



Staff Report

File #: 17-438

Version: 1

Date: 9/11/2017

Item #: 4.a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Lisa Anderson-Ogilvie, AICP, Interim Community Development Director

SUBJECT:

Appeal of Hearings Officer's decision approving Quasi-Judicial Zone Change / Class 3 Site Plan Review / Class 1 and 2 Adjustments Case No. ZC-SPR-ADJ17-02 for property located at 390 Hawthorne Avenue SE - 97301

Ward(s): Ward 2

Councilor(s): Andersen

Neighborhood(s): SESNA

ISSUE:

Shall the City Council affirm, amend, or reverse the decision of the Hearings Officer for Quasi-Judicial Zone Change / Class 3 Site Plan Review / Class 1 and 2 Adjustments Case No. ZC-SPR-ADJ17-02?

RECOMMENDATION:

Staff recommends that the City Council AFFIRM the June 30, 2017 Hearings Officer's Decision.

SUMMARY AND BACKGROUND:

On June 30, 2017, the Hearings Officer approved a consolidated Quasi-Judicial Zone Change, Site Plan Review, and Adjustment application for development of an 82-room hotel, subject to conditions of approval (Attachment 2 and 3). An appeal of the decision was filed by William Posegate, COO of Garten Services, Inc. (Attachment 4).

FACTS AND FINDINGS:

Procedural Findings

1. On March 15, 2017, an application for a Quasi-Judicial Zone Change, Class 3 Site Plan Review, Class 2 Adjustments, and Class 1 Adjustment was submitted to the Community Development Department. The application was deemed complete on May 3, 2017.
2. On May 24, 2017, the Hearings Officer held a public hearing. He closed the hearing and left the record open. On May 31, 2017, additional testimony was submitted by the applicant (Attachment 5) and Andrew Sprauer, attorney for Garten Services, Inc. (Attachment 6). On June 7, 2017, rebuttal testimony was submitted by Andrew Sprauer, attorney for Garten Services, Inc. (Attachment 7), and the applicant submitted a request to reserve the opportunity to submit a final written argument. On June 14, 2017, final argument was submitted by the applicant (Attachment 8).
3. On June 30, 2017, the Hearings Officer issued a decision approving the Quasi-Judicial Zone Change, Class 3 Site Plan Review, Class 2 Adjustments, and Class 1 Adjustment request (Attachment 3).
4. On July 17, 2017, William Posegate, COO of Garten Services, Inc., filed a timely appeal of the decision (Attachment 4). A public hearing before the City Council is scheduled for September 11, 2017.
5. Notice of the appeal hearing was sent to all persons who had standing to appeal the decision pursuant to Salem Revised Code requirements. Notice of the appeal hearing was posted on the subject property on August 29, 2017.

Substantive Findings

1. The applicable criteria and considerations that must be satisfied for the approval of the Quasi-Judicial Zone Change, Class 3 Site Plan Review, Class 2 Adjustments, and Class 1 Adjustment in this case are included within the City's zone change chapter (SRC Chapter 265) under section 265.005(e), the site plan review chapter (SRC Chapter 220) under section SRC 220.005(f)(3) and the adjustments chapter (SRC Chapter 250) under section 250.005(d).

Findings establishing the conformance of the proposed Quasi-Judicial Zone Change, Class 3 Site Plan Review, Class 2 Adjustments, and Class 1 Adjustment with the applicable approval criteria are included in the June 30, 2017 decision, which is included as Attachment 3 to this report and incorporated by reference.

2. The Garten Services, Inc., appeal of the Quasi-Judicial Zone Change, Class 3 Site Plan Review, Class 2 Adjustments, and Class 1 Adjustment decision is included as Attachment 4. The appeal asserts that the Hearings Officer's decision and conditions of approval, specifically Condition 5, do not adequately address the appellant's safety and access concerns regarding proposed parking spaces that would be located on both sides of an easement that serves as a driveway for heavy trucks, semi-trailers, and vans from Hawthorne Avenue SE to the applicant's loading docks. Condition 5 provides:

The development must reconfigure the parking and vehicle use area or modify the existing access easement so that no part of any parking space or curbed

landscape area encroaches into the access easement. The development must provide and maintain signage and otherwise enforce a restriction on the overhang of any portion of vehicles of any kind from the parking areas immediately adjoining the access easement, so that vehicles, bumpers, hitches, trailers, or any part thereof do not extend or intrude into the existing access easement.

The appellant asserts that the conditions of approval (1) do not properly address the specific criteria or burden to be placed on the applicant for proving compliance with requirements that they avoid encroachments on the appellant's driveway; (2) include no discussion about review criteria or requirements for addressing the concerns about long wheel based vehicles or recreational vehicles and trailers as part of the applicant's site plan and parking area; and (3) include no condition or requirement providing the appellant with the ability to review, comment, or participate in the development process to work to protect and maintain its access rights along the existing driveway.

The appellant requests that the City Council either (1) reverse the decision of the Hearings Officer and deny the application until the specified concerns are properly addressed as part of the site plan or (2) amend the decision to revise Condition of Approval 5 to address the requirements to be placed on the applicant for addressing concerns and avoiding encroachments, and providing the appellant with the opportunity to participate in the development at all stages to address the concerns specified herein.

Staff Response:

The appellant states that the Hearings Officer's conditions of approval do not properly address the specific criteria or burden to be placed on the applicant for proving compliance with requirements that they avoid encroachments on the appellant's driveway.

Compliance with all conditions of approval, including Condition 5, will be required on the final plans that the applicant submits with the building permit. On the final plans, the parking space striping must comply with dimensional requirements, the spaces must be located entirely outside of the access easement, and the required signage must be depicted. After construction, the development will be inspected, and no occupancy will be granted until the development complies with all of the conditions and applicable standards. After occupancy is granted, enforcement action will be undertaken if the city receives complaints regarding encroachments into the access easement.

The applicant states that the Hearings Officer's conditions of approval do not include a discussion about review criteria or requirements for addressing the concerns about long wheel based vehicles or recreational vehicles and trailers as part of the applicant's site plan and parking area.

The parking and vehicle use area and driveway development standards for commercial development (SRC 806.035 and SRC 806.040) do not require spaces to be designated for long wheel based vehicles or recreational vehicles and trailers or specify dimensions for such spaces. After occupancy is granted, enforcement action will be undertaken if the city receives complaints regarding encroachments of these types of vehicles into the access easement.

The appellant states that the Hearings Officer's conditions of approval do not include a condition or requirement providing the appellant with the ability to review, comment, or participate in the development process to work to protect and maintain its access rights along the existing driveway.

While it would have been preferable for the applicant to have worked with the neighboring property owner prior to the submittal of the land use application and during the review process, the Salem Revised Code does not require this. The appellant received proper notification of the proposed development and was given the opportunity to participate in the public hearing and appeal processes. If the land use decision becomes final and the development is constructed, the appellant will have the opportunity to notify the city of any violations of its access rights along the easement, and the city will investigate and take appropriate enforcement action.

3. In conclusion, the proposed Quasi-Judicial Zone Change, Class 3 Site Plan Review, Class 2 Adjustments, and Class 1 Adjustment satisfies the applicable approval criteria of SRC 265.005 (e), SRC 220.005(f)(3), and SRC 250.005(d).

Pamela Cole
Planner II

Attachments:

1. Vicinity Map
2. Approved Plans
3. Hearings Officer Decision June 30, 2017
4. Appeal Letter
5. Additional Testimony Submitted by the Applicant May 31, 2017
6. Additional Testimony Submitted by Andrew Sprauer for Garten Services, Inc. May 31, 2017
7. Rebuttal Submitted by Andrew Sprauer for Garten Services, Inc. June 7, 2017
8. Final Argument Submitted by the Applicant June 14, 2017

8/25/2017