

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the	)	Case No. ZC 17-005
Application of:	)	
North Lancaster Business Park, LLC	)	Clerk's File No. 5738

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1384

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of North Lancaster Business Park, LLC. to change the zone from CR (Commercial Retail) to CG (Commercial General) on a 4.42 acre parcel at 4743-4753 Lancaster Drive NE, Salem, Marion County, Oregon (T7S, R2W, S06BD, tax lot 2700).

SECTION II. Procedural History

The Hearings Officer held a public hearing on this application on November 29, 2017, and on January 5, 2018, issued a recommendation to grant the zone change. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board considered evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Additional Findings of Fact and Conclusions of Law contained in Section IV and V of the Hearings Officer's recommendation dated January 5, 2018, contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested zone change from CR (Commercial Retail) to CG (Commercial General) is hereby **GRANTED** subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is identified on a map in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to Marion County Code Section 16.010.40 to reflect the new zoning.

SECTION V. Effective Date

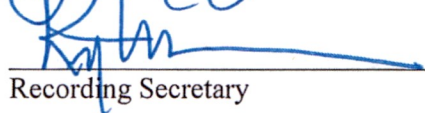
Pursuant to Marion County Code Section 1.10.030, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 14 day of February,
2018, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the	)	Case No.	ZC 17-005
	)		
Application of:	)	Clerk's File No.	
	)		
NORTH LANCASTER BUSINESS PARK, LLC	)	Zone Change	

INITIAL DECISION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of North Lancaster Business Park, LLC to change the zone from CR (Commercial Retail) to CG (Commercial General) on a 4.42 acre parcel located at 4743-4753 Lancaster Drive, NE, Salem (T7S; R2W; Section 6BD; tax lot 2700).

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 Title 16.39.

III. Public Hearing

A public hearing on this application was held before the Marion County Hearings Officer on November 29, 2017. At the hearing, the Planning Division file was made part of the record. The following individuals appeared at the hearing and provided testimony on the application:

- | | | |
|----|----------------|----------------------------|
| 1. | Joe Fennimore | Planning Division |
| 2. | John Rasmussen | Engineering Division |
| 3. | Frank Walker | Applicant's representative |
| 4. | Wes Hill | Applicant's attorney |

Applicant did not raise objections 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 4.42 acre area of land is a lawfully created parcel for land use purposes located within the Salem Urban Growth Boundary (UGB) outside the city limits of Salem. The parcel is designated C (Commercial) in the Salem Area Comprehensive Plan (SACP). The property is zoned CR (Commercial Retail) under the jurisdiction of Marion County.
2. The subject property is located on the west side of Lancaster Drive NE, approximately 300 feet north of its intersection with Hayesville Drive NE. The parcel contains 12 buildings, all of which are located along the western property line.

3. Adjacent land to the west and north is zoned CR and contains a mixture of commercial uses. Land to the south is zoned CO (Commercial Office) and contains an apartment complex and a single-family dwelling. Land to the east, across Lancaster Drive NE, is zoned Single-Family Residential and consists of a developed residential subdivision.
4. Applicant applies for a change in the zone from CR to CG (Commercial General).
5. The Marion County Planning Division (MCPD) requested comments on the proposal from various governmental agencies.
 - a. The Marion County Assessor's Office commented on the tax status of the property.
 - b. The Marion County Public Works Land Development and Engineering Permits Division (LDEP) provided comments on requirements that are not part of the land use decision, which are available for review in the planning file, and requested that the following conditions A through D be included in the land use case:

Condition A - Prior to issuance of building permits, provide a Traffic Impact Analysis (TIA) for review and approval.

Condition B - Prior to issuance of building permits and/or occupancy, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 48 feet to meet the City of Salem Arterial standard, and any additional R/W as may be necessary to accommodate any public road improvements that may be identified in an approved TIA, along the Lancaster Drive frontage.

Condition C - Prior to application for building permits submit an engineered civil site plan set to MCPW Engineering for review and conceptual approval of Lancaster Drive frontage improvements consisting of access consolidation, modifications and ADA upgrades, any road improvements that may be identified in the approved TIA, and proposed onsite grading, stormwater management facilities, traffic circulation and parking.

Condition D - Prior to issuance of building permits and/or occupancy, design, permit and construct Lancaster Drive frontage improvements consisting of access consolidation, modifications and ADA upgrades, any road improvements that may be identified in the approved TIA, and proposed onsite grading, stormwater management facilities, traffic circulation and parking. Construction of onsite improvements may be phased to align with building construction and/or occupancy. Construction of frontage and any road improvements must be completed prior to any occupancy.

- c. The City of Salem commented as follows:

"The City of Salem Comprehensive Plan designation for the subject property is Commercial which would be consistent with the CG zoning district. The application discusses warehousing and distribution as

the future use of the subject property. The City of Salem CG (General Commercial) zone does allow for warehousing and distribution limited to; Distribution centers for online, mail order, and catalog sales and Postal processing and distribution centers (Salem Revised Code Chapter 52, Table 523-1). Any other warehousing and distribution would be a non-conforming use upon annexing into the City of Salem."

- d. Other contacted agencies did not respond or did not state an 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. Pursuant to MCC 16.39, a zone change may be initiated by an application provided for in MCC 16.36. MCC 16.39 defines a "zone change" as an amendment of the official zoning map involving five or less different ownerships that does require an amendment to the text of the ordinance.
3. The Salem Comprehensive Policies Plan (Policies Plan) states that: "Marion County has exclusive jurisdiction over all land use actions applicable within that portion of the Salem Urban Area and Keizer Urban Area that are outside the Salem city limits and outside the Keizer city limits other than regional planning actions and amendments to urban area policies."¹
4. The hearings officer is authorized to make the initial decision on zone change applications under MCC 16.39.010. The initial decision of the hearings officer may be appealed to the Marion County Board of Commissioners (BOC) as provided in MCC 16.44.300. Pursuant to MC 16.39.040, an initial decision of the hearings officer to approve a zone change does not become final until the board adopts an ordinance implementing the decision, and an initial decision of the hearings officer to deny a zone change becomes final when the appeal period has expired unless the board calls up the application as provided in MCC 16.39.020 or a board hearing is required by state law.
5. Pursuant to 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.

¹ Salem Comprehensive Policies Plan, November 2015, p. 19
(<https://www.cityofsalem.net/CityDocuments/salem-area-comprehensive-policies-plan.pdf>).

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.

6. **Criterion A** - The subject property is designated Commercial in the SACP, and the CG zone requested by the applicant is allowed in areas subject to the Commercial comprehensive plan designation.

a. General Development Policies contained in the Policies Plan applicable to commercial development of the subject property are met, or can be met, by imposition of developments standards required by MCC Title 16, including but not limited to:

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 flat and does not require much, if any, topographic alteration or disturbance. Watercourses do not cross the property. General Development policy 7 can be met by imposition of development standards required by MCC Title 16.

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

MCC 16.07.250(A) requires, for any nonresidential development proposed within 100 feet of a residential zone, that outdoor storage areas be screened from the view of public roads and adjacent residential property. General development policy 14 can be met by imposition of the requirements of MCC 16.07.250(A) to development of the subject property.

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

MCC 16.07.250(B) requires, for any nonresidential development proposed within 100 feet of a residential zone, that exterior lighting be designed to illuminate the site and direct light away from public rights-of-way and adjacent residential properties. General development policy 15 can be met by imposition of the requirements of MCC 16.07.250(B) to development of the subject property.

b. Commercial Development Policies contained in the Policies Plan applicable to commercial development of the subject property are

met, or can be met by imposition of developments standards required by MCC Title 16:

Commercial development policy 1. The central business district shall be maintained and developed as a mixed-use regional retail and employment center for the Salem urban area as well as Marion and Polk counties.

The subject property is not located within the central business district (CB zone); therefore, Commercial Development Policy 1 is not applicable.

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 a preliminary site plan for the subject property; however, future development has not been finalized. MCC Title 16 contains development standards, including standards for off-street parking and loading and landscaping, that apply to development of the subject property. Currently, two transit lines (3 and 11) have stops near the intersection of Hayesville Drive NE and Lancaster Drive NE, which is within 300 feet of the subject property. Commercial development policy 2 can be met by implementation of the site plan review process and by imposition of development standards required by MCC Title 16.

Commercial Development Policy 3. Redevelopment of existing shopping and service facilities should be encouraged where appropriate to provide neighborhood services or as part of mixed-use development with multifamily housing. The City may use financial and other tools to encourage redevelopment of existing shopping and service facilities, especially in Urban Renewal Areas.

Applicant proposes to repurpose and upgrade existing commercial structures to provide warehousing and distribution services. Mixed-use development, including multi-family housing, may not be the most appropriate use of the subject property based on the location of the property and Applicant's intended use of the subject property. Uses allowed in the CG zone are among the most intensive uses of commercial zones. Use for warehousing and distribution is likely to generate truck and other large commercial vehicle traffic and is unlikely to

generate much, if any, retail consumer vehicle or pedestrian traffic. Commercial Development Policy 3 is 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 subject property has over 750 feet of frontage along Lancaster Drive NE, a major arterial. The preliminary site plan indicates there is adequate space for parking required by the MCC. Because the only residential zone nearby is across Lancaster Drive NE from the subject property, development of the property is likely to cause only a negligible amount of traffic infiltration onto local streets. 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.

Applicant proposes to repurpose and upgrade existing commercial structures in an area that is committed to commercial uses to provide goods and services for a market area of several neighborhoods. The subject property is located within the urban growth boundary just outside the city limits of Salem; therefore, the application does not contribute to strip development. Commercial development policy 5 is met.

Commercial Development Policy 6. Commercial office uses shall have direct access to collector and arterial streets or be located within one-quarter mile of a collector or arterial street.

The application does not propose commercial office uses; therefore, Commercial development policy 6 is not applicable.

Commercial Development Policy 7. With commercial development, buffer strips will be provided from residential uses, and external connectivity from residential development and other commercial development will be provided to commercial areas for pedestrian, bicycle and vehicular connectivity.

The land zoned for residential use, to the east of the subject property, is buffered by Lancaster Drive NE, a major arterial. There is residential use on property to the south that is zoned CO. MCC 16.07.250 contains development standards for nonresidential development proposed within 100 feet of a residential zone. Commercial development policy 7 can be met by imposition of the development standards required by MCC 16.07.250 to development of the subject property.

c. The criterion for the zone change in MCC 16.39.050(A) is satisfied or can be satisfied by the imposition of development standards required by MCC Title 16.

7. **Criterion B** - The subject property has over 750 feet of frontage on a major arterial in an area that is already planned, zoned and, developed to commercial uses. The subject property is in an area with existing infrastructure, including water and sewer services. Fire Service is provided by Marion County Fire Protection District #1 and the subject property is located within two miles of Fire House #8 on the campus of Chemeketa Community College. There are four paved access points serving the subject property, all of which meet the minimal turning radii requirements. Applicant represents that Marion County Public Works (MCPW) has discussed issues with the interval spacing and other compromises related to the access points and potential impacts of traffic growth on the access points. Applicant acknowledges that the existing access cannot likely be fully adaptable to meet the proposed commercial uses of the site and acknowledges that MCPW may require two access points with conforming interval spacing in the development process. Applicant represents that the property is either fully serviced, or is capable of being serviced for higher power demand if needed. Adequate public facilities, services and transportation networks are in place, or are planned to be provided concurrently with the development of the property. The criterion for the zone change in MCC 16.39.050(B) is satisfied.
8. **Criterion C** - Pursuant 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." MCC 16.07.000 describes the CG zone as "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." The subject property is located on the west side of Lancaster Drive NE, just outside the Salem city limits, and within the urban growth area. The portion of Lancaster Drive NE is a major arterial. To the north, Lancaster Drive NE provides a corridor to Interstate 5 by way of Portland Road NE, a major arterial, and Chemawa Road, a parkway. While development of uses allowable in the CG zone will increase traffic use of the corridor to I-5, uses are unlikely to create significant adverse impacts on local streets or the residential zone across Lancaster Drive NE from the subject property, as required by MCC 16.07.000. The request is consistent with the purpose statement for the proposed zone. The criterion for the zone change in MCC 16.39.050(C) is satisfied or can be satisfied by the imposition of development standards required by MCC Title 16.
9. **Criterion D** - 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 as well as some additional uses. A limited use overlay zone could be applied to the property. However, since all surrounding properties on the west side of Lancaster Drive NE are zoned for commercial use, it is unlikely that the additional uses allowed in the CG zone would have an adverse effect on allowed uses on the properties. The City of Salem commented that only very specific warehouse uses are permitted in its CG zone, however, they did not

recommend restrictions or conditions be applied to the property. The criterion for a zone change in MCC 16.39.050(D) is satisfied.

VI. Recommendation

The hearings officer finds 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.

1. Applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. Applicant shall meet the requirements of MCC 16.07.200 and MCC 16.07.250 which requires landscaping and screening of outdoor storage areas, exterior lighting, and roof equipment.
3. 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 Chapters 26 through 40 of the MCC.
4. The follow conditions, A through D, shall be met to the satisfaction of Marion County Public Works Land Development Engineering and Permit Division (LDEP):

Condition A - Prior to issuance of building permits, provide a Traffic Impact Analysis (TIA) for review and approval.

Condition B - Prior to issuance of building permits and/or occupancy, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 48 feet to meet the City of Salem Arterial standard, and any additional R/W as may be necessary to accommodate any public road improvements that may be identified in an approved TIA, along the Lancaster Drive frontage.

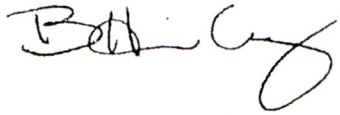
Condition C - Prior to application for building permits submit an engineered civil site plan set to MCPW Engineering for review and conceptual approval of Lancaster Drive frontage improvements consisting of access consolidation, modifications and ADA upgrades, any road improvements that may be identified in the approved TIA, and proposed onsite grading, stormwater management facilities, traffic circulation and parking.

Condition D - Prior to issuance of building permits and/or occupancy, design, permit and construct Lancaster Drive frontage improvements consisting of access consolidation, modifications and ADA upgrades, any road improvements that may be identified in the approved TIA, and proposed onsite grading, stormwater management facilities, traffic circulation and parking. Construction of onsite improvements may be phased to align with building construction and/or occupancy. Construction of frontage and any road improvements must be completed prior to any occupancy.

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 5th day of January 2018.

A handwritten signature in black ink, appearing to read "B. Harrison Conley", with a stylized flourish at the end.

B. Harrison Conley
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Frank Wallace
1480 Jamestown Street SE
Salem, OR 97302

Wes Hill
110 Madrona Ave SE
Salem, OR 97302

North Lancaster Business Park, LLC
360 Belmont Street NE
Salem, OR 97301

Agencies Notified

Planning Division

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

Public Works Engineering

(via email: jgrassmussen@co.marion.or.us)

Building Inspection

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

Assessor's Office

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

City of Salem

(via email: oglantz@cityofsalem.net)

Tax Office

(via email: adhillon@co.marion.or.us)

City of Salem Neighborhood Association B

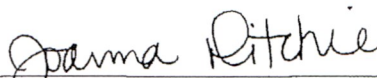
Northgate Association

Lee Ann Reed

3975 Bambi Ave NE

Salem, OR 97303

by mailing to them copies thereof, except as specified above for agency notifications. 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 5th day of January 2018, and that the postage thereon was prepaid.



Joanna Ritchie

Secretary to Hearings Officer

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC17-005/North Lancaster Business Park, LLC.

CONDITIONS OF APPROVAL:

Pursuant to Marion County Zone Code 16.39.060, the following conditions apply to the CG (Commercial General) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The CG zoning intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. The applicant shall meet the requirements of MCC16.07.200 and MCC16.07.250 which requires landscaping and screening of outdoor storage areas, exterior lighting, and roof equipment.
3. 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 Chapters 16.26 through 16.40 of the MCC.
4. The follow conditions, A through D, shall be met to the satisfaction of Marion County Public Works Land Development Engineering and Permit Division (LDEP):

Condition A – Prior to issuance of building permits, provide a Traffic Impact Analysis (TIA) for review and approval.

Condition B – Prior to issuance of building permits and/or occupancy, dedicate sufficient right-of-way (R/W) to provide the public R/W half-width of 48 feet to meet the City of Salem Arterial standard, and any additional R/W as may be necessary to accommodate any public road improvements that may be identified in an approved TIA, along the Lancaster Drive frontage.

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EXHIBIT C

The following described property is rezoned from CR (COMMERCIAL RETAIL) to CG (COMMERCIAL GENERAL). ZC 17-005/NORTH LANCASTER BUSINESS PARK LLC.

