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503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW CASE NO.: CU-SPR23-06

APPLICATION NO.: 23-111686-PLN

NOTICE OF DECISION DATE: September 13, 2023

SUMMARY: An application for a Conditional Use permit to establish a new child day care center within Westminster Presbyterian Church.

REQUEST: A consolidated application for a Conditional Use permit and Class 3 Site Plan Review to establish a new Child Day Care Center use within an existing Religious Assembly use on property 5.87 acres in size, zoned RM-II, and located at 3737 Liberty Rd S (Marion County Assessors Map and Tax Lot Number 083W04DA / 8100).

APPLICANT: Vik Schaaf

LOCATION: 3737 Liberty Rd S, Salem OR 97302

CRITERIA: Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use; 220.005(f)(3) – Class 3 Site Plan Review

FINDINGS: The findings are in the attached Decision dated September 12, 2023.

DECISION: The **Hearings Officer APPROVED** Conditional Use / Class 3 Site Plan Review Case No. CU-SPR23-06 subject to the following conditions of approval:

Condition 1: The applicant must install two additional bicycle parking spaces (e.g., one staple rack) to meet the minimum eight bicycle parking spaces to serve both uses, meeting the development standards of SRC 806.050 and 806.060.

The rights granted by the attached decision must be exercised, or an extension granted, by the dates listed below, or this approval shall be null and void.

Conditional Use:	<u>September 29, 2025</u>
Class 3 Site Plan Review:	<u>September 29, 2027</u>

Application Deemed Complete:	<u>July 27, 2023</u>
Public Hearing Date:	<u>August 23, 2023</u>
Notice of Decision Mailing Date:	<u>September 13, 2023</u>
Decision Effective Date:	<u>September 29, 2023</u>
State Mandate Date:	<u>November 24, 2023</u>

Case Manager: Peter Domine, pdomine@cityofsalem.net, (503) 540-2311

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
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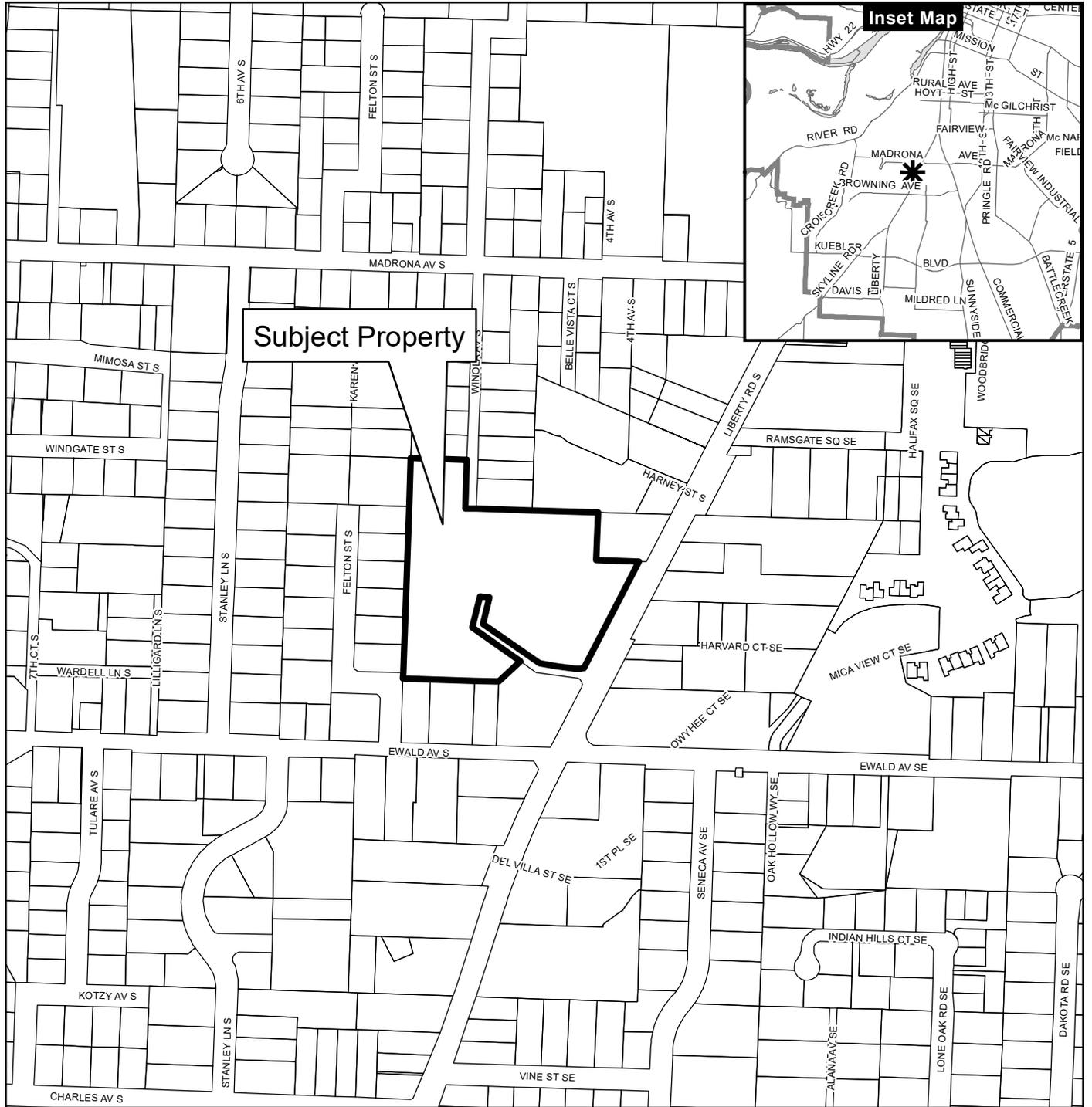
This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m. Thursday, September 28, 2023. Any 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, 220. 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>

Vicinity Map

3737 Liberty Rd S



Legend

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

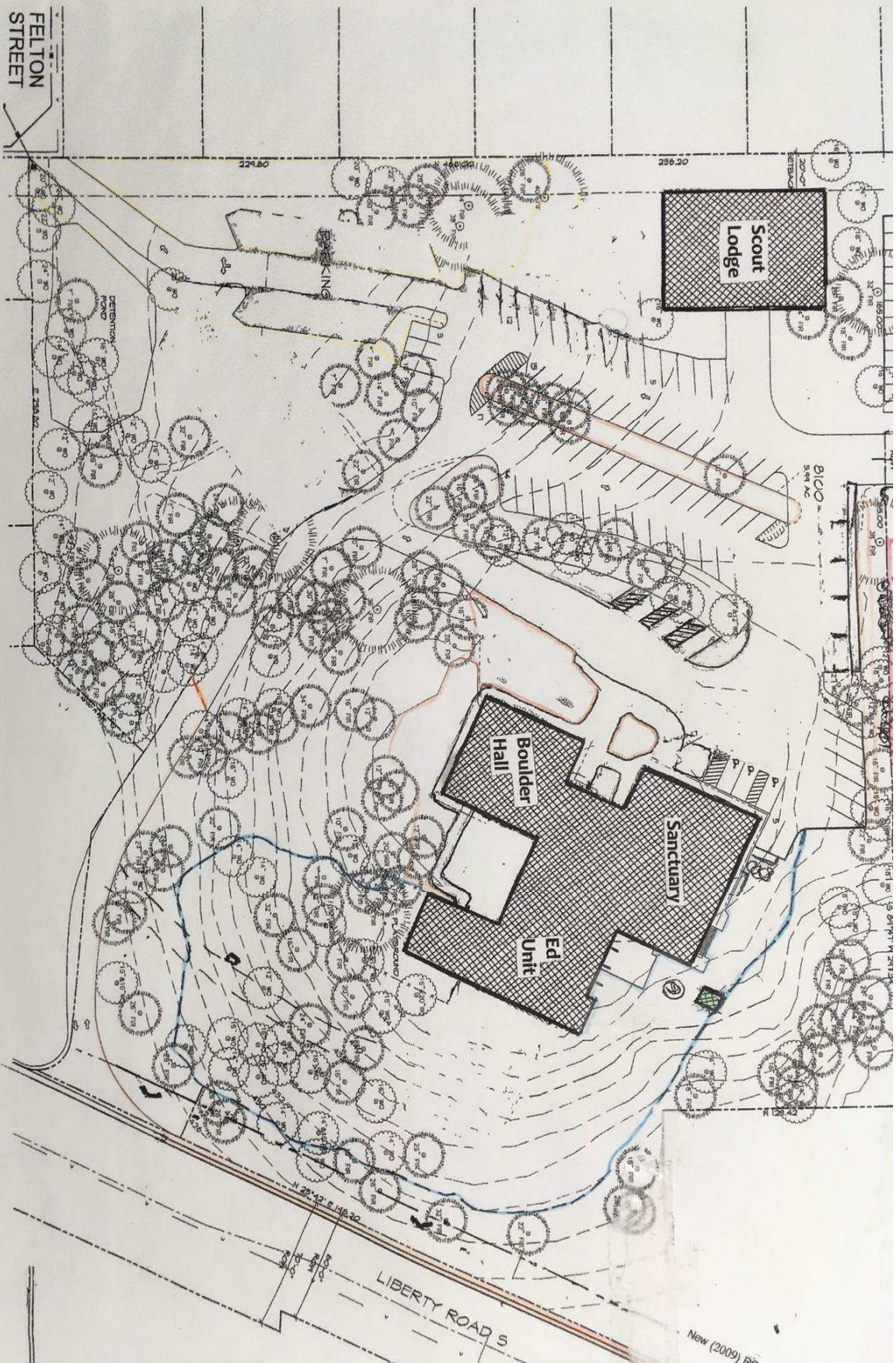
 Parks

CITY OF Salem
AT YOUR SERVICE
Community Development Dept.



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FELTON STREET



LIBERTY ROAD S

New (2009) RP

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A CONSOLIDATED APPLICATION FOR A)
CONDITIONAL USE PERMIT AND CLASS 3)
SITE PLAN REVIEW TO ESTABLISH A NEW)
CHILD DAY CARE CENTER USE WITHIN AN)
EXISTING RELIGIOUS ASSEMBLY USE ON)
PROPERTY 5.87 ACRES IN SIZE, ZONED RM-)
II, AND LOCATED AT 3737 LIBERTY RD S)
(MARION COUNTY ASSESSOR'S MAP AND)
TAX LOT NUMBER 083W04DA / 8100))

CU-SPR23-06
FINDINGS OF FACT, CONCLUSIONS, AND
DECISION

DATE AND PLACE OF HEARING:

On August 23rd, 2023, 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:

Staff: Peter Domine, Planner I

Neighborhood Association: None

Proponents: Vik Schaaf, on behalf of Westminster Presbyterian Church

Opponents: None

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on August 23rd, 2023, regarding the Applicant's request. During the hearing, Peter Domine requested that the Staff Report be entered into the Record, and the Hearings Officer granted the request. Staff explained that the Hearing Notice that was originally provided on August 1, 2023, to surrounding property owners and tenants pursuant to Salem Revised Code (SRC) stated that the date for the hearing was August 17th, 2023, which was incorrect. A new hearing notice was issued on August 16th, 2023, correcting this error. Because of the error on the original hearing notice, the Hearings Officer ordered the record to be left open for additional comments. No one submitted additional comments during the open record or the open rebuttal periods, and the applicant waived their final written argument.

The Staff Report and Staff presentation provided the following uncontested information and analysis, and recommended the following findings of fact and conclusions:

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 “Multi-Family Residential.” The subject property is within the Urban Growth Boundary and the Urban Service Area.

2. Zoning and Surrounding Land Uses

The subject property is zoned RM-II (Multiple Family Residential II). The zoning and uses of the surrounding properties include:

North: RS (Single Family Residential); RM-II (Multiple Family Residential II); and MU-I (Mixed Use I), single family dwellings, apartments, offices.

South: RS (Single Family Residential); across Ewald Ave S, RM-II (Multiple Family Residential II); single family dwellings and townhouses.

East: Across Liberty Road S, RM-II (Multiple Family Residential), apartments.

West: RS (Single Family Residential), single family dwellings.

2. Site Analysis

The subject property is 5.87 acres and has approximately 325 feet of frontage on Liberty Road S, 16 feet of frontage on Felton Street S, and Winola Avenue S dead-ends into the property from the north. The church has driveways on Felton Street S and one off the dead end of Winola Avenue S and Liberty Road S. Liberty Road S is designated as a Major Arterial Street in the Transportation System Plan, and Felton Street S and Winola Avenue S are designated as Local Streets.

3. Neighborhood and Citizen Comments

The subject property is located within the Southwest Association of Neighbors (SWAN). Pursuant to SRC Chapter 300, the applicant is required to contact the Neighborhood Association prior to submittal of this consolidated application. On June 1, 2023, the applicant contacted SWAN, meeting the requirements of SRC 300.310(c). Notice was provided to the SWAN Neighborhood Association and to surrounding addresses, property owners, and tenants within 250 feet of the subject property.

The SWAN Neighborhood Association submitted comment via email supporting the approval of a conditional use permit for the proposed day care use within the existing church buildings on the subject property.

At the time of this decision, no public comments were received.

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 indicated that a Building Permit for a Change of Occupancy will be required.

The Salem Fire Department reviewed the proposal and indicated that the change of use will need to comply with all applicable sections of the OSSC and OFC.

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

Criterion 1:

The proposed use is allowed as a conditional use in the zone.

Finding: SRC Chapter 514, Table 514-1 provides that a *Child Day Care Center* use is allowed in the RM-II (Multiple Family Residential II) zone with a conditional use permit.

The Hearings Officer finds that the proposal meets this criterion.

Criterion 2:

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

Finding: No comments were received from adjacent property owners or tenants indicating concern for any adverse impacts on the immediate neighborhood. The

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Southwest Association of Neighbors (SWAN) commented via email that they supported the approval of the proposed *Child Day Care Center* use within the existing church buildings.

The Hearings Officer finds that the proposal meets this criterion.

Criterion 3:

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

Finding: The subject property has been used as a *Religious Assembly* use, and this use has included associated basic education services within the existing building for several decades. The proposed *Child Day Care Center* use will be located within the existing building, and no new development is proposed. The proposal will not significantly change the appearance or use of the property or significantly impact the livability of the surrounding area.

The Hearings Officer finds that the proposal meets this criterion. Accordingly, the Hearings Officer will grant the Conditional Use Permit.

6. Analysis of Class 3 Site Plan Review Approval Criteria

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

Criterion 1:

The application meets all applicable standards of the UDC.

Finding: The applicant is requesting to establish a new *Child Day Care Center* use within the existing buildings of the *Religious Assembly* use. The proposed site plan complies with all applicable development standards of the Unified Development Code (UDC).

Use and Development Standards – RM-II (Multiple Family Residential II) Zone:

SRC 514.005 – Uses:

Finding: The proposed development includes establishing a new *Child Day Care Center* use within the existing buildings. A *Child Day Care Center* use is a permitted use within the RM-II zone per SRC 514.005, Table 514-1 as a Conditional Use. Findings for the approval of the Conditional Use permit are set out above in the analysis of the Conditional Use in numbered item 5 of this decision.

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SRC 514.010(b) – Lot Standards:

The minimum lot area for all uses other than single family is 6,000 square feet with a minimum width of 40 feet and a minimum depth of 80 feet and a minimum 40 feet of street frontage.

Finding: The subject property is 5.87 acres in size and has 325 feet of frontage on Liberty Road S, exceeding minimum lot standards of the RM-II zone. No changes are proposed to the existing configuration of the property.

SRC 514.010(d), Table 514-4; Table 514-5 – Setbacks:

North: Adjacent to the north are properties zoned RS (Single Family Residential), RM-II (Multiple Family Residential II) and MU-I (Mixed Use I). There is a minimum 10-foot setback with Type C landscaping required for buildings, accessory structures, and vehicle use areas.

South: Adjacent to the south are properties zoned RS (Single Family Residential) and RM-II (Multiple Family Residential II). There is a minimum 10-foot setback with Type C landscaping required for buildings, accessory structures, and vehicle use areas.

East: Adjacent to the east is right-of-way for Liberty Road S. There is a minimum 12-foot building setback, plus one foot for each foot of height over 12 feet (but that need not exceed 20 feet in depth). Vehicle use areas require a minimum 12-foot setback for all uses other than single- to four-family uses.

West: Adjacent to the west are properties zoned RS (Single Family Residential). There is a minimum 10-foot setback with Type C landscaping required for buildings, accessory structures, and vehicle use areas.

Finding: The *Child Day Care Center* use is proposed to be within an existing building; no expansion or changes to the existing building footprint, vehicle use areas, or setbacks are proposed, and the existing buildings and vehicle use areas comply with all applicable setback requirements of the RM-II zone. Therefore, this standard does not apply or is satisfied by the existing development on the site.

SRC 514.010(e), Table 514-6 – Lot Coverage, Height:

The maximum lot coverage standard in the RM-II zone is 60 percent, and the maximum height allowance for all buildings other than residential uses is 70 feet.

Finding: The lot coverage of the existing buildings is less than 60 percent of the development site, and the buildings are less than 70 feet in height. No changes are proposed to the height or footprint of the existing buildings. Therefore, this standard does not apply or is satisfied by the existing development on the site.

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SRC 514.010(f) – *Maximum square footage for all accessory structures.* In addition to the maximum coverage requirements established in Table 514-6, accessory structures to single-family and two-family uses shall be limited to the maximum aggregate total square footage set forth in Table 514-7.

Finding: The proposal is to establish a new *Child Day Care Center* use, not to construct an accessory structure to a single- or two-family use; therefore, this standard does not apply.

SRC 514.010(g) – Landscaping:

(1) *Setbacks.* Required setbacks shall be landscaped. Landscaping shall conform to the standards set forth in SRC Chapter 807.

(2) *Vehicle Use Areas.* Vehicle use areas shall be landscaped as provided under SRC Chapter 806 and SRC Chapter 807.

Finding: The proposal does not include a change to the footprint of the existing buildings, nor an expansion of the existing off-street parking and vehicle use areas; therefore, no additional landscaping is required for the proposed development.

SRC 514.010(h) – Outdoor Storage:

Outdoor storage shall be screened from streets and adjacent properties by a minimum six-foot high sight-obscuring fence, wall, or hedge.

Finding: The proposal does not include outdoor storage; therefore, this standard does not apply.

General Development Standards – SRC 800

SRC 800.065 – Pedestrian Access.

All development shall include an on-site pedestrian circulation system developed in conformance with the standards in this section. For purposes of this section development means the construction of, or addition to, a building or accessory structure or the construction of, or alteration or addition to, an off-street parking or vehicle use area.

Finding: Because the proposed change of use does not meet the definition of “development” as used in this section, the proposed change of use does not trigger compliance with the pedestrian access standards of SRC 800.065. The Felton-Winola proposed connector off-street bike network alignment is mapped through the property according to the Salem TSP. Pursuant to SRC 800.065(a)(4), the trail must either be constructed or an easement must be dedicated for the future alignment. As mapped in the TSP, the alignment travels through the parking lot on the subject property from Winola Avenue S to Felton Street S; however, an engineered alignment has not been provided and connections on either end are not in place. The applicant has proposed no changes to the existing parking lot; therefore, an easement is not currently required for the future alignment, per SRC 800.065. Future development of

the property must take into account the off-street bike network alignment.

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

SRC 806.015 - Amount Off-Street Parking.

Except as otherwise provided, off-street parking shall not exceed the amounts set forth in Table 806-1. For the purposes of calculating the maximum amount of off-street parking allowed, driveways shall not be considered off-street parking spaces.

Finding: The proposed *Child Day Care Center* use is proposed to be located within the existing religious assembly building on the subject property. Per Table 806-1, the maximum parking for a *Religious Assembly* use is one space per four seats or 15 feet of bench length within the principal worship area, or one per 60 square feet within the principal worship area, when no fixed seating or benches are provided. The maximum off-street parking allowance for a *Day Care* use is one space per 250 square feet. According to previous site plan review approval, SPR09-6, the allowed maximum seating capacity for the church is 260 people, and there are 178 seats within the principal worship area. The maximum allowed number of parking spaces is 45 spaces ($178 / 4 = 45$). There are an existing 112 parking spaces on the property serving the *Religious Assembly* use, exceeding the allowed maximums under the current Code. No additional parking is proposed or required for the proposed *Child Day Care Center* use. The code does not require or anticipate removal of existing off-street parking when a use is proposed within an existing structure built to comply with earlier parking requirements.

Bicycle Parking

SRC 806.045 - General Applicability.

Bicycle parking shall be provided for each new use or activity, any change of use or activity, or any intensification, expansion, or enlargement of a use or activity. When bicycle parking is required to be added to an existing bicycle parking area that has a nonconforming number of spaces, the number of spaces required under this chapter for any new use or activity, any change of use or activity, or any intensification, expansion, or enlargement of a use or activity shall be provided, in addition to the number of spaces required to remedy the existing deficiency.

SRC 806.050 – Proximity of Bicycle Parking to use or Activity Served.

Bicycle parking shall be located on the same development site as the use or activity it serves.

SRC 806.055 - Amount of Bicycle Parking.

The minimum amount of bicycle parking required is found in SRC Chapter 806, Table 806-8.

Finding: A *Child Day Care Center* use requires four bicycle parking spaces with an allowance of 100 percent as long-term spaces (e.g., indoor racks). The existing

Religious Assembly use requires a minimum of one bicycle parking space per 30 vehicle parking spaces. There are 112 vehicle parking spaces; therefore, four bicycle parking spaces are required ($112 / 30 = 3.7$ spaces). Together, the two uses require eight bicycle parking spaces. The applicant has indicated that there are an existing six short-term bicycle parking spaces (three staple racks) on the property serving the church, meeting the minimum amount of required bicycle parking for the *Religious Assembly* use. In order to ensure that there is adequate bicycle parking provided to serve both uses, the Hearings Officer imposes the following condition:

Condition 1: The applicant must install two additional bicycle parking spaces (e.g., one staple rack) to meet the minimum eight bicycle parking spaces to serve both uses, meeting the development standards of SRC 806.050 and 806.060.

Off-Street Loading Areas

SRC 806.065 - General Applicability.

Off-street loading areas shall be provided and maintained for each proposed new use or activity, any change of use or activity, when such change of use or activity results in a greater number of required off-street loading spaces than the previous use or activity, or any intensification, expansion, or enlargement of a use or activity.

SRC 806.075 - Amount of Off-Street Loading.

Unless otherwise provided under the UDC, off-street loading shall be provided in amounts not less than those set forth in Table 806-10.

Finding: According to SRC 806.075, Table 806-1, no off-street loading spaces are required for the proposed new *Child Day Care Center* use.

Landscaping

All required setbacks must be landscaped with a minimum of 1 plant unit per 20 square feet of landscaped area. A minimum of 40 percent of the required number of plant units must be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials and minimum plant unit values are defined in SRC Chapter 807, Table 807-2.

All building permit applications for development subject to landscaping requirements must include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

Finding: The proposal includes a change of use within an existing building, and no exterior changes to the development site are proposed that would trigger the requirement for additional site landscaping. Therefore, landscape and irrigation plans are not required for the proposed new use.

Natural Resources

SRC 601 – Floodplain Overlay Zone:

Finding: The subject property is not located within a floodplain overlay zone.

SRC 808 - Preservation of Trees and Vegetation: The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (an Oregon White Oak greater than 20 inches in diameter at breast height (dbh), or any other tree with a dbh of 30 inches or greater, excluding Tree of Heaven, Empress Tree, Black Cottonwood, and Black Locust (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by a variance granted under SRC 808.045.

Finding: No building expansion that would require removal of any trees is proposed, and no trees are proposed for removal.

SRC 809 - Wetlands: Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetland laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

Finding: According to the Salem-Keizer Local Wetland Inventory (LWI), the subject property does not contain any wetland areas or hydric soils.

SRC 810 - Landslide Hazards: A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. According to the City's adopted landslide hazard susceptibility maps and SRC Chapter 810 (Landslide Hazards), there are no mapped landslide hazard areas on the subject property.

Finding: The development proposal includes a change of use within an existing building, and no activity points are assigned to the proposed development. Therefore, the proposed development is a low landslide hazard risk and does not require a geological assessment or geotechnical report.

The Hearings Officer concludes that with Condition 1, the application meets all the applicable standards of the UDC.

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.

Finding: Liberty Road S abuts the property and does not meet the minimum right-of-way width required for its classification according to the Salem TSP. The property is subject to a special setback equal to 48 feet from the centerline of Liberty Road S. No new development is proposed in this area.

Winola Avenue S abuts the property and does not meet the minimum right-of-way width required for its classification according to the Salem TSP. The property is subject to a special setback equal to 30 feet from the centerline of Winola Avenue S. No new development is proposed in this area.

There is an unnamed street that traverses through the property. This street is not improved to City street standards; it contains the driveway for the subject property. This unnamed street does not meet the minimum right-of-way width required for its classification according to the Salem TSP. The property is subject to a special setback equal to 30 feet from the centerline of the unnamed street. No new development is proposed in this area.

The subject property is currently served by existing driveway approaches onto Liberty Road S, Winola Avenue S, and Felton Street S. No changes to access are proposed. The existing driveway accesses provide for safe turning movements into and out of the property. In summary, the Hearings Officer finds that the current transportation system provides for the safe, orderly and efficient circulation of traffic into and around the site and finds that the proposed *Child Day Care Center* use will not adversely increase the amount of vehicle traffic into or out of the property. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 3:

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

Finding: The property has existing driveway accesses on Liberty Road S, Felton Street S, and Winola Avenue S. The existing driveway accesses provide for safe turning movements into and out of the property. The existing driveways and parking areas are designed to facilitate the safe and efficient movement of vehicles, bicycles, and pedestrians, and no changes are proposed to these areas. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 4:

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

Finding: The subject property is located inside the Urban Service Area, and adequate facilities are available. No Urban Growth Area Preliminary Declaration permit is required. The Public Works Department has reviewed the applicant's preliminary plan for this site. The water, sewer, and storm infrastructure are available within surrounding streets/areas and are adequate to serve the proposed development. The Hearings Officer finds that the proposal satisfies this criterion.

DECISION

Based upon the Facts and Findings herein, the Hearings Officer **APPROVES** the collective applications for a conditional use and site plan review for the proposed new *Child Day Care Center* use within an existing building located at 3737 Liberty Rd S, subject to the following condition of approval:

CONDITIONAL USE:

Condition 1: The applicant must install two additional bicycle parking spaces (e.g., one staple rack) to meet the minimum eight bicycle parking spaces to serve both uses, meeting the development standards of SRC 806.050 and 806.060.

DATED: September 12, 2023



James K. Brewer, Hearings Officer