

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Brownson, Rocka, Herman, Hilton, and Mayor Jones.

Councilors Excused: None

Staff Present: City Manager Estes, Parks and Recreation Director Dart-McLean, Community Development Director Leatherman, Finance Director Brooks, Fire Chief Crutchfield, Police Chief Spalding, Public Works Director Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting was live streamed and recorded, and will be transcribed by ABC Transcription Services, LLC.

Mayor Jones announced that Astoria Police Officer Sam Whisler had passed away on July 9, 2021. He gave an overview of Officer Whisler's career and called for a moment of silence.

Chief Spalding commented that Officer Whisler was a dedicated officer who left positive impacts on the community. He announced that a celebration of life service would be on Wednesday at 1:00 pm at the Seaside Convention Center.

REPORTS OF COUNCILORS

Councilor Herman expressed condolences to the family of Officer Whisler. She reported that she attended the badge pinning ceremony for Firefighter Royce Cone. She also listened in on the most recent Homelessness Solutions Taskforce meeting and she was impressed with the work being done by the two new homelessness liaisons. She and her husband toured the Bowline Hotel. Her first Meet the Councilor event has been scheduled for August 4th at 4:00 pm in the Flag Room at the library.

Councilor Brownson offered condolences to the family of Officer Whisler. He reported that his first Meet the Councilor event would be on July 31st at 9:00 am at Peter Pan Market. He met with Representative Webber at the Port to discuss city politics and the needs of rural cities. He also met with Port Commissioner Dirk Rohne to establish a good working relationship with the Port. The Port is so important to the health of Astoria. He also attended a meeting with the Association of Oregon Counties (AOC) and League of Oregon Cities (LOC) on local government broadband. He planned to discuss broadband access and affordability with the County and the Broadband Action Team. Tillamook has fiber optics and he wanted to figure out how to expand that to the county and to Astoria.

Councilor Rocka shared his concern for Officer Whisler's family. He reported that the Homelessness Solutions Taskforce was working on a drop-in center for the homeless in the downtown area. He also listed to the webinar on broadband. Astoria has decent broadband, but the pandemic required people to rely on internet for so many things, which are difficult to do in areas with slow speeds. The LOC is advocating for everyone in the state to have gigabyte speeds. He reported that the city is heavy with tourism and he wondered about the impressions of those who were in Astoria for the first time. He also reported that theatres were among the hardest hit by the pandemic. They were the first to close and the last to open, so all theatres were struggling to survive. He asked everyone to support the Liberty Theatre, Performing Arts Center, and theatres in surrounding communities.

Councilor Hilton offered condolences to the Whisler family. He also offered condolences to Scott Parker's family. The Parker family has been in Astoria for a long time and Mr. Parker passed away on Saturday. He reported that his constituents were excited about the improvements to the crosswalk on 23rd Street. His constituents also expressed excitement about the denial of the scooter program.

Mayor Jones reported that he met with Representative Webber, who helped secure \$10.8 million in infrastructure funding and \$400,000 for the library. He toured the new navigation drop-in center for Filling Empty Bellies and Beacon Club House. He was impressed by both organizations' plans to be mindful of their impacts

on the community while providing a needed service not being provided anywhere else. He also attended a meeting of the North Coast Regional Advisory Council, the Columbia Pacific Economic Development Council and the Area Committee on Transportation to welcome Sarah Lu Heath as their new staff member. Lastly, he attended a window restoration workshop in the Oddfellows Building. The windows are being restored by an all-female crew of experts from the National Trust for Historic Preservation, local Job Corps students, and other experts from around the country.

CHANGES TO AGENDA

No changes.

CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 4(a) City Council Minutes of June 16, 2021
- 4(b) City Council Work Session Minutes of June 16, 2021
- 4(c) City Council Minutes of June 21, 2021
- 4(d) Parks Advisory Board Minutes of June 23, 2021
- 4(e) Astoria Planning Commission Minutes
- 4(f) Historic Landmarks Commission Minutes
- 4(g) Liquor License Application from Gaetano's Market and Deli, doing business as Gaetano's Market and Deli, located at 1004 Commercial Street for a Limited On-Premises Sales License

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Herman, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

REGULAR AGENDA ITEMS

Item 5(a): Public Hearing for Appeal (AP21-04) by Terri Delafiganieri of Astoria Planning Commission Denial of Variance Request (V20-19) to exceed allowed 30 percent lot coverage at 1312-1316 Kensington Avenue in the R-1 Zone

Variance (V20-19) and Exterior Alteration (EX20-07) applications were received by the Community Development Department on October 15, 2020 for repair of a back-yard deck on a historic home at 1312-1316 Kensington. The deck is proposed to be repaired and extended, along with replacement of the stairs to the deck. The Exterior Alteration application went to the HLC but has been withdrawn by the applicant due to the APC's denial of the Variance application. The Appeal application before you is specifically for the Astoria Planning Commission's decision on the Variance. Ms. Delafiganieri is requesting a variance from lot coverage so that she can convert the existing deck that is designed for two-family use to a deck for single-family use. It would be in order for the City Council to hold a public hearing and make a decision on whether or not to uphold the Planning Commission's denial of this request.

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 member of the Council had any ex parte contacts or conflicts of interest to declare.

Councilor Herman declared that she lived in the neighborhood one block from the Appellant. She had no contact with the Appellant but did receive a letter from Ellen Fry a few months ago, which was included in the Agenda packet. She told Ms. Fry she was unable to discuss this matter. She believed she could weigh the matter fairly.

Councilor Brownson declared that he had done work for Scott and Ann at their house. He had also worked on the house in question before it was owned by the Appellant. He was familiar with the property but believed he could judge this matter fairly based on the evidence.

Councilor Rocka declared that he knew some of the people involved in this matter but he had not spoken with any of them about this issue. He did not believe he had any conflict of interest and could vote based on the facts.

Mayor Jones 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 noted that Councilors received new testimony just before the meeting and asked if the Council wanted to hold an on the record or a de novo hearing.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Hilton, to hold a de novo hearing of Appeal AP21-04 by Terri Delafiganiere. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Director Leatherman presented the written Staff report via PowerPoint. She noted that after the Staff report had been published online, Staff received two more exhibits, which were available at the back of the room and had already been emailed to Councilors. Since then, Staff received one more exhibit, which had just been handed to Councilors and emailed to the Appellant.

Councilor Rocka noted one argument made to the Planning Commission was that R-1 zoning did not really exist anymore due to legislation passed by the State. He asked for Staff to respond to that argument.

Director Leatherman stated that trying to predict what the State would do was difficult. Currently, the City's Codes complies with State legislation.

City Manager Estes added that a population of over 10,000 people would trigger the elimination of a single-family zone. Since Astoria is still under 10,000 people, the State has not required the City to amend its Codes.

Mayor Jones noted that the statewide census data shows Oregon would get another congressional district. However, city level data has not yet been released.

Councilor Brownson stated the Appellant's goals could be achieved with alternative designs.

Mayor Jones called for the Appellant's testimony.

Begin Verbatim

Ronald Shader [no address stated]:

"I'm the husband of Terri Delafiganiere and I want to make this clear. It's still a duplex. It is not a single-family unit. It's a multi-generational home. My mother and my sister are going to be living on the one side of the house. But I'd like to turn my time over to a neighbor, Ellen, so she could speak for me.

Ellen Fry, 1351 Kensington, Astoria:

"I'm kitty corner across the street and Terri asked me to read. She has 10 minutes. She would like me to read her letter. Okay, so she says, 'Dear Mr. Mayor and City Councilors, I'm writing this letter to you to further explain my request for the variance and for the reason that I think the Planning Commission erred in denying my application for 1.23 percent variance of lot coverage. I understand that I'm already at 32.55 percent. I want to extend that lot coverage further by a mere 1.23 percent or three additional feet on a rebuilt deck on the back of my home. First, I want to let you know about my property and the overall project. The home listed as historic in the Shively McClure National Historic Register is important to me. I looked for a home that could serve as a multi-generational home for my family that could provide a place for me and my husband to age in place. Unfortunately, historic homes in Astoria were not constructed with aging in place in mind. My daughter and her family and Ron's mother are eventually going to move in with us when we can make the property safe for them to do so. Built in the 1900s as a duplex, this home is the finest example of a craftsman home in Astoria. According to the historic inventory form for my property, I am honoring the Craftsman style of the property and I'm lovingly restoring the property. When I purchased the property, the previous property owner did little maintenance and I have spent over \$500,000 in repairs and maintenance. I've replaced all the knobs into electrical wiring the LED, plumbing, the siding, and my next steps are the roof and the exterior deck. As I worked on the property, I haven't been able to determine how the exterior deck in the rear of the house is attached to the home. It is unstable and needs to be replaced. Due to the time period of my home, there is a bathroom with only a toilet located on a deck that has a jack and jill entryway into the toilet room from both sides of the deck. Both sides of the duplex access the toilet room from their respective decks. I need to replace the deck because it is not safe. As I said earlier in this letter, my intent is to age in place and to bring Ron's mom and other family members to live here in my home. This toilet room on the back porch is the only bathroom on the main floor. I need that bathroom to stay on the main floor so that Ron's mom and I can use it

due to our deteriorating ability to walk due to hip issues. Stairs are not possible for Ron's mom and are becoming increasingly difficult for me. As I rebuild the deck, I need to include a second exit for my home to address egress and meeting fire safety standards. I need the three-foot extension of the deck to allow access around the toilet room on the back of the home. Originally, I wanted a larger deck to entertain guests and family, which would have required a variance from the setback. Working with the City, I scaled back the initial proposal as much as I could, while still providing the three feet of ADA wheelchair access behind the toilet room to the stairs and provide a second access to my home. As I need it, I will replace the proposed stairs in the back with a ramp to avoid affecting the historic character of the home from the front along the street. I simply want to create this multi-generational home for my family. I'm only asking to extend three feet on the back of my porch and extend my lot coverage from the existing 32.55 percent to a total of 33.78 percent.'

And then she goes into meeting the variance criteria.

'One, the request is necessary to prevent unnecessary hardship. Astoria needs to be sensitive to our aging population and allow property owners to age in place. Over 20 percent of Astoria's population is over 65 years old according to the 2019 US Census Bureau. In order to age in place, minor changes are necessary. In my case, I need to increase the deck by three feet in order to provide a second exit from my home in case of fire. As noted, I have invested in this property and have made a number of improvements to increase the safety of the home from potential fire. I replaced knob into a lager wiring, consulted with professionals to understand the type of insulation that would also retard fires, and added wall insulation. And finally, I'm in the process of adding fire breaks in my staircase since it will serve as a chimney in case of fire today. The deck extension by three feet is a fire life safety issue for me and it was crucial to ensure that me and my family and have more than the front access to exit the home in case of fire.

Number two, the request will not be substantially injurious to the neighborhood. Adding three feet to my deck will not substantially injure my neighborhood. There is no evidence in the record that my deck will substantially injure the neighborhood. Ms. Lederer, in her letter dated November 12 2020, said that my original proposal would provide only a 17 foot setback from her property line. I listened and revised my plans to set back 20 feet one inch on the rear property line. Nothing in her letter describes how she is substantially injured or that any of the properties in the neighborhood are substantially injured. The Lederer's home appears to be less than the required 20 feet rear yard setback. So, her perspective may be marred by the fact that her home is not in compliance with the setback requirements in the zoning district. And that fact should not preclude me from using my property and attaining my secondary fire access while complying with the City's setback regulation.

Three, the request is necessary to make reasonable use of my property, as I described. I purchased this home with the intent of making it a multi-generational home for my family. That means that Ron's mother can move in, have access to the bathroom on the main floor, have two means of safe exit from the home. Also, as I age, I want to be able to stay in the home and finding stairs a challenge and having access to the bathroom on the main floor is crucial to reasonable function of the home.

Four, no conflicts with the Comprehensive Plan. My neighborhood is in the central residential area. Policy 2 states historic areas will be protected through zoning regulation and the use of public lands for relocation and structures. My home is in the Shively McClure National Historic District with over 243 historic properties including my own. My intent is to lovingly restore this home to its original grandeur while allowing my multi-generational family to live here. I want to grow old in this home. As you can see from this information and the information in the packet provided to you, the variance meets the criteria for approval.' And then she goes on to recusal of the Commissioner. 'I want to add that I think Commissioner Price was biased against my proposal and should have recused herself from the discussion and vote. State law ORS 227.1.803(a) requires that a Commission state the substance of ex parte conversations concerning the decision or action. ORS 227.1.183(b) also allows rebuttal of the substance of the communication. Commissioner Price stated that she had discussions with Ms. Lederer but believe that she could be unbiased. Commissioner Price lives in this neighborhood. For the minutes of the May 25 meeting, Ms. Price stated that she was acquainted with Ms. Lederer, the only person to object to my proposal, and had discussed with her hearing dates but nothing else contained in the application. I believe that is imperative. That is apparent from the discussion at the meeting that Ms. Price had additional discussions with Ms. Lederer or was more knowledgeable about the property than described in his statement because similar wording was repeatedly used by Commissioner Price and Ms. Lederer. Commissioner Price spoke about the necessity to maintain 30 percent lot coverage in the City, commenting that 1.23 percent has an impact on the City and it is a Planning Commissioners duty to uphold the Development Code. The Planning Commission's charge and State Law ORS 227, and the Astoria Development Code 1.125 Powers and Duties is to recommend and make suggestions to the City Council and to all other public authorities concerning streets housing, sanitation, district, solar and wind. In conclusion, my proposal meets the approval criteria, etcetera, etcetera. 'I urge you to approve my appeal. The Planning

Commission erred when denying my application for a variance of 1.23 percent exceedance of law. Thank you, Sincerely Yours.'

Mayor Jones:

"Thank you very much. At this time, I would invite testimony by persons in the room or online who wish to speak in favor of the appeal. You were just reading her statement. So, you may have three minutes to speak as yourself."

Ellen Fry, 1291 Kensington Avenue, Astoria:

"My house is kitty corner across from the house under appeal and no, I'm not directly affected by whatever my good neighbors do to the back of their house. I am directly affected by the attitude expressed both in the Astoria Planning Commission's denial of the variance request, and the most recent letter from the neighbor to the north. This month we all know is disability pride month. I've only recently joined the ranks of the disabled and the difficulties I used to see from outside I'm now experiencing from the inside. Two years, I traipsed all over Astoria, then I found myself using a cane, and two canes, and today I walk behind a four wheeled walker. We never know when disability might strike. The Planning Commission says the need to age in place is not sufficient reasoning to find that a hardship exists. The neighbor to the north amplifies suggesting that if aging in place is important, a property with limitations should not be purchased. This echoes comments I heard made by Commissioners during the variance hearing. I am offended that people with disabilities or with the foresight to plan for future disabilities would be dismissed so cavalierly. I think aging in place policies are good for Astoria. If the City Codes do not currently acknowledge this, then I hope the City Council can make that part of a Comprehensive Plan. I also hope if or when I find myself requiring a wheelchair for mobility that the future Planning Commission will look favorably on a variance for adding a ramp or elevator to my home. And tonight, I hope that this Council will approve the variance appeal of my neighbor. Owners of historic homes should be able to face the future without the fear that they will have to abandon their homes when their mobility is compromised. Thank you."

Mayor Jones:

"Thank you. Are there others who wish to speak in favor of the appeal? Any Zoom hands raised, Jen? Ms. Morley, you may have three minutes to speak in favor of the appeal."

Lisa Morley, 4908 Cedar Street, Astoria:

"I really didn't know this was on the agenda tonight. But I will say that I toured that home a couple of times looking to purchase it as an investment property. And based on the deferred maintenance, that's why we chose not to buy that property. Looking at the pictures of what they've done, it's astounding. I'm glad they purchased this. What a difference is made for Astoria to have that house returned to that, to the glory showing in these pictures. I'm blown away. I would highly support a variance for three feet of mobility access on that deck. And we would have liked to have done a lot of different things in that backyard when we looked at it, and a three foot for safety for secondary exit in case of fire. I would strongly ask that you allow this variance and I would just say congratulations to the folks that have done all this amazing work on this house. It was a beautiful house, but it needed hundreds of thousands of dollars. And they've done that and I believe that this variance should be allowed. Thank you."

Mayor Jones:

"Thank you, Ms. Morley. Are there others who wish to speak in favor of the appeal? Okay, seeing no hands raised, I now invite testimony of persons speaking against the appeal. Ms. Lederer, please come to the podium."

Ann Lederer, 1309 Jerome Avenue, Astoria:

"I'm here with my husband, Scott Reuter. It's very difficult to be portrayed as someone who is unsympathetic to those who have accessibility issues. That is not the reason that I am opposing this appeal. I believe that the Planning Commission correctly looked at the standards for granting a variance and found that there was not an extreme hardship. There wasn't a lack of any reasonable use. And although I did not use the word substantially injurious, they found that the expansion of the current zoning's maximum lot coverage would be substantially injurious. I'd like to point out that although the increase sounds very small at 1.23 percent, this is a grandfathered property that already exceeds the maximum lot coverage. And in fact, the total, if this is granted, we will have increased that maximum 30 percent by 12.6 percent. And again, that's of the 30 percent, not obviously 12.6 percent of the total lot. My real concern is that the Applicant has stated several reasons for

wanting to do this potential need based on aging in place. Some safety issues were stated briefly, but not really fleshed out. In the most current notice of appeal, the desire to have a better review from the outside, the Planning Commission I think correctly dealt with the stated reasons for the variance and found that they did not meet the standards, which were clearly stated. I do agree with Ms. Fry that aging in place is a real concern for many homes in Astoria. Many people here have historic homes, including ourselves, that are not lending themselves to that. I just do not think that it is the correct approach to grant a variance based on that when there has not been a comprehensive discussion by the City Council and appropriate zoning enacted to ensure these aging in place measures. If there are in fact variances given on an even playing field or are given thoughtfully, if this is granted, I am guaranteeing... Well, I'm not guaranteeing but I am pretty sure that there would be many requests for variances for people to take measures to allow aging in place. And that may be fine. But I think it would be much better dealt with by some thoughtful discussion and planning for what kinds of variances should be granted for those specific prospective hardships or difficulties. So, in short, it's very difficult to be challenging a neighbor. I don't like it. And I appreciate the work that the neighbor has done in the house. But we continue to feel that this variance to expand the deck, as Councilmember Brownson indicated, could be accomplished in terms of a first-floor bathroom by other measures in this almost 2000 square foot first floor. And I thank you for your time."

Mayor Jones:

"Thank you, Ms. Lederer. Are there others who wish to speak against the appeal? Is there anyone who wishes to speak impartially on the appeal? The Appellant now has five minutes for any rebuttal. So, are you still designated as the Appellants representative this evening? You don't have to speak for five minutes but you may speak for five minutes."

Ms. Fry:

"In conclusion, my proposal meets the approval criteria for a variance. I have a hardship. I need to have a secondary access that provides ADA access to my home. The objecting neighbor and letter did not provide any evidence that the project would be substantially injurious to her or to the neighborhood. So, the Planning Commission erred in finding that the proposal didn't meet the second criterion. Thirdly, to make reasonable use of my property, I need a second egress from the home. My request is for a three-foot extension of the deck around the bathroom to allow for that second egress. The proposal is in compliance with the Comprehensive Plan. As I stated earlier, Commissioners Fitzpatrick and Womack agreed that the proposal met the criteria. I believe Commissioner Price should have recused herself from this application as she lives in the neighborhood and is friends with the sole person objecting to the application and used similar language in the discussion period of the deliberation and Ms. Lederer used in her comments and letters. Thank you."

Mayor Jones:

"Thank you. Okay, if there are no other persons who wish to speak, then we will now close the public hearing. And Council, do you have any questions for the Staff or requests for any clarification from the Staff before we begin deliberations?"

Councilor Rocka:

"Mr. Mayor, I guess before we close the public hearing, I wonder if we could ask questions on the person who is seeking the appeal."

Mayor Jones:

"So, I can reopen the public hearing to do that. Is there's no problem with asking questions of anybody who spoke?"

City Manager Estes:

"At this point in time, it would be questions of the Appellant. If there were questions for any of the other individuals, we would need to give the Appellant final rebuttal once again."

Mayor Jones:

"Okay, so I'll reopen the public hearing so that any Councilor can ask questions of the Appellant."

Councilor Rocka:

"Well, I'd say there are a couple things about the about the appeal that bother me. I had the same thought as Councilor Brownson about design. And I'm wondering why that wasn't considered because it would have

avoided the conflict. Secondly, I've read that Ms. Delafiganiere said that you've already spent \$500,000 on this home. And we weren't provided with the interior layout of the home. But, you know, a question that couldn't help but occur to me is why leave the toilet out on the porch, and for what reason was it not brought in. And the third thing that bothers me is still the emergency. The emergency exit from the top floor is still proposed to be a ladder. And so, I'm wondering why we're not talking about a stairway that comes all the way to the top floor instead of still having a ladder because that certainly is not ADA compatible. So those are kind of my concerns as they stand and I appreciate hearing from you about them."

Mr. Shader: [1:11:56 off microphone, hard to hear]

"Yes, sir. We haven't addressed the stairwell from on the second floor. No, we have not. The reason we've had these plans drawn out is we can get down if we have a deck. You can actually get down off of the second floor because that makes it one story. It'd be much easier to get down from some other kind of a safety ladder instead of building a big old stairwell that seems like everybody was against that in the beginning. And it's the bathroom inside of the house. That means we'd have to tear out a stairwell or something in that manner to build a bathroom inside the house where we already have the sewage ran to the back of the house. And that costs. That would save about \$30,000 just in that alone. So, to build one inside the house, we were talking probably \$60,000 if we have to tear out the stairwells. And we're trying to save this house. It's a restoration. It's not a remodel. We've restored the moldings to their grandeur. I've had wood milled and the price of what these are now, it's just through the roof. We've just been trying. We moved here unintentionally. When we found that house, it kind of found us, but we love old buildings. And we just love the house and we're trying to restore it. We're not trying to change the exterior or the interior. We're trying to preserve it. And we're just looking to simplify a little bit, because you know, things are different from 1915 when the house was constructed and the bathroom was already there. So, we figured that's our easiest bet as to the bath. And my mother is going to be staying with us. She's 85 years old and has wheelchair. Terri is going to be having a hip replacement here pretty soon. And so, to build a ramp into the front of the house, we don't want to take away the integrity of the historic part of that house. So, we figured in the back of the house where it's not an eyesore for the community to see, which it wouldn't be because we constructed in the drawings, the way we put the rails, we constructed that off of the designs. The cabinet is inset in the wall. We took the design off of the inside of the cabinet. And we're adding that to the back of the house around the porch. So, we love this. We love your town. We love the area. And we are blessed finding this house. And if we could just simplify things. And why shouldn't a person who is handicapped be able to enjoy the view off the back deck? Sure, we have a backyard, which you can't get to it from the back of the house."

Councilor Rocka:

"One more question. I read that at this point, you don't know exactly how that back section is connected to the house. Are you going to have to disassemble that and entirely rebuild new or how you're going to do that? And does that include the bathroom? Or how does that work?"

Mr. Shader:

"Yes sir, what I'm going to do is I'm going to take all the siding off the back of the porch and the columns on the ground. I've got to fix some dry rot that goes across the back beam, the header board and on the back porch. It's got a lot of dry rot. So, I have to deconstruct it because I got to use the materials on the back the same as it is. But it's the interior structure that's behind them that will be behind the siding that has to be fixed. And we want to put it back the same way that it is now as it has always been. It's a restoration, not a remodel. Thank you."

Councilor Brownson:

"So, just to follow up on that just a little bit and you're saying it's a restoration, why not restore it to what it is as you found it, two doors, two stairways leading, giving egress from both sides of the house."

Mr. Shader:

"I can do that. I could still do that. We want to be able to get off the back deck. Even the front is sort of, the front of the house, I can't put nothing up there to get out of the front of the house. I can only put it on the back of the house. That's why I always push for a deck. My wife has a hip problem, and my mother, and I actually need to a knee replacement soon. My concern is fire life safety and hers was ADA accessible. And you know, even with that, it's just so hard going up stairs to go to the bathroom all the time too, for me with my knee injury. And so, we want to keep the bathroom downstairs and the only logical place to do it without like I said costing me \$60,000 is to use the bathroom that's already there on the back porch."

Councilor Brownson:

"I'm just not sure how relevant this is but except that you do talk in terms of aging in place. And great. It's good to have a bathroom downstairs. But what about the rest? It's only a half bath. What about what about taking a bath? What about showering? I mean, you still got to go upstairs. You still have to live upstairs."

Mr. Shader:

"Not necessarily, sir. You can design that bathroom where it's a shower. It's a seat on the toilet that drains to the center of the floor. The whole bathroom could be a shower and a toilet."

Councilor Brownson:

"So that's your intention to do that."

Mr. Shader:

"It's my intention to do that."

Councilor Brownson:

"Okay. That didn't show up anywhere in there."

Mr. Shader:

"Yes, there will be a shower."

Councilor Brownson:

"Okay, I can buy that. Thank you. So, since it's open, I would like to ask Ms. Lederer a question. I realize that they get an opportunity to rebut."

Mayor Jones:

"So, is there anything to prevent asking someone who's testified and then offering the Appellant other than time the opportunity to rebut?"

City Manager Estes:

"Correct me if I'm wrong, Mr. Henningsgaard. If a Councilor was to ask another individual who provided testimony, we would need to offer the Appellant the opportunity for final rebuttal once again. Is that correct, Mr. Henningsgaard?"

City Attorney Henningsgaard:

"That is correct. You're absolutely right."

Mayor Jones:

"Okay, so if anyone has questions then of any of those who testified, you may ask those. And then if anyone else has a question, please ask them right after Councilor Brownson so that we only have to go back once for the rebuttal."

Councilor Brownson:

"Okay, I'd like to ask Ms. Lederer a question. Again, this is just more or less clarifying. I'm still not grasping the injurious nature of this from your standpoint. I can hear possible discussion about the whole idea of granting variances to help people age in place, and the need for that discussion further down the line. But how is that pertinent to you right now with the situation as it was? I've heard you discuss it, but I just still would like a little bit more clarity on that."

Ms. Lederer:

"Sure. First of all, I just want to reiterate the term substantially injurious to my property was not one that I used or that I argued. It's one that appeared in the report because it's one of the criteria. And as I understand it, if any of the criteria failed to be met, like the hardship, etcetera, then that's enough to deny the variance. But our concern, and I won't try to portray it in terms of substantially injurious, but our properties are very close together. Given the topography of the neighborhood, given the fact that our house was built in 1914 with a very small backyard, any expansion that is outside of what was permitted by zoning in terms of the lot coverage does affect us. As I said in my letter that I included, I think you got it in the packet, it's auditory, it's somewhat

visual, although the property on Kensington can look into to our property just given the topography. So, I'm less concerned about that. But just any expanded use, that's what the lot coverage restrictions are there for, that 30 percent buffer between properties is intended to provide people in a very dense neighborhoods such as ours with some level of cushion from noise, from visual, all of those things. So again, I'm not phrasing this in terms of substantially injurious. That was something that the Staff report and the Planning Commission used, but I do think that it has a negative impact, that an expanded deck would have a negative impact on our property in terms of its use and reducing the regulatory question of lot coverage."

Mayor Jones:

"And that's the only question for anyone who gave testimony? Okay, so then I'll offer the Appellant's representatives, either of you, if you wish to rebut, you have an opportunity to rebut whatever the testifier just testified to."

Ms. Fry:

"We live in a dense neighborhood. Some houses are closer to the others but three feet is such a small amount. To expand the deck by three feet and to say that it's going to really impact a neighbor, it's not a substantial impact at all. It doesn't compute to my mind. And I'm just a neighbor. But that's certainly what Terri has been feeling and I'm sorry she couldn't be here tonight. She's dealing with hip problems and is lying on ice I believe right now. Anyway, that's my feeling."

Mayor Jones:

"Thank you. The public hearing is now closed. And are there any Council questions of the Staff? If not, we can begin deliberations."

[1:24:22 – end verbatim]

Councilor Rocka asked if the Appellant would have an opportunity to modify their design after the Council upholds the Commission's decision to deny the request.

Director Leatherman said yes, but the Applicant would have to wait six months if the design was not significantly different.

Councilor Rocka noted that the house was built before the standards existed and there is no way the house could function without the back deck. He wished the neighbors would have compromised. He was concerned that people who are aging in place would use a ladder to get down from the second floor. He was in favor of aging in place, but he was inclined to uphold the denial with the hope that the Applicant would submit a slightly modified design.

Mayor Jones commented that the City has Codes for a reason. The City also has variances for a reason. The four criteria for variances are not defined clearly enough to make a decision black and white. That means the decision comes down to interpretation by elected officials. In the last two and a half years, this Council has had several appeals to consider. In at least one case, the Appellant did not have the community's best interest in mind. In this case, the Appellants have put a lot of passion, money, and labor into restoring a historic home. When interpreting the variance criterion, he believed it was reasonable to consider intent. He believed this request was reasonable and not excessive. He supported the appeal.

Councilor Herman stated she was surprised that this request was ever denied. This request clearly complied with the four requirements in the Development Code for a variance. Additionally, the request is reasonable. Providing three feet of additional deck space for wheelchair access is necessary for quality of life. The ability to access a deck is not a luxury and everyone should have that right. The tremendous restoration work that the Applicants have done to the house is beautiful and the City wants to support people who can afford to restore properties. This project will be great for the neighborhood. For someone with a disability, this request is definitely necessary to make reasonable use of the home. Finally, the Comprehensive Plan supports the restoration of historic properties. She planned to vote in favor of the appeal.

Councilor Brownson said everyone should be able to fully enjoy their property and the views when possible. Decks are a nice way to get outside. He had a neighbor above him with a deck and he understood how chaotic that could be at times, but the disturbances are infrequent because the deck is not used all the time. He did not understand why the Applicants could not stay within the existing footprint because other design options could

achieve the same goals. However, a three-foot extension was not unreasonable and the request made sense. Variances stand on their own, do not set a precedent, and are not based on a precedent. Aging in place is important, but he was concerned about the potential for future variance requests when, for example, in five years, the Applicants request a ramp that would add to the footprint again. These variance requests to accommodate aging in place could be ongoing. If the Applicants were planning for the future, they should be planning for future accommodations now. Instead, the Applicants are planning to put in stairs and a deck, which seems contrary to their stated desires.

Councilor Hilton agreed with Councilor Brownson that while the current request is for stairs, a ramp could be requested in the future. He questioned whether the intent was really to restore the deck and make the bathroom ADA accessible. The home is old and ADA accessibility requirements did not apply to single-family homes. He was concerned about the integrity of the historic value of the home and agreed with the Planning Commission.

Mayor Jones asked Staff if the Council could find that the appeal could be approved based on the belief that the Applicants had no intent to expand lot coverage in the future.

City Manager Estes reminded that the Council was reviewing the existing application, not a potential future application.

City Attorney Henningsgaard added that it would be inappropriate to speculate about what could happen in the future. There are no facts concerning the effect of a ramp or a request for a ramp.

Councilor Herman stated that anyone could someday need to modify their home to make it more livable. She did not believe the request was unreasonable and the Council could not consider what might happen in the future. The Council should be sensitive to homeowners who want to make their homes ADA accessible.

Councilor Brownson responded that the proposed design seemed contradictory to the Applicant's stated reason for this project, which was to make the home livable for people with disabilities. The same goal can be achieved by reconstructing what is there now without adding a deck around the entire structure. Different designs would still allow access to the bathroom and access to the stairs from either apartment.

City Manager Estes requested that the Council vote to tentatively approve or deny the request and give Staff time to draft findings in support of the Council's decision, which the Council could approve at the next meeting.

City Council Action: Motion made by Councilor Herman, seconded by Mayor Jones, to tentatively approve Appeal AP21-04 by Terri Delafiganere and direct Staff to draft Findings in support of approval for the Council to approve on August 2, 2021, at 7:00 pm in City Hall Council Chambers.

Councilor Rocka stated he would vote against the appeal because the design did not accomplish the goal of aging in place.

The motion carried 3 to 2. Ayes: Councilors Herman, Hilton, and Mayor Jones; Nays: Councilors Rocka and Brownson.

Mayor Jones thanked the Planning Commission for such thoughtful deliberation of a difficult decision. The Council's decision did not discount or disrespect the Commission's decision. He called for a recess at 8:57 pm.

The meeting reconvened at 9:06 pm.

Item 5(b): Public Hearing and First Reading of Repeal of City Code 5.931 (P) relating to Swimming and Wading Prohibitions

Astoria City Code section 5.931(P) prohibits swimming, bathing or wading in waters or waterways in or adjacent to a city park. It is not known when or why this prohibition was adopted. As written, this section prohibits anyone from wading or swimming in the Columbia River or Youngs Bay in or adjacent to a city park. As much of the river within city limits is adjacent to the Riverwalk, which is a designated city park, there are areas where the public does have access to the water (such as the small beach in front of the Holiday Inn Express with park adjacency). There are also other areas off Youngs Bay (old Yacht Club grounds) with water

access for the boat launch where this would apply. Although, not recommended, there is no other known legal prohibition against swimming or wading in the Columbia River. Staff met with City Attorney Henningsgaard on this matter and it was felt that the provision should be removed from code. It is recommended that Council hold a public hearing and consider holding a first reading of the ordinance amending City Code 5.931 (P) relating to swimming and wading prohibitions in waters in or adjacent to a city park. It is recommended this section be removed in its entirety.

City Manager Estes noted that this prohibition may have been adopted when one of Astoria's uncovered water tanks was next to Shively Park and was intended to prevent people from using the water tank as a swimming pool.

Mayor Jones opened the public hearing at 9:08 pm and called for public comments.

Tim Kennedy, 3708 Irving, Astoria, said he really enjoyed swimming in the Columbia River. When the pools were closed during the pandemic, he started swimming in the lakes and in the Columbia River near the new Fort George facility. He has explored several routes near the trestles, in Alderbrook, and near the Astoria Warehouse site. He gets into the water at a nice beach in front of the natural gas building and takes a route out to the transformer tower, under the dock, to the condominiums and back. He has also swum escorted by a kayak to keep him away from marine traffic. On one occasion, the police were called. He discussed with the police the possibility of him calling the non-emergency number to let them know when he would be swimming. He was always safe and carried a whistle, but he would like to have company. At high tide, there is not much current and the water is primarily ocean water. He wanted the ordinance to be approved.

Mayor Jones closed the public hearing at 9:11 pm.

Councilor Hilton said he swam in the river quite a bit as a child. This outdated law should go away. Children should have the right to play in the river, especially down by the warehouse building and behind the Holiday Inn.

Councilor Rocka stated he supported the ordinance with a couple of caveats. The Council is not implying that it is a good idea to swim in the river. And, not everyone knows about tides.

Councilor Brownson agreed and added that swimming in the Columbia River is not for the faint of heart. People have to be careful, must know where they are, and understand that getting caught in an ebb tide means going down river real fast.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Hilton, to hold a first reading of the ordinance repealing City Code 5.931 (P) relating to swimming and wading prohibitions. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Director Brooks conducted the first reading of the ordinance.

Item 5(c): Public Hearing and Consideration of Resolution for Supplemental Budget for Community Development Block Grant Fund #125

ORS 294.473 (1) provides guidance for a municipality to hold a public hearing on a supplemental budget to adjust for changes which could not reasonably be foreseen when preparing the original budget. The process requires advertisement of a supplemental budget not less than 5 days before a Council meeting. There will be a public hearing for consideration of the supplemental budgets being presented.

It is recommended that City Council conduct a public hearing and approve the supplemental budget as presented in the attached resolution.

Mayor Jones opened the public hearing at 9:16 pm and called for public comments. Seeing none, he closed the public hearing at 9:16 pm.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Herman to approve the resolution adopting the supplemental budget for Community Development Block Grant Fund #125. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 5(d): Consideration of Agreement for Professional Services with Astoria Downtown Historic District Association (ADHDA) – Promote Astoria Fund

City Code Section 8.045.18 states "Organizations receiving funds from the Promote Astoria Fund shall enter into a contract with the City that will include a scope of work and budget to be approved annually by the Astoria City Council. The contract will designate how the funds will be expended by contracting organizations." Agreements in the budgeted amount of \$43,200 and \$23,760 for Astoria Downtown Historic District Association (ADHDA) have been reviewed by the City Attorney and are attached for Council consideration. The agreements are respectively for tourism, marketing and promotional efforts and for downtown parking enforcement and tourist information services. It is recommended that City Council consider execution of the Agreements for Professional Services with Astoria Downtown Historic District Association (ADHDA).

Councilor Herman said she appreciated all of the work the ADHDA did to attract new businesses that make the community a more vibrant place to live.

City Council Action: Motion made by Councilor Herman, seconded by Councilor Rocka to execute the Agreements for Professional Services with Astoria Downtown Historic District Association (ADHDA). Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 5(e): Consideration of Agreement for Professional Services with Clatsop Economic Development Resources (CEDR) – General Fund and Transfer from Astoria Development Commission

City Code Section 8.045.18 states organizations receiving funds from the Promote Astoria Fund shall enter into a contract with the City that will include a scope of work and budget to be approved annually by the Astoria City Council. In prior years the Council has wished to continue in a similar pattern using a contract with CEDR even though Promote Astoria Funds are not used for this purpose. The contract will designate how the funds will be expended by contracting organizations. Funding sources for the CEDR agreement are included in the budget and will be paid out accordingly from the following funds:

General Fund (Non-Interdepartmental)	\$ 4,000
Astoria East Urban Renewal District Fund	\$ 4,000
Astoria West Urban Renewal District Fund	\$ 4,000
Total	\$ 12,000

While the agreement is with the City of Astoria, there will be funds distributed from the Astoria Development Commission (ADC) which are within the City Manager's spending authority. All amounts are included in the City and ADC adopted budgets for Fiscal Year 2020-21. It is recommended that City Council consider execution of the Agreement for Professional Services with Clatsop Economic Development Resources (CEDR).

Councilor Brownson thanked CEDR for working so hard to keep businesses going over the last year and a half.

City Council Action: Motion made by Councilor Rocka, seconded by Councilor Brownson, to execute the Agreement for Professional Services with Clatsop Economic Development Resources (CEDR). Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 5 (f): Consideration of Agreement for Professional Services with Astoria Warrenton Chamber of Commerce – Promote Astoria Funds

City Code Section 8.045.18 states "Organizations receiving funds from the Promote Astoria Fund shall enter into a contract with the City that will include a scope of work and budget to be approved annually by the Astoria City Council. The contract will designate how the funds will be expended by contracting organizations." An agreement for Astoria-Warrenton Chamber of Commerce for Visitor Center Services in the budgeted amount of \$ 174,570 and Lower Columbia Tourism Committee professional services in the budgeted amount of \$ 252,440 has been reviewed by the City Attorney and is attached for Council consideration. The amounts for

this agreement are in the Fiscal Year 2020-21 budget, adopted by Council at their June 22, 2020 meeting. It is recommended that City Council consider execution of the Agreements for Professional Services with Astoria-Warrenton Chamber of Commerce.

Councilor Rocka wished the Chamber would spend more money now on ensuring that people have as good a time as possible when they are in Astoria and spend less money on inviting people to Astoria.

Mayor Jones said he had spoken to several tourists over the weekend who said Astoria was wonderful.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Hereman, to execute the Agreements for Professional Services with Astoria-Warrenton Chamber of Commerce. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

Item 5(g): Consideration of Authorization to Purchase Portland Loo Restroom as part of the Oregon Parks and Recreation Department Astoria Riverwalk Enhancement Grant

The Parks and Recreation Department was awarded \$428,404 from the Oregon Parks and Recreation Department to carry out enhancements on the Astoria Riverwalk that include the installation of a Portland Loo restroom facility the Nordic Park (formerly People's Park). Parks staff are seeking authorization from City Council to purchase a Portland Loo unit so it can be ordered and installed while the Nordic Park is under construction so the two projects are completed along the same timeline. The Nordic Park's construction is anticipated to begin in early September and finish in spring 2022. The Portland Loo unit will cost \$145,446. The price has risen dramatically in this sector due to material costs and high demand. The unit's installation has been approved for the location by the Historic Landmarks Commission and the Design Review Commission. It is recommended that Council authorize the City Manager to approve the purchase of a Portland Loo unit in the amount of \$145,446.

Mayor Jones said he hoped this restroom would be a success and that additional grants became available to install more.

Councilor Herman stated she would also like to see more of the restrooms along the Riverwalk.

Councilor Rocka noted the price had gone up since the Council first began discussing the restroom. However, the City needs it.

Director Dart-McLean confirmed that much lower costs were anticipated when the grant was prepared. Unfortunately, the cost went up \$20,000 in the last few weeks due to substantial delays in materials. Staff hoped to remain within the confines of the grant.

Councilor Brownson added that both material and labor costs had increased. He asked if Staff expected any issues with installation.

City Manager Estes said Staff must monitor the project because the budget is a year and a half old. The grant was put on hold during the pandemic. Once Staff had a better understanding of the current costs, they would look for ways to cut expenses. Additionally, Staff may request that the Council authorize a reallocation of funds that had originally been set aside as a match for a different grant, which that grant no longer requires.

Councilor Rocka asked if the price would come back down in the future.

Director Dart-McLean stated he would not want to gamble on the price. He believed that prices may stabilize but would never drop back to what they were in September 2019.

City Manager Estes added that the City had a deadline to use the grant funds.

Councilor Herman believed, and Director Dart-McLean agreed, that it made sense to install the restroom at the same time as the Nordic Park was being developed.

City Council Action: Motion made by Councilor Brownson, seconded by Councilor Herman, to authorize the City Manager to approve the purchase of a Portland Loo unit in the amount of \$145,446. Motion carried unanimously. Ayes: Councilors Brownson, Herman, Rocka, Hilton, and Mayor Jones; Nays: None.

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

Ms. Morley said she was shocked by the price of the restroom and that it was approved just because the City had the money and had to spend the money within a certain timeframe. The restrooms are fancy but the price does not even include the price of installation. The grant is for almost \$500,000, with \$90,000 going to a project manager and \$145,000 going to one toilet. The toilet is needed but that sounds like an insane amount for a public restroom. The City will now have to get more grant money to pay someone to clean the restroom because Staff will not be cleaning it.

Councilor Herman responded that several options were considered and this was the best deal. The Portland Loo is very sturdy and the City is currently paying a price for not having a restroom where one is needed. This will be money well-spent. The project manager will also oversee a \$250,000 contribution from the City, so the grant is far more than \$400,000.

Director Dart-McLean noted the total project amount was a little over \$700,000 with the City contributing \$288,000.

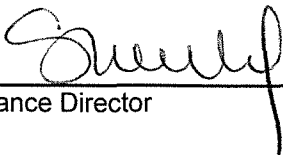
Mayor Jones announced that the Parks and Recreation Department had published a survey to collect citizen input on the new grant funded playground equipment at Violet LaPlante Park in Alderbrook. A link to the survey was available on Facebook.

City Manager Estes said the City Council work session had been rescheduled to August 2, 2021 at 5:30 pm due to Officer Whisler's celebration of life. At the work session, Chief Spalding will give a report on the final survey of the Police Department. The Council would review another land use appeal at their regular meeting on the same day at 7:00 pm.

ADJOURNMENT

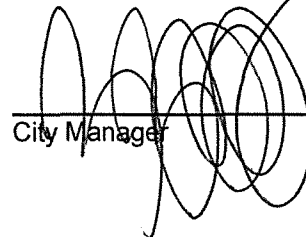
There being no further business, the meeting was adjourned at 9:40 pm.

ATTEST:



Finance Director

APPROVED:



City Manager