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503-588-6173*

## DECISION OF THE HEARINGS OFFICER

**VARIANCE / CLASS 2 DRIVEWAY APPROACH PERMIT CASE NO.: VAR-DAP21-01**

**APPLICATION NO.: 21-101587-ZO, 21-101590-ZO**

**NOTICE OF DECISION DATE:** March 16, 2021

**SUMMARY:** A request for a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, where a driveway is not allowed for a single-family residential use.

**REQUEST:** A Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, where a driveway is not allowed pursuant to SRC 804.035, for a single-family residential use, for property approximately 7.56 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

**APPLICANT:** Brandie Dalton on behalf of Empire Builders of Oregon LLC (James Helton)

**LOCATION:** 1355 Mildred Ln SE, Salem OR 97306

**CRITERIA:** Salem Revised Code (SRC) Chapters 245.005(d) – Variance; 804.025(d) – Driveway Approach Permits

**FINDINGS:** The findings are in the attached Decision dated March 12, 2021

**DECISION:** The **Hearings Officer DENIED** Variance / Class 2 Driveway Approach Permit Case No. VAR-DAP21-01

Application Deemed Complete:	January 29, 2021
Public Hearing Date:	February 24, 2021
Notice of Decision Mailing Date:	March 16, 2021
Decision Effective Date:	April 1, 2021
State Mandate Date:	May 29, 2021

**Case Manager:** Sally Long, [sjlong@cityofsalem.net](mailto:sjlong@cityofsalem.net), 503-540-2311

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at [planning@cityofsalem.net](mailto:planning@cityofsalem.net), no later than 5:00 p.m. Wednesday, March 31, 2021. 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

# NOTICE OF DECISION

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



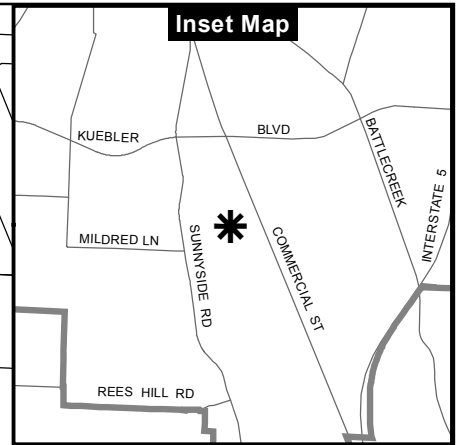
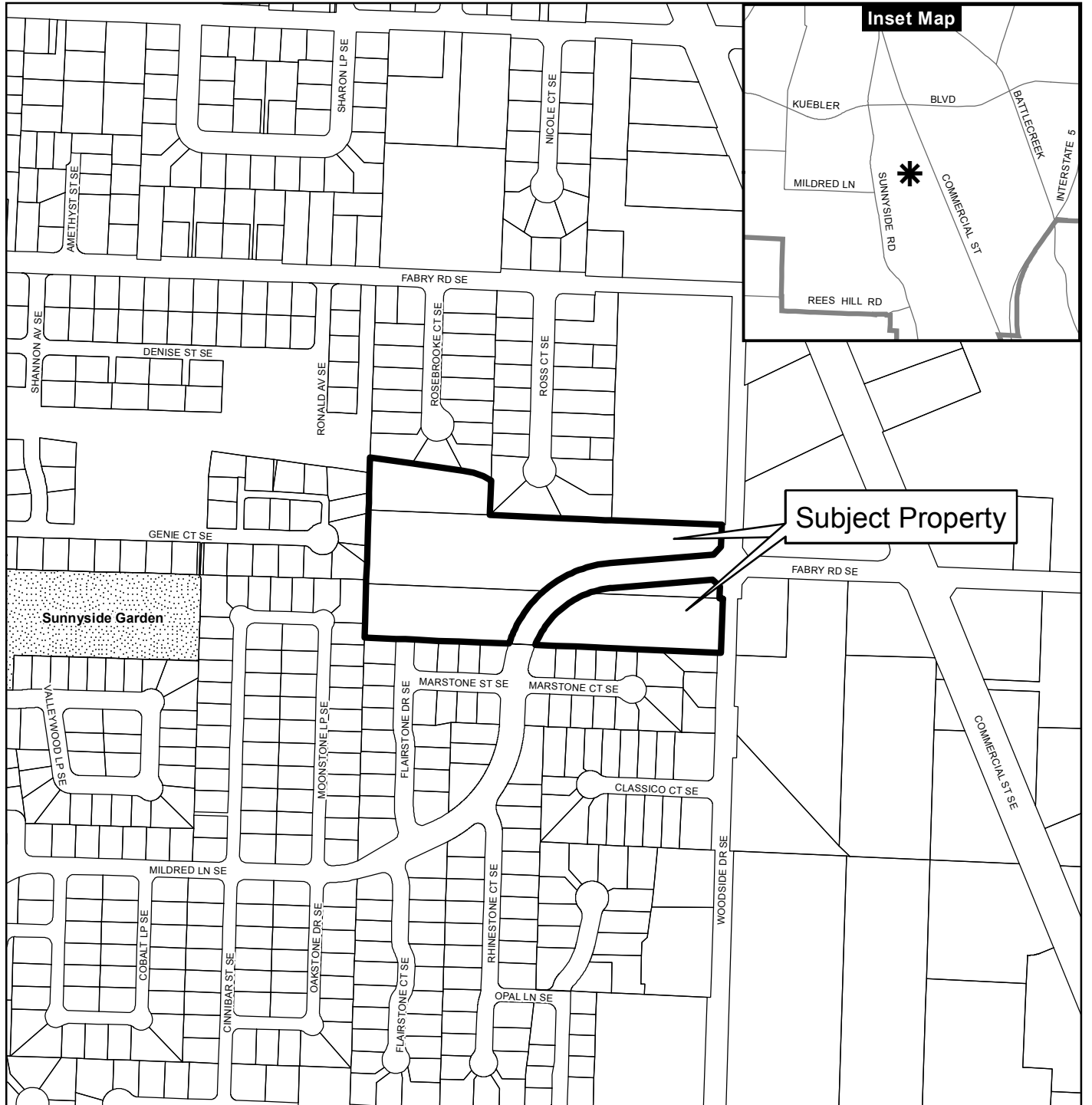
decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 245, 804. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. 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 by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

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








# Vicinity Map

## 1355 Mildred Lane SE



**Subject Property**

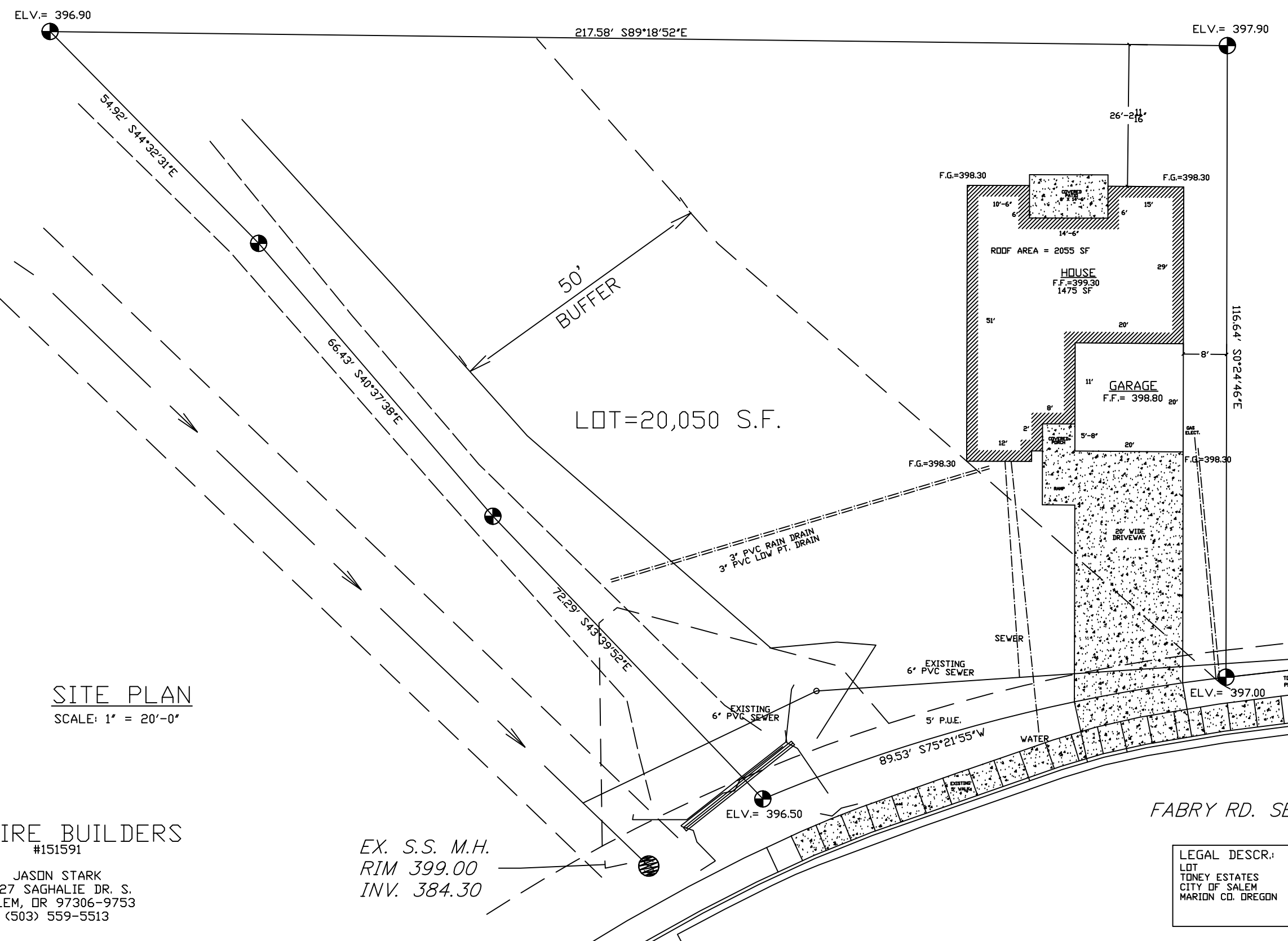
**Legend**

-  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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LOT=20,050 S.F.

HOUSE  
F.F.=399.30  
1475 SF

GARAGE  
F.F.= 398.80

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

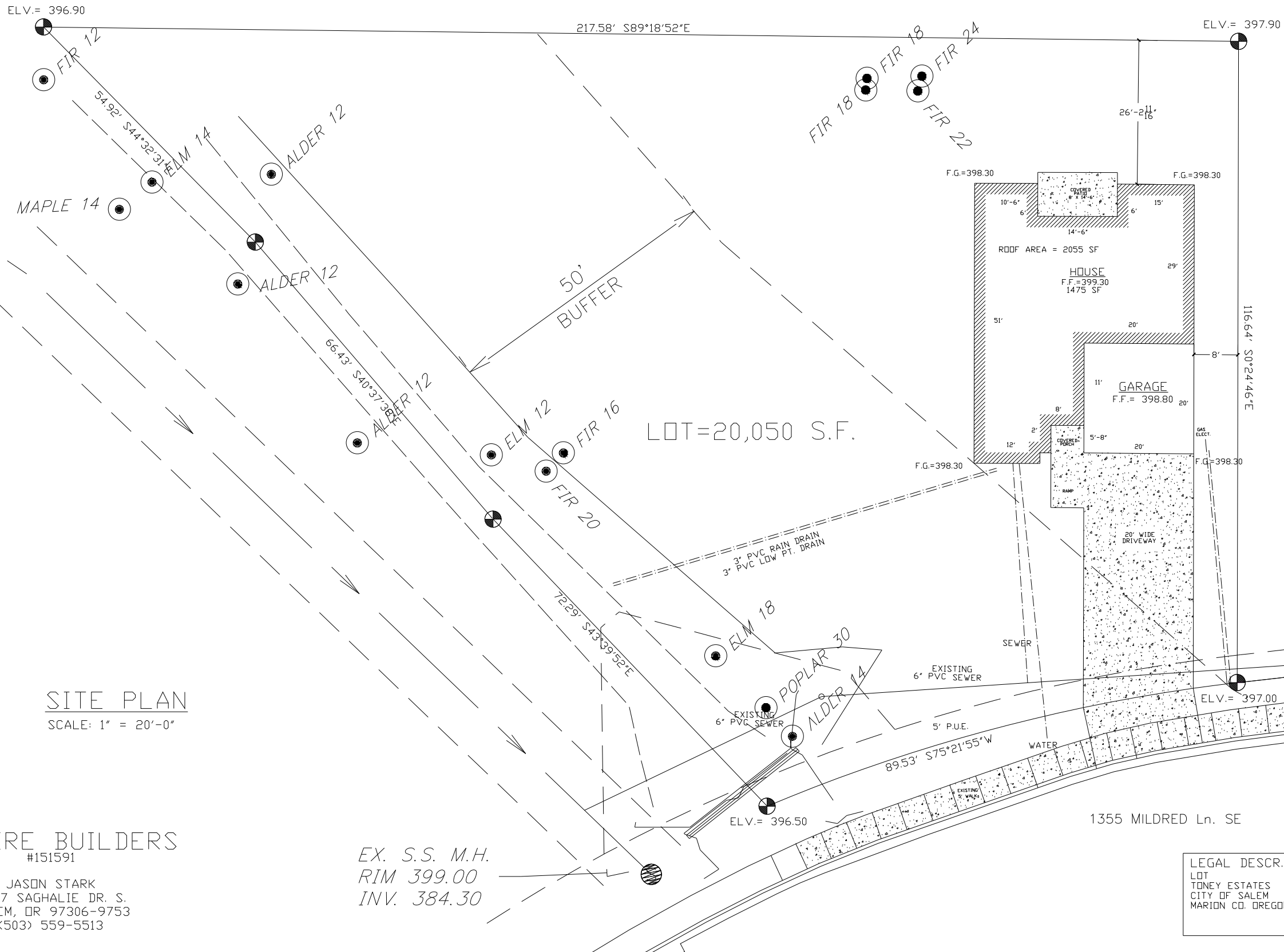
EMPIRE BUILDERS  
#151591  
JASON STARK  
8527 SAGHALIE DR. S.  
SALEM, OR 97306-9753  
(503) 559-5513

EX. S.S. M.H.  
RIM 399.00  
INV. 384.30

FABRY RD. SE

LEGAL DESCR.:  
LOT  
TONEY ESTATES  
CITY OF SALEM  
MARION CO. OREGON

# Tree Plan



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

EMPIRE BUILDERS  
#151591  
JASON STARK  
8527 SAGHALIE DR. S.  
SALEM, OR 97306-9753  
(503) 559-5513

EX. S.S. M.H.  
RIM 399.00  
INV. 384.30

LEGAL DESCR.:  
LOT  
TONEY ESTATES  
CITY OF SALEM  
MARION CO. OREGON

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A VARIANCE AND CLASS 2  
DRIVEWAY APPROACH PERMIT TO ALLOW  
A DRIVEWAY ONTO MILDRED LANE SE, A  
MINOR ARTERIAL STREET FOR PROPERTY  
APPROXIMATELY 7.6 ACRES IN SIZE, SPLIT  
ZONED RA (RESIDENTIAL AGRICULTURE),  
RS (SINGLE-FAMILY RESIDENTIAL) and IC  
(INDUSTRIAL COMMERCIAL) AND  
LOCATED AT 1355 MILDRED LANE SE,  
SALEM OREGON

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VAR-DAP21-01

FINDINGS OF FACT, CONCLUSIONS AND  
DECISION

**DATE AND PLACE OF HEARING:**

February 24, 2021; due to social distancing measures in place to help stop the spread of the Covid-19 virus, the hearing was held virtually.

**APPEARANCES:**

Staff: Sally Long, Planner I

Applicant: Empire Builders of Oregon LLC (James Helton), owner;  
Brandie Dalton, Multi-Tech Engineering, Inc., Mark  
Grenz, on behalf of applicant.

Neighborhood Association: South Gateway Neighborhood Association. No  
appearance.

Proponents: None.

Opponents: Maureen and Thomas Burd

**SUMMARY OF THE APPLICATION AND HEARING  
BACKGROUND**

On January 11, 2021, Brandie Dalton, Multi-Tech Engineering, Inc., filed Variance and Class 2 Driveway Approach Permits on behalf of one of the property owners, Empire Builders of

Oregon LLC (James Helton) for a driveway approach permit to allow a driveway approach onto Mildred Lane SE to serve a single-family residential use. On January 27, 2021, an incomplete letter was provided to the applicant requesting additional information. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete. The consolidated applications were deemed complete for processing on January 29, 2021.

The City of Salem Hearings Officer held a virtual public hearing over Zoom on February 24, 2021, at 5:30 p.m. As required by the Salem Revised Code (SRC), the public hearing notice was sent by mail to surrounding property owners and tenants, on February 4, 2021; and the public hearing notice was posted on the property.

### **SUMMARY OF THE APPLICATION**

A request for a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, for a single-family residential use. The Variance is requested because driveway access onto a minor arterial for a single-family use is prohibited pursuant to SRC 804.035. The Class 2 Driveway Approach Permit is required for a driveway approach onto a parkway, major arterial, or minor arterial pursuant to SRC 804.025(a)(1)

### **PROPOSAL**

The applicant is requesting a Variance and Class 2 Driveway Approach Permit to allow a driveway approach onto Mildred Lane SE, classified a Minor Arterial Street on the Salem Transportation System Plan, for a single-family residential use. The Variance is requested because driveway access onto a minor arterial for a single-family use is prohibited pursuant to SRC 804.035. The Class 2 Driveway Approach Permit is required for a driveway approach onto a parkway, major arterial, or minor arterial pursuant to SRC 804.025(a)(1). A vicinity map illustrating the location of the property and the location of the proposed driveway approach is Attachment A to the staff report.

### **SUMMARY OF RECORD**

The following items are accepted into the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City departments, neighborhood associations, and the public; the written staff report; the recording of the public hearing and the PowerPoint used for the staff report at the public hearing; written comments, including emails,

provided by the public before and after the public hearing; the applicant's final written argument; and all documents referenced in this decision.

## **FINDINGS OF FACT AND CONCLUSIONS**

The Hearings Officer adopts the following facts from the application, staff report and testimony:

### **FACTS AND FINDINGS**

#### **1. Salem Area Comprehensive Plan (SACP) designation**

*Urban Growth Policies:* The subject property is located within the Salem Urban Growth Boundary and the Urban Service Area.

*Comprehensive Plan Map:* The subject property is designated "Single Family Residential (SF)" and "Industrial Commercial (IC)" on the Salem Area Comprehensive Plan (SACP) Map. The surrounding properties are designated as follows:

North: Single Family Residential (SF) and Multi-Family Residential (MF)

South: Single Family Residential (SF)

East: Across Woodside Drive SE; Industrial Commercial (IC)

West: Single Family Residential (SF)

#### **2. Zoning and Surrounding Land Uses**

The subject property is split-zoned RA (Residential Agriculture), RS (Single Family Residential), and IC (Industrial Commercial), and is currently undeveloped. The surrounding properties are zoned and used as follows:

North: RS (Single Family Residential) and RM-II (Multiple Family Residential) – Single-family residential subdivision and an apartment complex

South: RS (Single Family Residential) – Single-family residential subdivision

East: IC (Industrial Commercial) – Self-service storage development and single-family residence

West: RS (Single Family Residential) – Single-family residential subdivision

#### **3. Site Analysis**

The subject property includes five tax lots with an area of approximately 7.6 acres and has approximately 248 feet of frontage on Woodside Drive SE, approximately 50 feet of frontage on Flairstone Drive SE, approximately 630 feet of frontage on the north side of Mildred Lane SE, and approximately 539 feet of frontage on the south side of Mildred Lane SE.



Mildred Lane SE is designated as a Minor Arterial street in the Salem Transportation System Plan and Flairstone Drive SE and Woodside Drive SE are designated as Local streets. Because Mildred Lane SE is designated as a Minor Arterial street, the proposed driveway approach onto Mildred Street SE for the single-family use is not allowed pursuant to SRC 804.035.

The subject property was approved for a three-lot partition in August of 2019; Partition Case PAR19-11 (staff report Attachment D is the Tentative Partition Plan). The proposed driveway approach is intended to provide access for a new single-family dwelling which the applicant submitted for development under permit 20-113775-DW. The applicant's site plan indicates the driveway approach and single-family dwelling are proposed for what is currently an undivided portion of proposed Parcel 1 of PAR19-11. The Hearings Officer note that there is no evidence in the record that the Final Plat for the partition has been recorded, therefore, there is no evidence in the record demonstrating that Parcel 1 is a separate legal parcel, rather than an undivided area on the 7.6 acre site. The Hearings Officer notes that partition tentative plans are valid for a period of two years. The approval granted by PAR19-11 must be exercised or an extension granted by September 14, 2021, or the approval of the partition will be null and void. Pursuant to SRC 300.850, Table 300-3, a partition tentative plan is allowed a maximum of four extensions with a maximum approval period of two years per each extension granted. Consequently, a number of years could pass before the Final Plat is recorded and Parcel 1 is a separate unit of land, or the approval of PAR19-11 could expire, leaving the 7.6 acres undivided.

Along the same lines, just as there is no evidence in the record that a Final Plat has been recorded, the Hearings Officer notes that there is no evidence in the record of an approved final plat or other instrument that further divides tentative plan Parcel 1 so that the proposed driveway approach would serve a separate lot. Nor does the application for this variance seem to be part of a consolidated application.

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

The subject property is located within the South Gateway Neighborhood Association. The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). The record does not include evidence that the applicant contacted the South Gateway Neighborhood Association.

Notice was provided by staff to South Gateway Neighborhood Association and to surrounding addresses, property owners, and tenants within 250 feet of the subject property. At the time of this decision, no comments were received from the neighborhood association, but two neighboring property owners appeared at the public hearing to express concerns about the driveway access related to traffic and safety on Mildred Lane SE.

## 5. City Department and Public Agency Comments

The City of Salem Building and Safety Division reviewed the Variance and Class 2 Driveway Approach Permit proposals and commented the Building and Safety Department has no zoning jurisdiction.

The City of Salem Fire Department reviewed the Variance and Class 2 Driveway Approach Permit proposals and stated that they have no concerns.

The City of Salem Public Works Department, Development Services Section, reviewed the proposal and has provided comments. Their memorandum is included with the staff report as Attachment E.

## 6. Analysis of Land Use Application Submittal – SRC Chapters 300, 245 and 804

The Hearings Officer notes that the staff report sets out a series of application submittal requirements from SRC 300.210 and the additional submittal requirements for a variance from SRC 245.005(c). The Hearings Officer notes that the staff report sets out specific deficiencies in the application, and notes that there is no evidence in the record that these deficiencies materials were corrected. The Hearings Officer notes that application requirements are not substantive criteria, and, once an application is deemed complete as required by state law and SRC 300.220, the Hearings Officer is required to base any decision on whether the applicant has met its burden of proof and demonstrated that the application satisfies the applicable criteria, based on substantial evidence in the record. The Hearings Officer views the discussion of these application deficiencies in the staff report as a useful explanation and guide for why the staff report does not provide a thorough evaluation of facts presented by the applicant and leads the Hearings Officer to a concern that the evidence in the record in this case does not demonstrate the application satisfies the substantive review criteria.

The staff report notes the following items that were required to be submitted by the applicant by SRC 300.210(a) and were either partially submitted or were not submitted:

### *SRC 300.210(a)(1) land use application*

An applicant is required to submit an application form which includes applicant's name, subject property, brief description of the proposal and signatures of the applicant(s), owner(s) of the subject property and/or those duly authorized to represent them.

The subject property contains five tax lots (083W14CB / 2301, 2400, 2401, 2500, and 2501) as one legal unit of land. The applicant was a party to a previously approved tentative partition application, which would divide the subject property into three parcels. The applicant has not yet filed the final land division map (Plat), therefore the five tax lots are still one legal property. Since the partition has not

been finalized, the land area is owned by Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The application forms submitted by the applicant listed Empire Builders of Oregon LLC as the applicant. However, the applications only contained the signature of James Helton (Empire Buildings of Oregon LLC). Signature authority was not provided by all owners of the subject property authorizing James Helton to file the application on their behalf.

Staff requested current ownership information from the applicant on January 27, 2021 to verify required property owner signatures on the land use applications. On January 29, 2021, the applicant provided written notice stating no additional information would be provided, pursuant to ORS 227.178(2)(c), and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021 without the signatures of Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The land use applications do not meet the submittal requirements of SRC 300.210(A)(G).

*SRC 300.210(a)(2), recorded deed/land sales contract with legal description.*

Pursuant to SRC 300.210(a)(2), a recorded deed or land sales contract with legal descriptions is required to be submitted with land use applications. The Marion County Assessor's site lists the owners of the subject property as Empire Builders of Oregon LLC (James Helton), Mountain West Investment Corporation, and JCT Construction Group LLC (Mark Hoyt, James Tokarski, James Cain). The deed submitted by the applicant is not the latest deed and does not reflect current ownership.

The recorded deed submitted with the land use applications does not meet the submittal requirements of SRC 300.210(a)(2).

*SRC 300.210(a)(4), pre-application conference written summary or copy of an approved pre-application conference waiver.*

Pursuant to SRC 300.100, Table 300-2, a pre-application conference is required for a variance land use application. Records indicate no pre-application conference has been requested for the variance and no approved pre-application conference waiver was submitted by the applicant. Therefore, the variance land use application does not meet the submittal requirements of SRC 300.210(a)(4).

*SRC 300.210(a)(5), a statement as to whether any City-recognized neighborhood associations whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact.*

and

SRC 300.210(a)(6), proof that the required neighborhood association contacted has been provided.

The applicant is required by SRC 300.210(a)(6) to provide a copy of an email or letter to the Neighborhood Association, meeting SRC 300.210(a)(5). The subject property is located within the South Gateway Neighborhood Association. The application form that was submitted for the variance indicates the neighborhood association has not been contacted (**Attachment F**).

The applicant did not provide, as the required materials under SRC 300.210(a)(5), that they had contacted the South Gateway Neighborhood Association in advance of filing the variance application.

The Hearings Officer notes that the requirement to contact neighborhood associations is closely tied to Statewide Planning Goal One, concerning public participation in the planning process. The Hearings Officer notes that the staff notice may have cured this particular defect.

SRC 245.005(c), submittal requirements.

In addition to the submittal requirements for a Type III application under SRC Chapter 300, an application for a variance shall include a site plan indicating future and existing development, trees, and landscaping.

The applicant's site plan indicates a driveway approach and a single-family dwelling are proposed for a portion of a lot (Parcel 1) that was approved under Partition Case No. PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. The applicant's site plan only shows a small portion of proposed Parcel 1. This small portion is not a separate or approved lot configuration. The applicant has not provided any details about future plans for the remainder of proposed Parcel 1, which makes an analysis of the proposal difficult.

Staff advised the applicant to submit a subdivision application for proposed Parcel 1, which will allow staff to determine if this portion of the lot can be served by an access from the west side of the creek. Staff also advised the applicant that another route open to them would be to request Comprehensive Plan Map and Zone Changes to implement a zone that can have a driveway access that conforms to the code, in addition to a Conditional Use approval to allow access for a single-family dwelling across from the IC zone. The Hearings Officer notes that the proposed development, as submitted, is not allowed.

Staff notified the applicant on January 27, 2021 that the site plan does not reflect the total site area and dimensions as required under SRC 245.005(c)(1) and requested a revised site plan. On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The Staff analysis is that

the site plan submitted with the variance application does not meet the additional submittal requirements of SRC 245.005(c)(1).

SRC 804.035(d) submittal requirement

SRC 804.035(d) provides that the spacing of a driveway approach providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline. The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway for the legal unit of land (subject property), for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. As staff informed the applicant, this equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with proposed findings of how the proposal meets the criteria of SRC 250.005(d)(2). On January 29, 2021, the applicant provided written notice stating no additional information would be provided pursuant to ORS 227.178(2)(c) and requested that the applications be deemed complete as submitted. The applications were deemed complete for processing on January 29, 2021. The applicant did not provide an application nor findings for a Class 2 Adjustment. This standard is not met.

## 7. Analysis of Criteria for Variances

The Hearings Officer notes that SRC Chapter 245.005(a) provides that, unless otherwise provided in the UDC, buildings, structures, or land shall not be developed contrary to the applicable development standards of the UDC unless a variance has been granted pursuant to this Chapter. Accordingly, the applicant has requested a variance to SRC 804.035, to allow access onto major and minor arterials.

SRC Chapter 245.005(d) establishes the following approval criteria for a variance:

**SRC 245.005(d)(1): There is an unreasonable hardship or practical difficulty created by the physical characteristics of the land.**

The Hearings Officer notes that the applicant points to hardship or practical difficulties related to the location of the proposal within the eastern portion of Parcel 1 of approved Partition 19-11 and the relative location of Waln Creek (and its related riparian buffer) on the subject property. The applicant argues that access to a local street will not be feasible due to the creek and the cost of impacts on the riparian corridor that would include removal of trees and required fill and grading. The applicant also argues that access onto Mildred Lane SE, which is designated a Minor Arterial street on the Salem Transportation System Plan, is necessary due to the shape of the site, the established developed surrounding properties, the location of Waln Creek, and the subject property not having access to a local or collector street. Based on this, the applicant requests a variance to SRC 804.035(a) and (c).

The Hearings Officer sees some disconnect between the timing of the applicant's request in this case and the current status of the subject property. The subject property is approximately 7.6 acres in size and is currently vacant. The Hearings Officer notes that Partition Case No. PAR19-11 approved dividing the 7.6-acre parcel into three smaller parcels, but the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the applicant's site plan shows a lot configuration for the single family home that has not been approved and is not part of this application (or possibly shows what is intended to remain a part of Parcel 1). The development, as submitted, is not allowed. The Hearings Officer has considered whether a condition of approval requiring recording of the partition plat approved by Partition Case No. PAR19-11 would address this concern. The Hearings Officer notes that such a condition would still leave the Hearings Officer with a need to determine whether an application for the driveway access to serve a single family residence on Parcel 1 can be allowed. The Hearings Officer sees no evidence in the record that demonstrates that under the current zoning for Parcel 1 the site configuration proposed by the applicant must be approved. Accordingly, the Hearings Officer declines to impose a condition to address the timing of the proposal.

SRC 804.035(a)(2)(B) and (C) provide that no driveway approach is allowed onto a major or minor arterial unless the development does not abut a local or collector street; or the development cannot be feasibly served by access onto a local or collector street. The Hearings Officer agrees with staff that in its current legal configuration, the subject property has direct street frontage on Flairstone Drive SE, which is designated a Local street on the Salem Transportation System Plan and can feasibly be served by access onto Flairstone Drive SE. The Hearings Officer agrees with staff that site layout is under the control of the applicant when developing the site, and concludes that any hardship resulting from the ultimate layout or internal organization of the site or future partitions or subdivisions would be a result of the actions of the applicant. Therefore, the Hearings Officer finds that there is no unreasonable hardship or practical difficulty created by the physical characteristic of the land that prevents the subject property from taking access onto Flairstone Drive SE.

The Hearings Officer notes that according to SRC 804.035(c)(3), no access shall be provided onto a major or minor arterial from a single family or two-family use constructed as part of a subdivision or partition. Partition Case No. PAR19-11 approved subdividing the 7.6-acre parcel into three smaller parcels. The applicant is proposing to take access onto Mildred Lane SE, a minor arterial, from a single-family use constructed as part of partition PAR19-11. However, the partition plat has not been recorded, therefore, Parcel 1 is currently not a legal parcel. Additionally, the applicant's site plan illustrates a lot configuration that has not been approved and therefore, is not a legal lot. The development, as submitted, is not allowed and therefore, access onto Mildred Lane SE for the proposed single-family use is not allowed, pursuant to SRC 804.035(c)(3).

In summary, the applicant has not adequately addressed how the subject property has an unreasonable hardship or practical difficulty created by the physical characteristics of the land. The Hearings Officer finds that the applicant has not met its burden of proof, as there is not substantial evidence in the record to support a decision that the application satisfies this criterion.

**SRC 245.005(d)(2): The variance will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity.**

The Hearings Officer notes that the applicant's complete written statement is included with the staff report as Attachment C. The Hearings Officer notes that the criteria for driveways in SRC 804.025(d) requires that a proposed driveway approach does not create traffic hazards and provides for safe turning movements and access. Table 3-1 of the Salem Transportation System Plan classifies a minor arterial street as a high capacity street that primarily serves regional and intracity travel with an Average Daily Traffic (ADT) count of 7,000 to 20,000 vehicles. The proposed driveway access for the single-family use onto Mildred Lane SE, a high capacity street, is not allowed pursuant to SRC 804.035, as it would not provide for safe turning movements and access and could potentially create traffic hazards. Testimony from Maureen and Thomas Burd raised concerns about the safety of this driveway approach entering traffic travelling at speed on Mildred Lane SE. The Hearings Officer finds that as the the subject property has direct street frontage onto Flairstone Drive SE, which is designated a Local street on the Salem Transportation System Plan, direct access to a local street is available. This direct access to a local street would avoid any concern about traffic hazards and safe turning movements related to the driveway access. As the applicant has not adequately addressed how the variance to SRC 804.035 will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity, the Hearings Officer finds that the proposal does not satisfy this criterion.

**8. Analysis of Class 2 Driveway Approach Permit Approval Criteria**

Pursuant to SRC 804.025(a), a Class 2 driveway approach permit is required for:

- (1) A driveway approach onto a parkway, major arterial, or minor arterial;
- (2) A driveway approach onto a local or collector street providing access to a use other than single family or two family;
- (3) A driveway approach providing access to a corner lot that abuts only local or collector streets, where the driveway approach will provide access onto the street with the higher street classification; or
- (4) Maintenance, repair, or replacement of an existing permitted driveway approach, which is part of, or needed for, redevelopment of commercial or industrially zoned property.

The Hearings Officer notes that a Class 2 Driveway Approach Permit is required for this proposal pursuant to SRC 804.025(a)(1) because the proposed driveway approach for a single-family residential use will provide access on to Mildred Lane SE, classified a Minor Arterial street on the Salem Transportation System Plan (TSP).

The approval criteria for a Class 2 Driveway Approach Permit are found in SRC 804.025(d); findings for the proposed driveway accesses onto Mildred Lane SE are included below.

Criterion 1:

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

The Hearings Officer notes that the proposed driveway onto Mildred Lane SE does not meet the standards for SRC 804 and the Public Works Design Standards. SRC 804.035(a)(2)(B) prohibits access onto a minor arterial if the development abuts a Local street. The applicant is proposing to take access onto Mildred Lane SE from the eastern portion of Parcel 1 of approved Partition 19-11. As the partition plat has not yet been recorded, Parcel 1 is currently not a separate legal parcel. The Hearings Officer also notes that the applicant's site plan for the proposed single-family dwelling illustrates a lot configuration that has not been approved and shows a portion of the property which is not currently a legal lot. In its current configuration, the subject property has direct street frontage onto Flairstone Drive SE, which is designated a Local street on the Salem Transportation System Plan, so the Parcel has direct access to a local street.

The proposed driveway approach is to a Minor Arterial street and therefore must meet the standards found in SRC 804.035. The proposed development is not part of a complex; therefore, the application does not satisfy SRC 804.035(a)(1). The current legal parcel also abuts Woodside Drive SE (a Local street). The applicant's proposal fails to show that there is an unreasonable hardship or practical difficulty created by the physical characteristics of the land that would preclude accessing the Local streets; the Hearings officer finds the application does not satisfy SRC 804.035(a)(2).

Pursuant to SRC 804.035(b), the driveway approach shall meet the Traffic Volume Threshold for a Minor Arterial street. A single-family home will generate less than 10 vehicle trips per day according to the Institute of Traffic Engineers (ITE) "Trip Generation Manual" 10<sup>th</sup> Edition. The proposed use of a single-family dwelling does not meet the threshold of generating 30 or more vehicle trips per day and the driveway approach does not provide access to a city park. The Hearings Officer finds that the application does not meet this standard.

Pursuant to SRC 804.035(c)(2), the driveway approach shall take access from the lowest classification of street abutting the property for corner lot. As two local streets are available, the Hearings Officer finds that this standard is not met.



Pursuant to SRC 804.035(c)(3), "No access shall be provided onto a major or minor arterial from a single-family or two-family use constructed as part of a subdivision or partition." The Hearings Officer finds that this is the plan set out in the application, so this standard is not met.

Pursuant to SRC 804.035(c)(4), a Minor Arterial access shall allow only forward-in/forward-out movements. The proposed site plan shows a driveway that requires vehicles to back out into Mildred Lane SE. This standard is not met. The Applicant stated that a turn around or other method to avoid needing to back into Mildred Land SE would be an acceptable condition of approval, but the Hearings Officer declines to impose a condition without sufficient evidence in the record to demonstrate that it is plausible to put a hammerhead or circular drive on whatever the ultimate configuration of the internal lots of Parcel 1 might be.

Pursuant to SRC 804.035(d), "Driveway approaches providing direct access to a major or minor arterial shall be no less than 370 feet from the nearest driveway or street intersection, measured from centerline to centerline." The proposed driveway approach is less than 370 feet from the intersection of Mildred Lane SE and Woodside Drive SE. Additionally, land use case number DR-CU-SPR-ADJ-DAP20-02 approved a driveway, for a multiple family development, that will provide approximately 150 feet of spacing from the proposed driveway. This equates to a 60% adjustment to the standard and requires a Class 2 Zoning Adjustment application with findings of how the proposal meets the criteria of SRC 250.005(d)(2). The Hearings Officer notes that the applicant did not provide an application nor propose findings for a Class 2 Adjustment. The Hearings Officer finds that this standard is not met.

The proposal does not satisfy this criterion.

Criterion 2:

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

The Hearings Officer notes that the proposed development is bordered on the west by Waln Creek and the proposed driveway approach is placed close to the eastern boundary. SRC 804.035(a)(2)(B) does not allow a driveway approach onto a major or minor arterial if the development is not a complex and also abuts a local or collector street. The proposed driveway approach for a single-family use is for access onto a Minor Arterial street when Local street frontage is available. The Hearings Officer finds that there are no site conditions that prohibit placing the location of the proposed driveway along the property's Local street frontage, as required by code. The Hearings Officer finds that this proposal does not meet this criterion.

Criterion 3:

The number of driveway approaches onto an arterial are minimized.

The Hearings Officer notes that the applicant states there is only one driveway proposed onto an arterial, so the proposal meets this criterion. The Hearings Officer notes that staff points out that as it currently exists, the property has an approved driveway approach to the Minor Arterial under CU-SPR-DAP-DR20-06. The proposed driveway adds a second access to an arterial street. The Hearings Officer notes that the subject property also has direct frontage onto Flairstone Drive SE, which is a Local street. The driveway approach for the property could be located on the Flairstone Drive SE frontage instead of onto a Minor Arterial street, minimizing the number of approaches onto the arterial. The Hearings Officer finds that the proposal does not meet this criterion.

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.

The Hearings Officer notes the applicant states the subject property is located on Mildred Lane (arterial) to the south and that access to adjacent streets is not available and/or feasible. The applicant argues that the possibility of sharing an accessway with the apartments to the east is not possible due to zoning differences. Therefore, from the applicant's point of view, there are no lower classified streets adjacent to the property.

The Hearings Officer notes the staff points out that the property, as existing, abuts Woodside Drive SE, a Local street. The proposed driveway approach does not propose to take access to Woodside Drive SE due to future plans for a multi-family development previously approved under CU-SPR-DAP-DR20-06. The driveway access is proposed to be taken from Mildred Lane SE, a Minor Arterial street. The Hearings Officer notes that the subject property has direct street frontage off Flairstone Drive SE, a Local street. The Hearings Officer finds that the proposed driveway approach access would not be from the lowest classification of street abutting the subject property. The Hearings Officer finds that this criterion is not met.

Criterion 5:

The proposed driveway approach meets vision clearance standards.

The Hearings Officer notes that the applicant states that as shown on the site plan, the proposed driveway does not create any vision clearance issues and is in the most feasible location and meets vision clearance standards, meeting this criterion. The Hearings Officer finds that the proposed driveway approach will meet the

PWDS vision clearance standards set forth in SRC Chapter 805. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 6:

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

The Hearings Officer notes that the applicant states that as shown on the street plan, the driveway approach does not create traffic hazards. The Hearings Officer notes that the proposed site plan shows a driveway that requires vehicles to back out onto Mildred Lane SE (a Minor Arterial). Table 3-1 of the Salem Transportation System Plan classifies a minor arterial street as a high capacity street that primarily serves regional and intracity travel with an Average Daily Traffic (ADT) count of 7,000 to 20,000 vehicles. The proposed driveway access for the single-family use onto Mildred Lane SE, a high capacity street, is not allowed pursuant to SRC 804.035. Further, the applicant's site plan does not show adequate turnaround onsite which would result in vehicles having to back out onto Mildred Lane SE. Backing out onto a high capacity street would not provide for safe turning movements and access and could potentially create traffic hazards. The Hearings Officer finds that there is not sufficient evidence in the record to demonstrate that the proposed driveway approach does not create traffic hazards, accordingly the proposal does not satisfy this criterion.

Criterion 7:

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

The Hearings Officer notes that the applicant argues that no adverse impacts to the vicinity have been identified. As shown on the site plan, the location of the driveway will not have any impacts on the subject property or adjacent properties and that this criterion has been met. 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.

The Hearings Officer notes that the applicant states the driveway approach is in the required location to minimize impacts to adjacent streets and intersection and as shown on the site plan, meets this criterion. The Hearings Officer notes that the staff agrees that the proposed driveway approach will have minimal impact to adjacent streets and intersections. The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 9:

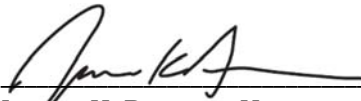
The proposed driveway approach balances the adverse impacts to residentially zoned property and the functionality of adjacent streets.

The Hearings Officer notes that the applicant states the driveway approach is in the required location to help balance the adverse impacts to residentially zoned property and takes into consideration the location of the streets adjacent to the site, the riparian corridor, the location of Waln Creek, adjacent uses, and access onto Mildred Lane, therefore, meeting this criterion. The Hearings Officer notes that the staff agreed that because the proposed development is surrounded by residentially zoned property, the driveway balances the adverse impacts to residentially zoned property and would not have an adverse effect on the functionality of the adjacent streets. The Hearings Officer notes that there is not sufficient evidence in the record to determine whether the proposed driveway approach would or would not have an adverse impact on the functionality of Mildred Lane. Accordingly, the Hearings Officer finds that the proposal does not satisfy this criterion.

**DECISION**

Based on the evidence in the record and the findings and conclusions set out above, the Hearings Officer **DENIES** the request for a variance and driveway approach permit to allow a driveway approach onto Mildred Lane SE, a Minor Arterial Street, for property approximately 7.6 acres in size, split-zoned RA (Residential Agriculture), RS (Single-Family Residential) and IC (Industrial Commercial) and located at 1355 Mildred Lane SE - 97306 (Marion County Assessor Map and Tax Lot Numbers: 083W14CB / 2301, 2400, 2401, 2500, and 2501).

DATED: March 12, 2021

  
James K. Brewer, Hearings Officer