



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT



April 19, 2006

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Keizer Plan Amendment
DLCD File Number 002-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office. This adoption was adopted by the City on February 21, 2006, and passed the 21-day appeal period from the date of the adoption.

Appeal Procedures*

DLCD DEADLINE TO APPEAL: Acknowledged under ORS 197.625 and ORS 197.830 (9)

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.625 if no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

Under ORS 197.830 (9) a notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Jason Locke, DLCD Regional Representative
Nate Brown, City of Keizer

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FORM 2

DLCD NOTICE OF ADOPTION DEPT OF

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

APR 13 2006

(See reverse side for submittal requirements)

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: City of Keizer Local File No.: 2005-30
(If no number, Use none)

Date of Adoption: February 21, 2006 Date Mailed: April 12, 2006
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: November 7, 2005

Comprehensive Plan Text Amendment Comprehensive Plan Map Amendment
 Land Use Regulation Amendment Zoning Map Amendment
 New Land Use Regulation Other: _____
(Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write ASee Attached.≡
Zone Change from CO (Commercial Office) to CM (Commercial Mixed Use)

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write ASame.≡ If you did not give notice for the proposed amendment, write AN/A.≡
Same

Plan Map Changed from : _____ to _____

Zone Map Changed from: CO (Commerical Office) to: CM (Commercial Mixed Use)

Location: 4699 River Rd N, Keizer, OR Acres Involved: .37 acres

Specify Density: Previous: min 8 du/a max 24 du/a New: min 8 du/a and max 24 du/a

Applicable Statewide Planning Goals: 1, 6, 9

Was an Exception Adopted? Yes: No: _____

DLCD File No.: 002-65
(14803)

Did the Department of Land Conservation and Development **receive** a notice of Proposed Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing**. Yes: X No: _____
If no, do the Statewide Planning Goals apply. Yes: _____ No: _____
If no, did The Emergency Circumstances Require immediate adoption. Yes: _____ No: _____
Affected State or Federal Agencies, Local Governments or Special Districts: _____

Local Contact: Nate Brown Area Code + Phone Number: (503) 856-3437
Address: PO Box 21000 City: Keizer
Zip Code + 4: 97307-1000 Email Address: brownn@keizer.org

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 ANotice of Adoption is sent to DLCD.
6. In addition to sending the ANotice 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 copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Tamara.Good@state.or.us - **ATTENTION: PLAN AMENDMENT SPECIALIST**.

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BILL NO. 516

A BILL

ORDINANCE NO.

2006- 537

FOR

AN ORDINANCE

IN THE MATTER OF THE APPLICATION OF SENIOR MANAGEMENT, LLC FOR A ZONE CHANGE FROM CO (COMMERCIAL OFFICE) TO CM (COMMERCIAL MIXED), A VARIANCE TO REDUCE THE MINIMUM STREET FRONT SETBACK, AND A VARIANCE TO INCREASE THE MAXIMUM NUMBER OF REQUIRED PARKING SPACES ON PROPERTY LOCATED AT 4669 RIVER ROAD NORTH, KEIZER, OREGON (CASE NO. 2005-30)

The City of Keizer ordains as follows:

Section 1. THE APPLICATION. This matter comes before the Keizer City Council on the application of Senior Management, LLC for a zone change from CO (Commercial Office) to CM (Commercial Mixed), a variance to reduce the minimum street front setback to ten feet of landscaped area, and a variance to increase the maximum number of required parking spaces to 18 on property located at 4669 River Road North, Keizer, Oregon (within Township 7 South, Range 3 West, Section 02BC, Tax Lots #08300, 08400, 08500 and 08600).

Lien & Johnson
Attorneys at Law
4855 River Road North
Keizer, Oregon 97303
503-390-1635

INTEGRA

1 Section 2. JURISDICTION. The land in question in this Ordinance is within the
2 city limits of the City of Keizer. The City Council is the governing body for the City of
3 Keizer. As the governing body, the City Council has the authority to make final land
4 use decisions concerning land within the city limits of the City of Keizer.

5 Section 3. PUBIC HEARING. A public hearing was held on this matter before
6 the Hearings Officer on December 22, 2005. In addition, a public hearing was held
7 before the Keizer City Council on February 6, 2006. The following persons either
8 appeared at the City Council hearing or provided written testimony on the application:

- 9 1. Nate Brown, Community Development Director
- 10 2. Kenneth Sherman, Jr., Attorney for Applicant
- 11 3. Paul Wittenberg, Member of Applicant

12 Section 4. EVIDENCE. Evidence before the City Council in this matter is
13 summarized in Exhibit "A" attached.

14 Section 5. OBJECTIONS. No objections have been raised as to notice,
15 jurisdiction, alleged conflicts of interest, evidence presented or testimony taken at the
16 hearing.

17 Section 6. CRITERIA AND STANDARDS. The criteria and standards relevant
18 to the decision in this matter are set forth in Exhibit "B" attached.

19

1 Section 7. FACTS. The facts before the City Council in this matter are set forth
2 in Exhibit "C" attached.

3 Section 8. JUSTIFICATION. Justification for the City Council's decision in this
4 matter is explained in Exhibit "D" attached.

5 Section 9. ACTION. The decision of the City Council is set forth in Exhibit "E"
6 attached.

7 Section 10. FINAL DETERMINATION. This Ordinance is the final
8 determination in this matter.

9 Section 11. EFFECTIVE DATE. This Ordinance shall become effective thirty
10 (30) days after its passage.

11 Section 12. APPEAL. A party aggrieved by the final determination in a
12 proceeding for a discretionary permit or a zone change may have it reviewed under ORS
13 197.830 to ORS 197.834.

14 PASSED this 21st day of February, 2006.

15

16 SIGNED this 21st day of February, 2006.

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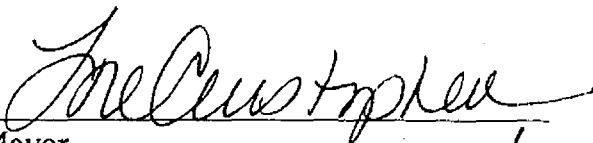
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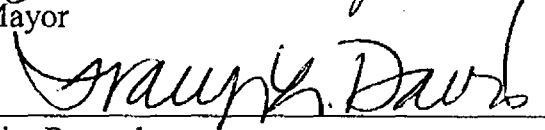
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Mayor



City Recorder

EXHIBIT "A"

Evidence

Official notice has been taken of the Planning Department files and reports in this matter, including the application and exhibits contained therein.

City Attorney Shannon Johnson suggested that because the criteria in this case were so lengthy, the reading of the exact list of criteria be waived and asked if anyone objected. There were no objections. He added that testimony, arguments and evidence must be directed toward the criteria or other criteria in the land use plan or land use regulations believed to apply to this decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Council and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue. In addition any failure by the applicant or others to raise constitutional or other issues related to the proposed conditions of approval with sufficient specificity to allow the Council or its designee to respond to that issue precludes an action for damages in Circuit Court. He noted that if anyone had any objection as to conflict of interest, bias, jurisdiction, notice and opportunity to be heard, it should be brought up at the time of testimony and any Council members wanting to disclose any bias or ex parte contacts on this case should do so at this time.

Nate Brown, Community Development Director, stated that the application specifically was to rezone the property from Commercial Office to Commercial Mixed Use. The matter has come before the Hearings Examiner, who recommends that the rezone not be approved until the applicant provides documentation on the vacant land supply. Staff, however, has recommended approval as there are problematic issues with land supply. A variance request has also been received to allow increased parking at the site, but staff does not recommend approval of the variance.

Staff recommends that the Council direct staff to bring back an Ordinance adopting findings that the Keizer Development Code provisions for vacant land does not address the specific situation of this parcel, and the conditions proposed in the Hearings Examiner's Recommendation report, titled "Recommended Conditions of Approval" be adopted. Also, that the variance for the landscaped area be granted but that the variance for parking spaces be denied at this time.

Mr. Brown then fielded questions regarding setbacks, parking, zoning of nearby parcels, the prematurity of a parking variance and the difference between Keizer's parking ordinance and Salem's parking ordinance, definition of vacant and

beautification grants. Councilor Walsh wondered if approval could be given of the zone change but the remaining issues could be addressed at a later date.

City Attorney Johnson explained that because this is a quasi-judicial hearing, there is an obligation to make a decision by the next meeting. He suggested letting the applicant testify and address the issues and to explore possible solutions. He also urged that the public hearing not be closed until everything is nailed down.

Mayor Christopher opened the public hearing.

Ken Sherman, Jr., Salem, Attorney for the applicant Paul Wittenberg, explained that his client has applied for a rezoning and variance for property located at River Road and Evans. He noted that his client has been unsuccessful in marketing the property under the existing commercial office zone but has had numerous inquiries from people who wanted the property for uses other than those permitted within the CO zone. He added that the proposed rezoning would considerably broaden opportunities for redevelopment of this property. He added that parking was an important issue. He noted that staff and the Hearings Officer had agreed that their application satisfied most of the criteria for the zone change and the variances and focused on separation, landscaping, site obscuring wall and lot line adjustments.

He continued that the vacant land criteria in the code do not apply because they are not adding or taking away, but the Hearings Officer had not agreed with this primarily because the definition of vacant land is unclear. He added that he felt the vacant land issue was irrelevant to this case and concluded urging that the definition of vacant land be determined to mean parcels of land that have not been developed. Therefore, what is done with this land (which is developed) has no relevance to either of these criteria.

Two variances: parking and setback, have been applied for and are interrelated. He reviewed the Keizer Code noting that it would require a minimum of 5 to 8 parking spaces. He noted that Salem's minimum is the same as Keizer's but their maximum is greater. He explained that it is important for any restaurant to have adequate parking, adding that the code grossly understates the allowed parking for restaurants compared to what existing ones have in the community.

Paul Wittenberg, Keizer, asked if anyone would like to rent that building for a restaurant with 8 parking stalls and concluded that the person would be out of business before they even began because there is not parking on River Road or side streets.

Discussion took place regarding changing the zoning but denying the other issues until a specific plan is developed. Nate Brown stated that it would be possible to tie the variance (not the rezone) to the specific use being requested. Council could approve the variance for eating and drinking establishments only. This would not

EXHIBIT "A"

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restrict the uses allowed, but would tie the variance to the proposed use. Chris Eppley voiced hesitancy to tie the variance to a specific use because business will maximize opportunity given the site it has. He urged Council to evaluate the variance based on site constraints rather than end use because if end use changes it is likely that they will maximize the site in other ways.

Mr. Sherman distributed and reviewed the site plan and fielded questions regarding setbacks, landscaping, driveway closures, removal of the canopy, parking requirements and aisle widths. Additional discussion took place at length with Attorney Johnson and Nate Brown responding to questions regarding parking, drive-thru aisles and landscaping grants. Upon detailed review of the site plan, Mr. Brown suggested that Council consider omitting the condition in the hearings examiner's report that says that the development of the site shall be in substantial conformance with this plan.

Mayor Christopher closed the public hearing.

EXHIBIT "B"

Criteria and Standards

The criteria and standards relevant to this application are found in the Keizer Development Code (KDC). The specific criteria are set forth below:

1. KDC 1.103.02 (Comprehensive Plan Designation and Zoning Districts).
2. KDC 2.108.02 (Commercial Office (CO) – Permitted Uses).
3. KDC 2.108.03 (Commercial Office (CO) – Special Permitted Uses).
4. KDC 2.110.02 (Commercial Mixed Use (CM) – Permitted Uses).
5. KDC 2.110.03 (Commercial Mixed Use (CM) – Special Permitted Uses).
6. KDC 2.110.05 (Commercial Mixed Use (CM) – Use Restrictions).
7. KDC 2.110.06.B (Dimensional Standards - Minimum Yard Setback Requirements).
8. KDC 2.110.07.G (Development Standards – Landscaping – General).
9. KDC 2.124 (Limited Use Overlay Zone (LUO)).
10. KDC 2.303.06.A (Off-Street Automobile Parking Requirements – Parking Requirements).
11. KDC 2.303.06.C (Off-Street Automobile Parking Requirements – Parking Increase).
12. KDC 2.309 (Site and Landscaping Design).
13. KDC 2.310.03.B (Development Standards for Land Divisions – Standards for Lots or Parcels, Lot Line Adjustment Required – Lot Line Adjustment).
14. KDC 3.105.05 (Criteria – Major Variance).

EXHIBIT "B"

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15. KDC 3.110 (Zone Change).

No other specific criteria were raised by any witnesses.

EXHIBIT "C"

Facts

FINDINGS: GENERAL

1. The applicant is Senior Management, LLC.
2. The subject property is located on the west side of River Road N at the southwest corner of the intersection of Evans Av NE and River Road N. The property is addressed as 4669 River Rd N. The County Tax Assessor's map identifies the properties as being located within Township 7 South; Range 3 West; Section 02BC; Tax Lots #08300, 08400, 08500 and 08600.
3. The subject properties combined contain approximately 15,915 square feet (0.37 acres).
4. The properties contain an existing building that housed a BP service station. The properties have frontage along two public streets (River Road N and Evans Av N). The properties are served by both public water and sewer.
5. The property is designated Commercial on the Comprehensive Plan and zoned CO (Commercial Office).
6. Properties to the north and east (across Evans and River Rd N) are designated Commercial on the Comprehensive Plan Land Use map and are zoned CM (Commercial Mixed Use). Property to the south and west are designated Commercial on the Comprehensive Plan Land Use map and zoned CO (Commercial Office).
7. The applicant is requesting approval of a zone change to change the zoning from CO (Commercial Office) to CM (Commercial Mixed). The purpose of the zone change is to allow for re-development of the property with a coffee shop with a drive through. Included with this application are two variance requests: 1) to reduce the minimum street front setback, which is required to be landscaped, to 10 feet of landscaped area per Section 2.110.06.B and 2.110.07.G of the Keizer Development Code; and 2) to increase the maximum number of required parking spaces to 18, where a maximum of 8 is allowed per Section 2.303.06.A & C of the Keizer Development Code.

8. The City of Salem Public Works Department reviewed the proposal and responded that they reviewed the proposal and have no comments.

9. The Keizer Public Works and City Engineer provided comments regarding public facility improvements and are recommended as conditions of approval.

FINDINGS: ZONE CHANGE

10. Section 1.103.02 of the Keizer Development Code identifies four zones appropriate for the Commercial Comprehensive Plan designation: CO (Commercial Office), CR (Commercial Retail), CG (Commercial General), and CM (Commercial Mixed Use). The primary difference between these zones is the level of commercial activity allowed in each zone. Of the four zones, the applicant chose the CM (Commercial Mixed Use) zone for this request.

11. The zone change will permit the establishment of a wider range of commercial and retail uses on the subject property than is currently allowed with the Commercial Office zone. The previous use of the property as a BP mobile station was a pre-existing non-conforming use.

12. The zone change review criteria are found in Section 3.110 of the Keizer Development Code. The specific criteria and the related findings are noted below:

(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. KDC 3.110.04(A).

FINDINGS: Section 1.103.02 identifies Comprehensive Plan designations and their corresponding appropriate zones. Pursuant to this Section, the CM (Commercial Mixed Use) zone is appropriate for the Commercial Comprehensive Plan Land Use designation.

The Goals and Policies found within the Comprehensive Plan applicable to the land use classification are as follows:

CHAPTER III

1. Significant Natural and Cultural Features:

This section refers to Agricultural Land; Natural, Historical and Cultural Resources; Environmental Quality Policies; Energy and Resource conservation; Willamette Greenway; and, the 100-year flood plain. There are no known agricultural, natural, historical, or cultural resources, or Resource Conservation Area designations on the subject property. Any development on the property will be required to conform to all City, State and Federal standards regarding pollutants including odor and noise. The subject properties are not located within the 100-year flood plain. The modification of the use of the property from gasoline service station is a more environmentally friendly use of the property. This proposal satisfies this criterion.

2. Urban Growth and Growth Management:

Preserve and enhance the livability of the area.

FINDINGS: The request for a zone change to CM would allow more intensive use of the property than the current CO zoning would allow. The properties adjacent to the property and across the streets are predominantly commercial in use. The property to the west is a parking lot and beyond that are residential homes. The CM (Commercial Mixed Use) zone allows for uses that would have greater impact upon surrounding properties, ie, amusement and recreation, hotels, motels, food stores. The CM zone also allows Special Permitted uses, which must meet specific development requirements. Some examples of Special Permitted Uses within a CM zone are; manufacturing and assembly facilities; adult entertainment business; and, automobile services. It is recommended that the Special Permitted Uses be limited to those found within the permitted use Section 2.110.02 and 2.110.03 A through D and those use restrictions found in 2.110.05 except No. 2.

The majority of the types of businesses allowed within the CM zone require the consistent steady flow of traffic to be successful as opposed to commercial office uses. However, the majority of the traffic will be circulating from River Rd to the property and returning back to River Rd. The proposed site plan indicates the removal of one driveway onto River Rd and the creation of a smaller driveway along Evans. Each of these actions will help to create a safer flow of traffic.

The proposed use of the property includes a drive thru window. While there is a parcel located between the residential properties to the west, the

EXHIBIT "C"

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lot does not contain any buildings that could help to alleviate any sound. The construction of a sight obscuring fence of at least five (5) feet would help increase the livability of the area.

With the above recommended conditions placed on the approval of this application, this proposal satisfies this criterion.

3. Land-Use and Economic Development:

(2)(a). RESIDENTIAL DEVELOPMENT *Stabilize and protect the essential characteristics of residential environments, including natural features. Ensure compatibility among all types of residential uses, both new and existing, and between residential and non-residential uses. Protect existing and proposed residential areas from conflicting non-residential uses while providing for compatible mixed-use development (residential and non-residential). Discourage through traffic in residential neighborhoods.*

FINDINGS: The subject property was previously used as a gasoline service station. The applicant's request includes the re-development of the property with fifteen (15) percent of the property developed with landscaping. It includes the addition of curbing, sidewalks and driveway reductions. This re-development will be an improvement to the current property and may be more compatible than the previous use. This proposal satisfies this criterion.

(4) ECONOMIC, COMMERCIAL AND INDUSTRIAL DEVELOPMENT.

The goals and policies for *Economic, Commercial and Industrial Development* identified in the Keizer Comprehensive Plan support the intent of the proposal. The proposal also meets the goal to encourage public and private efforts to increase economic development in Keizer. In addition the Comprehensive Plan requires that commercial and industrial developments provide adequate landscaping and appropriate setbacks from adjacent residential uses. The Keizer Development Code outlines buffering guidelines to help reduce adverse visual impacts, dust, noise or pollution and provide compatibility between dissimilar adjoining uses. It provides for the ability to require alternative buffering requirements. If approved, it is recommended that additional requirements be placed on the proposed development in the form of a five

EXHIBIT "C"

Page 4 of 13

(5) foot sight obscuring wall along the west side of the property to create a noise and visual buffer. Conditioned to provide buffering as described above, the proposal satisfies this criterion.

4. PLAN DIAGRAM AND SPECIAL LAND USE POLICIES

(3)(d) Ensure that future improvements and land use changes in the area provide adequate sound, light and visual buffers to adjacent residential areas. When design review is feasible, buffering and other visual methods will be required to reduce the impact on adjacent residential area.

This issue is discussed in detail under 3(4) above.

(B) The uses permitted in the proposed zone can be accommodated on the proposed site without exceeding its physical capacity. KDC 3.110.04(B).

FINDINGS: The ground is relatively flat, has no unusual features, and presents no apparent physical limitations or conditions that require special measures or considerations, or that would prevent or impair the development of the proposed use. Based on the parcel's topography, there does not appear to be any physical limitations that would prohibit a commercial retail development on the property. The applicant states "[C]hanges include adding more parking spaces, adjusting the lot line between the subject property and the Wells Fargo bank property (also owned by applicant) to incorporate the north 16 feet of the bank property into the subject property to create more parking spaces on the subject property." A lot line adjustment on commercial property does not require a land use action from the City of Keizer per Section 2.310.03.B.

Upon reviewing the site plan it appears there is adequate area for parking, landscaping and vehicle maneuverability within the requirements of the Development Code. Based upon the size of the original lots, location of the existing building and the applicant's site plan, the lot is of sufficient size to accommodate uses allowed within the CM. While the applicant may wish to increase the area of the existing lot and provide additional parking for the business proposed, the subject property can accommodate the permitted uses within the CM zone without exceeding its physical capacity.

Note The request for a Lot Line Adjustment of the two properties does not require the City's approval, however the applicant is responsible to assure the*

parking requirements for the bank on the adjacent property is not reduced below the requirements found in the Keizer Development Code.

(C) Allowed uses in the proposed zone can be established in compliance with the development requirements in this Ordinance. KDC 3.110.04(C).

With the existing building, the property is of sufficient size to allow for adequate parking (using the most intensive parking requirements of (1 per 200 square feet for a community center), required landscaping area (using a 15% requirement), and adequate maneuverability of vehicles through the lot. In reviewing the applicant's site plan, the subject property is capable of accommodating uses allowed within the CM zone.

The proposed coffee shop with a drive-thru is listed as a permitted use in the CM (Commercial Mixed Use) zone *Keizer Development Code, Section 2.110.02.1.8 Eating and Drinking places (58) except as provided in Section 2.110.05*. A coffee shop is listed in the Standard Industrial Classification Manual under number 5812 (1987 edition). The exception of Section 2.110.05 references an area of Keizer closely related to the intersection of River Rd and Chemawa Rd. The location of the subject property is not within the area specified in Section 2.110.05. Therefore a coffee shop with a drive-thru is permitted.

The Keizer Development Code outlines specific requirements for property development. These standards govern parking, buffering, vision clearance areas, special setbacks, and other applicable development requirements. The applicant submitted a statement and a preliminary site plan proposing that the property will be re-developed with a coffee shop with a drive-thru window. The proposed plan is based upon receiving approval for two variances which are included with this request.

The applicant is requesting approval of two (2) variances in order to accommodate the development with the existing size restrictions of the property; 1) to reduce the required street front setback area required to be landscaped and 2) to increase the maximum parking.

Compliance with the Keizer Development Code is a criterion of approval of the zone change application. Variances from quantifiable standards are permitted providing the request can meet the criteria outlined in the Code. The applicant's preliminary site plan indicates the proposed plan can be developed in compliance with the Keizer Development Code with approval of variances requested with this zone change request.

This proposal satisfies this criterion with approval of the variances.

(D) Adequate public facilities, services, and transportation networks are in place or are planned to be provided concurrently with the development of the property. KDC 3.110.04(D).

FINDINGS: Public facilities serving the subject property currently exist. In addition, River Road is designated a Major Arterial by the adopted 2000 *Keizer Transportation Systems Plan*. Access to River Road is limited due to this designation to limit ingress/egress to promote safe traffic circulation. The proposed site plan includes the removal of one driveway onto River Rd. In addition, the access onto the property from Evans is being reduced to approximately thirty (30) feet in width. Both of these changes will promote safety and reduce confusion for both drivers and pedestrians. With the conditions placed upon the applicant for the development of public improvements, and the condition that the property must be developed in substantial conformance to the proposed site plan submitted with this application, this proposal meets this criterion

(E) For residential zone changes, the criteria listed in the purpose statement for the proposed zone shall be met. KDC 3.110.04(E).

FINDINGS: This criterion is not applicable to the requested zone change.

(F) The following additional criteria shall be addressed: KDC 3.110.04(F).

(1) The supply of vacant land in the proposed zone is inadequate to accommodate the projected rate of development of uses allowed in the zone during the next five years, or the location of the appropriately zoned land is not locationally or physically suited to the particular uses proposed for the subject property, or lack site specific amenities required by the proposed site.

FINDINGS: The applicant did not supply a detailed inventory of vacant CM zoned land, however, there was evidence presented that the supply of land currently zoned CM (Commercial Mixed) is inadequate to accommodate the current rate of development of retail and other related uses allowed within the CM Zone.

The applicant states that the criterion is inapplicable since the site is not vacant and would not increase or decrease the supply of vacant land. The City Council does not interpret this criterion in that manner. The reference in the criterion is to the supply of vacant land generally, not to whether the subject property is vacant.

However, the City Council finds that the supply of vacant land in the proposed zone is inadequate, and this criterion is satisfied.

(2) The supply of vacant land in the existing zone is adequate, assuming the zone change is granted, to accommodate the projected rate of development of uses allowed in the zone during the next 5 years.

FINDINGS: A previous review of CO (Commercial Office) zone properties has shown there is an insufficient supply of vacant CO zoned properties. (*Zone Change Case No.2003-03 Revised Staff Recommendation, Page 7 Section (e)(1)*).

The applicant states “[T]his criterion is also not applicable to the Applicant’s proposal, as the proposed site is not vacant. In 2003, the *Keizer Station Plan* included an inventory of existing vacant CO sites within the City of Keizer. SEE ZONE CHANGE/MAJOR AND MINOR VARIANCE CASE NO. 2003-03; STAFF RECOMMENDATION TO HEARINGS OFFICER at” (page) “8. The proposed site is not included in that CO inventory. As the City of Keizer does not include the proposed development site in its inventory of developable CO lands, this criterion does not apply to Applicant’s proposed development.”

As stated in the previous Finding, the City Council does not agree with the applicant's interpretation that the criterion is not applicable because the proposed site is not vacant. The criterion addresses the supply of vacant land in the existing zone generally, not whether the proposed site is vacant.

However, applicant's point that the proposed development site is not included in the inventory of developable CO land is well taken. This zone change will not reduce the vacant land in the CO zone since it is not included as vacant CO land.

In the alternative, this request would not reduce the five year supply of vacant land for the CO (Commercial Office) zone to an inadequate amount

EXHIBIT "C"

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of land available to accommodate the projected rate of development during the next 5 years since the supply is currently inadequate. This proposal satisfies this criterion.

(3) The proposed zone, if it allows uses more intensive than other zones appropriate for the land use designation, will not allow uses that would destabilize the land use pattern of the area or significantly adversely affect adjacent properties.

FINDINGS: The proposed zone change to Commercial Mixed (CM) allows uses more intensive than the current zoning on the subject property. However, the property was developed as a service station and changing the zoning designation to CM would not intensify the previous use of the property. The previous use of the subject property was a special permitted use within the CM zone. The use of the property as CM can be mitigated slightly by requiring a sight obscuring fence between the residential and CO properties to the west and northwest. In addition, the restriction of exterior speakers, on the north, south or west side of the building and any future development to be limited as defined in 2.110.05.C except No. 2 which would exclude drive-through windows. The proposed zone change would comply with this criterion with the proposed overlay zone limiting the uses of the property as outlined above.

FINDINGS: VARIANCE TO MINIMUM STREET FRONT SETBACK

13. Section 2.110.06 of the Keizer Development Code requires a minimum street-side setback of twenty (20) feet. Section 2.110.07.G of the Keizer Development Code requires that all required setback areas (required yard area) be landscaped as provided in Section 2.309. This requires the entire twenty (20) feet to be landscaped. The applicant's proposal is to reduce the setback area to be landscaped to 10 feet. Therefore, variance approval is required, as this proposal does not comply with requirements of the Keizer Development Code.

14. The decision criteria for a Major Variance are contained in Section 3.105.05 of the Keizer Development Code. The criteria and related findings are listed below:

- a. **The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone.**

FINDINGS: The applicant's site plan proposes the redevelopment of an existing building located over twenty feet away from the street front property line adjacent to River Rd. The applicant is requesting this reduction in required landscaped area in order to provide optimum vehicular maneuverability and safety on the site. The applicant's design for the development shows angled parking which reduces the area, and will limit the circulation of traffic to one way parallel to River Rd, north of the driveway. The applicant has also proposed to relocate the sidewalk away from River Rd within the ten (10) foot setback area, which will provide a buffer between traffic on River Rd and pedestrians.

The applicant is proposing fifteen (15) percent of the property to be landscaped elsewhere within the site. In order to maintain the required setbacks, buffering area, and provide parking and maneuvering area for traffic, the request is the minimum necessary to provide efficient use of the site. With a condition requiring the 15% landscaping, the proposal satisfies this criterion.

b. There has not been a previous land use action approved on the basis that variances would not be allowed;

FINDINGS: There are no prior land use actions that expressly prohibit the granting of the variance. This proposal satisfies this criterion.

c. The variance will not be unreasonably detrimental to property or improvements in the neighborhood of the subject property;

FINDINGS: The request is for a reduction in the required landscaping area of the required yard adjacent to River Rd. The applicant's site plan indicates that approximately fifteen (15) percent of property will be landscaped which exceeds the minimum by five (5) percent. The applicant has also agreed to relocate the sidewalk along River Rd to provide a landscape buffer between the street and sidewalk by approximately five (5) feet. This proposal will result in a more even distribution of visible landscaping to surrounding properties and will provide a more pedestrian friendly walking area along River Rd. The granting of this proposal, with the conditions outlined above, will not be detrimental to properties or improvements in the surrounding neighborhood. This proposal meets with this criterion.

d. The variance will not significantly affect the health or safety of persons working or residing in the vicinity.

FINDINGS: The granting of this variance will not significantly affect the health or safety of persons working or residing in the vicinity. The request will provide a more efficient flow of vehicular traffic within the site, thereby helping to provide safer vehicular traffic circulation. In addition, as addressed previously, the request will provide a safer pedestrian system by relocating the existing sidewalk and installing a landscape buffer area between River Rd and the public sidewalk. The granting of this variance satisfies this criterion.

e. The variance will be consistent with the intent and purpose of the provision being varied.

FINDINGS: The purpose and intent of the minimum street front setbacks is to provide for open area; separation from the public right of way and activities on the subject property; and, an appropriate separation to accommodate the visual impact of structures. The existing building is located approximately 50 feet back from River Rd. The proposal will provide additional landscaped area that helps to mitigate the reduction along River Rd. Additional landscaping will be provided between the street and sidewalk with a pedestrian friendly sidewalk and two large areas between the street and the building, and on the corner of River Rd and Evans Ave. This helps to meet the intent and purpose of the street front setback standard by providing additional open area and separation from the public right of way. This proposal is consistent with the intent and purpose of the section being varied and this proposal satisfies this criterion.

FINDINGS – VARIANCE TO INCREASE MAXIMUM NUMBER OF PARKING SPACES

15. Section 2.303.06 of the Keizer Development Code allows a maximum of 8 parking spaces for a 1,410 sq ft building used for eating and drinking establishments. The applicant is proposing to allow a total of 18 parking spaces to accommodate the proposed use on the property. Therefore, variance approval is required, as this proposal does not comply with requirements of the Keizer Development Code.

16. The decision criteria for a Major Variance are contained in Section 3.105.05 of the Keizer Development Code. The criteria and related findings are listed below:

EXHIBIT "C"

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- a. The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone.

FINDINGS: The applicant provided additional information at the Council hearing to justify why this is the minimum necessary. At the hearing, the applicant submitted written and oral testimony showing the number of parking spaces used for several eating and drinking establishments in Keizer. The Council finds that this information, together with other testimony addressing necessary parking for such establishments is sufficient to show that the requested variance is the minimum necessary to permit development for such uses. This proposal meets this criterion.

- b. The applicant in good faith is unable to comply with the standard without undue burden. The applicant must demonstrate that the burden is substantially greater than the potential adverse impacts caused by the proposed variance.

FINDINGS: The applicant states that they are unable to operate successfully or safely with eight (8) parking spaces. The reduction in parking spaces would result in a loss of business due to inadequate parking and could lead to parking overflow onto other lots or onto public streets. The applicant explains that most of the traffic will come from River Rd and that if additional parking spaces are not provided traffic will back up onto River Rd in the drivers' efforts to find additional parking. This proposal meets with this criterion.

- c. The variance will not be unreasonably detrimental to property or improvements in the neighborhood of the subject property;

FINDINGS: The applicant's request to increase the number of parking spaces is mitigated by the addition of landscaping area and the addition of the landscaping strip between the street and the sidewalk providing additional green area where asphalt had previously existed. The majority of the property is currently developed structures and asphalt. The increase in green space will be an improvement to the subject property. This proposal meets with this criterion.

d. There has not been a previous land use action approved on the basis that variances would not be allowed;

FINDINGS: There are no prior land use actions that expressly prohibit the granting of the variance. This proposal satisfies this criterion.

e. The variance will not significantly affect the health or safety of persons working or residing in the vicinity.

FINDINGS: The granting of this variance will not significantly affect the health or safety of persons working or residing in the vicinity. The request will provide additional parking area which will contribute to a more efficient flow of vehicular traffic as a safer pedestrian and vehicular traffic system. In addition, as addressed previously the applicant has agreed to provide additional landscaping area which will help mitigate visual impacts of the parking area. The granting of this variance satisfies this criterion.

f. The variance will be consistent with the intent and purpose of the provision being varied.

FINDINGS: The purpose and intent of the parking provisions is to provide for adequate areas of parking, maneuvering, loading and unloading of vehicles for all land uses in the City of Keizer. By increasing the allowed parking area, the intent will be met. However, the parking provisions also provide for a maximum number of parking spaces in order to avoid vast expanses of asphalt and/or concrete and to help ensure adequate landscaped area is provided. The applicant proposes to provide landscaping in excess of the required minimums outlined in the code. Therefore, this request meets with this criterion.

EXHIBIT "D"

Justification

The applicant has the burden of proving that the application meets relevant standards and criteria to be applied in the particular case.

In this case, the applicant is requesting approval of a zone change to change the zoning from CO (Commercial Office) to CM (Commercial Mixed). The purpose of the zone change is to allow for-redevelopment of the property with a coffee shop with a drive through. Also included with the application are two variance requests to reduce the minimum street front setback to 10 feet of landscaped area and to increase the maximum number of required parking spaces to 18.

Of particular concern in this case are the Keizer Development Code provisions for vacant land. Vacant land is not defined in the Keizer Development Code making it unclear whether vacant land is undeveloped land or land that currently contains unoccupied buildings. The applicant has demonstrated that the Keizer Development Code provisions for vacant land do not address the specific situation of this property.

Another concern in this case is the potential adverse impacts that the maximum number of parking spaces may cause to River Road. To mitigate the potential impacts to River Road, additional parking spaces will be approved with conditions as set forth on Exhibit "E".

In order to prevent other more intense uses normally allowed in the CM (Commercial Mixed) zone, a Limited Use Overlay will be imposed on the subject property. Such Limited Use Overlay will prohibit uses that would be inappropriate for the subject property.

In mitigate the impacts of the proposed uses, buffering and restrictions on the location of loudspeakers will be imposed as a condition of approval.

The applicant has demonstrated that when the conditions set forth in Exhibit "E" are imposed and complied with, the proposal meets the applicable criteria set forth in the Keizer Development Code. As conditioned, the application should be granted.

EXHIBIT "E"

Action

The City of Keizer hereby GRANTS the requested zone change from CO (Commercial Office) to CM (Commercial Mixed) and also hereby GRANTS the requested variance to reduce the minimum street front setback to 10 feet of landscaped area, and also hereby GRANTS the requested variance to increase the maximum number of required parking spaces to 18, subject to the following conditions:

General:

1. The variance to allow 18 parking spaces is limited to "Eating and Drinking Establishment" uses only.
2. One exterior speaker shall be permitted as shown on the proposed site plan. No other exterior speakers are allowed on the subject property. The exterior speaker shall be used at the minimum volume necessary to achieve the purpose of communication between the interior of the building and a single automobile ordering food or drink. The speaker shall be directed downward to the maximum extent practicable to prevent sound from transmitting beyond the subject parcel. Use of the speaker shall comply with any applicable local laws governing time and volume of noise.
3. The sidewalk shall be relocated away from River Rd approximately five (5) feet from the street curb and shall include a landscaped buffer area between the sidewalk and street curb.
4. The property shall be developed with a minimum landscaped area of fifteen (15) percent of the subject property.
5. Improvement work shall not commence until plans have been checked for adequacy and approved by the Department of Public Works. Plans shall be prepared in accordance with requirements of the City.
6. Improvement work shall not commence until the Public Works Department has been notified in advance; and, if work has been discontinued for any reason, it shall not be resumed until the Public Works Department has been notified.

7. Public improvements shall be constructed under the inspection and to the satisfaction of the City Engineer and the Director of Public Works. The City may require changes in typical sections and details in the public interest, if unusual conditions arise during construction to warrant the change.
8. Connection to existing sewer and water lines that serve the general area is required and is the responsibility of the developer of the property.

Prior to Plan Submittal:

9. A grading and drainage plan shall be developed for the subject property. Details shall include adequate conveyance of storm water from adjacent property across the subject property. This plan shall be submitted for review and approval by the Department Of Public Works prior to the issuance of any permits for street or storm drainage for the subject property. Grading and drainage plans shall be in conformance with the City of Keizer Public Works Standards and Keizer Development Code, particularly as follows: Keizer Development Code Section 2.306 Storm Drainage.

Local sewer permits are required prior to construction and are issued through the City of Salem. The City of Salem requires sanitary sewer laterals be constructed that serve each lot conforming with the City of Salem Sewer Design Standards. Sewer laterals shall be located within the access and utility easement or appropriate easements.

Prior to submitting plans to the City of Salem for approval, plans shall be submitted to the Public Works Department for review and determination of compliance with the City of Keizer's Master Sewer Plan for the area.

Prior to Issuance of Construction Permits by the Department Of Public Works or Issuance of any Building Permits:

10. Plans for new curb and driveway drops for Evans Avenue and River Road shall be submitted to the Department of Public Works for review and approval. Any storm drainage deficiencies in the area shall be corrected during the new curb construction. A curb profile along the entire length of both Evans Avenue and River Road fronting the subject property shall be submitted for review by the Public Works Department. The access to Evans Avenue shall be placed as far west as possible to eliminate any turning maneuver conflicts from vehicles entering the subject property from River Road. The existing driveway near the south property line of the subject

EXHIBIT "E"

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property along River Road is indicated to remain. Plans for removing and replacing the other driveway on River Road shall be submitted to the Department of Public Works for approval. Only one driveway access shall be allowed on Evans Avenue and only one access shall be allowed on River Road.

During Public Improvements:

11. Construction permits will be required for the new curb and sidewalk construction on Evans Avenue and River Road. All driveway drops and handicap ramps shall be constructed to current standards during the construction process. Any storm drainage deficiencies shall be corrected during the reconstruction process.

Prior to Satisfaction of Improvements:

12. As built drawings of any new public construction shall be submitted to the Department of Public Works for review and acceptance.

Prior to Issuance of Building Permits:

13. The applicant shall construct a sight obscuring fence along the west property line. The fence shall be at least five (5) feet in height. The applicant shall also plant a continuous row of vegetation on either side of the wall. At least 75% of the vegetation shall retain its leaves throughout the year. The vegetation shall be at least as high as the fence at the time of planting, and shall have the potential to grow to at least six (6) feet in height. The applicant shall maintain the vegetation in a healthy state and shall replace dead or diseased vegetation as provided in this condition for as long as the exterior speaker exists on the subject parcel. Alternately, the applicant may place the fence/landscaping on the west boundary of the adjoining property to the west, if the owner and lessee of such property agree in writing.

BEFORE THE HEARINGS OFFICER

FOR THE CITY OF KEIZER

In the Matter of Zone Change/)
Major Variances No. 2005-30)
_____) FINDINGS OF FACT
CONCLUSIONS OF LAW
AND RECOMMENDATIONS

I. STATEMENT OF THE MATTER

This application came for public hearing before the Hearings Officer for the City of Keizer at approximately 7:00 p.m. on December 22, 2005. A hearing was held pursuant to Keizer Development Code § 3.205 and in accordance with Or. Rev. Stat. § 197.763.

The applicant, Senior Management, LLC, proposes to change the zoning of the subject site from CO to CM and for major variances to KDC §§ 2.110.06.B and 2.110.07.G, and KDC § 2.303.06.A. The subject site is identified on the Marion County Tax Assessor map as Township 7 South, Range 3 West, Section 02BC, Lots 08300, 08400, 08500, and 08600.

II. SUMMARY OF EVIDENCE

Staff Recommendation

Cheryl Webster, Associate Planner, was present at the hearing. Ms.

Webster recommended that the proposed zone change and major variance to KDC §§ 2.110.06.B and 2.110.07.G complied with the applicable standards, but
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that the major variance to KDC § 2.303.06.A did not comply with the first decision criteria for a major variance because the applicant did not provide adequate information why the variance requested is the minimum necessary to permit development for the property for uses allowed in the applicable zone.

Ms. Webster also submitted amended findings, which were marked as Exhibit 8.

Applicant's Presentation

Kenneth Sherman Jr., the agent for the applicant and Adam Wittenberg, a member of Senior Management, LLC, spoke for the applicant.

Proposed Zone Change

Mr. Sherman stated that the applicant concurred with the limited use overlay restricting uses on the subject parcel and the recommended condition of approval #13, which would require a five-foot sight-obscuring fence along the west property line. Mr. Sherman noted that this is the side of the property that is closest to residential uses and so a fence made sense.

Mr. Sherman also agreed with the staff's conclusions that the vacant land criteria for the zone change did not apply to this proposal because the subject lots in this proposal are already developed. He also agreed with the staff's conclusion that the proposed zone change would not result in destabilization of the nearby residential neighborhood. He noted that the current location for the Java Crew business is one-half block north and that the neighborhood uses Java Crew as a gathering place, and that the fence and parking area will provide an adequate buffer for the neighborhood.

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Mr. Sherman specifically addressed recommended condition of approval #2 which would prohibit exterior speakers on the north, south or west side of the building. He referred to the site plan and discussed that the speaker shown to the west of the building was integral to the business. The loudspeaker would be 70 feet from the nearest residence and would be shielded by the sight-obscuring fence and car sitting at the speaker.

Mr. Wittenberg noted that the current Java Crew has a loudspeaker but does not currently use it; however, the loudspeaker was important because Java Crew might decide to use it in the future. Ms. Webster stated that because this property is lower than nearby residential uses, sound might bounce over the fence and car sitting at the loudspeaker. She suggested a wall constructed with sound-absorbing materials or taller vegetation. Mr. Wittenberg stated that his goal is also to avoid conflicts and would be willing to construct a wall.

Ms. Webster recommended amending condition of approval #2 to allow the proposed speaker if the applicant constructs a fence of a minimum of 5 feet in height and plants a continuous row of landscaping that will grow to at least 6 to 8 within a two-year period. The landscaping could be on either side of the fence because the applicant owns both parcels.

Landscaping Variance

Mr. Sherman stated that the applicant concurs with the staff's recommendation. The recommended condition of approval moving the sidewalk is a change from the submitted site plan.

Parking Variance

Mr. Sherman noted that the proposed parking area would be expanded to the south rather than the west because the land to the south is at the same elevation as the subject lots. The applicant's parcel to the west is not at the same elevation. In response to the Staff's recommendation that the applicant did not provide adequate evidence that the variance was the minimum necessary, Mr. Sherman discussed the Keizer Development Code's requirements and Java Crew's needs. The code requires a minimum of one space per 250 sq. ft. for eating and drinking places, with a maximum of 150% of the minimum, which is 8 or 9 parking spaces depending on when mathematical rounding is done. Java Crew's current location provides 26 parking spaces, which includes 6 spaces used by administrative employees. These employees would not be moved to the new Java Crew. The current restaurant part of the existing Java Crew is approximately 1400 square feet, the same size as proposed for the new Java Crew. During peak hours, 8-11 a.m. there are typically only 2-3 parking spaces available, which means that the parking lot is functionally full. The empty spaces are necessary for turnover. The new Java Crew would have only 18 spaces for customers as opposed to the 20 spaces available at the current Java Crew, so 18 spaces would mean that during peak hours the parking lots would typically be absolutely full.

Mr. Sherman testified that Keizer's code generally allows an inadequate number of parking spaces. By comparison, Salem's code, section 133.100 has the same minimum number of spaces, 1 per 250 sq. ft., but allows a maximum of

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250%. Mr. Sherman then discussed a survey he conducted of parking at 15 existing restaurants along River Road, See Exhibit 9. He concluded that on average the restaurants have nearly 1.7 times the maximum amount of parking permitted under the current code.

Ms. Webster noted that she believed the restaurants listed in Exhibit 9 predated the current Keizer Code.

Oral Testimony Before the Hearings Officer

No person spoke concerning the application.

Applicant's Rebuttal

Because the applicant was the only speaker, the applicant did not have any rebuttal.

Written Testimony Submitted to the Hearings Officer

Exhibits 8 and 9 were submitted to the Hearings Officer during the hearing. The Hearings Officer also requested a copy of the Revised Economic Opportunities Analysis (January 20, 2003), which would be marked as Exhibit 10. During the hearing, the Staff agreed to provide this document. The Staff provided copies of Exhibit 10 to the Hearings Officer and Mr. Sherman immediately after the hearing. The Hearings Officer accepts all three exhibits as part of the record that will go before the City Council.

Documents and Exhibits Considered by the Hearings Officer

Staff Recommendation, Zone Change/Major Variances Case No. 2005-30 with exhibits 1-7 attached (December 15, 2005).

Exhibit 1 – Vicinity Map

Exhibit 2 – Proposed Site Plan

Exhibit 3 – Comments from City of Salem Public Works

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Exhibit 4 – Comments from Public Works
Exhibit 5 – Excerpt of KDC §§ 2.110.02, 2.110.03, and 2.110.05
Exhibit 6 – [no exhibit 6 provided, numbering continues at 7]
Exhibit 7 – Memorandum from Senior Management Co., LLC by
and through Kenneth Sherman, Jr. to Keizer Community
Development Department, Subject Zone Change/Major Variance
Requests (Received October 21, 2005).

Exhibit 8 – Amendments to Staff Recommendation
Exhibit 9 – Parking for Existing Restaurants on River Road, North,
3400 block to Chemawa Road.
Exhibit 10 – Revised Economic Opportunities Analysis, Keizer,
Oregon, Prepared for NW National, LLC, January 20, 2003.

City of Keizer Zone Change Application, Received October 21, 2005.
City of Keizer Major and Minor Variance Application, Received October
21, 2005 [for Section 2.303.06].
City of Keizer Major and Minor Variance Application, Received October
21, 2005 [for Section 2.110.07(g)]
Vicinity maps attached to applications.

III. DISCUSSION

Findings of Fact and Conclusions of Law

The Staff's recommended findings of fact and conclusions of law in the
initial staff report as modified by the amendments in Exhibit 8 are incorporated
into this recommendation with the following modifications:

1. The Hearings Officer disagrees that the criteria in KDC §§
3.110.04.F.1 and 2 concerning the supply of vacant land in the existing and
proposed zones are not applicable to this proposal. These criteria state:
 1. The supply of vacant in the proposed zone is inadequate to
accommodate the projected rate of development of uses
allowed in the zone during the next 5 years * * *
 2. The supply of vacant land in the existing zone is adequate,
assuming the zone change is granted, to accommodate the
projected rate of development of uses allowed in the zone
during the next 5 years.

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FINDINGS: The applicant argues that these criteria are not applicable because the subject site is not vacant. Staff concurred with this argument, but also added conclusions about the supplies of CM and CO zoned land. Staff did not provide factual or statistical data supporting these conclusions.

The Hearings Officer disagree that these criteria are not applicable. These criteria inquire about the supply of vacant land in the zones generally— i.e., city-wide. For criterion 1, the supply of vacant land in the proposed zone must be inadequate so that the zone change helps correct that inadequacy by adding more land (even developed land) to that supply. Likewise, for criterion 2, the supply of vacant land in the existing zone must be adequate so that a zone change does not worsen the inadequate supply of vacant land by eliminating some of that land. Eliminating developed land would add further pressures on an already inadequate supply of land in the existing zone.

The term "vacant land" is not defined in the Development Code. In the context of these criteria, vacant could mean only undeveloped land, or it could mean land that currently contains unoccupied buildings (i.e., vacant buildings). This latter interpretation would give a more accurate analysis of the supply of useable land in the existing and proposed zones; an unoccupied building in the proposed zone could accommodate development consistent with the development code for that zone in the same way as undeveloped land.

CONCLUSIONS OF LAW: These criteria are applicable and must be evaluated. Factual data is necessary to complete the analysis. There is no factual data in the application or staff report. The Hearings Officer considered

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Exhibit 10, the Revised Economic Opportunities Analysis, Keizer Oregon (January 20, 2003), which was used for both the Keizer Station Plan matter and Case No. 2003-03. This study is now three years old and does not contain current information about the developed and occupied status of the CO and CM zones at this time; thus the hearings officer will not rely on it.

Based on this record, the Hearings Officer cannot recommend that this application for a zone change complies with KDC § 2.110.04.F.1 and 2.

2. KDC 3.105.05.A requires that the applicant demonstrate, "The degree of variance from the standard is the minimum necessary to permit development of the property for uses allowed in the applicable zone."

FINDINGS OF FACT: The applicant provided information to the Hearings Officer tending to demonstrate that 18 parking spaces is the minimum necessary to successfully operate the proposed Java Crew (without administrative staff). The applicant also provided information tending to show that the number of parking spaces at other eating and drinking places in the vicinity of the subject site exceed the maximum number of spaces allowed in the current Development Code.

This focus of this criterion is not whether the variance is the minimum necessary for the applicant's specific proposed use, but rather whether the variance is the minimum to allow development of the uses allowed in the applicable zone. This is a more general inquiry. For the purpose of this inquiry for this application, the applicable zone should be CM, the proposed zone. If the applicable zone were not CM, then it would be impossible to apply for a zone change and variance at the same time; rather the zone change would have to

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come first in time, and the variance would follow serially. This puts procedure unnecessarily over substance.

CONCLUSIONS OF LAW: While the applicant has shown the variance to be the minimum necessary to allow Java Crew to effectively operate on the subject site, this is not the relevant inquiry under this criterion. To make the connection between the variance being the minimum necessary for Java Crew to the variance being the minimum necessary to allow development of the allowed uses, the applicant should show that the subject site could not be reasonably developed considering the allowable uses more generally with less than 18 parking spaces.

Just because a site is zoned for certain uses does not necessarily mean that all of the permitted, special permitted, and conditional uses allowed in that zone are appropriate for all sites. Here, the applicant has not adequately shown that the requested variance is the minimum necessary to allow development of the allowable uses—i.e., that the uses are allowed in the CM zone cannot be developed without the requested variance to the parking standards.

3. KDC § 3.110.05.A states, "Approval of a zone change application may be conditioned to require provisions for buffering or provision of off-site public facilities. In order to impose conditions on a zone change, findings must be adopted showing that:

1. The zone change will allow uses more intensive than allowed in the current zone; and
2. The conditions are reasonably related to impacts caused by development allowed in the proposed zone or to impacts caused by specific development proposed on the subject property; and
3. Conditions will serve a public purpose such as mitigating the negative impacts of allowed uses on adjacent properties; and

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4. The conditions are based upon policies or standards in the Comprehensive Plan or other standards adopted by the City of Keizer.

FINDINGS: The staff recommends the following conditions of approval related to the applications: (1) restriction on the types of uses allowed on the subject site; (2) restriction on the location of loudspeakers; (3) construction of a five foot fence and vegetation screen on the west side of the parcels; and (4) revising the proposed landscape plan.

The proposed zone, Commercial Mixed, allows for uses that are more intensive than the current Commercial Office zone. Compare KDC §§ 2.108.02 and .03 with KDC §§ 2.110.02, .03, and .04. For example, the CM zone allows eating and drinking places, such as the one proposed, whereas the CO zone does not allow this use.

The recommended condition for restricting the uses allowed on the subject parcel is reasonably related to protecting nearby residential uses from adverse effects of intensive uses. By not allowing the most intensive uses, the residential uses are better protected from adverse impacts from use of the subject site. The condition to relocate the sidewalk is reasonably related to reducing the buffer area because it will result in a more visible landscaping in the area that would otherwise be the buffer. The other recommended conditions are directly related to the impacts that the proposed eating and drinking establishment would cause.

As noted in the staff's recommendation, the recommended conditions serve the stated public purpose of mitigating the negative impacts of allowed uses on adjacent properties.

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The recommended conditions of approval are based upon standards found in the Keizer Development Code. The restriction on loudspeakers implements KDC § 3.110.04.F.3 by ensuring that excessive noise will not emanate the subject site. The restriction on the types of uses is allowed by KDC § 2.124, and the requirement for the buffering fence is a requirement of KDC § 2.309.05. The requirement to relocate the sidewalk facilitates better site landscaping within the reduced setback, which is based on KDC § 2.309.

CONCLUSION OF LAW: The recommended conditions of approval meet the criteria in 3.110.05.A

IV. RECOMMENDATIONS

Based upon the documents and exhibits listed above, and the testimony and evidence presented before the Hearings Officer, and the findings of fact and conclusions of law presented herein, the Hearings Officer recommends:

(1) The applicant has not demonstrated that the proposed zone change complies with the requirement that the supply of land zoned CM is currently inadequate and the supply of land zoned CO would be adequate after the zone change (KDC §§ 3.110.04.F.1 and 2);

(2) The applicant has not demonstrated that the proposed major variance to the parking requirements (KDC § 2.303.06) complies with the requirement that the variance be the minimum necessary to allow development of the allowed uses on the property (KDC § 3.105.05.A); and

(3) The proposed major variance to the landscaping requirements (KDC §§ 2.110.06.B and 2.110.07.G) complies with the approval criteria.

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Specific Recommendations To The Applicant And City Council:

(1) The Hearings Officer recommends the applicant develop current statistical information concerning the supply of land in the CO and CM zones to demonstrate compliance with KDC § 3.110.04.F.1 and 2. Because the term “vacant land” is not defined, the applicant should consider two analyses—one that includes unoccupied buildings in the analysis and one that excludes unoccupied buildings.

(2) The Hearings Officer recommends the City Council interpret the term “vacant land” in KDC § 3.110.04.F.1 and 2 to clarify whether the relevant analysis includes only undeveloped land or unoccupied buildings as well. In the long-term, the City Council may wish to provide a definition of this term.

(3) The Hearings Officer recommends that the applicant analyze the range of allowable uses in the CM zone and determine if the subject site can be reasonably developed with a lesser variance to the parking standards.

V. RECOMMENDED CONDITIONS OF APPROVAL

If the applicant demonstrates compliance with the approval criteria for the proposed zone change and variance to the parking standards, then the Hearings Officer would recommend the following conditions of approval. *Note: several of the conditions of approval in this recommendation contain clarifications to the staff recommendation.*

The Hearings Officer recommends that compliance with the Conditions of

Approval shall be the sole responsibility of the applicant and/or property owner.

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General:

1. The zone change shall include a Limited Use Overlay restricting uses of the property to the uses in 2.110.02 (Permitted Uses), 2.110.03 (Special Permitted Uses) and 2.110.05.C.2 Drive through windows or car service associated with eating and drinking places.
2. One exterior speaker shall be permitted as shown on the proposed site plan. No other exterior speakers are allowed on the subject property. The exterior speaker shall be used at the minimum volume necessary to achieve the purpose of communication between the interior of the building and a single automobile ordering food or drink. The speaker shall be directed downward to the maximum extent practicable to prevent sound from transmitting beyond the subject parcel. Use of the speaker shall comply with any applicable local laws governing time and volume of noise.
3. The sidewalk shall be relocated away from River Rd approximately five (5) feet from the street curb and shall include a landscaped buffer area between the sidewalk and street curb.
4. The property shall be developed substantially as indicated on the applicant's site plan and shall include a minimum landscaped area of fifteen (15) percent of the subject property.
5. Improvement work shall not commence until plans have been checked for adequacy and approved by the Department of Public Works. Plans shall be prepared in accordance with requirements of the City.
6. Improvement work shall not commence until the Public Works Department has been notified in advance; and, if work has been discontinued for any reason, it shall not be resumed until the Public Works Department has been notified.
7. Public improvements shall be constructed under the inspection and to the satisfaction of the City Engineer and the Director of Public Works. The City may require changes in typical sections and details in the public interest, if unusual conditions arise during construction to warrant the change.
8. Connection to existing sewer and water lines that serve the general area is required and is the responsibility of the developer of the property.

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Prior to Plan Submittal:

9. A grading and drainage plan shall be developed for the subject property. Details shall include adequate conveyance of storm water from adjacent property across the subject property. This plan shall be submitted for review and approval by the Department of Public Works prior to the issuance of any permits for street or storm drainage for the subject property. Grading and drainage plans shall be in conformance with the City of Keizer Public Works Standards and Keizer Development Code, particularly as follows: Keizer Development Code Section Section 2.306 Storm Drainage

Local sewer permits are required prior to construction and are issued through the City of Salem. The City of Salem requires sanitary sewer laterals be constructed that serve each lot conforming with the City of Salem Sewer Design Standards. Sewer laterals shall be located within the access and utility easement or appropriate easements.

Prior to submitting plans to the City of Salem for approval, plans shall be submitted to the Public Works Department for review and determination of compliance with the City of Keizer's Master Sewer Plan for the area.

Prior to Issuance of Construction Permits by The Department Of Public Works or Issuance of any Building Permits:

10. Plans for new curb and driveway drops for Evans Avenue and River Road shall be submitted to the Department of Public Works for review and approval. Any storm drainage deficiencies in the area shall be corrected during the new curb construction. A curb profile along the entire length of both Evans Avenue and River Road fronting the subject property shall be submitted for review by the Public Works Department. The access to Evans Avenue shall be placed as far west as possible to eliminate any turning maneuver conflicts from vehicles entering the subject property from River Road. The existing driveway near the south property line of the subject property along River Road is indicated to remain. Plans for removing and replacing the other driveway on River Road shall be submitted to the Department of Public Works for approval. Only one driveway access shall be allowed on Evans Avenue and only one access shall be allowed on River Road.

During Public Improvements:

11. Construction permits will be required for the new curb and sidewalk construction on Evans Avenue and River Road. All driveway drops and handicap ramps shall be constructed to current standards during the

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construction process. Any storm drainage deficiencies shall be corrected during the reconstruction process.

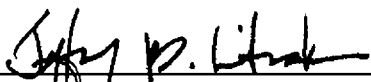
Prior to Satisfaction of Improvements:

12. As built drawings of any new public construction shall be submitted to the Department of Public Works for review and acceptance.

Prior to Issuance of Building Permits

13. The applicant shall construct a sight-obscuring fence along the west property line. The fence shall be at least 5 feet in height. The applicant shall also plant a continuous row of vegetation on either side of the wall. At least 75% of the vegetation shall retain its leaves throughout the year. The vegetation shall be at least as high as the fence at the time of planting, and shall have the potential to grow to at least 8 feet in height. The applicant shall maintain the vegetation in a healthy state and shall replace dead or diseased vegetation as provided in this condition for as long as the exterior speaker exists on the subject parcel.

DATED this 5 day of January, 2006



Jeffrey B. Litwak
Hearings Officer

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