

ORDINANCE NO. 3863

TITLE: ZONE CHANGE AMENDMENT NO. _____, UNDER ORDINANCE NO. 2916,
REZONING A PARCEL OF PROPERTY LOCATED AT 930 S. ERMINE AS
C-2 COMMERCIAL.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: ZONE CHANGE AMENDMENT NO.

An area described as follows:

11 3W 8AB 15200 (Lot 10)

is hereby rezoned as C-2 Commercial.

and this amendment shall be known as Zone Change Amendment No. _____.

Section 2: A copy of this zone change amendment shall be filed in the office
of the City Recorder of the City of Albany and the number shall be filed in
the office of the City Recorder of the City of Albany and the number shall be
noted on the official zoning map of the City of Albany.

Section 3: This zone change is granted based on findings and conditions as attached.

Passed by the Council : August 13, 1975

Approved by the Mayor : August 13, 1975

Effective Date: September 12, 1975

ATTEST:

Ernest W. Scham
City Recorder

David C. Hayes
Mayor

Mr. Olsen asked what had happened to the application for rezone from a group of people to the west of the parcel being discussed tonight (along Jackson and Marion). Mr. Rhodaback told the Council that the Planning Commission decided not to consider rezoning that particular area. The neighborhood group out there is still interested in doing something about the zoning out there and the issue has been brought up in the Neighborhood meetings. Staff suggested to these citizens that the opportunity to review this issue would be during discussions on the proposed new zoning ordinance. Mr. Rhodaback explained that the petition was originally signed by a number of property owners, but other areas involved did not sign the petition. Mr. Olsen said he felt a hearing should be held to allow the people in this neighborhood an opportunity to say what they want. Mr. Rhodaback said when the people come back and submit a proper petition he felt the Planning Commission would give it some more thought. Mr. Davis said it appeared that there was no emergency on this matter of a rezone, and since the petitioner was not present, the ordinance was read only for the first time.

REZONE ON SIEGRIST-SHINDLER PROPERTY FROM R-1(6) TO RA (2)

This request involves four lots located at the southeast corner of Gary and 15th Avenue. The owner and petitioner has submitted this request for the purpose of changing the land use classification from R-1(6) to R-A (2) which would allow the maximum construction of the apartment units. However, the owner only proposes to build either two triplexes or one sixplex with adequate off-street parking. The Planning Commission recommended denial of the zone change request based on the following reasons: (1) There is much undeveloped multiple family land already in the area; (2) There is a substantial amount of multiple dwellings in the area; (3) There is a definite need to lower the density in the Sunrise Neighborhood. The public hearing was declared open. There being no one to speak for or against this matter, the public hearing was closed. Mr. Hayne moved to uphold the recommendation to deny the request based upon the findings of the Planning and Zoning Commission. Mr. Olsen seconded the motion and it carried unanimously.

REZONE ON PROPERTY LOCATED AT ERMINE STREET (930) MERLE TAYLOR

The public hearing was declared open on this request for a rezone from R-2 residential to C-2 Commercial which would allow for expansion of Mr. Taylor's existing Dodge Dealership. At the June 11, 1975 City Council meeting, Mr. Taylor's request for rezone was tabled. At the June 25th meeting, Council removed the matter from the table at the request of Mr. James Goode, attorney for Mr. Taylor, and set July 23rd as the date for a new public hearing time. At the time the attorney requested that the public hearing be re-opened, their request had been modified slightly from their original request: it would consist of rezoning Lot 10 and the southwest corner of Lot 11 consisting of a right triangle (930 S. Ermine St. and the Southwest corner of 920 S. Ermine Street). Mr. Goode, in speaking for Mr. Taylor (his client) requested that he be sworn in. Mr. Long, City Attorney, did swear him in. Mr. Goode stated that Mr. Taylor has withdrawn his request for the southwest corner of Lot 11. Mr. Taylor has submitted a revised plot plan in which he has agreed to several changes and conditions which would result in improvements to the property and to the neighborhood. Mr. Taylor requests that if the zone change is re-considered that a time request be made for improvements and that the blacktopping be completed within 120 days or else the zone change would revert back to residential zoning. Mr. Goode said it appears that the objections to this zone change request stems from concern of bad effect on the residences close by. Mr. Goode pointed out that Mr. Taylor is operating under a 50 year lease, and the area is to be used for dealership purposes only. Mr. Goode said Mr. Taylor must have this additional space in order to adequately serve his customers. The use he intends for this property, and the improvements Mr. Taylor intends to make, will be for the benefit of his customers as well as the aesthetics of the neighborhood, Mr. Goode said.

Mr. Taylor understood that the property was for commercial development, but he did not realize that the property was not zoned for commercial development. Mr. Goode stated, "In my opinion, the proposed rezoning is not contrary to the Comprehensive Plan of 1971 or 1973." Mr. Goode furnished the Council with an exhibit of the Comprehensive Plan. Mr. Goode also read his affidavit sworn and subscribed to before Shirley Lichtenthaler, a notary public. Also submitted was a news release of Oregon Automobile Dealers Association indicating auto dealer statistics reported for Oregon for the year 1973; a copy of the Albany Planning Commission staff report of May 5 recommending approval of the requested zone change; copy of minutes of the Albany Planning and Zoning Commission likewise recommending approval of the request; site and improvement plan showing hedge, fence, lack of curb cuts and preservation of existing greenery all on the property requested to be rezoned; affidavits from Jackson G. Wentworth, David Cutsforth, E. L. Bob Barrett (all citizens and car dealers), and Merle Taylor, citizen, car dealer and applicant; proposed findings of facts and conclusions in support of zone change; snapshot of lot requested to be zoned C-2 showing adjoining house and curb area

The affidavits of Wentworth, Cutsforth and Barrett were read into the record. In Mr. Taylor's affidavit he outlined the fact that the expansion is one of an existing use and not a new business. Mr. Goode said he had also submitted suggested findings of fact in support of the application for Mr. Taylor's zone change.

Mr. Goode then asked that Mr. Rhodaback be sworn in, which the City Attorney did. Mr. Goode asked Mr. Rhodaback if the zone change request in his opinion was in compliance with the Comprehensive Plan. Mr. Rhodaback replied, "yes". Mr. Goode then asked if the staff reports included from the Planning Commission meetings reflected his opinion accurately. Mr. Rhodaback replied "yes". Mr. Goode then acknowledged that Mr. Rhodaback had not had much time to look at Mr. Taylor's revised plans, but did ask him if the revised plans were acceptable to him. Mr. Rhodaback said they were, subject to the conditions mentioned at the Planning Commission meeting: showing curb cuts, landscaping, drainage, surfacing, parking arrangement and total traffic circulation as well as the elimination of the triangular portion of the lot at 920 S. Ermine from the rezone request.

Mr. Goode requested that Mr. Taylor be sworn in. Mr. Goode asked Mr. Taylor whether or not his business needed the additional car storage space. Mr. Taylor said he stopped parking cars on the additional lot when he was told he was in violation of the zoning ordinance. Mr. Taylor said he did need the additional space.

Messrs. Wentworth, Cutsforth and Barrett were sworn in to attest to the fact that the affidavits read earlier in the meeting were, in fact, their statements. Each acknowledged that what was read was an accurate statement.

Mayor Hayes then asked for those who wished to speak against the rezone to do so at this time.

Mr. Gary Butterfield, 915 S. Ermine, reminded the Council that the item raised at the June 11th Council meeting, concerned the question of public need in particular. He pointed out that the Council has heard testimony from people tonight who are not directly involved in the rezone issue.

Mr. Butterfield pointed out to the Council members that new auto sales are definitely on the decline in the United States, and he stated he did not feel that public need for this rezone has been proven. With reference to the May 5th Planning Commission recommendation, Mr. Butterfield stated that the Commission decision to recommend approval was made before the residents had a chance to be heard from. He mentioned also that if the zoning ordinance had been enforced, it would have been a residential lot. Mr. Butterfield contended that the way the Comprehensive Plan exists now that any rezoning is subject to interpretation and he believed that if the zone change were granted that it could be challenged in the courts.

Mrs. Nancy Butterfield, 915 S. Ermine, stated she was an interested citizen in this issue. She said she understood that Farstad Dodge was experiencing some difficulty financially when they had the dealership. She felt more should be known about car lots, how they operate, and the sales they are generating before granting such a rezone as this, based on the need for expansion. She cited information showing that Chrysler sales are on the decline. Mrs. Butterfield said it was her understanding that Mr. Taylor had a used car lot available and she asked if he could move some of his cars to this other lot so that all the used cars could be together. Mr. Goode said as far as the success of the business, he judged it to be a successful car dealership. Sales have approximately doubled since Mr. Taylor has taken over operation of the Dodge dealership. Mr. Goode also pointed out that the used car lot at Santiam and Pacific is quite a ways removed from the Dodge dealership.

Mr. Hubert asked Mr. Butterfield when he purchased his home. Mr. Butterfield said he had purchased the home in January of this year. The house presently on the second lot (withdrawn from this request) was not there at the time the Butterfields bought their home. At the time of purchase, the Butterfields were assured that the lot with the house on it was residential and that the Planning Commission would not rezone it, and the Butterfields therefore issued the complaint about parked cars on the lot. Mr. Potts asked if the neighbors would accept the modified proposal as presented now by Mr. Goode on behalf of Mr. Taylor. Mr. Butterfield said this would be subjective.

Mr. Davis pointed out that in the Skyline Ford case which was brought to the courts served no real public interest. Mr. Davis felt that in our country we have a competitive system and that competition serves the public interest. "I think there has been enough to show that it is in the public interest to have this application approved," he said. Mr. Davis asked that the City Attorney formulate a motion to so reflect. Mr. Long pointed out that the Council already has before it findings of fact in support of the application. Mr. Davis moved that the findings of fact for 930 S. Ermine be approved. Mr. Long said the Council could adopt the findings of fact and recommendation of the Planning Commission. Mr. Davis moved to adopt the following findings: (1) The Comprehensive Land Use Plan designates commercial for most of this area although a small area of residential land is shown south of 9th Avenue; (2) Rezoning of the southerly lot would represent an expansion of an established use and not the development of a new use; (3) The proposed zone and use of the southerly lot will not be detrimental to the adjacent Residential areas because the existing operation is fronted on and oriented to Santiam Highway; (4) There has been a showing before the City Council of the demonstrated use of this particular area for the proposal made by the petitioner. Mr. Hubert seconded the motion.

Mrs. Butterfield asked the Council to put a time restriction on the improvements so that she and her husband could be sure that the improvements will be made as scheduled subject to the following conditions: those as mentioned before by Mr. Rhodaback during his testimony.

Mr. Olsen said that the Council has heard tonight statements that Mr. Taylor needs more space, but he did not feel that the space requirements have necessarily been demonstrated to the Council. "Without comparisons, I don't know that I am convinced that the extra space is needed." The vote on the motion carried with Messrs. Olsen and Hayne voting "no".

The ordinance was read for the first time entitled, "ZONE CHANGE AMENDMENT NO. , UNDER ORDINANCE NO. 2916, REZONING A PARCEL OF PROPERTY LOCATED AT 930 S. ERMINE STREET. " The conditions as outlined would be compliance with the revised site plan subject to completion within 120 days (as set forth in the exhibit of the petitioner on the fold out sheet in the application for zone change distributed to the Council at the beginning of the discussion) from the effective date of the ordinance. The second reading of the ordinance will be held at the next regular meeting.

VACATION OF FRONT AVENUE FROM SHERMAN STREET 132 FEET EAST

This petition for vacation of street right-of-way has been initiated by the adjoining property owners. The request concerns a portion of Front Avenue between Sherman Street and Oak Street. The parcel is presently unimproved except for a small portion which provides access to the adjoining properties. The adjoining property owners desire to fill the area and landscape it. The Hearings Board has recommended to the City Council that the vacation of this portion of Front Avenue be approved based on the following reasons: (1) This portion of Front Avenue is not proposed for future development; (2) This right-of-way section is a gully overgrown with vines and weeds and is not maintained by the City; (3) There are no properties which would lose access or which would otherwise be adversely affected if this parcel is vacated. The Hearings Board further recommended that the street vacation be subject to the conditions that the property be permanently maintained to allow proper drainage by the property owners and that all necessary easements, as may be required for utilities, shall be provided.

The public hearing was declared open. Mr. Ray Jean, 205 E. Front, told the Council that the present situation is quite a detriment to the property. Since the sanitary landfill has been closed up in this area, "I think this has become a new disposal for trash," he said. "I ask that you seriously consider and vacate this." There was no one to speak against the vacation request. The public hearing was declared closed. The ordinance was read for the first time entitled, "AN ORDINANCE VACATING A PORTION OF FRONT AVENUE FROM SHERMAN STREET 132 FEET EAST."

Mr. Olsen asked if someone were to develop the lot, how many units could be built and he further asked what the current zoning in the area is. Mr. Rhodaback said the present zoning is R-2 which would allow up to a four-plex. If the land from the vacation were added, Mr. Rhodaback said a person might be able to get up to a four-plex and one single dwelling. It is possible to build only up to a four-plex in an R-2 zone in one given lot. The ordinance was read for the first time and the second reading will be at the next regular meeting.

PUBLIC HEARING ON ST-75-11, MARY B. INDUSTRIAL SUBDIVISION

It has been proposed by the developers of Mary B. Industrial Subdivision to do the street construction in two phases. The first phase, to be constructed in 1975, would start at Queen and would be 700 feet long. The construction would be done privately by the developers with the City of Albany responsible for engineering, surveying and inspection. This section of construction would affect Nix Transportation and the self-storage buildings. The public hearing was declared open.