

A special meeting of the Astoria Common Council was held at the above place at the hour of 6:30 pm.

Councilors Present: Nemlowill, Jones, Price, Brownson, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Planner Ferber, Contract Planner Johnson and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

#### CHANGES TO AGENDA

There were none.

#### REGULAR AGENDA ITEMS

**Item 4(a): Appeal 18-05 by Mark Hollander of Hollander Hospitality of the Design Review Committee's decision to deny the request DR18-01R to construct a four-story hotel at 1 2<sup>nd</sup> Street in the C-3 Zone (General Commercial), Bridge Vista Overlay Zone (BVO), Flood Hazard Overlay (FHO), and CRESO Zone.**

On June 25, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) held public hearings and respectively reviewed a New Construction Request (NC18-01) and Design Review Request (DR18-01) to construct a four-story hotel at 1 2<sup>nd</sup> Street. The location is within the Bridge Vista Overlay Zone (BVOZ), and adjacent to historically designated structures, which triggered review by both groups. The HLC and DRC both voted to tentatively deny the requests at their June 25, 2018 meetings, and formally denied the proposals with revised Findings of Fact at their respective meetings on July 10, 2018.

The denials were subsequently appealed by the applicant on July 25, 2018. Public notices for the appeals were sent, and a combined public hearing on the HLC Appeal (AP18-04) and DRC Appeal (AP18-03) was held at the August 23, 2018 City Council meeting. At that Council public hearing, the applicants submitted revised proposed plans. The Council tentatively approved the HLC Appeal and reversed the HLC denial, thereby tentatively approving the New Construction Request (NC18-01) pending adoption of Findings of Fact. The appellant was directed to have their attorney prepare draft revised Findings of Fact to be brought back for consideration at a subsequent Council meeting. The appeal findings of the HLC decision is addressed in a separate memo to the Council.

The revised plans submitted with the initial appeal differ from those previously reviewed by the HLC and at the first DRC hearing. At the August 23, 2018 meeting, the Council remanded the Design Review Request (DR18-01) back to the Design Review Committee for additional consideration.

The applicants submitted revised plans (DR18-01R) for consideration on remand and the Design Review Committee held a public hearing on October 9, 2018. At that meeting, the DRC tentatively denied the request with a split 2 to 2 vote, pending adoption of Findings of Fact. Development Code Section 1.120.D, Meetings, Voting, states that "At a minimum, a quorum must vote on any issue, and the concurrence of a majority of a quorum shall be required to affirmatively decide any matter before the Commission or Committee. A tie shall be a denial." Findings of Fact for denial were adopted by the DRC at a meeting on November 1, 2018. That decision was appealed by Hollander Hospitality (AP18-05) on November 13, 2018.

Oregon Revised Statute Section ORS 227.178(1) requires that land use decisions, including appeals, be resolved within 120 days from the date a complete application is submitted unless the applicant grants an extension. The original 120-day review time would have expired on August 29, 2018 but the applicant has extended the date for additional days to December 21, 2018.

On Appeal (AP18-05) for Design Review Request (DR18-01R), it is recommended that the City Council hold a public hearing on the appeal "on the record", receive testimony, and consider the Design Review Committee decision denying the construction request. The City Council will need to adopt applicable Findings of Fact which include the basis of their decision. Staff recommends Council make a tentative decision and continue final decision to a special meeting on December 20, 2018 pending submittal of supplemental Findings of Fact for adoption.

Mayor LaMear asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. Mayor LaMear asked if any member of the City Council had a conflict of interest, or any ex parte contacts to declare. None declared. She explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were listed in the Staff report. Mayor LaMear requested a presentation of the Staff report.

City Manager Estes gave a brief overview of the appeal and noted this hearing would need to be continued so that Staff could prepare Findings in support of the appeal of the Historic Landmarks Commission decision. Planner Ferber reviewed the case via PowerPoint, which included a timeline and next steps. Planner Johnson presented the written Staff report, provided details about the applicable criteria, Council's jurisdiction, and Staff's recommendations.

Mayor LaMear asked if the Council wanted to proceed with an on-the-record appeal or a de novo appeal.

Councilor Nemlowill stated it was not the Council's job to decide whether the zone was appropriate for a hotel. The Council was just conducting a design review, so she did not understand what a de novo hearing would mean. City Attorney Henningsgaard explained that a de novo hearing would be like starting over from the very beginning. An entirely new record would be created. An on-the-record hearing would not include any new evidence, and the decision would be made on the record that was established as part of previous hearings. The public would still be entitled to address by argument the two appeal criteria, but could not present any new evidence. He did not believe there was any substantial new evidence and the existing record was already over 1,000 pages long. Therefore, he recommended an on-the-record hearing.

Councilor Price stated the residents are not represented at a land use appeal because they have already been represented during the Code development process. She had advocated for some expanded restrictions in the BVO, which was adopted in August 2015. Her restrictions were voted down, but in the end she voted with Councilor Nemlowill, Mayor LaMear, and former Councilor Russ Warr to approve this Code. It is now up to Council to rule on a very narrow issue. She supported an on-the-record appeal and asked that members of the public speak to the criteria to help inform Council's decision.

Councilor Brownson said he agreed and preferred an on-the-record hearing.

Councilor Jones agreed to an on-the-record hearing as well. Councilors have already read through the existing record, which included the testimony and evidence submitted at other multiple de novo hearings.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Brownson to conduct an on-the-record appeal hearing of Appeal 18-05 by Mark Hollander. Motion carried unanimously. Ayes: Councilors Price, Jones, Nemlowill, Brownson, and Mayor LaMear; Nays: None.

Mayor LaMear opened the public hearing at 6:59 pm and asked for the Appellant's presentation.

Steve Hollberg, no address stated, attorney for the Appellants, stated all of the materials in his presentation had already been included in the record and he would not be introducing any new evidence. He believed the issues before the Council were narrow. Only two Code provisions were the issue and could be resolved by the text of the Code rather than by the design of the hotel. When the City adopted the BVO, it contained a lot of language about the intent to preserve the character of the city. At the last hearing in August, it was discussed that when City Council adopted the Code, it adopted a set of standards and guidelines. The Code is very clear that Code development standards such as height, setbacks, step backs, and massing do not provide City Council with any discretion to adjust the provisions. The definitions adopted as part of the Code explicitly state that the development standards provide no discretion. That means the 45-foot height limit is the height limit. In land use hearings, although the Council has discretion to interpret many things, the Code does not provide discretion for

Council to interpret. The design guidelines in the Code explicitly state that City Council has some ability to interpret the guidelines, but the guidelines are very different from development standards. The development standards give developers an understanding of what can be built on a property. The design is what the building looks like, for example where the windows will be located and the style of roof. Design elements are the things Council has the ability to interpret and modify. But the development standards are set by Code and cannot be adjusted. The Code clearly states the development standards control everything else. There is no way Council can say a 20,000 square foot building would be more appropriate on this property. When the Council adopted those development standards, it had the BVO in mind and understood that in order to protect the character of the area, buildings needed to be limited to a certain massing. While the design is an important component, the standards are set in stone and are required by Code. There would be no way for a developer to determine what could be built if a Council were allowed to require something other than the adopted standards. The Development Code provides certainty to the community, the City, and developers. City Council must interpret the expressed language in the Code. Oregon law is clear that when a Code contains expressed language, the Code cannot be interpreted differently from what the Code actually states. The standard on scale, massing, and building materials contains the word "retain" and there is no way to retain scale and massing of a building if there was no building already on the site. The expressed language only applies to renovation. The language of the text on street frontages refers to scale, massing, and building materials along street facades. There is no way to say that only building materials apply. The proposed design is very appropriate in terms of scale and massing relative to other buildings in the vicinity and the character of the area. However, he did not believe this applied. Additionally, there is no way to simply state the building is just too big because the Code explicitly allows buildings up to 30,000 square feet. The Code also asks is the building square, rectangular, or triangular. If so, the standard has been met. There is nothing in the Code that allows the Design Review Commission or City Council to say that while the building is rectangular, it needs a lot of other elements. This Code provision provides certainty to a developer who is trying to understand what can and cannot be built on a property. This design is an improvement over the prior design, but the Appellants must adhere to the criteria that apply to their application. He believed those criteria were very clear, that if the building is a rectangle and meets the scale and massing criteria set by Code, it qualifies and the standards have been met.

Craig Reigelneegg, 830 SW 10th Ave. Ste. 200, Portland, Carlton Hart Architecture, stated the design being presented was the exact same design presented at the Design Review hearing. He gave a PowerPoint presentation on the proposed design. The hotel would sit on a block that also included Josephson's Smoke House, the 76 Gas Station, and Stephanie's Cabin. Stephanie's Cabin would be part of a future phase of the development of the site. The former Ship Inn would be demolished and replaced with a new single-story entry. Within 400 feet of the site, there is Columbia House Condominiums, a five-story condominium building; Astoria Warehousing, a large industrial storage facility; and a mix of smaller commercial and residential buildings. The remnants of the historic Van Kamp Seafood building are also on site. The BVO calls on the working waterfront concept and encourages designs compatible with the area's historic and working waterfront character. The Van Kamp Seafood building used to be to the north of the site and provided a perfect example of the historic context. The building was an old cannery from the late 19<sup>th</sup> Century estimated to be about 50 feet to the top of the monitor, which is taller than the proposed architecture. He displayed photographs of additional examples of the working waterfront architecture and designs, which included large flat wall plans without much modulation. There were buildings between single- and four-stories, between 20 and 50 feet high, oriented perpendicular to the water or parallel to the water, with very little extraneous ornaments. He displayed the proposed site plan and explained the building would be oriented east/west along the north edge of the site. That position accommodates the shape of the site and the fire lane requirements. The covered parking area would be located on the west side, common use spaces would be in the center of the hotel, and the single-story lobby would be on the east with entry on the south east. A patio would be on the north of the lobby. He displayed the north elevation, which illustrated much of the design criteria that had already been approved. The building would have V-groove siding, red board and batten, windows integrated with architectural louvers and recessed within the cladding, and patios and decks allowing the step backs along the river trail. The south elevation showed the pitched roof, standing seam metal, ground floor glazing, and ornamental metal screens around the ground floor parking area. The building dimensions conform to all of the Code requirements, including the 45-foot height limit as defined and the maximum 30,000 square foot area. Staff's finding states the building should retain significant original characteristics of scale, massing, and building materials along street facades. This does not apply, but he wanted to propose a design that was contextually applicable and appropriate, not out of scale with the neighborhood. The street elevations illustrate the perceived scale within context. He displayed the 2<sup>nd</sup> Street frontage, which is the single-story section of the building, 45-feet wide with a single roof gable split by a clearstory. There would be two active pedestrian areas at the entry and patio. He displayed the Marine Drive

frontage, which included Astoria Warehousing for comparison. The building would be set back on that side, which makes the height less obstructive than Josephson's and Astoria Warehousing. The parking area would be on the west behind Stephanie's Cabin. He showed the north east perspective, which had step backs at the east end. The south east perspective included a 10-foot set back and a 50-foot single story before the four-story guest room portion. He displayed a diagram showing the building's step backs and the theoretical maximum mass of a building, which is quite a bit larger than the proposed hotel. He showed examples of the working waterfront concept, diagrams, and three-dimensional digital models of historic and contemporary models, which were all comparable projects. Staff's findings state the building form should be a simple geometric shape and does not discuss modulation. Van Kamp is a historic example that no longer exists. Buoy Beer is a modern industrial example just six blocks up the river. He also showed Columbia House Condominiums, Hanthorn Cannery, and Astoria Warehousing. He had considered some of the larger projects in the vicinity because the hotel is on a larger site. All of the examples have large flat wall plains. He concentrated on the south because that was the elevation cited by the Design Review Commission, who did not have a problem with the north elevation. The proposed design takes advantage of step backs and visual variety. To modulate the massing of the building any further would directly contradict the stated goal and intent of the Code.

Mayor LaMear called for any presentations by persons in favor of the appeal. Hearing none, she called for any presentations against the appeal.

Pamela Mattson McDonald, 22 Nimitz Road, Astoria, said she worked on a number of maritime ships, so she wanted great views of the river. She hoped City Council would deny the appeal because she believed the City should make views very accessible to people who do a lot of walking. She wanted the river to be viewed by those who could not afford to have houses on the river or views of the river.

Sarah Jane Bardy, 1661 Irving Avenue, Astoria, stated she was on the Design Review Commission (DRC). She reminded that the DRC denied the request because of the scale. The attorney for the Appellants forgot to mention that the wording around retaining scale, while confusion, also mentions new construction. The Staff reports indicate that development should respect historic character. A 45-foot building sitting 10 feet from the Riverwalk is nothing short of disrespectful. The sidewalk in front of City Hall is about 12 feet wide and the Riverwalk will be 10 feet from the construction. Additionally, the hotel will be taller than City Hall. In her opinion and the opinion of others, the hotel would be out of scale. She was not debating whether or not the hotel was appropriate but debated the fourth floor. The hotel will be the tallest building in the area at about 14 feet taller than Astoria Warehousing. The design has improved from the original proposal, but the building would tower over everything nearby. Astoria does not owe Hollander Hospitality anything. It is fine that they will get a hotel in Astoria, but they do not get to call all of the shots. The negative impact of the height on the community will outweigh the positive impact on the hotel's bottom line. She asked the Council to vote as a representative of the town and refrain from allowing the Appellant's attorney from patronizing the City by explaining the Code.

Elizabeth Menetrey, 3849 Grand Avenue, Astoria, said the Riverfront Vision Planning began 11 years ago. Former Mayor Van Dusen started the Riverfront Vision Plan Committee when people became concerned about condominiums being developed on the east side of town. There were a lot of public meetings and many citizens gave input. Some people had no problems with hotels and condominiums, mostly people who made money from them. People also said they did not want massive buildings. The City Council, development committee, and Design Review Committee have spent a great deal of time and energy implementing the Plan into the Code. The Comprehensive Plan says that hotels and motels are allowed in a C-3 zone, but if the Community Development Director determines that there is a violation of other parts of the Development Code, Comprehensive Plan, and other City laws, that violation must be considered. Development Staff and the Design Review Committee found that there were problems with this project's scale and mass. This project has been denied twice. Scale and mass are critical to the Riverfront Vision Plan. The Applicants have pushed the very edge of the boundaries of what is possible. The building is out of scale with the lot size and the surroundings.

Glen Boring 1 3<sup>rd</sup> Street, Astoria, said that during the Appellants' presentations, the attorney spoke to the two applicable criteria, but the architect did not relate to those two criteria at all. He was concerned that the architect's presentation was smoke and mirrors. He understood that any developer could build a 45-foot tall, 30,000 square foot rectangular building. He did not believe that is what the Code intended for this zone. If he were to raise one of the warehouse buildings to 45-feet high, he would have to meet all of the same requirements. However, if he razed the building and proposed a new building, it would have to meet the design criteria. The City could end up with a string of 45-foot tall rectangular boxes. He did not believe that was in

character with everything else around the site. He has lived in Columbia House for almost a year and has heard a lot of complaints about the condominium building from the residents. He did not want Columbia House to become the standard for everything else that is built along the waterfront. The decisions that the City Council makes will have ramifications in other areas of the city and will set a precedent.

Mike Sensenbach 110 Kensington, Astoria, said he worked in property claims for one of the largest property casualty insurance companies. He routinely reviews property claims for adherence to building codes, zoning, development codes, and other regulatory issues in Oregon and Washington. The Applicant has questioned the applicability of Section 14.115(B)(2)(a) on the characteristics of scale, massing, and building materials along street facades. This is addressed in the previous section, Section 14.115(A), which specifically says that Sections 14.095 to 14.125 apply to new construction or a major renovation. This is also outlined in Section 14.090 on applicability and review procedures, which states Sections 14.085 to 14.125 apply in all areas of the BVO unless indicated otherwise. Therefore, Section 14.115(B)(2) applies. The Applicant has provided a number of buildings including several that no longer exist. He believed City Council would have trouble determining compatibility with something that no longer existed. All of the other buildings except Astoria Warehousing do not fall within the BVO. If Astoria Warehousing is accepted as comparable, then the scale can be considered. The warehouse is wider along Marine Drive than the proposed hotel. The depth of the warehouse is deeper than the proposed hotel. However, Astoria Warehousing is 31'1" tall from the sidewalk to the roofline, making the proposed hotel 50 percent taller than the tallest building within five blocks in any direction from the project site. Several people have suggested that a three-story hotel would be appropriate, but that would still exceed the height of the Astoria Warehousing building by 15 to 20 percent.

Mayor LaMear called for a recess at 7:38 pm. The meeting reconvened at 7:43 pm.

Mayor LaMear called for any testimony impartial to the appeal. Hearing none, she called for the Appellant's rebuttal.

Mr. Hollberg said Ms. Bardy was correct. The City does not owe the Applicant anything other than fidelity to the Code and the Code contains explicit language that the City, the public, and the Applicant must rely on. The Code says development standards provide little or no discretion for the City to interpret, so it is incumbent upon the Council to follow its own definitions and Codes. Several people said design standards clearly applied to new construction. However, certain sections of the Code do not apply. The section on guidelines for all uses says midcentury slip covers should be removed whenever possible. That provision cannot apply to new construction. For the same reason, he did not believe the retain language could apply to a new building because there is nothing there to retain. The Vision Plan had a vision for the area. It sounds like the Council and the community spent a long time figuring out what was appropriate. Protecting view corridors has been implemented by requiring vision corridors within the BVO. The City decided massing could be an issue, so standards were set for massing. The Vision Plan says height limits need to be established and enforced. Height limits are not enforced by allowing variances depending on the application. The Applicant and the architects have spent an incredible amount of time trying to make this work and trying to make the project fit into the Code. The Code is very restrictive and it is very difficult to meet the standards, but the Development Standards set the rules to live by. The design guidelines are a bit more flexible. The expressed language in the Code on massing and scales leaves no other conclusion than the standards have been met.

Mr. Riegelneg clarified that the hotel would not be the tallest in the immediate vicinity. The Columbia House condominiums will be 10 to 15 feet taller. There is also a four-story apartment building up the hill. He chose comparison projects that included historic and contemporary architecture that were worth comparing to his project due to comparable uses and the size of the sites. His survey of the immediate vicinity places the hotel in an appropriate context. The Planning Staff commented that, subject to review by the DRC, the regulations for height could be anywhere below the maximum height limit. However, the numerical standards are established in good faith so that a developer can follow them. The intent and the specific language in the Code will coincide. He researched the historic projects that the BVO is based on. A number of precedents are 40 to 50 feet and some were smaller. It is important not to view this through rose-colored glasses. The buildings that existed along the waterfront were very large buildings in many cases and they would have blocked views of the river. He tried to stay true to the intent of the Code and has been willing to compromise. The owner has bent to a substantial degree based on the difference between the earlier design and the one being presented now. A lot of changes were made to materials, trim, detailing, and the building will be costlier to construct, but it will be more in keeping the contextual appropriateness that the DRC has expressed. He hoped the compromise would be adequate.

Mayor LaMear called for closing remarks of Staff.

Planner Johnson said maximum heights are set as maximums, not guaranteed maximums. The Design Review states that the mass and scale for the site is to be considered. Land use decisions do not set precedents for other decisions. However, Council interpretations of how the Code is applied would be carried through to future applications of the Code.

Mayor LaMear closed the public hearing at 7:52 pm and called for Commission discussion and deliberation. She reminded that denying the appeal would uphold the DRC's decision that denied the proposal, and approving the appeal would reverse the DRC's decision and approve the request.

Councilor Price stated Development Code Section 14.085 provides the purpose of the BVO, which is "intended to serve objectives including supporting water dependent and water related uses and new uses consistent with Astoria's working waterfront, encouraging design that is compatible with the area's historic and working waterfront character, protecting views of and access to the Columbia River, enhancing open space and landscaping particularly adjacent to the river trail, strengthening the pedestrian orientation and gateway characteristics of the area, and allowing for commercial and residential uses that complement the downtown core, and support other planning objectives for the area." It was not clear to her how the project got this far. The Appellant defines the DRC's decision as a limited land use decision under an Oregon statute that includes the use of discretionary standards, which are those that apply professional judgement along with adopted standards and guidelines to design review and conditions of approval. So, the City Council has the ability to use their judgement. The Appellant states that the same statute precludes the City from applying any provision of the Riverfront Vision Plan to the proposal. This section of the Oregon Code states that a City's Comprehensive Plan must be incorporated into its Development Code or the Plan may not be used as a basis for a decision by the City. She wondered if the Appellant was confusing the Riverfront Vision Plan with the City's Comprehensive Plan. The BVO is one of four parts of the Riverfront Vision Plan and is in the Development Code. Its purpose and intent is well developed in the Code, and the City does not need to look at the original Riverfront Vision Plan to know and understand the intent of the BVO. Section 14.113 controls the standards for on-land development in the BVO. The Appellant interprets Section 14.115 as applying only to major renovation, but not new construction, and with the scale and massing applying, if at all, only to the façade facing 2<sup>nd</sup> Street. The Appellant asserts that one cannot retain something in a new development and that the intent of this section only applied to major renovations. The word retain has several definitions, one of which is that Astoria keeps something that no longer exists, as in retaining the memory of something. This is very different from comparing the specifics of the historic waterfront, which was horrid for many years. No one saw the river because it stunk. It is not the intent of this or any Code to retain that, so looking at the large canneries, net sheds, and things that used to be on the river does not make a lot of sense because Astoria has grown and changed in many ways. Many sections of the Development Code talk about the provisions applying to all uses and all areas, to all new construction or major renovation unless otherwise specified. The only time this is otherwise specified is in reference to industrial construction and uses, not commercial. The Appellant stuck the City with the language of the Code. The Code is clearly in need of some housekeeping, but over and over again, the Code clearly states the intent of the BVO is to apply to new construction and major renovations so that Uniontown's historic and working waterfront character could be retained. Three Councilors adopted a Finding of Fact along with the BVO that stated, "the proposed amendments will adopt design standards to allow for development consistent with the existing development within the area." Section 14.115 applies to this development. The presentation only included one small image of the south perspective facing Marine Drive. She found a picture on Page 25 of the Appellant's presentation titled "View of project massing from Bond Street south of project site." The image is small and not from the pedestrian level, so the perspective is very different from the other images. The hotel as viewed from Marine Drive is much larger than anything in the vicinity. So the building is really not in scale with its neighbors. She agreed that the building was a simple geometric shape and the materials are not bad. She would uphold the DRC's denial of the project based on the fact that Section 14.115(B)(2) applies to new construction and the project does not meet the standards and guidelines in that section.

Councilor Jones stated he also agreed that the building form was a simple geometric shape. The language in the Development Code is subject to a lot of interpretation. He thanked the DRC, HLC, Planning Commission, and Staff, especially Planners Johnson and Ferber, for doing an extraordinary amount of work over a long time. He was confident that every person involved voted with the best interests of the City in mind. The fact that people have disagreed indicates there is room for interpretation of the language. He re-read the minutes from 2014 and

2015 regarding the Code amendments so that he could understand the original intent. He hoped to find a definition for massing and scale because simple dictionary definitions do not necessarily apply to this matter. He was surprised that the 34-page glossary of definitions in the Development Code did not include massing or scale. People have referred to mass as height or volume. Staff's Findings that accompanied the recommendations to the Planning Commission in April 2015, which was implemented into the Code now being discussed, says, "to the extent possible the design and development standards are intended to be clear and objective so that most proposed development can be evaluated administratively." This is instructive as the City moves forward with working on new Codes for the Urban Core. It is impossible to anticipate all of the unintended consequences. The Findings also said, "The proposed amendments would satisfy land use needs and allow for the development of private properties while protecting the vistas and views along the Bridge Vista area of the river trail. Building setbacks and landscaped view corridors are proposed to allow street and visual access to the river." The Finding specifically mentions protecting views from the river trail, not necessarily Marine Drive or from the hill. The Findings also quotes CP 068 the Riverfront Vision Overlay policies. Paragraph 1(a) through (e) gives objectives, including maintaining areas of open space, creating new open space, providing public access to the river within private developments, retaining public ownership of key sites along the riverfront, protecting view sheds along the river including corridors and panoramas from key viewpoints, and use of alternative development forms like clustered developments, narrower or taller profiles, setbacks, step backs, and gaps in building frontages to preserve views." That was the only reference he found to narrower and taller profiles. The word massing was not used. He asked where the narrower and taller profiles came from.

Planner Johnson explained that when there is a one-story building that extends the entire block from the land side, the river cannot be seen. However, a taller building with a reduced width opens up the view corridors. The Code does define mass under "building mass" as the height, width, and depth of a structure including non-enclosed features, such as stairs and decks.

Councilor Jones confirmed there was no definition of the word scale. The Development Code defines standards as Code provisions that require or prohibit specific design features, incorporate numerical or other clear and objective standards, and provide for limited or no discretion by the appropriate review body to interpret and apply the standard. Guidelines are defined as Code provisions that encourage or allow for design features or approaches, and that provide flexibility and discretion for the appropriate review body to interpret and apply the guidance. The provisions of the BVO shall apply to all new construction or major renovation, so the intent is to apply the standards and guidelines to new construction. In hindsight, the language of Section 14.115(B)(2)(a) through (g) clearly leaves much room for interpretation. If this section pertains to new buildings, new buildings should retain significant original characteristics of scale, massing, etc. What does "original characteristics" mean? It is not clear whether the proposal satisfies Section 14.115(B)(2)(a). Do the original characteristics refer to the entire BVO boundaries, the block, a certain distance measured in yards and feet from the site, an original building that may have once stood on the site but no longer exists, or historic buildings that were nearby and no longer exist? It is not clear how a new building can retain significant original characteristics of scale and massing when the City has not identified the scale of massing of any particular thing. The Findings in the April 2015 Planning Commission meeting state the amendments would establish design review guidelines and standards based on the existing historic and waterfront development design of the Uniontown and Port areas. This could be interpreted to mean the new building should retain significant original characteristics of scale and massing of the existing historic and waterfront development design of the Uniontown and Port areas. However, that would include Josephson's Smoke House, the gas station in front of the proposed hotel, the Columbia House, the Holiday Inn Express, and the Helping Hands building. Helping Hands is 3.5 stories, the Holiday Inn is four stories, and Columbia House is 50-feet. He confirmed there was nothing in the Code that says the characteristics of more nearby buildings should be retained. When this Code was adopted on June 15, 2015, two Councilors moved to reduce the height standard to 35-feet, which was defeated by a 2 to 3 vote. So the standard that was adopted was 35-feet or up to 45-feet with setbacks. Saying the building needs to be 35-feet or less is effectively using the guideline to change the standard. In that case, the guideline would be overruling the standard. Standards take precedent over guidelines. Based on the buildings in the BVO, which includes one-story buildings, three-story buildings, and buildings taller and larger than the proposed hotel, he did not believe the hotel was out of scale with the BVO. If the City does not want four-story building in the BVO, then a Code amendment is necessary. Subsequent to the City Council meeting 3.5 years ago where the Council voted three to two to retain the 45-foot limitation, there has not been a motion by any Councilor to amend the Code.

Councilor Brownson said he agreed with most of what Councilor Jones said, but he did not believe the Code applied to new construction. The City has received a lot of correspondence on this appeal and he appreciated

that everyone who testified spoke on the specific issues. However, City Council is not tasked with debating parking, determining the developers' needs, or deciding whether a hotel is a good or bad idea. He agreed that regardless of how we got here, we got here with this Code three years ago with a lot of public input and a lot of work. Section 14.115(B)(2)(a) is not meant to apply to new construction. It is great to get very esoteric about a word and wander off into all sorts of meanings. However, Codes are intended to be realistic and specific. The word retain means that some structure is going to retain its characteristics. Sections 14.115(B)(2)(b), (c), and (d) clearly apply to existing structures as well. There is no way to apply those sections to new construction and trying to do so would not make sense. He believed that when the Codes were put in place, they were not always for new construction and significant renovation. Sometimes they are for new construction and sometimes they are for renovation. Sometimes they might be for both. The lack of clarity makes this decision tough. He referred back to Section 14.113, which clearly states that in the event of a conflict between this section and other sections of the Astoria Development Code, this section shall control. The height limitations, footprints, and set backs are standards that cannot be exceeded. If he were a developer, he would plan for the limitations in the Code. Therefore, Section 14.115 does not apply as stated. He walks the Riverwalk, drives by the site, and he looked at the surrounding buildings as he imagined the hotel in that location. Five years from now, no one will notice any difference. Every building will change the landscape, but people will still be able to walk up and down the Riverwalk and see the river. In this case, the Code is clear on height, size, setbacks, and uses. There was public input and a lot of discussion that went into the Code. This hotel should be allowed. It is too late to make any Code changes today, but the City can revisit the Code. He believed there was a good case for making the Code language clearer. This situation informs him about the work the City needs to do on the Urban Core. For those who have an issue with hotels and large buildings going up, talk to your Councilor and allow them to work on this in the future. However, right now, the Council must work with the Code as it exists today.

Councilor Nemlowill said she spent nine years on the Planning Commission and four years on the City Council and this is one of the toughest decisions she has had to make. She would hate to be the developer in this case because she knew what it was like to feel like you are being jerked around by a government organization when trying to move forward with a good project. She was not convinced that the proposed hotel was character compatible when it comes to mass and scale. Being a part of the Riverfront Vision Plan from its inception, she believed the intent of the BVO and Section 14.115(B)(2)(a) absolutely applied to new construction. She leaned toward denying the appeal or requesting that City Council modify the DRC denial by requiring the height to be reduced to 35 feet.

Mayor LaMear stated that no matter what our personal beliefs are, whether we want a hotel or not, whether we believe 45 feet is too high, City Council must vote on the Code that is before them. She planned to vote to approve the appeal because she believed the Appellants had satisfied everything they had been asked to do. She believed that the building would retain significant original characteristics of scale, massing, and building materials along street facades and that the building form is a simple geometric shape.

Planner Johnson confirmed that the majority of City Council agreed that Section 14.115 was applicable, but that the proposed hotel met the criteria.

Councilor Brownson said the Code language did not make sense and was odd to read. He did not believe the language was clear.

Staff requested direction on preparing findings in support of Council's rationale. City Attorney Henningsgaard confirmed with the Councilors that there was agreement on the notion that the guidelines cannot be used to overrule the standards and the proposal meets the standards. Planner Johnson understood and said she would need to figure out how to state that the proposal was in mass and scale with whatever character.

Councilor Jones did not want to establish a principle that the guidelines can never be used to modify the Council's decision on a proposal that is within the standard. If all the buildings in the BVO were two stories or less, he would say this proposal did not meet the characteristics of scale and massing in the BVO. He believed the Applicant had adequately met the scale and massing because there are so many massive buildings in the BVO already. Mass is defined as volume determined by a mathematical formula, not height alone. The Astoria Warehousing building is a massive building with a cumulative mass that far exceeds the proposed hotel. In this particular instance only, he believed this hotel met the scale and massing.



Councilor Brownson reminded that Section 14.113 specifically states that standards trump the guidelines when there is a conflict anywhere in the Development Code. The Council that adopted this Code said the setbacks, height limits, and square footage captured the appropriate maximum massing of the BVO. Section 14.115 starts off by saying it applies to renovation and new construction, but then applies guidelines that do not apply to new construction mixed in with guidelines that possibly do. That is the problem.

Councilor Nemlowill said the City did not embark on the Riverfront Vision Plan out of fear of development that already existed; it was out of fear of waterfront development that could come. At the time, there were 17 proposed waterfront condominiums. So, the idea that this only applies to existing structures is ludicrous.

Councilor Brownson asked why 45-feet was allowed if that was the case.

Councilor Price believed 45-feet was adopted because the Council was relying on the fact that the purpose of the BVO would be fulfilled. There were many ifs involved which were not applied in this case.

Councilor Brownson clarified that he was trying to stay within the bounds of the Code that is before the Council.

Planner Johnson said Staff would prepare findings that show the differences of the interpretations and a final finding on whether the proposal has met the criteria to proceed with the construction of this design. Discussion can be included in the findings to show the differences, but the bottom line will consider whether the proposal will get approved at the proposed height and design.

Councilor Nemlowill said the appeal procedures listed in the Staff report stated, "upon review, the reviewing body may affirm, reverse, or modify the decision of the lower body or Staff." She recommended modifying the decision to require a 35-foot height limit.

Councilor Jones believed the guidelines applied to new construction and that the proposal met the guidelines.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones to tentatively approve Appeal 18-05 by Mark Hollander and direct Staff and the Appellant's attorney to prepare revised Findings of Fact to be considered on December 20, 2018 at 6:30 pm in City Hall's Council Chambers. Motion carried 3 to 2. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilor Price and Nemlowill.

**Item 4(b): Review of Findings for Appeal 18-04 by Sam Mullen on behalf of Hollander Hospitality of the Historic Landmarks Commission decision to deny New Construction request NC 18-01 to construct a 29,782 square-foot four-story hotel at 1 2<sup>nd</sup> Street.**

On June 25, 2018 the Historic Landmarks Commission (HLC) and the Design Review Committee (DRC) held public hearings and respectively reviewed a New Construction Request (NC18-01) and Design Review Request (DR18-01) to construct a four-story hotel at 1 2<sup>nd</sup> Street. The location is within the Bridge Vista Overlay Zone (BVOZ), and adjacent to historically designated structures, which triggered review by both groups. The HLC and DRC both voted to tentatively deny the requests at their June 25, 2018 meetings, and formally denied the proposals with revised Findings of Fact at their respective meetings on July 10, 2018.

The denials were subsequently appealed by the applicant on July 25, 2018. Public notices for the appeals were sent, and a combined public hearing on the HLC Appeal (AP18-04) and DRC Appeal (AP18-03) was held at the August 23, 2018 City Council meeting. At that Council public hearing, the applicants submitted revised proposed plans. The Council tentatively approved the Appeal and reversed the HLC denial, thereby tentatively approving the New Construction Request (NC18-01) pending adoption of Findings of Fact. The appellant was directed to have their attorney prepare revised Findings of Fact to be brought back for consideration at a subsequent Council meeting. At the August 23, 2018 meeting, the Council remanded the Design Review Request (DR18-01) back to the Design Review Committee for additional consideration. The appeal of the DRC decision is addressed in a separate memo to the Council.

The revised plans submitted with the initial appeal differ from those previously reviewed by the HLC and at the first DRC hearing. However, on appeal and in accordance with Development Code Section 9.040.G.1, the Council may modify the decision of the HLC. Revised Findings of Fact to approve the HLC Request were prepared by the applicant and are currently under review by City Staff. Once a final draft has been prepared

they will be presented to the Council for consideration at the December 12, 2018 and or December 20, 2018 special meetings. The public hearing on this request was closed at the August 23, 2018 meeting and no new testimony may be taken without additional public notice. Council will need to review the new design and consider adoption of the Findings of Fact on Appeal (AP18-04) for New Construction Request (NC18-01).

Oregon Revised Statute Section ORS 227.178(1) requires that land use decisions, including appeals, be resolved within 120 days from the date a complete application is submitted unless the applicant grants an extension. The original 120-day review time would have expired on August 29, 2018 but the applicant has extended the date for additional days to December 21, 2018.

Once a final draft set of findings are prepared, they will be sent to City Council as a part of a supplemental staff report. If the Council determines the proposal meets the HLC criteria for approval, it would be in order for Council to adopt the Finding of Fact on Appeal (AP18-04) for New Construction Request (NC18-01) to support the Council's tentative decision on August 23, 2018 to reverse the HLC denial, thereby approving the New Construction Request.

City Manager Estes reminded this public hearing had been closed and confirmed this item would be continued to the December 20, 2018 meeting where Staff would present the Findings of Fact based on the Council's direction and 3 to 2 vote to approve the appeal.

Councilor Price stated she was very concerned about this decision because it set some very serious precedents. She asked Councilors to rethink the request.

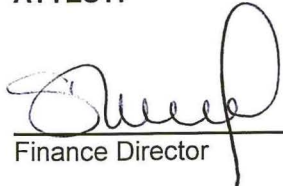
**NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)**

Sarah Bardy, 1661 Irving, Astoria, suggested a park bench be placed in front of the hotel containing the names of the Councilors who voted in favor of the hotel so that the community never forgets who started this slippery slope.

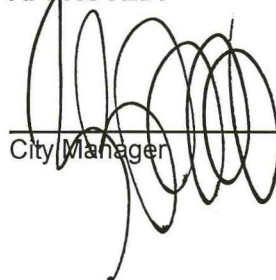
**ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:51 pm.

**ATTEST:**

  
\_\_\_\_\_  
Finance Director

**APPROVED:**

  
\_\_\_\_\_  
City Manager