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503-588-6173*

**DECISION OF THE HEARINGS OFFICER**

**CONDITIONAL USE / CLASS 3 SITE PLAN REVIEW / CLASS 2 ADJUSTMENT /  
CLASS 2 DRIVEWAY APPROACH PERMIT / CLASS 1 DESIGN REVIEW CASE  
NO.: CU-SPR-ADJ-DAP-DR20-02**

**APPLICATION NO. : 19-124717-ZO / 19-124718-RP / 19-125096-ZO / 19-125097-  
ZO / 19-125098-DR**

**NOTICE OF DECISION DATE: APRIL 1, 2020**

**SUMMARY:** A proposal to construct a coffee cafe with a drive-through lane.

**REQUEST:** A consolidated Conditional Use, Class 3 Site Plan Review, Class 2 Zoning Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review for a proposed 2,206 square foot eating and drinking establishment with a drive-through on a property of 0.58 acres located at 2095 Fairgrounds Road NE (Marion County Assessor 073W14CD01300) in the CR (Retail Commercial) zone and Portland/Fairgrounds Overlay Zone. The Class 2 Adjustment is requested to reduce the required width of the landscaped setback abutting residential zones from 15 feet to 5 feet.

**APPLICANT:** Jon Hummelt and Fritz Hummelt, Hummelt Development Company

**LOCATION:** 2095 Fairgrounds Rd NE / 97301

**CRITERIA:** Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use; 220.005(f)(3) – Class 3 Site Plan Review; 250.005(d)(2) – Class 2 Adjustment; 804.025(d) – Class 2 Driveway Approach Permit; and 225.005(d)(1) – Class 1 Design Review.

**FINDINGS:** The findings are in the attached Decision dated March 31, 2020.

**DECISION:** The **Hearings Officer APPROVED** Conditional Use / Class 3 Site Plan Review / Class 2 Adjustment / Class 2 Driveway Approach Permit / Class 1 Design Review CU-SPR-ADJ-DAP-DR20-02 subject to the following conditions of approval:

**CONDITIONAL USE:**

**Condition 1:** Provide a raised surface or speed bumps to delineate the pedestrian pathways that cross the drive-through lane.

**Condition 2:** Install a small sign indicating “Do Not Block Crosswalk” at the northern pedestrian pathway that crosses the drive-through lane.

**Condition 3:** Install a small sign indicating “Yield to Pedestrians” at the southern pedestrian pathway that crosses the drive-through lane.

**NOTICE OF DECISION**

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005



## **SITE PLAN REVIEW:**

**Condition 4:** Provide a minimum 6-foot-tall sight-obscuring fence along the property line abutting the residential zones.

**Condition 5:** Provide a solid waste service area meeting all applicable standards of SRC 800.055.

**Condition 6:** Replace nonconforming portions of existing sidewalk along the frontage of the property pursuant to SRC 78.180(a).

**Condition 7:** Install street trees to the maximum extent feasible along the frontage of Fairgrounds Road NE pursuant to SRC 86.015(e).

**Condition 8:** Design and construct a storm drainage system at the time of development in compliance with SRC Chapter 71 and Public Works Design Standards (PWDS).

## **ADJUSTMENT:**

**Condition 9:** The adjusted perimeter setback abutting residential zones, as approved in this zoning adjustment, shall only apply to the specific development proposal shown in the attached site plan. Any future development, beyond what is shown in the attached site plan, shall conform to all applicable development requirements, unless adjusted through a future land use action.

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

- Class 3 Site Plan Review: April 17, 2024
- All other case types: April 17, 2022

|                                  |                          |
|----------------------------------|--------------------------|
| Application Deemed Complete:     | <u>February 18, 2020</u> |
| Public Hearing Date:             | <u>March 11, 2020</u>    |
| Notice of Decision Mailing Date: | <u>April 1, 2020</u>     |
| Decision Effective Date:         | <u>April 17, 2020</u>    |
| State Mandate Date:              | <u>June 17, 2020</u>     |

Case Manager: Pamela Cole, [pcole@cityofsalem.net](mailto:pcole@cityofsalem.net), 503-540-2309

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division by 5:00 p.m., Thursday, April 16, 2020. **PLEASE NOTE: Due to the COVID-19 pandemic, City of Salem Offices are closed to the public until further notice.** The notice of appeal can be submitted electronically at [planning@cityofsalem.net](mailto:planning@cityofsalem.net) or mailed to City of Salem Planning, Room 320, 555 Liberty Street SE, Salem OR 97301. The appeal must be received by the above date and time. 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, 250, 804, and

225. 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 320, City Hall, 555 Liberty Street SE, during regular business hours.







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

# Vicinity Map

## 2095 Fairgrounds 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





Compact  
Stall width 8'-8" if next to wall or post  
Stall to curb 15'  
Aisle width 22'  
Curb length 8'  
Front stall to front stall 54'

a. Refer to site and Landscape plans indicating compliance to

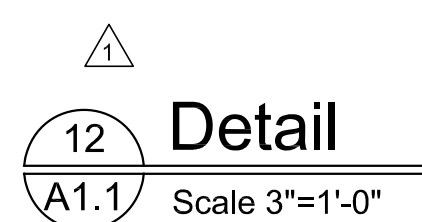
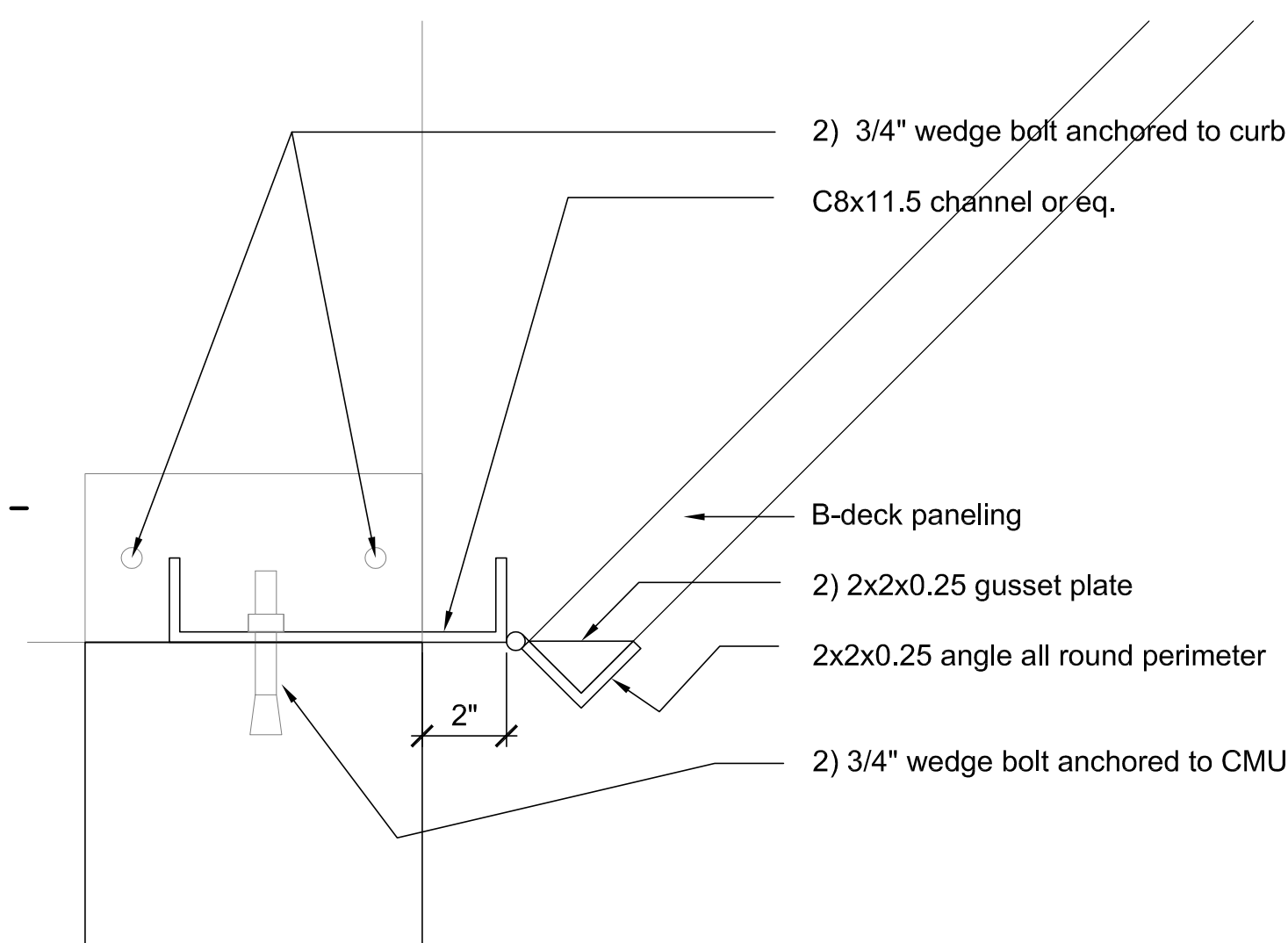
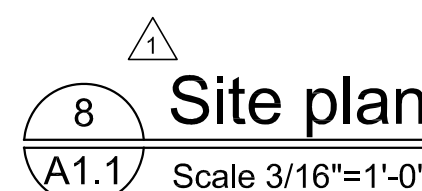
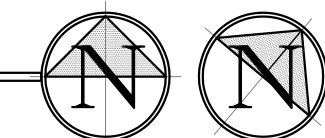
 a Pedestrian connections proposed to be striped and colored

20. Primary Building entrance shall be provided for each building facade facing a street.

Building Height: 19'-8" + \.

One Per floor

2902.2 Separate facilities appear to be required



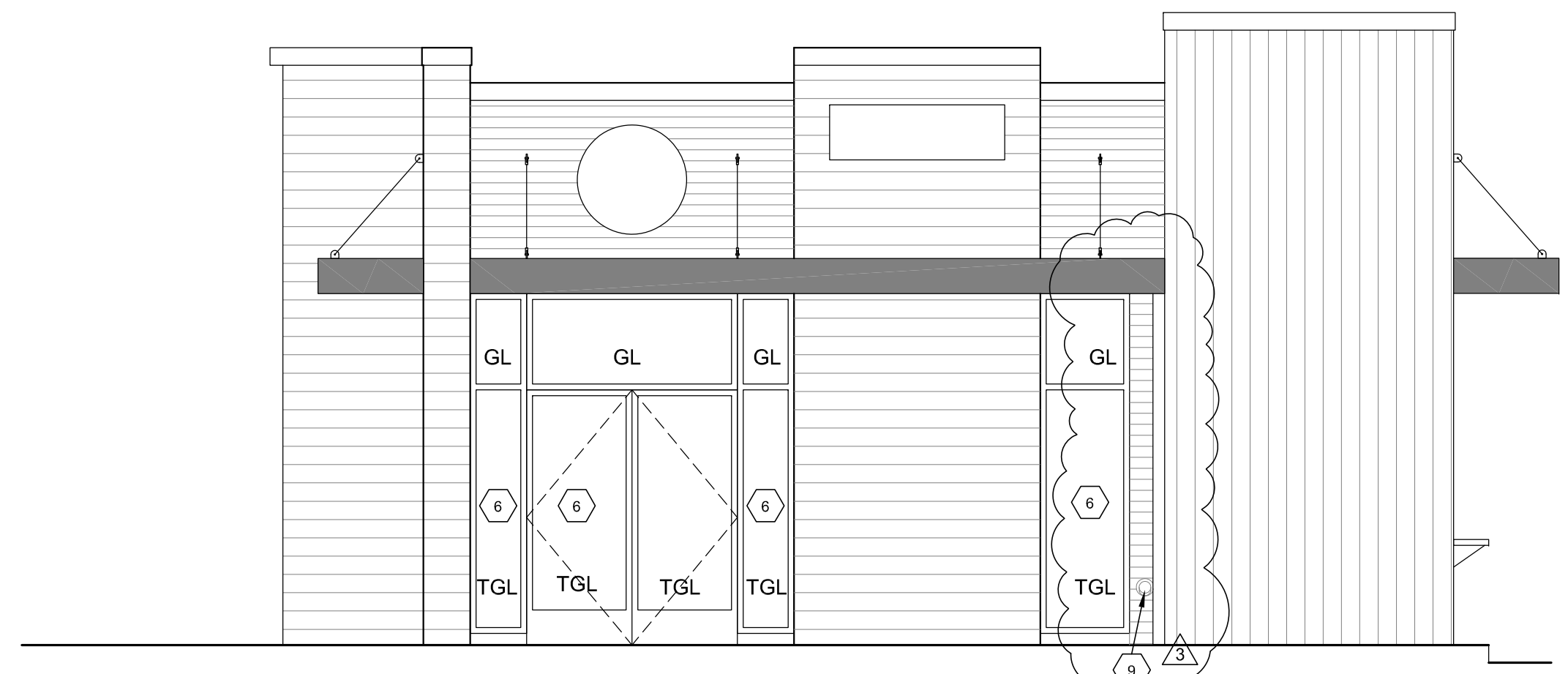
## AI.1



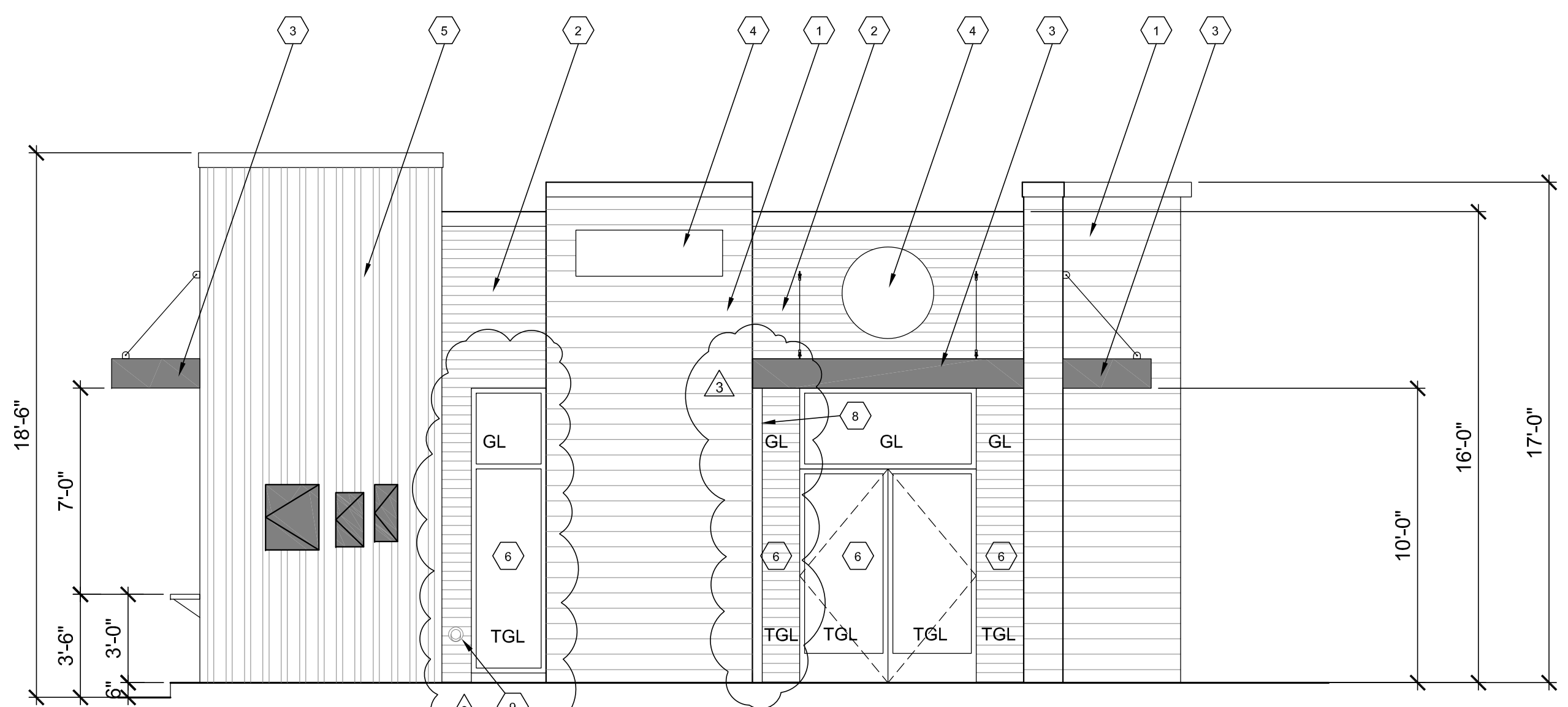


- KEY NOTES**
- 1 Fiber Cement Panel horizontal orientation (Type 1)
  - 2 Fiber Cement Panel horizontal orientation (Type 2)
  - 3 Metal canopy
  - 4 Signage location
  - 5 Fiber Cement Panel Vertical orientation (Type 3)
  - 6 Storefront System
  - 7 Drive thru window
  - 8 Down spout
  - 9 Overflow scupper 18" above grade

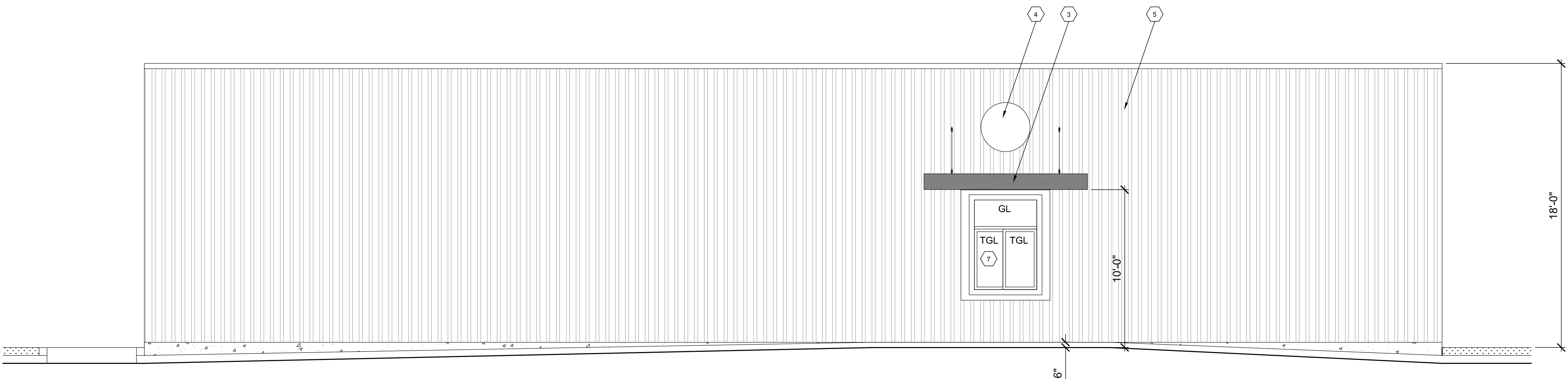
1 South Elevation  
A6.1 Scale 1/4"=1'-0"



5 East Elevation  
A6.1 Scale 1/4"=1'-0"



7 West Elevation  
A6.1 Scale 1/4"=1'-0"



9 North Elevation  
A6.1 Scale 1/4"=1'-0"

REGISTERED ARCHITECT  
#3474  
NEIL LEE  
PORTLAND, OREGON  
STATE OF OREGON

LEEKA Architecture and Planning  
Creating Positive Impressions in the Built Environment  
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Site and Building Shell Development  
Coffee Cafe with Drive Thru  
Salem Oregon

Revised: 1/4/19 Conditions of Approval  
1/31/20 Client Update  
2/4/20 Conditions of Approval

Job No: 1933  
Date: Nov. 11, 2019  
File:  
Site Design Issue Set  
DRAWN:  
CHECKED: NYL  
Sheet Title  
Exterior Elevations

Sheet Number  
A6.1

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

|   |   |                                    |
|---|---|------------------------------------|
| A Request: A consolidated Conditional Use,  | } |                                    |
| Class 3 Site Plan Review, Class 2 Zoning    | } | CU-SPR-ADJ-DAP-DR20-02             |
| Adjustment, Class 2 Driveway Approach       | } |                                    |
| Permit, and Class 1 Design Review for a     | } |                                    |
| proposed 2,206 square foot eating and       | } | FINDINGS OF FACT, CONCLUSIONS, AND |
| drinking establishment with a drive-        | } | DECISION                           |
| through on a property of 0.58 acres located | } |                                    |
| at 2095 Fairgrounds Road NE (Marion         | } |                                    |
| County Assessor 073W14CD01300) in the       | } |                                    |
| CR (Retail Commercial) zone and             | } |                                    |
| Portland/Fairgrounds Overlay Zone. The      | } |                                    |
| Class 2 Adjustment is requested to reduce   | } |                                    |
| the required width of the landscaped        | } |                                    |
| setback abutting residential zones from 15  | } |                                    |
| feet to 5 feet.                             | } |                                    |

**DATE AND PLACE OF HEARING:**

March 11, 2020, Salem City Council Chambers, Room 240, Civic Center, 555  
Liberty Street SE, Salem, Oregon.

**APPEARANCES:**

|                                  |   |
|----------------------------------|---|
| <u>Staff:</u>                    | Pamela Cole, Planner II   |
| <u>Neighborhood Association:</u> | None  |
| <u>Proponents:</u>               | Jon Hummelt and Fritz Hummelt, as agent for<br>Hummelt Development Company.<br><br>Scott Quail, neighbor. |
| <u>Opponents:</u>                | None.   |
| <u>Neutral:</u>                  | None.   |

## **SUMMARY OF THE APPLICATION AND HEARING**

### **BACKGROUND**

The City of Salem held a duly authorized and noticed public hearing on March 11, 2020, regarding a request for a consolidated Conditional Use, Class 3 Site Plan Review, Class 2 Zoning Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review for a proposed 2,206 square foot eating and drinking establishment with a drive-through on a property of 0.58 acres located at 2095 Fairgrounds Road NE (Marion County Assessor 073W14CD01300) in the CR (Retail Commercial) zone and Portland/Fairgrounds Overlay Zone. The Class 2 Adjustment is requested to reduce the required width of the landscaped setback abutting residential zones from 15 feet to 5 feet.

During the hearing, Pamela Cole requested the Hearings Officer enter the Staff Report into the Record, and the Hearings Officer granted the request. Prior to the close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

The Staff Report and Staff presentation provided uncontested facts and analysis of the application. The Hearings Officer adopts the following:

### **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 "Commercial." The subject property is within the Urban Growth Boundary and within the Urban Service Area.

#### **2. Zoning of Surrounding Properties**

The subject property is zoned CR (Retail Commercial) and located in the Portland/Fairgrounds Overlay Zone. In the CR zone, eating and drinking establishment uses are permitted. In the Portland/Fairgrounds Overlay Zone, any use that is a permitted use in the underlying zone is a permitted use in the Portland/Fairgrounds Road Overlay Zone; however, any permitted use shall be a conditional use if developed with a drive-through.

The Comprehensive Plan designations of surrounding properties include:

Northwest: RS (Single Family Residential)



Southwest: RM-II (Multi-Family Residential)

Northeast: Across Myrtle Avenue NE, RM-II (Multi-Family Residential) and CG (General Commercial)

Southeast: Across Fairgrounds Road NE and Capitol Street NE, CR (Retail Commercial)

### **3. Site Analysis**

The Subject property is a single tax lot of approximately .58 acres and has approximately 145 feet of frontage on Myrtle Avenue NE and approximately 210 feet of frontage on Fairground Road NE. Fairgrounds Road NE is designated as a Major Arterial street in the Transportation System Plan and Myrtle Avenue NE is designated as a local street.

### **4. Neighborhood and Citizen Comments**

The subject property is located within the Highland Neighborhood Association. Notice was provided to Highland and to surrounding addresses, property owners, and tenants within 250 feet of the subject property. At the time of this staff report, no neighborhood association or public comments had been received.

### **5. City Department and Public Agency Comments**

The Public Works Department reviewed the proposal and provided a memo which was included as **Attachment D**.

The Salem Building and Safety Division reviewed the proposal and identified no issues.

The Salem Fire Department reviewed the proposal and commented:

Items including fire department access and water supply appear to be provided. This will be verified at the time of building permit plan review.

NOTE: The provided code summary references the old editions of the state building and fire codes and indicated an A-2 occupancy with an occupant load over 100 without fire sprinklers. Items including but not limited to these will be reviewed at the time of building permit plan review.

Portland General Electric (PGE) reviewed the proposal and indicated that development costs are determined by current tariff and service requirements.

## **6. Criteria for Granting a Validation of Unit of Land**

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 criterion for a conditional use permit:

### Criterion 1:

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

The Hearings Officer notes that SRC Chapter 603.015(b)(2) provides that permitted uses developed with a drive-through are allowed in the Portland/Fairgrounds Overlay Zone with a conditional use permit.

The Hearings Officer finds that the proposal satisfies this criterion.

### 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 notes that the written statement provided by the applicant indicates that the proposed drive-through will have little to no impact on the neighborhood. The proposed drive-through is located in the interior of the lot and on the back side of the building that will be placed near and parallel to Fairgrounds Road NE. A 15-foot setback is proposed along the most northerly sections of the northwest property line abutting the RS zone, except for an area where the solid waste enclosure will be located. An adjustment to provide a narrower 5-foot setback is proposed along the remainder of the property line abutting the residential zones.

Existing 6-foot chain link fencing and a tall arborvitae hedge provide buffering from the sounds and visual impacts of the drive-through along most of the property line abutting the residential zones. The applicant proposes to fill gaps within the vegetation screening to provide complete screening. Conditions of approval below would require that the existing fencing be made sight-obscuring or replaced with a sight-obscuring fence.

The Hearings Officer concurs with the findings included in the applicant's written statement. The screening helps to eliminate any visual or noise impacts, and the location of the drive-through provides adequate length for vehicle queuing within the parking area and in the drive-through lane. These features help eliminate any impacts on the surrounding neighborhood. The development standards of the CR zone included under SRC Chapter 552 and the design review requirements for development within the Portland/Fairgrounds Road Overlay Zone included under SRC Chapter 522 and the design review requirements for development within the Portland/Fairgrounds Road Overlay Zone included under SRC Chapter 603 are intended to ensure development within this area is conducted in a manner consistent with the area's role as the northern gateway into Salem. The proposed development has been reviewed for conformance with these requirements and, as recommended to be conditioned under Sections 7 and 10 of this decision, conforms to such requirements, except as conditioned below; thereby ensuring that adverse impacts of the proposed drive-through use on the immediate neighborhood will be minimized.

The proposed design includes two pedestrian pathways that cross the proposed drive-through lane, and one of these also serves as an accessible route to the ADA parking space. The proposed design meets standards for pedestrian pathways crossing driveways and drive aisles, where drivers may reasonably expect to see pedestrians. However, because drivers in drive-through lanes do not typically expect pedestrian traffic to cross, and because vehicles may be stationary for extended periods of time while drivers wait for service, the Hearings Officer imposes the following conditions to ensure pedestrian safety and unobstructed pedestrian access:

**Condition 1:** Provide a raised surface or speed bumps to delineate the pedestrian pathways that cross the drive-through lane.

- Condition 2:** Install a small sign indicating “Do Not Block Crosswalk” at the northern pedestrian that crosses the drive-through lane.
- Condition 3:** Install a small sign indicating “Yield to Pedestrians” at the southern pedestrian pathway that crosses the drive-through lane.

The Hearings Officer finds that, with these three conditions, the proposal satisfies 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.

The Hearings Officer notes that the written statement provided by the applicant submitted as **Attachment C** indicates the development will be compatible with adjacent uses surrounding the subject property. The applicant explains that the proposed development complies with design standards and site amenities of the Portland/Fairgrounds Overlay Zone. Building and site amenities such as building offsets, 65% storefront glass, and pedestrian paths will improve the visual appeal of the property and reduce the impacts on the neighborhood. The design standards are in place to help ensure compatibility with adjacent uses.

The Hearings Officer concurs with the findings included within the applicant’s written statement. The subject property is located in an area characterized predominantly by commercial zoning and a variety of non-residential uses including, but not limited to, medical clinics, financial institutions, a post office, auto service uses, retail, and warehouses.

The subject property is zoned CR (Commercial Retail) and falls within the Portland/Fairgrounds Road Overlay Zone. Commercial uses with a drive-through use are allowed use within the Portland/Fairgrounds Road Overlay Zone subject to receiving conditional use permit approval. Due to the location of the subject property and the zoning of surrounding properties, the proposed development is near shopping, employment, and other services anticipated by the applicable policies of the City’s Comprehensive Policies Plan for the siting of commercial development.



Development of the property is subject to the development standards of the CR zone included under SRC Chapter 522 and the development standards and design review requirements for commercial developments within the Portland/Fairgrounds Road Overlay Zone included under SRC Chapter 603. To the extent that there is any discord between the development standards of the CR zone and the Portland/Fairgrounds Road Overlay Zone, the Hearings Officer finds that consistent with SRC 603.020, the standards and design review requirements within the Portland/Fairgrounds Road Overlay Zone apply to this proposal, rather than the standards from the CR zone. The requirements established under these chapters are intended to minimize the potential impacts of development on surrounding properties. As indicated in Sections 7 and 11 of the staff report, the proposed development has been reviewed for conformance with these requirements and, as recommended to be conditioned, conforms to such requirements; thereby ensuring the proposed development will have minimal impact on the development of surrounding property.

The Hearings Officer finds that the proposal satisfies this criterion.

#### **7. 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.

The Hearings Officer notes the applicant is requesting approval for development of an eating and drinking establishment of 2,206 square feet. The proposed site plan complies with all applicable development standards except the minimum required vehicle use area setback to property lines abutting residential zones. Findings for the adjustment are addressed below.

#### **Use and Development Standards – CR (Retail Commercial) Zone:**

***SRC 522.005(a) – Uses:***

Permitted, special and conditional uses for the CR zone are found in SRC Chapter 522, Table 522-1. Eating and drinking establishment uses are permitted uses.

***SRC 522.010(a) – Lot Standards:***

There are no minimum lot area or dimension requirements in the CR zone. All uses are required to have a minimum of 16 feet of street frontage.

The Hearings Officer notes the subject property is approximately 0.58 acres in size and has approximately 145 feet of frontage on Myrtle Avenue NE and approximately 210 feet of frontage on Fairgrounds Road NE, exceeding the minimum lot standards of the CR zone.

***SRC 522.010(b) – Setbacks:***

**Northwest:** Adjacent to the northwest is property zoned RS (Single-Family Residential). There is a minimum 15-foot building and vehicle use area setback required adjacent to a residential zone.

**Finding:** The proposed building is located more than 65 feet from the property line. The proposed vehicle use area is five to 15 feet from the property line, and the applicant has requested an adjustment. Findings for the adjustment are in Section 8 of this decision.

**Southwest:** Adjacent to the southwest is property zoned RM-II (Multi-Family Residential). There is a minimum 15-foot building and vehicle use area setback required adjacent to a residential zone.

**Finding:** The proposed building is located approximately 75 feet from the property line. The proposed vehicle use area is five feet from the property line, and the applicant has requested an adjustment. Findings for the adjustment are in Section 8 of this decision.

**Northeast:** Adjacent to the northeast is right-of-way for Myrtle Avenue NE. Buildings and structures adjacent to a street require a minimum five-foot setback, and vehicle use areas require a minimum 6- to 10-foot setback.

**Finding:** The proposed building is located 52 to 60 feet from the property line. The proposed vehicle use area is 10 feet from the property line, in compliance with the minimum standard.

**Southeast:** Adjacent to the southeast is right-of-way for Fairgrounds Road NE. Buildings and structures adjacent to a street require a minimum five-foot setback, and vehicle use areas require a minimum 6- to 10-foot setback.

However, the Portland/Fairground Road Overlay Zone establishes a zero foot minimum setback for buildings and structures adjacent to a street and a 60 feet maximum setback.

**Finding:** The proposed building is set back more than five feet from the property line. Wing walls at the main entry are proposed to provide a building offset to meet design standards and are approximately 1'9" from the front property line. SRC 603.030 establishes a minimum setback within the Portland/Fairground Road Overlay Zone of zero feet for the proposed type of development. In the hearings, Staff explained the disconnect between the standards, and recommended that the Hearings Officer find this criterion is satisfied by the proposed design. The Hearings Officer agrees that the Portland/Fairground Road Overlay Zone standards apply, consistent with SRC 603.020. Accordingly, the Hearings Officer finds that the proposal satisfies this criterion.

***SRC 522.010(d) – 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.
- (3) *Development Site.* A minimum of 15 percent of the development site shall be landscaped. Landscaping shall meet the Type A standard set forth in SRC Chapter 807. Other required landscaping under the UDC, such as landscaping required for setbacks or vehicle use areas, may count towards meeting this requirement.

**Finding:** Within the required setbacks for buildings and parking and vehicle use areas abutting the streets, Type A landscaping of one plant unit per 20 square feet is required. The preliminary landscape plan complies with this standard.

Within the landscaped setbacks for the vehicle use areas abutting residential zones, Type C landscaping with one plant unit per 20 square feet and a minimum 6-foot-tall fence or wall is required. Required screening in the form of a fence, wall, or landscaping shall be sight-obscuring (at least 75 percent opaque when viewed from any angle at a point 25 feet away). Landscaping shall be of an evergreen species that will attain a height of at least 6 feet and 75 percent opacity within three years after planting. The site

plan indicates an existing 6-foot-tall chain link fence along the property line abutting the residential zones. The fence must be opaque to meet the standard. Staff recommends the following condition to ensure compliance with the standard:

**Condition 4:** Provide a minimum 6-foot-tall sight-obscuring fence along the property line abutting the residential zones.

The Hearings Officer notes that Mr. Quail provided testimony that he preferred a 7-foot-tall sight-obscuring fence and the applicant indicated that a 7-foot-tall fence would be agreeable to the applicant. The Hearings Officer notes that the criterion requires only a 6-foot tall fence, and that the Hearings Officer does not have authority to require more than is required to satisfy the standard. Nonetheless, the condition should be seen as the minimum requirement, and not a barrier to the applicant providing a taller fence.

The interior vehicle use area landscaping satisfies the standards of SRC Chapter 806 and SRC Chapter 807 as explained later in this decision.

The subject property is approximately 0.58 acres, or 25,265 square feet, requiring a minimum of 3,790 square feet of landscaping ( $25,265 \times 0.15 = 3,789.75$ ). The site plan indicates that 8,399 square feet (33%) of the site will be landscaped, exceeding the minimum requirement.

#### **Use and Development Standards – Portland/Fairgrounds Road Overlay Zone (SRC 603.020)**

The Hearings Officer notes and adopts the following findings and analysis from the Staff Report:

##### ***SRC 603.020(e) -- Landscaping:***

*Berms, mounds, raised beds, and grade drops shall not be allowed as a landscaping treatment, unless a bioswale treatment system or approved landscaping exists to adequately collect water runoff and the berms, mounds, raised beds, and grade drops do not exceed a 3:1 slope.*



**Finding:** The applicant submitted a site plan which details the proposed landscaping. Most of the landscaping is proposed to be on grade with the street. However, bioswales are proposed in several locations. The applicant submitted preliminary bioswale designs indicating compliance with the slope standard.

***SRC 603.020(f) -- Off-street parking and loading areas:***

*(1) Planter bays or islands shall have a minimum planting area of 50 square feet.*

**Finding:** As shown on the proposed site plan, the proposed development all proposed planter bays exceed the minimum area of 50 square feet. Therefore, this standard has been met.

*(2) A minimum of one tree per eight parking spaces is required, of which a maximum on 25 percent may be evergreen trees. Trees shall be planted within 20 feet of the parking lot perimeter. Trees within the public street right-of-way shall not count toward the tree planting requirements.*

**Finding:** The applicant proposes 20 parking spaces, requiring a minimum of three trees. The applicant provided a landscaping plan which indicates more than three trees will be planted within the parking area. Therefore, this standard has been met.

*(3) Off-street parking may be provided no more than 800 feet from the edge of the lot or contiguous lots, upon which the main building is located.*

**Finding:** The off-street parking areas serving the proposed development will all be on the same property. Therefore, this standard has been met.

*(4) Employee off-street parking may be provided no more than 2,000 feet from the edge of the lot, or contiguous lots, upon which the main building is located.*

**Finding:** The off-street parking areas serving the proposed development will all be on the same property. Therefore, this standard has been met.

*(5) Parking lot light structures shall not exceed 25 feet in height.*

**Finding:** The applicant stated that the proposed parking lot light structures would not exceed 25 feet in height. Therefore, this standard has been met.

***SRC 603.020(g) -- Screening:***

- (1) Trash receptacles shall be screened from adjacent household living uses and streets by a sight obscuring fence, wall, or hedge.*

**Finding:** The proposed development, as conditioned, includes a cmu trash enclosure area which will be screened by a sight-obscuring fence and hedge. Therefore, this standard has been met.

- (2) Concertina or barbed wire fencing shall not be located within 60 feet of the street right-of-way, unless such fencing is obstructed by a building or structure.*

**Finding:** The proposal does not include the use of concertina or barbed wire fencing. As proposed, the development meets the standard.

- (3) Concertina or barbed wire fencing shall be screened from public view and adjacent property by sight-obscuring landscaping.*

**Finding:** The proposal does not include the use of concertina or barbed wire fencing. As proposed, the development meets the standard.

***SRC 603.020(h) Outdoor Storage:***

- (1) Outdoor storage areas shall not be located within required setbacks.*

**Finding:** The applicant's site plan does not include any space for outdoor storage. This standard is not applicable.

- (2) Outdoor storage areas shall be enclosed by a minimum six-foot-high-site-obscuring fence, wall, hedge, or berm; provided however, items more than six feet in height above grade shall be screened by site-obscuring landscaping.*

**Finding:** The applicant's site plan does not include any space for outdoor storage. This standard is not applicable.

- (3) Items stored within outdoor storage areas shall not exceed a maximum height of 14 feet above grade.*

**Finding:** The applicant's site plan does not include any space for outdoor storage. This standard is not applicable.

***SRC 603.020(i) -- Pedestrian Access:***

- (1) A pedestrian connection shall be provided from the public sidewalk to the primary building entrance.*

**Finding:** The proposed site plan shows pedestrian connections from the public sidewalk along Fairgrounds Road NE and Myrtle Avenue NE to the three building entrances. The Hearings Officer finds that the proposal meets this standard.

- (2) A pedestrian connection through the parking area to the primary building entrance shall be provided when the parking area is greater than 60 feet in depth.*

**Finding:** The proposed site plan indicates pedestrian connections through all parking areas to the building entrances. The Hearings Officer finds that the proposal meets this standard.

- (3) Within shopping centers, office complexes, and mixed-use developments, pedestrian connections shall be provided to connect the buildings. Pedestrian connections shall be the most practical, direct route.*

**Finding:** The proposed development is a single building. This standard is not applicable.

- (4) Pedestrian connections shall be a minimum of five feet in width and defined by visual contrast or tactile finish texture.*

**Finding:** The pedestrian connections shown on the applicant's plans are planned to striped and colored asphalt crossing the drive-through and parking lot and scored concrete at the plazas connecting to the public sidewalk. Additionally, all internal pedestrian connections are a minimum of five feet in width. As proposed, the development satisfies this criterion.

- (5) Wheel stops, or extended curbs shall be provided along required pedestrian connections to prevent the encroachment of vehicles onto pedestrian connections.*

**Finding:** The pedestrian connections shown on the applicant's plans are not perpendicular to parking spaces, and no wheel stops or extended curbs are required. Where parking spaces are perpendicular to landscaped areas, the applicant has proposed extended curbs. As proposed, the development satisfies these criteria.

**SRC 603.020(j) -- Project Enhancements**

*Development within the Portland/Fairgrounds Road Overlay Zone shall include four or more of the following project enhancements.*

*(1) Closure of one driveway approach on Portland/Fairgrounds Road;*

**Finding:** The applicant is not proposing this enhancement.

*(2) Joint parking agreement under SRC 806.020(a)(5), or implementation of a plan to satisfy off-street parking requirements through alternative modes of transportation under SRC 806.015(e)(2);*

**Finding:** The applicant is not proposing this enhancement.

*(3) Freestanding sign not more than five feet in height and placed upon a foundation;*

**Finding:** The applicant's site plan indicates intent to provide a freestanding sign no more than five feet in height near the corner of Myrtle Avenue NE and Fairgrounds Road NE.

*(4) Weather protection, in the form of awnings or canopies, along more than 50 percent of the length of the ground floor building facade adjacent to sidewalks or pedestrian connections;*

**Finding:** The applicant's site plan indicates awnings and a roofed alcove along the facades of the building for weather protection. The proposed awnings extend over the building entrances and cover more than 50 percent of the length of the ground floor building façades (northeast, southeast, and southwest) that are adjacent to the public sidewalk and the internal pedestrian connections.

*(5) Cast iron or wrought iron fencing adjacent to Portland/Fairgrounds Road;*

**Finding:** The applicant's site plan indicates a wrought iron ornamental fence at the exterior dining area near the northeast entrance adjacent to Myrtle Avenue NE and Fairgrounds Road NE.



*(6) Pedestrian connections that are:*

- (A) Constructed with pavers, scored, or colored cement, and/or stamped asphalt;*
- (B) Elevated above the parking area and driveway; or*
- (C) Defined with landscaping or building features such as canopies, awnings, or arcades;*

**Finding:** The applicant is not proposing this enhancement.

*(7) Development on surface parking lots existing on October 1, 2001;*

**Finding:** The subject site is not a surface parking lot.

*(8) Provision of one or more of the following pedestrian-oriented design features on private property adjacent to Portland/Fairgrounds Road:*

- (A) Pedestrian scale lighting not more than 16 feet in height; or*
- (B) Plazas or other outdoor spaces open to the public;*

**Finding:** The applicant's site plan indicates pedestrian plazas and outdoor spaces adjacent to Fairgrounds Road NE.

*(9) A minimum of seven percent interior landscaping within parking areas not more than 50,000 square feet in size; or a minimum of ten percent interior landscaping within parking areas greater than 50,000 square feet in size;*

**Finding:** The applicant's site plan indicates approximately 16 percent interior landscaping.

*(10) Installation of landscaping and irrigation using a plan designed by an Oregon landscape architect;*

**Finding:** The applicant's site plan indicates installation of landscaping and irrigation by a landscape architect.

*(11) Development of a mixed-use building; or*

**Finding:** The proposed development is not a mixed-use building.

*(12) Construction of a building where at least 50 percent of the building frontage is constructed contiguous to the minimum building setback line.*

**Finding:** Within the Portland/Fairgrounds Overlay Zone, the minimum building setback is zero feet. The applicant is not proposed a building setback of zero feet.

The applicant's site plan and written statement demonstrate conformance with six of the 12 project enhancements which exceeds the minimum requirement of four project enhancements. This criterion is met.

### **General Development Standards SRC 800**

#### ***SRC 800.055(a) – Applicability.***

Solid waste service area design standards shall apply to all new solid waste, recycling, and compostable services areas, where use of a solid waste, recycling, and compostable receptacle of 1 cubic yard or larger is proposed.

**Finding:** The site plan indicates that a new solid waste enclosure with receptacles greater than 1 cubic yard in size is proposed.

#### ***SRC 800.055(b) – Solid Waste Receptacle Placement Standards.***

All solid waste receptacles shall be placed at grade on a concrete pad that is a minimum of 4 inches thick, or on an asphalt pad that is a minimum of 6 inches thick. The pad shall have a slope of no more than 3 percent and shall be designed to discharge stormwater runoff.

- 1) Pad area. In determining the total concrete pad area for any solid waste service area:
  - a. The pad area shall extend a minimum of 1-foot beyond the sides and rear of the receptacle.
  - b. The pad area shall extend a minimum 3 feet beyond the front of the receptacle.
  - c. In situations where receptacles face each other, a minimum four feet of pad area shall be required between the fronts of the facing receptacles.

**Finding:** The materials for the slab are indicated as concrete and asphalt in the proposed plans. The proposed slope meets the standard. More than four feet of pad area is provided between receptacles that face each other. Compliance with this standard will be verified at building permit.

2) Minimum Separation.

- a. A minimum separation of 1.5 feet shall be provided between the receptacle and the side wall of the enclosure.
- b. A minimum separation of 5 feet shall be provided between the receptacle and any combustible walls, combustible roof eave lines, or building or structure openings.

**Finding:** Receptacles will not be placed within 5 feet of a building or structure. Adequate separation distance is available for 1.5 feet of separation between receptacles and side walls of the enclosure, but only one foot of separation is shown on the site plan. Compliance with this standard will be verified at building permit.

3) Vertical Clearance.

- a. Receptacles 2 cubic yards or less in size shall be provided with a minimum of 8 feet of unobstructed overhead or vertical clearance for servicing.
- b. Receptacles greater than 2 cubic yards in size shall be provided with a minimum of 14 feet of unobstructed overhead or vertical clearance for servicing.

**Finding:** No roof is proposed for the solid waste enclosure; therefore, this standard is not applicable.

***SRC 800.055(d) – Solid Waste Service Area Screening Standards.***

- 1) Solid waste, recycling, and compostable service areas shall be screened from all streets abutting the property and from all abutting residentially zoned property by a minimum six-foot-tall sight-obscuring fence or wall; provided, however, where receptacles, drop boxes, and compactors are located within an enclosure, screening is not required. For the purpose of this standard, abutting property shall also include any residentially zoned property located across an alley from the property.
- 2) Existing screening at the property line shall satisfy screening requirements if it includes a six-foot-tall sight-obscuring fence or wall.

**Finding:** The solid waste service area is completely enclosed with a cmu wall and sight-obscuring gate and screened from view from surrounding streets and residentially zoned property.

***SRC 800.055(e) – Solid Waste Service Area Enclosure Standards.***

When enclosures area used for required screening or aesthetics, such enclosure shall conform to the following standards:

- 1) Front Opening of Enclosure. The front opening of the enclosure shall be unobstructed and shall be a minimum of 12 feet in width.

**Finding:** The unobstructed width of the proposed front opening for the enclosure is less than 12 feet. Compliance with this standard will be verified at building permit.

- 2) Measures to Prevent Damage to Enclosure. Enclosures constructed of concrete, brick, masonry block, or similar types of material shall contain a minimum four-inch nominal high bumper curb at ground level located 12 inches inside the perimeter of the outside walls of the enclosure, or a fixed bumper rail to prevent damage from receptacle impacts.

**Finding:** The proposed site plan indicates that the enclosure walls will be cmu block. A bumper curb 12 inches inside the perimeter of the enclosure walls is required and indicated on the proposed plans.

- 3) Enclosure Gates. Any gate across the front opening of an enclosure shall swing freely without obstructions. For any opening that is less than 15 feet in width, the gates shall open a minimum of 120 degrees. All gates shall have restrainers in the open and closed positions.

**Finding:** The proposed gates can swing to 120 degrees in compliance with this provision, but no restrainers are shown. Compliance will be verified at building permit.

***SRC 800.055(f) – Solid Waste Service Area Vehicle Access.***

- 1) Vehicle Operation Area. A vehicle operation area shall be provided for solid waste collection service vehicles that are free of obstructions and no less than 45 feet in length and 12 feet in width. Vehicle operation areas shall be made available in front of every receptacle.

**Finding:** The proposed vehicle operation area meets the minimum dimensional requirements for service vehicle access.

The Hearings Officer imposes the following condition of approval to ensure compliance with all applicable standards:

**Condition 5:** Provide a solid waste service area meeting all applicable standards of SRC 800.055.

### **Off-Street Parking, Loading, and Driveways SRC 806**

#### ***SRC 806.005 - Off-Street Parking; When Required.***

Off-street parking shall be provided and maintained for each proposed new use or activity.

#### ***SRC 806.010 - Proximity of Off-Street Parking to Use or Activity Served.***

Required off-street parking shall be located on the same development site as the use or activity it serves.

#### ***SRC 806.015 - Amount of Off-Street Parking.***

- a) *Minimum Required Off-Street Parking.* The proposal is for an eating and drinking establishment. A minimum of one space per 250 square feet of gross floor area is required.
- b) *Compact Parking.* Up to 75 percent of the minimum off-street parking spaces required under this Chapter may be compact parking spaces.
- c) *Carpool and Vanpool Parking.* New developments with 60 or more required off-street parking spaces and falling within the public services and industrial use classifications, and the business and professional services use category, shall designate a minimum of five percent of their total off-street parking spaces for carpool or vanpool parking.
- d) *Maximum Off-Street Parking.* Unless otherwise provided in the SRC, off-street parking shall not exceed the amounts set forth in Table 806-2.

**Finding:** The proposed use is an eating and drinking establishment. The gross floor area is approximately 2,206 square feet, requiring a minimum of 9 spaces ( $2,206 / 250 = 8.824$ ).

A maximum of 7 of the 9 required parking spaces may be compact spaces; at least two required parking spaces must be standard spaces. No carpool/vanpool spaces are required for the proposed development. A maximum of 23 off-street parking spaces are allowed ( $9 \times 2.5 = 22.5$ ).

The proposed site plan indicates that 20 new off-street parking spaces will be provided. One of the proposed parking spaces will be ADA and the remainder are standard size parking spaces. No compact spaces are indicated on the site plan, but the conditions of approval above may require redesigning some spaces to compact spaces.

***SRC 806.035 - Off-Street Parking and Vehicle Use Area Development Standards.***

- a) *General Applicability.* The off-street parking and vehicle use area development standards set forth in this section apply to the development of new off-street parking and vehicle use areas.
- b) *Location.* Off-street parking and vehicle use areas shall not be located within required setbacks.
- c) *Perimeter Setbacks and Landscaping.* Perimeter setbacks shall be required for off-street parking and vehicle use areas abutting streets, abutting interior front, side, and rear property lines, and adjacent to buildings and structures.

**Abutting Property Lines:** Off-street parking and vehicle use areas shall be set back a minimum of six to 10 feet from property lines abutting streets (unless a greater setback is required elsewhere within the UDC) and 5 feet from interior front, side, and rear property lines (unless a greater setback is required elsewhere within the UDC).

**Adjacent to Buildings and Structures:** The off-street parking or vehicle use area shall be set back from the exterior wall of the building or structure by a minimum 5-foot wide landscape strip or by a minimum 5-foot wide paved pedestrian walkway.

**Finding:** The proposed vehicle use area complies with the minimum 5-foot setback requirement adjacent to a building or structure and the minimum perimeter setback standards identified in SRC Chapter 806 and the greater setbacks of the CR zone development standards, except the applicant has requested an adjustment to reduce the 15-foot zone-to-zone setback from residential zones to 5 feet. Findings for the adjustment are in Section 8 of this decision.

- d) *Interior Landscaping.* Interior landscaping shall be provided in amounts not less than those set forth in Table 806-5. For parking areas less than 50,000 square feet in size, a minimum of 5 percent of the interior parking area shall be landscaped.

**Finding:** The proposed parking area is approximately 12,307 square feet, requiring a minimum of 615 square feet of interior parking lot landscape area ( $12,307 \times 0.05 = 615.35$ ). Approximately 1,977 square feet (16 percent) of interior parking lot landscaping is proposed, which exceeds the minimum interior parking lot landscaping requirement.

A minimum of 1 deciduous shade tree shall be planted for every 12 parking spaces within the off-street parking area. Landscape islands and planter bays shall have a minimum planting area of 25 square feet and shall have a minimum width of 5 feet. The applicant's landscape plans indicate deciduous shade trees and planter bays that meet or exceed the standards.

- e) *Off-Street Parking Area Dimensions.* Off-street parking areas shall conform to the minimum dimensions set forth in Table 806-6.

**Finding:** The proposed parking spaces, driveway and drive aisle for the off-street parking area meet the minimum dimensional requirements of SRC Chapter 806.

- f) *Additional Off-Street Parking Development Standards 806.035(f)-(m).*

**Finding:** The proposed off-street parking area is developed consistent with the additional development standards for grade, surfacing, and drainage. Extended curbs allowing a two-foot vehicle overhang are shown as wheel barriers on the proposed site plan.

The parking area striping, marking, signage and lighting shall be consistent with SRC Chapter 806, required compact parking spaces shall be marked and signed per SRC 806.035(k)(2). The subject property is adjacent to residential zones to the northwest and southwest, and SRC 806.035(m) requires a minimum six-foot tall sight-obscuring fence, wall, or hedge be provided to screen the off-street parking area from abutting residentially zoned property. The site plan indicates an existing 6-foot-high chain link fence along that property line and an existing hedge along most of the property line. The conditions above require a sight-obscuring fence, and much of the landscaped setback is occupied by a mature hedge. As conditioned, the proposal satisfies the standards.



***SRC 806.040 - Driveway Development Standards.***

- a) *Access.* Off-street parking and vehicle use areas shall have either separate driveways for ingress and egress, a single driveway for ingress and egress with an adequate turnaround that is always available, or a loop to the single point of access. The driveway approaches to the driveways shall conform to SRC [Chapter 804](#).
- b) *Location.* Driveways shall not be located within required setbacks except where the driveway provides direct access to the street, alley, or abutting property or the driveway is a shared driveway located over the common lot line and providing access to two or more uses.
- c) *Perimeter Setbacks and Landscaping.* Perimeter setbacks shall be required for driveways abutting streets, abutting interior front, side, and rear property lines, except where the driveway provides direct access to the street, alley, or abutting property or the driveway is a shared driveway located over the common lot line and providing access to two or more uses.

**Abutting Streets and Property Lines:** For the corner lot, an existing driveway on Fairgrounds Road NE and a proposed driveway on Myrtle Avenue NE are proposed. Both driveways meet the standards of SRC Chapter 804 and minimum width of SRC Chapter 806 for two-way traffic. Public Works has not restricted either driveway to one-way traffic. The proposed driveways exceed the minimum access requirements.

Unless a greater setback is required elsewhere in the UDC, driveways shall be set back a minimum of six to 10 feet from property lines abutting streets as set forth in the standards for vehicle use areas in SRC 806.035(c)(2) and 5 feet from interior front, side, and rear property lines. The proposed driveways meet location, setbacks, and landscaping standards.

**Bicycle Parking**

***SRC 806.045 - General Applicability.***

Bicycle parking shall be provided and maintained for each proposed new use or activity.

***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.***

Per SRC Chapter 806, Table 806-8, eating and drinking establishment uses are required to provide a minimum of one space per 1,000 square feet or four bicycle parking spaces, whichever is greater.

**Finding:** The proposed use is an eating and drinking establishment. The gross floor area is approximately 2,206 square feet, requiring a minimum of four spaces. The site plan indicates six bicycle parking spaces, meeting the minimum bicycle parking requirements.

***SRC 806.060 - Bicycle Parking Development Standards.***

Bicycle parking areas shall be developed and maintained as set forth in this section.

- a) Location. Bicycle parking located outside a building shall be located within a convenient distance of, and be clearly visible from, the primary building entrance. In no event shall bicycle parking areas be located more than 50 feet from the primary building entrance, as measured along a direct pedestrian access route.
- b) Access. Bicycle parking areas shall have direct and accessible access to the public right-of-way and the primary building entrance that is free of obstructions and any barriers, such as curbs or stairs, which would require users to lift their bikes in order to access the bicycle parking area.
- c) Dimensions. Except as provided for bicycle lockers, bicycle parking spaces shall be a minimum of 6 feet in length and 2 feet in width, with the bicycle rack centered along the long edge of the bicycle parking space. Bicycle parking space width may be reduced, however, to a minimum of three feet between racks where the racks are located side-by-side. Bicycle parking spaces shall be served by a minimum 4-foot-wide access aisle. Access aisles serving bicycle parking spaces may be located within the public right-of-way.
- d) Surfacing. Where bicycle parking is located outside a building, the bicycle parking area shall consist of a hard surface material, such as concrete, asphalt pavement, pavers, or similar material, meeting the Public Works Design Standards.

e) **Bicycle Racks.** Where bicycle parking is provided in racks, the racks may be floor, wall, or ceiling racks. Bicycle racks shall meet the following standards:

- (1) Racks must support the bicycle frame in a stable position, in two or more places a minimum of six inches horizontally apart, without damage to wheels, frame, or components.
- (2) Racks must allow the bicycle frame and at least one wheel to be locked to the rack with a high security, U-shaped shackle lock;
- (3) Racks shall be of a material that resists cutting, rusting, and bending or deformation; and
- (4) Racks shall be securely anchored.
- (5) Examples of types of bicycle racks that do, and do not, meet these standards are shown in Figure 806-10.

**Finding:** The proposed site plan indicates that bicycle racks will be provided with one rack next to the northeast entrance and two next to the southwest entrance in compliance with the standards of this section. Compliance with the standards will be verified at building permit.

### **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.

#### ***SRC 806.075 - Amount of Off-Street Loading.***

No off-street loading space is required for retail sales and services uses, including eating and drinking establishments, that are in buildings less than 5,000 square feet.

### **Landscaping**

All required setbacks shall 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 shall 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 shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

The preservation of existing trees and vegetation is encouraged. If preserved, existing trees as defined under SRC [Chapter 808](#), existing trees less than ten inches dbh, and existing vegetation may be utilized to satisfy required landscaping if they conform to the minimum plant unit requirements specified in this chapter.

In addition to the landscaping required under this chapter, when existing trees, as defined under SRC [chapter 808](#), are proposed for removal from within required setbacks or from a development site, replanting shall be required as provided in this subsection.

(1) *Removal of trees within required setbacks.* When an existing tree or trees, as defined under SRC [chapter 808](#), within a required setback are proposed for removal, two new trees shall be planted for each tree removed. Replanted trees shall be of either a shade or evergreen variety with a minimum 1.5-inch caliper.

(2) *Removal of trees from development site.* When more than 75 percent of the existing trees, as defined under SRC [chapter 808](#), on a development site are proposed for removal, two new trees shall be planted for each tree removed in excess of 75 percent. Replanted trees shall be of either a shade or evergreen variety with a minimum 1.5-inch caliper. For purposes of this section, existing trees within vision clearance areas, or within areas to be cleared for required roads, utilities, sidewalks, trails, or stormwater facilities, shall not be counted in the total percentage of trees removed from the development site.

**Finding:** The Hearings Officer notes that the proposed site plan indicates that 8,399 square feet of landscaping will be provided for the development site requiring a minimum of 420 plant units ( $8,399 / 20 = 419.95$ ). Of the required plant units, a minimum of 168 plant units ( $420 \times 0.4 = 168$ ) shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees.

Landscape and irrigation plans will be reviewed for conformance with the requirements of SRC 807 at the time of building permit application review.

The preliminary landscape plan indicates that all existing trees in the required setbacks and on the property will be preserved. The Hearings Officer finds that this standard is satisfied.

### **Natural Resources**

#### ***SRC Chapter 601 (Floodplain):***

Public Works Department staff has reviewed the Flood Insurance Study and Flood Insurance Rate Maps and has determined that no floodplain or floodway areas exist on the subject property.

#### ***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.

The Hearings Officer notes that no protected riparian trees or significant trees have been identified on the site plan for removal. The Hearings Officer finds that this standard is met.

#### ***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.

The Hearings Officer notes that according to the Salem-Keizer Local Wetland Inventory (LWI), the subject property does not contain any wetland areas. The Hearings Officer finds that the proposal meets this standard.

***SRC 810 - Landslide Hazards:***

A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. City records show that the subject property may be located within a landslide hazard area. The applicant submitted findings, prepared by TerraMark, Inc. and dated October 31, 2019, which demonstrate that the proposed development is a low landslide hazard risk based on SRC Chapter 810.

The Hearings Officer finds that with completion of the recommended conditions, the subject property meets all applicable standards of the following chapters of the UDC: 601–Floodplain, 802–Public Improvements, 803–Streets and Right-of-Way Improvements, 804–Driveway Approaches, 805–Vision Clearance, 809–Wetlands, and 810–Landslides.

**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:** The Hearings Officer notes that Fairgrounds Road NE is fully developed and meets the right-of-way width and pavement width standards pursuant to the Salem TSP; therefore, the Hearings Officer finds that no additional street improvements are required as a condition of the proposed development.

Myrtle Avenue NE meets the right-of-way width and pavement width standards pursuant to the Salem TSP, Table 3-1; therefore, the Hearings Officer finds that no additional street improvements are required as a condition of the proposed development.

The Hearings Officer notes that no special setback is required along Myrtle Avenue NE nor Fairgrounds Road NE because the existing rights-of-way meet the standards for their classifications of street.

The Hearings Officer notes that the applicant is required to replace nonconforming portions of existing sidewalk along the frontage of the property pursuant to SRC 78.180(a). The sidewalk may remain located along the curb line pursuant to SRC 803.035(l)(2)(B). The applicant shall install street trees to the maximum extent feasible along the frontage of Fairgrounds Road NE pursuant to SRC 86.015(e). The

Hearings Officer imposes the following conditions to ensure compliance with this criterion:

**Condition 6:** Replace nonconforming portions of existing sidewalk along the frontage of the property pursuant to SRC 78.180(a).

**Condition 7:** Install street trees to the maximum extent feasible along the frontage of Fairgrounds Road NE pursuant to SRC 86.015(e).

Criterion 3:

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

**Finding:** The Hearings Officer finds that relocated driveway access onto Myrtle Avenue NE provides for safe turning movements into and out of the property. The Hearings Officer finds that the existing driveway to Fairgrounds Road NE is proposed to remain in the existing location and will therefore provide safe turning movements with the existing configuration.

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 Hearings Officer notes that 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 applicant's engineer submitted a statement demonstrating compliance with Stormwater PWDS Appendix 004-E(4) and SRC Chapter 71.

The Hearings Officer notes that the preliminary stormwater design demonstrates the use of green stormwater infrastructure to the maximum extent feasible.



The Hearings Officer notes that the applicant is required to design and construct all utilities (sewer, water, and storm drainage) according to the PWDS and to the satisfaction of the Public Works Director. The trash area shall be designed in compliance with Public Works Standards.

The Hearings Officer imposes the following condition to ensure compliance with this criterion:

**Condition 8:** Design and construct a storm drainage system at the time of development in compliance with SRC Chapter 71 and *Public Works Design Standards (PWDS)*.

## 8. **Analysis of Class 2 Zoning Adjustment Permit Criteria**

SRC Chapter 250.005(d)(2) provides that an applicant for a Class 2 Adjustment shall be granted if all the following criteria are met:

### Criterion 1:

The purpose underlying the specific development standard proposed for adjustment is:

- (i) Clearly inapplicable to the proposed development; or
- (ii) Equally or better met by the proposed development.

**Finding:** The Hearings Officer notes that the applicant is requesting a Class 2 Adjustment to reduce the required zone-to-zone setback of 15 feet for the parking and vehicle use area and trash enclosure along portions of the northwest and southwest property lines abutting RS and RM-II zones.

The purpose of the 15-foot landscaped setback abutting residential zones is a buffer between commercial and residential uses to reduce impacts such as noise, light, and visual impacts. The standard is a 15-foot setback landscaped with one plant unit per 20 square feet of landscaped area and a minimum 6-foot-tall sight-obscuring fence or wall. The conditions above would require a 6-foot-tall sight-obscuring fence or wall.

In the written statement, the applicant states that the intent of the standard can be equally met through vegetation and fencing, as the existing fencing and screening will be enhanced at locations of void to create a sight and sound barrier. The adjustment would allow the development to meet design standards, create a pleasing landscape aesthetic, promote safe vehicular travel and parking, and provide for the safest pedestrian passage through the property.

The Hearings Officer notes that staff concurs with the applicant's statement that the proposal to utilize and enhance the existing mature hedges and fencing, combined with the condition above to provide a sight-obscuring fence, equally or better meets the purpose of the code.

The Hearings Officer notes that Mr. Quail, who owns a neighboring property agreed that the applicant's proposal would be a vast improvement over the current appearance of neighboring properties. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 2:

If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.

**Finding:** The subject property is not located within a residential zone; therefore, the Hearings Officer finds that this criterion is not applicable.

Criterion 3:

If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.

**Finding:** The Hearings Officer finds that only one adjustment has been requested.

The Hearings Officer notes that the SRC requires that any future development, beyond what is shown in the proposed plans, must conform to all applicable development requirements of the zoning code, unless adjusted through a future land use action. The Hearings Officer imposes the following condition:

**Condition 9:** The adjusted perimeter setback abutting residential zones, as approved in this zoning adjustment, shall only apply to the specific development proposal shown in the attached site plan. Any future development, beyond what is shown in the attached site plan, shall conform to all applicable development requirements, unless adjusted through a future land use action. With this condition, the Hearings Officer finds that the proposal satisfies this criterion.

9. **Analysis of Class 2 Driveway Approach Permit Criteria**

Salem Revised Code (SRC) 804.025(d) sets forth the following criteria that must be met before approval can be granted to an application for a Driveway Approach Permit. The Driveway Approach Permit is required for the driveway on Myrtle Avenue NE.

Criterion 1:

The proposed driveway approach meets the standards of this Chapter and the Public Works Design Standards.

**Finding:** The Hearings Officer finds that the proposed driveway to Myrtle Avenue SE meets the standards for SRC Chapter 804 and PWDS.

Criterion 2:

No site conditions prevent placing the driveway approach in the required location.

**Finding:** The Hearings Officer finds that there are no site conditions prohibiting the location of the proposed driveway.

Criterion 3:

The number of driveways onto an arterial is minimized.

**Finding:** The Hearings Officer finds that the proposed driveway is not accessing onto an arterial street.

Criterion 4:

The proposed driveway approach, where possible:

- a) Is shared with an adjacent property; or
- b) Takes access from the lowest classification of street abutting the property.

**Finding:** The Hearings Officer finds that the proposed driveway is currently located with access to the lowest classification of street abutting the subject property.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

**Finding:** The Hearings Officer finds that the proposed driveway meets the PWDS vision clearance standards set forth in SRC Chapter 805.

Criterion 6:

The proposed driveway approach does not create traffic hazards and provides for safe turning movements and access.

**Finding:** The Hearings Officer finds that no evidence has been submitted to indicate that the proposed driveway will create traffic hazards or unsafe turning movements. Additionally, the Hearings Officer notes that the staff analysis of the proposed driveway indicates that it will not create a traffic hazard and will provide for safe turning movements for access to the subject property. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 7:

The proposed driveway approach does not result in significant adverse impacts in the vicinity.

**Finding:** The Hearings Officer note that the Staff analysis of the proposed driveway and the evidence that has been submitted indicate that the location of the proposed driveway will not have any adverse impacts to the adjacent properties or streets. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 8:

The proposed driveway approach minimizes impact to the functionality of adjacent streets and intersections.

**Finding:** The Hearings Officer notes that the proposed driveway approach is located on a Local street and does not create a significant impact to adjacent streets and intersections. The existing driveway to Myrtle Avenue NE is proposed to be closed and moved further north

from the intersection, thereby improving functionality of the Fairgrounds Road NE and Myrtle Avenue NE intersection. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 9:

The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

**Finding:** The Hearings Officer notes that the proposed development is surrounded by residentially zoned property. The proposed driveway is taken from the lowest classification street abutting the subject property. The driveway balances the adverse impacts to residentially zoned property and will not have an adverse effect on the functionality of the adjacent streets. The Hearings Officer finds that the proposal satisfies this criterion.

10. **Analysis of Class 1 Design Review Criteria**

Salem Revised Code (SRC) 225.005(e)(1) sets forth the criteria that must be met before approval can be granted to an application for Class 1 Design Review. Pursuant to SRC 225.005(e)(1) an application for a Class 1 Design Review shall be approved if all applicable design review standards are met.

The applicable design review standards for commercial development within the Portland/Fairgrounds Overlay Zone are included under SRC Chapter 603.030. The following subsections are organized with the Portland/Fairgrounds Road Overlay Zone design standard shown in ***bold italic***, followed by findings evaluating the proposal for conformance with the design standard.

**Building location, orientation, and design (SRC 603.030(a)):**

***(1) Building location***

***(A) Building setbacks abutting street. Buildings shall have the following setbacks abutting a street:***

- i. Minimum zero feet.***
- ii. Maximum 60 feet.***

**Finding:** The Hearings Officer notes that the proposed building will be not be located less than zero feet or more than 60 feet from the right of way. The Hearings Officer finds that this standard is met.

***(B) Accessory structures shall be located no closer to the street than the primary building.***

**Finding:** The proposed solid waste enclosure is not roofed, so it is not considered an accessory structure. This standard is not applicable. Nevertheless, it is farther from the streets than the primary building.

***(2) Orientation and design***

***(A) A primary building entrance shall be provided for each building façade facing a street. If a building has frontage on more than one street, a single primary building entrance may be provided at the corner of the building where the streets intersect.***

**Finding:** The applicant submitted a site plan and correlating building elevations which depict three main entrances, one facing northeast to Myrtle Avenue NE, one facing southeast to Fairgrounds Road NE, and one facing southwest to the parking area. The Hearings Officer finds that the proposal meets this standard.

***(B) Ground floor building façades facing Portland/Fairgrounds Road shall include transparent windows on a minimum of 65 percent of the ground floor façade. The windows shall not be mirrored or treated in such a way as to block visibility into the building. The windows shall have a minimum Visible Transmittance (VT) of 37 percent.***

**Finding:** The site plan indicates that the façade facing Fairgrounds Road NE is 82 feet long, which requires a minimum of 53.3 linear feet of glazing ( $82 \times .65 = 53.3$ ). The applicant's written statement and site plan indicate glazing along 55 linear feet, exceeding the minimum. The Hearings Officer finds that the proposal meets this standard.

***(C) Building offsets shall be provided for building frontages greater than 75 feet in width. Building frontages two or more stories in height may be constructed without required building offsets on the first floor, but all additional floors shall incorporate building offsets. Building offsets shall be a minimum four feet in depth and shall be provided at intervals of not more than 40 feet along the building frontage. Building offsets may extend into required setbacks.***

**Finding:** The plans submitted by the applicant show that the proposed building is 82 feet long, and offsets of at least four feet are provided at intervals of not more than 40 feet. The conditions above would require constructing all walls of the building at least five feet from the property line abutting Fairgrounds Road NE to meet the minimum setbacks of the CR zone and retaining four-foot building offsets to meet the design standards. As proposed and conditioned, the Hearings Officer finds that the proposal meets this standard.

***(D) Weather protection, in the form of awnings or canopies, shall be provided along a minimum of 50 percent of the length of the ground floor building facade adjacent to sidewalks or pedestrian connections. Awnings or canopies shall have a minimum clearance height above the sidewalk of eight feet, and may encroach into the street right-of-way as provided in SRC [76.160](#).***

**Finding:** Awnings along the pedestrian connection on the northeast building elevation facing Myrtle Avenue NE, along the public sidewalk on Fairgrounds Road NE, and along the pedestrian connection on the southwest facade exceed the minimum requirement of 50 percent of the length of the building. Each proposed awning maintains the minimum clearance of at least eight feet. As designed, the Hearings Officer finds that the proposal meets this standard.

**Landscaping (SRC 603.030(b))**

***(A) Open sales areas for items such as vehicles, boats, recreational vehicles, satellites, hot tubs, and other similar items shall be screened from the public right-of-way with a minimum three-foot tall sight-obscuring fence, masonry wall, or hedge, and a minimum three-foot wide landscape strip. The fence, masonry wall, or hedge shall not encroach into the vision clearance area.***

**Finding:** The Hearings Officer finds that the proposed development does not include open sales areas. This standard is not applicable.

***(B) A minimum ten-foot-wide landscape strip shall be provided between surface parking lots and the street right-of-way. The landscape strip shall be planted with a minimum of one plant unit***



*per 20 square feet of planting area. Berms, mounds, raised beds, and grade drops are allowed if they meet the standards in SRC 603.020(e).*

**Finding:** The Hearings Officer notes that the proposal shows landscape strips of at least 10 feet in width are provided between the parking lots and street rights-of-way. On the preliminary plans, the landscaping provides for one plant unit per 20 square feet and the grade drops meet the standards of SRC 603.020(e). As designed, the Hearings Officer finds that the proposal meets this standard.

**Off-street parking and loading (SRC 603.030(c))**

***(A) Parking structures located adjacent to Portland Road shall include space for ground floor commercial uses along their Portland Road frontage in order to create a safe, pleasant, and active pedestrian environment.***

**Finding:** The Hearings Officer notes that the proposed development does not include a parking structure. The Hearings Officer finds that this design review standard is not applicable to the proposed development.

**RECOMMENDATION**

Based upon the Facts and Findings contained in the staff report, staff presentation and testimony from the public hearing, the Hearings Officer APPROVES the request for a conditional use, site plan review, adjustment, driveway approach permit, and design review application for the proposed 2,206 square foot eating and drinking establishment with a drive-through on a property of 0.58 acres located at 2095 Fairgrounds Road NE, subject to the following conditions of approval:

**CONDITIONAL USE:**

- Condition 1:** Provide a raised surface or speed bumps to delineate the pedestrian pathways that cross the drive-through lane.
- Condition 2:** Install a small sign indicating “Do Not Block Crosswalk” at the northern pedestrian pathway that crosses the drive-through lane.
- Condition 3:** Install a small sign indicating “Yield to Pedestrians” at the southern pedestrian pathway that crosses the drive-through lane.


**SITE PLAN REVIEW:**

- Condition 4:** Provide a minimum 6-foot-tall sight-obscuring fence along the property line abutting the residential zones.
- Condition 5:** Provide a solid waste service area meeting all applicable standards of SRC 800.055.
- Condition 6:** Replace nonconforming portions of existing sidewalk along the frontage of the property pursuant to SRC 78.180(a).
- Condition 7:** Install street trees to the maximum extent feasible along the frontage of Fairgrounds Road NE pursuant to SRC 86.015(e).
- Condition 8:** Design and construct a storm drainage system at the time of development in compliance with SRC Chapter 71 and *Public Works Design Standards (PWDS)*.

**ADJUSTMENT:**

- Condition 9:** The adjusted perimeter setback abutting residential zones, as approved in this zoning adjustment, shall only apply to the specific development proposal shown in the attached site plan. Any future development, beyond what is shown in the attached site plan, shall conform to all applicable development requirements, unless adjusted through a future land use action.

DATED: March 31, 2020

  
James K. Brewer, Hearings Officer