

June 14, 2017

Jim Brewer
 City of Salem Hearings Officer
 c/o Pamela Cole
 City of Salem Planning Division
 555 Liberty Street SE, Room 305
 Salem, OR 97301

RE: ZC-SPR-ADJ17-02 (390 Hawthorne Avenue SE)

Dear Mr. Brewer,

Please accept the following narrative as the Applicant's final written argument pursuant to Salem Revised Code (SRC) 300.970(f), ORS 197.763(6)(e), and the verbal instructions at the conclusion of the May 24, 2017 public hearing.

The consolidated applications for the planned 82-room hotel represent a straightforward, quasi-judicial land use review. In summary, the consolidated application package addresses three overarching questions:

- 1) Does the planned zone change from IBC to IP meet the applicable quasi-judicial zone change criteria listed in SRC 265.005(e)(1)? If yes, the zone change shall be granted.
- 2) Do the planned adjustments to landscaped setbacks and height meet the applicable criteria in SRC 250.005(d)? If yes, the adjustments shall be granted.
- 3) Does the planned 82-room hotel meet the Class 3 site plan criteria listed in SRC 220.005(f)(3)? If yes, the site plan review shall be granted.

Contrary to the plain language of the SRC, Andrew Sprauer, on behalf of Garten Services, Inc., seeks to confuse and conflate these straightforward and distinct questions, so that a decision on the zone change is somehow based on the site plan, and an adjustment should be denied because there is a concurrent application for a zone change. These arguments have no basis in the SRC.

SRC 265.005. Quasi-Judicial Zone Changes.

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(e) *Criteria.*

(1) *A quasi-judicial zone change **shall be granted** if all of the following criteria are met [emphasis added]:*

(A) *The zone change is justified based on the existence of 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 proposed zone would be compatible with the vicinity's development pattern; or*
- (iii) A demonstration that the proposed zone 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.*

As detailed in the Applicant's submittals and the City staff report, the IP zone is equally or better suited for the property than the IBC zone. Mr. Sprauer's testimony fails to provide compelling evidence that the criteria are not met, and his arguments rely entirely on the incorrect assumption that the planned use or site plan must be considered in evaluating the zone change criteria. This assertion is incorrect and not based on the plain language in the code. The plain language in SRC 265.005(e) only requires consideration of the physical characteristics of the property, the uses allowed in the proposed zone, and whether the uses allowed in the proposed zone are logical with surrounding land uses. While concurrent Site Plan Review and Adjustment applications for the planned hotel have been submitted, the criteria make clear that the zone change should be evaluated on its own merits, and must be granted if the specific criteria are met.

As submitted by Staff and Applicant in the written materials, and reiterated during the public hearing, this specific change in zoning – from IBC to IP – more easily meets the applicable zone change criteria because the two zones are very similar with respect to the uses allowed and standards affecting the configuration and scale of development.

Additionally, in the two written statements submitted by Mr. Sprauer, he argues for denial of the zone change based on the intent underlying the zone change, and the fact that there are several other hotels near the subject property. First, the zone change criteria does not require analysis of the intent of the Applicant, and the assertion that a zone change should be denied because the proposed zone offers advantages over the existing zone is irrational. Second, the fact that there are other hotels near the subject property further supports the conclusion that "the uses allowed by the proposed zone are logical with the surrounding land uses."

If it was illogical to have IP-zoned property in proximity to hotels, short-term commercial lodging would not be listed as a permitted use in the IP zone, and the City would not establish zones that allow hotels – such as the IBC and IC zones – in proximity to the IP zone. The subject property abuts the IP, IBC, and IC zones. Up and down Hawthorne Avenue SE, the City has established IP, IBC, and IC zones abutting each other. The fact that the City has established the IP zone in close proximity to the IBC and IC zones demonstrates that the uses allowed by the IP zone are logical with the surrounding uses.

For these reasons, Condition 1 is unnecessary to ensure compliance with SRC 265.005(e)(1)(A)(iii). The subject property, in part relative to surrounding zones and uses, meets the criteria for the zone change irrespective of any intended use, planned development, or lack thereof. Logically, it would follow that any of the uses allowed by the zone would and could be permitted, subject to additional applicable criteria (Site Plan Review, Adjustments, etc.) in the SRC. The Applicant does not necessarily object to the wording of Condition 1 as a general matter, but it seems the Condition is better located in the findings addressing the Class 3 Site Plan Review criteria.

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(C) *The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan [emphasis added].*

The IBC zone and IP zone both fit within the Industrial designation of the Salem Area Comprehensive Plan (SACP). The Staff Report lists Goal 1 and several policies related to Industrial Development contained in Section IV(I) of the SACP.

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.

Relative to SRC 265.005(e)(1)(C), the Applicant does not believe Goal 1 constitutes an applicable provision of the SACP. The Land Use Board of Appeals (LUBA) has found that plan goals and policies worded in aspirational and general terms are intended to guide development of implementing ordinances, not individual permit decisions. *Citizens for Resp. Growth v. City of Seaside, 23 Or LUBA 100 (1992)*. The plain language in Goal 1, such as “encourage” and “promote,” is both aspirational and general, and makes clear that Goal 1 is intended to guide development of specific SACP policies and implementing ordinances, not individual quasi-judicial zone change decisions.

Nonetheless, the planned zone change complies with Goal 1 because the planned IP zone allows for industrial and related uses that strengthen the economic base of the community, including traded-sector uses which generate traded-sector employment.

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 especially areas where the City has made substantial investments in infrastructure.

High value industrial land has the following characteristics: it is designated for industrial uses, in flat parcels, most frequently in large parcels at least 10 acres in size, located

within an industrial district, has direct access to a state highway or I-5, and is serviced or planned to be serviced with water and wastewater infrastructure.

As stated in the land use application, the Salem Economic Opportunities Analysis 2015-2035 (EOA) forecasts that Salem has a 907-acre surplus of industrial land over the 20-year planning horizon. Furthermore, the planned zone from IBC to IP – both industrial zones – does not reduce the City’s industrial land inventory. Therefore, the zone change complies with the Policy.

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.

The Applicant does not believe Policy 12 constitutes an applicable provision of the SACP relative to SRC 265.005(e)(1)(C). The plain language in Policy 12 makes clear that it is intended to guide development of implementing ordinances, specifically the types of uses allowed in an industrial zone, not individual quasi-judicial zone change decisions. The application does not propose to change any of the permitted uses in the IBC or IP zones. Nothing in Section 265.005 requires an applicant to propose an intended use or include a site plan with an application for a quasi-judicial zone change, or consideration of an intended or planned use in evaluating the decision criteria.

Nonetheless, the planned IP zone does allow limited amounts of non-industrial uses, such as eating and drinking establishments and short-term commercial lodging, that “should” (i.e. theoretically) support industrial businesses or their employees. The fact that hotels are a permitted use in both the IP and IBC zones demonstrates that the City has concluded that hotels are a use that supports industrial businesses or employees at industrial businesses. Furthermore, it is logical that the surrounding businesses – which include corporations and state offices – would be supported by a hotel in close proximity to these offices that could provide short-term lodging for employees or clients travelling from across the state, country, or world.

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(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.

Per Oregon Administrative Rule (OAR) 660-012-0060(9), a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if (a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map; (b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The TSP accounts for urbanization of the subject property. The TSP is based on the land use designations found in the SACP, and the planned zone change is consistent with, and does not alter, the SACP. Therefore, the zone change satisfies conditions (a), (b), and (c) above, and the City can find that it does not significantly affect a transportation facility.

Alternatively, in determining whether a proposed zone change significantly affects a transportation facility under OAR 660-012-0060(1), LUBA has found that a proper baseline for comparison of the differences in traffic generated under the current zone and the proposed zone is development that is proposed concurrently with the zone change, where that zone change decision includes a condition of approval that imposes a vehicle trip cap to limit the transportation impacts from development under the new zone to transportation impacts that would have been generated under the current zone. *Willamette Oaks LLC v. City of Eugene*, 63 Or LUBA 75 (2011).

The existing and planned zones allow a similar slate of industrial and related uses. Neither zone has a maximum lot coverage requirement, and the planned IP zone has a lower maximum building height (45 feet) than the existing IBC zone (70 feet). Therefore, it is reasonable to expect that the zone change, would result in less intensive development compared to the existing zone. To compare development under the two zoning scenarios, a trip generation analysis was conducted, based on the trip generation data already in the record. The following table of uses permitted in both the IBC and IP zones is presented as a comparison of realistic development scenarios for the subject property.

USE	ITE LAND USE CODE	WEEKDAY TRIPS ¹	SATURDAY TRIPS ¹	PARKING SPACES ²
Hotel (47,378 SF – 82 Rooms)	310 – Hotel	670	672	82
Olive Garden Restaurant (6,000 SF)	932 – High Turnover Sitdown Restaurant	762	950	24
Subway Restaurant (1,200 SF)	933 – Fast Food (No Drive-Through)	852	835	5

ITE Trip Generation Manual 8th Edition.

¹ Trip generation per 1,000 square feet of gross floor area, except for 310 – Hotel, which is based on number of rooms, consistent with the signed City of Salem TGE form.

² Table 806-1, Salem Revised Code Chapter 806.

Based on the size of the site and the characteristics of the uses, a 6,000-square-foot High Turnover Sitdown Restaurant (Olive Garden or similar) and 1,200-square-foot Fast Food with No Drive-Through (Subway or similar) could be located on the 2.69-acre site with ample room for the required 29 parking spaces, in compliance with all applicable standards. These two uses would generate 1,614 trips per weekday. If necessary, this methodology could be utilized to establish a condition implementing a trip cap of 1,614 trips per weekday. This would be an alternate/supplementary method to ensure that the zone change does not significantly affect a transportation facility.

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(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

Because the impact on the area of the planned zone change from IBC to IP would be minimal, due to the similarity of allowed uses and development standards, the burden on the Applicant to demonstrate the criteria are satisfied is relatively low. The Applicant has provided substantial evidence, under any reasonable standard, that the applicable zone change criteria are met.

SRC 220.005. Site Plan Review.

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(f) Criteria.

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*(3) Class 3 Site Plan Review. An application for Class 3 Site Plan Review **shall be granted** if [emphasis added]:*

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(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;

The purpose (11.010) of Salem's Unified Development Code is to implement the SACP through a comprehensive land use and development code governing all land in the City and establishing regulations to, among other things:

- "Promote and protect the health, safety, and general welfare of the public"
- "Provide for the orderly growth and development of the City"
- "Ensure the provision of adequate public facilities and services"
- "Protect property from risks and dangers"

The "transportation system" referenced in the standard is understood to be the public street system. Chapter 803 establishes "standards for streets and other improvements within public right-of-way in the City." Chapter 804 establishes "development standards for safe and efficient access to public streets." Chapter 805 establishes standards "to ensure visibility for vehicular, bicycle, and pedestrian traffic at the intersections of streets, alleys, flag lot accessways, and driveways." Taken together, and consistent with the overarching intent of the UDC, the standards contained within Chapters 803, 804, and 805 ensure that the transportation system provides for the safe, orderly, and efficient circulation of traffic.

Chapters 803, 804, and 805 are not directly addressed in the land use application because Hawthorne Avenue SE and the existing access were previously improved and meet the applicable standards. This is confirmed by comments from Glenn J. Davis, PE, CFM, Chief Development Engineer, included as Staff Report Attachment E: "Hawthorne Avenue SE meets the right-of-way width and pavement width standards per the Salem TSP; therefore no

additional street improvements are required as a condition of the proposed development...The existing driveway access onto Hawthorne Avenue SE provides for safe turning movements into and out of the property.”

Furthermore, no additional analysis of the impacts on the transportation system is necessary because the City’s Traffic Engineering Section concluded the planned use does not meet the clear and objective trip generation thresholds (e.g. 1,000 trips/day on an Arterial) that trigger a Traffic Impact Analysis (TIA).

*(C) Parking areas and driveways are **designed** to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians; and [emphasis added]*

As stated directly above, the Chapters and individual sections of Salem’s Unified Development Code are designed and intended to, among other things:

- “Promote and protect the health, safety, and general welfare of the public”
- “Provide for the orderly growth and development of the City”
- “Ensure the provision of adequate public facilities and services”
- “Protect property from risks and dangers”

Chapter 806 establishes “standards for off-street parking and vehicle use areas, bicycle parking, loading areas, and driveways.” These standards are addressed in detail in the land use application and Staff Report.

As described above, a shared access that complies with Chapters 803, 804, and 805 ensures the safe, orderly, and efficient circulation of traffic into and out of the proposed development. A shared access that complies with Chapter 806 ensures that the parking areas and driveways are “designed” to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians. “Designed” is the operable element of the criteria.

This project was designed by a Professional Engineer (PE). The City’s Chief Development Engineer, Glenn J. Davis, PE reviewed the application and submitted comments: “The existing driveway access onto Hawthorne Avenue SE provides for safe turning movements into and out of the property.” As stated in the Staff Report, the Fire Department also reviewed the proposal, and “had no concerns with the zoning or adjustment request.” In other words, the Fire Department is confident the parking areas and driveways, as designed and shown on the site plan, can facilitate the safe and efficient movement of large emergency vehicles into, through, and out of the site should they need to address an emergency. These statements should be viewed as expert testimony that conclusively finds that the transportation system and on-site circulation system are designed to be safe and efficient.

The photographs submitted by Mr. Sprauer fail to demonstrate any fault in the design of the planned parking and vehicle use area, and at best show that an individual driver did a poor job of parking in a vehicle use area built to an unidentified standard on a separate property.

Furthermore, the photographs suggest there is ample room for any driver (and especially a trained and licensed commercial truck driver) using common judgement to safely and efficiently navigate the shared accessway and parking aisle. Mr. Sprauer references “near misses” but provides neither incident reports nor substantial evidence demonstrating that the planned design is unsafe.

SRC 250.005. Adjustments.

(d) Criteria.

*(1) An application for a Class 1 adjustment **shall be granted** if all of the following criteria are met [emphasis added]:*

(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.

A Class 1 Adjustment is necessary for a 15.6% increase in the maximum building height from 45 feet to ± 52 feet. The primary purpose of a maximum height requirement is to limit the impacts of building mass on adjacent properties. In this case, the zoning of adjacent properties allows buildings significantly taller than the hotel planned for the subject property. The maximum building height allowed in the IC zone, which abuts the subject property to the north and east, is 70 feet. The maximum building height allowed in the IBC zone, which abuts the subject property to the south, is 70 feet. The maximum building height allowed in the IP zone is 45 feet. The planned hotel will be ± 52 feet in height.

Additionally, the hotel building itself will be ± 36 feet from the Garten property, a setback 3.5 times greater than the required 10 feet. This more than off-sets any additional building mass impacts that may be generated with the necessary 15.6% height increase. Therefore, the purpose underlying the maximum height requirement is clearly satisfied by the proposed hotel.

Mr. Sprauer asserts that the planned hotel will create a “sight obstruction” for the Garten property. However, the entirety of Mr. Sprauer’s objection applies generally to any building built on the subject property. There is no evidence presented that a 52-foot-high building fails to satisfy the purpose of the underlying development standard relative to a 45-foot-high building. Furthermore, the additional 7 feet in height will not “unreasonably” impact surrounding existing or potential uses in large part due to the increased building setbacks and the 70-foot maximum height allowed on all surrounding property east of Hawthorne Avenue SE.

(2) An application for a Class 2 adjustment **shall be granted** if all of the following criteria are met [emphasis added]:

(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.

Based on information contained in the Pre-Application Conference Report, Applicant understood that the following Class 2 adjustments were necessary:

- Reduce from 10 feet to 0 feet the required landscaped setback from the southern (“most interior”) access easement line of the existing accessway.
- Reduce from 10 feet to 0 feet the required landscaped setback from the southern property boundary.
- Reduce from 10 feet to 5 feet the required landscaped setback from the eastern property boundary.

The purpose of landscaped setbacks is to buffer potential impacts from adjacent properties and uses. The subject property is constrained by several factors, including easements and hydric soils. The site has been designed to minimize impacts on sensitive areas, align with the existing hotel to the south by sharing a vehicle-use area between the buildings and matching/continuing the landscaped setback along the eastern boundary, and maximize efficient use of the site. The result of this design is that existing development to the north and east is not impacted, and impervious surface is minimized as the existing driveway also functions as a parking aisle. Consequently, the purpose underlying the development standard – to buffer impacts to adjacent properties – is equally or better achieved with the planned site design.

In addition to looking at the site, the purpose of the landscaped setback, and the development standards holistically, each adjustment is broken out and addressed individually, below:

- Reduce from 10 feet to 0 feet the required landscaped setback from the southern (“most interior”) access easement line of the existing accessway.

The Staff Report references SRC 806.040(c) to justify why the setback to the southern property boundary is not applicable. The relevant part of this code states:

806.040. Driveway Development Standards for Uses or Activities other than Single Family or Two Family. Unless otherwise provided under the UDC, driveways for uses or activities other than Single Family or Two Family shall be developed and maintained as provided in this section.
(c) Setbacks and Landscaping.

(1) *Perimeter Setbacks and Landscaping, Generally.* Perimeter setbacks and landscaping as set forth in this subsection shall be required for driveways abutting streets and abutting

interior front, side, and rear property lines; provided, however, perimeter setbacks and landscaping are not required where:

(A) The driveway provides direct access to the street, alley, or abutting property.

(B) The driveway is a shared driveway located over the common lot line and providing access to two or more uses.

In this case, “perimeter setbacks” means setbacks around the perimeter of driveways. Contextually, this is consistent to how “perimeter setbacks” is used in Chapter 806 (perimeter setbacks for loading areas, parking garages, etc.). While SRC 112.050(c) appears to require setbacks to accessways, generally, SRC 806.040(c)(1) provides two specific exemptions for commercial and industrial driveways.

Based on this reasoning and the plain language in the code, a landscaped setback from the existing driveway should not be required because the driveway does not serve a residential use, and the site plan illustrates how it provides direct access to Hawthorne Avenue SE and the abutting property. As such, the Applicant contends that there is no applicable setback standard for the existing driveway, and no adjustment is necessary.

However, taking a “belt and suspenders” approach to demonstrating the applicable criteria are met, if it is found that a landscaped setback is required for the existing driveway, the Applicant generally agrees with the finding 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. The proposed development will equally or better meet this purpose with the imposition of Condition 5 above, which requires that all parts of the parking spaces and curbed landscape areas must be removed from the easement.”

This proposed condition has been met with the revised site plan submitted on May 31, 2017. It should also be noted that the required width for a two-way driveway is 22 feet, per Table 806-7. The existing accessway is 25-feet-wide. Furthermore, as detailed above, the City’s Chief Development Engineer, Glenn J. Davis, PE reviewed the application and concluded: “The existing driveway access onto Hawthorne Avenue SE provides for safe turning movements into and out of the property.” The Fire Department also reviewed the proposal, and “had no concerns with the zoning or adjustment request.” In other words, the Fire Department is confident the parking areas and driveways provide unobstructed access for large emergency vehicles into, through, and out of the site. Consequently, there is substantial evidence in the record that the purpose underlying the setback standard is equally or better met by the proposed development.

- Reduce from 10 feet to 0 feet the required landscaped setback from the southern property boundary.

The Applicant generally agrees with the finding in the Staff Report that “the 10-foot landscaped area setback in the IP zone is not applicable on the north side of the [southern] driveway”

because the approved plans for Variance-Site Plan Review Case No. VAR-SPR10-02 showed a common driveway across the property line.

- Reduce from 10 feet to 5 feet the required landscaped setback from the eastern property boundary.

The Applicant agrees with proposed Condition 9, which requires additional screening. With the addition of a 6-foot-tall sight-obscuring fence or wall along the east property line or a doubling of the standard vegetative density, the Applicant agrees with the finding in the Staff Report that the purpose underlying the landscaped setback standard is equally or better met.

This final written argument, along with the Applicant's previous submittals, preliminary plans, and other materials required by the City, demonstrate compliance with all applicable approval criteria, and the City can rely upon this information in its approval of the application.

Thank you in advance for your consideration.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC



Joey Shearer, Land Use Planner