



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

5/20/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment
DLCD File Number 012-09

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: Thursday, June 03, 2010

This amendment was submitted to DLCD for review 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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Brandon Reich, Marion County
Jon Jinings, DLCD Community Services Specialist
Steve Oulman, DLCD Regional Representative
Gary Fish, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE
MAY 14 2010

DEPT OF
LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

Jurisdiction: **MARION COUNTY**

Local file number: **ZC/CP09-011**

Date of Adoption: **05/12/10**

Date Mailed: **05/13/10**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 8/31/09

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".

Change the zone from Residential Multi Family to Commercial Retail and to change the Comprehensive Plan designation from Multi Family Residential to Commercial

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

Plan Map Changed from: **Multi Family Residential** to: **Commercial**

Zone Map Changed from: **Multi Family Residential** to: **Commercial**

Location: **2620 Lancaster Dr NE** Acres Involved: **.59**

Specify Density: Previous:

New:

Applicable statewide planning goals:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19

Was an Exception Adopted? YES NO

Did DLCD 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

DLCD file No. 012-09 (17807) [16132]

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

Local Contact: **Sterling anderson**

Phone: **(503) 588-5038** Extension:

Address: **PO Box 14500**

Fax Number: - -

City: **Salem**

Zip: **97309**

E-mail Address:

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

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

In the Matter of the)	Case No. ZC/CP09-011
Application of:)	
Dhote and Kaur)	Clerk's File No. 5642
)	
)	AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1206

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 Harnek Dhote and Harpreet Kaur to change the zone from RM (Residential Multi Family) to CR (Commercial Retail) and to change the Comprehensive Plan designation from Multi Family Residential to Commercial on a 0.59 acre parcel in a RM (Residential Multi Family) zone located at 2620 Lancaster Drive NE, Salem, Marion County, Oregon. (T7S; R2W; Section 18CA; tax lot 6000).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on this application on October 28, 2009. Mailed notice was provided to all property owners within 100 feet of the subject property at least 20 days before the hearing. On February 11, 2010, the Hearings Officer issued a report recommending the Board grant the request if the applicant submitted additional information. The Board held a duly noticed public hearing on the application on March 24, 2010. The hearing was closed and record was left open for written testimony until April 19, 2010. At its regular session on April 21, 2010, the Board considered the Planning Division file, the Hearings Officer's recommendation, all arguments of the parties and was 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 of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested Comprehensive Plan designation change from Multi-Family Residential to Commercial is hereby **GRANTED**. The requested zone change from RM (Multiple-Family Residential) to CR-LU (Commercial Retail – Limited Use Overlay) zone is hereby **GRANTED**, subject to conditions identified 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 Zoning Map shall be changed pursuant to the Marion County Zone Code 16.01.040 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 13th day of May 12, 2010, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Janet Carlson
Chair

D. Kim Hullett
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 OF LAW

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 of law in Planning Case No. ZC/CP 09-011.

1. The subject property is within the Urban Growth Boundary of the City of Salem but under the jurisdiction of Marion County. It is designated Multi-Family Residential in the Salem Area Comprehensive Plan (SACP) and correspondingly zoned RM (Residential Multi Family).
2. The subject property is located at 2620 Lancaster Drive NE, Salem, and consists of 0.59 acres and is undeveloped. The parcel consists of lots 53, 54, 62 and 63 of Lombard Addition, a lawfully platted subdivision.
3. Property immediately north of the subject property is zoned RM and is developed with apartments. To the east and south, property is zoned RS (Single-Family Residential) and developed with dwellings. To the west across Lancaster Drive NE, property is inside the City of Salem and developed with commercial uses.
4. The applicants are requesting to change the zone from RM (Residential Multi Family) to CR (Commercial Retail) and to change the Comprehensive Plan designation from Multi Family Residential to Commercial.
5. The Marion County Planning Division requested comments on the application from various governmental agencies.
 - A. The Marion County Tax Office provided information on the tax status of the properties.
 - B. Marion County Engineering Development Permits and Engineering (DPW) commented:

STREETS

1. "Access shall be derived from the roadway having the lower functional class, or if a similar class, the road with lower traffic volume and/or fewer conflict points, if the option is available. Since Lancaster Drive NE is classified in the City's Transportation System Plan (TSP) as a Major Arterial, no direct access from the subject parcel to Lancaster Drive NE will be allowed. A single access to the subject property from Judy Avenue NE will be allowed that must be located as close as feasible to the east property line as shown on the application site plan. A single access to the subject property from Beverly Avenue NE will be allowed at a location that is as close as feasible to the property line, further to the east than is indicated on the application site plan, in order to minimize conflicts with the left-turn pocket on Beverly Avenue NE.
2. In accordance with Marion County Driveway Ordinance #651, driveway permits will be required for any new access or change in use of the existing access to the public right-of-way.

As a condition of this land use application, the applicant shall be required to apply for a driveway "Access Permit" and construct any improvements required by the permit. Driveways must meet sight distance, design, spacing, and safety standards.

3. The sight distance at the proposed site accesses to both Beverly Avenue NE and Judy Avenue NE is restricted by existing vegetation on adjacent properties. The applicant shall obtain and record vision easements with the affected property owners to remove and maintain the vegetation to a maximum height of 30 inches for distances of:
 - 18 feet into the property as measured perpendicular with the curb face on Beverly Avenue NE
 - 16 feet into the property as measured perpendicular with the curb face on Judy Avenue NE
4. The applicant is advised that the local fire district has authority to require, as a condition for plat approval and/or issuance of building permits, that driveways and private easements either meet fire district standards for access, have a fire sprinkler suppression system installed on any proposed structure, or be approved by waiver of the local fire marshal, prior to the issuance of building permits.
5. Lancaster Drive NE in the vicinity of the subject property is under the jurisdiction of City of Salem. Evidence of compliance with any City requirements shall be a condition of County approval for this request for ZC/CP. The City of Salem Public Works contact number is 503-588-6211.
6. The property is located within the City of Salem Urban Growth Boundary (UGB). Lancaster Drive NE is identified in the City's Transportation System Plan (TSP) as a Major Arterial having a Special Setback distance of 48 feet. Reference to Salem's TSP is according to Section 27.21(e)(7) of the Marion County Urban Zoning Ordinance (MCUZO). No building structures may be placed within the Special Setback. Signs may be allowed within Special Setback areas by completion of a Removal Agreement per Section 27.21(c). However, no signs are allowed within the public right-of-way.
7. Since the proposal is for a zone change, the applicant is required to improve their frontage along Lancaster Drive NE and Judy Avenue NE in accordance with appropriate standards as directed by Public Works as a condition of approval. The subject property is located within the City of Salem's Urban Growth Boundary (UGB) and is required to meet the City's roadway standards as stated in Chapter 27.21(e)(7) of the Marion County Urban Zoning Ordinance (MCUZO). The City of Salem's Transportation System Plan (TSP) classifies Judy Avenue NE as a local street. The applicant shall design and construct improvements on Lancaster Drive NE and Judy Avenue NE frontages to City of Salem and Marion County Public Works standards. On Lancaster Drive NE this is anticipated to include a PCC curblined sidewalk to replace existing asphalt concrete (A/C) sidewalk and any other upgrades to frontage that the City may so require. On Judy Avenue NE this is anticipated to include replacement of deteriorated Type C curb and install new where absent, ADA compatible PCC driveway drop, stormwater catch basin (CB) piped to an existing CB on Lancaster just

south of the curb return, PCC curblin sidewalk with temporary A/C end ramp, and patching with elastomeric crack seal of an approximate ¼ to ½"-inch wide, 12-foot long crack in the asphalt road pavement.

8. Placement of planimetric features such as landscaping, signs and fences on private property must meet Marion County standards for vision clearance and vehicular safety, in addition to any zoning ordinance requirements. All vegetation within vision clearance areas shall reach no more than 30-inches at mature height.
9. Review of the Transportation Impact Analysis (TIA) prepared by Lancaster Engineering dated August 2009 and the subsequent update, dated September 2009, for the subject property indicated that the level of impact to the County roadway system is minimal. Since Lancaster Drive NE is under the jurisdiction of the City of Salem, the applicant shall be required to construct and/or contribute to any improvements that the City feels are necessary to mitigate the traffic impacts.
10. It is the responsibility of the applicant to preserve and protect the current Pavement Condition Index (or PCI) rating and the structural integrity of adjacent county roads to the satisfaction of Marion County Public Works during transport of materials and construction activities. Failure to preserve and protect the road may result in the applicant being responsible for replacing or reconstructing the damaged road at his/her own expense.

STORMWATER

11. The applicant is advised that construction of improvements on the property should not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading should not impact surrounding properties, roads, or drainage ways in a negative manner.
12. The County requires any development having 0.5 acre or more of impervious (hard) surface to provide storm water detention. As such, the applicant may need to provide storm-water detention systems that detain enough of the storm-water runoff on site so that there is no net rate increase in storm-water flow from the subject property. Such a system shall be sized and modified so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 50-year frequency storm under development conditions. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved by Public Works prior to final building inspection. Underground detention systems are preferred for development located within the UGB.
13. Public storm drainage improvements shall be built to Marion County Engineering and Construction Standards. Storm drainage shall be discharged to a suitable outlet and, where applicable, evidence provided that an adequate easement exists for transit of the water to such an outlet.

GENERAL

14. The subject property is within the Urban Growth Boundary of the City of Salem. Per Marion County Ordinance #99-11R Systems Development Charges will be assessed upon development of the subject property at the time of application for building permits or change in land use.
15. Any work in the public right-of-way of Beverly Avenue NE and/or Judy Avenue NE will require a permit from Marion County. This may be in addition to any Access Permits that may be required.
16. Any work in the public right-of-way of Lancaster Drive NE will require a permit from the City of Salem. This may be in addition to any Access Permits that may be required.
17. Any utility work in the public right-of-ways of either Beverly Avenue NE or Lancaster Drive NE may require a permit from the City of Salem Public Works Utility Dept.”

All other contacted agencies either failed to submit comments by the time the staff report was written or stated they were not affected by the proposal.

6. Applicants have the burden of proving all applicable standards and criteria are met.

COMPREHENSIVE PLAN AMENDMENT

7. The subject property is outside of the Salem city limits but within the Salem UGB. Marion County has jurisdiction over the subject property and Judy and Beverly Avenues east of Lancaster Drive. However, the City of Salem has jurisdiction west of Lancaster Drive. Therefore, Marion County must coordinate land use applications with the City of Salem. The Marion County Planning Division requested comments from the City of Salem. The City responded that they had no comments at this time but wished to be notified of the public hearings affecting the application and requested a copy of the written decision.
8. 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.
9. 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 a 0.59 acre parcel. This is a non-legislative plan amendment.

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

- (a) Conformance with the comprehensive plan goals, policies and intent, and any plan map amendment criteria in the plan, 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 [c]omprehensive [p]lan.
 - (c) Uses allowed in the proposed designation will not significantly affect planned uses on adjacent lands; and
 - (d) Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.
11. The subject property is within the Salem UGB and is subject to the SACP although Marion County has jurisdiction over land use matters. The intent of the SACP is to project the most desirable pattern of land use in the Salem area. According to SACP H.A.4.c, designated Commercial areas provide the following types of shopping and service opportunities: Regional shopping facilities, community/neighborhood shopping and service facilities, convenience stores, commercial offices, and specialized shopping and service facilities. Commercial offices accommodate office space and non-retail services. The SACP commercial development goal is to maintain the Salem urban area as a commercial center for the Marion-Polk County metropolitan area. There are no map amendment criteria in the SACP.
12. General Development Policy 7. Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the Salem urban area should average 6.5 dwelling units per gross acre of residential development. 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.

The applicants plan to construct a 5,400 square foot commercial building. A convenience store is proposed for approximately 3,000 square feet of the building and the remaining portion of the building will likely house offices. As a condition of approval, the applicants will be required to comply with conditions to alleviate stormwater conditions that could lead to erosion. As conditioned, general development policy 7 is met.

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

MCUZO 6.25 sets out the development standards for Commercial uses located next to a residential zone. As a condition of approval, the applicants will be required to comply with this provision. As conditioned, general development policy 14 is met.

General Development Policy 15. Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public rights-of-way and adjacent properties.

MCUZO 6.25 addresses exterior lights. The applicants will be required to provide a lighting plan showing how lighting will be placed to illuminate the subject property and not cause glare into the public rights-of-way and adjacent residential properties. As conditioned, general development policy 15 is met.

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

- a. Site plan,
- b. Layout of all off-street parking and loading facilities,
- 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 use(s),
- j. Transit service, and
- k. Other information that may be required.

The applicants submitted site plan, documentation, and written statements that address all of the above items. Commercial Development Policy 2 is met.

Commercial Development Policy 4. Community shopping and service facilities shall be located adjacent to major arterials and shall provide adequate parking and service areas. Land use regulations shall include provisions for siting and development, which discourage major customer traffic from outside the immediate neighborhoods from filtering through residential streets.

Lancaster is a major arterial road that abuts the subject property. The parking layout has been provided in the site plan and is regulated by county ordinance, state and federal law. The applicant will be required to comply with those requirements and will also be required to provide a site plan for the service area. The applicants state that in the professional judgment of the engineer who prepared the TIA, almost all of the traffic generated by the proposed use is already in the stream of traffic. The subject property abuts Lancaster Drive and ingress and egress to the subject property will be via Judy and Beverly Avenues. The majority of the traffic is expected to come from Lancaster and will not be driving into the surrounding neighborhoods. A memorandum in the record from DPW analyzes concerns raised at the public hearing by neighbors about traffic cutting through the subdivision. The analysis concludes that the development will not generate an unreasonable amount of cut-through in this case. Commercial Development Policy 4 is met.

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 and services for a market area of several neighborhoods.

The east side of Lancaster near the subject area is developed with a series of one-story residences. To

the north and south of the subject property are a number of dwellings. West of the subject property are a number of businesses that include Walmart, Bi-Mart, Food Outlet, and a veterinarian clinic. Marie Callender's Restaurant is across Lancaster from the subject property and behind Marie Callender's are a number of other businesses, including at least one vacant building. Therefore, most of the strip development is across the street from the subject property and residential uses are located east of Lancaster and adjacent to the subject property. The proposed use is for a convenience store and commercial office space. According to applicants' traffic engineer, the majority of the customer base will come from traffic already on Lancaster Drive. It appears the proposed use, a convenience store and commercial office, would provide services to several neighborhoods in the area. Commercial Development Policy 5 is met.

Commercial Development Policy 6. Commercial office uses shall have convenient access to collector and arterial streets.

The proposed use will have approximately 2,000 square feet for commercial office space. Access will be off of Judy and Beverly streets. There is a fairly new traffic signal at Beverly and Lancaster. That intersection is a four-legged intersection. Judy Avenue is a three-legged intersection controlled by a stop sign. Lancaster has at least one left turn refuge to help direct traffic off of Lancaster and on to both Judy and Beverly Avenues. Commercial Development Policy 6 is met.

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

The subject property abuts residential uses to the east. Residential uses also are located to the north and south of the subject property but are separated from the subject property by Beverly Avenue to the south and Judy Avenue to the north. The applicants will be required to provide buffer strips in accordance with MCZO Chapter 6. As conditioned, Commercial Development Policy 8 is met.

With the conditions of approval noted above, the Board finds that the proposal conforms to SACP goals, policies and intent.

13. The current designation for the subject parcel is Multi-Family Residential. The subject parcel is undeveloped and is a rather narrow parcel that abuts Lancaster Drive and is unsuitable for multifamily development. Although 0.59 acres will be taken out of the RM designation, the record shows that other actions have resulted in additions to the RM designation. Some of those actions include ZC/CP06-07 that changed the zoning for 2.89 acres from UD to RM; ZC/CP05-04 that changed the zoning for 1.31 acres from UD to RM; and ZC/CP04-08 that changed the zoning for 71.28 acres from RS to RL (Limited Multi-Family Residential). In this case, the removal of less than one acre from the designation is minute.

The subject area consists of properties in commercial and residential uses. The property across Lancaster from the subject property is within the city limits of Salem and is developed with commercial uses. Property to the immediate north is developed with apartments, and property the east and south is developed with dwellings. These factors are consistent with the projected needs for such lands within the comprehensive plan. In keeping with the surrounding one level dwellings, the applicants stated that they would have no objection to being limited to a structural height of one level. Because of the small acreage involved as well as already existing businesses and residential

uses surrounding the subject property, there should be little affect on the planned uses on adjacent lands.

The surrounding area is developed and needed services are readily available. Hiland Water District provides water service to the area. At the public hearing neighboring property owners testified that they suffer from a lack of water pressure. The applicant submitted into the record a letter from the water district that the system has the ability and capacity to serve the proposed use without detriment to existing customers. Electricity is readily available as evidenced by the traffic signals, and Marion County Fire District No. 1 provides fire protection service. Public transportation to the area is provided by Cherriots bus service.

14. For the reasons discussed above, the Board finds that , as conditioned, MCUZO 43.02 is met.

ZONE CHANGE

15. The requirements for a zone change are found in section 39.05 of the MCUZO, and include:

- (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.

16. The proposal is to change the designation of the property from Multi Family Residential to Commercial and to change the zone from Residential Multi Family to Commercial Retail. The small size of the property and the fact that it is located near a busy street, Lancaster Drive, make it an undesirable location for residential development. Of the Commercial zones, CR is the least restrictive zone that would allow for the uses identified by the applicants. As set out above, the SACP policies are met. The proposed zone would fit within the proposed Commercial designation. MCUZO 39.05(a) is met.

17. The subject property is located within the Salem Area Urban Growth Boundary and services to the area are currently in place. Salem Cherriots bus service provides public transportation to Lancaster Drive, a major arterial that abuts the subject property to the west. Hiland Water District provides water to the area and a letter in the record from the district states that the system has the ability and capacity to serve the proposed use without detriment to existing customers. Electricity is in place as

evidenced by the traffic signal at Beverly and Lancaster. The subject property is an enclave of undeveloped property along a heavily developed section of East Salem.

The applicants are proposing to construct a 5,400 square foot building and locate a convenience store in part of the building. Approximately 2,000 square feet will be used for commercial office space. The subject property fronts Lancaster Drive, a major arterial roadway. The business will not have direct access to Lancaster Drive but will have access to both Beverly and Judy Avenues.

Neighbors expressed concern over the potential increase in traffic as the result of the proposed use and that, as Lancaster Drive is a heavily trafficked roadway, subdivision streets will be used as cut-through for traffic trying to avoid busy intersections. A memorandum in the record from DPW analyzes concerns raised at the public hearing by neighbors about traffic cutting through the subdivision. The analysis concludes that the development will not generate an unreasonable amount of cut-through in this case. Jurisdiction for Lancaster Drive lies with the City of Salem and the applicants shall comply with mitigation measures set out by the City as well as those identified by Marion County. Identified improvements needed along Lancaster include sidewalk upgrades. On Judy Avenue, needed improvements include replacement of deteriorated or missing curbs, installation of sidewalks, driveway drops, catch basin improvements, and patching a crack in the pavement.

The applicants employed Lancaster Engineering to conduct a TIA. The TIA was completed in August of 2009 and updated in September 2009. The study found that the proposed zoning would result in a potential increase of approximately 84 morning peak hour trips and a potential increase of approximately 59 peak hour trips. However, the report concluded that the intersections of Beverly and Judy Avenues with Lancaster Drive would still operate at an acceptable level of service. Although the site intersections with Beverly and Judy Avenue have not been built, the conclusion reached by the traffic engineer who performed the TIA was that the intersections would also operate at an acceptable level of service. Sight distance issues were identified in the TIA. The sight distance at the intersection of the site access onto Beverly Avenue was hampered by shrubs on the property to the east. Brush near the east property line hampered the sight distance at the intersection of the site access to Judy Avenue. It was recommended in the TIA that the brush at both locations be cut back to 3.5 feet to alleviate the problem.

The DPW regulates storm water detention and drainage and the applicant will be required to meet their engineering standards for these facilities. A letter in the record from the Hiland Water District confirms that the existing water main across the property will be relocated in order to accommodate development of the property. MCUZO 39.05(b) is met.

18. The Salem Area Comprehensive Plan contains no zone change review criteria. Therefore, section 39.05(c) does not apply in this instance.

19. MCUZO 6.00 states:

The purpose of the CR (Commercial Retail) 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 property abuts Lancaster Drive Northeast, a major arterial roadway. Surrounding uses include commercial uses such as a restaurant located across Lancaster Drive from the subject property and nearby retail stores such as Bi-Mart and Walmart. MCUZO 39.05(d) is met.

20. There are three commercial zone designations. The CO (commercial office) zone would allow the proposed office use but not the retail store use. The CG (Commercial General) allows intensive retail use. The CR (Commercial Retail) is the zone that would allow the least intensive development while allowing the retail store uses requested by the applicants.

Although the TIA found that the proposal would have minimal impact, neighbors raised additional concerns about sound and light emanating from the proposed use. The subject property is surrounded on three sides by residential property and divided from commercial development to the west by Lancaster Drive. As indicated above, the proposed use is a much more intensive use than is currently allowed on the subject property. The site plan indicates that the building will be placed directly in front of the two residences that abut the property to the east, as only a three-foot setback is required. In addition, the access onto Beverly Avenue and Judy Avenue will be fairly close to the adjacent single family residences that abut the subject property. The TIA is concerned with the flow of traffic rather than how the project will affect neighboring properties. The accesses will generate lighting issues not only for the two adjacent single family residences, but also for the residential areas across the two side streets. MCUZO 6.25 addresses exterior lights and the applicants will be required to provide a lighting plan on the detailed site plan showing how lighting will be placed to illuminate the subject property and not cause glare into the public rights-of-way and adjacent residential properties. In addition to the lighting requirements in the MCUZO, and to help reduce the intrusion of light from customers automobiles into the residential areas surrounding the subject property as well as help with late-night noise, the hours of operation for the proposed convenience store should be limited to 5:30 a.m. to 11:00 p.m.

As a condition of approval, the applicants will be required to comply with all setbacks, screening and buffers to lessen the impact on residential zones. As conditioned, the use will not have any significant adverse impacts on local streets or residential zones and the criteria in MCUZO 39.05(e) is met.

LIMITED USE OVERLAY ZONE

21. MCUZO chapter 22 provides the following Limited Use Overlay Zone requirements:

MCUZO 22.01. The purpose of the Limited Use Overlay Zone(LUO) is to reduce the list of permitted or conditional uses in a zone to those that are suitable for a particular location. Zones permit a number of uses without notification or opportunity for a hearing, because the uses are considered generally acceptable, although type and intensity of activity may vary. Zones also include conditional uses which may be permitted if certain criteria are met. However, 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.

MCUZO 22.02. When the Limited Use 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 Limited Use Overlay zone. Until the 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 Limited Use Overlay Zone is amended or the Limited Use Overlay Zone is removed from the property.

MCUZO 22.03. The Limited Use 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 has 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.

22. The CR zone allows several intensive uses that would be inappropriate for a small parcel surrounded by residential uses, but it is the zone that is the best suited to accommodate the applicants' proposed uses. Because of the intensity of the use requested, the small size of the subject property, and the surrounding residential neighborhood with sight, noise, traffic, and lighting concerns, it is necessary to limit the permitted or conditional uses in the proposed zone to the following uses:

- (1) One dwelling unit* in conjunction with a commercial use.
- (2) Offices for any use listed in SIC Division C - Construction.
- (3) Commercial printing. SIC 275.
- (4) Post offices. SIC 43.
- (5) Travel Agency. SIC 4724.
- (6) Communications. SIC 48 except transmission towers*.
- (7) Building materials, hardware, retail nurseries and garden supply. SIC 52 except SIC 527 mobile home dealers.
- (8) General merchandise stores. SIC 53.
- (9) Food stores. SIC 54.

- (10) Auto and home supply stores. SIC 553.
- (11) Apparel and accessory stores. SIC 56.
- (12) House furniture, furnishings and equipment stores. SIC 57.
- (14) Miscellaneous retail. SIC 59 except SIC 598 fuel dealers, provided all display is within a building.
- (15) Finance, insurance and real estate. SIC 60, 61, 63, 64, 65, 66 and 67.
- (17) Public utility*.
- (18) Personal services. SIC 72 except SIC 7217 carpet and upholstery cleaning and SIC 7218 industrial launderers.
- (19) Business services. SIC 73 except SIC 7342 disinfecting and pest control services, and SIC 7353 heavy construction equipment rental.
- (20) Signs subject to Chapter 31.
- (21) Watch, clock and jewelry repair. SIC 763.
- (22) Landscape counseling and planning. SIC 0781.
- (23) Motion picture distribution and allied services. SIC 782.
- (25) Video tape rental. SIC 784.
- (26) Dance studios, schools, and halls. SIC 791.
- (30) Health services. SIC 80 except SIC 806 hospitals.
- (32) Legal services. SIC 81.
- (33) Educational service. SIC 82.
- (37) Engineering, Accounting, Research management, and related services. SIC 87.
- (38) Miscellaneous services. SIC 89.
- (39) Executive offices. SIC 911.
- (40) Executive and legislative combined. SIC 913.
- (41) Finance, taxation, and monetary policy. SIC 93.
- (43) Administration of environmental quality and housing programs. SIC 95.
- (44) Administration of economic programs. SIC 96.
- (45) National security and international affairs. SIC 97.
- (46) Uses permitted in Chapter 25.
- (47) The following uses subject to the special standards in Chapter 26:
 - (b) Used merchandise store (see Section 26.48) provided all display is within a building.
 - (c) Religious organizations*. (see Section 26.60).
 - (d) Veterinary services. SIC 074 (see Section 26.42).
 - (f) Bed and breakfast establishments (see Section 26.26).
 - (g) Mixed use buildings (see Section 26.46).

23. The Board finds that applicants' proposed limited use overlay zone is consistent with MCUZO 22.030.

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC/CP 09-11/Dhote and Kaur.

CONDITIONS OF APPROVAL:

Pursuant to the Marion County Urban Zoning Ordinance Section 39.06, the following conditions apply to the CR-LU (Commercial Retail – Limited Use Overlay) 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. The conditions are necessary for the public health, safety and welfare.

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 the CR zone. The maximum number of acceptable uses in the zone have been retained as permitted or conditional uses.

b. The CR zone allows several intensive uses that would be inappropriate for a small parcel surrounded by residential uses, but it is the zone that is the best suited to accommodate the applicants' proposed uses. Because of the intensity of the use requested, the small size of the subject property, and the surrounding residential neighborhood with sight, noise, traffic, and lighting concerns, it is necessary to limit the permitted or conditional uses in the proposed zone to the following uses:

- (1) One dwelling unit* in conjunction with a commercial use.
- (2) Offices for any use listed in SIC Division C - Construction.
- (3) Commercial printing. SIC 275.
- (4) Post offices. SIC 43.
- (5) Travel Agency. SIC 4724.
- (6) Communications. SIC 48 except transmission towers*.
- (7) Building materials, hardware, retail nurseries and garden supply. SIC 52 except SIC 527 mobile home dealers.
- (8) General merchandise stores. SIC 53.
- (9) Food stores. SIC 54.
- (10) Auto and home supply stores. SIC 553.
- (11) Apparel and accessory stores. SIC 56.
- (12) House furniture, furnishings and equipment stores. SIC 57.
- (14) Miscellaneous retail. SIC 59 except SIC 598 fuel dealers, provided all display is within a building.
- (15) Finance, insurance and real estate. SIC 60, 61, 63, 64, 65, 66 and 67.
- (17) Public utility*.
- (18) Personal services. SIC 72 except SIC 7217 carpet and upholstery cleaning and SIC 7218 industrial launderers.

- (19) Business services. SIC 73 except SIC 7342 disinfecting and pest control services, and SIC 7353 heavy construction equipment rental.
 - (20) Signs subject to Chapter 31.
 - (21) Watch, clock and jewelry repair. SIC 763.
 - (22) Landscape counseling and planning. SIC 0781.
 - (23) Motion picture distribution and allied services. SIC 782.
 - (25) Video tape rental. SIC 784.
 - (26) Dance studios, schools, and halls. SIC 791.
 - (30) Health services. SIC 80 except SIC 806 hospitals.
 - (32) Legal services. SIC 81.
 - (33) Educational service. SIC 82.
 - (37) Engineering, Accounting, Research management, and related services. SIC 87.
 - (38) Miscellaneous services. SIC 89.
 - (39) Executive offices. SIC 911.
 - (40) Executive and legislative combined. SIC 913.
 - (41) Finance, taxation, and monetary policy. SIC 93.
 - (43) Administration of environmental quality and housing programs. SIC 95.
 - (44) Administration of economic programs. SIC 96.
 - (45) National security and international affairs. SIC 97.
 - (46) Uses permitted in Chapter 25.
 - (47) The following uses subject to the special standards in Chapter 26:
 - (b) Used merchandise store (see Section 26.48) provided all display is within a building.
 - (c) Religious organizations*. (see Section 26.60).
 - (d) Veterinary services. SIC 074 (see Section 26.42).
 - (f) Bed and breakfast establishments (see Section 26.26).
 - (g) Mixed use buildings (see Section 26.46).
2. No direct access is allowed off of Lancaster Drive NE. A single access to both Judy and Beverly Avenue will be allowed. A revised site plan that clearly indicates the accesses in accordance with DPW standards shall be submitted prior to any construction work.
 3. The applicants shall obtain access permits for any new access or change in existing access. The access shall comply with DWP and City of Salem standards.
 4. If it is determined that the vegetation on adjacent property is hindering sight distance, the applicant shall obtain and record vision easements with the affected property owners to remove and maintain the vegetation to a maximum height of 30 inches for distances of:
 - 18 feet into the property as measured perpendicular with the curb face on Beverly Avenue NE
 - 16 feet into the property as measured perpendicular with the curb face on Judy Avenue NE

The applicants shall maintain all vegetation on the subject property to allow for unobstructed sight distance in accordance with DPW standards.

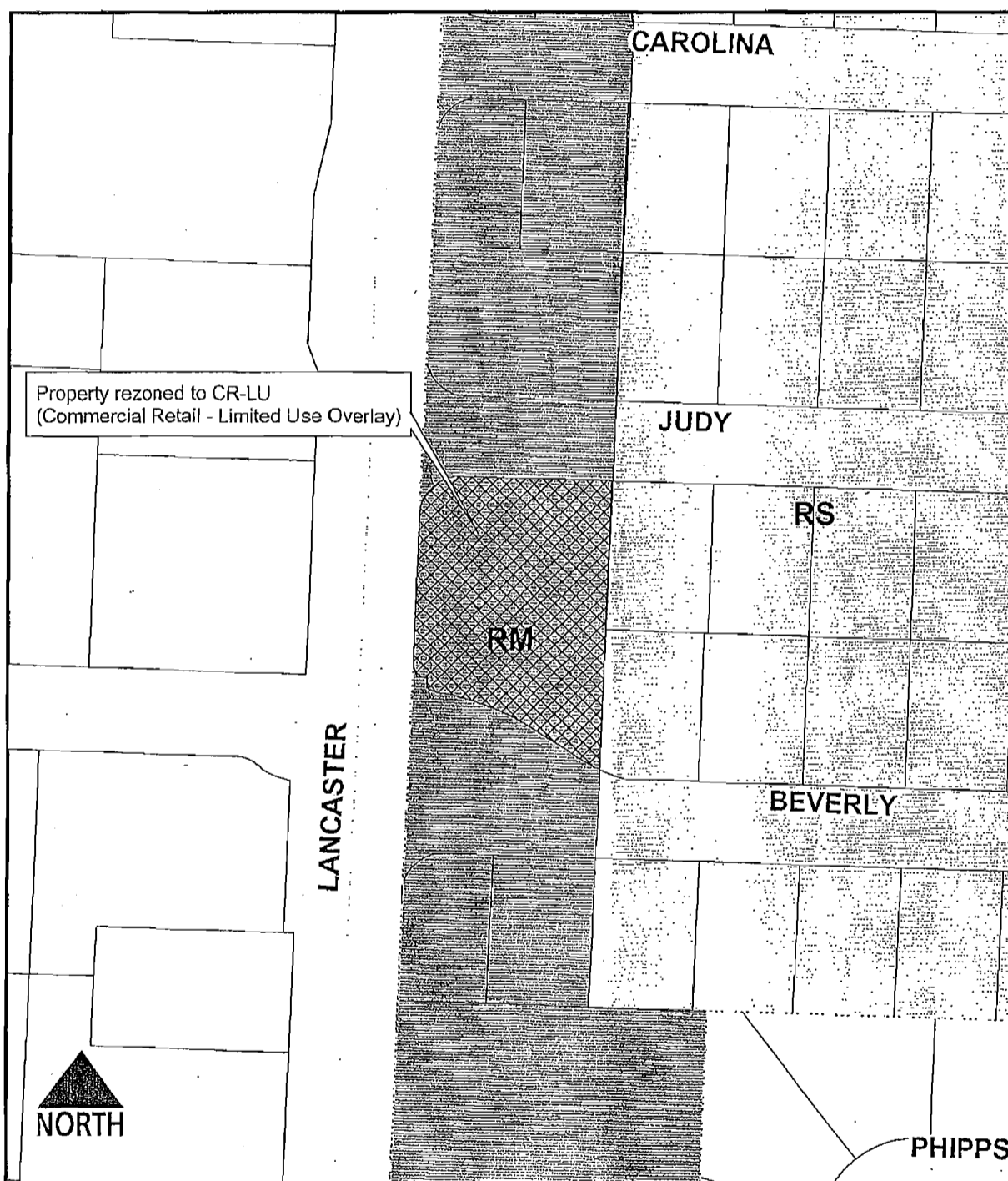
5. All portions of the property shall be landscaped according to CR zone requirements.
6. The site must comply with MCFD1 access, water supply and address standards, and the *Marion County Fire Code Applications Guide* or be approved by waiver of the local fire marshal, prior to the issuance of building permits.
7. Lancaster Drive NE in the vicinity of the subject property is under the jurisdiction of the City of Salem. Therefore, the applicants shall provide proof of compliance with City of Salem requirements.
8. All structures shall be limited to no more than one level in height.
9. The applicants shall comply with the development provisions of MCUZO Chapters 6 and 27.
10. The applicants shall improve the frontage along Lancaster Drive to the satisfaction of the City of Salem. The applicants shall improve the frontage along Judy Avenue to the satisfaction of DPW. Improvements along Judy Avenue include replacement of deteriorated curb and installation of missing curb, installation of ADA compatible PCC driveway drop, stormwater catch basin (CB) piped to an existing CB on Lancaster just south of the curb return, PCC curblin sidewalk with temporary A/C end ramp, and patching with elastomeric crack seal of an approximate ¼ to ½"-inch wide, 12-foot long crack in the asphalt road pavement.
11. Placement of planimetric features such as landscaping, signs and fences on private property must meet Marion County standards for vision clearance and vehicular safety, in addition to any zoning ordinance requirements. All vegetation within vision clearance areas shall reach no more than 30-inches at mature height.
12. As Lancaster Drive NE is under the jurisdiction of the City of Salem, the applicant shall be required to construct and/or contribute to any improvements that the City feels are necessary to mitigate the traffic impacts.
13. Site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties.
14. The applicant shall preserve and protect the current Pavement Condition Index (PCI) rating and the structural integrity of adjacent county roads to the satisfaction of Marion County Public Works during transport of materials and construction activities. Failure to preserve and protect the road may result in the applicant being responsible for replacing or reconstructing the damaged road at its own expense.
15. The County requires any development having 0.5 acre or more of impervious (hard) surface to provide storm water detention. The applicants shall provide storm-water detention systems that detain enough of the storm-water runoff on site so that there is no net rate increase in storm-water flow from the subject property. Such a system shall be sized and modified so that it will detain the difference between a 5-year frequency storm with pre-development conditions and a 50-year frequency storm under development conditions. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved by Public Works prior to final building

inspection. Underground detention systems are preferred for development located within the UGB.

16. Public storm drainage improvements shall be built to Marion County Engineering and Construction Standards. Storm drainage shall be discharged to a suitable outlet and, where applicable, evidence provided that an adequate easement exists for transit of the water to such an outlet.
17. The subject property is within the Urban Growth Boundary of the City of Salem. Per Marion County Ordinance #99-11R Systems Development Charges will be assessed upon development of the subject property at the time of application for building permits or change in land use.
18. Any work in the public right-of-way of Beverly Avenue NE and/or Judy Avenue NE will require a permit from Marion County. This may be in addition to any Access Permits that may be required.
19. Any work in the public right-of-way of Lancaster Drive NE will require a permit from the City of Salem. This may be in addition to any Access Permits that may be required.
20. Any utility work in the public right-of-way of either Beverly Avenue NE or Lancaster Drive NE may require a permit from the City of Salem Public Works Utility Dept.
21. Prior to development the applicants shall submit a revised site plan detailing parking, loading facilities, surface storm water plans, lighting, signing, landscaping, access points, utilities, drainage and stormwater detention, and placement of garbage receptacles.
22. The hours of operation shall be from no earlier than 5:30 a.m. and no later than 11:00 p.m.

EXHIBIT C

The following described property is rezoned from RM (Multiple Family Residential to CR-LU (Commercial Retail - Limited Use Overlay) zone. ZC/CP09-11/Dhote and Kaur.



Washington County Planning Division
555 Court St. NE, Room 2130
PO Box 14500
Salem, OR 97309

ADDRESS
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PRESORTED
FIRST CLASS



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SALEM OR 97301-6033