

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF CITY COUNCIL) ORDER NO. 2020-5 SPR-DAP18-15
REVIEW OF THE REQUEST FOR)
REMAND FOR CLASS 3 SITE PLAN) CLASS 3 SITE PLAN REVIEW /
REVIEW AND CLASS 2 DRIVEWAY) CLASS 2 DRIVEWAY APPROACH
APPROACH PERMIT CASE NO. SPR-) PERMIT CASE NO. SPR-DAP18-15
DAP18-15)
)
2500-2600 BLOCK OF BOONE RD SE)
)

This matter coming before the City Council, at its September 28, 2020, meeting; the City Council, having received evidence and testimony, makes the following findings and adopts the following order, approving Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SPR-DAP18-15.

PROCEDURAL FINDINGS:

- (a) In December 2007, the City Council adopted a final order affirming a Comprehensive Plan Change and Zone Change Case No. CPC/ZC06-06 for a portion of the subject property changing the Comprehensive Plan Map Designation from “Developing Residential” to “Commercial” and changing the zoning from RA (Residential Agriculture) to CR (Retail Commercial).
- (b) On June 6, 2018, Class 3 Site Plan Review and Class 2 Driveway Approach Permit applications were submitted to the Planning Division for property located at the 2500-2600 Block of Boone Road SE (**Exhibit 1**). After receiving additional information, the applications were deemed complete for processing on September 4, 2018.
- (c) On October 23, 2018, the Planning Administrator issued a decision approving SPR-DAP18-15 subject to conditions of approval.
- (d) On November 7, 2018, two Notices of Appeal were filed by Karl G. Anuta and the South Gateway Neighborhood Association.
- (e) At the November 13, 2018 regularly scheduled meeting, the City Council voted to initiate the review of the appeal of the Planning Administrator’s decision.
- (f) On December 10, 2018, City Council held a public hearing, received public testimony, closed the public hearing, and voted to reverse the decision of the Planning Administrator, and deny the applications.
- (g) The December 18, 2018 decision by the City Council was appealed to the Land Use Board of Appeals (LUBA).
- (h) On August 14, 2019 LUBA determined the City’s decision contained errors and remanded the decision to the City. Specifically, LUBA found that the City erred in determining the proposed shopping center violated Condition 14 from Comprehensive Plan Change and Zone

Change Case No. CPC/ZC06-16, that a store such as Costco is a permitted use, and that the City's decision failed to address the applicants' argument that the applicant has a vested right to approval of the proposed development by virtue of the applicants' substantial investment in required traffic infrastructure improvements and other on-site improvements.

LUBA also found that the City did not error in determining the application failed to comply with SRC 808.030(a)(2)(L) regarding tree removal, but held that because the City decision failed to address the vested rights argument made by the applicants, that the City must address that argument on remand.

On remand, the City is required to address the errors found by LUBA in addition to making a determination of whether the application complies with all other applicable criteria.

- (i) LUBA's decision was appealed to the Oregon Court of Appeals by private citizens who participated in the proceeding before the City and LUBA. On February 5, 2020, the Court of Appeals issued a decision affirming the decision by LUBA.
- (j) On June 16, 2020, the applicant submitted a request for the City to issue a decision on remand. The site plan included with this request is included in **Exhibit 2**.
- (k) On July 1, 2020, notice of remand was sent to the public, providing for an initial comment period from July 1-July 28, 2020, a public rebuttal period from July 29-August 12, 2020.
- (l) The applicant submitted testimony on July 27, 2020, rebuttal testimony on August 12, 2020, and final written argument on September 10, 2020.
- (m) The notice stated that the City Council will review the record for this case and deliberate toward a final decision at its September 28, 2020 meeting. A public hearing was not held.
- (n) On September 28, 2020, the City Council conducted deliberations and voted to approve the applications.
- (o) ORS 227.181 requires local governments to make a final written decision on remand from LUBA within 120 days of the date that the applicant makes a written request for the local government to take action. The 120-day mandated deadline for this request for remand is October 14, 2020. The applicant has provided an extension of the decision deadline to allow additional time for public review, comment and rebuttal. The mandated deadline for final action on the request for remand, as extended by the applicant, is November 13, 2020.

SUBSTANTIVE FINDINGS:

The City Council adopts the following findings for this decision:

- (a) As provided in the findings of fact included in **Exhibit 3**, and as demonstrated by the evidence and testimony included in the record, the requested Class 3 Site Plan Review and Class 2 Driveway Approach Permit satisfies all of the approval criteria applicable to the application as set forth under SRC 220.005(f)(2) and SRC 804.025(d).
- (b) The findings of fact, attached hereto as **Exhibit 3**, are incorporated into this decision as set forth herein.
- (c) The City Council therefore APPROVES the application for Class 3 Site Plan Review and Class 2 Driveway Approach Permit.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1. Class 3 Site Plan Review and Class 2 Driveway Approach Permit Case No. SPR-DAP18-15 is hereby approved.

Section 2. This order constitutes the final land use decision and any appeal must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

ADOPTED by the City Council this 9th day of November, 2020.

ATTEST:

City Recorder

Checked by: Aaron Panko