

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 CASE NO. CU16-13

APPLICATION NO. : 16-120842-ZO

NOTICE OF DECISION DATE: JANUARY 25, 2017

SUMMARY: A request for a Conditional Use Permit to allow development of a 180-unit apartment complex on a portion of the subject property.

REQUEST: A request for a Conditional Use Permit to allow development of a 180-unit apartment complex on a portion of the subject property approximately 8.99 acres in size, for property with a combined size of approximately 13.9 acres, zoned CR (Retail Commercial) within the Portland/Fairgrounds Road Overlay Zone, and located at 3350 Portland Road NE - 97301 (Marion County Assessor's Map and Tax Lot numbers: 073W13BB / 00100, 00200, 00300, 00400, 00500, 00600, 00700, 00800, and 01600).

APPLICANT: Richard Berger, Mountain West Investments

LOCATION: 3350 Portland Road NE / 97301

CRITERIA: Salem Revised Code Chapter 240

FINDINGS: The findings are in the attached Staff Report.

DECISION: The Hearings Officer **approved** Conditional Use CU16-13 subject to the following condition of approval:

Condition 1. The multi-family use shall contain no more than 180-dwelling units.

The rights granted by the attached decision must be exercised, or an extension granted, by February 10, 2019 or this approval shall be null and void. A copy of the decision is attached.

| | |
|----------------------------------|--------------------------|
| Application Deemed Complete: | <u>December 15, 2016</u> |
| Public Hearing Date: | <u>January 11, 2017</u> |
| Notice of Decision Mailing Date: | <u>January 25, 2017</u> |
| Decision Effective Date: | <u>February 10, 2017</u> |
| State Mandate Date: | <u>April 14, 2017</u> |

Case Manager: Aaron Panko, APanko@cityofsalem.net, 503.540.2356 *AP*

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., Thursday, February 9, 2017.**

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 in SRC Chapter 240. 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.

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

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**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

THIS IS A REQUEST FOR A CONDITIONAL USE) CU16-13
PERMIT TO ALLOW DEVELOPMENT OF A 180-UNIT)
APARTMENT COMPLEX ON A PORTION OF THE)
SUBJECT PROPERTY APPROXIMATELY 8.99 ACRES)
IN SIZE, FOR PROPERTY WITH COMBINED SIZE OF) FINDINGS OF
APPROXIMATELY 13.9 ACRES, ZONED CR (RETAIL) FACT, CONCLUSIONS
COMMERCIAL) WITHIN THE PORTLAND ROAD NE-) AND DECISION
97301 (MARION COUNTY ASSESSOR'S MAP AND)
TAX LOT NUMBERS: 073W13BB/ 00100, 00200, 00300,)
00400, 00500, 00600, 00700, 00800, AND 016000.)

DATE AND PLACE OF HEARING:

January 11, 2017, Salem City Council Chambers, 555 Liberty Street SE, Salem,
Oregon.

APPEARANCES:

Staff: Aaron Panko, City Planner III, Sally Long, Recorder
Neighborhood Association: Northgate Neighborhood Association (email of January
2, 2017)
Applicant/Proponents: Richard Berger, Mountain West Investments;
Mark Grenz, P.E., Multi-Tech Engineering Inc.
Opponents: None

SUMMARY OF THE APPLICATION AND HEARING

This is a request for a Conditional Use Permit to allow development of a 180-unit apartment complex on a portion of the subject property approximately 8.99 acres in size, for property with a combined size of approximately 13.9 acres, zoned CR (Retail Commercial) within the Portland/Fairgrounds Road Overlay Zone, and located at 3350 Portland Road NE - 97301 (Marion County Assessor's Map and Tax Lot numbers: 073W13BB I 00100, 00200, 00300, 00400, 00500, 00600, 00700, 00800, and 01600).

The Hearings Officer opened the public hearing at 5:59. The staff report was accepted into the record. Mr. Panko presented the staff report. Richard Berger, representing the applicant, concurred with the staff report and explained that this project was seen as a philanthropic issue.

FINDINGS OF FACT AND CONCLUSIONS

Based on the staff report and the testimony, the Hearings Officer makes the following findings and conclusions:

1) Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designation for the majority of the subject property is "Commercial" with a small portion of the property that is used as access to Highway Avenue NE designated as "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 CR (Retail Commercial) and RM-II (Multi-Family Residential). Multi-family uses are allowed in the CR zone with a conditional use permit, and is a permitted use in the RM-II zone.

The subject property is also within the boundaries of the Portland/Fairgrounds Road Overlay Zone. SRC 603.015 provides that any use that is a permitted, special, conditional, or prohibited use in the underlying zone is a permitted, special, conditional, or prohibited use in the Portland/Fairgrounds Road Overlay Zone.

The zoning and uses of surrounding properties includes:

North: CR (Retail Commercial) - Contractors Office, Retail Sales and Services, and Single Family Dwellings

East: RS (Single Family Residential) - Single Family Dwellings

South: CO (Commercial Office) and RM-II (Multi-Family Residential) Multi-Family Residential Uses

West: Right-of-way for Portland Road NE

3) Site Analysis

The subject property is approximately 13.9 acres in size and is currently vacant. The subject property abuts Portland Road NE to the west, which is designated as a major arterial street within the Salem TSP (Transportation System Plan). Rose Gardens Way NE is an existing street which connects the proposed multi-family use to Portland Road NE. The property also has access to Highway Avenue NE to the south, which is designated as a local street.

4. Natural Resources

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 (Oregon White Oak greater than 24 inches in diameter at breast height) (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.

One significant tree is present on the property along the eastern property line; the applicant notes that the significant tree will be protected and preserved during construction. Approval of a Conditional Use Permit does not authorize removal of a significant tree.

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 wetlands 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.

The Salem-Keizer Local Wetland Inventory (LWI) does not identify any wetland areas on the subject property, there are however hydric soils mapped on the property. The applicant should contact DSL to verify if any permits are required for development or construction in the vicinity of mapped hydric soils.

SRC 810 - Landslide Hazards: A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. There is a small area on the north side of the property which contains areas of minor landslide hazard, but is outside of the proposed development area. The applicant's proposal does not appear to disturb any portion of a mapped landslide hazard area with regulated activities; therefore, a geological assessment is not required.

4. Neighborhood and Citizen Comments

The subject property is located within the Northgate Neighborhood Association (Northgate). Notice was provided to Northgate and surrounding property owners within 250 feet of the subject property. No comments were received from surrounding property owners. Northgate provided a response indicating concerns with the proposed development by email dated January 2, 2017. The following is a summary of the concerns raised by Northgate, and the staff responses to those concerns. The Hearings Officer concurs with the staff responses:

a) Questionable compatibility with surrounding neighborhood.

The Hearings Officer concurs with the Staff Response: New multi-family apartment complexes are required to comply with multi-family design standards, which in part help to address compatibility issues between multi-family and single family residential uses. The multi-family standards require setbacks abutting single family zoned property that are based on the height of the proposed apartment building, with taller buildings requiring a greater setback distance. In addition, when abutting single-family residential zoned property, the multi-family standards require a decorative fence, a minimum of 6' in height to be placed on the perimeter; chain link fencing is not permitted. Additional trees and shrubs are required

to be planted as well. The combination of setbacks, fencing and landscaping help to provide a buffer between multi-family and single family uses.

- b.) Concerns with access to Highway Avenue, increasing traffic on surrounding local streets.

The Hearings Officer concurs with the Staff Response: The applicant has provided a Transportation Impact Analysis for the proposed development prepared by Associated Transportation Engineering & Planning Inc., dated October 26, 2016. The impacts to the surrounding transportation system will be reviewed at the time of Site Plan Review, and off-site transportation improvements may be required in order to mitigate any adverse impacts resulting from the increase in traffic generated by the proposed apartment complex.

- c.) Safety and security concerns with this property, request that a 10' tall perimeter fence to be installed with this development.

The Hearings Officer concurs with the Staff Response: The zoning code limits the maximum height for fences in the household living category to no more than 8' in height; the request for a 10' tall perimeter fence would not be permitted. Multi-family developments are required to provide design elements that consider crime prevention and resident safety. Visual surveillance of common open spaces and parking areas is taken into consideration in the layout of an apartment complex. A developed property will bring residents to the site, increasing surveillance of the area, and will generally reduce opportunities for criminal activity to occur.

- d.) Neither buildings nor parking should be allowed on or near the property line bordering Donald Street, Duncan Avenue or Highway Avenue.

The Hearings Officer concurs with the Staff Response: Building and parking area setbacks are required adjacent to streets, preventing buildings or parking areas from being placed on a property line. The property does not directly abut Donald Street or Duncan Avenue NE. No buildings or structures are proposed in the vicinity of Highway Avenue.

5. City Department and Public Agency Comments

The Fire Department has reviewed the proposal and indicated they have no comments for the Conditional Use Permit application. Access, fire flow, and fire hydrant locations shall be provided in accordance with the Salem Fire Prevention Code (SRC 58) and will be reviewed during the building permit application.

The Public Works Department and Building and Safety Division have reviewed the proposal and indicated that they have no comments for the Conditional Use Permit application.

The Salem-Keizer School District has reviewed the proposal and provided comments

included in the Staff Report.

6. 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.

The Hearings Officer finds that SRC Chapter 522, Table 522-1 provides that multi-family uses are allowed in the CR (Retail Commercial) zone with a conditional use permit.

The Hearings Officer finds that the subject property is also located within the boundaries of the Portland/Fairgrounds Road Overlay Zone. Pursuant to SRC 603.015; any use that is a permitted, special, conditional, or prohibited use in the underlying zone is a permitted, special, conditional, or prohibited use in the Portland/Fairgrounds Road Overlay Zone. The proposed multi-family use is allowed as a conditional use in the Portland/Fairgrounds Road Overlay Zone.

The Hearings Officer finds that this criterion is satisfied by the application.

Criterion 2:

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

The Hearings Officer finds that design review is required for multi-family development within the City of Salem. The design review process encourages open spaces in multi-family developments, requires common and private open space for active and passive uses, ensures that accessible pathways are available to residents of the development and provides visual relief from building mass and structural bulk.

The subject property is adjacent to single-family residential zoning to the east. Multi-family design standards require that a site obscuring fence and landscape buffer separate the proposed multi-family use from the abutting single family neighborhood to the east. The landscaping and screening shall include the following:

- (i) A minimum of 1 tree, not less than 1-1/2 inches in caliper, for every 30 lineal feet of abutting property width; and
- (ii) A minimum 6-foot tall, decorative, sight-obscuring fence or wall. The fence or wall shall be constructed of materials commonly used in the construction of fences and walls, such as wood, stone, brick, or other durable materials. Chain link fencing with slats shall not be allowed to satisfy this standard.

Required landscaping and fencing will provide a buffer and separation between the multi-family use and abutting single family uses. In addition, buildings adjacent to a residential zone that are greater than 2 stories in height are required to be setback 1-foot for each 1-foot of building height, but in no case less than 20 feet.

The Hearings Officer notes that SRC 603.020(c) provides that the minimum dwelling unit density within the Portland/Fairgrounds Road Overlay Zone is 20 dwelling units per acre are required. The applicant is proposing 180-dwelling units on the tentative site plan for a proposed lot which is 8.99 acres in size, meeting the minimum dwelling unit density requirement. Multi-family uses are generally considered to be compatible with single family uses, as they are both residential uses. The design review standards, including setbacks, landscaping and open space, are intended to address the difference in compatibility that arises from increased residential density. The scale of the multi-family development with 180-dwelling units will have minimal impact on the immediate neighborhood. Any future increase of the development beyond 180-dwelling units will require approval of a separate conditional use permit. To meet this criterion, Staff proposes the following condition of approval:

Condition 1: The multi-family use shall contain no more than 180-dwelling units.

The Hearings Officer finds that with the proposed condition, the application satisfies the criterion.

Criterion 3:

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

The Hearings Officer notes that determination of whether the proposed multi-family use is reasonably compatible with the surrounding area, requires an initial consideration of the proposed multi-family use for consistency with the goals and policies of the Salem Area Comprehensive Plan for multi-family residential development and siting.

Residential Development (SACP IV Section E)

Establishing Residential Uses.

The location and density of residential uses shall be determined after considering the

proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.

Multi-Family Housing.

Multiple family developments should be located in areas that provide walking, auto or transit connections to:

- 1) Employment Center
- 2) Shopping Areas
- 3) Transit Service
- 4) Parks
- 5) Public Buildings

The Hearings Officer finds that the primary access to the subject property is provided by Portland Road NE, which is designated as a major arterial on the Salem Area Transportation System Plan. Portland Road provides a pedestrian, bike and vehicle connection from the subject property to nearby services, including grocery stores and shopping areas. Salem-Keizer Transit (Cherriots) provides a transit route that passes by the subject property.

The Hearings Officer notes that the subject property is approximately 0.65 miles away from the nearest public park, Northgate Park, which is to the northeast of the subject property, accessed by Portland Road and Stortz Avenue NE. In addition, Lansing Park Cascades Gateway Park is located approximately 0.8 miles away and is accessed to the northeast by Highway Avenue, Silverton Road and Hawthorne Avenue NE.

The Hearings Officer notes the proximity of the site to other notable public facilities including the Salem Senior Center, located on Portland Road, southwest of the subject property, the State Fairgrounds to the south and the Kroc Center to the Northwest.

The Hearings Officer notes that Hallman Elementary School, Waldo Middle School and McKay High School will serve students in this area. Students residing at the proposed development are within the walk zone of Waldo Middle School and will be eligible for school transportation services to Hallman Elementary and McKay.

The Hearings Officer notes that the Portland Road corridor includes a mix of commercial and industrial land uses, providing residents nearby shopping, services and employment opportunities. The proposed multi-family use for the subject property is consistent with the goals and policies of the Salem Area Comprehensive Plan for multi-family residential development and siting.

The Hearings Officer notes that the proposed development will be reviewed for

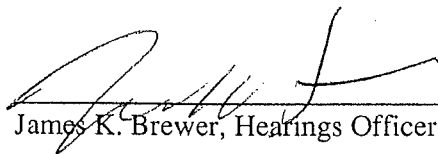
conformance with zoning development standards and the multi-family design review requirements. As conditioned, the Hearings Officer finds that the proposed development will have a minimal impact on the livability and appropriate development of surrounding property and the application satisfies this criterion.

DECISION

The Hearing Officer APPROVES the request for the consolidated conditional use permit to allow development of a 180-unit apartment complex for property located at 3350 Portland Road NE, subject to the following condition of approval:

Condition 1: The multi-family use shall contain no more than 180-dwelling units.

DATED: January 25, 2017.


James K. Brewer, Hearings Officer

Vicinity Map 3350 Portland Road NE



Legend

Taxlots

Urban Growth Boundary

City Limits

Outside Salem City Limits

Historic District

Schools

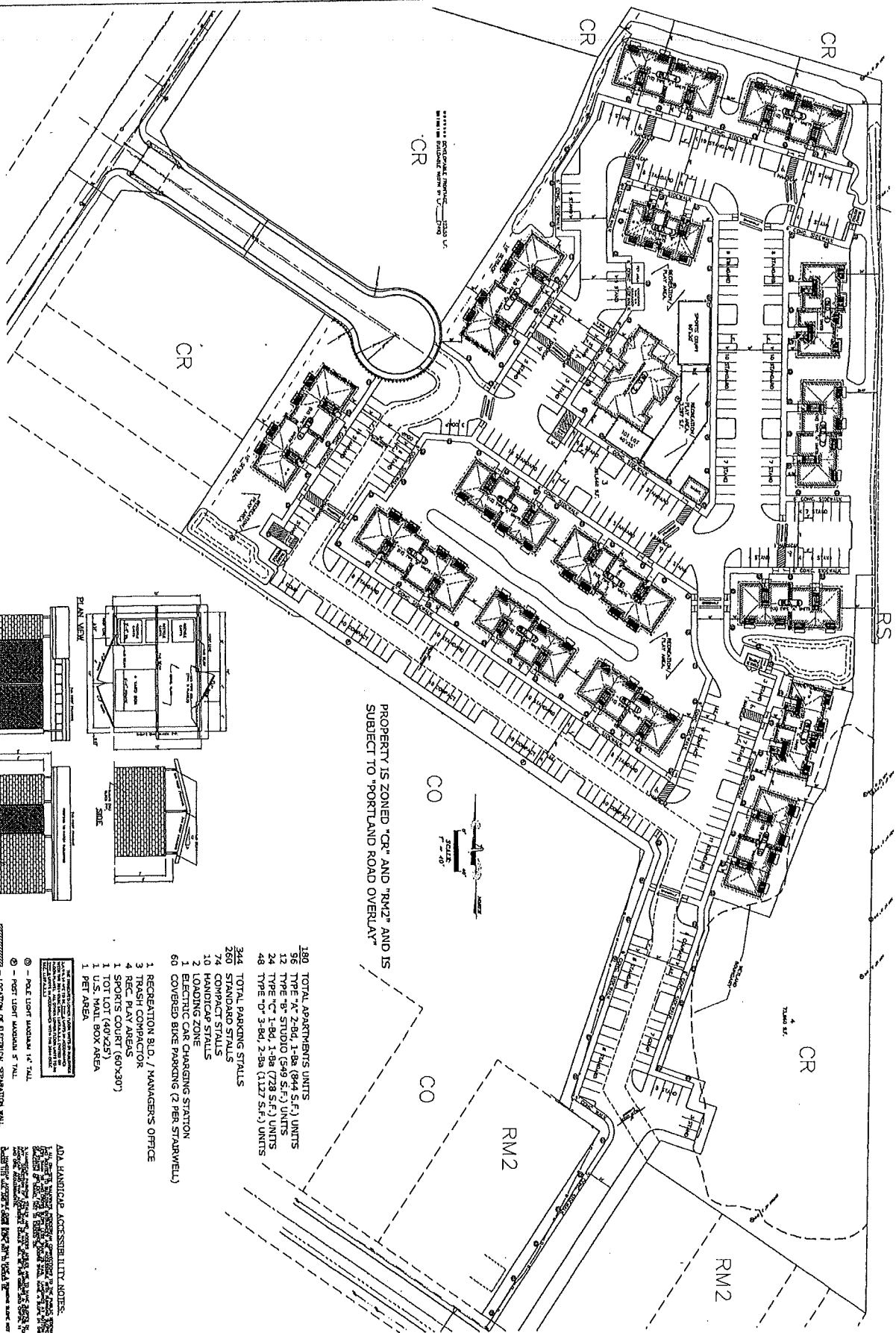
Parks

CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

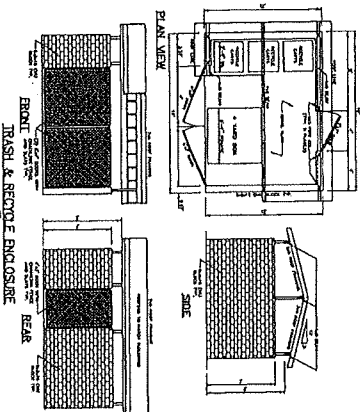
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0 100 200 400 Feet





PROPERTY IS ZONED "CR" AND "RM2" AND IS
SUBJECT TO "PORTLAND ROAD OVERLAY"



- 180 TOTAL APARTMENT UNITS
- 56 TYPE "A" 2-BD, 1-BD (944 S.F.) UNITS
- 12 TYPE "B" STUDIO (540 S.F.) UNITS
- 24 TYPE "C" 1-BD, 1-BD (728 S.F.) UNITS
- 48 TYPE "D" 3-BD, 2-BD (1127 S.F.) UNITS
- 344 TOTAL PARKING STALLS
- 260 STANDARD STALLS
- 74 COMPACT STALLS
- 10 HANDICAP STALLS
- 2 LOADING ZONE
- 1 ELECTRIC BIKE PARKING STATION
- 60 COVERED BIKE PARKING (2 PER STAIRWELL)
- 1 RECREATION BLD. / MANAGER'S OFFICE
- 3 TRASH COMPACTOR
- 4 REC. PLAY AREAS
- 1 SPORTS COURT (60'x30')
- 1 TOT LOT (40'x25')
- 1 U.S. MAIL BOX AREA
- 1 PET AREA

ADA HANDICAP ACCESSIBILITY NOTE:
THE HANDICAP ACCESSIBILITY NOTE IS A REQUIREMENT OF THE AMERICAN DISABILITY ACT (ADA) AND THE ARCHITECTURAL BARRIERS ACT (ABA). IT IS THE RESPONSIBILITY OF THE DESIGNER TO PROVIDE A HANDICAP ACCESSIBLE DESIGN FOR ALL NEW BUILDINGS AND RENOVATIONS OF EXISTING BUILDINGS. THE HANDICAP ACCESSIBILITY NOTE IS A REQUIREMENT OF THE AMERICAN DISABILITY ACT (ADA) AND THE ARCHITECTURAL BARRIERS ACT (ABA). IT IS THE RESPONSIBILITY OF THE DESIGNER TO PROVIDE A HANDICAP ACCESSIBLE DESIGN FOR ALL NEW BUILDINGS AND RENOVATIONS OF EXISTING BUILDINGS.

SDR3

Design: N.D.S.
Drawn: C.D.S.
Checked: H.D.S.
Date: APR 2014
Scale: AS SHOWN

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PORTLAND ROAD APARTMENT COMPLEX

SITE PLAN



Aaron Panko

From: Ian T. Davidson <iantdavidson@gmail.com>
Sent: Monday, January 02, 2017 8:58 PM
To: Aaron Panko
Cc: Jason Cox
Subject: Fwd: Request for Comments - Case No CU16-13 for 3350 Portland Road NE
Attachments: CU16-13 R.F.C..pdf

Hi Aaron,

While the Northgate Neighborhood Association has not had a formal vote on the Conditional Use Permit for 3350 Portland Road NE, we have discussed the project in past meetings and several concerns have been raised. Before the hearing, we'd like to communicate those concerns to you:

- Questionable compatibility with the surrounding neighborhood: The development will have single-family residences on at least two sides. The proposed apartments will be two to three stories towering over these homes.
- Access: Should be restricted to Portland Road. The current proposal would allow access from Highway Avenue, creating a high-traffic driveway between single-family residences, 24 hours a day. Access should not be allowed from residential streets such as Highway Avenue, Carleton Way, Donald Street or Duncan Avenue.
- Safety and security: Residents bordering this property have had issues with people accessing their properties from the Epping property site. It is entirely possible this problem could get worse with hundreds of people being brought into this area. For this reason, an opaque fence at least 10 feet high should be required.
- Setback: Neither buildings nor parking should be allowed on or near the property line bordering Donald St., Duncan Avenue or Highway Avenue.

We hope that our concerns are addressed as this project moves forward.

Thank you,

Ian T. Davidson
Land Use Chair
Northgate Neighborhood Association

----- Forwarded message -----

From: Sally Long <SJLong@cityofsalem.net>
Date: Thu, Dec 22, 2016 at 8:31 AM
Subject: Request for Comments - Case No CU16-13 for 3350 Portland Road NE
To: Sally Long <SJLong@cityofsalem.net>
Cc: Aaron Panko <APanko@cityofsalem.net>

Good Morning,

The Request For Comments for Conditional Use Case No. CU16-13 is attached for your information. Comments are due by **5:00 P.M., January 3, 2017**. Hard copies go out in the mail today to those of you who are to receive one.