LUBA APPEAL

NO. 2024-012*

ANDREW KIPP

v.

CITY OF ASTORIA

Andrew Kipp Appeal
of the Hearings Officer's Land Use Decision
Order No. Appeal AP23-02
as appealed to the City of Astoria City Council
Land Use Decision Order No. Appeal AP24-01

Prepared by:
City of Astoria
Community Development Department
1095 Duane St. • Astoria, OR 97103
***Re-Submittal / July 23, 2024**

LUBA APPEAL 2024-012
ANDREW KIPP v. CITY OF ASTORIA

TABLE OF CONTENTS
OF RECORD

ITEM		PAGE
1.	Decision Letter and Final Order, Appeal AP24-01 (mailed 02/27/2024)	L-1
	a. Persons of Record / Distribution List	L-3
2.	Minutes (transcribed), City Council 02/20/2024 meeting (USB: *Exhibit A*) . .	L-4
	Astoria City Council 02/20/2024 Appeal Hearing, AP24-01	
3.	Staff Memo, prepared for City Council (02/20/2024)	L-46
	a. Public Notice for AP24-01, Affidavit of Publication (02/10/2024)	L-48
	b. Public Notice for AP24-01 (Mailed 01/30/2024)	L-50
	c. Notice of Appeal AP24-01, Application Documents (01/02/2024)	L-52
4.	LUBA No. 2022-015 Final Opinion and Order (Dismissed 12/29/2023)	L-68
5.	LUBA No. 2022-015 Motion to Withdraw Notice of Intent to Appeal and Dismiss Appeal (filed 12/22/2023)	L-71
6.	Hearings Officer's Decision, Appeal AP23-02 (mailed 12/15/2023)	L-74
	a. Attachment: Specific "Record" pages referenced in decision letter . .	L-86
	b. The full Appeal Record for AP23-02, as prepared for the H.O.	L-126
	c. Persons of Record / Distribution List	L-570
7.	LUBA No. 2022-015 Order - Status of Appeal (12/01/2023)	L-573
	Appeal AP23-02 Documents received by Final Deadline, 11/27/2023	
8.	Applicant's Final Written Argument (Carrie Richter, Bateman Seidel)	L-576
	a. Attachment: 1961 Astoria Development Code	L-588
	Appeal AP23-02 Documents received by Rebuttal Deadline, 11/16/2023	
9.	Appellant's 2nd Rebuttal Letter (Kettleson, Kipp, Windus)	L-647
10.	Applicant's 2nd Rebuttal Letter (Bob and Cindy Magie)	L-652
	a. Attachment: 2016 Survey and Deed re: tax lots 18000/181000	L-658
	b. Attachment: "Renovation for Converting 4 Gilbaugh Units"	L-663
	Documents received by Close of Record Deadline, 11/09/2023	
11.	Appellant's Letter (Daniel Kearns, Reeve Kearns)	L-664
	a. Attachment: City Zoning	L-670
	b. Attachment: Astoria Development Code, Article 7 – Off-Street Parking and Loading (prior to Ord. 22-01)	L-671

ITEM		PAGE
	c. Attachment: Application file for Amendment Request A19-02 pertaining to Transient Lodging	L-690
12.	Applicant's Letter (Bob and Cindy Magie)	L-716
	a. Attachment: Image – pre-parking lot development (August 2016)	L-721
	b. Attachment: Image – post-parking lot development (June 2017)	L-722
	c. Attachment: Image – on-street parking calculations (August 2016)	L-723
	d. Attachment: Image – on-street parking calculations (June 2017)	L-724
	e. Attachment: Image – site (October 2018)	L-725
	f. Attachment: Site photos (various dates)	L-726
13.	Public Testimony – Written Comments	
	a. Mary Hunter (11/09/2023)	L-729
	b. Jacob Helligso (11/09/2023)	L-730
	c. Melissa Barber (11/03/2023)	L-732
	d. Caitlin Callahan and Dustin Nord (11/03/2023)	L-734
	e. Brenda Harper (11/03/2023)	L-736
14.	Minutes (transcribed), Hearings Officer 11/02/2023 meeting *(USB: Exhibit B)*	L-738
	Appeal Hearing, AP23-02, 11/02/2023	
15.	Appellants' Hearing Memorandum (Daniel Kearns, Reeve Kearns)	L-744
	a. Attachment: Rental Agreement – 1557 Exchange (2018-2019)	L-761
	b. Attachment: Rental Agreement – 1559 Exchange (2018-2019)	L-765
	c. Attachment: Rental Agreement – 1561 Exchange (2019-2020)	L-769
16.	Appellant Letter – John Windus	L-773
	a. Attachment: "Attachment 1 – Unit #3" Airbnb reviews	L-775
	b. Attachment: "Attachment 2" (June emails)	L-776
	c. Attachment: "Attachment 2-continued Decision Letter 6/26/23"	L-777
17.	Appellant Letter – Andrew Kipp	L-778
18.	Appellant Letter – Austin Kettleson	L-781
19.	Public Testimony – In Person Sign-in Sheet	L-783
20.	Public Testimony – Written Comments	
	a. Alicia Christian (11/02/2023)	L-785
	b. Laura Evans (11/02/2023)	L-786
	c. Jan and Ashleigh Gregor, et al (11/02/2023)	L-787
21.	City's Appeal Memo as prepared for Hearings Officer Alan Rappleyea	L-788
22.	Public Notice for AP23-02 Hearing (published 10/21/2023)	L-795
23.	Public Notice for AP23-02 Hearing (Mailed 10/12/2023)	L-797
24.	Notice of Appeal AP23-02 Application (07/10/2023)	L-799
	a. Attachment: Written Statement	L-801
	b. Attachment: Occupational Tax Application "Cottages"	L-806
	c. Attachment: Rental Agreement – 1559 Exchange (2018-2019)	L-807
25.	Decision Letter re: transient lodging use (06/26/2023)	L-811
26.	Email chain re: pending decision, C. Richter/city staff (06/16/2023)	L-815
27.	Internal investigation: clarification of structures, tax lot 80908DC18200; AirBnB listings for all 6 dwellings (May 2023)	L-818

ITEM		PAGE
28.	LUBA 2022-015 Order - Status of Appeal (05/02/2023)	L-825
29.	Email from Magies requesting a meeting (02-06-2023)	L-828
30.	Complaint – A. Kettleson email; lease termination notice (05/30/2022)	L-829
	a. Attachment: 90-Day Termination Letter (05/19/2022)	L-830
31.	Complaint – B. Colonna email: "Cottage" lodging use (05/19/2022)	L-831
32.	"Application for Verification of Non-Conforming Use" request, by Bob and Cindy Magie, with attachments (05/09/2022)	L-833
	a. Sean Fitzpatrick, Wecoma Partners, email (04/26/2022)	L-836
	b. Shannon Fitzpatrick, Pacific Capital Management, letter (04/28/2022)	L-837
	c. Table: History of uses, parking, renovations, etc.	L-838
	d. "Progress and Development of short-term rentals" (04/28/2022)	L-839
33.	Complaint - A. Kettleson follow up email (04/14/2022)	L-859
34.	LUBA 2022-015 Motion to Stay Proceedings (03/07/2022)	L-861
36.	LUBA 2022-015 Notice of Intent to Appeal (02/25/2022)	L-866
37.	Magies submit to City a letter titled "Notice of Appeal" (02/18/2022)	L-876
	a. Attachment: B. Fryer email (12-15-2020)	L-878
	b. Attachment: M. Leatherman email (02-02-2022)	L-879
	c. Attachment: $500 check #1065 (02-18-2022)	L-880
38.	City confirms AirBnB ad for 4-plex still active (as of 02/08/2022)	L-881
39.	City confirms code enforcement decision, email to Magies (02/04/2022)	L-882
40.	2nd Letter (email): "Code Enforcement" for 4-plex (01/26/2022)	L-884
41.	Complaint – A. Kettleson follow-up email (01/25/2022)	L-886
42.	City emails and investigation (01/25/2022)	L-887
	a. AirBnB listings for "Downtown Cottage" and "Riverview Flat"	L-889
43.	Complaint – A. Kettleson follow-up email (01/19/2022)	L-894
44.	Magie response to "Non-Compliance" Letter with email chain (01/19/2022)	L-896
45.	1st Letter:"Notice of Non-Compliance" for Flat No. 1 (01/10/2022)	L-902
	a. Attachment: AirBnB ad for Flat No. 1 / Jan. 2022 calendar	L-904
	b. Attachment: AirBnB ad for Flat No. 1 / Dec. 2021 calendar	L-911
46.	Complaint – A. Kettleson follow-up email (12/15/2021)	L-918
47.	Kettleson email with link of Airbnb listing (12/01/2021)	L-919
48.	City email to A. Kettleson: request for more information (11/09/2021)	L-920
49.	City opens Code Enforcement File (11/01/2021)	L-922
50.	Complaint – A. Kettleson: noncompliant vacation rental (10-28-2021)	L-922
51.	TRT payments made by the Magies 12-15-2020 thru 12-14-2021	L-924
52.	City emails to Magies to bring TRT account current (02-10-2021)	L-925
53.	Transient Room Tax Registration for "Cottages" (12/15/2020)	L-926
54.	City email to Magie re: "Cottages" as a permitted lodging use (12/15/2020)	L-928
55.	Internal emails re: "Cottage" tax payments; no account (Sept.-Oct. 2020)	L-932
56.	O.T. 2018 renewal for "Downton Astoria Cottages" (01/28/18)	L-936
57.	Landscaping Plan for 1565/1569 Exchange (11/02/2017)	L-938
58.	O.T. Application "Downtown Astoria Cottages" (10/27/2017)	L-940
59.	Parking Plan "Magie/Helligso" for 1565/1569 Exchange (10/23/2017)	L-942

ITEM PAGE

60. Astoria Development Code ("ADC") Sections
    a. ADC §3.160, 3.180 / "Nonconforming Uses" L-943
    b. ADC §1.400 / "Definitions" (specifically "Use…") 2017 . . . . . L-945
    c. ADC §2.385 / "C-3 Zone" 2017 . . . . . L-980
    d. ADC Article 7 / "Off-Street Parking" 2017 . . . . . L-985
    e. ADC Amendment (A19-02) / C-3 Zone / Uses ADC §2.390.J.1 . . . . L-1004
    f. ADC Amendment (A22-01) / C-3 Zone / Uses ADC §2.390.J L-1006

61. Exhibits *(USB drive provided)*
    A. Recording of the February 20, 2024 Appeal Hearing (AP24-01) L-1008
    B. Recording of the November 02, 2023 Appeal Hearing (AP23-02) L-1009

NOTE
LUBA page numbers are indicated as "L- " so as not to be confused with previous document page numbers.

CITY OF ASTORIA
Founded 1811 ● Incorporated 1856

COMMUNITY DEVELOPMENT

February 27, 2024

TO: Interested Parties

FROM: Planning Division

RE: Notice of Decision – Appeal (AP24-01) by Kipp and Windus

This letter is to inform you of the decision of City Council concerning Appeal (AP24-01) of transient lodging use at 1555-1557-1559-1561 Exchange Street. The decision of the City Council is to **deny** the Appeal (AP24-01) and uphold the Hearings Officer's Decision. A copy of the decision is enclosed for your reference. For a full printout of the 636 page appeal record, please go to www.astoria.or.us, select Agenda's and Minutes, City Council, February 20, 2024, or contact the Community Development Department by mail at 1095 Duane Street, Astoria, Oregon 97103, by email at planning@astoria.or.us or by phone at (503)-338-5183.

Any person with standing may appeal City Council's decision and request a public hearing before Land Use Board of Appeals (LUBA) by filing a Notice of Appeal with LUBA not later than 21 days of this mailing of the Order (Section 9.040). The appeal deadline is 4:00pm on March 20, 2024. The Notice of Appeal should state the reasons for the request. A fee is required to cover the cost of the appeal. If no appeal is filed within the 21-day period, the decision of the City Council becomes final.

If you have any questions, please call the Planning Division at (503) 338-5183.

Sincerely,

Tresa Abke
Administrative Assistant

Encl: Appeal (AP24-01) Decision

cc: Appellants
Persons of Record File

BEFORE THE CITY COUNCIL
OF THE CITY OF ASTORIA

IN THE MATTER OF THE APPEAL OF A DECISION TO ALLOW TRANSIENT LODGING USE AT 1555-1557-1559-1561 EXCHANGE STREET ASTORIA, OREGON.	)	**AP-24-01**
APPELLANT: ANDREW KIPP & JOHN WINDUS 461 EXCHANGE STREET, ASTORIA, OR 97103	)	**FINAL ORDER**
APPLICANTS: CARRIE RICHTER, BATEMAN SEIDEL 1000 SW BROADWAY, SUITE 1910 ON BEHALF OF ROBERT J & CYNTHIA MAGIE PO BOX 532, ASTORIA, OR 97103	)	

This matter came before the Astoria City Council on February 20, 2024 for an on the record hearing, pursuant to ADC 9.040.E., of a hearings officer's decision to allow the applicant to use the subject property for transient lodging. Prior to opening the hearing, the Mayor recused himself in the appearance of fairness. Further proceedings were then presided over by the Council President.

After considering the record and arguments of the parties, a motion to grant the appeal and overturn the decision of the hearings officer was made and seconded. The resulting council vote showed two councilors in favor of and two councilors opposed to the motion. No further motion was made and a tie vote was declared.

The appellant bore the burden of proof on the appeal pursuant to ADC 9.040.E.5. and a majority vote required to overturn the hearing officer's decision. As a result the appeal is denied, and the Public Hearings Officer's decision, Findings of Fact and conclusions of law a copy of which is attached hereto, is upheld.

This order is effective as of the date of signing.

This decision may be appealed to the Land Use Board of Appeals (LUBA) by persons with standing by filing an appeal with LUBA not later than 21 days after the decision becomes final pursuant to ORS 197.830(9).

DATE SIGNED: 2.26.2024

DATE MAILED: February 27, 2024

Astoria City Council

Mayor Sean Fitzpatrick

Councilor Andy Davis

Councilor Tom Brownson

Councilor Elisabeth Adams

Councilor Tom Hilton

Persons of Record / Distribution List, Appeal AP24-01 / mailed decision on 02/27/2024

Taxlotkey	OWNER	MAILING_ADDRESS	CITY
(AP24-01)	Andrew Kipp	461 Exchange St.	Astoria, OR 97103
(AP24-01)	John Windus	960 Franklin Ave.	Astoria, OR 97103
(AP24-01)	Dan Kearns, Reeve Kearns	P.O. Box 13015	Portland, OR 97213
(AP24-01)	Bob & Cindy Magie	1466 Franklin Ave.	Astoria, OR 97103
(AP24-01)	Carrie Richter, Bateman Seidel	1000 SW Broadway Ave. #1910	Portland, OR 97204
(AP24-01)	John Orr	175 South Place	Astoria, OR 97103
(AP24-01)	Andrew Kipp	461 Exchange St.	Astoria, OR 97103
(AP24-01)	Brenda Harper	342 14th St.	Astoria, OR 97103
(AP24-01)	Sarah Jane Bardy	1661 Irving Ave.	Astoria, OR 97103
(AP24-01)	Jordan Okoniewski	4831 Cedar St.	Astoria, OR 97103
(AP24-01)	Alicia Christian	460 McClure Ave.	Astoria, OR 97103
(AP24-01)	Laura Evans	461 Exchange St.	Astoria, OR 97103
(AP24-01)	Jan & Ashleigh Gregor	1546 Franklin Ave.	Astoria, OR 97103
(AP24-01)	Curt Clumpner & Lake Jiroudek	1528 Franklin Ave.	Astoria, OR 97103
(AP24-01)	Dave & Pam Armstrong	1510 Franklin Ave.	Astoria, OR 97103
(AP24-01)	Jasper Stone	1527 Exchange #2	Astoria, OR 97103
(AP24-01)	Melissa Barber	1268 Kensington Ave.	Astoria, OR 97103
(AP24-01)	Caitlin Callahan & Dustin Nord	90614 Hwy 202	Astoria, OR 97103
(AP24-01)	Brenda Harper	342 14th St.	Astoria, OR 97103
(AP24-01)	Jacob Helligso	539 16th St.	Astoria, OR 97103
(AP24-01)	Mary Hunter	3356 Grand Ave	Astoria, OR 97103
(AP24-01)	Judith P. Niland	3679 Duane Street	Astoria Oregon 97103
(AP24-01)	Scott & Jill Eckberg	P.O. Box 695	Clarkston, Washington 99403

CITY OF ASTORIA **CITY COUNCIL JOURNAL OF PROCEEDINGS**
City Council Chambers **Verbatim Transcript**
February 20, 2024

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

1. CALL TO ORDER

Mayor Fitzpatrick: Good evening and welcome to the February 20, 2024, meeting of the Astoria City Council. The time is now 6 p.m. Please rise if you are willing able, and Deputy Chief Halversen, if you could lead us in the Pledge of Allegiance.

2. PLEDGE OF ALLEGIENCE

Deputy Chief of Police Eric Halverson led the Pledge of Allegiance.

3. ROLL CALL

Councilors Present: Davis, Brownson, Adams, Hilton, and Mayor Fitzpatrick.

Councilors Excused:

Staff Present: City Manager Scott Spence; Deputy Chief of Police Eric Halverson; City Attorney Blair Henningsgaard; Police Chief Stacy Kelly; City Engineer Nathan Crater; Community Development Director Matt Brandmeyer. The meeting was live streamed and recorded, and will be transcribed verbatim by ABC Transcription Services, LLC.

4. PRESENTATION

Item 4(b): **Introduction of New Police Department Employee.**

[Switched with Item 4(a)]

Mayor Fitzpatrick: First up tonight, we have three presentations. We will start with the introduction of a new Police Department Employee, and Chief Kelly will do the introduction.

Police Chief Kelly: All right, just right over here. So, Mayor, Councilors, Mr. Manager, Ben is our newest Senior Records and Evidence Specialist. He'll be working the front counter, handling all the walk-ins and records, and backing up specialists. And we just wanted to bring him so he can see everybody and so that y'all can get to know him as well.

So, Ben was born and raised in Fresno, California, where he graduated from CSU Fresno with a BS in business administration in 2009. Ben worked for Pacific Agronomics in Fresno, California for 17 years. He spent the final seven-plus years as an office manager, where he was responsible for all administrative duties for the company including, but not limited to, accounts payable and receivable, processing, payroll, and company budgeting.
Ben resigned from the position in the fall of 2020 and relocated to Seaside, Oregon to live closer to his parents, who live in Seaside, and two brothers who live here in Astoria and

Warrenton. Ben worked for the US Postal Service as a carrier from March ‘21 till December ‘23, before accepting the position as senior records and evidence specialist with the Astoria Police Department.

In his free time, Ben enjoys hiking and spending time with his parents, brothers, and two nieces. He also enjoys traveling back to California to visit friends and family when the opportunity arises. And I would say—you've been here what, a month now? He's been here a month and he's just been a great fit for the organization, and we were really, really lucky to steal him from the Postal Service.

Mayor Fitzpatrick: Congratulations.

Benjamin Rudd: Thank you.

Mayor Fitzpatrick: And welcome to Astoria.

Mr. Rudd: Thank you, glad to be aboard. Thank you for the opportunity.

Chief Kelly: Sure you don’t want to say anything?

Mr. Rudd: I’m okay, man of few words. Glad to be aboard.

Chief Kelly: All right, thanks.

Mr. Rudd: All right.

Item 4(a): Swearing in of New Police Officer.
[Switched with Item 4(b)]

Chief Kelly: All right, next we will move to our police officer, and I must—also, Ben fills all of our vacancies on the civilian side, not counting dispatch—we won’t talk about that right now. But our civilian side is now fully staffed. And Stephen, whose call sign will be 8-18, is our final police officer, so we have no vacancies as of right now. So, it’s been about two-and-a-half years since we were fully staffed on the Police Department side, and there’s not a lot of police departments in this country that can say the same. We can’t take the credit for that. This great community, the support from the Council, all of that really helps attract good candidates.

So, if you can come on up. So, Stephan was born and raised in Phoenix, Arizona, and graduated from Estrella Foothills High School in 2017. In 2018, he left Arizona to serve in the United States Navy as an undesignated seaman, where he served on the USS Tortuga.

During his time on the Tortuga, Stephen fell in love with security and anti-terrorism and started on the path of becoming a Master at Arms, which is military police in Navy terms. He would go on to complete his kennel support qualification to become a canine handler.

After military police and canine school, he received orders to Naval Air Station Fallon in Nevada, where he served as an explosive canine handler for his detection dog, Granger.

Stephen was honorably discharged from the United States Navy in 2022. He most recently worked as a canine handler for a pest control company, where he worked with his detection dog Ace. In his free time, Stephen enjoys working out, reading novels, and visiting new places

with his wife, Tia, who is joining us up here today and will be pinning him. So, we'll have the Mayor swear him in and then his wife will pin him.

Mayor Fitzpatrick: If you want to step over here so that people can see you online.

Stephen Sladek: Like, right here?

Mayor Fitzpatrick: That's great, yes. So, please say, "I," and then state your name.

Officer Sladek: I, Stephen Sladek . . .

Mayor Fitzpatrick: . . . police officer of the City of Astoria Police Department . . .

Officer Sladek: . . . police officer of the City of Astoria Police Department . . .

Mayor Fitzpatrick: . . . in said county and state . . .

Officer Sladek: . . . in said county and state . . .

Mayor Fitzpatrick: . . . do solemnly swear that I will preserve and protect the laws and the Constitution of the United States of America . . .

Officer Sladek: . . . do solemnly swear that I will preserve and protect the laws and the Constitution of the United States of America . . .

Mayor Fitzpatrick: **. . .** the State of Oregon, and the City of Astoria . . .

Officer Sladek: . . . the State of Oregon, and the City of Astoria . . .

Mayor Fitzpatrick: . . .that I will faithfully bring credit to the Astoria Police Department and myself . . .

Officer Sladek: . . . that I will faithfully bring credit to the Astoria Police Department and myself . . .

Mayor Fitzpatrick: . . . as a police officer for the City of Astoria . . .

Officer Sladek: . . . as a police officer for the City of Astoria . . .

Mayor Fitzpatrick: . . . that I will strive to preserve life and to maintain all human rights . . .

Officer Sladek: . . . that I will strive to preserve life and to maintain all human rights . . .

Mayor Fitzpatrick: . . . and that I will faithfully perform the duties . . .

Officer Sladek: . . . and that I will faithfully perform the duties . . .

Mayor Fitzpatrick: . . . of a police officer . . .

Officer Sladek: . . . of a police officer . . .

Mayor Fitzpatrick: . . . to the best of my ability . . .

Officer Sladek: . . . to the best of my ability. . .

Mayor Fitzpatrick: . . . in accordance with the Criminal Justice Code of Ethics, so help me, God.

Officer Sladek: . . . in accordance with the Criminal Justice Code of Ethics, so help me, God.

Mayor Fitzpatrick: Congratulations. Would you like to say anything before your wife pins you?

Officer Sladek: It's very exciting to come to the city. I mean, I've been here for about eight years now. So, it's been amazing to come out here, and more of our family is soon to come out to the city, so I'm very excited.

Mayor Fitzpatrick: So, I see some beaming faces in the audience. I'm guessing they might be relatives.

Officer Sladek: Yes.

Mayor Fitzpatrick: You're welcome to come up for a photo opportunity if you would like. And I believe that one of our City employees will be taking some photos. Would they like us in the photos?

Chief Kelly: Yeah, I think so.

Mayor Fitzpatrick: Great. Well, congratulations again.

Item 4(c): **Clatsop County Historical Society Presentation**

Mayor Fitzpatrick: I would now ask Mack Burns, Executive Director of the Clatsop Historical Society, to approach the lectern and tell us a little about the Oregon Film Museum. Mr. Burns?

Mac Burns: Terrific. Thank you so much. Mr. Mayor, City Councilors, friends and neighbors, the Clatsop County Historical Society has been in existence for more than 75 years and probably goes back to the 1890s. I've had the honor and privilege of being the executive director for the past 21 years.

We operate the Captain George Flavel House, the Heritage Museum, the Uppertown Firefighters Museum, and the Oregon Film Museum. Our annual budget is about $1,000,000 a year, and we welcomed more than 95,000 visitors last year to our museums. In addition, we maintain an ambitious public programming calendar, including Thursday Night Talks, Casino Night—our Mayor was there—thank you, Old Fashioned Fun and Games, Mother's Day Tea and Scones, Goonies Day, Talking Tombstones, and Tea and Plum Pudding.

I'm proud of our partnerships and cooperation with the City of Astoria. You've asked us in the past to be the lead organization in planning in orchestrating the Astoria Bicentennial celebration in 2011, the 100th anniversary of the Gutter Party in 2013, and the 50th Anniversary of the Astoria-Megler Bridge Celebration in 2016. We've been a reliable resource and partner for the city over the years—things like timeline out on the sidewalk by the Garden of Surging Waves, and just this afternoon giving a guided tour to half of the Police Department through the Heritage Museum so they could learn a little local history.

In 2010, the Clatsop County Historical Society—oops, how do I move forward here? There we go. In 2010, the Classic Historical Society created the Oregon Film Museum in the Old County Jail to celebrate the rich heritage of filmmaking here in Oregon. Some people question why is the Oregon Film Museum located in Astoria? It's a statewide thing. Why isn't it in Portland or on the I-5 corridor? There are three main reasons that it's located here in Astoria Oregon. The very first film ever made with a plot in the State of Oregon, was filmed right here in 1909: *The Fisherman's Bride*. The Selig Polyscope company, the company that created Hollywood, sent a crew here to film in 1909. We also have plenty of iconic films, and we certainly own the 1980s.

Second, Astoria has a great reputation with filmmakers. They know that we'll go out of our way, and we love being on film. You asked for an antique car, 20 are going to show up. You ask for a few extras, and 500 people will show up. We never mind closing our streets or inconveniencing ourselves. We love seeing our town on film. And number three: at the time, no one else in the state was doing anything like what we dream.

So, the museum's attendance has exceeded all expectations. Last year, we welcomed, entertained, and educated more than 52,000 visitors through an 800 square foot facility. That entire museum would fit easily in this room with some extra space in the room. So, it's kind of amazing the 52,000 visitors. They came from all 50 states and about 25 foreign nations. They included more than 750 school kids, including every single fourth grader in Astoria.

We have clearly reached and passed our capacity. We are also not able to, in such a small space, fulfill our educational mission. We are first and foremost an educational organization. In response, we have designed a new facility across the intersection. It's a two-story, 13,000 square foot facility. There are a lot of wonderful projects—a lot of wonderful projects—happening in Astoria right now.

I'm here tonight to request that you schedule a work session so we can better brief you about this project and give you the proper time to ask questions and to do a deep dive into this. I know that you all give tons of time and I know that I'm asking for even more of your time, but this project is worth your time.

Mayor Fitzpatrick: Great. Thank you, Mr. Burns. The March 25th work session has an opening, if that would work for you. If not, we can do it April 22nd.

Mr. Burns: We will be there March 25th.

Mayor Fitzpatrick: March 25th it is then, thank you.

Mr. Burns: That's fantastic. Thank you all very much for your time. Should I bring this back to you? They love this in the Film Museum.

5. REPORTS OF COUNCILORS

Mayor Fitzpatrick: So, we'll start Reports of Councilors this evening with Councilor Hilton.

Item 5(a) Councilor Hilton: Good evening, Mayor, citizens of Astoria, Council. First, I'd like to start off by saying it's FisherPoets coming up this weekend, and so there's going to be a lot of people within our community. It's an organization that I belong to and that I'm very fond of. So,

I hope to see some of you out and about in our town. And just be aware there's going to be a lot of people walking around, so it's going to be dark, and it's going to be a great time.

On to business-wise. I received a few phone calls and met with some of my neighbors who live within the slide, and they're still some of them that are unsheltered. They're living with friends and neighbors, and that's the challenge for us as a community. And when I hear my lifelong friends talk about wanting to be back in their houses, and they realize that the situation is still moving, it's a challenge. It's difficult for me and I'm sure it's difficult for our Public Works Department, our City Manager, and our community. So, I would really like to see the citizens of this community reach out to those people and offer them food, shelter, an ear to hear, shoulder to lean on, and maybe a hug, because they haven't been in their homes in three weeks. It's not easy for some of them. They've got bills to pay. So, that's one thing.

Talked a lot. Let's see, I attended the emergency management training session with my fellow Councilors, the Mayor, Deputy Chief, Chief of Police. And that was a really eye-opening process for some of us, me as well, to see that—I said this when I ran for office—if something were to happen now, do you know where you would go? Do you know what you would do? Do you have a to-go bag? Are you ready? Do you know the chain of command? Do you know people you can rely on? What would you do if you didn't have a cell phone? What if your house is on fire? So, these are important questions, and if you're not ready for it, then you should be prepared and get ready because it's important for our community that if our neighbors aren't ready, we have to be ready for them.

I think that's about it for me. I'm going to say let's just get to work. Thank you.

Mayor Fitzpatrick: Thank you, Councilor Hilton. Councilor Adams?

Item 5(b) Councilor Adams: Thank you, Mayor. Good evening, everyone. I'm actually going to pass all of my information—it's easily—I can share at another time. I think that in lieu of what we have ahead of us, I think it's important to take the time to really dive into what we have. I'm anxious to move forward with tonight's meeting. So, we definitely want to get prepared for spring and visitors. There's exciting things like our downtown shelter is open now, having folks. So, there's a lot of exciting things. I can share all that at another time. And that's it.

Mayor Fitzpatrick: Great. Thank you, Councilor Adams. Councilor Brownson?

Item 5(c) Councilor Brownson: Thank you, Mayor. So, congratulations to our new Officer Sladek. That's great that we have a full house. I can attest that we've had difficulties being a full house since I've been on Council, so congratulations on that.

I just wanted to note that I also attended the FEMA—the National Incident Management System overview that was presented by the County. Also attended the CMH—Columbia Memorial Hospital—Capital Campaign presentation over at the old Lums building. They've got mockups of some of the rooms and stuff, so it's pretty interesting to kind of get a sense of space they use now and space they will have in the future. It's pretty impressive and positive.

I attended the South Slope Neighborhood Association meeting, and I just fielded questions about things going on in the city—sometimes under my purview, sometimes not. But it was a good meeting. And also, since the last meeting, I met with our new Community Development Director, and we had a good sort of getting-to-know-you session. Just sat and talked a little bit

about where he's from and what he had done in the past, and he got to know me a little bit. And didn't talk a lot about City business, but I was pretty impressed with him, and I think he looks like a good fit and a very personable person, somebody you can work with.

And I think the only—oh, I had a grandson down for the weekend and he wants to be a fireman when he grows up. He's five years old. He got to visit the fire station a couple years ago, and since then he has his own fire uniform, and he wore that, and we got to visit the fire station on Sunday and was really treated well by Lieutenant Tom Jaworski and Engineer Jake Rummell. Both of them just were—had a great conversation with the Lieutenant while Jake took the kid off into the truck, drove around the block, handed him a fire hose. He got to spray at cones, and stuff like that. And this is just a little kid. It was really nice. It was both good for him and it was good for me to have these conversations with our firefighters.

And I think that's it for now. We do have a lot tonight. So, that's it. Thanks.

Mayor Fitzpatrick: Great. Thank you, Councilor Brownson. The—go ahead.

Councilor Brownson: Sorry. I just wanted to mention because Councilor Hilton mentioned the slide victims—I just wanted to point out that there is a GoFundMe that's available. You can just Google, "GoFundMe Astoria Landslide," and you'll find it. They're raising money for the people that are having a hard time with their housing and whatnot. So, you know, it is a good way—I pulled it up here while he was talking thinking I thought I heard something about it, and I just donated $100 towards it. But they're up to $2800, so it's something, but I'm sure a lot more is needed. Thanks.

Mayor Fitzpatrick: Great. Thank you, Councilor Brownson—good addition there. Councilor Davis?

Item 5(d): Councilor Davis: Thank you, Mayor. I'll keep my remarks short as well. I've got lots of duplicative remarks with the other Councilors. On the landslide topic, I did just want to give appreciation to the Fire Marshall and to the City Manager. I got some constituent feedback about tenants not hearing from some of our notices, and they really quickly acted to change the way we were sending notices out to the tenants as well, and I appreciate that sort of immediate response to make sure that people are getting notified of what's going on with the City and with the slide.

The only really unique thing that I would report is I attended the COL-PAC, Columbia Pacic Economic Development District meeting. We had a pair of presentations. One was about the Habitat Conservation Plan which affects the amount of forest that's eligible for cutting in the State Forest Lands. Clatsop County has a large amount of state forest compared to most counties. We're the second largest. We have the largest amount of take, as in the most revenue coming out of the state forest of any county in the state. So, we're affected by it. The HCP would affect things like our school budgets, our Sheriff's budget, the County budget. Most of those effects are more long term than short, frankly, I think. But it's significant and a lot of the counties that participate in COLPAC, which is Columbia, Tillamook, Washington County, and ourselves—are pretty concerned about it. So, we heard a presentation from a variety of stakeholders: timber industry, the Association of Counties. And COL-PAC ended up deciding to, essentially, submit a letter to the State advocating for some changes to the HCP—not necessarily opposing but asking for some changes in the calculations that they're using.

The other piece that we reviewed was about fish processing. And there's a fish processor in Warrenton, Hammond Bioprotein, who has been having some interactions with DEQ where

they're being asked to change the filtering of effluent water coming out of their plan. And they presented to us and basically their case was that the amount of filtration that they're being required to do is excessive in their minds. And they're being required to take in water that is less clean than the water they're putting out into the river at some cost to the company. I think that I bring this up especially because we have a couple of fish processors on our port, and I think that we can anticipate that this may be coming from DEQ to all fish processors in Oregon—at least those who have effluent that comes into any of our rivers or tributaries. So, we might just want to keep an eye on that so that we if we have the opportunity to make public comment, or work with our fish processors to support them in some way, that we try to do that. I've talked to the City Manager about what our options are for assisting in that process if it's difficult for the fish processors to accommodate these new regulations. So, we'll see. I'll update as I learn more or how it would affect our particular processors. But I think that's the biggest thing.

And also, congratulations to the Police Department and our new officer and Senior Records Specialist. I am, Mac, very curious about what the film without a plot was that filmed somewhere else in Oregon, but I'll catch up with you another time about that. Thank you for the presentation. I Look forward to learning more about the extension to the museum.

But, Mayor, thank you. Let's get to the rest of the agenda.

Mayor Fitzpatrick: Thank you, Councilor Davis.

6. CHANGES TO THE AGENDA

Mayor Fitzpatrick: So, do we have any changes to the agenda tonight?

City Manager Spence: We do not.

Mayor Fitzpatrick: Great.

7. CONSENT CALENDAR

The following items were presented on the Consent Calendar:

7(a) Astoria City Council Draft Meeting Minutes – December 4, 2023.
7(b) Astoria City Council Work Session Draft Meeting Minutes – December 4, 2023.

Mayor Fitzpatrick: The Consent Calendar—the items on the Consent Calendar are considered routine and will be adopted by motion unless a member of the City Council requests to have any item considered separately. Members of the Community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting. Have any members of the community contacted the City?

City Manager Spence: No.

Mayor Fitzpatrick: Okay. Would any Council members like something to be removed? All right. Who would like to make a motion? Councilor Davis?

Councilor Davis: I will move to accept the Consent Agenda as presented.

Councilor Brownson: I'll second.

Mayor Fitzpatrick: We have a motion and a second. All those in favor say, “aye.”

Council: Aye.

Mayor Fitzpatrick: Opposed? Abstentions? Motion carries.

8. REGULAR AGENDA ITEMS

Mayor Fitzpatrick: On our Regular Agenda items, all Agenda items are open for public comment following deliberation by the City Council. Rather than asking for comments after each agenda item, the Mayor asks that audience members raise their hands if they want to speak to the item and they will be recognized. In order to respect everyone’s time, comments will be limited to three minutes.

8(a): Development Agreement between the City of Astoria and Hollander Hospitality, LLC to construct a hotel at 1 2nd Street.

Mayor Fitzpatrick: Eight(a) is a development agreement between the City of Astoria and Hollander Hospitality, LLC to construct a hotel at number 1 2nd Street. Mr. Spence, would you introduce the item, please?

City Manager Spence: Thank you, Mayor and City Council. The development agreement before you is an effort to resolve a dispute between the City and Hollander Hospitality regarding a hotel project. This is also per LUBA's final order and opinion dated September 20th, 2021, known as LUBA number 2021061, and ordering the City to approve petitioners’ application.

Council held a work session on January 29th, 2024 and was fully briefed on the background of this subject. Council then held a first reading of the ordinance on February 5th, 2024. At that meeting, there was an adopted change, or an amendment, to the development agreement. As you recall, there was an amendment from the effective date of permit submittals from 90 to 180, and that was in Section 5(a). And then additional amendments related to notices in Section 19. All these changes have been reflected in the updated development agreement in Exhibit 1.

Staff is recommending that Council hold a second reading of the proposed ordinance, as well as adopt that said ordinance and the approval of the development agreement. So, I'd be happy to answer your questions and also our City Attorney, Blair Henningsgaard.

Mayor Fitzpatrick: Great. Thank you, Mr. Spence. Councilors, discussion? I think we’ve pretty well talked this to death at previous meetings. So, public comment: is there anybody that would like to comment in the audience this evening? Do we see any hands raised online? I don’t see any. okay. Who would like to make a motion? Councilor Brownson?

Councilor Brownson: I move that the Astoria City Council holds a second reading and adopt Ordinance 24-02, approving the development agreement between the City of Astoria and Hollander Hospitality.

Mayor Fitzpatrick: Do we have a second?

Councilor Adams: I’ll second.

Mayor Fitzpatrick: We have a motion and a second. This is a roll call vote. Mr. Spence?

City Manager Spence: So, we're going to do the—is the reading later after the roll call?

Executive Assistant Ryan Quigley: Yeah.

City Manager Spence: Roll call first. Sorry, my mistake. Councilor Davis?

Councilor Davis: Aye.

City Manager Spence: Councilor Brownson?

Councilor Brownson: Aye.

City Manager Spence: Councilor Adams?

Councilor Adams: Aye.

City Manager Spence: Councilor Hilton?

Councilor Hilton: Aye.

City Manager Spence: Mayor Fitzpatrick?

Mayor Fitzpatrick: Aye.

Director Norton, if we could have a second reading, please?

Director Norton: An ordinance approving the Hollander Hospitality Hotel development agreement.

Mayor Fitzpatrick: Thank you.

8(b): Notice of Appeal AP24-01 by Andrew Kipp and John Windus of the Hearings Officer's decision to deny Appeal AP23-02 and uphold the Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street.

Mayor Fitzpatrick: Agenda item 8(b) is a notice of appeal, AP24-01 by Andrew Kipp and John Windus, of the Hearings Officer's decision to deny Appeal AP23-02 and uphold the Administrative Decision concerning approval of transient lodging use at 1555,1557, 1559, and 1561 Exchange Street.

Does anyone object to the jurisdiction of the City Council to hear this matter at this time? I don't see any hands raised online. Does any member of the City Council—

City Manager Spence: You have a—

Unknown: Can I clarify who will be hearing the matter on the City Council?

Mayor Fitzpatrick: I didn't hear what he said.

City Manager Spence: So, what was the question again?

Unknown: Who on the City Council will be voting on the matter—question?

Mayor Fitzpatrick: The question in front of the Council this evening, or the question that I have raised, is, "does anybody object to the jurisdiction of the Council this evening?"

Unknown: No.

Mayor Fitzpatrick: Okay, my next question was does any member of the City Council feel he or she has a conflict of interest or any ex parte contacts to declare? Councilor Brownson?

Councilor Brownson: I just wanted to comment. I feel fully qualified to judge this matter, but I will note that I have met with the Appellant, Andy Kipp, but we did not discuss this at all at any point, and I haven't had any other further discussions with anybody, except for Staff, about this particular issue. And once I knew that this was potentially an appeal, I also avoided reading any of the articles in *The Astorian* as well. So, I wanted to not be prejudiced.

Mayor Fitzpatrick: Great. Thank you, Councilor Brownson. Councilor Davis?

Councilor Davis: Thank you, Mayor. I just want to declare that I have service on a nonprofit board with Mr. Kipp. I also, not that it has much bearing on this, but I also play pickleball with the Magies on occasion. And I don't know that it's ex parte contact, but I did have a chance to have a conversation with our City Attorney today just to ask some questions about the case and really mostly about what's allowed in an on-the-record hearing. I'm going to restate those questions for the public, I think, during this hearing so I don't believe it should affect my decision making at all, but I want to declare that. I don't think any of that will influence my decision making in this capacity as a City Councilor, but I want to declare those. Thank you.

Mayor Fitzpatrick: Great. Thank you, Councilor Davis. Councilor Adams?

Councilor Adams: My turn, my turn. okay, I just want to state for the record, as I have previously, that I have met with Bob and Cindy Magie prior to my taking the oath of office. I was an elect at the time, and I went to their home and met with them and had discussion about multiple things about the city, and that was in 2022 in December before taking office. Since then, I have seen them in public. I've said hello to them at other events. Same with Andy Kipp. Same with Mr. Windus. Said hello, talked about other things pertinent to different city and community things, similar to, like, Heritage Square and other items that we have been at multiple meetings in the community at, as well as email contact and other written contact.

Mayor Fitzpatrick: Great. Do you feel you can be impartial?

Councilor Adams: I do, thank you.

Mayor Fitzpatrick: Great, thank you. Councilor Hilton?

Councilor Hilton: I feel that I can be impartial. I would like to say I know all the parties. I did receive a text from John Windus asking me to meet with him and I did not respond in kind. So, I just want to make that clear to the City of Astoria, to the Mayor, and to our City Attorney as well. Let's just get it rolling. Let's go.

Mayor Fitzpatrick: Great. Thank you, Councilor Hilton.

So, to avoid the appearance of an apparent or actual conflict, and to ensure the integrity and fairness of tonight's proceedings, I will recuse myself from AP24-01 the Gilbaugh Appeal.

The basis for my recusal stems from my intimate knowledge of the property and from my capacity as an advisor for the Small Business Development Center in 2015, when the Magies sought guidance on the property which is the focus of the appeal. By this action I will remove myself from the dais after passing the Council the gavel to Council President Tom Brownson, who will finish tonight's meeting. President Brownson.

Council President Brownson: Okay. So, as the Mayor said, as Council President upon his recusal and leaving the room, I will take over his duties for this item, and I will continue through the rest of the meeting for any other business that comes up as well. So, that being said, I'm going to open the proceedings of this appeal.

Notice of Appeal AP24-01 by Andrew Kipp and John Windus of the Hearings Officer's decision to deny Appeal AP23-02 and uphold the Administrative Decision concerning approval of transient lodging use at 1555, 1557, 1559, 1561 Exchange Street.

So, do I open it? Is this an official—so, I open this appeal. And does anyone object to the jurisdiction of the City to hear this matter at this time? Mayor did ask that I'll ask it again.

I will now, having opened the appeal hearing, I'm going to restate this: We are conducting this appeal hearing on the record developed before the Astoria Planning Commission's Hearings Officer. This means that only evidence received by the hearings officer and arguments raised by the Applicant and the Appellants will be considered by the City Council on the appeal. The Appellant and the Applicant will have an opportunity to argue why the appeal should or should not be granted.

The appeal of the Hearings Officer's decision is limited to the record reviewed by the Hearing Officer in reaching their decision to deny appeal A23-02. No new evidence will be received or considered.

So, City Manager, may we have a presentation from Staff?

City Manager Spence: Yes, I'll just do a very brief introduction. So, obviously as has been stated, this is an appeal of the Hearing Officer's decision approving transient lodging facilities at 1555, 1557, 1559, and 1561 at Exchange Street.

The appeal was heard on November 2nd, 2023, and a decision was made, or transmitted, on December 11, 2023, by the hearing Examiner. The applicant is proposing to operate all three buildings as transient lodging and no residential use. The City received an appeal of the Hearing Standard Decision on January 2, 2024. As a result, this issue is now before City Council. So, with that we can proceed with the appeal.

Council President Brownson: Thank you, Manager Scott Spene. All right, so now we will hear from the Appellants who are allotted a total of 10 minutes. So, if you have more than one person, you only get within that 10 minutes to make your case. So, who will be speaking? So, I recognize Andy Kipp as the Appellant.

Andy Kipp: Hello, good evening. My name is Andy Kipp, and I live at 461 Exchange Street. I am here tonight because we are in the midst of a severe housing crisis.

A study recently published by Harvard University found that 43 percent of renters in Clatsop County are cost burdened, meaning they pay more than 30 percent of their income for their housing. Moreover, it is estimated that nearly one in four renters in the county are severely cost burdened, paying over half of their income for their housing.

As the data illustrates, this is a crisis is deep and impacts many. I'm sure we all know someone who is living under the pressure of housing unaffordability. They are our neighbors, our relatives, teachers at our schools, the staff at our hospitals, the servers who wait on us when we dine out. These people are vital and treasured members of our community, and they cannot afford to keep a roof over their heads. This is the reason why we appealed the City's decision to permit four apartments to be converted to short-term rentals.

Every short-term rental is by definition not available as housing. Short term rentals undermine the limited supply of available and affordable housing for long term renters. Increasing short-term rentals exacerbates the housing affordability and availability crisis by taking apartments off of the market so that owners can maximize profits at the expense of our limited housing stock.

In 2019, the City Council understood this and tried to address it when it adopted ordinances that prohibited converting existing long-term housing into short-term rentals. That policy made it illegal to use any residential dwelling that was in use as of January 1st, 2019, or any building originally constructed as a residential dwelling, as a short-term rental. Yet nearly five years after enacting this policy, it is still happening.

The Hearings Officer’s conclusion and findings on this matter are wrong, not only from a legal perspective and factual perspective, but because they directly contradict the policy that it was adopted by this Council.

Beginning with the legal errors in the Hearings Officer’s decision, it is important to first note that this application began as a non-conforming use verification. In brief, the Applicants asked the City to verify their claimed right to operate a short-term rental business in the fourplex known as the Gilbaugh Apartments because they began working on the property with that intended use in mind before the 2019 Code changes prohibiting STRs came into effect.

The Applicants have freely acknowledged that they did not actually rent the apartment to any short-term tenants until the end of 2021, nearly three years after such use was no longer permitted. During that time, the applicants claimed to have been preparing the apartments for short-term use, all while they were in fact renting them to long term tenants. Nevertheless, to evaluate the Applicants non-conforming use claims we must first understand the Astoria Development Code’s chapter on non-conforming use. Under the Code a non-conforming use is defined as, “A use that legally conformed with the applicable Development Code regulations when it first occurred but due to amendments to those regulations, no longer complies with the regulations which apply to it.”

The City Staff and the Hearings Officer incorrectly interpreted this definition to rely on the term, “start of use.” However, the actual text of the Code never mentions this phrase. What the Code does say is that a non-conforming use exists if it first occurred before the restrictive zoning came into effect. The term, “first occurred” is substantially different than “start of use.”

The phrase, “when it first occurred,” requires actual existence, and this requirement cannot be substituted by a property owner’s claimed intent or envisioned usage. The reason for this is obvious. If you started when a property owner says that they envisioned or thought of it, and then can years later claim right to engage in it, then there’s effectively no standard for non-conforming use. Anyone can claim they had the intent to do something at some point in the past and then be grandfather in through non-conforming use. This radical interpretation by the Hearings Officer is incorrect and wildly inconsistent with relevant case law.

Furthermore, from a factual perspective, the record only shows the intention of the Applicants to purchase and renovate the four-unit apartment building as long-term rentals and then rent the units to long term tenants. There is absolutely no evidence showing the Applicants intended to use any of these apartments as lawful short-term rentals until after the City outlawed the use. None of the evidence provided, including the permits, the plans, the tax records, or the other materials substantiate the claim that the intended use of the fourplex was for short-term use until long after it had been outlawed.

Intent must be manifest in some tangible way, and the only intent that the record shows is the actual use of this apartment building as an apartment building for long term tenants. That intent is clearly visible in the long-term lease agreements that were signed in 2018, 2019, and 2020.

The Hearings Officer is implausible and unsupportable interpretation of the Code, relying on terms that are not even mentioned in the chapter on non-conforming use, is contrary to the clear policy that this City Council adopted curtailing short-term rentals as a way to preserve our limited housing stock. If you allow such a massive exception to the prohibitions you adopted and allow anyone to short-term rent their apartment or house by claiming that they had planned to operate a short-term rental years ago, then there's no way to enforce your housing policy and you might as well repeal it now.

The actual language of the City's non-conforming use Code also provides that any non-conforming use lapses of 12 months or more must come into conformance with the current Code requirements. The Code also provides that any non-conforming use that is converted to or used for a conforming use of any length of time immediately and automatically loses any non-conforming use status it may have had. Again, the record shows that these units were all used for long term rentals for more than a year after the Council prohibited STRs in the building.

The Hearing Officer’s incomprehensible conclusion that the fourplex was in use simultaneously as a short-term rental while being rented by long term tenants because the Applicants were “continuing to work on STR use,” is a violation of the Astoria Development Code which says, “A building or site that is occupied by a different use shall be considered a cessation of the former use.”

To conclude, the Hearings Officer's decision is legally unsound because it inserts language into the Code that is not there and allows the owners claimed but undocumented intention to operate a short-term rental established when short-term use first occurred. The decision also ignores the plainly worded provisions of the City's non-conforming use Code that terminated any non-conforming status that may have existed. Such an interpretation effectively renders the City's policy regulating short-term rentals unenforceable.

Finally, the Hearings Officer's clearly incorrect decision directly opposes the Council's well-reasoned housing policy that prohibits converting long-term housing stock into short-term rentals. Your housing policy shows that you understood that short-term rentals undermined the city's limited housing stock by eliminating available rentals, making them wholly unaffordable to long term tenants for the sake of maximizing owner profits.

I come before this Council to respectfully urge you to honor and respect the intent and purpose of this vital housing policy. The residents of this city who are struggling to afford their rent are counting on you to do the right thing and overturn this flawed and dangerous decision.

Thank you for your time. I will now answer any questions.

Council President Brownson: So, does anybody on the Council have any questions at this time of the Appellant?

Councilor Davis: Maybe one.

Council President Brownson: Okay, Councilor Davis.

Councilor Davis: Thank you, Council President. How do I refer to you? Councilor? Councilor President?

Mr. Kipp: Mr. President.

Council President Brownson: Sure.

Councilor Davis: Thank you, Mr. President. Mr. Kipp, so one of the items that I have had some dialogue with Staff over is the decision—it states in the packet the decision of Council to conduct the review of this appeal on the record. It is my understanding that both the Applicant and the Appellant have agreed to on-the-record with Staff. I just want to confirm that with you.

Mr. Kipp: That was what I think was in the notice, yeah.

Councilor Davis: Okay.

Mr. Kipp: Yeah.

Councilor Davis: But your side had agreed or is okay with an on-the-record hearing?

Mr. Kipp: Yeah, if that's the Council's desire, I respect that. I think that the arguments that we've made, and we've outlined are all documented on the record. We're not introducing new evidence at this time. So, yeah, we think the facts on the record make the case and so we're not introducing any new evidence and if the Council chooses to do an on-the-record review, that's fine with us, yeah.

Councilor Davis: Okay, thank you.

Council President Brownson: Thank you, Councilor. So, just a question for Mr. Henningsgaard. It's been stated that this is on the record. There's been agreement by both parties that on the record is okay. Is there a need for Council to affirm that at this time?

City Attorney Henningsgaard: Well, you already—I mean you opened it as an on-the-record hearing.

Council President Brownson: I did.

City Attorney Henningsgaard: It's been noticed as an on-the-record hearing.

Council President Brownson: Okay.

City Attorney Henningsgaard: It'd be inappropriate to change course at this point.

Council President Brownson: Okay, thank you. Anybody—go ahead, Councilor Davis.

Councilor Davis: Just for clarification, I'm more just desiring to get confirmation of that on the record because the Council making that decision was abbreviated at best in terms of us, you know, making that decision through Staff, in essence. I don't believe we actually voted on that in a Council meeting. So, I'm just bringing this up to confirm that that's the understanding of both parties so that we're not doing this in a way that someone's going to object to later on that basis, essentially.

Council President Brownson: Okay, thank you; well noted. Anybody else on Council have any comments or questions at this point? Basically, we're looking for questions.

Councilor Hilton: I have one question for Mr. Kipp. Are you aware of the use prior to the 2019 change? What was the Code used for the property prior to that?

Mr. Kipp: The fourplex prior to the 2019, I believe it was consistently used for long term tenants. I think there were long term tenants living in the property when the Applicants purchased it.

Councilor Hilton: The actual use of the property defined when they purchased the property.

Mr. Kipp: Residential dwelling I believe would be the use if four tenants were living in it. I believe it's zoned C-3. It's a commercial-zoned property.

Councilor Hilton: Okay.

Mr. Kipp: I'm sorry. I don't understand the question.

Councilor Hilton: When the Magies purchased the property, do you know what the use was when they purchased the property as defined by City Code?

Mr. Kipp: I believe it would have been a residential dwelling at that time if it had long term tenants.

Councilor Hilton: And so, after 2019, when the Code changed—you're only aware the Code changed as of 2019, correct?

Mr. Kipp: Could you clarify the question? I'm not sure I understand.

Councilor Hilton: So, you aren't aware of the use prior to 2019?

Mr. Kipp: I've not looked into it significantly. I have heard from several people that have lived in the building and they said that it has always housed people living there on a permanent basis.

Councilor Hilton: Okay. So, all I'm saying is you do not know what the use was prior to the Code change. It's a yes or no. Yeah, go ahead.

Council President Brownson: Could I just clarify a little bit? You're asking what the allowable uses of the property prior to 2019 were?

Councilor Hilton: Yes, when they purchased the property.

Council President Brownson: Not necessarily how it was being used, but what it could be—

Councilor Hilton: What it could be used for.

Mr. Kipp: Oh, yes. I mean, at that time, before 2019, right, transient lodging was a permitted use in the C-3 Zone. That changed with the Code changes adopted in 2019; it became no longer a permitted use.

Councilor Hilton: Okay, thank you. Council President Brownson, that you for clarification.

Council President Brownson: Okay, hearing no other questions—I don't have any questions at the moment. We have an opportunity to ask some final questions down the line, so—

Mr. Kipp: Also, according to the procedure, I think we also have the opportunity for a rebuttal?

Council President Brownson: Yes, you will have five—

Mr. Kipp: Okay.

Council President Brownson: Right, that's correct. You will have five minutes of rebuttal after…Okay, so we shall now hear from the Appellants who are also allotted a total of 10 minutes. Applicants, that would be correct. Thank you.

Carrie Richter: Thank you, Council President Brownson and Council. My name is Carrie Richter. I'm an attorney at the law firm Bateman Seidel, and I'm here today representing the Magies. I represented them before the Hearings Officer, and I assisted them with filing the application that started this proceeding.

I appreciate the opportunity to speak to you. The Magies are also here and available to answer any questions, but I'm intending to handle the oral argument just because the matter is on the record—so all the evidence you have before you in the packet.

Before getting into the merits of this appeal, I want to make a couple of introductory comments that are important for framing this review. This case is not about whether the city is suffering from a shortage of long-term rental housing. This case is not about whether short-term rentals are a good idea or a bad idea. This case is not about whether the Council should do more to stop the proliferation of short-term rentals. This case is a much more mundane and boring topic. It is whether or not the Code allows for the Magies to continue their short-term rental use of the Gilbaugh that started in 2015 when they purchased the property.

It's much less interesting than whether or not there are people who need affordable housing in this community. It's an adjudicative question. It is a question of you must apply the Code as it is written. You may want to change the Code, but you have an obligation in this proceeding to apply the Code as it's written.

You need to know also that this same question that's before you tonight was before a Hearings Officer who was asked to review this decision and determine and, you know, evaluate the question in an unbiased way. They weighed all the evidence and determined that the Magies had satisfied the burden of proof to show that the criteria satisfied that their use was a non-conforming use. We are asking that you do the same thing here tonight.

The Appellants have argued that any non-conforming use must actually exist before the date on which the Code changes in order to have, “first occurred.” The term “actually exists” as advocated by the Appellants does not appear in the Code. What appears in the Code is, “first occurs.” And what the Hearings Officer said is that the term, “first occurs,” means the same thing as, “start of use,” as that term is defined in the Code. And “start of use” is defined in the Code as in the process of physically moving into the site in preparation of beginning occupation and/or operation. In fact, the definition says actual operation or business open to the public need not occur to consider the use as begun.

The Appellants have argued that you just have to have an idea in your head and that would be a start of a use. No, we're not arguing that the idea in your head is the start of the use. What we're arguing is that a person who has an idea in their head and then goes and starts spending money and making improvements to the property in order to use the property in the ways that the Zoning Code allows, that is what is what is allowed. That is what “start of use” means.

The Magies started spending money on short-term renting this property this property in 2015, right after they purchased it. They started making improvements to the parking lot in order to have sufficient off-street parking to serve—there are six short-term rental units. They started making plans. They knew it was going to be a costly endeavor. They knew there was a ton of deferred maintenance. They knew it was going to take a long time, but the Code doesn't say you have to actually operate a use in one year after you start spending money, or two years. It says that when you start spending money, that is when a use starts.

If the Council would like this outcome to be different, as the Appellants argue, then the solution is to change the Code. We can't interpret the Code to say something that it does not actually say.

The Appellants argue that by long-term renting from December 2018 to May 2021, the use was discontinued at or changed and cannot be resumed. They rely on a portion of the definition of “cease of use” that says a building or site that is occupied by a different use shall be considered as a cessation of the farmer use. But what the appellants neglect to mention, and that the Hearings Officer relied on, is that the terms “cease of use” says a building being continuously marketed, repaired, or similarly unavailable for use, is not considered to be a cessation of use.

During the period between 2015 and 2021, this building was not ready to short-term rent. It wasn't ready to short-term rent because the floors had to be refinished, and the windows had to be sealed, and the foundation had to be built. And in that foundation, when they finished that foundation, they had to waterproof it, and when they waterproofed it they were able to

store supplies necessary to have a short-term rental occupy the four units above. They had to purchase furnishings. They had to purchase all of the things that would make the building suitable for a short-term residential use, and all of that is set forth in the record before you.

The Hearings Officer weighed all of the evidence that the Magies submitted, and that submitted testimony was corroborated by others. We have a testimony from Sean Fitzpatrick, who says that he spoke with the Magies about short-term renting in 2015. We have testimony in the record for Mr. Hellingsbow the neighbor who had conversations with Mr. Magie in 2016 about parking. So, it is not the case that there is no evidence in the record. There is a lot of evidence in the record. Mr. Cronin, who was the Planning Director, spoke with Mr. Magie about how much parking he would need, and they talked about how six units would require 11 spaces and so they needed five off-street parking spaces and that's how many were provided in the plan that Mr. Magie submitted.

The third assignment of error, I want to quickly talk about—the Appellants object to that parking plan and again it was corroborated—the scope of that plan was corroborated by independent people from the record.

Finally, I want to talk a little bit about the Magie's good faith regarding their expenditures, which the Appellants call into question. And I'm going to quote directly from the Hearings Officer's decision. It says, "Upon reviewing the record and hearing the Magie's testimony, I find the day the Magies made expenditures to improve this property in good faith before the law changed. I find that they were unaware that the law changed and continued to work on the short-term rentals. They were transparent, working in this with the City on their plans to use the fourplex as a short-term rental, as summarized in the Applicant's attorney at the Record 379. I find that the City provided them with an e-mail dated December 15th, 2020, that gave them assurances that all of the units were lawful, and they relied on this to continue making good faith investments in the property." That's at the Record at 184.

The Hearings Officer went on to find that the Magie's expenditures were specifically for the short-term use, and that the expenditures were significant. We have provided a breakdown of the budget of all of the expenditures that the Magies spent on this short-term rental broken down both by items that are related to the building and then specific to short-term residential use. In both cases, those expenditures were made before 2019 and they were significant.

At this point, I'd be happy to answer any questions that you may have. I've got the Magies here and they're happy to answer any questions, if that would be an appropriate use for the last minute of my time, and then I'll reserve the remainder of my argument for rebuttal.

Council President Brownson: Well, I just want to make it clear that you can use up the rest of your time for your discussion and the questions will come after your time is up.

Ms. Richter: Oh, okay.

Council President Brownson: So, if you had more to say.

Ms. Richter: Okay. Well, you know, give a lawyer more time, they'll take it.

The appellants have argued that the purpose and policies for regulating short-term rentals demands a different outcome in this case. And as a lawyer, I can tell you that purpose and policy statements are not regulations in among themselves. They are not approval criteria.

They matter only when a phrase is ambiguous; when it requires discretion for the Council to exercise in order to determine what a term means. There's no discretion here with the term, “start of use.”

Start of use says you don't have to be actually operating the use. It very clearly says that on the face of the language, so we don't—we can't use the purpose and policy to interpret the Code to suggest that the term is ambiguous when it is not. In a full and complete evaluation by an independent Hearings Officer with decades of experience in reviewing and applying local government land use regulations, he affirmed the City Staff’s application.

Council President Brownson: Okay, thank you.

Ms. Richter: Thank you.

Council President Brownson: Okay, so at this point do any Councilors have any questions for the Applicants. I see Councilor Davis.

Councilor Davis: Thank you, Mr. President. Thank you.

Ms. Richter: Mm-hmm.

Councilor Davis: Same question as I had for the appellant in that we’re conducting this hearing on the record. Was that your understanding? Are you accepting of that as a process here?

Ms. Richter: The Hearings Officer had a full and complete hearing, and there was an open record period afterward, so all parties had an opportunity to submit evidence before the hearings officer. So, the answer is yes.

Councilor Davis: Okay, thank you. You read the section of the use—cease of definition. I believe you read that the term, “being continuously marketed, repaired, or otherwise similarly unavailable for use.” Correct?

Ms. Richter: Correct.

Councilor Davis: Is it your contention that the building site was also vacant over that period of time?

Ms. Richter: No, it was not vacant.

Councilor Davis: Do you think that those elements stand alone instead of in—

Ms. Richter: I do, I do. And I also think that those—cessation of the use assumes that they’re—or the way the Appellants are using it—assumes that a building can only have one use.

Councilor Davis: Mm-hmm.

Ms. Richter: And a building can have multiple uses. We know that from many mixed uses where you have multiple uses occurring in a same building.

Councilor Davis: What do you think our threshold for establishing multiple use should be?

Ms. Richter: I think that the Applicants' statements and materials and the record that say that they were moving forward with short-term renting—

Councilor Davis: Mm-hmm.

Ms. Richter: --while at the same time long term renting means that the building was both used for long term and short-term use at the same time.

Councilor Davis: Okay.

Ms. Richter: Thank you.

Councilor Davis: Thank you, President.

Council President Brownson: Anybody else?

Councilor Hilton: I have two questions. First of all, did the City notify the owners of the property prior to the Code change? Did they have a public hearing? Was there any notification that this Code change would be changing their use of their property?

Ms. Richter: I have never seen notice of the change.

Councilor Hilton: So, there was no notice of a public hearing or anything that—

Ms. Richter: The Hearings Officer found that the Magies did not know.

Councilor Hilton: Okay, and then the next question again is when the Magies purchased the property, what was the determined use of the property?

Ms. Richter: The use was C-4, so—C-3, C-3, excuse me. It was C-3 and a full range of commercial and residential. Transient residential was allowed.

Councilor Hilton: Okay, thank you.

Ms. Richter: There was no distinguishing rental from six months to two weeks. There was no classification for that in the C-4—C-3, sorry.

Councilor Hilton: Yes, I was just trying to determine use when they purchased the property prior to the significant change in the Code.

Ms. Richter: Do you want to say something? State your name for the record.

Bob Magie: Bob Magie, 1466 Franklin. Yeah, so C-3 transient lodging was an outright use. So was the whole myriad of things as you all know—C-3 we have hotels, hospitals, car dealerships, everything as well as housing. Yeah, so that was definitely all right and that was definitely something that we'd been looking into after running a short-term rental out of our house years earlier. So, this gave us flexibility to do what it took to restore the building—at great expense. Keep in mind, I mean, we're paying that debt right now. So, yeah, it is a use that was available to us to help augment the work that needed to be done and still needs to be done.

Councilor Hilton: Thank you.

Council President Brownson: Thank you. Okay, and I don't have any questions for the Applicant at this point in time. So, this just brings us right back around to a final rebuttal from the Applicant.

John Windus: Hi, I'm John Windus. I live at 960 Franklin Avenue and, to be clear, I use my homestay lodging as a Captain Eric Johnson house, which goes back to 1875.

The Hearings Officer made clear that he really didn't care about the City Code; that that wasn't his job to interpret. He was just looking at issues that he was focused on. We need to look at use. "Use shall be considered," this is City Code. "Use shall be considered as ceased when the site and/or building is no longer used or available for occupancy by the specific use. A building or a site vacant while being continuously marketed, repaired, or otherwise similarly unavailable for use is not considered to be a cessation. So, if the Magies had vacated the building, done their work, and then put it on the market—then sought—that would not be a change of use. However, City Code says, "A building or a site that is occupied by a different use shall be considered as a cessation of the former use." That's City Code.

Now, the Hearings Officer—for whatever reason—wasn't interested in hearing City policy intent. He said that's just not his job. I understand that sometimes working within City Code can be a challenge. I received a stop work order from the Historic Landmarks Commission and worked with the City and Rosemary Johnson, and they brought me up to speed of what was required for a historic home in a historic neighborhood. That's not what the Magies did. Several times, they got a stop work order which says, "Please cease the transient lodging use. Cease reservations. Cancel any reservations beyond the date on this notice and remove transient lodging listings on all advertising platforms." That's pretty clear of what they're being asked to do by the City. So, rather than interact with City Staff—who's very accommodating—they said, "You know what? We're going to go ahead and do this anyway because we've committed resources." That's not how it works. Anybody who owns an old house knows it's a process, and if you work with the City in good faith, they'll work with you. And so, my Historic Landmarks thing, I got a nice Staff Report from Rosemary Johnson, thank you, and we concluded it amicably. And they had a chance to do that but kept ignoring City Staff.

With—the other note about confusion is with the exception of one typo in one email, it's not credible to believe that the Magies did not understand they were in violation, why they were in violation, and what the City expected them to do.

I just want to make a quick circle here and thank Council for hearing our appeal because this really is where it belongs. This is where the intent for the Code came from and so this is the proper forum to make that appeal, in my opinion. Our overriding objection is that the Hearings Officer's decision is 180 degrees contrary to the Council's well-reasoned policy that prohibits the conversion of an apartment building to short-term lodging; it's as simple as that. And I'm referring to the homestay lodging/transient lodging Code from June of 2019. Maybe there will come a day when these provisions don't matter—when the Council intent doesn't matter, but sadly this is not that day. It may come a time when we can say these provisions against Airbnb don't matter.

And let's finally remember that this decision to support our position doesn't mean the Gilbaugh will turn into pixie dust and blow away in the wind. The Magies still have the ability to rent at or above market rate. Mayor Fitzpatrick has sought to reframe the discussion on housing to include units aimed at higher income occupants, and we agree that more housing is needed at all price points. Well, this wish could come true if you align with our position and that will add a

handful of additional apartments to the mix. So, thank you again for your time, for your consideration, for looking through 500 pages of documents, and Andy and I would be glad to answer any questions you may have. Thank you.

Council President Brownson: Thank you. So, at this point I am prepared to close the appeal unless anybody on the Council has any further questions at this point. Councilor Davis?

Councilor Davis: Mr. President, I just want to ask—is the appropriate time for me to ask questions of our City Attorney or should I wait until this portion is done?

Council President Brownson: I would wait on it. This is an opportunity to talk to the Applicant and the Appellant.

Councilor Davis: Okay, thank you. I have no more questions for the Applicant or Appellant. Thank you.

Council President Brownson: Okay, seeing none I close this hearing.

So, the appeal hearing is now closed. So, at this point maybe if Council has any questions, clarification items for Staff, this would be the time to do that?

Councilor Davis: President, sorry—

Council President Brownson: Councilor Davis?

Councilor Davis: I'm just conscious that normally we break after approximately an hour, and we're about 15 minutes over that now. Is it possible for us to take a break at this point?

Council President Brownson: Yeah, I see no problem with taking a break. It's 7:15—we'll call it 7:15. We'll take a five-minute break and reconvene at 7:20.

Council President Brownson: So, we're back in session. I'm going to wait a moment for the City Manager to come back in before we proceed. So, we'll get started here in just a moment. So, during the break our City Attorney pointed out to me that the rebuttal that was made by the Appellants brought up new material that wasn't part of the previous discussion from Andy Kipp. So, there was new material there as opposed to a direct rebuttal to what was presented by the Applicant. So, in order to remedy that, I would like to give the Applicant five minutes to rebut specifically any new information that was brought during the previous rebuttal.

City Manager Scott: Council President—

Council President Brownson: And, yeah, and sure—

City Manager Soctt: Just for a point of clarification, should we then reopen? Okay.

Council President Brownson: Yeah, I'm going—I have to reopen the hearing here in order to do that. I guess at this point, though, I'll ask our attorney—so, should—if she rebuts his, may I offer them an opportunity to rebut her specifically one more time? Just—

City Attorney Henningsgaard: No. I believe that attorney will not direct her arguments to new arguments that were raised in what was supposed to be a rebuttal. So, I don't think we'll have that problem.

Council President Brownson: Okay, all right. The hearing is open again.

Ms. Richter: Thank you, Council President Brownson. I won't take five minutes. My name is Carrie Richter. For the record, again, I represent the applicants. Mr. Kipp started with a statement that the Hearings Officers did not apply the Code, and that couldn't be further from the truth. The Hearings Officer notes in his opening paragraph here, "The Astoria Development Code governs how the City will regulate non-conforming uses." The Hearings Officer's whole job was to apply the Code. That's why he got paid the big bucks. So, to think that he didn't apply the Code is outrageous.

The second comment that was made was that the Hearings Officer didn't weigh the evidence.

Council President Brownson: Excuse me, could I stop you—

Ms. Richter: Please.

Council President Brownson: —just for a moment. So, these are about the comments from John Windus?

Ms. Richter: No, from Mr. Kipp—made in the rebuttal.

Council President Brownson: John Windus made the rebuttal.

Ms. Richter: Oh, I'm sorry, sorry.

Council President Brownson: So, I just wanted to correct whose comments you're referring to, okay, thank you.

Ms. Richter: Sorry, my apologies.

Council President Brownson: No problem.

Ms. Richter: And then the second thing that Mr. Windus said was that the City asked the Magies to stop operating their short-term rentals and the Magies ignored that instruction. And the record reflects absolutely the other way. The Magies did not learn about the change in the City Code until they went to get a license for to operate their cottages in the fall of 2020. They had some email correspondence with Staff at that time, and as a result of that, Barbara Fryer looked into it and Barbara Fryer said that the use is allowed, and we will put this in the file so that folks will know in the future. So, the Magies had all of the good-faith reassurances from the City from Ms. Fryer that they could continue their short-term rental efforts as of the winter of 2020. The letter that Mr. Windus read was issued in 2022, which came about as a result of the enforcement complaints that were filed by—that initiated this process. So, there were enforcement complaints filed about short-term rentals. The City issued a notice in 2022 that the short-term rentals had to cease. I was immediately retained, and I filed the application for a verification of non-conforming use. My meetings with the City Attorney at that time were that the Applicant could continue to short-term rent until this was resolved. That is how enforcement works. Usually, if you're asking for it to be deemed lawful, you don't have to stop

doing the action while you are seeking approval from the City. So, there is no validity to the claim that the Magies have short-term rented in violation of any City instruction.

With that, I appreciate the Council's consideration of these issues. I ask that the Council affirm the Hearings Officer's decision by adopting the Hearings Officer's findings as their own tonight, and again reaffirming what Barbara Fryer, what a Hearings Officer, what City Staff have said, which is that the Magie's use is allowed to continue. Thank you.

Council President Brownson: Thank you. All right, I'm going to close this hearing. Hearings closed. So, we circle back around to where we left off to see if anybody has any further questions, clarifications from Staff at this point. Okay, not seeing any.

Council President Brownson: Sorry. Tom? Yeah.

Councilor Adams: You go first.

Councilor Hilton: No, you go ahead.

Council President Brownson: Councilor Adams, sorry.

Councilor Adams: Sorry. Yeah, it's—I'm trying to really take in as much of this as possible to really ask the right questions. My question is about the original decision. Can we ask about that or we can only refer to what the Hearings Officer—

Council President Brownson: We can refer—

City Attorney Henningsgaard: If it's in the record.

Council President Brownson: If it's in the record, you can refer to it. And these are questions for Staff?

Councilor Adams: Yeah.

Council President Brownson: Okay.

Councilor Adams: The original decision for staff to allow this to move forward. Can you share about what that report entailed?

City Manager Spence: So, Matt are you online?

Matt: Yes, I'm here.

City Manager Spence: Okay, do you want to speak to the decision by Staff?

Community Development Director Brandmeyer: Well, I, you know, from what I understand with the record, and I wasn't present when these decisions were made, there were complaints made about the use in, you know, meeting—the Staff met then with the Applicants, and, you know, who provided additional information. And then at that time they were able to make findings that suggested that this was a non-conforming use that could continue and essentially approved the use.

Councilor Adams: Thank you, Matt. My question is when the City Staff decided that that was the outcome, why wasn't that the outcome in the first place? Why did this continue to go back and forth if it was such a clear answer to be determined at that point. Is there any kind of real clear understanding that the City was wrong in not allowing that to be used as short-term rentals and that it was obvious once we came to that conclusion.

Community Development Director Brandmeyer: I'm not clear on that—and again, this is Matt Brandmeyer, Community Development Director. I'm not clear on that discussion in particular, but I do know that the enforcement steps stopped at that point. So, I think it's a matter of, you know, they initially took enforcement steps by sending the letter. Evidence was provided and then that decision was essentially reversed. And they wrote findings that approved the use at that point. But I can't tell you—and I think the author would need to, and I don't know if that was Barbary Fryer or someone else at that point—but the author would, you know, need to respond to that in particular. I don't know what was going on, you know, inside their heads.

Councilor Adams: I wouldn't assume that you do. Thank you. I appreciate you answering the question.

Councilor Davis: Councilor Adams, City Attorney Henningsgaard seems to have—

City Attorney Henningsgaard: Well, I might be able to fill in a few of the blanks. The procedural history was complicated by delays and turnovers in Staff. And so, the City's initial decision was dependent largely on that definition of, "use start of," and looked at the series of events that occurred and encouraged the Magies to continue, or appeared to encourage, the Magies to continue their progress on the short-term rentals and concluded that based on that that they had a vested right to continue that use.

Councilor Davis: City Attorney, pardon me—when you're saying the first decision, are you referring to the December 2020 e-mail from Barbara Fryer? Is that the decision you're—

City Attorney Henningsgaard: No, no. There was a complaint filed and the Magies asked for a determination that they had a vested right. There was also an appeal to LUBA that was filed. And the combination of all those things, I think, helped drag things out for over a year, year and a half. But Staff eventually issued an opinion that said—that granted the Magies the right to continue that use. That decision was then appealed to the Hearings Officer. The Hearings Officer's decision now is in front of you. Those are the steps that got this case in front of you.

Councilor Adams: When you say issued an opinion, can you be more clear about how the Staff issues an opinion versus what's clearly defined and understandable? Because that seems like two different things: issuing an opinion or issuing a fact about what the Code states. It's interpretation? Is it—

City Attorney Henningsgaard: It was Staff's interpretation—

Councilor Adams: Okay.

City Attorney Henningsgaard: —of what our Code states.

Council President Brownson: Councilor Davis?

Councilor Davis: Council President. I don't know if Mr. Brandmeyer or Mr. Henningsgaard can answer this. There is—so in the communications record—so, we've got in our packet a at least partial record of communications between the City and the Applicant, and in this particular turn of events—this December 15th issuance by Barbara Fryer to say that all of the units are applicable for this non-conforming use at this time. The previous Staff decision, three, four months in advance of that—I don't have all of the communications. It's a huge packet so it's hard to flip around to just get the exact page right now. But it seems like there's a few months in between a communication from Community Development Director Leatherman, who says that at least four of the units are not applicable for non-conforming use, and then Barbara Fryer seems to change that decision, or opinion. And a: Can you confirm that my recollection is correct there? And b: in the communications there's a fairly big like knowledge gap for me in between those two emails. Do you, or does Community Development Director Brandmeyer, have knowledge of what changed in their determination? Why the opinion changed, you know, 180 from Community Development Director Leatherman to Planner Fryer? Does that make sense?

City Attorney Henningsgaard: Yes, it's a good question. I participated in some of the discussions that led to the second opinion that that allowed the—previously, the Planning Director had not considered this definition, “use start of,” in her—and looked merely at the date that she saw that use starting.

Councilor Davis: She had been working from the 2019 policy change about the zone change for C-3?

City Attorney Henningsgaard: The ordinance adoption, yes.

Councilor Davis: Okay, okay.

Council President Brownson: So, just to follow up on that, I think that's pretty much how I understood that process: that the original denial of usage was just basically saying, “Oh, look, you're using it for long term. In 2019, that changed so you can't use it for STRs.” And then when that—I'm assuming and it looks like—the Magies went into conversation with Staff going forward to get clarification and understanding about how this works because it was new to them as well that they set about to establish their intention from the beginning was to create STRs there and that they had been in the process of doing so, and that through that conversation they came up with a more nuanced response.

City Attorney Henningsgaard: Yeah, if you look in the record, you'll see that much of these, the City’s correspondence and record keeping was less than meticulous. In one case I think Assistant Director Morgan just scribbled on a piece of paper, “Approved.” I think Magies brought forth some of that information that was no longer in the City files.

Council President Brownson: Thank you. Any other questions for staff?

Councilor Davis: Council President, I only just want to follow up. In opening remarks, I made some reference to speaking to City Attorney Henningsgaard and that I would likely bring up the same topics again. I will say the things that I wrote down, I can go through here and most of them have been covered one way or another in either Applicant or Appellant comments or things we've already talked about. One was having this hearing on the record as opposed to de novo. We've sort of spoken about that. The Appellant has talked extensively about the use cease of, as has the Applicant. We had some conversations about that passage as well. I

might ask about non-conforming uses. One thing that the Appellant brings up, and that I at least have some concern about, is enforceability of non-conforming use and—then the language in our Code to me speaks to an assumption—it refers to use—"a use" all the time. I am perfectly aware that we have spaces in our community that are used for more than one thing at a time. You know, people operating a business out of a residence or something like that. So, it's got simultaneous uses. What I'm sort of worried about is how we make an authoritative determination of whether or not something is a use or not. There are elements here that we've looked at or that you've spoken—plans, expenditures, etcetera—that become part of that. I guess one of my questions might be how do we—within our non-conforming use Code—how do we make those determinations? Does a decision that we make tonight have ramifications for future use of that part of our Code? Do you have an opinion to share on that?

City Attorney Henningsgaard: Generally, the rule all planners like to say is that a decision in this case will have no bearing on a decision in another case. They're all fact dependent, and that's really true in planning cases more than anything else. But I think in this case, the question is what we have below is a Staff decision that they had a vested right to continue this use. And we have a Hearings Officer decision to the same effect. It's: have you seen anything in the record or heard any arguments tonight that convinces you that your Staff and the Hearing Officer were wrong? Because it's the Appellant that has the burden of convincing you that an incorrect decision was made based on the interpretation of the Code. Now, you may conclude that, as a result, you don't like what the Code says, but unless you can say, "Yeah, I think these guys were—everybody along the line was wrong, it means something else," then I think that you have to say that the Appellants have not met the burden of proof in front of you tonight.

Councilor Davis: Maybe one other item that we talked about today, City Attorney, and that is we discussed a little bit about intent of the Council referring both to the policy change, the ordinance change made in 2019, which I frankly think is less relevant here. I think a lot of the argument revolves around the use definitions in this case. We talked, to some extent, about even trying to find a record on intent of Council at the time when those two new definitions—"use, cease of," and "use, start of,"—were passed. Those appear to be added to the definition set in 2010. Could you recollect what you shared with me as far as those definitions and possible background of why they were passed the way they were.

City Attorney Henningsgaard: I could find nothing that would—no legislative history, Staff Reports of any kind, indicated why those definitions were adopted. I have ideas, but that is pretty much irrelevant, I think. They were adopted as part of a very large piece of City ordinance that was originally sent to the City in January and was eventually adopted in November. And so, there are a lot of, there are a lot of back and forth between the City Council and the Planning Commission, but none of those Staff Reports discussed why they were changing the Code definitions.

Councilor Davis: Thank you. That's all my questions for Staff. I do want to note and just give commendation to City Attorney Henningsgaard, who's having some back issues at the moment, and both putting up with my questions twice in a day and sitting through this meeting. I just want to share my appreciation for you being here and soldiering through this. Thank you.

Council President Brownson: Thank you, Councilor Davis. So, one last chance. Any other questions for Staff? Okay, not seeing any at this point. So, the City Council will now discuss and deliberate and come to a decision on this matter. So, this is your opportunity to, if you have anything else to say before a motion is brought forward: any comments about how you

feel about this; why you are choosing to go one direction or the other; or information that you feel any of us may benefit by, this is your opportunity. So, I open the floor. Councilor Hilton any comments?

Councilor Hilton: Yeah, I feel free to say that this is a very common theme in what I say when it comes down to Code, and it comes down to the use of property, and that is when the purchase of the property owner and the Code when it was written when they purchased the property. If the City comes in and changes Code, changes the rules of the game, should that apply to the person when they bought the property, in let's say, in 1900, or whatever. No, it shouldn't. If the City comes in and changes the rules of the game and the person—and we don't inform those people of the changes—and they have a use, and a specific use, outright use within that zone, then we can't go do that. The City, I mean, I'm not saying that the City is wrong, I'm just saying that the way use is, it's use. So, they bought the property in 2015. They have a use. The use is what it is when they bought it. That shouldn't change because the City comes along and changes a Code and then all of a sudden, we're going to say, "Oh, well you can't do this." Well, the historic use of that property does have some value when they buy it. But we can't come in and just say all the sudden, "No, you can't do this now."

And I guess I would also—maybe this isn't—but that's just how it is. You can't ask somebody that buys an outright use property and then all of the sudden change the rules. We saw that last year on Marine Drive—wanted to change the rules of the use for the, let's say for the home bakery, or that, or the properties in my neighborhood, and we can't do that to people. People have the—when they buy a piece of property, and they invest in that, it's their—they should have the right to do that. And we can't come along and say, "Oh, just because of this, we're going to change the rules." We can't change the rules in the middle of the game. And especially if we don't notify or have a public hearing, and that there's no record of this discussed to the people that have those investments in those property. That's what's even a more slippery slope. Now, we inherited this, okay? And our Code isn't perfect. And, yes, they'll have to be some changes to it. But, once again, you can't change the rules in the middle of the game, especially when people are investing their lives into something. And I would say this: if you don't like it, go buy it. Buy it. I'm sure they might be more than happy to sell it to you. But that's just it. And that's kind of my take. And it just—if we're going to talk about use, that's the use. The use is when they bought it, and it should stay that way. And the use is—yeah, anyway—that's my take. Thank you.

Council President Brownson: Thank you, Councilor Hilton. Councilor Adams?

Councilor Adams: We change the rules of the game all the time. That's how it works. We change it all the time. We absolutely change it. None of this has to do with how much money they've spent. They've spent their entire life savings. They've spent everything they own to make this property what it is, but that has nothing to do with our decision tonight. It doesn't matter that they're nice people. It doesn't matter that they are involved in the community, that they do wonderful things—none of that matters. What matters is whether or not that the Hearings Examiner made the right decision, and to be honest, when I heard the decision that first came out from the Hearings Examiner, I was shocked. I did not think that that would be the decision. I thought that it would rule not in favor of the Magies. I was shocked, based on all of the information that I had been given, the meetings I had sat in, the documentation that I looked at—the Magies are failed by the City in a lot of ways. This, like, writing on something, "Approved," and calling it a piece of paper or a document—there's so many failures that have happened and none of those matter. What matters is whether or not the Hearings Examiner's decision was made appropriately based on what our Code says. And that's all I have to say.

Council President Brownson: Thank you, Councilor. Councilor Davis, are you ready to jump in, or?

Councilor Davis: Council President, can I ask one more question of Staff?

Council President Brownson: Sure.

Councilor Davis: Is that objectionable to anybody?

Council President Brownson: Not at all.

Councilor Davis: City Attorney Henningsgaard, so there was one other item that I didn't write down here, but we did talk about a little bit, which was things that are within the record or not, what I can make reference to. Refresh my memory because I believe that I spoke with you about looking up the agenda packet for the I don't know, June, July 2019 meeting of the City Council when they passed the ordinance change. But you said that that's not germane to the record, that Code references were okay, but talking about that packet, or the minutes, or things like that from that meeting was not. Is that correct?

City Attorney Henningsgaard: That's a correct statement, yeah.

Councilor Davis: Okay. Am I allowed to make characterizations of my understanding of that material?

City Attorney Henningsgaard: It shouldn't be part of your decision because if it's not in the record, the parties haven't had an opportunity to address it to you and respond to it in any way.

Councilor Davis: Okay. Thank you, City Attorney. It's just—okay. It's hard to summarize my thoughts on this, frankly. So, we got this packet Thursday. This is 600-page packet. There's a lot in it. I tried to get some of the material well in advance, like I wanted to read the opinion from the Hearings Officer. It was a little difficult to get that in advance. I, like Councilor Adams, when I read the story in the paper was a bit taken aback and frankly wanted to read the logic of the Hearings Officer around this, "use start of" piece of language, and was a little frustrated in my ability to get that information.

So, I spent an unfortunate amount of time over Dark Arts weekend thinking about this case, this appeal. I think that one of the things that is really tough about it is that I know both parties, like both parties, agree with both parties in the possible harms on both sides of this appeal. Like, I think housing is an important issue. I talk about it, like, every Council meeting. I'm a broken record on housing. It's also immaterial to this case, frankly, and it's really frustrating to me that it's immaterial, but I can't make a decision on it.

Unidentified: But it's not. It's not.

Councilor Davis: I mean it really is though, as far as our decision. And I'd say—

Unidentified: You guys are.

Unidentified: Your policy.

Council President Brownson: Allow him to speak, please. This is not time for public comment. Comment has been made. The hearing is over. Allow him to express himself.

Councilor Davis: I want to say, too, like, I didn't write this policy. This is predecessor policy. I've talked to some of those folks over the years and understand how this policy came to be. I think I have a reasonable understanding of the intent of it, but unfortunately, I don't think the decision in this case actually revolves around the policy change that much. I think it revolves around these definitions, which are not part of that policy change, which is super frustrating, too. I think it would be a much cleaner appeal if we were talking about some ambivalence in the policy change from 2019, and we could say, "Oh, you know, I know what the counselors were trying to do then, and they were trying to tamp down on short-term rentals and we should do that." But "use start of," is not part of that ordinance package. It's part of this 2010 change that we know nothing about, essentially, which is super frustrating. And I think part of what's in my head here, too, is whatever decision we make—if I make a unsupportable decision here, it goes to LUBA and gets overturned anyway, either way—could go either way. The record so far seems to be much in favor of the Applicant, right? We've got two decisions that side with the applicant. LUBA may sign it with the Applicant, too, even if we decide that we want to side with housing. So, this is really difficult on that side.

I also think it's super difficult—I understand your financial position. Like, I think Councilor Adams is right: the City has let you down and in meaningful ways. Like, I don't agree with all of the Staff decisions as I read them, but at the very least, they, like, strung you along in the process and let you spend more money and do something that has put you in a bind. If we make a decision that impacts you. That's also—I mean there's an element of it that is important to the case, because it's part of the basis of at least the Hearings Officer saying that you've been planning this all along, you know, that you have spent a bunch of money and he seems to give weight to it being a amount of money commensurate with a planning for a short-term rental. So, I get that it's also important for the case in in that sense.

I would say for me, Councilor Hilton, I think I agree with the concept that we can't—a current use we can't change in—we can't make a policy change to prohibit something that's currently in use without having a takings, without needing to grandfather in uses, which we usually do right? Like, that's the whole idea behind the non-conforming use. Like, we say, "We changed this ordinance, but you can keep doing that because you were doing that and we're not going to take it away."

I think there is question in my head about whether or not, even in the language of our Code, whether or not this is a non-conforming use in the in the sense that I understand it, which is you've got something going on, it's continuous there, there's not something else happening there. We've got language in the Code both in the C-7 "start of" that seems to speak to this a little bit as well, as the non-conforming use section. And I think that, frankly, it's not real clear to me. I wish there was something in the historical record to tell me what they were trying to do with this C-7 "start of" language because I don't think it's as clear as you do about that vacancy. I think that when the property is in use as a long-term rental, even if you're making updates to it and you're planning to change it to short-term rental in your long run for the property, I'm not sure that it can be used as a short-term rental if you've got a long term tenant in it. Like, in a case where I'm running a business out of my home and it's got commercial use and residential use, I can do both of those things. I can occupy the space right now in both of those ways. I don't know that that's true in my sense of what has been going on with your property. Like, I think you have been making improvements over time. It sounds like you've switched in—you personally have lived in and out of different units and made improvements

like piece meal as you went along. But outside of the parking lot, which the Hearings Officer gives a lot of credence to, I don't know that I see, like, a continuous occupation of that space as short-term rental. The parking lot is a—yes?

City Attorney Henningsgaard: We're approaching the bewitching hour. If you want to extend that period of this meeting, you'll need a motion.

Council President Brownson: I was going to get there.

Councilor Davis: Thank you, City Attorney.

Council President Brownson: We still have a couple of minutes, but if you want to hold off for just a second?

Councilor Davis: Sure.

Council President Brownson: And I would entertain a motion to continue this meeting for another half hour.

Councilor Adams: I'll make a motion that we continue the meeting for another half hour.

Council President Brownson: Do I hear a second?

Councilor Davis: Second.

Council President Brownson: All in favor?

Council: Aye.

Council President Brownson: All opposed? Okay, we will continue this meeting until 8:30. Thank you. You can continue, please, Councilor Davis.

Councilor Davis: So, I think I get stuck on the C-sub language right now. And I don't quite know how to get around in my head thinking that we really can't have an ineffective—a use of a property that can't be affected during occupation by another use. I feel terrible about that, but I think that's where I'm at right now, yeah.

Council President Brownson: Thank you, Councilor Davis.

Councilor Davis: Thank you, President.

Council President Brownson: I guess it's my turn, and I do have a few comments here and I hope to be coherent to the best of my ability. As Councilor Davis has pointed out, there's a lot of material to take in and a very short period of time, and I have spent some time going over this any number of ways to try and get clear. So, if I ramble, I apologize, but I hope I can make my point.

So, because I was the one that was there in 2019, so I understand the intent. I know what we were up to, and it and it was about housing. But this is not about that; that is correct. This isn't whether—I mean I—if this all becomes short-term rentals, from a housing standpoint, I'm saddened by that fact. But again, that's still not why we're here. After going over and over this,

I really had to put my shoes into the Magie's situation. You know, I just stand—kind of take that in and try and understand what they were going through, what their perceptions, what their choices, how they made their choices, and where that was leading them. So, pre-2019 it was pretty straightforward. There was no anticipation of a Code change. They had the property, and from everything that they were able to bring forward to establish that their intent was to take that old, poorly maintained building and fix it up and get their investment back by making it a short-term rental. You pencil it out—if you can keep occupancy at a certain point, you're going to make—bring in a lot more money. You're going to be able to start, you know, with short-term rental as opposed to the fixed incomes that you can only raise the rent so far. And so, I get the decision to do that makes perfect sense at the time.

Also at the time, my mindset would be that "Okay, we're going to get started on this. We're going to have some discussions. We're going to find out what we need to do to make this work as a short-term rental here in Astoria according to Code. We will go at a pace that we can afford and that we have time to do." All these factors come into play, and none of that takes away from their intention to make this a short-term rental. That's the plan. Now, what I saw on—and again, Councilor Davis pointed out that they were let down by the City and a bunch of different ways. Again, being here through that process and the challenges we've had in our Community Development Department with personnel changes, lack of personnel, it's hard to get a good, coherent, steady response. So, what I saw happen here was that they went to the City to renew their short-term rental, or their occupancy tax, because they had two in play already: they had the two cottages around that in play. Also, I did see pretty good evidence that said that their intention was that the whole property was going in that direction. They were able to do the low hanging fruit and that was the cottages. Again, this is this is how it reads to me.

When they went for the occupancy tax, when they—they didn't do that, they didn't need to do it apparently, until the fall of 2020, and they did whatever that was, and they put it forward, and that rang, the bell. Said, "Oh, wait a minute. You can't do that in that building because you have long-term residents. Cease and desist." It's very straightforward. According to Code, that one would read, that's exactly what they did.

Again, my read on all of this information is that at that point the Magies engaged with Staff to try and get clarification of what happened. What's different now? What changed? We weren't aware of a change. So, so far I still feel that they are honest brokers in this; that they're intention was to do the right thing according to Code, but they just got blindsided by this Code change. I want to point out that there haven't been any other incidences that we're aware of, that I'm aware of, that this Code change impacted somebody who was in transition of going from a short-term rental, getting things fixed up moving forward, that just wasn't happening. The Code isn't bad in and of itself as it stands here today. If I have a building in a C-3 zone that I'm using for long term rentals, I can't change it to short-term rentals. It's not allowed. You can't do that. That's what the law does.

What I see happening here is that somebody who was in that process got caught in the middle. No fault of their own. I just don't see—I mean, I was willing to kind of speculate idly, maybe in the past when I might have heard something about it here and there, like, "Oh, no short-term housing. Somebody, you know—what are they doing, taking away our, you know, our housing?" I would certainly have had that attitude because I'm, again back in 2019, I'm one of the individuals that was all for this. We were looking for ways to save our long-term housing. We didn't want—and it was—this is just a piece of that whole process of what we were doing. So, there's that.

So, when it comes to actually talking about this decision in front of me here, I really do have to go back. I have to go to the to the language, “first occurred.” You know, “use start of,” whatever your terminology to—how is that reasonably interpreted by the people who are involved in the process? Now, I can reinterpret for my purposes right now to make a decision, but I'm trying not to do that. Again, I'm trying to interpret it in a manner of how the Magies and how Staff was looking at this once the issue came up. Because we don't have really great documentation from one point to the next, to that final Staff decision to allow it, the STRs, to go forward, I can't read their minds. I'm not willing to make things up. I am willing to believe that through their discussions, because our Attorney was involved, Staff was involved, and the Magies were involved in the discussion for clarification and going forward, and that it's simply a result of those conversations and those understandings about what it is to have started something and then finished. And the point that there are long term tenants in at the time—I think the argument is reasonable that until you're ready to switch over, you're spending a lot of money, and you want to maintain an income stream to help support it until your rate is switched over.

So again, going through this, it just seems to me that. The parties involved were at least honest brokers. Now, you may disagree with that, and that Code is Code and having long term residents in there post 2019 just took away the ability for it to be something else. In my opinion, I think that this is a one off when it comes to this. I'm sad if this goes in their favor that we lose long term housing. It's a constant battle out there. But again, that's not what this is about. This is about reasonable people making reasonable interpretations of the Code and being able to move forward. And I appreciate the Appellants concerns. At the highest level, I agree with those concerns, but in this matter I just couldn't quite agree that this violation—that—that this perceived violation on their part--and it was couched—this all came up and it started as a violation. It was treated as a violation initially, but that was before people took the time to understand what the issue was. That was reactive in my opinion and by reading; that was just reactive by Staff. It's what they do: say, “Not compliant, Let's act on it.” And somebody made a comment about having worked with--the Appellant talked about how when the city approaches you and say, “Stop doing what you're doing,” if you engage and talk to them and work with them, they work with you. And that's my impression of what the Magies did. They also worked with Staff to achieve and to continue to do what they were doing.

So, if I have more—again, I could start wandering around, but in general I feel that Staff made a reasonable decision on their final decision, and I feel that the Hearings Officer upheld that reasonable decision. And again, reasonable people can also disagree but, in this particular case, I'm sympathetic and willing to support the outcome of the Hearing Officers hearing in this matter. So, those are my comments. I'm willing to entertain further comments from the Council. I think everybody has something to say. So, Councilor Davis.

Councilor Davis: Frankly, Council President, I was prepared to make a motion. I, you know, I have a sense that it might not go very far, but yeah.

Council President Brownson: All right, Councilor Davis.

Councilor Davis: But I don't know if other Councilors have other discussion points to make beforehand.

Council President Brownson: Okay, so let's do it this way. Does anybody on the Council have any other discussion on this?

Councilor Hilton: Well, I really do. I just wanted to say that we are burdened with the decision based on a certain amount of information and a lack of information. I think the real question would be is we're basing it on words as opposed to paper trail. The paper trail came about because they went to apply for something unbeknownst to them, of a change. That's the key to this paper trail. If originally when they purchased the place and said, “Oh, this is what our intentions are,” well then that's fine. But we have to look at the fact of what the Code is written as. We have to make maybe a decision that doesn't sit well with us, doesn't sit well with everybody. I don't think anybody really is happy to be here to do this, okay? But let's keep in mind, we live in a community that—we have to get along, and that's important. And yeah, I took this position, I was voted into it. Yep, that's right. I took it, and I got to deal with my neighbors and my friends and everybody and, you know, but decisions are made by people who have to make decisions that aren't so easy sometimes. So that's the difference between. people that want to be leaders and help lead our community and those that don't get up here and take this responsibility.

So, that’s it. Thanks for everybody for your time. Thanks for your efforts. Thank you Councilor Adams, Councilor Davis, and President Council Brownson, and thank you, Staff.

Council President Brownson: Thank you, Councilor Hilton. Councilor Adams, did you have any other comments?

Councilor Adams: I just wanted to say for the record that I think this is a really good example of how important it is for us to be incredibly clear with everything that we do up here for our citizens. This world is no longer the handshake and the smile that Councilor Hilton and I were raised on. We have to have equity, and equality, and fairness and all of the decisions that we make, and they cannot be based on because we want housing or because we think these are good people. This decision is very, very specific. And I have been a big proponent in talking about my interest in decreasing short-term rentals and the illegal use in which they're occurring in our city and how it does take away from our housing stock. And yes, Brenda, that is the issue, but right here, right now that's not the issue we get to decide upon. And it's a failure to everyone involved that things are not clear, that there is the potential for people to think that special interest can change the way someone decides something, whether it be on Staff or at Council or at any other level. We need to have a very clear understanding for our developers, for short-term rental, for all of our business—because these are businesses—our business owners, so that they are supported appropriately with the right terminology and the right Code written, and that there isn't this subjective way in which we can interpret things. We need to have a lot more clarity.

Council President Brownson: Thank you, Councilor Adams. Yeah, you know, it does worry me a little that people might get the idea that, well, “I could circumvent this 2019 Code Development change by just saying that I had planned on doing this, you know, in 2015. So, let me do it now here in 2024.” The only thing that really comforts me—there's a couple of things. One is that I think that the Magies actually have some documentation, some background, that says that yes, that this was clearly their intention and that it only came to light, right, you know, within the 2019-2020—you know, just after it came in effect. It came as a surprise. There are no surprises anymore. We know what the Code is. Somebody comes in and says, “I want to change this to a non-conforming use because I always wanted to,” just isn't going to make it. It's going to be hard to make that case going forward and I only see this as a very unique one off, as far as I'm concerned. If I were here in the future and something like this was to come up, you can bet that I wouldn't let it happen. The Development Code 2019 was put there to

preserve housing. Period. That's what it was there for. So, at this point, if there is no more discussion—

Councilor Davis: Council President, I'm prepared to make a. Motion.

Council President Brownson: Well, it looks like Councilor Davis is prepared to make a motion.

Councilor Davis: Thank you, Council President. I would move that we make a partial approval of the appeal to reverse the hearings Officer decision on the four units in the main household, leaving non-conforming use for the 2 cottage units.

Council President Brownson: Well, excuse me, but a clarification.

Councilor Davis: Sure.

Council President Brownson: The cottage units aren't part of this discussion. It's only the fourplex. Cottage units had been established and licensed and they are—

Councilor Davis: They are non-contested?

Council President Brownson: This is only about the four…

Councilor Davis: Thank you for the clarification. Then I will move to approve the appeal and reverse the Hearing Officer decision.

Council President Brownson: So, there's been a motion to approve the appeal by Councilor Davis. Do I hear a second?

Councilor Adams: Could you repeat it? I'm sorry. You said to approve?

Council President Brownson: To approve the appeal.

Councilor Adams: You said, “approve” or “remove?”

Council President Brownson: Approve.

Councilor Davis: Approve the appeal and overturn the Hearing Officer decision.

Council President Brownson: So, do I hear a second?

Councilor Adams: I second that.

Council President Brownson: Okay, hearing a second. Is this a roll call vote? This is just—okay. So, all in favor?

Councilor Davis: Aye.

Councilor Adams: Aye.

Council President Brownson: Opposed?

Councilor Hilton: Nay.

Council President Brownson: Nay.

Council President Brownson: So, we are at a two to two on this motion. I would also be willing to entertain—you know, we can discuss this a little bit if you want, see if there's a way to get beyond this 2:2. We could also have another motion to deny the appeal as well, but if we did that, I would like to hear a little bit of discussion before we attempt another motion. If there is no other motion, then with a 2 to 2, the appeal does not move forward. So, basically it will uphold the Hearing Officer's appeal. So, is there any other discussion? Councilor Davis? Or a question.

Councilor Davis: Is there any amount of short-term rental units that would make this viable short of all four?

Council President Brownson: So, I don't think—that's a speculative question that can't be answered at this point.

Councilor Hilton: We need to refer to Council.

Council President Brownson: Well, Council could weigh in, I suppose, on whether that's possible. So, the idea that possibly you could have two of the apartments short-term—just for an example—two long term. Or one long term and three short-term, some variation. And whether that could be part of this appeal or an amendment to the appeal in any way. And I don't know the—

City Attorney Henningsgaard: To propose that kind of solution, you'd need to adopt findings that would support it factually, and it'd have to be based on the record that you have in front of you.

Councilor Davis: Can I ask a question of Staff, Mr. President?

Council President Brownson: Certainly.

Councilor Davis: City Attorney Henningsgaard, or Community Development Director Brandmeyer, is your understanding that there is uniform improvement made to all units of the building, or are there particular units that have had more mixed occupancy or more improvement done to them over the span of this project?

City Attorney Henningsgaard: I haven't seen that in the record.

Councilor Davis: Director Brandmeyer?

Community Development Director Brandmeyer: Yeah, I don't have that information either.

Councilor Davis: Okay, fair enough—thought it was a reasonable to ask but thank you.

Council President Brownson: Well, I think it's a reasonable thing to ask. I don't know how to prescribe it based on the record. The only possible interpretation that I could come up with that would potentially support your assertion, I'll call it, is that—but it would just have to go back and research, and I don't know—but if it was the case that 2019, when this became Code, there were one occupant long term or two occupants long term that were in the building and

that that went on for 12 months post 2019, that possibly those rooms would not be able to revert to STRs and the rooms that weren't occupied, that were in the process of being turned into STR rooms, but again I don't have enough information and I don't think there was enough information in the record for me to actually assert that. It was a question that I had because there was this whole discussion about, you know, the 12 months and non-conformity, and whether it applied to the whole building or whether it could apply to just singular rooms, and the response I got in asking Staff about it was that yes, a single room could become non-conforming. Like let's just say we approved the Appellants, or we reject the Appellants and they get to have STRs, and if at some point they put a long term resident in one of those rooms for more than 12 months, that room would no longer be non-conforming, but the rest would continue to be STRs. So, that's down the line how that could change. But I don't know—I think it's too hard to apply here in my opinion. But I did think about it.

Any other discussion? Is there another motion to be offered? Seeing none. Manager Spence, where are we at here? We've had a motion. It's been 2 to 2, and that's what stands at this point.

City Manager: Right, so Council, since there's been a lack of majority to advance a motion, there could be continued discussion and maybe at some point amongst Council, you can come to an agreement based on the appeal. I guess if they're—and I'm looking at our City Attorney—if Council is unable to arrive at a majority motion, regardless of which way, my understanding is that defaults, that the appeal would be denied. Is that a fair summation?

City Attorney Henningsgaard: It would be…. It is.

Council President Brownson: And the Attorney responded in the positive. Okay.

Councilor Adams: Can I also ask what would be the, like, how far does this go? Is this the end of it? Is this going to continue on? Can you talk about its possible future?

Council President Brownson: Well, okay, so, we have now taken a final action. I don't see anybody offering any other actions going forward. That being said, the City Council's ruling may be appealed by any person with standing by filing a notice of intent to appeal with the Oregon Land Use Board of Appeals, LUBA, within 21 days after the City has made its decision. If an appeal is not filed with LUBA within 21-day period, the decision of the City Council shall be final. And that's the end of that agenda item.

Thank you, thank you everybody.

Council President Brownson: We have a little bit more meeting here. I would like to get a motion to extend the meeting for another 15 minutes so that we can get public comment in.

Councilor Davis: Council President, I would move to extend the meeting time until 8:45.

Council President Brownson: Do I hear a second?

Councilor Hilton: I'll second.

Council President Brownson: All in favor?

Council: Aye.

Council President Brownson: Thank you.

City Manager Spence: So, Council President, maybe a procedural question.

Council President Brownson: Sure.

City Manager Spence: So, Blair, how do we record that, I guess, non-decision decision?

City Attorney Henningsgaard: I will prepare an order…

City Manager Spence: Okay.

Council President Brownson: So, the Counselor said he'll prepare a order. He's not on mic here, so I just want people to hear that. Okay.

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

Council President Brownson: Okay, so Item 9: New Business, Miscellaneous Public Comments. So, at this point, let's ask for public comments to non-agenda items. Okay, would you please step up to the microphone and state your name and address for the record? And you'll have 3 minutes, and anybody online that's willing to make comments, please raise your hand.

Mary Eng: Hi, Council. Mary Eng, Box 12. I know we're all exhausted from that very long meeting, but there are a few little things I wanted to point out to you, one of which is that Airbnbs are not always viable income revenue generators when they turn up with meth labs. I was quite shocked to see that that happens and did a little research, and it can really go south. So, watch out for your investments.

There is some graffiti on the harbor right now. I called the landlord, Richard Bunny, the defense attorney, a former prosecutor, so, he's looking into that. I think it sends a strong message to DV victims that they're not safe to attend services without their stalkers tagging up the building. Then also, I wanted to point out though, there is a groper on the loose of people at the Deals Only store. He was not prosecuted. He was eighty-sixed from the store. But we run into him, and he has assaulted a friend of mine as well as customers at Deals Only.

And then I would like to ask also for homeless restrooms, 24/7. Our bodies do not stop functioning at 3:00 in the morning and 4:00 in the morning and such. Some people have incontinence needs, menstruation happens usually about every 28 days for a large segment of a woman's life. I'd also let you know that I spoke to the Health Director, Jiancheng Huang, about menstruation products being more widely accessible. The college has taken an incredible standpoint towards having menstruation products in every bathroom, freely accessible to anyone of any income demographic. But I think just with Covid tests, toilet paper, things that human beings need, that would be great. And I would like to point out the Portland loose style wheel, it's fabulous to have that as a feature. It obviously wasn't designed by a woman because a woman would know to have more sanitation options for washing your hands, if you change a baby's diaper, or have a menstruation need, etcetera.

Let's see. I have been communicating with the Methodist—a superintendent who is above the Methodist minister—regarding what has happened with the resources that are still tied up at

the Methodist Church. Her name is Wendy. I'm still waiting to hear back from her. And then, oh yeah, I want dog owners to clean up their dog poop because I will do it if I stumble upon it but it's really getting out of control, especially with great festival weekends.

And I want to thank my friends at Los Angeles Food not Bombs for protecting me when I was being harassed, when I was feeding the homeless almost 20 years ago, and suggest that we need to really rally against any abuse of homeless people, including homeless women and find a culture that protects them and gets their needs met.

Thank you. And, BOLI, Bureau of Labor and Industries, is working on a conciliation process regarding the disability discrimination done on commercial thinking.

Council President Brownson: Thank you. Does anybody else have comment, public? Yes, sir. Your name and address, and three minutes.

Steve Headrick: Steve Headrick, 984 Clatsop Avenue. I was just wondering what's going on with the Owen Adair addition. It just seems to keep stalling. We need to build it. I mean, some people worry about the slide, but there's already a very old foundation right there. It's, like, if somebody puts in a new foundation of the proper tone who knows what they're doing, you'd think that would be a great thing.

Also, I have concerns—I have a couple friends that live in the Astor Building, and the top couple of floors have more or less been turned into Airbnbs as they kick people out. And, is there some point that where they're going to kick so many people out, you're going to make them turn it back into a hotel? Or do they just keep getting to do Airbnbs.

Council President Brownson: Okay, thank you very much for your comments. Anybody else? Do we have anybody online? No, nobody online. Okay, well that end up in Public Comments. Any New Business from the Council? I see Councilor Adams has her hand up.

Councilor Adams: Yeah. I just would like to inquire about our duty as performing reviews or other types of discussions with our employee, City Manager Spence. He's been with us a year. I haven't been notified by HR, or any kind of process in which we're supposed to be flagged or paying attention to anything that's coming up. I'd like to know that information well beforehand so that we know what our duty is to him as our employee to make sure that we take care of that.

Council President Brownson: Okay, thank you. Do want to address that—we're having—there's going to be an Executive Session, I think next Monday after the work session to have this conversation.

Councilor Adams: Oh, there is. Okay.

Council President Brownson: Yeah.

Councilor Adams: I know that I had mentioned it to Scott, but I hadn't heard anything back about it, so I've just been waiting to hear.

Council President Brownson: Okay. Councilor Davis, do you have something?

Councilor Davis: I don't have any other New Business. Thanks for the discussion tonight. I do wonder if, Manager Spence, are you prepared to give any update on the Owens Adair to the public?

City Manager Spence: I would state only that there is an appeal before the Planning Commission related to the grading and grading permit, and so that is in process. I believe that hearing is this month. But we are still actively working with the Applicant.

Councilor Davis: Thank you.

Council President Brownson: Okay, just have one item I wanted to bring up here and this is a League of Oregon Cities Business. There is a spring conference coming up. It's down in Klamath Falls, and I feel that the City should have a presence there from Council. I know that this Council, you guys are all pretty busy and whatnot, but so if one or any of you would like to—or, well go to that conference, sign up for the conference.

Councilor Adams: We could carpool?

Council President Brownson: One could carpool, but basically what I want to say is that if nobody can make it, I would go. I don't need to go necessarily, but if nobody else is going, I would go to make sure that Astoria still has a presence there for this conference.

Councilor Davis: What are the dates, Council President Brownson. Sorry…

Council President Brownson: That's okay.

Councilor Davis: We can get to it later if you don't have it off the top of your head.

Council President Brownson: Yeah.

Councilor Davis: Okay.

Council President Brownson: I think Scott's looking for it right now. It'd be good to have those dates.

Councilor Davis: We can follow up. I'll try to make it.

Council President Brownson: And I can tell you that it's not a weekend, it's a weekday. It's a Thursday and Friday.

Councilor Davis: I can drive, too.

Council President Brownson: Okay, but it's just taking time off work, you know, taking that time. I just want to make sure, 'cause Klamath is a long way to go.

City Manager Spence: Looks like April 25th and 26th of April.

Council President Brownson: Yeah, so there's a little bit of time. I know that the conference is being held at a particular venue and there are rooms at that venue, but all the rooms are taken there, but they've got a couple of hotel/motels that have rooms available. And, by the way, the City will pay for your mileage, for your room, and for your meals, so—

Councilor Hilton: You could take Amtrak.

Council President Brownson: Does it go to Klamath?

Councilor Hilton: Yeah.

Council President Brownson: Okay, hey, there you go. So, I just wanted to put that out there. Any other business? Okay, well thank you everybody. Thank you for being here. At, it looks like 8:37, this meeting is adjourned.

ATTEST:



Finance Director

APPROVED:



City Manager

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

MEMORANDUM

DATE: **FEBRUARY 20, 2024**

TO: **MAYOR AND CITY COUNCIL**

FROM: **SCOTT SPENCE, CITY MANAGER**

SUBJECT: **NOTICE OF APPEAL AP24-01 BY ANDREW KIPP AND JOHN WINDUS OF THE HEARINGS OFFICER'S DECISION TO DENY APPEAL AP23-02 AND UPHOLD THE ADMINISTRATIVE DECISION CONCERNING APPROVAL OF TRANSIENT LODGING USE AT 1555-1557-1559-1561 EXCHANGE ST.**

DISCUSSION / ANALYSIS:

BACKGROUND

This is an appeal of the Hearing Officer's decision to deny an appeal to the City's decision to allow a transient lodging facility at the subject property. The appeal was heard on November 2, 2023 and a decision was transmitted on December 11, 2023. The subject property is located on Exchange Street in the C-3 (General Commercial) Zone. It is developed with one multi-family structure and two single-family structures. The buildings were constructed in 1920, 1930, and 1955 as residential properties. The applicant is proposing to operate all three buildings as transient lodging with no residential use. Use of the two cottages as transient lodging has not been appealed and that use has been approved by the City.

APPEAL

The City received an appeal of the Hearing Officer's decision on January 2, 2024. The appeal was filed by Andrew Kipp and John Windus. The City Council has decided to conduct its review of this appeal "on the record." This means that only evidence received by the Hearings Officer and arguments raised at the public hearing may be considered by City Council on this appeal. The record reviewed by the Hearings Officer in reaching their decision to deny appeal A23-02 is attached. Appellant's Notice of Appeal application describes their reason for objecting to the Hearing Officer's denial of appeal A23-02 as follows:

- Short-term rental use in the 4-plex did not occur until almost three years after January 1, 2019.
- Even if short-term rentals use had occurred before January 1, 2019, it was discontinued or changed to a conforming use.
- The existence of the parking lot does not show short-term rental use in the 4-plex use had occurred or was intended before January 1, 2019.
- There was insufficient evidence showing expenditures on the 4-plex were for shortterm use.
- The decision is a direct violation of the purpose and intent of the City of Astoria's policy adopted to regular short-term vacation rentals.

The Appellants full narrative of each bulleted item above can be found in the attached Notice

of Appeal application beginning on page 6. The Hearing Officer's December 11, 2023 decision can be found on Pages 7-11 "Arguments and Findings" of the memo entitled "Appeal Memo and Hearings Decision."

HEARING PROCEDURE

At the hearing, the Appellants will be allotted 10 minutes to present their argument as a group followed by questions from Councilors. The Applicants will be allowed 10 minutes as a group to respond followed by questions from Councilors. The Applicant will then be asked if they have a final rebuttal followed by the Appellant's final rebuttal. The Mayor pro tem will ask City Staff and the City Attorney if they have any questions or closing remarks. The hearing will be closed, and the City Councilors will discuss and come to a decision on the matter.

RECOMMENDATION:

The City Council's options are to: (1) Deny the Appeal and uphold the Hearings Officer's decision or (2) Approve the Appeal and reverse the Hearings Officer's decision, pending adoption of revised Findings drafted by Council. Note: For any scenario requiring a revision to the Findings, a meeting date to review and adopt the revised Findings would need to occur. The City Council should deliberate the issues raised on this appeal and come to a decision.

BY: TIFFANY TAYLOR, CITY PLANNER

ATTACHMENTS:

The full record was provided to the City Council, including:

01-30-2024 Public Notice for AP24-01, mailed
01-02-2024 Notice of Appeal AP24-01, Application Documents
12-15-2023 Hearings Officer's Decision, Appeal AP23-02
12-15-2023 Persons of Record, AP23-02
11-27-2023 Applicant's Final Written Argument
11-16-2023 Appellants 2nd Rebuttal Letter
11-16-2023 Applicant's 2nd Rebuttal Letter
11-09-2023 Close of Record AP23-02 packet
11-02-2023 Minutes from Appeal Hearing
11-02-2023 Full Record for Appeal AP23-02

The above documents are included in the Record Submittal for LUBA Appeal 2024-012.

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR CLATSOP COUNTY

}AFFIDAVIT OF PUBLICATION
STATE OF OREGON
County of Clatsop} ss

I, Sarah Silver being duly sworn, depose and say that I am the principal clerk of the publisher of the The Astorian, Seaside Signal, a newspaper of general circulation, as defined by ORS 193.010 and 193.020;
that the

AB9603 CITY OF ASTORIA NOTICE OF PUBLIC HEARING THE CITY OF ASTORIA WILL HOLD AN APPEAL HEARING BY CITY COUNCIL ON TUESDAY FEBRUARY 20 2024 AT 6 00 P M IN THE ASTORIA CITY HALL COUNCIL CHAMBERS 1095

a printed copy of which is hereto annexed; was published in the entire issue of said newspaper for 1 successive and consecutive issues in the following issues:

2/10/24

Subscribed and sworn to before me on this 10th day of February, A.D. 2024

Notary Public of Oregon

Adld: 419357
PO:
Tagline: AB9603 Notice of Hearing (2/20)

OFFICIAL STAMP
Rozena Anne Williams
NOTARY PUBLIC - OREGON
COMMISSION NO. 1044825
MY COMMISSION EXPIRES Feb. 4, 2028

AB9603
CITY OF ASTORIA
NOTICE OF PUBLIC HEARING

The City of Astoria will hold an Appeal Hearing by City Council on Tuesday, February 20, 2024 at 6:00 p.m. in the Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria.
The purpose of the hearing is to consider the following request:

Notice of Appeal (AP24-01) by Andrew Kipp and John Windus of Hearings Officer's December 11, 2023 decision to deny Appeal AP23-02 and uphold the Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking]) located in the C-3 and R-3 Zones. The appellants cited: (1) the short-term rental use in the 4-plex did not occur until after January 1, 2019, (2) if the short-term rental use had occurred prior to January 1, 2019, the use was discontinued or changed to a conforming use, (3) the existence of the parking lot does not show short-term rental use for the 4-plex, had the use occurred or was intended before January 1, 2019, (4) there is insufficient evidence showing expenditures on the 4-plex were for short-term use, (5) the decision is a direct violation of the purpose and intent of the City's policy adopted to regulate short-term vacation rentals, (6) Development Code Standards in Sections 1.400, 2.390, 3.180 and 7.100 as the specific criteria relied upon for the appeal, as well as an objection to the City's mayor to hear the appeal, citing bias in support of the applicant/property owners. Development Code Standards in Articles 3, 7, 9 and Comprehensive Plan Sections CP.005-CP.028 and CP.040-CP.045 are also applicable to the request.

For information, contact the Community Development Dept. by writing to: 1095 Duane St., Astoria OR 97103, by email: planning@astoria.or.us or by phone: (503) 338-5183. The location of the hearing is accessible to the handicapped. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department 48 hours prior to the meeting at (503) 338-5183. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided.

THE CITY OF ASTORIA
Tresa Abke, Administrative Assistant
PUBLISHED: February 10, 2024

CITY OF ASTORIA
Founded 1811 ● Incorporated 1856
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street • Astoria, OR 97103 • Phone 503-338-5183 • www.astoria.or.us • planning@astoria.or.us

NOTICE OF APPEAL HEARING

To participate remotely in public meetings, go to https://www.astoria.or.us/LIVE_STREAM.aspx for connection options and instructions (see page 2 of this Notice). You may also use a telephone to listen in. At the start of the meeting, call (253) 215-8782 and when prompted enter meeting ID# 503 325 5821.

The Astoria City Council will hold an appeal hearing on **Tuesday, February 20, 2024 at 6:00 p.m.** in the City Council Chambers at City Hall, 1095 Duane Street, Astoria. The purpose of the appeal hearing is to consider the following request:

1. Notice of Appeal (AP24-01) by Andrew Kipp and John Windus of Hearings Officer's December 11, 2023 decision to deny Appeal AP23-02 and uphold the Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking]) located in the C-3 (General Commercial [4-plex]) and R-3 (High Density Residential [parking]) Zones. The appellants cited: (1) the short-term rental use in the 4-plex did not occur until after January 1, 2019, (2) if the short-term rental use had occurred prior to January 1, 2019, the use was discontinued or changed to a conforming use, (3) the existence of the parking lot does not show short-term rental use for the 4-plex, had the use occurred or was intended before January 1, 2019, (4) there is insufficient evidence showing expenditures on the 4-plex were for short-term use, (5) the decision is a direct violation of the purpose and intent of the City's policy adopted to regulate short-term vacation rentals, (6) Development Code Standards in Sections 1.400 (Definitions), 2.390 (C-3 Zone), 3.180 (Nonconforming Uses) and 7.100 (Parking) as the specific criteria relied upon for the appeal, as well as an objection to the City's mayor to hear the appeal, citing bias in support of the applicant/property owners. Development Code Standards in Articles 3 (Additional Use and Development Standards), 7 (Parking), 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005-CP.028 (General Policies) and CP.040-CP.045 (Central Residential) are also applicable to the request.

A copy of the appeal application (AP24-01), the record for Appeal AP23-02, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available by request by contacting the Community Development Department at 1095 Duane Street, Astoria, by email at planning@astoria.or.us or by calling (503) 338-5183. You may also use the following link to view the documents in ORMS: https://ormswd2.synergydcs.com/HPRMWebDrawer/Record/6587466

The location of the appeal hearing is ADA accessible. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department at (503) 338-5183, 48 hours prior to the meeting.

The City Council will conduct an appeal hearing "on the record" developed before a Hearings Officer (in lieu of the Planning Commission). No new evidence will be received or considered. The City Council will review the Notice of Appeal (AP24-01) application, the original appeal application (AP23-02) and all evidence and

arguments presented to the Hearings Officer. Staff will make a presentation, followed by the Appellants (or their representative), and then by the Applicants/Property Owners (or their representative). It is expected that the City Council will then deliberate and make a decision. The City Council reserves the right to amend the appeal, modify the appeal, or deny the appeal. If the hearing is continued, no further public notice will be provided.

The City Council's ruling may be appealed to the Oregon Land Use Board of Appeals ("LUBA") by the appellant or by the owner by filing a Notice of Intent to Appeal within 21 days after the City Council's decision. Appellants should contact LUBA concerning specific procedures for filing an appeal. If an appeal is not filed with LUBA within the 21 day period the decision of the City Council shall be final.

THE CITY OF ASTORIA MAILED: January 30, 2024



Tiffany Taylor
City Planner

Public meetings are held in the City Council Chambers at City Hall, 1095 Duane Street, Astoria.
Check dates, times and location at: www.astoria.or.us
You may also view/listen and participate remotely by using the following connection options:

ONLINE MEETING ZOOM

At start of our Public Meetings you will be able to join our online ZOOM meeting using your **mobile or desktop device** and watch the live video presentation and provide public testimony.

Step #1: Use this link: **https://www.astoria.or.us/zoom/**
Step #2: Install the Zoom software on your mobile device, or join in a web browser
Step #3: If prompted, enter the Meeting ID number: 503 325 5821

Note: Your device will automatically be muted when you enter the online meeting. At the time of public testimony, when prompted you may choose to select the option within the ZOOM software to "raise your hand" and notify staff of your desire to testify. Your device will then be un-muted by the Host and you will be called upon, based on the name you entered within the screen when you logged in.

TELECONFERENCE ZOOM

At start of our Public Meetings you will be able to **dial-in using your telephone** to listen and provide public testimony.

Step #1: Call this number: **253-215-8782**
Step #2: When prompted, enter the Meeting ID number: 503 325 5821

*Note: Your phone will automatically be muted when you enter the conference call. At the time of public testimony, when prompted, you may dial *9 to "raise your hand" and notify staff of your desire to testify. Your phone will then be un-muted by the Host and you will be called upon based on your phone number used to dial-in.*

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

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checks #1997-$250
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☒ Fee Paid Date 1/2/24 By ____
Fee: $500.00 tt

No. AP 24-01

NOTICE OF APPEAL

Property Address: 1555, 1557, 1559, 1561 Exchange St.

Lot 3; north 100' of west 35'; 2; 1 (South 17' Lot 1; ~south 50' of west 30' Lot 2) Block 114 Subdivision Shively

Map T8N R9W sec 8DC Tax Lot 18200 - dwelling structures; 18100 - parking Zone C-3/4-plex; R-3/parking

Appellant Name: Andrew Kipp, John Windus

Appellant Mailing Address: 461 Exchange St. Astoria, OR

Phone: 509-664-7982 (617 513 6117) Business Phone: ____ Email: Kipp.andrew@gmail.com; jwindus@nwi.net

Issue Being Appealed: NCU Approval for transient lodging use AP23-02

Signature of Appellant: [signature] Date: 1/2/24

Name of Appellant's Attorney (if any): Daniel Kears

Address of Appellant's Attorney (if any): PO Box 13015 Portland OR 97213

This Appeal is filed with the City of Astoria, in accordance with Development Code Section 9.040, on a decision and/or ruling dated 12/11/2023 by the Hearings officer

Commission (Department/Commission/Committee/City Official)

Specific Criteria Appealed: ADC 1.400, ADC 2.390, ADC 3.180, ADC 7.100

The specific grounds relied upon for review: See Attached

We Object to the Mayor hearing this matter based on evidence on the record showing Bias in support of the Magies.

(If additional space is needed, attach additional sheets.)

For office use only:						
Application Received :	1/2/24	**Standing to Appeal**	**Yes**	✓	**No**	
Appeal Criteria:						
Application Complete:		**Permit Info Into D-Base:**	✓			
Labels Prepared:	1/30/24	**Tentative** CC **Meeting Date:**	2/20/24			
120 Days:						

Andrew Kipp
461 Exchange Street
Astoria, Oregon 97103

John Windus
960 Franklin Avenue
Astoria, Oregon 97103

RECEIVED
JAN 0 2 2024
BY:

January 2nd, 2024

Matt Brandmeyer
Community Development Director
City of Astoria
1095 Duane Street
Astoria, Oregon 97103

RE: Notice of Appeal - Hearings Officer Decision Dated December 11th, 2023

Dear Mr. Brandmeyer,

Please accept this letter detailing the grounds for an appeal of the Hearings Officer denying Appeal 23-02 dated December 11th, 2023.

A: <u>Background Information</u>

This case involves six dwellings: two cottages (1565 & 1569 Exchange Street) and a 4-plex apartment house (1555, 1557, 1559 & 1561 Exchange Street). All six dwellings are on land zoned C-3 (General Commercial). However, this appeal pertains only to the Hearing Officer's determination that the 4-plex has a nonconforming right to short-term rental ("STR") use. The City previously determined that the two cottages had nonconforming STR status, and we are not challenging that determination.

The six units were purchased by Robert and Cynthia Magie in March 2015, at a time when STRs were allowed in the C-3 Zone. In 2017, the Magies made improvements to the three structures for their use as rental housing.

They obtained a business license for the cottages and used them for short-term rental, yet consistently used the 4-plex as long-term rental apartments.[1]

In September 2020, the City initially became aware of the STRs operating in the cottages when the Magies began to remit tax payments for the cottages without having a valid Transient Lodging Tax permit. Ultimately, this led to two determinations by then City Planner Barbera Fryer, finding at first that the STRs were illegal, then reversing that decision and finding that they were permitted. The confusion surrounding this property resulting in an incorrect determination by Barber Fryer is understandable, given the complex nature of nonconforming use and, at the time, the relatively recent adoption of the ordinances regulating STRs. However, as City Attorney Blair Henningsgaard noted in a 2021 email concerning the illegal STRs in the 4-plex, "Even if a staff person told the Magies that they could use building 1 for transient lodging it does not give them the right to do so. City staff can be wrong without committing the City to illegal activities."

Notwithstanding, the matter surrounding this appeal arose in response to an October 28, 2021 code complaint filed by Austin Kettleson, a long-term resident in the 4-plex, who complained of an illegal STR operating out of his building. In response, under then Community Development Director Meg Leatherman, the City again determined that the use of the 4-plex as STRs was unpermitted and unlawful and issued a Notice of Non-Compliance on January 10, 2022[2]. The Magies appealed the City's determination to the State of Oregon's Land Use Board of Appeals (LUBA), and the appeal was eventually settled, with the owners agreeing to submit a nonconforming use verification application.

As part of its nonconforming use verification application, the owners claim they had always intended to use all six dwelling units for short-term rental (transient lodging) use. However, the evidence provided with the

[1] The ADC draws a distinction between transient (short-term) lodging as being rentals for 30 days or less, and long-term rentals, which are 31 days or longer. Only transient lodging is subject to the City's Transient Lodging Tax.

[2] Notice of Non-Compliance, Appeal packet, page 55

application only shows intent to use the cottages as short-term rentals. For example:

- The Magie's October 27, 2017, Occupational Tax Permit[3] for the transient lodging use is only for the cottage units (1565 & 1569 Exchange Street). The Magies did not apply for a Transient Room Tax permit applicable to the 4-plex until December 2020 (almost two years after STRs in that building were not permitted).

- The Magie's October 23, 2017, parking plan[4] for their STR operation specifically states that the parking is only for the cottage units (1565 & 1569 Exchange Street) and does not show the required number of off-street parking spaces to operate the 4-plex as STRs.

- The Magie's November 2, 2017, landscaping plan[5] for their STR operation states that the landscaping plan is only for the cottage units (1565 & 1569 Exchange Street).

- The Magies unjustified claim that the exterior and structural renovations to the 4-plex were exclusively related to using the property exclusively as STRs, conflating measures taken by the Magies to improve the 4-plex units for rental tenancy generally, with efforts to use them for STR tenancy exclusively.

Except for a letter from Sean Fitzpatrick[6] where he recounted his conversion with Magies' discussing plans for the building with him nine years ago, the Magies have not submitted a single document, plan, permit, drawing, or any other type of record showing they intended to convert the 4-plex to short-term use before January 1st, 2019.

Despite this lack of evidence related to the 4-plex, the Hearings Officer's decision acknowledges all of the steps the Magies took to put the two cottage units to STR use but then credits all of that evidence to the

[3] Occupational Tax Permit, Appeal packet, page 10
[4] Parking Plan, Appeal packet, page 9
[5] Landscaping Plan, Appeal packet, page 12
[6] Sean Fitzpatrick email, Appeal packet, page 108

4-plex. The documents in the record show that none of these permits, plans, or other steps pertained to the 4-plex, which has consistently been used for long-term rental tenancy and remained in that use for nearly two full years after STR use was no longer permitted.

B: Overview of Astoria Development Code Regulating Nonconforming Use

The heart of this matter is the Magie's claim that they are allowed to use the 4-plex for transient lodging because it is a permitted nonconforming use. The Astoria Development Code defines nonconforming use as:

> *NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.*
>
> ADC §1.400 (emphasis added)

In June 2019, in response to concerns about the lack of sufficient housing for residents, the City of Astoria adopted an ordinance to regulate short-term rentals (STRs) in commercial zones. The adopted ordinance amending Astoria Development Code §2.390 prohibits converting any residential dwelling in the C-3 zone that was in use after January 1st, 2019, or was originally constructed as a residential dwelling into transient lodging[7]:

> *2.390 USES PERMITTED OUTRIGHT*
>
> *The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:*
>
> * * *
>
> *J. Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:*

[7] The Astoria Development Code considers STRs in commercial zones to be a form of transient lodging, in the same category as hotels, motels or inns.

1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.

2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

ADC §2.390 (emphasis added)

Meant to prevent the continued erosion of the existing housing supply in commercial zones into STRs, this code change caused any existing STRs that had been used as housing in those zones to become "nonconforming" (i.e., illegal under the current Development Code but allowed to be "grandfathered in" under the old code). The Development Code allows nonconforming uses to continue, provided they "legally conformed" with the Development Code when that use "first occurred", and they do not stop being used for that purpose[8].

When making a determination that any property should be designated a permitted nonconforming use and, therefore, exempted from the Development Code, it is appropriate to scrutinize the facts and applicable laws. The Development Code expresses city policy on development, and exceptions should not be made without careful consideration. Evaluating if an existing property can be designated a permitted nonconforming use rests on interpreting "when it first occurred" and "legally conformed".

In this case, the issues are centered around the Hearings Officer's finding that the Magies took steps that show their intent to convert the 4-plex to STRs before it was prohibited, meaning that STR use had "first occurred" before January 1st, 2019. The Hearings Officer incorrectly claims that this expression of intent is sufficient to establish a permitted nonconforming use, and therefore, the Magies can continue to convert the 4-plex from long-term rentals into STRs.

[8] ADC §3.180 regulates nonconforming uses, including the discontinuance of a nonconforming use or changing of a nonconforming use into a conforming use

This interpretation has several errors, which we have outlined below.

C: <u>First Error:</u> Short-Term Rental Use in the 4-Plex Did Not Occur Until Almost Three Years After January 1st, 2019.

The Hearings Officer decision incorrectly finds that STR use began as soon as the Magies started to take steps to convert the 4-plex to STRs, relying on the definition of "start of use" in the Astoria Development Code:

> *USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun.*
>
> ADC §1.400

However, as cited in the previous section, the ADC does not use the term "start of use" when it defines nonconforming use. The text of the Astoria Development Code says that a nonconforming use must have "legally conformed with applicable Development Code regulations when it *first occurred*".

"First occurred" has a substantively different meaning from "start of use" in the context of nonconforming use. The Hearing Officer's finding interpreting these to be equivalent is wildly inconsistent with the traditional notion of nonconforming use and relevant case law. <u>Under the Hearing Officer's interpretation, any person who can claim intent or has taken any step towards putting a property to a particular use, no matter how insignificant, would be able to establish a right to nonconforming use, thus "grandfathering" them for that use.</u> Indeed, such an interpretation, if upheld, would have a devastating effect on the ability of the City to regulate land use if the burden to establish a right to nonconforming use only required the taking of preliminary steps or some other incomplete manifestation of some presumed intent.

In reality, "[F]irst occurred," in the context of a nonconforming use, means "actual existence" and does not embody mere preliminary steps or unrealized intent, as the Hearings Officer incorrectly stated.

In the case of the 4-plex, it is undisputed that no STRs actually existed before January 1, 2019. This is clearly stated in a letter submitted by the Magie's own property manager, Shannon Fitzpatrick of Pacific Capital Management. In the letter, Mr. Fitzpatrick admits that short-term use did not occur in the 4-plex until December 2021, almost two years after that use was prohibited[9].

D: Second Error: Even If Short-Term Rentals Use Had Occurred Before January 1st, 2019, It Was Discontinued or Changed to a Conforming Use.

The Hearing Officer incorrectly interpreted "first occurred" to mean the same as "start of use", suggesting that STR use had begun before January 1st, 2019. However, even if such an interpretation were correct, ample evidence shows the Magies rented the apartments to long-term tenants through the end of December 2021 (three years after STRs were prohibited). Despite the Magie's claim that the apartments were used for STRs at this time, the following lease agreements show that the apartments were, in fact, used as residential dwellings:

- Lease agreement with Austin Kettleson from December 2018 through August 2022[10]
- Lease agreement with Andrew Zingg from May 2018 through June 2021[11]
- Lease agreement with Tristan Fell from July 2019 through May 2021[12]

[9] Letter from Shannon Fitzpatrick, Appeal packet, page 110
[10] Lease Agreement, Appeal packet, page 161
[11] Lease Agreement, Appeal packet, page 256
[12] Lease Agreement, Appeal packet, page 261

While the Hearings Officer finds that STR use began as soon as the Magies started to make improvements to the property, he also acknowledges that the apartments were simultaneously rented to long-term tenants, as demonstrated by the leases above. In this finding, he claims that even though the apartments were being used for an entirely different purpose (residential dwellings), this does not prevent STR use from continuing. This implies that the 4-plex apartments were concurrently occupied for two different uses (i.e., the same apartments were in use simultaneously as both short-term and long-term rentals). Besides being illogical and factually incorrect, this is inconsistent with the Astoria Development Code, which says a particular use ends when another use occupies the same building or site:

> *USE, CEASE OF: Use shall be considered as ceased when the site and/or building is no longer used or available for occupancy by the specific use. A building or site vacant while being continuously marketed, repaired, or otherwise similarly unavailable for use is not considered to be a cessation of use. A building or site that is occupied by a different use shall be considered as a cessation of the former use.*
>
> ADC §1.400 (emphasis added)

Under the Astoria Development Code, any short-term use that the Magie's claim occurred in the 4-plex apartments before January 1st, 2019, immediately ceased when the Magies put those same apartments to a different use (i.e., renting them to long-term tenants). The Hearings Officer's notion that the 4-plex was in use simultaneously as both short-term and long-term rentals by virtue of the Magie's "continuing to work on STR use" is inconsistent with the Astoria Development Code.

Critically, concerning nonconforming uses, the Astoria Development Code establishes that a nonconforming use right is immediately lost if that use is discontinued for one year or changed to a conforming use.

> *B. Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located.*

C. *Discontinuance of Nonconforming Use.*

1. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows:

ADC §3.180(B) & (C).

As the lease agreements previously cited clearly show, even if STR use had occurred, it was discontinued (had ceased) for more than a year because the apartments were rented to long-term tenants for almost three years (a different use). Moreover, according to ADC §3.180(B), when a claimed nonconforming use is changed to a conforming use, such as a long-term tenancy apartment, any nonconforming use right is immediately lost. That is exactly what happened here, because all of the units in the 4-plex have consistently been rented as long-term apartments. This use terminated any right the applicants may have had to a transient lodging use right.

Both the Hearings Officer and the City erred when they failed to consider the text in the Astoria Development Code that clearly states that any right to nonconforming was lost when the Magies rented the 4-plex apartments to long-term tenants.

E: Third Error: The Existence of the Parking Lot Does Not Show Short-Term Rental Use in the 4-plex Use Had Occurred or Was Intended Before January 1st, 2019.

Under the 2017 Astoria Development Code §7.100[13], transient lodging facilities (including STRs) must have one off-street parking space for each bedroom. The 4-plex has eight bedrooms, and the two cottages have three bedrooms, requiring a minimum of 11 off-street parking spaces to use all three structures as STRs.

The Magies provided a 2017 parking plan recorded by then Community Development Director Mike Morgan as evidence of their intent to convert the cottages and the 4-plex into STRs. The Hearings Officer agreed with this

[13] ADC §7.100, Appeal packet, page 219

claim and found that 2017 parking expenditures show that they intended to convert 11 units, including the four apartments in the 4-plex, to STRs. However, the parking plan does not show that intent, nor does it show that the 4-plex lawfully conformed with ADC parking requirements for transient lodging when the Magies claim STR use began.

The first problem with the 2017 parking plan is that the addresses listed on the parking plan[14] are exclusively for the two cottages, not the 4-plex. In fact, the 4-plex building doesn't even appear on the plan. The Hearings Officer erred when he cited this unrelated parking plan as evidence of the Magie's use of the 4-plex as STRs.

However, even if the approved parking plan was meant to apply to the 4-plex (which it clearly is not), it does not show the minimum number of required off-street parking spaces. The ADC requires 11 off-street spaces, and the plan shows five off-street spaces. To meet the minimum required off-street parking, Magies claim to have a right to occupy nine on-street parking spaces. Yet, the plan shows **zero** on-street parking spaces. If the Magies had been permitted to use nine on-street parking spaces to operate their transient lodging business for all 11 bedrooms, then the on-street spaces would have been indicated on the approved plan. However, they are not. The Magies have provided no other evidence, such as variance or other permits, demonstrating their right to use nine on-street parking spaces to support the operation of their transient lodging business.

Once again, the Hearings Officer's decision citing the mere existence of the parking lot as evidence that the Magies intended to use the 4-plex for transient lodging is wrong. In fact, there is no evidence whatsoever that the parking was intended to be used for the 4-plex as STRs or that it was sufficient to meet the code requirements of the code to do so. Moreover, the existence of the parking does not support a claim of a vested right to develop the 4-plex as short-term rentals and does not show that the Magies had committed the 4-plex to that use.

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[14] 2017 Parking Plan, Appeal packet, page 9

F: **<u>Forth Error:</u> There Is Insufficient Evidence Showing Expenditures on the 4-Plex Were For Short-Term Use.**

While it's clear that the Magies have invested significant resources into restoring the 4-plex as a historic property, they have failed to provide any evidence showing the intended outcome of that investment was short-term vacation rentals until after that use became illegal.

The Magies claim that repairs made to the structure, including stabilizing the foundation, were exclusively in support of converting the building from long-term rental apartments into transient lodging. However, it's unclear how short-term guests (renting the apartment for a handful of nights while on vacation) would be aware of or at all concerned with the structural condition of the foundation. Instead, it's reasonable to assume that any major repair work done to the building's structure, including the foundation, siding, windows, roof, etc., was completed to address long-deferred maintenance and support its use for any permitted purpose, including continued use as a multi-family residential dwelling. The reasonable assumption that a property owner would want to protect their recently acquired investment by addressing long-deferred maintenance conflicts with the Magies' claim that, absent their intent to convert the building to transient lodging, they would have let the property they had purchased for $375,000 continue to deteriorate.

The Magies also claim that the exterior and interior renovations, including the refinishing of the floors, were exclusively for the purpose of renting the apartments as STRs. The Magies have claimed that such restoration work only makes sense for renting to short-term tenants, but they did the exact opposite after completing those improvements by renting the apartments to long-term tenants. From the date of restrictive zoning (January 1, 2019) until December 2021, there is no evidence of any intention to put any of the 4-plex units to transient lodging use.

The little evidence related to expenditures that are associated with using the 4-plex for short-term rentals shows that much of it was not made

in good faith. The Magies reveal in their chart of expenses[15] that $75,300 of the $111,481.97 (67%) spent to outfit the 4-plex to short-term use after January 1st, 2019, occurred after receiving a Notice of Non-Conformance from the City of Astoria ordering them to discontinue operating STRs. When a business receives a notice that they are operating illegally and then goes out and spends $75,000 to further the illegal business, claiming those expenditures is evidence of a vested right to continue developing the property is illegitimate.

The evidence (or lack thereof) demonstrating expenditures related to converting the 4-plex to short-term use before restrictive zoning came into effect on January 1st, 2019, and the bad-faith expenditures that were made towards that effort disqualify the applicants from any claim to a vested right to develop the property for short-term use. It's reasonable to assume that if the Magies had, in fact, taken steps to use the 4-plex for STRs before January 1, 2019, then the evidence would be readily available. It is not because they did not take those steps, and they do not have a right to use the 4-plex for STRs.

G: Fifth Error: The Decision is a Direct Violation of the Purpose and Intent of the City of Astoria's Policy Adopted to Regulate Short-Term Vacation Rentals

In June 2019, the City of Astoria adopted an ordinance regulating transient lodging in commercial and residential zones in response to a growing number of illegal vacation rentals driven by the adoption of short-term rental platforms such as AirBnB and VRBO. Many of the concerns that the Astoria City Council hoped to address with the regulations were related to mitigating the impact vacation rentals have on the community, including the impact on the housing supply. This was articulated by Astoria City Planner Rosemary Johnson in a March 24th, 2019 memo presented to the Astoria Planning Commision[16] documenting the proposed code changes:

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[15] Magie Letter, Appeal packet, page 372

[16] Memo from Rosemary Johnson to Astoria Planning Commission, Appeal packet, page 307

The City Council has expressed concerns that the use of residences for transient lodging, especially vacation rentals, is a threat to the available housing stock.

Johnson also noted the Council's specific desire to specifically prevent the conversion of long-term rentals within commercial zones into short-term vacation rentals:

The Council also identified the conversion of residential units in commercial zones for transient lodging as contrary to the goal to provide affordable housing. The Council suggested that structures built and/or currently used for residences should not be converted to transient lodging.

These statements make clear that the Council's intent of the 2019 ordinance was to prohibit the conversion of Astoria's limited housing stock into transient lodging, as doing so is contrary to the city's goal of ensuring there is adequate housing stock available for residents. However, nearly two years after this code came into effect, exactly that has occurred with the 4-plex. There can be no doubt that the City's decision to allow the 4-plex to be converted from long-term rentals into transient lodging is directly contrary to the city's policy goals.

To the extent there is any ambiguity in the code language, it must be resolved consistently with this underlying purpose and policy and cannot be interpreted in a way that is contrary to these purposes or policies.

H: Conclusion

It's important to note that this appeal should not be misconstrued as being based on a personal dispute with Bob or Cindy Magie. It's plain to see that they have invested significant resources into operating their rental business in the Gilbaugh. We acknowledge their hard work and meaningful community contribution by restoring a historic property in downtown Astoria. However, operating any type of business, especially an evolving one like short-term vacation rentals, carries risk. We filed this appeal because we believe the conversion of the 4-plex from long-term rentals to STRs violates the law and is contrary to city policy. The Magie's failure to comply with

land-use regulations as an STR operator represents a risk as business owners, not some unfair treatment as they have claimed.

In this appeal, we've raised many reasons why the Hearings Officer's decision was fatally flawed and why the City Council must overturn it. However, while it's essential to understand the details of this specific situation and how the Hearings Officer's decision was incorrect based on a close examination of the facts and the law, all of that may obscure the larger questions the City Council must contend with.

This appeal is not only about the loss of four apartments that were in use by long-term renters and then illegally converted into short-term rentals long after such a conversion was no longer permitted. This appeal is also about asking the City to be accountable for enforcing its own ordinances that were put in place to help Astorians in an increasingly challenging housing market.

The question at the heart of this appeal is: Will the City of Astoria honor and respect the intent and purpose of the ordinances regulating short-term rentals, or will it instead choose to interpret its codes to benefit those who wish to profit by converting homes into hotels? Ultimately, it is the City Council's responsibility to decide how to interpret and enforce its Development Code based on the policy goals it wishes to advance. In this case, the city has relied on faulty and incomplete code interpretations and insufficient evidence backing up the applicant's claims, resulting in the loss of four apartments that Astorians have called home for decades.

At the end of the day, as its elected representatives, the Astoria City Council must decide what type of city Astoria will aspire to be. Will it be a place where local residents are able to find abundant and affordable housing and be a vibrant and diverse community where everyday people live, work, and thrive? Or will it further its slide into becoming the next Cannon Beach, where only the wealthy few can afford to live, and the workforce is imported to serve the tourists? The truth is that each and every decision the City makes that works against creating and sustaining abundant and affordable housing, including the decision to permit the conversion of these four

long-term rental apartments into STRs, only hastens to bring about that sad outcome.

We are confident this isn't an outcome that the citizens of Astoria desire. Given all the evidence we have provided documenting the flawed decision and the importance of the underlying policy, we ask the Astoria City Council to reverse the Hearing Officer's decision and deny the applicant's request.

Respectfully,

Andrew Kipp
John Windus

RECEIVED
JAN 08 2024
Blair Henningsgaard

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE,
Petitioners,

vs.

CITY OF ASTORIA,
Respondent.

LUBA No. 2022-015

FINAL OPINION
AND ORDER

Appeal from City of Astoria.

Carrie A. Richter represented petitioners.

Blair J. Henningsgaard represented respondent.

ZAMUDIO, Board Member; RYAN, Board Chair; participated in the decision.

RUDD, Board Member, did not participate in the decision.

DISMISSED 12/29/2023

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Zamudio.

Petitioners request that this appeal be dismissed. Accordingly, this appeal is dismissed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2022-015 on December 29, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Blair J. Henningsgaard
Astoria City Attorney's Office
PO Box 1030
Astoria, OR 97103

Carrie A. Richter
Bateman Seidel, P.C.
1000 SW Broadway
Suite 1910
Portland, OR 97205

Dated this 29th day of December, 2023.

Erin Pence
Executive Support Specialist

Hannah Barkemeyer Baker
Executive Support Specialist

RECEIVED
DEC 26 2023
Blair Henningsgaard

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE, Petitioners, v. CITY OF ASTORIA, Respondent.	LUBA No. 2022 - 015 **MOTION TO WITHDRAW NOTICE OF INTENT TO APPEAL AND DISMISS APPEAL**

Petitioners Robert and Cindy Magie ("Petitioners") hereby move to withdraw their Notice of Intent to Appeal and dismiss this matter. *See Brown v. Jackson County,* 55 Or LUBA 178 (2007) (when all petitioners withdraw from a LUBA appeal, the appeal must be dismissed).

DATED this 22nd day of December, 2023.

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: Carrie Richter
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932
Facsimile: (503) 972-9952

IT IS SO ORDERED.

By:_____

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932
Facsimile: (503) 972-9952

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 22, 2023, I filed the original of this **MOTION TO WITHDRAW NOTICE OF INTENT TO APPEAL AND DISMISS APPEAL**, together with one copy, via first class U.S. mail, postage prepaid to the following:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

I further certify that on December 22, 2023, I served a true and correct copy of the above **MOTION TO WITHDRAW NOTICE OF INTENT TO APPEAL AND DISMISS APPEAL** by first class U.S. mail, postage prepaid to the following:

Blair Henningsgaard
Attorney at Law
P.O. Box 1030
Astoria, OR 97103

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: Carrie Richter
Carrie A. Richter, OSB #003703
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CITY OF ASTORIA
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COMMUNITY DEVELOPMENT
1095 Duane Street • Astoria, OR 97103 • Phone 503-338-5183 • www.astoria.or.us • planning@astoria.or.us

APPEAL MEMO and HEARINGS OFFICER DECISION

Memo Date: October 26, 2023

Prepared By: Tiffany Taylor, City Planner

Subject: Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning transient lodging use at 1555-1557-1559-1561 Exchange St.

Hearing Date: November 2, 2023

Hearings Officer: Alan Rappleyea

Decision Date: **December 11, 2023**

Decision: I deny the Appeal and uphold the City's Administrative Decision based on the following findings.

I. SUMMARY

A. Applicants: Robert J Magie and Cynthia D Magie
PO Box 532
Astoria OR 97103
exchangeastoria@gmail.com

Attorney: Carrie Richter, Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
crichter@batemanseidel.com

B. Owners: Gilbaugh LLC (Tax Lot 18200 – dwelling structures)
PO Box 532
Astoria OR 97103

Robert J Magie (Tax Lot 18100 – parking)
Cynthia D Magie
PO Box 532
Astoria OR 97103

C. Appellants: Austin Kettleson
286 Lexington
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austinkettleson@gmail.com
Andrew Kipp
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Astoria OR 97103
kipp.andrew@gmail.com

John Windus
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Astoria OR 97103
jwindus@nwi.net

Attorney: Dan Kearns, Reeve Kearns PC
P.O. Box 13015
Portland, OR 97213
dan@reeveskearns.com

D. Location: 1555-1557-1559-1561 Exchange Street (4-plex); 1565 Exchange Street (cottage) and 1569 Exchange Street (cottage); Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively

Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively (parking)

E. Zones: C-3 Zone (General Commercial) – structures
R-3 Zone (High Density Residential) – parking

F. Proposal: To operate transient lodging classified as a "hotel/motel/vacation rental" in an existing multi-family residential structure.

G. Applications: The applicant also submitted a request to operate transient lodging classified as a "hotel/motel/vacation rental" in two existing residential structures at 1565 and 1569 Exchange Street. All three buildings were reviewed and approved at the same time. Only the decision on the multi-family residential structure operation was appealed.

II. PUBLIC REVIEW AND COMMENT

A public notice was mailed pursuant to ADC §9.020 on October 12, 2023. Email and web publishing also occurred on October 12, 2023. On site notice was posted on October 19, 2023. A notice of public hearing was published in The *Astorian* on October 21, 2023. Comments received were added to the Record.

The Hearings Officer includes the following from the Staff Appeal memorandum dated October 26, 2023 and adopts it as his findings.

III. BACKGROUND

A. Site:
The subject property is located on Exchange Street in the C-3 (General Commercial) Zone. It is developed with one multi-family structure and two single-family structures. The buildings were constructed in 1920, 1930, and 1955 as residential properties. The applicant is proposing to operate all three buildings as transient lodging with no residential use. Use of the two cottages as transient lodging has not been appealed and that use has been approved by the City.

B. Neighborhood:
The neighborhood is developed with a mixture of commercial and residential uses. To the north is the Owens Adair housing facility; to the east is a single-family residence and across 16th Street is the former Lum's Auto building; to the west are multi-family dwellings and a dental office; to the south is the Masonic Temple and single-family residences. Vehicular access to the site is from a driveway on 16th Street (tax lot18100). The C-3 Zone abuts the residential R-3 Zone (High Density Residential) on the south and east boundaries of the property.

IV. INDEPENDENT HEARINGS OFFICER DECISION

ADC §9.030.A. Quasi-Judicial Public Hearing Procedures and Requirements, Procedural Entitlements states:

"The following procedural entitlements shall be provided at the public hearing:

1. *An impartial review as free from potential conflicts of interest and prehearing ex parte contact as is reasonably possible.*
2. *No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:*
   - a. *Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.*
   - b. *The member has a direct private interest in the proposal.*
   - c. *For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner."*

The transient lodging facility at this location has been discussed by members of the City Council as a code enforcement issue prior to the use being administratively reviewed and approved by staff with a Decision Letter. The appellants alleged that there are "overlapping relationships and interests" that create potential bias by members of the Planning Commission and City Council. They specifically cite that the Mayor is a friend of the property owners, that the mayor's brother was the property manager at the time of the residential lease agreement for the four-plex, and

that the property owner, Ms. Magie, is a member of the Planning Commission, appointed by the Mayor. As several Council members and Commissioners are associated with the property owners, and in an effort to maintain an impartial review, free from potential conflicts of interest and prehearing ex parte contact, the City acknowledged the potential conflict and decided to bring the matter before an independent Hearings Officer for review, rather than to the Planning Commission or City Council. The City contracted with this Hearings Officer to hear this matter.

V. APPLICABLE CRITERIA

1. ADC §1.400, Definitions

   "MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

   TRANSIENT LODGING FACILITY: Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private, dormitory, fraternity, sorority, public or private club, bed and breakfast establishment, home stay lodging, vacation rental, or other such transient lodging facility known by their advertising and/or management platform names. Transient Lodging Facility also means space in mobile homes or trailer parks, or similar structure of space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

   USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun.

   VACATION RENTAL: A transient lodging facility available for transient rental, and which is not occupied by an owner or manager at the same time as the guests. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. For the purposes of this Code, a Vacation Rental is classified the same as a hotel or motel."

2. ADC §2.390.J, Uses Permitted Outright in the C-3 Zone
   "Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:

   1. *Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.*
   2. *Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."*

3. ADC §3.160 Nonconforming Lots, Uses and Structures, Purpose
"Within the zones established under this Code, the existing lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It is the intent of this Section to establish requirements that govern the future use of such nonconformities."

ADC §3.180.B, Change of Nonconforming Use, "A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."

ADC §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use, "If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows."

ADC §3.200 Prior Approval of Nonconforming Lots, Uses and Structures, "Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a legal permit has been issued by the City and construction has begun, provided the structure, if nonconforming, or intended for a nonconforming use, is completed and is used within two years from the time the permit was issued."

4. ADC §7.100, Minimum Parking Space Requirements (ADC §2.415.D, Other Applicable Use Standards, in the C-3 Zone states "All uses will comply with applicable access, parking, and loading standards in Article 7"):

Use Categories	**Minimum Parking Requirements** *Amended by Ord. 22-01 on 11/7/2022*
All Dwellings not otherwise listed	0.65 spaces per bedroom with a maximum total of 2 spaces for single-family or two-family dwellings, including each unit in a cottage cluster development.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

Use Categories	**Minimum Parking per Land Use** (Fractions are rounded up to the next whole number.) *Code prior to 2019*
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one-bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

VI. PROCEDURES

The hearing was held on November 2, 2023. At the start of the hearing, I reviewed procedures, including the order of testimony and time limits. I also stated that as I have been a land use attorney for many years, that I knew professionally the attorneys for both Applicant and Appellant. I stated that other than the professional relationship, I was unaware of any connections or relationships with any of the parties. I stated my contacts with staff were solely concerning hearing procedures. I stated that I had no ex-parte contacts or conflicts of interest. I stated that I drove by and viewed the subject property. I stated that I would be an unbiased neutral decision maker. I asked if anyone wanted to challenge my ability to hear this matter and heard none.

Staff made a brief opening statement. The Applicants and Appellants testified. Jacob Helligso and John Orr testified on behalf of the Applicants. Brenda Harper and Sara Jane Bardy testified in support of the appeal. The hearing was also held via Zoom for remote participants. Jordan Okoniewski testified via Zoom in support of the appeal. Written testimony was submitted at the hearing.

At the end of the public testimony, upon request, the record was left open until November 9, 2023 for all testimony, followed by a rebuttal evidence only period until November 16, 2023. That was followed by the Applicant's final argument period until November 29, 2023. After November 29, 2023, the record was closed and I took this matter under advisement. I reviewed all the materials in the record submitted at the hearing as well as after the hearing before the record was closed. A number of letters were submitted into the record supporting the appeal and opposing the Application.

VII. FINDING OF FACTS

I adopt as my findings of fact the November 2, 2023 Staff Memorandum timeline Pages 5-7 and the record pages referenced therein. The most important date in that timeline is January 1, 2019, when the code amendment went into effect to prohibit the use of the four units (1555, 1557, 1559 and 1561) for Short Term Rentals (STR). The other two units of STR (1565, 1569) are not part of this appeal.

I will highlight a few key documents:

- Email from Barbara Fryer dated December 15, 2020, stating that 1555-1569 units, inclusive, are a permitted use. Record Page 20.
- Email from Barbara Fryer dated September 15, 2020 stating that all STR uses on units 1555-1569, in the **three houses** on TL 18200 are prohibited. Record Page 20.
- Kettleson Complaint about the STR dated October 28, 2021. Record Page 27-28.
- Notice of Decision Approving the Use dated June 26, 2023, Record Page 150-152.
- Appeal of the Decision dated July 10, 2023. Record page 155-164.

Disputed facts will be discussed under Arguments and Findings below.

VIII. ARGUMENTS AND FINDINGS

Appellants' main argument is that the use of the 4-plex was for Long Term Rental (LTR) and not Short-Term Rental (STR) and there was no evidence that any of the work done was for STR and distinguishable from LTR. The Appellants' attorney does a good job of describing the legal framework for the analysis of a Non-Conforming Use (NCU). This area of the law is unfortunately very subjective. The decision maker must determine whether the use was lawfully created, the nature and extent of the use and whether it was discontinued for over 12 months. I agree that ORS 215.130 does not apply as it is limited to counties although case law interpreting that statute does provide guidance. Here, the Astoria Development Code (ADC) governs how the City will regulate NCUs.

The Appellants argue there were a series of evidentiary and legal errors in the City's decision. Appellants argue that there was no evidence for STR only LTR, that the 4-plex was consistently used as LTR based on leases and those leases went past January 1, 2019; STR occurred long after that date, and that renovations were for the LTR. These factual disputes will be discussed below.

Appellants' legal argument is that the City's use of the definition of "use, start of" was in error. Appellants argue that the City was limited solely to the NCU provision in determining when "it first occurred." ADC Section 1.400. Appellants argue that the NCU can only be allowed when the actual **use** of the 4 plex as STR started before the effective date of the ordinance. Appellants argue that here the STR use started after the effective date of the STR ordinance.

I disagree. The ADC 3.180 employs the term "use" to define NCU. In that definition it states, "when **it** first occurred." The "it' referred to in this definition means "when [the use] first occurred." As such, it is reasonable for interpreting the meaning of "use" to look at both the definition of "use" and for the definition of "use, start of." The terms "start of" and "first occurred" are synonymous. In interpreting the code, we look to the plain meaning of the words and how they are used in context of the law. *State v. Gaines,* 346 Or 160, 206 P2d 1042 (2009).

It was proper for the City to use these definitions to determine that the start of use occurred when the Applicants started working on their STR before the code was changed. The Applicants did not have to rent STRs before the code was changed.

Appellants argue that the City failed to determine the nature and extent of the NCU. I do not find this a fatal to the City's decision. The use of the STR is set by the four walls of the 4-plex and the number of bedrooms used. The City also has business regulations for STRs. I find this is adequate to determine the nature and extent of the NCU. I also find that the Applicant established the nature and extent of the NCU by providing evidence of the parking for all the units. Record Page 341.

Appellants argue that there were gaps in the use that exceeded 12 months and the units all had long term rental agreements which nullified the NCU for STR. I adopt the Applicants' attorney letter and find that there were no gaps for over 12 months where the STR use was not pursued. Record Page 382-383.

Based on the City's interpretation of "use, start of" which I adopt and find reasonable, I find that the Applicants' work and expenditure of money for the STR use is adequate to demonstrate when the use first occurred and that was before the effective date of the ordinance. I find that merely because LTR tenants were in the units does not disqualify them from continuing to work on the STR use. I find that the focus is on the intent of the Applicants as demonstrated by both their testimony and extrinsic evidence.

Appellants then describe the legal maxim of vested rights as to NCUs. I agree with Appellants' description of the law. Appellants argue that all the work done on the 4-plex was to make the units habitable generally for LTR, and no steps were taken to put them to STR use. Appellants describe the vested rights factors as described in *Holmes v. Clackamas County,* 265 Or 193, 508 P2d 190 (1973). Appellants post hearing arguments elaborate on why the Applicants failed to meet these factors.

I find that the Applicants satisfied the plain meaning of the NCU code provision regarding when the use first occurred as to when they began working on the STR. The City is not bound by statutory interpretation of NCU law and so can reasonably interpret when the use first occurred by using the definition of "use, start of". The City correctly found the NCU was established as the Applicants were "carefully and continuously repairing and restoring these structures as necessary to operate them as short-term rentals." Record page 106.

If that interpretation is incorrect, then alternatively, I find that the Applicants are entitled to the NCU under the vested rights theory and the factors under the *Holmes* test as discussed subsequently.

Appellants then argue that the City's interpretation of the code violates the purpose and policy of the City regulation of STRs. There were also several people who testified and submitted letters opposing the Application based on the policy issues surrounding STRs. As stated at the meeting, my role is to interpret the NCU law as it applies to this use and not to interpret City policy on STRs. I find that I am adequately informed on the intent of the NCU ordinance by the plain meaning of the words and their context. I do not need to delve into any legislative history on the NCU ordinance. Similarly, I find the City policy as to STRs is not relevant in making the factual determination of the whether the STR use had started before the effective date of the ordinance.

Turning to Applicants' legal argument, the Applicants argue that the use was always for STR because of the transitory nature of the rentals next to the hospital for hospital workers and other short-term workers. Thus, the NCU is established. I disagree. I find that such an interpretation would eviscerate the City STR regulations. Any LTR could argue that they had a STR tenant (maybe because of lack of payment) and therefore the use was for STR not LTR. Most importantly, the most recent lease agreements for the last several years were for LTR. But for the Applicants' work to complete the STRs, any NCU based on historic short term stays for hospital workers and the like would have lapsed.

Now, I will address the evidentiary arguments. Although there no was argument concerning this matter, it should be addressed. The Planning Department decision found that the Barbara Fryer

letter dated December 15, 2020, did not approve of the 4-plex as a non-conforming use. I find that it did. Her letter states that it includes units 1555-1569 with a hyphen between these numbers. I find this to mean that in included all the units between those numbers. This is supported by her earlier finding just 3 months before (September 15, 2020) where she found that all the STRs 1555-1569 were illegal. These were the three homes located on TL 18200. Record Page 20-21. One of those three houses is at issue on this appeal. She found all were illegal and then used the same verbiage, "1555-1569" to find them legal. This finding is also supported by the Magies' testimony at Record Page 126.

As stated above, I find that the Application complied with the plain meaning of the City's NCU ordinance. Alternatively, I find that it meets the *Holmes* factors. I will address those factors as quoted from Appellants attorney's letter. Record Page 284-285. The evidentiary findings under these factors also often address the City's NCU standards and so I will use these factors as a guide to address the evidentiary issues.

"1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;"

Upon reviewing the record and hearing the Magies' testimony, I find that they made expenditures to improve this property in good faith before the law changed. I find that they were unaware that the law changed and continued working on the STRs. They were transparent in working with the City on their plans to use the 4 plex as a STR as summarized by Applicants' attorney. Record Page 379. I find that the City provided them with an email dated December 15, 2020, that gave them assurances that all the units were lawful and they relied on this to continue making good faith investments in the property.

Appellants argue that the continued use of the property for LTR, as demonstrated by the leases, show that there was no intent to create STR. I find the Magies' testimony convincing as to why they would continue to have these LTRs. They continued these LTR while they worked on the project and until the tenants move out voluntarily. Record Page 126. It makes sense to have an income stream as they worked on their properties. I agree that STR occupants would not be as tolerant to construction work on or near their units. Record Page 336. I find it logical that they continued LTR leases while they actively pursued the goal of a STR use.

I find that there were good faith expenditures directed at STR and not solely for LTR. I adopt Applicants' discussion of those good faith expenditures directed at STR in their November 9, 2023 letter and their November 16, 2023 letter. Record Pages 281 and 334. I find that Applicants spent funds for parking before the effective date of the ordinance that was used to provide parking for the STRs at issue here.

I asked about this at the hearing and I find convincing Applicants' argument that finishes and furnishing are significantly different and more costly for a STR. It is a matter of common sense and my own experience (especially when my wife is booking the accommodations) that when people are spending significant amounts of money for housing on vacation, they want a nice place. The photos attached to these letters show nice accommodations. Certainly, there could be

lesser standards and cheaper STRs. Here, the money was spent to make these higher end STR rentals. If that money had not been spent, it would have been a closer decision.

There were arguments that some LTR come furnished and therefore these expenditures could actually be for LTR. In response, I find that the intent of Applicants since 2015 was to make these STRs. I find that I do not need to rely solely on the Applicants' statements to verify this. Applicants' attorney gives a good summary of the extrinsic evidence of the intent to use the property as STR. Record Pages 379-381. Furthermore, from my own experience, LTR that are furnished are generally not furnished with expensive furnishings as the Applicant has done here. Ms. Hunter testified that she quickly found furnished LTRs. Record Page 354. I did not go beyond the record but did look into the links she provided. Two of the four were very simple furnished studios, the third showed pictures of a furnished apartment but said "unfurnished" and the first was unavailable. Regardless of whether immaculately furnished apartments can be found somewhere, I find that the finishes and the furnishing of the subject STRs provide additional evidence of the intent to use them as STRs and not LTRs.

"2. The amount of notice of any proposed re-zoning;"

There is no evidence regarding this factor but the Magies testified that they were unaware of the changes to the zoning.

"3. The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;"

I find that the Applicants' intent for the use of the property was to make it a STR. Applicants' Letter Record Page 361; Helligso Letter Record Page 352. I find that the Applicants were transparent in working with the City to make sure its use was lawful as stated above.

"4. The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;"

This factor is the heart of the matter. Were the expenditures for the conforming use…LTRs or the non-conforming use…STRs? As stated above, I find that the expenditures were more for STRs. I find convincing the Applicants' argument that the 4-plex was in LTR when they purchased it and they could have just continued to rent those unit with no or little upgrades. Record Page 334. I find credible the Magies' oral and written testimony that they intended to use it for STR. Supporting these statements was the testimony of Shannon Fitzpatrick, Record Page 109; Sean Fitzpatrick, Record Page 108 and Mr. Helligso, Record Page 352.

I find that the expenditures for parking was for the non-conforming use. As shown in the Applicants' November 16, 2023 letter, 75% of the expenditures were made for the STR use. Excluding exterior work, 45% of the of the expenditures was for STR. Record Page 372. I find this convincing. The Application meets this factor.

"5. The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;"

I find that the difference is the uses are not that significant. They are both for housing. From the outside, it would be difficult to tell the NCU from a conforming use. This factor is met.

"6. Whether the expenditures made prior to the subsequent zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation;"

I find that based on the facts in the record cited above, the expenditures made before the zone change show that the Applicants went well beyond mere thinking about STR use. I find that the expenditure made, including for parking, committed the property to the STR use. I find compelling the testimony from an expert in real estate, Sean Fitzpatrick, that LTRs would not financially support the Magies' proposed upgrades to the property and that the only way to make it financially feasible was to put the property into STRs. Record Pages 108, 334. Mr. Fitzpatrick referred to his notes that went back to 2015. This factor is met.

"7. The ratio of the prior expenditures to the total cost of the proposed use. If the evidence relative to these factors establishes a "vested right," the property owner may complete his improvements and thereafter use his property in a manner which is a nonconforming use, subject to the restrictions on nonconforming uses. *Polk County v. Martin*, 292 Or 69, 81 n 7, 636 P2d 952 (1981), citing with approval *Clackamas County v. Holmes, supra*."

The Applicants have satisfactorily provided evidence of the ratio of their prior expenditures to the total cost. This factor is always the most difficult for applicants to prove. Here, I find that the expenditures that the applicant has proven are for the STR use and not for the LTR. Even if the expenditures for the exterior of the 4 plex is excluded, I find that the 45% expenditures for the interior satisfies this ratio. Record Page 336.

I find that the Applicants have met all seven of these factors and therefore is entitled to a vested right to continue the use of their property as a NCU for STRs.

Decision: I find that the Appellants' appeal of the City's Approval of Applicants' NCU is hereby denied.

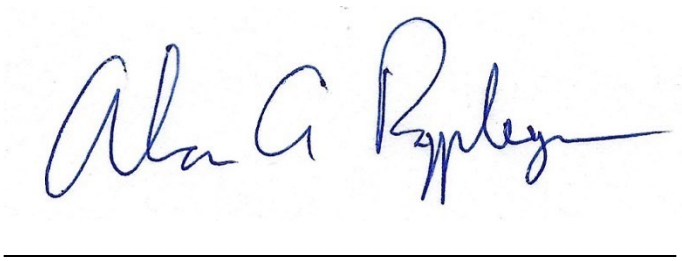
IX. APPEAL

This decision may be appealed.

ADC §9. 040.B states:

> *"A decision of the Commission or Committee concerning a quasi-judicial land use matter may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing an appeal within 15 days of the mailing of the Order. The notice of appeal filed with the City shall contain the information outlined in Section 9.040(D)."*

Dated this 11th Day of December 2023



Alan A. Rappleyea, Hearings Officer

December 15, 2023/tt
Mailed Date

Attachments: Specific "Record" Pages referenced in the Hearings Officer Decision document
Appeal AP23-02, Full Record, 444 pages
https://secure.ifocus.us/Default.aspx?dl=4AB057E5B2693195262F8CA79A1D9E31
November 2, 2023 Meeting Minutes with link to audio/visual recording
https://zoom.us/rec/play/PYdNvLVzZHCh72nHb2cgUbpDv3JKVVPaNN3i9481aUbudUepQg0jG2WKTJM2UsnsH2LJV4XhVCrvJKC-.TzO7EvZJPKDqmwAl?autoplay=true&startTime=1698962921000

provided the structure, if nonconforming, or intended for a nonconforming use, is completed and is used within two years from the time the permit was issued."

4. ADC §7.100, Minimum Parking Space Requirements (ADC §2.415.D, Other Applicable Use Standards, in the C-3 Zone states "All uses will comply with applicable access, parking, and loading standards in Article 7"):

Use Categories	Minimum Parking Requirements *Amended by Ord. 22-01 on 11/7/2022*
All Dwellings not otherwise listed	0.65 spaces per bedroom with a maximum total of 2 spaces for single-family or two-family dwellings, including each unit in a cottage cluster development.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.) *Code prior to 2019*
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one-bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

VI. TIMELINE AND CODE REFERENCES

Date	Description	Page #
March 25, 2015	Magies purchase subject property	--
May 28, 2015	Magies purchase adjacent lot (80908DC18100) for off-street parking	--
Oct. 23, 2017	"Magie/Helligso Parking Plan 2017" / Cottages + 539 16th St / approved	9
Oct. 27, 2017	OT Application "Downtown Astoria Cottages" + receipt	10-11
Nov. 2, 2017	Landscaping Plan	12-13
Jan. 28, 2018	OT Renewal "Downtown Astoria Cottages"	14-15
April 2018	Change of ownership of subject property; 4-plex and 2 cottages / Robert J. Magie and Cynthia D. Magie to Gilbaugh LLC	--
July 1, 2019	Amendment to ADC (A19-02) re: uses in C-3 zone. *ADC §2.390.J.1*	*(below)*

Sept. 15, 2020	City internal emails re: "Cottage" tax payments; no TRT account set up	16-19
Dec. 15, 2020	City email to Magie re "Cottages" as a permitted use	20-23
Dec. 15, 2020	Transient Room Tax Registration Application (#118)	24
Dec. 15, 2020	TRT Certificate of Authority issued to "Astoria Downtown Cottages"	25
Feb. 10, 2021	Magie email re TRT account 118; J. Helligso as manager/tax payments	26
Nov. 1, 2021	City email: complaint rec'd via website / logged as file #CE21-44	27-28
Nov. 9, 2021	Email to A Kettleson_request for info	29-30
Dec. 1, 2021	Email from A Kettleson with Airbnb listing at 4-plex	31
Dec. 2, 2021	Staff confirmed AirBnB listing for "Flat, No. 1" (apt in 4-plex)	32-38
Dec. 14, 2021	TRT payments 12-15-2020 thru 12-14-2021 / No taxes rec'd 2017-2020	39
Dec. 15, 2021	Email chain-follow up on complaint	40
Dec. 28, 2021	AirBnB Ad- December Vacancy	41-47
Dec. 28, 2021	AirBnB Ad- January Vacancy	48-54
Jan. 10, 2022	Letter: Notice of Non-Compliance / 1555 Exchange / Flat No. 1 (1st Notice)	55-60
Jan. 19, 2022	Email chain-DC follow up with A Kettleson	61-62
Jan. 19, 2022	Magie Email-response to code compliance letter	63-68
Jan. 20, 2022	City internal emails - investigation	69-76
Jan. 25, 2022	Email chain – ML and AK re: complaint with AirBnB ad listing	77-82
Jan. 26, 2022	Email to Magies – cease transient lodging use at 4-plex (2nd Notice)	83-84
Feb. 4, 2022	Email from ML to Magies – meeting follow up	85-86
Feb. 8, 2022	Airbnb listing of 4-plex	87
Feb 18, 2022	Notice of Appeal letter received from the Magies; hand-delivered to ML	88-92
Feb. 25, 2022	LUBA "Notice of Intent to Appeal" filed (received on 2-28-22)	93-99
March 1, 2022	LUBA "Motion to Stay Proceedings"	100-102
March 7, 2022	LUBA issued Order suspending the appeal to May 30, 2023	--
April 14, 2022	Email chain – DC with A Kettleson	103-104
May 9, 2022	Application for Verification of Non-Conforming Use rec'd via C Richter	105-130
May 19, 2022	Email chain - B Colonna complaint re: Magies' property	131-132
May 30, 2022	Email chain – ML with A Kettleson; rec'd 90-Day lease termination	133-134
Nov. 7, 2022	ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*	*(below)*
Feb. 6, 2023	Magie Email request to schedule meeting	135
April 24, 2023	In person meeting: Scott Spence with Bob Magie	--
May 2, 2023	LUBA Order "continue the suspension" 28-day extension (rec'd 5-4-23)	136-138
May 12, 2023	Photos – addressing clarification for structures on site	139-142
May 22, 2023	In person meeting: Scott Spence; Tiffany Taylor; Bob & Cindy Magie	--
May 22, 2023	AirBnB Listing - 4plex	143-144
May 22, 2023	AirBnB Listing - Cottages	145
May 24, 2023	In person Meeting: Scott Spence: Tiffany Taylor; Bob & Cindy Magie; Mayor Sean Fitzpatrick; Councilor Elisabeth Adams	--
June 16, 2023	Email chain: Magie; C. Richter; TT – pending final decision letter	146-148
June 26, 2023	Decision Letter	149-152
July 10, 2023	Notice of Appeal rec'd (AP23-02) Appellants: Kettleson, Kipp & Windus	153-164
Oct. 12, 2023	Public Notice – mailed	165-166
Oct. 21, 2023	Public Notice – *The Astorian* – published / affidavit	167-168

ASTORIA DEVELOPMENT CODE (ADC)

Date	Description	Page #
	ADC §3.160, 3.180 "Nonconforming Uses"	169-170
January 2017	Astoria Development Code ADC §1.400 / Definitions ("uses...)	171-205
January 2017	Astoria Development Code ADC §2.385 / C-3 Zone	206-210
January 2017	Astoria Development Code Article 7 / Off-Street Parking	211-229
July 1, 2019	ADC Amendment (A19-02) / C-3 Zone / Uses *ADC §2.390.J.1*	230-231
Nov. 7, 2022	ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*	232-233

VII. PROCEDURES

The appeal hearing, as conducted by the Hearings Officer, will include a review of the application and presentation of the evidence, opportunity for presentations by the applicant and those in favor of the request, those in opposition to the request, deliberation and decision by the Hearings Officer. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time.

ADC §9.040.B, Appeals, Commission or Committee Decision states, *"A decision of the Commission or Committee concerning a quasi-judicial land use matter may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing an appeal within 15 days of the mailing of the Order. The notice of appeal filed with the City shall contain the information outlined in Section 9.040(D)."*

Geo 20

20

Tiffany Taylor

From: Barbara Fryer
Sent: Tuesday, December 15, 2020 9:01 AM
To: exchangeAstoria@gmail.com
Cc: Tiffany Taylor; Heidi Dlubac; Cristine Shade; Megan Leatherman
Subject: FW: Astoria Downtown Cottages

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Good afternoon,

The properties in question, are zoned C3. They cannot be converted from long-term housing to vacation rental if they have been used as long-term rental housing.

2.390.10(a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel.

The three homes located at this address 1555-1569 Exchange Street (T8N R9W Section 08 Map DC Tax lot 18200). The homes on this property were moved in the sixties onto this property from slide areas as housing. They cannot be converted to lodging – they must remain long-term rentals.

Regards,

Barbara

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 2:08 PM
To: Barbara Fryer <BFryer@astoria.or.us>
Subject: FW: Astoria Downtown Cottages

Barbara –

21

Did you want to chime in with some code interpretation? I'm still lost on how we are dealing with the HSL permitting process. (It's probably just me.)

1555-1569 Exchange is an apartment complex. 1565 Exchange is an address within that building. Sounds like the property owners have changed use on one of the apartments from long-term housing to vacation rental.

-Tiffany

TIFFANY TAYLOR
ADMINISTRATIVE ASSISTANT
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)
503-338-6538 (fax)

From: Heidi Dlubac
Sent: Tuesday, September 15, 2020 2:02 PM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Re: Astoria Downtown Cottages

I haven't seen anything for this address. It's in the C3 zone and doesn't require a homestay permit. However, a vacation rental would not be allowed per new code (structures or portions of structures used as residential cannot be converted to short-term stays).

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:40:49 AM
To: Tiffany Taylor; Heidi Dlubac
Subject: RE: Astoria Downtown Cottages

Sorry, it's 1565 Exchange St. It was handwritten on their return.

Cristine Shade

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 8:39 AM
To: Cristine Shade <CShade@astoria.or.us>; Heidi Dlubac <HDlubac@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Do you have an address? Maybe an O.T.?
-Tiffany

CE21-27

Diane Christiansen

From: Megan Leatherman
Sent: Monday, November 1, 2021 12:10 PM
To: Diane Christiansen
Subject: FW: Complaint Form from Website

Sincerely, Meg

Megan Leatherman MCRP
Director
Community Development Department
CITY OF ASTORIA
Founded 1811 • Incorporated 1856

From: commdev@astoria.or.us <commdev@astoria.or.us>
Sent: Thursday, October 28, 2021 5:27 PM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Complaint Form from Website

Comm Dev Complaint Form Submission

City of Astoria - Community Development

Customer Information:
Name (The Customer): Austin Kettleson
Address: 1559 Exchange ST
City, State Zip: Astoria, OR 97103
Email Address: Austinkettleson@gmail.com
Cell Phone: 9716784591
Phone:
Fax:

property owners:
Gilbaugh LLC
P.O. Box 532
Astoria, OR 97103

Complaint Information:
Street/Site Address of Complaint: 1559 Exchange ST
Complaint or explanation of issues: My landlords are breaching my lease agreement and also operating non city compliant air BNBs on the same property. Due to them being good friends with the property management company it's been difficult to deal with this issue
Known dangers or conditions on site:

City of Astoria Employee use only!

Complaint Taken By:
Phone Number:

28

Time:
Type of Complaint:

Action taken by reporting City of Astoria employee:
(IE Forwarding to Engineering, Fire Dept, etc)

Has the problem been resolved by your department?
YES NO
*If YES, forward the file to the code enforcement officer for recording in the investigation/address file.
*If NO, to which department was it transferred?
Date:

Please document date and time of all communications and letters sent out by City of Astoria personnel.	
Date:	
Date:	
Date:	
Date:	
Date:	
Date:	

Issue has not been resolved and the property owner or owners agent has failed to make corrective action

Please forward to Code Enforcement officer for abatement or citations. (All investigation files, photos, and letters are attached.)
Forwarding Department Head (signature Required):

Date:

Code Enforcement Department Employee:

Date:
(Stamp Date received for enforcement)

106

- 10-27-2017 – Occupational Tax Application Approval for 1565 Exchange Street and 1569 Exchange Street
- 12-23-2017 – Mike Morgan sign-off that off-street parking was designed and operated to support a commercial short-term rental use
- 7-01-2020 – Heidi Dlubac confirmed that since the project was initiated prior to 2019, the effort could continue
- 12-15-2020 – Barbara Fryer email that the short-term rental use occurring on 1555-1569 may continue
- 12-15-2020 – Transient Room Tax registration is issues by the City for 11 bedrooms – the total number of bedrooms contained within the 6 units.

Over the past 5 years on multiple occasions, different staff from different departments have all reached the same conclusion – the Magies 6 short term rental units are allowed. The Magies first learned of the change in the City's code on July 1, 2020 and learned of the City's changed position to apply these amendments to bar short term use on January 10, 2022. The Magies acted in good faith in reliance on the previous code, City staff representations and lodging tax sign-offs.

As the activity chronology, use table and 3rd party letters from others also shows, the Magies have been carefully and continuously repairing and restoring these structures as necessary to operate them as short-term rentals. These records and photographs show that putting these structures into short term use required the expenditure of over $335,000 including construction of an off-street parking lot, basement and foundation stabilization, installation of new hip roofs and siding, window restoration, furnishings, and kitchen appliances such as coffee pots and silverware. These costs represent a substantial portion (much over half) of the total costs necessary to open all 6 units for operation and all of these efforts were expended before April 2019, the date on which the ADC 2.39.10.J amendments took effect. These costs do not include all of the hours of sweat equity and volunteer labor, which was, again, accomplished in good faith and without any notice that the amendments adopted in 2019 imposed any limitation.

Based on the foregoing, the Magies have established vested right to continue operating a 6-unit short term residential use on their Exchange Street property.

The 4-Plex was Originally Constructed as a "Motel" and May Continue under ADC 2.39.10.b

In addition to being a lawfully vested, short-term use, the units contained within the 4-plex fall within the definition of a "motel" that can continue, regardless of whether some of the units may have historically be placed for some period into permanent residential use.

The limitations on short-term accommodations under the ADC 2.39.10.J, provide as follows:

> "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:
>
> 1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.2.

108

Gmail

Bob and Cindy Magie <exchangeastoria@gmail.com>

Short Term Rentals

Sean Fitzpatrick <sfitz97103@gmail.com>
To: Exchangeastoria@gmail.com

Tue, Apr 26, 2022 at 10:13 AM

Hi Bob and Cindy,

Thanks for touching base about your short-term rentals. My notes reflect that we were discussing your project as early as June of 2015. You were purchasing or had recently purchased the lot on 16th to provide the parking required for short term rentals. The lot in itself was too small to build on, so it had no value to the owner/seller. The highest and best use was for parking for your units. The seller of the lot lived out of the area and I was impressed that you had gone to such great lengths to find, contact and negotiate with her. I believe you later did a "good neighbor" lot line adjustment to allow off-street parking for the owner of the small house on 16th which is adjacent to your property, and to allow for a more efficient parking layout for your short term tenants.

City staff stated that short term rentals were an outright use in the commercial zoning. As your project would not come before the Planning Commission, we could discuss the project and there would be no conflict if I advised you in my role as an advisor with the SBDC.

We discussed the driveway apron and concrete work necessary to accommodate the parking requirement. There was an issue with the initial flatwork on city property, and staff required removal and re-pouring of the concrete apron.

The main building and the two smaller buildings needed considerable work. While Roberta loved her properties, she did not appear to have (or chose not to spend) the capital necessary to do ongoing maintenance and large repairs. The buildings, as a result, had several decades of deferred maintenance, including foundation issues in the main building. The siding on the main building and one of the smaller buildings had considerable rot, the roofs needed maintenance and/or replacement, all of the buildings needed paint. The interiors were very dated and at least one of the units was not occupied or habitable in the condition in which you purchased. All units would need new paint, flooring and appliances, in addition to updating to plumbing and electrical.

The estimated costs at that time were in the hundreds of thousands of dollars, which would be close to or exceed $1,000,000 today. The only way that you could repair and restore the buildings was to use them as Short Term Rentals, as market rents could not cover the costs to operate- mortgage, property taxes, insurance, utilities, maintenance, repairs, etc.

As we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals. We discussed that hospitality was very different from habitation, so you would have to study the differences in laws pertaining to hospitality, and learn how to be a good neighbor and good host.

It's interesting reflecting back on what you have accomplished, from what you started with to what it has become. All of Roberta's properties- including the six units on Exchange Street- had been offered to me in 2007. I turned them all down, except The Franklin, due to the extreme amount of work and the high costs to cure the deferred maintenance. The property was completely neglected from that time until you purchased the buildings and started pouring money into them seven years later. The buildings look so much better and are so much safer now than they were 15 years ago! A great contribution to the neighborhood as it transitions from housing to commercial.

I hope this information is helpful. Please let me know if you have other questions!

Sincere Regards,

Sean Fitzpatrick, General Manager
Wecoma Partners, Ltd.

109

PACIFIC CAPITAL MANAGEMENT

April 28, 2022

Robert & Cynthia Magie
PO Box 532
Astoria, Oregon 97103

Dear Bob & Cindy,

Following up on our recent conversations, this letter documents the professional property management relationship between PCM, INC dba Pacific Capital Management, a real estate investment management firm licensed in Oregon, Washington and California and Gilbaugh, LLC and it's property located at 1555-1569 Exchange in Astoria.

PCM, INC managed the property at 1555-1569 Exchange from May 2018 through November 2021 while you were attending to other business and family matters. During this period of management, we discussed your business plan for using the property as short term rentals and you showed me your business licenses for the short term rentals. We worked together on upgrading and updating units in a manner that would set the units up for use as future short term rentals as tenants vacated the units and new tenants were put into place.

We also discussed from the beginning whether PCM would provide the short term management for the units or whether another local service provider would be a better fit.

As you and your family were winding down your other business and family matters and starting to take over more management and upgrades at the property, we started to slowly transition the units, one at a time, to short term rentals.

In summary, during our business relationship, your repeatedly stated intention and actions were to transition the units at the 1555-1569 Exchange property to short term rentals.

Please let me know if you or anyone else has questions about the above.

Sincerely,

Shannon Fitzpatrick,
Principal Broker
PCM, INC

126

My apologies.

Regards,

Barbara

I neglected to mention in the above email to my property manager that while I was on the phone with Barbara, she said she cannot approve just two of our units since all 6 are on one tax lot. I mentioned to her that our intention was to convert all 6 units (two cottages and the 4plex) to short-term rentals, but had been working on this process slowly and as tenants moved out on their own and a had intended (before the code was, unknowingly to us, amended) to continue working with the city to finish our project. She then said the approval would be for all units on the tax lot. We then filled out the subsequent document and received our file number (Note; 11 bedrooms on the number of rooms line, all 6 addresses listed and our license and customer numbers are those issued in 2017). Also note that this was a fillable form with some formatting problems.

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

June 26, 2023

Gilbaugh LLC
P.O. Box 532
Astoria, OR 97103

Via email: exchangeastoria@gmail.com

Re: 1555-1557-1559-1561 Exchange Street; 1565 Exchange Street and 1569 Exchange Street
Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Block 114, Shivelys

This letter is a Notice of Decision and Order for the following properties:

- 1555-1557-1559-1561 Exchange Street (multi-family dwelling; advertised on AirBnB as "Historic Downtown Riverview Flats, 1, 2, 3 and 4")
- 1565 Exchange Street (single-family dwelling; advertised on AirBnB as "Historic Downtown Cottage")
- 1569 Exchange Street (single-family dwelling; advertised on AirBnB as "Riverview Downton Cottage")

For the reasons described below, the City finds that the properties located at 1555-1557-1559-1561, 1565 & 1569 Exchange Street may be used as transient lodging and are considered a non-conforming use.

Background: The subject properties listed above are located in the C-3 Zone (General Commercial). The Astoria Development Code (ADC), adopted January 1, 2019, allows transient lodging as follows:

ADC §2.390.J, Uses Permitted Outright in the C-3 Zone
"Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:

1. *Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.*

2. *Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."*

City Hall • 1095 Duane Street • Astoria, OR 97103 • Phone (503) 338-5183
planning@astoria.or.us • www.astoria.or.us

The subject property is currently owned by Gilbaugh LLC, which acquired it from Robert J. Magie and Cynthia D. Magie in April 2018. It includes a four-plex, constructed as a residential facility in 1920 (1555-1557-1559-1561 Exchange) and two single family residences, that were moved to the property in the 1960s (1565 and 1569 Exchange). Pursuant to the language of ADC §2.390.J, property in the C-3 zone may not be used for transient lodging.

The Magies acquired the subject property in March 2015. On that date transient lodging was allowed as an outright use in the C-3 zone. The Magies agreed to purchase the property with a plan to use all three buildings as transient lodging. Shortly after purchase, the Magies began to improve this property to accommodate 6 short term rental units.

In 2017 the Magies obtained a business license and began using the two single family residences (1565 and 1569 Exchange) as transient lodging. By January 1, 2019 the four-plex was under extensive renovation for use as a transient lodging facility. Three of the four units in the four-plex were vacant; however, the fourth was occupied by a residential tenant. On December 15, 2020, Barbara Fryer, a planner for the City, found that conversion of the two single family residential buildings (1565 and 1569 Exchange) from residential to transient lodging preceded the 2019 amendments and therefore constituted a lawful, non-conforming use. That decision is not contested by the City and is again confirmed.

Issues surrounding the four-plex (1555-1557-1559-1561 Exchange) are slightly more complex. For the reasons discussed below the City finds that the four-plex was in use as transient lodging by January 1, 2019; as a result, its use also constitutes a lawful non-conforming use.

Shortly after purchasing the property, the City's Community Development Director informed the Magies that changing the use of the four-plex to transient lodging would require additional off-street parking spaces on its property. In May 2016, the Magies purchased additional property and installed required parking improvements. Over the next few years, the Magies continued to take steps needed to convert the four-plex to transient lodging. These activities included complying with landscape requirements for the C-3 zone, constructing improvements, repairing the building, furnishing, management and cleaning fees, insurance and marketing the property.

As the above history of activity shows, the Magies began transient lodging improvements no later than May 2016. The Astoria Development Code provides that a non-conforming use may continue if it was legal when the use first occurred. That use "occurred" when the Magies moved onto the property in preparation to operate as transient lodging. The actual transient lodging operation was not required to consider a use as having begun. The applicable ordinances state:

> ADC 3.160 "NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."
>
> ADC 1.400 "USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual

operation and/or business open to the public need not occur to consider a use as begun."

These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

Conclusion: After reviewing the submitted documents, and researching City records, the City has determined that the four-plex at 1555-1557-1559-1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street, were in transient lodging use on January 1, 2019, and as such, these six units may continue as a transient lodging use. With the 2019 code change, they are now classified as "Nonconforming Uses."

Clarification on Future Uses: Development Code Section §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use states, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

Development Code Section §3.180.B, Change of Nonconforming Use states, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

As a nonconforming use, the transient lodging may continue. If the transient lodging should discontinue for one year, the use would need to conform with the current code. If the use is changed to a conforming use, such as residential and not transient use, then it may not return to the nonconforming transient use. The property use may not switch back and forth between conforming and nonconforming uses.

As a reminder, use for transient lodging does require a City Occupational Tax (business license) and payment of the transient room tax.

THIS IS A FINAL LAND USE DECISION. THE DECISION MAY BE APPEALED TO THE ASTORIA PLANNING COMMISSION BY THE APPLICANT OR A PARTY WHO RESPONDED IN WRITING TO THE PROPOSED USE BY FILING AN APPEAL WITH THE COMMUNITY DEVELOPMENT DIRECTOR WITHIN 15 DAYS OF THE MAILING OF THE DECISION. THE NOTICE OF APPEAL SHALL INDICATE THE INTERPRETATION THAT IS BEING APPEALED.

Regards,

Tiffany Taylor
City Planner

cc: Carrie Richter (crichter@batemanseidel.com)
Austin Kettleson (austinkettleson@gmail.com)

155
RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA
AP23-02
155

Austin Kettleson
286 Lexington Avenue
Astoria, Oregon 97103

Andrew Kipp
461 Exchange Street
Astoria, Oregon 97103

John Windus
960 Franklin Avenue
Astoria, Oregon 97103

July 10th, 2023

Tiffany Taylor
City Planner
City of Astoria
1095 Duane Street
Astoria, Oregon 97103

RE: APPEAL - Notice of Decision RE: 1555-1557-1559-1561 Exchange Street; 1565 Exchange Street and 1569 Exchange Street Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Block 114, Shivelys

Dear Ms. Taylor,

Please accept this letter detailing the grounds for an appeal of the Decision and Order dated June 26th, 2023, regarding the city's final decision that the properties located at 1555-1557-1559-1561 Exchange Street may be used as non-conforming, transient lodging. Under the City of Astoria Development Code §9.040, we request that this appeal be heard before the City of Astoria Planning Commission. We ask the commission to review this matter thoroughly and, in doing so, reverse the city's decision on the following grounds:

156

In its decision, the city claims that Robert J. Magie and Cynthia D. Magie, owners of the Gilbaugh Apartments, took steps to begin preparations to use the properties at 1555-1557-1559-1561 Exchange Street (the "four-plex") as short-term rentals as early as May 2016. Further in its decision, the city concludes that these steps constitute the start of use as transient lodging and therefore was a permitted use under the code in effect at that time and may continue as non-conforming, lawful use.

The city correctly states that the Astoria Development Code defines the "start of use" as occurring when the applicant is on-site in preparation for operation. However, to interpret this correctly, defining "use" is necessary. The applicable section of the Astoria Development Code states:

> *ADC §1.400*
> *USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.*

In its analysis, the city may have overlooked meaningful evidence of concrete actions taken by Mr. and Mrs. Magie that show that the use of the "four-plex," exclusively as transient lodging, had not started, in actuality or intent. Several facts demonstrate that Mr. and Mrs. Magie did not intend to operate transient lodging at the "four-plex" before January 1st, 2019, and, in fact, intended to operate the multi-family dwelling as long-term rentals.

First, the Occupational Tax Application (see Attachment 1) provided to the City of Astoria by Cynthia Magie and dated October 27th, 2017, does not mention operating any short-term rentals at the "four-plex." The application only states that they planned to use the properties at 1565 Exchange Street and 1569 Exchange Street (the "cottages") as short-term rentals under the business name "Downtown Astoria Cottages." If Mrs. Magie had intended to begin using the "four-plex"—a completely separate structure—as transient lodging as early 2016, why were they not included in the 2017 occupational tax application? Are we to believe that applicant forgot that she owned four additional apartment units?

Second, Mr. and Mrs. Magie entered into a lease agreement (Attachment 2) for a long-term apartment rental at 1559 Exchange Street on December 1st, 2018, one month before the new ordinance on short-term rentals went into effect. The lease was to end on August 31st, 2019, and continue after that date on a month-to-month basis. The development code clearly states that transient lodging is limited to stays of less than 30 days. Again, if Mr. and Mrs. Magie had been in "preparation to operate as transient lodging," why did they enter into a 9-month lease agreement with at least one long-term tenant? How is it possible that use as transient lodging had started when the actions taken by Mr. and Mr. Magie directly conflict with that use?

This evidence reveals that the meaningful steps taken by Mr. and Mrs. Magie show they did not intend to convert the "four-plex" to transient lodging because they were either out of the scope of their business by virtue of being omitted from the Occupational Tax Application or they sought to achieve the exact opposite of a short-term rental business by renting the apartments in the building to long-term tenants. By applying the definition of "use" from the Astoria Development Code to these facts, it's not only clear the "four-plex" was *designed, arranged, maintained, and occupied* as a multi-family dwelling, but the steps taken by Mr. and Mrs. Magie demonstrate they *intended* to continue using the building, at least in part, as a multi-family dwelling for long-term tenants until at least August 31st, 2019. The city cannot ignore steps taken by the applicants when determining when use started, and Mr. and Mrs. Magie's actions cast doubt on whether the "preparations to operate as a transient lodging" at the "four-plex" were for that purpose at all. In failing to account for these actions, the city erred in its interpretation that the apartments in the "four-plex" were in use as transient lodging before January 1st, 2019. Given the clear evidence that Mr. and Mrs. Magie, both in actuality and intent, were not operating the entire building as short-term rentals but rather were leasing units to long-term tenants through at least August 31st, 2019, it fails to meet the definition of use as transient lodging. Therefore, because the "four-plex" was not in use as transient lodging before January 1st, 2019, its continued use as such is not permitted under ADC §2.390 (J.1):

ADC §2.390 (J.1):

158

Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.

We appeal to the City of Astoria Planning Commission to review this matter with special attention to the course of events and in consideration of the evidence brought forward in this appeal. In doing so, we hope they will reverse the decision, making these desperately needed long-term rental units available for families and workers who have chosen to make Astoria their home. Community leaders must work to live up to the intent and purpose of the ordinances regulating short-term rental in the Astoria Development Code. Failure to do so means a continued deepening of the housing crisis devastating our community. Too many of the people that make Astoria such a special place to live—from the servers and bartenders at our local restaurants and breweries, to the nurses and doctors at CMH, to the teachers in our schools—are struggling to find a stable place to live, affordable or otherwise. Our small businesses lack enough workers to fully staff up because potential employees have such a difficult time securing housing. Many of us have friends and family who have moved away because they couldn't find a place to live or it's just gotten too expensive. It's true that short-term rentals have a part to play in the fabric of our increasingly tourism-focused economy and are a meaningful source of income for property owners. However, this decision is deeply unfair to operators of short-term rentals who have gone to great lengths to make their rentals compliant with the city's code regulating short-term rentals. Faulty decisions like this directly undermine the checks and balances put in place to help mitigate the impact short-term rentals have on the housing supply and, ultimately, the ability to sustain livability here in Astoria.

Lastly, and perhaps most seriously, we can't ignore the interconnected relationships between Mrs. Magie (a City of Astoria Planning Commissioner), Mayor Sean Fitzpatrick (who appointed her to the Planning Commission), and his brother Shannon Fitzpatrick (who formally managed the Gilbaugh Apartments on behalf of Mr. and Mrs. Magie). These overlapping relationships and interests make many community members uneasy. The community is rightfully alarmed when they see elected officials involved in issues where they have been a friend and advisor to one of the parties, and

159

in this case, even writing a letter of support in this matter on behalf of the applicants before being elected. A problematic situation arises when it's difficult to know whether the mayor was acting in his capacity as an elected official representing the people of Astoria or acting as a friend and advocate of the applicants in the meetings and deliberations that led the city to reverse its decision. The Planning Commission has a duty to ensure that the Astoria Development Code is correctly interpreted and followed. That interpretation being free of bias is foundational to the rule of law and democratic government itself. Astorians must have confidence that land use decisions in Astoria are made fairly and without considering personal or political relationships. It is in the interest of good government for the Planning Commission to examine this matter under the highest ethical standards and with the transparency the people of Astoria deserve.

Sincerely,

Austin Kettleson
Andrew Kipp
John Windus

CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: 0146664
Receipt Number: 217670

OCCUPATIONAL TAX APPLICATION

Name of Business: Doubletree Astoria Cottages

Proprietor: Ryder Magie TIN or SSN: [illegible]

Business Address: 1565 Exchange St., 1569 Exchange St.

City: Astoria State: OR Zip: 97103

(Local Location Must Include Written Approval to Locate on the Premises)

Mailing Address (Include City, State, & Zip): PO Box 532 Astoria OR 97103

Residence Address (Include City, State, & Zip):

Business Telephone: 503-312-7348 Home Telephone:

E-mail Address: Exchange.Astoria@gmail.com Type of Business:

Type of Business: Vacation Rental

Brief Description of What Your Business Will Do: Rent house as short term rentals

Business New to Area? X Yes ___ No Renewal? ___ Yes X No

Has the character of your business changed in the last year? ___ Yes X No

If yes, please explain Briefly:

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. Occupational Tax is due January 1 of each year. Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

** Number of Individuals Employed: 1 Fee Per Schedule: $ 9.95

1 = $ 85.00 2 = $ 47.50 3 or more = see fee schedule

** Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

Approved - Comm Dev 10/27/17

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA AP23-02

Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA

AP23-02

Tenant(s): AUSTIN KETTLESON

Tenant(s): DANAE M. SUPRUNOWSKI

Rented Premises 1559 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: _____

Cell or Mobile 971-678-4591 Alternate Phone: 360-244-3399

Email: austinkettleson@gmail.com Email: danae.suprunowski@gmail.com

Alternate Mailing: _____

Monthly Rent Amount $ 1225.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 12/1/18 Ending: 8/31/19 1st month's prorated rent from _____ to _____ is $ _____

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- [X] One charge per rental installment limited to the amount customary in rental area. $ 100
- [ ] Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- [ ] Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ _____
1st Full Month's Rent	$ 1225.00
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ _____
Total Due	$ 3225.00

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O=Owner Pays T=Tenant Pays

- [T] Electricity [O] Water
- [T] Cable [O] Sewer
- [X] Gas [O] Garbage

Other _____

Furnished to Unit

- [X] Range [ ] Disposal [X] Blinds
- [ ] Dishwasher [X] Refrigerator
- [X] Garbage Can [ ] Dumpster

Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Austin Kettleson, Danae Suprunowski, Hazel & Millie Peterson

EQUAL HOUSING OPPORTUNITY
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www.oregonrentalhousing.com
WARNING: No portion of this form may be reprinted without written permission of the Oregon Rental Housing Association, Inc.

Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: _____ Relationship: _____
Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Email: _____

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s) _____
Storage Space _____
Mail Box # 1559

Pets Allowed

No ☒ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☒ IS ☐ IS NOT available.
2) ☒ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☒ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. **Oversized and Water Filled Furnishings:** No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. **Guests:** Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. **Tenant Contact Info:** Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

4. **Property Condition:** Tenant(s) shall return premises to Owner/Agent in clean condition. The Owner/Agent's definition of "clean" is binding on all parties.

5. **Tenant and Guest Conduct:** Tenant(s) shall restrict all sounds or noise to a reasonable volume. Tenant(s) and their Guest(s) shall conduct themselves in a manner that will not disturb their neighbor's peaceful enjoyment of their premises, including common areas.

6. **Notice of Absence:** Tenant(s) shall notify Owner/Agent of any anticipated absence from the premises in excess of 7 days, no later than the first day of the absence.

7. **Entry into Premises:** Tenant(s) shall not unreasonably withhold consent to Owner/Agent to enter premises to inspect, make repairs or improvements, or to show the unit to prospective buyers or tenants. Owner/Agent may enter the premises without consent in an emergency, to post notices, or at any reasonable time with 24-hour notice or with permission of Tenant(s). If boxes are checked, Tenant(s) agrees to allow the use of ☒ text messages or ☒ email, or both for the purpose of submitting maintenance requests to Owner/Agent and for providing 24-hour notice to enter by Owner/Agent to Tenant(s).

8. **Sublease:** Tenant(s) shall not transfer their interest(s) in this agreement or sublet the premises, or any part of the premises.

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9. **Insurance:** Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☒ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

10. **Rent Increases:** If lease expires and converts to a month-to-month tenancy, rent may be increased with a 90-day written notice. Rent increases may not be effective prior to the end of the first year of occupancy.

11. **Abandonment:** Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. **Notices:** All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY, must include an additional 4 days for delivery including date of service. Where allowed by law; notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the portion of the premises of which the Tenant(s) has possession or to the Owner/Agent at the address provided. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. **Use of Premises, Maintenance and Repair:** The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT.

14. **Damage to Property:** Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

15. **Hazardous Materials:** Tenant(s) shall not store hazardous or flammable materials at the premises.

16. **Smoke and Carbon Monoxide Alarms:** Tenant(s) acknowledges the presence of a smoke alarm(s) and, if required, a carbon monoxide alarm(s) in fully operational condition in the unit. Tenant(s) is instructed to test the alarms at least every 6 months and replace the batteries as needed. Tenant(s) shall replace expired batteries with 10-year lithium batteries as required by law. Tenant(s) agrees that Owner/Agent is not liable for loss or damage due to the alarm's failure to operate. Tenant(s) is required to immediately notify Owner/Agent in writing of any malfunction of the alarm(s). Tenant(s) shall not remove or tamper with a properly functioning alarm, including removing any working batteries. Tenant(s) agrees to pay a fee of $250.00 for each violation.

17. **Limited Liability:** Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

18. **Non-Compliance Fees:** Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation.

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19. **Carpet Cleaning:** If Owner/Agent had the carpets cleaned using specialized equipment after the previous tenancy before the Tenant(s) took possession, Owner/Agent may deduct the cost of carpet cleaning from the Tenant's security deposit regardless of whether the Tenant(s) cleaned the carpets before delivery of possession of the premises.

20. **Lease Enabling/Trespassing:** Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

21. **Termination:** Tenant(s) shall not terminate this agreement without giving 30 days' written notice; failure shall make Tenant(s) liable for up to 30 days' rent. Tenant(s) must provide a single forwarding address for final accounting. Upon material noncompliance with this agreement, Owner/Agent may issue a 30-day notice of Termination with Cause, and if the breach is not remedied by the cure period indicated on the notice, the rental agreement will terminate and the Owner/Agent may take possession pursuant to Oregon law. Fixed-term tenancy will automatically convert to month-to-month tenancy unless either party has properly terminated the tenancy by giving at least 30 days' written notice prior to end of the fixed term or 60 days' by the Owner/Agent if termination is after the first year of occupancy. Owner/Agent may terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/or other charges, or to comply with any terms or conditions of this agreement. Any omission or misstatement on the application for this dwelling unit may, at the option of Owner/Agent, be grounds for termination of tenancy. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises.

22. **Holdover Tenancy:** Any holding over after the expiration of the rental term without written consent of Owner/Agent shall be deemed a willful holdover and Owner/Agent shall be entitled to rent and damages, including court fees if applicable.

23. **Tenant(s) Jointly and Severally Liable:** If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

24. **Application of Payments:** Owner/Agent may apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months. B) Rent for the current month. C) Utility or service charges. D) Late rent charges. E) Damage claims and any other fees or claims owed by the tenant.

25. **Legal and Collection Fees:** Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

26. **Unenforceable Provision:** If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

27. **Charges: Utility** – Utility charges must be paid in full within 30 days of receipt of billing or Owner/Agent may assess a $50 late fee. Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. **HOA** – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. **Re-Key Mailbox(s)** – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

28. **Attachments to the Agreement:** The following are attached and are made a part of this agreement.

☐ # 3 Pet Agreement	☒ # 21 Deposit Refund	☐ # 33 Rules & Regulations
☐ # 9 Check In/Check Out	☒ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☒ # 11 Smoke Alarm & CO Agreement	☒ # 54 Mold Prevention	☒ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. **Signature Block:** Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant [signature] Date 11/21/2018 10:12:17 AM PST Tenant DANIELE SUPRUNOWSKI Date 11/21/2018 10:58:24 AM PST

Tenant 5EBCBC21FBEC467... Date _____ Tenant 3F08BBF32519454... Date _____

DocuSigned by:

Owner/Agent Shannon Fitzpatrick Date 11/21/2018 11:00:35 AM PST

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2B Page 4 of 4

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Daniel H. Kearns
Direct Dial: 503-997-6032

November 9, 2023

Astoria Land Use Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Appeal of Gilbaugh LLC nonconforming use determination
1555, 1557, 1559 & 1561 Exchange Street
Post-Hearing Memorandum from Appellants

Dear Mr. Rappleyea:

This firm represents the appellants in this land use appeal challenging a June 26, 2023 nonconforming use determination by the Planning Director regarding the 4-plex apartment house at 1555, 1557, 1559 & 1561 Exchange Street.[1] This memorandum provides appellants' first post-hearing arguments for overturning the Director's decision and entry of an order denying the nonconforming use status of these four dwellings units ("4-plex") as short-term rentals ("STRs").

A. Nonconforming Use versus Vested Right Determination.

During the hearing, the Officer drew a distinction between a nonconforming use determination, under ADC §3.180, and a vested right determination under the so-called Holmes factors. *See Clackamas County v. Holmes*, 265 Or. 193, 198-99, 508 P.2d 190, 192-93 (1973). For several reasons, the question presents a false dichotomy. First, this case started with the Magies' "Application for Nonconforming Use Verification." It then progressed to the Director's June 26, 2023 decision that concluded that all of the applicants' 6 units on Exchange Street "may be used as transient lodging and are considered a nonconforming use." Third, all of the City's notices and staff reports, and indeed, the Director's June 26th decision cite the City's nonconforming use provisions from ADC §§3.160 & 3.180 as the applicable criteria. While the Holmes factors must also be considered, this is first and primarily a nonconforming use case, and the City's nonconforming use criteria cannot be ignored.

1 This appeal challenges the Director's decision only as to the 4-plex units at 1555, 1557, 1559 & 1561 Exchange Street. Throughout the application and this appeal process, the applicants conflate things they've done to improve the two cottage units at 1565 and 1569 Exchange Street and use those efforts to boot-strap the allegation that they intended the 4-plex for future use as short-term rental ("STR"). The Hearings Officer must carefully examine those claims to distinguish fact from fiction because there is no evidence of any intention or effort to use the 4-plex for STR use until long after January 1, 2019.

there is no evidence that any of the parking they claim to have added had anything to do with transient lodging use of even the cottages, and certainly none of the parking efforts had anything to do with satisfying the parking requirement for transient lodging use of the 4-plex. Consequently, the applicants never had a lawful transient lodging use at the 4-plex, *i.e.,* it was not lawfully established, there is no evidence of any such intention prior to January 1, 2019, and it remains parking deficient today. The basic requirement that, to qualify as a lawful nonconforming use, the 4-plex had to be lawfully established as STRs and in existence on the date restrictive zoning was first imposed (Jan 1, 2019), is simply not met.

D. Any nonconforming use or vested right the applicants may have had was lost through lapses in use that exceed 12 months and when they put the 4-plex to a conforming use.

ADC §3.180(C) provides that any nonconforming use that lapses for a period exceeding 12 months is lost. In this case, ADC §3.180(C) means that if the applicants did not put the 4-plex to actual STR use within 12 months of January 1, 2019, i.e., by January 1, 2020, any nonconforming right was lost. There is no evidence in the record that the applicants met this deadline. In fact, their property management company (Pacific Capital Management) testified in an April 28, 2022 letter to the following "date of first use by short-term tenant" for each of the 4-plex units:

1555 Exchange Street .....December 1, 2021
1557 Exchange Street .....April 17, 2022
1559 Exchange Street .....long-term tenant holding-over prevented access.
1561 Exchange Street .....March 15, 2022

This is the testimony from the applicant's property manager and is therefore credible evidence that there was no transient lodging use of any of the 4-plex units before December 2021.

Even more fatal to the applicant's nonconforming use claim is the abundant evidence that all of the 4-plex units have consistently been used as long-term apartments from long before January 1, 2019 until at least December 2021. According to ADC §3.180(B), when a claimed nonconforming use is converted to a conforming use, such as a long-term tenancy apartment, any nonconforming use right is immediately lost. That is exactly what happened here, because all of the units in the 4-plex have consistently been rented as long-term apartments. This use terminated any right the applicants may have had to a transient lodging use right.

E. Under the 7 Holmes factors, the applicants have no vested right to a transient lodging use in the 4-plex.

The Supreme Court created the following factors (the so-called "*Holmes* factors") as relevant in evaluating a vested rights claim to a particular development:

1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;

2. The amount of notice of any proposed re-zoning;

3. The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;

4. The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;

5. The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;

6. Whether the expenditures made prior to the subsequent zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation;

7. The ratio of the prior expenditures to the total cost of the proposed use.

If the evidence relative to these factors establishes a "vested right," the property owner may complete his improvements and thereafter use his property in a manner which is a nonconforming use, subject to the restrictions on nonconforming uses.

Polk County v. Martin, 292 Or 69, 81 n 7, 636 P2d 952 (1981), citing with approval *Clackamas County v. Holmes, supra*.

Factor 1: The preceding discussion informs the Holmes factors in this case by proving that any vested right the applicants may have had to a nonconforming STR use was lost. First, there is no evidence of "good faith expenditures" toward the use of the 4-plex for transient lodging. Instead, all of the expenditures were put toward making the 4-plex habitable, and they were actually used as long-term apartments. As explained above, the claim of developing parking to serve the 4-plex as a transient lodging use is false.

Factor 3: The same evidence (or lack of evidence) shows no investment or reliance on the prior zoning that allowed transient lodging, but no longer does. There is no evidence of reliance on the prior zoning, and no evidence that the applicants were even aware of what the prior code required for transient lodging uses to operate lawfully, *e.g.,* the 2017 off-street parking requirements.

Factor 4: The same evidence also demonstrates that, rather than transient lodging, the applicants' expenditures were focused on making the 4-plex units habitable, and there is no evidence of any expenditures related to transient lodging. Thus, the expenditures were focused on a conforming use, *i.e.,* long-term apartment use of the 4-plex, not transient lodging use.

a total of 11). We added 5, which exceeds the requirement but is more convenient for our guests. I have attached a series of google aerial images illustrating this change.

2) What are the programmatic differences between short term and long term rentals?

There was a great deal of testimony during the hearing suggesting that the improvements that we made to the Gilbaugh Building were pursued only to make it habitable and as a result, those efforts do not establish the start of a "transient lodging facility" use, as that term is used post-2019.

First, it is important to remember that the Gilbaugh Building has always been used as transitional housing in some form or another as zoning code allowed. The property is zoned C-3 and multi-family dwellings, motels and hotels were permitted outright in this commercial zone. The building was located right across the street from the hospital and, according to local historian John Goodenberger, it provided short term housing for visiting doctors and nurses. Although this transitional housing was not marketed for tourism the same way as it may be today, the Gilbaugh Building has offered transitional housing extending for weeks-long or month-long stays for individuals to some degree or another throughout its existence.

Second, it is also important to understand that when we purchased the property in 2015 from the Lower Columbia Preservation Society, all but one of the units were rented. Although the old carpet or painted floors, acoustic ceilings tiles with the upstairs units having rough cut cedar paneling on the walls and ceilings would have made it impossible to market to tourists, we could have continued to long-term rent the Gilbaugh in the state that it was in. Therefore, the structural improvements were not critical to making the building habitable, as some claimed at the hearing, but rather were necessary to market for short term rentals.

We knew that the only way to justify the cost necessary to rehabilitate the building was with the expectation of short term rentals. As reflected in the email from Sean Fitzpatrick at record p 108, corroborating our statements of our intent:

> "we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals. We discussed that hospitality was very different from habitation, so you would have to study the differences in laws pertaining to hospitality, and learn how to be a good neighbor and good host."

We restored the building in order to commercially market the units for short term rentals assuming a different return on our investment. Long term rentals have a market maximum that they can earn that does not fluctuate based on seasons or overall demand. We know this

Although this was the first time that these units were advertised on Airbnb as available for rent on a daily basis, we secured the Transient Room Tax Registration for 11 bedrooms in December of 2020. Moreover, as the documentation set forth in the Hearings Officer's packet at pages 127-128 shows, the License number (5001435) and Customer number (019664) that City Staff Barbara Fryer assigned us on 12-15-20 came from our original 10-27-2017 business license and occupational tax receipt. This reinforces the City's conclusion that short term rental activity began in 2017 with the original Downtown Cottages tax registration, along with the parking.

As explained at the hearing, the units in the Gilbaugh Building were in the process of being prepared for short term rental use since 2017. In January, 2019, we were in the process of reinforcing the foundation. This required parking construction vehicles and materials in the parking lot. See attached photos. The noise and construction activity would have made it impossible to put any of the dwelling units into short term residential use at that time.

In the winter of 2019, as part of working on the foundation, we finished portions of the basement to accommodate short-term rental supply storage and started to accumulate furnishing for the units. In addition, our contractor continued the buildout of our parking area by constructing a retaining wall / parking barriers and marking the parking spaces.

In the spring of 2020, we were working on renovating the unit interiors. This included plumbing repairs, professional painting, woodwork restoration which were not necessary to make the units habitable but rather to market short term rentals. Throughout this time (2017 to 2023) but moving to one to two days per week beginning in 2020, we regularly went to garage sales, estate sales, antique stores and Facebook marketplace to find period furniture, art and other antiques to decorate units to period and maritime detail. These items were placed in the basement storage areas until they could be deployed into their respective short term rental. In the winter of 2020, we learned that water intrusion into the windows on the east and south wall were causing interior wall damage. As such, we were forced to scaffold and tarp the south wall and custom build and install metal window sills. See attached photos. This process was slow and weather dependent but was not complete until April 2021.

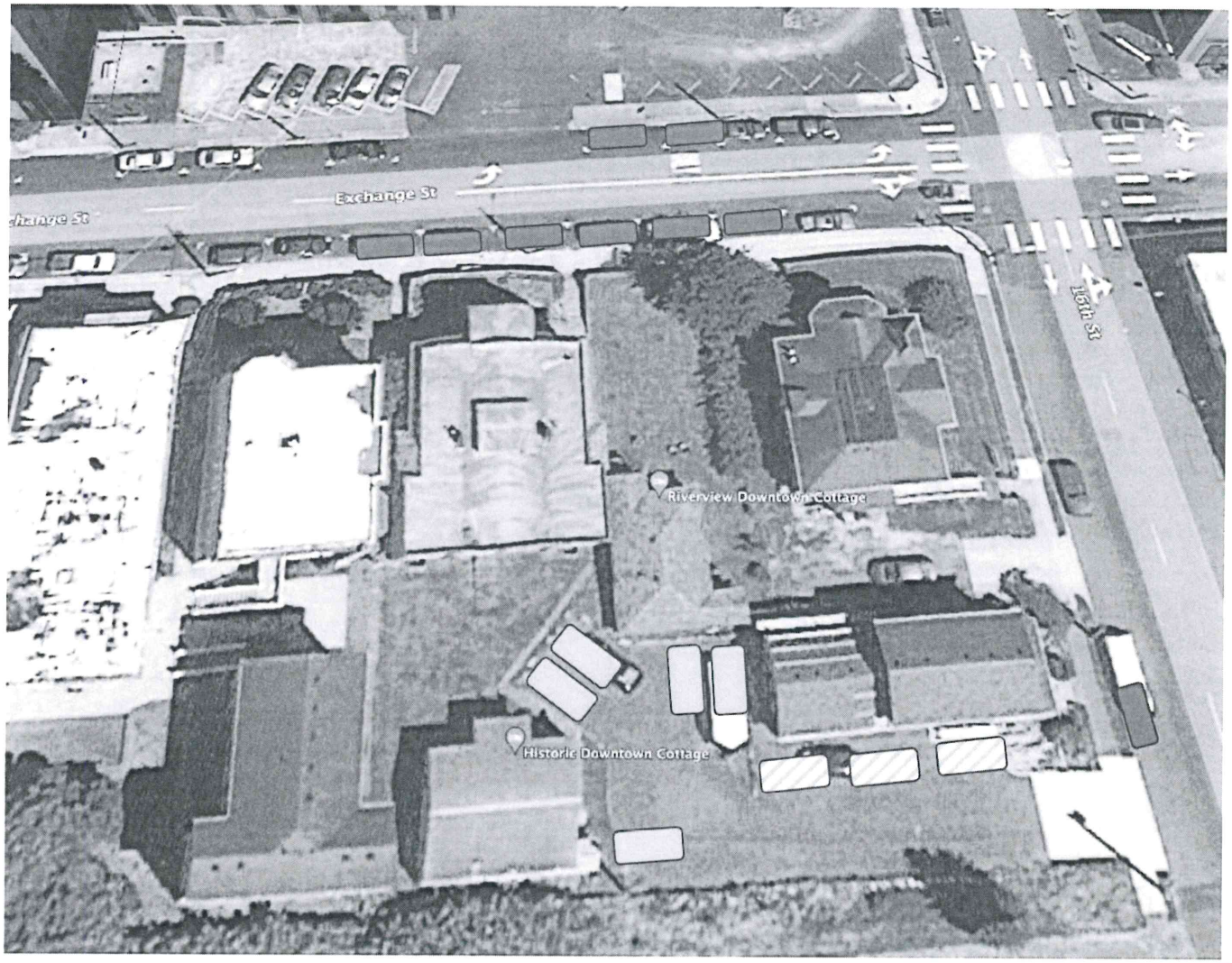
In March of 2021, we contracted with the Appellant's company West River Construction to construct a fence to prevent foot traffic of guests using a neighboring driveway. Although West River Construction did not complete the work as bid, we paid him anyway but had to pay someone else to finish the work, which was not completed until May 2021.

In January, 2022, we installed electronic locks on the porch entry door. In the spring of 2022, we purchased and installed security cameras on the porch and inside the building. (We did not have them at any of our long term buildings when we installed them. We have subsequently installed them in the parking lot at one of our long term buildings at the recommendation of APD.) In August of 2022, we purchased and installed Minut decibel meters to monitor sound, temperature and humidity levels in all units. (We do not have these in any of our long term units.)

June 2017

STR parking requires 1 space/bdr (2017 ADC Article 7 table 7.100). 11 spaces required and 14 provided for guest convenience and overflow parking of our 6 STR units

- Magie on-street
- Magie STR off-street
- Helligso STR off-street



341

From: Jacob Helligso <jakehelligso@gmail.com>
Sent: Thursday, November 9, 2023 12:50 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Regarding Public Hearing of Magie property
Hi Tiffany,

Here is my statement for the open hearing from the meeting last week.

Jacob Helligso
jakehelligso@gmail.com

To all Pertinent Parties:

In March of 2015, after Bob and Cindy purchased the empty lot next to mine, we started discussing plans to create a shared driveway to increase access to his properties and create off street parking for both of us. After going through the process of planning and getting our lots legally changed to accommodate the plan, the construction of the driveway was completed in Early 2017.

During our conversation around parking in 2016 we discussed the plan to move his properties into Short Term Rentals. I was in the process of renovating my own home and was excited by this idea as I had been considering doing a similar thing in my home. After looking at the city codes we mapped out potential parking spaces for both properties with the express intent to meet the city's parking requirements for Short Term Rentals.

At that time there were no permits required for a commercial property to be used as an STR, and was considered an outright use of his property. Recognizing this, Bob and Cindy had set up appropriate paperwork and went through the regulations to comply with the city's codes shortly after buying the land with plans to move all of the units over as work was completed.

Simultaneous to the creating parking, Bob and Cindy began planning and rehabbing the buildings to create a pleasant atmosphere for future guests starting with the two smaller buildings (1565 and 1569) as they needed less work and cost. We had ongoing conversations weekly around the project and even added additional lighting, pathway access, and landscaping for all three of his buildings.

It was a multiyear process for both of us and we continued having conversations leading up to the first two being opened and I began managing their STRs in 2021.

The work to the four plex was still ongoing at that point and as tenants moved out, we consulted on each unit's renovation as it became available and the necessary funding to furnish them and put in appliances was generated.

At no point during our often more than once a week conversation over 7+ years did this plan change from the original plan to have all of the units be STRs. Then the new regulations that were voted into place in summer of 2019 with "retroactive" status, potentially jeopardizing months of work and money, which by itself seems extremely suspect

From: Mary Hunter
To: Planning
Subject: Short term rental - furnishings (AP23-02)
Date: Thursday, November 9, 2023 2:38:44 PM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Hello,

I attended the meeting last week where both sides in the rental dispute made their case.

The owner indicated that he intended to present evidence that his purchase of furniture supported that they were short term rentals from the date of the furniture receipts. However, there are plenty of furnished long term rentals, and especially there are furnished medium-term rentals that are popular with tenants such as visiting nurses and coast guard.

Here are some examples from a few different sites, found in about 15 minutes of googling:

https://www.movoto.com/rental/1432-franklin-avenue-astoria-or-97103/pid_x6u605jmcmab/

https://www.movoto.com/rental/76-w-bond-street-astoria-or-97103/pid_jy308gu7itab/

https://www.zillow.com/homedetails/2004-Washington-Ave-N-Long-Beach-WA-98631/2062233635_zpid/

https://www.facebook.com/marketplace/item/808610451057349/

Mary Hunter
3356 Grand Ave, Astoria, OR 97103

361

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November 16, 2023

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal

Dear Hearings Officer Rappleyea:

This letter responds to issues raised during the first open record period:

1) **Installing five new off-street parking spaces was two more than necessary to serve the cottages.**

As explained in our previous letter, residential uses within the Gilbaugh pre-dated the existence of the code so it did not require any of the off-street parking identified within the 2017 code to continue. Contrary to Mr. Kearns assertion, parking for a motel use required 1 space per guestroom. Collectively, the cottage units include 3 bedrooms which would require 3 off-street spaces. This means that there were two extra spaces available to serve short term tenants within the Gilbaugh. These two additional off-street spaces (allowed in non-residential zones) along with the on-street spaces provided parking amenities sufficient to satisfy six short term dwelling uses.

Mr. Kearns argues that the off-street parking is owned by Mr. Helligso and not us. As we have always explained, the land for the parking area was purchased in May of 2015 after closing on the Gilbaugh property in late March of the same year. See Rec p 112. This land was purchased to provide parking for our project as discussions with the city necessitated additional parking for short term use. We were only following the requirements as they were set forth by City staff. When we purchased this lot we understood we were buying a C3 lot as initial paperwork dictated. By the time we neared closing, a change to R3 (for this narrow band -initiated by the neighbors -the Colonna's north of Helligso) had been processed and at closing the lot we had bought was R3. The City processed that request acknowledging that this extra parking would serve short term uses on our entire property.

Once the land was purchased, we worked with our neighbor (Jacob Helligso) to optimize usage of this lot for mutual parking for short-term rentals (see Figure 1 below). Since our lot and Jacob's lot were of odd shape, we decided to swap land; Magies getting Helligso's back yard (which was closer to our buildings -C3) allowing closer parking; Magies giving up land adjacent to Helligso's house where parking was better suited for him. On the original parking plan Helligso had two spaces but later modified his garden area to provide an additional space before he applied for and received his homestay lodging license (required for R3) after massive renovations of his home was completed in 2021. Once the driveway was completed in 2017 we

Renovations for Converting 4 Gilbaugh Units to Full Time Short Term Rentals

Pre July 2019

Date	Payee	Description	Approx cost
5/15/16	Handyman	Carpet and linoleum removal and wood floor prep for 1557 and finish work	$2,600.00
6/14/16	J&J hardwood	restoration of original fir floors unit 1557	$2,256.00
1/1/17	Various	Driveway - creation of off-street parking to accommodate 11 bedrooms for short term rental use	$19,479.00
9/1/18	Handyman 2	Demo and wood floor prep for sleeping room, landing and 1559 and finish work	$4,200.00
10/1/18	Handyman	1559 kitchen reconfiguration, bathroom renovation, acoustic tile removal (replastering) painting, plumbing to relocate water heater	$45,441.00
10/1/18	J&J hardwood	restoration of original fir floors unit 1559	$2,992.00
10/1/18	Handyman	strip and prep sleeping porch and landing	$1,600.00
11/1/18	J&J hardwood	restoration of original fir floors unit stair landing and sleeping porch	$2,367.00
3/6/19	Handyman	1561 kitchen remodel, build custom cabinets and counter top, wainscoting in kitchen and bath, materials, plumbing	$11,000.00
		Subtotal of STR-supported specific elements	**$91,935.00**
6/18-6/19	Various	Ext. renovation including stabilizing foundation, replacing siding, and restoring windows (accomplished only in anticipation of STR use)	$250,567.00
		Total spent for converting units to full time STR before code change in July 2019 (retroactive to Jan 2019)	**$342,502.00**

Post July 2019

12/13/19	Handyman	construct retaining wall for rear parking	$870.34
12/13/19	Handyman	Remodel - frame out and drywall basement for STR storage	$924.00
6/6/20	Handyman	1555- Remodel, remove old top sand and refinish countertop, build and install new in kitchen and install, caulk new bathroom paneling	$5,000.00
3/1/21	West River Const.*	Build fence to prevent foottraffic of guests from neighbors driveway	$4,387.63
11/1/21	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1555	$25,000.00
3/1/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1561	$25,000.00
3/15/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1557	$25,000.00
8/5/22	Handyman	Installation of decibel, temperature and humidity meters in 1555, 1557, 1559, 1561	$300.00
10/22/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1559	$25,000.00
		Total spent for converting units to full time STR after code change	**$111,481.97**

*The appellant, Austin Kettleson's company, he did not complete the work as bid but we paid him anyway but had to pay someone else to finish the work.

Total Excluding Exterior $203,416.97

Ratio of improvements before July 2019 to the total excluding exterior: 1:2.1 or 45% of the total cost of improvements expended before 7/19

Total Including Exterior $453,983.97

Ratio of improvements before July 2019 to the total including exterior: 1:1.3 or 75% of the total cost of improvements expended before 7/19

Officer should conclude that the Gilbaugh was originally constructed as a "motel" and allow its continued operation as such under ADC 2.39.10(J)(2).

Before 2019, a unit within a "hotel" or "motel" could provide lodging for one day, one week, six months or a year and the use would qualify as a "hotel" or "motel" use. The units within the Gilbaugh Building so qualified as providing "lodging" to "guests for compensation." At the time that the Gilbaugh units were first put to use in the 1920s and more recently, at the time that the Magies purchased the property in 2015 up until the present, the fourplex units have been used as "hotel / motel" without any constraint on the length of time that the unit was rented.

The City's non-conforming use code is structured to allow uses that "were lawful before this code was passed" to continue except for in certain circumstances provided by the Code, only two of which Appellants have argued are relevant here. First, is "change in the non-conforming use." The Appellants argue that by long term renting units after the July 2019, the units were changed to a conforming use. The shortcoming with this argument is that the pre-2019 "hotel / motel" use occurring within the Gilbaugh never actually changed. As explained, this use is not subject to the tenancy timing limitations because its transitory use predates those obligations. The law developed around non-conforming uses does acknowledge types of uses that are intermittent, sporadic or that vary with seasonal or market conditions. *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1981) (rock quarry made available for aggregate extraction on request but where no rock was extracted for 14 years); *Coonse v. Crook County,* 22 Or LUBA 138 (1991) (growth or fluctuations in business do not constitute a change in a use, although relocating a logging business to a different location and then resuming it in its nonconforming location did constitute a change in use.) Variability in the length of tenancy is common when one is renting units that were constructed for and historically accommodated such variety. As a result, stays that exceed 30 days should not be viewed as a presumptive change in the preempts the ability to rent for less than 30 day stays.

Honoring the historic transient nature of the Gilbaugh use would allow the Magies to continue renting to paying customers for whatever length the community demands rather than requiring the units to sit vacant turning down those who might be interested in a stay of more than 30-days. By viewing the use as that first occurred in 1920, the Magies would be able to continue to rent for a few months at a time for a Coast Guard training crew or contractors working on a construction project but then return to less than 30-day rentals for a visiting nurse. This would not only acknowledge the long-standing nonconforming use rights for the property consistent with the Gilbaugh, it would provide a middle-ground responding to the needs of the community - whether it be in the form of long, middle, or short-term rentals.

The Evidence Shows that the Magies Intended and Took Action to Short Term Rent the Gilbaugh Units Before 2019

If, in the alternative, the Hearings Officer concludes that residential uses within Gilbaugh units are subject to the 30-day transient lodging limitations unless they were initiated as an exclusive and discrete use before 2019, then there is sufficient evidence in the record to support such a finding. This evidence includes:

- Statements by Bob and Cindy Magie, both oral at the hearing and in writing that when they purchased the property in 2015, they intended to operate short term rentals. They knew that restoring the property to a point to which the units would be attractive to short term renters with their limited resources and the amount of work necessary would take years. If they had any idea that the City was going to change the code in 2019 foreclosing that opportunity, they would not have purchased and lovingly restored the building. Oral statements at the hearing and Nov. 9 and 16, 2023 letters.

- Recitations of conversations with the Community Development Director Kevin Cronin in the summer of 2015 and the spring of 2017 "that our additional 5 new spaces in the back would more than compensate for the two spaces per unit that are required for our 6 potential STRs (14 spaces total, but only 12[2] needed for compliance.)" Rec. 112 & 114.

- Statement by Shannon Fitzpatrick, principal broker of PCM, Inc, the company that managed the units from May 2018 through November 2021, supporting the Magies' statement of intent stating:

  "during the period of management, we discussed your business plan for using the property as short term rentals and you showed me your business licenses for the short term rentals. We worked together on upgrading and updating the units in a manner that would set the units up for use as future short term rentals as tenants vacated the units and new tenants were put into place." Rec 109.

- Statement from Sean Fitzpatrick, a small business advisor working with Clatsop Community College's Clatsop Economic Development Resource program, similarly independently corroborating the Magies' intent, who recounted a conversation in 2015 which provides:

  "As we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market

[2] In their November 9, 2023 letter, the Magies' acknowledged their misstatement in the application timeline that compliance with the 2017 code required 11 parking spaces to serve the short term rental of 11 bedrooms.

rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals." Rec 108.

- Statement from Jacob Helligso, a neighboring homeowner, stating: "During our conversation around parking in 2016 we discussed the plan to move his properties into Short Term Rentals." November 9, 2023 submittal.

- Photographs of the site taken in the winter of 2018 and January, 2019, showing construction work taking place including parking construction vehicles and materials in the parking lot including porta-potty. The foundation work included installing a short-term rental supply storage area and a place to store furniture for the units that were under renovation. Attached to Magies' Nov. 9, 2023 submittal.

- Substantial expenditures directed specifically to short term rentals made before 2019 including interior floor and kitchen unit restoration, driveway and parking area improvements totaling 45% of the total STR-specific improvements. Including the exterior restoration costs, which were necessary to eliminate years of deferred maintenance to make the units attractive to short term rentals, the expenditures made before 2019 total 75% of the total costs.[3] See expenditure table attached to Magies' November 16, 2023 submittal.

- Documentation of emails between the Magies and City staff in 2020 verifying that the Magies had 6 short term rentals including a following statement by Barbara Fryer:

  "Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff." Rec 125.

  This acknowledges the addresses of all 6 dwelling units on the property as well as the 11 bedroom "Astoria Downtown Cottages" as identified in the 2020 Transient Room Tax Registration that was assigned the same number as the 2017 application. These forthright

[3] A ratio in excess of one to 14, or seven percent, between expenditures and total project is sufficient to satisfy the expenditure ratio test as established in *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973); *Cook v. Clackamas County*, 50 Or App 75, 81-82, 622 P3d 1107 (1981).

> discussions with City staff are not evidence of someone who is scheming to avoid compliance with regulations.

All of this evidence indicates that the Magies acted in good faith moving forward with their short term rentals long-before (and even after) the City changed the standards.

In his letter dated November 9, 2023, Mr. Kearns states:

> "Mr. Magie made an impassioned argument at the November 2nd hearing about his investment in the 4-plex units and how unfair it would be for the City to now claim that they cannot use the 4-plex. If that were the truth, it would be unfair, but Mr. Magie misrepresented the evidence in the record."

Although acknowledging that the equities favor the Magies, this letter (and most of the Appellants' statements) call into question the Magies' credibility. Yet, Mr. Magie's intent was fully supported by independent statements of others who have no stake in and have nothing to gain by not being honest and forthright in recounting the facts. The people supporting the Magies' intent are successful business owners, neighbors and a volunteer public official that successfully ran for Mayor. These people have not seen their success by lying or fabricating truth, but conversely from truth, honesty, high moral standards and integrity. Cindy Magie was appointed to the planning commission, in part, because of these standards. Magie November 16, 2023 letter.

The Magies began advertising their units for short term stays on Airbnb-type platforms as soon as the units were ready to do so. This was not an after-the-fact scheme to avoid compliance with the law but rather a continued effort to see their significant investment through to completion consistent with the regulatory standards in place when they started. This reflects substantial evidence upon which the Hearings Officer should conclude that the short term rental use (as that term is currently defined in code) began in 2017 and continues up through the present day.

The Nonconforming Standards Support Finding that a Use Exists when it is Started or Intended

The Appellants argue that because none of the Gilbaugh fourplex units were physically occupied by short term renters in January 2019, there is no recognized non-conforming use. They argue that the language "when it first occurred" within the definition of "non-conforming use" requires "actual existence" and relies on the *Spurgin v. Josephine County* interpreting ORS 215.130 so holding. 28 Or LUBA 383, 386-387 (1994). Whatever level of "existence" may be required to satisfy ORS 215.130 or *Spurgin* are irrelevant to how nonconforming uses are regulated under the ADC. Rather, the definition of both "use" and "use, start of" makes explicit that a use need not be in operation to exist. Again, quoted again for ease of reference, the term "use" is defined in ADC 1.400 to include:

> "USE: The purpose for which land or a structure is *designed, arranged, or intended*, or for which it is occupied or maintained.
>
> USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is *in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun.*" (Emphasis added.)

A "use" is not only the way that it is "occupied or maintained" but it also includes that which is "intended" including "the process of physically moving into the site in preparation of beginning occupation and/or operation." It is the express definition of "use" that turns, in part, on the applicant's intent coupled with their efforts in preparation that establish when a nonconforming use "first occurred" and not its actual operation. The ADC expressly provides that a use starts when it is planned and the process of preparing the site for that use begins. As the City Planning staff found in 2020, and reaffirmed in 2023, the Magies began taking steps necessary to market the Gilbaugh units on Airbnb platforms before 2019 and again, the Hearings Officer should reaffirm that approach.

No Change or Discontinuance in Short-Term Rental Efforts Occurred

In order for a nonconforming use to continue it cannot be "changed to a conforming use" or discontinued for a period of more than "one year." ADC 3.180. The Appellants argue that the long delay between 2019, when the code changed, and when the units were listed as available for rent through Airbnb along with long-term rentals continuing after 2019, requires a finding that that the use was changed or discontinued. The Hearings Officer should reject such an approach because the Magie's never abandoned their intent or efforts at short term renting.

As the Magies' have described in detail, they moved forward with short term rentals within the Gilbaugh as quickly as the units were prepared and their finances allowed:

- Summer 2016 – Remove carpet and linoleum and refinish floor in unit 1557
- January through Oct, 2017 – Create off-street parking area
- June 2018 through June 2019 – Stabilize foundation, replace siding and restoring windows
- Fall 2018 – Refinish flooring, kitchen reconfiguration, bathroom renovation, replastering, and plumbing for unit 1559
- Fall 2018 – Strip and finish sleeping porch and landing
- January, 2019 - Reinforcing the foundation including parking construction vehicles and materials, including a porta-potty in the parking lot.

- Winter, 2019 – Finishing the basement including short-term rental supply storage and furniture staging areas.
- Spring 2020 – Renovating unit interiors including renovating kitchens, floors, plumbing repairs not to make the units habitable but rather to make them function at the level attractive to short term renters. Installed retaining wall and parking improvements.
- Bi-weekly throughout 2020 – Sourced period appropriate and maritime related furniture and decor
- Winter 2020 – Obtaining occupancy tax licensing for all 6 units
- Winter 2020 through April 2021 – Learned of water intrusion through the windows on the east and south wall required scaffold and tarp the south wall and installation of custom metal window sills.
- March 2021 through May 2021 - constructed a fence to prevent short term renters from accessing the property through the neighbor's driveway.
- January 2022 – Installed electronic locks
- Spring 2022 – Installed security cameras
- August 2022 – Installed decibel meters to monitor sound, temperature and humidity levels.

There was never any 12-month period where the Magies discontinued their efforts to prepare the units for the short term market.

Regarding changing the use, the Magies never changed the use to accommodate long term rentals. Rather, they rented units as they had always been allowed to do until their units were ready for short term marketing on Airbnb. A reasonable person would not continue to buy furniture, utensils, dishes and towels in order to engage in the long-term rental of units if they believed the regulations would prohibit short term use. They would not painstakingly restore straight-grain fir floors to accommodate long-term renters, knowing that such use could require allowing service animals that would destroy those same floors. They would not install locked storage areas for paper products, soaps, and cleaning supplies necessary for weekly cleaning of units that would be accommodated by long-term renters. All of these actions taken before and after the code changed indicate that they always intended and were working towards short term rentals.

Again, a "use" as contemplated within the ADC begins when an owner with "intent" takes steps to "prepare" for a use. The existence of rental activity that exceeded 30-day periods after 2019 did not change or alter those efforts. The Hearings Officer should resist the urge to divorce the owners intent and significant expenditures preparing for this use both before and after the Code changed.

CITY OF ASTORIA

Founded 1811 ● Incorporated 1856

Appeal Hearing
November 2, 2023

5:30 p.m.

2nd Floor Council Chambers
1095 Duane Street • Astoria OR 97103

To participate remotely in public meetings, go to https://www.astoria.or.us/LIVE_STREAM.aspx for connection options and instructions. You may also use a telephone to listen in and provide testimony. At the start of the meeting, call (253) 215-8782 and when prompted enter meeting ID# 503 325 5821.

1. CALL TO ORDER

2. ROLL CALL

3. APPEAL HEARING

   Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking]) located in the C-3 (General Commercial [4-plex]) and R-3 (High Density Residential [parking]) Zones. The appellants cited: (1) the property was occupied as residential use after January 1, 2019, (2) the applicant's Occupational Tax application for transient lodging use only included the two "cottage" structures and not the 4-plex, (3) a potential bias on part of public officials, and (4) ADC § 2.390.J.1 as the specific criteria relied upon for the appeal.

4. ADJOURNMENT

ONLINE MEETING ZOOM

At start of our Public Meetings you will be able to join our online ZOOM meeting using your **mobile or desktop device** and watch the live video presentation and provide public testimony.

Step #1: Use this link: **https://www.astoria.or.us/zoom/**
Step #2: Install the Zoom software on your mobile device, or join in a web browser
Step #3: If prompted, enter the Meeting ID number: 503 325 5821

Note: Your device will automatically be muted when you enter the online meeting. At the time of public testimony, when prompted, you may choose to select the option within the ZOOM software to "raise your hand" and notify staff of your desire to testify. Your device will then be un-muted by the Host and you will be called upon, based on the name you entered within the screen when you logged in.

CITY OF ASTORIA

Founded 1811 ● Incorporated 1856

Community Development Department

1095 Duane Street • Astoria OR 97103 • Phone 503-338-5183 • www.astoria.or.us • planning@astoria.or.us

APPEAL MEMO

Date: October 26, 2023

Hearing Date: November 2, 2023

To: Alan Rappleyea, Hearings Officer

From: Tiffany Taylor, City Planner

Subject: Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning transient lodging use at 1555-1557-1559-1561 Exchange Street.

I. SUMMARY

A. Applicants:

Robert J Magie
Cynthia D Magie
PO Box 532
Astoria OR 97103
exchangeastoria@gmail.com

Attorney:
Carrie Richter, Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
crichter@batemanseidel.com

B. Owners:

Gilbaugh LLC (Tax Lot 18200 – dwelling structures)
PO Box 532
Astoria OR 97103

Robert J Magie (Tax Lot 18100 – parking)
Cynthia D Magie
PO Box 532
Astoria OR 97103

C. Appellants:

Austin Kettleson
286 Lexington
Astoria OR 97103
austinkettleson@gmail.com

Attorney:
Dan Kearns, Reeve Kearns PC
P.O. Box 13015
Portland, OR 97213
dan@reeveskearns.com

Andrew Kipp
461 Exchange
Astoria OR 97103
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John Windus
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Astoria OR 97103
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D. Location: 1555-1557-1559-1561 Exchange Street (4-plex); 1565 Exchange Street (cottage) and 1569 Exchange Street (cottage); Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively

T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively (parking)

E. Zones: C-3 Zone (General Commercial) – structures
R-3 Zone (High Density Residential) – parking

F. Proposal: To operate transient lodging classified as a "hotel/motel/vacation rental" in an existing multi-family residential structure

G. Applications: The applicant also submitted a request to operate transient lodging classified as a "hotel/motel/vacation rental" in two existing residential structures at 1565 and 1569 Exchange Street. All three buildings were reviewed and approved at the same time. Only the decision on the multi-family residential structure operation was appealed.

II. PUBLIC REVIEW AND COMMENT

A public notice was mailed pursuant to ADC §9.020 on October 12, 2023. Email and web publishing also occurred on October 12, 2023. On site notice was posted on October 19, 2023. A notice of public hearing was published in The *Astorian* on October 21, 2023. To date, no comments have been submitted to the City. Any comments received will be made available at the Appeal Hearing.

III. BACKGROUND

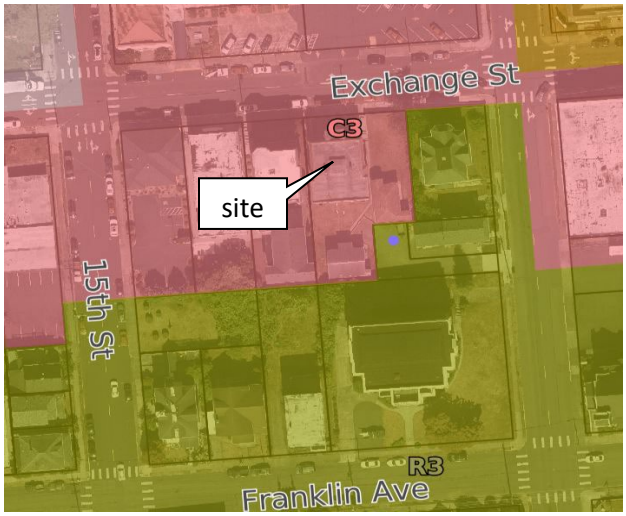
A. Site:

The subject property is located on Exchange Street in the C-3 (General Commercial) Zone. It is developed with one multi-family structure and two single-family structures. The buildings were constructed in 1920, 1930, and 1955 as residential properties. The applicant is proposing to operate all three buildings as transient lodging with no residential use. Use of the two cottages as transient lodging has not been appealed and that use has been approved by the City.

B. Neighborhood:

The neighborhood is developed with a mixture of commercial and residential uses. To the north is the Owens Adair housing facility; to the east is a single-family residence and across 16th Street is the former Lum's Auto building; to the west are multi-family dwellings and a dental office; to the south is the Masonic Temple and single-family residences. Vehicular access to the site is from a driveway on 16th Street (tax lot 18100). The C-3 Zone abuts the residential R-3 Zone (High Density Residential) on the south and east boundaries of the property.





IV. INDEPENDENT HEARINGS OFFICER DECISION

ADC §9.030.A, Quasi-Judicial Public Hearing Procedures and Requirements, Procedural Entitlements states*:*

"The following procedural entitlements shall be provided at the public hearing:

1. *An impartial review as free from potential conflicts of interest and prehearing ex parte contact as is reasonably possible.*
2. *No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:*
   - a. *Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.*
   - b. *The member has a direct private interest in the proposal.*
   - c. *For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner."*

The transient lodging facility at this location has been discussed by members of the City Council as a code enforcement issue prior to the use being administratively reviewed and approved by staff with a Decision Letter. The appellants alleged that there are "overlapping relationships and interests" that create potential bias by members of the Planning Commission and City Council. They specifically cite that the Mayor is a friend of the property owners, that the mayor's brother was the property manager at the time of the residential lease agreement for the four-plex, and that the property owner, Ms. Magie, is a member of the Planning Commission, appointed by the Mayor. As several Council members and Commissioners are associated with the property owners, and in an effort to maintain an impartial review, free from potential conflicts of interest and prehearing ex parte contact, the City acknowledges the potential conflict and decided to bring the matter before an independent Hearings Officer for review, rather than to the Planning Commission or City Council.

V. Applicable Criteria

1. ADC §1.400, Definitions

MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

TRANSIENT LODGING FACILITY: Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast establishment, home stay lodging, vacation rental, or other such transient lodging facility known by their advertising and/or management platform names. Transient Lodging Facility also means space in mobile home or trailer parks, or similar structure of space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

"USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun."

VACATION RENTAL: A transient lodging facility available for transient rental, and which is not occupied by an owner or manager at the same time as the guests. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. For the purposes of this Code, a Vacation Rental is classified the same as a hotel or motel.

2. ADC §2.390.J, Uses Permitted Outright in the C-3 Zone

"Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:

1. *Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.*
2. *Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."*

3. ADC §3.160 Nonconforming Lots, Uses and Structures, Purpose

"Within the zones established under this Code, there existing lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It is the intent of this Section to establish requirements that govern the future use of such nonconformities."

ADC §3.180.B, Change of Nonconforming Use, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

ADC §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

ADC §3.200 Prior Approval of Nonconforming Lots, Uses and Structures, *"Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a legal permit has been issued by the City and construction has begun,*

provided the structure, if nonconforming, or intended for a nonconforming use, is completed and is used within two years from the time the permit was issued."

4. ADC §7.100, Minimum Parking Space Requirements (ADC §2.415.D, Other Applicable Use Standards, in the C-3 Zone states "All uses will comply with applicable access, parking, and loading standards in Article 7"):

Use Categories	**Minimum Parking Requirements** *Amended by Ord. 22-01 on 11/7/2022*
All Dwellings not otherwise listed	0.65 spaces per bedroom with a maximum total of 2 spaces for single-family or two-family dwellings, including each unit in a cottage cluster development.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

Use Categories	**Minimum Parking per Land Use** (Fractions are rounded up to the next whole number.) *Code prior to 2019*
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one-bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

VI. TIMELINE AND CODE REFERENCES

Date	**Description**	**Page #**
March 25, 2015	Magies purchase subject property	--
May 28, 2015	Magies purchase adjacent lot (80908DC18100) for off-street parking	--
Oct. 23, 2017	"Magie/Helligso Parking Plan 2017" / Cottages + 539 16th St / approved	9
Oct. 27, 2017	OT Application "Downtown Astoria Cottages" + receipt	10-11
Nov. 2, 2017	Landscaping Plan	12-13
Jan. 28, 2018	OT Renewal "Downtown Astoria Cottages"	14-15
April 2018	Change of ownership of subject property; 4-plex and 2 cottages / Robert J. Magie and Cynthia D. Magie to Gilbaugh LLC	--
July 1, 2019	Amendment to ADC (A19-02) re: uses in C-3 zone. *ADC §2.390.J.1*	*(below)*

Sept. 15, 2020	City internal emails re: "Cottage" tax payments; no TRT account set up	16-19
Dec. 15, 2020	City email to Magie re "Cottages" as a permitted use	20-23
Dec. 15, 2020	Transient Room Tax Registration Application (#118)	24
Dec. 15, 2020	TRT Certificate of Authority issued to "Astoria Downtown Cottages"	25
Feb. 10, 2021	Magie email re TRT account 118; J. Helligso as manager/tax payments	26
Nov. 1, 2021	City email: complaint rec'd via website / logged as file #CE21-44	27-28
Nov. 9, 2021	Email to A Kettleson_request for info	29-30
Dec. 1, 2021	Email from A Kettleson with Airbnb listing at 4-plex	31
Dec. 2, 2021	Staff confirmed AirBnB listing for "Flat, No. 1" (apt in 4-plex)	32-38
Dec. 14, 2021	TRT payments 12-15-2020 thru 12-14-2021 / No taxes rec'd 2017-2020	39
Dec. 15, 2021	Email chain-follow up on complaint	40
Dec. 28, 2021	AirBnB Ad- December Vacancy	41-47
Dec. 28, 2021	AirBnB Ad- January Vacancy	48-54
Jan. 10, 2022	Letter: Notice of Non-Compliance / 1555 Exchange / Flat No. 1 (1st Notice)	55-60
Jan. 19, 2022	Email chain-DC follow up with A Kettleson	61-62
Jan. 19, 2022	Magie Email-response to code compliance letter	63-68
Jan. 20, 2022	City internal emails - investigation	69-76
Jan. 25, 2022	Email chain – ML and AK re: complaint with AirBnB ad listing	77-82
Jan. 26, 2022	Email to Magies – cease transient lodging use at 4-plex (2nd Notice)	83-84
Feb. 4, 2022	Email from ML to Magies – meeting follow up	85-86
Feb. 8, 2022	Airbnb listing of 4-plex	87
Feb 18, 2022	Notice of Appeal letter received from the Magies; hand-delivered to ML	88-92
Feb. 25, 2022	LUBA "Notice of Intent to Appeal" filed (received on 2-28-22)	93-99
March 1, 2022	LUBA "Motion to Stay Proceedings"	100-102
March 7, 2022	LUBA issued Order suspending the appeal to May 30, 2023	--
April 14, 2022	Email chain – DC with A Kettleson	103-104
May 9, 2022	Application for Verification of Non-Conforming Use rec'd via C Richter	105-130
May 19, 2022	Email chain - B Colonna complaint re: Magies' property	131-132
May 30, 2022	Email chain – ML with A Kettleson; rec'd 90-Day lease termination	133-134
Nov. 7, 2022	ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*	*(below)*
Feb. 6, 2023	Magie Email request to schedule meeting	135
April 24, 2023	In person meeting: Scott Spence with Bob Magie	--
May 2, 2023	LUBA Order "continue the suspension" 28-day extension (rec'd 5-4-23)	136-138
May 12, 2023	Photos – addressing clarification for structures on site	139-142
May 22, 2023	In person meeting: Scott Spence; Tiffany Taylor; Bob & Cindy Magie	--
May 22, 2023	AirBnB Listing - 4plex	143-144
May 22, 2023	AirBnB Listing - Cottages	145
May 24, 2023	In person Meeting: Scott Spence: Tiffany Taylor; Bob & Cindy Magie; Mayor Sean Fitzpatrick; Councilor Elisabeth Adams	--
June 16, 2023	Email chain: Magie; C. Richter; TT – pending final decision letter	146-148
June 26, 2023	Decision Letter	149-152
July 10, 2023	Notice of Appeal rec'd (AP23-02) Appellants: Kettleson, Kipp & Windus	153-164
Oct. 12, 2023	Public Notice – mailed	165-166
Oct. 21, 2023	Public Notice – *The Astorian* – published / affidavit	167-168

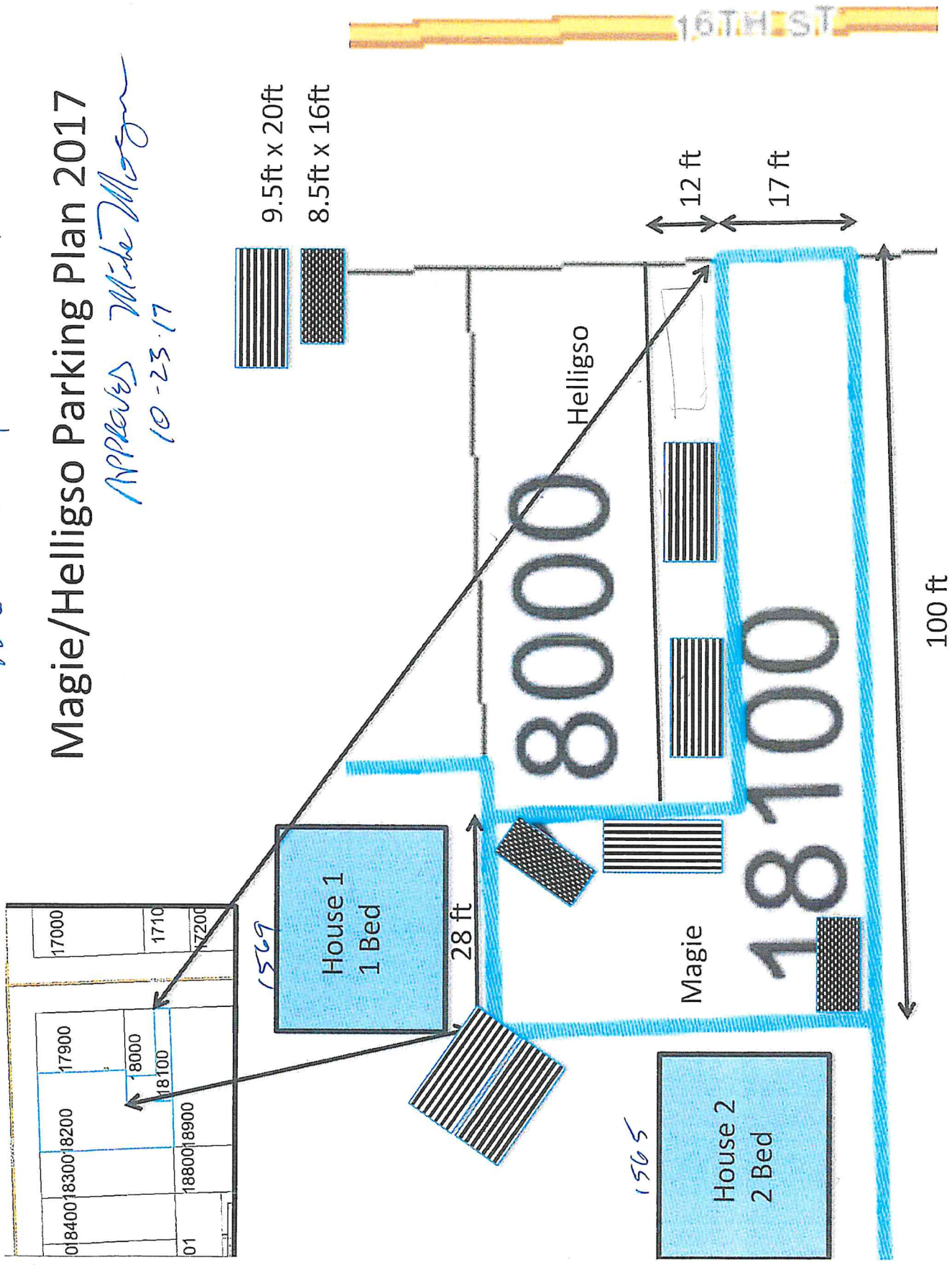
ASTORIA DEVELOPMENT CODE (ADC)

Date	Description	Page #
	ADC §3.160, 3.180 "Nonconforming Uses"	169-170
January 2017	Astoria Development Code ADC §1.400 / Definitions ("uses…)	171-205
January 2017	Astoria Development Code ADC §2.385 / C-3 Zone	206-210
January 2017	Astoria Development Code Article 7 / Off-Street Parking	211-229
July 1, 2019	ADC Amendment (A19-02) / C-3 Zone / Uses *ADC §2.390.J.1*	230-231
Nov. 7, 2022	ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*	232-233

VII. PROCEDURES

The appeal hearing, as conducted by the Hearings Officer, will include a review of the application and presentation of the evidence, opportunity for presentations by the applicant and those in favor of the request, those in opposition to the request, deliberation and decision by the Hearings Officer. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time.

ADC §9.040.B, Appeals, Commission or Committee Decision states, *"A decision of the Commission or Committee concerning a quasi-judicial land use matter may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing an appeal within 15 days of the mailing of the Order. The notice of appeal filed with the City shall contain the information outlined in Section 9.040(D)."*


1565 + 1569 EXCHANGE ST
Magie/Helligso Parking Plan 2017
APPROVED Mike Magie
10-23-17
16TH ST
9.5ft x 20ft
8.5ft x 16ft
12 ft
17 ft
Helligso
8000
18100
100 ft
1569
House 1
1 Bed
28 ft
Magie
1565
House 2
2 Bed
17000
17100
17200
17900
18000
18100
18200
18300
18400
18800
18900
01

CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: 019664
Receipt Number: 217670

OCCUPATIONAL TAX APPLICATION

Name of Business: Driftwood Astoria Cottages
Proprietor: Cynthia Magle TIN or SS#: 441-88-8122
Business Address: 1565 Exchange St., 1569 Exchange st.
City: Astoria State: OR Zip: 97103
(Local Location Must Include Written Approval to Locate on the Premises)
Mailing Address (include City, State, & Zip): PO Box 532 Astoria OR 97103
Residence Address (include City, State, & Zip):
Business Telephone: 503-812-7348 Home Telephone:
E-mail Address: ExchangeAstoria@gmail.com Type of Business:
Type of Business: Vacation Rental
Brief Description of What Your Business Will Do: Rent house on short term basis
Business New to Area? X Yes ____ No Renewal? ____ Yes X No
Has the character of your business changed in the last year? ____ Yes X No
If yes, please explain Briefly:

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. Occupational Tax is due January 1 of each year. Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

** Number of Individuals Employed: 1 Fee Per Schedule: $ 35
1 = $ 35.00 2 = $ 47.50 3 or more = see fee schedule
** Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

APPROVED - COMM. DEV.
MM Magle 10/27/17

2

CITY OF ASTORIA
1095 Duane
Astoria, OR 97103
503-325-5821

Date: 10/27/2017
Receipt: 00217670
Time: 1:21 PM

Customer: Downtown Astoria Cottages
Address: PO Box 532

Astoria, OR 971030532

LP 5001435	35.00
OT	
Occupational Tax	35.00
019664 - 2017	
Jo	
LP Account 5001435 Down	$-35.00
Total	35.00
Cash	0.00
CC - City Counter	35.00
Change	0.00


1565/69
EXCHANGE
(AVE.)
Lawn

Bob Magic
1565 Exchange
Landscaping Map

+ APPROVED
REVIEWED BY MIKE MORGAN NOV 2, 2017
LAWN AREA MEETS THE MINIMUM SQUARE FOOTAGE REQUIREMENT FOR LANDSCAPING IN THE C-3 ZONE OF 10%. LAWN MEETS DEFINITION OF LANDSCAPING.

CITY OF ASTORIA
2018 OCCUPATIONAL TAX RETURN

Type of Business: Vacation Rental

Customer Number: 019664

Downtown Astoria Cottages
PO Box 532
Astoria, OR 97103-0532

Please complete the following information:

Telephone numbers: Business 503 812 7348 Home _____

Owner's Name: Robert + Cynthia Magie

Address: PO Box 532 Astoria OR

Email: Exchange Astoria @ gmail.com

☐ Please check if this is a change of address ☐ No longer doing business in Astoria

You are hereby notified that the payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of a City (including fire, planning, and zoning) must be complied with in addition to any taxes or fees paid for the privilege of conducting a business within the City limits.

**Occupational Tax: Number of Individuals: 2 Fee per schedule: $ 47.50

**Includes owners and officials, full or part-time employees as determined by the enclosed schedule.

I hereby verify that the above information is true to the best of my knowledge and belief.

Signature

1/28/18
Date

owner
Title

Note: Payment of the occupational tax is **due by January 31st** of each year. Fees unpaid as of February 1st are subject to a penalty of 10% for every month they remain unpaid.

Please complete this form, sign, enclose payment and send to:

Occupational Tax
City of Astoria
1095 Duane Street
Astoria, OR 97103

For questions call:
Phone: (503) 325-5821
Fax: (503) 338-6630

OCCUPATIONAL TAX FEE SCHEDULE

AVERAGE	TAX
1	$ 35.00
2	$ 47.50
3	$ 60.00
4	$ 72.50
5	$ 85.00
6	$ 97.50
7	$ 110.00
8	$ 122.50
9	$ 135.00
10	$ 147.50
11	$ 156.25
12	$ 165.00
13	$ 173.75
14	$ 182.50
15	$ 191.25
16	$ 200.00
17	$ 208.75

AVERAGE	TAX
18	$ 217.50
19	$ 226.25
20	$ 235.00
21	$ 241.25
22	$ 247.50
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	

AVERAGE	TAX
35	$ 322.50
36	$ 327.50
37	$ 332.50
38	$ 337.50
39	$ 342.50
	47.50
	52.50
	57.50
	62.50
	67.50
	72.50
	77.50
	82.50
	87.50
	92.50
	97.50

CITY OF ASTORIA
1095 Duane
Astoria, OR 97103
503-325-5821

Date: 02/20/2018
Receipt: 00226611
Time: 1:16 PM

Customer: Downtown Astoria Cottages
Address: PO Box 532

Astoria, OR 971030532

LP 5001435	47.50
OT	
Occupational Tax	47.50
019664 - 2018	
Jo	
LP Account 5001435 Down	$-47.50
Total	47.50
Cash	0.00
Check 2666	47.50
Change	0.00
2666	

NOTE: For individuals in excess of 50, the license fee shall

The number of individuals carrying on a business includes vely engaged in such business and the individuals employed regularly or o wner or proprietor of a business who work entirely outside the corporate lim

To calculate the number of individuals: take the total nur ber of part-time employees to equal the time of a full-time employee.

* Example: If your business is a sole proprietor w me individuals, the total number of individuals employed would be 2

** Example: If your business has 2 owners, 3 ful total number of individuals employed would be 7 and the fee wo

Cristine Shade

From: Cristine Shade
Sent: Thursday, October 22, 2020 11:59 AM
To: Megan Leatherman
Cc: Susan Brooks
Subject: FW: Astoria Downtown Cottages

Hi Meg, I forgot to include you on this email. The Magie's keep sending me transient room tax payments, but they aren't authorized for short term rentals. I don't want to reach out to them until they've been notified that they aren't authorized.

Thanks.
Cristine Shade

From: Cristine Shade
Sent: Thursday, October 22, 2020 11:49 AM
To: Barbara Fryer <BFryer@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi Barbara,

Any update on this? They keep sending me transient room tax payments. Thanks.

Cristine Shade

From: Barbara Fryer
Sent: Wednesday, October 14, 2020 10:05 AM
To: Cristine Shade <CShade@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi Christine,

I am getting a busy signal. – so unusual in this day and age. I will try again later.

Barbara

From: Cristine Shade
Sent: Wednesday, October 14, 2020 10:02 AM
To: Barbara Fryer <BFryer@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

503-298-9196
Cynthia and Robert Magie

Thank you

Cristine Shade

From: Barbara Fryer
Sent: Wednesday, October 14, 2020 9:49 AM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi Christine,

Do you have contact information for the clients? I will call them today if I can get a contact.

Thank you,

Barbara

From: Cristine Shade
Sent: Wednesday, October 14, 2020 9:41 AM
To: Barbara Fryer <BFryer@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi, what was the outcome of this? I need to update my notes.

Thank you.

Cristine Shade

From: Cristine Shade
Sent: Tuesday, September 15, 2020 2:48 PM
To: Barbara Fryer <BFryer@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Thank you, everyone for your assistance on this.

Since I'm Finance, I think this information would be better coming from your department. They are likely to ask questions that I cannot answer.

Cristine Shade

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Good afternoon,

The properties in question, are zoned C3. They cannot be converted from long-term housing to vacation rental if they have been used as long-term rental housing.

2.390.10(a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel.

The three homes located at this address 1555-1569 Exchange Street (T8N R9W Section 08 Map DC Tax lot 18200). The homes on this property were moved in the sixties onto this property from slide areas as housing. They cannot be converted to lodging – they must remain long-term rentals.

Regards,

Barbara

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 2:08 PM
To: Barbara Fryer <BFryer@astoria.or.us>
Subject: FW: Astoria Downtown Cottages

Barbara –

Did you want to chime in with some code interpretation? I'm still lost on how we are dealing with the HSL permitting process. (It's probably just me.)

1555-1569 Exchange is an apartment complex. 1565 Exchange is an address within that building. Sounds like the property owners have changed use on one of the apartments from long-term housing to vacation rental.

-Tiffany

TIFFANY TAYLOR
ADMINISTRATIVE ASSISTANT
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)
503-338-6538 (fax)

From: Heidi Dlubac
Sent: Tuesday, September 15, 2020 2:02 PM

To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Re: Astoria Downtown Cottages

I haven't seen anything for this address. It's in the C3 zone and doesn't require a homestay permit. However, a vacation rental would not be allowed per new code (structures or portions of structures used as residential cannot be converted to short-term stays).

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:40:49 AM
To: Tiffany Taylor; Heidi Dlubac
Subject: RE: Astoria Downtown Cottages

Sorry, it's 1565 Exchange St. It was handwritten on their return.

Cristine Shade

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 8:39 AM
To: Cristine Shade <CShade@astoria.or.us>; Heidi Dlubac <HDlubac@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Do you have an address? Maybe an O.T.?
-Tiffany

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:38 AM
To: Heidi Dlubac <HDlubac@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Astoria Downtown Cottages

I have check for room tax from Cynthia and Robert Magie, but I don't have any other info for them. They did not register with me. Are they registered with you?

Cristine Shade
Staff Accountant
City of Astoria, Finance Department
1095 Duane Street
Astoria, OR 97103
Phone: (503) 298-2426
Fax: (503) 325-2997
Email: cshade@astoria.or.us

Tiffany Taylor

From: Barbara Fryer
Sent: Tuesday, December 15, 2020 9:01 AM
To: exchangeAstoria@gmail.com
Cc: Tiffany Taylor; Heidi Dlubac; Cristine Shade; Megan Leatherman
Subject: FW: Astoria Downtown Cottages

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Good afternoon,

The properties in question, are zoned C3. They cannot be converted from long-term housing to vacation rental if they have been used as long-term rental housing.

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TIFFANY TAYLOR
ADMINISTRATIVE ASSISTANT
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)
503-338-6538 (fax)

From: Heidi Dlubac
Sent: Tuesday, September 15, 2020 2:02 PM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Re: Astoria Downtown Cottages

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Subject: Astoria Downtown Cottages

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Cristine Shade
Staff Accountant
City of Astoria, Finance Department
1095 Duane Street
Astoria, OR 97103
Phone: (503) 298-2426
Fax: (503) 325-2997
Email: cshade@astoria.or.us

CITY OF ASTORIA
Founded 1811 • Incorporated 1856


Exchange St
1555
1557
1559
1563
1569
1585
Colonna
Brian
W
Gilbaugh
LLC
16th St
539
Helligso
Jacob
545
Magie
Robert
J

CITY OF ASTORIA
1095 DUANE STREET
ASTORIA, OR 97103

Phone: (503) 325-5821
Fax: (503) 325-2997

FOR OFFICE USE ONLY
FILE# 118
OT # 5001435
Cust# 19664

Transient Room Tax Registration 12/15/20

Date

1. Owner Name Gilbaugh LLC Phone# 503-717-3711
2. Business Name Astoria Downtown Cottages
3. Rental Address 1555-1569 Exchange st Astoria, OR 97103
4. No. of Rooms 11 bedrooms
5. Name of manager Cindy Magie Phone # 503-717-3711
6. Mailing Address (if different) PO Box 532 Astoria OR 97103
7. Email Address ExchangeAstoria@gmail.com
8. How long have you owned or operated this business? Oct 2017
9. Type of Organization ☐ Individual ☐ Partnership ☑ Corporation

Names of partners or corporate officers:

Name	Title	Complete Address
Robert Magie	Member	po box 532, Astoria, OR
Cynthia Magie	Member/reg agent	po box 532, Astoria OR

10. If you own more than one business subject to the City of Astoria **Transient Room Tax**, please complete this section:

Name of Business	No. of Rooms	Business Address	Time Owned

Please note:

Astoria Code section 8.045.11 of the Transient Room Tax ordinance provides that a security deposit not to exceed twice the operator's estimated average monthly liability, or $5,000, whichever is the lesser, may be required for the period in which tax returns are filed. This security deposit, if required, may be in the form of cash, bond or other security deemed proper by the Tax Administrator (Finance Director).

Member/Registered Agent

Signature and Title of Owner or Officer

CERTIFICATE OF AUTHORITY
TO COLLECT TRANSIENT ROOM TAX

Issued to: **Astoria Downtown Cottages**

Address: **1555-1569 Exchange St., Astoria, OR 97103**

This *Certificate of Authority to Collect Transient Room Tax* signifies that the entity or person/s named herein have filled the requirements of the Transient Lodging Tax Ordinance of the City of Astoria by registration with the Tax Administrator (Finance Director) for the purpose of collecting from transients, the Lodging Tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, or to operate a transient lodging establishment without strictly complying with all applicable laws, including but not limited to, those requiring a permit from any board, commission, department or offices of the City of Astoria. This certificate does not constitute a permit.

This certificate is NON-ASSIGNABLE and NON-TRANSFERRABLE, and must be surrendered immediately to the Tax Administrator upon cessation of business at the location named, or upon its sale or transfer.

This certificate issued on the 15th day of December, 2020.

CITY OF ASTORIA

Tax Administrator
Susan Brooks, Finance Director

H.O. Receipt P9# 25

Cristine Shade

From: exchangeastoria@gmail.com
Sent: Wednesday, February 10, 2021 5:48 PM
To: Cristine Shade
Cc: Jacob Helligso
Subject: Re: Occupancy taxes file #118

*****EXTERNAL SENDER*****
Jacob Helligso (503) 791-8975, manager

Sent from my iPhone

On Feb 10, 2021, at 1:09 PM, Cristine Shade <CShade@astoria.or.us> wrote:

This email is sufficient, but I would like to have a phone number for Jacob for the file.

Cristine Shade
503-298-2426

From: Bob and Cindy Magie [mailto:exchangeastoria@gmail.com]
Sent: Wednesday, February 10, 2021 12:40 PM
To: Cristine Shade <CShade@astoria.or.us>
Cc: Jacob Helligso <jakehelligso@gmail.com>
Subject: Occupancy taxes file #118

*****EXTERNAL SENDER*****
Good afternoon Cristine,

I have attached our January occupancy tax form and will be calling you later today or tomorrow morning to get this paid. I have also attached Jacob Helligso to this email because he will be managing Astoria Downtown Cottages and will be submitting these payments to you in the future. Please let me know if there is any information we need to provide to you for him to be able to do this for us.

Thanks
Cindy Magie

CE21-27

Diane Christiansen

From: Megan Leatherman
Sent: Monday, November 1, 2021 12:10 PM
To: Diane Christiansen
Subject: FW: Complaint Form from Website

Sincerely, Meg

Megan Leatherman MCRP
Director
Community Development Department
[redacted]
[redacted]
CITY OF ASTORIA
Founded 1811 • Incorporated 1856

From: commdev@astoria.or.us <commdev@astoria.or.us>
Sent: Thursday, October 28, 2021 5:27 PM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Complaint Form from Website

Comm Dev Complaint Form Submission

City of Astoria - Community Development

Customer Information:
Name (The Customer): Austin Kettleson
Address: 1559 Exchange ST
City, State Zip: Astoria, OR 97103
Email Address: Austinkettleson@gmail.com
Cell Phone: 9716784591
Phone:
Fax:

Property owners:
Gilbaugh LLC
P.O. Box 532
Astoria, OR 97103

Complaint Information:
Street/Site Address of Complaint: 1559 Exchange ST
Complaint or explanation of issues: My landlords are breaching my lease agreement and also operating non city compliant air BNBs on the same property. Due to them being good friends with the property management company it's been difficult to deal with this issue
Known dangers or conditions on site:

City of Astoria Employee use only!

Complaint Taken By:
Phone Number:

Time:
Type of Complaint:

Action taken by reporting City of Astoria employee:
(IE Forwarding to Engineering, Fire Dept, etc)

Has the problem been resolved by your department?
YES NO
*If YES, forward the file to the code enforcement officer for recording in the investigation/address file.
*If NO, to which department was it transferred?
Date:

Please document date and time of all communications and letters sent out by City of Astoria personnel.	
Date:	
Date:	
Date:	
Date:	
Date:	
Date:	

Issue has not been resolved and the property owner or owners agent has failed to make corrective action

Please forward to Code Enforcement officer for abatement or citations. (All investigation files, photos, and letters are attached.)
Forwarding Department Head (signature Required):

Date:

Code Enforcement Department Employee:

Date:
(Stamp Date received for enforcement)

Diane Christiansen

From: Tiffany Taylor
Sent: Tuesday, November 9, 2021 8:54 AM
To: austinkettleson@gmail.com
Cc: Diane Christiansen
Subject: Complaint Submission

Austin,

We have received your email complaint submission and have a few follow up questions:

(1) Do you have the name of the property management company?
(2) Could you confirm the property owners as Gilbaugh LLC?
(3) Could you identify the exact location of the "non city compliant AirBnB" such as the apt# in your building?

Regarding the breach of lease agreement complaint; the City does not get involved with civil matters. I would suggest contacting an attorney, or one of the legal resource centers dealing with tenant rights. The Clatsop County courthouse may have additional information and/or a local contact.

Legal Aid Services in Oregon
https://oregonlawhelp.org/

Oregon State Bar, Landlord Tenant Law
https://www.osbar.org/public/legalinfo/landlordtenant.html

Portland Housing Bureau - Rental Services Office
https://www.portlandoregon.gov/phb/72622

U.S. Department of Housing and Urban Development
https://www.hud.gov/

Fair Housing of Oregon
Hotline: 1-800-424-3247 (for housing discrimination only)
https://fhco.org/

Community Alliance of Tenants (CAT)
503-288-0130
http://www.oregoncat.org/

Multifamily NW
503-213-1281
https://www.multifamilynw.org/

Manufactured Housing/Oregon State Tenants Association
(Information for mobile park tenants)
https://www.mh-osta.org/

Sincerely,

Tiffany

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Tiffany Taylor
Associate Planner
Community Development Department

503-338-5183
ttaylor@astoria.or.us
1095 Duane Street
Astoria, Oregon 97103
www.astoria.or.us

Tiffany Taylor

From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Wednesday, December 1, 2021 8:52 AM
To: Tiffany Taylor
Subject: Check out this home on Airbnb!

*****EXTERNAL SENDER*****
Check out this home on Airbnb!

https://abnb.me/N2mq8A7ADlb



Sent from my iPhone

Astor Library
MCMLXVII

12/1/21

Spoke w/ Austin Kettleson today.
Prepared code enforcement letter
to property owners based upon his
Complaint.
Let me know if it's OK
to mail.
Tiffany

H.O. Record Pg# 32

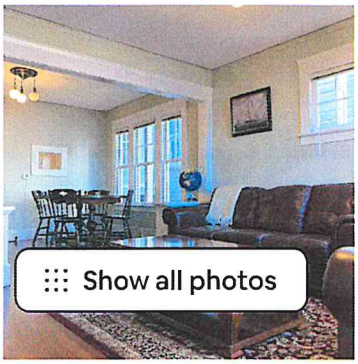
Historic Downtown Riverview Flat, No. 1

Superhost · Astoria, Oregon, United States

Share Save







Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath



Entire home
You'll have the apartment to yourself.

Enhanced Clean
This Host committed to Airbnb's 5-step enhanced cleaning process. Show more

Fast wifi
At 292 Mbps, you can take video calls and stream videos for your whole group.

Self check-in
Check yourself in with the smartlock.

$123 / night

CHECK-IN	CHECKOUT
Add date	Add date

GUESTS
1 guest

Check availability

Report this listing

L-157

H.O. Record Pg# 33

Step back in time and enjoy staying in the recently restored, iconic, Gilbaugh building and walk to all the best places to eat, drink and recreate in downtown Astoria. This well appointed, 2-bd 1-bath flat boasts beautiful period architecture and wonderful river and marine traffic views. Located in the historic district, the flat is 1 block from the Ft....

Show more >

Where you'll sleep

Bedroom 1
1 queen bed, 1 single bed

Bedroom 2
1 queen bed

What this place offers

- River view
- Kitchen
- Fast wifi – 292 Mbps
- Free parking on premises
- TV
- Washer
- Dryer
- Bathtub
- Private patio or balcony
- Luggage dropoff allowed

H.O. Record Pg# 34

Show all 48 amenities

Select check-in date

Add your travel dates for exact pricing

December 2021

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Janu

Su	Mo	Tu
2	3	4
9	10	11
16	17	18
23	24	25
30	31	

No reviews (yet)

This host has 235 reviews for other places to stay. Show other reviews

We're here to help your trip go smoothly. Every reservation is covered by Airbnb's Guest Refund Policy.

Where you'll be

H.O. Record Pg# 35

Astoria, Oregon, United States

Hosted by Cindy

Joined in February 2016

- 235 Reviews
- Identity verified
- Superhost

Co-hosts

Jacob

Cindy is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Response rate: 100%

Response time: within an hour

Contact Host

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.

Things to know

House rules

- Check-in: 4:00 PM - 11:00 PM
- Checkout: 11:00 AM
- Self check-in with smart lock
- No smoking
- No pets
- No parties or events

Show more >

Health & safety

- Committed to Airbnb's enhanced cleaning process. Show more
- Airbnb's social-distancing and other COVID-19-related guidelines apply
- Carbon monoxide alarm
- Smoke alarm

Show more >

Cancellation policy

Add your trip dates to get the cancellation details for this stay.

Add dates >

Explore other options in and around Astoria

Vancouver	Cannon Beach
Seaside	Tacoma
Lincoln City	Ocean Shores
Olympia	Victoria
Portland	Seattle
Vancouver	Whistler

H.O. Record Pg# 37

Unique stays on Airbnb

Tiny House Rentals

Lakehouse Rentals

Glamping Rentals

Beach House Rentals

Treehouse Rentals

Cabin Rentals

Camper Rentals

Airbnb › United States › Oregon › Clatsop County › Astoria

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Help Center

Safety information

Cancellation options

Our COVID-19 Response

Supporting people with disabilities

Report a neighborhood concern

Community

Airbnb.org: disaster relief housing

Support Afghan refugees

Celebrating diversity & belonging

Combating discrimination

Hosting

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H.O. Record Pg# 38

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English (US) $ USD

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File #	Receipt #	Receipt Date	Amount paid
118	299,956	12/15/2020	10.14
118	299,956	12/15/2020	15.97
118	299,956	12/15/2020	37.27
118	299,956	12/15/2020	129.32
118	299,957	12/15/2020	135.82
118	299,957	12/15/2020	19.64
118	299,957	12/15/2020	45.83
118	299,957	12/15/2020	158.71
118	299,958	12/15/2020	151.31
118	299,958	12/15/2020	21.88
118	299,958	12/15/2020	51.06
118	299,958	12/15/2020	176.75
118	299,959	12/15/2020	146.69
118	299,959	12/15/2020	21.21
118	299,959	12/15/2020	49.50
118	299,959	12/15/2020	171.50
118	302,062	1/13/2021	95.05
118	302,062	1/13/2021	13.74
118	302,062	1/13/2021	32.07
118	302,062	1/13/2021	111.14
118	304,122	2/11/2021	71.62
118	304,122	2/11/2021	10.36
118	304,122	2/11/2021	24.16
118	304,122	2/11/2021	83.74
118	306,113	3/10/2021	140.63
118	306,113	3/10/2021	20.34
118	306,113	3/10/2021	47.45
118	306,113	3/10/2021	164.44
118	308,328	4/7/2021	170.75
118	308,328	4/7/2021	24.69
118	308,328	4/7/2021	57.62
118	308,328	4/7/2021	196.82
118	310,769	5/11/2021	229.04
118	310,769	5/11/2021	33.12
118	310,769	5/11/2021	77.29
118	310,769	5/11/2021	270.60
118	312,990	6/14/2021	407.54
118	312,990	6/14/2021	58.94
118	312,990	6/14/2021	137.52
118	312,990	6/14/2021	476.48
118	314,840	7/13/2021	465.43
118	314,840	7/13/2021	67.30
118	314,840	7/13/2021	157.04
118	314,840	7/13/2021	544.20
118	316,700	8/11/2021	722.38
118	316,700	8/11/2021	104.47
118	316,700	8/11/2021	243.75
118	316,700	8/11/2021	844.61
118	319,074	9/14/2021	605.79
118	319,074	9/14/2021	87.60
118	319,074	9/14/2021	204.41
118	319,074	9/14/2021	708.30
118	320,800	10/11/2021	431.46
118	320,800	10/11/2021	62.40
118	320,800	10/11/2021	145.59
118	320,800	10/11/2021	504.47
118	323,353	11/15/2021	337.16
118	323,353	11/15/2021	48.76
118	323,353	11/15/2021	113.76
118	323,353	11/15/2021	394.19
118	325,304	12/14/2021	359.97
118	325,304	12/14/2021	52.06
118	325,304	12/14/2021	121.46
118	325,304	12/14/2021	420.88
			12,145.49

Diane Christiansen

From: Tiffany Taylor
Sent: Wednesday, December 15, 2021 11:18 AM
To: Diane Christiansen; Megan Leatherman
Subject: FW: 1557 exchange Astoria Air BNB

Code Enforcement complaint follow up email.

Please respond to Austin Kettleson on status.

(this is the property I had prepared a draft letter for) Thanks!
-Tiffany

-----Original Message-----
From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Tuesday, December 14, 2021 3:30 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: 1557 exchange Astoria Air BNB

*****EXTERNAL SENDER*****

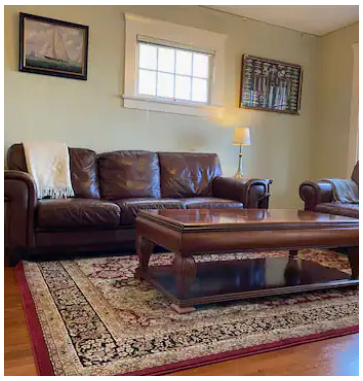
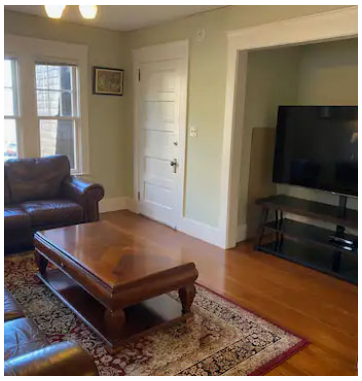
Good afternoon,
I was curious of there was any follow up with This Air BNB. It's continued to operate the last couple weeks and is disruptive to what is a small apartment building.

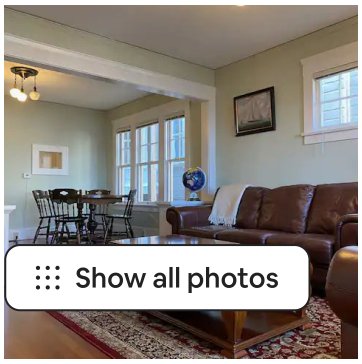
Sent from my iPhone

Historic Downtown Riverview Flat, No. 1

1 review · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath



Entire home
You'll have the apartment to yourself.

Enhanced Clean
This Host committed to Airbnb's 5-step enhanced cleaning process. Show more

Fast wifi
At 292 Mbps, you can take video calls and stream videos for your whole group.

Self check-in
Check yourself in with the smartlock.

$129 / night 1 review

CHECK-IN	CHECKOUT
Add date	Add date

GUESTS
1 guest

Check availability

Report this listing

Step back in time and enjoy staying in the recently restored, iconic, Gilbaugh building and walk to all the best places to eat, drink and recreate in downtown Astoria. This well appointed, 2-bd 1-bath flat boasts beautiful period architecture and wonderful river and marine traffic views. Located in the historic district, the flat is 1 block from the...

Show more >

Where you'll sleep

Bedroom 1
1 queen bed, 1 single bed

Bedroom 2
1 queen bed

What this place offers

- River view
- Kitchen
- Fast wifi – 292 Mbps
- Free parking on premises
- TV

Show all 48 amenities

Select check-in date

Add your travel dates for exact pricing

December 2021

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Cle

★ 1 review



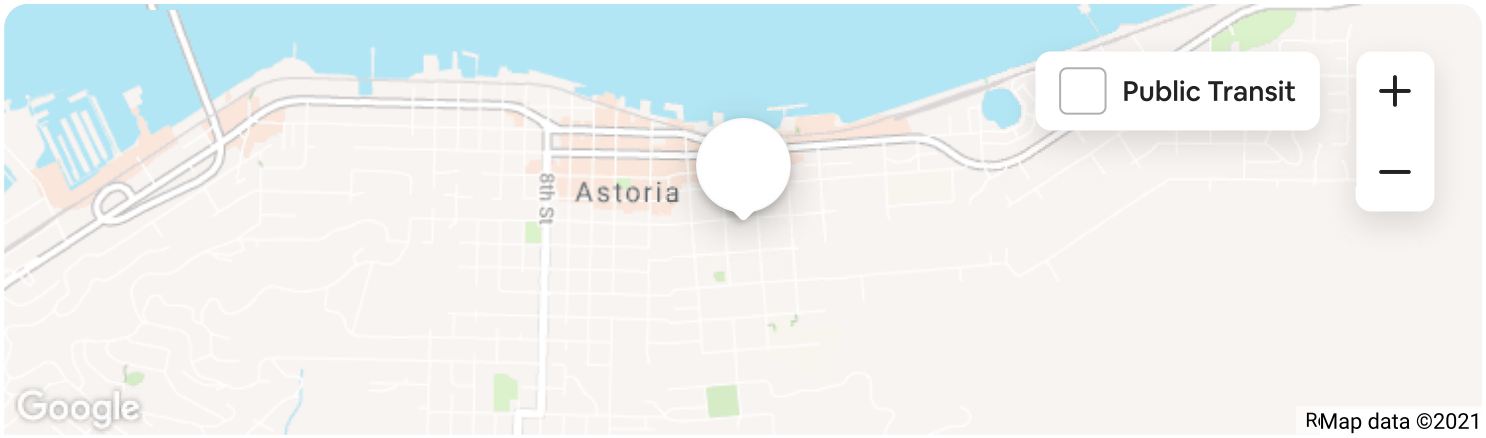
Lorell
December 2021

This is a perfect place to stay while in Astoria. The location is amazing. You can walk to the restaurants, shops, museums and the waterfront. We enjoyed watching the river from the front windows. There is a big TV for your entertainment. Jacob was great with communication. The beds were comfortable to...

Show more ›

Where you'll be

Astoria, Oregon, United States



Hosted by Cindy

Joined in February 2016

- 241 Reviews
- Identity verified
- Superhost

Cindy is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Response rate: 100%

Response time: within an hour

Contact Host

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.

Things to know

House rules

- Check-in: 4:00 PM - 11:00 PM
- Checkout: 11:00 AM
- Self check-in with smart lock
- No smoking
- No pets
- No parties or events

Show more >

Health & safety

- Committed to Airbnb's enhanced cleaning process. Show more
- Airbnb's social-distancing and other COVID-19-related guidelines apply
- Carbon monoxide alarm
- Smoke alarm

Show more >

Cancellation policy

Add your trip dates to get the cancellation details for this stay.

Add dates >

Explore other options in and around Astoria

Vancouver	Cannon Beach
Seaside	Tacoma
Lincoln City	Ocean Shores
Olympia	Victoria
Portland	Seattle

Vancouver

Whistler

Unique stays on Airbnb

Glamping Rentals

Lakehouse Rentals

Treehouse Rentals

Beach House Rentals

Tiny House Rentals

Cabin Rentals

Camper Rentals

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Historic Downtown Riverview Flat, No. 1

1 review · Superhost · Astoria, Oregon, United States

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Show more >

Where you'll sleep

Bedroom 1
1 queen bed, 1 single bed

Bedroom 2
1 queen bed

What this place offers

- River view
- Kitchen
- Fast wifi – 292 Mbps
- Free parking on premises
- TV

Show all 48 amenities

$133 / night 1 review

CHECK-IN	CHECKOUT
1/3/2022	1/7/2022

GUESTS
1 guest

Reserve

You won't be charged yet

$133 x 4 nights	$533
Cleaning fee	$85
Service fee	$87
Occupancy taxes and fees	$83
Total	**$788**

Report this listing

4 nights in Astoria

Jan 3, 2022 - Jan 7, 2022

January 2022

Su	Mo	Tu	We	Th	Fr	Sa
						~~1~~
2	3	4	5	6	7	~~8~~
~~9~~	10	11	12	13	14	~~15~~
~~16~~	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Cle

★ 1 review



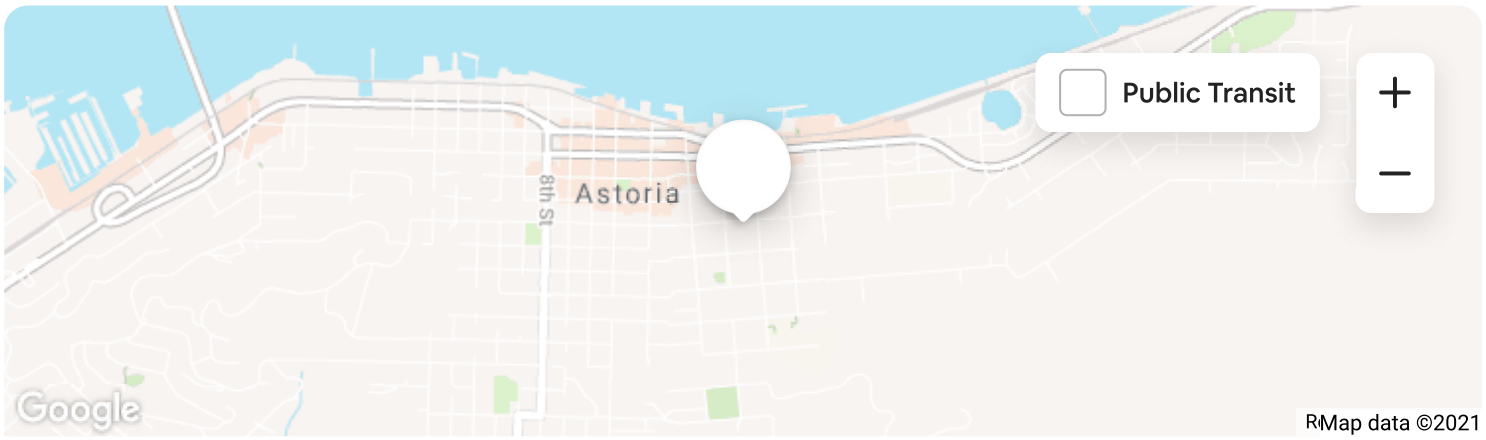
Lorell
December 2021

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Show more ›

Where you'll be

Astoria, Oregon, United States



Hosted by Cindy

Joined in February 2016

241 Reviews

Identity verified

Superhost

Cindy is a Superhost

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Contact Host

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- Checkout: 11:00 AM
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- No pets
- No parties or events

Show more >

Health & safety

- Committed to Airbnb's enhanced cleaning process. Show more
- Airbnb's social-distancing and other COVID-19-related guidelines apply
- Carbon monoxide alarm
- Smoke alarm

Show more >

Cancellation policy

Only cleaning fee is refundable because check-in is less than 7 days away.

Show more >

Explore other options in and around Astoria

Vancouver	Cannon Beach
Seaside	Tacoma
Lincoln City	Ocean Shores
Olympia	Victoria
Portland	Seattle

Vancouver

Whistler

Unique stays on Airbnb

Glamping Rentals

Lakehouse Rentals

Treehouse Rentals

Beach House Rentals

Tiny House Rentals

Cabin Rentals

Camper Rentals

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Help Center

Safety information

Cancellation options

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CITY OF ASTORIA
Founded 1811 • Incorporated 1856
COMMUNITY DEVELOPMENT

NOTICE OF NON-COMPLIANCE
Nuisance Ordinance Violation

January 10, 2022

Gilbaugh LLC
Attn: Bob and Cindy Magie
P.O. Box 532
Astoria, OR 97103

RE: RESIDENTIAL DWELLING UNIT ADVERTISED AS TRANSIENT LODGING AT 1555 EXCHANGE STREET.

Dear Bob and Cindy,

Our office has received information that the residential dwelling, located at 1555 Exchange Street, is advertised on the AirBnB website as a transient lodging unit; this is not allowed based on Astoria City Code. Please cease the transient lodging use; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms.

This letter serves to clarify the regulations regarding transient lodging (i.e. short-term lodging) in the City of Astoria as it applies to the property:

- Clatsop County classifies the property as a multi-family structure. This structure was constructed as apartment dwellings (c. 1890/1920), and has been occupied as a long term rental property for residents.

- The Astoria Development Code defines dwellings as:
  DWELLING: One or more rooms designed for permanent occupancy by one family.
  SINGLE-FAMILY: A free-standing building containing one dwelling unit.
  TWO-FAMILY: A free-standing building containing two dwelling units. May include two-unit rowhouses or duplexes, either renter-occupied or owner-occupied.
  MULTI-FAMILY: A building containing three or more dwelling units. May include rowhouses, apartment buildings, or residential condominiums, either renter-occupied or owner-occupied.

- 1555-1561 Exchange St. is located in a C-3 zone. Astoria Development Code §2.390.10 identifies the following lodging related uses as Outright Permitted Uses in the C-3 Zone:

  2.39.10 Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:
  a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.10.b.

b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

- The Astoria Development Code defines a Motel as:
  MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

  Staff Finding: The structure meets the definition of Motel because it is a building in which lodging is provided for guests for compensation and where a majority of rooms have direct access to the outside. However, within the C-3 Zone, the Astoria Development Code §2.390.10(a) prohibits hotel/motel use if the structure was originally constructed as a residential dwelling.

- The Astoria Development Code defines a Hotel as:
  HOTEL: A building in which lodging is provided for guests for compensation, which may also provide incidental services such as restaurants, meeting rooms, or recreational facilities subject to Development Code standards.

  Staff Finding: The proposal meets the definition of Hotel because the building, as proposed, would provide lodging for guests for compensation. However, within the C-3 Zone, Astoria Development Code §2.390.10(a) prohibits hotel/motel use if the structure was originally constructed as a residential dwelling.

CONCLUSION: As described, the structure meets the definition of Motel and Hotel; however, the existing multi-family structure was originally constructed as residential dwellings, and it has been consistently used to house people. The Astoria Development Code §2.390.10(a) prohibits hotel/motel use if the structure was originally constructed as a residential dwelling. To conclude, transient lodging is NOT a permitted use in the multi-family structure located at 1555-1561 Exchange St. in the C-3 zoning district (use is prohibited in unit 1555 Exchange, as well as the other dwelling units within the structure). The use as transient lodging does not meet the definition of motel/hotel due to the prior residential use of the property; therefore, the use as a Hotel or Motel is prohibited. Please cease the transient lodging use; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms.

If you have any questions, please feel free to contact our office.

Regards,
THE CITY OF ASTORIA
Community Development Department

Encl: AirBnB Listing
EC: File

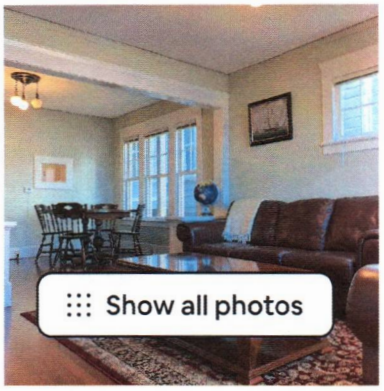
Historic Downtown Riverview Flat, No. 1

Superhost · Astoria, Oregon, United States

Share Save







Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath



Entire home
You'll have the apartment to yourself.

Enhanced Clean
This Host committed to Airbnb's 5-step enhanced cleaning process.
Show more

Fast wifi
At 292 Mbps, you can take video calls and stream videos for your whole group.

Self check-in
Check yourself in with the smartlock.

$123 / night

CHECK-IN	CHECKOUT
Add date	Add date

GUESTS
2 guests

Check availability

Report this listing

Step back in time and enjoy staying in the recently restored, iconic, Gilbaugh building and walk to all the best places to eat, drink and recreate in downtown Astoria. This well appointed, 2-bd 1-bath flat boasts beautiful period architecture and wonderful river and marine traffic views. Located in the historic

Show more >

Where you'll sleep

Bedroom 1
1 queen bed, 1 single bed

Bedroom 2
1 queen bed

What this place offers

- River view
- Kitchen
- Fast wifi – 292 Mbps
- Free parking on premises
- TV
- Washer
- Dryer
- Bathtub
- Private patio or balcony
- Luggage dropoff allowed

Show all 48 amenities

Select check-in date

Add your travel dates for exact pricing

December 2021

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

January

Su	Mo	Tu	We
2	3	4	5
9	10	11	12
16	17	18	19
23	24	25	26
30	31		



No reviews (yet)

This host has 235 reviews for other places to stay. **Show other reviews**



We're here to help your trip go smoothly. Every reservation is covered by **Airbnb's Guest Refund Policy**.



Where you'll be

Astoria, Oregon, United States

Hosted by Cindy

Joined in February 2016

235 Reviews

Identity verified

Superhost

Co-hosts

Jacob

Cindy is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Response rate: 100%

Response time: within an hour

Contact Host

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.

Things to know

House rules

Check-in: 4:00 PM - 11:00 PM

Checkout: 11:00 AM

Self check-in with smart lock

No smoking

Diane Christiansen

From: Diane Christiansen
Sent: Wednesday, January 19, 2022 9:40 AM
To: austinkettleson@gmail.com
Subject: FW: 1557 exchange Astoria Air BNB

Austin,

I received your voicemail about the Airbnb. I wanted you to know we are working on this.

It sounds like the owners are saying that they are only using the cottage as a short-term rental, not the apartments, which are not allowed to be converted from long-term dwellings to short-term rentals if they are already being used for long-term dwellings.

If you are able to, would you please send me the addresses for which the short-term rentals are being used? I believe we only know about 1555 Exchange, but it's my understanding that each apartment has its own address. Knowing which specific units they are using for short-term rentals will help us pursue this matter.

Also, if you have any more links for the short-term rental advertisements (for multiple units), please forward them over to me.

Thank you very much,

Diane

-----Original Message-----
From: Tiffany Taylor <ttaylor@astoria.or.us>
Sent: Wednesday, December 15, 2021 11:18 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: FW: 1557 exchange Astoria Air BNB

Code Enforcement complaint follow up email.

Please respond to Austin Kettleson on status.

(this is the property I had prepared a draft letter for) Thanks!
-Tiffany

-----Original Message-----
From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Tuesday, December 14, 2021 3:30 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: 1557 exchange Astoria Air BNB

*****EXTERNAL SENDER*****

Good afternoon,

I was curious of there was any follow up with This Air BNB. It’s continued to operate the last couple weeks and is disruptive to what is a small apartment building.

Sent from my iPhone

Diane Christiansen

From: Bob and Cindy Magie <exchangeastoria@gmail.com>
Sent: Wednesday, January 19, 2022 9:30 AM
To: Diane Christiansen
Subject: Re: FW: Astoria Downtown Cottages

Hi Diane,
As per our phone conversation, I am sending this long string of emails. It diagrams the issues we had in 2020 with the city regarding our short term rentals. As stated above we received our business license in 2017. We have been working toward this goal since 2015 when we purchased an adjacent lot that connected our property to 16th street we (with our neighbor -Jake Helligso) created the required concrete entry and parking as per instructions from Kevin Cronin (Community Development Director) which later had to be completely removed and repoured as Kevin felt it was slightly too steep. Much work, time and money has gone into development of our short term rentals since 2015. We are frustrated that the bar for our business (we've been building for years) appears to keep moving. It is scary to see the letter sent to us from the city. We pride ourselves on following the rules and doing things the right way (we have paid significant occupancy taxes to the city). We feel we have done our due diligence and done everything asked of us and have been granted permission repeatedly only to have it questioned again and again when there is a staff turn over. We've lived in this town since 2006 and this is our home; this business is our family's livelihood. These old buildings are very expensive to restore (especially to Historic Landmarks Commission standards) and maintain; income from our short term rentals has helped us bear these costs. We urge you to look at the aforementioned information and resolution and reach out to us with any questions.

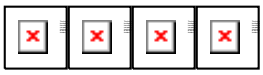
Thanks,
Bob and Cindy Magie

On Fri, Dec 18, 2020 at 11:18 AM Shannon Fitzpatrick <shannon@pcm-usa.com> wrote:
Thank you, Bob.

RESPECTFULLY,

SHANNON FITZPATRICK

PCM, INC
Pacific Capital Management
(503) 336-9303 - Direct
(805) 512-8822 - Direct
(503) 850-8895 - Office
(888) 819-6313 - Fax
OREA: 201222845
CA DRE: 01714909



On Thu, Dec 17, 2020 at 3:38 PM Bob and Cindy Magie <exchangeastoria@gmail.com> wrote:

Hi Shannon,
Just thought I would keep you in the loop regarding our short term rentals on exchange street. On the afternoon of December 14th Cindy called the city of Astoria and tried to pay our occupancy tax on our vacation rentals on exchange street. They were due on the 15th (paid via check in the mail in prior months) and she was hoping to pay by phone as we accidently waited until the last minute to get them paid. Cristine Shade told Cindy that there was a problem with our account, that we do not have a file number and that we would need to talk to Barbara Fryer in the morning.

After an evening spent locating all of our documentation, Cindy and I called Barbara on the morning of the 15th. Barbara said that we did not have legal vacation rentals, because they were located in R3 zoning and that we would need to stop using them accordingly. I then mentioned that the properties are in C3 zoning and she responded by saying "Okay". After a short delay she then mentioned that according code "2.390.10" ((a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel) we are still out of compliance. I then responded that we applied for and received a business license in October of 2017 for our Downtown Astoria Cottages (License # 5001435) well before the implementation of this code change. After another pause she then said "since your license was valid before the code change, you are in compliance; my apologies and I will send an email to the staff notifying all that you are in compliance and get a file number issued".

I then asked Barbara to send us an email confirming our conversation and she apologized again and said she would do so. The below email string is what Barbara sent to us and includes the discussion regarding our short term rentals.

Also, I have attached our original business license receipt from October of 2017 and the transient room tax registration form that we were asked to fill out to receive a file number (File #118) and also the completed form. I will also forward you the email from Cristine Shade that notifies us of our assigned file number.

FYI,
Bob Magie

---------- Forwarded message ---------
From: **Barbara Fryer** <BFryer@astoria.or.us>
Date: Tue, Dec 15, 2020 at 9:02 AM
Subject: FW: Astoria Downtown Cottages
To: exchangeAstoria@gmail.com <exchangeAstoria@gmail.com>
Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Good afternoon,

The properties in question, are zoned C3. They cannot be converted from long-term housing to vacation rental if they have been used as long-term rental housing.

2.390.10(a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel.

The three homes located at this address 1555-1569 Exchange Street (T8N R9W Section 08 Map DC Tax lot 18200). The homes on this property were moved in the sixties onto this property from slide areas as housing. They cannot be converted to lodging – they must remain long-term rentals.

Regards,

Barbara

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 2:08 PM

To: Barbara Fryer <BFryer@astoria.or.us>
Subject: FW: Astoria Downtown Cottages

Barbara –

Did you want to chime in with some code interpretation? I'm still lost on how we are dealing with the HSL permitting process. (It's probably just me.)

1555-1569 Exchange is an apartment complex. 1565 Exchange is an address within that building. Sounds like the property owners have changed use on one of the apartments from long-term housing to vacation rental.

-Tiffany

TIFFANY TAYLOR

ADMINISTRATIVE ASSISTANT

COMMUNITY DEVELOPMENT DEPARTMENT

1095 Duane Street Astoria OR 97103

ttaylor@astoria.or.us

503-338-5183 (phone)

503-338-6538 (fax)

From: Heidi Dlubac
Sent: Tuesday, September 15, 2020 2:02 PM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Re: Astoria Downtown Cottages

I haven't seen anything for this address. It's in the C3 zone and doesn't require a homestay permit. However, a vacation rental would not be allowed per new code (structures or portions of structures used as residential cannot be converted to short-term stays).

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:40:49 AM
To: Tiffany Taylor; Heidi Dlubac
Subject: RE: Astoria Downtown Cottages

Sorry, it's 1565 Exchange St. It was handwritten on their return.

Cristine Shade

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 8:39 AM
To: Cristine Shade <CShade@astoria.or.us>; Heidi Dlubac <HDlubac@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Do you have an address? Maybe an O.T.?

-Tiffany

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:38 AM

To: Heidi Dlubac <HDlubac@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Astoria Downtown Cottages

I have check for room tax from Cynthia and Robert Magie, but I don't have any other info for them. They did not register with me. Are they registered with you?

Cristine Shade

Staff Accountant

City of Astoria, Finance Department

1095 Duane Street

Astoria, OR 97103

Phone: (503) 298-2426

Fax: (503) 325-2997

Email: cshade@astoria.or.us



Diane Christiansen

From: Diane Christiansen
Sent: Thursday, January 20, 2022 11:22 AM
To: Megan Leatherman
Subject: RE: Code Enforcement | 1555-1569 Exchange (Astoria Downtown Cottages)
Attachments: CE_1555-1569 Exchange_email corr. BF 2020.12.15.pdf; CE_1555-1569 Exchange_AirBNB links.pdf

Meg,

I asked Alex about this, and how he interpreted Barbara's email from 12/15/2020 is that, while their Transient Lodging units are non-conforming, are allowed due to the fact that they've been using some of the units as transient lodging prior to the code change for the property at 1555-1569 Exchange. He also indicated that because Barbara's last email did not specify whether the remaining long-term units were permitted to be converted to short-term rentals, that we have very little traction in trying to prevent them from doing just that.

I took screenshots of their Airbnb ads, included the links in the attached PDF, and I wanted to note that they do explain that the building is very old and noisy and request their guests be courteous of the long-term tenants.

Let me know if we still need to get together as a team to go over this.

Thank you,

Diane

From: Megan Leatherman <mleatherman@astoria.or.us>
Sent: Wednesday, January 19, 2022 11:23 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: RE: Code Enforcement | 1555 Exchange (Astoria Downtown Cottages)

Can you check the address file and see if the documentation that Barbara references below is in there please

Sincerely, Meg



From: Diane Christiansen <dchristiansen@astoria.or.us>
Sent: Wednesday, January 19, 2022 10:11 AM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Code Enforcement | 1555 Exchange (Astoria Downtown Cottages)

Meg,

This is an email from the property owner for 1555-1569 Exchange. They are stating that they believe they are in compliance per the emails below.

The complaint is actually from one of their tenants who said they are converting the long-term rentals to short-term, and are trying to make them move, and the noise with the short-term renters has been impacting them.

I spoke with Bob yesterday afternoon, but in our conversation, he indicated that the small cottage behind the apartment complex is the only short-term rental, and then later also said that they've been converting the apartments "over the years" to short-term rentals and it's all allowed because they got their business license in 2017. Bob also stated that they initially converted a couple of units to short-term, but stopped when their daughter was ill, etc. and now plan to continue their "authorized" business.

I believe the property owners are still attempting to convert their long-term apartment units to short-term rentals but believe they are in compliance due to the fact that one, or more, units was allowed prior to the code change in 2019(?). I think we need to confirm which unit(s) is permitted as an HSL, document that, and inform the owner that no more units may be used as short-term rentals (aka Airbnb).

This is Accela record # 119-21-000039-NVST, in case that is helpful.

Diane

From: Bob and Cindy Magie <exchangeastoria@gmail.com>
Sent: Wednesday, January 19, 2022 9:30 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: Re: FW: Astoria Downtown Cottages

Hi Diane,
As per our phone conversation, I am sending this long string of emails. It diagrams the issues we had in 2020 with the city regarding our short term rentals. As stated above we received our business license in 2017. We have been working toward this goal since 2015 when we purchased an adjacent lot that connected our property to 16th street we (with our neighbor -Jake Helligso) created the required concrete entry and parking as per instructions from Kevin Cronin (Community Development Director) which later had to be completely removed and repoured as Kevin felt it was slightly too steep. Much work, time and money has gone into development of our short term rentals since 2015. We are frustrated that the bar for our business (we've been building for years) appears to keep moving. It is scary to see the letter sent to us from the city. We pride ourselves on following the rules and doing things the right way (we have paid significant occupancy taxes to the city). We feel we have done our due diligence and done everything asked of us and have been granted permission repeatedly only to have it questioned again and again when there is a staff turn over. We've lived in this town since 2006 and this is our home; this business is our family's livelihood. These old buildings are very expensive to restore (especially to Historic Landmarks Commission standards) and maintain; income from our short term rentals has helped us bear these costs. We urge you to look at the aforementioned information and resolution and reach out to us with any questions.

Thanks,
Bob and Cindy Magie

On Fri, Dec 18, 2020 at 11:18 AM Shannon Fitzpatrick <shannon@pcm-usa.com> wrote:

Thank you, Bob.

RESPECTFULLY,

SHANNON FITZPATRICK

PCM, INC
Pacific Capital Management
(503) 336-9303 - Direct
(805) 512-8822 - Direct
(503) 850-8895 - Office
(888) 819-6313 - Fax
OREA: 201222845
CA DRE: 01714909

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FYI,
Bob Magie

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Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

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My apologies.

Regards,

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To: Tiffany Taylor <ttaylor@astoria.or.us>
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To: Barbara Fryer <BFryer@astoria.or.us>
Subject: FW: Astoria Downtown Cottages

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-Tiffany

TIFFANY TAYLOR

ADMINISTRATIVE ASSISTANT

COMMUNITY DEVELOPMENT DEPARTMENT

1095 Duane Street Astoria OR 97103

ttaylor@astoria.or.us

503-338-5183 (phone)

503-338-6538 (fax)

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Cristine Shade

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Subject: RE: Astoria Downtown Cottages

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-Tiffany

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To: Heidi Dlubac <HDlubac@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
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Staff Accountant

City of Astoria, Finance Department

1095 Duane Street

Astoria, OR 97103

Phone: (503) 298-2426

Fax: (503) 325-2997

Email: cshade@astoria.or.us

CITY OF ASTORIA

Founded 1811 • Incorporated 1856

Diane Christiansen

From: Megan Leatherman
Sent: Tuesday, January 25, 2022 4:55 PM
To: Austin Kettleson
Cc: Diane Christiansen
Subject: RE: Exchange St Air BNB

Austin,

Thank you for continuing to pursue this. We are currently working with the owner on this and researching the past approvals and codes. I appreciate your patience and will let you know when we have clear direction. I have cc'd in my assistant, Diane, who is helping with this and can help keep you in the loop moving forward.

Sincerely, Meg

ePermitting: www.BuildingPermits.Oregon.gov ePermitting Help:
https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

-----Original Message-----
From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Monday, January 24, 2022 3:16 PM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Exchange St Air BNB

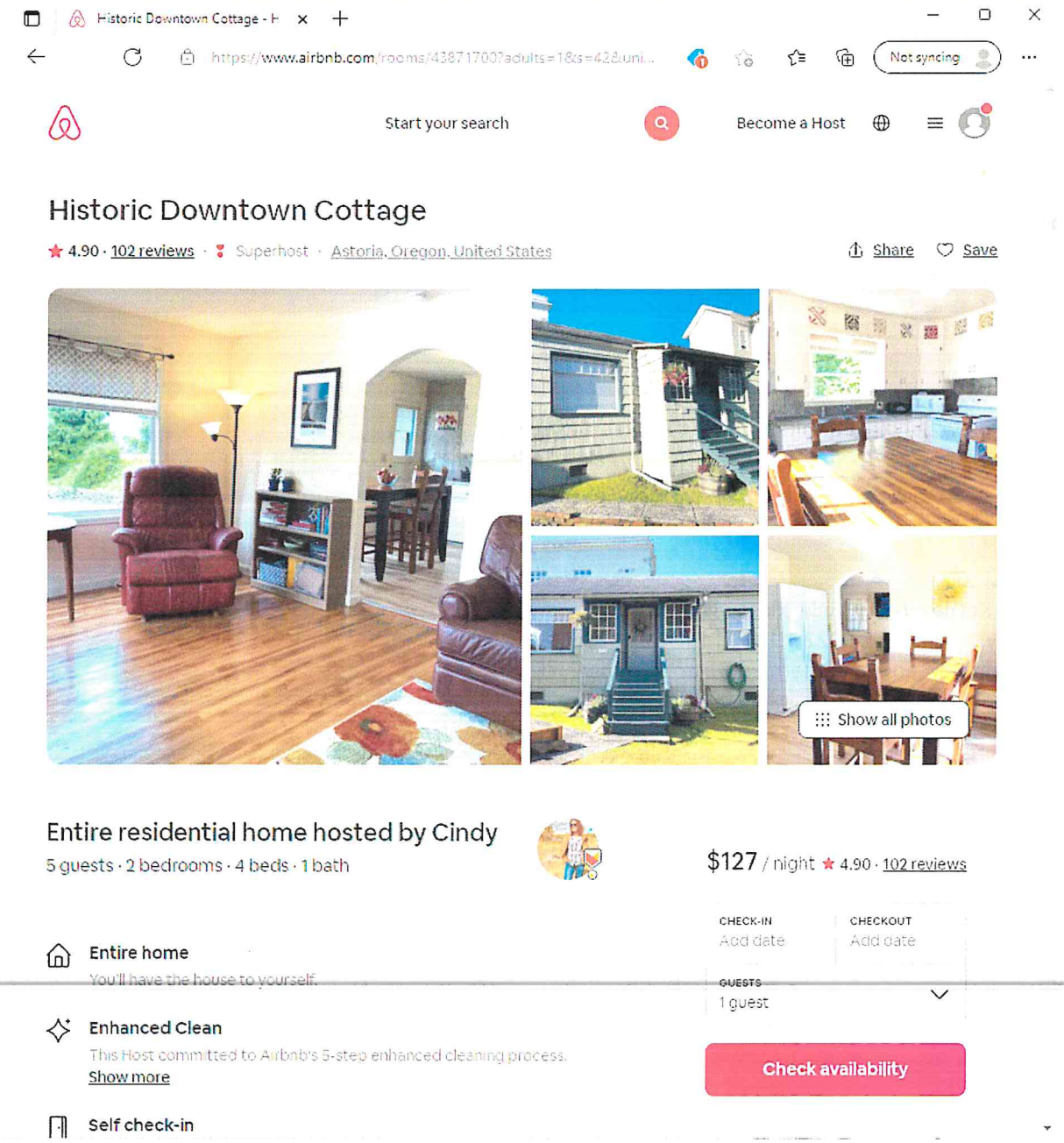
Good afternoon,

I've recently voiced some concerns I have about my landlords trying to get me to move out so they can turn it into an air BNB. I've lived there since December of 2018 with my girl friend and two daughters. The property has 6 units on it and 3 have already been converted to short stay lodging. I see that the property is zoned C3 how ever I can attest that all of these units were in fact occupied as long term rentals well after. January 1st 2019. Which would be a code violation of 2390 J . I am seeing first hand how hard it is to find apartments In the city of Astoria because of the influx of short stay lodging. I am a small business owner/vetran my girl friend works at the hospital. We would love to stay in this city and hopefully buy when there is an opportunity. I believe that issues has been brought to your attention and I would like to provide any evidence or testimony if that would be helpful. Please feel free to call if needed

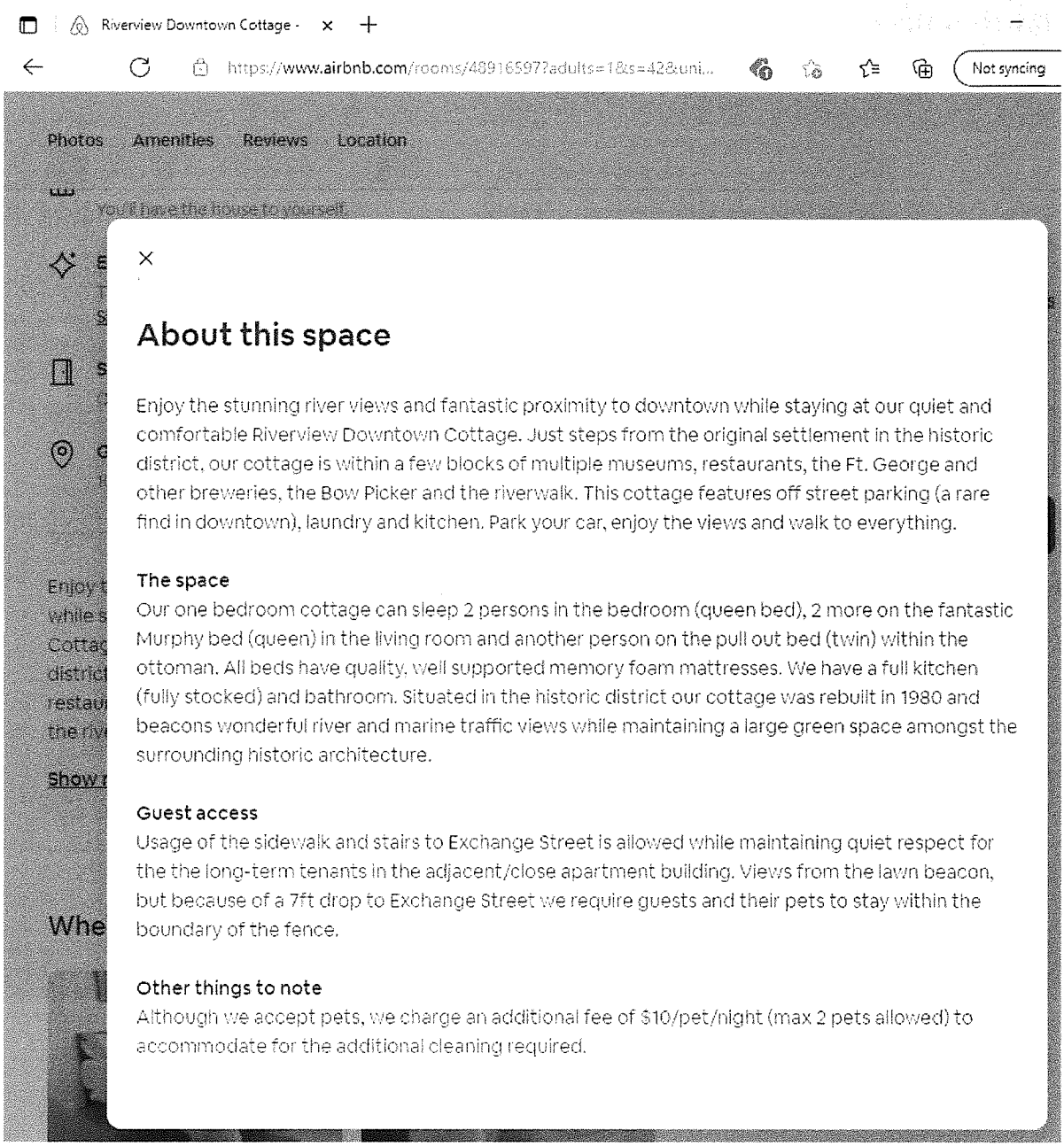
Respectfully,

Austin Kettleson
971 678 4591

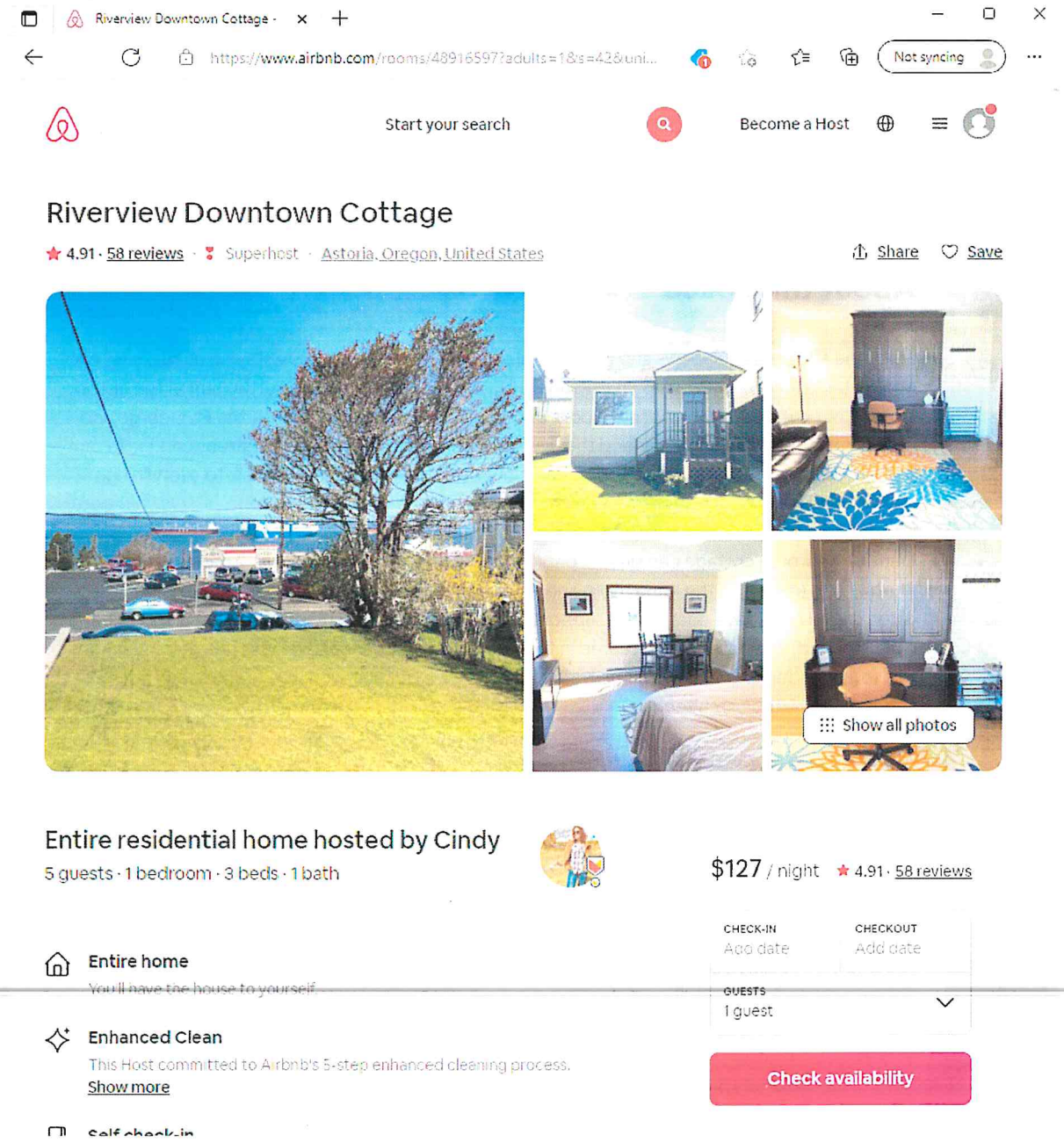
1565 Exchange | Airbnb Link: https://abnb.me/UbC26Dg7Wmb
Historic Downtown Cottage



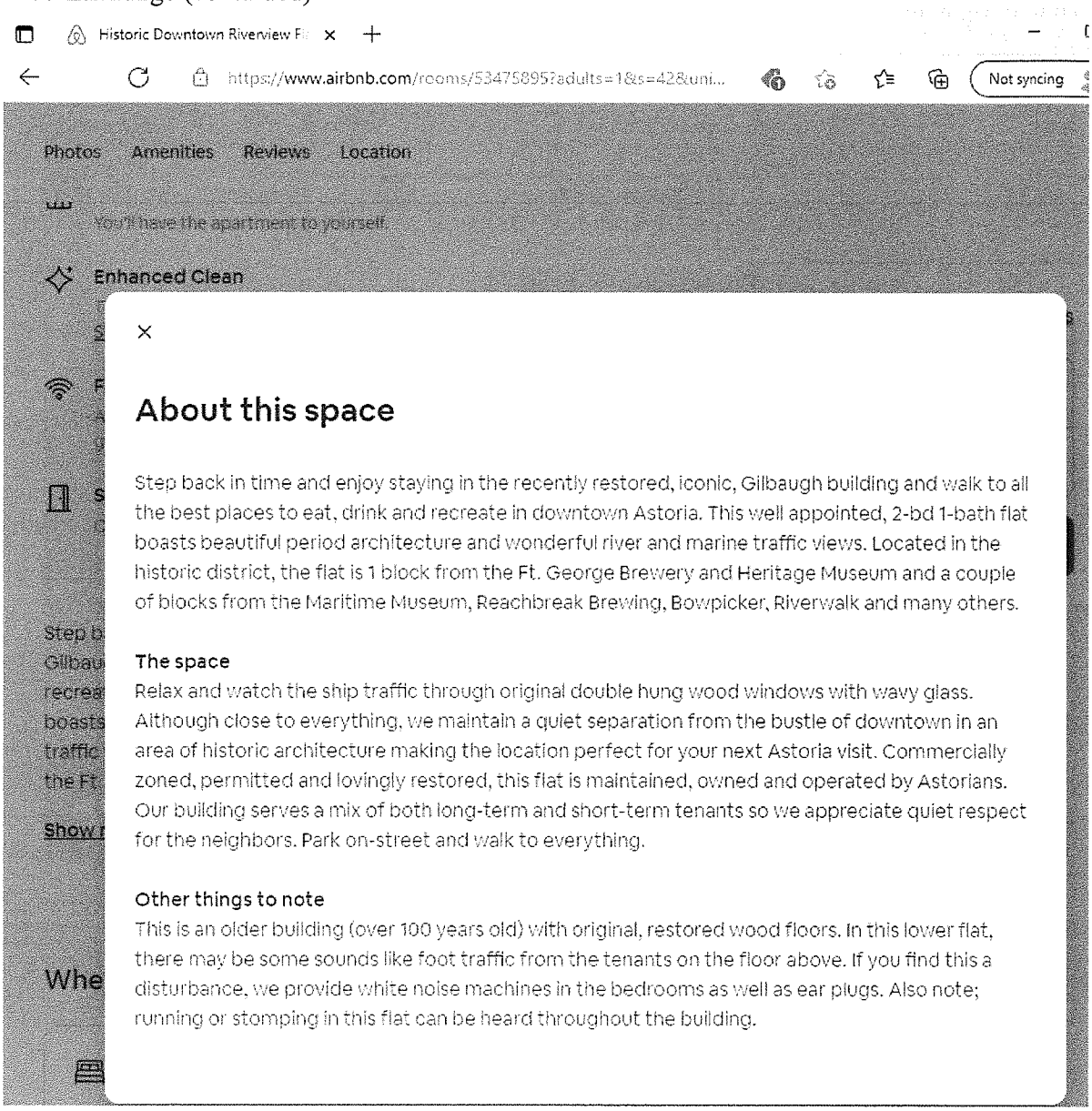
1569 Exchange (continued)



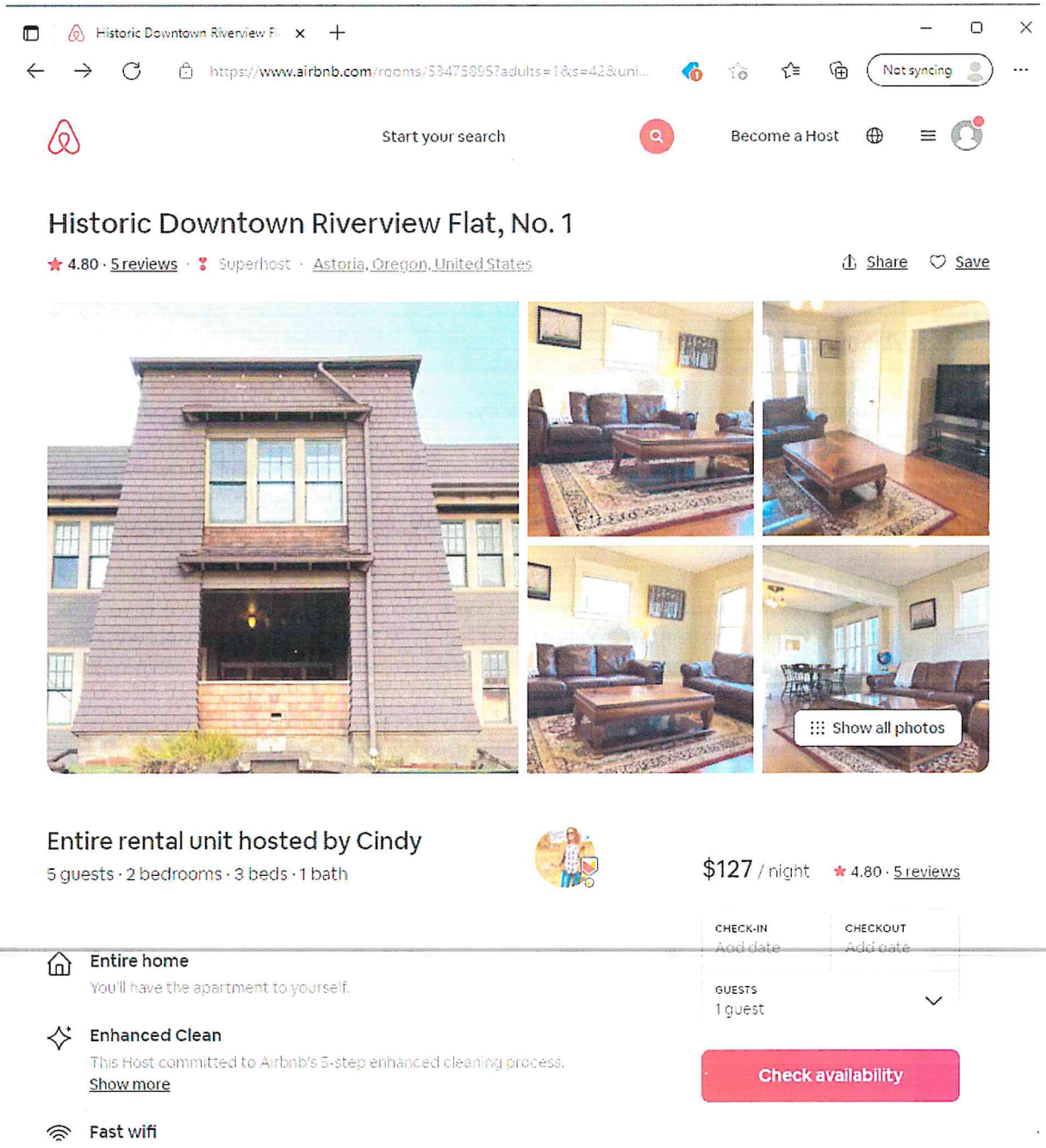
1569 Exchange | Airbnb Link: https://abnb.me/Q733rQa7Wmb
Riverview Downtown Cottage



1555 Exchange (continued)



1555 Exchange | Airbnb Link: https://abnb.me/92mmQLb5Wmb
Bottom right unit of apartment complex



Diane Christiansen

From: Diane Christiansen
Sent: Wednesday, January 26, 2022 1:22 PM
To: Bob and Cindy Magie
Cc: Megan Leatherman
Subject: Code Enforcement | 1555-1569 Exchange

Dear Bob and Cindy,

This email is in regards to the properties you have listed on Airbnb, located at 1555-1569 Exchange Street. Items underlined and in blue are links.

Per your email correspondence with Barbara Fryer on 12/15/2020, the two whole house rentals referred to as "Downtown Astoria Cottages," located at 1565 Exchange and 1569 Exchange are allowed to continue to operate as short-term rentals.

Per Astoria Development Code 2.390(J), "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.2.
2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units. (Section 2.390.J amended by Ord 19-07, 7-1-2019)"

However, the multi-family building, addressed 1555-1563 Exchange, was not authorized by Barbara, and is not in compliance with the above referenced city codes. Whether or not you interpreted Barbara's email to include 1555 Exchange is inconsequential to the City as it is violation to multiple City Codes. When the Occupational Tax/Business License was approved, it was also approved under the intent of approving 1565 Exchange and 1569 Exchange (Downtown Astoria Cottages) only.

None of the units in 1555-1563 Exchange may be Homestay Lodging/Airbnb/Transient. They all must remain long-term rentals, including the apartment listed as a short-term rental on Airbnb.com (Link: https://abnb.me/92mmQLb5Wmb), which was not being used as a short-term rental prior to January 1, 2019.

Please cease the transient lodging use for the apartment rental; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms for the apartment rental only. Any future listings for short-term rentals at 1555-1563 Exchange may trigger code enforcement action per Astoria Municipal Code. You may continue to use the two cottages at 1565-1569 Exchange as short-term rentals.

If you have questions, please contact us to set up a meeting.

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Diane Christiansen
Administrative Assistant
Community Development
1095 Duane Street
Astoria, Oregon 97103
503-338-5183
dchristiansen@astoria.or.us
www.astoria.or.us

ePermitting: www.BuildingPermits.Oregon.gov

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

Diane Christiansen

From: Megan Leatherman
Sent: Friday, February 4, 2022 1:40 PM
To: exchangeastoria@gmail.com
Cc: Diane Christiansen
Subject: FW: Code Enforcement | 1555-1569 Exchange

Bob and Cindy,

Thank you for taking the time to explain your situation to me. I have reviewed your situation with our City Attorney and unfortunately there is not anything we can do to help you out of this situation. I can understand how you may have misconstrued approval of your Occupational Tax (Business License) as approval of the short term rentals, especially with being told verbally it was ok in 2017. However, there are several places at the City where this is reinforced, specifically on the Occupational Tax application form. It states "You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location." The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below. Please let me know if you have any questions or concerns and please let know if you have any further questions.

Sincerely, Meg

Megan Leatherman, MCRP
Director
Community Development Department
503-338-5183
mleatherman@astoria.or.us
1095 Duane Street
Astoria, Oregon 97103
www.astoria.or.us
CITY OF ASTORIA
Founded 1811 • Incorporated 1856

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

---

From: Diane Christiansen <dchristiansen@astoria.or.us>
Sent: Wednesday, January 26, 2022 1:22 PM
To: Bob and Cindy Magie <exchangeastoria@gmail.com>
Cc: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Code Enforcement | 1555-1569 Exchange

Dear Bob and Cindy,

This email is in regards to the properties you have listed on Airbnb, located at 1555-1569 Exchange Street. Items underlined and in blue are links.

Per your email correspondence with Barbara Fryer on 12/15/2020, the two whole house rentals referred to as "Downtown Astoria Cottages," located at 1565 Exchange and 1569 Exchange are allowed to continue to operate as short-term rentals.

Per Astoria Development Code 2.390(J), "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

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2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units. (Section 2.390.J amended by Ord 19-07, 7-1-2019)"

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Please cease the transient lodging use for the apartment rental; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms for the apartment rental only. Any future listings for short-term rentals at 1555-1563 Exchange may trigger code enforcement action per Astoria Municipal Code. You may continue to use the two cottages at 1565-1569 Exchange as short-term rentals.

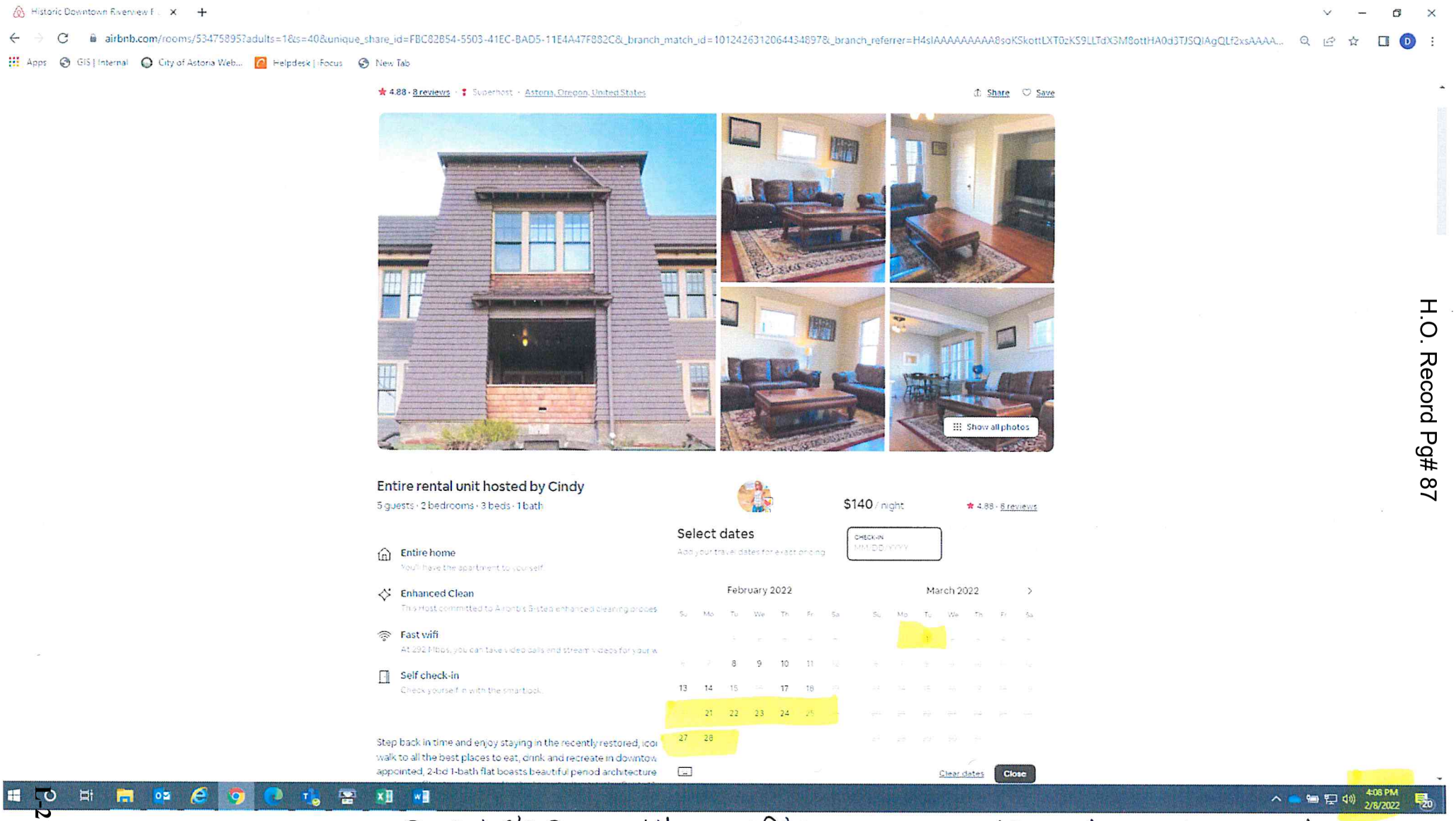
If you have questions, please contact us to set up a meeting.

CITY OF ASTORIA
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Diane Christiansen
Administrative Assistant
Community Development
1095 Duane Street
Astoria, Oregon 97103
503-338-5183
dchristiansen@astoria.or.us
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As of 2/18/22 - still accepting reservations through Mar. 1

H.O. Record Pg# 87

RECEIVED
FEB 18 2022
Community Development
CITY OF ASTORIA

NOTICE OF APPEAL

Appellants/ Owners: Bob and Cindy Magie

Property Address: 1555-1569 Exchange St

Date of Decision on Appeal: February 4, 2020

Nature of the Decision on Appeal: Appellants Bob and Cindy Magie wish to appeal the Community Development Director's decision that short term rental use of the above-referenced property is not allowed. This decision came in the form of an email decision dated February 4, 2020. See attached email. Appellants seek review of this decision by the Planning Commission pursuant to Astoria Development Code (ADC 9.040.A).

Statement of Interest: The Appellants are the owners of the above-reference properties. They are parties adversely affected by the Community Development Director's decision.

Grounds for Appeal: Shortly after purchase in 2015, Appellants began to improve this property to accommodate 6 short term rental units. At that time, short term rental uses were permitted outright in the C-3 zone without limitation. In discussing their intent to put the property to short term rental use, the then-Community Development Director Kevin Cronin informed them that they would need to install 1.5 off-street parking spaces for each short term rental unit. In 2017, Appellant made the required off-street improvements. The parking was approved by the interim Community Development Director Mike Morgan. Over the next few years, Appellants continued to take steps necessary to put these units into short-term use including making substantial construction improvements and repairs, furnishing, management and cleaning fees, insurance and marketing. Appellants are entitled to continue pursuing this non-conforming use pursuant to ADC 3.160.

In an email dated December 15, 2020, the City issued a decision confirming the validity of the 6 unit non-conforming use at the above-referenced address. See attached email. Most notably, this email states: "your project called Astoria Downtown Cottages located 1555-1569 is a permitted use and may continue as a lodging facility." This email serves as verification that the Appellant has established a right to a 6-unit short-term rental as a non-conforming use under ADC 3.200.

In the alternative, with respect to the fourplex structure housing 1555-1561 Exchange Street, the Code defines the term "motel" as "a building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building." Since its construction in the mid-1920s, the 4 units currently in existence have always been used to lodge guests for compensation where a majority of rooms have direct access to the outside. This structure meets the definition of "motel" today just as it did when it was originally constructed. As such, these 4 units within this motel may continue pursuant to ADC 2.39.10.b.

Further, Appellants did not receive notice of the amendments to the ADC that restricted short-term rentals and as a result, they cannot be bound by its obligations or are otherwise subject to challenge now.

In closing, Appellants have made significant improvements to their property in reliance on the City's continued representations that a 6-unit short term rental use could continue. Fairness dictate respecting those previous determinations and allowing this use to continue.

From: **Barbara Fryer** <BFryer@astoria.or.us>
Date: Tue, Dec 15, 2020 at 9:02 AM
Subject: FW: Astoria Downtown Cottages
To: exchangeAstoria@gmail.com <exchangeAstoria@gmail.com>
Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

Megan Leatherman
<mleatherman@astoria.or.us>

Feb 4, 2022, 1:39 PM (13 days ago)

to **Diane**,
me

Bob and Cindy,

Thank you for taking the time to explain your situation to me. I have reviewed your situation with our City Attorney and unfortunately there is not anything we can do to help you out of this situation. I can understand how you may have misconstrued approval of your Occupational Tax (Business License) as approval of the short term rentals, especially with being told verbally it was ok in 2017. However, there are several places at the City where this is reinforced, specifically on the Occupational Tax application form. It states "You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location." The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below. Please let me know if you have any questions or concerns and please let know if you have any further questions.

Sincerely, Meg



GILBAUGH LLC
PO BOX 532
ASTORIA, OR 97103

1065
34-827/1251
1057

Feb 18, 2022
Date

CHECK ARMOR FRAUD PROTECTION

Pay to the Order of City of Astoria

$ 500.00

Five hundred dollars and 00/100 Dollars

Photo Safe Deposit® Details on back

ColumbiaBank
Astoria
877.272.3678
columbiabank.com

For Appeal with ADC

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE, Petitioners, v. CITY OF ASTORIA, Respondent.	LUBA No. 2022 -_____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that Petitioners intend to appeal a February 4, 2022 Community Development Director determination that Petitioners continued use of their property located at 1555-1569 Exchange Street is not allowed. A copy of the decision is attached as Exhibit A to this Notice of Intent to Appeal.

II.

Petitioner is represented by Carrie A. Richter, Bateman Seidel, 1000 SW Broadway, Suite 1910, Portland, Oregon 97205; telephone: (503) 972-9968.

III.

Respondent City of Astoria has as its mailing address and telephone number City of Astoria, City Hall, 1095 Duane Street, Astoria, Oregon 97103; telephone (503) 338-5183. City of Astoria has as its legal counsel Blair Henningsgaard, whose mailing address and telephone number PO Box 1030, Astoria, Oregon 97103, telephone: (503) 325-0151.

IV.

The applicants were Robert and Cindy Magie , which have as their mailing address PO Box 532, Astoria Oregon 97103. Robert and Cindy Magie

were not represented by counsel below.

V.

No other parties were given notice of the City's decision.

Dated: February 25, 2022.

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 25, 2022, I caused to be filed the original and two copies of this NOTICE OF INTENT TO APPEAL with:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

by mailing by CERTIFIED MAIL.

On the same date, I caused to be served a true and correct copy by first-class mail, postage prepaid, on all persons listed in Paragraph III of this notice.

Dated: February 25, 2022.

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

From: Megan Leatherman <mleatherman@astoria.or.us>
Date: February 4, 2022 at 1:39:39 PM PST
To: exchangeastoria@gmail.com
Cc: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: FW: Code Enforcement | 1555-1569 Exchange

Bob and Cindy,

Thank you for taking the time to explain your situation to me. I have reviewed your situation with our City Attorney and unfortunately there is not anything we can do to help you out of this situation. I can understand how you may have misconstrued approval of your Occupational Tax (Business License) as approval of the short term rentals, especially with being told verbally it was ok in 2017. However, there are several places at the City where this is reinforced, specifically on the Occupational Tax application form. It states "You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location." The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below. Please let me know if you have any questions or concerns and please let know if you have any further questions.

Sincerely, Meg

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Megan Leatherman, MCRP
Director
Community Development Department
503-338-5183.
mleatherman@astoria.or.us
1095 Duane Street
Astoria, Oregon 97103
www.astoria.or.us

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

---

From: Diane Christiansen <dchristiansen@astoria.or.us>
Sent: Wednesday, January 26, 2022 1:22 PM
To: Bob and Cindy Magie <exchangeastoria@gmail.com>

Cc: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Code Enforcement | 1555-1569 Exchange

Dear Bob and Cindy,

This email is in regards to the properties you have listed on Airbnb, located at 1555-1569 Exchange Street. Items underlined and in blue are links.

Per your email correspondence with Barbara Fryer on 12/15/2020, the two whole house rentals referred to as "Downtown Astoria Cottages," located at 1565 Exchange and 1569 Exchange are allowed to continue to operate as short-term rentals.

Per Astoria Development Code 2.390(J), "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

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However, the multi-family building, addressed 1555-1563 Exchange, was not authorized by Barbara, and is not in compliance with the above referenced city codes. Whether or not you interpreted Barbara's email to include 1555 Exchange is inconsequential to the City as it is violation to multiple City Codes. When the Occupational Tax/Business License was approved, it was also approved under the intent of approving 1565 Exchange and 1569 Exchange (Downtown Astoria Cottages) only.

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If you have questions, please contact us to set up a meeting.

EXHIBIT A
L-222

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Diane Christiansen
Administrative Assistant
Community Development
1095 Duane Street
Astoria, Oregon 97103
503-338-5183
dchristiansen@astoria.or.us
www.astoria.or.us

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ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

EXHIBIT A

PORTLAND OR 972

25 FEB 2022 PM 3 L

UNITED STATES POSTAGE

PITNEY BOWES

02 1P $ 000.53⁰

0000937221 FEB 25 2022

MAILED FROM ZIP CODE 97205

del

10

Attn: Susan B

City of Astoria
City Hall
1095 Duane Street
Astoria, Oregon 97103

RECEIVED
BY
FEB 28 2022
FINANCE DEPT.

97103-45849

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE, Petitioners, v. CITY OF ASTORIA, Respondent.	LUBA No. 2022 - 105 **MOTION TO STAY PROCEEDINGS**

Petitioners hereby move LUBA to stay proceddings in this matter to allow the parties additional time to resolve a related case. This stay shall remain in place until one of parties notifies LUBA to reactivate the appeal. Counsel for the Petitioners has conferred with the other party to this appeal and all parties consent to the relief requested in this motion.

DATED this ____ day of March, 2022

BATEMAN SEIDEL MINER BLOMGREN CHELLIS & GRAM, P.C.

By:_____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

CITY OF ASTORIA

By:_____
Blair J. Henningsgaard, OSB#782406
Attorneys for Respondent

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

IT IS SO ORDERED.

By:_____

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 1, 2022, I filed the original of this **MOTION TO STAY PROCEEDINGS**, together with one copy, via First Class U.S. Mail, postage prepaid to the following:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

I further certify that on March 1, 2022, I served a true and correct copy of the above **MOTION TO STAY PROCEEDINGS** by First Class U.S. Mail, postage prepaid to the following:

Blair Henningsgaard
Attorney at Law
P.O. Box 1030
Astoria, OR 97103

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

From: Diane Christiansen
To: Austin Kettleson
Cc: Megan Leatherman
Subject: RE: Airbnb complaints
Date: Thursday, April 14, 2022 10:31:34 AM

Austin,

The Magie's have filed an appeal with LUBA, the Land Use Board of Appeals, regarding the code enforcement case for the Airbnb's in the apartment complex. We are unable to take action until the appeal has been resolved.

The City is unable to assist in tenant-landlord disputes. I believe you called this morning and I gave you the Oregon Law Help phone number – my advice is to start with them. Another option would be to hire an attorney and pursue civil court.

Diane

From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Thursday, April 14, 2022 8:34 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: Re: Airbnb complaints

> **Caution:** ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

I've tried that In the past doesn't really amount to anything. Are then any updates on there ability to air b n b ? They've opened an additional one in the apartment building. They've also been sending me really ridiculous non compliance violations so they can evict me as soon as possible

Sent from my iPhone

> On Mar 18, 2022, at 9:49 AM, Diane Christiansen <dchristiansen@astoria.or.us> wrote:
>
> Austin,
>
> I came across this on Airbnb.com. Neighbors can submit complaints directly to Airbnb here: https://www.airbnb.com/neighbors.
>
> There isn't anything we can do right now since it's in the legal realm but you could make complaints on Airbnb. It might help.



ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

Application for Verification of Non-Conforming Use

Owner: Gilbaugh LLC

Business Name: Astoria Downtown Cottages

Applicants: Bob and Cindy Magie

Address: 1555-1569 Exchange Street

Applicant's Representative: Carrie Richter, Bateman Seidel, 1000 SW Broadway St., #1910, Portland, Oregon, 97205

The applicants seek verification that the Magies have a vested right to a 6-unit short term rental use occurring at 1555-1569 Exchange Street may remain.

A 6-unit Short-Term Residential Use is a Fully Vested Lawful, Non-Conforming Use at this Site

Astoria Development Code (ADC) 3.160 acknowledges that non-conforming uses may continue, notwithstanding subsequent changes in the law that might restrict that use.

> "NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."

The Magies purchased 1555-1569 Exchange Street in 2015 with the intention of operating 6 short-term residential units. As the attached history of activity shows, thereafter the Magies began the slow and arduous process of restoring and improving these properties for short term rental use.

> "USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun."

This definition makes clear that a use starts when an applicant begins taking the steps necessary to operate this use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, this use started in December 2016 when the Magies purchased and improved an adjacent property adding 5 off-street parking spaces (coupled with the existing on-street spaces resulted in 12 total spaces or 2 per unit) pursuant to the Magie / Helligso Parking Plan 2017.

In 2016, the ADC did not impose any limitation on short-term rentals. In the C-3 zone, "motel, hotel, bed and breakfast inn or other tourist lodging facility and associated uses" were permitted outright without limitation. As soon as units were adequately improved to function in short-term use they were so operated. Before Airbnb was the popular method of locating customers, the Magies accommodated travelling nurses or Coast Guard members for short-stays, sometimes for a couple of month or by the week.

On multiple occasions, the City Planning Staff reinforced that short-term rental use of the property could continue unrestricted and without further review including:

- 10-27-2017 – Occupational Tax Application Approval for 1565 Exchange Street and 1569 Exchange Street
- 12-23-2017 – Mike Morgan sign-off that off-street parking was designed and operated to support a commercial short-term rental use
- 7-01-2020 – Heidi Dlubac confirmed that since the project was initiated prior to 2019, the effort could continue
- 12-15-2020 – Barbara Fryer email that the short-term rental use occurring on 1555-1569 may continue
- 12-15-2020 – Transient Room Tax registration is issues by the City for 11 bedrooms – the total number of bedrooms contained within the 6 units.

Over the past 5 years on multiple occasions, different staff from different departments have all reached the same conclusion – the Magies 6 short term rental units are allowed. The Magies first learned of the change in the City's code on July 1, 2020 and learned of the City's changed position to apply these amendments to bar short term use on January 10, 2022. The Magies acted in good faith in reliance on the previous code, City staff representations and lodging tax sign-offs.

As the activity chronology, use table and 3rd party letters from others also shows, the Magies have been carefully and continuously repairing and restoring these structures as necessary to operate them as short-term rentals. These records and photographs show that putting these structures into short term use required the expenditure of over $335,000 including construction of an off-street parking lot, basement and foundation stabilization, installation of new hip roofs and siding, window restoration, furnishings, and kitchen appliances such as coffee pots and silverware. These costs represent a substantial portion (much over half) of the total costs necessary to open all 6 units for operation and all of these efforts were expended before April 2019, the date on which the ADC 2.39.10.J amendments took effect. These costs do not include all of the hours of sweat equity and volunteer labor, which was, again, accomplished in good faith and without any notice that the amendments adopted in 2019 imposed any limitation.

Based on the foregoing, the Magies have established vested right to continue operating a 6-unit short term residential use on their Exchange Street property.

The 4-Plex was Originally Constructed as a "Motel" and May Continue under ADC 2.39.10.b

In addition to being a lawfully vested, short-term use, the units contained within the 4-plex fall within the definition of a "motel" that can continue, regardless of whether some of the units may have historically be placed for some period into permanent residential use.

The limitations on short-term accommodations under the ADC 2.39.10.J, provide as follows:

> "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:
>
> 1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.2.

2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."

The term Motel is defined in the ADC as:

> "MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building."

The fourplex structure has rooms that have direct access to the outside and is (and has been) made available to guests for compensation and as such it is a "motel." ADC 2.39.10.J.2 provides that where a "motel" was originally constructed, it can continue to be put to motel use. Since the definition of "motel" does not distinguish between short-term or long-term renter occupancy, the four-plex qualifies as a "motel" at the time it was originally constructed, just like it does today.[1] As such, short term rental use of the "motel" fourplex may continue without restriction.

[1] In a January 10, 2022 letter, the Community Development Department opines that the fourplex cannot be a "motel" because it was originally constructed as "apartment dwellings (c 1890/1920) and has been occupied as a long-term rental property for residents." The basis for this statement is not clear. Certainly the property tax classification code bears no relation to the actual use and, like the definition of "motel," it is does not impose any long or short-term distinction in any event.

Gmail

Bob and Cindy Magie <exchangeastoria@gmail.com>

Short Term Rentals

Sean Fitzpatrick <sfitz97103@gmail.com> Tue, Apr 26, 2022 at 10:13 AM
To: Exchangeastoria@gmail.com

Hi Bob and Cindy,

Thanks for touching base about your short-term rentals. My notes reflect that we were discussing your project as early as June of 2015. You were purchasing or had recently purchased the lot on 16th to provide the parking required for short term rentals. The lot in itself was too small to build on, so it had no value to the owner/seller. The highest and best use was for parking for your units. The seller of the lot lived out of the area and I was impressed that you had gone to such great lengths to find, contact and negotiate with her. I believe you later did a "good neighbor" lot line adjustment to allow off-street parking for the owner of the small house on 16th which is adjacent to your property, and to allow for a more efficient parking layout for your short term tenants.

City staff stated that short term rentals were an outright use in the commercial zoning. As your project would not come before the Planning Commission, we could discuss the project and there would be no conflict if I advised you in my role as an advisor with the SBDC.

We discussed the driveway apron and concrete work necessary to accommodate the parking requirement. There was an issue with the initial flatwork on city property, and staff required removal and re-pouring of the concrete apron.

The main building and the two smaller buildings needed considerable work. While Roberta loved her properties, she did not appear to have (or chose not to spend) the capital necessary to do ongoing maintenance and large repairs. The buildings, as a result, had several decades of deferred maintenance, including foundation issues in the main building. The siding on the main building and one of the smaller buildings had considerable rot, the roofs needed maintenance and/or replacement, all of the buildings needed paint. The interiors were very dated and at least one of the units was not occupied or habitable in the condition in which you purchased. All units would need new paint, flooring and appliances, in addition to updating to plumbing and electrical.

The estimated costs at that time were in the hundreds of thousands of dollars, which would be close to or exceed $1,000,000 today. The only way that you could repair and restore the buildings was to use them as Short Term Rentals, as market rents could not cover the costs to operate- mortgage, property taxes, insurance, utilities, maintenance, repairs, etc.

As we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals. We discussed that hospitality was very different from habitation, so you would have to study the differences in laws pertaining to hospitality, and learn how to be a good neighbor and good host.

It's interesting reflecting back on what you have accomplished, from what you started with to what it has become. All of Roberta's properties- including the six units on Exchange Street- had been offered to me in 2007. I turned them all down, except The Franklin, due to the extreme amount of work and the high costs to cure the deferred maintenance. The property was completely neglected from that time until you purchased the buildings and started pouring money into them seven years later. The buildings look so much better and are so much safer now than they were 15 years ago! A great contribution to the neighborhood as it transitions from housing to commercial.

I hope this information is helpful. Please let me know if you have other questions!

Sincere Regards,

Sean Fitzpatrick, General Manager
Wecoma Partners, Ltd.

PACIFIC CAPITAL MANAGEMENT

April 28, 2022

Robert & Cynthia Magie
PO Box 532
Astoria, Oregon 97103

Dear Bob & Cindy,

Following up on our recent conversations, this letter documents the professional property management relationship between PCM, INC dba Pacific Capital Management, a real estate investment management firm licensed in Oregon, Washington and California and Gilbaugh, LLC and it's property located at 1555-1569 Exchange in Astoria.

PCM, INC managed the property at 1555-1569 Exchange from May 2018 through November 2021 while you were attending to other business and family matters. During this period of management, we discussed your business plan for using the property as short term rentals and you showed me your business licenses for the short term rentals. We worked together on upgrading and updating units in a manner that would set the units up for use as future short term rentals as tenants vacated the units and new tenants were put into place.

We also discussed from the beginning whether PCM would provide the short term management for the units or whether another local service provider would be a better fit.

As you and your family were winding down your other business and family matters and starting to take over more management and upgrades at the property, we started to slowly transition the units, one at a time, to short term rentals.

In summary, during our business relationship, your repeatedly stated intention and actions were to transition the units at the 1555-1569 Exchange property to short term rentals.

Please let me know if you or anyone else has questions about the above.

Sincerely,

Shannon Fitzpatrick,
Principal Broker
PCM, INC

	Purchased	Off-street Parking to serve 6 STRs (5 more spaces)	Exterior and structural stabilization work	Driveway barriers and finish work	Interior STR renovations incl kitchen / baths	Window sill replacement effort (First treated, bondo and paint; second wrap in metal and paint)	Date of first use by short-term tenant
4-plex							
1555 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	June 2020	6-1-2020 and 4-15-2021	12-1-2021
1557 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	August 2021	6-1-2020 and 4-15-2021	4-17-2022
1559 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	Jan 2019	6-1-2020 and 4-15-2021	[1]
1561 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	Mar 2019	6-1-2020 and 4-15-2021	3-15-2022
Cottages							
1565 Exchange	2015	2016-2017	[2]8-1-2017, 7-05-2018 to 2-1-2019, 6-1-2020	11-13-2019	5-28-2015		9-1-2015
1569 Exchange	2015	2016-2017	[2]7-05-2018 to 2-1-2019, 6-1-2020, 2-1-2021	11-13-2019	4-27-2018		4-21-2021

[1]Other than maintenance calls and damage repair we have not had access to this unit, we have been unable to remove the tenant since the no cause eviction was eliminated.

[2]Both cottages were impacted by large exterior and structural stabilization work effort done on the 4 plex as driveway was filled with supplies, contractors used the parking and their greenspaces were used for staging and scaffolding.

H.O. Record Pg# 110

Progress and Development of short-term rentals on 1555 to 1569 Exchange St. Astoria, Oregon.
Prepared by Robert and Cynthia Magie
April 28, 2022

*03-01-2014 Through 08-27-2017. We established and operated a short-term rental (STR) located in a converted shop area at our personal residence at 92009 Hwy 202 Astoria Oregon. We were very successful with this endeavor and intended to replicate this with a future property.

*03-27-2015. Purchase 1555 to 1569 Exchange Street Astoria Oregon (4plex and two small houses Figure 1). Purchase was made by cashing in my retirement after 20yrs working for the fed gov. for the down payment.

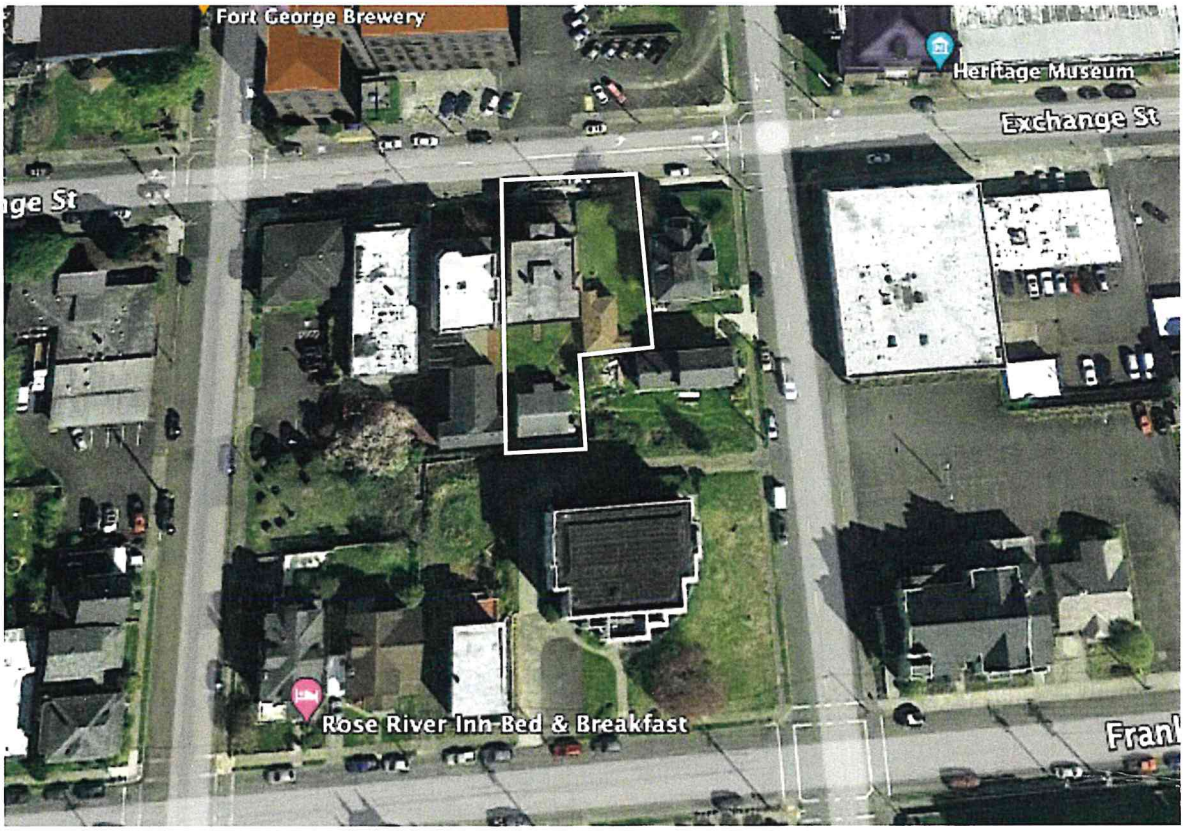


Figure 1. Subject property with boundaries in white.

This property is located in a commercial zone (C3). See below excerpt from a February 2022 link to the Astoria City code and uses permitted outright item 10;

City of Astoria
Development Code
C-3 Zone
Article 2 – Page 24
(Adopted 10-8-92)
C-3: GENERAL COMMERCIAL ZONE
2.385. PURPOSE.
This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more

appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.
2.390. USES PERMITTED OUTRIGHT.
The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:
1. Business service establishment.
2. Commercial laundry or dry cleaning establishment.
3. Commercial or public off-street parking lot.
4. Communication service establishment.
5. Construction service establishment.
6. Eating and drinking establishment.
7. Educational service establishment.
8. Family day care center in single-family, two-family, or multi-family dwelling.
9. Home occupation in existing dwelling.
10. Motel, hotel, bed and breakfast, inn, or other tourist lodging facility and associated uses.
11. Multi-family dwelling.
12. Personal service establishment.

*05-28-2015. We purchased a vacant lot that connected the southeast side of the Exchange property to 16th Street to create off street parking for our tenants/guests. Development of this parking was recommended and potentially would be required for short-term rentals as per personal communication with the then Community Development Director Kevin Cronin in late summer. Thus, we initiated development of the driveway/parking area. Surveys, legal process for land swap and recording, and initial lot preparation and planning took many months to complete. While the driveway was in process, we began renovating 1565 Exchange St. for conversion to an STR.



Figure 2. Empty lot on 16th street purchased for the purpose of creating off street parking.

*09-01-2015. We completely renovated the interior of 1565 Exchange Street using all of Cindy's inheritance from her mother's estate (about $35). At this time there was little if any regulation of STR's in Astoria. After fully furnishing, we advertised and used the house as a short-term rental as of 12-01-2015 (see below flyer)



Figure 3. Flyer advertising our furnished Short-term Rental.

*12-23-2016. After survey and lot line adjustment with the neighbor, driveway construction and concrete apron/sidewalk were completed as per requested and approved by the City (City employee "Dean" was there during the concrete pour and said "looks good"). See Figure 4.



Figure 4. Finished driveway with sidewalk and concrete entry as per city specifications facing west.

*05-05-2017. We were notified by Kevin Cronin that his office did not have a finalized driveway permit and that, after a recent inspection, our sidewalk was approximately 3degrees too steep for ADA compliance. The concrete contractor could not find a copy of the permit they submitted prior to the pour. Thus, after much discussion and frustration we removed and repoured that section concrete.

During a subsequent site inspection Kevin Cronin and I discussed the parking improvement this effort would provide the neighborhood. Kevin mentioned that our 4plex and two houses were allotted 1.5 spaces on Exchange Street since they were long existing structures. He mentioned that our additional 5 new spaces in the back would more than compensate for the two spaces per unit that are required for our 6 potential STR's (14 spaces total, but only 12 needed for compliance). Additionally, our neighbor Jake Helligso was able to create 3 spaces on the land we traded him (win/win for all--only two shown on his property in the parking plan below but his side was updated later to 3)

*08-10-2017. Last concrete pour (Figure 5)



Figure 5. Finished driveway with repoured sidewalk section as per city specifications facing east.

*10-23-2017. We finished development of the lot to a driveway and off-street parking for both Magie and Helligso (neighbor) and it was approved by Mike Morgan (interim Community Development Director). See final parking plan below (Figure 6) and inserted email.

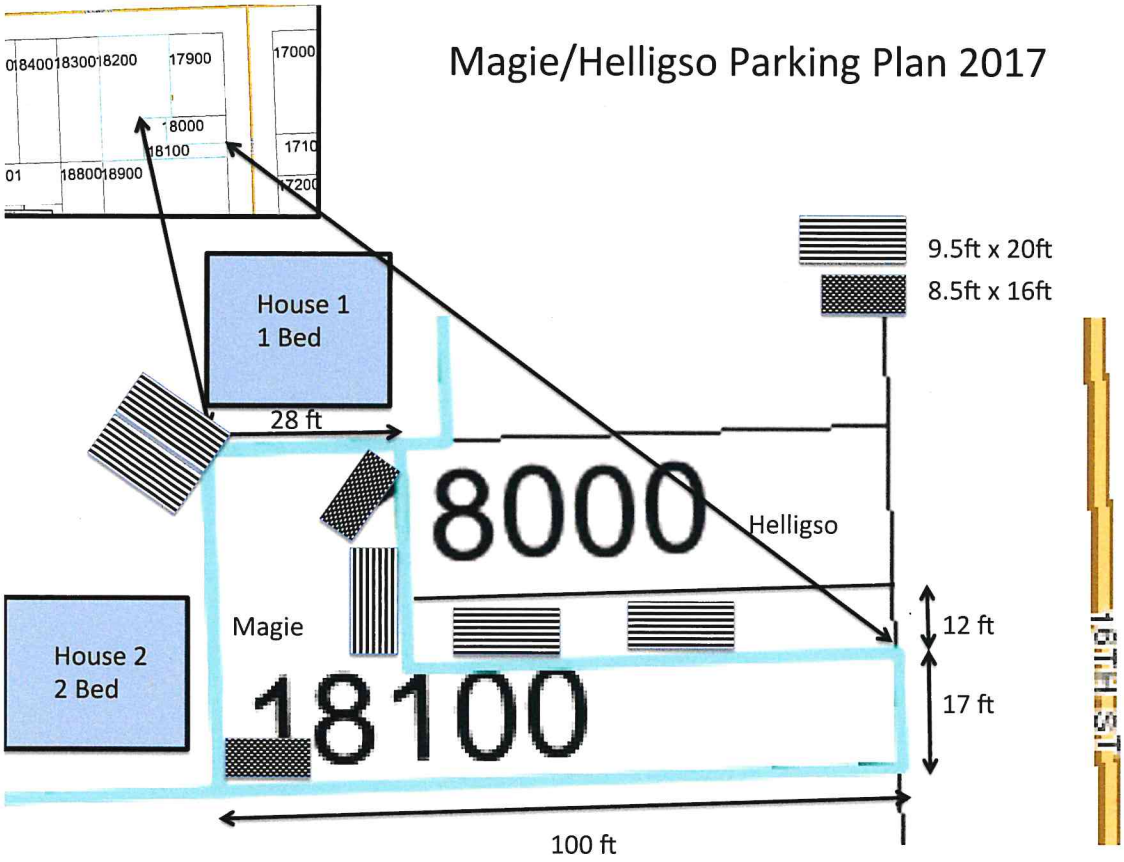


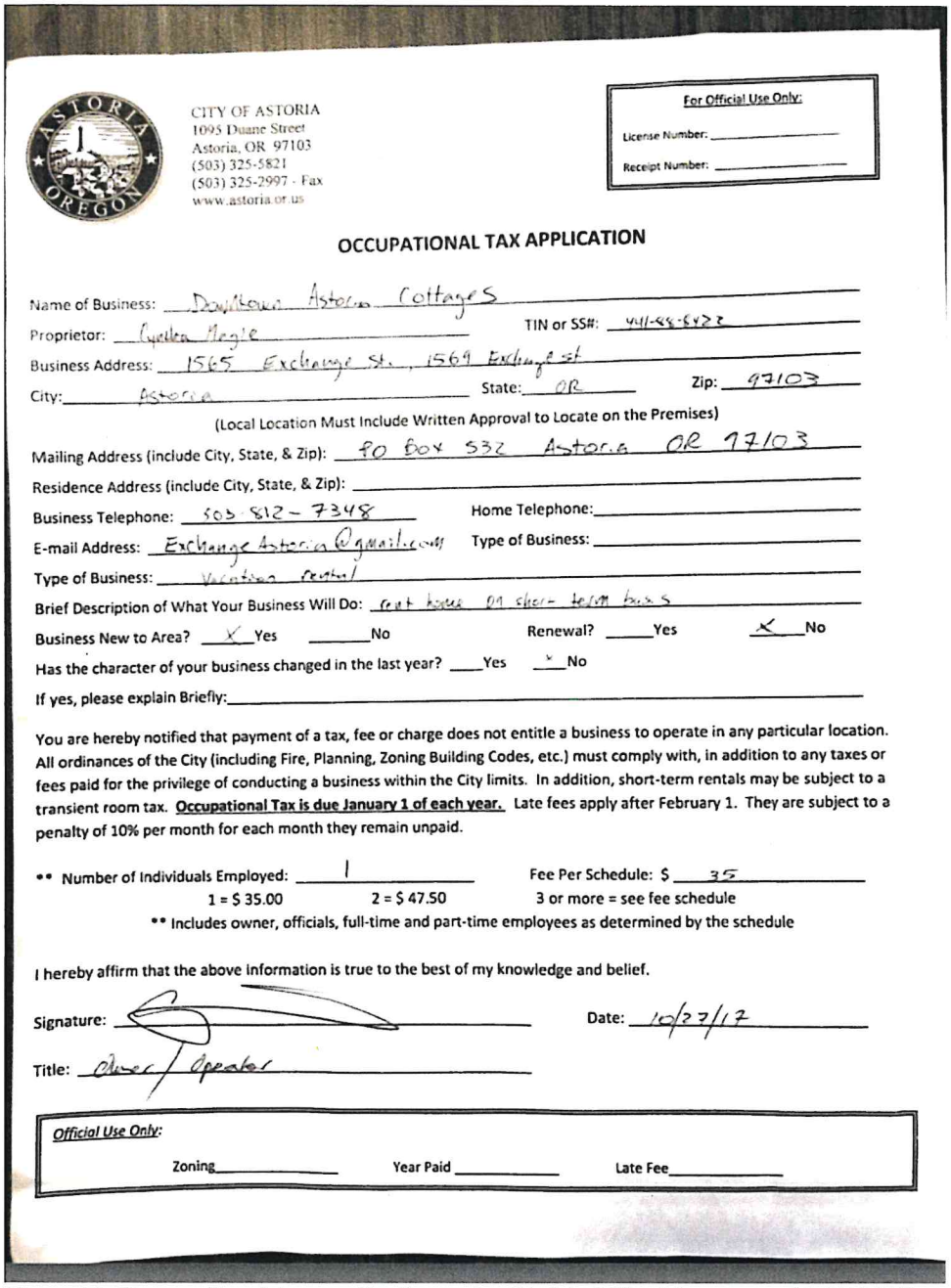
Figure 6. Final parking plan approved by City.

Mike Morgan <mmorgan@astoria.or.us> Oct 23, 2017, 1:48 PM

to me

I approved your parking plan and put it in the address file for future reference. If you want to bring in a map showing your lawn areas I'll approve that too.

*10-27-2017. After the parking plan was approved and, as per Mike Morgan's request, we sent him the Occupational Tax Application for our two short term rentals (see Figure 7). We also received our Occupational Tax Receipt (Figure 8). The License and Customer number are the same numbers we use today.



CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: _____
Receipt Number: _____

OCCUPATIONAL TAX APPLICATION

Name of Business: Downtown Astoria Cottages
Proprietor: Cynthia Magie TIN or SS#: 411-88-8428
Business Address: 1565 Exchange St. 1569 Exchange St
City: Astoria State: OR Zip: 97103
(Local Location Must Include Written Approval to Locate on the Premises)
Mailing Address (include City, State, & Zip): PO Box 532 Astoria OR 97103
Residence Address (include City, State, & Zip): _____
Business Telephone: 503 812-7348 Home Telephone: _____
E-mail Address: Exchange Astoria@gmail.com Type of Business: _____
Type of Business: Vacation rental
Brief Description of What Your Business Will Do: rent house on short-term basis
Business New to Area? X Yes ____ No Renewal? ____ Yes X No
Has the character of your business changed in the last year? ____ Yes X No
If yes, please explain Briefly: _____

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. **Occupational Tax is due January 1 of each year.** Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

•• Number of Individuals Employed: 1 Fee Per Schedule: $ 35
1 = $ 35.00 2 = $ 47.50 3 or more = see fee schedule
•• Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

Signature: _____ Date: 10/27/17
Title: Owner / Operator

Official Use Only:
Zoning_____ Year Paid _____ Late Fee_____

Figure 7. Occupational tax application submitted to Mike Morgan on 10-27-2017.

CITY OF ASTORIA **Occupational Tax Receipt** **License # 5001435**

Type of Business	Issue Date	Date of Expiration
Vacation Rental	10/27/2017	12/31/2017

Customer # 019664

Downtown Astoria Cottages
PO Box 532
Astoria, OR 97103-0532

City Manager

NOTICE: THIS OCCUPATION TAX IS LEVIED FOR REVENUE PURPOSES ONLY AND DOES NOT IMPLY THAT THE HOLDER HAS COMPLIED WITH ZONING, BUILDING, AND ALL OTHER CITY REGULATIONS. THE HOLDER SHOULD CONSULT WITH THE BUILDING, ZONING, AND FIRE DEPARTMENT OFFICIALS FOR INFORMATION REGARDING OTHER CITY REGULATIONS.

THIS RECEIPT MUST BE POSTED IN A CONSPICUOUS PLACE AT THE LOCATION. IT IS NOT TRANSFERABLE OR ASSIGNABLE.

Figure 8. Occupational Tax Receipt received on 10-27-2017.

*04-27-2018. Our contractor Sean Sullivan began the process of re. The remodel included rot repair, all new flooring throughout, and new interior paint.

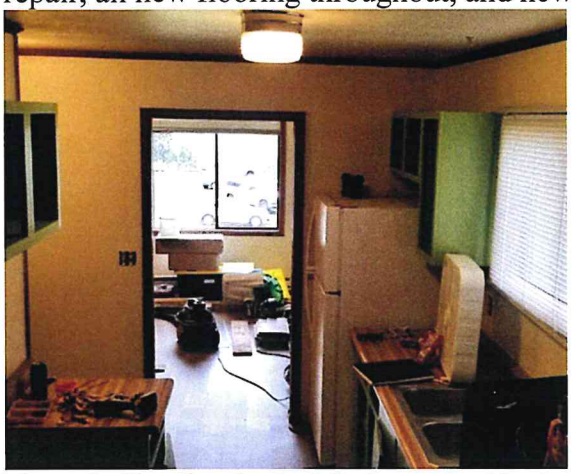


Figure 9. New flooring installation and cabinet paint and repair, 1569 Exchange St.

*07-05-2018. We moved into 1561 Exchange Street to initiate massive repairs and restoration to the 4 plex building (also referred to as the Gilbaugh building).

When we purchased 1555-1569 Exchange St. in 2015 (4plex and two cottages), the 4-plex building had suffered at least 5 decades of neglect. The foundation was inadequately supported with an earthen dugout basement, approximately 65% of cedar shingle siding were rotten and needing replacement, the hip roofs, gutters and water management systems were rotted/failing, and most of the wooden windows were either rotten and needed to be rebuilt and/or the glazing had failed (see figures 10 through 16). We knew this work needed to be done so we rolled up our sleeves and sold our commercial tuna/scientific support vessel for $35k to finance this effort.



Figure 10. photos displaying poor condition of inadequately supported dugout basement with terracotta brick foundation 2018.



Figure 11. Photo of condition of unit 1559 in Gilbaugh 2018.

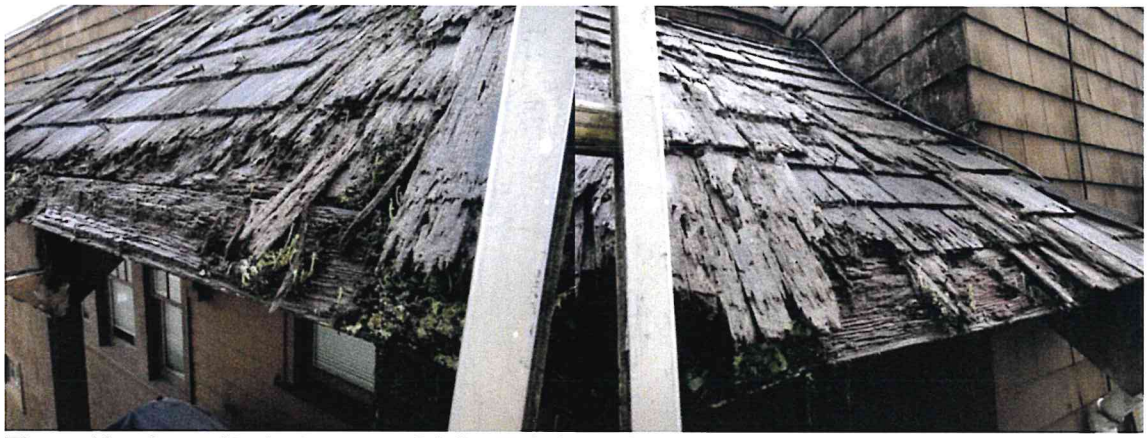


Figure 12. photos displaying rot and failure of hip roofs and gutters.



Figure 13. Front Exterior photo displaying poor condition of Gilbaugh building prior to 2018.



Figure 14a. Front Exterior photo displaying scaffolding effort to access and restore the exterior, October 2018.



Figure 14b. Front Exterior photo displaying scaffolding effort to access and restore the exterior.



Figure 15. Cindy and Mom reglazing windows, September 2018.



Figure 16. Setting forms and pouring concrete to stabilize the earthen dugout basement, November 2018 and nearing completion of basement stabilization, February 2019.



Figure 17. Finishing the exterior, October/ November 2018.



Figure 18. Before and after exterior work.



Figure 19. Restoration of unit 1559 in Gilbaugh building (includes kitchen and bath), January 2019 ($35k).

*02-01-2019. Professional installation of dryer vent pumps (5k) to divert dryer moisture from the basement to the exterior.

*03-06-2019. Our contractor, Ryan Eccles completed a kitchen (newly built cabinets, countertops, electrical and wainscoting) and bathroom remodel in 1561 Exchange St.



Figure 20. Restored countertop and new wainscoting and custom cabinets 1561 Exchange St.

*10-13-2019. Our handyman began framing and drywalling new walls and storage areas in the newly reinforced basement to create dry storage to store supplies for our short-term rental business. He also continued the buildout of our parking area by constructing a retaining wall/parking barriers and marking the parking spaces.

*05-01-2020. We moved into our STR at 1565 Exchange St. and further improved the property with a new window, repaired rotten window sills, some plumbing repairs, some exterior painting and updated interior furnishings.

*06-01-2020. We renovated the kitchen and bathroom and had professionally painted (spent over 2k) in 1555 Exchange.

*07-01-2020. After looking at the city code we noticed a change in the verbiage that we were unaware that had happened. The city amended the code to state 2.390.10" ((a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel). This was done without warning or notification to us as we had been developing our project for nearly 4 years at this point.

We called the city for clarification on our use and the new homestay license requirements and were directed to talk with Heidi Dlubac. She said "that we did not need a homestay license as we were zoned C3 and that we could continue to use our places (and our project) as short-term rentals as this is an outright use in the zone"

*08-01-2020. We then moved to another recently vacated unit at another property that needed much work and, after finishing improvements, we continued to use 1565 as a short-term rental.

*12-15-2020. Below is an email I sent to my property manager to describe problems encountered in late 2020 and my final correspondence with Barbara Fryer (she sent a long internal email chain; this is just the last email).

Bob and Cindy Magie <exchangeastoria@gmail.com> Dec 17, 2020, 3:38 PM

to **Shannon**, me

Hi Shannon,
Just thought I would keep you in the loop regarding our short term rentals on exchange street. On the afternoon of December 14th Cindy called the city of Astoria and tried to pay our occupancy tax on our vacation rentals on exchange street. They were due on the 15th (paid via check in the mail in prior months) and she was hoping to pay by phone as we accidently waited until the last minute to get them paid. Cristine Shade told Cindy that there was a problem with our account, that we do not have a file number and that we would need to talk to Barbara Fryer in the morning.

After an evening spent locating all of our documentation, Cindy and I called Barbara on the morning of the 15th. Barbara said that we did not have legal vacation rentals, because they were located in R3 zoning and that we would need to stop using them accordingly. I then mentioned that the properties are in C3 zoning and she responded by saying "Okay". After a short delay she then mentioned that according code "2.390.10" ((a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel) we are still out of compliance. I then responded that we applied for and received a business license in October of 2017 for our Downtown Astoria Cottages (License # 5001435) well before the implementation of this code change. After another pause she then said "since your license was valid before the code change, you are in compliance; my apologies and I will send an email to the staff notifying all that you are in compliance and get a file number issued".

I then asked Barbara to send us an email confirming our conversation and she apologized again and said she would do so. The below email string is what Barbara sent to us and includes the discussion regarding our short term rentals.

Also, I have attached our original business license receipt from October of 2017 and the transient room tax registration form that we were asked to fill out to receive a file number (File #118) and also the completed form. I will also forward you the email from Cristine Shade that notifies us of our assigned file number.

FYI,
Bob Magie

From: **Barbara Fryer** <BFryer@astoria.or.us>
Date: Tue, Dec 15, 2020 at 9:02 AM
Subject: FW: Astoria Downtown Cottages
To: exchangeAstoria@gmail.com <exchangeAstoria@gmail.com>
Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

I neglected to mention in the above email to my property manager that while I was on the phone with Barbara, she said she cannot approve just two of our units since all 6 are on one tax lot. I mentioned to her that our intention was to convert all 6 units (two cottages and the 4plex) to short-term rentals, but had been working on this process slowly and as tenants moved out on their own and a had intended (before the code was, unknowingly to us, amended) to continue working with the city to finish our project. She then said the approval would be for all units on the tax lot. We then filled out the subsequent document and received our file number (Note; 11 bedrooms on the number of rooms line, all 6 addresses listed and our license and customer numbers are those issued in 2017). Also note that this was a fillable form with some formatting problems.

CITY OF ASTORIA
1095 DUANE STREET
ASTORIA, OR 97103

Phone: (503) 325-5821
Fax: (503) 325-2997

FOR OFFICE USE ONLY
FILE# 118
OT # 5001435
Cust# 19664

Transient Room Tax Registration

12/15/20

Date

1. Owner Name Gilbaugh LLC Phone# 503-717-3711
2. Business Name Astoria Downtown Cottages
3. Rental Address 1555-1569 Exchange st Astoria, OR 97103
4. No. of Rooms 11 bedrooms
5. Name of manager Cindy Magie Phone # 503-717-3711
6. Mailing Address (if different) PO Box 532 Astoria OR 97103
7. Email Address ExchangeAstoria@gmail.com
8. How long have you owned or operated this business? Oct 2017
9. Type of Organization ☐ Individual ☐ Partnership ☑ Corporation

Names of partners or corporate officers:

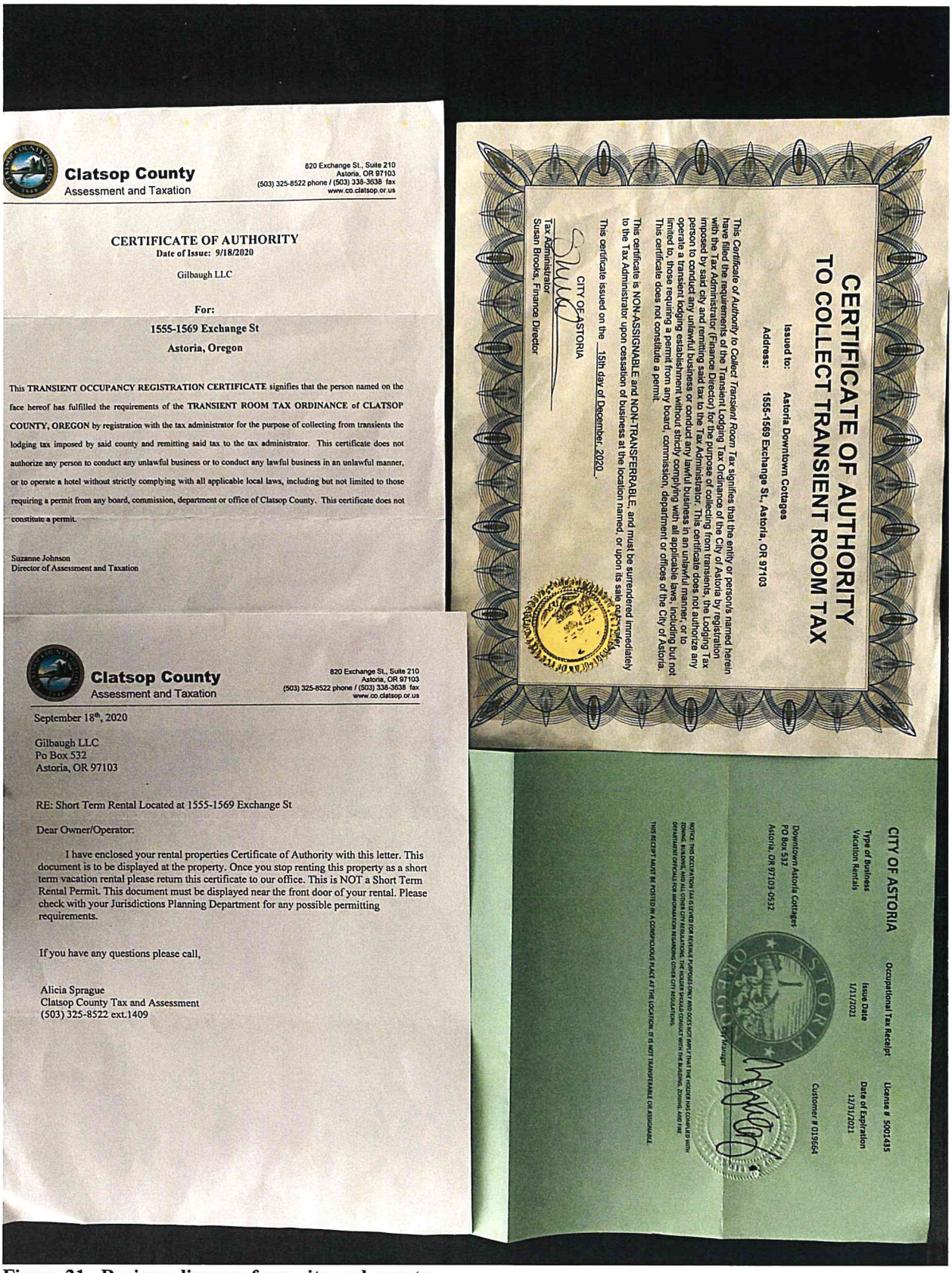
Name	Title	Complete Address
Robert Magie	Member	po box 532, Astoria, OR
Cynthia Magie	Member/reg agent	po box 532, Astoria OR

10. If you own more than one business subject to the City of Astoria **Transient Room Tax**, please complete this section:

Name of Business	No. of Rooms	Business Address	Time Owned

Please note:
Astoria Code section 8.045.11 of the Transient Room Tax ordinance provides that a security deposit not to exceed twice the operator's estimated average monthly liability, or $5,000, whichever is the lesser, may be required for the period in which tax returns are filed. This security deposit, if required, may be in the form of cash, bond or other security deemed proper by the Tax Administrator (Finance Director).

Member/Registered Agent
Signature and Title of Owner or Officer



Clatsop County
Assessment and Taxation

820 Exchange St., Suite 210
Astoria, OR 97103
(503) 325-8522 phone / (503) 338-3638 fax
www.co.clatsop.or.us

CERTIFICATE OF AUTHORITY
Date of Issue: 9/18/2020

Gilbaugh LLC

For:

1555-1569 Exchange St
Astoria, Oregon

This **TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE** signifies that the person named on the face hereof has fulfilled the requirements of the **TRANSIENT ROOM TAX ORDINANCE of CLATSOP COUNTY, OREGON** by registration with the tax administrator for the purpose of collecting from transients the lodging tax imposed by said county and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all applicable local laws, including but not limited to those requiring a permit from any board, commission, department or office of Clatsop County. This certificate does not constitute a permit.

Suzanne Johnson
Director of Assessment and Taxation

Clatsop County
Assessment and Taxation

820 Exchange St., Suite 210
Astoria, OR 97103
(503) 325-8522 phone / (503) 338-3638 fax
www.co.clatsop.or.us

September 18th, 2020

Gilbaugh LLC
Po Box 532
Astoria, OR 97103

RE: Short Term Rental Located at 1555-1569 Exchange St

Dear Owner/Operator:

I have enclosed your rental properties Certificate of Authority with this letter. This document is to be displayed at the property. Once you stop renting this property as a short term vacation rental please return this certificate to our office. This is NOT a Short Term Rental Permit. This document must be displayed near the front door of your rental. Please check with your Jurisdictions Planning Department for any possible permitting requirements.

If you have any questions please call,

Alicia Sprague
Clatsop County Tax and Assessment
(503) 325-8522 ext.1409

CERTIFICATE OF AUTHORITY TO COLLECT TRANSIENT ROOM TAX

Issued to: Astoria Downtown Cottages
Address: 1555-1569 Exchange St., Astoria, OR 97103

This *Certificate of Authority to Collect Transient Room Tax* signifies that the entity or person's named herein have filled the requirements of the Transient Lodging Tax Ordinance of the City of Astoria by registration with the Tax Administrator (Finance Director) for the purpose of collecting from transients, the Lodging Tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, or to operate a transient lodging establishment without strictly complying with all applicable laws, including but not limited to, those requiring a permit from any board, commission, department or offices of the City of Astoria. This certificate does not constitute a permit.

This certificate is NON-ASSIGNABLE and NON-TRANSFERRABLE, and must be surrendered immediately to the Tax Administrator upon cessation of business at the location named, or upon its sale or transfer.

This certificate issued on the 15th day of December, 2020.

CITY OF ASTORIA
Tax Administrator
Susan Brooks, Finance Director

CITY OF ASTORIA — Occupational Tax Receipt — License # 5001435

Type of Business: Vacation Rentals
Issue Date: 1/11/2021
Date of Expiration: 12/31/2021

Downtown Astoria Cottages
PO Box 532
Astoria, OR 97103-0532

Customer # 019664

NOTICE: THIS OCCUPATION TAX IS LEVIED FOR REVENUE PURPOSES ONLY AND DOES NOT IMPLY THAT THE HOLDER HAS COMPLIED WITH BUSINESS, BUILDING, PLANNING, ZONING OR OTHER CITY REGULATIONS. YOU SHOULD CONSULT WITH THE BUILDING, ZONING, AND FIRE DEPARTMENT OFFICIALS FOR INFORMATION REGARDING OTHER CITY REGULATIONS.

THIS RECEIPT MUST BE POSTED IN A CONSPICUOUS PLACE AT THE LOCATION. IT IS NOT TRANSFERABLE OR ASSIGNABLE.

City Manager

Figure 21. Business licenses from city and county.

With the information we had, we feel anyone would have felt legal in our position. We always thought we were legal and have proceeded with our project as time has allowed and tenants have moved on.

*12-29-2020. We developed a window leak in unit 1559 which was causing damage to 1561. The windows had been previously treated and painted but as they are exposed to the most weather some of the paint had failed. To fix the problem we wrapped the window sills in metal. Since the other south facing windows were also showing signs of failing, we also protected them with metal sills (1555,1557,1559 and 1561). This process was slow and weather dependent and we finally finished this work in April 2021.

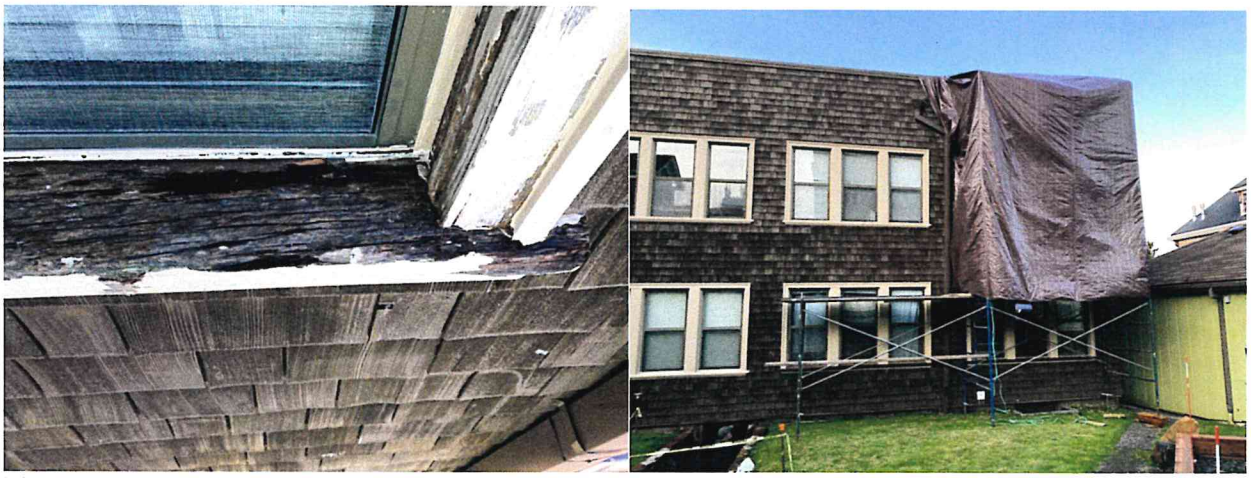


Figure 22. Window sill repair.



Figure 23. New metal (prior to cut and fitting) window sills installed and painted.

*03-01-2021. 1569 exchange vacated and we moved in to that unit and purchased about 20k in furnishings and décor and by April 15 it was an active short-term rental.

*11-01-2021. 1555 Exchange St. (in 4plex) vacated and we had been purchased furnishings and electronics to (about $20k).

*12-01-2021. Our "Historic Downtown Riverview Flat, No 1" began booking short-term guests on Airbnb.

We feel we have been developing our project since 2015, before being listed through Airbnb we had offered them as short-term rentals and advertised in multiple places including the hospital for visiting physicians and nurses. We are finally achieving our goal only to have the city cancel us over and over. We appreciate the move for more workforce housing, but we are zoned C3 and when we bought our property and invested over 300k of our equity and income from other property and business to develop this project, it was an outright use without all of the new stipulations. The income we make from STR's significantly subsidizes the rehabilitation of this property and supports our other long-term rental properties. This feels like theft. Furthermore, we have no appreciation for what is legal vs illegal as the city seems to be able to change your properties use without notice based on popular opinion. If we are approved for some or all of our STR's what's to stop the City from coming back and attacking us again once they've had another turnover of employees. We are very concerned about Megs statement " The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below." and thus feel we have no security with any of our STR's in our project. Please help.

Sincerely,
Bob and Cindy Magie

From: Megan Leatherman
To: Tiffany Taylor
Subject: RE: Home-Stay Lodging Lic & Code Enforcement
Date: Thursday, May 19, 2022 3:36:00 PM
Attachments: image002.png

Just so you are aware of the status Blair and I are going back and forth with Carrie Richter on some legal points. Once we come to a conclusion we will have detailed next steps. Until then there is nothing we can do but wait while something is worked out.

Sincerely, Meg

MLeatherman-Resized

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

From: Tiffany Taylor <ttaylor@astoria.or.us>
Sent: Thursday, May 19, 2022 10:52 AM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: FW: Home-Stay Lodging Lic & Code Enforcement

Meg,

Please contact Brian Colonna at: (360) 787-0756. He owns the property at 1585 Exchange, east adjacent to Bob and Cindy Magie's property.

He called with concerns about 1569 Exchange. See below for some of his comments:

- The cottage at 1569 Exchange (structure along the east property line) had a party of about 10 individuals this past weekend. Very disruptive. Never received notice of the change in use (which kicked off a discussion about zoning, HSL requirements, etc.).
- Brian reported that he has known the past tenants of the cottage and that the cottage was a residential use until last year, in violation of the Jan. 2019 code change. Cottage is now used as a vacation rental and is advertised as "River View…"
- Reported that the Magies approached him and another neighbor, Jacob Helligso (539 16th) last year with a proposal for "all of them to go in together and apply for a lodging license" and rent out their properties for vacation rentals.

He would like an explanation and status of the Magie's property. I told him it was under review and

that you would be the best person to speak with.

Let me know if you need more info about my phone conversation with Brian.

Thanks,
Tiffan

From: Tiffany Taylor
Sent: Thursday, May 19, 2022 10:34 AM
To: 'margaritacolonna@att.net' <margaritacolonna@att.net>
Cc: Megan Leatherman <mleatherman@astoria.or.us>; Diane Christiansen <dchristiansen@astoria.or.us>
Subject: Home-Stay Lodging Lic & Code Enforcement

Brian,

Thank you for your call today. As discussed, please see the attached noticing that was sent out on September 7, 2021 for the property located at 539 16th Street. The address recipients are obtained from the County Assessor's real property tax records. It's important to note that if there are any violations or code enforcement issues, it could jeopardize the license-holder's ability to continue operations and/or license renewals.

Regarding the cottage at 1569 Exchange, we are sorry to hear about the large gathering and disruption/noise over the weekend. Meg Leatherman, the Community Development Director, is currently in discussions with the property owners and should be able to provide you with more information.

In the meantime, if you have any further questions, please don't hesitate to reach out.

Regards,
Tiffany

https://www.astoria.or.us/footers/TaylorT2.png

Tiffany Taylor

From: Megan Leatherman
Sent: Monday, May 30, 2022 8:57 AM
To: Austin Kettleson
Subject: RE: 1559 exchange ST

Hi Austin,

I will pass this onto our attorney, Blair Henningsaard. I think it is wise that you have obtained an attorney.

Sincerely, Meg

Megan Leatherman, MCRP
Director
Community Development Department
503.338.5183
mleatherman@astoria.or.us
1095 Duane Street
Astoria, Oregon 97103
www.astoria.or.us
CITY OF ASTORIA
Founded 1811 • Incorporated 1856

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Monday, May 30, 2022 6:08 AM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: 1559 exchange ST

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Good morning Mrs Leatherman,
Just thought I'd let you know I received a lease termination notice last week. For the reason being mr Magie's father wants to live in my apartment as his full time residence and there no comparable units open in the same building. (Even though theirs 5 Airbnb's on property). Anyways I wanted to get my notice over to you to see if it would help the cities case in this matter. I've contacted a lawyer myself and since the legitimacy of his air bnbs are still in limbo I'm out of luck in this matter.

Very respectfully

Austin Kettleson
9716784591

HAGLUND KELLEY LLP

Portland Office and Mailing Address:
2177 SW Broadway
Portland, Oregon 97201

T 503.225.0777
F 503.225.1257
www.hk-law.com

Astoria Office Location:
800 Exchange Street, #330
Astoria, Oregon 97103

Michael E. Haglund
Michael K. Kelley (In Memoriam)
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmsheimer
Joshua Stellmon (Astoria)
Eric J. Brickenstein
Christopher T. Griffith
Shay Scott

Heather Reynolds (Astoria)
Of Counsel

LeRoy W. Wilder
Retired

May 19, 2022

Austin Kettleson
Danae Sunprunowski
1559 Exchange
Astoria, OR 97103

90-DAY TERMINATION-QUALIFYING OWNER REASON

Re: Your Tenancy at 1559 Exchange, Astoria, OR 97103

Dear Mr. Kettleson, Ms. Sunprunowski,

I represent Gilbaugh, LLC and Bob and Cynthia Magie, your landlords and the owners of the property in which you reside. In accordance with ORS 90.427, please consider this letter your 90-Day Notice of Termination for Qualifying Owner Reason because the landlord intends for a member of the landlord's immediate family to occupy the dwelling unit as a primary residence and the landlord does not own a comparable unit in the same building that is available for occupancy. More specifically, Mr. Magie's father will be occupying the unit as his primary residence.

Your tenancy will terminate at 11:59 p.m. on Sunday, August 21, 2022. Additional days have been added for service by mail. In accordance with ORS 90.427, a check for $1,456.00 is enclosed as fulfillment of your landlord's obligations under ORS 90.427(6)(a)(C).

If the recipient of this document is a veteran of the armed forces, assistance may be available from a county veteran's service officer or community action agency. Contact information for a local county veteran's service officer and community action agency may be obtained by calling a 2-1-1 information service.

Very truly yours,

Joshua J. Stellmon

JJS/akt
Enclosure

From: Bob and Cindy Magie
To: Elisabeth Adams
Subject: scheduling a meeting
Date: Monday, February 6, 2023 2:40:44 PM

> **Caution:** ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Good afternoon,

I am just checking in with you again regarding having a meeting with yourself and the city manager regarding resolving our Short term rental situation with the city.

Thanks
Cindy

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE,
Petitioners,

vs.

CITY OF ASTORIA,
Respondent.

RECEIVED
MAY 04 2023
Blair ... Board

LUBA No. 2022-015

ORDER

On February 25, 2022, petitioners filed their notice of intent to appeal a community development director determination that petitioners' use of their property was not allowed. On March 2, 2022, petitioners filed a motion to suspend this appeal to allow the parties additional time to resolve a related case. The motion asked that the case remain suspended until one of the parties notified LUBA to restart the appeal. The motion was signed by both the city and petitioners. On March 7, 2022, LUBA issued its order suspending the appeal. Not later than May 30, 2023, LUBA requests that the parties advise LUBA whether this appeal should be dismissed, reactivated, or the suspension continued.

If a party advises us that the parties wish to continue the suspension, or we do not receive a response to this Order, we will issue an Order continuing the suspension for an additional 28 days. At the conclusion of that 28-day extension, this appeal will be dismissed without further notice, unless one or more of the parties requests that the appeal be reactivated.

Dated this 2nd day of May 2023.

Michelle Gates Rudd

Michelle Gates Rudd
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Order for LUBA No. 2022-015 on May 2, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Blair J. Henningsgaard
Astoria City Attorney's Office
PO Box 1030
Astoria, OR 97103

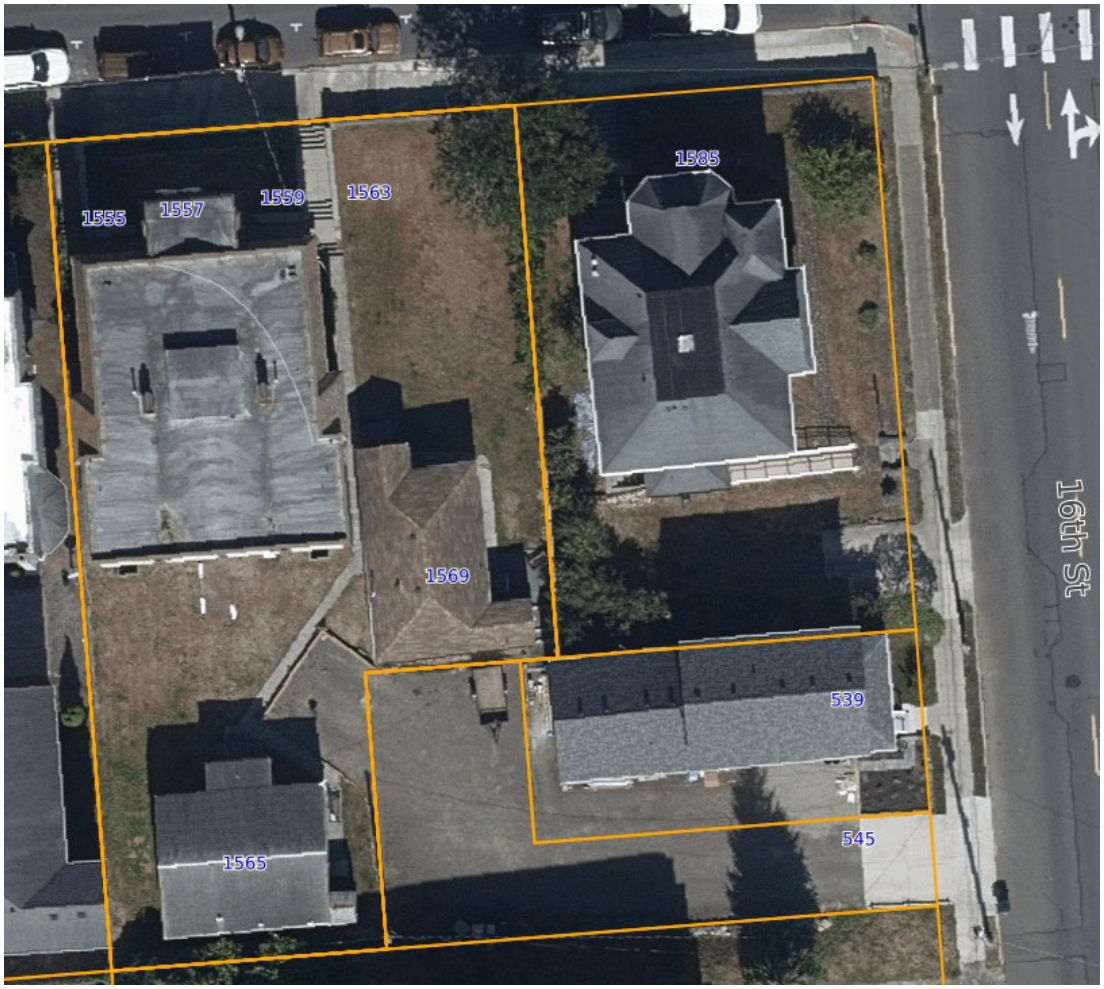
Carrie A. Richter
Bateman Seidel, P.C.
1000 SW Broadway
Suite 1910
Portland, OR 97205

Dated this 2nd day of May, 2023.

Erin Pence
Executive Support Specialist

Jessica Loftis
Executive Support Specialist

5/12/2023 – Address confirmation for each structure / Magie property





H.O. Record Pg# 140

Astoria Cottages: 1565 and 1569 Exchange





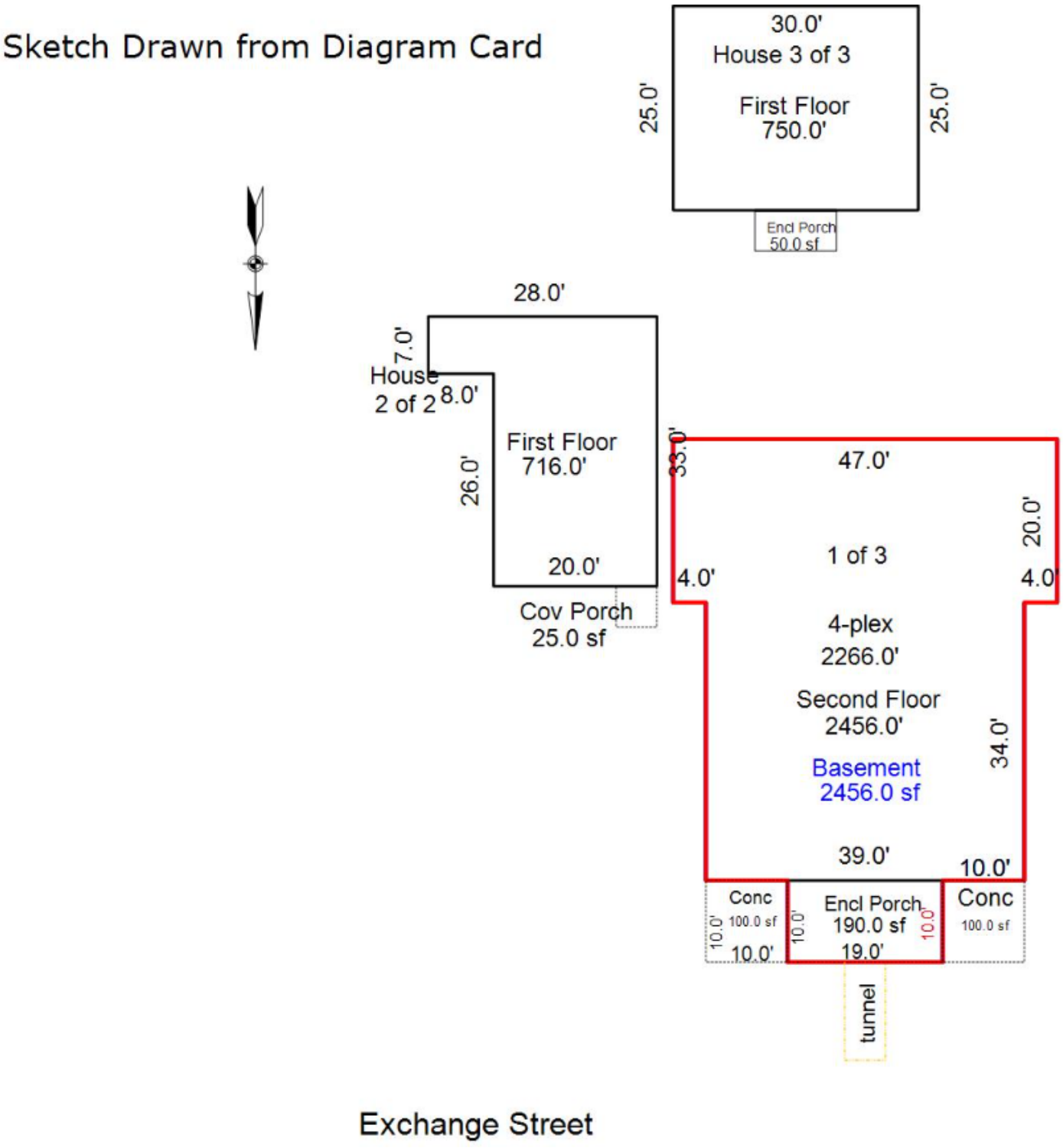
4-plex: 1555 – 1557 – 1559 – 1561 Exchange







Sketch Drawn from Diagram Card



Historic Downtown Riverview Flat, No. 1

★ 4.93 · 89 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.93 · 89 reviews

Historic Downtown Riverview Flat, No. 2

★ 4.88 · 59 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.88 · 59 reviews

Historic Downtown Riverview Flat, No. 3

★ 4.97 · 74 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.97 · 74 reviews

Historic Downtown Riverview Flat, No. 4

★ 4.86 · 7 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.86 · 7 reviews

Cottages: 1565 and 1569 Exchange

airbnb Start your search Airbnb your home

Riverview Downtown Cottage

★ 4.95 · 129 reviews · Superhost · Astoria, Oregon, United States Share Save



Entire cottage hosted by Cindy

5 guests · 1 bedroom · 3 beds · 1 bath

~~$217~~ $185 night ★ 4.95 · 129 reviews

airbnb Start your search Airbnb your home

Historic Downtown Cottage

★ 4.91 · 179 reviews · Superhost · Astoria, Oregon, United States Share Save



Entire cottage hosted by Cindy

5 guests · 2 bedrooms · 4 beds · 1 bath

$225 night ★ 4.91 · 179 reviews

From: exchangeastoria@gmail.com
To: Tiffany Taylor; Scott Spence; Sean Fitzpatrick; Carrie Richter
Subject: Fwd: Transient Lodging
Date: Friday, June 16, 2023 8:53:39 AM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Hi all,
We still have not received our assuredly positive official notice of decision that we were told we'd receive 3 weeks ago. Carrie Richter provided suggested language below two weeks ago and I sent out a reminder last week. Our LUBA appeal period is quickly ending and Cindy and I are are exhausted with this process and would like to put it behind us.

Thanks
Bob Magie

Sent from my iPhone

Begin forwarded message:

From: Carrie Richter <crichter@batemanseidel.com>
Date: June 6, 2023 at 2:05:41 PM PDT
To: ttaylor@astoria.or.us, BLAIR HENNINGSGAARD <blair@astoria.law>
Cc: Bob and Cindy Magie <exchangeastoria@gmail.com>
Subject: FW: Transient Lodging

Good Afternoon:

In order to expedite resolution of this matter, I wanted to offer some proposed language to the Notice of Decision and Order that I understand may be forthcoming:

Re: 1555, 1557, 1559, 1561, 1565 and 1569 Exchange Street Notice of Decision and Order

After reviewing the material supplied, the City has determined that the four units located at 1555, 1557, 1559, 1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street were in transient lodging use on January 1, 2019 and as such, these six units may continue to either be placed into transient lodging use or for residential dwelling purposes, at the owners' discretion. Therefore, the City's final decision is that six units containing residential uses, whether short or long term, have been in continual operation since the 1920s when these properties were constructed and may continue notwithstanding any use limitation imposed by ADC 2.39.10(a) or other constraint on the operation of transient lodging or other residential uses.

As a result, the Notice of Non-Compliance dated January 10, 2022 is hereby rescinded.

The owner shall be required to maintain required business licenses and transient room tax registration as may apply.

I hope that this is helpful in moving this matter to closure.

Carrie

Carrie Richter
Bateman◊Seidel
Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, OR 97205
(503) 972-9903 (direct phone)
(503) 972-9904 (direct fax)
crichter@batemanseidel.com

This e-mail is for the sole use of the intended recipient(s). It contains information that is confidential and/or legally privileged. If you believe that it has been sent to you in error, please notify the sender by reply e-mail and delete the message. Any disclosure, copying, distribution or use of this information by someone other than the intended recipient is prohibited.

From: Tiffany Taylor <ttaylor@astoria.or.us>
Date: May 26, 2023 at 6:11:50 PM PDT
To: exchangeastoria@gmail.com
Cc: Scott Spence <sspence@astoria.or.us>, Blair Henningsgaard <blair@astoria.law>, Sean Fitzpatrick <sfitzpatrick@astoria.or.us>, Elisabeth Adams <eadams@astoria.or.us>
Subject: Transient Lodging

Bob and Cindy,

As a follow up to our phone conversation today, the City will prepare a decision letter regarding the properties located at 1555-1557-1559-1561 Exchange and 1565-1569 Exchange. The intent of the letter is to document the allowed uses.

While our existing records, as well as the materials you've presented, do not contain a full account of past communications and/or permissions, the City recognizes the intended use (transient lodging) as permissible for the two cottages, as well as the 4-plex, and will memorialize that decision in a letter. You should expect a letter by

the end of next week.

We consider the matter resolved; therefore, the pending case before LUBA unnecessary.

If you have any questions, please don't hesitate to reach out.

Regards,
Tiffany



From: Tiffany Taylor
To: austinkettleson@gmail.com
Cc: Amanda Perron
Subject: Gilbaugh / Transient Lodging
Date: Monday, June 26, 2023 3:15:00 PM
Attachments: Magies_Decision Letter 6-26-2023.FINAL.pdf
image001.jpg
image003.jpg

Good Afternoon –

Please see the attached "Notice of Decision and Order" letter for the properties located at 1555-1557-1559-1561 Exchange, 1565 Exchange and 1569 Exchange.

Feel free to reach out if you have any questions.

Regards,
Tiffany

TIFFANY TAYLOR
CITY PLANNER
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

June 26, 2023

Gilbaugh LLC
P.O. Box 532
Astoria, OR 97103

Via email: exchangeastoria@gmail.com

Re: 1555-1557-1559-1561 Exchange Street; 1565 Exchange Street and 1569 Exchange Street
Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Block 114, Shivelys

This letter is a Notice of Decision and Order for the following properties:

- 1555-1557-1559-1561 Exchange Street (multi-family dwelling; advertised on AirBnB as "Historic Downtown Riverview Flats, 1, 2, 3 and 4")
- 1565 Exchange Street (single-family dwelling; advertised on AirBnB as "Historic Downtown Cottage")
- 1569 Exchange Street (single-family dwelling; advertised on AirBnB as "Riverview Downton Cottage")

For the reasons described below, the City finds that the properties located at 1555-1557-1559-1561, 1565 & 1569 Exchange Street may be used as transient lodging and are considered a non-conforming use.

Background: The subject properties listed above are located in the C-3 Zone (General Commercial). The Astoria Development Code (ADC), adopted January 1, 2019, allows transient lodging as follows:

ADC §2.390.J, Uses Permitted Outright in the C-3 Zone
"Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:

1. *Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.*

2. *Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."*

The subject property is currently owned by Gilbaugh LLC, which acquired it from Robert J. Magie and Cynthia D. Magie in April 2018. It includes a four-plex, constructed as a residential facility in 1920 (1555-1557-1559-1561 Exchange) and two single family residences, that were moved to the property in the 1960s (1565 and 1569 Exchange). Pursuant to the language of ADC §2.390.J, property in the C-3 zone may not be used for transient lodging.

The Magies acquired the subject property in March 2015. On that date transient lodging was allowed as an outright use in the C-3 zone. The Magies agreed to purchase the property with a plan to use all three buildings as transient lodging. Shortly after purchase, the Magies began to improve this property to accommodate 6 short term rental units.

In 2017 the Magies obtained a business license and began using the two single family residences (1565 and 1569 Exchange) as transient lodging. By January 1, 2019 the four-plex was under extensive renovation for use as a transient lodging facility. Three of the four units in the four-plex were vacant; however, the fourth was occupied by a residential tenant. On December 15, 2020, Barbara Fryer, a planner for the City, found that conversion of the two single family residential buildings (1565 and 1569 Exchange) from residential to transient lodging preceded the 2019 amendments and therefore constituted a lawful, non-conforming use. That decision is not contested by the City and is again confirmed.

Issues surrounding the four-plex (1555-1557-1559-1561 Exchange) are slightly more complex. For the reasons discussed below the City finds that the four-plex was in use as transient lodging by January 1, 2019; as a result, its use also constitutes a lawful non-conforming use.

Shortly after purchasing the property, the City's Community Development Director informed the Magies that changing the use of the four-plex to transient lodging would require additional off-street parking spaces on its property. In May 2016, the Magies purchased additional property and installed required parking improvements. Over the next few years, the Magies continued to take steps needed to convert the four-plex to transient lodging. These activities included complying with landscape requirements for the C-3 zone, constructing improvements, repairing the building, furnishing, management and cleaning fees, insurance and marketing the property.

As the above history of activity shows, the Magies began transient lodging improvements no later than May 2016. The Astoria Development Code provides that a non-conforming use may continue if it was legal when the use first occurred. That use "occurred" when the Magies moved onto the property in preparation to operate as transient lodging. The actual transient lodging operation was not required to consider a use as having begun. The applicable ordinances state:

> ADC 3.160 "NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."
>
> ADC 1.400 "USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual

operation and/or business open to the public need not occur to consider a use as begun."

These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

Conclusion: After reviewing the submitted documents, and researching City records, the City has determined that the four-plex at 1555-1557-1559-1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street, were in transient lodging use on January 1, 2019, and as such, these six units may continue as a transient lodging use. With the 2019 code change, they are now classified as "Nonconforming Uses."

Clarification on Future Uses: Development Code Section §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use states, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

Development Code Section §3.180.B, Change of Nonconforming Use states, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

As a nonconforming use, the transient lodging may continue. If the transient lodging should discontinue for one year, the use would need to conform with the current code. If the use is changed to a conforming use, such as residential and not transient use, then it may not return to the nonconforming transient use. The property use may not switch back and forth between conforming and nonconforming uses.

As a reminder, use for transient lodging does require a City Occupational Tax (business license) and payment of the transient room tax.

THIS IS A FINAL LAND USE DECISION. THE DECISION MAY BE APPEALED TO THE ASTORIA PLANNING COMMISSION BY THE APPLICANT OR A PARTY WHO RESPONDED IN WRITING TO THE PROPOSED USE BY FILING AN APPEAL WITH THE COMMUNITY DEVELOPMENT DIRECTOR WITHIN 15 DAYS OF THE MAILING OF THE DECISION. THE NOTICE OF APPEAL SHALL INDICATE THE INTERPRETATION THAT IS BEING APPEALED.

Regards,

Tiffany Taylor
City Planner

cc: Carrie Richter (crichter@batemanseidel.com)
Austin Kettleson (austinkettleson@gmail.com)

CITY OF ASTORIA
Founded 1811 • Incorporated 1856
COMMUNITY DEVELOPMENT

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA

No. AP 23-02

Fee Paid Date 7/10/23 By ck# 391
Fee: $500.00

NOTICE OF APPEAL

Property Address: 1555-1557-1559-1561 Exchange St. plus: Tax Lot 18100

Lot 3; Block 114 Subdivision

Map T8N R9W Sec 8DC Tax Lot 18200 Zone C-3

Appellant Name: Kethleson / Kipp / Windus

Appellant Mailing Address: Kethleson, 286 Lexington Ave
Kipp, 461 Exchange St
Windus, 960 Franklin Ave

Phone: 617-513-6117 Business Phone: ~~503~~ 509-664-7952 Email: kipp.andrew@gmail.com

Issue Being Appealed: Gilbaugh/Magie TL Decision

Signature of Appellant: [signature] Date: 7/10/23

Name of Appellant's Attorney (if any): TBD

Address of Appellant's Attorney (if any): TBD

This Appeal is filed with the City of Astoria, in accordance with Development Code Section 9.040, on a decision and/or ruling dated 6/26/23 by the Community Development Dept Commission (Department/Commission/Committee/City Official)

Specific Criteria Appealed: ADC 2.390 (J)

The specific grounds relied upon for review: (See attachments)

(If additional space is needed, attach additional sheets.)

For office use only:						
Application Received :	7/10/23	**Standing to Appeal**	**Yes**	✓	**No**	
Appeal Criteria:						
Application Complete:		**Permit Info Into D-Base:**	7/10/23			
Labels Prepared:		**Tentative** 8-22-23 **Meeting Date:**				
120 Days:						

Andy Kipp

Kipp.ANDREW@gMAIL.com

Austin Kettleson

AustinKettleson@gmail.com

John Windus

jwindus@nwi.net

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Community Development
CITY OF ASTORIA
AP23-02

Austin Kettleson
286 Lexington Avenue
Astoria, Oregon 97103

Andrew Kipp
461 Exchange Street
Astoria, Oregon 97103

John Windus
960 Franklin Avenue
Astoria, Oregon 97103

July 10th, 2023

Tiffany Taylor
City Planner
City of Astoria
1095 Duane Street
Astoria, Oregon 97103

RE: APPEAL - Notice of Decision RE: 1555-1557-1559-1561 Exchange Street; 1565 Exchange Street and 1569 Exchange Street Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Block 114, Shivelys

Dear Ms. Taylor,

Please accept this letter detailing the grounds for an appeal of the Decision and Order dated June 26th, 2023, regarding the city's final decision that the properties located at 1555-1557-1559-1561 Exchange Street may be used as non-conforming, transient lodging. Under the City of Astoria Development Code §9.040, we request that this appeal be heard before the City of Astoria Planning Commission. We ask the commission to review this matter thoroughly and, in doing so, reverse the city's decision on the following grounds:

In its decision, the city claims that Robert J. Magie and Cynthia D. Magie, owners of the Gilbaugh Apartments, took steps to begin preparations to use the properties at 1555-1557-1559-1561 Exchange Street (the "four-plex") as short-term rentals as early as May 2016. Further in its decision, the city concludes that these steps constitute the start of use as transient lodging and therefore was a permitted use under the code in effect at that time and may continue as non-conforming, lawful use.

The city correctly states that the Astoria Development Code defines the "start of use" as occurring when the applicant is on-site in preparation for operation. However, to interpret this correctly, defining "use" is necessary. The applicable section of the Astoria Development Code states:

> *ADC §1.400*
> *USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.*

In its analysis, the city may have overlooked meaningful evidence of concrete actions taken by Mr. and Mrs. Magie that show that the use of the "four-plex," exclusively as transient lodging, had not started, in actuality or intent. Several facts demonstrate that Mr. and Mrs. Magie did not intend to operate transient lodging at the "four-plex" before January 1st, 2019, and, in fact, intended to operate the multi-family dwelling as long-term rentals.

First, the Occupational Tax Application (see Attachment 1) provided to the City of Astoria by Cynthia Magie and dated October 27th, 2017, does not mention operating any short-term rentals at the "four-plex." The application only states that they planned to use the properties at 1565 Exchange Street and 1569 Exchange Street (the "cottages") as short-term rentals under the business name "Downtown Astoria Cottages." If Mrs. Magie had intended to begin using the "four-plex"—a completely separate structure—as transient lodging as early 2016, why were they not included in the 2017 occupational tax application? Are we to believe that applicant forgot that she owned four additional apartment units?

Second, Mr. and Mrs. Magie entered into a lease agreement (Attachment 2) for a long-term apartment rental at 1559 Exchange Street on December 1st, 2018, one month before the new ordinance on short-term rentals went into effect. The lease was to end on August 31st, 2019, and continue after that date on a month-to-month basis. The development code clearly states that transient lodging is limited to stays of less than 30 days. Again, if Mr. and Mrs. Magie had been in "preparation to operate as transient lodging," why did they enter into a 9-month lease agreement with at least one long-term tenant? How is it possible that use as transient lodging had started when the actions taken by Mr. and Mr. Magie directly conflict with that use?

This evidence reveals that the meaningful steps taken by Mr. and Mrs. Magie show they did not intend to convert the "four-plex" to transient lodging because they were either out of the scope of their business by virtue of being omitted from the Occupational Tax Application or they sought to achieve the exact opposite of a short-term rental business by renting the apartments in the building to long-term tenants. By applying the definition of "use" from the Astoria Development Code to these facts, it's not only clear the "four-plex" was *designed, arranged, maintained, and occupied* as a multi-family dwelling, but the steps taken by Mr. and Mrs. Magie demonstrate they *intended* to continue using the building, at least in part, as a multi-family dwelling for long-term tenants until at least August 31st, 2019. The city cannot ignore steps taken by the applicants when determining when use started, and Mr. and Mrs. Magie's actions cast doubt on whether the "preparations to operate as a transient lodging" at the "four-plex" were for that purpose at all. In failing to account for these actions, the city erred in its interpretation that the apartments in the "four-plex" were in use as transient lodging before January 1st, 2019. Given the clear evidence that Mr. and Mrs. Magie, both in actuality and intent, were not operating the entire building as short-term rentals but rather were leasing units to long-term tenants through at least August 31st, 2019, it fails to meet the definition of use as transient lodging. Therefore, because the “four-plex” was not in use as transient lodging before January 1st, 2019, its continued use as such is not permitted under ADC §2.390 (J.1):

ADC §2.390 (J.1):

Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.

We appeal to the City of Astoria Planning Commission to review this matter with special attention to the course of events and in consideration of the evidence brought forward in this appeal. In doing so, we hope they will reverse the decision, making these desperately needed long-term rental units available for families and workers who have chosen to make Astoria their home. Community leaders must work to live up to the intent and purpose of the ordinances regulating short-term rental in the Astoria Development Code. Failure to do so means a continued deepening of the housing crisis devastating our community. Too many of the people that make Astoria such a special place to live—from the servers and bartenders at our local restaurants and breweries, to the nurses and doctors at CMH, to the teachers in our schools—are struggling to find a stable place to live, affordable or otherwise. Our small businesses lack enough workers to fully staff up because potential employees have such a difficult time securing housing. Many of us have friends and family who have moved away because they couldn't find a place to live or it's just gotten too expensive. It's true that short-term rentals have a part to play in the fabric of our increasingly tourism-focused economy and are a meaningful source of income for property owners. However, this decision is deeply unfair to operators of short-term rentals who have gone to great lengths to make their rentals compliant with the city's code regulating short-term rentals. Faulty decisions like this directly undermine the checks and balances put in place to help mitigate the impact short-term rentals have on the housing supply and, ultimately, the ability to sustain livability here in Astoria.

Lastly, and perhaps most seriously, we can't ignore the interconnected relationships between Mrs. Magie (a City of Astoria Planning Commissioner), Mayor Sean Fitzpatrick (who appointed her to the Planning Commission), and his brother Shannon Fitzpatrick (who formally managed the Gilbaugh Apartments on behalf of Mr. and Mrs. Magie). These overlapping relationships and interests make many community members uneasy. The community is rightfully alarmed when they see elected officials involved in issues where they have been a friend and advisor to one of the parties, and

in this case, even writing a letter of support in this matter on behalf of the applicants before being elected. A problematic situation arises when it's difficult to know whether the mayor was acting in his capacity as an elected official representing the people of Astoria or acting as a friend and advocate of the applicants in the meetings and deliberations that led the city to reverse its decision. The Planning Commission has a duty to ensure that the Astoria Development Code is correctly interpreted and followed. That interpretation being free of bias is foundational to the rule of law and democratic government itself. Astorians must have confidence that land use decisions in Astoria are made fairly and without considering personal or political relationships. It is in the interest of good government for the Planning Commission to examine this matter under the highest ethical standards and with the transparency the people of Astoria deserve.

Sincerely,

Austin Kettleson
Andrew Kipp
John Windus

1 of 2

CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: 019664
Receipt Number: 217670

OCCUPATIONAL TAX APPLICATION

Name of Business: Doghouse Astoria Cottages
Proprietor: Peyton Angle TIN or SSN: [redacted]
Business Address: 1565 Exchange St., 1569 Exchange St.
City: Astoria State: OR Zip: 97103
(Local Location Must Include Written Approval to Locate on the Premises)
Mailing Address (Include City, State, & Zip): PO Box 532 Astoria OR 97103
Residence Address (Include City, State, & Zip):
Business Telephone: 503-812-7348 Home Telephone:
E-mail Address: Exchange.Astoria@gmail.com Type of Business:
Type of Business: Vacation Rental
Brief Description of What Your Business Will Do: pet home 64 short term rental's
Business New to Area? X Yes ___ No Renewal? ___ Yes X No
Has the character of your business changed in the last year? ___ Yes X No
If yes, please explain Briefly:

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. Occupational Tax is due January 1 of each year. Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

** Number of Individuals Employed: 1 Fee Per Schedule: $ 35
1 = $35.00 2 = $47.50 3 or more = see fee schedule
** Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

[signature]

APPROVED - COMM. DEV.
MM 10/27/17

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Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

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Community Development
CITY OF ASTORIA

AP23-02

Tenant(s): AUSTIN KETTLESON

Tenant(s): DANAE M. SUPRUNOWSKI

Rented Premises 1559 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: _____

Cell or Mobile 971-678-4591 Alternate Phone: 360-244-3399

Email: austinkettleson@gmail.com Email: danae.suprunowski@gmail.com

Alternate Mailing: _____

Monthly Rent Amount $ 1225.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 12/1/18 Ending: 8/31/19 1st month's prorated rent from _____ to _____ is $ _____

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- [X] One charge per rental installment limited to the amount customary in rental area. $ 100
- [ ] Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- [ ] Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ _____
1st Full Month's Rent	$ 1225.00
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ _____
Total Due	$ 3225.00

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O=Owner Pays T=Tenant Pays

- [T] Electricity [O] Water
- [T] Cable [O] Sewer
- [X] Gas [O] Garbage

Other _____

Furnished to Unit

- [X] Range [ ] Disposal [X] Blinds
- [ ] Dishwasher [X] Refrigerator
- [X] Garbage Can [ ] Dumpster

Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Austin Kettleson, Danae Suprunowski, Hazel & Millie Peterson

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Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: _____ Relationship: _____
Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Email: _____

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s) _____
Storage Space _____
Mail Box # 1559

Pets Allowed

No ☒ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☒ IS ☐ IS NOT available.
2) ☒ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☒ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. **Oversized and Water Filled Furnishings:** No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. **Guests:** Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. **Tenant Contact Info:** Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

4. **Property Condition:** Tenant(s) shall return premises to Owner/Agent in clean condition. The Owner/Agent's definition of "clean" is binding on all parties.

5. **Tenant and Guest Conduct:** Tenant(s) shall restrict all sounds or noise to a reasonable volume. Tenant(s) and their Guest(s) shall conduct themselves in a manner that will not disturb their neighbor's peaceful enjoyment of their premises, including common areas.

6. **Notice of Absence:** Tenant(s) shall notify Owner/Agent of any anticipated absence from the premises in excess of 7 days, no later than the first day of the absence.

7. **Entry into Premises:** Tenant(s) shall not unreasonably withhold consent to Owner/Agent to enter premises to inspect, make repairs or improvements, or to show the unit to prospective buyers or tenants. Owner/Agent may enter the premises without consent in an emergency, to post notices, or at any reasonable time with 24-hour notice or with permission of Tenant(s). If boxes are checked, Tenant(s) agrees to allow the use of ☒ text messages or ☒ email, or both for the purpose of submitting maintenance requests to Owner/Agent and for providing 24-hour notice to enter by Owner/Agent to Tenant(s).

8. **Sublease:** Tenant(s) shall not transfer their interest(s) in this agreement or sublet the premises, or any part of the premises.

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9. **Insurance:** Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☒ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

10. **Rent Increases:** If lease expires and converts to a month-to-month tenancy, rent may be increased with a 90-day written notice. Rent increases may not be effective prior to the end of the first year of occupancy.

11. **Abandonment:** Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. **Notices:** All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY, must include an additional 4 days for delivery including date of service. Where allowed by law; notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the portion of the premises of which the Tenant(s) has possession or to the Owner/Agent at the address provided. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. **Use of Premises, Maintenance and Repair:** The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT.

14. **Damage to Property:** Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

15. **Hazardous Materials:** Tenant(s) shall not store hazardous or flammable materials at the premises.

16. **Smoke and Carbon Monoxide Alarms:** Tenant(s) acknowledges the presence of a smoke alarm(s) and, if required, a carbon monoxide alarm(s) in fully operational condition in the unit. Tenant(s) is instructed to test the alarms at least every 6 months and replace the batteries as needed. Tenant(s) shall replace expired batteries with 10-year lithium batteries as required by law. Tenant(s) agrees that Owner/Agent is not liable for loss or damage due to the alarm's failure to operate. Tenant(s) is required to immediately notify Owner/Agent in writing of any malfunction of the alarm(s). Tenant(s) shall not remove or tamper with a properly functioning alarm, including removing any working batteries. Tenant(s) agrees to pay a fee of $250.00 for each violation.

17. **Limited Liability:** Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

18. **Non-Compliance Fees:** Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation.

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19. Carpet Cleaning: If Owner/Agent had the carpets cleaned using specialized equipment after the previous tenancy before the Tenant(s) took possession, Owner/Agent may deduct the cost of carpet cleaning from the Tenant's security deposit regardless of whether the Tenant(s) cleaned the carpets before delivery of possession of the premises.

20. Lease Enabling/Trespassing: Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

21. Termination: Tenant(s) shall not terminate this agreement without giving 30 days' written notice; failure shall make Tenant(s) liable for up to 30 days' rent. Tenant(s) must provide a single forwarding address for final accounting. Upon material noncompliance with this agreement, Owner/Agent may issue a 30-day notice of Termination with Cause, and if the breach is not remedied by the cure period indicated on the notice, the rental agreement will terminate and the Owner/Agent may take possession pursuant to Oregon law. Fixed-term tenancy will automatically convert to month-to-month tenancy unless either party has properly terminated the tenancy by giving at least 30 days' written notice prior to end of the fixed term or 60 days' by the Owner/Agent if termination is after the first year of occupancy. Owner/Agent may terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/or other charges, or to comply with any terms or conditions of this agreement. Any omission or misstatement on the application for this dwelling unit may, at the option of Owner/Agent, be grounds for termination of tenancy. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises.

22. Holdover Tenancy: Any holding over after the expiration of the rental term without written consent of Owner/Agent shall be deemed a willful holdover and Owner/Agent shall be entitled to rent and damages, including court fees if applicable.

23. Tenant(s) Jointly and Severally Liable: If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

24. Application of Payments: Owner/Agent may apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months. B) Rent for the current month. C) Utility or service charges. D) Late rent charges. E) Damage claims and any other fees or claims owed by the tenant.

25. Legal and Collection Fees: Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

26. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

27. Charges: Utility – Utility charges must be paid in full within 30 days of receipt of billing or Owner/Agent may assess a $50 late fee. Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. **HOA** – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. **Re-Key Mailbox(s)** – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

28. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ # 3 Pet Agreement	☒ # 21 Deposit Refund	☐ # 33 Rules & Regulations
☐ # 9 Check In/Check Out	☒ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☒ # 11 Smoke Alarm & CO Agreement	☒ # 54 Mold Prevention	☒ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant: DocuSigned by: [signature] 5EBCBC21FBEC467... Date: 11/21/2018 10:12:14 AM PST

Tenant: _____ Date: _____

Tenant: DocuSigned by: [signature] 3F08BBF32519454... Date: 11/21/2018 10:58:24 A

Tenant: _____ Date: _____

Owner/Agent: DocuSigned by: Shannon Fitzpatrick 83DAA43D2A214B5... Date: 11/21/2018 11:00:35 AM PST

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Community Development Department
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NOTICE OF APPEAL HEARING

YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA

You may participate in the appeal hearing in person or remotely. For connection options and instructions go to https://www.astoria.or.us/LIVE_STREAM.aspx (included on page 2 of this notice as well). You may also use a telephone to listen in and provide public testimony. At the start of the meeting, call (253) 215-8782 and when prompted enter meeting ID# 503 325 5821.

The City of Astoria will hold an Appeal Hearing by a Hearings Officer (in lieu of the Planning Commission) on **Thursday, November 2, 2023 at 5:30 p.m.** in the Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request:

1. Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking]) located in the C-3 (General Commercial [4-plex]) and R-3 (High Density Residential [parking]) Zones. The appellants cited (1) the property was occupied as residential use after January 1, 2019, (2) the applicant's Occupational Tax application for transient lodging use only included the two "cottage" structures and not the 4-plex, (3) a potential bias on part of public officials, and (4) ADC § 2.390.J.1 as the specific criteria relied upon for the appeal. Development Code Standards in Sections 1.400 (Definitions), 2.150-2.185 (R-3 zone), 2.390-2.415 (C-3 zone), 3 (Additional Use and Development Standards), 7 (Parking), 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005-CP.028 (General Policies) and CP.040-CP.045 (Central Residential) are applicable to the request.

A copy of the Notice to Appeal application, all documents and evidence relied upon by the appellants, the applicants and the City, as well as the applicable criteria, are available for inspection at no cost and will be provided at reasonable cost. The Agenda Packet will be made available seven days prior to the hearing. All such documents and information are available by contacting the Community Development Department by mail at 1095 Duane Street, Astoria, OR 97103, by email at planning@astoria.or.us or by phone at (503) 338-5183.

The location of the hearing is accessible to the handicapped. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department 48 hours prior to the meeting at (503) 338-5183.

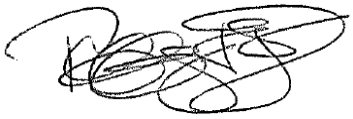
All interested persons are invited to express their opinion for or against the appeal at the hearing, or by letter addressed to the Community Development Department via email at planning@astoria.or.us or via mail at 1095 Duane St., Astoria OR 97103. Testimony and evidence must be directed toward the applicable criteria identified above or other criteria of the Comprehensive Plan or land use regulation, which you believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the

Hearings Officer and the parties an opportunity to respond to the issue precludes an appeal based on that issue.

The appeal hearing, as conducted by the Hearings Officer, will include a review of the application and presentation of the evidence, opportunity for presentations by the applicant and those in favor of the request, those in opposition to the request, deliberation and decision by the Hearings Officer. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided.

The Hearings Officer's ruling may be appealed to the City Council by the appellants, applicant, a party to the hearing, or by a party who responded in writing, by filing a Notice of Appeal within 15 days after the Hearings Officer's decision is mailed. Appellants should contact the Community Development Department concerning specific procedures for filing an appeal with the City. If an appeal is not filed with the City within the 15-day period, the decision of the Hearings Officer shall be final.

THE CITY OF ASTORIA



Tiffany Taylor
City Planner

MAILED: October 12, 2023

Public Meetings have resumed in the City Council Chambers at City Hall, 1095 Duane Street, Astoria.
Check dates, times and location at: www.astoria.or.us
You may also view/listen and fully participate remotely by using the following connection options:

ONLINE MEETING ZOOM

At start of our Public Meetings you will be able to join our online ZOOM meeting using your **mobile or desktop device** and watch the live video presentation and provide public testimony.

Step #1: Use this link: **https://www.astoria.or.us/zoom/**
Step #2: Install the Zoom software on your mobile device, or join in a web browser
Step #3: If prompted, enter the Meeting ID number: 503 325 5821

Note: Your device will automatically be muted when you enter the online meeting. At the time of public testimony, when prompted you may choose to select the option within the ZOOM software to "raise your hand" and notify staff of your desire to testify. Your device will then be un-muted by the Host and you will be called upon, based on the name you entered within the screen when you logged in.

TELECONFERENCE ZOOM

At start of our Public Meetings you will be able to **dial-in using your telephone** to listen and provide public testimony.

Step #1: Call this number: **253-215-8782**
Step #2: When prompted, enter the Meeting ID number: 503 325 5821

*Note: Your phone will automatically be muted when you enter the conference call. At the time of public testimony, when prompted, you may dial *9 to "raise your hand" and notify staff of your desire to testify. Your phone will then be un-muted by the Host and you will be called upon based on your phone number used to dial-in.*

AB9499
CITY OF ASTORIA
NOTICE OF PUBLIC HEARING

The City of Astoria will hold an Appeal Hearing by a Hearings Officer (in lieu of the Planning Commission) on **Thursday, November 2, 2023 at 5:30 p.m.** in the Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request:

Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking] located in the C-3 [4-plex] and R-3 [parking] Zones. The appellants cited: (1) the property was occupied as residential use after January 1, 2019, (2) the applicant's Occupational Tax application for transient lodging use only included the two "cottage" structures and not the 4-plex, (3) a potential bias on part of public officials, and (4) ADC § 2.390.J.1 as the specific criteria relied upon for the appeal. Development Code Standards in Sections 1.400, 2.150-2.185, 2.390-2.415, 3, 7, 9 and Comprehensive Plan Sections CP.005-CP.028 and CP.040-CP.045 are applicable to the request.

For information, contact the Community Development Dept. by writing to: 1095 Duane St., Astoria OR 97103, by email: planning@astoria.or.us or by phone: (503) 338-5183. The location of the hearing is accessible to the handicapped. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department 48 hours prior to the meeting at (503) 338-5183. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided.
THE CITY OF ASTORIA
Tresa Abke, Administrative Assistant
Published: October 21, 2023

H.O. Record Pg# 168

**IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR CLATSOP COUNTY**

**}AFFIDAVIT OF PUBLICATION
STATE OF OREGON
County of Clatsop} ss**

I, Sarah Silver being duly sworn, depose and say that I am the principal clerk of the publisher of the The Astorian, Seaside Signal, a newspaper of general circulation, as defined by ORS 193.010 and 193.020;
that the

AB9499 CITY OF ASTORIA NOTICE OF PUBLIC HEARING THE CITY OF ASTORIA WILL HOLD AN APPEAL HEARING BY A HEARINGS OFFICER IN LIEU OF THE PLANNING COMMISSION ON THURSDAY NOVEMBER 2 2023 AT 5 30 P M IN THE

a printed copy of which is hereto annexed; was published in the entire issue of said newspaper for 1 successive and consecutive issues in the following issues:

10/21/23

Subscribed and sworn to before me on this 21st day of October, A.D. 2023

Tina L. Bacon
Notary Public of Oregon

OFFICIAL STAMP
TINA L BACON
NOTARY PUBLIC-OREGON
COMMISSION NO. 1038707
MY COMMISSION EXPIRES JULY 18, 2027

AdId: 403403
PO:
Tagline: AB9499 Notice of Hearing

ADC §3.160 NONCONFORMING LOTS, USES AND STRUCTURES

A. Purpose. Within the zones established under this Code, there existing lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It is the intent of this Section to establish requirements that govern the future use of such nonconformities.

ADC §3.180 NONCONFORMING USES

A. Expansion of a Nonconforming Use. The expansion of a nonconforming use to a portion of a structure that was provided for the nonconforming use shall be permitted. When the expansion is to a portion of a structure that was not provided for the nonconforming use, or when new construction is involved, expansion may be permitted as follows:
    1. The Community Development Director may permit up to a 10% expansion of a nonconforming use where it is determined that there will be minimal impact on adjacent uses, in accordance with the procedures in Article 9. If the Community Development Director believes that substantial issues are involved, the Director may schedule a public hearing before the Planning Commission in accordance with procedures in Article 12.
    2. The Planning Commission may permit an expansion of a nonconforming use in excess of 10%, in accordance with procedures in Article 12.

B. Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located.

C. Discontinuance of Nonconforming Use.
    1. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows:
        a. When a residential structure has been used in the past for more units than allowed, the use may continue, even if ceased for one year, with the following conditions:
            1) Structure was not converted back to the lesser number of units (i.e. removal of kitchen, etc.); and
            2) Units were legal non-conforming units and not converted without necessary permits; and
            3) The number of units are allowed outright or conditionally in the zone (i.e., duplex or multi-family dwelling in R-2, etc.); and
            4) The number of units does not exceed the density for the zone (i.e., the lot square footage divided by 43,560 square feet (acre) x maximum density of zone = number of units allowed by density; and
            5) Provide required off-street parking spaces per unit, or obtain a variance; and
            6) If the structure is destroyed per Section 3.190.D, the new use shall comply with the zone requirements and/or Section 3.190.E.

2. If a nonconforming use not involving a structure is discontinued for a period of six (6) months, further use of the property shall conform to this Code.

D. Reestablishment of Existing Non-Conforming Uses in Overwater Buildings. Nonconforming uses in overwater buildings located between 16th and 41st Street within the Civic Greenway Overlay Area existing prior to 2013, and between 41st and approximately 54th Street within the Neighborhood Greenway Overlay Area existing prior to 2015 may be reestablished if the building housing the use is unintentionally destroyed by any means to an extent exceeding 80% of its fair market value as indicated in Section 3.190.D, provided the reconstruction of the building complies with the standards in Section 3.190.F and reestablishment of the use occurs within one year of the completion of construction. Completion of construction shall be determined by issuance of a temporary and/or final Certificate of Occupancy from the Building Official.

HISTORY
Amended by Ord. 22-01 on 11/7/2022

1.400. DEFINITIONS.

As used in this Code or in the interpretation of this Code, the following terms shall have the meanings indicated:

ABUTMENT: A substructure composed of stone, concrete, brick or timber supporting the end of a single span bridge or the ends of a multi-span superstructure and, in general, retaining or supporting the approach embankment placed in contact therewith.

ACCESS WAY: A walkway providing a through connection for pedestrians and bicyclists between two streets, between two lots, or between a development and a public right-of-way. It may be an access way for pedestrians and bicyclists (with no vehicle access), or a walkway on public or private property (*i.e.,* with a public access easement); it may also be designed to accommodate emergency vehicles. See also, Walkway. *(Added by Ordinance 14-03, 4-21-14)*

ACCESSORY RENTAL UNIT: *(Deleted by Ordinance 04-10, 11/1/04)*

ACCESSORY DWELLING UNIT: An accessory dwelling unit is one additional subordinate or auxiliary living unit in an existing large, older house. A dwelling with an accessory dwelling unit is distinguished from a duplex by the retention of the appearance as a single-family dwelling. *(Added by Ordinance 04-10, 11/1/04)*

ACCESSORY STRUCTURE IN A COTTAGE CLUSTER DEVELOPMENT: Includes shared accessory structures such as parking or storage buildings; and individual accessory structures such as garages attached to cottages, which may not face the common open space. *(Added by Ord 13-09, 10-6-14)*

ACCESSORY STRUCTURE OR USE: A structure or use incidental and subordinate to the main use and located on the same lot as the main use.

ACCRETION: The build-up of land along a beach or shore by the deposition of waterborne or airborne sand, sediment, or other material.

ADJACENT: Contiguous to, including those properties which would share an edge or boundary if there were no intervening streets, alleys or other rights-of-way.

ALLEY: A street which affords only a secondary means of vehicular access to the property.

ALTERATION: A change, addition, or modification of a structure, appurtenance, object, sign, or site, which affects the exterior appearance of the structure, appurtenance, object, sign or site, excluding landscaping, routine maintenance, and exterior painting of buildings. Alteration to a sign, excluding content, shall include but not be limited to the size, shape,

method of illumination, position, location, materials, construction or supporting structure of the sign.

AQUACULTURE: The raising, feeding, planting and harvesting of fish, shellfish, aquatic plants, or other aquatic organisms, including associated facilities necessary to engage in the use.

AQUATIC AREA: In the Columbia River Estuary, the tidal waters and wetlands, and the land underlying these waters. The upper limit of aquatic areas is the upper limit of aquatic vegetation or, where such a line cannot be accurately determined, Mean Higher High Water.

ARTS AND CRAFTS STUDIO: Facility used by artists and crafts persons and up to two assistants for the production of arts and crafts, and which are not open to the public for retail sales.

ATTACHED ACCESSORY BUILDING: Structures that share one or more common vertical walls. *(Added by Ordinance 04-10; 11/1/04)*

AUTOMOTIVE SALES OR SERVICE ESTABLISHMENTS: Businesses engaged in the storage, sales, or servicing of automobiles, trucks, recreation vehicles, or other vehicles. Gasoline service stations are not included in this category.

AUTOMOTIVE SERVICE STATION: Any premises used primarily for retail sales of oil, auto accessories, and as a secondary service, minor servicing, excluding body and fender repair. Gasoline service stations are not included in this category.

AUTOMOTIVE WRECKING YARD: Any property where two or more motor vehicles not in running condition, or the parts thereof, are wrecked, dismantled, disassembled, substantially altered or stored in the open and are not to be restored to operation.

AVULSION: A tearing away or separation by the force of water. Land which is separated from uplands or adjacent properties by the action of a stream or river cutting through the land to form a new stream bed.

AWNING: A temporary or movable shelter which may or may not contain signage, supported entirely from the exterior wall of a building and composed of non-rigid materials except for the supporting framework. Backlit awnings are not included in this category.

BACKLIT AWNING: An awning that is specifically designed to illuminate the surface of an awning after dark, and made of a material that enhances or facilitates projection of light.

BANKLINE ALTERATION: Realignment of a stream bank or the entire stream, either within or outside of its normal high water boundaries.

BANNER: A piece of non-rigid material attached by one or more edges to a pole, staff, building or other device intended to draw attention to a building or site for commercial or non-commercial purposes.

BASEMENT: The lowest story of a structure, below the main floor and wholly or partly below the surface of the ground.

BEACH: Gently sloping areas of loose material (e.g. sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or land form, or to the line of vegetation.

BEACH NOURISHMENT: Placement of sand material on actively eroding beach sites identified in the Dredged Material Management Plan to maintain the historic beach profile. Beach nourishment does not include creation of new land area or beaches and must provide for the protection of estuarine resources (including habitat, nutrient, fish, wildlife, and aesthetic resources). Dredged material may be used for beach nourishment.

BED AND BREAKFAST: Any transient lodging facility which contains between three (3) and seven (7) guest bedrooms, which is owner or manager occupied, and which provides a morning meal.

BLOCK: A parcel of land bounded by three or more streets in a land division. *(Added by Ordinance 14-03, 4-21-14)*

BLOCK LENGTH: The distance measured along all that part of one side of a street which is between two intersection or intercepting streets, or between an intercepting street and a railroad right-of- way, water course, body of water or unsubdivided acreage. *(Added by Ordinance 14-03, 4-21-14)*

BOARDING OR ROOMING HOUSE: A building where lodging with or without meals is provided for compensation for not less than three nor more than fifteen persons in addition to members of the family occupying the buildings.

BOAT HOUSE: A floating or pile-supported structure used for the protection and storage of a boat or boats.

BOAT RAMP: An improved sloped surface extending from a shoreland area into an aquatic area suitable for removing a boat from the water and launching a boat into the water from a trailer.

BRIDGE CROSSING: The portion of a bridge spanning a waterway not including supporting structures or fill located in the waterway or adjacent wetlands.

BRIDGE CROSSING SUPPORT STRUCTURES: Piers, piling, abutments, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

BUILDING: A structure built for the support, shelter, or enclosure of persons, animals, chattels or property of any kind.

BUILDING ENVELOPE: The outer bounds, both vertically and horizontally, of an enclosed structure. *[Added by Ordinance 13-08, 8-19-2013]*

BUILDING FRONTAGE: The lineal frontage of a building along a public street, waterway, or parking lot, excluding alleys. In cases of building frontage on a parking lot, the frontage must contain a public entry to a building. Where a business or other enterprise occupies a portion of a building, lineal frontage is based on the footage occupied by that business or activity. (See Section 8.120(D).

BUILDING LINE: A line established by an ordinance to govern the placement of a building with respect to the front lot line through the setback requirements of a minimum front yard. A building line is ordinarily parallel to the front lot line and at a distance in accordance with the setback requirement. A building line indicates the limit beyond which buildings or structures may not be erected. For lots contained in an official subdivision plat recorded before December 7, 1961, the building line may be taken as shown therein. *(Amended by Ordinance 14-03, 4-21-14)*

BUILDING MASS: The height, width, and depth of a structure including non-enclosed features such as stairs and decks. *[Added by Ordinance 13-08, 8-19-2013]*

BUILDING OFFICIAL: The officer or other designated authority charged with the administration and enforcement of the Building Code, or a regularly authorized deputy. *(Amended by Ordinance 14-03, 4-21-14)*

BULK PLANT: An establishment where commodities, including both liquids and solids, are received by tank vessel, pipelines, tank cars, tank vehicle or other container, and are stored or blended in bulk for distribution by tank vessel, pipeline, tank car, tank vehicle or container.

BULKHEAD: A vertical wall of steel, timber or concrete used for erosion protection or as a retaining wall.

BUSINESS INCUBATOR: A business incubator is a place where newly created firms and/or individuals interested in starting their own businesses are concentrated in a limited space and are provided with an array of business support resources and services. Its aim is to improve the chance of growth and rate of survival of these firms and individuals by providing on-site management support individually focused on their marketing, general management, finance and accounting problems. Facilities provided by incubators generally are subsidized with increasing rental rates over time. These facilities generally have common areas for office space, technology support services and conference rooms. Generally new firms must apply to participate in the incubator program, and when accepted, are supported in developing their business plans, obtaining financing/ working capital

(loans/investments) and generating sales. The main goal is local economic development and job creation. *(Added by Ordinance 02-03, 2-4-02)*

BUSINESS SERVICE ESTABLISHMENTS: Businesses primarily engaged in rendering services - other than professional, educational, repair, or contract construction services - to other business establishments. These services include, but are not limited to: employment services, advertising services, consumer credit and reporting services, collection services, mailing services, and building maintenance services.

CANOPY: A removable roof-like structure attached to a building, including, but not limited to metal awnings and mansard roofs.

CARRIAGE HOUSE DWELLING UNIT: A dwelling unit on the second floor of a common parking structure. *(Added by Ord 14-09, 10-6-14)*

CITY: The City of Astoria, Oregon.

CITY ENGINEER: The certified official or other designated authority charged with the administration of the Engineering Division of the City's Public Works Department or his/her designee. *(Added by Ordinance 14-03, 4-21-14)*

CLINIC: A building or portion of a building containing offices and facilities for out-patients only, providing one or more of the following services: medical, dental, or psychiatric.

CLUSTER DEVELOPMENT: A development technique wherein house sites or structures are grouped closer together with the remainder of the tract left in its natural state or as open space. Refer to Section 11.160. *(Amended by Ordinance 95-05, 2-6-95)*

COASTAL SHORELANDS: Those areas immediately adjacent to the ocean, estuary, and its associated wetlands. Coastal Shorelands are limited in landward extent by the coastal shorelands boundary, described in Astoria Comprehensive Plan area plans.

COMMON OPEN SPACE: An area improved for recreational use or gardening that all owners in the development own and maintain in common through a homeowner's association, condominium association, or similar mechanism. *(Added by Ord 14-09, 10-6-14)*

COMMUNICATION FACILITIES: Power and communication lines and towers, antennas and microwave receivers.

COMMUNICATION SERVICE ESTABLISHMENTS: Businesses primarily engaged in communications activities, including: newspaper and printing services, television and radio services, and telephone and telegraphy services.

COMMUNITY DEVELOPMENT DIRECTOR: The person designated as having overall responsibility for the activities of the City's Community Development Department or his/her designee. *(Added by Ordinance 14-03, 4-21-14)*

COMPATIBLE NON-HISTORIC NON-CONTRIBUTING STRUCTURE: Structures in this classification were built after the end of the secondary development period, but are compatible architecturally, and in scale, use of materials and detailing with the context and historic character of Primary and Secondary buildings within a historic district.

COMPREHENSIVE PLAN: The comprehensive development plan for the City comprising plans, maps or reports, or any combination thereof, relating to the future economic and physical growth and development or redevelopment of the City.

CONDOMINIUM: A building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common area, and facilities are owned by all the owners on a proportional, undivided basis. *(Added by Ordinance 95-05, 2-6-95)*

CONGREGATE CARE: A single or multiple structure, assisted living facility which provides semi-independent living for the elderly or handicapped persons, consisting of small apartments with common eating, recreational or therapy facility. Such facility may or may not be licensed by the State of Oregon. Such facilities are distinct from Residential Facilities in that they are intended to serve more than 15 persons.

CONSISTENT: For the purpose of Article 6, Historic Properties Ordinance, consistent shall mean to be similar to the original historic feature in design, size, and/or material, or would meet the commonly acceptable intent of an original feature. *(Added by Ordinance 13-08, 8-19-2013)*

COTTAGE: A detached, site-built, single-family or two-family dwelling unit that is part of a cottage cluster development. *(Added by Ord 14-09, 10-6-14)*

COTTAGE CLUSTER: A group of four (4) to 12 cottages, arranged around a common open space. *(Added by Ord 14-09, 10-6-14)*

COURT: An open, uncovered and unoccupied space contained within or completely surrounded by buildings.

DAY CARE CENTER: A day care facility which provides day care in any setting for any number of persons, excluding family day care centers and residential homes.

DECLARANT: The person who files a declaration under ORS Chapter 92. *(Added by Ordinance 14-03, 4-21-14)*

DECLARATION: The instrument by which the subdivision or partition plat was created. *(Added by Ordinance 14-03, 4-21-14)*

DESIGN REVIEW: A process of review whereby the Historic Landmarks Commission, Design Review Committee, Planner, or their designee, evaluates new construction, or the alteration of buildings, structures, appurtenances, objects, signs, sites and districts for appropriateness. *(Amended by Ordinance 14-03, 4-21-14)*

DIKE: With regard to flood protection, a structure designed and built to prevent inundation of a parcel of land by water. With regard to dredged material disposal, a structure consisting of sediments, rock, or other material designed to contain the dredged material and allow for settling of solids in a specific area while it is being deposited and after deposition has occurred.

DOCK: A pier or secured float or floats for boat tie-up or other water use.

DRAINAGE LAND: Land required for drainage ditches, or required along a natural stream or water course for preserving the channel and providing for the flow of water therein, to safeguard the public against flood damage or the accumulation of surface water. *(Added by Ordinance 14-03, 4-21-14)*

DREDGED MATERIAL: Sediment, gravel and other solids removed from an aquatic area.

DREDGED MATERIAL DISPOSAL: The deposition of dredged materials in aquatic or land areas. Methods include land disposal (deposition in specific land areas or on the tops and landward sides of flood protection dikes) and in-water disposal (including beach nourishment, flowlane disposal, estuarine open water disposal, and ocean disposal).

> ESTUARINE OPEN-WATER DREDGED MATERIAL DISPOSAL: All types of in-water dredged material disposal within the estuary which do not fall into the classifications of flowlane disposal, beach nourishment, sump disposal, and disposal to provide fill material for an approved aquatic area fill project.
>
> FLOWLANE DREDGED MATERIAL DISPOSAL: Deposition of dredged material in or adjacent to a natural or maintained navigation channel in an area where the prevailing sediment transport will carry the material down-stream.

DREDGING: The removal of sediment or other material from an aquatic area for the purpose of deepening the area, obtaining fill material, or mining and mineral extraction.

DREDGING, MAINTENANCE: Dredging of a channel, basin, or other water-dependent facility, or for tidegate maintenance, which has been dredged before and is currently in use or operation or has been in use or operation sometime during the past five years, provided that the dredging does not deepen the facility beyond its previously authorized or approved depth plus customary overdredging.

DREDGING, NEW: Dredging a channel, basin, or other water-dependent facility that has not been dredged before; deepening an existing dredged channel, basin, or other water-dependent facility beyond its previously authorized or approved depth; dredging a channel, basin, or other water-dependent facility that has not been in use or operation in the past five years.

DRIFT RIGHT: A specific area or section of river that has been cleared of snags and sunken debris and is shared and actively maintained by a group of fishermen as their fishing grounds.

DUCK SHACK: A structure having no permanent water or sewage treatment connection which is used to store recreational equipment meant for hunting waterfowl and not exceeding 500 square feet on a float or pier not exceeding 750 square feet. Occupancy by a single individual of a duck shack shall be strictly limited to 15 days of any consecutive 30-day period.

DWELLING: One or more rooms designed for permanent occupancy by one family.

SINGLE-FAMILY: A free-standing building containing one dwelling unit.

TWO-FAMILY: A free-standing building containing two dwelling units. May include two-unit rowhouses or duplexes, either renter-occupied or owner-occupied. *(Amended by Ordinance 95-05, 2-6-95)*

MULTI-FAMILY: A building containing three or more dwelling units. May include rowhouses, apartment buildings, or residential condominiums, either renter-occupied or owner-occupied. *(Amended by Ordinance 95-05, 2-6-95)*

DWELLING, ATTACHED HOUSING: A dwelling which is designed or used exclusively for the occupancy of one family which is attached to one or more separately owned dwellings by common vertical walls. This definition includes but is not limited to zero lot line dwellings, town houses, condominiums, and row houses. *(Added by Ordinance 98-04, 5-4-98)*

EASEMENT: A grant of the right to use a portion of land for specific purposes. *(Added by Ordinance 14-03, 4-21-14)*

EDUCATIONAL SERVICE ESTABLISHMENTS: Businesses primarily engaged in education, including: vocational and trade schools, business and stenographic schools, art and music schools, dancing schools, and correspondence schools.

EFFLUENT: With regard to water quality, treated or untreated liquid entering the estuary from a point source. With regard to dredging, water, including dissolved and suspended materials, which flows from a dredged material disposal site.

ELECTRONIC MESSAGE CENTER: A sign whose message or display consists of patterns of lights changing at intermittent intervals, such as time and temperature signs.

EMERGENCY: With respect to the Columbia River Estuary, emergency conditions are limited to:

a. Severe shoreline, bankline or dike erosion during a storm event or a high tide that threatens property or public safety; or

b. Oil or hazardous waste spills subject to US Coast Guard Captain of the Port (COTP) authority; or

c. A 100 year (or less frequent) flood event; or

d. Flooding caused by a tsunami, or extreme sedimentation, such as that caused by the eruption of Mt. St. Helens.

ESTUARINE ENHANCEMENT: An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

ESTUARY: A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: estuarine water; inter-tidal areas; and submerged lands. For regulatory purposes, the Columbia River Estuary extends to the western edge of Puget Island on the Oregon side, to the Wahkiakum-Cowlitz County line on the Washington side, and to the head of tide for all tributaries.

FAMILY: An individual, or two or more persons related by blood, marriage, legal adoption, or guardianship, living together in a dwelling unit and no more than four additional persons, who need not be so related, who live together as a single household unit.

FAMILY DAY CARE CENTER: A day care center which provides day care in the provider's home in the family living quarters to no more than 12 persons, regardless of age, or full-time or part-time status, including family members of the provider. This includes family day care providers as specified in ORS Chapter 418.

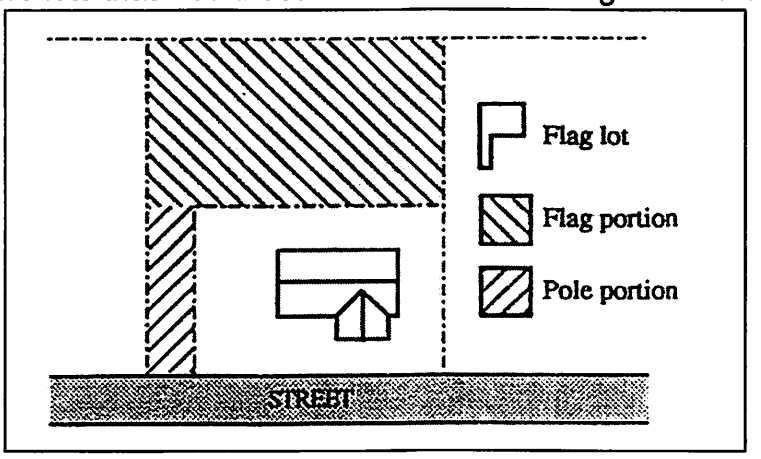
FENCE: An accessory structure, including landscape planting, designed and intended to serve as a barrier or as a means of enclosing a yard or other area, or other structure; or to serve as a boundary feature separating two or more properties.

FENCE, SIGHT-OBSCURING: A fence or evergreen planting arranged to obstruct vision.

FILL: the placement by man of sand, sediment, or other material, to create new land or to raise the elevation of land.

FINAL DECISION: The date upon which a decision has been rendered and the Order is signed, or the final resolution of all City, State, and Federal appeals, whichever is later. *(Added by Ordinance 10-06, 4-19-10)*

FLAG LOT: A lot located behind another lot that has normal street frontage. A flag lot includes a strip of land that goes out to the street for an access drive. There are two distinct parts to a flag lot; the flag which comprises the actual building site located behind another lot, and the pole which provides access from the street to the flag. A flag lot generally results from the division of a large lot that does not have sufficient width for division into two lots that would both have normal frontage onto the street.



FLOATING RESIDENCE: A dwelling unit which floats on a water body and is designed such that it does not come into contact with land except by ramp. Floating residences may also be referred to as floating homes or houseboats. A floating residence is not equivalent to a duck shack or other similar recreational structure designed for temporary use. It is not equivalent to a boat house, designed for storage of boats.

FLOOR AREA: The sum of gross horizontal areas of the several floors of a building, measured from the exterior face of the exterior walls or from the center line of walls separating two buildings, but not including:

a. Attic space providing headroom of less than seven feet.

b. Basement, if the floor above is less than six feet above grade.

c. Uncovered steps or fire escapes.

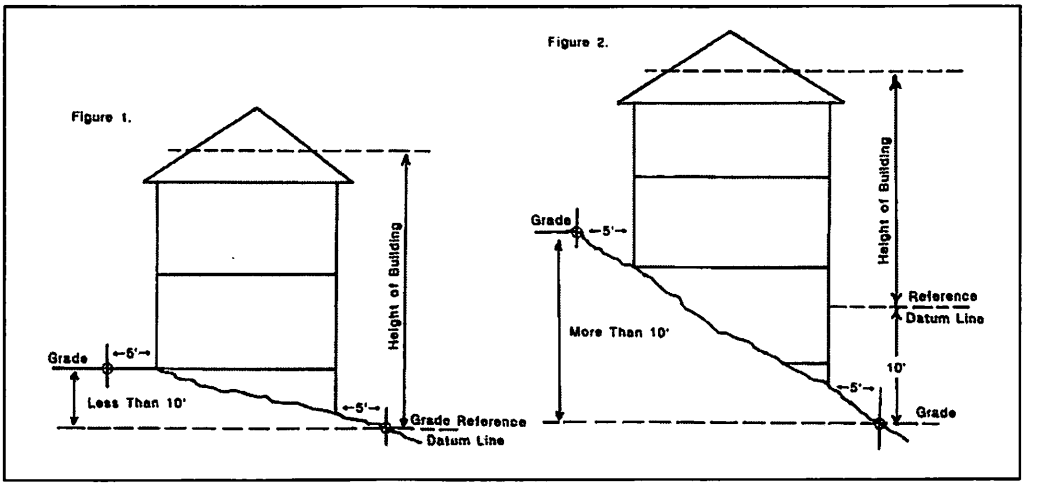
d. Private garages, carports or porches.

e. Accessory off-street parking or loading spaces.

FOOTPRINT: The outer bounds, horizontally, of all features of a structure including decks, stairs, and other non-enclosed features that are attached to the structure and are constructed 12" or more above grade. *[Added by Ordinance 13-08, 8-19-2013]*

GASOLINE SERVICE STATION: A place or station selling motor fuel and oil for motor vehicles; selling, servicing and installing tires, batteries and accessories, and other related products.

GRADE: The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building.



GRANTING AUTHORITY: The Community Development Director, Astoria Planning Commission, Historic Landmarks Commission, and/or the Design Review Committee who review and approve land use requests. *(Added by Ordinance 10-06, 4-19-10)*

GROSS AREA: The total usable area, including accessory space dedicated to such things as streets, easements, and uses out of character with the principal use, but within a unit of area being measured.

GROUP HOUSING: Dwelling in which no more than 15 individuals reside who do not require treatment, excluding Residential Facility and Residential Home.

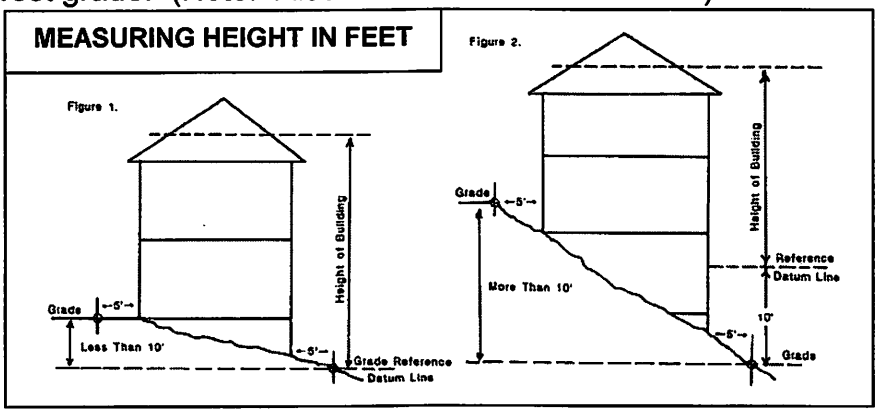
GUIDELINES: For the purpose of the Riverfront Vision Plan Overlay Zones, the term guidelines shall mean code provisions that encourage or allow for design features or approaches and that provide flexibility and discretion for the appropriate review body to interpret and apply the guideline. *(Added by Ord.15-03, 6-15-15)*

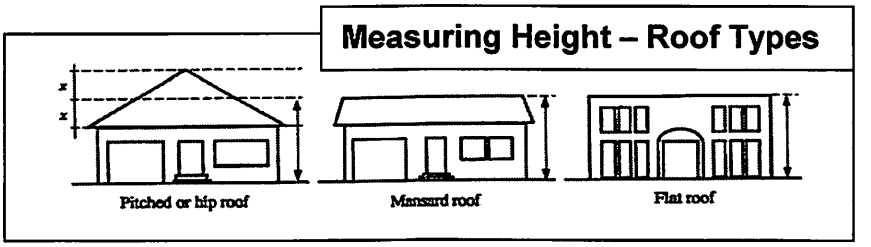
HEIGHT, BUILDING: The vertical distance above a reference datum measured to the highest point of the coping of a flat roof, to the deckline of a mansard roof, or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of that building. The reference datum shall

be whichever of the following two measurements results in the greater building height (see Figure 1):

a. The reference datum is the lowest grade when the highest ground surface within a five (5) foot horizontal distance of the exterior wall of the building is not more than ten (10) feet above that lowest grade. (Note: Also see definition of "Grade".)

b. The reference datum is ten (10) feet higher than the lowest grade when the ground surface described in Item A above is ten (10) feet or more above that lowest grade. (Note: Also see definition of "Grade".)





HISTORIC DISTRICT: A relatively compact, definable geographic area possessing an obvious concentration, linkage or continuity of buildings and sites united by past events, architectural styles, or other physical features illustrative of the community's historic development, consistent with and conforming to the standards of the National Register of Historic Places.

HISTORIC LANDMARK: An individual building, site, or object worthy of official recognition due to its age, its physical features, architectural merit, or association with persons which helped to shape the history of Astoria; buildings should be at least 50 years old.

HISTORIC MARKER: A sign erected or maintained by public authority or by a recognized historical society or organization identifying sites, buildings, districts or structures of recognized historical or architectural value.

HISTORIC NON-CONTRIBUTING STRUCTURE: Structures in this classification were built during either the Primary or Secondary periods, but have been so altered that their historic and/or architectural character has been lost to view. Alterations of buildings in this classification are not deemed irreversible, and if restored, these buildings may qualify for reclassification as Primary or Secondary.

HISTORIC PRESERVATION: The process of sustaining the form and extent of a structure or site essentially as it now exists. It aims at halting further deterioration and providing structural stability but does not contemplate significant rebuilding.

HISTORIC PRESERVATION OFFICER: The City Staff person appointed by the City Manager to provide Staff support to the Historic Landmarks Commission.

HISTORIC PRIMARY SIGNIFICANT CONTRIBUTING STRUCTURE: Structures in this classification represent the primary period of construction and economic development within a neighborhood or other defined geographic area and reflect the building styles at that time.

HISTORIC REHABILITATION: The process of returning property to a state of utility through repair or alteration, which makes possible an efficient contemporary use. Those portions of the property which are important in illustrating historic and cultural values are preserved or restored.

HISTORIC RESTORATION: The process of accurately recovering the form and details of a property as it appeared at a particular period of time by means of removal of later work and the replacement of missing original work.

HISTORIC SECONDARY SIGNIFICANT CONTRIBUTING STRUCTURE: Structures in this classification represent the second significant period of construction and economic development within a neighborhood or other defined geographic area and reflect the building styles of that time.

HOME OCCUPATION: An occupation carried on by a resident of a dwelling as an accessory use within the same dwelling or in an adjacent structure.

HOME STAY LODGING: A tourist accommodation with no more than two (2) bedrooms available for transient rental, and which is owner occupied. Such facilities may or may not provide a morning meal.

HOSPITAL: An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical or surgical care and nursing service on a continuous basis.

HOTEL: A building in which lodging is provided for guests for compensation.

INCIDENTAL USE: A use that is in conjunction with, and smaller than the main part of the operation.

INDOOR FAMILY ENTERTAINMENT: A facility which provides entertainment for persons of all ages, and which may be passive or active. Examples include bowling alleys, movie theaters, swimming pools, racquet ball courts, and similar facilities.

INITIAL PLAN: A sketch or schematic plan presented by a subdivider or applicant to the Planning Commission or Community Development Director, as applicable, for their comments. The plan may be to any size, scale, and include information deemed necessary by the applicant. Review of the initial plans places no obligation on the commission or the applicant as to the future of such plan. *(Added by Ordinance 14-03, 4-21-14)*

IN-KIND: With respect to mitigation, a term used to describe an action that is designed to duplicate, to the degree practicable, habitat characteristics that are lost or impaired by a development action.

INN: A transient lodging facility with up to 11 guest bedrooms, which is owner or manager occupied, and which provides a morning meal. Inns may conduct associated business activities on an occasional basis, such as wedding receptions, club meetings and luncheons, conferences, and reunions.

INTERTIDAL: Between extreme low tide and the landward limit of aquatic vegetation.

IN-WATER DREDGED MATERIAL DISPOSAL: Deposition of dredged materials in an aquatic area. Methods include beach nourishment, flowlane disposal, estuarine open-water disposal, in-water sump disposal, agitation dredging and ocean disposal.

JUNK YARD: Any property used for breaking up, dismantling, sorting storing, distributing, buying, or selling scrap, waste material, or other junk.

KENNEL: A lot or building in which four but not more than 50 dogs or cats at least four months of age are kept commercially for board, propagation, training or sale.

LAND DISPOSAL: Deposition of dredged material on uplands or shorelands, including on the to and landward sides of flood control dikes.

LAND TRANSPORTATION FACILITIES: Highways, railroads, bridges and associated structures and signs which provide for land transportation of motorized and/or non-motorized vehicles (excluding logging roads).

LANDSCAPING: Preservation, planting and maintenance of trees, shrubs, groundcovers, and lawns, and associated walkways, benches, decks, fences, fountains, sculptures, courts or plazas in the proportions specified by the landscaping Code.

LIGHT MANUFACTURING: An enterprise involved in the manufacturing of goods or products which require minimal primary processing and which have minimal off-site impacts in terms of noise, glare, odor, air and water pollution. Processing, fabricating, assembly or disassembly of items takes place wholly within an enclosed building, and requires only a small amount of raw materials, land area, power, are easy to transport, and does not require large automated production lines. Facilities typically have less environmental impact than those associated with heavy industry. Examples include food products, brewery, distillery, clothing, electronics, wood working, etc. *(Amended by Ordinance 14-03, 4-21-14)*

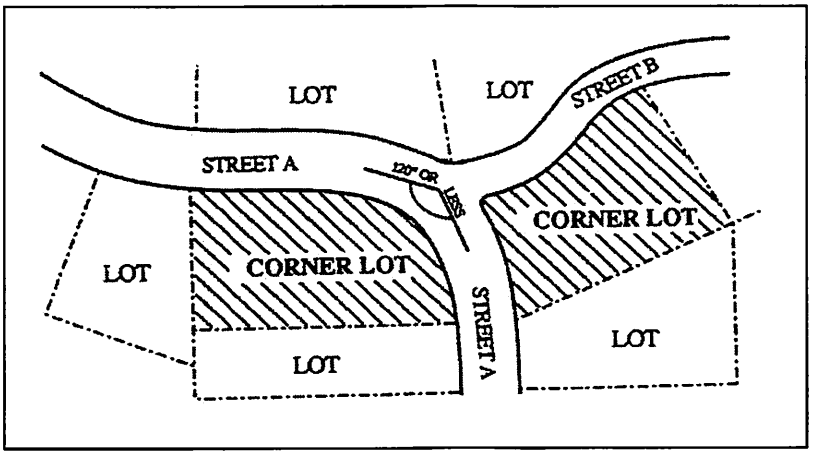
LOG DUMP/SORT AREA (in-water): The use of an area to transfer logs to or from the land to water, normally associated with log storage/sort yards, log booming or processing/shipping facilities where rafts are built or dismantled.

LOG STORAGE (in-water): The use of water surface area to store commercial logs in rafts until ready for market.

LOG STORAGE/SORTING AREA (dry land): An area where logs are gathered from surrounding harvest areas, weighed, sorted for species, size and quality, and stored until ready for transfer to water storage areas or to market.

LOT: A parcel or tract of land as shown on a legally recorded plat of a subdivision, or a parcel or tract of land under one ownership.

CORNER: A lot that has frontage on more than one intersecting street. A street that curves with angles that are 120 degrees or less is considered two intersecting streets for the purpose of evaluating whether a lot is a corner lot.



INTERIOR: A lot other than a corner lot.

REVERSED CORNER LOT: A corner lot the side street line of which is substantially a continuation of the front lot line of the first lot to its rear. *(Added by Ordinance 14-03, 4-21-14)*

THROUGH: An interior lot having frontage on two streets.

LOT AREA: The total area of a lot measured in a horizontal plane within the lot boundary lines.

LOT COVERAGE: The portion of a lot expressed as a percentage of the total lot area that is occupied by the principal and accessory buildings, including all decks, and other projections except eaves.

LOT DEPTH: The average horizontal distance between the front lot line and the rear lot line.

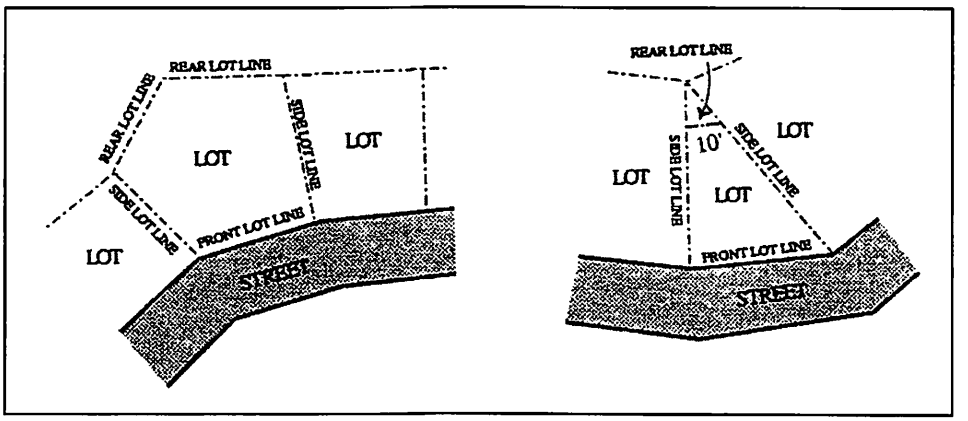
LOT LINE: The property line bounding a lot.

FRONT: The property line separating the lot from the street, other than an alley. On corner lots, the front lot line shall be determined by the main entrance to the existing or proposed structure. The City shall determine the front lot line of a corner lot. On a flag lot, the front line is considered to be the lot line that is most parallel to and closest to the street, excluding the pole portion of the flag.

REAR: The property line which is opposite and most distant from the front lot line. In the case of an irregular or triangular shaped lot, a line ten feet in length within the lot parallel to and at a maximum distance from the front lot line.

SIDE: Any property line not a front or rear lot line.

Lot Lines on Irregular Lots



LOT WIDTH: The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

MAINTENANCE AND REPAIR: Routine upkeep of an existing structure or remedial restoration of a damaged structure. Maintenance and repair may involve changes in the structure's location, size, configuration, orientation, or alignment if those changes are limited to the minimum amount necessary to retain or restore its operation or function or to meet current building or engineering standards.

(Adopted 10-8-92)

MANUFACTURED DWELLING: A manufactured dwelling is a building or structure not subject to the Uniform Building Code Structural Specialty Code adopted pursuant to ORS 455.100 to ORS 455.450, and is one of the following:

MANUFACTURED HOME: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with Federal manufactured housing construction and safety standards regulations in effect after June 16, 1976, and not conforming to the Uniform Building Code.

MOBILE HOUSE: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 16, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

PARK UNITS: A park unit is a small, single-wide, manufactured dwelling designed for permanent occupancy and does not include recreation vehicles.

RESIDENTIAL TRAILER: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962.

MANUFACTURED DWELLING PARK: Any place where four (4) or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured Dwelling Park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one mobile home per lot if the subdivision was approved by the City.

MARINA: A facility which provides moorage, launching, storage, supplies and a variety of services for recreational, commercial, and fishing vessels. They are differentiated from individual docks and moorages by their larger scale, the provision of significant landside services or the use of a solid breakwater (rock, bulkhead, etc.).

MARQUEE: A permanent roof-like structure projecting horizontally from and attached to a building.

MARSH: Lands transitional between terrestrial and aquatic systems where saturation with water is the dominant factor determining plant and animal communities and soil development. For the purpose of this definition, these areas must have one or more of the following attributes:

a. At least periodically, the land supports predominantly hydrophytes; and/or

b. The substrate is predominantly undrained hydric soil.

MICROWAVE RECEIVING DISH: Any conical or dish shaped device or structure used for receiving television or other telecommunication signals transmitted from satellites or earth based transmitters. Microwave receiving dishes may also be known as "Television Receive Only" (TVRO) dishes, "Satellite Direct Service" (SDS) dishes, "Multi-Distance Service" (MDS) dishes and "Earth Stations".

MINI STORAGE: A building or group of buildings in a controlled access compound that contains various sizes of individual, compartmentalized, and controlled-access stalls or lockers for the storage of a customer's goods or wares. No sales, service, or repair activities other than the rental of storage units are permitted on the premises.

MINING AND MINERAL EXTRACTION: The removal for economic use of minerals, petroleum resources, sand gravel or other naturally occurring materials from shorelands or submerged lands.

MITIGATION: The reduction of adverse affects of a proposed development project in wetlands or aquatic areas by considering, in the following order:

a. Avoiding the impact altogether by not taking a certain action or parts of an action;

b. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;

c. Rectifying the impact by repairing, rehabilitation, or restoring the affected environment;

d. Reducing or eliminating the impact over time by preservation and maintenance operation; and

e. Compensating for the impact by creation, restoration, or enhancement of wetlands to maintain their functional processes, such as natural biological productivity, habitats, and species diversity, unique features and water quality. Any mitigation action or combination of actions involves monitoring with remedial follow up if necessary.

MODULAR HOME: A dwelling unit manufactured off-site, built to be used for permanent residential occupancy, to be set on a permanent foundation and conforming to the Uniform Building Code.

MOORAGE: Piling or a dock or both used to secure a boat or barge.

MOTEL: Same as "Hotel".

NAME PLATE: A sign identifying the name, occupation or both of an occupant of the property.

NAVIGATION AIDE: Beacon, buoy, range marker and other objects providing directional assistance.

NAVIGATION IMPROVEMENTS, MINOR: Alterations necessary to provide water access to existing or permitted uses including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.

NAVIGATIONAL STRUCTURE: Jetty, groin, pile dike, breakwater, and other in-water structures designed to change or moderate hydraulic characteristics.

NON-COMPATIBLE NON-CONTRIBUTING STRUCTURE: Buildings in this classification were built after the end of the secondary development period and are not compatible architecturally with the context and historic character of the district.

NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.

NON-TOURIST ORIENTED: A use or business which devotes at least 50% or more or its gross floor area to uses or activities which are not open or physically accessible to the public, or are not reasonably expected to be of interest to visitors.

NURSING HOME: A home, place or institution which operates and maintains facilities providing convalescent or chronic care, or both for a period exceeding 24 hours or two or more ill or infirm patients not related to the nursing home administrator or owner by blood or marriage. Convalescent and chronic care may include, but need not be limited to, the procedures commonly employed in nursing and care for the sick.

OCEAN FLOODING: The flooding of lowland areas by salt water owing to tidal action, storm surge, or tsunamis (seismic sea waves). Land forms subject to ocean flooding include beaches, marshes, coastal lowlands, and low lying interdune areas. Areas of ocean flooding are mapped by the Federal Emergency Management Agency (FEMA). Ocean flooding includes areas of velocity flooding and associated shallow marine flooding.

OFF-SITE: With respect to mitigation, an area separated from the impact area that offers a potential set of environmental conditions that are partially or entirely different from the original conditions occurring at the impact area.

ON-SITE: With respect to mitigation, an area near the impact area that offers a reasonable opportunity to emulate the same environmental conditions lost to a development action (e.g. salinity regime, tidal elevation or flood regime, temperature regime, proximity to propagules, and substrate type).

OUT-OF-KIND: With respect to mitigation, an action that is designed to replace a set of habitat characteristics that have been impaired or lost due to a development action with a different set of habitat characteristics that are considered to be equally desirable by the regulatory resource agencies.

OPEN SPACE OR OPEN AREA: Land area that is not occupied by buildings, structures, parking areas, streets, or alleys, excluding approved driveways. Open space or open area may be devoted to landscaping or preservation of natural features.

OWNER: Those individuals, partnerships, corporations or public agencies holding fee simple title to property, or a purchaser under a recorded instrument of sale. This includes an authorized agent of the owner. Owner does not include those holding easements, leaseholds, or purchasers of less than fee interest. *(Amended by Ordinance 14-03, 4-21-14)*

PARCEL: A unit of land that is created by a partitioning of land. *(Added by Ordinance 14-03, 4-21-14)*

PARKING SPACE: An enclosed or unenclosed surfaced area, exclusive of maneuvering and access area, permanently reserved for the temporary storage of one automobile, and connects with a street or an alley which affords ingress and egress for automobiles.

PARTITION: Either an act of partitioning land or an area or tract of land partitioned as defined in this Section.

MAJOR PARTITION: A partition which includes the creation of a street.

MINOR PARTITION: A partition that does not include the creation of a street. *(Added by Ordinance 14-03, 4-21-14)*

PARTITION LAND: To divide an area of land into two or three parcels within a calendar year, but does not include:

1. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

2. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable Development Code requirement; or

3. A sale or grant by a person to a public agency or public body for State highway, County road, City street or other right of purposes provided such road or right-of-way conforms with the Comprehensive Plan and ORS 215.213(2)(g) to (s) and ORS 215.283(2)(p) to (r). However, any property divided by the sale or grant of property for State highway, county road, city street or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

(Added by Ordinance 14-03, 4-21-14)

PARTITION PLAT: A final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a major or minor partition. *(Added by Ordinance 14-03, 4-21-14)*

PATHWAY/SHARED-USE PATHWAY: A facility for pedestrian and bicycle access conforming to City standards and separated from the street right-of-way, which may or may not be within a public right-of-way. *(Added by Ordinance 14-03, 4-21-14)*

PEDESTRIAN WAY: A right-of-way for pedestrian traffic. *(Added by Ordinance 14-03, 4-21-14)*

PENNANT: Any flag tapering to a point or swallowtail and used for identification or signaling.

PERFORMANCE AGREEMENT: A proper petition submitted to and approved by the Council for construction and improvements as required in Section 13.150; or a performance bond executed by a surety company duly licensed to do business in the State, in an amount equal to the full cost of the work to be done, and conditioned upon the faithful performance thereof. *(Added by Ordinance 14-03, 4-21-14)*

PERSON: Every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

PERSONAL SERVICE ESTABLISHMENT: Business primarily engaged in providing services involving the care of a person or pet, including laundering and dry cleaning services, beauty and barber services, grooming, garment alterations, and funeral homes.

PHASED PROJECT: Project involving construction of buildings and/or sites that are not completed all at the same time. All phases of a phased project are reviewed and approved under one permit with a time line for phased completion. *(Added by Ordinance 10-06, 4-19-10)*

PILING/DOLPHIN INSTALLATION: The driving of wood, concrete or steel piling into the bottom in aquatic areas to support piers or docks, structures, moored floating structures, vessels or log rafts, or for other purposes. A dolphin is a group of piling held together by steel cable and used for mooring vessels, log rafts or floating structures.

PLAT: A final subdivision plat, replat or partition plat. *(Added by Ordinance 14-03, 4-21-14)*

PORTABLE ACCESSORY STRUCTURE OR OBJECT: A structure or object which is not permanently attached to the ground, but which requires location on the ground; and which is more than 12" in height; and that is not used or intended to be used for dwelling or storage or coverage (for humans or equipment) purposes. Examples include but are not limited to: picnic tables, basketball hoops, dog houses, skate board ramps, and similar structures or objects. *(Added by Ordinance 01-05, 5-7-01)*

PORTABLE SIGN: Any sign designed to be placed on the ground, and attached to a frame which is self-supporting, and which is not affixed to a building, structure, pole, or other item of permanent support. *(Added by Ordinance 00-11, 12-4-00)*

PRELIMINARY PLAT: A tentative map and plan for a land division duly submitted to the Community Development Director for Commission or administrative consideration and approval and conforming in all respects to the requirements therefore specified in this Ordinance. *(Added by Ordinance 14-03, 4-21-14)*

PRIMARY: See "Historic Primary Significant Contributing Structure".

PROFESSIONAL SERVICE ESTABLISHMENTS: Businesses primarily engaged in providing services such as the following: medical and other health services; legal services; engineering and architectural services; accounting, auditing, and bookkeeping services; real estate services; and financial services.

PROPERTY LINE: The division line between two units of land. *(Added by Ordinance 14-03, 4-21-14)*

PROPERTY LINE ADJUSTMENT: The relocation of a common property line between two abutting properties. *(Added by Ordinance 14-03, 4-21-14)*

PUBLIC USE: A structure or use intended or used for a public purpose by a city, school district, county, state, or by any other public agency or by a public utility.

PUBLIC WORKS DIRECTOR: The duly appointed Public Works Director of the City of Astoria or his/her designee. *(Added by Ordinance 14-03, 4-21-14)*

RECREATION: Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction. Coastal Recreation occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.

LOW-INTENSITY: Does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation. Facilities included as low-intensity recreation include picnic tables, trail signs, unpaved trails and portable restrooms.

HIGH-INTENSITY: Uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation.

RECREATION VEHICLE PARK: A facility which is designed for occupancy by RV, camping trailers, tents, or other personal transient lodging facility and are not designed for permanent occupancy exceeding 90 days.

RECREATIONAL VEHICLE: A vehicle which is:

a. Built on a single chassis;
b. 400 square feet or less when measured at the largest horizontal projection;
c. Designed to be self-propelled or permanently towable by a light duty truck; and
d. Designated primarily not for use as a permanent dwelling but as temporary occupancy for recreational, camping, travel, or seasonal use.

(Added by Ordinance 09-03, 8-3-09)

REPAIR SERVICE ESTABLISHMENT, MAJOR: Business primarily engaged in repairing items and which undertakes no more than a minimal amount of manufacturing. A major repair service establishment has more than 3,000 square feet of gross floor area.

REPAIR SERVICE ESTABLISHMENT, MINOR: Business primarily engaged in repairing items and which undertakes no more than a minimal amount of manufacturing. A minor repair service establishment has 3,000 square feet or less gross floor area.

REPLAT: The act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. *(Added by Ordinance 14-03, 4-21-14)*

RESERVED STRIP: A strip of land, usually one (1) foot in width, reserved across the end of a street or alley and terminating at the boundary of a land division or a strip of land between a dedicated street or less than full width and adjacent acreage, in either case reserved or held for future street extension or widening. *(Added by Ordinance 14-03, 4-21-14)*

RESIDENTIAL FACILITY: A facility licensed by or under the authority of the Department of Human Resources under ORS 443.400 to ORS 443.460 which provides residential care alone or in conjunction with training or treatment or a combination thereof for six (6) to 15 individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

RESIDENTIAL HOME: A home licensed by or under the authority of the Department of Human Resources under ORS 443.400 to ORS 443.825 which provides residential care alone or in conjunction with training or treatment or a combination thereof for five (5) or fewer individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

RESOURCE ENHANCEMENT: The use of artificial or natural means to improve the quantity or quality of a specific resource.

RESTORATION: (Estuarine Related) Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities or catastrophic events. For the purpose of Oregon Statewide Planning Goal 16, estuarine restoration means to revitalize reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began. Active Restoration involves the use of specific remedial actions, such as removing fills, installing water treatment facilities, rebuilding deteriorated urban waterfront area or returning diked areas to tidal influence. Passive Restoration is the use of natural processes, sequences, and timing which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

RESTORATION AS MITIGATION: For the purposes of Oregon Statewide Planning Goal 16, estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

RETAIL SALES ESTABLISHMENTS: Businesses, including a restaurant or bar, which are primarily engaged in selling merchandise to customers for personal, household or farm use. Retail Sales Establishment does not include gasoline service station, automotive sales establishment, or other sales of large motorized vehicles, or mobile homes.

RETIREMENT CENTER: A housing facility designed specifically for residents 55 years of age or older.

REVERSED CORNER LOT: A corner lot the side street line of which is substantially a continuation of the front line of the first lot to its rear. *(Added by Ordinance 14-03, 4-21-14)*

RIGHT-OF-WAY: The area between the boundary lines of a street or other easement. *(Added by Ordinance 14-03, 4-21-14)*

RIPARIAN: Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

RIPRAP: A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. In local usage, the similar use of other hard material, such as concrete rubble, is also frequently included as riprap.

ROADWAY: The portion of a street right-of-way developed for vehicular traffic. *(Added by Ordinance 14-03, 4-21-14)*

ROUTINE MAINTENANCE: Includes cleaning, landscaping, painting and minor repairs, not including the removal or replacement of architectural elements or details which would significantly alter the historical integrity of the building.

ROWHOUSE: One of a continuous row of dwellings having a uniform or nearly uniform architectural style, and having at least one common wall with its neighbor. *(Added by Ordinance 95-05, 2-6-95)*

SANDWICH BOARD: *(Deleted by Ordinance 00-11, 12-4-00)*

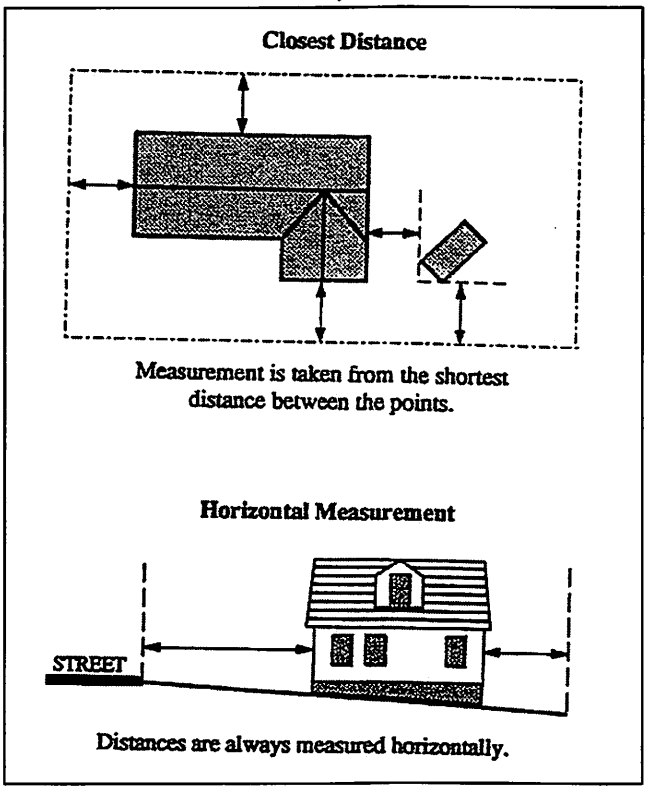
SECONDARY: See "Historic Secondary Significant Contributing Structure".

SEMI-PUBLIC USE: A structure or use intended or used for a semi-public purpose by a church, lodge, club, or any other nonprofit organization, excluding lodges or clubs which have eating or drinking facilities.

SHOPPING CENTER: A group of stores sharing common off-street parking facilities and leasing or sharing a common property ownership.

SHOULD: A requirement, unless it can be shown that to comply with the requirement would be unreasonable, impractical, or unfeasible. Economic hardship alone shall not be justification for noncompliance with the requirement, but may be considered in conjunction with other reasons for noncompliance. *(Added by Ordinance 14-03, 4-21-14)*

SETBACK: The minimum distance required between a structure and a lot line.



SHORELAND AREAS: The lands and nontidal wetlands along the estuary shore. Shoreland designations extend waterward to the upper limit of aquatic vegetation or, where aquatic vegetation is absent, Mean Higher High Water.

SHORELAND RESOURCES, SIGNIFICANT: Significant shoreland resources are described in subarea plans, and are included in Oregon jurisdiction Coastal Shorelands Boundaries. Significant shoreland resources include significant nontidal wetlands, significant shoreland fish and wildlife habitat, significant riparian vegetation, exceptional aesthetic resources and coastal headlands.

SHORELINE: The boundary line between a body of water and the land, measured on tidal waters at the landward limit of aquatic vegetation or, where aquatic vegetation is absent, Mean Higher High Water; and on non-tidal waterways at the ordinary high water mark.

SHORELINE STABILIZATION: The protection from erosion and sloughing of the banks of tidal and nontidal streams, rivers, lakes or estuaries by vegetative or structural means.

VEGETATIVE SHORELINE STABILIZATION: Use of plants that anchor the soil to prevent shoreline erosion and sloughing.

STRUCTURAL SHORELINE STABILIZATION: Use of riprap, bulkheads, seawalls or other non-vegetative material to prevent shoreline erosion.

SIDEWALK: A paved walkway with rock, paved surfacing, or other approved material within a public street right-of-way that is generally located adjacent to and separated from the roadway by a curb, drainage facility (e.g., ditch or swale), or planter strip. *(Added by Ordinance 14-03, 4-21-14)*

SIGN: Any identification, description, illustration, symbol, or device which is affixed directly or indirectly upon a building, structure, or land and which conveys a message.

ABANDONED SIGN: A sign pertaining to a business or occupant whose products or services or noncommercial messages have ceased to be offered to the public or ceased to be in effect on said premises for a period of more than 90 days.

ANIMATION SIGN: Any sign or part of a sign that contains text and/or other images that flash or move or otherwise change at intervals of less than once every ten (10) seconds.

(Added by Ordinance 04-04, 5-3-04)

CHANGEABLE TEXT SIGN: Any sign or part of a sign that changes physical position, light intensity, or text and/or graphic images by use of intermittent on-and-off illumination or any movement or rotation or that gives the visual impression of such movement or rotation at intervals of more than once every 24 hours. Also known as "moveable text sign", "electronic reader board", "electronic message center", or "multiple message sign".

(Added by Ordinance 04-04, 5-3-04)

CORNER SIGN: A sign projecting from the corner of a building.

DETERIORATED SIGN: A sign which the Building Official determines is deteriorated or dilapidated, or which may constitute a threat to public safety.

DIRECTIONAL SIGN: A permanent sign which is designed and erected solely for the purpose of traffic or pedestrian direction and placed on the property to which the public is directed.

FLASHING SIGN: A sign incorporating artificially reflected light which does not maintain a stationary or constant intensity or color at all times when in use.

FREESTANDING OR GROUND SIGN: A sign which is supported by one or more upright poles, or other support structure, and which is not attached to a building, but not including sandwich boards.

HISTORICAL SIGN: A sign designated to be historical in nature by the Historic Landmarks Commission.

MARQUEE SIGN: A sign which is painted on, attached to or supported by a marquee.

MONUMENT SIGN: A sign, other than a freestanding sign, in which the entire bottom is in contact with or is close to the ground and is not attached to any part of a building or other structure. A monument sign shall not exceed 10' in height. Any sign over 10' in height shall be classified as a "freestanding sign".

(Added by Ordinance 04-04, 5-3-04)

NONCONFORMING SIGN: A sign or sign structure lawfully erected and properly maintained that would not be allowed under the sign regulations presently applicable to the site.

OFF-PREMISE SIGN: A sign that identifies, advertises, or draws attention to a business, use, activity, goods, products, or services which are not sold, manufactured, or distributed on or from the premises on which the sign is located, or facilities not located on the premises on which the sign is located.

(Added by Ordinance 04-04, 5-3-04)

OPENING OR COMING SOON SIGN: A sign intended to announce the opening of a business, use, or activity, or the construction of a new building or expansion of an existing building, excluding announcement of sales or activities and events within an existing business, use, or activity.

(Added by Ordinance 04-04, 5-3-04)

PEDESTRIAN SIGN: A sign which is placed under an awning or marquee.

PORTABLE SIGN: Any sign designed to be placed on the ground, and attached to a frame which is self-supporting, and which is not affixed to a building, structure, pole, or other item of permanent support. *(Added by Ordinance 00-11, 12-4-00)*

PROJECTING SIGN: A sign, other than wall signs, which is attached to or project from a structure or building face, usually perpendicular to the building face, although it may project from the corner of a building.

ROOF SIGN: Any sign erected upon, against, or directly above a roof, on top of or above the parapet of a building.

SHORT TERM SIGN: A sign that is installed for more than 30 days but not more than 180 days.

(Added by Ordinance 04-04, 5-3-04)

TEMPORARY SIGN: A sign which is not permanently affixed. All devices such as banners, pennants, flags (not including flags of national, state or city governments), searchlights, curb signs, balloons or other air or gas-filled balloons.

WALL SIGN: A sign attached to or erected against the wall of a building with the face in a parallel plane to the building wall.

WINDOW SIGN: Any sign located inside, affixed to or within three (3) feet of the window panes of a building, whether removable or permanent that remains in place for more than a period of 14 days.

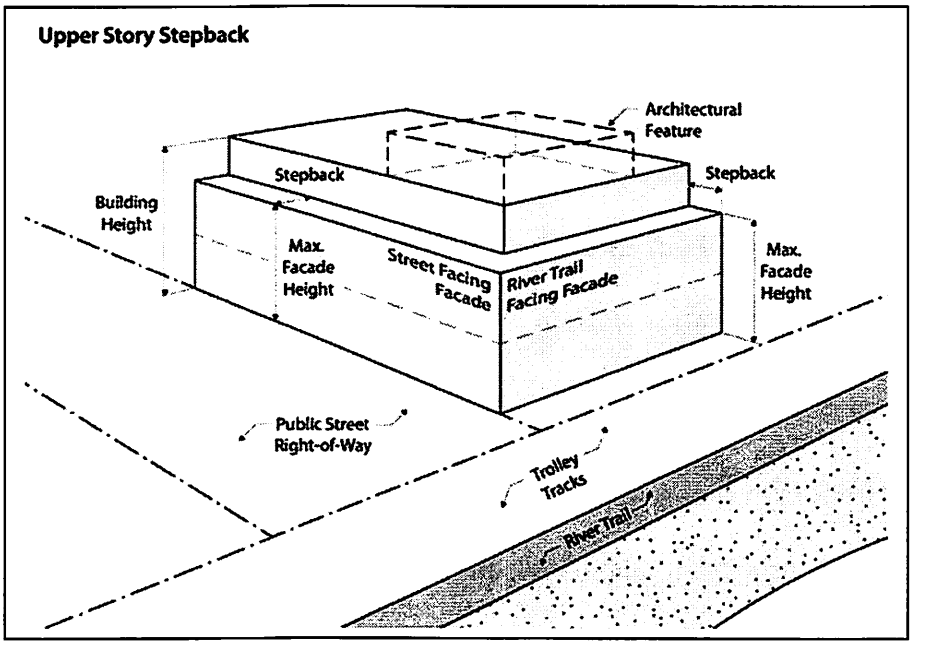
SIGN STRUCTURE: A structure specifically intended for supporting or containing a sign.

SINGLE-FAMILY DENSITY AREA: An area abutting a minor street not a business street, where for one block length or more all property on both sides of the street is, or as determined by the Planning Commission, will be occupied by no more than 4.50 families per acre exclusive of street right-of-way. *(Added by Ordinance 14-03, 4-21-14)*

SITE FRONTAGE: The lineal frontage of a site on a public street, excluding alleyways.

STANDARDS: For the purpose of the Riverfront Vision Plan Overlay Zones, the term guidelines shall mean code provisions that require or prohibit specific design features, incorporate numerical or other clear and objective standards, and provide for limited or no discretion by the appropriate review body to interpret and apply the standard. *(Added by Ord. 15-03, 6-15-15)*

STEPBACK: Building stepbacks are stepped or progressive recessions in a building's face as the building rises higher. Stepbacks are designed to reduce building mass to allow views around the building from above and/or from a distance, to allow more light down to the adjacent rights-of-way, and to improve the aesthetic experience of the building from adjacent rights-of-way. *(Added by Ord 14-09, 10-6-14)*



STORY: That portion of a building included between a floor and the ceiling above it which is six feet or more above grade. If the finished floor level directly above a basement or cellar is more than six feet above grade, each basement or cellar will be considered a story.

STREET: A public or private way being the entire width from lot line to lot line that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land and including the term "road", "highway", "lane", "avenue", "alley" or similar designations. *(Amended by Ordinance 14-03, 4-21-14)*

ALLEY: A narrow street through a block which affords only secondary means of access to abutting property at the rear or sides thereof. *(Added by Ordinance 14-03, 4-21-14)*

ARTERIAL: A street of considerable continuity which is primarily a traffic artery for intercommunication among large areas. *(Added by Ordinance 14-03, 4-21-14)*

BUSINESS STREET: Any block length along any street, other than an arterial, within which there is or will be provided access to one or more commercial structures. *(Added by Ordinance 14-03, 4-21-14)*

COLLECTOR: A street supplementary to the arterial street system and a means of intercommunication between this system and smaller area; used to some extent for through traffic and to some extent for access to abutting properties. *(Added by Ordinance 14-03, 4-21-14)*

CUL-DE-SAC: (Dead End Street) A short street having one end open to traffic and being terminated by a vehicle turnaround. *(Added by Ordinance 14-03, 4-21-14)*

HALF STREET: The dedication of a portion only of the width of a street, usually along the edge of a subdivision, where the remaining portion of a street has been or could be dedicated in another subdivision. *(Added by Ordinance 14-03, 4-21-14)*

MAJOR STREET: Same as "arterial". *(Added by Ordinance 14-03, 4-21-14)*

MARGINAL ACCESS STREET: A minor street parallel and adjacent to a major arterial street, providing access to abutting properties, but protected from through traffic. *(Added by Ordinance 14-03, 4-21-14)*

MINOR STREET: A street intended primarily for access to abutting properties. *(Added by Ordinance 14-03, 4-21-14)*

STRUCTURAL ALTERATION: Any change to the supporting members of a building including foundations, bearing walls or partitions, columns, beams, or girders or any structural change in the roof or in the exterior walls.

STRUCTURAL ALTERATION, SIGN: Modification of the size, shape or height of a sign structure. This also includes replacement of sign structure materials with other than comparable materials, for example, metal parts replacing wood parts.

STRUCTURE: That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having a location on the ground.

STUDIOS, ARTS AND CRAFTS: Facilities used by artists and crafts persons and up to two assistants for the production of arts and crafts, and which are not open to the public for sales.

SUBDIVIDE: To effect a land division. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVIDE LAND: To divide an area or tract of land into four or more lots within a calendar year. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVIDER: An owner commencing proceedings under this Chapter to effect a land division by himself or through this lawful agent. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVISION: Either an act of subdividing land or an area or tract of land subdivided as defined in this Section. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVISION PLAT: A final map and other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision. *(Added by Ordinance 14-03, 4-21-14)*

SUBSTANTIAL CONSTRUCTION: Physical alteration of the land and/or building to an extent that there is obvious progress toward completion of the project as follows: For new construction, it shall include walls extending up from grade level; for existing buildings, it shall include issuance of a building permit with inspections for work equal to or greater than 25% of the value of the project as indicated on the building permit; and if no building permit is required, proof that site work equal to or greater than 25% of the value of the project has been completed. Land value and permit costs shall not be included in the calculation for value of construction completed. *(Added by Ordinance 10-06, 4-19-10)*

SUBTIDAL: Below the level of extreme low tide.

SUMP DREDGED MATERIAL DISPOSAL, IN-WATER: Deposition of dredged materials in a temporary in-water holding area and subsequently rehandling the material to place it on a land disposal site.

SUPERMARKET: Any retail store over 5,000 square feet whose normal items consist of produce and groceries, but may sell other items.

TEMPORARY ESTUARINE ALTERATION: Dredging, filling, or other estuarine alteration occurring over a specified short period of time which is needed to facilitate an allowed use. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include:

a. Alterations necessary for Federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance);

b. Alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations; and

c. Minor structures (such as blinds) necessary for research and educational observation.

TEMPORARY USE: A use or activity involving minimal capital investment that does not result in the permanent alteration of the site or construction of new buildings, and is removed from the site within one year, unless otherwise extended.

TIDEGATE: A device placed in a dike or dam that allows the passage of water through a culvert in a single direction.

TIDAL MARSH: Tidal wetlands vegetated with emergent vascular plants lying between extreme low tide and landward limit of aquatic vegetation.

TOURIST ORIENTED SALES OR SERVICE: A use or business which devotes 50% or more of its gross floor area to uses or activities which are open or physically accessible to the public, and are reasonably expected to be of interest to visitors.

TRANSPORTATION FACILITY: Transportation facilities include construction, operation, and maintenance of travel lanes, bike lanes and facilities, curbs, gutters, drainage facilities, sidewalks, transit stops, electric car charging stations (without pricing signs), landscaping, and related improvements located within public rights-of-ways controlled by a public agency, consistent with the City Transportation System Plan. *(Amended by Ordinance 14-03, 4-21-14)*

USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

USE, CEASE OF: Use shall be considered as ceased when the site and/or building is no longer used or available for occupancy by the specific use. A building or site vacant while being continuously marketed, repaired, or otherwise similarly unavailable for use is not considered to be a cessation of use. A building or site that is occupied by a different use shall be considered as a cessation of the former use. *(Added by Ordinance 10-06, 4-19-10)*

USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun. *(Added by Ordinance 10-06, 4-19-10)*

UTILITIES: Towers, facilities and lines for communication and power transmission; waste water treatment plants; storm water and treated waste water outfalls, including industrial; and major water, sewer and gas lines.

VISION CLEARANCE AREA: A triangular area of a lot at the intersection of streets, railroads, alleys, or driveways, as defined in City Code Section 6.100. *(Amended by Ordinance 14-03, 4-21-14)*

WALKWAY: A sidewalk or pathway, including any access way, allowing pedestrian and bicycle access and improved to City standards, or to other roadway authority standards, as applicable. See also, Access Way, Pathway, Sidewalk. *(Added by Ordinance 14-03, 4-21-14)*

WALL GRAPHICS: Any mosaic, mural or painting or graphic art technique or combination or grouping of mosaics, murals, or paintings or graphic art techniques applied, implanted or placed directly onto a wall or fence which does not identify a business or product, or carry a commercial or non-commercial message, excluding historical signs.

WATER-DEPENDENT: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER-DEPENDENT COMMERCIAL ACTIVITY, LOW INTENSITY: Commercial activities are actions taken in conjunction with a use or to make a use possible. Commercial activities generally do not in and of themselves result in a specific use, but rather in conjunction with a variety of uses for business and trade purposes. Water-dependent commercial activities are those which can be accomplished only on, in, or adjacent to water areas and are activities requiring water access for transportation, recreation, energy production, or as a source of process water. Low-intensity, water-dependent commercial activities are those occurring as part of a business and not simply for private use, which do not require or result in major alteration of the estuary. The level of impact on estuarine aquatic resources and recreational benefits is low as it relates to the consistency of the activity with the resource capabilities of the area and the purpose of the management unit.

WATER-ORIENTED: A use whose attraction to the public is enhanced by a view of or access to coastal waters.

WATER-RELATED: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

WETLAND CREATION: Inundation, by excavation or other means, of upland areas to allow local hydrologic conditions to convert soils and vegetation to a hydric character.

WETLAND ENHANCEMENT: An action which results in a long term improvement of existing wetland functional characteristics and processes that is not the result of a creation or restoration action.

WETLANDS: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WETLANDS, SIGNIFICANT NONTIDAL: Nontidal wetland described as significant in Oregon subarea plan Coastal Shorelands boundary descriptions or described as significant in Oregon jurisdiction Oregon Statewide Planning Goal 5 elements.

WHOLESALE TRADE ESTABLISHMENTS: Business which generally have substantial quantities of merchandise on the premises and which are primarily engaged in selling merchandise to other wholesalers, retailers, manufacturers, other businesses, governments, or institutions.

WIND SIGN OR DEVICE: Any sign or device in the nature of banners, flags, balloons, or other objects fastened in such a manner as to move upon being subject to pressures by wind.

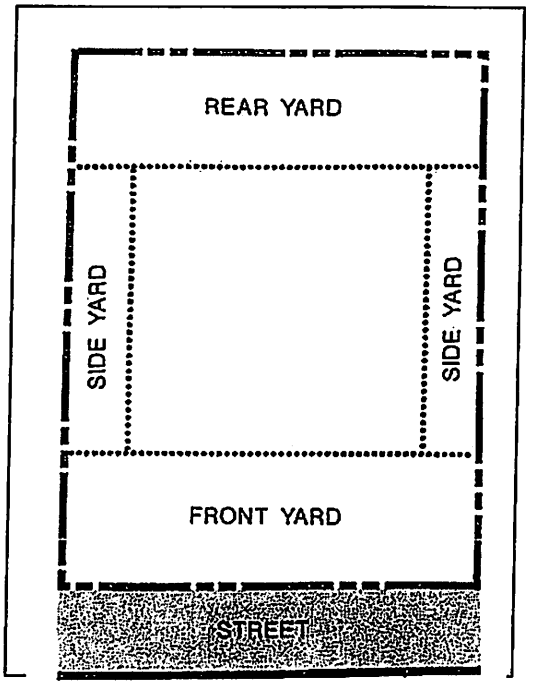
City of Astoria
Development Code

YARD: An open, unoccupied space of a lot which is unobstructed by any structure or portion of a structure extending more than 12 inches above ground level of the lot upward.

FRONT: A required open space extending the full width of a lot between any structure and the front lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this Code.

REAR: A required open space extending the full width of a lot between any structure and the rear lot line unoccupied and unobstructed from the ground upward except as specified elsewhere in this Code.

SIDE: A required open space extending from the front yard to the rear yard between any structure and the nearest side lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this Code.



H.O. Record Pg# 206

CITY OF ASTORIA

Founded 1811 • Incorporated 1856

DEVELOPMENT CODE

Adopted 10-8-92

Revised January, 2017

C-3: GENERAL COMMERCIAL ZONE

2.385. PURPOSE.

This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.

2.390. USES PERMITTED OUTRIGHT.

The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

1. Business service establishment.
2. Commercial laundry or dry cleaning establishment.
3. Commercial or public off-street parking lot.
4. Communication service establishment.
5. Construction service establishment.
6. Eating and drinking establishment.
7. Educational service establishment.
8. Family day care center in single-family, two-family, or multi-family dwelling.
9. Home occupation in existing dwelling.
10. Motel, hotel, bed and breakfast, inn, or other tourist lodging facility and associated uses.
11. Multi-family dwelling.
12. Personal service establishment.

13. Professional service establishment.

14. Public or semi-public use.

15. Repair service establishment, not including automotive, heavy equipment, or other major repair services.

16. Residential facility.

17. Retail sales establishment.

18. Single-family and two-family dwelling in a new or existing structure:

    a. Located above or below the first floor with commercial facilities on the first floor of the structure.

    b. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

    (Section 2.390.18.b added by Ordinance 11-08, 7-5-11)

(Section 2.390(18) amended by Ordinance 00-08, 9-6-00)

19. Transportation service establishment.

20. Conference Center.
(Section 2.390(20) added by Ordinance 94-06, 6-6-94)

21. Indoor family entertainment or recreation establishment.
(Section 2.390(21) added by Ordinance 98-01, 1-5-98)

22. Transportation facilities.
(Section 2.390.22 added by Ordinance 14-03, 4-21-14)

2.395. CONDITIONAL USES PERMITTED.

The following uses and their accessory uses are permitted in a C-3 Zone if the Planning Commission, after a public hearing, determines that the location and development plans comply with applicable standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

1. Animal hospital or kennel.

2. Automotive sales or service establishment.

3. Day care center.

4. Gasoline service station.

5. Hospital.

6. *(Section 2.395(6) deleted by Ordinance 98-01, 1-5-98)*

7. Light Manufacturing.

8. Recycling establishment.

9. Repair service establishment not allowed as an Outright Use.

10. Temporary use meeting the requirements of Sections 3.240.

11. Wholesale trade or warehouse establishment.

2.400. LOT COVERAGE.

Buildings will not cover more than 90 percent of the lot area.

2.405. LANDSCAPED OPEN AREA.

A minimum of 10 percent of the total lot area will be maintained as a landscaped open area.

2.410. HEIGHT OF STRUCTURES.

No structure will exceed a height of 45 feet above grade.

2.415. OTHER APPLICABLE USE STANDARDS.

1. Landscaping shall meet the requirements of Sections 3.105 through 3.120.

2. When a commercial use in a C-3 Zone abuts a lot in a residential zone, there will be an attractively designed and maintained buffer of at least five (5) feet in width, which can be in the form of hedges, fencing, or walls.

3. Outdoor storage areas will be enclosed by appropriate vegetation, fencing, or walls. This requirement does not apply to outdoor retail sales areas.

(Adopted 10-8-92)

4. Where feasible, joint access points and parking facilities for more than one use should be established. This standard does not apply to multi-family residential developments.

5. All uses will comply with access, parking, and loading standards in Article 7.

6. Conditional uses will meet the requirements in Article 11.

7. Signs will comply with requirements in Article 8.

8. All structures will have storm drainage facilities that are channeled into the public storm drainage system or a natural drainage system approved by the City Engineer. Developments affecting natural drainage shall be approved by the City Engineer.

9. Where new development is within 100 feet of a known landslide hazard, a site investigation report will be prepared by a registered geologist. Recommendations contained in the site report will be incorporated into the building plans.

10. For uses located within the Astor-East Urban Renewal District, refer to the Urban Renewal Plan for additional standards.

ARTICLE 7

OFF-STREET PARKING AND LOADING

7.010. PARKING AND LOADING AREAS REQUIRED.

A. Off-street parking areas and off-street loading areas meeting the applicable requirements of this Section shall be provided and maintained:

1. For each separate use in any building or structure erected after the adoption of this ordinance.

2. For additional seating capacity, floor area, guest rooms, or dwelling units added to any existing structure or lot.

3. When the use of the structure or portion thereof is changed.

B. Where a structure is added to, or a portion thereof changes in use such that additional parking or loading is required, only the number of additional spaces required under Sections 7.100 and 7.160 for the area added or changed in use need be provided. Nevertheless, if the lot or structure as used prior to the addition or change of use did not have the number of parking and loading spaces required by Sections 7.100 and 7.160 and such deficiency was not lawfully nonconforming, parking for the entire building or use shall be provided as required by Sections 7.100 through 7.160.

C. When additional parking or loading area is required or added to an existing nonconforming parking or loading area, the entire parking and loading area shall be improved as provided in Section 7.110 and landscaped setbacks from streets shall be provided as required in Section 7.170.

7.020. REDUCTION OF PARKING AREA PROHIBITED; EXCEPTION.

Off-street parking and loading areas which existed on the effective date of this ordinance or which are provided as required by this Section shall be maintained, or equivalent parking and loading areas provided; except that if this ordinance reduces the number of required off-street parking or loading spaces, an affected use may diminish its parking and loading area to the new requirements.

7.030. LOCATION.

A. Off-street parking and loading areas required by this ordinance shall be provided on the same lot with the use except that:

1. In any residential zone, up to 50% of vehicle parking spaces for dwellings and other uses permitted in a residential zone may be located on contiguous lots or on a lot across a street or other right-of-way from the lot with the primary use.

2. In non-residential zones, up to 50% of the required parking area may be located off the site of the primary use or structure provided it is within 300 feet of such site.

B. Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

7.040. FRACTIONAL MEASUREMENTS.

When calculations for determining the number of required off-street parking or loading spaces result in a requirement of fractional space, any fraction of a space less than one-half shall be disregarded, and a fraction of one-half or greater shall be counted as one full space.

7.050. OWNERSHIP OF PARKING AND LOADING AREAS.

A. Except as provided for joint use parking in Section 7.070, the land to be provided for off-street parking and loading areas, including driveways, aisles, and maneuvering areas shall be:

1. Owned by the owner of the property served by the parking; or

2. In commercial and industrial zones, the parking may be provided by a permanent and irrevocable easement appurtenant to the property served by the parking; or

3. Be leased for a minimum term of five (5) years, provided that upon expiration or termination of the lease, the parking requirements of this ordinance shall otherwise be fully met within 90 days or the use discontinued until such requirements are met.

7.060. OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Except as otherwise specifically provided in this ordinance, off-street parking spaces shall be provided in amounts not less than those set forth in Section 7.100.

B. For any proposed use not listed in Section 7.100, the Community Development Director shall determine the parking space requirement for the most nearly similar use listed in Section 7.100 with regard to traffic generation.

7.062 SPECIAL EXCEPTIONS TO OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Developed Sites Exemption.

Existing buildings which encompass all or a major portion of a lot with little or no possibility of providing off-street parking in compliance with City Code may apply to the Community Development Director for authority to participate in a program whereby, in lieu of providing required off-street parking, annual payments would be made to the City for the purpose of supporting mass transit, and development of public parking. As an alternative to making annual cash payments, the applicant may, with approval of the City Council, provide a public service of equal or greater value than the cash payment.

1. Participation in the Program.

The Director shall approve participation in the program upon a finding that the lack of required off-street parking will not result in a public safety hazard. Participation involving the provision of compensation in the form of public service in lieu of cash payments also requires the concurrence of the City Council.

2. Location.

This exception shall apply to any change of use or expansion of a use in all zones except those areas where the provision of off-street parking is otherwise exempted.

3. Compensation.

a. Cash Payments.

The fee to be paid for each parking space not provided shall be $180.00 per year.

(Adopted 10-8-92)

The fee shall be paid annually on a per space basis. The number of spaces subject to a fee shall be the difference between the number of off-street spaces provided and the number required by the Astoria Development Code, or, where a Variance is issued, the number of spaces authorized by Variance.

Payments shall be made to the City of Astoria at the beginning of each year the applicant is involved in the program, and shall be made, in accordance with a payment schedule to be established by the Community Development Department.

b. Compensation in Lieu of Cash Payments.

Compensation in lieu of cash payments may be accepted only upon a finding by the City Council that there is both a need for the proposed public service, and that the value of the service is equivalent to or greater than the cash payment described in Section 3(a) above.

(Section 7.062 Added by Ordinance 93-08, 10-18-93; amended by Ordinance 96-04, 5-6-96)

B. Modification of Parking Space Requirements.

1. The applicant may propose a parking space standard that is different than the standard in Section 7.100, for review and action by the Community Development Director through a Class 1 variance, pursuant to Article 9. The applicant's proposal shall consist of a written request, and a parking analysis prepared by a qualified professional. The parking analysis, at a minimum, shall assess the average parking demand and available supply for existing and proposed uses on the subject site; opportunities for shared parking with other uses in the vicinity; existing public parking in the vicinity; transportation options existing or planned near the site, such as frequent bus service, carpools, or private shuttles; and other relevant factors. The Community Development Director may reduce the off-street parking standards for sites with one or more of the following features:

a. Site has a bus stop with existing or planned frequent transit service (15-minute headway or less) located adjacent to it, and the site's frontage is improved with a bus stop waiting shelter, consistent with the standards of the applicable transit service provider: Allow up to a 20 percent reduction to the standard number of automobile parking spaces;

b. Site has dedicated parking spaces for carpool/vanpool vehicles: Allow up to a 10 percent reduction to the standard number of automobile parking spaces;

(Adopted 10-8-92)

c. Site has dedicated parking spaces for motorcycle and/or scooter or electric carts: Allow reductions to the standard dimensions for parking spaces and the ratio of standard to compact parking spaces;

d. Available on-street parking spaces adjacent to the subject site in amounts equal to the proposed reductions to the standard number of parking spaces.

e. Site has more than the minimum number of required bicycle parking spaces: Allow up to a 10 percent reduction to the number of automobile parking spaces.

(Section 7.062.B added by Ordinance 14-03, 4-21-14)

C. Downtown Area.

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street parking.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.062.C added by Ordinance 14-03, 4-21-14)

7.070. JOINT USE OF PARKING AREAS.

A. The Community Development Director may authorize the joint use of parking areas by the following uses or activities as a Conditional Use in every zone under the following conditions:

1. Up to 50% of the off-street parking spaces required by this ordinance for a church, auditorium in a school, theater, bowling alley, night club, eating or drinking establishment may be satisfied by the off-street parking spaces provided by uses occupied only during the daytime on weekdays.

2. Up to 50% of the off-street parking spaces required by this ordinance for any daytime use may be satisfied by the parking spaces provided for nighttime or Sunday uses.

3. All jointly used spaces shall be located with relation to all uses relying on such spaces within the applicable distance set forth in Section 7.030.

4. The Planning Commission must find that there is no substantial conflict in the principal operating hours of the buildings or uses for which joint use of off-street parking facilities is proposed.

5. A properly drawn legal instrument executed by the parties concerned with joint use of off-street parking facilities, approved as to form and manner of execution by Legal Counsel, shall be filed with the Community Development Director. Joint use parking privileges shall continue in effect only so long as such an instrument, binding on all parties, remains in force. If such instrument becomes legally ineffective, then parking shall be provided as otherwise required in this ordinance within 60 days.

7.080. CLASSIFICATION OF USES FOR PURPOSES OF JOINT USE PARKING.

A. The following uses are considered daytime uses for purposes of Section 7.070:

1. Bank or other financial institution.

2. Business service establishment.

3. Clothing, shoe repair, or service establishment.

4. Household equipment or furniture store.

5. Manufacturing or wholesale building.

6. Personal service establishment.

7. Retail store.

8. Other similar primarily daytime uses as determined by the Community Development Director.

B. The following uses are considered nighttime or Sunday uses for purposes of Section 7.070:

1. Auditoriums incidental to a public or private school.

2. Church.

3. Eating and drinking establishment, only open after 5:00 p.m.

4. Night Club.

5. Theater.

6. Other similar primarily nighttime uses as determined by the Community Development Director.

7.090. OFF-STREET LOADING.

A. Except as otherwise specifically provided in this ordinance, off-street loading shall be provided in amounts not less than those set forth in Section 7.160.

B. A parking area meeting the requirements of Sections 7.100 through 7.110 may also be used for loading when the use does not require a delivery vehicle which exceeds a combined vehicle and load rating of 20,000 pounds, and when the parking area is within 25 feet of the building or use which it serves.

C. Downtown Area

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street loading.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.090.C added by Ordinance 14-03, 4-21-14)

7.100. MINIMUM PARKING SPACE REQUIREMENTS.

Table 7.100 – Off-Street Parking Space Requirements by Use.

The following are minimum off-street parking requirements by use category. The Community Development Director or Planning Commission, as applicable, may increase the required off-street parking based on anticipated need for a specific conditional use.

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
RESIDENTIAL CATEGORIES	
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Two-family Dwelling (Duplex)	2 spaces per dwelling unit
Accessory Dwelling (second dwelling unit on a single-family lot)	1 additional space for the accessory dwelling unit
Manufactured Dwelling in a Park	1.5 per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Group living, such as nursing or convalescent homes, rest homes, assisted living, congregate care, and similar special needs housing where clients have no access to driving	1 space per 8 bedrooms plus one per employee Calculation is based on the maximum number of employees on one shift, not total employment.
Residential Home, Residential Facility, and Adult Foster Care	1 additional space per 3 beds for the home/facility

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
COMMERCIAL CATEGORIES	
Animal hospital or kennel	1 space per 300 sq. ft. gross floor area
Automotive repair & service, gas station	1 space per 1,000 sq. ft. gross floor area
Bed and Breakfast, Home Stay Lodging, Inn	1 additional space for each bedroom used for transient lodging Plus spaces required for associated uses such as assembly areas or restaurant.
Daycare, Family/Home	1 space, plus required parking for dwelling
Daycare Center	1 space per employee
Eating and Drinking / Restaurant	1 space per 500 sq. ft. if no seating; 1 space per 250 sq. ft. with seating.
Educational Services, not a school (e.g., tutoring or similar services, excluding single student tutoring facilities)	1 space per 300 sq. ft. gross floor area
Home Occupation with customers and/or non-resident employees	1 additional space per anticipated customer/employee at a specific time in excess of one person at a time
Hotels, Motels, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.
Laundromat and dry cleaner	1 space per 350 sq. ft. gross floor area
Mortuary/Funeral Home	1 space per 300 sq. ft. gross floor area
Offices: General, medical/dental, professional	1 space per 500 sq. ft. gross floor area
Personal Services (i.e. salon, spa, barber, animal grooming, out-patient vetinary services)	1 space per chair, table, or booth for customers
Repair or Service other than automotive	1 space per 500 sq. ft. gross floor area
Retail Sales, General Merchandise	1 space per 500 sq. ft. gross floor area

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Retail Sales, Bulk with a building (lumber and construction materials, furniture, appliances, and similar sales)	1 space per 1,000 sq. ft. gross floor area
Retail Sales, Outdoor with no building or building of less than 200 sq. ft. (i.e. automotive, nursery, bulk retail, produce, etc.)	1 space per 1,000 sq. ft. of site used for retail display/storage
INDUSTRIAL CATEGORIES	
Industrial Service, not otherwise categorized	1 space per 1,000 sq. ft. gross floor area
Light Manufacturing	1 space per 2 employees on the largest shift
Manufacturing and Production, Heavy Industrial with building greater than 5,000 sq. ft.	1 space per 2,500 sq. ft. gross floor area
Marina	0.25 spaces per boat berth or docking space
Mini-Storage	1 space per four units
Seafood Processing and Associated Uses	1 space per full-time equivalent employee plus 1 space per 10 seasonal employees. Seasonal parking may be reduced with proof that employees are bussed to site.
Wholesale, Warehouse, Freight Service	1 space per 1,500 sq. ft. gross floor area
INSTITUTIONAL CATEGORIES	
Community Service, including Government Offices and Services	Same requirement as non-institutional use for the category
Jail	1 space per 2,000 sq. ft. gross floor area
Medical Center/Hospital with overnight stay	1 space per 300 sq. ft. gross floor area

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Membership organization, club, lodge	Same as specified use requirement such as eating and drinking establishment, public assembly, school, etc.
Parks and Open Space	Parking based on projected parking demand for planned uses. See Recreation, outdoor.
Public Assembly	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Religious Institutions and Houses of Worship	1 space per 100 sq. ft. of main assembly gross floor area; additional parking is not required for associated use areas if not used at same time as main assembly area
School, Pre-School through Middle-School	1.5 space per classroom
School, High School	7 spaces per classroom
School, College & Vocational	1 space per 400 sq. ft. of gross floor area; and 1 space per 2 dorm rooms
RECREATIONAL CATEGORIES	
Aquatic center, sports club, gym, rink, recreation center, health club, bowling alley, and other similar indoor entertainment	1 space per 400 sq. ft. gross floor area
Museum, art gallery, library	1 space per 600 sq. ft. gross floor area
Outdoor recreational park, Public playground	None
Outdoor recreational park, Commercial park	1 space per 1,000 sq. ft. gross land area
Sports Field	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Theater, indoor arena: Single venue	1 space per 3 seats
Theater, indoor arena: Multiplex	1 space per 6 seats

OTHER CATEGORIES	
Accessory Uses	Parking standards for accessory uses are the same as for primary uses, but are pro-rated based on the percentage of estimated overall parking demand, subject to City review and approval.
Temporary Uses	Parking standards for temporary uses are the same as for primary uses, except that the Community Development Director or Planning Commission, as applicable, may reduce or waive certain development and designs standards for temporary uses.
Transportation and Communications Facilities (operation, maintenance, preservation, and construction)	None, except where temporary parking is required for construction staging areas

(Section 7.100 amended by Ordinance 14-03, 4-21-14)

7.105. BICYCLE PARKING.

A. Standards.

Bicycle parking spaces shall be provided for new development, change of use, and major renovation, at a minimum, based on the standards in Table 7.105. Major renovation is defined as construction valued at 25% or more of the assessed value of the existing structure.

Where an application is subject to Conditional Use Permit approval or the applicant has requested a reduction to an automotive parking standard, pursuant to Section 7.062, the Community Development Director or Planning Commission, as applicable, may require bicycle parking spaces in addition to those in Table 7.105.

Table 7.105: Minimum Required Bicycle Parking Spaces

Use	Minimum Number of Spaces	Long and Short Term Bicycle Parking Percentages
Multi-family Residential Dwelling with 4 or more dwelling units	1 bike space per 4 dwelling units	75% long term 25% short term
Commercial	1 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term
Industrial	1 bike spaces per primary use or 1 per 20 vehicle spaces, whichever is greater	25% long term 75% short term
Parks (active recreation areas greater than 10,000 sq. ft.)	4 bike spaces per 10,000 sq. ft.	100% short term
Schools (all types)	1 bike spaces per 4 classrooms	50% long term 50% short term
Institutional Uses and Places of Worship	1 bike space per 20 vehicle spaces	100% short term
Other Uses	2 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term

B. Design and Location.

1. All bicycle parking shall be securely anchored to the ground or to a structure.

2. All bicycle parking shall be designed so that bicycles may be secured to them without undue inconvenience, including being accessible without removing another bicycle.

3. All bicycle parking should be integrated with other elements in the planter strip when in the public right-of-way.

4. Direct access from the bicycle parking area to the public right-of-way shall be provided at-grade or by ramp access, and pedestrian access shall be provided from the bicycle parking area to the building entrance.

5. Bicycle parking shall not impede or create a hazard to pedestrians or vehicles, and shall not conflict with the vision clearance standards of City Code Section 6.100.

6. Short-term bicycle parking.

   a. Short-term bicycle parking shall consist of a stationary rack or other approved structure to which the bicycle can be locked securely.

   b. If more than 10 short-term bicycle parking spaces are required, at least 50% of the spaces must be sheltered. Sheltered short-term parking consists of a minimum 7-foot overhead clearance and sufficient area to completely cover all bicycle parking and bicycles that are parked correctly.

   c. Short-term bicycle parking shall be located within 50 feet of the main building entrance or one of several main entrances, and no further from an entrance than the closest automotive parking space.

6. Long-term bicycle parking.

   Long-term bicycle parking shall consist of a lockable enclosure, a secure room in a building on-site, monitored parking, or another form of sheltered and secure parking.

C. Exemptions.

This Section does not apply to single-family, two-family, and three-unit multi-family housing, home occupations, and agricultural uses. The Community Development Director or Planning Commission as applicable may exempt other uses upon finding that, due to the proximity of public bicycle parking facilities, the nature of the use, or its location, it is unlikely to have any patrons or employees arriving by bicycle.

(Section 7.105 added by Ordinance 14-03, 4-21-14)

7.110. PARKING AND LOADING AREA DEVELOPMENT REQUIREMENTS.

All parking and loading areas required under this ordinance, except those for a detached single-family dwelling on an individual lot unless otherwise noted, shall be developed and maintained as follows:

(Section 7.110 amended by Ordinance 14-03, 4-21-14)

A. Location on site.

Required yards adjacent to a street, shall not be used for parking and loading areas unless otherwise specifically permitted in this ordinance. Side and rear yards which are not adjacent to a street may be used for such areas when developed and maintained as required in this ordinance.

B. Surfacing.

All parking and loading areas and driveways thereto shall be paved with asphalt, concrete or other hard surface approved by the City Engineer. Parking and loading areas shall be adequately designed, graded, and drained.

C. Bumper guards or wheel barriers.

Permanently affixed bumper guards or wheel barriers are required and shall be so installed that no portion of a vehicle will project into a public right-of-way or over adjoining property. The area beyond the wheel barriers or bumper guards shall be surfaced as required in Section 7.110(B) or landscaped.

D. Size of parking spaces and maneuvering areas.

The parking area, each parking space, and all maneuvering areas shall be of sufficient size and all curves and corners of sufficient radius as determined by the City Engineer to permit the safe operation of a standard size vehicle subject to the following minimum requirements:

1. Full size parking spaces shall be nine and one half (9.5) feet wide and 20 feet long.

2. Compact parking spaces shall be eight and one half (8.5) feet wide and 16 feet long for no more than 50% of the parking spaces required.

   An increase to 75% compact may be approved administratively by the Community Development Director upon a finding that anticipated use would not require compliance. An increase greater than 75% may be approved by the Community Development Director as a Class 1 Variance in accordance with Article 9.

3. Where a landscaped area, fence, or wall is adjacent to a parking space, the parking space shall be ten (10) feet wide.

4. A maximum of 2.5' of a parking stall required length may extend beyond the wheel barrier into a landscaped area. The parking stall shall not extend into a pedestrian walkway area.

(Section 7.110.D amended by Ordinance 14-03, 4-21-14)

E. Access.

Parking or loading areas having more than four (4) spaces shall be designed so that vehicles do not back into public streets, or do not use public streets for maneuvering. All entrances and exits onto public streets shall first have a Driveway Permit from the Engineering Department and shall be designed and constructed to City standards.

F. Lighting.

Parking or loading areas that will be used at nighttime shall be lighted. Outdoor lighting shall be directed away from any adjacent residential zone or public street.

G. Landscaping.

1. Landscaping shall be provided as required in Section 7.170 and Section 3.105 through 3.120.

2. Required landscaped yards shall not be used for parking.

(Section 7.110.G amended by Ordinance 14-03, 4-21-14)

H. Additional Requirements.

1. Directional signs and pavement marking shall be used to control vehicle movement in parking area.

(Section 7.110.H amended by Ordinance 14-03, 4-21-14)

I. Aisle Widths

Aisles with parking adjacent on one or both sides, depending on angle of parking spaces:

	Minimum Width
0 - 40 degrees	12 feet
41 - 45 degrees	13 feet
46 - 55 degrees	15 feet
56 - 70 degrees	18 feet
71 - 90 degrees	24 feet

7.120. DRIVEWAY DEVELOPMENT STANDARDS.

All driveways providing access to parking spaces and loading areas required under this ordinance, including those for a single-family dwelling on a lot, shall conform to the Astoria City Code Sections 2.050 through 2.100 and Development Code Section 3.008.D, in addition to requirements in the Astoria Engineering Design Standards for Roadways (Chapter 4).

(Section 7.120 amended by Ordinance 14-03, 4-21-14)

7.130. OUTDOOR STORAGE AREA SURFACING.

A. Where commercial, industrial, or shoreland zones permit outdoor storage, or if such storage is permitted as part of a Conditional Use in any zone, such storage areas and any access driveway shall be paved and shall have plans for off-site drainage approved by the City.

7.140. PARKING PLAN REQUIRED.

Plans, at a workable scale, for all parking and loading areas required under this Section, shall be submitted to the Community Development Director for approval prior to issuance of a permit; or, if no building permit is required, at the time of application for a driveway permit; or, if no such permit is required, prior to commencing any paving or use of the parking or loading area. No such work or use shall commence prior to approval by the City of the plans required by this Section.

7.150. ACCESSIBLE PARKING SPACES.

A. Effective September 1, 1990, existing and new parking spaces for disabled persons shall be required by law at all public and government buildings.

B. The size, location, dimension, and marking for accessible parking spaces shall be in accordance with current State and Federal regulations for accessible parking facilities.

(Section 7.150 amended by Ordinance 14-03, 4-21-14)

7.160. MINIMUM LOADING SPACE REQUIREMENTS.

USE OR GROSS SQUARE FOOTAGE OF FLOOR AREA	MINIMUM NO. OF SPACES	MINIMUM SIZE OF SPACE WIDTH	LENGTH	HEIGHT
A. Multi-Family Dwelling Units.				
0 - 49 Units	0	12 ft	19 ft	12 ft
50 - 99 Units	1	"	"	"
100 - 199 Units	2	"	"	"
200 and over Units	3	"	"	"

If a recreational or service building is provided, at least one of the required loading spaces shall be located in conjunction with the recreational or service building.

B. For Buildings Used Entirely for Office Occupancy.				
Under 5,000 sq ft	0	12 ft	30 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

C. Commercial, Non-office, Public and Semi-Public.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

D. Industrial.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 99,999 sq ft	1	"	"	"
100,000 - 239,999 sq ft	3	"	"	"
240,000 - 319,000 sq ft	5	"	"	"
320,000 - 399,000 sq ft	6	"	"	"
400,000 - 489,999 sq ft	7	"	"	"
490,000 - 579,999 sq ft	8	"	"	"
580,000 - 669,999 sq ft	9	"	"	"
670,000 - 759,999 sq ft	10	"	"	"

For each additional 100,000 square feet or any portion thereof over 760,000 square feet, an additional loading space is required.

7.170. LANDSCAPING OF OUTDOOR STORAGE OR PARKING AREAS.

A minimum of 5% of the gross parking lot area shall be designed and maintained as landscaped area, subject to the standards in Sections 3.105 through 3.120. This requirement shall apply to all parking lots with an area of 600 square feet or greater. Approved sight obscuring fences or vegetative buffers shall be constructed where commercial parking lots abut Residential Zones. The minimum 5% landscaping shall be counted as part of the total landscaping required for the property.

(Section 7.180, Parking in the Downtown Area, Exception added by Ordinance 99-21, 11-1-99; Section 7.180 deleted by Ordinance 14-03, 4-21-14)

C-3: GENERAL COMMERCIAL ZONE

2.385. PURPOSE.

This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.

2.390. USES PERMITTED OUTRIGHT.

The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

1. Business service establishment.
2. Commercial laundry or dry cleaning establishment.
3. Commercial or public off-street parking lot.
4. Communication service establishment.
5. Construction service establishment.
6. Eating and drinking establishment.
7. Educational service establishment.
8. Family day care center in single-family, two-family, or multi-family dwelling.
9. Home occupation in existing dwelling.
10. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

    a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.10.b.

    b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

    (Section 2.390.10 amended by Ord 19-07, 7-1-2019)

11. Multi-family dwelling.

12. Personal service establishment.
13. Professional service establishment.
14. Public or semi-public use.
15. Repair service establishment, not including automotive, heavy equipment, or other major repair services.
16. Residential facility.
17. Retail sales establishment.
18. Single-family and two-family dwelling in a new or existing structure:
    a. Located above or below the first floor with commercial facilities on the first floor of the structure.
    b. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

    (Section 2.390.18.b added by Ordinance 11-08, 7-5-11)

    (Section 2.390(18) amended by Ordinance 00-08, 9-6-00)
19. Transportation service establishment.
20. Conference Center.
    (Section 2.390(20) added by Ordinance 94-06, 6-6-94)
21. Indoor family entertainment or recreation establishment.
    (Section 2.390(21) added by Ordinance 98-01, 1-5-98)
22. Transportation facilities.
    (Section 2.390.22 added by Ordinance 14-03, 4-21-14)
23. Residential Home in a new or existing structure:
    a. Located above or below the first floor with commercial facilities on the first floor of the structure.
    b. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

    (Section 2.390.23 added by Ord 19-05, 6-17-2019)

November 2022 ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*

C-3: GENERAL COMMERCIAL ZONE
2.385 PURPOSE
2.390 USES PERMITTED OUTRIGHT
2.395 CONDITIONAL USES PERMITTED
2.405 LANDSCAPED OPEN AREA
2.410 HEIGHT OF STRUCTURES
2.415 OTHER APPLICABLE USE STANDARDS

2.385 PURPOSE

This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off street parking requirements for all uses.

2.390 USES PERMITTED OUTRIGHT

The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

A. Business service establishment.
B. Commercial laundry or dry cleaning establishment.
C. Commercial or public off-street parking lot.
D. Communication service establishment.
E. Construction service establishment.
F. Eating and drinking establishment.
G. Educational service establishment.
H. Family day care center in a legal dwelling unit.
I. Home occupation in a legal dwelling unit.
J. Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:
    1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.
    2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.
K. Multi-family dwelling.
L. Personal service establishment.
M. Professional service establishment.
N. Public or semi-public use.

O. Repair service establishment, not including automotive, heavy equipment, or other major repair services.
P. Group Living Facility.
Q. Retail sales establishment.
R. Single-family and, two-family dwelling in a new or existing structure:
    1. Located above or below the first floor with commercial facilities on the first floor of the structure.
    2. Located in the rear of the first floor with commercial facilities in the front portion of the structure.
S. Cottage Cluster Development.
T. Transportation service establishment.
U. Conference Center.
V. Indoor family entertainment or recreation establishment.
W. Transportation facilities.
X. Residential Home or Residential Facility in a new or existing structure:
    1. Located above or below the first floor with commercial facilities on the first floor of the structure.
    2. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

HISTORY
Amended by Ord. 22-01 on 11/7/2022

Documents received after the Appeal Packet Publication date (October 26, 2023):

(1) Public Comment from Alicia Christian, received 11-02-2023
(2) Public Comment from Laura Evans, received 11-02-2023
(3) Public Comment from Jan & Ashleigh Gregor; Curt Clumpner; Dave & Pam Armstrong; Jasper Stone; Lake Jiroudek, received 11-02-2023

All Documents were added to the Record for Appeal AP23-02 and forwarded to all parties for review prior to the November 2, 2023 Appeal Hearing. Copies were also made available to the public at the hearing.

RECEIVED
NOV 0 2 2023
BY: TT via email

Nov 2, 2023
Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103
Re: Letter opposing short-term rentals at 1551-1561 Exchange St.
To Whom It May Concern:

My husband and I moved across the country just over 3 years ago to live in, open a business and be a part of the Astorian community. In the short time that we have lived here, I have seen those simple goals slowly become harder for us and many of my friends and neighbors. Long term tenants being forced to find alternate housing when the owners decided to turn their apartment complex into a short term rental property. Business owners in the downtown area fearing the loss of their livelihood to a similar fate. Our service industries are already hurting with the lack of places for employees to live. I fear the character of Astoria is in danger of being lost if short term rentals/short term guests continue to take precedence over long term residents and business owners.

Sincerely,
Alicia Christian
460 McClure Ave
Astoria OR 97103

RECEIVED
NOV 0 2 2023
BY: via email

Nov 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Letter opposing short-term rentals at 1551-1561 Exchange St.

To Whom It May Concern:

I am writing to voice my wholehearted opposition to the city's decision to permit STRs at 1551-1561 Exchange Street.

Astoria is facing a housing crisis in which *every* long-term housing unit matters. The City Council knew this when they enacted code changes to prevent long-term housing from being converted into short term rentals. The city initially took the correct action by opposing the use of the four units in the Gilbaugh Building as STRs. The closed-door dealings which led to a reversal of this initial decision and approval of STRs at 1551-1561 Exchange St. give the appearance that with the right connections, you can be immune to this vital law.

If we continue to allow our city to be ruled by greed and what will make the quickest dollar, rather than by intentional urban planning and design, we will soon find ourselves to be the next coastal tourist destination where no one can afford to live, work, and raise a family. Astoria will lose its charm if our homes are allowed to become transient lodging. And who will be here to provide services to the visitors? To work at our hospitals, restaurants, and schools? Astoria will become a hollow version of its former self, rather than a dynamic, thriving city.

Enforce the law steadfastly across the board. It is the first in many necessary steps to regulate the scourge of STRs on Astoria's livability and our local economy. These four housing units truly matter. Four families who are able to live and work here full time, *matter*. Please deny this application.

Sincerely,

Laura Evans
461 Exchange Street, Astoria

From: Jan Gregor
To: Planning
Subject: Community Development Dept / Neighbors for the Appeal Nov 2 at 5:30PM
Date: Wednesday, November 1, 2023 7:07:57 PM
Attachments: AirBnBobjection.doc

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

We live on Franklin above Exchange. I attended the LCPS open house when Bob Magie stated his pride in restoring the four-plex, his intent to live in the east apartment and their intent to give back to the community in providing long term rental with the other three units. That was their early intent. Any claim otherwise was not voiced at that time.

In wading through their correspondence they sound rather beleaguered. No one forced them to buy multiple historic properties, that was their decision.

We will not bring up the obvious parking problems or the new hotel and coming ambulance facility in this area as they are being discussed and studied on another project.

When the Magie's applied for AirBnB with the two cottages, we neighbors grumbled but we did not formally object. The situation is different today.

The verdict is in on how AirBnB is causing problems in small tourist towns nationwide. This public company had a boom and now is causing many problems for anyone to read about, particularly decimating to small desirable tourist towns like Astoria. It's time for Astoria to get off the AirBnB wagon, not pile more on.

Transient lodging is encroaching on our Central Residential area and causing rental drought for locals and our workforce. This decision should be based on what's best for locals that live and work here.

We have plenty of hotels, motels and bed and breakfasts and more in the works. They are nowhere near capacity most of the year. Why should we let more transient lodging compete with our established hotels, motels and B&Bs, particularly in our Central Residential area?

This is bad for Astoria. We are opposed.

Jan and Ashleigh Gregor - 1546 Franklin Ave
Curt Clumpner - 1528 Franklin Ave
Dave and Pam Armstrong - 1510 Franklin Ave
Jasper Stone - 1527 Exchange St #2
Lake Jiroudek - 1528 Franklin Ave

Documents received at the November 2, 2023 Appeal Hearing:

(1) Hearing Memorandum from Appellants' attorney, Daniel Kearns
(2) Comment from Appellant Austin Kettleson
(3) Comment from Appellant Andrew Kipp
(4) Comment from Appellant John Windus

All Documents were collected at the meeting, added to the Record for Appeal AP23-02 and forwarded to all parties via email after the Appeal Hearing.

Also attached:

(1) Sign-In sheet to give testimony at the Appeal Hearing (reflects in-person and virtual participation).

New Document – Received
Date: 11-2-2023 Permit #: AP23-02
Meeting: Appeal Notes: Submitted @ meeting

Reeve Kearns PC

Attorneys at Law

P.O. Box 13015
Portland, Oregon 97213
Email: dan@reevekearns.com

Daniel H. Kearns
Direct Dial: 503-997-6032

November 2, 2023

Astoria Land Use Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Appeal of Gilbaugh LLC nonconforming use determination
1555, 1557, 1559 & 1561 Exchange Street
Appellants' Hearing Memorandum

Dear Mr. Rappleyea:

This firm represents the appellants in this land use appeal challenging a June 26, 2023 nonconforming use determination by the Planning Director regarding the dwellings at 1555, 1557, 1559 & 1561 Exchange Street.[1] This memorandum provides appellants' arguments for overturning the Director's decision and entry of an order denying the nonconforming use status of these four dwellings units (the "4-plex") as short-term rentals ("STRs").

A. Factual Background and Procedural Overview.

By way of general background, this case involves 6 dwellings: 2 cottages (1565 & 1569 Exchange Street) and a 4-plex apartment house (1555, 1557, 1559 & 1561 Exchange Street). All six dwellings are on land zoned C-3 (General Commercial), but this appeal pertains only to the Director's determination that the 4-plex has a nonconforming right to a STR use. The City previously determined that the 2 cottages had nonconforming STR status.

The 6 dwelling units were acquired by Robert and Cynthia Magie in March 2015, at a time when STRs (transient lodging) were allowed in the C-3 Zone. In 2017, the Magies obtained a business license and made improvements to the three structures for their use as rental housing. They obtained a business license and occasionally used the cottages for short-term Rental, but consistently used the 4-plex as long-term rental apartments.[2]

The present matter arose in response to an October 28, 2021 code complaint filed by Austin Kettleson, a long-term resident in the 4-plex, who complained of an illegal STR operating

1 The Director's decision purported to address the 4-plex at 1555, 1557, 1559 & 1561 Exchange Street plus the 2 cottage units at 1565 and 1569 Exchange Street. In this appeal, appellants challenge the Director's decision only as to the 4-plex units, and they do not challenge the Director's decision related to the two cottage dwellings.
2 The ADC draws a distinction between transient (short-term) lodging as being rentals for 30 days or less, and long-term rentals, which are 31 days or longer. Only transient lodging is subject to the City's Transient Lodging Tax.

out of his apartment building. In response, the City's determined that use of the 4-plex as STRs was unpermitted and unlawful and issued a Notice of Violation on January 10, 2022. The current owner appealed the City's determination to LUBA, and the appeal eventually settled with the owners agreeing to submit a nonconforming use verification application.

As part of its nonconforming use verification application, the current owner argued that the Magies had always intended to use all 6 dwelling units for short-term rental (transient) use. However, the evidence provided with the application only shows an intent and affirmative steps to use the 6 units as rental dwellings, not necessarily short-term rental, and all of the actual STR (transient) use reflected in this record is limited to the two cottage units, not the 4-plex units. For example, the Magies' October 27, 2017 Occupational Tax Permit for the transient lodging use (Appeal Packet p 10-11) is only for the cottage units at 1565 & 1569 Exchange Street. The Magies' October 23, 2017 parking plan for their STR operation (Appeal Packet p 9) specifically states that the parking is only for the cottage units (1565 & 1569 Exchange Street). The Magies' November 2, 2017 landscaping plan (Appeal Packet p 12-13) specifically states that the landscaping plan is only for the cottage units (1565 & 1569 Exchange Street). There is no evidence that any of the plans required for transient lodging use of the 4-plex were ever submitted, at least not before January 1, 2019.

The Director's decision on the nonconforming use verification acknowledges all of the plans, permits and other steps the Magies took to put the two cottage units to STR (transient lodging) use, but then credits all of that evidence to the 4-plex. The documents in the record show that none of these permits, plans or other steps pertained to the 4-plex, which has consistently been used for long-term rental tenancy. The Director's decision also conflates steps taken by the Magies to prepare the 4-plex units for rental tenancy, not their use for STR tenancy. In that light, the Director conflated without justification long-term rental use with STR use.

The Director's decision rests upon an interpretation of the ADC §3.160 (Nonconforming Lots, Uses and Structures) and ADC 1.400 (definition of "use, start of") to conclude:

> These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

From these evidentiary determinations and this code interpretation, the Director concluded that the Magies had established a lawful nonconforming STR (transient lodging) use of the 4-plex. The Director's decision did not address, however, the discontinuation of nonconforming use or change of nonconforming use provisions in ADC §3.180(B) & (C), respectively.

B. <u>The Law of Nonconforming Uses Generally and Under the ADC</u>.

Critical for this nonconforming use analysis is the date on which restrictive zoning is first applied to render a lawful, existing use nonconforming. In this case, that date is January 1, 2019 - when the following provision took effect to prohibit STRs (transient uses) in the C-3 Zone:

> 2.390 USES PERMITTED OUTRIGHT
> The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:
>
> * * *
>
> J. Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:
>
> 1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.
>
> 2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

At common law, a nonconforming use is one that was lawfully established and operating on the date restrictive zoning was first imposed and has been maintained ever since without any gaps or lapses in excess of 12 months. This is how ORS 215.130(5) operates:

> In determining whether an existing use of property has a right to continue as a nonconforming use, there generally are four inquiries a local government must make. First, did the use lawfully exist at the time the zoning which first prohibited the use was applied? Second, what was the nature and extent of the use at the time it became nonconforming? Third, if the use lawfully existed at the time restrictive zoning was applied, has the use since been discontinued or abandoned such that the right to continue as a nonconforming use was lost? Finally, if the nature and extent of the present use represents an alteration of the use in existence at the time the use became nonconforming, do those alterations comply with the standards governing alteration of nonconforming uses?

Spurgin v. Josephine County, 28 Or. LUBA 383, 386-387 (1994) (emphasis added).

Cities are not bound by ORS 215.130 but only by the local code's nonconforming use provisions,[3] in this case, Astoria Development Code ("ADC") §3.180 (Nonconforming Uses). Nonetheless, many of the steps described above are instructive here, and many are part of the ADC. Case law makes clear that evaluating the existence and magnitude of a nonconforming use includes an evaluation of the "nature and extent" of the use on the operative date restrictive zoning is imposed and whether the same nature and extent of use is maintained without any discontinuances or conversions to a conforming use. These notions are reflected in Astoria's definition of "nonconforming use," similar to how the term is construed in case law:

> NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.

ADC §1.400 (emphasis added).

Additionally, Astoria's nonconforming use provisions in ADC §3.180(B) & (C) have the following change and discontinuation provisions:

> B. Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located.
>
> C. Discontinuance of Nonconforming Use.
>
> 1. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows:

C. Errors in the Director's Decision.

As a preliminary matter, the proponent of a nonconforming use right has the burden of proving the existence of the claimed right and establishing all of the elements required to substantiate a nonconforming use.[4] This case and the Hearings Officer's decision are strictly controlled by the language in the operative ADC provisions and evidence in the record.

1. First Evidentiary Error: Evidence in the record shows that none of the preliminary steps taken to comply with transient lodging (STR) use requirements were taken for the 4-plex. There is no evidence that any preliminary steps were taken to use the 4-plex as STRs, much less actual STR use, until after January 1, 2019.

---

3 *Hood River Sand, Gravel and Ready Mix v. City of Mosier*, 24 Or. LUBA 381, 385 (1993). ("...ORS 215.130 and appellate court cases interpreting and applying that statute, while perhaps suggestive of how the city might interpret and apply its zoning ordinance, are not binding on the city.")
4 *ODOT v. City of Mosier*, 36 Or LUBA 666, 671 (1999), citing *Lane County v. Bessett*, 46 Or App 319, 612 P2d 297 (1980).

The Director's decision purports to rely on the Magies' Occupational Tax Permit, parking plan and landscape plan as evidence that they intended to use the 4-plex for STR use and these documents show preliminary steps to use the 4-plex for transient lodging. In fact, all of this evidence relates solely to the two cottages (1565 & 1569 Exchange Street) not the 4-plex (1555, 1557, 1559 & 1561 Exchange Street). *See* the following attached exhibits:

- October 27, 2017 Occupational Tax Permit listing only 1565 & 1569 Exchange Street required by AMC §§8.000 to 8.035, stating the use of the cottage units for "vacation rental," with no mention of the 4-plex.

- October 23, 2017 parking plan required for Transient Lodging uses by ADC §7.100 (minimum parking requirements) and specifically notated by the Director as applying only to the cottage units at 1565 & 1569 Exchange Street, with no mention of the 4-plex.

- November 2, 2017 landscape plan required by ADC §2.415 for hotels, motels and other transient lodging uses and specifically notated as applying only to the cottage units at 1565 & 1569 Exchange Street, with no mention of the 4-plex.

While the Magies may have taken these preliminary steps with the intention of putting the cottage units to a transient lodging use, none of these documents indicate any similar intention for the 4-plex. In fact, the Magies did not register the 4-plex units for transient lodging use until December 15, 2020 (Appeal Packet p 24-25) – long after the January 1, 2019 date at which such use became unlawful pursuant to ADC §2.390(J). The Magies did not pay any transient room taxes on the 4-plex units until after December 15, 2020 because all four units were rented as apartments under long-term leases well into 2020 and beyond.

2. **Second Evidentiary Error: Evidence in the record shows that the 4-plex has consistently been used for long-term rental tenancy (lease terms longer than 30 days), which is inconsistent with a nonconforming claim of transient lodging use.**

On the date that restrictive zoning took effect (January 1, 2019) to prohibit transient lodging in the C-3 Zone or soon thereafter, at least 3 of the units in the 4-plex were under long-term tenancy leases. The following attached documents show how the 4-plex units were actually used on January 1, 2019:

- 1557 Exchange Street: Long-term lease with initial term of May 15, 2018 to May 15, 2019; although, the lease was extended to June 30, 2021. The lease states that only on-street parking is available; whereas, ADC §7.100 requires at least one off-street parking space per transient lodging guest.

- 1559 Exchange Street: Long-term lease with initial term of December 1, 2018 to August 31, 2019; although, the lease was extended to August 21, 2022, at which point the Magies terminated the lease to move one of their relatives into the apartment. The lease indicates no on-site parking spaces associated with the apartment, contrary to the one off-street

space required by ADC §7.100 for each transient lodging guest.

- 1561 Exchange Street: Long-term lease with initial term of July 18, 2019 to May 31, 2020; although, the lease was extended to May 31, 2021. The lease indicates no on-site parking spaces associated with the apartment, contrary to the one off-street space required by ADC §7.100 for each transient lodging guest.

In response to the October 28, 2021 code complaint from one of the long-term tenants of the 4-plex that the owners were unlawfully converting one of the 4-plex units to a transient lodging use, City staff investigated. As part of that investigation, Diane Christiansen reported the following in a January 19, 2022 email to Megan Leatherman, both Community Development Department officials (Appeal Packet p 69-70):

> The complaint is actually from one of their tenants who said [the Magies] are converting the long-term rentals to short-term, and are trying to make them move, and the noise with the short-term renters has been impacting them.
>
> I spoke with Bob [Magies] yesterday afternoon, but in our conversation, he indicated that the small cottage behind the apartment complex is the only short-term rental, and then later also said that they've been converting the apartments "over the years" to short-term rentals and it's all allowed because they got their business license in 2017. Bob also stated that they initially converted a couple of units to short-term, but stopped when their daughter was ill, etc. and now plan to continue their "authorized" business.

The City's investigations in the code enforcement proceeding lead to the conclusion that only the cottages had been used for short-term (transient lodging) rental use, not the 4-plex, and that STR use of the 4-plex must stop:

> However, the multi-family building, addressed 1555-1563 Exchange, was not authorized by Barbara, and is not in compliance with the above referenced city codes. Whether or not you interpreted Barbara's email to include 1555 Exchange is inconsequential to the City as it is violation to multiple City Codes. When the Occupational Tax/Business License was approved, it was also approved under the intent of approving 1565 Exchange and 1569 Exchange (Downtown Astoria Cottages) only.
>
> None of the units in 1555-1563 Exchange may be Homestay Lodging/Airbnb/ Transient. They all must remain long-term rentals, including the apartment listed as a short-term rental on Airbnb.com (Link: https://abnb.me/92mmQLb5Wmb), which was not being used as a short-term rental prior to January 1, 2019.
>
> Please cease the transient lodging use for the apartment rental; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms for the apartment rental only. Any future listings for short-term rentals at 1555-1563 Exchange may trigger

code enforcement action per Astoria Municipal Code. You may continue to use the two cottages at 1565-1569 Exchange as short-term rentals.

January 26, 2022 Notice of Violation to the Magies (Appeal Packet p 83).

As part of the City's 2022 investigation, the Magies' property manager and rental agent (Pacific Capital Management) provided an April 28, 2022 letter (Appeal Packet p 109-110) stating the Magies' units were first used for short-term rental (transient lodging) purposes on the following dates, prior to which all of the 4-plex units were under long-term rental leases:

4-plex:
1555 Exchange Street.....December 1, 2021
1557 Exchange Street.....April 17, 2022
1559 Exchange Street.....long-term tenant holding-over prevented access.
1561 Exchange Street.....March 15, 2022

Cottages:
1565 Exchange Street.....September 1, 2025
1569 Exchange Street.....April 21, 2021

This evidence shows there was no actual short-term rental (transient lodging) use of the 4-plex units until long after the date restrictive zoning was applied in the C-3 Zone (January 1, 2019). This evidence shows that transient lodging (STR) use of the 4-plex did not actually exist in any of the 4-plex units until nearly two years after the date on which the use became unlawful.

3. **Third Evidentiary Error: The only preliminary steps reflected in this record for the 4-plex units were extensive interior renovations to kitchens, baths, and living areas plus foundation and exterior repair and renovation – all of which are improvements needed and to make the 4-plex habitable. None of these improvements, renovations or preliminary steps is uniquely related to STR use, as opposed to long-term apartment use.**

The April 28, 2022 letter from the owner's rental agent (Appeal Packet p 109-110) and the Magies' April 28, 2022 Statement of Progress and Development of Short-Term Rentals on 1555 to 1569 Exchange Street (Appeal Packet p 111-114) describe the interior and exterior renovations and other improvements the owners completed to make the units habitable. All of these improvements were needed to make these units rentable as long-term apartments, and none were uniquely suited to their use as STRs. In fact, it is hard to imagine any improvement to an apartment that is uniquely suited to a STR use, as opposed to simple long-term residential use of the unit. The Director's decision credits all of these improvements and renovations as being preliminary to a transient lodging use. In fact, these renovations are uniquely suited only to residential use, including multi-family use, which is how these units were actually used as a conforming use in the C-3 Zone. *See* ADC §2.390(K).

4. First Legal Error: The Director's reliance on the defined term "use, start of" was legal error because the expression is not found in any of the City's nonconforming use regulations or the definition of nonconforming use.

The Director's decision is predicated on the Magies' perceived first steps or preliminary steps as being sufficient to establish the existence of the transient lodging use at issue in this case. This notion stems from the Director's reliance on the ADC definition of "use, start of." However, that expression does not appear in the definition of "nonconforming use" in ADC §1.400 nor in any of the City's nonconforming use regulations in ADC 3.180. Rather, the actual words from City's definition of "nonconforming use" controls:

> A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.

ADC §1.400 (emphasis added).

"[W]hen it first occurred" is substantively different than "start of use." "[F]irst occurred," in the context of a nonconforming uses means "actual existence" and does not embody mere preliminary steps or unrealized intent, as the Director incorrectly assumed. Moreover, the Director's reliance on so-called preliminary steps or presumed or unrealized intent as sufficient to establish the use is inconsistent with traditional notions of nonconforming uses at common law or under ORS 215.130, which require "actual existence." *Spurgin v. Josephine County*, *supra*, 28 Or. LUBA at 387 (1994) ("First, did the use lawfully exist at the time the zoning which first prohibited the use was applied?").

> Where a lawfully established existing use would require local government approval of a variance or conditional use permit if the use were built under current regulations, that existing use is a nonconforming use.

Ferguson Creek Investment Co. v. Lane County, __ Or LUBA __ (Or LUBA 2022-099, June 9, 2023, slip op at 2, fn 1), citing *Miller v. City of Dunes City*, 18 Or LUBA 515, 519-21 (1989) and *Morse Bros., Inc. v. Clackamas County*, Or LUBA 188, 194-96 (1989), emphasis added.

> We refer to "[t]he lawful use of any building, structure or land at the time of enactment or amendment of any zoning ordinance or regulation" that may be continued as a "nonconforming use." The term "nonconforming use" is not defined in ORS 215.130 or elsewhere in ORS chapter 215. The Court of Appeals has explained:
>
> > "Generally, ' [a] lawful nonconforming use of land is one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance.' ... ORS 25215.130(5). To summarily prohibit a lawfully established use of land 'would constitute a taking without compensation.' ... 'Under state and local law, a nonconforming

> use can continue until abandoned, but alterations or replacements of the use are regulated.'

Ferguson Creek Investment Co. v. Lane County, __ Or LUBA __ (Or LUBA 2022-099, June 9, 2023, slip op at 2), internal citations omitted, quoting *Morgan v. Jackson County*, 290 Or App 111, 114, 414 P3d 917, *rev den*, 362 Or 860 (2018), emphasis added.

The other element missing from the Director's decision, yet is a critical part of traditional notions of nonconforming uses under common law and ORS 215.130 is a determination of the "nature and extent" of the use at the time it became nonconforming (January 1, 2019). The "nature and extent" of the alleged nonconforming use at issue in *ODOT v. City of Mosier*, 36 Or. LUBA 666 (1999), was a critical consideration, and the City of Mosier's failure to evaluate those elements was cause for remand:

> The nature and extent of the nonconforming use do not depend on whether the entity performing the activity is a landowner, permittee or licensee, but on the nature and extent of the nonconforming activities themselves. In its proceedings on remand, the city must include an analysis of uses on the subject property that have continued by virtue of being carried out by ODOT, its lessees and permittees.
>
> However, the city does not have to consider the use of the haul road that is attributable to activities that are not subject to the nonconforming use determination (*e.g.*, use of the quarry for target shooting), or use of the haul road that does not arise from the nonconforming use on the property (*e.g.*, use of the haul road to haul rock from Houston's quarry).

ODOT v. City of Mosier, 36 Or. LUBA 666, 678 (1999), fn 4. *See also Spurgin v. Josephine County, supra*, 28 Or. LUBA at 387 (1994) ("Second, what was the nature and extent of the use at the time it became nonconforming?").

Even under the Director's interpretation, transient lodging (STR) use of the 4-plex units did not exist as of January 1, 2019; therefore, there is no way to evaluate the "nature and extent" of the claimed nonconforming use at the point of its inception, *i.e.,* the date on which restrictive zoning was first imposed. The only conclusion to draw from that factual reality is that the claimed nonconforming use, in fact, did not exist until long after January 1, 2019.

5. **Second Legal Error: The Director's decision ignores evidence of gaps in the claimed nonconforming use that exceed 12 months and conversion of the 4-plex to a conforming multi-family dwelling, both of which destroy any nonconforming use right that may have existed.**

Similar to ORS 215.130, any discontinuation of a nonconforming use for a period of one year in Astoria destroys the nonconforming use right. ADC §3.180(C).[5] And any change of a nonconforming use to a conforming (allowed) use for any period of time also terminates the nonconforming use right. ADC §3.180(B).[6] The record contains evidence that, even if there was a nonconforming STR use of the 4-plex as of January 1, 2019, subsequently, there were gaps of more than 12 months as the owners rented all four units for long-term tenancy. Pursuant to ADC §3.180(C), this destroyed any claim of nonconforming transient lodging (STR) use that may have existed in the 4-plex after January 1, 2019. *See* long-term leases for the 4-plex units, Pacific Capital Management April 28, 2022 letter and city staff e-mails reporting the owner's statements about gaps in STR use.

In the C-3 Zone, multi-family dwellings are a conforming (allowed) use. Even if there were a valid nonconforming claim to transient lodging (STR) use of the 4-plex as of January 1, 2019, that use right was destroyed by operation of ADC §3.180(B) as soon as the owner converted the 4-plex to a conforming multi-family dwelling for any length of time. The April 28, 2022 letter from the owner's rental/management agent (Pacific Capital Management) states that none of the 4-plex units was put to STR (transient lodging) use any earlier than December 1, 2021. The long-term leases show that these units were used for a conforming long-term tenancy until that time (or longer).

6. **Third Legal Error: To the extent, the Director's decision reflects a vested rights theory of an inchoate nonconforming use, that too must fail because the owners' preliminary transient lodging steps were limited to the two cottages and not the 4-plex; all work done on the 4-plex was related to making the units habitable generally with no steps focused on short-term rental as opposed to long-term apartment use, and the owners waited nearly 2 years after transient lodging use was outlawed before short-term renting the 4-plex units.**

The theory underlying the Director's decision is the vested rights doctrine described by the Oregon Supreme Court, which appears to be consistent with the application request:

> The test of whether a landowner has developed his land to the extent that he has acquired a vested right to continue the development should not be based solely on the ratio of expenditures incurred to the total cost of the project. We believe the ratio test should be only one of the factors to be considered. Other factors which should be taken into consideration are the good faith of the landowner, whether or not he had notice of any proposed zoning or amendatory zoning before starting his improvements, the type of expenditures, i.e., whether the expenditures have any relation to the completed project or could apply to various other uses of the land,

5 "Discontinuance of Nonconforming Use. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows..." ADC §3.180(C)(1).

6 "Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located." ADC §3.180(B).

> the kind of project, the location and ultimate cost. Also, the acts of the landowner should rise beyond mere contemplated use or preparation, such as leveling of land, boring test holes, or preliminary negotiations with contractors or architects. ...

Clackamas County v. Holmes, 265 Or. 193, 198-99, 508 P.2d 190, 192-93 (1973).

The *Holmes* vested rights doctrine has since been tied to nonconforming use rights:

> In *Fountain Village*..., we and the Court of Appeals relied on *Holmes* to characterize uses for which there are vested rights to develop or complete as "inchoate nonconforming uses." We held that because uses for which there are vested rights to develop or complete are a species of nonconforming use, the statute at ORS 215.130 that protects, regulates, and limits nonconforming uses, and local code provisions governing nonconforming uses, also apply to vested rights, including a determination of whether a vested right has been discontinued. ...

Land Watch Lane County v. Lane County, __ Or LUBA __ (LUBA No. 2017-077, slip op. at 9-10, February 26, 2018), citing *Fountain Village Dev. Co. v. Multnomah County*, 39 Or LUBA 207, 221 (2000), *aff'd* 176 Or App 213,220-24,31 P3d 458 (2001).

Since *Fountain Village*, LUBA and the Court of Appeals have held that local nonconforming use provisions must be applied to vested right claims that have lapsed or been discontinued. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or. LUBA 392, 410 (2012), citing *Crosley v. Columbia County*, 65 Or LUBA 164, *aff'd* 251 Or App 653, 286 P3d 911 (2012). Thus, *Holmes* and its progeny suggest that a claim of an inchoate nonconforming use, *i.e.*, one that was not fully developed before restrictive zoning came into effect, must be analyzed as a vested right claim, which implicates the original *Holmes* factors.

> The right that the holder of a vested right has is the right to continue "construction" of a proposed use until construction of that proposed use is complete and the vested right is converted to a nonconforming use, or, put another way, the nonconforming use is fully established. Since the use that a vested right protects is an inchoate nonconforming use, *i.e.* a use that does not yet exist, there is no nonconforming use to "maintain." It is the continued "construction" of an inchoate nonconforming use that must not be abandoned, discontinued or interrupted for more than one year in Columbia County under CCZO 1506.4 to avoid losing a vested right to continue construction of that vested right. <u>If petitioner discontinued or interrupted construction of the dwelling for more than one year after the construction of the foundation was completed in 1979, the fact that petitioner may have engaged in some activities that can be characterized as maintaining the foundation or maintaining or enhancing the vegetation on the property does not alter the fact that construction was discontinued or interrupted. Where construction of a residence has been discontinued or interrupted, actions to maintain the partially constructed residence are not sufficient to continue "construction" of the residence</u>.

Crosley v. Columbia County, 65 Or. LUBA at 174 (2012).

That said, even applying the *Holmes* factors for a vested right analysis to this case, the applicants fall far short of establishing a right to operate the 4-plex as transient lodging. The Supreme Court derived the following factors (the so-called "*Holmes* factors") as relevant in evaluating a vested rights claim to a particular development:

> 1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;
>
> 2. The amount of notice of any proposed re-zoning;
>
> 3. The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;
>
> 4. The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;
>
> 5. The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;
>
> 6. Whether the expenditures made prior to the subsequent zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation;
>
> 7. The ratio of the prior expenditures to the total cost of the proposed use.
>
> If the evidence relative to these factors establishes a "vested right," the property owner may complete his improvements and thereafter use his property in a manner which is a nonconforming use, subject to the restrictions on nonconforming uses.

Polk County v. Martin, 292 Or 69, 81 n 7, 636 P2d 952 (1981), citing with approval *Clackamas County v. Holmes, supra.*

The critical difference between the present case and the above-cited vested rights cases, is that there is no evidence that these owners showed any particular interest in putting the 4-plex to transient lodging use, as opposed to simply renovating it to be habitable and marketable as apartments for long-term tenancy. There is no evidence that the owners made any investment in the 4-plex that was uniquely focused on transient lodging use. Even years after STRs were outlawed in the C-3 Zone, the owners continued to rent the 4-plex as conforming, lawful long-term apartments. In fact, the evidence shows that the owners intended to use only the cottage units as transient lodging (STRs) prior to January 1, 2019, not the 4-plex units:

- The Magies applied for an Occupational Tax Permit on October 27, 2017 for the transient

lodging use of the cottage units (1565 & 1569 Exchange Street) only, but not the 4-plex (Appeal Packet p 10-11).

- The Magies submitted a parking plan on October 23, 2017 for operating the cottage units (1565 & 1569 Exchange Street) as STRs, but the plan did not include the 4-plex (Appeal Packet p 9).

- The Magies submitted a landscaping plan on November 2, 1017 for operating the cottage units (1565 & 1569 Exchange Street) as STRs, but the plan did not include the 4-plex (Appeal Packet p 12-13).

- The Magies paid the City's transient room tax for STR use of the cottage units from the beginning, but did not begin paying transient room tax for the 4-plex until late 2020 – nearly 2 years after STR use in the C-3 Zone became unlawful (Appeal Packet p 24-25).

- The Magies' property management and rental company stated in an April 28, 2022 letter that STR use of the 4-plex units did not begin until December 1, 2021 for 1555 Exchange Street, and not until spring 2022 for 1557 and 1561 Exchange Street – long after STR use in the C-3 Zone became unlawful (Appeal Packet p 109-110).

- The 4-plex units were under long-term leases as apartments from 2018 and 2019 until after January 1, 2019. Long-term leases for 1557, 1559 and 1561 were then extended well into 2021 and 2022.

- January 19, 2022 statement by Bob Magies that, up to that point, only the cottages were used for transient lodging purposes, not the 4-plex units (Appeal Packet p 69-70).

Under the *Holmes* factors, this failure to actually put the 4-plex to transient lodging use until nearly 2 years after STRs became unlawful in the C-3 Zone, much less before January 1, 2019, destroys their claim of a vested right to STR use today. The actions taken and investments made by the Magies throughout this period are only consistent with their intention and actual use of the 4-plex units as long-term rental apartments, not transient lodging. In *Crosley v. Columbia County*, LUBA held that, when evaluating such gaps, discontinuances and conversions from a claimed nonconforming use right to a conforming one, the local nonconforming use regulations apply. *See Hood River Citizens for a Local Economy v. City of Hood River*, *supra*, 65 Or. LUBA at 415 (2012) (Remanding a vested rights determination to apply the local nonconforming use chapter to determine if discontinuances terminated Wal-Mart's claim of a vested right to expand its Hood River store).

Following LUBA's remand in the *Hood River Citizens* case, with instruction that the City apply its nonconforming use code to Wal-Mart's vested right claim, the City Council focused on a conspicuous gap in Wal-Mart's expansion plan. In particular, there was a long lapse between the time when Wal-Mart supposedly obtained a vested right to the 30,000 sf store expansion it sought and when it actually applied for the expansion. Hood River's discontinuation provisions in its nonconforming use regulations are the same as Astoria's, *viz.*, a discontinuation of 12

months terminates the nonconforming use. The Hood River City Council concluded that any vested right Wal-Mart may have had at one time was lost through the long, multi-year delay in activating the vested right it claimed. LUBA affirmed the City's decision that the vested right was terminated:

> A vested right is essentially the right to finish construction or to fully implement the use that is, or will be, a nonconforming use when completed. As such vested rights are essentially a species of nonconforming use. ... The general principles of nonconforming uses (including discontinuance) apply to vested rights, at least in counties subject to ORS 215.130, the statute that provides for nonconforming uses. As respondents argue, analysis of discontinuance under ORS 215.130 or county codes implementing the statute generally involves looking back in time to determine the status of the nonconforming use, and whether that nonconforming use has been lost due to discontinuance. Depending on the facts, it is entirely possible for a nonconforming use to be discontinued or abandoned prior to the date that the applicant seeks a verification of the lawful existence and scope of the nonconforming use, and prior to the date the local government issues a decision verifying the lawful existence and scope of the nonconforming use.
>
> * * *
>
> Similarly, petitioner has not established that the city's findings are inadequate. The city's findings regarding HRMC 17.05.020(2) are three pages long, single-spaced. The findings are a bit imprecise at times in distinguishing between existing nonconforming uses and the inchoate proposed expansion in this case which is no longer allowed by the LI zone, but for which at one time petitioner had a vested right to begin and complete construction. But the findings quoted earlier set out the text and context of the discontinuance standard, including a discussion of the purpose and policy of the city's nonconforming use code provisions. The findings discuss the relevant facts, apply the discontinuance standard to those facts, and provide a reasonably understandable explanation for the city's conclusion that Wal-Mart's vested right to complete the expansion as part of a nonconforming use was lost through elapse of more than 12 months between the years 1997 to 2011, during which time Wal-Mart made no effort to pursue a vested rights determination or completion of the expansion. The city's findings are adequate.

Wal-Mart Stores, Inc. v. City of Hood River, 72 Or. LUBA 1, 18-19 & 21 (2015).

The gap between the point when Wal-Mart supposedly obtained its vested right and when it attempted to act on that perceived right was a discontinuance in excess of 12 months under Hood River's nonconforming use regulations that terminated the nonconforming use. The same outcome should result here, where the Magies waited nearly two years after January 1, 2019 before doing anything to put the 4-plex to a transient lodging use and therefore lost any vested right they may have had pursuant ADC §3.180(C) (Discontinuance of Nonconforming Use).

Additionally, during that nearly 2-year delay, the Magies used the 4-plex for a conforming use – as multi-family apartments – which under ADC §3.180(B) (Change of a Nonconforming Use) immediately terminated any vested right claim they may have had to a nonconforming short-term rental use of the 4-plex. After the Magies used the 4-plex for long-term tenancy they forfeited any vested right to transient use, and their only lawful options for the 4-plex were (and remain) conforming uses, *i.e.,* long-term tenancy multi-family dwelling.

7. **Fourth Legal Error. The Director's decision is contrary to the purpose and policy of ADC 2.390 and related amendments that were adopted to prohibit transient lodging uses in the C-3 Zone and elsewhere in the city because it eliminates long-term housing for people who want to live and work in Astoria, and it exacerbates the nuisance impacts of transient lodging where the owner does not reside in the dwelling.**

The ADC amendments that eliminated transient lodging as a use allowed outright in the C-3 Zone and elsewhere in the City were based on findings and policies adopted by the City Council designed to protect the City's housing base for long-term residents, to retain as much affordable housing as possible, and to protect the livability of residential neighborhoods:

> Transient lodging, in and of itself, is not detrimental to the City. However, when it is operated without paying the appropriate taxes, no off-street parking, and without an on-site owner in residence, it can become a nuisance to a neighborhood. The lack of off-street parking creates a parking situation in some neighborhoods that have narrow streets and limited on-street parking. Use of homes without the benefit of the owner in residence creates multiple issues that are detrimental to the other residents in the neighborhood. Guests are not generally a problem, but they are on vacation and can tend to get loud and/or have multiple vehicles and people at the home. With the owner on site, the owner can keep their guests in compliance with City regulations. Otherwise, adjacent property owners are required to either live with the situation or report it to the Police which causes everyone embarrassment and only solves the issue for the current guests, not the new ones the next weekend. Therefore, HSL, B&B, and Inns are allowed but vacation rentals (which are classified as motels) are not. This would help to protect the quiet residential character of the neighborhoods.

March 24, 2019 staff memo to Planning Commission, Findings document at 5 (emphasis added).

> Finding: The Buildable Lands Inventory (BLI) identified a deficit of residential buildable lands. The Comprehensive Plan indicates a goal of having a variety of housing types and price ranges, and the preservation of existing historic housing stock. The City Council 2018-2019 Goals included "Implement the provisions contained in the City of Astoria Affordable Housing Study to increase the number of housing units within the City, for permanent residents. Special attention should be given to derelict and/or vacant properties." The draft 2019-2020 City Council goals include "Facilitate an increase in housing supply (both market rate and affordable) using the County Housing Study to implement." and "Maintain Astoria's unique character through economic development and zoning which reflects on those values." The City Council has expressed concerns that the use of

> residences for transient lodging, especially vacation rentals, is a threat to the available housing stock. There is currently a lack of affordable housing for the existing employees and Astoria residents. While the Council agrees that transient lodging in owner occupied homes may be an acceptable use in residential areas, it also sees the prohibition of use of full homes for transient lodging as one way to keep the existing housing available for long term housing. Therefore, the Council determined that transient lodging in residential areas should not include a kitchen in the guest area as this would equate to a living unit.
>
> The Council also identified the conversion of residential units in commercial zones for transient lodging as contrary to the goal to provide affordable housing. The Council suggested that structures built and/or currently used for residences should not be converted to transient lodging. A proposed amendment would prohibit the conversion. However, there are several existing former hotels that are currently either vacant and/or have been converted to residences. An exception for these buildings to allow conversion back to a hotel use is proposed as it would only impact a few buildings (Waldorf Hotel 1067 Duane; JJAstor Hotel 342 14th; Elliot Hotel 357 12th; Norblad Building 443 14th; Commodore Hotel 258 14th) and would allow for economic ability to maintain these larger buildings.

March 24, 2019 memo to Planning Commission, Findings document at 6-7 (emphasis added).

> Finding: Tourism is a major industry for Astoria. The year-round nature of tourist activities has created a need for additional transient lodging facilities. Astoria has seen an influx of hotels/motels over the last few years with two or three new ones proposed in the next year or two. The use of private homes as HSL and B&B's has also increased. The City encourages home occupations and activities in residential areas but only if they have "little impact on the surrounding neighborhoods". Adoption of the proposed amendments would allow for controlled use of private residences as transient lodging so as to protect the residential character of the neighborhoods while allowing for this tourist base industry to exist. Commercial activities related to tourism such as vacation rentals are a major impact to the quiet residential character of the area and to the loss of long term, affordable housing. The proposed amendments would prevent the loss of housing to accommodate transient lodging thereby preserving Astoria for Astorians first.

March 24, 2019 memo to Planning Commission, Findings document at 7-8 (emphasis added).

> Finding: The proposed amendments would limit the allowable transient lodging uses in all zones. Uses would be regulated to assure low-impact in residential areas and limit the loss of housing. These proposed regulations are consistent with this Comprehensive Plan section which protects the waterfront area for the low-impact marine uses. Any project proposed would be subject to compliance with this section at the time of project proposal.

March 24, 2019 staff memo to Planning Commission, Findings document at 8 (emphasis added).

The above-quoted findings are expressions of policy adopted by the City Council in support of its regulations to curtail transient lodging (STR) uses in all residential areas of the city, including the C-3 Zone to protect residential areas and the City's housing stock for long-term residents. To interpret the City's C-3 Zone regulations (ADC §2.390) and nonconforming use provisions (ADC §3.180) to allow the conversion of the 4-plex to STR use, would be contrary to (a violation) of these underlying purposes and policies that strongly suggest this application should be denied. To the extent there is any ambiguity in the operative code language, it must be resolved consistently with this underlying purpose and these policies and cannot be interpreted in a way that is contrary to these purposes or policies. ORS 197.829(1).[7]

Finally, to the extent the applicants assert that the 4-plex was originally constructed as a hotel/motel and has operated as such throughout its history to the present, that argument is not only false, but it does not support a vested right or nonconforming use to operate a transient lodging (STR) use today. "Hotel" and "Motel" are defined by the City and are different than "transient lodging facility." *See* ADC §1.400 (Definitions). The use that the applicants seek in this nonconforming use verification proceeding is not a hotel or a motel; those uses are not part of this request. The application is for verification of a nonconforming use right to a "transient lodging facility;" approval of that request violates the above-referenced ADC provisions and is not supported by the evidence in this record.

Based on the foregoing arguments and the attached exhibits, the Hearings Officer should reverse the Director and deny the nonconforming use request.

Sincerely,



Daniel Kearns, attorney for appellants Austin Kettleson, Andrew Kipp and John Windus

Enclosures
cc: Clients
Carrie Richter, Esq.

7 In pertinent part, ORS 197.829(1) provides that "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation ...

(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; ..."

Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

Tenant(s): Andrew Zingg and Lydia Mendoza

Tenant(s): _____

Rented Premises 1557 Exchange St Unit: _____

City: Astoria Oregon, Zip: 97103 Phone: _____

Cell or Mobile (614) 507-5372 Alternate Phone: (415) 240-6406

Email: mendoza.lydia@gmail.com Email: azingg@wesleyan.edu

Alternate Mailing: _____

Monthly Rent Amount $ 1225 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 05/15/18 Ending: 05/15/19 1st month's prorated rent from 05/15/18 to 5/31/18 is $ $632

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- X One charge per rental installment limited to the amount customary in rental area. $ 85
- ____ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ____ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Move-in Accounting Rent & Deposits

Security Deposit	$ 1225
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ 632
1st Full Month's Rent	$ 1225
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ 1225
Total Due	$ 632

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Landscaping

Tenant shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O-Owner Pays T-Tenant Pays

T Electricity	O Water
T Cable	O Sewer
T Gas	O Garbage

Other _____

Furnished to Unit

X Range	___ Disposal X Blinds
___ Dishwasher	X Refrigerator
X Garbage Can	___ Dumpster

Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Andrew Zingg and Lydia Mendoza AZ

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Payments to Owner/Agent

Owner/Agent: Cynthia Magie, Gilbaugh LLC
Address: PO Box 532
City/State/Zip: Astoria, OR 97103
Phone: 503-812-7348
E-mail: ExchangeAstoria@gmail.com

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: Carmen Mendoza Relationship: Mother
Address: 1346 Haines Avenue City: Columbus State: OH Zip: 43212
Phone: 614481-0949 Email: mcarmendoza@gmail.com

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s) street
Storage Space _____
Mail Box # _____

Pets Allowed

No ☑ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☑ IS ☐ IS NOT available.
2) ☑ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☑ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. **Oversized and Water Filled Furnishings:** No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. **Guests:** Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. **Tenant Contact Info:** Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

4. **Property Condition:** Tenant(s) shall return premises to Owner/Agent in clean condition. The Owner/Agent's definition of "clean" is binding on all parties.

5. **Tenant and Guest Conduct:** Tenant(s) shall restrict all sounds or noise to a reasonable volume. Tenant(s) and their Guest(s) shall conduct themselves in a manner that will not disturb their neighbor's peaceful enjoyment of their premises, including common areas.

6. **Notice of Absence:** Tenant(s) shall notify Owner/Agent of any anticipated absence from the premises in excess of 7 days, no later than the first day of the absence.

7. **Entry into Premises:** Tenant(s) shall not unreasonably withhold consent to Owner/Agent to enter premises to inspect, make repairs or improvements, or to show the unit to prospective buyers or tenants. Owner/Agent may enter the premises without consent in an emergency, to post notices, or at any reasonable time with 24-hour notice or with permission of Tenant(s). If boxes are checked, Tenant(s) agrees to allow the use of ☑ text messages or ☑ email, or both for the purpose of submitting maintenance requests to Owner/Agent and for providing 24-hour notice to enter by Owner/Agent to Tenant(s).

8. **Sublease:** Tenant(s) shall not transfer their interest(s) in this agreement or sublet the premises, or any part of the premises. AZ

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9. **Insurance:** Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☐ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

10. **Rent Increases:** If lease expires and converts to a month-to-month tenancy, rent may be increased with a 90-day written notice. Rent increases may not be effective prior to the end of the first year of occupancy.

11. **Abandonment:** Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. **Notices:** All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY, must include an additional 4 days for delivery including date of service. Where allowed by law; notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the portion of the premises of which the Tenant(s) has possession or to the Owner/Agent at the address provided. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. **Use of Premises, Maintenance and Repair:** The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT.

14. **Damage to Property:** Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

15. **Hazardous Materials:** Tenant(s) shall not store hazardous or flammable materials at the premises.

16. **Smoke and Carbon Monoxide Alarms:** Tenant(s) acknowledges the presence of a smoke alarm(s) and, if required, a carbon monoxide alarm(s) in fully operational condition in the unit. Tenant(s) is instructed to test the alarms at least every 6 months and replace the batteries as needed. Tenant(s) shall replace expired batteries with 10-year lithium batteries as required by law. Tenant(s) agrees that Owner/Agent is not liable for loss or damage due to the alarm's failure to operate. Tenant(s) is required to immediately notify Owner/Agent in writing of any malfunction of the alarm(s). Tenant(s) shall not remove or tamper with a properly functioning alarm, including removing any working batteries. Tenant(s) agrees to pay a fee of $250.00 for each violation.

17. **Limited Liability:** Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

18. **Non-Compliance Fees:** Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation.

LM

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19. Carpet Cleaning: If Owner/Agent had the carpets cleaned using specialized equipment after the previous tenancy before the Tenant(s) took possession, Owner/Agent may deduct the cost of carpet cleaning from the Tenant's security deposit regardless of whether the Tenant(s) cleaned the carpets before delivery of possession of the premises.

20. Lease Enabling/Trespassing: Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

21. Termination: Tenant(s) shall not terminate this agreement without giving 30 days' written notice; failure shall make Tenant(s) liable for up to 30 days' rent. Tenant(s) must provide a single forwarding address for final accounting. Upon material noncompliance with this agreement, Owner/Agent may issue a 30-day notice of Termination with Cause, and if the breach is not remedied by the cure period indicated on the notice, the rental agreement will terminate and the Owner/Agent may take possession pursuant to Oregon law. Fixed-term tenancy will automatically convert to month-to-month tenancy unless either party has properly terminated the tenancy by giving at least 30 days' written notice prior to end of the fixed term or 60 days' by the Owner/Agent if termination is after the first year of occupancy. Owner/Agent may terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/ or other charges, or to comply with any terms or conditions of this agreement. Any omission or misstatement on the application for this dwelling unit may, at the option of Owner/Agent, be grounds for termination of tenancy. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises.

22. Holdover Tenancy: Any holding over after the expiration of the rental term without written consent of Owner/Agent shall be deemed a willful holdover and Owner/Agent shall be entitled to rent and damages, including court fees if applicable.

23. Tenant(s) Jointly and Severally Liable: If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

24. Application of Payments: Owner/Agent may apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months. B) Rent for the current month. C) Utility or service charges. D) Late rent charges. E) Damage claims and any other fees or claims owed by the tenant.

25. Legal and Collection Fees: Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

26. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

27. Charges: Utility – Utility charges must be paid in full within 30 days of receipt of billing or Owner/Agent may assess a $50 late fee. Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. **HOA** – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. **Re-Key Mailbox(s)** – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

28. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ # 3 Pet Agreement	☐ # 21 Deposit Refund	☑ # 33 Rules & Regulations
☐ # 9 Check In/Check Out	☐ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☑ # 11 Smoke Alarm & CO Agreement	☑ # 54 Mold Prevention	☑ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant Zyli Mena Date 5/4/18 Tenant _____ Date _____

Tenant _____ Date 5/4/18 Tenant _____ Date _____

Owner/Agent _____ Date _____

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Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

Tenant(s): AUSTIN KETTLESON

Tenant(s): DANAE M. SUPRUNOWSKI

Rented Premises 1559 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: _____

Cell or Mobile 971-678-4591 Alternate Phone: 360-244-3399

Email: austinkettleson@gmail.com Email: danae.suprunowski@gmail.com

Alternate Mailing: _____

Monthly Rent Amount $ 1225.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 12/1/18 Ending: 8/31/19 1st month's prorated rent from _____ to _____ is $ _____

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- X One charge per rental installment limited to the amount customary in rental area. $ 100
- ____ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ____ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ _____
1st Full Month's Rent	$ 1225.00
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ _____
Total Due	$ 3225.00

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O=Owner Pays T=Tenant Pays

- T Electricity
- O Water
- T Cable
- O Sewer
- X Gas
- O Garbage

Other _____

Furnished to Unit

- X Range ___ Disposal X Blinds
- ____ Dishwasher X Refrigerator
- X Garbage Can ____ Dumpster

Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Austin Kettleson, Danae Suprunowski, Hazel & Millie Peterson

 Initials AK DS

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Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: _____ Relationship: _____
Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Email: _____

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s)_____
Storage Space _____
Mail Box # 1559

Pets Allowed

No ☒ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☒ IS ☐ IS NOT available.
2) ☒ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☒ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. **Oversized and Water Filled Furnishings:** No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. **Guests:** Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. **Tenant Contact Info:** Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

4. **Property Condition:** Tenant(s) shall return premises to Owner/Agent in clean condition. The Owner/Agent's definition of "clean" is binding on all parties.

5. **Tenant and Guest Conduct:** Tenant(s) shall restrict all sounds or noise to a reasonable volume. Tenant(s) and their Guest(s) shall conduct themselves in a manner that will not disturb their neighbor's peaceful enjoyment of their premises, including common areas.

6. **Notice of Absence:** Tenant(s) shall notify Owner/Agent of any anticipated absence from the premises in excess of 7 days, no later than the first day of the absence.

7. **Entry into Premises:** Tenant(s) shall not unreasonably withhold consent to Owner/Agent to enter premises to inspect, make repairs or improvements, or to show the unit to prospective buyers or tenants. Owner/Agent may enter the premises without consent in an emergency, to post notices, or at any reasonable time with 24-hour notice or with permission of Tenant(s). If boxes are checked, Tenant(s) agrees to allow the use of ☒ text messages or ☒ email, or both for the purpose of submitting maintenance requests to Owner/Agent and for providing 24-hour notice to enter by Owner/Agent to Tenant(s).

8. **Sublease:** Tenant(s) shall not transfer their interest(s) in this agreement or sublet the premises, or any part of the premises.

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9. Insurance: Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☒ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

10. Rent Increases: If lease expires and converts to a month-to-month tenancy, rent may be increased with a 90-day written notice. Rent increases may not be effective prior to the end of the first year of occupancy.

11. Abandonment: Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. Notices: All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY, must include an additional 4 days for delivery including date of service. Where allowed by law; notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the portion of the premises of which the Tenant(s) has possession or to the Owner/Agent at the address provided. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. Use of Premises, Maintenance and Repair: The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT.

14. Damage to Property: Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

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26. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

27. Charges: Utility – Utility charges must be paid in full within 30 days of receipt of billing or Owner/Agent may assess a $50 late fee. Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. **HOA** – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. **Re-Key Mailbox(s)** – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

28. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ # 3 Pet Agreement	☒ # 21 Deposit Refund	☐ # 33 Rules & Regulations
☐ # 9 Check In/Check Out	☒ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☒ # 11 Smoke Alarm & CO Agreement	☒ # 54 Mold Prevention	☒ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant [signature] Date 11/21/2018 10:12:14 AM PST Tenant [signature] Date 11/21/2018 10:58:24 AM

Tenant 5EBCBC21FBEC467... Date _____ Tenant 3F08BBF32519454... Date _____

DocuSigned by:

Owner/Agent Shannon Fitzpatrick Date 11/21/2018 11:00:35 AM PST

03DAA43B2A244B5...

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Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

Tenant(s): TRISTAN FELL

Tenant(s): ALYSSA HANSON

Rented Premises: 1561 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: 541-969-6714

Cell or Mobile: _____ Alternate Phone: 503-791-6277

Email: TRISTANPAIGE@GMAIL.COM Email: ALYGHANSON@GMAIL.COM

Alternate Mailing: _____

Monthly Rent Amount $ 1275.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 7/18/19 Ending: 5/31/20 1st month's prorated rent from 7/18/19 to 7/31/19 is $ 595.00

Late Fees

If rent payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- ✔ One charge per rental installment limited to the amount customary in rental area. $ 100.00
- ___ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ___ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #21 for explanation*

Early termination of lease fee $ _____

(Early termination of lease will be charged as a fee equal to 1 1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting, and to be to be exercised at discretion of Owner/Agent.)

Utilities

T___ Electricity O___ Water
O___ Sewer T___ Cable
T___ Gas O___ Garbage
Other INTERNET T
Other _____

O = Owner Pays T = Tenant Pays

Furnished to Unit

✔ Range ___ Disposal ✔ Blinds
___ Dishwasher ✔ Refrigerator
✔ Garbage Can ___ Dumpster
Other _____
Other _____

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ 595.00
1st Full Month's Rent	$ _____
Last Month's Rent	$ _____
Other _____	$ _____
Subtotal	$ _____
Deposit to Hold (subtract)	$ _____
Total Due	$ 2595.00

☐ If checked, deposits are held by Owner.

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

Marijuana

No marijuana, medical or recreational, may be grown, stored, processed, smoked or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: TRISTAN FELL, ALYSSA HANSON

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Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA, OR 97103
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Address:
City/State/Zip:

Include description of where to post notice (See #12), such as "front door," "side door," "gate," etc.

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: ALYSSA: HEATHER RAMSDEL, TRISTAN: TRINA FELL (541- Relationship: ALYSSA & TRISTAN: MOTHER
Address: ALYSSA: 35433 HOMER LANE City: ALYSSA: ASTORIA, TRI State: OR Zip: 97103
Phone: 503-791-6259 Email:

Utility or Service Charge Disclosure

Utility or service benefitting other Tenants or common area:

Basis for allocation of utility or service charge for common areas:
Square footage by # of units or: $ per
Utility charges must be paid by: to avoid $50 late fee.
If left blank, utility charge must be paid within 30 days of date of Owner/Agent billing to avoid assessment of late charge.

Parking - Storage - Mail

Parking Space(s) N/A
Storage Space N/A

Disclosures

1) Recycling [✓] IS [ ] IS NOT available.
prohibited on the premises.
3) [ ] If checked, the dwelling unit is located in a 100-year flood plain, as

9. Insurance: Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☑ If checked, Renter's Insurance is required – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required. Owner/Agent is responsible to maintain their own insurance policy and may not "self insure" if Renter's Insurance is to be required. Owner/Agent must provide proof of property insurance to Tenant upon request.

10. Rent Increases: Offers of lease renewal to current occupants may not exceed 7% plus the Consumer Price Index for the West Coast in any 12-month period, unless exempt. Properties whose 1st Certificate of Occupancy was issued within the past 15 years are exempt, as are properties where the landlord is providing reduced rent to the tenant as part of a federal, state or local program or subsidy. If the lease expires and converts to a month-to-month tenancy, rent increases are subject to the laws of periodic tenancies.

11. Abandonment: Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. Notices: All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY must include an additional 4 days for delivery, including date of service. Where allowed by law, notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the main portion of the premises of which Tenant(s) has possession or to the Owner/Agent at the address provided above in section entitled, "For Service of Notices to Owner/Agent." As required by law, Owner/Agent's designated service address must be described with particularity, reasonably located in relation to the Tenant(s), and available at all hours. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. Use of Premises, Maintenance and Repair: The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT. No credit for repairs or improvements shall be allowed without Owner/Agent's prior written approval. Alterations to the dwelling unit without the prior written consent of Owner/Agent are strictly prohibited and may be cause for termination of the tenancy.

14. Damage to Property: Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

15. Trash Receptacles: Tenant(s) shall promptly remove trash receptacles from the street within 24 hours after garbage pick-up and, when possible, stored so that they are not visible from the street. All trash shall be bagged or sealed prior to placing in trash receptacles. Tenant(s) are prohibited from rummaging through trash or recycling bins. No hazardous materials shall be placed in trash receptacles.

16. Wildlife: Due to the potential for damage and spread of disease, Tenant(s) and their guests shall not feed, water or otherwise provide sustenance to feral or wild animals, birds, reptiles, snakes or other such animals.

17. Hazardous Materials: Tenant(s) shall not store hazardous or flammable materials at the premises.

18. Smoke and Carbon Monoxide Alarms: Tenant(s) acknowledges the presence of a smoke alarm(s) and, if required, a carbon monoxide alarm(s) in fully operational condition in the unit. Tenant(s) is instructed to test the alarms at least every 6 months and replace the batteries as needed. Tenant(s) shall replace expired batteries with 10-year lithium batteries as required by law. Tenant(s) agrees that Owner/Agent is not liable for loss or damage due to the alarm's failure to operate. Tenant(s) is required to immediately notify Owner/Agent in writing of any malfunction of the alarm(s). Tenant(s) shall not remove or tamper with a properly functioning alarm, including removing any working batteries. Tenant(s) agrees to pay a fee of $250.00 for each violation.

19. Limited Liability: Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

20. NSF Payments: Should any payment made by or on behalf of any Tenant(s) be returned by the financial institution for insufficient funds, Owner/Agent may require that all subsequent payments be made in certified funds only (cashier's check or money order), for the remainder of the tenancy.

21. Non-Compliance Fees: Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation. Late fees and dishonored check fees are due immediately upon default by Tenant(s). Tenancy may be terminated as allowed by law for failure to pay outstanding fees.

22. Carpet Cleaning: If Owner/Agent had carpets cleaned using specialized equipment, or had the carpets replaced before the Tenant(s) took possession, Owner/Agent may deduct the cost of carpet cleaning from the Tenant's security deposit regardless of whether the Tenant(s) cleaned the carpets before the delivery of possession.

23. Lease Enabling/Trespassing: Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

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24. Termination: If the ending date of the lease falls within the first year of occupancy, Owner/Agent may terminate the tenancy at any time within the first year by providing 30-days' written notice of nonrenewal of lease. First year of tenancy includes all periods during which any of the Tenant(s) has resided in the dwelling unit for less than one year. Such notice may be served prior to the specified ending date for the fixed term, or 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later. **Regardless of length of tenancy, proscribed notice periods may be longer in certain local jurisdictions or in subsidized housing.** Tenant(s) may terminate a lease at its end by providing a minimum of 30 days' written notice to Owner/Agent. Failure of either party to provide notice prior to end of the lease shall result in tenancy converting to a periodic agreement (month-to-month), subject to the laws of periodic tenancies.

After the first year of occupancy, Owner/Agent may terminate a lease only for cause, or with 90-days' written notice for a Qualifying Landlord Reason: 1) Owner/Agent intends to demolish the unit or convert it to a use other than residential use within a reasonable time; 2) Owner/Agent intends to undertake repairs or renovations to the unit within a reasonable time and the unit is unsafe or unfit for occupancy, or will be unsafe or unfit for occupancy during repairs or renovations; 3) Owner/Agent intends for the property owner or a member of the Owner's immediate family to occupy the unit as a primary residence, and the Owner does not own a comparable unit in the same building that is available for occupancy at the time the notice is delivered; 4) Owner is selling the property, and has accepted an offer to purchase the unit separately from any other unit from a person who intends in good faith to occupy the unit as their primary residence. *(Owner/Agent must provide the notice and written evidence of the offer to purchase the unit to the tenant not more than 120 days after accepting the offer to purchase.)* For a nonrenewal of lease under this section to be valid at the time it is delivered to the tenant, Owner must pay the Tenant(s) the equivalent of one month's periodic rent – unless exempt. Landlords with an ownership interest in four or fewer dwelling units are exempt from payment of the relocation expense.

Owner/Agent may terminate a fixed-term tenancy upon expiration of the fixed term following written notice given not less than 90 days prior to the specified ending date for the fixed term or 90 days prior to the date designated in the notice for the termination of the tenancy, whichever is later, and: (a) The tenant has committed three or more violations of the rental agreement within the preceding 12-month period and the landlord has given the tenant a written warning notice at the time of each violation; (b) Each written warning notice: (A) Specifies the violation; (B) States that the landlord may choose to terminate the tenancy at the end of the fixed term if there are three violations within a 12-month period preceding the end of the fixed term; and (C) States that correcting the third or subsequent violation is not a defense to termination under this subsection; and (c) The 90-day notice of termination: (A) States that the rental agreement will terminate upon the specified ending date for the fixed term or upon a designated date not less than 90 days after delivery of the notice, whichever is later; (B) Specifies the reason for the termination and supporting facts; and (C) Is delivered to the tenant concurrent with or after the third or subsequent written warning notice.

Owner/Agent may also terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/or other charges, or fails to comply with any terms or conditions of this agreement, or fails to comply with any obligations under ORS Chapter 90. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises. Tenant(s) must provide a single forwarding address for final accounting.

25. Early termination: For a Tenant(s) failure to occupy the premises through the lease term for reasons other than those exempt by law, the Tenant(s) shall be responsible for, at Landlord's sole election, either:

1) All amounts owing at the time of surrender, as well as a fee not to exceed 1-1/2 times the monthly rent, including all amounts necessary to return the premises to a rentable condition, minus normal wear and tear; or,

2) All amounts necessary to re-lease the dwelling unit, including but not limited to, damages, property care, advertising and administrative costs, and the difference in rent amount through the term should Owner/Agent be unable to re-lease the property at the same rate, as well as all amounts necessary to return the premises to a rentable condition, minus normal wear and tear.

26. Sale or Transfer of Premises: If the rented premises is sold or transferred during the tenancy, all terms of this agreement shall remain in full force and effect until further notice by Owner/Agent.

27. Tenant(s) Jointly and Severally Liable: If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

28. Application of Payments: Owner/Agent must apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months; B) Rent for the current month; C) Utility or service charges; D) Late rent charges; E) Damage claims and any other fees or claims owed by the tenant. If the due date for rent payment or other payment falls on a Sunday or national holiday (New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day), Tenant(s) shall be entitled to one additional day to tender payment without penalty.

29. Legal and Collection Fees: Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

30. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

31. Charges: Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. HOA – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. Re-Key Mailbox(s) – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

32. Co-signers: If this rental agreement is secured by a co-signer, Owner/Agent reserves the right to notify the Co-signer about any information related to the tenancy deemed necessary, but shall be under no obligation to do so.

33. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ #3 Pet Agreement	☐ #33 Rules & Regulations	☑ #54 Mold Prevention
☐ #9 Check In/Check Out	☐ #46 Assistance Animal Agreement	☐ #65 Exterior Care Agreement
☑ #11 Smoke Alarm & CO Agreement	☐ #47 Parking Agreement	☐ #66 Weatherization Agreement
☑ #21 Deposit Refund Checklist	☑ #51 Lead Paint Disclosure	☑ Other INSURANCE ADDENDUM
☑ #27 Smoke/Vape Free Agreement	☑ #52 Co-Signer Agreement	☐ Other _____

34. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant_____ Date _____ Tenant _____ Date _____

Tenant_____ Date _____ Tenant _____ Date _____

Owner/Agent _____ Date _____

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New Document – Received
Date: 11-2-23 Permit #: AP23-02
Meeting: Appeal Notes: submitted @ meeting

Austin Kettleson
286 Lexington Ave
Astoria, OR 97103

November 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Public comment on AP23-02

In December of 2018, I moved my family into the Gilbaugh Apartments as I transitioned out of the Coast Guard, and my partner took on her new job at the hospital. Before we even moved in, we were intrigued when we read about the building's history in an article that was attached to the listing: "Built in 1915: 'The Astoria Evening Budget proclaimed the new building was a modern structure designed to meet the rapidly increasing demand for comfortable homes in the city.'" It's interesting that over 100 years later, the same building is still being talked about, and the same issue still exists: there is a rapidly increasing demand for comfortable and affordable housing in the city.

When we first moved in, my neighbors consisted of teachers, doctors, hospital employees, and cannery workers because all six structures were long-term rentals. However, in 2020, the first cottage was turned into an AirBnB. Shortly after, the second cottage followed. Besides the occasional extra noise, these two vacation rentals had little to no effect on our experience living in the 4-plex. Then, in October 2021, I was asked by Bob and Cindy to have a meeting about my apartment. At this meeting, they told me that they wanted to use my unit as their primary residence. In the following days, I received a text from Bob Magie stating I needed to move my stuff out of the storage unit I rented in the basement within one month. He also said they have another property on the south slope they wanted to offer to me. A few days later, Shannon Fitzpatrick, the building's property manager, sent me an email stating the same thing. After researching my rights as a tenant under Oregon law as a tenant, I knew their attempts to evict me over email and text message was not legal.

However, the writing on the wall became pretty clear in December of 2021 when the first unit in the four-plex was listed on AirBNB as "Riverview Flat, Number 1." Having "number one" in the title suggested that Riverview Flats number two, three, and four would soon follow, and sure enough, they did. After realizing that my home of the last three years was about to be surrounded by five short-term rentals, I knew that mine was next to be added to their portfolio. This was when I decided to file a complaint with the City of Astoria because I knew it was not legal for Bob and Cindy to convert any of the apartments in my building into AirBNBs.

Nevertheless, my lease was terminated on August 21st, 2022. Bob and Cindy said the reason I was being evicted was that Bob's father intended to occupy my apartment as his primary residence. Fortunately, my family and I narrowly managed to get approved and close on a house during our 90-day eviction notice period. We were relieved to move on and leave the last year of uncertainty about where we would live behind us. Some months later, we were not surprised to see our former apartment listed on AirBNB as "Riverview Flat, Number 4". What did surprise us however, was getting a decision letter on my complaint with a complete reversal of the city's original stance on the situation and agreeing that it was always the Magies' intent to use the four-plex as short-term rentals. How could that be the case when I lived there for almost four years?

My story illustrates how this 4-plex has been used as an apartment the entire time it has existed. The city has put in a strong set of codes that should protect housing for people like me, but since 2019, it hasn't been enforced. Instead of standing up to preserve housing for residents, the city reversed its course, resulting in the loss of 4 homes that have existed for over 100 years. It's time to turn a corner and live up to the intent of the City Council. It's time to enforce the code that protects housing for the many families that would like to be able to call Astoria "home."

Austin Kettleson

New Document – Received
Date: 11-2-2023 Permit #: AP23-02
Meeting: Appeal Notes: Submitted @ meeting

Andrew Kipp
461 Exchange Street
Astoria, OR 97103

November 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Public comment regarding the appeal of Gilbaugh LLC nonconforming use determination 1555, 1557, 1559 & 1561 Exchange Street (AP23-02)

To Whom It May Concern:

As one of the appellants in this matter, I want to highlight what I believe are several meaningful errors concerning the City of Astoria's decision to grant nonconforming use status for transient lodging in the 4-plex located at 1555-1561 Exchange Street.

First, the evidence on the record fails to show that the applicants had operated, or intended to operate, transient lodging in the 4-plex when the restrictive zoning prohibiting that use came into effect. In its decision, the city cites a 2017 Occupational Tax Permit, a 2017 commercial zone landscaping plan, and a 2017 parking plan. It claims these documents show the applicants' intent to renovate the 4-plex into short-term rentals. However, upon examination, none of these documents provide any evidence about the applicants' intended use for the 4-plex at all. The Occupational Tax Permit explicitly describes operating a short-term rental business called "Astoria Downtown Cottages" at 1565 and 1569 Exchange Street. This address refers exclusively to the two accessory cottages located behind the 4-plex. The tax permit makes no reference to the 4-plex itself located at 1555 to 1561 Exchange Street.

Similarly, the 2017 landscaping and parking plans that were approved by then Community Development Director, Mike Morgan, failed to show the applicants' intent was to use the 4-plex for transient lodging. In both plans, the addresses listed are for the two cottages at 1565 and 1569 Exchange Street. Neither plan refers to the 4-plex addresses. In fact, the 4-plex structure isn't depicted in the parking plan at all. The parking plan also shows a total of 8 off-street parking spots, which is less than the 11 off-street spots that would be required were transient lodging the intended use for all 11 bedrooms in the three separate structures (see ADC §7.100).

Likewise, the landscaping plan provides no indication that the intended use of the 4-plex was transient lodging. It only shows that the property owners were in compliance with landscaping requirements in the C-3 zone (see ADC §2.405), which would apply to any permitted use in that zone (including a multi-family dwelling) (see ADC §3.105). While it's worth noting that the applicants omitted the address details from the copies of the 2017 landscaping and parking plans submitted with their application, it was nevertheless erroneous for the city to rely on them to show that applicants were making steps towards converting the 4-plex to transient lodging, as they fail to substantiate that claim in any way.

Second, in its decision, the city cites stabilization work, replaced siding, repaired window sills, updated interior finishes, and other activities the applicants performed as evidence of their intent to convert the 4-plex to transient lodging use. Yet the record contains no evidence demonstrating how these improvements are related to converting the 4-plex into short-term rentals versus rehabilitating it for continued use as a multi-family dwelling for long-term renters. In fact, it's hard to imagine any renovation applicable exclusively to using the property as short-term rentals that would not also apply to using it as long-term rentals. The city erred when it attributed structural repairs and other necessary improvements to the 4-plex as evidence to support the claim that applicants were converting the 4-plex to transient lodging use when such improvements are relevant to any number of uses, including the continued use of the property as a multi-family dwelling housing long-term tenants.

Lastly, the city failed to consider evidence that long-term tenants occupied the units in the 4-plex both before and after the restrictions on transient lodging came into effect. To illustrate this, we have submitted copies of lease agreements for three of the four apartments in the 4-plex, showing that these units were in residential use on January 1, 2019, or shortly thereafter. The fact that the applicants entered into multiple long-term lease agreements for the units in the 4-plex calls into question their claim that they intended to operate them as transient lodging. Furthermore, the applicants extended those leases long after the Astoria City Council enacted the restrictive zoning on transient lodging, with some tenants living there for nearly four years.

The fact that long-term tenants occupied many of the units in the 4-plex is further highlighted by a letter from the applicants' property manager, Shannon Fitzpatrick of Pacific Captial Management, showing that no units in the 4-plex were used as short-term rentals before December 2021. These facts undermine the city's determination that the use of the 4-plex as transient lodging had occurred prior to January 1, 2019. Logic dictates that transient lodging use cannot have occurred prior to January 1, 2019, because these units were being used for a different purpose (long-term housing) at that time. These three units cannot simultaneously be used as both long-term housing and short-term lodging.

Consequently, the city again erred when it failed to apply the Astoria Development Code governing the change or discontinuance of a nonconforming use in this application. Even if transient lodging use had occurred before the restrictive zoning came into effect, the applicants' decision to use the 4-plex as a conforming use after that date (i.e., a multi-family dwelling) immediately invalidated any status as a lawful nonconforming use (see ADC §3.180(B)). Similarly, if transient lodging use had occurred prior to January 1, 2019, then the city failed to recognize that any lawful nonconforming use status was discontinued as a result of gaps exceeding 12 months when the units were leased to long-term tenants for multiple years (see ADC §3.180(C)).

In summary, the city's determination that the 4-plex is a lawful nonconforming use is deeply flawed. The decision relies on evidence and logic that tries to blur the lines between transient lodging for tourists and long-term housing for tenants. The decision conflates steps taken relating to using the cottages as short-term rentals and attributes them to the 4-plex. It ignores clear evidence that the applicants used most of the units in the 4-plex as a conforming multi-family dwelling before and after January 1, 2019. It fails to apply relevant sections of the Astoria Development Code governing nonconforming use. Lastly, it directly violates the stated purpose of the 2019 code amendments that were adopted to prevent this exact situation from occurring (i.e., the loss of critically needed housing stock to short-term vacation rentals). Given these facts, I ask you to reverse the city's decision and deny the application for nonconforming use.

Respectfully,

Andrew Kipp

New Document – Received
Date: 11-2-2023 Permit #: AP23-02
Meeting: Appeal Notes: Submitted @ meeting

John Windus
960 Franklin Avenue
Astoria, OR 97103

November 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

I'm one of the three appellants (AP23-02) regarding the Decision and Order dated June 26, 2026, the city's final decision that the properties at 1555-1557-1559-1561 Exchange Street may be used as non-conforming, transient lodging.

First, let me thank city staff for the professional and cordial way they have handled this appeal. Both City Planner Tiffany Taylor and Amanda Perron have been exceptionally accommodating. Please know that you have the appreciation of all three appellants.

My interest in the Gilbaugh Apartments decision was piqued by coverage in the Daily Astorian because my home is also active on the AirBNB platform. My full-time residence is permitted (HSL-2103) under the Homestay Lodging rules that are similar to Transient Lodging rules. The "Captain Johnson House" permit number is posted on AirBNB and the Astoria Chamber of Commerce website, as required by code.

I live in a circa 1875 structure listed on the state registry of historic homes deemed "contributing" in the Shivley-McClure district. As such, I've become familiar with what it takes to repair an old house and the restrictions those repairs can entail. My challenges are not unlike what the owners of the Gilbaugh Apartments, and other historic properties in Astoria, have faced.

At no time did I assume that the extensive repairs of my home would entitle me to a Homestay Lodging permit, though that seems to be a recurring argument the owners of the Gilbaugh Apartments have made. It's makes no sense to claim that you have a "vested right" to run an illegal AirBNB just because you fix up an old apartment house.

As a HSL permit holder, I have agreed not to offer a full kitchen, to submit lodging revenue in a timely manner, to be at the home when guests are present, to monitor guest parking, and to make sure that there are no noise issues that could be disruptive to our neighborhood. These are all reasonable rules that allow homeowners to rent out one or two rooms while not stealing inventory from Astoria's precious housing stock.

As explained by our attorney, Daniel Kerns, in the section labeled "Fourth Legal Error," city council's concern about protecting residential housing stock played a major role in the 2018-2019 drafting of language restricting short-term lodging. Despite code precluding the change of use of apartments to short-term lodging beginning in 2019, the Gilbaugh Apartment owners moved ahead anyway, ignoring multiple cease-and-desist letters from then City Planner Meg Leatherman, Diane Christiansen with Community Development, and City Manager Scott Spence. Rather than obey city directives, they continued to advertise and book units on AirBNB.

The apartment house owners have tried to conflate permitting of their two nearby cottages with permission to convert the four-unit Gilbaugh to STL use. Yet the Gilbaugh wasn't a part of their

application for an Occupational Use license or landscape requirements. The four apartments in Gilbaugh were in use as long-term rentals when the 2019 rules took hold as Mr. Kearns and fellow appellants Austin Kettleson and Andy Kipp will prove.

The Gilbaugh owners have also attempted to confuse the issue by claiming that parking created for the cottages is proof that they planned to use the four-plex for short-term lodging. Even if that was true, which we don't believe is a supported argument, they have shown a lack of good faith as operators. Instead of directing guests to a parking lot, it is "recommended to park on adjacent streets," according to an online guest review. The owners misrepresent their intent to mitigate parking problems in the neighborhood and instead actively encourage them. A copy of the AirBNB review by "Larissa" is provided. (Attachment 1)

As we pointed out in our letter of appeal, we are also taken aback by what appears to be an effort to coerce city staff by the Gilbaugh owners. Our concerns, based on reporting in the Astorian and documents provided in the agenda packet for tonight's hearing, show that Mayor Sean Fitzpatrick and his brother Shannon Fitzpatrick have both had professional business relationships with the Gilbaugh owners. Had they not intervened at the request of the owners of the Gilbaugh Apartments, this might not have been concerning. However, both Fitzpatrick brothers elected to weigh in to influence staff and reverse multiple "cease-and-desist" orders.

On May 24, 2023, there was a closed-door meeting involving Mayor Fitzpatrick, the Gilbaugh Apartment owners, city staff, and others. It is documented on page 7 of tonight's agenda packet. Within days, planning staff withdrew their objections to the STL conversion and issued a decision that mirrored language written by the building owners' attorney, Carrie Richter. (See attachment 2). This is what we meant when we referred in our initial appeal to "interconnected relationships...that make many community members uneasy."

There are some heroes in all of this; I want to recognize the good journalism provided by the Astorian about our housing crisis. Without their ongoing coverage and the dedication shown by the publisher by assigning a reporter to city meetings, we would have been left largely in the dark.

Lastly, as an appellant, I commend the decision to involve an independent Hearings Officer. We trust that a non-partisan review will restore the initial finding that the conversion of the Gilbaugh Apartments to a conditional use AirBNB violates city code and the intent of city council to *protect Astoria housing.*

With regards,

John A Windus

Attachment < Unit #3 —

★ 4.94 · 107 reviews

Search reviews

food are with in walking distance

Larissa
May 2022

Having a laundry and a kitchen was well worth the added expense of renting a flat as apposed to getting a hotel. It is right downtown so you can walk to wherever you want to go. There are a lot of stairs but I didn't mind. It was recommended to park on adjacent streets but there was always at least 1 open parking spot on the street. It gave me lots of practice parallel parking, which I usually try to avoid. But most parking in Astoria is on street parallel parking.
Overall it was a great stay and I would stay there again.



Beverly
April 2022

Nice apt.
We had a great stay.
Nice view of river from front window.
Bring food and clothes everything else is there.

Attachment 2

From: exchangeastoria@gmail.com
To: Tiffany Taylor; Scott Spence; Sean Fitzpatrick; Carrie Richter
Subject: Fwd: Transient Lodging
Date: Friday, June 16, 2023 8:53:39 AM

Caution: ***EXTERNAL SENDER* Do not click any link and do not open attachments unless you have confirmed the sender.**

Hi all,
We still have not received our assuredly positive official notice of decision that we were told we'd receive 3 weeks ago. Carrie Richter provided suggested language below two weeks ago and I sent out a reminder last week. Our LUBA appeal period is quickly ending and Cindy and I are are exhausted with this process and would like to put it behind us.

Thanks
Bob Magie

Sent from my iPhone

Begin forwarded message:

From: Carrie Richter <crichter@batemanseidel.com>
Date: June 6, 2023 at 2:05:41 PM PDT
To: ttaylor@astoria.or.us, BLAIR HENNINGSGAARD <blair@astoria.law>
Cc: Bob and Cindy Magie <exchangeastoria@gmail.com>
Subject: FW: Transient Lodging

Good Afternoon:

In order to expedite resolution of this matter, I wanted to offer some proposed language to the Notice of Decision and Order that I understand may be forthcoming:

Re: 1555, 1557, 1559, 1561, 1565 and 1569 Exchange Street Notice of Decision and Order

After reviewing the material supplied, the City has determined that the four units located at 1555, 1557, 1559, 1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street were in transient lodging use on January 1, 2019 and as such, these six units may continue to either be placed into transient lodging use or for residential dwelling purposes, at the owners' discretion. Therefore, the City's final decision is that six units containing residential uses, whether short or long term, have been in continual operation since the 1920s when these properties were constructed and may continue notwithstanding any use limitation imposed by ADC 2.39.10(a) or other constraint on the operation of transient lodging or other residential uses.

As a result, the Notice of Non-Compliance dated January 10, 2022 is hereby rescinded.

operation and/or business open to the public need not occur to consider a use as begun."

These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

Conclusion: After reviewing the submitted documents, and researching City records, the City has determined that the four-plex at 1555-1557-1559-1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street, were in transient lodging use on January 1, 2019, and as such, these six units may continue as a transient lodging use. With the 2019 code change, they are now classified as "Nonconforming Uses."

Clarification on Future Uses: Development Code Section §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use states, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

Development Code Section §3.180.B, Change of Nonconforming Use states, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

As a nonconforming use, the transient lodging may continue. If the transient lodging should discontinue for one year, the use would need to conform with the current code. If the use is changed to a conforming use, such as residential and not transient use, then it may not return to the nonconforming transient use. The property use may not switch back and forth between conforming and nonconforming uses.

As a reminder, use for transient lodging does require a City Occupational Tax (business license) and payment of the transient room tax.

THIS IS A FINAL LAND USE DECISION. THE DECISION MAY BE APPEALED TO THE ASTORIA PLANNING COMMISSION BY THE APPLICANT OR A PARTY WHO RESPONDED IN WRITING TO THE PROPOSED USE BY FILING AN APPEAL WITH THE COMMUNITY DEVELOPMENT DIRECTOR WITHIN 15 DAYS OF THE MAILING OF THE DECISION. THE NOTICE OF APPEAL SHALL INDICATE THE INTERPRETATION THAT IS BEING APPEALED.

Regards,

Tiffany Taylor
City Planner

cc: Carrie Richter (crichter@batemanseidel.com)
Austin Kettleson (austinkettleson@gmail.com)

Appeal Hearing

DATE: November 2, 2023

Please Sign-In if you wish to speak. *(PLEASE PRINT)*

(6)

Name: Andrew Kipp
Address: 461 Exchange St.
City/Zip: Astoria, OR
Email: kipl.andrew@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose w/letter
- ☐ Neutral

Name: John Windus
Address: 960 Franklin Ave
City/Zip: Astoria OR 97103
Email: jwindus@nwi.net

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

Name: Austin Kettleson
Address: 286 Lexington Ave
City/Zip: 97103 Astoria
Email: austinkettleson@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

(1) + rebuttal

Name: Bob Magi
Address: 1466 Franklin
City/Zip: Astoria 97103
Email:

- ☒ In Favor of Applicant (allowed use of transient lodging)
- ☐ Oppose
- ☐ Neutral

(7)

Name: Brenda Harper
Address: 342 14th st
City/Zip: Astoria, OR
Email: superset7@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

(7)

Name: Sarah Jane Bardy
Address: 1659-1661 Irving
City/Zip: Astoria, OR 97103
Email: sarahjane.bardy@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose via Zoom
- ☐ Neutral

Name: IRIS DOUGLAS
Address: 235 Lexington Ave
City/Zip: 97103
Email: M.luna.iris@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

(4)

Name: John Orr
Address: 175 South Place
City/Zip: AST 97103
Email: realjohnny005@hotmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☐ Oppose
- ☒ Neutral

Appeal Hearing

DATE: November 2, 2023

Please Sign-In if you wish to speak. *(PLEASE PRINT)*

(2)

Name: CARRIE RICHTER
Address: 1000 SW BROADWAY #1910
City/Zip: PDX, OR 97204
Email: CRICHTER@BATEMANSEIDEL.COM

- [x] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

(5)

Name: Dan Kearns, Reeve Kearns
Address: P.O. Box 13015
City/Zip: Portland, OR 97213
Email: dan@reevekearns.com

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose w/letter
- [ ] Neutral

Name: Rachel Gaetano
Address: 281 W Irving
City/Zip: Astoria OR 97103
Email: rachel.gaetano@yahoo.com

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose
- [ ] Neutral

(8)

Name: Jordan Okoniewski
Address: 4831 Cedar St
City/Zip: Astoria, OR 97103
Email:

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose via Zoom
- [ ] Neutral

Name: Laura Evans
Address: 461 Exchange St
City/Zip: Astoria, OR 97103
Email: laura.jeanne.evans@gmail.com

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose
- [ ] Neutral

Name:
Address:
City/Zip:
Email:

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

(3)

Name: Jacob Wells
Address: 539 16th St
City/Zip: Astoria OR 97103
Email: jakehwigs@gmail.com

- [x] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

Name:
Address:
City/Zip:
Email:

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

CITY OF ASTORIA
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MEMORANDUM • COMMUNITY DEVELOPMENT

TO: **Alan Rappleyea, Hearings Officer**

DATE: **November 9, 2023** (revised 11-16-23)

FROM: **Tiffany Taylor, City Planner**

SUBJECT: **Additional Submittals regarding appeal AP23-02**

Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street.

Please note the attached Additional Submittals our office received by 4:00 p.m. on November 9, 2023:

- Appellants' Attorney Letter and Attachments (Daniel Kearns)
- Applicants' Letter and Attachments (Bob and Cindy Magie)
- Public Comments:
  - Melissa Barber
  - Caitlin Callahan & Dustin Nord
  - Brenda Harper
  - Jacob Helligso
  - Mary Hunter

RECEIVED
NOV 09 2023
BY: tt/via email @ 3:40pm

Reeve Kearns PC

Attorneys at Law

P.O. Box 13015
Portland, Oregon 97213
Email: dan@reevekearns.com

Daniel H. Kearns
Direct Dial: 503-997-6032

November 9, 2023

Astoria Land Use Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Appeal of Gilbaugh LLC nonconforming use determination
1555, 1557, 1559 & 1561 Exchange Street
Post-Hearing Memorandum from Appellants

Dear Mr. Rappleyea:

This firm represents the appellants in this land use appeal challenging a June 26, 2023 nonconforming use determination by the Planning Director regarding the 4-plex apartment house at 1555, 1557, 1559 & 1561 Exchange Street.[1] This memorandum provides appellants' first post-hearing arguments for overturning the Director's decision and entry of an order denying the nonconforming use status of these four dwellings units ("4-plex") as short-term rentals ("STRs").

A. Nonconforming Use versus Vested Right Determination.

During the hearing, the Officer drew a distinction between a nonconforming use determination, under ADC §3.180, and a vested right determination under the so-called Holmes factors. *See Clackamas County v. Holmes*, 265 Or. 193, 198-99, 508 P.2d 190, 192-93 (1973). For several reasons, the question presents a false dichotomy. First, this case started with the Magies' "Application for Nonconforming Use Verification." It then progressed to the Director's June 26, 2023 decision that concluded that all of the applicants' 6 units on Exchange Street "may be used as transient lodging and are considered a nonconforming use." Third, all of the City's notices and staff reports, and indeed, the Director's June 26th decision cite the City's nonconforming use provisions from ADC §§3.160 & 3.180 as the applicable criteria. While the Holmes factors must also be considered, this is first and primarily a nonconforming use case, and the City's nonconforming use criteria cannot be ignored.

1 This appeal challenges the Director's decision only as to the 4-plex units at 1555, 1557, 1559 & 1561 Exchange Street. Throughout the application and this appeal process, the applicants conflate things they've done to improve the two cottage units at 1565 and 1569 Exchange Street and use those efforts to boot-strap the allegation that they intended the 4-plex for future use as short-term rental ("STR"). The Hearings Officer must carefully examine those claims to distinguish fact from fiction because there is no evidence of any intention or effort to use the 4-plex for STR use until long after January 1, 2019.

Finally, LUBA has made clear that, even when a case begins as a vested rights determination – an inchoate or undeveloped nonconforming use, the local decision maker cannot ignore and must apply the local nonconforming use criteria. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or. LUBA 392, 410 (2012), citing *Crosley v. Columbia County*, 65 Or LUBA 164, *aff'd* 251 Or App 653, 286 P3d 911 (2012). LUBA's rationale is that a vested right claim is necessarily for a use that is not yet developed or perfected, but if it were, it would be nonconforming, and therefore would be subject to the local nonconforming use code. Consequently, both sets of criteria must be evaluated in this case: Astoria's nonconforming use factors in ADC §§3.160 & 3.180 and the 7 *Holmes* Factors.

B. The applicants' claim of lost value and investment are false.

Mr. Magie made an impassioned argument at the November 2nd hearing about his investment in the 4-plex units and how unfair it would be for the City to now claim that they cannot use the 4-plex. If that were the truth, it would be unfair, but Mr. Magie misrepresented the evidence in the record. The 4-plex was constructed and has always been used for residential purposes – not transient lodging, but a long-term dwelling (lease term greater than 30 days). All of the renovation and actual use of the 4-plex was clearly and indisputably for residential purposes. The STR idea, however, is just an after-the-fact scheme to maximize profits, but there is no evidence of any actual STR use or even a plan or intention of transient lodging use until long after January 1, 2019. Residential use – yes, there is ample evidence of intention and actual long-term residential use. Transient use – no, there is no evidence of intention or actual STR use. All of the investment expended by the Magies to renovate the 4-plex is safe and they have not lost that value. Their application and this appeal is only about whether they have any recognized right to short-term rent these apartments – a use prohibited under current zoning, *i.e.,* transient lodging (lease shorter than 30 days) has been unlawful for the 4-plex since January 1, 2019.

C. The applicants' arguments based on parking make no sense and prove no intention to use the 4-plex apartments for transient use.

In their nonconforming use verification application and at the hearing, the applicants claim that their 2017 parking plan proves their intention to short-term rent the 4-plex. It does not. First, the 2017 parking plan was submitted solely to show parking for the two cottage units, not the 4-plex. The planner at the time hand-wrote the operative addresses on the top of plan as 1565 and 1569 Exchange Street, which are the cottage addresses. Second, the plan shows 7 parking spaces and claims them all for the cottage units. In fact, two of the spaces shown are on a different and unrelated lot on TL 8000 owned by Helligso, not Magie. That means the 2017 parking plan shows only 5 lawful parking spaces for the Magie property.

Third, in 2017, the ADC required two off-street spaces per dwelling, regardless of size. This means the two cottages required a total of 4 off-street parking spaces, and the 5 spaces shown in the 2017 parking plan are adequate for the cottages. The ADC in 2017 required 1.5 parking spaces per multi-family dwelling with more than one bedroom (each of the 4-plex units has 2 bedrooms). This means that, in 2017, the 4-plex alone required 6 off-street parking spaces

(8 is the plan was STR use), which added to the 4 spaces required for the cottages equal a total of 10 off-street parking spaces required for all 6 units. The ADC requires one parking space per bedroom for transient uses. The cottages have 3 bedrooms between them, plus the 8 bedrooms in the 4-plex, means that transient use for all 3 structures in 2017 required 11 off-street parking spaces. The 2017 plan shows only 5, which is inadequate for any of these uses, including transient lodging use.

In summary, the 2017 parking plan purports to show nothing (no parking) for the 4-plex, but even if it included the 4-plex, the 2017 parking plan shows there are at most two parking space available for the 4-plex (if the cottages are put to STR use, they require only 3 spaces, one per bedroom). In 2017 and now, STR use of the 4-plex requires 8 off-street parking spaces, and in 2017 (and now) there is at most 2 spaces available for the 4-plex units, not the 8 spaces that would be needed to short-term rent the 4-plex.

Finally, the 2017 version of the ADC parking provisions is attached. These regulations show that up to 50% of required off-site parking for a particular use may be located on an adjacent lot, but only if the zoning for the other lot allows accessory parking. *See* ADC 7.030 (Location). In particular, this section provides that:

> Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

ADC 7.030 (2017)

The subject property is zoned C-3, but the applicant's 2017 parking plan shows 5 of the proposed off-street parking, including the 2 spaces on the Helligso property, which is zoned R-3. Uses accessory to commercial uses, such as parking serving a C-3 use, is not allowed in the R-3 zone. As for the two spaces on the Helligso property, ADC §7.050 (Ownership of Parking and Loading Areas), use of someone else's property to satisfy a parking requirement (assuming the off-site area can lawfully accommodate it) requires either a recorded easement or a 5-year lease. The applicant's here provide neither; therefore, the 2 spaces on Helligso's property cannot count toward the applicant's parking requirement. ADC §7.062(B) (2017) provides for a variance from the mandatory parking requirements, but again, the applicants do not appear to have a variance for any of their required parking.

The 2017 parking plan shows that the 4-plex never had the lawful amount of parking for an apartment building, much less for a transient lodging use. The site lacks the minimum amount of off-street parking required by the current and the 2017 code, and the applicants appear to have no variance from those minimum parking standards, or a lease, or an easement for any off-site parking. The evidence shows they never had enough parking, especially if they claim their STR use of the 4-plex was (or is) lawful.

The Director's Decision appears to rest entirely on the applicant's false claims that they took preliminary steps such as adding parking to the site (Director's Decision at 3). However,

there is no evidence that any of the parking they claim to have added had anything to do with transient lodging use of even the cottages, and certainly none of the parking efforts had anything to do with satisfying the parking requirement for transient lodging use of the 4-plex. Consequently, the applicants never had a lawful transient lodging use at the 4-plex, *i.e.,* it was not lawfully established, there is no evidence of any such intention prior to January 1, 2019, and it remains parking deficient today. The basic requirement that, to qualify as a lawful nonconforming use, the 4-plex had to be lawfully established as STRs and in existence on the date restrictive zoning was first imposed (Jan 1, 2019), is simply not met.

D. Any nonconforming use or vested right the applicants may have had was lost through lapses in use that exceed 12 months and when they put the 4-plex to a conforming use.

ADC §3.180(C) provides that any nonconforming use that lapses for a period exceeding 12 months is lost. In this case, ADC §3.180(C) means that if the applicants did not put the 4-plex to actual STR use within 12 months of January 1, 2019, i.e., by January 1, 2020, any nonconforming right was lost. There is no evidence in the record that the applicants met this deadline. In fact, their property management company (Pacific Capital Management) testified in an April 28, 2022 letter to the following "date of first use by short-term tenant" for each of the 4-plex units:

1555 Exchange Street .....December 1, 2021
1557 Exchange Street .....April 17, 2022
1559 Exchange Street .....long-term tenant holding-over prevented access.
1561 Exchange Street .....March 15, 2022

This is the testimony from the applicant's property manager and is therefore credible evidence that there was no transient lodging use of any of the 4-plex units before December 2021.

Even more fatal to the applicant's nonconforming use claim is the abundant evidence that all of the 4-plex units have consistently been used as long-term apartments from long before January 1, 2019 until at least December 2021. According to ADC §3.180(B), when a claimed nonconforming use is converted to a conforming use, such as a long-term tenancy apartment, any nonconforming use right is immediately lost. That is exactly what happened here, because all of the units in the 4-plex have consistently been rented as long-term apartments. This use terminated any right the applicants may have had to a transient lodging use right.

E. Under the 7 Holmes factors, the applicants have no vested right to a transient lodging use in the 4-plex.

The Supreme Court created the following factors (the so-called "*Holmes* factors") as relevant in evaluating a vested rights claim to a particular development:

1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;

> 2. The amount of notice of any proposed re-zoning;
>
> 3. The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;
>
> 4. The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;
>
> 5. The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;
>
> 6. Whether the expenditures made prior to the subsequent zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation;
>
> 7. The ratio of the prior expenditures to the total cost of the proposed use.
>
> If the evidence relative to these factors establishes a "vested right," the property owner may complete his improvements and thereafter use his property in a manner which is a nonconforming use, subject to the restrictions on nonconforming uses.

Polk County v. Martin, 292 Or 69, 81 n 7, 636 P2d 952 (1981), citing with approval *Clackamas County v. Holmes, supra*.

Factor 1: The preceding discussion informs the Holmes factors in this case by proving that any vested right the applicants may have had to a nonconforming STR use was lost. First, there is no evidence of "good faith expenditures" toward the use of the 4-plex for transient lodging. Instead, all of the expenditures were put toward making the 4-plex habitable, and they were actually used as long-term apartments. As explained above, the claim of developing parking to serve the 4-plex as a transient lodging use is false.

Factor 3: The same evidence (or lack of evidence) shows no investment or reliance on the prior zoning that allowed transient lodging, but no longer does. There is no evidence of reliance on the prior zoning, and no evidence that the applicants were even aware of what the prior code required for transient lodging uses to operate lawfully, *e.g.,* the 2017 off-street parking requirements.

Factor 4: The same evidence also demonstrates that, rather than transient lodging, the applicants' expenditures were focused on making the 4-plex units habitable, and there is no evidence of any expenditures related to transient lodging. Thus, the expenditures were focused on a conforming use, *i.e.,* long-term apartment use of the 4-plex, not transient lodging use.

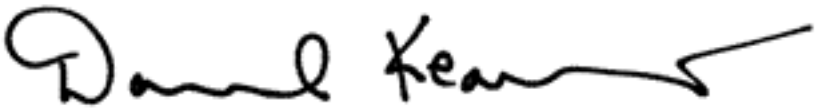
Factor 5: The difference between transient lodging use versus long-term apartment use is significant and is easily proven if such evidence exists. In this case, the applicants did not obtain an Occupational tax permit for the 4-plex when they obtained one for the cottage units on October 27, 2017. They did not register to pay transient lodging tax on the 4-plex until December 2020 (they did not register until December 15, 2020). There is no evidence they actually used any of the 4-plex units for transient lodging use until December 1, 2021.

Factor 6: From the date of restrictive zoning (January 1, 2019) until December 2021, there is no evidence of any intention to put any of the 4-plex units to transient lodging use. Under the 6th Factor, therefore, there is no evidence that these owners went beyond alleged contemplated use and actually committed the 4-plex to actual transient lodging use.

Factor 7: There is no evidence of how much any of the renovations cost the applicants. However, it is extremely difficult to imagine that they can demonstrate any expenditures made to make the 4-plex suitable for transient lodging, as opposed to make it suitable for a conforming use of long-term apartments. Because none of the renovation costs are uniquely focused on converting and using the 4-plex as STRs, none of those investments are evidence that supports a vested right claim.

The basic requirement that, to qualify as a lawful nonconforming use, the 4-plex had to have been lawfully established as STRs and in existence on the date restrictive zoning was first imposed (Jan 1, 2019), is simply not met. The applicants' vested rights theory is no better, as explained above, so there is no legal basis for STR use of the 4-plex under either legal theory. Based on the foregoing arguments and my November 2, 2023 hearing memo, the Hearings Officer should reverse the Director and deny the nonconforming use request. Also attached in support of the policy argument in my hearing memo, is the April 17, 2019 staff report and findings that support the 2019 code amendments, that made STRs unlawful in the C-3 zone, along with a copy of the zoning map for this and the neighboring property.

Sincerely,

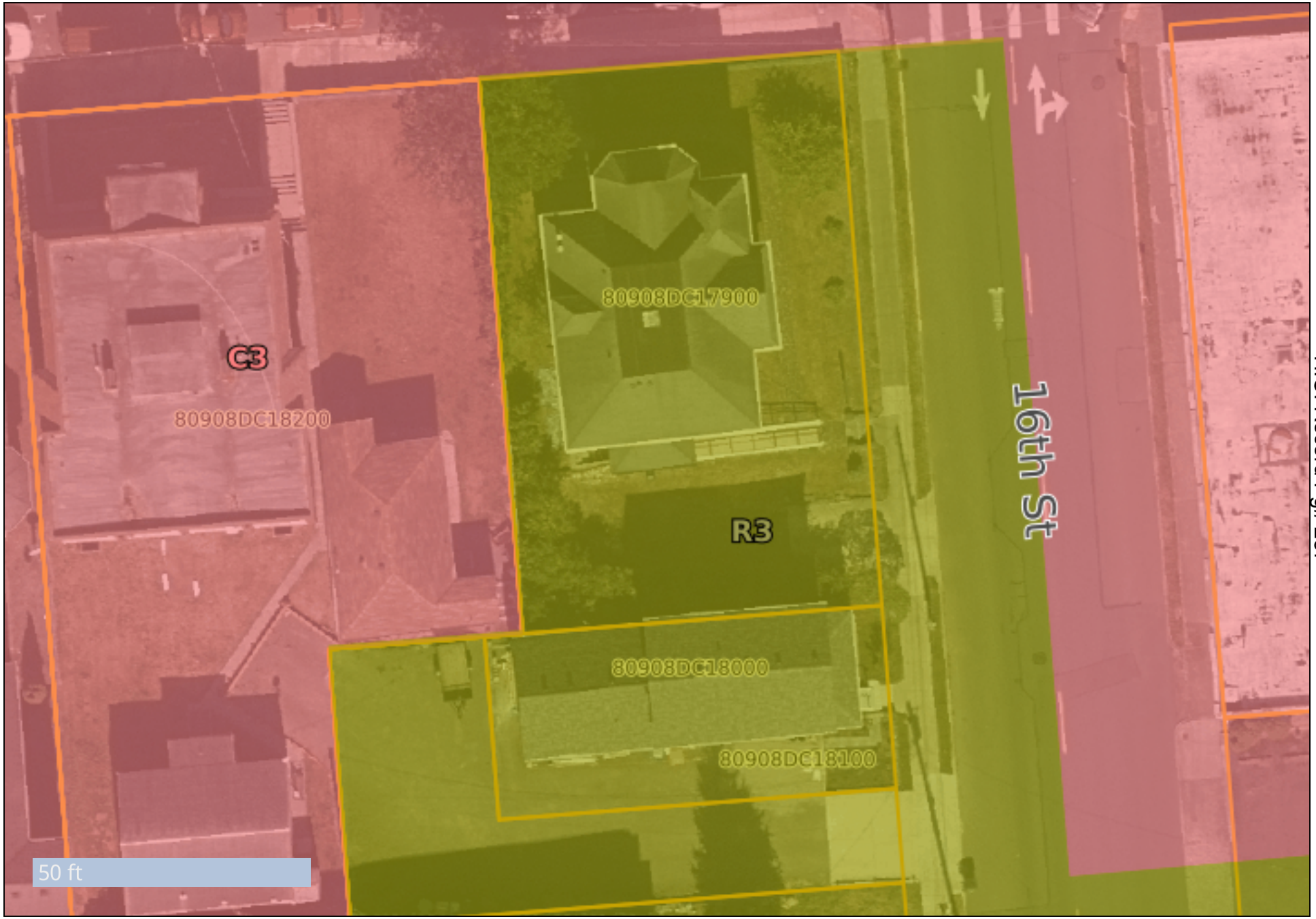


Daniel Kearns, attorney for appellants Austin Kettleson, Andrew Kipp and John Windus

Attachments
cc: Clients
Carrie Richter, Esq.

Zoning

CITY OF ASTORIA
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H.O. Record Pg# 287

L-412

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Printed 11 / 6 / 2023

ARTICLE 7

OFF-STREET PARKING AND LOADING

7.010. PARKING AND LOADING AREAS REQUIRED.

A. Off-street parking areas and off-street loading areas meeting the applicable requirements of this Section shall be provided and maintained:

1. For each separate use in any building or structure erected after the adoption of this ordinance.

2. For additional seating capacity, floor area, guest rooms, or dwelling units added to any existing structure or lot.

3. When the use of the structure or portion thereof is changed.

B. Where a structure is added to, or a portion thereof changes in use such that additional parking or loading is required, only the number of additional spaces required under Sections 7.100 and 7.160 for the area added or changed in use need be provided. Nevertheless, if the lot or structure as used prior to the addition or change of use did not have the number of parking and loading spaces required by Sections 7.100 and 7.160 and such deficiency was not lawfully nonconforming, parking for the entire building or use shall be provided as required by Sections 7.100 through 7.160.

C. When additional parking or loading area is required or added to an existing nonconforming parking or loading area, the entire parking and loading area shall be improved as provided in Section 7.110 and landscaped setbacks from streets shall be provided as required in Section 7.170.

7.020. REDUCTION OF PARKING AREA PROHIBITED; EXCEPTION.

Off-street parking and loading areas which existed on the effective date of this ordinance or which are provided as required by this Section shall be maintained, or equivalent parking and loading areas provided; except that if this ordinance reduces the number of required off-street parking or loading spaces, an affected use may diminish its parking and loading area to the new requirements.

7.030. LOCATION.

A. Off-street parking and loading areas required by this ordinance shall be provided on the same lot with the use except that:

1. In any residential zone, up to 50% of vehicle parking spaces for dwellings and other uses permitted in a residential zone may be located on contiguous lots or on a lot across a street or other right-of-way from the lot with the primary use.

2. In non-residential zones, up to 50% of the required parking area may be located off the site of the primary use or structure provided it is within 300 feet of such site.

B. Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

7.040. FRACTIONAL MEASUREMENTS.

When calculations for determining the number of required off-street parking or loading spaces result in a requirement of fractional space, any fraction of a space less than one-half shall be disregarded, and a fraction of one-half or greater shall be counted as one full space.

7.050. OWNERSHIP OF PARKING AND LOADING AREAS.

A. Except as provided for joint use parking in Section 7.070, the land to be provided for off-street parking and loading areas, including driveways, aisles, and maneuvering areas shall be:

1. Owned by the owner of the property served by the parking; or

2. In commercial and industrial zones, the parking may be provided by a permanent and irrevocable easement appurtenant to the property served by the parking; or

3. Be leased for a minimum term of five (5) years, provided that upon expiration or termination of the lease, the parking requirements of this ordinance shall otherwise be fully met within 90 days or the use discontinued until such requirements are met.

7.060. OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Except as otherwise specifically provided in this ordinance, off-street parking spaces shall be provided in amounts not less than those set forth in Section 7.100.

B. For any proposed use not listed in Section 7.100, the Community Development Director shall determine the parking space requirement for the most nearly similar use listed in Section 7.100 with regard to traffic generation.

7.062 SPECIAL EXCEPTIONS TO OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Developed Sites Exemption.

Existing buildings which encompass all or a major portion of a lot with little or no possibility of providing off-street parking in compliance with City Code may apply to the Community Development Director for authority to participate in a program whereby, in lieu of providing required off-street parking, annual payments would be made to the City for the purpose of supporting mass transit, and development of public parking. As an alternative to making annual cash payments, the applicant may, with approval of the City Council, provide a public service of equal or greater value than the cash payment.

1. Participation in the Program.

The Director shall approve participation in the program upon a finding that the lack of required off-street parking will not result in a public safety hazard. Participation involving the provision of compensation in the form of public service in lieu of cash payments also requires the concurrence of the City Council.

2. Location.

This exception shall apply to any change of use or expansion of a use in all zones except those areas where the provision of off-street parking is otherwise exempted.

3. Compensation.

a. Cash Payments.

The fee to be paid for each parking space not provided shall be $180.00 per year.

The fee shall be paid annually on a per space basis. The number of spaces subject to a fee shall be the difference between the number of off-street spaces provided and the number required by the Astoria Development Code, or, where a Variance is issued, the number of spaces authorized by Variance.

Payments shall be made to the City of Astoria at the beginning of each year the applicant is involved in the program, and shall be made, in accordance with a payment schedule to be established by the Community Development Department.

b. Compensation in Lieu of Cash Payments.

Compensation in lieu of cash payments may be accepted only upon a finding by the City Council that there is both a need for the proposed public service, and that the value of the service is equivalent to or greater than the cash payment described in Section 3(a) above.

(Section 7.062 Added by Ordinance 93-08, 10-18-93; amended by Ordinance 96-04, 5-6-96)

B. Modification of Parking Space Requirements.

1. The applicant may propose a parking space standard that is different than the standard in Section 7.100, for review and action by the Community Development Director through a Class 1 variance, pursuant to Article 9. The applicant's proposal shall consist of a written request, and a parking analysis prepared by a qualified professional. The parking analysis, at a minimum, shall assess the average parking demand and available supply for existing and proposed uses on the subject site; opportunities for shared parking with other uses in the vicinity; existing public parking in the vicinity; transportation options existing or planned near the site, such as frequent bus service, carpools, or private shuttles; and other relevant factors. The Community Development Director may reduce the off-street parking standards for sites with one or more of the following features:

a. Site has a bus stop with existing or planned frequent transit service (15-minute headway or less) located adjacent to it, and the site's frontage is improved with a bus stop waiting shelter, consistent with the standards of the applicable transit service provider: Allow up to a 20 percent reduction to the standard number of automobile parking spaces;

b. Site has dedicated parking spaces for carpool/vanpool vehicles: Allow up to a 10 percent reduction to the standard number of automobile parking spaces;

c. Site has dedicated parking spaces for motorcycle and/or scooter or electric carts: Allow reductions to the standard dimensions for parking spaces and the ratio of standard to compact parking spaces;

d. Available on-street parking spaces adjacent to the subject site in amounts equal to the proposed reductions to the standard number of parking spaces.

e. Site has more than the minimum number of required bicycle parking spaces: Allow up to a 10 percent reduction to the number of automobile parking spaces.

(Section 7.062.B added by Ordinance 14-03, 4-21-14)

C. Downtown Area.

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street parking.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.062.C added by Ordinance 14-03, 4-21-14)

7.070. JOINT USE OF PARKING AREAS.

A. The Community Development Director may authorize the joint use of parking areas by the following uses or activities as a Conditional Use in every zone under the following conditions:

1. Up to 50% of the off-street parking spaces required by this ordinance for a church, auditorium in a school, theater, bowling alley, night club, eating or drinking establishment may be satisfied by the off-street parking spaces provided by uses occupied only during the daytime on weekdays.

2. Up to 50% of the off-street parking spaces required by this ordinance for any daytime use may be satisfied by the parking spaces provided for nighttime or Sunday uses.

3. All jointly used spaces shall be located with relation to all uses relying on such spaces within the applicable distance set forth in Section 7.030.

4. The Planning Commission must find that there is no substantial conflict in the principal operating hours of the buildings or uses for which joint use of off-street parking facilities is proposed.

5. A properly drawn legal instrument executed by the parties concerned with joint use of off-street parking facilities, approved as to form and manner of execution by Legal Counsel, shall be filed with the Community Development Director. Joint use parking privileges shall continue in effect only so long as such an instrument, binding on all parties, remains in force. If such instrument becomes legally ineffective, then parking shall be provided as otherwise required in this ordinance within 60 days.

7.080. CLASSIFICATION OF USES FOR PURPOSES OF JOINT USE PARKING.

A. The following uses are considered daytime uses for purposes of Section 7.070:

1. Bank or other financial institution.

2. Business service establishment.

3. Clothing, shoe repair, or service establishment.

4. Household equipment or furniture store.

5. Manufacturing or wholesale building.

6. Personal service establishment.

7. Retail store.

8. Other similar primarily daytime uses as determined by the Community Development Director.

B. The following uses are considered nighttime or Sunday uses for purposes of Section 7.070:

1. Auditoriums incidental to a public or private school.

2. Church.

3. Eating and drinking establishment, only open after 5:00 p.m.

4. Night Club.

5. Theater.

6. Other similar primarily nighttime uses as determined by the Community Development Director.

7.090. OFF-STREET LOADING.

A. Except as otherwise specifically provided in this ordinance, off-street loading shall be provided in amounts not less than those set forth in Section 7.160.

B. A parking area meeting the requirements of Sections 7.100 through 7.110 may also be used for loading when the use does not require a delivery vehicle which exceeds a combined vehicle and load rating of 20,000 pounds, and when the parking area is within 25 feet of the building or use which it serves.

C. Downtown Area

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street loading.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.090.C added by Ordinance 14-03, 4-21-14)

7.100. MINIMUM PARKING SPACE REQUIREMENTS.

Table 7.100 – Off-Street Parking Space Requirements by Use.

The following are minimum off-street parking requirements by use category. The Community Development Director or Planning Commission, as applicable, may increase the required off-street parking based on anticipated need for a specific conditional use.

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
RESIDENTIAL CATEGORIES	
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Two-family Dwelling (Duplex)	2 spaces per dwelling unit
Accessory Dwelling (second dwelling unit on a single-family lot)	1 additional space for the accessory dwelling unit
Manufactured Dwelling in a Park	1.5 per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Group living, such as nursing or convalescent homes, rest homes, assisted living, congregate care, and similar special needs housing where clients have no access to driving	1 space per 8 bedrooms plus one per employee Calculation is based on the maximum number of employees on one shift, not total employment.
Residential Home, Residential Facility, and Adult Foster Care	1 additional space per 3 beds for the home/facility

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
COMMERCIAL CATEGORIES	
Animal hospital or kennel	1 space per 300 sq. ft. gross floor area
Automotive repair & service, gas station	1 space per 1,000 sq. ft. gross floor area
Bed and Breakfast, Home Stay Lodging, Inn	1 additional space for each bedroom used for transient lodging Plus spaces required for associated uses such as assembly areas or restaurant.
Daycare, Family/Home	1 space, plus required parking for dwelling
Daycare Center	1 space per employee
Eating and Drinking / Restaurant	1 space per 500 sq. ft. if no seating; 1 space per 250 sq. ft. with seating.
Educational Services, not a school (e.g., tutoring or similar services, excluding single student tutoring facilities)	1 space per 300 sq. ft. gross floor area
Home Occupation with customers and/or non-resident employees	1 additional space per anticipated customer/employee at a specific time in excess of one person at a time
Hotels, Motels, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.
Laundromat and dry cleaner	1 space per 350 sq. ft. gross floor area
Mortuary/Funeral Home	1 space per 300 sq. ft. gross floor area
Offices: General, medical/dental, professional	1 space per 500 sq. ft. gross floor area
Personal Services (i.e. salon, spa, barber, animal grooming, out-patient vetinary services)	1 space per chair, table, or booth for customers
Repair or Service other than automotive	1 space per 500 sq. ft. gross floor area
Retail Sales, General Merchandise	1 space per 500 sq. ft. gross floor area

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Retail Sales, Bulk with a building (lumber and construction materials, furniture, appliances, and similar sales)	1 space per 1,000 sq. ft. gross floor area
Retail Sales, Outdoor with no building or building of less than 200 sq. ft. (i.e. automotive, nursery, bulk retail, produce, etc.)	1 space per 1,000 sq. ft. of site used for retail display/storage
INDUSTRIAL CATEGORIES	
Industrial Service, not otherwise categorized	1 space per 1,000 sq. ft. gross floor area
Light Manufacturing	1 space per 2 employees on the largest shift
Manufacturing and Production, Heavy Industrial with building greater than 5,000 sq. ft.	1 space per 2,500 sq. ft. gross floor area
Marina	0.25 spaces per boat berth or docking space
Mini-Storage	1 space per four units
Seafood Processing and Associated Uses	1 space per full-time equivalent employee plus 1 space per 10 seasonal employees. Seasonal parking may be reduced with proof that employees are bussed to site.
Wholesale, Warehouse, Freight Service	1 space per 1,500 sq. ft. gross floor area
INSTITUTIONAL CATEGORIES	
Community Service, including Government Offices and Services	Same requirement as non-institutional use for the category
Jail	1 space per 2,000 sq. ft. gross floor area
Medical Center/Hospital with overnight stay	1 space per 300 sq. ft. gross floor area

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Membership organization, club, lodge	Same as specified use requirement such as eating and drinking establishment, public assembly, school, etc.
Parks and Open Space	Parking based on projected parking demand for planned uses. See Recreation, outdoor.
Public Assembly	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Religious Institutions and Houses of Worship	1 space per 100 sq. ft. of main assembly gross floor area; additional parking is not required for associated use areas if not used at same time as main assembly area
School, Pre-School through Middle-School	1.5 space per classroom
School, High School	7 spaces per classroom
School, College & Vocational	1 space per 400 sq. ft. of gross floor area; and 1 space per 2 dorm rooms
RECREATIONAL CATEGORIES	
Aquatic center, sports club, gym, rink, recreation center, health club, bowling alley, and other similar indoor entertainment	1 space per 400 sq. ft. gross floor area
Museum, art gallery, library	1 space per 600 sq. ft. gross floor area
Outdoor recreational park, Public playground	None
Outdoor recreational park, Commercial park	1 space per 1,000 sq. ft. gross land area
Sports Field	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Theater, indoor arena: Single venue	1 space per 3 seats
Theater, indoor arena: Multiplex	1 space per 6 seats

OTHER CATEGORIES	
Accessory Uses	Parking standards for accessory uses are the same as for primary uses, but are pro-rated based on the percentage of estimated overall parking demand, subject to City review and approval.
Temporary Uses	Parking standards for temporary uses are the same as for primary uses, except that the Community Development Director or Planning Commission, as applicable, may reduce or waive certain development and designs standards for temporary uses.
Transportation and Communications Facilities (operation, maintenance, preservation, and construction)	None, except where temporary parking is required for construction staging areas

(Section 7.100 amended by Ordinance 14-03, 4-21-14)

7.105. BICYCLE PARKING.

A. Standards.

Bicycle parking spaces shall be provided for new development, change of use, and major renovation, at a minimum, based on the standards in Table 7.105. Major renovation is defined as construction valued at 25% or more of the assessed value of the existing structure.

Where an application is subject to Conditional Use Permit approval or the applicant has requested a reduction to an automotive parking standard, pursuant to Section 7.062, the Community Development Director or Planning Commission, as applicable, may require bicycle parking spaces in addition to those in Table 7.105.

Table 7.105: Minimum Required Bicycle Parking Spaces

Use	Minimum Number of Spaces	Long and Short Term Bicycle Parking Percentages
Multi-family Residential Dwelling with 4 or more dwelling units	1 bike space per 4 dwelling units	75% long term 25% short term
Commercial	1 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term
Industrial	1 bike spaces per primary use or 1 per 20 vehicle spaces, whichever is greater	25% long term 75% short term
Parks (active recreation areas greater than 10,000 sq. ft.)	4 bike spaces per 10,000 sq. ft.	100% short term
Schools (all types)	1 bike spaces per 4 classrooms	50% long term 50% short term
Institutional Uses and Places of Worship	1 bike space per 20 vehicle spaces	100% short term
Other Uses	2 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term

B. Design and Location.

1. All bicycle parking shall be securely anchored to the ground or to a structure.

2. All bicycle parking shall be designed so that bicycles may be secured to them without undue inconvenience, including being accessible without removing another bicycle.

3. All bicycle parking should be integrated with other elements in the planter strip when in the public right-of-way.

4. Direct access from the bicycle parking area to the public right-of-way shall be provided at-grade or by ramp access, and pedestrian access shall be provided from the bicycle parking area to the building entrance.

5. Bicycle parking shall not impede or create a hazard to pedestrians or vehicles, and shall not conflict with the vision clearance standards of City Code Section 6.100.

6. Short-term bicycle parking.

   a. Short-term bicycle parking shall consist of a stationary rack or other approved structure to which the bicycle can be locked securely.

   b. If more than 10 short-term bicycle parking spaces are required, at least 50% of the spaces must be sheltered. Sheltered short-term parking consists of a minimum 7-foot overhead clearance and sufficient area to completely cover all bicycle parking and bicycles that are parked correctly.

   c. Short-term bicycle parking shall be located within 50 feet of the main building entrance or one of several main entrances, and no further from an entrance than the closest automotive parking space.

6. Long-term bicycle parking.

   Long-term bicycle parking shall consist of a lockable enclosure, a secure room in a building on-site, monitored parking, or another form of sheltered and secure parking.

C. Exemptions.

This Section does not apply to single-family, two-family, and three-unit multi-family housing, home occupations, and agricultural uses. The Community Development Director or Planning Commission as applicable may exempt other uses upon finding that, due to the proximity of public bicycle parking facilities, the nature of the use, or its location, it is unlikely to have any patrons or employees arriving by bicycle.

(Section 7.105 added by Ordinance 14-03, 4-21-14)

7.110. PARKING AND LOADING AREA DEVELOPMENT REQUIREMENTS.

All parking and loading areas required under this ordinance, except those for a detached single-family dwelling on an individual lot unless otherwise noted, shall be developed and maintained as follows:

(Section 7.110 amended by Ordinance 14-03, 4-21-14)

A. Location on site.

Required yards adjacent to a street, shall not be used for parking and loading areas unless otherwise specifically permitted in this ordinance. Side and rear yards which are not adjacent to a street may be used for such areas when developed and maintained as required in this ordinance.

B. Surfacing.

All parking and loading areas and driveways thereto shall be paved with asphalt, concrete or other hard surface approved by the City Engineer. Parking and loading areas shall be adequately designed, graded, and drained.

C. Bumper guards or wheel barriers.

Permanently affixed bumper guards or wheel barriers are required and shall be so installed that no portion of a vehicle will project into a public right-of-way or over adjoining property. The area beyond the wheel barriers or bumper guards shall be surfaced as required in Section 7.110(B) or landscaped.

D. Size of parking spaces and maneuvering areas.

The parking area, each parking space, and all maneuvering areas shall be of sufficient size and all curves and corners of sufficient radius as determined by the City Engineer to permit the safe operation of a standard size vehicle subject to the following minimum requirements:

1. Full size parking spaces shall be nine and one half (9.5) feet wide and 20 feet long.

2. Compact parking spaces shall be eight and one half (8.5) feet wide and 16 feet long for no more than 50% of the parking spaces required.

   An increase to 75% compact may be approved administratively by the Community Development Director upon a finding that anticipated use would not require compliance. An increase greater than 75% may be approved by the Community Development Director as a Class 1 Variance in accordance with Article 9.

3. Where a landscaped area, fence, or wall is adjacent to a parking space, the parking space shall be ten (10) feet wide.

4. A maximum of 2.5’ of a parking stall required length may extend beyond the wheel barrier into a landscaped area. The parking stall shall not extend into a pedestrian walkway area.

(Section 7.110.D amended by Ordinance 14-03, 4-21-14)

E. Access.

Parking or loading areas having more than four (4) spaces shall be designed so that vehicles do not back into public streets, or do not use public streets for maneuvering. All entrances and exits onto public streets shall first have a Driveway Permit from the Engineering Department and shall be designed and constructed to City standards.

F. Lighting.

Parking or loading areas that will be used at nighttime shall be lighted. Outdoor lighting shall be directed away from any adjacent residential zone or public street.

G. Landscaping.

1. Landscaping shall be provided as required in Section 7.170 and Section 3.105 through 3.120.

2. Required landscaped yards shall not be used for parking.

(Section 7.110.G amended by Ordinance 14-03, 4-21-14)

H. Additional Requirements.

1. Directional signs and pavement marking shall be used to control vehicle movement in parking area.

(Section 7.110.H amended by Ordinance 14-03, 4-21-14)

I. Aisle Widths

Aisles with parking adjacent on one or both sides, depending on angle of parking spaces:

	Minimum Width
0 - 40 degrees	12 feet
41 - 45 degrees	13 feet
46 - 55 degrees	15 feet
56 - 70 degrees	18 feet
71 - 90 degrees	24 feet

7.120. DRIVEWAY DEVELOPMENT STANDARDS.

All driveways providing access to parking spaces and loading areas required under this ordinance, including those for a single-family dwelling on a lot, shall conform to the Astoria City Code Sections 2.050 through 2.100 and Development Code Section 3.008.D, in addition to requirements in the Astoria Engineering Design Standards for Roadways (Chapter 4).

(Section 7.120 amended by Ordinance 14-03, 4-21-14)

7.130. OUTDOOR STORAGE AREA SURFACING.

A. Where commercial, industrial, or shoreland zones permit outdoor storage, or if such storage is permitted as part of a Conditional Use in any zone, such storage areas and any access driveway shall be paved and shall have plans for off-site drainage approved by the City.

7.140. PARKING PLAN REQUIRED.

Plans, at a workable scale, for all parking and loading areas required under this Section, shall be submitted to the Community Development Director for approval prior to issuance of a permit; or, if no building permit is required, at the time of application for a driveway permit; or, if no such permit is required, prior to commencing any paving or use of the parking or loading area. No such work or use shall commence prior to approval by the City of the plans required by this Section.

7.150. ACCESSIBLE PARKING SPACES.

A. Effective September 1, 1990, existing and new parking spaces for disabled persons shall be required by law at all public and government buildings.

B. The size, location, dimension, and marking for accessible parking spaces shall be in accordance with current State and Federal regulations for accessible parking facilities.

(Section 7.150 amended by Ordinance 14-03, 4-21-14)

7.160. MINIMUM LOADING SPACE REQUIREMENTS.

USE OR GROSS SQUARE FOOTAGE OF FLOOR AREA	MINIMUM NO. OF SPACES	MINIMUM SIZE OF SPACE WIDTH	LENGTH	HEIGHT
A. Multi-Family Dwelling Units.				
0 - 49 Units	0	12 ft	19 ft	12 ft
50 - 99 Units	1	"	"	"
100 - 199 Units	2	"	"	"
200 and over Units	3	"	"	"

If a recreational or service building is provided, at least one of the required loading spaces shall be located in conjunction with the recreational or service building.

B. For Buildings Used Entirely for Office Occupancy.				
Under 5,000 sq ft	0	12 ft	30 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

C. Commercial, Non-office, Public and Semi-Public.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

D. Industrial.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 99,999 sq ft	1	"	"	"
100,000 - 239,999 sq ft	3	"	"	"
240,000 - 319,000 sq ft	5	"	"	"
320,000 - 399,000 sq ft	6	"	"	"
400,000 - 489,999 sq ft	7	"	"	"
490,000 - 579,999 sq ft	8	"	"	"
580,000 - 669,999 sq ft	9	"	"	"
670,000 - 759,999 sq ft	10	"	"	"

For each additional 100,000 square feet or any portion thereof over 760,000 square feet, an additional loading space is required.

7.170. LANDSCAPING OF OUTDOOR STORAGE OR PARKING AREAS.

A minimum of 5% of the gross parking lot area shall be designed and maintained as landscaped area, subject to the standards in Sections 3.105 through 3.120. This requirement shall apply to all parking lots with an area of 600 square feet or greater. Approved sight obscuring fences or vegetative buffers shall be constructed where commercial parking lots abut Residential Zones. The minimum 5% landscaping shall be counted as part of the total landscaping required for the property.

(Section 7.180, Parking in the Downtown Area, Exception added by Ordinance 99-21, 11-1-99; Section 7.180 deleted by Ordinance 14-03, 4-21-14)

CITY OF ASTORIA
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COMMUNITY DEVELOPMENT

April 17, 2019

TO: ASTORIA PLANNING COMMISSION

FROM: ROSEMARY JOHNSON, SPECIAL PROJECTS PLANNER

SUBJECT: AMENDMENT REQUEST (A19-02) ON TRANSIENT LODGING

I. BACKGROUND SUMMARY

A. Applicant: Community Development Department
On behalf of the City Council
City of Astoria
1095 Duane Street
Astoria OR 97103

B. Request: Amend the Development Code concerning Transient Lodging, amend and add definitions, add reference to City Code Home Stay Lodging regulations, establish standards for transient lodging in conjunction with Home Stay Lodging, allow administrative conditional use permits, limit transition of residential units in commercial zones to transient lodging, and other miscellaneous updates.

C. Location: City-wide

II. BACKGROUND

Over the last few years, the number of illegal transient lodging facilities in Astoria has increased substantially. Enforcement is difficult as the units are not identified by address or owner in the advertising platforms (such as Airbnb, VRBO, etc.) and it is time consuming and difficult for staff to research where the specific facilities are located in order to initiate code enforcement. The advertising platforms have helped to increase the number of units in communities but have added to the problem in that they do not reveal their client information and do not require proof that the use is allowed in an area or what permits are necessary. As a result, many home owners have utilized these companies without checking with local authorities about operation of a commercial use within their home.

The City Council discussed the need for better codes, licenses, and enforcement and directed staff to research other cities' codes and draft an amendment to the City Code that would address this growing problem. Staff researched transient lodging codes in multiple cities and counties and found a variety of ways that communities are dealing with these facilities. Staff drafted a City Code amendment that clarified terminology, established a license process, and addressed code enforcement. At its December 3,2018 meeting, the City Council adopted City

Code amendment for Home Stay Lodging Licenses, and the Transient Lodging Tax. This amendment put the regulations and license requirements into the City Code. However, since the Development Code includes some regulations related to transient lodging and identifies the specific zones in which they are allowed, some code amendments will be required to the Development Code so that it coincides with the adopted City Code. The following is a synopsis of the code requirements and issues addressed in the City Code:

- All Home Stay Lodging facilities will require a license, Occupational Tax, and pay Transient Room Tax. The license will be reviewed by the Community Development Department.
- Facility is limited to one or two bedrooms and shall not include a kitchen and must be owner occupied at the same time as the guest.
- License standards requirements: home safety inspection; payment of fees; off-street parking; license ID shall be placed on the advertising platform; applicant shall provide advertising platform ID number to City.
- Public notice will be sent to adjacent property owners when an application is being reviewed. Renewals will not require a public notice.
- License would be valid for two years and requires renewals to continue operation. Renewals will be reviewed for continued compliance with all standards and may be denied for non-compliance, unresolved violations, or transient tax delinquent for six months or more.
- Enforcement will be through a citation process in Municipal Court. Advertising a transient lodging without a license or in violation of any of the license standards will be a violation.

The Transient Room Tax portion of the City Code was amended to update the terminology and allow for third party collection of the room tax. With the third-party collection, an agreement with the City would be required, and liens for unpaid taxes would be applied to the operator, property owner, and third-party tax collector.

Some standards/requirements will be included in the Development Code rather than the City Code. These amendments will need to be processed as a land use amendment through the Planning Commission before City Council review and adoption. The proposed amendments include the following:

- Specific uses within each zone such as: Home Stay Lodging (HSL) as conditional use in R-1 Zone; HSL may not be on the same site in conjunction with an ADU in the R-1 Zone but may be on the same property as an ADU in the R-2 and R-3 Zones as a conditional use.
- Structures built and used as residential structures in non-residential zones shall not be used for transient lodging with some exceptions for former hotel structures.
- Amend and add definitions for various transient lodging related terms.
- Add HSL purpose & standards to coincide with City Code
- Transient lodging not allowed in mobile vehicles.
- Clarify HSL parking requirement.
- Add Community Development Director to process for Admin Conditional Use.
- Section 11.022 on classification of Conditional Use review.

III. PUBLIC REVIEW AND COMMENT

A. Astoria Planning Commission

A public notice was mailed to Neighborhood Associations, various agencies, and interested parties on April 2, 2019. In accordance with ORS 227.186(5), State required Measure 56 mailing, a notice was mailed on April 2, 2019 to all property owners within the City advising *". . . that the City has proposed a land use regulation that may affect the permissible uses of your property and other properties."* In accordance with Section 9.020, a notice of public hearing was published in the *Daily Astorian* on April 16, 2019. In accordance with Section 9.020.D, a notice was posted on March 29, 2019 at the following locations: corner of 30th and Marine Dr. and near the corner of 43rd and Lief Erikson Dr. The proposed amendment is legislative as it applies City-wide.

B. State Agencies

Although concurrence or approval by State agencies is not required for adoption of the proposed amendments, the City has provided a copy of the draft amendments to representatives of the Oregon Departments of Transportation (ODOT), Land Conservation and Development (DLCD) and Department of State Lands (DLS) as part of the planning process.

IV. FINDINGS OF FACT

A. Development Code Section 10.020.A states that *"an amendment to the text of the Development Code or the Comprehensive Plan may be initiated by the City Council, Planning Commission, the Community Development Director, a person owning property in the City, or a City resident."*

Development Code Section 10.020.B states that *"An amendment to a zone boundary may only be initiated by the City Council, Planning Commission, the Community Development Director, or the owner or owners of the property for which the change is proposed."*

Finding: The proposed amendments to the Development Code are being initiated by the Community Development Director on behalf of the City Council. The City Council has adopted a licensing procedure in the City Code for Home Stay Lodgings and identified the need to amend the Development Code to coincide with the HSL license process and to adopt additional regulations concerning other transient lodging facilities.

B. Section 10.050.A states that *"The following amendment actions are considered legislative under this Code:*

1. *An amendment to the text of the Development Code or Comprehensive Plan.*

2. *A zone change action that the Community Development Director has designated as legislative after finding the matter at issue involves such a substantial area and number of property owners or such broad public policy changes that processing the request as a quasi-judicial action would be inappropriate."*

Finding: The proposed amendment is to amend the text of the Astoria Development Code concerning transient lodging regulations City wide. The amendment would create new standards. The proposed amendments are applicable to the entire City and represents a relatively broad policy change. Processing as a legislative action is appropriate.

C. Section 10.070.A.1 concerning Text Amendments, requires that *"The amendment is consistent with the Comprehensive Plan."*

1. CP.015.1, General Land & Water Goals states that *"It is the primary goal of the Comprehensive Plan to maintain Astoria's existing character by encouraging a compact urban form, by strengthening the downtown core and waterfront areas, and by protecting the residential and historic character of the City's neighborhoods. It is the intent of the Plan to promote Astoria as the commercial, industrial, tourist, and cultural center of the area."*

   CP.035.2, West End Area Policies, states *"The quiet residential character of the west end will be protected through the City's Development Code."*

   CP.045.2, Central Residential Area Policies, states *"Historic areas (neighborhoods with high concentrations of pre-1911 homes) will be protected through zoning regulations and the use of public lands for relocation of structures."*

   CP.075.2, Uppertown Area Policies, states *"The predominantly residential character of the area upland of Marine Drive/Lief Erikson Drive will be preserved."*

   CP.085.2, Alderbrook Area Policies, states *"The residential character of Alderbrook will be protected through the designation of the aquatic area from 41st Street to Tongue Point as natural, and by the present zoning pattern. Development in the 100-year flood area shall be subject to the requirements of the City's Flood Hazard Overlay Zone."*

   CP.088.2, Emerald Heights Area Policies. States *"The multi-family residential character of Emerald Heights Area will be protected through the present zoning pattern. Additional residential development is encouraged in this area."*

   Finding: The proposed amendments create development standards for transient lodging standards and guidelines to protect the character of the residential neighborhoods. Astoria has seen a major increase in tourism

and an increase in transient lodging in residential zones. The Development Code allows for Home Stay Lodging (HSL), Bed and Breakfast (B&B), and Inns in the various residential zones, but has standards that include the need for owner occupancy and off-street parking. These facilities are required to have an Occupational Tax (business license) and pay transient room tax. However, in recent years there has been an increase in unpermitted facilities that are not paying the required taxes, do not provide off-street parking, and are not owner occupied. Some homes are operating as vacation rentals where the entire house is rented to a guest.

Transient lodging, in and of itself, is not detrimental to the City. However, when it is operated without paying the appropriate taxes, no off-street parking, and without an on-site owner in residence, it can become a nuisance to a neighborhood. The lack of off-street parking creates a parking situation in some neighborhoods that have narrow streets and limited on-street parking. Use of homes without the benefit of the owner in residence creates multiple issues that are detrimental to the other residents in the neighborhood. Guests are not generally a problem, but they are on vacation and can tend to get loud and/or have multiple vehicles and people at the home. With the owner on site, the owner can keep their guests in compliance with City regulations. Otherwise, adjacent property owners are required to either live with the situation or report it to the Police which causes everyone embarrassment and only solves the issue for the current guests, not the new ones the next weekend. Therefore, HSL, B&B, and Inns are allowed but vacation rentals (which are classified as motels) are not. This would help to protect the quiet residential character of the neighborhoods.

2. CP.020.9, Community Growth - Plan Strategy, states *"The Buildable Lands Inventory completed in April 2011 identified a deficit of 15.54 net acres of residential buildable lands. In order to address this deficit, OAR 660-24-0050 requires that the City amend the Plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the boundary or by expanding the UGB, or both."*

   CP.215.1, Housing Element, Issues and Conclusions, Vacancy Rates, states *". . . North coast trends in second homes and short-term rentals reached an average of 20.5% in 2007 with a State average of 2.5%. Astoria was well below this with 1.9%; however, this number is expected to increase over the next 20 years. Housing stock needed to accommodate this trend could change the amount of residentially zoned land needed to accommodate growth through 2027. The Buildable Lands Inventory dated April 2011 addresses this issue in depth and recommends that the City review and revise the assumptions made in the Inventory after the 2010 US Census results are finalized."*

   CP.215.5, Housing Element, Issues and Conclusions, Low- and Moderate-Income Housing, states *"Because of the large number of older buildings in Astoria, there is great potential for reuse of existing structures for housing.*

The John Jacob Astor Apartments and Owens-Adair Apartments projects are both examples of successful renovations. The City could encourage this trend by working with developers, applying for grant funds, and looking for ways of fostering both historic preservation and provision of low-cost housing. Organizations, including the Clatsop County Housing Authority, the Clatsop Community Action Agency, Northwest Oregon Housing Authority, for-profit corporations, and other local and regional non-profit groups and public agencies have been involved in providing low cost housing in Clatsop County. County-wide efforts are being made to address the need for workforce housing on the entire North coast."

CP.218.1, Housing Element, Housing Goals, "*Provide opportunities for development of a wide variety of housing types and price ranges within the Urban Growth Boundary."*

CP.218.2, Housing Element, Housing Goals, states *"Maintain and rehabilitate the community's existing housing stock."*

CP.220.1, Housing Element, Housing Policies, states *"Maintain attractive and livable residential neighborhoods, for all types of housing."*

CP.220.5, Housing Element, Housing Policies, states *"Encourage low- and moderate-income housing throughout the City, not concentrated in one area."*

CP.220.6, Housing Element, Housing Policies, states *"Protect neighborhoods from incompatible uses, including large scale commercial, industrial, and public uses or activities."*

Finding: The Buildable Lands Inventory (BLI) identified a deficit of low density residential buildable lands. The Comprehensive Plan indicates a goal of having a variety of housing types and price ranges, and the preservation of existing historic housing stock. The City Council 2018-2019 Goals included *"Implement the provisions contained in the City of Astoria Affordable Housing Study to increase the number of housing units within the City, for permanent residents. Special attention should be given to derelict and/or vacant properties."* The 2019-2021 City Council goals adopted April 15, 2019 include *"Support efforts to increase the housing supply (both market rate and affordable), using the County Housing Study as a guide."* and *"Maintain Astoria's unique character through economic development and zoning which reflects on those values."* The City Council has expressed concerns that the use of residences for transient lodging, especially vacation rentals, is a threat to the available housing stock. There is currently a lack of affordable housing for the existing employees and Astoria residents. While the Council agrees that transient lodging in owner occupied homes may be an acceptable use in residential areas, it also sees the prohibition of use of full homes for transient lodging as one way to keep the existing housing available for long term housing. Therefore, the Council

determined that transient lodging in residential areas should not include a kitchen in the guest area as this would equate to a living unit.

The Council also identified the conversion of residential units in commercial zones for transient lodging as contrary to the goal to provide affordable housing. The Council suggested that structures built and/or currently used for residences should not be converted to transient lodging. A proposed amendment would prohibit the conversion. However, there are several existing former hotels that are currently either vacant and/or have been converted to residences. An exception for these buildings to allow conversion back to a hotel use is proposed as it would only impact a few buildings (Waldorf Hotel 1067 Duane; JJAstor Hotel 342 14th; Elliot Hotel 357 12th; Norblad Building 443 14th; Commodore Hotel 258 14th) and would allow for economic ability to maintain these larger buildings.

3. CP.195.7, Economic Element, Conclusions and Problems, states *"Tourism in Clatsop County has increased in recent years, and the Astoria area has been the recipient of some of this economic activity. Astoria is becoming a "destination" like the communities on the ocean beaches. The quantity of lodging facilities in the City have increased in recent years to accommodate the needs except during peak tourist times. The Columbia River Maritime Museum is a major tourist attraction. In recent years, there has been construction of private facilities which can accommodate moderate sized gatherings and conventions. Tourism is an economic activity which has several disadvantages, such as low wages, and seasonality. However, Astoria has a highly seasonal work force which tourism, particularly the convention business during the winter, could counteract. Astoria has begun to capitalize on its scenic, historic character; proper emphasis on it through advertising and public projects has the potential of stimulating the City's tourist economy."*

   CP.200.4, Economic Development Goal 1 and Goal 1 Policies, states *"Goal: The City of Astoria will strengthen, improve, and diversify the area's economy to increase local employment opportunities. Policies: Encourage private development such as retail, restaurants, commercial services, transient lodging, and make strategic investments in target industries."*

   CP.206.2, Economic Development Goal 7 and Goal 7 Policies, states *"Goal: Encourage successful home-based businesses. Policies: Encourage home occupations, cottage industries and activities which have little impact on the surrounding neighborhoods through the City's Development Code."*

   Finding: Tourism is a major industry for Astoria. The year-round nature of tourist activities has created a need for additional transient lodging facilities. Astoria has seen an influx of hotels/motels over the last few years with two or three new ones proposed in the next year or two. The use of private homes as HSL and B&B's has also increased. The City encourages home occupations and activities in residential areas but only if they have *"little*

impact on the surrounding neighborhoods". Adoption of the proposed amendments would allow for controlled use of private residences as transient lodging so as to protect the residential character of the neighborhoods while allowing for this tourist base industry to exist. Commercial activities related to tourism such as vacation rentals are a major impact to the quiet residential character of the area and to the loss of long term, affordable housing. The proposed amendments would prevent the loss of housing to accommodate transient lodging thereby preserving Astoria for Astorians first.

4. CP.175.G.1, Uppertown / Alderbrook Subarea Plan, Subarea Policies, states that *"The Alderbrook area has unique characteristics and values. Plan amendments which would allow higher-intensity uses than those now present are discouraged."*

   CP.185.O, Residential, Commercial and Industrial Development Policies, states that *"Policies in this subsection are applicable to construction or expansion of residential, commercial or industrial facilities in Columbia River Estuary shoreland and aquatic areas. Within the context of this subsection, residential uses include single and multifamily structures, mobile homes, and floating residences (subject to an exception to Oregon Statewide Planning Goal 16). Duck shacks, recreational vehicles, hotels, motels and bed-and-breakfast facilities are not considered residential structures for purposes of this subsection. Commercial structures and uses include all retail or wholesale storage, service or sales facilities and uses, whether water-dependent, water-related, or non-dependent, non-related. Industrial uses and activities include facilities for fabrication, assembly, and processing, whether water-dependent, water-related or non-dependent, non-related. . ."*

   Finding: The proposed amendments would limit the allowable transient lodging uses in all zones. Uses would be regulated to assure low-impact in residential areas and limit the loss of housing. These proposed regulations are consistent with this Comprehensive Plan section which protects the waterfront area for the low-impact marine uses. Any project proposed would be subject to compliance with this section at the time of project proposal.

5. CP.204.3 & CP.204.4, Economic Development Goal 5 and Goal 5 Policies, Goal states "*Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."* The Policies state

   3. Encourage the growth of tourism as a part of the economy.
   a. Consider zoning standards that improve the attractiveness of the City, including designation of historic districts, stronger landscaping requirements for new construction, and Design Review requirements.

4. *Protect historic resources such as downtown buildings to maintain local character and attract visitors."*

CP.250.1, Historic Preservation Goals states that *"The City will Promote and encourage, by voluntary means whenever possible, the preservation, restoration and adaptive use of sites, areas, buildings, structures, appurtenances, places and elements that are indicative of Astoria's historical heritage."*

CP.200.6, Economic Development Goals states that the City will *"Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."*

CP.205.5, Economic Development Policies states that *"The City encourages the growth of tourism as a part of the economy. Zoning standards which improve the attractiveness of the City shall be considered including designation of historic districts, stronger landscaping requirements for new construction, and Design Review requirements."*

Finding: The proposed amendments will establish standards for transient lodging to allow facilities in residential areas which would support the tourism industry while protecting the quiet character of the neighborhoods. Allowing transient lodging in homes provides the owners with some additional income to help with preservation of the buildings, many of which are designated as historic. However, the unique characteristics of the neighborhoods are proposed to be protected by the addition of standards to prohibit vacation rentals and the loss of full-time residents.

6. CP.470.1, Citizen Involvement states that *"Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies."*

Finding: Throughout the process of drafting the proposed ordinance, the City has provided public outreach. The City Council addressed the issue of Home Stay Lodgings, the need for license procedures, enforcement, and how to protect the loss of affordable housing. They held two work sessions on 12-13-2017 and 10-10-2018. The Council held a public hearing on 11-19-2018 and the City Code amendments were adopted on 12-3-2019. The Planning Commission held a work session on 2-26-2019. Notices were sent to interested parties, neighborhood associations, email lists, web site, etc. In addition, a State required Measure 56 mailing was sent to every property owner in Astoria. Anyone interested in the proposed ordinance was encouraged to submit suggestions and comments. Work sessions were open for discussion with the public to allow for interactive feedback from the early stage of the adoption process. There were numerous "Letters to the Editor" in the Daily Astorian and some articles.

The City was very conscious of the interest in protection of the residential character of neighborhoods and the potential loss of long-term housing. The proposed amendments will be in compliance with State regulations and will establish a permit process that is easy for both the citizens and staff.

Finding: The request is consistent with the Comprehensive Plan.

D. Section 10.070.A.2 concerning Text Amendments requires that *"The amendment will not adversely affect the ability of the City to satisfy land and water use needs."*

Finding: The proposed amendment will satisfy land use needs in that it will allow for the use of private properties for transient lodging while protecting the housing stock and quiet character of the neighborhoods. The protection of long-term housing supports the need for residential area as identified in the Buildable Lands Inventory. The proposed amendment will not adversely affect the ability of the City to satisfy land and water use needs.

V. CONCLUSION AND RECOMMENDATION

The request is consistent with the Comprehensive Plan and Development Code. Staff recommends that the Planning Commission recommend adoption of the proposed amendments to the City Council.

CODE AMENDMENT SYNOPSIS
3-5-19

Home Stay Lodging and Transient Lodging

Code Section	Code Designation	Proposed Change
1.400	Definitions	Amend: bed and breakfast, inn, dwelling, home stay lodging, motel to coincide with City Code and make meal optional
1.400	Definitions	Add: kitchen, owner occupied, primary residence, time share, transient, transient lodging facility, vacation rental
2.025.8	R-1	Add City Code reference to HSL
2.065.6 2.070.13	R-2	Add City Code reference to HSL
2.155.7 2.160.12	R-3	Add City Code reference to HSL
2.585.14.b	A-3	Add City Code reference to HSL
2.350.3	C-2	Add City Code reference to HSL; limit motel in existing residential buildings
2.390.10	C-3	Add City Code reference to HSL; limit motel in existing residential buildings; allow original hotels to return to hotel use
2.435.4	C-4	Add City Code reference to HSL; limit motel in existing residential buildings; allow original hotels to return to hotel use
2.894.2	MH	Add City Code reference to HSL
14.132.1.b	A-4	Add City Code reference to HSL
8.160.A.1 8.160.A.3	Signs	Add HSL for residential sign allowance & not as CU
3.020.B.9	Accessory Dwelling Unit	Add HSL reference; refer to zone for allowance in conjunction w/ ADU
3.100	Home Stay Lodging	Add HSL purpose & standards to coincide with City Code; list allowable zones; not allowed in mobile vehicles
7.100	Parking	Amend to clarify HSL parking requirement
11.020	Conditional Use	Add Com Dev Director to process for Admin CU; add Section 11.022 on classification of CU review
11.022	Conditional Use, Classification of CU Review	Add Section to allow Type II CU for HSL and ADU

DEVELOPMENT CODE UPDATES
Annotated
March 24, 2019

CITY CODE

(Annotated: The Home Stay Lodging Code is included in the City Code rather than the Development Code at the suggestion of the City Attorney to allow for better code enforcement possibilities. This is also the way several cities handle the permits.)

The following proposed amendments include multiple sections of the Development Code. Some are updates needed to coincide with the recent Home Stay Lodging City Code amendments and others are "housekeeping" and/or non-controversial updates to the Code to make processes quicker and easier for both the public and staff. Some proposed amendments are to clarify language in existing codes based on interpretations over the years. Proposed amendments are grouped by subject in case sections need to be removed for any reason during the adoption process.

HOME STAY LODGING

(Annotate: Development Code amendments are needed to coincide with the City Code amendments so there is no conflict.)

Section 1.400, Definitions, delete existing specific definitions in their entirety and replace to read as follows:

(Annotate: To avoid conflict in definitions if changes occur in the future, definitions are included in both codes with City Code referenced.)

BED AND BREAKFAST: Any transient lodging facility which contains between three (3) and seven (7) guest bedrooms, which is owner or manager occupied, and which may provide a morning meal. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification.

(Annotated: B&B is allowed as follows: Outright Use: C-2, C-3, S-2A, HR, LS, Conditional Use: R-1, R-2, R-3, C-4, A-2, A-2A, A-3 in existing bldg, S-2, MH, AH-MP.)

DWELLING: One or more rooms designed for permanent occupancy by one family

SINGLE-FAMILY: A free-standing building containing one dwelling unit.

TWO-FAMILY: A free-standing building containing two dwelling units. May include two-unit rowhouses or duplexes, either renter-occupied or owner-occupied.

MULTI-FAMILY: A building containing three or more dwelling units. May include rowhouses, apartment buildings, or residential condominiums, either renter-occupied or owner-occupied.

HOME STAY LODGING: A transient lodging facility with no more than two (2) bedrooms available for transient rental, and which is owner occupied. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. Such facilities may or may not provide a morning meal. Rooms used by transient guests shall not include a kitchen.
(Astoria City Code Section 8.755)

~~A transient lodging facility with no more than two (2) bedrooms available for transient rental, and which is owner occupied. Such facilities may or may not provide a morning meal.~~

(Annotated: CC determined that a full living unit should not be used as a HSL and full unit has been generally defined as having a kitchen. At the discretion of the homeowner and subject to public health safety regulations, guests may use the homeowners kitchen.)

HOTEL: A building in which lodging is provided for guests for compensation, which may also provide incidental services such as restaurants, meeting rooms, or recreational facilities subject to Development Code standards.

INN: A transient lodging facility with up to 11 guest bedrooms, which is owner or manager occupied, and which may provide a morning meal. Inns may conduct associated business activities on an occasional basis, such as wedding receptions, club meetings and luncheons, conferences, and reunions.

MOTEL: ~~Same as "Hotel".~~ A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

Section 1.400, Definitions, specific definitions are added to read as follows:

KITCHEN: Room for preparation of food and includes a cooking stove or ability to heat food other than with a microwave oven.

OWNER OCCUPIED: Occupancy of a residence by an individual owner

OWNER: For purposes of transient lodging codes, the term owner only includes individuals, holding fee simple title to property, the beneficiaries of a revocable living trust, or a purchaser under a recorded instrument of sale. This does not include corporations, limited liability companies or similar organizations, an authorized agent of the owner, or those holding easements, leaseholds, or purchasers of less than fee interest.

(Annotated: It does not reference City Code definition as it would apply to more than HSL for Development Code. Owner is defined in 1.400, but the added definition is for transient lodging as it is different and matches City Code for HSL.)

PRIMARY RESIDENCE: Dwelling maintained as the permanent residence of the owner for not less than six months of the year.

(Annotated: This is included to help avoid the issue such as person living in an adjacent home and only staying in the transient building on occasions, and to help maintain the housing stock so a building is not just used occasionally as a dwelling. It does not reference City Code definition as it would apply to more than HSL for Development Code.)

TIME SHARE: A dwelling unit that is occupied for other than permanent occupancy by one family and whose ownership is divided into periods of time under an arrangement, plan, scheme, or device, whether by membership, agreement, share, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or otherwise, where a purchaser, in exchange for consideration, receives a right to use the dwelling unit for a period of time less than a full year during any given year. Use of the dwelling for less than a 30-day period by one family shall be classified as "transient lodging" and the same as a "hotel" or "motel".

(Annotated: This specific type of transient lodging was not addressed during the City Council code amendment on HSL. However, as it could be used as "short term rental", it is suggested that we include this in the Development Code to clarify that this also falls under transient lodging.)

TOURIST LODGING FACILITY: See "Transient Lodging Facility".

TRANSIENT: A transient includes any person entitled to occupy a residence for less than 30 consecutive calendar days. The day a transient guest checks out shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

(Annotated: This is similar to the definition for Occupational Tax purposes but removes reference to hotels and allowable extended occupancies. It does not reference City Code definition as it would apply to more than HSL for Development Code.)

TRANSIENT LODGING FACILITY: Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast establishment, home stay lodging, vacation rental, or other such transient lodging facility known by their advertising and/or management platform names. Transient Lodging Facility also means space in mobile home or trailer parks, or similar structure of space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

(Annotated: With the addition of these other definitions, we would eliminate the reference to "other tourist lodging facility" in the Development Code so there is no confusion as to which classification each use is in. What other configuration of lodging facility could there be? The term "other tourist lodging facility is used in the C-2, C-3, C-4, MH zones only)

VACATION RENTAL: A transient lodging facility available for transient rental, and which is not occupied by an owner or manager at the same time as the guests. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. For the purposes of this Code, a Vacation Rental is classified the same as a "hotel" or "motel".

(Annotated: This would clarify what we already do in classifying vacation rentals as a hotel which limits them to commercial zones. This is intended to protect a SFD from being used for transient lodging without an owner on-site which reduces the permanent available housing.)

Section 2.025.8 (R-1 conditional use) is deleted in its entirety and replaced to read as follows:

Home Stay Lodging, which satisfies requirements in City Code Sections 8.750 to 8.800.

Section 2.065.6 (R-2 outright use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Home Stay Lodging, which satisfies requirements in City Code Sections 8.750 to 8.800.

Section 2.070.13 (R-2 conditional use, zone list of allowable uses) is added to read as follows:

13. Home Stay Lodging in conjunction with an Accessory Dwelling Unit, which satisfies requirements in City Code Sections 8.750 to 8.800. May be processed as an Administrative Conditional Use.

Section 2.155.7 (R-3 outright use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Home Stay Lodging, which satisfies requirements in City Code Sections 8.750 to 8.800.

Section 2.160.12 (R-3 conditional use, zone list of allowable uses) is added to read as follows:

12. Home Stay Lodging in conjunction with an Accessory Dwelling Unit, which satisfies requirements in City Code Sections 8.750 to 8.800. May be processed as an Administrative Conditional Use.

Section 2.585.14.b (A-3 conditional use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Bed and breakfast, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), or inn.

Section 2.350.3 (C-2 outright use), is deleted in its entirety and replaced to read as follows:

3. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), ~~or other tourist lodging facility~~ and associated uses except as follows:

   a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.350.3.b.

   b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

(Annotate: City Council determined that buildings or portions of buildings constructed and used as residences should not be allowed to be used for vacation rental transient lodging as it would reduce the housing stock. If there is an existing non-conforming dwelling in the zone, it could have a B&B or HSL. The exceptions would only impact a few larger buildings such as the Waldorf Hotel, Astor Hotel, etc.)

Section 2.390.10 (C-3 outright use), is deleted in its entirety and replaced to read as follows:

10. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), ~~or other tourist lodging facility~~ and associated uses except as follows:

    a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.10.b.

    b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

(Annotate: City Council determined that buildings or portions of buildings constructed and used as residences should not be allowed to be used for vacation rental transient lodging as it would reduce the housing stock. If there is an existing non-conforming dwelling in the zone, it could have a B&B or HSL. The exceptions would only impact a few larger buildings such as the Waldorf Hotel, Astor Hotel, etc..)

Section 2.435.4 (C-4 conditional use), is deleted in its entirety and replaced to read as follows:

4. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), ~~or other tourist lodging facility~~ and associated uses except as follows:

   a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.435.4.b.

   b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

   (Annotate: City Council determined that buildings or portions of buildings constructed and used as residences should not be allowed to be used for vacation rental transient lodging as it would reduce the housing stock. If there is an existing non-conforming dwelling in the zone, it could have a B&B or HSL. The exceptions would only impact a few larger buildings such as the Waldorf Hotel, Astor Hotel, etc. .)

Section 2.894.2 (MH conditional use), is deleted in its entirety and replaced to read as follows:

2. Bed and breakfast, inn, or home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800)~~, or other tourist lodging facility~~.

Section 14.132.1.b (A-4 conditional use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Bed and breakfast, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), or inn.

Section 8.160.A.1 (signs in residential zones) is deleted in its entirety and replaced to read as follows:

Sites with 1 or 2 dwelling units in a building, Home Occupations, and Home Stay Lodging.

Section 8.160.A.3 (signs in residential zones) is deleted in its entirety and replaced to read as follows:

Conditional Uses, except Home Stay Lodging, Bed and Breakfast, Inn, or Home Occupation.

Section 3.020.B.9 (Accessory Dwelling Unit) is deleted in its entirety and replaced to read as follows:

9. Home Stay Lodging.

Home Stay Lodging in conjunction with an Accessory Dwelling Unit may be allowed as follows:

a. Home Stay Lodging (which satisfies requirements in City Code Sections 8.750 to 8.800) may be allowed on properties in conjunction with an Accessory Dwelling Unit as listed in the allowable uses within specific zones.

~~Homestay lodging is prohibited in accessory dwelling units created after May 17, 2017.~~

(Annotated: If owner lives in ADU and has a bedroom for HSL, it would be the same impact as if it were in the primary unit, just in different unit.)

(Annotated: each zone will list if HSL is allowed with an ADU and in 3.100.)

Section 3.100, Home Stay Lodging, is added to read as follows:

3.100. HOME STAY LODGING.

A. Purpose.

The City's purpose in regulating Home Stay Lodgings is to allow for economic use of underutilized bedrooms in dwellings; provide financial assistance to preserve both the housing stock and historic properties within the City; to ensure that Home Stay Lodging facilities are appropriately located; are compatible with surrounding allowed uses; are conducive to the public peace, health, safety, and welfare of the City; do not reduce the number of potential long-term housing units; and support tourism.

B. Standards

1. Primary Residence. Every Home Stay Lodging shall be located in the owner's primary residence.

2. Occupancy. The Home Stay Lodging shall be owner occupied while occupied by transients.

3. Location. Home Stay Lodgings may be allowable in conjunction with an Accessory Dwelling Unit as follows:

a. R-1 Zone: Home Stay Lodging shall not be allowed in conjunction with an Accessory Dwelling Unit.

b. R-2 Zone: Home Stay Lodging shall require an Administrative Conditional Use permit through the Community Development Department if located in conjunction with an Accessory Dwelling Unit.

c. R-3 Zone: Home Stay Lodging shall require an Administrative Conditional Use permit through the Community Development Department if located in conjunction with an Accessory Dwelling Unit.

(Annotated: ADU is an extra unit on a lot which is not sufficient for a duplex. To have both an ADU and an HSL would increase the impact to the neighborhood. CC determined that an HSL in R-2 or R-3 may be possible if the neighborhood development could accommodate it. While HSL is outright in the R-2 and R-3 Zone, if done on a site that has an ADU, then a CU would be required to provide the additional impact review.)

d. Home Stay Lodging facility shall not be allowed within an Accessory Dwelling Unit.

(Annotated: If owner lives in ADU and has a bedroom for HSL, it would be the same impact as if it were in the primary unit, just in different unit. However, there could be other impacts that have not been researched yet, so it is recommended that the HSL shall be only in the primary unit at this time.)

4. No Kitchen. Home Stay Lodgings may not contain a kitchen.

5. Mobile vehicles. Home Stay Lodging shall not be located in motor homes, travel trailers, or other mobile vehicles.

Section 7.100, Off-Street Parking Space Requirements by Use, is deleted in its entirety and replaced to read as follows:

Use Category	Minimum Parking per Land Use
Bed and Breakfast, Inn	1 additional off-street space for each bedroom used for transient lodging plus off-street spaces required for the dwelling and associated uses such as assembly areas or restaurant.
Home Stay Lodging	1 additional off-street space for each bedroom used for transient lodging plus off-street spaces required for the dwelling.

(Annotate: This separated Home Stay Lodging from B&B as HSL cannot have the associated uses.)

Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

Section 11.020. Conditional Use, APPLICATION AND PROCEDURES, is deleted in its entirety and replaced to read as follows:

A. Procedures.

1. Application.

A request for a new, enlarged or otherwise altered development listed in the Development Code as a conditional use shall be made on forms provided by the Community Development Department. The Community Development Director shall specify what information is required for the application; additional information may be required where determined by the Director, and reviewed by the Astoria Planning Commission or Community Development Director.

2. Public Notice.

Public notice and procedures on applications shall be in accordance with the Administrative Procedures in Article 9 except as noted in Section 11.022.

B. Decision.

The Community Development Director and/or Planning Commission shall base their decision on whether the use complies with:

1. Applicable policies of the Comprehensive Plan.

2. Applicable aquatic and shoreland standards in Article 4.

3. For aquatic areas, whether the use or activity meets the resource capability and purpose of the zone in which it is proposed when such a determination is required in accordance with Article 5.

4. For aquatic uses, the findings of an Impact Assessment where required by Article 5.

5. Development standards of the applicable zone.

6. Basic conditional use standards of Section 11.030.

7. Appropriate conditional use standards of Section 11.130 to 11.170.

Section 11.022, Classification of Conditional Use Review, is added to read as follows:

11.022. CLASSIFICATION OF CONDITIONAL USE REVIEW.

~~The Community Development Director shall decide the classification of any conditional use application. If the Community Development Director believes that substantial issues are involved in a conditional use application, the Director may schedule a public hearing in accordance with the procedures specified in Sections 9.020 to 9.030.~~

Permits shall be processed and reviewed as a Type II or Type III permit in accordance with the procedures specified in Sections 9.020 to 9.030 as follows:

A. Type II Procedure (Administrative/Staff Review with Notice).

Type II includes minor conditional uses which are minimal uses and which will have little or no impact on adjacent property or users. Administrative approval by the Community Development Director of Type II conditional uses may be granted.

Type II conditional uses include:

1. Home Stay Lodging in conjunction with an Accessory Dwelling Unit.

2. Accessory Dwelling Unit in R-1 Zone.

(Annotated: HSL w/ an ADU is intended by City Code to be processed by the Community Development Director rather than the APC.)

B. Type III Procedure (Quasi-judicial with Public Hearing).

Type III includes conditional uses which are significant and are likely to create impacts on adjacent property or users. A Type III conditional use may be granted by the Planning Commission.

H.O. Record Pg# 328

CITY OF ASTORIA
1095 Duane Street
Astoria OR 97103
503-338-5183

A 19-02

☐ Fee Paid Date 2-19-19 No fee ___ By _____

Fee: $750.00

AMENDMENT

Property Address: City Wide

Lot _____ Block _____ Subdivision _____

Map _____ Tax Lot _____ Zone _____

Code or Map to be Amended: See attached

Applicant Name: Community Development Dept

Mailing Address: 1095 Duane, Astoria

Phone: 503-338-5183 Business Phone: _____

Property Owner's Name: Various

Mailing Address: _____

Business Name (if applicable): _____

Signature of Applicant: Rosemary Johnson

Planning Consultant, Project Manager, Rosemary Johnson

Signature of Property Owner: _____

Proposed Amendment: Amend zone uses for City Code reference to Home Stay Lodging (HSL) requirements; amend and add definitions on transient lodging; add HSL standards; add administrative conditional use process; clarify parking & sign for HSL;

For office use only:			
Application Complete:		Permit Info into D-Base:	
Labels Prepared:		Tentative APC Meeting Date:	
120 Days:			

FILING INFORMATION: Astoria Planning Commission meets at 7:00 pm on the fourth Tuesday of each month. Applications must be received by the 20th of the month to be on the next month's agenda.. A pre-application meeting with the Planner is required prior to the acceptance of the application as complete. Only complete applications will be scheduled on the agenda. Your attendance at the Planning Commission is recommended.

Briefly address each of the Amendment Criteria and state why this request should be approved. (Use additional sheets if necessary.)

A. Text Amendment (*Please provide draft language of proposed text amendment)*

Before an amendment to the text of the Code is approved, findings will be made that the following criteria are satisfied.

1. The amendment is consistent with the Comprehensive Plan.

CP supports tourism and transient lodging

2. The amendment will not adversely affect the ability of the City to satisfy land and water use needs.

Intent of amendment is to clarify and update existing codes to coincide with City Code on Home Stay Lodging and set standards for review including streamline the process for the conditional use as admistrative

B. Map Amendment *(Please provide a map showing the proposed area to be amended.*

Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:

1. The amendment is consistent with the Comprehensive Plan:

2. The amendment will:

   a. Satisfy land and water use needs; or

   b. Meet transportation demands; or

c. Provide community facilities and services:

3. The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations.

4. Resource lands, such as wetlands are protected.

5. The amendment is compatible with the land use development pattern in the vicinity of the request.

PLANS: A site plan indicating location of any proposed zone change is required.

Tiffany Taylor

From: Colonna, Brian <Brian.Colonna@Schwab.com>
Sent: Monday, April 8, 2019 11:34 AM
To: Tiffany Taylor
Subject: RE: Amendment A19-0, A19-02 and A19-04.

RECEIVED
APR 08 2019
COMMUNITY DEVELOPMENT

Hello Tiffanie,

Thank you for the call and your time today, it was very helpful.

As mentioned, my only concerned with the transient lodging amendment is the gray area of my wife and I splitting our time from our home in California and our home in Astoria (which will be primary) and considering the possibility of Air B&B when not in Astoria which may be a few months out of the year.

Understanding the need for housing in Astoria and what the City is trying to do, our situation seems a bit different in that it just wouldn't be practical to try to rent our unit a month here and there as I don't believe there is a local need for that. If there is we would be happy to consider but our local property manager doesn't see that need either.

Thank you taking my comments to the City Council for consideration.

Brian Colonna

From: Colonna, Brian
Sent: Monday, April 8, 2019 10:35 AM
To: 'ttaylor@astoria.or.us' <ttaylor@astoria.or.us>
Subject: Amendment A19-0, A19-02 and A19-04.

Hello,

I received the attached Notice of Public Hearing with respect to the above mentioned Amendments, however, I will not be in town on April 23 and would to receive information on the proposed Amendments.

Could someone call me at (415) 740-5786 or forward the Amendments with a summary of the proposed changes?

Thank you,
Brian Colonna

YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA

Mail 4-2-19
Email 4-2-19
Web 4-2-19
Pub 4-16-19

CITY OF ASTORIA
NOTICE OF REVIEW

The City of Astoria Planning Commission will hold a public hearing on Tuesday, April 23, 2019 at **6:00 p.m.**, at the **Judge Guy Boyington Building, 857 Commercial St.,** Astoria. The purpose of the hearing is to consider the following request(s):

1. *Continued from March 26, 2019 meeting: Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A zone or at a specific location.

2. * Continued from March 26, 2019 meeting: Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates.

3. Amendment Request (A19-02) by Community Development Director to amend Development Code sections concerning Transient Lodging, amend and add definitions, add reference to City Code Home Stay Lodging regulations, establish standards for transient lodging in conjunction with Home Stay Lodging, allow administrative conditional use permits, limit transition of residential units in commercial zones to transient lodging, and other miscellaneous updates. Development Code Sections 1.400, 3.020, 7.100, 8.160, 11.020, 14.132, Articles 2, 9, 10; and Comprehensive Plan Sections CP.005 to CP.028 General, CP.190 to CP.210 Economic Element, CP.215 to CP.230 Housing are applicable to the request.

4. Amendment Request (A19-04) by Community Development Director to amend Development Code sections concerning miscellaneous issues, allow additional administrative variances, allow additional front and street side setback averaging, allow certain stairs as an exception to setback, allow arbor and gateways in fences, amend lighting standards, amend outdoor storage area enclosure standards, amend and add definitions, allow residential use behind commercial use in C-4 zone, codify several legal interpretations of code application, add 15' setback for parking from top of bank, expand non-conforming uses and structures to allow continuation of certain residential use, clarify off-street parking requirements, and other miscellaneous updates. Development Code Sections 1.400, 2.430, 7.100, 7.110, 7.170, 8.040, 8.050, 11.140, 14.510, 15.020, Articles 3, 9, 10, 12; Comprehensive Plan Sections CP.005 to CP.028 General, CP.190 to CP.210 Economic Element, CP.215 to CP.230 Housing are applicable to the request.

A copy of the applications, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available at least seven days prior to the hearing and are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available at the Community Development Department at 1095 Duane Street, Astoria. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Contact the City of Astoria Community Development at 503-338-5183 for additional information.

L-457

RECEIVED
NOV 09 2023
BY: TA/in person
and via email @ 3:31pm

November 9, 2024

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal

Dear Hearings Officer Rappleyea:

This letter is to respond to some of the questions that you raised at the public hearing:

1) **Explain the parking requirements.**

When we purchased the property in 2015, all of the parking for the building and the two cottages was on street and had been from the time of construction ~1920. Because of this historical use, we were not required to install any parking whatsoever to continue operating rentals without expending the money to purchase the extra parcel or develop it into a parking lot.

According to the 2017 ADC and with talking to Kevin Cronin in 2015/2016 assuming that there was no pre-existing dwelling use, we had to provide 1.5 spaces per two bedroom unit and 1 space for the 1 bedroom cottage.[1] This would have meant 9 spaces for us that could be entirely accommodated on the street because of the non-conforming nature of the use. However, in order to satisfy the "motel" category, we needed to add additional spaces (one per bedroom or

---

[1] The parking table at ADC 7.100 in place in 2017 provided:

Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one bedroom group housing units; Calculation is based on specific number of each type of units within the complex.

Hotels, Motels, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

ADC 7.030(A)(2) provided that up to 50% of the required parking area may be located off-site within 300 feet from the primary use.

a total of 11). We added 5, which exceeds the requirement but is more convenient for our guests. I have attached a series of google aerial images illustrating this change.

2) What are the programmatic differences between short term and long term rentals?

There was a great deal of testimony during the hearing suggesting that the improvements that we made to the Gilbaugh Building were pursued only to make it habitable and as a result, those efforts do not establish the start of a "transient lodging facility" use, as that term is used post-2019.

First, it is important to remember that the Gilbaugh Building has always been used as transitional housing in some form or another as zoning code allowed. The property is zoned C-3 and multi-family dwellings, motels and hotels were permitted outright in this commercial zone. The building was located right across the street from the hospital and, according to local historian John Goodenberger, it provided short term housing for visiting doctors and nurses. Although this transitional housing was not marketed for tourism the same way as it may be today, the Gilbaugh Building has offered transitional housing extending for weeks-long or month-long stays for individuals to some degree or another throughout its existence.

Second, it is also important to understand that when we purchased the property in 2015 from the Lower Columbia Preservation Society, all but one of the units were rented. Although the old carpet or painted floors, acoustic ceilings tiles with the upstairs units having rough cut cedar paneling on the walls and ceilings would have made it impossible to market to tourists, we could have continued to long-term rent the Gilbaugh in the state that it was in. Therefore, the structural improvements were not critical to making the building habitable, as some claimed at the hearing, but rather were necessary to market for short term rentals.

We knew that the only way to justify the cost necessary to rehabilitate the building was with the expectation of short term rentals. As reflected in the email from Sean Fitzpatrick at record p 108, corroborating our statements of our intent:

> "we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals. We discussed that hospitality was very different from habitation, so you would have to study the differences in laws pertaining to hospitality, and learn how to be a good neighbor and good host."

We restored the building in order to commercially market the units for short term rentals assuming a different return on our investment. Long term rentals have a market maximum that they can earn that does not fluctuate based on seasons or overall demand. We know this

because we have owned and operated nine long-term units throughout the City for the past ten years.

Further, the choices of interior finishes varies dramatically depending on whether you are going to long or short term rent. With long term renting, you want to select utilitarian finishes that will have greater durability over time. With respect to flooring, for example, we install carpet or vinyl flooring that will hold up against tenant furniture or dog scratching (allowing pets is something that must be assumed as part of ADA accommodation for long-term renters). Whereas with short term renting, we worked hard to restore original materials (the historic doors and other millwork), light fixtures and hardware knowing that we will regularly have cleaning and maintenance in the units to check for wear. All of the original straight-grain fir floors in the Gilbaugh Building were painstakingly restored. This was done because: (1) we provide the furniture; (2) we can prohibit pets; and (3) short term guests are more likely to appreciate the creaks, squeaks and the old building smell of a restored historic structure.

Another big difference between short and long term rentals relates to furnishings. Short term rental units not only have to be furnished but the kitchens must be supplied with pots, pans, dishes, utensils, bedrooms must have linens and blankets, and bathrooms must have towels and paper products. We have estimated that furnishings and supplies for each short term unit costs approximately $25,000. It is important to note that we supply washers and dryers only in our short term units and that we had been accumulating furnishings for our short term rentals (which was (and is) stored in the basement) from 2017. We spent months searching for period-appropriate craftsman furniture. See attached photos. In addition, in 2019, we built out a space in the basement to house linens, cleaning supplies as well as surplus supplies to have them centrally located but inaccessible to guests this was necessary because each unit has access to the basement through a service stairwell.

All of these actions reinforce our statements that we started moving down a path of short term rentals in 2017 when we created off-street parking fully aware that it would take years before the building was in a condition to allow short term rentals. We had no reason to believe that once we started down this path expending our retirement savings and borrowing on lines of credit, that the City would reverse course more than six years later.

3) When did short term renting activity actually begin?

The answer to this question depends on how you define “actually beginning.” As noted above, the four Gilbaugh units have always been in rental use for shorter or longer term periods depending on the needs of the community. The first advertising of a Gilbaugh unit on Airbnb occurred in the winter of 2021. More specifically, the breakdown for the units is as follows:

1555	F1	12/1/2021
1561	F2	3/1/2022
1557	F3	3/15/2022
1559	F4	4/1/2023

Although this was the first time that these units were advertised on Airbnb as available for rent on a daily basis, we secured the Transient Room Tax Registration for 11 bedrooms in December of 2020. Moreover, as the documentation set forth in the Hearings Officer's packet at pages 127-128 shows, the License number (5001435) and Customer number (019664) that City Staff Barbara Fryer assigned us on 12-15-20 came from our original 10-27-2017 business license and occupational tax receipt. This reinforces the City's conclusion that short term rental activity began in 2017 with the original Downtown Cottages tax registration, along with the parking.

As explained at the hearing, the units in the Gilbaugh Building were in the process of being prepared for short term rental use since 2017. In January, 2019, we were in the process of reinforcing the foundation. This required parking construction vehicles and materials in the parking lot. See attached photos. The noise and construction activity would have made it impossible to put any of the dwelling units into short term residential use at that time.

In the winter of 2019, as part of working on the foundation, we finished portions of the basement to accommodate short-term rental supply storage and started to accumulate furnishing for the units. In addition, our contractor continued the buildout of our parking area by constructing a retaining wall / parking barriers and marking the parking spaces.

In the spring of 2020, we were working on renovating the unit interiors. This included plumbing repairs, professional painting, woodwork restoration which were not necessary to make the units habitable but rather to market short term rentals. Throughout this time (2017 to 2023) but moving to one to two days per week beginning in 2020, we regularly went to garage sales, estate sales, antique stores and Facebook marketplace to find period furniture, art and other antiques to decorate units to period and maritime detail. These items were placed in the basement storage areas until they could be deployed into their respective short term rental. In the winter of 2020, we learned that water intrusion into the windows on the east and south wall were causing interior wall damage. As such, we were forced to scaffold and tarp the south wall and custom build and install metal window sills. See attached photos. This process was slow and weather dependent but was not complete until April 2021.

In March of 2021, we contracted with the Appellant's company West River Construction to construct a fence to prevent foot traffic of guests using a neighboring driveway. Although West River Construction did not complete the work as bid, we paid him anyway but had to pay someone else to finish the work, which was not completed until May 2021.

In January, 2022, we installed electronic locks on the porch entry door. In the spring of 2022, we purchased and installed security cameras on the porch and inside the building. (We did not have them at any of our long term buildings when we installed them. We have subsequently installed them in the parking lot at one of our long term buildings at the recommendation of APD.) In August of 2022, we purchased and installed Minut decibel meters to monitor sound, temperature and humidity levels in all units. (We do not have these in any of our long term units.)

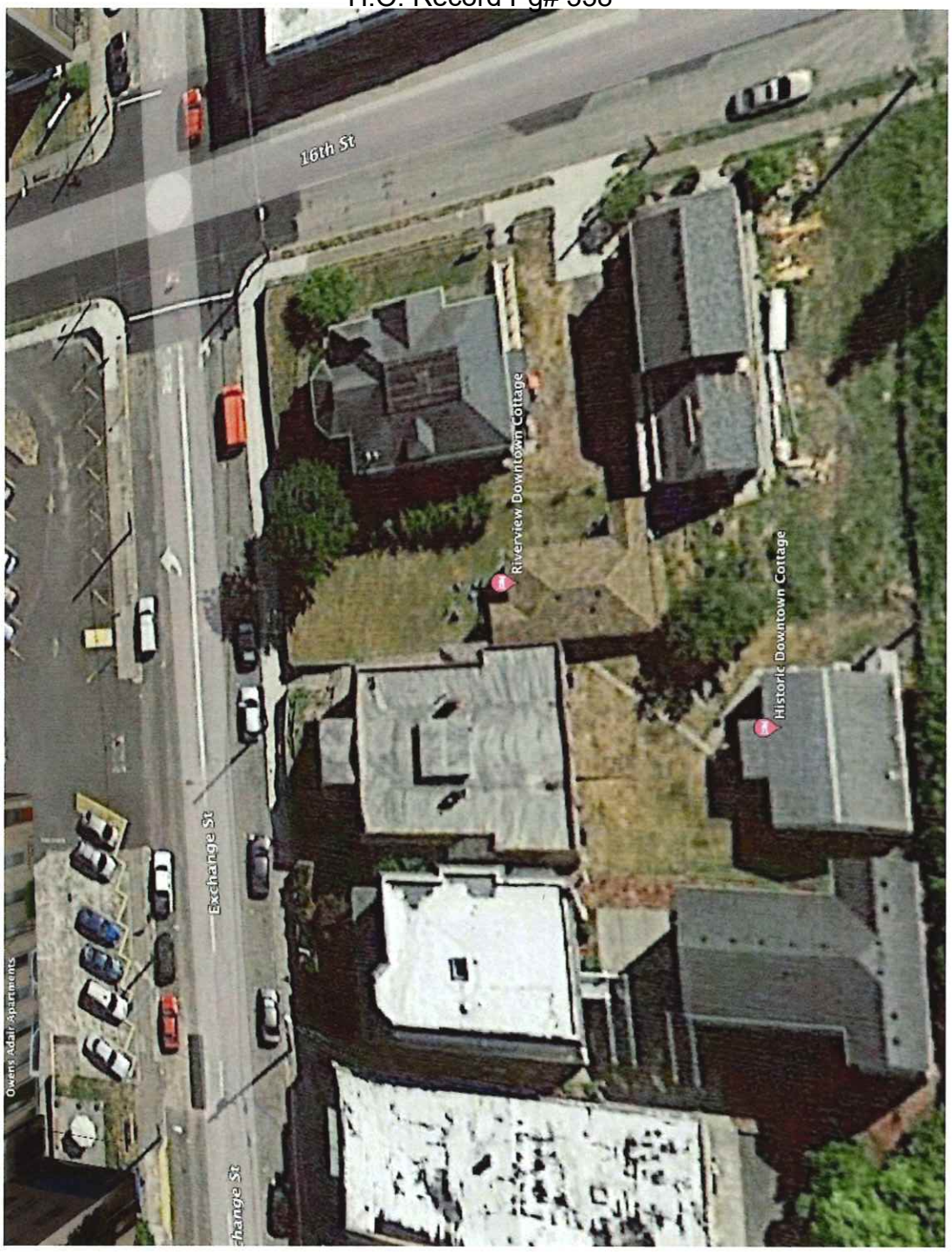
At no point did we ever abandon or discontinue our efforts to market the Gilbaugh Building units for anything other than short term rentals and there was certainly never any gap of more than 12 consecutive months where we did nothing to prepare the building or moving in the fixtures and amenities necessary to operate short term rentals.

We have always worked transparently, honestly and inclusively with the city's various staff since our project began in 2015. We have continually and consistently progressed forward and knew this was going to be a slow process as money has always been tight and as this all-consuming task required vast amounts of our time and energy. Your denial of this appeal upholds the City of Astoria's multiple prior approvals, pays due respect to our vast good faith effort to restore and rehabilitate a neglected historical building and make it cashflow in a way to support itself while assisting to support our other long term rentals. And finally, your denial of this appeal states that land owner rights shouldn't be taken from hardworking, well-intended owners due to uniformed, inexperienced and misguided public opinion when such an investment was made as a conforming use.

Sincerely,

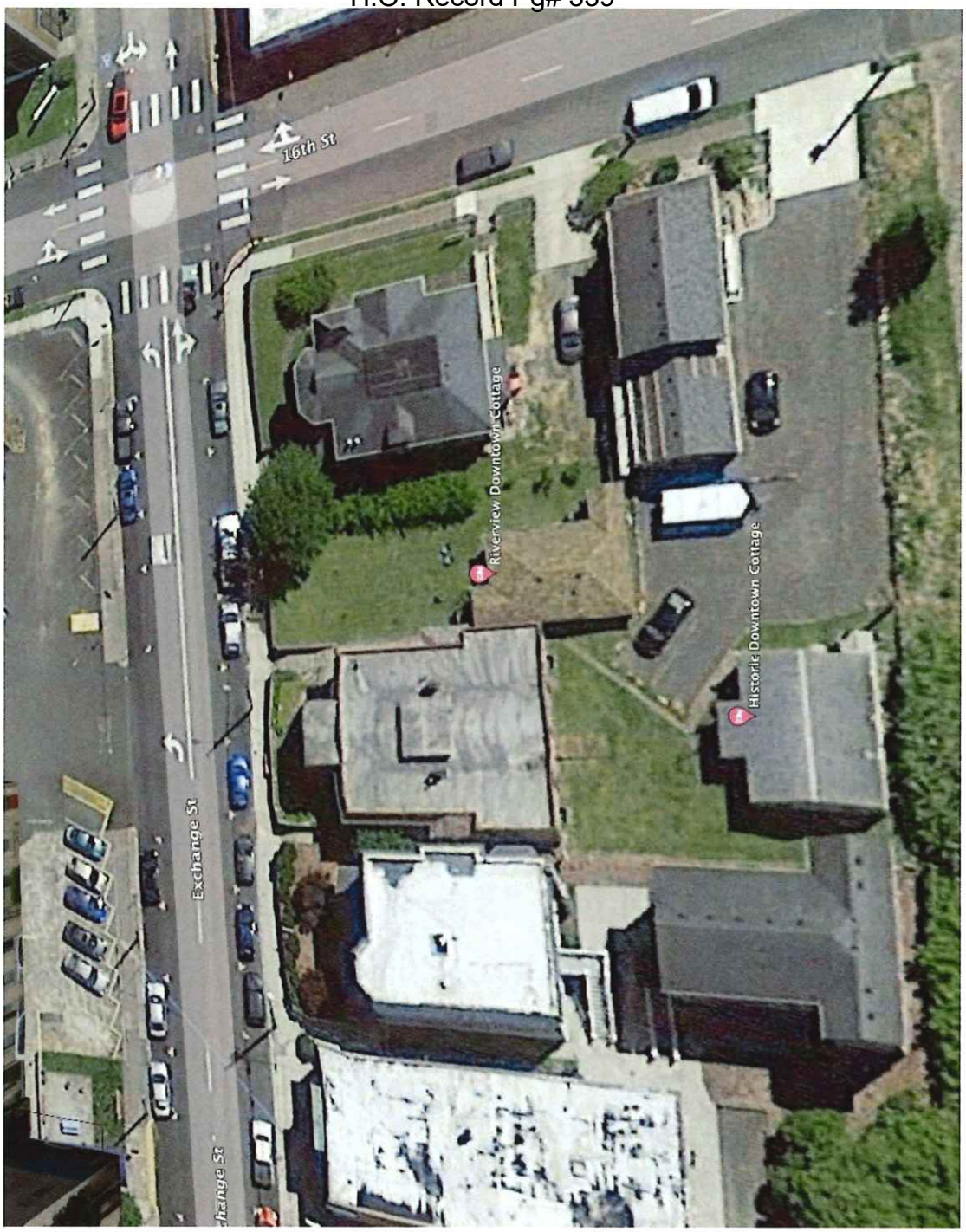


Bob and Cindy Magie



August 2016

Pre-parking lot development
as seen from Google Earth



June 2017

Post-parking lot development
as seen from Google Earth

August 2016

On-street parking is 1.5 per 2bdr unit and 1per 1bd or smaller (2017 ADC Article 7 table 7.100) thus 8.5 spaces and 9 shown (originally thought this was 1.25 spaces but later verified 1.5 in 2017 code).

Magie on-street



H.O. Record Pg# 340

June 2017

STR parking requires 1 space/bdr (2017 ADC Article 7 table 7.100). 11 spaces required and 14 provided for guest convenience and overflow parking of our 6 STR units

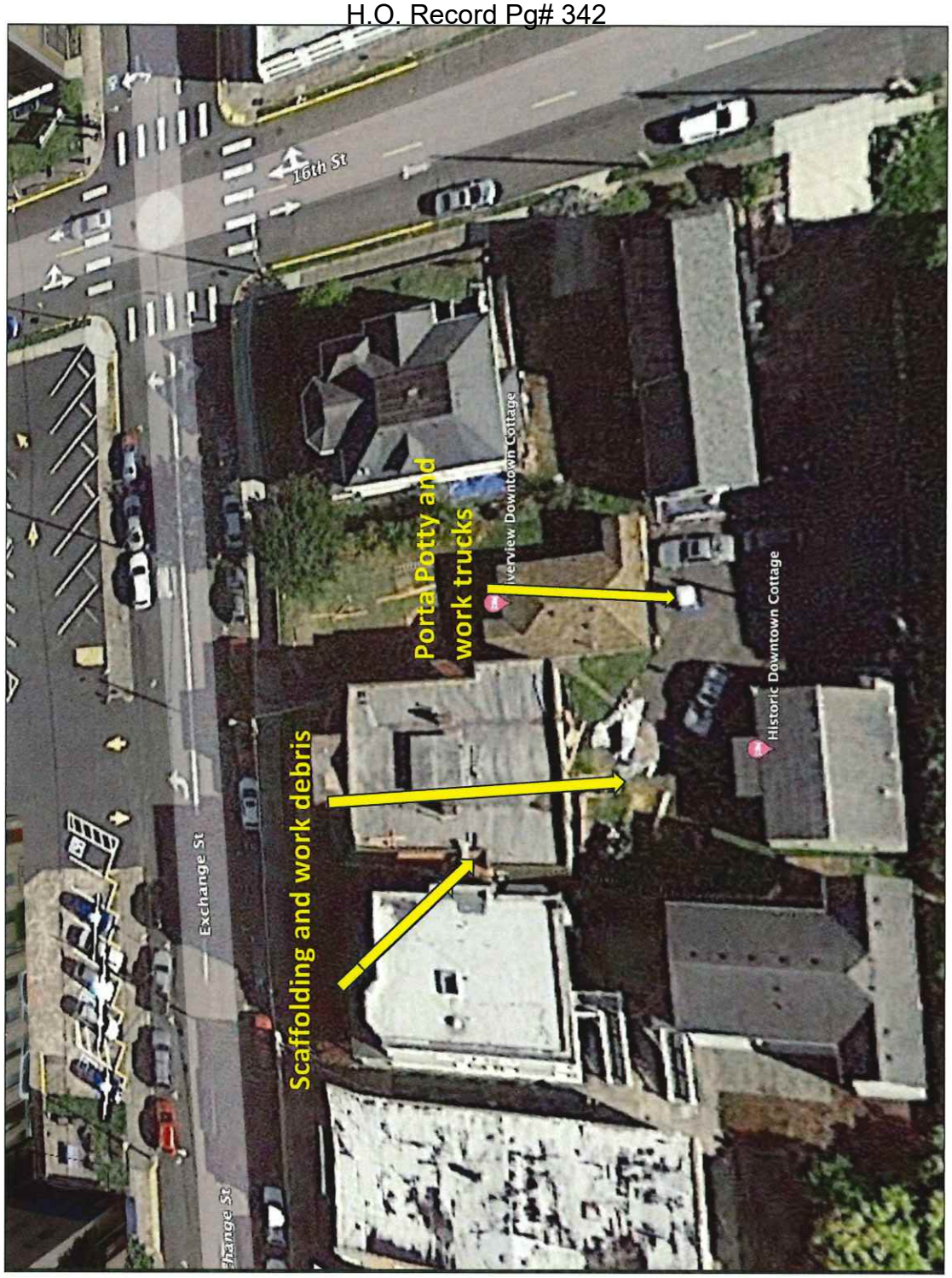
Magie on-street

Magie STR off-street

Helligso STR off-street



H.O. Record Pg# 341



October 2018

On going work on Gilbaugh building as seen from Google Earth



Photo taken 1/7/2019 shows construction materials and vehicles occupying parking



Photo taken 11/29/20 shows window restoration efforts



Exterior doors restoration efforts – Left and top photo original condition taken between 10/16/18, 10/22/18 and 11/14/18.

ANTIQUE FURNITURE SOURCED FOR SHORT TERM RENTALS



Craftsman style buffet sourced 9/24/22



Craftsman style dresser sourced 3/30/22



Doors and antique bench sourced 2/17/23



Dining room table sourced Oct, 2022

From: Melissa Barber
To: Planning
Subject: Writing in Support Appeal AP23-02
Date: Friday, November 3, 2023 2:48:10 PM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

I'm writing in support of the appeal (AP23-02) of the City of Astoria's approval of transient lodging use at 1555-1557-1559-1561 Exchange Street. The city's decision sets a dangerous precedent of making exceptions to our city code that prohibits converting long-term rentals into transient lodging when the units have been occupied by long-term renters after January 1, 2019. The city correctly upheld the code until a new mayor was sworn in. The new mayor, by his own admission, is a friend of and has been an advisor to the property owners, Bob and Cindy Magie. This sets the precedent that if you're connected to the right people in town, you can get an exception to a law that others have to follow in order to legally operate an AirBnB.

Much has been said about how the Magies emptied their savings and went into debt to prepare the quadplex for habitation. The implication seems to be that unless they can operate the units as short-term rentals, they're facing an undue financial burden. By doing the math, it's readily apparent that the Magies can easily recoup their expenditures by renting the units to tenants that stay longer than 30 days. And if renting to long-term renters is too long of a timeline to recoup their costs, they could list the property for sale and quickly get back what they paid and much more.

The Magies bought the property with a quadplex and two cottages for $375,000. They then invested about another $395,000 to fix up the quadplex. They invested a total of $770,000 for six units that are highly sought after in Astoria's long-term rental market. The quadplex units are in a desirable area that's very close to downtown and have two bedrooms and one bathroom. On the low end, they could rent each unit for $2,000/unit/month or $96,000 a year for the four units. This total doesn't count the AirBnB revenue from the two cottages on the property that they list for $200-$300/cottage/night nor the income from the illegally-operated AirBnBs in the quadplex. When you put it all together, they're likely to recoup their initial purchase and refurbishing expenses in five to seven years. If that schedule is too slow for their comfort, they could sell the property and easily get over $1 million, pay off their debts, and replenish their savings.

Two other factors appear to have influenced the city's decision: prior to January 1, 2019, the Magies constructed off-street parking spaces and they might have purchased furniture for the quadplex units. These are irrelevant and should not be considered when determining whether or not to approve their application. None of us can determine a person's intent when they do things nor do we know if they changed their intent at some point later. So, we must look for documentation that proves their intent and when they intended it.

I'll start with the assertion that the parking was constructed with the intent of putting all of the units on the property up as short-term rentals. The fact is they constructed the off-street parking at a time when the city required the same number of parking spaces for long-term or short-term rentals. Without documented evidence, how can any of us know that they constructed the parking explicitly for short-term rentals? They constructed parking for rentals, end of story.

Lastly, the notion that purchasing furniture prior to January 1, 2019 demonstrates their intent to use the units as short-term rentals doesn't make sense. Furnished apartments in Astoria are often rented to people who stay for longer than 30 days because the area brings in many traveling medical staff, pastors, and seasonal workers. This demographic is looking for the lowest-lift move they can, and furnished apartments fit that to a T.

Our city codes around transient lodging were put into effect in 2019 to help protect our city's housing for people who live here. I ask that you protect our city codes, avoid setting a dangerous precedent, and uphold the appeal.

Thank you,
Melissa Barber
1268 Kensington, Astoria

From: Caitlin Callahan
To: Planning
Subject: Letter opposing short term rentals at 1551-1561 Exchange Street
Date: Friday, November 3, 2023 11:00:11 AM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

November 3, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Letter opposing short term rentals at 1551-1561 Exchange Street (AP23-02)

To whom it may concern:

We are writing in regards to last night's hearing on the illegal short-term rentals in the Gilbaugh Apartments. As you know, in 2019, the Astoria City Council passed a zoning amendment that said that no commercially zoned apartment building that was housing long-term tenants as of January 1, 2019, could be converted into a short-term rentals. The council adopted this code amendment to prevent the further loss of Astoria's extremely limited housing stock to conversion into STRs. The City Council saw the impact that STRs were having on the housing supply and the need to preserve existing housing options for residents of Astoria.

In direct violation of the zoning code amendment, the owners of Gilbaugh Apartments began converting long term housing units to STRs in 2021. A compliant was filed against them and the city performed an investigation and determined that it was indeed a violation of the 2019 code changes and, in January 2022, ordered the property owners to stop. After this initial ruling, the property owners engaged in a year-long legal dispute with the city. In June of this year, the property owners SOMEHOW were able to secure a decision permitting them to convert all four long-term apartments into short-term rentals in June 2023. Our city (and Mayor) essentially rewarded them for breaking the law.

We want it to be known that we are adamantly opposed to the city's permissive decisions regarding these illegal STR conversions. The law should be enforced, and bad actors should be held accountable. The adage of "ask for forgiveness, not permission" is never applicable to law. The city and it's planning and zoning department should do everything possible to properly enforce the current regulations on STRs. We believe this hearing is a crucial test of the political will of local leaders to enforce the city's own laws regulating short-term rentals. Make no mistake, there are many residents watching this case and vested in it's outcome.

Please remember that Astoria remains a working class community. Affordable housing in our area is becoming harder and harder to find due to STR conversions. We are acutely aware of this struggle as one of us worked in food service

management. The lack of housing affordability/availability was often a barrier to securing an adequate workforce.

What makes our city vibrant and beautiful is its diversity, which includes class. We must stop pandering to those who are better off at the expense of those who are not. The interests of the many trump those of the few.

Sincerely,
Caitlin Callahan & Dustin Nord
90614 Hwy 202
Astoria, OR 97103

From: Brenda Harper
To: Planning
Subject: In opposition to converting Gilbaugh apartments to short term rentals
Date: Thursday, November 2, 2023 8:18:06 PM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

I would like to move my support to not allow the Gilbaugh apartments building to be converted to short term rentals. I am a part of a group Protect Astoria Housing. Again, this is the very least that needs to be done to remedy the housing crisis. I can't emphasize enough the importance that we as a community support the people that live and work here. In a relatively short time, STR's have caused a lot of problems here for people. There should be swift regulation/or banning of it because it has resulted in the destruction of the well being of locals-all over this country and the world, in fact. We can choose to not allow them at all. If a traveler wants to become a part of the local culture, there are far less destructive activities for them to participate in on their vacations. It has just gone too far!. Here's an idea; rent a hotel room!
There needs to be very strong regulation or elimination of STR's altogether-They've caused problems for social stability all over the world. Online rental platforms have caused the locals in small towns to lose their houses and apartments!. Numerous articles documenting this literally take seconds to find with a quick internet news search: A 2019 BBC report titled The holiday island where locals have nowhere to live. And from another 2022 article of the Greek Reporter: The explosion of Airbnb rentals means "soaring rents for families, doctors leaving the islands because they can't find a home, and professors and teachers sleeping in cars," I personally know 3 friends that are living in their cars right now in Astoria! So, we know there is a direct correlation between unaffordable rents and homelessness. I was lucky enough to get into the impossibly long waiting list of affordable apartments downtown at the mixed use-retail below-and apartments above- the Astor apartments. We need to build more affordable housing and stop with this nonsense of stigmatizing low income housing, of which- that occurred with the housing proposal at Heritage square. And this should go without saying-No apartment should sit empty for half the year when we are in a housing crisis.
I would respectively say, Please do your due diligence as city officials to end this local displacement. Because that's exactly what short term rentals are doing.
Sincerly, Brenda Harper
Astoria, OR 342 14th street

--

Brenda

From: Jacob Helligso <jakehelligso@gmail.com>
Sent: Thursday, November 9, 2023 12:50 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Regarding Public Hearing of Magie property
Hi Tiffany,

Here is my statement for the open hearing from the meeting last week.

Jacob Helligso
jakehelligso@gmail.com

To all Pertinent Parties:

In March of 2015, after Bob and Cindy purchased the empty lot next to mine, we started discussing plans to create a shared driveway to increase access to his properties and create off street parking for both of us. After going through the process of planning and getting our lots legally changed to accommodate the plan, the construction of the driveway was completed in Early 2017.

During our conversation around parking in 2016 we discussed the plan to move his properties into Short Term Rentals. I was in the process of renovating my own home and was excited by this idea as I had been considering doing a similar thing in my home. After looking at the city codes we mapped out potential parking spaces for both properties with the express intent to meet the city's parking requirements for Short Term Rentals.

At that time there were no permits required for a commercial property to be used as an STR, and was considered an outright use of his property. Recognizing this, Bob and Cindy had set up appropriate paperwork and went through the regulations to comply with the city's codes shortly after buying the land with plans to move all of the units over as work was completed.

Simultaneous to the creating parking, Bob and Cindy began planning and rehabbing the buildings to create a pleasant atmosphere for future guests starting with the two smaller buildings (1565 and 1569) as they needed less work and cost. We had ongoing conversations weekly around the project and even added additional lighting, pathway access, and landscaping for all three of his buildings.

It was a multiyear process for both of us and we continued having conversations leading up to the first two being opened and I began managing their STRs in 2021.

The work to the four plex was still ongoing at that point and as tenants moved out, we consulted on each unit's renovation as it became available and the necessary funding to furnish them and put in appliances was generated.

At no point during our often more than once a week conversation over 7+ years did this plan change from the original plan to have all of the units be STRs. Then the new regulations that were voted into place in summer of 2019 with "retroactive" status, potentially jeopardizing months of work and money, which by itself seems extremely suspect

considering the immense time lapse. Bob and Cindy once again, preemptively consulted with the city to ensure that we could continue with the rest of the units. They received confirmation that we could continue. In no way or form did the city indicate that the plan needed to be adjusted or additional paperwork be filed until a FULL 3 YEARS LATER when they chose to say that the confirmation that we received was "just an employee's opinion" after receiving an outside complaint.

Had the idea that the work we were doing leading up to the "retroactive" policy change in 2019 not be approved, we could have immediately closed the building for long term rentals.

During that almost three years span we thought the matter settled and had continued converting units in the building into STRs and were in process of purchasing additional furnishings and creating plans for necessary work that needed to be done in each unit as they became available.

Also, in that multi-year span there were delays as the pandemic had hit and we sheltered in place. First and foremost, we did not feel it was appropriate to remove renters during a crisis of that level. And materials for the work that still needed to be done could not be obtained.

Immediately after the city changed their minds about the ongoing project Bob and Cindy once again worked with them to obtain permission that had already been given, now for the third time, leading to further complaints by people uninvolved in the process and unfamiliar with any background information or the multistep processes that had already been done and put in place.

Finally, I would like to note that Bob and Cindy went above and beyond in regards to working with the city at every step. We often consulted the standards and he had many conversations with staff and always sought to be in good standing with the work being done to achieve his goals to the point of even attending city council meetings and actively engaging with the local political structure to invest in and improve our community. The truth is that working with the city leads to frequently moving targets (8 month after the fact "retroactive" policies and "employee’s opinions") and is slow to resolve things, frequently citing lost paperwork (due to a lack of digital record keeping) and being too busy to schedule things. Since all of this could have been addressed by the city at any point in 2019, it seems unreasonable to think that the work of the Magie's, myself, and all of the people they employed for the work across more than 3 years is now rendered useless. So much of the work and expense over more than 7 years of planning and implementation was to create a "more than rental unit" atmosphere with quality of work and products used, infrastructural developments (including a parking area that goes above city standards for all six unit), perishable supplies provided for guest use, remodeling, furnishings, wages and cleanings, paying for utilities, additional taxes paid to the city county and state... and the list goes on. I cannot even begin to account for the total cost but from my perspective as a manager of these units it is easily over $500,000 in additional cost that is not just "providing an adequate and safe rental unit."

Sincerely,

Jacob Helligso

From: Mary Hunter
To: Planning
Subject: Short term rental - furnishings (AP23-02)
Date: Thursday, November 9, 2023 2:38:44 PM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Hello,

I attended the meeting last week where both sides in the rental dispute made their case.

The owner indicated that he intended to present evidence that his purchase of furniture supported that they were short term rentals from the date of the furniture receipts. However, there are plenty of furnished long term rentals, and especially there are furnished medium-term rentals that are popular with tenants such as visiting nurses and coast guard.

Here are some examples from a few different sites, found in about 15 minutes of googling:

https://www.movoto.com/rental/1432-franklin-avenue-astoria-or-97103/pid_x6u605jmcmab/

https://www.movoto.com/rental/76-w-bond-street-astoria-or-97103/pid_jy308gu7itab/

https://www.zillow.com/homedetails/2004-Washington-Ave-N-Long-Beach-WA-98631/2062233635_zpid/

https://www.facebook.com/marketplace/item/808610451057349/

Mary Hunter
3356 Grand Ave, Astoria, OR 97103

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

MEMORANDUM • COMMUNITY DEVELOPMENT

TO: **Alan Rappleyea, Hearings Officer**

DATE: **November 16, 2023**

FROM: **Tiffany Taylor, City Planner**

SUBJECT: **Rebuttal Submittals regarding appeal AP23-02**

Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street.

Please note the attached REBUTTAL Submittals our office received by 4:00 p.m. on November 16, 2023:

- Appellants' Letter and Attachments (Kettleson, Kipp and Windus)
- Applicants' Letter and Attachments (Bob and Cindy Magie)

RECEIVED
NOV 16 2023
BY: tt/3:11pm email

Austin Kettleson
286 Lexington Avenue
Astoria, Oregon 97103

Andrew Kipp
461 Exchange Street
Astoria, Oregon 97103

John Windus
960 Franklin Avenue
Astoria, Oregon 97103

November 16, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, Oregon 97103

Re: Rebuttal to evidence submitted by applicant regarding the appeal of Gilbaugh LLC nonconforming use decision at 1555, 1557, 1559 & 1561 Exchange Street (AP23-02)

Dear Mr. Rappleyea,

Please accept the comments below in response to the evidence and testimony submitted by the applicants on November 9th, 2023.

Part A. **No Evidence of Compliance With Transient Lodging Parking Requirements**

The applicant's response to this appeal failed to show evidence that they met the minimum parking requirements necessary to lawfully operate a transient lodging business in the 4-plex before doing so became an unpermitted use.

Under the 2017 Astoria Development Code §7.100 (and current code), transient lodging facilities must have one off-street parking space for each bedroom. The 4-plex has eight bedrooms, and the two cottages have three bedrooms, requiring a minimum of 11 off-street parking spaces to use all three structures as transient lodging. To meet the minimum required off-street parking, applicants claim to have a right to occupy nine on-street parking spaces. The applicants claim that these nine on-street spaces, combined with the five off-street spaces in the

parking lot, meet the requirement. Yet critically, the applicants have provided no evidence demonstrating that their use of the nine on-street parking spaces is lawfully nonconforming.

- As mentioned in previous testimony, the addresses listed on the parking plan approved by the city (Appeal packet, page 9) are exclusively for the two cottages, not the 4-plex. However, even if the approved parking plan was meant to apply to the 4-plex (which it clearly is not), the plan shows **zero** on-street parking spaces. If the applicants had been permitted to use nine on-street parking spaces to operate their transient lodging business for all 11 bedrooms, then the on-street spaces would have been indicated on the approved plan. However, they are not. While the applicants have now submitted a new diagram as evidence that asserts a right to use on-street parking, this plan is not, and was not, approved by the City of Astoria. The applicants have provided no other evidence, such as variance or other documentation, demonstrating their right to use nine on-street parking spaces to support the lawful operation of their transient lodging business.

- In the applicants' application for verification for non-conforming use, they reveal that after the parking lot was initially constructed, the city notified them that they did not have a permit on file to construct the driveway and that, as constructed, the driveway was nonconforming because of an unsuitable pitch under ADA regulations (Appeal packet, page 114). The lack of a driveway permit on file for this work casts significant doubt that the applicants had ever received approval from the City of Astoria to construct the parking lot to support transient lodging use before it was constructed. Besides the recollection of a conversation alleged to have occurred 7 or 8 years ago, the applicants have provided no evidence whatsoever showing that the City of Astoria was even aware that they intended to convert the 4-plex to transient lodging use when the parking lot was constructed.

The applicant's claim that the mere existence of the parking lot shows that they intended to use the 4-plex for transient lodging is false. In fact, the applicants have provided no evidence whatsoever that the parking lot meets the minimum off-street parking requirements for 11 bedrooms of transient lodging, and its existence does not lend any support that transient lodging use had been intended in the 4-plex prior to January 1st, 2019, let alone had lawfully begun before that date.

Part B. No Evidence Demonstrating Investments Made Into the 4-Plex Were for Transient Lodging Use Prior to the Introduction of Restrictive Zoning

While it's clear that the applicants have invested significant resources into restoring the 4-plex as a historic property, they have failed to provide any evidence showing the intended outcome of that investment was short-term vacation rentals until that use became unlawful.

- The applicants claim that repairs made to the structure (including stabilizing the foundation) were exclusively in support of converting the building from long-term rental apartments into transient lodging. However, it's unclear how short-term guests (renting the apartment for a handful of nights while on vacation) would be aware of or concerned with the structural condition of the foundation. Instead, it's reasonable to assume that any major repair work done to the building's structure, including the foundation, siding, windows, roof, etc., was completed to address long-deferred maintenance and support its use for any permitted purpose, including continued use as a multi-family residential dwelling. The reasonable assumption that a property owner would want to protect their recently acquired investment by addressing long-deferred maintenance conflicts with the applicants' claim that, absent their intent to convert the building to transient lodging, they would have let the property they had purchased for $375,000 continue to deteriorate.

- The applicants claim that the materials and finishes they choose when renovating the building would apply exclusively to short-term vacation rentals. However, the applicants assert, without providing evidence, that the standard to which a property is renovated dictates its intended use. This is not the case. Property owners renovate and then rent out apartments at various price points, including at the high end, all the time. High-end rentals often contain luxury finishes or are restored to appeal to a higher-income renter. Likewise, short-term rentals in popular vacation destinations like Astoria often see frequent use and rapid turnover during the high season, sometimes from large groups. Through noise complaints and other nuisance violations, it's well documented that visitors frequently use short-term vacation rentals to host large and rowdy parties. Given the frequent hard treatment and heavy use, if a property owner were planning to renovate a property for short-term vacation rental use, it would be logical to use durable, simple finishes and cost-effective furniture that could tolerate the beating that short-term vacation rentals are likely to incur. Looking at these straightforward examples, one can see that the applicants' assertion that only short-term vacation rentals get high-end restorations and long-term rentals receive only utilitarian finishes is simply false.

- The applicants cite the furniture purchases as evidence of intent to convert the units in the 4-plex to transient lodging. Setting aside the evidence the applicants provided showing that the purchases had occurred after transient lodging was no longer lawful use, the claim that these purchases only apply to short-term vacation rentals is also inconsistent with rental market practices. Apartments are frequently available for rent long-term as

furnished units. A quick internet search will reveal several furnished listings available for rent to long-term tenants (long-term being defined as periods greater than 30 days). Additionally, the applicants cite several other purchases, such as security cameras and smart locks, claiming that they support their intention to convert the 4-plex to transient lodging. However, these purchases were all made in 2022 and 2023, more than three years after January 1st, 2019, when transient lodging was no longer a lawful use. The cited purchases (made years after transient lodging was no longer permitted) simply do not support their claims that transient lodging had been intended or had actually begun prior to it becoming prohibited.

Part C. Transient Lodging Use Did Not Begin Until Almost Two Years After It Was a Prohibited Use

The applicants clearly admit that transient lodging had not begun in the 4-plex until December 1st, 2021, nearly two years after that use was no longer permitted. The applicants claim that transient lodging was not possible before those dates because of construction and other maintenance issues in the building. Yet, they continued to sign leases and collect rent from long-term tenants.

Perhaps the applicants thought it would be more profitable to continue to rent the 4-plex units on a long-term basis until their construction projects were finished and would be able to fetch higher nightly rates. However, the Astoria Development Code regulating nonconforming use is not concerned with the ideal timing to ensure maximum profits from any particular use. Rather, the Astoria Development Code says that to be considered nonconforming use, that use must have begun prior to when the restrictive zoning came into effect. The applicants readily admit it did not.

It's also possible that the applicants thought they were free to convert the apartments in the 4-plex from long-term rentals into short-term rentals and back again as their whims or desire for profits dictated. They were–and are–not. The Astoria Development Code on nonconforming use says that a nonconforming use status is immediately lost when changed to a conforming use or when use is discontinued for 12 months.

Part D. Conclusion

We do not dispute that the applicants have invested significant resources into restoring a long-neglected historic property. We congratulate the applicants for their accomplishment and for doing so in a way that is consistent with the Astoria Development Code requirements for historically designated properties.

However, the evidence, or lack thereof, does not show the applicants' intent to operate short-term vacation rentals in the 4-plex until almost two years after it was prohibited. The building was used exclusively as long-term rental housing at the time of purchase in 2015 and until the end of 2021. There is no evidence that the applicants had any intent to do anything but continue to rent the 4-plex apartments to long-term tenants until December 1st, 2021. It wasn't until then, almost two years after it became unlawful (and coinciding with a period of high demand for vacation rentals), that the applicants took action to convert the 4-plex to transient lodging use. Because there is ample evidence showing the applicant's intent to operate short-term vacation rentals after December 1st, 2021, it stands to reason that, had that use begun prior to January 1st, 2019, the evidence would also be readily available in the form of receipts, plans, permits, or other materials. However, there is none.

Finally, we want to make it clear that we filed this appeal not because we have anything to gain personally from winning it but because we saw the importance of standing up to protect long-term housing in Astoria for the people and families that live here year-round. The Astoria City Council knew how important this goal was when it passed the 2019 code amendments with the express purpose of preventing the conversion of long-term housing into short-term vacation rentals (precisely what has happened here). We believe the city made a serious error when it failed to uphold its own code meant to preserve housing stock for its residents amid a crippling housing crisis. By reversing the city's decision, we hope that the four long-term rental apartments in the 4-plex will continue to do what they have always done and provide much-needed homes to Astorians for years to come.

Respectfully,

Austin Kettleson
Andrew Kipp
John Windus

RECEIVED
NOV 16 2023
BY: 3:45pm/tt

November 16, 2023

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal

Dear Hearings Officer Rappleyea:

This letter responds to issues raised during the first open record period:

1) **Installing five new off-street parking spaces was two more than necessary to serve the cottages.**

As explained in our previous letter, residential uses within the Gilbaugh pre-dated the existence of the code so it did not require any of the off-street parking identified within the 2017 code to continue. Contrary to Mr. Kearns assertion, parking for a motel use required 1 space per guestroom. Collectively, the cottage units include 3 bedrooms which would require 3 off-street spaces. This means that there were two extra spaces available to serve short term tenants within the Gilbaugh. These two additional off-street spaces (allowed in non-residential zones) along with the on-street spaces provided parking amenities sufficient to satisfy six short term dwelling uses.

Mr. Kearns argues that the off-street parking is owned by Mr. Helligso and not us. As we have always explained, the land for the parking area was purchased in May of 2015 after closing on the Gilbaugh property in late March of the same year. See Rec p 112. This land was purchased to provide parking for our project as discussions with the city necessitated additional parking for short term use. We were only following the requirements as they were set forth by City staff. When we purchased this lot we understood we were buying a C3 lot as initial paperwork dictated. By the time we neared closing, a change to R3 (for this narrow band -initiated by the neighbors -the Colonna's north of Helligso) had been processed and at closing the lot we had bought was R3. The City processed that request acknowledging that this extra parking would serve short term uses on our entire property.

Once the land was purchased, we worked with our neighbor (Jacob Helligso) to optimize usage of this lot for mutual parking for short-term rentals (see Figure 1 below). Since our lot and Jacob's lot were of odd shape, we decided to swap land; Magies getting Helligso's back yard (which was closer to our buildings -C3) allowing closer parking; Magies giving up land adjacent to Helligso's house where parking was better suited for him. On the original parking plan Helligso had two spaces but later modified his garden area to provide an additional space before he applied for and received his homestay lodging license (required for R3) after massive renovations of his home was completed in 2021. Once the driveway was completed in 2017 we

initiated our short-term business license. Final count was 5 off street for Magie's and 3 for Helligso.

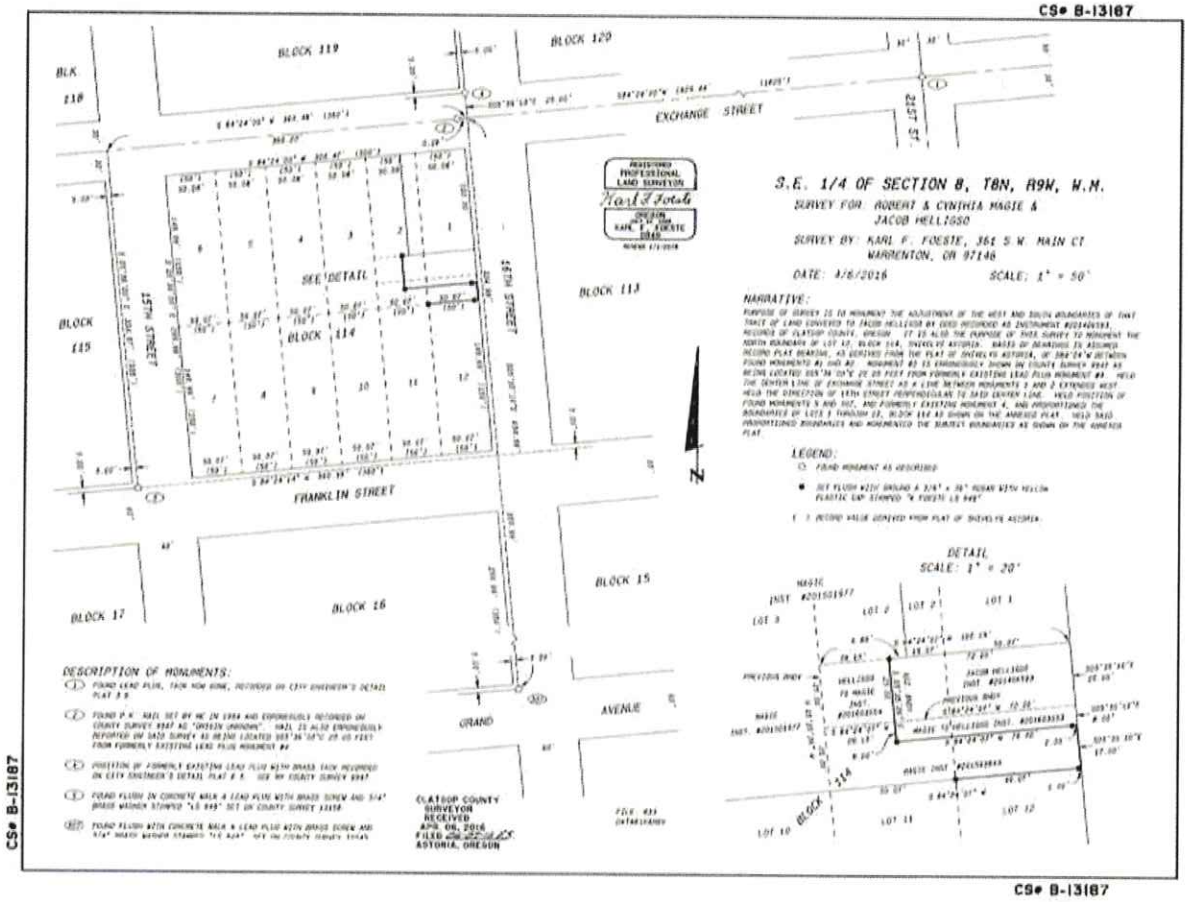


Figure 1. Survey from 4/6/2016 (recorded with the county) showing property swap between Magie and Helligso to maximize STR off street parking and access to respective properties. (See also deeds attached memorializing the property transfer.)

Contrary to Mr. Kearns contention, we are not using someone else's property to provide parking. We obtained title to this property and we own it.

2) **The expenditures for the Fourplex were necessary to a short term rental use and were significant.**

Attached is a spreadsheet setting forth all of the expenditures necessary to short term rent the Gilbaugh Building by date. Appellants suggestion that the exterior building rehabilitation costs were necessary to make the building habitable is false; all four units were occupied when we purchased and could have continued to be occupied in the existing building condition. As we have explained, no reasonable home owner would make the restoration choices that we made for long-term rentals. The exterior was lovingly restored in order to make it attractive as short

term rentals and not to supplement the City's affordable housing supply (as some have suggested.) For this reason, the exterior improvement costs (all expended before January 1, 2019) should be considered as part the expenditures made for short term rentals. As the attached expenditure sheet shows, taken in total, we expended 75% of the costs necessary to short term rent the Gilbaugh units before July 2019, when the City first started regulating residential units based on the short or long term distinction.

Second, if you exclude the exterior renovations, the expenditures made for short term rentals before July 2019 make up 45% of the total costs. Again, these expenditures remain significant.

3) Any suggestion of special treatment by city officials is absolutely false.

We wholeheartedly reject any suggestion that anyone at the City has given us favorable treatment or that we have otherwise bent the rules to our benefit.

In 2015/2016, long before he was the Mayor, we reached out to Sean Fitzpatrick (a housing provider in Astoria with multiple rental properties) to ask his opinion of our perspective purchase and use of the Gilbaugh property and houses for short term rentals. Through his rental portfolio Sean obviously had the knowledge and experience that novices like ourselves needed to consult to make the most educated decision about such an important investment as we were going all in with this project.

I asked Sean if we could pay him to take the time to look over our purchase agreement and he mentioned his consulting rate was expensive, but he was working with Clatsop Community College's CEDAR (Clatsop Economic Development Resource) program to help mentor small businesses and that we could work through that program at no charge to us. We obviously agreed and talked with him about this property in his professional capacity. We discussed various ways to pay for the work needed. This included subdividing the two houses off and selling them to pay for the work needed for the building restoration, that he considered buying the property for long term rentals but had decided that too much work needed to be done to make it cashflow and passed on the property, and finally I discussed our experience with a short-term rental at our primary residence and that this was properly zoned for this type of use and that it could help us make the entire restoration/renovation possible and afterwards still cash flow. Sean saw the merit in the last option and I was very happy to later tell him that I was able to buy the adjoining lot to create the off street parking that Kevin Cronin suggested to make our STR's legal from the city's standpoint.

When false claims about our intent with our property arose, we reached out to Sean Fitzpatrick to provide proof of our intent. Sean supplied a letter that professionally recounted our interaction when he was working as a mentor for Clatsop County's CEDAR program for us and simply that. Sean drafted this email without any direction or advice from us or our attorney. It simply recounts the details as they happened. We are not alone in seeking and receiving advice from Sean Fitzpatrick as he has helped other new local housing providers learn to navigate our

state's difficult and ever changing landlord tenant laws to provide both the provider and the tenant with the best possible experience.

The fact that Sean Fitzpatrick was on planning commission years later when the code was changed to prohibit new STR's without any special notice to us should attest that even though we consulted him on rental property questions, we have no special relationship with the Mayor. Astoria is a small town with business owners who work together to make their businesses better. Mayor Fitzpatrick appointed Cindy to planning commission not due to any sort of special treatment or favoritism but respects her decision-making abilities from being a successful local business owner, housing provider and pragmatic scientist that makes decisions based upon fact, reason and the City's code.

We met with City staff and Mayor Fitzpatrick last spring so that we could explain our perspective in much the same way as we have done here. After that meeting, the Community Development Director issued a decision, providing notice and allowing for an appeal. Again, there was nothing inappropriate or unfair about that meeting or the decision that resulted. Again, it reaffirmed the multiple times that the City has previously found that our property contains six units that can accommodate short term rentals.

4) Special treatment for the Appellants resulting from the newspaper misrepresenting the facts

Since accusations of special treatment were part of this appeal, we would like to point out some facts about of the Appellants and their relationship to the Astorian (newspaper), whose articles have misrepresented our intentions and fomented unfounded ire against us. Our ex-tenant Austin Kettleson has been affrontive, aggressive, litigious and personally threating. Until this appeal we had not met Andy Kipp or John Windus. What we now know they are close friends that share administration on a facebook account that has continued to slander my wife and myself with false claims and has a large following of supporters. We know now that all three of these so called housing advocates did not live in this community prior to 2018, currently own their own homes and do not provide housing to others. We know that the newspaper which has consistently falsely reported/omitted facts that support our project to incite public resentment has some sort of relationship with John Windus who worked in media before living in Astoria and (in 2018) sold him a house adjoining the paper's property. This house he later converted to a short term rental in 2021 and has somehow got away without providing any off-street parking to serve this use.

Additionally, the Astorian appears to have an agenda that serves their friends and ex-employees and will do anything to sell newspapers, even at the slandering of well-intended citizens, volunteers and true supporters of housing in our community (everyone knows this is typical about media but is really sucks when it happens to you). This perversion of facts has cost us a lot of time and money we do not have and we feel deeply harassed. We believe that this misrepresentation and harassment by the media contributed to the City's failure to stand by its earlier authorizations placing us in the situation that we are now in.

5) The claim that there is a dire lack of long-term rentals is overstated.

The testimony submitted by opponents to this appeal have focused on the need for affordable housing for working class individuals in the service industry repeatedly referring to it as a "crisis". A quick visit to Zillow and Apartments.com (not used by some housing providers, thus those vacancies are not reported here) on 11/13/2023 revealed that there are currently many units available within Astoria city limits. We have also noticed a reduction of employed qualified tenants seeking housing since the pandemic with our last 4 vacancies taking 2 to 6 months to fill. We count ourselves as members of the community and we support the people who live and work here. We do so by providing 9 long term and 6 short term rentals throughout the City. These long-term rentals are made possible, in part, through short term rentals at the Gilbaugh as we have updated and maintained by the use of debt. We have a greater understanding of the status of housing in the area as our business is to provide housing. The appellants do not provide housing and bold statements about us and other housing providers prove that they do not fully understand the market or what is required to do so.

Rentals available 11/13/2023

Astoria		**Price Range**	
Type	Units	Min	Max
2 Bedroom	6	1450	1695
1 Bedroom	4	1375	1500
Studio	2	1095	1250
Warrrenton			
2 Bedroom	4	1400	1450
3 Bedroom	1	1950	2995
1 Bedroom	1	718	-
Studio	1	895	-

6 houses were also listed for rent in Astoria
66 market units under construction in Astoria
2 new apartment complexes, 96 total units will soon be opening in Warrenton.
Another new development of affordable housing next to Home Depot built this year that has approximately 40 doors of subsidized and operated by Northwest Oregon Housing Authority (NOHA).

(not sure whether to list the Astoria motel recently purchased by the county to supply housing for Clatsop Community Action clients, A large affordable housing project being developed downtown called Copland Commons -maybe 50 doors. 40 affordable units just completed at the Merwyn Project. All of these are new or relatively new and supplement the existing stock that was deemed adequate in the last -2018-housing study) (Astoria population is 10,500 and

Warrenton population is 6400. Also the 2018 countywide housing study reported that Astoria was not underhoused.)

Conclusion

In conclusion we would like to reiterate that we have acted in good faith, transparency and compliance with the city regarding and our short-term rental project. We are people who value our integrity and honesty in all things. Everything that we have put forward as part of this proceeding has been the truth. We have always been up front about our intent to short term rent as soon as the units were ready to do so. We received approval of our project multiple times from the City and from various staff. We have not received special treatment from anyone and have worked very hard and given everything to a project we thought would be a good investment for us and the community while helping to beautify a previously blighted area of the city. This has been one project since the beginning (both the bank – commercial lending and the city have viewed this as a 6-plex on one tax lot) and viewed through that lens our progression and timelines make sense. We have provided adequate proof and provided testimony from others that we either consulted with or worked with of our intentions and progression of development of STR's in the Gilbaugh building. Our family and some friends have always known our intent, but no we did not talk with our very disgruntled tenant about this. And although he resided in this building, he does not own it or have the right to dictate what we do with our investments, time and money and cannot decide how we use our building. We are not required to gain his approval. As novice developers, we followed what was instructed by the city staff over the years, if they are wrong then whom else are citizens supposed work with or gain knowledge or approval from?

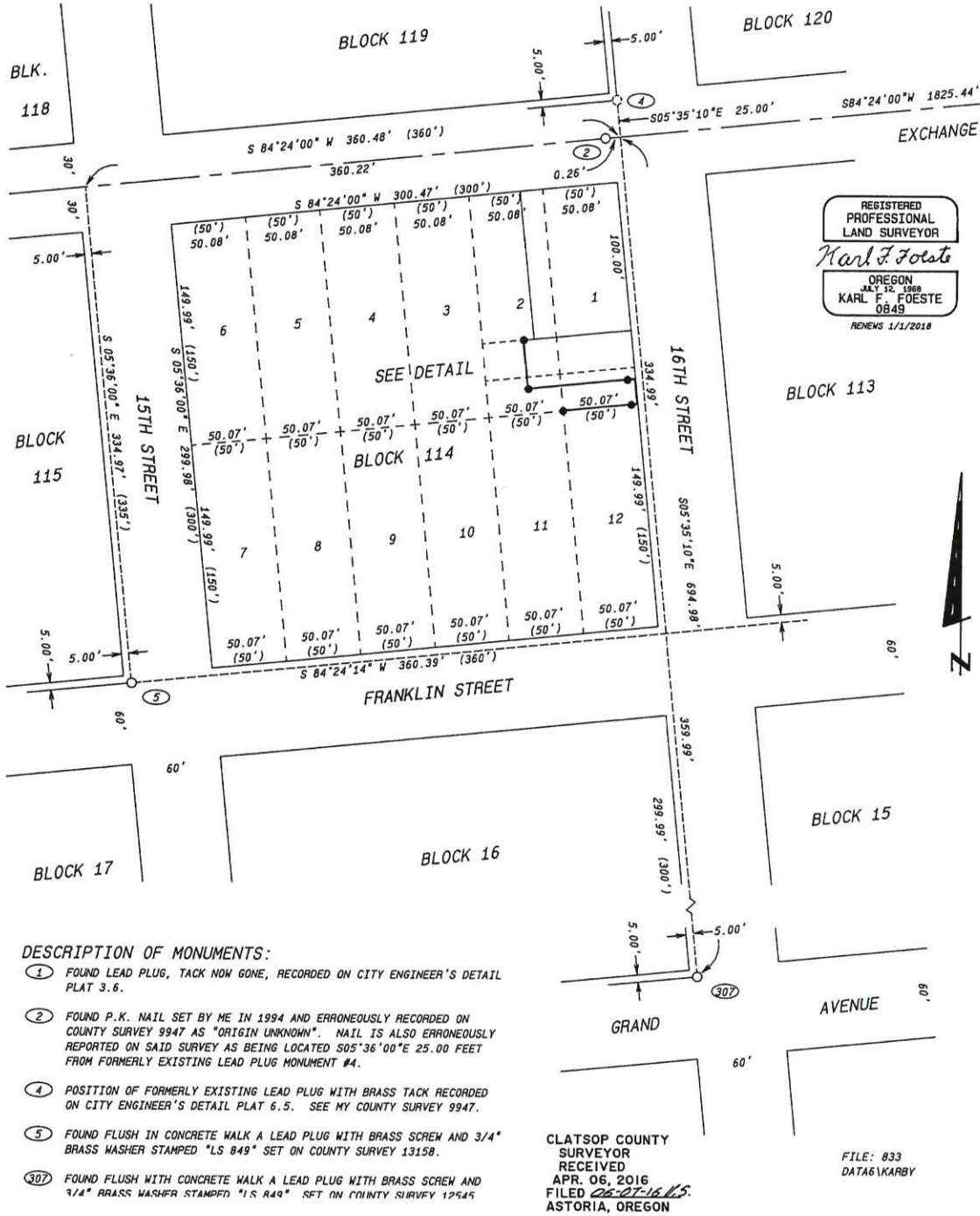
Mr. Rappleyea, we ask that you deny this appeal and uphold the multiple city approvals and our good faith efforts and significant expenditures resolving this matter once and for all. Before the code changed in 2019, we could freely transition between long term and short-term rentals as the market and the community needs and as this commercial property has done for over 100yrs. This was our outright use before 2019. We should be free to exercise that right without constraint. We did not need any formal land use approval to continue but rather were forced in response to an enforcement action.

We agreed to go through the process of a hearings officer to further prove no special treatment occurred with the city or elected officials. We believe that the facts, when viewed in an independent setting, also show that we satisfy the code requirements as the City has already concluded multiple times. Please independently uphold the integrity of the city and elected volunteer officials who are being unfairly accused of bias. Acknowledge that all of our actions support a finding that short term rental of six dwelling units can continue by denying this appeal.

Sincerely,

Bob and Cindy Magie

CS# B-13187



REGISTERED PROFESSIONAL LAND SURVEYOR
Karl F. Foeste
OREGON
JULY 12, 1968
KARL F. FOESTE
0849
RENEWS 1/1/2018

S.E. 1/4 OF SECTION 8, T8N, R9W, W.M.

SURVEY FOR: ROBERT & CYNTHIA MAGIE & JACOB HELLIGSO

SURVEY BY: KARL F. FOESTE, 361 S.W. MAIN CT. WARRENTON, OR 97146

DATE: 4/6/2016 SCALE: 1" = 50'

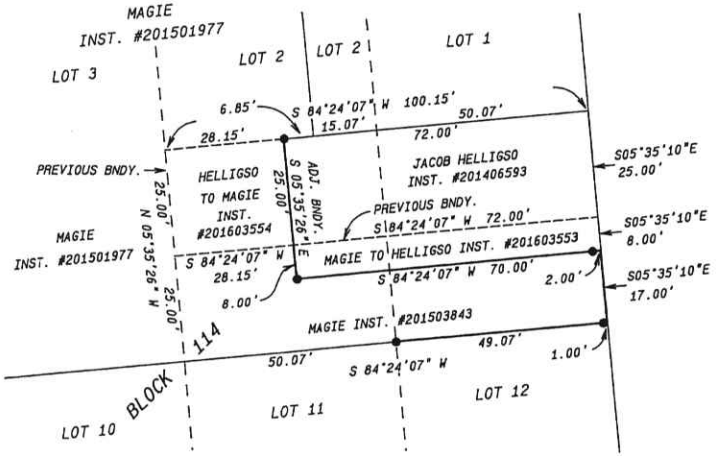
NARRATIVE:

PURPOSE OF SURVEY IS TO MONUMENT THE ADJUSTMENT OF THE WEST AND SOUTH BOUNDARIES OF THAT TRACT OF LAND CONVEYED TO JACOB HELLIGSO BY DEED RECORDED AS INSTRUMENT #201406593, RECORDS OF CLATSOP COUNTY, OREGON. IT IS ALSO THE PURPOSE OF THIS SURVEY TO MONUMENT THE NORTH BOUNDARY OF LOT 12, BLOCK 114, SHIVELYS ASTORIA. BASIS OF BEARINGS IS ASSUMED RECORD PLAT BEARING, AS DERIVED FROM THE PLAT OF SHIVELYS ASTORIA, OF S84°24'W BETWEEN FOUND MONUMENTS #1 AND #2. MONUMENT #2 IS ERRONEOUSLY SHOWN ON COUNTY SURVEY 9947 AS BEING LOCATED S05°36'00"E 25.00 FEET FROM FORMERLY EXISTING LEAD PLUG MONUMENT #4. HELD THE CENTER LINE OF EXCHANGE STREET AS A LINE BETWEEN MONUMENTS 1 AND 2 EXTENDED WEST. HELD THE DIRECTION OF 15TH STREET PERPENDICULAR TO SAID CENTER LINE. HELD POSITION OF FOUND MONUMENTS 5 AND 307, AND FORMERLY EXISTING MONUMENT 4, AND PROPORTIONED THE BOUNDARIES OF LOTS 1 THROUGH 12, BLOCK 114 AS SHOWN ON THE ANNEXED PLAT. HELD SAID PROPORTIONED BOUNDARIES AND MONUMENTED THE SUBJECT BOUNDARIES AS SHOWN ON THE ANNEXED PLAT.

LEGEND:

- ○ FOUND MONUMENT AS DESCRIBED.
- ● SET FLUSH WITH GROUND A 5/8" x 36" REBAR WITH YELLOW PLASTIC CAP STAMPED "K FOESTE LS 849".
- ( ) RECORD VALUE DERIVED FROM PLAT OF SHIVELYS ASTORIA.

DETAIL
SCALE: 1" = 20'



DESCRIPTION OF MONUMENTS:

(1) FOUND LEAD PLUG, TACK NOW GONE, RECORDED ON CITY ENGINEER'S DETAIL PLAT 3.6.

(2) FOUND P.K. NAIL SET BY ME IN 1994 AND ERRONEOUSLY RECORDED ON COUNTY SURVEY 9947 AS "ORIGIN UNKNOWN". NAIL IS ALSO ERRONEOUSLY REPORTED ON SAID SURVEY AS BEING LOCATED S05°36'00"E 25.00 FEET FROM FORMERLY EXISTING LEAD PLUG MONUMENT #4.

(4) POSITION OF FORMERLY EXISTING LEAD PLUG WITH BRASS TACK RECORDED ON CITY ENGINEER'S DETAIL PLAT 6.5. SEE MY COUNTY SURVEY 9947.

(5) FOUND FLUSH IN CONCRETE WALK A LEAD PLUG WITH BRASS SCREW AND 3/4" BRASS WASHER STAMPED "LS 849" SET ON COUNTY SURVEY 13158.

(307) FOUND FLUSH WITH CONCRETE WALK A LEAD PLUG WITH BRASS SCREW AND 3/4" BRASS WASHER STAMPED "LS 849" SET ON COUNTY SURVEY 12545

CLATSOP COUNTY SURVEYOR RECEIVED APR. 06, 2016 FILED 06-07-16 W.S. ASTORIA, OREGON

FILE: 833 DATA6\KARBY

CS# B-13187

L-492

H.O. Record Pg# 367

CS# B-13187

Recording Instrument #: 201603553
Recorded By: Clatsop County Clerk
# of Pages: 3 Fee: 57.00
Transaction date: 5/19/2016 11:40:31
Deputy: nstethem

Jacob Helligso
539 16th Street
Astoria, Oregon 97103
Grantor

Robert J. Magie and Cynthia D. Magie
P.O. Box 532
Astoria, Oregon 97103
Grantee

After Recording, Return To:
Heather Reynolds, Attorney at Law
P.O. Box 145
Astoria, Oregon 97103

Please Send Tax Statements To:
Robert J. and Cynthia D. Magie
P.O. Box 532
Astoria, Oregon 97103

BARGAIN AND SALE DEED

KNOW ALL BY THESE PRESENTS that **Jacob Helligso**, hereinafter called Grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto **Robert J. Magie and Cynthia D. Magie**, Husband and Wife, hereinafter called Grantee, and unto Grantee's heirs, successors and assigns, all of that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, situated in Clatsop County, State of Oregon, described as follows, to-wit:

See Exhibit A attached hereto and by this reference incorporated herein.

Situs Address: A portion of 539 16th Street, Astoria, Oregon 97103
Tax Account #: 80908DC18000, Acct ID #23172

To Have and to Hold the same unto Grantee and Grantee's heirs, successors and assigns forever.
The true and actual consideration paid for this transfer, stated in terms of dollars is **$-0-**. This is a reciprocal lot line adjustment with reciprocal deeds between the parties.

In construing this deed, where the context so requires, the singular includes the plural, and all grammatical changes shall be made so that this deed shall apply equally to corporations and to individuals.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTION 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 19 day of May, 2016.

STATE OF OREGON, County of Clatsop) ss.

This instrument was acknowledged before me on May 19, 2016 by Jacob Helligso

OFFICIAL STAMP
BECKY L NELSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 946189
MY COMMISSION EXPIRES JANUARY 11, 2020

NOTARY PUBLIC FOR OREGON
My Commission Expires: 01-11-2020

May 10, 2016

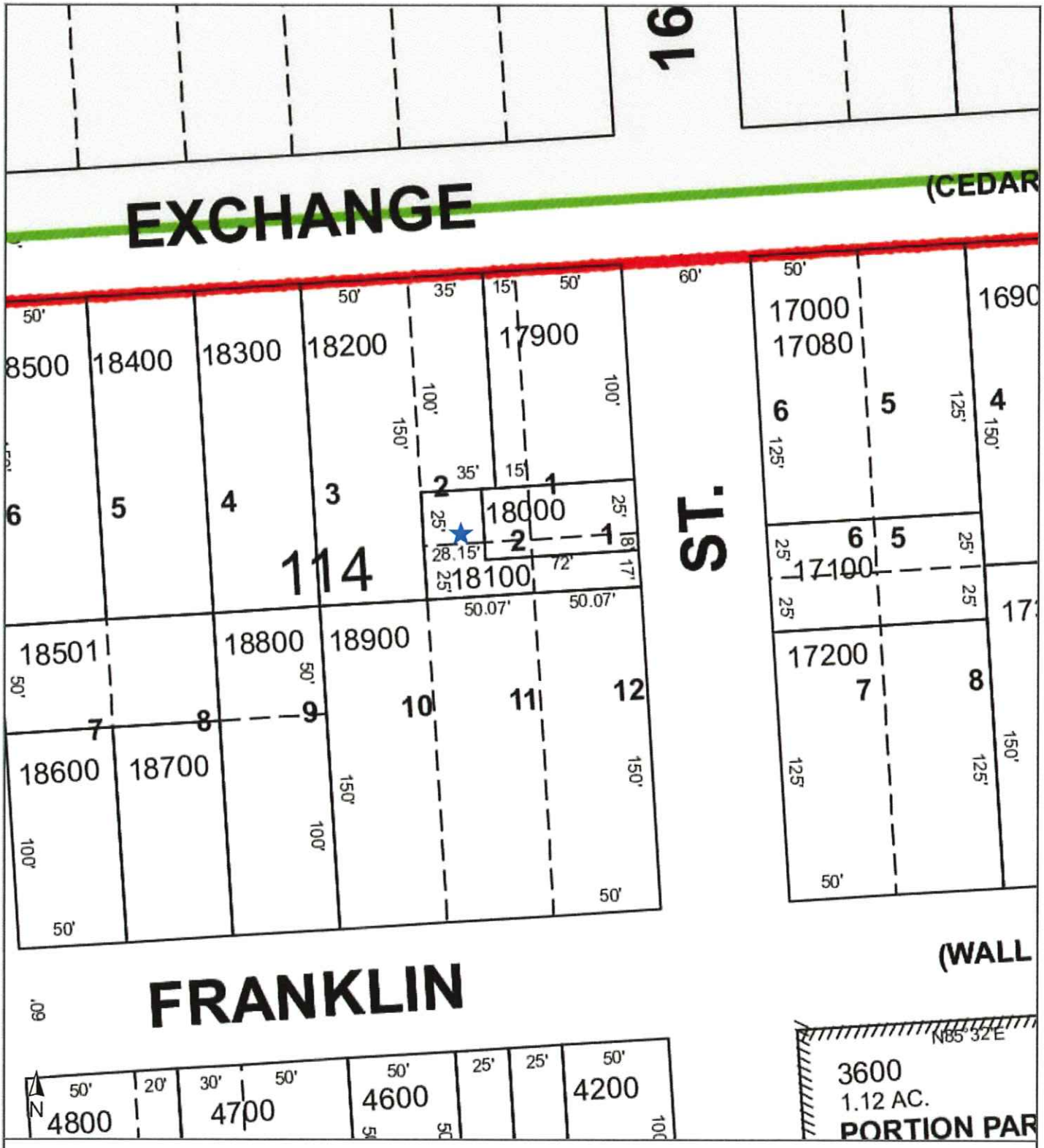
DESCRIPTION OF A TRACT OF LAND TO BE CONVEYED
BY JACOB HELLIGSO
TO ROBERT J. MAGIE AND CYNTHIA D. MAGIE

A tract of land in the County of Clatsop, State of Oregon, described as follows:

The west 28.15 feet of the north 25 feet of the south 50 feet of Lot 2, Block 114, in the City of Astoria, County of Clatsop, State of Oregon, as laid out and recorded by John M. Shively and later established by decree of the Circuit Court of the State of Oregon for Clatsop County.



Renews 1/1/2018



TICOR TITLE COMPANY

ParcelID: 23173
Tax Account #: 80908DC18100
, Astoria OR 97103

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Renovations for Converting 4 Gilbaugh Units to Full Time Short Term Rentals

Pre July 2019

Date	Payee	Description	Approx cost
5/15/16	Handyman	Carpet and linoleum removal and wood floor prep for 1557 and finish work	$2,600.00
6/14/16	J&J hardwood	restoration of original fir floors unit 1557	$2,256.00
1/1/17	Various	Driveway - creation of off-street parking to accommodate 11 bedrooms for short term rental use	$19,479.00
9/1/18	Handyman 2	Demo and wood floor prep for sleeping room, landing and 1559 and finish work	$4,200.00
10/1/18	Handyman	1559 kitchen reconfiguration, bathroom renovation, acoustic tile removal (replastering) painting, plumbing to relocate water heater	$45,441.00
10/1/18	J&J hardwood	restoration of original fir floors unit 1559	$2,992.00
10/1/18	Handyman	strip and prep sleeping porch and landing	$1,600.00
11/1/18	J&J hardwood	restoration of original fir floors unit stair landing and sleeping porch	$2,367.00
3/6/19	Handyman	1561 kitchen remodel, build custom cabinets and counter top, wainscoting in kitchen and bath, materials, plumbing	$11,000.00
		Subtotal of STR-supported specific elements	**$91,935.00**
6/18-6/19	Various	Ext. renovation including stabilizing foundation, replacing siding, and restoring windows (accomplished only in anticipation of STR use)	$250,567.00
		Total spent for converting units to full time STR before code change in July 2019 (retroactive to Jan 2019)	**$342,502.00**

Post July 2019

12/13/19	Handyman	construct retaining wall for rear parking	$870.34
12/13/19	Handyman	Remodel - frame out and drywall basement for STR storage	$924.00
6/6/20	Handyman	1555- Remodel, remove old top sand and refinish countertop, build and install new in kitchen and install, caulk new bathroom paneling	$5,000.00
3/1/21	West River Const.*	Build fence to prevent foottraffic of guests from neighbors driveway	$4,387.63
11/1/21	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1555	$25,000.00
3/1/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1561	$25,000.00
3/15/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1557	$25,000.00
8/5/22	Handyman	Installation of decibel, temperature and humidity meters in 1555, 1557, 1559, 1561	$300.00
10/22/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1559	$25,000.00
		Total spent for converting units to full time STR after code change	**$111,481.97**

*The appellant, Austin Kettleson's company, he did not complete the work as bid but we paid him anyway but had to pay someone else to finish the work.

Total Excluding Exterior $203,416.97

Ratio of improvements before July 2019 to the total excluding exterior: 1:2.1 or 45% of the total cost of improvements expended before 7/19

Total Including Exterior $453,983.97

Ratio of improvements before July 2019 to the total including exterior: 1:1.3 or 75% of the total cost of improvements expended before 7/19

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

MEMORANDUM • COMMUNITY DEVELOPMENT

TO: **Alan Rappleyea, Hearings Officer**

DATE: **November 27, 2023**

FROM: **Tiffany Taylor, City Planner**

SUBJECT: **Additional Submittals regarding appeal AP23-02**

Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street.

Please note the attached Additional Submittals our office received by 4:00 p.m. on November 27, 2023:

- Applicants' Final Argument (Carrie Richter, attorney, on behalf of Bob and Cindy Magie)

RECEIVED
NOV 27 2023
BY: In person TA

Bateman Seidel

Carrie A. Richter
crichter@batemanseidel.com
www.batemanseidel.com
Telephone DID: 503.972.9903
Facsimile: 503.972.9043

11/27/2023

VIA EMAIL

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal
Applicant's Final Written Argument

Dear Hearings Officer Rappleyea:

This firm represents the applicants Bob and Cindy Magie, the principles of Gilbaugh LLC, which owns the Gilbaugh building, the subject of this appeal. By way of introduction, it is important to recall how this case started. The Magies did not ask the City to take this matter up in the first instance. Rather, the Magies offered the City an explanation for their use of the Gilbaugh building solely in response to an enforcement action that the City pursued. The Magies were perfectly happy to continue renting units within the Gilbaugh fourplex, for short or long-term use, as the building had been originally constructed, had always been used and as the City had, on more than one occasion, blessed as being permitted. For the reasons set forth in greater detail below, the Hearings Officer should affirm the City's previous approvals.

The Controlling Regulatory Framework

As the Appellant's attorney correctly notes, ORS 215.130, governing nonconforming uses applies only to counties and not to cities. *Hood River Sand, Gravel and Ready Mix v. City of Mosier,* 24 Or LUBA 381 (1993). Cases considering non-conforming uses relying on ORS 215.130 have no relevance to how non-conforming uses are treated in Astoria. Rather, this matter should be viewed strictly under the nonconforming use requirements as set forth in the Astoria Development Code (ADC).

In Astoria, the regulation controlling non-conforming uses provides:

> "3.160 NONCONFORMING LOTS, USES AND STRUCTURES
>
> Purpose. Within the zones established under this Code, there existing *[sic]* lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It

> is the intent of this Section to establish requirements that govern the future use of such nonconformities."

The regulations that govern future operation of nonconforming uses is set forth in ADC 3.180 and they relate solely to expansion, change or discontinuance, which are discussed in greater detail below. Assuming that none of these three circumstances has occurred, a nonconforming use is allowed to continue. This conclusion is reinforced by the definition of "nonconforming use" set forth in ADC 3.160 which provides:

> "a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."

Whether the use was lawful before the new code was passed requires identifying and describing the "use." The term "use" is defined in ADC 1.400 to include:

> "USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.
>
> USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun."

The Nature of the Use, when it First Occurred, was Transitional Residential Without Any Tenancy Timing Limitations and Should be Allowed to Continue Accordingly

The Magies have established that the Gilbaugh Building was constructed in the 1920s to include the same four residential units that exist today. The record reflects, and no party disputes, that it was located across the street from the hospital in order to provide temporary accommodation for traveling doctors or nurses. Rec 131. Since that time, the fourplex has continued to provide residential accommodation with no concern for the length of the stay, whether it be for days or for years. The record reflects that there were renters living in all four of the units when the Magies first purchased the property in 2015. And transient rental uses have continued through the present, with the Magies renting to travelling nurses or Coast Guard members for short-stays, sometimes for a couple of months or by the week, or for longer periods. Rec 1.

The City adopted its first zoning code in 1961. See attached.[1]

[1] Although it is not controlling since the Gilbaugh transitory use predates any regulatory restrictions imposed by the code, the evolution of short term rental regulation in Astoria may be of interest. In 1961, "motels" and "hotels" were permitted outright within the C3 zone, whereas a

"dwelling unit," including multifamily, was only conditionally allowed. In 1961, a "motel" was defined as:

> "A building or group of buildings on the same lot containing guest units with separate entrances and consisting of individual sleeping quarters, detached or in connected rows, with our without cooking facilities, for rental to transients."

A "dwelling structure" was only allowed as a conditional use and the term "dwelling unit" was defined to include:

> "An independent living unit within a dwelling structure designed and intended for occupancy by not more than one (family and having its own housekeeping and kitchen facilities. Hotel, motel, rooming and boarding units which are used primarily for transient tenancy shall not be considered as dwelling units."

The term "transient" was not defined and did not impose any quantifiable limitation on the duration of a stay.

The regulations in place from 1992 through 2018 identify "motel / hotel" and "multi-family dwelling" as outright permitted uses within the C3 zone. However, the terms "motel" and "hotel" were given much more barebones definitions: "a building in which lodging is provided for guests for compensation." Rec 183. Although the term "transient lodging facility" does appear in the 1992-2018 code in reference to the definition for an "inn," a definition of this term appears for the first time as part of the adoption of Ordinance No 19-07 in 2019 and it provides, in relevant part:

> "Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn,....."

If the Gilbaugh units were first occupied with transient units between 1992 to 2018 subject to the City's zoning standards applied, the use would be as a "motel."

The regulation of short-term rentals was nonexistent when the Magies started their work on the Gilbaugh in 2015. Occupancy taxes for short term rentals was added in 2016/2017, homestay lodging licenses (only in the R zones) were discussed in 2019 and then the retroactive 2019 code amendment for all short term rentals followed. At this time short term rentals were not looked at as the ill-informed cause of the "housing crisis" that is it has been for the last couple of years but a great way to travel that helps locals and not huge hotel chains and a different option. See the legislative history attached to Kearns letter dated November 9, 2023.

The transient-focused residential use of this building pre-dates that first zoning by about 40 years so any limitations that may otherwise apply, would not control residential uses occurring within the Gilbaugh. Similarly, there were no mandatory off-street parking obligations imposed as part of this use when it first started. Although the Magies have come into compliance with various City standards in recent years, including obtaining land and improving it for off-street parking and complying with the City's occupational tax requirements, this alone does not change the non-conforming residential status of the use of the Gilbaugh units to anything other than residential lodging without any length of stay limitations.

From its original inception, the residential uses at the Gilbaugh reflect a transitory lodging, rather than permanent dwelling use. No local zoning regulations prescribed any timing limitation on those uses but rather they could extend for a few days, weeks, months or even years. The first time that the City imposed any quantifiable timing limitation as a means to distinguish lodging tenancies occurred in 2019 when the City defined the term "transient" as one who occupies a residence for less than 30 consecutive calendar days and began classifying motels, hotels or other lodgings as "transient lodging facilities." The result of the 2019 change was to create residential distinctions that do not apply to the Gilbaugh given the City's nonconforming use standards that allow pre-established uses – rentals for any length of time - to continue. Because the residential use at the Gilbaugh predate any of the City's regulatory distinction between transitory and permanent uses, the Hearings Officer should conclude that these four units can continue to provide accommodation without respect to any such timing constraint as they have done since the 1920s.

In fact, the structure of the existing short term regulations within the C3 zone expressly authorize the continued use of structures that were originally constructed as a "motel" or "hotel." ADC 2.39.10(J)(2) provides:

> "Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."

The term "motel" is defined in the post-2019 version of the ADC as:

> "A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building."

The Gilbaugh has rooms that have direct access to the outside which has, since its construction, been made available to guests for compensation. This configuration of the units and their accommodation of paying guests has not changed since the building was built. The Hearings

Officer should conclude that the Gilbaugh was originally constructed as a "motel" and allow its continued operation as such under ADC 2.39.10(J)(2).

Before 2019, a unit within a "hotel" or "motel" could provide lodging for one day, one week, six months or a year and the use would qualify as a "hotel" or "motel" use. The units within the Gilbaugh Building so qualified as providing "lodging" to "guests for compensation." At the time that the Gilbaugh units were first put to use in the 1920s and more recently, at the time that the Magies purchased the property in 2015 up until the present, the fourplex units have been used as "hotel / motel" without any constraint on the length of time that the unit was rented.

The City's non-conforming use code is structured to allow uses that "were lawful before this code was passed" to continue except for in certain circumstances provided by the Code, only two of which Appellants have argued are relevant here. First, is "change in the non-conforming use." The Appellants argue that by long term renting units after the July 2019, the units were changed to a conforming use. The shortcoming with this argument is that the pre-2019 "hotel / motel" use occurring within the Gilbaugh never actually changed. As explained, this use is not subject to the tenancy timing limitations because its transitory use predates those obligations. The law developed around non-conforming uses does acknowledge types of uses that are intermittent, sporadic or that vary with seasonal or market conditions. *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1981) (rock quarry made available for aggregate extraction on request but where no rock was extracted for 14 years); *Coonse v. Crook County,* 22 Or LUBA 138 (1991) (growth or fluctuations in business do not constitute a change in a use, although relocating a logging business to a different location and then resuming it in its nonconforming location did constitute a change in use.) Variability in the length of tenancy is common when one is renting units that were constructed for and historically accommodated such variety. As a result, stays that exceed 30 days should not be viewed as a presumptive change in the preempts the ability to rent for less than 30 day stays.

Honoring the historic transient nature of the Gilbaugh use would allow the Magies to continue renting to paying customers for whatever length the community demands rather than requiring the units to sit vacant turning down those who might be interested in a stay of more than 30-days. By viewing the use as that first occurred in 1920, the Magies would be able to continue to rent for a few months at a time for a Coast Guard training crew or contractors working on a construction project but then return to less than 30-day rentals for a visiting nurse. This would not only acknowledge the long-standing nonconforming use rights for the property consistent with the Gilbaugh, it would provide a middle-ground responding to the needs of the community - whether it be in the form of long, middle, or short-term rentals.

The Evidence Shows that the Magies Intended and Took Action to Short Term Rent the Gilbaugh Units Before 2019

If, in the alternative, the Hearings Officer concludes that residential uses within Gilbaugh units are subject to the 30-day transient lodging limitations unless they were initiated as an exclusive and discrete use before 2019, then there is sufficient evidence in the record to support such a finding. This evidence includes:

- Statements by Bob and Cindy Magie, both oral at the hearing and in writing that when they purchased the property in 2015, they intended to operate short term rentals. They knew that restoring the property to a point to which the units would be attractive to short term renters with their limited resources and the amount of work necessary would take years. If they had any idea that the City was going to change the code in 2019 foreclosing that opportunity, they would not have purchased and lovingly restored the building. Oral statements at the hearing and Nov. 9 and 16, 2023 letters.

- Recitations of conversations with the Community Development Director Kevin Cronin in the summer of 2015 and the spring of 2017 "that our additional 5 new spaces in the back would more than compensate for the two spaces per unit that are required for our 6 potential STRs (14 spaces total, but only 12[2] needed for compliance.)" Rec. 112 & 114.

- Statement by Shannon Fitzpatrick, principal broker of PCM, Inc, the company that managed the units from May 2018 through November 2021, supporting the Magies' statement of intent stating:

  "during the period of management, we discussed your business plan for using the property as short term rentals and you showed me your business licenses for the short term rentals. We worked together on upgrading and updating the units in a manner that would set the units up for use as future short term rentals as tenants vacated the units and new tenants were put into place." Rec 109.

- Statement from Sean Fitzpatrick, a small business advisor working with Clatsop Community College's Clatsop Economic Development Resource program, similarly independently corroborating the Magies' intent, who recounted a conversation in 2015 which provides:

  "As we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market

[2] In their November 9, 2023 letter, the Magies' acknowledged their misstatement in the application timeline that compliance with the 2017 code required 11 parking spaces to serve the short term rental of 11 bedrooms.

rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals." Rec 108.

- Statement from Jacob Helligso, a neighboring homeowner, stating: "During our conversation around parking in 2016 we discussed the plan to move his properties into Short Term Rentals." November 9, 2023 submittal.

- Photographs of the site taken in the winter of 2018 and January, 2019, showing construction work taking place including parking construction vehicles and materials in the parking lot including porta-potty. The foundation work included installing a short-term rental supply storage area and a place to store furniture for the units that were under renovation. Attached to Magies' Nov. 9, 2023 submittal.

- Substantial expenditures directed specifically to short term rentals made before 2019 including interior floor and kitchen unit restoration, driveway and parking area improvements totaling 45% of the total STR-specific improvements. Including the exterior restoration costs, which were necessary to eliminate years of deferred maintenance to make the units attractive to short term rentals, the expenditures made before 2019 total 75% of the total costs.[3] See expenditure table attached to Magies' November 16, 2023 submittal.

- Documentation of emails between the Magies and City staff in 2020 verifying that the Magies had 6 short term rentals including a following statement by Barbara Fryer:

"Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff." Rec 125.

This acknowledges the addresses of all 6 dwelling units on the property as well as the 11 bedroom "Astoria Downtown Cottages" as identified in the 2020 Transient Room Tax Registration that was assigned the same number as the 2017 application. These forthright

[3] A ratio in excess of one to 14, or seven percent, between expenditures and total project is sufficient to satisfy the expenditure ratio test as established in *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973); *Cook v. Clackamas County*, 50 Or App 75, 81-82, 622 P3d 1107 (1981).

> discussions with City staff are not evidence of someone who is scheming to avoid compliance with regulations.

All of this evidence indicates that the Magies acted in good faith moving forward with their short term rentals long-before (and even after) the City changed the standards.

In his letter dated November 9, 2023, Mr. Kearns states:

> "Mr. Magie made an impassioned argument at the November 2nd hearing about his investment in the 4-plex units and how unfair it would be for the City to now claim that they cannot use the 4-plex. If that were the truth, it would be unfair, but Mr. Magie misrepresented the evidence in the record."

Although acknowledging that the equities favor the Magies, this letter (and most of the Appellants' statements) call into question the Magies' credibility. Yet, Mr. Magie's intent was fully supported by independent statements of others who have no stake in and have nothing to gain by not being honest and forthright in recounting the facts. The people supporting the Magies' intent are successful business owners, neighbors and a volunteer public official that successfully ran for Mayor. These people have not seen their success by lying or fabricating truth, but conversely from truth, honesty, high moral standards and integrity. Cindy Magie was appointed to the planning commission, in part, because of these standards. Magie November 16, 2023 letter.

The Magies began advertising their units for short term stays on Airbnb-type platforms as soon as the units were ready to do so. This was not an after-the-fact scheme to avoid compliance with the law but rather a continued effort to see their significant investment through to completion consistent with the regulatory standards in place when they started. This reflects substantial evidence upon which the Hearings Officer should conclude that the short term rental use (as that term is currently defined in code) began in 2017 and continues up through the present day.

The Nonconforming Standards Support Finding that a Use Exists when it is Started or Intended

The Appellants argue that because none of the Gilbaugh fourplex units were physically occupied by short term renters in January 2019, there is no recognized non-conforming use. They argue that the language "when it first occurred" within the definition of "non-conforming use" requires "actual existence" and relies on the *Spurgin v. Josephine County* interpreting ORS 215.130 so holding. 28 Or LUBA 383, 386-387 (1994). Whatever level of "existence" may be required to satisfy ORS 215.130 or *Spurgin* are irrelevant to how nonconforming uses are regulated under the ADC. Rather, the definition of both "use" and "use, start of" makes explicit that a use need not be in operation to exist. Again, quoted again for ease of reference, the term "use" is defined in ADC 1.400 to include:

> "USE: The purpose for which land or a structure is *designed, arranged, or intended*, or for which it is occupied or maintained.
>
> USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is *in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun.*" (Emphasis added.)

A "use" is not only the way that it is "occupied or maintained" but it also includes that which is "intended" including "the process of physically moving into the site in preparation of beginning occupation and/or operation." It is the express definition of "use" that turns, in part, on the applicant's intent coupled with their efforts in preparation that establish when a nonconforming use "first occurred" and not its actual operation. The ADC expressly provides that a use starts when it is planned and the process of preparing the site for that use begins. As the City Planning staff found in 2020, and reaffirmed in 2023, the Magies began taking steps necessary to market the Gilbaugh units on Airbnb platforms before 2019 and again, the Hearings Officer should reaffirm that approach.

No Change or Discontinuance in Short-Term Rental Efforts Occurred

In order for a nonconforming use to continue it cannot be "changed to a conforming use" or discontinued for a period of more than "one year." ADC 3.180. The Appellants argue that the long delay between 2019, when the code changed, and when the units were listed as available for rent through Airbnb along with long-term rentals continuing after 2019, requires a finding that that the use was changed or discontinued. The Hearings Officer should reject such an approach because the Magie's never abandoned their intent or efforts at short term renting.

As the Magies' have described in detail, they moved forward with short term rentals within the Gilbaugh as quickly as the units were prepared and their finances allowed:

- Summer 2016 – Remove carpet and linoleum and refinish floor in unit 1557
- January through Oct, 2017 – Create off-street parking area
- June 2018 through June 2019 – Stabilize foundation, replace siding and restoring windows
- Fall 2018 – Refinish flooring, kitchen reconfiguration, bathroom renovation, replastering, and plumbing for unit 1559
- Fall 2018 – Strip and finish sleeping porch and landing
- January, 2019 - Reinforcing the foundation including parking construction vehicles and materials, including a porta-potty in the parking lot.

- Winter, 2019 – Finishing the basement including short-term rental supply storage and furniture staging areas.
- Spring 2020 – Renovating unit interiors including renovating kitchens, floors, plumbing repairs not to make the units habitable but rather to make them function at the level attractive to short term renters. Installed retaining wall and parking improvements.
- Bi-weekly throughout 2020 – Sourced period appropriate and maritime related furniture and decor
- Winter 2020 – Obtaining occupancy tax licensing for all 6 units
- Winter 2020 through April 2021 – Learned of water intrusion through the windows on the east and south wall required scaffold and tarp the south wall and installation of custom metal window sills.
- March 2021 through May 2021 - constructed a fence to prevent short term renters from accessing the property through the neighbor's driveway.
- January 2022 – Installed electronic locks
- Spring 2022 – Installed security cameras
- August 2022 – Installed decibel meters to monitor sound, temperature and humidity levels.

There was never any 12-month period where the Magies discontinued their efforts to prepare the units for the short term market.

Regarding changing the use, the Magies never changed the use to accommodate long term rentals. Rather, they rented units as they had always been allowed to do until their units were ready for short term marketing on Airbnb. A reasonable person would not continue to buy furniture, utensils, dishes and towels in order to engage in the long-term rental of units if they believed the regulations would prohibit short term use. They would not painstakingly restore straight-grain fir floors to accommodate long-term renters, knowing that such use could require allowing service animals that would destroy those same floors. They would not install locked storage areas for paper products, soaps, and cleaning supplies necessary for weekly cleaning of units that would be accommodated by long-term renters. All of these actions taken before and after the code changed indicate that they always intended and were working towards short term rentals.

Again, a "use" as contemplated within the ADC begins when an owner with "intent" takes steps to "prepare" for a use. The existence of rental activity that exceeded 30-day periods after 2019 did not change or alter those efforts. The Hearings Officer should resist the urge to divorce the owners intent and significant expenditures preparing for this use both before and after the Code changed.

The City's Prior Approval of Short Term Rentals in 2020 Must be Honored

Finally, acknowledging that the City permitted short term rentals in December 2020 and that the short term rental use was completed and used within two years is an alternative basis for allowing the continued short-term rental of the Gilbaugh. ADC 3.200 allows such uses to continue. It provides:

> "Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a legal permit has been issued by the City and construction has begun, provided the structure, if nonconforming, or intended for a nonconforming use, is completed and is used within two years from the time the permit was issued."[4]

The ADU defines the term "permit" as "any approval granted under the Astoria Development Code or City Code."

As noted above, in December of 2020, this matter was discussed at length by the City staff and the conclusion made that all six units could continue as short term rentals. The confirming email from Barbara Fryer indicates that this determination would be placed in the "Geo File" to remind future staff that the determination was made and that no further action would be required in the future. This decision by Ms. Fryer was essentially a use verification decision as contemplated in ORS 227.160(2)(b) and 227.175(11). All occupational room tax licensing and authorizations necessary to short term rent 11 bedrooms were issued based on this determination. This December 15 email, coupled with the occupancy documentation, not only qualify as "legal permits," as that term is used in the ADU, they were the only "legal permits" that were necessary in order to proceed with short term residential use.

Except for Flat 4 (1559 Exchange Street), three of the four Gilbaugh units were marketed on Airbnb and rented before December, 2022. Although the Applicants' actions in continuing to make improvements to Flat 4 as necessary before first advertising it on Airbnb qualify it as a legal non-conforming use for the reasons stated above, the Hearings Officer must allow the continued short term rental of Flats 1 through 3 of the Gilbaugh building where construction was completed and the units were short term rented on the Airbnb platform within 2 years after the use was verified as permitted in December, 2020.

Conclusion

This case is not about whether and to what degree short term rentals should be allowed in Astoria. This case is also not about manipulating the applicable standards to allow an owner to

[4] The use of the term "is completed and used" in ADU 3.200 regarding the timeline for permitted non-conforming uses suggests that if the City had intended actual use to be required in order for a nonconforming use to be allowed to continue, it would have used similar terms.

thwart the City's housing preservation objectives. Rather, this case is about the facts, as presented, fairness and compliance with the ADC. The ADC nonconforming use provisions unambiguously acknowledge that pre-existing uses are allowed to continue subject only to the standards that applied to them when they first began. The Gilbaugh units have been providing transient accommodations since they were constructed long before the City ever decided to prohibit short term uses. These same ADC standards expressly contemplate that a use can start by taking into account the owners' purpose, intentions, plans and efforts which were manifestly made clear by the Magies throughout this proceeding. Ultimately, the Magies are best suited to convey their intent and they have done so honestly, completely and without reservation.

Please respect all of the Magies efforts, their honesty and their integrity as local Astoria business owners who invested in this community in good faith allowing them to operate four short term rental units in the Gilbaugh building. Please affirm the City Planning Director's decision and deny this appeal.

Very truly yours.



Carrie A. Richter

CAR:kms
cc: Client

Enclosures

Ordinance 61-26
11-6-1961

CONTENTS

ARTICLE I - GENERAL

Section	Title	Page
1.01	Title	1
1.02	Purpose and Intent	1
1.03	Standards	1
1.04	Compliance with Ordinance Provisions	1
1.05	Provisions not Affected by Headings	2
	ARTICLE II - DEFINITIONS	
2.01	Definitions	3
	ARTICLE III - ZONING DISTRICT CLASSIFICATIONS	
3.01	Zoning Map	10
3.02	District Classifications	10
3.03	Boundaries of Zoning Districts	10
	ARTICLE IV - R1 DISTRICT	
4.01	R1 District. Principal Uses Permitted Outright	12
4.02	R1 District. Accessory Uses Permitted Outright	12
4.03	R1 District. Conditional Uses Permitted	12
4.04	R1 District. Density Provisions	13
	ARTICLE V - R2 DISTRICT	
5.01	R2 District. Principal Uses Permitted Outright	14
5.02	R2 District. Accessory Uses Permitted Outright	14
5.03	R2 District. Conditional Uses Permitted	14
5.04	R2 District. Density Provisions	14
	ARTICLE VI - R3 DISTRICT	
6.01	R3 District. Principal Uses Permitted Outright	15
6.02	R3 District. Accessory Uses Permitted Outright	15
6.03	R3 District. Conditional Uses Permitted	15
6.04	R3 District. Density Provisions	15

ARTICLE VII - R4 DISTRICT

Section	Title	Page
7.01	R4 District. Principal Uses Permitted Outright	17
7.02	R4 District. Accessory Uses Permitted Outright	17
7.03	R4 District. Conditional Uses Permitted	17
7.04	R4 District. Density Provisions	17

ARTICLE VIII - C1 DISTRICT

8.01	C1 District. Purpose and Function	18
8.02	C1 District. Principal Uses Permitted Outright	18
8.03	C1 District. Accessory Uses Permitted Outright	18
8.04	C1 District. Conditional Uses Permitted	19
8.05	C1 District. Density Provisions	19
8.06	C1 District. Conditions Governing Permitted Uses	19

ARTICLE IX - C2 DISTRICT

9.01	C2 District. Purpose and Function	21
9.02	C2 District. Principal Uses Permitted Outright	21
9.03	C2 District. Accessory Uses Permitted Outright	22
9.04	C2 District. Accessory Uses Permitted	22
9.05	C2 District. Density Provisions	23
9.06	C2 District. Conditions Governing Permitted Uses	23

ARTICLE X - C3 DISTRICT

10.01	C3 District. Purpose and Function	24
10.02	C3 District. Principal Uses Permitted Outright	24
10.03	C3 District. Accessory Uses Permitted Outright	25
10.04	C3 District. Conditional Uses Permitted	25
10.05	C3 District. Density Provisions	26
10.06	C3 District. Conditions Governing Permitted Uses	26

ARTICLE XI - M1 DISTRICT

11.01	M1 District. Principal Uses Permitted Outright	27
11.02	M1 District. Accessory Uses Permitted Outright	27
11.03	M1 District. Conditional Uses Permitted	27
11.04	M1 District. Conditions of Allowing Uses	28
11.05	M1 District. Prohibited Uses	28
11.06	M1 District. Density Provisions	28

ARTICLE XII - PR DISTRICT

Section	Title	Page
12.01	PR District. Uses Permitted Outright	29
12.02	PR District. Uses Permitted by Council Action	29
12.03	PR District. Conditions and Procedures Governing Permitted Uses	29

ARTICLE XIII - LOT AND YARD STANDARDS

13.01	General Provisions. Intent and Application	30
13.02	Prohibiting the Reduction of the Size of Yard or Other Open Space	30
13.03	General Exception to Lot Size Requirements	30
13.04	General Exception to Building Height Limitations	30
13.05	General Yard Exceptions	30
13.06	Front Yard Exceptions	31
13.07	Side Yard Exceptions	31
13.08	Side Yard Along Flanking Street of Corner Lot	32
13.09	Rear Yard Exceptions.	32

ARTICLE XIV - ACCESSORY STRUCTURES

14.01	Vision Clearance Area	33
14.02	Accessory Structures (Except Fences, Walls, Hedges and Signs	33
14.03	Accessory Structures: Fences, Walls and Hedges	34
14.04	Accessory Structures: Signs	34

ARTICLE XV - HOME OCCUPATIONS

15.01	Home Occupations	36

ARTICLE XVI - OFF-STREET PARKING AND LOADING

16.01	Off-Street Parking Policy	37
16.02	Off-Street Parking: Space and Access	37
16.03	Off-Street Parking: Location	37
16.04	Off-Street Parking: Units of Measurement	37
16.05	Off-Street Parking: Change of Use, Alteration, Expansion or Enlargement	38
16.06	Off-Street Parking: Uses not Specified	38
16.07	Off-Street Parking: Joint Use	38
16.08	Off-Street Parking: Plans Shall be Submitted	39

Section	Title	Page
16.09	Off-Street Parking: Enclosure	39
16.10	Off-Street Parking: Additional Requirements	39
16.11	Off-Street Parking: Table of Minimum Standards.	40
16.12	Off-Street Loading: Policy and Standards	41
	ARTICLE XVII - NONCONFORMING USES	
17.01	Nonconforming Uses: May be Continued	43
17.02	Nonconforming Uses: Discontinuance or Abandonment	43
17.03	Nonconforming Uses: Structures	43
17.04	Nonconforming Uses: Land	44
17.05	Nonconforming Use: Conversion or Removal	44
17.06	Nonconforming Uses: Reclassification of Zoning District or Annexation	45
17.07	Nonconforming Uses: Survey, Notice, and Certificate of Occupancy	45
	ARTICLE XVIII - CONDITIONAL USES AND VARIANCES	
18.01	Conditional Uses and Variances: Intent and Policy	46
18.02	Conditional Use: Application and Fee	46
18.03	Conditional Use: Public Hearing	46
18.04	Conditional Use: Planning Commission Action	47
18.05	Conditional Use: Council Action	47
18.06	Conditional Use: Special Provision for Excavating Pits: Stone Quarry; Sand, Gravel, or Clay Pits; and Soil Stripping	48
18.07	Conditional Use: Mobile Home Park	48
18.08	Variance	49
18.09	Variance: Application and Fee	50
18.10	Variance: Public Hearing	50
18.11	Variance: Action of the Commission	50
18.12	Variance: Appeal to the Council	50
	ARTICLE XIX - ZONE CHANGES	
19.01	Amendments to Ordinance Text and Zoning Map	51
19.02	Amendments: Application and Fee	51
19.03	Amendments: Public Hearing	51
19.04	Amendments: Notice of Public Hearing	51
19.05	Amendment: Recommendation of the Commission	52
19.06	Amendments: Recess of Hearing by Commission	52
19.07	Amendments: Council Action	52

ARTICLE XX - ADMINISTRATION

Section	Title	Page
20.01	Form of Petitions, Applications and Appeals	53
20.02	Interpretation	53
20.03	Enforcement	53
20.04	Penalty Provisions	53
20.05	Validity	53
20.06	Repeal	54
20.07	Effective Date	54

ORDINANCE NO. 0 61-26

AN ORDINANCE RELATING TO AND REGULATING LAND USE AND DEVELOPMENT; CREATING UNIFORM DISTRICTS IN WHICH COMPATIBLE USES ARE ALLOWED; PRESCRIBING STANDARDS FOR EACH DISTRICT; PRESCRIBING DENSITY CONTROLS; PRESCRIBING PROCEDURES AND STANDARDS FOR GRANTING CONDITIONAL USES; PRESCRIBING PROCEDURES AND CONDITIONS FOR GRANTING VARIANCES; PROVIDING FOR OFF-STREET PARKING; PROVIDING PROCEDURES FOR ADMINISTRATION, APPEAL, AMENDMENTS AND ENFORCEMENT; PROVIDING FOR PENALTIES; AND REPEALING ORDINANCES NOS. 059-06 AND 059-20.

The city of Astoria does ordain as follows:

ARTICLE I

GENERAL

Section 1.01. Title. This ordinance shall be known as the "Zoning Ordinance" of the city.

Section 1.02. Purpose and Intent.

(1) The several purposes of the ordinance are: to implement the comprehensive development plan for the city; to encourage the most appropriate use of land; to conserve and stabilize the value of property; to aid in the rendering of fire and police protection; to provide adequate open spaces for light and air; to lessen the congestion on streets; to give an orderly growth to the city; to prevent undue concentrations of population; to improve the city's appearance; to facilitate adequate provisions for community utilities and facilities such as water, sewerage, and electrical distribution systems, transportation, schools, parks, and other public requirements; and in general to promote public health, safety, and general welfare.

(2) Since the public health, safety, and general welfare is superior to the interests and pecuniary gains of the individual, the ordinance may limit the use of property and prevent its most profitable gain. If some reasonable use of property is allowed by the ordinance the effect is not confiscatory and is a proper exercise of police power.

Section 1.03 Standards. The standards established by the ordinance are determined to be the minimum requirements in the interest of public health, safety, and general welfare.

Section 1.04 Compliance with Ordinance Provisions. No building, structure, or premises shall hereafter be used or occupied and no building or part thereof shall be erected, moved, reconstructed, extended, enlarged, or altered contrary to the provisions of this ordinance.

Section 1.05 Provisions Not Affected by Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of any section hereof.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions. As used in the ordinance, words in the present tense include the future; words in the singular number include the plural, and words in the plural number include the singular; the word "person" may be taken for persons, association, firm, partnership or corporation; the word "structure" includes buildings; the word "occupied" includes designed or intended to be used; and the word "shall" is always mandatory and not merely directive. The following words and phrases, whenever used in this ordinance, shall be construed as follows unless the context shows a different meaning:

(1) Accessory structure or use. A structure or use incidental and subordinate to the principal use or structure and located on the same lot or tract.

(2) Accessory structure, attached. An accessory structure which is attached to the principal structure by the wall or roof of the latter or by the roof over a breeze-way connecting the accessory and principal structure.

(3) Alley. A narrow street primarily for vehicular service access to the rear or side of properties otherwise abutting on another street.

(4) Apartment house. See Dweling, multi-family.

(5) Automobile service station. Any premises used primarily for supplying motor fuel, oil, minor servicing, excluding body and fender repair, and for sale of accessories as a secondary service for automobiles at retail direct to the customer.

(6) Automobile wrecking. The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale , or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

(7) Basement. The portion of a building included between a floor with its level two feet or more below finished grade and the ceiling next above said floor.

(8) Billboard. Any outdoor advertising sign or device or any portion of a structure upon which lettered or pictured material is displayed for advertising purposes, other than the name and occupation or the use of, or the nature of the business conducted on such premisses, or the products primarily sold or manufactured thereon.

(9) Boarding, lodging or rooming house. A residential type building, or portion thereof, other than a hotel or motel, where for compensation lodging, with or without meals, is provided for not less than four (4)nor

more than ten (10) persons, not including members of the owner occupant or tenant occupant family.

(10) Breeze-way. A structure for the principal purpose of connecting the main building or buildings on a property with other main buildings or accessory buildings.

(11) Building. Any structure built or used for the support, shelter, or enclosure of any persons, animals, goods, equipment, or chattels and property of any kind.

(12) Building line. A line established by the ordinance to govern the placement of a building with respect to the front lot line through the setback requriements of a minimum front yard. A building line is ordinarily parallel to the front lot line and at a distance in accordance with the setback requirement. For lots contained in an official subdivision plat recorded before the effective date of the ordinance the building line may be taken as shown therein.

(13) Building height. The vertical distance measured from the level of the first floor above finished grade to the highest point of the roof beams in the case of flat roofs, to the deck line of mansard roofs, or to the center height between eaves and ridges for gable, hip, or gambrel roofs.

(14) Bulk plant. An establishment where commodities, including both liquids and solids, are received by tank vessel, pipe lines, tank car, tank vehicle, or other container, and are stored or blended in bulk for the purposes of distribution by tank vessel, pipe line, tank car, tank vehicle or container.

(15) Clinic. A building or portion of a building containing offices and facilities for providing medical, dental, and/or psychiatric services for outpatients only.

(16) City. The city of Astoria.

(17) Commission. The planning commission of the city of Astoria.

(18) Comprehensive Plan. The comprehensive development plan for the city, comprising plans, maps or reports, or any combination thereof relating to the future economic and physical growth and development or redevelopment of the city.

(19) Court. An open, uncovered, and unoccupied space contained within or surrounded or partly so by buildings.

(20) Council. The legislative body of the city.

(21) Dwelling, duplex, or dwelling, two-family. A detached structure containing two (2) dwelling units.

(22) Dwelling, multi-family. A building containing three (3) or more dwelling units.

(23) Dwelling, single-family. A detached building containing one (1) dwelling unit.

(24) Dwelling unit. An independent living unit within a dwelling structure designed and intended for occupancy by not more than one (1) family and having its own housekeeping and kitchen facilities. Hotel, motel, rooming and boarding units which are used primarily for transient tenancy shall not be considered as dwelling units.

(25) Established grade. See Grade, established.

(26) Family. An individual or two (2) or more persons related by blood or marriage living together in a dwelling unit, which may also provide meals or lodging for not more than four (4) additional persons (excluding servants) living in the same dwelling unit, or a group or not more than five (5) persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

(27) Fence. An accessory structure, including landscape planting, designed and intended to serve as a barrier or as a means of enclosing a yard or other area, or other structure; or to serve as a boundary feature separating two (2) or more properties.

(28) Fence, sight obscuring. A fence or evergreen planting of such density and so arranged as to obstruct vision.

(29) Finished grade. See Grade, finished (ground level).

(30) Floor area. The area included in surrounding walls of a building (or portion thereof), exclusive of vent shafts, courts.

(31) Garage, private. An accessory building or portion of a main building used for the parking or temporary storage of private automobiles, trailers, mobile homes, boats, or other vehicles owned or used by occupants of the main building.

(32) Garage, public. A building other than a private garage used for the care and repair of motor vehicles or where such vehicles are parked or stored for compensation, hire, or sale.

(33) Grade, established. The curb line grade established by the city.

(34) Grade, finished (ground level). The average of finished ground levels at the center of all walls of the building unless otherwise specified.

(35) Gross area. The total usable area including accessory space dedicated to such things as streets, easements, and uses out of character with the principal use, but within a unit of area being measured.

(36) Guest house. An accessory, detached dwelling without kitchen facilities, designed for and used to house transient visitors or guests of the occupants of the main building without compensation.

(37) Height of building. See Building height.

(38) Home occupation. An occupation carried on within a dwelling by members of a family with no servant, employee, or other person being engaged therein.

(39) Hospital. An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical, or surgical care and nursing service on a continuous basis.

(40) Hotel. A building in which lodging is provided for guests for compensation and in which no provision is made for cooking in the rooms.

(41) Junk Yard. An area of more than two hundred (200) square feet used for the dismantling, storage, or handling in any manner of junked vehicles or other machinery, or for the purpose of storage of dismantled material, junk, and scrap machinery, or for the purpose of storage of dismantled material, junk, and scrap, if such activity is not incidental to the principal use on the same lot.

(42) Kennel. Any premises or building in which four (4) or more dogs or cats at least four (4) months of age are kept commercially for board, propogation, or sale.

(43) Lot. A parcel of land under one ownership used or capable of being used under the regulations of the ordinance, including both the building site and all required yards and open spaces. A "lot" need not necessarily coincide with the "lot of record" which refers to land designated as a separate and distinct parcel on a legally recorded subdivision plat or in a legally recorded deed filed in the records of the county.

(44) Lot area. The total horizontal area within the lot lines of a lot.

(45) Lot,corner. A lot abutting on two (2) intersecting streets other than an alley, provided that the streets do not intersect at an angle greater than one hundred thirty-five (135) degrees.

(46) Lot coverage. The portion of a lot that is occupied by the principal and accessory buildings, including all projections except eaves, expressed as a percentage of the total lot area.

(47) Lot, depth: The horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line.

(48) Lot, interior. A lot other than a corner lot.

(49) Lot, through. A lot having frontage on two (2) parallel or approximately parallel streets.

(50) Lot line. The property line bounding a lot.

(51) Lot line, front. In the case of an interior lot, the lot line separating the lot from the street other than an alley; and in the case of a corner lot, the shortest lot line along a street other than an alley.

(52) Lot line, rear. A lot line which is opposite and most distant from the front lot line; and in the case of a triangular or irregular shaped lot a line ten (10) feet in length within the lot parallel to and at the maximum distance from the front lot line.

(53) Lot line, side. Any lot line not a front or rear lot line.

(54) Lot width. The horizontal distance between the side lot lines at the building line.

(55) Mobile home. All vehicles designed or intended to be self propelled or propelled by another vehicle, for use or capable of being used for living and/or sleeping quarters and not conforming to any schedule operating between fixed termini.

(56) Mobile home park. Any property used for the accommodation of inhabited mobile homes on a tenancy or lease basis.

(57) Motel. A building or group of buildings on the same lot containing guest units with separate entrances and consisting of individual sleeping quarters, detached or in connected rows, with or without cooking facilities, for rental to transients.

(58) Nonconforming building or use. Any lawful use or activity involving a building or land occupied or in existence on the effective date of the ordinance, or any amendments thereto, which does not conform to the principal, accessory, or conditional uses permitted in or to the density provisions of the zoning district in which located.

(59) Rooming house. See Boarding, lodging or rooming house.

(60) Sign, advertising. Any structure or portion thereof that is intended for advertising purposes or on which letters, figures, or pictorial matter are, or are intended to be, displayed, other than on a business sign. (See also Billboard).

(61) Sign, business. Any sign, structure, or device which directs attention to the premises on which located, or the occupant of the premises or the goods or services manufactured, produced, or available on the premises.

(62) Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the top story shall be that portion of a building included between the upper surface of the top floor and the ceiling above.

(63) Story, half. A space under a sloping roof which has the line of intersection of roof decking and exterior wall face not more than four (4) feet above the top floor level. A half-story containing one (1) or more dwelling units shall be counted as a full story.

(64) Street. The entire width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic and the placement of utilities, and including the terms "road", "highway", "lane", "place", "avenue", or other similar designation.

(65) Structure. That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

(66) Structural alteration. Any change to the supporting members of a building including foundations, bearing walls or partitions, columns, beams or girders, or any structural change in the roof.

(67) Use. An activity or a purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

(68) Vision clearance area. A triangular area on a lot at the intersection of two (2) streets, or a street and an alley, or a street and a railroad, two (2) sides of which are lot lines measured from their corner intersection for a distance specified in the ordinance. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

(69) Yard. An open space on a lot which is unobstructed from the ground upward except as otherwise provided in the ordinance.

(70) Yard, front. An open space between side lot lines and measured horizontally from the front lot line at right angles to the front lot line to the nearest point of the building.

(71) Yard, rear. An open space between side lot lines and measured horizontally at right angles from the rear lot line to the nearest point of the main building.

(72) Yard, side. An open space between a building and the side lot line measured horizontally and at right angles from the side lot line to the nearest point of the building.

ARTICLE III

ZONING DISTRICT CLASSIFICATIONS

Section 3.01 Zoning Map.

(1) The location and boundaries of the zoning districts designated in Section 3.02 are hereby established as shown on the map entitled "Zoning Map of the City of Astoria", signed by the mayor and the city auditor, and hereafter referred to as the "Zoning Map".

(2) The zoning map shall be maintained on file in the office of the city auditor and is hereby incorporated into the ordinance.

Section 3.02. District Classifications. For the purpose of the ordinance the city is divided into districts designated as follows:

District	Symbol
Residential districts	
Residential District One (Single-family)	R1
Residential District Two (Two-family)	R2
Residential District Three (Multi-family)	R3
Residential District Four (Multi-family)	R4
Commercial districts	
Commercial District One (Local business district)	C1
Commercial District Two (Central business district)	C2
Commercial District Three (General commercial district)	C3
Industrial districts	
Industrial District One (General industrial district)	M1
Public Reserve district	PR

Section 3.03 Boundaries of Zoning Districts.

(1) Unless otherwise specified or shown on the zoning map, district boundaries are lot lines or the center lines of streets, alleys, railroad and other rights-of-way. Where boundaries are other than lot lines or center lines of streets, alleys, railroad and other rights-of-way, they shall be determined by dimensions shown on the zoning map giving distances measured from street or other rights-of-way or lot lines, or if no dimensions are shown, by scaling distances on the zoning map. Where actual streets or other features on the ground vary from those shown on the zoning map interpretations or adjustments shall be made by the commission.

(2) Where a district boundary line, as shown on the zoning map, divides a lot in a single ownership at the time of passage of the ordinance, the use permitted on the least restrictive portion of such lot may extend to the portion lying in the more restrictive district a distance of not more that fifty (50) feet beyond the district boundary line.

ARTICLE IV

R1 DISTRICT

Section 4.01 R1 District. Principal Uses Permitted Outright.

(1) One (1) single-family detached dwelling structure on each lot.

Section 4.02 R1 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 4.03 R1 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R1 district when authorized in accordance with the provisions of Sections 18.01 through 18.06.

(1) Church

(2) Public park, playground, or recreational area, and buildings used in connection therewith.

(3) Governmental building for administrative or protective services.

(4) Public or semi-public building serving as a library, museum, or other similar purpose.

(5) Public, private, or parochial school.

(6) Private nursery school, orphanage, kindergarten, or child-care center on a lot having a minimum area of ten thousand (10,000) square feet, provided there is established in connection therewith a play lot having a minimum area of four hundred (400) square feet plus an additional forty (40) square feet for each child in excess of ten (10), which play lot is separated from adjoining properties by a sight-obscuring fence or evergreen hedge.

(7) Private club, lodge, convent, social or recreational building or community assembly hall, except those having a chief activity carried on for monetary gain; provided, that the building used for such purpose shall be at least fifty (50) feet distant from an adjoining lot in any residential zoning district.

(8) Golf course, including club house, but not an independent pitch-and-putt course or golf driving range.

(9) Public utility and communication facilities, such as a branch telephone exchange, static transformer, booster station, or pumping station; provided there shall be no service or storage buildings or yards in connection therewith.

Section 4.04 R1 District. Density Provisions.

(1) Minimum lot area: 6000 square feet
(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 20 feet
(5) Minimum side yard: 5 feet
(6) Minimum side yard along flanking street of corner lot: 15 feet
(7) Minimum rear yard: 25 feet
(8) Maximum building height: $2\frac{1}{2}$ stories, but not to exceed 35 feet
(9) Maximum lot coverage: 30 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03

ARTICLE V

R2 DISTRICT

Section 5.01 R2 District. Principal Uses Permitted Outright.

(1) Principal use permitted outright in an R1 district.

(2) One (1) two-family dwelling structure on each lot.

Section 5.02 R2 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 5.03 R2 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R2 district when authorized in accordance with the provisions of Sections 1 .01 through 1 .06:

(1) Any conditional use permitted in an R1 district.

(2) Hospital, home for the aged, retirement home, or rest or convalescent home.

Section 5.04 R2 District. Density Provisions.

(1) Minimum lot area: 6000 square feet
(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 20 feet
(5) Minimum side yard: 5 feet
(6) Minimum side yard along flanking street of corner lot: 15 feet
(7) Minimum rear yard: 25 feet
(8) Maximum building height: 2½ stories, but not to exceed 35 feet
(9) Maximum lot coverage: 40 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03.

ARTICLE VI

R3 DISTRICT

Section 6.01 R3 District. Principal Uses Permitted Outright.

(1) Principal uses permitted outright in an R2 district.

(2) Multi-family dwelling structure.

(3) Boarding house.

Section 6.02 R3 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 6.03 R3 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R3 district when authorized in accordance with the provisions of Sections 13.01 through 13.06:

(1) Any conditional use permitted in an R2 district.

(2) Office for a doctor, dentist, or other practioner of the healing arts; attorney, architect; engineer; surveyor; or accountant.

Section 6.04 R3 District. Density Provisions.

(1) Minimum lot area:

(a) For single or two-family dwelling structures: 6000 square feet for each principal structure.
(b) For multi-family dwellings: 6000 square feet plus 1500 square feet for each dwelling unit in excess of four.
(c) For other uses: 6000 square feet.

(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 15 feet
(5) Minimum side yard: 5 feet

(6) Minimum side yard along flanking street of corner lot: 10 feet
(7) Minimum rear yard: 10 feet
(8) Maximum building height: 2½ stories, but not to exceed 35 feet
(9) Maximum lot coverage: 50 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03.

ARTICLE VII

R4 DISTRICT

Section 7.01 R4 District. Principal Uses Permitted Outright.

(1) Principal use permitted outright in an R3 district.

Section 7.02 R4 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 7.03 R4 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R4 district when authorized in accordance with the provisions of Sections 18.01 through 18.06:

(1) Any conditional use permitted in an R3 district.

(2) Mobile home park. See Section 18.07.

(3) Motel or motel with restaurant and cocktail lounge in connection therewith.

Section 7.04 R4 District. Density Provisions.

(1) Minimum lot area:

(a) For single or two-family dwelling structures: 6000 square feet for each principal structure.

(b) For multi-family dwellings: 6000 square feet plus 600 square feet for each dwelling unit in excess of ten.

(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 15 feet
(5) Minimum side yard: 5 feet
(6) Minimum side yard along flanking street of corner lot: 10 feet
(7) Minimum rear yard: 10 feet
(8) Maximum building height: 4 stories, but not to exceed 45 feet
(9) Maximum lot coverage: 60 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03.

ARTICLE VIII

C1 DISTRICT

Section 8.01 C1 District. Purpose and Function. The C1 district is intended to provide for limited business and commercial facilities serving residents of the surrounding residential districts.

Section 8.02 C1 District. Principal Uses Permitted Outright.

(1) Principal or conditional use permitted in an R1 district.

(2) Bakery, retail only.

(3) Barber shop or beauty parlor.

(4) Confectionery.

(5) Delicatessen.

(6) Drug store, including fountain.

(7) Dry cleaning or laundry establishment, pick-up and delivery only.

(8) Florist shop.

(9) Grocery store.

(10) Hardware.

(11) Laundry, self service.

(12) Real estate office.

(13) Shoe repair shop.

(14) Variety store.

(15) Other similar use, but not including a listed commercial or manufacturing use permitted in a C2 or C3 district, or an industrial use permitted in an M1 district; provided, it shall be clearly determined that such use is intended to serve the local neighborhoods and will not cater to or attract customers on a community-wide basis.

Section 8.03 C1 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Signs: See Section 14.04.

Section 9.04 C1 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in a C1 district when authorized in accordance with the provisions of Sections 18.01 through 18.06:

(1) Use permitted outright in an R2 district.

(2) Garden supplies store and horticultural nursery.

Section 9.05 C1 District. Density Provisions.

(1) For residential uses:

(a) Single family dwelling structures shall conform to the requirements of Section 4.04.

(2) For other uses:

(a) Minimum lot area: 4000 square feet
(b) Minimum lot width: 40 feet
(c) Minimum lot depth: 80 feet
(d) Minimum front yard: 15 feet
(e) Minimum side yard: no limitation
(f) Minimum side yard along flanking street of corner lot: 10 feet
(g) Minimum rear yard: no limitation
(h) Maximum building height: 2½ stories, but not to exceed 35 feet
(i) Maximum lot coverage: 35 per cent of lot area.

(3) For additional density provisions see Sections 13.01 through 14.03.

Section 9.06 C1 District. Conditions Governing Permitted Uses. Uses permitted in a C1 district, except conditional uses and dwellings, shall be subject to the following conditions:

(1) For expansion of existing buildings and for new construction, plot plans must be submitted to the commission showing the proposed development and shall include the following information.

(a) Property description,
(b) Building location on the property.
(c) Location of parking and screening of parking in those areas abutting a residential district.
(d) Access to public streets.
(e) Signs,

(2) The commission may impose the following conditions before a building permit will be issued for the proposed development:

(a) Limit or prohibit openings to structures on sides within fifty (50) feet of a residential district if the openings will cause glare, excessive traffic, noise, or other adverse effects on adjacent residential areas,

(b) Limit access to streets.

(c) Require additional setbacks and planting or screening abutting residential districts if necessary to minimize the detrimental effects of commercial activity such as glare and noise.

(3) Construction shall be in substantial conformance to plans approved by the commission.

(4) All business, service, repair, processing, storage, or merchandise display shall be conducted wholly within an enclosed building except for the following:

(a) Off-street parking or loading.
(b) Drive-in windows.

(5) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.

(6) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes,noise, vibration, or disturbance to television or radio reception.

ARTICLE IX

C2 DISTRICT

Section 9.01. C2 District. Purpose and Function. The C2 district is intended to provide for the principal shopping, business, and transportation core center serving the community and its trading area.

Section 9.02 C2 District. Principal Uses Permitted Outright.

(1) Principal use permitted outright in a C1 district, except dwelling structure.(See Section 9.03 for dwelling structure permitted as a conditional use.)

(2) Appliance sales and incidental service.

(3) Auditoriums.

(4) Automobile and truck sales, rentals and garage, including auto repair but no junking, wrecking, or salvaging operations, and excluding service station. Automobile, but not mobile home, trailer, or boat sales lot or yard.

(5) Bakery for retail sales on the premises only.

(6) Bank.

(7) Bowling alley.

(8) Business office.

(9) Business, technical, or trade school.

(10) Bus depot, but not bus garage or storage yard.

(11) Clinic, medical, but not including veterinarian.

(12) Clothing store.

(13) Club, fraternal, union, or lodge social or recreational building.

(14) Cocktail lounge as part of a restaurant.

(15) Department store.

(16) Drive-in business, except drive-in theater, offering goods or services directly to waiting customers in motor vehicles.

(17) Dry cleaning and pressing services at retail for delivery to customers on the premises only, provided no highly volatile or combustible solvents shall be allowed nor high pressure steam tanks or boilers permitted.

(18) Equipment rental limited to small equipment for household, recreation, or business.

(19) Furniture store.

(20) Garden supplies store.

(21) Hotel.

(22) Market.

(23) Motel.

(24) Mortuary.

(25) Newspaper and printing plant.

(26) Parking lot or parking garage.

(27) Passenger terminal.

(28) Public building but not including storage, warehousing or other uses of an industrial character.

(29) Railroad right-of-way and operating facilities appurtenant thereto, but not yards, industrial spurs, or other similar facilities.

(30) Restaurant, cafe.

(31) Tavern.

(32) Theater, except drive-in theater.

(33) Other use of similar character, but not including a specific listed commercial or manufacturing use permitted in a C3 district, or an industrial use permitted in an M1 district.

Section 9.03 C2 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Signs: See Section 14.04.

Section 9.04 C2 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in a C2 district when authorized in accordance with the provisions of Sections 14.01 through 14.06:

(1) Dwelling structure.

(2) Manufacture and compounding, but only from previously prepared materials, and packaging of such products as candy, cosmetics, drugs, musical instruments, toys, novelties, rubber and metal stamps, optical goods, scientific and precision instruments and equipment.

(3) Automobile service station.

Section 9.05 C2 District. Density Provisions.

(1) Minimum lot area: No limitation
(2) Minimum lot width: No limitation
(3) Minimum lot depth: No limitation
(4) Minimum front yard: No limitation
(5) Minimum side yard: No limitation
(6) Minimum rear yard: No limitation
(7) Maximum building height: No limitation
(8) Maximum lot coverage: No limitation
(9) For additional density provisions, see Sections 13.01 through 14.03

Section 9.06 C2 District. Conditions Governing Permitted Uses. All principal uses permitted outright in a C2 district shall meet the following conditions:

(1) All business, service, repair, processing, storage, or merchandise display shall be conducted wholly within an enclosed building, except for the following:

(a) Off-street parking and loading.
(b) Drive-in windows.

(2) The use of the property in a C2 district shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes,noise, or vibration.

ARTICLE X

C3 DISTRICT

Section 10.01 C3 District. Purpose and Function. The C3 district is intended to provide for those types of retail, wholesale, transportation, and service uses which because of traffic and other requirements depend upon particular locations to serve the needs of the community and its trading area. The specific listed uses permitted in a C3 district are generally those which are not entirely compatible with the purpose and function of the C2 district by reason of the character of traffic, types of commodities and goods handled, needs for large sites, and certain distracting and interruptive influences.

Section 10.02 C3 District. Principal Uses Permitted Outright.

(1) Principal or conditional use permitted in a C2 district.

(2) Amusement enterprises, such as bowling alley, roller or ice rink, dance hall, and trampoline.

(3) Automobile service station.

(4) Automobile repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations.

(5) Bakery.

(6) Book publishing and binding.

(7) Bottling and processing of non-alcoholic beverages the production of which is devoid of fumes, noxious odors or waste products.

(8) Electrical supply store, repairing service.

(9) Feed and seed store, retail or wholesale.

(10) Film processing plant.

(11) Flooring materials, retail or wholesale.

(12) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground.

(13) Fuel yard.

(14) Golf driving range; pitch-and-putt course operated independently of a golf course.

(15) Laboratory for experimental or research work or testing.

(16) Landscape nursery: propogation and sale at retail or wholesale of nursery stock and plant materials.

(17) Lumber yard, retail or wholesale, including building supplies, hardware, and related items.

(18) Mobile home or trailer sales lot.

(19) Mobile home park. (See Section 10.07).

(20) Marine craft, equipment and supply sales, and repair and service of small craft.

(21) Plumbing shop.

(22) Sign shop, but not manufacture or assembly of electrically illuminated signs.

(23) Theater, drive-in.

(24) Upholstery shop.

(25) Other use of similar character, but not including a specific listed industrial use permitted in an M1 district.

Section 10.03. C3 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Signs: See Section 14.04.

Section 10.04. C3 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in a C3 district when authorized in accordance with the provisions of Sections 18.01 through 18.06.

(1) Wholesale warehouse and storage establishment, but only when occupying a completely enclosed building.

(2) Truck terminal.

Section 10.05 C3 District. Density Provisions.

(1) For residential uses: Single family, two-family, and multi-family dwelling structures shall conform to the requirements of Section 7.04.

(2) For mobile home park and other uses:

	Mobile Home Park	Other Uses
(a) Minimum lot area:	2 acres	No limitation
(b) Minimum lot width:	200 feet	No limitation
(c) Minimum lot depth:	200 feet	No limitation
(d) Minimum front yard:	20 feet	No limitation
(e) Minimum side yard:	15 feet	No limitation
(f) Minimum side yard along flanking street of corner lot	10 feet	No limitation
(g) Minimum rear yard:	20 feet	No limitation
(h) Maximum building height:	2½ stories	No limitation
(i) Maximum lot coverage:	40 percent	No limitation
(j) For additional density provisions see Sections 13.01 through 14.03.		

Section 10.06. C3 District. Conditions Governing Permitted Uses. All principal uses permitted outright in a C3 district shall meet the following requirements:

(1) Automobile, mobile home or boat sales yard, automobile service station or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in a C3 district adjoining or abutting a residential zoning district shall be screened from properties in the residential district by a fence. Outside storage yard, fuel yard or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in a C3 district adjoining or abutting or located across a street from a residential zoning district or located along a street designated by the comprehensive plan as a state highway or a major or secondary arterial shall be enclosed by a fence. The fence shall be sight-obscuring and of such material and design as will not detract from adjacent residences and shall be constructed of such material and according to such design as approved by the city engineer. In no case shall the fence be required to have a height in excess of ten (10) feet.

(2) Automobile, mobile home, or trailer sales lots shall be drained and surfaced with crushed rock except in those portions of the lot maintained as landscape areas.

(3) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, or vibration.

ARTICLE XI

M1 DISTRICT

Section 11.01 M1 District. Principal Uses Permitted Outright.

(1) Principal use permitted in a C3 district, except dwelling structure unless of a type permitted by Section 11.05.

(2) Any other use except a use specified in Section 11.03.

Section 11.02 M1 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Signs: See Section 14.04.

Section 11.03 M1 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an M1 district when authorized in accordance with the provisions of Sections 19.01 through 19.06.

(1) Assembly, manufacture, compounding, processing, preparation, treatment or storage of:

(a) Acids.

(b) Carborundum.

(c) Cement.

(d) Explosives.

(e) Fertilizers, organic or inorganic.

(f) Gas, all kinds (artificial, natural, liquefied, or compressed).

(g) Petroleum products of all kinds.

(h) Rubber.

(2) Dump: rubbish, garbage, dead animals, offal, slag, or other objectionable or hazardous materials.

(3) Fish canning and processing.

(4) Incineration or burning of industrial wastes or by-products.

(5) Junk yard, including processing, storage, or sales.

(6) Meat and poultry slaughter and packing.

(7) Smelting, foundry, casting, or fabrication works for ferrous and non-ferrous metals.

(8) Stock yard, feeding pens.

(9) Wrecking yard.

Section 11.04 M1 District. Conditions of Allowing Uses. All uses in an M1 district shall conform to the following requirements:

(1) Automobile, mobile home or boat sales yard, automobile service station or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in an M1 district adjoining or abutting a residential zoning district shall be screened from properties in the residential district by a fence. Outside storage yard, fuel yard or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in an M1 district adjoining or abutting or located across a street from a residential zoning district or located along a street designated by the comprehensive plan as a state highway or a major or secondary arterial shall be enclosed by a fence. The fence shall be sight-obscuring and of such material and design as will not detract from adjacent residences and shall be constructed of such material and according to such design as approved by the city engineer. In no case shall the fence be required to have a height in excess of ten (10) feet.

(2) Buildings containing uses permitted in the M1 district, and their accessory uses, and located within one hundred (100) feet of a lot in a residential zoning district, where the distance is unobstructed, must have blank walls or walls with windows which do not open on the side of the building facing the residential district.

Section 11.05 M1 District. Prohibited Uses. No building structure, or premises, or portions thereof established after the effective date of the ordinance, shall be used for human habitation, except as quarters for a caretaker, guard or other persons whose permanent residency on the premises is required for operational, safety, or protective purposes, or as quarters or accomodations for persons engaged in certain industrial operations whose residency in the vicinity thereof is essential to satisfy conditions and requirements of the work.

Section 11.06 M1 District. Density Provisions. No limitations except those contained in Sections 13.01 through 15.03.

ARTICLE XII

PR DISTRICT

Section 12.01 PR District. Uses Permitted Outright. None

Section 12.02 PR District. Uses Permitted by Council Approval.

(1) Principal and accessory use for governmental purpose.

(2) Temporary use of any kind.

Section 12.03 PR District. Conditions and Procedures Governing Permitted Uses.

(1) Plans or proposals for the use of land or the erection of buildings or facilities of either permanent or temporary character within a PR district shall first be submitted to the commission for its study and recommendations.

(2) The commission in reviewing plans or proposals submitted to it in accordance with subsection (1) of this section shall consider the most appropriate use of land; the conservation and stabilization of the value of property; and the promotion of the public safety, health and general welfare. The commission shall give particular attention to plans or proposals relating to temporary uses to satisfy itself that such uses will not jeopardize fulfillment of the comprehensive plan in terms of both the use to be permitted and the period of time to be allowed.

(3) After study of a plan or proposal the commission shall transmit without delay to the council its report of findings and recommendations, including stipulated requirements as terms and conditions for approval.

(4) After receiving and hearing the report of the commission the council may approve the proposed use subject to such conditions as it deems appropriate.

(5) If the council or commission determines that the proposed use of any land area, tract, or lot within a PR district affects property located in a vicinity area adjoining such district a public hearing shall be held by the commission. The city auditor shall give notice of the hearing in the following manner:

(a) By publication of a notice in a newspaper of general circulation in the city not less than five (5) nor more than twenty (20) days prior to the date of the hearing.

(b) By sending notices by mail not less than ten (10) days prior to the date of the hearing to the owners of the property in an area affected by the proposed use as determined by the commission, using for this purpose the names and addresses of owners as shown in the records of the county assessor.

ARTICLE XIII

LOT AND YARD STANDARDS

Section 13.01 General Provisions. Intent and Application.

(1) It is the intent of the ordinance to provide standards sufficient to afford continuing protection to property and yet be adaptable enough to avoid unnecessary hardship or interference with growth and natural change. Accordingly, supplementary provisions are necessary to govern specific deviations from general rules.

(2) The provisions contained in the following sections are of both general application to the several zoning districts and supplementary application to the provisions established by the zoning ordinance for specific districts.

Section 13.02. Prohibiting the Reduction of the Size of Yard or Other Open Space. No lot area, yard, or other open space or required off-street parking or loading area existing on or after the effective date of the ordinance shall be reduced below the minimum required by the ordinance, nor shall any lot area, yard, or other open space or off-street parking or loading area which is required by the ordinance for one use be used as the lot area, yard, or other open space or off-street parking or loading area for another use, except as provided in the ordinance.

Section 13.03 General Exception to Lot Size Requirements. If at the time of passage of the ordinance a lot has an area or dimension which does not conform with the density provisions of the zoning district in which it is located, the lot may be occupied by any use permitted outright in the district, subject to the other requirements of the district. Documentary proof of the fact that the lot existed by title at the time of passage of the ordinance shall be submitted by the person claiming benefits under this section.

Section 13.04 General Exception to Building Height Limitations. The following type of structures or structural parts are not subject to the building height limitations of the ordinance: tanks, church spires, belfries, domes, monuments, fire and hose towers, observation towers, transmission towers, chimneys, flagpoles, radio and television towers, masts, aerials, cooling towers, and other similar structures or facilities.

Section 13.05 General Yard Exceptions.

(1) Cornices, eaves, chimneys, belt courses, leaders, sills, pilasters, or other similar architectural or ornamental features (not including bay windows or vertical projections) may extend or project into a required yard not more than two (2) feet.

(2) Open balconies, or unenclosed fire escapes or stairways, not covered by a roof or canopy, may extend or project into a required front yard or a required side yard along a flanking street of a corner lot not more than four (4) feet, or into a required side yard not more than three (3) feet.

(3) Open, unenclosed patios, terraces, roadways, courtyards, or similar surfaced areas, not covered by a roof or canopy, may occupy, extend, or project into a required yard, provided that such areas are not used for off-street parking or other purposes not in conformance with the requirements of the ordinance.

Section 13.06 Front Yard Exceptions.

(1) Commercial and industrial districts: For a lot in a C2, C3 or M1 district containing a use other than a dwelling structure and having its front line on a street any portion of the frontage of which on either side between intersecting streets is contained in any residential zoning district, the minimum front yard shall be fifteen (15) feet; provided that if the frontage contained within the residential zoning district is within an area designated in the comprehensive plan for future general commercial or business use or expansion, except of a local or neighborhood type classified in the ordinancefor a C1 district, or industrial use or expansion, no minimum front yard shall be required.

(2) Sloping lot: If the natural gradient of a lot from front to rear along the lot depth line exceeds an average of twenty (20) percent, the front yard may be reduced by one (1) foot for each two (2) percent gradient over twenty (20) percent, except that the front yard shall not be less than the established front yard of buildings on abutting lots, but in no case shall the front yard for principal uses be required to exceed twenty (20) feet. In no case under the provisions of this subsection shall the setback be less than ten (10) feet.

(3) Garage: A detached or attached garage may be constructed in a natural bank of earth without regard to front yard regulations, provided all exterior walls, except the front, are concealed by the earth for not less than seventy-five (75) percent of their separate areas.

Section 13.07 Side Yard Exceptions. For a lot in a C1, C2, C3, or M1 district containing a use other than a dwelling structure and adjoining a residential zoning district: Minimum side yard along a side lot line adjoining a lot in a residential zoning district shall be fifteen (15) feet in the case of a lot in a C1, C2, or C3 district and twenty (20) feet in the case of a lot in an M1 district; provided that if the adjoining residential district is within an area shown in the comprehensive plan for future commercial or industrial use or expansion, no minimum side yard shall be required.

Section 13.03 Side Yard Along Flanking Street of Corner Lot. For a corner lot in a C2, C3, or M1 district containing a use other than a dwelling structure and having a side yard along a flanking street any portion of the frontage of which on either side between intersecting streets is contained in a residential zoning district, the minimum side yard along the flanking street shall be fifteen (15) feet; provided that if the frontage contained within the residential district is within an area designated in the comprehensive plan for future commercial or industrial use or expansion, no minimum side yard along the flanking street shall be required.

Section 13.09. Rear Yard Exceptions. For a lot in a C1, C2, C3 or M1 district containing a use other than a dwelling structure and adjoining a residential zoning district: minimum rear yard along a rear lot line adjoining a side or rear yard of a lot in a residential zoning district shall be fifteen (15) feet in the case of a lot in a C1, C2, or C3 district and twenty(20) feet in the case of a lot in an M1 district; provided that if the adjoining residential district is within an area shown in the comprehensive plan for future commercial or industrial use or expansion, no minimum rear yard shall be required.

ARTICLE XIV

ACCESSORY STRUCTURES

Section 14.01 Vision Clearance Area.

(1) Except in C2, C3, or M1 districts, vision clearance areas are established. The distance establishing the size of a vision clearance area shall be a minimum of fifteen (15) feet, except that the distance may be reduced to ten (10) feet at intersections including an alley. When the angle of intersection between streets is less than thirty (30) degrees the distance shall be increased to ten (10) feet.

(2) A vision clearance area shall contain no plantings, walls, structures, or other obstructions exceeding a height of forty-two (42) inches measured from the established grade.

Section 14.02 Accessory Structures. (Except Fences, Walls, Hedges and Signs) In an R1, R2, R3 or R4 district accessory structures on each lot (except fences, walls, hedges and signs)shall conform to the following requirements:

(1) Not exceed one story or fourteen (14) feet in height, except on a lot having a minimum area of one acre.

(2) Not project beyond the front building line.

(3) Not occupy altogether more than thirty (30) percent of a required rear yard, provided that the total lot coverage shall not be exceeded.

(4) Not occupy any portion of a required side yard.

(5) Not be located closer than two (2) feet to a side or rear lot line within a rear yard, nor closer than ten (10) feet to a side lot line within a rear yard along a flanking street of a corner lot, provided that in the case of a mobile home park accessory structures shall not be located closer than twenty-five (25) feet to a side lot line within a rear yard along a flanking street of a corner lot, and provided further where the owners of two adjoining lots agree to the joint use of a common driveway, garage structures may be erected by permission of the city engineer which have a common wall located on a side lot line within a rear yard.

(6) Not be located closer than five (5) feet to a rear lot line where such rear lot line coincides with the side lot line of an adjoining lot.

Section 14.03 Accessory Structures: Fences, Walls and Hedges.

(1) Except as provided in Section 14.01, fences, walls or mature hedges not over forty-two (42) inches in height may occupy the required front yard of any lot or the required side yard along the flanking street of a corner lot.

(2) Fences or hedges located back of the required front or flanking street side yard shall not exceed a height of six (6) feet, except when used to enclose a patio, swimming pool, garden supply or tool compound, or similar living, recreational or storage area or facility, provided that such enclosed area or facility and the fences and hedges enclosing it shall be considered as comprising an accessory structure.

Section 14.04 Accessory Structures: Signs.

(1) In R1, R2, R3 and R4 districts the following signs shall be permitted:

(a) One name plate or sign for each home occupation, indirectly illuminated, less than two hundred-forty (240) square inches in area.

(b) One temporary sign, not illuminated, less than six (6) square feet in area, advertising the sale, lease, or rental of the property.

(c) Temporary sign advertising the sale of a tract of land or lots in a subdivision, not illuminated, and not exceeding forty-two (42) square feet in area.

(d) Temporary sign during construction only denoting architect, engineer, contractor, or others engaged in design and erection of buildings and facilities.

(2) In a C1 district the following signs shall be permitted:

(a) Any sign permitted under the provisions of subsection (1) of this section.

(b) One sign for each business establishment, illuminated, but not of an intermittent flashing, animated, or motion type, not exceeding twenty (20) square feet. If illuminated, sign shall not create glare objectionable to residential properties in the vicinity.

(3) In all other districts there shall be no limitations on signs or billboards except those imposed by subsections (5) and (6) of this section.

(4) No illuminated sign or billboard exceeding forty-two (42) square feet, nor any intermittent flashing, motion, or animated sign shall be so located as to face directly, shine, or reflect glare into a dwelling structure, public park, public building, hospital, home for the aged and convalescent, or similar place or building situated in the vicinity of such sign or billboard.

(5) Signs shall conform to all requirements established in the ordinance governing accessory structures, except that a temporary sign advertising the sale, lease, or rental of the property, or the sale of a lot or tract of land may occupy a required front yard or a required side yard along a flanking street of a corner lot.

(6) Signs serving or incidental to a conditional use permitted by the ordinance shall be approved as to type, size, and location by the commission.

ARTICLE XV

HOME OCCUPATIONS

Section 15.01 Home Occupations. Home occupations shall conform to the following requirements:

(1) Not include the following: barber shop, beauty parlor, or real estate office.

(2) Not be conducted in an accessory building.

(3) Not attract traffic or create disturbing influences greater than that of other residential properties in the vicinity.

(4) The residential character of the building shall be maintained and the occupation shall be conducted in such a manner as not to give an outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term.

ARTICLE XVI

OFF-STREET PARKING AND LOADING

Section 16.01 Off-Street Parking Policy. In all districts there shall be provided at the time of erecting new structures, or at the time of enlarging,moving, or increasing of capacity by creating or adding dwelling units, commercial or industrial floor space, or seating facilities, minimum off-street parking space, other than in required front yards or required side yards along flanking streets of corner lots, with adequate provision for ingress and egress to the street, in accordance with the requirements of the following sections.

Section 16.02 Off-Street Parking: Space and Access.

(1) Each off-street parking space shall have a net area of not less than one hundred sixty (160) square feet exclusive of access drives or aisles, and shall be of usable shape and condition. If determined on a gross area basis, three hundred (300) square feet shall be allowed per vehicle.

(2) If the required parking space for a one or two-family dwelling is not provided in a covered garage, such space shall be not less than two hundred (200) square feet, and shall be so located that it may later be covered by a garage structure in accordance with the provisions of the ordinance.

Section 16.03 Off-Street Parking: Location. Off-street parking facilities shall be located as hereinafter specified. Where a distance is specified,such distance shall be the maximum walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve.

(1) For one or two-family dwelling: on the same lot with the building they are required to serve.

(2) For multiple dwelling, rooming or lodging house: two hundred (200) feet.

(3) For hospital, sanitarium, home for the aged, or building containing club rooms: three hundred (300) feet.

(4) For uses other than those specified above: four hundred (400) feet.

Section 16.04 Off-Street Parking: Units of Measurement.

(1) In a stadium, sports arena, church, or other place of assembly, each twenty (20) inches of bench seating shall be counted as one seat for the purpose of determining requirements for off-street parking facilities.

(2) For purposes of determining off-street parking as related to floor space of multi-level structures and buildings, the following formula shall be used to compute gross floor area for parking determination:

Main floor	always 100%
Basement and second floor	50%
Additional stories	25%

Section 16.05 Off-Street Parking: Change of Use, Alteration, Expansion or Enlargement. Whenever a building is enlarged or altered, or whenever the use of a building or property is changed, off-street parking shall be provided for such expansion, enlargement or change in use in accordance with the requirements of the ordinance; provided, however, that no additional off-street parking space need be provided where the number of parking spaces required for such expansion, enlargement or change in use since the effective date of the ordinance is less than ten percent (10%) of the parking spaces specified in the ordinance. Nothing in this provision shall be construed to require off-street parking spaces for the portion of such building existing at the time of passage of the ordinance.

Section 16.06 Off-Street Parking: Uses not Specified. In the case of a use not specifically mentioned in Section 16.11, the requirements for off-street parking facilities shall be determined by the commission. Such determination shall be based upon the requirements for the most comparable use listed.

Section 16.07 Off-Street Parking: Joint Use. The commission may authorize the joint use of parking facilities for the following uses or activities under conditions specified:

(1) Up to fifty percent (50%) of the parking facilities required by the ordinance for a theater, bowling alley, dance hall, bar, or restaurant may be supplied by the off-street parking facilities provided by certain types of buildings or uses herein referred to as "daytime" uses in subsection (4) below.

(2) Up to fifty percent (50%) of the off-street parking facilities required for any building or use specified in subsection (4) below, "daytime" uses, may be supplied by the parking facilities provided by uses herein referred to as "nighttime" uses in subsection (5) below.

(3) Up to one hundred percent (100%) of the parking facilities required for a church or for an auditorium incidental to a public or parochial school may be supplied by the off-street parking facilities provided by uses herein referred to as "daytime" uses in subsection (4) below.

(4) For the purpose of this section, the following and similar uses are considered as primary daytime uses: banks, offices, retail, personal service shops, household equipment or furniture stores, clothing or shoe repair shops, manufacturing or wholesale buildings and similar uses.

(5) For the purpose of this section, the following and similar uses are considered as primary nighttime or Sunday uses: auditorium incidental to a public or parochial shcool, churches, bowling alleys, dance halls, theaters, bars, or restaurants.

(6) Owners of two (2) or more buildings or lots may agree to utilize jointly the same parking space, subject to such conditions as may be imposed by the commission. Satisfactory legal evidence shall be presented to the commission in the form of deeds, leases or contracts to establish the joint use. Evidence shall be required that there is no substantial conflict in the principal operating hours of the buildings or uses for which joint off-street parking is proposed.

Section 16.08 Off-Street Parking: Plans Shall be Submitted.

(1) Every tract or lot hereafter used as a public or private parking area, having a capacity of five (5) or more vehicles, shall be developed and maintained in accordance with the requirements and standards of the ordinance.

(2) The plan of the proposed parking lot shall be submitted to the city engineer at the time of the application for the building for which the parking area is required. Said plan shall clearly indicate the proposed development, including location, size, shape, design, curb cuts, lighting, landscaping, and other features and appurtenances required.

Section 16.09 Off-Street Parking: Enclosure.

(1) A parking barrier, railing, rail fence, evergreen hedge, wall, or other continuous barricade of harmonius material and design at least eight (8) inches, and no more than twenty-four (24) inches, in height shall be provided along each property line which adjoins a street.

(2) Any portion of an off-street parking area which adjoins a residential zoning district shall be screened by a sight obscuring fence.

Section 16.10 Off-Street Parking: Additional Requirements. In addition to the basic standards and requirements established by other sections of the ordinance, the commission or city engineer may make such other requirements or restrictions as shall be deemed necessary in the interests of safety, public health and general welfare of the city, including, but not limited to, lighting, joint developement of parking facilities, entrances and exits, accessory uses, and conditional exceptions. Further, performance bonds may be required in such cases where the commission or council determines that such shall be necessary to guarantee proper completion of improvements within time periods specified.

Section 16.11 Off-Street Parking: Table of Minimum Standards.
Required parking spaces (where alternative standards prevail, the greater applies in conflicting computations) are as follows:

(1) Residential structure	One (1) for each dwelling unit
(2) Rooming and lodging house	One (1) for each sleeping room
(3) Auto court, motel, tourist home	One (1) for each sleeping unit, guest room or suite
(4) Hospital, nursing home, or institution	One((1) for each three (3) beds
(5) Theater	One (1) for each four (4) seats, except one (1) for each six (6) seats in excess of eight hundred (800) seats.
(6) Church, auditorium and similar enclosed place of assembly	One (1) for each six (6) seats,or one (1) for each fifty (50) square feet of floor area for assembly not containing fixed seats
(7) Stadium, sports arena, and similar open assembly place	One (1) for each six (6) seats
(8) Library	One (1) for each two hundred fifty (250) square feet of gross floor area
(9) Dance hall, skating rink	One (1) for each fifty (50) square feet of dance floor or skating area
(10) Bowling alley	Four (4) for each alley
(11) Medical or dental clinic	One (1) for each three hundred (300) square feet of gross floor area
(12) Bank, business and professional office with on-site customer service	One (1) for each four hundred (400) square feet of gross floor area
(13) Office not providing customer services on premises	One (1) for each four (4) employees or one (1) for each eight hundred (800) square feet of gross floor area
(14) Mortuary	One (1) for each four (4) seats

(15) Warehouse, storage and wholesale business	One (1) for each two (2) employees
(16) Food and beverage place with sale and consumption on premises:	
(a) If less than four thousand (4000) square feet floor area	One (1) for each two hundred (200) square feet of gross floor area
(b) If over four thousand (4000) square feet floor area	Twenty (20) plus one (1) for each one hundred (100) square feet of gross floor area in excess of four thousand (4000) square feet
(17) Furniture, appliance, hardware, clothing, shoe, and personal service store	One (1) for each six hundred (600) square feet of gross floor area
(18) Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One (1) for each one thousand (1000) square feet of gross floor area, exclusive of displays, or one (1) for each three (3) employees
(19) Retail store less than five thousand (5000) square feet gross floor area	One (1) for each three hundred (300) square feet of gross floor area
(20) Retail store more than five thousand (5000) square feet gross floor area	Seventeen (17) plus one (1) for each fifteen hundred (1500) square feet in excess of five thousand (5000) square feet of gross floor area
(21) Manufacturing uses, research testing and processing, assembly, and all industries	One (1) for each two (2) employees on the maximum working shift, but not less than one (1) for each eight hundred (800) square feet of gross floor area

Section 16.12 Off-Street Loading: Policy and Standards.

(1) Buildings or structures to be built or substantially altered which receive and distribute material and merchandise by trucks shall provide and maintain off-street loading berths in sufficient numbers and size to adequately handle the needs of the particular case.

(2) The following standards shall be used in establishing the minimum number of berths required.

Number of Berths	Gross Floor Area of the Building in Square Feet
1	Up to 20,000
2	20,000 - 50,000
3	50,000 - 100,000
1 additional for each	50,000 in excess of 100,000

(3) No loading berth shall be located closer than fifty (50) feet to a lot in any residential zoning district unless wholly within a completely enclosed building or unless screened from such lot in the residential district by a wall, fence, or sight-obscuring evergreen hedge not less than six (6) feet in height.

ARTICLE XVII

NONCONFORMING USES

Section 17.01 Nonconforming Uses: May be Continued.

(1) Subject to the provisions of the following sections relating to nonconforming uses, a nonconforming building or use may be continued.

(2) To benefit from the provisions governing continuance of a nonconforming use such use must have been legitimately and lawfully established prior to and in existence at the time of adoption of the ordinance.

Section 17.02 Nonconforming Uses: Discontinuance or Abandonment. Discontinuance or abandonment shall be interpreted as meaning:

(1) When improved land (no principal buildings) and accessory structures used as a nonconforming use shall cease to be used continuously for that particular use for six (6) consecutive months.

(2) When a building designed or arranged for a nonconforming use shall cease to be used continuously for that particular use for twelve (12) consecutive months.

(3) When a building designed or arranged for a conforming use but used for nonconforming activities shall cease to be used continuously for such particular use for six (6) consecutive months.

(4) Declaration of intent to resume active operations shall not affect the requirements of subsections (1), (2),or (3) of this section.

Section 17.03 Nonconforming Uses: Structures.

(1) A building conforming as to use but nonconforming as to the density provisions of the district in which such building is located may be altered, repaired, or extended, providing that the alteration, repair, or extension does not further exceed or violate the appropriate density provisions.

(2) The use of a nonconforming building, or the conduct of nonconforming activities in a building conforming as to use, once discontinued or abandoned, shall not be resumed unless further use conforms to the ordinance.

(3) A nonconforming use of a building may not be changed to another nonconforming use.

(4) The enlargement of a nonconforming use to any portion of an existing building, which portion was designed and built for such nonconforming use prior to the adoption of the ordinance, may be permitted, providing no structural alterations are made.

(5) A building designed and built for, or devoted to, a nonconforming use at the time of the adoption of the ordinance, may not be enlarged or structurally altered unless the use of such building is changed to a conforming use.

(6) When a building or other structure containing a nonconforming use is damaged by any cause so that the cost of renewal of the damaged parts exceeds seventy-five percent(75%) of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt unless the building and its construction and use conforms fully to the ordinance. Any rebuilding otherwise authorized by the ordinance shall commence within six (6) months from the date of damage or destruction if such nonconforming use is to be continued. The determination of whether a building is destroyed to the extent described shall be made by the city engineer.

Section 17.04. Nonconforming Uses: Land.

(1) A nonconforming use of land shall not be continued longer than five (5) years from the date of adoption of the ordinance, or from the date of annexation or change in zoning district classification the result of which such use of land becomes nonconforming, if the true cash value of improvements at the time such use of land becomes nonconforming is less than $2,000.00, as determined by the city engineer on the basis of evidence obtained from a competent source.

(2) A use of land shall conform to the requirements of the ordinance governing fences and screening of certain properties within a period of three (3) years from the date of adoption of the ordinance.

(3) If a nonconforming use of improved land is discontinued, further use of the property shall be for a conforming use.

Section 17.05 Nonconforming Use: Conversion or Removal.

(1) Conversion or removal of a nonconforming structure or use shall be commenced not later than sixty (60) days after the date of abandonment and shall be completed within twelve (12) months thereafter.

(2) In the event of failure of the owner of record to complete, or cause to be completed, removal or conversion, the city engineer may, within ninety (90) days after notice to the owner of record, cause or undertake removal of all nonconforming structures or uses and charge the cost thereof against the property.

Section 17.06 Nonconforming Uses: Reclassification of Zoning District or Annexation. The provisions contained in Sections 17.02 through 17.05 shall apply to buildings, land, or uses which, after the date of adoption of the ordinance, become nonconforming due to reclassification of a zoning district, annexation to the city, or any subsequent change in the regulations of the ordinance.

Section 17.07 Nonconforming Uses: Survey, Notice, and Certificate of Occupancy.

(1) As soon as practicable after the effective date of the ordinance, amendments thereto, or annexations to the city, the city engineer shall determine by survey the existence of nonconforming uses and shall give written notice by mail to the owners of properties containing such uses as shown in the records of the county assessor. Failure on the part of the city engineer to give notice shall not invalidate the regulations of the ordinance.

(2) Any person, or his agent, upon whose property there is operated or maintained a lawful nonconforming use shall, within thirty (30) days after receipt of a notice as required by subsection (1) of this section, obtain from the city engineer a certificate of occupancy designating the location, nature and extent of the nonconforming use and the name of the person responsible therefor.

ARTICLE XVIII

CONDITIONAL USES AND VARIANCES

Section 18.01 Conditional Uses and Variances: Intent and Policy.

(1) It is recognized that there are special uses which, because of their unique characteristics, cannot be properly classified in any particular zoning district without consideration, in each case, of the inpact of those uses upon neighboring land and of the public need for the particular use at the particular location. These uses are called conditional uses. It is the intent and policy of the council that such uses be dealt with in a manner that is equitable to the owner or applicant in terms of the interests of the city in securing public health, safety, and general welfare.

(2) It is the intent and policy of the council to provide relief by granting variances in cases of hardship resulting from a strict interpretation of the regulations of the ordinance, and to authorize a process of appeals to govern situations in which parties affected by an interpretation of the regulations of the ordinance allege improper administrative action.

Section 18.02 Conditional Use: Application and Fee.

(1) An application for a conditional use or modification of an existing conditional use may be initiated by a property owner, or his authorized agent, or by any governmental officer, department, board, or bureau.

(2) An application for a conditional use shall be filed with the city auditor on forms provided by the city. For other than city or other governmental property the application shall be accompanied by a fee of forty ($40.00) dollars which shall not be refundable.

Section 18.03 Conditional Use: Public Hearing. Before any conditional use or modification of an existing conditional use is allowed, it shall be considered at a public hearing by the commission. Such public hearing shall be held within forty (40) days after the filing of the application. The city auditor shall give notice of the hearing in the following manner:

(1) By publication of a notice in a newspaper of general circulation in the city not less than five (5) nor more than twenty (20) days prior to the date of the hearing.

(2) By sending notices by mail not less than ten (10) days prior to the date of the hearing to the property owners within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of way, using for this purpose the names and addresses of owners as shown in the records of the county assessor.

(3) Where all property located within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of-way, is under the same ownership, owners of all property abutting that of the same ownership shall be notified in the same manner as provided in subsection (2) of this section.

(4) Failure to send notices to persons specified in this subsection or failure of a person to receive a notice shall not invalidate the proceedings in connection with an application for conditional use.

Section 10.04 Conditional Use: Planning Commission Action.

(1) The commission in reviewing an application for a conditional use shall consider the most appropriate use of the land; the conservation and stabilization of the value of property; adequate open space for light and air; concentration of population; congestion of public streets; and all other factors affecting the promotion of the public safety, health, convenience, and comfort.

(2) In addition to other requirements of the ordinance, the commission, in recommending the granting of a conditional use, may stipulate those which it finds are necessary to carry out the intent of the ordinance. These stipulations may increase the required lot or yard, control the location and number of vehicular access points to the property, limit the number of signs, limit coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property, require screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area, or impose other requirements.

(3) Following the public hearing the commission shall transmit without delay to the council the application, report of findings, and its recommendation, together with stipulated requirements as terms and conditions for approval.

Section 10.05 Conditional Use: Council Action.

(1) After receiving and hearing the report of the commission the council may approve or deny the application. In allowing a conditional use the council may impose requirements stipulated by the commission in its report of recommendations.

(2) The council shall promptly advise the city engineer of its action, and if an application is approved, he shall incorporate the terms and conditions stipulated by the council in the issuance of permits to the applicant.

Section 10.06 Conditional Use: Special Provision for Excavation Pits: Stone Quarry; Sand, Gravel, or Clay Pits; and Soil Stripping. The use of premises in any district for the excavation, mining, extraction, or removal of stone, sand, gravel, clay or other natural deposits may only be authorized by the council after public hearing before the commission and receipt of a report of the commission's findings and recommendations. A conditional use may be authorized by the council for such periods as it deems consistent with the public health, safety, and general welfare, and subject to the following provisions:

(1) Plans submitted by the applicant for such excavations shall consist of a topographic map with such cross-sections as are necessary to adequately show the topography of the property in question and its relation to streets and surrounding property, together with a similar map showing the extent of the proposed excavation and the contours of the ground after the removal of the material.

(2) A copy of each map shall be submitted to the city engineer who shall report to the commission his findings regarding the effect of the intended excavations upon streets and other improvements, either existing or contemplated, and upon all properties within the area of influence of such excavations.

(3) Before approving an application, the council may require that the applicant enter into an appropriate agreement with the city for reclamation of such areas to suitable use after completion of excavations, and that an adequate performance bond or other guarantee be furnished covering the cost of restoration or other work.

Section 10.07 Conditional Use: Mobile Home Park. In addition to such other requirements as the commission may recommend and the council stipulate in authorizing a mobile home park under the provisions of subsection (2) of Section 7.03, the following density provisions shall be imposed.

(1)	Minimum lot area:	2 acres
(2)	Minimum lot width:	200 feet
(3)	Minimum lot depth:	200 feet
(4)	Minimum front yard:	30 feet
(5)	Minimum side yard:	20 feet
(6)	Minimum side yard along flanking street of corner lot:	25 feet
(7)	Minimum rear yard:	25 feet
(8)	Maximum building height:	2½ stories
(9)	Maximum lot coverage:	40 percent

(10) No mobile home or trailer stand or an accessory use incidental to a mobile home park shall extend or project into a required yard.

Section 1[illegible].0[illegible] Variance.

(1) Where unnecessary hardships and practical difficulties, resulting from peculiarities of a specific property, render it difficult or inequitable to carry out the provisions of the ordinance, the commission shall have power to grant a variance in harmony with the general purpose and intent of the ordinance. Such variance may vary the literal enforcement of any standard, requirement or regulation of the ordinance, except the provisions relating to the permitted uses of the district wherein is located the property which is the subject of the application for variance, so that the intent of the ordinance will be observed, public interest protected, public safety secured, and substantial justice done. To this end a variance in the provisions and requirements of the ordinance shall only be authorized if the commission finds that all the following facts and conditions exist in each case of an application for a variance:

(a) That there are exceptional or extraordinary circumstances or conditions applying to the subject property that do not apply generally to other properties in the same vicinity or zoning district, and that the plight of the applicant is unique and not the result of his own action.

(b) That the land or structure in question cannot be reasonably used and cannot yield a reasonable return, if used only in accordance with the density requirements of the ordinance for the district in which it is located, and that such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other property in the same vicinity or district.

(c) That the authorization of such variance will not be materially detrimental to the public welfare, not injurious to nearby property, nor essentially different from the provisions of the district in which it is located.

(d) That the granting of such variance will not adversely affect the comprehensive plan or studies thereof.

(2) In authorizing a variance the commission may attach thereto such conditions regarding the location, character or other features of the proposed structures or uses as it may deem necessary to carry out the intent of the ordinance; provided, however that a variance so authorized shall become void after the expiration of six (6) months if no substantial construction has taken place in accordance with the plans for which such variance was authorized.

(3) No variance shall be granted by the commission which allows the use of property for purposes not authorized within the zoning district in which the property is located.

Section 18.09 Variance: Application and Fee.

(1) An application for a variance may be initiated by a property owner or his authorized agent, or by any governmental officer, department, board, or bureau.

(2) An application for a variance shall be filed with the city auditor on forms provided by the city. For other than city or other governmental property the application shall be accompanied by a fee of twenty dollars ($20.00) which shall not be refundable.

Section 18.10 Variance: Public Hearing.

(1) Before any variance is allowed under the provisions of the ordinance, it shall be considered by the commission at a public hearing.

(2) Within forty (40) days after the filing of an application for a variance, the commission shall hold a public hearing. At least five (5) days but not more than twenty (20) days prior to the date of hearing, the city auditor shall give written notice by mail of the hearing to owners of property abutting the lot or parcel of land on which the variance is requested, and shall notify the owner of any other lot or land parcel which he deems affected by the proposed variance, using for this purpose the names and addresses of owners as shown upon the records of the county assessor.

Section 18.11 Variance: Action of the Commission. The commission may attach conditions to an authorized variance which it feels are necessary to protect the public interest and carry out the purpose of the ordinance. The city auditor shall notify the applicant for a variance in writing of the commission's action within five (5) days after the commission has rendered its decision.

Section 18.12 Variance: Appeal to the Council. The action of the commission on an application for a variance may be appealed to the council within fifteen (15) days after the commission has rendered its decision by filing a written notice with the city auditor. If no appeal is taken within the fifteen (15) day period the decision of the commission shall be final. If an appeal is filed the council shall receive a report and recommendation from the commission, and shall hold a public hearing on the application. Notice of the public hearing shall be by one (1) publication in a newspaper of general circulation in the city not less than five (5) days nor more than twenty (20) days prior to the date of hearing.

ARTICLE XIX

ZONE CHANGES

Section 19.01 Amendments to Ordinance Text and Zoning Map. An amendment to the text of the ordinance or a change in or addition to the zoning map by altering district boundaries may be initiated by the council, commission, or by application of a property owner or his authorized agent.

Section 19.02 Amendments: Application and Fee. An application by a property owner or his authorized agent for an amendment to the ordinance shall be filed with the city auditor on forms provided by the city. The application shall be accompanied by a fee of forty dollars ($40.00) which shall not be refundable.

Section 19.03 Amendments: Public Hearing

(1) Before an amendment is made to the text of the ordinance or the zoning map, it shall be considered by the commission at a public hearing. This requirement shall apply to an amendment initiated by the commission or the council as well as by application of a property owner.

(2) The public hearing shall be held within forty (40) days after the filing of an application by a property owner or after request of the commission or council.

Section 19.04 Amendments: Notice of Public Hearing. Notice of the time and place for a public hearing on an amendment to the ordinance shall be given by the city auditor in the following manner:

(1) By publication in a newspaper of general circulation in the city not less than five (5) days nor more than twenty (20) days prior to the date of the hearing.

(2) By mailing notice not less than ten (10) days prior to the date of hearing to owners of property within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of-way, using for this purpose the names and addresses of the owners as shown upon the records of the county assessor.

(3) Where all property located within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of-way, is under the same ownership, owners of all property abutting that of the same ownership shall be notified in the same manner as provided in subsection (2) of this section.

(4) Failure to mail notice to a person specified in this section or failure of a person to receive the notice shall not invalidate any proceedings in connection with the proposed amendment.

Section 19.05 Amendment: Recommendation of the Commission. The commission shall recommend to the council approval, disapproval, or modification of the proposed amendment to the text or zoning map of the ordinance. The commission shall make its findings and recommendations in writing within forty (40) days after the hearing on the proposed amendment.

Section 19.06 Amendments: Recess of Hearing by Commission. The commission may recess a hearing on a proposed amendment in order to obtain additional information or to serve further notice upon other property owners or persons it determines may be interested in the proposed amendment. Before recessing for this purpose the commission shall announce the time and place at which the hearing will be resumed. If the time and place are not thus announced a new notice stating the time and place for resumption of the hearing shall be given by the city auditor in accordance with the provisions of Section 19.04.

Section 19.07 Amendments: Council Action.

(1) The council shall receive from the commission the application, report, and its recommendations and shall hear other information relating to the proposed amendment.

(2) After receipt of the report from the commission, or if no report is received within the time period stipulated in Section 19.05, the council shall hold a public hearing on the proposed amendment. Notice of the hearing shall be given as provided in ORS 227.260.

(3) After the public hearing required by subsection (2) of this section has been held, the council may, by ordinance, adopt the proposed amendment as submitted by the commission, or as it may itself modify.

ARTICLE XX

ADMINISTRATION

Section 20.01 Form of Petitions, Applications, and Appeals. The commission shall prescribe the form and scope of all petitions and applications provided for in the ordinance and accompanying data to be furnished to assure the fullest practical presentation of facts for proper consideration of a matter involved in each case and to maintain a permanent record.

Section 20.02 Interpretation. Where the conditions imposed by any provision of the ordinance upon the use of land or building or upon the size, location, coverage, or height of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of the ordinance or of any other ordinance, resolution, or regulation, the provisions which are more restrictive shall govern.

Section 20.03 Enforcement. The city engineer shall have the power and duty to enforce the provisions of the ordinance.

Section 20.04 Penalty Provisions. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this ordinance shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this ordinance shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the city jail for a period of not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or permitted by such person and shall be punishable accordingly.

In addition to the penalties herein above provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance shall be deemed a public nuisance and may be, by this city, summarily abated, and each day such condition continues shall be regarded as a new and separate offense.

Section 20.05. Validity. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 20.06 Repeal. Ordinance 59-06 and ordinance 59-20 and all other ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 20.07 Effective Date. This ordinance shall take effect and be in force from, on and after thirty (30) days after passage.

PASSED by the Common Council this 6th day of November, 1961

APPROVED by the Mayor this 6th day of November, 1961

/s/ Harry M. Steinbock
Mayor

ATTEST:

/s/ Dale F. Curry
Finance Director

ROLL CALL ON PASSAGE:

	Yea	Nay
Commissioner Thorsness	x	
Swanson	x	
Abrahamsen	Absent	
Duoos	x	
Mayor Steinbock	x	

Appeal AP23-02

	Name	Mailing Address	City, State, Zip	Email	Phone #	Notes
(AP23-02: Appellant)	Austin Kettleson	286 Lexington Ave.	Astoria, OR 97103	austinkettleson@gmail.com		
(AP23-02: Appellant)	Andrew Kipp	461 Exchange St.	Astoria, OR 97103	kipp.andrew@gmail.com		
(AP23-02: Appellant)	John Windus	960 Franklin Ave.	Astoria, OR 97103	jwindus@nwi.net		
(AP23-02: Appellants' Attorney)	Dan Kearns, Reeve Kearns	P.O. Box 13015	Portland, OR 97213	dan@reevekearns.com	(503) 997-6032	

Appeal AP23-02

	Name	Mailing Address	City, State, Zip	Email	Phone #	Notes
(AP23-02: Applicant)	Bob Magie	1466 Franklin Ave.	Astoria, OR 97103	exchangeastoria@gmail.com		
(AP23-02: Applicant)	Cindy Magie	1466 Franklin Ave.	Astoria, OR 97103	exchangeastoria@gmail.com		
(AP23-02: Applicants' Attorney)	Carrie Richter, Bateman Seidel	1000 SW Broadway Ave. #1910	Portland, OR 97204	crichter@batemanseidel.com	(503) 972-9903	

Persons of Record Appeal AP23-02 - provided in-person/Zoom testimony at the November 2, 2023 Appeal Hearing (refer to Sign-In sheets (pgs 278-279) and Hearing Minutes

	Name	Mailing Address	City	Email	Phone #	Notes
(AP23-02: Applicant)	(1) Bob Magie	1466 Franklin Ave.	Astoria, OR 97103			Opposed to Appeal; in person testimony
(AP23-02: Applicants' Attorney)	(2) Carrie Richter, Bateman Seidel	1000 SW Broadway Ave. #1910	Portland, OR 97204	crichter@batemanseidel.com		Opposed to Appeal; in person testimony (att'y)
(AP23-02: PofR)	(3) Jacob Helligso	539 16th St.	Astoria, OR 97103	jakehelligso@gmail.com		Opposed to Appeal; in person testimony
(AP23-02: PofR)	(4) John Orr	175 South Place	Astoria, OR 97103	realjohnny@gmail.com		Opposed to Appeal; in person testimony
(AP23-02: Appellants' Attorney)	(5) Dan Kearns, Reeve Kearns	P.O. Box 13015	Portland, OR 97213	dan@reevekearns.com		In favor of Appeal; in person testimony (att'y)
(AP23-02: Appellant)	(6) Andrew Kipp	461 Exchange St.	Astoria, OR 97103	kipp.andrew@gmail.com		In favor of Appeal; in person testimony
(AP23-02: PofR)	(7) Brenda Harper	342 14th St.	Astoria, OR 97103	superset7@gmail.com		In favor of Appeal; in person testimony
(AP23-02: PofR)	(8) Sarah Jane Bardy	1661 Irving Ave.	Astoria, OR 97103	sarahjane.bardy@gmail.com		In favor of Appeal; in person testimony
(AP23-02: PofR)	(9) Jordan Okoniewski	4831 Cedar St.	Astoria, OR 97103			In favor of Appeal; Zoom testimony

Attended hearing - did NOT speak

	Name	Mailing Address	City	Email	Phone #	Notes
(AP23-02: Appellant)	John Windus	960 Franklin Ave.	Astoria, OR 97103	jwindus@nwi.net		In favor of Appeal - as indicated on sign-in sheet
(AP23-02: Appellant)	Austin Kettleson	286 Lexington Ave.	Astoria, OR 97103	austinkettleson@gmail.com		In favor of Appeal - as indicated on sign-in sheet
(AP23-02: person of interest)	Iris Douglas	235 Lexington Ave.	Astoria, OR 97103	m.luna.iris@gmail.com		In favor of Appeal - as indicated on sign-in sheet
(AP23-02: person of interest)	Rachel Gaetano	281 W. Irving Ave.	Astoria, OR 97103	rachel.gaetano@yahoo.com		In favor of Appeal - as indicated on sign-in sheet
(AP23-02: person of interest)	Laura Evans	461 Exchange St.	Astoria, OR 97103	laura.jeanne.evans@gmail.com		In favor of Appeal - as indicated on sign-in sheet

Persons of Record Appeal AP23-02 - provided written testimony for the November 2, 2023 Appeal Hearing

	Name	Mailing Address	City	Email	Phone #	Notes
(AP23-02: PofR)	Alicia Christian	460 McClure Ave.	Astoria, OR 97103	abchristianlmt@yahoo.com		In favor of Appeal; rec'd letter via email 11-2-23 (pg 235)
(AP23-02: PofR)	Laura Evans	461 Exchange St.	Astoria, OR 97103	laura.jeanne.evans@gmail.com		In favor of Appeal; rec'd letter via email 11-2-23 (pg 236)
(AP23-02: PofR)	Jan & Ashleigh Gregor *(group letter)*	1546 Franklin Ave.	Astoria, OR 97103	jantgregor@gmail.com		in favor of Appeal; rec'd letter via email 11-2-23 (pg 237)
(AP23-02: PofR)	Curt Clumpner & Lake Jiroudek	1528 Franklin Ave.	Astoria, OR 97103			" "
(AP23-02: PofR)	Dave & Pam Armstrong	1510 Franklin Ave.	Astoria, OR 97103			" "
(AP23-02: PofR)	Jasper Stone	1527 Exchange #2	Astoria, OR 97103			" "

Persons of Record Appeal AP23-02 - provided written testimony AFTER the November 2, 2023 Appeal Hearing

	Name	Mailing Address	City	Email	Phone #	Notes
(AP23-02: PofR)	Melissa Barber	1268 Kensington Ave.	Astoria, OR 97103	melissa.barber@gmail.com		In favor of Appeal; rec'd letter via email 11-3-23 (pg 346)
(AP23-02: PofR)	Caitlin Callahan & Dustin Nord	90614 Hwy 202	Astoria, OR 97103	callahan.caitlin.ann@gmail.com		In favor of Appeal; rec'd letter via email 11-3-23 (pg 348)
(AP23-02: PofR)	Brenda Harper	342 14th St.	Astoria, OR 97103	superset7@gmail.com		In favor of Appeal; rec'd letter via email 11-3-23 (pg 350)
(AP23-02: PofR)	Jacob Helligso	539 16th St.	Astoria, OR 97103	jakehelligso@gmail.com		Opposed to Appeal; rec'd letter via email 11-9-23 (pg 352)
(AP23-02: PofR)	Mary Hunter	3356 Grand Ave	Astoria, OR 97103	mhunter97103@gmail.com		Neutral to Appeal; rec'd letter via email 11-9-23 (pg 354)

ORDERS mailed 12/15/23 - also sent via email; deadline to appeal is by 4:00pm on Tuesday, Jan. 2, 2024

From:	Tiffany Taylor
Cc:	Blair Henningsgaard; Scott Spence; Matt Brandmeyer
Subject:	Appeal Decision - AP23-02
Date:	Friday, December 15, 2023 6:19:20 PM
Attachments:	Minutes 11-02-2023 Appeal Hearing.final.pdf AP23-02 Decision Cover Letter 12-15-2023.pdf

Please use this link to view the Hearings Officer's Decision regarding Appeal AP23-02:

- (58 pages) – **https://secure.ifocus.us/Default.aspx?dl=6BE646BB0A49DDE3E522BE9B51E9979B**

The meeting minutes from the November 2, 2023 appeal hearing are attached.

For your convenience, please note the following links:

- Full Record (444 pages) – **https://secure.ifocus.us/Default.aspx?dl=4AB057E5B2693195262F8CA79A1D9E31**

- Audio/Visual Zoom recording – **https://zoom.us/rec/play/PYdNvLVzZHCh72nHb2cgUbpDv3JKVVPaNN3i9481aUbudUepQg0jG2WKTJM2UsnsH2LJV4XhVCrvJKC-.TzO7EvZJPKDqmwAI?autoplay=true&startTime=1698962921000**

Any person with standing may appeal the Hearings Officer's decision and request a public hearing before the City Council by filing a Notice of Appeal with the Community Development Director within 15 days of this mailing of the Order (Section 9.040). The appeal deadline is 4:00pm on January 2, 2024. The Notice of Appeal should state the reasons for the request. A fee is required to cover the cost of the appeal. If no appeal is filed within the 15-day period, the decision of the Hearings Officer becomes final.

If you have any questions, please don't hesitate to contact our office.

Regards,
Tiffany

TIFFANY TAYLOR
CITY PLANNER
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)

AP23-02 Orders sent via email on 12/15/23 to Persons of Record

Email Distribution List

Alan Rappleyea rappleyeagovtlaw@gmail.com

Daniel Kearns dan@reevekearns.com

Austin Kettleson austinkettleson@gmail.com

Andy Kipp kipp.andrew@gmail.com

John Windus jwindus@nwi.net

Carrie Richter crichter@batemanseidel.com

Bob and Cindy Magie exchangeastoria@gmail.com

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Jan Gregor jantgregor@gmail.com

Melissa Barber melissa.barber@gmail.com

Caitlin Callahan callahan.caitlin.ann@gmail.com

Mary Hunter mhunter97103@gmail.com

LUBA
DEC 01 2023 PM 12:49

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE,
Petitioners,

vs.

CITY OF ASTORIA,
Respondent.

RECEIVED
DEC 04 2023
Blair Henningsgaard

LUBA No. 2022-015

ORDER

On February 25, 2022, petitioners filed their notice of intent to appeal a community development director determination that petitioners' use of their property was not allowed. On March 2, 2022, petitioners filed a motion to suspend this appeal to allow the parties additional time to resolve a related case. The motion asked that the case remain suspended until one of the parties notified LUBA to restart the appeal. The motion was signed by both the city and petitioners. On March 7, 2022, LUBA issued its order suspending the appeal.

On May 2, 2023, LUBA issued an order directing the parties to advise LUBA of the status of the appeal. Our order advised the parties that if we did not receive a response to our order, we would issue a second order continuing the suspension for an additional 28 days and at the conclusion of that 28-day extension, the appeal would be dismissed without further notice, unless one or more of the parties requested that the appeal be reactivated.

As of the date of this order, LUBA has not received a response to its order.

This appeal will be dismissed without further notice unless one or more of the parties requests that the appeal be reactivated, on or before December 29, 2023

Dated this 1st day of December 2023.

Michelle Gates Rudd
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Order for LUBA No. 2022-015 on December 1, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Blair J. Henningsgaard
Astoria City Attorney's Office
PO Box 1030
Astoria, OR 97103

Carrie A. Richter
Bateman Seidel, P.C.
1000 SW Broadway
Suite 1910
Portland, OR 97205

Dated this 1st day of December, 2023.

Erin Pence
Executive Support Specialist

Hannah Barkemeyer Baker
Executive Support Specialist

RECEIVED
NOV 27 2023
BY: In person TA

Bateman Seidel

Carrie A. Richter
crichter@batemanseidel.com
www.batemanseidel.com
Telephone DID: 503.972.9903
Facsimile: 503.972.9043

11/27/2023

VIA EMAIL

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal
Applicant's Final Written Argument

Dear Hearings Officer Rappleyea:

This firm represents the applicants Bob and Cindy Magie, the principles of Gilbaugh LLC, which owns the Gilbaugh building, the subject of this appeal. By way of introduction, it is important to recall how this case started. The Magies did not ask the City to take this matter up in the first instance. Rather, the Magies offered the City an explanation for their use of the Gilbaugh building solely in response to an enforcement action that the City pursued. The Magies were perfectly happy to continue renting units within the Gilbaugh fourplex, for short or long-term use, as the building had been originally constructed, had always been used and as the City had, on more than one occasion, blessed as being permitted. For the reasons set forth in greater detail below, the Hearings Officer should affirm the City's previous approvals.

The Controlling Regulatory Framework

As the Appellant's attorney correctly notes, ORS 215.130, governing nonconforming uses applies only to counties and not to cities. *Hood River Sand, Gravel and Ready Mix v. City of Mosier,* 24 Or LUBA 381 (1993). Cases considering non-conforming uses relying on ORS 215.130 have no relevance to how non-conforming uses are treated in Astoria. Rather, this matter should be viewed strictly under the nonconforming use requirements as set forth in the Astoria Development Code (ADC).

In Astoria, the regulation controlling non-conforming uses provides:

> "3.160 NONCONFORMING LOTS, USES AND STRUCTURES
>
> Purpose. Within the zones established under this Code, there existing *[sic]* lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It

> is the intent of this Section to establish requirements that govern the future use of such nonconformities."

The regulations that govern future operation of nonconforming uses is set forth in ADC 3.180 and they relate solely to expansion, change or discontinuance, which are discussed in greater detail below. Assuming that none of these three circumstances has occurred, a nonconforming use is allowed to continue. This conclusion is reinforced by the definition of "nonconforming use" set forth in ADC 3.160 which provides:

> "a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."

Whether the use was lawful before the new code was passed requires identifying and describing the "use." The term "use" is defined in ADC 1.400 to include:

> "USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.
>
> USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun."

The Nature of the Use, when it First Occurred, was Transitional Residential Without Any Tenancy Timing Limitations and Should be Allowed to Continue Accordingly

The Magies have established that the Gilbaugh Building was constructed in the 1920s to include the same four residential units that exist today. The record reflects, and no party disputes, that it was located across the street from the hospital in order to provide temporary accommodation for traveling doctors or nurses. Rec 131. Since that time, the fourplex has continued to provide residential accommodation with no concern for the length of the stay, whether it be for days or for years. The record reflects that there were renters living in all four of the units when the Magies first purchased the property in 2015. And transient rental uses have continued through the present, with the Magies renting to travelling nurses or Coast Guard members for short-stays, sometimes for a couple of months or by the week, or for longer periods. Rec 1.

The City adopted its first zoning code in 1961. See attached.[1]

[1] Although it is not controlling since the Gilbaugh transitory use predates any regulatory restrictions imposed by the code, the evolution of short term rental regulation in Astoria may be of interest. In 1961, "motels" and "hotels" were permitted outright within the C3 zone, whereas a

"dwelling unit," including multifamily, was only conditionally allowed. In 1961, a "motel" was defined as:

> "A building or group of buildings on the same lot containing guest units with separate entrances and consisting of individual sleeping quarters, detached or in connected rows, with our without cooking facilities, for rental to transients."

A "dwelling structure" was only allowed as a conditional use and the term "dwelling unit" was defined to include:

> "An independent living unit within a dwelling structure designed and intended for occupancy by not more than one (family and having its own housekeeping and kitchen facilities. Hotel, motel, rooming and boarding units which are used primarily for transient tenancy shall not be considered as dwelling units."

The term "transient" was not defined and did not impose any quantifiable limitation on the duration of a stay.

The regulations in place from 1992 through 2018 identify "motel / hotel" and "multi-family dwelling" as outright permitted uses within the C3 zone. However, the terms "motel" and "hotel" were given much more barebones definitions: "a building in which lodging is provided for guests for compensation." Rec 183. Although the term "transient lodging facility" does appear in the 1992-2018 code in reference to the definition for an "inn," a definition of this term appears for the first time as part of the adoption of Ordinance No 19-07 in 2019 and it provides, in relevant part:

> "Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn,....."

If the Gilbaugh units were first occupied with transient units between 1992 to 2018 subject to the City's zoning standards applied, the use would be as a "motel."

The regulation of short-term rentals was nonexistent when the Magies started their work on the Gilbaugh in 2015. Occupancy taxes for short term rentals was added in 2016/2017, homestay lodging licenses (only in the R zones) were discussed in 2019 and then the retroactive 2019 code amendment for all short term rentals followed. At this time short term rentals were not looked at as the ill-informed cause of the "housing crisis" that is it has been for the last couple of years but a great way to travel that helps locals and not huge hotel chains and a different option. See the legislative history attached to Kearns letter dated November 9, 2023.

The transient-focused residential use of this building pre-dates that first zoning by about 40 years so any limitations that may otherwise apply, would not control residential uses occurring within the Gilbaugh. Similarly, there were no mandatory off-street parking obligations imposed as part of this use when it first started. Although the Magies have come into compliance with various City standards in recent years, including obtaining land and improving it for off-street parking and complying with the City's occupational tax requirements, this alone does not change the non-conforming residential status of the use of the Gilbaugh units to anything other than residential lodging without any length of stay limitations.

From its original inception, the residential uses at the Gilbaugh reflect a transitory lodging, rather than permanent dwelling use. No local zoning regulations prescribed any timing limitation on those uses but rather they could extend for a few days, weeks, months or even years. The first time that the City imposed any quantifiable timing limitation as a means to distinguish lodging tenancies occurred in 2019 when the City defined the term "transient" as one who occupies a residence for less than 30 consecutive calendar days and began classifying motels, hotels or other lodgings as "transient lodging facilities." The result of the 2019 change was to create residential distinctions that do not apply to the Gilbaugh given the City's nonconforming use standards that allow pre-established uses – rentals for any length of time - to continue. Because the residential use at the Gilbaugh predate any of the City's regulatory distinction between transitory and permanent uses, the Hearings Officer should conclude that these four units can continue to provide accommodation without respect to any such timing constraint as they have done since the 1920s.

In fact, the structure of the existing short term regulations within the C3 zone expressly authorize the continued use of structures that were originally constructed as a "motel" or "hotel." ADC 2.39.10(J)(2) provides:

> "Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."

The term "motel" is defined in the post-2019 version of the ADC as:

> "A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building."

The Gilbaugh has rooms that have direct access to the outside which has, since its construction, been made available to guests for compensation. This configuration of the units and their accommodation of paying guests has not changed since the building was built. The Hearings

Officer should conclude that the Gilbaugh was originally constructed as a "motel" and allow its continued operation as such under ADC 2.39.10(J)(2).

Before 2019, a unit within a "hotel" or "motel" could provide lodging for one day, one week, six months or a year and the use would qualify as a "hotel" or "motel" use. The units within the Gilbaugh Building so qualified as providing "lodging" to "guests for compensation." At the time that the Gilbaugh units were first put to use in the 1920s and more recently, at the time that the Magies purchased the property in 2015 up until the present, the fourplex units have been used as "hotel / motel" without any constraint on the length of time that the unit was rented.

The City's non-conforming use code is structured to allow uses that "were lawful before this code was passed" to continue except for in certain circumstances provided by the Code, only two of which Appellants have argued are relevant here. First, is "change in the non-conforming use." The Appellants argue that by long term renting units after the July 2019, the units were changed to a conforming use. The shortcoming with this argument is that the pre-2019 "hotel / motel" use occurring within the Gilbaugh never actually changed. As explained, this use is not subject to the tenancy timing limitations because its transitory use predates those obligations. The law developed around non-conforming uses does acknowledge types of uses that are intermittent, sporadic or that vary with seasonal or market conditions. *Polk County v. Martin*, 292 Or 69, 636 P2d 952 (1981) (rock quarry made available for aggregate extraction on request but where no rock was extracted for 14 years); *Coonse v. Crook County,* 22 Or LUBA 138 (1991) (growth or fluctuations in business do not constitute a change in a use, although relocating a logging business to a different location and then resuming it in its nonconforming location did constitute a change in use.) Variability in the length of tenancy is common when one is renting units that were constructed for and historically accommodated such variety. As a result, stays that exceed 30 days should not be viewed as a presumptive change in the preempts the ability to rent for less than 30 day stays.

Honoring the historic transient nature of the Gilbaugh use would allow the Magies to continue renting to paying customers for whatever length the community demands rather than requiring the units to sit vacant turning down those who might be interested in a stay of more than 30-days. By viewing the use as that first occurred in 1920, the Magies would be able to continue to rent for a few months at a time for a Coast Guard training crew or contractors working on a construction project but then return to less than 30-day rentals for a visiting nurse. This would not only acknowledge the long-standing nonconforming use rights for the property consistent with the Gilbaugh, it would provide a middle-ground responding to the needs of the community - whether it be in the form of long, middle, or short-term rentals.

The Evidence Shows that the Magies Intended and Took Action to Short Term Rent the Gilbaugh Units Before 2019

If, in the alternative, the Hearings Officer concludes that residential uses within Gilbaugh units are subject to the 30-day transient lodging limitations unless they were initiated as an exclusive and discrete use before 2019, then there is sufficient evidence in the record to support such a finding. This evidence includes:

- Statements by Bob and Cindy Magie, both oral at the hearing and in writing that when they purchased the property in 2015, they intended to operate short term rentals. They knew that restoring the property to a point to which the units would be attractive to short term renters with their limited resources and the amount of work necessary would take years. If they had any idea that the City was going to change the code in 2019 foreclosing that opportunity, they would not have purchased and lovingly restored the building. Oral statements at the hearing and Nov. 9 and 16, 2023 letters.

- Recitations of conversations with the Community Development Director Kevin Cronin in the summer of 2015 and the spring of 2017 "that our additional 5 new spaces in the back would more than compensate for the two spaces per unit that are required for our 6 potential STRs (14 spaces total, but only 12[2] needed for compliance.)" Rec. 112 & 114.

- Statement by Shannon Fitzpatrick, principal broker of PCM, Inc, the company that managed the units from May 2018 through November 2021, supporting the Magies' statement of intent stating:

  "during the period of management, we discussed your business plan for using the property as short term rentals and you showed me your business licenses for the short term rentals. We worked together on upgrading and updating the units in a manner that would set the units up for use as future short term rentals as tenants vacated the units and new tenants were put into place." Rec 109.

- Statement from Sean Fitzpatrick, a small business advisor working with Clatsop Community College's Clatsop Economic Development Resource program, similarly independently corroborating the Magies' intent, who recounted a conversation in 2015 which provides:

  "As we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market

[2] In their November 9, 2023 letter, the Magies' acknowledged their misstatement in the application timeline that compliance with the 2017 code required 11 parking spaces to serve the short term rental of 11 bedrooms.

rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals." Rec 108.

- Statement from Jacob Helligso, a neighboring homeowner, stating: "During our conversation around parking in 2016 we discussed the plan to move his properties into Short Term Rentals." November 9, 2023 submittal.

- Photographs of the site taken in the winter of 2018 and January, 2019, showing construction work taking place including parking construction vehicles and materials in the parking lot including porta-potty. The foundation work included installing a short-term rental supply storage area and a place to store furniture for the units that were under renovation. Attached to Magies' Nov. 9, 2023 submittal.

- Substantial expenditures directed specifically to short term rentals made before 2019 including interior floor and kitchen unit restoration, driveway and parking area improvements totaling 45% of the total STR-specific improvements. Including the exterior restoration costs, which were necessary to eliminate years of deferred maintenance to make the units attractive to short term rentals, the expenditures made before 2019 total 75% of the total costs.[3] See expenditure table attached to Magies' November 16, 2023 submittal.

- Documentation of emails between the Magies and City staff in 2020 verifying that the Magies had 6 short term rentals including a following statement by Barbara Fryer:

"Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff." Rec 125.

This acknowledges the addresses of all 6 dwelling units on the property as well as the 11 bedroom "Astoria Downtown Cottages" as identified in the 2020 Transient Room Tax Registration that was assigned the same number as the 2017 application. These forthright

[3] A ratio in excess of one to 14, or seven percent, between expenditures and total project is sufficient to satisfy the expenditure ratio test as established in *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973); *Cook v. Clackamas County*, 50 Or App 75, 81-82, 622 P3d 1107 (1981).

> discussions with City staff are not evidence of someone who is scheming to avoid compliance with regulations.

All of this evidence indicates that the Magies acted in good faith moving forward with their short term rentals long-before (and even after) the City changed the standards.

In his letter dated November 9, 2023, Mr. Kearns states:

> "Mr. Magie made an impassioned argument at the November 2nd hearing about his investment in the 4-plex units and how unfair it would be for the City to now claim that they cannot use the 4-plex. If that were the truth, it would be unfair, but Mr. Magie misrepresented the evidence in the record."

Although acknowledging that the equities favor the Magies, this letter (and most of the Appellants' statements) call into question the Magies' credibility. Yet, Mr. Magie's intent was fully supported by independent statements of others who have no stake in and have nothing to gain by not being honest and forthright in recounting the facts. The people supporting the Magies' intent are successful business owners, neighbors and a volunteer public official that successfully ran for Mayor. These people have not seen their success by lying or fabricating truth, but conversely from truth, honesty, high moral standards and integrity. Cindy Magie was appointed to the planning commission, in part, because of these standards. Magie November 16, 2023 letter.

The Magies began advertising their units for short term stays on Airbnb-type platforms as soon as the units were ready to do so. This was not an after-the-fact scheme to avoid compliance with the law but rather a continued effort to see their significant investment through to completion consistent with the regulatory standards in place when they started. This reflects substantial evidence upon which the Hearings Officer should conclude that the short term rental use (as that term is currently defined in code) began in 2017 and continues up through the present day.

The Nonconforming Standards Support Finding that a Use Exists when it is Started or Intended

The Appellants argue that because none of the Gilbaugh fourplex units were physically occupied by short term renters in January 2019, there is no recognized non-conforming use. They argue that the language "when it first occurred" within the definition of "non-conforming use" requires "actual existence" and relies on the *Spurgin v. Josephine County* interpreting ORS 215.130 so holding. 28 Or LUBA 383, 386-387 (1994). Whatever level of "existence" may be required to satisfy ORS 215.130 or *Spurgin* are irrelevant to how nonconforming uses are regulated under the ADC. Rather, the definition of both "use" and "use, start of" makes explicit that a use need not be in operation to exist. Again, quoted again for ease of reference, the term "use" is defined in ADC 1.400 to include:

> "USE: The purpose for which land or a structure is *designed, arranged, or intended*, or for which it is occupied or maintained.
>
> USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is *in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun.*" (Emphasis added.)

A "use" is not only the way that it is "occupied or maintained" but it also includes that which is "intended" including "the process of physically moving into the site in preparation of beginning occupation and/or operation." It is the express definition of "use" that turns, in part, on the applicant's intent coupled with their efforts in preparation that establish when a nonconforming use "first occurred" and not its actual operation. The ADC expressly provides that a use starts when it is planned and the process of preparing the site for that use begins. As the City Planning staff found in 2020, and reaffirmed in 2023, the Magies began taking steps necessary to market the Gilbaugh units on Airbnb platforms before 2019 and again, the Hearings Officer should reaffirm that approach.

No Change or Discontinuance in Short-Term Rental Efforts Occurred

In order for a nonconforming use to continue it cannot be "changed to a conforming use" or discontinued for a period of more than "one year." ADC 3.180. The Appellants argue that the long delay between 2019, when the code changed, and when the units were listed as available for rent through Airbnb along with long-term rentals continuing after 2019, requires a finding that that the use was changed or discontinued. The Hearings Officer should reject such an approach because the Magie's never abandoned their intent or efforts at short term renting.

As the Magies' have described in detail, they moved forward with short term rentals within the Gilbaugh as quickly as the units were prepared and their finances allowed:

- Summer 2016 – Remove carpet and linoleum and refinish floor in unit 1557
- January through Oct, 2017 – Create off-street parking area
- June 2018 through June 2019 – Stabilize foundation, replace siding and restoring windows
- Fall 2018 – Refinish flooring, kitchen reconfiguration, bathroom renovation, replastering, and plumbing for unit 1559
- Fall 2018 – Strip and finish sleeping porch and landing
- January, 2019 - Reinforcing the foundation including parking construction vehicles and materials, including a porta-potty in the parking lot.

- Winter, 2019 – Finishing the basement including short-term rental supply storage and furniture staging areas.
- Spring 2020 – Renovating unit interiors including renovating kitchens, floors, plumbing repairs not to make the units habitable but rather to make them function at the level attractive to short term renters. Installed retaining wall and parking improvements.
- Bi-weekly throughout 2020 – Sourced period appropriate and maritime related furniture and decor
- Winter 2020 – Obtaining occupancy tax licensing for all 6 units
- Winter 2020 through April 2021 – Learned of water intrusion through the windows on the east and south wall required scaffold and tarp the south wall and installation of custom metal window sills.
- March 2021 through May 2021 - constructed a fence to prevent short term renters from accessing the property through the neighbor's driveway.
- January 2022 – Installed electronic locks
- Spring 2022 – Installed security cameras
- August 2022 – Installed decibel meters to monitor sound, temperature and humidity levels.

There was never any 12-month period where the Magies discontinued their efforts to prepare the units for the short term market.

Regarding changing the use, the Magies never changed the use to accommodate long term rentals. Rather, they rented units as they had always been allowed to do until their units were ready for short term marketing on Airbnb. A reasonable person would not continue to buy furniture, utensils, dishes and towels in order to engage in the long-term rental of units if they believed the regulations would prohibit short term use. They would not painstakingly restore straight-grain fir floors to accommodate long-term renters, knowing that such use could require allowing service animals that would destroy those same floors. They would not install locked storage areas for paper products, soaps, and cleaning supplies necessary for weekly cleaning of units that would be accommodated by long-term renters. All of these actions taken before and after the code changed indicate that they always intended and were working towards short term rentals.

Again, a "use" as contemplated within the ADC begins when an owner with "intent" takes steps to "prepare" for a use. The existence of rental activity that exceeded 30-day periods after 2019 did not change or alter those efforts. The Hearings Officer should resist the urge to divorce the owners intent and significant expenditures preparing for this use both before and after the Code changed.

The City's Prior Approval of Short Term Rentals in 2020 Must be Honored

Finally, acknowledging that the City permitted short term rentals in December 2020 and that the short term rental use was completed and used within two years is an alternative basis for allowing the continued short-term rental of the Gilbaugh. ADC 3.200 allows such uses to continue. It provides:

> "Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a legal permit has been issued by the City and construction has begun, provided the structure, if nonconforming, or intended for a nonconforming use, is completed and is used within two years from the time the permit was issued."[4]

The ADU defines the term "permit" as "any approval granted under the Astoria Development Code or City Code."

As noted above, in December of 2020, this matter was discussed at length by the City staff and the conclusion made that all six units could continue as short term rentals. The confirming email from Barbara Fryer indicates that this determination would be placed in the "Geo File" to remind future staff that the determination was made and that no further action would be required in the future. This decision by Ms. Fryer was essentially a use verification decision as contemplated in ORS 227.160(2)(b) and 227.175(11). All occupational room tax licensing and authorizations necessary to short term rent 11 bedrooms were issued based on this determination. This December 15 email, coupled with the occupancy documentation, not only qualify as "legal permits," as that term is used in the ADU, they were the only "legal permits" that were necessary in order to proceed with short term residential use.

Except for Flat 4 (1559 Exchange Street), three of the four Gilbaugh units were marketed on Airbnb and rented before December, 2022. Although the Applicants' actions in continuing to make improvements to Flat 4 as necessary before first advertising it on Airbnb qualify it as a legal non-conforming use for the reasons stated above, the Hearings Officer must allow the continued short term rental of Flats 1 through 3 of the Gilbaugh building where construction was completed and the units were short term rented on the Airbnb platform within 2 years after the use was verified as permitted in December, 2020.

Conclusion

This case is not about whether and to what degree short term rentals should be allowed in Astoria. This case is also not about manipulating the applicable standards to allow an owner to

[4] The use of the term "is completed and used" in ADU 3.200 regarding the timeline for permitted non-conforming uses suggests that if the City had intended actual use to be required in order for a nonconforming use to be allowed to continue, it would have used similar terms.

thwart the City's housing preservation objectives. Rather, this case is about the facts, as presented, fairness and compliance with the ADC. The ADC nonconforming use provisions unambiguously acknowledge that pre-existing uses are allowed to continue subject only to the standards that applied to them when they first began. The Gilbaugh units have been providing transient accommodations since they were constructed long before the City ever decided to prohibit short term uses. These same ADC standards expressly contemplate that a use can start by taking into account the owners' purpose, intentions, plans and efforts which were manifestly made clear by the Magies throughout this proceeding. Ultimately, the Magies are best suited to convey their intent and they have done so honestly, completely and without reservation.

Please respect all of the Magies efforts, their honesty and their integrity as local Astoria business owners who invested in this community in good faith allowing them to operate four short term rental units in the Gilbaugh building. Please affirm the City Planning Director's decision and deny this appeal.

Very truly yours.



Carrie A. Richter

CAR:kms
cc: Client

Enclosures

Ordinance 61-26
11-6-1961

CONTENTS

ARTICLE I - GENERAL

Section	Title	Page
1.01	Title	1
1.02	Purpose and Intent	1
1.03	Standards	1
1.04	Compliance with Ordinance Provisions	1
1.05	Provisions not Affected by Headings	2

ARTICLE II - DEFINITIONS

2.01	Definitions	3

ARTICLE III - ZONING DISTRICT CLASSIFICATIONS

3.01	Zoning Map	10
3.02	District Classifications	10
3.03	Boundaries of Zoning Districts	10

ARTICLE IV - R1 DISTRICT

4.01	R1 District. Principal Uses Permitted Outright	12
4.02	R1 District. Accessory Uses Permitted Outright	12
4.03	R1 District. Conditional Uses Permitted	12
4.04	R1 District. Density Provisions	13

ARTICLE V - R2 DISTRICT

5.01	R2 District. Principal Uses Permitted Outright	14
5.02	R2 District. Accessory Uses Permitted Outright	14
5.03	R2 District. Conditional Uses Permitted	14
5.04	R2 District. Density Provisions	14

ARTICLE VI - R3 DISTRICT

6.01	R3 District. Principal Uses Permitted Outright	15
6.02	R3 District. Accessory Uses Permitted Outright	15
6.03	R3 District. Conditional Uses Permitted	15
6.04	R3 District. Density Provisions	15

ARTICLE VII - R4 DISTRICT

Section	Title	Page
7.01	R4 District. Principal Uses Permitted Outright	17
7.02	R4 District. Accessory Uses Permitted Outright	17
7.03	R4 District. Conditional Uses Permitted	17
7.04	R4 District. Density Provisions	17

ARTICLE VIII - C1 DISTRICT

8.01	C1 District. Purpose and Function	18
8.02	C1 District. Principal Uses Permitted Outright	18
8.03	C1 District. Accessory Uses Permitted Outright	18
8.04	C1 District. Conditional Uses Permitted	19
8.05	C1 District. Density Provisions	19
8.06	C1 District. Conditions Governing Permitted Uses	19

ARTICLE IX - C2 DISTRICT

9.01	C2 District. Purpose and Function	21
9.02	C2 District. Principal Uses Permitted Outright	21
9.03	C2 District. Accessory Uses Permitted Outright	22
9.04	C2 District. Accessory Uses Permitted	22
9.05	C2 District. Density Provisions	23
9.06	C2 District. Conditions Governing Permitted Uses	23

ARTICLE X - C3 DISTRICT

10.01	C3 District. Purpose and Function	24
10.02	C3 District. Principal Uses Permitted Outright	24
10.03	C3 District. Accessory Uses Permitted Outright	25
10.04	C3 District. Conditional Uses Permitted	25
10.05	C3 District. Density Provisions	26
10.06	C3 District. Conditions Governing Permitted Uses	26

ARTICLE XI - M1 DISTRICT

11.01	M1 District. Principal Uses Permitted Outright	27
11.02	M1 District. Accessory Uses Permitted Outright	27
11.03	M1 District. Conditional Uses Permitted	27
11.04	M1 District. Conditions of Allowing Uses	28
11.05	M1 District. Prohibited Uses	28
11.06	M1 District. Density Provisions	28

ARTICLE XII - PR DISTRICT

Section	Title	Page
12.01	PR District. Uses Permitted Outright	29
12.02	PR District. Uses Permitted by Council Action	29
12.03	PR District. Conditions and Procedures Governing Permitted Uses	29

ARTICLE XIII - LOT AND YARD STANDARDS

13.01	General Provisions. Intent and Application	30
13.02	Prohibiting the Reduction of the Size of Yard or Other Open Space	30
13.03	General Exception to Lot Size Requirements	30
13.04	General Exception to Building Height Limitations	30
13.05	General Yard Exceptions	30
13.06	Front Yard Exceptions	31
13.07	Side Yard Exceptions	31
13.08	Side Yard Along Flanking Street of Corner Lot	32
13.09	Rear Yard Exceptions.	32

ARTICLE XIV - ACCESSORY STRUCTURES

14.01	Vision Clearance Area	33
14.02	Accessory Structures (Except Fences, Walls, Hedges and Signs	33
14.03	Accessory Structures: Fences, Walls and Hedges	34
14.04	Accessory Structures: Signs	34

ARTICLE XV - HOME OCCUPATIONS

15.01	Home Occupations	36

ARTICLE XVI - OFF-STREET PARKING AND LOADING

16.01	Off-Street Parking Policy	37
16.02	Off-Street Parking: Space and Access	37
16.03	Off-Street Parking: Location	37
16.04	Off-Street Parking: Units of Measurement	37
16.05	Off-Street Parking: Change of Use, Alteration, Expansion or Enlargement	38
16.06	Off-Street Parking: Uses not Specified	38
16.07	Off-Street Parking: Joint Use	38
16.08	Off-Street Parking: Plans Shall be Submitted	39

Section	Title	Page
16.09	Off-Street Parking: Enclosure	39
16.10	Off-Street Parking: Additional Requirements	39
16.11	Off-Street Parking: Table of Minimum Standards.	40
16.12	Off-Street Loading: Policy and Standards	41
	ARTICLE XVII - NONCONFORMING USES	
17.01	Nonconforming Uses: May be Continued	43
17.02	Nonconforming Uses: Discontinuance or Abandonment	43
17.03	Nonconforming Uses: Structures	43
17.04	Nonconforming Uses: Land	44
17.05	Nonconforming Use: Conversion or Removal	44
17.06	Nonconforming Uses: Reclassification of Zoning District or Annexation	45
17.07	Nonconforming Uses: Survey, Notice, and Certificate of Occupancy	45
	ARTICLE XVIII - CONDITIONAL USES AND VARIANCES	
18.01	Conditional Uses and Variances: Intent and Policy	46
18.02	Conditional Use: Application and Fee	46
18.03	Conditional Use: Public Hearing	46
18.04	Conditional Use: Planning Commission Action	47
18.05	Conditional Use: Council Action	47
18.06	Conditional Use: Special Provision for Excavating Pits: Stone Quarry; Sand, Gravel, or Clay Pits; and Soil Stripping	48
18.07	Conditional Use: Mobile Home Park	48
18.08	Variance	49
18.09	Variance: Application and Fee	50
18.10	Variance: Public Hearing	50
18.11	Variance: Action of the Commission	50
18.12	Variance: Appeal to the Council	50
	ARTICLE XIX - ZONE CHANGES	
19.01	Amendments to Ordinance Text and Zoning Map	51
19.02	Amendments: Application and Fee	51
19.03	Amendments: Public Hearing	51
19.04	Amendments: Notice of Public Hearing	51
19.05	Amendment: Recommendation of the Commission	52
19.06	Amendments: Recess of Hearing by Commission	52
19.07	Amendments: Council Action	52

ARTICLE XX - ADMINISTRATION

Section	Title	Page
20.01	Form of Petitions, Applications and Appeals	53
20.02	Interpretation	53
20.03	Enforcement	53
20.04	Penalty Provisions	53
20.05	Validity	53
20.06	Repeal	54
20.07	Effective Date	54

ORDINANCE NO. 0 61-26

AN ORDINANCE RELATING TO AND REGULATING LAND USE AND DEVELOPMENT; CREATING UNIFORM DISTRICTS IN WHICH COMPATIBLE USES ARE ALLOWED; PRESCRIBING STANDARDS FOR EACH DISTRICT; PRESCRIBING DENSITY CONTROLS; PRESCRIBING PROCEDURES AND STANDARDS FOR GRANTING CONDITIONAL USES; PRESCRIBING PROCEDURES AND CONDITIONS FOR GRANTING VARIANCES; PROVIDING FOR OFF-STREET PARKING; PROVIDING PROCEDURES FOR ADMINISTRATION, APPEAL, AMENDMENTS AND ENFORCEMENT; PROVIDING FOR PENALTIES; AND REPEALING ORDINANCES NOS. 059-06 AND 059-20.

The city of Astoria does ordain as follows:

ARTICLE I

GENERAL

Section 1.01. Title. This ordinance shall be known as the "Zoning Ordinance" of the city.

Section 1.02. Purpose and Intent.

(1) The several purposes of the ordinance are: to implement the comprehensive development plan for the city; to encourage the most appropriate use of land; to conserve and stabilize the value of property; to aid in the rendering of fire and police protection; to provide adequate open spaces for light and air; to lessen the congestion on streets; to give an orderly growth to the city; to prevent undue concentrations of population; to improve the city's appearance; to facilitate adequate provisions for community utilities and facilities such as water, sewerage, and electrical distribution systems, transportation, schools, parks, and other public requirements; and in general to promote public health, safety, and general welfare.

(2) Since the public health, safety, and general welfare is superior to the interests and pecuniary gains of the individual, the ordinance may limit the use of property and prevent its most profitable gain. If some reasonable use of property is allowed by the ordinance the effect is not confiscatory and is a proper exercise of police power.

Section 1.03 Standards. The standards established by the ordinance are determined to be the minimum requirements in the interest of public health, safety, and general welfare.

Section 1.04 Compliance with Ordinance Provisions. No building, structure, or premises shall hereafter be used or occupied and no building or part thereof shall be erected, moved, reconstructed, extended, enlarged, or altered contrary to the provisions of this ordinance.

Section 1.05 Provisions Not Affected by Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of any section hereof.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions. As used in the ordinance, words in the present tense include the future; words in the singular number include the plural, and words in the plural number include the singular; the word "person" may be taken for persons, association, firm, partnership or corporation; the word "structure" includes buildings; the word "occupied" includes designed or intended to be used; and the word "shall" is always mandatory and not merely directive. The following words and phrases, whenever used in this ordinance, shall be construed as follows unless the context shows a different meaning:

(1) Accessory structure or use. A structure or use incidental and subordinate to the principal use or structure and located on the same lot or tract.

(2) Accessory structure, attached. An accessory structure which is attached to the principal structure by the wall or roof of the latter or by the roof over a breeze-way connecting the accessory and principal structure.

(3) Alley. A narrow street primarily for vehicular service access to the rear or side of properties otherwise abutting on another street.

(4) Apartment house. See Dweling, multi-family.

(5) Automobile service station. Any premises used primarily for supplying motor fuel, oil, minor servicing, excluding body and fender repair, and for sale of accessories as a secondary service for automobiles at retail direct to the customer.

(6) Automobile wrecking. The dismantling or wrecking of used motor vehicles or trailers, or the storage, sale , or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

(7) Basement. The portion of a building included between a floor with its level two feet or more below finished grade and the ceiling next above said floor.

(8) Billboard. Any outdoor advertising sign or device or any portion of a structure upon which lettered or pictured material is displayed for advertising purposes, other than the name and occupation or the use of, or the nature of the business conducted on such premises, or the products primarily sold or manufactured thereon.

(9) Boarding, lodging or rooming house. A residential type building, or portion thereof, other than a hotel or motel, where for compensation lodging, with or without meals, is provided for not less than four (4)nor

more than ten (10) persons, not including members of the owner occupant or tenant occupant family.

(10) Breeze-way. A structure for the principal purpose of connecting the main building or buildings on a property with other main buildings or accessory buildings.

(11) Building. Any structure built or used for the support, shelter, or enclosure of any persons, animals, goods, equipment, or chattels and property of any kind.

(12) Building line. A line established by the ordinance to govern the placement of a building with respect to the front lot line through the setback requriements of a minimum front yard. A building line is ordinarily parallel to the front lot line and at a distance in accordance with the setback requirement. For lots contained in an official subdivision plat recorded before the effective date of the ordinance the building line may be taken as shown therein.

(13) Building height. The vertical distance measured from the level of the first floor above finished grade to the highest point of the roof beams in the case of flat roofs, to the deck line of mansard roofs, or to the center height between eaves and ridges for gable, hip, or gambrel roofs.

(14) Bulk plant. An establishment where commodities, including both liquids and solids, are received by tank vessel, pipe lines, tank car, tank vehicle, or other container, and are stored or blended in bulk for the purposes of distribution by tank vessel, pipe line, tank car, tank vehicle or container.

(15) Clinic. A building or portion of a building containing offices and facilities for providing medical, dental, and/or psychiatric services for outpatients only.

(16) City. The city of Astoria.

(17) Commission. The planning commission of the city of Astoria.

(18) Comprehensive Plan. The comprehensive development plan for the city, comprising plans, maps or reports, or any combination thereof relating to the future economic and physical growth and development or redevelopment of the city.

(19) Court. An open, uncovered, and unoccupied space contained within or surrounded or partly so by buildings.

(20) Council. The legislative body of the city.

(21) Dwelling, duplex, or dwelling, two-family. A detached structure containing two (2) dwelling units.

(22) Dwelling, multi-family. A building containing three (3) or more dwelling units.

(23) Dwelling, single-family. A detached building containing one (1) dwelling unit.

(24) Dwelling unit. An independent living unit within a dwelling structure designed and intended for occupancy by not more than one (1) family and having its own housekeeping and kitchen facilities. Hotel, motel, rooming and boarding units which are used primarily for transient tenancy shall not be considered as dwelling units.

(25) Established grade. See Grade, established.

(26) Family. An individual or two (2) or more persons related by blood or marriage living together in a dwelling unit, which may also provide meals or lodging for not more than four (4) additional persons (excluding servants) living in the same dwelling unit, or a group or not more than five (5) persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit.

(27) Fence. An accessory structure, including landscape planting, designed and intended to serve as a barrier or as a means of enclosing a yard or other area, or other structure; or to serve as a boundary feature separating two (2) or more properties.

(28) Fence, sight obscuring. A fence or evergreen planting of such density and so arranged as to obstruct vision.

(29) Finished grade. See Grade, finished (ground level).

(30) Floor area. The area included in surrounding walls of a building (or portion thereof), exclusive of vent shafts, courts.

(31) Garage, private. An accessory building or portion of a main building used for the parking or temporary storage of private automobiles, trailers, mobile homes, boats, or other vehicles owned or used by occupants of the main building.

(32) Garage, public. A building other than a private garage used for the care and repair of motor vehicles or where such vehicles are parked or stored for compensation, hire, or sale.

(33) Grade, established. The curb line grade established by the city.

(34) Grade, finished (ground level). The average of finished ground levels at the center of all walls of the building unless otherwise specified.

(35) Gross area. The total usable area including accessory space dedicated to such things as streets, easements, and uses out of character with the principal use, but within a unit of area being measured.

(36) Guest house. An accessory, detached dwelling without kitchen facilities, designed for and used to house transient visitors or guests of the occupants of the main building without compensation.

(37) Height of building. See Building height.

(38) Home occupation. An occupation carried on within a dwelling by members of a family with no servant, employee, or other person being engaged therein.

(39) Hospital. An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical, or surgical care and nursing service on a continuous basis.

(40) Hotel. A building in which lodging is provided for guests for compensation and in which no provision is made for cooking in the rooms.

(41) Junk Yard. An area of more than two hundred (200) square feet used for the dismantling, storage, or handling in any manner of junked vehicles or other machinery, or for the purpose of storage of dismantled material, junk, and scrap machinery, or for the purpose of storage of dismantled material, junk, and scrap, if such activity is not incidental to the principal use on the same lot.

(42) Kennel. Any premises or building in which four (4) or more dogs or cats at least four (4) months of age are kept commercially for board, propogation, or sale.

(43) Lot. A parcel of land under one ownership used or capable of being used under the regulations of the ordinance, including both the building site and all required yards and open spaces. A "lot" need not necessarily coincide with the "lot of record" which refers to land designated as a separate and distinct parcel on a legally recorded subdivision plat or in a legally recorded deed filed in the records of the county.

(44) Lot area. The total horizontal area within the lot lines of a lot.

(45) Lot,corner. A lot abutting on two (2) intersecting streets other than an alley, provided that the streets do not intersect at an angle greater than one hundred thirty-five (135) degrees.

(46) Lot coverage. The portion of a lot that is occupied by the principal and accessory buildings, including all projections except eaves, expressed as a percentage of the total lot area.

(47) Lot, depth: The horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line.

(48) Lot, interior. A lot other than a corner lot.

(49) Lot, through. A lot having frontage on two (2) parallel or approximately parallel streets.

(50) Lot line. The property line bounding a lot.

(51) Lot line, front. In the case of an interior lot, the lot line separating the lot from the street other than an alley; and in the case of a corner lot, the shortest lot line along a street other than an alley.

(52) Lot line, rear. A lot line which is opposite and most distant from the front lot line; and in the case of a triangular or irregular shaped lot a line ten (10) feet in length within the lot parallel to and at the maximum distance from the front lot line.

(53) Lot line, side. Any lot line not a front or rear lot line.

(54) Lot width. The horizontal distance between the side lot lines at the building line.

(55) Mobile home. All vehicles designed or intended to be self propelled or propelled by another vehicle, for use or capable of being used for living and/or sleeping quarters and not conforming to any schedule operating between fixed termini.

(56) Mobile home park. Any property used for the accommodation of inhabited mobile homes on a tenancy or lease basis.

(57) Motel. A building or group of buildings on the same lot containing guest units with separate entrances and consisting of individual sleeping quarters, detached or in connected rows, with or without cooking facilities, for rental to transients.

(58) Nonconforming building or use. Any lawful use or activity involving a building or land occupied or in existence on the effective date of the ordinance, or any amendments thereto, which does not conform to the principal, accessory, or conditional uses permitted in or to the density provisions of the zoning district in which located.

(59) Rooming house. See Boarding, lodging or rooming house.

(60) Sign, advertising. Any structure or portion thereof that is intended for advertising purposes or on which letters, figures, or pictorial matter are, or are intended to be, displayed, other than on a business sign. (See also Billboard).

(61) Sign, business. Any sign, structure, or device which directs attention to the premises on which located, or the occupant of the premises or the goods or services manufactured, produced, or available on the premises.

(62) Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the top story shall be that portion of a building included between the upper surface of the top floor and the ceiling above.

(63) Story, half. A space under a sloping roof which has the line of intersection of roof decking and exterior wall face not more than four (4) feet above the top floor level. A half-story containing one (1) or more dwelling units shall be counted as a full story.

(64) Street. The entire width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic and the placement of utilities, and including the terms "road", "highway", "lane", "place", "avenue", or other similar designation.

(65) Structure. That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

(66) Structural alteration. Any change to the supporting members of a building including foundations, bearing walls or partitions, columns, beams or girders, or any structural change in the roof.

(67) Use. An activity or a purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

(68) Vision clearance area. A triangular area on a lot at the intersection of two (2) streets, or a street and an alley, or a street and a railroad, two (2) sides of which are lot lines measured from their corner intersection for a distance specified in the ordinance. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

(69) Yard. An open space on a lot which is unobstructed from the ground upward except as otherwise provided in the ordinance.

(70) Yard, front. An open space between side lot lines and measured horizontally from the front lot line at right angles to the front lot line to the nearest point of the building.

(71) Yard, rear. An open space between side lot lines and measured horizontally at right angles from the rear lot line to the nearest point of the main building.

(72) Yard, side. An open space between a building and the side lot line measured horizontally and at right angles from the side lot line to the nearest point of the building.

ARTICLE III

ZONING DISTRICT CLASSIFICATIONS

Section 3.01 Zoning Map.

(1) The location and boundaries of the zoning districts designated in Section 3.02 are hereby established as shown on the map entitled "Zoning Map of the City of Astoria", signed by the mayor and the city auditor, and hereafter referred to as the "Zoning Map".

(2) The zoning map shall be maintained on file in the office of the city auditor and is hereby incorporated into the ordinance.

Section 3.02. District Classifications. For the purpose of the ordinance the city is divided into districts designated as follows:

District	Symbol
Residential districts	
Residential District One (Single-family)	R1
Residential District Two (Two-family)	R2
Residential District Three (Multi-family)	R3
Residential District Four (Multi-family)	R4
Commercial districts	
Commercial District One (Local business district)	C1
Commercial District Two (Central business district)	C2
Commercial District Three (General commercial district)	C3
Industrial districts	
Industrial District One (General industrial district)	M1
Public Reserve district	PR

Section 3.03 Boundaries of Zoning Districts.

(1) Unless otherwise specified or shown on the zoning map, district boundaries are lot lines or the center lines of streets, alleys, railroad and other rights-of-way. Where boundaries are other than lot lines or center lines of streets, alleys, railroad and other rights-of-way, they shall be determined by dimensions shown on the zoning map giving distances measured from street or other rights-of-way or lot lines, or if no dimensions are shown, by scaling distances on the zoning map. Where actual streets or other features on the ground vary from those shown on the zoning map interpretations or adjustments shall be made by the commission.

(2) Where a district boundary line, as shown on the zoning map, divides a lot in a single ownership at the time of passage of the ordinance, the use permitted on the least restrictive portion of such lot may extend to the portion lying in the more restrictive district a distance of not more that fifty (50) feet beyond the district boundary line.

ARTICLE IV

R1 DISTRICT

Section 4.01 R1 District. Principal Uses Permitted Outright.

(1) One (1) single-family detached dwelling structure on each lot.

Section 4.02 R1 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 4.03 R1 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R1 district when authorized in accordance with the provisions of Sections 18.01 through 18.06.

(1) Church

(2) Public park, playground, or recreational area, and buildings used in connection therewith.

(3) Governmental building for administrative or protective services.

(4) Public or semi-public building serving as a library, museum, or other similar purpose.

(5) Public, private, or parochial school.

(6) Private nursery school, orphanage, kindergarten, or child-care center on a lot having a minimum area of ten thousand (10,000) square feet, provided there is established in connection therewith a play lot having a minimum area of four hundred (400) square feet plus an additional forty (40) square feet for each child in excess of ten (10), which play lot is separated from adjoining properties by a sight-obscuring fence or evergreen hedge.

(7) Private club, lodge, convent, social or recreational building or community assembly hall, except those having a chief activity carried on for monetary gain; provided, that the building used for such purpose shall be at least fifty (50) feet distant from an adjoining lot in any residential zoning district.

(8) Golf course, including club house, but not an independent pitch-and-putt course or golf driving range.

(9) Public utility and communication facilities, such as a branch telephone exchange, static transformer, booster station, or pumping station; provided there shall be no service or storage buildings or yards in connection therewith.

Section 4.04 R1 District. Density Provisions.

(1) Minimum lot area: 6000 square feet
(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 20 feet
(5) Minimum side yard: 5 feet
(6) Minimum side yard along flanking street of corner lot: 15 feet
(7) Minimum rear yard: 25 feet
(8) Maximum building height: $2\frac{1}{2}$ stories, but not to exceed 35 feet
(9) Maximum lot coverage: 30 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03

ARTICLE V

R2 DISTRICT

Section 5.01 R2 District. Principal Uses Permitted Outright.

(1) Principal use permitted outright in an R1 district.

(2) One (1) two-family dwelling structure on each lot.

Section 5.02 R2 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 5.03 R2 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R2 district when authorized in accordance with the provisions of Sections 1 .01 through 1 .06:

(1) Any conditional use permitted in an R1 district.

(2) Hospital, home for the aged, retirement home, or rest or convalescent home.

Section 5.04 R2 District. Density Provisions.

(1) Minimum lot area: 6000 square feet
(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 20 feet
(5) Minimum side yard: 5 feet
(6) Minimum side yard along flanking street of corner lot: 15 feet
(7) Minimum rear yard: 25 feet
(8) Maximum building height: 2½ stories, but not to exceed 35 feet
(9) Maximum lot coverage: 40 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03.

ARTICLE VI

R3 DISTRICT

Section 6.01 R3 District. Principal Uses Permitted Outright.

(1) Principal uses permitted outright in an R2 district.

(2) Multi-family dwelling structure.

(3) Boarding house.

Section 6.02 R3 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 6.03 R3 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R3 district when authorized in accordance with the provisions of Sections 13.01 through 13.06:

(1) Any conditional use permitted in an R2 district.

(2) Office for a doctor, dentist, or other practioner of the healing arts; attorney, architect; engineer; surveyor; or accountant.

Section 6.04 R3 District. Density Provisions.

(1) Minimum lot area:

(a) For single or two-family dwelling structures: 6000 square feet for each principal structure.
(b) For multi-family dwellings: 6000 square feet plus 1500 square feet for each dwelling unit in excess of four.
(c) For other uses: 6000 square feet.

(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 15 feet
(5) Minimum side yard: 5 feet

(6) Minimum side yard along flanking street of corner lot: 10 feet
(7) Minimum rear yard: 10 feet
(8) Maximum building height: 2½ stories, but not to exceed 35 feet
(9) Maximum lot coverage: 50 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03.

ARTICLE VII

R4 DISTRICT

Section 7.01 R4 District. Principal Uses Permitted Outright.

(1) Principal use permitted outright in an R3 district.

Section 7.02 R4 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Gardening and horticultural activities and related structures for non-commercial purposes.

(4) Signs. See Section 14.04.

Section 7.03 R4 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an R4 district when authorized in accordance with the provisions of Sections 18.01 through 18.06:

(1) Any conditional use permitted in an R3 district.

(2) Mobile home park. See Section 18.07.

(3) Motel or motel with restaurant and cocktail lounge in connection therewith.

Section 7.04 R4 District. Density Provisions.

(1) Minimum lot area:

(a) For single or two-family dwelling structures: 6000 square feet for each principal structure.

(b) For multi-family dwellings: 6000 square feet plus 600 square feet for each dwelling unit in excess of ten.

(2) Minimum lot width: 60 feet
(3) Minimum lot depth: 90 feet
(4) Minimum front yard: 15 feet
(5) Minimum side yard: 5 feet
(6) Minimum side yard along flanking street of corner lot: 10 feet
(7) Minimum rear yard: 10 feet
(8) Maximum building height: 4 stories, but not to exceed 45 feet
(9) Maximum lot coverage: 60 percent of lot area
(10) For additional density provisions see Sections 13.01 through 14.03.

ARTICLE VIII

C1 DISTRICT

Section 8.01 C1 District. Purpose and Function. The C1 district is intended to provide for limited business and commercial facilities serving residents of the surrounding residential districts.

Section 8.02 C1 District. Principal Uses Permitted Outright.

(1) Principal or conditional use permitted in an R1 district.

(2) Bakery, retail only.

(3) Barber shop or beauty parlor.

(4) Confectionery.

(5) Delicatessen.

(6) Drug store, including fountain.

(7) Dry cleaning or laundry establishment, pick-up and delivery only.

(8) Florist shop.

(9) Grocery store.

(10) Hardware.

(11) Laundry, self service.

(12) Real estate office.

(13) Shoe repair shop.

(14) Variety store.

(15) Other similar use, but not including a listed commercial or manufacturing use permitted in a C2 or C3 district, or an industrial use permitted in an M1 district; provided, it shall be clearly determined that such use is intended to serve the local neighborhoods and will not cater to or attract customers on a community-wide basis.

Section 8.03 C1 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Signs: See Section 14.04.

Section 9.04 C1 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in a C1 district when authorized in accordance with the provisions of Sections 18.01 through 18.06:

(1) Use permitted outright in an R2 district.

(2) Garden supplies store and horticultural nursery.

Section 9.05 C1 District. Density Provisions.

(1) For residential uses:

(a) Single family dwelling structures shall conform to the requirements of Section 4.04.

(2) For other uses:

(a) Minimum lot area: 4000 square feet
(b) Minimum lot width: 40 feet
(c) Minimum lot depth: 80 feet
(d) Minimum front yard: 15 feet
(e) Minimum side yard: no limitation
(f) Minimum side yard along flanking street of corner lot: 10 feet
(g) Minimum rear yard: no limitation
(h) Maximum building height: 2½ stories, but not to exceed 35 feet
(i) Maximum lot coverage: 35 per cent of lot area.

(3) For additional density provisions see Sections 13.01 through 14.03.

Section 9.06 C1 District. Conditions Governing Permitted Uses. Uses permitted in a C1 district, except conditional uses and dwellings, shall be subject to the following conditions:

(1) For expansion of existing buildings and for new construction, plot plans must be submitted to the commission showing the proposed development and shall include the following information.

(a) Property description,
(b) Building location on the property.
(c) Location of parking and screening of parking in those areas abutting a residential district.
(d) Access to public streets.
(e) Signs,

(2) The commission may impose the following conditions before a building permit will be issued for the proposed development:

(a) Limit or prohibit openings to structures on sides within fifty (50) feet of a residential district if the openings will cause glare, excessive traffic, noise, or other adverse effects on adjacent residential areas,

(b) Limit access to streets.

(c) Require additional setbacks and planting or screening abutting residential districts if necessary to minimize the detrimental effects of commercial activity such as glare and noise.

(3) Construction shall be in substantial conformance to plans approved by the commission.

(4) All business, service, repair, processing, storage, or merchandise display shall be conducted wholly within an enclosed building except for the following:

(a) Off-street parking or loading.
(b) Drive-in windows.

(5) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises.

(6) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes,noise, vibration, or disturbance to television or radio reception.

ARTICLE IX

C2 DISTRICT

Section 9.01. C2 District. Purpose and Function. The C2 district is intended to provide for the principal shopping, business, and transportation core center serving the community and its trading area.

Section 9.02 C2 District. Principal Uses Permitted Outright.

(1) Principal use permitted outright in a C1 district, except dwelling structure.(See Section 9.03 for dwelling structure permitted as a conditional use.)

(2) Appliance sales and incidental service.

(3) Auditoriums.

(4) Automobile and truck sales, rentals and garage, including auto repair but no junking, wrecking,.or salvaging operations, and excluding service station. Automobile, but not mobile home, trailer, or boat sales lot or yard.

(5) Bakery for retail sales on the premises only.

(6) Bank.

(7) Bowling alley.

(8) Business office.

(9) Business, technical, or trade school.

(10) Bus depot, but not bus garage or storage yard.

(11) Clinic, medical, but not including veterinarian.

(12) Clothing store.

(13) Club, fraternal, union, or lodge social or recreational building.

(14) Cocktail lounge as part of a restaurant.

(15) Department store.

(16) Drive-in business, except drive-in theater, offering goods or services directly to waiting customers in motor vehicles.

(17) Dry cleaning and pressing services at retail for delivery to customers on the premises only, provided no highly volatile or combustible solvents shall be allowed nor high pressure steam tanks or boilers permitted.

(18) Equipment rental limited to small equipment for household, recreation, or business.

(19) Furniture store.

(20) Garden supplies store.

(21) Hotel.

(22) Market.

(23) Motel.

(24) Mortuary.

(25) Newspaper and printing plant.

(26) Parking lot or parking garage.

(27) Passenger terminal.

(28) Public building but not including storage, warehousing or other uses of an industrial character.

(29) Railroad right-of-way and operating facilities appurtenant thereto, but not yards, industrial spurs, or other similar facilities.

(30) Restaurant, cafe.

(31) Tavern.

(32) Theater, except drive-in theater.

(33) Other use of similar character, but not including a specific listed commercial or manufacturing use permitted in a C3 district, or an industrial use permitted in an M1 district.

Section 9.03 C2 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Signs: See Section 14.04.

Section 9.04 C2 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in a C2 district when authorized in accordance with the provisions of Sections 14.01 through 14.06:

(1) Dwelling structure.

(2) Manufacture and compounding, but only from previously prepared materials, and packaging of such products as candy, cosmetics, drugs, musical instruments, toys, novelties, rubber and metal stamps, optical goods, scientific and precision instruments and equipment.

(3) Automobile service station.

Section 9.05 C2 District. Density Provisions.

(1) Minimum lot area: No limitation
(2) Minimum lot width: No limitation
(3) Minimum lot depth: No limitation
(4) Minimum front yard: No limitation
(5) Minimum side yard: No limitation
(6) Minimum rear yard: No limitation
(7) Maximum building height: No limitation
(8) Maximum lot coverage: No limitation
(9) For additional density provisions, see Sections 13.01 through 14.03

Section 9.06 C2 District. Conditions Governing Permitted Uses. All principal uses permitted outright in a C2 district shall meet the following conditions:

(1) All business, service, repair, processing, storage, or merchandise display shall be conducted wholly within an enclosed building, except for the following:

(a) Off-street parking and loading.
(b) Drive-in windows.

(2) The use of the property in a C2 district shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes,noise, or vibration.

ARTICLE X

C3 DISTRICT

Section 10.01 C3 District. Purpose and Function. The C3 district is intended to provide for those types of retail, wholesale, transportation, and service uses which because of traffic and other requirements depend upon particular locations to serve the needs of the community and its trading area. The specific listed uses permitted in a C3 district are generally those which are not entirely compatible with the purpose and function of the C2 district by reason of the character of traffic, types of commodities and goods handled, needs for large sites, and certain distracting and interruptive influences.

Section 10.02 C3 District. Principal Uses Permitted Outright.

(1) Principal or conditional use permitted in a C2 district.

(2) Amusement enterprises, such as bowling alley, roller or ice rink, dance hall, and trampoline.

(3) Automobile service station.

(4) Automobile repair of all kinds, including body and fender work, provided there shall be no wrecking, junking, dismantling, or salvaging operations.

(5) Bakery.

(6) Book publishing and binding.

(7) Bottling and processing of non-alcoholic beverages the production of which is devoid of fumes, noxious odors or waste products.

(8) Electrical supply store, repairing service.

(9) Feed and seed store, retail or wholesale.

(10) Film processing plant.

(11) Flooring materials, retail or wholesale.

(12) Fuel oil distribution, retail and wholesale, provided incidental storage is maintained underground.

(13) Fuel yard.

(14) Golf driving range; pitch-and-putt course operated independently of a golf course.

(15) Laboratory for experimental or research work or testing.

(16) Landscape nursery: propogation and sale at retail or wholesale of nursery stock and plant materials.

(17) Lumber yard, retail or wholesale, including building supplies, hardware, and related items.

(18) Mobile home or trailer sales lot.

(19) Mobile home park. (See Section 18.07).

(20) Marine craft, equipment and supply sales, and repair and service of small craft.

(21) Plumbing shop.

(22) Sign shop, but not manufacture or assembly of electrically illuminated signs.

(23) Theater, drive-in.

(24) Upholstery shop.

(25) Other use of similar character, but not including a specific listed industrial use permitted in an M1 district.

Section 10.03. C3 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Home occupation.

(3) Signs: See Section 14.04.

Section 10.04. C3 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in a C3 district when authorized in accordance with the provisions of Sections 18.01 through 18.06.

(1) Wholesale warehouse and storage establishment, but only when occupying a completely enclosed building.

(2) Truck terminal.

Section 10.05 C3 District. Density Provisions.

(1) For residential uses: Single family, two-family, and multi-family dwelling structures shall conform to the requirements of Section 7.04.

(2) For mobile home park and other uses:

	Mobile Home Park	Other Uses
(a) Minimum lot area:	2 acres	No limitation
(b) Minimum lot width:	200 feet	No limitation
(c) Minimum lot depth:	200 feet	No limitation
(d) Minimum front yard:	20 feet	No limitation
(e) Minimum side yard:	15 feet	No limitation
(f) Minimum side yard along flanking street of corner lot	10 feet	No limitation
(g) Minimum rear yard:	20 feet	No limitation
(h) Maximum building height:	2½ stories	No limitation
(i) Maximum lot coverage:	40 percent	No limitation
(j) For additional density provisions see Sections 13.01 through 14.03.		

Section 10.06. C3 District. Conditions Governing Permitted Uses. All principal uses permitted outright in a C3 district shall meet the following requirements:

(1) Automobile, mobile home or boat sales yard, automobile service station or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in a C3 district adjoining or abutting a residential zoning district shall be screened from properties in the residential district by a fence. Outside storage yard, fuel yard or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in a C3 district adjoining or abutting or located across a street from a residential zoning district or located along a street designated by the comprehensive plan as a state highway or a major or secondary arterial shall be enclosed by a fence. The fence shall be sight-obscuring and of such material and design as will not detract from adjacent residences and shall be constructed of such material and according to such design as approved by the city engineer. In no case shall the fence be required to have a height in excess of ten (10) feet.

(2) Automobile, mobile home, or trailer sales lots shall be drained and surfaced with crushed rock except in those portions of the lot maintained as landscape areas.

(3) The use of property shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, or vibration.

ARTICLE XI

M1 DISTRICT

Section 11.01 M1 District. Principal Uses Permitted Outright.

(1) Principal use permitted in a C3 district, except dwelling structure unless of a type permitted by Section 11.05.

(2) Any other use except a use specified in Section 11.03.

Section 11.02 M1 District. Accessory Uses Permitted Outright.

(1) Use customarily incidental and subordinate to a principal use permitted outright.

(2) Signs: See Section 14.04.

Section 11.03 M1 District. Conditional Uses Permitted. The following principal uses and their accessory uses may be permitted in an M1 district when authorized in accordance with the provisions of Sections 19.01 through 19.06.

(1) Assembly, manufacture, compounding, processing, preparation, treatment or storage of:

(a) Acids.

(b) Carborundum.

(c) Cement.

(d) Explosives.

(e) Fertilizers, organic or inorganic.

(f) Gas, all kinds (artificial, natural, liquefied, or compressed).

(g) Petroleum products of all kinds.

(h) Rubber.

(2) Dump: rubbish, garbage, dead animals, offal, slag, or other objectionable or hazardous materials.

(3) Fish canning and processing.

(4) Incineration or burning of industrial wastes or by-products.

(5) Junk yard, including processing, storage, or sales.

(6) Meat and poultry slaughter and packing.

(7) Smelting, foundry, casting, or fabrication works for ferrous and non-ferrous metals.

(8) Stock yard, feeding pens.

(9) Wrecking yard.

Section 11.04 M1 District. Conditions of Allowing Uses. All uses in an M1 district shall conform to the following requirements:

(1) Automobile, mobile home or boat sales yard, automobile service station or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in an M1 district adjoining or abutting a residential zoning district shall be screened from properties in the residential district by a fence. Outside storage yard, fuel yard or an area used for operations of a similar commercial or industrial character in connection with a use permitted outright or a conditional use in an M1 district adjoining or abutting or located across a street from a residential zoning district or located along a street designated by the comprehensive plan as a state highway or a major or secondary arterial shall be enclosed by a fence. The fence shall be sight-obscuring and of such material and design as will not detract from adjacent residences and shall be constructed of such material and according to such design as approved by the city engineer. In no case shall the fence be required to have a height in excess of ten (10) feet.

(2) Buildings containing uses permitted in the M1 district, and their accessory uses, and located within one hundred (100) feet of a lot in a residential zoning district, where the distance is unobstructed, must have blank walls or walls with windows which do not open on the side of the building facing the residential district.

Section 11.05 M1 District. Prohibited Uses. No building structure, or premises, or portions thereof established after the effective date of the ordinance, shall be used for human habitation, except as quarters for a caretaker, guard or other persons whose permanent residency on the premises is required for operational, safety, or protective purposes, or as quarters or accomodations for persons engaged in certain industrial operations whose residency in the vicinity thereof is essential to satisfy conditions and requirements of the work.

Section 11.06 M1 District. Density Provisions. No limitations except those contained in Sections 13.01 through 15.03.

ARTICLE XII

PR DISTRICT

Section 12.01 PR District. Uses Permitted Outright. None

Section 12.02 PR District. Uses Permitted by Council Approval.

(1) Principal and accessory use for governmental purpose.

(2) Temporary use of any kind.

Section 12.03 PR District. Conditions and Procedures Governing Permitted Uses.

(1) Plans or proposals for the use of land or the erection of buildings or facilities of either permanent or temporary character within a PR district shall first be submitted to the commission for its study and recommendations.

(2) The commission in reviewing plans or proposals submitted to it in accordance with subsection (1) of this section shall consider the most appropriate use of land; the conservation and stabilization of the value of property; and the promotion of the public safety, health and general welfare. The commission shall give particular attention to plans or proposals relating to temporary uses to satisfy itself that such uses will not jeopardize fulfillment of the comprehensive plan in terms of both the use to be permitted and the period of time to be allowed.

(3) After study of a plan or proposal the commission shall transmit without delay to the council its report of findings and recommendations, including stipulated requirements as terms and conditions for approval.

(4) After receiving and hearing the report of the commission the council may approve the proposed use subject to such conditions as it deems appropriate.

(5) If the council or commission determines that the proposed use of any land area, tract, or lot within a PR district affects property located in a vicinity area adjoining such district a public hearing shall be held by the commission. The city auditor shall give notice of the hearing in the following manner:

(a) By publication of a notice in a newspaper of general circulation in the city not less than five (5) nor more than twenty (20) days prior to the date of the hearing.

(b) By sending notices by mail not less than ten (10) days prior to the date of the hearing to the owners of the property in an area affected by the proposed use as determined by the commission, using for this purpose the names and addresses of owners as shown in the records of the county assessor.

ARTICLE XIII

LOT AND YARD STANDARDS

Section 13.01 General Provisions. Intent and Application.

(1) It is the intent of the ordinance to provide standards sufficient to afford continuing protection to property and yet be adaptable enough to avoid unnecessary hardship or interference with growth and natural change. Accordingly, supplementary provisions are necessary to govern specific deviations from general rules.

(2) The provisions contained in the following sections are of both general application to the several zoning districts and supplementary application to the provisions established by the zoning ordinance for specific districts.

Section 13.02. Prohibiting the Reduction of the Size of Yard or Other Open Space. No lot area, yard, or other open space or required off-street parking or loading area existing on or after the effective date of the ordinance shall be reduced below the minimum required by the ordinance, nor shall any lot area, yard, or other open space or off-street parking or loading area which is required by the ordinance for one use be used as the lot area, yard, or other open space or off-street parking or loading area for another use, except as provided in the ordinance.

Section 13.03 General Exception to Lot Size Requirements. If at the time of passage of the ordinance a lot has an area or dimension which does not conform with the density provisions of the zoning district in which it is located, the lot may be occupied by any use permitted outright in the district, subject to the other requirements of the district. Documentary proof of the fact that the lot existed by title at the time of passage of the ordinance shall be submitted by the person claiming benefits under this section.

Section 13.04 General Exception to Building Height Limitations. The following type of structures or structural parts are not subject to the building height limitations of the ordinance: tanks, church spires, belfries, domes, monuments, fire and hose towers, observation towers, transmission towers, chimneys, flagpoles, radio and television towers, masts, aerials, cooling towers, and other similar structures or facilities.

Section 13.05 General Yard Exceptions.

(1) Cornices, eaves, chimneys, belt courses, leaders, sills, pilasters, or other similar architectural or ornamental features (not including bay windows or vertical projections) may extend or project into a required yard not more than two (2) feet.

(2) Open balconies, or unenclosed fire escapes or stairways, not covered by a roof or canopy, may extend or project into a required front yard or a required side yard along a flanking street of a corner lot not more than four (4) feet, or into a required side yard not more than three (3) feet.

(3) Open, unenclosed patios, terraces, roadways, courtyards, or similar surfaced areas, not covered by a roof or canopy, may occupy, extend, or project into a required yard, provided that such areas are not used for off-street parking or other purposes not in conformance with the requirements of the ordinance.

Section 13.06 Front Yard Exceptions.

(1) Commercial and industrial districts: For a lot in a C2, C3 or M1 district containing a use other than a dwelling structure and having its front line on a street any portion of the frontage of which on either side between intersecting streets is contained in any residential zoning district, the minimum front yard shall be fifteen (15) feet; provided that if the frontage contained within the residential zoning district is within an area designated in the comprehensive plan for future general commercial or business use or expansion, except of a local or neighborhood type classified in the ordinancefor a C1 district, or industrial use or expansion, no minimum front yard shall be required.

(2) Sloping lot: If the natural gradient of a lot from front to rear along the lot depth line exceeds an average of twenty (20) percent, the front yard may be reduced by one (1) foot for each two (2) percent gradient over twenty (20) percent, except that the front yard shall not be less than the established front yard of buildings on abutting lots, but in no case shall the front yard for principal uses be required to exceed twenty (20) feet. In no case under the provisions of this subsection shall the setback be less than ten (10) feet.

(3) Garage: A detached or attached garage may be constructed in a natural bank of earth without regard to front yard regulations, provided all exterior walls, except the front, are concealed by the earth for not less than seventy-five (75) percent of their separate areas.

Section 13.07 Side Yard Exceptions. For a lot in a C1, C2, C3, or M1 district containing a use other than a dwelling structure and adjoining a residential zoning district: Minimum side yard along a side lot line adjoining a lot in a residential zoning district shall be fifteen (15) feet in the case of a lot in a C1, C2, or C3 district and twenty (20) feet in the case of a lot in an M1 district; provided that if the adjoining residential district is within an area shown in the comprehensive plan for future commercial or industrial use or expansion, no minimum side yard shall be required.

Section 13.03 Side Yard Along Flanking Street of Corner Lot. For a corner lot in a C2, C3, or M1 district containing a use other than a dwelling structure and having a side yard along a flanking street any portion of the frontage of which on either side between intersecting streets is contained in a residential zoning district, the minimum side yard along the flanking street shall be fifteen (15) feet; provided that if the frontage contained within the residential district is within an area designated in the comprehensive plan for future commercial or industrial use or expansion, no minimum side yard along the flanking street shall be required.

Section 13.04. Rear Yard Exceptions. For a lot in a C1, C2, C3 or M1 district containing a use other than a dwelling structure and adjoining a residential zoning district: minimum rear yard along a rear lot line adjoining a side or rear yard of a lot in a residential zoning district shall be fifteen (15) feet in the case of a lot in a C1, C2, or C3 district and twenty(20) feet in the case of a lot in an M1 district; provided that if the adjoining residential district is within an area shown in the comprehensive plan for future commercial or industrial use or expansion, no minimum rear yard shall be required.

ARTICLE XIV

ACCESSORY STRUCTURES

Section 14.01 Vision Clearance Area.

(1) Except in C2, C3, or M1 districts, vision clearance areas are established. The distance establishing the size of a vision clearance area shall be a minimum of fifteen (15) feet, except that the distance may be reduced to ten (10) feet at intersections including an alley. When the angle of intersection between streets is less than thirty (30) degrees the distance shall be increased to ten (10) feet.

(2) A vision clearance area shall contain no plantings, walls, structures, or other obstructions exceeding a height of forty-two (42) inches measured from the established grade.

Section 14.02 Accessory Structures. (Except Fences, Walls, Hedges and Signs) In an R1, R2, R3 or R4 district accessory structures on each lot (except fences, walls, hedges and signs)shall conform to the following requirements:

(1) Not exceed one story or fourteen (14) feet in height, except on a lot having a minimum area of one acre.

(2) Not project beyond the front building line.

(3) Not occupy altogether more than thirty (30) percent of a required rear yard, provided that the total lot coverage shall not be exceeded.

(4) Not occupy any portion of a required side yard.

(5) Not be located closer than two (2) feet to a side or rear lot line within a rear yard, nor closer than ten (10) feet to a side lot line within a rear yard along a flanking street of a corner lot, provided that in the case of a mobile home park accessory structures shall not be located closer than twenty-five (25) feet to a side lot line within a rear yard along a flanking street of a corner lot, and provided further where the owners of two adjoining lots agree to the joint use of a common driveway, garage structures may be erected by permission of the city engineer which have a common wall located on a side lot line within a rear yard.

(6) Not be located closer than five (5) feet to a rear lot line where such rear lot line coincides with the side lot line of an adjoining lot.

Section 14.03 Accessory Structures: Fences, Walls and Hedges.

(1) Except as provided in Section 14.01, fences, walls or mature hedges not over forty-two (42) inches in height may occupy the required front yard of any lot or the required side yard along the flanking street of a corner lot.

(2) Fences or hedges located back of the required front or flanking street side yard shall not exceed a height of six (6) feet, except when used to enclose a patio, swimming pool, garden supply or tool compound, or similar living, recreational or storage area or facility, provided that such enclosed area or facility and the fences and hedges enclosing it shall be considered as comprising an accessory structure.

Section 14.04 Accessory Structures: Signs.

(1) In R1, R2, R3 and R4 districts the following signs shall be permitted:

(a) One name plate or sign for each home occupation, indirectly illuminated, less than two hundred-forty (240) square inches in area.

(b) One temporary sign, not illuminated, less than six (6) square feet in area, advertising the sale, lease, or rental of the property.

(c) Temporary sign advertising the sale of a tract of land or lots in a subdivision, not illuminated, and not exceeding forty-two (42) square feet in area.

(d) Temporary sign during construction only denoting architect, engineer, contractor, or others engaged in design and erection of buildings and facilities.

(2) In a C1 district the following signs shall be permitted:

(a) Any sign permitted under the provisions of subsection (1) of this section.

(b) One sign for each business establishment, illuminated, but not of an intermittent flashing, animated, or motion type, not exceeding twenty (20) square feet. If illuminated, sign shall not create glare objectionable to residential properties in the vicinity.

(3) In all other districts there shall be no limitations on signs or billboards except those imposed by subsections (5) and (6) of this section.

(4) No illuminated sign or billboard exceeding forty-two (42) square feet, nor any intermittent flashing, motion, or animated sign shall be so located as to face directly, shine, or reflect glare into a dwelling structure, public park, public building, hospital, home for the aged and convalescent, or similar place or building situated in the vicinity of such sign or billboard.

(5) Signs shall conform to all requirements established in the ordinance governing accessory structures, except that a temporary sign advertising the sale, lease, or rental of the property, or the sale of a lot or tract of land may occupy a required front yard or a required side yard along a flanking street of a corner lot.

(6) Signs serving or incidental to a conditional use permitted by the ordinance shall be approved as to type, size, and location by the commission.

ARTICLE XV

HOME OCCUPATIONS

Section 15.01 Home Occupations. Home occupations shall conform to the following requirements:

(1) Not include the following: barber shop, beauty parlor, or real estate office.

(2) Not be conducted in an accessory building.

(3) Not attract traffic or create disturbing influences greater than that of other residential properties in the vicinity.

(4) The residential character of the building shall be maintained and the occupation shall be conducted in such a manner as not to give an outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term.

ARTICLE XVI

OFF-STREET PARKING AND LOADING

Section 16.01 Off-Street Parking Policy. In all districts there shall be provided at the time of erecting new structures, or at the time of enlarging,moving, or increasing of capacity by creating or adding dwelling units, commercial or industrial floor space, or seating facilities, minimum off-street parking space, other than in required front yards or required side yards along flanking streets of corner lots, with adequate provision for ingress and egress to the street, in accordance with the requirements of the following sections.

Section 16.02 Off-Street Parking: Space and Access.

(1) Each off-street parking space shall have a net area of not less than one hundred sixty (160) square feet exclusive of access drives or aisles, and shall be of usable shape and condition. If determined on a gross area basis, three hundred (300) square feet shall be allowed per vehicle.

(2) If the required parking space for a one or two-family dwelling is not provided in a covered garage, such space shall be not less than two hundred (200) square feet, and shall be so located that it may later be covered by a garage structure in accordance with the provisions of the ordinance.

Section 16.03 Off-Street Parking: Location. Off-street parking facilities shall be located as hereinafter specified. Where a distance is specified,such distance shall be the maximum walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve.

(1) For one or two-family dwelling: on the same lot with the building they are required to serve.

(2) For multiple dwelling, rooming or lodging house: two hundred (200) feet.

(3) For hospital, sanitarium, home for the aged, or building containing club rooms: three hundred (300) feet.

(4) For uses other than those specified above: four hundred (400) feet.

Section 16.04 Off-Street Parking: Units of Measurement.

(1) In a stadium, sports arena, church, or other place of assembly, each twenty (20) inches of bench seating shall be counted as one seat for the purpose of determining requirements for off-street parking facilities.

(2) For purposes of determining off-street parking as related to floor space of multi-level structures and buildings, the following formula shall be used to compute gross floor area for parking determination:

Main floor	always 100%
Basement and second floor	50%
Additional stories	25%

Section 16.05 Off-Street Parking: Change of Use, Alteration, Expansion or Enlargement. Whenever a building is enlarged or altered, or whenever the use of a building or property is changed, off-street parking shall be provided for such expansion, enlargement or change in use in accordance with the requirements of the ordinance; provided, however, that no additional off-street parking space need be provided where the number of parking spaces required for such expansion, enlargement or change in use since the effective date of the ordinance is less than ten percent (10%) of the parking spaces specified in the ordinance. Nothing in this provision shall be construed to require off-street parking spaces for the portion of such building existing at the time of passage of the ordinance.

Section 16.06 Off-Street Parking: Uses not Specified. In the case of a use not specifically mentioned in Section 16.11, the requirements for off-street parking facilities shall be determined by the commission. Such determination shall be based upon the requirements for the most comparable use listed.

Section 16.07 Off-Street Parking: Joint Use. The commission may authorize the joint use of parking facilities for the following uses or activities under conditions specified:

(1) Up to fifty percent (50%) of the parking facilities required by the ordinance for a theater, bowling alley, dance hall, bar, or restaurant may be supplied by the off-street parking facilities provided by certain types of buildings or uses herein referred to as "daytime" uses in subsection (4) below.

(2) Up to fifty percent (50%) of the off-street parking facilities required for any building or use specified in subsection (4) below, "daytime" uses, may be supplied by the parking facilities provided by uses herein referred to as "nighttime" uses in subsection (5) below.

(3) Up to one hundred percent (100%) of the parking facilities required for a church or for an auditorium incidental to a public or parochial school may be supplied by the off-street parking facilities provided by uses herein referred to as "daytime" uses in subsection (4) below.

(4) For the purpose of this section, the following and similar uses are considered as primary daytime uses: banks, offices, retail, personal service shops, household equipment or furniture stores, clothing or shoe repair shops, manufacturing or wholesale buildings and similar uses.

(5) For the purpose of this section, the following and similar uses are considered as primary nighttime or Sunday uses: auditorium incidental to a public or parochial shcool, churches, bowling alleys, dance halls, theaters, bars, or restaurants.

(6) Owners of two (2) or more buildings or lots may agree to utilize jointly the same parking space, subject to such conditions as may be imposed by the commission. Satisfactory legal evidence shall be presented to the commission in the form of deeds, leases or contracts to establish the joint use. Evidence shall be required that there is no substantial conflict in the principal operating hours of the buildings or uses for which joint off-street parking is proposed.

Section 16.08 Off-Street Parking: Plans Shall be Submitted.

(1) Every tract or lot hereafter used as a public or private parking area, having a capacity of five (5) or more vehicles, shall be developed and maintained in accordance with the requirements and standards of the ordinance.

(2) The plan of the proposed parking lot shall be submitted to the city engineer at the time of the application for the building for which the parking area is required. Said plan shall clearly indicate the proposed development, including location, size, shape, design, curb cuts, lighting, landscaping, and other features and appurtenances required.

Section 16.09 Off-Street Parking: Enclosure.

(1) A parking barrier, railing, rail fence, evergreen hedge, wall, or other continuous barricade of harmonius material and design at least eight (8) inches, and no more than twenty-four (24) inches, in height shall be provided along each property line which adjoins a street.

(2) Any portion of an off-street parking area which adjoins a residential zoning district shall be screened by a sight obscuring fence.

Section 16.10 Off-Street Parking: Additional Requirements. In addition to the basic standards and requirements established by other sections of the ordinance, the commission or city engineer may make such other requirements or restrictions as shall be deemed necessary in the interests of safety, public health and general welfare of the city, including, but not limited to, lighting, joint developement of parking facilities, entrances and exits, accessory uses, and conditional exceptions. Further, performance bonds may be required in such cases where the commission or council determines that such shall be necessary to guarantee proper completion of improvements within time periods specified.

Section 16.11 Off-Street Parking: Table of Minimum Standards.
Required parking spaces (where alternative standards prevail, the greater applies in conflicting computations) are as follows:

(1) Residential structure	One (1) for each dwelling unit
(2) Rooming and lodging house	One (1) for each sleeping room
(3) Auto court, motel, tourist home	One (1) for each sleeping unit, guest room or suite
(4) Hospital, nursing home, or institution	One((1) for each three (3) beds
(5) Theater	One (1) for each four (4) seats, except one (1) for each six (6) seats in excess of eight hundred (800) seats.
(6) Church, auditorium and similar enclosed place of assembly	One (1) for each six (6) seats,or one (1) for each fifty (50) square feet of floor area for assembly not containing fixed seats
(7) Stadium, sports arena, and similar open assembly place	One (1) for each six (6) seats
(8) Library	One (1) for each two hundred fifty (250) square feet of gross floor area
(9) Dance hall, skating rink	One (1) for each fifty (50) square feet of dance floor or skating area
(10) Bowling alley	Four (4) for each alley
(11) Medical or dental clinic	One (1) for each three hundred (300) square feet of gross floor area
(12) Bank, business and professional office with on-site customer service	One (1) for each four hundred (400) square feet of gross floor area
(13) Office not providing customer services on premises	One (1) for each four (4) employees or one (1) for each eight hundred (800) square feet of gross floor area
(14) Mortuary	One (1) for each four (4) seats

(15) Warehouse, storage and wholesale business	One (1) for each two (2) employees
(16) Food and beverage place with sale and consumption on premises:	
(a) If less than four thousand (4000) square feet floor area	One (1) for each two hundred (200) square feet of gross floor area
(b) If over four thousand (4000) square feet floor area	Twenty (20) plus one (1) for each one hundred (100) square feet of gross floor area in excess of four thousand (4000) square feet
(17) Furniture, appliance, hardware, clothing, shoe, and personal service store	One (1) for each six hundred (600) square feet of gross floor area
(18) Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One (1) for each one thousand (1000) square feet of gross floor area, exclusive of displays, or one (1) for each three (3) employees
(19) Retail store less than five thousand (5000) square feet gross floor area	One (1) for each three hundred (300) square feet of gross floor area
(20) Retail store more than five thousand (5000) square feet gross floor area	Seventeen (17) plus one (1) for each fifteen hundred (1500) square feet in excess of five thousand (5000) square feet of gross floor area
(21) Manufacturing uses, research testing and processing, assembly, and all industries	One (1) for each two (2) employees on the maximum working shift, but not less than one (1) for each eight hundred (800) square feet of gross floor area

Section 16.12 Off-Street Loading: Policy and Standards.

(1) Buildings or structures to be built or substantially altered which receive and distribute material and merchandise by trucks shall provide and maintain off-street loading berths in sufficient numbers and size to adequately handle the needs of the particular case.

(2) The following standards shall be used in establishing the minimum number of berths required.

Number of Berths	Gross Floor Area of the Building in Square Feet
1	Up to 20,000
2	20,000 - 50,000
3	50,000 - 100,000
1 additional for each	50,000 in excess of 100,000

(3) No loading berth shall be located closer than fifty (50) feet to a lot in any residential zoning district unless wholly within a completely enclosed building or unless screened from such lot in the residential district by a wall, fence, or sight-obscuring evergreen hedge not less than six (6) feet in height.

ARTICLE XVII

NONCONFORMING USES

Section 17.01 Nonconforming Uses: May be Continued.

(1) Subject to the provisions of the following sections relating to nonconforming uses, a nonconforming building or use may be continued.

(2) To benefit from the provisions governing continuance of a nonconforming use such use must have been legitimately and lawfully established prior to and in existence at the time of adoption of the ordinance.

Section 17.02 Nonconforming Uses: Discontinuance or Abandonment. Discontinuance or abandonment shall be interpreted as meaning:

(1) When improved land (no principal buildings) and accessory structures used as a nonconforming use shall cease to be used continuously for that particular use for six (6) consecutive months.

(2) When a building designed or arranged for a nonconforming use shall cease to be used continuously for that particular use for twelve (12) consecutive months.

(3) When a building designed or arranged for a conforming use but used for nonconforming activities shall cease to be used continuously for such particular use for six (6) consecutive months.

(4) Declaration of intent to resume active operations shall not affect the requirements of subsections (1), (2),or (3) of this section.

Section 17.03 Nonconforming Uses: Structures.

(1) A building conforming as to use but nonconforming as to the density provisions of the district in which such building is located may be altered, repaired, or extended, providing that the alteration, repair, or extension does not further exceed or violate the appropriate density provisions.

(2) The use of a nonconforming building, or the conduct of nonconforming activities in a building conforming as to use, once discontinued or abandoned, shall not be resumed unless further use conforms to the ordinance.

(3) A nonconforming use of a building may not be changed to another nonconforming use.

(4) The enlargement of a nonconforming use to any portion of an existing building, which portion was designed and built for such nonconforming use prior to the adoption of the ordinance, may be permitted, providing no structural alterations are made.

(5) A building designed and built for, or devoted to, a nonconforming use at the time of the adoption of the ordinance, may not be enlarged or structurally altered unless the use of such building is changed to a conforming use.

(6) When a building or other structure containing a nonconforming use is damaged by any cause so that the cost of renewal of the damaged parts exceeds seventy-five percent(75%) of the cost of the replacement of the entire building, exclusive of foundations, using new materials, then such building shall not be rebuilt unless the building and its construction and use conforms fully to the ordinance. Any rebuilding otherwise authorized by the ordinance shall commence within six (6) months from the date of damage or destruction if such nonconforming use is to be continued. The determination of whether a building is destroyed to the extent described shall be made by the city engineer.

Section 17.04. Nonconforming Uses: Land.

(1) A nonconforming use of land shall not be continued longer than five (5) years from the date of adoption of the ordinance, or from the date of annexation or change in zoning district classification the result of which such use of land becomes nonconforming, if the true cash value of improvements at the time such use of land becomes nonconforming is less than $2,000.00, as determined by the city engineer on the basis of evidence obtained from a competent source.

(2) A use of land shall conform to the requirements of the ordinance governing fences and screening of certain properties within a period of three (3) years from the date of adoption of the ordinance.

(3) If a nonconforming use of improved land is discontinued, further use of the property shall be for a conforming use.

Section 17.05 Nonconforming Use: Conversion or Removal.

(1) Conversion or removal of a nonconforming structure or use shall be commenced not later than sixty (60) days after the date of abandonment and shall be completed within twelve (12) months thereafter.

(2) In the event of failure of the owner of record to complete, or cause to be completed, removal or conversion, the city engineer may, within ninety (90) days after notice to the owner of record, cause or undertake removal of all nonconforming structures or uses and charge the cost thereof against the property.

Section 17.06 Nonconforming Uses: Reclassification of Zoning District or Annexation. The provisions contained in Sections 17.02 through 17.05 shall apply to buildings, land, or uses which, after the date of adoption of the ordinance, become nonconforming due to reclassification of a zoning district, annexation to the city, or any subsequent change in the regulations of the ordinance.

Section 17.07 Nonconforming Uses: Survey, Notice, and Certificate of Occupancy.

(1) As soon as practicable after the effective date of the ordinance, amendments thereto, or annexations to the city, the city engineer shall determine by survey the existence of nonconforming uses and shall give written notice by mail to the owners of properties containing such uses as shown in the records of the county assessor. Failure on the part of the city engineer to give notice shall not invalidate the regulations of the ordinance.

(2) Any person, or his agent, upon whose property there is operated or maintained a lawful nonconforming use shall, within thirty (30) days after receipt of a notice as required by subsection (1) of this section, obtain from the city engineer a certificate of occupancy designating the location, nature and extent of the nonconforming use and the name of the person responsible therefor.

ARTICLE XVIII

CONDITIONAL USES AND VARIANCES

Section 18.01 Conditional Uses and Variances: Intent and Policy.

(1) It is recognized that there are special uses which, because of their unique characteristics, cannot be properly classified in any particular zoning district without consideration, in each case, of the inpact of those uses upon neighboring land and of the public need for the particular use at the particular location. These uses are called conditional uses. It is the intent and policy of the council that such uses be dealt with in a manner that is equitable to the owner or applicant in terms of the interests of the city in securing public health, safety, and general welfare.

(2) It is the intent and policy of the council to provide relief by granting variances in cases of hardship resulting from a strict interpretation of the regulations of the ordinance, and to authorize a process of appeals to govern situations in which parties affected by an interpretation of the regulations of the ordinance allege improper administrative action.

Section 18.02 Conditional Use: Application and Fee.

(1) An application for a conditional use or modification of an existing conditional use may be initiated by a property owner, or his authorized agent, or by any governmental officer, department, board, or bureau.

(2) An application for a conditional use shall be filed with the city auditor on forms provided by the city. For other than city or other governmental property the application shall be accompanied by a fee of forty ($40.00) dollars which shall not be refundable.

Section 18.03 Conditional Use: Public Hearing. Before any conditional use or modification of an existing conditional use is allowed, it shall be considered at a public hearing by the commission. Such public hearing shall be held within forty (40) days after the filing of the application. The city auditor shall give notice of the hearing in the following manner:

(1) By publication of a notice in a newspaper of general circulation in the city not less than five (5) nor more than twenty (20) days prior to the date of the hearing.

(2) By sending notices by mail not less than ten (10) days prior to the date of the hearing to the property owners within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of way, using for this purpose the names and addresses of owners as shown in the records of the county assessor.

(3) Where all property located within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of-way, is under the same ownership, owners of all property abutting that of the same ownership shall be notified in the same manner as provided in subsection (2) of this section.

(4) Failure to send notices to persons specified in this subsection or failure of a person to receive a notice shall not invalidate the proceedings in connection with an application for conditional use.

Section 10.04 Conditional Use: Planning Commission Action.

(1) The commission in reviewing an application for a conditional use shall consider the most appropriate use of the land; the conservation and stabilization of the value of property; adequate open space for light and air; concentration of population; congestion of public streets; and all other factors affecting the promotion of the public safety, health, convenience, and comfort.

(2) In addition to other requirements of the ordinance, the commission, in recommending the granting of a conditional use, may stipulate those which it finds are necessary to carry out the intent of the ordinance. These stipulations may increase the required lot or yard, control the location and number of vehicular access points to the property, limit the number of signs, limit coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property, require screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area, or impose other requirements.

(3) Following the public hearing the commission shall transmit without delay to the council the application, report of findings, and its recommendation, together with stipulated requirements as terms and conditions for approval.

Section 10.05 Conditional Use: Council Action.

(1) After receiving and hearing the report of the commission the council may approve or deny the application. In allowing a conditional use the council may impose requirements stipulated by the commission in its report of recommendations.

(2) The council shall promptly advise the city engineer of its action, and if an application is approved, he shall incorporate the terms and conditions stipulated by the council in the issuance of permits to the applicant.

Section 10.06 Conditional Use: Special Provision for Excavation Pits: Stone Quarry; Sand, Gravel, or Clay Pits; and Soil Stripping. The use of premises in any district for the excavation, mining, extraction, or removal of stone, sand, gravel, clay or other natural deposits may only be authorized by the council after public hearing before the commission and receipt of a report of the commission's findings and recommendations. A conditional use may be authorized by the council for such periods as it deems consistent with the public health, safety, and general welfare, and subject to the following provisions:

(1) Plans submitted by the applicant for such excavations shall consist of a topographic map with such cross-sections as are necessary to adequately show the topography of the property in question and its relation to streets and surrounding property, together with a similar map showing the extent of the proposed excavation and the contours of the ground after the removal of the material.

(2) A copy of each map shall be submitted to the city engineer who shall report to the commission his findings regarding the effect of the intended excavations upon streets and other improvements, either existing or contemplated, and upon all properties within the area of influence of such excavations.

(3) Before approving an application, the council may require that the applicant enter into an appropriate agreement with the city for reclamation of such areas to suitable use after completion of excavations, and that an adequate performance bond or other guarantee be furnished covering the cost of restoration or other work.

Section 10.07 Conditional Use: Mobile Home Park. In addition to such other requirements as the commission may recommend and the council stipulate in authorizing a mobile home park under the provisions of subsection (2) of Section 7.03, the following density provisions shall be imposed.

(1) Minimum lot area:	2 acres
(2) Minimum lot width:	200 feet
(3) Minimum lot depth:	200 feet
(4) Minimum front yard:	30 feet
(5) Minimum side yard:	20 feet
(6) Minimum side yard along flanking street of corner lot:	25 feet
(7) Minimum rear yard:	25 feet
(8) Maximum building height:	2½ stories
(9) Maximum lot coverage:	40 percent

(10) No mobile home or trailer stand or an accessory use incidental to a mobile home park shall extend or project into a required yard.

Section 1[illegible].0[illegible] Variance.

(1) Where unnecessary hardships and practical difficulties, resulting from peculiarities of a specific property, render it difficult or inequitable to carry out the provisions of the ordinance, the commission shall have power to grant a variance in harmony with the general purpose and intent of the ordinance. Such variance may vary the literal enforcement of any standard, requirement or regulation of the ordinance, except the provisions relating to the permitted uses of the district wherein is located the property which is the subject of the application for variance, so that the intent of the ordinance will be observed, public interest protected, public safety secured, and substantial justice done. To this end a variance in the provisions and requirements of the ordinance shall only be authorized if the commission finds that all the following facts and conditions exist in each case of an application for a variance:

(a) That there are exceptional or extraordinary circumstances or conditions applying to the subject property that do not apply generally to other properties in the same vicinity or zoning district, and that the plight of the applicant is unique and not the result of his own action.

(b) That the land or structure in question cannot be reasonably used and cannot yield a reasonable return, if used only in accordance with the density requirements of the ordinance for the district in which it is located, and that such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other property in the same vicinity or district.

(c) That the authorization of such variance will not be materially detrimental to the public welfare, not injurious to nearby property, nor essentially different from the provisions of the district in which it is located.

(d) That the granting of such variance will not adversely affect the comprehensive plan or studies thereof.

(2) In authorizing a variance the commission may attach thereto such conditions regarding the location, character or other features of the proposed structures or uses as it may deem necessary to carry out the intent of the ordinance; provided, however that a variance so authorized shall become void after the expiration of six (6) months if no substantial construction has taken place in accordance with the plans for which such variance was authorized.

(3) No variance shall be granted by the commission which allows the use of property for purposes not authorized within the zoning district in which the property is located.

Section 18.09 Variance: Application and Fee.

(1) An application for a variance may be initiated by a property owner or his authorized agent, or by any governmental officer, department, board, or bureau.

(2) An application for a variance shall be filed with the city auditor on forms provided by the city. For other than city or other governmental property the application shall be accompanied by a fee of twenty dollars ($20.00) which shall not be refundable.

Section 18.10 Variance: Public Hearing.

(1) Before any variance is allowed under the provisions of the ordinance, it shall be considered by the commission at a public hearing.

(2) Within forty (40) days after the filing of an application for a variance, the commission shall hold a public hearing. At least five (5) days but not more than twenty (20) days prior to the date of hearing, the city auditor shall give written notice by mail of the hearing to owners of property abutting the lot or parcel of land on which the variance is requested, and shall notify the owner of any other lot or land parcel which he deems affected by the proposed variance, using for this purpose the names and addresses of owners as shown upon the records of the county assessor.

Section 18.11 Variance: Action of the Commission. The commission may attach conditions to an authorized variance which it feels are necessary to protect the public interest and carry out the purpose of the ordinance. The city auditor shall notify the applicant for a variance in writing of the commission's action within five (5) days after the commission has rendered its decision.

Section 18.12 Variance: Appeal to the Council. The action of the commission on an application for a variance may be appealed to the council within fifteen (15) days after the commission has rendered its decision by filing a written notice with the city auditor. If no appeal is taken within the fifteen (15) day period the decision of the commission shall be final. If an appeal is filed the council shall receive a report and recommendation from the commission, and shall hold a public hearing on the application. Notice of the public hearing shall be by one (1) publication in a newspaper of general circulation in the city not less than five (5) days nor more than twenty (20) days prior to the date of hearing.

ARTICLE XIX

ZONE CHANGES

Section 19.01 Amendments to Ordinance Text and Zoning Map. An amendment to the text of the ordinance or a change in or addition to the zoning map by altering district boundaries may be initiated by the council, commission, or by application of a property owner or his authorized agent.

Section 19.02 Amendments: Application and Fee. An application by a property owner or his authorized agent for an amendment to the ordinance shall be filed with the city auditor on forms provided by the city. The application shall be accompanied by a fee of forty dollars ($40.00) which shall not be refundable.

Section 19.03 Amendments: Public Hearing

(1) Before an amendment is made to the text of the ordinance or the zoning map, it shall be considered by the commission at a public hearing. This requirement shall apply to an amendment initiated by the commission or the council as well as by application of a property owner.

(2) The public hearing shall be held within forty (40) days after the filing of an application by a property owner or after request of the commission or council.

Section 19.04 Amendments: Notice of Public Hearing. Notice of the time and place for a public hearing on an amendment to the ordinance shall be given by the city auditor in the following manner:

(1) By publication in a newspaper of general circulation in the city not less than five (5) days nor more than twenty (20) days prior to the date of the hearing.

(2) By mailing notice not less than ten (10) days prior to the date of hearing to owners of property within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of-way, using for this purpose the names and addresses of the owners as shown upon the records of the county assessor.

(3) Where all property located within two hundred (200) feet of the exterior boundaries of the property involved, not including public rights-of-way, is under the same ownership, owners of all property abutting that of the same ownership shall be notified in the same manner as provided in subsection (2) of this section.

(4) Failure to mail notice to a person specified in this section or failure of a person to receive the notice shall not invalidate any proceedings in connection with the proposed amendment.

Section 19.05 Amendment: Recommendation of the Commission. The commission shall recommend to the council approval, disapproval, or modification of the proposed amendment to the text or zoning map of the ordinance. The commission shall make its findings and recommendations in writing within forty (40) days after the hearing on the proposed amendment.

Section 19.06 Amendments: Recess of Hearing by Commission. The commission may recess a hearing on a proposed amendment in order to obtain additional information or to serve further notice upon other property owners or persons it determines may be interested in the proposed amendment. Before recessing for this purpose the commission shall announce the time and place at which the hearing will be resumed. If the time and place are not thus announced a new notice stating the time and place for resumption of the hearing shall be given by the city auditor in accordance with the provisions of Section 19.04.

Section 19.07 Amendments: Council Action.

(1) The council shall receive from the commission the application, report, and its recommendations and shall hear other information relating to the proposed amendment.

(2) After receipt of the report from the commission, or if no report is received within the time period stipulated in Section 19.05, the council shall hold a public hearing on the proposed amendment. Notice of the hearing shall be given as provided in ORS 227.260.

(3) After the public hearing required by subsection (2) of this section has been held, the council may, by ordinance, adopt the proposed amendment as submitted by the commission, or as it may itself modify.

ARTICLE XX

ADMINISTRATION

Section 20.01 Form of Petitions, Applications, and Appeals. The commission shall prescribe the form and scope of all petitions and applications provided for in the ordinance and accompanying data to be furnished to assure the fullest practical presentation of facts for proper consideration of a matter involved in each case and to maintain a permanent record.

Section 20.02 Interpretation. Where the conditions imposed by any provision of the ordinance upon the use of land or building or upon the size, location, coverage, or height of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of the ordinance or of any other ordinance, resolution, or regulation, the provisions which are more restrictive shall govern.

Section 20.03 Enforcement. The city engineer shall have the power and duty to enforce the provisions of the ordinance.

Section 20.04 Penalty Provisions. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this ordinance shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this ordinance shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the city jail for a period of not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this ordinance is committed, continued or permitted by such person and shall be punishable accordingly.

In addition to the penalties herein above provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance shall be deemed a public nuisance and may be, by this city, summarily abated, and each day such condition continues shall be regarded as a new and separate offense.

Section 20.05. Validity. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 20.06 Repeal. Ordinance 59-06 and ordinance 59-20 and all other ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 20.07 Effective Date. This ordinance shall take effect and be in force from, on and after thirty (30) days after passage.

PASSED by the Common Council this 6th day of November, 1961

APPROVED by the Mayor this 6th day of November, 1961

/s/ Harry M. Steinbock
Mayor

ATTEST:

/s/ Dale F. Curry
Finance Director

ROLL CALL ON PASSAGE:

	Yea	Nay
Commissioner Thorsness	x	
Swanson	x	
Abrahamsen	Absent	
Duoos	x	
Mayor Steinbock	x	

RECEIVED
NOV 16 2023
BY: tt / 3:11 pm email

Austin Kettleson
286 Lexington Avenue
Astoria, Oregon 97103

Andrew Kipp
461 Exchange Street
Astoria, Oregon 97103

John Windus
960 Franklin Avenue
Astoria, Oregon 97103

November 16, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, Oregon 97103

Re: Rebuttal to evidence submitted by applicant regarding the appeal of Gilbaugh LLC nonconforming use decision at 1555, 1557, 1559 & 1561 Exchange Street (AP23-02)

Dear Mr. Rappleyea,

Please accept the comments below in response to the evidence and testimony submitted by the applicants on November 9th, 2023.

Part A. **No Evidence of Compliance With Transient Lodging Parking Requirements**

The applicant's response to this appeal failed to show evidence that they met the minimum parking requirements necessary to lawfully operate a transient lodging business in the 4-plex before doing so became an unpermitted use.

Under the 2017 Astoria Development Code §7.100 (and current code), transient lodging facilities must have one off-street parking space for each bedroom. The 4-plex has eight bedrooms, and the two cottages have three bedrooms, requiring a minimum of 11 off-street parking spaces to use all three structures as transient lodging. To meet the minimum required off-street parking, applicants claim to have a right to occupy nine on-street parking spaces. The applicants claim that these nine on-street spaces, combined with the five off-street spaces in the

parking lot, meet the requirement. Yet critically, the applicants have provided no evidence demonstrating that their use of the nine on-street parking spaces is lawfully nonconforming.

- As mentioned in previous testimony, the addresses listed on the parking plan approved by the city (Appeal packet, page 9) are exclusively for the two cottages, not the 4-plex. However, even if the approved parking plan was meant to apply to the 4-plex (which it clearly is not), the plan shows **zero** on-street parking spaces. If the applicants had been permitted to use nine on-street parking spaces to operate their transient lodging business for all 11 bedrooms, then the on-street spaces would have been indicated on the approved plan. However, they are not. While the applicants have now submitted a new diagram as evidence that asserts a right to use on-street parking, this plan is not, and was not, approved by the City of Astoria. The applicants have provided no other evidence, such as variance or other documentation, demonstrating their right to use nine on-street parking spaces to support the lawful operation of their transient lodging business.

- In the applicants' application for verification for non-conforming use, they reveal that after the parking lot was initially constructed, the city notified them that they did not have a permit on file to construct the driveway and that, as constructed, the driveway was nonconforming because of an unsuitable pitch under ADA regulations (Appeal packet, page 114). The lack of a driveway permit on file for this work casts significant doubt that the applicants had ever received approval from the City of Astoria to construct the parking lot to support transient lodging use before it was constructed. Besides the recollection of a conversation alleged to have occurred 7 or 8 years ago, the applicants have provided no evidence whatsoever showing that the City of Astoria was even aware that they intended to convert the 4-plex to transient lodging use when the parking lot was constructed.

The applicant's claim that the mere existence of the parking lot shows that they intended to use the 4-plex for transient lodging is false. In fact, the applicants have provided no evidence whatsoever that the parking lot meets the minimum off-street parking requirements for 11 bedrooms of transient lodging, and its existence does not lend any support that transient lodging use had been intended in the 4-plex prior to January 1st, 2019, let alone had lawfully begun before that date.

Part B. No Evidence Demonstrating Investments Made Into the 4-Plex Were for Transient Lodging Use Prior to the Introduction of Restrictive Zoning

While it's clear that the applicants have invested significant resources into restoring the 4-plex as a historic property, they have failed to provide any evidence showing the intended outcome of that investment was short-term vacation rentals until that use became unlawful.

- The applicants claim that repairs made to the structure (including stabilizing the foundation) were exclusively in support of converting the building from long-term rental apartments into transient lodging. However, it's unclear how short-term guests (renting the apartment for a handful of nights while on vacation) would be aware of or concerned with the structural condition of the foundation. Instead, it's reasonable to assume that any major repair work done to the building's structure, including the foundation, siding, windows, roof, etc., was completed to address long-deferred maintenance and support its use for any permitted purpose, including continued use as a multi-family residential dwelling. The reasonable assumption that a property owner would want to protect their recently acquired investment by addressing long-deferred maintenance conflicts with the applicants' claim that, absent their intent to convert the building to transient lodging, they would have let the property they had purchased for $375,000 continue to deteriorate.

- The applicants claim that the materials and finishes they choose when renovating the building would apply exclusively to short-term vacation rentals. However, the applicants assert, without providing evidence, that the standard to which a property is renovated dictates its intended use. This is not the case. Property owners renovate and then rent out apartments at various price points, including at the high end, all the time. High-end rentals often contain luxury finishes or are restored to appeal to a higher-income renter. Likewise, short-term rentals in popular vacation destinations like Astoria often see frequent use and rapid turnover during the high season, sometimes from large groups. Through noise complaints and other nuisance violations, it's well documented that visitors frequently use short-term vacation rentals to host large and rowdy parties. Given the frequent hard treatment and heavy use, if a property owner were planning to renovate a property for short-term vacation rental use, it would be logical to use durable, simple finishes and cost-effective furniture that could tolerate the beating that short-term vacation rentals are likely to incur. Looking at these straightforward examples, one can see that the applicants' assertion that only short-term vacation rentals get high-end restorations and long-term rentals receive only utilitarian finishes is simply false.

- The applicants cite the furniture purchases as evidence of intent to convert the units in the 4-plex to transient lodging. Setting aside the evidence the applicants provided showing that the purchases had occurred after transient lodging was no longer lawful use, the claim that these purchases only apply to short-term vacation rentals is also inconsistent with rental market practices. Apartments are frequently available for rent long-term as

furnished units. A quick internet search will reveal several furnished listings available for rent to long-term tenants (long-term being defined as periods greater than 30 days). Additionally, the applicants cite several other purchases, such as security cameras and smart locks, claiming that they support their intention to convert the 4-plex to transient lodging. However, these purchases were all made in 2022 and 2023, more than three years after January 1st, 2019, when transient lodging was no longer a lawful use. The cited purchases (made years after transient lodging was no longer permitted) simply do not support their claims that transient lodging had been intended or had actually begun prior to it becoming prohibited.

Part C. Transient Lodging Use Did Not Begin Until Almost Two Years After It Was a Prohibited Use

The applicants clearly admit that transient lodging had not begun in the 4-plex until December 1st, 2021, nearly two years after that use was no longer permitted. The applicants claim that transient lodging was not possible before those dates because of construction and other maintenance issues in the building. Yet, they continued to sign leases and collect rent from long-term tenants.

Perhaps the applicants thought it would be more profitable to continue to rent the 4-plex units on a long-term basis until their construction projects were finished and would be able to fetch higher nightly rates. However, the Astoria Development Code regulating nonconforming use is not concerned with the ideal timing to ensure maximum profits from any particular use. Rather, the Astoria Development Code says that to be considered nonconforming use, that use must have begun prior to when the restrictive zoning came into effect. The applicants readily admit it did not.

It's also possible that the applicants thought they were free to convert the apartments in the 4-plex from long-term rentals into short-term rentals and back again as their whims or desire for profits dictated. They were–and are–not. The Astoria Development Code on nonconforming use says that a nonconforming use status is immediately lost when changed to a conforming use or when use is discontinued for 12 months.

Part D. Conclusion

We do not dispute that the applicants have invested significant resources into restoring a long-neglected historic property. We congratulate the applicants for their accomplishment and for doing so in a way that is consistent with the Astoria Development Code requirements for historically designated properties.

However, the evidence, or lack thereof, does not show the applicants' intent to operate short-term vacation rentals in the 4-plex until almost two years after it was prohibited. The building was used exclusively as long-term rental housing at the time of purchase in 2015 and until the end of 2021. There is no evidence that the applicants had any intent to do anything but continue to rent the 4-plex apartments to long-term tenants until December 1st, 2021. It wasn't until then, almost two years after it became unlawful (and coinciding with a period of high demand for vacation rentals), that the applicants took action to convert the 4-plex to transient lodging use. Because there is ample evidence showing the applicant's intent to operate short-term vacation rentals after December 1st, 2021, it stands to reason that, had that use begun prior to January 1st, 2019, the evidence would also be readily available in the form of receipts, plans, permits, or other materials. However, there is none.

Finally, we want to make it clear that we filed this appeal not because we have anything to gain personally from winning it but because we saw the importance of standing up to protect long-term housing in Astoria for the people and families that live here year-round. The Astoria City Council knew how important this goal was when it passed the 2019 code amendments with the express purpose of preventing the conversion of long-term housing into short-term vacation rentals (precisely what has happened here). We believe the city made a serious error when it failed to uphold its own code meant to preserve housing stock for its residents amid a crippling housing crisis. By reversing the city's decision, we hope that the four long-term rental apartments in the 4-plex will continue to do what they have always done and provide much-needed homes to Astorians for years to come.

Respectfully,

Austin Kettleson
Andrew Kipp
John Windus

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NOV 16 2023
BY: 3:45pm/tt

November 16, 2023

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal

Dear Hearings Officer Rappleyea:

This letter responds to issues raised during the first open record period:

1) **Installing five new off-street parking spaces was two more than necessary to serve the cottages.**

As explained in our previous letter, residential uses within the Gilbaugh pre-dated the existence of the code so it did not require any of the off-street parking identified within the 2017 code to continue. Contrary to Mr. Kearns assertion, parking for a motel use required 1 space per guestroom. Collectively, the cottage units include 3 bedrooms which would require 3 off-street spaces. This means that there were two extra spaces available to serve short term tenants within the Gilbaugh. These two additional off-street spaces (allowed in non-residential zones) along with the on-street spaces provided parking amenities sufficient to satisfy six short term dwelling uses.

Mr. Kearns argues that the off-street parking is owned by Mr. Helligso and not us. As we have always explained, the land for the parking area was purchased in May of 2015 after closing on the Gilbaugh property in late March of the same year. See Rec p 112. This land was purchased to provide parking for our project as discussions with the city necessitated additional parking for short term use. We were only following the requirements as they were set forth by City staff. When we purchased this lot we understood we were buying a C3 lot as initial paperwork dictated. By the time we neared closing, a change to R3 (for this narrow band -initiated by the neighbors -the Colonna's north of Helligso) had been processed and at closing the lot we had bought was R3. The City processed that request acknowledging that this extra parking would serve short term uses on our entire property.

Once the land was purchased, we worked with our neighbor (Jacob Helligso) to optimize usage of this lot for mutual parking for short-term rentals (see Figure 1 below). Since our lot and Jacob's lot were of odd shape, we decided to swap land; Magies getting Helligso's back yard (which was closer to our buildings -C3) allowing closer parking; Magies giving up land adjacent to Helligso's house where parking was better suited for him. On the original parking plan Helligso had two spaces but later modified his garden area to provide an additional space before he applied for and received his homestay lodging license (required for R3) after massive renovations of his home was completed in 2021. Once the driveway was completed in 2017 we

initiated our short-term business license. Final count was 5 off street for Magie's and 3 for Helligso.

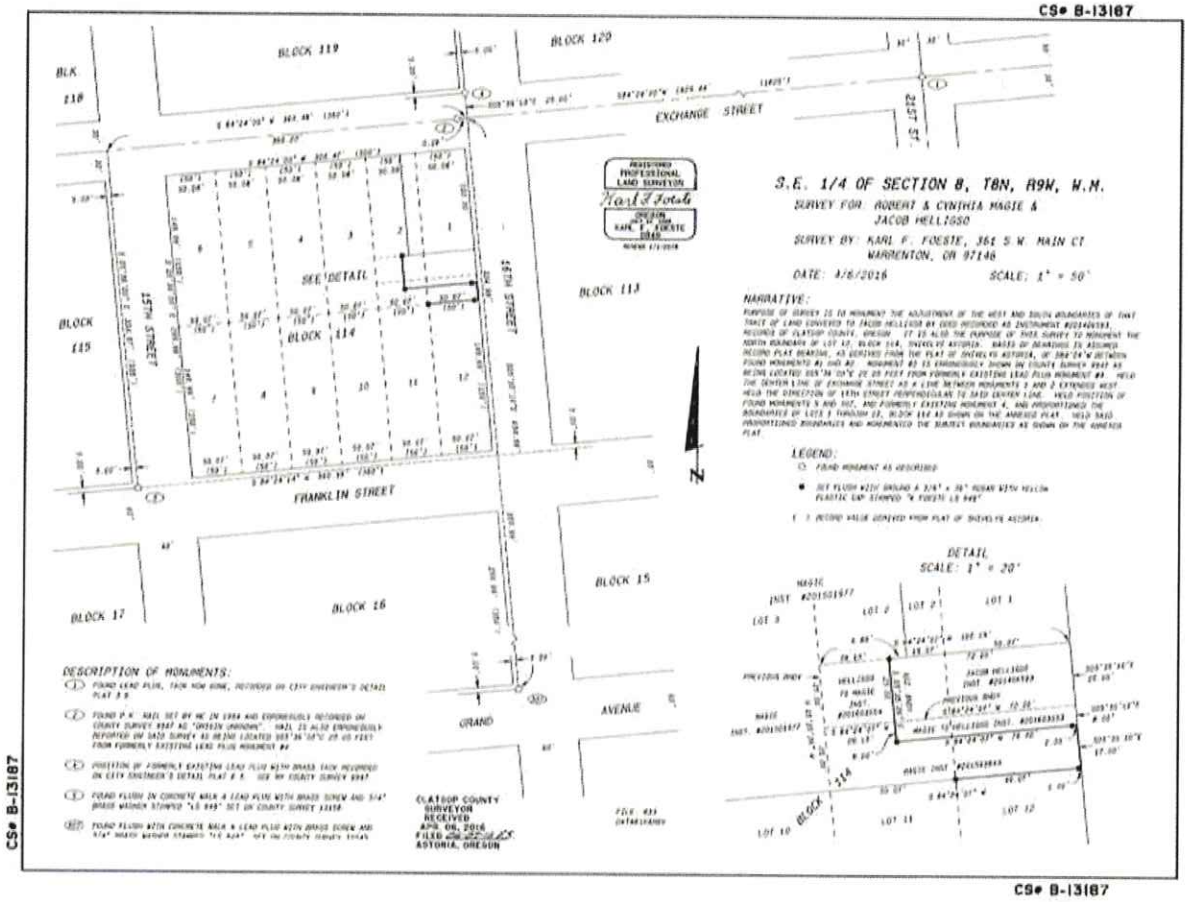


Figure 1. Survey from 4/6/2016 (recorded with the county) showing property swap between Magie and Helligso to maximize STR off street parking and access to respective properties. (See also deeds attached memorializing the property transfer.)

Contrary to Mr. Kearns contention, we are not using someone else's property to provide parking. We obtained title to this property and we own it.

2) **The expenditures for the Fourplex were necessary to a short term rental use and were significant.**

Attached is a spreadsheet setting forth all of the expenditures necessary to short term rent the Gilbaugh Building by date. Appellants suggestion that the exterior building rehabilitation costs were necessary to make the building habitable is false; all four units were occupied when we purchased and could have continued to be occupied in the existing building condition. As we have explained, no reasonable home owner would make the restoration choices that we made for long-term rentals. The exterior was lovingly restored in order to make it attractive as short

term rentals and not to supplement the City's affordable housing supply (as some have suggested.) For this reason, the exterior improvement costs (all expended before January 1, 2019) should be considered as part the expenditures made for short term rentals. As the attached expenditure sheet shows, taken in total, we expended 75% of the costs necessary to short term rent the Gilbaugh units before July 2019, when the City first started regulating residential units based on the short or long term distinction.

Second, if you exclude the exterior renovations, the expenditures made for short term rentals before July 2019 make up 45% of the total costs. Again, these expenditures remain significant.

3) Any suggestion of special treatment by city officials is absolutely false.

We wholeheartedly reject any suggestion that anyone at the City has given us favorable treatment or that we have otherwise bent the rules to our benefit.

In 2015/2016, long before he was the Mayor, we reached out to Sean Fitzpatrick (a housing provider in Astoria with multiple rental properties) to ask his opinion of our perspective purchase and use of the Gilbaugh property and houses for short term rentals. Through his rental portfolio Sean obviously had the knowledge and experience that novices like ourselves needed to consult to make the most educated decision about such an important investment as we were going all in with this project.

I asked Sean if we could pay him to take the time to look over our purchase agreement and he mentioned his consulting rate was expensive, but he was working with Clatsop Community College's CEDAR (Clatsop Economic Development Resource) program to help mentor small businesses and that we could work through that program at no charge to us. We obviously agreed and talked with him about this property in his professional capacity. We discussed various ways to pay for the work needed. This included subdividing the two houses off and selling them to pay for the work needed for the building restoration, that he considered buying the property for long term rentals but had decided that too much work needed to be done to make it cashflow and passed on the property, and finally I discussed our experience with a short-term rental at our primary residence and that this was properly zoned for this type of use and that it could help us make the entire restoration/renovation possible and afterwards still cash flow. Sean saw the merit in the last option and I was very happy to later tell him that I was able to buy the adjoining lot to create the off street parking that Kevin Cronin suggested to make our STR's legal from the city's standpoint.

When false claims about our intent with our property arose, we reached out to Sean Fitzpatrick to provide proof of our intent. Sean supplied a letter that professionally recounted our interaction when he was working as a mentor for Clatsop County's CEDAR program for us and simply that. Sean drafted this email without any direction or advice from us or our attorney. It simply recounts the details as they happened. We are not alone in seeking and receiving advice from Sean Fitzpatrick as he has helped other new local housing providers learn to navigate our

state's difficult and ever changing landlord tenant laws to provide both the provider and the tenant with the best possible experience.

The fact that Sean Fitzpatrick was on planning commission years later when the code was changed to prohibit new STR's without any special notice to us should attest that even though we consulted him on rental property questions, we have no special relationship with the Mayor. Astoria is a small town with business owners who work together to make their businesses better. Mayor Fitzpatrick appointed Cindy to planning commission not due to any sort of special treatment or favoritism but respects her decision-making abilities from being a successful local business owner, housing provider and pragmatic scientist that makes decisions based upon fact, reason and the City's code.

We met with City staff and Mayor Fitzpatrick last spring so that we could explain our perspective in much the same way as we have done here. After that meeting, the Community Development Director issued a decision, providing notice and allowing for an appeal. Again, there was nothing inappropriate or unfair about that meeting or the decision that resulted. Again, it reaffirmed the multiple times that the City has previously found that our property contains six units that can accommodate short term rentals.

4) Special treatment for the Appellants resulting from the newspaper misrepresenting the facts

Since accusations of special treatment were part of this appeal, we would like to point out some facts about of the Appellants and their relationship to the Astorian (newspaper), whose articles have misrepresented our intentions and fomented unfounded ire against us. Our ex-tenant Austin Kettleson has been affrontive, aggressive, litigious and personally threating. Until this appeal we had not met Andy Kipp or John Windus. What we now know they are close friends that share administration on a facebook account that has continued to slander my wife and myself with false claims and has a large following of supporters. We know now that all three of these so called housing advocates did not live in this community prior to 2018, currently own their own homes and do not provide housing to others. We know that the newspaper which has consistently falsely reported/omitted facts that support our project to incite public resentment has some sort of relationship with John Windus who worked in media before living in Astoria and (in 2018) sold him a house adjoining the paper's property. This house he later converted to a short term rental in 2021 and has somehow got away without providing any off-street parking to serve this use.

Additionally, the Astorian appears to have an agenda that serves their friends and ex-employees and will do anything to sell newspapers, even at the slandering of well-intended citizens, volunteers and true supporters of housing in our community (everyone knows this is typical about media but is really sucks when it happens to you). This perversion of facts has cost us a lot of time and money we do not have and we feel deeply harassed. We believe that this misrepresentation and harassment by the media contributed to the City's failure to stand by its earlier authorizations placing us in the situation that we are now in.

5) The claim that there is a dire lack of long-term rentals is overstated.

The testimony submitted by opponents to this appeal have focused on the need for affordable housing for working class individuals in the service industry repeatedly referring to it as a "crisis". A quick visit to Zillow and Apartments.com (not used by some housing providers, thus those vacancies are not reported here) on 11/13/2023 revealed that there are currently many units available within Astoria city limits. We have also noticed a reduction of employed qualified tenants seeking housing since the pandemic with our last 4 vacancies taking 2 to 6 months to fill. We count ourselves as members of the community and we support the people who live and work here. We do so by providing 9 long term and 6 short term rentals throughout the City. These long-term rentals are made possible, in part, through short term rentals at the Gilbaugh as we have updated and maintained by the use of debt. We have a greater understanding of the status of housing in the area as our business is to provide housing. The appellants do not provide housing and bold statements about us and other housing providers prove that they do not fully understand the market or what is required to do so.

Rentals available 11/13/2023

Astoria		**Price Range**	
Type	Units	Min	Max
2 Bedroom	6	1450	1695
1 Bedroom	4	1375	1500
Studio	2	1095	1250
Warrrenton			
2 Bedroom	4	1400	1450
3 Bedroom	1	1950	2995
1 Bedroom	1	718	-
Studio	1	895	-

6 houses were also listed for rent in Astoria
66 market units under construction in Astoria
2 new apartment complexes, 96 total units will soon be opening in Warrenton.
Another new development of affordable housing next to Home Depot built this year that has approximately 40 doors of subsidized and operated by Northwest Oregon Housing Authority (NOHA).

(not sure whether to list the Astoria motel recently purchased by the county to supply housing for Clatsop Community Action clients, A large affordable housing project being developed downtown called Copland Commons -maybe 50 doors. 40 affordable units just completed at the Merwyn Project. All of these are new or relatively new and supplement the existing stock that was deemed adequate in the last -2018-housing study) (Astoria population is 10,500 and

Warrenton population is 6400. Also the 2018 countywide housing study reported that Astoria was not underhoused.)

Conclusion

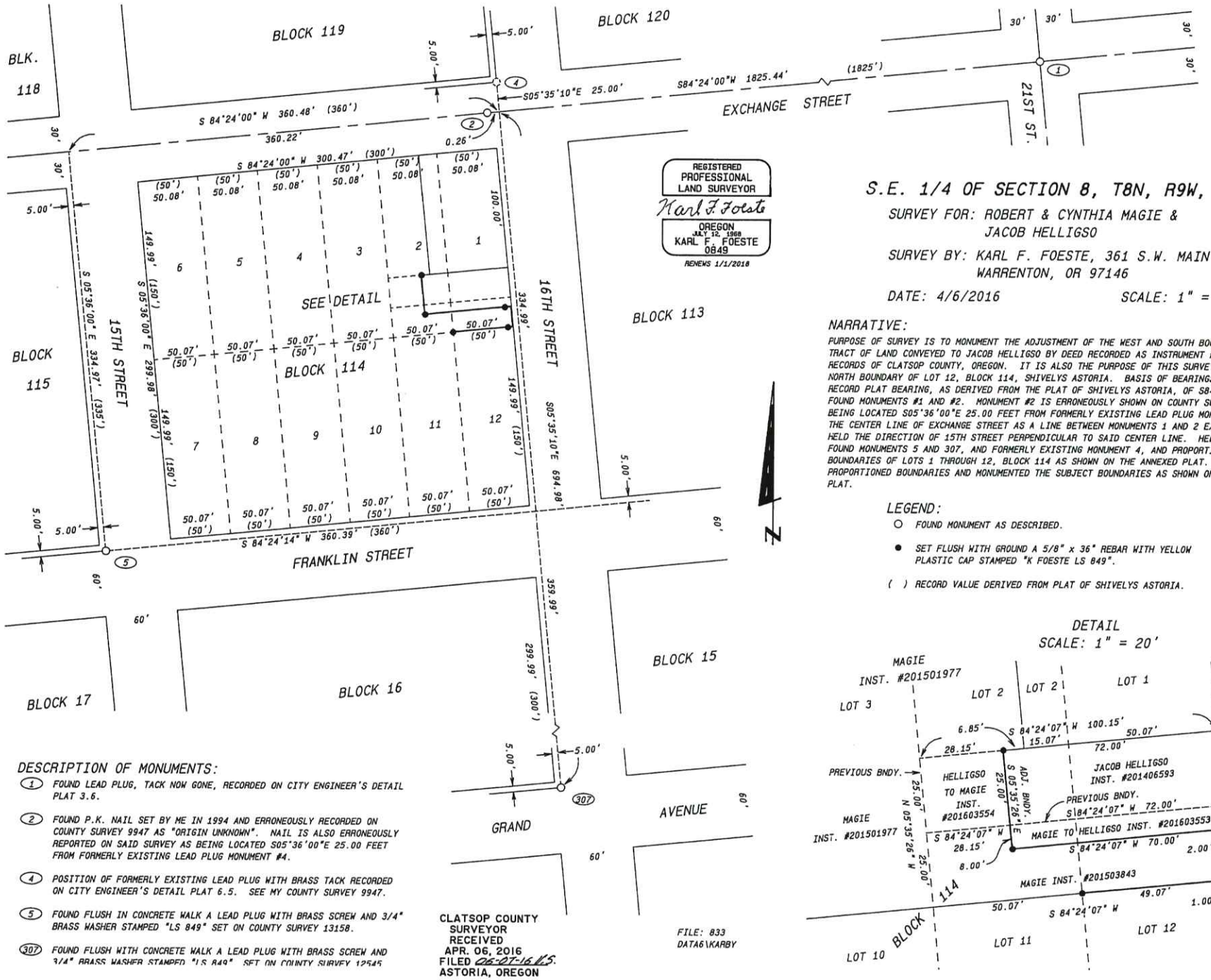
In conclusion we would like to reiterate that we have acted in good faith, transparency and compliance with the city regarding and our short-term rental project. We are people who value our integrity and honesty in all things. Everything that we have put forward as part of this proceeding has been the truth. We have always been up front about our intent to short term rent as soon as the units were ready to do so. We received approval of our project multiple times from the City and from various staff. We have not received special treatment from anyone and have worked very hard and given everything to a project we thought would be a good investment for us and the community while helping to beautify a previously blighted area of the city. This has been one project since the beginning (both the bank – commercial lending and the city have viewed this as a 6-plex on one tax lot) and viewed through that lens our progression and timelines make sense. We have provided adequate proof and provided testimony from others that we either consulted with or worked with of our intentions and progression of development of STR's in the Gilbaugh building. Our family and some friends have always known our intent, but no we did not talk with our very disgruntled tenant about this. And although he resided in this building, he does not own it or have the right to dictate what we do with our investments, time and money and cannot decide how we use our building. We are not required to gain his approval. As novice developers, we followed what was instructed by the city staff over the years, if they are wrong then whom else are citizens supposed work with or gain knowledge or approval from?

Mr. Rappleyea, we ask that you deny this appeal and uphold the multiple city approvals and our good faith efforts and significant expenditures resolving this matter once and for all. Before the code changed in 2019, we could freely transition between long term and short-term rentals as the market and the community needs and as this commercial property has done for over 100yrs. This was our outright use before 2019. We should be free to exercise that right without constraint. We did not need any formal land use approval to continue but rather were forced in response to an enforcement action.

We agreed to go through the process of a hearings officer to further prove no special treatment occurred with the city or elected officials. We believe that the facts, when viewed in an independent setting, also show that we satisfy the code requirements as the City has already concluded multiple times. Please independently uphold the integrity of the city and elected volunteer officials who are being unfairly accused of bias. Acknowledge that all of our actions support a finding that short term rental of six dwelling units can continue by denying this appeal.

Sincerely,

Bob and Cindy Magie



REGISTERED PROFESSIONAL LAND SURVEYOR
Karl F. Foeste
OREGON
JULY 12, 1968
KARL F. FOESTE
0649
RENEWS 1/1/2018

S.E. 1/4 OF SECTION 8, T8N, R9W, W.M.

SURVEY FOR: ROBERT & CYNTHIA MAGIE & JACOB HELLIGSO

SURVEY BY: KARL F. FOESTE, 361 S.W. MAIN CT. WARRENTON, OR 97146

DATE: 4/6/2016 SCALE: 1" = 50'

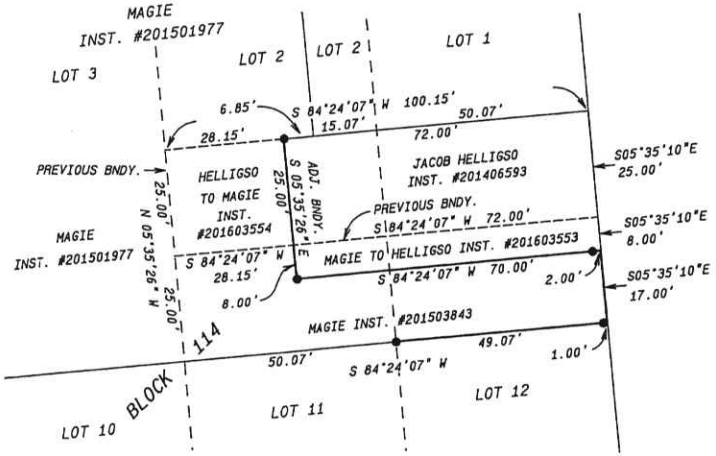
NARRATIVE:

PURPOSE OF SURVEY IS TO MONUMENT THE ADJUSTMENT OF THE WEST AND SOUTH BOUNDARIES OF THAT TRACT OF LAND CONVEYED TO JACOB HELLIGSO BY DEED RECORDED AS INSTRUMENT #201406593, RECORDS OF CLATSOP COUNTY, OREGON. IT IS ALSO THE PURPOSE OF THIS SURVEY TO MONUMENT THE NORTH BOUNDARY OF LOT 12, BLOCK 114, SHIVELYS ASTORIA. BASIS OF BEARINGS IS ASSUMED RECORD PLAT BEARING, AS DERIVED FROM THE PLAT OF SHIVELYS ASTORIA, OF S84°24'W BETWEEN FOUND MONUMENTS #1 AND #2. MONUMENT #2 IS ERRONEOUSLY SHOWN ON COUNTY SURVEY 9947 AS BEING LOCATED S05°36'00"E 25.00 FEET FROM FORMERLY EXISTING LEAD PLUG MONUMENT #4. HELD THE CENTER LINE OF EXCHANGE STREET AS A LINE BETWEEN MONUMENTS 1 AND 2 EXTENDED WEST. HELD THE DIRECTION OF 15TH STREET PERPENDICULAR TO SAID CENTER LINE. HELD POSITION OF FOUND MONUMENTS 5 AND 307, AND FORMERLY EXISTING MONUMENT 4, AND PROPORTIONED THE BOUNDARIES OF LOTS 1 THROUGH 12, BLOCK 114 AS SHOWN ON THE ANNEXED PLAT. HELD SAID PROPORTIONED BOUNDARIES AND MONUMENTED THE SUBJECT BOUNDARIES AS SHOWN ON THE ANNEXED PLAT.

LEGEND:

- ○ FOUND MONUMENT AS DESCRIBED.
- ● SET FLUSH WITH GROUND A 5/8" x 36" REBAR WITH YELLOW PLASTIC CAP STAMPED "K FOESTE LS 849".
- ( ) RECORD VALUE DERIVED FROM PLAT OF SHIVELYS ASTORIA.

DETAIL
SCALE: 1" = 20'



DESCRIPTION OF MONUMENTS:

(1) FOUND LEAD PLUG, TACK NOW GONE, RECORDED ON CITY ENGINEER'S DETAIL PLAT 3.6.

(2) FOUND P.K. NAIL SET BY ME IN 1994 AND ERRONEOUSLY RECORDED ON COUNTY SURVEY 9947 AS "ORIGIN UNKNOWN". NAIL IS ALSO ERRONEOUSLY REPORTED ON SAID SURVEY AS BEING LOCATED S05°36'00"E 25.00 FEET FROM FORMERLY EXISTING LEAD PLUG MONUMENT #4.

(4) POSITION OF FORMERLY EXISTING LEAD PLUG WITH BRASS TACK RECORDED ON CITY ENGINEER'S DETAIL PLAT 6.5. SEE MY COUNTY SURVEY 9947.

(5) FOUND FLUSH IN CONCRETE WALK A LEAD PLUG WITH BRASS SCREW AND 3/4" BRASS WASHER STAMPED "LS 849" SET ON COUNTY SURVEY 13158.

(307) FOUND FLUSH WITH CONCRETE WALK A LEAD PLUG WITH BRASS SCREW AND 3/4" BRASS WASHER STAMPED "LS 849" SET ON COUNTY SURVEY 12545

CLATSOP COUNTY SURVEYOR RECEIVED APR. 06, 2016 FILED 06-07-16 W.S. ASTORIA, OREGON

FILE: 833 DATA6\KARBY

CS# B-13187

L-658

CS# B-13187

Recording Instrument #: 201603553
Recorded By: Clatsop County Clerk
# of Pages: 3 Fee: 57.00
Transaction date: 5/19/2016 11:40:31
Deputy: nstethem

Jacob Helligso
539 16th Street
Astoria, Oregon 97103
Grantor

Robert J. Magie and Cynthia D. Magie
P.O. Box 532
Astoria, Oregon 97103
Grantee

After Recording, Return To:
Heather Reynolds, Attorney at Law
P.O. Box 145
Astoria, Oregon 97103

Please Send Tax Statements To:
Robert J. and Cynthia D. Magie
P.O. Box 532
Astoria, Oregon 97103

BARGAIN AND SALE DEED

KNOW ALL BY THESE PRESENTS that **Jacob Helligso**, hereinafter called Grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto **Robert J. Magie and Cynthia D. Magie**, Husband and Wife, hereinafter called Grantee, and unto Grantee's heirs, successors and assigns, all of that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining, situated in Clatsop County, State of Oregon, described as follows, to-wit:

See Exhibit A attached hereto and by this reference incorporated herein.

Situs Address: A portion of 539 16th Street, Astoria, Oregon 97103
Tax Account #: 80908DC18000, Acct ID #23172

To Have and to Hold the same unto Grantee and Grantee's heirs, successors and assigns forever.
The true and actual consideration paid for this transfer, stated in terms of dollars is **$-0-**. This is a reciprocal lot line adjustment with reciprocal deeds between the parties.

In construing this deed, where the context so requires, the singular includes the plural, and all grammatical changes shall be made so that this deed shall apply equally to corporations and to individuals.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTION 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 19 day of May, 2016.

STATE OF OREGON, County of Clatsop) ss.

This instrument was acknowledged before me on May 19, 2016 by Jacob Helligso

OFFICIAL STAMP
BECKY L NELSON
NOTARY PUBLIC-OREGON
COMMISSION NO. 946189
MY COMMISSION EXPIRES JANUARY 11, 2020

NOTARY PUBLIC FOR OREGON
My Commission Expires: 01-11-2020

May 10, 2016

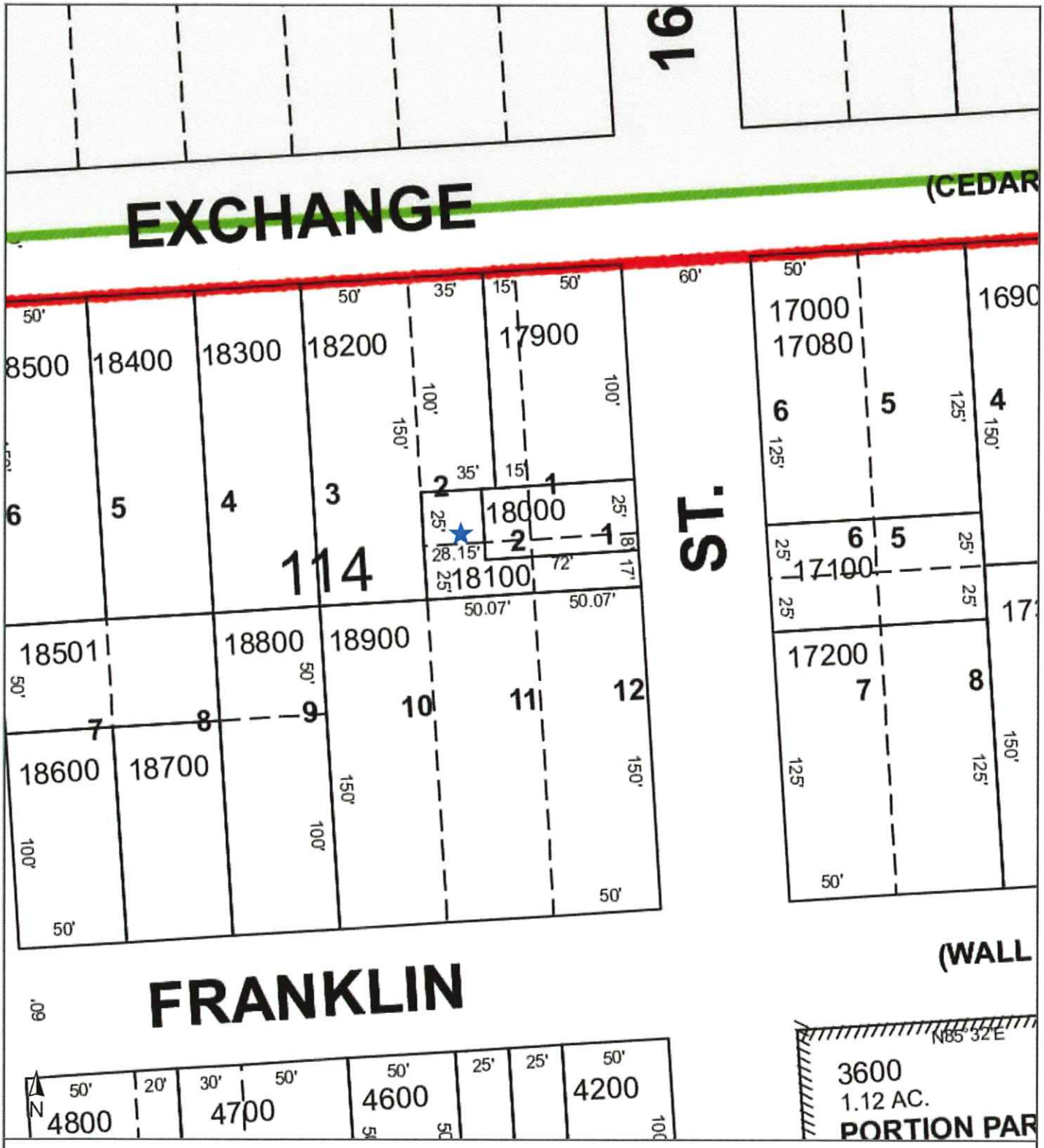
DESCRIPTION OF A TRACT OF LAND TO BE CONVEYED
BY JACOB HELLIGSO
TO ROBERT J. MAGIE AND CYNTHIA D. MAGIE

A tract of land in the County of Clatsop, State of Oregon, described as follows:

The west 28.15 feet of the north 25 feet of the south 50 feet of Lot 2, Block 114, in the City of Astoria, County of Clatsop, State of Oregon, as laid out and recorded by John M. Shively and later established by decree of the Circuit Court of the State of Oregon for Clatsop County.



Renews 1/1/2018



TICOR TITLE COMPANY

ParcelID: 23173
Tax Account #: 80908DC18100
, Astoria OR 97103

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Renovations for Converting 4 Gilbaugh Units to Full Time Short Term Rentals

Pre July 2019

Date	Payee	Description	Approx cost
5/15/16	Handyman	Carpet and linoleum removal and wood floor prep for 1557 and finish work	$2,600.00
6/14/16	J&J hardwood	restoration of original fir floors unit 1557	$2,256.00
1/1/17	Various	Driveway - creation of off-street parking to accommodate 11 bedrooms for short term rental use	$19,479.00
9/1/18	Handyman 2	Demo and wood floor prep for sleeping room, landing and 1559 and finish work	$4,200.00
10/1/18	Handyman	1559 kitchen reconfiguration, bathroom renovation, acoustic tile removal (replastering) painting, plumbing to relocate water heater	$45,441.00
10/1/18	J&J hardwood	restoration of original fir floors unit 1559	$2,992.00
10/1/18	Handyman	strip and prep sleeping porch and landing	$1,600.00
11/1/18	J&J hardwood	restoration of original fir floors unit stair landing and sleeping porch	$2,367.00
3/6/19	Handyman	1561 kitchen remodel, build custom cabinets and counter top, wainscoting in kitchen and bath, materials, plumbing	$11,000.00
		Subtotal of STR-supported specific elements	**$91,935.00**
6/18-6/19	Various	Ext. renovation including stabilizing foundation, replacing siding, and restoring windows (accomplished only in anticipation of STR use)	$250,567.00
		Total spent for converting units to full time STR before code change in July 2019 (retroactive to Jan 2019)	**$342,502.00**

Post July 2019

12/13/19	Handyman	construct retaining wall for rear parking	$870.34
12/13/19	Handyman	Remodel - frame out and drywall basement for STR storage	$924.00
6/6/20	Handyman	1555- Remodel, remove old top sand and refinish countertop, build and install new in kitchen and install, caulk new bathroom paneling	$5,000.00
3/1/21	West River Const.*	Build fence to prevent foottraffic of guests from neighbors driveway	$4,387.63
11/1/21	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1555	$25,000.00
3/1/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1561	$25,000.00
3/15/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1557	$25,000.00
8/5/22	Handyman	Installation of decibel, temperature and humidity meters in 1555, 1557, 1559, 1561	$300.00
10/22/22	Various	purchased furniture, Elect. locks, rugs, pots, pans, décor, kitchen supplies, dinner tables, W/D and bedding, supplies for 1559	$25,000.00
		Total spent for converting units to full time STR after code change	**$111,481.97**

*The appellant, Austin Kettleson's company, he did not complete the work as bid but we paid him anyway but had to pay someone else to finish the work.

Total Excluding Exterior $203,416.97

Ratio of improvements before July 2019 to the total excluding exterior: 1:2.1 or 45% of the total cost of improvements expended before 7/19

Total Including Exterior $453,983.97

Ratio of improvements before July 2019 to the total including exterior: 1:1.3 or 75% of the total cost of improvements expended before 7/19

RECEIVED
NOV 09 2023
BY: tt/via email @ 3:40pm

Reeve Kearns PC

Attorneys at Law

P.O. Box 13015
Portland, Oregon 97213
Email: dan@reevekearns.com

Daniel H. Kearns
Direct Dial: 503-997-6032

November 9, 2023

Astoria Land Use Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Appeal of Gilbaugh LLC nonconforming use determination
1555, 1557, 1559 & 1561 Exchange Street
Post-Hearing Memorandum from Appellants

Dear Mr. Rappleyea:

This firm represents the appellants in this land use appeal challenging a June 26, 2023 nonconforming use determination by the Planning Director regarding the 4-plex apartment house at 1555, 1557, 1559 & 1561 Exchange Street.[1] This memorandum provides appellants' first post-hearing arguments for overturning the Director's decision and entry of an order denying the nonconforming use status of these four dwellings units ("4-plex") as short-term rentals ("STRs").

A. Nonconforming Use versus Vested Right Determination.

During the hearing, the Officer drew a distinction between a nonconforming use determination, under ADC §3.180, and a vested right determination under the so-called Holmes factors. *See Clackamas County v. Holmes*, 265 Or. 193, 198-99, 508 P.2d 190, 192-93 (1973). For several reasons, the question presents a false dichotomy. First, this case started with the Magies' "Application for Nonconforming Use Verification." It then progressed to the Director's June 26, 2023 decision that concluded that all of the applicants' 6 units on Exchange Street "may be used as transient lodging and are considered a nonconforming use." Third, all of the City's notices and staff reports, and indeed, the Director's June 26th decision cite the City's nonconforming use provisions from ADC §§3.160 & 3.180 as the applicable criteria. While the Holmes factors must also be considered, this is first and primarily a nonconforming use case, and the City's nonconforming use criteria cannot be ignored.

1 This appeal challenges the Director's decision only as to the 4-plex units at 1555, 1557, 1559 & 1561 Exchange Street. Throughout the application and this appeal process, the applicants conflate things they've done to improve the two cottage units at 1565 and 1569 Exchange Street and use those efforts to boot-strap the allegation that they intended the 4-plex for future use as short-term rental ("STR"). The Hearings Officer must carefully examine those claims to distinguish fact from fiction because there is no evidence of any intention or effort to use the 4-plex for STR use until long after January 1, 2019.

Finally, LUBA has made clear that, even when a case begins as a vested rights determination – an inchoate or undeveloped nonconforming use, the local decision maker cannot ignore and must apply the local nonconforming use criteria. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or. LUBA 392, 410 (2012), citing *Crosley v. Columbia County*, 65 Or LUBA 164, *aff'd* 251 Or App 653, 286 P3d 911 (2012). LUBA's rationale is that a vested right claim is necessarily for a use that is not yet developed or perfected, but if it were, it would be nonconforming, and therefore would be subject to the local nonconforming use code. Consequently, both sets of criteria must be evaluated in this case: Astoria's nonconforming use factors in ADC §§3.160 & 3.180 and the 7 *Holmes* Factors.

B. The applicants' claim of lost value and investment are false.

Mr. Magie made an impassioned argument at the November 2nd hearing about his investment in the 4-plex units and how unfair it would be for the City to now claim that they cannot use the 4-plex. If that were the truth, it would be unfair, but Mr. Magie misrepresented the evidence in the record. The 4-plex was constructed and has always been used for residential purposes – not transient lodging, but a long-term dwelling (lease term greater than 30 days). All of the renovation and actual use of the 4-plex was clearly and indisputably for residential purposes. The STR idea, however, is just an after-the-fact scheme to maximize profits, but there is no evidence of any actual STR use or even a plan or intention of transient lodging use until long after January 1, 2019. Residential use – yes, there is ample evidence of intention and actual long-term residential use. Transient use – no, there is no evidence of intention or actual STR use. All of the investment expended by the Magies to renovate the 4-plex is safe and they have not lost that value. Their application and this appeal is only about whether they have any recognized right to short-term rent these apartments – a use prohibited under current zoning, *i.e.,* transient lodging (lease shorter than 30 days) has been unlawful for the 4-plex since January 1, 2019.

C. The applicants' arguments based on parking make no sense and prove no intention to use the 4-plex apartments for transient use.

In their nonconforming use verification application and at the hearing, the applicants claim that their 2017 parking plan proves their intention to short-term rent the 4-plex. It does not. First, the 2017 parking plan was submitted solely to show parking for the two cottage units, not the 4-plex. The planner at the time hand-wrote the operative addresses on the top of plan as 1565 and 1569 Exchange Street, which are the cottage addresses. Second, the plan shows 7 parking spaces and claims them all for the cottage units. In fact, two of the spaces shown are on a different and unrelated lot on TL 8000 owned by Helligso, not Magie. That means the 2017 parking plan shows only 5 lawful parking spaces for the Magie property.

Third, in 2017, the ADC required two off-street spaces per dwelling, regardless of size. This means the two cottages required a total of 4 off-street parking spaces, and the 5 spaces shown in the 2017 parking plan are adequate for the cottages. The ADC in 2017 required 1.5 parking spaces per multi-family dwelling with more than one bedroom (each of the 4-plex units has 2 bedrooms). This means that, in 2017, the 4-plex alone required 6 off-street parking spaces

(8 is the plan was STR use), which added to the 4 spaces required for the cottages equal a total of 10 off-street parking spaces required for all 6 units. The ADC requires one parking space per bedroom for transient uses. The cottages have 3 bedrooms between them, plus the 8 bedrooms in the 4-plex, means that transient use for all 3 structures in 2017 required 11 off-street parking spaces. The 2017 plan shows only 5, which is inadequate for any of these uses, including transient lodging use.

In summary, the 2017 parking plan purports to show nothing (no parking) for the 4-plex, but even if it included the 4-plex, the 2017 parking plan shows there are at most two parking space available for the 4-plex (if the cottages are put to STR use, they require only 3 spaces, one per bedroom). In 2017 and now, STR use of the 4-plex requires 8 off-street parking spaces, and in 2017 (and now) there is at most 2 spaces available for the 4-plex units, not the 8 spaces that would be needed to short-term rent the 4-plex.

Finally, the 2017 version of the ADC parking provisions is attached. These regulations show that up to 50% of required off-site parking for a particular use may be located on an adjacent lot, but only if the zoning for the other lot allows accessory parking. *See* ADC 7.030 (Location). In particular, this section provides that:

> Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

ADC 7.030 (2017)

The subject property is zoned C-3, but the applicant's 2017 parking plan shows 5 of the proposed off-street parking, including the 2 spaces on the Helligso property, which is zoned R-3. Uses accessory to commercial uses, such as parking serving a C-3 use, is not allowed in the R-3 zone. As for the two spaces on the Helligso property, ADC §7.050 (Ownership of Parking and Loading Areas), use of someone else's property to satisfy a parking requirement (assuming the off-site area can lawfully accommodate it) requires either a recorded easement or a 5-year lease. The applicant's here provide neither; therefore, the 2 spaces on Helligso's property cannot count toward the applicant's parking requirement. ADC §7.062(B) (2017) provides for a variance from the mandatory parking requirements, but again, the applicants do not appear to have a variance for any of their required parking.

The 2017 parking plan shows that the 4-plex never had the lawful amount of parking for an apartment building, much less for a transient lodging use. The site lacks the minimum amount of off-street parking required by the current and the 2017 code, and the applicants appear to have no variance from those minimum parking standards, or a lease, or an easement for any off-site parking. The evidence shows they never had enough parking, especially if they claim their STR use of the 4-plex was (or is) lawful.

The Director's Decision appears to rest entirely on the applicant's false claims that they took preliminary steps such as adding parking to the site (Director's Decision at 3). However,

there is no evidence that any of the parking they claim to have added had anything to do with transient lodging use of even the cottages, and certainly none of the parking efforts had anything to do with satisfying the parking requirement for transient lodging use of the 4-plex. Consequently, the applicants never had a lawful transient lodging use at the 4-plex, *i.e.,* it was not lawfully established, there is no evidence of any such intention prior to January 1, 2019, and it remains parking deficient today. The basic requirement that, to qualify as a lawful nonconforming use, the 4-plex had to be lawfully established as STRs and in existence on the date restrictive zoning was first imposed (Jan 1, 2019), is simply not met.

D. Any nonconforming use or vested right the applicants may have had was lost through lapses in use that exceed 12 months and when they put the 4-plex to a conforming use.

ADC §3.180(C) provides that any nonconforming use that lapses for a period exceeding 12 months is lost. In this case, ADC §3.180(C) means that if the applicants did not put the 4-plex to actual STR use within 12 months of January 1, 2019, i.e., by January 1, 2020, any nonconforming right was lost. There is no evidence in the record that the applicants met this deadline. In fact, their property management company (Pacific Capital Management) testified in an April 28, 2022 letter to the following "date of first use by short-term tenant" for each of the 4-plex units:

1555 Exchange Street .....December 1, 2021
1557 Exchange Street .....April 17, 2022
1559 Exchange Street .....long-term tenant holding-over prevented access.
1561 Exchange Street .....March 15, 2022

This is the testimony from the applicant's property manager and is therefore credible evidence that there was no transient lodging use of any of the 4-plex units before December 2021.

Even more fatal to the applicant's nonconforming use claim is the abundant evidence that all of the 4-plex units have consistently been used as long-term apartments from long before January 1, 2019 until at least December 2021. According to ADC §3.180(B), when a claimed nonconforming use is converted to a conforming use, such as a long-term tenancy apartment, any nonconforming use right is immediately lost. That is exactly what happened here, because all of the units in the 4-plex have consistently been rented as long-term apartments. This use terminated any right the applicants may have had to a transient lodging use right.

E. Under the 7 Holmes factors, the applicants have no vested right to a transient lodging use in the 4-plex.

The Supreme Court created the following factors (the so-called "*Holmes* factors") as relevant in evaluating a vested rights claim to a particular development:

1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;

2. The amount of notice of any proposed re-zoning;

3. The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;

4. The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;

5. The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;

6. Whether the expenditures made prior to the subsequent zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation;

7. The ratio of the prior expenditures to the total cost of the proposed use.

If the evidence relative to these factors establishes a "vested right," the property owner may complete his improvements and thereafter use his property in a manner which is a nonconforming use, subject to the restrictions on nonconforming uses.

Polk County v. Martin, 292 Or 69, 81 n 7, 636 P2d 952 (1981), citing with approval *Clackamas County v. Holmes, supra*.

Factor 1: The preceding discussion informs the Holmes factors in this case by proving that any vested right the applicants may have had to a nonconforming STR use was lost. First, there is no evidence of "good faith expenditures" toward the use of the 4-plex for transient lodging. Instead, all of the expenditures were put toward making the 4-plex habitable, and they were actually used as long-term apartments. As explained above, the claim of developing parking to serve the 4-plex as a transient lodging use is false.

Factor 3: The same evidence (or lack of evidence) shows no investment or reliance on the prior zoning that allowed transient lodging, but no longer does. There is no evidence of reliance on the prior zoning, and no evidence that the applicants were even aware of what the prior code required for transient lodging uses to operate lawfully, *e.g.,* the 2017 off-street parking requirements.

Factor 4: The same evidence also demonstrates that, rather than transient lodging, the applicants' expenditures were focused on making the 4-plex units habitable, and there is no evidence of any expenditures related to transient lodging. Thus, the expenditures were focused on a conforming use, *i.e.,* long-term apartment use of the 4-plex, not transient lodging use.

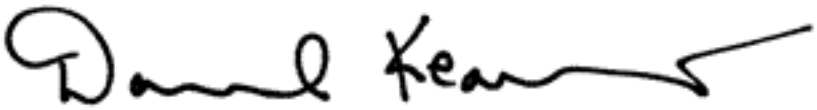
Factor 5: The difference between transient lodging use versus long-term apartment use is significant and is easily proven if such evidence exists. In this case, the applicants did not obtain an Occupational tax permit for the 4-plex when they obtained one for the cottage units on October 27, 2017. They did not register to pay transient lodging tax on the 4-plex until December 2020 (they did not register until December 15, 2020). There is no evidence they actually used any of the 4-plex units for transient lodging use until December 1, 2021.

Factor 6: From the date of restrictive zoning (January 1, 2019) until December 2021, there is no evidence of any intention to put any of the 4-plex units to transient lodging use. Under the 6th Factor, therefore, there is no evidence that these owners went beyond alleged contemplated use and actually committed the 4-plex to actual transient lodging use.

Factor 7: There is no evidence of how much any of the renovations cost the applicants. However, it is extremely difficult to imagine that they can demonstrate any expenditures made to make the 4-plex suitable for transient lodging, as opposed to make it suitable for a conforming use of long-term apartments. Because none of the renovation costs are uniquely focused on converting and using the 4-plex as STRs, none of those investments are evidence that supports a vested right claim.

The basic requirement that, to qualify as a lawful nonconforming use, the 4-plex had to have been lawfully established as STRs and in existence on the date restrictive zoning was first imposed (Jan 1, 2019), is simply not met. The applicants' vested rights theory is no better, as explained above, so there is no legal basis for STR use of the 4-plex under either legal theory. Based on the foregoing arguments and my November 2, 2023 hearing memo, the Hearings Officer should reverse the Director and deny the nonconforming use request. Also attached in support of the policy argument in my hearing memo, is the April 17, 2019 staff report and findings that support the 2019 code amendments, that made STRs unlawful in the C-3 zone, along with a copy of the zoning map for this and the neighboring property.

Sincerely,

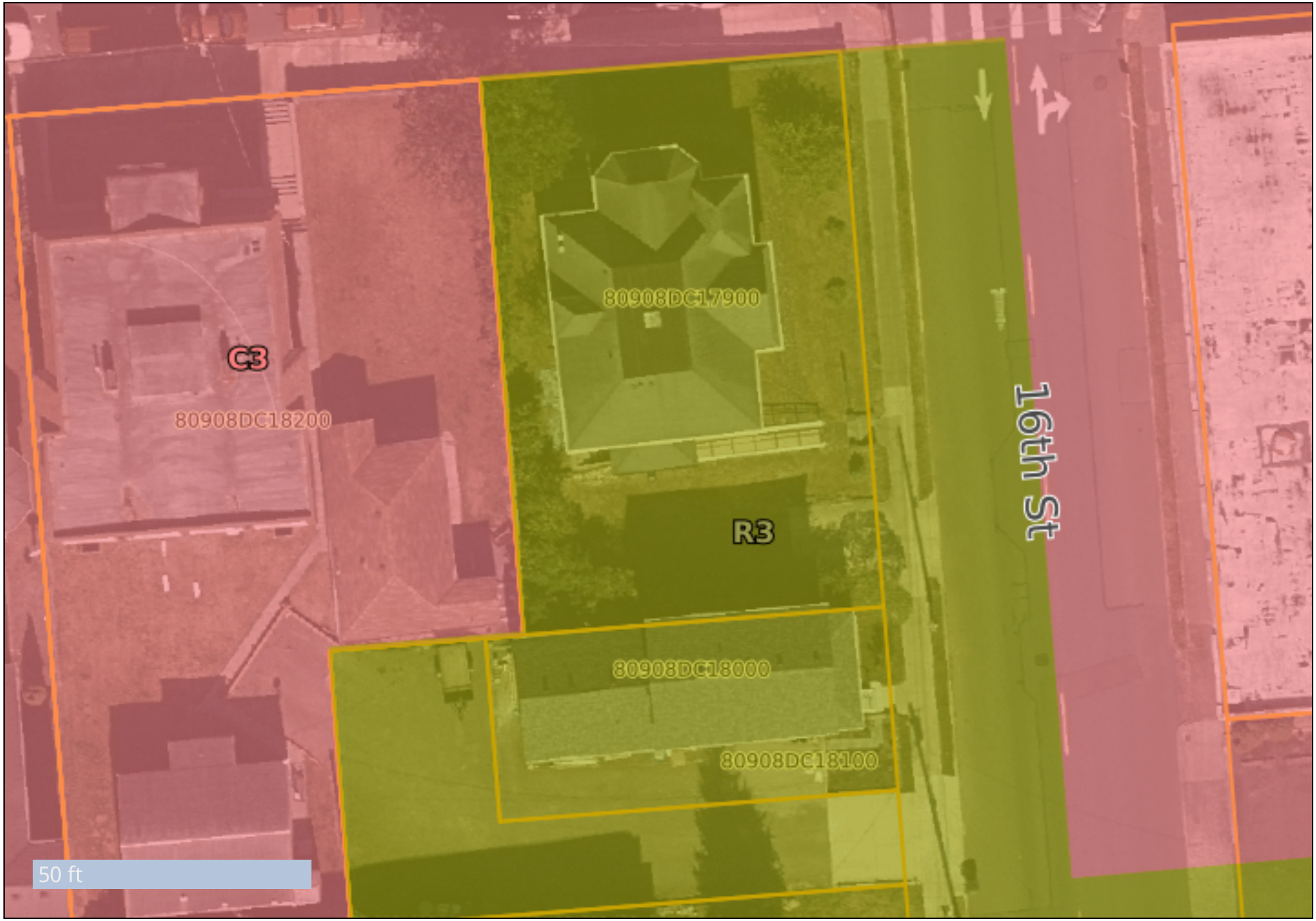


Daniel Kearns, attorney for appellants Austin Kettleson, Andrew Kipp and John Windus

Attachments
cc: Clients
Carrie Richter, Esq.

Zoning

CITY OF ASTORIA
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L-670

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Printed 11 / 6 / 2023

ARTICLE 7

OFF-STREET PARKING AND LOADING

7.010. PARKING AND LOADING AREAS REQUIRED.

A. Off-street parking areas and off-street loading areas meeting the applicable requirements of this Section shall be provided and maintained:

1. For each separate use in any building or structure erected after the adoption of this ordinance.

2. For additional seating capacity, floor area, guest rooms, or dwelling units added to any existing structure or lot.

3. When the use of the structure or portion thereof is changed.

B. Where a structure is added to, or a portion thereof changes in use such that additional parking or loading is required, only the number of additional spaces required under Sections 7.100 and 7.160 for the area added or changed in use need be provided. Nevertheless, if the lot or structure as used prior to the addition or change of use did not have the number of parking and loading spaces required by Sections 7.100 and 7.160 and such deficiency was not lawfully nonconforming, parking for the entire building or use shall be provided as required by Sections 7.100 through 7.160.

C. When additional parking or loading area is required or added to an existing nonconforming parking or loading area, the entire parking and loading area shall be improved as provided in Section 7.110 and landscaped setbacks from streets shall be provided as required in Section 7.170.

7.020. REDUCTION OF PARKING AREA PROHIBITED; EXCEPTION.

Off-street parking and loading areas which existed on the effective date of this ordinance or which are provided as required by this Section shall be maintained, or equivalent parking and loading areas provided; except that if this ordinance reduces the number of required off-street parking or loading spaces, an affected use may diminish its parking and loading area to the new requirements.

7.030. LOCATION.

A. Off-street parking and loading areas required by this ordinance shall be provided on the same lot with the use except that:

1. In any residential zone, up to 50% of vehicle parking spaces for dwellings and other uses permitted in a residential zone may be located on contiguous lots or on a lot across a street or other right-of-way from the lot with the primary use.

2. In non-residential zones, up to 50% of the required parking area may be located off the site of the primary use or structure provided it is within 300 feet of such site.

B. Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

7.040. FRACTIONAL MEASUREMENTS.

When calculations for determining the number of required off-street parking or loading spaces result in a requirement of fractional space, any fraction of a space less than one-half shall be disregarded, and a fraction of one-half or greater shall be counted as one full space.

7.050. OWNERSHIP OF PARKING AND LOADING AREAS.

A. Except as provided for joint use parking in Section 7.070, the land to be provided for off-street parking and loading areas, including driveways, aisles, and maneuvering areas shall be:

1. Owned by the owner of the property served by the parking; or

2. In commercial and industrial zones, the parking may be provided by a permanent and irrevocable easement appurtenant to the property served by the parking; or

3. Be leased for a minimum term of five (5) years, provided that upon expiration or termination of the lease, the parking requirements of this ordinance shall otherwise be fully met within 90 days or the use discontinued until such requirements are met.

7.060. OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Except as otherwise specifically provided in this ordinance, off-street parking spaces shall be provided in amounts not less than those set forth in Section 7.100.

B. For any proposed use not listed in Section 7.100, the Community Development Director shall determine the parking space requirement for the most nearly similar use listed in Section 7.100 with regard to traffic generation.

7.062 SPECIAL EXCEPTIONS TO OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Developed Sites Exemption.

Existing buildings which encompass all or a major portion of a lot with little or no possibility of providing off-street parking in compliance with City Code may apply to the Community Development Director for authority to participate in a program whereby, in lieu of providing required off-street parking, annual payments would be made to the City for the purpose of supporting mass transit, and development of public parking. As an alternative to making annual cash payments, the applicant may, with approval of the City Council, provide a public service of equal or greater value than the cash payment.

1. Participation in the Program.

The Director shall approve participation in the program upon a finding that the lack of required off-street parking will not result in a public safety hazard. Participation involving the provision of compensation in the form of public service in lieu of cash payments also requires the concurrence of the City Council.

2. Location.

This exception shall apply to any change of use or expansion of a use in all zones except those areas where the provision of off-street parking is otherwise exempted.

3. Compensation.

a. Cash Payments.

The fee to be paid for each parking space not provided shall be $180.00 per year.

The fee shall be paid annually on a per space basis. The number of spaces subject to a fee shall be the difference between the number of off-street spaces provided and the number required by the Astoria Development Code, or, where a Variance is issued, the number of spaces authorized by Variance.

Payments shall be made to the City of Astoria at the beginning of each year the applicant is involved in the program, and shall be made, in accordance with a payment schedule to be established by the Community Development Department.

b. Compensation in Lieu of Cash Payments.

Compensation in lieu of cash payments may be accepted only upon a finding by the City Council that there is both a need for the proposed public service, and that the value of the service is equivalent to or greater than the cash payment described in Section 3(a) above.

(Section 7.062 Added by Ordinance 93-08, 10-18-93; amended by Ordinance 96-04, 5-6-96)

B. Modification of Parking Space Requirements.

1. The applicant may propose a parking space standard that is different than the standard in Section 7.100, for review and action by the Community Development Director through a Class 1 variance, pursuant to Article 9. The applicant's proposal shall consist of a written request, and a parking analysis prepared by a qualified professional. The parking analysis, at a minimum, shall assess the average parking demand and available supply for existing and proposed uses on the subject site; opportunities for shared parking with other uses in the vicinity; existing public parking in the vicinity; transportation options existing or planned near the site, such as frequent bus service, carpools, or private shuttles; and other relevant factors. The Community Development Director may reduce the off-street parking standards for sites with one or more of the following features:

a. Site has a bus stop with existing or planned frequent transit service (15-minute headway or less) located adjacent to it, and the site's frontage is improved with a bus stop waiting shelter, consistent with the standards of the applicable transit service provider: Allow up to a 20 percent reduction to the standard number of automobile parking spaces;

b. Site has dedicated parking spaces for carpool/vanpool vehicles: Allow up to a 10 percent reduction to the standard number of automobile parking spaces;

(Adopted 10-8-92)

c. Site has dedicated parking spaces for motorcycle and/or scooter or electric carts: Allow reductions to the standard dimensions for parking spaces and the ratio of standard to compact parking spaces;

d. Available on-street parking spaces adjacent to the subject site in amounts equal to the proposed reductions to the standard number of parking spaces.

e. Site has more than the minimum number of required bicycle parking spaces: Allow up to a 10 percent reduction to the number of automobile parking spaces.

(Section 7.062.B added by Ordinance 14-03, 4-21-14)

C. Downtown Area.

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street parking.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.062.C added by Ordinance 14-03, 4-21-14)

7.070. JOINT USE OF PARKING AREAS.

A. The Community Development Director may authorize the joint use of parking areas by the following uses or activities as a Conditional Use in every zone under the following conditions:

1. Up to 50% of the off-street parking spaces required by this ordinance for a church, auditorium in a school, theater, bowling alley, night club, eating or drinking establishment may be satisfied by the off-street parking spaces provided by uses occupied only during the daytime on weekdays.

2. Up to 50% of the off-street parking spaces required by this ordinance for any daytime use may be satisfied by the parking spaces provided for nighttime or Sunday uses.

3. All jointly used spaces shall be located with relation to all uses relying on such spaces within the applicable distance set forth in Section 7.030.

(Adopted 10-8-92)

4. The Planning Commission must find that there is no substantial conflict in the principal operating hours of the buildings or uses for which joint use of off-street parking facilities is proposed.

5. A properly drawn legal instrument executed by the parties concerned with joint use of off-street parking facilities, approved as to form and manner of execution by Legal Counsel, shall be filed with the Community Development Director. Joint use parking privileges shall continue in effect only so long as such an instrument, binding on all parties, remains in force. If such instrument becomes legally ineffective, then parking shall be provided as otherwise required in this ordinance within 60 days.

7.080. CLASSIFICATION OF USES FOR PURPOSES OF JOINT USE PARKING.

A. The following uses are considered daytime uses for purposes of Section 7.070:

1. Bank or other financial institution.

2. Business service establishment.

3. Clothing, shoe repair, or service establishment.

4. Household equipment or furniture store.

5. Manufacturing or wholesale building.

6. Personal service establishment.

7. Retail store.

8. Other similar primarily daytime uses as determined by the Community Development Director.

B. The following uses are considered nighttime or Sunday uses for purposes of Section 7.070:

1. Auditoriums incidental to a public or private school.

2. Church.

3. Eating and drinking establishment, only open after 5:00 p.m.

4. Night Club.

5. Theater.

6. Other similar primarily nighttime uses as determined by the Community Development Director.

7.090. OFF-STREET LOADING.

A. Except as otherwise specifically provided in this ordinance, off-street loading shall be provided in amounts not less than those set forth in Section 7.160.

B. A parking area meeting the requirements of Sections 7.100 through 7.110 may also be used for loading when the use does not require a delivery vehicle which exceeds a combined vehicle and load rating of 20,000 pounds, and when the parking area is within 25 feet of the building or use which it serves.

C. Downtown Area

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street loading.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.090.C added by Ordinance 14-03, 4-21-14)

7.100. MINIMUM PARKING SPACE REQUIREMENTS.

Table 7.100 – Off-Street Parking Space Requirements by Use.

The following are minimum off-street parking requirements by use category. The Community Development Director or Planning Commission, as applicable, may increase the required off-street parking based on anticipated need for a specific conditional use.

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
RESIDENTIAL CATEGORIES	
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Two-family Dwelling (Duplex)	2 spaces per dwelling unit
Accessory Dwelling (second dwelling unit on a single-family lot)	1 additional space for the accessory dwelling unit
Manufactured Dwelling in a Park	1.5 per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Group living, such as nursing or convalescent homes, rest homes, assisted living, congregate care, and similar special needs housing where clients have no access to driving	1 space per 8 bedrooms plus one per employee Calculation is based on the maximum number of employees on one shift, not total employment.
Residential Home, Residential Facility, and Adult Foster Care	1 additional space per 3 beds for the home/facility

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
COMMERCIAL CATEGORIES	
Animal hospital or kennel	1 space per 300 sq. ft. gross floor area
Automotive repair & service, gas station	1 space per 1,000 sq. ft. gross floor area
Bed and Breakfast, Home Stay Lodging, Inn	1 additional space for each bedroom used for transient lodging Plus spaces required for associated uses such as assembly areas or restaurant.
Daycare, Family/Home	1 space, plus required parking for dwelling
Daycare Center	1 space per employee
Eating and Drinking / Restaurant	1 space per 500 sq. ft. if no seating; 1 space per 250 sq. ft. with seating.
Educational Services, not a school (e.g., tutoring or similar services, excluding single student tutoring facilities)	1 space per 300 sq. ft. gross floor area
Home Occupation with customers and/or non-resident employees	1 additional space per anticipated customer/employee at a specific time in excess of one person at a time
Hotels, Motels, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.
Laundromat and dry cleaner	1 space per 350 sq. ft. gross floor area
Mortuary/Funeral Home	1 space per 300 sq. ft. gross floor area
Offices: General, medical/dental, professional	1 space per 500 sq. ft. gross floor area
Personal Services (i.e. salon, spa, barber, animal grooming, out-patient vetinary services)	1 space per chair, table, or booth for customers
Repair or Service other than automotive	1 space per 500 sq. ft. gross floor area
Retail Sales, General Merchandise	1 space per 500 sq. ft. gross floor area

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Retail Sales, Bulk with a building (lumber and construction materials, furniture, appliances, and similar sales)	1 space per 1,000 sq. ft. gross floor area
Retail Sales, Outdoor with no building or building of less than 200 sq. ft. (i.e. automotive, nursery, bulk retail, produce, etc.)	1 space per 1,000 sq. ft. of site used for retail display/storage
INDUSTRIAL CATEGORIES	
Industrial Service, not otherwise categorized	1 space per 1,000 sq. ft. gross floor area
Light Manufacturing	1 space per 2 employees on the largest shift
Manufacturing and Production, Heavy Industrial with building greater than 5,000 sq. ft.	1 space per 2,500 sq. ft. gross floor area
Marina	0.25 spaces per boat berth or docking space
Mini-Storage	1 space per four units
Seafood Processing and Associated Uses	1 space per full-time equivalent employee plus 1 space per 10 seasonal employees. Seasonal parking may be reduced with proof that employees are bussed to site.
Wholesale, Warehouse, Freight Service	1 space per 1,500 sq. ft. gross floor area
INSTITUTIONAL CATEGORIES	
Community Service, including Government Offices and Services	Same requirement as non-institutional use for the category
Jail	1 space per 2,000 sq. ft. gross floor area
Medical Center/Hospital with overnight stay	1 space per 300 sq. ft. gross floor area

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Membership organization, club, lodge	Same as specified use requirement such as eating and drinking establishment, public assembly, school, etc.
Parks and Open Space	Parking based on projected parking demand for planned uses. See Recreation, outdoor.
Public Assembly	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Religious Institutions and Houses of Worship	1 space per 100 sq. ft. of main assembly gross floor area; additional parking is not required for associated use areas if not used at same time as main assembly area
School, Pre-School through Middle-School	1.5 space per classroom
School, High School	7 spaces per classroom
School, College & Vocational	1 space per 400 sq. ft. of gross floor area; and 1 space per 2 dorm rooms
RECREATIONAL CATEGORIES	
Aquatic center, sports club, gym, rink, recreation center, health club, bowling alley, and other similar indoor entertainment	1 space per 400 sq. ft. gross floor area
Museum, art gallery, library	1 space per 600 sq. ft. gross floor area
Outdoor recreational park, Public playground	None
Outdoor recreational park, Commercial park	1 space per 1,000 sq. ft. gross land area
Sports Field	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Theater, indoor arena: Single venue	1 space per 3 seats
Theater, indoor arena: Multiplex	1 space per 6 seats

(Adopted 10-8-92)

OTHER CATEGORIES	
Accessory Uses	Parking standards for accessory uses are the same as for primary uses, but are pro-rated based on the percentage of estimated overall parking demand, subject to City review and approval.
Temporary Uses	Parking standards for temporary uses are the same as for primary uses, except that the Community Development Director or Planning Commission, as applicable, may reduce or waive certain development and designs standards for temporary uses.
Transportation and Communications Facilities (operation, maintenance, preservation, and construction)	None, except where temporary parking is required for construction staging areas

(Section 7.100 amended by Ordinance 14-03, 4-21-14)

7.105. BICYCLE PARKING.

A. Standards.

Bicycle parking spaces shall be provided for new development, change of use, and major renovation, at a minimum, based on the standards in Table 7.105. Major renovation is defined as construction valued at 25% or more of the assessed value of the existing structure.

Where an application is subject to Conditional Use Permit approval or the applicant has requested a reduction to an automotive parking standard, pursuant to Section 7.062, the Community Development Director or Planning Commission, as applicable, may require bicycle parking spaces in addition to those in Table 7.105.

Table 7.105: Minimum Required Bicycle Parking Spaces

Use	Minimum Number of Spaces	Long and Short Term Bicycle Parking Percentages
Multi-family Residential Dwelling with 4 or more dwelling units	1 bike space per 4 dwelling units	75% long term 25% short term
Commercial	1 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term
Industrial	1 bike spaces per primary use or 1 per 20 vehicle spaces, whichever is greater	25% long term 75% short term
Parks (active recreation areas greater than 10,000 sq. ft.)	4 bike spaces per 10,000 sq. ft.	100% short term
Schools (all types)	1 bike spaces per 4 classrooms	50% long term 50% short term
Institutional Uses and Places of Worship	1 bike space per 20 vehicle spaces	100% short term
Other Uses	2 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term

B. Design and Location.

1. All bicycle parking shall be securely anchored to the ground or to a structure.

2. All bicycle parking shall be designed so that bicycles may be secured to them without undue inconvenience, including being accessible without removing another bicycle.

3. All bicycle parking should be integrated with other elements in the planter strip when in the public right-of-way.

4. Direct access from the bicycle parking area to the public right-of-way shall be provided at-grade or by ramp access, and pedestrian access shall be provided from the bicycle parking area to the building entrance.

5. Bicycle parking shall not impede or create a hazard to pedestrians or vehicles, and shall not conflict with the vision clearance standards of City Code Section 6.100.

6. Short-term bicycle parking.

   a. Short-term bicycle parking shall consist of a stationary rack or other approved structure to which the bicycle can be locked securely.

   b. If more than 10 short-term bicycle parking spaces are required, at least 50% of the spaces must be sheltered. Sheltered short-term parking consists of a minimum 7-foot overhead clearance and sufficient area to completely cover all bicycle parking and bicycles that are parked correctly.

   c. Short-term bicycle parking shall be located within 50 feet of the main building entrance or one of several main entrances, and no further from an entrance than the closest automotive parking space.

6. Long-term bicycle parking.

   Long-term bicycle parking shall consist of a lockable enclosure, a secure room in a building on-site, monitored parking, or another form of sheltered and secure parking.

C. Exemptions.

This Section does not apply to single-family, two-family, and three-unit multi-family housing, home occupations, and agricultural uses. The Community Development Director or Planning Commission as applicable may exempt other uses upon finding that, due to the proximity of public bicycle parking facilities, the nature of the use, or its location, it is unlikely to have any patrons or employees arriving by bicycle.

(Section 7.105 added by Ordinance 14-03, 4-21-14)

7.110. PARKING AND LOADING AREA DEVELOPMENT REQUIREMENTS.

All parking and loading areas required under this ordinance, except those for a detached single-family dwelling on an individual lot unless otherwise noted, shall be developed and maintained as follows:

(Section 7.110 amended by Ordinance 14-03, 4-21-14)

A. Location on site.

Required yards adjacent to a street, shall not be used for parking and loading areas unless otherwise specifically permitted in this ordinance. Side and rear yards which are not adjacent to a street may be used for such areas when developed and maintained as required in this ordinance.

B. Surfacing.

All parking and loading areas and driveways thereto shall be paved with asphalt, concrete or other hard surface approved by the City Engineer. Parking and loading areas shall be adequately designed, graded, and drained.

C. Bumper guards or wheel barriers.

Permanently affixed bumper guards or wheel barriers are required and shall be so installed that no portion of a vehicle will project into a public right-of-way or over adjoining property. The area beyond the wheel barriers or bumper guards shall be surfaced as required in Section 7.110(B) or landscaped.

D. Size of parking spaces and maneuvering areas.

The parking area, each parking space, and all maneuvering areas shall be of sufficient size and all curves and corners of sufficient radius as determined by the City Engineer to permit the safe operation of a standard size vehicle subject to the following minimum requirements:

1. Full size parking spaces shall be nine and one half (9.5) feet wide and 20 feet long.

2. Compact parking spaces shall be eight and one half (8.5) feet wide and 16 feet long for no more than 50% of the parking spaces required.

   An increase to 75% compact may be approved administratively by the Community Development Director upon a finding that anticipated use would not require compliance. An increase greater than 75% may be approved by the Community Development Director as a Class 1 Variance in accordance with Article 9.

3. Where a landscaped area, fence, or wall is adjacent to a parking space, the parking space shall be ten (10) feet wide.

4. A maximum of 2.5’ of a parking stall required length may extend beyond the wheel barrier into a landscaped area. The parking stall shall not extend into a pedestrian walkway area.

(Section 7.110.D amended by Ordinance 14-03, 4-21-14)

E. Access.

Parking or loading areas having more than four (4) spaces shall be designed so that vehicles do not back into public streets, or do not use public streets for maneuvering. All entrances and exits onto public streets shall first have a Driveway Permit from the Engineering Department and shall be designed and constructed to City standards.

F. Lighting.

Parking or loading areas that will be used at nighttime shall be lighted. Outdoor lighting shall be directed away from any adjacent residential zone or public street.

G. Landscaping.

1. Landscaping shall be provided as required in Section 7.170 and Section 3.105 through 3.120.

2. Required landscaped yards shall not be used for parking.

(Section 7.110.G amended by Ordinance 14-03, 4-21-14)

H. Additional Requirements.

1. Directional signs and pavement marking shall be used to control vehicle movement in parking area.

(Section 7.110.H amended by Ordinance 14-03, 4-21-14)

I. Aisle Widths

Aisles with parking adjacent on one or both sides, depending on angle of parking spaces:

	Minimum Width
0 - 40 degrees	12 feet
41 - 45 degrees	13 feet
46 - 55 degrees	15 feet
56 - 70 degrees	18 feet
71 - 90 degrees	24 feet

7.120. DRIVEWAY DEVELOPMENT STANDARDS.

All driveways providing access to parking spaces and loading areas required under this ordinance, including those for a single-family dwelling on a lot, shall conform to the Astoria City Code Sections 2.050 through 2.100 and Development Code Section 3.008.D, in addition to requirements in the Astoria Engineering Design Standards for Roadways (Chapter 4).

(Section 7.120 amended by Ordinance 14-03, 4-21-14)

7.130. OUTDOOR STORAGE AREA SURFACING.

A. Where commercial, industrial, or shoreland zones permit outdoor storage, or if such storage is permitted as part of a Conditional Use in any zone, such storage areas and any access driveway shall be paved and shall have plans for off-site drainage approved by the City.

7.140. PARKING PLAN REQUIRED.

Plans, at a workable scale, for all parking and loading areas required under this Section, shall be submitted to the Community Development Director for approval prior to issuance of a permit; or, if no building permit is required, at the time of application for a driveway permit; or, if no such permit is required, prior to commencing any paving or use of the parking or loading area. No such work or use shall commence prior to approval by the City of the plans required by this Section.

7.150. ACCESSIBLE PARKING SPACES.

A. Effective September 1, 1990, existing and new parking spaces for disabled persons shall be required by law at all public and government buildings.

B. The size, location, dimension, and marking for accessible parking spaces shall be in accordance with current State and Federal regulations for accessible parking facilities.

(Section 7.150 amended by Ordinance 14-03, 4-21-14)

7.160. MINIMUM LOADING SPACE REQUIREMENTS.

USE OR GROSS SQUARE FOOTAGE OF FLOOR AREA	MINIMUM NO. OF SPACES	MINIMUM SIZE OF SPACE WIDTH	LENGTH	HEIGHT
A. Multi-Family Dwelling Units.				
0 - 49 Units	0	12 ft	19 ft	12 ft
50 - 99 Units	1	"	"	"
100 - 199 Units	2	"	"	"
200 and over Units	3	"	"	"

If a recreational or service building is provided, at least one of the required loading spaces shall be located in conjunction with the recreational or service building.

B. For Buildings Used Entirely for Office Occupancy.				
Under 5,000 sq ft	0	12 ft	30 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

C. Commercial, Non-office, Public and Semi-Public.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

D. Industrial.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 99,999 sq ft	1	"	"	"
100,000 - 239,999 sq ft	3	"	"	"
240,000 - 319,000 sq ft	5	"	"	"
320,000 - 399,000 sq ft	6	"	"	"
400,000 - 489,999 sq ft	7	"	"	"
490,000 - 579,999 sq ft	8	"	"	"
580,000 - 669,999 sq ft	9	"	"	"
670,000 - 759,999 sq ft	10	"	"	"

For each additional 100,000 square feet or any portion thereof over 760,000 square feet, an additional loading space is required.

(Adopted 10-8-92)

7.170. LANDSCAPING OF OUTDOOR STORAGE OR PARKING AREAS.

A minimum of 5% of the gross parking lot area shall be designed and maintained as landscaped area, subject to the standards in Sections 3.105 through 3.120. This requirement shall apply to all parking lots with an area of 600 square feet or greater. Approved sight obscuring fences or vegetative buffers shall be constructed where commercial parking lots abut Residential Zones. The minimum 5% landscaping shall be counted as part of the total landscaping required for the property.

(Section 7.180, Parking in the Downtown Area, Exception added by Ordinance 99-21, 11-1-99; Section 7.180 deleted by Ordinance 14-03, 4-21-14)

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

April 17, 2019

TO: ASTORIA PLANNING COMMISSION

FROM: ROSEMARY JOHNSON, SPECIAL PROJECTS PLANNER

SUBJECT: AMENDMENT REQUEST (A19-02) ON TRANSIENT LODGING

I. BACKGROUND SUMMARY

A. Applicant: Community Development Department
On behalf of the City Council
City of Astoria
1095 Duane Street
Astoria OR 97103

B. Request: Amend the Development Code concerning Transient Lodging, amend and add definitions, add reference to City Code Home Stay Lodging regulations, establish standards for transient lodging in conjunction with Home Stay Lodging, allow administrative conditional use permits, limit transition of residential units in commercial zones to transient lodging, and other miscellaneous updates.

C. Location: City-wide

II. BACKGROUND

Over the last few years, the number of illegal transient lodging facilities in Astoria has increased substantially. Enforcement is difficult as the units are not identified by address or owner in the advertising platforms (such as Airbnb, VRBO, etc.) and it is time consuming and difficult for staff to research where the specific facilities are located in order to initiate code enforcement. The advertising platforms have helped to increase the number of units in communities but have added to the problem in that they do not reveal their client information and do not require proof that the use is allowed in an area or what permits are necessary. As a result, many home owners have utilized these companies without checking with local authorities about operation of a commercial use within their home.

The City Council discussed the need for better codes, licenses, and enforcement and directed staff to research other cities' codes and draft an amendment to the City Code that would address this growing problem. Staff researched transient lodging codes in multiple cities and counties and found a variety of ways that communities are dealing with these facilities. Staff drafted a City Code amendment that clarified terminology, established a license process, and addressed code enforcement. At its December 3,2018 meeting, the City Council adopted City

Code amendment for Home Stay Lodging Licenses, and the Transient Lodging Tax. This amendment put the regulations and license requirements into the City Code. However, since the Development Code includes some regulations related to transient lodging and identifies the specific zones in which they are allowed, some code amendments will be required to the Development Code so that it coincides with the adopted City Code. The following is a synopsis of the code requirements and issues addressed in the City Code:

- All Home Stay Lodging facilities will require a license, Occupational Tax, and pay Transient Room Tax. The license will be reviewed by the Community Development Department.
- Facility is limited to one or two bedrooms and shall not include a kitchen and must be owner occupied at the same time as the guest.
- License standards requirements: home safety inspection; payment of fees; off-street parking; license ID shall be placed on the advertising platform; applicant shall provide advertising platform ID number to City.
- Public notice will be sent to adjacent property owners when an application is being reviewed. Renewals will not require a public notice.
- License would be valid for two years and requires renewals to continue operation. Renewals will be reviewed for continued compliance with all standards and may be denied for non-compliance, unresolved violations, or transient tax delinquent for six months or more.
- Enforcement will be through a citation process in Municipal Court. Advertising a transient lodging without a license or in violation of any of the license standards will be a violation.

The Transient Room Tax portion of the City Code was amended to update the terminology and allow for third party collection of the room tax. With the third-party collection, an agreement with the City would be required, and liens for unpaid taxes would be applied to the operator, property owner, and third-party tax collector.

Some standards/requirements will be included in the Development Code rather than the City Code. These amendments will need to be processed as a land use amendment through the Planning Commission before City Council review and adoption. The proposed amendments include the following:

- Specific uses within each zone such as: Home Stay Lodging (HSL) as conditional use in R-1 Zone; HSL may not be on the same site in conjunction with an ADU in the R-1 Zone but may be on the same property as an ADU in the R-2 and R-3 Zones as a conditional use.
- Structures built and used as residential structures in non-residential zones shall not be used for transient lodging with some exceptions for former hotel structures.
- Amend and add definitions for various transient lodging related terms.
- Add HSL purpose & standards to coincide with City Code
- Transient lodging not allowed in mobile vehicles.
- Clarify HSL parking requirement.
- Add Community Development Director to process for Admin Conditional Use.
- Section 11.022 on classification of Conditional Use review.

III. PUBLIC REVIEW AND COMMENT

A. Astoria Planning Commission

A public notice was mailed to Neighborhood Associations, various agencies, and interested parties on April 2, 2019. In accordance with ORS 227.186(5), State required Measure 56 mailing, a notice was mailed on April 2, 2019 to all property owners within the City advising *". . . that the City has proposed a land use regulation that may affect the permissible uses of your property and other properties."* In accordance with Section 9.020, a notice of public hearing was published in the *Daily Astorian* on April 16, 2019. In accordance with Section 9.020.D, a notice was posted on March 29, 2019 at the following locations: corner of 30th and Marine Dr. and near the corner of 43rd and Lief Erikson Dr. The proposed amendment is legislative as it applies City-wide.

B. State Agencies

Although concurrence or approval by State agencies is not required for adoption of the proposed amendments, the City has provided a copy of the draft amendments to representatives of the Oregon Departments of Transportation (ODOT), Land Conservation and Development (DLCD) and Department of State Lands (DLS) as part of the planning process.

IV. FINDINGS OF FACT

A. Development Code Section 10.020.A states that *"an amendment to the text of the Development Code or the Comprehensive Plan may be initiated by the City Council, Planning Commission, the Community Development Director, a person owning property in the City, or a City resident."*

Development Code Section 10.020.B states that *"An amendment to a zone boundary may only be initiated by the City Council, Planning Commission, the Community Development Director, or the owner or owners of the property for which the change is proposed."*

Finding: The proposed amendments to the Development Code are being initiated by the Community Development Director on behalf of the City Council. The City Council has adopted a licensing procedure in the City Code for Home Stay Lodgings and identified the need to amend the Development Code to coincide with the HSL license process and to adopt additional regulations concerning other transient lodging facilities.

B. Section 10.050.A states that *"The following amendment actions are considered legislative under this Code:*

1. *An amendment to the text of the Development Code or Comprehensive Plan.*

2. *A zone change action that the Community Development Director has designated as legislative after finding the matter at issue involves such a substantial area and number of property owners or such broad public policy changes that processing the request as a quasi-judicial action would be inappropriate."*

Finding: The proposed amendment is to amend the text of the Astoria Development Code concerning transient lodging regulations City wide. The amendment would create new standards. The proposed amendments are applicable to the entire City and represents a relatively broad policy change. Processing as a legislative action is appropriate.

C. Section 10.070.A.1 concerning Text Amendments, requires that *"The amendment is consistent with the Comprehensive Plan."*

1. CP.015.1, General Land & Water Goals states that *"It is the primary goal of the Comprehensive Plan to maintain Astoria's existing character by encouraging a compact urban form, by strengthening the downtown core and waterfront areas, and by protecting the residential and historic character of the City's neighborhoods. It is the intent of the Plan to promote Astoria as the commercial, industrial, tourist, and cultural center of the area."*

   CP.035.2, West End Area Policies, states *"The quiet residential character of the west end will be protected through the City's Development Code."*

   CP.045.2, Central Residential Area Policies, states *"Historic areas (neighborhoods with high concentrations of pre-1911 homes) will be protected through zoning regulations and the use of public lands for relocation of structures."*

   CP.075.2, Uppertown Area Policies, states *"The predominantly residential character of the area upland of Marine Drive/Lief Erikson Drive will be preserved."*

   CP.085.2, Alderbrook Area Policies, states *"The residential character of Alderbrook will be protected through the designation of the aquatic area from 41st Street to Tongue Point as natural, and by the present zoning pattern. Development in the 100-year flood area shall be subject to the requirements of the City's Flood Hazard Overlay Zone."*

   CP.088.2, Emerald Heights Area Policies. States *"The multi-family residential character of Emerald Heights Area will be protected through the present zoning pattern. Additional residential development is encouraged in this area."*

   Finding: The proposed amendments create development standards for transient lodging standards and guidelines to protect the character of the residential neighborhoods. Astoria has seen a major increase in tourism

and an increase in transient lodging in residential zones. The Development Code allows for Home Stay Lodging (HSL), Bed and Breakfast (B&B), and Inns in the various residential zones, but has standards that include the need for owner occupancy and off-street parking. These facilities are required to have an Occupational Tax (business license) and pay transient room tax. However, in recent years there has been an increase in unpermitted facilities that are not paying the required taxes, do not provide off-street parking, and are not owner occupied. Some homes are operating as vacation rentals where the entire house is rented to a guest.

Transient lodging, in and of itself, is not detrimental to the City. However, when it is operated without paying the appropriate taxes, no off-street parking, and without an on-site owner in residence, it can become a nuisance to a neighborhood. The lack of off-street parking creates a parking situation in some neighborhoods that have narrow streets and limited on-street parking. Use of homes without the benefit of the owner in residence creates multiple issues that are detrimental to the other residents in the neighborhood. Guests are not generally a problem, but they are on vacation and can tend to get loud and/or have multiple vehicles and people at the home. With the owner on site, the owner can keep their guests in compliance with City regulations. Otherwise, adjacent property owners are required to either live with the situation or report it to the Police which causes everyone embarrassment and only solves the issue for the current guests, not the new ones the next weekend. Therefore, HSL, B&B, and Inns are allowed but vacation rentals (which are classified as motels) are not. This would help to protect the quiet residential character of the neighborhoods.

2. CP.020.9, Community Growth - Plan Strategy, states *"The Buildable Lands Inventory completed in April 2011 identified a deficit of 15.54 net acres of residential buildable lands. In order to address this deficit, OAR 660-24-0050 requires that the City amend the Plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the boundary or by expanding the UGB, or both."*

   CP.215.1, Housing Element, Issues and Conclusions, Vacancy Rates, states *". . . North coast trends in second homes and short-term rentals reached an average of 20.5% in 2007 with a State average of 2.5%. Astoria was well below this with 1.9%; however, this number is expected to increase over the next 20 years. Housing stock needed to accommodate this trend could change the amount of residentially zoned land needed to accommodate growth through 2027. The Buildable Lands Inventory dated April 2011 addresses this issue in depth and recommends that the City review and revise the assumptions made in the Inventory after the 2010 US Census results are finalized."*

   CP.215.5, Housing Element, Issues and Conclusions, Low- and Moderate-Income Housing, states *"Because of the large number of older buildings in Astoria, there is great potential for reuse of existing structures for housing.*

The John Jacob Astor Apartments and Owens-Adair Apartments projects are both examples of successful renovations. The City could encourage this trend by working with developers, applying for grant funds, and looking for ways of fostering both historic preservation and provision of low-cost housing. Organizations, including the Clatsop County Housing Authority, the Clatsop Community Action Agency, Northwest Oregon Housing Authority, for-profit corporations, and other local and regional non-profit groups and public agencies have been involved in providing low cost housing in Clatsop County. County-wide efforts are being made to address the need for workforce housing on the entire North coast."

CP.218.1, Housing Element, Housing Goals, "*Provide opportunities for development of a wide variety of housing types and price ranges within the Urban Growth Boundary."*

CP.218.2, Housing Element, Housing Goals, states *"Maintain and rehabilitate the community's existing housing stock."*

CP.220.1, Housing Element, Housing Policies, states *"Maintain attractive and livable residential neighborhoods, for all types of housing."*

CP.220.5, Housing Element, Housing Policies, states *"Encourage low- and moderate-income housing throughout the City, not concentrated in one area."*

CP.220.6, Housing Element, Housing Policies, states *"Protect neighborhoods from incompatible uses, including large scale commercial, industrial, and public uses or activities."*

Finding: The Buildable Lands Inventory (BLI) identified a deficit of low density residential buildable lands. The Comprehensive Plan indicates a goal of having a variety of housing types and price ranges, and the preservation of existing historic housing stock. The City Council 2018-2019 Goals included *"Implement the provisions contained in the City of Astoria Affordable Housing Study to increase the number of housing units within the City, for permanent residents. Special attention should be given to derelict and/or vacant properties."* The 2019-2021 City Council goals adopted April 15, 2019 include *"Support efforts to increase the housing supply (both market rate and affordable), using the County Housing Study as a guide."* and *"Maintain Astoria's unique character through economic development and zoning which reflects on those values."* The City Council has expressed concerns that the use of residences for transient lodging, especially vacation rentals, is a threat to the available housing stock. There is currently a lack of affordable housing for the existing employees and Astoria residents. While the Council agrees that transient lodging in owner occupied homes may be an acceptable use in residential areas, it also sees the prohibition of use of full homes for transient lodging as one way to keep the existing housing available for long term housing. Therefore, the Council

determined that transient lodging in residential areas should not include a kitchen in the guest area as this would equate to a living unit.

The Council also identified the conversion of residential units in commercial zones for transient lodging as contrary to the goal to provide affordable housing. The Council suggested that structures built and/or currently used for residences should not be converted to transient lodging. A proposed amendment would prohibit the conversion. However, there are several existing former hotels that are currently either vacant and/or have been converted to residences. An exception for these buildings to allow conversion back to a hotel use is proposed as it would only impact a few buildings (Waldorf Hotel 1067 Duane; JJAstor Hotel 342 14th; Elliot Hotel 357 12th; Norblad Building 443 14th; Commodore Hotel 258 14th) and would allow for economic ability to maintain these larger buildings.

3. CP.195.7, Economic Element, Conclusions and Problems, states *"Tourism in Clatsop County has increased in recent years, and the Astoria area has been the recipient of some of this economic activity. Astoria is becoming a "destination" like the communities on the ocean beaches. The quantity of lodging facilities in the City have increased in recent years to accommodate the needs except during peak tourist times. The Columbia River Maritime Museum is a major tourist attraction. In recent years, there has been construction of private facilities which can accommodate moderate sized gatherings and conventions. Tourism is an economic activity which has several disadvantages, such as low wages, and seasonality. However, Astoria has a highly seasonal work force which tourism, particularly the convention business during the winter, could counteract. Astoria has begun to capitalize on its scenic, historic character; proper emphasis on it through advertising and public projects has the potential of stimulating the City's tourist economy."*

   CP.200.4, Economic Development Goal 1 and Goal 1 Policies, states *"Goal: The City of Astoria will strengthen, improve, and diversify the area's economy to increase local employment opportunities. Policies: Encourage private development such as retail, restaurants, commercial services, transient lodging, and make strategic investments in target industries."*

   CP.206.2, Economic Development Goal 7 and Goal 7 Policies, states *"Goal: Encourage successful home-based businesses. Policies: Encourage home occupations, cottage industries and activities which have little impact on the surrounding neighborhoods through the City's Development Code."*

   Finding: Tourism is a major industry for Astoria. The year-round nature of tourist activities has created a need for additional transient lodging facilities. Astoria has seen an influx of hotels/motels over the last few years with two or three new ones proposed in the next year or two. The use of private homes as HSL and B&B's has also increased. The City encourages home occupations and activities in residential areas but only if they have *"little*

impact on the surrounding neighborhoods". Adoption of the proposed amendments would allow for controlled use of private residences as transient lodging so as to protect the residential character of the neighborhoods while allowing for this tourist base industry to exist. Commercial activities related to tourism such as vacation rentals are a major impact to the quiet residential character of the area and to the loss of long term, affordable housing. The proposed amendments would prevent the loss of housing to accommodate transient lodging thereby preserving Astoria for Astorians first.

4. CP.175.G.1, Uppertown / Alderbrook Subarea Plan, Subarea Policies, states that *"The Alderbrook area has unique characteristics and values. Plan amendments which would allow higher-intensity uses than those now present are discouraged."*

   CP.185.O, Residential, Commercial and Industrial Development Policies, states that *"Policies in this subsection are applicable to construction or expansion of residential, commercial or industrial facilities in Columbia River Estuary shoreland and aquatic areas. Within the context of this subsection, residential uses include single and multifamily structures, mobile homes, and floating residences (subject to an exception to Oregon Statewide Planning Goal 16). Duck shacks, recreational vehicles, hotels, motels and bed-and-breakfast facilities are not considered residential structures for purposes of this subsection. Commercial structures and uses include all retail or wholesale storage, service or sales facilities and uses, whether water-dependent, water-related, or non-dependent, non-related. Industrial uses and activities include facilities for fabrication, assembly, and processing, whether water-dependent, water-related or non-dependent, non-related. . ."*

   Finding: The proposed amendments would limit the allowable transient lodging uses in all zones. Uses would be regulated to assure low-impact in residential areas and limit the loss of housing. These proposed regulations are consistent with this Comprehensive Plan section which protects the waterfront area for the low-impact marine uses. Any project proposed would be subject to compliance with this section at the time of project proposal.

5. CP.204.3 & CP.204.4, Economic Development Goal 5 and Goal 5 Policies, Goal states "*Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."* The Policies state

   3. Encourage the growth of tourism as a part of the economy.
   a. Consider zoning standards that improve the attractiveness of the City, including designation of historic districts, stronger landscaping requirements for new construction, and Design Review requirements.

4. *Protect historic resources such as downtown buildings to maintain local character and attract visitors."*

CP.250.1, Historic Preservation Goals states that *"The City will Promote and encourage, by voluntary means whenever possible, the preservation, restoration and adaptive use of sites, areas, buildings, structures, appurtenances, places and elements that are indicative of Astoria's historical heritage."*

CP.200.6, Economic Development Goals states that the City will *"Encourage the preservation of Astoria's historic buildings, neighborhoods and sites and unique waterfront location in order to attract visitors and new industry."*

CP.205.5, Economic Development Policies states that *"The City encourages the growth of tourism as a part of the economy. Zoning standards which improve the attractiveness of the City shall be considered including designation of historic districts, stronger landscaping requirements for new construction, and Design Review requirements."*

Finding: The proposed amendments will establish standards for transient lodging to allow facilities in residential areas which would support the tourism industry while protecting the quiet character of the neighborhoods. Allowing transient lodging in homes provides the owners with some additional income to help with preservation of the buildings, many of which are designated as historic. However, the unique characteristics of the neighborhoods are proposed to be protected by the addition of standards to prohibit vacation rentals and the loss of full-time residents.

6. CP.470.1, Citizen Involvement states that *"Citizens, including residents and property owners, shall have the opportunity to be involved in all phases of the planning efforts of the City, including collection of data and the development of policies."*

Finding: Throughout the process of drafting the proposed ordinance, the City has provided public outreach. The City Council addressed the issue of Home Stay Lodgings, the need for license procedures, enforcement, and how to protect the loss of affordable housing. They held two work sessions on 12-13-2017 and 10-10-2018. The Council held a public hearing on 11-19-2018 and the City Code amendments were adopted on 12-3-2019. The Planning Commission held a work session on 2-26-2019. Notices were sent to interested parties, neighborhood associations, email lists, web site, etc. In addition, a State required Measure 56 mailing was sent to every property owner in Astoria. Anyone interested in the proposed ordinance was encouraged to submit suggestions and comments. Work sessions were open for discussion with the public to allow for interactive feedback from the early stage of the adoption process. There were numerous "Letters to the Editor" in the Daily Astorian and some articles.

The City was very conscious of the interest in protection of the residential character of neighborhoods and the potential loss of long-term housing. The proposed amendments will be in compliance with State regulations and will establish a permit process that is easy for both the citizens and staff.

Finding: The request is consistent with the Comprehensive Plan.

D. Section 10.070.A.2 concerning Text Amendments requires that *"The amendment will not adversely affect the ability of the City to satisfy land and water use needs."*

Finding: The proposed amendment will satisfy land use needs in that it will allow for the use of private properties for transient lodging while protecting the housing stock and quiet character of the neighborhoods. The protection of long-term housing supports the need for residential area as identified in the Buildable Lands Inventory. The proposed amendment will not adversely affect the ability of the City to satisfy land and water use needs.

V. CONCLUSION AND RECOMMENDATION

The request is consistent with the Comprehensive Plan and Development Code. Staff recommends that the Planning Commission recommend adoption of the proposed amendments to the City Council.

CODE AMENDMENT SYNOPSIS
3-5-19

Home Stay Lodging and Transient Lodging

Code Section	Code Designation	Proposed Change
1.400	Definitions	Amend: bed and breakfast, inn, dwelling, home stay lodging, motel to coincide with City Code and make meal optional
1.400	Definitions	Add: kitchen, owner occupied, primary residence, time share, transient, transient lodging facility, vacation rental
2.025.8	R-1	Add City Code reference to HSL
2.065.6 2.070.13	R-2	Add City Code reference to HSL
2.155.7 2.160.12	R-3	Add City Code reference to HSL
2.585.14.b	A-3	Add City Code reference to HSL
2.350.3	C-2	Add City Code reference to HSL; limit motel in existing residential buildings
2.390.10	C-3	Add City Code reference to HSL; limit motel in existing residential buildings; allow original hotels to return to hotel use
2.435.4	C-4	Add City Code reference to HSL; limit motel in existing residential buildings; allow original hotels to return to hotel use
2.894.2	MH	Add City Code reference to HSL
14.132.1.b	A-4	Add City Code reference to HSL
8.160.A.1 8.160.A.3	Signs	Add HSL for residential sign allowance & not as CU
3.020.B.9	Accessory Dwelling Unit	Add HSL reference; refer to zone for allowance in conjunction w/ ADU
3.100	Home Stay Lodging	Add HSL purpose & standards to coincide with City Code; list allowable zones; not allowed in mobile vehicles
7.100	Parking	Amend to clarify HSL parking requirement
11.020	Conditional Use	Add Com Dev Director to process for Admin CU; add Section 11.022 on classification of CU review
11.022	Conditional Use, Classification of CU Review	Add Section to allow Type II CU for HSL and ADU

DEVELOPMENT CODE UPDATES
Annotated
March 24, 2019

CITY CODE

(Annotated: The Home Stay Lodging Code is included in the City Code rather than the Development Code at the suggestion of the City Attorney to allow for better code enforcement possibilities. This is also the way several cities handle the permits.)

The following proposed amendments include multiple sections of the Development Code. Some are updates needed to coincide with the recent Home Stay Lodging City Code amendments and others are "housekeeping" and/or non-controversial updates to the Code to make processes quicker and easier for both the public and staff. Some proposed amendments are to clarify language in existing codes based on interpretations over the years. Proposed amendments are grouped by subject in case sections need to be removed for any reason during the adoption process.

HOME STAY LODGING

(Annotate: Development Code amendments are needed to coincide with the City Code amendments so there is no conflict.)

Section 1.400, Definitions, delete existing specific definitions in their entirety and replace to read as follows:

(Annotate: To avoid conflict in definitions if changes occur in the future, definitions are included in both codes with City Code referenced.)

BED AND BREAKFAST: Any transient lodging facility which contains between three (3) and seven (7) guest bedrooms, which is owner or manager occupied, and which may provide a morning meal. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification.

(Annotated: B&B is allowed as follows: Outright Use: C-2, C-3, S-2A, HR, LS, Conditional Use: R-1, R-2, R-3, C-4, A-2, A-2A, A-3 in existing bldg, S-2, MH, AH-MP.)

DWELLING: One or more rooms designed for permanent occupancy by one family

SINGLE-FAMILY: A free-standing building containing one dwelling unit.

TWO-FAMILY: A free-standing building containing two dwelling units. May include two-unit rowhouses or duplexes, either renter-occupied or owner-occupied.

MULTI-FAMILY: A building containing three or more dwelling units. May include rowhouses, apartment buildings, or residential condominiums, either renter-occupied or owner-occupied.

HOME STAY LODGING: A transient lodging facility with no more than two (2) bedrooms available for transient rental, and which is owner occupied. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. Such facilities may or may not provide a morning meal. Rooms used by transient guests shall not include a kitchen.
(Astoria City Code Section 8.755)

~~A transient lodging facility with no more than two (2) bedrooms available for transient rental, and which is owner occupied. Such facilities may or may not provide a morning meal.~~

(Annotated: CC determined that a full living unit should not be used as a HSL and full unit has been generally defined as having a kitchen. At the discretion of the homeowner and subject to public health safety regulations, guests may use the homeowners kitchen.)

HOTEL: A building in which lodging is provided for guests for compensation, which may also provide incidental services such as restaurants, meeting rooms, or recreational facilities subject to Development Code standards.

INN: A transient lodging facility with up to 11 guest bedrooms, which is owner or manager occupied, and which may provide a morning meal. Inns may conduct associated business activities on an occasional basis, such as wedding receptions, club meetings and luncheons, conferences, and reunions.

MOTEL: ~~Same as "Hotel".~~ A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

Section 1.400, Definitions, specific definitions are added to read as follows:

KITCHEN: Room for preparation of food and includes a cooking stove or ability to heat food other than with a microwave oven.

OWNER OCCUPIED: Occupancy of a residence by an individual owner

OWNER: For purposes of transient lodging codes, the term owner only includes individuals, holding fee simple title to property, the beneficiaries of a revocable living trust, or a purchaser under a recorded instrument of sale. This does not include corporations, limited liability companies or similar organizations, an authorized agent of the owner, or those holding easements, leaseholds, or purchasers of less than fee interest.

(Annotated: It does not reference City Code definition as it would apply to more than HSL for Development Code. Owner is defined in 1.400, but the added definition is for transient lodging as it is different and matches City Code for HSL.)

PRIMARY RESIDENCE: Dwelling maintained as the permanent residence of the owner for not less than six months of the year.

(Annotated: This is included to help avoid the issue such as person living in an adjacent home and only staying in the transient building on occasions, and to help maintain the housing stock so a building is not just used occasionally as a dwelling. It does not reference City Code definition as it would apply to more than HSL for Development Code.)

TIME SHARE: A dwelling unit that is occupied for other than permanent occupancy by one family and whose ownership is divided into periods of time under an arrangement, plan, scheme, or device, whether by membership, agreement, share, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or otherwise, where a purchaser, in exchange for consideration, receives a right to use the dwelling unit for a period of time less than a full year during any given year. Use of the dwelling for less than a 30-day period by one family shall be classified as "transient lodging" and the same as a "hotel" or "motel".

(Annotated: This specific type of transient lodging was not addressed during the City Council code amendment on HSL. However, as it could be used as "short term rental", it is suggested that we include this in the Development Code to clarify that this also falls under transient lodging.)

TOURIST LODGING FACILITY: See "Transient Lodging Facility".

TRANSIENT: A transient includes any person entitled to occupy a residence for less than 30 consecutive calendar days. The day a transient guest checks out shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

(Annotated: This is similar to the definition for Occupational Tax purposes but removes reference to hotels and allowable extended occupancies. It does not reference City Code definition as it would apply to more than HSL for Development Code.)

TRANSIENT LODGING FACILITY: Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast establishment, home stay lodging, vacation rental, or other such transient lodging facility known by their advertising and/or management platform names. Transient Lodging Facility also means space in mobile home or trailer parks, or similar structure of space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

(Annotated: With the addition of these other definitions, we would eliminate the reference to "other tourist lodging facility" in the Development Code so there is no confusion as to which classification each use is in. What other configuration of lodging facility could there be? The term "other tourist lodging facility is used in the C-2, C-3, C-4, MH zones only)

VACATION RENTAL: A transient lodging facility available for transient rental, and which is not occupied by an owner or manager at the same time as the guests. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. For the purposes of this Code, a Vacation Rental is classified the same as a "hotel" or "motel".

(Annotated: This would clarify what we already do in classifying vacation rentals as a hotel which limits them to commercial zones. This is intended to protect a SFD from being used for transient lodging without an owner on-site which reduces the permanent available housing.)

Section 2.025.8 (R-1 conditional use) is deleted in its entirety and replaced to read as follows:

Home Stay Lodging, which satisfies requirements in City Code Sections 8.750 to 8.800.

Section 2.065.6 (R-2 outright use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Home Stay Lodging, which satisfies requirements in City Code Sections 8.750 to 8.800.

Section 2.070.13 (R-2 conditional use, zone list of allowable uses) is added to read as follows:

13. Home Stay Lodging in conjunction with an Accessory Dwelling Unit, which satisfies requirements in City Code Sections 8.750 to 8.800. May be processed as an Administrative Conditional Use.

Section 2.155.7 (R-3 outright use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Home Stay Lodging, which satisfies requirements in City Code Sections 8.750 to 8.800.

Section 2.160.12 (R-3 conditional use, zone list of allowable uses) is added to read as follows:

12. Home Stay Lodging in conjunction with an Accessory Dwelling Unit, which satisfies requirements in City Code Sections 8.750 to 8.800. May be processed as an Administrative Conditional Use.

Section 2.585.14.b (A-3 conditional use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Bed and breakfast, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), or inn.

Section 2.350.3 (C-2 outright use), is deleted in its entirety and replaced to read as follows:

3. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), ~~or other tourist lodging facility~~ and associated uses except as follows:

   a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.350.3.b.

   b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

(Annotate: City Council determined that buildings or portions of buildings constructed and used as residences should not be allowed to be used for vacation rental transient lodging as it would reduce the housing stock. If there is an existing non-conforming dwelling in the zone, it could have a B&B or HSL. The exceptions would only impact a few larger buildings such as the Waldorf Hotel, Astor Hotel, etc.)

Section 2.390.10 (C-3 outright use), is deleted in its entirety and replaced to read as follows:

10. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), ~~or other tourist lodging facility~~ and associated uses except as follows:

    a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.10.b.

    b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

(Annotate: City Council determined that buildings or portions of buildings constructed and used as residences should not be allowed to be used for vacation rental transient lodging as it would reduce the housing stock. If there is an existing non-conforming dwelling in the zone, it could have a B&B or HSL. The exceptions would only impact a few larger buildings such as the Waldorf Hotel, Astor Hotel, etc..)

Section 2.435.4 (C-4 conditional use), is deleted in its entirety and replaced to read as follows:

4. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), ~~or other tourist lodging facility~~ and associated uses except as follows:

   a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.435.4.b.

   b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

   (Annotate: City Council determined that buildings or portions of buildings constructed and used as residences should not be allowed to be used for vacation rental transient lodging as it would reduce the housing stock. If there is an existing non-conforming dwelling in the zone, it could have a B&B or HSL. The exceptions would only impact a few larger buildings such as the Waldorf Hotel, Astor Hotel, etc. .)

Section 2.894.2 (MH conditional use), is deleted in its entirety and replaced to read as follows:

2. Bed and breakfast, inn, or home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800)~~, or other tourist lodging facility~~.

Section 14.132.1.b (A-4 conditional use, zone list of allowable uses) is deleted in its entirety and replaced to read as follows:

Bed and breakfast, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), or inn.

Section 8.160.A.1 (signs in residential zones) is deleted in its entirety and replaced to read as follows:

Sites with 1 or 2 dwelling units in a building, Home Occupations, and Home Stay Lodging.

Section 8.160.A.3 (signs in residential zones) is deleted in its entirety and replaced to read as follows:

Conditional Uses, except Home Stay Lodging, Bed and Breakfast, Inn, or Home Occupation.

Section 3.020.B.9 (Accessory Dwelling Unit) is deleted in its entirety and replaced to read as follows:

9. Home Stay Lodging.

Home Stay Lodging in conjunction with an Accessory Dwelling Unit may be allowed as follows:

a. Home Stay Lodging (which satisfies requirements in City Code Sections 8.750 to 8.800) may be allowed on properties in conjunction with an Accessory Dwelling Unit as listed in the allowable uses within specific zones.

~~Homestay lodging is prohibited in accessory dwelling units created after May 17, 2017.~~

(Annotated: If owner lives in ADU and has a bedroom for HSL, it would be the same impact as if it were in the primary unit, just in different unit.)

(Annotated: each zone will list if HSL is allowed with an ADU and in 3.100.)

Section 3.100, Home Stay Lodging, is added to read as follows:

3.100. HOME STAY LODGING.

A. Purpose.

The City's purpose in regulating Home Stay Lodgings is to allow for economic use of underutilized bedrooms in dwellings; provide financial assistance to preserve both the housing stock and historic properties within the City; to ensure that Home Stay Lodging facilities are appropriately located; are compatible with surrounding allowed uses; are conducive to the public peace, health, safety, and welfare of the City; do not reduce the number of potential long-term housing units; and support tourism.

B. Standards

1. Primary Residence. Every Home Stay Lodging shall be located in the owner's primary residence.

2. Occupancy. The Home Stay Lodging shall be owner occupied while occupied by transients.

3. Location. Home Stay Lodgings may be allowable in conjunction with an Accessory Dwelling Unit as follows:

a. R-1 Zone: Home Stay Lodging shall not be allowed in conjunction with an Accessory Dwelling Unit.

b. R-2 Zone: Home Stay Lodging shall require an Administrative Conditional Use permit through the Community Development Department if located in conjunction with an Accessory Dwelling Unit.

c. R-3 Zone: Home Stay Lodging shall require an Administrative Conditional Use permit through the Community Development Department if located in conjunction with an Accessory Dwelling Unit.

(Annotated: ADU is an extra unit on a lot which is not sufficient for a duplex. To have both an ADU and an HSL would increase the impact to the neighborhood. CC determined that an HSL in R-2 or R-3 may be possible if the neighborhood development could accommodate it. While HSL is outright in the R-2 and R-3 Zone, if done on a site that has an ADU, then a CU would be required to provide the additional impact review.)

d. Home Stay Lodging facility shall not be allowed within an Accessory Dwelling Unit.

(Annotated: If owner lives in ADU and has a bedroom for HSL, it would be the same impact as if it were in the primary unit, just in different unit. However, there could be other impacts that have not been researched yet, so it is recommended that the HSL shall be only in the primary unit at this time.)

4. No Kitchen. Home Stay Lodgings may not contain a kitchen.

5. Mobile vehicles. Home Stay Lodging shall not be located in motor homes, travel trailers, or other mobile vehicles.

Section 7.100, Off-Street Parking Space Requirements by Use, is deleted in its entirety and replaced to read as follows:

Use Category	Minimum Parking per Land Use
Bed and Breakfast, Inn	1 additional off-street space for each bedroom used for transient lodging plus off-street spaces required for the dwelling and associated uses such as assembly areas or restaurant.
Home Stay Lodging	1 additional off-street space for each bedroom used for transient lodging plus off-street spaces required for the dwelling.

(Annotate: This separated Home Stay Lodging from B&B as HSL cannot have the associated uses.)

Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

Section 11.020. Conditional Use, APPLICATION AND PROCEDURES, is deleted in its entirety and replaced to read as follows:

A. Procedures.

1. Application.

A request for a new, enlarged or otherwise altered development listed in the Development Code as a conditional use shall be made on forms provided by the Community Development Department. The Community Development Director shall specify what information is required for the application; additional information may be required where determined by the Director, and reviewed by the Astoria Planning Commission or Community Development Director.

2. Public Notice.

Public notice and procedures on applications shall be in accordance with the Administrative Procedures in Article 9 except as noted in Section 11.022.

B. Decision.

The Community Development Director and/or Planning Commission shall base their decision on whether the use complies with:

1. Applicable policies of the Comprehensive Plan.

2. Applicable aquatic and shoreland standards in Article 4.

3. For aquatic areas, whether the use or activity meets the resource capability and purpose of the zone in which it is proposed when such a determination is required in accordance with Article 5.

4. For aquatic uses, the findings of an Impact Assessment where required by Article 5.

5. Development standards of the applicable zone.

6. Basic conditional use standards of Section 11.030.

7. Appropriate conditional use standards of Section 11.130 to 11.170.

Section 11.022, Classification of Conditional Use Review, is added to read as follows:

11.022. CLASSIFICATION OF CONDITIONAL USE REVIEW.

~~The Community Development Director shall decide the classification of any conditional use application. If the Community Development Director believes that substantial issues are involved in a conditional use application, the Director may schedule a public hearing in accordance with the procedures specified in Sections 9.020 to 9.030.~~

Permits shall be processed and reviewed as a Type II or Type III permit in accordance with the procedures specified in Sections 9.020 to 9.030 as follows:

A. Type II Procedure (Administrative/Staff Review with Notice).

Type II includes minor conditional uses which are minimal uses and which will have little or no impact on adjacent property or users. Administrative approval by the Community Development Director of Type II conditional uses may be granted.

Type II conditional uses include:

1. Home Stay Lodging in conjunction with an Accessory Dwelling Unit.

2. Accessory Dwelling Unit in R-1 Zone.

(Annotated: HSL w/ an ADU is intended by City Code to be processed by the Community Development Director rather than the APC.)

B. Type III Procedure (Quasi-judicial with Public Hearing).

Type III includes conditional uses which are significant and are likely to create impacts on adjacent property or users. A Type III conditional use may be granted by the Planning Commission.

CITY OF ASTORIA
1095 Duane Street
Astoria OR 97103
503-338-5183

A 19-02

☐ Fee Paid Date 2-19-19 No fee By

Fee: $750.00

AMENDMENT

Property Address: City Wide

Lot _____ Block _____ Subdivision _____

Map _____ Tax Lot _____ Zone _____

Code or Map to be Amended: See attached

Applicant Name: Community Development Dept

Mailing Address: 1095 Duane, Astoria

Phone: 503-338-5183 Business Phone: _____

Property Owner's Name: Various

Mailing Address: _____

Business Name (if applicable): _____

Signature of Applicant: Rosemary Johnson

Planning Consultant, Project Manager, Rosemary Johnson

Signature of Property Owner: _____

Proposed Amendment: Amend zone uses for City Code reference to Home Stay Lodging (HSL) requirements; amend and add definitions on transient lodging; add HSL standards; add administrative conditional use process; clarify parking & sign for HSL;

For office use only:			
Application Complete:		Permit Info into D-Base:	
Labels Prepared:		Tentative APC Meeting Date:	
120 Days:			

FILING INFORMATION: Astoria Planning Commission meets at 7:00 pm on the fourth Tuesday of each month. Applications must be received by the 20th of the month to be on the next month's agenda.. A pre-application meeting with the Planner is required prior to the acceptance of the application as complete. Only complete applications will be scheduled on the agenda. Your attendance at the Planning Commission is recommended.

Briefly address each of the Amendment Criteria and state why this request should be approved. (Use additional sheets if necessary.)

A. Text Amendment (*Please provide draft language of proposed text amendment)*

Before an amendment to the text of the Code is approved, findings will be made that the following criteria are satisfied.

1. The amendment is consistent with the Comprehensive Plan.

CP supports tourism and transient lodging

2. The amendment will not adversely affect the ability of the City to satisfy land and water use needs.

Intent of amendment is to clarify and update existing codes to coincide with City Code on Home Stay Lodging and set standards for review including streamline the process for the conditional use as admistrative

B. Map Amendment *(Please provide a map showing the proposed area to be amended.*

Before an amendment to a zone boundary is approved, findings will be made that the following criteria are satisfied:

1. The amendment is consistent with the Comprehensive Plan:

2. The amendment will:

   a. Satisfy land and water use needs; or

   b. Meet transportation demands; or

c. Provide community facilities and services:

3. The land is physically suitable for the uses to be allowed, in terms of slope, geologic stability, flood hazard and other relevant considerations.

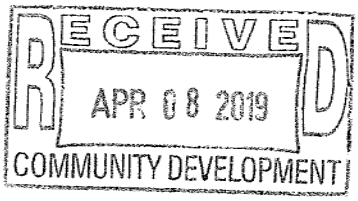
4. Resource lands, such as wetlands are protected.

5. The amendment is compatible with the land use development pattern in the vicinity of the request.

PLANS: A site plan indicating location of any proposed zone change is required.

Tiffany Taylor

From: Colonna, Brian <Brian.Colonna@Schwab.com>
Sent: Monday, April 8, 2019 11:34 AM
To: Tiffany Taylor
Subject: RE: Amendment A19-0, A19-02 and A19-04.



Hello Tiffanie,

Thank you for the call and your time today, it was very helpful.

As mentioned, my only concerned with the transient lodging amendment is the gray area of my wife and I splitting our time from our home in California and our home in Astoria (which will be primary) and considering the possibility of Air B&B when not in Astoria which may be a few months out of the year.

Understanding the need for housing in Astoria and what the City is trying to do, our situation seems a bit different in that it just wouldn't be practical to try to rent our unit a month here and there as I don't believe there is a local need for that. If there is we would be happy to consider but our local property manager doesn't see that need either.

Thank you taking my comments to the City Council for consideration.

Brian Colonna

From: Colonna, Brian
Sent: Monday, April 8, 2019 10:35 AM
To: 'ttaylor@astoria.or.us' <ttaylor@astoria.or.us>
Subject: Amendment A19-0, A19-02 and A19-04.

Hello,

I received the attached Notice of Public Hearing with respect to the above mentioned Amendments, however, I will not be in town on April 23 and would to receive information on the proposed Amendments.

Could someone call me at (415) 740-5786 or forward the Amendments with a summary of the proposed changes?

Thank you,
Brian Colonna

YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA

Mail 4-2-19
Email 4-2-19
Web 4-2-19
Pub 4-16-19

CITY OF ASTORIA
NOTICE OF REVIEW

The City of Astoria Planning Commission will hold a public hearing on Tuesday, April 23, 2019 at **6:00 p.m.**, at the **Judge Guy Boyington Building, 857 Commercial St.,** Astoria. The purpose of the hearing is to consider the following request(s):

1. *Continued from March 26, 2019 meeting: Miscellaneous Request (MR19-01) by Jeremy Lumachi for an interpretation as to whether a retail store that sells cannabis and related materials is classified as a "tourist-oriented retail sales and service establishment" per the Astoria Development Code. This review is limited to the interpretation of the terminology of the use and does not include review of the applicant's ability to meet the requirements for development within the S-2A zone or at a specific location.

2. * Continued from March 26, 2019 meeting: Amendment Request (A19-01) by Community Development Director to amend Development Code sections concerning Riverfront overlay zone requirements, reduce height in Bridge Vista Overlay to 28', add definitions for mass and scale, add standards for Outdoor Storage Area Enclosures, clarify how to apply various sections of the code for design review, clarify exceptions to building height, expand responsibilities of Design Review Committee, and other miscellaneous updates.

3. Amendment Request (A19-02) by Community Development Director to amend Development Code sections concerning Transient Lodging, amend and add definitions, add reference to City Code Home Stay Lodging regulations, establish standards for transient lodging in conjunction with Home Stay Lodging, allow administrative conditional use permits, limit transition of residential units in commercial zones to transient lodging, and other miscellaneous updates. Development Code Sections 1.400, 3.020, 7.100, 8.160, 11.020, 14.132, Articles 2, 9, 10; and Comprehensive Plan Sections CP.005 to CP.028 General, CP.190 to CP.210 Economic Element, CP.215 to CP.230 Housing are applicable to the request.

4. Amendment Request (A19-04) by Community Development Director to amend Development Code sections concerning miscellaneous issues, allow additional administrative variances, allow additional front and street side setback averaging, allow certain stairs as an exception to setback, allow arbor and gateways in fences, amend lighting standards, amend outdoor storage area enclosure standards, amend and add definitions, allow residential use behind commercial use in C-4 zone, codify several legal interpretations of code application, add 15' setback for parking from top of bank, expand non-conforming uses and structures to allow continuation of certain residential use, clarify off-street parking requirements, and other miscellaneous updates. Development Code Sections 1.400, 2.430, 7.100, 7.110, 7.170, 8.040, 8.050, 11.140, 14.510, 15.020, Articles 3, 9, 10, 12; Comprehensive Plan Sections CP.005 to CP.028 General, CP.190 to CP.210 Economic Element, CP.215 to CP.230 Housing are applicable to the request.

A copy of the applications, all documents and evidence relied upon by the applicant, the staff report, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A copy of the staff report will be available at least seven days prior to the hearing and are available for inspection at no cost and will be provided at reasonable cost. All such documents and information are available at the Community Development Department at 1095 Duane Street, Astoria. If additional documents or evidence are provided in support of the application, any party shall be entitled to a continuance of the hearing. Contact the City of Astoria Community Development at 503-338-5183 for additional information.

L-715

RECEIVED
NOV 09 2023
BY: TA/in person
and via email @ 3:31pm

November 9, 2024

Hearings Officer Alan Rappleyea
c/o Tiffany Taylor, Senior Planner
1095 Duane Street
Astoria, OR 97103

Re: Gilbaugh LLC - 1555-1569 Exchange Street Appeal

Dear Hearings Officer Rappleyea:

This letter is to respond to some of the questions that you raised at the public hearing:

1) Explain the parking requirements.

When we purchased the property in 2015, all of the parking for the building and the two cottages was on street and had been from the time of construction ~1920. Because of this historical use, we were not required to install any parking whatsoever to continue operating rentals without expending the money to purchase the extra parcel or develop it into a parking lot.

According to the 2017 ADC and with talking to Kevin Cronin in 2015/2016 assuming that there was no pre-existing dwelling use, we had to provide 1.5 spaces per two bedroom unit and 1 space for the 1 bedroom cottage.[1] This would have meant 9 spaces for us that could be entirely accommodated on the street because of the non-conforming nature of the use. However, in order to satisfy the "motel" category, we needed to add additional spaces (one per bedroom or

---

[1] The parking table at ADC 7.100 in place in 2017 provided:

Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one bedroom group housing units; Calculation is based on specific number of each type of units within the complex.

Hotels, Motels, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

ADC 7.030(A)(2) provided that up to 50% of the required parking area may be located off-site within 300 feet from the primary use.

a total of 11). We added 5, which exceeds the requirement but is more convenient for our guests. I have attached a series of google aerial images illustrating this change.

2) What are the programmatic differences between short term and long term rentals?

There was a great deal of testimony during the hearing suggesting that the improvements that we made to the Gilbaugh Building were pursued only to make it habitable and as a result, those efforts do not establish the start of a "transient lodging facility" use, as that term is used post-2019.

First, it is important to remember that the Gilbaugh Building has always been used as transitional housing in some form or another as zoning code allowed. The property is zoned C-3 and multi-family dwellings, motels and hotels were permitted outright in this commercial zone. The building was located right across the street from the hospital and, according to local historian John Goodenberger, it provided short term housing for visiting doctors and nurses. Although this transitional housing was not marketed for tourism the same way as it may be today, the Gilbaugh Building has offered transitional housing extending for weeks-long or month-long stays for individuals to some degree or another throughout its existence.

Second, it is also important to understand that when we purchased the property in 2015 from the Lower Columbia Preservation Society, all but one of the units were rented. Although the old carpet or painted floors, acoustic ceilings tiles with the upstairs units having rough cut cedar paneling on the walls and ceilings would have made it impossible to market to tourists, we could have continued to long-term rent the Gilbaugh in the state that it was in. Therefore, the structural improvements were not critical to making the building habitable, as some claimed at the hearing, but rather were necessary to market for short term rentals.

We knew that the only way to justify the cost necessary to rehabilitate the building was with the expectation of short term rentals. As reflected in the email from Sean Fitzpatrick at record p 108, corroborating our statements of our intent:

> "we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals. We discussed that hospitality was very different from habitation, so you would have to study the differences in laws pertaining to hospitality, and learn how to be a good neighbor and good host."

We restored the building in order to commercially market the units for short term rentals assuming a different return on our investment. Long term rentals have a market maximum that they can earn that does not fluctuate based on seasons or overall demand. We know this

because we have owned and operated nine long-term units throughout the City for the past ten years.

Further, the choices of interior finishes varies dramatically depending on whether you are going to long or short term rent. With long term renting, you want to select utilitarian finishes that will have greater durability over time. With respect to flooring, for example, we install carpet or vinyl flooring that will hold up against tenant furniture or dog scratching (allowing pets is something that must be assumed as part of ADA accommodation for long-term renters). Whereas with short term renting, we worked hard to restore original materials (the historic doors and other millwork), light fixtures and hardware knowing that we will regularly have cleaning and maintenance in the units to check for wear. All of the original straight-grain fir floors in the Gilbaugh Building were painstakingly restored. This was done because: (1) we provide the furniture; (2) we can prohibit pets; and (3) short term guests are more likely to appreciate the creaks, squeaks and the old building smell of a restored historic structure.

Another big difference between short and long term rentals relates to furnishings. Short term rental units not only have to be furnished but the kitchens must be supplied with pots, pans, dishes, utensils, bedrooms must have linens and blankets, and bathrooms must have towels and paper products. We have estimated that furnishings and supplies for each short term unit costs approximately $25,000. It is important to note that we supply washers and dryers only in our short term units and that we had been accumulating furnishings for our short term rentals (which was (and is) stored in the basement) from 2017. We spent months searching for period-appropriate craftsman furniture. See attached photos. In addition, in 2019, we built out a space in the basement to house linens, cleaning supplies as well as surplus supplies to have them centrally located but inaccessible to guests this was necessary because each unit has access to the basement through a service stairwell.

All of these actions reinforce our statements that we started moving down a path of short term rentals in 2017 when we created off-street parking fully aware that it would take years before the building was in a condition to allow short term rentals. We had no reason to believe that once we started down this path expending our retirement savings and borrowing on lines of credit, that the City would reverse course more than six years later.

3) When did short term renting activity actually begin?

The answer to this question depends on how you define “actually beginning.” As noted above, the four Gilbaugh units have always been in rental use for shorter or longer term periods depending on the needs of the community. The first advertising of a Gilbaugh unit on Airbnb occurred in the winter of 2021. More specifically, the breakdown for the units is as follows:

1555	F1	12/1/2021
1561	F2	3/1/2022
1557	F3	3/15/2022
1559	F4	4/1/2023

Although this was the first time that these units were advertised on Airbnb as available for rent on a daily basis, we secured the Transient Room Tax Registration for 11 bedrooms in December of 2020. Moreover, as the documentation set forth in the Hearings Officer's packet at pages 127-128 shows, the License number (5001435) and Customer number (019664) that City Staff Barbara Fryer assigned us on 12-15-20 came from our original 10-27-2017 business license and occupational tax receipt. This reinforces the City's conclusion that short term rental activity began in 2017 with the original Downtown Cottages tax registration, along with the parking.

As explained at the hearing, the units in the Gilbaugh Building were in the process of being prepared for short term rental use since 2017. In January, 2019, we were in the process of reinforcing the foundation. This required parking construction vehicles and materials in the parking lot. See attached photos. The noise and construction activity would have made it impossible to put any of the dwelling units into short term residential use at that time.

In the winter of 2019, as part of working on the foundation, we finished portions of the basement to accommodate short-term rental supply storage and started to accumulate furnishing for the units. In addition, our contractor continued the buildout of our parking area by constructing a retaining wall / parking barriers and marking the parking spaces.

In the spring of 2020, we were working on renovating the unit interiors. This included plumbing repairs, professional painting, woodwork restoration which were not necessary to make the units habitable but rather to market short term rentals. Throughout this time (2017 to 2023) but moving to one to two days per week beginning in 2020, we regularly went to garage sales, estate sales, antique stores and Facebook marketplace to find period furniture, art and other antiques to decorate units to period and maritime detail. These items were placed in the basement storage areas until they could be deployed into their respective short term rental. In the winter of 2020, we learned that water intrusion into the windows on the east and south wall were causing interior wall damage. As such, we were forced to scaffold and tarp the south wall and custom build and install metal window sills. See attached photos. This process was slow and weather dependent but was not complete until April 2021.

In March of 2021, we contracted with the Appellant's company West River Construction to construct a fence to prevent foot traffic of guests using a neighboring driveway. Although West River Construction did not complete the work as bid, we paid him anyway but had to pay someone else to finish the work, which was not completed until May 2021.

In January, 2022, we installed electronic locks on the porch entry door. In the spring of 2022, we purchased and installed security cameras on the porch and inside the building. (We did not have them at any of our long term buildings when we installed them. We have subsequently installed them in the parking lot at one of our long term buildings at the recommendation of APD.) In August of 2022, we purchased and installed Minut decibel meters to monitor sound, temperature and humidity levels in all units. (We do not have these in any of our long term units.)

At no point did we ever abandon or discontinue our efforts to market the Gilbaugh Building units for anything other than short term rentals and there was certainly never any gap of more than 12 consecutive months where we did nothing to prepare the building or moving in the fixtures and amenities necessary to operate short term rentals.

We have always worked transparently, honestly and inclusively with the city's various staff since our project began in 2015. We have continually and consistently progressed forward and knew this was going to be a slow process as money has always been tight and as this all-consuming task required vast amounts of our time and energy. Your denial of this appeal upholds the City of Astoria's multiple prior approvals, pays due respect to our vast good faith effort to restore and rehabilitate a neglected historical building and make it cashflow in a way to support itself while assisting to support our other long term rentals. And finally, your denial of this appeal states that land owner rights shouldn't be taken from hardworking, well-intended owners due to uniformed, inexperienced and misguided public opinion when such an investment was made as a conforming use.

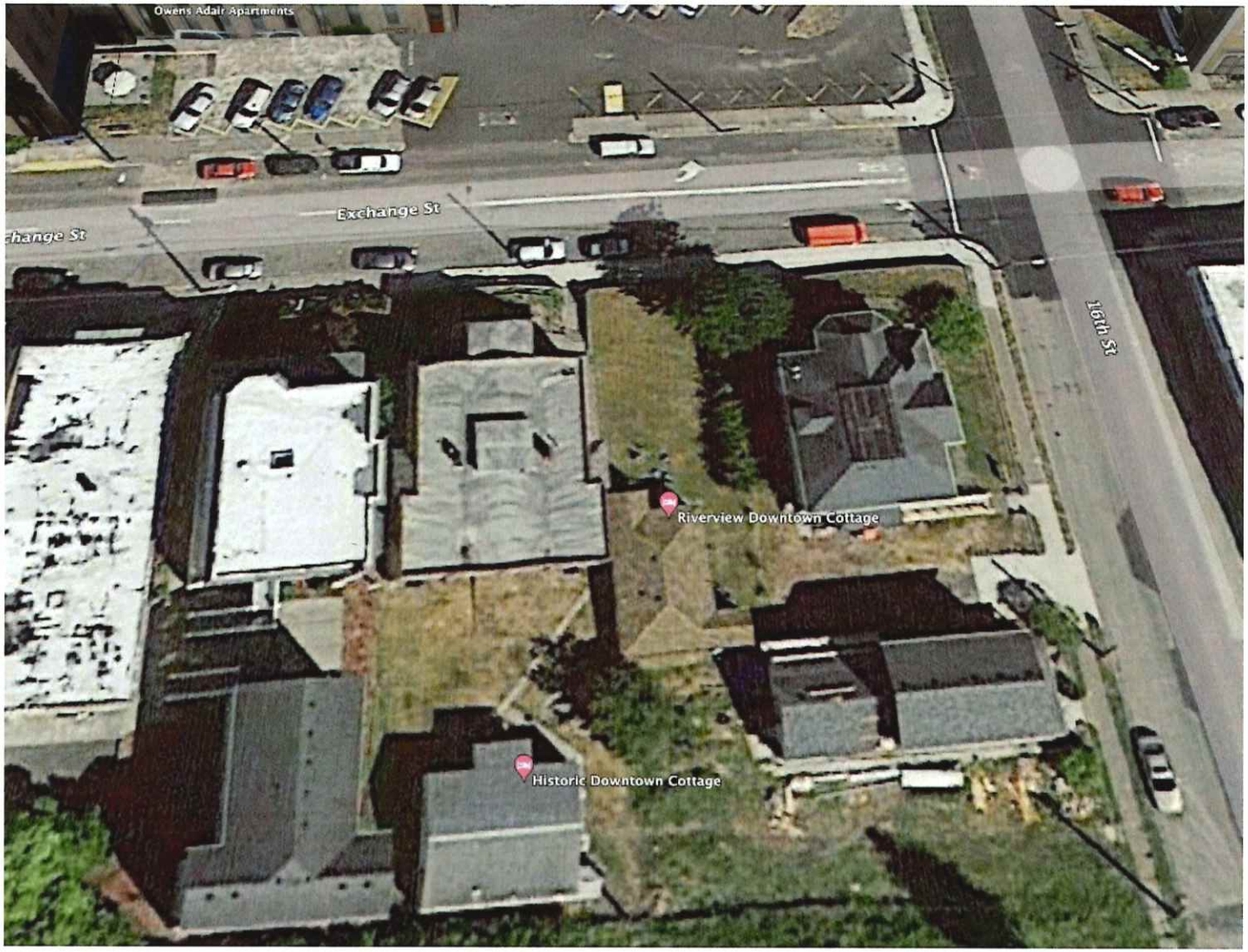
Sincerely,



Bob and Cindy Magie

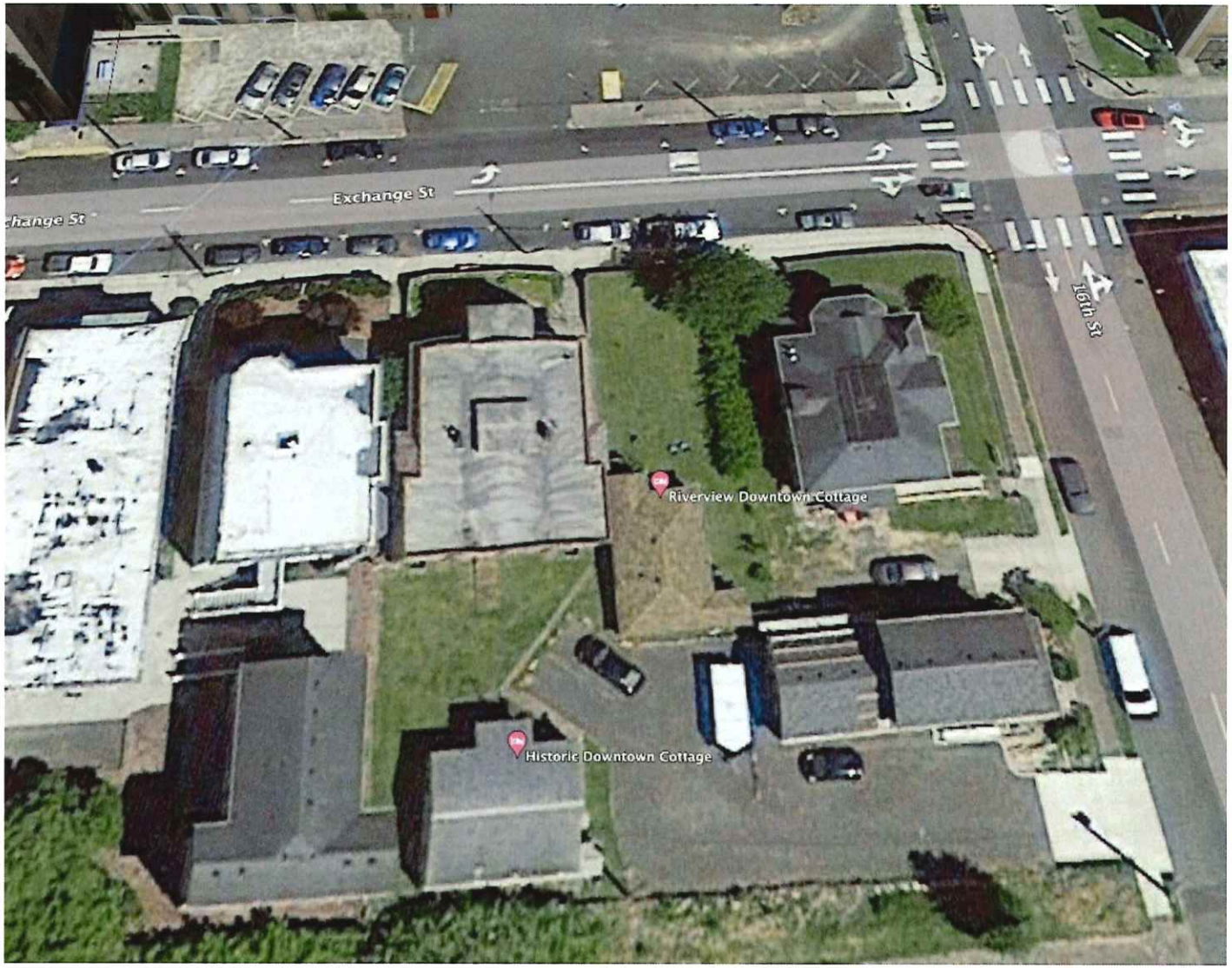
August 2016

Pre-parking lot development
as seen from Google Earth



June 2017

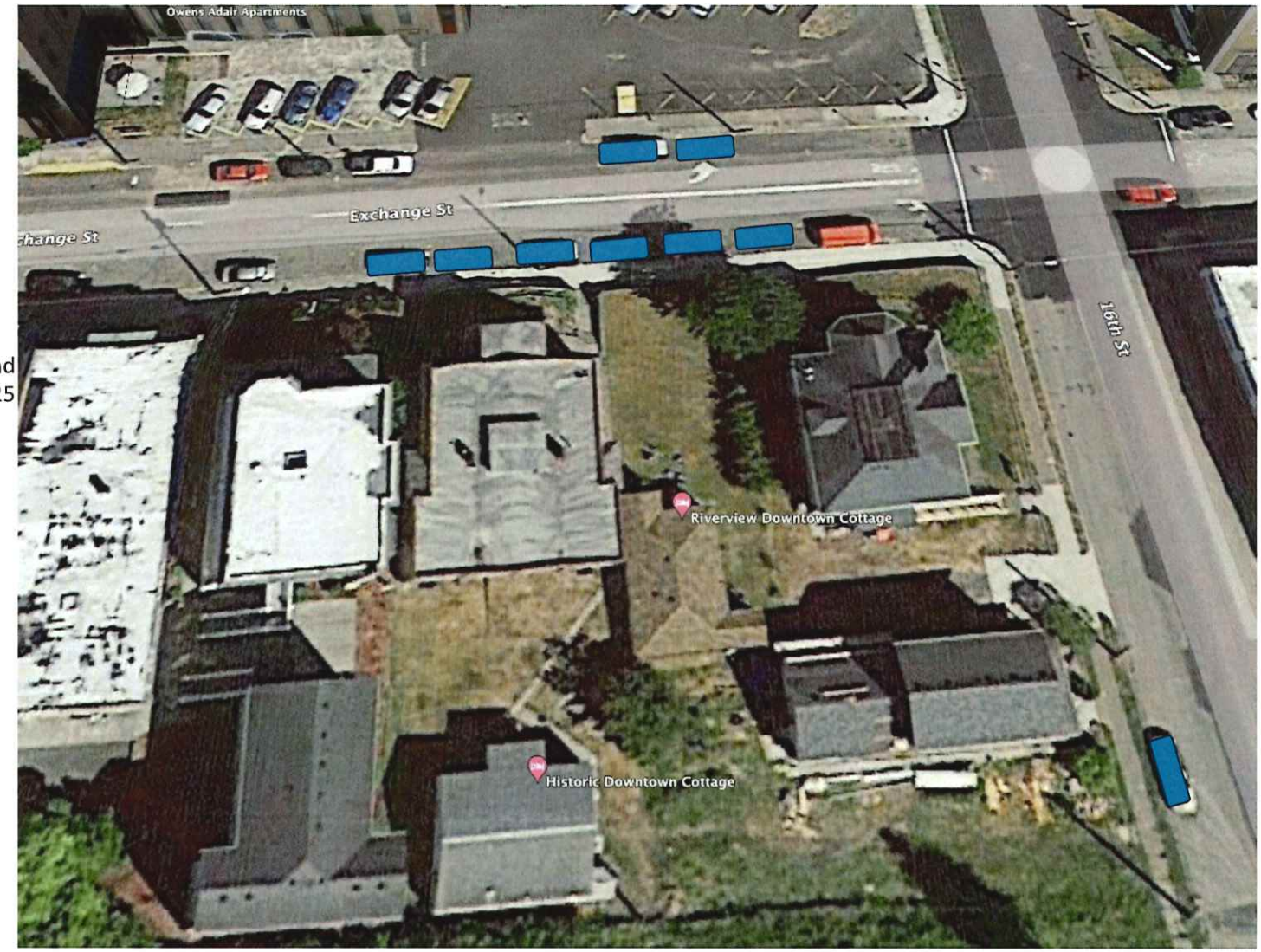
Post-parking lot development
as seen from Google Earth



August 2016

On-street parking is 1.5 per 2bdr unit and 1per 1bd or smaller (2017 ADC Article 7 table 7.100) thus 8.5 spaces and 9 shown (originally thought this was 1.25 spaces but later verified 1.5 in 2017 code).

Magie on-street



June 2017

STR parking requires 1 space/bdr (2017 ADC Article 7 table 7.100). 11 spaces required and 14 provided for guest convenience and overflow parking of our 6 STR units

Magie on-street

Magie STR off-street

Helligso STR off-street



October 2018

On going work on Gilbaugh building as seen from Google Earth

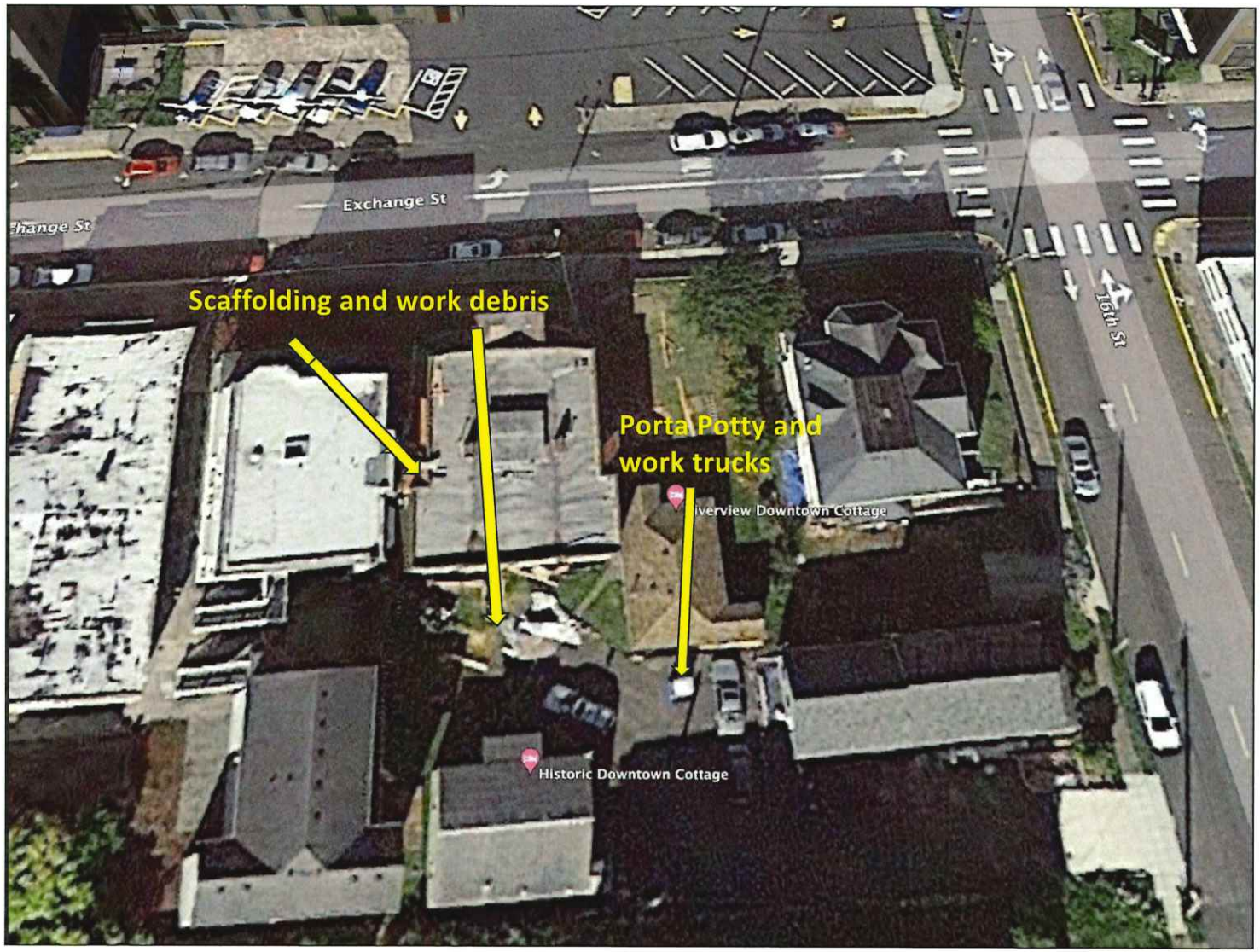




Photo taken 1/7/2019 shows construction materials and vehicles occupying parking



Photo taken 11/29/20 shows window restoration efforts



Exterior doors restoration efforts – Left and top photo original condition taken between 10/16/18, 10/22/18 and 11/14/18.

ANTIQUE FURNITURE SOURCED FOR SHORT TERM RENTALS



Craftsman style buffet sourced 9/24/22



Craftsman style dresser sourced 3/30/22



Doors and antique bench sourced 2/17/23



Dining room table sourced Oct, 2022

From: Mary Hunter
To: Planning
Subject: Short term rental - furnishings (AP23-02)
Date: Thursday, November 9, 2023 2:38:44 PM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Hello,

I attended the meeting last week where both sides in the rental dispute made their case.

The owner indicated that he intended to present evidence that his purchase of furniture supported that they were short term rentals from the date of the furniture receipts. However, there are plenty of furnished long term rentals, and especially there are furnished medium-term rentals that are popular with tenants such as visiting nurses and coast guard.

Here are some examples from a few different sites, found in about 15 minutes of googling:

https://www.movoto.com/rental/1432-franklin-avenue-astoria-or-97103/pid_x6u605jmcmab/

https://www.movoto.com/rental/76-w-bond-street-astoria-or-97103/pid_jy308gu7itab/

https://www.zillow.com/homedetails/2004-Washington-Ave-N-Long-Beach-WA-98631/2062233635_zpid/

https://www.facebook.com/marketplace/item/808610451057349/

Mary Hunter
3356 Grand Ave, Astoria, OR 97103

From: Jacob Helligso <jakehelligso@gmail.com>
Sent: Thursday, November 9, 2023 12:50 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Regarding Public Hearing of Magie property
Hi Tiffany,

Here is my statement for the open hearing from the meeting last week.

Jacob Helligso
jakehelligso@gmail.com

To all Pertinent Parties:

In March of 2015, after Bob and Cindy purchased the empty lot next to mine, we started discussing plans to create a shared driveway to increase access to his properties and create off street parking for both of us. After going through the process of planning and getting our lots legally changed to accommodate the plan, the construction of the driveway was completed in Early 2017.

During our conversation around parking in 2016 we discussed the plan to move his properties into Short Term Rentals. I was in the process of renovating my own home and was excited by this idea as I had been considering doing a similar thing in my home. After looking at the city codes we mapped out potential parking spaces for both properties with the express intent to meet the city's parking requirements for Short Term Rentals.

At that time there were no permits required for a commercial property to be used as an STR, and was considered an outright use of his property. Recognizing this, Bob and Cindy had set up appropriate paperwork and went through the regulations to comply with the city's codes shortly after buying the land with plans to move all of the units over as work was completed.

Simultaneous to the creating parking, Bob and Cindy began planning and rehabbing the buildings to create a pleasant atmosphere for future guests starting with the two smaller buildings (1565 and 1569) as they needed less work and cost. We had ongoing conversations weekly around the project and even added additional lighting, pathway access, and landscaping for all three of his buildings.

It was a multiyear process for both of us and we continued having conversations leading up to the first two being opened and I began managing their STRs in 2021.

The work to the four plex was still ongoing at that point and as tenants moved out, we consulted on each unit's renovation as it became available and the necessary funding to furnish them and put in appliances was generated.

At no point during our often more than once a week conversation over 7+ years did this plan change from the original plan to have all of the units be STRs. Then the new regulations that were voted into place in summer of 2019 with "retroactive" status, potentially jeopardizing months of work and money, which by itself seems extremely suspect

considering the immense time lapse. Bob and Cindy once again, preemptively consulted with the city to ensure that we could continue with the rest of the units. They received confirmation that we could continue. In no way or form did the city indicate that the plan needed to be adjusted or additional paperwork be filed until a FULL 3 YEARS LATER when they chose to say that the confirmation that we received was "just an employee's opinion" after receiving an outside complaint.

Had the idea that the work we were doing leading up to the "retroactive" policy change in 2019 not be approved, we could have immediately closed the building for long term rentals.

During that almost three years span we thought the matter settled and had continued converting units in the building into STRs and were in process of purchasing additional furnishings and creating plans for necessary work that needed to be done in each unit as they became available.

Also, in that multi-year span there were delays as the pandemic had hit and we sheltered in place. First and foremost, we did not feel it was appropriate to remove renters during a crisis of that level. And materials for the work that still needed to be done could not be obtained.

Immediately after the city changed their minds about the ongoing project Bob and Cindy once again worked with them to obtain permission that had already been given, now for the third time, leading to further complaints by people uninvolved in the process and unfamiliar with any background information or the multistep processes that had already been done and put in place.

Finally, I would like to note that Bob and Cindy went above and beyond in regards to working with the city at every step. We often consulted the standards and he had many conversations with staff and always sought to be in good standing with the work being done to achieve his goals to the point of even attending city council meetings and actively engaging with the local political structure to invest in and improve our community. The truth is that working with the city leads to frequently moving targets (8 month after the fact "retroactive" policies and "employee’s opinions") and is slow to resolve things, frequently citing lost paperwork (due to a lack of digital record keeping) and being too busy to schedule things. Since all of this could have been addressed by the city at any point in 2019, it seems unreasonable to think that the work of the Magie's, myself, and all of the people they employed for the work across more than 3 years is now rendered useless. So much of the work and expense over more than 7 years of planning and implementation was to create a "more than rental unit" atmosphere with quality of work and products used, infrastructural developments (including a parking area that goes above city standards for all six unit), perishable supplies provided for guest use, remodeling, furnishings, wages and cleanings, paying for utilities, additional taxes paid to the city county and state... and the list goes on. I cannot even begin to account for the total cost but from my perspective as a manager of these units it is easily over $500,000 in additional cost that is not just "providing an adequate and safe rental unit."

Sincerely,

Jacob Helligso

From: Melissa Barber
To: Planning
Subject: Writing in Support Appeal AP23-02
Date: Friday, November 3, 2023 2:48:10 PM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

I'm writing in support of the appeal (AP23-02) of the City of Astoria's approval of transient lodging use at 1555-1557-1559-1561 Exchange Street. The city's decision sets a dangerous precedent of making exceptions to our city code that prohibits converting long-term rentals into transient lodging when the units have been occupied by long-term renters after January 1, 2019. The city correctly upheld the code until a new mayor was sworn in. The new mayor, by his own admission, is a friend of and has been an advisor to the property owners, Bob and Cindy Magie. This sets the precedent that if you're connected to the right people in town, you can get an exception to a law that others have to follow in order to legally operate an AirBnB.

Much has been said about how the Magies emptied their savings and went into debt to prepare the quadplex for habitation. The implication seems to be that unless they can operate the units as short-term rentals, they're facing an undue financial burden. By doing the math, it's readily apparent that the Magies can easily recoup their expenditures by renting the units to tenants that stay longer than 30 days. And if renting to long-term renters is too long of a timeline to recoup their costs, they could list the property for sale and quickly get back what they paid and much more.

The Magies bought the property with a quadplex and two cottages for $375,000. They then invested about another $395,000 to fix up the quadplex. They invested a total of $770,000 for six units that are highly sought after in Astoria's long-term rental market. The quadplex units are in a desirable area that's very close to downtown and have two bedrooms and one bathroom. On the low end, they could rent each unit for $2,000/unit/month or $96,000 a year for the four units. This total doesn't count the AirBnB revenue from the two cottages on the property that they list for $200-$300/cottage/night nor the income from the illegally-operated AirBnBs in the quadplex. When you put it all together, they're likely to recoup their initial purchase and refurbishing expenses in five to seven years. If that schedule is too slow for their comfort, they could sell the property and easily get over $1 million, pay off their debts, and replenish their savings.

Two other factors appear to have influenced the city's decision: prior to January 1, 2019, the Magies constructed off-street parking spaces and they might have purchased furniture for the quadplex units. These are irrelevant and should not be considered when determining whether or not to approve their application. None of us can determine a person's intent when they do things nor do we know if they changed their intent at some point later. So, we must look for documentation that proves their intent and when they intended it.

I'll start with the assertion that the parking was constructed with the intent of putting all of the units on the property up as short-term rentals. The fact is they constructed the off-street parking at a time when the city required the same number of parking spaces for long-term or short-term rentals. Without documented evidence, how can any of us know that they constructed the parking explicitly for short-term rentals? They constructed parking for rentals, end of story.

Lastly, the notion that purchasing furniture prior to January 1, 2019 demonstrates their intent to use the units as short-term rentals doesn't make sense. Furnished apartments in Astoria are often rented to people who stay for longer than 30 days because the area brings in many traveling medical staff, pastors, and seasonal workers. This demographic is looking for the lowest-lift move they can, and furnished apartments fit that to a T.

Our city codes around transient lodging were put into effect in 2019 to help protect our city's housing for people who live here. I ask that you protect our city codes, avoid setting a dangerous precedent, and uphold the appeal.

Thank you,
Melissa Barber
1268 Kensington, Astoria

From:	Caitlin Callahan
To:	Planning
Subject:	Letter opposing short term rentals at 1551-1561 Exchange Street
Date:	Friday, November 3, 2023 11:00:11 AM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

November 3, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Letter opposing short term rentals at 1551-1561 Exchange Street (AP23-02)

To whom it may concern:

We are writing in regards to last night's hearing on the illegal short-term rentals in the Gilbaugh Apartments. As you know, in 2019, the Astoria City Council passed a zoning amendment that said that no commercially zoned apartment building that was housing long-term tenants as of January 1, 2019, could be converted into a short-term rentals. The council adopted this code amendment to prevent the further loss of Astoria's extremely limited housing stock to conversion into STRs. The City Council saw the impact that STRs were having on the housing supply and the need to preserve existing housing options for residents of Astoria.

In direct violation of the zoning code amendment, the owners of Gilbaugh Apartments began converting long term housing units to STRs in 2021. A compliant was filed against them and the city performed an investigation and determined that it was indeed a violation of the 2019 code changes and, in January 2022, ordered the property owners to stop. After this initial ruling, the property owners engaged in a year-long legal dispute with the city. In June of this year, the property owners SOMEHOW were able to secure a decision permitting them to convert all four long-term apartments into short-term rentals in June 2023. Our city (and Mayor) essentially rewarded them for breaking the law.

We want it to be known that we are adamantly opposed to the city's permissive decisions regarding these illegal STR conversions. The law should be enforced, and bad actors should be held accountable. The adage of "ask for forgiveness, not permission" is never applicable to law. The city and it's planning and zoning department should do everything possible to properly enforce the current regulations on STRs. We believe this hearing is a crucial test of the political will of local leaders to enforce the city's own laws regulating short-term rentals. Make no mistake, there are many residents watching this case and vested in it's outcome.

Please remember that Astoria remains a working class community. Affordable housing in our area is becoming harder and harder to find due to STR conversions. We are acutely aware of this struggle as one of us worked in food service

management. The lack of housing affordability/availability was often a barrier to securing an adequate workforce.

What makes our city vibrant and beautiful is its diversity, which includes class. We must stop pandering to those who are better off at the expense of those who are not. The interests of the many trump those of the few.

Sincerely,
Caitlin Callahan & Dustin Nord
90614 Hwy 202
Astoria, OR 97103

From: Brenda Harper
To: Planning
Subject: In opposition to converting Gilbaugh apartments to short term rentals
Date: Thursday, November 2, 2023 8:18:06 PM

> **Caution:** ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

I would like to move my support to not allow the Gilbaugh apartments building to be converted to short term rentals. I am a part of a group Protect Astoria Housing. Again, this is the very least that needs to be done to remedy the housing crisis. I can't emphasize enough the importance that we as a community support the people that live and work here. In a relatively short time, STR's have caused a lot of problems here for people. There should be swift regulation/or banning of it because it has resulted in the destruction of the well being of locals-all over this country and the world, in fact. We can choose to not allow them at all. If a traveler wants to become a part of the local culture, there are far less destructive activities for them to participate in on their vacations. It has just gone too far!. Here's an idea; rent a hotel room!
There needs to be very strong regulation or elimination of STR's altogether-They've caused problems for social stability all over the world. Online rental platforms have caused the locals in small towns to lose their houses and apartments!. Numerous articles documenting this literally take seconds to find with a quick internet news search: A 2019 BBC report titled The holiday island where locals have nowhere to live. And from another 2022 article of the Greek Reporter: The explosion of Airbnb rentals means "soaring rents for families, doctors leaving the islands because they can't find a home, and professors and teachers sleeping in cars," I personally know 3 friends that are living in their cars right now in Astoria! So, we know there is a direct correlation between unaffordable rents and homelessness. I was lucky enough to get into the impossibly long waiting list of affordable apartments downtown at the mixed use-retail below-and apartments above- the Astor apartments. We need to build more affordable housing and stop with this nonsense of stigmatizing low income housing, of which- that occurred with the housing proposal at Heritage square. And this should go without saying-No apartment should sit empty for half the year when we are in a housing crisis.
I would respectively say, Please do your due diligence as city officials to end this local displacement. Because that's exactly what short term rentals are doing.
Sincerly, Brenda Harper
Astoria, OR 342 14th street

--

Brenda

APPEAL HEARING
Astoria City Hall
November 2, 2023

CALL TO ORDER:

Hearings Officer Alan A. Rappleyea called the meeting to order at 5:29 pm.

ROLL CALL – ITEM 2:

Staff Present: Community Development Director Matt Brandmeyer, City Planner Tiffany Taylor, and City Attorney Blair Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, LLC.

APPEAL HEARING:

Hearings Officer Rappleyea explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were available from Staff.

ITEM 3(a):

AP23-02 Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking]) located in the C-3 (General Commercial [4-plex]) and R-3 (High Density Residential [parking]) Zones. The appellants cited: (1) the property was occupied as residential use after January 1, 2019, (2) the applicant's Occupational Tax application for transient lodging use only included the two "cottage" structures and not the 4-plex, (3) a potential bias on part of public officials, and (4) ADC § 2.390.J.1 as the specific criteria relied upon for the appeal.

Hearings Officer Rappleyea stated he did not have any ex-parte contacts or conflicts of interest to disclose. He asked if anyone objected to the jurisdiction of the City of Astoria to hear this matter at this time. There were no objections. He called for a presentation of the Staff report.

Planner Taylor reviewed the Findings and Conditions contained in the Staff report. Three letters opposing the appeal were received and had been included in the Appeal packet.

Hearings Officer Rappleyea called for testimony from the Applicant.

Bob Magie, 1466 Franklin, said his family had been working transparently with the City on a short-term rental (STR) project since 2015. The project was approved by the City multiple times and the revenue generated by the short-term rental provides jobs for the community, City tax revenue, customers to local businesses, and supports his other long-term rental apartments. Since selling his home in 2017, his family has moved into vacated units to do updates and restorations until another unit was vacated. The work was done as time and money allowed, as he did not receive grants or public funds for the restoration work. He dissolved his retirement funds, sold his commercial fishing boat, and took out loans and lines of credit. The debt is still being paid. The policy regarding STRs was non-existent when he purchased the property and evolved during his development process. As he became aware of changes, he consulted with the City to confirm the project status and requirements. During this time, he acted on good faith, transparency, and honesty. Changes in Staff over the years combined with changes to the rules have been disruptive and frustrating. However, he remained steadfast in his commitment to renting six units on a short-term basis. He believed legal, legitimate STRs like his provide a valuable service to communities. STRs are not cramped like a hotel room and allow families to spread out comfortably and affordably while they visit. STRs provide comfortable lodging for traveling tradespeople, Coast Guard families, nurses, engineers, visiting performers and artists, pastors, and vacationers who all spend money in the community. As a housing provider of short- and long-term rentals, he understood the need for housing in the area. His units provide a place for a work crew to stay and cook meals as they do a month-long

scientific study in the estuary. His family exclusively uses STRs when they travel because they are more comfortable and affordable. STRs are homes away from home that address valuable needs. His property is zoned for STRs as an outright use. After receiving a cease and desist in early 2022, he hired Carrie Richter to protect his business and property rights.

Carrie Richter, Bateman Seidel, 1000 SW Broadway, Suite 1910, Portland, stated the Magies purchased the property known as the Gilbaugh Building in 2015 with the intent to restore the structure for short-term residential use. Based on the Magie's inquiry at the time, City Staff confirmed that STRs were an outright permitted use in the C-3 Zone and that the only land use related requirement would be to upgrade the parking to provide one parking space per bedroom. The six units include 11 bedrooms and at the time, only nine parking spaces were available. In 2016, the Magie's obtained adjacent property and began constructing five additional off-street parking spaces bringing the total to 14 spaces, three more than needed to operate the STRs. In October 2017, the Staff Mike Morgan approved the parking plan, allowing for the units to be used as STRs. The Magie's submitted an occupational tax application to operate two STRs at 1565 and 1569 Exchange because the adjacent Gilbaugh Building four-plex needed major renovations before it could be put to use. The Magies continued to restore the building and make improvements necessary to rent the six units as STRs. In 2020, the Magies learned that the City was implementing a homestay lodging license for STRs. When the Magie's reached out to the City to confirm this, Heidi Dlubac said that since the property was in a C-3 Zone, the Magies were not required to confirm they could continue their STRs. After an inquiry from City Staff on December 25th, then City Planner Barbara Fryer emailed the Magie's to say their project was a permitted use and could continue as a lodging facility. The email was placed in the appropriate file to remind future Staff. At that point, the Magies believed they had done everything they needed to do and had received the Transient Room Tax registration and other licenses for the six units. The Magie's have always been upfront and honest that as soon as their units were ready and sufficiently restored and furnished for short-term use, they would be used as STRs. The Magie's have never waivered on this position. On every occasion that the City has asked, the Magie's have explained and Staff has agreed that they could continue.

- Astoria Development Code 3.160 says a non-conforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but due to amendments to those regulations no longer complied. The Code defines Start of use as "the process of physically moving into or site preparation necessary to begin occupation or operation," and states that "actual operation and/or business open to the public need not occur to consider the use has begun." That is the position the Magies have taken with respect to the Gilbaugh Building because it needed so much work. The record reflects all of the steps including shoring up the foundation walls, waterproofing the building, replacing the windowsills with metal, refinishing all of the floors, restoring all of the fixtures, and furnishing all of the units. The Magies put their entire retirement into the idea of eventually renting the units as STRs.
- When the Magies long-term leased 1559 Exchange to the Appellant Austin Kettleson, the Magie's were reinforcing the foundation in the basement and remodeling the unit directly below. The parking area was filled with supplies and construction vehicles. The noise and construction activity would have made it impossible to put a short-term renter in the unit at that time. Renting to Mr. Kettleson was not evidence that the Magie's abandoned their intent. The units were still being prepared and could not yet be rented short-term. There is no evidence that the Magies had discontinued their efforts to complete the development of the STRs in the Gilbaugh Building.
- She referred to the Holmes factors regarding vested rights. The ratio of expenditures that the Magie's incurred before the Code changed in 2019 was $265,000. The total cost of the project is $395,000. Most of this is debt that the Magie's are currently paying on.

The Magies had no notice that the zone changes were taking place and they did not learn of the zone changes until December. The Magies have acted with good faith. She requested the Hearing Officer recognize and give weight to the numerous times that Staff concluded that the units were allowed for STRs and that the Development Code recognizes non-conforming uses are established when the site is being prepared for the use. The site, the Gilbaugh Building, and the cottages were being prepared to accommodate STRs from 2017 when the parking was installed.

Hearings Officer Rappleyea asked if the parking built by the Applicant was the amount necessary for long-term rentals. Ms. Richter stated that at the time, there was no distinction in the Code between short-term and long-term. The parking was necessary for any use, but the Applicants' intent was always short-term. The motel use required 1.5 parking spaces for each bedroom, which is what the Applicants built because the Code did not include short-term rentals at the time.

Hearings Officer Rappleyea asked when the occupancy tax for the STR was first filed. Ms. Richter replied that the initial occupancy tax application was filed in 2018 but only for the two cottages because the Gilbaugh Building was still in disrepair. The occupancy tax for all six units was received in 2020 after former Planner Barbara Fryer sent the Applicants an email saying they could proceed.

Hearings Officer Rappleyea called for testimony in favor of the application.

Jacob Helligso, 539 16th St, Astoria, said he and Bob started this process long before the parking was built. He shared a driveway with the property and had agreed to reconfigure the adjacent lot with a portion of his rear lot to make parking for the units and for his house. He confirmed this was in 2015 or 2016. He was remodeling his house and decided to move forward with an STR in his upstairs. Bob and Cindy have gone above and beyond every time to make sure they followed all of the laws and regulations. He was impressed with their record keeping and how much they communicate. Bob and Cindy regularly attend meetings to make sure they met the standards. It was ridiculous that this was being discussed again for the fourth time. The property is commercially zoned and the use is allowed outright. He did not understand why this was an issue at this point. One person is personally upset with Bob, but that was a ridiculous reason to go through this process.

John Orr, 175 South Place, said he believed housing was needed in Clatsop County and he had been volunteering for efforts in that regard. He had also studied and practiced some land use planning law. He knew the Magie's who were wonderful people. The Magies had spent a lot of money, made a lot of effort, and played by the rules, but now risk losing their investment, which is unfair. The law recognizes the equitable aspect of the case. He asked the Hearing Officer to consider fairness to a person who tries within the best of their abilities and is financially upside down.

Hearings Officer Rappleyea called for testimony impartial to the application. Seeing none, he called for the Appellants' testimony.

Dan Kearns, attorney, P.O. Box 13015, Portland, gave a letter to Hearings Officer Rappleyea and Ms. Richter. He stated the director's decision addressed all six units, however, the two cottage units are not part of the appeal. The Code for the C-3 Zone talks about the date for reckoning a non-conforming use is the date on which restrictive zoning first became applicable, which is January 1, 2019. Throughout the record and the Applicant's testimony, there is a blending of work done and intentions about the cottage units versus the four-plex, including the Parking Plan, the Landscaping Plan, and the tax permit, which refer only to the cottage units. All of the Applicants' efforts were for the short-term renting of the cottage units. There was no indication that the four-plex was anything but an afterthought that occurred after January 1, 2019. The decision is code-driven and equity has no involvement in this appeal.

- The director's decision was premised on the "use start of" notion, which is defined in the Development Code. The definition of non-conforming use does not use that term and the non-conforming use provisions parallel state law, common law, and case law. The use was lawfully established and in existence on the say restrictive zoning was first imposed and continued without any gaps of more than 12 months from that point to the present. There was an error in the director's decision with the quoted definition of non-conforming use. However, the Code describes a non-conforming use as "existing lots, structures, and uses." The Code does not refer to the best intentions of work that had begun toward the "use start of." The term "use start of" is not in the non-conforming use Code. The Hearing Officer is stuck with the non-conforming use Code, which is consistent with Oregon non-conforming use law.
- There is a lot of evidence in the record about the effort, the cost, and the work to renovate the four-plex. The Applicants spent all that money to make the building habitable. In this case, habitability means long-term tenancy because that is all the Applicants used the building for until recently. The units were under long-term leases on January 1, 2019 and for several years after. The rental manager's letter says the first time the units were rented as STRs was December 1, 2021. Therefore, the STRs were not in existence when the building became a non-conforming use. All of the work was done for the cottage units. The Landscape and Parking Plans talk about the cottage units. The Parking Plan shows eight parking spaces. There are 11 bedrooms in all six units, so 16 parking spaces are necessary. He did not understand how the parking situation supported the Applicant's argument that they ever intended to rent the four-plex as STRs. Only the cottage units were STRs prior to January 1, 2019. He had never seen renovations or improvements done exclusively for use as STRs. The units were renovated to make them habitable and they were used as apartments. The leases were in effect from January 1, 2019 to August 21, 2022.

- There were three local cases that deal with vested rights and the notion that under a vested right, the use is a type of non-conforming use. The Hood River case focused on looking at a vested right through the lens of a non-conforming use, so the non-conforming use provisions applied. In this case, the director's decision skipped the two provisions in the non-conforming use Code that talk about discontinuances and conversions. If the non-conforming use is discontinued for more than 12 months, the non-conforming use no longer exists. In this case, the long-term leases show that the units were apartments for more than a year. The provision key to the Hood River case was that if the use is converted to a conforming use, the non-conforming use disappears immediately. In this case, all four units were used for long-term tenancy after January 1, 2019. The units were converted to a conforming use, a multifamily dwelling, which is allowed outright. That instantaneously terminated any right or claim the Applicant had to a non-conforming use. The building was renovated and has been used as apartments. The STRs were just an afterthought.

He requested the record be kept open for a week so he could submit the Staff report that has the findings that talk at length about the shortage and unavailability of affordable housing and the difficulty of having STRs in residential neighborhoods. Any ambiguities should be resolved in favor of achieving those purposes and promoting those policies.

Hearings Officer Rappleyea stated he would leave the record open. He confirmed his decision was Code-driven and explained that concerns about how the STR applies and its effect on the community were not for him to deal with. He would be focusing strictly on the non-conforming use sections of the Code. He asked if Mr. Kearns' argument was that the vested rights analysis did not apply and that he should only look at the plain language of the non-conforming use Code language.

Mr. Kearns clarified that the non-conforming use Code language could not be ignored.

Hearings Officer Rappleyea said he was concerned with Mr. Kearns statement that he could not tell the difference between STR construction and long-term rental construction. For the vested rights analysis, that would mean the intended use was strictly in the Applicant's head. The decision comes down to the Applicant's intent.

Mr. Kearns responded that the units were not rented short-term. The building had long-term tenants until 2022. The discontinuation and the conversion provisions of the non-conforming use Code could not be ignored.

Andrew Kipp, 461 Exchange St, said he and the other Appellants were everyday people who saw something wrong and decided to speak up. Staff showed incredible professionalism and patience. The primary issue with the City's decision to permit the four-plex to be converted from long-term rentals to STRs as a non-conforming use is that the evidence provided and the language and intent of the Development Code did not support the decision. The City claims the occupational tax permit, landscaping plan, and parking plan show the Applicant's intent to renovate the four-plex into STRs prior to the restrictive zoning. However, none of those documents say anything about the application to convert the four-plex into STRs. The addresses on those documents are not the four units. The City cites the stabilization work, updated finishes, and repaired windowsills. However, there is no way to discern whether those things were done to make the building habitable. Any building suitable for long-term rentals must have a stable foundation. All of this adds up to a deeply flawed decision and the loss of four homes for people in Astoria. The decision directly violates the standard and the purpose of the 2019 Code amendments.

Hearings Officer Rappleyea called for any testimony opposed to the application.

Brenda Harper, 342 14th St, stated she did not support the Gilbaugh Building being converted to STRs. Astoria is in a housing crisis. People who need to rent to live here long term should be considered first over someone who has all this money to put into renovating a house. The community supports the people who live and work here first. In a short time, STRs have caused a lot of problems for people. The apartments sit empty for half the year. She lived next door to an STR and no one has been there for three months. She knew three people who were homeless and living in their cars. There should be swift regulation or banning. She could not see why STRs should be allowed. A quick Google search shows how Airbnb has affected other places. People in Greece cannot afford to rent an apartment. New York City recently put very strict regulations on STRs. By allowing STRs, municipalities do not have the money to keep regulating them. Astoria needs to stop problems before they start because the housing crisis is already terrible. There are long wait lists to get into affordable housing. She asked that the Hearing Officer do due diligence and reject the request.

Hearings Officer Rappleyea encouraged Ms. Harper to address elected officials with her concerns.

Sarah Jane Bardy, 1661 Irving Ave., Astoria, said she opposed to the converting of units of that have been used as long-term rentals into short-term. If the Applicants were defending existing STRs, the story would be different. The rentals have been long-term for a significant period of time and she was opposed to taking them away.

Jordan Okoniewski, 4831 Cedar St., Astoria (via Zoom) said he believed that allowing a place that does long-term rentals to convert to short-term, especially when it appears there are Code violations, sets a dangerous precedent for a community that cannot take more destruction of long-term rentals. He was a teacher and knew other teachers who were sleeping on couches. He had seen homelessness and signs of housing insecurity everywhere. This conversion should not be allowed simply because the owners are nice or because it seem like maybe STRs were their intent at one time.

Hearings Officer Rappleyea called for the Applicant's rebuttal testimony.

Bob Magie, 1466 Franklin, stated that in 2017, when he finished the parking lot, there were five parking spaces. He applied for just the two cottages, but he built five parking spaces because in 2015 and 2016, Kevin Cronin said he was entitled to 1.5 spaces of on-street parking, which gave him a total of nine spaces. For the STRs, he only needed one parking space per bedroom. He had 11 bedrooms, so he came up with five more parking spaces, for a total of 14. If he had known the City was going to change all of the rules, he would have been present and he would have put all of the information down that showed all of the addresses. However, at that time, he had such a big effort in front of him, he knew he could rent short-term out of that building for a long time, so he just did not include it. Before 2019, he had the ability to go both ways, short-term and long-term. The work has been slow and progressed organically as he conducted improvements over time and as he could afford them. The transition to STRs was nearly $25,000 per unit and the transition began as tenants left. When Mr. Kettleson began his tenancy in 2018, the building was still under construction. STRs is a hospitality business driven heavily by guest experience and reviews. He still had large projects to complete in the basement and the other units and could not have expected good reviews from guests staying in a construction zone. However, he also required revenue to help pay for the debt acquired for the construction costs, so he listed the unit for rent knowing that as City Code allowed at that time he could still move back and forth between long-term and STRs. In 2019, work continued in the basement to reinforce the foundation. In March, renovations on the unit directly below Mr. Kettleson began. In October, framing began in the basement to create a storage area where items could be kept locked away from guests. The driveway was marked and a retaining wall was built in the off-street parking area. In May 2020, he improved the property with a new window, repaired windowsills, plumbing, exterior painting and updated interior furnishings. Progress was slow at this time due to COVID. He intended to rent the property as STRs, as evidenced by the off-street parking project. He needed to progress slowly as his access to funds would allow and as units naturally vacated. He did not think it was prudent to kick everyone out, nor could he afford to do so. After all the restoration work was finished, he still had to furnish the units at about $25,000 per unit. He could not afford to bring them all on at once. The Appellants include a very disgruntled ex-tenant, a new arrival housing advocate, and an ex-reporter who recently converted his home into an STR, all of whom own single-family homes. These Appellants feel his family and the City are wrong and should not be able to have STRs in the building because they feel they know what is best for his business, and property, and how he should spend his borrowed money. He is someone from out of the area buying up housing stock in residential zones and turning it into STRs. He is a housing provider who lives and works in this community and has thanklessly worked to restore and maintain a neglected historic commercial building that was properly zoned for STRs as outright use. The Appellants are not harassing a wealthy company from out of the area, they are harassing his family who are volunteers, job creators, and small business owners who have invested everything they have to provide quality housing. Instead of talking to him to gain clarification and understanding, the Appellants have chosen to complain about the use, shamed him on social media, threatened him with violence, and devised a spectacle for self-grandeur and to appease a personal vendetta. The Appellants stand to gain nothing from the appeal, just their need to hurt him. The Appellants do not provide housing and do not understand what it requires. His family had been providing housing for over 10 years. The City's regulations allow him to continue to provide six STRs. He asked the Hearing Officer to reaffirm the City's approval of his request by denying the appeal.

Ms. Richter requested the record remain open.

Hearings Officer Rappleyea confirmed the record would remain open for one week. He requested the Applicants and Appellants respond to the following questions in writing:

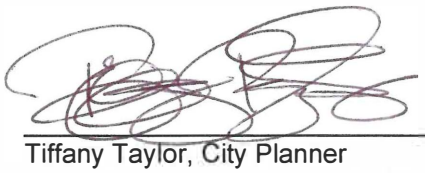
- How many parking spaces are on-street and how many parking spaces are off-street?
- When was the first unit furnished for short-term use?
- When were the units first rented as STRs?

He stated the record would remain open until 4:00 pm on November 9, 2023, rebuttal must be submitted by 4:00 pm on November 16, 2023, and the Applicant's final argument must be submitted by 4:00 pm on November 27, 2023.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 6:32 p.m.

APPROVED:



Tiffany Taylor, City Planner
and Secretary of the Astoria Planning Commission

Link to the Zoom Audio/Visual Recording:

AP23-02 Zoom recording

New Document – Received
Date: 11-2-2023 Permit #: AP23-02
Meeting: Appeal Notes: Submitted @ meeting

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November 2, 2023

Astoria Land Use Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Appeal of Gilbaugh LLC nonconforming use determination
1555, 1557, 1559 & 1561 Exchange Street
Appellants' Hearing Memorandum

Dear Mr. Rappleyea:

This firm represents the appellants in this land use appeal challenging a June 26, 2023 nonconforming use determination by the Planning Director regarding the dwellings at 1555, 1557, 1559 & 1561 Exchange Street.[1] This memorandum provides appellants' arguments for overturning the Director's decision and entry of an order denying the nonconforming use status of these four dwellings units (the "4-plex") as short-term rentals ("STRs").

A. Factual Background and Procedural Overview.

By way of general background, this case involves 6 dwellings: 2 cottages (1565 & 1569 Exchange Street) and a 4-plex apartment house (1555, 1557, 1559 & 1561 Exchange Street). All six dwellings are on land zoned C-3 (General Commercial), but this appeal pertains only to the Director's determination that the 4-plex has a nonconforming right to a STR use. The City previously determined that the 2 cottages had nonconforming STR status.

The 6 dwelling units were acquired by Robert and Cynthia Magie in March 2015, at a time when STRs (transient lodging) were allowed in the C-3 Zone. In 2017, the Magies obtained a business license and made improvements to the three structures for their use as rental housing. They obtained a business license and occasionally used the cottages for short-term Rental, but consistently used the 4-plex as long-term rental apartments.[2]

The present matter arose in response to an October 28, 2021 code complaint filed by Austin Kettleson, a long-term resident in the 4-plex, who complained of an illegal STR operating

1 The Director's decision purported to address the 4-plex at 1555, 1557, 1559 & 1561 Exchange Street plus the 2 cottage units at 1565 and 1569 Exchange Street. In this appeal, appellants challenge the Director's decision only as to the 4-plex units, and they do not challenge the Director's decision related to the two cottage dwellings.
2 The ADC draws a distinction between transient (short-term) lodging as being rentals for 30 days or less, and long-term rentals, which are 31 days or longer. Only transient lodging is subject to the City's Transient Lodging Tax.

out of his apartment building. In response, the City's determined that use of the 4-plex as STRs was unpermitted and unlawful and issued a Notice of Violation on January 10, 2022. The current owner appealed the City's determination to LUBA, and the appeal eventually settled with the owners agreeing to submit a nonconforming use verification application.

As part of its nonconforming use verification application, the current owner argued that the Magies had always intended to use all 6 dwelling units for short-term rental (transient) use. However, the evidence provided with the application only shows an intent and affirmative steps to use the 6 units as rental dwellings, not necessarily short-term rental, and all of the actual STR (transient) use reflected in this record is limited to the two cottage units, not the 4-plex units. For example, the Magies' October 27, 2017 Occupational Tax Permit for the transient lodging use (Appeal Packet p 10-11) is only for the cottage units at 1565 & 1569 Exchange Street. The Magies' October 23, 2017 parking plan for their STR operation (Appeal Packet p 9) specifically states that the parking is only for the cottage units (1565 & 1569 Exchange Street). The Magies' November 2, 2017 landscaping plan (Appeal Packet p 12-13) specifically states that the landscaping plan is only for the cottage units (1565 & 1569 Exchange Street). There is no evidence that any of the plans required for transient lodging use of the 4-plex were ever submitted, at least not before January 1, 2019.

The Director's decision on the nonconforming use verification acknowledges all of the plans, permits and other steps the Magies took to put the two cottage units to STR (transient lodging) use, but then credits all of that evidence to the 4-plex. The documents in the record show that none of these permits, plans or other steps pertained to the 4-plex, which has consistently been used for long-term rental tenancy. The Director's decision also conflates steps taken by the Magies to prepare the 4-plex units for rental tenancy, not their use for STR tenancy. In that light, the Director conflated without justification long-term rental use with STR use.

The Director's decision rests upon an interpretation of the ADC §3.160 (Nonconforming Lots, Uses and Structures) and ADC 1.400 (definition of "use, start of") to conclude:

> These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

From these evidentiary determinations and this code interpretation, the Director concluded that the Magies had established a lawful nonconforming STR (transient lodging) use of the 4-plex. The Director's decision did not address, however, the discontinuation of nonconforming use or change of nonconforming use provisions in ADC §3.180(B) & (C), respectively.

B. <u>The Law of Nonconforming Uses Generally and Under the ADC</u>.

Critical for this nonconforming use analysis is the date on which restrictive zoning is first applied to render a lawful, existing use nonconforming. In this case, that date is January 1, 2019 - when the following provision took effect to prohibit STRs (transient uses) in the C-3 Zone:

> 2.390 USES PERMITTED OUTRIGHT
> The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:
>
> * * *
>
> J. Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:
>
> 1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.
>
> 2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

At common law, a nonconforming use is one that was lawfully established and operating on the date restrictive zoning was first imposed and has been maintained ever since without any gaps or lapses in excess of 12 months. This is how ORS 215.130(5) operates:

> In determining whether an existing use of property has a right to continue as a nonconforming use, there generally are four inquiries a local government must make. First, did the use lawfully exist at the time the zoning which first prohibited the use was applied? Second, what was the nature and extent of the use at the time it became nonconforming? Third, if the use lawfully existed at the time restrictive zoning was applied, has the use since been discontinued or abandoned such that the right to continue as a nonconforming use was lost? Finally, if the nature and extent of the present use represents an alteration of the use in existence at the time the use became nonconforming, do those alterations comply with the standards governing alteration of nonconforming uses?

Spurgin v. Josephine County, 28 Or. LUBA 383, 386-387 (1994) (emphasis added).

Cities are not bound by ORS 215.130 but only by the local code's nonconforming use provisions,[3] in this case, Astoria Development Code ("ADC") §3.180 (Nonconforming Uses). Nonetheless, many of the steps described above are instructive here, and many are part of the ADC. Case law makes clear that evaluating the existence and magnitude of a nonconforming use includes an evaluation of the "nature and extent" of the use on the operative date restrictive zoning is imposed and whether the same nature and extent of use is maintained without any discontinuances or conversions to a conforming use. These notions are reflected in Astoria's definition of "nonconforming use," similar to how the term is construed in case law:

> NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.

ADC §1.400 (emphasis added).

Additionally, Astoria's nonconforming use provisions in ADC §3.180(B) & (C) have the following change and discontinuation provisions:

> B. Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located.
>
> C. Discontinuance of Nonconforming Use.
>
> 1. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows:

C. Errors in the Director's Decision.

As a preliminary matter, the proponent of a nonconforming use right has the burden of proving the existence of the claimed right and establishing all of the elements required to substantiate a nonconforming use.[4] This case and the Hearings Officer's decision are strictly controlled by the language in the operative ADC provisions and evidence in the record.

1. First Evidentiary Error: Evidence in the record shows that none of the preliminary steps taken to comply with transient lodging (STR) use requirements were taken for the 4-plex. There is no evidence that any preliminary steps were taken to use the 4-plex as STRs, much less actual STR use, until after January 1, 2019.

3 *Hood River Sand, Gravel and Ready Mix v. City of Mosier*, 24 Or. LUBA 381, 385 (1993). ("...ORS 215.130 and appellate court cases interpreting and applying that statute, while perhaps suggestive of how the city might interpret and apply its zoning ordinance, are not binding on the city.")
4 *ODOT v. City of Mosier*, 36 Or LUBA 666, 671 (1999), citing *Lane County v. Bessett*, 46 Or App 319, 612 P2d 297 (1980).

The Director's decision purports to rely on the Magies' Occupational Tax Permit, parking plan and landscape plan as evidence that they intended to use the 4-plex for STR use and these documents show preliminary steps to use the 4-plex for transient lodging. In fact, all of this evidence relates solely to the two cottages (1565 & 1569 Exchange Street) not the 4-plex (1555, 1557, 1559 & 1561 Exchange Street). *See* the following attached exhibits:

- October 27, 2017 Occupational Tax Permit listing only 1565 & 1569 Exchange Street required by AMC §§8.000 to 8.035, stating the use of the cottage units for "vacation rental," with no mention of the 4-plex.

- October 23, 2017 parking plan required for Transient Lodging uses by ADC §7.100 (minimum parking requirements) and specifically notated by the Director as applying only to the cottage units at 1565 & 1569 Exchange Street, with no mention of the 4-plex.

- November 2, 2017 landscape plan required by ADC §2.415 for hotels, motels and other transient lodging uses and specifically notated as applying only to the cottage units at 1565 & 1569 Exchange Street, with no mention of the 4-plex.

While the Magies may have taken these preliminary steps with the intention of putting the cottage units to a transient lodging use, none of these documents indicate any similar intention for the 4-plex. In fact, the Magies did not register the 4-plex units for transient lodging use until December 15, 2020 (Appeal Packet p 24-25) – long after the January 1, 2019 date at which such use became unlawful pursuant to ADC §2.390(J). The Magies did not pay any transient room taxes on the 4-plex units until after December 15, 2020 because all four units were rented as apartments under long-term leases well into 2020 and beyond.

2. **Second Evidentiary Error: Evidence in the record shows that the 4-plex has consistently been used for long-term rental tenancy (lease terms longer than 30 days), which is inconsistent with a nonconforming claim of transient lodging use.**

On the date that restrictive zoning took effect (January 1, 2019) to prohibit transient lodging in the C-3 Zone or soon thereafter, at least 3 of the units in the 4-plex were under long-term tenancy leases. The following attached documents show how the 4-plex units were actually used on January 1, 2019:

- 1557 Exchange Street: Long-term lease with initial term of May 15, 2018 to May 15, 2019; although, the lease was extended to June 30, 2021. The lease states that only on-street parking is available; whereas, ADC §7.100 requires at least one off-street parking space per transient lodging guest.

- 1559 Exchange Street: Long-term lease with initial term of December 1, 2018 to August 31, 2019; although, the lease was extended to August 21, 2022, at which point the Magies terminated the lease to move one of their relatives into the apartment. The lease indicates no on-site parking spaces associated with the apartment, contrary to the one off-street

space required by ADC §7.100 for each transient lodging guest.

- 1561 Exchange Street: Long-term lease with initial term of July 18, 2019 to May 31, 2020; although, the lease was extended to May 31, 2021. The lease indicates no on-site parking spaces associated with the apartment, contrary to the one off-street space required by ADC §7.100 for each transient lodging guest.

In response to the October 28, 2021 code complaint from one of the long-term tenants of the 4-plex that the owners were unlawfully converting one of the 4-plex units to a transient lodging use, City staff investigated. As part of that investigation, Diane Christiansen reported the following in a January 19, 2022 email to Megan Leatherman, both Community Development Department officials (Appeal Packet p 69-70):

> The complaint is actually from one of their tenants who said [the Magies] are converting the long-term rentals to short-term, and are trying to make them move, and the noise with the short-term renters has been impacting them.
>
> I spoke with Bob [Magies] yesterday afternoon, but in our conversation, he indicated that the small cottage behind the apartment complex is the only short-term rental, and then later also said that they've been converting the apartments "over the years" to short-term rentals and it's all allowed because they got their business license in 2017. Bob also stated that they initially converted a couple of units to short-term, but stopped when their daughter was ill, etc. and now plan to continue their "authorized" business.

The City's investigations in the code enforcement proceeding lead to the conclusion that only the cottages had been used for short-term (transient lodging) rental use, not the 4-plex, and that STR use of the 4-plex must stop:

> However, the multi-family building, addressed 1555-1563 Exchange, was not authorized by Barbara, and is not in compliance with the above referenced city codes. Whether or not you interpreted Barbara's email to include 1555 Exchange is inconsequential to the City as it is violation to multiple City Codes. When the Occupational Tax/Business License was approved, it was also approved under the intent of approving 1565 Exchange and 1569 Exchange (Downtown Astoria Cottages) only.
>
> None of the units in 1555-1563 Exchange may be Homestay Lodging/Airbnb/ Transient. They all must remain long-term rentals, including the apartment listed as a short-term rental on Airbnb.com (Link: https://abnb.me/92mmQLb5Wmb), which was not being used as a short-term rental prior to January 1, 2019.
>
> Please cease the transient lodging use for the apartment rental; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms for the apartment rental only. Any future listings for short-term rentals at 1555-1563 Exchange may trigger

code enforcement action per Astoria Municipal Code. You may continue to use the two cottages at 1565-1569 Exchange as short-term rentals.

January 26, 2022 Notice of Violation to the Magies (Appeal Packet p 83).

As part of the City's 2022 investigation, the Magies' property manager and rental agent (Pacific Capital Management) provided an April 28, 2022 letter (Appeal Packet p 109-110) stating the Magies' units were first used for short-term rental (transient lodging) purposes on the following dates, prior to which all of the 4-plex units were under long-term rental leases:

4-plex:
1555 Exchange Street.....December 1, 2021
1557 Exchange Street.....April 17, 2022
1559 Exchange Street.....long-term tenant holding-over prevented access.
1561 Exchange Street.....March 15, 2022

Cottages:
1565 Exchange Street.....September 1, 2025
1569 Exchange Street.....April 21, 2021

This evidence shows there was no actual short-term rental (transient lodging) use of the 4-plex units until long after the date restrictive zoning was applied in the C-3 Zone (January 1, 2019). This evidence shows that transient lodging (STR) use of the 4-plex did not actually exist in any of the 4-plex units until nearly two years after the date on which the use became unlawful.

3. **Third Evidentiary Error: The only preliminary steps reflected in this record for the 4-plex units were extensive interior renovations to kitchens, baths, and living areas plus foundation and exterior repair and renovation – all of which are improvements needed and to make the 4-plex habitable. None of these improvements, renovations or preliminary steps is uniquely related to STR use, as opposed to long-term apartment use.**

The April 28, 2022 letter from the owner's rental agent (Appeal Packet p 109-110) and the Magies' April 28, 2022 Statement of Progress and Development of Short-Term Rentals on 1555 to 1569 Exchange Street (Appeal Packet p 111-114) describe the interior and exterior renovations and other improvements the owners completed to make the units habitable. All of these improvements were needed to make these units rentable as long-term apartments, and none were uniquely suited to their use as STRs. In fact, it is hard to imagine any improvement to an apartment that is uniquely suited to a STR use, as opposed to simple long-term residential use of the unit. The Director's decision credits all of these improvements and renovations as being preliminary to a transient lodging use. In fact, these renovations are uniquely suited only to residential use, including multi-family use, which is how these units were actually used as a conforming use in the C-3 Zone. *See* ADC §2.390(K).

4. **First Legal Error: The Director's reliance on the defined term "use, start of" was legal error because the expression is not found in any of the City's nonconforming use regulations or the definition of nonconforming use.**

The Director's decision is predicated on the Magies' perceived first steps or preliminary steps as being sufficient to establish the existence of the transient lodging use at issue in this case. This notion stems from the Director's reliance on the ADC definition of "use, start of." However, that expression does not appear in the definition of "nonconforming use" in ADC §1.400 nor in any of the City's nonconforming use regulations in ADC 3.180. Rather, the actual words from City's definition of "nonconforming use" controls:

> A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.

ADC §1.400 (emphasis added).

"[W]hen it first occurred" is substantively different than "start of use." "[F]irst occurred," in the context of a nonconforming uses means "actual existence" and does not embody mere preliminary steps or unrealized intent, as the Director incorrectly assumed. Moreover, the Director's reliance on so-called preliminary steps or presumed or unrealized intent as sufficient to establish the use is inconsistent with traditional notions of nonconforming uses at common law or under ORS 215.130, which require "actual existence." *Spurgin v. Josephine County*, *supra*, 28 Or. LUBA at 387 (1994) ("First, did the use lawfully exist at the time the zoning which first prohibited the use was applied?").

> Where a lawfully established existing use would require local government approval of a variance or conditional use permit if the use were built under current regulations, that existing use is a nonconforming use.

Ferguson Creek Investment Co. v. Lane County, __ Or LUBA __ (Or LUBA 2022-099, June 9, 2023, slip op at 2, fn 1), citing *Miller v. City of Dunes City*, 18 Or LUBA 515, 519-21 (1989) and *Morse Bros., Inc. v. Clackamas County*, Or LUBA 188, 194-96 (1989), emphasis added.

> We refer to "[t]he lawful use of any building, structure or land at the time of enactment or amendment of any zoning ordinance or regulation" that may be continued as a "nonconforming use." The term "nonconforming use" is not defined in ORS 215.130 or elsewhere in ORS chapter 215. The Court of Appeals has explained:
>
> > "Generally, ' [a] lawful nonconforming use of land is one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance.' ... ORS 25215.130(5). To summarily prohibit a lawfully established use of land 'would constitute a taking without compensation.' ... 'Under state and local law, a nonconforming

> use can continue until abandoned, but alterations or replacements of the use are regulated.'

Ferguson Creek Investment Co. v. Lane County, __ Or LUBA __ (Or LUBA 2022-099, June 9, 2023, slip op at 2), internal citations omitted, quoting *Morgan v. Jackson County*, 290 Or App 111, 114, 414 P3d 917, *rev den*, 362 Or 860 (2018), emphasis added.

The other element missing from the Director's decision, yet is a critical part of traditional notions of nonconforming uses under common law and ORS 215.130 is a determination of the "nature and extent" of the use at the time it became nonconforming (January 1, 2019). The "nature and extent" of the alleged nonconforming use at issue in *ODOT v. City of Mosier*, 36 Or. LUBA 666 (1999), was a critical consideration, and the City of Mosier's failure to evaluate those elements was cause for remand:

> The nature and extent of the nonconforming use do not depend on whether the entity performing the activity is a landowner, permittee or licensee, but on the nature and extent of the nonconforming activities themselves. In its proceedings on remand, the city must include an analysis of uses on the subject property that have continued by virtue of being carried out by ODOT, its lessees and permittees.
>
> However, the city does not have to consider the use of the haul road that is attributable to activities that are not subject to the nonconforming use determination (*e.g.*, use of the quarry for target shooting), or use of the haul road that does not arise from the nonconforming use on the property (*e.g.*, use of the haul road to haul rock from Houston's quarry).

ODOT v. City of Mosier, 36 Or. LUBA 666, 678 (1999), fn 4. *See also Spurgin v. Josephine County, supra*, 28 Or. LUBA at 387 (1994) ("Second, what was the nature and extent of the use at the time it became nonconforming?").

Even under the Director's interpretation, transient lodging (STR) use of the 4-plex units did not exist as of January 1, 2019; therefore, there is no way to evaluate the "nature and extent" of the claimed nonconforming use at the point of its inception, *i.e.*, the date on which restrictive zoning was first imposed. The only conclusion to draw from that factual reality is that the claimed nonconforming use, in fact, did not exist until long after January 1, 2019.

5. Second Legal Error: The Director's decision ignores evidence of gaps in the claimed nonconforming use that exceed 12 months and conversion of the 4-plex to a conforming multi-family dwelling, both of which destroy any nonconforming use right that may have existed.

Similar to ORS 215.130, any discontinuation of a nonconforming use for a period of one year in Astoria destroys the nonconforming use right. ADC §3.180(C).[5] And any change of a nonconforming use to a conforming (allowed) use for any period of time also terminates the nonconforming use right. ADC §3.180(B).[6] The record contains evidence that, even if there was a nonconforming STR use of the 4-plex as of January 1, 2019, subsequently, there were gaps of more than 12 months as the owners rented all four units for long-term tenancy. Pursuant to ADC §3.180(C), this destroyed any claim of nonconforming transient lodging (STR) use that may have existed in the 4-plex after January 1, 2019. *See* long-term leases for the 4-plex units, Pacific Capital Management April 28, 2022 letter and city staff e-mails reporting the owner's statements about gaps in STR use.

In the C-3 Zone, multi-family dwellings are a conforming (allowed) use. Even if there were a valid nonconforming claim to transient lodging (STR) use of the 4-plex as of January 1, 2019, that use right was destroyed by operation of ADC §3.180(B) as soon as the owner converted the 4-plex to a conforming multi-family dwelling for any length of time. The April 28, 2022 letter from the owner's rental/management agent (Pacific Capital Management) states that none of the 4-plex units was put to STR (transient lodging) use any earlier than December 1, 2021. The long-term leases show that these units were used for a conforming long-term tenancy until that time (or longer).

6. **Third Legal Error: To the extent, the Director's decision reflects a vested rights theory of an inchoate nonconforming use, that too must fail because the owners' preliminary transient lodging steps were limited to the two cottages and not the 4-plex; all work done on the 4-plex was related to making the units habitable generally with no steps focused on short-term rental as opposed to long-term apartment use, and the owners waited nearly 2 years after transient lodging use was outlawed before short-term renting the 4-plex units.**

The theory underlying the Director's decision is the vested rights doctrine described by the Oregon Supreme Court, which appears to be consistent with the application request:

> The test of whether a landowner has developed his land to the extent that he has acquired a vested right to continue the development should not be based solely on the ratio of expenditures incurred to the total cost of the project. We believe the ratio test should be only one of the factors to be considered. Other factors which should be taken into consideration are the good faith of the landowner, whether or not he had notice of any proposed zoning or amendatory zoning before starting his improvements, the type of expenditures, i.e., whether the expenditures have any relation to the completed project or could apply to various other uses of the land,

5 "Discontinuance of Nonconforming Use. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows..." ADC §3.180(C)(1).

6 "Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located." ADC §3.180(B).

> the kind of project, the location and ultimate cost. Also, the acts of the landowner should rise beyond mere contemplated use or preparation, such as leveling of land, boring test holes, or preliminary negotiations with contractors or architects. ...

Clackamas County v. Holmes, 265 Or. 193, 198-99, 508 P.2d 190, 192-93 (1973).

The *Holmes* vested rights doctrine has since been tied to nonconforming use rights:

> In *Fountain Village*..., we and the Court of Appeals relied on *Holmes* to characterize uses for which there are vested rights to develop or complete as "inchoate nonconforming uses." We held that because uses for which there are vested rights to develop or complete are a species of nonconforming use, the statute at ORS 215.130 that protects, regulates, and limits nonconforming uses, and local code provisions governing nonconforming uses, also apply to vested rights, including a determination of whether a vested right has been discontinued. ...

Land Watch Lane County v. Lane County, __ Or LUBA __ (LUBA No. 2017-077, slip op. at 9-10, February 26, 2018), citing *Fountain Village Dev. Co. v. Multnomah County*, 39 Or LUBA 207, 221 (2000), *aff'd* 176 Or App 213,220-24,31 P3d 458 (2001).

Since *Fountain Village*, LUBA and the Court of Appeals have held that local nonconforming use provisions must be applied to vested right claims that have lapsed or been discontinued. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or. LUBA 392, 410 (2012), citing *Crosley v. Columbia County*, 65 Or LUBA 164, *aff'd* 251 Or App 653, 286 P3d 911 (2012). Thus, *Holmes* and its progeny suggest that a claim of an inchoate nonconforming use, *i.e.*, one that was not fully developed before restrictive zoning came into effect, must be analyzed as a vested right claim, which implicates the original *Holmes* factors.

> The right that the holder of a vested right has is the right to continue "construction" of a proposed use until construction of that proposed use is complete and the vested right is converted to a nonconforming use, or, put another way, the nonconforming use is fully established. Since the use that a vested right protects is an inchoate nonconforming use, *i.e.* a use that does not yet exist, there is no nonconforming use to "maintain." It is the continued "construction" of an inchoate nonconforming use that must not be abandoned, discontinued or interrupted for more than one year in Columbia County under CCZO 1506.4 to avoid losing a vested right to continue construction of that vested right. <u>If petitioner discontinued or interrupted construction of the dwelling for more than one year after the construction of the foundation was completed in 1979, the fact that petitioner may have engaged in some activities that can be characterized as maintaining the foundation or maintaining or enhancing the vegetation on the property does not alter the fact that construction was discontinued or interrupted. Where construction of a residence has been discontinued or interrupted, actions to maintain the partially constructed residence are not sufficient to continue "construction" of the residence</u>.

Crosley v. Columbia County, 65 Or. LUBA at 174 (2012).

That said, even applying the *Holmes* factors for a vested right analysis to this case, the applicants fall far short of establishing a right to operate the 4-plex as transient lodging. The Supreme Court derived the following factors (the so-called "*Holmes* factors") as relevant in evaluating a vested rights claim to a particular development:

> 1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;
>
> 2. The amount of notice of any proposed re-zoning;
>
> 3. The amount of reliance on the prior zoning classification in purchasing the property and making expenditures to develop the property;
>
> 4. The extent to which the expenditures relate more to the nonconforming use than to the conforming uses;
>
> 5. The extent of the nonconformity of the proposed use as compared to the uses allowed in the subsequent zoning ordinances;
>
> 6. Whether the expenditures made prior to the subsequent zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to an actual use which would in fact have been made but for the passage of the new zoning regulation;
>
> 7. The ratio of the prior expenditures to the total cost of the proposed use.
>
> If the evidence relative to these factors establishes a "vested right," the property owner may complete his improvements and thereafter use his property in a manner which is a nonconforming use, subject to the restrictions on nonconforming uses.

Polk County v. Martin, 292 Or 69, 81 n 7, 636 P2d 952 (1981), citing with approval *Clackamas County v. Holmes, supra.*

The critical difference between the present case and the above-cited vested rights cases, is that there is no evidence that these owners showed any particular interest in putting the 4-plex to transient lodging use, as opposed to simply renovating it to be habitable and marketable as apartments for long-term tenancy. There is no evidence that the owners made any investment in the 4-plex that was uniquely focused on transient lodging use. Even years after STRs were outlawed in the C-3 Zone, the owners continued to rent the 4-plex as conforming, lawful long-term apartments. In fact, the evidence shows that the owners intended to use only the cottage units as transient lodging (STRs) prior to January 1, 2019, not the 4-plex units:

- The Magies applied for an Occupational Tax Permit on October 27, 2017 for the transient

lodging use of the cottage units (1565 & 1569 Exchange Street) only, but not the 4-plex (Appeal Packet p 10-11).

- The Magies submitted a parking plan on October 23, 2017 for operating the cottage units (1565 & 1569 Exchange Street) as STRs, but the plan did not include the 4-plex (Appeal Packet p 9).

- The Magies submitted a landscaping plan on November 2, 1017 for operating the cottage units (1565 & 1569 Exchange Street) as STRs, but the plan did not include the 4-plex (Appeal Packet p 12-13).

- The Magies paid the City's transient room tax for STR use of the cottage units from the beginning, but did not begin paying transient room tax for the 4-plex until late 2020 – nearly 2 years after STR use in the C-3 Zone became unlawful (Appeal Packet p 24-25).

- The Magies' property management and rental company stated in an April 28, 2022 letter that STR use of the 4-plex units did not begin until December 1, 2021 for 1555 Exchange Street, and not until spring 2022 for 1557 and 1561 Exchange Street – long after STR use in the C-3 Zone became unlawful (Appeal Packet p 109-110).

- The 4-plex units were under long-term leases as apartments from 2018 and 2019 until after January 1, 2019. Long-term leases for 1557, 1559 and 1561 were then extended well into 2021 and 2022.

- January 19, 2022 statement by Bob Magies that, up to that point, only the cottages were used for transient lodging purposes, not the 4-plex units (Appeal Packet p 69-70).

Under the *Holmes* factors, this failure to actually put the 4-plex to transient lodging use until nearly 2 years after STRs became unlawful in the C-3 Zone, much less before January 1, 2019, destroys their claim of a vested right to STR use today. The actions taken and investments made by the Magies throughout this period are only consistent with their intention and actual use of the 4-plex units as long-term rental apartments, not transient lodging. In *Crosley v. Columbia County*, LUBA held that, when evaluating such gaps, discontinuances and conversions from a claimed nonconforming use right to a conforming one, the local nonconforming use regulations apply. *See Hood River Citizens for a Local Economy v. City of Hood River*, *supra*, 65 Or. LUBA at 415 (2012) (Remanding a vested rights determination to apply the local nonconforming use chapter to determine if discontinuances terminated Wal-Mart's claim of a vested right to expand its Hood River store).

Following LUBA's remand in the *Hood River Citizens* case, with instruction that the City apply its nonconforming use code to Wal-Mart's vested right claim, the City Council focused on a conspicuous gap in Wal-Mart's expansion plan. In particular, there was a long lapse between the time when Wal-Mart supposedly obtained a vested right to the 30,000 sf store expansion it sought and when it actually applied for the expansion. Hood River's discontinuation provisions in its nonconforming use regulations are the same as Astoria's, *viz.*, a discontinuation of 12

months terminates the nonconforming use. The Hood River City Council concluded that any vested right Wal-Mart may have had at one time was lost through the long, multi-year delay in activating the vested right it claimed. LUBA affirmed the City's decision that the vested right was terminated:

> A vested right is essentially the right to finish construction or to fully implement the use that is, or will be, a nonconforming use when completed. As such vested rights are essentially a species of nonconforming use. ... The general principles of nonconforming uses (including discontinuance) apply to vested rights, at least in counties subject to ORS 215.130, the statute that provides for nonconforming uses. As respondents argue, analysis of discontinuance under ORS 215.130 or county codes implementing the statute generally involves looking back in time to determine the status of the nonconforming use, and whether that nonconforming use has been lost due to discontinuance. Depending on the facts, it is entirely possible for a nonconforming use to be discontinued or abandoned prior to the date that the applicant seeks a verification of the lawful existence and scope of the nonconforming use, and prior to the date the local government issues a decision verifying the lawful existence and scope of the nonconforming use.
>
> * * *
>
> Similarly, petitioner has not established that the city's findings are inadequate. The city's findings regarding HRMC 17.05.020(2) are three pages long, single-spaced. The findings are a bit imprecise at times in distinguishing between existing nonconforming uses and the inchoate proposed expansion in this case which is no longer allowed by the LI zone, but for which at one time petitioner had a vested right to begin and complete construction. But the findings quoted earlier set out the text and context of the discontinuance standard, including a discussion of the purpose and policy of the city's nonconforming use code provisions. The findings discuss the relevant facts, apply the discontinuance standard to those facts, and provide a reasonably understandable explanation for the city's conclusion that Wal-Mart's vested right to complete the expansion as part of a nonconforming use was lost through elapse of more than 12 months between the years 1997 to 2011, during which time Wal-Mart made no effort to pursue a vested rights determination or completion of the expansion. The city's findings are adequate.

Wal-Mart Stores, Inc. v. City of Hood River, 72 Or. LUBA 1, 18-19 & 21 (2015).

The gap between the point when Wal-Mart supposedly obtained its vested right and when it attempted to act on that perceived right was a discontinuance in excess of 12 months under Hood River's nonconforming use regulations that terminated the nonconforming use. The same outcome should result here, where the Magies waited nearly two years after January 1, 2019 before doing anything to put the 4-plex to a transient lodging use and therefore lost any vested right they may have had pursuant ADC §3.180(C) (Discontinuance of Nonconforming Use).

Additionally, during that nearly 2-year delay, the Magies used the 4-plex for a conforming use – as multi-family apartments – which under ADC §3.180(B) (Change of a Nonconforming Use) immediately terminated any vested right claim they may have had to a nonconforming short-term rental use of the 4-plex. After the Magies used the 4-plex for long-term tenancy they forfeited any vested right to transient use, and their only lawful options for the 4-plex were (and remain) conforming uses, *i.e.,* long-term tenancy multi-family dwelling.

7. **Fourth Legal Error. The Director's decision is contrary to the purpose and policy of ADC 2.390 and related amendments that were adopted to prohibit transient lodging uses in the C-3 Zone and elsewhere in the city because it eliminates long-term housing for people who want to live and work in Astoria, and it exacerbates the nuisance impacts of transient lodging where the owner does not reside in the dwelling.**

The ADC amendments that eliminated transient lodging as a use allowed outright in the C-3 Zone and elsewhere in the City were based on findings and policies adopted by the City Council designed to protect the City's housing base for long-term residents, to retain as much affordable housing as possible, and to protect the livability of residential neighborhoods:

> Transient lodging, in and of itself, is not detrimental to the City. However, when it is operated without paying the appropriate taxes, no off-street parking, and without an on-site owner in residence, it can become a nuisance to a neighborhood. The lack of off-street parking creates a parking situation in some neighborhoods that have narrow streets and limited on-street parking. Use of homes without the benefit of the owner in residence creates multiple issues that are detrimental to the other residents in the neighborhood. Guests are not generally a problem, but they are on vacation and can tend to get loud and/or have multiple vehicles and people at the home. With the owner on site, the owner can keep their guests in compliance with City regulations. Otherwise, adjacent property owners are required to either live with the situation or report it to the Police which causes everyone embarrassment and only solves the issue for the current guests, not the new ones the next weekend. Therefore, HSL, B&B, and Inns are allowed but vacation rentals (which are classified as motels) are not. This would help to protect the quiet residential character of the neighborhoods.

March 24, 2019 staff memo to Planning Commission, Findings document at 5 (emphasis added).

> Finding: The Buildable Lands Inventory (BLI) identified a deficit of residential buildable lands. The Comprehensive Plan indicates a goal of having a variety of housing types and price ranges, and the preservation of existing historic housing stock. The City Council 2018-2019 Goals included "Implement the provisions contained in the City of Astoria Affordable Housing Study to increase the number of housing units within the City, for permanent residents. Special attention should be given to derelict and/or vacant properties." The draft 2019-2020 City Council goals include "Facilitate an increase in housing supply (both market rate and affordable) using the County Housing Study to implement." and "Maintain Astoria's unique character through economic development and zoning which reflects on those values." The City Council has expressed concerns that the use of

> residences for transient lodging, especially vacation rentals, is a threat to the available housing stock. There is currently a lack of affordable housing for the existing employees and Astoria residents. While the Council agrees that transient lodging in owner occupied homes may be an acceptable use in residential areas, it also sees the prohibition of use of full homes for transient lodging as one way to keep the existing housing available for long term housing. Therefore, the Council determined that transient lodging in residential areas should not include a kitchen in the guest area as this would equate to a living unit.
>
> The Council also identified the conversion of residential units in commercial zones for transient lodging as contrary to the goal to provide affordable housing. The Council suggested that structures built and/or currently used for residences should not be converted to transient lodging. A proposed amendment would prohibit the conversion. However, there are several existing former hotels that are currently either vacant and/or have been converted to residences. An exception for these buildings to allow conversion back to a hotel use is proposed as it would only impact a few buildings (Waldorf Hotel 1067 Duane; JJAstor Hotel 342 14th; Elliot Hotel 357 12th; Norblad Building 443 14th; Commodore Hotel 258 14th) and would allow for economic ability to maintain these larger buildings.

March 24, 2019 memo to Planning Commission, Findings document at 6-7 (emphasis added).

> Finding: Tourism is a major industry for Astoria. The year-round nature of tourist activities has created a need for additional transient lodging facilities. Astoria has seen an influx of hotels/motels over the last few years with two or three new ones proposed in the next year or two. The use of private homes as HSL and B&B's has also increased. The City encourages home occupations and activities in residential areas but only if they have "little impact on the surrounding neighborhoods". Adoption of the proposed amendments would allow for controlled use of private residences as transient lodging so as to protect the residential character of the neighborhoods while allowing for this tourist base industry to exist. Commercial activities related to tourism such as vacation rentals are a major impact to the quiet residential character of the area and to the loss of long term, affordable housing. The proposed amendments would prevent the loss of housing to accommodate transient lodging thereby preserving Astoria for Astorians first.

March 24, 2019 memo to Planning Commission, Findings document at 7-8 (emphasis added).

> Finding: The proposed amendments would limit the allowable transient lodging uses in all zones. Uses would be regulated to assure low-impact in residential areas and limit the loss of housing. These proposed regulations are consistent with this Comprehensive Plan section which protects the waterfront area for the low-impact marine uses. Any project proposed would be subject to compliance with this section at the time of project proposal.

March 24, 2019 staff memo to Planning Commission, Findings document at 8 (emphasis added).

The above-quoted findings are expressions of policy adopted by the City Council in support of its regulations to curtail transient lodging (STR) uses in all residential areas of the city, including the C-3 Zone to protect residential areas and the City's housing stock for long-term residents. To interpret the City's C-3 Zone regulations (ADC §2.390) and nonconforming use provisions (ADC §3.180) to allow the conversion of the 4-plex to STR use, would be contrary to (a violation) of these underlying purposes and policies that strongly suggest this application should be denied. To the extent there is any ambiguity in the operative code language, it must be resolved consistently with this underlying purpose and these policies and cannot be interpreted in a way that is contrary to these purposes or policies. ORS 197.829(1).[7]

Finally, to the extent the applicants assert that the 4-plex was originally constructed as a hotel/motel and has operated as such throughout its history to the present, that argument is not only false, but it does not support a vested right or nonconforming use to operate a transient lodging (STR) use today. "Hotel" and "Motel" are defined by the City and are different than "transient lodging facility." *See* ADC §1.400 (Definitions). The use that the applicants seek in this nonconforming use verification proceeding is not a hotel or a motel; those uses are not part of this request. The application is for verification of a nonconforming use right to a "transient lodging facility;" approval of that request violates the above-referenced ADC provisions and is not supported by the evidence in this record.

Based on the foregoing arguments and the attached exhibits, the Hearings Officer should reverse the Director and deny the nonconforming use request.

Sincerely,



Daniel Kearns, attorney for appellants Austin Kettleson, Andrew Kipp and John Windus

Enclosures
cc: Clients
Carrie Richter, Esq.

7 In pertinent part, ORS 197.829(1) provides that "The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation ...

(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; ..."

Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

Tenant(s): Andrew Zingg and Lydia Mendoza

Tenant(s): _____

Rented Premises 1557 Exchange St Unit: _____

City: Astoria Oregon, Zip: 97103 Phone: _____

Cell or Mobile (614) 507-5372 Alternate Phone: (415) 240-6406

Email: mendoza.lydia@gmail.com Email: azingg@wesleyan.edu

Alternate Mailing: _____

Monthly Rent Amount $ 1225 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 05/15/18 Ending: 05/15/19 1st month's prorated rent from 05/15/18 to 5/31/18 is $ $632

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- X One charge per rental installment limited to the amount customary in rental area. $ 85
- ____ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ____ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 1225
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ 632
1st Full Month's Rent	$ 1225
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ 1225
Total Due	$ 632

Landscaping

Tenant shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O-Owner Pays T-Tenant Pays

T Electricity	O Water
T Cable	O Sewer
T Gas	O Garbage

Other _____

Furnished to Unit

X Range	___ Disposal X Blinds
___ Dishwasher	X Refrigerator
X Garbage Can	___ Dumpster

Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Andrew Zingg and Lydia Mendoza AZ

EQUAL HOUSING OPPORTUNITY

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Payments to Owner/Agent

Owner/Agent: Cynthia Magie, Gilbaugh LLC
Address: PO Box 532
City/State/Zip: Astoria, OR 97103
Phone: 503-812-7348
E-mail: ExchangeAstoria@gmail.com

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: Carmen Mendoza Relationship: Mother
Address: 1346 Haines Avenue City: Columbus State: OH Zip: 43212
Phone: 614481-0949 Email: mcarmendoza@gmail.com

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s) street
Storage Space _____
Mail Box # _____

Pets Allowed

No ☑ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☑ IS ☐ IS NOT available.
2) ☑ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☑ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. **Oversized and Water Filled Furnishings:** No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. **Guests:** Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. **Tenant Contact Info:** Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

4. **Property Condition:** Tenant(s) shall return premises to Owner/Agent in clean condition. The Owner/Agent's definition of "clean" is binding on all parties.

5. **Tenant and Guest Conduct:** Tenant(s) shall restrict all sounds or noise to a reasonable volume. Tenant(s) and their Guest(s) shall conduct themselves in a manner that will not disturb their neighbor's peaceful enjoyment of their premises, including common areas.

6. **Notice of Absence:** Tenant(s) shall notify Owner/Agent of any anticipated absence from the premises in excess of 7 days, no later than the first day of the absence.

7. **Entry into Premises:** Tenant(s) shall not unreasonably withhold consent to Owner/Agent to enter premises to inspect, make repairs or improvements, or to show the unit to prospective buyers or tenants. Owner/Agent may enter the premises without consent in an emergency, to post notices, or at any reasonable time with 24-hour notice or with permission of Tenant(s). If boxes are checked, Tenant(s) agrees to allow the use of ☑ text messages or ☑ email, or both for the purpose of submitting maintenance requests to Owner/Agent and for providing 24-hour notice to enter by Owner/Agent to Tenant(s).

8. **Sublease:** Tenant(s) shall not transfer their interest(s) in this agreement or sublet the premises, or any part of the premises. AZ

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9. **Insurance:** Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☐ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

10. **Rent Increases:** If lease expires and converts to a month-to-month tenancy, rent may be increased with a 90-day written notice. Rent increases may not be effective prior to the end of the first year of occupancy.

11. **Abandonment:** Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. **Notices:** All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY, must include an additional 4 days for delivery including date of service. Where allowed by law; notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the portion of the premises of which the Tenant(s) has possession or to the Owner/Agent at the address provided. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

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14. **Damage to Property:** Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

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17. **Limited Liability:** Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

18. **Non-Compliance Fees:** Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation.

LM

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20. Lease Enabling/Trespassing: Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

21. Termination: Tenant(s) shall not terminate this agreement without giving 30 days' written notice; failure shall make Tenant(s) liable for up to 30 days' rent. Tenant(s) must provide a single forwarding address for final accounting. Upon material noncompliance with this agreement, Owner/Agent may issue a 30-day notice of Termination with Cause, and if the breach is not remedied by the cure period indicated on the notice, the rental agreement will terminate and the Owner/Agent may take possession pursuant to Oregon law. Fixed-term tenancy will automatically convert to month-to-month tenancy unless either party has properly terminated the tenancy by giving at least 30 days' written notice prior to end of the fixed term or 60 days' by the Owner/Agent if termination is after the first year of occupancy. Owner/Agent may terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/ or other charges, or to comply with any terms or conditions of this agreement. Any omission or misstatement on the application for this dwelling unit may, at the option of Owner/Agent, be grounds for termination of tenancy. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises.

22. Holdover Tenancy: Any holding over after the expiration of the rental term without written consent of Owner/Agent shall be deemed a willful holdover and Owner/Agent shall be entitled to rent and damages, including court fees if applicable.

23. Tenant(s) Jointly and Severally Liable: If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

24. Application of Payments: Owner/Agent may apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months. B) Rent for the current month. C) Utility or service charges. D) Late rent charges. E) Damage claims and any other fees or claims owed by the tenant.

25. Legal and Collection Fees: Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

26. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

27. Charges: Utility – Utility charges must be paid in full within 30 days of receipt of billing or Owner/Agent may assess a $50 late fee. Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. **HOA** – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. **Re-Key Mailbox(s)** – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

28. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ # 3 Pet Agreement	☐ # 21 Deposit Refund	☑ # 33 Rules & Regulations
☐ # 9 Check In/Check Out	☐ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☑ # 11 Smoke Alarm & CO Agreement	☑ # 54 Mold Prevention	☑ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant Zyli Mora Date 5/4/18 Tenant _____ Date _____

Tenant _____ Date 5/4/18 Tenant _____ Date _____

Owner/Agent _____ Date _____

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Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

Tenant(s): AUSTIN KETTLESON

Tenant(s): DANAE M. SUPRUNOWSKI

Rented Premises 1559 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: _____

Cell or Mobile 971-678-4591 Alternate Phone: 360-244-3399

Email: austinkettleson@gmail.com Email: danae.suprunowski@gmail.com

Alternate Mailing: _____

Monthly Rent Amount $ 1225.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 12/1/18 Ending: 8/31/19 1st month's prorated rent from _____ to _____ is $ _____

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- X One charge per rental installment limited to the amount customary in rental area. $ 100
- ____ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ____ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ _____
1st Full Month's Rent	$ 1225.00
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ _____
Total Due	$ 3225.00

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O=Owner Pays T=Tenant Pays

- T Electricity
- O Water
- T Cable
- O Sewer
- X Gas
- O Garbage

Other _____

Furnished to Unit

- X Range ___ Disposal X Blinds
- ____ Dishwasher X Refrigerator
- X Garbage Can ____ Dumpster

Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Austin Kettleson, Danae Suprunowski, Hazel & Millie Peterson

 Initials AK DS

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Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: _____ Relationship: _____
Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Email: _____

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s)_____
Storage Space _____
Mail Box # 1559

Pets Allowed

No ☒ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☒ IS ☐ IS NOT available.
2) ☒ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☒ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. Oversized and Water Filled Furnishings: No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. Guests: Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. Tenant Contact Info: Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

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9. Insurance: Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☒ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

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☐ # 9 Check In/Check Out	☒ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☒ # 11 Smoke Alarm & CO Agreement	☒ # 54 Mold Prevention	☒ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant [signature] Date 11/21/2018 10:12:14 AM PST Tenant [signature] Date 11/21/2018 10:58:24 AM PST

Tenant 5EBCBC21FBEC467... Date _____ Tenant 3F08BBF32519454... Date _____

DocuSigned by:

Owner/Agent Shannon Fitzpatrick Date 11/21/2018 11:00:35 AM PST

03DAA43B2A244B5...

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Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

Tenant(s): TRISTAN FELL

Tenant(s): ALYSSA HANSON

Rented Premises: 1561 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: 541-969-6714

Cell or Mobile: _____ Alternate Phone: 503-791-6277

Email: TRISTANPAIGE@GMAIL.COM Email: ALYGHANSON@GMAIL.COM

Alternate Mailing: _____

Monthly Rent Amount $ 1275.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 7/18/19 Ending: 5/31/20 1st month's prorated rent from 7/18/19 to 7/31/19 is $ 595.00

Late Fees

If rent payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- ✔ One charge per rental installment limited to the amount customary in rental area. $ 100.00
- ___ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ___ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #21 for explanation*

Early termination of lease fee $ _____

(Early termination of lease will be charged as a fee equal to 1 1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting, and to be to be exercised at discretion of Owner/Agent.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ 595.00
1st Full Month's Rent	$ _____
Last Month's Rent	$ _____
Other _____	$ _____
Subtotal	$ _____
Deposit to Hold (subtract)	$ _____
Total Due	$ 2595.00

☐ If checked, deposits are held by Owner.

Utilities

T___ Electricity O___ Water
O___ Sewer T___ Cable
T___ Gas O___ Garbage
Other INTERNET T___
Other _____

O = Owner Pays T = Tenant Pays

Furnished to Unit

✔ Range ___ Disposal ✔ Blinds
___ Dishwasher ✔ Refrigerator
✔ Garbage Can ___ Dumpster
Other _____
Other _____

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

Marijuana

No marijuana, medical or recreational, may be grown, stored, processed, smoked or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: TRISTAN FELL, ALYSSA HANSON

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Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA, OR 97103
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Address:
City/State/Zip:

Include description of where to post notice (See #12), such as "front door," "side door," "gate," etc.

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: ALYSSA: HEATHER RAMSDEL, TRISTAN: TRINA FELL (541- Relationship: ALYSSA & TRISTAN: MOTHER
Address: ALYSSA: 35433 HOMER LANE City: ALYSSA: ASTORIA, TRI State: OR Zip: 97103
Phone: 503-791-6259 Email:

Utility or Service Charge Disclosure

Utility or service benefitting other Tenants or common area:

Basis for allocation of utility or service charge for common areas:
Square footage by # of units or: $ per
Utility charges must be paid by: to avoid $50 late fee.
If left blank, utility charge must be paid within 30 days of date of Owner/Agent billing to avoid assessment of late charge.

Parking - Storage - Mail

Parking Space(s) N/A
Storage Space N/A

Disclosures

1) Recycling [✓] IS [ ] IS NOT available.

prohibited on the premises.

3) [ ] If checked, the dwelling unit is located in a 100-year flood plain, as

9. Insurance: Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☑ If checked, Renter's Insurance is required – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required. Owner/Agent is responsible to maintain their own insurance policy and may not "self insure" if Renter's Insurance is to be required. Owner/Agent must provide proof of property insurance to Tenant upon request.

10. Rent Increases: Offers of lease renewal to current occupants may not exceed 7% plus the Consumer Price Index for the West Coast in any 12-month period, unless exempt. Properties whose 1st Certificate of Occupancy was issued within the past 15 years are exempt, as are properties where the landlord is providing reduced rent to the tenant as part of a federal, state or local program or subsidy. If the lease expires and converts to a month-to-month tenancy, rent increases are subject to the laws of periodic tenancies.

11. Abandonment: Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. Notices: All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY must include an additional 4 days for delivery, including date of service. Where allowed by law, notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the main portion of the premises of which Tenant(s) has possession or to the Owner/Agent at the address provided above in section entitled, "For Service of Notices to Owner/Agent." As required by law, Owner/Agent's designated service address must be described with particularity, reasonably located in relation to the Tenant(s), and available at all hours. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. Use of Premises, Maintenance and Repair: The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT. No credit for repairs or improvements shall be allowed without Owner/Agent's prior written approval. Alterations to the dwelling unit without the prior written consent of Owner/Agent are strictly prohibited and may be cause for termination of the tenancy.

14. Damage to Property: Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

15. Trash Receptacles: Tenant(s) shall promptly remove trash receptacles from the street within 24 hours after garbage pick-up and, when possible, stored so that they are not visible from the street. All trash shall be bagged or sealed prior to placing in trash receptacles. Tenant(s) are prohibited from rummaging through trash or recycling bins. No hazardous materials shall be placed in trash receptacles.

16. Wildlife: Due to the potential for damage and spread of disease, Tenant(s) and their guests shall not feed, water or otherwise provide sustenance to feral or wild animals, birds, reptiles, snakes or other such animals.

17. Hazardous Materials: Tenant(s) shall not store hazardous or flammable materials at the premises.

18. Smoke and Carbon Monoxide Alarms: Tenant(s) acknowledges the presence of a smoke alarm(s) and, if required, a carbon monoxide alarm(s) in fully operational condition in the unit. Tenant(s) is instructed to test the alarms at least every 6 months and replace the batteries as needed. Tenant(s) shall replace expired batteries with 10-year lithium batteries as required by law. Tenant(s) agrees that Owner/Agent is not liable for loss or damage due to the alarm's failure to operate. Tenant(s) is required to immediately notify Owner/Agent in writing of any malfunction of the alarm(s). Tenant(s) shall not remove or tamper with a properly functioning alarm, including removing any working batteries. Tenant(s) agrees to pay a fee of $250.00 for each violation.

19. Limited Liability: Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

20. NSF Payments: Should any payment made by or on behalf of any Tenant(s) be returned by the financial institution for insufficient funds, Owner/Agent may require that all subsequent payments be made in certified funds only (cashier's check or money order), for the remainder of the tenancy.

21. Non-Compliance Fees: Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation. Late fees and dishonored check fees are due immediately upon default by Tenant(s). Tenancy may be terminated as allowed by law for failure to pay outstanding fees.

22. Carpet Cleaning: If Owner/Agent had carpets cleaned using specialized equipment, or had the carpets replaced before the Tenant(s) took possession, Owner/Agent may deduct the cost of carpet cleaning from the Tenant's security deposit regardless of whether the Tenant(s) cleaned the carpets before the delivery of possession.

23. Lease Enabling/Trespassing: Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

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24. Termination: If the ending date of the lease falls within the first year of occupancy, Owner/Agent may terminate the tenancy at any time within the first year by providing 30-days' written notice of nonrenewal of lease. First year of tenancy includes all periods during which any of the Tenant(s) has resided in the dwelling unit for less than one year. Such notice may be served prior to the specified ending date for the fixed term, or 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later. **Regardless of length of tenancy, proscribed notice periods may be longer in certain local jurisdictions or in subsidized housing.** Tenant(s) may terminate a lease at its end by providing a minimum of 30 days' written notice to Owner/Agent. Failure of either party to provide notice prior to end of the lease shall result in tenancy converting to a periodic agreement (month-to-month), subject to the laws of periodic tenancies.

After the first year of occupancy, Owner/Agent may terminate a lease only for cause, or with 90-days' written notice for a Qualifying Landlord Reason: 1) Owner/Agent intends to demolish the unit or convert it to a use other than residential use within a reasonable time; 2) Owner/Agent intends to undertake repairs or renovations to the unit within a reasonable time and the unit is unsafe or unfit for occupancy, or will be unsafe or unfit for occupancy during repairs or renovations; 3) Owner/Agent intends for the property owner or a member of the Owner's immediate family to occupy the unit as a primary residence, and the Owner does not own a comparable unit in the same building that is available for occupancy at the time the notice is delivered; 4) Owner is selling the property, and has accepted an offer to purchase the unit separately from any other unit from a person who intends in good faith to occupy the unit as their primary residence. *(Owner/Agent must provide the notice and written evidence of the offer to purchase the unit to the tenant not more than 120 days after accepting the offer to purchase.)* For a nonrenewal of lease under this section to be valid at the time it is delivered to the tenant, Owner must pay the Tenant(s) the equivalent of one month's periodic rent – unless exempt. Landlords with an ownership interest in four or fewer dwelling units are exempt from payment of the relocation expense.

Owner/Agent may terminate a fixed-term tenancy upon expiration of the fixed term following written notice given not less than 90 days prior to the specified ending date for the fixed term or 90 days prior to the date designated in the notice for the termination of the tenancy, whichever is later, and: (a) The tenant has committed three or more violations of the rental agreement within the preceding 12-month period and the landlord has given the tenant a written warning notice at the time of each violation; (b) Each written warning notice: (A) Specifies the violation; (B) States that the landlord may choose to terminate the tenancy at the end of the fixed term if there are three violations within a 12-month period preceding the end of the fixed term; and (C) States that correcting the third or subsequent violation is not a defense to termination under this subsection; and (c) The 90-day notice of termination: (A) States that the rental agreement will terminate upon the specified ending date for the fixed term or upon a designated date not less than 90 days after delivery of the notice, whichever is later; (B) Specifies the reason for the termination and supporting facts; and (C) Is delivered to the tenant concurrent with or after the third or subsequent written warning notice.

Owner/Agent may also terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/or other charges, or fails to comply with any terms or conditions of this agreement, or fails to comply with any obligations under ORS Chapter 90. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises. Tenant(s) must provide a single forwarding address for final accounting.

25. Early termination: For a Tenant(s) failure to occupy the premises through the lease term for reasons other than those exempt by law, the Tenant(s) shall be responsible for, at Landlord's sole election, either:

1) All amounts owing at the time of surrender, as well as a fee not to exceed 1-1/2 times the monthly rent, including all amounts necessary to return the premises to a rentable condition, minus normal wear and tear; or,

2) All amounts necessary to re-lease the dwelling unit, including but not limited to, damages, property care, advertising and administrative costs, and the difference in rent amount through the term should Owner/Agent be unable to re-lease the property at the same rate, as well as all amounts necessary to return the premises to a rentable condition, minus normal wear and tear.

26. Sale or Transfer of Premises: If the rented premises is sold or transferred during the tenancy, all terms of this agreement shall remain in full force and effect until further notice by Owner/Agent.

27. Tenant(s) Jointly and Severally Liable: If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

28. Application of Payments: Owner/Agent must apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months; B) Rent for the current month; C) Utility or service charges; D) Late rent charges; E) Damage claims and any other fees or claims owed by the tenant. If the due date for rent payment or other payment falls on a Sunday or national holiday (New Year's Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day), Tenant(s) shall be entitled to one additional day to tender payment without penalty.

29. Legal and Collection Fees: Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

30. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

31. Charges: Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. HOA – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. Re-Key Mailbox(s) – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

32. Co-signers: If this rental agreement is secured by a co-signer, Owner/Agent reserves the right to notify the Co-signer about any information related to the tenancy deemed necessary, but shall be under no obligation to do so.

33. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ #3 Pet Agreement	☐ #33 Rules & Regulations	☑ #54 Mold Prevention
☐ #9 Check In/Check Out	☐ #46 Assistance Animal Agreement	☐ #65 Exterior Care Agreement
☑ #11 Smoke Alarm & CO Agreement	☐ #47 Parking Agreement	☐ #66 Weatherization Agreement
☑ #21 Deposit Refund Checklist	☑ #51 Lead Paint Disclosure	☑ Other INSURANCE ADDENDUM
☑ #27 Smoke/Vape Free Agreement	☑ #52 Co-Signer Agreement	☐ Other _____

34. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant_____ Date _____ Tenant _____ Date _____

Tenant_____ Date _____ Tenant _____ Date _____

Owner/Agent _____ Date _____

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New Document – Received
Date: 11-2-2023 Permit #: AP23-02
Meeting: Appeal Notes: Submitted @ meeting

John Windus
960 Franklin Avenue
Astoria, OR 97103

November 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

I'm one of the three appellants (AP23-02) regarding the Decision and Order dated June 26, 2026, the city's final decision that the properties at 1555-1557-1559-1561 Exchange Street may be used as non-conforming, transient lodging.

First, let me thank city staff for the professional and cordial way they have handled this appeal. Both City Planner Tiffany Taylor and Amanda Perron have been exceptionally accommodating. Please know that you have the appreciation of all three appellants.

My interest in the Gilbaugh Apartments decision was piqued by coverage in the Daily Astorian because my home is also active on the AirBNB platform. My full-time residence is permitted (HSL-2103) under the Homestay Lodging rules that are similar to Transient Lodging rules. The "Captain Johnson House" permit number is posted on AirBNB and the Astoria Chamber of Commerce website, as required by code.

I live in a circa 1875 structure listed on the state registry of historic homes deemed "contributing" in the Shivley-McClure district. As such, I've become familiar with what it takes to repair an old house and the restrictions those repairs can entail. My challenges are not unlike what the owners of the Gilbaugh Apartments, and other historic properties in Astoria, have faced.

At no time did I assume that the extensive repairs of my home would entitle me to a Homestay Lodging permit, though that seems to be a recurring argument the owners of the Gilbaugh Apartments have made. It's makes no sense to claim that you have a "vested right" to run an illegal AirBNB just because you fix up an old apartment house.

As a HSL permit holder, I have agreed not to offer a full kitchen, to submit lodging revenue in a timely manner, to be at the home when guests are present, to monitor guest parking, and to make sure that there are no noise issues that could be disruptive to our neighborhood. These are all reasonable rules that allow homeowners to rent out one or two rooms while not stealing inventory from Astoria's precious housing stock.

As explained by our attorney, Daniel Kerns, in the section labeled "Fourth Legal Error," city council's concern about protecting residential housing stock played a major role in the 2018-2019 drafting of language restricting short-term lodging. Despite code precluding the change of use of apartments to short-term lodging beginning in 2019, the Gilbaugh Apartment owners moved ahead anyway, ignoring multiple cease-and-desist letters from then City Planner Meg Leatherman, Diane Christiansen with Community Development, and City Manager Scott Spence. Rather than obey city directives, they continued to advertise and book units on AirBNB.

The apartment house owners have tried to conflate permitting of their two nearby cottages with permission to convert the four-unit Gilbaugh to STL use. Yet the Gilbaugh wasn't a part of their

application for an Occupational Use license or landscape requirements. The four apartments in Gilbaugh were in use as long-term rentals when the 2019 rules took hold as Mr. Kearns and fellow appellants Austin Kettleson and Andy Kipp will prove.

The Gilbaugh owners have also attempted to confuse the issue by claiming that parking created for the cottages is proof that they planned to use the four-plex for short-term lodging. Even if that was true, which we don't believe is a supported argument, they have shown a lack of good faith as operators. Instead of directing guests to a parking lot, it is "recommended to park on adjacent streets," according to an online guest review. The owners misrepresent their intent to mitigate parking problems in the neighborhood and instead actively encourage them. A copy of the AirBNB review by "Larissa" is provided. (Attachment 1)

As we pointed out in our letter of appeal, we are also taken aback by what appears to be an effort to coerce city staff by the Gilbaugh owners. Our concerns, based on reporting in the Astorian and documents provided in the agenda packet for tonight's hearing, show that Mayor Sean Fitzpatrick and his brother Shannon Fitzpatrick have both had professional business relationships with the Gilbaugh owners. Had they not intervened at the request of the owners of the Gilbaugh Apartments, this might not have been concerning. However, both Fitzpatrick brothers elected to weigh in to influence staff and reverse multiple "cease-and-desist" orders.

On May 24, 2023, there was a closed-door meeting involving Mayor Fitzpatrick, the Gilbaugh Apartment owners, city staff, and others. It is documented on page 7 of tonight's agenda packet. Within days, planning staff withdrew their objections to the STL conversion and issued a decision that mirrored language written by the building owners' attorney, Carrie Richter. (See attachment 2). This is what we meant when we referred in our initial appeal to "interconnected relationships...that make many community members uneasy."

There are some heroes in all of this; I want to recognize the good journalism provided by the Astorian about our housing crisis. Without their ongoing coverage and the dedication shown by the publisher by assigning a reporter to city meetings, we would have been left largely in the dark.

Lastly, as an appellant, I commend the decision to involve an independent Hearings Officer. We trust that a non-partisan review will restore the initial finding that the conversion of the Gilbaugh Apartments to a conditional use AirBNB violates city code and the intent of city council to *protect Astoria housing.*

With regards,

John A Windus

Attachment 1
< Unit #3 —

★ 4.94 · 107 reviews

Search reviews

food are with in walking distance



Larissa
May 2022

Having a laundry and a kitchen was well worth the added expense of renting a flat as apposed to getting a hotel. It is right downtown so you can walk to wherever you want to go. There are a lot of stairs but I didn't mind. It was recommended to park on adjacent streets but there was always at least 1 open parking spot on the street. It gave me lots of practice parallel parking, which I usually try to avoid. But most parking in Astoria is on street parallel parking.
Overall it was a great stay and I would stay there again.



Beverly
April 2022

Nice apt.
We had a great stay.
Nice view of river from front window.
Bring food and clothes everything else is there.

Attachment 2

From: exchangeastoria@gmail.com
To: Tiffany Taylor; Scott Spence; Sean Fitzpatrick; Carrie Richter
Subject: Fwd: Transient Lodging
Date: Friday, June 16, 2023 8:53:39 AM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Hi all,
We still have not received our assuredly positive official notice of decision that we were told we'd receive 3 weeks ago. Carrie Richter provided suggested language below two weeks ago and I sent out a reminder last week. Our LUBA appeal period is quickly ending and Cindy and I are are exhausted with this process and would like to put it behind us.

Thanks
Bob Magie

Sent from my iPhone

Begin forwarded message:

From: Carrie Richter <crichter@batemanseidel.com>
Date: June 6, 2023 at 2:05:41 PM PDT
To: ttaylor@astoria.or.us, BLAIR HENNINGSGAARD <blair@astoria.law>
Cc: Bob and Cindy Magie <exchangeastoria@gmail.com>
Subject: FW: Transient Lodging

Good Afternoon:

In order to expedite resolution of this matter, I wanted to offer some proposed language to the Notice of Decision and Order that I understand may be forthcoming:

Re: 1555, 1557, 1559, 1561, 1565 and 1569 Exchange Street Notice of Decision and Order

After reviewing the material supplied, the City has determined that the four units located at 1555, 1557, 1559, 1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street were in transient lodging use on January 1, 2019 and as such, these six units may continue to either be placed into transient lodging use or for residential dwelling purposes, at the owners' discretion. Therefore, the City's final decision is that six units containing residential uses, whether short or long term, have been in continual operation since the 1920s when these properties were constructed and may continue notwithstanding any use limitation imposed by ADC 2.39.10(a) or other constraint on the operation of transient lodging or other residential uses.

As a result, the Notice of Non-Compliance dated January 10, 2022 is hereby rescinded.

Attachment 2 – (continued)
Decision Letter 6/26/23

operation and/or business open to the public need not occur to consider a use as begun."

These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

Conclusion: After reviewing the submitted documents, and researching City records, the City has determined that the four-plex at 1555-1557-1559-1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street, were in transient lodging use on January 1, 2019, and as such, these six units may continue as a transient lodging use. With the 2019 code change, they are now classified as "Nonconforming Uses."

Clarification on Future Uses: Development Code Section §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use states, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

Development Code Section §3.180.B, Change of Nonconforming Use states, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

As a nonconforming use, the transient lodging may continue. If the transient lodging should discontinue for one year, the use would need to conform with the current code. If the use is changed to a conforming use, such as residential and not transient use, then it may not return to the nonconforming transient use. The property use may not switch back and forth between conforming and nonconforming uses.

As a reminder, use for transient lodging does require a City Occupational Tax (business license) and payment of the transient room tax.

THIS IS A FINAL LAND USE DECISION. THE DECISION MAY BE APPEALED TO THE ASTORIA PLANNING COMMISSION BY THE APPLICANT OR A PARTY WHO RESPONDED IN WRITING TO THE PROPOSED USE BY FILING AN APPEAL WITH THE COMMUNITY DEVELOPMENT DIRECTOR WITHIN 15 DAYS OF THE MAILING OF THE DECISION. THE NOTICE OF APPEAL SHALL INDICATE THE INTERPRETATION THAT IS BEING APPEALED.

Regards,

Tiffany Taylor
City Planner

cc: Carrie Richter (crichter@batemanseidel.com)
Austin Kettleson (austinkettleson@gmail.com)

New Document – Received
Date: 11-2-2023 Permit #: AP23-02
Meeting: Appeal Notes: Submitted @ meeting

Andrew Kipp
461 Exchange Street
Astoria, OR 97103

November 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Public comment regarding the appeal of Gilbaugh LLC nonconforming use determination 1555, 1557, 1559 & 1561 Exchange Street (AP23-02)

To Whom It May Concern:

As one of the appellants in this matter, I want to highlight what I believe are several meaningful errors concerning the City of Astoria's decision to grant nonconforming use status for transient lodging in the 4-plex located at 1555-1561 Exchange Street.

First, the evidence on the record fails to show that the applicants had operated, or intended to operate, transient lodging in the 4-plex when the restrictive zoning prohibiting that use came into effect. In its decision, the city cites a 2017 Occupational Tax Permit, a 2017 commercial zone landscaping plan, and a 2017 parking plan. It claims these documents show the applicants' intent to renovate the 4-plex into short-term rentals. However, upon examination, none of these documents provide any evidence about the applicants' intended use for the 4-plex at all. The Occupational Tax Permit explicitly describes operating a short-term rental business called "Astoria Downtown Cottages" at 1565 and 1569 Exchange Street. This address refers exclusively to the two accessory cottages located behind the 4-plex. The tax permit makes no reference to the 4-plex itself located at 1555 to 1561 Exchange Street.

Similarly, the 2017 landscaping and parking plans that were approved by then Community Development Director, Mike Morgan, failed to show the applicants' intent was to use the 4-plex for transient lodging. In both plans, the addresses listed are for the two cottages at 1565 and 1569 Exchange Street. Neither plan refers to the 4-plex addresses. In fact, the 4-plex structure isn't depicted in the parking plan at all. The parking plan also shows a total of 8 off-street parking spots, which is less than the 11 off-street spots that would be required were transient lodging the intended use for all 11 bedrooms in the three separate structures (see ADC §7.100).

Likewise, the landscaping plan provides no indication that the intended use of the 4-plex was transient lodging. It only shows that the property owners were in compliance with landscaping requirements in the C-3 zone (see ADC §2.405), which would apply to any permitted use in that zone (including a multi-family dwelling) (see ADC §3.105). While it's worth noting that the applicants omitted the address details from the copies of the 2017 landscaping and parking plans submitted with their application, it was nevertheless erroneous for the city to rely on them to show that applicants were making steps towards converting the 4-plex to transient lodging, as they fail to substantiate that claim in any way.

Second, in its decision, the city cites stabilization work, replaced siding, repaired window sills, updated interior finishes, and other activities the applicants performed as evidence of their intent to convert the 4-plex to transient lodging use. Yet the record contains no evidence demonstrating how these improvements are related to converting the 4-plex into short-term rentals versus rehabilitating it for continued use as a multi-family dwelling for long-term renters. In fact, it's hard to imagine any renovation applicable exclusively to using the property as short-term rentals that would not also apply to using it as long-term rentals. The city erred when it attributed structural repairs and other necessary improvements to the 4-plex as evidence to support the claim that applicants were converting the 4-plex to transient lodging use when such improvements are relevant to any number of uses, including the continued use of the property as a multi-family dwelling housing long-term tenants.

Lastly, the city failed to consider evidence that long-term tenants occupied the units in the 4-plex both before and after the restrictions on transient lodging came into effect. To illustrate this, we have submitted copies of lease agreements for three of the four apartments in the 4-plex, showing that these units were in residential use on January 1, 2019, or shortly thereafter. The fact that the applicants entered into multiple long-term lease agreements for the units in the 4-plex calls into question their claim that they intended to operate them as transient lodging. Furthermore, the applicants extended those leases long after the Astoria City Council enacted the restrictive zoning on transient lodging, with some tenants living there for nearly four years.

The fact that long-term tenants occupied many of the units in the 4-plex is further highlighted by a letter from the applicants' property manager, Shannon Fitzpatrick of Pacific Captial Management, showing that no units in the 4-plex were used as short-term rentals before December 2021. These facts undermine the city's determination that the use of the 4-plex as transient lodging had occurred prior to January 1, 2019. Logic dictates that transient lodging use cannot have occurred prior to January 1, 2019, because these units were being used for a different purpose (long-term housing) at that time. These three units cannot simultaneously be used as both long-term housing and short-term lodging.

Consequently, the city again erred when it failed to apply the Astoria Development Code governing the change or discontinuance of a nonconforming use in this application. Even if transient lodging use had occurred before the restrictive zoning came into effect, the applicants' decision to use the 4-plex as a conforming use after that date (i.e., a multi-family dwelling) immediately invalidated any status as a lawful nonconforming use (see ADC §3.180(B)). Similarly, if transient lodging use had occurred prior to January 1, 2019, then the city failed to recognize that any lawful nonconforming use status was discontinued as a result of gaps exceeding 12 months when the units were leased to long-term tenants for multiple years (see ADC §3.180(C)).

In summary, the city's determination that the 4-plex is a lawful nonconforming use is deeply flawed. The decision relies on evidence and logic that tries to blur the lines between transient lodging for tourists and long-term housing for tenants. The decision conflates steps taken relating to using the cottages as short-term rentals and attributes them to the 4-plex. It ignores clear evidence that the applicants used most of the units in the 4-plex as a conforming multi-family dwelling before and after January 1, 2019. It fails to apply relevant sections of the Astoria Development Code governing nonconforming use. Lastly, it directly violates the stated purpose of the 2019 code amendments that were adopted to prevent this exact situation from occurring (i.e., the loss of critically needed housing stock to short-term vacation rentals). Given these facts, I ask you to reverse the city's decision and deny the application for nonconforming use.

Respectfully,

Andrew Kipp

New Document – Received
Date: 11-2-23 Permit #: AP23-02
Meeting: Appeal Notes: submitted @ meeting

Austin Kettleson
286 Lexington Ave
Astoria, OR 97103

November 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Public comment on AP23-02

In December of 2018, I moved my family into the Gilbaugh Apartments as I transitioned out of the Coast Guard, and my partner took on her new job at the hospital. Before we even moved in, we were intrigued when we read about the building's history in an article that was attached to the listing: "Built in 1915: 'The Astoria Evening Budget proclaimed the new building was a modern structure designed to meet the rapidly increasing demand for comfortable homes in the city.'" It's interesting that over 100 years later, the same building is still being talked about, and the same issue still exists: there is a rapidly increasing demand for comfortable and affordable housing in the city.

When we first moved in, my neighbors consisted of teachers, doctors, hospital employees, and cannery workers because all six structures were long-term rentals. However, in 2020, the first cottage was turned into an AirBnB. Shortly after, the second cottage followed. Besides the occasional extra noise, these two vacation rentals had little to no effect on our experience living in the 4-plex. Then, in October 2021, I was asked by Bob and Cindy to have a meeting about my apartment. At this meeting, they told me that they wanted to use my unit as their primary residence. In the following days, I received a text from Bob Magie stating I needed to move my stuff out of the storage unit I rented in the basement within one month. He also said they have another property on the south slope they wanted to offer to me. A few days later, Shannon Fitzpatrick, the building's property manager, sent me an email stating the same thing. After researching my rights as a tenant under Oregon law as a tenant, I knew their attempts to evict me over email and text message was not legal.

However, the writing on the wall became pretty clear in December of 2021 when the first unit in the four-plex was listed on AirBNB as "Riverview Flat, Number 1." Having "number one" in the title suggested that Riverview Flats number two, three, and four would soon follow, and sure enough, they did. After realizing that my home of the last three years was about to be surrounded by five short-term rentals, I knew that mine was next to be added to their portfolio. This was when I decided to file a complaint with the City of Astoria because I knew it was not legal for Bob and Cindy to convert any of the apartments in my building into AirBNBs.

Nevertheless, my lease was terminated on August 21st, 2022. Bob and Cindy said the reason I was being evicted was that Bob's father intended to occupy my apartment as his primary residence. Fortunately, my family and I narrowly managed to get approved and close on a house during our 90-day eviction notice period. We were relieved to move on and leave the last year of uncertainty about where we would live behind us. Some months later, we were not surprised to see our former apartment listed on AirBNB as "Riverview Flat, Number 4". What did surprise us however, was getting a decision letter on my complaint with a complete reversal of the city's original stance on the situation and agreeing that it was always the Magies' intent to use the four-plex as short-term rentals. How could that be the case when I lived there for almost four years?

My story illustrates how this 4-plex has been used as an apartment the entire time it has existed. The city has put in a strong set of codes that should protect housing for people like me, but since 2019, it hasn't been enforced. Instead of standing up to preserve housing for residents, the city reversed its course, resulting in the loss of 4 homes that have existed for over 100 years. It's time to turn a corner and live up to the intent of the City Council. It's time to enforce the code that protects housing for the many families that would like to be able to call Astoria "home."

Austin Kettleson

Appeal Hearing

DATE: November 2, 2023

Please Sign-In if you wish to speak. *(PLEASE PRINT)*

(6)

Name: Andrew Kipp
Address: 461 Exchange St.
City/Zip: Astoria, OR
Email: kipp.andrew@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose w/letter
- ☐ Neutral

Name: John Windus
Address: 960 Franklin Ave
City/Zip: Astoria OR 97103
Email: jwindus@nwi.net

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☐ Oppose
- ☐ Neutral

Name: Austin Kettleson
Address: 286 Lexington Ave
City/Zip: 97103, Astoria
Email: austinkettleson@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

(1) + rebuttal

Name: Bob Magi
Address: 1466 Franklin
City/Zip: Astoria 97103
Email:

- ☑ In Favor of Applicant (allowed use of transient lodging)
- ☐ Oppose
- ☐ Neutral

(7)

Name: Brenda Harper
Address: 342 14th st
City/Zip: Astoria, OR
Email: superset7@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

(7)

Name: Sarah Jane Bardy
Address: 1659-1661 Irving
City/Zip: Astoria, OR 97103
Email: sarahjane.bardy@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose via Zoom
- ☐ Neutral

Name: IRIS DOUGLAS
Address: 235 Lexington Ave
City/Zip: 97103
Email: m.luna.iris@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☒ Oppose
- ☐ Neutral

(4)

Name: John Orr
Address: 175 South Place
City/Zip: AST 97103
Email: realjohnyo@gmail.com

- ☐ In Favor of Applicant (allowed use of transient lodging)
- ☐ Oppose
- ☑ Neutral

Appeal Hearing

DATE: November 2, 2023

Please Sign-In if you wish to speak. *(PLEASE PRINT)*

(2)

Name: CARRIE RICHTER
Address: 1000 SW BROADWAY #1910
City/Zip: POX, OR 97204
Email: CRICHTER@BATEMANSEIDEL.com

- [x] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

(5)

Name: Dan Kearns, Reeve Kearns
Address: P.O. Box 13015
City/Zip: Portland, OR 97213
Email: dan@reevekearns.com

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose w/letter
- [ ] Neutral

Name: Rachel Gaetano
Address: 281 W Irving
City/Zip: Astoria OR 97103
Email: rachel.gaetano@yahoo.com

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose
- [ ] Neutral

(8)

Name: Jordan OKoniewski
Address: 4831 Cedar St
City/Zip: Astoria, OR 97103
Email:

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose via Zoom
- [ ] Neutral

Name: Laura Evans
Address: 461 Exchange St
City/Zip: Astoria, OR 97103
Email: laura.jeanne.evans@gmail.com

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [x] Oppose
- [ ] Neutral

Name:
Address:
City/Zip:
Email:

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

(3)

Name: Jacob Vellzoo
Address: 539 16th St
City/Zip: Astoria OR 97103
Email: jakehilvig@gmail.com

- [x] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

Name:
Address:
City/Zip:
Email:

- [ ] In Favor of Applicant (allowed use of transient lodging)
- [ ] Oppose
- [ ] Neutral

RECEIVED
NOV 0 2 2023
BY:

Nov 2, 2023
Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103
Re: Letter opposing short-term rentals at 1551-1561 Exchange St.
To Whom It May Concern:

My husband and I moved across the country just over 3 years ago to live in, open a business and be a part of the Astorian community. In the short time that we have lived here, I have seen those simple goals slowly become harder for us and many of my friends and neighbors. Long term tenants being forced to find alternate housing when the owners decided to turn their apartment complex into a short term rental property. Business owners in the downtown area fearing the loss of their livelihood to a similar fate. Our service industries are already hurting with the lack of places for employees to live. I fear the character of Astoria is in danger of being lost if short term rentals/short term guests continue to take precedence over long term residents and business owners.

Sincerely,
Alicia Christian
460 McClure Ave
Astoria OR 97103

RECEIVED
NOV 0 2 2023
BY: Via Email

Nov 2, 2023

Astoria Planning Commission Hearings Officer
c/o Tiffany Taylor
1095 Duane Street
Astoria, OR 97103

Re: Letter opposing short-term rentals at 1551-1561 Exchange St.

To Whom It May Concern:

I am writing to voice my wholehearted opposition to the city's decision to permit STRs at 1551-1561 Exchange Street.

Astoria is facing a housing crisis in which *every* long-term housing unit matters. The City Council knew this when they enacted code changes to prevent long-term housing from being converted into short term rentals. The city initially took the correct action by opposing the use of the four units in the Gilbaugh Building as STRs. The closed-door dealings which led to a reversal of this initial decision and approval of STRs at 1551-1561 Exchange St. give the appearance that with the right connections, you can be immune to this vital law.

If we continue to allow our city to be ruled by greed and what will make the quickest dollar, rather than by intentional urban planning and design, we will soon find ourselves to be the next coastal tourist destination where no one can afford to live, work, and raise a family. Astoria will lose its charm if our homes are allowed to become transient lodging. And who will be here to provide services to the visitors? To work at our hospitals, restaurants, and schools? Astoria will become a hollow version of its former self, rather than a dynamic, thriving city.

Enforce the law steadfastly across the board. It is the first in many necessary steps to regulate the scourge of STRs on Astoria's livability and our local economy. These four housing units truly matter. Four families who are able to live and work here full time, *matter*. Please deny this application.

Sincerely,

Laura Evans
461 Exchange Street, Astoria

RECEIVED
NOV 0 2 2023
BY:

From: Jan Gregor
To: Planning
Subject: Community Development Dept / Neighbors for the Appeal Nov 2 at 5:30PM
Date: Wednesday, November 1, 2023 7:07:57 PM
Attachments: AirBnBobjection.doc

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

We live on Franklin above Exchange. I attended the LCPS open house when Bob Magie stated his pride in restoring the four-plex, his intent to live in the east apartment and their intent to give back to the community in providing long term rental with the other three units. That was their early intent. Any claim otherwise was not voiced at that time.

In wading through their correspondence they sound rather beleaguered. No one forced them to buy multiple historic properties, that was their decision.

We will not bring up the obvious parking problems or the new hotel and coming ambulance facility in this area as they are being discussed and studied on another project.

When the Magie's applied for AirBnB with the two cottages, we neighbors grumbled but we did not formally object. The situation is different today.

The verdict is in on how AirBnB is causing problems in small tourist towns nationwide. This public company had a boom and now is causing many problems for anyone to read about, particularly decimating to small desirable tourist towns like Astoria. It's time for Astoria to get off the AirBnB wagon, not pile more on.

Transient lodging is encroaching on our Central Residential area and causing rental drought for locals and our workforce. This decision should be based on what's best for locals that live and work here.

We have plenty of hotels, motels and bed and breakfasts and more in the works. They are nowhere near capacity most of the year. Why should we let more transient lodging compete with our established hotels, motels and B&Bs, particularly in our Central Residential area?

This is bad for Astoria. We are opposed.

Jan and Ashleigh Gregor - 1546 Franklin Ave
Curt Clumpner - 1528 Franklin Ave
Dave and Pam Armstrong - 1510 Franklin Ave
Jasper Stone - 1527 Exchange St #2
Lake Jiroudek - 1528 Franklin Ave

CITY OF ASTORIA
Founded 1811 ● Incorporated 1856

Community Development Department
1095 Duane Street • Astoria OR 97103 • Phone 503-338-5183 • www.astoria.or.us • planning@astoria.or.us

APPEAL MEMO

Date: October 26, 2023

Hearing Date: November 2, 2023

To: Alan Rappleyea, Hearings Officer

From: Tiffany Taylor, City Planner

Subject: Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning transient lodging use at 1555-1557-1559-1561 Exchange Street.

I. SUMMARY

A. Applicants:

Robert J Magie
Cynthia D Magie
PO Box 532
Astoria OR 97103
exchangeastoria@gmail.com

Attorney:
Carrie Richter, Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
crichter@batemanseidel.com

B. Owners:

Gilbaugh LLC (Tax Lot 18200 – dwelling structures)
PO Box 532
Astoria OR 97103

Robert J Magie (Tax Lot 18100 – parking)
Cynthia D Magie
PO Box 532
Astoria OR 97103

C. Appellants:

Austin Kettleson
286 Lexington
Astoria OR 97103
austinkettleson@gmail.com

Attorney:
Dan Kearns, Reeve Kearns PC
P.O. Box 13015
Portland, OR 97213
dan@reeveskearns.com

Andrew Kipp
461 Exchange
Astoria OR 97103
kipp.andrew@gmail.com

John Windus
960 Franklin
Astoria OR 97103
jwindus@nwi.net

D. Location: 1555-1557-1559-1561 Exchange Street (4-plex); 1565 Exchange Street (cottage) and 1569 Exchange Street (cottage); Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively

T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively (parking)

E. Zones: C-3 Zone (General Commercial) – structures
R-3 Zone (High Density Residential) – parking

F. Proposal: To operate transient lodging classified as a "hotel/motel/vacation rental" in an existing multi-family residential structure

G. Applications: The applicant also submitted a request to operate transient lodging classified as a "hotel/motel/vacation rental" in two existing residential structures at 1565 and 1569 Exchange Street. All three buildings were reviewed and approved at the same time. Only the decision on the multi-family residential structure operation was appealed.

II. PUBLIC REVIEW AND COMMENT

A public notice was mailed pursuant to ADC §9.020 on October 12, 2023. Email and web publishing also occurred on October 12, 2023. On site notice was posted on October 19, 2023. A notice of public hearing was published in The *Astorian* on October 21, 2023. To date, no comments have been submitted to the City. Any comments received will be made available at the Appeal Hearing.

III. BACKGROUND

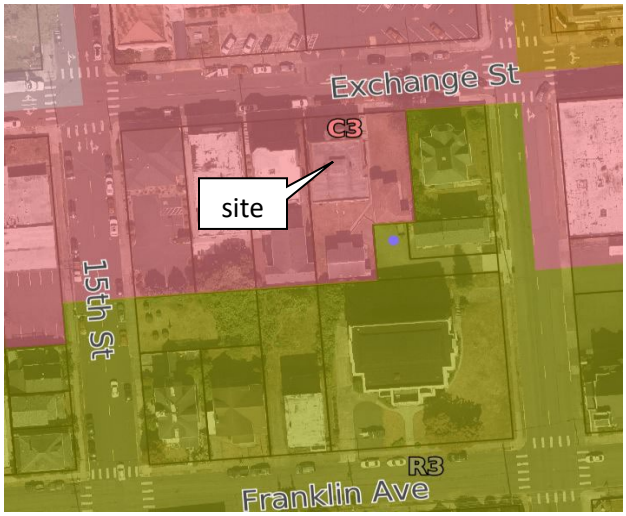
A. Site:

The subject property is located on Exchange Street in the C-3 (General Commercial) Zone. It is developed with one multi-family structure and two single-family structures. The buildings were constructed in 1920, 1930, and 1955 as residential properties. The applicant is proposing to operate all three buildings as transient lodging with no residential use. Use of the two cottages as transient lodging has not been appealed and that use has been approved by the City.

B. Neighborhood:

The neighborhood is developed with a mixture of commercial and residential uses. To the north is the Owens Adair housing facility; to the east is a single-family residence and across 16th Street is the former Lum's Auto building; to the west are multi-family dwellings and a dental office; to the south is the Masonic Temple and single-family residences. Vehicular access to the site is from a driveway on 16th Street (tax lot 18100). The C-3 Zone abuts the residential R-3 Zone (High Density Residential) on the south and east boundaries of the property.





IV. INDEPENDENT HEARINGS OFFICER DECISION

ADC §9.030.A, Quasi-Judicial Public Hearing Procedures and Requirements, Procedural Entitlements states*:*

"The following procedural entitlements shall be provided at the public hearing:

1. *An impartial review as free from potential conflicts of interest and prehearing ex parte contact as is reasonably possible.*
2. *No member of a hearing body shall participate in a discussion of the proposal or vote on the proposal when any of the following conditions exist:*
   - a. *Any of the following have a direct or substantial financial interest in the proposal: the hearing body member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.*
   - b. *The member has a direct private interest in the proposal.*
   - c. *For any other valid reason, the member has determined that participation in the hearing and decision cannot be in an impartial manner."*

The transient lodging facility at this location has been discussed by members of the City Council as a code enforcement issue prior to the use being administratively reviewed and approved by staff with a Decision Letter. The appellants alleged that there are "overlapping relationships and interests" that create potential bias by members of the Planning Commission and City Council. They specifically cite that the Mayor is a friend of the property owners, that the mayor's brother was the property manager at the time of the residential lease agreement for the four-plex, and that the property owner, Ms. Magie, is a member of the Planning Commission, appointed by the Mayor. As several Council members and Commissioners are associated with the property owners, and in an effort to maintain an impartial review, free from potential conflicts of interest and prehearing ex parte contact, the City acknowledges the potential conflict and decided to bring the matter before an independent Hearings Officer for review, rather than to the Planning Commission or City Council.

V. Applicable Criteria

1. ADC §1.400, Definitions

MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

TRANSIENT LODGING FACILITY: Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club, bed and breakfast establishment, home stay lodging, vacation rental, or other such transient lodging facility known by their advertising and/or management platform names. Transient Lodging Facility also means space in mobile home or trailer parks, or similar structure of space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

"USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun."

VACATION RENTAL: A transient lodging facility available for transient rental, and which is not occupied by an owner or manager at the same time as the guests. This includes any accommodation meeting these requirements including facilities known by their advertising and/or management platform names, or other such transient lodging identification. For the purposes of this Code, a Vacation Rental is classified the same as a hotel or motel.

2. ADC §2.390.J, Uses Permitted Outright in the C-3 Zone

"Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:

1. *Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.*
2. *Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."*

3. ADC §3.160 Nonconforming Lots, Uses and Structures, Purpose

"Within the zones established under this Code, there existing lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It is the intent of this Section to establish requirements that govern the future use of such nonconformities."

ADC §3.180.B, Change of Nonconforming Use, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

ADC §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

ADC §3.200 Prior Approval of Nonconforming Lots, Uses and Structures, *"Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a legal permit has been issued by the City and construction has begun,*

provided the structure, if nonconforming, or intended for a nonconforming use, is completed and is used within two years from the time the permit was issued."

4. ADC §7.100, Minimum Parking Space Requirements (ADC §2.415.D, Other Applicable Use Standards, in the C-3 Zone states "All uses will comply with applicable access, parking, and loading standards in Article 7"):

Use Categories	Minimum Parking Requirements *Amended by Ord. 22-01 on 11/7/2022*
All Dwellings not otherwise listed	0.65 spaces per bedroom with a maximum total of 2 spaces for single-family or two-family dwellings, including each unit in a cottage cluster development.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.) *Code prior to 2019*
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one-bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Hotels, Motels, other transient lodging facilities not listed, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.

VI. TIMELINE AND CODE REFERENCES

Date	Description	Page #
March 25, 2015	Magies purchase subject property	--
May 28, 2015	Magies purchase adjacent lot (80908DC18100) for off-street parking	--
Oct. 23, 2017	"Magie/Helligso Parking Plan 2017" / Cottages + 539 16th St / approved	9
Oct. 27, 2017	OT Application "Downtown Astoria Cottages" + receipt	10-11
Nov. 2, 2017	Landscaping Plan	12-13
Jan. 28, 2018	OT Renewal "Downtown Astoria Cottages"	14-15
April 2018	Change of ownership of subject property; 4-plex and 2 cottages / Robert J. Magie and Cynthia D. Magie to Gilbaugh LLC	--
July 1, 2019	Amendment to ADC (A19-02) re: uses in C-3 zone. *ADC §2.390.J.1*	*(below)*

Sept. 15, 2020	City internal emails re: "Cottage" tax payments; no TRT account set up	16-19
Dec. 15, 2020	City email to Magie re "Cottages" as a permitted use	20-23
Dec. 15, 2020	Transient Room Tax Registration Application (#118)	24
Dec. 15, 2020	TRT Certificate of Authority issued to "Astoria Downtown Cottages"	25
Feb. 10, 2021	Magie email re TRT account 118; J. Helligso as manager/tax payments	26
Nov. 1, 2021	City email: complaint rec'd via website / logged as file #CE21-44	27-28
Nov. 9, 2021	Email to A Kettleson_request for info	29-30
Dec. 1, 2021	Email from A Kettleson with Airbnb listing at 4-plex	31
Dec. 2, 2021	Staff confirmed AirBnB listing for "Flat, No. 1" (apt in 4-plex)	32-38
Dec. 14, 2021	TRT payments 12-15-2020 thru 12-14-2021 / No taxes rec'd 2017-2020	39
Dec. 15, 2021	Email chain-follow up on complaint	40
Dec. 28, 2021	AirBnB Ad- December Vacancy	41-47
Dec. 28, 2021	AirBnB Ad- January Vacancy	48-54
Jan. 10, 2022	Letter: Notice of Non-Compliance / 1555 Exchange / Flat No. 1 (1st Notice)	55-60
Jan. 19, 2022	Email chain-DC follow up with A Kettleson	61-62
Jan. 19, 2022	Magie Email-response to code compliance letter	63-68
Jan. 20, 2022	City internal emails - investigation	69-76
Jan. 25, 2022	Email chain – ML and AK re: complaint with AirBnB ad listing	77-82
Jan. 26, 2022	Email to Magies – cease transient lodging use at 4-plex (2nd Notice)	83-84
Feb. 4, 2022	Email from ML to Magies – meeting follow up	85-86
Feb. 8, 2022	Airbnb listing of 4-plex	87
Feb 18, 2022	Notice of Appeal letter received from the Magies; hand-delivered to ML	88-92
Feb. 25, 2022	LUBA "Notice of Intent to Appeal" filed (received on 2-28-22)	93-99
March 1, 2022	LUBA "Motion to Stay Proceedings"	100-102
March 7, 2022	LUBA issued Order suspending the appeal to May 30, 2023	--
April 14, 2022	Email chain – DC with A Kettleson	103-104
May 9, 2022	Application for Verification of Non-Conforming Use rec'd via C Richter	105-130
May 19, 2022	Email chain - B Colonna complaint re: Magies' property	131-132
May 30, 2022	Email chain – ML with A Kettleson; rec'd 90-Day lease termination	133-134
Nov. 7, 2022	ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*	*(below)*
Feb. 6, 2023	Magie Email request to schedule meeting	135
April 24, 2023	In person meeting: Scott Spence with Bob Magie	--
May 2, 2023	LUBA Order "continue the suspension" 28-day extension (rec'd 5-4-23)	136-138
May 12, 2023	Photos – addressing clarification for structures on site	139-142
May 22, 2023	In person meeting: Scott Spence; Tiffany Taylor; Bob & Cindy Magie	--
May 22, 2023	AirBnB Listing - 4plex	143-144
May 22, 2023	AirBnB Listing - Cottages	145
May 24, 2023	In person Meeting: Scott Spence: Tiffany Taylor; Bob & Cindy Magie; Mayor Sean Fitzpatrick; Councilor Elisabeth Adams	--
June 16, 2023	Email chain: Magie; C. Richter; TT – pending final decision letter	146-148
June 26, 2023	Decision Letter	149-152
July 10, 2023	Notice of Appeal rec'd (AP23-02) Appellants: Kettleson, Kipp & Windus	153-164
Oct. 12, 2023	Public Notice – mailed	165-166
Oct. 21, 2023	Public Notice – *The Astorian* – published / affidavit	167-168

ASTORIA DEVELOPMENT CODE (ADC)

Date	Description	Page #
	ADC §3.160, 3.180 "Nonconforming Uses"	169-170
January 2017	Astoria Development Code ADC §1.400 / Definitions ("uses…)	171-205
January 2017	Astoria Development Code ADC §2.385 / C-3 Zone	206-210
January 2017	Astoria Development Code Article 7 / Off-Street Parking	211-229
July 1, 2019	ADC Amendment (A19-02) / C-3 Zone / Uses *ADC §2.390.J.1*	230-231
Nov. 7, 2022	ADC Amendment (A22-01) / C-3 Zone / Uses *ADC §2.390.J*	232-233

VII. PROCEDURES

The appeal hearing, as conducted by the Hearings Officer, will include a review of the application and presentation of the evidence, opportunity for presentations by the applicant and those in favor of the request, those in opposition to the request, deliberation and decision by the Hearings Officer. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time.

ADC §9.040.B, Appeals, Commission or Committee Decision states, *"A decision of the Commission or Committee concerning a quasi-judicial land use matter may be appealed to the City Council by the applicant, a party to the hearing, or by a party who responded in writing, by filing an appeal within 15 days of the mailing of the Order. The notice of appeal filed with the City shall contain the information outlined in Section 9.040(D)."*

AB9499
CITY OF ASTORIA
NOTICE OF PUBLIC HEARING

The City of Astoria will hold an Appeal Hearing by a Hearings Officer (in lieu of the Planning Commission) on **Thursday, November 2, 2023 at 5:30 p.m.** in the Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request:

Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking] located in the C-3 [4-plex] and R-3 [parking] Zones. The appellants cited: (1) the property was occupied as residential use after January 1, 2019, (2) the applicant's Occupational Tax application for transient lodging use only included the two "cottage" structures and not the 4-plex, (3) a potential bias on part of public officials, and (4) ADC § 2.390.J.1 as the specific criteria relied upon for the appeal. Development Code Standards in Sections 1.400, 2.150-2.185, 2.390-2.415, 3, 7, 9 and Comprehensive Plan Sections CP.005-CP.028 and CP.040-CP.045 are applicable to the request.

For information, contact the Community Development Dept. by writing to: 1095 Duane St., Astoria OR 97103, by email: planning@astoria.or.us or by phone: (503) 338-5183. The location of the hearing is accessible to the handicapped. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department 48 hours prior to the meeting at (503) 338-5183. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided.
THE CITY OF ASTORIA
Tresa Abke, Administrative Assistant
Published: October 21, 2023

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR CLATSOP COUNTY

}AFFIDAVIT OF PUBLICATION
STATE OF OREGON
County of Clatsop} ss

I, Sarah Silver being duly sworn, depose and say that I am the principal clerk of the publisher of the The Astorian, Seaside Signal, a newspaper of general circulation, as defined by ORS 193.010 and 193.020;
that the

AB9499 CITY OF ASTORIA NOTICE OF PUBLIC HEARING THE CITY OF ASTORIA WILL HOLD AN APPEAL HEARING BY A HEARINGS OFFICER IN LIEU OF THE PLANNING COMMISSION ON THURSDAY NOVEMBER 2 2023 AT 5 30 P M IN THE

a printed copy of which is hereto annexed; was published in the entire issue of said newspaper for 1 successive and consecutive issues in the following issues:

10/21/23

Subscribed and sworn to before me on this 21st day of October, A.D. 2023

Tina L. Bacon
Notary Public of Oregon

OFFICIAL STAMP
TINA L BACON
NOTARY PUBLIC-OREGON
COMMISSION NO. 1038707
MY COMMISSION EXPIRES JULY 18, 2027

AdId: 403403
PO:
Tagline: AB9499 Notice of Hearing

CITY OF ASTORIA
Founded 1811 ● Incorporated 1856
Community Development Department
1095 Duane Street • Astoria, OR 97103 • Phone 503-338-5183 • www.astoria.or.us • planning@astoria.or.us

NOTICE OF APPEAL HEARING

YOU ARE RECEIVING THIS NOTICE BECAUSE THERE IS A PROPOSED LAND USE APPLICATION NEAR YOUR PROPERTY IN ASTORIA

You may participate in the appeal hearing in person or remotely. For connection options and instructions go to https://www.astoria.or.us/LIVE_STREAM.aspx (included on page 2 of this notice as well). You may also use a telephone to listen in and provide public testimony. At the start of the meeting, call (253) 215-8782 and when prompted enter meeting ID# 503 325 5821.

The City of Astoria will hold an Appeal Hearing by a Hearings Officer (in lieu of the Planning Commission) on **Thursday, November 2, 2023 at 5:30 p.m.** in the Astoria City Hall, Council Chambers, 1095 Duane Street, Astoria. The purpose of the hearing is to consider the following request:

1. Appeal (AP23-02) by Austin Kettleson, Andrew Kipp and John Windus of Administrative Decision concerning approval of transient lodging use at 1555-1557-1559-1561 Exchange Street (Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Lot 1, Block 114, Shively [4-plex] and Map T8N R9W Section 8DC, Tax Lot 18100; south 17' Lot 1, and approximate south 50' of west 30' Lot 2, Block 114, Shively [parking]) located in the C-3 (General Commercial [4-plex]) and R-3 (High Density Residential [parking]) Zones. The appellants cited (1) the property was occupied as residential use after January 1, 2019, (2) the applicant's Occupational Tax application for transient lodging use only included the two "cottage" structures and not the 4-plex, (3) a potential bias on part of public officials, and (4) ADC § 2.390.J.1 as the specific criteria relied upon for the appeal. Development Code Standards in Sections 1.400 (Definitions), 2.150-2.185 (R-3 zone), 2.390-2.415 (C-3 zone), 3 (Additional Use and Development Standards), 7 (Parking), 9 (Administrative Procedures) and Comprehensive Plan Sections CP.005-CP.028 (General Policies) and CP.040-CP.045 (Central Residential) are applicable to the request.

A copy of the Notice to Appeal application, all documents and evidence relied upon by the appellants, the applicants and the City, as well as the applicable criteria, are available for inspection at no cost and will be provided at reasonable cost. The Agenda Packet will be made available seven days prior to the hearing. All such documents and information are available by contacting the Community Development Department by mail at 1095 Duane Street, Astoria, OR 97103, by email at planning@astoria.or.us or by phone at (503) 338-5183.

The location of the hearing is accessible to the handicapped. An interpreter for the hearing impaired may be requested under the terms of ORS 192.630 by contacting the Community Development Department 48 hours prior to the meeting at (503) 338-5183.

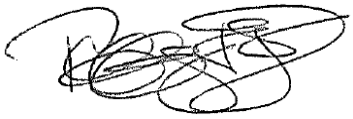
All interested persons are invited to express their opinion for or against the appeal at the hearing, or by letter addressed to the Community Development Department via email at planning@astoria.or.us or via mail at 1095 Duane St., Astoria OR 97103. Testimony and evidence must be directed toward the applicable criteria identified above or other criteria of the Comprehensive Plan or land use regulation, which you believe apply to the decision. Failure to raise an issue with sufficient specificity to afford the

Hearings Officer and the parties an opportunity to respond to the issue precludes an appeal based on that issue.

The appeal hearing, as conducted by the Hearings Officer, will include a review of the application and presentation of the evidence, opportunity for presentations by the applicant and those in favor of the request, those in opposition to the request, deliberation and decision by the Hearings Officer. The Hearings Officer reserves the right to modify the proposal or to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided.

The Hearings Officer's ruling may be appealed to the City Council by the appellants, applicant, a party to the hearing, or by a party who responded in writing, by filing a Notice of Appeal within 15 days after the Hearings Officer's decision is mailed. Appellants should contact the Community Development Department concerning specific procedures for filing an appeal with the City. If an appeal is not filed with the City within the 15-day period, the decision of the Hearings Officer shall be final.

THE CITY OF ASTORIA



Tiffany Taylor
City Planner

MAILED: October 12, 2023

Public Meetings have resumed in the City Council Chambers at City Hall, 1095 Duane Street, Astoria.
Check dates, times and location at: www.astoria.or.us
You may also view/listen and fully participate remotely by using the following connection options:

ONLINE MEETING ZOOM

At start of our Public Meetings you will be able to join our online ZOOM meeting using your **mobile or desktop device** and watch the live video presentation and provide public testimony.

Step #1: Use this link: **https://www.astoria.or.us/zoom/**
Step #2: Install the Zoom software on your mobile device, or join in a web browser
Step #3: If prompted, enter the Meeting ID number: 503 325 5821

Note: Your device will automatically be muted when you enter the online meeting. At the time of public testimony, when prompted you may choose to select the option within the ZOOM software to "raise your hand" and notify staff of your desire to testify. Your device will then be un-muted by the Host and you will be called upon, based on the name you entered within the screen when you logged in.

TELECONFERENCE ZOOM

At start of our Public Meetings you will be able to **dial-in using your telephone** to listen and provide public testimony.

Step #1: Call this number: **253-215-8782**
Step #2: When prompted, enter the Meeting ID number: 503 325 5821

*Note: Your phone will automatically be muted when you enter the conference call. At the time of public testimony, when prompted, you may dial *9 to "raise your hand" and notify staff of your desire to testify. Your phone will then be un-muted by the Host and you will be called upon based on your phone number used to dial-in.*

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA

No. AP 23-02

☒ Fee Paid Date 7/10/23 By ck # 391
Fee: $500.00

NOTICE OF APPEAL

Property Address: 1555-1557-1559-1561 Exchange St. plus: Tax Lot 18100

Lot 3; Block 114 Subdivision

Map T8N R9W Sec 8DC Tax Lot 18200 Zone C-3

Appellant Name: Kethleson / Kipp / Windus

Appellant Mailing Address: Kethleson, 286 Lexington Ave
Kipp, 461 Exchange St
Windus, 960 Franklin Ave

Phone: 617-513-6117 Business Phone: ~~503~~ 509-664-7952 Email: kipp.andrew@gmail.com

Issue Being Appealed: Gilbaugh/Magie TL Decision

Signature of Appellant: [signature] Date: 7/10/23

Name of Appellant's Attorney (if any): TBD

Address of Appellant's Attorney (if any): TBD

This Appeal is filed with the City of Astoria, in accordance with Development Code Section 9.040, on a decision and/or ruling dated 6/26/23 by the Community Development Dept Commission (Department/Commission/Committee/City Official)

Specific Criteria Appealed: ADC 2.390 (J)

The specific grounds relied upon for review: (See attachments)

(If additional space is needed, attach additional sheets.)

For office use only:						
Application Received :	7/10/23	**Standing to Appeal**	**Yes**	✓	**No**	
Appeal Criteria:						
Application Complete:		**Permit Info Into D-Base:**	7/10/23			
Labels Prepared:		**Tentative** 8-22-23 **Meeting Date:**				
120 Days:						

Andy Kipp

Kipp.ANDREW@gMAIL.com

Austin Kettleson

AustinKettleson@gmail.com

John Windus

jwindus@nwi.net

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA
AP23-02

Austin Kettleson
286 Lexington Avenue
Astoria, Oregon 97103

Andrew Kipp
461 Exchange Street
Astoria, Oregon 97103

John Windus
960 Franklin Avenue
Astoria, Oregon 97103

July 10th, 2023

Tiffany Taylor
City Planner
City of Astoria
1095 Duane Street
Astoria, Oregon 97103

RE: APPEAL - Notice of Decision RE: 1555-1557-1559-1561 Exchange Street; 1565 Exchange Street and 1569 Exchange Street Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Block 114, Shivelys

Dear Ms. Taylor,

Please accept this letter detailing the grounds for an appeal of the Decision and Order dated June 26th, 2023, regarding the city's final decision that the properties located at 1555-1557-1559-1561 Exchange Street may be used as non-conforming, transient lodging. Under the City of Astoria Development Code §9.040, we request that this appeal be heard before the City of Astoria Planning Commission. We ask the commission to review this matter thoroughly and, in doing so, reverse the city's decision on the following grounds:

In its decision, the city claims that Robert J. Magie and Cynthia D. Magie, owners of the Gilbaugh Apartments, took steps to begin preparations to use the properties at 1555-1557-1559-1561 Exchange Street (the "four-plex") as short-term rentals as early as May 2016. Further in its decision, the city concludes that these steps constitute the start of use as transient lodging and therefore was a permitted use under the code in effect at that time and may continue as non-conforming, lawful use.

The city correctly states that the Astoria Development Code defines the "start of use" as occurring when the applicant is on-site in preparation for operation. However, to interpret this correctly, defining "use" is necessary. The applicable section of the Astoria Development Code states:

> *ADC §1.400*
> *USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.*

In its analysis, the city may have overlooked meaningful evidence of concrete actions taken by Mr. and Mrs. Magie that show that the use of the "four-plex," exclusively as transient lodging, had not started, in actuality or intent. Several facts demonstrate that Mr. and Mrs. Magie did not intend to operate transient lodging at the "four-plex" before January 1st, 2019, and, in fact, intended to operate the multi-family dwelling as long-term rentals.

First, the Occupational Tax Application (see Attachment 1) provided to the City of Astoria by Cynthia Magie and dated October 27th, 2017, does not mention operating any short-term rentals at the "four-plex." The application only states that they planned to use the properties at 1565 Exchange Street and 1569 Exchange Street (the "cottages") as short-term rentals under the business name "Downtown Astoria Cottages." If Mrs. Magie had intended to begin using the "four-plex"—a completely separate structure—as transient lodging as early 2016, why were they not included in the 2017 occupational tax application? Are we to believe that applicant forgot that she owned four additional apartment units?

Second, Mr. and Mrs. Magie entered into a lease agreement (Attachment 2) for a long-term apartment rental at 1559 Exchange Street on December 1st, 2018, one month before the new ordinance on short-term rentals went into effect. The lease was to end on August 31st, 2019, and continue after that date on a month-to-month basis. The development code clearly states that transient lodging is limited to stays of less than 30 days. Again, if Mr. and Mrs. Magie had been in "preparation to operate as transient lodging," why did they enter into a 9-month lease agreement with at least one long-term tenant? How is it possible that use as transient lodging had started when the actions taken by Mr. and Mr. Magie directly conflict with that use?

This evidence reveals that the meaningful steps taken by Mr. and Mrs. Magie show they did not intend to convert the "four-plex" to transient lodging because they were either out of the scope of their business by virtue of being omitted from the Occupational Tax Application or they sought to achieve the exact opposite of a short-term rental business by renting the apartments in the building to long-term tenants. By applying the definition of "use" from the Astoria Development Code to these facts, it's not only clear the "four-plex" was *designed, arranged, maintained, and occupied* as a multi-family dwelling, but the steps taken by Mr. and Mrs. Magie demonstrate they *intended* to continue using the building, at least in part, as a multi-family dwelling for long-term tenants until at least August 31st, 2019. The city cannot ignore steps taken by the applicants when determining when use started, and Mr. and Mrs. Magie's actions cast doubt on whether the "preparations to operate as a transient lodging" at the "four-plex" were for that purpose at all. In failing to account for these actions, the city erred in its interpretation that the apartments in the "four-plex" were in use as transient lodging before January 1st, 2019. Given the clear evidence that Mr. and Mrs. Magie, both in actuality and intent, were not operating the entire building as short-term rentals but rather were leasing units to long-term tenants through at least August 31st, 2019, it fails to meet the definition of use as transient lodging. Therefore, because the “four-plex” was not in use as transient lodging before January 1st, 2019, its continued use as such is not permitted under ADC §2.390 (J.1):

ADC §2.390 (J.1):

Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.

We appeal to the City of Astoria Planning Commission to review this matter with special attention to the course of events and in consideration of the evidence brought forward in this appeal. In doing so, we hope they will reverse the decision, making these desperately needed long-term rental units available for families and workers who have chosen to make Astoria their home. Community leaders must work to live up to the intent and purpose of the ordinances regulating short-term rental in the Astoria Development Code. Failure to do so means a continued deepening of the housing crisis devastating our community. Too many of the people that make Astoria such a special place to live—from the servers and bartenders at our local restaurants and breweries, to the nurses and doctors at CMH, to the teachers in our schools—are struggling to find a stable place to live, affordable or otherwise. Our small businesses lack enough workers to fully staff up because potential employees have such a difficult time securing housing. Many of us have friends and family who have moved away because they couldn't find a place to live or it's just gotten too expensive. It's true that short-term rentals have a part to play in the fabric of our increasingly tourism-focused economy and are a meaningful source of income for property owners. However, this decision is deeply unfair to operators of short-term rentals who have gone to great lengths to make their rentals compliant with the city's code regulating short-term rentals. Faulty decisions like this directly undermine the checks and balances put in place to help mitigate the impact short-term rentals have on the housing supply and, ultimately, the ability to sustain livability here in Astoria.

Lastly, and perhaps most seriously, we can't ignore the interconnected relationships between Mrs. Magie (a City of Astoria Planning Commissioner), Mayor Sean Fitzpatrick (who appointed her to the Planning Commission), and his brother Shannon Fitzpatrick (who formally managed the Gilbaugh Apartments on behalf of Mr. and Mrs. Magie). These overlapping relationships and interests make many community members uneasy. The community is rightfully alarmed when they see elected officials involved in issues where they have been a friend and advisor to one of the parties, and

in this case, even writing a letter of support in this matter on behalf of the applicants before being elected. A problematic situation arises when it's difficult to know whether the mayor was acting in his capacity as an elected official representing the people of Astoria or acting as a friend and advocate of the applicants in the meetings and deliberations that led the city to reverse its decision. The Planning Commission has a duty to ensure that the Astoria Development Code is correctly interpreted and followed. That interpretation being free of bias is foundational to the rule of law and democratic government itself. Astorians must have confidence that land use decisions in Astoria are made fairly and without considering personal or political relationships. It is in the interest of good government for the Planning Commission to examine this matter under the highest ethical standards and with the transparency the people of Astoria deserve.

Sincerely,

Austin Kettleson
Andrew Kipp
John Windus

1 of 2

CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: 019664
Receipt Number: 217670

OCCUPATIONAL TAX APPLICATION

Name of Business: Doghouse Astoria Cottages
Proprietor: Peyton Angle TIN or SSN: [redacted]
Business Address: 1565 Exchange St., 1569 Exchange St.
City: Astoria State: OR Zip: 97103
(Local Location Must Include Written Approval to Locate on the Premises)
Mailing Address (Include City, State, & Zip): PO Box 532 Astoria OR 97103
Residence Address (Include City, State, & Zip):
Business Telephone: 503-812-7348 Home Telephone:
E-mail Address: Exchange.Astoria@gmail.com Type of Business:
Type of Business: Vacation Rental
Brief Description of What Your Business Will Do: pet home 84 short term rentals
Business New to Area? X Yes ___ No Renewal? ___ Yes X No
Has the character of your business changed in the last year? ___ Yes X No
If yes, please explain Briefly:

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. Occupational Tax is due January 1 of each year. Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

** Number of Individuals Employed: 1 Fee Per Schedule: $ 35
1 = $35.00 2 = $47.50 3 or more = see fee schedule
** Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

[signature]

APPROVED - COMM. DEV.
MM 10/27/17

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA

AP23-02

L-806

DocuSign Envelope ID: FE1AF08E-BBA5-4837-92E1-C1D7B22065DC

Oregon Rental Housing Association, Inc.

FIXED TERM RENTAL AGREEMENT

2B

RECEIVED
JUL 10 2023
Community Development
CITY OF ASTORIA

AP23-02

Tenant(s): AUSTIN KETTLESON

Tenant(s): DANAE M. SUPRUNOWSKI

Rented Premises 1559 EXCHANGE Unit: _____

City: ASTORIA Oregon, Zip: 97103 Phone: _____

Cell or Mobile 971-678-4591 Alternate Phone: 360-244-3399

Email: austinkettleson@gmail.com Email: danae.suprunowski@gmail.com

Alternate Mailing: _____

Monthly Rent Amount $ 1225.00 Due Date _____ Rent is payable on the 1st day of the month if left blank.

Lease Term Beginning: 12/1/18 Ending: 8/31/19 1st month's prorated rent from _____ to _____ is $ _____

Late Fees

If payment is not received by 11:59 p.m. on the 4th day of the rental period Tenant(s) will be charged a late fee as follows: (select ONLY one)

- X One charge per rental installment limited to the amount customary in rental area. $ 100
- ____ Per-day fee shall not exceed 6% of the one-time late fee amount customary in rental area. $ _____
- ____ Incremental late fee shall not exceed 5% of monthly rent for each 5 days of delinquency or portion thereof. $ _____

Non-Compliance and Other Fees

Smoke Alarm and Carbon Monoxide Alarm tampering fee	$ 250.00
Dishonored check fee (plus amount charged by bank)	$ 35.00
Late payment of utility fee	$ 50.00*
Failure to clean up animal waste, garbage or other waste	$ 50.00*
Parking violation or other improper use of vehicle	$ 50.00*
Smoking/Vaping in a clearly designated non-smoking/vaping unit or area	$ 250.00*
Unauthorized pet capable of causing damage	$ 250.00*

** see #18 for explanation*

Early termination of lease fee $ _____ (Early termination of lease will be charged as a fee equal to 1-1/2 times the monthly rent OR Actual Damages, to be determined at the time of the deposit accounting.)

Move-in Accounting Rent & Deposits

Security Deposit	$ 2000.00
Pet Deposit	$ _____
Other Deposits	$ _____
Pro-rated Rent	$ _____
1st Full Month's Rent	$ 1225.00
Last Month's Rent	$ _____
Other _____	$ _____
Minus Deposit to Hold --	$ _____
Total Due	$ 3225.00

Landscaping

Tenants shall mow, water and maintain lawn and landscaping in like manner in which it was received, unless otherwise indicated in writing.

O=Owner Pays T=Tenant Pays

- T Electricity O Water
- T Cable O Sewer
- X Gas O Garbage
- Other _____

Furnished to Unit

- X Range ___ Disposal X Blinds
- ____ Dishwasher X Refrigerator
- X Garbage Can ____ Dumpster
- Other _____

Medical Marijuana

No marijuana, medical or otherwise, may be grown, stored or consumed on the premises without the prior written consent of Owner/Agent.

Occupancy of Premises

Only the following person(s) shall occupy the premises: Austin Kettleson, Danae Suprunowski, Hazel & Millie Peterson

 Initials AK DS

EQUAL HOUSING OPPORTUNITY

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www.oregonrentalhousing.com
WARNING: No portion of this form may be reprinted without written permission of the Oregon Rental Housing Association, Inc.

L-807

Payments to Owner/Agent

Owner/Agent: PACIFIC CAPITAL MANAGEMENT
Address: 1046 GRAND AVENUE
City/State/Zip: ASTORIA
Phone: 503-850-8895
E-mail: SHANNON@PCM-USA.COM

For Services of Notices to Owner/Agent

Same X
Address: _____
City/State/Zip: _____

Emergency Contact for Tenant

Person to notify in case of emergency or death of Tenant: (See # 12 page 3)
Name: _____ Relationship: _____
Address: _____ City: _____ State: _____ Zip: _____
Phone: _____ Email: _____

Utility or Service Charge Disclosure

Utility benefiting other Tenants or common area: _____

Basis for allocation of utility or service charge for common areas:
Square footage by # of units _____ or: $_____ per _____
Utility fees charged must be paid by: _____ to avoid $50 late fee.

Parking - Storage - Mail

Parking Space(s) _____
Storage Space _____
Mail Box # 1559

Pets Allowed

No ☒ Yes ☐
If Yes, see attached Pet Agreement

Disclosures

1) Recycling ☒ IS ☐ IS NOT available.
2) ☒ If checked, Smoking is restricted/prohibited on the premises. (See attached Smoke Free Agreement.)
3) ☐ If checked, the dwelling unit is located in a 100-year flood plain, as determined by the National Flood Insurance Program.
4) ☐ If checked, the unit is listed for sale.
5) ☐ If checked, the unit is in foreclosure or default.
6) ☒ If checked, Owner/Agent may enter the exterior of the premises at any reasonable time for landscaping and/or maintenance.
7) Other: _____

Terms and Conditions

1. **Oversized and Water Filled Furnishings:** No aquariums, water beds, pianos, or organs are allowed without the written consent of Owner/Agent.

2. **Guests:** Written permission from the Owner/Agent is required if guest remains more than ____ days/nights in any ____ month period (if left blank then - 7 days/nights in any one month period.)

3. **Tenant Contact Info:** Tenant(s) agrees to provide updated phone, cell and email address to Owner/Agent when applicable.

4. **Property Condition:** Tenant(s) shall return premises to Owner/Agent in clean condition. The Owner/Agent's definition of "clean" is binding on all parties.

5. **Tenant and Guest Conduct:** Tenant(s) shall restrict all sounds or noise to a reasonable volume. Tenant(s) and their Guest(s) shall conduct themselves in a manner that will not disturb their neighbor's peaceful enjoyment of their premises, including common areas.

6. **Notice of Absence:** Tenant(s) shall notify Owner/Agent of any anticipated absence from the premises in excess of 7 days, no later than the first day of the absence.

7. **Entry into Premises:** Tenant(s) shall not unreasonably withhold consent to Owner/Agent to enter premises to inspect, make repairs or improvements, or to show the unit to prospective buyers or tenants. Owner/Agent may enter the premises without consent in an emergency, to post notices, or at any reasonable time with 24-hour notice or with permission of Tenant(s). If boxes are checked, Tenant(s) agrees to allow the use of ☒ text messages or ☒ email, or both for the purpose of submitting maintenance requests to Owner/Agent and for providing 24-hour notice to enter by Owner/Agent to Tenant(s).

8. **Sublease:** Tenant(s) shall not transfer their interest(s) in this agreement or sublet the premises, or any part of the premises.

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9. **Insurance:** Owner/Agent will not be liable or responsible in any way for loss or damage to any property belonging to Tenant(s) or their guests unless caused intentionally or negligently by Owner/Agent. Tenant(s) is responsible to maintain their own fire and theft insurance for their personal property. Tenant(s) is also responsible for liability coverage for damage or fire caused by them or their guest's negligence. ☐ If checked, Tenant(s) must provide proof of liability insurance covering the pet(s) and add the Owner/Agent as an Interested Party for purposes of notification in case of cancellation of policy or reduction of coverage. ☒ **If checked, Renter's Insurance is required** – Tenant is also required to maintain minimum of $100,000 liability coverage and add Owner/Agent as Interested Party. If Tenant(s) combined household income falls at or below 50% of the median for the area, Renter's Insurance may not be required.

10. **Rent Increases:** If lease expires and converts to a month-to-month tenancy, rent may be increased with a 90-day written notice. Rent increases may not be effective prior to the end of the first year of occupancy.

11. **Abandonment:** Tenant(s) agrees that any belongings, personal property or motor vehicles left on the premises, after termination of tenancy by any means, shall be considered abandoned and may be disposed of in the manner provided by law.

12. **Notices:** All required notices shall be delivered in the manner provided by law to Owner/Agent or Tenant(s). Any notice served by first class mail ONLY, must include an additional 4 days for delivery including date of service. Where allowed by law; notices may be served by first class mail and on the same day attached in a secure manner to the main entrance to the portion of the premises of which the Tenant(s) has possession or to the Owner/Agent at the address provided. Tenant has designated the "person to notify in case of death or emergency" as the person, if the Tenant is living alone, having the same rights and responsibilities as the Tenant regarding personal property. Owner/Agent does not waive the right to terminate tenancy by simultaneously or subsequently served notices.

13. **Use of Premises, Maintenance and Repair:** The premises shall be used only as a dwelling unit. Tenant(s) shall use all electrical, plumbing, sanitary, heating, ventilation, air conditioning and appliances on the premises in a safe and reasonable manner. ALL REPAIR REQUESTS MUST BE SUBMITTED IN WRITING TO OWNER/AGENT.

14. **Damage to Property:** Tenant(s) is responsible for all damages to property or premises caused by stoppage of waste pipes or overflow of bathtubs, toilets, or washbasins, unless caused by circumstances beyond their control (such as roots in the pipes). Tenant(s) must pay for any damage to the building or furnishings other than normal wear and tear. Tenant(s) shall not tamper with or make any alterations to the premises, including changing locks, without written permission of Owner/Agent. Tenant(s) agrees that Owner/Agent is not required to make a repair caused by Tenant(s) in order for Tenant(s) to be liable for the cost of the repair. Tenant(s) may be held liable for rent while the dwelling unit is being cleaned or repaired, if the cleaning or repair results from the Tenant's noncompliance with this agreement. All damage caused by Tenant(s) shall be repaired or replaced at the Tenant's expense.

15. **Hazardous Materials:** Tenant(s) shall not store hazardous or flammable materials at the premises.

16. **Smoke and Carbon Monoxide Alarms:** Tenant(s) acknowledges the presence of a smoke alarm(s) and, if required, a carbon monoxide alarm(s) in fully operational condition in the unit. Tenant(s) is instructed to test the alarms at least every 6 months and replace the batteries as needed. Tenant(s) shall replace expired batteries with 10-year lithium batteries as required by law. Tenant(s) agrees that Owner/Agent is not liable for loss or damage due to the alarm's failure to operate. Tenant(s) is required to immediately notify Owner/Agent in writing of any malfunction of the alarm(s). Tenant(s) shall not remove or tamper with a properly functioning alarm, including removing any working batteries. Tenant(s) agrees to pay a fee of $250.00 for each violation.

17. **Limited Liability:** Owner/Agent shall not be liable for damages of any kind caused by lack of heat, refrigeration, or other services to the premises arising out of any accident, act of God, or occurrence beyond the control of Owner/Agent. Tenant(s) further agrees to be responsible for and to pay for damages, fines, or fees incurred by Owner/Agent caused by acts of Tenant(s), pets, or guests.

18. **Non-Compliance Fees:** Owner/Agent may charge noncompliance fees as listed on page 1 of this agreement for subsequent violations occurring within one year from issuance of written warning notice of a specific violation. Noncompliance fees for keeping an unauthorized pet capable of causing damage may be charged as early as 48 hours after effective date of written warning notice and for each additional 48-hour period during which the unauthorized pet remains on the premises. For smoking/vaping in a clearly designated non-smoking/vaping unit or area of the premises, Owner/Agent may charge noncompliance fees as early as 24 hours after effective date of written warning notice for each subsequent violation.

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19. Carpet Cleaning: If Owner/Agent had the carpets cleaned using specialized equipment after the previous tenancy before the Tenant(s) took possession, Owner/Agent may deduct the cost of carpet cleaning from the Tenant's security deposit regardless of whether the Tenant(s) cleaned the carpets before delivery of possession of the premises.

20. Lease Enabling/Trespassing: Owner/Agent retains the power to exclude non-residents from the common areas of the property if they violate the rules of the complex. Owner/Agent retains control over the common areas of the premises for the purposes of enforcing state trespass laws and shall be the "person in charge."

21. Termination: Tenant(s) shall not terminate this agreement without giving 30 days' written notice; failure shall make Tenant(s) liable for up to 30 days' rent. Tenant(s) must provide a single forwarding address for final accounting. Upon material noncompliance with this agreement, Owner/Agent may issue a 30-day notice of Termination with Cause, and if the breach is not remedied by the cure period indicated on the notice, the rental agreement will terminate and the Owner/Agent may take possession pursuant to Oregon law. Fixed-term tenancy will automatically convert to month-to-month tenancy unless either party has properly terminated the tenancy by giving at least 30 days' written notice prior to end of the fixed term or 60 days' by the Owner/Agent if termination is after the first year of occupancy. Owner/Agent may terminate this tenancy in the manner provided by law if Tenant(s) fails to pay rent and/or other charges, or to comply with any terms or conditions of this agreement. Any omission or misstatement on the application for this dwelling unit may, at the option of Owner/Agent, be grounds for termination of tenancy. Owner/Agent accepting partial payment does not waive the right to terminate tenancy if the balance of rent is not paid as agreed in writing. Acceptance of deposit on last month's rent does not constitute a waiver of Owner/Agent's right to terminate for nonpayment of rent. Rent or other charges owed by Tenant(s) shall be deducted from Tenant's security deposit after all Tenants vacate the premises.

22. Holdover Tenancy: Any holding over after the expiration of the rental term without written consent of Owner/Agent shall be deemed a willful holdover and Owner/Agent shall be entitled to rent and damages, including court fees if applicable.

23. Tenant(s) Jointly and Severally Liable: If the rental unit is occupied by more than one occupant it is agreed that each person will be responsible for the entire rent and all other charges until the account is paid in full. Any prepaid rents or deposits will not be applied until all Tenants legally vacate the premises.

24. Application of Payments: Owner/Agent may apply payments received by tenant(s) in the following order: A) Outstanding rent from prior months. B) Rent for the current month. C) Utility or service charges. D) Late rent charges. E) Damage claims and any other fees or claims owed by the tenant.

25. Legal and Collection Fees: Any funds due from Tenant(s) may be consigned to a Collection Agency, Small Claims Court or Circuit Court. Tenant(s) expressly authorizes Owner/Agent to collect any and all costs, fees, expenses, charges, and incurred interest associated with the attempt to collect any debt due under this agreement. Tenant's financial obligation expressly includes the actual debt and all other costs, fees, expenses, and charges including charges related to collection activity of a Collection Agency. Specifically, this authorization includes charges in excess of the original debt. Interest on the debt to be charged at a rate of 10% per annum, compounded monthly.

26. Unenforceable Provision: If any portion of this agreement should be ruled unenforceable for any reason, all other portions of the agreement shall remain in full force.

27. Charges: Utility – Utility charges must be paid in full within 30 days of receipt of billing or Owner/Agent may assess a $50 late fee. Any charges imposed on a owner/agent by a utility or service provider or on behalf of a local government for one or more municipal services or for the general use of a public resource related to the dwelling unit, including fees assessed to support street maintenance or transportation improvements, transit, public safety and parks and open space, but not including real property or income taxes or business licenses or dwelling inspection fees, may be passed through to Tenant(s) as allowed by law. **HOA** – Any charges imposed upon Owner/Agent by a Homeowner's or Condominium Association for anyone who moves into or out of a unit within the Association, may be passed through to the Tenant(s) for payment as allowed by law. **Re-Key Mailbox(s)** – If the mail receptacle associated with the dwelling unit is a locking type, Tenant(s) are solely responsible for the fees charged by the Postmaster for the re-keying of the box should a key not be provided by the Owner/Agent, or if the box has not been re-keyed between tenancies.

28. Attachments to the Agreement: The following are attached and are made a part of this agreement.

☐ # 3 Pet Agreement	☒ # 21 Deposit Refund	☐ # 33 Rules & Regulations
☐ # 9 Check In/Check Out	☒ # 27 Smoke/Vape Free Agreement	☐ # 41 Annual Recycling Notice
☒ # 11 Smoke Alarm & CO Agreement	☒ # 54 Mold Prevention	☒ # 51 Lead Paint Disclosure
☐ # 32 Contract Addendum	☐ # 52 Co-Signer Agreement	☐ Other _____
☐ Other _____	☐ Other _____	☐ Other _____

29. Signature Block: Where used in this agreement "Owner/Agent" means "Landlord" as defined in ORS 90.100. All parties acknowledge having read and understand all pages and attachments to this agreement. All questions have been answered.

Tenant [signature] Date 11/21/2018 10:12:14 AM PST Tenant [signature] Date 11/21/2018 10:58:24 A

Tenant 5EBCBC21FBEC467... Date _____ Tenant 3F08BBF32519454... Date _____

DocuSigned by:

Owner/Agent Shannon Fitzpatrick Date 11/21/2018 11:00:35 AM PST

83DAA43D2A214B5...

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From:	Tiffany Taylor
To:	austinkettleson@gmail.com
Cc:	Amanda Perron
Subject:	Gilbaugh / Transient Lodging
Date:	Monday, June 26, 2023 3:15:00 PM
Attachments:	Magies_Decision Letter 6-26-2023.FINAL.pdf image001.jpg image003.jpg

---

Good Afternoon –

Please see the attached "Notice of Decision and Order" letter for the properties located at 1555-1557-1559-1561 Exchange, 1565 Exchange and 1569 Exchange.

Feel free to reach out if you have any questions.

Regards,
Tiffany

TIFFANY TAYLOR
CITY PLANNER
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

June 26, 2023

Gilbaugh LLC
P.O. Box 532
Astoria, OR 97103

Via email: exchangeastoria@gmail.com

Re: 1555-1557-1559-1561 Exchange Street; 1565 Exchange Street and 1569 Exchange Street
Map T8N R9W Section 8DC, Tax Lot 18200; Lot 3, and north 100' of west 35' Lot 2, Block 114, Shivelys

This letter is a Notice of Decision and Order for the following properties:

- 1555-1557-1559-1561 Exchange Street (multi-family dwelling; advertised on AirBnB as "Historic Downtown Riverview Flats, 1, 2, 3 and 4")
- 1565 Exchange Street (single-family dwelling; advertised on AirBnB as "Historic Downtown Cottage")
- 1569 Exchange Street (single-family dwelling; advertised on AirBnB as "Riverview Downton Cottage")

For the reasons described below, the City finds that the properties located at 1555-1557-1559-1561, 1565 & 1569 Exchange Street may be used as transient lodging and are considered a non-conforming use.

Background: The subject properties listed above are located in the C-3 Zone (General Commercial). The Astoria Development Code (ADC), adopted January 1, 2019, allows transient lodging as follows:

ADC §2.390.J, Uses Permitted Outright in the C-3 Zone
"Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:

1. *Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.*

2. *Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."*

The subject property is currently owned by Gilbaugh LLC, which acquired it from Robert J. Magie and Cynthia D. Magie in April 2018. It includes a four-plex, constructed as a residential facility in 1920 (1555-1557-1559-1561 Exchange) and two single family residences, that were moved to the property in the 1960s (1565 and 1569 Exchange). Pursuant to the language of ADC §2.390.J, property in the C-3 zone may not be used for transient lodging.

The Magies acquired the subject property in March 2015. On that date transient lodging was allowed as an outright use in the C-3 zone. The Magies agreed to purchase the property with a plan to use all three buildings as transient lodging. Shortly after purchase, the Magies began to improve this property to accommodate 6 short term rental units.

In 2017 the Magies obtained a business license and began using the two single family residences (1565 and 1569 Exchange) as transient lodging. By January 1, 2019 the four-plex was under extensive renovation for use as a transient lodging facility. Three of the four units in the four-plex were vacant; however, the fourth was occupied by a residential tenant. On December 15, 2020, Barbara Fryer, a planner for the City, found that conversion of the two single family residential buildings (1565 and 1569 Exchange) from residential to transient lodging preceded the 2019 amendments and therefore constituted a lawful, non-conforming use. That decision is not contested by the City and is again confirmed.

Issues surrounding the four-plex (1555-1557-1559-1561 Exchange) are slightly more complex. For the reasons discussed below the City finds that the four-plex was in use as transient lodging by January 1, 2019; as a result, its use also constitutes a lawful non-conforming use.

Shortly after purchasing the property, the City's Community Development Director informed the Magies that changing the use of the four-plex to transient lodging would require additional off-street parking spaces on its property. In May 2016, the Magies purchased additional property and installed required parking improvements. Over the next few years, the Magies continued to take steps needed to convert the four-plex to transient lodging. These activities included complying with landscape requirements for the C-3 zone, constructing improvements, repairing the building, furnishing, management and cleaning fees, insurance and marketing the property.

As the above history of activity shows, the Magies began transient lodging improvements no later than May 2016. The Astoria Development Code provides that a non-conforming use may continue if it was legal when the use first occurred. That use "occurred" when the Magies moved onto the property in preparation to operate as transient lodging. The actual transient lodging operation was not required to consider a use as having begun. The applicable ordinances state:

> ADC 3.160 "NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."
>
> ADC 1.400 "USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual

operation and/or business open to the public need not occur to consider a use as begun."

These ordinances make clear that a use starts when an applicant begins taking the steps necessary to operate that use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, the transient lodging use started no later than May 2016 when the Magies purchased and improved adjacent property to add additional off-street parking spaces.

Conclusion: After reviewing the submitted documents, and researching City records, the City has determined that the four-plex at 1555-1557-1559-1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street, were in transient lodging use on January 1, 2019, and as such, these six units may continue as a transient lodging use. With the 2019 code change, they are now classified as "Nonconforming Uses."

Clarification on Future Uses: Development Code Section §3.180.C.1, Nonconforming Uses, Discontinuance of Nonconforming Use states, *"If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows. . ."*

Development Code Section §3.180.B, Change of Nonconforming Use states, *"A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located."*

As a nonconforming use, the transient lodging may continue. If the transient lodging should discontinue for one year, the use would need to conform with the current code. If the use is changed to a conforming use, such as residential and not transient use, then it may not return to the nonconforming transient use. The property use may not switch back and forth between conforming and nonconforming uses.

As a reminder, use for transient lodging does require a City Occupational Tax (business license) and payment of the transient room tax.

THIS IS A FINAL LAND USE DECISION. THE DECISION MAY BE APPEALED TO THE ASTORIA PLANNING COMMISSION BY THE APPLICANT OR A PARTY WHO RESPONDED IN WRITING TO THE PROPOSED USE BY FILING AN APPEAL WITH THE COMMUNITY DEVELOPMENT DIRECTOR WITHIN 15 DAYS OF THE MAILING OF THE DECISION. THE NOTICE OF APPEAL SHALL INDICATE THE INTERPRETATION THAT IS BEING APPEALED.

Regards,



Tiffany Taylor
City Planner

cc: Carrie Richter (crichter@batemanseidel.com)
Austin Kettleson (austinkettleson@gmail.com)

From: exchangeastoria@gmail.com
To: Tiffany Taylor; Scott Spence; Sean Fitzpatrick; Carrie Richter
Subject: Fwd: Transient Lodging
Date: Friday, June 16, 2023 8:53:39 AM

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Hi all,
We still have not received our assuredly positive official notice of decision that we were told we'd receive 3 weeks ago. Carrie Richter provided suggested language below two weeks ago and I sent out a reminder last week. Our LUBA appeal period is quickly ending and Cindy and I are are exhausted with this process and would like to put it behind us.

Thanks
Bob Magie

Sent from my iPhone

Begin forwarded message:

From: Carrie Richter <crichter@batemanseidel.com>
Date: June 6, 2023 at 2:05:41 PM PDT
To: ttaylor@astoria.or.us, BLAIR HENNINGSGAARD <blair@astoria.law>
Cc: Bob and Cindy Magie <exchangeastoria@gmail.com>
Subject: FW: Transient Lodging

Good Afternoon:

In order to expedite resolution of this matter, I wanted to offer some proposed language to the Notice of Decision and Order that I understand may be forthcoming:

Re: 1555, 1557, 1559, 1561, 1565 and 1569 Exchange Street Notice of Decision and Order

After reviewing the material supplied, the City has determined that the four units located at 1555, 1557, 1559, 1561 Exchange Street as well as the two cottages located at 1565 and 1569 Exchange Street were in transient lodging use on January 1, 2019 and as such, these six units may continue to either be placed into transient lodging use or for residential dwelling purposes, at the owners' discretion. Therefore, the City's final decision is that six units containing residential uses, whether short or long term, have been in continual operation since the 1920s when these properties were constructed and may continue notwithstanding any use limitation imposed by ADC 2.39.10(a) or other constraint on the operation of transient lodging or other residential uses.

As a result, the Notice of Non-Compliance dated January 10, 2022 is hereby rescinded.

The owner shall be required to maintain required business licenses and transient room tax registration as may apply.

I hope that this is helpful in moving this matter to closure.

Carrie

Carrie Richter
Bateman◊Seidel
Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, OR 97205
(503) 972-9903 (direct phone)
(503) 972-9904 (direct fax)
crichter@batemanseidel.com

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From: Tiffany Taylor <ttaylor@astoria.or.us>
Date: May 26, 2023 at 6:11:50 PM PDT
To: exchangeastoria@gmail.com
Cc: Scott Spence <sspence@astoria.or.us>, Blair Henningsgaard <blair@astoria.law>, Sean Fitzpatrick <sfitzpatrick@astoria.or.us>, Elisabeth Adams <eadams@astoria.or.us>
Subject: Transient Lodging

Bob and Cindy,

As a follow up to our phone conversation today, the City will prepare a decision letter regarding the properties located at 1555-1557-1559-1561 Exchange and 1565-1569 Exchange. The intent of the letter is to document the allowed uses.

While our existing records, as well as the materials you've presented, do not contain a full account of past communications and/or permissions, the City recognizes the intended use (transient lodging) as permissible for the two cottages, as well as the 4-plex, and will memorialize that decision in a letter. You should expect a letter by

the end of next week.

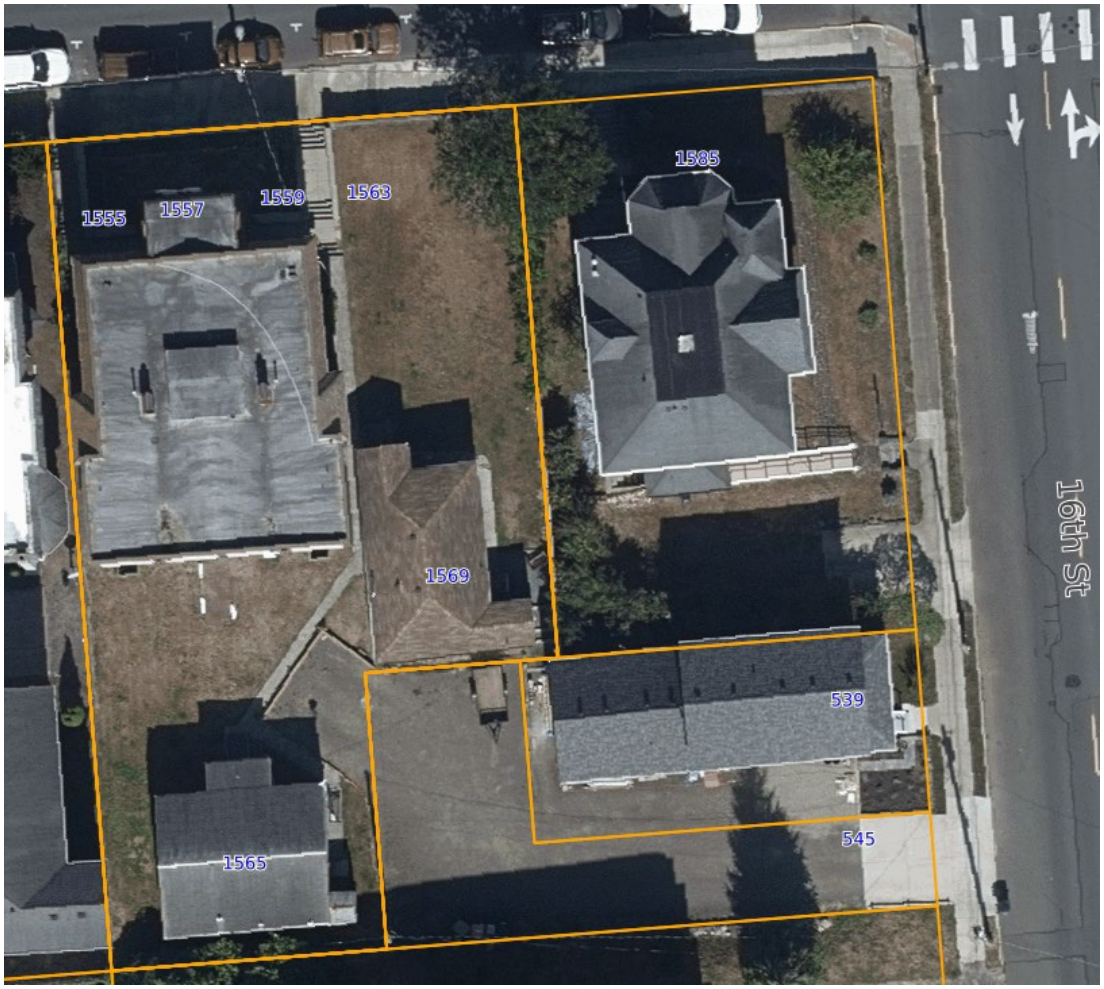
We consider the matter resolved; therefore, the pending case before LUBA unnecessary.

If you have any questions, please don't hesitate to reach out.

Regards,
Tiffany



5/12/2023 – Address confirmation for each structure / Magie property





Astoria Cottages: 1565 and 1569 Exchange





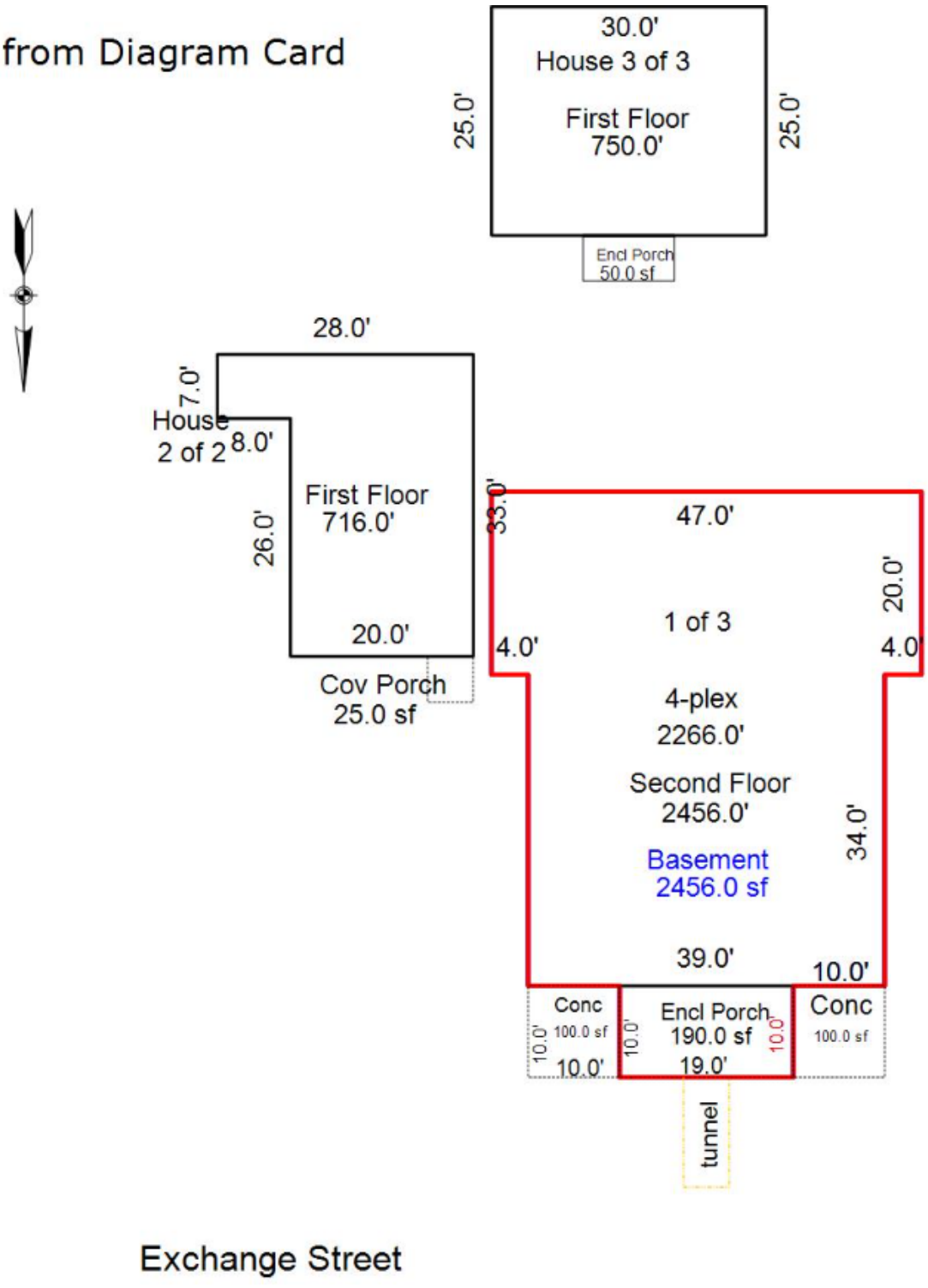
4-plex: 1555 – 1557 – 1559 – 1561 Exchange







Sketch Drawn from Diagram Card



Exchange Street

Cottages: 1565 and 1569 Exchange

airbnb Start your search Airbnb your home

Riverview Downtown Cottage

★ 4.95 · 129 reviews · Superhost · Astoria, Oregon, United States Share Save



Entire cottage hosted by Cindy

5 guests · 1 bedroom · 3 beds · 1 bath

~~$217~~ $185 night ★ 4.95 · 129 reviews

airbnb Start your search Airbnb your home

Historic Downtown Cottage

★ 4.91 · 179 reviews · Superhost · Astoria, Oregon, United States Share Save



Entire cottage hosted by Cindy

5 guests · 2 bedrooms · 4 beds · 1 bath

$225 night ★ 4.91 · 179 reviews

4-plex: 1555–1557–1559–1561 Exchange

Historic Downtown Riverview Flat, No. 1

★ 4.93 · 89 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.93 · 89 reviews

Historic Downtown Riverview Flat, No. 2

★ 4.88 · 59 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.88 · 59 reviews

Historic Downtown Riverview Flat, No. 3

★ 4.97 · 74 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.97 · 74 reviews

Historic Downtown Riverview Flat, No. 4

★ 4.86 · 7 reviews · Superhost · Astoria, Oregon, United States

Share Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

~~$225~~ $191 night ★ 4.86 · 7 reviews

LUBA
MAY 02 2023 PM 01:27

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE,
Petitioners,

vs.

CITY OF ASTORIA,
Respondent.

RECEIVED
MAY 04 2023
Blair Henningsgaard

LUBA No. 2022-015

ORDER

On February 25, 2022, petitioners filed their notice of intent to appeal a community development director determination that petitioners' use of their property was not allowed. On March 2, 2022, petitioners filed a motion to suspend this appeal to allow the parties additional time to resolve a related case. The motion asked that the case remain suspended until one of the parties notified LUBA to restart the appeal. The motion was signed by both the city and petitioners. On March 7, 2022, LUBA issued its order suspending the appeal. Not later than May 30, 2023, LUBA requests that the parties advise LUBA whether this appeal should be dismissed, reactivated, or the suspension continued.

If a party advises us that the parties wish to continue the suspension, or we do not receive a response to this Order, we will issue an Order continuing the suspension for an additional 28 days. At the conclusion of that 28-day extension, this appeal will be dismissed without further notice, unless one or more of the parties requests that the appeal be reactivated.

Dated this 2nd day of May 2023.

Michelle Gates Rudd
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Order for LUBA No. 2022-015 on May 2, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Blair J. Henningsgaard
Astoria City Attorney's Office
PO Box 1030
Astoria, OR 97103

Carrie A. Richter
Bateman Seidel, P.C.
1000 SW Broadway
Suite 1910
Portland, OR 97205

Dated this 2nd day of May, 2023.

Erin Pence
Executive Support Specialist

Jessica Loftis
Executive Support Specialist

From: Bob and Cindy Magie
To: Elisabeth Adams
Subject: scheduling a meeting
Date: Monday, February 6, 2023 2:40:44 PM

> **Caution:** ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Good afternoon,

I am just checking in with you again regarding having a meeting with yourself and the city manager regarding resolving our Short term rental situation with the city.

Thanks
Cindy

Tiffany Taylor

From: Megan Leatherman
Sent: Monday, May 30, 2022 8:57 AM
To: Austin Kettleson
Subject: RE: 1559 exchange ST

Hi Austin,

I will pass this onto our attorney, Blair Henningsaard. I think it is wise that you have obtained an attorney.

Sincerely, Meg



ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Monday, May 30, 2022 6:08 AM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: 1559 exchange ST

Caution: ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

Good morning Mrs Leatherman,
Just thought I'd let you know I received a lease termination notice last week. For the reason being mr Magie's father wants to live in my apartment as his full time residence and there no comparable units open in the same building. (Even though theirs 5 Airbnb's on property). Anyways I wanted to get my notice over to you to see if it would help the cities case in this matter. I've contacted a lawyer myself and since the legitimacy of his air bnbs are still in limbo I'm out of luck in this matter.

Very respectfully

Austin Kettleson
9716784591

HAGLUND KELLEY LLP

Portland Office and Mailing Address:
2177 SW Broadway
Portland, Oregon 97201

T 503.225.0777
F 503.225.1257
www.hk-law.com

Astoria Office Location:
800 Exchange Street, #330
Astoria, Oregon 97103

Michael E. Haglund
Michael K. Kelley (In Memoriam)
Michael G. Neff
Julie A. Weis
Christopher Lundberg
Matt Malmsheimer
Joshua Stellmon (Astoria)
Eric J. Brickenstein
Christopher T. Griffith
Shay Scott

Heather Reynolds (Astoria)
Of Counsel

LeRoy W. Wilder
Retired

May 19, 2022

Austin Kettleson
Danae Sunprunowski
1559 Exchange
Astoria, OR 97103

90-DAY TERMINATION-QUALIFYING OWNER REASON

Re: Your Tenancy at 1559 Exchange, Astoria, OR 97103

Dear Mr. Kettleson, Ms. Sunprunowski,

I represent Gilbaugh, LLC and Bob and Cynthia Magie, your landlords and the owners of the property in which you reside. In accordance with ORS 90.427, please consider this letter your 90-Day Notice of Termination for Qualifying Owner Reason because the landlord intends for a member of the landlord's immediate family to occupy the dwelling unit as a primary residence and the landlord does not own a comparable unit in the same building that is available for occupancy. More specifically, Mr. Magie's father will be occupying the unit as his primary residence.

Your tenancy will terminate at 11:59 p.m. on Sunday, August 21, 2022. Additional days have been added for service by mail. In accordance with ORS 90.427, a check for $1,456.00 is enclosed as fulfillment of your landlord's obligations under ORS 90.427(6)(a)(C).

If the recipient of this document is a veteran of the armed forces, assistance may be available from a county veteran's service officer or community action agency. Contact information for a local county veteran's service officer and community action agency may be obtained by calling a 2-1-1 information service.

Very truly yours,

Joshua J. Stellmon

JJS/akt
Enclosure

From: Megan Leatherman
To: Tiffany Taylor
Subject: RE: Home-Stay Lodging Lic & Code Enforcement
Date: Thursday, May 19, 2022 3:36:00 PM
Attachments: image002.png

Just so you are aware of the status Blair and I are going back and forth with Carrie Richter on some legal points. Once we come to a conclusion we will have detailed next steps. Until then there is nothing we can do but wait while something is worked out.

Sincerely, Meg

MLeatherman-Resized

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

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From: Tiffany Taylor <ttaylor@astoria.or.us>
Sent: Thursday, May 19, 2022 10:52 AM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: FW: Home-Stay Lodging Lic & Code Enforcement

Meg,

Please contact Brian Colonna at: (360) 787-0756. He owns the property at 1585 Exchange, east adjacent to Bob and Cindy Magie's property.

He called with concerns about 1569 Exchange. See below for some of his comments:

- The cottage at 1569 Exchange (structure along the east property line) had a party of about 10 individuals this past weekend. Very disruptive. Never received notice of the change in use (which kicked off a discussion about zoning, HSL requirements, etc.).
- Brian reported that he has known the past tenants of the cottage and that the cottage was a residential use until last year, in violation of the Jan. 2019 code change. Cottage is now used as a vacation rental and is advertised as "River View…"
- Reported that the Magies approached him and another neighbor, Jacob Helligso (539 16th) last year with a proposal for "all of them to go in together and apply for a lodging license" and rent out their properties for vacation rentals.

He would like an explanation and status of the Magie's property. I told him it was under review and

that you would be the best person to speak with.

Let me know if you need more info about my phone conversation with Brian.

Thanks,
Tiffan

From: Tiffany Taylor
Sent: Thursday, May 19, 2022 10:34 AM
To: 'margaritacolonna@att.net' <margaritacolonna@att.net>
Cc: Megan Leatherman <mleatherman@astoria.or.us>; Diane Christiansen <dchristiansen@astoria.or.us>
Subject: Home-Stay Lodging Lic & Code Enforcement

Brian,

Thank you for your call today. As discussed, please see the attached noticing that was sent out on September 7, 2021 for the property located at 539 16th Street. The address recipients are obtained from the County Assessor's real property tax records. It's important to note that if there are any violations or code enforcement issues, it could jeopardize the license-holder's ability to continue operations and/or license renewals.

Regarding the cottage at 1569 Exchange, we are sorry to hear about the large gathering and disruption/noise over the weekend. Meg Leatherman, the Community Development Director, is currently in discussions with the property owners and should be able to provide you with more information.

In the meantime, if you have any further questions, please don't hesitate to reach out.

Regards,
Tiffany

https://www.astoria.or.us/footers/TaylorT2.png

Application for Verification of Non-Conforming Use

Owner: Gilbaugh LLC

Business Name: Astoria Downtown Cottages

Applicants: Bob and Cindy Magie

Address: 1555-1569 Exchange Street

Applicant's Representative: Carrie Richter, Bateman Seidel, 1000 SW Broadway St., #1910, Portland, Oregon, 97205

The applicants seek verification that the Magies have a vested right to a 6-unit short term rental use occurring at 1555-1569 Exchange Street may remain.

A 6-unit Short-Term Residential Use is a Fully Vested Lawful, Non-Conforming Use at this Site

Astoria Development Code (ADC) 3.160 acknowledges that non-conforming uses may continue, notwithstanding subsequent changes in the law that might restrict that use.

> "NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it."

The Magies purchased 1555-1569 Exchange Street in 2015 with the intention of operating 6 short-term residential units. As the attached history of activity shows, thereafter the Magies began the slow and arduous process of restoring and improving these properties for short term rental use.

> "USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun."

This definition makes clear that a use starts when an applicant begins taking the steps necessary to operate this use. Actual operation or opening of the business to the public need not occur for the use to be considered started. Therefore, this use started in December 2016 when the Magies purchased and improved an adjacent property adding 5 off-street parking spaces (coupled with the existing on-street spaces resulted in 12 total spaces or 2 per unit) pursuant to the Magie / Helligso Parking Plan 2017.

In 2016, the ADC did not impose any limitation on short-term rentals. In the C-3 zone, "motel, hotel, bed and breakfast inn or other tourist lodging facility and associated uses" were permitted outright without limitation. As soon as units were adequately improved to function in short-term use they were so operated. Before Airbnb was the popular method of locating customers, the Magies accommodated travelling nurses or Coast Guard members for short-stays, sometimes for a couple of month or by the week.

On multiple occasions, the City Planning Staff reinforced that short-term rental use of the property could continue unrestricted and without further review including:

- 10-27-2017 – Occupational Tax Application Approval for 1565 Exchange Street and 1569 Exchange Street
- 12-23-2017 – Mike Morgan sign-off that off-street parking was designed and operated to support a commercial short-term rental use
- 7-01-2020 – Heidi Dlubac confirmed that since the project was initiated prior to 2019, the effort could continue
- 12-15-2020 – Barbara Fryer email that the short-term rental use occurring on 1555-1569 may continue
- 12-15-2020 – Transient Room Tax registration is issues by the City for 11 bedrooms – the total number of bedrooms contained within the 6 units.

Over the past 5 years on multiple occasions, different staff from different departments have all reached the same conclusion – the Magies 6 short term rental units are allowed. The Magies first learned of the change in the City's code on July 1, 2020 and learned of the City's changed position to apply these amendments to bar short term use on January 10, 2022. The Magies acted in good faith in reliance on the previous code, City staff representations and lodging tax sign-offs.

As the activity chronology, use table and 3rd party letters from others also shows, the Magies have been carefully and continuously repairing and restoring these structures as necessary to operate them as short-term rentals. These records and photographs show that putting these structures into short term use required the expenditure of over $335,000 including construction of an off-street parking lot, basement and foundation stabilization, installation of new hip roofs and siding, window restoration, furnishings, and kitchen appliances such as coffee pots and silverware. These costs represent a substantial portion (much over half) of the total costs necessary to open all 6 units for operation and all of these efforts were expended before April 2019, the date on which the ADC 2.39.10.J amendments took effect. These costs do not include all of the hours of sweat equity and volunteer labor, which was, again, accomplished in good faith and without any notice that the amendments adopted in 2019 imposed any limitation.

Based on the foregoing, the Magies have established vested right to continue operating a 6-unit short term residential use on their Exchange Street property.

The 4-Plex was Originally Constructed as a "Motel" and May Continue under ADC 2.39.10.b

In addition to being a lawfully vested, short-term use, the units contained within the 4-plex fall within the definition of a "motel" that can continue, regardless of whether some of the units may have historically be placed for some period into permanent residential use.

The limitations on short-term accommodations under the ADC 2.39.10.J, provide as follows:

> "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:
>
> 1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.2.

2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units."

The term Motel is defined in the ADC as:

> "MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building."

The fourplex structure has rooms that have direct access to the outside and is (and has been) made available to guests for compensation and as such it is a "motel." ADC 2.39.10.J.2 provides that where a "motel" was originally constructed, it can continue to be put to motel use. Since the definition of "motel" does not distinguish between short-term or long-term renter occupancy, the four-plex qualifies as a "motel" at the time it was originally constructed, just like it does today.[1] As such, short term rental use of the "motel" fourplex may continue without restriction.

[1] In a January 10, 2022 letter, the Community Development Department opines that the fourplex cannot be a "motel" because it was originally constructed as "apartment dwellings (c 1890/1920) and has been occupied as a long-term rental property for residents." The basis for this statement is not clear. Certainly the property tax classification code bears no relation to the actual use and, like the definition of "motel," it is does not impose any long or short-term distinction in any event.

Gmail

Bob and Cindy Magie <exchangeastoria@gmail.com>

Short Term Rentals

Sean Fitzpatrick <sfitz97103@gmail.com>
To: Exchangeastoria@gmail.com

Tue, Apr 26, 2022 at 10:13 AM

Hi Bob and Cindy,

Thanks for touching base about your short-term rentals. My notes reflect that we were discussing your project as early as June of 2015. You were purchasing or had recently purchased the lot on 16th to provide the parking required for short term rentals. The lot in itself was too small to build on, so it had no value to the owner/seller. The highest and best use was for parking for your units. The seller of the lot lived out of the area and I was impressed that you had gone to such great lengths to find, contact and negotiate with her. I believe you later did a "good neighbor" lot line adjustment to allow off-street parking for the owner of the small house on 16th which is adjacent to your property, and to allow for a more efficient parking layout for your short term tenants.

City staff stated that short term rentals were an outright use in the commercial zoning. As your project would not come before the Planning Commission, we could discuss the project and there would be no conflict if I advised you in my role as an advisor with the SBDC.

We discussed the driveway apron and concrete work necessary to accommodate the parking requirement. There was an issue with the initial flatwork on city property, and staff required removal and re-pouring of the concrete apron.

The main building and the two smaller buildings needed considerable work. While Roberta loved her properties, she did not appear to have (or chose not to spend) the capital necessary to do ongoing maintenance and large repairs. The buildings, as a result, had several decades of deferred maintenance, including foundation issues in the main building. The siding on the main building and one of the smaller buildings had considerable rot, the roofs needed maintenance and/or replacement, all of the buildings needed paint. The interiors were very dated and at least one of the units was not occupied or habitable in the condition in which you purchased. All units would need new paint, flooring and appliances, in addition to updating to plumbing and electrical.

The estimated costs at that time were in the hundreds of thousands of dollars, which would be close to or exceed $1,000,000 today. The only way that you could repair and restore the buildings was to use them as Short Term Rentals, as market rents could not cover the costs to operate- mortgage, property taxes, insurance, utilities, maintenance, repairs, etc.

As we discussed at the time, maintenance and repair costs with a property as ornate or detailed as the Exchange Street building will result in costs beyond what fair market rents can support. As a result, you would have to utilize the commercial zoning to create cash flows that could support the restoration, repairs and ongoing maintenance, which meant short term rentals. We discussed that hospitality was very different from habitation, so you would have to study the differences in laws pertaining to hospitality, and learn how to be a good neighbor and good host.

It's interesting reflecting back on what you have accomplished, from what you started with to what it has become. All of Roberta's properties- including the six units on Exchange Street- had been offered to me in 2007. I turned them all down, except The Franklin, due to the extreme amount of work and the high costs to cure the deferred maintenance. The property was completely neglected from that time until you purchased the buildings and started pouring money into them seven years later. The buildings look so much better and are so much safer now than they were 15 years ago! A great contribution to the neighborhood as it transitions from housing to commercial.

I hope this information is helpful. Please let me know if you have other questions!

Sincere Regards,

Sean Fitzpatrick, General Manager
Wecoma Partners, Ltd.

PACIFIC CAPITAL MANAGEMENT

April 28, 2022

Robert & Cynthia Magie
PO Box 532
Astoria, Oregon 97103

Dear Bob & Cindy,

Following up on our recent conversations, this letter documents the professional property management relationship between PCM, INC dba Pacific Capital Management, a real estate investment management firm licensed in Oregon, Washington and California and Gilbaugh, LLC and it's property located at 1555-1569 Exchange in Astoria.

PCM, INC managed the property at 1555-1569 Exchange from May 2018 through November 2021 while you were attending to other business and family matters. During this period of management, we discussed your business plan for using the property as short term rentals and you showed me your business licenses for the short term rentals. We worked together on upgrading and updating units in a manner that would set the units up for use as future short term rentals as tenants vacated the units and new tenants were put into place.

We also discussed from the beginning whether PCM would provide the short term management for the units or whether another local service provider would be a better fit.

As you and your family were winding down your other business and family matters and starting to take over more management and upgrades at the property, we started to slowly transition the units, one at a time, to short term rentals.

In summary, during our business relationship, your repeatedly stated intention and actions were to transition the units at the 1555-1569 Exchange property to short term rentals.

Please let me know if you or anyone else has questions about the above.

Sincerely,

Shannon Fitzpatrick,
Principal Broker
PCM, INC

L-837

	Purchased	Off-street Parking to serve 6 STRs (5 more spaces)	Exterior and structural stabilization work	Driveway barriers and finish work	Interior STR renovations incl kitchen / baths	Window sill replacement effort (First treated, bondo and paint; second wrap in metal and paint)	Date of first use by short-term tenant
4-plex							
1555 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	June 2020	6-1-2020 and 4-15-2021	12-1-2021
1557 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	August 2021	6-1-2020 and 4-15-2021	4-17-2022
1559 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	Jan 2019	6-1-2020 and 4-15-2021	[1]
1561 Exchange	2015	2016-2017	7-05-2018 to 2-1-2019	11-13-2019	Mar 2019	6-1-2020 and 4-15-2021	3-15-2022
Cottages							
1565 Exchange	2015	2016-2017	[2]8-1-2017, 7-05-2018 to 2-1-2019, 6-1-2020	11-13-2019	5-28-2015		9-1-2015
1569 Exchange	2015	2016-2017	[2]7-05-2018 to 2-1-2019, 6-1-2020, 2-1-2021	11-13-2019	4-27-2018		4-21-2021

[1]Other than maintenance calls and damage repair we have not had access to this unit, we have been unable to remove the tenant since the no cause eviction was eliminated.

[2]Both cottages were impacted by large exterior and structural stabilization work effort done on the 4 plex as driveway was filled with supplies, contractors used the parking and their greenspaces were used for staging and scaffolding.

Progress and Development of short-term rentals on 1555 to 1569 Exchange St. Astoria, Oregon.
Prepared by Robert and Cynthia Magie
April 28, 2022

*03-01-2014 Through 08-27-2017. We established and operated a short-term rental (STR) located in a converted shop area at our personal residence at 92009 Hwy 202 Astoria Oregon. We were very successful with this endeavor and intended to replicate this with a future property.

*03-27-2015. Purchase 1555 to 1569 Exchange Street Astoria Oregon (4plex and two small houses Figure 1). Purchase was made by cashing in my retirement after 20yrs working for the fed gov. for the down payment.

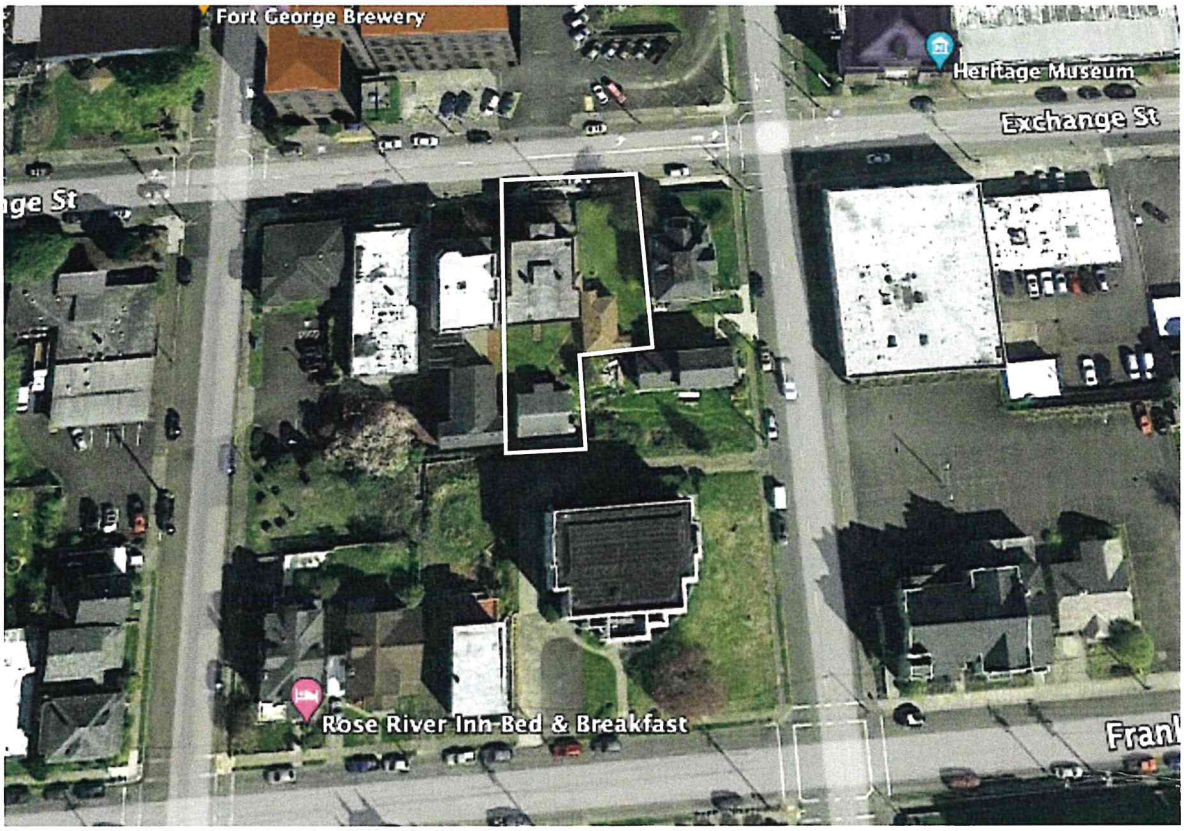


Figure 1. Subject property with boundaries in white.

This property is located in a commercial zone (C3). See below excerpt from a February 2022 link to the Astoria City code and uses permitted outright item 10;

City of Astoria
Development Code
C-3 Zone
Article 2 – Page 24
(Adopted 10-8-92)
C-3: GENERAL COMMERCIAL ZONE
2.385. PURPOSE.
This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more

appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.
2.390. USES PERMITTED OUTRIGHT.
The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:
1. Business service establishment.
2. Commercial laundry or dry cleaning establishment.
3. Commercial or public off-street parking lot.
4. Communication service establishment.
5. Construction service establishment.
6. Eating and drinking establishment.
7. Educational service establishment.
8. Family day care center in single-family, two-family, or multi-family dwelling.
9. Home occupation in existing dwelling.
10. Motel, hotel, bed and breakfast, inn, or other tourist lodging facility and associated uses.
11. Multi-family dwelling.
12. Personal service establishment.

*05-28-2015. We purchased a vacant lot that connected the southeast side of the Exchange property to 16th Street to create off street parking for our tenants/guests. Development of this parking was recommended and potentially would be required for short-term rentals as per personal communication with the then Community Development Director Kevin Cronin in late summer. Thus, we initiated development of the driveway/parking area. Surveys, legal process for land swap and recording, and initial lot preparation and planning took many months to complete. While the driveway was in process, we began renovating 1565 Exchange St. for conversion to an STR.



Figure 2. Empty lot on 16th street purchased for the purpose of creating off street parking.

*09-01-2015. We completely renovated the interior of 1565 Exchange Street using all of Cindy's inheritance from her mother's estate (about $35). At this time there was little if any regulation of STR's in Astoria. After fully furnishing, we advertised and used the house as a short-term rental as of 12-01-2015 (see below flyer)



Figure 3. Flyer advertising our furnished Short-term Rental.

*12-23-2016. After survey and lot line adjustment with the neighbor, driveway construction and concrete apron/sidewalk were completed as per requested and approved by the City (City employee "Dean" was there during the concrete pour and said "looks good"). See Figure 4.



Figure 4. Finished driveway with sidewalk and concrete entry as per city specifications facing west.

*05-05-2017. We were notified by Kevin Cronin that his office did not have a finalized driveway permit and that, after a recent inspection, our sidewalk was approximately 3degrees too steep for ADA compliance. The concrete contractor could not find a copy of the permit they submitted prior to the pour. Thus, after much discussion and frustration we removed and repoured that section concrete.

During a subsequent site inspection Kevin Cronin and I discussed the parking improvement this effort would provide the neighborhood. Kevin mentioned that our 4plex and two houses were allotted 1.5 spaces on Exchange Street since they were long existing structures. He mentioned that our additional 5 new spaces in the back would more than compensate for the two spaces per unit that are required for our 6 potential STR's (14 spaces total, but only 12 needed for compliance). Additionally, our neighbor Jake Helligso was able to create 3 spaces on the land we traded him (win/win for all--only two shown on his property in the parking plan below but his side was updated later to 3)

*08-10-2017. Last concrete pour (Figure 5)



Figure 5. Finished driveway with repoured sidewalk section as per city specifications facing east.

*10-23-2017. We finished development of the lot to a driveway and off-street parking for both Magie and Helligso (neighbor) and it was approved by Mike Morgan (interim Community Development Director). See final parking plan below (Figure 6) and inserted email.

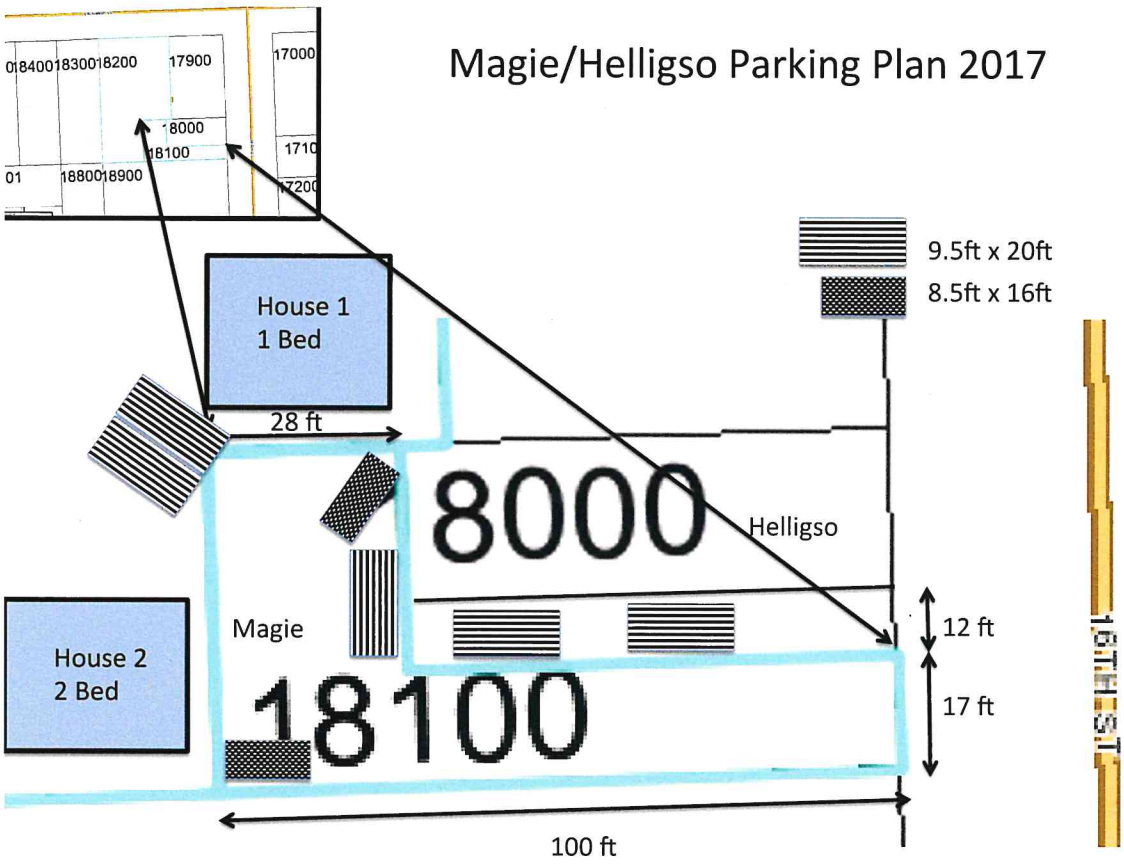


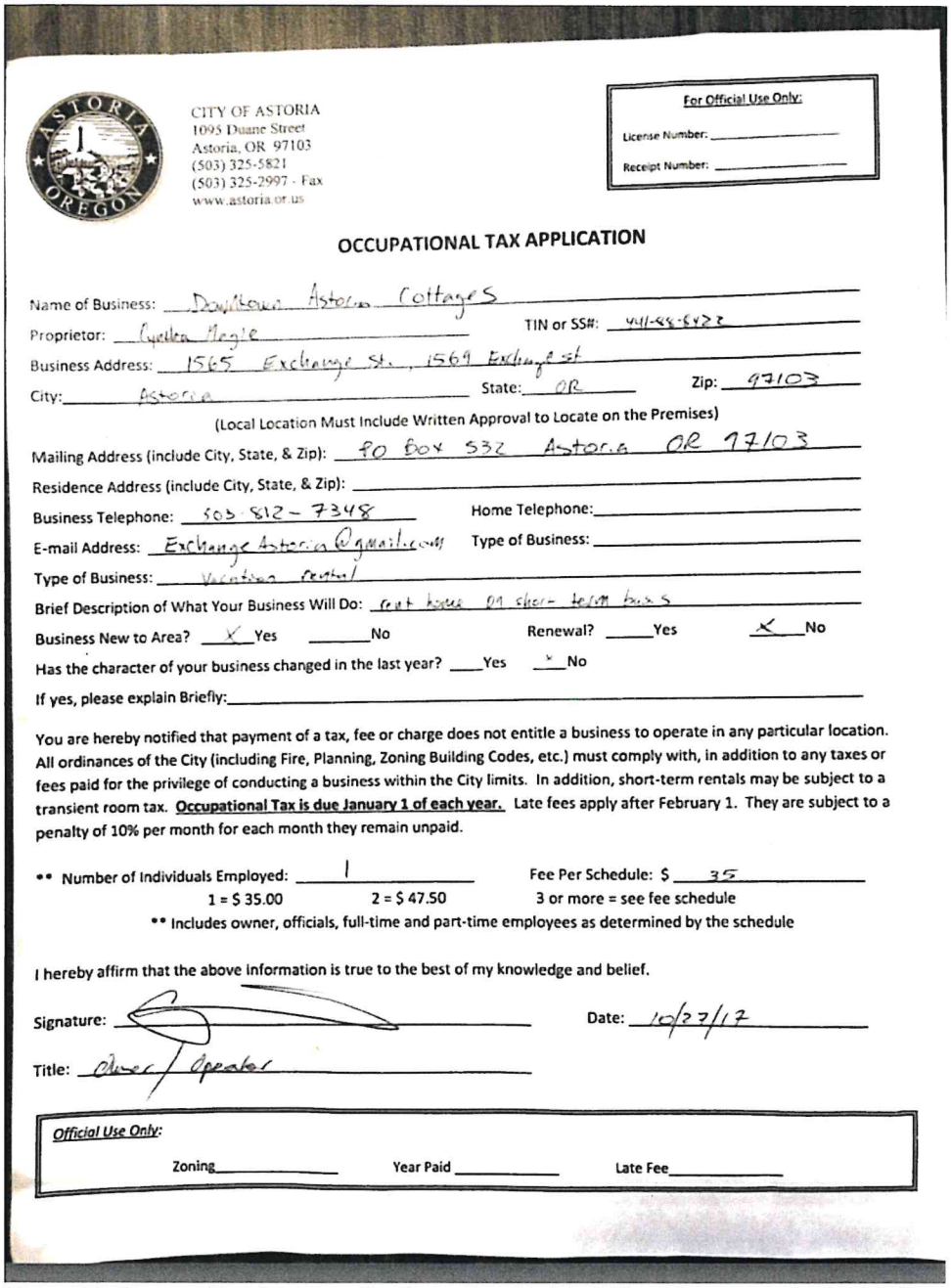
Figure 6. Final parking plan approved by City.

Mike Morgan <mmorgan@astoria.or.us> Oct 23, 2017, 1:48 PM

to me

I approved your parking plan and put it in the address file for future reference. If you want to bring in a map showing your lawn areas I'll approve that too.

*10-27-2017. After the parking plan was approved and, as per Mike Morgan's request, we sent him the Occupational Tax Application for our two short term rentals (see Figure 7). We also received our Occupational Tax Receipt (Figure 8). The License and Customer number are the same numbers we use today.



CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: _____
Receipt Number: _____

OCCUPATIONAL TAX APPLICATION

Name of Business: Downtown Astoria Cottages
Proprietor: Cynthia Magle TIN or SS#: 411-88-8428
Business Address: 1565 Exchange St. 1569 Exchange St
City: Astoria State: OR Zip: 97103
(Local Location Must Include Written Approval to Locate on the Premises)
Mailing Address (include City, State, & Zip): PO Box 532 Astoria OR 97103
Residence Address (include City, State, & Zip): _____
Business Telephone: 503 812-7348 Home Telephone: _____
E-mail Address: Exchange Astoria@gmail.com Type of Business: _____
Type of Business: Vacation rental
Brief Description of What Your Business Will Do: rent house on short-term basis
Business New to Area? X Yes ____ No Renewal? ____ Yes X No
Has the character of your business changed in the last year? ____ Yes X No
If yes, please explain Briefly: _____

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. **Occupational Tax is due January 1 of each year.** Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

•• Number of Individuals Employed: 1 Fee Per Schedule: $ 35
1 = $ 35.00 2 = $ 47.50 3 or more = see fee schedule
•• Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

Signature: _____ Date: 10/27/17
Title: Owner / Operator

Official Use Only:
Zoning_____ Year Paid _____ Late Fee_____

Figure 7. Occupational tax application submitted to Mike Morgan on 10-27-2017.

CITY OF ASTORIA **Occupational Tax Receipt** **License # 5001435**

Type of Business	Issue Date	Date of Expiration
Vacation Rental	10/27/2017	12/31/2017

Customer # 019664

Downtown Astoria Cottages
PO Box 532
Astoria, OR 97103-0532

City Manager

NOTICE: THIS OCCUPATION TAX IS LEVIED FOR REVENUE PURPOSES ONLY AND DOES NOT IMPLY THAT THE HOLDER HAS COMPLIED WITH ZONING, BUILDING, AND ALL OTHER CITY REGULATIONS. THE HOLDER SHOULD CONSULT WITH THE BUILDING, ZONING, AND FIRE DEPARTMENT OFFICIALS FOR INFORMATION REGARDING OTHER CITY REGULATIONS.

THIS RECEIPT MUST BE POSTED IN A CONSPICUOUS PLACE AT THE LOCATION. IT IS NOT TRANSFERABLE OR ASSIGNABLE.

Figure 8. Occupational Tax Receipt received on 10-27-2017.

*04-27-2018. Our contractor Sean Sullivan began the process of re. The remodel included rot repair, all new flooring throughout, and new interior paint.

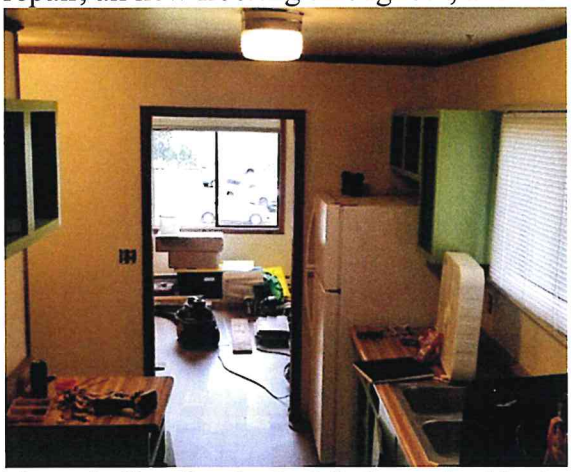


Figure 9. New flooring installation and cabinet paint and repair, 1569 Exchange St.

*07-05-2018. We moved into 1561 Exchange Street to initiate massive repairs and restoration to the 4 plex building (also referred to as the Gilbaugh building).

When we purchased 1555-1569 Exchange St. in 2015 (4plex and two cottages), the 4-plex building had suffered at least 5 decades of neglect. The foundation was inadequately supported with an earthen dugout basement, approximately 65% of cedar shingle siding were rotten and needing replacement, the hip roofs, gutters and water management systems were rotted/failing, and most of the wooden windows were either rotten and needed to be rebuilt and/or the glazing had failed (see figures 10 through 16). We knew this work needed to be done so we rolled up our sleeves and sold our commercial tuna/scientific support vessel for $35k to finance this effort.



Figure 10. photos displaying poor condition of inadequately supported dugout basement with terracotta brick foundation 2018.



Figure 11. Photo of condition of unit 1559 in Gilbaugh 2018.

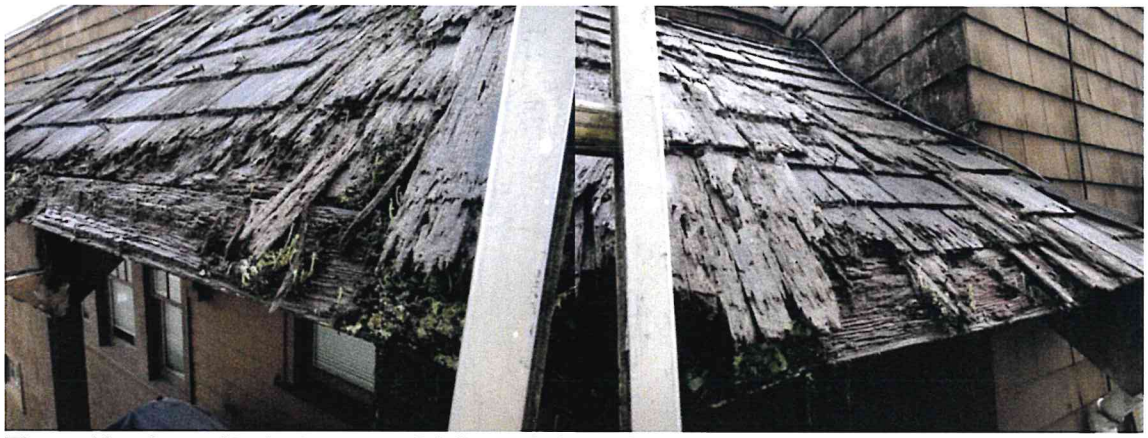


Figure 12. photos displaying rot and failure of hip roofs and gutters.



Figure 13. Front Exterior photo displaying poor condition of Gilbaugh building prior to 2018.



Figure 14a. Front Exterior photo displaying scaffolding effort to access and restore the exterior, October 2018.



Figure 14b. Front Exterior photo displaying scaffolding effort to access and restore the exterior.



Figure 15. Cindy and Mom reglazing windows, September 2018.



Figure 16. Setting forms and pouring concrete to stabilize the earthen dugout basement, November 2018 and nearing completion of basement stabilization, February 2019.



Figure 17. Finishing the exterior, October/ November 2018.



Figure 18. Before and after exterior work.



Figure 19. Restoration of unit 1559 in Gilbaugh building (includes kitchen and bath), January 2019 ($35k).

*02-01-2019. Professional installation of dryer vent pumps (5k) to divert dryer moisture from the basement to the exterior.

*03-06-2019. Our contractor, Ryan Eccles completed a kitchen (newly built cabinets, countertops, electrical and wainscoting) and bathroom remodel in 1561 Exchange St.



Figure 20. Restored countertop and new wainscoting and custom cabinets 1561 Exchange St.

*10-13-2019. Our handyman began framing and drywalling new walls and storage areas in the newly reinforced basement to create dry storage to store supplies for our short-term rental business. He also continued the buildout of our parking area by constructing a retaining wall/parking barriers and marking the parking spaces.

*05-01-2020. We moved into our STR at 1565 Exchange St. and further improved the property with a new window, repaired rotten window sills, some plumbing repairs, some exterior painting and updated interior furnishings.

*06-01-2020. We renovated the kitchen and bathroom and had professionally painted (spent over 2k) in 1555 Exchange.

*07-01-2020. After looking at the city code we noticed a change in the verbiage that we were unaware that had happened. The city amended the code to state 2.390.10" ((a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel). This was done without warning or notification to us as we had been developing our project for nearly 4 years at this point.

We called the city for clarification on our use and the new homestay license requirements and were directed to talk with Heidi Dlubac. She said "that we did not need a homestay license as we were zoned C3 and that we could continue to use our places (and our project) as short-term rentals as this is an outright use in the zone"

*08-01-2020. We then moved to another recently vacated unit at another property that needed much work and, after finishing improvements, we continued to use 1565 as a short-term rental.

*12-15-2020. Below is an email I sent to my property manager to describe problems encountered in late 2020 and my final correspondence with Barbara Fryer (she sent a long internal email chain; this is just the last email).

Bob and Cindy Magie <exchangeastoria@gmail.com> Dec 17, 2020, 3:38 PM

to **Shannon**, me

Hi Shannon,
Just thought I would keep you in the loop regarding our short term rentals on exchange street. On the afternoon of December 14th Cindy called the city of Astoria and tried to pay our occupancy tax on our vacation rentals on exchange street. They were due on the 15th (paid via check in the mail in prior months) and she was hoping to pay by phone as we accidently waited until the last minute to get them paid. Cristine Shade told Cindy that there was a problem with our account, that we do not have a file number and that we would need to talk to Barbara Fryer in the morning.

After an evening spent locating all of our documentation, Cindy and I called Barbara on the morning of the 15th. Barbara said that we did not have legal vacation rentals, because they were located in R3 zoning and that we would need to stop using them accordingly. I then mentioned that the properties are in C3 zoning and she responded by saying "Okay". After a short delay she then mentioned that according code "2.390.10" ((a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel) we are still out of compliance. I then responded that we applied for and received a business license in October of 2017 for our Downtown Astoria Cottages (License # 5001435) well before the implementation of this code change. After another pause she then said "since your license was valid before the code change, you are in compliance; my apologies and I will send an email to the staff notifying all that you are in compliance and get a file number issued".

I then asked Barbara to send us an email confirming our conversation and she apologized again and said she would do so. The below email string is what Barbara sent to us and includes the discussion regarding our short term rentals.

Also, I have attached our original business license receipt from October of 2017 and the transient room tax registration form that we were asked to fill out to receive a file number (File #118) and also the completed form. I will also forward you the email from Cristine Shade that notifies us of our assigned file number.

FYI,
Bob Magie

From: **Barbara Fryer** <BFryer@astoria.or.us>
Date: Tue, Dec 15, 2020 at 9:02 AM
Subject: FW: Astoria Downtown Cottages
To: exchangeAstoria@gmail.com <exchangeAstoria@gmail.com>
Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

I neglected to mention in the above email to my property manager that while I was on the phone with Barbara, she said she cannot approve just two of our units since all 6 are on one tax lot. I mentioned to her that our intention was to convert all 6 units (two cottages and the 4plex) to short-term rentals, but had been working on this process slowly and as tenants moved out on their own and a had intended (before the code was, unknowingly to us, amended) to continue working with the city to finish our project. She then said the approval would be for all units on the tax lot. We then filled out the subsequent document and received our file number (Note; 11 bedrooms on the number of rooms line, all 6 addresses listed and our license and customer numbers are those issued in 2017). Also note that this was a fillable form with some formatting problems.

CITY OF ASTORIA
1095 DUANE STREET
ASTORIA, OR 97103

Phone: (503) 325-5821
Fax: (503) 325-2997

FOR OFFICE USE ONLY
FILE# 118
OT # 5001435
Cust# 19664

Transient Room Tax Registration

12/15/20

Date _____

1. Owner Name Gilbaugh LLC Phone# 503-717-3711
2. Business Name Astoria Downtown Cottages
3. Rental Address 1555-1569 Exchange st Astoria, OR 97103
4. No. of Rooms 11 bedrooms
5. Name of manager Cindy Magie Phone # 503-717-3711
6. Mailing Address (if different) PO Box 532 Astoria OR 97103
7. Email Address ExchangeAstoria@gmail.com
8. How long have you owned or operated this business? Oct 2017
9. Type of Organization ☐ Individual ☐ Partnership ☑ Corporation

Names of partners or corporate officers:

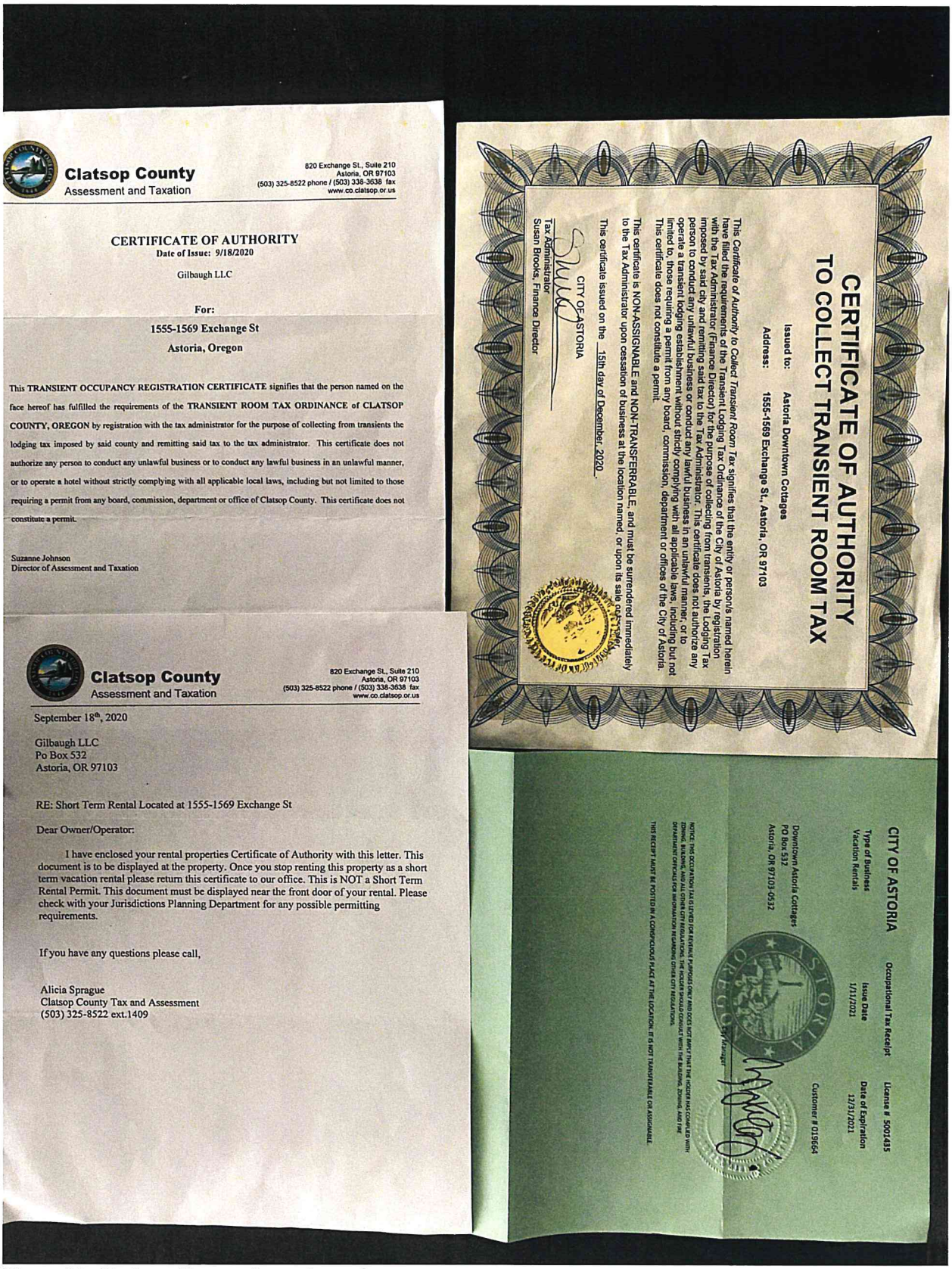
Name	Title	Complete Address
Robert Magie	Member	po box 532, Astoria, OR
Cynthia Magie	Member/reg agent	po box 532, Astoria OR

10. If you own more than one business subject to the City of Astoria **Transient Room Tax**, please complete this section:

Name of Business	No. of Rooms	Business Address	Time Owned

Please note:
Astoria Code section 8.045.11 of the Transient Room Tax ordinance provides that a security deposit not to exceed twice the operator's estimated average monthly liability, or $5,000, whichever is the lesser, may be required for the period in which tax returns are filed. This security deposit, if required, may be in the form of cash, bond or other security deemed proper by the Tax Administrator (Finance Director).

Member/Registered Agent
Signature and Title of Owner or Officer



Clatsop County
Assessment and Taxation

820 Exchange St., Suite 210
Astoria, OR 97103
(503) 325-8522 phone / (503) 338-3638 fax
www.co.clatsop.or.us

CERTIFICATE OF AUTHORITY
Date of Issue: 9/18/2020

Gilbaugh LLC

For:

1555-1569 Exchange St
Astoria, Oregon

This **TRANSIENT OCCUPANCY REGISTRATION CERTIFICATE** signifies that the person named on the face hereof has fulfilled the requirements of the **TRANSIENT ROOM TAX ORDINANCE of CLATSOP COUNTY, OREGON** by registration with the tax administrator for the purpose of collecting from transients the lodging tax imposed by said county and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all applicable local laws, including but not limited to those requiring a permit from any board, commission, department or office of Clatsop County. This certificate does not constitute a permit.

Suzanne Johnson
Director of Assessment and Taxation

CERTIFICATE OF AUTHORITY
TO COLLECT TRANSIENT ROOM TAX

Issued to: Astoria Downtown Cottages
Address: 1555-1569 Exchange St., Astoria, OR 97103

This *Certificate of Authority to Collect Transient Room Tax* signifies that the entity or person's named herein have filled the requirements of the Transient Lodging Tax Ordinance of the City of Astoria by registration with the Tax Administrator (Finance Director) for the purpose of collecting from transients, the Lodging Tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, or to operate a transient lodging establishment without strictly complying with all applicable laws, including but not limited to, those requiring a permit from any board, commission, department or offices of the City of Astoria. This certificate does not constitute a permit.

This certificate is NON-ASSIGNABLE and NON-TRANSFERRABLE, and must be surrendered immediately to the Tax Administrator upon cessation of business at the location named, or upon its sale or transfer.

This certificate issued on the 15th day of December, 2020.

CITY OF ASTORIA
Tax Administrator
Susan Brooks, Finance Director

Clatsop County
Assessment and Taxation

820 Exchange St., Suite 210
Astoria, OR 97103
(503) 325-8522 phone / (503) 338-3638 fax
www.co.clatsop.or.us

September 18th, 2020

Gilbaugh LLC
Po Box 532
Astoria, OR 97103

RE: Short Term Rental Located at 1555-1569 Exchange St

Dear Owner/Operator:

I have enclosed your rental properties Certificate of Authority with this letter. This document is to be displayed at the property. Once you stop renting this property as a short term vacation rental please return this certificate to our office. This is NOT a Short Term Rental Permit. This document must be displayed near the front door of your rental. Please check with your Jurisdictions Planning Department for any possible permitting requirements.

If you have any questions please call,

Alicia Sprague
Clatsop County Tax and Assessment
(503) 325-8522 ext.1409

CITY OF ASTORIA — **Occupational Tax Receipt** — **License # 5001435**

Type of Business: Vacation Rentals
Issue Date: 1/11/2021
Date of Expiration: 12/31/2021

Downtown Astoria Cottages
PO Box 532
Astoria, OR 97103-0532

Customer # 019664

NOTICE: THIS OCCUPATION TAX IS LEVIED FOR REVENUE PURPOSES ONLY AND DOES NOT IMPLY THAT THE HOLDER HAS COMPLIED WITH BUSINESS, BUILDING, PLANNING, ZONING OR OTHER CITY REGULATIONS. YOU SHOULD CONSULT WITH THE BUILDING, ZONING, AND FIRE DEPARTMENT OFFICIALS FOR INFORMATION REGARDING OTHER CITY REGULATIONS.

THIS RECEIPT MUST BE POSTED IN A CONSPICUOUS PLACE AT THE LOCATION. IT IS NOT TRANSFERABLE OR ASSIGNABLE.

City Manager

Figure 21. Business licenses from city and county.

With the information we had, we feel anyone would have felt legal in our position. We always thought we were legal and have proceeded with our project as time has allowed and tenants have moved on.

*12-29-2020. We developed a window leak in unit 1559 which was causing damage to 1561. The windows had been previously treated and painted but as they are exposed to the most weather some of the paint had failed. To fix the problem we wrapped the window sills in metal. Since the other south facing windows were also showing signs of failing, we also protected them with metal sills (1555,1557,1559 and 1561). This process was slow and weather dependent and we finally finished this work in April 2021.

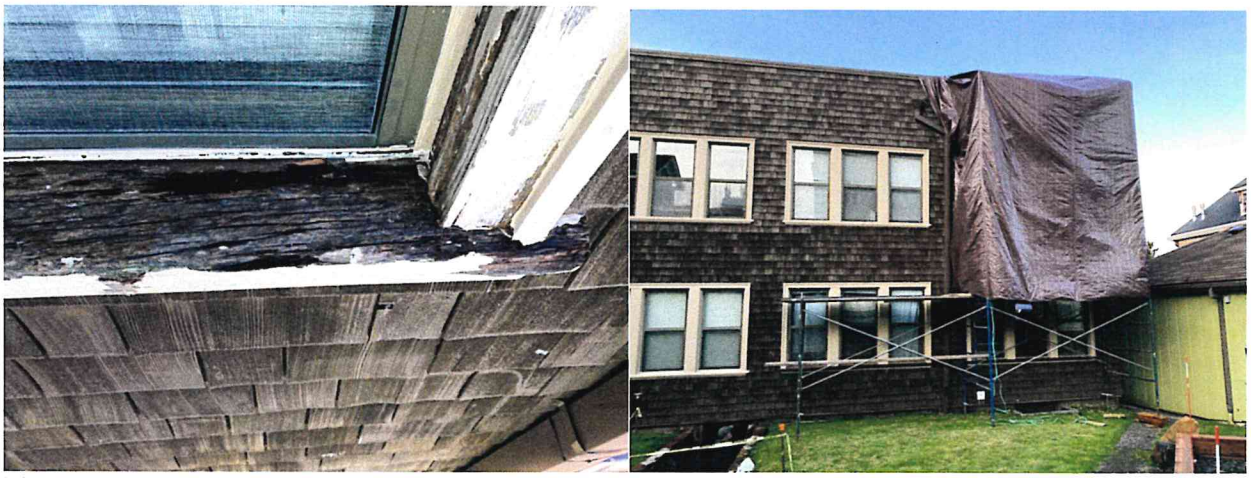


Figure 22. Window sill repair.



Figure 23. New metal (prior to cut and fitting) window sills installed and painted.

*03-01-2021. 1569 exchange vacated and we moved in to that unit and purchased about 20k in furnishings and décor and by April 15 it was an active short-term rental.

*11-01-2021. 1555 Exchange St. (in 4plex) vacated and we had been purchased furnishings and electronics to (about $20k).

*12-01-2021. Our "Historic Downtown Riverview Flat, No 1" began booking short-term guests on Airbnb.

We feel we have been developing our project since 2015, before being listed through Airbnb we had offered them as short-term rentals and advertised in multiple places including the hospital for visiting physicians and nurses. We are finally achieving our goal only to have the city cancel us over and over. We appreciate the move for more workforce housing, but we are zoned C3 and when we bought our property and invested over 300k of our equity and income from other property and business to develop this project, it was an outright use without all of the new stipulations. The income we make from STR's significantly subsidizes the rehabilitation of this property and supports our other long-term rental properties. This feels like theft. Furthermore, we have no appreciation for what is legal vs illegal as the city seems to be able to change your properties use without notice based on popular opinion. If we are approved for some or all of our STR's what's to stop the City from coming back and attacking us again once they've had another turnover of employees. We are very concerned about Megs statement " The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below." and thus feel we have no security with any of our STR's in our project. Please help.

Sincerely,
Bob and Cindy Magie

From: Diane Christiansen
To: Austin Kettleson
Cc: Megan Leatherman
Subject: RE: Airbnb complaints
Date: Thursday, April 14, 2022 10:31:34 AM

Austin,

The Magie's have filed an appeal with LUBA, the Land Use Board of Appeals, regarding the code enforcement case for the Airbnb's in the apartment complex. We are unable to take action until the appeal has been resolved.

The City is unable to assist in tenant-landlord disputes. I believe you called this morning and I gave you the Oregon Law Help phone number – my advice is to start with them. Another option would be to hire an attorney and pursue civil court.

Diane

From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Thursday, April 14, 2022 8:34 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: Re: Airbnb complaints

> **Caution:** ***EXTERNAL SENDER*** Do not click any link and do not open attachments unless you have confirmed the sender.

I've tried that In the past doesn't really amount to anything. Are then any updates on there ability to air b n b ? They've opened an additional one in the apartment building. They've also been sending me really ridiculous non compliance violations so they can evict me as soon as possible

Sent from my iPhone

> On Mar 18, 2022, at 9:49 AM, Diane Christiansen <dchristiansen@astoria.or.us> wrote:
>
> Austin,
>
> I came across this on Airbnb.com. Neighbors can submit complaints directly to Airbnb here: https://www.airbnb.com/neighbors.
>
> There isn't anything we can do right now since it's in the legal realm but you could make complaints on Airbnb. It might help.



ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

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MAR 09 2022
Blair Henningsgaard

LUBA
MAR 04 2022 PM03:47

LUBA
MAR 07 2022 AM09:11

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

PORTLAND OR 972
02 MAR 2022 PM 1 L

ROBERT MAGIE and CINDY MAGIE, Petitioners, v. CITY OF ASTORIA, Respondent.	LUBA No. 2022 - 105 **MOTION TO STAY PROCEEDINGS**

Petitioners hereby move LUBA to stay proceddings in this matter to allow the parties additional time to resolve a related case. This stay shall remain in place until one of parties notifies LUBA to reactivate the appeal. Counsel for the Petitioners has conferred with the other party to this appeal and all parties consent to the relief requested in this motion.

DATED this 2nd day of March, 2022

BATEMAN SEIDEL MINER BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

CITY OF ASTORIA

By: _____
Blair J. Henningsgaard, OSB#782406
Attorneys for Respondent

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

IT IS SO ORDERED.

By:_____

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on March 2, 2022, I filed the original of this **MOTION TO STAY PROCEEDINGS**, together with one copy, via First Class U.S. Mail, postage prepaid to the following:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

I further certify that on March 2, 2022, I served a true and correct copy of the above **MOTION TO STAY PROCEEDINGS** by First Class U.S. Mail, postage prepaid to the following:

Blair Henningsgaard
Attorney at Law
P.O. Box 1030
Astoria, OR 97103

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

IT IS SO ORDERED.

Dated this 7th day of March, 2022.

Michelle Gates Rudd
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Order for LUBA No. 2022-015 on March 7, 2022, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Blair J. Henningsgaard
Astoria City Attorney's Office
PO Box 1030
Astoria, OR 97103

Carrie A. Richter
Bateman Seidel, P.C.
1000 SW Broadway
Suite 1910
Portland, OR 97205

Dated this 7th day of March, 2022.

Erin Pence
Executive Support Specialist

Caleb Huegel
Staff Attorney

RECEIVED
MAR 07 2022
Blair Henningsgaard

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE, Petitioners, v. CITY OF ASTORIA, Respondent.	LUBA No. 2022 - 105 **MOTION TO STAY PROCEEDINGS**

Petitioners hereby move LUBA to stay proceddings in this matter to allow the parties additional time to resolve a related case. This stay shall remain in place until one of parties notifies LUBA to reactivate the appeal. Counsel for the Petitioners has conferred with the other party to this appeal and all parties consent to the relief requested in this motion.

DATED this 2nd day of March, 2022

BATEMAN SEIDEL MINER BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

CITY OF ASTORIA

By: _____
Blair J. Henningsgaard, OSB#782406
Attorneys for Respondent

Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910
Portland, Oregon 97205
Telephone: (503) 972-9932 / Facsimile: (503) 972-9952

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below, I served a true and correct copy of the foregoing STIPULATED GENERAL JUDGMENT OF DISMISSAL on:

Blair J. Henningsgaard, OSB #78240
City of Astoria – Attorney
PO Box 1030
Astoria OR 97103
blair@astoria.law
Phone: 503-325-0151

Attorney for Defendant City of Astoria

Carrie A. Richter, OSB #003703
Bateman Seidel Miner Blomgren Chellis & Gram, P.C.
1000 SW Broadway, Ste 1910
Portland OR 97205
crichter@batemanseidel.com
Phone: 503-972-9903

Attorney for Intervenor-Defendant Lower Columbia Preservation Society

☐ by first class mail, postage prepaid.

☐ by overnight mail.

☐ by hand delivery.

☐ by facsimile transmission.

☐ by facsimile transmission and first class mail, postage prepaid.

☐ by electronic transmission.

☒ by electronic transmission and first class mail, postage prepaid.

DATED: _____, 2022.

Christopher K. Dolan, OSB #922821
chris.dolan@jordanramis.com
Edward H. Trompke, OSB #843653
ed.trompke@jordanramis.com
Attorneys for Plaintiffs Thomas and Priscilla Levy

JORDAN RAMIS PC
Attorneys at Law
Two Centerpointe Dr., 6th Floor
Lake Oswego, Oregon 97035
Telephone: (503) 598-7070 Fax: (503) 598-7373

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE Ste 330
Salem, OR 97301-1283
(503) 373-1265

March 2, 2022

RECEIVED
MAR 07 2022
Blair Henningsgaard

Blair J. Henningsgaard
PO Box 1030
Astoria, OR 97103

RE: Magie et al v. City of Astoria
LUBA No. 2022-015

This is to advise you that a Notice of Intent to Appeal was sent certified mail on February 25, 2022 and received by the Board on February 28, 2022, in the above matter and that OAR 661-010-0015 requires that service of the notice of intent to appeal be made upon the respondent within 21 days after the date of the land use decision being appealed.

A copy of the record is to be prepared by respondent and transmitted to the Board within 21 days of the date of such service. Enclosed is a summary of the specifications for preparation of the record as set out in OAR 661-010-0025(4).

If the decision being appealed is on remand from LUBA and the record on remand incorporates the original record, you will need to refile a copy of the original record as we no longer maintain records from closed appeals.

Attached to this letter is a notice of the option to seek mediation in this matter.

Best Regards,

Erin Pence
Executive Support Specialist

Enclosures

cc: Carrie A. Richter

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283
(503) 373-1265

NOTICE

OPPORTUNITY FOR MEDIATION

Parties to a LUBA appeal have the option of entering mediation to resolve the appeal. Mediation is a process by which the parties, with the help of a neutral third-party, meet to address some or all of the issues arising from a particular land use decision. The mediation can be as limited or as comprehensive as the parties wish.

ORS 197.830(10)(b) requires that LUBA give you notice that "mediation information or assistance may be obtained from the Department of Land Conservation and Development." Through an agreement with the Department of Land Conservation and Development, information about mediation or assistance in assessing whether mediation would be appropriate in your case or in initiating the mediation may now be obtained from the Oregon Consensus Program at Portland State University, the state's public policy dispute resolution program. Laurel Singer is the Director of the Program. Please contact the program at 503-725-2265 or email Julia Babcock at jjb@pdx.edu.

A LUBA appeal will be suspended if all parties to the appeal stipulate to a stay of the appeal to enter into mediation. A sample stipulated motion is attached for your reference.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ROBERT MAGIE and CINDY MAGIE, Petitioners, v. CITY OF ASTORIA, Respondent.	LUBA No. 2022 -_____

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that Petitioners intend to appeal a February 4, 2022 Community Development Director determination that Petitioners continued use of their property located at 1555-1569 Exchange Street is not allowed. A copy of the decision is attached as Exhibit A to this Notice of Intent to Appeal.

II.

Petitioner is represented by Carrie A. Richter, Bateman Seidel, 1000 SW Broadway, Suite 1910, Portland, Oregon 97205; telephone: (503) 972-9968.

III.

Respondent City of Astoria has as its mailing address and telephone number City of Astoria, City Hall, 1095 Duane Street, Astoria, Oregon 97103; telephone (503) 338-5183. City of Astoria has as its legal counsel Blair Henningsgaard, whose mailing address and telephone number PO Box 1030, Astoria, Oregon 97103, telephone: (503) 325-0151.

IV.

The applicants were Robert and Cindy Magie , which have as their mailing address PO Box 532, Astoria Oregon 97103. Robert and Cindy Magie

were not represented by counsel below.

V.

No other parties were given notice of the City's decision.

Dated: February 25, 2022.

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 25, 2022, I caused to be filed the original and two copies of this NOTICE OF INTENT TO APPEAL with:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

by mailing by CERTIFIED MAIL.

On the same date, I caused to be served a true and correct copy by first-class mail, postage prepaid, on all persons listed in Paragraph III of this notice.

Dated: February 25, 2022.

BATEMAN SEIDEL MINER
BLOMGREN CHELLIS & GRAM, P.C.

By: _____
Carrie A. Richter, OSB #003703
Attorneys for Petitioners

From: Megan Leatherman <mleatherman@astoria.or.us>
Date: February 4, 2022 at 1:39:39 PM PST
To: exchangeastoria@gmail.com
Cc: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: FW: Code Enforcement | 1555-1569 Exchange

Bob and Cindy,

Thank you for taking the time to explain your situation to me. I have reviewed your situation with our City Attorney and unfortunately there is not anything we can do to help you out of this situation. I can understand how you may have misconstrued approval of your Occupational Tax (Business License) as approval of the short term rentals, especially with being told verbally it was ok in 2017. However, there are several places at the City where this is reinforced, specifically on the Occupational Tax application form. It states "You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location." The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below. Please let me know if you have any questions or concerns and please let know if you have any further questions.

Sincerely, Meg

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Megan Leatherman, MCRP
Director
Community Development Department
503-338-5183
mleatherman@astoria.or.us
1095 Duane Street
Astoria, Oregon 97103
www.astoria.or.us

ePermitting: www.BuildingPermits.Oregon.gov
ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

---

From: Diane Christiansen <dchristiansen@astoria.or.us>
Sent: Wednesday, January 26, 2022 1:22 PM
To: Bob and Cindy Magie <exchangeastoria@gmail.com>

EXHIBIT A
L-873

Cc: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Code Enforcement | 1555-1569 Exchange

Dear Bob and Cindy,

This email is in regards to the properties you have listed on Airbnb, located at 1555-1569 Exchange Street. Items underlined and in blue are links.

Per your email correspondence with Barbara Fryer on 12/15/2020, the two whole house rentals referred to as "Downtown Astoria Cottages," located at 1565 Exchange and 1569 Exchange are allowed to continue to operate as short-term rentals.

Per Astoria Development Code 2.390(J), "Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.2.
2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units. (Section 2.390.J amended by Ord 19-07, 7-1-2019)"

However, the multi-family building, addressed 1555-1563 Exchange, was not authorized by Barbara, and is not in compliance with the above referenced city codes. Whether or not you interpreted Barbara's email to include 1555 Exchange is inconsequential to the City as it is violation to multiple City Codes. When the Occupational Tax/Business License was approved, it was also approved under the intent of approving 1565 Exchange and 1569 Exchange (Downtown Astoria Cottages) only.

None of the units in 1555-1563 Exchange may be Homestay Lodging/Airbnb/Transient. They all must remain long-term rentals, including the apartment listed as a short-term rental on Airbnb.com (Link: https://abnb.me/92mmQLb5Wmb), which was not being used as a short-term rental prior to January 1, 2019.

Please cease the transient lodging use for the apartment rental; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms for the apartment rental only. Any future listings for short-term rentals at 1555-1563 Exchange may trigger code enforcement action per Astoria Municipal Code. You may continue to use the two cottages at 1565-1569 Exchange as short-term rentals.

If you have questions, please contact us to set up a meeting.

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

Diane Christiansen
Administrative Assistant
Community Development
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Astoria, Oregon 97103
503-338-5183
dchristiansen@astoria.or.us
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EXHIBIT A

RECEIVED
FEB 18 2022
Community Development
CITY OF ASTORIA

NOTICE OF APPEAL

Appellants/ Owners: Bob and Cindy Magie

Property Address: 1555-1569 Exchange St

Date of Decision on Appeal: February 4, 2020

Nature of the Decision on Appeal: Appellants Bob and Cindy Magie wish to appeal the Community Development Director's decision that short term rental use of the above-referenced property is not allowed. This decision came in the form of an email decision dated February 4, 2020. See attached email. Appellants seek review of this decision by the Planning Commission pursuant to Astoria Development Code (ADC 9.040.A).

Statement of Interest: The Appellants are the owners of the above-reference properties. They are parties adversely affected by the Community Development Director's decision.

Grounds for Appeal: Shortly after purchase in 2015, Appellants began to improve this property to accommodate 6 short term rental units. At that time, short term rental uses were permitted outright in the C-3 zone without limitation. In discussing their intent to put the property to short term rental use, the then-Community Development Director Kevin Cronin informed them that they would need to install 1.5 off-street parking spaces for each short term rental unit. In 2017, Appellant made the required off-street improvements. The parking was approved by the interim Community Development Director Mike Morgan. Over the next few years, Appellants continued to take steps necessary to put these units into short-term use including making substantial construction improvements and repairs, furnishing, management and cleaning fees, insurance and marketing. Appellants are entitled to continue pursuing this non-conforming use pursuant to ADC 3.160.

In an email dated December 15, 2020, the City issued a decision confirming the validity of the 6 unit non-conforming use at the above-referenced address. See attached email. Most notably, this email states: "your project called Astoria Downtown Cottages located 1555-1569 is a permitted use and may continue as a lodging facility." This email serves as verification that the Appellant has established a right to a 6-unit short-term rental as a non-conforming use under ADC 3.200.

In the alternative, with respect to the fourplex structure housing 1555-1561 Exchange Street, the Code defines the term "motel" as "a building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building." Since its construction in the mid-1920s, the 4 units currently in existence have always been used to lodge guests for compensation where a majority of rooms have direct access to the outside. This structure meets the definition of "motel" today just as it did when it was originally constructed. As such, these 4 units within this motel may continue pursuant to ADC 2.39.10.b.

Further, Appellants did not receive notice of the amendments to the ADC that restricted short-term rentals and as a result, they cannot be bound by its obligations or are otherwise subject to challenge now.

In closing, Appellants have made significant improvements to their property in reliance on the City's continued representations that a 6-unit short term rental use could continue. Fairness dictate respecting those previous determinations and allowing this use to continue.

From: **Barbara Fryer** <BFryer@astoria.or.us>
Date: Tue, Dec 15, 2020 at 9:02 AM
Subject: FW: Astoria Downtown Cottages
To: exchangeAstoria@gmail.com <exchangeAstoria@gmail.com>
Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

Megan Leatherman
<mleatherman@astoria.or.us>

Feb 4, 2022, 1:39 PM (13 days ago)

to **Diane**,
me

Bob and Cindy,

Thank you for taking the time to explain your situation to me. I have reviewed your situation with our City Attorney and unfortunately there is not anything we can do to help you out of this situation. I can understand how you may have misconstrued approval of your Occupational Tax (Business License) as approval of the short term rentals, especially with being told verbally it was ok in 2017. However, there are several places at the City where this is reinforced, specifically on the Occupational Tax application form. It states "You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location." The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below. Please let me know if you have any questions or concerns and please let know if you have any further questions.

Sincerely, Meg



GILBAUGH LLC
PO BOX 532
ASTORIA, OR 97103

1065
34-827/1251
1057

Feb 18, 2022
Date

CHECK ARMOR FRAUD PROTECTION

Pay to the Order of City of Astoria $ 500.00

Five hundred dollars and 00/100 Dollars

Photo Safe Deposit® Details on back

ColumbiaBank
Astoria
877.272.3678
columbiabank.com

For Appeal with ADC

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Historic Downtown Riverview F...

airbnb.com/rooms/53475895?adults=1&s=40&unique_share_id=FBC82B54-5503-41EC-BAD5-11E4A47F882C&_branch_match_id=1012426312064434897&_branch_referrer=H4sIAAAAAAAAA8soKSkottLXT0zKS9LLTdX3M8ottHA0d3TJSQIAgQLf2xsAAAA...

Apps | GIS | Internal | City of Astoria Web... | Helpdesk | Focus | New Tab

★ 4.88 · 8 reviews · Superhost · Astoria, Oregon, United States

Share | Save



Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath

$140 / night

★ 4.88 · 8 reviews

Entire home
You'll have the apartment to yourself

Enhanced Clean
This Host committed to Airbnb's 5-step enhanced cleaning proces

Fast wifi
At 292 Mbps, you can take video calls and stream videos for your w

Self check-in
Check yourself in with the smartlock.

Step back in time and enjoy staying in the recently restored, icon
walk to all the best places to eat, drink and recreate in downtow
appointed, 2-bd 1-bath flat boasts beautiful period architecture

Select dates

Add your travel dates for exact pricing

CHECK-IN MM/DD/YYYY

February 2022 | March 2022

Su Mo Tu We Th Fr Sa

Clear dates | Close

4:08 PM 2/8/2022

L-881

As of 2/8/22 - still accepting reservations through Mar. 1

Diane Christiansen

From: Megan Leatherman
Sent: Friday, February 4, 2022 1:40 PM
To: exchangeastoria@gmail.com
Cc: Diane Christiansen
Subject: FW: Code Enforcement | 1555-1569 Exchange

Bob and Cindy,

Thank you for taking the time to explain your situation to me. I have reviewed your situation with our City Attorney and unfortunately there is not anything we can do to help you out of this situation. I can understand how you may have misconstrued approval of your Occupational Tax (Business License) as approval of the short term rentals, especially with being told verbally it was ok in 2017. However, there are several places at the City where this is reinforced, specifically on the Occupational Tax application form. It states "You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location." The two smaller structures are allowed to continue to be used as short term rentals but if enforcement action is filed you could lose this right as a result. I suggest that you follow the described actions below. Please let me know if you have any questions or concerns and please let know if you have any further questions.

Sincerely, Meg



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ePermitting Help: https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

---

From: Diane Christiansen <dchristiansen@astoria.or.us>
Sent: Wednesday, January 26, 2022 1:22 PM
To: Bob and Cindy Magie <exchangeastoria@gmail.com>
Cc: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Code Enforcement | 1555-1569 Exchange

Dear Bob and Cindy,

This email is in regards to the properties you have listed on Airbnb, located at 1555-1569 Exchange Street. Items underlined and in blue are links.

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If you have questions, please contact us to set up a meeting.

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Diane Christiansen

From: Diane Christiansen
Sent: Wednesday, January 26, 2022 1:22 PM
To: Bob and Cindy Magie
Cc: Megan Leatherman
Subject: Code Enforcement | 1555-1569 Exchange

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This email is in regards to the properties you have listed on Airbnb, located at 1555-1569 Exchange Street. Items underlined and in blue are links.

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Diane Christiansen

From: Megan Leatherman
Sent: Tuesday, January 25, 2022 4:55 PM
To: Austin Kettleson
Cc: Diane Christiansen
Subject: RE: Exchange St Air BNB

Austin,

Thank you for continuing to pursue this. We are currently working with the owner on this and researching the past approvals and codes. I appreciate your patience and will let you know when we have clear direction. I have cc'd in my assistant, Diane, who is helping with this and can help keep you in the loop moving forward.

Sincerely, Meg

ePermitting: www.BuildingPermits.Oregon.gov ePermitting Help:
https://www.oregon.gov/bcd/epermitting/howto/Pages/index.aspx

-----Original Message-----
From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Monday, January 24, 2022 3:16 PM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Exchange St Air BNB

Good afternoon,

I've recently voiced some concerns I have about my landlords trying to get me to move out so they can turn it into an air BNB. I've lived there since December of 2018 with my girl friend and two daughters. The property has 6 units on it and 3 have already been converted to short stay lodging. I see that the property is zoned C3 how ever I can attest that all of these units were in fact occupied as long term rentals well after. January 1st 2019. Which would be a code violation of 2390 J . I am seeing first hand how hard it is to find apartments In the city of Astoria because of the influx of short stay lodging. I am a small business owner/vetran my girl friend works at the hospital. We would love to stay in this city and hopefully buy when there is an opportunity. I believe that issues has been brought to your attention and I would like to provide any evidence or testimony if that would be helpful. Please feel free to call if needed

Respectfully,

Austin Kettleson
971 678 4591

Diane Christiansen

From: Diane Christiansen
Sent: Thursday, January 20, 2022 11:22 AM
To: Megan Leatherman
Subject: RE: Code Enforcement | 1555-1569 Exchange (Astoria Downtown Cottages)
Attachments: CE_1555-1569 Exchange_email corr. BF 2020.12.15.pdf; CE_1555-1569 Exchange_AirBNB links.pdf

Meg,

I asked Alex about this, and how he interpreted Barbara's email from 12/15/2020 is that, while their Transient Lodging units are non-conforming, are allowed due to the fact that they've been using some of the units as transient lodging prior to the code change for the property at 1555-1569 Exchange. He also indicated that because Barbara's last email did not specify whether the remaining long-term units were permitted to be converted to short-term rentals, that we have very little traction in trying to prevent them from doing just that.

I took screenshots of their Airbnb ads, included the links in the attached PDF, and I wanted to note that they do explain that the building is very old and noisy and request their guests be courteous of the long-term tenants.

Let me know if we still need to get together as a team to go over this.

Thank you,

Diane

From: Megan Leatherman <mleatherman@astoria.or.us>
Sent: Wednesday, January 19, 2022 11:23 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: RE: Code Enforcement | 1555 Exchange (Astoria Downtown Cottages)

Can you check the address file and see if the documentation that Barbara references below is in there please

Sincerely, Meg



From: Diane Christiansen <dchristiansen@astoria.or.us>
Sent: Wednesday, January 19, 2022 10:11 AM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Code Enforcement | 1555 Exchange (Astoria Downtown Cottages)

Meg,

This is an email from the property owner for 1555-1569 Exchange. They are stating that they believe they are in compliance per the emails below.

The complaint is actually from one of their tenants who said they are converting the long-term rentals to short-term, and are trying to make them move, and the noise with the short-term renters has been impacting them.

I spoke with Bob yesterday afternoon, but in our conversation, he indicated that the small cottage behind the apartment complex is the only short-term rental, and then later also said that they've been converting the apartments "over the years" to short-term rentals and it's all allowed because they got their business license in 2017. Bob also stated that they initially converted a couple of units to short-term, but stopped when their daughter was ill, etc. and now plan to continue their "authorized" business.

I believe the property owners are still attempting to convert their long-term apartment units to short-term rentals but believe they are in compliance due to the fact that one, or more, units was allowed prior to the code change in 2019(?). I think we need to confirm which unit(s) is permitted as an HSL, document that, and inform the owner that no more units may be used as short-term rentals (aka Airbnb).

This is Accela record # 119-21-000039-NVST, in case that is helpful.

Diane

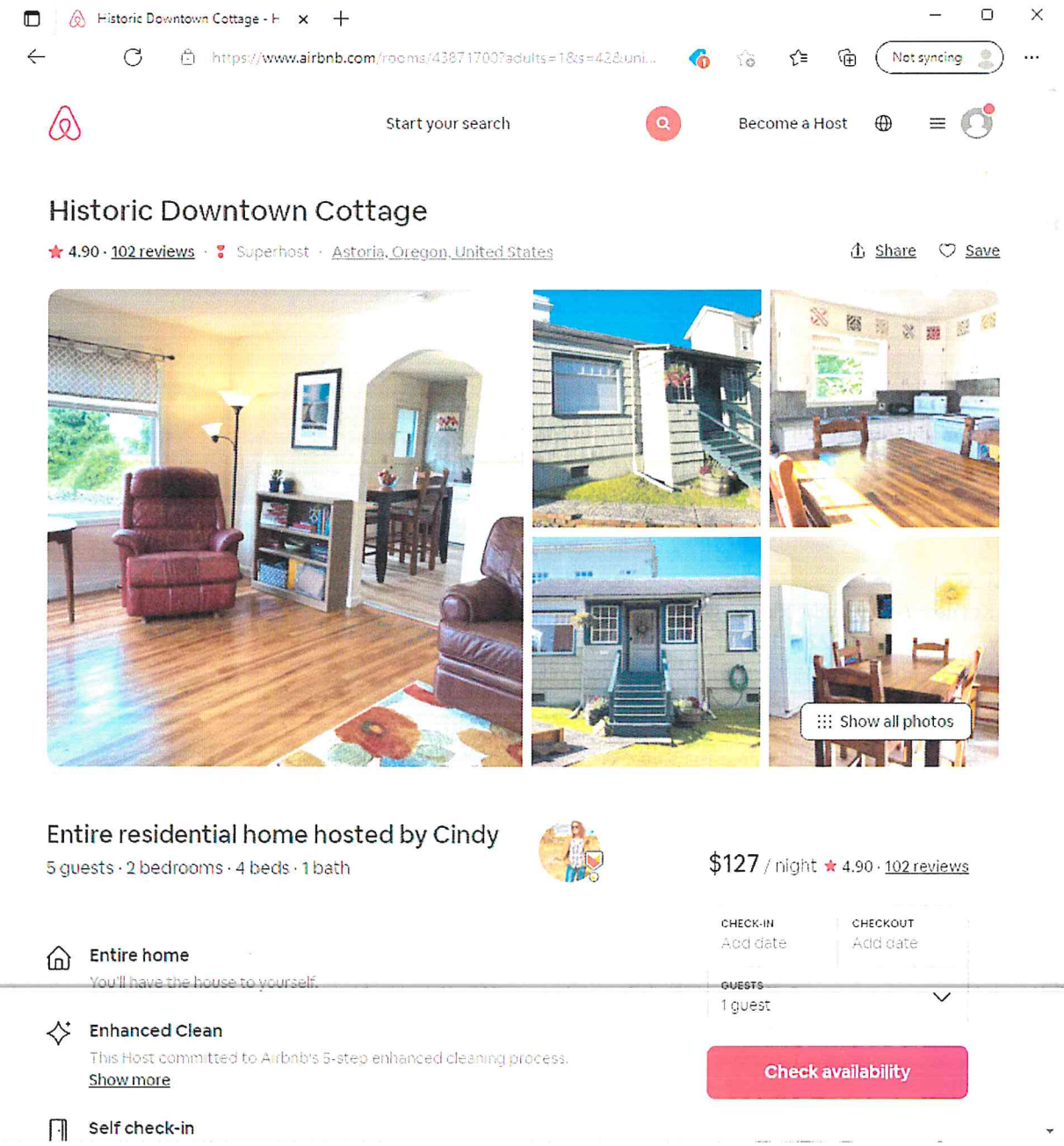
From: Bob and Cindy Magie <exchangeastoria@gmail.com>
Sent: Wednesday, January 19, 2022 9:30 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>
Subject: Re: FW: Astoria Downtown Cottages

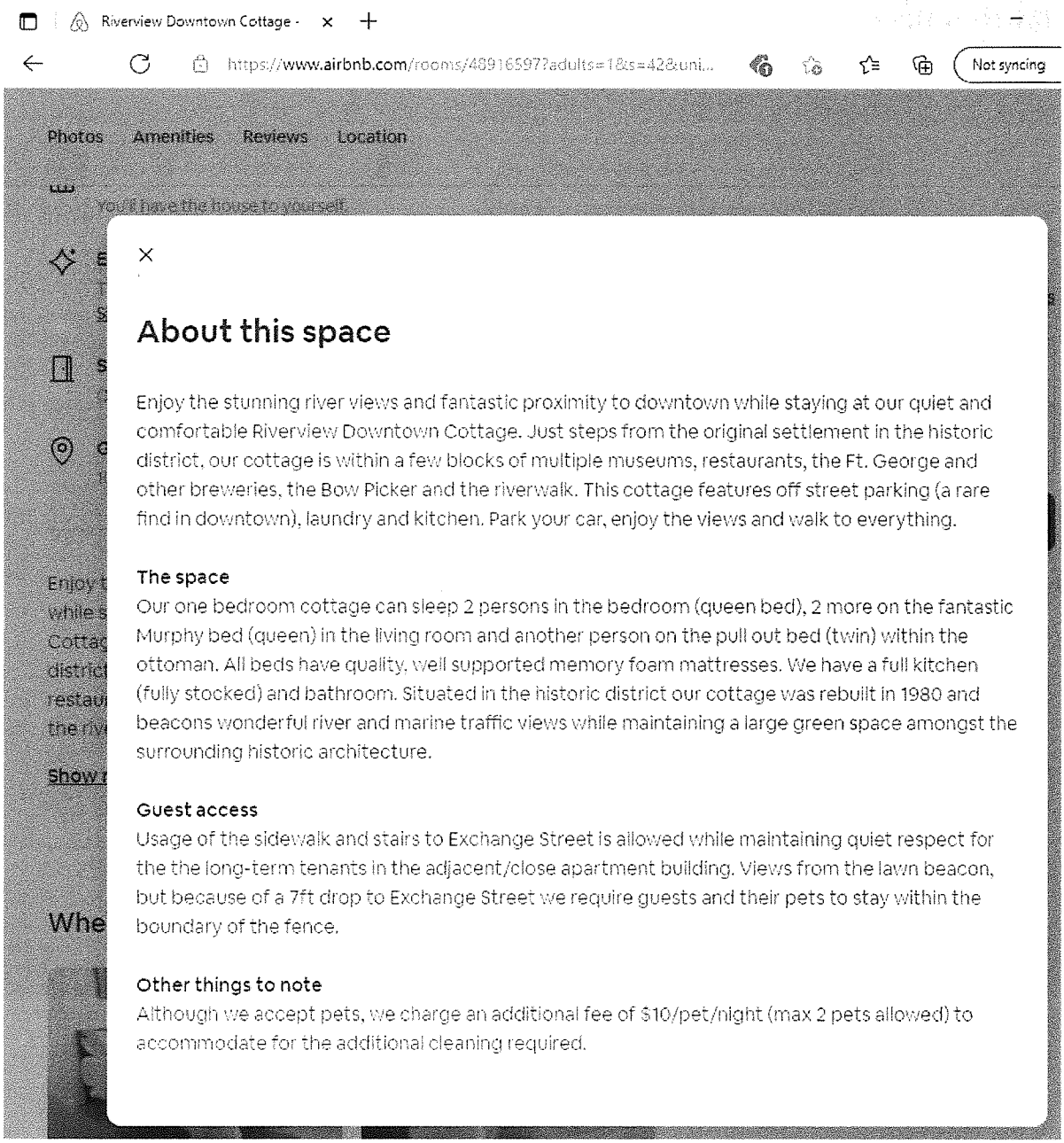
Hi Diane,
As per our phone conversation, I am sending this long string of emails. It diagrams the issues we had in 2020 with the city regarding our short term rentals. As stated above we received our business license in 2017. We have been working toward this goal since 2015 when we purchased an adjacent lot that connected our property to 16th street we (with our neighbor -Jake Helligso) created the required concrete entry and parking as per instructions from Kevin Cronin (Community Development Director) which later had to be completely removed and repoured as Kevin felt it was slightly too steep. Much work, time and money has gone into development of our short term rentals since 2015. We are frustrated that the bar for our business (we've been building for years) appears to keep moving. It is scary to see the letter sent to us from the city. We pride ourselves on following the rules and doing things the right way (we have paid significant occupancy taxes to the city). We feel we have done our due diligence and done everything asked of us and have been granted permission repeatedly only to have it questioned again and again when there is a staff turn over. We've lived in this town since 2006 and this is our home; this business is our family's livelihood. These old buildings are very expensive to restore (especially to Historic Landmarks Commission standards) and maintain; income from our short term rentals has helped us bear these costs. We urge you to look at the aforementioned information and resolution and reach out to us with any questions.

Thanks,
Bob and Cindy Magie

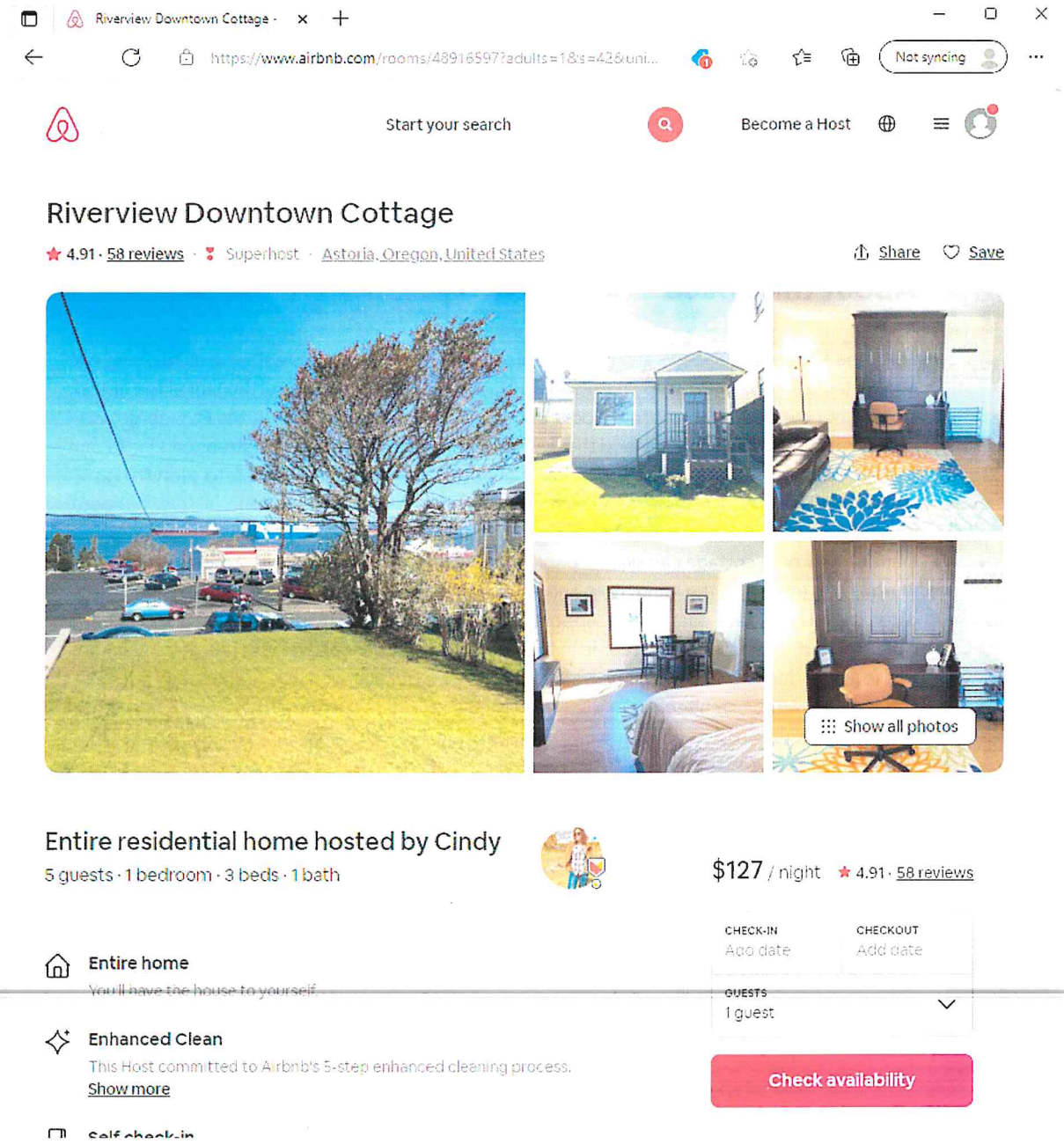
On Fri, Dec 18, 2020 at 11:18 AM Shannon Fitzpatrick <shannon@pcm-usa.com> wrote:

1565 Exchange | Airbnb Link: https://abnb.me/UbC26Dg7Wmb
Historic Downtown Cottage

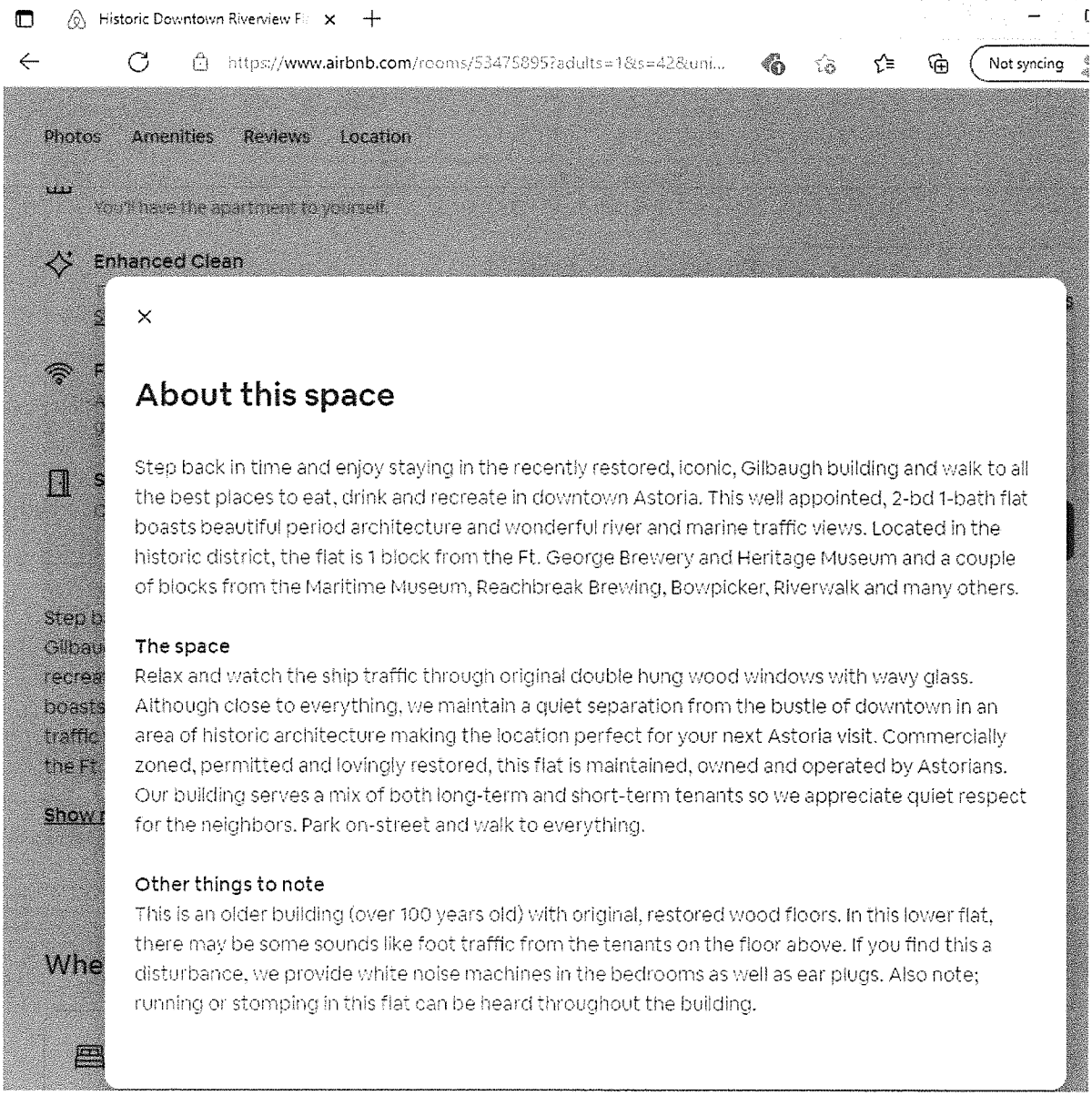



Riverview Downtown Cottage -
https://www.airbnb.com/rooms/48916597?adults=1&s=42&uni...
Not syncing
Photos
Amenities
Reviews
Location
About this space
Enjoy the stunning river views and fantastic proximity to downtown while staying at our quiet and comfortable Riverview Downtown Cottage. Just steps from the original settlement in the historic district, our cottage is within a few blocks of multiple museums, restaurants, the Ft. George and other breweries, the Bow Picker and the riverwalk. This cottage features off street parking (a rare find in downtown), laundry and kitchen. Park your car, enjoy the views and walk to everything.
The space
Our one bedroom cottage can sleep 2 persons in the bedroom (queen bed), 2 more on the fantastic Murphy bed (queen) in the living room and another person on the pull out bed (twin) within the ottoman. All beds have quality, well supported memory foam mattresses. We have a full kitchen (fully stocked) and bathroom. Situated in the historic district our cottage was rebuilt in 1980 and beacons wonderful river and marine traffic views while maintaining a large green space amongst the surrounding historic architecture.
Guest access
Usage of the sidewalk and stairs to Exchange Street is allowed while maintaining quiet respect for the the long-term tenants in the adjacent/close apartment building. Views from the lawn beacon, but because of a 7ft drop to Exchange Street we require guests and their pets to stay within the boundary of the fence.
Other things to note
Although we accept pets, we charge an additional fee of $10/pet/night (max 2 pets allowed) to accommodate for the additional cleaning required.

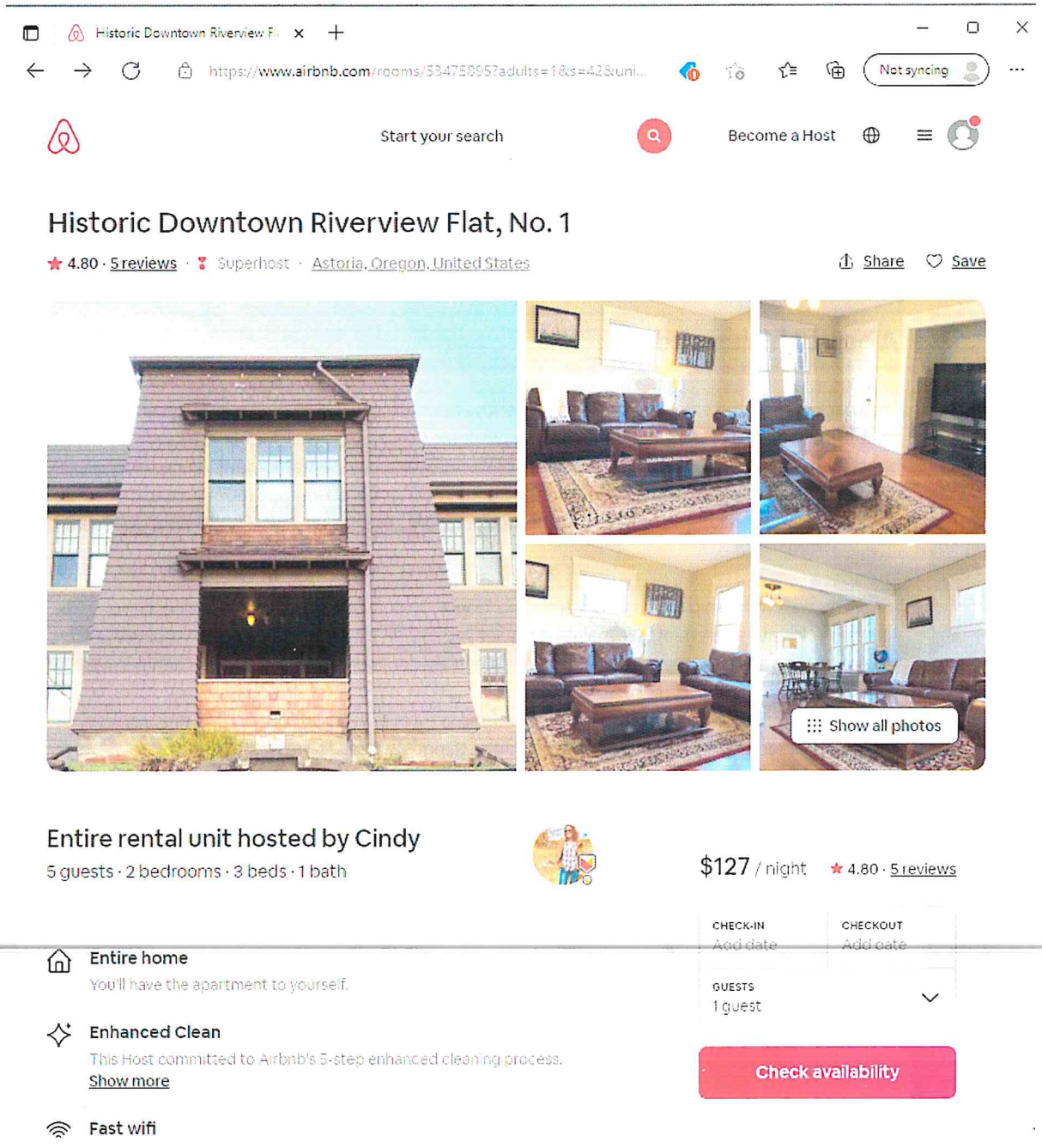
1569 Exchange | Airbnb Link: https://abnb.me/Q733rQa7Wmb
Riverview Downtown Cottage



1555 Exchange (continued)



1555 Exchange | Airbnb Link: https://abnb.me/92mmQLb5Wmb
Bottom right unit of apartment complex



Diane Christiansen

From: Diane Christiansen
Sent: Wednesday, January 19, 2022 9:40 AM
To: austinkettleson@gmail.com
Subject: FW: 1557 exchange Astoria Air BNB

Austin,

I received your voicemail about the Airbnb. I wanted you to know we are working on this.

It sounds like the owners are saying that they are only using the cottage as a short-term rental, not the apartments, which are not allowed to be converted from long-term dwellings to short-term rentals if they are already being used for long-term dwellings.

If you are able to, would you please send me the addresses for which the short-term rentals are being used? I believe we only know about 1555 Exchange, but it's my understanding that each apartment has its own address. Knowing which specific units they are using for short-term rentals will help us pursue this matter.

Also, if you have any more links for the short-term rental advertisements (for multiple units), please forward them over to me.

Thank you very much,

Diane

-----Original Message-----
From: Tiffany Taylor <ttaylor@astoria.or.us>
Sent: Wednesday, December 15, 2021 11:18 AM
To: Diane Christiansen <dchristiansen@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: FW: 1557 exchange Astoria Air BNB

Code Enforcement complaint follow up email.

Please respond to Austin Kettleson on status.

(this is the property I had prepared a draft letter for) Thanks!
-Tiffany

-----Original Message-----
From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Tuesday, December 14, 2021 3:30 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: 1557 exchange Astoria Air BNB

*****EXTERNAL SENDER*****

Good afternoon,

I was curious of there was any follow up with This Air BNB. It's continued to operate the last couple weeks and is disruptive to what is a small apartment building.

Sent from my iPhone

Diane Christiansen

From: Bob and Cindy Magie <exchangeastoria@gmail.com>
Sent: Wednesday, January 19, 2022 9:30 AM
To: Diane Christiansen
Subject: Re: FW: Astoria Downtown Cottages

Hi Diane,
As per our phone conversation, I am sending this long string of emails. It diagrams the issues we had in 2020 with the city regarding our short term rentals. As stated above we received our business license in 2017. We have been working toward this goal since 2015 when we purchased an adjacent lot that connected our property to 16th street we (with our neighbor -Jake Helligso) created the required concrete entry and parking as per instructions from Kevin Cronin (Community Development Director) which later had to be completely removed and repoured as Kevin felt it was slightly too steep. Much work, time and money has gone into development of our short term rentals since 2015. We are frustrated that the bar for our business (we've been building for years) appears to keep moving. It is scary to see the letter sent to us from the city. We pride ourselves on following the rules and doing things the right way (we have paid significant occupancy taxes to the city). We feel we have done our due diligence and done everything asked of us and have been granted permission repeatedly only to have it questioned again and again when there is a staff turn over. We've lived in this town since 2006 and this is our home; this business is our family's livelihood. These old buildings are very expensive to restore (especially to Historic Landmarks Commission standards) and maintain; income from our short term rentals has helped us bear these costs. We urge you to look at the aforementioned information and resolution and reach out to us with any questions.

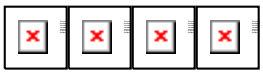
Thanks,
Bob and Cindy Magie

On Fri, Dec 18, 2020 at 11:18 AM Shannon Fitzpatrick <shannon@pcm-usa.com> wrote:
Thank you, Bob.

RESPECTFULLY,

SHANNON FITZPATRICK

PCM, INC
Pacific Capital Management
(503) 336-9303 - Direct
(805) 512-8822 - Direct
(503) 850-8895 - Office
(888) 819-6313 - Fax
OREA: 201222845
CA DRE: 01714909



On Thu, Dec 17, 2020 at 3:38 PM Bob and Cindy Magie <exchangeastoria@gmail.com> wrote:

Hi Shannon,
Just thought I would keep you in the loop regarding our short term rentals on exchange street. On the afternoon of December 14th Cindy called the city of Astoria and tried to pay our occupancy tax on our vacation rentals on exchange street. They were due on the 15th (paid via check in the mail in prior months) and she was hoping to pay by phone as we accidently waited until the last minute to get them paid. Cristine Shade told Cindy that there was a problem with our account, that we do not have a file number and that we would need to talk to Barbara Fryer in the morning.

After an evening spent locating all of our documentation, Cindy and I called Barbara on the morning of the 15th. Barbara said that we did not have legal vacation rentals, because they were located in R3 zoning and that we would need to stop using them accordingly. I then mentioned that the properties are in C3 zoning and she responded by saying "Okay". After a short delay she then mentioned that according code "2.390.10" ((a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel) we are still out of compliance. I then responded that we applied for and received a business license in October of 2017 for our Downtown Astoria Cottages (License # 5001435) well before the implementation of this code change. After another pause she then said "since your license was valid before the code change, you are in compliance; my apologies and I will send an email to the staff notifying all that you are in compliance and get a file number issued".

I then asked Barbara to send us an email confirming our conversation and she apologized again and said she would do so. The below email string is what Barbara sent to us and includes the discussion regarding our short term rentals.

Also, I have attached our original business license receipt from October of 2017 and the transient room tax registration form that we were asked to fill out to receive a file number (File #118) and also the completed form. I will also forward you the email from Cristine Shade that notifies us of our assigned file number.

FYI,
Bob Magie

---------- Forwarded message ---------
From: **Barbara Fryer** <BFryer@astoria.or.us>
Date: Tue, Dec 15, 2020 at 9:02 AM
Subject: FW: Astoria Downtown Cottages
To: exchangeAstoria@gmail.com <exchangeAstoria@gmail.com>
Cc: Tiffany Taylor <ttaylor@astoria.or.us>, Heidi Dlubac <HDlubac@astoria.or.us>, Cristine Shade <CShade@astoria.or.us>, Megan Leatherman <mleatherman@astoria.or.us>

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Good afternoon,

The properties in question, are zoned C3. They cannot be converted from long-term housing to vacation rental if they have been used as long-term rental housing.

2.390.10(a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel.

The three homes located at this address 1555-1569 Exchange Street (T8N R9W Section 08 Map DC Tax lot 18200). The homes on this property were moved in the sixties onto this property from slide areas as housing. They cannot be converted to lodging – they must remain long-term rentals.

Regards,

Barbara

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 2:08 PM

To: Barbara Fryer <BFryer@astoria.or.us>
Subject: FW: Astoria Downtown Cottages

Barbara –

Did you want to chime in with some code interpretation? I'm still lost on how we are dealing with the HSL permitting process. (It's probably just me.)

1555-1569 Exchange is an apartment complex. 1565 Exchange is an address within that building. Sounds like the property owners have changed use on one of the apartments from long-term housing to vacation rental.

-Tiffany

TIFFANY TAYLOR

ADMINISTRATIVE ASSISTANT

COMMUNITY DEVELOPMENT DEPARTMENT

1095 Duane Street Astoria OR 97103

ttaylor@astoria.or.us

503-338-5183 (phone)

503-338-6538 (fax)

From: Heidi Dlubac
Sent: Tuesday, September 15, 2020 2:02 PM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Re: Astoria Downtown Cottages

I haven't seen anything for this address. It's in the C3 zone and doesn't require a homestay permit. However, a vacation rental would not be allowed per new code (structures or portions of structures used as residential cannot be converted to short-term stays).

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:40:49 AM
To: Tiffany Taylor; Heidi Dlubac
Subject: RE: Astoria Downtown Cottages

Sorry, it's 1565 Exchange St. It was handwritten on their return.

Cristine Shade

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 8:39 AM
To: Cristine Shade <CShade@astoria.or.us>; Heidi Dlubac <HDlubac@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Do you have an address? Maybe an O.T.?

-Tiffany

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:38 AM

To: Heidi Dlubac <HDlubac@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Astoria Downtown Cottages

I have check for room tax from Cynthia and Robert Magie, but I don't have any other info for them. They did not register with me. Are they registered with you?

Cristine Shade

Staff Accountant

City of Astoria, Finance Department

1095 Duane Street

Astoria, OR 97103

Phone: (503) 298-2426

Fax: (503) 325-2997

Email: cshade@astoria.or.us



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

NOTICE OF NON-COMPLIANCE
Nuisance Ordinance Violation

January 10, 2022

Gilbaugh LLC
Attn: Bob and Cindy Magie
P.O. Box 532
Astoria, OR 97103

RE: RESIDENTIAL DWELLING UNIT ADVERTISED AS TRANSIENT LODGING AT 1555 EXCHANGE STREET.

Dear Bob and Cindy,

Our office has received information that the residential dwelling, located at 1555 Exchange Street, is advertised on the AirBnB website as a transient lodging unit; this is not allowed based on Astoria City Code. Please cease the transient lodging use; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms.

This letter serves to clarify the regulations regarding transient lodging (i.e. short-term lodging) in the City of Astoria as it applies to the property:

- Clatsop County classifies the property as a multi-family structure. This structure was constructed as apartment dwellings (c. 1890/1920), and has been occupied as a long term rental property for residents.

- The Astoria Development Code defines dwellings as:
  DWELLING: One or more rooms designed for permanent occupancy by one family.
  SINGLE-FAMILY: A free-standing building containing one dwelling unit.
  TWO-FAMILY: A free-standing building containing two dwelling units. May include two-unit rowhouses or duplexes, either renter-occupied or owner-occupied.
  MULTI-FAMILY: A building containing three or more dwelling units. May include rowhouses, apartment buildings, or residential condominiums, either renter-occupied or owner-occupied.

- 1555-1561 Exchange St. is located in a C-3 zone. Astoria Development Code §2.390.10 identifies the following lodging related uses as Outright Permitted Uses in the C-3 Zone:

  2.39.10 Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

  a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.10.b.

b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

- The Astoria Development Code defines a Motel as:
  MOTEL: A building in which lodging is provided for guests for compensation and where the majority of rooms have direct access to the outside without the necessity of passing through the main lobby of the building.

  Staff Finding: The structure meets the definition of Motel because it is a building in which lodging is provided for guests for compensation and where a majority of rooms have direct access to the outside. However, within the C-3 Zone, the Astoria Development Code §2.390.10(a) prohibits hotel/motel use if the structure was originally constructed as a residential dwelling.

- The Astoria Development Code defines a Hotel as:
  HOTEL: A building in which lodging is provided for guests for compensation, which may also provide incidental services such as restaurants, meeting rooms, or recreational facilities subject to Development Code standards.

  Staff Finding: The proposal meets the definition of Hotel because the building, as proposed, would provide lodging for guests for compensation. However, within the C-3 Zone, Astoria Development Code §2.390.10(a) prohibits hotel/motel use if the structure was originally constructed as a residential dwelling.

CONCLUSION: As described, the structure meets the definition of Motel and Hotel; however, the existing multi-family structure was originally constructed as residential dwellings, and it has been consistently used to house people. The Astoria Development Code §2.390.10(a) prohibits hotel/motel use if the structure was originally constructed as a residential dwelling. To conclude, transient lodging is NOT a permitted use in the multi-family structure located at 1555-1561 Exchange St. in the C-3 zoning district (use is prohibited in unit 1555 Exchange, as well as the other dwelling units within the structure). The use as transient lodging does not meet the definition of motel/hotel due to the prior residential use of the property; therefore, the use as a Hotel or Motel is prohibited. Please cease the transient lodging use; cease reservations; cancel any reservations 2 weeks beyond the date on this notice; and remove transient lodging listing on all advertising platforms.

If you have any questions, please feel free to contact our office.

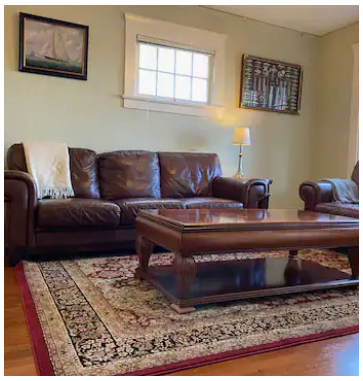
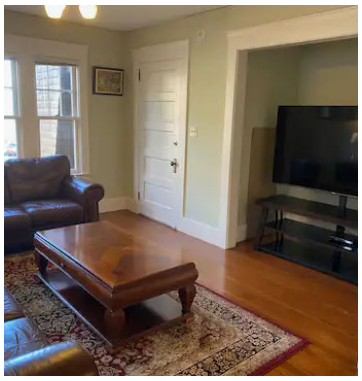
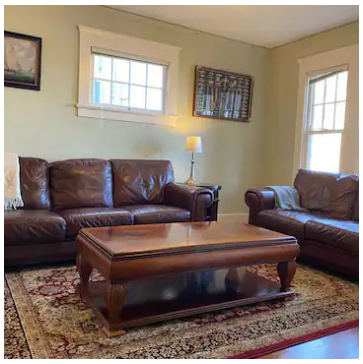
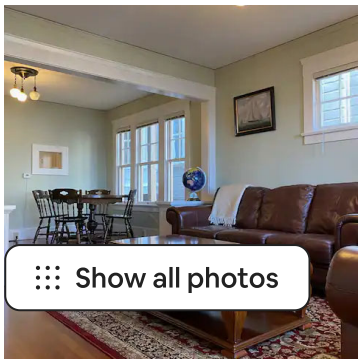
Regards,
THE CITY OF ASTORIA
Community Development Department

Encl: AirBnB Listing
EC: File

Historic Downtown Riverview Flat, No. 1

1 review · Superhost · Astoria, Oregon, United States

Share Save

Entire rental unit hosted by Cindy

5 guests · 2 bedrooms · 3 beds · 1 bath



Entire home

You'll have the apartment to yourself.

Enhanced Clean

This Host committed to Airbnb's 5-step enhanced cleaning process. Show more

Fast wifi

At 292 Mbps, you can take video calls and stream videos for your whole group.

Self check-in

Check yourself in with the smartlock.

Step back in time and enjoy staying in the recently restored, iconic, Gilbaugh building and walk to all the best places to eat, drink and recreate in downtown Astoria. This well appointed, 2-bd 1-bath flat boasts beautiful period architecture and wonderful river and marine traffic views. Located in the historic district, the flat is 1 block from the...

Show more >

Where you'll sleep

Bedroom 1
1 queen bed, 1 single bed

Bedroom 2
1 queen bed

What this place offers

- River view
- Kitchen
- Fast wifi – 292 Mbps
- Free parking on premises
- TV

Show all 48 amenities

$133 / night 1 review

CHECK-IN	CHECKOUT
1/3/2022	1/7/2022

GUESTS
1 guest

Reserve

You won't be charged yet

$133 x 4 nights	$533
Cleaning fee	$85
Service fee	$87
Occupancy taxes and fees	$83
Total	**$788**

Report this listing

4 nights in Astoria

Jan 3, 2022 - Jan 7, 2022

January 2022

Su	Mo	Tu	We	Th	Fr	Sa
						~~1~~
2	3	4	5	6	7	~~8~~
~~9~~	10	11	12	13	14	~~15~~
~~16~~	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Cle

★ 1 review



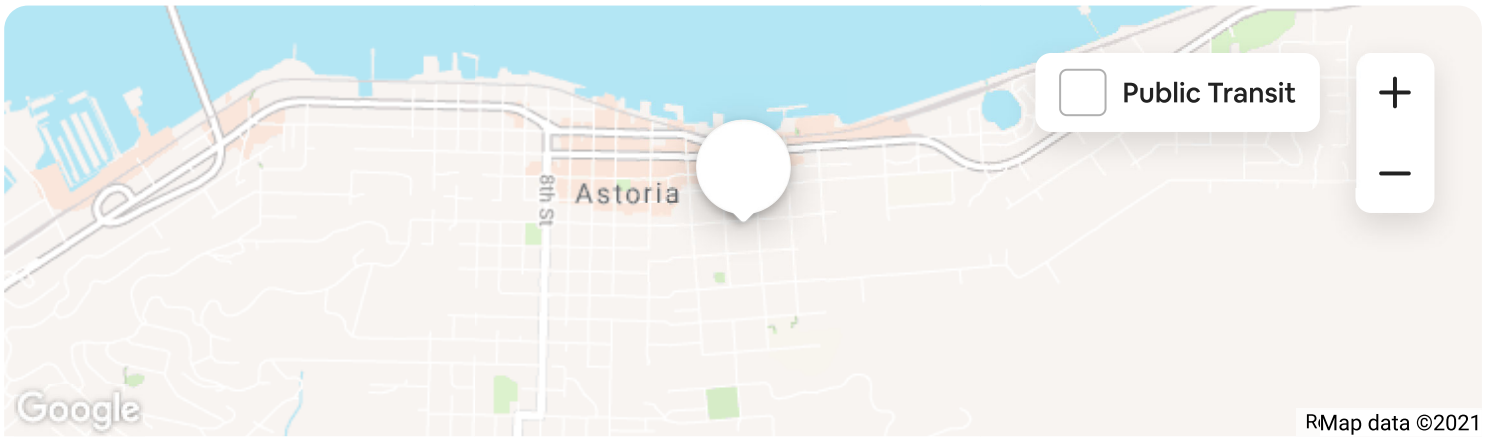
Lorell
December 2021

This is a perfect place to stay while in Astoria. The location is amazing. You can walk to the restaurants, shops, museums and the waterfront. We enjoyed watching the river from the front windows. There is a big TV for your entertainment. Jacob was great with communication. The beds were comfortable to...

Show more ›

Where you'll be

Astoria, Oregon, United States



Hosted by Cindy

Joined in February 2016

241 Reviews

Identity verified

Superhost

Cindy is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Response rate: 100%

Response time: within an hour

Contact Host

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.

Things to know

House rules

- Check-in: 4:00 PM - 11:00 PM
- Checkout: 11:00 AM
- Self check-in with smart lock
- No smoking
- No pets
- No parties or events

Show more >

Health & safety

- Committed to Airbnb's enhanced cleaning process. Show more
- Airbnb's social-distancing and other COVID-19-related guidelines apply
- Carbon monoxide alarm
- Smoke alarm

Show more >

Cancellation policy

Only cleaning fee is refundable because check-in is less than 7 days away.

Show more >

Explore other options in and around Astoria

Vancouver	Cannon Beach
Seaside	Tacoma
Lincoln City	Ocean Shores
Olympia	Victoria
Portland	Seattle

Vancouver

Whistler

Unique stays on Airbnb

Glamping Rentals

Lakehouse Rentals

Treehouse Rentals

Beach House Rentals

Tiny House Rentals

Cabin Rentals

Camper Rentals

Support

Help Center

Safety information

Cancellation options

Our COVID-19 Response

Supporting people with disabilities

Report a neighborhood concern

Community

Airbnb.org: disaster relief housing

Support Afghan refugees

Celebrating diversity & belonging

Combating discrimination

Hosting

Try hosting

AirCover: protection for Hosts

Explore hosting resources

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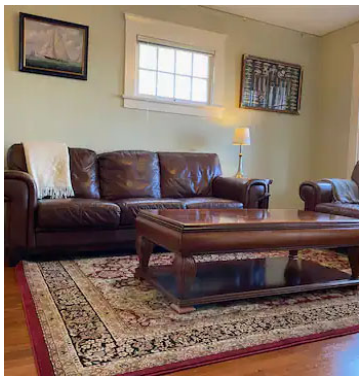
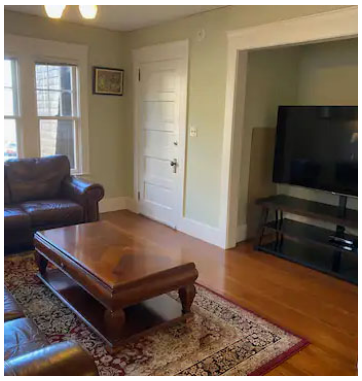
English (US) $ USD

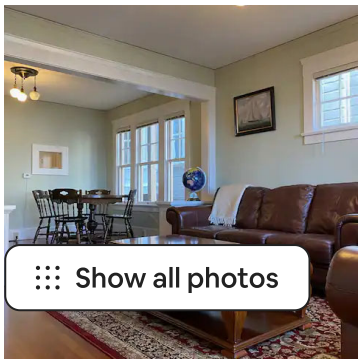
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Fast wifi
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Self check-in
Check yourself in with the smartlock.

$129 / night 1 review

CHECK-IN	CHECKOUT
Add date	Add date

GUESTS
1 guest

Check availability

Report this listing

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Show more >

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- Kitchen
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- Free parking on premises
- TV

Show all 48 amenities

Select check-in date

Add your travel dates for exact pricing

December 2021

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Cle

★ 1 review



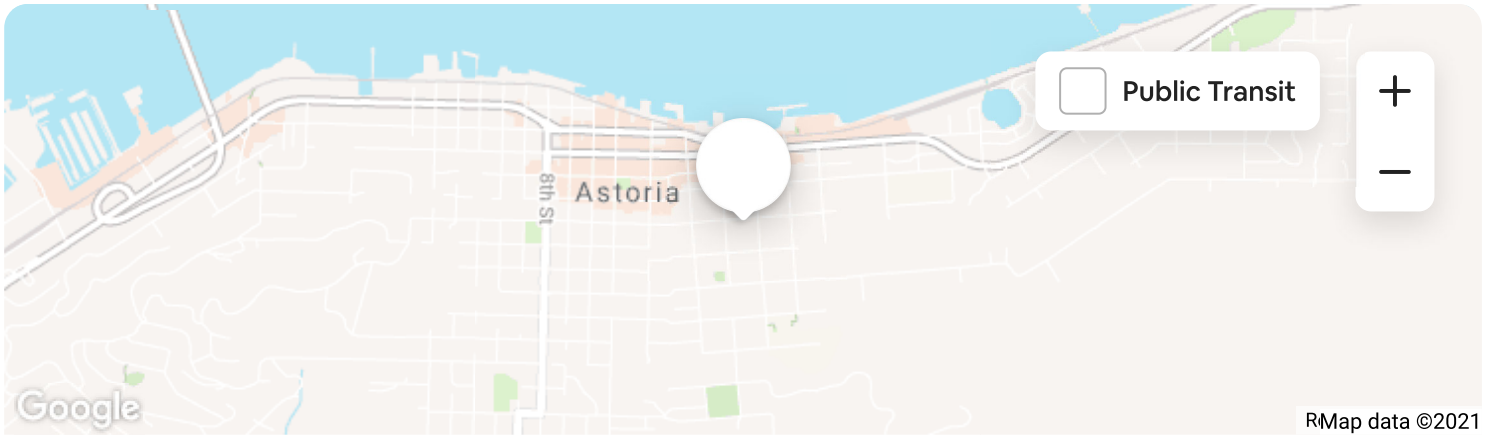
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Health & safety

- Committed to Airbnb's enhanced cleaning process. Show more
- Airbnb's social-distancing and other COVID-19-related guidelines apply
- Carbon monoxide alarm
- Smoke alarm

Show more >

Cancellation policy

Add your trip dates to get the cancellation details for this stay.

Add dates >

Explore other options in and around Astoria

Vancouver	Cannon Beach
Seaside	Tacoma
Lincoln City	Ocean Shores
Olympia	Victoria
Portland	Seattle

Vancouver

Whistler

Unique stays on Airbnb

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Support Afghan refugees

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Combating discrimination

Hosting

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Newsroom

Learn about new features

Letter from our founders

Careers

Investors

Airbnb Luxe

English (US) $ USD

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Diane Christiansen

From: Tiffany Taylor
Sent: Wednesday, December 15, 2021 11:18 AM
To: Diane Christiansen; Megan Leatherman
Subject: FW: 1557 exchange Astoria Air BNB

Code Enforcement complaint follow up email.

Please respond to Austin Kettleson on status.

(this is the property I had prepared a draft letter for) Thanks!
-Tiffany

-----Original Message-----
From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Tuesday, December 14, 2021 3:30 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Subject: 1557 exchange Astoria Air BNB

*****EXTERNAL SENDER*****

Good afternoon,
I was curious of there was any follow up with This Air BNB. It's continued to operate the last couple weeks and is disruptive to what is a small apartment building.

Sent from my iPhone

Tiffany Taylor

From: Austin Kettleson <austinkettleson@gmail.com>
Sent: Wednesday, December 1, 2021 8:52 AM
To: Tiffany Taylor
Subject: Check out this home on Airbnb!

*****EXTERNAL SENDER*****
Check out this home on Airbnb!

https://abnb.me/N2mq8A7ADlb



Sent from my iPhone

Astor Library
MCMLXVII

12/1/21

Spoke w/ Austin Kettleson today. Prepared code enforcement letter to property owners based upon his complaint.

Let me know if it's OK to mail.

Tiffany

450 10th Street • 503-325-7323 • astorialibrary.org

L-919

Diane Christiansen

From: Tiffany Taylor
Sent: Tuesday, November 9, 2021 8:54 AM
To: austinkettleson@gmail.com
Cc: Diane Christiansen
Subject: Complaint Submission

Austin,

We have received your email complaint submission and have a few follow up questions:

(1) Do you have the name of the property management company?
(2) Could you confirm the property owners as Gilbaugh LLC?
(3) Could you identify the exact location of the "non city compliant AirBnB" such as the apt# in your building?

Regarding the breach of lease agreement complaint; the City does not get involved with civil matters. I would suggest contacting an attorney, or one of the legal resource centers dealing with tenant rights. The Clatsop County courthouse may have additional information and/or a local contact.

Legal Aid Services in Oregon
https://oregonlawhelp.org/

Oregon State Bar, Landlord Tenant Law
https://www.osbar.org/public/legalinfo/landlordtenant.html

Portland Housing Bureau - Rental Services Office
https://www.portlandoregon.gov/phb/72622

U.S. Department of Housing and Urban Development
https://www.hud.gov/

Fair Housing of Oregon
Hotline: 1-800-424-3247 (for housing discrimination only)
https://fhco.org/

Community Alliance of Tenants (CAT)
503-288-0130
http://www.oregoncat.org/

Multifamily NW
503-213-1281
https://www.multifamilynw.org/

Manufactured Housing/Oregon State Tenants Association
(Information for mobile park tenants)
https://www.mh-osta.org/

Sincerely,

Tiffany


CITY OF ASTORIA
Founded 1811 • Incorporated 1856
Tiffany Taylor
Associate Planner
Community Development Department
503-338-5183
ttaylor@astoria.or.us
1095 Duane Street
Astoria, Oregon 97103
www.astoria.or.us

CE21-1f

Diane Christiansen

From: Megan Leatherman
Sent: Monday, November 1, 2021 12:10 PM
To: Diane Christiansen
Subject: FW: Complaint Form from Website

Sincerely, Meg

Megan Leatherman MCRP
Director
Community Development Department
CITY OF ASTORIA
Founded 1811 • Incorporated 1856

From: commdev@astoria.or.us <commdev@astoria.or.us>
Sent: Thursday, October 28, 2021 5:27 PM
To: Megan Leatherman <mleatherman@astoria.or.us>
Subject: Complaint Form from Website

Comm Dev Complaint Form Submission

City of Astoria - Community Development

Customer Information:
Name (The Customer): Austin Kettleson
Address: 1559 Exchange ST
City, State Zip: Astoria, OR 97103
Email Address: Austinkettleson@gmail.com
Cell Phone: 9716784591
Phone:
Fax:

Property owners:
Gilbaugh LLC
P.O. Box 532
Astoria, OR 97103

Complaint Information:
Street/Site Address of Complaint: 1559 Exchange ST
Complaint or explanation of issues: My landlords are breaching my lease agreement and also operating non city compliant air BNBs on the same property. Due to them being good friends with the property management company it's been difficult to deal with this issue
Known dangers or conditions on site:

City of Astoria Employee use only!

Complaint Taken By:
Phone Number:

L-922

Time:
Type of Complaint:

Action taken by reporting City of Astoria employee:
(IE Forwarding to Engineering, Fire Dept, etc)

Has the problem been resolved by your department?
YES NO
*If YES, forward the file to the code enforcement officer for recording in the investigation/address file.
*If NO, to which department was it transferred?
Date:

Please document date and time of all communications and letters sent out by City of Astoria personnel.	
Date:	
Date:	
Date:	
Date:	
Date:	
Date:	

Issue has not been resolved and the property owner or owners agent has failed to make corrective action

Please forward to Code Enforcement officer for abatement or citations. (All investigation files, photos, and letters are attached.)
Forwarding Department Head (signature Required):

Date:

Code Enforcement Department Employee:

Date:
(Stamp Date received for enforcement)

File #	Receipt #	Receipt Date	Amount paid
118	299,956	12/15/2020	110.44
118	299,956	12/15/2020	15.97
118	299,956	12/15/2020	37.27
118	299,956	12/15/2020	129.32
118	299,957	12/15/2020	135.82
118	299,957	12/15/2020	19.64
118	299,957	12/15/2020	45.83
118	299,957	12/15/2020	158.71
118	299,958	12/15/2020	151.31
118	299,958	12/15/2020	21.88
118	299,958	12/15/2020	51.06
118	299,958	12/15/2020	176.75
118	299,959	12/15/2020	146.69
118	299,959	12/15/2020	21.21
118	299,959	12/15/2020	49.50
118	299,959	12/15/2020	171.50
118	302,062	1/13/2021	95.05
118	302,062	1/13/2021	13.74
118	302,062	1/13/2021	32.07
118	302,062	1/13/2021	111.14
118	304,122	2/11/2021	71.62
118	304,122	2/11/2021	10.36
118	304,122	2/11/2021	24.16
118	304,122	2/11/2021	83.74
118	306,113	3/10/2021	140.63
118	306,113	3/10/2021	20.34
118	306,113	3/10/2021	47.45
118	306,113	3/10/2021	164.44
118	308,328	4/7/2021	170.75
118	308,328	4/7/2021	24.69
118	308,328	4/7/2021	57.62
118	308,328	4/7/2021	196.82
118	310,769	5/11/2021	229.04
118	310,769	5/11/2021	33.12
118	310,769	5/11/2021	77.29
118	310,769	5/11/2021	270.60
118	312,990	6/14/2021	407.54
118	312,990	6/14/2021	58.94
118	312,990	6/14/2021	137.52
118	312,990	6/14/2021	476.48
118	314,840	7/13/2021	465.43
118	314,840	7/13/2021	67.30
118	314,840	7/13/2021	157.04
118	314,840	7/13/2021	544.20
118	316,700	8/11/2021	722.38
118	316,700	8/11/2021	104.47
118	316,700	8/11/2021	243.75
118	316,700	8/11/2021	844.61
118	319,074	9/14/2021	605.79
118	319,074	9/14/2021	87.60
118	319,074	9/14/2021	204.41
118	319,074	9/14/2021	708.30
118	320,800	10/11/2021	431.46
118	320,800	10/11/2021	62.40
118	320,800	10/11/2021	145.59
118	320,800	10/11/2021	504.47
118	323,353	11/15/2021	337.16
118	323,353	11/15/2021	48.76
118	323,353	11/15/2021	113.76
118	323,353	11/15/2021	394.19
118	325,304	12/14/2021	359.97
118	325,304	12/14/2021	52.06
118	325,304	12/14/2021	121.46
118	325,304	12/14/2021	420.88
			12,145.49

Cristine Shade

From: exchangeastoria@gmail.com
Sent: Wednesday, February 10, 2021 5:48 PM
To: Cristine Shade
Cc: Jacob Helligso
Subject: Re: Occupancy taxes file #118

*****EXTERNAL SENDER*****
Jacob Helligso (503) 791-8975, manager

Sent from my iPhone

On Feb 10, 2021, at 1:09 PM, Cristine Shade <CShade@astoria.or.us> wrote:

This email is sufficient, but I would like to have a phone number for Jacob for the file.

Cristine Shade
503-298-2426

From: Bob and Cindy Magie [mailto:exchangeastoria@gmail.com]
Sent: Wednesday, February 10, 2021 12:40 PM
To: Cristine Shade <CShade@astoria.or.us>
Cc: Jacob Helligso <jakehelligso@gmail.com>
Subject: Occupancy taxes file #118

*****EXTERNAL SENDER*****
Good afternoon Cristine,

I have attached our January occupancy tax form and will be calling you later today or tomorrow morning to get this paid. I have also attached Jacob Helligso to this email because he will be managing Astoria Downtown Cottages and will be submitting these payments to you in the future. Please let me know if there is any information we need to provide to you for him to be able to do this for us.

Thanks
Cindy Magie

CERTIFICATE OF AUTHORITY
TO COLLECT TRANSIENT ROOM TAX

Issued to: **Astoria Downtown Cottages**

Address: **1555-1569 Exchange St., Astoria, OR 97103**

This *Certificate of Authority to Collect Transient Room Tax* signifies that the entity or person/s named herein have filled the requirements of the Transient Lodging Tax Ordinance of the City of Astoria by registration with the Tax Administrator (Finance Director) for the purpose of collecting from transients, the Lodging Tax imposed by said city and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or conduct any lawful business in an unlawful manner, or to operate a transient lodging establishment without strictly complying with all applicable laws, including but not limited to, those requiring a permit from any board, commission, department or offices of the City of Astoria. This certificate does not constitute a permit.

This certificate is NON-ASSIGNABLE and NON-TRANSFERRABLE, and must be surrendered immediately to the Tax Administrator upon cessation of business at the location named, or upon its sale or transfer.

This certificate issued on the 15th day of December, 2020.

CITY OF ASTORIA

Tax Administrator
Susan Brooks, Finance Director

L-926

CITY OF ASTORIA
1095 DUANE STREET
ASTORIA, OR 97103

Phone: (503) 325-5821
Fax: (503) 325-2997

FOR OFFICE USE ONLY
FILE# 118
OT # 5001435
Cust# 19664

Transient Room Tax Registration

12/15/20

Date _____

1. Owner Name Gilbaugh LLC Phone# 503-717-3711
2. Business Name Astoria Downtown Cottages
3. Rental Address 1555-1569 Exchange st Astoria, OR 97103
4. No. of Rooms 11 bedrooms
5. Name of manager Cindy Magie Phone # 503-717-3711
6. Mailing Address (if different) PO Box 532 Astoria OR 97103
7. Email Address ExchangeAstoria@gmail.com
8. How long have you owned or operated this business? Oct 2017
9. Type of Organization ☐ Individual ☐ Partnership ☑ Corporation

Names of partners or corporate officers:

Name	Title	Complete Address
Robert Magie	Member	po box 532, Astoria, OR
Cynthia Magie	Member/reg agent	po box 532, Astoria OR

10. If you own more than one business subject to the City of Astoria **Transient Room Tax**, please complete this section:

Name of Business	No. of Rooms	Business Address	Time Owned

Please note:

Astoria Code section 8.045.11 of the Transient Room Tax ordinance provides that a security deposit not to exceed twice the operator's estimated average monthly liability, or $5,000, whichever is the lesser, may be required for the period in which tax returns are filed. This security deposit, if required, may be in the form of cash, bond or other security deemed proper by the Tax Administrator (Finance Director).

Member / Registered Agent

Signature and Title of Owner or Officer

Geo

Tiffany Taylor

From: Barbara Fryer
Sent: Tuesday, December 15, 2020 9:01 AM
To: exchangeAstoria@gmail.com
Cc: Tiffany Taylor; Heidi Dlubac; Cristine Shade; Megan Leatherman
Subject: FW: Astoria Downtown Cottages

Good morning,

Due to the fact that your Cottages have been in operation prior to the Home Stay Lodging/Transient Lodging regulations going into effect in 2019, your project called Astoria Downtown Cottages located at 1555-1569 Exchange Street is a permitted use and may continue as a lodging facility. We will place this email in the Geo File to remind future staff.

My apologies.

Regards,

Barbara

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Good afternoon,

The properties in question, are zoned C3. They cannot be converted from long-term housing to vacation rental if they have been used as long-term rental housing.

2.390.10(a) Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, unless (b) they were originally constructed as a hotel or motel.

The three homes located at this address 1555-1569 Exchange Street (T8N R9W Section 08 Map DC Tax lot 18200). The homes on this property were moved in the sixties onto this property from slide areas as housing. They cannot be converted to lodging – they must remain long-term rentals.

Regards,

Barbara

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 2:08 PM
To: Barbara Fryer <BFryer@astoria.or.us>
Subject: FW: Astoria Downtown Cottages

Barbara –

L-928

Did you want to chime in with some code interpretation? I'm still lost on how we are dealing with the HSL permitting process. (It's probably just me.)

1555-1569 Exchange is an apartment complex. 1565 Exchange is an address within that building. Sounds like the property owners have changed use on one of the apartments from long-term housing to vacation rental.

-Tiffany

TIFFANY TAYLOR
ADMINISTRATIVE ASSISTANT
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)
503-338-6538 (fax)

From: Heidi Dlubac
Sent: Tuesday, September 15, 2020 2:02 PM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Re: Astoria Downtown Cottages

I haven't seen anything for this address. It's in the C3 zone and doesn't require a homestay permit. However, a vacation rental would not be allowed per new code (structures or portions of structures used as residential cannot be converted to short-term stays).

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:40:49 AM
To: Tiffany Taylor; Heidi Dlubac
Subject: RE: Astoria Downtown Cottages

Sorry, it's 1565 Exchange St. It was handwritten on their return.

Cristine Shade

From: Tiffany Taylor
Sent: Tuesday, September 15, 2020 8:39 AM
To: Cristine Shade <CShade@astoria.or.us>; Heidi Dlubac <HDlubac@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Do you have an address? Maybe an O.T.?
-Tiffany

From: Cristine Shade
Sent: Tuesday, September 15, 2020 8:38 AM
To: Heidi Dlubac <HDlubac@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Subject: Astoria Downtown Cottages

I have check for room tax from Cynthia and Robert Magie, but I don't have any other info for them. They did not register with me. Are they registered with you?

Cristine Shade
Staff Accountant
City of Astoria, Finance Department
1095 Duane Street
Astoria, OR 97103
Phone: (503) 298-2426
Fax: (503) 325-2997
Email: cshade@astoria.or.us



CITY OF ASTORIA
Founded 1811 • Incorporated 1856


Exchange St
1555
1557
1559
1563
1569
1585
Colonna
Brian
W
16th St
Gilbaugh
LLC
539
Helligso
Jacob
545
Magie
Robert
J

Cristine Shade

From: Cristine Shade
Sent: Thursday, October 22, 2020 11:59 AM
To: Megan Leatherman
Cc: Susan Brooks
Subject: FW: Astoria Downtown Cottages

Hi Meg, I forgot to include you on this email. The Magie's keep sending me transient room tax payments, but they aren't authorized for short term rentals. I don't want to reach out to them until they've been notified that they aren't authorized.

Thanks.
Cristine Shade

From: Cristine Shade
Sent: Thursday, October 22, 2020 11:49 AM
To: Barbara Fryer <BFryer@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi Barbara,

Any update on this? They keep sending me transient room tax payments. Thanks.

Cristine Shade

From: Barbara Fryer
Sent: Wednesday, October 14, 2020 10:05 AM
To: Cristine Shade <CShade@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi Christine,

I am getting a busy signal. – so unusual in this day and age. I will try again later.

Barbara

From: Cristine Shade
Sent: Wednesday, October 14, 2020 10:02 AM
To: Barbara Fryer <BFryer@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

503-298-9196
Cynthia and Robert Magie

L-932

Thank you

Cristine Shade

From: Barbara Fryer
Sent: Wednesday, October 14, 2020 9:49 AM
To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi Christine,

Do you have contact information for the clients? I will call them today if I can get a contact.

Thank you,

Barbara

From: Cristine Shade
Sent: Wednesday, October 14, 2020 9:41 AM
To: Barbara Fryer <BFryer@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Hi, what was the outcome of this? I need to update my notes.

Thank you.

Cristine Shade

From: Cristine Shade
Sent: Tuesday, September 15, 2020 2:48 PM
To: Barbara Fryer <BFryer@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>; Susan Brooks <sbrooks@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

Thank you, everyone for your assistance on this.

Since I'm Finance, I think this information would be better coming from your department. They are likely to ask questions that I cannot answer.

Cristine Shade

From: Barbara Fryer
Sent: Tuesday, September 15, 2020 2:36 PM
To: Tiffany Taylor <ttaylor@astoria.or.us>
Cc: Heidi Dlubac <HDlubac@astoria.or.us>; Cristine Shade <CShade@astoria.or.us>; Megan Leatherman <mleatherman@astoria.or.us>
Subject: RE: Astoria Downtown Cottages

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To: Barbara Fryer <BFryer@astoria.or.us>
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-Tiffany

TIFFANY TAYLOR
ADMINISTRATIVE ASSISTANT
COMMUNITY DEVELOPMENT DEPARTMENT
1095 Duane Street Astoria OR 97103
ttaylor@astoria.or.us
503-338-5183 (phone)
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Sent: Tuesday, September 15, 2020 2:02 PM

To: Cristine Shade <CShade@astoria.or.us>; Tiffany Taylor <ttaylor@astoria.or.us>
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Subject: RE: Astoria Downtown Cottages

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Sent: Tuesday, September 15, 2020 8:39 AM
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Subject: RE: Astoria Downtown Cottages

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Sent: Tuesday, September 15, 2020 8:38 AM
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Subject: Astoria Downtown Cottages

I have check for room tax from Cynthia and Robert Magie, but I don't have any other info for them. They did not register with me. Are they registered with you?

Cristine Shade
Staff Accountant
City of Astoria, Finance Department
1095 Duane Street
Astoria, OR 97103
Phone: (503) 298-2426
Fax: (503) 325-2997
Email: cshade@astoria.or.us

CITY OF ASTORIA
2018 OCCUPATIONAL TAX RETURN

Type of Business: Vacation Rental

Customer Number: 019664

Downtown Astoria Cottages
PO Box 532
Astoria, OR 97103-0532

Please complete the following information:

Telephone numbers: Business 503 812 7348 Home _____

Owner's Name: Robert & Cynthia Magie

Address: PO Box 532 Astoria OR

Email: Exchange.Astoria@gmail.com

☐ Please check if this is a change of address ☐ No longer doing business in Astoria

You are hereby notified that the payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of a City (including fire, planning, and zoning) must be complied with in addition to any taxes or fees paid for the privilege of conducting a business within the City limits.

**Occupational Tax: Number of Individuals: 2 Fee per schedule: $ 47.50

**Includes owners and officials, full or part-time employees as determined by the enclosed schedule.

I hereby verify that the above information is true to the best of my knowledge and belief.

Signature

1/28/18
Date

Owner
Title

Note: Payment of the occupational tax is **due by January 31st** of each year. Fees unpaid as of February 1st are subject to a penalty of 10% for every month they remain unpaid.

Please complete this form, sign, enclose payment and send to:

Occupational Tax
City of Astoria
1095 Duane Street
Astoria, OR 97103

For questions call:
Phone: (503) 325-5821
Fax: (503) 338-6630

OCCUPATIONAL TAX FEE SCHEDULE

AVERAGE	TAX
1	$ 35.00
2	$ 47.50
3	$ 60.00
4	$ 72.50
5	$ 85.00
6	$ 97.50
7	$ 110.00
8	$ 122.50
9	$ 135.00
10	$ 147.50
11	$ 156.25
12	$ 165.00
13	$ 173.75
14	$ 182.50
15	$ 191.25
16	$ 200.00
17	$ 208.75

AVERAGE	TAX
18	$ 217.50
19	$ 226.25
20	$ 235.00
21	$ 241.25
22	$ 247.50
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	

AVERAGE	TAX
35	$ 322.50
36	$ 327.50
37	$ 332.50
38	$ 337.50
39	$ 342.50
	47.50
	52.50
	57.50
	62.50
	67.50
	72.50
	77.50
	82.50
	87.50
	92.50
	97.50

CITY OF ASTORIA
1095 Duane
Astoria, OR 97103
503-325-5821

Date: 02/20/2018
Receipt: 00226611
Time: 1:16 PM

Customer: Downtown Astoria Cottages
Address: PO Box 532

Astoria, OR 971030532

LP 5001435	47.50
OT	
Occupational Tax	47.50
019664 - 2018	
Jo	
LP Account 5001435 Down	$-47.50
Total	47.50
Cash	0.00
Check 2666	47.50
Change	0.00
2666	

NOTE: For individuals in excess of 50, the license fee shall

The number of individuals carrying on a business includes vely engaged in such business and the individuals employed regularly or o wner or proprietor of a business who work entirely outside the corporate lim

To calculate the number of individuals: take the total nur ber of part-time employees to equal the time of a full-time employee.

* Example: If your business is a sole proprietor w me individuals, the total number of individuals employed would be 2

** Example: If your business has 2 owners, 3 ful total number of individuals employed would be 7 and the fee wo

1565/69
EXCHANGE
(AVE)
Lawn

Bob Magic
1565 Exchange
Landscaping Map

+APPROVED
REVIEWED BY MIKE MORGAN NOV 2, 2017
LAWN AREA MEETS THE MINIMUM SQUARE FOOTAGE REQUIREMENT FOR LANDSCAPING IN THE C-3 ZONE OF 10%. LAWN MEETS DEFINITION OF LANDSCAPING.

CITY OF ASTORIA
1095 Duane Street
Astoria, OR 97103
(503) 325-5821
(503) 325-2997 - Fax
www.astoria.or.us

For Official Use Only:
License Number: 019664
Receipt Number: 217670

OCCUPATIONAL TAX APPLICATION

Name of Business: Driftwood Astoria Cottages
Proprietor: Cynthia Magle TIN or SS#: 441-88-8122
Business Address: 1565 Exchange St., 1569 Exchange st.
City: Astoria State: OR Zip: 97103
(Local Location Must Include Written Approval to Locate on the Premises)
Mailing Address (include City, State, & Zip): PO Box 532 Astoria OR 97103
Residence Address (include City, State, & Zip):
Business Telephone: 503-812-7348 Home Telephone:
E-mail Address: ExchangeAstoria@gmail.com Type of Business:
Type of Business: Vacation rental
Brief Description of What Your Business Will Do: rent house on short term basis
Business New to Area? X Yes ____ No Renewal? ____ Yes X No
Has the character of your business changed in the last year? ____ Yes X No
If yes, please explain Briefly:

You are hereby notified that payment of a tax, fee or charge does not entitle a business to operate in any particular location. All ordinances of the City (including Fire, Planning, Zoning Building Codes, etc.) must comply with, in addition to any taxes or fees paid for the privilege of conducting a business within the City limits. In addition, short-term rentals may be subject to a transient room tax. Occupational Tax is due January 1 of each year. Late fees apply after February 1. They are subject to a penalty of 10% per month for each month they remain unpaid.

** Number of Individuals Employed: 1 Fee Per Schedule: $ 35
1 = $ 35.00 2 = $ 47.50 3 or more = see fee schedule
** Includes owner, officials, full-time and part-time employees as determined by the schedule

I hereby affirm that the above information is true to the best of my knowledge and belief.

APPROVED - COMM. DEV.
MM Magle 10/27/17

2

CITY OF ASTORIA
1095 Duane
Astoria, OR 97103
503-325-5821

Date: 10/27/2017
Receipt: 00217670
Time: 1:21 PM

Customer: Downtown Astoria Cottages
Address: PO Box 532

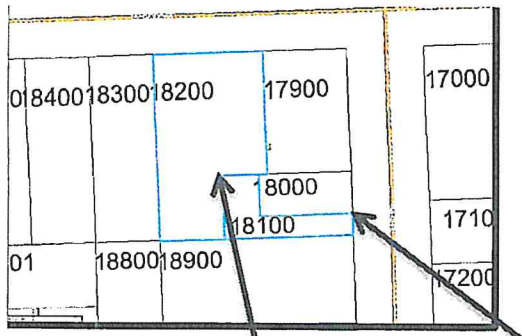
Astoria, OR 971030532

LP 5001435	35.00
OT	
Occupational Tax	35.00
019664 - 2017	
Jo	
LP Account 5001435 Down	$-35.00
Total	35.00
Cash	0.00
CC - City Counter	35.00
Change	0.00

1565 + 1569 EXCHANGE ST

Magie/Helligso Parking Plan 2017

APPROVED Mike Morgan
10-23-17



1569

House 1
1 Bed

28 ft

9.5ft x 20ft

8.5ft x 16ft

8000

Helligso

1565

House 2
2 Bed

Magie

18100

12 ft

17 ft

100 ft

19TH ST

L-942

ADC §3.160 NONCONFORMING LOTS, USES AND STRUCTURES

A. Purpose. Within the zones established under this Code, there existing lots, structures and uses of land and structures which were lawful before this Code was passed or amended, but which no longer conform to the provisions of this Code. It is the intent of this Section to establish requirements that govern the future use of such nonconformities.

ADC §3.180 NONCONFORMING USES

A. Expansion of a Nonconforming Use. The expansion of a nonconforming use to a portion of a structure that was provided for the nonconforming use shall be permitted. When the expansion is to a portion of a structure that was not provided for the nonconforming use, or when new construction is involved, expansion may be permitted as follows:
    1. The Community Development Director may permit up to a 10% expansion of a nonconforming use where it is determined that there will be minimal impact on adjacent uses, in accordance with the procedures in Article 9. If the Community Development Director believes that substantial issues are involved, the Director may schedule a public hearing before the Planning Commission in accordance with procedures in Article 12.
    2. The Planning Commission may permit an expansion of a nonconforming use in excess of 10%, in accordance with procedures in Article 12.

B. Change of Nonconforming Use. A nonconforming use may be changed to a conforming use. However, after a nonconforming use is changed to a conforming use, it shall thereafter not be changed to a use that does not conform to the use zone in which it is located.

C. Discontinuance of Nonconforming Use.
    1. If a nonconforming use involving a structure is discontinued for a period of one (1) year, further use of the property shall conform to this Code except as follows:
        a. When a residential structure has been used in the past for more units than allowed, the use may continue, even if ceased for one year, with the following conditions:
            1) Structure was not converted back to the lesser number of units (i.e. removal of kitchen, etc.); and
            2) Units were legal non-conforming units and not converted without necessary permits; and
            3) The number of units are allowed outright or conditionally in the zone (i.e., duplex or multi-family dwelling in R-2, etc.); and
            4) The number of units does not exceed the density for the zone (i.e., the lot square footage divided by 43,560 square feet (acre) x maximum density of zone = number of units allowed by density; and
            5) Provide required off-street parking spaces per unit, or obtain a variance; and
            6) If the structure is destroyed per Section 3.190.D, the new use shall comply with the zone requirements and/or Section 3.190.E.

2. If a nonconforming use not involving a structure is discontinued for a period of six (6) months, further use of the property shall conform to this Code.

D. Reestablishment of Existing Non-Conforming Uses in Overwater Buildings. Nonconforming uses in overwater buildings located between 16th and 41st Street within the Civic Greenway Overlay Area existing prior to 2013, and between 41st and approximately 54th Street within the Neighborhood Greenway Overlay Area existing prior to 2015 may be reestablished if the building housing the use is unintentionally destroyed by any means to an extent exceeding 80% of its fair market value as indicated in Section 3.190.D, provided the reconstruction of the building complies with the standards in Section 3.190.F and reestablishment of the use occurs within one year of the completion of construction. Completion of construction shall be determined by issuance of a temporary and/or final Certificate of Occupancy from the Building Official.

HISTORY
Amended by Ord. 22-01 on 11/7/2022

1.400. DEFINITIONS.

As used in this Code or in the interpretation of this Code, the following terms shall have the meanings indicated:

ABUTMENT: A substructure composed of stone, concrete, brick or timber supporting the end of a single span bridge or the ends of a multi-span superstructure and, in general, retaining or supporting the approach embankment placed in contact therewith.

ACCESS WAY: A walkway providing a through connection for pedestrians and bicyclists between two streets, between two lots, or between a development and a public right-of-way. It may be an access way for pedestrians and bicyclists (with no vehicle access), or a walkway on public or private property (*i.e.,* with a public access easement); it may also be designed to accommodate emergency vehicles. See also, Walkway. *(Added by Ordinance 14-03, 4-21-14)*

ACCESSORY RENTAL UNIT: *(Deleted by Ordinance 04-10, 11/1/04)*

ACCESSORY DWELLING UNIT: An accessory dwelling unit is one additional subordinate or auxiliary living unit in an existing large, older house. A dwelling with an accessory dwelling unit is distinguished from a duplex by the retention of the appearance as a single-family dwelling. *(Added by Ordinance 04-10, 11/1/04)*

ACCESSORY STRUCTURE IN A COTTAGE CLUSTER DEVELOPMENT: Includes shared accessory structures such as parking or storage buildings; and individual accessory structures such as garages attached to cottages, which may not face the common open space. *(Added by Ord 13-09, 10-6-14)*

ACCESSORY STRUCTURE OR USE: A structure or use incidental and subordinate to the main use and located on the same lot as the main use.

ACCRETION: The build-up of land along a beach or shore by the deposition of waterborne or airborne sand, sediment, or other material.

ADJACENT: Contiguous to, including those properties which would share an edge or boundary if there were no intervening streets, alleys or other rights-of-way.

ALLEY: A street which affords only a secondary means of vehicular access to the property.

ALTERATION: A change, addition, or modification of a structure, appurtenance, object, sign, or site, which affects the exterior appearance of the structure, appurtenance, object, sign or site, excluding landscaping, routine maintenance, and exterior painting of buildings. Alteration to a sign, excluding content, shall include but not be limited to the size, shape,

method of illumination, position, location, materials, construction or supporting structure of the sign.

AQUACULTURE: The raising, feeding, planting and harvesting of fish, shellfish, aquatic plants, or other aquatic organisms, including associated facilities necessary to engage in the use.

AQUATIC AREA: In the Columbia River Estuary, the tidal waters and wetlands, and the land underlying these waters. The upper limit of aquatic areas is the upper limit of aquatic vegetation or, where such a line cannot be accurately determined, Mean Higher High Water.

ARTS AND CRAFTS STUDIO: Facility used by artists and crafts persons and up to two assistants for the production of arts and crafts, and which are not open to the public for retail sales.

ATTACHED ACCESSORY BUILDING: Structures that share one or more common vertical walls. *(Added by Ordinance 04-10; 11/1/04)*

AUTOMOTIVE SALES OR SERVICE ESTABLISHMENTS: Businesses engaged in the storage, sales, or servicing of automobiles, trucks, recreation vehicles, or other vehicles. Gasoline service stations are not included in this category.

AUTOMOTIVE SERVICE STATION: Any premises used primarily for retail sales of oil, auto accessories, and as a secondary service, minor servicing, excluding body and fender repair. Gasoline service stations are not included in this category.

AUTOMOTIVE WRECKING YARD: Any property where two or more motor vehicles not in running condition, or the parts thereof, are wrecked, dismantled, disassembled, substantially altered or stored in the open and are not to be restored to operation.

AVULSION: A tearing away or separation by the force of water. Land which is separated from uplands or adjacent properties by the action of a stream or river cutting through the land to form a new stream bed.

AWNING: A temporary or movable shelter which may or may not contain signage, supported entirely from the exterior wall of a building and composed of non-rigid materials except for the supporting framework. Backlit awnings are not included in this category.

BACKLIT AWNING: An awning that is specifically designed to illuminate the surface of an awning after dark, and made of a material that enhances or facilitates projection of light.

BANKLINE ALTERATION: Realignment of a stream bank or the entire stream, either within or outside of its normal high water boundaries.

BANNER: A piece of non-rigid material attached by one or more edges to a pole, staff, building or other device intended to draw attention to a building or site for commercial or non-commercial purposes.

BASEMENT: The lowest story of a structure, below the main floor and wholly or partly below the surface of the ground.

BEACH: Gently sloping areas of loose material (e.g. sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or land form, or to the line of vegetation.

BEACH NOURISHMENT: Placement of sand material on actively eroding beach sites identified in the Dredged Material Management Plan to maintain the historic beach profile. Beach nourishment does not include creation of new land area or beaches and must provide for the protection of estuarine resources (including habitat, nutrient, fish, wildlife, and aesthetic resources). Dredged material may be used for beach nourishment.

BED AND BREAKFAST: Any transient lodging facility which contains between three (3) and seven (7) guest bedrooms, which is owner or manager occupied, and which provides a morning meal.

BLOCK: A parcel of land bounded by three or more streets in a land division. *(Added by Ordinance 14-03, 4-21-14)*

BLOCK LENGTH: The distance measured along all that part of one side of a street which is between two intersection or intercepting streets, or between an intercepting street and a railroad right-of- way, water course, body of water or unsubdivided acreage. *(Added by Ordinance 14-03, 4-21-14)*

BOARDING OR ROOMING HOUSE: A building where lodging with or without meals is provided for compensation for not less than three nor more than fifteen persons in addition to members of the family occupying the buildings.

BOAT HOUSE: A floating or pile-supported structure used for the protection and storage of a boat or boats.

BOAT RAMP: An improved sloped surface extending from a shoreland area into an aquatic area suitable for removing a boat from the water and launching a boat into the water from a trailer.

BRIDGE CROSSING: The portion of a bridge spanning a waterway not including supporting structures or fill located in the waterway or adjacent wetlands.

BRIDGE CROSSING SUPPORT STRUCTURES: Piers, piling, abutments, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

BUILDING: A structure built for the support, shelter, or enclosure of persons, animals, chattels or property of any kind.

BUILDING ENVELOPE: The outer bounds, both vertically and horizontally, of an enclosed structure. *[Added by Ordinance 13-08, 8-19-2013]*

BUILDING FRONTAGE: The lineal frontage of a building along a public street, waterway, or parking lot, excluding alleys. In cases of building frontage on a parking lot, the frontage must contain a public entry to a building. Where a business or other enterprise occupies a portion of a building, lineal frontage is based on the footage occupied by that business or activity. (See Section 8.120(D).

BUILDING LINE: A line established by an ordinance to govern the placement of a building with respect to the front lot line through the setback requirements of a minimum front yard. A building line is ordinarily parallel to the front lot line and at a distance in accordance with the setback requirement. A building line indicates the limit beyond which buildings or structures may not be erected. For lots contained in an official subdivision plat recorded before December 7, 1961, the building line may be taken as shown therein. *(Amended by Ordinance 14-03, 4-21-14)*

BUILDING MASS: The height, width, and depth of a structure including non-enclosed features such as stairs and decks. *[Added by Ordinance 13-08, 8-19-2013]*

BUILDING OFFICIAL: The officer or other designated authority charged with the administration and enforcement of the Building Code, or a regularly authorized deputy. *(Amended by Ordinance 14-03, 4-21-14)*

BULK PLANT: An establishment where commodities, including both liquids and solids, are received by tank vessel, pipelines, tank cars, tank vehicle or other container, and are stored or blended in bulk for distribution by tank vessel, pipeline, tank car, tank vehicle or container.

BULKHEAD: A vertical wall of steel, timber or concrete used for erosion protection or as a retaining wall.

BUSINESS INCUBATOR: A business incubator is a place where newly created firms and/or individuals interested in starting their own businesses are concentrated in a limited space and are provided with an array of business support resources and services. Its aim is to improve the chance of growth and rate of survival of these firms and individuals by providing on-site management support individually focused on their marketing, general management, finance and accounting problems. Facilities provided by incubators generally are subsidized with increasing rental rates over time. These facilities generally have common areas for office space, technology support services and conference rooms. Generally new firms must apply to participate in the incubator program, and when accepted, are supported in developing their business plans, obtaining financing/ working capital

(loans/investments) and generating sales. The main goal is local economic development and job creation. *(Added by Ordinance 02-03, 2-4-02)*

BUSINESS SERVICE ESTABLISHMENTS: Businesses primarily engaged in rendering services - other than professional, educational, repair, or contract construction services - to other business establishments. These services include, but are not limited to: employment services, advertising services, consumer credit and reporting services, collection services, mailing services, and building maintenance services.

CANOPY: A removable roof-like structure attached to a building, including, but not limited to metal awnings and mansard roofs.

CARRIAGE HOUSE DWELLING UNIT: A dwelling unit on the second floor of a common parking structure. *(Added by Ord 14-09, 10-6-14)*

CITY: The City of Astoria, Oregon.

CITY ENGINEER: The certified official or other designated authority charged with the administration of the Engineering Division of the City's Public Works Department or his/her designee. *(Added by Ordinance 14-03, 4-21-14)*

CLINIC: A building or portion of a building containing offices and facilities for out-patients only, providing one or more of the following services: medical, dental, or psychiatric.

CLUSTER DEVELOPMENT: A development technique wherein house sites or structures are grouped closer together with the remainder of the tract left in its natural state or as open space. Refer to Section 11.160. *(Amended by Ordinance 95-05, 2-6-95)*

COASTAL SHORELANDS: Those areas immediately adjacent to the ocean, estuary, and its associated wetlands. Coastal Shorelands are limited in landward extent by the coastal shorelands boundary, described in Astoria Comprehensive Plan area plans.

COMMON OPEN SPACE: An area improved for recreational use or gardening that all owners in the development own and maintain in common through a homeowner's association, condominium association, or similar mechanism. *(Added by Ord 14-09, 10-6-14)*

COMMUNICATION FACILITIES: Power and communication lines and towers, antennas and microwave receivers.

COMMUNICATION SERVICE ESTABLISHMENTS: Businesses primarily engaged in communications activities, including: newspaper and printing services, television and radio services, and telephone and telegraphy services.

COMMUNITY DEVELOPMENT DIRECTOR: The person designated as having overall responsibility for the activities of the City's Community Development Department or his/her designee. *(Added by Ordinance 14-03, 4-21-14)*

COMPATIBLE NON-HISTORIC NON-CONTRIBUTING STRUCTURE: Structures in this classification were built after the end of the secondary development period, but are compatible architecturally, and in scale, use of materials and detailing with the context and historic character of Primary and Secondary buildings within a historic district.

COMPREHENSIVE PLAN: The comprehensive development plan for the City comprising plans, maps or reports, or any combination thereof, relating to the future economic and physical growth and development or redevelopment of the City.

CONDOMINIUM: A building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common area, and facilities are owned by all the owners on a proportional, undivided basis. *(Added by Ordinance 95-05, 2-6-95)*

CONGREGATE CARE: A single or multiple structure, assisted living facility which provides semi-independent living for the elderly or handicapped persons, consisting of small apartments with common eating, recreational or therapy facility. Such facility may or may not be licensed by the State of Oregon. Such facilities are distinct from Residential Facilities in that they are intended to serve more than 15 persons.

CONSISTENT: For the purpose of Article 6, Historic Properties Ordinance, consistent shall mean to be similar to the original historic feature in design, size, and/or material, or would meet the commonly acceptable intent of an original feature. *(Added by Ordinance 13-08, 8-19-2013)*

COTTAGE: A detached, site-built, single-family or two-family dwelling unit that is part of a cottage cluster development. *(Added by Ord 14-09, 10-6-14)*

COTTAGE CLUSTER: A group of four (4) to 12 cottages, arranged around a common open space. *(Added by Ord 14-09, 10-6-14)*

COURT: An open, uncovered and unoccupied space contained within or completely surrounded by buildings.

DAY CARE CENTER: A day care facility which provides day care in any setting for any number of persons, excluding family day care centers and residential homes.

DECLARANT: The person who files a declaration under ORS Chapter 92. *(Added by Ordinance 14-03, 4-21-14)*

DECLARATION: The instrument by which the subdivision or partition plat was created. *(Added by Ordinance 14-03, 4-21-14)*

DESIGN REVIEW: A process of review whereby the Historic Landmarks Commission, Design Review Committee, Planner, or their designee, evaluates new construction, or the alteration of buildings, structures, appurtenances, objects, signs, sites and districts for appropriateness. *(Amended by Ordinance 14-03, 4-21-14)*

DIKE: With regard to flood protection, a structure designed and built to prevent inundation of a parcel of land by water. With regard to dredged material disposal, a structure consisting of sediments, rock, or other material designed to contain the dredged material and allow for settling of solids in a specific area while it is being deposited and after deposition has occurred.

DOCK: A pier or secured float or floats for boat tie-up or other water use.

DRAINAGE LAND: Land required for drainage ditches, or required along a natural stream or water course for preserving the channel and providing for the flow of water therein, to safeguard the public against flood damage or the accumulation of surface water. *(Added by Ordinance 14-03, 4-21-14)*

DREDGED MATERIAL: Sediment, gravel and other solids removed from an aquatic area.

DREDGED MATERIAL DISPOSAL: The deposition of dredged materials in aquatic or land areas. Methods include land disposal (deposition in specific land areas or on the tops and landward sides of flood protection dikes) and in-water disposal (including beach nourishment, flowlane disposal, estuarine open water disposal, and ocean disposal).

> ESTUARINE OPEN-WATER DREDGED MATERIAL DISPOSAL: All types of in-water dredged material disposal within the estuary which do not fall into the classifications of flowlane disposal, beach nourishment, sump disposal, and disposal to provide fill material for an approved aquatic area fill project.
>
> FLOWLANE DREDGED MATERIAL DISPOSAL: Deposition of dredged material in or adjacent to a natural or maintained navigation channel in an area where the prevailing sediment transport will carry the material down-stream.

DREDGING: The removal of sediment or other material from an aquatic area for the purpose of deepening the area, obtaining fill material, or mining and mineral extraction.

DREDGING, MAINTENANCE: Dredging of a channel, basin, or other water-dependent facility, or for tidegate maintenance, which has been dredged before and is currently in use or operation or has been in use or operation sometime during the past five years, provided that the dredging does not deepen the facility beyond its previously authorized or approved depth plus customary overdredging.

DREDGING, NEW: Dredging a channel, basin, or other water-dependent facility that has not been dredged before; deepening an existing dredged channel, basin, or other water-dependent facility beyond its previously authorized or approved depth; dredging a channel, basin, or other water-dependent facility that has not been in use or operation in the past five years.

DRIFT RIGHT: A specific area or section of river that has been cleared of snags and sunken debris and is shared and actively maintained by a group of fishermen as their fishing grounds.

DUCK SHACK: A structure having no permanent water or sewage treatment connection which is used to store recreational equipment meant for hunting waterfowl and not exceeding 500 square feet on a float or pier not exceeding 750 square feet. Occupancy by a single individual of a duck shack shall be strictly limited to 15 days of any consecutive 30-day period.

DWELLING: One or more rooms designed for permanent occupancy by one family.

SINGLE-FAMILY: A free-standing building containing one dwelling unit.

TWO-FAMILY: A free-standing building containing two dwelling units. May include two-unit rowhouses or duplexes, either renter-occupied or owner-occupied. *(Amended by Ordinance 95-05, 2-6-95)*

MULTI-FAMILY: A building containing three or more dwelling units. May include rowhouses, apartment buildings, or residential condominiums, either renter-occupied or owner-occupied. *(Amended by Ordinance 95-05, 2-6-95)*

DWELLING, ATTACHED HOUSING: A dwelling which is designed or used exclusively for the occupancy of one family which is attached to one or more separately owned dwellings by common vertical walls. This definition includes but is not limited to zero lot line dwellings, town houses, condominiums, and row houses. *(Added by Ordinance 98-04, 5-4-98)*

EASEMENT: A grant of the right to use a portion of land for specific purposes. *(Added by Ordinance 14-03, 4-21-14)*

EDUCATIONAL SERVICE ESTABLISHMENTS: Businesses primarily engaged in education, including: vocational and trade schools, business and stenographic schools, art and music schools, dancing schools, and correspondence schools.

EFFLUENT: With regard to water quality, treated or untreated liquid entering the estuary from a point source. With regard to dredging, water, including dissolved and suspended materials, which flows from a dredged material disposal site.

ELECTRONIC MESSAGE CENTER: A sign whose message or display consists of patterns of lights changing at intermittent intervals, such as time and temperature signs.

EMERGENCY: With respect to the Columbia River Estuary, emergency conditions are limited to:

a. Severe shoreline, bankline or dike erosion during a storm event or a high tide that threatens property or public safety; or

b. Oil or hazardous waste spills subject to US Coast Guard Captain of the Port (COTP) authority; or

c. A 100 year (or less frequent) flood event; or

d. Flooding caused by a tsunami, or extreme sedimentation, such as that caused by the eruption of Mt. St. Helens.

ESTUARINE ENHANCEMENT: An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

ESTUARY: A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: estuarine water; inter-tidal areas; and submerged lands. For regulatory purposes, the Columbia River Estuary extends to the western edge of Puget Island on the Oregon side, to the Wahkiakum-Cowlitz County line on the Washington side, and to the head of tide for all tributaries.

FAMILY: An individual, or two or more persons related by blood, marriage, legal adoption, or guardianship, living together in a dwelling unit and no more than four additional persons, who need not be so related, who live together as a single household unit.

FAMILY DAY CARE CENTER: A day care center which provides day care in the provider's home in the family living quarters to no more than 12 persons, regardless of age, or full-time or part-time status, including family members of the provider. This includes family day care providers as specified in ORS Chapter 418.

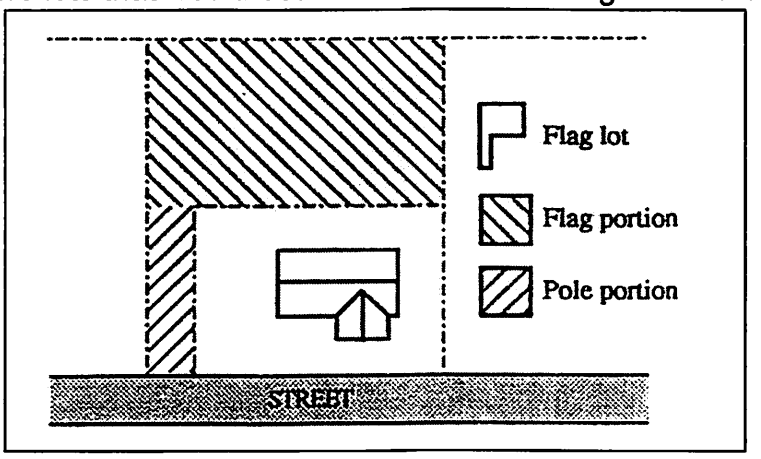
FENCE: An accessory structure, including landscape planting, designed and intended to serve as a barrier or as a means of enclosing a yard or other area, or other structure; or to serve as a boundary feature separating two or more properties.

FENCE, SIGHT-OBSCURING: A fence or evergreen planting arranged to obstruct vision.

FILL: the placement by man of sand, sediment, or other material, to create new land or to raise the elevation of land.

FINAL DECISION: The date upon which a decision has been rendered and the Order is signed, or the final resolution of all City, State, and Federal appeals, whichever is later. *(Added by Ordinance 10-06, 4-19-10)*

FLAG LOT: A lot located behind another lot that has normal street frontage. A flag lot includes a strip of land that goes out to the street for an access drive. There are two distinct parts to a flag lot; the flag which comprises the actual building site located behind another lot, and the pole which provides access from the street to the flag. A flag lot generally results from the division of a large lot that does not have sufficient width for division into two lots that would both have normal frontage onto the street.



FLOATING RESIDENCE: A dwelling unit which floats on a water body and is designed such that it does not come into contact with land except by ramp. Floating residences may also be referred to as floating homes or houseboats. A floating residence is not equivalent to a duck shack or other similar recreational structure designed for temporary use. It is not equivalent to a boat house, designed for storage of boats.

FLOOR AREA: The sum of gross horizontal areas of the several floors of a building, measured from the exterior face of the exterior walls or from the center line of walls separating two buildings, but not including:

a. Attic space providing headroom of less than seven feet.

b. Basement, if the floor above is less than six feet above grade.

c. Uncovered steps or fire escapes.

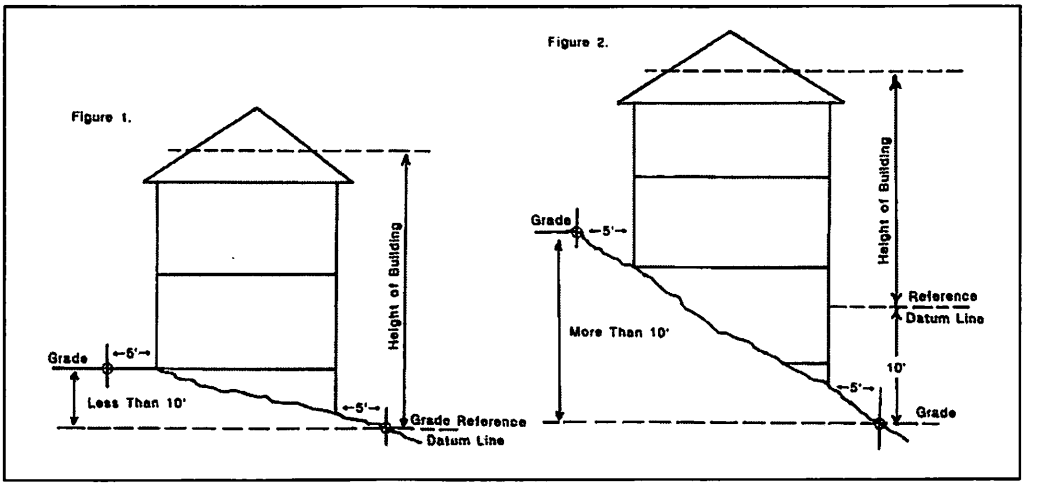
d. Private garages, carports or porches.

e. Accessory off-street parking or loading spaces.

FOOTPRINT: The outer bounds, horizontally, of all features of a structure including decks, stairs, and other non-enclosed features that are attached to the structure and are constructed 12" or more above grade. *[Added by Ordinance 13-08, 8-19-2013]*

GASOLINE SERVICE STATION: A place or station selling motor fuel and oil for motor vehicles; selling, servicing and installing tires, batteries and accessories, and other related products.

GRADE: The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building.



GRANTING AUTHORITY: The Community Development Director, Astoria Planning Commission, Historic Landmarks Commission, and/or the Design Review Committee who review and approve land use requests. *(Added by Ordinance 10-06, 4-19-10)*

GROSS AREA: The total usable area, including accessory space dedicated to such things as streets, easements, and uses out of character with the principal use, but within a unit of area being measured.

GROUP HOUSING: Dwelling in which no more than 15 individuals reside who do not require treatment, excluding Residential Facility and Residential Home.

GUIDELINES: For the purpose of the Riverfront Vision Plan Overlay Zones, the term guidelines shall mean code provisions that encourage or allow for design features or approaches and that provide flexibility and discretion for the appropriate review body to interpret and apply the guideline. *(Added by Ord.15-03, 6-15-15)*

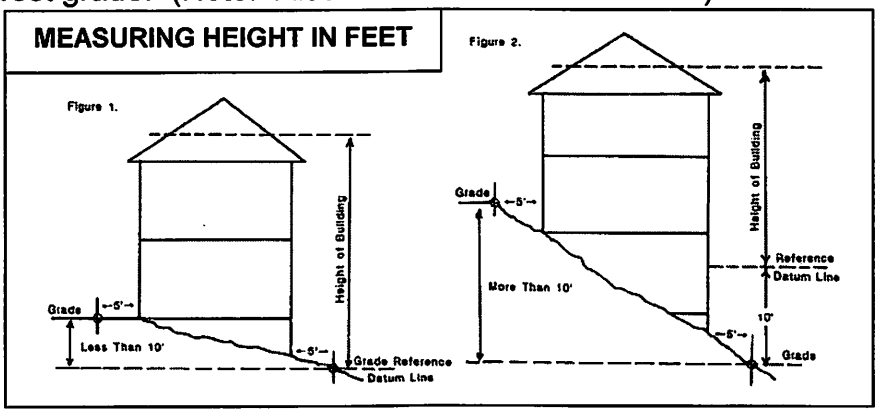
HEIGHT, BUILDING: The vertical distance above a reference datum measured to the highest point of the coping of a flat roof, to the deckline of a mansard roof, or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of that building. The reference datum shall

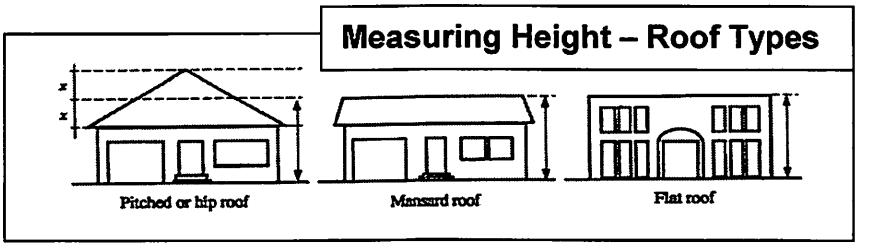
(Adopted 10-8-92)

be whichever of the following two measurements results in the greater building height (see Figure 1):

a. The reference datum is the lowest grade when the highest ground surface within a five (5) foot horizontal distance of the exterior wall of the building is not more than ten (10) feet above that lowest grade. (Note: Also see definition of "Grade".)

b. The reference datum is ten (10) feet higher than the lowest grade when the ground surface described in Item A above is ten (10) feet or more above that lowest grade. (Note: Also see definition of "Grade".)





HISTORIC DISTRICT: A relatively compact, definable geographic area possessing an obvious concentration, linkage or continuity of buildings and sites united by past events, architectural styles, or other physical features illustrative of the community's historic development, consistent with and conforming to the standards of the National Register of Historic Places.

HISTORIC LANDMARK: An individual building, site, or object worthy of official recognition due to its age, its physical features, architectural merit, or association with persons which helped to shape the history of Astoria; buildings should be at least 50 years old.

HISTORIC MARKER: A sign erected or maintained by public authority or by a recognized historical society or organization identifying sites, buildings, districts or structures of recognized historical or architectural value.

HISTORIC NON-CONTRIBUTING STRUCTURE: Structures in this classification were built during either the Primary or Secondary periods, but have been so altered that their historic and/or architectural character has been lost to view. Alterations of buildings in this classification are not deemed irreversible, and if restored, these buildings may qualify for reclassification as Primary or Secondary.

HISTORIC PRESERVATION: The process of sustaining the form and extent of a structure or site essentially as it now exists. It aims at halting further deterioration and providing structural stability but does not contemplate significant rebuilding.

HISTORIC PRESERVATION OFFICER: The City Staff person appointed by the City Manager to provide Staff support to the Historic Landmarks Commission.

HISTORIC PRIMARY SIGNIFICANT CONTRIBUTING STRUCTURE: Structures in this classification represent the primary period of construction and economic development within a neighborhood or other defined geographic area and reflect the building styles at that time.

HISTORIC REHABILITATION: The process of returning property to a state of utility through repair or alteration, which makes possible an efficient contemporary use. Those portions of the property which are important in illustrating historic and cultural values are preserved or restored.

HISTORIC RESTORATION: The process of accurately recovering the form and details of a property as it appeared at a particular period of time by means of removal of later work and the replacement of missing original work.

HISTORIC SECONDARY SIGNIFICANT CONTRIBUTING STRUCTURE: Structures in this classification represent the second significant period of construction and economic development within a neighborhood or other defined geographic area and reflect the building styles of that time.

HOME OCCUPATION: An occupation carried on by a resident of a dwelling as an accessory use within the same dwelling or in an adjacent structure.

HOME STAY LODGING: A tourist accommodation with no more than two (2) bedrooms available for transient rental, and which is owner occupied. Such facilities may or may not provide a morning meal.

HOSPITAL: An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical or surgical care and nursing service on a continuous basis.

HOTEL: A building in which lodging is provided for guests for compensation.

INCIDENTAL USE: A use that is in conjunction with, and smaller than the main part of the operation.

INDOOR FAMILY ENTERTAINMENT: A facility which provides entertainment for persons of all ages, and which may be passive or active. Examples include bowling alleys, movie theaters, swimming pools, racquet ball courts, and similar facilities.

INITIAL PLAN: A sketch or schematic plan presented by a subdivider or applicant to the Planning Commission or Community Development Director, as applicable, for their comments. The plan may be to any size, scale, and include information deemed necessary by the applicant. Review of the initial plans places no obligation on the commission or the applicant as to the future of such plan. *(Added by Ordinance 14-03, 4-21-14)*

IN-KIND: With respect to mitigation, a term used to describe an action that is designed to duplicate, to the degree practicable, habitat characteristics that are lost or impaired by a development action.

INN: A transient lodging facility with up to 11 guest bedrooms, which is owner or manager occupied, and which provides a morning meal. Inns may conduct associated business activities on an occasional basis, such as wedding receptions, club meetings and luncheons, conferences, and reunions.

INTERTIDAL: Between extreme low tide and the landward limit of aquatic vegetation.

IN-WATER DREDGED MATERIAL DISPOSAL: Deposition of dredged materials in an aquatic area. Methods include beach nourishment, flowlane disposal, estuarine open-water disposal, in-water sump disposal, agitation dredging and ocean disposal.

JUNK YARD: Any property used for breaking up, dismantling, sorting storing, distributing, buying, or selling scrap, waste material, or other junk.

KENNEL: A lot or building in which four but not more than 50 dogs or cats at least four months of age are kept commercially for board, propagation, training or sale.

LAND DISPOSAL: Deposition of dredged material on uplands or shorelands, including on the to and landward sides of flood control dikes.

LAND TRANSPORTATION FACILITIES: Highways, railroads, bridges and associated structures and signs which provide for land transportation of motorized and/or non-motorized vehicles (excluding logging roads).

LANDSCAPING: Preservation, planting and maintenance of trees, shrubs, groundcovers, and lawns, and associated walkways, benches, decks, fences, fountains, sculptures, courts or plazas in the proportions specified by the landscaping Code.

LIGHT MANUFACTURING: An enterprise involved in the manufacturing of goods or products which require minimal primary processing and which have minimal off-site impacts in terms of noise, glare, odor, air and water pollution. Processing, fabricating, assembly or disassembly of items takes place wholly within an enclosed building, and requires only a small amount of raw materials, land area, power, are easy to transport, and does not require large automated production lines. Facilities typically have less environmental impact than those associated with heavy industry. Examples include food products, brewery, distillery, clothing, electronics, wood working, etc. *(Amended by Ordinance 14-03, 4-21-14)*

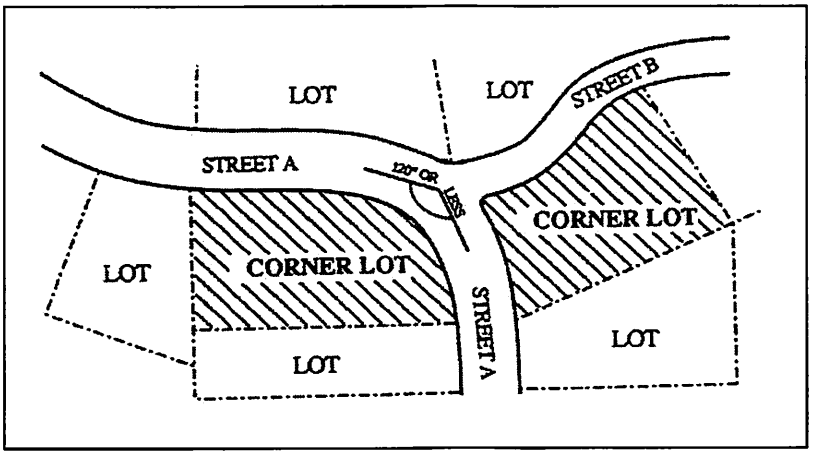
LOG DUMP/SORT AREA (in-water): The use of an area to transfer logs to or from the land to water, normally associated with log storage/sort yards, log booming or processing/shipping facilities where rafts are built or dismantled.

LOG STORAGE (in-water): The use of water surface area to store commercial logs in rafts until ready for market.

LOG STORAGE/SORTING AREA (dry land): An area where logs are gathered from surrounding harvest areas, weighed, sorted for species, size and quality, and stored until ready for transfer to water storage areas or to market.

LOT: A parcel or tract of land as shown on a legally recorded plat of a subdivision, or a parcel or tract of land under one ownership.

CORNER: A lot that has frontage on more than one intersecting street. A street that curves with angles that are 120 degrees or less is considered two intersecting streets for the purpose of evaluating whether a lot is a corner lot.



INTERIOR: A lot other than a corner lot.

REVERSED CORNER LOT: A corner lot the side street line of which is substantially a continuation of the front lot line of the first lot to its rear. *(Added by Ordinance 14-03, 4-21-14)*

THROUGH: An interior lot having frontage on two streets.

(Adopted 10-8-92)

LOT AREA: The total area of a lot measured in a horizontal plane within the lot boundary lines.

LOT COVERAGE: The portion of a lot expressed as a percentage of the total lot area that is occupied by the principal and accessory buildings, including all decks, and other projections except eaves.

LOT DEPTH: The average horizontal distance between the front lot line and the rear lot line.

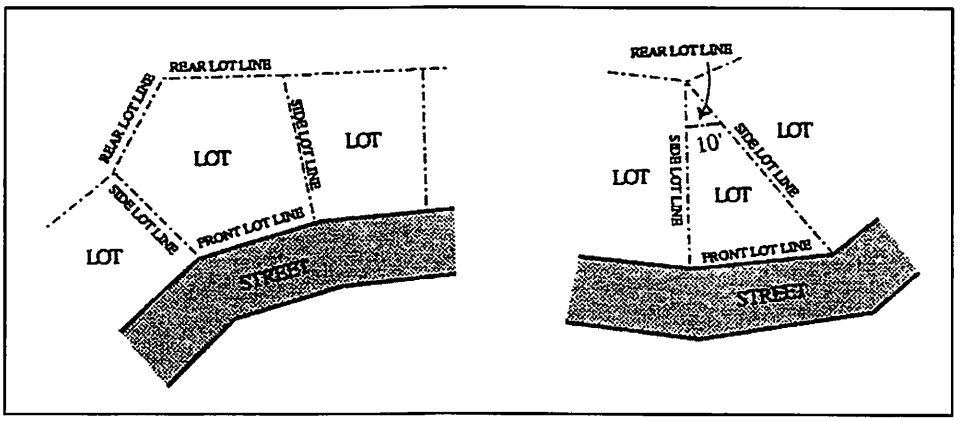
LOT LINE: The property line bounding a lot.

FRONT: The property line separating the lot from the street, other than an alley. On corner lots, the front lot line shall be determined by the main entrance to the existing or proposed structure. The City shall determine the front lot line of a corner lot. On a flag lot, the front line is considered to be the lot line that is most parallel to and closest to the street, excluding the pole portion of the flag.

REAR: The property line which is opposite and most distant from the front lot line. In the case of an irregular or triangular shaped lot, a line ten feet in length within the lot parallel to and at a maximum distance from the front lot line.

SIDE: Any property line not a front or rear lot line.

Lot Lines on Irregular Lots



LOT WIDTH: The average horizontal distance between the side lot lines, ordinarily measured parallel to the front lot line.

MAINTENANCE AND REPAIR: Routine upkeep of an existing structure or remedial restoration of a damaged structure. Maintenance and repair may involve changes in the structure's location, size, configuration, orientation, or alignment if those changes are limited to the minimum amount necessary to retain or restore its operation or function or to meet current building or engineering standards.

MANUFACTURED DWELLING: A manufactured dwelling is a building or structure not subject to the Uniform Building Code Structural Specialty Code adopted pursuant to ORS 455.100 to ORS 455.450, and is one of the following:

MANUFACTURED HOME: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed in accordance with Federal manufactured housing construction and safety standards regulations in effect after June 16, 1976, and not conforming to the Uniform Building Code.

MOBILE HOUSE: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed between January 1, 1962, and June 16, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

PARK UNITS: A park unit is a small, single-wide, manufactured dwelling designed for permanent occupancy and does not include recreation vehicles.

RESIDENTIAL TRAILER: A structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, is being used for residential purposes and was constructed before January 1, 1962.

MANUFACTURED DWELLING PARK: Any place where four (4) or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured Dwelling Park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one mobile home per lot if the subdivision was approved by the City.

MARINA: A facility which provides moorage, launching, storage, supplies and a variety of services for recreational, commercial, and fishing vessels. They are differentiated from individual docks and moorages by their larger scale, the provision of significant landside services or the use of a solid breakwater (rock, bulkhead, etc.).

MARQUEE: A permanent roof-like structure projecting horizontally from and attached to a building.

MARSH: Lands transitional between terrestrial and aquatic systems where saturation with water is the dominant factor determining plant and animal communities and soil development. For the purpose of this definition, these areas must have one or more of the following attributes:

a. At least periodically, the land supports predominantly hydrophytes; and/or

b. The substrate is predominantly undrained hydric soil.

MICROWAVE RECEIVING DISH: Any conical or dish shaped device or structure used for receiving television or other telecommunication signals transmitted from satellites or earth based transmitters. Microwave receiving dishes may also be known as "Television Receive Only" (TVRO) dishes, "Satellite Direct Service" (SDS) dishes, "Multi-Distance Service" (MDS) dishes and "Earth Stations".

MINI STORAGE: A building or group of buildings in a controlled access compound that contains various sizes of individual, compartmentalized, and controlled-access stalls or lockers for the storage of a customer's goods or wares. No sales, service, or repair activities other than the rental of storage units are permitted on the premises.

MINING AND MINERAL EXTRACTION: The removal for economic use of minerals, petroleum resources, sand gravel or other naturally occurring materials from shorelands or submerged lands.

MITIGATION: The reduction of adverse affects of a proposed development project in wetlands or aquatic areas by considering, in the following order:

a. Avoiding the impact altogether by not taking a certain action or parts of an action;

b. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;

c. Rectifying the impact by repairing, rehabilitation, or restoring the affected environment;

d. Reducing or eliminating the impact over time by preservation and maintenance operation; and

e. Compensating for the impact by creation, restoration, or enhancement of wetlands to maintain their functional processes, such as natural biological productivity, habitats, and species diversity, unique features and water quality. Any mitigation action or combination of actions involves monitoring with remedial follow up if necessary.

MODULAR HOME: A dwelling unit manufactured off-site, built to be used for permanent residential occupancy, to be set on a permanent foundation and conforming to the Uniform Building Code.

MOORAGE: Piling or a dock or both used to secure a boat or barge.

MOTEL: Same as "Hotel".

NAME PLATE: A sign identifying the name, occupation or both of an occupant of the property.

NAVIGATION AIDE: Beacon, buoy, range marker and other objects providing directional assistance.

NAVIGATION IMPROVEMENTS, MINOR: Alterations necessary to provide water access to existing or permitted uses including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.

NAVIGATIONAL STRUCTURE: Jetty, groin, pile dike, breakwater, and other in-water structures designed to change or moderate hydraulic characteristics.

NON-COMPATIBLE NON-CONTRIBUTING STRUCTURE: Buildings in this classification were built after the end of the secondary development period and are not compatible architecturally with the context and historic character of the district.

NONCONFORMING USE: A nonconforming use is a use that legally conformed with applicable Development Code regulations when it first occurred but, due to amendments to those regulations, no longer complies with regulations which apply to it.

NON-TOURIST ORIENTED: A use or business which devotes at least 50% or more or its gross floor area to uses or activities which are not open or physically accessible to the public, or are not reasonably expected to be of interest to visitors.

NURSING HOME: A home, place or institution which operates and maintains facilities providing convalescent or chronic care, or both for a period exceeding 24 hours or two or more ill or infirm patients not related to the nursing home administrator or owner by blood or marriage. Convalescent and chronic care may include, but need not be limited to, the procedures commonly employed in nursing and care for the sick.

OCEAN FLOODING: The flooding of lowland areas by salt water owing to tidal action, storm surge, or tsunamis (seismic sea waves). Land forms subject to ocean flooding include beaches, marshes, coastal lowlands, and low lying interdune areas. Areas of ocean flooding are mapped by the Federal Emergency Management Agency (FEMA). Ocean flooding includes areas of velocity flooding and associated shallow marine flooding.

OFF-SITE: With respect to mitigation, an area separated from the impact area that offers a potential set of environmental conditions that are partially or entirely different from the original conditions occurring at the impact area.

ON-SITE: With respect to mitigation, an area near the impact area that offers a reasonable opportunity to emulate the same environmental conditions lost to a development action (e.g. salinity regime, tidal elevation or flood regime, temperature regime, proximity to propagules, and substrate type).

OUT-OF-KIND: With respect to mitigation, an action that is designed to replace a set of habitat characteristics that have been impaired or lost due to a development action with a different set of habitat characteristics that are considered to be equally desirable by the regulatory resource agencies.

OPEN SPACE OR OPEN AREA: Land area that is not occupied by buildings, structures, parking areas, streets, or alleys, excluding approved driveways. Open space or open area may be devoted to landscaping or preservation of natural features.

OWNER: Those individuals, partnerships, corporations or public agencies holding fee simple title to property, or a purchaser under a recorded instrument of sale. This includes an authorized agent of the owner. Owner does not include those holding easements, leaseholds, or purchasers of less than fee interest. *(Amended by Ordinance 14-03, 4-21-14)*

PARCEL: A unit of land that is created by a partitioning of land. *(Added by Ordinance 14-03, 4-21-14)*

PARKING SPACE: An enclosed or unenclosed surfaced area, exclusive of maneuvering and access area, permanently reserved for the temporary storage of one automobile, and connects with a street or an alley which affords ingress and egress for automobiles.

PARTITION: Either an act of partitioning land or an area or tract of land partitioned as defined in this Section.

MAJOR PARTITION: A partition which includes the creation of a street.

MINOR PARTITION: A partition that does not include the creation of a street. *(Added by Ordinance 14-03, 4-21-14)*

PARTITION LAND: To divide an area of land into two or three parcels within a calendar year, but does not include:

1. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

2. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable Development Code requirement; or

3. A sale or grant by a person to a public agency or public body for State highway, County road, City street or other right of purposes provided such road or right-of-way conforms with the Comprehensive Plan and ORS 215.213(2)(g) to (s) and ORS 215.283(2)(p) to (r). However, any property divided by the sale or grant of property for State highway, county road, city street or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

(Added by Ordinance 14-03, 4-21-14)

PARTITION PLAT: A final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a major or minor partition. *(Added by Ordinance 14-03, 4-21-14)*

PATHWAY/SHARED-USE PATHWAY: A facility for pedestrian and bicycle access conforming to City standards and separated from the street right-of-way, which may or may not be within a public right-of-way. *(Added by Ordinance 14-03, 4-21-14)*

PEDESTRIAN WAY: A right-of-way for pedestrian traffic. *(Added by Ordinance 14-03, 4-21-14)*

PENNANT: Any flag tapering to a point or swallowtail and used for identification or signaling.

PERFORMANCE AGREEMENT: A proper petition submitted to and approved by the Council for construction and improvements as required in Section 13.150; or a performance bond executed by a surety company duly licensed to do business in the State, in an amount equal to the full cost of the work to be done, and conditioned upon the faithful performance thereof. *(Added by Ordinance 14-03, 4-21-14)*

PERSON: Every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government, or any other group or combination acting as a unit.

PERSONAL SERVICE ESTABLISHMENT: Business primarily engaged in providing services involving the care of a person or pet, including laundering and dry cleaning services, beauty and barber services, grooming, garment alterations, and funeral homes.

PHASED PROJECT: Project involving construction of buildings and/or sites that are not completed all at the same time. All phases of a phased project are reviewed and approved under one permit with a time line for phased completion. *(Added by Ordinance 10-06, 4-19-10)*

PILING/DOLPHIN INSTALLATION: The driving of wood, concrete or steel piling into the bottom in aquatic areas to support piers or docks, structures, moored floating structures, vessels or log rafts, or for other purposes. A dolphin is a group of piling held together by steel cable and used for mooring vessels, log rafts or floating structures.

PLAT: A final subdivision plat, replat or partition plat. *(Added by Ordinance 14-03, 4-21-14)*

PORTABLE ACCESSORY STRUCTURE OR OBJECT: A structure or object which is not permanently attached to the ground, but which requires location on the ground; and which is more than 12" in height; and that is not used or intended to be used for dwelling or storage or coverage (for humans or equipment) purposes. Examples include but are not limited to: picnic tables, basketball hoops, dog houses, skate board ramps, and similar structures or objects. *(Added by Ordinance 01-05, 5-7-01)*

PORTABLE SIGN: Any sign designed to be placed on the ground, and attached to a frame which is self-supporting, and which is not affixed to a building, structure, pole, or other item of permanent support. *(Added by Ordinance 00-11, 12-4-00)*

PRELIMINARY PLAT: A tentative map and plan for a land division duly submitted to the Community Development Director for Commission or administrative consideration and approval and conforming in all respects to the requirements therefore specified in this Ordinance. *(Added by Ordinance 14-03, 4-21-14)*

PRIMARY: See "Historic Primary Significant Contributing Structure".

PROFESSIONAL SERVICE ESTABLISHMENTS: Businesses primarily engaged in providing services such as the following: medical and other health services; legal services; engineering and architectural services; accounting, auditing, and bookkeeping services; real estate services; and financial services.

PROPERTY LINE: The division line between two units of land. *(Added by Ordinance 14-03, 4-21-14)*

PROPERTY LINE ADJUSTMENT: The relocation of a common property line between two abutting properties. *(Added by Ordinance 14-03, 4-21-14)*

PUBLIC USE: A structure or use intended or used for a public purpose by a city, school district, county, state, or by any other public agency or by a public utility.

PUBLIC WORKS DIRECTOR: The duly appointed Public Works Director of the City of Astoria or his/her designee. *(Added by Ordinance 14-03, 4-21-14)*

RECREATION: Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction. Coastal Recreation occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.

LOW-INTENSITY: Does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation. Facilities included as low-intensity recreation include picnic tables, trail signs, unpaved trails and portable restrooms.

HIGH-INTENSITY: Uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation.

RECREATION VEHICLE PARK: A facility which is designed for occupancy by RV, camping trailers, tents, or other personal transient lodging facility and are not designed for permanent occupancy exceeding 90 days.

RECREATIONAL VEHICLE: A vehicle which is:

a. Built on a single chassis;
b. 400 square feet or less when measured at the largest horizontal projection;
c. Designed to be self-propelled or permanently towable by a light duty truck; and
d. Designated primarily not for use as a permanent dwelling but as temporary occupancy for recreational, camping, travel, or seasonal use.

(Added by Ordinance 09-03, 8-3-09)

REPAIR SERVICE ESTABLISHMENT, MAJOR: Business primarily engaged in repairing items and which undertakes no more than a minimal amount of manufacturing. A major repair service establishment has more than 3,000 square feet of gross floor area.

REPAIR SERVICE ESTABLISHMENT, MINOR: Business primarily engaged in repairing items and which undertakes no more than a minimal amount of manufacturing. A minor repair service establishment has 3,000 square feet or less gross floor area.

REPLAT: The act of platting the lots, parcels and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. *(Added by Ordinance 14-03, 4-21-14)*

RESERVED STRIP: A strip of land, usually one (1) foot in width, reserved across the end of a street or alley and terminating at the boundary of a land division or a strip of land between a dedicated street or less than full width and adjacent acreage, in either case reserved or held for future street extension or widening. *(Added by Ordinance 14-03, 4-21-14)*

RESIDENTIAL FACILITY: A facility licensed by or under the authority of the Department of Human Resources under ORS 443.400 to ORS 443.460 which provides residential care alone or in conjunction with training or treatment or a combination thereof for six (6) to 15 individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

RESIDENTIAL HOME: A home licensed by or under the authority of the Department of Human Resources under ORS 443.400 to ORS 443.825 which provides residential care alone or in conjunction with training or treatment or a combination thereof for five (5) or fewer individuals who need not be related. Staff persons required to meet Department of Human Resources licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

RESOURCE ENHANCEMENT: The use of artificial or natural means to improve the quantity or quality of a specific resource.

RESTORATION: (Estuarine Related) Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities or catastrophic events. For the purpose of Oregon Statewide Planning Goal 16, estuarine restoration means to revitalize reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began. Active Restoration involves the use of specific remedial actions, such as removing fills, installing water treatment facilities, rebuilding deteriorated urban waterfront area or returning diked areas to tidal influence. Passive Restoration is the use of natural processes, sequences, and timing which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

RESTORATION AS MITIGATION: For the purposes of Oregon Statewide Planning Goal 16, estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

RETAIL SALES ESTABLISHMENTS: Businesses, including a restaurant or bar, which are primarily engaged in selling merchandise to customers for personal, household or farm use. Retail Sales Establishment does not include gasoline service station, automotive sales establishment, or other sales of large motorized vehicles, or mobile homes.

RETIREMENT CENTER: A housing facility designed specifically for residents 55 years of age or older.

REVERSED CORNER LOT: A corner lot the side street line of which is substantially a continuation of the front line of the first lot to its rear. *(Added by Ordinance 14-03, 4-21-14)*

RIGHT-OF-WAY: The area between the boundary lines of a street or other easement. *(Added by Ordinance 14-03, 4-21-14)*

RIPARIAN: Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

RIPRAP: A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. In local usage, the similar use of other hard material, such as concrete rubble, is also frequently included as riprap.

ROADWAY: The portion of a street right-of-way developed for vehicular traffic. *(Added by Ordinance 14-03, 4-21-14)*

ROUTINE MAINTENANCE: Includes cleaning, landscaping, painting and minor repairs, not including the removal or replacement of architectural elements or details which would significantly alter the historical integrity of the building.

ROWHOUSE: One of a continuous row of dwellings having a uniform or nearly uniform architectural style, and having at least one common wall with its neighbor. *(Added by Ordinance 95-05, 2-6-95)*

SANDWICH BOARD: *(Deleted by Ordinance 00-11, 12-4-00)*

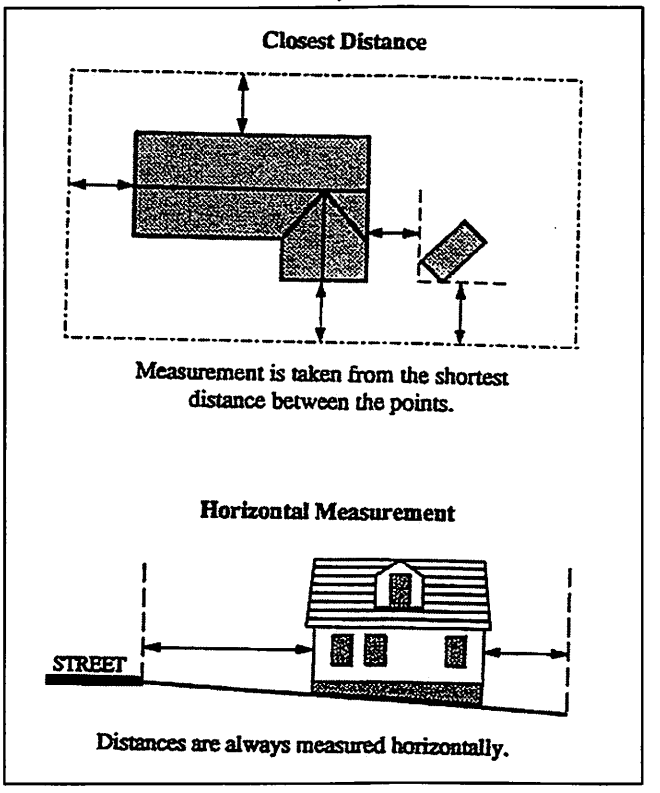
SECONDARY: See "Historic Secondary Significant Contributing Structure".

SEMI-PUBLIC USE: A structure or use intended or used for a semi-public purpose by a church, lodge, club, or any other nonprofit organization, excluding lodges or clubs which have eating or drinking facilities.

SHOPPING CENTER: A group of stores sharing common off-street parking facilities and leasing or sharing a common property ownership.

SHOULD: A requirement, unless it can be shown that to comply with the requirement would be unreasonable, impractical, or unfeasible. Economic hardship alone shall not be justification for noncompliance with the requirement, but may be considered in conjunction with other reasons for noncompliance. *(Added by Ordinance 14-03, 4-21-14)*

SETBACK: The minimum distance required between a structure and a lot line.



SHORELAND AREAS: The lands and nontidal wetlands along the estuary shore. Shoreland designations extend waterward to the upper limit of aquatic vegetation or, where aquatic vegetation is absent, Mean Higher High Water.

SHORELAND RESOURCES, SIGNIFICANT: Significant shoreland resources are described in subarea plans, and are included in Oregon jurisdiction Coastal Shorelands Boundaries. Significant shoreland resources include significant nontidal wetlands, significant shoreland fish and wildlife habitat, significant riparian vegetation, exceptional aesthetic resources and coastal headlands.

SHORELINE: The boundary line between a body of water and the land, measured on tidal waters at the landward limit of aquatic vegetation or, where aquatic vegetation is absent, Mean Higher High Water; and on non-tidal waterways at the ordinary high water mark.

SHORELINE STABILIZATION: The protection from erosion and sloughing of the banks of tidal and nontidal streams, rivers, lakes or estuaries by vegetative or structural means.

VEGETATIVE SHORELINE STABILIZATION: Use of plants that anchor the soil to prevent shoreline erosion and sloughing.

STRUCTURAL SHORELINE STABILIZATION: Use of riprap, bulkheads, seawalls or other non-vegetative material to prevent shoreline erosion.

SIDEWALK: A paved walkway with rock, paved surfacing, or other approved material within a public street right-of-way that is generally located adjacent to and separated from the roadway by a curb, drainage facility (e.g., ditch or swale), or planter strip. *(Added by Ordinance 14-03, 4-21-14)*

SIGN: Any identification, description, illustration, symbol, or device which is affixed directly or indirectly upon a building, structure, or land and which conveys a message.

ABANDONED SIGN: A sign pertaining to a business or occupant whose products or services or noncommercial messages have ceased to be offered to the public or ceased to be in effect on said premises for a period of more than 90 days.

ANIMATION SIGN: Any sign or part of a sign that contains text and/or other images that flash or move or otherwise change at intervals of less than once every ten (10) seconds.

(Added by Ordinance 04-04, 5-3-04)

CHANGEABLE TEXT SIGN: Any sign or part of a sign that changes physical position, light intensity, or text and/or graphic images by use of intermittent on-and-off illumination or any movement or rotation or that gives the visual impression of such movement or rotation at intervals of more than once every 24 hours. Also known as "moveable text sign", "electronic reader board", "electronic message center", or "multiple message sign".

(Added by Ordinance 04-04, 5-3-04)

CORNER SIGN: A sign projecting from the corner of a building.

DETERIORATED SIGN: A sign which the Building Official determines is deteriorated or dilapidated, or which may constitute a threat to public safety.

DIRECTIONAL SIGN: A permanent sign which is designed and erected solely for the purpose of traffic or pedestrian direction and placed on the property to which the public is directed.

FLASHING SIGN: A sign incorporating artificially reflected light which does not maintain a stationary or constant intensity or color at all times when in use.

FREESTANDING OR GROUND SIGN: A sign which is supported by one or more upright poles, or other support structure, and which is not attached to a building, but not including sandwich boards.

HISTORICAL SIGN: A sign designated to be historical in nature by the Historic Landmarks Commission.

MARQUEE SIGN: A sign which is painted on, attached to or supported by a marquee.

MONUMENT SIGN: A sign, other than a freestanding sign, in which the entire bottom is in contact with or is close to the ground and is not attached to any part of a building or other structure. A monument sign shall not exceed 10' in height. Any sign over 10' in height shall be classified as a "freestanding sign".

(Added by Ordinance 04-04, 5-3-04)

NONCONFORMING SIGN: A sign or sign structure lawfully erected and properly maintained that would not be allowed under the sign regulations presently applicable to the site.

OFF-PREMISE SIGN: A sign that identifies, advertises, or draws attention to a business, use, activity, goods, products, or services which are not sold, manufactured, or distributed on or from the premises on which the sign is located, or facilities not located on the premises on which the sign is located.

(Added by Ordinance 04-04, 5-3-04)

OPENING OR COMING SOON SIGN: A sign intended to announce the opening of a business, use, or activity, or the construction of a new building or expansion of an existing building, excluding announcement of sales or activities and events within an existing business, use, or activity.

(Added by Ordinance 04-04, 5-3-04)

PEDESTRIAN SIGN: A sign which is placed under an awning or marquee.

PORTABLE SIGN: Any sign designed to be placed on the ground, and attached to a frame which is self-supporting, and which is not affixed to a building, structure, pole, or other item of permanent support. *(Added by Ordinance 00-11, 12-4-00)*

PROJECTING SIGN: A sign, other than wall signs, which is attached to or project from a structure or building face, usually perpendicular to the building face, although it may project from the corner of a building.

ROOF SIGN: Any sign erected upon, against, or directly above a roof, on top of or above the parapet of a building.

SHORT TERM SIGN: A sign that is installed for more than 30 days but not more than 180 days.

(Added by Ordinance 04-04, 5-3-04)

TEMPORARY SIGN: A sign which is not permanently affixed. All devices such as banners, pennants, flags (not including flags of national, state or city governments), searchlights, curb signs, balloons or other air or gas-filled balloons.

WALL SIGN: A sign attached to or erected against the wall of a building with the face in a parallel plane to the building wall.

WINDOW SIGN: Any sign located inside, affixed to or within three (3) feet of the window panes of a building, whether removable or permanent that remains in place for more than a period of 14 days.

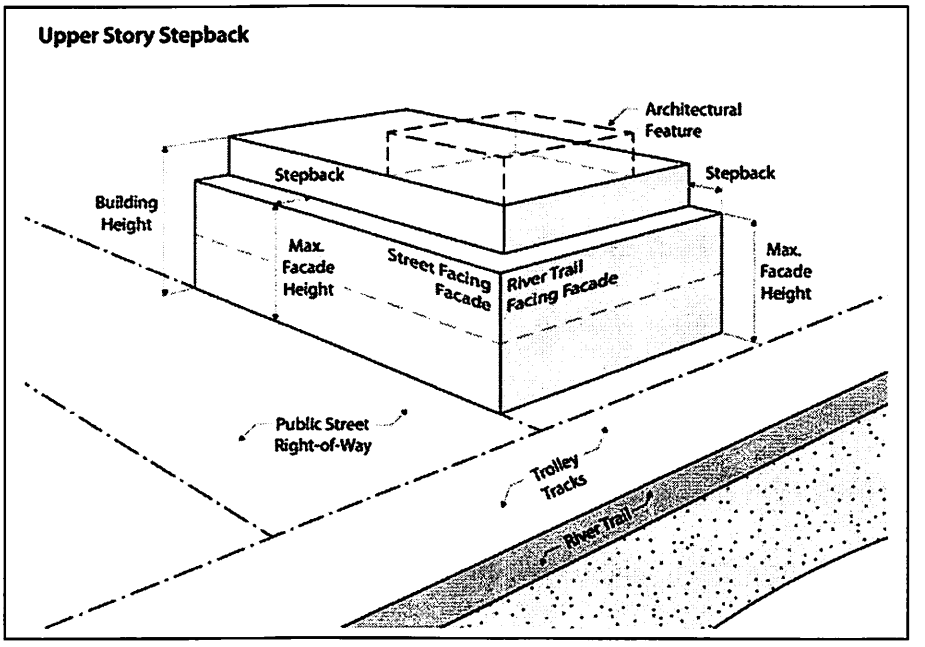
SIGN STRUCTURE: A structure specifically intended for supporting or containing a sign.

SINGLE-FAMILY DENSITY AREA: An area abutting a minor street not a business street, where for one block length or more all property on both sides of the street is, or as determined by the Planning Commission, will be occupied by no more than 4.50 families per acre exclusive of street right-of-way. *(Added by Ordinance 14-03, 4-21-14)*

SITE FRONTAGE: The lineal frontage of a site on a public street, excluding alleyways.

STANDARDS: For the purpose of the Riverfront Vision Plan Overlay Zones, the term guidelines shall mean code provisions that require or prohibit specific design features, incorporate numerical or other clear and objective standards, and provide for limited or no discretion by the appropriate review body to interpret and apply the standard. *(Added by Ord. 15-03, 6-15-15)*

STEPBACK: Building stepbacks are stepped or progressive recessions in a building's face as the building rises higher. Stepbacks are designed to reduce building mass to allow views around the building from above and/or from a distance, to allow more light down to the adjacent rights-of-way, and to improve the aesthetic experience of the building from adjacent rights-of-way. *(Added by Ord 14-09, 10-6-14)*



STORY: That portion of a building included between a floor and the ceiling above it which is six feet or more above grade. If the finished floor level directly above a basement or cellar is more than six feet above grade, each basement or cellar will be considered a story.

STREET: A public or private way being the entire width from lot line to lot line that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land and including the term "road", "highway", "lane", "avenue", "alley" or similar designations. *(Amended by Ordinance 14-03, 4-21-14)*

ALLEY: A narrow street through a block which affords only secondary means of access to abutting property at the rear or sides thereof. *(Added by Ordinance 14-03, 4-21-14)*

ARTERIAL: A street of considerable continuity which is primarily a traffic artery for intercommunication among large areas. *(Added by Ordinance 14-03, 4-21-14)*

BUSINESS STREET: Any block length along any street, other than an arterial, within which there is or will be provided access to one or more commercial structures. *(Added by Ordinance 14-03, 4-21-14)*

COLLECTOR: A street supplementary to the arterial street system and a means of intercommunication between this system and smaller area; used to some extent for through traffic and to some extent for access to abutting properties. *(Added by Ordinance 14-03, 4-21-14)*

CUL-DE-SAC: (Dead End Street) A short street having one end open to traffic and being terminated by a vehicle turnaround. *(Added by Ordinance 14-03, 4-21-14)*

HALF STREET: The dedication of a portion only of the width of a street, usually along the edge of a subdivision, where the remaining portion of a street has been or could be dedicated in another subdivision. *(Added by Ordinance 14-03, 4-21-14)*

MAJOR STREET: Same as "arterial". *(Added by Ordinance 14-03, 4-21-14)*

MARGINAL ACCESS STREET: A minor street parallel and adjacent to a major arterial street, providing access to abutting properties, but protected from through traffic. *(Added by Ordinance 14-03, 4-21-14)*

MINOR STREET: A street intended primarily for access to abutting properties. *(Added by Ordinance 14-03, 4-21-14)*

STRUCTURAL ALTERATION: Any change to the supporting members of a building including foundations, bearing walls or partitions, columns, beams, or girders or any structural change in the roof or in the exterior walls.

STRUCTURAL ALTERATION, SIGN: Modification of the size, shape or height of a sign structure. This also includes replacement of sign structure materials with other than comparable materials, for example, metal parts replacing wood parts.

STRUCTURE: That which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having a location on the ground.

STUDIOS, ARTS AND CRAFTS: Facilities used by artists and crafts persons and up to two assistants for the production of arts and crafts, and which are not open to the public for sales.

SUBDIVIDE: To effect a land division. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVIDE LAND: To divide an area or tract of land into four or more lots within a calendar year. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVIDER: An owner commencing proceedings under this Chapter to effect a land division by himself or through this lawful agent. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVISION: Either an act of subdividing land or an area or tract of land subdivided as defined in this Section. *(Added by Ordinance 14-03, 4-21-14)*

SUBDIVISION PLAT: A final map and other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision. *(Added by Ordinance 14-03, 4-21-14)*

SUBSTANTIAL CONSTRUCTION: Physical alteration of the land and/or building to an extent that there is obvious progress toward completion of the project as follows: For new construction, it shall include walls extending up from grade level; for existing buildings, it shall include issuance of a building permit with inspections for work equal to or greater than 25% of the value of the project as indicated on the building permit; and if no building permit is required, proof that site work equal to or greater than 25% of the value of the project has been completed. Land value and permit costs shall not be included in the calculation for value of construction completed. *(Added by Ordinance 10-06, 4-19-10)*

SUBTIDAL: Below the level of extreme low tide.

SUMP DREDGED MATERIAL DISPOSAL, IN-WATER: Deposition of dredged materials in a temporary in-water holding area and subsequently rehandling the material to place it on a land disposal site.

SUPERMARKET: Any retail store over 5,000 square feet whose normal items consist of produce and groceries, but may sell other items.

TEMPORARY ESTUARINE ALTERATION: Dredging, filling, or other estuarine alteration occurring over a specified short period of time which is needed to facilitate an allowed use. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include:

a. Alterations necessary for Federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance);

b. Alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations; and

c. Minor structures (such as blinds) necessary for research and educational observation.

TEMPORARY USE: A use or activity involving minimal capital investment that does not result in the permanent alteration of the site or construction of new buildings, and is removed from the site within one year, unless otherwise extended.

TIDEGATE: A device placed in a dike or dam that allows the passage of water through a culvert in a single direction.

TIDAL MARSH: Tidal wetlands vegetated with emergent vascular plants lying between extreme low tide and landward limit of aquatic vegetation.

TOURIST ORIENTED SALES OR SERVICE: A use or business which devotes 50% or more of its gross floor area to uses or activities which are open or physically accessible to the public, and are reasonably expected to be of interest to visitors.

TRANSPORTATION FACILITY: Transportation facilities include construction, operation, and maintenance of travel lanes, bike lanes and facilities, curbs, gutters, drainage facilities, sidewalks, transit stops, electric car charging stations (without pricing signs), landscaping, and related improvements located within public rights-of-ways controlled by a public agency, consistent with the City Transportation System Plan. *(Amended by Ordinance 14-03, 4-21-14)*

USE: The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

USE, CEASE OF: Use shall be considered as ceased when the site and/or building is no longer used or available for occupancy by the specific use. A building or site vacant while being continuously marketed, repaired, or otherwise similarly unavailable for use is not considered to be a cessation of use. A building or site that is occupied by a different use shall be considered as a cessation of the former use. *(Added by Ordinance 10-06, 4-19-10)*

USE, START OF: Use shall be considered as begun when the applicant has physically moved into the site or is in the process of physically moving into the site in preparation of beginning occupation and/or operation. Actual operation and/or business open to the public need not occur to consider a use as begun. *(Added by Ordinance 10-06, 4-19-10)*

UTILITIES: Towers, facilities and lines for communication and power transmission; waste water treatment plants; storm water and treated waste water outfalls, including industrial; and major water, sewer and gas lines.

VISION CLEARANCE AREA: A triangular area of a lot at the intersection of streets, railroads, alleys, or driveways, as defined in City Code Section 6.100. *(Amended by Ordinance 14-03, 4-21-14)*

WALKWAY: A sidewalk or pathway, including any access way, allowing pedestrian and bicycle access and improved to City standards, or to other roadway authority standards, as applicable. See also, Access Way, Pathway, Sidewalk. *(Added by Ordinance 14-03, 4-21-14)*

WALL GRAPHICS: Any mosaic, mural or painting or graphic art technique or combination or grouping of mosaics, murals, or paintings or graphic art techniques applied, implanted or placed directly onto a wall or fence which does not identify a business or product, or carry a commercial or non-commercial message, excluding historical signs.

WATER-DEPENDENT: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER-DEPENDENT COMMERCIAL ACTIVITY, LOW INTENSITY: Commercial activities are actions taken in conjunction with a use or to make a use possible. Commercial activities generally do not in and of themselves result in a specific use, but rather in conjunction with a variety of uses for business and trade purposes. Water-dependent commercial activities are those which can be accomplished only on, in, or adjacent to water areas and are activities requiring water access for transportation, recreation, energy production, or as a source of process water. Low-intensity, water-dependent commercial activities are those occurring as part of a business and not simply for private use, which do not require or result in major alteration of the estuary. The level of impact on estuarine aquatic resources and recreational benefits is low as it relates to the consistency of the activity with the resource capabilities of the area and the purpose of the management unit.

WATER-ORIENTED: A use whose attraction to the public is enhanced by a view of or access to coastal waters.

WATER-RELATED: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

WETLAND CREATION: Inundation, by excavation or other means, of upland areas to allow local hydrologic conditions to convert soils and vegetation to a hydric character.

WETLAND ENHANCEMENT: An action which results in a long term improvement of existing wetland functional characteristics and processes that is not the result of a creation or restoration action.

WETLANDS: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

WETLANDS, SIGNIFICANT NONTIDAL: Nontidal wetland described as significant in Oregon subarea plan Coastal Shorelands boundary descriptions or described as significant in Oregon jurisdiction Oregon Statewide Planning Goal 5 elements.

WHOLESALE TRADE ESTABLISHMENTS: Business which generally have substantial quantities of merchandise on the premises and which are primarily engaged in selling merchandise to other wholesalers, retailers, manufacturers, other businesses, governments, or institutions.

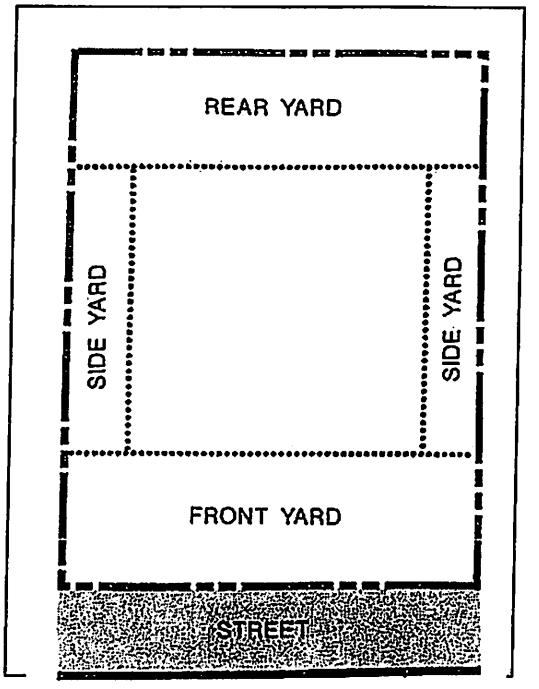
WIND SIGN OR DEVICE: Any sign or device in the nature of banners, flags, balloons, or other objects fastened in such a manner as to move upon being subject to pressures by wind.

YARD: An open, unoccupied space of a lot which is unobstructed by any structure or portion of a structure extending more than 12 inches above ground level of the lot upward.

FRONT: A required open space extending the full width of a lot between any structure and the front lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this Code.

REAR: A required open space extending the full width of a lot between any structure and the rear lot line unoccupied and unobstructed from the ground upward except as specified elsewhere in this Code.

SIDE: A required open space extending from the front yard to the rear yard between any structure and the nearest side lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this Code.



CITY OF ASTORIA

Founded 1811 • Incorporated 1856

DEVELOPMENT CODE

Adopted 10-8-92

Revised January, 2017

L-980

C-3: GENERAL COMMERCIAL ZONE

2.385. PURPOSE.

This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.

2.390. USES PERMITTED OUTRIGHT.

The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

1. Business service establishment.
2. Commercial laundry or dry cleaning establishment.
3. Commercial or public off-street parking lot.
4. Communication service establishment.
5. Construction service establishment.
6. Eating and drinking establishment.
7. Educational service establishment.
8. Family day care center in single-family, two-family, or multi-family dwelling.
9. Home occupation in existing dwelling.
10. Motel, hotel, bed and breakfast, inn, or other tourist lodging facility and associated uses.
11. Multi-family dwelling.
12. Personal service establishment.

13. Professional service establishment.

14. Public or semi-public use.

15. Repair service establishment, not including automotive, heavy equipment, or other major repair services.

16. Residential facility.

17. Retail sales establishment.

18. Single-family and two-family dwelling in a new or existing structure:

    a. Located above or below the first floor with commercial facilities on the first floor of the structure.

    b. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

    (Section 2.390.18.b added by Ordinance 11-08, 7-5-11)

(Section 2.390(18) amended by Ordinance 00-08, 9-6-00)

19. Transportation service establishment.

20. Conference Center.
(Section 2.390(20) added by Ordinance 94-06, 6-6-94)

21. Indoor family entertainment or recreation establishment.
(Section 2.390(21) added by Ordinance 98-01, 1-5-98)

22. Transportation facilities.
(Section 2.390.22 added by Ordinance 14-03, 4-21-14)

2.395. CONDITIONAL USES PERMITTED.

The following uses and their accessory uses are permitted in a C-3 Zone if the Planning Commission, after a public hearing, determines that the location and development plans comply with applicable standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

1. Animal hospital or kennel.

2. Automotive sales or service establishment.

3. Day care center.

4. Gasoline service station.

5. Hospital.

6. *(Section 2.395(6) deleted by Ordinance 98-01, 1-5-98)*

7. Light Manufacturing.

8. Recycling establishment.

9. Repair service establishment not allowed as an Outright Use.

10. Temporary use meeting the requirements of Sections 3.240.

11. Wholesale trade or warehouse establishment.

2.400. LOT COVERAGE.

Buildings will not cover more than 90 percent of the lot area.

2.405. LANDSCAPED OPEN AREA.

A minimum of 10 percent of the total lot area will be maintained as a landscaped open area.

2.410. HEIGHT OF STRUCTURES.

No structure will exceed a height of 45 feet above grade.

2.415. OTHER APPLICABLE USE STANDARDS.

1. Landscaping shall meet the requirements of Sections 3.105 through 3.120.

2. When a commercial use in a C-3 Zone abuts a lot in a residential zone, there will be an attractively designed and maintained buffer of at least five (5) feet in width, which can be in the form of hedges, fencing, or walls.

3. Outdoor storage areas will be enclosed by appropriate vegetation, fencing, or walls. This requirement does not apply to outdoor retail sales areas.

4. Where feasible, joint access points and parking facilities for more than one use should be established. This standard does not apply to multi-family residential developments.

5. All uses will comply with access, parking, and loading standards in Article 7.

6. Conditional uses will meet the requirements in Article 11.

7. Signs will comply with requirements in Article 8.

8. All structures will have storm drainage facilities that are channeled into the public storm drainage system or a natural drainage system approved by the City Engineer. Developments affecting natural drainage shall be approved by the City Engineer.

9. Where new development is within 100 feet of a known landslide hazard, a site investigation report will be prepared by a registered geologist. Recommendations contained in the site report will be incorporated into the building plans.

10. For uses located within the Astor-East Urban Renewal District, refer to the Urban Renewal Plan for additional standards.

ARTICLE 7

OFF-STREET PARKING AND LOADING

7.010. PARKING AND LOADING AREAS REQUIRED.

A. Off-street parking areas and off-street loading areas meeting the applicable requirements of this Section shall be provided and maintained:

1. For each separate use in any building or structure erected after the adoption of this ordinance.

2. For additional seating capacity, floor area, guest rooms, or dwelling units added to any existing structure or lot.

3. When the use of the structure or portion thereof is changed.

B. Where a structure is added to, or a portion thereof changes in use such that additional parking or loading is required, only the number of additional spaces required under Sections 7.100 and 7.160 for the area added or changed in use need be provided. Nevertheless, if the lot or structure as used prior to the addition or change of use did not have the number of parking and loading spaces required by Sections 7.100 and 7.160 and such deficiency was not lawfully nonconforming, parking for the entire building or use shall be provided as required by Sections 7.100 through 7.160.

C. When additional parking or loading area is required or added to an existing nonconforming parking or loading area, the entire parking and loading area shall be improved as provided in Section 7.110 and landscaped setbacks from streets shall be provided as required in Section 7.170.

7.020. REDUCTION OF PARKING AREA PROHIBITED; EXCEPTION.

Off-street parking and loading areas which existed on the effective date of this ordinance or which are provided as required by this Section shall be maintained, or equivalent parking and loading areas provided; except that if this ordinance reduces the number of required off-street parking or loading spaces, an affected use may diminish its parking and loading area to the new requirements.

7.030. LOCATION.

A. Off-street parking and loading areas required by this ordinance shall be provided on the same lot with the use except that:

1. In any residential zone, up to 50% of vehicle parking spaces for dwellings and other uses permitted in a residential zone may be located on contiguous lots or on a lot across a street or other right-of-way from the lot with the primary use.

2. In non-residential zones, up to 50% of the required parking area may be located off the site of the primary use or structure provided it is within 300 feet of such site.

B. Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

7.040. FRACTIONAL MEASUREMENTS.

When calculations for determining the number of required off-street parking or loading spaces result in a requirement of fractional space, any fraction of a space less than one-half shall be disregarded, and a fraction of one-half or greater shall be counted as one full space.

7.050. OWNERSHIP OF PARKING AND LOADING AREAS.

A. Except as provided for joint use parking in Section 7.070, the land to be provided for off-street parking and loading areas, including driveways, aisles, and maneuvering areas shall be:

1. Owned by the owner of the property served by the parking; or

2. In commercial and industrial zones, the parking may be provided by a permanent and irrevocable easement appurtenant to the property served by the parking; or

3. Be leased for a minimum term of five (5) years, provided that upon expiration or termination of the lease, the parking requirements of this ordinance shall otherwise be fully met within 90 days or the use discontinued until such requirements are met.

7.060. OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Except as otherwise specifically provided in this ordinance, off-street parking spaces shall be provided in amounts not less than those set forth in Section 7.100.

B. For any proposed use not listed in Section 7.100, the Community Development Director shall determine the parking space requirement for the most nearly similar use listed in Section 7.100 with regard to traffic generation.

7.062 SPECIAL EXCEPTIONS TO OFF-STREET VEHICLE PARKING REQUIREMENTS.

A. Developed Sites Exemption.

Existing buildings which encompass all or a major portion of a lot with little or no possibility of providing off-street parking in compliance with City Code may apply to the Community Development Director for authority to participate in a program whereby, in lieu of providing required off-street parking, annual payments would be made to the City for the purpose of supporting mass transit, and development of public parking. As an alternative to making annual cash payments, the applicant may, with approval of the City Council, provide a public service of equal or greater value than the cash payment.

1. Participation in the Program.

The Director shall approve participation in the program upon a finding that the lack of required off-street parking will not result in a public safety hazard. Participation involving the provision of compensation in the form of public service in lieu of cash payments also requires the concurrence of the City Council.

2. Location.

This exception shall apply to any change of use or expansion of a use in all zones except those areas where the provision of off-street parking is otherwise exempted.

3. Compensation.

a. Cash Payments.

The fee to be paid for each parking space not provided shall be $180.00 per year.

The fee shall be paid annually on a per space basis. The number of spaces subject to a fee shall be the difference between the number of off-street spaces provided and the number required by the Astoria Development Code, or, where a Variance is issued, the number of spaces authorized by Variance.

Payments shall be made to the City of Astoria at the beginning of each year the applicant is involved in the program, and shall be made, in accordance with a payment schedule to be established by the Community Development Department.

b. Compensation in Lieu of Cash Payments.

Compensation in lieu of cash payments may be accepted only upon a finding by the City Council that there is both a need for the proposed public service, and that the value of the service is equivalent to or greater than the cash payment described in Section 3(a) above.

(Section 7.062 Added by Ordinance 93-08, 10-18-93; amended by Ordinance 96-04, 5-6-96)

B. Modification of Parking Space Requirements.

1. The applicant may propose a parking space standard that is different than the standard in Section 7.100, for review and action by the Community Development Director through a Class 1 variance, pursuant to Article 9. The applicant's proposal shall consist of a written request, and a parking analysis prepared by a qualified professional. The parking analysis, at a minimum, shall assess the average parking demand and available supply for existing and proposed uses on the subject site; opportunities for shared parking with other uses in the vicinity; existing public parking in the vicinity; transportation options existing or planned near the site, such as frequent bus service, carpools, or private shuttles; and other relevant factors. The Community Development Director may reduce the off-street parking standards for sites with one or more of the following features:

a. Site has a bus stop with existing or planned frequent transit service (15-minute headway or less) located adjacent to it, and the site's frontage is improved with a bus stop waiting shelter, consistent with the standards of the applicable transit service provider: Allow up to a 20 percent reduction to the standard number of automobile parking spaces;

b. Site has dedicated parking spaces for carpool/vanpool vehicles: Allow up to a 10 percent reduction to the standard number of automobile parking spaces;

(Adopted 10-8-92)

c. Site has dedicated parking spaces for motorcycle and/or scooter or electric carts: Allow reductions to the standard dimensions for parking spaces and the ratio of standard to compact parking spaces;

d. Available on-street parking spaces adjacent to the subject site in amounts equal to the proposed reductions to the standard number of parking spaces.

e. Site has more than the minimum number of required bicycle parking spaces: Allow up to a 10 percent reduction to the number of automobile parking spaces.

(Section 7.062.B added by Ordinance 14-03, 4-21-14)

C. Downtown Area.

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street parking.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.062.C added by Ordinance 14-03, 4-21-14)

7.070. JOINT USE OF PARKING AREAS.

A. The Community Development Director may authorize the joint use of parking areas by the following uses or activities as a Conditional Use in every zone under the following conditions:

1. Up to 50% of the off-street parking spaces required by this ordinance for a church, auditorium in a school, theater, bowling alley, night club, eating or drinking establishment may be satisfied by the off-street parking spaces provided by uses occupied only during the daytime on weekdays.

2. Up to 50% of the off-street parking spaces required by this ordinance for any daytime use may be satisfied by the parking spaces provided for nighttime or Sunday uses.

3. All jointly used spaces shall be located with relation to all uses relying on such spaces within the applicable distance set forth in Section 7.030.

4. The Planning Commission must find that there is no substantial conflict in the principal operating hours of the buildings or uses for which joint use of off-street parking facilities is proposed.

5. A properly drawn legal instrument executed by the parties concerned with joint use of off-street parking facilities, approved as to form and manner of execution by Legal Counsel, shall be filed with the Community Development Director. Joint use parking privileges shall continue in effect only so long as such an instrument, binding on all parties, remains in force. If such instrument becomes legally ineffective, then parking shall be provided as otherwise required in this ordinance within 60 days.

7.080. CLASSIFICATION OF USES FOR PURPOSES OF JOINT USE PARKING.

A. The following uses are considered daytime uses for purposes of Section 7.070:

1. Bank or other financial institution.

2. Business service establishment.

3. Clothing, shoe repair, or service establishment.

4. Household equipment or furniture store.

5. Manufacturing or wholesale building.

6. Personal service establishment.

7. Retail store.

8. Other similar primarily daytime uses as determined by the Community Development Director.

B. The following uses are considered nighttime or Sunday uses for purposes of Section 7.070:

1. Auditoriums incidental to a public or private school.

2. Church.

3. Eating and drinking establishment, only open after 5:00 p.m.

4. Night Club.

5. Theater.

6. Other similar primarily nighttime uses as determined by the Community Development Director.

7.090. OFF-STREET LOADING.

A. Except as otherwise specifically provided in this ordinance, off-street loading shall be provided in amounts not less than those set forth in Section 7.160.

B. A parking area meeting the requirements of Sections 7.100 through 7.110 may also be used for loading when the use does not require a delivery vehicle which exceeds a combined vehicle and load rating of 20,000 pounds, and when the parking area is within 25 feet of the building or use which it serves.

C. Downtown Area

Uses in the C-4 Zone (Central Commercial) and uses between 7th and 14th Streets in the A-2 (Aquatic Two Development) and S-2A Zones (Tourist Oriented Shoreland) are not required to provide off-street loading.

Exception: In the C-4 Zone, off-street parking and loading requirements shall apply to Lots 1, 2, 3, Block 40, McClure's Addition (south side of 600 Block Duane Street) as required by Amendment A99-02, Ordinance 99-21.

(Section 7.090.C added by Ordinance 14-03, 4-21-14)

7.100. MINIMUM PARKING SPACE REQUIREMENTS.

Table 7.100 – Off-Street Parking Space Requirements by Use.

The following are minimum off-street parking requirements by use category. The Community Development Director or Planning Commission, as applicable, may increase the required off-street parking based on anticipated need for a specific conditional use.

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
RESIDENTIAL CATEGORIES	
Single-family Dwelling, including manufactured homes on individual lots, and attached dwellings such as townhomes and condominiums	2 spaces per dwelling unit
Two-family Dwelling (Duplex)	2 spaces per dwelling unit
Accessory Dwelling (second dwelling unit on a single-family lot)	1 additional space for the accessory dwelling unit
Manufactured Dwelling in a Park	1.5 per dwelling unit
Multi-family Dwelling including Group Housing	1.5 spaces per dwelling unit with more than one bedroom; 1.25 spaces per dwelling unit limited to one bedroom, or one bedroom group housing units; Calculation is based on specific number of each type of units within the complex.
Group living, such as nursing or convalescent homes, rest homes, assisted living, congregate care, and similar special needs housing where clients have no access to driving	1 space per 8 bedrooms plus one per employee Calculation is based on the maximum number of employees on one shift, not total employment.
Residential Home, Residential Facility, and Adult Foster Care	1 additional space per 3 beds for the home/facility

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
COMMERCIAL CATEGORIES	
Animal hospital or kennel	1 space per 300 sq. ft. gross floor area
Automotive repair & service, gas station	1 space per 1,000 sq. ft. gross floor area
Bed and Breakfast, Home Stay Lodging, Inn	1 additional space for each bedroom used for transient lodging Plus spaces required for associated uses such as assembly areas or restaurant.
Daycare, Family/Home	1 space, plus required parking for dwelling
Daycare Center	1 space per employee
Eating and Drinking / Restaurant	1 space per 500 sq. ft. if no seating; 1 space per 250 sq. ft. with seating.
Educational Services, not a school (e.g., tutoring or similar services, excluding single student tutoring facilities)	1 space per 300 sq. ft. gross floor area
Home Occupation with customers and/or non-resident employees	1 additional space per anticipated customer/employee at a specific time in excess of one person at a time
Hotels, Motels, and similar uses	1 space per guest room. See also, parking requirements for associated uses, such as restaurants, entertainment uses, drinking establishments, assembly facilities.
Laundromat and dry cleaner	1 space per 350 sq. ft. gross floor area
Mortuary/Funeral Home	1 space per 300 sq. ft. gross floor area
Offices: General, medical/dental, professional	1 space per 500 sq. ft. gross floor area
Personal Services (i.e. salon, spa, barber, animal grooming, out-patient vetinary services)	1 space per chair, table, or booth for customers
Repair or Service other than automotive	1 space per 500 sq. ft. gross floor area
Retail Sales, General Merchandise	1 space per 500 sq. ft. gross floor area

(Adopted 10-8-92)

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Retail Sales, Bulk with a building (lumber and construction materials, furniture, appliances, and similar sales)	1 space per 1,000 sq. ft. gross floor area
Retail Sales, Outdoor with no building or building of less than 200 sq. ft. (i.e. automotive, nursery, bulk retail, produce, etc.)	1 space per 1,000 sq. ft. of site used for retail display/storage
INDUSTRIAL CATEGORIES	
Industrial Service, not otherwise categorized	1 space per 1,000 sq. ft. gross floor area
Light Manufacturing	1 space per 2 employees on the largest shift
Manufacturing and Production, Heavy Industrial with building greater than 5,000 sq. ft.	1 space per 2,500 sq. ft. gross floor area
Marina	0.25 spaces per boat berth or docking space
Mini-Storage	1 space per four units
Seafood Processing and Associated Uses	1 space per full-time equivalent employee plus 1 space per 10 seasonal employees. Seasonal parking may be reduced with proof that employees are bussed to site.
Wholesale, Warehouse, Freight Service	1 space per 1,500 sq. ft. gross floor area
INSTITUTIONAL CATEGORIES	
Community Service, including Government Offices and Services	Same requirement as non-institutional use for the category
Jail	1 space per 2,000 sq. ft. gross floor area
Medical Center/Hospital with overnight stay	1 space per 300 sq. ft. gross floor area

Use Categories	Minimum Parking per Land Use (Fractions are rounded up to the next whole number.)
Membership organization, club, lodge	Same as specified use requirement such as eating and drinking establishment, public assembly, school, etc.
Parks and Open Space	Parking based on projected parking demand for planned uses. See Recreation, outdoor.
Public Assembly	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Religious Institutions and Houses of Worship	1 space per 100 sq. ft. of main assembly gross floor area; additional parking is not required for associated use areas if not used at same time as main assembly area
School, Pre-School through Middle-School	1.5 space per classroom
School, High School	7 spaces per classroom
School, College & Vocational	1 space per 400 sq. ft. of gross floor area; and 1 space per 2 dorm rooms
RECREATIONAL CATEGORIES	
Aquatic center, sports club, gym, rink, recreation center, health club, bowling alley, and other similar indoor entertainment	1 space per 400 sq. ft. gross floor area
Museum, art gallery, library	1 space per 600 sq. ft. gross floor area
Outdoor recreational park, Public playground	None
Outdoor recreational park, Commercial park	1 space per 1,000 sq. ft. gross land area
Sports Field	1 space per 100 sq. ft. of public assembly area where no seats provided; or 1 space per five seats where provided
Theater, indoor arena: Single venue	1 space per 3 seats
Theater, indoor arena: Multiplex	1 space per 6 seats

OTHER CATEGORIES	
Accessory Uses	Parking standards for accessory uses are the same as for primary uses, but are pro-rated based on the percentage of estimated overall parking demand, subject to City review and approval.
Temporary Uses	Parking standards for temporary uses are the same as for primary uses, except that the Community Development Director or Planning Commission, as applicable, may reduce or waive certain development and designs standards for temporary uses.
Transportation and Communications Facilities (operation, maintenance, preservation, and construction)	None, except where temporary parking is required for construction staging areas

(Section 7.100 amended by Ordinance 14-03, 4-21-14)

7.105. BICYCLE PARKING.

A. Standards.

Bicycle parking spaces shall be provided for new development, change of use, and major renovation, at a minimum, based on the standards in Table 7.105. Major renovation is defined as construction valued at 25% or more of the assessed value of the existing structure.

Where an application is subject to Conditional Use Permit approval or the applicant has requested a reduction to an automotive parking standard, pursuant to Section 7.062, the Community Development Director or Planning Commission, as applicable, may require bicycle parking spaces in addition to those in Table 7.105.

Table 7.105: Minimum Required Bicycle Parking Spaces

Use	Minimum Number of Spaces	Long and Short Term Bicycle Parking Percentages
Multi-family Residential Dwelling with 4 or more dwelling units	1 bike space per 4 dwelling units	75% long term 25% short term
Commercial	1 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term
Industrial	1 bike spaces per primary use or 1 per 20 vehicle spaces, whichever is greater	25% long term 75% short term
Parks (active recreation areas greater than 10,000 sq. ft.)	4 bike spaces per 10,000 sq. ft.	100% short term
Schools (all types)	1 bike spaces per 4 classrooms	50% long term 50% short term
Institutional Uses and Places of Worship	1 bike space per 20 vehicle spaces	100% short term
Other Uses	2 bike spaces per primary use or 1 per 10 vehicle spaces, whichever is greater	50% long term 50% short term

B. Design and Location.

1. All bicycle parking shall be securely anchored to the ground or to a structure.

2. All bicycle parking shall be designed so that bicycles may be secured to them without undue inconvenience, including being accessible without removing another bicycle.

3. All bicycle parking should be integrated with other elements in the planter strip when in the public right-of-way.

4. Direct access from the bicycle parking area to the public right-of-way shall be provided at-grade or by ramp access, and pedestrian access shall be provided from the bicycle parking area to the building entrance.

5. Bicycle parking shall not impede or create a hazard to pedestrians or vehicles, and shall not conflict with the vision clearance standards of City Code Section 6.100.

6. Short-term bicycle parking.

   a. Short-term bicycle parking shall consist of a stationary rack or other approved structure to which the bicycle can be locked securely.

   b. If more than 10 short-term bicycle parking spaces are required, at least 50% of the spaces must be sheltered. Sheltered short-term parking consists of a minimum 7-foot overhead clearance and sufficient area to completely cover all bicycle parking and bicycles that are parked correctly.

   c. Short-term bicycle parking shall be located within 50 feet of the main building entrance or one of several main entrances, and no further from an entrance than the closest automotive parking space.

6. Long-term bicycle parking.

   Long-term bicycle parking shall consist of a lockable enclosure, a secure room in a building on-site, monitored parking, or another form of sheltered and secure parking.

C. Exemptions.

This Section does not apply to single-family, two-family, and three-unit multi-family housing, home occupations, and agricultural uses. The Community Development Director or Planning Commission as applicable may exempt other uses upon finding that, due to the proximity of public bicycle parking facilities, the nature of the use, or its location, it is unlikely to have any patrons or employees arriving by bicycle.

(Section 7.105 added by Ordinance 14-03, 4-21-14)

7.110. PARKING AND LOADING AREA DEVELOPMENT REQUIREMENTS.

All parking and loading areas required under this ordinance, except those for a detached single-family dwelling on an individual lot unless otherwise noted, shall be developed and maintained as follows:

(Section 7.110 amended by Ordinance 14-03, 4-21-14)

A. Location on site.

Required yards adjacent to a street, shall not be used for parking and loading areas unless otherwise specifically permitted in this ordinance. Side and rear yards which are not adjacent to a street may be used for such areas when developed and maintained as required in this ordinance.

B. Surfacing.

All parking and loading areas and driveways thereto shall be paved with asphalt, concrete or other hard surface approved by the City Engineer. Parking and loading areas shall be adequately designed, graded, and drained.

C. Bumper guards or wheel barriers.

Permanently affixed bumper guards or wheel barriers are required and shall be so installed that no portion of a vehicle will project into a public right-of-way or over adjoining property. The area beyond the wheel barriers or bumper guards shall be surfaced as required in Section 7.110(B) or landscaped.

D. Size of parking spaces and maneuvering areas.

The parking area, each parking space, and all maneuvering areas shall be of sufficient size and all curves and corners of sufficient radius as determined by the City Engineer to permit the safe operation of a standard size vehicle subject to the following minimum requirements:

1. Full size parking spaces shall be nine and one half (9.5) feet wide and 20 feet long.

2. Compact parking spaces shall be eight and one half (8.5) feet wide and 16 feet long for no more than 50% of the parking spaces required.

   An increase to 75% compact may be approved administratively by the Community Development Director upon a finding that anticipated use would not require compliance. An increase greater than 75% may be approved by the Community Development Director as a Class 1 Variance in accordance with Article 9.

3. Where a landscaped area, fence, or wall is adjacent to a parking space, the parking space shall be ten (10) feet wide.

4. A maximum of 2.5' of a parking stall required length may extend beyond the wheel barrier into a landscaped area. The parking stall shall not extend into a pedestrian walkway area.

(Section 7.110.D amended by Ordinance 14-03, 4-21-14)

E. Access.

Parking or loading areas having more than four (4) spaces shall be designed so that vehicles do not back into public streets, or do not use public streets for maneuvering. All entrances and exits onto public streets shall first have a Driveway Permit from the Engineering Department and shall be designed and constructed to City standards.

F. Lighting.

Parking or loading areas that will be used at nighttime shall be lighted. Outdoor lighting shall be directed away from any adjacent residential zone or public street.

G. Landscaping.

1. Landscaping shall be provided as required in Section 7.170 and Section 3.105 through 3.120.

2. Required landscaped yards shall not be used for parking.

(Section 7.110.G amended by Ordinance 14-03, 4-21-14)

H. Additional Requirements.

1. Directional signs and pavement marking shall be used to control vehicle movement in parking area.

(Section 7.110.H amended by Ordinance 14-03, 4-21-14)

I. Aisle Widths

Aisles with parking adjacent on one or both sides, depending on angle of parking spaces:

	Minimum Width
0 - 40 degrees	12 feet
41 - 45 degrees	13 feet
46 - 55 degrees	15 feet
56 - 70 degrees	18 feet
71 - 90 degrees	24 feet

7.120. DRIVEWAY DEVELOPMENT STANDARDS.

All driveways providing access to parking spaces and loading areas required under this ordinance, including those for a single-family dwelling on a lot, shall conform to the Astoria City Code Sections 2.050 through 2.100 and Development Code Section 3.008.D, in addition to requirements in the Astoria Engineering Design Standards for Roadways (Chapter 4).

(Section 7.120 amended by Ordinance 14-03, 4-21-14)

7.130. OUTDOOR STORAGE AREA SURFACING.

A. Where commercial, industrial, or shoreland zones permit outdoor storage, or if such storage is permitted as part of a Conditional Use in any zone, such storage areas and any access driveway shall be paved and shall have plans for off-site drainage approved by the City.

7.140. PARKING PLAN REQUIRED.

Plans, at a workable scale, for all parking and loading areas required under this Section, shall be submitted to the Community Development Director for approval prior to issuance of a permit; or, if no building permit is required, at the time of application for a driveway permit; or, if no such permit is required, prior to commencing any paving or use of the parking or loading area. No such work or use shall commence prior to approval by the City of the plans required by this Section.

7.150. ACCESSIBLE PARKING SPACES.

A. Effective September 1, 1990, existing and new parking spaces for disabled persons shall be required by law at all public and government buildings.

B. The size, location, dimension, and marking for accessible parking spaces shall be in accordance with current State and Federal regulations for accessible parking facilities.

(Section 7.150 amended by Ordinance 14-03, 4-21-14)

7.160. MINIMUM LOADING SPACE REQUIREMENTS.

USE OR GROSS SQUARE FOOTAGE OF FLOOR AREA	MINIMUM NO. OF SPACES	MINIMUM SIZE OF SPACE WIDTH	LENGTH	HEIGHT
A. Multi-Family Dwelling Units.				
0 - 49 Units	0	12 ft	19 ft	12 ft
50 - 99 Units	1	"	"	"
100 - 199 Units	2	"	"	"
200 and over Units	3	"	"	"

If a recreational or service building is provided, at least one of the required loading spaces shall be located in conjunction with the recreational or service building.

B. For Buildings Used Entirely for Office Occupancy.				
Under 5,000 sq ft	0	12 ft	30 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

C. Commercial, Non-office, Public and Semi-Public.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 59,999 sq ft	1	"	"	"
60,000 - 249,999 sq ft	2	"	"	"

For each additional 100,000 square feet of any portion thereof over 250,000 square feet, one additional loading space.

D. Industrial.				
Under 5,000 sq ft	0	12 ft	55 ft	14 ft
5,000 - 99,999 sq ft	1	"	"	"
100,000 - 239,999 sq ft	3	"	"	"
240,000 - 319,000 sq ft	5	"	"	"
320,000 - 399,000 sq ft	6	"	"	"
400,000 - 489,999 sq ft	7	"	"	"
490,000 - 579,999 sq ft	8	"	"	"
580,000 - 669,999 sq ft	9	"	"	"
670,000 - 759,999 sq ft	10	"	"	"

For each additional 100,000 square feet or any portion thereof over 760,000 square feet, an additional loading space is required.

(Adopted 10-8-92)

7.170. LANDSCAPING OF OUTDOOR STORAGE OR PARKING AREAS.

A minimum of 5% of the gross parking lot area shall be designed and maintained as landscaped area, subject to the standards in Sections 3.105 through 3.120. This requirement shall apply to all parking lots with an area of 600 square feet or greater. Approved sight obscuring fences or vegetative buffers shall be constructed where commercial parking lots abut Residential Zones. The minimum 5% landscaping shall be counted as part of the total landscaping required for the property.

(Section 7.180, Parking in the Downtown Area, Exception added by Ordinance 99-21, 11-1-99; Section 7.180 deleted by Ordinance 14-03, 4-21-14)

C-3: GENERAL COMMERCIAL ZONE

2.385. PURPOSE.

This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off-street parking requirements for all uses.

2.390. USES PERMITTED OUTRIGHT.

The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

1. Business service establishment.
2. Commercial laundry or dry cleaning establishment.
3. Commercial or public off-street parking lot.
4. Communication service establishment.
5. Construction service establishment.
6. Eating and drinking establishment.
7. Educational service establishment.
8. Family day care center in single-family, two-family, or multi-family dwelling.
9. Home occupation in existing dwelling.
10. Motel, hotel, bed and breakfast, inn, home stay lodging (which satisfies requirements in City Code Sections 8.750 to 8.800), and associated uses except as follows:

    a. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.10.b.

    b. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.

    (Section 2.390.10 amended by Ord 19-07, 7-1-2019)

11. Multi-family dwelling.

12. Personal service establishment.

13. Professional service establishment.

14. Public or semi-public use.

15. Repair service establishment, not including automotive, heavy equipment, or other major repair services.

16. Residential facility.

17. Retail sales establishment.

18. Single-family and two-family dwelling in a new or existing structure:

    a. Located above or below the first floor with commercial facilities on the first floor of the structure.

    b. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

    (Section 2.390.18.b added by Ordinance 11-08, 7-5-11)

    (Section 2.390(18) amended by Ordinance 00-08, 9-6-00)

19. Transportation service establishment.

20. Conference Center.
    (Section 2.390(20) added by Ordinance 94-06, 6-6-94)

21. Indoor family entertainment or recreation establishment.
    (Section 2.390(21) added by Ordinance 98-01, 1-5-98)

22. Transportation facilities.
    (Section 2.390.22 added by Ordinance 14-03, 4-21-14)

23. Residential Home in a new or existing structure:

    a. Located above or below the first floor with commercial facilities on the first floor of the structure.

    b. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

    (Section 2.390.23 added by Ord 19-05, 6-17-2019)

C-3: GENERAL COMMERCIAL ZONE
2.385 PURPOSE
2.390 USES PERMITTED OUTRIGHT
2.395 CONDITIONAL USES PERMITTED
2.405 LANDSCAPED OPEN AREA
2.410 HEIGHT OF STRUCTURES
2.415 OTHER APPLICABLE USE STANDARDS

2.385 PURPOSE

This zone is primarily for a wide range of commercial businesses, including most of those allowed in other commercial zones. Compared to the C-4 Zone, the C-3 Zone is more appropriate for uses requiring a high degree of accessibility to vehicular traffic, low intensity uses on large tracts of land, most repair services, and small warehousing and wholesaling operations. Unlike the C-4 Zone, there are maximum lot coverage, landscaping, and off street parking requirements for all uses.

2.390 USES PERMITTED OUTRIGHT

The following uses and their accessory uses are permitted in a C-3 Zone if the Community Development Director determines that the uses will not violate standards referred to in Sections 2.400 through 2.415, additional Development Code provisions, the Comprehensive Plan, and other City laws:

A. Business service establishment.
B. Commercial laundry or dry cleaning establishment.
C. Commercial or public off-street parking lot.
D. Communication service establishment.
E. Construction service establishment.
F. Eating and drinking establishment.
G. Educational service establishment.
H. Family day care center in a legal dwelling unit.
I. Home occupation in a legal dwelling unit.
J. Motel, hotel, bed and breakfast, inn, home stay lodging, of no more than five (5) units located in an existing structure, that is over fifty (50) years old, and that the transient lodging is accessory and subordinate to the primary use of the structure, except as follows:
    1. Structures or portions of structures occupied as a residential dwelling unit after January 1, 2019 and/or originally constructed as a residential dwelling unit may not be used as a motel or hotel, except as noted in Section 2.390.J.
    2. Structures or portions of structures originally constructed as a motel or hotel of greater than three units may be utilized as a motel and/or hotel regardless of current use as residential units.
K. Multi-family dwelling.
L. Personal service establishment.
M. Professional service establishment.
N. Public or semi-public use.

O. Repair service establishment, not including automotive, heavy equipment, or other major repair services.
P. Group Living Facility.
Q. Retail sales establishment.
R. Single-family and, two-family dwelling in a new or existing structure:
    1. Located above or below the first floor with commercial facilities on the first floor of the structure.
    2. Located in the rear of the first floor with commercial facilities in the front portion of the structure.
S. Cottage Cluster Development.
T. Transportation service establishment.
U. Conference Center.
V. Indoor family entertainment or recreation establishment.
W. Transportation facilities.
X. Residential Home or Residential Facility in a new or existing structure:
    1. Located above or below the first floor with commercial facilities on the first floor of the structure.
    2. Located in the rear of the first floor with commercial facilities in the front portion of the structure.

HISTORY
Amended by Ord. 22-01 on 11/7/2022

CITY OF ASTORIA
Founded 1811 • Incorporated 1856
COMMUNITY DEVELOPMENT

EXHIBIT A

AUDIO/VISUAL RECORDING

February 20, 2024 Astoria City Council Meeting – Appeal Hearing for AP24-01

Provided to LUBA for the record on a USB thumb drive.

The Zoom Audio/Visual recording may also be accessed by using the following URL:

https://us02web.zoom.us/rec/share/37XWzTX8-W3d18HA9dEk4OJfa-HAyNnNTS9Vm1Y1xOfBkhKJGGQQTKnWzjAf2FVD.dKHdRjs9fD0JTuY3?startTime=1708474832000

CITY OF ASTORIA
Founded 1811 • Incorporated 1856

COMMUNITY DEVELOPMENT

EXHIBIT B

AUDIO/VISUAL RECORDING

November 02, 2023 Hearings Officer Meeting – Appeal Hearing for AP24-01

Provided to LUBA for the record on a USB thumb drive.

The Zoom Audio/Visual recording may also be accessed by using the following URL:

https://us02web.zoom.us/rec/share/37XWzTX8-W3d18HA9dEk4OJfa-HAyNnNTS9Vm1Y1xOfBkhKJGGQQTKnWzjAf2FVD.dKHdRjs9fD0JTuY3?startTime=1708474832000