



Staff Report

File #: 20-379
Version: 1

Date: 10/12/2020
Item #: 4.b.

TO: Mayor and City Council
THROUGH: Steve Powers, City Manager
FROM: Norman Wright, Community Development Director

SUBJECT:

City Council review of the Planning Commission's decision approving Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change Case No. CPC-NPC-ZC20-04 for property located in the 2400 Block of Commercial Street NE and Liberty Street NE.

Ward(s): Ward 5
Councilor(s): Ausec
Neighborhood(s): Highland Neighborhood Association
Result Area(s): Welcoming and Livable Community

ISSUE:

Shall the City Council affirm, modify, or reverse the Planning Commission's decision for Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change Case No. CPC-NPC-ZC20-04?

RECOMMENDATION:

Staff recommends that the City Council reverse the Planning Commission's August 25, 2020, decision and deny Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change Case No. CPC-NPC-ZC20-04.

SUMMARY:

The proposal under review by the City Council is an application for a minor amendment to the City's comprehensive plan map, a minor amendment to the Highland Neighborhood Association's land use plan map, and a zone change for nine properties owned by the Oregon Department of Transportation (ODOT) totaling approximately 1.89 acres in size and located in the 2400 block of Commercial Street NE and Liberty Street NE (**Attachment 1**).

The northern four properties which make up the subject property (*Marion County Assessor map and*

tax lot nos. 073W15AD06000, 6100, 6200, & 6300) total approximately 1.03 acres in size and are currently designated Commercial on the comprehensive plan map and zoned CG (General Commercial). The remaining five properties which make up the southern portion of the subject property (*tax lot nos. 073W15AD05600, 5700, 5800, 5900, & 6400*) total approximately 0.86 acres in size and are designated Multiple Family Residential on the comprehensive plan map and zoned RM-II (Multiple Family Residential).

The northern four CG zoned properties are currently used by ODOT for their traffic signal facility shop where ODOT repairs, configures, tests, stores, and deploys traffic signs and signals that are used to maintain traffic mobility and safety on the State's highways. The southern five RM-II zoned properties are undeveloped, except for a driveway and a few storage containers. In order to meet operational demands ODOT plans to extend their existing use of the site onto the undeveloped southern portion of the property to provide additional space for the ongoing temporary storage of variable message signs to be used on ODOT projects. However, under the property's existing comprehensive plan designation and zoning, neither the CG (Commercial General) zone or the RM-II (Multiple Family Residential) zone allow Governmental Maintenance Services and Construction, the use classification the existing traffic signal facility shop falls within.

Because ODOT's existing use of the property within the CG zoned portion of the site is currently non-conforming, and because their proposed expansion of the use onto the undeveloped RM-II zoned portion of the property is similarly not allowed, they applied to change the comprehensive plan and Highland neighborhood plan land use map designations of the property to Community Service Government (**Attachment 2**), together with a zone change to PS (Public Service) (**Attachment 3**), in order to place the entire site under a single comprehensive plan designation and zone district that allows their existing and planned use of the site.

Under the proposed Community Service Government comprehensive plan designation and PS (Public Service) zoning the existing traffic signal facility shop would become a conforming permitted use and ODOT would be able to expand their planned use of the site to the southern undeveloped portion of the property.

The proposal includes the following land use approval requests:

- 1) A Minor Comprehensive Plan Map Amendment to change the Comprehensive Plan Map designation of the subject property from "Commercial" and "Multiple Family Residential" to "Community Service Government."
- 2) A Minor Neighborhood Plan Map Amendment to change the Highland Neighborhood Plan general land use map designation to "Community Service Government."
- 3) A Quasi-Judicial Zone Change to change the zoning of the subject property from CG (General Commercial) and RM-II (Multiple Family Residential) to PS (Public Service).

The Planning Commission approved the consolidated Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change, with conditions, on August 25, 2020. A copy of the Planning

Commission's decision is included as **Attachment 4**.

FACTS AND FINDINGS:

Procedural Findings

1. On May 6, 2020, an application was filed for a consolidated Minor Comprehensive Plan Map Amendment, Minor Neighborhood Plan Map Amendment, and Quasi-Judicial Zone Change by Matt Hastie, of Angelo Planning Group, on behalf of the applicant and owner of the property, the Oregon Department of Transportation (ODOT).
2. After additional requested information was provided by the applicant the consolidated application was deemed complete for processing on June 18, 2020, and a public hearing to consider the application was scheduled for August 4, 2020.
3. DLCD Notice. State law (ORS 197.610) and SRC 300.620(b)(1) require the City to provide the Oregon Department of Land Conservation and Development (DLCD) a minimum 35-day notice when an applicant or the City proposes an amendment to an acknowledged Comprehensive Plan or land use regulation or to adopt a new land use regulation. The City sent notice of the proposed Comprehensive Plan Change and Zone Change application to DLCD on June 18, 2020.
4. On August 4, 2020, a public hearing was held before the Planning Commission. At the hearing the Planning Commission received staff's presentation and recommendation that the application be denied because it did not meet all applicable approval criteria. The Commission also heard testimony from the applicant's representatives in support of the proposal. Subsequent to the Commission's questions of the applicant and staff, the hearing was closed and the record subsequently left open for a period of seven days, until August 11, 2020, at 5:00 p.m., in order to allow any party to submit additional written testimony regarding the proposal. The applicant was correspondingly granted a subsequent seven days, until August 18, 2020, at 5:00 p.m., to submit final written rebuttal.

During the open record period staff introduced two alternatives for the Planning Commission to consider should they not agree with staff's recommendation of denial. In addition to these two alternatives the applicant identified a third alternative for the Planning Commission to consider that would have resulted in a partial, rather than full, rezoning of the property.

5. On August 18, 2020, the Planning Commission voted to reopen the public hearing in response to the new evidence submitted during the open record period. Subsequent to additional questions of the applicant and staff the Planning Commission closed the hearing, conducted deliberations on the proposal, and voted to approve the Minor Comprehensive Plan Map Amendment, Minor Neighborhood Plan Map Amendment, and Quasi-Judicial Zone Change subject to the conditions of approval included under Alternative No. 2 as identified by staff. The Planning Commission's decision was issued on August 25, 2020.

6. On September 14, 2020, the City Council voted to initiate review of the Planning Commission's decision. A public hearing before the City Council is scheduled for October 12, 2020.
7. On September 22, 2020, notice of the City Council public hearing was provided pursuant to Salem Revised Code (SRC) requirements. Notice of the public hearing was also subsequently posted on the subject property by the City's Case Manager.
8. 120-Day Rule. Pursuant to Oregon Revised Statutes (ORS) 227.128, amendments to an acknowledged Comprehensive Plan are not subject to the 120-day rule. In addition, the requested Quasi-Judicial Zone Change included with the application is similarly not subject to the 120-day rule because, pursuant to ORS 227.178(10), the zone change has been filed concurrently, and is being considered jointly, with the proposed comprehensive plan amendment.

Substantive Findings

1. Neighborhood Association & Public Comments

The subject property is located within the Highland Neighborhood Association. Comments were received from the neighborhood association indicating support for the proposal.

In addition to the comment received from the neighborhood association one other comment was received that also expressed support.

2. Approval Criteria

The applicable criteria that must be satisfied for the approval of a minor comprehensive plan map amendment and neighborhood plan map amendment are included under SRC 64.025(e) (2). The criteria which must be satisfied for the approval of a zone change are included under SRC 265.005(e).

Findings in support of the Planning Commission's decision approving the proposal are included in the August 25, 2020, decision, which is included as **Attachment 4** to this report and incorporated herein by reference.

3. Staff's Initial Recommendation

As evidenced in the record for this case staff initially recommended that the Planning Commission not approve the requested comprehensive plan map amendment, neighborhood plan map amendment, and zone change. The reasons for staff's recommendation of denial are included in the August 4, 2020, Planning Commission staff report (**Attachment 5**) and were based on staff's analysis that the proposal did not meet all of the applicable approval criteria as required under the code. Staff found that the comprehensive plan, neighborhood plan, and zoning designations proposed with the application weren't equally or better suited for the

property than the existing designations, that the proposed designations would not provide for the logical urbanization of the land in light of the land use pattern envisioned in the neighborhood plan, and that the proposal did not comply with all of the applicable goals and policies of the Salem Area Comprehensive Plan and Statewide Planning Goals principally in regard to the following issues:

- a) Loss of Multiple Family Residential Land Supply. As identified in the August 4, 2020, staff report, the proposal would result in the loss of approximately 0.86 acres of land from the City's multiple-family land inventory when the City is facing a deficit of multiple-family designated land. The proposed change would also undo the previous land use designation change for the property approved through the *Salem Multiple Family Residential Lands Study (SMFRLS)* process in the 1990s specifically intended to reduce the City's multiple family land deficit in response to a State periodic review order to comply with Statewide Planning Goal 10 (Housing).
- b) Loss of Commercial Land Supply. As identified in the August 4, 2020, staff report the proposal would also result in the loss of approximately 1.03 acres of commercially designated land from the City's land supply when the City currently has a deficit. The City's 2015 to 2035 Economic Opportunities Analysis indicates that the City has an approximate 271-acre deficit of commercial land and that roughly 60 percent of the deficit is for office and commercial services and approximately 40 percent is for retail and retail services.
- c) Inconsistency with the Highland Neighborhood Plan. As identified in the August 4, 2020, staff report the Highland Neighborhood Plan designates the area between Commercial Street and Liberty Street as Commercial / Community Shopping. The intent of the Community Shopping designation is to provide locations for a wide variety of goods and services, including both convenience stores for neighborhood residents and shopping facilities for a market area consisting of several neighborhoods.

The abutting properties to the north of the subject property, which share the same comprehensive plan designation, neighborhood plan designation, and zoning as the four commercially designated properties which make up the northern half of the subject property, reflect the intended land use pattern for this area as envisioned by the neighborhood plan by being developed with a mixture of office, retail, and commercial uses that serve both area residents and individuals traveling to and from Salem via the Salem Parkway.

The proposed "Community Service Government" comprehensive plan designation and PS (Public Service) zoning, however, is inconsistent with the intended land use pattern for this area identified under the neighborhood plan and would instead be better located in the Industrial-Commercial designated area of the neighborhood plan between Commercial Street and Front Street intended for commercial and limited industrial activities in which the nature of the business requires fabrication, storage, and wholesale or retail trade.

As previously indicated in this report, the Planning Commission public hearing to consider the proposal was held on August 4, 2020. Subsequent to receiving testimony from staff and the applicant the hearing was closed and the record left open until August 11, 2020, for any interested party to submit additional written testimony regarding the proposal. The applicant was correspondingly granted until August 18, 2020 to submit final written rebuttal.

Within the initial seven-day open record period staff introduced two alternatives into the record for the Planning Commission to consider in the event they decided to approve the proposed request rather than deny it as recommended by staff. The two alternatives are included in the August 11, 2020, open record period memo to the Planning Commission that is included as **Attachment 6** to this report. A summary of the two alternative is provided as follows:

Alternative No. 1:

Alternative 1 included approving the proposed change to Community Service Government and PS (Public Service) for only those portions of the existing site that are currently used for the traffic signal shop facility. This would include the northern four CG zoned properties, the RM-II zoned property located within the middle of the site fronting Commercial Street, and the northernmost portion of the RM-II zoned property located at the southeast corner of the site.

Under this alternative the existing traffic signal shop facility would become a permitted conforming use in the zone, but ODOT would not be able to expand the facility as intended; the majority of the multiple-family residential designated portion of the site would remain designated and zoned for multiple family residential; and conditions of approval would be established to clean up and reconfigure existing lot lines to conform to the new zone boundaries and to bring the landscaping and screening required for the existing traffic signal shop facility up to the current standards of the PS zone.

Alternative No. 2:

Alternative 2 included approving the proposed change to Community Service Government and PS (Public Service) for the entire property.

Under this alternative the existing traffic signal shop facility would become a permitted conforming use in the zone; ODOT would be able to expand the facility to provide for additional storage as intended; and conditions of approval would be established to clean up and consolidate the various existing lots which make up the site into one lot to accommodate the expanded facility, establish a trip cap to limit the maximum total number of average daily vehicular trips resulting from any future use or development of the site to ensure compliance with Statewide Planning Goal 12 (Transportation), and bring the required landscaping and screening for the entire site up to the current standards of the PS zone.

4. Applicant's Proposed Alternative

During the final open record period provided to the applicant for rebuttal, ODOT submitted a third alternative for the Planning Commission to consider in-lieu of the two alternatives that had been introduced by staff. The alternative proposed by ODOT is included in their rebuttal testimony submitted to the Planning Commission, dated August 17, 2020, and included as **Attachment 7** to this report.

ODOT's proposed alternative included withdrawing their proposed change to Community Service Government and PS (Public Service) for the northern CG zoned portions of the site; reducing the extent of the proposed rezoning for the multiple-family residential designated portion of the site; and reducing landscaping to provide additional flexibility in meeting setback and buffering requirements on the rezoned RM-II portion of the site.

Under this alternative the existing traffic signal shop facility would remain a non-conforming use in the zone; the proposed Community Service Government comprehensive plan designation and PS (Public Service) zoning would apply to only that portion of the site currently zoned RM-II that is needed by ODOT for the expanded storage area; and landscaping and screening would be provided, but in an amount less than what would be required under the PS zone.

5. Planning Commission Decision

On August 18, 2020, the Planning Commission re-opened the public hearing in order to consider the three alternatives that had been introduced into the record and to ask questions of the applicant and staff.

After receiving information from the applicant and staff in response to the questions raised the Planning Commission again closed the hearing and proceeded to deliberations on the proposal where they considered the applicant's request, staff's initial recommendation, the subsequent alternatives introduced into the record, and all evidence and testimony provided and ultimately found that the proposal met the applicable approval criteria subject the conditions of approval included under Alternative 2 as identified by staff.

The Commission's decision, in summary, was based on consideration of:

- a) ODOT's ownership of the property dating back to the 1970s and the traffic signal shop facility being a long-standing use on the property that has not resulted in any specific identified impacts or concerns from area residents or property owners;
- b) While the property is under the ownership of ODOT it is unlikely that it will be developed for either residential or commercial uses;
- c) If at some point in the future ODOT were to cease operations at this location and sell the property for a private, rather than public, use, the relative limited variety of uses allowed under the PS zone will likely require an additional comprehensive plan change, neighborhood plan change, and zone change application in the future, thereby providing

an opportunity to review that request to determine the most appropriate land use designation for the property based on the conditions and circumstances associated with the site and the surrounding neighborhood at that time;

- d) Approval of the proposed comprehensive plan change, neighborhood plan change, and zone change will allow the existing facility to become a permitted conforming use under the PS zone and allow for the facility to be expanded to provide for additional storage space to meet ODOT's operational needs;
- e) The conditions of approval for landscaping and screening established under the decision require the site to be brought up to the current perimeter landscaping and screening standards of the PS zone which not only ensures that any new development will be sufficiently landscaped and screened to minimize any visual impact resulting from the use of the site but also that the existing developed portion of the site will be brought up to current landscaping and screening standards as well;
- f) The property's lack of suitability for multiple family development due to its location near incompatible uses and along state highways, and its small size which would make it cost prohibitive to develop; and
- g) A lack of any concerns being identified by the public regarding the proposal and its support by the Highland Neighborhood Association.

ALTERNATIVES

The City Council may affirm, modify, or reverse the decision of the Planning Commission for Comprehensive Plan Change, Neighborhood Plan Change, and Zone Change Case No. CPC-NPC-ZC20-04.

- I. **AFFIRM** the decision;
- II. **MODIFY** the decision; or
- III. **REVERSE** the decision.

Bryce Bishop
Planner II

Attachments:

1. Vicinity Map
2. Comprehensive Plan Change Map
3. Zone Change Map
4. Planning Commission Decision (August 25, 2020)
5. Planning Commission Staff Report (August 4, 2020)
6. Open Record Period Memo to Planning Commission (August 11, 2020)

7. Applicant's Final Written Rebuttal (August 17, 2020)