

**COUNCIL ORDINANCE No. 2165**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE ZONING MAP TO CHANGE THE ZONING FOR THE PROPERTIES ADDRESSED AS 4401-09 SE LLEWELLYN ST, 4411 SE LLEWELLYN ST, 10500 SE 44<sup>TH</sup> AVE, AND 4401 SE HARRISON ST FROM RESIDENTIAL R-3 TO R-2.5.**

**WHEREAS**, the proposed amendments to the Zoning Map do not change the Medium Density land use designation of the subject properties on Comprehensive Plan Map 8 (Land Use); and

**WHEREAS**, the proposed amendments will allow the subject properties to redevelop at the prescribed density with less need for variances to lot size standards; and

**WHEREAS**, the Planning Commission held a public hearing on August 14, 2018, and voted unanimously to approve the proposed amendments; and

**WHEREAS**, no appeal of the Planning Commission decision was received within the appeal period, which closed on August 31, 2018; and

**WHEREAS**, Milwaukie Municipal Code (MMC) Subsection 19.1006.5.D provides that, for Zoning Map Amendments evaluated by the Planning Commission through a Type III process, an adopting ordinance shall be before the Council at the first meeting following the close of the appeal period that meets the applicable public notice requirements of the Milwaukie Charter (Chapter VIII, Section 31).

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Findings. The Planning Commission's findings of fact in support of the zoning map amendment are adopted by the City Council and are attached as Exhibit A.

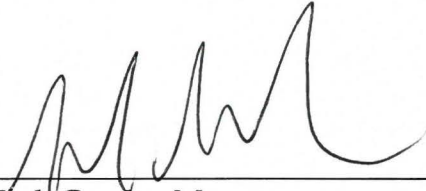
Section 2. Amendments. The Milwaukie Zoning Map is amended as described in Exhibit B (Proposed Zoning Map Amendment).

Section 3. Effective Date. The amendment shall become effectively immediately.

Read the first time on 9/18/18 and moved to second reading by 5:0 vote of the City Council.

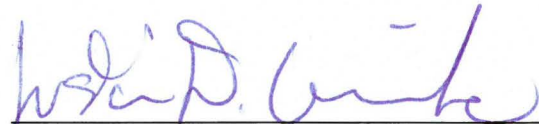
Read the second time and adopted by the City Council on 9/18/18.

Signed by the Mayor on 9/18/18.

  
\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Scott S. Stauffer, City Recorder  
\_\_\_\_\_  
Justin D. Gericke, City Attorney

**ATTACHMENT 1**  
**Recommended Findings in Support of Approval**  
**File #ZA-2018-003, Llewellyn & 44<sup>th</sup> Rezone**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Dieringer Properties, Inc., has applied for approval to amend the City's Zoning Map to rezone 4 properties currently zoned Residential R-3 to R-2.5. The subject properties are addressed as 4401-09 SE Llewellyn St, 4411 SE Llewellyn St, 10500 SE 44<sup>th</sup> Ave, and 4401 SE Harrison St. The applicant is the owner of the 2 properties on Llewellyn St, and the owners of the other 2 properties (Greg Van Dyke for 10500 SE 44<sup>th</sup> Ave and Arnold Keller for 4401 SE Harrison St) have requested that the proposed zone change include their lots as well. The land use application file number is ZA-2018-003.

2. The property at 4401-09 SE Llewellyn St is approximately 11,250 sq ft in area and is currently developed with a duplex on the western side of the lot. A pre-existing single-family house on the site was demolished within the last 10 years. The property at 4411 SE Llewellyn St is approximately 5,500 sq ft in area and is currently developed with a single-family house.

The property at 10500 SE 44<sup>th</sup> Ave is approximately 10,000 sq ft in area and is currently developed with a single-family house. The property at 4401 SE Harrison St is approximately 10,000 sq ft and is currently developed with a 4-unit multifamily structure, which makes it a de facto conditional use that is nonconforming with respect to the maximum allowed density and minimum lot size standards of the R-3 zone.

Given the current development standards for the R-2.5 zone, the proposed zone change would resolve the nonconforming issue for 4401 SE Harrison St. It would also allow the other subject properties to redevelop in proportion to their size, at a ratio of 2,500 sq ft per unit instead of 3,000 sq ft.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):

- MMC Section 19.902 Amendments to Maps and Ordinances
- MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on August 14, 2018, as required by law.

4. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the general process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code. Specifically, MMC Subsection 19.902.6 establishes the process for amending the Zoning Map.

a. MMC Subsection 19.902.6.A Review Process

MMC 19.902.6.A establishes the review process for Zoning Map amendments. Generally, changes that involve fewer than 5 properties or that encompass less than 2 acres of land are quasi-judicial in nature and subject to Type III review.

*The proposed amendment involves four properties that encompass approximately 36,750 sq ft or 0.85 acres. The Planning Commission finds that the change is quasi-judicial in nature and therefore subject to Type III review.*

b. MMC Subsection 19.902.6.B Approval Criteria

MMC 19.902.6.B establishes the following approval criteria for changes to the Zoning Map.

(1) The proposed amendment is compatible with the surrounding area based on the following factors:

- (a) Site location and character of the area.
- (b) Predominant land use pattern and density of the area.
- (c) Expected changes in the development pattern for the area.

*The subject properties are located adjacent to the King Road Shopping Center to the west, which is zoned for Neighborhood Mixed Use (NMU). As established in MMC Subsection 19.303.1.B, the NMU zone allows for a mix of small-scale retail and services with residential uses to establish neighborhood commercial centers that meet the needs of nearby residents and provide a pedestrian-friendly environment. The properties immediately surrounding the King Road Shopping Center are zoned R-3 for medium density residential use and are currently developed with a mix of commercial offices and primarily single-family dwellings (both houses and duplexes). One of the subject properties (4401 SE Harrison St) is currently developed with a legal nonconforming multifamily 4-plex.*

*The City anticipates continued redevelopment of the area surrounding the shopping center, with older low-density housing stock being converted over time into more medium-density units. Given that many of the existing lots in the area are sized in increments of 5,000 sq ft and that the R-3 development standards currently require increments of 3,000 sq ft per dwelling unit, the proposed zone change to R-2.5 (requiring increments of 2,500 sq ft per unit) will allow redevelopment of the subject properties for certain forms of medium density housing (e.g., duplexes or rowhouses) without the need for variances to the lot size standard. The slight increase in allowable density from R-3 to R-2.5 would allow redevelopment that capitalizes on the existing commercial uses and transit services provided along the King Rd corridor and that is compatible with the existing character of the neighborhood.*

*The Planning Commission finds that the proposed amendment is compatible with the surrounding area. This standard is met.*

- (2) The need is demonstrated for uses allowed by the proposed amendment.

*The City's Housing Needs Analysis, prepared in 2016 and looking ahead through 2036, notes that duplex and other similar single-family attached units (e.g., rowhouses and townhomes) comprise approximately 15% of the needed stock for both ownership and rental housing. That is third only to single-family detached housing (46%) and multifamily housing of 5 units or more (30%) in terms of projected need. The proposed zone change will facilitate the redevelopment of the subject properties to allow duplex and other similar attached housing development to achieve the prescribed density without the necessity of variances to dimensional standards.*

*In July 2018, the City Council adopted the Milwaukie Housing Affordability Strategy, a 5-year action plan for promoting affordable housing options. One of the strategy's 3 main goals is to develop new units, which the proposed amendment will facilitate. Duplex development, such as will be more readily allowed by the proposed amendment, represents one of the "missing middle" housing types identified in the community vision conducted as part of the City's current effort to update the Comprehensive Plan.*

*The Planning Commission finds that the need is demonstrated for uses allowed by the proposed amendment. This standard is met.*

- (3) The availability is shown of suitable alternative areas with the same or similar zoning designation.

*There are several significant areas zoned R-3 across the city, particularly in the central Milwaukie area. As noted above, the area surrounding the King Road Shopping Center is zoned R-3, an area of approximately 7 to 8 square blocks. The area around and just south of the Providence Milwaukie Hospital (32<sup>nd</sup> Ave) is zoned R-3, including the Hillside Manor housing development, which itself is a prime candidate for redevelopment. To the west and south of the Wichita Town Center is another block of R-3 zoning. In addition, there are 9 other small pockets of properties zoned R-3. Rezoning the subject properties to R-2.5 will not result in a shortage of R-3 sites. The only other location with R-2.5 zoning is adjacent to the subject properties.*

*The Planning Commission finds that there is sufficient availability of alternative areas with the R-3 zoning designation. This standard is met.*

- (4) The subject properties and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

*The City's Engineering Department has confirmed that there is adequate water and sewer service in the adjacent streets to serve any redevelopment needs for the subject properties. The existing street frontages on Llewellyn St, 44<sup>th</sup> Ave, and Harrison St do not provide all of the facilities that the City's code requires for local streets, though all are adequate to serve the existing level of development. Redevelopment of the subject*

*properties will require improvements in proportion to the new impacts, which will bring the frontages closer to or fully into compliance with contemporary standards.*

*The Planning Commission finds that the subject properties and adjacent properties presently have adequate public facilities, utilities, and services to support uses allowed by the proposed amendment. This standard is met.*

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

*Llewellyn St, 44<sup>th</sup> Ave, and Harrison St are all classified as local streets. The proposed zone change from R-3 to R-2.5, and the accompanying increase in allowed maximum density and development options, will not significantly increase the potential peak-hour trips or require a transportation impact study (TIS). The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.*

*The Planning Commission finds that the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. This standard is met.*

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

*The Land Use Map within the City's Comprehensive Plan (Comp Plan) shows a Medium Density designation for the subject properties, which are currently zoned R-3. Because the proposed R-2.5 zone is also a Medium Density zone, the proposed amendment will not change the properties' designation on the Land Use Map.*

*The Comp Plan includes the following goals and policies that are applicable to the proposed development:*

- (a) Chapter 1 Citizen Involvement

*The goal of Chapter 1 is to encourage and provide opportunities for citizens to participate in all phases of the planning process.*

*The Type III review process utilized for consideration of small-scale zone changes provides for a public hearing by the Planning Commission, where citizens have the opportunity to present testimony and participate in the decision-making process. A public hearing on the proposed development was held by the Planning Commission on August 14, 2018. The Commission took public testimony from citizens en route to reaching the decision reflected in these findings.*

- (b) Chapter 2 Plan Review and Amendment Process

*Chapter 2 establishes a process for land use decisions, with participation by citizens and affected governmental units. This includes policies for amending and implementing the Comp Plan and associated documents.*



*Under Objective 2 (Implementing the Plan), Policy 4 states that all planning actions, including zone changes, must be consistent with the intent of the Comp Plan. As discussed in these findings, the proposed amendment is consistent with the relevant objectives and policies of the Comp Plan.*

(c) Chapter 4 Land Use

Chapter 4 provides objectives and policies to guide the development of vacant lands and redevelopment of existing properties, considering a variety of needs such as housing, employment, and recreation. Specifically, the Residential Land Use and Housing Element is focused on providing new housing that is adequate to meet the needs of local residents and the regional housing market.

(i) Objective 2: Residential Land Use: Density and Location

Objective 2 aims to locate higher density residential uses so the concentration of people will help support public transportation services and major commercial centers and foster implementation of adopted master plans. Policy 1 establishes a density range for the Medium Density designation (8.8 to 21.1 units per net acre). Policy 4 establishes duplexes as the predominant housing type in Medium Density zones, with access primarily to major or minor arterial streets. These zones should be located near or adjacent to commercial areas, employment concentrations, and/or transit stops and may include deteriorating dwellings that are candidates for redevelopment and infill.

*Both the R-3 zone (11.6 to 14.5 units/acre) and R-2.5 zone (11.6 to 17.4 units/acre) fall within the density range outlined for Medium Density zones. The Comp Plan's current Land Use Map shows the R-2.5 zone designated as High Density, which City staff understands to be an error. The Comp Plan policies set the range for High Density development at 21.2 to 24.0 units per net acre, which is well above the current development standard for the R-2.5 zone.*

*The subject properties are adjacent to the King Road Shopping Center and within 1-2 blocks of King Rd, where regular bus service is provided by TriMet. On two of the four subject properties, there is currently a duplex, a deteriorating single-family house that is scheduled for replacement with a duplex, and a vacant space where a deteriorated duplex was demolished and is scheduled to be replaced with a new duplex.*

(ii) Objective 4: Neighborhood Conservation

Objective 4 aims to preserve and enhance the identity of existing well-defined neighborhoods to encourage the long-term maintenance of the city's housing stock. Policies include encouraging the

rehabilitation of older housing in lieu of large area clearance and new construction (unless there are structural or other considerations); residential infill that maintains existing building heights, setbacks, yard areas, and building mass; and duplexes as the predominant housing type.

*On two of the subject properties, two existing or previously existing dwellings were in poor condition and unsuitable for rehabilitation. They are proposed for replacement with two duplexes, and the R-2.5 development standards will result in structures with building heights and setbacks that are comparable with those allowed in the surrounding neighborhood. Other existing dwellings will be maintained in place. The proposed change from R-3 to R-2.5 is not such a significant one as to affect the character of the existing neighborhood, as similar uses are allowed with only slight differences in development standards such as lot size.*

(iii) Objective 5: Housing Choice

Objective 5 aims to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the needs of all segments of the population. Policies include encouraging the development of infill housing using innovative development techniques such as allowing duplex housing units in appropriate areas.

*The proposed zone change will allow duplex development on several of the subject properties without the need for a variance. The lots are undersized for duplex development in the R-3 zone but are appropriately sized for duplex development in the proposed R-2.5 zone. The proposed amendment would also facilitate rowhouse development as an efficient form of infill on the site.*

*The proposed amendment satisfies the applicable objectives and policies of the Residential Land Use and Housing Element of Chapter 4 by supporting slightly higher density residential uses near a major commercial center and public transit service, while preserving the identity of the existing surrounding neighborhood and promoting improved choices for housing.*

*The Planning Commission finds that the proposed amendment is consistent with the applicable goals and policies of the Comprehensive Plan, including the Land Use Map. This standard is met.*

- (7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

Within the Metro Urban Growth Management Functional Plan, Title 1 (Housing Capacity) and Title 12 (Protection of Residential Neighborhoods) provide guidance related to the proposed amendment. Title 1 calls for a compact urban form to meet regional housing needs. Title 12 encourages land use regulations



and planning efforts to designate neighborhood centers that provide convenient commercial services for neighborhoods, to reduce air pollution and traffic congestion.

*The proposed change to R-2.5 zoning will allow redevelopment of lots that would otherwise require variances to achieve the prescribed density due to their size and the dimensional requirements of the R-3 zone. Duplex and similar attached housing formats are the most likely type of unit to be redeveloped on the subject properties. The adjacent King Road Shopping Center is a benefit for any redevelopment that provides additional housing units, which are within easy walking distance of commercial services.*

*The Planning Commission finds that the proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies. This standard is met.*

- (8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

Several of the Statewide Planning Goals are applicable to the proposed amendment. Goal 1 (Citizen Involvement) focuses on developing a citizen involvement program that ensures the opportunity for all citizens to be involved in all phases of the planning process. Goal 2 (Land Use Planning) deals with establishing a land use planning process and policy framework as a basis for all decisions and actions related to use of land, assuring that all such decisions and actions have an adequate factual base. Goal 10 (Housing) aims to provide for the housing needs of the citizens of the state, by inventorying buildable lands and encouraging the availability of adequate numbers of needed housing units at appropriate price ranges and rent levels. Goal 12 (Transportation) focuses on providing a safe, convenient, and economic transportation system. Goal 13 (Energy Conservation) was established to conserve energy by managing land uses to maximize conservation of all forms of energy. Goal 14 (Urbanization) is intended to ensure efficient use of land and provide for livable communities.

In addition, the Metro Housing Rule, as established in Oregon Administrative Rule (OAR) 660 Division 7, aims to ensure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the metropolitan Portland urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs.

*The proposed zone change has been processed with Type III (quasi-judicial) review. Notice of the public hearing was provided to property owners and current residents of properties within 300 ft of the subject properties. The Planning Commission held a public hearing on August 14, 2018, with an opportunity for testimony and comment by anyone with interest in or concern about the proposed amendment. These findings demonstrate that the proposed amendment complies with the applicable criteria for approval established in the City's municipal code.*

*The City's Comprehensive Plan was previously acknowledged by the State to be in compliance with the Statewide Planning Goals, including Goal 10 (Housing). As discussed in other parts of Finding 4-b, the proposed amendment satisfies the City's various housing policies and objectives.*

*In OAR 660-007-0035, the Metro Housing Rule sets a base minimum density of 8 units per acre for new residential construction in Milwaukie. Both the existing R-3 zone and the proposed R-2.5 zone have a minimum density of 11.6 units per acre, which exceeds the minimum density required by Metro.*

*The proposed amendment will facilitate the redevelopment of the subject properties, allowing the prescribed Medium level of density to be achieved without a need for variances or other discretionary adjustments. At least 2 of the subject properties are projected to redevelop with duplexes, providing 3 additional needed housing units beyond what currently exists on the site.*

*The subject properties are adjacent to the King Road Shopping Center and very close to King Rd, which is an arterial street with sidewalks, bike lanes, and regular transit service. The site provides convenient, multimodal access to basic commercial services and transportation facilities, furthering statewide efforts for energy conservation and the efficient use of land. The proposed amendment will allow for the development of at most only 3 more units in the R-2.5 zone than what would be allowed in the R-3 zone. This represents only a slight increase in the number of new trips and an insignificant impact overall on the transportation system. Redevelopment of any of the subject properties will include a requirement for improvements to its public street frontage(s), which will improve safety and enhance transportation choices within the neighborhood.*

*The Planning Commission finds that the proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule. This standard is met.*

*The Planning Commission finds that the proposed amendment meets all applicable approval criteria for zone changes as established in MMC 19.902.6.B. This standard is met.*

c. MMC Subsection 19.902.6.C Conditions of Approval

*As per MMC 19.902.6.C, conditions of approval may be applied to Zoning Map amendments for purposes of fulfilling identified need for public facilities and/or meeting applicable regional, State, or federal regulations.*

*The Planning Commission finds that no conditions of approval are necessary for fulfilling identified public facility needs and/or meeting applicable regional, State, or federal regulations.*

d. MMC Subsection 19.902.6.D Modification of Official Zoning Map

*For Zoning Map amendments not involving conditions of approval, the Zoning Map shall be modified when the adopting ordinance goes into effect.*

*As noted in Finding 4-c, the proposed amendment does not require any conditions of approval. An adopting ordinance will be brought before the City Council as required by MMC Subsection 19.1006.5.D, and the Zoning Map will be modified accordingly when the ordinance goes into effect.*

*As proposed, the Planning Commission finds that the applicable requirements for an amendment to the City's Zoning Map are met.*

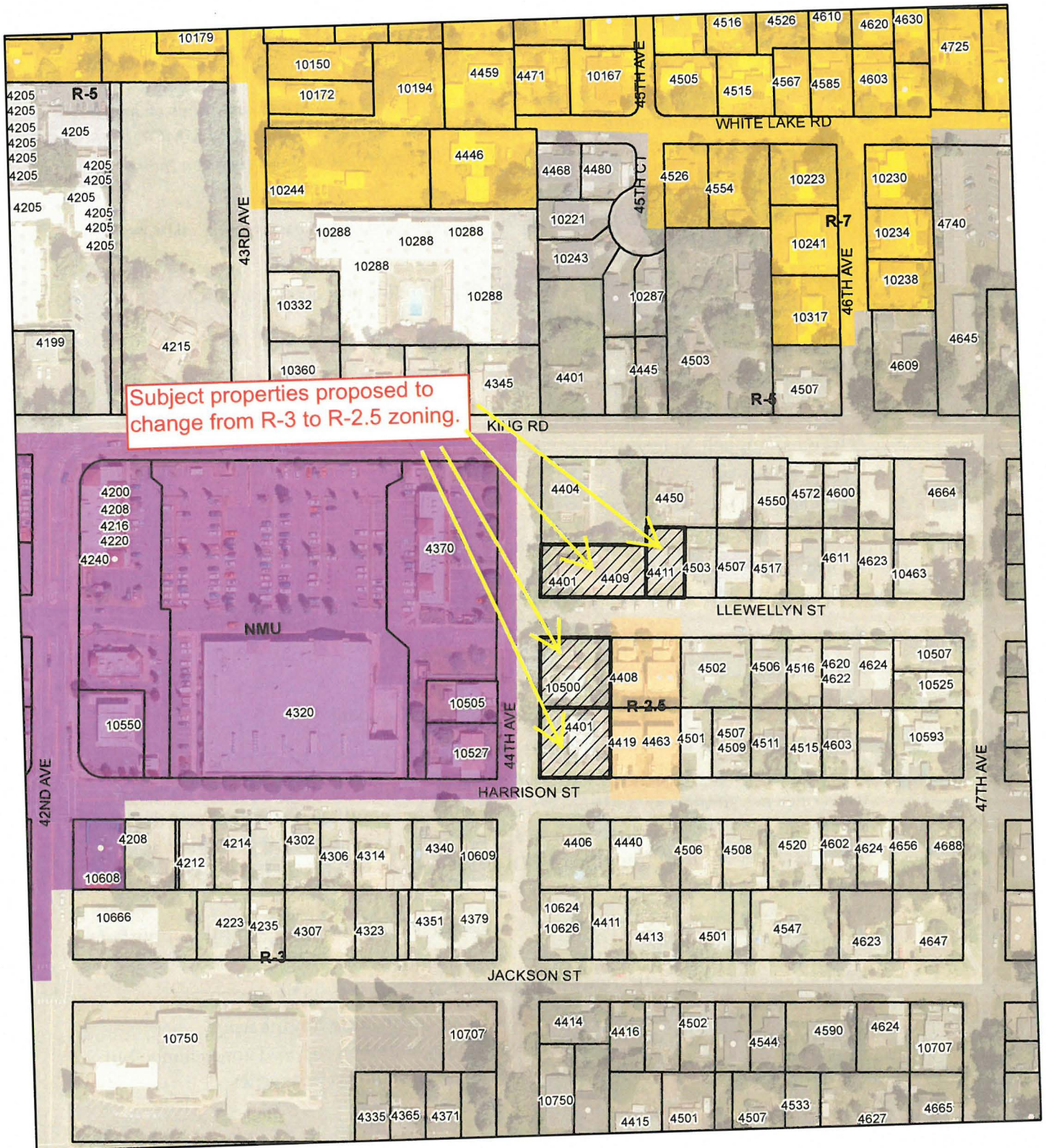
5. The application was referred to the following departments and agencies on July 2, 2018:

- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Clackamas Fire District #1
- Hector Campbell Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
- Lewelling NDA and LUC
- Clackamas County Department of Transportation & Development
- Metro
- ODOT
- TriMet
- North Clackamas School District
- Oregon Department of Land Conservation & Development

The comments received are summarized as follows:

- **Joshua Brooking, Associate Planner, ODOT:** Assuming the uses allowed within the two zones are similar, an additional trips should be marginal. Given that and that fact that the nearest ODOT intersection (Harrison St and Hwy 224) is approximately three-quarters of a mile from the site, ODOT has no comments on the proposed amendment.
- **David Aschenbrenner, Chair, Hector Campbell NDA:** The NDA is in full support of the proposed zone change.
- **Stephan Lashbrook, Chair, Lewelling NDA:** No comments on the proposal.
- **Alex Roller, Engineering Technician II, City of Milwaukie Engineering Department:** MMC Chapter 19.700 is not applicable to the proposed zone change but may be applicable to new development on any of the subject properties.





**Site Map**  
**4401-09 & 4411 SE Llewellyn St,**  
**10500 SE 44th Ave, and 4401 SE Harrison St**  
**(Tax Lots 1S2E30CC07500 & 7400,**  
**and 1S2E31BB00900 & 1000)**  
**File #ZA-2018-003**



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