



PLANNING COMMISSION REGULAR SESSION AGENDA
Tuesday, May 28, 2019 - 6:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of May 13, 2019.

[Draft PC Work Session 05-13-19.pdf](#)

2.B Approval of the Planning Commission Regular Session Meeting Minutes of May 13, 2019.

[Draft PC Minutes 05-13-19.pdf](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

- 4.A Final Order and Findings for File No. 2-CUP-19: Approval of a Request to Grant Relief of the Five Off-Street Parking Spaces Required to Operate Three Vacation Rental Units That Include One (1) One-bedroom Vacation Rental and Two (2) Two-bedroom vacation rentals.**

[2-CUP-19 Final Order and Findings.pdf](#)

- 4.B Final Order and Findings for File No. 2-NCU-19: Nonconforming Use Permit to Allow a Continued Historical Use of General Purpose Warehouse Buildings at 2102 NW Oceanview Drive and 343 NW 22nd Street.**

[2-NCU-19 Final Order and Findings.pdf](#)

- 4.C Final Order and Findings for File No. 3-CUP-19: A Request for a Modification to a Conditional Use Permit (File No. 3-CUP-18) to Renovate the Existing Building at Mariner Square.**

[3-CUP-19 Final Order and Findings.pdf](#)

5. PUBLIC HEARINGS

6. NEW BUSINESS

- 6.A Upcoming Work Session and Regular Meeting Agenda Items**

[Memorandum.pdf](#)

7. UNFINISHED BUSINESS

- 7.A FEMA Newport Community Assistance Visit (CAV).**

[FEMA Community Assistance Visit.pdf](#)

8. DIRECTOR COMMENTS

9. ADJOURNMENT

Draft MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room A
May 13, 2019
6:00 p.m.

Planning Commissioners Present: Jim Patrick, Lee Hardy, Bob Berman, Rod Croteau, Jim Hanselman, and Bill Branigan.

Planning Commissioners Absent: Mike Franklin (*excused*).

PC Citizens Advisory Committee Members Present: Dustin Capri.

Public Members Present: Mona Linstromberg, and Gary Laymon.

City Staff Present: Community Development Director (CDD), Derrick Tokos; Associate Planner, Rachel Cotton; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:00 p.m.
2. **Unfinished Business.** No unfinished business.
3. **New Business.**
- A. **Continued Discussion on the Draft Tree Manual and Pruning/Tree Removal Ordinance.** Tokos reviewed his staff memo noting that Cotton had made changes to the manual based on feedback from the Commission from the last meeting.

Cotton reviewed the draft ordinance with the Commission and noted that “other tree care professional” was added and a definition of “public trees” was created. Hardy said City “owned” and “controlled” was a conflict in terms when the owner didn’t have to maintain the property. A discussion ensued on what it meant for a property to be controlled by the City. Cotton suggested leaving it as “City owned” property and remove “controlled”. Patrick questioned how far a portion of the tree had to be on the City’s property for it to be considered City property. Cotton suggested saying that if more than 50 percent of the trunk was on the property, it was City property. Patrick suggested measuring it at breast height. Cotton suggested using diameter breast height (DBH) that was 4.5 feet. Hanselman suggested adding “if the trunk was 51 percent or more on the property”. Cotton reiterated that what she was hearing was that “public trees” meant park trees, street trees, or other trees with more than 51 percent of the trunk at DBH of 4.5 feet were on City owned property. Hardy suggested adding who would be liable in the document. Cotton explained that was not part of this document. Berman noted that public trees and street trees weren’t defined. Cotton would change it to say “trees” instead. Tokos suggested saying “includes rights-of-way”. Patrick suggested including “easements”.

Cotton covered the examples of stumps in the manual and noted the examples pulled from other jurisdictions. Hardy questioned why they had to grind the stump instead of removing the stump. Croteau suggested going with La Grande’s method. Patrick was inclined to say they should remove the stump flush to ground level.

Cotton reviewed the tree replacement specifications next and the examples from other jurisdictions. Hanselman was concerned about density of planting replacement trees and thought density standards needed to be determined. Cotton said this was addressed in the tree manual. Berman liked Oregon City’s example with the DBH and calipers added in. Capri thought the DBH should be 4.5 feet to match. Hardy was concerned about the reasoning for having to plant eight trees when replacing a tree over 31 inches. Capri expressed concerns about whether or not the Tree Board would be experts on trees. Cotton said the Tree Board was the Parks and Rec Committee. She said Ryan Parker was on the Board. He had worked with State

Parks and had some background. Capri asked if the City could hire an arborist for the Tree Board in order to have tree experts available when making decisions. Cotton said hazardous trees would need tree professionals to begin with. Capri was also concerned that the Tree Board have a professional to determine good properties where the City needed to plant trees. Tokos thought this would involve staff support with the Parks and Rec Committee to identify areas suitable for planting. Branigan suggested adding that the Tree Board consult with the State Arborist. Croteau suggested talking to Extension Services. Capri wanted the Tree Board to include diverse backgrounds. Cotton said what she was hearing was that there was a concern that the Tree Board would be qualified to determine someone's replacement plan. She said there wasn't a budget to pay for a professional to be on call to review applications, and they were trying to work with the resources available. Her thoughts were to have standards written and then come back and adjust it if it wasn't working. What the Commission was doing was putting standards in place. Patrick suggested using Oregon City's example No. 1 instead of B, and keep C and D. The Commission was in general agreement.

Cotton asked the Commission for their input on if the Tree Board would make decisions or make recommendation. The Commission was in general agreement that the Tree Board would approve or deny requests.

Croteau asked how the Tree Board would be selected. Cotton said the Tree Board would be the existing Parks and Rec Committee. Hanselman asked how common tree removal requests would be handled. Cotton said they would have to see what came in, but the City had heard in the past from people interested in removing trees on their property who asked what they needed to do. Hanselman questioned if a homeowner would be responsible for the costs to remove a hazardous City tree. He felt the property owner shouldn't be responsible. Hardy and Hanselman felt the City would be responsible if they owned the property. Hanselman thought they needed to write in protection for residents. Tokos said they could consult the City Attorney on this question.

Patrick questioned if there was a way to add a tree that that wasn't in the manual. Cotton said part of what the Tree Board would do is revisit the list to amend it, and it was a living document. (37:26)

Capri asked if a request would go through Public Works and then to the Tree Board. Cotton explained if it fell under 1-4 it would be handled internally, anything that fell under the other criteria would go through the Tree Board. Patrick questioned whether anyone would be interested in planting a tree on their property and dedicating it as a public tree. Cotton said it would be something the Tree Board would consider as an option for someone to have a heritage tree.

Tokos said if the Commission was comfortable with these changes, they could initiate the legislation process by motion at that night's regular session meeting. He asked Cotton to submit a summary to the Commission.

Cotton reviewed the Tree Manual draft next and what had been added. Berman asked for clarification on the approved street trees. Cotton explained the list included the trees approved for street trees and reviewed why there were standards for street trees. She noted that other trees would be acceptable species in other areas of Newport. Hanselman noted that the tree list included Ginkgos. He noted the female Ginkgo was obnoxiously stinky. Cotton would include "males only" for Ginkgos.

Adjourned at 6:47 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
May 13, 2019

Planning Commissioners Present: Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, Rod Croteau, and Bill Branigan.

Planning Commissioners Absent: Mike Franklin (*excused*)

City Staff Present: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hardy, Berman, Croteau, Patrick, Hanselman, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work and Regular Session Meeting Minutes of April 22, 2019.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hanselman to approve the Planning Commission work and regular session meeting minutes of April 22, 2019 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** Mona Linstromberg addressed the Commission. She referenced that at the February 19, 2019 Planning Commission work session meeting where there was a discussion on the draft revision to the Newport geologic hazard overlay. She asked for an update on when the issue would come back to the Commission. She noted there were two geologic permits that were either in process, or going to be, that the revisions could effect, and why this needed to be addressed.

Tokos said an update on this would be presented to the Commission at the next meeting. Croteau asked if they would be taking an action. Tokos said the update would be the date the amendment would be going to a public hearing.

4. **Action Items.**

A. **Motion to Initiate Flood Insurance Rate Map Amendments.**

Tokos reviewed the staff memo on the updated flood insurance rate maps and flood study. He noted the City received a final notice from FEMA that it was good to go. Tokos reported that if the City didn't initiate the legislative process and get the maps adopted within the designated timeframe, FEMA could make a determination that property owners would no longer be eligible for federally subsidized flood insurance.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to initiate the legislative process for the Flood Insurance Rate Map and Ordinance Amendments as indicated. The motion carried unanimously in a voice vote.

B. **Motion to Initiate Tree Manual Legislative Process.**

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman to initiate the legislative process on the Tree Manual and updated elements. The motion carried in a voice vote. Hardy abstained.

5. Public Hearings. At 7:08 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman, Croteau, Hanselman, and Branigan reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. File No. 2-CUP-19.

Tokos reviewed his staff memo and gave an update that the Finance Department and Rogue confirmed that they were not able to identify that there were any receipts that room taxes had been paid for Rogue Bed 'n' Brew. He noted the city was working with Rogue to get things resolved. He explained that room taxes fell under the Newport Municipal Code Chapter 3.05 and was not a land use issue. Tokos reminded the Commission that for the Conditional Use permit, they were charged with determining if the application met the criteria for the land use standards, not other matters that weren't a part of the land use code. Berman asked if there would be penalties for unpaid room taxes. Tokos reported that the City would be determining this.

Proponents: Matthew Merritt and Jim Cline, from Rogue Ales, addressed the Commission. Merritt asked the Commission to look at the criteria for the approval and asked them to grant relief for the off-street parking spaces. He noted they were working with the City to remit room taxes.

Branigan asked if Rogue was willing to make parking spaces available in the delivery area on the property to mitigate the five parking spaces. Merritt said they didn't have a problem with this, but they had to speak to their landlord to see if they would work with the City, and if there were any kind of easement issues.

Berman asked the applicants if the Commission attached a condition of approval that Rogue get permission from the landlord to turn the area into parking spaces, would it be a hardship for them. Merritt said he would have to talk to the landlord first to answer this, but noted that the report said the rentals didn't add much to the parking impact in the area. Cline agreed that they would be willing to look into this but noted they didn't have the final say on the parking spaces, the landlord would.

Opponents: Mona Linstromberg addressed the Commission. She explained that she had a problem that Rogue had been operating without a license and not paying room taxes. She suggested a condition should be added that they pay back their room taxes. Linstromberg also suggested the applicant sign a time waiver on whether or not these parking spaces could be used.

Rebuttal: Merritt explained they weren't asking for five parking spaces, they were asking to continue operating their rentals. He noted they were happy to work on the room taxes but wanted this separate from the conditional use because it was a separate issue. Tokos noted, with respect to obtaining a business license, this was a land use requirement and appropriate as a part of this discussion.

Berman asked if the ground for the additional parking spaces wasn't in the right-of-way. Merritt wasn't sure about this and was why they needed to check with the landlord.

Hearing closed at 7:22 pm.

Branigan noted he was happy that Rouge was working to amend the lack of room tax payments. He would be inclined to grant the permit, but would add a provision that said within 90 days Rouge would consult

with the landlord to see if they could convert the spaces to parking and report back to the City. Branigan stated he would grant their request either way. Hanselman said it was difficult for him to grant approval at this time. He thought the applicant was poorly prepared from the onset with a lack of business license and payment of room taxes. Hanselman had issues with the staff report. The parking study indicated that people typically park between 2-4 hours at the Bayfront. He felt the five spaces the renters would use could be filled all day with the same five cars, and was a direct economic issue for other businesses on the Bayfront. Hanselman noted the letter from Janet Webster that gave her concerns on loss of parking in the Bayfront district. He wanted to wait until the new parking district rules came out to deal with this.

Croteau said this was a case of clear negligence and he would be abstaining. Berman said he had a problem with this but he had to consider the criteria. He noted that the parking would be on-street if it became available. Berman wanted to add a provision to see if spaces could be added. Hardy thought all the criteria had been met and the room taxes weren't relevant. Patrick agreed with the City missing out on room taxes but thought it was not a part of the criteria. He said the Commission couldn't wait for future rules to make a decision. Patrick thought it met the conditional use requirements.

Branigan wanted to add a condition to the motion that Rogue would make a good faith effort to obtain permission from the landlord and report back to the City in 90 days. Hardy asked how that pertained to the conditional use. Branigan felt it was just another piece. Tokos suggested the Commission do two motions. One to approve the conditional use and another for the 90 days to obtain permission from the landlord.

MOTION was made by Commissioner Hardy, seconded by Commissioner Branigan to approve File No. 2-CUP-19 as written with conditions in the staff report. The motion carried in a voice vote. Hanselman and Croteau abstained.

MOTION was made by Commissioner Branigan, seconded by Commissioner Berman to encourage Rogue Ales to work with the City and the landlord to obtain permission to strip up to four additional parking spaces along SW Bay Blvd for parking and do so in a reasonable time frame. The motion carried in a voice vote. Hardy was a nay. Hanselman and Croteau abstained.

Tokos asked for clarification on if the four additional parking spaces were angled parking at the driveway approach to the patio area currently. Branigan confirmed that it was.

B. File No. 2-NCU-19.

Tokos reviewed his staff report. Croteau asked if the buildings had been in continuous use without a 12 month hiatus. Tokos confirmed it had continued use for decades. Berman asked if the owners were contemplating an expansion or a remodel. Tokos said he understood they were not.

Proponents: Angie Richcreek addressed the Commission. She said they had owned the property for years. They found out their property needed nonconforming approval when they had recently rented the unit to someone who needed a business license. Richcreek said they submitted their request to make things right.

Opponents: Gary Laymon addressed the Commission. He stated he lived close to the property and wasn't opposed to the application. He noted that when the property was an insulation business, trucks would load early in the morning and the sound of the beeping when they backed up was intrusive. He asked the Commission to consider a noise requirement for the approval. Laymon also suggested the City add squiggly lines on Oceanview Drive to slow people down in the area.

Rebuttal: Richcreek agreed that the trucks were there but reminded the Commission that Pepsi bordered the property and they had trucks as well. She said the plan was to have the building as storage. Hanselman asked if their hours would be 9 am to 5 pm. Richcreek said as it would just be storage and there wouldn't be much comings and goings.

Hearing closed at 7:48pm.

Hardy didn't have any problems and felt it met the criteria. Berman appreciated the owners cleaning up and thought a vegetation requirement was a good thing, but thought they maintained the property well. Croteau liked the landscaping requirement but had no objection. Hanselman suggested softening the view with landscaping to 10 percent. Branigan didn't have any issues. Patrick thought they met the criteria.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman to approve File No. 2-NCU-19 as written with conditions and with landscape requirements. The motion carried unanimously in a voice vote.

Tokos noted that the portion of the noise code stated operations should be between 7 am to 10 pm. When noises exceeded the level permissible, public could voice their concerns and the city would follow up.

C. File No. 3-CUP-19.

Tokos reviewed his staff report and the reasoning that the applicant had for submitting revisions to the original conditional use permit.

Proponents: Dustin Capri and Darren Morrison addressed the Commission. Capri noted that after contacting contractors for bids on the original designs, they discovered it was too expensive and had to reduce the budget. This was why they were submitting for a modification to the conditional use permit.

Hanselman asked if there was anything on the Bayfront that resembled the octopus they were proposing. Capri said one building on the Bayfront had a big copper seal sculpture. Hanselman asked what the size of the octopus was. Capri said around 25 feet. Croteau noted there was an octopus at Undersea Gardens. Branigan asked what material the octopus would be made of. Morrison reported it would be fiberglass. Branigan asked if the top of the elevator would be lit 24 hours a day. Capri said there would be light elimination on it to dim the light and it would fit in with the community. Berman asked about the plans for the deck on the roof. Capri said it was an existing deck and would be ADA accessible. It was used currently as a picnic area and their intention was to utilize it more often. Branigan asked what the exterior "TBD" was. Capri said this would be various artifacts that Ripley's supplied and would be outside sculptures. Hanselman asked if the entire building would be Ripley's. Morrison said it would after the renovations were done and noted the food portion would be removed. Branigan asked when the building was built. Capri said Ripley's was built in two phases in 1983 and 1984.

Opponents: None heard.

Hearing closed at 8:02pm.

Branigan said he had no problems with the approval. Hanselman said he wasn't sure about the octopus but would accept it. Croteau, Berman, Hardy, and Patrick had no problems.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to approve File No. 3-CUP-19 as written with conditions. The motion carried unanimously in a voice vote.

D. File No. 1-SV-19.

Tokos reviewed his staff report and why there was an amendment to the previously proposed street vacation. Berman asked if this was approved, would the entire property be private. He was concerned about people being able to turn around when entering the property if it was private. Tokos said there would be a way to turnaround before they got to the gate. He said the issue was that Public Works didn't like the previous

design and felt it didn't meet the standards. This application was the applicant's work around. Croteau asked if there would be no further objection from Public Works. Tokos said they would not be objecting to this.

Proponents: Leo Dobitz addressed the Commission. He wanted to clarify that there was a suggestion by the Public Works that they had an alternative. When he went to see it, Public Works couldn't give it to him. Dobitz reported that both the State and local Fire Marshalls felt the turnaround exceeded the turnaround requirements.

Opponents: None were heard.

Hearing closed at 8:09 pm.

Hardy said she had no problems. Berman had no problems but wanted an assurance that this would never be closed off in the future. Croteau, Hanselman, Branigan had no issues. Patrick had no issues and didn't have a problem approving it.

MOTION was made by Commissioner Croteau, seconded by Commissioner Branigan to approve a positive recommendation to the City Council for File No. 1-SV-19. The motion carried unanimously in a voice vote.

6. Unfinished Business. None were heard.

7. Director Comments. Tokos noted that he would be putting together a work program for the Commission. The Park System Master Plan would be coming forward as a final document. Tokos reported that the Parking Study meeting was productive and thought a recommendation would be made at their next meeting. He noted that they most likely would have amendments to the Comprehensive Plan to meter in the Bayfront, and hold off on Nye Beach and come up with an alternative business license adjustment and permit fee there for the time being. Branigan asked if there would be any more outreach meetings in Nye Beach. Tokos said they would have to do a round of meetings because they would need an alternative approved. He didn't think it needed to happen before they did the Comprehensive Plan amendments. Tokos noted there had been a discussion that maybe Nye Beach wasn't right for metering at that time. Croteau asked what the timeframe was. Tokos said within a year and the Commission would have to make a recommendation to the City Council. In late fall they would answer if they needed to do meters. Berman noted that as far as the budget, he objected to the money being in the budget for the parking plan.

Tokos reported that the Regional Housing Plan would be coming to the Commission soon. He said the Tsunami Overlay is also moving forward and that a House Bill is likely to pass that would take the provisions in the Building codes that prohibits certain special facilities or special occupancy uses within tsunami inundation areas, and waters things down to make DOGAMI's role more advisory and less mandatory. This would also apply to nursing homes and large assembly facilities in tsunami zones.

Patrick asked about Linstromberg's comments on the geologic permit applications. Tokos said one application had been submitted in November 2018, put on hold, and supplemented in February 2019. It is presently incomplete.

8. Adjournment. Having no further business, the meeting adjourned at 8:18 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE #2-CUP-19, APPLICATION FOR A) FINAL
CONDITIONAL USE PERMIT AS SUBMITTED BY) ORDER
ROGUE ALES AND SPIRITS (MO PROPERTIES, LLC,)
OWNER))**

ORDER APPROVING A CONDITIONAL USE PERMIT per Chapter 14.03.080(18)“Water-dependent and Water-related Uses” of the Newport Municipal Code (NMC) seeking relief from the five off-street parking spaces required to operate one (1) one-bedroom vacation rental and two (2), two-bedroom vacation rentals in what was originally approved as three (3), second story apartments. The subject property is located at 746 to 760 SW Bay Blvd. (Lincoln County Assessor’s Map 11-11-08-CA, Tax Lots 3800 and 4100).

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held public hearings on the request, with such public hearings being a matter of record of the Planning Commission on April 22, 2019 and May 13, 2019; and
- 3.) At the public hearings on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearings, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested conditional use permit with the following condition(s):

1. The applicant/owner shall make applications for vacation rental business license endorsements pursuant to NMC Chapter 14.25, and is subject to inspection by the Building Official or designee to determine conformance with basic health and safety elements and the endorsement standards of 14.25.050, except the requirements for parking outlined under NMC 14.25.050(C).

BASED UPON THE ABOVE, the Planning Commission determines that the request for a Conditional Use Permit seeking relief from the five off-street parking spaces required to operate one (1), one-bedroom vacation rental and two (2), two-bedroom vacation rentals is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 28th day of May, 2019.

Jim Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 2-CUP-19

FINDINGS OF FACT

1. The applicant Rogue Ales and Spirits, on behalf of owner Mo Properties, LLC, submitted an application on April 1, 2019, for approval of a Conditional Use Permit, per Chapter 14.25.020(E)/ “Bed and Breakfast and Vacation Rental Facilities – General Provisions” of the Newport Municipal Code, seeking relief from the five off-street parking spaces required to operate one (1), one-bedroom vacation rental and two (2), two-bedroom vacation rentals.

2. The subject property is located at 746 to 760 SW Bay Boulevard, Newport, Oregon 97365. It is identified on Lincoln County Assessor’s Map 11-11-08-CA as Tax Lots 3800 and 4100. The parcel is approximately 8,400 sq. ft. in size per Lincoln County Tax Assessor records.

3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Shoreland.
 - b. Zone Designation: W-2/"Water-Related."
 - c. Surrounding Land Uses: Tourist-oriented commercial uses and public parking on the landward side of SW Bay Boulevard. A mix of tourist oriented retail and fish processing on the bay side of the street. Residential to the west on the bluff overlooking the Bayfront.
 - d. Topography and Vegetation: The existing building is built into the bluff. Most of the property is flat, developed with a mixed-use building and concrete patio. The western most portion of the property is an undeveloped portion of the bluff that is grown over with shrubs.
 - e. Existing Structures: An existing two-story building. Rogue Ales micro-brewery and restaurant occupies the main floor and there are three apartments on the second floor.
 - f. Utilities: All are available to the site.
 - g. Development Constraints: Property is within the City’s Geologic Hazards Overlay.
 - h. Past Land Use Actions: *File No. 14-CU-90* authorized expanded seating for the micro-brewery and restaurant. *File No. 3-CU-89* approved a micro-brewery and restaurant use of the main floor of the building. *File No. 19-CU-87* amended the previously approved conditional use permit to allow a third apartment on the second floor of the building. *File No. 10-CU-87/12-VAR-87* approved construction of a mixed-use building, with a tavern/deli, two retail areas, warehouse and cold storage use on the main floor, and two apartments on the second floor. The variance granted relief from landscaping and the setback/landscape buffer requirement between the building and upslope residential area. The building replaced the “Pub Tavern,” which was torn down.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on April 12, 2019, to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., April 22,

2019, or be submitted in person at the hearing. The notice was also published in the Newport News-Times on April 12, 2019. An email was received from Janet Webster on April 22, 2019 expressing concerns about the adequacy of available parking. No other comments were received.

5. A public hearing was held on April 22, 2019. At the hearing, the Planning Commission received the staff report and heard testimony from the applicant. The minutes of the April 22, 2019 hearing are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Completed application form
- Attachment "B" – Application cover letter and narrative
- Attachment "C" – Lincoln County Assessor property reports
- Attachment "D" – Exterior building architectural elevations and floorplan for the apartments (File No. 10-CU-87)
- Attachment "E" – Zoning map of the property
- Attachment "F" – Ordinance No. 2020 creating a Bayfront parking district
- Attachment "G" – Prior land use approvals
- Attachment "H" – Public notice of the hearing

6. Pursuant to NMC 14.03.080(21) residences on floors other than street grade are permitted in the W-2 zone district subject to a conditional use permit. The apartments subject to this request were approved 10-CU-87 and 19-CU-87. NMC 14.25.020(A) of Ordinance No. 2032, in effect on the date this application was filed, stipulated that vacation rental use of an existing dwelling unit is permitted in all residential and commercial zone district subject to compliance with the provisions of that chapter.

7. Pursuant to Chapter 14.25.020(E)/“Bed and Breakfast and Vacation Rental Facilities – General Provisions” of the Newport Municipal Code (NMC), if one or more of the standards required under Section 14.25.050 cannot be met, an owner may seek approval of a vacation rental or bed and breakfast use as a Conditional Use, pursuant to 14.34.010. A Conditional Use Permit may allow relief from one or more of the endorsement standards of 14.25.050, but does not excuse the general endorsement requirements of 14.25.010. With this application, the applicant is seeking approval of a conditional use permit because the apartments the applicant wants to use as short-term rentals lack off-street parking and there is no room on the property to construct off-street parking.

8. When the mixed-use building was approved in 1987 (ref: Attachment No. “G”), the Planning Commission at the time acknowledged that the property, which had accommodated a tavern and retail space, was too small to provide all of its required off-street parking. The decision provided that six off-street spaces were to be constructed (four in the warehouse and two outside) with nine more going into what at that time was an alternate option for a property owner to pay a fee in lieu of providing the parking. Later, as the brewery restaurant was expanded, more required spaces went the way of the payment in lieu option. As it stands today, there are no off-street parking spaces on the property, as the warehouse is being fully utilized for that purpose and the area outside that would have been available for parking has been configured into patio seating. With Ordinance No. 2020, the City terminated the “payment in lieu” program, in favor of a parking district where

businesses pay an annual fee, with the proceeds being dedicated to maintaining and improving public parking assets (ref: Attachment “F”). This includes the adjacent Abbey Street parking lot. Current use of the property appears to be consistent with how it was being used when Ordinance No. 2020 was adopted.

9. The applicable criteria for the conditional use request are found in NMC Section 14.34.050:

- a. The public facilities can adequately accommodate the proposed use.
- b. The request complies with the requirements of the underlying zone or overlay zone.
- c. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.
- d. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

10. At the close of the April 22, 2019 hearing, the Planning Commission requested a report on room tax payments Rogue Ales and Spirits had made to the City of Newport considering that the apartments in question have been used as short-term rentals for a number of years without city approval. The Commission then continued the hearing to May 13, 2019 so that it could receive the report before making a decision.

11. On May 13, 2019 the Commission reopened the continued hearing, and received a report from staff, in a memorandum dated May 10, 2019, indicating that the City of Newport Finance Department reviewed its records and concluded that no room tax payments had been made for past transient rental use of the apartments. Staff with Rogue Ales and Spirits reviewed their records and concluded the same. Rogue was informed that it is to make back payments and provide backup documentation to support the amount being remitted. Failure to pay room taxes is a civil infraction, enforced by the City of Newport Code Enforcement Officer (NMC 3.05.200). The memorandum notes that the City was refraining from pursuing a civil infraction for the time being because Rogue ales and Spirits is cooperating with City staff to resolve the matter. A copy of the May 10, 2019 memorandum, and its attachments, is hereby incorporated by reference into the findings.

12. The Conditional Use Permit request submitted by Rogue Ales and Spirits is a discretionary permit application, the approval or denial of which must be based on standards and criteria set forth in the City’s development (i.e. zoning) ordinance (ORS 227.173). The Newport zoning ordinance is contained in Chapter 14 of the Newport Municipal Code.

CONCLUSIONS

Regarding the applicable criteria for the conditional use request, the following conclusions can be made:

A. Criterion #1. *The public facilities can adequately accommodate the proposed use.*

1. Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets (including parking) and electricity. The zoning map includes an aerial image showing that the mixed-use building is located in a developed commercial area where these public services are available (ref: Attachment "E").
2. In their findings (ref: Attachment "B"), the applicant points out that the apartments they want to license as vacation rentals are located immediately adjacent to the Abbey Street public parking lot, which they believe provides ample parking in the event that the five spaces would be needed.
3. The aerial photograph of the property from 2018 (ref: Attachment "E") illustrates that paved public parking is available at the Abbey Street public lot, along SW Bay Boulevard, and within the adjoining Case Street right-of-way.
4. It is not uncommon for residential, commercial, and industrial uses along the Bayfront to lack off-street parking. When assessing applications for relief from off-street parking standards, the Planning Commission has considered whether or not (a) it is feasible for the owner to construct off-street parking and (b) on-street parking assets are adequate to meet anticipated demand.

With regards to the first point, the size and configuration of the building relative to the property is such that the Commission concludes it is not feasible for the requisite number of off-street parking spaces to be provided. City records show that this property has always relied upon nearby public parking to meet its needs. Even when off-street spaces were required, they were placed in locations where it was not intuitive (e.g. four spaces in a warehouse) and difficult to ascertain which uses they were associated with. With that in mind, it is not surprising that the off-street spaces were phased out, presumably in favor of the payment in lieu option.

As for the second point, the Commission concludes that the Bayfront Parking District provides a sufficient management structure to ensure that on-street parking assets will be adequate to meet the need. The District was established to actively manage the supply of on-street and public parking lot spaces with parking time limitations, and it is acknowledged as an acceptable alternative to the typical off-street parking requirements established in the Zoning Ordinance (NMC 14.14.100). Apartments are typically required to have three off-street spaces (NMC 14.14.030(21)). Use of the apartments as vacation rentals will generate a demand for two additional spaces. Section 8 of Ordinance No. 2020 notes that redevelopment is only required to provide new off-street parking when it generates a demand for more than five (5) parking spaces. Therefore, this proposal is the type of limited expansion that the ordinance anticipated on-street/lot parking to accommodate.

5. In her April 22, 2019 email, Ms. Webster suggests that the property be required to give up use of the designated driveway adjacent to the patio area used for outdoor seating so that additional, angled on-street spaces can be provided at that location. While the Commission concludes it is not necessary that the on-street spaces be provided in order for the conditional use criteria to be met, for the reasons noted above, it nonetheless agrees with Ms. Webster that elimination of the driveway approach, in favor of parking, should be further explored. For many years, outdoor seating for Rogue Ales and Spirits has prevented the driveway from being used, and the

Commission encourages the applicant to work with the property owner to see if they would be agreeable to removing the driveway approach so that additional on-street spaces can be established on SW Bay Boulevard.

6. Taken as a whole, it appears that there is adequate parking available along the public street, and adjacent public lot, to accommodate the needs of all users and that this request for relief from the five off-street parking space requirement will not result in an increased demand on parking facilities or any other public facilities. Therefore, it is reasonable for the Commission to conclude that public facilities can adequately accommodate the use of the apartments as vacation rentals.

B. Criterion #2. The request complies with the requirements of the underlying zone or overlay zone.

1. This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. The subject property is zoned W-2/“Water-Related.” The applicant, in their findings, points out that this zone district allows tourist-oriented commercial uses, and residential uses above street-grade, through a conditional use process. That is how the existing mixed-use building was approved. The brewery and restaurant is popular with tourists and the Commission concludes that use of the upstairs units as “Bed ‘n’ Beer” vacation rentals is a complementary component of the business.

2. Given the above, the Planning Commissions concludes that this criterion is satisfied.

C. Criterion #3. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.

1. This criterion relates to the issue of whether or not the proposed use has potential “adverse impacts” greater than existing uses and whether conditions may be attached to ameliorate those “adverse impacts.” Impacts are defined in the Zoning Ordinance as the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood.

2. The applicant’s findings note that the Rogue location on the Bay Boulevard has functioned as an integral part of the historic Bayfront community for many years without problems or impacts. The Bayfront is a heavily trafficked area, frequented by tourists, locals, and employees of the fish processing plants and retail businesses. Any adverse impact associated with the rentals will be dwarfed by the level of activity occurring on these nearby properties.

3. Given the above, the Planning Commission concludes that this criterion has been satisfied.

D. Criterion #4. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

1. The applicant is not proposing to modify the building; therefore, it is reasonable for the Planning Commission to conclude that this approval standard is not applicable.

E. The Commission concludes that Rogue Ale and Spirit's lack of compliance with City room tax requirements, while troubling, cannot be a basis for denying the application because the tax provisions of the City's Municipal Code are not standards and criteria that the City of Newport has adopted for the approval or denial of a conditional use permit. ORS 227.173 requires that the Commission's decision be based on standards and criteria set forth in the City's development (i.e. zoning) ordinance, and the City's room tax requirements are not contained in that ordinance. That said, the Commission believes that the City administration should take all appropriate steps to ensure that Rogue Ales and Spirits makes room tax payments it is legally obligated to make to the City of Newport.

OVERALL CONCLUSION

Based on the application materials, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for a conditional use permit found in Section 14.34.050 of the Newport Municipal Code (NMC); and, therefore, the requested conditional use permit is hereby approved with the imposition of the following conditions of approval:

1. The applicant/owner shall make applications for vacation rental business license endorsements pursuant to NMC Chapter 14.25, and is subject to inspection by the Building Official or designee to determine conformance with basic health and safety elements and the endorsement standards of 14.25.050, except the requirements for parking outlined under NMC 14.25.050(C).

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT, COUNTY
OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE # 2-NCU-19, APPLICATION FOR VERIFICATION,)
ALTERATION, & EXPANSION OF A NONCONFORMING) FINAL
USE, AS SUBMITTED BY DAVID & ANGELA RICHCREEK,) ORDER
OWNERS)**

ORDER APPROVING a request per Chapter 14.32 (“Nonconforming Uses, Lots, and Structures”) of the Newport Municipal Code (NMC) for the alteration and expansion of a nonconforming use to allow continued commercial use of 40-ft x 50-ft and 50-ft x 120-ft, general purpose buildings in an R-1/“Low Density Single Family Residential” zone district. The subject property is located at 2102 NW Oceanview Drive and 343 NW 22nd Street (Lincoln County Assessor’s Tax Map 10-11-32-DC, Tax Lots 00500 and Tax Lot 00301 and Lincoln County Assessor’s Tax Map 10-11-32-DC, Tax Lot 00300. In sum, the properties total to approximately 0.38 acres in size.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on May 13, 2019; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested nonconforming use permit.

BASED UPON THE ABOVE, the Planning Commission determines that the request to verify, alter, and expand a nonconforming use is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport; and the request is, therefore, granted subject to the following conditions:

1. Use of the building at 2102 NW Oceanview Drive shall be limited to low and moderate hazard storage uses, except motor vehicle repair, and low-hazard industrial uses equivalent to S-1 (except auto repair), S-2, and F-2 occupancies under the 2014 Oregon Structural Specialty Code.

2. Use of the building at 343 NW 22nd Street shall be limited to low and moderate hazard storage uses, except motor vehicle repair, equivalent to S-1 (except auto repair), and S-2 occupancies under the 2014 Oregon Structural Specialty Code.
3. This non-conforming use determination is specific to property owned by the applicant, as described herein, and does not extend to, or authorize, any building encroachment that may exist within the right-of-way for NW Oceanview Drive.
4. Owner shall re-establish landscaping to either side of the driveway at 343 NW 22nd Street, and install landscaping at 2102 NW Oceanview Drive, with an emphasis on the street frontages. A landscape plan shall be provided to the City for its review, and the work completed within 12-months of the date of this decision.

Accepted and approved this 28th day of May, 2019.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File # 2-NCU-19

FINDINGS OF FACT

1. David Richcreek (David and Angela Richcreek, owners) submitted an application on April 8, 2019, per Chapter 14.32 (“Nonconforming Uses, Lots, and Structures”) of the Newport Municipal Code, to allow continued commercial use of 40-ft x 50-ft and 50-ft x 120-ft, general purpose buildings in an R-1/“Low Density Single Family Residential” zone district.

2. The subject property is located at 2102 NW Oceanview Drive and 343 NW 22nd Street (Lincoln County Assessor’s Tax Map 10-11-32-DC, Tax Lot 00500. Expanded onto Tax Lot 00301 in 2009 (2102 NW Oceanview Drive). Lincoln County Assessor’s Tax Map 10-11-32-DC, Tax Lot 00300 (343 NW 22nd Street). In sum, the properties total to approximately 0.38 acres in size.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: Low Density Residential.
- b. Zone Designation: R-1 / "Low Density Single Family Residential."
- c. Surrounding Land Uses: Residential uses to the north, west and south. Commercial uses to the east.
- d. Topography and Vegetation: The property at 2102 NW Oceanview Drive is level and largely devoid of vegetation. The site at 343 NW 22nd Street is gradually sloped, dropping in elevation to the west and south, and is similarly devoid of vegetation.
- e. Existing Structures: A three bay warehouse building exists at 2102 NW Oceanview Drive. The structure at 343 NW 22nd is a single bay warehouse building.
- f. Utilities: All are available to the site.
- g. Development Constraints: None known.
- h. Past Land Use Actions: None of record.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on April 8, 2019 to affected property owners required to receive such notice by the Newport Municipal Code, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m. May 13, 2019, or be submitted in person at the hearing. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on May 3, 2019. No comments were received in response to the notice.

5. At the May 13, 2019 public hearing, the Planning Commission received the staff report and allowed for testimony on the request. The minutes of the May 13, 2019 meeting is hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Application Form

Attachment "A-1" – Lincoln County Property Reports (2102 NW Oceanview)

Attachment "A-2" – Land Use History Narrative (2102 NW Oceanview)

Attachment "A-3" – Written Findings (2102 NW Oceanview)
 Attachment "A-4" – Assessor’s Tax Card (2102 NW Oceanview)
 Attachment "A-5" – Photographs (2102 NW Oceanview)
 Attachment "A-6" – Utility Records (2102 NW Oceanview)
 Attachment "A-7" – Lease Records (2102 NW Oceanview)
 Attachment "A-8" – Lincoln County Property Report (343 NW 22nd)
 Attachment "A-9" – Land Use History Narrative (2102 NW Oceanview)
 Attachment "A-10" – Written Findings (2102 NW Oceanview)
 Attachment "A-11" – Assessor’s Tax Card (343 NW 22nd)
 Attachment "A-12" – Photographs (343 NW 22nd)
 Attachment "A-13" – Lease Records (2102 NW Oceanview)
 Attachment "B" – Aerial Photograph (2007)
 Attachment "C" – Aerial Photograph (2013)
 Attachment "D" – Zoning Map of Area
 Attachment "E" – Building Records 1994 Addition (2102 NW Oceanview)
 Attachment "F" – Business Registry Printout for Wilson’s West Coast Insulations
 Attachment "G" – Building Records 2009 Addition (2102 NW Oceanview)
 Attachment "H" – Building Records 1975 Remodel (343 NW 22nd)
 Attachment "I" – 2014 Structural Specialty Code Occupancy Classifications
 Attachment "J" – Public Hearing Notice

6. At the public hearing on November 26, 2018, testimony was received from:

- Angela Richcreek, 2026 NW Oceanview Drive, Newport, OR 97365, spoke in support of the application.

7. Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

The applicant indicates that they are seeking this non-conforming use permit to obtain a written determination from the City of Newport that the general purpose buildings they own at 2102 NW Oceanview Drive and 243 NW 22nd Street can continue to be used in a commercial manner as they have been historically (Attachments "A-2" and "A-9"). These properties are within an R-1/ “Low Density Single Family Residential” zone district, which does not allow commercial uses.

The building at 2102 NW Oceanview Drive was expanded in 1994 and 2009, and this non-conforming use application addresses those improvements as well.

8. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicants provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

9. **Applicable Criteria (Section 14.32.070):** After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;
- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;
- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

CONCLUSIONS

In order to grant the permit, the Planning Commission must find that the applicants have provided a complete application, that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070.

1. The subject property is located in an R-1/“Low-Density Single Family Residential” zoning district (Attachment “D”). Residential zoning was placed on the property when it was annexed into the City of Newport with the adoption of Ordinance No. 954 on February 4, 1974. The R-1 zone district has building setbacks of 15-ft from a street, with 5-ft and 8-ft side yard setbacks, a 15-ft rear yard setback, a 54% lot coverage requirement, and a 30-ft maximum building height (ref: NMC 14.13.010, Table A). The R-1 zone district does not permit commercial or industrial uses.

2. Consistent with NMC 14.32.040, the applicant submitted a completed application form, narrative, names and addresses of property owners within the notification area and photographs of the properties. In sum, the Planning Commission concludes that this constitutes substantial evidence upon which to make a decision as to whether or not the 40-ft x 50-ft and 50-ft x 120-ft, general purpose buildings on the subject properties satisfy the City’s standards for the alteration and expansion of a nonconforming use.

3. With respect to NMC 14.32.060, regarding the nonconforming status of the buildings, the applicant provided, assessment, utility, and lease records. Relevant building permit and business registry information is also enclosed. Per the Newport Zoning Ordinance, a building is nonconforming if it is established that the facility existed and has been continuously maintained since September 7, 1982.

4. With regards to the building at 2102 NW Oceanview Drive, Assessment Records show that a warehouse building existed in 1972 on the portion of the property identified as Lots 13 & 14, Beach Park Addition to Newport (Attachment "A-1"). A porch/office addition was constructed in 1994, at which time a note was placed in the City building file advising that a non-conforming use review was needed (Attachment "E"). Such reviews at that time were performed through a conditional use permitting process, and there does not appear to be a record of such review ever being carried out. Nonetheless, a building permit was issued for the addition. In January of 2009, the building was expanded by 1,500 square feet, increasing its size from 4,100 sq. ft. to 5,600 sq. ft. (Attachment "G"). A building permit was issued; however, a non-conforming use review was not performed.

The applicant indicates that Mike Wilson purchased the property at some point in the late 1970’s and had a drywall and insulation business in the space. He then sold the company and leased the building to John Vole in the early 1980’s and the company was called Ocean Breeze. Mr. Wilson sold the property to the current owner in July of 2004 who continued to lease the building to Ocean Breeze. Mr. Vole retired and closed the business in 2017 and the owner leased the building to the Erin Hymer Group, who uses the space to repair gear used in the trade show industry (Attachment "A-2"). The Secretary of State’s Business Registry shows that Wilson’s West Coast Insulations and Ocean Breeze Enterprises, Inc. operated at this location (Attachment "F") and the applicant’s photographs, utility billing records, and lease documents show that the building has been maintained and actively used (Attachments "A-5" through "A-7").

5. As for the property at 343 NW 22nd Street, the Lincoln County Assessor indicates that the building was constructed in 1974 (Attachment "A-8"). City building records note that the structure was remodeled at that time and that a warehouse existed on the property before it was annexed. The structure was 2,000 sq. ft. at that time, as it is now (Attachment "H").

The applicant indicates that the 1975 remodel was undertaken by Industrial Development Company, that it was later sold and used for storage, and that the structure is now being used by a building contractor (Attachments "A-9" and "A-13"). The current owners purchased the property in 2015. Photographs and lease records show that the structure is in good condition and is actively being used (Attachments "A-12" and "A-13").

6. The type of construction and historic use of the buildings would support low and moderate hazard storage uses, except motor vehicle repair, and low-hazard industrial uses. These are the equivalent of S-1 (except auto repair), S-2, and F-2 occupancies under the 2014 Oregon Structural Specialty Code (Attachment "I"). Since the building at 343 NW 22nd Street lacks water/sewer service, and has historically been used almost exclusively for storage, its occupancy should be limited to the storage classifications.

7. Considering the above, the Planning Commission concludes that substantial evidence exists that commercial buildings lawfully existed on the subject properties before they were annexed to the City and zoned for residential use. Evidence also establishes that the structures have been maintained and used continuously since they were rendered nonconforming in September 7, 1982.

8. After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the Planning Commission may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. The building at 2102 NW Oceanview Drive was expanded in 1994 and again in 2009. Those improvements can be, and have been, addressed as an alteration and expansion of the non-conforming use in the findings below.

a. The character and history of the use and of development in the surrounding area.

i. The applicant notes the properties were rundown and that they have cleaned them up and performed needed maintenance since they acquired the parcels (Attachments "A-3" and "A-5").

ii. The portion of the building at 2102 NW Oceanview Drive, constructed in 1972, protruded well within the 15-foot building setback from NW Oceanview Drive and it is unclear that it met the side yard setback from the north property line. The addition to the south and west side of the building in 1994 was modest in size and while it brought the structure closer to NW Oceanview Dr, it didn't appreciably change the character of the commercial site. The same goes for the 2009 addition, as that extended the building east toward the beverage distribution facility, which is quite larger in terms of its building mass. It is unclear whether or not the westernmost portion of the building is fully contained on the subject property. This application is specific to the private ownership; therefore, the Commission concludes that it is appropriate to stipulate that this decision does not apply to any potential encroachment into the NW Oceanview Drive right-of-way.

iii. Neither property, as they existed when annexed, appear to meet the 54% lot coverage limitation. Expansion of the building on 2102 NW Oceanview Dr has resulted in additional lot coverage; however, the bulk of that has occurred on the easterly portion of the site that is less visible from surrounding residential areas and more closely oriented towards neighboring commercial buildings. Both structures satisfy the 30-ft maximum building height of the R-1 zone.

iv. This portion of town has historically been an area transitioning from commercial to residential use. Over time, it appears that these two properties have become more commercial and industrial in appearance, with limited landscaping being removed to maximize business use. With residential properties to the north, south, and west, the Planning Commission finds that it is appropriate and necessary that the applicant take steps to landscape undeveloped areas as a vegetated buffer, emphasizing areas adjacent to NW Oceanview Drive. Businesses are typically required to landscape 10 percent of their lot area, with such landscaping being focused on street frontages (ref: NMC 14.19.050).

v. Considering the above, the Planning Commission concludes that the buildings, as presently constituted, are consistent with the character and history of development in the area provided landscaping is installed.

b. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

i. Commercial activities will occur entirely within enclosed structures and a condition limiting the range of uses to S-1 (except auto repair), S-2, and F-2 occupancies under the 2014 Oregon Structural Specialty Code is sufficient to ensure future use of the structures will not result in a greater adverse impact to the neighborhood relative to this standard.

ii. Considering the above, the Planning Commission concludes that the building expansion will not create noise, vibration, dust, odor, fumes, glare, or smoke in a manner that would result in a greater adverse impact on the neighborhood.

c. Adequacy of infrastructure to accommodate the use (including sewer, water, and streets.)

i. The applicant notes that infrastructure is in place to serve the buildings. The lack of water/sewer service to the building at 343 NW 22nd Street will limit the scope of potential uses, since building codes require restrooms in occupied facilities.

ii. Considering the above, the Planning Commission concludes that the building expansion will not cause any greater adverse impact on the neighborhood as it relates to the adequacy of infrastructure to serve the uses.

d. The comparative numbers and kinds of vehicular trips to the site.

The applicant notes that vehicle trips to and from the properties are minimal and will not disrupt the neighborhood (Attachments "A-3" and "A-10").

ii. NW Oceanview Drive is a collector roadway designed to accommodate a significant volume of vehicle traffic. Additionally, NW 22nd accommodates vehicle traffic from both residential and commercial uses.

iii. Considering the above, the Planning Commission concludes that the building expansion will not cause any greater adverse impact on the neighborhood relative to this criterion.

e. The comparative amount and nature of outside storage, loading, and parking.

i. The applicant indicates that there will be no change in outdoor storage, loading and parking. Both properties provide a substantial amount of off-street parking and loading, both inside and outside the structures. Neither property has been used for outside storage.

ii. Given the above, the Planning Commission concludes that the proposed building expansion will not cause any greater adverse impact on the neighborhood with respect to comparative amount and nature of outside storage, loading, and parking.

f. The comparative visual appearance.

i. The applicant indicates that they intend to maintain the visual appearance of the structures in their present condition. With additional landscaping, the visual appearance of the properties is likely to improve. This is particularly true along NW Oceanview Drive as it relates to the appearance of the property as viewed from surrounding residential areas.

ii. Considering the above, the Planning Commission concludes that the proposed building expansion will not cause any greater adverse impact on the neighborhood as it relates to comparative visual appearance.

g. The comparative hours of operation.

i. The applicant notes that the hours of operation are 9:00 am to 5:00 pm and that this will be unchanged.

ii. Based on the above, the Planning Commission concludes that the proposed building expansion will not cause any greater adverse impact on the neighborhood as far as comparative hours of operation.

h. The comparative effect on solar access and privacy.

i. The applicant indicates that they do not anticipate any impacts to solar access. Given the low profile of the buildings and existing development pattern in the area, it is unlikely that they have a significant shadowing effect on neighboring properties.

ii. The subject buildings have very few windows and with most of the on-site activities occurring within the structures little, if any, of it will be visible from nearby properties.

iii. Given the above, it is reasonable the Planning Commission concludes that the proposed building expansion satisfies this criterion.

i. Other factors which impact the character or needs of the neighborhood.

- i. There appears to be no other relevant factors that would impact the character or needs of the neighborhood.

j. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

i. The alteration and expansion is largely limited to the 2102 NW Oceanview Drive property. Low density single-family residential zoning includes setbacks and maximum lot coverage requirements to encourage a dispersed development pattern. With NW Oceanview Drive, a collector roadway, on the west and developed commercial zoned property to the east, the area can be fairly characterized as transitional. As noted, there is room for the Commission to require landscaping be installed as a buffer for nearby residential properties and to dampen the industrial look and feel of the properties, particularly the building at 2102 NW Oceanview, which is quite a bit larger than what it was when placed in the R-1 zone.

ii. Based on the above, the Planning Commission concludes that commercial use of the buildings, including the expanded structure at 2102 NW Oceanview Drive, will not result in a greater adverse impact on the neighborhood relative to the objectives of the current zoning provisions.

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for the verification, alteration and expansion of a nonconforming use found in Chapter 14.32 of the Newport Municipal Code (NMC), subject to the following:

1. Use of the building at 2102 NW Oceanview Drive shall be limited to low and moderate hazard storage uses, except motor vehicle repair, and low-hazard industrial uses equivalent to S-1 (except auto repair), S-2, and F-2 occupancies under the 2014 Oregon Structural Specialty Code.
2. Use of the building at 343 NW 22nd Street shall be limited to low and moderate hazard storage uses, except motor vehicle repair, equivalent to S-1 (except auto repair), and S-2 occupancies under the 2014 Oregon Structural Specialty Code.
3. This non-conforming use determination is specific to property owned by the applicant, as described herein, and does not extend to, or authorize, any building encroachment that may exist within the right-of-way for NW Oceanview Drive.
4. Owner shall re-establish landscaping to either side of the driveway at 343 NW 22nd Street, and install landscaping at 2102 NW Oceanview Drive, with an emphasis on the street frontages. A landscape plan shall be provided to the City for its review, and the work completed within 12-months of the date of this decision.

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE #3-CUP-19, APPLICATION FOR A) FINAL
CONDITIONAL USE PERMIT AS SUBMITTED BY) ORDER
CAPRI ARCHITECTURE (OAK BAY MARINE)
GROUP, OWNER))**

ORDER APPROVING A CONDITIONAL USE PERMIT per Chapter 14.03.080(18)/“Water-dependent and Water-related Uses” of the Newport Municipal Code (NMC) to renovate the existing building at Mariner Square to accommodate a new central entry; add new roofs over the east and west portions of the existing building; and re-side the existing building. There will be a small addition between the existing building and Bay Boulevard and the proposal includes new signage and interior/exterior thematic exhibits. The subject property is located at 250 SW Bay Blvd. (Lincoln County Assessor’s Map 11-11-08-AC, Tax Lots 9900, 10000, 10100, 10200, 10300 & 10800).

The City approved a similar renovation plan on June 11, 2018 (File No. 3-CUP-18); however, the applicant has since elected to further refine their design, which necessitated this application. This latest concept reduces the size and height of the central entry, with the octopus sculpture now being placed on the roof as opposed to being substantially within the building. A second floor lighthouse feature has also been incorporated into the entry. The balance of the exterior elements are similar to what was previously approved, although the color scheme and sign design has been changed.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on May 13, 2019; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested conditional use permit with the following condition(s):

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, than a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a Conditional Use Permit to renovate the Mariner Square tourist venue at 250 SW Bay Blvd is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 28th day of May, 2019.

Jim Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 3-CUP-19

FINDINGS OF FACT

1. Capri Architecture, representing owner Oak Bay Marine Group, submitted an application on April 5, 2019, for approval of a Conditional Use Permit, per Chapter 14.03.080(18)/“Water-dependent and Water-related Uses” of the Newport Municipal Code (NMC) to renovate the existing building at Mariner Square to accommodate a new central entry; add new roofs over the east and west portions of the existing building; and re-side the existing building. There will be a small addition between the existing building and Bay Boulevard and the proposal includes new signage and interior/exterior thematic exhibits.

The City approved a similar renovation plan on June 11, 2018 (File No. 3-CUP-18); however, the applicant has since elected to further refine their design, which necessitated this application. This latest concept reduces the size and height of the central entry, with the octopus sculpture now being placed on the roof as opposed to being substantially within the building. A second floor lighthouse feature has also been incorporated into the entry. The balance of the exterior elements are similar to what was previously approved, although the color scheme and sign design has been changed.

2. The subject property is located at 250 SW Bay Blvd. (Lincoln County Assessor’s Map 11-11-08-AC, Tax Lots 9900, 10000, 10100, 10200, 10300 & 10800). The parcel is approximately 1.17 acres (50,965.2 sq. ft.) per Lincoln County Tax Assessor records.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: Yaquina Bay Shoreland (building), High-Density Residential (parking areas).
- b. Zone Designation: W-2/“Water-Related” (building), and R-4/“High Density Multi-Family Residential” (parking areas).
- c. Surrounding Land Uses: A mix of commercial, tourist-oriented uses including eating and drinking places and retail shops, seafood processing related businesses, Port facilities, and residential uses.
- d. Topography and Vegetation: The property slopes toward the bay, from the northwest to the southeast. There are several large Cyprus trees on the property.
- e. Existing Structures: A 20,883 sq. ft., tourist commercial building constructed in 1985.
- f. Utilities: All are available to the site.
- g. Development Constraints: None known.
- h. Past Land Use Actions: *File No. 29-CUP-79-B* - Requested approval of a wax museum tourist attraction. Approved June 25, 1979. Affirmed on appeal by City Council on September 4, 1979. LUBA appeal dismissed (File No. 79-051). File 3-CUP-18, approved June 11, 2018, authorized plans to renovate the exterior of the building.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on April 8, 2019, to affected property owners required to

receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., May 13, 2019, or be submitted in person at the hearing. The notice was also published in the Newport News-Times on May 3, 2019. No written comments were received in response to the notice.

5. A public hearing was held on May 13, 2019. At the hearing, the Planning Commission received the staff report and heard testimony from the applicant. The minutes of the May 13, 2019 hearing are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Application Form
- Attachment "A-1" – Applicant's Written Narrative
- Attachment "A-2" – Proposed Business Plan
- Attachment "A-3" – Site Plan (Existing)
- Attachment "A-4" – Architectural Renderings
- Attachment "A-5" – Signage and Exterior Thematic Exhibits
- Attachment "B" – Zoning Map of the Area
- Attachment "C" – Aerial Map of the Area
- Attachment "D" – Previous Architectural Rendering (File 3-CUP-18)
- Attachment "E" – Previous Exterior Signage Concept (File 3-CUP-18)
- Attachment "F" – Public Hearing Notice

6. Pursuant to Chapter 14.03.080(18)/"Water-dependent and Water-related Uses" of the Newport Municipal Code (NMC), a retail use that is permitted outright in a C-2/"Tourist Commercial" zoning district requires a conditional use permit to be located in a W-2/"Water-related" zoning district.

7. The applicant is requesting the conditional use permit to renovate and modernize the existing Mariner Square facility by consolidating multiple existing entry points to one central entry, re-siding the building to repair worn material, and changing roof pitches on the east and west sides in order to cover the existing barrel roofs with the goal of solving current points of weather infiltration.

In their business plan, the applicant notes that the existing building was constructed in 1984 and is the home of the first Ripley's Believe it or Not! franchise. Since then they have welcomed approximately 90,000 guests each year from countries around the world. The displays, exhibits, and facility in general are showing signs of their age and need to be refreshed. The applicant notes, that pursuant to their franchise agreement with Ripley's Entertainment, Inc., they are required to renovate and modernize the interior spaces and create a centralized reception/lobby area. The project will include a new 7D movie theatre, a mirror maze, and laser race within the existing building footprint. The facility will also include new safety features to meet ADA and building code requirements. Parking and courtyard areas are to remain largely as they are and the applicant has indicated that they will retain the existing large cypress trees.

8. The applicable criteria for the conditional use request are found in NMC Section 14.34.050:
- a. The public facilities can adequately accommodate the proposed use.
 - b. The request complies with the requirements of the underlying zone or overlay zone.
 - c. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.
 - d. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

CONCLUSIONS

Regarding the applicable criteria for the conditional use request, the following conclusions can be made:

A. NMC 14.34.040(A) requires that applications include a site plan showing the dimensions and arrangement of the proposed development on the lot. The applicant provided a site plan of the existing and proposed building layout (Attachment “A-3”), exterior architectural renderings of the proposed remodel (Attachment “A-4”) and illustrations of proposed signage and exterior thematic exhibits (Attachment “A-5”). The Commission concludes that the referenced materials constitute substantial evidence upon which to evaluate the application.

B. NMC 14.34.030 indicates that a Type III decision-making procedure, with review and approval by the Planning Commission, is required for property that is over one (1) acre in size. Lincoln County Assessor records indicate that the subject site encompasses 1.17 acres, which exceeds this threshold. Therefore, the Planning Commission is the appropriate approval body for this request.

C. *Criterion #1. The public facilities can adequately accommodate the proposed use.*

1. Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and electricity. All public facilities are available and serve the property. The applicant notes that the renovation will result in a modest expansion of the current use and that no changes to the building program will be made that will place additional strain on public facilities. They further point out that the building’s existing commercial kitchen and restaurant space will be removed, an element that represents a significant source of resource consumption.

2. As shown on the applicant’s site plan (Attachment “A-3”) and the Aerial Map (Attachment “C”), street and sidewalk access to this developed site is available off of SW Bay Boulevard, SW Hatfield Drive, and SW Lee Street. SW Bay Boulevard and SW Hatfield Drive are fully improved, paved collector roadways. SW Lee Street is a fully improved and paved local road. The Commission accepts this as sufficient evidence to establish that street and sidewalk access to the property is adequate. The City provides water service to the site via an 8-inch main in SW Bay

Boulevard. Sewer service is provided via a 14-inch gravity line in SW Bay Boulevard. Storm drainage is collected in catch basins and directed under SW Bay Boulevard to the bay. The existing facility utilizes these services. The services have been sized to accommodate regional development in the area, including industrial users such as the fish plants along SW Bay Boulevard and the Commission can rely upon the presence of these utilities to establish that the water, sewer, and storm drainage services are adequate to support tourist oriented retail uses at this location. Electric service is available to the existing building.

3. Given the above, the Planning Commission concludes that public facilities can adequately accommodate the retail use.

D. Criterion #2. The request complies with the requirements of the underlying zone or overlay zone.

1. This criterion addresses special requirements of the underlying or overlay zone beyond the standard zoning ordinance requirements. Each zoning district includes “intent” language. For the W-2 district, it includes the following:

“All conditional uses in a W-2 district shall also comply with the following standard: In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.” (NMC 14.03.040)

2. The applicant provided architectural renderings, signage details and images of the proposed thematic exhibits (Attachments “A-4” and “A-5”). This has given Commission members a clear sense of how the existing tourist oriented venue will look once the renovation is complete. Mariner Square has long been a part of the fabric of the Bayfront. It is one of the larger tourist attractions and the existing facility contributes to the unique tourist-oriented and working-waterfront experience that defines the Bayfront. The question turns to whether or not the proposed design maintains or enhances these qualities. The applicant is preserving the large cypress trees, courtyard and overall footprint of the existing facility. Additionally, the exterior appearance of the renovated building is similar to the existing one in that it includes multiple terraces and visual relief on the various exterior architectural elevations. The new entry design includes a more modest second story with the look and feel of a lighthouse and the octopus sculpture, previously housed primarily within the entry, will now be placed on the roof. Ripley’s is a venue that attracts kids and families and the applicant has tried to balance their desire to have eye catching exhibits while also providing an exterior appearance that compliments the area.

3. For these reasons, and those pointed out by the applicant, the Planning Commission concludes that renovated facility compliments the unique qualities of the area and that, therefore, this criterion is satisfied.

E. Criterion #3. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.

1. This criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse

impacts." Impacts are defined in the Zoning Ordinance as including, but not being limited to, the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. Adequate off-street parking, or the lack thereof, may also be considered by the Commission under this criterion.

2. The applicant notes that the use of the building will remain the same with no anticipated increase in noise, dust, or air pollutants. They further point out that there will likely be no increase in traffic associated with the expansion/modernization due to the elimination of the restaurant function, which should offset any increase in traffic from the new construction. Due to the retail nature of the area, the applicant believes that the modernization will benefit the surrounding businesses and not have any adverse impacts. Overall, they note that the project will improve what is already a significant tourist attraction, thus benefitting the nearby properties, which rely on tourism as well.

3. Restaurants are a significant traffic generator and the removal of that use, offsets other changes such as the new theatre. For this reason, the Commission finds that the number of off-street parking spaces currently provided is sufficient to accommodate the renovated facility. Adjustments may be needed to the arrangement of accessible parking spaces; however, this should not materially impact the visual appearance of the facility. As illustrated on the applicant's site plan (Attachment "A-3") new attractions, like the existing ones, are fully contained within the building, the footprint of which is essentially the same (with the exception of a small lobby addition). Consequently there should be no impact on the surrounding neighborhood relative to dust, smoke, noise, glare, vibration, safety, and odors.

4. Given the above, the Planning Commission concludes that this criterion has been satisfied.

F. Criterion #4. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

1. The applicant notes that the existing building is a landmark on the Bayfront. Its style is coastal, with similar materials to the rest of the neighborhood, but unique in massing and details. They point out that the project plans to remain true to this style. While this tourist venue does not match the surrounding industrial uses, the district has many varied styles and relies on the unique style of the existing building as an anchor. In terms of shape, the new addition will be consistent with the neighborhood in terms of height and size. The nature of the building is to attract tourists and provide entertainment. The design reflects this, with exciting, interactive details. The applicant points out that the Bayfront area as a whole strives to attract tourists, and this building will support that goal.

2. Exterior fascia signage has been reoriented and redesigned to align with the changes, but is of the same general style as what was previously proposed. It also conforms to the dimensional limitations for signage contained in NMC Chapter 10.10.085.

3. The applicant may need to adjust aspects of the exterior design to comply with building codes, fire codes, and other public health and safety regulations, including accessibility requirements. It is unlikely though that such changes would materially impact the size or height of the building. If that does happen, then a new conditional use permit will need to be filed so that the Commission can evaluate the impact of those changes.


3. Given the above, the Planning Commission concludes that the use will be consistent with the overall development character of the neighborhood with regard to building size and height.

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for a conditional use permit found in Section 14.34.050 of the Newport Municipal Code (NMC); and, therefore, the requested conditional use permit to renovate the Mariner Square tourist venue can satisfy the approval criteria for a conditional use and is hereby approved with the imposition of the following conditions of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building in order to comply with these codes, than a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.

Memorandum

To: Planning Commission
From: Derrick I. Tokos, AICP, Community Development Director 
Date: May 23, 2019
Re: Upcoming Work Session and Regular Meeting Agenda Items

While I haven't had a chance to put together a full work program, I did want to share with you what we have scheduled for work sessions and regular meetings for the next couple of months. I had also agreed to report back on timing for the public hearing on targeted amendments to the City's geologic hazards code, which I have covered below.

June 10, 2019, Work Session

- Review final draft of Park System Master Plan and corresponding amendments to the Newport Comprehensive Plan
- Overview of Transportation System Plan project schedule

June 10, 2019, Regular Session

- Hearing on File 4-CUP-19, Request for relief from one off-street parking space for a one bedroom vacation rental. This is the last request of this nature under the old ordinance
- Hearing on Files 1 & 2-PD-19 / 1-SUB-19 / 1-MRP-19, Amendments to the Southshore Planned Development to replace the hotel/retail component with a 12-lot, single-family residential subdivision and the conversion of the undeveloped condominium lots to single-family residential use

June 24, 2019 (No Meeting)

July 8, 2019, Work Session

- Review framework for a new tsunami hazard overlay zone (DLCD staff to attend)
- Review amendments to the Newport Comprehensive Plan to implement the Parking Study

July 8, 2019, Regular Session

- Hearing on amendments to the Geologic Hazards chapter of the zoning ordinance related to development in active hazard areas
- Hearing on amendments to the Newport Municipal Code related to the "Tree Plan"

July 22, 2019, Work Session

- Review final draft of the Lincoln County Regional Housing Strategy (DLCD grant funded)
- Update from 2019 State of Oregon Legislative Session

July 22, 2019, Regular Session

- Hearing on Park System Master Plan related amendments to the Newport Comprehensive Plan
- Hearing to adopt the new Flood Insurance Rate Maps and Flood Study (Any changes to the Flood Hazard regulations will be handled separately)

Memorandum

To: Planning Commission

From: Derrick I. Tokos, AICP, Community Development Director 

Date: May 23, 2019

Re: Upcoming FEMA Community Assistance Visit

Enclosed, for your information, is a series of emails related to a notice we received from FEMA Region X indicating that they have identified Newport for a Community Assistance Visit (CAV). These can be fairly characterized as an audit of how effectively a local jurisdiction is implementing flood hazard regulations. It will include a review of building records to ensure the City has required flood-proofing and flood elevation certificates where appropriate and that those documents were completed properly. FEMA staff will also tour development within flood prone areas to confirm that new projects were constructed in accordance with flood hazard requirements.

Since the CAV coincides with the release of the new flood maps and study, any required ordinance updates will be coordinated with FEMA instead of the Oregon Department of Land Conservation and Development.

Attachments

- Emails from May 17, 2019 to May 20, 2019 related to FEMA community assistance visit

Derrick Tokos

From: Adair, Celinda <celinda.adair@state.or.us>
Sent: Monday, May 20, 2019 10:21 AM
To: 'Pilkenton, Roxanne'; Derrick Tokos
Cc: Sherri Marineau
Subject: RE: Newport Community Assistance Visit (CAV)

Hi Derrick,

Per Roxanne's email, FEMA will be leading the effort to review your community's ordinance and Roxanne will coordinate with me for the state review.

There is also still the need to submit any proposed amendments through the DLCD online PAPA portal at least 35 days prior to the final hearing (this is the standard state review process). If I have already completed my review before the PAPA submittal, then I won't re-review it, I'll just note that my review was completed previously. With these flood ordinance updates the reviews are typically done via email exchange prior to the 35 days to give communities feedback as early as possible in their process.

Depending on the amount of changes required to your flood ordinance and the extent of changes under the new maps you may also need to consider doing a measure 56 notice to impacted property owners.

I'll also be touching base with you shortly regarding recommended outreach to community members regarding the insurance options for properties changing flood zones (or being newly mapped as falling in a flood zone) under the new maps. I have some outreach materials you can provide to community members and some deadlines they should be aware of. Roxanne may discuss this further with you during the Community Assistance Visit (CAV).

Kind regards,
 Celinda



Celinda Adair, CFM

National Flood Insurance Program (NFIP) Coordinator
 Oregon Department of Land Conservation and Development
 635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
 Direct: 503-934-0069 | Cell: 503-930-9739 | Main: 503-373-0050
celinda.adair@state.or.us | www.oregon.gov/LCD

From: Pilkenton, Roxanne [mailto:roxanne.reale-pilkenton@fema.dhs.gov]
Sent: Monday, May 20, 2019 7:27 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Adair, Celinda <cadair@dlcd.state.or.us>; Sherri Marineau <S.Marineau@NewportOregon.gov>
Subject: RE: Newport Community Assistance Visit (CAV)

Good Morning Derrick,

The timing of the new map adoption will work perfectly with the Community Assistance Visit (CAV) as having a compliant ordinance is one of the items that needs to be completed with the CAV process. I will be working on reviewing your ordinance and will be making any needed and suggested changes well before your needed date of adoption (18 October 2019). Usually the State takes the lead on reviewing ordinances in regard to map adoption, and while FEMA reviews most correspondence is done through the State. Because the CAV is

being done during the ordinance adoption time, FEMA will be taking the lead on the ordinance review, and the correspondence in regard to the review, but the State will be involved as well.

If I can answer any questions please do not hesitate to ask.

Kind regards,

Roxanne Reale-Pilkenton^{CFM}

Floodplain Management Specialist

FEMA Region X | Floodplain Management and Insurance Branch

130 228th Street SW | Bothell, Washington 98021-9792

Phone: (425) 487-4654 | Cell: (202) 341-6948

Roxanne.Pilkenton@fema.dhs.gov

Federal Emergency Management Agency (FEMA), Region X is committed to providing access, equal opportunity and reasonable accommodation in its services, programs, activities, education and employment for individuals with disabilities. To request a disability accommodation contact me at least five (5) working days in advance at 425-487-4654 or roxanne.reale-pilkenton@fema.dhs.gov.



FEMA

From: Derrick Tokos <D.Tokos@NewportOregon.gov>

Sent: Friday, May 17, 2019 5:15 PM

To: Pilkenton, Roxanne <roxanne.reale-pilkenton@fema.dhs.gov>

Cc: Adair, Celinda <celinda.adair@state.or.us>; Sherri Marineau <S.Marineau@NewportOregon.gov>

Subject: RE: Newport Community Assistance Visit (CAV)

Hi Roxanne,

The August dates are fine. As you are likely aware, on April 18, 2019 FEMA issued its final flood hazard determination letter for the new flood insurance rate maps and study for our area. Our Planning Commission just initiated the local legislative adoption process for the maps and I was planning to reach out to the State to see what, if anything, we need to add to our flood hazard ordinance.

Should we be thinking about trying to sync up any of that code work with the CAV?

We are operating under the assumption that our local code update and map adoption process needs to be completed by October 18, 2019 per the FEMA letter.

Derrick I. Tokos, AICP

Community Development Director

City of Newport

169 SW Coast Highway

Newport, OR 97365

ph: 541.574.0626 fax: 541.574.0644

d.tokos@newportoregon.gov

From: Pilkenton, Roxanne [mailto:roxanne.reale-pilkenton@fema.dhs.gov]
Sent: Friday, May 17, 2019 11:35 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Cc: Adair, Celinda <celinda.adair@state.or.us>
Subject: Newport Community Assistance Visit (CAV)

Good Morning Derrick,

FEMA Region X has identified Newport, Oregon as a community that will be receiving a Community Assistance Visit (CAV) in 2019. The CAV is a comprehensive assessment of a community's floodplain management program to help improve the community's understanding of, and compliance with, the requirements of the NFIP. Each CAV is comprised of five elements - review of the community's floodplain management regulations (Ordinance); review of permit files for development within the Special Flood Hazard Area (SFHA); a Field Tour of the community's floodplains; an Office Meeting with floodplain management staff; and a CAV Report, summarizing the findings from the previous four steps with follow-up as necessary:

1. The most important part of a community's floodplain management program is the adopted Ordinance for development in the SFHA. Please send a copy of the current and effective Newport Floodplain Ordinance and any other codes or regulations that are used to regulate in the SFHA. Please send the current effective Ordinance for review by Monday, **July 1st** to ensure the Ordinance meets the minimum requirements for completeness and compliance.
2. Please send a list of development permits issued in SFHAs over the last five years by Monday, **July 1st**. The list should include, at a minimum, the permit number, the issuance date of the permit, the flood zone, the address, and the type of development the permit was issued for. This list will assist in the preparation of the Field Tour itinerary.
3. The Field Tour is an opportunity to visit the SFHA within the City, observe new and/or existing development, and to gather information on the accuracy and completeness of the effective Flood Insurance Rate Maps (FIRMs). This usually takes a full day to complete, at a minimum, and staff from the City are invited to be part of this Tour. Please note that the Field Tour will take place **July 29th – 30th**.
4. The Office Meeting generally lasts half a day but depending on the discussion could last the whole day. The best meeting will include any staff representatives that are involved in permitting and inspections within the SFHAs in the City. Please advise which of the following dates works best with your schedule:
 - a. **Monday, August 26th, 9:00 a.m. start**
 - b. **Tuesday, August 27th, 9:00 a.m. start**

PLEASE RSVP, AS SOON AS POSSIBLE AS TO WHICH OF THE ABOVE DATES WORKS BEST FOR NEWPORT.

5. The CAV Report is usually completed within a month following the Office Meeting and will be sent to the CEO of community as well as uploaded in the FEMA Community Information System (CIS), a database maintained by FEMA. The Report will document the findings of the CAV and outline any follow-up as needed based on the Field Tour and Office Meeting discussions.

I've attached a copy of the Region X Pre-CAV Questionnaire, the Questionnaire will help Newport prepare for the Office Meeting as it covers most of the topics we will discuss. Please send the completed Questionnaire by Monday, August 5th.

If you have any comments or questions, please do not hesitate to contact me.

Thank you for your assistance, and I look forward to visiting with you!

Best Regards,

Roxanne Reale-Pilkenton^{CFM}

Floodplain Management Specialist

FEMA Region X | Floodplain Management and Insurance Branch

130 228th Street SW | Bothell, Washington 98021-9792

Phone: (425) 487-4654 | Cell: (202) 341-6948

Roxanne.Pilkenton@fema.dhs.gov

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FEMA