

ORDINANCE NO. 4119

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TITLE: ZONE CHANGE AMENDMENT NO. 145, UNDER ORDINANCE NO. 4067 REZONING PROPERTY LOCATED AT 7TH AVENUE AND LAFAYETTE STREET FROM R-3 MULTIPLE FAMILY TO C-2 COMMUNITY COMMERCIAL.

WHEREAS, the Planning and Zoning Commission of the City of Albany has held such hearings as are required by the law and the Ordinances of this city and has made findings concerning the appropriate zone for the property being considered, said findings being based upon evidence produced at hearings, and

WHEREAS, the Council of the City of Albany has duly advertised and caused notices to be given as required by law and has had a public hearing concerning the zoning of the property above described and evidence having been introduced and the same being fully considered, the City Council does hereby find as follows:

(see attached findings)

and,

WHEREAS, it is further determined that the rezoning hereinafter made should be subject to certain conditions, the said conditions being as follows:

none

now, therefore,

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

Section 1: ZONE CHANGE AMENDMENT NO. 145

An area described as follows: property located at 7th Avenue and Lafayette Street (see attached legal description) known as Assessor's Parcel Map 11-3W-7AB, Tax Lot 7400
Community
is hereby rezoned as C-2 Commercial and this amendment shall be known as zone change amendment number 145 .

Section 2: COPY FILED

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 noted on the official zoning map of the City of Albany.

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Section 3: CERTIFICATE OF COMPLIANCE

This zone change amendment shall be effective upon filing of a certificate of compliance with the conditions above enumerated by the Planning Director of the City of Albany.

Passed by the Council: April 12, 1978


Approved by the Mayor: April 12, 1978

Effective Date: May 12, 1978



Mayor

ATTEST:



City Recorder

EXHIBIT "B"

Supplement to Petition for Zone Change

On January 23, 1978 a zone change petition was filed by Mr. & Mrs. Leonard Steckley. The petition requested that their property described in Exhibit "A" of their petition be changed from its present zoning of R3 to C2.

The purpose of this supplement is to further substantiate that there is a public need for the kind of change in question and that the need will be best served by changing the classification of the particular piece of property.

I. Is there a public need for the kind of change in question?

A. Answer: Yes

B. Discussion: First of all, it should be noted that "public need" is not a clearly defined concept. An adequate discussion of whether a public need for a change exists requires a two step analysis dealing with specific public needs and the concept of net public benefit.

Most authorities appear to believe that public need means that the benefits to the general public from the change will exceed public detriments.

In the case presented to the commission by this petition several clearly defined public benefits can be identified. Any community is benefited by the establishment and continued profitable operation of commercial enterprises. They provide valuable

services to members of the public and add to the tax base of the city.

There has been some concern expressed that no benefit would result from the change because the property presently is being used for a commercial activity which use is allowed to continue as a non-conforming use and that therefore any change would merely be a paper change with no benefit. The petitioners hasten to point out that although it is true that the present use of the property may be continued as a non-conforming use that alone does not serve their needs and is potentially detrimental to the public.

It is textbook law that a non-conforming use loses its protected status upon any change in the use. Hagman, Urban Planning and Laws Development Control Law §82. No one can guarantee that the present commercial enterprise will continue to be profitable or that the present tenants won't move out necessitating a change in the use of the property. In addition, there is considerable controversy over how much repair and alteration of a structure is permissible without jeopardizing its status as a non-conforming use. The rule seems to be that if repair and alteration substantially prolongs the life of the structure it will not be permitted.

It is obvious that it is not in the best interest of the public to promote the continuation of a situation wherein a business cannot change, improve or adapt to meet changes in the needs of the public. Upkeep, repair and maintenance of buildings

within the city to keep them looking nice benefits the public. However, if the owners of this building were not allowed to do those things because it would increase the life of the structure and jeopardize non-conforming use status, the building would deteriorate and detract from the overall esthetic beauty of the city.

The public is also benefited by good planning and orderly growth. The property in question is bordered by railroad tracks and busy streets and all of the surrounding property with the exception of one parcel located on the corner of 7th and Madison is being used as commercial property making it ill suited for residential use.

'Because of this clustering of existing business in close proximity to major arterials and the downtown core area it is ideal for commercial activity and a benefit to the public exists because of the convenience of access and lack of need to travel long distances between stores.

The only possible detriment offsetting the benefit is the withdrawal of the parcel as a possible site for a multi-family dwelling. However, that detriment vanishes when one looks at all of the facts. First of all, because of the surrounding busy streets and railroad tracks it is not a safe place for the children which are characteristically found in multi-family dwellings.

For those same reasons and because of the noise generated by streets and railroads it is not a desirable location to live

and it is seriously questioned that any investor would construct an apartment on this site. Since it is highly unlikely that an investor would construct residential buildings on this particular piece of property and because of the ultimate deterioration of the present structures if the owners are forced to operate under the limitations of a non-conforming use a zone change is the only logical solution.

The economic waste that would result from the underutilization of this property is a detriment which far outweighs the loss of the property as a site for apartments.

High on the list of specific public needs in the City of Albany is that of having adequate commercial enterprises so that our residents do not have to go out of town to shop. The fulfillment of that need can be met by rezoning this property to assure adequate sites for commercial development.

Another need to be served by rezoning this property to allow for continued operation of the commercial use without the limiting rules pertaining to non-conforming use is that of insuring jobs for Albany residents. No one can argue that an enterprise which provides jobs benefits both those employed and the community in which they live. The wages paid are multiplied many times as they are spent within the community.

In light of the above, the petitioners submit that an adequate showing of public need has been demonstrated.

II. Will the need best be served by changing the classification of the particular piece of property in question as compared to others.

A. Answer: Yes

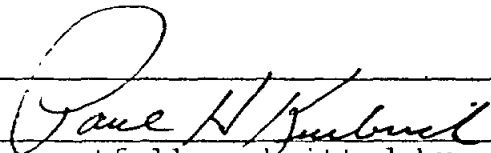
B. Discussion: The property in question has several special characteristics which make it better suited to C2 zoning than other available property.

First of all, it is not at all suited for its present zoning of multiple family residential.

Secondly, it is presently being used as commercial property as is almost all of the surrounding property. Good planning dictates that compatible uses be grouped together and that is the result that would be achieved from the proposed change.

Thirdly, because the property is already being used as commercial, changing the zoning will not have the impact that it might if a vacant parcel suitable for use as residential were changed.

Finally, the property is uniquely situated for use as commercial. Access is provided by a major arterial and traffic flow can be easily handled and it is close to the downtown area.


Respectfully submitted by

PAUL H. KUEBRICH
and
ROGER H. REID

Attorneys for Petitioner

Evidence as Required by § 10 of Zone Change Petition

The following information is put forth for the Petitioner to demonstrate why the proposed zone change is consistent with and promotes the objectives of the comprehensive plan, goal statements, and zoning and land use regulations of the City of Albany. The information also demonstrates that there is a public need for the change and the need will best be served by changing the classification of this particular piece of property.

1. Citizen Involvement:

Citizen involvement will be provided for through a framework of notice and public hearing. The planning commission is required by § 19.04 of the City of Albany Zoning and Land Use Regulations to hold public hearings. That section also provides for mailing of written notice of the application to owners of property within 500 feet of the subject property, as well as newspaper publication of said notice.

2. Land Use Planning:

This goal is being fulfilled by the actions of public hearings and procedures set forth by the City of Albany Planning and Development Staff giving full consideration to the needs of the area to be served.

3. Agriculture Lands:

The property in question is within the city limits of the City of Albany and is currently zoned R-2. By zoning the property R-2 it has already been removed from farmland inventory.

4. Forest Lands:

This land does not fall within the definition of forest land as set out in LCDC Goal and Guideline No. 4.

5. Open Spaces, Senic and Historic Areas, and Natural Resources:

The land for which the proposed zone change is sought is not suitable for open space or recreational area. It is bordered by busy streets on the South and East and by Railway tracks on the North and West. The development of the property has already taken place and as such even if preserved and continued in its present use would not:

- 1) Conserve or enhance natural or scenic resources.
- 2) Protect air or streams or water supply.
- 3) Promote conservation of soils wetlands, beaches, or tidal marshes.
- 4) Conserve landscaped areas.
- 5) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, or other open spaces.
- 6) Promote orderly urban development.

6. Air, Water, and Land Resource Quality:

Since all of the proposed development of the property has taken place there would be no changes in air, water, or land resource quality.

7. Areas Subject to Natural Disasters and Hazards:

Not applicable.

8. Recreational Needs:

Again because of the location of the property and its proximity to busy streets and Railroad tracks it is not suitable as recreational property.

9. Economy of the State:

The proposed change from R-3 to C-2 in this area would provide for a continuation of the present favorable economic impact that the businesses located on the property now have. Each business is an asset to the economy of the State. Again, because the development of the property has already taken place there would be no additional drain on tax supported services.

10. Housing:

Although this land is presently zoned R-3, the fact that it is bordered by Railroad tracks and busy streets makes it very undesirable as a residential zone. All of the surrounding property with the exception of one parcel located on the corner of 7th & Madison is being used as commercial property. The property located directly across the street to the South of the property for which this change is sought is already zoned C-2.

11. Public Facilities and Services:

Rezoning this property C-2 would promote the goal of developing an orderly and efficient arrangement of public services. The property presently houses two retail service facilities and most of the surrounding property is also currently utilized as commercial property.

The area, is for all practical purposes a commercial area. A change to allow for the continuation of the small cluster of businesses already in the area would be convenient to the public as far as availability and access, and would promote orderly development of the City.

12. Transportation:

Zoning this property C-2 to allow for use of the property for retail store purposes would promote LCDC Goal #12, clustering small businesses so that consumers would not have to travel all over to service their needs. Access to the area is good and traffic problems are not anticipated.

13. Energy Conservation:

LCDC Goal #15 provides that land and uses developed on land shall be managed and controlled so as to maximize the conservation of all forms of energy based upon sound economic principles.

The area in question is close to both the down-town area and the commercial strip along Pacific Boulevard. By providing for its continued use as commercial property we avoid the energy waste involved in having retail businesses locate in fringe areas which require the consumer to drive a relatively long distance between shops.

14. Urbanization: Not applicable.

Again it should be stressed that no significant change will result from the proposed rezone. The present use of the property, which is consistent with the surrounding property, will continue.

No other property in Albany is better suited to a C-2 zone. The property is not desirable because of its location and proximity to Railway and busy streets, as either single or multi-family residential property. The surrounding property is already commercial. Good planning and common sense dictate the necessity for the proposed change.

*to be
cont. 4117*

EXHIBIT "A"

All that part of Lots 5, 6, and 7, Block 33, Hackleman's Second Addition to the City of Albany, Linn County, Oregon, lying South of the Southern Pacific Railroad, formerly Oregon and California Railroad, also all of that part of the West 61.6 feet of Block 40 in Hackleman's Second Addition to the City of Albany, Linn County, Oregon, lying South of the Southern Pacific Railroad, formerly Oregon and California, also that portion of vacated Lafayette Street, lying between Blocks 33 and 40 of Hackleman's Second Addition to the City of Albany, Linn County, Oregon, lying South of the Southern Pacific Railroad, formerly Oregon and California Railroad.