

Department of Community Development Director's Administrative Code Interpretation

File No.: MIS21-0014

Date Issued: February 9, 2022

Subject: Carvana's "Last-Mile Logistics Hub"

Code References: Title 18 ACC 'Zoning'

Other References: City of Auburn Comprehensive Plan
Volume 1 – Land Use Element
Volume 6 – Economic Development Element
Revised Code of Washington (RCW) 82.32.730 – Sourcing—Streamlined sales and use tax agreement.

Zoning Designation: C-3, Heavy Commercial

Applicant: Isaac Hall, Assistant Project Manager,
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I. BACKGROUND AND REQUEST:

- A. Carvana is a nationwide online passenger-vehicle sales platform that utilizes physical locations to inspect and repair vehicles then distribute to local physical locations for eventual distribution/deliver to customers. Carvana has requested to permanently site one of these local vehicle distribution hubs, termed "last-mile logistics hubs" within the City of Auburn on a site zoned C-3, Heavy Commercial.
- B. On December 14, 2021, application for a Director's Interpretation was filed by Isaac Hall, representing Carvana, for a determination of consistency of their proposed land use in relation to the site zoning.

II. FINDINGS:

GENERAL

- A. The Site is located on the west side of Auburn Way N, King Co. Parcel No. 0004000030. 42nd St. NE bifurcates the Site with the northern approx. 25% being located north of the street; the balance on the south side. The Site totals approximately 10 acres (435,403 SF) and is zoned C-3, Heavy Commercial. The proposed operation would be located on the south side of 42nd St. NE and would utilize one or more of the three existing buildings

and surrounding paved areas located on the site. The current condition of the property is unoccupied.

ZONING CODE & C-3, HEAVY COMMERCIAL DISTRICT – PURPOSE & INTENT STATEMENTS

B. ACC 18.02.030 'Purpose' (of the City's Zoning Code) in Subsection A states:

"The purpose of this Title is to implement the City's Comprehensive Plan. This Title will be used to further the growth and development of the City consistent with the adopted Comprehensive Plan and its implementing elements. This Title will also further the purpose of promoting the health, safety, morals, convenience, comfort, prosperity, and general welfare of the city's population and to prevent and abate public nuisances."

C. ACC 18.02.030 'Purpose' in Subsection B states:

"The specific zones and regulations set out in this Title are designed to:

- 1. Provide adequate public facilities and services, including utilities, roads, schools, and parks in conjunction with development;*
- 2. Provide housing with essential light, air, privacy, and open space;*
- 3. Facilitate the safe and efficient movement of traffic on the City's streets;*
- 4. Stabilize and enhance property values;*
- 5. Facilitate adequate provisions for doing public and private business and thereby safeguard the community's economic structure upon which the prosperity and welfare of all depends; and*
- 6. Through such achievements, help ensure the safety and security of home life, foster good citizenship, and create and preserve a more healthful, serviceable and attractive municipality and environment in which to live."*

D. ACC 18.02.030 'Purpose' in Subsection C states:

"To most effectively accomplish these purposes, this Title divides the City into zones wherein the location, height and use of buildings, the use of land, the size of setback areas and other open space, and the provision of off-street parking and loading are regulated and restricted in accordance with the comprehensive plan for the city. These zones and regulations are deemed necessary and are made with reasonable consideration, among other things, as to the character of each zone and its particular suitability for specific uses, the need for such uses, the common rights and interests of all within the zone as well as those of the general public, and with the view of conserving and encouraging the most appropriate use of land throughout the City and to prevent and abate public nuisances."

E. ACC 18.02.040 'Applicability' (of the Zoning Code) states:

"...no use shall be conducted, and no building, structure and appurtenance shall be erected, relocated, remodeled, reconstructed, altered or enlarged, unless in compliance with the provisions of this title, and then only after securing all permits and approvals required hereby. It shall be unlawful to build or use any building or structure or to use

premises in the city for any purpose or use other than the uses listed as being permitted in the zone in which such building, land, or premises is located.”

- F. ACC 18.02.120 ‘Permitted Land Uses Established’ in Subsection C(6) establishes that for the Director:

“... to determine if a proposed use not specifically listed in any zone use table is allowed within a specific zone...”, an interpretation is appropriate. This section also establishes that “Should an interpretation be made that a proposed, unlisted use not be allowed in a specific zone, the planning director or designee shall indicate which zones, if any, do permit the use.” The Director’s authority to make an interpretation shall utilize the purpose and intent of the zone, Comprehensive Plan policy guidance, and similarity to allowed uses.

- G. The site is zoned C-3 Heavy Commercial. ACC 18.23.020 states the purpose and intent of the C-3 zoning district:

“...is to allow for medium to high intensity uses consisting of a wide range of retail, commercial, entertainment, office, services, and professional uses. This zone is intended to accommodate uses which are oriented to automobiles either as a mode or target of the commercial service while fostering a pedestrian orientation. The uses allowed can include outside activities, display, fabrication or service features when not the predominant portion of the use. The uses enumerated in this classification have more potential for impacts to surrounding properties and street systems than those uses permitted in the more restrictive commercial classifications.”

REVISED CODE OF WASHINGTON (RCW) AND COMPREHENSIVE PLAN PROVISIONS

- H. RCW 82.32.730(1)(b) ‘Sourcing—Streamlined sales and use tax agreement’ includes destination-based sales tax information:

“When the tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.”

- I. The City’s Comprehensive Plan, Economic Development Element, Policy ED-1 states:

“City promotion of new industry shall be directed at attracting business that diversifies the City’s tax base, offers secure, quality employment opportunities, is sensitive to community values, and promotes the development of attractive facilities.”

- J. The City’s Comprehensive Plan Land Use Map designates the property as Heavy Commercial, of which the C-3 zoning district is the only implementing zone. Policy LU-69 for the Heavy Commercial Land Use Element further states:

“A wide variety of commercial-oriented services are appropriate within this category. This includes but is not limited to regional-scale retail and entertainment uses, commercial uses with outdoor sales areas, drive-in restaurant or other drive in commercial businesses, and commercial services with outdoor storage as an accessory use.”

RELEVANT ZONING CODE PROVISIONS

- K. The City's Zoning Code definitions section at ACC 18.04.170 establishes the definition for an “*Automobile, Trailer, Equipment Sales Area*” and states that this use “...*means an open area, other than a street or alley, used for the display, sale, or rental of new or used automobiles, trucks, trailers or other equipment.*”
- i. Subsequently, ACC Table 18.23.030 ‘Uses’ identifies the uses that are allowed within each of the commercial and industrial zoning designations (except the DUC zone). This Table includes a land use titled “*Auto/Vehicle Sales and Rental*” which is a Permitted or allowed use in the C-3, Heavy Commercial zoning district.
 - ii. ACC 18.04.676 establishes the definition for “*Outdoor Storage*” which states “...*the keeping of materials, supplies, equipment, machinery and vehicles which are not currently licensed or capable to operate on public streets or highways, in an open, uncovered yard or nonwalled buildings. This definition includes junkyards as defined by ACC 18.04.500, but excludes outdoor sales as defined by ACC 18.04.672.*”
 - iii. ACC 18.04.692 establishes the definition for a “*Parking Structure*” as “...*a single or multi-level structure intended for the use of vehicular parking, as opposed to an uncovered surface parking lot. This definition includes both stand-alone parking garages and structured parking as incorporated into a building, the primary purpose of which is not parking (i.e., rooftop or basement parking areas).*”
 - iv. Although there is no definition for “*Warehousing and Distribution*” in City Code, the general meaning would be the storage of physical goods (typically within a building) for eventual sale (to a customer) or distribution to another facility.

RELEVANT TEMPORARY USE PROVISIONS

- L. ACC 18.46A.010 ‘Intent’ (of Temporary Uses) in Subsection A states:

“It is the intent of this chapter to provide an administrative approval process whereby the City may permit uses to locate within the City on an interim basis without requiring full compliance with the development standards for the applicable zoning district, or by which the City may allow seasonal or transient uses not otherwise permitted.”

- M. ACC 18.46A.020 states that a Temporary Use is:

“...a short-term or interim activity or purpose for which land or premises or a building thereon is designed, arranged, intended, or for which it is occupied, maintained, let, or

leased; and where such use is not in full compliance with the applicable development standards of this title and/or is not otherwise permitted in the applicable zoning district."

III. ANALYSIS AND CONCLUSIONS:

- A. The Applicant (Carvana) has requested to establish and operate a "last-mile logistics hubs" or "delivery hub" on a property zoned C-3, Heavy Commercial. Per the Applicant's submittal documents, the use would entail storage of vehicles (with some minor detailing) on the site until they are loaded onto delivery trucks and delivered to a customer's location. The principal use is a storage lot for passenger vehicles awaiting distribution to buyers.
- B. A "last-mile logistics hubs" is not a land use specifically listed as allowed in the C-3 Heavy Commercial zone. Therefore, it is appropriate to compare the proposed use to the purpose statement of the zone (ACC 18.23.020). The purpose provides uses which are generally oriented towards those which provide on-site shopping. It also provides jobs and/or sales tax for the City; i.e., retail and services. Uses which do not generate significant amounts of jobs and little to no sales tax are generally not accommodated in the C-3 zone; e.g., warehousing and distribution.
- C. Carvana's request to site a delivery hub on a C-3-zoned property, would generate some jobs, to operate the use; however, due to the online nature of the sales, employees associated with operations, and sales support that could be located elsewhere. The proposed use would only produce sales tax in the event a vehicle is delivered to a site within the City Limits of Auburn. Per the Applicant's submittal documents, the delivery radius is typically approx. within 90 miles of the site (which ranges from Longview, Ocean Shores, Sedro Wooley and Wenatchee). Sales tax accounts for approx. 10% of the City's revenue sources (<https://weblink.auburnwa.gov/External/ElectronicFile.aspx?dbid=0&openfile=true&docid=438978>) with automotive sales encompassing 20% of this source. Although some sales tax would be generated for the City, it can be assumed that due to the 90-mile delivery range in relation to the City boundaries, a vast majority of sales tax revenue would occur outside of the City.
- D. A "last-mile logistics hubs" is not a land use specifically listed as allowed in the C-3 Heavy Commercial zone. Therefore, it is appropriate to compare the proposed use to the list of allowed uses (ACC Table 18.23.030 'Uses').
 - i. The request to classify this delivery hub as similar to an auto dealership is not consistent with the City definition, nor common usage of the term. An "auto/vehicle sales and rental" use would typically include an area of stored vehicles, similar to what Carvana has proposed; however, these vehicles would be available for purchase (or rent) on-site and thus directly generating sales tax revenue for the City. Auto/vehicle sales and rental also typically include outside vehicle display areas, indoor vehicle display/showrooms, sales areas, repair services, and parts sales.

- ii. While not specifically defined in the City's Code, the terms, "*Parking Facility, Public or Commercial, Surface*" and "*Parking Facility, Public or Commercial, Structured*" are uses that are included in the list in ACC 18.23.030. Whether parking within a structure or on surface, it can be assumed that a parking facility is intended to mean a location that provides parking supply for typical passenger automobiles. The reason that this can be assumed starts with the use of the word "structured." Parking structures are defined in ACC 18.04.692 as "...a *single or multi-level structure intended for the use of vehicular parking, as opposed to an uncovered surface parking lot.*" Parking structures typically serve the needs for the public, such as customers, for the purposes of temporary parking their vehicles on an hourly basis and where there is high daily or hourly turnover of vehicles. Accepting this assumption, it is appropriate to apply the same principal to "surface" facilities because the only distinction between the two terms is whether the facility is located within a building or the facility is limited to utilizing the ground. The proposed use is a storage lot for passenger vehicles awaiting distribution to buyers. This is not "outdoor storage" as defined in the preceding section and is also not similar enough to either a "parking lot" or "auto/vehicle sales and rental" to be allowed.
- iii. Although "*Warehousing and Distribution*" is typically located within a building, the general consistencies between the proposed Carvana (storage of vehicles until distributed to customers) and a warehousing and distribution use cannot be overlooked. Warehousing and distribution is not a use that is allowed in the C-3 zone; however, is allowed in the M-1, Light Industrial zone and may be allowed with a Conditional Use Permit in the M-2, Heavy Industrial zone.
- iv. According to the documents submitted by the Applicant the request seeks to establish and operate on a permanent basis, a use which is not consistent with the purpose and intent of the C-3 zone. This use could, however, be considered by the City on a temporary basis under Ch. 18.46A ACC 'Temporary Uses'. This Code section allows for uses on a property that don't strictly adhere to the underlying zoning requirements. Subsection ACC 18.46A.010 provides:

"A. It is the intent of this chapter to provide an administrative approval process whereby the city may permit uses to locate within the city on an interim basis without requiring full compliance with the development standards for the applicable zoning district, or by which the city may allow seasonal or transient uses not otherwise permitted.

B. It is not the intent of this chapter to provide a means to circumvent the strict application of the permitted uses as established elsewhere in this title for the city's zoning districts. Time limits are to be strictly enforced, unless otherwise modified by the planning director or designee."

