

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers by Video Conference
June 8, 2020

Planning Commissioners Present by Video Conference: Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, Bill Branigan, Mike Franklin, and Gary East (*present by phone*).

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 East, Hardy, Berman, Franklin, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Regular Session Meeting Minutes of May 26, 2020.

Commissioner Berman and Hanselman submitted corrections to the May 26, 2020 Regular Session meeting minutes. Berman and Hanselman reviewed their corrections.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission Regular Session Meeting Minutes of May 26, 2020 with corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.**

A. **File 1-CUP-20 Final Order and Findings: Conditional Use Permit for Construction of the Newport Basics Public Market at the Old Apollos Site.**

MOTION was made by Commissioner Berman, seconded by Commissioner Branigan, to approve the Final Order and Findings for File No. 1-CUP-20 with conditions. The motion carried unanimously in a voice vote.

B. **Approval of the City Council Letter for the Nye Beach Core Zone Proposal and Other Potential Changes to the Nye Beach Design Review Overlay.**

Tokos reviewed the public testimony submitted by Wendy Engler and Jan Kaplan. Patrick asked if the Commissioners wanted to include anything further on the letter to the City Council based on the additional public testimony. Tokos suggested that the minutes reflect the additional testimony and then forward the additional testimony to the Council as evidence of grass roots interest in doing visioning work in the Nye Beach area. The additional testimony and the letter from the Commission would be brought to the Council. Berman wanted to see this happen with an additional one or two sentence paragraph in the letter saying there were several public comments that were attached to the letter. He thought the letter should also say that in general the Commission agreed that an updated visioning effort for Nye Beach should be undertaken. Hanselman agreed and thought more work on the Nye Beach Overlay was appropriate. They needed to find someone who could do this because the work is beyond the time the Commission and staff could offer. Tokos noted the Commission could adjust this at another work session meeting. He wasn't ready to adjust the letter on the fly because they already conveyed in the letter that the Commission believed this should be done and encouraged the Council to refer the question to the Visioning Committee. Berman was concerned this wouldn't happen because the Visioning Committee wasn't interested in doing neighborhood

visioning. He thought the Council needed to do something to get that effort underway once resources were available to undertake it.

Branigan wanted to see more public input and to have the Council hold a meeting with Nye Beach residents on what their issues were rather than going off of just input from Engler. Hardy agreed and thought a community meeting would be more valuable. Berman reminded the Commission that there had been discussions before about having a joint Council and Commission work session open house in Nye Beach to solicit public input. Hanselman wasn't surprised that there was only a couple of people giving testimony but remembered that at the workshop there were several residents and business owners from the neighborhood who talked to the Commission. He thought there could have been more discussion with these individuals and noted there wasn't much discussions about the 2015 work. Hanselman thought there were more public members who were interested. Hardy suggested sending out a survey to the population directly impacted on any potential changes. Berman thought this should be part of the new effort for whomever ends up undertaking this. Patrick suggested forwarding the draft letter to Council to see find out how they would move forward.

MOTION was made by Commissioner Branigan, seconded by Commissioner Hardy to approve the City Council letter for the Nye Beach Core Zone Proposal and Other Potential Changes to the Nye Beach Design Review Overlays with minor corrections, and include the additional public comments. The motion carried in a voice vote. Berman was a nay.

5. Public Hearings. At 7:17 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, Hanselman, Franklin reported site visits. Patrick noted that he had looked at the File 2-NCU-20 property a year and half prior to bid on a construction project. He noted he did not submit a bid on the project and wasn't sure this was the same owners. 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 2-NCU-20.

Tokos reviewed the staff report. He shared an email and revised site plan submitted by the applicant. Tokos acknowledged an email from Wendy Engler with questions about the application. He read the email into the record. Tokos explained that the application was to change a currently licensed two bedroom short-term rental (STR) into a three bedroom rental. He noted this unit had a license before the 2019 rules were in effect and therefore was considered a non-conforming use.

Tokos noted the Commission could argue that any intensification outside of the overlay would be problematic with the standards of criteria. This unit was inside the overlay and this didn't apply in this instance. The spacing standards made this use nonconforming. Tokos thought the Commission could approve the request if they thought the standards were met for short-term rentals that were within the overlay. The character and history of the use wasn't inconsistent with the area and there were a number of STRs in that area. Tokos thought the comparative amount and nature of outside storage, loading and parking, and the comparative visual appearance was the most relevant issues. He noted the intensification of parking in the front yard could impact the visual appearance. Tokos noted the driveway they were proposing to use was a shared driveway. The staff recommendation was to require the applicant to provide a plan showing how they could provide three conforming off-street parking spaces without obstructing the neighbor's use. This would need to be submitted before the change of the license was authorized.

Franklin asked if the applicant had asked if they could have additional occupancy to the STR when they did the remodel of the dwelling. Tokos explained that he didn't recall any discussions with the applicant before the remodel and thought the Commission should pose the question to the applicant. Berman asked why the parking space on the street wasn't counted as a parking space because of NMC Chapter 14.25.030 and the discussion that if someone is in a parking district they should be able to count the parking on the

street. Tokos explained that the Commission could consider this. Because of the change in the code the two bedroom STR became a nonconforming use. Any changes to the use requires a nonconforming use approval, and therefore is not being reviewed under Ordinance 2124 because it can't meet the density limitation of ordinance. Tokos explained that the Commission could find that there was sufficient on-street parking resources that wouldn't necessitate additional parking spaces. Berman understood that nonconforming could apply to certain aspects but not to others. He noted that the code said that on-street parking could meet the need for one parking space for parking.

Hanselman was concerned that the STR might not have been used in the last 12 months. He was glad there was a diagram of the parking and thought the spaces were risky but doable. Hanselman didn't think it was safe for the cars.

Berman thought they had to show 30 days use for the nonconforming use. Tokos noted that when it comes to a discontinued nonconforming use, it would have to be a discontinuation of 12 consecutive months. This was not the case for this STR because it has been used in that time period. Hanselman asked if the room taxes showed they had been active. Tokos said the proof of 30 day rental use wasn't required until they renewed their license. For purposes of this nonconforming use land action, all they would need to do was to show one rental date in the last 12 months to keep the nonconforming use. Tokos noted that tax room payments were available and the city could look up this information. Patrick asked if there was anything in the nonconforming use provisions for when construction prohibited use for the 12 months. Tokos explained that for the STRs, the City was working to add this to the provisions to allow STRs to not lose their nonconforming use due to this.

Branigan asked if the dwelling had been re-inspected to meet the fire requirements. Tokos explained that the bedroom was inspected for the permit process but didn't think it had been done for the licenses.

Proponent: Samer and Myoko Abufal addressed the Commission on the phone. Samer noted that the third bedroom had been inspected by the building and fire inspectors. The STR had been actively rented through OR Beach Vacation Rentals and they were providing receipts to the city for room taxes. Samer noted the unit had been out of commission for part of the year for renovations. Myoko noted that there were still 19 more days to rent in June.

Samer explained that the parking site plan showed the way the house was currently and that the parking spaces existed. He explained that it wasn't difficult to park there. Berman noted the Google map screen shot showed that the third space was heavily vegetated and asked if it was already paved. Samer explained that the Google map was outdated and only used as an aerial view. The image was taken during the remodel of the house. The space was now compacted gravel and weeds were replaced with new vegetation to make the area look nice.

Franklin asked if they talked with the City about adding to the occupancy to the STR in the early phases of the remodel. Samer reported that this was an afterthought. He described how they first bought the property and their thoughts to expand the home. The extent of the remodel meant that it would be that much more to add the third bedroom. After they decided to add the bedroom they started thinking about changing the license to three bedrooms.

Opponents: None were heard.

Hearing closed at 7:55pm.

Hardy thought the request met the criteria and was an appropriate accommodation in the marketplace. She thought it adapted with the over parked Nye Beach streets in terms of not requiring on-street parking. Franklin was hesitant about allowing nonconforming STR units in Nye Beach to increase their occupancies when adding on to structures to get an additional rooms in their STRs because it could become a pattern. He didn't have any problems with this request.

Branigan thought it met all the criteria and was the exception in Nye Beach. Hanselman agreed that the third off-street parking space looked suspicious but would take the owners word that it was doable to park there. He didn't like approving these things after the fact and didn't think it was good to keep granting approvals for all kinds of uses. Since this was the same use, he would support it.

Berman noted that if the site plan for parking was a requirement of the code these three spaces had to be used first. It would become a violation if people didn't use the spaces. Berman didn't see any problems approving.

East agreed that after looking at site plans the parking was tight but was doable.

Patrick had reservations on making nonconforming uses a habit for rental units. He didn't think there was anything they could do about this for nonconforming uses. Patrick thought that the parking meet the requirements but violated the spirit of the neighborhood.

Tokos noted that the revised site plan was part of the recommended conditions and they would only need the one condition if approved.

MOTION was made by Commissioner Hardy, seconded by Commissioner Berman to approve File No. 2-NCU-20 with one condition. The motion carried unanimously in a voice vote.

B. File 2-CP-18.

Tokos gave his staff report. He reviewed the updates to Goal 1 and the addition of Goal 2 and Goal 3. He noted the changes requested by the Commission to include LIDs, and a couple of other changes. Berman said he didn't see LIDs in Policy 6 and asked where this was. Tokos said it was addressed in the Storm Drainage Facilities area under Financing on page 5. Berman asked if it should be included as another letter in number 6 under letter G. Tokos would add this. He noted that Policy 5 had added language to make good housekeeping guidelines that would be passed along to residential for pesticide use.

Hanselman asked if Civil West gave information on the section of town not included in their report from west side of Highway 101 from Oceanview Street up to 48th Street. Tokos reported that the contract with Civil West had been closed and no additional work would be performed. Any issues could be addressed by a targeted amendment to the plan if needed. Hanselman was concerned that this area of town was never evaluated and in turn could never use the funds. He thought all property owners should have access to the inventory of assets. Tokos said they would need to build upon this so it was more complete over time. This was the first complete Stormwater Master Plan the City had done. These areas could be picked up with a future amendment. Hanselman thought it was a shame it hasn't been evaluated. Patrick asked if it would be advantageous to maintain a list of areas that were skipped over or come up over time. Tokos reported they were working with Public Works to have a running list for this.

No proponents or opponents were present.

Hearing closed at 8:13pm.

Hardy thought it was a good start with the idea that they could gradually amend the plan in the future as needs were identified. Franklin agreed with Hardy. Branigan was fine with this. Hanselman thought it was a good start and fine with it. Berman agreed but noted that the Planning staff memo on Item 5 should say draft "stormwater" not "wastewater". East agreed with everyone to go forward with this. He asked if erosion control measures was included. Patrick confirmed that they were included and one of the policies was part of complying with the Phase 2 DEQ standards. He noted he was in favor of the plan and glad to see it happening after 15 years.

Berman noted the file number on the agenda was wrong and should be File 2-CP-18.

MOTION was made by Commissioner Franklin, seconded by Commissioner Branigan to forward a favorable recommendation to the City Council for File 2-CP-18. The motion carried unanimously in a voice vote.

6. **New Business.** None were heard.

7. **Unfinished Business.**

A. **Updated Planning Commission Work Program.** Tokos reviewed the update changes. He explained that he would be working on a new work program for the next six months and it would be picked up in the next work session. Patrick asked when the OSU housing project would be coming in. Tokos didn't think it would happen until July. He noted the Urban Growth Boundary amendment for Hancock would have a public hearing in a couple of months.

8. **Director Comments.** None were heard.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:16 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant