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DECISION OF THE HEARINGS OFFICER

QUASI-JUDICIAL ZONE CHANGE CASE NO.: ZC18-01

APPLICATION NO. : 18-102895-ZO

NOTICE OF DECISION DATE: APRIL 19, 2018

SUMMARY: A proposal to add office uses to a list of uses currently allowed on a property zoned CO (Commercial Office).

REQUEST: A proposal to add office uses to a list of uses currently allowed on a property zoned CO (Commercial Office). Application No. CPC/ZC94-04 limits the uses allowed to medical and dental laboratories and uses allowed in the RS zone.

The subject property is approximately 14,090 square feet (0.31 acres) in size, zoned CO (Commercial Office), and located at 630 Mary Avenue SE (Block 2, Lot 12 of Highway View Addition) (Marion County Assessor Map and Tax Lot Number 083W03CA 07700).

APPLICANT: Mr Kansky LLC (Richard Kansky, Robert Kansky, Amy Kansky and Stacie Kansky)

LOCATION: 630 Mary Avenue SE, Salem, OR 97302

CRITERIA: Salem Revised Code Chapter 265.005(e)

FINDINGS: The findings are in the attached Order dated April 19, 2018.

DECISION: The Hearings Officer **APPROVED** Quasi-Judicial Zone Change ZC18-01 subject to the following condition of approval:

CONDITION 1. Conditions 2 through 10 imposed by Comprehensive Plan / Zone Change application CPC/ZC94-04 are still applicable to the subject property.

Related to this decision and the possible use restriction recorded against the property, the Hearings Officer includes in this order express authority for the City to release that recorded restriction. Consequently, if the use restriction was recorded, the applicant may prepare a release of the use restriction that meets the approval of the City Attorney, and once signed by the appropriate designee of the City, the Applicant may record the release.

Application Deemed Complete: March 16, 2018
Public Hearing Date: April 11, 2018
Notice of Decision Mailing Date: April 19, 2018
Decision Effective Date: May 5, 2018
State Mandate Date: July 14, 2018

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



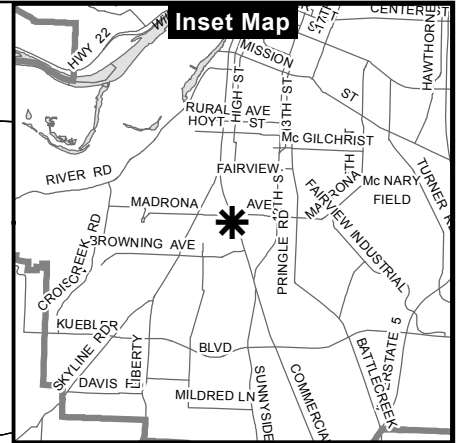
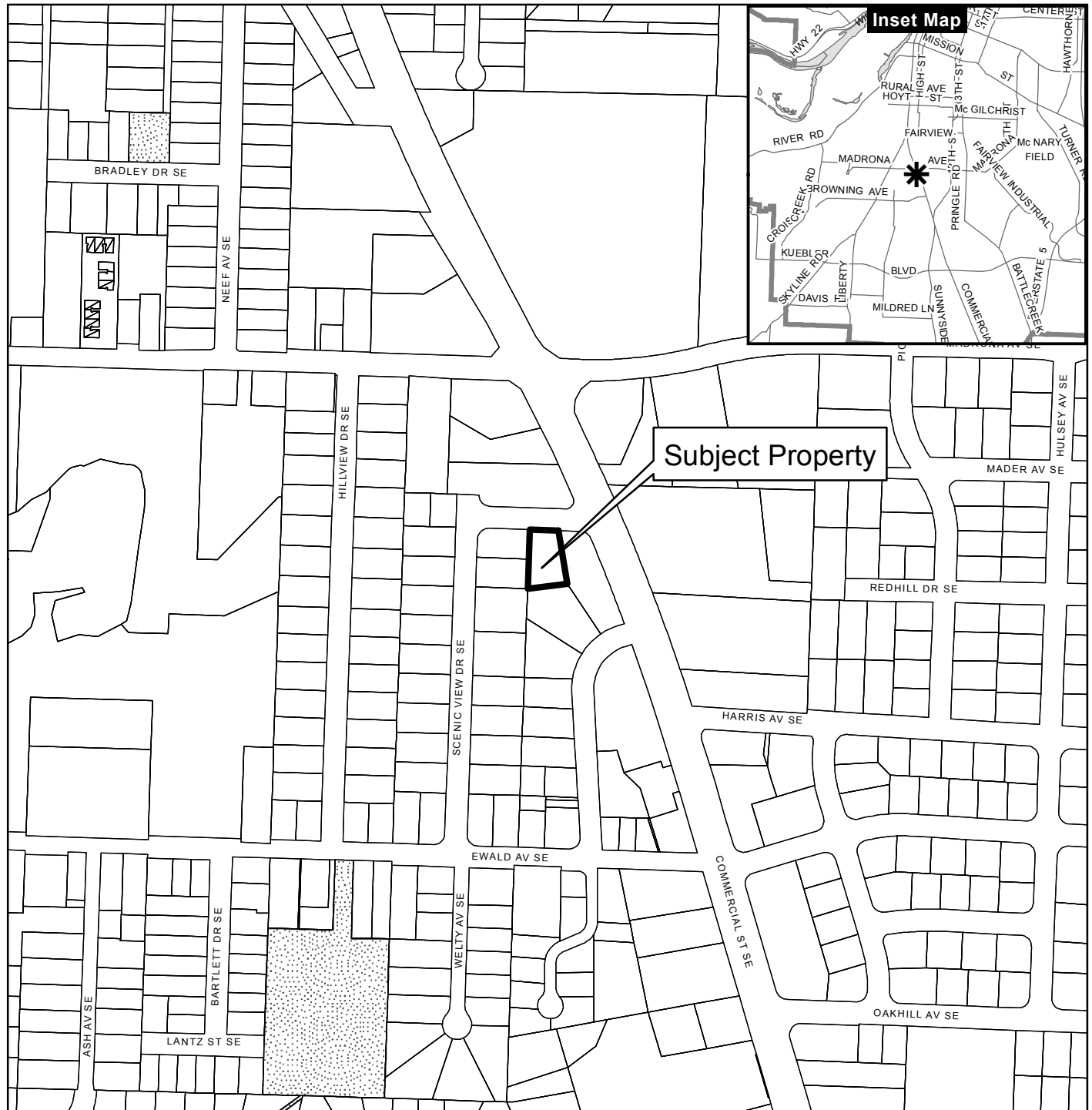
Case Manager: Britany Randall, brandall@cityofsalem.net

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, **no later than 5:00 p.m., May 4, 2018.** Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter 265. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

Vicinity Map 630 Mary Avenue SE



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

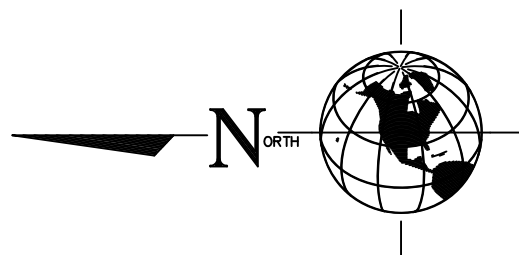
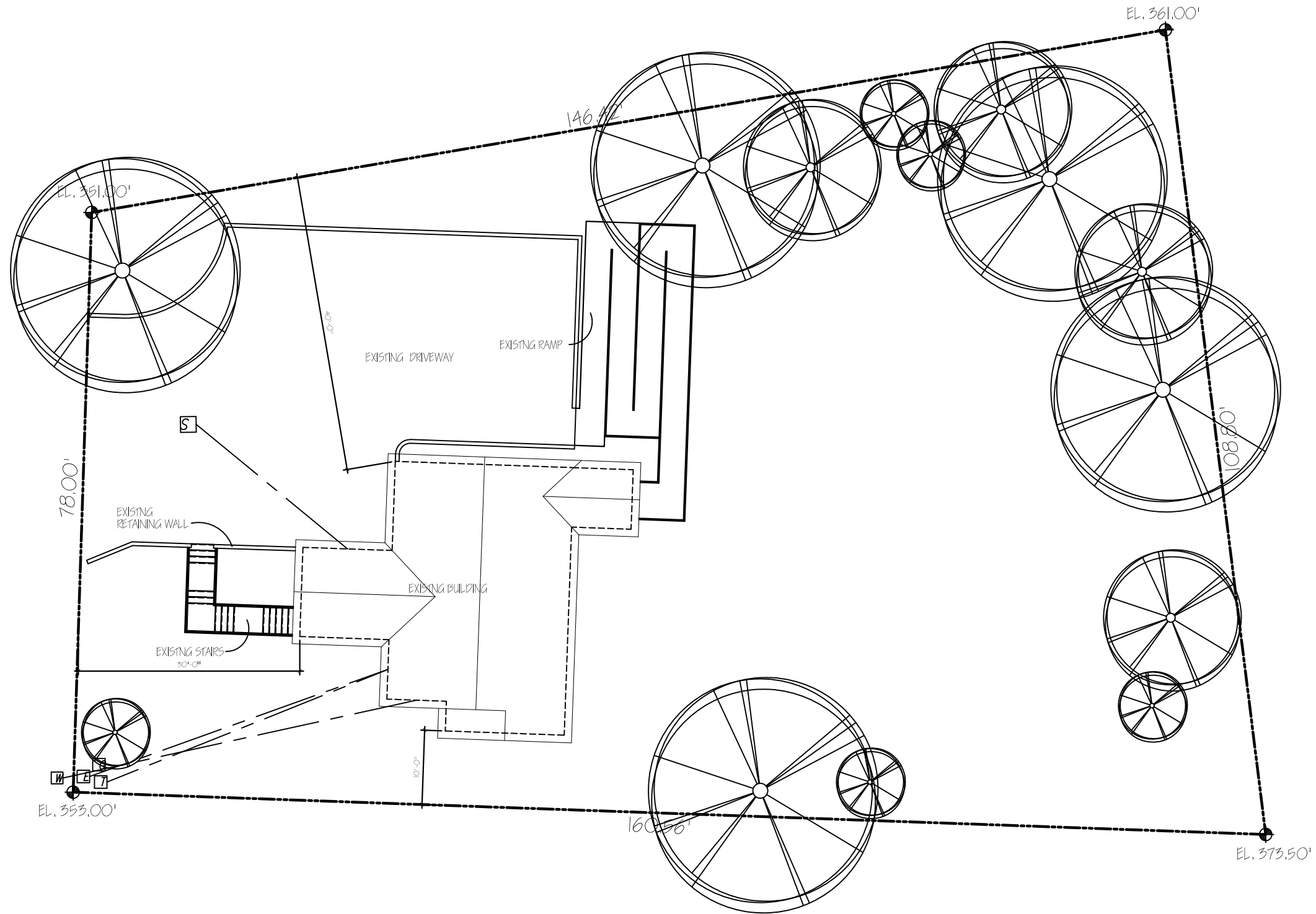
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CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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630 MARY ST.



	(SPECIES & DIA AS NOTED) TREE TO BE REMOVED		WATER STUBOUT
	TREE (DIA AS NOTED)		WATER VALVE
	FIRE HYDRANT		PROPERTY CORNER
	SEWER STUBOUT		MONUMENT FOUND AS NOTED
	CATV PEDESTAL		COUNTOUR (ASSUMED ELEV)
	TELEPHONE PEDESTAL		EASEMENT / SETBACK LINE
	ELECTRIC PEDESTAL		CONCRETE CURB
	GAS STUBOUT		UTILITY LINE (AS NOTED)
			PROPERTY BOUNDARY

SITE PLAN

HURLEY DESIGN GROUP
541-791-9880

DATE: 1-03-2017
SCALE: 1/16" = 1'-0"
FILE #
PROJECT:

PAGE
5

A REQUEST TO ADD OFFICE USES TO A LIST OF USES CURRENTLY ALLOWED ON A PROPERTY ZONED CO (COMMERCIAL OFFICE) FOR PROPERTY LOCATED AT 630 MARY AVENUE SE, MARION COUNTY ASSESSOR MAP AND TAX LOT NUMBER 083W03CA 07700.	} } } } } } }	ZC18-01 FINDINGS OF FACT, CONCLUSIONS, AND DECISION
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April 11, 2018, Salem City Council Chambers, Room 240, Civic Center, 555 Liberty Street SE, Salem, Oregon.

APPEARANCES:

Staff: Britany Randall, Planner II

Neighborhood Association: None

Proponents: Robert Kansky, Applicant

Opponents: None

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on April 11, 2018, regarding a proposal to add office uses to the list of uses currently allowed on a property zone CO (Commercial Office). A prior decision setting the Comprehensive Plan Designation and Zone, Application No. CPC/ZC94-04, limits the uses allowed on the property to medical and dental laboratories and those uses allowed in the RS zone. No written or oral testimony was provided by any party other than the applicant. Prior to the close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Commercial." The Salem Comprehensive Policies Plan describes the predominant use in the Commercial designation as commercial. The designation indicates commercial areas that provide shopping and service opportunities including regional shopping facilities, community and neighborhood shopping and service facilities, convenience stores, commercial offices, and specialized shopping and service facilities.

Because the proposed CO (Commercial Office) zoning is consistent with the Comprehensive Plan designation, a concurrent Comprehensive Plan Map Amendment is not required.

The Comprehensive Plan designations of surrounding properties include:

North: "Commercial" (Across Mary Ave. SE)
South: "Commercial"
East: "Commercial"
West: "Single Family Residential"

The property is within the Urban Service Area.

2. Zoning of Surrounding Properties

The subject site is currently zoned CO but has a use restriction imposed by the conditions of approval for Comprehensive Plan/Zone change application CPC/ZC 94-04. The staff report included a copy of CPC/ZC 94-04 as Attachment C. At the time of the application for CPC/ZC 94-04, the property owners, Mr. and Mrs. Vaterlaus, applied for the comprehensive plan and zone change application that was subsequently approved, which changed the zoning designation of the property from RS to CO. In an effort to buffer the abutting residential uses from the intensive commercial uses along Commercial Street SE, the approval limited the uses to just the dental laboratory. Additional measures were taken at the time of the previous approval to buffer the residential uses from the commercial uses closer to Commercial Street SE. The existing structure on the site was required to maintain its residential character as well as all of the trees and vegetation. A fence was required to be installed for screening against the residential use and the size of the structure was restricted and could not be enlarged. The parking area was located on the easterly portion of the site against the CR (Retail Commercial) zoned property in order to further reduce the impacts to the residential uses to the west. A right turn only sign was installed to direct any commercial traffic from the subject site directly to Commercial Street SE and to prevent commercial traffic

from traveling through the RS zone. The first of 10 conditions for CPC/ZC 94-04 states that if additional uses are desired for the subject site, approval of a zone change application would be required to add additional uses to the list of uses allowed. The current applicant is seeking a zone change to establish Office uses as an allowed use on this site.

The zoning of surrounding properties is described as follows:

North: CR (Retail Commercial) - Across Mary Avenue SE
South: RS (Single Family Residential)
East: CR (Retail Commercial)
West: RS (Single Family Residential)

3. Neighborhood and Citizen Comments

The subject property is located within the boundaries of Faye Wright Neighborhood Association. Notification was sent on March 22, 2018, to the neighborhood association and surrounding property owners within 250 feet of the property. While the record was open, no comments were received from either the neighborhood association or from any adjoining property owners.

4. City Department and Public Agency Comments

- The Public Works Department reviewed the proposal and identified no issues.
- The Building and Safety Division reviewed the proposal and identified no issues.
- The Fire Department reviewed the proposal and had no comments.
- The Police Department reviewed the proposal and had no comments.

5. Public Agency and Private Service Provider Comments

At the close of the record, no comments were received from any public agencies or private service providers.

6. Criteria for Granting a Quasi-Judicial Zone Change

The following analysis addresses the proposed zoning change to CO (Commercial Office) with the sole purpose of adding Office uses to the list of uses allowed on the property.

SRC Chapter 265.005(e) provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a quasi-judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are

satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater is the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in **bold** print. Following each criterion is a response and/or finding relative to the amendment requested.

(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.

The Hearings Officer notes that no party asserts that a mistake has been made in the application of the CO zone to the subject property. There is not a conflict between the Comprehensive Plan designation and the CO zone. The Hearings Officer finds this criterion does not apply.

(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.

The Hearings Officer notes that the applicant did not address this criterion but based on the requirement that the approval must be justified based on one or more of the factors that follow, the Hearings Officer finds that addressing this criterion was not necessary.

(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.

The Hearings Officer notes that the City staff reviewed the previously approved comprehensive plan and zone change application (Application No. CPC/ZC94-04) which limited the uses allowed on the subject property to medical and dental laboratories and uses allowed within the RS zone. In accordance with the conditions imposed by the previous approval, the applicant has submitted a zone change application to expand the uses allowed to include office. The Hearings Officer notes that the additional use is consistent with the zoning and comprehensive plan designation of the subject property.

The Salem Area Comprehensive Plan (SACP) designates the subject property as "Commercial" and it has a matching zoning designation of CO. The applicant proposes adding office uses to the list of limited uses allowed on the subject site. The Hearings Officer notes that the proposal is consistent with both the SACP and the existing zoning designation. Office use is permitted outright within the CO zone, per SRC Chapter 521, Table 521-1 Uses. However, the previous land use action was approved with conditions which limited the uses allowed on this site to medical and dental laboratories and uses allowed in the RS zone.

The Hearings Officer notes that in the applicant's written statement, the proposed use is described as the offices for their business, Mr. Kansky, LLC. The applicant further states that retail sales of goods and storage of equipment will not take place at this site keeping the impacts to the surrounding area at a minimum.

The Hearings Officer notes that conditions imposed by the approval of the previous comprehensive plan and zone change application (CPC/ZC 94-04) helped to reduce the impacts to the residential uses to the west of the subject property. The conditions imposed were implemented in an effort to buffer the abutting RS zone and are still in place on the site today. This includes maintaining the residential character of the existing building on the site, preserving the trees and vegetation and incorporating them into the buffer yards, installing an opaque fence to provide further screening, limiting the square footage of the building to the existing 1,570 square feet, thereby limiting the number of required parking spaces to four spaces. Additionally, the topography of the subject site was considered when approving the comprehensive plan and zone change application. The subject site has significant fall in elevation from its southwesterly corner to its northeasterly corner. As such, it looks down over the commercial uses across Mary Avenue SE and down along Commercial Street SE. The parking lot was located on the easterly portion of the subject site abutting the CR zoned property, to remove any conflicts with abutting residential uses. In addition to locating the parking area at the furthest point from the residential uses, a right turn only sign was installed which directs any commercial traffic from the subject property directly to Commercial Street SE away from the residences.

The Hearings Officer notes that the subject property is designated on the Salem Area Comprehensive Plan as "Commercial," and the proposed expansion of uses to include office use would be consistent with the CO designation. The application takes into account the impact to the surrounding uses. The Hearings Officer does not anticipate that the impacts to surrounding property if office uses are present on the site will be greater than the impacts of the uses currently allowed. Based on the information provided above, the Hearings Officer finds that all uses allowed within the CO zone, with the exception of commercial parking, would be appropriate uses for the subject property.

The Hearings Officer imposes the following condition to mitigate impacts to surrounding residential properties:

Condition 1: Conditions 2 through 10 imposed by Comprehensive Plan/Zone Change application CPC/ZC 94-04 are still applicable to the subject property.

The Hearings Officer notes that Condition 1 of Comprehensive Plan/Zone Change application CPC/ZC 94-04 reads as follows:

"The subject property shall only be used for medical and dental laboratories (Standard Industrial Classification (SIC) - 807) and those uses permitted within the RS zone. This use restriction shall be recorded against the subject property in the deed records of Marion County."

The Hearings Officer notes that if the use restriction was recorded against the subject property, it would not permit the Office uses sought by this application. Accordingly, the Hearings Officer includes in this order express authority for the City to release that recorded restriction. Consequently, if the use restriction was recorded, the applicant may prepare a release of the use restriction that meets the approval of the City Attorney, and once signed by the appropriate designee of the City, the applicant may record the release.

(B) If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

The Hearings Officer finds that the proposal is not a City-initiated zone change. Therefore, this criterion does not apply.

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

The Hearings Officer finds that the Comprehensive Plan Map designates the subject property as "Commercial." Goals and policies for Commercial Development are contained in section IV.G of the Salem Area Comprehensive Plan (SACP). The applicable goal and related policies are addressed below. The Hearings Officer finds that the proposal satisfies meets this criterion.

Goal G. To promote development of commercial office buildings for a range of employment uses, especially in downtown, mixed use districts, and commercially-oriented urban renewal areas.

The Hearings Officer finds that the proposed zone change would allow office uses on the subject site which is already zoned CO and designated as Commercial in the SACP. The subject site is developed and the applicant is not

proposing any changes to the development at this time. Lifting the use restrictions will fulfill this policy by allowing a range of uses within this CO zoned property. The proposed zone change is consistent with the applicable Commercial Development policies identified below.

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

The Hearings Officer notes that there is existing development adjacent to the subject property to the east that is located on Commercial Street SE. Commercial Street SE is designated as a Major Arterial in the Salem Transportation System Plan (TSP) Plan. Mary Avenue SE intersects with Commercial Street SE in less than one-quarter mile from the subject site.

The Hearings Officer finds that the subject property is well-served by the street network in the vicinity, which includes Major Arterial, Commercial Street SE. The proposal conforms to this policy.

(D) The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

The Hearings Officer notes that the City's adopted Comprehensive Plan implements the Statewide Planning Goals and applicable administrative rules, and is acknowledged to be in compliance with the Statewide Planning Goals. The proposed CO (Commercial Office) zoning designation is consistent with the existing "Commercial" Comprehensive Plan Map designation, its intent and its applicable provisions. The Hearings Officer finds that the proposal satisfies this criterion.

(E) If the zone change requires a comprehensive plan change from an industrial use designation to a non-industrial use designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to the Comprehensive Plan.

The Hearings officer notes that the application is to add office uses to a list of allowed uses on property currently zoned CO. The comprehensive plan designation of "Commercial" is not proposed to be altered. The Hearings Officer finds that this criterion does not apply.

(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.

The Hearings Officer notes that the subject property has frontage on Mary Avenue SE, which is designated as a Local Road in the Transportation System Plan. Pursuant to Oregon Administrative Rule 660-012-0060(9), this request is exempt from the Transportation Planning Rule determination of significant affect. The proposed zone change will not trigger analysis or improvements to the surrounding transportation system. Adequate urban services are available at the boundaries of the subject property. Infrastructure requirements to serve any development on the property are addressed as part of the Site Plan Review process with future development. The Hearings Officer finds that the proposal satisfies this criterion.

(G) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

The Hearings Officer notes that the water, sewer, and storm infrastructure are available within surrounding streets/areas and appear to be adequate to serve the future tenants. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220. The Hearings Officer finds that the proposal meets this criterion.

(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.

The Hearings Officer notes that the applicant has provided a written justification for the zone change request and indicates that the purpose of the request is to add office uses to a list of uses allowed on the subject property which is currently zoned CO.

The applicant discussed the impact of the proposal on surrounding development. By limiting the additional allowed uses to office and not conducting retail sales or the storage of equipment on the site, the impacts to surrounding property will be minimized.

To measure the impact of this request, staff considered the area of the land to be rezoned, the neighborhood compatibility of the uses allowed under the proposed zone as compared to the current RS zoning, and the character of the existing land uses immediately surrounding the property. The Hearings Officer agrees with and adopts this approach.

The Hearings Officer notes that the proposed zone change would add office uses to a small list of uses allowed on the subject property currently zoned CO. The property is currently developed and has historically been used as a dental laboratory. The proposed change would have little impact on the existing land use pattern, transportation system, or utilities.

The Hearings Officer finds that considering the relatively small area subject to the zone change, and the minor impact on the surrounding area, the level of information provided in the applicant's statement addressing the factors listed under SRC Chapter 265.005(e) corresponds to the anticipated impact of the zone change proposal.


DECISION

The Hearings Officer APPROVES the request with the following modification: allow all uses permitted within the CO zone with the exception of commercial parking uses, on the subject site which is currently zoned CO (Commercial Office), approximately 14,090 square feet (0.31 acres) in size, and located at 630 Mary Avenue SE, identified as Marion County Assessor Map and Tax Lot Number 083W03CA 07700, and designated Commercial in the Salem Area Comprehensive Plan. The requested zone change should be subject to the following condition of approval:

Condition 1: Conditions 2 through 10 imposed by Comprehensive Plan/Zone Change application CPC/ZC 94-04 are still applicable to the subject property.

Related to this decision and the possible use restriction recorded against the property, the Hearings Officer includes in this order express authority for the City to release that recorded restriction. Consequently, if the use restriction was recorded, the applicant may prepare a release of the use restriction that meets the approval of the City Attorney, and once signed by the appropriate designee of the City, the applicant may record the release.

DATED: April 19, 2018.


James K. Brewer, Hearings Officer