

**City of Gold Beach
Planning Commission
Staff Report**



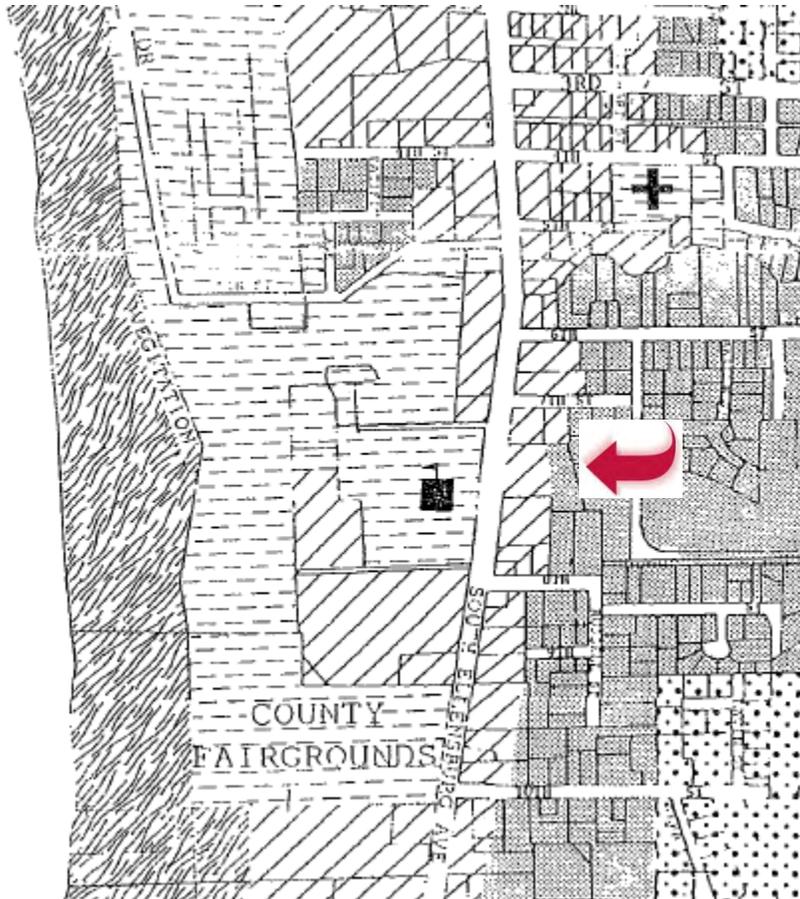
File #: GBZ-1301

Application Date: June 20, 2013

Applicant: Patrick Fitzstephens
PO Box 535
Gold Beach, OR 97444

Map/TL: 3715-01AA tax lot 4400

Land Use Request: Request to change the comprehensive plan map and zoning designation on a portion of parcel from Residential 3-R to Commercial 4-C. The subject property is currently split zoned 3-R and 4-C



Background Information:

Location: The subject property is located at 29513 Ellensburg Avenue (Hwy 101) within the City of Gold Beach.

The subject property is approximately 1.4 acres split zoned Commercial and Residential: approximately 0.62 acres is currently Commercial and approximately 0.82 is Residential.

The property is developed with a large commercial building that houses a restaurant, beauty shop, and vacant retail space. The area of the proposed zone change has historically been used for parking.



The applicant state in their findings that a six space recreational vehicle park was formerly located on this portion of the property. Staff has been unable to confirm this anecdotal assertion; since the adoption of the comprehensive plan in 1982 no RV park has existed here. Staff has consulted with the Public Works Department and no evidence of an RV park was found in their records dating back to the 1960s.

Prior Land Use Actions: Based on a check of department records, it appears there have been no prior land use actions on this subject property.

ANALYSIS

Applicable Criteria:

Gold Beach Comprehensive Plan

Goal 9 – Economy

Goal 10 – Housing

Land Use Classifications

Gold Beach Zoning Ordinance

ARTICLE VIII Amendments to the Zoning Ordinance

Section 8.010 Authorization to Initiate Amendments

Section 8.020 Application for a Zone Change

Section 8.030 Public Hearing on Zoning Amendment

Section 8.040 Criteria and Burden of Proof for an Amendment to the Zoning Map

Section 8.050 Zone Changes with Conditions

Criteria and Findings

Comprehensive Plan Goal 9 – Economy

GOAL 9 - ECONOMY

Goal: To diversify and improve the economy of Gold Beach

Policies:

- a) To incorage commercial and industrial development which is non-polluting in nature.
- b) To encourage and support efforts to improve Port facilities and the entrance to the Harbor.
- c) To encourage further development of the airport.
- d) To encourage the development of tourist related facilities.
- e) To encourage local processing of wood into useable items.
- f) To reduce unemployment, the out-migration of youth and accommodate the growth of the local labor force, by increasing job opportunities.
- g) To encourage economic activities which provide year-round employment.

Staff Response:

Policies a, d, f, g are applicable to this application. The applicant is requesting a zone change from Residential to Commercial for the eastern portion of the subject property.

The aspirational goal of Goal – 9 Economy is to diversify and improve the economy of Gold Beach. Arguably more land in commercial use could diversify and improve the economy. Currently, the portion of the property that is subject to this application is vacant, unimproved land that has been used for parking for at least the last 30 years. By utilizing the property for commercial purposes it could stimulate commercial activity at this location.

Comprehensive Plan Goal – 10 Housing

GOAL 10 - HOUSING

Goal: To develop a variety of adequate, quality housing and rental units.

Policies:

- a) To encourage maximum usage of the land within the City.
- b) To encourage a variety of residential lot sizes, diversity of housing types and a range in housing prices.
- c) To encourage the rehabilitation of substandard housing.
- d) To encourage the development of rental units in all price ranges.

Staff Response:

Policies a, b, and d are applicable to this application. The aspirational goal of Goal 10 – Housing is to develop a variety of adequate, quality housing and rental units. The subject property has been split zoned Commercial and Residential since at least 1982. Reviewing the historical zoning records it is unclear why the property was split zoned. There is not an abundance of residential development surrounding the eastern portion of the property (area of proposed zone change) so the intent of the split zoning is not evident. No evidence is contained in the zoning and comp plan records specific to this parcel.

There is a shortage of adequate residential lots and rental units in the Workforce Housing category in Gold Beach. However, no attempt has been made over the several decade history of development of this parcel to propose any residential use. It would be difficult due to the commercial building configuration on the lot to provide adequate residential access to the back (eastern) portion of the lot to develop residential housing.

Comprehensive Plan Land Use Classifications

Residential - The purpose of this classification is to designate lands which are suitable for residential development. Public facilities are already provided or feasibly can be provided to these areas.

Staff Response:

As stated above, the eastern portion of the subject property is zoned Residential but it is unclear why. Based on the surrounding development, a Commercial designation would be more appropriate. The back (eastern) portion, while zoned Residential, is not particularly "suitable for residential development." Public facilities are available at this location and the parcel is currently served with City sewer and water services.

Commercial - The purpose of this classification is to designate lands which are suitable for the continuance and expansion of a full range of commercial activities. These areas have the full range of urban services and are suitable to meet the commercial needs of Gold Beach's residents and visitors.

Staff Response:

The back (eastern) portion of the subject property is more suited for the "continuance and expansion of a full range of commercial activities" rather than residential development.

Gold Beach Zoning Ordinance

Section 8.010. Authorization to Initiate Amendments.

An amendment to this ordinance in the text or the map may be initiated by the City Council, the Planning Commission, or by application of a property owner or his authorized agent.

Staff Response:

The property owner has made an application for a zoning map amendment.

Section 8.020. Application for a Zone Change.

An application for an amendment by a property owner or his authorized agent shall be filed with the Planning Commission or its designated agent. The application shall be filed at least sixty (60) days prior to the hearing on the request in order to provide statutory notice to the Department of Land Conservation and Development Department. The application shall be accompanied by a fee established by resolution of the City Council.

Staff Response:

The applicant has paid the required application fee. The application was filed on June 20, 2013. Since that time, the City of Gold Beach has been unable to process the application due to the lack of a quorum of Planning Commission members. For the past six months there have only been two seated members of the five member commission.

Section 8.030. Public Hearing on Zoning Amendment.

Public hearings shall be held by the Planning Commission on any amendments to the zoning ordinance and the Planning Commission shall submit a recommendation to the City Council regarding the proposed change in the ordinance text or map.

- b. If an amendment to the zoning map is proposed, the notice shall be by one publication in a newspaper of general circulation in the city not less than ten (10) days prior to the date of hearing and by mailing notice not less than twenty (20) days prior to the date of hearing to owners of property within two-hundred-fifty (250) feet of the exterior boundaries of the property involved. The names for this purpose shall be obtained from the records of the County Assessor. Failure of a person specified in this section to receive the notice shall not invalidate any proceedings in connection with the application for a change in zone. The Planning Commission may continue a public hearing in order to obtain more information or to give further notice to persons it decides are affected by the proposed change in zone.

Staff Response:

When the City processes the application the method of notice and public hearing listed above would be followed.

Section 8.040. Criteria and Burden of Proof for an Amendment to the Zoning Map.

An amendment to the zoning map shall meet the following criteria:

1. The applicant for any quasi-judicial land use action under this zoning code shall have the burden of proving justification for the proposal. The greater the impact of the proposal in an area, the greater is the burden on the proponent.

Staff Response:

The applicant has provided findings in support of their request which are attached to this report as Attachment 1.

2. The proposal must be supported by proof that it conforms to all applicable criteria imposed in this zoning code; that it conforms to all standards imposed by applicable goals and policies of the comprehensive plan in light of its intent statements; and that it conforms with all applicable land use standards imposed by state law or administrative regulation. The burden rests ultimately on the proponent to bring forward testimony or other evidence sufficient to prove compliance with these standards. At a minimum, the proponent's case should identify and evaluate the proposal in the context of all applicable standards.

Staff Response:

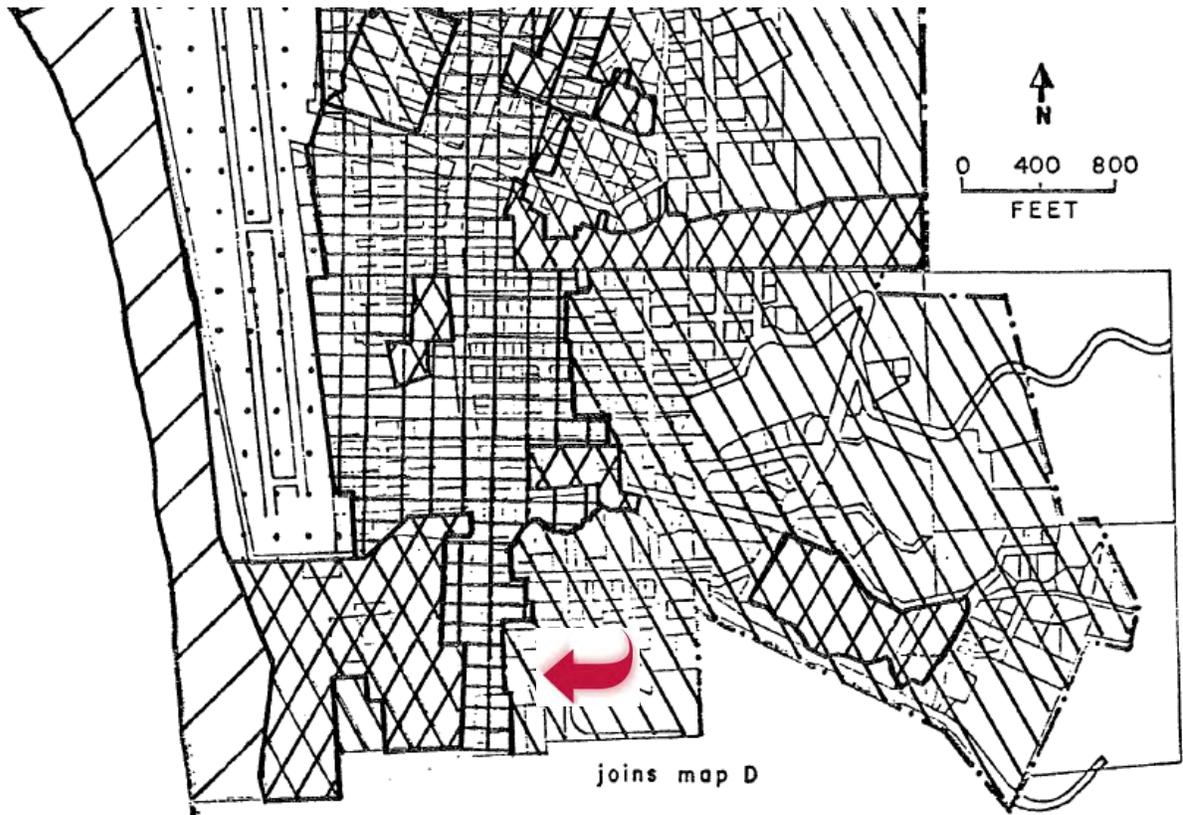
The applicant has provided findings in support of their request which are attached to this report as Attachment 1.

3. In addition to the proof under (a) and (b) above, the following factors should be evaluated by the proponent of a zone change and shall, where relevant, be addressed by the administrative body in its final decision:
 - a) The existence of a mistake in the compilation of any map, or in the application of a particular land use designation to any property in this zoning ordinance or the comprehensive plan;

Staff Response:

The applicant has provided findings in support of their request which are attached to this report as Attachment 1. As mentioned previously, staff found no evidence of the anecdotal assertion of a prior RV park at this location.

Staff agrees that the intent of the split zoning is unclear. The size of the adopted comprehensive map is so small that it is quite possible that a mistake was made in the compilation of the map in the early 1980s. Additionally, according to the records of the Curry County Tax Assessor, the building located on the subject property was built in 1940. The zoning line bisects the eastern half of the building. It seems unlikely that when the zoning designations were adopted that the line would intentionally be drawn to create a non-conforming use.



- b) A change in the social, economic, or demographic patterns of the neighborhood or of the community;

Staff Response:

The applicant has provided findings in support of their request which are attached to this report as Attachment 1. Staff agrees with the applicant—it seems unlikely that the proposed zone change would affect the social, economic, or demographic patterns of the neighborhood or community.

- c) A change of conditions in the character of the neighborhood in which the use or development is proposed;

Staff Response:

The applicant has provided findings in support of their request which are attached to this report as Attachment 1. Again, it seems unlikely the proposed zone change would change the character of the neighborhood. It is already surrounded by commercial uses.



- d) The effect of the proposal on the neighborhood, the physical characteristics of the subject property, and public facilities and services;

Staff Response:

The applicant has provided findings in support of their request which are attached to this report as Attachment 1. The exterior property lines of the subject property total approximately 1092 linear feet. The north, southwest, south and west property lines (approximately 648') all front on to existing commercial development or Hwy 101. The east and most southern property lines (approximately 453') back up to residential lots. The majority of the surrounding lots are in commercial or public use. The subject property is a generally flat lot and is presently served by city sewer and water. The subject property is not located in an identified geologic hazard zone or in a special flood hazard zone. A specific commercial use proposal has not been made at this time so it is difficult to comment on whether the proposed use could affect the physical characteristics of the subject property—but it seems unlikely.

- e) All other factors relating to the public health, safety, and general welfare which the administrative body deems relevant.

Staff Response:

This criterion seems somewhat subjective in nature; however, at this time there are no other factors that are deemed relevant.

4. The extent of the consideration given to the various factors set forth in subsection (3) of this section will depend on the nature and circumstances of each individual case. Unless any of the factors is deemed irrelevant, something more than an unsupported conclusion will be required, but the degree of detail in the treatment of relevant factors will depend on the degree of proposed change or deviation, and the scale and intensity of the proposed use or development. The requisite degree of consideration is directly related to the provision of subsection (a) of this section that the greater the impact of a proposal in an area, the greater is the burden on the proponent.

Staff Response:

The applicant has provided findings in support of their request which are attached to this report as Attachment 1. The factors in subsection (3) listed above have been adequately addressed.

5. The provisions of this section do not apply to legislative proceedings.

Staff Response:

This criterion is not applicable.

Section 8.050 Zone Changes with Conditions.

The planning commission and council shall have the authority to grant zone changes subject to certain conditions and may impose conditions as to any of the following matters:

1. Uses permitted;
2. Size, height, and location of buildings and accessory structures;
3. Landscaping when necessary to provide screening from incompatible adjacent uses or from public right-of-way;
4. Protection and preservation of existing trees, vegetation, water resources, wildlife habitat, and other significant natural resources;
5. Size, location, screening, drainage, and surfacing of driveways, parking and loading areas, and street access;

6. Size, height, location, and illumination of signs;
7. Size, height, location, and materials for the construction of fences to screen the subject property from incompatible adjacent uses or from public right-of-way;
8. Location and intensity of outdoor lighting;
9. Hours of operation or conduct of particular activities;
10. Abatement, mitigation, or prevention of nuisances;
11. Availability and improvement of urban services, including street improvements, dedication of street right-of-way, traffic signs and signals, sewer, storm drainage, water, and mass transportation; provided, however that no condition imposed under this paragraph shall obligate the applicant to construct or fund, in whole or in part, public improvements in public right-of-way or easements not on or abutting the subject property. Conditions under this paragraph may, however, require that all or part of the development or use be deferred until the happening of certain events such as the availability to the subject property of a certain level of urban service.
 - a) If the dedication of right-of-way or public improvements is required as a condition under this section, such dedication or improvements shall be the obligation of the applicant but shall be deferred until the property owner applies for a building permit or certificate of occupancy, whichever is earlier. Upon justification by the applicant, the planning administrator may allow further deferral of all or a portion of public improvements required as a condition under this section, beyond building permit or certificate of occupancy until a stated time or until required by council, whichever is earlier. An applicant seeking deferral under this section shall sign an improvement deferral agreement which specifies the terms of deferral. Said agreement shall be in a form approved by the city attorney and shall be filed in the deed records of the appropriate county.

Such conditions shall be stated with at least the same specificity and narrowness as would be required of a regulatory ordinance enacted in the exercise of the city's police power; shall be reasonably related to the public health, safety, and welfare; and shall be designed to reasonably effectuate their intended purpose.

The planning commission or city council shall not impose any permanent condition which would have the effect of limiting use of the subject property to one particular owner, tenant, or business.

Such permanent conditions may limit the subject property as to use, but shall not be so restrictive that they may not reasonably be complied with by other occupants who might devote the property to the same or a substantially similar use.

The conditions imposed shall be construed and enforced, in all respects, as provisions of this zoning code relating to the use and development of the subject property. Modification of use conditions shall be by the zone change application and review procedure under this chapter. Variances from all other conditions, including full or partial release there from, may be applied for and granted as provided for variances.

Staff Response:

At this time staff has no proposed conditions. At the time of the public hearing, the council will consider written and oral testimony.

FINAL ANALYSIS:

As stated previously, the applicant has provided findings which are attached. It seems likely that the subject property was improperly zoned at the time the comp plan map was adopted in 1982. The probable error only came to light when the applicant purchased the subject property this year and came in for a development permit on the eastern portion of the property (the residentially zoned portion). Staff recommends granting the proposed zone change from Residential R-3 to Commercial 4-C.

Attachments:

1 – Applicants Findings