



# 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](http://www.lcd.state.or.us)

## NOTICE OF ADOPTED AMENDMENT

March 7, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Oakland Plan Amendment  
DLCD File Number 002-06



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 amendment was submitted with resolution and without a signed ordinance.

Appeal Procedures\*

**DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 20, 2007**

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 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 DATE SPECIFIED ABOVE.**

Cc: Doug White, DLCD Community Services Specialist  
John Renz, DLCD Regional Representative  
Elainna Carter, City Of Oakland

<paa> ya

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# DLCD

## 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

In person  electronic  mailed

DATE  
STAMP

DEPT OF

FEB 28 2007

LAND CONSERVATION  
AND DEVELOPMENT  
For DLCD Use Only

Jurisdiction: *City of Oakland*

Local file number: *Z-06-16*

Date of Adoption: *February 6, 2007*

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: *10/3/06*

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".

*Zone Map Change from R 1/3 low density residential  
to R-2 medium density residential*

Does the Adoption differ from proposal? Please select one

*original was R 1/3 low density to C-1 commercial  
that was changed to above. R-1/3 to R-2*

Plan Map Changed from:

to:

Zone Map Changed from: *R-1/3*

to: *C-1*

Location: *209 NE Pine St.*

Acres Involved: *.15*

Specify Density: Previous: *R-1/3*

New: *R-2*

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 # 002-06 (15610)*

**DLCD file No.** \_\_\_\_\_

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

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Local Contact: *Elainna Carter* Phone: *(541) 459-4531* Extension:  
Address: *637 NE Locust ST* Fax Number: *541-459-4472*  
City: *Oakland* Zip: *97462* E-mail Address: *oaklandcityclerk@quest.net*

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### **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, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@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 **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**CITY OF OAKLAND  
RESOLUTION 444**

**A RESOLUTION AUTHORIZING A ZONE CHANGE FOR  
PROPERTY LOCATED AT 209 NE PINE STREET FROM  
ZONE R-1/B LOW DENSITY RESIDENTIAL TO ZONE R-2  
MEDIUM DENSITY RESIDENTIAL.**

**WHEREAS**, Jack and Diane Smith, as joint applicants, have filed a Petition, pursuant to the provisions of the Oakland Zoning Ordinance (Ord. 499), for a change in the land use zoning designation of their property located at 209 NE Pine Street from Zone R-1 Low Density Residential to Zone R-2 Medium Density Residential; and,

**WHEREAS**, the Oakland Planning Commission, upon its review of the applicable criteria, found the Applicants' requested zone change to be consistent with and promotional of (1) the objectives of the City's acknowledged Comprehensive Plan and other adopted policies and goals of the City; (2) the objectives of the Oakland Zoning Ordinance and other City Ordinances; and, (3) Oregon's Statewide Planning Goals; and,

**WHEREAS**, upon the Applicant's specific request, the Oakland Planning Commission, by its affirmative and unanimous vote, recommended to this Council that the requested zone change be approved and given full force and effect; and,

**WHEREAS**, this Council, upon a duly noticed hearing pursuant to the procedures prescribed by the Oakland Zoning Ordinance and applicable state statutes, has approved and adopted the Findings of Fact and Decision of the Oakland Planning Commission in this matter as the Council's own Findings of Fact and Decision; and,

**WHEREAS**, appearing to this Council that there are no substantive or procedural impediments to giving the Applicant's requested Zone Change full force and effect;

**NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF OAKLAND HEREBY RESOLVES AS FOLLOWS:**

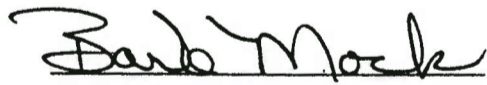
- 1. The Land Use Zoning Designation of that certain property, located at and commonly known as 209 N.E. Pine Street, in the City of Oakland, shall be and is hereby changed from R-1/B Low Density Residential to R-2 Medium Density Residential. The City Clerk shall make such appropriate notations and changes to the City's Zoning Map and Future Land Use Map as are necessary to effectuate said redesignation.**

**SO RESOLVED** by the Common Council this 6<sup>th</sup> day of February 2007.

**APPROVED** by:

  
\_\_\_\_\_  
Nanci Staples  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
Barb Mock, City Recorder

COPY

**BEFORE THE PLANNING COMMISSION  
OF THE CITY OF OAKLAND**

**In the matter of**

**File No. Z – 06 – 16  
VAR – 06 -13**

**Jack & Diane Smith**  
Applicants

**FINDINGS OF FACT &  
DECISION**

**APPLICATION FOR ZONING  
AMENDMENT AND  
CONCURRENT VARIANCE**

The Oakland Planning Commission enters the following Findings of Fact and Decision in relation to above entitled matter:

**PROCEDURAL FINDINGS**

The initial application for a Zone Change was received by the city on August 24, 2006. Due to the absence of a Zoning Administrator and Planning Staff, there was some confusion around the appropriate course of action for the Applicants. The application was reviewed by the Planning Commission on November 28, 2006 and was deemed to be essentially complete with the suggestion that the Applicants modify the application to pursue a zone change to R-2 Medium Density Residential and a Variance. In the absence of a Zoning Administrator and Planning staff, Planning Commissioner Steven Smith was assigned to act as Planning Staff *Pro Tem*.

The matter was duly noticed and a public hearing was scheduled for December 26, 2006. On that date, a quorum having assembled, a public hearing was held before the Oakland Planning Commission (hereafter "Commission"). There were no objections made to the Commission's jurisdiction to hear the matter. There were no conflicts of interest or ex parte contacts disclosed by any Commissioner. The Commission conducted the hearing as follows: the hearing was opened to receive testimony and evidence; the staff report was reviewed; the applicant briefly addressed the application and provided clarification of the proposal; no one spoke in favor or opposition to the application; one letter of opposition was read and considered; and the hearing was closed. The Planning Commission deliberated on the application and at the conclusion of their deliberation, the Commission made the following:

**FINDINGS OF FACT**

1. The existing factual context of the Application is as follows:

A. Owner/Applicant: Jack and Diane Smith

- B. Site Address: 209 NE Pine Street
- C. Assessors Map& Tax Lot No: 25 05 04 DC 04500
- D. Land Use Designation: Specific Residential 1
- E. Zoning Designation: R-1/B Low Density Residential (10,000 sq. ft)
- F. Surrounding Zone: All surrounding properties are zoned R-1/B. Historic Overlay Zone is adjacent, across the intersection of 2<sup>nd</sup> Street and Pine Street.
- G. Parcel Area: .15 Acres (6,343 sq. ft.)

## 2. Description of Property and Proposed Use

The Applicants seek a zone change for this property from the current designation of R-1/B Low Density Residential to R-2 Medium Density Residential. The zone change sought by the Applicants would be effected by an amendment to the City's Zoning Map. Oakland Zoning Ordinance, Section 12.01.0 provides that amendments to the City's Zoning Map shall be accompanied by corresponding amendments to the Future Land use Map, and shall be processed concurrently. The Planning Commission will consider both the Zone Change and Comprehensive Plan Map Amendment. In addition, the Applicants seek a variance from the requirements of Oakland Zoning Ordinance, Section 6.05.6, which specifies that the minimum zone size for the R-2 Medium Density Residential is five (5) acres and Section 6.05.7, which specifies the minimum lot size for a two family dwelling as 7,500 square feet. Due to the unique nature of this property and its historical value to city, the unusual circumstance of seeking both a zone change and concurrent variance to allow the zone change will be considered by the Oakland Planning Commission.

The Applicants seek to develop the lower level of their building into a single apartment and to operate a Home Occupation Antique business on a portion of the upper floor. The Operation of the Antique business was submitted as part of a Site Plan approved with conditions in August 2006.

The subject property is one of two adjacent properties in the ownership of the Applicants. Together, the two properties were historically, the location of the denominational Church of Christ and its adjacent parsonage (a single family structure located to the north of the old church). This application is for the old church structure and the lot on which it is located. In 2002, these two adjacent properties were the subject of a Lot Line Adjustment that was approved by the City's contract Zoning Administrator, Satre Associates. The current Owners/Applicants purchased the adjacent properties at separate times, in 2006. Additionally, in August, 2006, a Site Plan Review and Proposed Change

in Use to include a home occupation within a single family dwelling was approved by the Oakland Planning Commission. The approved site plan allowed the Applicants to modify the former church basement, by converting a portion of it to a vehicle garage with a driveway entrance, making additional internal modifications including construction of several internal walls, creating one additional bathroom and one additional bedroom on the lower level, two additional bathrooms and an area for operation of a proposed home occupation on the upper floor.

In considering this proposal, it is necessary to consider the unique history of this building. It was originally constructed as a church in 1898. Various additions were made overtime, with a third addition in 1943. Its construction and various additions precede all current and previous zoning requirements. It continued to be used regularly as a church until the mid 1990s. It was used a wedding chapel with associated wedding related business uses including a florist shop and copy center. It was used briefly by another congregation, The River of Life World Outreach Center, until neighbors complained about the loudness of that congregation's music and that congregation decided it was easier to move than comply with conditions on the loudness of their music.

Further, it needs to be noted that the Applicants have appeared before the Oakland Planning Commission on several occasions and in the absence of consistent planning staff did not receive clear direction from planning staff or the Planning Commission. In January, 2006, the Applicants sought a Conditional Use Permit, based on inadequate advice from the contract Zoning Administrator, Umpqua Regional Council of Governments, who also prepared an incomplete and contradictory staff report. The most recent appearance before the Planning Commission was on November 28, 2006 at which time the Applicants were encouraged by the Planning Commission to pursue the present application, instead of a zone change to C-1 General Commercial.

### 3. Criteria

In order for the Oakland Planning Commission to approve the Applicants' proposal, the criteria of both Oakland Zoning Ordinance, Section 12.04.0 Criteria For Evaluating An Amendment and Section 11.01.02 Criteria for Variance Approval must be met. Because, the Zoning Change is ultimately contingent on the Variance approval, the Variance will be considered first.

#### **Findings of Fact Relating to Section 11.01.02 (OZO)**

**Section 11.01.02 Criteria for Variance Approval has four criteria:**

**Criteria 1. Special circumstances or conditions apply to the property that do not apply to other property in the same zone or vicinity and result from**



**the lot size or shape, (legally existing prior to the date of this ordinance), topography, or other circumstances over which the applicant has no control.**

- Criteria 2. The Variance is necessary for the preservation of a property right of the applicant substantially the same as owners of property in the same zone or vicinity possess.**
- Criteria 3. The variance would not be materially detrimental to the purpose of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of the Comprehensive Plan.**
- Criteria 4. The variance requested is the least waiver of the requirements which would alleviate a hardship.**

**Findings of Fact Relating to Criteria 1:**

The church building is unique as a structure as it is larger in size and height than any nearby buildings which are residential structures. The surrounding residential neighborhood grew up around the church structure, prior to any zoning regulations. It is beyond the control of the applicant that this structure is totally surrounded by the R-1 zone.

Due the previous Lot Line Adjustment in 2002, the current lot size does not meet the minimum lot size of 7,500 square feet for a two family dwelling in the R-2 Zone. The Lot Line Adjustment was done prior to the Applicants' ownership of the property.

The Commission finds there are special circumstances over which the applicant has no control and Criteria 1 is met.

**Findings of Fact Relating to Criteria 2:**

The property was advertised as having many possible uses. In fact, in recent years, the building has seen multiple uses including residential, a wedding chapel with related commercial businesses including a florist shop and copy center, and a church. Given the proximity to the General Commercial Zone, one block to the south and one half block to the west, and the clear history of multiple uses it is not unreasonable that the Applicants were lead to believe that such multiple uses could continue. To unduly restrict the Applicants use of this unique property would infringe on their property rights.

The Commission finds that the variance is necessary for the preservation of property rights of the Applicants substantially the same as others in the general vicinity and that Criteria 2 is met.

**Findings of Fact Relating to Criteria 3:**

The proposed change is consistent with the Oakland Zoning Ordinance which purposes to “control the character and development of the City of Oakland ...to create and maintain a proper environment for human interaction.” (OZO Section 2.01.0). The purpose of the Oakland Zoning Ordinance is by design very broad and seeks in general to promote compatible uses within zones. The Comprehensive Plan, while recognizing specified uses within zones, tends to consider what is beneficial for the entire city and promotes broad goals such as economic development. The current proposal does not conflict with the objectives of the Comprehensive Plan, but rather promotes additional housing opportunities and economic development.

The only significant question is “does the current proposal have a detrimental effect on surrounding properties in the zone or vicinity?” While an argument could be made for potential detrimental effects, the surrounding properties are all clearly in a transitional area between the down town commercial zone, first street commercial zone, and public access area of the post office. Most, if not all, of the adjacent properties were developed after the church was built and in use. These same properties were developed in close proximity to the down town commercial area. If any these properties were purchased later, the transitional nature of the area was evident. The proposed zone change is not detrimental to the neighborhood; rather it contributes to smoothing out or blending of uses in this transitional area. However, other changes which have been considered such as changing to General Commercial could be detrimental.

The Commission finds the proposed change is not detrimental to the purpose of the Zoning Ordinance or to other properties in the vicinity or in conflict with the objectives of the Comprehensive Plan and that Criteria 3 is met.

**Findings of Fact Relating to Criteria 4:**

The Applicants have considered other options such as pursuing a change to General Commercial. However, if a change to General Commercial were approved, it would have greater, potential harmful effects on the surrounding neighborhood due to fewer restrictions and possibly increased traffic. Because of the unique nature of this property special allowances need to be considered. The proposed change does create in essence a spot zone, limited to one property. The spot zone by its very nature limits impact and does the most to preserve the residential nature of the neighborhood. Of the possible options available to the Applicants, the proposed change appears to be the least waiver of requirements, with the least potential negative effects.

The Commission finds the proposed change is the least waiver of requirements that will alleviate a hardship for the Applicant and that Criteria 4 is met.

**Findings of Fact Relating to Section 12.04.0 (OZO)**

**Section 12.04.0 Criteria For Evaluating An Amendment has three criteria:**

- Criteria 1. Whether the change is consistent with and promotes the objectives of the Comprehensive Plan and other adopted policies and goals of the City.**
- Criteria 2. Whether the change is consistent with and promotes the objectives of this ordinance and other City ordinances.**
- Criteria 3. Whether the change is consistent with and promotes Oregon's Statewide Planning Goals as developed and amended by the Department of Land Conservation and Development.**

**Findings of Fact Relating to Criteria 1:**

This property is unique in its history and its present circumstances. In order to preserve a structure with historical significance, continued use that fosters good maintenance should be encouraged. In the Historic Goals and Policies Section of the Comprehensive Plan the value of buildings of secondary historical significance is recognized:

**CITY POLICIES:**

- 1. Buildings of primary or secondary historic significance should be restored. Demolition is not encouraged.

The proposed zone change with the proposed use will increase the likelihood that the building will be well maintained and attractive in appearance.

The proposed use as a two family dwelling also provides for additional reasonable cost housing which is addressed by the Housing Goal and Policies Section of the Comprehensive Plan:

**CITY POLICIES:**

- 2. Sufficient land shall be designated, including land on which all types of housing are allowed, so that new housing can be those types of units affordable by low and moderate income persons.

Based upon the foregoing, the Commission finds that the Applicants' proposal is consistent with and promotes the objectives of the Comprehensive Plan and other adopted policies and goals of the City; and, therefore, meets the first criteria for approval.

**Findings of Fact Relating to Criteria 2:**

The proposed zone change is consistent with the intent of the Zoning Ordinance which includes preserving the rights of and affording protections to all affected property owners. Given the transitional nature of the neighborhood the proposed zone change would have minimal impact on the surrounding properties. The proposed zone change would also provide the most effective controls in relation to uses permitted outright in comparison to other potential changes.

Based upon the foregoing, the Commission finds that the Applicants' proposal is consistent with and promotes the objectives of the Oakland Zoning Ordinance and, therefore, meets the second criteria for approval.

**Findings of Fact Relating to Criteria 3:**

The City of Oakland Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission and has thereby been determined to be consistent with Statewide Planning Goals. . If approved, the Applicants' proposed zone change will promote Oregon's Statewide planning Goals and Guidelines, Goal 9: Economic Development and Goal 10: Housing.

Based upon the foregoing, the Commission finds that the Applicants' proposal is consistent with and promotes Oregon's Statewide Planning Goals as developed and amended by the Department of Lane Conservation and Development; and, therefore, meets the third criteria for approval.

**NOW, THEREFORE, based upon the foregoing Findings of Fact, the Oakland Planning Commission enters its**

**DECISION**

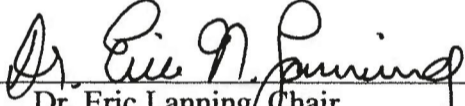
The Applicants' petition for an amendment of the City of Oakland Zoning Map, and contemporaneous amendment of the City of Oakland Future Land Use Map, is hereby **recommended for approval** from the current designation of R-1/B Low Density Residential to R-2 Medium Density Residential and concurrently the Applicants' request for a Variance from the minimum zone size for the R-2 Medium Density Residential of five (5) acres and the minimum lot size for a two family dwelling of 7,500 square feet is hereby **approved**.

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The Oakland Planning Commission hereby adopts FINDINGS OF FACT supporting approval of a re-designation of the Applicants' property from zone R-1/B Low Density Residential to R-2 Medium Density Residential, and forwards the Applicants' proposal, these Findings of Fact, and the attached Staff Report to the Oakland City Council with a RECOMMENDATION FOR APPROVAL of the requested Zoning Map and Future Land Use Map amendments. Concurrently, the Planning Commission adopts FINDINGS OF FACT supporting APPROVAL of a Variance granting a waiver from the minimum zone size for the R-2 Medium Density Residential of five (5) acres and the minimum lot size for a two family dwelling of 7,500 square feet with the following conditions:

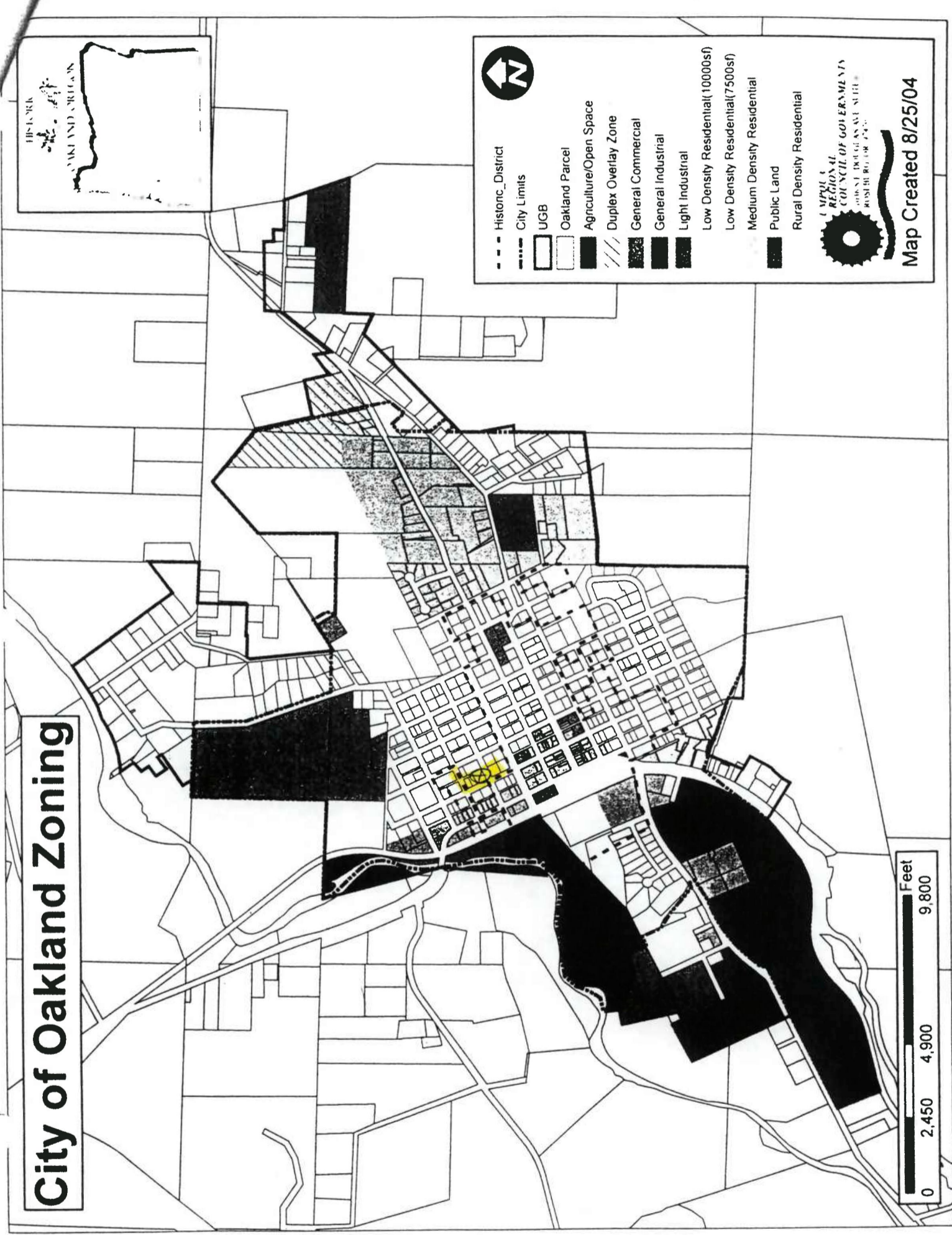
1. The previous ten (10) conditions of the Site Plan approved in August of 2006 continue to apply, unless specifically modified by a new Site Plan.
2. A new Site Plan shall be submitted and must be approved before any renovation or remodeling not specified in the existing Site plan can be initiated.
3. The total number of dwelling units on this property shall not exceed two (2).
4. The Applicants shall complete the addition of the ground floor garage with a driveway, in order that any tenant may use the existing off street parking.
5. Approval of the Zone Change by the City Council, is necessary for the approval of the Variance. The Zone Change and the Variance with these five (5) conditions are mutually dependent and neither can be granted independent of the other.

DATED this 12<sup>th</sup> day of January, 2007.

By:   
Dr. Eric Lanning, Chair  
Oakland Planning Commission

Prepared by:  
Steven Smith  
Planning Staff *Pro Tem*

# City of Oakland Zoning



**Legend**

- Historic\_District
- City Limits
- UGB
- Oakland Parcel
- Agriculture/Open Space
- Duplex Overlay Zone
- General Commercial
- General Industrial
- Light Industrial
- Low Density Residential(10000sf)
- Low Density Residential(7500sf)
- Medium Density Residential
- Public Land
- Rural Density Residential

City of Oakland  
Regional Council of Governments  
1000 1st Avenue North  
Burlingame, AK 99581

Map Created 8/25/04