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503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE CASE NO.: CU21-03

APPLICATION NO.: 20-118644-ZO

NOTICE OF DECISION DATE: March 19, 2021

SUMMARY: A request to add a sixth unit to a five-unit homeless shelter.

REQUEST: A Conditional Use Permit to create an additional shelter unit to serve the homeless in an existing building with five shelter units and a residential care facility, for property of approximately 1.24 acres, zoned RM-II (Multi-Family Residential), and located at 4107 Fisher Road NE 97305 (Marion County Assessors Map and Tax Lot number: 073W12AD / 700 and 800).

APPLICANT: Richard Rothweiler, ACCOAC, on behalf of the City of Salem Housing Authority

LOCATION: 4107 Fisher Rd NE, Salem OR 97305

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

FINDINGS: The findings are in the attached Decision dated March 18, 2021

DECISION: The **Hearings Officer APPROVED** Conditional Use Case No. CU21-03 subject to the following conditions of approval:

Condition 1: The Conditional Use approval shall be limited to a nonprofit shelter serving up to six persons.

The rights granted by the attached decision must be exercised, or an extension granted, by April 6, 2021, or this approval shall be null and void.

Application Deemed Complete:	<u>January 28, 2021</u>
Public Hearing Date:	<u>February 24, 2021</u>
Notice of Decision Mailing Date:	<u>March 19, 2021</u>
Decision Effective Date:	<u>April 6, 2021</u>
State Mandate Date:	<u>May 28, 2021</u>

Case Manager: Pamela Cole, pcole@cityofsalem.net, 503-540-2309

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, no later than 5:00 p.m. Monday, April 5, 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 decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240. The

NOTICE OF DECISION

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



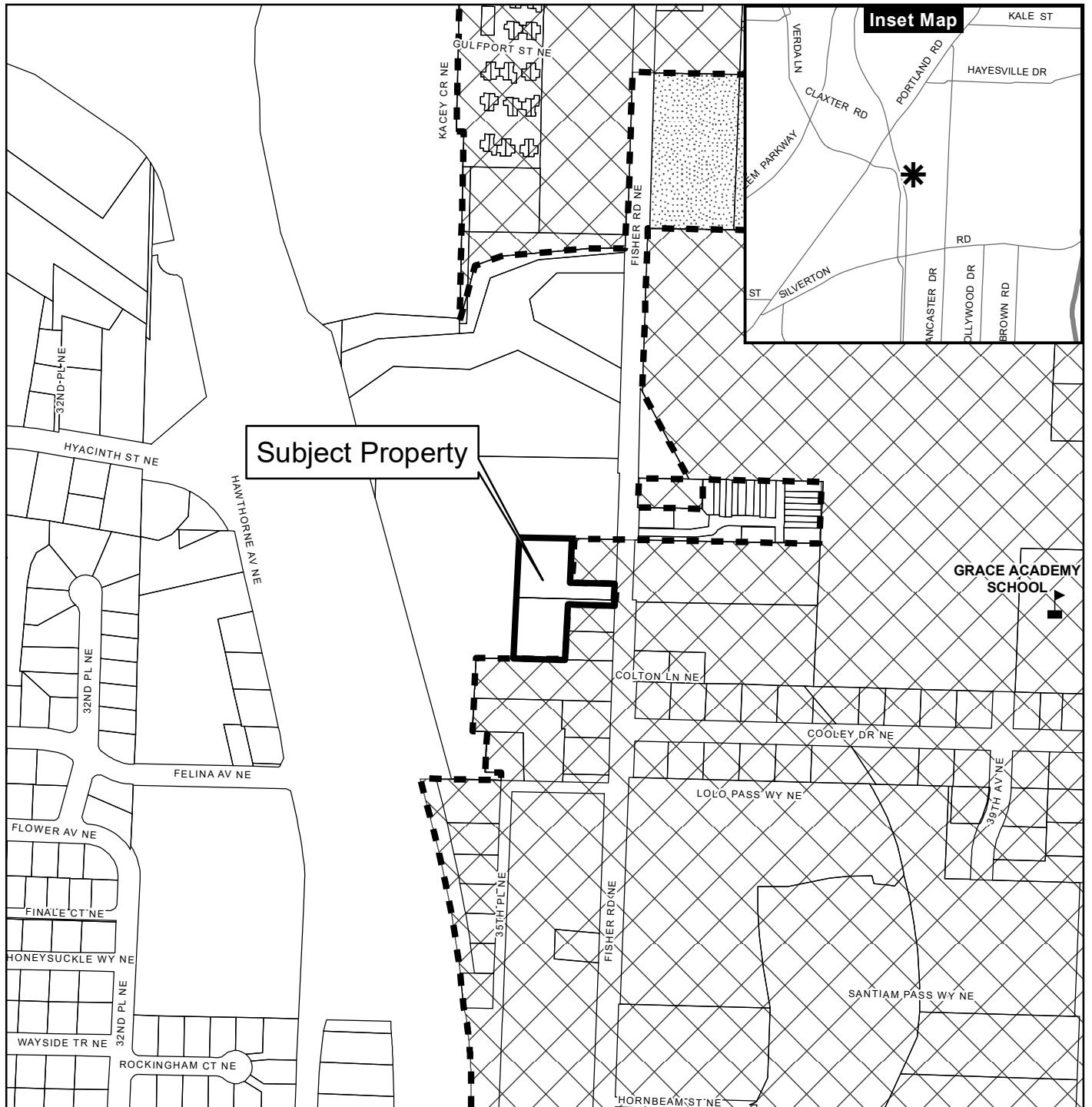
appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter 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

4107 Fisher 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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④ FIRST FLOOR PLAN

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A CONDITIONAL USE	} <u>CU21-03</u>
PERMIT TO CREATE AN ADDITIONAL	
SHELTER UNIT TO SERVE THE HOMELESS	
IN AN EXISTING BUILDING WITH FIVE	
SHELTER UNITS AND A RESIDENTIAL CARE	
FACILITY, FOR PROPERTY OF	
APPROXIMATELY 1.24 ACRES, ZONED RM-	
II (MULTI-FAMILY RESIDENTIAL), AND	
LOCATED AT 4107 FISHER ROAD NE 97305	
(MARION COUNTY ASSESSORS MAP AND	
TAX LOT NUMBER: 073W12AD / 700 AND	} FINDINGS OF FACT, CONCLUSIONS, AND DECISION
800).	

DATE AND PLACE OF HEARING:

The public hearing before the City of Salem Hearings Officer was scheduled for February 24, 2021 and was held remotely due to social distancing measures put in place to slow the spread of the COVID-19 virus.

APPEARANCES:

<u>Staff:</u>	Pamela Cole, Planner II
<u>Neighborhood Association:</u>	Northgate Neighborhood Association
<u>Proponents:</u>	Richard Rothweiler, ACCOAC, on behalf of City of Salem Housing Authority
<u>Opponents:</u>	Margaret Legrande
<u>Neutral:</u>	Byron Meadows

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

On December 3, 2020, a Conditional Use Permit application was submitted. On December 22, 2020, the application was accepted for processing. The application was deemed complete for processing on January 28, 2021.

PROPOSAL

The applicant is requesting to convert a living room area within an existing building at 4107 Fisher Road NE to a shelter unit bedroom. This will increase the number of shelter units (beds) within the building from five to six. No changes to the exterior of the existing building are proposed.

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 "Multiple Family Residential." The subject property is within the Urban Growth Boundary and within the Urban Service Area.

2. Zoning and Surrounding Land Uses

The subject property is zoned RM-II (Multiple Family Residential - II). The proposed use of a nonprofit shelter serving up to six homeless persons is a Conditional Use in the RM-II zone. Therefore, a conditional use permit is required for the proposal.

The zoning of surrounding properties is as follows:

North:	RM-II (Multiple-Family Residential - II)
South:	Marion County RM (Multiple Family Residential) and UD (Urban Development)
East:	Marion County UD (Urban Development)
West:	RM-II (Multiple-Family Residential - II)

3. Site Analysis

The subject property consists of two contiguous tax lots with a combined area of approximately 1.24 acres and total frontage of approximately 62 feet on Fisher Road NE. In the Transportation System Plan, Fisher Road NE is designated as a Collector street.

4. Neighborhood and Citizen Comments

The subject property is located within the Northgate Association (Northgate). The applicant stated that no Homeowner's Association registered with the Oregon Secretary of State is applicable to the subject property. The applicant provided notice to Northgate according to SRC 300.310 before the application was accepted. Notice was provided to Northgate and to surrounding addresses, property owners,

and tenants within 250 feet of the subject property. The Northgate Association supports the application.

The Hearings Officer has received email testimony from Margaret Legrande, who owns neighboring property, opposing the addition. Ms. Legrande provided email testimony regarding noise complaints and concern for her tenants. The Hearings Officer has also received email comment from Byron Meadows, sharing concerns about nearby litter and parking issues on nearby property, though he did not expressly oppose the project.

5. City Department and Public Agency Comments

The Public Works Department reviewed the proposal and had no comments.

The Salem Building and Safety Division reviewed the proposal and stated that the architect shall show how the structure meets building code occupancy requirements in a code summary.

The applicant was notified by staff that a building permit and site plan review would be required to provide the information required by Building and Safety. The applicant will submit a Class 1 Site Plan Review and building permit application if the Conditional Use application is approved.

The Salem Fire Department reviewed the proposal and stated that Fire Department access and water supply are existing for the structure.

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 the subject property is zoned RM-II (Multiple-Family Residential II). The proposed conversion of a living area to a bedroom to serve a sixth person within a nonprofit shelter currently serving five persons is a

Conditional Use in the RM-II zone. Therefore, a conditional use permit is required for the proposal.

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.

Applicant's Statement: The applicant states that the existing building is located deep into the site to minimize impacts to the neighborhood; existing parking is provided on-site to alleviate parking issues in the neighborhood; an existing chain-link fencing with privacy slats separates the entire site from the adjacent neighborhood; the existing building footprint restricts shelter units to the first floor; and existing building security, door monitoring/security, and site supervision reduce any potential adverse impacts to the surrounding neighborhood.

The Hearings Officer notes that the proposed change of a living area to a bedroom would allow up to six persons to occupy an existing nonprofit shelter that currently serves up to five persons on the first floor of a three-story building. The net possible increase is one person. The building also includes residential care facility rooms on the second and third floors.

The Hearings Officer notes that the subject property has an existing access easement and parking lot drive aisle that extends approximately 260 feet from the narrowest part of the site along Fisher Road NE to the center of the widest part of the site at the west property line. The building is located near the north and northwest property lines that abut an existing apartment development. Sight-obscuring fencing surrounds the site.

The existing building is 19,335 square feet, according to the applicant's site plan, and no expansion is proposed. The minimum off-street parking requirement for a residential care facility or a nonprofit shelter (other than those serving victims of domestic violence) is one space per 350 square feet. For the existing building, the minimum requirement is $19,335 / 350 = 55$ spaces. The site plan indicates 57 parking spaces.

The Hearings Officer notes that because the proposed shelter unit is within an existing building, no changes are proposed to the exterior of the building, and no other changes are proposed on the property, there will be no change in appearance, no visual impact, and little to no vehicle traffic impact on the immediate neighborhood.

The Hearings Officer notes the testimony in opposition by Ms. Legrande and the neutral testimony from Mr. Meadows. In summary, both express concerns about the potential negative impacts from this proposed development, and provide examples of noise, parking, traffic, litter, and other current issues occurring on or from nearby property. The Hearings Officer notes that there is no evidence that any of these issues are caused in any way by the applicant's current activities in the building. The Hearings Officer is not persuaded that the current operation contributes to any of these impacts, and is not persuaded that the addition of one shelter bed and one additional person inside an existing building will contribute any additional impact.

In order to ensure that the proposed use minimizes impacts, the Hearings Officer imposes the following condition as recommended by staff:

Condition 1: The Conditional Use approval shall be limited to a nonprofit shelter serving up to six persons.

As conditioned, the proposed development will have a minimal impact on the immediate neighborhood. The Hearing Officer finds that the application 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.

Applicant's Statement: The applicant states that the proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property. An existing six-foot-tall chain link fence with privacy slats screens the subject property from a fully developed apartment complex on the north and west, existing single family homes on deep lots near Fisher Road NE that could be developed with apartments, and existing single family homes on large parcels to the south that could be developed with apartments.

The Hearings Officer notes that the proposed use will be reasonably compatible with the surrounding property. The Subject Property is designated Multi-Family Residential in the Salem Area Comprehensive Plan and zoned RM-II. It is surrounded by residential properties that are designated Multi-Family Residential in the Salem Area Comprehensive Plan and are or could be developed with apartments, residential care facilities, or shelters. The property to the north and west is zoned RM-II and developed with apartments. The property outside city limits to the south and zoned RM in Marion County would automatically be zoned RM-I or RM-II upon annexation into the City of Salem. The property outside city limits to the east and zoned UD in Marion County would require a change in land use

designation to City of Salem RM-I or RM-II to be consistent with the Comprehensive Plan designation upon annexation into the City of Salem.

The Hearings Officer finds that the proposed change of one living area to a bedroom within the existing shelter and residential care facility building will have minimal impact on the livability or appropriate development of the surrounding residential properties. The Hearings Officer notes that potential impacts on the surrounding properties would be very minimal because only one additional resident would be accommodated within the nonprofit shelter.

The Hearings Officer notes that no changes are proposed to the exterior of the building, and the development will retain its current appearance. The building, parking, and vehicle use area met the standards of the RM-II zoning district at the time they were developed.

The Hearings Officer finds that the proposal satisfies this approval criterion, and therefore satisfies the criteria for the Conditional Use.

DECISION

The Hearings Officer APPROVES the request for a conditional use to create an additional nonprofit shelter unit in an existing building with five nonprofit shelter units and a residential care facility on a property approximately 1.24 acres located at 4107 Fisher Road NE, subject to the following conditions of approval:

CONDITIONAL USE:

Condition 1: The Conditional Use approval shall be limited to a nonprofit shelter serving up to six persons.

DATED: March 18, 2021

A handwritten signature in black ink, appearing to read 'James K. Brewer', written over a horizontal line.

James K. Brewer, Hearings Officer