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## DECISION OF THE HEARINGS OFFICER

**SIGN VARIANCE CASE NO.: VAR-SI19-03**

**APPLICATION NO. : 19-113014-SA**

**NOTICE OF DECISION DATE: OCTOBER 23, 2019**

**SUMMARY:** A request for two sign permits and a sign variance to allow construction of two freestanding vehicle viewing signs approximately 20 square feet and 13.7 square feet in size.

**REQUEST:** A consolidated request including a Sign Variance and two Sign Permits to allow two additional vehicle viewing signs permitted under SRC 900.200(b)(6) for use as an additional menu board and pre-sell menu board in the drive-through lane of an existing eating and drinking establishment. The subject property is approximately 0.72 acres in size, zoned CR (Retail Commercial) and located at 1598 Hawthorne Avenue NE - 97301 (Marion County Assessors Map and Tax lot number: 073W24AD / 02800 / 02703).

**APPLICANT:** Site Enhancement Services on behalf of McDonald's USA, LLC  
McDonald's USA, LLC (Corporation Service Company, Jerome Krulewitch, Marcy Miller, Denise Horne, Kevin Ozan, Catherine Martin, Robert Switzer)

**LOCATION:** 1598 Hawthorne Av NE

**CRITERIA:** Salem Revised Code (SRC) Chapters 900.040(d)

**FINDINGS:** The findings are in the attached Decision dated October 23, 2019.

**DECISION:** The **Hearings Officer DENIED** Sign Variance VAR-SI19-03.

Application Deemed Complete:	<u>August 16, 2019</u>
Public Hearing Date:	<u>September 25, 2019</u>
Notice of Decision Mailing Date:	<u>October 23, 2019</u>
Decision Effective Date:	<u>November 8, 2019</u>
State Mandate Date:	<u>December 14, 2019</u>

Case Manager: Hayley Feightner, [hfeightner@cityofsalem.net](mailto:hfeightner@cityofsalem.net), 503-540-2315

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., Thursday, November 7, 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) 900. 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

**NOTICE OF DECISION**

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

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untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

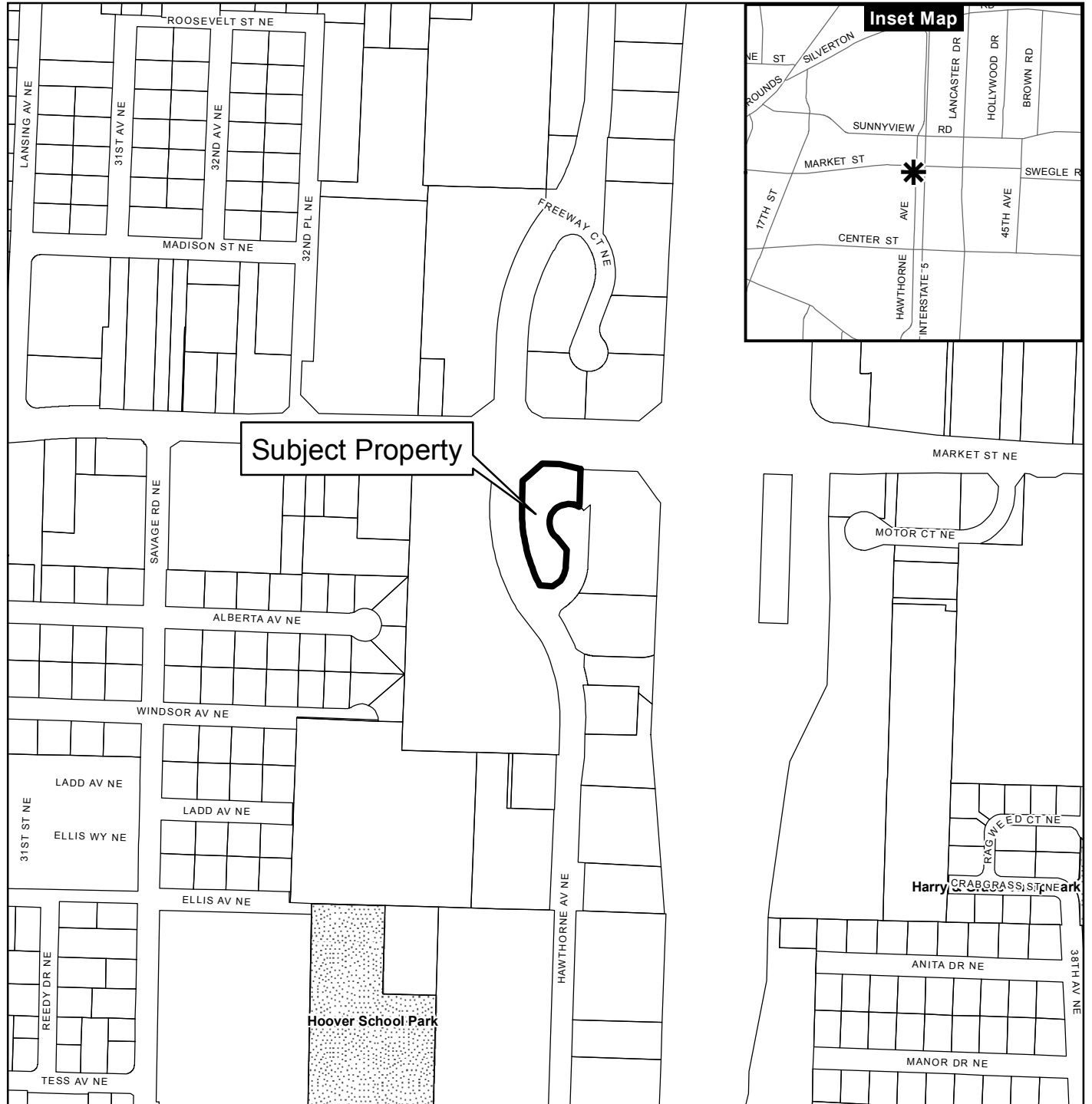
The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

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

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# Vicinity Map

## 1598 Hawthorne Avenue NE



### Legend

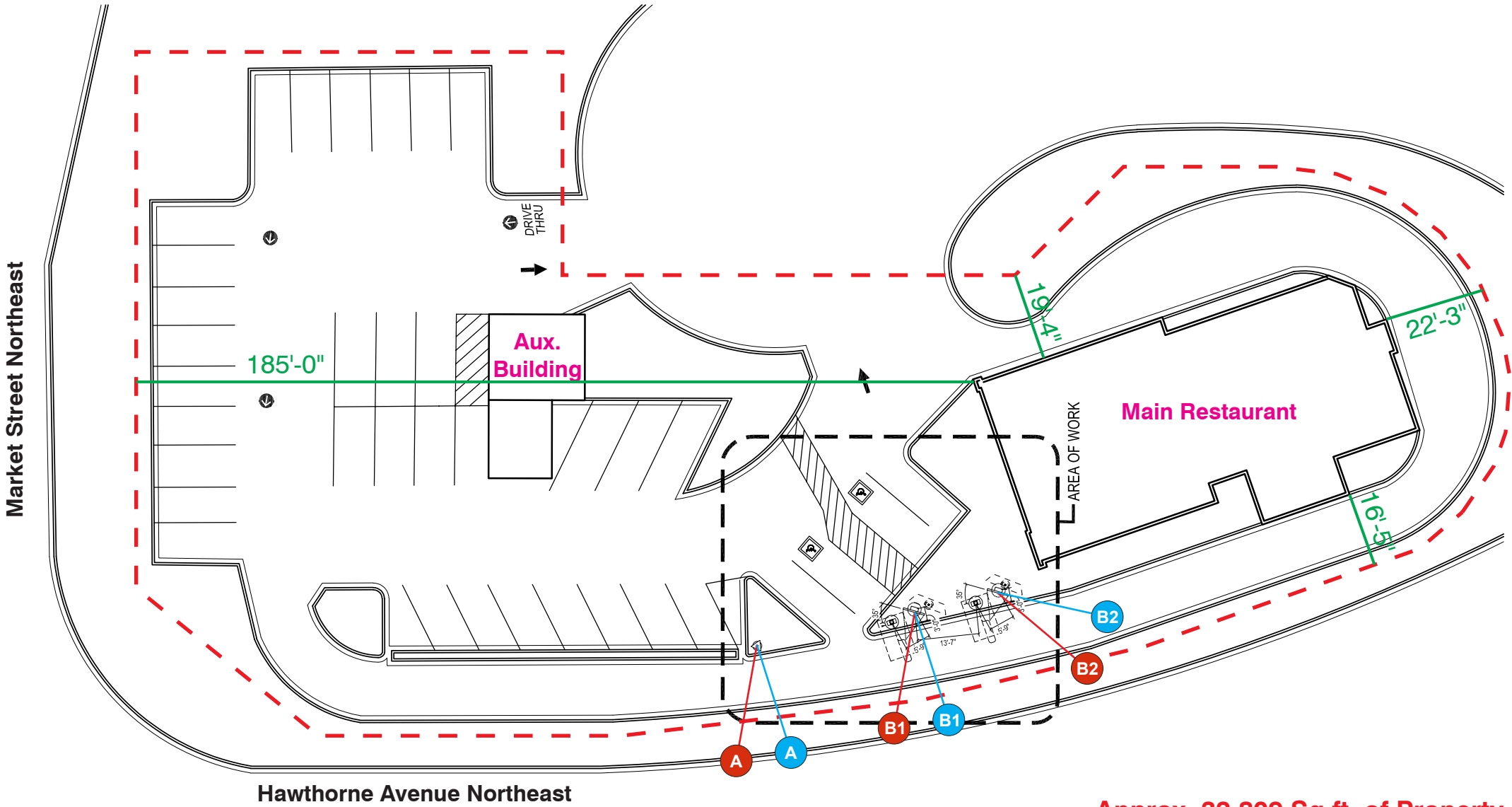
- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet



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Community Development Dept.

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Approx. 32,809 Sq.ft. of Property

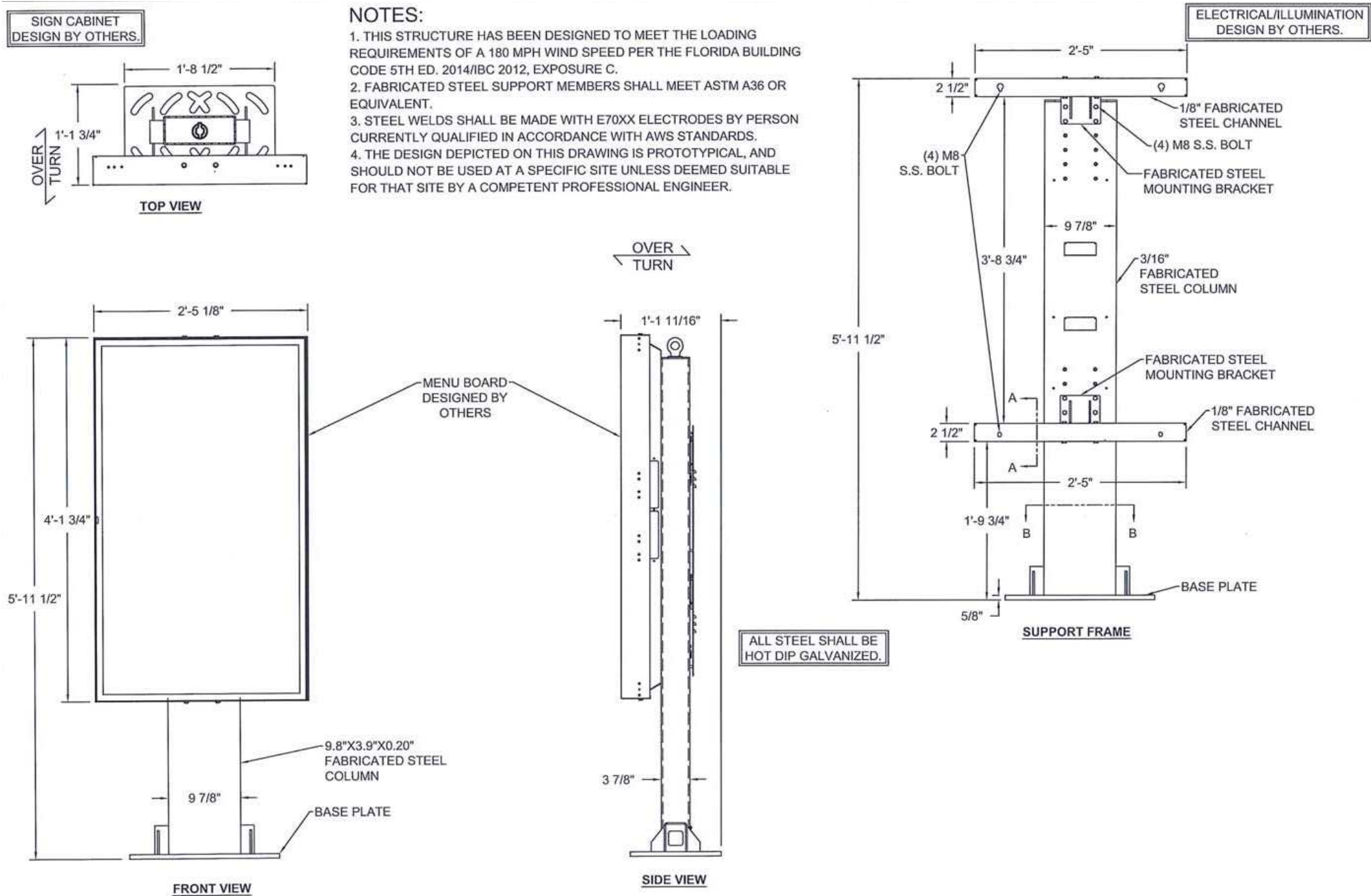
Process permit for sign B1,  
that is to be permitted outright



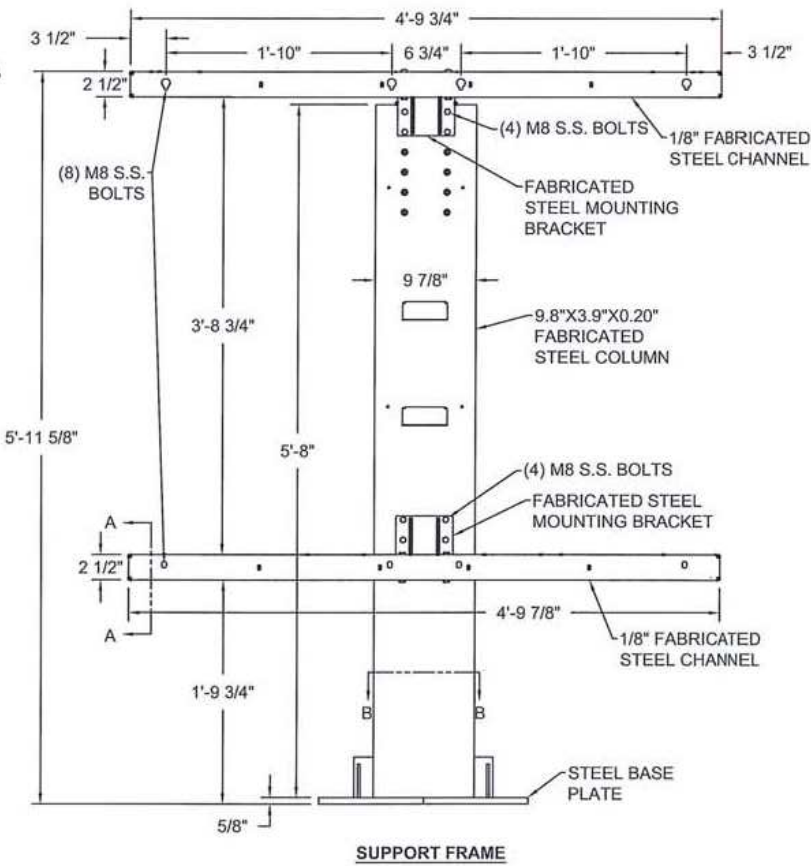
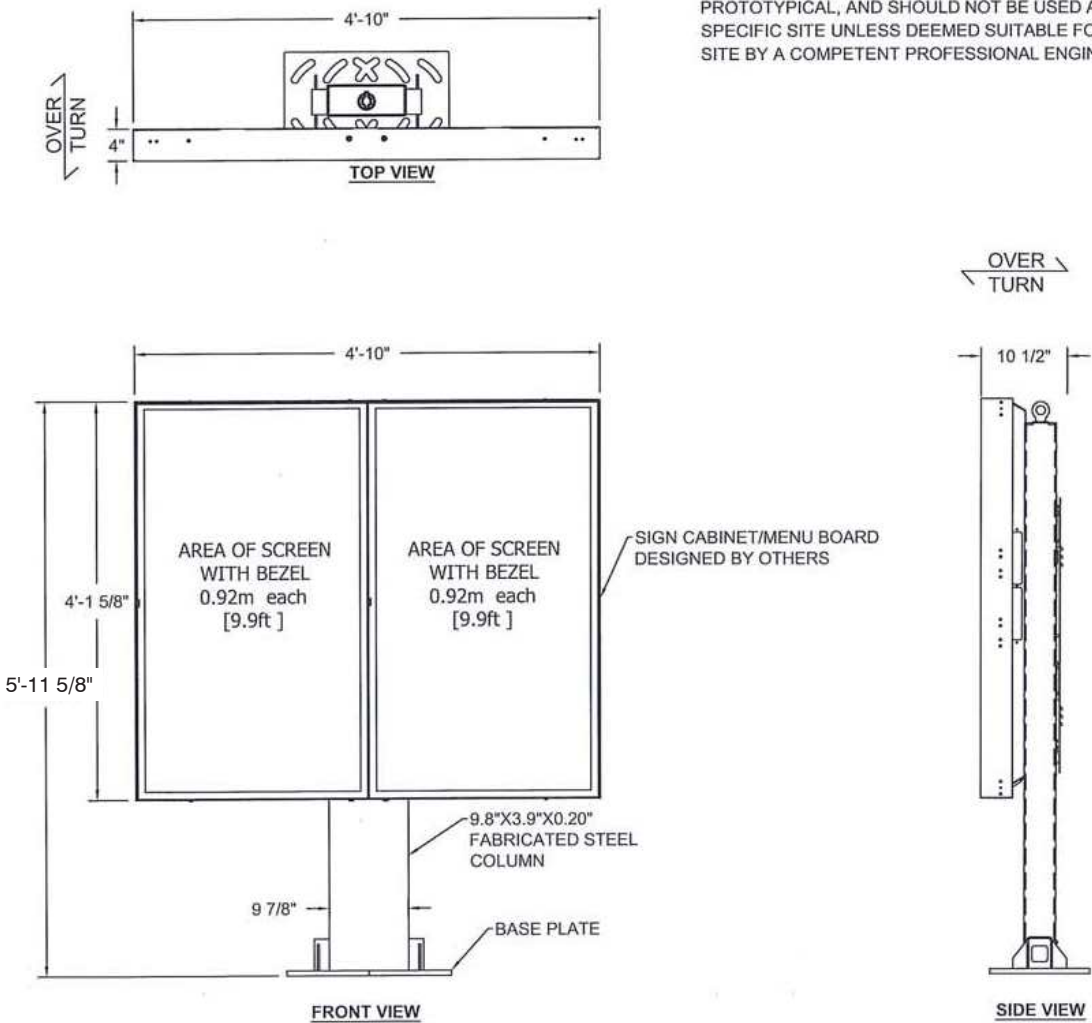
Scale: 1" = 20'

Proposed Signage Specifications

A



NOTES:  
1. THIS STRUCTURE HAS BEEN DESIGNED TO MEET THE LOADING REQUIREMENTS OF A 180 MPH WIND SPEED PER THE FLORIDA BUILDING CODE 5TH ED. 2014/IBC 2012, EXPOSURE C.  
2. FABRICATED STEEL SUPPORT MEMBERS SHALL MEET ASTM A36 OR EQUIVALENT.  
3. STEEL WELDS SHALL BE MADE WITH E70XX ELECTRODES BY PERSON CURRENTLY QUALIFIED IN ACCORDANCE WITH AWS STANDARDS.  
4. THE DESIGN DEPICTED ON THIS DRAWING IS PROTOTYPICAL, AND SHOULD NOT BE USED AT A SPECIFIC SITE UNLESS DEEMED SUITABLE FOR THAT SITE BY A COMPETENT PROFESSIONAL ENGINEER.



**CITY OF SALEM  
BEFORE THE HEARINGS OFFICER**

A CONSOLIDATED REQUEST INCLUDING A SIGN VARIANCE AND TWO SIGN PERMITS TO ALLOW TWO ADDITIONAL VEHICLE VIEWING SIGNS PERMITTED UNDER SRC 900.200(B)(6) FOR USE AS AN ADDITIONAL MENU BOARD AND PRE-SELL MENU BOARD IN THE DRIVE-THROUGH LANE OF AN EXISTING EATING AND DRINKING ESTABLISHMENT. THE SUBJECT PROPERTY IS APPROXIMATELY 0.72 ACRES IN SIZE, ZONED CR (RETAIL COMMERCIAL) AND LOCATED AT 1598 HAWTHORNE AVENUE NE - 97301 (MARION COUNTY ASSESSORS MAP AND TAX LOT NUMBER: 073W24AD / 02800 / 02703).	} } } } } } } } } } } } }	VAR-SI19-03
		FINDINGS OF FACT, CONCLUSIONS, AND DECISION

**DATE AND PLACE OF HEARING:**

September 25, 2019, Salem City Council Chambers, Room 240, Civic Center,  
555 Liberty Street SE, Salem, Oregon.

**APPEARANCES:**

Staff: Hayley Feightner, Planner I

Neighborhood Association: None

Proponents: McDonald's Corporation, Applicant, and Site Enhancement Services, 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 September 25, 2019, regarding two sign permits and a sign variance to allow construction of two freestanding vehicle viewing signs approximately 20 square feet and 13.7 square feet in size.

During the hearing, Hayley Feightner 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 designation for the subject property is "Commercial." The subject property is within the Urban Growth Boundary and is located inside the Urban Service Area.

#### **2. Zoning and Surrounding Land Uses**

The subject property is zoned CR (Retail Commercial).

The zoning and uses of surrounding properties include:

North: Across Market Street NE – CR (Retail Commercial) – Newport Seafood Grill

South: Across Weston Court NE – CR (Retail Commercial) – Stars Cabaret

East: Across Weston Court NE – CR (Retail Commercial) – DoubleTree Hotel

West: Across Hawthorne Avenue NE – CR (Retail Commercial) – Shopping Center

#### **3. Site Analysis**

The subject property is approximately 0.72 acres in size and has frontage along Hawthorne Avenue NE, Market Street NE, and Weston Court NE. In the Salem Transportation System Plan (TSP), Hawthorne Avenue NE and Market Street NE are designated as Major Arterial Streets and Weston Court NE is designated as a Local Street. The signs are proposed to be located on the drive-through lane developed along the western portion of the lot.

#### **4. Neighborhood and Citizen Comments**

Notice of the application was sent to the North East Salem Community Association (NESCA), and all property owners of record within 250 feet of the subject property. At the time of the staff report, no comments were received from NESCA or surrounding property owners.

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

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

The Building and Safety Division reviewed the proposal and indicated no concerns.

Portland General Electric also reviewed the proposal and indicated that the permanent sign including construction, installation, and maintenance must meet working and safety clearances.

## **6. Sign Variance Applicability – SRC Chapter 900**

SRC 900.040(a) provides that sign variances may be granted to the height and display surface standards, to increase the number of allowed signs, to allow relocation of a sign, and to allow structural alterations to a sign.

A sign variance shall not provide for any of the following:

- a) To allow a sign prohibited by SRC 900.020 (Prohibited Signs).
- b) To decrease a setback or special setback.
- c) To allow placement of a sign in a vision clearance area.
- d) To allow structural alterations to a non-conforming or non-complying sign.
- e) To authorize a sign not otherwise permitted on the property for which the variance is sought.
- f) To allow any sign other than those specifically allowed by this Chapter.
- g) To modify the display and brightness regulations for electronic display signs established by SRC 900.090.

The Hearings Officer notes the statements in paragraphs 5 and 6 are uncontested and finds the same useful in addressing the criteria below.

## **7. Analysis of Sign Variance Criteria – SRC Chapter 900**

Pursuant to SRC 900.040(d), an application for a sign variance shall be granted if the following criteria are met:

### Criterion 1:

Compliance with the applicable standard would create an unnecessary hardship due to unique or unusual physical conditions of the property over

which the applicant has no control, such as topography and lot shape, which are not present on other properties in the vicinity that have the same zone designation; the hardship does not result from actions of the applicant, owner, or previous owners of the property; and the sign variance is limited to the minimum reasonably necessary to alleviate the problem created by the unique or unusual physical conditions.

The Hearings Officer notes that the subject property is irregularly shaped, approximately 0.72 acres in size and has frontage along three streets: Hawthorne Avenue NE, Market Street NE, and Weston Court NE. The property takes access from Weston Court NE. The subject property and neighboring commercial properties are generally flat. The subject property is located near several restaurants, hotels, and shopping complexes. Most of the fast food restaurants developed with drive-through lanes in the vicinity are developed along the Lancaster Drive NE corridor. The restaurants are generally located on similarly sized lots and have similar lot coverages. The proposed menu board and pre-sell menu board signs would be located in the drive-through lane, near the western portion of the lot. The proposed signs are approximately 20 square feet and 13.7 square feet in size, which is less than the 32 square foot maximum size for a vehicle viewing sign.

SRC 900.200(b)(6) allows one vehicle viewing sign for an individual business, located on a vehicle accessway adjacent to a building or on the building, and intended to be seen by a person doing business from the vehicle accessway while the person is within a motor vehicle. The variance request is to add one additional menu board sign and one pre-sell menu board (vehicle viewing sign) to the drive-through lane. The applicant's statement indicates that the lot's narrow size and the building's location on the lot necessitate additional signage on the subject property. The lot is L-shaped and is bounded by two major arterials and a cul-de-sac.

The Hearings Officer finds that the applicant did not adequately demonstrate how the lot dimensions or shape are unusual physical conditions and did not demonstrate that the lot dimensions or shape create a hardship that necessitates increased signage.

The Hearings Officer notes that the staff reports states that the location of the buildings on the lot, the parking lots configuration and the drive lanes are existing site characteristics caused by decisions made by the applicant or a prior owner when this eating and drinking establishment was originally developed in 1994. The applicant did not testify or argue that the existing configuration and location of the existing buildings, parking and drive lanes on the site was due to the geometry of the site, its topography, or natural features, nor did the applicant testify or argue that this configuration was due to the action of any party other than the applicant, current owner or previous owner of the property.

The Hearings Officer finds that the applicant did not adequately demonstrate that any hardship created by the standard did not result from the actions of the applicant, owner or previous owners of the property.

The Hearings Officer notes that on the same agenda as this hearing, two other applications for similar variances by the same applicant were heard (VAR-S119-02 and VAR-S119-04). The applicant's representative was forthright that his presentations and argument for each of these sign variances would have the same basis. The Hearings Officer and applicant's representative agreed that there was no particular reason for the applicant's representative to repeat the same testimony and argument for each case. Based on this agreement, the Hearings Officer incorporates the applicant's representative's testimony and argument from VAR-S119-02 into the record in support of the current application. The Hearings Officer appreciates the applicant's representative's cooperation in this matter.

The Hearings Officer also notes that the bulk of the applicant's testimony was an explanation that changes to the applicant's business model to address changes in the expectations and behaviors of the applicant's customers are the cause of the hardship that the standards create—the business has an established method and manner for providing information to customers that the City standards do not allow.

The Hearings Officer notes that the location and configuration of the buildings, parking and drive lanes the applicant has developed on this site are the only physical conditions of the property that prevent the applicant from following its business practice. The applicant is consistent and forthright in saying that it seeks a variance on the basis of these changing conditions in its business requirements, not on hardships that are due to the unique or physical conditions of the property itself. Along the same lines, the applicant provided no testimony or argument that the physical properties of the lot created a condition where additional signs were required.

The Hearings Officer is aware that an earlier decision at the Hearings Officer level (VAR-S119-01), denying the same applicant a similar sign variance at a different location was overturned by the Planning Commission. The Hearings Officer notes that reasonable people can disagree, and the Planning Commission's decision was entirely within its jurisdiction.

Nonetheless, the Hearings Officer cannot find any authority in the SRC, case law or state statute that requires or permits the Hearings Officer to adopt an interpretation by the Planning Commission of the requirements of the SRC that is not consistent with the plain reading of the text. The Hearings Officer is compelled to make a decision in this matter based on the plain language of the criteria, as it existed at the time of the application.

In summary, the Hearings Officer finds that the applicant has not adequately addressed how the subject property features unique physical conditions that create a hardship that prevents the applicant from complying with the applicable standards. The Hearings Officer finds that there are no unusual or unique conditions of the lot that necessitate additional signage.

The Hearings Officer finds that the applicant does not satisfy this criterion.

Criterion 2:

The sign variance is necessary to permit signage comparable with other properties in the vicinity that have the same zone designation.

The Hearings Officer notes that properties in the vicinity along the Market Street NE and Lancaster Drive NE corridor are primarily zoned CR (Retail Commercial). The subject property is most adjacent short-term lodging uses, shopping complexes, and sit-down restaurants. There are many fast-food restaurants developed with drive-throughs near the Lancaster Drive NE and Market Street NE intersection that are comparable to the subject property. Fast food restaurants with drive-throughs in the vicinity include Dairy Queen, located at 3001 Market Street NE, Carl's Jr., located at 1501 Lancaster Drive NE, and Jack in the Box, located at 1940 Lancaster Drive NE.

The applicant's written statement did not provide an analysis of menu board signage present at comparable fast food restaurants in the vicinity. The applicant argues that this criterion is not applicable to the variance request because the signs use utilize new technology that is not seen with other companies in the industry. The digital features of the proposed signs are not prohibited by the sign code, as provided below in Section 8 of this final decision. The applicant is requesting two additional signs to be provided in a single drive-through lane for the business. The replacement of the signs would not meet the criteria for an exempt sign and does not fall under allowed repair and maintenance permitted for nonconforming signs under SRC 900.300. This amount of signage is not seen at other properties in the vicinity. The applicant has not adequately demonstrated how the sign variance is necessary to permit signage comparable with other properties in the vicinity that have the same zone designation, therefore the Hearings Officer finds that this criterion is not met.

Criterion 3:

The sign variance will not adversely affect the function or appearance of the development and use of the property and surrounding properties.

The Hearings Officer notes that the variance request is to allow two additional menu board signs to be located within the drive-through of the business, which is located to the north and west of the building. The proposed digital signs will replace existing non-compliant, non-digital menu board signs located on the subject property. Part of the signage updates for the business also includes the construction of one digital menu boards permitted outright under SRC 900.200(b)(6) to replace the non-digital menu board. The sign code does not require special illumination standards for vehicle viewing signs, except that they must meet the general illumination standards for electronic display signs otherwise permitted under SRC Chapter 900. The applicant has indicated that these digital signs are being constructed to improve the aesthetics of the site and to provide a more positive experience for customers.

The number of menu board signs permitted in SRC Chapter 900 is limited to prevent sign proliferation. The applicant is requesting the replacement of existing non-conforming signs that are larger than the proposed signs, which would decrease the aggregate display surface of the menu board signs present on the property. Because the proposed signs will have a lesser impact than the existing signs, the Hearings Officer finds that the variance will not adversely affect the function or appearance of the development and use of the property and surrounding properties.

The Hearings Officer finds that this criterion is met.

Criterion 4:

The sign variance will not impose limitations on other properties and signage in the area, including signage that would be allowed on adjacent properties.

The Hearings Officer notes that if granted, the sign variance to allow construction of two additional vehicle viewing signs permitted by SRC Chapter 900, would not limit allowed signage for other buildings on the subject property or the allowed signage for adjacent properties.

**8. Analysis of Sign Permit Approval Criteria – SRC Chapter 900**

SRC Chapter 900.025(d) provides that an application for a sign permit shall be granted if the following criteria are met:

Criterion 1:

The sign meets the requirements of SRC Chapter 56.

The Hearings Officer notes the freestanding signs less than 7 feet in height do not require a building permit. The proposed vehicle viewing signs are approximately 6 feet in height, building permits and engineering is not a requirement for the proposed signs.

Criterion 2:

The sign is allowed in the zone.

The Hearings Officer finds that one vehicle viewing sign per vehicle accessway is permitted in the CR zone. The variance request is to increase the number of allowed vehicle viewing signs above the number of signs permitted under SRC 900.200(b)(6).

Criterion 3:

The sign will not interfere with the use of any public right-of-way, other public easements, or other publicly owned property.

The Hearings Officer finds that no evidence has been presented that the sign will interfere with use of the public right-of-way, public easements or other publicly owned property.

Criterion 4:

The sign conforms to all the applicable standards in this Chapter.

The Hearings Officer notes SRC 900.200(b)(6) allows one vehicle viewing sign for an individual business, located on a vehicle accessway adjacent to a building or on the building, and intended to be seen by a person doing business from the vehicle accessway while the person is within the person's motor vehicle. The display surface of the vehicle viewing sign shall not exceed 32 square feet. If granted the variance request will allow the construction of two additional vehicle viewing signs. If approved, the applicant will be required to submit electrical permits for the proposed digital signs. No electrical permits have been submitted to date. The proposed vehicle viewing signs comply with all other standards of SRC Chapter 900.

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 DENIES the request for a Sign Variance and Sign Permit to allow two additional vehicle viewing signs permitted under SRC 900.200(b)(6) for use as an additional menu board and pre-sell menu board in the drive-through lane of an existing eating and drinking establishment for property approximately 0.72 acres in size, zoned CR (Retail Commercial) and located at 1598 Hawthorne Avenue NE - 97301.

DATED: October 23, 2019

A handwritten signature in black ink, appearing to read "James K. Brewer", with a long horizontal stroke extending to the right.

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James K. Brewer, Hearings Officer