



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

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www.lcd.state.or.us

## AMENDED NOTICE OF ADOPTED AMENDMENT

October 29, 2007

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment  
DLCD File Number 011-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: November 9, 2007**

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

**\*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Gary Fish, DLCD Regional Representative  
Sterling Anderson, Marion County

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# Notice of Adoption

THIS FORM MUST BE MAILED TO DLCDD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person  electronic  mailed

DATE STAMP

**DEPT OF**  
**OCT 22 2007**  
**LAND CONSERVATION AND DEVELOPMENT**  
For DLCDD Use Only

Jurisdiction: **MARION COUNTY**

Local file number: **ZC/CP06-10**

Date of Adoption: **10/17/2007**

Date Mailed: **10/18/07**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCDD? **Yes** Date: 10/10/2006

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

To change the comprehensive plan designation from Single Family Residential to Commercial and the zone from RS (Single Family Residential) to CR (Commercial Retail) on a 0.27 acre parcel

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **SINGLE FAMILY RESIDENTIAL** to: **COMMERCIAL**

Zone Map Changed from: **SINGLE FAMILY RESIDENTIAL** to: **COMMERCIAL**

Location: **4063 DURBIN AV**

Acres Involved: **0**

Specify Density: Previous:

New:

Applicable statewide planning goals:

- |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
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Was an Exception Adopted?  YES  NO

Did DLCDD receive a Notice of Proposed Amendment..

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

**DLCDD # 011-06 (15622)**

**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

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Local Contact: STERLING ANDERSON

Phone: (503) 588-5038 Extension: 5906

Address: PO BOX 14500

Fax Number: - -

City: SALEM

Zip: 97308

E-mail Address:

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## ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:  
  
**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: [webserver.lcd.state.or.us](http://webserver.lcd.state.or.us). To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us).
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to [mara.ulloa@state.or.us](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the Matter of the	)	Case No. 06-10
	)	
Application of:	)	Clerk's File No. 5529
	)	
VICENTE ALVAREZ	)	ZONE CHANGE/COMPREHEN-
	)	SIVE PLAN AMENDMENT

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1253

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of Vicente Alvarez to change the comprehensive plan designation from Single-Family Residential to Commercial, and to change the zone from RS (Single-Family Residential) to CR (Commercial Retail), on a 0.27 acre lot located at 4063 Durbin Avenue SE, Salem.

SECTION II. Procedural History

The Marion County Hearings Officer held a public hearing on this application on December 6, 2006. Mailed notice was provided to all property owners within 250 feet of the subject property at least 20 days before the hearing and required notice was provided to the Department of Land Conservation and Development. On May 22, 2007, the Hearings Officer issued a report recommending that the Board deny the requested changes. The Board held a duly noticed public hearing on the subject application on September 12, 2007. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board considered evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Facts and Conclusions in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan Amendment from Single Family Residential to Commercial is hereby **GRANTED**.

The requested zone change from RS (Residential Single Family) to CR-LU (Commercial Retail -Limited Use) is hereby **GRANTED**, subject to the conditions of approval contained in Exhibit B, attached hereto and by this reference incorporated herein.

The property rezoned by this Ordinance is described in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Urban Zoning Maps shall be changed pursuant to the Marion County Urban Zoning Ordinance Section 1.40 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Ordinance 669, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 17th day of October,  
2007, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Janet Larson  
Chair

D. Kim Shultz  
Recording Secretary

**JUDICIAL NOTICE**

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

## EXHIBIT A

### FINDINGS OF FACT AND CONCLUSIONS

The Marion County Board of Commissioners after careful consideration of all the testimony and evidence in the record makes the following findings of fact and conclusions.

1. The subject property is designated Single-Family Residential in the SACP and zoned RS under the MCUZO. The property is within the City of Salem urban growth boundary (UGB).
2. The subject property is 0.27 acres, and contains a dwelling and detached accessory structure.
3. Properties to the east and south are zoned RS (Single-Family Residential) and contain single-family residences. Property to the southwest is zoned CO (Commercial Office) and contains a medical office. The property to the west is zoned CR and is currently vacant and used as a Goodwill drop-off sight. The property to the north and northwest is zoned CR with a limited use overlay and contains a tool business. Lancaster Drive SE is a major arterial roadway that is about 120' to the west of the subject property. Commercial and residential zoning and uses border Lancaster Drive in this area.
4. Applicant asks to change the SACP designation from Single-Family Residential to Commercial and change the zone from RS to CR. These changes will allow a variety of commercial retail, service, or office uses. The property may be developed on its own or in conjunction with the property to the west.
5. The Marion County Planning Division requested comments on the proposal from various governmental agencies.

The Marion County Department of Public Works Engineering Development Services and Permits Section originally commented:

Approval of the proposal would change the zone from RS (Single-Family Residential) to CR (Retail Commercial) and facilitate development of 7,600 sf of retail stores on the subject property, resulting in a significant amount of additional traffic on Durbin Avenue, Lancaster Drive, and other roads in the area. Comments are based on the proposed development level; changes in development level may necessitate changes in analysis requirements and/or mitigation measures. The Public Works Department has the following comments, requirements, and recommendations on this case:

#### STREETS

1. As shown on the applicant's site plan, access to the proposed parking lots shall be via one access to Durbin Avenue as far away from Lancaster Drive as possible. No other accesses will be permitted to Lancaster Drive or Durbin Avenue. Driveway permits will be required for the access.
2. Pursuant to the Marion County Urban Zoning Ordinance, the applicant will be required to dedicate sufficient right-of-way on the plat to provide the public dedicated right-of-way of 48 feet along Lancaster Drive. This is the standard right-of-way width for a Major Arterial street. A half-width of 36 feet will be necessary along Durbin Avenue; this is the standard width for roads when a center turn lane is necessary. Any dedications should be to the public, not Marion County.
3. If this development proceeds, prior to plat approval the developer would be required to improve Lancaster Drive and Durbin Avenue along their frontage in accordance with appropriate standards as directed by Public Works. This will include such elements as pavement overlay, curb, gutter, property line sidewalk, and landscaping. To deal with curving road alignment, the curb line of Lancaster Drive may need to be moved towards the center of the road (thus giving the developer more space) at the discretion of the Public Works Department.
4. The developer will be required to meet the requirements of the City of Salem for any impacts of the proposed development within the City of Salem.
5. It is the responsibility of the developer to preserve and protect the current PCI rating and the structural integrity of Lancaster Drive and Durbin Avenue to the satisfaction of Marion County Public Works through all phases of development. Failure to preserve and protect the road may result in the developer being responsible for replacing or reconstructing the damaged road at the developer's expense.

#### DRAINAGE

6. Site grading shall not impact surrounding properties in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. The developer will need to construct facilities as necessary to address drainage issues, and will be required to obtain approval of a site drainage plan to verify this lack of negative impact.
7. Construction of the proposed buildings and parking lots would increase the amount of storm water runoff from the subject property. The County requires any development 0.5 acre or larger to provide storm water

detention. The system shall be sized so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 10-year frequency storm with development conditions. Underground systems are preferred within the Urban Growth Boundary. Drainage plans and construction of drainage facilities must be satisfactorily completed prior to development or plat approval.

#### GENERAL

8. The subject property is within the Urban Growth Boundary of the City of Salem. Systems Development Charges will be assessed upon development of the subject property at the time of application for building permits.
9. Any utility work in the public right-of-way will require a utility permit from Public Works.
10. A National Pollutant Discharge Elimination System (NPDES) permit is required for all construction activities that disturb one-acre or more. The NPDES permit is obtained through the Oregon Department of Environmental Quality.

DPW later revised comments 2 and 3 regarding streets:

2. Pursuant to the Marion County Urban Zoning Ordinance, the applicant will be required to dedicate sufficient right-of-way on the plat to provide the public dedicated right-of-way of 36 feet along Durbin Avenue; this is the standard width for roads when a center turn lane is necessary (such as at an approach to a signal). Any dedications should be to the public, not Marion County.
3. If this development proceeds, prior to plat approval the developer would be required to improve Durbin Avenue along their frontage in accordance with appropriate standards as directed by Public Works. This will include such elements as 23-foot paved half-width, curb, gutter, property line sidewalk, and landscaping. (A conceptual plan showed this property developing together with the property to the west, at the corner of Durbin and Lancaster. Frontage improvements for this case are only required along the frontage of the subject property; frontage improvements along the adjacent property are anticipated to be required before building permits can be obtained for development on that property).

Marion County Fire District #1: Must comply with access, hydrants, water supply and address standards per Marion County Fire code applications guide.



City of Salem Public Works:

The existing building is connected to a sewer line. The residence at 590 Lancaster Drive SE was demolished and disconnected from the sewer in 1992. This line may not be reused.

Permanent sewer disconnect permit is required prior to the demolition of the residences from the City of Salem. If a sewer service is to be reused, the inspector must be shown the service is in usable condition.

At the time of development, the City of Salem will require the applicant to sign and record an annexation agreement and pay all appropriate system development charges. Call Development Services at 503 588-6211.

All other contacted agencies either failed to respond, or stated no objection to the proposal.

**Additional Findings of Fact and Conclusions of Law**

1. Applicant has the burden of proving all applicable standards and criteria are met.

COMPREHENSIVE PLAN AMENDMENT

2. The subject property is outside the Salem city limits but within the Salem UGB. Marion County has jurisdiction in this area but must coordinate land use applications with the City of Salem. The Marion County Planning Division requested comments from the City of Salem. The City of Salem Public Works department responded as noted above. The City of Salem Community Development (planning) department stated it had no comment on the proposal.
3. The Department of Land Conservation and Development (DLCD) must be notified of any proposed comprehensive plan amendment. DLCD was notified as required but provided no comment on the application.
4. Comprehensive plan amendments are classified, under MCUZO 43.00, as legislative and non-legislative amendments. A non-legislative amendment involves a change to the land use designation of four or fewer different ownerships and 15 or fewer acres.

This application involves one ownership of 0.27 acre. This is a non-legislative (quasi-judicial) plan amendment.

5. MCUZO 43.02 contains the following criteria for non-legislative plan amendments:

- (a) Conformance with the Comprehensive Plan goals, policies and intent, applicable plan amendment criteria or intergovernmental planning coordination agreement, pertaining to unincorporated lands;
  - (b) The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with the projected needs for such lands within the Comprehensive Plan;
  - (c) Uses allowed in the proposed designation will not significantly affect planned uses on adjacent lands; and
  - (d) Public facilities necessary to support allowed uses on the subject property are available or will be made available.
6. The subject property is within the Salem UGB and is subject to the SACP. The intent of the SACP is to project the most desirable pattern of land use in the Salem area. According to SACP II.A.3.c, designated Commercial areas provide the following types of shopping and service opportunities: Regional shopping facilities, community and neighborhood shopping and service facilities, convenience stores, commercial offices, and specialized shopping and service facilities. Community and neighborhood shopping and service facilities offer a variety of goods and services. Neighborhood scale facilities include convenience goods for neighborhood residents while community scale facilities may include shopping goods for a market area consisting of several neighborhoods. The SACP commercial development goal is to maintain and promote the Salem urban area as a commercial center for the Marion-Polk County metropolitan area.

General development policy 7. Structures and their siting in all residential, commercial, and industrial developments—shall optimize the use of land . . . Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.

A structure is already sited on the property. Applicant could use the current structure or redevelop the property. Applicant indicates he may redevelop the subject property in conjunction with family owned property to the west. The parcel is small and redevelopment would likely make efficient use the land. Any change to the terrain, topography, watercourses and soils has already occurred because of the parcel's current development. General development policy 7 is met.

General development policy 14. Outdoor storage areas should be screened from the public streets and adjacent uses.

Under MCUZO 6.25(a), outdoor storage for nonresidential uses in the CR zone must be screened by a sight-obscuring fence, wall or hedge from view of the public road and from adjacent residential property. This restriction meets general development policy 14 and will be made a condition of approval.

General development policy 15. Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.

Under MCUZO 6.25(b), exterior lighting shall be designed to illuminate the site and be directed away from public streets and residential properties. Applicant will be required to provide a lighting plan as a condition of approval showing how lighting will be placed to illuminate the subject property and not cause glare into the public right-of-ways and adjacent properties. As conditioned, general development policy 15 will be met.

Growth management policy 7. Within the Salem urban area, residential subdivisions, mobile home parks, multi-family residential, commercial and industrial development shall be permitted only within the County service districts or within the City of Salem where public sewer and water services are available and other urban facilities are scheduled pursuant to an adopted growth management program. Exceptions to this policy may only be permitted if mutually agreed to by the City and the appropriate County.

The subject property already receives public water and sewer services. Growth management policy 7 is met.

Commercial development policy 2. Development of shopping and service facilities may be approved only after reviewing and approving a development plan consisting of maps and written statements on the following:

- a. Site plan
- b. Layout of all off-street parking
- c. Landscaping plan
- d. Surface stormwater plan
- e. Vehicular and pedestrian circulation plan
- f. Utility plans
- g. Impact on adjacent neighborhoods
- h. Impact on adjacent street networks
- i. Proposed uses
- j. Transit service
- k. Other information that may be required

No specific development is yet proposed. Applicant submitted a conceptual site plan showing how this property could be developed with the adjacent property to

the west, but the property could be developed on its own as well. The conceptual site plan shows off street parking, landscaping areas, and interior pedestrian and vehicular traffic circulation plan. Whether developed separately or in conjunction with the property to the west, upon development applicant will be required to submit a site plan that shows how applicable county development standards will be met.

The subject property does not have direct access onto Lancaster Drive. Access will be off of Durbin Avenue. The Lancaster Drive-Durbin Avenue intersection has a signal, allowing relatively easy access to and from the site via Lancaster Drive. Having almost direct access to a signalized intersection will help keep traffic out of the surrounding neighborhood because people will not tend to filter through the neighborhood looking for another signalized outlet. Additionally, transit service is available along Lancaster Drive and sidewalk access will be required upon development, both tending to reduce vehicular traffic.

Neighboring property owners and local residents believe the proposal will have a profoundly negative effect on the adjacent residential neighborhood. At hearings and in writing, neighbors stated that the proposed commercial designation and zoning would bring additional noise, traffic, lighting glare, loss of privacy and other problems into the neighborhood, and suggesting that the proposal will devalue property and raise taxes. Neighbors note that children and school busses going to and from Four-Corners Elementary use Durbin and that there are no sidewalks or streetlights in the area, also that all other businesses in the area have direct access to and from Lancaster Drive, not from the neighborhood streets. Additionally, it is complained that traffic backing up at the signal will interfere with the children using the street for soccer, bike riding and other play activities. Some of the neighbors and property owners suggest CO zoning as an option that would eliminate problems of late hours and heavy traffic. The Delzers live across Durbin from the subject property and note that noise, lights and traffic will impact them, especially if the driveway for any development is located directly across from their dwelling. The Delzers ask for denial of the proposal or CO zoning, location of any driveway offset from their dwelling, limited business hours, visual screening and shielded lighting.

The proposed Commercial designation for commercial retail purposes will have no negative consequences for the surrounding commercially zoned properties. Lancaster Drive creates a barrier to the west, and the building on the northern parcel appears to shield that property from any likely effects of commercial use of the subject property. The CO property to the southeast across Durbin Avenue is a medical practice clinic with apparently normal daytime hours. That property would not likely be affected by commercial use of the subject property because it is probably uninhabited during non-office hours. Traffic impacts to most of the residential neighborhood should be minimal because of the almost direct access to a signalized intersection at a major arterial street. Little additional traffic should filter onto the local roadway system. Additionally, sidewalks would be required,

making for safer pedestrian travel on and adjacent to the site. Property valuation and taxation issues were not raised sufficiently to be more than speculative. The same is true for the loss of privacy issue, and there appears to be no reasonable expectation of privacy in a front yard area adjacent to a public street. The real issue is possible nuisance effects on the neighboring residential properties.

The property adjacent to the east, and property directly across Durbin to the south are in residential use. These neighboring property owners expressed concerns about traffic, noise and glare. The property across the street is especially susceptible to traffic impacts and glare caused by headlights at the driveway of the subject property. Although applicant submitted a conceptual site plan that showed the subject property developed in conjunction with the parcel to the east, there is no requirement for or guarantee that the two parcels would be developed together and development of this property on its own must be considered. For maximum public safety, DPW asks to place the access driveway for the subject property as far east as possible. This puts the driveway adjacent to the eastern property line and directly in front of the living quarters of the home across the street, making these properties especially vulnerable to noise and the property across the road vulnerable to light pollution.

The Hearings Officer found that the location of the site access driveway at the east line of the subject property could cause a significant impact to the residential property to the south across Durbin St., in particular as a result of headlights from traffic exiting the property during nighttime hours. As a result the Hearings Officer recommended that the property be considered for CO zoning, instead of the requested CR, to minimize the use of the property during nighttime hours.

The location for the driveway had been recommended by the Public Works Dept., in order for it to be as far as possible from the Lancaster Drive intersection. At the public hearing, the Applicant testified that the subject property was intended to develop in conjunction with the adjacent property to the west, which is at the corner of Durbin and Lancaster. That property is already zoned CR, and was formerly the site of a gas station. When developed together, the two parcels would share a single access driveway to Durbin.

The Applicant testified that if the corner property were to redevelop individually, it would have a driveway onto Lancaster or onto Durbin. The driveway to Durbin would be at the east side of that corner property, which would place it directly across from property on the south side of Durbin that is zoned CO. A driveway at that location would avoid conflict with residential property, and still be sufficiently distant from the Lancaster intersection to allow for vehicles to wait for the signal without conflict with the site driveway. The Board finds that if the site access driveway is located across from the property in the CO zone, the potential for conflict with the residential property to the south will be eliminated.

Conditions and limitations might be placed on the subject property to mitigate issues of noise, traffic back up, and headlight glare, such as imposing strict hours of operation, forbidding eating places or other uses that would lead to idling vehicles, speakers or the like, and forbidding other high traffic, high intensity uses. These restrictions would significantly reduce conflicts.

The Marion County Board of Commissioners find that with these and other limitations to reduce the conflicts the application can be mitigated to make this proposal wholly consistent with commercial development policy 2.

Commercial development policy 4.

The request for a Comprehensive Plan Amendment must satisfy the criteria of MCUZO 43.02(a), which requires conformance with the applicable goals and policies of the Comprehensive Plan. The property is within the Salem Urban Growth Boundary, and is subject to the Salem Area Comprehensive Plan (SACP). The Hearings Officer found that SACP Commercial Development Policy 4. was not met by the application, because the subject property is not adjacent to a major arterial.

At the public hearing, the Applicant provided additional testimony to address this policy. The Applicant submitted a copy of the relevant portions of the SACP, including the intent statements for the various categories of commercial development identified by the SACP, and the Commercial Development Policies. The Applicant explained that the proposal is for a "neighborhood"-level commercial facility, as that category is described in the SACP, based on the small size of the subject property and its location at the edge of the residential area that extends along Durbin St. to the east. Commercial Development Policy 4. applies to "community"-level commercial development, and requires such development to be located adjacent to a major arterial. Because the proposal fits the description of a neighborhood commercial facility, as described in the Plan, the Board finds that Commercial Development Policy 4. does not apply in this case, and therefore it is not a basis for this decision. The Board finds that the remaining applicable policies of the SACP have been met, and that MCUZO 43.02(a) is satisfied.

Commercial development policy 5. Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods for a market area of several neighborhoods.

The subject site does not increase commercial frontage along Lancaster Drive. The property is in a commercial cluster area north of Durbin Avenue on both

sides of Lancaster Drive. The proposal will not contribute to strip development. Commercial development policy 5 is met.

Commercial development policy 8. Buffer strips from residential uses shall be provided for all commercial development.

Commercially zoned properties are adjacent to the west and across Lancaster Drive, and adjacent to the north. Commercial office property is kitty corner to the southwest. No special buffering is required adjacent to the commercially designated areas. Residential properties are to the east and south. The CR zone provides the following special buffering for residential properties . . . a three foot side or rear yard (MCUZO 6.14(a)), with landscaping and 6' high sight obscuring fence, hedge or wall (MCUZO 6.20). Outdoor storage and roof equipment need to be screened, lighting needs to be shielded, and noise is not to exceed state requirements of OAR 340-345.

A three foot buffer strip is not a great deal of space, but if conditioned on including a 6' masonry wall or hedge to the extent allowed on the eastern property line, the buffer would be more effective in protecting against light and noise pollution. A lower hedge or masonry wall between the parking lot and Durbin Street will also help mitigate the problem with headlights illuminating the residential property across Durbin Avenue. With these conditions of approval, commercial development policy 8 will be met.

7. The SACP contains little information on residential and commercial property inventories within the Salem UGB, but due to the small size of the property, removing the lot from Single Family Residential designation and adding it to the Commercial designation will have no significant affect on the overall lands inventory within the UGB. Redesignating the subject property as proposed will not affect the projected need for Single-Family Residential or Commercial land within the Salem UGB. MCUZO 43.02(b) is satisfied.
8. Commercial designation of the subject property will not affect adjacent or nearby commercial property, and for the most part will not significantly affect nearby residentially zoned properties. The biggest impact will be on the properties directly east and south of the subject property. Commercial designation allows a wide array of intensive commercial uses. The CR zone is the not the most intensive commercial zone, but is also not the least intensive zone. CR zone uses can generate a significant amount of traffic and noise (drive up windows, automobile radios, engine noise, doors slamming, etc.). A limited use (LU) overlay zone is often used to identify and allow only compatible uses for a property, especially when commercially zoned property abuts residentially zoned property. Because some uses have the potential to disrupt residential use of adjacent properties, if this proposal is ultimately approved, a limited use overlay zone, as discussed below, should be applied to the subject property. With addition of the LU overlay to the property, in combination with other mitigation measures

such as buffering the property with masonry walls or hedges and restricting the hours of operation to 7:00 a.m. to 7:00 p.m., the BOC finds that the proposed use will not significantly adversely affect uses on adjacent properties, and that MCUZO 43.02(c) will be satisfied.

9. The subject property already has water, sewer, telephone and electric service. Public transportation is available along Lancaster Drive. Commercial use of the property will increase the number of traffic trips on Durbin Avenue near the Lancaster Drive intersection, contributing to the need for a left turn lane at the signal so that cuing traffic will not interfere with access to the subject property or create problems with traffic backing up into the neighborhood. Applicant will be required to dedicate sufficient right-of-way along the property's Durbin Avenue frontage and provide street improvements compatible with the placement of a left turn lane at the signal. Development will also increase potential stormwater runoff with paving of parking areas. Storm drainage and stormwater detention facilities, and driveway and utility permitting will be required. With these conditions of approval, along with requiring applicant to provide proof from MCFD1 that adequate fire access is provided, adequate public facilities and services will be available to support the proposed use, and MCUZO 43.02(d) will be satisfied.
10. The proposed comprehensive plan amendment for commercial retail uses, with the application of the Limited Use Overlay zone and other conditions, meets the criteria for a comprehensive plan amendment.

#### ZONE CHANGE

11. MCUZO 39.05 contains the following zone change criteria:
  - (a) The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the description and policies for the applicable comprehensive plan land use classification.
  - (b) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.
  - (c) Satisfaction of any zone change review criteria in the applicable city Comprehensive Plan pertaining to unincorporated lands is demonstrated.
  - (d) The criteria listed in the purpose statement for the proposed zone shall be met.
  - (e) If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow



uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

12. If the comprehensive plan amendment is approved, the proposed CR zone will be appropriate for the Commercial comprehensive plan designation.
13. As noted above, adequate public facilities are available or can be made available through conditions of approval. With the conditions noted above, MCUZO 39.05(b) is satisfied.
14. The SACP contains no zone change criteria. MCUZO 39.05(c) is not applicable.
15. According to MCUZO 6.00, the purpose of the CR zone is to provide areas suitable for professional and general commercial offices, retail sales within a building, eating and drinking places, commercial accommodations and commercial services. The Commercial Retail zone is appropriate in those areas designated Commercial in the applicable urban area comprehensive plan and where the location has access to a collector or arterial street.

The subject site has indirect access to Lancaster Drive at a signalized intersection. Lancaster Drive is a busy major arterial street with several highly intense commercial uses. The area is appropriate for professional and general commercial offices, but it is not clear that the area is appropriate for eating and drinking places or other more intense commercial uses. Some restrictions on use may be imposed through the limited use overlay zone and other conditions of approval that would make the proposed zone compatible with the adjacent residential uses, the location is generally consistent with the purpose statement of the CR zone. MCUZO 39.05(d) is satisfied.

16. Commercial designation of the subject property will not affect adjacent or nearby commercial property, and for the most part will not significantly affect nearby residentially zoned properties. The biggest impact will be on the properties directly east and south of the subject property. Commercial designation allows a wide array of intensive commercial uses. CR zone uses can generate a significant amount of traffic and noise (drive up windows, automobile radios, engine noise, doors slamming, etc.). A limited use (LU) overlay zone is often used to identify and allow only compatible uses for a property, especially when commercially zoned property abuts residentially zoned property. Because some uses have the potential to disrupt residential use of adjacent properties, if this proposal is ultimately approved, a limited use overlay zone shall be applied to the subject property.

The Board finds that because the subject property is located less than 120' from the Lancaster Drive frontage, because it is adjacent to the corner property which is already zoned CR, because of the potential to redevelop the subject property and

the corner property together with a coordinated development plan, and because redevelopment of the property will result in improvements to pedestrian safety along the street frontage, CR zoning is appropriate. However, the Board also finds that some minor measures are needed to enhance the compatibility of the future uses on the property with the residential neighborhood to the east. These measures are included as conditions of approval as stated below, and include applying the Limited Use Overlay to restrict or eliminate certain types of uses; a limitation on the hours of operation; requirements for setbacks, buffering and screening; and improvements along the street frontage to include curbs and sidewalks.

17. The BOC finds that the proposed use will not significantly adversely affect uses on adjacent properties zoned for less intensive residential uses and that MCUZO 39.05(e) is satisfied.

#### LIMITED USE OVERLAY

18. According to MCUZO 22.01, the purpose of the limited use (LU) overlay zone is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. On a particular property, certain uses may conflict with adjacent land uses or may not be considered suitable for a particular site. Rather than deny a zone change because the proposed zone would allow an objectionable permitted or conditional use, the limited use overlay can be used to identify the appropriate uses and either require a conditional use permit for other uses normally permitted in the zone or delete objectionable permitted or conditional uses from the zone. It is the intent that the maximum number of acceptable uses be permitted so that the use of the property is not unnecessarily limited.
19. According to MCUZO 22.02, when the LU overlay zone is applied, the uses identified in the underlying zone shall be limited to those permitted or conditional uses specifically referenced in the ordinance adopting the overlay zone. Until the LU overlay zone has been removed or amended the only uses permitted on the property shall be those specifically referenced in the adopting ordinance. Uses that would otherwise be permitted, or permitted subject to a conditional use permit, may only be allowed if the list of permitted or conditional uses in the LU overlay zone is amended or the LU overlay zone is removed from the property.
20. Under MCUZO 22.03, the LU overlay zone is applied at the time the underlying zone is being changed. It shall not be necessary to mention in the hearing notice of a rezoning application that this overlay zone may be applied. The ordinance adopting the overlay zone shall include findings showing that 1) no zone has a list of permitted and conditional uses where all uses would be appropriate; 2) the proposed zone is the best suited to accommodate the desired uses; 3) it is necessary to limit the permitted or conditional uses in the proposed zone; and 4)

the maximum number of acceptable uses in the zone have been retained as permitted or conditional uses. The ordinance adopting the overlay zone shall by section reference, or by name, identify those permitted uses in the zone that become conditional uses and those permitted or conditional uses that are deleted from the underlying zone. A use description may be segmented to delete or require a conditional use for any aspect of a use that may not be compatible.

21. The CO, CR and CG zones are appropriate to the commercial comprehensive plan designation. Even the CO zone has uses (such as eating place) that would be inappropriate for this site. Applicant has not specified just what uses the property will be put to, but the applicant clearly wants more uses and greater flexibility than allowed in the CO zone. The CR zone is best suited to accommodate the desired types of uses. The area, except for the Lancaster Drive frontages, is still largely residential, so extra care must be exercised in allowing commercial development at the site uses having a high volume of traffic or long hours of operation must be limited. Approval of the comprehensive plan amendment and zone change will require a limit on the uses at this site by application of a Limited Use Overlay zone.
22. With the elimination of the potential conflict of the driveway location, and the measures included as conditions of approval to enhance the compatibility of the proposal with the nearby residential uses, the Board concludes that all of the applicable criteria for a Comprehensive Plan Amendment and Zone Change from RS to CR are met.

## EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP 06-10/Alvarez.

### CONDITIONS OF APPROVAL:

Pursuant to the Marion County Urban Zoning Ordinance Section 39.06 the following conditions apply to the 0.27 acres of CR-LU (COMMERCIAL RETAIL-LIMITED USE) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The CR-LU zoning significantly intensifies the use of the land.

#### 1. Limited Use Overlay Zone

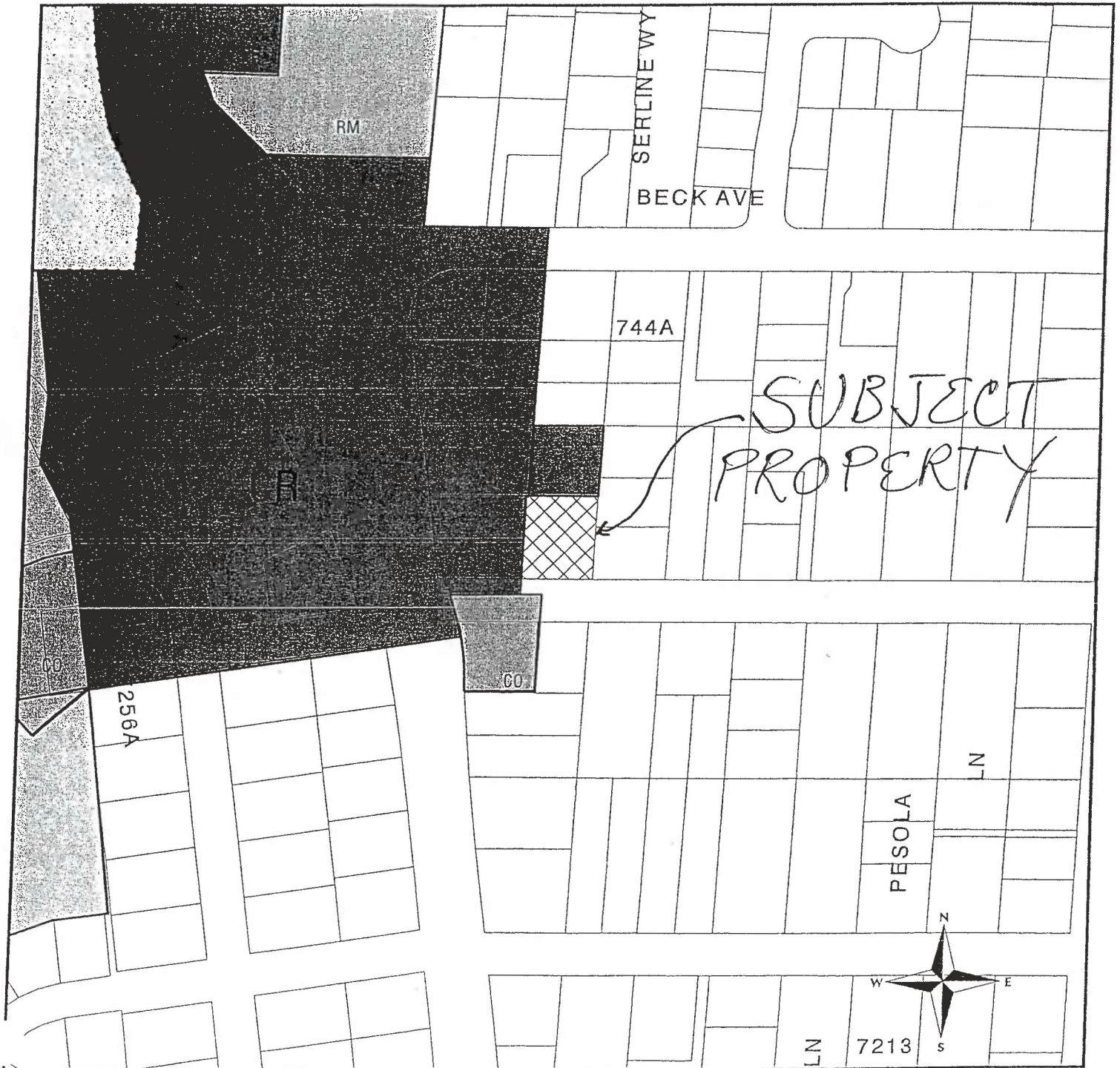
- a. Pursuant to Marion County Urban Zoning Ordinance Section 22.03, no zone includes a list of permitted and conditional uses where all uses would be appropriate. The proposed CR zone is the best suited to accommodate the desired uses, however it is necessary to limit the permitted or conditional uses in CR zone. The maximum number of acceptable uses in the zone have been retained as permitted or conditional uses.
  - b. A Limited Use Overlay zone is applied to the 0.27 acres of the CR zoning. The uses permitted outright in the overlay zone are those specifically listed in Marion County Urban Zoning Ordinance section 6.01 (1) through (3), (5) and (6), (9) through (12), (13) through (15), (17) through (23), (25), (30), (32) through (46), all of 47 except (a) (e) (h), and (i). The following uses are prohibited: liquor stores, taverns and bars, movie theaters and video rentals. All others uses require a conditional use permit.
2. The access driveway for the subject property and the property located to the west shall be located directly opposite of the driveway to the south serving the CO zoned property.
  3. No drive through facilities are allowed.
  4. Hours of operation are limited to between the hours of 7 am and 11 pm.
  5. A 6' high sight obscuring fence, hedge or wall shall be located on the subject property's east property line and a hedge shall be located along the subject property's south property line not to exceed 4 feet in height and consistent with vision clearance requirements at driveway access points.
  6. Prior to obtaining a building permit the applicant shall submit for review and approval by the Zoning Administrator a detailed, drawn to scale, site plan showing

compliance with the development standards applying to landscaping, parking, fencing and other applicable development standards contained in the Marion County Urban Zoning Ordinance.

7. Prior to obtaining a building permit, a lighting plan shall be submitted to the Planning Division for review and approval by the Zoning Administrator. The plan shall include the location of all lighting facilities to serve the property. The plan shall also include an example of how these lighting facilities will be designed to avoid illumination of adjacent properties.
8. The applicant must comply with the access, water supply and address standards per Marion County Fire code applications guide.
9. The applicant shall meet the requirements of Marion County Public Works Land Development Engineering and Permits to their satisfaction.
10. The applicant shall meet the requirements of the City of Salem Public Works.

# EXHIBIT C

The following described property is rezoned from RS (Residential Single Family) to CR-LU (Commercial Retail-Limited Use Overlay) zone.



Owner Name: ALVAREZ,VINCE  
Situs Address: 4063 DURBIN AV SE

361104

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555 Court St. NE, 2<sup>nd</sup> Floor  
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Salem OR 97309

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