

ORDINANCE NO. 738

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF
CANBY, OREGON.

PURPOSE - To amend the zoning map for the purpose of recording an approved application by David Anderson to change from R-I, Low Density Residential, to R-II, Medium Density Residential, the zoning of 2.81 acres, described as Tax Lots 1600 and 1601, Section 33AD, T3S, R1E.

WHEREAS, an application was filed with the City Planner on July 18, 1983, by David Anderson on the hereinafter described property for the purpose of changing the zoning classification from R-I (Single Family Residential) to R-II (Medium Density Residential). The application fee as required by Article 8, 10.8.10, (B), (8), of Ordinance No. 690 (the Land Development and Planning Ordinance) has been paid. The following is a description of the real property consisting of 2.81 acres and described as Tax Lots 1600 and 1601, Section 33AD, T3S, R1E, of the Willamette Meridian, Clackamas County, Oregon.

WHEREAS, the Planning Commission scheduled and held a public hearing on the zone change application of David Anderson on August 8, 1983, and notice of the time, place and purpose of said hearing was duly given by written notices mailed by the Planning Commission Secretary to all owners of property within lines parallel to and 200 feet from the exterior boundaries of the property involved as required by Section 10.8.30 of the Land Development and Planning Ordinance, No. 690. Also, notice of said hearing was made by publication in the Canby Herald on August 3, 1983. A record of the property owners to whom notices were mailed and the newspaper's affidavit of publication of the notice are on file in the Planning Department's records and file of this zone change matter in the City's Public Works Department; and

WHEREAS, the Canby Planning Commission at the time and place of the public hearing on such matter, i.e., August 8, 1983, heard and considered testimony regarding the proposed zone change and

upon conclusion of the public hearing by motion duly made and seconded and carried by a vote of 3 to 1, moved to continue the matter for decision only until the August 22, 1983, meeting; and

WHEREAS, at the regular Planning Commission meeting of August 22, 1983, the Commission reviewed the data requested and by motion duly made and seconded and carried by a vote of 4 to 1, moved to recommend denial of the proposed zone change; and

WHEREAS, the Canby City Council considered the matter and the recommendations of the Planning Commission at a regular meeting held on October 5, 1983, and thoroughly reviewed the record and heard testimony on the record pursuant to Section 10.3.85 of the Land Development and Planning Ordinance; and

WHEREAS, the Canby City Council concluded its discussion on this matter and by motion duly made and seconded, voted 2 to 2 on the matter and Mayor Gabrion cast the tie-breaking vote in support of the requested zone change.

The Council in their motion to approve adopted the findings and conclusions presented by the applicant. A copy of said findings and conclusions are attached hereto as Exhibit A to this Ordinance.

NOW THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The zone boundaries of the R-2, Medium Density, zone shall now include the hereinabove described property and upon the passage of this ordinance said property shall thereupon be classified as R-2, Medium Density, and not R-1, Low Density.

Section 2. The Zone Change as authorized by Section 1 of this Ordinance is subject to the following conditions which were

proposed by the Planning Department and are conditions which shall run with the land, to-wit:

1. Other department reports to become conditions of approval.
2. Ten (10) foot street dedication on east property line along N. Pine Street.
3. Waiver of Remonstrance against street improvements.
4. Street lighting approved by C.U.B. and the Public Works Department to be installed by the developer at N. E. 4th Avenue and Pine Street and at the 90° curbe on N. Pine Street.

Section 3. The Mayor attested by the City Recorder is hereby authorized and directed to make the appropriate changes on the City's Zoning Map in accordance with the dictates of Section 1 of this Ordinance.

Submitted to the Council and read the first time at a regular meeting thereof on the 19th day of October, 1983, ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on the 2nd of November, 1983, commencing at the hour of 7:30 o'clock p.m., at the Council's regular meeting chambers at the Canby City Hall, in Canby, Oregon.


Marilyn K. Perkett, Deputy Recorder

Passed on second and final reading by the Canby City Council at a regular meeting thereof on the 7th day of December 1983.

Vote 3 Yea, 0 Nay & 1 Abstention


Michael L. Gabriion, Mayor

ATTEST:


Marilyn K. Perkett, Deputy Recorder

Council to review the record to confirm his opinion that the other three requirements were met.

Public Need

The only finding of fact that appears in the record is that there is a "vacancy rate of twenty percent (20%) in the existing area". Existing area is undefined and the applicant respectfully submits to this Council that the Planning Commission is in error. A review of the record indicates the following:

1. "Critical shortage of available high-density residential property of this size available in Canby." (See application)
2. City facilities are available. (See staff report)
3. Thirty (30) applications for a twenty-unit proposed apartment complex. (See minutes of August 8, 1983, verified by staff in minutes of August 22, 1983.)
4. Public works survey - 185 units - 10 vacancies for a vacancy rate of 5.4%. Six of the 10 vacancies are in one complex and suggest that there might be management problems, higher rent or any possibility of other problems. The applicant submits that Canby is not Portland and there is no justifiable reason to divide it into quadrants. The housing shortage should be considered "as a whole" in Canby rather than on a piece-meal basis.
5. Pine Street can handle the traffic (public works memo).

The Comprehensive Plan of the City is also part of the record and it indicates under Section 10.9.45:

- (1) Policy B: Canby shall encourage a gradual increase in housing density as a response to the increase in housing costs and the need for more rental housing. This policy should be implemented by "encouraging housing mix to incur in all residential areas through zoning applications and through planned unit developments".
- (2) Policy C: Canby shall coordinate the location of higher density

housing with the ability of the City to provide utilities, public facilities and functional transportation network. (Please note that the public works department said that this application could be supported because the necessary utilities and facilities were present).

(3) Policy D: Canby shall encourage the development of housing for low income persons and the integration of that housing into a variety of residential areas within the City. This policy shall be implemented by:

- a. Encouraging the private sector to provide "low income housing".
- b. "Support the County Housing Authority and the Farmers Home Administration in a continued effort to provide low income housing".

It is precisely this application that implements these policies of the City of Canby.

OTHER AVAILABLE PROPERTY

There is absolutely no evidence in the record that I can find that supports the conclusion that there is other available property. The application stated, "we have located no other property for sale in a city of this size." The staff report states, "staff research revealed no other available property of this size with R-2 capability." Furthermore, the staff found that the area was presently committed to multi-family units and this changes a logical expansion of the area.

It is the law in Oregon that decision makers in quasi-judicial land use cases must make findings of fact which disclose the basis for their decision. Fasano v. Washington County Board of Commissions, 264 OR 574 (1973). Our courts later said in a case of Roseta v. County of Washington, 254 OR 161 (1969), "Since we cannot properly exercise our function of judicial review without a record of adequate findings by the board or the planning commission of which it based its decision to allow a change of use within a zone, it is

within our province to require such findings as an essential part of the boards procedure." It is respectfully argued by the applicant that there was absolutely no findings of fact to support its conclusion that there was other available land and for that reason the conclusion of the Planning Commission cannot be upheld on appeal.

CONCLUSION

It is respectfully requested that the City Council not follow the recommendation of the Planning Commission. The following motion is suggested:

"I move that the application of David Anderson for a zone change from R-1 to R-2, consisting of property approximately 2.81 acres, commonly described as Lots 1600 and 1601, Section 33AD, T3S, R1E W.M. be approved."

This motion is based upon the following finds of fact which are made pursuant to Section 10.3.85 Ordinance 690:

1. The Comprehensive Plan of the City, and the plans and policies of the county, state and local districts in order to preserve functions and local aspects of land conservation development.
 - a. It is the policy of the City of Canby to encourage a gradual increase in housing density. This application will increase the density in an area that is a logical extension of higher density residential development.
 - b. The Comprehensive Plan of the City encourages housing mixes in all residential areas.
 - c. It is the policy of the City of Canby to locate higher density housing where the city has the ability to provide utilities, public facilities and functional transportation. Staff reports indicate that utility services are available, that Pine Street is a collector street and can handle the additional traffic.
 - d. The policy in Canby's Comprehensive Plan dictates that Canby shall encourage the development of housing for low income persons and the integration of that housing into a variety of residential areas within the city. The city is "on record" in encouraging "low income housing" by the private sector. The applicant has the right to expect that the city will follow its policy as set forth in the Comprehensive Plan.

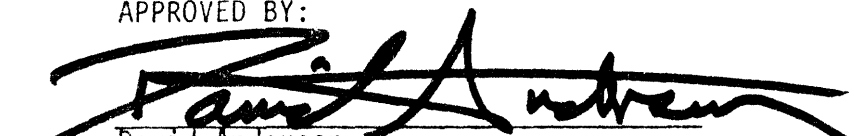
2. A public need for the change.
 - a. There are thirty (30) applications for a twenty-unit proposed apartment complex. Obviously there is a need for housing of this type when thirty (30) people apply for a twenty-unit complex when there has been no excavation or work of any type.
 - b. Public works survey indicates that in the City of Canby there is only ten (10) vacancies out of 185 units. A 5.4% vacancy rate is minimal.
3. Whether the change will serve the public need better than a change which might reasonably be made on other available property.
 - a. Staff research reveals no other available property of this size with R-2 capabilities.
 - b. The area is presently committed to multi-family units and this is a logical expansion of the area.
4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the area.
 - a. Pine Street can handle the traffic.
 - b. Traffic signals can coordinate the traffic on Pine Street.
 - c. Utilities are available.
 - d. Development of this property is a logical extension of the higher density development in the area.
5. State wide planning goals.
 - a. Goals 1 (Citizen Involvement) and 2 (Land Use Planning). The goals have been addressed by the city adopting its own Comprehensive Plan.
 - b. Goal 3 (Agriculture Lands). Soil is Class I, however, this application was in an urban area, committed to urban use and is not restricted from development by LCDC. It is recognized that urban areas agricultural soils will have to be developed to accommodate the needed expansion and development of the urban area.
 - c. Goal 4 (Forest Lands). This does not apply since the property has not been so designated nor has it at any time been so designated.

- d. Goal 5 (Open Space). This is not applicable.
- e. Goal 6 (Air Water and Land Resources Quality). This goal is met. There is no information that there would be any adverse effect on any of the water or land resources. Any effect on the air quality would be minimal and the result of urban expansion.
- f. Goal 7, 8 and 9 are inapplicable.
- g. Goal 10 (Housing). This goal is to provide the housing needs of the state. There is a vacancy rate of 5.4% for multi-family development for multi-family housing in the city. There is a need to provide alternative housing for all citizens as evidenced by thirty (30) applications for twenty (20) units.
- h. Goal 11 (Public Facilities and Transportation). As previously stated water and utility services are available and staff has determined that Pine Street as a collector, can handle the traffic.
- i. Goal 12 (Transportation). The property is located off a collector street. It is near a highway (99E) and accessible to public transportation.
- j. Goal 13 (Energy Conservation). Land and uses developed on the land shall be managed and controlled as to maximize the conservation of all resources. Proposed zone change would be close to employment centers, recreation centers, and thereby reduce the home to destination distance. By reducing this travel distance, energy, particularly petroleum products, will be conserved.
- k. Goal 14 (Urbanization). This parcel of property is within the urbanization plan of the city and is therefore a defined urban area. We believe there is a need for multi-family housing because of the minimum 5.4% vacancy rate.
- l. Goals 15 and 19 are inapplicable because they have to deal with the Willamette Greenway.

Respectfully submitted,


R. Roger Reif

APPROVED BY:


David Anderson