



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 20, 2024
Department: Public Works

Title: Receive notice of hearings officer's decision approving Zone Change 23-003/LJS Property Management

Agenda Planning Date: 3/14/24 Management Update/Work Session Date: N/A Audio/Visual aids ☐
Time Required: 0 min Contact: Austin Barnes Phone: 503-566-4174

Requested Action: Receive notice of hearings officer's decision approving Zone Change 23-003/LJS Property Management.

Issue, Description & Background: The Marion County Hearings Officer issued a decision on March 11, 2024, approving Zone Change 23-003. As part of the land use process, the Marion County Board of Commissioners must receive official notice of the recommendation.

This is a zone change only; the comprehensive plan is not changing. The zone is changing from Multiple Family Residential to Commercial Retail to match the underlying existing commercial comprehensive plan designation. Planning staff will bring an ordinance before the board for its consideration to adopt the zone change. The board is not required to hold a hearing, and the applicants have not requested one. There was no testimony at the hearings officer's hearing aside from the applicant.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Hearings Officer's Decision

Presenter: Austin Barnes

Department Head Signature:

for Brandon Reel

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of
LJS Property Management, LLC

)
)

Case No. ZC 23-003
ZONE CHANGE

ORDER

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of LJS Property Management, LLC for a zone change to change the zone from RM (Multiple Family Residential) to CR (Commercial Retail) on a .89-acre parcel located at 350 Lancaster Drive SE, Salem (T7S, R2W, Section 31BA, Tax lot 3500).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, especially Chapter 16.39, the Salem Comprehensive Plan Goals, and the State of Oregon Planning Goals.

III. Public Hearing

A public hearing was held on this matter on February 29, 2024. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- | | | |
|----|--------------|---------------------------------|
| 1. | Nicole Inman | Marion County Planning Division |
| 2. | David Dodson | Representative of Applicant |

No documents were presented, marked, or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflict of interest, or to evidence or testimony presented at the hearing.

p

IV. Executive Summary

Applicant seeks a zone change on a .89-acre parcel located at 350 Lancaster Drive SE, Salem from RM (Multiple Family Residential) to CR (Commercial Retail). The subject property is currently a split zone, with a portion of the parcel already zoned Commercial Retail and the remainder being Multiple-Family Residential. The change would be in alignment with the underlying Comprehensive Plan (Commercial) and would resolve the existing issue of having an incompatible zone and Comprehensive Plan combination because the RM does not implement the Commercial Comprehensive Plan designation. The Hearings Officer APPROVES the application.

V. 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, a 0.89-acre parcel located at 350 Lancaster Dr SE, Salem (T7S, R2W, Section 31BA, Tax lot 3500), is within the Salem Urban Growth Boundary (UGB) and designated Commercial in the Salem Area Comprehensive Plan (SACP). The property's current split RM and CR zoning is under the jurisdiction of Marion County. The Applicant proposes a zone change to change the zone from RM (Multiple Family Residential) to CR (Commercial Retail) and then seeks to expand the use already existing on the CR portion onto the portion of the property presently zoned RM.
2. The property is located directly east of Lancaster Dr SE, approximately 175 feet south of its intersection with Mahrt Ave SE. The parcel is generally flat and currently has no structures on it. The portion of the property within the CR zone is roughly half paved and half graveled, while the portion of the property within the RM zone is vegetated with grass.
3. The property is served by the East Salem Sewer Service District and city utility maps show a 6-inch main pipe owned by the City of Salem ending at the southwest corner of the subject parcel, and an active 6 inch privately owned sewer service line extending from the main line onto the subject property. Staff was unable to find any data on the locations of water service or storm drain lines on or near the parcel, however, the subject property is located within the Suburban East Salem Water District and per the Applicant statement there is a 12-inch water line and a 12-inch storm drain line which runs along Lancaster Dr SE. The subject property is considered legally created for land use purposes.
4. Adjacent properties to the north and south are zoned CR (Commercial Retail) and are mostly in commercial use, with the exception being three residential dwellings to the north-northwest of the subject property. However, one of these dwellings is also using their parcel for an auto detail shop per land use case CU22-022. Properties to the northeast, east, and southeast are zoned RS (single family residential) and are a mix of undeveloped and developed with single-family dwellings.
5. The Marion County Planning Division requested comments from other agencies.

The City of Salem Community Planning and Development Department (Infrastructure) commented: "The City of Salem, Development Services Division has no comments on the proposed zone change. For future development of the property, the Applicant should be aware that the property is located within the Suburban East Salem Water District and East Salem Sewer Service District. Pursuant to Council Policy X-4A-B, Annexation is required as a condition of new sewer service for properties that are contiguous to Salem City Limits. Prior to new service connections, the Applicant would be required to file for annexation with the City of Salem because the property is contiguous to Salem City Limits per the definition of "contiguous" in SRC 260.005."

The City of Salem Community Planning and Development Department (Planner) commented: "The proposed zone change meets Salem's Comprehensive Plan Designation."

Marion County Land Development Engineering and Permits (LDEP) commented:

ENGINEERING ADVISORIES

- A. Notwithstanding future site development building construction, addition to and/or modification of site surfacing will still trigger requirement for stormwater management, including water quality treatment, and construction erosion control permitting. Please contact Land Development Engineering prior to conducting any elective or obligated surfacing or resurfacing work.
- B. Upon future site development and/or redevelopment, it will be required to dedicate additional Lancaster Drive public right-of-way to achieve the ultimate 48-foot half-width meeting City of Salem Principal Arterial standard.

Marion County Building commented: "No Building Inspection concerns. Permits are required to be obtained prior to development and/or utilities installation on private property."

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

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria apply.

Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(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).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicants' favor, the burden of proof is met.

2. Pursuant to MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications.
3. Pursuant to MCC 16.39.040, a hearings officer's decision to approve a zone change does not become final until the Board of Commissioners adopts an ordinance implementing the decision.

4. According to the Salem-Keizer Urban Area (Regional) Procedures and Policies of the Salem Area Comprehensive Plan, the following applies to the question of jurisdiction: 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 the urban area policies.
5. Under Marion County Code (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.*

The subject property is currently a split zone, with a portion of the parcel being zoned Commercial Retail and the remainder being Multiple-Family Residential. The Applicants are proposing to change the section of the parcel zoned RM to Commercial Retail. This change would be in alignment with the underlying Comprehensive Plan (Commercial). It would also resolve the existing issue of having an incompatible Zone and Comprehensive Plan combination, as the RM zone does not implement the Commercial Comprehensive Plan designation. The criterion is met.

- B. *Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.*

The subject property is located directly off of Lancaster Dr SE, which is within the Cherriots Public Transit Corridor Overlay. The subject property can be connected to water and sewer services. The Applicant also submitted a Trip Generation & Transportation Planning Rule Analysis which supports the current infrastructure's ability to adequately handle the anticipated increased traffic. The criterion is met.

- C. *The request shall be consistent with the purpose statement for the proposed zone.*

The purpose statement for the CR zone is "to provide areas suitable for professional and general commercial offices, retail sales within a building, eating and drinking places, commercial accommodations and commercial services. The commercial retail zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan and where the location has access to a collector or arterial street."

The Salem Area Comprehensive Plan designates the subject property as commercial. A portion of the property is already zoned commercial and is used for commercial purposes.

The Applicant states that if zone change is approved, the used car lot on the portion of the parcel currently zoned CR would be expanded. Per MCC 16.06.010(48)(h) Automobile dealers are allowed outright as a permitted use, subject to meeting requirements listed in 16.26.580, and are therefore, by default, consistent with the CR zone's proposed statement. The criterion is met.

- 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.*

Commercial Retail is the least intensive zone within the Commercial plan designation to allow for an automobile dealership as a permitted use. Commercial Retail is the zoning of the majority of surrounding properties. The two parcels east of the subject site are owned by the property owner requesting the zone change. It is very unlikely that the proposed zone change having any significant adverse effects on adjacent properties, as a zone change to Commercial Retail would match the current zoning of most neighboring properties. Further, a condition of approval, compliance with MCC 16.26.580, buffer uses from adjacent residential uses. The criterion is met.

6. The existing Plan designation in the Salem Area Comprehensive Plan (SACP) is Commercial, and this Plan designation provides for the application of the CR zone proposed by the Applicant. Policies applicable to the proposal are:

E 1 Economic Development Goal: Strengthen and diversify the economy to enhance Salem's economic prosperity and resiliency. (SUA)

E 1.4 Small businesses: The growth and stability of existing small businesses should be facilitated, and opportunities for local entrepreneurs and start-up businesses should be expanded.

The proposed zone change is to allow for the expansion of small business which already exists on the western portion of the parcel already zoned CR. The criterion is met.

E 2 Land Supply Goal: Maintain an adequate supply of land to meet Salem's economic and employment needs. (SUA)

E 2.1 Employment land: The City shall provide a supply of employment land that accommodates the amounts, size, types, locations, and service levels needed to meet the short-term and long-term employment growth forecasts for the Salem Urban Area. (SUA)

The Salem Comprehensive Plan designates the subject parcel as Commercial. The proposed zone change would bring the RM portion of the parcel into conformity with the long-term growth forecast for Salem. The automobile dealership provides a zone appropriate service to the surrounding area and aids in economic and employment goals. The criterion is met.

E 3 Access and Livability Goal: Promote a vibrant economy that increases access to jobs, goods, and services.

E 3.2 Transit-oriented development: Pedestrian-friendly, mixed-use development and redevelopment should be encouraged along corridors with frequent transit access and near Cherriots' Core Network to increase access to jobs and services, reduce the need for single-occupancy vehicle trips, and support public transit.

Lancaster Dr SE is classified as a Major Arterial Road and is a main service branch and key focus area for Cherriots bus routes. The Applicant states that there is weekday service every 15 minutes along said transit corridor. The subject property provides convenient access to jobs, goods, and services. The criterion is met.

L 1 Urbanization and Growth Management Goal: Manage growth in the Salem Urban Area through cooperative efforts between the City of Salem, Marion and Polk counties, and other jurisdictions to provide area residents with a high quality of life, contain urban development, promote the City's efficient delivery of services, and preserve adjacent agricultural lands. (SUA)

L 1.10 Infill: Development of vacant and underutilized land with existing urban services should be encouraged before converting urbanizable lands to urban uses and extending services beyond presently served areas.

The subject property is within the Salem Urban Area, surrounded by development, and the eastern portion of the property (which is the focus of this zone change application) is vacant but has immediate access to services. Approval of the zone change would promote potential development of underutilized land within the existing urban services area. The criterion is met.

7. Based on the Findings and Analysis in sections 6 and 7 above, the proposed zone change from RM to CR is appropriate for the underlying Commercial designation and is consistent with the applicable policies of the relevant goals as outlined by SACP. Therefore, the proposed zone change can meet the criteria in MCC 16.39.050(A).
8. The subject parcel is in an area with existing infrastructure, including water and sewer services. The parcel is located on Lancaster Dr SE, a well-developed five lane road classified as Major Arterial. There is a northbound transit service stop located roughly at the subject parcel's northwest corner. The nearest southbound transit stops are approximately 1/5th of a mile north and south of the subject parcel. These stops are run by Cherriots bus service every 15 minutes on weekdays.

In addition, the Applicant submitted a Trip Generation & Transportation Planning Rule Analysis with their application. This was completed by a registered professional engineer and concluded that "the proposed zone change will not impact or alter the functional classification of any existing or planned facility, the proposal does not include a change to any functional classification standards and will not result in the degradation of the performance of any existing or planned transportation facility below acceptable agency standards. Accordingly, the Transportation Planning Rule is satisfied."

Therefore, the criterion of MCC 16.39.050(B) is met.

9. The CR (Commercial Retail) zone purpose statement listed under MCC 16.06.000 states:

The purpose of the CR (commercial retail) zone is to provide areas suitable for professional and general commercial offices, retail sales within a building, eating and drinking places, commercial accommodations and commercial services. The commercial retail zone is appropriate in those areas

designated commercial in the applicable urban area comprehensive plan and where the location has access to a collector or arterial street.

The proposed CR zone is appropriate for the underlying SACP designation of Commercial. The Applicant anticipates expanding their existing small business, an automobile dealership, which is a viable commercial use. Therefore, MCC 16.39.050 (C) is met.

10. The proposed CR zone would allow the zone and comprehensive plan designation to come into alignment, as the existing RM zone is incompatible with the underlying Commercial designation. The proposed CR zone would not cause any adverse effects on adjacent properties as the majority are also zoned CR and therefore the subject property being made wholly CR would not cause it to be zoned for a more intensive use than neighboring parcels. Therefore MCC 16.30.050 (D) is met.
11. Marion County Planning staff assessed the relevant Oregon Planning Goals:

Goal 2 – Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The process for evaluating the proposed zone change is outlined in MCC 16.39. This process implements policy framework of both Marion County Code and consideration of the underlying City of Salem comprehensive plan goals. The process also allows the opportunity for public comment and requires review by a hearings officer. Therefore, the planning process is consistent with Goal 2 – Land Use Planning.

Goal 9 – Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Per the Applicant statement the vacant easterly portion of the subject parcel is primarily surrounded by developed properties and is fully served by water, sewer and storm drains. Rezoning this section of the parcel would allow for infill development and contribute to the community's economic vitality.

Goal 10 – Housing

To provide for the housing needs of citizens of the state.

The property is zoned RM but is unable to be developed for multi-family uses because the underlying comprehensive plan designation is Commercial. This likely occurred around 1977 when the front part of the property was re-zoned. Also, the RM portion of the property is unable to be accessed from the east because the property is zoned Single-Family Residential and roadways cannot cross a more restrictively zoned property to serve the more intensive uses in the RM zone. A new access off Lancaster for multi-family use could also be difficult to establish because of the proximity to an

intersection and the level of traffic in this area. This zone change would allow the property to be developed as commercial, which implements the underlying plan designation, and is the only way the property can be developed because of the limitations on access.

12 – Transportation

To provide and encourage a safe, convenient and economic transportation system.

The subject parcel of the proposed zone change is next to the major arterial road Lancaster Dr SE. The Cherriots service corridor that runs the length of Lancaster, Route 11, runs every 15 minutes on weekdays. Lancaster Dr SE is a five-lane road and can easily accommodate the increased traffic which may result from the potential infill development made possible by the proposed zone change. This is supported by the Applicant's submitted Trip Generation and Transportation Planning Rule Analysis. Therefore, the proposed zone change is compatible with Goal 12 – Transportation.

Goal 14 – Urbanization

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The subject parcel is within the Salem Urban Growth Boundary and designated Commercial in the Salem Area Comprehensive Plan. The proposed zone change to Commercial Retail is consistent with Salem's Comprehensive Plan designation and would bring the property into compliance with Salem's long term urbanization goals, which in turn ensures the efficient use of the land. Therefore, the proposed zone change is compatible with Goal 14 – Urbanization.

12. The Marion County Planning Staff recommends approval of the Applicant's request for the change in zone from RM to CR, with the application of the following conditions:

A. The Applicant shall obtain all permits required by the Marion County Building Inspection Division.

B. The Applicant shall meet the requirements of MCC 16.26.580. This section states that:

Automotive dealers (SIC 55) and automotive repair, service, and parking (SIC 75) shall meet the following use and development standards:

A. *The lot shall be paved with a concrete or asphalt hard surface.*

B. *A sight-obscuring fence, wall or hedge shall be provided along lot lines abutting residential zones.*

C. *Repair of vehicles and any storage of merchandise or supplies not in retail packaging or display racks shall occur entirely within an enclosed building.*

- C. All current and future development on the property must satisfy the specific development standards in the CR zone (MCC 16.06) and the general development standards found in Chapters 16.26 through 16.40 of the MCC.

The Applicant, through its representative, David Dodson, stated that the Applicant understood the conditions and requirements, and had no objections to any proposed conditions and requirements. The Hearings Officer finds that these conditions and requirements are reasonable and consistent with the purpose and standards of the CR zone.

VII. Decision

It is hereby found that Applicant has met the burden of proving the applicable standards and criteria for approval of a zone change from RM to CR have been met. Therefore, the Hearings Officer **GRANTS** the zone change application, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

- A. The Applicant shall obtain all permits required by the Marion County Building Inspection Division.
- B. The Applicant shall meet the requirements of MCC 16.26.580.
- C. All current and future development on the property must satisfy the specific development standards in the CR zone (MCC 16.06) and the general development standards found in Chapters 16.26 through 16.40 of the MCC.

VIII. Referral of Decision

This document is a referral to the Marion County Board of Commissioners. A hearings officer's decision to approve a zone change does not become final until the Board adopts an ordinance implementing the decision. Any aggrieved or affected person may file with the Marion County Clerk (555 Court Street NE, Salem, Oregon), a written request for a public hearing before the Board within fifteen (15) days of the date of mailing of this decision. 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 this 11th day of March, 2024.


Jill F. Foster, Hearings Officer

CERTIFICATE OF MAILING

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

LJS Property Management LLC
5347 Valley View Road SE
Turner, OR 97392

David Dodson
Planning Consultant
545 NW Elizabeth Dr.
Corvallis, OR 97330

Lori Leach
5347 Valley View Rd.
Turner, OR 97392

David Dodson
545 NW Elizabeth Dr.
Corvallis, OR 97330

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

City of Salem (via email)
James Suing (PW)
developmentservices@cityofsalem.net
Planning@cityofsalem.net

City of Keizer (via email)
Associate Planner
hornerd@keizer.org
withams@keizer.org

Area Advisory Committee #1:(via email)
Laurel Hines
laulehines@gmail.com

County Agencies Notified:

Assessor's Office (via email)
assessor@co.marion.or.us

Tax Collector (via email)
Rweisner@co.marion.or.us
NMcVey@co.marion.or.us
ADhillon@co.marion.or.us

Surveyor's Office (via email)
KInman@co.marion.or.us

Fire District:
MCFD #1(via email)
PaulaS@mcfcd1.com

Planning Division (via email)
breich@co.marion.or.us
abarnes@co.marion.or.us
ANajeraSanchez@co.marion.or.us

Building Inspection (via email)
pwolterman@co.marion.or.us
Kaldrich@co.marion.or.us
ABammes@co.marion.or.us
CTate@co.marion.or.us

Public Works LDEP Section (via email)
jrasmussen@co.marion.or.us
mcldep@co.marion.or.us
JShanahan@co.marion.or.us

Building Inspection Septic (via email)
ABammes@co.marion.or.us

School District (via email)

fridenmaker_david@salkeiz.k12.or.us

Code Enforcement (via email)

CGoffin@co.marion.or.us

JTaylor@co.marion.or.us

ccaballero@co.marion.or.us

State Agencies Notified (via email)

DLCD

Nicole.mardell@slcd.oregon.gov

hilary.foote@state.or.us

By mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 11th day of March 2023 and that the postage thereon was prepaid.



Administrative Assistant to the
Hearings Officer