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503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE CASE NO.: CU24-05

APPLICATION NO.: 24-104327-PLN

NOTICE OF DECISION DATE: September 24, 2024

SUMMARY: Conditional Use for motor vehicle services in the MU-III zone.

REQUEST: A Conditional Use Permit to allow a motor vehicle service use in an existing building on property zoned MU-III (Mixed Use-III), 0.26 acres in size, and located at 3393 Silverton Road NE (Marion County Assessors Map and Tax Lot number: 073W13AA / 700).

APPLICANT: Giovanna Reyes

LOCATION: 3393 Silverton Rd NE, Salem OR 97301

CRITERIA: Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use

FINDINGS: The findings are in the attached Decision dated September 20, 2024.

DECISION: The **Hearings Officer APPROVED** Conditional Use Case No. CU24-05 subject to the following conditions of approval:

- Condition 1:** The Applicant shall obtain the necessary building permit to establish the change of occupancy within 90 days of the effective date of the Class 1 Site Plan Review approval. The applicant shall request to obtain Final Occupancy within 90 days after the building permit is issued.
- Condition 2:** All vehicle repair shall be conducted entirely within the building and there shall be no outdoor storage of vehicle parts or equipment on site.
- Condition 3:** Vehicles shall only be parked within delineated parking spaces or within the building.
- Condition 4:** Normal hours of operation where the business is open to the public shall be between the hours of 10:00 a.m. to 8:00 p.m. All repairs and work done on vehicles shall be conducted between the hours of 7:00 a.m. and 10 p.m.
- Condition 5:** Wheel stops shall be installed to ensure that vehicles do not overhang into the sidewalk or right-of-way directly adjacent to the parking area along Silverton Road NE.

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



- Condition 6:** The applicant shall provide a wheel stop and post signage for the ADA parking space, and paint “No Parking” within the striped access aisle. The access aisle service the ADA space shall maintain a minimum width of 8 feet clear of vehicles or obstructions. The painted “No Parking” designation shall be maintained in good condition and visible through the duration of the conditional use permit.
- Condition 7:** The applicant shall install landscaping of shrubs and group cover to the existing planter strip along Hawthorne Ave NE at a density of one unit per 20 square feet. Trees are not required. Consistent with SRC 807.045, the landscaping material shall be maintained in good condition throughout the duration of the conditional use permit.
- Condition 8:** The applicant shall provide a pedestrian connection from the building entrance to the intersection of Silverton Road NE and Hawthorne Avenue NE, in conformance with SRC 800.065.
- Condition 9:** The property is required to provide a minimum of one ADA space on the site. If the widening of Hawthorne Avenue NE to meet standards displaces the current ADA space, a replacement ADA space shall be located elsewhere on the site.

Advisory Conditions:

- Condition 1:** The property is subject to a special setback equal to 48 feet from the centerline of Hawthorne Avenue NE.
- Condition 2:** The property is subject to a special setback equal to 48 feet from the centerline of Silverton Road NE.

The rights granted by the attached decision must be exercised, or an extension granted, by October 15, 2026, or this approval shall be null and void.

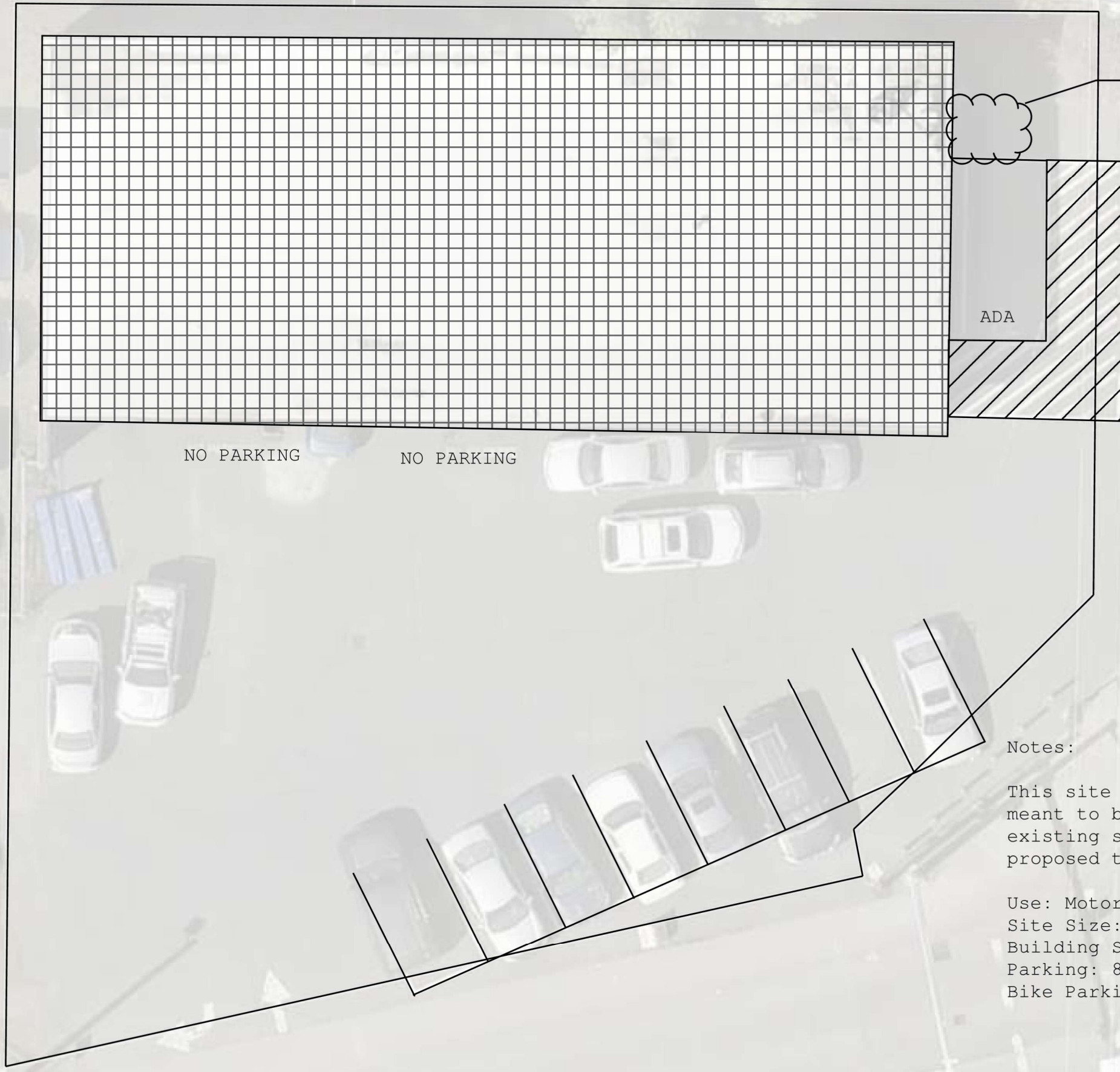
Application Deemed Complete:	<u>May 30, 2024</u>
Public Hearing Date:	<u>August 14, 2024</u>
Notice of Decision Mailing Date:	<u>September 24, 2024</u>
Decision Effective Date:	<u>October 15, 2024</u>
State Mandate Date:	<u>January 25, 2025</u>

Case Manager: Jamie Donaldson, jdonaldson@cityofsalem.net, (503) 540-2328

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m. Wednesday, October 9, 2024. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>



Proposed location of 2 new bicycle parking stalls.

ADA

NO PARKING

NO PARKING

HAWTHORNE AVE NE

SILVERTON ROAD NE



Notes:

This site plan is not to scale and is meant to be used to demonstrate some existing site features. No changes are proposed to the building or site.

- Use: Motor Vehicle Service
- Site Size: .26 acres
- Building Size: 3,696
- Parking: 8 Standard 1 ADA
- Bike Parking: 2 - Newly Proposed

Existing Conditions - No Changes Proposed

OREGON ALLIANCE, LLC

3393 SILVERTON ROAD NE SALEM, OR 97303

BRAND

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

AN APPLICATION FOR A CONDITIONAL USE PERMIT TO ALLOW A MOTOR VEHICLE SERVICE USE ON PROPERTY ZONED MU-III LOCATED AT 3393 SILVERTON ROAD NE (MARION COUNTY ASSESSOR'S MAP AND TAX LOT NUMBER 073W13AA / 700)	} CU24-05 } FINDINGS OF FACT, CONCLUSIONS, } AND DECISION
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DATE AND PLACE OF HEARING:

On August 14th, 2024, at 5:30 p.m., a properly noticed hearing was held before the City of Salem Hearings Officer at Salem City Council Chambers, Room 240, Civic Center, 555 Liberty Street SE, Salem, Oregon.

APPEARANCES:

<u>Staff:</u>	Jamie Donaldson, Planner III
<u>Neighborhood Association:</u>	South Gateway Neighborhood Association
<u>Proponents:</u>	Giovanna Casas Reyes, Represented by Brittany Randall; Emma Marquez
<u>Opponents:</u>	None

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on August 14th, 2024, regarding the Applicant's request. During the hearing, Jamie Donaldson requested that the Staff Report be entered into the Record, and the Hearings Officer granted the request. The application for a conditional use permit was accepted for processing on March 6, 2024 and was deemed complete at the request of the applicant on May 30, 2024. The 120-day State mandated deadline was extended at the request of the applicant until January 25, 2025.

The Hearing Notice was provided on July 25, 2024, to surrounding property owners and tenants pursuant to Salem Revised Code (SRC) and stated that the date for the hearing was June 12th, 2024. The property was posted on July 31, 2024 consistent with the requirements of SRC 300.620(b)(3) for a Type III application.

Multiple comments were submitted prior to the hearing and during the open record or the open rebuttal periods, and the applicant submitted a final written argument.

The public hearing was held on August 14th, 2024. At the conclusion of the hearing, the record was held open for two weeks as follows: until 5:00 p.m. on August 28th, 2024 for comments from any interested party; until 5:00 p.m. on September 4th, 2024, for comments from any interested party responding to the comments submitted into the record during the prior open record period; and until 5:00 on September 11th, 2024, for final rebuttal by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is “Mixed Use.” The subject property is within the Urban Growth Boundary and the Urban Service Area. It has a site address of 3393 Silverton Road NE, Salem, Oregon.

2. Zoning and Surrounding Land Uses

The subject property is zoned MU–III (Mixed Use–III). The zoning and uses of the surrounding properties include:

North: MU–III (Mixed Use–III) Jackson's Body Shop, *motor vehicle services*.

South: MU–III (Mixed Use–III) Across Silverton Road NE, United Rentals, *heavy vehicle and trailer sales*.

East: MU–III (Mixed Use–III) Across Hawthorne Ave. NE, Cheetahs and OG Collective, *commercial indoor entertainment and retail sales*.

West: MU–III (Mixed Use–III) Jackson's Body Shop, *motor vehicle services*.

2. Site Analysis

The subject property is 0.26 acres and is occupied with an existing building which has historically operated as a bakery. The subject property has about 110 feet of frontage along Silverton Road NE to the south and about 80 feet of frontage along Hawthorne Avenue NE to the east; both of which are designated as Mayor Arterial Streets in the Salem Transportation System Plan (TSP).

3. Neighborhood and Citizen Comments

The subject property is located within the Northgate Neighborhood Association and is directly adjacent to the boundary of the North Lancaster Neighborhood Association (NOLA). Pursuant to SRC Chapter 300, the applicant is required to contact the

Neighborhood Association prior to submittal of this consolidated application. On February 29, 2024, the applicant contacted the neighborhood associations, meeting the requirements of SRC 300.310(b)(1 and (c). Pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), notice was provided to surrounding addresses, property owners, and tenants within 250 feet of the subject property. No comments were received from the Northgate or North Lancaster Neighborhood Associations at the time the staff report was completed or during the open record period.

4. City Department and Public Agency Comments

The Public Works Department reviewed the proposal and provided a memo.

The Salem Building and Safety Division reviewed the proposal and commented that "If not completed prior, building permits to establish occupancy/use will be required."

The Salem Fire Department reviewed the proposal and indicated no concerns.

5. Analysis of Conditional Use Criteria

SRC Chapter 240.005(a)(1) provides that no building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter. SRC 535.010, Table 535-1, provides that motor vehicle services are conditionally allowed in the MU-111 Zone.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

Criterion 1 (SRC 240.005(d)(1): *The proposed use is allowed as a conditional use in the zone.*

Finding 1: The proposal includes a change of use for an existing building of 3,696 square feet from a bakery to a motor vehicle services use for the operation of Adan's Automotive. SRC 535.010, Table 535-1, provides that motor vehicle services, except for gasoline service stations, are conditionally allowed in the MU-111 Zone. Thus, a conditional use permit is required to change the existing use to a motor vehicle services use.

Conclusion: The Hearings Officer concludes that the proposal meets this criterion.

Criterion 2 (SRC 240.005(d)(2): *The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.*

Finding 2: The proposal is to allow conversion of an existing structure from a bakery to an automotive repair shop, which is classified as a motor vehicle services use. The nature of the proposed use is more intense than the previous use, as it will involve an increased number of vehicles visiting the site, including parking and circulation of vehicles outside

of the building, and could have noise and odor impacts that could present adverse impacts to immediate neighbors. The change in use will require building permits to establish occupancy and the new use.

Both the existing conditions plan submitted by the applicant and aerial and street views of the property have shown vehicles parked outside of approved parking spaces, in areas that restrict safe circulation of the site and encroach onto neighboring property. In addition, there have been observations of repairs occurring in the parking lot, which can create excess noise or odors to the surrounding neighborhood. To ensure the operation of the auto repair shop maintains minimal impact to the surrounding neighborhood, the following condition of approval is appropriate:

Condition #1: The applicant shall obtain the necessary building permit to establish the change of occupancy within 90 days of the effective date of the Class I Site Plan Review approval. The applicant shall request to obtain Final Occupancy within 90 days after the building permit is issued.

Finding 3: To ensure the operation of the auto repair shop maintains minimal impact to the surrounding neighborhood, all vehicle repair will be conducted indoors, with no outdoor storage of vehicle parts or equipment on site. In addition, any vehicles outside of the building shall be parked in the existing striped parking on site, henceforth referred to as "delineated" parking spaces. The existing "delineated" parking includes seven parking stalls along Silverton Road NE, and the ADA parking stall along Hawthorne Avenue NE. Any substantial alteration or reconfiguration to the existing parking lot striping is subject to site plan review and changes to or additional striping outside of the parking configuration as it exists as of August 14, 2024, shall not be considered "delineated" parking for the purposes of the following conditions of approval, unless approval of a land use decision is issued for any such changes.

Condition #2: All vehicle repair shall be conducted entirely within the building and there shall be no outdoor storage of vehicle parts or equipment on site.

Condition #3: Vehicles shall only be parked within delineated parking spaces, or within the building.

Initially, the applicant did not provide current or proposed hours of operation. At the hearing, however, the applicant indicated that the normal hours of operation for the business was normally 10 a.m. to 8:00 p.m., with some exceptions where work was extended until 9:00 p.m. due to an emergency. Nevertheless, the applicant continued to resist any condition that set hours of operation and suggested that there was no precedent for the restriction of hours on auto repair businesses.

The applicant has supplemented the record with additional information regarding the operating hours of nearby uses. For instance, Jacksons Auto Body operates from 7:30 a.m. to 5:00 p.m., Monday through Friday and United Rentals operates from 7:00 a.m. to 5:00 p.m. during that same timeframe. Cheetahs Cabaret operates from 7:00 a.m. to 4:00 p.m.

on Tuesdays through Thursdays and from 6:00 p.m. to 5:00 a.m. on Fridays and Saturdays. Finally, Capital Transmission Experts operates from 8:00 a.m. to 5:00 p.m., Monday through Friday. In general, the uses inventoried by the applicant that are most similar to the proposed use generally operate between 7:00 a.m. and 5:00 p.m., Monday through Friday. In addition, the City has introduced evidence of various conditional use permits that limited hours of operation.

In response to the applicant's assertions, planning staff did a data base search for previous planning applications that concerned motor vehicle service use. One such case, CU-SPR-ADJ-DAP-PLA23-05PLA23-11 was for a motor vehicle sales and service use. In that case, the application was conditioned that the service and repair of vehicles be limited to the hours of operation of the sales dealership. Another case, CU-SPR23-02, concerned an oil-change facility that was part of a mixed-use development where residential units were located above a retail convenience store. The Salem City Council had concerns about allowing auto repair uses that create adverse impacts from noise and odors in close proximity with residential units.

As the applicant has pointed out, there currently are no residential uses immediately adjacent to the subject property. The nearest residential use is located to the west on Hadley Street with Jackson's Autobody and an industrial park lying between that use and the subject property. However, staff has noted that the Our Salem Project updated that Salem Comprehensive Plan to address Salem's housing needs by allowing multifamily housing more broadly in Salem and increasing densities in multifamily and mixed-use zones. A second data base search that focused on new mixed developments revealed that exactly half of all new developments in the new mixed-use zones since August 24, 2022 included residential units. Apparently this is indicative of a trend as an analysis of pre-application conferences completed after the implementation of the Our Salem Project showed that 46 percent included proposals for residential uses within mixed-use zones. The relevance of these development trends to the current application is that they suggest the high likelihood of the infiltration of residential uses into the neighborhood since the subject property is surrounded by mixed-use zoned properties.

Staff has proposed a modified Condition #4 and I believe that it represents a good balance between the hours of service normally offered by the applicant and protection for future residential uses as the neighborhood gradually incorporates more residential uses. It should be noted that the hours proposed by staff are more generous than similar uses inventoried by the applicant in regards to hours of repair work and the number of days that the business may operate. The Hearings Official agrees with the proposed modification and incorporates it into the following condition of approval:

Condition #4: Normal hours of operation where the business is open to the public shall be between the hours of 10:00 a.m. to 8:00 p.m. All repairs and work done on vehicles shall be conducted between the hours of 7:00 a.m. and 10 p.m.

Finding 4: The proposed use will also involve parking of vehicles in the existing parking spaces exterior to the building, along Silverton Road NE. The applicant did not submit a site plan with proposed improvements; however, an existing conditions plan was submitted. The existing conditions plans submitted by the applicant shows parking stalls that extend into the public right-of-way and overhang into the sidewalk along Silverton Road NE. The parking on the subject property was re-striped through a Capital Improvement Project at the intersection of Silverton Road NE and Hawthorne Avenue NE. Wheel stops were not placed as part of the Capital Improvement Project on the private property; however, bollards at the intersection of Silverton Road NE and Hawthorne Avenue NE were placed in the public right-of-way. Pursuant to SRC 78.220, it is the responsibility of owners or lessees abutting, or adjacent to, any sidewalk to keep the sidewalk clear of obstructions. In order to ensure that vehicles do not overhang from the parking spaces into the right-of-way and sidewalk, the applicant shall be required to place wheel stops within the parking spaces abutting Silverton Road NE. This condition of approval is intended ensure that the adverse impacts of the development are minimized and pedestrian safety in the public right-of-way is ensured.

Condition #5: Wheel stops shall be installed to ensure that vehicles do not overhang into the sidewalk or right-of-way directly adjacent to the parking area along Silverton Road NE.

Finding 5: The existing ADA parking space on site was re-striped due to the Capital Improvement Project at the intersection of Silverton Road NE and Hawthorne Avenue NE. However, the re-striped ADA parking area does not meet the Oregon Transportation Commission's Standards for Accessible Parking Places, which require the use of signs, pavement markings, and wheel stops, for clear identification of the space and safety. Prior observations of the site have also shown cars parked in the ADA access aisle, or cars parked beyond the lines that delineate the space to accommodate tandem parking of excess vehicles. To ensure that accessible parking requirements are met and the ADA space remains safe and accessible at all times, the following condition is necessary:

Condition #6: The applicant shall provide a wheel stop and post signage for the ADA parking space, and paint "No Parking" within the striped access aisle. The access aisle service the ADA space shall maintain a minimum width of 8 feet clear of vehicles or obstructions. The painted "No Parking" designation shall be maintained in good condition and visible through the duration of the conditional use permit.

Finding 6: SRC 535.015(e)(2) provides that vehicle use areas in the MU-III Zone shall be landscaped according to SRC Chapters 806 and 807. SRC 535.015(d)(3) extends this requirement to a minimum of 15 percent of a development site. SRC 806.035(5)(d)(2), Table 806-4 requires 5 percent of off-street parking to be landscaped. SRC 807.055 provides for administrative relief but none of its exceptions are applicable.

As staff has noted, it is typical for similar developments subject to a conditional use permit to provide a combination of landscaping and/or site-obscuring fencing to mitigate

the visual impacts of parked vehicles to surrounding properties and the public. Unfortunately, the majority of the subject property is largely paved, limiting the ability to provide such improvements. There is, however, one landscape planter strip left on the property along Hawthorne Avenue NE which now contains dormant grass that could be maintained in good condition so as to present a healthy, neat, and orderly appearance, pursuant to SRC 807.045. To ensure compliance with landscape maintenance standards and to mitigate the visual impacts of the parked vehicles to neighboring properties, staff has proposed a condition requiring the applicant to install landscaping of shrubs and ground cover to the existing planter strip on the subject property.

The applicant argues that proposed Conditions of Approval #7 (as well as Condition of Approval #8) represent an unconstitutional taking. On the basis of the following analysis, the Hearings Officer must disagree:

The U.S. Supreme Court has issued several landmark decisions that establish general rules in regard to regulatory takings. Generally, these rules fall under the Doctrine of Unconstitutional Conditions. The first rule addresses situations where the regulation denies the landowner of all economically viable use of the property. (*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)). That is clearly not the case here. Second, there is the situation where the regulation gives a non-owner the right to physically occupy the landowner's property. (*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)). Again, that isn't the situation in this case. Thirdly, there is the circumstance where the government requires the landowner to accept an exaction or dedication in return for regulatory approval. This was the situation in the *Nollan* and *Dolan* cases. *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In the present case, the City is not requiring the applicant to dedicate any property to the public nor is it demanding an exaction. The fourth and final rule addresses situations where a balancing of interests is required to determine whether an unconstitutional taking has occurred. *Penn Central v. New York City*, 438 U.S. 104 (1978). Here, the decision-maker must balance the extent of the economic impact of the regulation, the reasonable investment expectations of the landowner, and the character or purpose of the regulation itself. This is the standard that is applicable to this case.

Applying the *Penn Central* balancing test, we see that the economic impact on the applicant is not large. Essentially, the city is requiring the applicant to landscape a small, existing planter strip and to provide a pedestrian connection from the building entrance to the intersection of Silverton Road NE and Hawthorne Avenue NE. The estimated cost of what is required to repair the existing condition of the planter strip landscape is around \$150. The property is over 11,000 square feet in size and the affected portion of the property is but a small fraction of this area. By the same token, the establishment of a pedestrian connection is essentially a paint job. A vast majority of the applicant's property will be unaffected by these conditions. Secondly, the regulations objected to by the applicant were in place when the business began. Due diligence would have alerted the applicant to those regulations prior to the purchase of the subject property. Finally, there is no question that the conditions imposed by the City are for the benefit of the general public in regard to improving the aesthetic quality of the neighborhood and protecting

pedestrian access through clearly marked accessways. The applicant is not singled out since the regulations apply uniformly to the zoning district overlaying the subject property and were in place prior to the purchase of the subject property by the applicant.

In summary, an application of the *Penn Central* balancing test results in the conclusion that the imposition of proposed Conditions of Approval #7 and #8 are not an unconstitutional regulatory taking.

The applicant also argues that the site is an existing non-conforming development and modifications cannot be required. SRC 270.010(a) states "*Generally: Nonconforming development is any development which met the applicable City or county development standards imposed at the time the development was constructed, but which no longer complies with development standards due to the adoption of, or amendment to, the City's land use regulations, the annexation of the property into the City, or the acquisition of public right-of-way. A nonconforming development may be continued until the development's nonconforming status is terminated as provided in section (d) of this section.*"

SRC 270.005(a) generally describes a nonconforming use as any use that was lawfully established under applicable City or county land use regulations at the time the use was established. Under SRC 270.010(a), the same general description applies to nonconforming development. What is missing is any evidence that the "development" affected by Conditions of Approval #7 and #8 were lawfully established at the time they were established or constructed. The burden is on the applicant to provide that evidence.

The change in use of the subject property from a bakery to an auto repair and service operation requires conditional use permit approval. Elements of the use or development that must be changed to gain conditional use approval lose whatever nonconforming use or development status they might have had. In other words, the permit process overrides any inconsistent nonconforming use status that existed prior to the approval of that permit. See *Pioneer Asphalt, Inc. v. Umatilla County*, LUBA No. 2014-076, at page 16 (2015). Thus, in the present case, the approval of the conditional use permit makes the conditioned changes to the existing use as lawful not nonconforming development.

Condition #7: The applicant shall install landscaping of shrubs and ground cover to the existing planter strip along Hawthorne Avenue NE at a density of one unit per 20 square feet. Trees are not required. Consistent with SRC 807.045, the landscaping material shall be maintained in good condition throughout the duration of the conditional use permit.

Conclusion: I conclude that the application, as conditioned, is consistent with SRC 240.005(d)(2).

Criterion 3 (SRC 240.005(d)(3): *The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.*

Finding 7: The properties immediately adjacent to the subject property are zoned MU–III and are occupied with motor vehicle services. Rentals and vehicle sales are located across Silverton Road to the South and commercial uses are located across Hawthorne Avenue to the East.

The property was rezoned from CG (General Commercial) to MU–III (Mixed Use–III) with the Our Salem project in August 2022, prior to the sale of the property to the applicant. The purpose of rezoning this area to Mixed Use is to encourage infill development and redevelopment of one the City’s main corridors, and to promote pedestrian access through the area. The MU–III zone generally allows a variety of retail and office uses, commercial services, and multi-family residential uses. As such, certain improvements to the property would make it reasonably compatible with the anticipated uses of the surrounding properties as the area continues to redevelop, and to bring the proposed conditional use in alignment with the purpose of the zone. This includes the provision of pedestrian connections.

To promote pedestrian access, the City adopted on–site pedestrian access standards in 2019 which link the public sidewalks with entrances of businesses and places of interest, and provide a system of safe pedestrian travel. The standards require pedestrian access from the front entrance of each building to each street, between buildings on site, and between properties that have a vehicular connection. There are a variety of materials and methods that can be utilized to meet the standards under SRC 800.065. Pedestrian access is required for all new development, for additions, and for parking lot changes. While the applicant’s proposal does not trigger pedestrian access on its own, this improvement can be required through a Conditional Use Permit, to better meet the approval criterion.

Previously, there was only a speed bump over the drive aisle of the parking lot. This is evidence from as–built plans provided by the applicant for work done in 2012. While the applicant has stated that there was an existing pedestrian path from the building entrance to Hawthorne Avenue, the path was actually a striped area leading from the striped access aisle service the ADA parking space and was intended to serve the ADA parking space. This is not an approved or safe pedestrian access as it leads behind the parking space where a car could potentially back into pedestrians.

The pedestrian connection improvement recommended by staff is related to conditional use criteria that require compatibility with appropriate development which is mixed use zoning that encourages residential development. The proposed condition, which is not particularly expensive, will provide a clear walkway, physically separated by speed bumps, to ensure pedestrian safety.

A pedestrian connection would be an improvement to the property that would help ensure it is reasonably compatible with the surrounding area as customers can drop off their car and walk somewhere nearby to wait while it is repaired, thereby providing a positive impact on the appropriate development envisioned for the area. Because the

property is on a corner lot, one connection to the intersection would provide sufficient access from the sidewalks along both streets and can be accomplished by painting a five-foot-wide striped path through the parking lot, with the installation of speed bumps for pedestrian safety. The following condition of approval addresses pedestrian access:

Condition #8: The applicant shall provide a pedestrian connection from the building entrance to the intersection of Silverton Road NE and Hawthorne Avenue NE, in conformance with SRC 800.065.

Finding 8: Special setbacks along both streets shall also ensure that the proposed use will be reasonably compatible with the future development of the surrounding right-of-way. SRC Chapter 800.040 establishes special setback requirements to afford better light, air, and vision on public streets, and to permit the eventual widening of streets without creating nonconforming structures. The subject property abuts Silverton Road NE to the south and Hawthorne Avenue NE to the east. Both Silverton Road NE and Hawthorne Avenue NE are classified as Major Arterial Streets, according to SRC Chapter 803 and the Salem TSP, and require 96 feet of right-of-way width, pursuant to SRC 803.025(a), Table 803-1. Silverton Road NE currently has a right-of-way width of approximately 80 feet; Hawthorne Avenue NE has a right-of-way width of approximately 62-to-85-feet. Because both streets do not meet the minimum right-of-way width standard for its street classification, special setbacks apply along both right-of-ways abutting the subject property. The required special setback is equal to 48 feet from centerline along both Silverton Road NE and Hawthorne Avenue NE. The staff has recommended two conditions that reflect the special setbacks from the centerline of Hawthorne Avenue and Silverton Road NE. The applicant has argued that these conditions should be advisory. I must agree with the applicant. The conditions do not require the applicant to take any action and do not address compliance with currently applicable approval criteria. Rather, they merely note that the presence of those setbacks may affect future development of the subject property.

Finding 9: Special setbacks and potential future street widening would likely contribute to removal of the existing ADA parking space on the site, as it may no longer be in conformance with accessibility requirements once the street improvements occur. The applicant argues that the staff's proposed condition would remove the ability to negotiate the details of any reconfiguration of the parking lot and ADA stall if the city takes additional right-of-way from the subject property. There is some truth to that concern and the proposed condition has been modified accordingly to only require an ADA space elsewhere on the site. The determination of who bears the expense of that relocation can be made at the time that the right-of-way is taken and a reconfiguration is necessary. As such, the following condition is appropriate to address the possibility of the future relocation of the ADA parking spot but is intended to recognize that the ultimate responsibility for complying with the ADA standards lie with the property owner:

Condition #9: The property is required to provide a minimum of one ADA space on the site. If the widening of Hawthorne Avenue NE to meet standards displaces the current ADA space, a replacement ADA space shall be located elsewhere on site.

Conclusion: I conclude that the application, as conditioned, is consistent with SRC 240.005(d)(3).

DECISION

Based upon the Facts and Findings herein, the Hearings Officer **APPROVES** the collective applications for a conditional use to allow a motor vehicle services use on the property located at 3393 Silverton Road NE, subject to the following conditions of approval:

- Condition #1:** The applicant shall obtain the necessary building permit to establish the change of occupancy within 90 days of the effective date of the Class I Site Plan Review approval. The applicant shall request to obtain Final Occupancy within 90 days after the building permit is issued.
- Condition #2:** All vehicle repair shall be conducted entirely within the building and there shall be no outdoor storage of vehicle parts or equipment on site.
- Condition #3:** Vehicles shall only be parked within delineated parking spaces, or within the building.
- Condition #4:** Normal hours of operation where the business is open to the public shall be between the hours of 10:00 a.m. to 8:00 p.m. All repairs and work done on vehicles shall be conducted between the hours of 7:00 a.m. and 10 p.m.
- Condition #5:** Wheel stops shall be installed to ensure that vehicles do not overhang into the sidewalk or right-of-way directly adjacent to the parking area along Silverton Road NE.
- Condition #6:** The applicant shall provide a wheel stop and post signage for the ADA parking space, and paint "No Parking" within the striped access aisle. The access aisle service the ADA space shall maintain a minimum width of 8 feet clear of vehicles or obstructions. The painted "No Parking" designation shall be maintained in good condition and visible through the duration of the conditional use permit.
- Condition #7:** The applicant shall install landscaping of shrubs and ground cover to the existing planter strip along Hawthorne Avenue NE at a density of one unit per 20 square feet. Trees are not required. Consistent with SRC

807.045, the landscaping material shall be maintained in good condition throughout the duration of the conditional use permit.

Condition #8: The applicant shall provide a pedestrian connection from the building entrance to the intersection of Silverton Road NE and Hawthorne Avenue NE, in conformance with SRC 800.065.

Condition #9: The property is required to provide a minimum of one ADA space on the site. If the widening of Hawthorne Avenue NE to meet standards displaces the current ADA space, a replacement ADA space shall be located elsewhere on the site.

Advisory Conditions:

Condition #1: The property is subject to a special setback equal to 48 feet from the centerline of Hawthorne Avenue NE.

Condition #2: The property is subject to a special setback equal to 48 feet from the centerline of Silverton Road NE.

DATED: September 20, 2024



Gary Darnielle, Hearings Officer