



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: July 17, 2019

Department: Public Works Agenda Planning Date: July 11, 2019 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: Brian Nicholas

TITLE: Receive notice of hearings officer's decision recommending approval of Zone Change (ZC) Case 19-004/ Larry and Noreen Chamberland, Trustees of the Chamberland Family Trust.

Issue, Description & Background: The hearings officer issued a decision on July 8, 2019, recommending approval of ZC 19-004. As part of the land use process, the board of commissioners must receive official notice of the recommendation.

Financial Impacts: None.

Impacts to Department & External Agencies: None.

Options for Consideration: 1. Receive notice of the recommendation. 2. Receive notice of the recommendation and call the matter up.

Recommendation: Staff recommends that the board of commissioners receive the notice of the recommendation.

List of attachments: Hearings officer's recommendation

Presenter: Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Joe Fennimore - gfennimore@co.marion.or.us

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No.	ZC 19-004
)		
Application of:)	Clerk's File No.	
)		
LARRY and NOREEN CHAMBERLAND, TRUSTEES))	Zone change	
of the CHAMBERLAND FAMILY TRUST)		

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Larry and Noreen Chamberland, Trustees of the Chamberland Family Trust to change the zone from CO (Commercial Office) to CG (Commercial General) on 0.22 acre at 4050 Hudson Avenue NE, Salem, Marion County, Oregon (T7S, R2W, S30CD, tax lot 1400).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Salem Area Comprehensive Plan (SACP) and the Marion County Code (MCC) title 16, especially chapters 16.21 and 16.39.

III. Public Hearing

A public hearing was held May 14, 2019. The Planning Division file was made part of the record. The following persons appeared at hearing:

- | | | |
|----|-------------------|--|
| 1. | Lisa Milliman | Planning Division |
| 2. | John Rasmussen | Marion County Public Works Engineering |
| 3. | Larry Chamberland | Applicant |
| 4. | Jeff Tross | Applicants' consultant |

No documents were entered into the record as exhibits. No objections were raised to notice, jurisdiction, conflicts of interest, evidence or testimony.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. Larry and Noreen Chamberland, Trustees of the Chamberland Family Trust, propose changing the zone from CO to CG on a 0.22 acre parcel at 4050 Hudson Avenue NE in Salem, Marion County, Oregon. The property is within the Salem Urban Growth Boundary

(UGB) and is designated Commercial in the SACP. The property is under the jurisdiction of Marion County. Applicants propose developing the property with CG zone uses.

2. The property is on the south side of Hudson Ave. NE, about 240' east of its intersection with Lancaster Drive NE. The parcel is currently vacant.
3. Adjacent properties are zoned CO, CG and CR (Commercial Retail) and contain a mixture of commercial retail, service, and office uses.
4. The Marion County Planning Division contacted various governmental agencies for comment on the proposal.

Marion County Public Works Land Development Engineering and Permits Division (PW LDEP) commented:

ENGINEERING CONDITION

Condition A – Prior to building permit issuance, design and permit urban ¼-street frontage improvements along the subject property's Hudson Avenue frontage. Prior to issuance of a Building Certificate of Occupancy, acquire PW Engineering final inspection approval of the frontage improvements.

The subject property Hudson Avenue frontage is currently unimproved. Nexus for the above Condition is in accordance with Marion County Code 11.15 and 16.39.060 whereby the improvement of urban services to serve the public interest and protect public health, safety, and welfare may be conditioned, and as a matter of pedestrian connectivity to the surrounding urban area. Improvements are anticipated to include pavement widening, sidewalk, curb, gutter, and an ADA compliant corner ramp at the corner of Hudson Avenue and 40th Place. A Major Construction Permit will need to be obtained from Marion County Public Works for this work.

ENGINEERING REQUIREMENTS

B. In accordance with Marion County Code 11.10, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way. The applicant shall be required to apply for a driveway "Access Permit" and construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards.

C. Utility Permits are required in order to install utilities within County-controlled public right-of-ways. Underground utility work in the public R/W will need to be done in conjunction with overall improvements. Therefore, the Applicant will need to coordinate...ahead of time with those providers.

ENGINEERING ADVISORIES

D. It is noted that 40th Place is a private easement roadway on the neighboring property. Therefore, any direct access to 40th Place would need to be arranged with the underlying

property owner. Potential acquisition of an access easement may negate allowed direct access to Hudson Avenue.

E. Sanitary sewer service is provided by the City of Salem.

F. Potable water service is provided by Suburban East Salem Water District.

The City of Salem commented that the property is currently designated as Commercial on their Comprehensive Plan, and it has no concerns.

Marion County Fire District 1 (MCFD1) commented on fire flow, fire safety during construction, fire apparatus road distance from building and turnarounds, no parking signs, premise identification and fire extinguisher requirements.

All other contacted agencies either failed to comment or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

'Preponderance of the evidence' means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If the evidence for every criterion is in applicant's favor, then the burden of proof is met and the application must be approved.

ZONE CHANGE

2. Under MCC 16.36.070(A), applications shall include signatures of all owners of the subject property; or...

A statutory warranty deed recorded at reel 2437, page 487 shows Larry and Noreen Chamberland, Trustees of the Chamberland Family Trust, dated February 19, 1993 purchased the subject property. Larry and Noreen Chamberland, as Trustees of the Chamberland Family Trust signed the subject. MCC 16.36.070 is met.

3. Under MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications. The hearings officer may hear and decide this matter.
4. Under MCC 16.39.050, approval of a zone change shall include findings that the change meets the following criteria:
 - A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.
 - B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.
 - C. The request shall be consistent with the purpose statement for the proposed zone.
 - D. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
5. *Comprehensive plan designation.* The subject property is designated Commercial in the SACP. Under MCC 16.01.030, the CG zone is allowed in the SACP Commercial designation. Under SACP II.A.3.c, designated Commercial areas provide shopping and service opportunities for regional shopping facilities, community and neighborhood shopping and service facilities, convenience stores, commercial offices, and specialized shopping and service facilities. Community and neighborhood shopping and service facilities offer a variety of goods and services. Neighborhood scale facilities include convenience goods for neighborhood residents while community scale facilities may include shopping goods for a market area consisting of several neighborhoods. Applicant stated no immediate development plans for the subject property. SACP goals are achieved through SACP policies. Policies applicable to commercial designations are discussed below.

General development policy 7. Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the Salem urban area should average 6.5 dwelling units per gross acre of residential development. Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.

The subject property is undeveloped. The property is flat, and requires little or no topographic alteration or disturbance. No watercourses cross the property. Development policy 7 is met.

General development policy 14. Outdoor storage areas should be screened from the public streets and adjacent uses.

Under MCC 16.07.250(A), any nonresidential development proposed within 100' of a residentially designated property will have any outdoor storage areas screened from public streets and residential property. Property to the northeast is residentially designated and may be within 100' of the subject property. Applicant stated no problem with meeting MCC 16.07.250(A) screening requirement. With this screening standard general development policy 14 is met.

General development policy 15. Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.

Under MCC 16.07.250(B), any nonresidential development proposed within 100' of a residentially designated property will have exterior lighting designed to illuminate the site and direct light away from public rights-of-way and adjacent residential properties. With this MCC 16.07.250 light shielding requirement, general development policy 15 is met.

Commercial development policy 2. Development of shopping and service facilities may be approved only after reviewing a development plan consisting of maps and written statements on the following:

- a. Site plan,
- b. Layout of all off-street parking and loading facilities,
- c. Landscaping plan,
- d. Surface stormwater plan,
- e. Vehicular and pedestrian circulation plan,
- f. Utility plans,
- g. Impact on adjacent neighborhoods,
- h. Impact on adjacent street networks,
- i. Proposed use(s),
- j. Transit service, and
- k. Other information that may be required.

Applicant provided no preliminary site plan for the subject property because future development has not been finalized. However, the MCC has development standards for off-street parking and loading, landscaping, and so on that will be imposed on development of the subject property. Additionally, the Planning Division noted that bus service is available on nearby Lancaster Drive. With imposition of standards and site plan review on development, commercial development policy 2 will be met.

Commercial development policy 4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

The site fronts Hudson Avenue and is owned in conjunction with property with frontage on Lancaster Drive, a principal arterial street. The subject property itself is 240' from Lancaster Drive with commercially designated property on all sides. There is no traffic light at Hudson for easier access to southbound Lancaster Drive. But, there is also no clear route through the neighborhood that would allow quick access to a nearby light, so traffic infiltration onto local streets is less likely to occur. Off-street loading areas for commercial uses must be developed to Marion County standards. Commercial development policy 4 is met.

Commercial development policy 5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods.

The subject property is in an existing commercial cluster at the Hudson Avenue-Lancaster Drive intersection. The area is already committed to commercial uses. Commercial development policy 5 is satisfied.

Commercial development policy 8. Buffer strips from residential uses shall be provided for all commercial development.

A corner of property to the northeast is residentially designated and may be within 100' of the subject property. MCC 16.07 special yard, setback, lighting, and screening standards for commercial development near and adjacent to residential properties will provide buffering to residential uses. Commercial development policy 8 is met.

Conclusion. The CG zone is appropriate for the SACP Commercial designation, is consistent with the community and neighborhood shopping and service facilities description and meets SACP policies applicable to the Commercial designation. MCC 16.39.050(A) is satisfied.

6. *Public facilities.* The subject property is in an area with existing infrastructure, including water and sewer services. Lancaster Drive, a well-developed five lane principal arterial roadway is within 240' of the subject property. Transit service is provided on Lancaster Drive. MCC 16.39.050(B) is met.
7. *Purpose statement.* According to MCC 16.07.000, the purpose of the CG zone is to provide areas suitable for warehousing, wholesale commercial sales and services with related outdoor storage or retail sales. The commercial general zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan where the location has access to an arterial street or highway for transport of bulk materials and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones.

The CG zone is appropriate for the SACP Commercial designation and property to the north is already zoned CG. CR zoned property is east and west. CO zoned property is to the south. The subject property's Hudson Avenue frontage is only 240' from Lancaster Drive,

and exiting traffic would go to Lancaster Drive through commercial rather than residential areas. Site-generated traffic can be accommodated, and applicants agreed to ¼-width street frontage improvements as a condition of approval. The corner of a residentially zoned parcel is to the northeast, but applicant agreed to meet MCC 16.07 special requirements for commercial uses near residentially designated properties. MCC 16.39.050(C) is met.

8. *More intensive zone.* CG is the most intensive zone appropriate for the commercial designation. The zone allows many of the same uses as the CR zone. A limited use overlay zone could be applied to restrict the more intensive CG zone uses that could significantly adversely affect allowed uses on less intensively zoned property. But, with the property's small size, it is unlikely that more intensive warehousing type uses requiring maneuvering room for large vehicles could use the subject property. MCC 16.39.050(D) is met.

AIRPORT OVERLAY

9. The subject property is within the airport overlay (AO) zone of the city of Salem's McNary Field. MCC chapter 16.21 governs the Marion County AO zone. Under MCC 16.21.030, three airport development districts are provided within the airport overlay zone. The three districts are shown on the official zoning map.
10. Under local rules, the hearings officer may take official notice of judicially noticeable facts and ordinances, resolutions, rules and regulations of the United States, the State of Oregon, Marion County, and the incorporated cities within Marion County. To determine which districts apply here, the hearings officer takes official notice of the Federal Aviation Administration (FAA) approved airspace surfaces from the 2012 City of Salem draft Salem Airport master plan, page 291. The illustration shows the subject property is within the horizontal surface of the Salem Airport.
11. Under 16.21.030(B), the Horizontal Surface District consists of the land, water and airspace above or below the horizontal surface as described in MCC 16.21.020. Under MCC 16.21.020(D)(3), horizontal surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs.
12. Under 16.21.030(B)(1), any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:
 - a. Except as provided in subsection (D) of this section, no obstruction or object shall penetrate the horizontal surface as defined in MCC 16.21.020.
 - b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

The height limit for commercial uses in the CG zone is 70'. Any structure developed as a result of this zone change will not extend within the 150' horizontal surface. No sanitary

landfills, sewage lagoons or sewage sludge disposal areas are requested or allowed by this application. MCC 16.21.030(B) is satisfied.

VI. Recommendation

It is hereby found that applicant has met the burden of proving the applicable standards and criteria for approval of a zone change from CO to CG have been met. The hearings officer **recommends** the Marion County Board of Commissioners **GRANT** the zone change application, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

- A. Applicant shall obtain all permits required by the Marion County Building Inspection Division.
- B. Applicant shall meet the requirements of MCC 16.07.200 and MCC 16.07.250 which require landscaping and screening of outdoor storage areas, exterior lighting, and roof equipment.
- C. All current and future development on the property must satisfy the specific development standards in the CG zone and the general development standards found in MCC chapters 16.26 through 16.40.
- D. Prior to building permit issuance, design and permit urban ¼-street frontage improvements along the subject property's Hudson Avenue frontage. Prior to issuance of a Building Certificate of Occupancy, acquire PW Engineering final inspection approval of the frontage improvements.
- E. Prior to development of the property, applicant shall provide evidence that the Marion County Fire District 1 has reviewed and approved all fire and life safety plans.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application. Any aggrieved or affected person may file with the Marion County Clerk (555 Court Street NE, Salem), a written request for a public hearing before the Board within fifteen (15) days of the date of mailing of this recommendation. The request must be accompanied by, and will not be accepted without, payment of a \$500.00 fee. (If the Board denies the appeal, \$300 of the fee will be refunded.) The Board has discretion whether to hold a public hearing. After fifteen (15) days, the Board may take final action on this application without conducting another public hearing.

DATED at Salem, Oregon, this 8th day of July 2019.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing recommendation on the following persons:

Larry and Noreen Chamberland
P.O. Box 619
Stayton, OR 97383

Agencies Notified
Planning Division

(via email: gfennimore@co.marion.or.us)
(via email: breich@co.marion.or.us)
(via email: lmilliman@co.marion.or.us)

Jeff Tross
1720 Liberty Street SE
Salem, OR 97302

Code Enforcement
Building Inspection
Assessor
PW Engineering

(via email: bdickson@co.marion.or.us)
(via email: twheeler@co.marion.or.us)
(via email: assessor@co.marion.or.us)

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

MCFD No. 1
DLCD
City of Salem

(via email: jrassmussen@co.marion.or.us)
(via email: mhepburn@co.marion.or.us)
(via email: mpuntney@co.marion.or.us)
(via email: paulas@mcfcd1.com)
(via email: angela.camahan@state.or.us)
(Planning@cityofsalem.net)

Mary Kyle McCurdy
1000 Friends of Oregon
133 SW 2nd Avenue, Suite 201
Portland, OR 97204

East Salem Suburban
Neighborhood Association
P.O. Box 13571
Salem, OR 97309

by mailing or emailing copies thereof, as specified above. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 8th day of July 2019, and that the postage thereon was prepaid.



Susan Hogg
Secretary to Hearings Officer