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503-588-6173*

## DECISION OF THE HEARINGS OFFICER

**ZONE CHANGE CASE NO.:** ZC19-03

**APPLICATION NO.:** 19-117415-ZO

**NOTICE OF DECISION DATE:** OCTOBER 29, 2019

**SUMMARY:** A Quasi-Judicial Zone Change from CO (Commercial Office) to CR (Retail Commercial).

**REQUEST:** An application for a Quasi-Judicial Zone Change from CO (Commercial Office) to CR (Retail Commercial), for property approximately 0.96 acres in size that is currently vacant, zoned CO (Commercial Office), and located at 3245 River Road NE 97303 (Marion County Assessors Map and Tax Lot number: 073W11CC / 1300).

**APPLICANT:** Abraham Kahnadooian, Boatwright Engineering, on behalf of Gary Standish

**LOCATION:** 3245 River Rd NE / 97303

**CRITERIA:** Salem Revised Code (SRC) Chapters 265.005(e)

**FINDINGS:** The findings are in the attached Decision dated October 29, 2019.

**DECISION:** The **Hearings Officer APPROVED** Quasi-Judicial Zone Change ZC19-03 subject to the following conditions of approval:

**Condition 1:** All commercial activities and building(s) shall face River Road N and be orientated away from residential areas to the west along Stark Street and to the north along Gardenia Drive.

**Condition 2:** All commercial building(s) shall be limited to a maximum height of 25-feet.

**Condition 3:** If freestanding signs are located on the subject property, they shall be within 20-feet of and oriented towards River Road N. No signs shall cause glare into adjacent residential properties.

**Condition 4:** All wall signs shall be located so as not to be visible from the residential areas to the west and north.

**Condition 5:** No sign shall have glaring, flashing or revolving components or lighting, including temporary signs.

**Condition 6:** No Outdoor advertising sign (billboards) shall be permitted on the subject property.

# NOTICE OF DECISION

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



**Condition 7:** The driveway approach to River Road N shall be closed.

Application Deemed Complete:	<u>September 13, 2019</u>
Public Hearing Date:	<u>October 9, 2019</u>
Notice of Decision Mailing Date:	<u>October 29, 2019</u>
Decision Effective Date:	<u>November 14, 2019</u>
State Mandate Date:	<u>January 11, 2020</u>

Case Manager: Olivia Glantz, [OGlantz@cityofsalem.net](mailto:OGlantz@cityofsalem.net), 503-540-2343

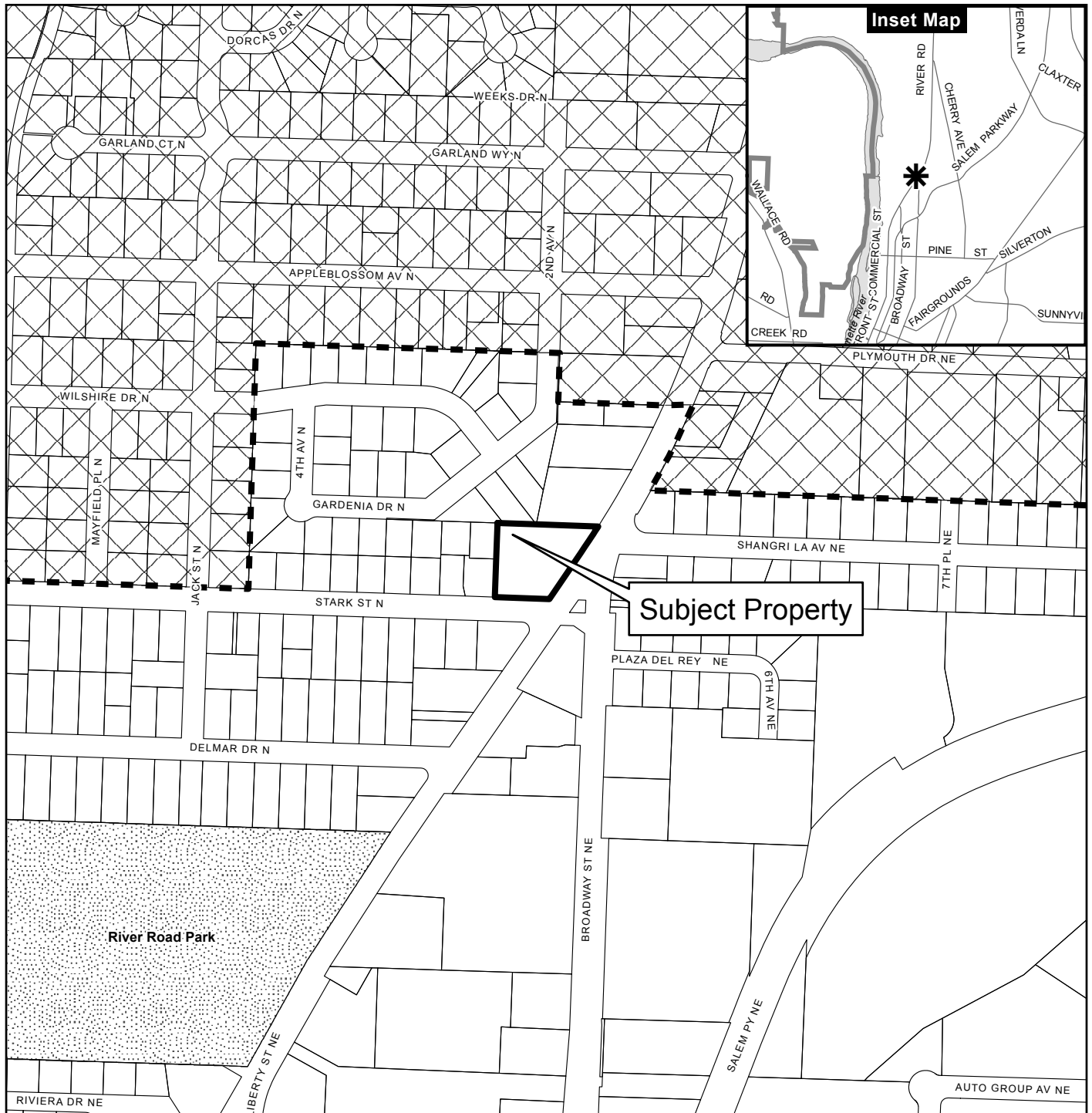
This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., Wednesday, November 13, 2019. Any person who presented evidence or testimony at the hearing may appeal the 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(s) 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 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

## 3245 River Road N



### Legend

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

Parks

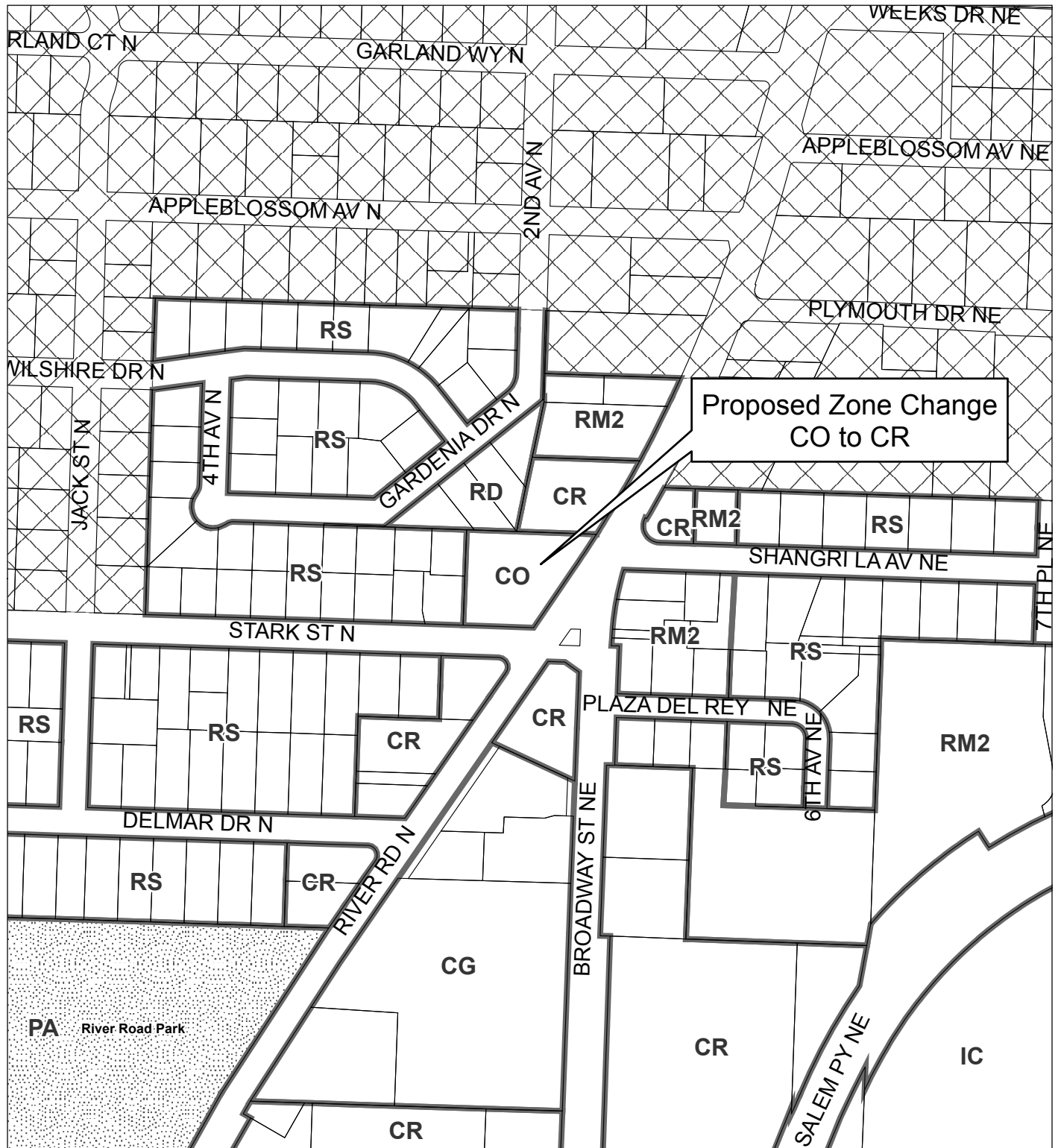
**CITY OF Salem**  
AT YOUR SERVICE  
Community Development Dept.

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0 100 200 400 Feet



# Vicinity Zoning - 3245 River Road N



## Legend

- |           |                           |  |         |
|-----------|---------------------------|--|---------|
| <b>RS</b> | Base Zoning               |  | Taxlots |
|           | Urban Growth Boundary     |  | Parks   |
|           | Outside Salem City Limits |  | Schools |

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0 50 100 200 Feet



CITY OF *Salem*  
AT YOUR SERVICE  
Community Development Dept.

**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A QUASI-JUDICIAL ZONE	}	ZC19-03
CHANGE FROM CO (COMMERCIAL OFFICE)		
TO CR (RETAIL COMMERCIAL), FOR	}	FINDINGS OF FACT, CONCLUSIONS, AND DECISION
PROPERTY APPROXIMATELY 0.96 ACRES		
IN SIZE THAT IS CURRENTLY VACANT,	}	
ZONED CO (COMMERCIAL OFFICE), AND		
LOCATED AT 3245 RIVER ROAD NE 97303	}	
(MARION COUNTY ASSESSORS MAP AND		
TAX LOT NUMBER: 073W11CC / 1300).	}	

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**DATE AND PLACE OF HEARING:**

October 9, 2019, Salem City Council Chambers, Room 240, Civic Center, 555  
Liberty Street SE, Salem, Oregon.

**APPEARANCES:**

Staff: Olivia Glantz, Planner III

Neighborhood Association: None

Proponents: Gary Standish, Applicant, and Abraham  
Kahnamooian, Boatwright Engineering, Agent for  
Applicant

Opponents: None

**SUMMARY OF THE APPLICATION AND HEARING**

**BACKGROUND**

The City of Salem held a duly authorized and noticed public hearing on October 9, 2019, regarding a requesting to change the zoning designation for the property from CO (Commercial Office) to CR (Retail Commercial). The subject property is approximately 0.96 acres in size and is currently vacant. The applicant stated that the property is intended to be used for a mobile food unit pod.

During the hearing, Planner Olivia Glantz requested the Staff Report be entered into the Record, and the Hearings Officer granted the request. Prior to the

close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

The Staff Report, and Staff presentation stated, observed, noted and alleged the following:

### **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. Multi-family residential may be included where appropriate. This designation includes regional shopping facilities, community and neighborhood shopping and service facilities, convenience stores, commercial offices, and specialized shopping and service facilities.

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

The Comprehensive Plan designations of surrounding properties include:

North: "Commercial" and "Single Family Residential"  
South: Across Stark Street N - "Commercial"  
East: Across River Road N - "Multiple Family"  
West: "Single Family Residential"

The property is within the Urban Service Area.

#### **2. Zoning of Surrounding Properties**

The subject site is currently zoned CO (Commercial Office).

The zoning of surrounding properties is described as follows:

North: CR (Retail Commercial) and RD (Residential Duplex)  
South: Across Stark Street N - CR (Retail Commercial)  
East: Across River Road N - RM-II (Multi-Family Residential)  
West: RS (Single Family Residential)

#### **3. Neighborhood and Citizen Comments**

The subject property is located within the boundaries of the Highland Neighborhood Association. Notification was sent on September 24, 2019 to the

neighborhood association and surrounding property owners within 250 feet of the property. At the time of writing the staff report, no comments were received from the neighborhood association or from adjoining property owners. No public testimony in opposition to the application was provided at the hearing.

#### **4. City Department and Public Agency Comments**

The Public Works Department has reviewed the proposal and provided a memo which is included as Attachment C in the staff report.

The Building and Safety Division reviewed the proposal and indicated no concerns with the zone change request.

The Fire Department reviewed the proposal and indicated no concerns with the zone change.

The Hearings Officer agrees with City Staff and adopts the findings in paragraphs 1-4, above.

#### **5. Public Agency and Private Service Provider Comments**

At the time of writing the staff report, comments were received with no objections from Portland General Electric.

#### **6. Criteria for Granting a Quasi-Judicial Zone Change**

The following analysis addresses the proposed zone change for the subject property from CO (Commercial Office) to CR (Retail Commercial).

SRC Chapter 265.005 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 are the findings relative to the amendment requested.

**SRC 265.005(e)(1)(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 proposed zone would be compatible with the vicinity's development pattern; or**
- (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 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 finds that the staff reported that the applicant relied on the zoning map, which listed the property as CR (Retail Commercial), but as part of the Pre-Application Conference, staff identified the zoning map was changed without an approved land use application. Staff provided the zone change history set out below in the staff report and staff verified that this is not a case where there is a mistake in the application of a land use designation to the property and does not identify a change in the economic, demographic, or physical character of the vicinity. Several previous zone changes in the immediate area have been granted, including:

- CPC-ZC94-01 for property located at 3245 River Road N. Comprehensive Plan and Zone Change granted from Multi-family to Commercial and RM (Multiple Family Residential) to CO (Commercial Office).
- ZC99-09 for property located at 3245 River Road N. Zone Change granted from CO to CR. **This application was withdrawn before a land use decision was issued.**

Since ZC 99-09 was withdrawn, the subject property is still zoned CO (Commercial Office). The proposal is justified based on SRC 265.005(e)(1)(A)(iii), because the proposed zone change is equally or better suited for the property than the existing zone.

The Hearings Officer notes that the subject property is the last remaining CO zoned property in the general vicinity. The CO zone designation for this property does not appear to serve a specific purpose in this area. The previous zone change approval (CPC-ZC94-01), had several conditions of approval that mitigated impacts to the transportation system and to the existing residential areas abutting the subject property. The conditions of approval consisted of ensuring that commercial buildings are facing River Road and not towards the residential properties. All commercial buildings are



limited to 25-feet in height, exterior lighting would not cause glare onto the streets or residential areas and any sign is located along North River Road and not visible from the residential areas. The signs are not permitted to have any glaring, flashing or revolving components or lights.

The Hearings Officer notes that pursuant to Salem Revised Code 800.060, exterior lighting shall not shine or reflect onto adjacent properties or right of way. Any development of the subject property must meet the standards of SRC 800.060, therefore Condition 6 of CPC-ZC94-01, which pertained to lighting on the property, is not needed for this application.

To ensure that the proposed intensification of uses is compatible with the surrounding area, the Hearings Officer shall impose the following conditions:

**Condition 1:** All commercial activities and building(s) shall face River Road N and be orientated away from residential areas to the west along Stark Street and to the north along Gardenia Drive.

**Condition 2:** All commercial building(s) shall be limited to a maximum height of 25-feet.

**Condition 3:** If freestanding signs are located on the subject property, they shall be within 20-feet of and oriented towards River Road N. No signs shall cause glare into adjacent residential properties.

**Condition 4:** All wall signs shall be located so as not to be visible from the residential areas to the west and north.

**Condition 5:** No sign shall have glaring, flashing or revolving components or lighting, including temporary signs.

**Condition 6:** No Outdoor advertising sign (billboards) shall be permitted on the subject property.

The proposed CR zone generally allows commercial uses and activities including the sale of commodities, performance of services, offices, and general wholesaling. The proposed CR zoning designation will allow a greater variety of uses for the subject property. Staff finds that the proposed zone change is equally or better suited to the property than the existing CO zone.

**(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 notes 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 notes that the applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

Salem Urban Area Goals and Policies, General Development (Page 24, Salem Comprehensive Policies Plan):

*To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.*

Economic Growth B.3

*Economic growth which improves and strengthens the economic base of the Salem urban area should be encouraged.*

The Hearings Officer notes that the Salem EOA identifies a deficit of available commercially zoned land in order to meet current and future community needs. The proposed zone change from CO (Commercial Office) to CR (Retail Commercial) maintains a commercial designation for the subject property. The proposal helps to increase the variety of commercial uses permitted for the property, which will help to improve and strengthen the economic base of the Salem urban area. The Hearings Officer finds the application satisfies this policy.

Development Compatibility B.12

*Land use regulations which govern the siting of any development shall encourage development to reduce its impact on adjacent properties by screening, landscaping, setback, height, and mass regulations.*

The Hearings Officer notes that the future development of the site will be required to conform to the development standards of the CR (Retail Commercial) zone, which shares similar setback, height and landscaping requirements as the current CO (Commercial Office) zone. The CR zone has an overall minimum landscape requirement of 15 percent. The Hearings Officer finds that the application satisfies this policy.

Salem Urban Area Goals and Policies, Urban Growth Goal (Page 26, Salem Comprehensive Policies Plan):

*To ensure that the rate, amount, type, location and cost of development will preserve or enhance the City's quality of life and promote the City's efficient delivery of services.*

*Development Compatibility C.4*

*Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.*

The Hearings Officer notes that the subject property is located within the Urban Service Area. Development of the proposed site does not require the extension or development of new public services. City services, including water, sewer, streets and storm drainage are available to serve the subject property. The proposal does not require the conversion of additional urbanizable land to urban uses and therefore the Hearings Officer finds that the application satisfies this policy.

*Salem Urban Area Goals and Policies, Growth Management Goal (Page 27, Salem Comprehensive Policies Plan):*

*To manage growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ensure the quality of life of present and future residents of the area, and to contain urban development and to preserve adjacent farm lands.*

*Infill on Facilities D.9*

*New development shall be encouraged to locate in areas where facilities are already available and in areas which require the least public costs to provide needed facilities and services.*

The Hearings Officer notes that the subject property is located within the Urban Service Area. Development of the proposed site does not require the extension or development of new public services. City services, including water, sewer, streets and storm drainage are available to serve the subject property. The Hearings Officer finds that the proposal is consistent with this policy.

*Salem Urban Area Goals and Policies, Transportation Goal (Page 40, Salem Comprehensive Policies Plan):*

*To provide a balanced, multimodal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.*

### Connectivity and Circulation J.5

*The vehicle, transit, bicycle, and pedestrian circulation systems shall be designed to connect major population and employment centers in the Salem Urban Area, as well as provide access to local neighborhood residential, shopping, schools, and other activity centers.*

The Hearings Officer notes that the subject property is located on River Road N, which is classified as a Major Arterial in the Salem Transportation System Plan and Stark Street N, which is classified as a Local Street. Sidewalks are developed on River Road N along the subject property's street frontage. Salem Keizer Transit (Cherriots) provides bus service within 250 feet of the property at Broadway Street NE and Plaza Del Ray NE via routes 19. The Hearings Officer finds that the proposal satisfies 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 applicable Statewide Planning Goals are addressed as follows:*

**Statewide Planning Goal 1 – Citizen Involvement:** *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The Hearings Officer notes that a public hearing notice was mailed to all property owners and addresses within 250 feet of the subject property and identified Homeowners Association and to the Highland Neighborhood Association. The Hearings Officer finds this satisfies the requirement for Citizen Involvement described in Goal 1.

**Statewide Planning Goal 2 – Land Use Planning:** *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

The Hearings Officer notes that the City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission has acknowledged the Salem Area Comprehensive Plan to be in compliance with the Statewide Planning Goals. The Hearings Officer finds this satisfies the requirements of the Goals.

**Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources:** *To protect natural resources and conserve scenic and historic areas and open spaces.*

The Hearings Officer notes that there are no known scenic, historic, natural, or cultural resources on the affected parcels. Through a future application for site plan review, the application will be reviewed for compliance with the City's tree preservation ordinance, historic preservation ordinance, and applicable wetland standards. The Hearings Officer finds that the proposal is consistent with Goal 5.

**Statewide Planning Goal 9 – Economic Development:** *To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.*

The Hearings Officer notes that the applicant proposes to change the zoning designation of the property from CO (Commercial Office) to CR (Retail Commercial). The CO zone generally allows office and professional services, along with a mix of housing and limited retail and personal services. The purpose statement of the CR zone in SRC Chapter 522 states that a wide array of retail sales and office uses, including the sale of commodities, performance of services, and offices.

The Hearings Officer notes that the CR zone generally allows a wider variety of commercial uses than the CO zone, therefore granting the proposed zone plan change allows the property to provide economic opportunities for needed commercial services in the area. The Hearings Officer finds that the application satisfies the Goal.

**Statewide Planning Goal 10 – Housing:** *To provide for the housing needs of citizens of the state.*

The Hearings Officer notes that the City has recently conducted a Housing Needs Analysis (HNA) to determine housing needs for the community for the next 20 years. The HNA concluded that there is currently a deficit of approximately 207 acres of available multi-family zoned land. Multi-family residential is a permitted use for the subject property under the current CO (Commercial Office) zoning designation. Multi-family residential is allowed as a conditional use under the proposed CR (Retail Commercial) zoning designation. Multi-family residential or mixed-use development could potentially be allowed on the property subject to approval through the conditional use permit process. The subject property has several characteristics that would support multi-family or mixed-use development. Salem-Keizer Transit (Cherriots) provides transit service adjacent to the subject property via route 19. Services, including parks (River Road Park), are located nearby. Employment opportunities are in proximity and walkable to the property. The proposed change in designation will still allow the potential for development of multi-family residential uses, which will be useful to meet the City's current and future housing needs. The Hearings Officer finds that the application satisfies the goal.

**Statewide Planning Goal 11 – Public Facilities and Services:** *To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.*

The Hearings Officer notes that the subject property is within the Urban Service area. Findings from the Public Works Department indicate that the water, sewer, and storm infrastructure are available within surrounding streets/areas and appear to be adequate to serve the proposed development.

The Hearings Officer finds that the application satisfies the Goal.

**Statewide Planning Goal 12 – Transportation:** *To provide and encourage a safe, convenient and economic transportation system.*

The Hearings Officer notes that Goal 12 is implemented by the Transportation Planning Rule (TPR). In summary, the TPR requires local governments to adopt Transportation System Plans (TSPs) and requires local governments to consider transportation impacts resulting from land use decisions and development. The key provision of the TPR related to local land use decisions is Oregon Administrative Rule (OAR) 660-012-0060. This provision is triggered by amendments to comprehensive plans and land use regulations that “significantly affect” a surrounding transportation facility (road, intersection, etc.).

Pursuant to OAR 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.

The Hearings Officer finds that the application satisfies the Goal.

**Statewide Planning Goal 14 – Urbanization:** *To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.*

The Hearings Officer notes that the subject property is located within the Urban Service Area. The Public Works Department indicates that existing urban services, including water, sewer, and storm infrastructure are available within surrounding streets and are adequate to serve future development of the subject property.

The Hearings Officer finds that the application satisfies the Goal.

**(E) If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial 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 a change to the comprehensive plan map designation for the property is not required for the proposed zone change, therefore the Hearings Officer finds that this criterion is not applicable.

**(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 pursuant to Oregon Administrative Rules 660-012-0060(9), the proposed zone change request is exempt from the Transportation Planning Rule determination of significant affect. The proposed zone change will not require analysis or improvements to the surrounding transportation system. Adequate urban services are available at the boundaries of the subject property.

The previous Comprehensive Plan change and Zone Change application evaluated the transportation system and found that the following conditions mitigated the transportation impacts of the additional traffic. The property is currently served by existing driveways to River Road N and Stark Street N. The driveway approach to Stark Street N provides for safe turning movements into and out of the property. The driveway approach to River Road N does not provide safe turning movements into or out of the property and shall be closed pursuant to SRC 804.060(a)(5). The property is subject to a special setback equal to 48-feet from centerline along the frontage of River Road N. Since the amount of traffic and use of the property will be similar or greater than the previous use, the Hearings Officer agrees that the conditions from CPC-ZC94-01 shall apply to this request:

**Condition 7:** The driveway approach to River Road N shall be closed.

**(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 and are adequate to serve future development under the proposed zone. Site-specific infrastructure requirements will be addressed in the Site Plan Review process pursuant to SRC Chapter 220. The Hearings Officer finds that the application satisfies this criterion.

No participant objected to or challenged the testimony or evidence. Based on the Record and testimony, the Hearings Officer finds this criterion met.

### **DECISION**

The Hearings Officer APPROVES the request for a quasi-judicial zone change from CO (Commercial Office) to CR (Retail Commercial) for property approximately 0.96 acres in size, and located at 3245 River Road NE, 97303, subject to the following conditions:

**Condition 1: All commercial activities and building(s) shall face River Road N and be orientated away from residential areas to the west along Stark Street and to the north along Gardenia Drive.**

**Condition 2: All commercial building(s) shall be limited to a maximum height of 25-feet.**

**Condition 3: If freestanding signs are located on the subject property, they shall be within 20-feet of and oriented towards River Road N. No signs shall cause glare into adjacent residential properties.**

**Condition 4: All wall signs shall be located so as not to be visible from the residential areas to the west and north.**

**Condition 5: No sign shall have glaring, flashing or revolving components or lighting, including temporary signs.**

**Condition 6: No Outdoor advertising sign (billboards) shall be permitted on the subject property.**

**Condition 7: The driveway approach to River Road N shall be closed.**

DATED: October 29, 2019



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James K. Brewer, Hearings Officer