

November 27, 2017

Mayor Chuck Bennett and City Council
555 Liberty St. SE
Salem, OR 97301



RE: Applicant's Supplemental Testimony (Needed Housing Analysis)
Design Review/Conditional Use/Site Plan Review/Driveway Approach Permit
Permit Case No. DR/CU/SPR/DAP17-05
Our File No: 00000-28496

Dear Mr. Bennett and City Council Members:

Our office represents Basil M. Elias (the "**Applicant**") with respect to the Appeal of the Planning Commission's Decision for Permit Case No. DR-SU-SPR-DAP17-05 (the "**Application**") regarding the real property located at 3010 Silverton Road NE in Salem, Oregon, and designated in Marion County Assessor's Map 07-3W-13AB, as TL 7800 (the "**Property**"). This letter is being submitted on behalf of the Applicant in response to comments and testimony received by members of the Lansing Neighborhood Association (the "**Association**") and provides additional evidence regarding the development of the Property in relation to Oregon's Needed Housing Statutes.

I. Applicability of ORS 197.303, ORS 197.307, and OAR 660-008-0000 through 660-008-0040

The State's Laws are codified in ORS 197.303 and ORS 197.307 and are further defined and set forth in OAR 660-008-0000 through 660-008-0040. ORS 197.307(4) provides that, with one exception, "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land[.]" OAR 660-008-0015(1) similarly provides that, with the sole exception of an optional alternative approval process, "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

ORS 197.303(1) defines "needed housing" as "housing types determined to meet the need for housing within an urban growth boundary at particular price ranges and rent levels including at least the following housing types: (a) attached and detached single family housing and multiple family housing for owner and renter occupancy; (b) government assisted housing; (c) mobile home or manufactured dwelling parks...; (d) manufactured homes on individual lots planned and zoned for single family residential use, and (e) housing for farm workers.

The term "buildable lands" means "land within the urban growth boundary, including both vacant and developed land that is likely to be redeveloped, that is suitable, available and necessary for residential uses." OAR 660-008-0005(2). "Land is generally considered "suitable and available" if it is

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residentially designated vacant or redevelopable land within an urban growth boundary unless it: (a) is severely constrained by natural hazards as determine under Statewide Planning Goal 7; (b) is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6, 15, 16, 17 or 19; (c) has sloped of 25 percent or greater; (d) is within the 100 year flood plain or (e) cannot be provided with public facilities.” *Id.* None of these characteristics exist on the Property; therefore it is considered “buildable land” under OAR 660-008-0005.

II. Application to City of Salem

In compliance with Goal 10, the City of Salem (the “**City**”) conducted a housing need analysis to determine the housing needs for the City for the next 20 years and to inventory the buildable lands. On February 8, 2016, the City adopted Resolution No. 2016-05 to accept the Salem Housing Needs Analysis (the “**SHNA**”) and directed staff to implement the Salem Housing Needs Analysis Work Plan. The City’s adoption of the SHNA is subject to the work plan conditions that may take several years to resolve; however, the SHNA should be deemed an acknowledged and binding buildable lands inventory.

The SHNA indicates that while the City’s land base currently has a surplus of land dedicated as single-family housing, the City’s population is forecasted to expand by 59,239 people by 2035. Demand for single family housing is estimated to increase as the population increases, with an estimated demand for 23,355 new dwelling units needed over the 20 year period. Of those dwelling units an estimated 8,174 will need to be Multifamily dwellings. Salem Housing Needs Analysis Work Plan Pg. 39. Therefore, Applicant’s Property undisputedly provides “needed housing.”

Lastly, under ORS 197.303 prior to its amendment by Senate Bill 1051 (the “**Amendment**”), an applicant must ensure that the Property is “buildable land.” The Amendment is applicable only to applications submitted on or after August 15, 2017. Applicant’s application was submitted on June 17, 2017 but it was not deemed complete until August 24, 2017. Therefore, Applicant is not subject to show that the Property is “buildable land,” however; out of an abundance of caution, Applicant will address the requirements set out by ORS 197.303 prior to the Amendment. The term “buildable land” as defined above has a broad definition and includes land suitable and available for residential uses. Under OAR 660-008-0010, sufficient buildable land must be designated on the comprehensive plan map to satisfy the need identified for housing and each local buildable lands inventory must document the amount of buildable land in each residential plan designation.

As the Property is currently zoned CR, the Property was not evaluated as part of the SHNA for suitability as buildable land. However, as stated above, the SHNA indicates that there is a deficit of suitable land zoned for Multifamily development and therefore indicates that land designated for alternative uses will need to be converted to buildable land to help address the deficit. As stated in the Staff Report, the Conditional Use Application process allows the City to evaluate the suitability of real property for development and the Property as conditioned meets the City’s established criteria for development as Multifamily Residential. By indicating that this criteria is satisfied, the City has acknowledged that the Property is suitable and available for residential use and therefore is within the broad definition of “buildable land” as provided in OAR 660-008-0010.

III. Clear and Objective Criteria

The requirement that "needed housing" be subject only to "clear and objective" approval standards applies to all approval standards and is not limited to aesthetic criteria. See, *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37, 13 (2014). The City has not adopted a dual approval tract system for Site Plan Review and Conditional Use Permit approval nor has it taken an exception to this obligation as provided by ORS 197.303(3) and OAR 660-008-0035. Thus, the clear and objective standard applies to all applicable standards and criteria. Generally, approval standards are clear and objective if they do not impose "subjective, value laden analyses that are designed to balance or mitigate impacts[.]" *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), affd 158 Or App 1 (1999). Relatedly, ORS 227.173(2) provides that "[w]hen an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance."

ORS 197.831 places the burden on the local government to demonstrate that standards and conditions imposed on needed housing that are required to be clear and objective "are capable of being imposed only in a clear and objective manner." Furthermore, the City may not apply these standards and conditions in a way that either individually or cumulatively discourages the development of needed housing "through unreasonable cost or delay." ORS 197.307(4).

In this instance, the Association is requesting that the City interpret the mandatory approval criteria under the Salem City Code (the "**Code**") in a way that would unduly restrict the development of needed housing on land that has been shown to be buildable. For example, Applicant has previously demonstrated that the requested condition limiting the development of the apartment building to two stories would prevent Applicant from obtaining the funding necessary to complete the project. The Association raises issues related to the "livability" of the neighborhood, however, it does so in a way that is clearly subjective and value laden as demonstrated by the language used in its statements, e.g., that the "residents near the apartments do not want renters [looking] down in their backyards and [invading] their lives." Staff has considered the development and recommended conditions that protect the safety and livability of the neighborhood according to an objective, data driven analysis of the potential development. If the City were to impose the conditions proposed by the Association it would be imposing standards in a manner that would fail to meet the clear and objective standard.

Applicant has provided sufficient evidence that as conditioned it is feasible for Applicant to meet the relevant mandatory approval criteria under the Code. Therefore, Applicant requests that the City Council approve the Application as conditioned.

Sincerely,



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