

A special meeting of the Astoria Common Council was held at the above place at the hour of 6:00 pm.

Councilors Present: Brownson, Rocka, Herman, West, and Mayor Jones via Zoom.

Councilors Excused: None

Staff Present: City Manager Estes, Community Development Director Leatherman, Contract Planner Johnson, and City Attorney Henningsgaard attended via Zoom. The meeting was live streamed and recorded, and will be transcribed by ABC Transcription Services, Inc.

## REPORTS OF COUNCILORS

**Item 3(a):** Councilor Herman had no reports.

**Item 3(b):** Councilor Brownson reported that he attended the unveiling of the new Regatta 125<sup>th</sup> Anniversary monument at the finger pier by the museum. He also attended the graduation of Carlos Gomez to Engineer for the Fire Department.

**Item 3(c):** Councilor West reminded that there was still time to respond to the census, which only takes 10 minutes.

**Item 3(d):** Councilor Rocka had no reports.

**Item 3(e):** Mayor Jones had no reports.

## CHANGES TO AGENDA

No changes.

## REGULAR AGENDA ITEMS

**Item 5(a): Appeal (AP20-02) by Hollander Hospitality of Administrative Denial of the Extension Requests for Design Review Request (DR18-01R as appealed (AP18-03) and Historic New Construction Permit (NC18-01) as appealed (AP18-04) to Construct a Four-Story Hotel at 1 2<sup>nd</sup> Street**

Hollander Hospitality submitted a request to construct a four-story hotel at 1 2nd Street in 2018. The location is within the Bridge Vista Overlay zone, and adjacent to structures designated as historic, which triggered review by the Historic Landmarks Commission (HLC) and the Design Review Commission (DRC). Public hearings were held on June 25, 2018 before the DRC (DR18-01) and the HLC (NC18-01). The DRC rendered a decision on July 10, 2018 to deny the application for Design Review (DR18-01). The HLC also rendered a decision at their July 10, 2018 meeting, denying New Construction (NC18-01).

On July 25, 2018, the applicant appealed both denials to the Astoria City Council. A public hearing was held before the City Council on August 23, 2018 and a decision was rendered at the August 23, 2018 City Council meeting. The City Council reversed the Historic Landmarks denial and tentatively approved NC18-01 as Appealed (AP18-04). City Council delayed the final New Construction permit decision until the final Design Review permit decision. The City Council remanded the Design Review Commission's decision for denial of DR18-01 as Appealed (AP18-03) based upon a revised design submitted by the applicant.

A public hearing was held before the Design Review Commission on October 9, 2018 to consider the applicant's revised design. The Design Review Commission rendered its decision at the November 1, 2018 meeting and denied the revised design in the application for Design Review (DR18-01R).

This decision was appealed (AP18-05) to the City Council on November 13, 2018 by Mark Hollander, Hollander Hospitality. A public hearing on the appeal was held before the City Council on December 12, 2018 and City Council closed the public hearing and rendered a decision at the December 20, 2018 meeting. The City Council reversed the Design Review Commission's decision, adopted Findings of Fact and conclusions of law, and ordered that Design Review Permit (DR18-01R) as Appealed (AP18-05) be approved. The City Council reversed the Historic Landmark's decision, adopted Findings of Fact and conclusions of law and ordered that New Construction Permit (NC18-01) as Appealed (AP18-04) be approved.

With the final approvals of the permits on December 20, 2018, the applicant had two years (December 20, 2020) to complete "substantial construction" or obtain an extension to the approved permits. On April 22, 2020, the applicant submitted a request for a one-year extension to December 20, 2021 of approved Design Review Permit (DR18-01R) as Appealed (AP18-03) and Historic New Construction Permit (NC18-01) as Appealed (AP18-04). The extension was processed as an Administrative Permit pursuant to Section 9.100.B.1.a and was denied on June 18, 2020. The primary basis of the denial was that the Development Code has been amended and the permits as approved are not in compliance with the new Code sections in accordance with Permit Extension criteria 9.100.B.1.b. Throughout Section 9.100.B.2 the Astoria Development Code provides that the granting authority "may" allow a permit extension. The use of this word provides the City discretion in granting any extension request. The City Council has made significant code changes relative to design, size, and location of any new construction in the Bridge Vista Overlay Zone where this project is located.

A Notice of Appeal was submitted by Hollander Hospitality on July 2, 2020. The appeal asks that the Administrative decision be overturned based on the following issues: Specific criteria appealed are Development Code Sections 9.100.A.1, 9.100.B.1.a, 9.100.B.1.c, 9.100.B.2, and "Exercise of Discretion". The appellant notes the following as the basis of the appeal: "decision is arbitrary and capricious in that it provides no basis for the denial on discretionary grounds"; progress has been made on the project; and "Exercise of Discretion" is not a criterion for permit extension review. The appeal hearing is limited to the Permit Extension criteria listed in Section 9.100 and should not include discussion concerning the design or issues raised during the original hearings on the proposal.

A record of the Permit Extension Request and Appeal is attached. Revised findings of facts, as well as additional public comments are included in the packet. A public hearing on the Appeal of the Administrative decision has been advertised and is scheduled for the August 6, 2020, City Council meeting at 6:00 pm.

It is recommended that the City Council hold a public hearing on the appeal, review new testimony, and consider the Administrative denial of the one-year Permit Extension Request for approved Design Review Permit (DR18-01R) as Appealed (AP18-03) and Historic New Construction Permit (NC18-01) as Appealed (AP18-04). The City Council will need to adopt applicable Findings of Fact which include the basis of their decision. Should the City Council deny the appeal which would deny the permit extension, the findings of fact to support the decision are attached. Should Council approve the appeal which would grant a one-year extension to the two permits, staff recommends continuing final deliberation to the August 17, 2020 City Council meeting at 7:00 pm so new findings of fact can be prepared.

Mayor Jones asked if anyone objected to the jurisdiction of the City Council to hear this matter at this time. There were no objections. He asked if any Councilors had any conflicts of interest or ex parte contacts to declare. There were none. He asked Staff to present the Staff report and recommendation.

Planner Johnson presented the Staff report via PowerPoint and noted that all correspondence had been presented to the Councilors either via email or as part of the Staff report.

Councilor Herman understood that one of the requirements for determining whether an applicant can receive an extension is that substantial progress had occurred. Progress was described in the Code as construction of up to one quarter of the building's value. Planner Johnson responded that the Code defines substantial construction as walls being constructed up. If there is substantial construction, the permit is valid and vested, so an extension would not be necessary. Because walls have not been constructed, the Applicant needs an extension. The permit criteria states that progress should be made. Progress is the behind the scene work like geologic and engineering work. In lieu of progress, the Applicant can submit documentation show poor economic conditions have prevented the progress.

Mayor Jones opened the public hearing at 6:18 pm. He explained the procedures governing the conduct of public hearings to the audience and advised that handouts of the substantive review criteria were available from Staff. He called for the Appellant's testimony and confirmed he would allow 15 minutes for their presentation.

Steve Holtberg, [20:22] Attorney, representing Hollander Hospitality, said the only question before the City Council is whether the Applicant had demonstrated that poor economic conditions exist in the market that are biased against proceeding with the project. The Staff report and Staff's earlier decisions make it clear that all of the other approval standards for an extension have been met. He asked the City Council to follow the requirements of the Code, review the evidence, and conclude that economic conditions are not right for a hotel project at this time. He also asked that the Council reverse Staff's decision and issue a one-year extension. There are two paths for a permit extension. One is to demonstrate substantial progress. The application did not assert that substantial progress had been made. He focused on the general economic conditions. The application was submitted during the pandemic when it was not right for a hotel project. Satisfaction of either substantial progress or poor economic conditions entitles the Applicant to a one-year extension. The economic condition is the only issue before the Council. The Staff report and Staff's decisions concluded that even if there were economic conditions in place, "because the Applicant has literally done nothing to advance this project, even if the Applicant had convinced Staff that poor economic conditions would advise against the proceeding, the Community Development Director would exercise discretion and deny this request." He did not believe that was how the Code reads or that the Code gives the City that type of discretion. The sole obligation is to examine the evidence to determine whether there are poor economic conditions in the market. It is inappropriate for Staff to focus on the progress or lack thereof because that is not what the Applicant applied for or what he is arguing. His written testimony demonstrates what progress the Applicant has made. Additionally, he provided substantial evidence demonstrating that the economic conditions are not right at this time. The Code is very clear that he simply has to demonstrate that economic conditions do not advise going forward with this project. He provided three separate letters from three separate lenders and a summary chart showing the performance of hotel projects throughout the nation and in the region. The letters make it clear that economic conditions are not right for a hotel project at this time. The evidence is really clear. New construction loans for hotels are nearly impossible to obtain at this point. Hollander's long-standing lending partners consider Hollander a valued client but are unwilling to make new construction loans for hotels at this point. This is understandable given the nature of the pandemic. Staff relied on the fact that there are already two hotel projects underway in the city. One is Buoy Beer's renovation of an existing building and the other is the Home2 project near Youngs Bay. The Buoy Beer project is not new construction. The renovation of an existing building is very different from trying to get construction financing for a new building. The Home2 project has not yet received building permits and there is no construction activity on the site. Therefore, he believed it was inappropriate for Staff to conclude that economic conditions are fine because there are two hotels under construction because that is not the case. Evidence and testimony shows that it is impossible to get construction financing for a new project. The Staff report indicated that the use of the word "may" in the Code makes it appropriate for the Council to just say no. He did not believe that was what the Code says. Where an Applicant demonstrates compliance with all of the criteria, as he has, the Council is required to issue an extension of the permit. The Staff report focused on changes to the Code. He realized the City had made changes to the Bridge Vista Overlay (BVO) and that those changes may preclude development of the same project. However, that is irrelevant to the City Council's decision because the Code clearly states that appeals on permit extensions shall be limited to the issues relevant to the permit extension criteria only, and not to issues relevant to the original permit approval. There is no dispute that the changes to the Code do not apply to this appeal. It is contrary to the Code and irrelevant to the Council's decision. It is not appropriate to say we meet the standards, but Staff will deny the request anyway because the Code has been amended. He asked the Council to follow the Code and focus on whether the Applicant has demonstrated that economic conditions in the market advise against proceeding with the project. He asked that the Council reverse Staff's decision and issue a one-year extension. He also requested that the record be left open, as the Applicants were not waiving their right to submit final argument under ORS 197.763.

Mark Hollander said he had been thinking about building a hotel in Astoria for quite some time. He entered the market in 2015, and has been developing and operating hotels for a long time as a family business. He'd been through a lot of ups and downs and has seen a lot of tough times in the industry, but this is absolutely the worst. A lot of hoteliers are hanging on by the skin of their teeth right now. He believed many hoteliers would go under. At one point, 50 percent of the hotels in Washington and Oregon were closed completely. Recovering from this will be a process. The company was pretty conservative and they have been told by their lenders that they were one of the best. However, they are still not willing to offer a loan for new construction. Once things open up, the process of building would be quick, but the company will have to be in a position to submit all of their plans. They

had been working on this project behind the scenes for quite some time. The City does not see the details of everything they had been working on, but they would be able to move fast once they are ready to pull the trigger on a project and get it going. This is not a big project and it should go well. They would have a general contractor work on the project for them and they are pretty confident in the experience that their general contractor has. They've built over 75 hotels and have experience in this market and in Seaside. He wished they were in a different position. He was flabbergasted that someone would say this is still a good time to build a hotel. Everybody has this type of project on hold right now. He believed an extension is in order. He would continue to keep working on things behind the scenes and be ready to pull the trigger as quickly as he can get a loan lined up. He submitted a fair number of detailed plans as part of the application. The building interior is already designed and the rooms would not be altered at all. It does not take any extra work for the architects and engineers to complete that work. He hoped the Council would take into consideration the situation he was in. He hoped he could do something soon.

Mayor Jones called for any testimony in favor of the appeal.

Barbara Pinder [38:06] P.O. Box 221, Astoria, said she was in favor of developing the waterfront and not leaving it derelict as it is now. It is important to improve the situation on the waterfront.

Christian Lindt, P.O. Box 221, Astoria, said he had been in town for several years trying to help get some activity on the waterfront. He brought a ferry boat to Astoria a few years ago and that turned sideways on him. However, he would continue to try to help develop and bring the city to a functioning waterfront city, not just a place that people drive through.

Mayor Jones called for any testimony opposed to the appeal.

George Hague, 1 3<sup>rd</sup> Street, Astoria, asked City Council to support Staff, who recommended denial of the extension even if it looks like the City will need to defend that decision in court. The developer did everything possible to push this massive project just six months before the BVO's more protective standards. The developer did very little over the next 19 months except allow the deterioration of the project site. Developers do this so decision-makers will think that something must be approved in order to make the area look better. The lack of permits and work on the site more than justifies denial of the extension. Investing in real estate does not guarantee anything and this project should not be something that is guaranteed to this developer or anyone associated with them. He asked the Council to consider the strong feelings about this 50-foot hotel. The developer does not need to meet the BVO requirements that are now in place, but they have not even met the other requirements for an extension. He recommended that the Council deny the request, which would make many people in Astoria very pleased.

John Ryan, 2496 Mill Pond Lane, Astoria, said the Applicant keeps saying they cannot get a loan, but the Council should not judge their ability to get a loan because they are an outsider in Astoria. The hotels in Astoria are full on weekends, even in this consideration. There is a lot of general activity going on in Astoria, so this is not a dead community. Any bank that is willing to send money out and if they have the right rates and the right deal, they will loan money to this project. His neighborhood has five house building projects going on. The people who are building here are able to get loans. The Council should judge some of the economies of an outside developer getting outside loans and what the criteria is for getting an acceptable loan. Maybe it's more profit than value to Astoria.

Matt Gillis, 11650 SW 67<sup>th</sup> Avenue, Suite 210, Tigard, said he had submitted written comments. The permit extension does not comply with Code Section 9.100(2)(b), and the Comprehensive Plan has changed with new criteria since the permit was approved. The project should comply with the 35-foot height restriction in the new Code criteria. No substantial construction has been completed. The Applicant is talking about loans, but it has been 14 months since the permit was approved. If he was a builder, he would have a loan approved three or months after the approval. The Applicant had significant plans drawn up prior to getting approved and they have had 14 months to get approved prior to Covid-19, so Covid-19 should not be a consideration at all. The criteria has not been met for an extension. His written comments are based on the Code criteria and not on opinion. There is no reason to extend the permit. The developer should be required to bring their hotel up to the current Code under the Bridge Vista plan, which reduces the height. This is the same project that created an uproar across the whole city. The Applicant should not be allowed to build over 45 feet with all of their additions. The 35-foot height would be great if the Applicant redesigned the building to meet the current Code. The building is way

too high for the location and it will block the views from all of the homes behind it. The criteria for an extension has not been met because the Code has changed. The Applicant has not made significant construction and they had 14 months to get the loan prior to Covid-19. Even the loan issue should have been dealt with prior, but the Applicants did not move it forward. He agreed with Staff that the request should be denied even if the decision is appealed to the Land Use Board of Appeals (LUBA). Everyone in the city would agree that is the right thing to do.

Mayor Jones called for testimony impartial to the application.

Chris Farrar, Astoria, understood that the issue was about an extension and not the nature of the project. He opposed having the big hotel built down there all through 2018. He testified numerous times, but that is not the issue tonight. The permits were granted and the business was given a chance to build the hotel. The city needs good strong businesses to provide jobs. This project could have been one that provided construction jobs and jobs for the operation of the hotel. There was also going to be a restaurant inside. Right now, jobs are scarce. The City made a commitment to this business that they would have the go ahead to build even though the vast majority of the residents were strongly opposed to it. In 2018, the Council said they met the criteria. However, the way the place looks right now says what kind of a business this is that comes into town, makes a big splash and causes a big argument, and proposes to build this project but does virtually nothing on it. Last year was one of the best economic years in the history of the United States, but things have turned around. The Applicant had a year of excellent economic conditions. He could not imagine a bank not loaning the money back then. It is likely that nothing will change next year and they likely will not get a loan next year either. He believed the word "may" had relevance here. The Council may extend the permit and does not have to.

Mayor Jones called for the Appellant's rebuttal.

Mr. Holtberg responded that he had asked to keep the record open, but based on the testimony, he retracted that request and his right to submit final argument. The Applicant did not start the hotel and therefore should be penalized because they did not start it over the last 14 months. The pandemic was not foreseeable. The Applicant had no idea there was a pandemic coming and there is no obligation in the Code to start a project. The project was given two years and about a year and a half in, the pandemic hit the hospitality industry harder than any other industry. That is the sole reason for the delay and the request. The economic conditions now make it impossible to move forward.

Mayor Jones called for closing remarks from Staff. There were none. He closed the public hearing at 6:54 pm and called for Council discussion and deliberation.

Mayor Jones stated that Development Code Section 9.100 provides that permits expire after two years and that an extension may be granted. The use of the word may is an indication that granting the extension is a matter of discretion for the decision maker. The decision maker may not exercise that discretion unless the criteria in Development Code Section 9.100(2)(b) have been met. If the criteria are met, that does not entitle the Applicant to an extension or require that an extension be granted, but allows the City to exercise its discretion to grant or not grant the extension. The project was approved in a three to two vote by the previous Council despite widespread community opposition because the Council found the project met the requirements of the Code at that time. During the December 2018 meeting, when the Appellant's appeal was upheld, he had stated that if the community no longer supported the Code that allowed the project, there was a public process to change the Code. That process was initiated immediately after he and Councilors Rocka and West were sworn in. The Code was changed after a thorough public process and this project would not longer be permitted. The Appellant was well aware of all of these changes as they were being discussed in 2018. He expected that the developer, knowing how the community's sentiment had changed and how the Code had changed, would have dropped everything on December 20, 2018 to fast track the project to ensure completion of substantial construction within two years. It was very predictable that the City would not choose in a discretionary fashion to grant an extension to a project which the community and the Code now opposed. He was inclined to agree with Staff's determination to deny the extension request.

Councilor West said she concurred with Staff's decision to deny the extension. She was concerned that so little progress had been made. Except with the joint permit application with the Army Corps of Engineers and the Department of State Lands, there have been no applications for a building permit, a grading permit, or geological reports that would have demonstrated any type of progress in the last 16 months. On the joint permit application,

the Applicant indicated that the construction timeline would begin February 2019 with an estimated completion date of December 2019. She was not sure what the hold up was, but that was well before the pandemic. The current Council spent a lot of time on the changes to the BVO. The Appellant has stated that cannot be considered because the changes did not apply at the time the permit was granted. However, there is nothing in Astoria's City Code or Oregon State Law that says the Council cannot take the changes into consideration. This building would not comply with the new height limitations, building shape, and building orientation requirements. The Council is allowed to consider the changes when considering this extension. She wanted to be sympathetic with the economic hardship argument, but the documentation the Appellant provided from the financial institutions had the opposite effect. Nowhere did the documentation say that a loan had been applied for or denied. She would think that for a project of this scale, financing would be one of the first things to be secured. It is not the City's responsibility to ensure that the Appellant secures financing for this project. At the local level, development has never been stronger.

Councilor Herman stated the Council is not required to approve this request. On December 20, 2018, the Council granted Mr. Hollander the right to move forward with the hotel development. Covid-19 did not close the coast in Clatsop County until mid to late March 2020, which was 16 months later. Mr. Hollander stated this was a small project, which indicated to her that he would be able to secure financing because he is an experienced developer and lenders hold him in high regard. The attorney's reasoning that Mr. Hollander could not have foreseen the pandemic coming made absolutely no sense to her. No one can foresee anything coming down the road in life. That is the reason to move quickly, especially in light of the fact that the Council dramatically changed the zoning on the waterfront. Those changes were greatly inspired by the huge amount of dissention over this hotel project. She did not see any reason to grant an extension due to poor economic conditions, and she contended that the County's economic conditions were not poor. The unemployment rate is very high right now because a lot of restaurants are still restricted, but judging by the congestion coming in to the north and south ends of the county, it is as bad as ever, perhaps worse because not nearly as many people are flying to go on vacation. People are driving to the coast and hotels in Astoria have been open 100 percent since July 26<sup>th</sup>. Astoria was only closed to hotel traffic for about two and a half months. That will affect the lodging tax revenues, but as soon as the beaches and hotels reopened, people flocked back to the coast. The Appellant had 16 months to apply for financing, but did not, and no progress had made. Therefore, she would uphold the denial of the extension.

Councilor Rocka said that last year, a lot of the meetings the Council had with state and local tourism people had to do with how to limit the amount of tourism that flooded the area. Those discussions went on through March 2020. Given the public response to the application, he had no idea why the developer would do nothing for 15 months and then at the 11<sup>th</sup> hour say he could not get financing. Last year, getting financing would have been easy. The site now looks exactly as it did in December 2018. Nothing has been done. Permits have not been pulled. The argument does not hold together. He would vote to support the Staff's decision.

Councilor Brownson said he believed that a year from now, significant changes would be made to way Covid-19 is dealt with. International travel may be slowed down, but local travel would expand. People will be looking more and more to come to visit Astoria. The opportunity for a hotel would have been fine had the Applicant started building in a timely manner. He and Mayor Jones voted in favor of the hotel based on the Code that was in place. As the year went by, he was amazed that nothing was happening. The Applicant is missing an opportunity. Going forward would have done a service to this community. During this downtime, contractors are looking for work and the Applicant could be stimulating the economy. He supported Staff's findings. Astoria is still a great market and he looked forward to the Applicant coming back with new hotel plans that meets the standards.

Mayor Jones understood the consensus was to deny the appeal.

Planner Johnson recommended the findings be amended to reflect the reasons for the denial, as follows:

- Page 10, Paragraph 3, Sentence 5 – “The City finds that the economic effects of the pandemic are **recent and** temporary. The fact that ~~two~~ **one** other hotel operators have **operator has** obtained building permits in 2020 and ~~are in the process of construction~~ **one in the building permit stage**, provides evidence that economic conditions in the Astoria hotel market do not advise against proceeding with this project.”
- Page 10, Paragraph 4, add the following sentence to the end of the paragraph – **“The Council finds that the Appellant could have proceeded with the project within the first year and a half of the permit and did not show progress during that time. The Covid-19 closures were only from March to June, and therefore, the Council finds that the project could have proceeded in a timely manner.”**

City Attorney Henningsgaard confirmed that he had no problems with the Council making a final decision now based on the revised findings.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Rocka, that the Astoria City Council adopt the Findings and Conclusions contained in the Staff report, as amended by Staff (above) and deny Appeal AP20-02 by Hollander Hospitality. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, West, and Mayor Jones; Nays: None.

Mayor Jones 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 7:18 pm.

**ATTEST:**

  
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Finance Director

**APPROVED:**

  
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City Manager