



LAND USE APPEAL APPLICATION

1. **GENERAL DATA REQUIRED** *[to be completed by the appellant]*

ZC-SPR-ADJ 17-02 June 30, 2017
 Case # Being Appealed Decision Date
390 Hawthorne Ave SE, Salem, OR 97301
 Address of Subject Property
500 Hawthorne Ave SE, Salem, OR 97301
 Appellants Mailing Address with zip code
wposegate@garten.com (503) 581-1984 ext. 3516
 Appellant's E-mail Address Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

Andrew Sprauer PO Box 804, Salem OR, 97308
 Name Mailing Address with ZIP Code
asprauer@churchill-law.com (503) 585-2255
 E-Mail Address Day-time Phone / Cell Phone

2. **SIGNATURES OF ALL APPELLANTS**

Signature: William Posegate Date: 7-13-17

Printed Name: William Posegate, COO - Garten Services, Inc.

Signature: _____ Date: _____

Printed Name: _____

3. **REASON FOR APPEAL** Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

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| FOR STAFF USE ONLY | |
| Received By: <u>DJC</u> | Date: <u>7/17/17 3:30pm</u> Receipt No: <u>17-106180-20</u> |
| Appeal Deadline: <u>7/17/2017</u> | Case Manager: <u>Lambert</u> |
| <u>5:00 pm</u> | |



CHURCHILL LEONARD

LAWYERS

July 17, 2017

City of Salem
Planning Division
555 Liberty Street SE
Salem, OR 97301

Re: Notice of Appeal of Hearings Officer's Decision
Case No. ZC-SPR-ADJ 17-02
Our File No. 13788

To the City of Salem Planning Division,

General Information on Decision:

This letter is submitted in support of Appellant Garten Services, Inc.'s Land Use Appeal Application submitted to the City of Salem for appeal and review of the decision of the Hearings Officer, James K. Brewer, on the Quasi-Judicial Zone Change / Class 3 Site Plan Review / Class 1 & 2 Adjustments, Case No. ZC-SPR-ADJ 17-02. The applications at issue are for development of the Subject Property located at 390 Hawthorne Ave. SE, Salem, OR 97301. The Public Hearing for this case was held on May 24, 2017. The Notice of Decision for this case was issued on June 30, 2017, with the deadline for appeals set for Monday, July 17, 2017.

Appellant's Standing to Appeal:

The Public Hearing on ZC-SPR-ADJ 17-02 was held on May 24, 2017. Appellant Garten Services, Inc. appeared and provided testimony at the public hearing, by and through legal counsel, Andrew Sprauer, and submitted additional written testimony after the public hearing while the record remained open at the request of Garten Services, Inc. For those reasons, Garten Services, Inc. has proper standing to appeal the decision of the Hearings Officer as Appellant under this Land Use Appeal Application.

Basis of Appeal:

As part of their application, representatives of Salem Hotel Investors II, LLC (the "Applicants") seek approval of a Class 3 Site Plan Review for development of an 82-room hotel on 2.7 acres along Hawthorne Ave. SE. The proposed hotel would be developed on property over which Garten Services, Inc. (the "Appellant") has a driveway and easement for heavy truck, semi-trailer, and van access between Appellant's loading dock and Hawthorne Ave. SE. Applicants have provided a proposed development plan / site plan for the Subject Property, which would involve lining

Appellant's access easement and existing driveway on both sides with approximately 40 parking spaces. Further, most of the parking spaces attached to the north end of Appellant's driveway access are designed for compact car parking. At the time of submission of their applications and plans to the City of Salem Planning Division, the Planning Division noted that the parking spaces along the north edge of Appellant's driveway access were encroaching onto Appellant's existing driveway. Rather than deny or hold the application, the Planning Division identified the encroachment and simply placed a condition of approval on the application that the encroachment issue be addressed by Applicants during the development process. Applicants testified at the public hearing that they made a slight adjustment to the site plan and that now the parking spaces meet the required measurements in the Salem Revised Code.

Despite the decision from the Planning Division approving the applications and the Conditions of Approval provided, Appellant had serious concerns about safety issues and encroachments onto their driveway easement and chose to appear at the public hearing to provide testimony at the hearing, and provided additional written submissions while the record remained open after the hearing. Included in Appellant's testimony were photographs of parking along Appellant's southern driveway access (which driveway does not provide access to the Garten loading dock, only employee and administrative access). Those photos clearly exhibit the significant encroachment issues created by customers of the Hampton Inn who are able to park along only one side of that driveway. Testimony from Appellant included information about:

- 1) Observed safety issues, including "near misses" and minor accidents along the southern driveway;
- 2) Impediments to use of Appellant's driveway due to encroachments from parking for Hampton Inn; and
- 3) Trespass issues that occur due to the Hampton Inn not providing parking for larger recreational vehicles and travel trailers (such vehicles and trailers frequently end up parking across multiple parking spaces in Garten's employee parking lot).

Further, it was specifically noted that all of the above issues had arisen along a driveway access that only had parking along one side of the existing driveway, and that did not involve traffic from semi-trailers, heavy trucks, and van traffic as exists along the northern driveway.

As part of the Class 3 Site Plan Review, the Hearings Officer reviewed the requirements of SRC 806.035 for Off-Street Parking and Development Standards and specifically relied on SRC 806.035(e), which states, "Off-street parking areas shall conform to the minimum dimensions set forth in Table 806-6." In his decision regarding off-street parking standards and dimensions, the Hearings Officer first noted that, "...the northernmost row of parking spaces is depicted as encroaching into the 25-foot-wide access easement." The Hearings Officer goes on to note that the majority of Appellant's concerns arise over the likelihood of interference with their easement, and while addressing encroachments as they occur involve mostly private civil action, he states:

Garten's concern about intrusion in to the access easement is legitimate, and requires a condition to ensure that the proposed development does not encroach. Similarly, Garten's concern about oversized or long wheel based vehicles, or

recreational vehicles and trailers encroaching or interfering with the access easement should be addressed, so that the off-street parking area dimensions provide the practical restrictions on encroachment that they are intended to provide. (see Hearings Officer's Decision, Page 23).

In an effort to respond to Appellant's noted concerns, the Hearings Officer revised and expanded Condition of Approval 5 in his decision, so it now provides:

Condition 5: The development must 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. The development must provide and maintain signage and otherwise enforce a restriction on the overhang of any portion of vehicles of any kind from the parking areas immediately adjoining the existing access easement, so that vehicles, bumpers, hitches, trailers, or any part thereof do not extend or intrude into the existing access easement.

While Appellant appreciates the expanded language and protections provided by the Hearings Officer in this revised condition, Appellant does not believe this condition of approval adequately addresses the breadth of Appellant's concerns about access and safety at this time. Specifically, these applications and the testimony provided on behalf of the Applicants has shown that Applicants general approach and argument in support of their development is that if they meet the minimum dimensional standards in the SRC, they do not need to address any other outside concerns regarding the access easement or Appellant's rights. Further, despite Applicant's recurring argument that they are meeting all applicable dimensional standards for the proposed development, it is important to note that in order to provide the required number of off-street parking spaces and the necessary amount of landscaping for the proposed development, Applicants require approval of two Class 2 Adjustments to completely waive setbacks along 2 boundary lines and to significantly reduce the setback between the Subject Property and Appellant's property. Additionally, if Applicants had any intent to address Appellant's concerns or to work with Appellant as part of this development, Applicants would have contacted Appellant prior to filing their applications to work with Appellants to address safety and access concerns. Applicants did not contact Appellants to try to discuss any concerns with the proposed development until 4 days prior to the Public Hearing.

Based on the foregoing, Appellant hereby appeals the decision of the Hearings Officer where the Conditions of Approval do not properly address:

- 1) The specific criteria or burden to be placed on Applicants for proving compliance with the requirements that they avoid encroachments on Appellant's driveway;
- 2) There is no discussion about the review criteria or requirements for addressing the concerns about long wheel based vehicles or recreational vehicles and trailers as part of Applicants' site plan and parking area; and
- 3) There is no condition or requirement providing Appellant with the ability to review, comment, or participate in the development process to work to protect and maintain its access rights along the existing driveway.

For the foregoing reasons, Appellant hereby appeals the decision of the Hearings Officer asking that:

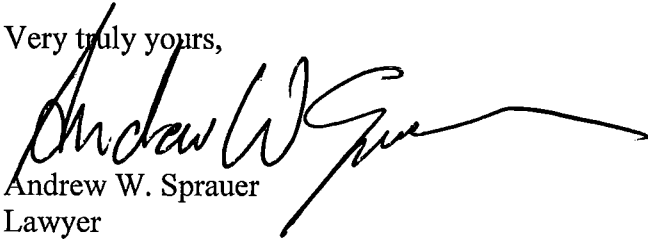
1. The City Council reverse the decision of the Hearings Officer and deny Applicants' Class 3 Site Plan Review until such time the specified concerns are properly addressed as part of Applicants' Site Plan; or
2. In the alternative, that the Hearings Officer's decision be amended to revise Condition of Approval 5 to address the requirements to be placed on Applicants for addressing concerns and avoiding encroachments, and providing Appellant with the opportunity to participate in the development at all stages to address the concerns specified herein.

Appellant hereby reserves the right to provide additional written testimony on these issues and concerns prior to the scheduled hearing before the City Council.

If you have any questions or need any additional information, please contact me at (503) 585-2255 or via email at asprauer@churchill-law.com.

Thank you for your time and courtesies in this matter.

Very truly yours,



Andrew W. Sprauer

Lawyer

asprauer@churchill-law.com

Attorney for Garten Services, Inc.

Enclosures

cc: Garten Services, Inc.