

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the Application of: ) Case No. ZC 21-010  
Landon Hattan ) **ZONE CHANGE**

**I. NATURE OF THE APPLICATION**

This matter came before the Marion County hearings officer on the application Landon Hattan to change the zone from Urban Development (UD) to Multi-Family Residential (RM) on a 0.96-acre parcel located at the 3200 block of Fisher Road, NE, Salem (T7S, R2W, Section 07BB, Tax Lot 3400).

**II. RELEVANT CRITERIA**

The standards and criteria relevant to this application are found in the Marion County Code (MCC), title 16, especially MCC 16.39, and the Salem Area Comprehensive Plan (SACP), especially General Development Policies and Commercial Development Policies.

**III. HEARING HIGHLIGHTS**

A public hearing was held on the application on January 6, 2021. At the hearing, the Planning Division file was made part of the record. The following persons appeared in person and provided testimony:

- 1. Lindsey King Planning Division
- 2. Landon Hattan Applicant

The hearings officer made the declaration required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The hearings officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all

arguments may result in waiver of arguments at subsequent appeal forums. No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony presented at the hearing. At the conclusion of the public hearing, the record was closed.

#### IV. EXECUTIVE SUMMARY

The Applicant requests a Zone Change from Urban Development (UD) to Multi-Family Residential (RM) on a 0.96-acre parcel located at the 3200 block of Fisher Road, NE, Salem. The Applicant has satisfied the relevant approval criteria for a zone change, and the hearings officer **APPROVES** the application.

#### V. FACTS

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The applicant is Landon Hattan. The subject property is owned by Dean and Tran Nygyen and Van and Hoang Danthanh.
2. The subject property is located within the City of Salem Urban Growth Boundary (UGB) and is currently zoned Urban Development (UD). The applicant seeks to change the zoning to Multi-Family Residential (RM).
3. The subject property is a 0.96-acre parcel zoned UD located at the 3200 block of Fisher Road, NE, about 200 feet east of its intersection with Ward Drive, NE. The parcel is generally flat and is currently undeveloped. The property has approximately 170 feet of frontage on Fisher Road.
4. Adjacent properties are a mix of properties zoned Urban Development (UD), Multi-Family Residential (RM), and Public Amusement (PA). Properties to the north are zoned RM. Properties to both the west and east are zoned RM. To the south, there is a large parcel zoned PA that is within city limits. These properties contain a mixture of multi- and single-family uses.

5. The hearings officer is authorized to make the initial decision on zone change applications. Any appeal of this decision is to the Marion County Board of County Commissioners.
6. An applicant has the burden of proving all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

“Preponderance of the evidence” means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests.” (Citation omitted.)

An applicant must prove, by substantial evidence in the whole record, that it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, the applicant has not met its burden and the application must be denied. If the evidence for every criterion is in applicant’s favor, then the burden of proof is met, and the application must be approved.

7. City of Salem Planning Division commented that the proposed zoning of RM complies with the property’s comprehensive plan designation of Multi-Family Residential. Staff would prefer to see any future development at the site adhere to City of Salem development standards. Staff also commented that if annexation should occur prior to the property’s development, the development should comply with SRC 702: Multiple family Design Review Standards, as requested by the City of Salem. Staff recommends approval of the proposal.

8. Marion County Fire District No. 1 made comments regarding the fire code requirements for commercial buildings.
9. Salem-Keizer Public Schools commented that the proposed change would impact Yoshikai Elementary School, Stephens Middle School, and McKay High School. Citing to school capacity, current enrollment, and the average number of students per residence, Salem-Keizer Public Schools concluded that there would be an estimated four new students to the Elementary School, two new students to the Middle School, and two new students to the High School, driving the enrollment per capacity ratio to 102%, 93%, and 93% respectively. Salem-Keizer Public Schools commented that “[c]ivic infrastructure needed to provide connectivity between the new residential development and the schools serving the new development will generally require roads, sidewalks and bicycle lanes.”
10. All other contacted agencies either failed to comment or stated no objection to the Applicant’s proposal.

## **VI. DISCUSSION**

Marion County Code (MCC) 16.39.050 provides the approval criteria for a zone change inside an urban growth boundary:

“Approval of a zone change shall include findings that the change meets the following 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. The request shall be consistent with the purpose statement for the proposed zone.
- “D. 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.”

**MCC 16.39.050(A)**

MCC 16.39.050(A) requires that “the proposed zone is appropriate for the Comprehensive Plan land use designation” for the property. The applicable comprehensive plan is the Salem Area Comprehensive Plan (SACP). The SACP designation for the property is Multi-Family Residential and this Plan designation provides for the application of the RM zone proposed by the applicant. MCC 16.39.050(A) also requires that the proposed zone change is “consistent with the description and policies” for the applicable plan designation. The applicant and the staff report identify a number of applicable policies.

General Development Policy 7 provides:

“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.”

This policy is primarily directed at development, while the application only proposes to change the zone rather than seek approval of any specific development. The property, however, is flat and requires little-to-no topographic alteration or

disturbance. There are no watercourses crossing the property. The proposed zone is consistent with General Development Policy 7.

General Development Policy 14 provides:

“Outdoor storage areas should be screened from public streets and adjacent uses.”

This policy is also directed at development rather than merely a zone change. Under MCC 16.04.200, within a RM zone, landscaping requirements are required for any development. However, since this is only a zone change, this screening standard will be imposed upon development. Accordingly, the proposed zone is consistent with General Development Policy 14.

General Development Policy 15 provides:

“Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.”

This policy is also directed at development rather than merely a zone change. MCC 16.30.220, however, provides that lighting of outdoor storage or parking areas must be directed away from adjacent residential properties and public streets. The development standards in MCC 16.04.100 reference compliance with Chapters 16.26 through 16.34 and will be applied on development of the property. The proposed zone is consistent with General Development Policy 15.

Residential Development Policy 6 provides:

“Multi-family housing shall be located in areas proximate to existing or planned transportation corridors, public facilities and services:

- A. To encourage efficient use of residential land and public facilities, development regulations shall require minimum densities for multiple family development zones.
- B. Development regulations shall promote a range of densities that encourage a variety of housing types;
- C. Multiple family developments shall be located in areas that provide walking, auto, or transit connections to:
  - (1) Employment centers;
  - (2) Shopping areas;
  - (3) Transit services;
  - (4) Parks;
  - (5) Public Buildings.”

The density in the zone will allow development of one unit per 1,500 square feet of site area. The applicant also provides evidence showing public facilities, services, and transportation corridors to demonstrate that any development located in the property will comply with Residential Development Policy 6. Transit connections are provided to Lancaster Drive, which provides employment centers, shopping areas, transit services, parks, and public buildings. Residential Development Policy 6 can be met.

Residential Development Policy 7 provides:

“Residential neighborhoods shall be served by transportation systems that provide access for pedestrian, bicycles, and vehicles while recognizing the neighborhoods physical constraints and transportation service needs:

- A. The transportation systems shall promote all modes of transportation and dispersal rather than concentration of through traffic

- B. Through traffic shall be addressed by siting street improvements and road networks that serve new development so that short trips can be made without driving
- C. The transportation system shall provide for a network of streets fitted to the terrain with due consideration for safety, drainage, views, and vegetation.”

The applicant described how the existing street framework creates arterials that provide both east-west and north-south access around the area, allowing for routes to be used by vehicle, bike, and on foot. The subject area is generally flat and well drained. Intersections are broad, with good site distance due to the lack of significant vegetation. Residential Development Policy 7 can be met.

Residential development policy 9 provides:

“Alternative residential development patterns, subdivision and zoning regulations shall provide opportunities for increased housing densities, alternative housing patterns and reduced development costs. Development regulations shall promote residential development patterns that encourage:

- A. The use of all modes of transportation;
- B. Reduction in vehicle miles travelled and length of auto trips;  
and
- C. Efficiency in providing public services.”

The Applicant provided findings that existing street networks provides for the use of all modes of transportation. The property is located next to major arterials and business centers, which will encourage trips taken by modes of transportation other than cars. Additionally, there is existing infrastructure that will adequately serve automobiles. Residential Development Policy 9 can be met.



Residential development policy 10 provides:

“Requests for rezoning to higher density residential uses to meeting identified housing needs will be deemed appropriate provided:

- A. The site is so designated on the comprehensive plan
- B. Adequate public services are planned to serve the site;
- C. The site's physical characteristics support higher density development; and
- D. Residential Development Policy 7 is met.”

The subject parcel is designated as Multi-Family Residential in the SACP. As previously discussed, all public service exist in the surrounding area and connectivity of streets is already adequate. The property is proximate to a major regional arterial, being only 0.30 miles west from Lancaster Drive. The parcel is relatively flat and lacks any identified geologic hazard areas mapped in the vicinity. Surrounding properties are developed with single-family and multi-family housing. The site is not located in a Primary or Secondary Overlay for Salem’s Municipal Airport. Approval of the application would assist in the housing deficit described in the Housing Needs Analysis (HNA) of 2,897 dwelling units in the Salem area. As discussed, Residential Development Policy 7 can be satisfied, Residential development Policy 10 can be met.

The application is consistent with the SACP. Therefore, MCC 16.39.050(A) is satisfied.

**MCC 16.39.050(B)**

MCC 16.39.050(B) requires that “adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.” The property is in an area with existing

infrastructure, including water and sewer services. The property is only 0.30 miles west from Lancaster Drive, a well-developed five lane principal arterial roadway. The subject property has existing infrastructure, include water, sewer, electric, and telecommunication services. The property is served by Cherriots transit service, with the nearest stop approximately 400 walkable feet away. MCC 16.39.050(B) is satisfied.

### **MCC 16.39.050(C)**

MCC 16.39.050(C) requires that the proposed zone change is “consistent with the purpose statement for the proposed zone.” MCC 16.04.000 provides the purpose statement for the RM zone:

“The RM (multiple-family residential) zone is primarily intended to provide for multiple-family dwellings on a lot, or attached dwellings on separate lots, at residential densities greater than permitted in the RI zone. Other uses compatible with residential development are also appropriate. RM zones are located in areas designated as multiple-family residential or an equivalent designation in the applicable urban area comprehensive plan and are provided with urban services. They are suited to locations near commercial office and retail zones and along collector and arterial streets.”

The proposed RM zone is appropriate. The subject property is located approximately 0.30 miles west of Lancaster Drive, a major arterial street and site-generated traffic can be easily accommodated. The parcel is adjacent to other RM parcels to the east and west that are already developed. To the north, there are single-family zones. The density allowed in the RM zone is compatible with the level of available services, including transportation. MCC 16.39.050(C) is met.

**MCC 16.39.050(D)**

MCC 16.039.050(D) requires that “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 intense uses.” The RM zone is intended to provide areas higher density residential use, similarly to UD zones. Surrounding properties on both sides of Fisher Road NE are zoned for Multi-Family residential uses. It is unlikely that additional uses permitted in the RM zone would adversely impact adjacent properties. MCC 16.39.050(D) is satisfied.

Because the applicant seeks a zone change, it must comply with the Transportation Planning Rule (TPR). OAR 660-012-0060(1) provides:

- “(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
  - “(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
  - “(b) Change standards implementing a functional classification system; or
  - “(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may

be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

“(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

“(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

“(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

If a proposed zone change would “significantly affect an existing or planned transportation facility” then certain measures must be put in place to approve the zone change. As discussed herein, a zone change will likely not significantly affect an existing or planned transportation facility. The proposed zone change will not significantly affect any existing or planned transportation facilities and the TPR is satisfied.

All of the applicable approval criteria are satisfied.

## VII. DECISION

It is hereby found that Applicant has met the burden of proving that the approval criteria for a zone change from Urban Development (UD) to Multi-Family Residential (RM) have been met. The hearings officer **APPROVES** the application, with the following conditions of approval.

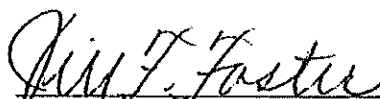
### VIII. CONDITIONS OF APPROVAL

1. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
2. The applicant shall meet the developments requirements of the RM Zone (see MCC 16.04.100 through 16.04.250). All current and future development on the property must satisfy the specific development standards in the RM zone (MCC 16.04.000) and the general development standards found in Chapters 16.26.000 through 16.40.000 of the MCC.
3. If annexation occurs before the property is developed, the development shall comply with SRC 702: Multiple Family Design Review Standards as requested by the City of Salem.

### IX. APPEAL RIGHTS

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court St. NE, Salem, OR 97301) by 5:00 p.m. on the 2 day of Feb. 2022. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 18 day of January, 2022.



Jill F. Foster

Marion County Hearings Officer

## CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Landon Hattan  
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Salem, OR 97304

David Fridenmaker  
Manager  
Planning and Property Services  
Salem-Keizer Public Schools  
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Salem, OR 97301

Roger Kaye  
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### Agencies Notified:

#### Planning Division

(via email: [gfennimore@co.marion.or.us](mailto:gfennimore@co.marion.or.us))

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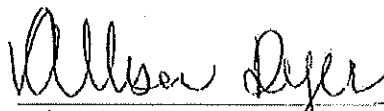
#### City of Salem Planning Division

(via email: [bpik@cityofsalem.net](mailto:bpik@cityofsalem.net))

#### MCFD No. 1

(via email: [paulas@mcf1.com](mailto:paulas@mcf1.com))

By mailing to them copies thereof, I further certify that said copies were placed in sealed envelopes addressed as noted above, that said copies were deposited in the United States Post Office at Salem, Oregon, on the 18<sup>th</sup> day of January, 2021, and that the postage thereon was prepaid.



Administrative Assistant to the  
Marion County Hearings Officer