

## Legislation Details (With Text)

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**In control:** City Council

**On agenda:** 11/23/2020 **Final action:** 11/23/2020

**Title:** Appeal of the Planning Commission's decision approving Comprehensive Plan Map Designation, Neighborhood Plan Change, Zone change, Class 3 Site Plan Review, Class 1 Design Review and Class 2 Adjustments to develop a 19-unit multi-family complex for properties located at 905 and 925 Cottage Street NE.

Ward(s): Ward 1  
Councilor(s): Vacant  
Neighborhood(s): Grant Neighborhood Association  
Result Area(s): Welcoming and Livable Community

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Vicinity Map, Site Plans and Building Elevations, 2. Grant Neighborhood Association Appeal, 3. Planning Commission Decision for Case No. CPC-NPC-ZC-SPR-ADJ-DR20-03, 4. Public Comments Submitted after October 29,2020, 5. Additional Public Comment received by 5:00 p.m. 11-18-20.pdf, 6. Public Comments received by 3:00 p.m. 11-23-20.pdf, 7. Public Comments received by 5:00 p.m. 11-23-20pdf

Date	Ver.	Action By	Action	Result
11/23/2020	1	City Council	approved as amended	Pass

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

**SUBJECT:**

Appeal of the Planning Commission's decision approving Comprehensive Plan Map Designation, Neighborhood Plan Change, Zone change, Class 3 Site Plan Review, Class 1 Design Review and Class 2 Adjustments to develop a 19-unit multi-family complex for properties located at 905 and 925 Cottage Street NE.

Ward(s): Ward 1  
Councilor(s): Vacant  
Neighborhood(s): Grant Neighborhood Association  
Result Area(s): Welcoming and Livable Community

**ISSUE:**

Shall the City Council affirm, amend, or reverse the Planning Commission's decision for Comprehensive Plan Map Designation, Neighborhood Plan Change, Zone change, Class 3 Site Plan Review, Class 1 Design Review and Class 2 Adjustments Case No. CPC-NPC-ZC-SPR-ADJ-DR20-03?

## **RECOMMENDATION:**

Staff recommends that the City Council affirm the Planning Commission's decision for Comprehensive Plan Map Designation, Neighborhood Plan Change, Zone change, Class 3 Site Plan Review, Class 1 Design Review and Class 2 Adjustments Case No. CPC-NPC-ZC-SPR-ADJ-DR20-03.

## **SUMMARY:**

On October 12, 2020, the Planning Commission issued a decision approving a request by DevNW, Inc to change the Comprehensive Plan, Neighborhood Plan and Zoning to Multiple Family High-Rise Residential and approved a Class 3 Site Plan Review, Class 1 Design Review and Class 2 Adjustments to develop a 19-unit multi-family complex, subject to conditions of approval.

The subject properties are approximately 0.30 acres, located at 905 and 925 Cottage Street NE, and have frontage on Cottage Street NE on the east, and D Street NE on the south (**Attachment 1**).

The Grant Neighborhood Association filed an appeal on October 26, 2020 (**Attachment 2**).

## **FACTS AND FINDINGS:**

### Procedural Findings

1. On December 3, 2019, an application was filed for a Comprehensive Plan Map Amendment, Neighborhood Plan Map Amendment and Quasi-Judicial Zone Change to change two lots totaling approximately 0.30-acre subject properties from "Single Family Residential" to "Commercial Office" and to change the zoning from RS (Single Family Residential) to CO (Commercial Office).
2. On July 24, 2020, the applicant amended their request to change the Comprehensive Plan Map and Neighborhood Plan designation of the subject property from "Single Family Residential" to "Multiple Family" and to change the zoning of that portion from RS (Single Family Residential) to RH (Multiple Family High-Rise Residential) and added a Class 3 Site Plan Review, Class 2 Adjustment and Class 1 Design Review to develop a 19-unit multi-family development.
3. On October 12, 2020, after conducting a public hearing, the Planning Commission issued a decision approving the applications with conditions.
4. On October 26, 2020, the Grant Neighborhood Association filed an appeal. A hearing was scheduled before the City Council on November 23, 2020.

5. On November 2, 2020, notice of the hearing was sent to the Grant Neighborhood Association and surrounding property owners and tenants pursuant to Salem Revised Code requirements. Notice of the hearing was posted on the subject property on November 11, 2020.
6. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. Pursuant to ORS 227.178(10), the additional applications have been filed concurrently, are being considered jointly with the proposed comprehensive plan amendment and are not subject to the 120-day rule.

### Substantive Findings

#### 1. Proposal

A consolidated application to change the Comprehensive Plan Map Designation, Neighborhood Plan Change and Zone change of an approximately 0.30-acre land area from Single Family Residential with RS (Single Family Residential) zoning to RH (Multiple Family High-Rise Residential) zoning. The application includes a Class 3 Site Plan Review, Class 1 Design Review to develop a 19-unit multi-family complex and Class 2 Adjustments to:

- Setback adjustment from 12-feet abutting a street (including special setback) to 4.25-feet for ADA landing (SRC 515.010(b)).
- Reduce the common open space dimension standard reduced from 25-feet on all sides to 20-feet. (SRC 702.020(a)(1)(A))
- Reduce windows in all habitable rooms, other than bathrooms, on each wall that faces common open space, parking areas, and pedestrian paths to encourage visual surveillance of such areas and minimize the appearance of building bulk to only provide windows on one wall. (SRC 702.020(c)(1))
- To allow the building to not provide an architectural detail which is intended to visually break up the building's vertical mass, the first floor of each building, except for single-story buildings, shall be distinguished from its upper floors. (SRC 702.020(e)(10))

The applicant's original request included an additional zoning adjustment to reduce the overall common open space on the site. However, at the Planning Commission public hearing, the applicant presented a revised site plan that removed one parking space and added additional open space, eliminating the need for the zoning adjustment. The Planning Commission approved the revised site plan.

#### 2. Planning Commission's Decision

The Planning Commission approved the application with the following conditions (**Attachment 3**):

**Condition 1:** The subject properties shall be limited to 19 units.

**Condition 2:** The maximum lot coverage allowance for all uses shall not exceed 50 percent.

**Condition 3:** The maximum building height allowance for all uses shall be 50 feet.

- Condition 4:** Outdoor Storage shall be screened from streets and adjacent properties by a minimum 6-foot high sight-obscuring fence, wall, or hedge.
- Condition 5:** The applicant shall be required to demonstrate that mitigation for the adverse effect to the resources at 905 and 925 Cottage Street NE has been agreed to through submittal of the Memorandum of Agreement (MOA) signed by the State Historic Preservation Office (SHPO) prior to building permit issuance for the project.
- Condition 6:** Prior to issuance to building permits the applicant shall complete property line adjustment to consolidate 073W23CB / 14301 and 073W23CB/ 14300.
- Condition 7:** Pedestrian pathways as depicted on the site plan shall be provided connecting the two buildings and vehicle use area.
- Condition 8:** All pedestrian paths and connections shall be a minimum of 5-feet in width, shall be visually differentiated from driveways, parking areas, parking lot drive aisles, and loading areas by elevation changes, physical separation, speed bumps, or a different paving material. Wheel stop or extended curbs shall be provided along pedestrian connections to prevent encroachment.
- Condition 9:** The existing driveway approaches along D Street NE shall be closed and the curb, landscape strip and sidewalk replaced in accordance with Public Works Development Standards.

### 3. Grant Neighborhood Association Appeal

The Neighborhood Association's appeal application and supporting documentation are included as **Attachment 2**. The appeal raises the following issues:

Equally or Better Suited Designation:

*The Planning Commission did not adequately demonstrate how the specific properties are equally or better suited as Multiple Family High-Rise Residential (RH) zone. The Planning Commission relies on characteristics that are not unique to the properties themselves.*

**Staff Response:** The Planning Commission's decision includes five conditions which align the proposal with the Multi-Family Residential II (RM-II) zone, which was suggested by the Neighborhood Association. The applicant has proposed 19 single bedroom or studio apartments, which exceeds the density of the RM-II zone. The only other multi-family zoning designation which allows a greater density is Multiple Family High-Rise Residential (RH). The name of the zoning district reflects some of the differences between the two zones.

The RH zone has a greater height limitation, no maximum density, increased lot coverage standards and less restrictions on outdoor storage. The Planning Commission decision includes four conditions to reflect the RM-II standard. The conditions limit the height to the same height as the RM-II zone (50-feet) and imposed a maximum of 19 units on the property, instead of allowing an unlimited density.

The Planning Commission received testimony that the RM-II zone would be better suited to the property and that the unlimited density, and specifically, that the proposed nineteen units, was too high of a density for the property.

The applicant's proposal is for nineteen one-bedroom or studio units. The subject properties, under the RM-II zone, would be allowed a maximum of nine dwelling units. However, the RM-II zone does not have limitations or standards regarding the number of bedrooms within a dwelling unit. The majority of the multi-family projects developed within the City of Salem have two and three bedroom dwelling units. Therefore, a typical multifamily nine-unit development would include between 18 to 27 bedrooms on the subject properties, greatly exceeding the number of rooms and residents on the property then the proposal. The Planning Commission considered this in their decision when weighing the impact of the proposal.

The physical characteristics of the property, including its relationship to a collector street, its location within an area providing a wide range of housing types, proximity to the Cherriots Core Network, downtown amenities and that the properties are partially developed as a non-residential use make it appropriate for a multifamily zone, and as conditioned the proposed RH zone.

According to the Housing Needs Analysis, "Salem has a deficit of capacity in the MF designation, with a deficit of 2,897 dwelling units and a deficit of 207 gross acres of residential land" while conversely finding that the City has a surplus of available single family residential lands. The proposed change in designation would allow for a redevelopment that will allow multi-family development which will help to meet the changing needs of the Salem urban area.

The Planning Commission found that multifamily lands are needed within the City and generally the Multi-Family designation and RM-II zone is an equally or better suited designation and zone. The applicant's proposal for nineteen, one-bedroom/studio dwelling units would not be within the density thresholds of the RM-II zone and can be provided with the RH zone. The Planning Commission found with conditions of approval that limit the density to 19 units, as proposed, that the proposal is equal to the number of bedrooms allowed in the RM-II zone and therefore an equally suited designation and zone.

Additional findings regarding 'equally or better suited designation' are addressed on Pages 13 - 14 of the Planning Commission's decision (**Attachment 3**).

Inadequacy of an Open House to Satisfy Statewide Planning Goal 1:

*The applicant failed to hold the required open house. The applicant's May 4, 2020 open house does not apply to this consolidated application and was only for a minor comprehensive plan amendment and zone change.*

**Staff Response:** The applicant conducted an Open House on May 4, 2020 and submitted an application on May 22, 2020, which meets the 90-day requirement. The intent of the Open House is to provide feedback to the applicant from the neighborhood association and surrounding property owners/tenants on the proposal. The Open House provided the applicant with information and concerns, which appears to have been taken into consideration and resulted in an alteration of the proposal from Commercial with Commercial Office (CO) Zone to Multi-Family and Residential High-Rise Zone (RH) zone.

Staff did identify additional applications needed for the proposal to move forward, which commonly happens as we review an application for completeness. The Open House presented by the applicant did include the site plans, elevations and additional information which is reviewed by the Site Plan Review, Adjustments and Design Review applications.

The additional application types that Staff identified, do not require an Open House. All of the work and plans associated with the entire application was presented at the Open House.

Statewide Planning Goal 5:

*The Planning Commission decision represents an adverse effect to properties eligible for listing on the National Register of Historic Places. The condition of approval is insufficient to protect the properties since the applicant is only required to engage with Oregon State Historic Preservation Office (SHPO).*

**Staff Response:** The funding for the proposed project includes federal funds that are passed through the City of Salem to the applicant. These federal funds trigger a review under the National Historic Preservation Act. Funds for this project are from the federal Housing and Urban Development Department (HUD). As required by HUD, prior to distribution of these federal funds, the City of Salem is responsible for demonstrating compliance. The review must determine if the structures are eligible for listing on the National Register of Historic Places, and if so, if the proposed project will constitute an adverse effect to these historic resources. If the Oregon State Historic Preservation Office (SHPO) determines the resource is eligible and the project will have an adverse effect, these adverse effects must be resolved according to the National Historic Preservation Act. If an adverse effect cannot be avoided, appropriate mitigation must then be imposed. These determinations are made by SHPO, though the City's Historic Landmarks Commission will be asked to weigh in on proposed mitigation, if necessary.

SHPO concludes that the Evergreen Church and Parsonage located at 905 and 925 Cottage Street NE are currently eligible for listing on the National Register of Historic Places and are therefore potential significant historic resources under Oregon's Statewide Planning Goal 5 within the City of Salem. The SHPO further concludes that the proposed rehabilitation project with conversion of the church to housing will constitute an adverse effect to these historic resources and mitigation is required by the Oregon SHPO under the National Historic Preservation Act. With the adverse impact determination made by SHPO, the City's Historic Landmarks Commission will weigh in on proposed mitigation.

The Planning Commission included Condition 5 (**Attachment 3**) to address this adverse effect and meet the requirements under Goal 5 for the protection of historic resources,

The appellant discusses that the applicant can choose not to use federal funds for portions of the project and not have to address the adverse impact determined by SHPO. Any federal funds used on the site will require compliance with the National Historic Preservation Act, regardless if the applicant uses private money for the development of the structures.

Additional Goal 5 findings are addressed on Pages 19-20 of the Planning Commission's decision (**Attachment 3**).

The amendment is in the public interest and would be of general benefit:

*The Planning Commission erred in findings related to the general benefit of the application. There is no indication that the Planning Commission has seriously weighed the costs of their decision, instead relying upon the need for housing to justify the request. The 'draft Vision for Our Salem' does not include the subject properties as multi-family.*

**Staff Response:** The proposal would increase the density within the City of Salem and may serve a vulnerable population. The change to Multifamily Residential is in the public interest and would be of general benefit because it would increase the number of housing units that can be provided on the subject property, consistent with the capacity of infrastructure, including transportation, serving future development. The Our Salem draft vision include goals about creating complete neighborhoods, which includes convenient access to jobs, services and amenities of residents. The proposed multifamily project is in a location that would provide close proximity to all of those amenities. In addition, the Our Salem Vision is currently a draft and could be changed and the applicant had applied for the proposed change prior to the Vision being presented. The draft vision seeks to increase the amount of land available for multifamily housing given the projected deficit of 207 gross acres of multifamily land, and the proposed project would provide more multifamily housing.

Grant Neighborhood Plan:

*The Planning Commission's decision is in error when justifying the project under the Grant Neighborhood Plan, when the neighborhood plan would specifically call for denial of zone changes that would be more intensive than single family. The Planning Commission cannot say the plan supports the zone change and then the plan is invalid under State and City Codes.*

**Staff Response:** The Grant Neighborhood Plan is a component of the Salem Area Comprehensive Plan. Statewide land use planning goals are the final standard to be used in interpreting the comprehensive plan, and the comprehensive plan shall be interpreted in a manner that is consistent with the statewide land use planning goals.

SRC 64.010, Rules of Construction states how the various components of the Comprehensive Plan work together and which sections take precedence. Specifically, SRC 64.010(a) states: "the comprehensive policies plan takes precedence over any other component of the comprehensive plan." The Comprehensive Plan has several policies related to siting multi-family development which are addressed in the Planning Commission's decision on pages 20-22.

In addition, the City's Housing Needs Analysis (HNA), which identifies a surplus of approximately 1,975 acres for single family residential development and a deficit of 207 acres available for multifamily residential development, has been accepted by the City Council with a work plan listing the conversion of single family to multi-family as needed to meet the projected multi-family land deficit. The HNA will be adopted into the Comprehensive Plan once the projected deficit is met. The City has an obligation to provide multi-family land to meet the projected deficit under Statewide Planning Goal 10.

Interpreting the Grant Neighborhood Plan's policies as having more weight than the state wide planning goals would conflict with SRC 64.010(f) which states: "statewide land use planning

goals are the final standard to be used in interpreting the comprehensive plan, and the comprehensive plan shall be interpreted in a manner that is consistent with the statewide land use planning goals.” While a neighborhood plan is an important document to help shape a neighborhood’s development, it cannot supersede the goals and policies of the Comprehensive Plan or of the Statewide Planning Goals.

The Grant Neighborhood Plan is addressed on pages 23-25 of the Planning Commission’s decision (**Attachment 3**).

4. Other Comments Received from Grant Neighborhood Association and the Public

The Planning Commission addressed five comments from citizens and comments from the Grant Neighborhood Association submitted in opposition and four comment from citizens and comments from Central Area Neighborhood Development Organization (CANDO) which were submitted in support. Comments raised issues related to incompatibility of the zone change in the Grant neighborhood, increased density, potential office space and lack of open space. These comments and Planning Commission responses are included in the Planning Commission’s decision (**Attachment 3**).

**ALTERNATIVES:**

The City Council may affirm, modify, or reverse the decision of the Planning Commission for Comprehensive Plan Map Designation, Neighborhood Plan Change and Zone change, Class 3 Site Plan Review, Class 1 Design Review and Class 2 Adjustments Case No. CPC-NPC-ZC-SPR-ADJ-DR20-03.

- I. **AFFIRM** the decision;
- II. **MODIFY** the decision; or
- III. **REVERSE** the decision.

Olivia Dias  
Current Planning Manager

Attachments:

- 1. Vicinity Map and Site Plan
- 2. Grant Neighborhood Association Appeal
- 3. Planning Commission’s Decision for Case No. CPC-NPC-ZC-SPR-ADJ-DR20-03
- 4. Public Comments submitted after October 29, 2020