

Salem Gateway Housing Phase 2 - Supplemental Findings

5205 Battle Creek Road SE, Salem case file 22 116522 PLN

Winterbrook Planning, September 22, 2022

As part of the completeness review for Phase 2 of the development proposed at 5205 Battle Creek Road SE (application no. 22-116522 PLN) a letter from Salem planning staff on September 9 determined that some standards were not met by the proposed design, and that an airport overlay zone height variance is required. Findings in this document address each of these issues.

With regard the design issues identified in the completeness letter, the applicant has provided clarifying information or modified the design to comply, as noted in a summary memo. In three specific instances, though, it seeks adjustments to the relevant standard. Specifically:

- From a standard which requires all ground-level dwelling units within 25 feet of the street to have “a building entrance facing that street, with direct pedestrian access to adjacent sidewalks,” SRC 702.020(e)(5). Three ground-level units have entrances facing other directions and therefore require an adjustment. These units are in the two buildings at the corner of Salal and Teal, I.3 on Lot 3 and H.2 on Lot 4.
- From a standard that requires solid waste service vehicle access to be designed so that the collection vehicle does not need to back out onto a public street, SRC 800.055(f)(2). The four parking areas are all one-way in and out, requiring collection vehicles to back out onto the street. The hauler has indicated this design is acceptable; however, an adjustment is still required.
- From a standard that requires solid waste service vehicle access to be perpendicular to the collection area, SRC 800.055(f)(1)(a). The four parking areas all have collection areas where the operation area is parallel to the front of the enclosure with the containers. The hauler has indicated this design is acceptable; however, an adjustment is still required.

Together with the other adjustments requested in the original narrative, this brings the total number of adjustments requested to five. Adjustments are limited in scope to a single or small number of locations. Also, given the request is for the development of 8 buildings and 4.66 acres of site area, situations needing adjustments are still relatively few.

Adjustments “allow reasonable development of property where special conditions or unusual circumstances exist,” as stated in the code. For the street-facing entrance adjustment request, one of the special conditions of this site is a natural elevation change, which would require stairs between one of the units and the sidewalk. Because ground-

floor units are reserved for elderly residents, a path with numerous stairs is an accessibility issue. Existing entries and paths, while not facing the sidewalk, are ADA compliant.

As noted in greater detail in the adjustment findings, the proposed design satisfies the purpose of the standard to “to orient buildings to the street” through other measures of building and site design. The waste collection vehicle access adjustments satisfy the purpose to provide “safe and convenient collection of solid waste” because the hauler responsible has said so.

Lastly, this document provides supplemental findings to address the Airport Overlay Zone requirements. Because the development site is within the horizontal area and exceeds allowable height limits, a height variance is requested. As noted in the completeness letter, the ground level of the site is above the height limit permitted by the overlay zone. A strict application of the standard with no variance granted would forbid all development and all vegetation. Because this is obviously not feasible or desirable, a variance is requested.

Adjustments – Chapter 250

Purpose – 250.001

The purpose of this chapter is to provide a process to allow deviations from the development standards of the UDC for developments that, while not meeting the standards of the UDC, will continue to meet the intended purpose of those standards. Adjustments provide for an alternative way to meet the purposes of the Code and provide for flexibility to allow reasonable development of property where special conditions or unusual circumstances exist.

Response: The requested adjustments will allow reasonable development of this property because special conditions or unusual circumstances exist. With respect to this property, one of those conditions is having two corner lots, which requires a building design that strives to have attractive and identifiable street-facing façades on two sides. Likewise, the narrow east-west dimension of the site reduces options for parking lot design and trash collection. Flexibility in these circumstances is justified.

Adjustments – 250.005

(a) Applicability.

(1) Classes.

(A) A Class 1 adjustment is an adjustment to any numerical development standard in the UDC that increases or decreases the standard by not more than 20 percent.

(B) A Class 2 adjustment is an adjustment to any development standard in the UDC other than a Class 1 adjustment, including an adjustment to any numerical development standard in the UDC that increases or decreases the standard by more than 20 percent.

Response: The proposed application requests three additional adjustments, from the multiple family design standard of SRC 702.020(e)(5), related to entrances for ground level

units, and from two vehicle access standards related to solid waste service vehicles, SRC 800.055(f)(1)(a) and SRC 800.055(f)(2).

The first adjustment is from SRC 702.020(e)(5), which requires that “any ground-level unit” within 25 feet of a street have “a building entrance facing that street, with direct pedestrian access to adjacent sidewalks.” Two units in Building I.3 that are within 25 feet of Salal Street and one unit in Building H.2 that is within 25 feet of Teal Drive do not have entrances that face those streets. This condition therefore requires a Class 2 adjustment

The second adjustment is from the waste collection vehicle access standard of SRC 800.055(f)(1)(a). This requires waste collection vehicle operation areas to be “perpendicular to every enclosure opening.” The design of the four waste collection areas on the site are parallel to their respective enclosure openings. Collection vehicles will roll the dumpsters out of the collection area to dump them into the trucks, which the hauler has indicated is acceptable. This proposed layout, parallel rather than perpendicular, requires a Class 2 adjustment.

The third adjustment is from the waste collection vehicle access standard of SRC 800.055(f)(2). This requires design of waste collection areas so that vehicles do not need to back out of the parking area onto the street after collecting the waste. The design of the four parking areas is one-way in and out, which therefore requires collection vehicles to back into the street after finishing collection, which the hauler has indicated is acceptable. This requires a Class 2 adjustment.

(2) Prohibition. Notwithstanding subsection (a)(1) of this section, an adjustment shall not be granted to:

- (A) Allow a use or activity not allowed under the UDC;*
 - (B) Change the status of a use or activity under the UDC;*
 - (C) Modify a definition or use classification;*
 - (D) Modify a use standard;*
 - (E) Modify the applicability of any requirement under the UDC;*
 - (F) Modify a development standard specifically identified as non-adjustable;*
 - (G) Modify a development standard that contains the word "prohibited";*
 - (H) Modify a procedural requirement under the UDC;*
 - (I) Modify a condition of approval placed on property through a previous planning action;*
 - (J) A design review guideline or design review standard, except Multiple Family Design Review Standards in SRC chapter 702, which may be adjusted; or*
 - (K) The required landscaping in the Industrial Business Campus (IBC) Zone.*
- (b) Procedure type. Class 1 and Class 2 adjustments are processed as a Type II Procedure under SRC chapter 300.*

Response: Subsection (J) above explicitly permits Multiple Family Design Review Standards in SRC Chapter 702 to go through the adjustment process. The vehicle access standards in SRC Chapter 800 is not prohibited from an adjustment under any of the listed circumstances and therefore may also be adjusted.

(c) Submittal requirements. In addition to the submittal requirements for a Type II application under SRC chapter 300, an application for a Class 1 or Class 2 adjustment shall include the following:

(1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing all information necessary to establish satisfaction with the approval criteria. By way of example, but not of limitation, such information may include the following:

(A) The total site area, dimensions, and orientation relative to north;

(B) The location of all proposed primary and accessory structures and other improvements, including fences, walls, and driveway locations, indicating distance to such structures from all property lines and adjacent on-site structures;

(C) All proposed landscape areas on the site, with an indication of square footage and as a percentage of site area;

(D) The location, height, and material of fences, berms, walls, and other proposed screening as they relate to landscaping and screening required by SRC chapter 807;

(E) The location of all trees and vegetation required to be protected pursuant to SRC chapter 808; and

(F) Identification of vehicle, pedestrian, and bicycle parking and circulation areas, including handicapped parking stalls, disembarking areas, accessible routes of travel, and proposed ramps.

(2) An existing conditions plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

(A) The total site area, dimensions, and orientation relative to north;

(B) The location of existing structures and other improvements on the site, including accessory structures, fences, walls, and driveways, noting their distance from property lines;

(C) The location of the 100-year floodplain, if applicable; and

(D) The location of drainage patterns and drainage courses, if applicable.

Response: The proposed adjustment requests are part of a consolidated application that includes site and building drawings that have all the listed elements above. These were previously addressed under the finding for site plan review submittal requirements, SRC 225.005(d), in the original application narrative.

(d) Criteria.

(1) An application for a Class 1 adjustment shall be granted if all of the following criteria are met:

[...]

(2) An application for a Class 2 adjustment shall be granted if all of the following criteria are met:

(A) The purpose underlying the specific development standard proposed for adjustment is:

(i) Clearly inapplicable to the proposed development; or

(ii) Equally or better met by the proposed development.

Response:

- Entrance orientation-- SRC 702.020(e)(5)

Three ground level units in the eight-building development are within 25 feet of a street lot line but do not have direct entrances and pedestrian accesses to the nearest sidewalk. Those

units are two units in Building I.3 facing Salal Street and one unit in Building H.2 facing Teal Drive. The location of these units, and the proposed entry points, are shown in the excerpts of the drawings shown below:

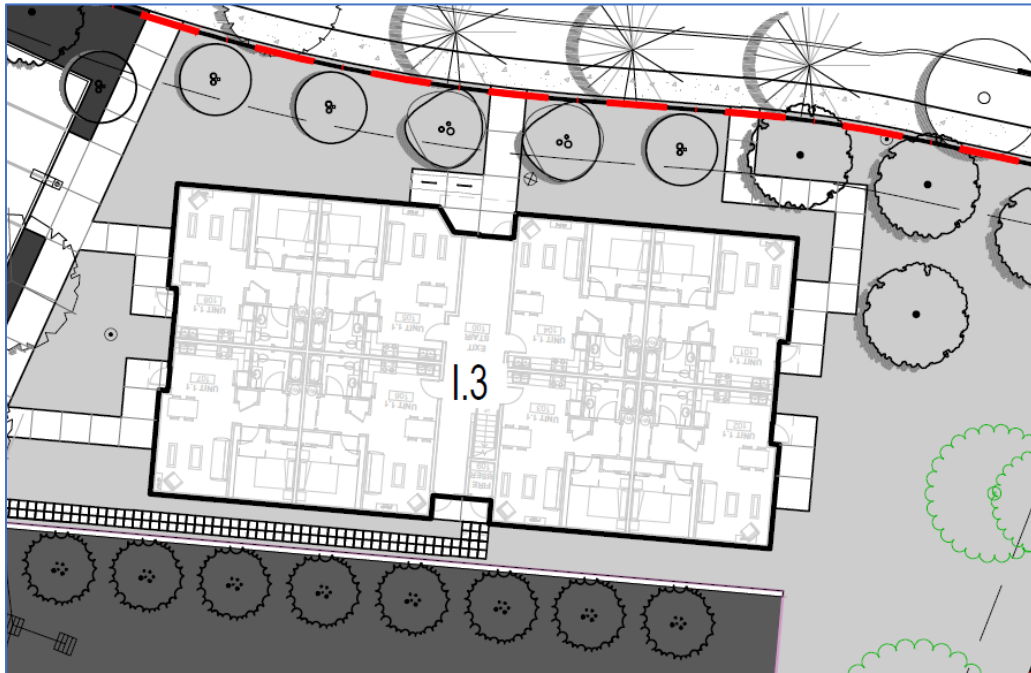


Figure 1. Two corner units have entrances to the side, rather than to the Salal sidewalk.

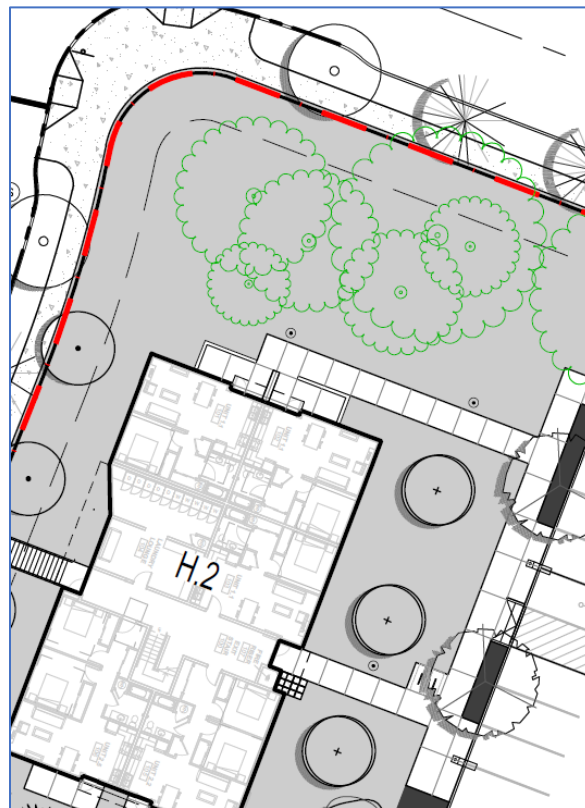


Figure 2. Northeast corner unit has entrance facing east, rather than to Teal sidewalk.

The entrances to these three qualifying units are on the short sides of the buildings. This is consistent with the design of all the other buildings in the development. But because the building locations at the corner of two streets, they do not meet the design standard requirement to have entrances face the nearest street. Building I.3 has a “direct” pedestrian connection from one of these entrances to the Salal sidewalk. The other entrance on Building I.3 and the one qualifying entrance on Building H.2 have entrances that connect to an internal pedestrian network, rather than to the nearest sidewalk.

The purpose statement for the section that includes the standard about the orientation of ground-floor unit entrances is in SRC 702.001:

“The purpose of this chapter is to establish design review standards for multiple family development.”

This purpose section does not address the unit entrance orientation requirement. However, the “underlying” purpose of the standard may be found within the language of each individual standard. The applicable standard reads, “To orient buildings to the street, any ground-level unit, cluster of units, interior lobbies, or portions thereof, located within 25 feet of the property line abutting a street shall have a building entrance facing that street, with direct pedestrian access to adjacent sidewalks.” Therefore, the purpose underlying the regulation is: “to orient buildings to the street.”

The overall design of each of the two buildings equally or better meets this purpose — orienting buildings to the street — by incorporating numerous design elements.

Building I.3 and Building H.2 both have major, prominent entrances on the long façade that faces the street, with direct sidewalk access. These entrances are shared among the many ground-level units and upper floor units in each building. As a result, they activate this side of each building with significant pedestrian activity. As a corollary, there would be only a minor incremental benefit to adding multiple private entrances and walkways on the same façade, each of which would serve only one unit. Additional entrances on the street-facing façade would also be aesthetically awkward because their proximity to the main shared entrance. A singular, prominent, clearly-defined main entrance does more to orient a building to the street than having multiple entrances with multiple walkways.

The street-facing façade of each building is located right at the setback line, as required by SRC 702.020(e)(4). This façade is an identifiable “front” of the building. This side of the building has a main entrance, gable ended roofs, a recessed area that creates articulation, and numerous ground floor and upper level windows that face the street. All of these features are architectural expressions of the buildings’ presence toward the abutting street and its orientation to it. These equally or better achieve that goal versus an entrance and walkway for the ground-level units.

Finally, strict application of the standard does not better serve the purpose of orienting Building H.2 for elevation reasons. The building’s ground floors and the Teal Drive are at

quite different elevations, requiring stairs. As noted in the application materials, ground floor units are restricted to low-income elderly residents, who are more likely to have mobility challenges. There is a 10-foot drop in grade between Building H.2 and the sidewalk on Teal Drive. Stairs between an entrance on this side of the building and the adjacent sidewalk would be necessary for a private walkway, as they are for the walkway to the shared main entrance. The unavoidable stairs from Teal Drive to the main entrance on that building façade create a mobility barrier, mitigated through a stair-less entrance on the south side of the building, accessible through the central hallway. Another entrance facing the Teal Drive sidewalk would serve just one unit and be lightly used because of that and because it is less accessible than the proposed design. Conversely, proposed connections on the “sides” of the buildings – to internal pedestrian paths – do not have stairs and are therefore more accessible to users. In short, largely unused entrances and walkways do not better orient buildings toward the street, which is the purpose of the regulation.

- Waste collection vehicle operation area -- SRC 800.055(f)(1)(A)

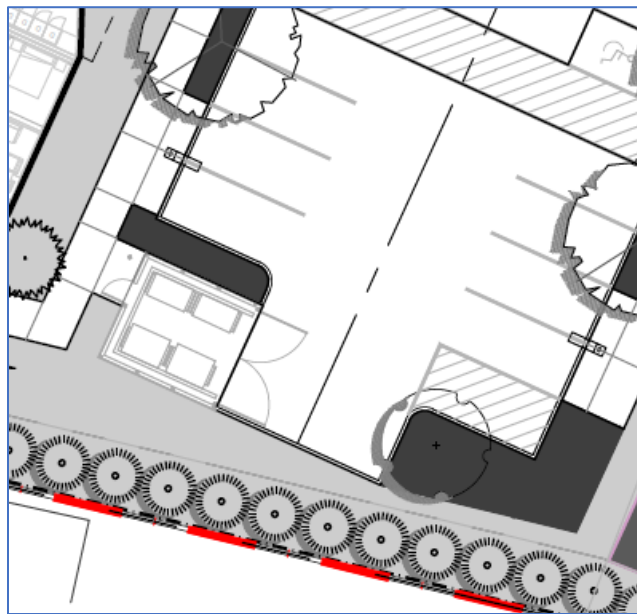


Figure 3. Typical waste collection area

The purpose statement for the section that includes the standard about operation areas for waste collection vehicles is in SRC 800.001:

“The purpose of this chapter is to establish certain standards that apply generally to development throughout the City, regardless of zone.”

This purpose section does not illuminate the reasons for the requirement for waste collection vehicle access standard. However, the “underlying” purpose of the standard may be found within the language of each individual standard. The opening sentence of the section on solid waste service areas reads, “Solid waste service areas shall provide for the

safe and convenient collection of solid waste and recyclable and compostable materials by the local solid waste collection franchisee.” The language therefore specifies that the purpose underlying the regulation is “safe and convenient collection.” It also makes clear the sole or primary beneficiary of this regulation is the local franchisee, which is in this case Republic Services.

The purpose of the vehicle operation area standard is satisfied because the hauler responsible for collection has reviewed plans and determined that the design allows for “safe and convenient collection,” as required by the standard. A letter from Republic Services has been submitted that states they can serve the collection area by approaching it in a parallel manner, rather than the perpendicular one specified in the code standard. The judgement of the hauler is paramount in considering whether the purpose of the regulation can be equally or better met by the adjustment, because they are explicitly who the regulation is supposed to benefit. Because evidence has been submitted with this application showing their belief that vehicle access as proposed allows for safe and convenient collection, this criterion is met.

- Waste collection vehicle access -- SRC 800.055(f)(2)

The purpose statement for the section that includes the standard about the orientation of ground-floor unit entrances is in SRC 800.001:

“The purpose of this chapter is to establish certain standards that apply generally to development throughout the City, regardless of zone.”

This purpose section does not illuminate the reasons for the requirement for waste collection vehicle access standard. However, the “underlying” purpose of the standard may be found within the language of each individual standard. The opening sentence of the section on solid waste service areas reads, “Solid waste service areas shall provide for the safe and convenient collection of solid waste and recyclable and compostable materials by the local solid waste collection franchisee.” The language therefore specifies that the purpose underlying the regulation is “safe and convenient collection.” It also makes clear the sole or primary beneficiary of this regulation is the local franchisee, which is in this case Republic Services.

The purpose of the vehicle access standard is satisfied because the hauler responsible for collection has reviewed plans and determined that the design allows for “safe and convenient collection,” as required by the standard. A letter from Republic Services has been submitted that due to the short distance from the street to the back of the parking area, they can safely back onto the street to leave the premises. The judgement of the hauler is paramount in considering whether the purpose of the regulation can be equally or better met by the adjustment, because they are explicitly who the regulation is supposed to benefit. Because they believe that vehicle access as proposed allows for safe and convenient collection, this criterion is met.

(B) If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.

Response: The proposed adjustments are within a residential zone, the RM-II. The proposed development will not detract from the livability or appearance of the residential area for the following reasons.

- Entrance orientation

In the context of this design standard, the “residential area” affected by allowing the adjustment is limited to properties immediately adjacent to the relevant unit. As with other adjustments, the area does not expand to adjacent properties if they have no view of the feature, in this case, the street-facing wall of the unit that is close to the street.

Both the east side of Building I.3 where the adjustment is needed for two units, and the north side of Building H.2 where the adjustment is needed for one unit are entirely internal to the larger Mahonia Crossing development. The exterior walls that would otherwise have additional entrance and connections to the sidewalk is visible only from the same development that has been proposed by this applicant. Other residents of the area cannot see these façades due to intervening buildings or landscaping. Placing entrances to some apartment units on the side of a building rather than on its street façade will have virtually no effect on the livability or appearance of this area. This is especially true where the affected buildings have a strong street-facing presence and the proposed connections are to a well-defined pedestrian path network.

- Waste collection operation area and vehicle access

Likewise, in the context of this the two standards related to waste collection service vehicle access and operation area, the “residential area” affected by allowing the adjustment is limited to buildings immediately adjacent to the relevant unit. The scope of impact from this adjustment is even more limited than with the other adjustments since it relates to the access and operations of service vehicles that come to the site approximately once a week. The operational change that will occur if the adjustment is approved does not extend to other properties. It is therefore entirely limited to the applicant’s site. As with other adjustments, the area does not expand to adjacent properties because collection vehicles are not routed any closer to them.

A strict application of the no-backing-out standard would result in a parking lot layout that loops through the site, creating more vehicular circulation closer to the properties that abut the site to the west. This is something those neighbors told the applicant they specifically did not want. In addition, a loop parking area would create more paving and less efficiency for the site, potentially reducing the number of housing units that could be constructed. As noted, the impacts to any users in the residential area are insignificant, especially considering how infrequent the anticipated backing movement out of the parking lot will be, *i.e.*, approximately one time per week.

Adjusting the standard to allow parallel rather than perpendicular access to the waste collection area creates a condition that is effectively imperceptible to any part of the residential area, on site or off. The only entity affected by this change to site layout is the hauler, and they have submitted testimony that this arrangement is acceptable to them. Consequently, these two adjustments related to the design and operations of the waste collection area will have no effect on the livability or appearance of the residential area.

(C) If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.

Response: Including the adjustments requested in the original application, five total adjustments are requested. These are from the following regulations:

- SRC 702.020(e)(4) – buildable width along street frontage
- SRC 702.020(e)(5) – unit entrance orientation
- SRC 702.020(e)(9) – building face length limit
- SRC 800.055(f)(1)(A) – waste collection vehicle operation area
- SRC 800.055(f)(2) – waste collection vehicle access

The development site encompasses 7.7 acres of property, the applicant has proposed 8 separate buildings with 200,000 square feet of floor area. Salem has dozens of specific standards in its code. Considering the project scale and scope, it is reasonable for the application to find a need for four adjustments that apply in only very specific locations. Adjustments have limited applicability within the site and their cumulative effect is minor compared with strict, blanket compliance with all standards.

The “overall purpose of the zone” is listed in SRC 514.001:

“The purpose of the Multiple Family Residential-II (RM-II) Zone is to implement the multiple family residential designation of the Salem Area Comprehensive Plan through the identification of allowed uses and the establishment of development standards. The RM-II zone generally allows multiple family residential uses, along with a mix of other uses that are compatible with and/or provide services to the residential area.”

The project, with the proposed adjustments, has no direct impact on the purpose of the zone as listed in this statement. Specifically, it does not change implementation of the comprehensive plan designation, identification of allowed uses, or establishment of development standards. The proposed use of the site is multiple family residential, which is an allowed use and not affected by the adjustments. The spirit of the design and development standards, to increase visual interest and enhance the pedestrian experience, has been met by upgrades to the condition of the site along the edge Salal Street and Teal Drive. The placement and appearance of the proposed buildings on the two lots define the

street edge and give shape and definition to the new neighborhood. At the same time, mature trees have been preserved to the extent possible while still developing the site to the extent anticipated by the city's zoning and comprehensive plan. Larger buildings are consistent with multi-family residential uses, and the larger buildings have been broken up into smaller segments using design elements. The adjustments not related to building design standards were reviewed and approved by the waste hauler. The hauler is the named beneficiary of the regulation and they have submitted testimony that the arrangement is acceptable to them. In general, the proposed multiple family project will be a high-quality housing development in a multiple family zone, a zone that was explicitly designated to create opportunities like this. For that reason, it is consistent with its overall purpose.

Airport Overlay Zone – Chapter 602

Purpose – 602.001

The purpose of the Airport Overlay Zone is to establish standards to promote air navigational safety and prevent hazards and obstructions to air navigation and flight.

Sec. 602.020. - Development standards.

Development within the Airport Overlay Zone must comply with the development standards applicable in the underlying zone and the development standards set forth in this section. The development standards in this section are in addition to, and not in lieu of, all other applicable development standards in the underlying zone. Where the development standards in this section conflict with the development standards applicable in the underlying zone or any other overlay zone, the more restrictive development standards shall be the applicable development standard.

(a) Height. Except as otherwise provided in this chapter, no building, structure, or object shall be erected or increased in height, and no vegetation shall be allowed to grow, to a height in excess of the height limitations set forth in this subsection. If all or part of a lot is located in more than one Airport Overlay Zone area, the applicable height limitation shall be the most restrictive height limitation. [...]

(5) Horizontal surface. In the horizontal surface, no building, structure, object, or vegetative growth shall have a height greater than that established by a horizontal plane 150 feet above the airport elevation. [...]

(b) Development compatibility. Uses within the Airport Overlay Zone shall not be developed, conducted, or maintained in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, attract wildlife, or endanger or interfere in

any other manner with landing, takeoff, or maneuvering of aircraft using or intending to use McNary Field.

Response: Figure 602-1 indicates that the development site is within the “horizontal surface” of the overlay zone. Consequently, per SRC 602.020(a)(5), height is limited on the site to 150 feet above the airport elevation, which is defined as 213.4 feet MSL. The ground level of the site is between approximately 368 and 414 MSL, or 5 to 50 feet higher than allowed. Existing trees on the vacant site, some of which will remain with new development, exceed the height limit. Proposed buildings, the tallest of which is 36.3 feet high, will also exceed the height limit.

Sec. 602.025. - Airport overlay zone height variance.

(a) Applicability. No building, structure, or object shall be erected or increased in height, and no vegetation shall be allowed to grow, to a height in excess of the height limitations set forth in this chapter unless a variance has been granted pursuant to this section.

Response: A variance pursuant to this section is requested to allow construction of new buildings, planting of new vegetation, and continued growth of existing vegetation on the site.

(b) Procedure type. An Airport Overlay Zone height variance is processed as a Type I procedure under SRC chapter 300.

(c) Submittal requirements. In addition to the submittal requirements for a Type I application under SRC chapter 300, an application for an Airport Overlay Zone height variance shall include:

(1) A statement of the specific height limitation for which the variance is requested, and the amount of the variance; and

Response: All the requirements for a Type I application were previously provided in the original application materials.

The specific height limitation for which the variance is requested is in SRC 602.020(a)(5), 150 feet above the airport elevation. The proposed buildings on the site, the tallest of which is 36.3 feet tall, will encroach into this height limit.

(2) A determination from the FAA that the proposed variance will not create a hazard to air navigation.

Response: The applicant filed a request for this determination from the FAA on September 13. The document will be forwarded to the city as soon as it is received.

(d) Criteria. An Airport Overlay Zone height variance shall be granted if the FAA has issued a determination that the proposed variance will not create a hazard to air navigation.

Response: The applicant filed a request for this determination from the FAA on September 13. The document will be forwarded to the city as soon as it is received. Presuming a

determination that the variance will not create an air navigation hazard, this criterion will be met.

(e) Conditions of approval. The Review Authority shall impose as conditions of approval on an Airport Overlay Zone height variance any condition imposed in the FAA determination.

Response: Conditions may be imposed by the city as necessary.