Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.

DECISION OF THE HEARINGS OFFICER

PARTITION / VARIANCE CASE NO. PAR-VAR16-04

APPLICATION NOS.: 16-113225-ZO & 16-107588-LD

NOTICE OF DECISION DATE: August 23, 2016

SUMMARY: A consolidated application to partition a 2.36 acre lot into two parcels, with the existing 24-unit apartment complex to remain on the north parcel, and variances to maximum flag lot accessway length and landscaped setbacks from existing parking areas.

REQUEST: A consolidated application containing the following requests:

- (1) A partition to divide approximately 2.36 acres into two parcels, with proposed Parcel 1 consisting of approximately 1.13 acres and proposed Parcel 2 consisting of approximately 1.21 acres; and
- (2) A variance to allow a flag lot accessway approximately 209 feet in length, where a maximum length of 150 feet is allowed by SRC 800.025(c); and
- (3) A variance to eliminate required landcaped setbacks from the boundary of the flag lot accessway and new property line created by the partition, where a minimum 10 foot setback with Type C landscaping and screening from vehicle use areas is required by SRC Chapter 514, Tables 514-4 and 514-5.

The subject property is zoned RM2 (Multiple Family Residential) and is located at 4072 Market Street NE (Marion County Assessor's Map and Tax Lot Number 072W19BD03500).

APPLICANT: Kerley Properties, LLC (Paul Kerley)

LOCATION: 4072 - 4096 Market St NE / 97301

CRITERIA: Salem Revised Code Chapters 245 & 205

DECISION: The Hearings Officer **APPROVED** Partition / Variance Case No. PAR-

VAR16-04 subject to the following conditions of approval:

Condition 1: Prior to issuance of building permits for development on Parcel 2, "NO PARKING – FIRE LANE" signs shall be posted on any segment of curbline abutting the proposed accessway that is a fire apparatus

roadway. "NO PARKING" signs shall be posted on all remain segments of curbline abutting the proposed accessway.

Condition 2: Provide a tentative stormwater design in sufficient detail to in

sufficient detail to specify the location of storm easements to serve

Parcel 2.

PAR-VAR16-04 August 23, 2016 Page 2

Condition 3: Show access and utility easements serving Parcel 2 on the plat to the

satisfaction of the Public Works Director.

Condition 4: Convey land for dedication equal to 36 feet from the centerline of Market

Street NE.

Condition 5: Dedicate a 10-foot public utility easement (PUE) along the entire frontage of

Market Street NE.

Condition 6: Provide a minimum 5-foot-wide pedestrian pathway from the southern

boundary of Parcel 1 to the Market Street NE right-of-way, to be developed as

follows:

A) Paved and curb-separated; or

B) In a material that contrasts with the driveway; or

C) Striped to contrast with the driveway material.

The pathway shall be located within a pedestrian access easement to benefit Parcel 2. No portion of the pedestrian access easement shall be located within the flag lot accessway serving Parcel 2.

Condition 7: Development on Parcel 2 shall provide reasonably direct access from buildings, common open space, and parking areas to the pathway and easement provided across Parcel 1 pursuant to Condition 6.

The rights granted by the attached decision must be exercised, or an extension granted, by **September 8, 2018** or this approval shall be null and void. A copy of the decision is attached.

Application Deemed Complete: July 14, 2016

Public Hearing Date: August 10, 2016

Notice of Decision Mailing Date: August 23, 2016

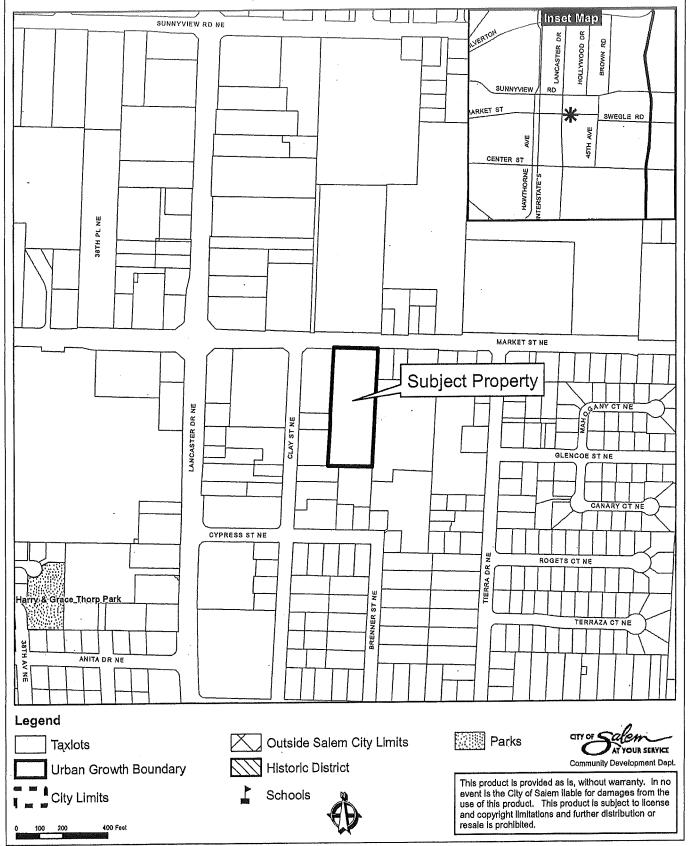
Decision Effective Date: September 8, 2016
Newspher 11, 2016

State Mandate Date: November 11, 2016

Case Manager: Chris Green, cgreen@cityofsalem.net, 503-540-2326

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., WEDNESDAY, SEPTEMBER 7, 2016**. 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 in SRC Chapter 205. 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 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 at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

Vicinity Map 4072-4096 Market Street NE



CITY OF SALEM BEFORE THE HEARINGS OFFICER

A CONSOLIDATED APPLICATION TO PARTITION A 2.36 ACRE LOT INTO TWO PARCELS, WITH THE EXISTING 24-UNIT APARTMENT COMPLEX TO REMAIN ON THE NORTH PARCEL, AND VARIANCES TO MAXIMUM FLAG LOT ACCESSWAY LENGTH AND LANDSCAPED SETBACKS FROM EXISTING PARKING AND VEHICLE USE AREAS, A CONSOLIDATED APPLICATION CONTAINING THE FOLLOWING REQUESTS: (1) A PARTITION TO DIVIDE APPROXIMATELY 2.36 ACRES INTO TWO PARCELS, WITH PROPOSED PARCEL 1 CONSISTING OF APPROXIMATELY 1.13 ACRES AND PROPOSED PARCEL 2 CONSISTING OF APPROXIMATELY 1.21 ACRES; AND (2) A VARIANCE TO ALLOW A FLAG LOT ACCESSWAY APPROXIMATELY 209 FEET IN LENGTH, WHERE A MAXIMUM LENGTH OF 150 FEET IS ALLOWED BY SRC 800.025(C); AND (3) A VARIANCE TO ELIMINATE REQUIRED LANDSCAPED SETBACKS FROM THE BOUNDARY OF THE FLAG LOT ACCESSWAY AND NEW PROPERTY LINE CREATED BY THE PARTITION, WHERE A MINIMUM 10 FOOT SETBACK WITH TYPE C LANDSCAPING AND SCREENING FROM VEHICLE USE AREAS IS REQUIRED BY SRC CHAPTER 514, TABLES 514-4 AND 514-5. THE SUBJECT PROPERTY IS ZONED RM2 (MULTIPLE FAMILY RESIDENTIAL) AND IS LOCATED AT 4072-4096 MARKET STREET NE SALEM OREGON

PAR-VAR16-04

FINDING OF FACTS, CONCLUSIONS AND DECISION

DATE AND PLACE OF HEARING:

Wednesday, August 10, 2016 City of Salem Council Chambers Rm.240 Salem, OR City Hall

APPEARANCES:

Staff:

Chris Green, Planner II

Neighborhood Association:

East Lancaster Neighborhood Association (ELNA) no

appearance

Proponents:

Frank Walker

Opponents:

None

SUMMARY OF THE APPLICATION

Summary: A consolidated application to partition a 2.36 acre lot into two parcels, with the existing 24-unit apartment complex to remain on the north parcel, and variances to maximum flag lot accessway length and landscaped setbacks from existing parking and vehicle use areas.

Request: A consolidated application containing the following requests:

- (1) A partition to divide approximately 2.36 acres into two parcels, with proposed Parcel 1 consisting of approximately 1.13 acres and proposed Parcel 2 consisting of approximately 1.21 acres; and
- (2) A variance to allow a flag lot accessway approximately 209 feet in length, where a maximum length of 150 feet is allowed by SRC 800.025(c); and
- (3) A variance to eliminate required landscaped setbacks from the boundary of the flag lot accessway and new property line created by the partition, where a minimum 10 foot setback with Type C landscaping and screening from vehicle use areas is required by SRC Chapter 514, Tables 514-4 and 514-5.

The subject property is zoned RM2 (Multiple Family Residential) and is located at 4072-4096 Market Street NE (Marion County Assessor Map and Tax Lot Number 072W19BD03500).

FINDINGS OF FACT AND CONCLUSION AND DECISION

- 1. Salem Area Comprehensive Map designation for the subject Property is Multi-Family Residential
- 2. The subject property is zoned RM-2 Multiple Family Residential.
- 3. Surrounding properties zoned as follows:

North:

Across Market Street NE-CR Retail Commercial and RM-2 Multiple

Family Residential

South:

RM-2 Multiple Family Residential

East:

RM-2 Multiple Family Residential

West: CR Retail Commercial

- 4. Applicable criteria for granting a partition is contained in SRC 205.005 D1. The tentative partition complies with all the standards of this chapter and with all the applicable provisions of the UDC including but not limited to the following:
 - A. Lot standards, including, but not limited to, standards for lot area, lot width and depth, lot frontage, and designation of front and rear lots. The finding of the Hearings Officer that these criteria has been satisfied.

The Hearings Officer looked at the several areas in SRC Chapter 514 as related to the RM-2 Zone and found that, as to lot standards 514.010 Subsection (a) requires that lots subdivided or partitioned in the RM-2 Zone shall be a minimum of 20,000 square feet and both of these parcels exceed that standard. SRC Chapter 514, Table 514.2 establishes lot standards for the RM-2 zone and both of the proposed Parcels exceed the minimum lot width area and depth requirements for the uses that are proposed; However, Parcel 2 does not have 40 feet of frontage on a street and must be created as a flag lot served from the street by a flag lot accessway.

As conditioned and subject to the variances included in this order, each of the parcels will be suitable for the general purpose for which they are intended to be used, such as further development or redevelopment of multifamily residential uses, or development of other SRC Chapter 514 "permitted," "special" or "conditional" uses. The parcels are of a size and design that will not be detrimental to the health, safety, or sanitary needs of the existing and/or future residents.

The Hearings Officer next looked at SRC Chapter 800 (General Development Standards):

SRC 800.025 (Flag Lots): As described in findings on lot standards above, proposed Parcel 2 does not meet the minimum 40-foot street frontage for a lot within the RM-2 zone and must be developed as a flag lot. Consistent with the definition provided in SRC 111.030(g), a flag lot accessway may be through fee-simple ownership as part of a flag lot or by an access easement with associated reciprocal and irrevocable access rights for all users. The tentative partition plan proposes the latter, with access to Parcel 2 being provided over an access easement across Parcel 1, the frontage lot. Although flag lot accessways generally abut one of the side lot lines of the street fronting lot, the UDC does not preclude flag lot accessway from running through the center of the lot, as proposed here in order to match the drive aisle within the existing apartment complex.

Subsections (a) and (b) specify that minimum lot area and dimensions for a flag lot shall be calculated exclusively of the flag lot accessway. Both proposed parcels exceed the minimum lot area and dimensions exclusive of the flag lot accessway.

Subsection (c) establishes development and maintenance standards for flag lot accessways. A flag lot accessway serving 1-2 residentially zoned lots must be a minimum of 20 feet in width, with 15 feet paved, and no more than 150 feet in length. The proposed flag lot accessway meets the minimum width and paved width requirements, but is greater than 150 feet in length. The consolidated application includes a variance to allow a flag lot accessway length in excess of this standard.

Subsection (d) prohibits parking on flag lot accessways. Approximately 22 existing parking stalls are accessed directly from the drive aisle proposed to serve as the flag lot accessway. However, these spaces do not overlap with the 22-foot-wide area proposed for the flag lot accessway. Between parking stalls, there are segments of curb abutting the flag lot accessway where vehicles could parallel park in violation of subsection (d). In order to ensure that resident and emergency access remains unobstructed, the Hearings Officer adopts the following condition:

Condition 1. Prior to issuance of building permits for development on Parcel 2, "NO PARKING – FIRE LANE" signs shall be posted on any segment of curbline abutting the proposed accessway that is a fire apparatus roadway. "NO PARKING" signs shall be posted on all remain segments of curbline abutting the proposed accessway.

B. City infrastructure standards

The Hearings Officer finds that with conditions that the infrastructure is adequate and satisfactory for the application. The following items were examined:

- a. SRC chapter 200 Urban Growth Management; subject property is within the urban service area. Therefore, UGA permit is not required and the proposal conforms to the requirements of SRC Chapter 200.
- b. SRC Chapter 802 Public improvements based upon the input of the public works department the water, sewer, and storm infrastructure is available along the perimeter of the site and appears to be adequate to serve the partition.
- c. SRC 802.020 (easements) Because parcel 1 may require easements in order to serve future developments on parcel 2 with any city utilities.

The Hearings Officer adopts the following conditions:

- **Condition 2:** Provide a tentative stormwater design in sufficient detail to in sufficient detail to specify the location of storm easements to serve Parcel 2.
- **Condition 3:** Show access and utility easements serving Parcel 2 on the plat to the satisfaction of the Public Works Director.

As conditioned the proposal complies with the requirements of SRC Chapter 802.

- d. SRC Chapter 803 (Streets and Right-of-Way Improvements): a traffic impact analysis will be required for any future development on the properties generating 1,000 or greater average daily vehicle trips to Market Street.
- e. SRC 803.020 (Public and Private Streets): The proposal does not include additional public or private streets. A flag lot accessway within an easement over parcel 1 is proposed to provide access to Parcel 2.
- f.; SRC 803.025 (Right-of-Way and Pavement Widths) In order to ensure that the abutting segment of Market Street NE compiles with Right-of-Way and Pavements Widths standards established in the TSP and the UDC, the Hearings Officer adopts the following condition 4:
- **Condition** 4: Convey land for dedication equal to 36 feet from the centerline of Market Street NE.
 - g. SRC 803.030 (Street Spacing) The proposed partition would be served by the existing frontage on Market Street and does not include any new public or private streets.
 - h. SRC 803.035035 (Street Standards): Subsection (a) requires streets within the partition to provide connectivity to existing streets and undeveloped properties within the vicinity of the subject property. The subject property is abutted to the south, east, and west by lots that have been developed with multifamily residential and commercial complexes, precluding any street connectivity for the site apart from the existing frontage on Market Street NE.
 - i. Subsection (m) requires streets identified in the Salem Transportation System Plan (TSP) Bicycle System Map as requiring a bicycle facility to conform to the designation of the TSP and Public Works Design Standards. The TSP Bicycle Map designates the abutting segment of Market Street NE as a "Constructed Bike lane" route, and bike lanes are present in this location.
 - j. Pursuant to subsection (n), public utility easements (PUEs) may be required for all streets. Comments from Portland General Electric, the franchise utility provider of electricity for the subject property, request a 10-foot-wide PUE on all street front lots. In order to ensure adequate access for the provision of electricity and other utilities, the Hearings Officer adopts the following condition:
- **Condition** 5: Dedicate a 10-foot public utility easement (PUE) along the entire frontage of Market Street NE.
 - k. SRC 803.040 (Boundary Streets). Condition 3 requires dedication of an additional 6 feet of right-of-way along the north boundary of the

subject property in order to comply with the minimum right-of-way width for a Minor Arterial street, as established in SRC 803.02 5 (a) The entire adjacent frontage of the subject property on Market Street is fully constructed to a half-street improvement. Therefore, no boundary street improvements are warranted as a requirement of the partition.

- C. Any special development standards, including, but not limited to, floodplain development, special setbacks, geological or geotechnical analysis, and vision clearance.
 - a. SRC Chapter 808 (Preservation of Trees and Vegetation): A tree plant is not required in this case because the proposal is not a land division intended for single family or duplex development. The site is already developed and there are no Significant Trees or Heritage Trees on the subject property.
 - b. SRC Chapter 809 (Wetlands) The Salem-Keizer Wetlands: The Salem, Keizer wetlands inventory does not identify any wetlands.
 - c. SRC Chapter 810 (Landslide Hazards): The City's Landslide Hazard Maps does not identify any areas of potential landslide susceptibility on the property, therefore the findings of the Hearings Officer that the proposed partition conforms with the requirements of SRC chapter 810.
 - 5. SRC 205.005(d)(2): The tentative partition plan does not impede the future use or development of the property or adjacent land.

It is the finding of the Hearings office that this criteria have been satisfied. The 2 Parcel layout proposed in the Tentative partition plan allows for development on the currently vacant potion of the subject property consistent with financing standards for new multifamily development as well as multifamily design guidelines. The proposed tentative partition plan would facilitate development of the remainder of the subject property consistent with its Comprehensive Plan Map and zoning designations as well as development on surrounding properties. Therefore, this criteria has been satisfied.

6. SRC 205.005(d)(3): Development within the tentative partition plan can be adequately served by City infrastructure.

It is the finding of the Hearings Officer that this criteria has been satisfied. Based upon the testimony from the public works department and the adoption of conditions 1 and 2 the proposal meets this criteria.

7. SRC 205.005(d)(4): The street system in and adjacent to the tentative partition plan conforms to the Salem Transportation System Plan.

It is the finding of the Hearings Officer that this criteria has been satisfied. Based upon the adoption of condition 3, the applicant dedicating approximately 6 additional feet of land along the entire frontage of Market Street. The tentative partition plan conforms to the Salem Transportation Plan. The partition plan proposes to serve Parcel 2 by a flag lot accessway,

running within a 22-foot wide easement over the drive aisle of the existing parking lot for the apartment complex on Parcel 1. No public or private internal streets are proposed.

8. SRC 205.005(d)(5): The street system in and adjacent to the tentative partition plan is designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the partition.

It is the finding of the Hearings Officer that this criteria has been satisfied. Existing access from Market Street, and proposed access from the flag lot accessway, provides safe, orderly, and efficient circulation of vehicular traffic into, through, and out of the proposed partition. However, the flag lot accessway does not include a sidewalk or other pedestrian access from the undeveloped portion of the site to the street network at Market Street. Therefore, to ensure orderly, and efficient pedestrian access, the Hearings Officer adopts the following 2 conditions:

Condition 6: Provide a minimum 5-foot-wide pedestrian pathway from the southern boundary of Parcel 1 to the Market Street NE right-of-way, to be developed as follows:

- A) Paved and curb-separated; or
- B) In a material that contrasts with the driveway; or
- C) Striped to contrast with the driveway material.

The pathway shall be located within a pedestrian access easement to benefit Parcel 2. No portion of the pedestrian access easement shall be located within the flag lot accessway serving Parcel 2.

Condition 7: Development on Parcel 2 shall provide reasonably direct access from buildings, common open space, and parking areas to the pathway and easement provided across Parcel 1 pursuant to Condition 6.

9. SRC 200.005(d)(6): The tentative partition plan takes into account the topography and vegetation of the site so the need for variances is minimized to the greatest extent practicable.

The applicant has requested two variances as part of the subject application, both related to the proposed flag lot accessway serving Parcel 2:

- (1) A variance to allow a flag lot accessway approximately 209 feet in length, where a maximum length, of 150 feet is allowed by SRC 800.025(c); and
- (2) A variance to eliminate required landscaped setbacks from the boundary of the flag lot accessway and new property line created by the partition, where a minimum 10-foot setback with Type C landscaping and screening from vehicle use areas is required by SRC Chapter 514, Tables 514-4 and 514-5.

These variances requested as part of the consolidated application are the result of the configuration of long standing development on the subject property and abutting Parcels and not necessitated by the topography or vegetation of the site. Therefor this criteria has been satisfied.

10. SRC 200.005(d)(7): The layout, size, and dimensions of the parcels within the tentative partition plan take into account the topography and vegetation of the site, such that the least disruption of the site, topography, and vegetation will occur from the reasonable development of the parcels.

Parcel 1 was developed largely in 1972. The partition does not include any specific plans for development of Parcel 2, the layout, size, and dimensions of Parcel 2 are sufficient to allow future development consistent with the subject property's multifamily land use designation and zoning in a manner that minimizes impacts to the site, topography, and vegetation. Therefore, the Hearings Officer finds that this criteria has been satisfied.

- 11. SRC 200.005(d)(8): When the tentative partition plan is for property located more than 300 feet from an available sewer main, and the property will not connect to City water and sewer:
 - (A) The property is zoned residential;
 - (B) The property has received a favorable site evaluation from the county sanitarian for the installation of an on-site sewage disposal system; and
 - (C) The proposed parcels are at least 5 acres in size and, except for flag lots, have no dimensions less than 100 feet.

Because the site is served by sewer and water. This criteria does not apply.

The variance criteria is contained in SRC 245.005.

- 12. SRC 245.005(d)(1): There is an unreasonable hardship or practical difficulty created by the physical characteristics of the land.
 - a. Variance 1: established by existing development on surrounding parcels, and the development of the Market Terrace Apartments on the north portion of the subject property in 1972, present a practical difficult preventing development of the southern portion of the site. Because of the configuration of the existing apartment complex and lack of alternative points of access through surrounding properties, further development of the subject property is precluded without an accessway from Market Street. Therefore, the various requests by the applicant would alleviate the practical difficulties associated with developing the vacant portion of the lot and allow development of multifamily housing consistent with the Comprehensive Plan Map and zoning designation for the property, as well as the development pattern of surrounding properties. Therefore based upon the variance 1 has meet this criteria.
 - b. Variance 2: The variance to eliminate required landscapes setbacks from the boundaries of the flag lot accessways on the new property line created by the partition would alleviate the practical difficulties associated with developing the

vacant portion of the lot and allow development of the multi-family housing. consistent with the Comprehensive Plan Map and the zoning designation. Therefore; this Variance meets this criteria.

- 13. SRC 245.005(d)(2): The variance will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity.
 - a. Variance 1: The main reason to limit the length of flag lot accessways is for Fire Department access. The Fire Department commented that they can address fire safety issues at the time of building permit, most likely through site design and requiring the buildings to have sprinklers. Therefore, this criterion satisfies for variance1.
 - b. Variance 2: The Proposed route of the flag lot accessway is centrally located on the side screen of the abutting property buildings by existing department buildings with in the complex of the east and the west. As such, there will be no adverse effects of the proposal on the public health, safety, and welfare of surrounding property owners. And this criteria has been meet.

Now therefore based upon the foregoing the Hearings Officer makes the following decision:

Grants the request for a consolidated partition and variances to maximum flag lot accessway length and landscaped setbacks from existing parking and vehicle use areas, for property located at 4072 Market Street NE, subject to the following conditions:

- Condition 1: Prior to issuance of building permits for development on Parcel 2, "NO PARKING FIRE LANE" signs shall be posted on any segment of curb line abutting the proposed accessway that is a fire apparatus roadway. "NO PARKING" signs shall be posted on all remain segments of curbline abutting the proposed accessway.
- **Condition** 2: Provide a tentative stormwater design in sufficient detail to in sufficient detail to specify the location of storm easements to serve Parcel 2.
- **Condition** 3: Show access and utility easements serving Parcel 2 on the plat to the satisfaction of the Public Works Director.
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- C) Striped to contrast with the driveway material.

The pathway shall be located within a pedestrian access easement to benefit Parcel 2. No portion of the pedestrian access easement shall be located within the flag lot accessway serving Parcel 2.

Condition 7: Development on Parcel 2 shall provide reasonably direct access from buildings, common open space, and parking areas to the pathway and easement provided across Parcel 1 pursuant to Condition 6.

DATED: August 23, 2016

Scott A. Fewel, Hearings Officer

Revised July 12, 2016 PROPOSED PARTITION

LOCATED IN THE

NORTHNEST QUARTER OF SECTION 19,
TOWNSHIP 7 SOUTH, RANGE 2 WEST OF THE WILLAMETTE MERIDIAN,
CITY OF SALEM, MARION COUNTY, OREGON

