

CALL TO ORDER The Regular meeting of the Seaside City Council was called to order at 7:00 PM by Mayor Don Larson.

ROLL CALL Present: Mayor Don Larson; Council President Johnson; Councilors Jay Barber, Tita Montero, Seth Morrisey, and Randy Frank.

Absent: Councilor Dana Phillips

Also Present: Mark Winstanley, City Manager; Dan Van Thiel, City Attorney; Dave Ham, Seaside Police Chief; Dale McDowell, Public Works Director; Kevin Cupples, Seaside Planning Director; Russ Vandenberg, Seaside Civic and Convention Center and Seaside Visitors Bureau General Manager; and RJ Marx, Daily Astorian/Seaside Signal.

AGENDA Mayor Larson asked for a motion and a second for approval of the agenda.

Councilor Frank so moved with a second from Councilor Morrisey; carried unanimously. (Frank/Morrisey)

COMMENTS – PUBLIC None

CONFLICT Mayor Larson asked whether any Councilor wished to declare a conflict of interest.

Councilor Montero declared a conflict of interest with the Seaside Civic and Convention Center Exterior Reader board Sign Proposal. Councilor Montero's brother in law owned a company that bid on the sign proposal for the convention center.

CONSENT AGENDA Mayor Larson asked for a motion and second to approve the consent agenda.

Consent Agenda: Payment of the Bills - \$1, 511,562.84; and Approval of Minutes July 25, 2016.

Council President Johnson made a motion to approve the consent agenda with a second from Councilor Morrisey; carried unanimously. (Johnson/Morrisey)

VACANCY – CITY TREE BOARD Mayor Larson stated there was still a vacancy on the City Tree Board with no applications received.

LIQUOR LICENSE Mayor Larson stated there was a liquor license application received from Guido and Vito's Italian Restaurant, 604 Broadway. Mayor Larson further stated the application was for a Full On-Premises Sales License, and was for a change of ownership. Mayor Larson asked if the owner or representative was present and DeAnna Sheets-Raniero who was the owner was present for Council questions.

Mayor Larson asked if Council had any questions.

Councilor Frank so moved to grant the application with a second from Councilor Barber. (Frank/Barber)

APPROVAL - ADDENDUM COASTCOM FRANCHISE TRANSFER Mark Winstanley, City Manager, explained the City of Seaside has had a franchise agreement with CoastCom, Inc., since May 14, 2013, for the Non-Exclusive Telecommunications Network. Mr. Winstanley further stated on June 3, 2016, CoastCom, Inc. and Astound Broadband, LLC entered into a definitive purchase agreement to acquire the assets and operations of CoastCom. The combination of the two companies will bring unique and beneficial technology assets to continue to serve the businesses and organizations of Seaside, while preserving the commitment to excellence and strong local presence of CoastCom for the community. Mr. Winstanley further stated CoastCom was requesting the City of Seaside approve an addendum to transfer the current CoastCom franchise. Astound satisfied the requisite legal, technical and financial qualifications outlined under applicable federal, state and local law to hold the telecommunications franchise to provide services to the City of Seaside. Mr. Winstanley further stated the addendum states: The addendum to the Non-Exclusive Telecommunications Network Franchise Agreement between the City of Seaside ("City") and CoastCom, Inc. ("Franchisee") dated May 14, 2013, is made this 22nd day of August, 2016. City and Franchisee hereby agree to the following terms and conditions: 1) The City of Seaside granted to CoastCom, Inc., an Oregon corporation (Franchisee), a franchise as set forth in the Franchise Agreement between City and Franchisee dated May 14, 2013.

On June 3, 2016, Franchisee and Astound Broadband, LLC entered into an Asset Purchase Agreement for the sale of assets of including the franchise, to Assignee. Franchisee and Assignee submitted a letter to City on or about July 21, 2016, requesting City's consent to the assignment and transfer of the Franchise from Franchisee to Assignee. The City has concluded Assignee has established it meets the legal, technical, and financial criteria to hold the Franchise and to operate the telecommunications network. 3) City hereby approves the Consent Request and consents to the transactions contemplated by the Purchase Agreement and the assignment of the Franchise from Franchisee to Assignee effective upon closing of the Transaction. City's approval of the Addendum and its consent to the assignment of the Franchise to Assignee shall be effective from and after its adoption and approval by the City. Within sixty (60) days following a transfer that required written consent of the City, Franchisee shall deliver to the City documentation evidencing the transfer and an acknowledgement of the transferee that it agrees to be bound by the terms and conditions of the Franchise. 4) City confirms that: (a) the Franchise was duly issued to Franchisee, is valid and enforceable in accordance with its terms, and is in full force and effect; (b) other than as set forth in this addendum, there have been no amendments or modifications to the Franchise; (c) to City's knowledge, there are no defaults under the Franchise, and no event has occurred and is continuing which, with the giving of notice or passage of time, or both, could constitute a default thereunder, and (d) upon the closing of the Transaction, the duly authorized franchisee under the Franchise will be Assignee. 5) All other terms of this franchise agreement dated May 14, 2013, shall continue to apply.

Councilor Barber so moved with a second from Councilor Frank; carried unanimously. (Barber/Frank)

**APPROVAL -
CONVENTION CENTER
RENOVATION**

Russ Vandenberg, Seaside Civic and Convention Center and Seaside Visitors Bureau General Manager, stated the Convention Center Staff and Commissioners are hereby recommending the approval of the Seaside Civic and Convention Center Addition/Renovation project. This project will add approximately 10,205/sf to the existing 62,000/sf facility and renovate 13,237/sf of the current space. This project started in 2009 with the development of an ad-hoc committee appointed by city council and led by Jeff Kilday, Larry Haller, Mark Blake, Jeff Harrington, Les McNary and Mary Davies. Looking back over the last 4 decades, it becomes clear that the success and prosperity of the "Convention Center" is no accident. It is due to the visionaries and risk takers of the early 1970's and civic leaders who put forward a plan to better the community and allow Seaside to steadily proceed to the success we enjoy today. The Convention Center was and is the "cornerstone" to a courageous and "gutsy" "Community Plan of Action". A volunteer lead plan for Seaside to be the architect of its own economic development. Visionaries like Bob Poole, Warren Kan, Harold Johnson, Harry Miller, Newt Snyder, Jay Brown, Bill Dagget, and Larry Haller to name a few who gathered \$10,000 of their own funds to purchase convention center equipment and rallied to make Seaside, a year round destination and vibrant hometown community in which to live and work. The Convention Center stands once again as the key element to the future prosperity and vitality of our community. Never have the challenges been more demanding, the stakes higher and the rewards more clearly visible with the need for our community to stay active, competitive and financially viable by renovating and improving our center. This is the right project, at the right time, to answer an identified need not only for the Convention Center but the downtown business community, and because of the expected main and primary funding source generated through the collections of transient occupancy tax, it places no financial burden on the citizens who live and work in our community. The Center has taken full advantage of its past success and recognized state-wide reputation as a quality, first-class facility with superior customer service in a world renowned hospitality community. We have spent countless hours preparing for today. We have engaged in various research projects such as Market and Feasibility studies, Master Plan Development studies and Financial Analysis studies, we have hired some of the finest architectural firms to develop conceptual and best use of existing space designs, hired engineers to review existing structures to determine if we have the ability to renovate and add additional space, conducted Feasibility studies for Sports and Spectators events and currently have a great sub-committee consisting of Rodger Schultz, Tim Tolan and Jeff Kilday on board to help me review and make recommendations on all of these studies. It is with great pride, that I ask you, the visionaries of today to approve this Seaside Civic and Convention Center addition/renovation project that is now before you.

Mayor Larson stated an amazing structure and you have come through with an amazing result of using the existing ground. That is absolutely fantastic and all these people that were known around town.

Mr. Vandenberg stated with the project the convention center would add 10,205 square feet to the existing facility and renovate 13,237 square feet of the current space. The project would improve and give more room to bring larger and more diverse groups into the community.

Councilor Frank stated he served 10 years on the Convention Center Commission and going through the process he liked this concept and the funding for it.

Councilor Frank so moved with a second from Council President Johnson; carried unanimously. (Frank/Johnson)

Councilor Morrissey stated it needed to be clear that the financing was not discussed and just the renovations had been approved.

**APPROVAL - PROPOSALS
CONVENTION CENTER
EXTERIOR
READERBOARD**

Mr. Vandenberg stated the current sign was costing a lot of money because of breakdowns. Seaside Civic and Convention Center received the following bids for the replacement of three DAktronics Galaxy Exterior Reader Boards. Pricing included installation: Tube Art Group - \$50,466.00; Security Signs Inc. - \$49,760.00; ES&A - \$49,135.00; and Ramsey Signs - \$47,848.00. Mr. Vandenberg further stated after making a detailed comparison, staff recommended accepting the bid from Ramsey Signs in the amount of \$47,848.00.

Council President Johnson so moved to accept the bid from Ramsey Signs with a second from Councilor Barber; carried with Montero Recused. (Johnson/Barber)

**APPROVAL -
NORTH HOLLADAY
CHANGE ORDERS
JUNE/JULY 2016**

Dale McDowell, Public Works Director, stated Council had copies of the change orders in their packets. The change orders were for the North Holladay Project for the June 30, 2016, Force Account Change Order totals were \$38,540.27 and July 31, 2016, Force Account Change Order totals were \$16,025.13.

Council President Johnson moved Council accept the change orders for June, 2016, and July, 2016; carried unanimously. (Johnson/Montero)

**UPDATE -
NORTH HOLLADAY
DRIVE PROJECT**

Mr. McDowell stated there is one utility company that has two people working at a time to lower the wires for cable television. There have been four workers when there are subcontractors. Staff calls headquarters every day if not twice a day to get more people out on the project. The cable was saying they would need a month to do their work. Tapani Inc. went door to door to find out there were twenty-seven homes with Charter Television and it was very frustrating because the project was so close. Pacific Power and Light was finished with their work except they have to take the poles down once Charter Cable was finished. Mr. McDowell further stated Tapani had the concrete subcontractor on site today to finish curbs.

**VACANCY - CONVENTION
CENTER COMMISSION**

Mayor Larson stated there was one vacancy on the Seaside Civic and Convention Center Commission with Chuck Minor resigning. Mayor Larson further stated Council would be taking applications for the vacancy.

**PUBLIC HEARING -
APPEAL PLANNING
COMM. VARIANCE**

Mayor Larson stated this was a City Council Land Use Public Hearing. "This is the time and place for the Seaside City Council to hold a public hearing on an appeal of a Planning Commission Decision. Mayor Larson stated there were a few procedural issues to take care of first. Mayor Larson asked "Does anyone wish to object to this item on jurisdictional grounds, in other words does anyone think the Council was not the right body to hear this item'. Mayor Larson stating hearing none Council would move on. Mayor Larson further stated he needed the Council to state if there were any conflicts of interest or exparte contact or conflict of interest?" Mayor Larson asked each Councilor and there were no conflicts of interest. Mayor Larson stated a fellow by the name of Mark came over to talk and he was a friend of someone and the Mayor further stated he could not talk about the issue and that was the end of the conversation.

Mayor Larson stated he would ask staff to give a brief report and then hear testimony from the applicant. Mayor Larson asked Kevin Cupples to explain.

Kevin Cupples, Planning Director, stated to start out individuals testifying are reminded their testimony must be directed towards the applicable criteria or other criteria in the plan or land use regulations which they believe is applicable to the decision and failure to raise an issue with sufficient details to allow the decision makers and or parties an opportunity to respond to the issue precludes the Land appeal to the Land Use Board of Appeals on that issue." Mr. Cupples further stated two of the neighboring property owners have appealed the Planning Commission's approval of Antoine Simmons' variance to the allowed building height and required side yard setbacks at 341 S Prom (file reference 16-017V). The property is zoned Resort Residential (R-R) and the zone currently allows a defined building height of 45 ft. The variance approval would allow the applicant to build up to a defined height of approximately 60 ft on the western portion of the property but the apparent height would be approximately 52 ft due to a below grade story. The eastern portion of the building would be setback 3 ft. along a portion of the southern property line and 3' along a portion of the northern interior property line where the zone requires an 8' setback. The applicant intends to develop a 48 unit motel. The building will have sloped roofs and numerous dormers and open decks on the westerly facade. The structure would also have a non-habitable tower with a peak height of 80'; however, this type of architectural feature is already allowed an exception to the building height under the ordinance.

A number of pre-existing buildings in the surrounding area are close to or exceed the requested building height authorized by variance. The appellants own two parcels adjacent to the proposed development and they object to proposed development based on the negative impacts they believe it will have on their property. Their objections are each explained in the attached information; along with a memorandum of support submitted by Mr. Nudelman's attorney, Sean T Malone. 16-041V Nudelman, Calef Appeal of PC Variance Approval 16-017V-341 S Prom-Simmons. In addition to the appellant's information, a letter in opposition to the Commission's approval from a property owner in the Sand & Sea Condominiums is attached. Planning Commission Public Hearings: The Planning Commission reviewed the original staff report and heard public testimony during their initial hearing on May 3, 2016. The request was continued and additional testimony was taken at the next two hearings (June 7, 2016 & July 5, 2016). Due to the amount of information in the record (applicant's submittals, staff report, written and verbal testimony reflected in the minutes), all of the file information will be provided in electronic form to each City Council member & the Mayor. Planning Commission Action: On July 5, 2016, the Seaside Planning Commission closed the public hearing and after deliberation, they approved the above referenced request subject to their review and approval of a final order on July 19, 2016. The motion to approve the applicant's proposal was passed by a vote of 6 to 0. Commissioner Horning stepped down and did not participate due to a conflict of interest. A copy of the Commission's final decision & supporting document is attached for review. City Council Action: The Council will conduct a public hearing to review the appeal, take additional testimony, and make a final decision. A representative for Mr. Simmons indicated they may request a continuance in order to provide additional information for the Council to review. A continuance may be granted by the Council before they make a final decision since this is a de novo hearing and it is not strictly based on the record. Once the Council completes their hearing process, they will make a final decision to uphold the Commission's decision and support the applicant's variance approval or overturn the Commission's decision in support of the appellants' request to deny the variance. The attachments that were included in the packet: Nudelman's Appeal, Calef's Appeal, Sean T Malone's Memorandum, Owen Blank's Letter, Planning Commission's Decision.

Councilor Frank asked what the zoning was on the properties.

Mr. Cupples stated the whole block is zoned RR which was a Resort Residential Zone.

THE FOLLOWING INFORMATION WAS PROVIDED IN THE CITY COUNCIL PACKETS:

SEASIDE PLANNING COMMISSION – NOTICE OF DECISION: (Letter to: Applicant, Parties, and Previously Notified Individuals)

16-017V: A request by Antoine Simmons for a variance to the allowed building height and required side yard setbacks at 341 S Prom. (6 10 21AC TL: 11900, 11100, 10900). The property is zoned Resort Residential (R-R) and the zone currently allows a defined building height of 45 ft. The applicant is requesting to build up to a defined height of approximately 60 ft on the western portion of the property but the apparent height would be approximately 52 ft due to a below grade story. The eastern portion of the building would be setback 3 ft along a portion of the southern property line and 3' along a portion of the northern interior property line where the zone requires an 8' setback. The applicant intends to develop a 48 unit motel. The building will have sloped roofs and numerous dormers and open decks on the westerly facade. The structure would also have a non-habitable tower with a peak height of 80'; however, this type of architectural feature is already allowed an exception to the building height under the ordinance. A number of pre-existing buildings in the surrounding area are close to or exceed the requested building height.

On July 5, 2016; the Seaside Planning Commission approved the above referenced request in accordance with the provision in the City of Seaside Zoning Ordinance. The Commission's decision was based on the oral and written testimony provided during the hearing, the information submitted by the applicant, and portions of the staff report. The extent of the yard variances was altered a number of times during the review process and ranged from zero to five foot setbacks. The applicant ultimately proposed a 3' side yard setback along the eastern portion of the building while maintaining the required 8' setback along the western portion of the structure. Likewise, the western portion of the building will be 8' from the property line adjacent to 25 Avenue A and the eastern portion of the building will be 3' from the property line adjacent to 340 Beach Drive. The height variance for the western portion of the building has remained consistent throughout the review process but the height of the eastern portion of the building will conform to the 45' building height in the zone. The decision was supported by findings, justification statements, and conclusions adopted by the Commission subject to the following conditions: Condition 1. As stated in the applicant's project narrative, the variance is limited to: A height variance of 15 feet for the westerly portion of the building fronting on Sixth Street. The actual height at Sixth Street will only be a 7 foot increase due to the 8 foot grade difference from Beach Drive. A side yard reduction from 8 feet to 3 feet at the south property line side yard adjacent to the existing Promenade Condominium parking lot. The remaining westerly portion of the building will meet the required 8 foot setback per Section 3.051 (4). A side yard reduction from 8 feet to 3 feet at the existing north property line adjacent to the existing residence (340 Beach Drive). Although they are not conditions of approval, the following is a reminder to the applicant.

The variance will become void one (1) year from the date of decision unless the permit is utilized or an extension of time is approved in the manner prescribed under the Seaside Zoning Ordinance, As with any permit, the applicant must meet all applicable standards in the Seaside Zoning Ordinance and any other applicable City of Seaside Ordinances.

APPEAL PROVISIONS: The Planning Commission's decisions may be appealed in accordance with Section 10.068 of the Seaside Zoning Ordinance which states: Any action or ruling of the Planning Commission pursuant to this Ordinance may be appealed to the City Council within fifteen (15) days after Notice of Decision is provided pursuant to Section 10.066.

Written notice of the appeal shall be filed with the City Auditor. If the appeal is not filed within the fifteen (15) day period, the decision of the Planning Commission shall be final. If the appeal is filed, the City Council shall receive a report and recommendation on it from the Planning Commission and shall hold a public hearing on the appeal. The appeal must be filed at the Planning Department (located at 1387 Ave. U) or mailed to 989 Broadway, Seaside, OR 97138. The appeal must include the applicable fee of \$625.00. If you have any questions regarding this decision or the appeal process, please contact the Planning Department at (503)738-7100. The Notice of Decision date and appeal deadline are Date of Decision Mailing: July 20, 2016 Appeal Deadline: August 4, 2016.

PLANNING COMMISSION'S FINAL DECISION WAS SUPPORTED BY THE FINDINGS, JUSTIFICATIONS, CONCLUSIONS & CONDITIONS TO SUPPORT THEIR FINAL DECISION.

REQUEST SUMMARY: 16-017V: A request by Antoine Simmons for a variance to the allowed building height and required side yard setbacks at 341 S Prom. (6 10 21AC TL: 11900, 11100, 10900). The property is zoned Resort Residential (R-R) and the zone currently allows a defined building height of 45 ft. The applicant is requesting to build up to a defined height of approximately 60 ft on the western portion of the property but the apparent height would be approximately 52 ft due to a below grade story. The eastern portion of the building would be setback 3 ft along a portion of the southern property line and 3' along a portion of the northern interior property line where the zone requires an 8' setback. The applicant intends to develop a 48 unit motel. The building will have sloped roofs and numerous dormers and open decks on the westerly facade. The structure would also have a non-habitable tower with a peak height of 80'; however, this type of architectural feature is already allowed an exception to the building height under the ordinance. A number of pre-existing buildings in the surrounding area are close to or exceed the requested building height. A variance to the allowed building height and required yards was previously approved for a five story condominium on a portion of the subject property. The proposal in 2001 would have allowed a building with an overall height of 50 feet according to the file.

DECISION CRITERIA, FINDINGS, AND CONCLUSIONS: The following is a list of the decision criteria applicable to the request. Each of the criteria is followed by findings or justification statements which may be adopted by the Planning Commission to support their conclusions. These may also include conditions which are necessary to ensure compliance with the Seaside Zoning Ordinance. Although each of the finding or justification statement specifically applies to one of the decision criteria, any of the statements may be used to support the Commission's final decision.

REVIEW CRITERIA #1: Variance Section 7.031, the property owner must demonstrate by written application that all of the following circumstances exist: The manner in which exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from lot size or shape legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control. How literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. That the special conditions and circumstances do not result from the actions of the applicant, and Evidence that granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of land, structures or buildings in other districts shall be considered grounds for issuance of a variance.

FINDINGS & JUSTIFICATION STATEMENTS: A request by Antoine Simmons for a variance to the allowed building height and required side yard setbacks at 341 S Prom. (6 10 21AC TL: 11900, 11100, 10900). The property is zoned Resort Residential (R-R) and the zone currently allows a defined building height of 45 ft. The applicant is requesting to build up to a defined height of approximately 60 ft on the western portion of the property but the apparent height would be approximately 52 ft due to a below grade story. The eastern portion of the building would be setback 3 ft. along a portion of the southern property line and 3' along a portion of the northern interior property line where the zone requires an 8' setback. The applicant intends to develop a 48 unit motel. The building will have sloped roofs and numerous dormers and open decks on the westerly facade. The structure would also have a non-habitable tower with a peak height of 80'; however, this type of architectural feature is already allowed an exception to the building height under the ordinance. A number of pre-existing buildings in the surrounding area are close to or exceed the requested building height. The applicant's submitted justification, site plan & elevation drawings dated June 27, 2016 are adopted by reference. A summary of the applicant's proposal and the original project's justification included the following: A height variance of 15 feet for the westerly portion of the building fronting on Sixth Street. The actual height at Sixth Street will only be a 7 foot increase due to the 8 foot grade difference from Beach Drive; a side yard reduction from 8 feet to 3 feet at the south property line side yard adjacent to the existing Promenade Condominium parking lot.

The remaining westerly portion of the building will meet the required 8 foot setback per Section 3.051 (4); a side yard reduction from 8 feet to 3 feet at the existing north property line adjacent to the existing residence in order to meet parking minimum stall length and aisle width. Please note that this property has a 15'-0" front yard setback on A Street and a 10'-0" side yard on Beach Drive and Sixth Street. The side yards at the south property line with the Promenade condominiums is 8'-0" per the RR zoning standards Section 3.051 (4). The 10'-0" setback from the "Non-Existent" Sixth Street is in addition to the 41'-0" setback from the Prom. Project Narrative: This project will replace the existing hotel between Beach Drive & an undeveloped portion of 6th Street. The existing hotel was originally built as a house in the 1920 and it has undergone a number of expansions and remodels. It is generally in poor condition and in need of replacement. The vacant property on the westerly portion of the property has been vacant for many years. It has been neglected and an eyesore adjacent to the Prom. The goal is to develop a hotel that fits the context of the location. This property is the only vacant parcel in the south prom vicinity that is zoned Resort Residential (RR). It is bordered by the 5 story 52 foot high Promenade hotel and 6 story 64 foot high Sand & Sea hotel to the south in the RR zone and the 8 story 84 foot high Worldmark Timeshare to the north in the C2 Zone . These adjacent buildings are considerably higher than the allowed 45 foot average height maximum for this project. The building is designed in a more traditional style that the adjacent buildings in order to convey a more welcome, friendlier appearance than the more contemporary neighboring buildings. It will have a sloped roof with numerous dormers and open decks on the westerly façade to add to the coastal experience. The tower at the northwest corner is the tallest roof at 80 feet, while the main roof and dormers are 60 feet average in height, 65 feet at the peak. The easterly portion of the property is 50 feet in width. If side yard setbacks of 8 feet were applied on both the north and south side yards, the parking as configured would not be possible. Therefore, the north & south setback along the eastern portion of the building have been reduced to three feet, which is more than zero lot line setbacks in zoning section 5.070 in R-2 and R-3 zones. This configuration will also allow easier coordination with the future redevelopment of the adjacent property to the north. There is only a garage at the southwest corner of the adjacent parcel that would abut this development. The literal interpretation of the ordinance would limit the allowed average roof height of the proposed development to 45 feet from the lowest point of the property, or 37 feet at the westerly property line, based on the slope of the site. This would reduce the development by two stories, and render the project infeasible. The special condition represented by the adjacent properties has not been created by the applicant. It is recognized that the granting of this variance will not confer any special privilege that is denied to owners of other lands, structures, or buildings in the same district. It is understood that the adjacent parcels were in compliance with the original land use zones when they were developed, therefore the non-conforming use of neighboring land is not a basis for this variance. We believe that the decreased side yard setback and increase to 60 feet for the average roof height, an addition of 15 feet over the 45 feet allowed by the current zoning, will allow a consistent pattern of development for the area and fill the "gap" that currently exists between the Worldmark and the adjacent hotels and condominiums to the south. Variances to the building height requirement have been approved in the past for structures that will enhance the exterior character of a structure and the applicant's plan does include enhancements to the exterior appearance of the structure from the Prom side view. The apparent height of the structure on the western portion of the property (that portion oriented north to south) will have the parking garage below grade. It would appear very similar to the height of the neighboring Promenade building to the south and the peak of the clock tower would provide an architectural feature that would be similar in height to the Worldmark building north of Avenue A. If this was the extent of the building on the property, it would have a defined height of approximately 52 feet. This building is being proposed close to the Central Commercial (C-2) zone boundary and that zone has an allowed building height of 90 feet in this area. The Trendwest building is located within the C-2 zone and it is the tallest building in Seaside (approximately 84' according to the applicant's submittal). The original submittal included a zero lot line that will require a solid wall along two portions of the eastern part of the proposed motel structure. The total loss of the yard area and the expansive wall would not fit in with the character of the area. The original proposal would have encroachment into the required 8' side yard adjacent to 25 Avenue A and the loss of yard would have been intensified since that existing structure is almost devoid of yards. The applicant has indicated proper engineering at the time of construction would ensure the neighboring dwelling would remain stable. The garage on the neighboring property to the north (340 Beach Dr.) is also very close to the property line and the combined yards will be approximately four feet (but not less than three feet between the two structures. The proposed development's parking configuration, without a wider structure being developed on the eastern portion of the property (one leg of the L shaped property) would be well below commonly accepted standards unless the spaces were all compact. The eastern portion of the building was stepped down in height from the applicant's original proposal to conform to the height restriction in the RR zone. Property between the Prom & Beach Drive is finite and it is important to make optimal use of it when the property is redeveloped. The ability to maximize the number of units in the east to west portion of the structure is undoubtedly important to the feasibility of the entire development and compliance with the height restriction within this portion of the building would likely reduce the total number of potential units. This request was forwarded to the Planning Commission due to the nature of the request and so that any objections could be fully heard directly by the Commission. The prior variance request to the required yards & building height was contested by owners and representatives of the neighboring property. The prior variance approval was appealed to City Council & the Commission's approval was sustained. Any future development of the property will require review by the Building Official for Fire & Life Safety compliance.

The Fire Department will want to ensure that adequate signage will be maintained or enhanced so that vehicle will not block the abutting portion of Avenue A. It provides emergency vehicle access to the beach and the abutting properties. Any future construction activities, staging, etc. will need to be carefully planned so the abutting street will remain open and unobstructed. In accordance with the Seaside Zoning Ordinance, in rendering a decision concerning a variance, the Commission must be able to make all of the findings in Section 7.032 which state: That the requirements of Section 7.031 have been met by the applicant for a variance. That the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance which will make possible the reasonable use of the land, building or structure, and That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and of the Comprehensive Plan and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. The general purpose statement in the ordinance reads as follows: Section 1.020. PURPOSE The purpose of this Ordinance is to further the objectives and goals of the Comprehensive Plan and to provide the public health, safety and general welfare of the citizens of Seaside through orderly community development with considerations for: Desirable concentrations of population; protection of property values; aesthetic, recreational and economic development; limitation of dangerous or offensive trades or industries; maintenance of adequate open space for light and air and emergency access; provisions for access and privacy; facilitate community utilities such as transportation, power, water and sewage; and to adequately provide for community facilities such as schools, parks, community centers, and other public requirements. The purpose statement in the RR zone reads as follows: Section 3.047 Purpose. To provide space for the orderly expansion of tourist accommodations and related business, such as restaurants and gift shops. These areas are characterized by built-up single family units, but are now in a state of transition. Conversion to resort uses should be provided with a minimum of disruption of existing residential values. Motels are an outright permitted use in the zone and any development will have an impact on the neighboring residential properties. It is not clear that a modified height reduction in yards along the eastern portion of the property will have any significantly greater impact to the neighboring properties than a building that would conform to the ordinance given the height of buildings in the area and the configuration (location of adjacent parking lots & residence) of the surrounding property. Throughout the hearing process, multiple objections were raised by the surrounding property owners. These included setback from the Prom & the undeveloped 6th Street right- of- way, setbacks from the neighboring house at 25 Avenue A, the house & garage at 340 Beach Drive, The Promenade Condominiums & parking lot, the apparent lack of an exceptional circumstance, obstruction of views & light, the need for full size parking spaces, rooms being too close to neighboring windows, restricted access to neighboring property etc. The applicant's proposed plans were modified in an attempt to soften these impacts and reduce them while still making practical use of the narrow portion of the RR zoned property. The Planning Commissioners pointed out that any development of the property that met all the development standards would be impactful to the neighbors. The Commissioners recognized the limited lot width of the RR zoned property as a unique circumstance and the applicant's need to maximize utilization of the lot in order to meet parking standards within the structure.

CONCLUSION TO CRITERIA #1: The variance to both the height is a significant departure to the development standards in the RR zone; however, they will allow for reasonable use of the current lot configuration and they will not unreasonably impact the surrounding uses. The height variance is supported along the western portion of the property since one floor will be below grade and it will not represent a significant departure from the surrounding developments. The applicant has sought to limit impacts to the neighboring properties by modifying their original plans so they have requested lesser variances that will still allow for the development of this property within the RR zone.

FINAL DECISION: Approve the variance for the 48 unit motel development at 341 S Prom subject the following conditions of approval: Condition 1. As stated in the applicant's project narrative, the variance is limited to: A height variance of 15 feet for the westerly portion of the building fronting on Sixth Street. The actual height at Sixth Street will only be a 7 foot increase due to the 8 foot grade difference from Beach Drive. A side yard reduction from 8 feet to 3 feet at the south property line side yard adjacent to the existing Promenade Condominium parking lot. The remaining westerly portion of the building will meet the required 8 foot setback per Section 3.051 (4). A side yard reduction from 8 feet to 3 feet at the existing north property line adjacent to the existing residence (340 Beach Drive).

Attachments: Applicant's Final Submittal Comments from Neighboring Property Owners Please note, the attachments were not included in this mailed notice of decision; however, they are in the file copy and can be viewed in the office or accessed via the following link: http://www.cityofseaside.us/sites/default/files/docs/16-017v-341_s_prom_-_simmons.pdf

Antoine Simmons, 341 S. Prom (Property Owner), stated he was also the owner of the Inn on the Prom. Mr. Simmons told a brief little history of himself and about where they came from and why he was before the Council today. In 2000 Mr. Simmons and his wife lived in Hillsboro and sold everything and moved to Cannon Beach and bought the Blue Gull Inn which was a small fourteen unit place. In 2003 he acquired the neighboring property Inn at Haystack Rock which was nine units and included a house. The name Haystack Lodgings was created and worked hard at the businesses. In 2011 he bought the property in Seaside called Inn on the Prom fifteen units (previously Edgewater Inn) and the property was in disrepair and bank owned. In 2014 he acquired the Gilbert Inn which was an amazing piece of history. These are all family ran businesses and everyone in the family is involved. Mr. Simmons further stated the Planning Commission process was his first time doing anything on this scale.

The plans for the property took three months working with the Commissioners and was not an overnight decision through the process. The approval for the project came because of listening to the neighbors and receiving their input, and input of the Commissioners. The approval was based on extreme circumstances because of the very narrow lot which was 50 foot wide. The property was zoned RR which was challenging on what could be done to the property. There was the vacant lot that had been an eyesore for many years.

Mayor Larson asked how big the lot was.

Mr. Simmons stated it was an odd shape lot which went in an angle. The lot had been vacant for so many years because you can't build on it. There were setbacks that were required. The only way to truly develop the oceanfront lot was to attach it to another piece of property. Mr. Simmons further stated at the Planning Commission meeting there were six commissioners that unanimously approved the variances, and not every party going to be satisfied in the deals.

Mayor Larson asked Mr. Simmons to tell the audience why number seven on the Planning Commission did not vote because of having contact or something.

Mr. Simmons stated he did not have discussions with the person but there was work he had done on the property with the surveying company. Mr. Simmons further stated after the ruling there was an appeal and also an attorney who was pointing out all the flaws in the process but we are dealing with people and the Planning Commission took their time to consider all the aspects and options and made their best judgment. Mr. Simmons further stated he wanted to address a couple of concerns with Mr. Nudelman and Susan and Daniel Calef who he was good friends and were his neighbors. Mr. Simmons wanted to address the loss of view, light, and value. When you live at the beach and a property is not located on the oceanfront there always will be the chance that someone will build in front of you. The Planning Commission took that into consideration and their conclusion stated an 18 and 20 in the findings where they stated any development of the property had met all the development standards. If the development was built to code it would be 45 feet tall and would block the light and view of Mr. Nudelman's home. The argument wasn't valid because it was code. Damage to the property during construction: Mr. Nudelman's home currently resided 17 feet away from the property line so if this was approved with a 3foot setback our building will be 20 feet away from his house. There was a detached garage which sat on the back corner and was 1 foot away from the lot line and was built in the setbacks and was non-compliant and would be 4 feet away from the building. With regards to the Calef home the setbacks were 8 feet all the way around it and were already at code for that and he did not think it would impact the property because there was going to be a driveway built in front of it.

Mayor Larson stated he thought the property line went right to their door.

Mr. Simmons stated with the setbacks for the building it was 8 feet back and would not be the building itself but a driveway and he did not believe there would be any damage to the home. Any time there is a project of this scale there would be engineers hired to design it and professionals that come in and do this to design the right footprint and walls to hold this thing in place. There would be insurance all in place that would take care of anything that happened or took place. Mr. Simmons stated the last thing to address was parking and in August everywhere was a parking space. He spoke about the requirements for parking spaces. Either the parking requirement was changed or there was a setback. If the building could be built 8 foot back from Mr. Nudelman's property he would not be here today. Some of the options brought up with the Planning Commission was to look at other cities and parking requirements and brought them to Kevin and that would not work. There was angle parking looked at and that would not work and we came back to setbacks and the only way to have parking done right was to have a 24 foot isle lane and 18 foot parking stalls. Mr. Simmons further stated what was the City of Seaside comprehensive plan and the properties were zoned to be resort residential (RR) and the purpose of the RR zone was to provide a space for the orderly expansion of tourist accommodations and these areas were characterized by the buildup of single family. In the last 30 plus years look at the two blocks from Avenue 'G' to Avenue 'A' and you could list off what buildings had been done. If there is an approval tonight he would work with Mr. Nudelman and Mr. and Mrs. Calef and talk about the green space and ways of screening material and buildings. Mr. Simmons presented Council with a picture of the property he wanted to build on. Mr. Simmons asked the Council to uphold the decision by the Planning Commission.

Councilor Montero stated on some of the things I was reading apparently there was consideration on a discussion about parking spaces for compact cars. What would be the difference to do that?

Mr. Simmons stated he looked at the percentages and were allowed 30% of the amount of your parking spaces. There would still need to be a variance for the setback and would be like a 5 foot setback request.

Councilor Montero asked how many parking spaces were there.

Mr. Simmons stated there were 51. What was the best use for the parking?

Mayor Larson asked if anybody wished to speak in favor of the application.

Mayor Larson asked if anybody wished to speak in opposition to the request. Come forward and give your name and address for the record.

Avrel Nudelman, 4126 SW 48th Place, Portland, stated he filed a Land Use Decision Appeal Form, and owned the property at 340 Beach Drive, Seaside, adjacent to Mr. Simmons Beach Drive, Inn at the Prom. Mr. Nudelman further stated he was here to appeal the decision of the variances given by the Planning Commission. My bottom line of my appeal is that the Planning Commission was not justified in their decision to grant variance on my property line. The applicant is creating this unique circumstance by designing a project of such a magnitude that it requires variances to the Seaside Zoning Ordinance stated setbacks. Land is not creating the unique circumstances that was clear on page 2 of my attorney's memorandum of support and was also stated in section 7.031 of the City of Seaside Zoning Ordinance.

Seaside Zoning Ordinance Section 7.031, to obtain a variance, the applicant must demonstrate by written application that all of the following circumstances exist: 1) The manner in which exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity, and result from the lot size or shape legally existing prior to the date of this Ordinance, topography, or other circumstances over which the applicant has no control. 2) How literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance. 3) That the special conditions and circumstances do not result from the actions of the applicant, and 4) Evidence that granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures, or buildings in the same district. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted use of land, structures or buildings in other districts shall be considered grounds for issuance of a variance."

Mr. Nudelman stated he was respectively requesting the Planning Commission decision regarding variance on his side of the property line be reduced. Mr. Nudelman was not opposed to a project by the way which is what he read in the description supplied here at the bottom of the City of Seaside Memorandum it says: The appellant if objects to a proposed development, and he was not opposed to a development and he thinks there should be a development but he was opposed to it being 3 feet away from his property line. Mr. Nudelman went through the basic points of his appeal information (provided below). Mr. Nudelman further stated the last article in the Daily Astorian dated August 10, 2016; Mr. Simmons was quoted if I am understanding this correct "The value of the Calef and Nudelman homes are difficult to address as both properties are already located in the shadows of the nine story Wyndam Resort, and other condominium development. Mr. Nudelman further stated he was not in the shadow of any structure my home has a large abundance of light which was what I liked about living where he lived in his home. If the City Council believes or anyone does believe Mr. Simmons opinion that the Wyndam which was a parking lot in the street near his home was going to value my property into question then how come the City Council or any other body conclude that building a four story structure 3 feet from his property line would make his property value even more difficult to address. Mr. Nudelman read article 1 section 1.020 of the City of Seaside Zoning Ordinance 83.10 which states the purpose of this ordinance is the protection of property values. Mr. Nudelman further stated this land that is going to be developed is going to impact by being three feet away from his property and putting him into the shadows and decreasing his light and affecting his privacy and being injurious to him by lowering the property value. Mr. Nudelman asked if there were any questions.

Appeal Information from Avrel Nudelman: My home and property is directly adjacent to 341 S. Prom along the north border of its eastern portion. If this project goes forward, I will be affected in the following ways: My view to the south of the mountains will disappear (as will my ocean view to the west) The light entering and on the south side of my house will be severely reduced My property value will almost certainly decrease, The potential for damage to my house owing to the proximity of construction and excavation for underground parking will increase 2. My objections to the decision to grant variance from 8 to 3 feet on the northern side of the proposed project abutting my property are: The decision goes against Article 1 Section 1,020 of the City of Seaside Zoning Ordinance No. 8340 (CSZO) which states "The purpose of this Ordinance is to protection of property values, maintenance of adequate open space for light, provisions for privacy." The Planning Commission in #16 of their Findings and Justification Statements used this section to justify their decision in error. The decision goes against CSZO Section 3.051 Standards In the MI Zone, the following standards shall apply: 4.Side Yard: Side yards shall be increased to eight feet for structures three or more stories in height; Article 7 Section 7.010 of the CSZO states: In certain instances where the property owner can demonstrate the situation to be unique and that by complying with the Ordinances the owner cannot make reasonable use of the property, a variance can be granted.." I did not see anywhere in the project's file at the Community Development Dept., nor did I hear specifically at the Planning Commission meetings any proof that this project could not be scaled down to meet the property's size and shape, thereby conforming to existing ordinances. In addition I did not see any proof that scaling this project down to fit the property would cause any type of hardship, financial or otherwise. This was an omission on the part of the Planning Commission. I heard one or more of the Planning Commissioners say at the July 5th meeting that this was "assumed" and used this assumption to make a decision to grant variance; Article 7 Section 7.010 also states:

"The granting of a variance however, cannot alter....nor can the property owner be granted any special privileges which give added advantage over neighbors."; The decision to grant a 3 foot side setback gives the owner the decided advantage of increased use of space, light, and view, while putting me at a disadvantage by decreasing mine. It also puts me at a disadvantage by limiting the potential of my property for commercial use due to the extreme proximity of the proposed structure thereby reducing my property value, e, Section 7.031 of the CSZO requires the property owner to demonstrate by written application that all of the following circumstances exist: That the special conditions and circumstances do not result from the actions of the applicant". This circumstance was deemed true by the Planning Commission and used as a major factor in its decision- making justification to grant variance. This was a major error made by the Planning Commission. (Refer to #15 of the Planning Commissions Findings and Justification Statements dated July 19, 2016) Clearly the special conditions and circumstances DO result from the actions of the applicant. Had the applicant not planned a structure of such magnitude, in advance of even acquiring the adjacent vacant property, there would be no need for the amount of parking required and therefore no need for a variance on its northern side bordering my property. I have two problems with #8 of the Findings and Justification Statements: It states that "proper engineering at the time of construction would ensure the neighboring dwelling would remain stable." 1. What will be the nature of this assurance and 2? Why is it only ensured to the "neighboring dwelling" when there are TWO neighboring dwellings? # 19 of the Findings and Justification Statements. This states that the applicant's proposed plans were modified "in an attempt to soften these impacts" including views and light. The variance granted by the Planning Commission on the property's north side does the exact opposite by intensifying the negative impacts on my property by eliminating views and reducing light as a result of the decreased setbacks. 3,1 am seeking relief from the appellate body in the form of a reversal of the decision by the Seaside Planning Commission to grant a variance from 8 feet to 3 feet on the northern property line of the proposed development adjacent to my property. (Final Decision: Condition 1: C) I request that the appellate body increase or at the very least uphold the side setback footage stated in the existing City of Seaside Zoning Ordinance (Section 3.051 Standards iv. Side Yard) and apply that to the proposed Pearl project's northern property line abutting my property.

Daniel Calef, 25 Avenue 'A', Seaside, stated he and his sister Susan filed a Land Use Decision Appeal Form, and owned the property at 25 Avenue 'A', Seaside, stated he was the small house across the street from the large condominium complex. Those that have been here for a while have known the property to be the Montag House and were part of the Montag House. Mr. Calef and his sister had been coming to Seaside every summer of their lives which was sixty-two years in his case. Mr. Calef further stated they had concerns with two things, the size of the building directly in front of us will simply dwarf his property and completely shading his property being much taller then our house and essentially regardless of whether it blocks any view or not will put him in the dark most of the year. There were concerns with being in the shadow of a very large building could affect the house by more moisture and wood rot. In terms of the building there were concerns with the traffic that would be occurring from the driveway directly in front of their house. Mr. Simmons adjusted the distance because it was so close that they could have been hit just coming down the stairs. Mr. Calef further stated they were also deeply concerned about any possible damage that might occur during the construction process specifically large scale excavation next to a 110 or some odd year old structure. A Montag family member who was structural engineer from Hawaii suggested that what was underneath the property needed to be looked at very carefully to see if it can safely be excavated without causing damage to our house and they had not seen evidence to their satisfaction saying this excavation could be done without undermining our house. The property in front of us had gone through many iterations and would love something in front of us besides the doggy rest area but we would prefer something scaled down slightly so we were not dwarfed by a large building in front of us. Mr. Calef further stated we would certainly welcome something in the vacant lot but we want something that doesn't dwarf our little house and we are opposed to the variances allowing extra height.

Appeal Information from Daniel and Susan Calef: We are the owners of 25 Avenue A, a duplex that our family has owned for generations and the proposed construction will abut our property. We inherited the home with only the land it was built upon with no setbacks on our side of the property line; hence any negative impact to our living space will be magnified. We believe that we will have reduced light, views and privacy, possible damage to our home during the excavation, and that the value of our property will be significantly reduced due to the size and lay out of the proposed hotel if the variances are granted; We object that the decision did not adequately address our concerns for the structural integrity of our house during construction, did not address our concerns about the proposed driveway adjacent to the entrances to our house, and did not address our concerns regarding the adverse affect of a large multistory building directly to the west of our older house; We request that the appellate body reverse decisions allowing height and setback variances for the proposed hotel.

Pat Golding, 361 S. Prom #303, Seaside, stated she had property at the Sand and Sea Condominiums and was here more as a concerned citizen. Ms. Golding stated the way the government was supposed to be was to always protect the small person. This situation can be a win, win but it would take a little more work then what we've done. We have talked about variances because it was an unusual extraordinary circumstances and she would say the extraordinary circumstances is simply that the developer did not buy enough land. Mr. Golding has worked with health care since the 60's as an aide and hospital administrator and as a hospital administrator you have a lot of power and there are a lot of responsibilities.

Often when hospitals have to expand neighborhoods had been bought and everything was available for a price or almost everything. You can not offer fair market value and expect someone to move. If I went to your house and said I really want your house and will pay fair market value and you will move out. There is a cost to sell and a cost to buy and when we worked with hospitals we were good neighbors and offered one and a half times and sometimes two times the price. A project did not get taken on until all the land was bought and we did our due diligence. We cannot use government influence and governmentalization to aid and she thinks there is a win here. If the developer went back and with due diligence figured out a place to move the people there, you make it so it is a win, win. It takes a little more money and you have to plan better. The extraordinary circumstances is there's not enough profit and you need to get more profit or move your property elsewhere. Ms. Golding had a couple more points, and she does not think there is an extraordinary circumstance if you haven't bought sufficient property so either buy sufficient property or find a place you can get sufficient property. Everything is for sale at a price but not at market value and there is a win, win if the developer goes back to the table and gets enough money to buy more property.

Leslie Berman, 717 N. Downing, Seaside, stated she was in support for Avrel Nudelman and Susan Calef and their appeal of the decision made by the Seaside Planning Commission to grant an 8 foot setback variance for the Simmons project. Avrel Nudelman's family purchased the house in 1940 and has been a part of the community for at least seventy-five years. I agree with Avrel Nudelman on all four points of his appeal. His view to the south side of the mountains would disappear as well as his ocean view to the west. The light will disappear from the South side will severely reduced. His property value will decrease and there is potential for damage from the construction and excavation of Mr. Simmons project. As stated in the appeal the 8 foot setback is supposed to protect property value, maintain open space for adequate light and privacy, and is required for structures three or more stories high. As stated in the appeal there has been no assurances for neighborhood dwellings to remain stable during the construction. There has been given an advantage to Mr. Simmons project for light and privacy as the expanse of the Nudelman and Calef properties. Most importantly, if there has been no proof that the project cannot be scaled down to meet the property size and shape. There has been no proof of exceptional circumstances that would require the Seaside Planning Commission to create a variance. The only special circumstances are those created by Mr. Simmons to increase the profitability of the project and it was very sad because Mr. Simmons, Avrel Nudleman and the neighborhood has been a close community for along time and have looked out after each other. Ms. Berman asked for a reversal of the decision by the Seaside Planning Commission to grant a variance from 8 feet to 3 feet for the property 340 Beach Drive, Avrel Nudelman.

Dana Brown, 361 S. Prom #104, Seaside, stated she was the owner of Prom #104 on the promenade right next door to the proposed project. The reason she was here was in support of the appeal for Nudelman and Calef for the variance request by Mr. Simmons. Ms. Brown further stated she had many concerns but primarily the setback from the 8 foot to the 3 foot. She had concerns regarding the light and agreed with Mr. Nudelman when he was speaking about the deficiency in light. Another concern she had was that she was a fairly new owner (1 year) and was not aware it was in the Planning Commission phase and received a letter about the July 5, 2016, meeting and sent a letter in opposition to that point and she was not sure if there were other property owners in the area that weren't even aware of this going to the Planning Commission because she would have been there. There were many letters written in opposition and the articles in the Daily Astorian and it would affect many property owners in the area. There were concerns about the excavation and digging in the ground. Ms. Brown asked Council to table their decision on this or vote no.

Laura Churchill, 240 6th Avenue, Seaside, stated Council should deny the variances for the Pearl Project. This was not a hardship case for them and under present guidelines the project was very intrusive for the two homes and would be compounded by the variances and they would lose property value, light, views, and privacy. There could be structural damage and more noise issues. Ms. Churchill further stated she remembers those two homes being in that block for many years and was not very neighborly for build tall buildings on three sides of someone's home.

Eldon Wexler, 602 N. Prom, Seaside, stated their family has owned property on the North Prom for over sixty years and our family had developed commercial properties in town Safeway, Rite Aid, McDonalds, Subway, and Lazerquick as well as other buildings in town. Ms. Golding stated very eloquently that most any property was for sale at the right price. If you want to develop it you go around and purchase the property or go somewhere else for the project. Mr. Wexler further stated he came to City Hall and read the packet and comments and if you uphold the variance then any future developer or person could come here and site this case as a dangerous precedent. Mr. Simmons does an outstanding job on his motels and properties but that doesn't preclude not doing things under City ordinance to protect the small person. Mr. Wexler further stated he hoped everyone had read Mr. Malones letters in support of Mr. Nudelman. The extraordinary circumstances do not exist and the finding does not explain how the applicant will be deprived of the rights enjoyed by other properties in the same area. The cities findings to not demonstrate the special circumstances do not result in the actions of the applicant. The findings do not demonstrate granting the variance will not offer any special privilege denied to others of other lands, structures, and buildings in the same district. The criteria for section 7.03 have not been satisfied and the findings did not demonstrate that the proposed variance is the minimum variance necessary and made possible for reasonable use of the land.

The other planning's do not demonstrate the variances consistence with the ordinance, comprehensive plan, and do not demonstrate the variance will not be injurious to the neighborhood. Mr. Wexler referred to an article that was in the Daily Astorian about Mr. Simmons and the project. Mr. Wexler strongly urged Council consider rejecting the Planning Commission's recommendation for a variance and that you uphold the appeal by the Nudelman's and neighbors.

Mark Golding, 475 S. Prom, Seaside, stated he had a unit at the Prom #303 and at Sand and Sea and it seemed there was not exceptional circumstances here because they have created their own situation and it was solvable in one of two ways. To scale down the project or pay Mr. Nudelman enough to buy his land.

Robin Risley, 587 N. Laurel, Cannon Beach, stated she was speaking in opposition to the variance request. Avrel Nudelman has been a long time friend and about ten years ago he became the sole owner of his family's home located at 340 Beach Drive. Many times he has mentioned how much it has meant to him to come to the beach. Ms. Risley further stated any change to the property setbacks would be a detriment to the value of the property.

Chris Hardy, 361 S. Prom, Seaside, stated he has seen the setbacks against promenade going from 8 to 3 and does anyone know the size of the hole that was going to happen next to the promenade to put a two story parking garage which was huge machinery and trailers. The logistics was crazy and there was no room to move around. Engineering was one thing and has failed before and was a huge liability to dig that big of a hole in that little area. Mr. Hardy further stated 8 feet to 5 feet all the way around the side of that parking lot and going against the law and against the code. Mr. Hardy further stated he strongly urged that if this was done then there was not a problem with that earth.

Mayor Larson closed the public comments.

Mr. Simmons stated this was similar to the Planning Commission and he had talked to both the property owners on multiple occasions to sit down and say what we can do together. Avrel and I met and went over the plans of the property and asked to purchase the property. If it was open on the table then he is all for it but it was never on the table over and over. What can we do about parking even if the project is scaled down there still needed to be parking? Mr. Simmons further stated unless Mr. Cupples approves a smaller driveway and it can be based on Portland code then there could be an 8 foot setback which was an option. Mr. Simmons when the Promenade was built next door they had to build a big hole for the foundation and that can go either way. The Pearl project would be the same size as the Promenade and would be right next door to each other same size. There has to be a way in and a way out and regardless of any building on that property it would impact the neighbors and it was going to happen and he tried to work with the Planning Commission to make the best plan for the parking and for the structure itself.

Council President Johnson stated he had heard a lot of information and there were good pros and good cons and he suggested the Council take all this information and digest it for a couple of weeks and carry it over to the next Council meeting. Council President Johnson further stated he would make that a motion.

Mayor Larson asked if this was proper.

Dan Van Thiel, City Attorney, stated if Council so desires. Mr. Van Thiel had not heard anybody ask for a continuance yet.

Mayor Larson stated that would be a continuance then.

Mr. Van Thiel stated that was correct and he assumed the record has been settled at this point.

Mayor Larson asked what Mr. Cupples thoughts were.

Mr. Cupples stated there was a written request for a continuance from an individual that was a new property owner in the Promenade and it was appropriate for Council to continue the meeting if you would like to enable him to provide additional documentation. If Council wanted to leave the record open to allow Mr. Simmons or any other party to submit written rebuttal you can. If Council wanted to hear more verbal testimony or take written testimony you can do that. Mr. Cupples further stated it was really up to the Council how to proceed. Council President Johnson was interested in a continuance. Mr. Cupples asked if Council President Johnson was interested in leaving the record open.

Council President Johnson stated Council would leave the record open and take additional information and to digest the information already provided.

Mr. Simmons requested that his architect come up and talk to Council so there was more information to think about for the next few weeks.

Mayor Larson stated Council was in the process of trying to decide to make a decision tonight or carry it over for the next meeting and it was extremely important that Council get all the information in.

That was why Council was discussing leaving the appeal open to receive additional information.

Jay Orloff, Tolovana Architects, and was hired by Mr. Simmons. Mr. Orloff showed Council diagrams regarding plans for the project. There would not be a two story deep hole and this has been done before and the Promenade had to dig deeper than Mr. Simmons would with the project.

Mr. Van Thiel stated he wanted to make sure the information that Council received was in response to what was heard at the meeting tonight and he had a consensus that Council wanted to continue.

Mr. Winstanley stated Council could leave the record open to a specific date. If the next Council meeting was on September 12, 2016, Council could accept written testimony until September 7, 2016, 5:00 pm.

Councilor Morrissey stated at that point Council would not take any more verbal testimony.

Councilor Montero stated at the next meeting Council would take no verbal testimony.

Mr. Winstanley stated that would be up to Council.

Council President Johnson made a motion to approve the request that was received by letter to grant a continuance on the appeal until the City Council meeting, September 12, 2016, with additional written testimony being received until Wednesday, September 7, 2017, 5:00 pm, with a second from Councilor Barber; carried unanimously. (Johnson/Barber)

Councilor Barber stated what Council heard here tonight was that there were good neighbors who are willing and ready to work towards solutions and what he would like to have happen was from now until the meeting on September 12, 2106, he would like to see the good neighbors come together to work towards a solution.

Mayor Larson stated it was not easy to hear all of this and Council knows construction concerns and Council needed to take a look at just exactly what it was that you are looking at. This was extremely serious and Council needed time to look at this further before making a decision. Mayor Larson thanked all those that came to the meeting.

Mr. Cupples stated for the record there would be a continuance to the City Council meeting on Monday, September 12, 2016, 7:00 pm.

**COMMENTS –
CITY STAFF
AND OTHERS**

Mr. Winstanley stated it had been a very good summer and the departments have been very busy and he appreciated all the work that had been done by the Police Department, Fire Department, and Public Works Department.

COMMENTS – COUNCIL

Councilor Morrissey stated he would be running in the Hood to Coast Relay.

Councilor Frank stated there was a request that the City review parking ticket fines and would encourage some progress on that. If there could be loading zones for trucks delivering goods to the businesses. Councilor Frank further stated he had requested the City look into sidewalks that were supposed to be provided on South Edgewood on a project next to the golf course and nothing had been done with that.

ADJOURNMENT

The regular meeting adjourned at 8:55 PM.

Kim Jordan, Secretary

DON LARSON, MAYOR