



# CITY OF SALEM

585 Liberty St SE  
Salem, OR 97301

## Staff Report

---

File #: 16-311

Version: 1

Date: 10/24/2016

Item #: 4.a.

---

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Glenn W. Gross, Community Development Director

**SUBJECT:**

Appeal of Planning Commission's decision approving Design Review/Site Plan Review Case No. DR/SPR16-03 for property located at 152-172 Pembrook Street SE and 4752 Liberty Road S - 97302

Ward(s): Ward 7

Councilor(s): Bednarz

Neighborhood(s): Faye Wright

**ISSUE:**

Shall the City Council affirm, amend, or reverse the decision of the Planning Commission for Design Review/Site Plan Review Case No. DR/SPR16-03?

**RECOMMENDATION:**

Staff recommends that the City Council AFFIRM the September 9, 2016 Planning Commission's Decision.

**SUMMARY AND BACKGROUND:**

In 2015, the City Council approved a Zone Change and Conditional Use permit, on appeal, to allow an 88-unit multi-family development on the subject property (Attachment 1). The City Council imposed conditions on building height, setbacks, fencing and trees to mitigate the impact of the proposed use on the abutting properties.

A consolidated Design Review and Site Plan Review application was approved by the Planning Commission, subject to conditions of approval (Attachment 2 and 3). An appeal of the decision was filed by the Faye Wright Neighborhood Association (Attachment 4).

## FACTS AND FINDINGS:

### Procedural Findings

1. In 2015, a consolidated Zone Change and Conditional Use Permit application (ZC-CU15-03) was submitted requesting to eliminate a use limitation condition from a 1997 Comprehensive Plan Change/Neighborhood Plan Change/Zone Change decision, as well as a request to develop the subject property with a multi-family residential use. The City Council made the final local decision for this case, approving the Zone Change and Conditional Use Permit subject to conditions of approval to mitigate the impact of the proposed use on the abutting properties (Attachment 5).
2. On July 12, 2016, an application for Class 3 Design Review and Class 3 Site Plan Review was submitted to the Community Development Department. The application was deemed complete on August 11, 2016.
3. On September 9, 2016, the Planning Commission issued a decision approving the Class 3 Design Review and Class 3 Site Plan Review request.
4. On September 23, 2016, the Faye Wright Neighborhood Association filed a timely appeal of the decision. A public hearing before the City Council is scheduled for October 24, 2016.
5. Notice of the appeal hearing was sent to the Faye Wright Neighborhood Association and surrounding property owners pursuant to Salem Revised Code requirements. Notice of the appeal hearing was posted on the subject property on October 11, 2016.

### Substantive Findings

1. The applicable criteria and considerations that must be satisfied for the approval of the Class 3 Design Review and Class 3 Site Plan Review in this case are included within the City's design review chapter (SRC Chapter 225) under section 225.005(e)(2), the multi-family design standards and guidelines chapter (SRC Chapter 702), and the site plan review chapter (SRC Chapter 220) under section SRC 220.005(f)(3).

Findings establishing the conformance of the proposed Class 3 Design Review and Class 3 Site Plan Review with the applicable approval criteria are included in the September 9, 2016 decision, which is included as Attachment 3 to this report and incorporated by reference.

2. Faye Wright Neighborhood Associations' appeal of the Class 3 Design Review and Class 3 Site Plan Review decision is included as Attachment 4. The appeal asserts that the Planning Commission decision fails to support the stated objective of minimizing the impact of the multi-family use on the surrounding property owners in one specific case: one of the two buildings along the northeast boundary where the complex abuts four residential properties has second floor balconies on the north side of the building facing the residential properties.

Their appeal states that balconies can provide additional opportunities for bothersome noise

and increased visibility into nearby properties. In keeping with the intent of the Council's objectives to "minimize the impact of multi-family use on the surrounding property owners," the Appellant requests that the City Council require that there be no balconies on the north side of the two buildings that abut the residential properties on Music Street and Dancers Court.

**Staff Response:**

The appellant states that the Planning Commission decision for the Design Review and Site Plan Review application fails to support the stated objective of minimizing the impact of the multi-family use on the surrounding property owners, as previously approved by the City Council in February 2016, under the Conditional Use Permit Case No. ZC-CU15-03.

The purpose of the Conditional Use Permit process is to determine whether conditions are necessary to minimize the negative impacts on uses in the surrounding area. During the Conditional Use Permit review for this case, four conditions were placed on the approval specifically to minimize the impact of the multi-family use on the surrounding property owners:

- Condition 5: Within 80 feet of the abutting RS-zoned land to the north, buildings shall not exceed two stories in height, nor exceed 35 feet in height.
- Condition 6: An 8-foot-tall, decorative, sight-obscuring fence or wall shall be provided adjacent to the abutting RS zone to the north. The fence or wall shall be constructed of materials commonly used in the construction of fences and walls, such as wood, stone, rock, brick, or other durable materials. Chain link fencing with slats shall not be allowed to satisfy this condition.
- Condition 7: Where the development site abuts a RS zone to the north, trees within the required setback shall be not less than 12 feet in height at the time of planting.
- Condition 8: The multi-family use may have one driveway, providing access for emergency vehicles only, onto Pembrook Street SE.

It should be noted that the conceptual site plan that was provided for the Conditional Use Permit review did show balconies on the north side of the proposed buildings facing the RS (Single Family Residential) zoned property. No conditions of approval were placed on the Conditional Use Permit which would prevent balconies from being placed on the north side of the buildings facing the abutting RS zone. The Conditional Use Permit would have been the appropriate time to place a condition of approval on the development with the goal of minimizing the negative impacts of the multi-family use on the surrounding property owners.

The Multi-Family Design Guidelines (SRC Chapter 702) require private open space to be provided for each proposed dwelling unit in the form of balconies/decks and/or patios.

*SRC 702.015(d)(1)(A) - Private Open Space  
Individual private open space shall be provided for each dwelling unit in all newly constructed multiple family developments.*

SRC Chapter 702 does not limit the direction which balconies face.

Proposed Building 2 is set back from the northern property line by approximately 26 feet. The two-story building is less than 35 feet in height, in compliance with Condition 5 from ZC-CU15-03. Private open space is provided for each proposed dwelling units within Building 2, including balconies on the second floor. The proposed design complies with the conditions of approval from the ZC-CU15-03 and the applicable guidelines in SRC Chapter 702.

The Appellant has not identified any applicable criteria that appears to prohibit the applicant from providing balconies for the dwelling units, and pursuant to SRC 702.015(d)(1)(A) a failure to provide them would violate the criterion. Although Council's prior Conditional Use Permit decision placed several conditions on the development to mitigate the impact of the proposal on the neighboring property, the conditions did not address these balconies; in fact the conceptual site plan in the record of the Conditional Use Permit decision identified the balconies that the Appellant now complains of.

3. In conclusion, the proposed Class 3 Design Review/Class 3 Site Plan Review satisfies the applicable approval criteria of SRC 225.005(e)(2) and SRC 220.005(f)(3).

Aaron Panko  
Planner III

Attachments:

1. Vicinity Map
2. Approved Plans
3. Planning Commission Decision
4. Faye Wright Neighborhood Association Appeal Letter
5. ZC-CU 15-03 City Council Decision

10/24/2016