

ORDINANCE NO. 5246

AN ORDINANCE AMENDING ORDINANCE NO. 4447, WHICH ADOPTED THE CITY OF ALBANY COMPREHENSIVE PLAN AND MAP, AND AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE COMPREHENSIVE PLAN MAP AND THE ZONING MAP REGARDING THE PACIFIC BOULEVARD/9TH AVENUE COUPLET; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY.

WHEREAS, the Planning Commission has held the public hearings required by local and state law; and

WHEREAS, the Planning Commission recommended approval of the proposed changes based on evidence presented in the staff report and at the public hearings for Planning Division Files CP-01-96, ZC-02-96, and DC-01-96; and

WHEREAS, the Albany City Council has caused notice to be given as required by law and has had a public hearing concerning the Comprehensive Plan and Development Code text and map amendments;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Findings of Fact contained in the staff report and attached as Exhibit "A" are hereby adopted in support of this decision.

Section 2: The Albany Comprehensive Plan Map is hereby amended as shown on Exhibits "B" and "C".

Section 3: The Zoning Map, which a part of the Albany Development Code, is hereby amended as shown on Exhibits "D", "E", and "F".

Section 4: Article 4 of the Albany Development Code text is hereby amended as shown on Exhibit "G".

Section 5: A copy of the map amendments shall be filed in the Office of the City Recorder of the City of Albany and the changes made to the official City of Albany Comprehensive Plan Map and Development Code Map.

Section 6: A copy of the change in zoning designations shall be filed with the Linn County Assessor's Office within 90 days after the date of this change.

IT IS HEREBY adjudged and declared that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, and an emergency is hereby declared to exist, and this Ordinance shall take effect and be in full force and effect when signed by the Council President.

Passed by the City Council: June 26, 1996

Approved by the Mayor: June 26, 1996

Effective Date: June 26, 1996

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

**FINDINGS OF FACT**  
Case Files CP-01-96, ZC-02-96, and DC-01-96  
June 1996

**CP-01-96, COMPREHENSIVE PLAN MAP AMENDMENTS**

- 1.1 The proposed amendments to the Comprehensive Plan Map are legislative in nature in that these changes affect a large number of persons and properties, and are applied over a large area [ADC 1.580 revised]. The impetus for this review of Zoning Map designations and Comprehensive Plan Map designations is the upcoming highway project by the Oregon Department of Transportation along Pacific Boulevard, a state highway. Many properties along the one-mile project will be affected by changes in traffic patterns. It is timely for the City to review these land use designations along the project corridor in a legislative setting in order to evaluate the consistency of Plan policies with changing conditions.
- 1.2 This legislative amendment is prompted by the Pacific Boulevard/9th Avenue Couplet. This project will reconfigure the intersection of Pacific Boulevard, Santiam Highway, and Geary Street, and it will change the flow of traffic on Pacific Boulevard and 9th Avenue as one-way streets. Much of the existing right-of-way will be utilized in the improvements, but some new right-of-way will be acquired.
- 1.3 A large percentage of properties within the Couplet corridor are designated as General Commercial on the Comprehensive Plan Map, consistent with the collector and arterial volumes experienced in this area. Within the project corridor, there are three areas where the change in traffic patterns may affect land uses. Area 1 is located on the east end of the project, Area 2 in the middle, and Area 3 at the west end of the project.
- 1.4 In Area 1 at the east end of the Couplet project, a new corridor will be created to divert through traffic on Santiam Highway around the planned intersections of Pacific Boulevard, Geary Street, and 9th Avenue. This new corridor will divide the former ODOT maintenance yard at Pacific Boulevard and Burkhart Street, use the existing 7th Avenue right-of-way between the ODOT yard and Geary Street, then extend 7th Avenue in a westerly direction to create a transition to Santiam Highway.
- 1.5 In this vicinity, the zoning and Plan map boundaries are located one-to-two blocks distant from the Pacific Boulevard. However, the new 7th Avenue corridor will shift traffic patterns to the edge of the residential neighborhood, bringing collector traffic levels to 7th Avenue which has functioned as a local street.
- 1.6 No inventory of commercial land has been compiled along Pacific Boulevard or 9th Avenue, but a visual survey would indicate that there are a number of vacant and underdeveloped lots within this corridor available for commercial development without redesignating the north side of 7th Avenue for commercial use.
- 1.7 Approximately 10 houses must be removed from their current locations in preparation for construction of the proposed project. Sites have been identified on the north side of 7th Avenue to accommodate the houses, and so avoid the loss to the local housing inventory. Designating the north side of 7th Avenue for residential use on the Comprehensive Plan Map will conserve the houses for long-term residential use. If a commercial designation is applied, it is likely that these homes will be lost.
- 1.8 Residential professional uses could be allowed on the north side of 7th Avenue as a buffer between commercial and residential uses, but the lack of adequate area for off-street parking precludes this as a suitable use of these properties.

- 1.9 Redesignating the north side of 7th Avenue for commercial use would constitute strip development because it does not cluster commercial uses or promote infill of vacant or underdeveloped areas.
- 1.10 In Area 2 in the Jackson Hill area, 9th Avenue will be converted from a two-way street carrying collector volumes to a one-way arterial for eastbound Pacific Boulevard traffic.
- 1.11 All properties on the north side of 9th Avenue are designated as General Commercial. Such is the case on the south side of 9th Avenue except for the two blocks between Hill and Oak Streets. The block between Main and Oak Streets is designated Medium Density Residential on the Comprehensive Plan Map; there are four duplexes and a restaurant on these properties. The duplexes are part of a 30-unit duplex development known as Oak Village. Maintaining the residential designation will conserve these rental units in the City's housing inventory.
- 1.12 There are two single-family residences on the southwest corner of Main Street and 9th Avenue in the OP district (designated on the Comprehensive Plan Map as Light Commercial). These houses are currently rented to tenants. The owners attest that these two bedroom homes have been difficult to rent due to the size, age, and location.
- 1.13 In Area 3 at the west end of the project, Pacific Boulevard will be split into two one-way sections, with eastbound traffic being diverted onto 9th Avenue through a new S-shaped right-of-way in the vicinity of Thurston Street. A portion of 9th Avenue may be vacated.
- 1.14 This change in the traffic pattern will affect access to each of the properties that will front on the new street section. A zone change in this area would realign the boundary between the CC and CH zoning districts to follow the S-curve, but no change is proposed to Comprehensive Plan Map because the entire area is designated as General Commercial.
- 2.1 In the ideal circumstances, compatibility between adjacent commercial and residential uses is best achieved by placing zoning boundaries along rear property lines where appropriate buffers can be created between uses. It is more difficult to accomplish this effect when residential and commercial uses face each other across the street. This is the argument for rezoning the north side of 7th Avenue from residential to commercial use.
- 2.2 The Albany Partnership for Housing and Community Development has requested that the CC zoning district of the north portion of the ODOT yard be changed to RM-5 to allow for residential development of that land. Also the owner of a house at 605 Burkhart Street prefers a zone change from CC to RS-6.5. A change in traffic patterns provides the basis for these requests. Burkhart Street will be closed at Pacific Boulevard and access to the ODOT yard will be limited to either 6th Avenue or Burkhart Street. Both are local streets in existing residential neighborhoods. To develop either property for commercial use would invite higher levels of auto and truck traffic through these neighborhoods and disrupt the current state of compatibility in this area.
- 2.3 For the remainder of the north side of 7th Avenue of Area 1, maintaining the residential designations for existing residences will ensure that, as permitted uses, they will continue to meet the housing needs for citizens of Albany. It is clear that increasing the traffic will impact the livability of these properties to an extent.
- 2.4 The property on the northwest corner of Santiam Highway and Cleveland Street was rezoned to CC as a quasi-judicial action at the request of the landowner in 1989 (Case Files CP-01-89 and ZC-02-89). No legislative change is recommended at this time.

- 2.5 In Area 2, the duplex development is designated as Medium Density Residential on the Comprehensive Plan Map. Testimony from Gene Murray initially expressed an interest in a change to a commercial designation but the request was withdrawn upon learning of the implications of owning non-conforming properties.
- 2.6 The two single-family residences on the southwest corner of Main Street and 9th Avenue are designated on the Comprehensive Plan Map as Light Commercial. A letter from Hazel Tidwell and conversations with Fred and Beverly Smith, owners of the two properties, support the change to General Commercial to allow for a broader range of uses. These owners attest to the difficulty of finding tenants interested in living next to an increasingly busy street.
- 2.7 On the southwest corner of Oak Street and 9th Avenue is the new site of Ping's Garden, a restaurant approved by conditional use (Case File CU-34-93) on land designated as Medium Density Residential on the Comprehensive Plan Map. Conversation with Ping Lee also expressed an interest in the General Commercial designation consistent with the use of the property.
- 2.8 In Area 3, a zone change in this area would realign the boundary between the CC and CH zoning districts to follow the S-curve. The entire area is designated as General Commercial on the Comprehensive Plan Map.

#### **ZC-02-96, ZONING MAP AMENDMENTS**

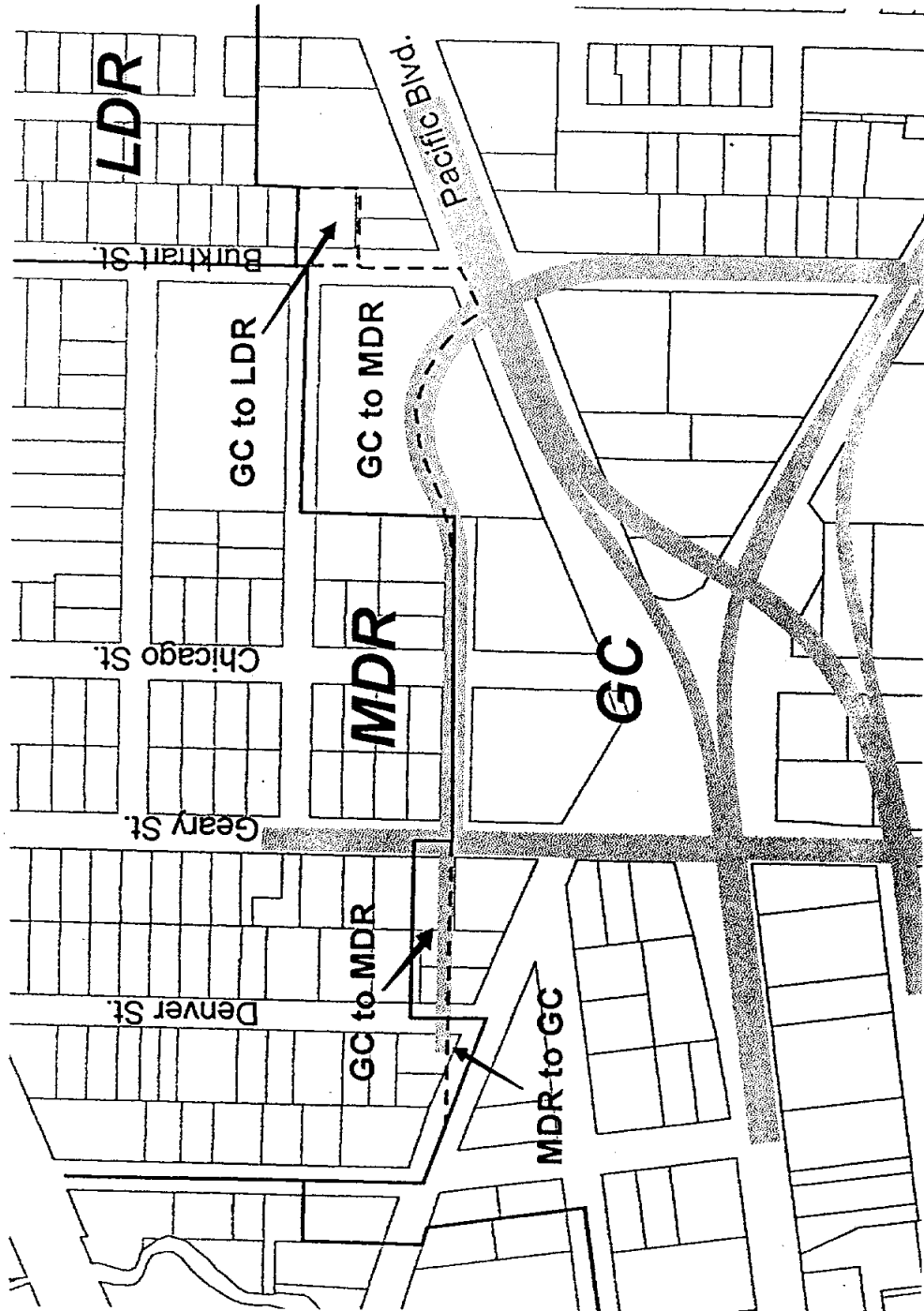
- 1.1 In Area 1, the RM-5 zoning district proposed for the north side of 7th Avenue is consistent with the Medium Residential designation proposed for the Comprehensive Plan Map discussed in the concurrent staff report for Case File CP-01-96. For the existing house located at 605 Burkhart Street, the proposed RS-6.5 is consistent with the Low Density Residential designation proposed for the site.
- 1.2 The Community Commercial zoning district proposed for three properties on the south side of 9th Avenue in Area 2 are consistent with the General Commercial designation proposed for the Comprehensive Plan Map as discussed in the concurrent staff report for Case File CP-01-96.
- 1.3 No changes are proposed for Area 3 except to realign the boundary between the CC and CH districts to follow the new rights-of-way. All land to be rezoned is presently designated as General Commercial.
- 2.1 In Area 1, 6th Avenue and Burkhart Street are paved with curb and gutter. Portions of both streets are proposed to be overlaid in conjunction with either the ODOT construction project or the Albany Partnership housing relocation project.
- 2.2 Seventh Avenue will be reconstructed by the ODOT project to accommodate the vehicle loads and traffic levels expected once the project is completed. Access to 7th Avenue will be controlled by ODOT.
- 2.3 In Area 2, 9th Avenue will not be widened, but it will be restriped for three east-bound lanes and bike lanes. No on-street parking will be permitted.
- 2.4 The new S-curve to be constructed by the ODOT project in Area 3 will be adequate for continued commercial development of adjacent properties. Access to the highway will be controlled by ODOT.
- 3.1 Water. Existing water facilities in Area 1 can accommodate the additional residential development proposed for the north half of the former ODOT yard. All other lots are presently served by City water mains. The proposed zone changes will not require any increase in service capacity.

- 3.2 Sanitary Sewer. Existing sanitary sewers will continue to serve developed lots. Extension of the public sanitary sewer main is required for residential development of the ODOT yard to occur. The proposed zone changes will not require any increase in service capacity.
- 3.3 Storm Drainage. Storm drainage will be managed by ODOT as an element of the Couplet project.
- 3.4 Schools. The Greater Albany Public School district has submitted a letter of support for the potential residential development of the ODOT yard by the Albany Partnership.
- 3.5 Police and fire protection. Additional fire hydrants will be installed in conjunction with the Couplet project in order to reduce hydrant spacing and increase response time. No impacts to emergency services are anticipated.
- 4.1 Floodplains. The areas proposed for zone change are not located within a floodplain as shown on the Flood Insurance Rate Map Community Panels 410137- 0001 and 410137-0002 (effective March 16, 1989). There is a floodplain associated with Periwinkle Creek within the ODOT project area, but the adjacent properties are not proposed for rezoning.
- 4.2 Slopes. The topography in the project area is level to gently sloping land. Hillside development regulations, which apply to lands with sloped exceeding ten percent, are not applicable to this area.
- 4.3 Significant natural vegetation. The areas proposed for zone change are not identified as having natural vegetation or wildlife habitat (Plate 3, Comprehensive Plan). There is a riparian corridor associated with Periwinkle Creek within the ODOT project area, but the adjacent properties are not proposed for rezoning.
- 4.4 Historic districts. The areas proposed for zone change are located outside the historic districts (Plate 9, Comprehensive Plan).
- 4.5 Wetlands. The US. Department of Interior, Fish and Wildlife Service, National Wetland Inventory Map (based on the USGS Albany 7.5 minute quad map date 1994) shows no wetlands in the areas proposed for zone change. There is a wetland associated with the channel of Periwinkle Creek within the ODOT project area, but the adjacent properties are not proposed for rezoning.
- 5.1 "The RS-6.5 District is intended primarily for low density urban single family residential development. Development should occur at 6-8 units per acre." [ADC 3.020(3) revised] This zoning district is most appropriate for the existing house at 605 Burkhart Street as a continuation of this zone from adjacent property to the north.
- 5.2 "The RM-5 District is primarily intended for low to medium density multiple family residential urban development. Development should occur at 10-20 units per acre." [ADC 3.020(5) revised] This zoning district is most appropriate for the existing and potential residential development on the north side of 7th Avenue as an extension of existing residential neighborhood on the north.
- 5.3 "The CC district is intended primarily for developments which have a wide range of retail sales and service establishments. The CC district is typically appropriate to large commercial clusters near intersections or along major thoroughfares." [ADC 4.020(3) revised]. This zoning district is most appropriate for the conversion of the Tidwell and Smith properties and for Ping's Garden because it will continue the existing CC designation along 9th Avenue, already a major thoroughfare.

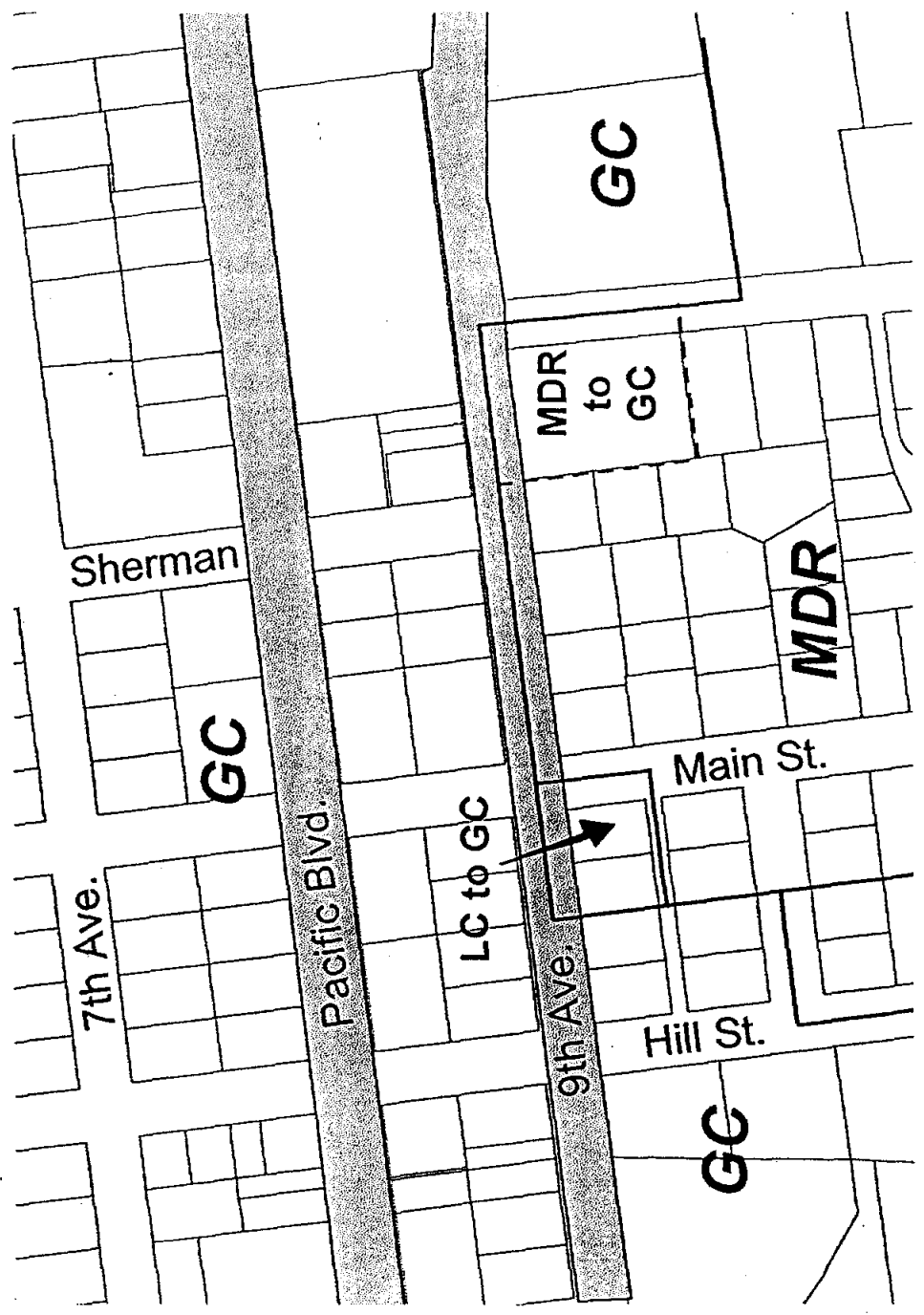
**DC-01-96, AMENDMENT TO ARTICLE 4, ALBANY DEVELOPMENT CODE**

- 1.1 The proposed amendment to Article 4 of the Development Code is being considered concurrently with amendments to the Comprehensive Plan Map and the Zoning Map in a legislative proceeding. The impetus for this review is the upcoming highway project by the Oregon Department of Transportation known as the Pacific Boulevard/9th Avenue Couplet.
- 1.2 The ODOT project will significantly change traffic patterns over the one-mile project corridor. A large percentage of properties within the Couplet corridor are zoned Community Commercial on the Zoning Map, consistent with the collector and arterial volumes experienced in this area. However, there are three properties on the south side of 9th Avenue that are zoned Office Professional, a transitional zone between commercial and residential districts. One property contains Ping's Garden, a restaurant located at 1206 9th Avenue SE. A single-family residence at 1024 9th Avenue SE is owned by Fred and Beverly Smith. Hazel Tidwell owns a single-family residence at 1028 9th Avenue SE. Given the increased levels of traffic expected of the Couplet project on 9th Avenue, each of these property owners has expressed an interest in a zone change to Community Commercial.
- 1.3 The findings in support of the map amendments presented for Case Files CP-01-96 and ZC-02-96 describe how the proposed map changes respond to changing conditions in order to best achieve the long-range goals and policies of the Comprehensive Plan.
- 1.4 The proposed map amendments will have the effect of changing the restaurant from a conditional use to a permitted use, but the residences will become nonconforming uses in a commercial district. This short-term anomaly will cease when a commercial use of the residences is established or when the dwellings are razed for new commercial structures. In the meanwhile, the nonconforming uses are subject to the provisions set forth in ADC 2.300-2.400 which include loss of use in the event of substantial damage to the structure.
- 1.5 Neither the Smiths nor Ms. Tidwell are prepared to establish a commercial use on the properties. They intend to continue the residential use for the near future. Construction of the couplet project, expected to begin in February, 1997, will last approximately two years.
- 1.6 In order to ease the transition from residential to commercial use, a mechanism in the Development Code has been devised to secure progress toward achieving long-range goals as well as protect the short-term needs of the applicant. The proposed amendment to Article 4 will confer a special status to these residences as conforming within the Community Commercial zoning district. First used as part of the "CALUTS" zone change with duplexes and multi-family development in the Hackleman Monteith district [ADC 14.080], this amendment would exempt these houses from the provisions for nonconforming uses until such time as the property is developed for commercial use.
- 2.1 "The CC district is intended primarily for developments which have a wide range of retail sales and service establishments. The CC district is typically appropriate to large commercial clusters near intersections or along major thoroughfares" [ADC 4.020(3)]
- 2.2 The proposed amendment to Article 4 only exempts the residences from nonconforming use regulations; the amendment is consistent with the purpose statement for the CC district in that a commercial use may be established at any time in conformance with the provisions of the CC district.

AREA 1  
AMENDMENTS TO THE COMPREHENSIVE PLAN MAP  
CASE FILE NO. CP-01-96

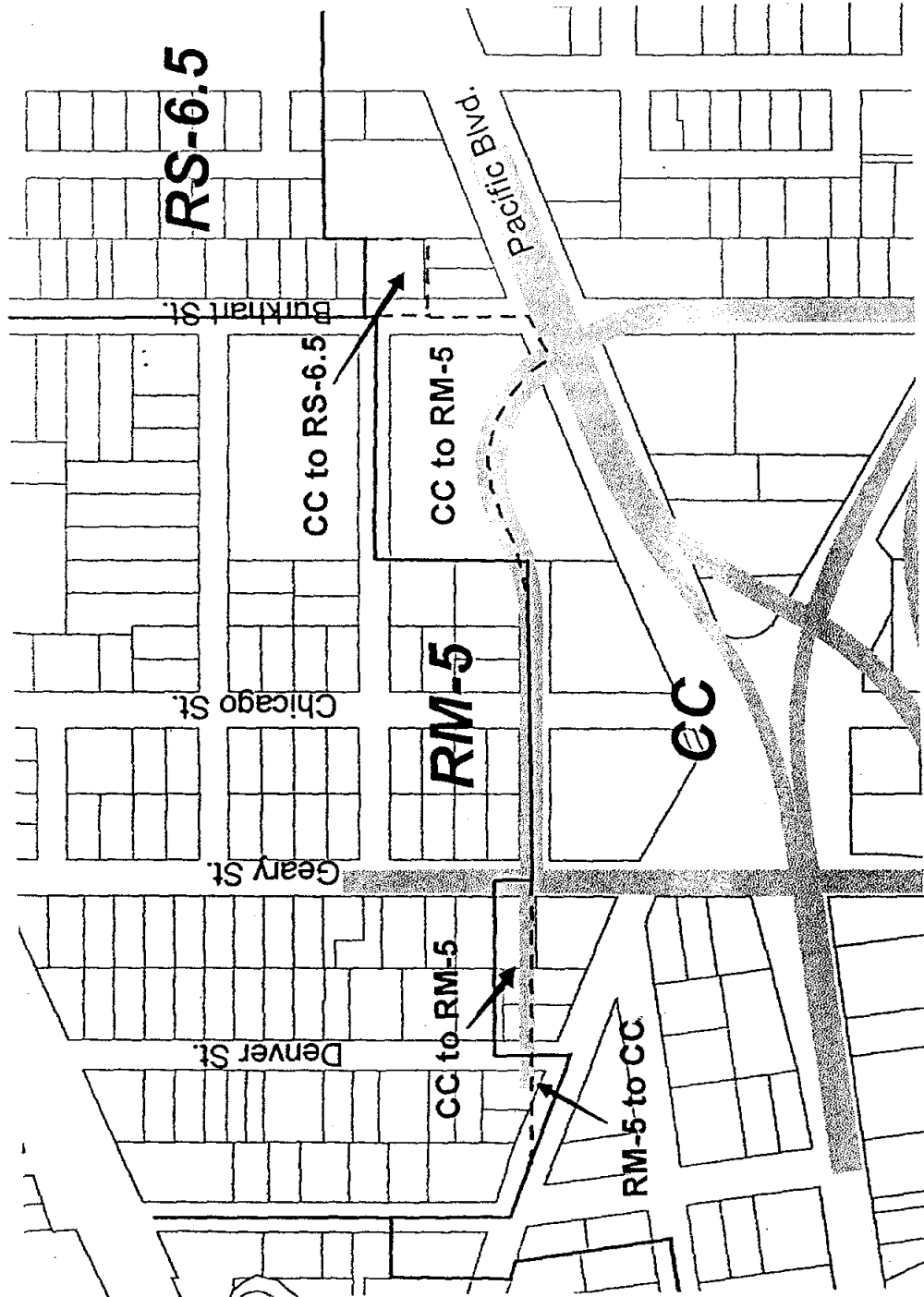


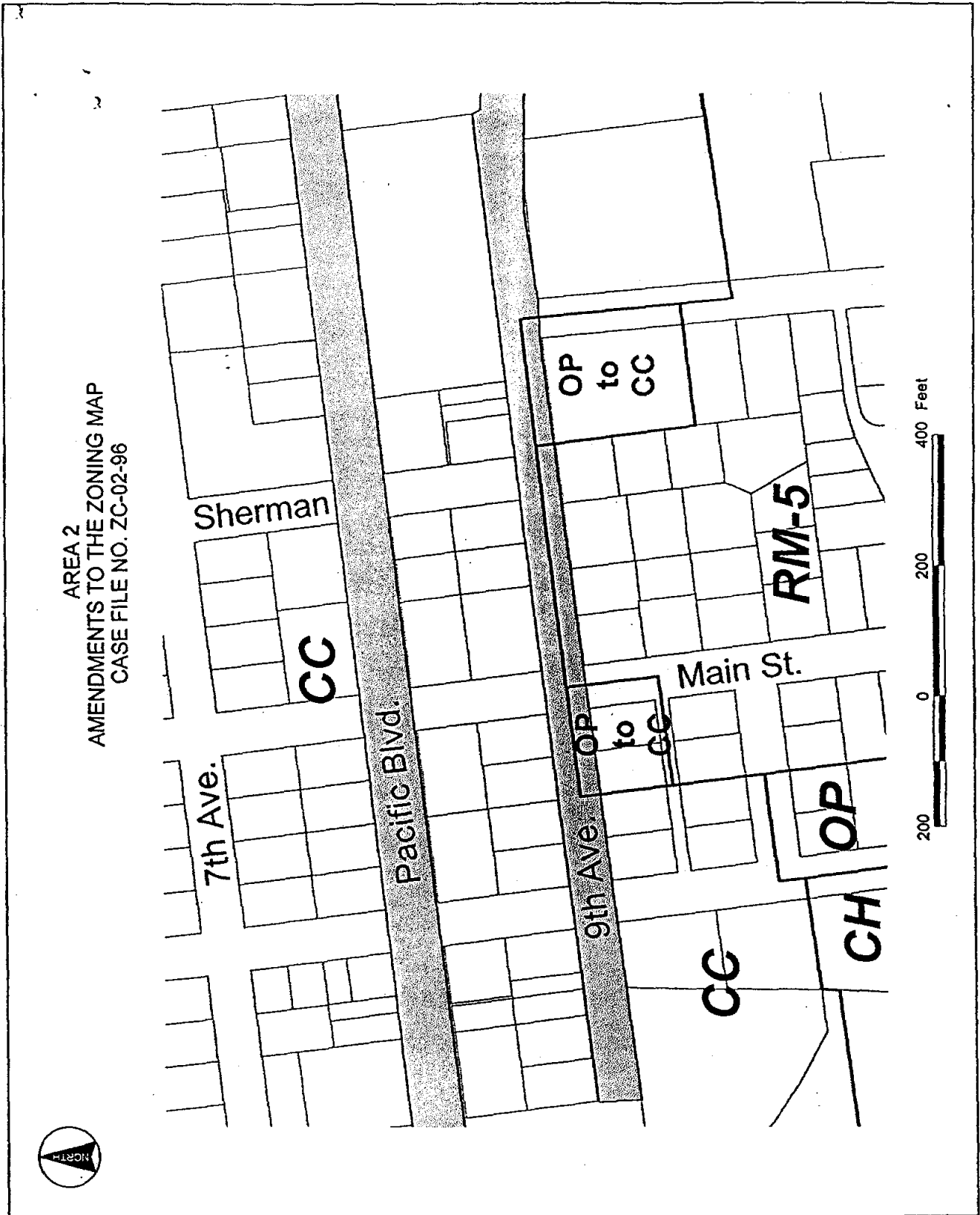
AREA 2  
AMENDMENTS  
TO THE COMPREHENSIVE PLAN MAP  
CASE FILE NO. CP-01-96





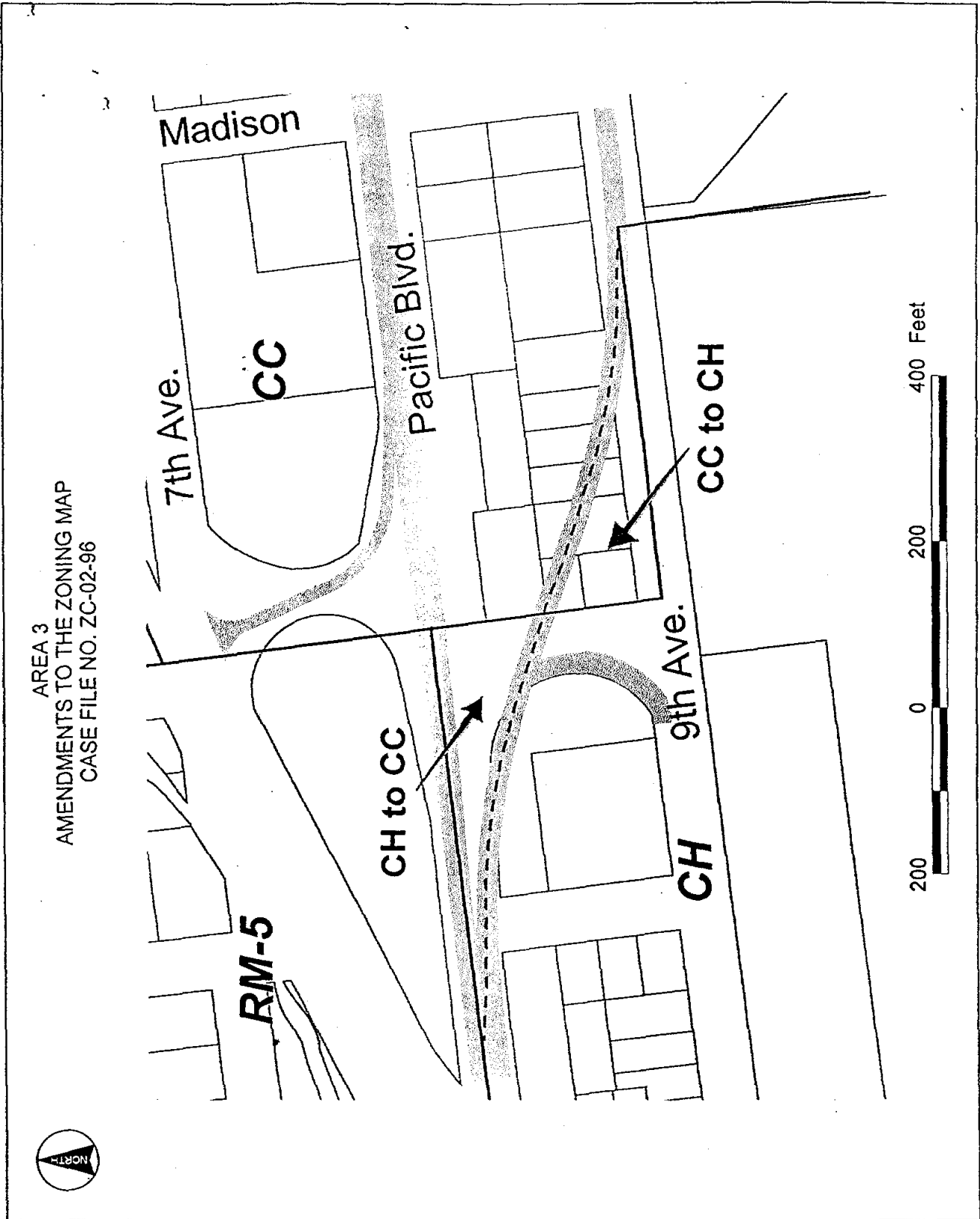
AREA 1  
AMENDMENTS TO THE ZONING MAP  
CASE FILE NO. ZC-02-96





AREA 2  
AMENDMENTS TO THE ZONING MAP  
CASE FILE NO. ZC-02-96





**AMENDMENT TO ARTICLE 4  
ALBANY DEVELOPMENT CODE  
COMMERCIAL ZONING DISTRICTS**

Add the following new section:

**SPECIAL STATUS**

4.075 Existing Uses Granted Special Status (Allowed) in the Commercial Districts. Notwithstanding the restrictions of any other section of the Albany Development Code (ADC), properties listed below shall be deemed to be conforming with the base commercial district. If any building on these properties is substantially destroyed, as defined in ADC 2.340(4), it can be rebuilt to the same density as existed on the property at the time the use was added in this section, subject to the regulations of any applicable overlay district. If any of the listed buildings are converted to commercial use, the special status granted here is rescinded, and the use of the property shall thereafter conform to the requirements of Article 4. The special status granted here shall be lost if it is determined that the use which existed at the time it was added to this Section was not then lawfully in existence.

- (1) 1024 9th Avenue SE, single-family residence
- (2) 1028 9th Avenue SE, single-family residence