



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: November 30, 2016

Department: Public Works Agenda Planning Date: Nov. 23, 2016 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE: Receive hearings officer's recommendation for Zone Change (ZC) Case 16-002/Lancaster Opportunities, LLC.

Issue, Description & Background: The hearings officer issued a recommendation on November 14, 2016, to approve ZC/CP Case 16-002. As part of the land use process, the board of commissioners must officially receive the decision.

Financial Impacts: None.

Impacts to Department & External Agencies: None.

Options for Consideration: The land use process mandates that the board of commissioners must receive the hearings officer's decision. As this is process only, there are no options for consideration.

Recommendation: Staff recommends the board of commissioners receive the hearings officer's decision.

List of attachments: Hearings officer's decision

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 16-002
Application of:) Clerk's File No.
LANCASTER OPPORTUNITIES, LLC) **Zone change**

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Lancaster Opportunities, LLC. to change the zone from CR (Commercial Retail) to CG (Commercial General) on 0.79 acre at 250 Lancaster Drive NE, Salem, Marion County, Oregon (T7S, R2W, S30CA, tax lot 5100).

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 chapter 16.39, zone changes.

III. Public Hearing

A public hearing was held September 28, 2016. The Planning Division file was made part of the record. The following persons appeared at hearing:

1. Lisa Milliman Planning Division
2. Michael Paluska Applicant's attorney

The record remained open until October 5, 2016 for applicant to submit additional information. An October 5, 2016 email with attached October 5, 2016 letter from Michael Paluska and Lancaster Opportunities, LLC operating agreement was submitted to the record as an exhibit 1. 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. The subject property is within the Salem Urban Growth Boundary (UGB) and is designated Commercial in the SACP. Marion County has zoning jurisdiction in the UGB area.
2. The subject property is on the north side of Hudson Avenue NE approximately 250 feet east of Lancaster Drive NE. The parcel is unimproved. The property is considered legally created for land use purposes.

3. The subject property is bordered on the north by CG zoned property in the same ownership, to the south by CR and CO (Commercial Office) zoned property, to the east by CG and RS (Single Family Residential) zoned property, and to the west by CR zoned property.
4. Applicant proposes changing the zone from CR to CG on 0.79 acre to allow expansion of its retail automotive businesses from property to the north or for other uses that may be allowed in the CG but not the CR zone.
5. The Planning Division contacted various governmental agencies for comment, but all agencies failed to respond 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.
2. Under MCC 16.36.070, applications shall include the following signatures:
 - A. Signatures of all owners of the subject property; or
 - B. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale; or
 - C. The signatures of lessee in possession of the property with the written consent of all the owners; or
 - D. The signatures of the agent of those identified in subsection (A), (B) or (C) of this section when authorized in writing by those with the interests described in subsection (B) or (C) of this section, and all the owners of the property; or
 - E. The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; and
 - F. The signature of the applicant and the applicant's address and phone number.

A personal representative's deed recorded at reel 3726, page 472 shows Lancaster Opportunities, LLC purchased lot 9, block 1 of the Emma Childs Subdivision in July 2015. A property line adjustment deed recorded at reel 3797, page 349 shows Lancaster Opportunities, LLC and a neighboring property owner adjusted their properties into the present configurations. Bonnie Anderson and Byron Anderson signed the subject application for Lancaster Opportunities, LLC as members. Lancaster Opportunities, LLC's operating agreement at exhibit 1 shows each member may execute, deliver, and perform on behalf of the company any and all agreements and documents

deemed necessary or desirable by the members to carry out its business. Members Anderson and Anderson could sign the subject application for Lancaster Opportunities, LLC. 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.* 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 but may develop it consistent with its northern property which is zoned CG. Policies applicable to commercial zoning 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. A 25' strip of the larger and mostly CG zoned tax lot 072W30CA04600 is adjacent to the east. The strip is residentially zoned but is designated Commercial in the SACP. Other property to the east and within 100' of the subject property is residentially designated. The screening standard will be imposed on development of the subject property. 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. MCC 16.07.250 will be applied on development of the property. 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, applicant provided a transit route printout showing that bus service is available on nearby Lancaster Drive and State Street. 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 but is owned in conjunction with property having frontage on Lancaster Drive, a principal arterial street. 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 less likely to occur. Off-street loading areas for commercial development 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 portion of the site's eastern boundary abuts a 25-foot wide residentially zoned but commercially designated strip that is part of a large commercially zoned property. At 25', the property is not likely to be developed for residential purposes. This, along with 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 250' of the

subject property. Transit service is provided on Lancaster Drive and nearby State Street. 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 proposed CG zone is appropriate for the SACP Commercial designation and adjacent property to the north and northeast is already zoned CG. The subject property has direct access to Lancaster Drive, a principal arterial street, if developed in conjunction with the properties to the north. Even without joint development, the site's Hudson Avenue frontage is only 250' from Lancaster Drive, and exiting traffic would go to Lancaster Drive through a commercially rather than residentially developed area. Site-generated traffic can be accommodated. A residentially zoned parcel abuts the subject property to the east, but MCC 16.07 contains special requirements for commercial uses next to residentially zoned properties. MCC 16.39.050(C) is satisfied.

8. *More intensive zone.* The CG zone 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 can 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 the more intensive warehousing type uses requiring maneuvering room for large vehicles could use the subject property. MCC 16.39.050(D) is met.
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.

13. The zone change is recommended with conditions as recommended by the Planning Director and set forth below.

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 CR 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 approval, applicant shall provide evidence that any required permits or agreements have been filed with the city of Salem and that any required upgrades to sewer or water service have been made to the city of Salem's satisfaction.
- E. Prior to development of the property, applicant shall provide evidence that the Marion County Fire District 1 has reviewed and approved all access and turnaround improvements.

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 14th day of November 2016.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Lancaster Opportunities, LLC
264 Lancaster Dr. NE
Salem, OR 97301
(via U.S. Postal Service)

Michael J. Paluska
1820 Commercial St. SE
Salem, OR 97302
(via U.S. Postal Service)

Agencies Notified

Planning Division (via email)
Building Inspection (via email)
Public Works Engineering (via email)
Neighborhood Association: ESSNA (via email)
chair@essnasalem.org
publicworksessnasalem.org
Assessor (via email)

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 14th day of November 2016, and that the postage thereon was prepaid.



Christi Klug
Secretary to Hearings Officer