

TO: HEARINGS OFFICER

FROM: LISA ANDERSON-OGILVIE, AICP, DEPUTY COMMUNITY PLANNING AND DEVELOPMENT DIRECTOR AND PLANNING ADMINISTRATOR

SUBJECT: APPEAL OF PLANNING ADMINISTRATOR'S DECISION APPROVING TREE VARIANCE CASE NO. TRV25-02 FOR PROPERTY LOCATED AT 2085 WILMINGTON AVENUE NW

ISSUE

Should the Hearings Officer affirm, modify, remand, or reverse the Planning Administrator's approval of a Tree Variance No. TRV25-02 to remove 23 trees and vegetation within the Riparian Corridor, including four Significant trees, in order to install a sanitary sewer line?

The subject property is 0.84 acres in size, zoned RA (Residential Agriculture) and located at the 2085 Wilmington Avenue NW (Polk County Assessors Map and Tax Lot Number 073W17 / 3802).

RECOMMENDATION

AFFIRM the Planning Administrator's decision approving Tree Variance Case No. TRV25-02.

SUMMARY OF RECORD

The following items are submitted to the record and are available: 1) All materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports, and; 2) any materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public. All application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. You may use the search function without registering and enter the permit number listed here: [25 102927](#). Copies of SUB-ADJ21-05, including the LUBA decision, Public Works design Standards, Public Construction Permits 22-124694, and a Draft Wetlands Delineation submitted to DSL can be found in the record.

BACKGROUND

In 2021 a 27-lot single family subdivision was approved by the Planning Administrator for property located at 2230 Doaks Ferry Rd NW (SUB-ADJ21-05). On appeal, the Planning Commission *affirmed* the decision, with one modified condition of approval. That decision was appealed to the Land Use Board of Appeals (LUBA), where the decision was upheld. The subdivision decision includes a Condition of Approval (Condition 14) which requires the applicant to extend an eight-inch sewer main through the easterly neighboring property to serve the proposed development pursuant to Public Works Desing Standards. The previous land use decision, SUB-ADJ21-05, is located in the record and available at the links above.

The applicant has submitted Public Construction Permits (22-124694) for the construction of all Public Utilities and Streets. City staff have provided feedback on the plans requiring the connection to be made through the easterly property (subject property in this application), consistent with the condition of approval (Condition 14). Based on the engineered alignment, a Tree Variance application for removal of a trees within the Riparian Corridor is required to install the sewer main, in accordance with the adopted Public Works Design Standards. The most recent Public Construction Permit Plans and comments can be found in the record. The permit has not yet been issued.

The applicant submitted two Tree Variance applications, one to remove 23 trees and vegetation from the Riparian Corridor and a separate application for evaluation of four significant trees proposed for removal. The four significant trees are evaluated under both criterion for removal.

On May 1, 2025, the Planning Administrator issued a decision approving the Tree Variance, subject to conditions of approval. A timely notice of appeal of the decision was filed by West Salem Neighborhood Association on May 15, 2025. The City Council at their regularly scheduled meeting on May 12, 2025 did not elect to review the decision; therefore, the review authority is the Hearings Officer.

PROPOSAL

The applicant submitted two Tree Variance applications, one to remove 23 trees and vegetation from the Riparian Corridor and a separate application for evaluation of four significant trees proposed for removal. The four significant trees are evaluated under both criterion for removal.

The subject property is located at 2085 Wilmington Avenue NW. A vicinity map showing the subject property is included as **Attachment 1**. The existing site plan shows a small area of the northwest corner of the subject property included as **Attachment 2**.

FACTS AND FINDINGS

Procedural Findings

1. On January 29, 2025, an application for two Tree Variance applications (**Attachment 2**). The application was deemed complete for processing on April 11, 2025. On April 11, 2025, notice to surrounding property owners and tenants was mailed pursuant to Salem Revised Code.
2. On May 1, 2025, the Planning Administrator issued a decision approving the application, subject to conditions of approval (**Attachment 3**).
3. On May 15, 2025, a timely notice of appeal was filed by West Salem Neighborhood Association with standing to appeal this decision (**Attachment 4**).

4. On May 22, 2025, notice of appeal hearing was sent to the applicant, property owners, the neighborhood association, individuals who submitted testimony for the record, and all others entitled to notice pursuant to Salem Revised Code (SRC) requirements. The subject property is not part of a Homeowner's Association (HOA).
5. Notice of the appeal hearing was posted on the subject property on May 28, 2025. The appeal public hearing before the Hearings Officer is scheduled for June 11, 2025.
6. The state-mandated deadline for a final local decision which is set for August 9, 2025. Appeal procedures are specified in SRC 300.1040.
7. The Hearing Officer may affirm, modify, or reverse the decision, or may remand the matter to the Planning Administrator for further action.

Appeal

A timely and jurisdictional notice of appeal of the Planning Administrator's decision was filed by the West Salem Neighborhood Association (WSNA) on May 15, 2025 (**Attachment 4**). A summary of the issues raised in the appeal followed by staff's response is provided below:

1. ***Approval is based on incomplete or inaccurate submission of narrative statements and graphics in response to the requirements of detailed at SRC 808.030 and SRC 808.045.***

Staff Response: Decision criteria for Tree and Vegetation Removal permits are found in SRC 808.030(d) and decision criteria for Tree Variances are found in SRC 804.045(d). Submittal requirements for Tree and Vegetation Removal Permits are found in SRC 808.040(c) and submittal requirements for Tree Variances are found in SRC 808.045(c).

Per SRC 300.210(b) (Application submittal) the Planning Administrator may waive any submittal requirement if the Planning Administrator determines "that the specific requirement would not provide evidence needed to satisfy any of the applicable criteria." The applicant has provided adequate information to indicate the trees being removed, including the size and species of each tree. The record includes the most recent Public Construction Plans being reviewed by the Development Services Division. The plans include the installation of the utilities, streets and other public infrastructure for the approved subdivision on the abutting property, consistent with the Subdivision conditions of approval (SUB-ADJ21-05) and the Public Works Design Standards.

Findings found in the Planning Administrator decision adequately address the approval criteria for the permits requested.

2. ***Approval findings do not adequately address Salem Area Comprehensive Plan goal N1 in relation to SRC 808.030(2)(C).***

Staff Response: Comprehensive Plans provide goals, policies, and recommendations to guide future decisions. The appellant references the following goals and polices from the

Comprehensive Plan:

N 1 Environmental Protection Goal: Protect and enhance the quality and function of Salem's natural resources, ecosystems, and environment.

N 1.1 Natural resource protection: The quality and function of natural resources in the Salem Urban Area shall be protected, including wetlands, waterways, floodplains, and critical habitat.

The Salem Revised Code implements the Comprehensive Plan, including Goal N1 by protecting trees and native vegetation located in Riparian Corridors and requiring a permit for removal:

*SRC808.020: Trees and native vegetation in riparian corridors.
No person shall remove a tree in a riparian corridor or native vegetation in a riparian corridor, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC 808.030, undertaken pursuant to a tree conservation plan approved under SRC 808.035, or undertaken pursuant to a tree variance granted under SRC 808.045. Roots, trunks, and branches of trees removed in riparian corridors shall remain within the riparian corridor, unless determined to be a potential hazard or impediment to stream flow by the Director.*

The applicant is afforded the opportunity to apply for a permit or variance and demonstrate how they meet the approval criteria. Compliance with the applicable decision criteria is consistent with the Salem Area Comprehensive Plan.

The appeal fails to mention that the Comprehensive Plan also contains goals and policies related to *Housing* and *Public Infrastructure* such as the goals listed below:

H1 Housing Choice Goal: Promote a variety of housing options to meet the needs, abilities, and preferences of all current and future residents.

PF 1 Public Facilities and Services Goal: Provide accessible, high-quality public facilities and services to meet the needs of current and future generations and to promote quality of life.

The Salem Revised Code also implements these goals and related policies by zoning land for housing, providing a land division process, and requiring developers to build infrastructure to serve proposed housing in compliance with City standards. The applicant has demonstrated that they are removing the minimum number of trees and native vegetation needed in order to comply with the conditions of approval for the subdivision and to meet City standards, which is what is required of them.

The approval criteria for the requested variance does not require an analysis of Comprehensive Plan Goals as part of the decision; Comprehensive Plan goals and policies are not approval criteria, and the City is not allowed to treat them as such.

3. Submittal requirements of SRC 808.030(2)(C) require a completed wetland

delineation or determination, if applicable. No wetland delineation was included in the application file. Nor does the application file explain or justify why the required delineation is not applicable.

Staff Response: Submittal requirements of SRC 808.030(2)(C) are not applicable to the application submitted. The section of code, SRC 808.030(2)(C), is for a *Tree Removal Permit*. The applicant submitted an application for a *Tree Variance*, subject to SRC 808.045. Submittal Requirements for a *Tree Variance* can be found in SRC 300.210 and SRC 808.045(c). A wetland delineation is not listed as a requirement under the submittal requirements. In addition, the Planning Administrator may waive any submittal requirement if the Planning Administrator determines that the specific requirement would not provide evidence needed to satisfy any of the applicable criteria (SRC 300.210(b)).

The Statewide Wetlands Inventory shows a waterway on the subject property but does not identify mapped wetlands outside of the waterway boundaries. SRC Chapter 809 requires the City to notify DSL of development activity which may impact wetlands and waterways. As there is a waterway mapped on the subject property, Wetlands Notice was provided to the Department of State Lands (DSL) with the Land Use Application for the Wilark Creek Subdivision (SUB-ADJ21-05). Providing notice to DSL, assures compliance with applicable wetland regulations regardless of whether any portion of the property is listed on the Local Wetland Inventory.

The applicant has submitted a wetland delineation to DSL for review, which has been entered into the record. Based on the draft delineation the applicant is not affecting the wetland area. Any disturbance to the wetland would be regulated by DSL and is not a criterion of this application.

SRC Chapter 809 provides that grading and construction activities within wetlands and waterways are regulated by DSL and US Army Corps of Engineers. If permits are required by DSL or the US Army Corps of Engineers, the applicant will be required to demonstrate that they have secured approved permits from the respective agencies, prior to issuance of any City construction permits which impact the wetlands or waterways. The permit for public construction has not yet been issued (22-124694).

Substantive Findings

As provided in the May 1, 2025, Planning Administrator's decision approving the Tree Variance Case No. TRV25-02, subject to conditions of approval, satisfies the applicable approval criteria of SRC 808.045(d)(1).

There was an additional Significant Tree identified on the plans, which brings the total to five Significant trees. The 40-inch Hawthorne Tree is identified as 'Dead' and was previously evaluated as removal under the Riparian Tree criterion. Since the tree is no longer living the tree would not be significant under SRC 808.015.

Conclusion

Based on the facts and findings presented above and included with the November 12, 2024, Planning Administrator's decision, staff recommends that the Hearing Officer **AFFIRM** the Planning Administrator's decision approving Tree Regulation Variance TRV25-02.

ALTERNATIVES

The Hearings Officer may take one of the following actions:

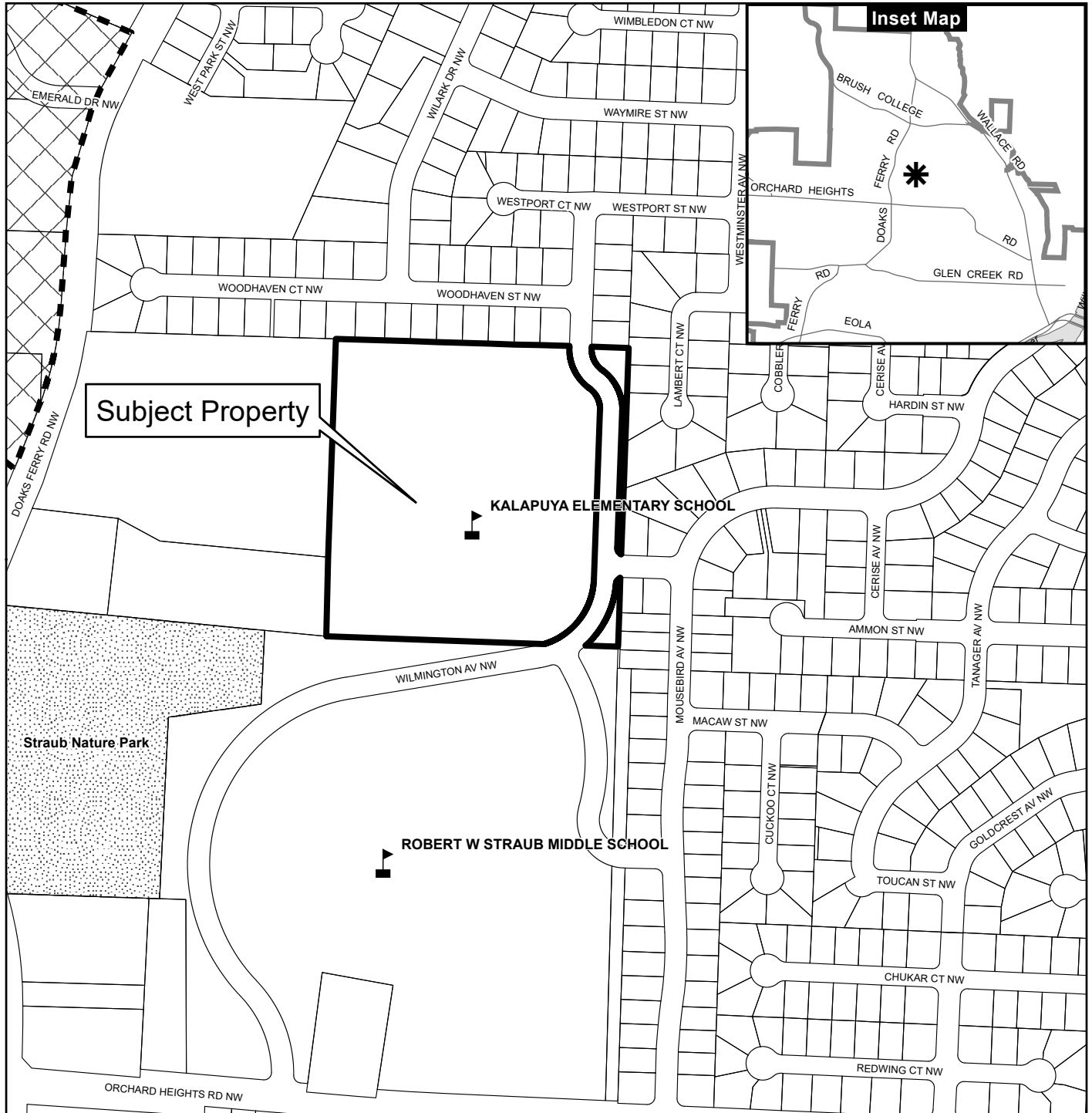
- I. **AFFIRM** the May 1, 2025, decision approving TRV25-02.
- II. **REMAND** the May 1, 2025, decision approving TRV25-02 to the Planning Administrator for further action.
- III. **MODIFY** the May 1, 2025, decision approving TRV25-02; or
- IV. **REVERSE** the May 1, 2025, decision, and deny TRV25-02.

Attachments:








1. Vicinity Map
2. Applicant's Site Plan
3. Planning Administrator's Decision on Case No. TRV25-02, dated May 1, 2025
4. Notice of Appeal dated May 15, 2025

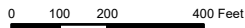
Prepared by: Olivia Dias, Current Planning Manager

Vicinity Map 2085 Wilmington Avenue NW

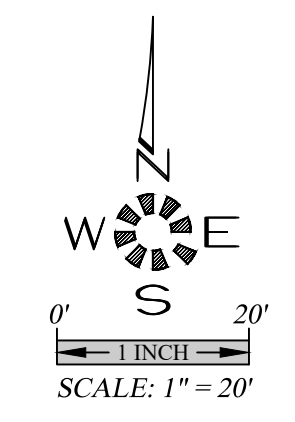
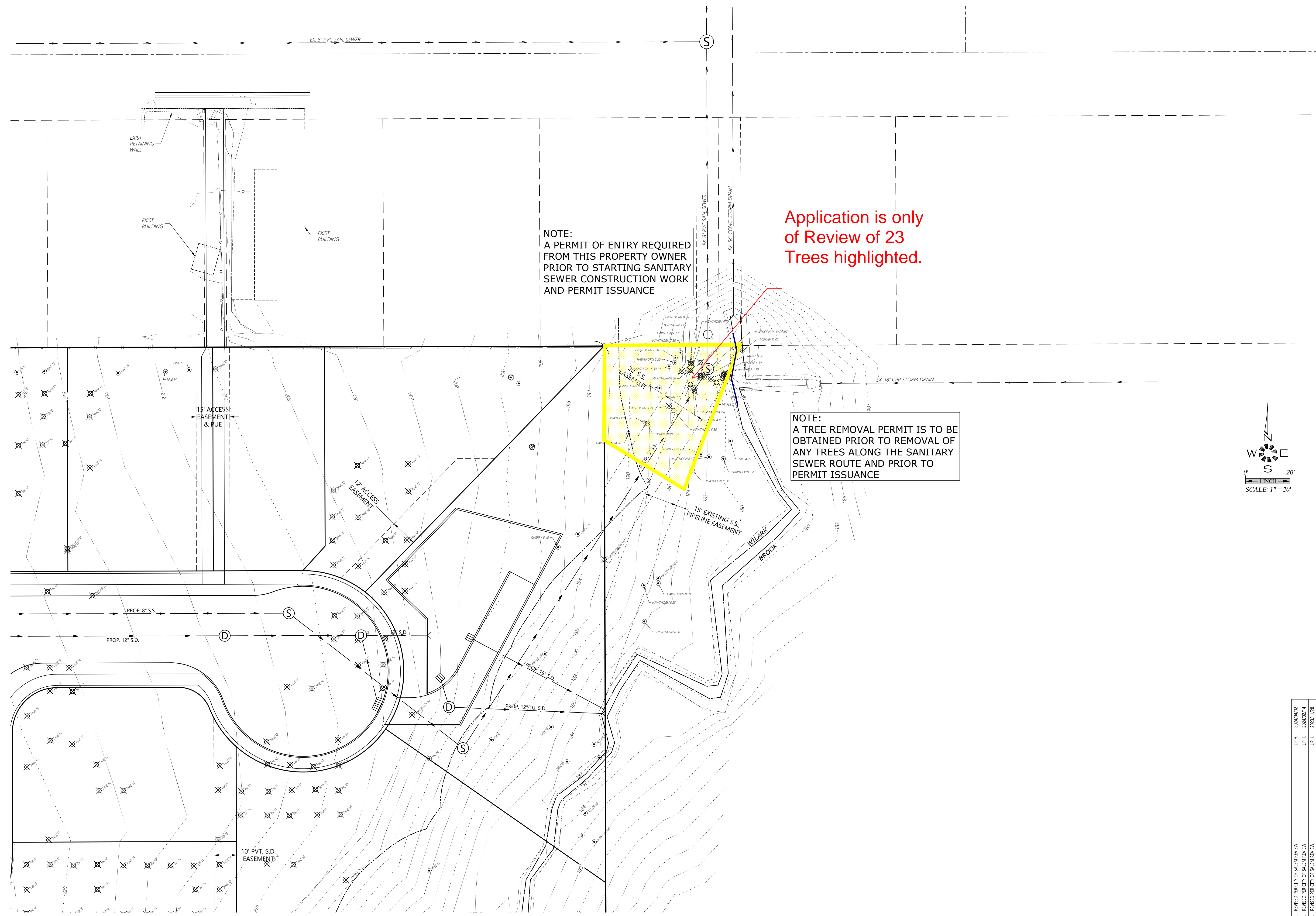


Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



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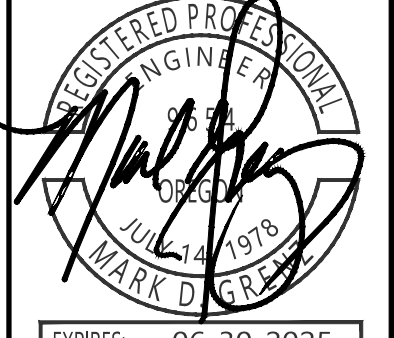
TREE REMOVAL PLAN

WILARK CREEK

NO CHANGES, MODIFICATIONS OR REPRODUCTIONS TO BE MADE TO THESE DRAWINGS WITHOUT WRITTEN AUTHORIZATION FROM THE DESIGN ENGINEER. DIMENSIONS & NOTES TAKE PRECEDENCE OVER GRAPHICAL REPRESENTATION.

5. REVISED PER CITY OF SALEM REVIEW	JPH	2024/04/02
4. REVISED PER CITY OF SALEM REVIEW	JPH	2024/02/14
3. REVISED PER CITY OF SALEM REVIEW	JPH	2023/11/08
2. REVISED PER CITY OF SALEM REVIEW	JPH	2023/09/20
1. REVISED PER CITY OF SALEM REVIEW	CFB	2023/04/20

Design: M.D.G.
 Drawn: D.G.G.
 Checked: J.J.G.
 Date: JAN. 2020
 Scale: AS SHOWN
 As-Built: _____



JOB # 6951

*Si necesita ayuda para comprender esta información, por favor llame
503-588-6173*

DECISION OF THE PLANNING ADMINISTRATOR

TREE REGULATION VARIANCE CASE NO.: TRV25-02

APPLICATION NO.: 25-102927-PLN

NOTICE OF DECISION DATE: May 1, 2025

REQUEST: A consolidated application for two Tree Regulation Variances to remove 23 Riparian Corridor trees and vegetation, which include four Significant Trees for the development of a sanitary sewer line serving a previously approved subdivision. The subject property is 0.84 acres in size, zoned RA (Residential Agriculture) and located at the 2085 Wilmington Avenue NW (Polk County Assessor's Map and Tax Lot Number 073W17 / 3802).

APPLICANT: Mark Farrow, Trademark Enterprises

LOCATION: 2085 Wilmington Ave NW, Salem OR 97304

CRITERIA: Salem Revised Code (SRC) Chapter 808.045(d) – Tree Regulation Variance

FINDINGS: The findings are in the attached Decision dated May 1, 2025.

DECISION: The **Planning Administrator APPROVED** Tree Variance Case No. TRV25-02 subject to the following conditions of approval:

Condition 1: The roots, trunks, and branches of the trees approved to be removed within the Wilark Creek riparian corridor shall be completely removed from the riparian corridor.

Condition 2: Prior to issuance of Public Construction permits for the sewer main, the applicant shall provide a restoration plan which includes 27 Trees outside of the sanitary sewer main easement, 27 vegetative bushes (from the list in the findings) and a seed mix (grass) beyond 15-feet from the top of bank.

The rights granted by the attached decision must be exercised, or an extension granted, by May 17, 2027, or this approval shall be null and void.

Application Deemed Complete:	<u>April 11, 2025</u>
Notice of Decision Mailing Date:	<u>May 1, 2025</u>
Decision Effective Date:	<u>May 17, 2025</u>
State Mandate Date:	<u>August 9, 2025</u>

Case Manager: Olivia Dias, odias@cityofsalem.net, 503-540-2343

NOTICE OF DECISION

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



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., Friday, May 16, 2025. 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 808. 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 Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer 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>

BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM

DECISION

IN THE MATTER OF APPROVAL OF) FINDINGS & ORDER
TREE REGULATION VARIANCE)
CASE NO. TRV25-02)
2085 WILMINGTON AVE NW) MAY 1, 2025

In the matter of the applications for a Tree Variance submitted by the applicant, Multi-Tech Engineering, on behalf of the applicant, Trademark Enterprises and property owner, Salem Keizer School District, the Planning Administrator, having received and reviewed evidence and the application materials, makes the following findings and adopts the following order as set forth herein.

REQUEST

Summary: Tree Regulation Variance to remove 23 trees and vegetation within a Riparian Corridor, including four Significant trees, to install a sanitary sewer line.

Request: A consolidated application for two Tree Regulation Variances to remove 23 Riparian Corridor trees and vegetation, which include four Significant Trees for the development of a sanitary sewer line serving a previously approved subdivision. The subject property is 0.84 acres in size, zoned RA (Residential Agriculture) and located at the 2085 Wilmington Avenue NW (Polk County Assessors Map and Tax Lot Number 073W17 / 3802).

A vicinity map illustrating the location of the property is attached hereto and made a part of this staff report (**Attachment A**).

PROCEDURAL FINDINGS

1. Background

In 2021 a 27-lot single family subdivision was approved for property located at 2230 Doaks Ferry Rd NW (SUB-ADJ21-05). The decision requires connection to the City’s sewer system which, as described later in this decision, must be located in the adjacent Riparian Corridor of Wilark Brook.

On January 29, 2025, a consolidated application for two Tree Regulation Variances was filed for the subject property. The application was deemed complete for processing on April 11, 2025. The 120-day state mandated decision deadline for this consolidated application is August 9, 2025.

The applicant’s proposed development plans are included as **Attachment B** and the applicant’s written statement addressing the approval criteria is included in the record.

SUBSTANTIVE FINDINGS

2. Summary of Record

The following items are submitted to the record and are available: 1) all materials and testimony submitted by the applicant, including any applicable professional studies such as

traffic impact analysis, geologic assessments, stormwater reports, and; 2) materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public. All application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. You may use the search function without registering and enter the permit number listed here: 25 102927.

3. Neighborhood Association and Public Comments

The subject property is located within the boundaries of the West Salem Neighborhood Association.

Applicant Neighborhood Association Contact: SRC 300.310 requires an applicant to contact the neighborhood association(s) whose boundaries include, and are adjacent to, property subject to specific land use application requests. Pursuant to SRC 300.310(b)(1), neighborhood association contact is not required for the requested land use applications.

Neighborhood Association Comment: Notice of the application was provided to the neighborhood association pursuant to SRC 300.520(b)(1)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property. The Neighborhood Association provided comments indicating their opposition. The Neighborhood Association's and one other comment are addressed below.

Homeowner's Association: The subject property is not located within a homeowner's association.

Public Comment: Notice was also provided, pursuant to SRC 300.520(b)(1)(B)(iii), (iv), (vi), & (vii), to the address of the subject property and all property owners and tenants within 250 feet of the subject property. As of the date of completion of this staff report, three comments were received from neighboring property owners. The comments and staff's responses are summarized as follows.

- *Concerns related to more housing.*

Staff Response: The proposal does not include additional housing. The adjacent property was previously approved for the creation of 27 lots within the Single-Family Residential zone (SUB-ADJ21-05). The submitted proposal pertains solely to utility connections to serve the subdivision.

- *Concerns related to the application containing two Tree Variance Applications.*

Staff Response: The applicant is requesting two variances due to the existence of two distinct sets of approval criteria: one for Significant Trees and another for Riparian Trees and Vegetation. Since the proposal encompasses both categories, they have submitted two separate applications. The findings outlined below specifically address each set of approval criteria, ensuring a thorough evaluation of the proposal in relation to both Significant and Riparian Trees and Vegetation.

- *Concerns regarding the size of the easement needed for the sewer facility.*

Staff Response: There is an existing 15-ft sanitary easement on Salem Keizer School District (SKSD) property, which was originally required as part of a 2010 Land Use Decision (SPR10-04). There is not currently a public sanitary sewer main located within the existing easement. The easement was required in the 2010 decision to serve upstream property, though an engineered alignment was not completed at that time. As the Land Use Decision was issued in 2010, the 2007 version of the Public Works Design Standards (PWDS) applied for the school project. Those 2007 PWDS required a 10-ft wide sanitary sewer easement for 8-inch mains up to 6-ft deep. A greater easement was likely required to allow for future pipe construction at depths greater than 6-feet.

Based on final engineering and design of the subdivision, the alignment of the existing sanitary sewer easement did not work for the Wilark Creek Subdivision. The City has reviewed the new sanitary sewer alignment to ensure that it meets the current PWDS and that City Staff can adequately access the manhole structures and main. The alignment of the 2016 easement would have necessitated the addition of another sanitary sewer manhole, which would be difficult to be accessed by City, which is not desirable. As the new sanitary sewer main was designed in a different alignment, a new easement for the sanitary sewer main has been required to meet the current standards. The current PWDS, adopted in 2014, requires a 20-ft wide easement for sanitary sewer mains 8-inch diameter pipes up to 10-ft deep. Wider easements allow for the pipes to be buried deeper and also for larger diameter pipes. Excavations for deeper pipes and larger pipes require larger equipment and wider trenches than for smaller pipes and shallower trenches.

- *Concerns regarding construction within a designated/mapped wetland.*

Staff Response: The Statewide Wetlands Inventory shows a waterway on the subject property, but does not identify mapped wetlands outside of the waterway boundaries. SRC Chapter 809 requires the City to notify DSL of development activity which may impact wetlands and waterways. As there is a waterway mapped on the subject property, Wetlands Notice was provided to the Department of State Lands (DSL) with the Land Use Application for the Wilark Creek Subdivision (SUB-ADJ21-05). Providing notice to DSL, assures compliance with applicable wetland regulations regardless of whether any portion of the property is listed on the Local Wetland Inventory. SRC Chapter 809 provides that grading and construction activities within wetlands and waterways are regulated by DSL and US Army Corps of Engineers. If permits are required by DSL or the US Army Corps of Engineers, those permits would be required to be submitted to the Development Services Division prior to issuance of any construction permits which impact the wetlands or waterways.

- *Concerns related to Indigenous Salmonids*

Staff Response: The subject property is located within the Urban Growth Boundary, is incorporated within the city limits of Salem, and is designated in the City of Salem Comprehensive Plan as developing residential. Designation as developing residential anticipates existing or future residential development similar to the adjacent subdivision and utility extension to support those uses. Loss of wildlife habitat that has not been identified as significant is not a criterion under Salem Revised Code for granting or denying a Tree Variance.

Further, SRC Chapter 809 was evaluated as part of the adjacent subdivision and ties evaluation of wetlands for significance to, in part, indigenous salmonids “which are listed as sensitive threatened or endangered by a federal or state authority.” The cutthroat trout and sculpin are not listed as threatened or endangered. There is no evidence that the property is a habitat for any threatened or endangered species. Accordingly, there is no indication of any significant habitat present on site or of any impact to any identified habitat, and the criteria is satisfied.

In regard to impacts to wildlife habitat, the subject property has not been identified as a significant wildlife habitat by state wildlife management agencies or by the City. The subject property is located within the Urban Growth Boundary and incorporated limits of the City of Salem and has been designated on the City of Salem Comprehensive Plan Map as “Developing Residential,” which anticipates existing or future residential development. Loss of wildlife habitat that has not been identified as significant is not a criterion under the Salem Revised Code for granting or denying a Tree Variance for extension of a sewer facility.

- *Concerns related to compliance with Salem Area Comprehensive Plan Goal N1.*

Staff Response: Comprehensive Plans provide goals, policies, and recommendations to guide future decisions. The Salem Revised Code implements the Comprehensive Plan, including Goal N1. Compliance with the applicable decision criteria would be consistent with the Salem Area Comprehensive Plan.

4. City Department Comments

Development Services: Reviewed the facts and findings listed in this decision and concur.

Building and Safety: Reviewed the proposal and indicated no concerns.

Fire Department: Reviewed the proposal and indicated no concerns.

5. Public Agency Comments

No Agency Comments were received.

DECISION CRITERIA FINDINGS

6. Analysis of Tree Regulation Variance Approval Criteria

Salem Revised Code (SRC) 808.045(d) sets forth the following criteria that must be met before approval can be granted to a request for a Tree Regulation Variance. In this case, the applicant has requested to address the hardship criterion in SRC 808.045(d)(1).

SRC 808.045(d)(1)(a): There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance.

Finding: The applicant is requesting two variances due to the existence of two distinct sets of approval criteria: one for Significant Trees and another for Riparian Trees and Vegetation. Findings for each are provided as follows:

- ***Significant Trees:***

The applicant has requested the removal of four significant trees to install a sanitary sewer line that will serve the subdivision located to the southwest. According to Salem Revised Code (SRC) 808.015, significant trees cannot be removed unless it is done under a tree and vegetation permit (SRC 808.030), a tree conservation plan (SRC 808.035), or a tree variance (SRC 808.045). The trees in question have been classified as both Significant and Riparian trees.

To grant a variance, it must be demonstrated that preserving the trees would create an unreasonable hardship or practical difficulty that can only be resolved through the variance. In assessing the request to remove the four significant trees, staff considered several factors, including existing or planned utilities and the site's topography, which would require severe grading of the critical root zone to comply with the installation standards for the sanitary sewer line.

The site must be equipped with essential utilities, including water, sewer, stormwater, and private utilities like power and cable. The subdivision tentatively approved to the west is bordered by Doaks Ferry Road NW, which currently lacks sanitary sewer access for the proposed homes (SUB-ADJ21-05). Utility placement is determined by existing infrastructure and grade. The sewer is located in the Wilark Park West Subdivision to the north and is stubbed to the northern property line of the School District property (the subject property). It was specifically stubbed here in order to serve future development on the SKSD property and the adjacent property where SUB-ADJ21-05 was approved. The only viable option for providing sanitary sewer service to the subdivision is to connect to the existing sanitary line located to the northeast and abutting the subject property.

The applicant aims to remove only the minimum number of trees necessary for utility installation. Staff has determined that the location of the four significant trees proposed for removal aligns with the criteria for removal. Their removal is essential because they are situated directly in the path of the sanitary sewer line that must be constructed to provide the necessary infrastructure. Given the constraints of existing sanitary sewer lines and the site's topography, there are no alternative options for installing the required sewer line.

- ***Riparian Corridor Trees:***

The applicant has requested to remove 23 riparian corridor trees, including four significant trees (addressed above) in order to install a sanitary sewer line to serve the subdivision to the southwest of the subject property.

No person shall remove a tree in a riparian corridor or native vegetation in a riparian corridor, unless the removal is undertaken pursuant to a tree and vegetation removal permit issued under SRC [808.030](#), undertaken pursuant to a tree conservation plan approved under SRC [808.035](#), or undertaken pursuant to a tree variance granted under SRC [808.045](#). Roots, trunks, and branches of trees removed in riparian corridors shall remain within the riparian

corridor, unless determined to be a potential hazard or impediment to stream flow by the Director.

The applicant has requested the removal of 23 Riparian trees to install a sanitary sewer line that will serve the subdivision located to the southwest. According to Salem Revised Code (SRC) 808.020, Riparian trees cannot be removed unless it is done under a tree and vegetation permit (SRC 808.030), a tree conservation plan (SRC 808.035), or a tree variance (SRC 808.045). The trees in question have been classified as both Significant and Riparian trees.

To grant a variance, it must be demonstrated that preserving the trees would create an unreasonable hardship or practical difficulty that can only be resolved through the variance. In assessing the request to remove the 23 Riparian trees, staff considered several factors, including existing or planned utilities and the site's topography, which would require severe grading of the critical root zone to comply with the installation standards for the sanitary sewer line.

The site must be equipped with essential utilities, including water, sewer, stormwater, and private utilities like power and cable. The subdivision tentatively approved to the west is bordered by Doaks Ferry Road NW, which currently lacks sanitary sewer access for the proposed homes. Utility placement is determined by existing infrastructure, which is currently extended to the northern property line of the School District property (the subject property). The only viable option for providing sanitary sewer service to the subdivision is to connect to the sanitary line located to the northeast and abutting the subject property.

The applicant aims to remove only the minimum number of trees necessary for utility installation. Staff has determined that the location of the 23 Riparian trees proposed for removal aligns with the criteria for removal. Their removal is essential because they are situated directly in the path of the sanitary sewer line that must be constructed to provide the necessary infrastructure. Given the constraints of existing sanitary sewer lines and the site's topography, there are no alternative options for installing the required sewer line.

Pursuant to SRC 808.020, Roots, trunks, and branches of trees removed in riparian corridors shall remain within the riparian corridor, unless determined to be a potential hazard or impediment to stream.

The application materials and construction plans have been reviewed by the Public Works Department to ensure compliance with Public Works Design Standards. In addition, the Natural Resources Section of the Public Works Department has noted that roots, trunks and branches shall be removed to ensure a flow impediment or hazard does not occur in the area, therefore the following condition applies:

Condition 1: The roots, trunks, and branches of the trees approved to be removed within the Wilark Creek riparian corridor, shall be completely removed from the riparian corridor.

Pursuant to SRC 808.045(e)(2), variances approved for removal within a Riparian Corridor are to be reasonably restored and in no case shall the alteration of the corridor occupy more than 50 percent of the width or result in less than 15-feet of vegetated corridor on each side.

Natural Resources Section commented that restoration to all areas affected at the site shall include planting with a seed (grass) mix beyond the 15 -feet from top of bank. Additionally, a mix of the following native shrubs along the disturbed ground shall be provided: Tall Oregon Grape, Pacific Nine Bark, Snowberry, Red Flowering Current, Mock Orange, Red Stemmed Dogwood, and Vine Maple. According to the Public Works Design Standards, trees are not permitted to be planted within the sanitary sewer main easement. As such, trees required as part of the restoration plan, shall be provided outside of the sanitary sewer main easement.

Condition 2: Prior to issuance of Public Construction permits for the sewer main, the applicant shall provide a restoration plan which includes 27 Trees outside of the sanitary sewer main easement, 27 vegetative bushes (from the list in the findings) and a seed mix (grass) beyond 15-feet from the top of bank.

As addressed above, because of the location of the sanitary sewer line and where the connection is needed to provide services to the approved subdivision is the minimum necessary for the otherwise reasonable development of the property.

SRC 808.045(d)(1)(b): The proposed variance is the minimum necessary to allow the otherwise lawful proposed development of activity.

Finding: The applicant is requesting two variances due to the existence of two distinct sets of approval criteria: one for Significant Trees and another for Riparian Trees. Findings for each are provided as follows:

▪ ***Significant Trees:***

The 27-lot subdivision (SUB-ADJ21-05) was approved through the land use process. The site is required, and entitled, to connect to City utilities, including sanitary sewer. The subdivision is bordered by Doaks Ferry Road NW, which lacks sanitary sewer. Utility placement is determined by existing infrastructure and grade. The sewer is located in the Wilark Park West Subdivision to the north and is stubbed to the northern property line of the School District property. It was specifically stubbed here in order to serve future development on the SKSD property, and the adjacent property where SUB-ADJ21-05 was approved. The only viable option for providing sanitary sewer service to the subdivision is to connect to the existing sanitary line located to the northeast and abutting the subject property.

The City has reviewed the new sanitary sewer alignment to ensure that it meets the current PWDS and that City Staff can adequately access the manhole structures and main. The PWDS require a 20-ft wide easement for sanitary which allows for the required pipe size, the required pipe depth and for grading and excavation as needed for construction.

As described in the findings above and as conditioned, the applicant's requested variances to remove four significant trees, is the minimum necessary to allow for the otherwise lawful development of the adjacent property.

▪ ***Riparian Corridor Trees:***

The 27-lot subdivision (SUB-ADJ21-05) was approved through the land use process. The site is required, and entitled, to connect to City utilities, including sanitary sewer. The subdivision is

bordered by Doaks Ferry Road NW, which lacks sanitary sewer. Utility placement is determined by existing infrastructure and grade. The sewer is located in the Wilark Park West Subdivision to the north and is stubbed to the northern property line of the School District property. It was specifically stubbed here in order to serve future development on the SKSD property, and the adjacent property where SUB-ADJ21-05 was approved. The only viable option for providing sanitary sewer service to the subdivision is to connect to the existing sanitary line located to the northeast and abutting the subject property.

The City has reviewed the new sanitary sewer alignment to ensure that it meets the current PWDS and that City Staff can adequately access the manhole structures and main. The PWDS require a 20-ft wide easement for sanitary which allows for the required pipe size, the required pipe depth and for grading and excavation as needed for construction.

As described in the findings above and as conditioned, the applicant's requested variances to remove 23 riparian corridor trees and vegetation, is the minimum necessary to allow for the otherwise lawful development of the adjacent property.

7. Conclusion

Based upon review of SRC Chapter 808, the applicable standards of the Salem Revised Code, the findings contained herein, and due consideration of comments received, the application complies with the requirements for an affirmative decision.

IT IS HEREBY ORDERED

Tree Regulation Variance Case No. TRV25-02 is hereby **APPROVED** subject to SRC Chapter 808 and 804, the applicable standards of the Salem Revised Code, and conditions of approval.

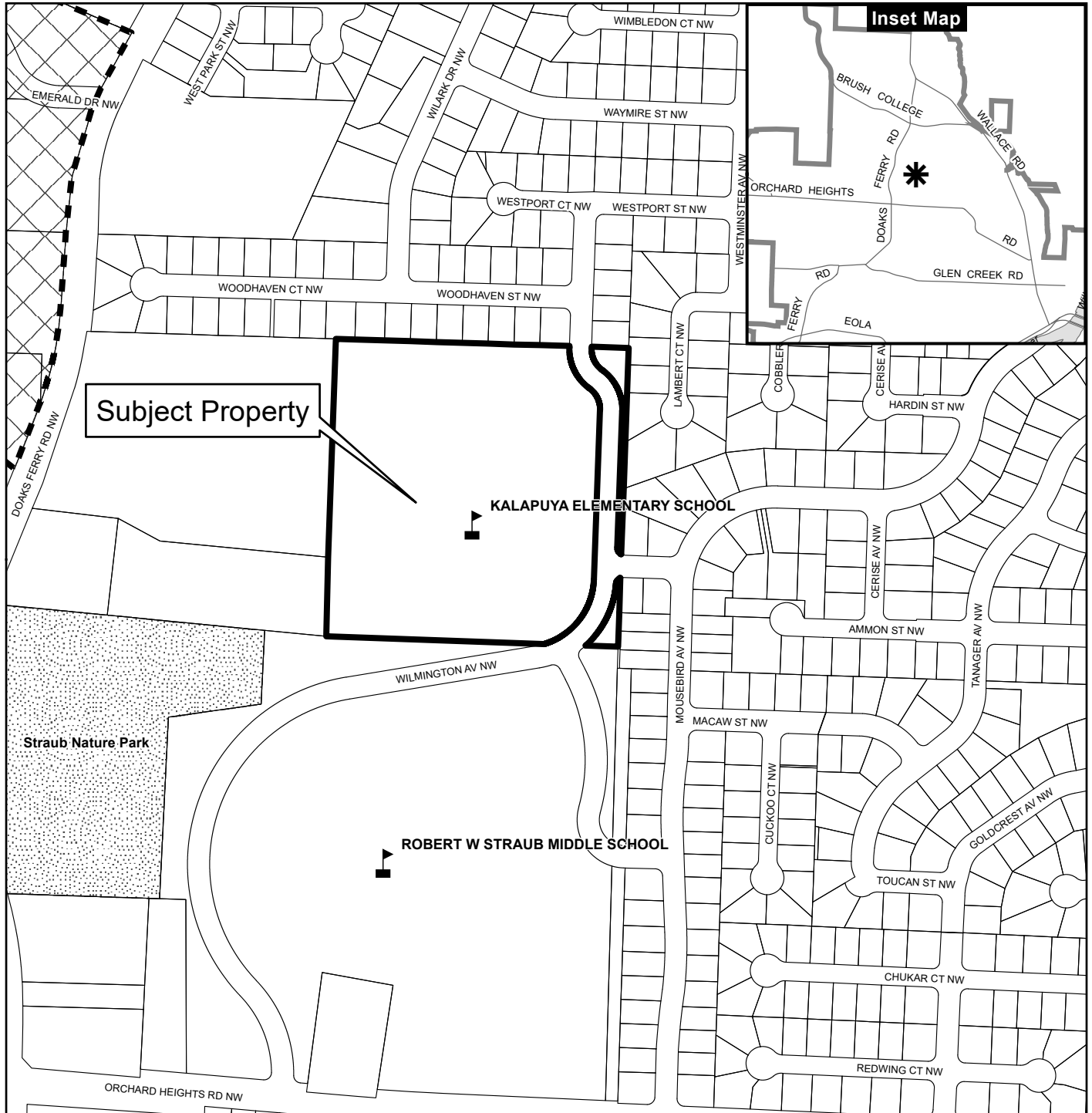
- Condition 1:** The roots, trunks, and branches of the trees approved to be removed within the Wilark Creek riparian corridor shall be completely removed from the riparian corridor.
- Condition 2:** Prior to issuance of Public Construction permits for the sewer main, the applicant shall provide a restoration plan which includes 27 Trees outside of the sanitary sewer main easement, 27 vegetative bushes (from the list in the findings) and a seed mix (grass) beyond 15-feet from the top of bank.










Olivia Dias, Current Planning Manager, on behalf of
Lisa Anderson-Ogilvie, AICP
Planning Administrator

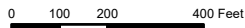
Attachments: A. Vicinity Map
B. Site Plan

Vicinity Map 2085 Wilmington Avenue NW



Legend

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



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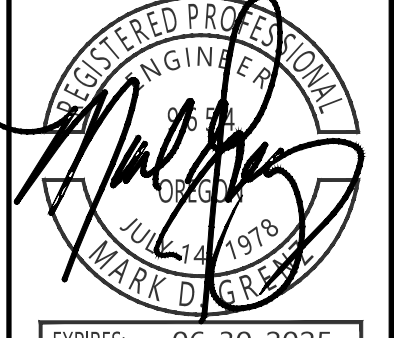


TREE REMOVAL PLAN

WILARK CREEK

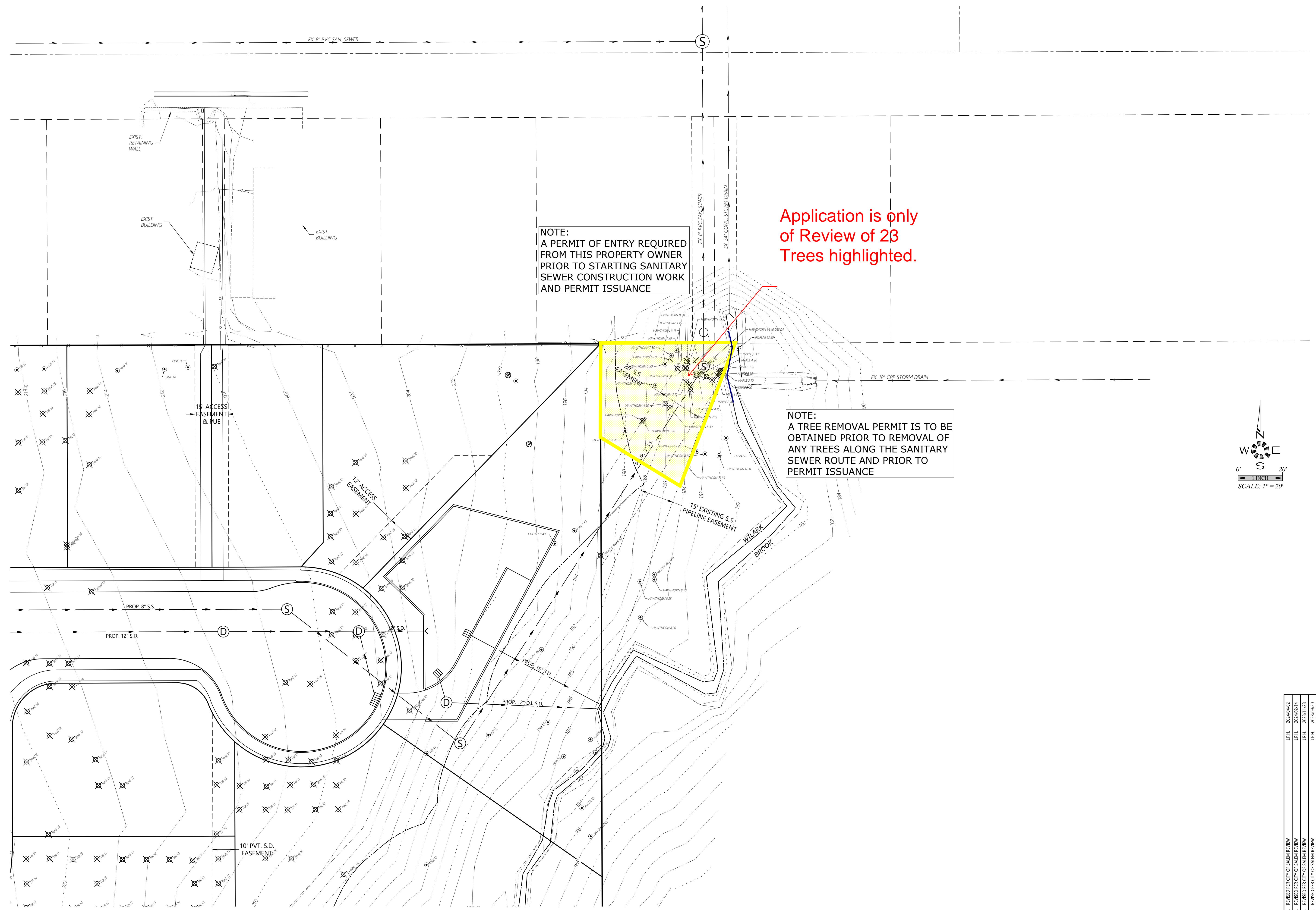
NO CHANGES, MODIFICATIONS OR REPRODUCTIONS TO BE MADE TO THESE DRAWINGS WITHOUT WRITTEN AUTHORIZATION FROM THE DESIGN ENGINEER. DIMENSIONS & NOTES TAKE PRECEDENCE OVER GRAPHICAL REPRESENTATION.

Design: M.D.G.
Drawn: D.G.G.
Checked: J.J.G.
Date: JAN. 2020
Scale: AS SHOWN
As-Built: _____



JOB # 6951

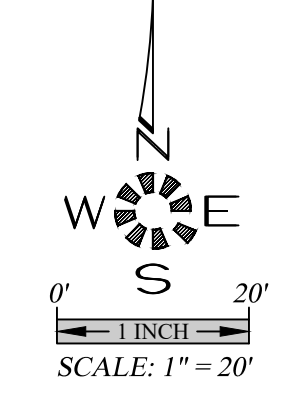
103



NOTE:
A PERMIT OF ENTRY REQUIRED FROM THIS PROPERTY OWNER PRIOR TO STARTING SANITARY SEWER CONSTRUCTION WORK AND PERMIT ISSUANCE

Application is only of Review of 23 Trees highlighted.

NOTE:
A TREE REMOVAL PERMIT IS TO BE OBTAINED PRIOR TO REMOVAL OF ANY TREES ALONG THE SANITARY SEWER ROUTE AND PRIOR TO PERMIT ISSUANCE



- 5. REVISION PER CITY OF SALEM REVIEW
- 4. REVISION PER CITY OF SALEM REVIEW
- 3. REVISION PER CITY OF SALEM REVIEW
- 2. REVISION PER CITY OF SALEM REVIEW
- 1. REVISION PER CITY OF SALEM REVIEW

69510 - 103 TREE



planning@cityofsalem.net

The West Salem Neighborhood Association (WSNA) appeals the TRV25-02 Approval Decision granted May 1, 2025, which authorizes the applicant to secure a City of Salem Tree Removal permit for 23 trees in a riparian zone along Wilark Brook on property owned by the 24-J School District. The appeal is based upon multiple inaccurate claims and for failing to conform to the provisions of the applicable code sections of SRC Chapter 808 and 809.

Steven Anderson and E. M. Easterly are the designated appeal representatives.

Example 1:

The approval of TRV25-02 is based on incomplete or inaccurate submission of narrative statements and graphics in response to the requirements detailed at SRC 808.030 and SRC 808.045.¹

Example 2:

The TRV25-02 Approval document offers the following declaration without referencing the SRC 808.030(2)(C) submittal requirement:

- *Concerns related to compliance with Salem Area Comprehensive Plan Goal N1.*

Staff Response: Comprehensive Plans provide goals, policies, and recommendations to guide future decisions. The Salem Revised Code implements the Comprehensive Plan, including Goal N1. Compliance with the applicable decision criteria would be consistent with the Salem Area Comprehensive Plan.

The referenced Salem Area Comprehensive Plan is cited below. Applicable decision criteria and conditions of approval are missing in the TRV25-02 Approval Decision.

“N 1 Environmental Protection Goal: Protect and enhance the quality and function of Salem’s natural resources, ecosystems, and environment.

N 1.1 Natural resource protection: The quality and function of natural resources in the Salem Urban Area shall be protected, including wetlands, waterways, floodplains, and critical habitat.
Salem Area Comprehensive Plan

Please note the applicant submittal requirements listed in Appendix A include: SRC 808.030(2)(C) “A completed wetland delineation or determination, if applicable;”

No wetland delineation was included in the application file. Nor does the application file explain or justify why the requisite delineation is not “applicable.”

Respectfully,

Michael Freitas, Chair
West Salem Neighborhood Association

¹ See Appendix A.



Appendix A

Sec. 808.030. - Tree and vegetation removal permits.

(c) Submittal requirements. In addition to the submittal requirements for a Type I application under SRC chapter 300, an application for a tree and vegetation removal permit shall include the following:

(1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

(A) The total site area, dimensions, and orientation relative to north; **{Not included}**

(F) The site plan may contain a grid or clear delineation of phases that depict separate areas where the work is to be performed. **{Not included}**

(2) In addition to the information required by subsection (c)(1) of this section, an application for tree or native vegetation removal connected with restoration activity in a riparian corridor shall include:

(B) A conceptual tree and vegetation planting or replanting plan; **Not included}**

(□) A completed wetland delineation or determination, if applicable; **Not included}**

(D) A grading plan if grading is planned or anticipated; **Not included}**

Sec. 808.045. - Tree variances.

(a) Applicability. Tree variances may be granted to allow deviation from the requirements of this chapter where the deviation is reasonably necessary to permit the otherwise lawful development of a property.

{Deviations Not identified in the approval document}

(b) Procedure type. A tree variance is processed as a Type II procedure under SRC chapter 300.

(c) Submittal requirements. In addition to the submittal requirements for a Type II application under SRC chapter 300, an application for a tree variance shall include the following:

(1) A site plan, of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

(A) The total site area, dimensions, and orientation relative to north; **Under Lined Not included}**

(C) Identification of the type, size, and location of all existing trees on the property; **{Not Accurately identified}**