



HEARING NOTICE

LAND USE REQUEST AFFECTING THIS AREA

Audiencia Pública

Si necesita ayuda para comprender esta informacion, por favor llame 503-588-6173

CASE NUMBER:	Appeal of Hearings Officer's Decision on Sign Variance / Sign Permit Case No.VAR-SI19-01
AMANDA APPLICATION NO:	18-124770-SA / 19-109437-SI / 19-110750-SI
HEARING INFORMATION:	<u>Salem Planning Commission, Tuesday, September 3, 2019, 5:30 P.M., Council Chambers, Room 240, Civic Center, 555 Liberty Street SE, Salem, OR 97301</u>
PROPERTY LOCATION:	5090 Commercial St SE, Salem OR 97306
OWNER(S):	Archland Property I, LLC (Corporation Service Company and Golden W Investors Business Trust) c/o McDonald's Corporation and Pro Enterprises, LLC (Jill Seaman-Pollard, Alyssa Burgess, and Melanie Pollard)
APPLICANT / APPEALANT(S):	Mark Shipman of Saalfeld Griggs Lawyers on behalf of Pro Enterprises, LLC and Archland Property I, LLC
DESCRIPTION OF REQUEST:	<p>SUMMARY: Appeal of the Hearings Officer's July 19, 2019 decision denying a request for two sign permits and a sign variance to allow construction of two freestanding vehicle viewing signs 13.7 square feet in size.</p> <p>REQUEST: Appeal of the Hearings Officer's July 19, 2019 decision denying a Sign Variance and two Sign Permit requests Case Number VAR-SI19-01 to allow two additional vehicle viewing signs permitted under SRC 900.200(b)(6) for use as pre-sell menu boards in the drive-through lanes of an existing eating and drinking establishment. The subject property is approximately .95 acres in size, zoned CR (Retail Commercial) and located within the South Gateway Overlay Zone, and located at 5090 Commercial Street SE / 97306 (Marion County Assessor's Map and Tax lot number: 083W14BB / 01703).</p>
BASIS OF APPEAL:	See attached Notice of Appeal
CRITERIA TO BE CONSIDERED:	<p><u>SIGN VARIANCE</u></p> <p>Pursuant to SRC 900.040(d), the testimony and evidence for the SIGN VARIANCE must be directed toward the following criteria:</p> <ol style="list-style-type: none">(1) Compliance with the applicable standard would create an unnecessary hardship due to unique or unusual physical conditions of the property over which the applicant has no control, such as topography and lot shape, which are not present on other properties in the vicinity that have the same zone designation; the hardship does not result from actions of the applicant, owner, or previous owners of the property; and the sign variance is limited to the minimum reasonably necessary to alleviate the problem created by the unique or unusual physical conditions;(2) The sign variance is necessary to permit signage comparable with other properties in the vicinity that have the same zone designation;(3) The sign variance will not adversely affect the function or appearance of the development and use of the property and surrounding properties; and(4) The sign variance will not impose limitations on other properties and signage in the area, including signage that would be allowed on adjacent properties.

HOW TO PROVIDE TESTIMONY:

Any person wishing to speak either for or against the proposed request may do so in person or by representative at the Public Hearing. Written comments may also be submitted at the Public Hearing. Include case number with the written comments. Prior to the Public Hearing, written comments may be filed with the Salem Planning Division, Community Development Department, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision.

HEARING PROCEDURE:

The hearing will be conducted with the staff presentation first, followed by the applicant's case, neighborhood organization comments, testimony of persons in favor or opposition, and rebuttal by the applicant, if necessary. The applicant has the burden of proof to show that the approval criteria can be satisfied by the facts. Opponents may rebut the applicant's testimony by showing alternative facts or by showing that the evidence submitted does not satisfy the approval criteria. Any participant may request an opportunity to present additional evidence or testimony regarding the application. A ruling will then be made to either continue the Public Hearing to another date or leave the record open to receive additional written testimony.

Failure to raise an issue in person or by letter prior to the close of the Public Hearing with sufficient specificity to provide the opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on this issue. A similar failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.

Following the close of the Public Hearing a decision will be issued and mailed to the applicant, property owner, affected neighborhood association, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice of the decision.

CASE MANAGER:

Hayley Feightner, Planner I, City of Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Telephone: 503-540-2315; E-mail: hfeightner@cityofsalem.net.

NEIGHBORHOOD ORGANIZATION:

South Gateway Neighborhood Association, Glenn Baly, Co-Chair; Phone: 503-588-6924; Email: glennbaly12345@gmail.com; South Gateway Neighborhood Association, TJ Sullivan, Co-Chair; Phone: 530-585-2211; Email: tj@huggins.com.

DOCUMENTATION AND STAFF REPORT:

Copies of the application, all documents and evidence submitted by the applicant are available for inspection at no cost at the Planning Division office, City Hall, 555 Liberty Street SE, Room 305, during regular business hours. Copies can be obtained at a reasonable cost. The Staff Report will be available seven (7) days prior to the hearing, and will thereafter be posted on the Community Development website:

<https://www.cityofsalem.net/Pages/salem-planning-commission.aspx>

ACCESS:

The Americans with Disabilities Act (ADA) accommodations will be provided on request.

NOTICE MAILING DATE:

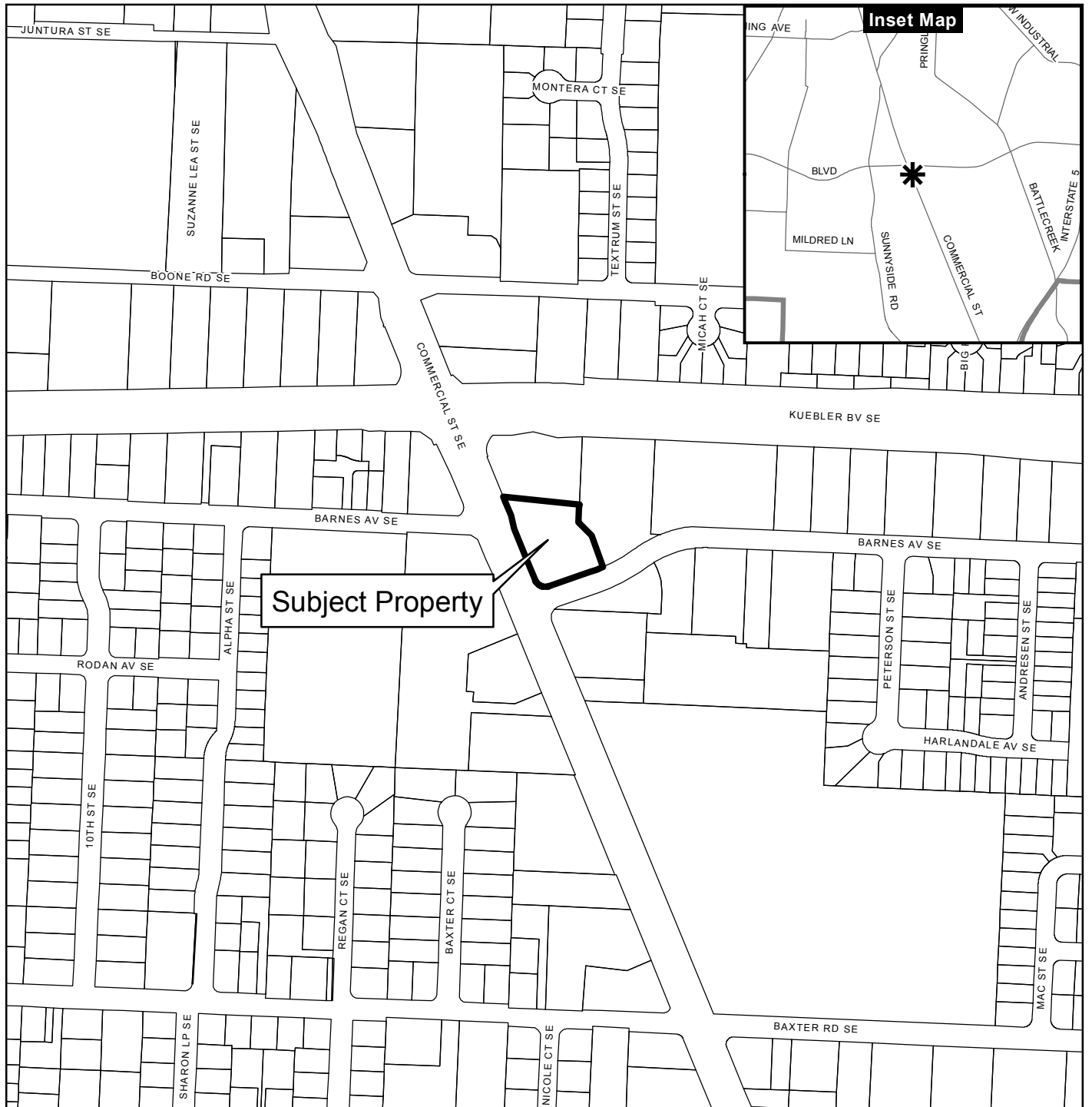
August 14, 2019

PLEASE PROMPTLY FORWARD A COPY OF THIS NOTICE TO ANY OTHER OWNER, TENANT OR LESSEE.
For more information about Planning in Salem:
<http://www.cityofsalem.net/planning>








It is the City of Salem's policy to assure that no person shall be discriminated against on the grounds of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income, as provided by Salem Revised Code Chapter 97. The City of Salem also fully complies with Title VI of the Civil Rights Act of 1964, and related statutes and regulations, in all programs and activities. Disability-related modification or accommodation, including auxiliary aids or services, in order to participate in this meeting or event, are available upon request. Sign language and interpreters for languages other than English are also available upon request. To request such an accommodation or interpretation, contact the Community Development Department at 503-588-6173 at least three business days before this meeting or event.

TTD/TTY telephone 503-588-6439 is also available 24/7

Vicinity Map 5090 Commercial Street SE



Legend

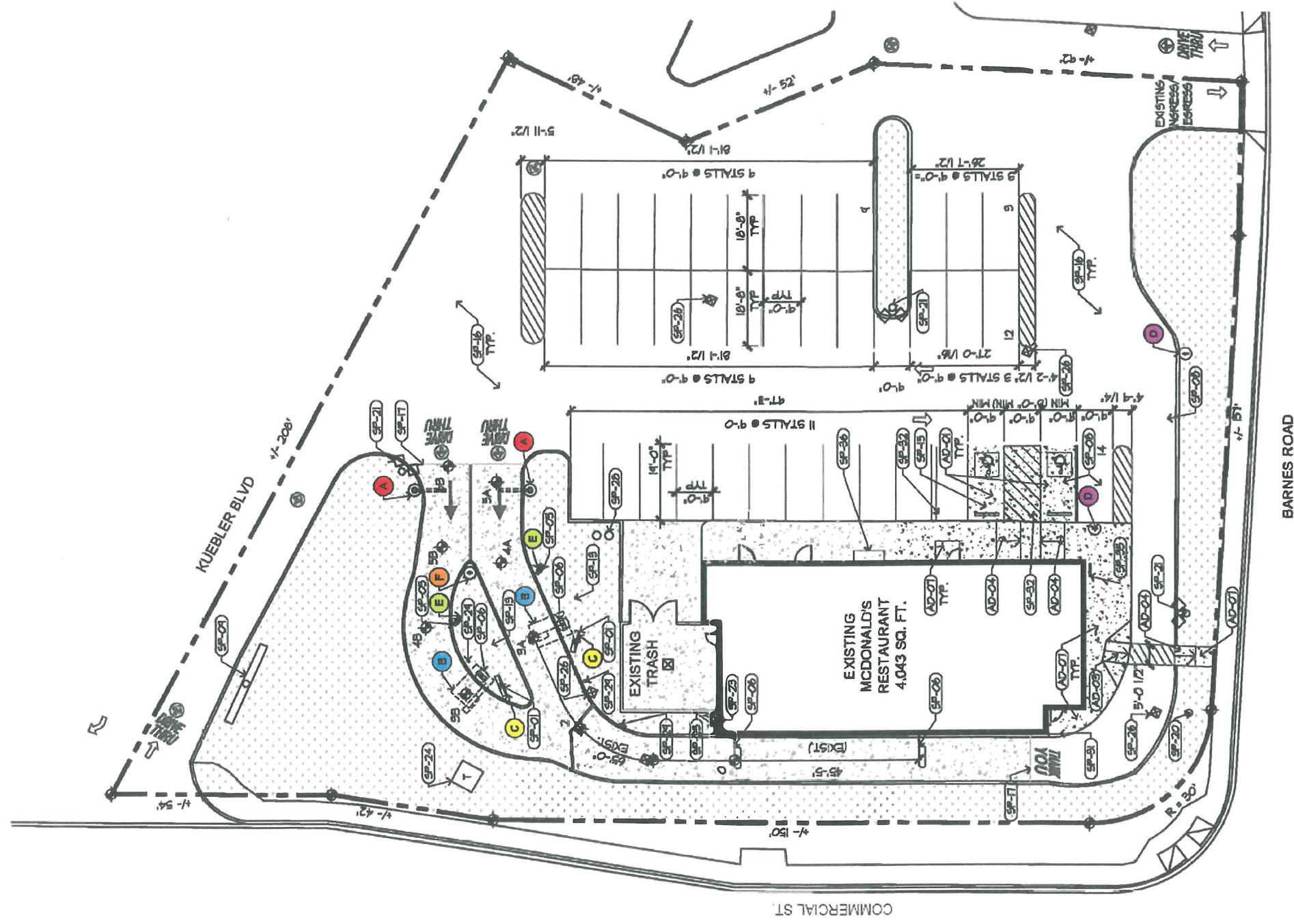
-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



0 100 200 400 Feet



This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.



SIGN LEGEND

- A** "Welcome" Gateway Sign (2 EXHISTING)
- B** Customer Order Display with Integral Canopy (2 EXHISTING)
- C** Digital Menu Board (2 NEW)
- D** Full Forward Stall Signs (1 EXHISTING, 1 NEW)
- E** Proposed Placement of Digital Pre-Sell Boards (2 NEW)
- F** "Any Lane, Any Time" Sign (1 EXHISTING)

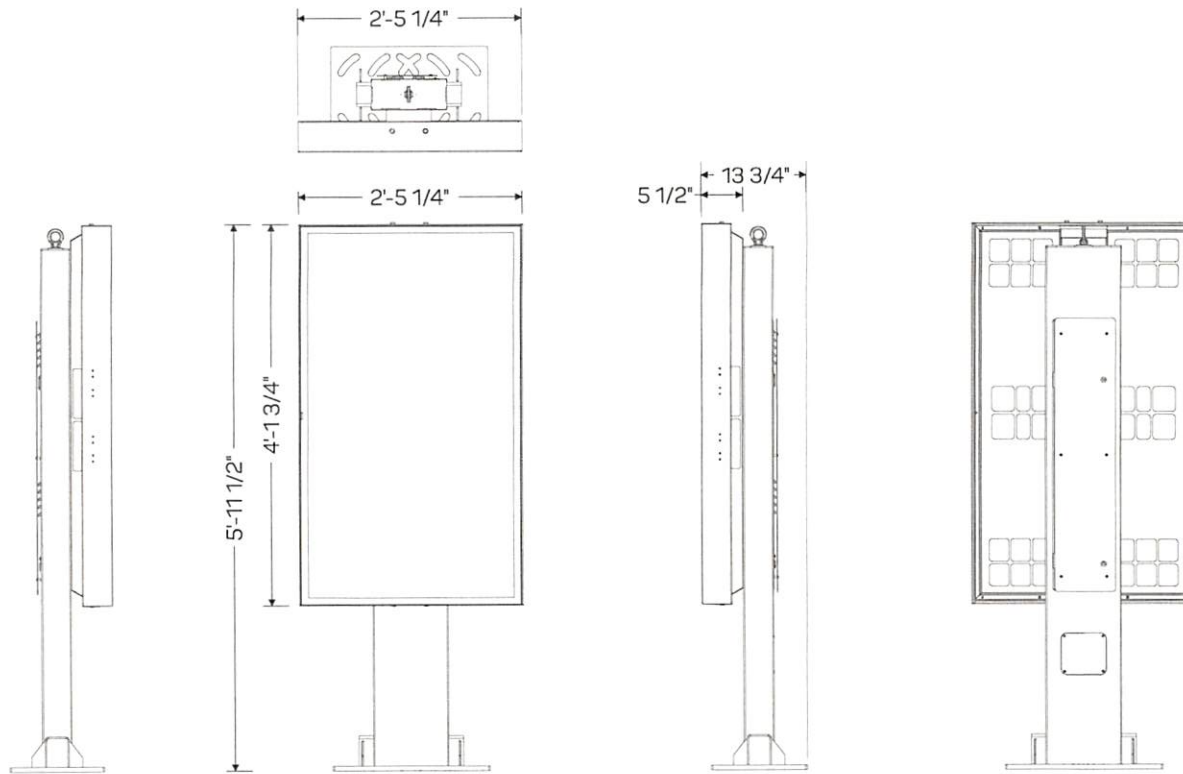


SITE PLAN

SCALE: 1" = 20'-0"
0 5 10 20 40 FT.

Frame	Hot dip galvanized + anti-graffiti powder coated steel
Brackets	Hot dip galvanized
Panels	Aluminium + anti-graffiti powdercoat
Access fasteners	Security Torx
Media player access	Dual camlock
Eyebolt	Stainless crane on
Baseplate	McDonalds spec triple mounting pattern option

ODMB 02 SINGLE	
Displays	Samsung OH55F
Hardware	Stratacache Spectra NG
Heating/Cooling	Watlow 100W Heater Sunon 120mm AC Fan
Power Supply Units	60W DC Media Player Power Supply
Power Cables	1 x IEC Power Cable
Electrical Components	Isolated Ground 2 x IG Receptacles 20A Circuit Breaker
Communication Cables	2 x HDMI 1 x RS232
Certification	UL Certified



SCALE: 1/2" = 1'-0"



GRAPHIC DETAIL
NOT TO SCALE

August 1, 2019



VIA ELECTRONIC MAIL: HFeightner@cityofsalem.net and Planning@cityofsalem.net
Copy uploaded to SPLASH

Hayley Feightner, Planner I
City of Salem | Community Development Department
555 Liberty St SE, Room 305
Salem, Oregon 97301

RE: Notice of Appeal Letter | VAR-SI19-01
5090 Commercial St SE Property
Our File No: 28757

Dear Ms. Feightner:

This notice of appeal letter, the appeal form, and filing fee compile our appeal of the Hearings Officer's decision on Archland Property I, LLC and Pro Enterprises, L.L.C. (the "**Applicant**") Sign Variance and Sign Permit Case No. VAR-SI19-01 (the "**Application**"), for a McDonald's Restaurant located at 5090 Commercial St SE, in Salem, Oregon (the "**Property**"), a copy of the decision is also attached hereto.

STANDING:

Applicant has standing to appeal as it was the applicant in the proceeding below. Salem Revised Code ("**SRC**") 300.620(g)(2). Additionally, Applicant was present at the hearing on June 26, 2019, through its representative, who gave testimony and evidence in support of the variance.

ASSIGNMENT OF ERRORS:

Applicant appeals the Hearings Officers decision regarding SRC 900.040(d)(1) and (2). The Hearing Officer determined that Applicant did not meet the criteria of (1) or (2) as follows:

Criteria (1)—Applicant identified six (6) characteristics that made the Property unique or unusual:

1. the subject property is part of a commercial retail center;
2. the retail center includes commercial structures with a variety of commercial uses;
3. the subject property shares joint access and parking with these commercial retailers;
4. the drive-through lanes are adjacent to the west access of the commercial retail center;
5. the subject property has two drive-throughs lanes; and
6. the building is slightly below grade, providing more buffering of signage by the mature vegetation.

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250 Church Street SE
Salem, Oregon 97301

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Salem, Oregon 97308

tel 503.399.1070
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With the exception of the increased buffering provided by the low grade and mature vegetation, the Hearings Officer did not consider any of the other characteristics to be “unique or unusual physical conditions of the property over which the applicant has no control, such as topography and lot shape, which are not present on other properties in the vicinity that have the same zone designation.” SRC 900.040(d)(1). And while the increased buffering was recognized as unique, the Hearings Officer did not consider that increased buffering alone was enough to to create an “unnecessary hardship” in Applicant’s ability to comply with the Code. We disagree and assign error to the Hearings Officer’s decision on Criteria (1), in that it is incongruous with the purpose of the variance: “it is the purpose of this chapter to provide a process that will allow flexibility, adaptability, and reasonableness in the application and administration of the UDC.” SRC 245.001. Strict enforcement of the sign code in this instance renders an unreasonable application of the UDC.

Criteria (2)—Applicant listed Arby’s, Carl’s Jr., Burger King, and Starbucks as comparable restaurants in the vicinity. While the Hearings Officer acknowledged the various types and sizes of menu, pre-sell, and directional signs present at the other fast food restaurants, she did not consider them equivalent or comparable to the Applicant’s proposed signs because their signs meet the requirements of, or exceptions under, the Salem Sign Code. This is not what SRC 900.040(d)(2) is looking for. This Section is asking whether the applicable sign variance is necessary to permit comparable signage with other properties in the vicinity that have the same zone designation

There are multiple restaurants in the vicinity of the Subject Property that have permanent pre-sell signs at the same ratio requested of Applicant—that is, for each drive-thru lane, one menu and one pre-sell sign has been permitted at restaurants in the vicinity.

A new hearing is necessary to correct the misinterpretation and misapplication of the sign variance criteria to this Sign Variance Application.

Sincerely,



MARK D. SHIPMAN
mshipman@sglaw.com
Voice Message #310

MDS/HRW:hst
Enclosures
cc: