



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/21/2009

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 012-09

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: Monday, January 04, 2010

This amendment was submitted to DLCD for review prior to adoption 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.

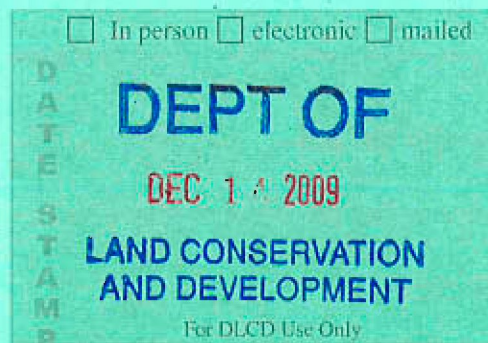
***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Derrick Tokos, City of Newport
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> YA

Notice of Adoption

**THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**



Jurisdiction: **City of Newport**

Local file number: **3-CP-09/10-Z-09**

Date of Adoption: **12/7/09**

Date Mailed: **12/11/09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **9/28/09**

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".

Property identified as Tax Lot 3100, Section 29CD, T10S, R11W, was split zoned R-4/"High Density Multi-Family Residential" and R-1/"Low Density Single Family Residential." The Comprehensive Plan Map was similarly split between low density and high density residential. The amendments place the entire property within a high density residential Comprehensive Plan designation with R-4 zoning.

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

Plan Map Changed from: **Low Density Residential**

to: **High Density Residential**

Zone Map Changed from: **R-1**

to: **R-4**

Location: **4305 NW Cherokee Lane**

Acres Involved: **.23**

Specify Density: Previous: **5.8 units/ac**

New: **8.7 units/ac**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
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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. _____

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

None.

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

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

Address: **169 SW Coast Highway**

Fax Number: **541-574-0644**

City: **Newport**

Zip: **97365**

E-mail Address: **d.tokos@thecityofnewport.net**

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 Complete Copies** (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
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 Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice 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 now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist.**

CITY OF NEWPORT

ORDINANCE NO. 1994

AN ORDINANCE AMENDING ORDINANCE NO. 1621 (AS AMENDED) AND ORDINANCE NO. 1308 (AS AMENDED) OF THE CITY OF NEWPORT, OREGON, TO AMEND THE COMPREHENSIVE PLAN MAP AND ZONING MAP OF THE CITY OF NEWPORT

Summary of Findings:

1. A request by Paul Knopp on behalf of the owner Lynne Properties, LLC, (Pavitt Land Use Consulting, LLC, authorized representative) was filed on September 24, 2009 for a minor amendment to the City of Newport Comprehensive Plan Map (Ordinance No. 1621, as amended), and the Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended).
2. The property, identified as Tax Lot 3100 of Lincoln County Assessor's Map 10-11-29-CD (4305 NW Cherokee Lane), is under a split Comprehensive Plan map designation that runs down the middle of the property, with a Low Density Residential designation applying to the southern portion and High Density Residential applying to the northern portion of the lot. The zoning is similarly split between R-1 (Low Density Single-Family Residential) and R-4 (High Density Residential). The property is approximately 10,018 square feet in size.
3. With these amendments, the entire property will be placed under a High Density Residential Comprehensive Plan designation. Zoning for the property will be R-4 (High Density Residential), under which the existing residence and apartment will become a permitted use.
4. The Newport Planning Commission reviewed the proposed revisions to the Comprehensive Plan and Zoning Ordinance (Newport File No. 3-CP-09/10-Z-09) at a public hearing on November 30, 2009, and voted unanimously to recommend adoption of the amendments.
5. The City Council held a public hearing on December 7, 2009 regarding the question of the proposed revisions (Newport File No. 4-CP-09/11-Z-09), and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.
6. 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. Ordinance No. 1621 (as amended) is amended to establish a Comprehensive Plan map designation of "High Density Residential" for the entire property identified as Tax Lot 3100 of Lincoln County Assessor's Map 10-11-29-CD (4305 NW Cherokee Lane) as illustrated in Exhibit "A."

Section 2. Ordinance No. 1308 (as amended) is amended to establish a Zoning Map designation of "R-4/HighDensity Residential for the entire property identified as Tax Lot 3100 of Lincoln County Assessor's Map 10-11-29-CD (4305 NW Cherokee Lane) as illustrated in Exhibit "A."

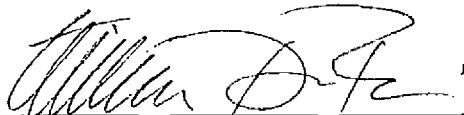
Section 3. The City Council adopts the findings of fact and conclusions contained in Exhibit "B," File No. 3-CP-09/10-Z-09 "Findings for Amendments to Comprehensive Plan Maps and the Zoning Map to Change the Designation of a Portion of Property," in support of approval of the amendment to the Newport Comprehensive Plan and Zoning Ordinance.

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

Date adopted on initial vote and read by title only: December 7, 2009

Date adopted on final roll call vote: December 7, 2009

Signed by the Mayor on December 9, 2009.



William D. Bain, Mayor

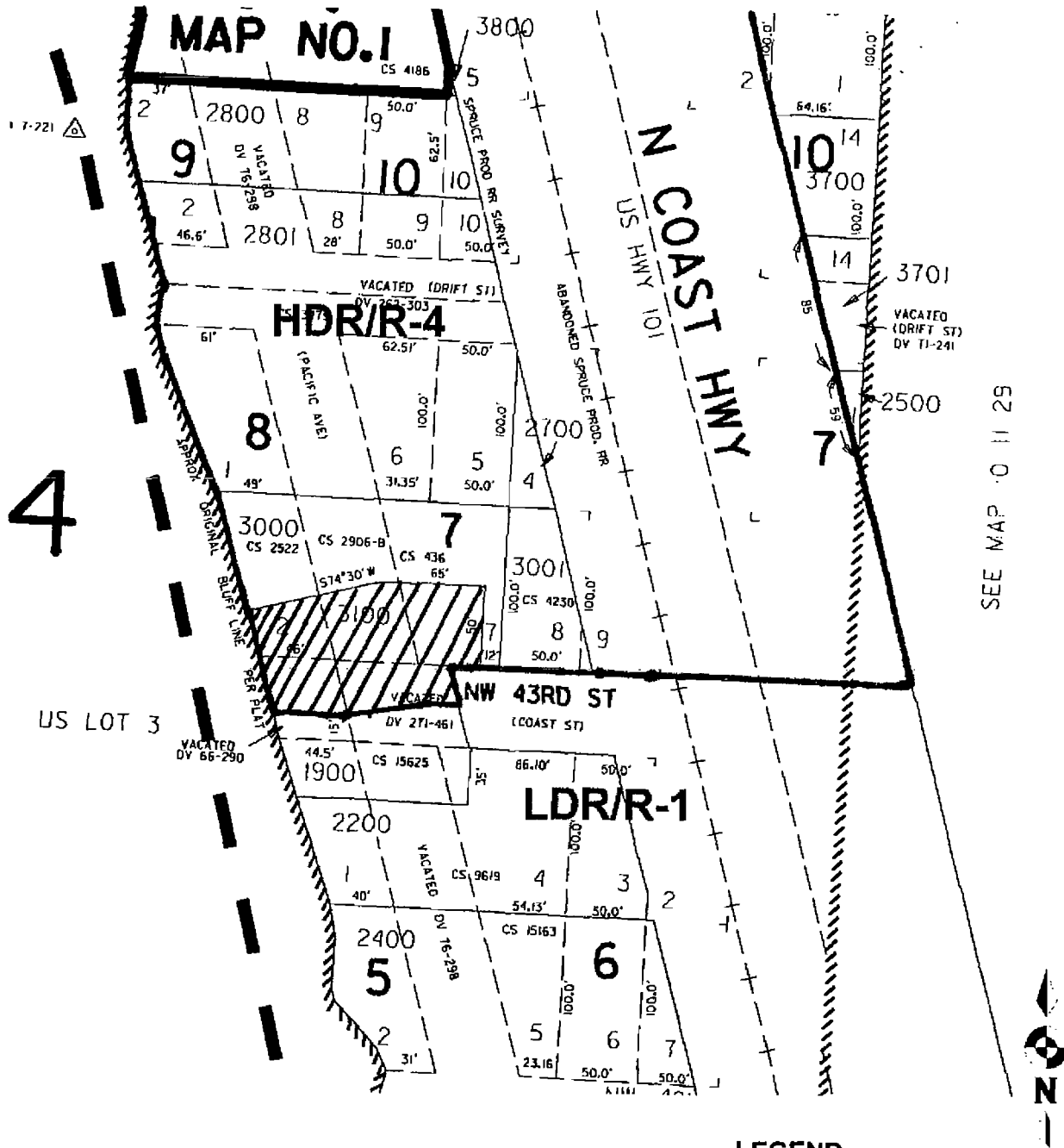
ATTEST:



Margaret M. Hawker, City Recorder

Exhibit "A"

Newport File No. 3-CP-09/10-Z-09



SEE MAP 01129

Subject Property:
Assessor's Map 10-11-29-CD Tax Lot 3100

Existing Comp Plan Designation: HDR & LDR
Existing Zoning Designation: R-4 & R-1

Proposed Comp Plan Designation: HDR
Proposed Zoning Designation: R-4

LEGEND

Comp Plan Map:
HDR = High Density Residential
LDR = Low Density Residential

Zoning Map:
R-4 = High Density Multi-Family
R-1 Low Density Single Family

EXHIBIT "B"

Newport File No. 3-CP-09/10-Z-09

FINDINGS FOR AMENDMENTS TO COMPREHENSIVE PLAN MAPS AND THE ZONING MAP TO CHANGE THE DESIGNATION OF A PORTION OF PROPERTY

FINDINGS OF FACT

1. Paul Knopp on behalf of property owner Lynne Properties, LLC (Pavitt Land Use Consulting, LLC, authorized representative), submitted a land use application on September 24, 2009, for approval of minor Comprehensive Plan Map and Zoning Map amendments. The subject property has a split Comprehensive Plan designation that runs down the middle of the site, with a Low Density Residential designation applying to the southern portion and High Density Residential applying to the northern portion of the lot. The zoning is similarly split between R-1 (Low Density Single-Family Residential) and R-4 (High Density Residential). The applicant is requesting that the Comprehensive Plan designation be changed to entirely High Density Residential and the zoning to R-4 (High Density Residential) so that the zoning conforms to the existing development pattern.
2. The applicant's property contains an existing single family residence, built in 1940, that is being remodeled by the current owners. There is also an attached apartment built in 1960.
3. The property is described as Tax Lot 3100 of Lincoln County Assessor's Map 10-11-29-CD (4305 NW Cherokee Lane). The property is approximately 10,018 square feet (.23 acres) in size per Assessment Records.
4. Staff reports the following facts associated with the request:
 - a. Existing Plan Designation: The property is split between "Low Density Residential" and "High Density Residential".
 - b. Existing Zone Designation: Split between R-1/"Low Density Single-family Residential" and R-4/"High Density Multi-Family Residential.
 - c. Surrounding Land Uses: The property is surrounded by a mix of primarily single-family residences, with some multi-family dwellings. The Agate Beach Golf Course is to the east, across Hwy. 101.
 - d. Topography and Vegetation: The site is situated at the street level then falls abruptly from the grassy bluff to the beach. There is typical residential vegetation around the residences and the grassy bluff in the rear dropping to the beach.

- e. Existing Structures: One building holding a single-family dwelling built in 1940 that is being remodeled by the current owners, and an attached apartment built in 1960.
 - f. Utilities: All city services are available to the site.
 - g. Development Constraints: A geologic permit was obtained by current owners prior to the existing remodel.
 - h. Past Land Use Actions:
 - File No. 1-GP-09: A geologic permit, finalized on February 25, 2009, with a geologic report by G2 Associates to add two bedrooms and one bathroom to the existing single-family residence.
5. The Department of Land Conservation & Development was mailed notification of the proposed amendments on September 23, 2009. Applicable city departments, public agencies, and affected property owners within 300 feet of the subject property were notified on November 3, 2009, for both the Planning Commission and the City Council hearings. Notification of the Planning Commission hearing was published in the Newport News-Times on November 20, 2009, and on November 28th for the City Council hearing.
6. The Planning Commission reviews land use applications of this nature and makes a recommendation to the City Council. The Planning Commission held a public hearing on the proposed amendment on November 30, 2009. After receiving testimony and evidence, and following deliberation, the Planning Commission voted in favor of forwarding a favorable recommendation on this proposed Comprehensive Plan and Zoning map change to the City Council. The record and minutes of the November 30, 2009 meeting is hereby incorporated by reference.
7. Testimony received or considered at the Planning Commission meetings included:
- a. A written "No Comment" comment from Lee Ritzman (City Engineer/Newport Public Works Director) dated November 3, 2009.
 - b. Oral testimony received at the November 30, 2009 hearing from Dawn Pavitt (applicant's agent) explaining the application and testifying in favor.
8. A public hearing was held on December 7, 2009 before the Newport City Council. The City Council heard a report by staff and allowed for testimony by the applicant/owner and others in favor or opposed to the request. The record and minutes of the December 7, 2009 meeting are hereby incorporated by reference. Planning staff prepared a summary of this agenda item for the meeting and that summary with its attachments is incorporated by reference into the findings.

9. Following the public hearing and deliberation on December 7, 2009, the City Council voted to accept the Planning Commission's recommendation and approve the requested amendments.
10. The City Council finds that the applicable criteria are as follows:
 - a. Findings regarding the following are required for the Proposed Comprehensive Plan Map Minor Amendment (p. 286 of the Comprehensive Plan):
 - i. Change in one or more goal or policy; and
 - ii. Demonstrated need to accommodate unpredicted population trends, housing needs, employment needs, or change in community attitudes; and
 - iii. Orderly and economic provision of key public facilities; and
 - iv. Ability to serve the subject property with City services without an undue burden on the general population; and
 - v. Compatibility of the proposed change with the surrounding neighborhood and community.
 - b. Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):
 - i. The change furthers a public necessity.
 - ii. The change promotes the general welfare.

CONCLUSIONS

1. The City Council concludes that the following findings demonstrate compliance with the applicable criteria for a Comprehensive Plan Map Minor Amendment.
 - a. Findings as applicable have been submitted demonstrating: "A change in one or more goal or policy."
 - i. The applicant notes that the requested map amendment will affect the city inventories for both high-density and low-density residential housing to a minor degree. The applicant contends that there is more than sufficient land in the City of Newport's buildable lands inventory for R-4 land. However, the entire building and both dwelling uses need to be included in that inventory. The applicant believes that this request supports the Comprehensive Plan Goal: *"To provide for the housing needs of the citizens of Newport in adequate numbers, price ranges, and rent levels which are commensurate with the financial capabilities of Newport households."* The applicant also

believes that, given the mixed use of housing on the property, Policy 3: *"The city shall encourage diversity and innovation in residential design, development, and redevelopment that is consistent with community goals"* is also supported.

- b. Findings as applicable have been submitted demonstrating that there is a: "Demonstrated need to accommodate unpredicted population trends, housing needs, employment needs, or change in community attitudes."
 - i. The applicant notes that the requested amendment is minor and will allow the City of Newport to continue to accommodate unpredicted population trends, housing needs, employment needs, or a change in community attitudes. The request is quite minor in size and is simply a realignment of bordering designations so that an entire piece of property and residential structure may be within a single zone and managed appropriately.
- c. Findings as applicable have been submitted demonstrating an: "Orderly and economic provision of key public facilities."
 - i. The applicant's findings indicate that the requested map amendment is not anticipated to impact the orderly and economic provision of key public facilities. The subject property is already fully served with key public facilities due to the proximity to NW 43rd Street and the existing building. The realignment of the map designation will not impair the provision of facilities to adjacent or nearby properties.
- d. Findings as applicable have been submitted demonstrating an: "Ability to serve the subject property with city services without an undue burden on the general population."
 - i. The applicant notes that city services to the subject property will not be impacted by the requested amendment. The parcels have access via NW 43rd Street, and the existing building is already served with city services.
- e. Findings as applicable have been submitted demonstrating the: "Compatibility of the proposed change with the surrounding neighborhood and community."
 - i. The applicant states that due to the split zoning and the existing Comprehensive Plan designation for the subject parcels, it is anticipated that the proposed changes will not be significantly noticeable to the surrounding neighborhood and community. This is simply a mapping change so that the property will be solely R-4 and be brought into compliance with the current applicable zoning code and requirements and the accompanying Comprehensive Plan designation. The residential development on the subject lot has been in place for 49+ years and pre-dates most, if not all, of the surrounding development in the neighborhood.

- ii. The applicant further states that the proposed "High Density Residential" uses in the small subject area will be compatible with the adjacent "High Density Residential" Comp Plan designated area. The lot is small, oceanfront, and situated on a level bluff, as is much of the city's "High Density Residential" planned land. Those features will be limiting factors in future development. The applicant notes that the city's Comprehensive Plan discusses this type of "High Density Residential" use: *"Although the R-4 zoning district allows for a higher density, that district has been historically located in areas with geologic or other constraints. It is not unusual to find a one acre plot that can have only four or five units. The R-4 district is also located in areas with views. This means that, although the density would allow many units, only one unit is built. This was taken into account when figuring the estimated number of units and is the reason why the dwelling units per acre is lower than the R-3 district."*
 - iii. The applicant notes also that the subject property is split by the Agate Beach Neighborhood Plan with the High Density Residential portion being covered. This request is in conformance with the Agate Beach Plan: Goal 1: *"To foster a sustainable urban living environment and to seek the maintenance and improvement of the character of the neighborhood for its people. Policy 2: Where feasible, development may transfer development rights that are not constrained by natural or artificial limitations."* The applicant further notes that the property has been developed with multi-family residences for more than 49 years. This is a long-time factor in the character of this neighborhood. The land owner should not be limited in future additional improvements because of the split zoning. Policy 2 supports this development right in the Agate Beach neighborhood.
2. The City Council concludes that the following findings demonstrate compliance with the applicable criteria for a Zoning Map Amendment:
- a. The change furthers a public necessity and promotes the general welfare.
 - i. The applicant notes that the proposed request furthers a public necessity by allowing the owner's parcel to be wholly zoned in one designation. In addition, this zone change request will not create spot zoning, but will further the intended R-4 use of the multi-family residential building on the subject property. The existing zone line between R-4 and R-1 will be changed so that the entire parcel is zoned R-4 as is the adjoining parcel to the north. The single zone will allow both the property owner and city officials to better manage the existing multi-family use and development on the property. Expectations and regulations of allowed uses would be significantly clearer than with the existing split zoning. There are different development standards for R-4 and R-1. Split zoning, in this instance, is impracticable to manage and makes it difficult for the city to regulate uses and development.

- ii. The applicant notes that the property is developed as a pre-existing nonconforming use given the split zoning, and they believe it would be in the best interests of the public for this property to be brought into conformance and compliance with Newport's zoning ordinance.
- iii. The applicant's findings state that city water, sewer, Northwest Natural Gas, and other utilities are in place. Access is via NW 43rd Street, and this will be unchanged. Fire and police protection are adequate due to the proximity of facilities to NW 43rd Street.
- iv. The applicant further notes that spot zoning is not necessary for the zone re-alignment. The request is simply a shift of the existing zone designation to fully include a parcel within the adjacent zone. The property is currently developed with two dwellings, so R-4 is the logical single zone to cover the property. As noted previously, the dwellings have been in place for many years prior to land use zoning being implemented in this location. The applicant believes that there was a mapping oversight that allowed the single tax lot to hold two different residential zones. The proposed change would allow the most appropriate use of the land given the long-time use of the two dwellings.
- v. The applicant states that there will be no additional traffic or other potential impacts such as noise or glare due to the requested zone change. As noted, the property has been developed with these two residences for 49+ years.
- vi. The applicant contends that based on factors specified above, the requested change would further a public necessity and promote the general welfare.

OVERALL CONCLUSION

Based on the evidence and testimony in the record, the City Council concludes that the above findings of fact and conclusions demonstrate compliance with the applicable criteria and the requested amendment is hereby **APPROVED**.



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City of Newport
169 SW Coast Hwy
Newport, OR 97365

TO

ATTN: BLAN AHENYEW SPECIALIST
DEPT OF LAND CONSERVATION & DEV.
635 CAPITAL STREET NE, STE 150
SALEM, OREGON 97301-2548