

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 (via telephone), Price (via telephone), Brownson, and Mayor LaMear.

Councilors Excused: None

Staff Present: City Manager Estes, Planner Ferber, Contract Planner Johnson, Interim Parks and Recreation Director Dart-McLean, Finance Director Brooks, Interim Fire Chief Curtis, Police Chief Spalding, Public Works Director Harrington, Library Director Pearson, 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): Consideration of Findings: 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 2nd 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 2nd 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 are 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.

If the Council determines the proposal meets the DRC criteria for approval, it would be in order for Council to adopt the Finding of Fact on Appeal (AP18-05) for Design Review Request (DR18-01R) to support the Council's tentative decision on December 12, 2018 to reverse the DRC denial, thereby approving the Design Review Request.

Planner Johnson noted the following correction on Page 14 of the Staff report, "The Applicant argued that this **standard guideline** does not apply."

Councilor Price said that while a hotel is allowed in a C-3 zone, there are some important factors that go back to the objectives of the BVO, which are stated in Section 14.085. This project in its current form debatably meets two of the six objectives. The Fourth Amendment of the Constitution on search and seizure says "The right of the secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue." By leaving out the important factors, this project has put Article 4 there and leaves out the ability to do so with "probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." In this instance, she learned that the gross floor area, which has been interpreted by the City Attorney and the Development Code to be barely under the 30,000 square foot maximum at 29,614 square feet. This excludes the covered parking, the open stairs, and balcony. But building mass, which is the subject of this appeal, is different. Mass does include the features such as stairs, decks, and covered parking. So, the mass is above 30,000 square feet. Council has been debating the original characteristics of mass and scale. The Appellant views every building existing and that existed in the past to determine whether this new project meets the criteria. Using that as a guideline means anything could be built pretty much anywhere. This should be more site specific and not include the entire zone throughout history. It makes no sense that Council is not looking just at adjacent structures. Land use decisions are not meant to set precedents, but they clearly do because this Appellant is using every building ever built within the area as a precedent for his building. She asked for clarity on the findings on Page 14 of the Staff report that says, "a majority of the Council concluded that the subsection applies to both existing and newly proposed buildings, but stress that such compliance in this instance does not mean that mere compliance with development standards ensures compliance with design guidelines related to scale and massing. The Council expressly reserves the right on future applications to independently determine whether a project satisfies the scale and massing requirements of the subsection."

Planner Johnson explained the language came from the Appellants when Staff was working with the City Attorney on drafting the findings. The Council has said that while there is compliance with the development standards, the project still needs to comply with the guidelines related to mass and scale. And Staff has said this does not set a precedent for dealing with mass and scale on future projects.

Councilor Price believed the language demonstrated the difficulty that some Councilors had with the standards, guidelines, and definitions. This shows the lack of clarity. It would be a mistake to add additional lack of clarity in the findings in a case where precedent does count. When there is uncertainty among the Council, she did not understand why the Council would not side with the commissions that have voted several times.

Councilor Nemlowill added that she was not convinced the building is character compatible with scale and mass. She would not vote to adopt the findings. This is the first big project ever attempted in the BVO. The Code has been beaten up quite a bit, but if the Code were crystal clear, there would not be land use attorneys or a need for committees and appeals. This was a complex case. Even though there are a lot of disappointed people in the community, she believed the design was much better than the first design. She appreciated the developer creating a design is specific to Astoria. The BVO has provisions for view corridors, height limitations, and gross square footage maximums that did not exist in the area before. Hotels cannot be built over the water in the area anymore. There is some good that has come out of this process and she thanked everyone for their hard work and passion.

Councilor Jones reminded that the DRC was deadlocked with a 2 to 2 vote. Two members passionately felt that the guidelines and standards had been met and two members equally felt they had not. All four of those members were doing the best they could to do their jobs. He did not believe the Council was disrespecting their decision. Some of the newer buildings in the BVO, specifically the warehouses, were about the same mass as the historic canneries. A developer could propose a two-story building that is three times wider. He would rather have a smaller narrower building than a shorter wider building that would block significantly more of the river

views. He did not want to see a series of four story buildings the length of the BVO, but the City Council voted three years ago to allow 45-foot high buildings in areas in the BVO that are zoned for hotels. The City evolves through a tightly written Development Code through amendments where the community needs to change or where the City finds gaps and areas that are too subject to interpretation. If the community wants to limit buildings in the BVO to 35 feet, the way to move forward is to amend the Code, not to ignore it.

Councilor Brownson said he had a lot of sympathy for those who choose not to see a building this size and this shape in this location. However, he believed the Code and the guidelines in Section 14.115 have been difficult. He planned to work towards making the Code more straight forward for future situations. Section 14.113 says that in the event of the conflicts between this and other sections of the Development Code, buildings of this size and mass are allowed in that location. If those who approved the BVO in its existing form had wanted something less than that at the time, that would be the standard.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Jones, to adopt the Finding of Fact contained in the Staff report and approve Appeal AP18-05 of Design Review Request DR18-01R by Mark Hollander. Motion carried 3 to 2. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilors Nemlowill and Price.

Mayor LaMear read the rules of appeal into the record.

Item 4(b): Consideration of Findings: Appeal 18-04 by Sam Mullen on behalf of Hollander Hospitality of the Historic Landmarks Commission decision to deny New Construction request NC18-01 to construct a four-story hotel at 1 2nd 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 2nd 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.

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 Council Action: Motion made by Councilor Brownson, seconded by Councilor Jones, to adopt the Finding of Fact contained in the Staff report and approve Appeal AP18-04 of New Construction Request NC18-01 by Sam Mullen. Motion carried 3 to 2. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilors Price and Nemlowill.

Mayor LaMear read the rules of appeal into the record.

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

There was none.

ADJOURNMENT


There being no further business, the meeting was adjourned at 6:52 pm.

ATTEST:



Finance Director

APPROVED:



City Manager