

Legislation Details (With Text)

File #: 23-286 **Version:** 1

Type: Public Hearings **Status:** Held

In control: City Council

On agenda: 7/24/2023 **Final action:**

Title: Appeal of consolidated application for a Subdivision Tentative Plan, Urban Growth Area Preliminary Declaration, Class 3 Site Plan Review, four Class 2 Adjustments, Tree Regulation Variance, and Class 1 Design Review for a proposed six-lot subdivision and multi-family residential development of 436 units (Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02). The subject property is approximately 37 acres in total size, zoned RM-II (Multiple Family Residential), and located at the 2100 Block of Doaks Ferry Rd NW (Polk County Assessor Map and Tax lot 073W17B / 400).

Ward(s): 8
Councilor(s): Varney
Neighborhood(s): West Salem Neighborhood Association
Result Area(s): Welcoming and Livable Community

Sponsors:

Indexes:

Code sections:

Attachments: 1. SUB-UGA-SPR-ADJ-TRV-DR23-02 Decision, 2. West Salem Neighborhood Association Appeal Letter, 3. Public Comments received by 3:30 p.m., July 21, 2023.pdf, 4. Additional Public Comments received by 3:00 p.m., July 24, 2023.pdf, 5. Additional Public Comments received July 24, 2023

Date	Ver.	Action By	Action	Result
7/24/2023	1	City Council	continued	Pass

TO: Mayor and City Council

THROUGH: Keith Stahley, City Manager

FROM: Kristin Retherford, Community and Urban Development Director

SUBJECT:

Appeal of consolidated application for a Subdivision Tentative Plan, Urban Growth Area Preliminary Declaration, Class 3 Site Plan Review, four Class 2 Adjustments, Tree Regulation Variance, and Class 1 Design Review for a proposed six-lot subdivision and multi-family residential development of 436 units (Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02). The subject property is approximately 37 acres in total size, zoned RM-II (Multiple Family Residential), and located at the 2100 Block of Doaks Ferry Rd NW (Polk County Assessor Map and Tax lot 073W17B / 400).

Ward(s): 8
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Neighborhood(s): West Salem Neighborhood Association
Result Area(s): Welcoming and Livable Community

SUMMARY:

On May 10, 2023 the Planning Administrator issued a decision approving a consolidated application request for a proposed six-lot subdivision for Titan Hill Estates in conjunction with a proposed multi-family development of 436 units for Titan Hill Apartments, subject to conditions of approval (**Attachment 1**).

On May 25, 2023, the West Salem Neighborhood Association (WSNA) appealed the Planning Administrator's decision (**Attachment 2**).

ISSUE:

Shall the City Council affirm, amend, or reverse the Planning Administrator's decision for Subdivision Tentative Plan, Urban Growth Area Preliminary Declaration, Class 3 Site Plan Review, four Class 2 Adjustments, Tree Regulation Variance, and Class 1 Design Review, Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02?

RECOMMENDATION:

Affirm the Planning Administrator's decision for Subdivision Tentative Plan, Urban Growth Area Preliminary Declaration, Class 3 Site Plan Review, four Class 2 Adjustments, Tree Regulation Variance, and Class 1 Design Review, Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02 and approve the applications, except for the requested adjustment to increase maximum parking, with the recommended conditions of approval.

FACTS AND FINDINGS:

Procedural Findings

1. On September 21, 2022, a consolidated application for Subdivision Tentative Plan, Urban Growth Area Preliminary Declaration, Class 3 Site Plan Review, Tree Regulation Variance, and Class 1 Design Review was filed for a proposal to divide approximately 37 acres located at the 2100 Block of Doaks Ferry Rd NW into six lots in conjunction with a proposed multi-family development of 436 units for Titan Hill Apartments.
2. After additional information was provided, including submission of a Class 2 Adjustment application on January 26, 2023, the applications were deemed complete for processing at the request of the applicant on January 26, 2023.
3. Notice to surrounding property owners was mailed pursuant to Salem Revised Code on February 24, 2023, and public notice was posted on the subject property on February 27, 2023 pursuant to SRC 300.520(b)(2).
4. The 120-day State mandated deadline is August 9, 2023.

5. On April 26, 2023, the applicant submitted a revised site plan indicating conformance with some of the conditions of approval of this decision prior to issuance. However, staff anticipates additional revisions to the applicant's plans will need to be made to comply with all conditions of approval within the decision issued. Therefore, the applicant's originally proposed site plans and building elevations are included in the decision issued by the Planning Administrator (**Attachment 1**) as Attachment B.
6. On May 10, 2023, the Planning Administrator issued a decision approving the consolidated application for the proposed six-lot subdivision for Titan Hill Estates in conjunction with a proposed multi-family development of 436 units for Titan Hill Apartments except for the requested adjustment to increase maximum parking, which was denied.
6. On May 25, 2023, the West Salem Neighborhood Association appealed the Planning Administrator's decision. A hearing was scheduled before the City Council on July 24, 2023.
7. On July 3, 2023, notice of the hearing was sent to the West Salem 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 July 10, 2023.
8. The entire case record, including the applicant's submittals, written statements, and professional studies; all evidence and testimony submitted into the record; and all Staff Reports and public notices are available on the City's online Permit Application Center at <https://permits.cityofsalem.net> <<https://egov.cityofsalem.net/PACPortal>>, by searching the permit number listed here: 22 119071.

Substantive Findings

1. Proposal

The proposal submitted by the applicant requests tentative subdivision plan approval to divide property totaling 36.72 acres in size and located at the 2100 Block of Doaks Ferry Rd NW into six lots ranging in size from 16,862 (.38 acres) to 519,696 square feet (11.93 acres). In addition to the proposed tentative subdivision, the application also includes a Class 3 Site Plan Review and Class 1 Design Review for development of 436 units in 31 buildings across the northern five lots; four Class 2 Adjustments to increase the maximum height allowed for the residential clubhouse, eliminate the requirement to orient buildings toward the street with pedestrian access, reduce the minimum buildable width required along multiple streets, and to increase the maximum allowed parking for the development site; along with an Urban Growth Area Preliminary Declaration to determine the public facilities required to serve the proposed development; and a Tree Regulation Variance to remove 46 significant trees throughout the five lots proposed for development.

The applicant is also requesting alternative street standards to deviate from street grade, block length, and connectivity standards. Specifically, the requests are to: increase grade of a collector street from eight percent to 12 percent on "Street A"; to increase the maximum allowed block length of "Street A" from 600 feet to approximately 985 feet between Doaks Ferry Road NW and the extension of Landaggard Drive NW; to deviate from street connectivity requirements and not provide a street connection from "Street A" to proposed Lot

6; and to allow internal local streets to have a 34-foot-wide curb-to-curb paved surface where the minimum paved surface for a local street is 30-feet.

2. Planning Administrator's Decision

Based on the Facts and Findings contained in the decision issued by the Planning Administrator, the Class 2 Adjustment request to increase the maximum allowed parking spaces throughout the development by 22 spaces was denied. The Planning Administrator found that, with 63 conditions of approval in place, the application complies with the requirements for an affirmative decision for the following applications as part of the proposal:

- A Subdivision Tentative Plan to divide the 36.72-acre property into six lots ranging in size from approximately .4 acres to 12 acres, with a request for Alternative Street Standards to allow increased street grades, block lengths, and an adjustment to street connectivity requirements in SRC Chapter 803 to provide a street connection to the undeveloped lot to the south;
- An Urban Growth Area Preliminary Declaration to determine the public facilities required to serve the proposed development;
- A Class 3 Site Plan Review and Class 1 Design Review for development of 436 units in 31 buildings across five lots, with associated amenities and improvements including a resident clubhouse, recreation areas, parking, and landscaping;
- Three out of four of the Class 2 Adjustments requested to increase the maximum height allowed for the residential clubhouse, eliminate the requirement to orient buildings toward the street with pedestrian access, and reduce the minimum buildable width required along multiple streets; and
- A Tree Regulation Variance to remove significant trees throughout the five lots proposed for development. While the applicant requested removal of 46 significant trees on site, staff has conditioned the preservation of six significant trees, while allowing removal of an additional two significant trees to accommodate a street realignment, as conditioned, allowing removal of 42 significant trees.

3. West Salem Neighborhood Association Appeal

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

Initial WSNA Testimony Not Addressed:

WSNA submitted comments indicating the decision, and 63 conditions therein, did not address the specific issues raised in 5 of the 6 WSNA questions in their testimony.

Staff Response: In the decision provided (**Attachment 1**), staff addressed six items raised by the neighborhood association, titled as follows: Alternative Street Standards, Wilark Brook and Wetlands, More Density than Allowed for Site, Traffic Impacts and Request for Increased Parking, Trees, and EV Chargers. Staff finds that all of the concerns brought forth by the West Salem Neighborhood Association were addressed. While it has not been made clear which specific issues were not addressed in the decision, the following are the more specific six items raised in the initial comments submitted by WSNA for further clarification:

1) *Variance request and street slope.*

Staff addressed these concerns under the heading “Alternative Street Standards” as well as with the analysis of the Alternative Street Standards and the Subdivision Approval Criteria in Section 9 of the decision. Additional concerns raised by WSNA include inclement weather days and emergency response time, and the effect on homeowner insurance rates in the area as a result. Salem Revised Code (SRC) 803.065 includes criteria for approval of an Alternative Street Standard and staff finds these criteria have been met, as discussed in the analysis. In addition, the requested street grade (12 percent) does not exceed the maximum street grade allowed for emergency service access, which is 15 percent. Extreme weather events and insurance rates are not criteria for granting or denying alternative street standards or the associated subdivision tentative plan.

2) *Wilark Brook.*

WSNA has specific environmental questions regarding Wilark Brook and the effect on the temperature profile, hydrological flow and groundwater recharge, nutrient and metal levels, and the wetlands located downstream. In summary, Wilark Brook flows through proposed Lot 6, which is being created through the subdivision portion of the application, where no plans have been submitted for development of this area. These specific environmental studies are not done at the City level and require input from the Oregon Department of State Lands (DSL). City staff sent a Wetland Notice to Oregon DSL and the response from DSL indicates that a State permit would be required if removal or fill in the wetlands area is anticipated. In addition, the decision includes a condition of approval to establish an open channel and drainage easement around the boundaries of Wilark Brook for access and maintenance.

3) *Request for 19 additional parking spaces.*

WSNA raised concerns about the potential effect on the Average Daily Trips when the development is subject to a trip cap of 500 multi-family units established by CPC-ZC21-06. While the number of trips generated by a site is based on the use, square footage and/or number of dwelling units, and not on the number of parking spaces provided, the request for an increase to the maximum allowed parking on site was ultimately denied by the Planning Administrator.

4) *Significant Oaks in Right-of-way.*

WSNA raised concerns about significant Oregon White Oaks located along the west side of Doaks Ferry Road NW and north of Orchard Heights Road NW which were not identified on the applicant's tree plans. The applicant is responsible for providing a tree inventory of all the trees located on the subject property; any tree located within the public right-of-way is considered a City tree and is subject to the standards of SRC Chapter 86. Staff addressed the WSNA concerns about inaccurate tree plans under the heading “Trees” and in the analysis of the Tree Regulation Variance Criteria in Section 13 of the decision, including several conditions for the preservation of trees, submittal of additional plans and arborist reports, and the denial of an increase of parking to preserve more trees on site. Should the applicant need to remove any additional trees on the property as a result of any street improvements or public construction, they will be required to obtain the necessary approval(s) through a Tree Removal Permit, Street Tree Removal Permit, or additional Tree Variance, depending on the type of tree and criteria for removal.

5) *Analysis of Balancing the “Intent to Preserve.”*

WSNA requested an analysis of how staff evaluates the “intent to preserve” significant trees as declared in SRC Chapter 808 versus the applicant’s request to remove trees for development, and how this logic is applied in the decision to preserve or remove a tree. This kind of analysis is discussed in Section 13 of the decision with the analysis of the Tree Regulation Variance Criteria, which establishes the standards to potentially allow removal. When staff finds that there are other design alternatives that would otherwise save one or more trees, conditions of approval have been added to ensure those design changes are made. An example of how this was implemented with this proposal is the denial of the maximum parking adjustment, and Conditions 49, 55, and 56 which require the applicant to remove parking and preserve trees in areas where an alternative design is feasible.

In addition, the applicant’s initial application requested the removal of 53 significant trees; through the completeness review process, and conditions of approval on the proposal, staff has been able to reduce that number to 42 significant trees to be removed. The applicant worked with staff during the completeness review process to redesign Building 29 to accommodate preservation of a grove of trees to the south; trees located towards the interior of the development where Building 29 is currently located prove harder to save with surrounding development impacts, as discussed below. In areas where there are multiple trees that could potentially be saved and the applicant did not provide design changes, conditions of approval have been included to ensure those changes are made and the trees are preserved.

6) *EV Chargers.*

WSNA asked what the provisions for EV charging stations are for the proposed development. Staff addressed this in this decision, citing that the application for development was received prior to the effective date of the new code standard; therefore, the proposal was not subject to EV charging conduit requirements of the Salem Revised Code as part of the land use decision. However, prior to the City’s code amendment to require EV charger conduit for 40 percent of parking spaces provided, State law required multi-family developments to provide 20 percent of parking spaces provided with EV charger conduits, which is evaluated and enforced through the Building Division at the time of building permit review.

Unenforceable Conditions:

WSNA submitted comments indicating several of the conditions are not enforceable and/or rely on the actions of a 3rd party before compliance with code can be achieved.

Staff Response: While it has not been made clear which conditions of approval are viewed as not enforceable, staff has collaborated on all conditions of approval to ensure that the conditions could be met across all departments. Additionally, the consolidated application includes six different application types, which typically involves multiple steps or an order of operations during the development phase, including but not limited to review and recording of the subdivision plat, public construction permits and civil site work, and multiple building permits for each structure. There are conditions of approval which require a “third-party

review” in the form of a decision of the City Council on the applicant’s request for a Transportation System Plan (TSP) Amendment. However, staff has provided conditions of approval for each decision scenario to ensure there is a path forward for the applicant whether the TSP Amendment is approved or denied.

Under Oregon Revised Statutes (ORS) 277.178(2), a land use application that was deemed incomplete, shall be deemed complete and a decision issued within 120 days of the deemed complete date upon receipt of all of the missing information; some of the missing information and written notice from the applicant that no other information will be provided; or written notice from the applicant that none of the missing information will be provided. In this case, the applicant provided some of the missing information on January 26, 2023 and requested the application be deemed complete under this state code; thereby requiring staff to issue a decision without all the information requested. Because of this, staff was required by state law to issue a decision within a time period that did not allow for many design changes or additional reviews. While conditions may seem excessive, unenforceable, or require a applications or review, staff has worked diligently to establish 63 conditions of approval which ensures a development that will ultimately meet all applicable standards.

Preservation of Significant Trees:

WSNA submitted comments indicating a failure to adequately address the preservation of significant trees, and that the Applicant has not met its burden of proof per the significant issues raised by the Glenn Gibson Watershed Council and WSNA.

Staff Response: The Glenn and Gibson Creeks Watershed Council provided a detailed response for each significant tree requested for removal by the applicant. In summary, they requested denial of the adjustment to increase maximum parking and denial of the Tree Regulation Variance for all 46 trees. Many of the comments suggest that development could be made around significant trees by shifting buildings, locating them in planters or contouring sidewalks around a tree. However, by definition, removal of tree means to cut down a tree or remove 30 percent or more of the crown, trunk, or root system of a tree; or to damage a tree so as to cause the tree to decline or die. The term "removal" includes, but is not limited to, topping, damage inflicted upon a root system by application of toxic substances, operation of equipment and vehicles, storage of materials, change of natural grade due to unapproved excavation or filling, or unapproved alteration of natural physical condition. Because of the size of the trees on site and the large critical root zones, and the significant topography of the site, contouring sidewalks or planters around these trees would still require significant grading and inflict damage beyond the 30 percent threshold that a tree could potentially withstand and still survive. This means that trees located in setbacks or open space areas would endure the least disruption and have the greatest chance of survival, which is where staff has conditioned the removal of excess parking and the preservation of trees. Where the applicant has not met the burden of proof to remove a tree, a condition has been imposed to provide such proof, or redesign to save the tree. The adjustment request to increase maximum parking was also denied in preference for saving additional trees.

Preservation of Riparian Trees:

WSNA submitted comments indicating a failure to protect trees and vegetation within the riparian corridor of Wilark Brook, and that the Applicant has not met its burden of proof per the

significant issues raised by the Glenn Gibson Watershed Council and WSNA.

Staff Response: As discussed above, Wilark Brook flows through proposed Lot 6, which is being created through the subdivision portion of the application, where no plans have been submitted for development of this area. The applicant has not indicated removal of any trees on Lot 6 except for a non-significant 14-inch Oak tree which requires removal due to street improvements along Doaks Ferry Road NW. However, on second review of the riparian zone along Wilark Brook due to the comment made by WSNA indicating failure to protect riparian trees, it was found that an 18-inch Madrona tree falls within the riparian zone on the small portion of the creek that passes through the southeast portion of Lot 5. Because of the tree's close proximity to the street, the location of the stormwater facilities on site, and the substantial grading necessary in that area, the removal of the 18-inch riparian tree is warranted and can be included with the applicant's Tree Regulation Variance request. No other riparian trees are proposed for removal.

BACKGROUND:

The subject property was redesignated to Multiple Family Residential on the Salem Comprehensive Plan Map and rezoned to Multiple Family Residential (RM-II) in April of 2022. The rezone was requested by the developer, approved by the Planning Commission and affirmed by the City Council.

Jamie Donaldson
Planner II

Attachments:

1. SUB-UGA-SPR-ADJ-TRV-DR23-02 Decision
2. West Salem Neighborhood Association Appeal Letter