CITY OF Salem AT YOUR SERVICE

LAND USE APPEAL APPLICATION

1. **GENERAL DATA REQUIRED** *[to be completed by the appellant]*

CU-ZC17-14MOD1 — April 26, 2019

Case # Being Appealed — Decision Date

700-800 Block of Commercial St. NE and 253-275 Division Street NE

Address of Subject Property

1118 Northshore Road, Lake Oswego, OR 97034

Appellants Mailing Address with zip code

gmbieze@gmail.com — 503-807-1226

Appellant's E-mail Address — Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

[Please see attached]

Name — Mailing Address with ZIP Code

E-Mail Address — Day-time Phone / Cell Phone

2. **SIGNATURES OF ALL APPELLANTS**

Signature: Gerald Bieze Date: 5/13/19

Gerald Bieze, an individual

Printed Name:

Signature: Gerald Bieze Date: 5/13/19

Gerald Bieze, as member of 9th Street LLC and as member of Second and Center St. LLC

Printed Name:

3. **REASON FOR APPEAL** Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

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FOR STAFF USE ONLY

Received By: HEF Date: 5/13/19 Receipt No: 19-104587-20

Appeal Deadline: May 13th 2019 Case Manager: Bryce

NOTICE OF APPEAL
May 13, 2019

To:	City of Salem Planning Division Room 305 555 Liberty Street SE Salem, OR 97301
Re:	Appeal of Decision of the Planning Administrator (the "**Decision**") Modification of Conditional Use and Zone Change Case NO.: CU-ZC17-14MOD1 (the "**CUP Modification**") Application No.: 19-104587-ZO 700-800 block of Commercial St. NE and 253-275 Division St. NE Notice of Decision Date: April 26, 2019
Appellants:	Mr. Gerald Bieze, an individual 9th Street LLC, an Oregon limited liability company Second and Center St. LLC, an Oregon limited liability company
Appellants' Address:	1118 Northshore Road, Lake Oswego, OR 97034
Appellants' Standing:	Appellants have standing to appeal under SRC § 300.520(f)(2) because they are property owners of record within 250 feet of the subject property that were entitled to notice of the Decision pursuant to SRC § 300.520(e)(1)(E). Appellant Gerald Bieze is a member of both 9th Street LLC, an Oregon limited liability company and Second and Center St. LLC, an Oregon limited liability company – the entities that own the property located at 250 Division St. NE, Salem, OR 97301 ("**Appellants' Property**"). Appellants' Property is located directly across Division St. NE from 253-275 Division St. NE (also known as Tax Lots 2000 and 2100), the properties at issue in the Decision (the "**Additional Properties**"). Appellants also have standing to appeal under SRC § 300.520(f)(2) because Mr. Bieze provided comment during the public comment period on behalf of himself and the entities which own the Appellants' Property. On March 25, 2019, Appellants' attorney submitted Appellants' written comments regarding the CUP Modification ("**Appellants' Comment Letter**") to Mr. Bryce Bishop, City of Salem Planner II/Planning Administrator Designee via electronic mail. A summary of Appellants' comments was provided in the Decision.

Appellants' Representatives

Susan Baird
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Appellants are appealing the Decision on the following grounds. Appellants reserve the right to raise additional issues and arguments and to present additional evidence at the de novo hearing.

1. The Decision failed to conform to SRC § 240.001. SRC § 240.001 provides that the very purpose of Chapter 240 is to undertake a "review" in order "to determine whether the imposition of conditions is necessary to minimize the negative impacts on uses in the surrounding area." The Decision erred in failing to consider the likely adverse impacts of the modified use on Appellants' Property, which is an adjacent surrounding property in the immediate neighborhood of the Additional Properties. These likely adverse impacts on the adjacent surrounding property could, and should, have been minimized through the imposition of reasonable additional conditions of approval.

2. The Decision failed to conform to SRC § 240.005. The proposed modification should have been reviewed as a new conditional use permit under the criteria set forth in SRC § 240.005.

3. The Decision failed to conform to SRC § 240.010. The proposed modification does not meet the criteria set forth in SRC § 240.010(d) for granting modification of a conditional use permit and therefore requires submittal of a new application for conditional use permit pursuant to SRC § 240.010(a).

4. The Decision failed to conform to SRC § 240.010(d)(1). The proposed modification is substantially inconsistent with the conditions of the original approval.

    a. The Decision made inadequate findings to support the conclusion that the modification is consistent with Condition 1 of the original approval requiring video surveillance of the entire surface of the alleyway. The Decision erred in failing to consider the purposes and rationale for imposing Condition 1 in the original approval, which purposes and rationale should have been reconsidered in light of the reorientation of the development and incorporation of the Additional Properties that substantially changed the reasons for imposing

Condition 1 in the original approval. The Decision erred in summarily concluding that merely applying the same conditions that existed in the original approval to the modification application resulted in consistency.

b. The Decision made inadequate findings to support the conclusion that the modification is consistent with Condition 4 of the original approval requiring a pedestrian connection to be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street or alley.

c. The Decision made inadequate findings to support the conclusion that the modification is consistent with Condition 8 of the original approval requiring that the "primary entrance for emergency shelter users shall not be located along Commercial Street frontage."

    i. In applying Condition 8 to the modification application, the Decision failed to address the applicable design standards of the Riverfront Overlay Zone.

5. The Decision failed to conform to SRC § 240.010(d)(2). The proposed modification will result in significant changes when compared with the original conditional use approval.

    a. The proposed modification will result in significant changes to the physical appearance of the development, including the size of the building, the location of the building, and the location and orientation of the primary client entry. The Decision concluded the changes were "better" without applying the proper criteria set forth in SRC § 240.010(d)(2) of "significant change."

    b. The proposed modification will result in significant changes to the use of the site, including how and where UGM clients access the shelter and how client activity will be monitored. The Decision concluded the intensity of use would not increase, but failed to apply the SRC § 240.010(d)(2) criteria of "significant change" to the changes in use.

    c. The proposed modification will result in significant changes to the impacts on surrounding properties, especially those properties near Division Street NE, where client activity will be focused. The Decision concluded Division Street NE was "*arguably* the best location" (italics added) for client entry, but the Decision failed to apply the SRC § 240.010(d)(2) criteria of "significant change" to the changes in impacts on surrounding properties.

i. The Decision failed to consider or require conditions of approval to mitigate adverse impacts to the Appellants' Property, as required by SRC § 240.001 and § 240.005(d);

6. The Decision entirely failed to consider or address the 114 parking spaces proposed, which exceed the number of parking spaces permitted in the original approval. SRC § 240.005(c)(3).

7. The Decision failed to conform to the City of Salem Unified Development Code ("**UDC**") Section 110.065, requiring developments and approvals to be in conformity with all applicable regulations in the UDC.

   a. The Additional Properties are located within the Commercial Office ("**CO**") Zone and the Riverfront Overlay Zone ("**Overlay Zone**"). In the Overlay Zone, relocations of an existing nonprofit shelter serving more than 75 persons may be allowed as a conditional use; however, SRC § 617.015 provides that any use that is prohibited in the underlying zone is prohibited in the Overlay Zone. In the underlying CO Zone, the development of room and board serving more than 75 persons is specifically prohibited under SRC §521.005, Table 521-1; therefore, it is also prohibited in the Overlay Zone. Under the applicable provisions of the UDC, a rezone changing the zoning of the Additional Properties from CO to CB would be required before the modification of the original approval could even be considered.

Gerald Bieze

Gerald Bieze

9th Street LLC,
an Oregon limited liability company

By: Gerald Bieze
Gerald Bieze, its member

Second and Center St. LLC,
an Oregon limited liability company

By: Gerald Bieze
Gerald Bieze, its member