

## NOTICE OF DECISION

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



*Si necesita ayuda para comprender esta informacion, por favor llame  
503-588-6173*

## DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE CASE NO. CU20-03

APPLICATION NO.: 20-104696-ZO

NOTICE OF DECISION DATE: June 8, 2020

**SUMMARY:** A request for a proposed non-profit womens shelter serving 40 individuals.

**REQUEST:** A Conditional Use Permit to allow a non-profit womens shelter serving 40 individuals, for property approximately 0.45 acres in size, zoned IC (Industrial Commercial), and located at 1910 Front Street SE - 97301 (Marion County Assessors Map and Tax Lot number: 073W15DA / 13600).

**APPLICANT:** Blake Bural, ACCOAC

**LOCATION:** 1910 Front Street NE

**CRITERIA:** Salem Revised Code (SRC) Chapter 240.005(d) – Conditional Use

**FINDINGS:** The findings are in the attached Decision dated June 5, 2020.

**DECISION:** The **Hearings Officer DENIED** Conditional Use CU20-03.

Application Deemed Complete:	April 22, 2020
Public Hearing Date:	May 13, 2020
Notice of Decision Mailing Date:	June 8, 2020
Decision Effective Date:	June 24, 2020
State Mandate Date:	September 19, 2020

Case Manager: Olivia Dias, [odias@cityofsalem.net](mailto:odias@cityofsalem.net), 503-540-2343

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., Tuesday, June 23, 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. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing.

After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

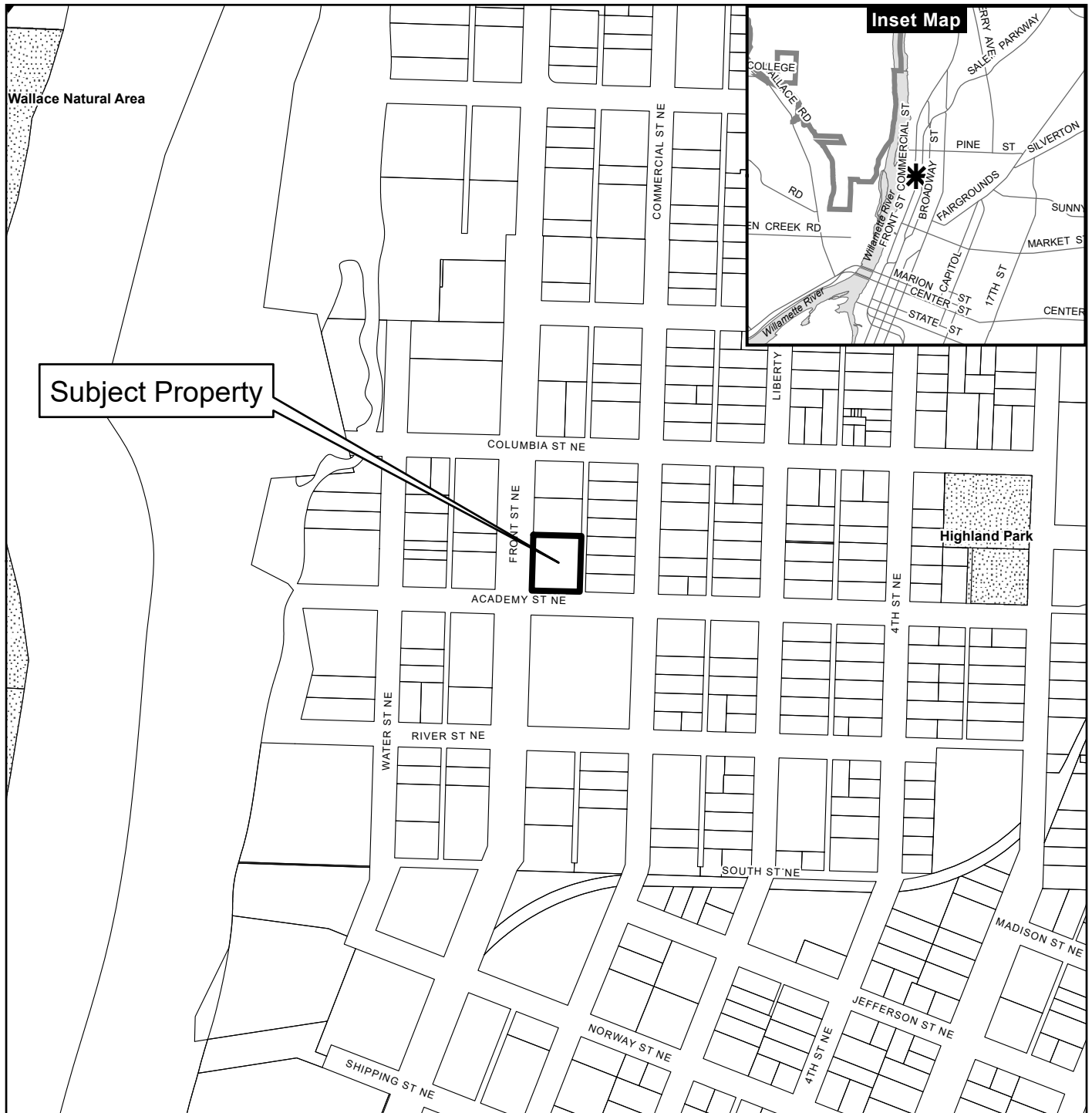
The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 320, City Hall, 555 Liberty Street SE, during regular business hours. For access to case related documents during the closure of City Hall to the public because of the Covid-19 pandemic, please contact the Case Manager.

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

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# Vicinity Map

## 1910 Front Street NE



### Legend

Taxlots

Urban Growth Boundary

City Limits

Outside Salem City Limits

Historic District

Schools

Parks

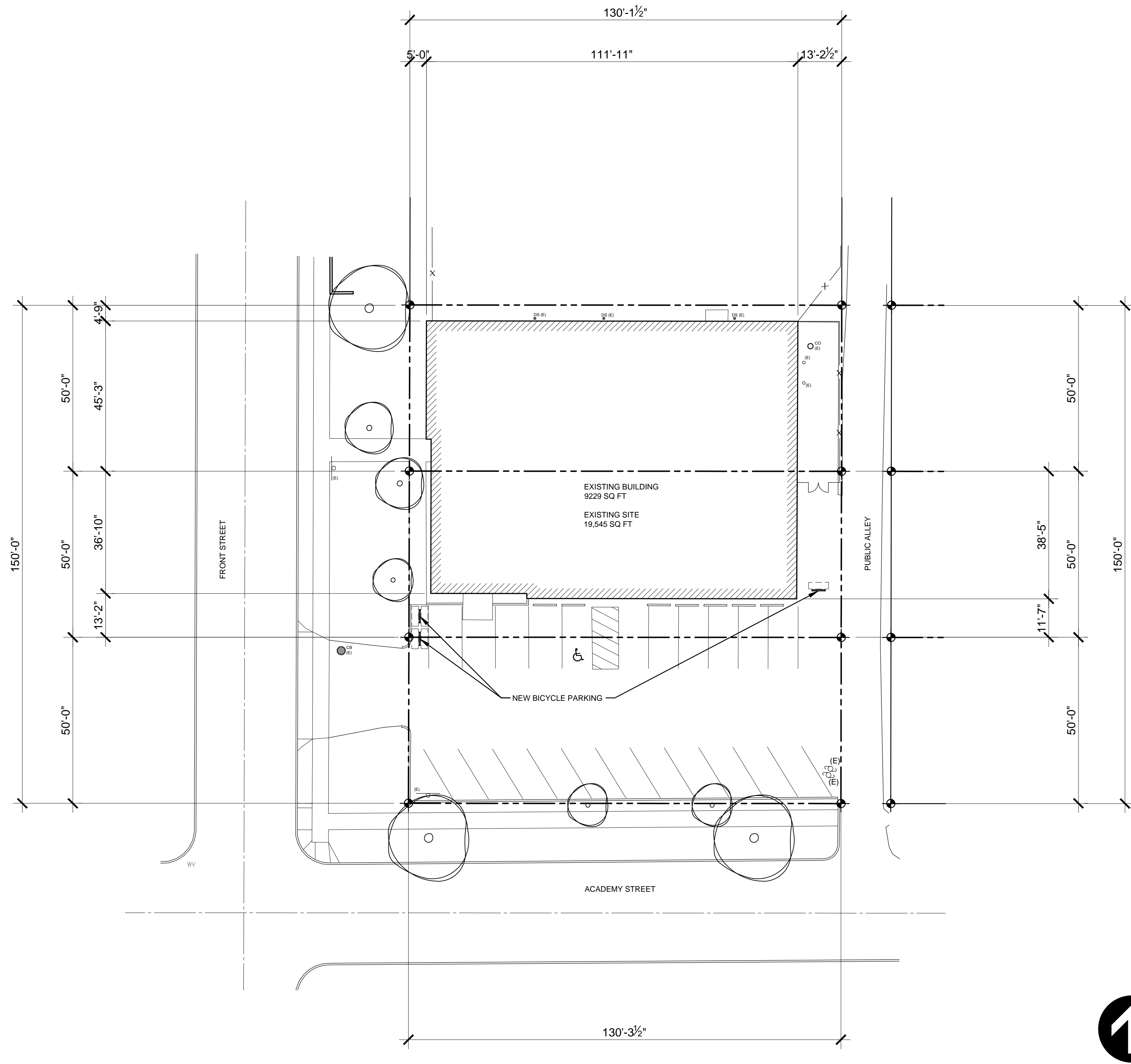
**CITY OF Salem**  
AT YOUR SERVICE  
Community Development Dept.

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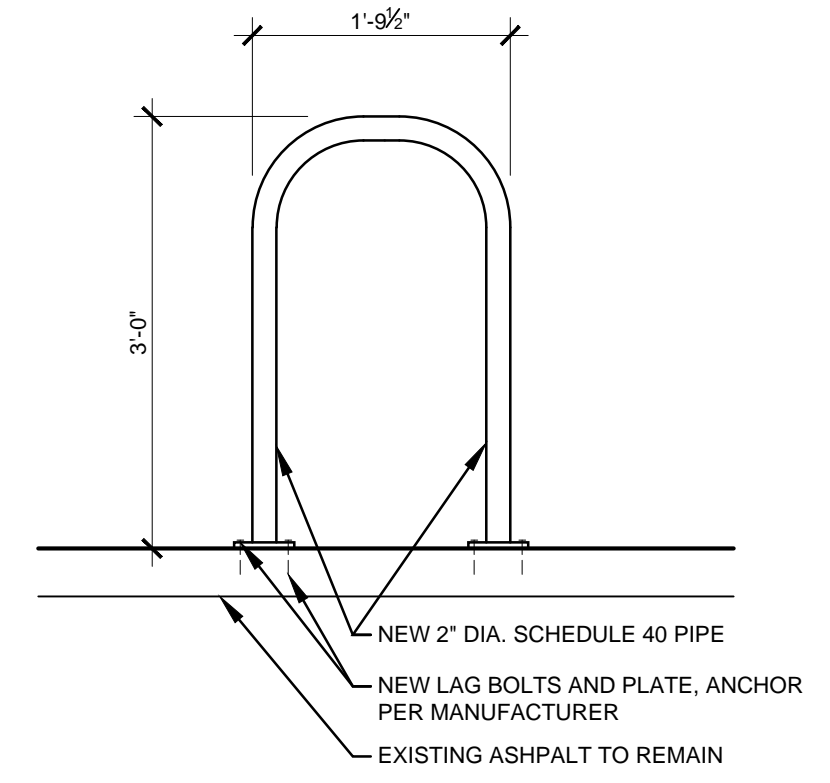




**SITE NOTE:**  
NOTE: THE LIMITED EXTERIOR WORK THAT IS OCCURRING IS THE INSTALLATION OF THE BICYCLE RACKS AND A FIRE SERVICE LINE. THE FIRE SERVICE LINE WILL HAVE A NEW VAULT AND FIRE DEPARTMENT CONNECTION. THIS WORK IS NOT SHOWN AS IT HAS NO BEEN DESIGNED YET. THIS WILL BE SHOWN WHEN WE COME IN FOR BUILDING PERMIT.

- SYMBOL LEGEND:**
- EXISTING PROPERTY LINE
  - EXISTING CHAIN LINK FENCE TO REMAIN
  - EXISTING CONCRETE CURB TO REMAIN
  - CB (E) EXISTING CATCH BASIN TO REMAIN, (N) DESIGNATES NEW, REFER TO CIVIL DRAWINGS
  - CO (E) EXISTING CLEAN OUT TO REMAIN, (N) DESIGNATES NEW, REFER TO CIVIL DRAWINGS
  - DS (E) EXISTING DOWNSPOUT TO REMAIN, (N) DESIGNATES NEW, REFER TO CIVIL DRAWINGS
  - S (E) EXISTING SIGN TO REMAIN
  - NEW BIKE RACK 2  
A1.1
  - EXISTING TREE TO REMAIN
  - o (E) EXISTING BOLLARD TO REMAIN
  - PO (E) EXISTING POLE TO REMAIN

**1 SITE PLAN**  
SCALE: 1" = 20'-0"



**2 NEW SURFACE MOUNTED BIKE RACK**  
SCALE: 3/4" = 1'-0" 19136-A1.1-02

In the event conflicts are discovered between the original signed and sealed documents prepared by the Architects and/or their Consultants, and any copy of the documents transmitted by mail, fax, electronically or otherwise, the original signed and sealed documents shall govern.

JOB NO. 2019.0136  
DATE JAN 24, 2020  
DRAWN SED  
REVISIONS

ac  
co

ARCHITECTURE  
COMMUNITY  
363 State Street  
Salem, OR 97301-3533  
P: 503.563.4114  
www.accoac.com

SAFE SLEEP  
SHELTER

1910 FRONT ST NE  
SALEM, OR 97301  
SHEET

A1.1

**FEWEL, BREWER & COULOMBE**  
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June 5, 2020

City of Salem  
Attn: Kirsten Straus  
555 Liberty Street SE Room 305  
Salem, OR 97301-3503

*Via US Mail & Email: [KStraus@cityofsalem.net](mailto:KStraus@cityofsalem.net)*

Dear Kirsten:

Enclosed is the Final Decision for CU20-03 dated for June 5, 2020

Thank you for letting us be of service.

Very truly yours,

FEWEL, BREWER & COULOMBE

A handwritten signature in black ink, appearing to be 'JB', followed by a long horizontal line extending to the right.

James K. Brewer

JKB/krr  
Enclosure

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A CONDITIONAL USE  
PERMIT TO ALLOW A NON-PROFIT  
WOMEN'S SHELTER SERVING 40  
INDIVIDUALS, FOR PROPERTY  
APPROXIMATELY 0.45 ACRES IN SIZE,  
ZONED IC (INDUSTRIAL COMMERCIAL),  
AND LOCATED AT 1910 FRONT STREET SE  
- 97301 (MARION COUNTY ASSESSOR'S  
MAP AND TAX LOT NUMBER: 073W15DA /  
13600).

**CU20-03**

FINDINGS OF FACT, CONCLUSIONS, AND  
DECISION

**DATE AND PLACE OF HEARING:**

The public hearing before the City of Salem Hearings Officer was scheduled for May 13, 2020, at 5:30 p.m., and was held remotely due to social distancing measures put in place to slow the spread of the COVID-19 virus.

**APPEARANCES:**

**Staff:**

Olivia Dias, Planner III

**Neighborhood Association:**

Highland Neighborhood Association

**Proponents:**

Blake Bural, AC+Co Architecture for Applicant, Oregon  
Conference Adventist Churches

**Opponents:**

Amy Logan  
Daniel and Laura Dorn

**SUMMARY OF THE APPLICATION AND HEARING**

**BACKGROUND**

On February 28, 2020, a conditional use permit application was submitted for a proposed nonprofit women's shelter to serve 40 individuals. The application was deemed complete for processing on April 22, 2020.

On January 21, 2020, the City Council approved Resolution number 2020-4, an emergency order to allow the subject property to be used as a shelter, serving 19 women. The applicant is currently operating under the emergency order. The Hearings Officer has received email testimony in opposition from Amy Logan, as well as in the event of an expansion, and from Daniel and Laura Dorn.

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

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

The subject property is zoned IC (Industrial Commercial). Nonprofit shelters serving up to 75 persons are allowed in the IC zone as a Conditional Use. The proposal is to add a nonprofit shelter as an accessory use to the existing church, which requires a Conditional Use Permit.

The zoning and uses of surrounding properties include:

North: IC (Industrial Commercial) – Enterprise Rent-A-Car

South: Across Academy Street NE, IC (Industrial Commercial) – Industrial Welding supplier

East: Across alley; IC (Industrial Commercial) – Office uses and Residential uses

West: Across Front Street NE – IC (Industrial Commercial) – Salvation Army Shelter

### **3. Site Analysis**

The subject property is approximately 0.45 acres in size and contains an existing commercial building. The subject property abuts Front Street NE, designated as a Minor Arterial street within the Salem TSP (Transportation System Plan) to the west and Academy Street NE to the south, designated as a local street within the Salem TSP.

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

The subject property is located within the Highland Neighborhood Association (Highland). Notice was provided to Highland and surrounding property owners and tenants within 250 feet of the subject property.

The Hearings Officer has received email testimony from Amy Logan, a neighbor, opposing the shelter in its current state of operation, and opposing an expansion.



Ms. Logan provided email testimony that included eleven photos of emergency responders, police, loiterers violating “no trespassing” notices, tents, uncontained refuse/waste, and what appeared to be drug use.

The Hearings Officer has also received email testimony from Dan and Laura Dorn, owners of property directly to the east and across the alley from the proposed shelter. The Dorns expressly directed their written comments to criteria 2 and 3 from SRC Chapter 240.005(d). These comments overlap with Ms. Logan’s comments.

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

The Hearings Officer notes the following from the staff report:

The Fire Department has reviewed the proposal and indicated that plans indicate a fire sprinkler system will be provided. Please be advised that the FDC will be required to be located within 100 feet of a fire hydrant, as measured along an approved route. The hose lay shall not obstruct Fire Department access or cross minor arterial or larger street designations.

The Building and Safety Division has reviewed the proposal and indicated that they have no concerns.

## **6. Analysis of Conditional Use Criteria**

SRC Chapter 240.005(a)(1) provides that:

No building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

Criterion 1:

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

The Hearings Officer notes that SRC Chapter 551, Table 551-1 provides that nonprofit shelter uses are allowed in the IC zone as a Conditional Use. 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 applicant's complete written statement, which addresses the three conditional use approval criteria, is included with the staff report as Attachment C. The Hearings Officer notes that the staff report recommends three conditions of approval intended to minimize the reasonably likely adverse impacts of the use on the immediate neighborhood:

Condition 1: Prior to final occupancy, the applicant shall provide a total of ten bicycle parking spaces. Of the ten spaces, five shall be covered or indoor.

Condition 2: Prior to occupancy, the applicant shall obtain Site Plan Review approval for both uses on the subject property.

Condition 3: Any outside storage areas, including outside storage areas for personal belongings, shall be screened by a minimum 6-foot-tall sight-obscuring fence, wall, or hedge.

The Hearings Officer notes that under the auspices of the emergency order, a shelter serving 19 women has been in operation for some time. The Hearings Officer notes that the testimony in opposition, and the photographs illustrating the concerns raised in that testimony, address currently occurring adverse impacts of the use.

The Hearings Officer finds that the same adverse impacts are likely to continue under an expanded use serving 40 people.

Regarding Criterion 2, the Applicant's statement includes the following description of the proposal:

1. *The shelter is proposing hours of operation outside of typical business hours (7pm to 7am). This works to minimize any adverse impacts on the immediate neighboring businesses and homes during daytime and standard business operation times. Hours of operation could be way of limiting future adverse impacts on the neighborhood.*
2. *Limiting shelter occupancy up to 40 and not the maximum of 75 to mitigate impacts to surrounding neighborhood.*
3. *Storage of belongings for the women using the shelter will be done inside only. If any storage in the future is utilized on the exterior it should be screened within a 6 foot tall sight obscuring fence, wall, or hedge.*
4. *Shelter queuing has been a couple hours prior to the shelter opening. Limitations on hours for waiting for the shelter to open can be a possibility. This will reduce an impact on neighboring businesses and homes. Similarly, in the morning the*

*shelter closes at 7am. There is a check out process so there will not be all women rushing out the door at one time, it is varied across a couple hours.*

Regarding Criterion 3, the Applicant's statement includes the following description of the proposal:

- 1. The property across the street to the West has historically been used with similar use, with additional properties to the NW offering tangential uses to the proposed conditional use and the proposed conditional use would have no impact on the Enterprise Car Rental to the North, the Welding company to the South, or small businesses to the East.*
- 2. The shelter does not allow for women to come and go from the shelter at night. To control this the shelter takes the women's stuff upon entering and lock it up in a storage room. They are then not allowed access to it until the morning when they are checked out. This reduces neighborhood interference and noise during the evening hours.*
- 3. The women using the shelter are required to leave the shelter at 7am and are not allowed to loiter around the building during the day. They are asked to take their belongings with them. This will assist the neighborhood by not allowing all day camping and waiting for the shelter to open back up.*
- 4. There will be almost none to zero impact based on traffic. Most all of the visitors using the shelter do not own or operate a car. The users that are driving to the facility are the volunteers and workers.*

In reviewing these eight points, the Hearings Officer agrees that operation hours that begin after and end before the operating hours of neighboring businesses, reduce some conflicting activity at the time businesses open and close, and therefore likely reduce some traffic and parking conflicts.

Similarly, the Hearings Officer tends to agree that limiting the occupancy of the shelter might reduce some impacts to the immediate neighborhood, at least as compared to the maximum number of people allowed in such a shelter, under the SRC. The Hearings Officer notes that the testimony in opposition and the photographs illustrating that testimony provided by Ms. Logan might even be seen as an indication that the current operation is too small, without the capacity to address queuing, an overflow of people needing shelter, and the negative impacts of that overflow. The Hearings Officer notes that there is not sufficient evidence in the record for the Hearings Officer to determine whether doubling the size from 19 to 40 is more likely to address the negative impacts that the neighbors are observing, or if it would be better to increase the capacity of the shelter to the maximum of 75, in order to reduce the impact by more adequately serving the overflow. Or perhaps the demand for shelters is so great that even if the application were for the maximum of 75, the use would still have a large overflow, resulting in the same impact on the neighborhood. The camping, loitering, and unruly behavior notes in the testimony against the application might be a result of the current emergency's

shelter-in-place requirements, or it might be an expected outcome of any shelter that does not take adequate steps to address outside behaviors. The record does not include any evidence that allows the Hearings Officer to draw a conclusion that some reasonable condition will minimize these negative impacts. This does not mean that the shelter operation is not a worthy endeavor, or that an application with developed conditions supported by some factual basis could not adequately address these issues. In each particular, a condition of approval might minimize the reasonably likely negative impacts of the use on the immediate neighborhood. But in this case, without evidence in the record to support the conclusion that the proposed total capacity will also reduce the reasonably likely (and currently on-going) negative impacts on the immediate neighborhood, the Hearings Officer is not convinced that setting the number of people to be served by the shelter at 40 will reduce these negative impacts in any manner.

The Hearings Officer notes that storing the personal property of the women using the shelter inside the building does minimize the likely adverse visual impacts of the use on the immediate neighborhood.

The Hearings Officer notes that the applicant asserts that, as proposed, the shelter use will have a similar impact on the immediate neighborhood as the existing church. As proposed by the applicant, the shelter operation would be limited in hours to 7:00pm to 7:00am and would not be active during the same time as most businesses in the surrounding area. The applicant states that because the shelter would serve homeless women, most of whom do not own or drive a car, parking and traffic generated by the use would be limited to staff and visitors to the site.

The Hearings Officer notes the testimony from Ms. Logan and Dan and Laura Dorn, which conflicts with the expectations of the applicant. In particular, Ms. Logan and the Dorns state that currently there is an increase in motor vehicle traffic, on-street parking, and people camping or waiting in these cars that are associated with the shelter's operation under the COVID-19 emergency. Their testimony and photographs indicate that men drop women at the shelter and then wait or camp in cars. Their testimony raises concerns about public safety, large groups outside the shelter at night, and behavior which interferes with the livability of the immediate neighborhood. Their testimony also raises concerns about the amount of waste and trash left as people queue or wait or travel to and from the shelter. The Hearings Officer notes that at the hearing, the Applicant's representative was receptive to outdoor trash receptacles, and perhaps portable toilets and a trash patrol.

The Hearings Officer notes that there is not sufficient evidence in the record for the Hearings Officer to determine whether the adverse impacts which Ms. Logan and the Dorns are concerned about are caused by the current shelter at this site, or a nearby shelter, or some other use entirely. The burden of demonstrating compliance with the criteria falls on the applicant, however, not the neighbors. A

future application may be able to adequately address this issue by providing factual information.

The Hearings Officer understands that the applicants are unlikely to be able to prevent people from using the public rights of way for automobile traffic and parking, but the Hearings Officer is concerned that the applicant has not considered the reasonably likely motor vehicle parking and traffic impacts associated with the operation of the shelter. The Hearings Officer is uncomfortable assuming that women served by the shelter will not have automobiles or that the women served by the shelter will not have friends, family, or other people who will take them to the shelter each night and wait throughout the night for them. The Hearings Officer does not mean that it is not possible for a future proposal on this site to address this issue, perhaps (based on a traffic study or survey of similar uses) addressing these impacts with a condition of approval, requiring a certain number of on-site overnight parking spaces or other associated on-site automobile areas. That condition, unfortunately, is not part of the application— and neither is sufficient information to allow the Hearings Officer to draft one as a part of this decision.

Based on the testimony in the record, the Hearings Officer finds that there is insufficient evidence in the record to demonstrate that reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions. Accordingly, the Hearings Officer finds that Criterion 2 is not satisfied.

#### 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 proposed use is reasonably compatible with surrounding property. But due in part of the same factors that leave the application unable to satisfy Criterion 2, the Hearings Officer is unable to find that the application will have minimal impact on the livability or appropriate development of surrounding property. Accordingly, the Hearings Officer finds that Criterion 3 is not satisfied.

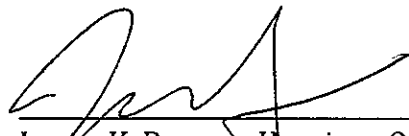
The Hearings Officer notes that staff drafted the staff report and crafted proposed conditions of approval without the benefit of the testimony in opposition. Similarly, the applicant may not have understood the nature of the concerns of the people in opposition, as that testimony came in after the staff report, and the truncated hearing required by the COVID-19 emergency may not have given the applicant the same opportunity to consider and address these issues during the hearing process. Nonetheless, the applicant had the opportunity to provide a final argument to respond to these concerns and did not do so. The Hearings Officer notes that this decision is not a measure of the value or merits of the proposed shelter use, but is

based only on whether the application satisfied the relevant criteria. Nothing in this decision should be seen as precluding a future application that addresses the issues set out in this decision.

### **DECISION**

The applicant has failed to meet its burden to satisfy the applicable criteria. The Hearings Officer **DENIES** the request for a conditional use permit for a proposed non-profit women's shelter serving up to 40 individuals for property approximately 0.45 acres in size, zoned IC (Industrial Commercial), and located at 1910 Front Street SE - 97301 (Marion County Assessor's Map and Tax Lot number: 073W15DA / 13600).

DATED: June 5, 2020

  
James K. Brewer, Hearings Officer