



CHURCHILL LEONARD
LAWYERS

May 31, 2017

Jim Brewer, Hearings Officer
c/o Pamela Cole, Planner II
City of Salem Planning Department
555 Liberty Street SE #305
Salem, OR 97301

Re: Written Statement in Opposition to Quasi-Judicial Zone Change, Class 3 Site Plan Review, and Class 1 and Class 2 Adjustments
Case No. ZC-SPR-ADJ 17-02
Our File No. 13788

Dear Mr. Brewer,

This letter is sent as written opposition to applications submitted for a Quasi-Judicial Zone Change, Class 3 Site Plan Review, three Class 2 Adjustments, and one Class 1 Adjustment in order to allow desired development of an 82 room hotel on the property at 390 Hawthorne Ave. SE, Salem, OR (the "Subject Property"). This written statement in opposition is sent on behalf of Garten Services, Inc., doing business as Garten Mail and Packaging and Assembly Services at 500 Hawthorne Ave. SE, Salem, OR (the "Garten Property"), directly east of the Subject Property. A public hearing was held on Wednesday, May 24, 2017 at 5:30pm in Salem. At that hearing, due to the significant number of applications filed and issues presented therein, Garten requested additional time to provide written statements regarding its position against the filed land use applications and the proposed development.

APPLICATION FOR QUASI-JUDICIAL ZONE CHANGE:

Applicant seeks a Quasi-Judicial Zone Change for the Subject Property from Industrial Business Campus ("ICB") to Industrial Park ("IP"). The Staff Report from the City Planning Department notes that based on the requested change being from one industrial designation to another, the rules for a quasi-judicial zone change applies and no amendment of the City of Salem Comprehensive Plan is needed for consideration of this application.

SRC 265.005(e) provides the criteria for a Quasi-Judicial Zone Change, which are as follows:

SRC 265.005(e)(A) The zone change is justified based on one or more of the following:

- (i) **A mistake in the application of a land use designation to the property.**
- (ii) **A demonstration that there has been a change in the economic demographic, or physical character of the vicinity such that the zone would be compatible with the vicinity's development pattern.**

- (iii) A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.**

Applicants do not address criteria (i) or (ii) in their application for a Quasi-Judicial Zone Change, relying exclusively on criteria (iii) and their claim that the zone change is equally or better suited for the property than the existing zone.

While we cannot argue that the general purposes of the IBC zone and the IP zone are similar, we disagree with Applicants' claims and the Planning Department's findings that the IP zone would be equally or better suited for the Subject Property than the existing zone, especially based on the intended use by Applicants. Applicants' intended use for the Subject Property is the development of an 82 room hotel. A zone change from IBC to IP is required for Applicants' desired use because the IBC zone limits short term commercial lodging (hotel developments) to 100 guest rooms within a development site. Due to the prior configuration of the property and the joint ownership with the property directly to the south of the Subject Property, which was previously developed to contain the Hampton Inn (a hotel similar in size to that proposed by Applicants), the Hampton Inn property (the "Hampton Property") and the Subject Property are considered a single development site preventing further development of short-term lodging under the IBC zoning on the Subject Property. Thus, Applicants are not seeking a change to a zone that is equally or better suited to the Subject Property, but are seeking a change in the zone to allow them their economically desired use for the Subject Property. It is important to note here that Applicants have not claimed that unique features of the property or the existing zone limit their ability to develop industrial or supporting non-industrial uses under the existing zone for the Subject Property, just that it would limit them from pursuing their large-scale, non-industrial hotel use for the property.

In fact, in testimony by Joey Shearer on behalf of AKS Engineering & Forestry, who represented Applicants at the public hearing, Mr. Shearer admitted that the City of Salem's rules had changed following the development of the Hampton Inn, and that the zone change and adjustment applications were specifically designed to fit their desired large-scale non-industrial use into the existing zoning and code framework for the City of Salem. Thus, the requested zone change is not equally suited or better suited to the subject property; just better suited to the desired use of the Subject Property by Applicants.

- (iii) "...A proposed zone is equally or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses."**

SRC 265.005(e)(A)(iii) provides additional guidance on what information must be provided to determine if the proposed zone is equally or better suited for the property. Applicants would like

the City and the Hearings Officer to rely exclusively on the fact that there is an existing hotel on the adjacent property (the Hampton Inn) to the south of the Subject Property as evidence that the desired use of the Subject Property is reasonable or logical for the Subject Property. While we recognize that short-term lodging is allowed in the IP zone (as well as the IBC zone), the proposed site plan for development of the Subject Property shows that the Applicants desired use is too large and is not logical for the Subject Property nor for the surrounding land uses. There is no discussion about the potential negative impacts on Garten or its property if this development is allowed, including, but not limited to sight obstruction, access concerns, and safety concerns related to the normal operation of Garten's business. Further, any claim by Applicants that the proposed hotel development is supportive of the surrounding industrial uses is inaccurate. There is little to no need for short-term lodging in support of the surrounding industrial uses based on the great number of existing short-term lodging options in the surrounding areas. Hampton Inn is directly adjacent to the Subject Property. Residence Inn is 0.2 miles south from the Subject Property, while La Quinta Inn & Suites and the Best Western Plus Mill Creek Inn are both 0.3 miles south from the subject property. Howard Johnson Inn is 1.5 miles from the subject property, but is located on Mission Street and is almost equal distance to the nearest I-5 on-ramp as the Subject Property. Based on this, the addition of another short-term lodging is not logical based on the surrounding uses due to the overabundance of existing lodging, which goes beyond what is needed for support of the existing industrial uses.

Further, the additional Adjustments requested to remove the setback and height restrictions of the IP zone to allow Applicants to develop the hotel they desire is clear evidence that the size and scope of the proposed development not reasonable. The Adjustments will be addressed directly later on in this statement. The use sought by Applicants here is not supportive of the industrial uses surrounding the Subject Property (even the Staff Report can only state that "This hotel may provide needed lodging for...nearby industrial businesses in the area..." (Staff Report Page 7)(emphasis added)), but is simply a commercial use on industrial property based on the proximity of the property to Mission Street and I-5.

For the foregoing reasons, the Applicants' desired/intended use for the property is not logical based on the surrounding land uses, and therefore the proposed zone change is not equally or better suited to the Subject Property, and the application for the Quasi-Judicial Zone Change should be denied.

SRC 265.005(e)(C) The zone change complies with applicable provisions of the Salem Area Comprehensive Plan.

Goal 1. To encourage and promote industrial development which strengthens the economic base of the community by increasing traded-sector employment, especially in sectors that pay higher than average wages.

Despite the Planning Department finding in favor of this goal and criteria, there is no real evidentiary or factual support provided in Applicant's statements, or in the Staff Report to support the finding that this criteria and Goal are satisfied. As noted above, the findings in the Staff Report only state that the hotel "may" provide lodging in support of the existing surrounding uses. Further, there is no evidence or information regarding the amount of jobs the proposed hotel would

create or to support that the employment would be for higher than average wages. In reality, an 82 room hotel will likely only create a limited number of jobs, with most jobs coming in the areas of reception/guest services, maintenance, and housekeeping, which types of jobs would not produce higher than average wages. Based on the lack of evidence in support of this Goal, the Quasi-Judicial Zone Change Application should be denied.

Industrial Land Inventory

Policy 1. Maintain a long-term (20 year) industrial land inventory which provides a full range of small, medium and large parcel sizes and locations to sustain a competitive market of industrial sites. Maintaining a long-term supply of industrial land will require identifying and preserving key high value industrial land...

Save and except for the parcel size (2.7 acres), which falls below the 10-acre size designation in Policy 1 for Industrial Land Inventory in the Salem Area Comprehensive Plan, the Subject Property meets all other criteria for being designated as “key high value industrial land.” Therefore, Policy 1 and maintenance of the inventory of industrial lands and uses must be considered. As noted by Applicants and the Planning Department during the public hearing, the Subject Property currently is the only remaining undeveloped IBC zoned land along Hawthorne Ave. SE. It was also noted during the presentations that there is an ample supply of undeveloped IP zoned property directly across Hawthorne Ave. SE. Thus, where there is ample IP zoned land in the remaining industrial lands inventory for the City of Salem, but only minimal IBC zoned land remaining, Applicants’ proposal to remove the remaining IBC zoned land for development as IP land is contrary to the purposes and goals of Policy 1 for maintaining Industrial Land Inventory under the Salem Area Comprehensive Plan. For this reason, Applicants’ requested Quasi-Judicial Zone Change does not comply with the Salem Area Comprehensive Plan and should be denied.

Limited Supporting Non-Industrial Uses

Policy 12. Supporting non-industrial uses are allowed in limited amounts in industrial areas. These non-industrial uses should primarily support industrial businesses or employees at industrial businesses.

Applicants claim that simply because short-term lodging is allowed under the IP zone and there is already a developed hotel on the adjacent property to the south of the Subject Property, the goals of Policy 12 for Limited Supporting Non-Industrial Uses is met. The Staff Report seems to follow this reasoning, stating that the IP zone allows a limited number of non-industrial uses, including short-term lodging, and so the proposal purportedly conforms to the Policy. Here, however, the analysis of both Applicants and the Staff Report fails to address the specified goal that such uses must be allowed in “limited amounts” and “should primarily support industrial businesses or employees.”

In terms of the policy of allowing limited amounts of non-industrial uses in industrial areas, the current IBC zone for the Subject Property follows this policy by limiting the number of short-term lodging rooms allowed on a singled development site. By Applicants’ own testimony at the public

hearing, they are seeking to circumvent this limitation of the IBC zone by switching to the IP zone in order to increase the non-industrial uses for short-term lodging and add to the already overloaded inventory of nearby short-term lodging. As noted above, there are already five other short-term lodging hotels within 1.5 miles of the Subject Property and equal or closer to the nearest access onto I-5. Therefore, allowing Applicants to circumvent the restrictions on further short-term lodging development as contained in the IBC zone by making the switch to the IP zone (which IP zone will also require numerous other adjustments to setback and height requirements in order for the proposed development fit within the Subject Property) is contrary to Policy 12 for limiting the amount of non-industrial uses in industrial areas.

In addition, as noted above, Applicants provide no specific evidence of the “supporting” nature of the proposed hotel on the surrounding industrial uses. In fact, later evidence will show that the proposed development will have a negative impact on the existing surrounding industrial uses; specifically Garten. The Staff Report only states that, “This hotel may provide needed lodging for persons who are meeting with or engaged in short-term work assignments with nearby industrial businesses in the area, as well as lodging for general customers.” (Staff Report Pg. 7)(emphasis added). This lack of evidence and only general statement regarding the possibility of providing some limited support to the surrounding industrial uses does not meet the required standard of Policy 12, which states clearly that, “These non-industrial uses should primarily support industrial businesses or employees at industrial businesses.” (emphasis added). In truth, there can be no claim that the proposed hotel will primarily support the surrounding industrial uses, but will instead simply be a large-scale commercial hotel for individuals moving up and down the I-5 corridor.

For these reasons, the goals of Policy 12 of the Salem Area Comprehensive Plan are not met and Applicants’ request for a Quasi-Judicial Zone Change should be denied.

SRC 265.005(e)(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on the zone change.

Applicants argue, and the Staff Report echoes, that because Hawthorne Ave. SE is designated as a Major Arterial in the City of Salem’s Transportation System Plan (“TSP”) and the proposed zone change from IBC to IP is consistent with the TSP, there are no significant impacts on the transportation facility pursuant to OAR 660-012-0060(9), and will not trigger analysis or improvements to the surrounding transportation system. Applicants rely heavily on the determination of the City of Salem Public Works Department, as stated in Applicant’s testimony at the public hearing, that because the number of trips anticipated to be generated by the proposed hotel use on the subject property, that no Transportation Impact Analysis will be required, and so there must not be any significant impacts on the existing transportation system. However, this analysis is shortsighted based on the existing use of the northern driveway, its location, and the lack of evidence regarding the anticipated number of additional trips in the Applicant’s written statement and inability to address at the public hearing.

Applicant is seeking to utilize the existing 25-foot wide northern driveway for all access (ingress and egress) for its proposed 82-room hotel on the subject property. As shown on Applicant's Site Plan (which is discussed further in regard to the Class 3 Site Plan Review) there is no room for expansion or movement of the driveway at any point if Applicants' development is to meet all of the standards of the IP zone if all Adjustments are also granted. This driveway is already utilized by Garten Services, Inc. under a recorded easement in favor of Garten's real property, which easement was entered into the record at the public hearing. Garten's use of the northern driveway is for the specific purpose of accessing its loading docks at the north end of its property, meaning that the traffic for Garten over and across the 25-foot wide driveway consists of delivery vans, large trucks, and semi-trailers. Testimony on behalf of Garten given at the public hearing indicated that average trips in and out of the northern driveway for Garten ranges between 40-50 trips per day, with 15-20 of those trips being large semi-trailers. Based on the existing use of the 25-foot northern driveway by Garten, which is different in scope from the proposed use for regular customer traffic for the proposed hotel, and the significant increase in trips on top of the existing use in and out of the northern driveway, it is shortsighted to claim that all standards are met and no additional analysis is needed regarding the traffic in and out of the Subject Property to Hawthorne Ave. SE. Further, there is no discussion about the increased use of the existing driveway access on the Subject Property being directly across from the existing driveway for Kettle Foods and Wells Fargo on the west side of Hawthorne Ave. SE, and what safety and access issues could arise from the increased use and that configuration along Hawthorne Ave. SE. Safety concerns and turning radius alone should be considered where the existing driveway cannot be moved or expanded, and is now being proposed to be turned into a two-way drive to support all hotel traffic and Garten's loading dock. Testimony by Pamela Cole at the public hearing acknowledged that even the southerly driveway for the Hampton Inn property, which also serves regular car and truck traffic to Garten for its employees and customers (not large truck and trailer transportation which is limited to the northern driveway), was widened to 40 feet to allow for a three lane access (entry, left turn only, right turn only) for development of Hampton Inn. Such expansion of the northerly driveway is not possible based on the site plan submitted by Applicants.

Based on the foregoing information, acknowledgement of Hawthorne Ave. SE as a "Major Arterial" under the Salem TSP is not enough to determine what impacts (namely safety for ingress and egress from the norther driveway) will occur as a result of the proposed use for hotel access in addition to the existing use of the driveway by Garten. The information provided by Applicants is not enough to properly conclude that the proposed development will not have a significant impact on the local transportation facility and the surrounding existing uses. Additional information, and likely a full Traffic Impact Analysis is warranted before a determination in favor of Applicants' Quasi-Judicial Zone Change application should be granted.

For the reasons stated herein, Applicants have failed to meet their burden in proving that all applicable criteria for approval of a Quasi-Judicial Zone Change for the Subject Property is proper at this time. Therefore, Garten, in opposition of the proposed zone change, asks that the Hearings Office deny the application for the Quasi-Judicial Zone Change at this time.

APPLICATION FOR CLASS 3 SITE PLAN REVIEW

The Staff Report from the Salem Planning Department references the incorrect SRC Chapter governing the review criteria for approval of a Class 3 Site Plan Review. The criteria for approval of a Class 3 Site Plan Review are contained in SRC 220.005(f)(3), and are as follows:

SRC 220.005(f)(3). An application for Class 3 Site Plan Review shall be granted if:

- (A) The application meets all applicable standards of the UDC;**
- (B) The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately;**
- (C) Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians; and**
- (D) The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.**

Applicants fail to meet all of the criteria for approval of a Class 3 Site Plan Review where they are unable to meet all applicable standards of the UDC, and do not provide sufficient evidence to support a determination that the transportation system and parking and driveway areas for the Subject Property will provide for safe and efficient movement around the Subject Property.

SRC 220.005(f)(3)(A): The application meets all applicable standards of the UDC.

Applicants cannot meet the applicable standards of the UDC for development of their desired 82 room hotel on the Subject Property without approval of multiple Adjustments resulting in the reduction or complete removal of multiple applicable UDC standards in order to fit their proposed development on the subject property. Further, without the removal and reduction of all of the applicable standards for property line and access setbacks and building height, Applicants will be unable to meet other applicable UDC standards for the requested IP zone for the Subject Property, including Landscaping Solid Waste Service Area Vehicle Access, and Amount of Off Street Parking. Even with the requested Adjustments and Zone Changes, Applicants Site Plan is in violation of applicable development standards where the northernmost line of parking spaces on the submitted Site Plan is encroaching on the 25-foot wide northern driveway. For this reason, and as more specifically addressed below, the application does not meet all applicable standards of the UDC for the IP zone, and the Class 3 Site Plan Review should be denied.

SRC 553.010(b) – Setbacks

Simply stated, Applicants cannot and does not meet the applicable standards of the UDC for setbacks in the IP zone as part of its proposed development. Instead Applicants seek to reduce or completely remove the applicable setback requirements from three of the four property boundary lines for the property in order to make their desired development fit onto the Subject Property. The Adjustments to the applicable setback standards of the UDC sought by Applicant are as follows:

- Eliminate the minimum 10-foot setback requirement to be measured from the most interior access easement line pursuant to SRC 112.050(c).
- Eliminate the minimum 10-foot setback requirement for the south boundary line of the Subject Property as provided in SCR Chapter 553, Table 553-4.
- Reduction of the minimum 10-foot setback requirement for the east boundary line of the Subject Property as provided in SCR Chapter 553, Table 553-4.

As noted in the Staff Report, the purpose of the UDC setback requirements along the boundary lines for the Subject Property “is to reduce impacts on adjacent properties by requiring separation and a landscaped buffer between them.” (Staff Report Page 23). Further, the setback required from the most interior access easement line (the south edge of the northern driveway) “is to provide unobstructed access to the flag lot property located east of the subject property.” (Staff Report Page 23). Applicants cannot meet other applicable standards of the UDC unless these setbacks are reduced or removed as proposed, in contradiction of the stated purposes for those setbacks.

For the easement for the flaglot (the northern driveway) Applicant’s site plan shows 40 parking spaces bordering Garten’s existing access easement driveway, with 17 parking spots located in the required 10 foot easement setback. Off-Street Parking requirements under SRC 806.015 requires Applicant to provide 1 parking space for every guest room or suite in the proposed hotel. Applicant proposes an 82 room hotel, and provides a current site plan showing 86 parking spaces. If Applicant were to meet the applicable standards of the UDC and include the 10-foot setback required for the IP zone, Applicant would only have 69 available parking spaces for the development and would not meet the applicable standards in the UDC for Off-Street Parking in SRC 806.015.

Similarly, the Adjustment to remove any setback from the south boundary line of the property is necessary to provide adequate driveway width for the Subject Property pursuant to SRC 806.040(d). Without complete waiver of the setback requirement for the south boundary line, the driveway along the south edge of the property exists within the required setback in direct violation of the applicable standards contained in SRC 806.040(b). This is identical to the east boundary setback, where the requested reduction from 10 feet to 5 feet is necessary to provide adequate driveway width and parking along the east edge of the Subject Property. Without a reduction in the applicable east setback, Applicants cannot fit the necessary number of parking spaces and adequate drive aisles as required in the UDC. As such, they must be placed in the setbacks in violation of SRC 806.040(b) through the attempted adjustments.

For this reason, Applicants do not meet the applicable setback standards under the UDC for approval of their Class 3 Site Plan Review, but instead seek to remove those standards in order to meet other applicable standards in the UDC. For this reason, Applicant does not meet the criteria for approval of its Class 3 Site Plan Review pursuant to 220.005(f)(3)(A), and the approval should be denied.

SRC 553.010(c) – Height

As noted above, Applicants have admittedly sought the Quasi-Judicial Zone Change from IBC to IP in order to circumvent legitimate restrictions consistent with the policies of the SRC and the Salem Area Comprehensive Plan that would limit the number of additional short-term lodging rooms that could be developed on the Subject Property. The reasoning behind the requested zone change was noted in the Staff Report (see Page 6), and also admitted by Applicants' representative, Joey Shearer, in his testimony at the public hearing. However, if the zone change were approved to get around the restriction on the number of hotel rooms on the development site, the IP zone has applicable development standards that Applicants should be required to meet, but which they need to ignore in order to meet other applicable development standards for this development. The IP zone requested by Applicants allows only 45-foot high developments. However, Applicants would like to construct a 4 floor hotel, meaning the IBC zone they are seeking to change is better for Applicants as it allows developments up to 70 feet high. Where Applicants desire a 52-foot high hotel, contrary to the UDC standards for the IP zone, adjustment of the applicable standards are necessary to meet Applicants' desires. Here, allowing Applicants to pick and choose which standards and allowances they would like from the IP zone and the IBC zone through requests for Adjustments of the IP zone standards is not consistent with a finding that Applicants can meet all applicable standards of the UDC for approval of its Class 3 Site Plan Review, and their application should be denied.

SRC 800.055(f) – Solid Waste Area Vehicle Access

SRC 800.055(f)(1)(A) provides that "A vehicle operation area shall be provided for solid waste collection service vehicles that is free from obstructions and no less than 45 feet in length and 12 feet in width. Findings in the Staff Report state that enough space exists within the Subject Property in front of the waste enclosure (assuming the Adjustment removing the 10-foot setback requirement were approved) to comply with SRC 800.055(f)(1)(A). Applicants' site plan includes measurements for the access driveway along the south edge of the Subject Property of 13'7". Assuming there is absolutely no overhang or extension of any cars, trucks, or other motor vehicles in any of the nearby parking spaces, then this statement in the Staff Report may be accurate. However, pictures submitted into evidence showing the effects of similar parking from the Hampton Inn along the southerly access easement for Garten shows that significant encroachments that would limit that access area in direct violation of SRC 800.055(f)(1)(A) are a common occurrence. Such obstructions would violate SRC 800.055(f)(1)(D), which states "The vehicle operating area may be coincident with a parking lot drive aisle or driveway, provided that such area is kept free of parked vehicles and other obstructions at all times except for the normal ingress and egress of vehicles." (emphasis added). Thus, any encroachment on the drive aisle similar to those evidenced occurrences from the Hampton Inn parking lot, would eliminate the ability to

consider the southerly drive aisle as an appropriate access area for compliance with SRC 800.055(f)(1)(A).

In recognition of this solid waste access issue, Applicant has proposed to use the adjacent Hampton Inn property to provide additional space for a direct access to the solid waste holding area. There is nothing referenced in the Staff Report or in Applicants' submitted materials to note whether or not a shared space agreement with a neighboring property is allowed to provide this type of access. Without conditions of approval or other code authority for providing solid waste access in this manner, there is nothing in the record to support this application as a proper means of complying with the applicable conditions of SRC 800.055(f)(1). Further, without approval of the adjustment to remove the setback requirement at the south boundary line, this access approach to the waste enclosure is not possible. Based on this, without further information, Applicants fail to provide adequate information to satisfy the applicable standards of SRC 800.055(f)(1), and their Class 3 Site Plan Review should be denied.

SRC 806.015 – Amount of Off-Street Parking

The amount of off-street parking is based on the size of the hotel proposed by Applicants, and can only be supported by the removal or reduction of the applicable setbacks to provide parking necessary to meet the applicable criteria of SRC 806.015 (Table 806-1). In reviewing the proposed Site Plan, we note that in working to obtain the necessary number of parking spaces to serve the proposed hotel development, Applicants make absolutely no allowances for larger motor vehicles and/or trailers. While SRC 806.015(c) provides certain requirements for carpool and vanpool parking, the Planning Department's findings indicate that even though this is Industrial property, the proposed hotel would be a non-industrial use, meaning there is no need to allow for carpool or vanpool parking. This is shortsighted where there is a significant likelihood that trucks and cars pulling trailers, vanpools, and other large sized recreational motor vehicles will seek to use the Subject Property for short-term lodging, if approved. In fact, Garten has already experienced problems with such traffic issues where the Hampton Inn development also ignored larger recreational vehicle traffic. This has resulted in continuing issues with Hampton Inn customers trespassing on Garten's property and parking RV's, camper trailers, and equipment trailers in Garten's employee parking lot. We have included a satellite photo with the Garten Employee Parking Lot labeled for review of this concern.

Thus, with no proper standards or criteria for addressing that type of traffic and how to avoid encroachments or impediments to use of the existing driveway and proposed drive aisles, additional information is necessary before approval is granted. If not addressed, it will likely be impossible to avoid similar issues with larger consequences that would occur if recreational vehicles were to park along the north access lane or in Garten's loading dock area. This is an issue that is also not addressed in regard to the safe and efficient use of the transportation system and the parking areas and driveways addressed later herein. Without further information on how such traffic is to be addressed, the application for Class 3 Site Plan Review should be denied or continued until additional information can be provided.

SRC 806.015(e) – Off-street Parking Area Dimensions

SRC 806.015(e) states that, “Off-street parking areas shall conform to the minimum dimensions set forth in Table 806-6.” However, the findings in the Staff Report clearly show that the northernmost line of parking spaces at the north edge of the existing 25-foot driveway encroach onto the 25-foot driveway when meeting the dimensional standards provided for in SRC 806.015(e) and table 806-6. The Planning Department has sought to address this by providing Condition of Approval 5 requiring Applicants to reconfigure the parking and vehicle use area or modify the existing access easement so that no part of any parking space or curbed landscape area encroaches into the access easement. However, there is no evidence in the record to determine if there is enough space between the parking spaces and the wetlands at the north end of the property to reconfigure the parking as provided. Further, pursuant to the terms of the access easement benefitting Garten’s property, the Applicants are restricted on their ability to adjust or relocate the access easement in order to comply with Condition of Approval 5 as contained in the Staff Report. For this reason, there is a clear finding that as prepared the Class 3 Site Plan Review does not meet the applicable standards of the UDC, and should therefore be denied at this time until additional information is provided and the Site Plan can comply with SRC 806.

SRC 806.040 – Driveway Development Standards

As noted above, the Subject Property and the Hampton Property directly south are considered to be a single development site, which necessitated Applicants’ zone change application for the IP zone in order to support approval for a new hotel that would exceed the limit of 100 rooms on the development site under the current IBC zone. The linked nature of the two properties as a single development site is further supported by the requested removal of all setback requirements between the Subject Property and the Hampton Property, and the proposed shared use of the drive aisle between the two properties, which would provide for unrestricted access between the two properties if approved.

SRC 806.040(a) states, “Access. Off-street parking and vehicular use areas shall have either separate driveways for ingress and egress, a single driveway for ingress and egress with an adequate turnaround that is always available, or a loop to the single point of access.” (emphasis added). The Site Plan for development of the Subject Property, which requests removal of all setbacks and proposes a shared drive aisle between the Subject Property and the Hampton Property, links the two properties further as a single development site as previously found by the Planning Department in its Staff Report. This linkage, and the proposed unrestricted access between the two properties, supports the determination of a single development property in violation of SRC 806.040(a) where there would be two driveways providing both ingress and egress from the development site. By joining these two properties through shared drive aisles and removal of any partitions or setbacks, and based on the designation of the properties as a single development site, in order to comply with SRC 806.040(a), the development site should have one driveway for ingress and another driveway for egress, or only a single driveway for the development site for ingress and egress with a loop or turnaround space. Use of both the north Garten driveway and south Garten driveway for ingress and egress to the development site is in

violation of the applicable standards of SRC 806.040(a), supporting denial of the Class 3 Site Plan Review as presented.

For the foregoing reasons, Applicants are unable to satisfy the first criteria of approval for their Class 3 Site Plan Review as provided in SRC 220.005(f)(3)(A), which requires that the application meet all applicable standards of the UDC. The record provided in this matter clearly shows that Applicants are unable to meet all applicable standards of the UDC for this development and are specifically seeking reduction and removal of 4 different applicable standards to allow their proposed development to proceed, without which adjustments they will be unable to meet other applicable standards in the UDC. Further, Applicants are in direct violation of SRC 806.015(e) and SRC 806.040(a) based on the information in the record and the findings in the Staff Report. For these reasons, Applicants' Class 3 Site Plan Review application should be denied for not being in compliance with SRC 220.005(f)(3)(A).

SRC 220.005(f)(3)(B): The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

Impacts on the transportation system and safety concerns of Garten in response to the filed applications are largely addressed and are consistent with the information provided in the response to the Quasi-Judicial Zone Change Application herein. They are also more fully discussed below in response to SRC 220.005(f)(3)(C) and the requested Adjustment applications. In review, the Applicants and the Planning Department seem to simply hold that because Hawthorne Ave. SE is identified as a "Major Arterial" there is no need to further consider impacts on the transportation system. There is no discussion in the Applicants' materials or findings in the Staff Report regarding the exact number of daily trips to be generated by the proposed hotel development in addition to the existing trip counts for semi-trailers, large trucks and delivery vans for Garten's established driveway use under the recorded easement in favor of the Garten property. There is no information or discussion about the adequate size of the existing 25 foot driveway for significantly increased normal car travel in addition to the established semi-truck and van travel if bordered on both sides by the 40 parking spaces proposed by Applicants, and with said parking spots backing directly onto the existing 25-foot wide driveway. There is also no information or discussion about the effect of the additional trips on traffic coming in and out of Kettle Court SE directly across Hawthorne Ave. SE from the existing driveway. Findings that Hawthorne Ave. SE is paved properly and wide enough as a Major Arterial is not enough to conclude that the transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development and that there are no conditions or mitigation standards that need to be applied to avoid negative impacts to the transportation system.

Consistent with the other concerns addressed herein regarding traffic movement and safety, there is not enough information or factual support provided by Applicants or in the Staff Report to clearly indicate that the transportation system will provide for safe, orderly, and efficient circulation of traffic into and out of the proposed development without further analysis. For these reasons, based on the application and the information provided, Applicant's Class 3 Site Plan Review should be denied.

In the alternative, if the City feels denial of the Class 3 Site Plan Review is not proper, Garten asks that, based on the expanded trips anticipated and the differing nature of the existing driveway use and that proposed by Applicants for its development, the City add a Condition of Approval requiring Applicants to have a Transportation Impact Analysis completed for the proposed development to determine if the differing uses are compatible based on the size of the existing driveway and if they can be operated safely together based on the size, nature, and location of the existing driveway.

SRC 220.005(f)(3)(C): Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians.

For written evidence that the criteria of SRC 220.005(f)(3)(C) are satisfied, Applicants provide the following:

As shown on the Preliminary Site Plan, the driveway, drive aisles, and other vehicle-use areas meet the applicable standards. The design is logical, intuitive, and will provide for the safe and efficient movement of vehicles, bicycles, and pedestrians. Therefore the condition is met. (Applicants' Written Statement, Page 14)

Thus, Applicants feel that simply restating the criteria and meeting basic measurement standards should be prima facie evidence of a safe design for all types of traffic. It is important to note here as well that Applicants' site plan fails to meet the applicable standards as addressed in relation to SRC 220.005(f)(3)(A) above where the north line of parking spaces encroaches on the existing 25-foot wide driveway.

Despite this extremely limited discussion of the applicable criteria, the Staff Report mirrors this analysis in its own findings, stating:

The internal vehicular, pedestrian, and bicycle circulation provided for the site is adequate to provide safe and efficient movement for customers and employees of this development and the adjacent developments to the south and east. The access onto Hawthorne Avenue SE provides for safe turning movements into and out of the property.

The proposal meets this criterion. (Staff Report, Page 21)

The Planning Department provides no discussion about the heavy truck and transport traffic coming to and from Garten's property or the increased level of two-way traffic created by the Applicants' development. Garten is deeply concerned about the increased traffic in and out of the Subject Property and significant safety issues created by placing 40 parking spaces along the existing 25-foot wide driveway, which parking spaces will be backing into the semi-truck traffic from Garten. Further, bordering the existing driveway with 40 parking spots will create numerous

incidents of encroachments on the driveway in violation of the terms of Garten's easement rights and limiting the safe drive width of the access for two-way customer and heavy truck traffic.

Garten representatives report that "near misses" occur frequently along Garten's southerly access easement / driveway, which serves one line of adjacent parking for Hampton Inn on the north side of the driveway, and provides access to and from Bank of the Cascades on the south side of the driveway. It is important to note that despite Garten's south driveway access facilitating only regular car and truck traffic to and from Garten for their employees and customers, encroachments on their access and safety concerns involving incidents involving Garten's employees almost being struck by traffic from Hampton Inn and customer traffic from Bank of the Cascades are fairly common. As shown on a photograph entered into the record at the public hearing and included with this written statement, encroachments from parking along the southerly driveway access for Garten are common and prevent safe and efficient flow of traffic along that access, with parking along only one side of the access.

Garten believes installation of parking spaces along both sides of their northern access driveway for the proposed new hotel will create even more encroachments into the 25-foot wide access, which will create significant safety issues for Garten's semi-trailer, truck, and van traffic moving into and out of Garten's property. Further, encroachments onto the easement, along with other line of sight issues created by the parking along both sides of their northerly access causes significant safety concerns involving pedestrian traffic stepping in and out of the driveway access around semi-trucks and heavy van traffic, luggage and pedestrians in the access loading and unloading cars, and children and pets moving in and out of the driveway access from lodgers at the proposed hotel, none of which are addressed by the Applicants or the Planning Department. All of these issues not only highlight the significant safety concerns arising from the proposed development, but will create significant liability issues for Garten, which would create a barrier to Garten's use of its own easement for access, in violation of that easement and its terms.

Based on the foregoing, Applicants do not provide valid evidence or support for their claim that they can provide safe and efficient movement of vehicles, bicycles, and pedestrians in the new development in compliance with the requirements of SRC 220.005(f)(3)(C) for approval of their Class 3 Site Plan Review. Applicants claim to satisfy SRC 220.005(f)(3)(C) simply by meeting the basic development standards for driveway and parking (assuming approval of all of the requested adjustments), but ignore completely the existing use of the driveway and the likelihood of encroachments and pedestrian traffic onto the easement, which will create significant safety hazards and will restrict and impede Garten's use of the easement driveway in violation of the recorded easement. For these reasons, Applicants request for approval of its Class 3 Site Plan Review for the proposed development should be denied.

APPLICATIONS FOR ADJUSTMENTS OF THE SALEM DEVELOPMENT CODE:

Applicants seek approval of three Class 2 Adjustments for the Subject Property and one Class 1 Adjustment for the Subject Property. These waivers of the Salem Development Code requirements are necessary to fit Applicants' desired development onto the Subject Property.

The purpose of providing for adjustments of the development code standards, pursuant to SRC 250.001, is as follows:

The purpose of this Chapter is to provide a process to allow deviations from the development standards of the UDC for developments that, while not meeting the standards of the UDC, will continue to meet the intended purposes of those standards. Adjustments provide for an alternative way to meet the purposes of the code and provide for flexibility to allow reasonable development of property where special conditions or unusual circumstances exist.

We will address the Class 2 Adjustments first. The criteria for granting a Class 2 Adjustment are as follows:

SRC 250.005(d)(2) – Criteria for Granting Class 2 Adjustment

- (A) The purpose underlying the specific development standard proposed for adjustment is:**
 - (i) Clearly inapplicable to the proposed development; or**
 - (ii) Equally or better met by the proposed development...**
- (C) If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.**

Applicants do not address SRC 250.005(d)(2)(A)(i) in regard to any of their requested Class 2 Adjustments, instead only relying on SRC 250.005(d)(2)(A)(ii) for those Adjustments. In opposition, Garten disagrees with Applicants' statements and argues that the specific development standards sought to be removed by Applicants are not equally or better met by the proposed development in this instance.

1. Adjustment to reduce landscaped setbacks from 10 feet to 0 feet from an existing accessway.

Applicants first seek the removal of all setback requirements from the existing northern driveway access. As discussed above, pursuant to SRC 112.050(c), "(s)etbacks abutting a flag lot accessway shall be measured from the most interior access easement line, if an access easement exists." Based on this, Applicants are seeking to remove the requirement to provide any type or amount of setback from the south edge of the existing driveway.

In reviewing whether or not the development standard is equally or better suited by the proposed development for this adjustment, it is important here to note that the purpose that must be equally or better met is not just the purpose of providing a setback for a buffer area between properties. The wetlands on the Subject Property create a 40-foot buffer area at the north edge of the Subject

Property, so there is not a dispute over the existing buffer area at the north boundary line of the Subject Property. However, as noted in the Planning Department Report, there is a different purpose for the setback requirement from the existing easement under SRC 112.050(c). As stated in the Staff Report, "One purpose of the setback from the driveway easement is to provide unobstructed access to the flag lot property located east of the subject property." (Staff Report, Page 23). Thus, in determining whether or not the setback requirement should be removed, we must look at the safe and unobstructed use of the access easement by Garten, consistent with Garten's established use, to determine if waiver of the setback is equally or better met by the proposed development.

As discussed above in opponent's responses in opposition to both the Quasi-Judicial Zone Change Application and the Class 3 Site Plan Review Application, Applicants do not properly address Garten's existing, established use of the easement for semi-trailer, truck, and delivery van traffic, and the effect of significant additional hotel traffic. Both Applicants and the Staff Report rely on the claim that because the proposed development plan shows that all the parking spaces, drive lanes, and curbing for the proposed development can fit on the Subject Property without impinging on the existing easement, then the standard of the UDC sought to be removed by Applicants is equally or better met by the proposed development. However, nothing is addressed regarding Garten's easement rights, its established use, or the safety issues created by allowing for removal of any and all setback requirements along the northern easement driveway.

The truth is that the removal of the 10-foot setback requirement is not equally or better met by the proposed development, but simply better suited to Applicants' desired use and size of development. Removal of the setback requirement, which Applicant must have approved in order to have enough parking spaces to satisfy the development requirements of SRC 806.015, will result in significant safety issues between the commuter/short-term lodging traffic and the semi-trailer, heavy truck, and van traffic for which Garten has established its easement use. Further, the parking spaces being placed in the setback area (along with those parking spaces along the north edge of the easement, which are already encroaching on the easement in the current Site Plan provided by Applicants) will result in continuing encroachments on the easement, significant safety and liability concerns and burdens for Garten for its continuing use of the access driveway, and infringements upon Garten's easement rights for continued, unimpeded use of their established access rights.

For these reasons, and in conjunction with other safety and transportation concerns addressed throughout this written response, removal of the setback requirement from the existing accessway does not equally or better meet the goals of the development code as contained in Applicant's proposed development, and the request for this Class 2 Adjustment should be denied.

2. Adjustment to reduce landscaped setbacks from 10 feet to 0 feet from the southern property boundary.

Applicants' proposal to eliminate the landscaped setback requirement from 10 feet to 0 feet at the southern property boundary results in significant concerns Garten objects to the proposed removal of the requirement.

First, we would again note that without approval of this Adjustment to completely remove the required setbacks at the south property line, Applicants would not be able to meet the development code requirements for driveway access lane width (SRC 806.040(d)), number or parking spaces (SRC 806.015), or solid waste disposal access as discussed previously in this application (SRC 800.055(f)).

Second, and of larger concern to Garten, removal of the setback requirement at the south property line and allowance of the shared drive lane and vehicle use area, creates a situation where not only would the proposed 82-room hotel at the Subject Property have access to the northern access driveway that Garten utilizes for access to its loading docks, but the existing Hampton Inn patron and employee traffic would also have full access to and from that driveway and access. Based on this, the previously discussed safety concerns and infringements upon Garten's access rights are further exacerbated by the proposed removal of the south property line setback and the creation of a 2-hotel development site with joint accesses over Garten's easement rights to both the north and the south drives. Therefore, while removal of the setback requirement meets Applicants' goals for a large-scale commercial hotel, it does not equally or better meet the purposes of the UDC as proposed where a buffer between the properties (which setback is a requirement that results if the requested Quasi-Judicial Zone Change is approved) would follow the purposes of that requirement in separating traffic from the two commercial hotels and better restrict traffic movement and patterns across the existing hotel property and the Subject Property.

For these reasons, Applicant's request for an Adjustment of the setback requirement along the southern property boundary should be denied.

3. Adjustment to reduce landscaped setbacks from 10 feet 5 feet at the eastern property boundary.

Applicants seek a Class 2 Adjustment to reduce the required setbacks along the eastern property line from 10 feet to 5 feet, in order to provide adequate space for drive lanes and necessary parking to meet other development code standards for the proposed hotel development. Applicants argue only that previously the Hampton Inn property obtained a variance to reduce the setback along its eastern property line from 10 feet to 5 feet, and therefore the Subject Property should be allowed to do the same.

First, it is important to note that Garten did not purchase its property east of the Subject Property and the Hampton Inn property until after the initial approval for the development of the Hampton Inn, including approval of the variance to reduce the setback along the shared boundary line between Garten and Hampton Inn from 10 feet to five feet. Therefore, Garten did not have an ability to object to the previous variance for the Hampton Property, but does object to the requested Adjustment herein.

Garten's biggest concern here is that while there currently exists a large open field between the common boundary line between the Subject Property and the Garten Property, the potential for development of the Garten site is not only a possibility, but was a prime reason for Garten to

purchase their property. In fact, the building now occupied by Garten was specifically designed to allow for additional development west from its existing building to create a T-shaped structure which would extend to the common boundary line between the Garten Property and the Subject Property. Garten is unsure how a reduction in the required setback for the proposed hotel property would or could affect its development rights now or in the future, but any reduction in the required setbacks for the Subject Property could likely increase required setbacks for Garten in the future, reducing its ability to further develop its property to the fullest extent.

Therefore, approval of the requested Class 2 Adjustment for the eastern boundary line of the Subject Property creates an undue burden on Garten and its ability to use its property to the fullest extent available, and the Adjustment should be denied. In the event that Applicants' request for the Class 2 Adjustment to reduce the setbacks along the eastern boundary line is approved, Garten requests that the City add a Condition of Approval to the order requiring Applicants to sign a Non-Remonstrance Agreement in favor of Garten to waive any future rights for Applicants or other owners or occupants of the Subject Property to object to any future development of the Garten Property. This additional Condition of Approval would protect Garten's use of its industrial property consistent with the purposes of the IBC zone. If such a condition were not imposed and Applicants were to object to Garten's future development, it would be prima facie evidence that Applicants' development herein was actually a burden on the existing industrial zoned properties and surrounding uses, not in support of them as presented in the applications and in the Staff Report.

In addition to the above addressed Class 2 Adjustments, Applicants seek a Class 1 Adjustment to increase the allowed height of the proposed hotel from 45 feet to approximately 52 feet. The criteria for approval of a Class 1 Adjustment, as contained in SRC 250.005(d)(1), are as follows:

SRC 250.005(d)(1) – Criteria for Granting Class 1 Adjustment

- (A) The purpose underlying the specific development standard proposed for adjustment is:**
 - (i) Clearly inapplicable to the proposed development; or**
 - (ii) Clearly satisfied by the proposed development.**
- (B) The proposed adjustment will not unreasonably impact surrounding existing or potential uses or development.**

Applicants rely on SRC 250.005(d)(1)(ii) in seeking approval for this Class 1 Adjustment, claiming that the development standard, even if adjusted, is still met by the proposed development. Applicants and the Staff Report rely largely on the fact that if the Subject Property remained zoned IBC, then the height of development allowed would be 70 feet, contrary to the 45 feet height allowed by the IP zone sought by Applicants in their Quasi-Judicial Zone Change Application. Applicants and the Staff Report also state that the height of the newly proposed hotel on the Subject Property would match the allowed height and variance previously granted for the Hampton Inn

when it was developed. However, neither the allowed height of the zone Applicants seek to remove, nor the previous approval for a variance for the Hampton Inn addresses the purpose of the zone and the development code for the IP zone in promoting industrial and commercial uses on industrial land in a park like setting. Approval of the Adjustment for the proposed development, although seemingly minor, would allow Applicants to add a fourth floor onto the proposed hotel, increasing the number of suites by 25%-33%. For every additional suite added on the hotel, an additional parking space is needed for the development pursuant to SRC 806.015. This results not only in additional land being removed from the park/landscaped inventory on the Subject Property, but necessitates the other three Class 2 Adjustments referenced above just to be able to obtain the necessary number of parking spaces for the development under SRC 806.015, while maintaining the proper ratio of landscaped property under SRC 553.010(d)(3).

The Staff Report states that because the building itself would not be within the required setbacks for the Subject Property at any of the property boundary lines or the 10-foot setback at the south edge of the access driveway (which setbacks Applicants have sought to have reduced or removed to accommodate the proposed development), and because the height would be less than allowed on the surrounding IBC zoned properties, the request is consistent with the proposed IP zone and development standards (see Staff Report, Page 26). However, this ignores the purpose of the IP zone for support uses on industrial property in a park like setting, which would limit size of developments and preserve additional natural and landscaped property. It also seems to ignore the fact that Applicants seek approval for the IP zone and its standards, but do not wish to be held to those standards.

For these reasons, Applicants' request for a Class 1 Adjustment of the building height limits for the IP zone does not provide proper evidence to show that the standards of the proposed development code are clearly satisfied by the proposed development where Applicants provide no information or discussion of the purpose of the IP zone and the reasons for the height restriction contained therein, and instead desire to avoid the requirements resulting from their own requested zone change to the IP zone. Thus, the Class 1 Adjustment should be denied.

SRC 200.005(d)(1)(B) The proposed adjustment will not unreasonably impact the surrounding existing or potential uses or development.

Applicants claim, and the Staff Report follows, that the proposed Class 1 Adjustment will not unreasonably impact the surrounding existing or potential uses or developments. Specifically, the Staff Report finds that there is no negative impact where: 1) the Hampton Inn is also 52 feet under a previously approved variance for that property; 2) the surrounding IC and IBC properties can be developed to a height of 70 feet; and 3) the difference between the proposed building height on the Subject Property (52 feet) and the IP zoned property west of Hawthorne Avenue SE (45 feet) is minimal because of the distance between the properties as separated by Hawthorne Avenue SE. This analysis completely ignores the Garten property and the sight obstruction of Garten's facility created by the hotel over the maximum height allowed in the IP zone.

The Hampton Inn currently creates a visual obstruction of the Garten property that makes it very difficult for patrons of Garten to see the Garten complex from Hawthorne Ave. SE and identify

the proper way to access the property. This was exacerbated previously when the signage for the Garten property was removed as part of the Hampton Inn development. Now, Applicants seek to do the same thing at the north end of the Garten property, by constructing another hotel over the allowed height standard, which will obstruct visual recognition of Garten's location and of the proper access to its loading docks by semi-trailer, heavy truck, and delivery van traffic. This will create a great impediment for Garten to be seen and properly accessed from Hawthorne Avenue SE, with limited ability for proper signage at either the Hampton Inn access point to the south, or the shared access driveway at the north of the proposed development. Further, there is no discussion or information provided by the Applicants or the Planning Department to address whether or not the increased height of the proposed development would have any negative impact on Garten's ability to further develop its own property. Because neither Applicants nor the Planning Department address the potential negative impacts to Garten due to sight obstruction of its property and potential impacts or assurances regarding future development, Applicants do not meet the standard of SRC 250.005(d)(1)(B) and their application for a Class 1 Adjustment to change the allowed height of its proposed development to 52 feet should be denied.

Adjustment Applications Generally

Finally, we would like to address the general purpose of the Adjustment Code in the SRC and the Applicants' proposed development generally, as it pertains to all four Adjustments requested by Applicants.

As noted above, the purpose of Adjustments under SRC 250 provides for "flexibility to allow *reasonable* development of property where special conditions or unusual circumstances exist." SRC 250.001(emphasis added). Applicants rely heavily on this language by claiming that the location of the northern access driveway used by Garten and the existing wetlands on the property are unique features supporting these Adjustments. While these features do present difficulties in allowing Applicants to complete development of the proposed hotel at the desired size as sought through these applications, these features do not affect or inhibit the Applicants ability to make other allowed use of the property under either the IBC zone or the IP zone. Stated differently, the wetlands and the location of the existing driveway do not in any way limit reasonable development of the Subject Property to industrial or supportive uses under the IBC or the IP zone. Those features simply restrict the ability of the Applicant to complete its large-scale commercial hotel development within the Subject Property.

In open testimony at the Public Hearing on these applications, the representative for AKS, on behalf of the Applicants, admitted that the combination of the filed applications in this matter were to circumvent a change in the City of Salem Development Code in order for Applicants to obtain their desired and intended use. Applicants have made no claim that the current code or the character of the property impedes reasonable development of industrial or supportive commercial uses; just that the features impede the use and size of development that Applicants want. Here however, Applicants should not be allowed to pick and choose which standards fit their goals and which do not. If Applicants wish to avail themselves of the IP zone for use of the property, they should be willing to abide by those standards, not seek to avoid them. If Applicants desire to build a hotel that is 52 feet tall in the industrial zone, they should be required to apply for a zone change

Jim Brewer, Hearings Officer

May 31, 2017

Page 21 of 21

and Comprehensive Plan Amendment to develop the property under the IC zone; not dodge a Comprehensive Plan Amendment by circumventing the standards of the IP zone.

If Applicants wish to proceed under the IP zone, the standards of that zone and the SRC support, at most, approval of a 3-story hotel, which would allow reconfiguration of the site plan to remove parking and abide by the setbacks requirements for that zone. However, Applicants should not be able to choose their zone, and then decide which criteria and development standards they want to follow and which they wish to simply ignore. Applicants are in no way precluded by the development code standards from reasonable development of their property pursuant to the SRC, and do not qualify for removal or adjustment of the applicable standards simply because their desired, large-scale commercial use, does not fit the property they own. For these reasons, Applicants do not meet the proscribed purposes for obtaining Adjustments to the standards of the UDC and the IP zone, based on the stated purpose of SRC 250.001 and Applicants reasonable ability to develop allowed uses on the Subject Property within the proscribed standards of the SRC. Therefore, their applications for all Adjustments should be denied.

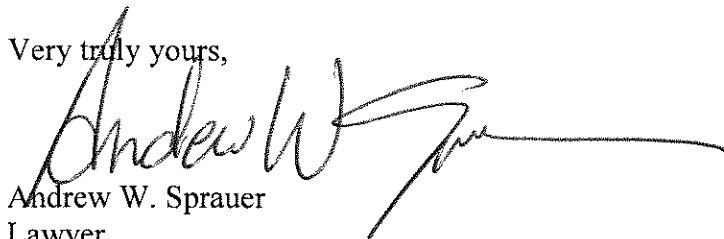
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Based on the foregoing information and discussion, opponents, Garten Services, Inc., doing business as Garten Mail and Packaging and Assembly Services at 500 Hawthorne Ave. SE, Salem, OR, hereby respectfully request denial of Applicants' applications for: 1) a Quasi-Judicial Zone Change; 2) Class 3 Site Plan Review approval; 3) three Class 2 Adjustments; and 4) one Class 1 Adjustment.

Opponents would like to reserve the right to provide additional comments or responses to any materials submitted by Applicants or the City of Salem as allowed at the discretion of the Hearings Officer.

Thank you for your time and consideration in this matter.

Very truly yours,



Andrew W. Sprauer

Lawyer

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Attorney for Garten Services, Inc.

Enclosures

cc: Garten Services, Inc.