



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/19/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 003-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, January 04, 2012

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Derrick Tokos, City of Newport
Angela Lazarean, DLCD Urban Planner
Matt Spangler, DLCD Regional Representative

<paa> YA

FORM **2****DLCD****Notice of Adoption**

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

DATE STAMP	☐ In person ☐ electronic ☐ mailed
	DEPT OF
	DEC 15 2011
	LAND CONSERVATION AND DEVELOPMENT
For Office Use Only	

Jurisdiction: **City of Newport**Local file number: **4-Z-11**Date of Adoption: **12/5/2011**Date Mailed: **12/14/2011**Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 9/26/2011☐ Comprehensive Plan Text Amendment☐ Comprehensive Plan Map Amendment☐ Land Use Regulation Amendment☒ Zoning Map Amendment☐ New Land Use Regulation☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

A rezoning of Block 15, Bayley and Case's Addn, from R-3/"Medium Density Multi-Family Residential" to R-4/"High Density Multi-Family Residential." The city rezoned the property from R-3 to R-4 in 1975 (Ord. 1002). A nursing home was built over much of the block in 1976. The use is permitted outright in the R-4. The City appears to have inadvertently rezoned the property back to R-3 when its codes were acknowledged in 1982 (Ord. 1308). A nursing home is a conditional use in the R-3 zone.

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

Plan Map Changed from:

to:

Zone Map Changed from: **R-3**to: **R-4**Location: **835 SW 11th Street**Acres Involved: **1.45**

Specify Density: Previous:

New:

Applicable statewide planning goals:

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

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ Yes ☐ No

If no, do the statewide planning goals apply?

☐ Yes ☐ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☐ No

DLCD File No. 003-11 (18984) [16869]

DLCD file No. _____

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

ODOT

Local Contact: **Derrick I. Tokos, AICP**

Phone: **(541) 574-0626** Extension:

Address: **169 SW Coast Highway**

Fax Number: **541-574-644**

City: **Newport**

Zip: **97365-**

E-mail Address: **d.tokos@newportoregon.gov**

ADOPTION SUBMITTAL REQUIREMENTS

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

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on 8½ - 11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

CITY OF NEWPORT

ORDINANCE NO. 2024

**AN ORDINANCE AMENDING ORDINANCE NO. 1308 (AS AMENDED)
OF THE CITY OF NEWPORT, OREGON,
TO AMEND THE ZONING MAP OF THE CITY OF NEWPORT**

Summary of Findings:

1. A request by Newport Rehabilitation, LLC (Nationwide Health Properties, LLC c/o Ventas, Inc. and Pacific Communities Health District, property owners) (Gretchen Stone, CB/Two Architects, authorized representative) was filed on September 19, 2011 for an amendment to the Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended). The application was made complete on October 24, 2011.
2. The subject property is approximately 1.45 acre in size, consisting of Block 15, Bayley and Case's Addition to Newport, including a 10-foot wide vacated alleyway (Lincoln County Assessor's Map 11-11-08-CA, Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901).
3. Existing improvements include a single story, 19,900 square foot building housing an 80-bed skilled nursing facility. This facility, known as "Avamere Rehabilitation of Newport," has an address of 835 SW 11th Street.
4. The Comprehensive Plan Map designation for the property is High Density Residential, and the Zoning Map designation is R-3 (Medium Density Multi-Family Residential).
5. Newport Rehabilitation, LLC, a part of the Avamere Family of Companies, operates the skilled nursing facility on behalf of Nationwide Health Properties, LLC. They have expressed an interest in maintaining, repairing and improving the facility. This is easier to accomplish in an R-4 zone district, where skilled nursing is an outright permitted use. Skilled nursing facilities are a conditional use in the R-3 district.
6. Property subject to this application was rezoned from R-3 to R-4 in 1975 with Ordinance No 1002. It was later changed back to R-3 when the City adopted a comprehensive set of map changes in 1982 with Ordinance No. 1308.
7. City records indicate that the 1975 zone change was done to facilitate skilled nursing use of the property. The 1982 amendments were undertaken to bring the City of Newport's Zoning Ordinance into compliance with Statewide Planning Goals. The ordinance that made those changes, Ordinance No. 1308, identified 26 prior ordinances that it was intended to replace. Ordinance No. 1002 was not listed among them. Because of its comprehensive nature, Ordinance No. 1308

included an additional statement repealing and replacing all other conflicting ordinances. Given this information, it appears that the subject property may have been overlooked at the time, and was inadvertently rezoned back into the R-3 district.

8. Pacific Communities Health District owns the vacant parcel north of the nursing facility (Tax Lot 8801). The District has indicated that it supports the application.

9. With this amendment, the Zoning Map designation for the property will be changed to R-4 (High Density Multi-Family Residential), which is consistent with the current Comprehensive Plan designation.

10. The Newport Planning Commission reviewed the proposed revisions to the Zoning Ordinance (Newport File No. 4-Z-11) at a public hearing on November 14, 2011, and voted to recommend adoption of the amendment, as furthering a public necessity and promoting the general welfare for the following reasons:

- a. R-4 zoning exists to the north and west of the subject property, and at 1.45 acres the proposed change constitutes a minor adjustment to the boundary between the R-3 and R-4 districts. The zone change will not result in spot zoning.
- b. The change to R-4 zoning furthers a public necessity by facilitating growth of essential medical services within the community. City Building Records show that a skilled nursing facility was constructed on the subject property in 1976. Samaritan Pacific Hospital resides to the west, and the Shaw House, immediately to the north, is being renovated for medical office use. This demonstrates that medical uses are well established in the area. The R-4 district allows these types of uses outright, making it easier for them to be maintained, repaired or expanded.
- c. Consistent with OAR 660-012-0060(1) this zone change will not significantly affect existing or planned transportation facilities because the change to R-4 zoning will not have the effect of allowing more vehicle trips than the existing R-3 zoning. This is due to the fact that the property is already developed with a skilled nursing facility, the small size of the zone change (1.45 acres), and that the R-3 and R-4 zoning districts allow the same residential densities. R-4 zoning provides for a broader range of non-residential uses; however, such flexibility will have a negligible impact to the transportation system because the more limited list of non-residential uses allowed in the R-3 zone provides for a comparable intensity of development.
- d. The change also does not impact the City of Newport's residential buildable lands inventory, which establishes that the City possesses a 20 year supply of land that can be developed for needed housing. This is the case because the subject property was already discounted as being

built and committed to non-residential use given that a nursing facility exists at this location.

11. The City Council held a public hearing on December 5, 2011 regarding the question of the proposed revisions, and voted to accept the Planning Commission's recommendation after considering evidence and argument in the record.

12. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's following amendments.

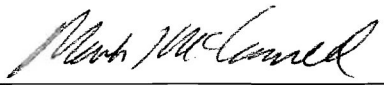
Section 2. The City Council further adopts the analysis and recommendation contained in the Planning Staff Report as supplemental findings in support of approval of the requested Zoning Map amendment, attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 3. Ordinance No. 1308 (as amended) is hereby amended to rezone Block 15, Bayley and Case's Addition to Newport, together with that portion of a vacated alleyway described in Lincoln County Micro Film Record 60-1085 (Lincoln County Assessor's Map 11-11-08-CA, Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901), from "R-3/Medium Density Multi-Family Residential" to "R-4/High Density Residential," as illustrated on Exhibit "B", attached hereto and incorporated herein by this reference.

Section 4. This ordinance shall take effect 30 days after adoption.

Adopted by the Newport City Council on December 5, 2011.

Signed by the Mayor on December 14th, 2011.



Mark McConnell, Mayor

ATTEST:



Margaret M. Hawker, City Recorder

Case File: 4-Z-11
Date filed: September 19, 2011, completed October 24, 2011
Hearing Date: November 14, 2011/Planning Commission

PLANNING STAFF REPORT

File No. 4-Z-11

- A. **APPLICANT & OWNER:** Newport Rehabilitation, LLC (Nationwide Health Properties, LLC c/o Ventas, Inc. and Pacific Communities Health District, property owners) (Gretchen Stone, CB/Two Architects, authorized representative).
- B. **REQUEST:** The request involves a zoning map amendment. The subject property has a zoning designation of R-3/"Medium Density Multi-Family Residential". The applicant is requesting that this designation be changed to R-4/"High Density Residential". The applicant operates an 80-bed skilled nursing facility at this location. "Nursing Homes" or "Skilled Nursing" are allowed outright in the R-4 zone, but are allowed as a conditional use in the R-3 zone. City staff discovered that the property was rezoned from R-3 to R-4 in 1975 by Ordinance No. 1002. Then in 1982, when the City of Newport adopted a comprehensive package of zoning map amendments to comply with Statewide Planning Goals (Ordinance No. 1308), the property appears to have been inadvertently rezoned back to R-3.
- C. **LOCATION:** The subject property consists of Lots 1-12, Block 15, Bayley and Case's Addition to Newport, including a vacated 10-foot wide alleyway (currently identified as Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901 of Lincoln County Assessor's Map 11-11-08-CA). See map in Planning Staff Report Attachment "B".
- D. **LOT SIZE:** The size of the subject property is approximately 1.45 acres per Assessment Maps.
- E. **PLANNING COMMISSION ACTION:** The Planning Commission reviews this request and makes a recommendation to the City Council.
- F. **STAFF REPORT:**
1. **Report of Fact**
 - a. **Existing Plan Designation:** "High Density Residential".
 - b. **Existing Zone Designation:** R-3/"Medium Density Multi-Family Residential".
 - c. **Surrounding Land Uses:** The property abuts R-4 zoned property to the north and west, and is surrounded by a mix of single-family residences, multi-family dwellings, and medical offices. Across SW 11th Street is the Samaritan Pacific Hospital property that is zoned P-1.
 - d. **Topography and Vegetation:** The site gently slopes from the northwestern side of the property downwards toward the southeast. The site is landscaped.

- e. **Existing Structures:** A single-story 19,900 square foot building housing a skilled nursing facility.
- f. **Utilities:** All city services are available to the site.
- g. **Development Constraints:** None known.
- h. **Past Land Use Actions:**

Ordinance No. 1002, adopted May 19, 1975, amended the zoning map changing the zoning of the subject property from R-3 to R-4.

Ordinance No. 1308, adopted September 7, 1982, amended the zoning map repealing all prior ordinances, thereby inadvertently changing the zoning of the property back to R-3.

- i. **Attachments:**

Attachment "A"	Applicant Request
Attachment "A-1"	Pacific Communities Health District Resolution
Attachment "A-2"	Assessor's Property Information
Attachment "A-3"	Zoning Map of Property
Attachment "A-4"	Aerial Photo of Property
Attachment "B"	Notice of Public Hearing and Map
Attachment "C"	Ordinance No. 1002
Attachment "C-1"	Ordinance No. 1308
Attachment "D"	Draft Ordinance
Attachment "E"	Uses Allowed in the R-3 and R-4 Zones
Attachment "E-1"	NZO Section 2-3-5 Table "A"
Attachment "F"	Topography Map of Area

- j. **Notification.** The Department of Land Conservation & Development was mailed notification of the proposed amendments on September 26, 2011. Applicable city departments, public agencies, and affected property owners within 300 feet of the subject property were notified on October 24, 2011, for the Planning Commission hearing. Notification of the Planning Commission hearing was published in the Newport News-Times on November 4, 2011.

2. **Explanation of the Request:**

Block 15, Bayley and Case's Addition to Newport was rezoned from R-3 to R-4 in 1975 by Ordinance No. 1002. City records show that a nursing home was constructed on the property in 1976 (then known as Yaquina Nursing Home). When the City undertook a comprehensive rewrite of its Zoning Ordinance and maps in 1982, to satisfy the newly adopted Statewide Planning Goals (Ordinance No. 1308),

the property appears to have been inadvertently rezoned back to R-3. Since the skilled nursing facility is an outright use in the R-4 zone, but in the R-3 zone requires a conditional use permit, the applicant is asking for a zoning map amendment to change the zoning of Block 15 back to R-4 as it was in 1975. This will make it easier for them to maintain, repair, or expand the existing skilled nursing facility.

3. **Evaluation of the Request:**

a. **Comments:** DLCD was provided notification on September 26, 2011. All applicable property owners, city departments, affected public/private utilities/agencies were notified on October 24, 2011, of the Planning Commission hearing. As of November 4, 2011, no written comments were received by the Community Development Department.

b. **Applicable Criteria:**

Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):

1. The change furthers a public necessity.
2. The change promotes the general welfare.

c. **Staff Analysis:**

The proposed findings submitted by the applicant address the criteria established in the Comprehensive Plan and Zoning Ordinance for approving the request. See Planning Staff Report Attachment "A". Additionally, a list of the uses in the applicable zones and a copy of Table "A" of NZO Section 2-3-5 (summarizing height restrictions, lot coverage restrictions, and other items in the different zones) are attached. See Planning Staff Report Attachments "E" and "E-1".

In regard to the applicable criteria for the proposed Zoning Map amendment:

The change furthers a public necessity and promotes the general welfare.

The requested zoning map change would allow the applicant to continue to operate the skilled nursing facility on the property and to repair, maintain, and expand the facility without having to go through a conditional use permit process. It appears that the City's intention was to have Block 15 zoned R-4 in 1975, but Ordinance No. 1308 inadvertently rezoned it to R-3. Ordinance No. 1308 called out 26 prior ordinances that it was intended to replace; however, Ordinance No. 1002 was not listed among them. Because of its comprehensive nature, Ordinance No. 1308 included an additional statement repealing and replacing all other conflicting ordinances. That is what caused the change back to R-3. Given this information, it appears that the City was

unaware of Ordinance No. 1002 when it made the changes in 1982.

Further, this zone change request will not create spot zoning. The subject property abuts R-4 zoning to the north and west. The applicant believes that it is appropriate to rezone the property to R-4 given how the property is developed and the history of its use. Also, Pacific Communities Health District to the north recently went through a zone change from R-3 to R-4 for property they purchased at 749 SW 11th Street. The applicant contends that the skilled nursing facility is a complementary use to the hospital's campus, and so it is logical and proper to allow the property to be rezoned to R-4. At 1.45 acres, it is reasonable for the Planning Commission to view this request as a minor adjustment to the boundary of the R-3 and R-4 zoning districts.

The applicant's findings indicate that the surrounding uses include R-3 to the north, east, and south; with R-4 to the north and west. They contend that there will be no impacts to the surrounding areas as both R-3 and R-4 are considered "High Density Residential" under the City's Comprehensive Plan. The applicant states that the existing use will not change as a result of approving this request and notes that the approval of the request is reasonable given the surrounding development and the medical uses adjacent to the north.

A change from R-3 to R-4 zoning furthers a public necessity by facilitating growth of essential medical services within the community. The applicant points out the presence of these services on the subject property and nearby parcels to the north and west. This demonstrates that medical uses are well established in the area. The R-4 district allows these uses outright, making it easier for them to be maintained, repaired or expanded.

For these reasons, the Planning Commission can find the proposed zoning change to be a public necessity that promotes the general welfare.

In regard to applicable Oregon Administrative Rules:

OAR 660-012-0060(1) requires that the Planning Commission establish that the proposed zone change will not significantly affect existing or planned transportation facilities. The subject request satisfies this requirement because the change to R-4 zoning will not have the effect of allowing more vehicle trips than the existing R-3 zoning. This is due to the fact that the property is already developed with a skilled nursing facility, the small size of the zone change (1.45 acres), and that the R-3 and R-4 zoning districts allow the same residential densities. R-4 zoning provides for a broader range of non-residential uses; however, such flexibility will have a negligible impact to the transportation system because the more limited list of non-residential uses allowed in the R-3 zone provides for a comparable intensity of

development.

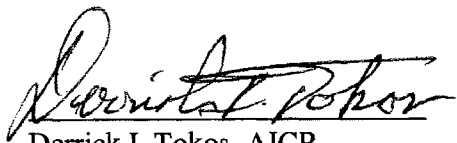
Consistent with Statewide Planning Goal 10 and Chapter 660, Division 008 of the Oregon Administrative Rules, the City of Newport maintains a residential buildable lands inventory, which establishes that a 20 year land supply is available for needed housing. When properties are rezoned, the Planning Commission must consider the impact of the change on the City's inventory. In this case, the subject property is already developed with a non-residential use. This fact is accounted for in the buildable lands inventory, which identifies most of the property as being unavailable for residential development.

4. **Conclusion:**

The applicant requests the zone change in order to continue the use of the property as a skilled nursing facility and in order to make necessary repairs, maintenance, and enhancements without having to go through a conditional use permit process. It appears that the City's intention was to have Block 15 zoned R-4. The R-3 zoning seems to have happened due to an inadvertent oversight when adopting a new zoning map with Ordinance No. 1308 in 1982. Because of that, the applicant believes that the zone change is a reasonable request.

G. **STAFF RECOMMENDATION:**

The Planning Commission should review the proposed changes to the Zoning Map and the application materials as well as other documentation and testimony that may be submitted during the course of the hearing. The Planning Commission should recommend approval of the request as being in compliance with the applicable criteria if the Commission finds that the criteria have been met. The Commission should identify how the request does not comply with the criteria, or should identify conditions necessary in order to make the request comply with the criteria, if the Commission finds that the criteria have not been met.



Derrick I. Tokos, AICP
Community Development Director
City of Newport

November 4, 2011



UNITED STATES POSTAGE
PITNEY BOWES
02 1A
0004318124 DEC 14 2011
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City of Newport
169 SW Coast Hwy
Newport, OR 97365

TO

ATTN: PLAN AMENAMENT SPECIALIST
DLCD
635 CAPITOL ST NE, SUITE 150
SALEM, OR 97301-2540