



Oregon

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Department of Land Conservation and Development

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: July 15, 2015
Jurisdiction: City of Eugene
Local file no.: Z 15-2
DLCD file no.: 004-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 07/13/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Notice of the proposed amendment was submitted to DLCD 41 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
004-15
File No.: {23775}
Received: 7/13/2015

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Eugene

Local file no.: **Z 15-2**

Date of adoption: 6/18/15

Date sent: 7/13/2015

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 5/1/15

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Erik Berg-Johansen, Assistant Planner

Phone: 541-682-5437

E-mail: erik.berg@ci.eugene.or.us

Street address: 99 West 10th Avenue

City: Eugene

Zip: 97401-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- | | | | |
|-------------|----|--------|--|
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this |
| change. | | | |
| Change from | to | acres. | A goal exception was required for this change. |

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from R-1	to C-1	Acres: .37
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address): 2290 West 18th and 1809 City View, 18-04-01-22/09400, 09500

List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

ZONE CHANGE

INTRODUCTION

Application File Name (Number):

Karen Nelson (Z 15-2)

Applicant's Request:

Zone change from R-1 Low-Density Residential to C-1 Neighborhood Commercial.

Subject Property/Location:

Located at the Southeast corner of City View Street and West 18th Avenue. Assessor's Map 18-04-01-22 - Tax Lots 9400 and 9500.

Relevant Dates:

Application submitted on January 30, 2015; application deemed complete on April 29, 2015; public hearing held on June 10, 2015.

Applicant's Representative:

Carol Schirmer of the Schirmer Satre Group.

Lead City Staff:

Erik Berg-Johansen, Associate Planner, Eugene Planning Division.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on June 10, 2015. The Hearings Official stated he had no conflicts of interests, was not biased, and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Erik Berg-Johansen (Berg-Johansen), Associate Planner, and Steve Nystrom, Principal Planner, were present for the hearing. Berg-Johansen presented the staff report at the public hearing, recommending approval of the application. A number of people spoke in favor of the application, a number of people who were neutral testified about the application, and a number of people testified in opposition to the application. At the conclusion of the public hearing, the Hearings Official closed the record.

FACTS

The subject property is approximately .37 acres located on the southeast corner of City View Street and West 18th Avenue. The applicant seeks to have the property rezoned to C-1 Neighborhood Commercial. The subject property is in a residential area, with single-family and multi-family residences nearby. There is a C-1 Neighborhood Commercial property adjacent to the property on the east that is currently used as a small market. West 18th Avenue is a minor arterial road. The property currently has an old boarded up residence.

DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL

I have considered all of the documents in the planning file for the proposed zone change, (Z 15-2) as well as the testimony and documents provided at the public hearing.

ANALYSIS

Eugene Code (EC) 9.8865 provides the criteria for approval of a zone change:

“Zone Change Approval Criteria. Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- “(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- “(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.
- “(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.
- “(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone * * *.
- “(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

EC 9.8865(1)

EC 9.8865(1) requires that the proposed zone change be consistent with applicable provisions of the Metro Plan. Generally, the most applicable provision of the Metro Plan is the plan designation for the subject property, which is Low Density Residential. In the present case, however, the Metro Plan allows C-1 Neighborhood Commercial zoning throughout residential neighborhoods, when certain criteria (discussed later) are satisfied.

The staff report identifies three Metro Plan policies that generally promote Neighborhood Commercial zoning. While those policies are general and aspirational, they support Neighborhood Commercial zoning in principle and do not provide any reason not to allow Neighborhood Commercial zoning for the subject property. The staff report also identifies four siting and locational criteria for Neighborhood Zoning. There does not appear to be any dispute that the siting and locational criteria are met.¹ Therefore, I find that the proposed zone change is consistent with the provisions of the Metro Plan and that EC 9.8865(1) is satisfied.

EC 9.8865(2)

EC 9.8865(2) requires that the proposed zone change be consistent with the applicable adopted refinement plans. In the present case, the property is not located within the boundaries of any adopted refinement plan.

EC 9.8865(2) is satisfied.

EC 9.8865(3)

EC 9.8865(3) requires that the uses and densities allowed by the proposed zoning can be served through the orderly extension of key urban facilities and services. Key urban facilities and services are defined in the Metro Plan as: wastewater service, stormwater service, transportation, water service, fire and emergency medical services, police protection, city-wide parks and recreation programs, electric service, land use controls, communication facilities, and public schools.

Opponents argue that West 18th is already a very busy street and additional traffic would be generated by Neighborhood Commercial uses that would make the situation even worse. The applicant's traffic engineer conducted a traffic impact analysis (TIA). As the TIA explains, the

¹ The third criterion concerns whether there is sufficient frontage to ensure safe and efficient automobile, pedestrian, and bicycle access. While there was testimony about traffic impacts, that testimony had more to do with increases in traffic and effects on safety rather than with the frontage in particular. Those traffic arguments are discussed later.

City's level of service (LOS) requirements for the signalized intersection at City View Street and West 18th Avenue is Level D and is Level E for the stop sign intersections nearby. The TIA further explains that the existing AM peak level is Level A and the existing PM peak level is Level B for the City View Street and West 18th Avenue intersection. Even with the worst case scenario for the property (which is a fast-food restaurant), AM peak level would remain Level A and the peak PM level would remain Level B. The TIA also explains that under the worst case scenario, the intersections with stop signs would be Level A or B. All of those levels are well within City requirements. The opponents' anecdotal evidence is not sufficient to outweigh the TIA, and opponents' do not challenge any particular methodologies in the TIA. Therefore, I find that EC 9.8865(3) is satisfied.

EC 9.8865(4)

EC 9.8865(4) requires that the proposed zone change be consistent with certain applicable siting requirements, in this case EC 9.2150, which provides:

“Commercial Zone Siting Requirements. In addition to the approval criteria of EC 9.8865 Zone Change Approval Criteria, the following C-1 Neighborhood Commercial siting requirements apply:

- “(1) New C-1 zones shall be located within convenient walking or bicycling distance of an adequate support population. For new C-1 areas between 4 1/2 and 5 acres, an adequate support population is 4,000 people (existing or planned) within an area conveniently accessible to the site.
- “(2) New C-1 areas larger than 1.5 acres shall be located on a collector or arterial street.
- “(3) Existing neighborhood commercial areas shall not be allowed to expand to greater than 1.5 acres unless the development area site abuts a collector or arterial street.”

There are approximately 500 residentially zoned parcels within walking distance and approximately 13,000 residentially zoned parcels within biking distance. Thus, EC 9.2150(1) is satisfied. The subject property would be added to an existing Neighborhood Commercial area, so EC 9.2150(2) is not applicable. Even if it were, the combined area of the existing Neighborhood Commercial area (.34 acres) and the proposed area (.37 acres) is less than one and a half acres. Similarly, EC 9.2150(3) is not applicable because the existing Neighborhood Commercial area would be less than one and a half acres. Therefore, I find that EC 9.8865(4) is satisfied.

EC 9.8865(5)

EC 9.8865(5) requires that certain arrangements must be made with the City when an NR Natural Resource zone is applied based on EC 9.2510(3). The proposed zone change does not include any NR Natural Resource zoning, so this criterion does not affect the application. Therefore, I find that EC 9.8865(5) is satisfied.

Other Challenges

Opponents, including the owners of the market next door to the subject property, are concerned that the applicant might open another market that would compete with the existing market. The present application is only for a zone change. If the proposed zone change is approved, a wide variety of potential uses could occur on the subject property. Although the applicant stated that it has no intentions of opening a competing market and would prefer to open a complementary business, any future potential uses of the property are not a basis for denying the proposed zone change.

Transportation Planning Rule

Oregon Transportation Planning Rule (TPR), OAR 660-012-0060(1) provides:

- “(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:
- “(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
 - “(b) Change standards implementing a functional classification system; or
 - “(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating

projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

“(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

“(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

“(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

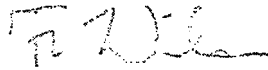
The applicant’s traffic engineer prepared a TIA regarding whether the proposed zone change would significantly affect a transportation facility for purposes of the TPR. The TIA explains that even under a worst case scenario of a fast food restaurant that the proposed zone change would not significantly affect a transportation facility. Although opponents testified that there is a lot of traffic on West 18th Avenue, they do not provide any evidence to contradict the findings in the TIA. I agree with the applicant’s traffic engineer that the proposed zone change would not significantly affect a transportation facility. Therefore, the proposed zone change complies with the TPR.

DECISION

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant’s request for a zone change from R-1 Low-Density Residential to C-1 Neighborhood Commercial.

Dated this 18th day of June, 2015.

Mailed this 22 day of June 2015.



Fred Wilson
Hearings Official

SEE NOTICE OF HEARINGS OFFICIAL DECISION FOR STATEMENT OF APPEAL RIGHTS




Nelson, Karen (Z 15-2)
18-04-01-22/09400 and 09500



Change in zoning from R-1 Low Density Residential to
C-1 Neighborhood Commercial



Current Zoning

-  C-1 Neighborhood Commercial
-  R-1 Low-Density Residential
-  R-2 Medium-Density Residential



Subject Site

