

# NOTICE OF DECISION

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



*Si necesita ayuda para comprender esta informacion, por favor llame  
503-588-6173*

## DECISION OF THE HEARINGS OFFICER

**CONDITIONAL USE/ CLASS 3 SITE PLAN REVIEW CASE NO. CU-SPR16-04**

**APPLICATION NO. : 16-106388-ZO & 16-106391-RP**

**NOTICE OF DECISION DATE: May 25, 2016**

**SUMMARY:** An application to change part of an existing building to a recreational marijuana extraction facility and add parking spaces in an existing parking lot.

**REQUEST:** Conditional Use and Class 3 Site Plan Review for a change of use and parking lot modification for a recreational marijuana extraction facility, a heavy manufacturing use, that will occupy approximately 593 square feet within an existing building located on a 3.1-acre property located in the IG (General Industrial) and RM-II (Multiple Family Residential) zones at 560 21st Street SE 97301 (Marion County Assessor Map and Tax Lot 073W26DC / 01800, 01899, 05900, 06000, 08500, 08600).

**APPLICANT:** Tyler Clark for Clark Commerical Industries LLC

**LOCATION:** 560 21<sup>ST</sup> Street SE / 97301

**CRITERIA:** Conditional Use: SRC 240.005(d)  
Class 3 Site Plan Review: SRC 220.005(f)(3)

**DECISION:** The Hearings Officer GRANTED Conditional Use/Class 3 Site Plan Review Case No. CU-SPR16-04 subject to the following conditions of approval:

**Condition 1:** The proposed development shall be in substantial conformance with the approved site plan included as Attachment B in the staff report.

**Condition 2:** The northeastern area of the site (including the areas adjacent to the entry to the proposed recreational marijuana extraction facility, abutting the property located at 515-545 22<sup>nd</sup> St SE, and abutting 22<sup>nd</sup> Street SE) shall be enclosed with a fence that meets the standards of SRC 800.050 and is constructed in a location to be approved by the Planning Administrator. The fence shall be sight-obscuring adjacent to the property located at 515-545 22<sup>nd</sup> St SE and adjacent to the right-of-way of 22<sup>nd</sup> Street SE.

**Condition 3:** The extraction process shall be performed as described in the applicant's statements.

**Condition 4:** At least 4 bicycle spaces meeting the standards of SRC 806.060 are required.

The rights granted by the attached decision for Conditional Use Case No. 16-04 must be exercised, or an extension granted, by June 10, 2018, or this approval shall be null and void.

The rights granted by the attached decision for Class 3 Site Plan Review Case No. 16-04 must be exercised, or an extension granted, by June 10, 2020, or this approval shall be null and void. A copy of the decision is attached.

Application Deemed Complete: April 20, 2016  
Public Hearing Date: May 11, 2016  
Notice of Decision Mailing Date: May 25, 2016  
Decision Effective Date: June 10, 2016  
State Mandate Date: August 18, 2016

Case Manager: Pamela Cole, pcole@cityofsalem.net, 503.540.2309

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., June 9, 2016. 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 900.

The appeal must be filed in duplicate with the City of Salem Planning Division. 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 Salem Planning Commission will review the appeal at a public hearing. After the hearing, the Salem Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

AN APPLICATION TO CHANGE PART OF AN )	CU-SPR 16-04
EXISTING BUILDING TO A RECREATIONAL )	
MARIJUANA EXTRACTION FACILITY AND ADD )	
PARKING SPACES IN AN EXISTING PARKING LOT. )	
REQUEST: A CONSOLIDATED CONDITIONAL USE )	
AND CLASS 3 SITE PLAN REVIEW FOR A CHANGE )	FINDINGS OF FACT
OF USE AND PARKING LOT MODIFICATION FOR A )	CONCLUSIONS AND
RECREATIONAL MARIJUANA EXTRACTION )	DECISION
FACILITY, A HEAVY MANUFACTURING USE, THAT )	
WILL OCCUPY APPROXIMATELY 593 SQUARE )	
FEET WITHIN AN EXISTING BUILDING LOCATED )	
ON A 3.1 ACRE PROPERTY LOCATED IN THE IG )	
(GENERAL INDUSTRIAL) AND RM-II )	
(MULTIPLE FAMILY RESIDENTIAL) ZONES AT )	
560 21 <sup>ST</sup> STREET SE, SALEM OREGON )	

**DATE AND PLACE OF HEARING:**

May 11, 2016, Community Development Department, Room 305, 555 Liberty Street SE, Salem, Oregon.

**APPEARANCES:**

<u>Staff:</u>	Pamela Cole, Planner II
<u>Neighborhood Association:</u>	Southeast Salem Neighborhood Association (SESNA) Bill Smaldone, SESNA Chair
<u>Proponents:</u>	Tyler Clark, Applicant Adam Smith, Applicant
<u>Opponents:</u>	Leona Wyatt; Darwin Sandau

**SUMMARY OF THE APPLICATION AND HEARING**

An application to change part of an existing building to a recreational marijuana extraction facility and add parking spaces in an existing parking lot. Request: A consolidated Conditional Use and Class 3 Site Plan Review for a change of use and parking lot modification for a recreational marijuana extraction facility, a heavy manufacturing use, that will occupy approximately 593 square feet within an existing building located on a 3.1 acre property located in the IG (General Industrial) and RM-II (Multiple Family Residential) zones at 560 21<sup>st</sup> Street SE, Salem, Oregon.

## FINDINGS OF FACT AND CONCLUSIONS

1. The Salem Area Comprehensive Plan (SACP) designation for this property is "Industrial".
2. The subject property is zoned IG (General Industrial) and RM-II (Multiple Family Residential). The recreational marijuana extraction uses are classified as heavy manufacturing and are conditional uses in the IG zone.
3. The surrounding properties are zoned as follows:

North: RD (Duplex Residential) - single family dwellings (across Bellevue Street)

South: RM-II (Multiple Family Residential) - single family dwellings; and  
IG (General Industrial) - metal casting and fabrication (across Simpson Street SE)

East: RM-II (Multiple Family Residential) - multiple family dwellings & single family dwellings (across 22<sup>nd</sup> Street SE)

West: RD (Duplex Residential) - single family dwellings and two-family dwellings; IG (General Industrial) - warehouse and single family dwellings; and RM-II (Multiple Family Residential) - single family dwellings (across 21<sup>st</sup> Street SE)

4. One surrounding property owner submitted comments in support of the proposal, stating that the building had been vacant too long.
5. Two people testified, and several submitted written comments which were provided to the Hearings Officer in the staff report, which raised ten separate concerns. The Hearings Officer will address each of those concerns as follows:
  - i) Increase in crime.

The applicant has provided a supplemental statement on proposed security measures, including cameras, fencing and security guards. The staff is recommending conditions of approval that will address these concerns which the Hearings Officer will address later.

- ii) Tax increase; and property value reductions for neighboring properties.

The impact on property values is not an approval criterion for this application.

- iii) Inadequate notice and opportunity for opponents to respond.

It is the finding of the Hearings Officer that all requirements for public notice under the SRC have been satisfied.

- iv) The release of chemicals or toxins into the air.

The Hearings Officer finds that closed loop machines used for oil extraction of raw cannabis plant material emit no gases other than carbon dioxide, according to the testimony.

v) Odors

The closed loop machine used for oil extraction of raw cannabis plant materials emits no gases other than carbon dioxide which is odorless, according to the testimony.

vi) Proximity to residences, parks, and schools.

The Hearings Officer notes that the Salem Revised Code does not specify minimum distances between recreational marijuana extraction facilities and residences, parks, and schools. The facility would be located within an established industrial area and thus, this concern does not impact any appropriate criteria.

vii) Possible building code and fire code violations

It is the finding of the Hearings Officer that all building code and fire code issues will be addressed by the appropriate departments at the time of the building permit application.

viii) Request that extraction facilities should be located separately from commercial or recreational growth facilities to reduce crime and lower the level of loss to each type of facility if they would be forced to be separated in the future.

The Hearings Officer's responsibility is to apply the existing code provisions to the application. The Salem Revised Code does not require separation of the extraction facility and the recreational facility and therefore, this concern cannot be addressed by the Hearings Officer.

ix) Condition of the building and grounds including broken down vehicles.

Issues regarding property maintenance is appropriate for the compliance division of the Salem staff and is not a criterion to be addressed in this application.

x) Concerns regarding marijuana related businesses expressed by insurers, banks, and employers.

The Hearings Officer does not regulate how insurance agencies, banks, and employers handle these businesses and therefore, this is not an applicable criterion for the Hearings Officer to consider.

6. Conditional Use criteria - SRC240.005(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.

**Conditional Use Criteria are found in SRC 240.005(d):**

Criterion 1: The proposed use is allowed as a conditional use in the zone

The Hearings Officer finds that SRC Chapter 554, Table 554-1 provides that heavy manufacturing uses are allowed in the IG (General Industrial) zone with a conditional use permit. Therefore, this criterion is satisfied.

Criterion 2:

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

It is the finding of the Hearings Officer that this criterion has been satisfied with the adoption of conditions. There are several potential impacts on the neighborhood that could be generated by the proposal including parking, noise from equipment, odor, chemical disposal, and criminal activity. However, based upon the testimony, and the description of the processes involved, the safety practices to be involved, business practices, and state mandated requirements would all minimize these potential adverse impacts. Additional off-street parking for employees is proposed. All activity will be contained on the premises within the building, reducing possible noise impacts. The extraction process will use carbon dioxide rather than dangerous solvents, and ventilation systems and equipment features are designed to ensure employee safety and reduce odors. Chemicals and other waste materials will be stored inside until they can be removed. The property owner will provide fences, security cameras, steel exterior doors, key-card entry systems, and a security guard to reduce the likelihood of crime. However, to ensure that these actions take place, and to minimize the impact on the immediate neighborhood, the Hearings Officer adopts the following conditions:

**Condition 1:** The proposed development shall be in substantial conformance with the approved site plan included as Attachment B in the staff report.

**Condition 2:** The northeastern area of the site (including the areas adjacent to the entry to the proposed recreational marijuana extraction facility, abutting the property located at 515-545 22<sup>nd</sup> Street SE, and abutting 22<sup>nd</sup> Street SE) shall be enclosed with a fence that meets the standards of SRC 800.050 and is constructed in a location to be approved by the Planning Administrator. The fence shall be sight-obscuring adjacent to the property located at 515-545 22<sup>nd</sup> Street SE and adjacent to the right-of-way of 22<sup>nd</sup> Street SE.

**Condition 3:** The extraction process shall be performed as described in the applicant's statements.

Criterion 3:

The proposed use will be reasonably compatible with, and have minimal impact on, the livability or appropriate development of surrounding property.

It is the finding of the Hearings Officer that this criterion has been satisfied. The staff submitted a supplemental staff report at the time of the hearing. That supplemental staff report noted that by researching previous land use cases and building permits for the subject property, the staff found a case, Zone Change 85-5. This case was a request to change the zoning of property at 515-555 22<sup>nd</sup> Street SE and 714 21<sup>st</sup> Street SE from RM (Multifamily Residential) to IG (General Industrial). The area at 555

22<sup>nd</sup> Street SE includes the northeastern area of the subject property of this application. In addition, the Planning Commission granted the request for a zone change subject to three conditions:

1. That no vehicular access be permitted to 22<sup>nd</sup> Street SE from Parcel A (two duplexes located at 515-545 22<sup>nd</sup> Street SE) or Parcel B (555 22<sup>nd</sup> Street SE);
2. That a sight-obscuring fence, wall or hedge be provided adjacent to 22<sup>nd</sup> Street SE and adjacent to the north property line of the property at 515-555 22<sup>nd</sup> Street SE; and
3. That at such time as Parcel C (714 21<sup>st</sup> Street SE) is developed, such development shall be screened from adjacent residentially used or zoned properties.

Based on this information, the Hearings Officer finds that the zoning map is to be changed so that the northeastern area of the subject property, formerly identified as 555 22<sup>nd</sup> Street SE, and the adjacent property at 515-545 2<sup>nd</sup> Street SE, will be zoned IG (General Industrial). Therefore the applicant and the property owner may use the northeastern area of the property, subject to the conditions of Zone Change 85-5, the standards of the Salem Revised Code, and any other applicable standards of the UDC.

The Hearings Officer also finds that the proposal will not significantly change the appearance of the property or increase traffic or other impacts on the IG zoned area of the property.

7. Class 3 Site Plan Review Approval Criteria

SRC 220.005(f)(3) establishes the following approval criteria for a Class 2 Site Plan Review:

Criterion 1:

The application meets all applicable standards of the UDC.

It is the finding of the Hearings Officer that the proposed development does comply with all the applicable development standards of the Salem Revised Code as follows:

**Development Standards - IG Zone:**

*SRC 554.005(a) - Uses:*

The proposed development includes a change of use and a parking lot reconfiguration for a recreational marijuana extraction facility. A recreational marijuana extraction facility use is a heavy manufacturing use and is allowed in the IG zone per SRC 554.005, Table 554-1 as a Conditional Use.

*SRC 554.010(a) - Lot Standards:*

The subject property complies with the applicable standards of the IG zone.

*SRC 554.010(b) - IG Zone Setbacks:*

It is the finding of the Hearings Officer that the existing building setbacks and vehicle use area

setbacks are nonconforming but are not changing. The proposal complies with all the applicable setback requirements of the IG zone.

*SRC 554.010(c) - Lot Coverage, Height:*

The proposed development complies with the maximum height standard

*SRC 554.010(d) - Landscaping:*

It is the finding of the Hearings Officer that the existing building setback and vehicle use area setbacks are not changing; the proposed parking areas are within an existing completely paved parking and vehicle use area. No paved surface will be added, and the existing paved surface will not be replaced. No additional landscaping is required.

**Off-Street Parking, Loading, and Driveways SRC 806**

It is the finding of the Hearings Officer that heavy manufacturing use is proposed for an area formerly occupied by a manufacturing use, and according to the testimony, will have five (5) employees requiring a minimum of four (4) off-street parking spaces. The maximum off-street parking allowance for the use is 10 spaces. Other existing uses on the property require a minimum of six (6), and a maximum of 15 parking spaces. The total minimum and maximum parking spaces are 10 spaces and 25 spaces. There are 12 proposed off-street parking spaces provided on the subject property. No carpool or van pool parking is required. Up to 8 of the 10 required spaces may be compact spaces, and 3 must be standard. 5 of the proposed on-site spaces are compact. Therefore, the spaces meet this criterion.

*SRC 806.035 - Off-Street Parking and Vehicle Use Area Development Standards.*

The proposed parking spaces are within an existing completely paved parking and vehicle use area. No paved surface will be added, and the existing paved surface will not be replaced. Therefore, the off-street parking and vehicle use area development standards under SRC 806.035 including perimeter setbacks, landscaping, interior landscaping, and dimensions do not apply to the proposed development.

*SRC 806.040 - Driveway Development Standards.*

No changes are proposed to the existing driveway. The existing two-way driveway from Bellevue Street SE has an adequate turnaround and conforms to the driveway location and dimensional requirements of SRC 806.040.

**Bicycle Parking**

*SRC 806.045 - General Applicability; SRC 806.055 - Amount of Bicycle Parking; and SRC 806.060 - Bicycle Parking Development Standards.*

It is the finding of the Hearings Officer that heavy manufacturing use is proposed for an area formerly occupied by a manufacturing use. The minimum bicycle parking requirements for the previous use and the proposed use is 4 spaces. The site plan does not indicate bicycle parking,



according to the testimony. Therefore, the Hearings Officer adopts the following condition:

**Condition 4:** At least 4 bicycle spaces meeting the standards of SRC 806.060 are required.

**Off-Street Loading Areas**

*SRC 806.065 - General Applicability; SRC 806.075 - Amount of Off-Street Loading.*

The proposed development does not result in any additional off-street loading spaces required for the development site.

**Landscaping** requirements are contained in Chapter 807.

The existing building setback and vehicle use area setbacks are not changing. The proposed parking spaces are within an existing completely paved parking and vehicle use area. No paved surface will be added; the existing paved surface will not be replaced. Therefore, no additional landscaping is required.

**Natural Resources** contained in SRC Chapter 808, 809, & 810.

It is the finding of the Hearings Officer that the proposed development would not cause removal of protected trees or vegetation and would not occur in wetlands or landslide hazard areas.

Criterion 2:

The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

The Hearings Officer finds that this criterion is satisfied. The existing street system is adequate to serve the proposed development and the development is not proposing a building addition, pursuant to SRC 803.040(a), so no right-of-way dedication or street improvements are required.

Criterion 3:

Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

The existing driveways are adequate and do not warrant modification to serve the proposed development. Therefore, this criterion is satisfied.

Criterion 4:

The proposed development will be adequately served with City water, sewer, storm drainage, and other utilities appropriate to the nature of the development.

Based upon the testimony, it is the finding of the Hearings Officer that this criterion is satisfied. Water, sewer, and storm infrastructure are available within surrounding streets and appear to be adequate to serve the proposed development. The applicant shall be required to design and construct a storm drainage system at the time of development. The application shall provide an evaluation of the connection to the approved point of discharge for new areas of impervious surface per SRC 73.075 and the applicant may be assessed a storm system development charge at the time he applies for a building permit.

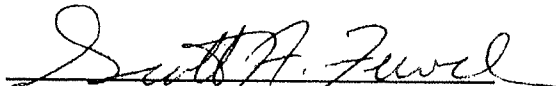
Based upon the foregoing, the Hearings Officer makes the following:

### DECISION

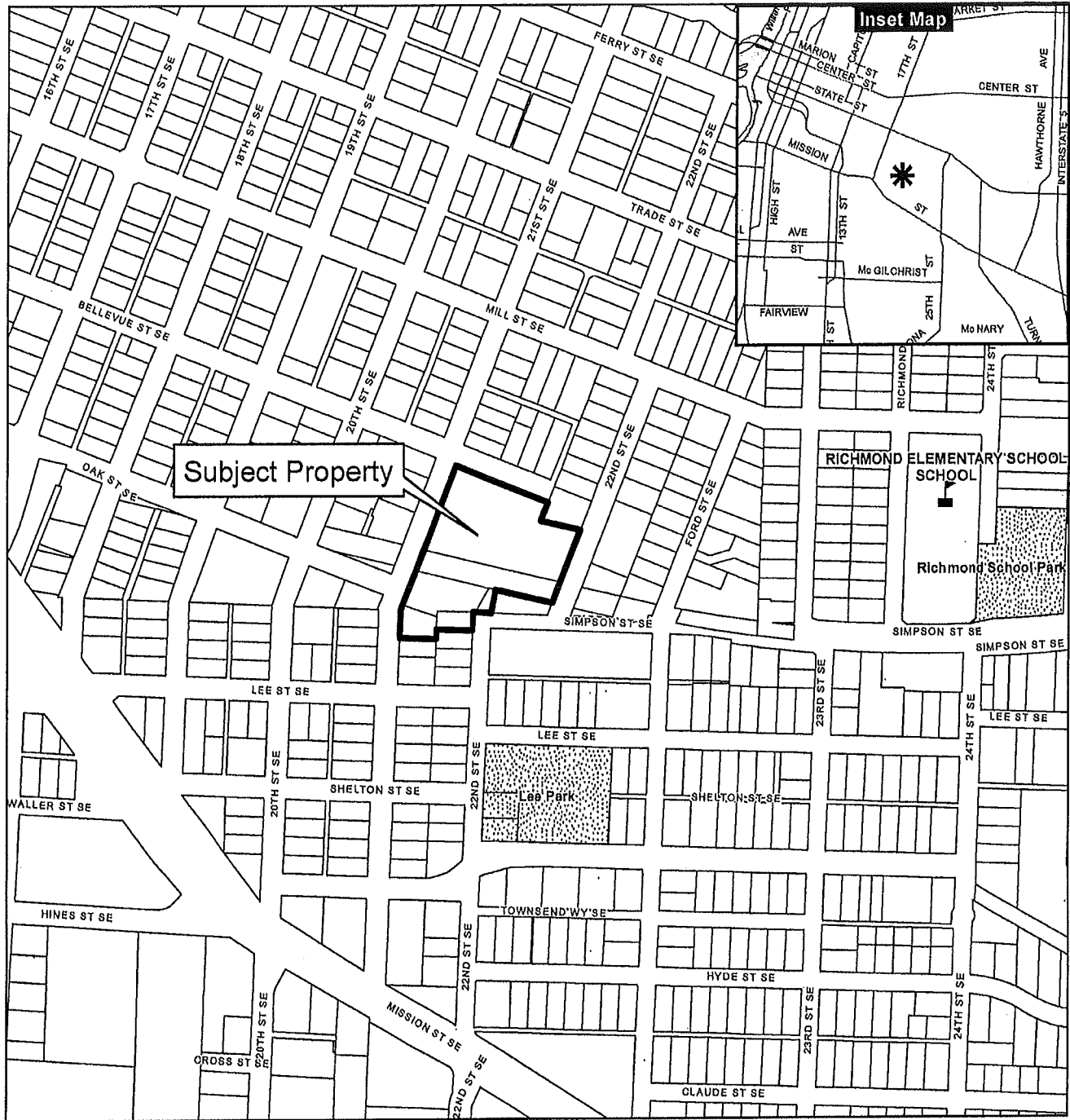
The Hearings Officer GRANTS the request for the consolidated conditional use and site plan review for a change of use and a parking lot modification for a recreational marijuana extraction facility located at 560 21<sup>st</sup> Street SE, Salem, Oregon, subject to the following conditions of approval:

- Condition 1:** The proposed development shall be in substantial conformance with the approved site plan included as Attachment B in the staff report.
- Condition 2:** The northeastern area of the site (including the areas adjacent to the entry to the proposed recreational marijuana extraction facility, abutting the property located at 515-545 22<sup>nd</sup> Street SE, and abutting 22<sup>nd</sup> Street SE) shall be enclosed with a fence that meets the standards of SRC 800.050 and is constructed in a location to be approved by the Planning Administrator. The fence shall be sight-obscuring adjacent to the property located at 515-545 22<sup>nd</sup> Street SE and adjacent to the right-of-way of 22<sup>nd</sup> Street SE.
- Condition 3:** The extraction process shall be performed as described in the applicant's statements.
- Condition 4:** At least 4 bicycle spaces meeting the standards of SRC 806.060 are required.

DATED: May 25, 2016.

  
Scott A. Fewel, Hearings Officer








# Vicinity Map 560 21st Street SE



Subject Property

Inset Map

### Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks

**CITY OF Salem**  
AT YOUR SERVICE  
Community Development Dept.



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**SITE PLAN GENERAL NOTES:**

SITE PLAN WAS GENERATED USING TAX MAPS AND AERIAL PHOTOS, IT IS NOT ACCURATE BUT A REPRESENTATION OF AS BUILT CONDITIONS. GENERAL CONTRACTOR TO CONFIRM DIMENSIONS AND NOTIFY ARCHITECT IMMEDIATELY OF ANY DISCREPANCIES.

**SITE PLAN NOTES:**

- PARCEL 07W26DC01800
- IG ZONE
- SITE AREA = 3.1 ACRE OR 135,036 SF
- ALL UTILITIES ARE EXISTING
- BUILDING IS PROVIDED WITH FIRE SPRINKLERS
- BUILDING HEIGHT IS 25'

**SITE PLAN LEGEND:**

- EXISTING PAVEMENT
- EXISTING LANDSCAPING
- EXISTING GRAVEL

**PARKING REQUIREMENTS:**

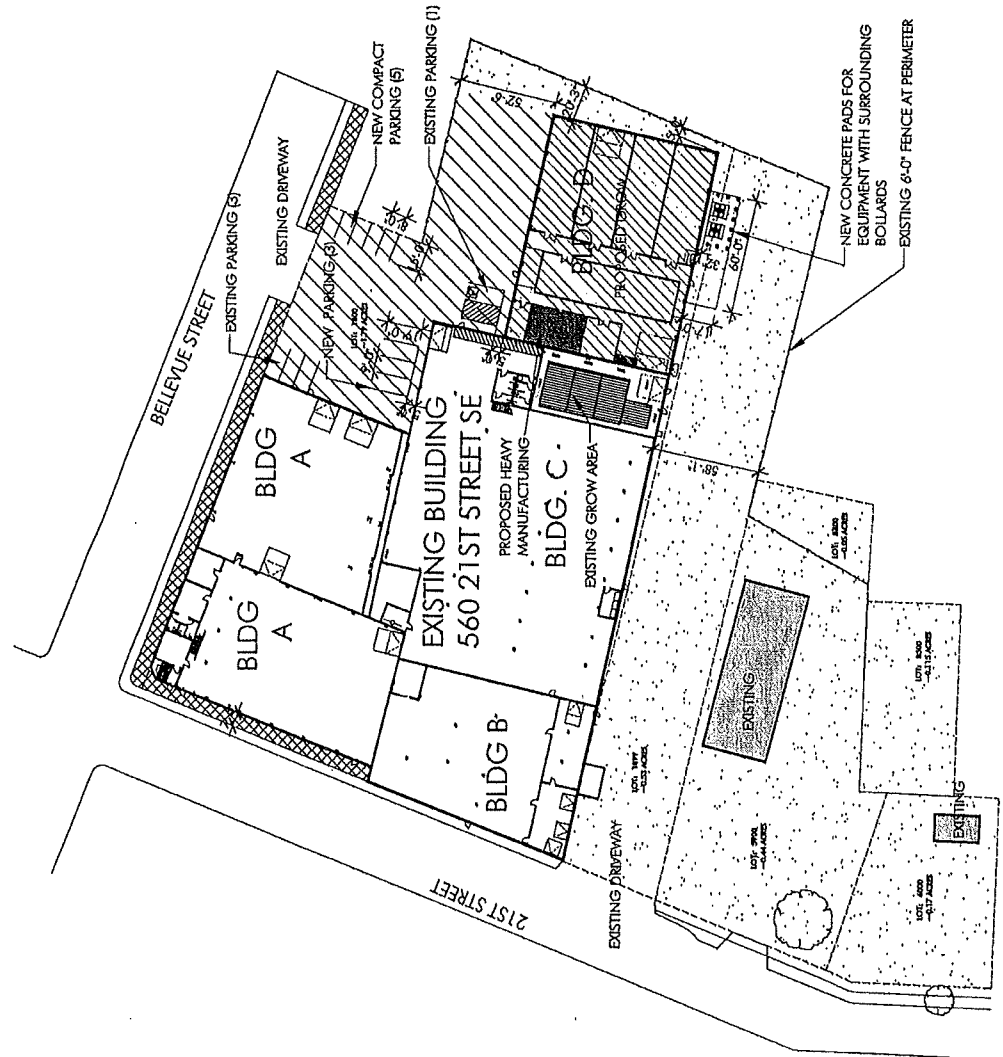
BUILDING A - AGRICULTURE	19,460 SF	=	0
BUILDING B - GENERAL MANUFACTURING	8,100 SF/5,000	=	2
BUILDING C - AGRICULTURE	2,296 SF	=	0
BUILDING D - GENERAL MANUFACTURING	19,765 SF /5,000	=	4
BUILDING D - AGRICULTURE	10,426 SF	=	0
- HEAVY MANUFACTURING (5 EMPLOYEES)	0.75 x 5	=	4
<b>TOTAL</b>		=	<b>10</b>
			<b>3 EXISTING + 1 ACCESSIBLE</b>

**SITE SUMMARY TABLE**

SITE AREA	134,818 SF	44.59%
MAIN BUILDING AREA	60,660 SF	2.59%
ACCESSORY STRUCTURES	13,120 SF	9.73%
PAVEMENT	3,035 SF	2.25%
LANDSCAPE	54,517 SF	40.44%
GRAVEL		

**CONTIGUOUS SITE AND AREAS:**

LOT 1800	1.79 ACRES
LOT 1899	0.53 ACRES
LOT 5900	0.44 ACRES
LOT 6000	0.17 ACRES
LOT 6500	0.115 ACRES
LOT 6600	0.05 ACRES
<b>TOTAL</b>	<b>= 3.095 ACRES</b>



**1** EXISTING SITE PLAN

0' 10' 20' 30' 40' 50' 60' 70' 80' 90' 1" = 60'-0" @ 11 X 17

