

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF APPROVAL OF A)	ORDER NO. 2022-15-CU-
CONDITIONAL USE PERMIT, CLASS 3)	SPR-ADJ-DAP-DR21-05
SITE PLAN REVIEW, CLASS 2)	CONDITIONAL USE, CLASS
ADJUSTMENT, CLASS 2 DRIVEWAY)	CLASS 3 SITE PLAN REVIEW,
APPROACH PERMIT, AND CLASS 1)	CLASS 2 ADJUSTMENT,
DESIGN REVIEW)	CLASS 2 DRIVEWAY
)	APPROACH PERMIT, CLASS 1
)	DESIGN REVIEW CASE NO.
4900 BLOCK OF STATE STREET - 97301)	CU-SPR-ADJ-DAP-DR21-05

This matter coming regularly for hearing before the City Council, at its September 26, 2022, meeting, and the City Council, having received evidence and heard testimony, makes the following findings, and adopts the following order APPROVING Conditional Use, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review Case No. CU-SPR-ADJ-DAP-DR21-05.

PROCEDURAL FINDINGS:

- (a) On September 22, 2021, a Conditional Use Permit, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review consolidated application was submitted for property located at the 4900 Block of State Street (Attachment 1). After receiving additional information, the collective application was deemed complete for processing on December 1, 2021.
- (b) A public hearing was conducted on December 22, 2021. The Hearings Officer continued the public hearing to January 26, 2022, to allow for additional findings and testimony to be submitted.
- (c) Prior to the continued hearing, the applicant submitted an updated site plan and updated written response which were included in the supplemental staff report dated January 26, 2022. On January 26, 2022, the Hearings Officer conducted the continued hearing, closed the public hearing, and left the record open for additional written comments and final argument by the applicant.
- (d) On February 9, 2022, an open record memo, including staff rebuttal testimony in response to the updated plans and findings provided by the applicant was provided to the Hearings Officer. The applicant provided final argument on February 16, 2022.
- (e) On March 9, 2022, the Hearings Officer issued a decision denying the collective application.
- (f) On March 15, 2022, a timely Notice of Appeal was filed by the applicant. At the March 28, 2022, regularly scheduled meeting, the City Council voted to initiate review of the appeal filed by the applicant.

- (g)** The 120-day State mandated deadline for final decision has been extended by the applicant to May 26, 2022.
- (h)** On April 25, 2022, the City Council held a public hearing, received public testimony, and then closed the hearing. The City Council conducted deliberations and voted to affirm the Hearings Officer's decision denying CU-SPR-ADJ-DAP-DR21-05.
- (i)** The applicant appealed the City's final decision denying the development application to the Land Use Board of Appeals (LUBA).
- (j)** On August 30, 2022, LUBA issued a final order LUBA No. 2022-050, reversing the decision, and requiring the City to approve the development application. LUBA found that the City misconstrued applicable state law by determining that state law did not require only clear and objective criteria to apply to the application, as required by ORS 197.307(4), and erred in applying discretionary criteria to the application. Because the City Council found that the application met all clear and objective criteria, LUBA determined that the City's denial was outside the range of discretion afforded the City under state law, and that the City is obligated to now approve the application.

SUBSTANTIVE FINDINGS:

The City Council adopts the following as findings for this decision:

- (a)** The Conditional Use Permit, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review collective application to develop a new multi-family apartment complex containing 291 dwelling units for property approximately 10.7 acres in size, as proposed and conditioned, is found to comply with the applicable statutes and ordinances.
- (b)** The facts and findings, attached hereto as exhibit 1, are incorporated to this decision as set forth herein.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1. The City Council APPROVES Conditional Use, Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit and Class 1 Design Review Case No. CU-SPR-ADJ-DAP-DR21-05.

Section 2. This order constitutes the final land use decision and any appeal must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

Exhibit 1: Facts and Findings for CU-SPR-ADJ-DAP-DR21-05

ADOPTED by the City Council this 26th day of September 2022.

ATTEST:

City Recorder

Checked by: Aaron Panko