

**AGENDA SEASIDE CITY COUNCIL MEETING
AUGUST 22, 2016 7:00 PM**

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. COMMENTS – PUBLIC – (please keep speaking time to four minutes)
6. DECLARATION OF POTENTIAL CONFLICT OF INTEREST
7. CONSENT AGENDA
 - a) PAYMENT OF THE BILLS – \$1,511,562.84
 - b) APPROVAL OF MINUTES – July 25, 2016
8. UNFINISHED BUSINESS:
 - a) VACANCY - CITY TREE BOARD
9. NEW BUSINESS:
 - a) LIQUOR LICENSE APPLICATION - GUIDO & VITO'S ITALIAN RESTAURANT, 604 BROADWAY
 - b) APPROVAL - ADDENDUM FOR CONSENT TO TRANSFER COASTCOM FRANCHISE TO ASTOUND BROADBAND, LLC
 - c) APPROVAL - SEASIDE CIVIC AND CONVENTION CENTER RENOVATION
 - d) APPROVAL - SEASIDE CIVIC AND CONVENTION CENTER EXTERIOR READERBOARD SIGN PROPOSAL
 - e) APPROVAL - 2015 NORTH HOLLADAY DRIVE IMPROVEMENT PROJECT CHANGE ORDERS FOR JUNE/JULY 2016, Dale McDowell
 - f) UPDATE - NORTH HOLLADAY PROJECT, DALE MCDOWELL
 - g) VACANCY - SEASIDE CIVIC AND CONVENTION CENTER COMMISSION
 - h) PUBLIC HEARING - APPEAL 16-041VA PLANNING COMMISSION VARIANCE APPROVAL AT 341 S. PROM
10. COMMENTS FROM THE CITY STAFF
11. COMMENTS FROM THE COUNCIL
12. COMMENTS FROM THE MAYOR
13. ADJOURNMENT

Complete copies of the Current Council meeting Agenda Packets can be viewed at: *Seaside Public Library and Seaside City Hall. The Agendas and Minutes can be viewed on our website at www.cityofseaside.us.*

All meetings other than executive sessions are open to the public. When appropriate, any public member desiring to address the Council may be recognized by the presiding officer. Remarks are limited to the question under discussion except during public comment. This meeting is handicapped accessible. Please let us know at 503-738-5511 if you will need any special accommodation to participate in this meeting.

SEASIDE CITY TREE BOARD

The purpose of the City Tree Board is to study, investigate, and develop and/or update annually, a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees in parks, along streets, and in other public areas. The Tree Board, when requested by the City Council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its duties and responsibilities,

- (1) Develop criteria for city staff and/or contractors to apply in making decisions entrusted to staff and/or contractor discretion,
- (2) Designate Heritage Trees on public and private lands within the city,
- (3) Promote the planting and proper maintenance of trees through special events including an annual local celebration of Arbor Day, and
- (4) Obtain the annual Tree City USA designation by the National Arbor Day Foundation.

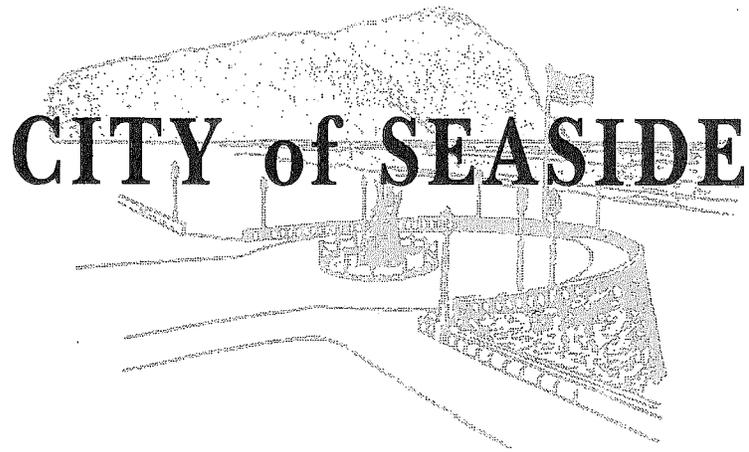
The Board consists of five members, appointed by the City Council for a three-year term, and who are residents, or owners or employees of businesses within the city limit.

The City Tree Board shall schedule meetings as needed and elect a chairperson and a vice-chairperson. No more than 3 unexcused absences allowed in a calendar year.

Tree Board members serve without salary or compensation of any nature.

COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** July 11, 2016
Name: Taylor Barnes
Commission/Committee: City Tree Board Committee
Resignation Date: Barnes - June 22, 2016
Term Expiration Date: Barnes - June 30, 2018
Wants to be considered again: Barnes - No Resigned
2. **Applicants:**
3. **Nominations:**
4. **Appointment:**



CITY of SEASIDE

OREGON'S
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RESORT

989 BROADWAY
SEASIDE, OREGON 97138
(503) 738-5511

CITY TREE BOARD

Term of Office: 3 years

Number of Members: 5

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXPIRES</u>
NEAL WALLACE	881 S. EDGEWOOD	717-2927	6/30/2017
PAM FLEMING	1255 AVENUE 'B'	738-5637	6/30/2017
MELYSSA GRAEPER	10075 7 TH ST. BAY CITY, OR 97107	503-939-9210	6/30/2018
VACANCY			6/30/2018
CRAIG SORTER	840 5 TH AVENUE	440-7201	6/30/2019
DALE MCDOWELL	1387 AVENUE 'U'	738-5112	STAFF REPRESENTATIVE

LIQUOR LICENSE APPLICATION

DeAnna Sheets-Raniero
Guido & Vitos Italian Cuisine
604 Broadway
Seaside

This business has applied for a Full On-premises Sales Liquor License. This would be for a change of ownership.

Full On-Premises Sales License – allows the sale of distilled spirits, malt beverages, wine, and cider for consumption at the licensed business. This license also allows private catering if the applicant receives pre-approval from OLCC.

The Police Department has reviewed the business and applicants applying for the liquor license and the information received is attached.

Criteria for consideration

The City Council, after consideration, may determine to make a favorable, unfavorable, conditionally favorable or no recommendation to the OLCC. If the City Council makes an unfavorable or conditionally favorable recommendation to the OLCC regarding any application for liquor license, the recommendation will be based on a finding that one or more of the following conditions exist:

1. There is a history or pattern of illegal or disorderly activity on the premises.
2. There have been disturbances and/or other problems (such as fights, altercations, drug dealing by patrons, furnishing alcohol to minors by patrons, public drunkenness, alcohol related litter, etc.) related to the exercise of the applicant's alcohol license privilege and the applicant has failed to take reasonable and timely corrective action when notified of these problems by the police or the OLCC.
3. There is a continuing problem of noise from this business disturbing neighbors.
4. The applicant would be a poor risk for compliance with liquor laws, as indicated by a felony conviction, which reflects on the applicant's ability to be a responsible liquor licensee.
5. The applicant would be a poor risk for compliance with liquor laws, as indicated by a failure to comply with liquor laws.
6. The applicant has a history of abusing alcohol or other controlled substances and would be a poor risk for compliance with liquor laws.
7. The applicant has made an intentional and materially false statement about a matter that reflects on the applicant's ability to comply with the State's liquor laws.
8. An unlicensable person or a party not named as applicant has an ownership interest in the business to be licensed.
9. The applicant has failed to operate as originally proposed to the City Council, the original proposal having been a deciding factor in the Council's favorable recommendation to the OLCC.
10. The applicant has expanded the boundaries of the licensed premises to areas not originally considered by the Council and without City and OLCC approval.
11. The business is located within 500 feet of a school, child care facility, church, hospital, nursing or convalescent care facility, a park or child oriented recreation facility, or an alcohol and other drug treatment facility and there is evidence that the business will adversely impact the facility.

Seaside Police Department

July 28, 2016

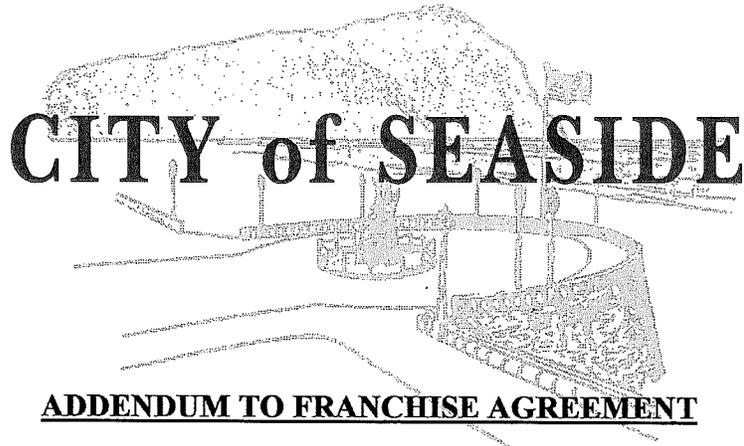
MEMORANDUM

TO: Mayor and City Council
FROM: Guy Knight, Seaside Police Sergeant
SUBJECT: **Guido & Vitos Italian Cuisine**

The Seaside Police Department has reviewed the liquor application for Guido & Vitos Italian Cuisine at 604 Broadway. This is a change of ownership and the owner is requesting a "Full On-Premises Sales" license.

Our background check did not find anything that would disqualify the owner from obtaining a liquor license.

If you have any additional questions, please let me know.



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ADDENDUM TO FRANCHISE AGREEMENT

This 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 (the "Franchise"). On June 3, 2016, Franchisee and Astound Broadband, LLC ("Assignee") entered into an Asset Purchase Agreement for the sale of assets of ("Licensee") including the franchise, to Assignee.
2. 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.

WHEREFORE, the parties have executed this addendum this ____ day of _____, 2016.

FRANCHISEE:

Greg Palser, PRESIDENT
COASTCOM INC.

ASSIGNEE:

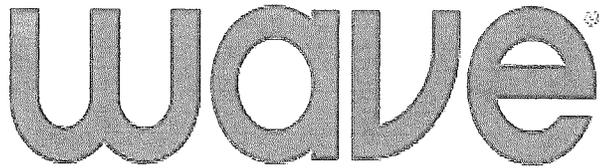
ASTOUND BROADBAND, LLC

OWNER:
CITY OF SEASIDE

Don Larson, MAYOR

ATTEST:

Mark J. Winstanley, City Manager



July 21, 2016

Mark J. Winstanley, City Manager
City of Seaside
989 Broadway
Seaside, Oregon 97138

Re: CoastCom, Inc. / Astound Broadband, LLC d/b/a Wave
Non-Exclusive Telecommunications Network Franchise
Agreement, dated May 14, 2013

Dear Mr. Winstanley:

We hope you'll share in our enthusiasm about this positive step for economic development and advanced telecommunications resources for the Seaside area. With our new pending business combination, we're asking for your help on a telecommunications franchise matter.

On June 3, 2016, CoastCom, Inc. and Astound Broadband, LLC ("Astound"), a wholly-owned direct subsidiary of WaveDivision Holdings, LLC ("Wave"), entered into a definitive purchase agreement to acquire the assets and operations of CoastCom. You may know Astound through our "Wave" brands, including "Wave Broadband," "Wave Business" and Wave G", and our expanding telecom operations throughout the Northwest. Astound is Wave's largest subsidiary, holds all of our telecom assets and is a registered CLEC in Oregon, Washington and California.

CoastCom has been a pioneer and respected leader for bringing telecom solutions and new fiber networks to communities along the Oregon Coast and for providing connectivity to major telecom hubs in Portland, the West Coast and across the Pacific. As a part of Wave, CoastCom's success will be bolstered by our significant financial and technical resources, 1,300+ dedicated employees, robust network facilities, and improved access to the best carriers and technologies in today's telecom arena.

Our entire management team is delighted that Greg Palser and Doug Updenkelder will continue to run the day-to-day operations of the terrific business they have built over the last 17 years and that all of CoastCom's employees will continue to perform in their present positions.

The following briefly describes Wave:

- Wave and its subsidiaries, including Astound, are headquartered in Kirkland, Washington. Wave's management team is responsible for the operations of Astound and its 15 other operating subsidiaries.

- As Wave's telecom arm, Astound holds the enclosed Certificate of Authority to Provide Telecommunications Service from the Public Utilities Commission of Oregon and operates as a Competitive Local Exchange Carrier. Astound holds both domestic and international Section 214 licenses issued by the Federal Communications Commission, each of which is enclosed. Wave will focus on the provision of services to business customers including telecommunications, high-speed Internet access, data transport and dark fiber leasing. Although we have a great deal of experience in residential telecommunications, broadband and cable television service as well, we have no present plans to provide cable television service in Seaside. If those plans change we will request a cable television franchise.
- Wave was founded in 2003 and has grown organically and through a series of 18 acquisitions. We're proud to be among the top 10 broadband companies in the US. For communities of all sizes stretching from Palo Alto to the Canadian border, Wave has emerged as a leader in developing fiber optic networks above and beyond those of traditional telecoms. We offer new, competitive network solutions; Gigabit (and faster) Internet access; alternate, diverse and reliable routes; advanced telephony; and a range of technical solutions typically only available in the "big city." With our help, communities like Dallas, OR have equal or better access to the digital economy as Dallas, TX. We're bringing innovation to over 500,000 customers in Oregon, Washington, and California.
- Wave has invested significantly in excess of \$100 million in recent years to rebuild and upgrade its distribution network and related transmission equipment. We're rapidly expanding our fiber network. In 2015 we built over 1,500 miles of new fiber routes, and we're on track to exceed that again this year.
- Wave has established an enviable track record in providing high-quality customer service and technical service and in developing technology to enable its 24x7 Network Operations Center to proactively monitor its distribution network and customer premises equipment to prevent or quickly remedy any technical issues. Our customer support staff and resources will augment the excellent work and service already in place at CoastCom and provide additional levels of technical support and backup. The significant achievements of the highly regarded staff of Wave in areas of technical quality and innovation have been widely recognized. In fact, Wave received the prestigious "Independent Operator of the Year" award from CableFax Magazine in 2012, was named the "Fastest ISP in the Northwest" by PC Magazine in 2014, and was the fourth most highly ranked ISP in the US by a leading consumer reports magazine in 2015.

The combination of our two companies will bring unique and beneficial technology assets to continue to serve the businesses and organizations of Seaside, while we preserve the commitment to excellence and strong local presence of CoastCom for your community. We need your help in transferring the current CoastCom franchise.

Astound satisfies the requisite legal, technical and financial qualifications outlined under applicable federal, state and local law to hold the telecommunications franchise to provide

services in the City of Seaside. Accordingly, we request your consent to the transfer of that franchise from CoastCom to Astound.

In addition, we ask that the City extend the term of the telecom franchise for an additional period of 5 years. This will allow Wave and CoastCom adequate time to complete the transition of business operations and for the City and Wave to develop a working relationship before we need to engage in franchise renewal discussions.

We have provided a draft form of consent ordinance to be adopted by the City Council. Because we want to close the purchase transaction by August 1, 2016, we look forward to working with you to answer any questions or provide additional information and to obtain swift approval of our request for the City's consent.

Very Truly Yours,

CoastCom, Inc.

By: 

Greg Palser, President



MEMORANDUM

TO: Honorable Mayor & City Council
FROM: Russ Vandenberg, General Manager
DATE: August 2, 2016
RE: Seaside Civic and Convention Center Addition/Renovation Project

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.



SEASIDE
CIVIC AND CONVENTION CENTER

MEMORANDUM

TO: Honorable Mayor & City Council
FROM: Russ Vandenberg, General Manager
DATE: August 17, 2016
RE: Exterior Reader Board

We have received the following bids for the replacement of three Daktronics Galaxy Exterior Reader Boards. Pricing includes installation.

Tube Art Group	\$50,466.00
Security Signs Inc	\$49,760.00
ES&A	\$49,135.00
Ramsay Signs	\$47,848.00

After making a detailed comparison, staff recommends accepting the bid from Ramsay Signs in the amount of \$47,848.00.

SEASIDE CIVIC AND CONVENTION CENTER COMMISSION

The purpose of the Seaside Convention Center Commission is to be an advisory body to make recommendations to the City Council on matters concerning the Civic and Convention Center. The Commission shall make recommendations concerning policy matters related to the Civic Convention Center. The Civic and Convention Center Commission shall advise the Convention Center Manager, City Manager and City Council on all items relating to the operation of the Civic and Convention Center including but not limited to: Contracts; Building Improvements; Employment of Civic and Convention Center Manager; Rentals; and Budget.

The commission consists of seven members who are not employees of the city and shall be residents, or owners or employees of businesses within the city limits of Seaside.

Each year, at the first Commission meeting in November, the members shall appoint one of their members as Chairperson and one as Vice-Chairperson. The center manager shall serve as Secretary to the Civic and Convention Center Commission.

The Commission shall hold a regular meeting at least once each month of the calendar year. The meetings shall be open to the public. Any person appointed to serve on this committee who misses three or more regularly scheduled meetings during a 12 month period shall be notified by letter that the position must be vacated. The individual may appeal the decision to the City Council. (A 12 month period is defined as beginning in January of each calendar year.)

The members shall serve without salary or compensation of any nature.

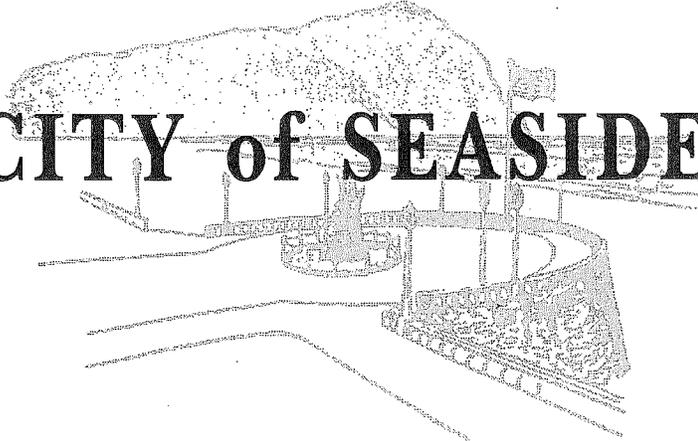
COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** August 22, 2016
Name: Chuck Minor
Commission/Committee: Convention Center Commission
Resignation Date: August 11, 2016
Term Expiration Date: October 25, 2017
Wants to be considered again: No

2. **Applicants:**

3. **Nominations:**

4. **Appointment:**



CITY of SEASIDE

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989 BROADWAY
SEASIDE, OREGON 97138
(503) 738-5511

CONVENTION CENTER COMMISSION

Term of Office: 4 years

Number of Members: 7

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXPIRES</u>
ROGER SCHULTZ	2481 VENICE BLVD.	738-5641	10/25/2016
KAARINA VERA	170 SW BIRCH AVENUE WARRENTON,	717-2282	10/25/2016
JEFF KILDAY*	PO BOX 1031	738-3018	10/25/2017
CHUCK MINER	2002 MAPLE ST.	440-9240	10/25/2017
PATRICK DUHACHEK	89736 SEALS RD.	858-774-4678	10/25/2017
NANCY MCCUNE	PO Box 315	503-260-8905	10/25/2018
TIM TOLAN	PO BOX 911	738-3802	10/25/2018

*CHAIR
**VICE CHAIR

CITY OF SEASIDE MEMORANDUM

To: Mayor & City Council

From: Planning Director, Kevin Cupples

Date: August 22, 2016

Appellants: Avrel Nudelman, 4126 SW 48th Place, Portland, OR 97721
Local Property Address; 340 Beach Drive, Seaside, OR
Susan Calef, 3051 SE 23rd Street, Gresham, OR 97080
Local Property Address; 25 Avenue A, Seaside, OR

Location: 341 S Prom. (6 10 21AC TL: 11900, 11100, 10900)

Subject: Appeal of Planning Commission Variance Approval 16-017V, Setback & Height Variance in the Resort Residential (RR) zone.

Request Summary:

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.

In addition to the appellants 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 3rd. The request was continued and additional testimony was taken at the next two hearings (June 7th & July 5th). 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 19th. 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.

Attachments:

- Nudelman's Appeal
- Calef's Appeal
- Sean T Malone's Memorandum
- Owen Blank's Letter
- Planning Commission's Decision

LAND USE DECISION APPEAL FORM

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach Seaside City Hall (989 Broadway) or Seaside Community Development (1387 Ave. U) no later than 5:00 p.m. of the last day of the appeal period.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list their names and addresses on a separate sheet. If appeal is on behalf of an organization, indicate the group's name and mailing address.

Name Avrel Nudelman

Address 4126 SW 48th Place
Portland, Oregon 97221

Phone: Home 503-246-5939 Work 503-223-8147

E-mail Address: efrainlevi526@gmail.com

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups must specify one person to be representative/contact person.

Name _____

Address _____

Phone: Home _____ Work _____

E-mail Address: _____

DECISION BEING APPEALED

1. Decision appealed (File Reference Number): 16-017V

2. Property address of decision being appealed: 341 S. Prom Seaside, OR

3. Elements of decision being appealed. Check one or more as appropriate:

Adequacy of conditions

Decision maker error

Impartiality, bias, or notice challenge

Other. Please specify: _____

APPEAL INFORMATION

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1. What is your interest in this decision? How are you affected by it?

see attached sheet

2. What are your objections to the decision? List and describe what you believe to be the errors, omissions, or other problems with this decision. The objections need to be specific and relevant to the criteria applicable to the decision.

see attached sheet

3. What relief are you seeking? (Specify what you want the appellate body to do? e.g. reverse the decision, require additional conditions, modify the approval conditions, etc.)

see attached sheet

Signature Ariel Muelken

Date August 1, 2016

Appellant or Authorized Representative Sean Malone, attorney

Appeal Fee Based on level of appeal \$ 625.00

For Office Use Only:

Appeal Hearing Body: _____

Payment Receipt Number: _____

Proposed Appeal Hearing Date: _____

Appeal Information

1. 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:

- a. My view to the south of the mountains will disappear (as will my ocean view to the west)
- b. The light entering and on the south side of my house will be severely reduced
- c. My property value will almost certainly decrease.
- d. 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:

a. The decision goes against Article 1 Section 1.020 of the City of Seaside Zoning Ordinance No. 83-10 (CSZO) which states "The purpose of this Ordinance is toprotection 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.

b. The decision goes against CSZO Section 3.051 Standards : In the R-R 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.

c. 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.

d. 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~~ that all of the following circumstances exist:
"3. 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.

f. I have two problems with #8 of the 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?

g. # 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. I 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.

July 26, 2016.

ATTN: Mr. Avrel Nudelman

RE: The Pearl at Seaside

Dear Mr. Nudelman:

The excavation adjacent to your property created by the construction of the Pearl of Seaside is something to be concerned about. After the arcade on the corner of the south side of Broadway and the Prom was demolished, then the Relton Apartments burnt down and the Montag House was subsequently demolished the material exposed was sand.

To proactively address this concern when an excavation is close to an existing building or property, survey targets are placed on the buildings and readings are taken before the excavation begins, at least weekly during the construction until the backfilling is complete and then for a year. Then there is no dispute about settlement that may occur. This is paid for by the developer. It is done by an independent survey company mutually agreed upon between you and the developer.

Sincerely,



Phillip Gerwie, P.E.

LAND USE DECISION APPEAL FORM

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach Seaside City Hall (989 Broadway) or Seaside Community Development (1387 Ave. U) no later than 5:00 p.m. of the last day of the appeal period.

APPELLANT INFORMATION (Person or group making appeal)

1. Appellant:

If several individuals are appealing together, list their names and addresses on a separate sheet. If appeal is on behalf of an organization, indicate the group's name and mailing address.

Name Susan Calef and Daniel Calef

Address 3051 SE 23rd St
Gresham OR 97080

Phone: Home 503-492-6204 Work 503-929-3353

E-mail Address: calef1.1@juno.com

2. Authorized Representative:

Name of representative if different from the appellant indicated above. Groups must specify one person to be representative/contact person.

Name _____

Address _____

Phone: Home _____ Work _____

E-mail Address: _____

DECISION BEING APPEALED

1. Decision appealed (File Reference Number): 16-017V

2. Property address of decision being appealed: 341 S. Prom

3. Elements of decision being appealed. Check one or more as appropriate:

Adequacy of conditions

Decision maker error

Impartiality, bias, or notice challenge

Other. Please specify: _____

APPEAL INFORMATION

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1. What is your interest in this decision? How are you affected by it?
See attached sheet

Attachment to Land Use Decision Appeal Form
Susan Calef and Daniel Calef 7/31/16

1. 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.

2. 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.

3. We request that the appellate body reverse decisions allowing height and setback variances for the proposed hotel.

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-G
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

August 3, 2016

Via Email

City Council
City of Seaside
989 Broadway
Seaside Oregon 97138
kcupples@cityofseaside.us

Re: Memorandum in Support of Nudelman Appeal of the City of Seaside
Planning Commission's approval of a variance to the required setback from 8 feet
to 3 feet, 16-017V

I. Introduction

On behalf of Avrel Nudelman, please accept this memorandum in support Mr. Nudelman's appeal of the Planning Commission's decision to grant Antoine Simmons (applicant) a variance to the required yard setbacks at 341 S. Prom. The applicant requested a reduction from 8 feet to 3 feet from the property line adjacent to the existing residence of Mr. Nudelman in order to allegedly meet parking minimum stall length and aisle width. According to the decision, the variance is part of a larger project to replace the existing hotel between Beach Drive and an undeveloped portion of 6th Street. According to the findings, the goal is apparently to develop a hotel that fits the context of the location. There is no evidence in the record that a hotel that can satisfy the required setback of 8 feet would not fit within the context of the location, and the otherwise conclusory findings of the Planning Commission are inadequate and not based on substantial evidence. As such, I request that the City Council reverse the Planning Commission's decision approving the applicant's request for a variance to the setback requirement.

II. Case law on Variance

LUBA reviews variance findings to determine if they are supported by substantial evidence in the record, which requires LUBA “to determine whether the evidence in the whole record would allow a reasonable fact finder to make the challenged finding.” *Friends of Bryant Woods Park v. City of Lake Oswego*, 126 Or App 205, 208 (1994). The question, therefore, is whether the City’s interpretation is inconsistent with the language, purpose or apparent intent of the local code. *Doyle v. Coos County*, 51 Or LUBA 402, 411-412 (2006). The local government must clearly articulate that interpretation. *Bates v. City of Cascade Lock*, 38 Or LUBA 349 (2000).

As noted by the Court of Appeals, “[v]ariations are generally approved only in extraordinary circumstances and should not be used in place of the normal legislative process of amending zoning regulations. *Lovell v. Planning Com of Independence*, 37 Or App 3, 7 (1978) (emphasis added). No variance can be granted simply because the property owner could use the land more profitably if the variance were granted. *Lovell*, 37 Or App at 7.

III. Local Criteria

The City of Seaside’s criteria for granting a variance are contained within sections 7.031 and 7.032 of the City’s zoning ordinance. Under 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.”

Section 7.032, in turn, provides that the Planning Director shall make the following findings:

- “1. That the requirements of Section 7.031 have been met by the applicant for a variance.
2. 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
3. That the granting of the variance will be in harmony with the general purposes and intent of this Ordinance and the Comprehensive Plan and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.”

IV. Analysis

A. Exceptional and extraordinary circumstances do not exist

For the first criterion listed above related to the exceptional or extraordinary circumstances, the findings allege that “[i]f side yard setbacks of 8 feet were applied on both the north and south side yards, the parking *as configured* would not be possible.” (emphasis added). Other findings allege that “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.”

LUBA has held that the “exceptional or extraordinary circumstances or conditions” requirement is “a demanding standard.” *Corbett/Terwilliger/Lair Hill Neighborhood Assn. v. City of Portland*, 19 Or LUBA 1, 12 (1990). The exceptional and extraordinary circumstances must “arise out of conditions inherent in the land.” *Lovell v. Planning Com. Of Independence*, 37 Or App 3, 6 (1978); *Patzkowsky v. Klamath County*, 8 Or LUBA 546, 550 (1987); *Cope v. City of Cannon Beach*, 15 Or LUBA 546, 550 (1987). If the local government makes no comparison of the conditions affecting the subject property and other property, the local government is unable to show that the special circumstances or conditions affecting the applicant’s property do not apply to other property in the area. *Jarvis v. Wallowa County*, 15 Or LUBA 390, 393-394 (1987).

If an approval criterion requires that the subject property have circumstances that do not apply to “other properties in the same vicinity or land use district,” the applicant’s application and the local government findings must address whether the circumstances supporting a variance exist on other properties in the same vicinity or land use district. *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194, 196-197 (2006)

First, the findings concede that the “the parking as configured” would preclude the construction of the hotel. The issue allegedly necessitating the variance, therefore, arises from the applicant’s design or configuration of the hotel and parking lot, including the specific number of rooms and parking spaces. The applicant has not demonstrated that a lesser number of rooms and parking spaces would also require a variance, and, therefore, the alleged necessity for the variance arises out of the applicant’s proposed configuration and design of the hotel.

Second, the findings do not demonstrate that the lot size or shape that exists on the subject property is unique to this particular property. For example, the findings do not point to other similarly zoned properties to demonstrate that this property is in any way unique.

Third, a variance is not justified by some desire of the applicant to maximize its profit or use of a property. *See Lovell*, 37 Or App at 7. Here, the findings justify the need for a variance based upon the applicant’s alleged need “to maximize utilization of the lot in order to meet parking standards within the structure.” That alleged need only arises because the applicant is attempting to “maximize” its profit, not because of some exceptional or extraordinary circumstance.

B. The findings do not explain how the applicant will be deprived of the rights commonly enjoyed by other properties in the same district

With regard to the second criterion under section 7.031 listed above, the findings do not demonstrate, through examples or otherwise, how the applicant will be deprived of the rights commonly enjoyed by other properties in the same district. The property is zoned Resort Residential (R-R), and, while that zone allows for a motel, hotel or tourist court, among many other uses, there is nothing to show that the applicant cannot construct a hotel or motel on the property that does not require a variance. The problem is simply that the applicant has designed a specific hotel that allegedly necessitates a variance, not that a hotel could never be placed in this location.¹ The applicant is simply

¹ The apparent justification for the variance is that if the parking spaces would otherwise be “compact” spaces. This, in and of itself, does not preclude the construction of the

attempting to maximize its profit at the expense of his neighbors. In the absence of demonstrating that a motel, hotel, or tourist court could never be placed on the subject property, the applicant has failed to satisfy this criterion, and the City's findings are inadequate and not based on substantial evidence.

C. The City's findings do not demonstrate that the special conditions and circumstances do not result from the actions of the applicant

For the third criterion under section 7.031, the City's findings are simply conclusory. The findings allege that "[t]he special condition represented by the adjacent properties has not been created by the applicant." This is simply a recitation of the standard, and it is inadequate and not based on substantial evidence. Again, the problem here arises from the applicant's proposed design, which is wholly within the control of the applicant. Therefore, the "special condition" arises from the applicant.

D. The findings do not demonstrate that granting the variance will not confer any special privilege that is denied to owners of other lands, structures, or buildings in the same district

For this criterion, the City's findings are simply conclusory because the findings simply restate the standard. As such, the City's findings are inadequate and not based on substantial evidence.

E. The criteria for section 7.031 have not been satisfied

The first criterion under section 7.032 requires that all the requirements in section 7.031 be satisfied. For the reasons cited above, this criterion cannot be satisfied because the requirements of section 7.031 have not been satisfied.

F. The findings do not demonstrate that the proposed variance is the minimum variance necessary to make possible the reasonable use of the land

As has been the theme, the applicant's proposed hotel, as designed, creates the alleged necessity for the variance. To comply with the criterion establishing that a variance is the minimum necessary for reasonable use of the land, "the city's findings must establish (1) what constitutes a reasonable use of the property, and (2) why the approved variance is the minimum necessary to allow such use." *Sokol v. City of Lake*

hotel, nor does it preclude the construction of a hotel that would otherwise comply with the required setbacks. Therefore, a variance is not necessary to carry out the reasonable use of the property.

Oswego, 17 Or LUBA 429, 442-443 (1989). The applicant could re-design the hotel or otherwise utilize less rooms and parking spaces for the hotel. The applicant has not demonstrated and the City's findings do not demonstrate that reasonable use of the subject property could occur only with the number of rooms and parking spaces sought by the applicant. As such, the variance sought is not the minimum necessary to make possible the reasonable use of the land.

G. The City's findings do not demonstrate the variance is consistent with the Ordinance, Comprehensive plan, and similarly do not demonstrate that variance will not be injurious to the neighborhood

The City's findings recite a host of injurious issues related to various surrounding property owners in the neighborhood:

"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, ... rooms being too close to neighboring windows, restricted access to neighboring property, etc."

Despite documenting these risks, the City's findings allege that "[t]he appellant'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." These findings are both inadequate and not based on substantial evidence.

First, the comments from surrounding property owners (including Mr. Nudelman) clearly indicate that the variance will be injurious. The City is simply brushing them aside.

Second, the City's finding that the second proposal "softens" the impacts from the first proposal is misplaced because the applicant has not demonstrated that it would be precluded from constructing a hotel if the variance was not granted. The hotel, as designed, is still injurious to surrounding property owners. The simple fact that the applicant began with a design that would have no setbacks does not mean that the applicant's current design is not injurious to neighboring property owners.

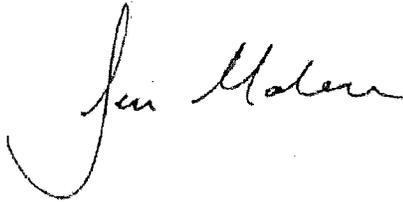
The findings also cite to the purpose statement for the RR zone, which provides that "[c]onversion [from single family homes] to resort uses should be provided with a

minimum of disruption of existing residential values.” Section 3.047. Here, the variance disrupts the existing residential values for Mr. Nudelman by, among others, reducing the amount of natural light that enters his home on the east and west sides. Notably, the purpose statement of section 1.020, which is cited in the City’s findings, aims to help maintain “adequate open space for light and air,” but the City’s findings fail to address that provision as it applies to Mr. Nudelman’s dwelling.

IV. Conclusion

For the reasons discussed above, I respectfully request that the Planning Commission’s decision granting the variance for the setback be denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sean T. Malone".

Sean T. Malone
Legal Counsel for Avrel Nudelman

Cc:
Avrel Nudelman



August 16, 2016

VIA E-MAIL & REGULAR MAIL

Mr. Kevin Cupples
City Planning Director
Planning Office, City of Seaside
989 Broadway
Seaside, Oregon 97138
kcupples@cityofseaside.us

Re: 341 South Prom, Seaside OR 97138 - Variance 16-017V – Verbal
Testimony

Dear Mr. Cupples:

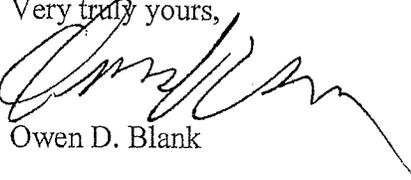
I am writing to urge the City Council to reverse the grant by the Planning Commission of the variances requested by the above application. Our family has owned property in Seaside for over 40 years in the Sand and Sea Condominium. Allowing the variances requested in this application will negatively impact not only our property, but other surrounding properties, and the general public's opportunities to enjoy the surrounding area and the wonderful beach and ocean views we all enjoy.

The various setbacks and height restrictions in the subject zone were established for the benefit of both surrounding property owners and the general public. There are no exceptional or extraordinary circumstances that apply to the proposed development. The Promenade Condominiums, which are immediately south of the proposed development, were built without variances. The existing ordinances do not prohibit the commercially reasonable development of the subject property.

Mr. Kevin Cupples
August 16, 2016
Page 2

Allowing the subject variances will negatively impact the use, enjoyment, and property values of nearby properties, and the general public. Therefore, I urge the City Council to reverse the Planning Commission's grant of the subject variances.

Very truly yours,

A handwritten signature in black ink, appearing to read "Owen D. Blank", written over the typed name below.

Owen D. Blank

Seaside Property Address: 475 South Prom, Unit 206
Seaside, Oregon 97138

Mailing address: 888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204

Copy (via E-mail): kjordan@cityofseaside.us

**SEASIDE PLANNING COMMISSION
NOTICE OF DECISION**

Date: July 19, 2016
To: Applicant, Parties, and Previously Notified Individuals
From: Kevin Cupples, Planning Director
RE: 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.

PLANNING COMMISSION DECISION:

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. 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.

B. 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).

C. 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 listed below.

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

Date: July 19, 2016

**Applicant/
Owner:** Antoine Simons, 35547 Montrose Ct, Astoria, OR 97103

Location: 341 S Prom, Seaside, OR 97138 (6 10 21AC TL: 10900, 11100, & 11900)

Subject: Variance 16-017V, Allowing a 48 Unit Motel That Will Exceed the Allowed Height and Encroach Into The Side Yards Along the Eastern Portion of Proposed Structure.

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 apply 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:

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 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.

FINDINGS & JUSTIFICATION STATEMENTS:

1. 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.
2. 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. 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
 - b. 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).

- c. 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.
- d. 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).
- e. The 10'-0" setback from the "Non-Existent" Sixth Street is in addition to the 41'-0" setback from the Prom.
- f. Project Narrative: This project will replace the existing hotel between Beach Drive & an undeveloped portion of 6th Street.
- g. 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.
- h. 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.
- i. 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.

- j. 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.

- k. The special condition represented by the adjacent properties has not been created by the applicant.
 - l. 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.
 - m. 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.
3. 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.
 4. 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.
 5. 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).
 6. The original submittal included a zero lot line that would 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.
 7. 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.
 8. The applicant has indicated proper engineering at the time of construction would ensure the neighboring dwelling would remain stable..
 9. 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).
 10. 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.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.

17. 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.

18. 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.
19. 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.
20. The Planning Commissioners pointed out that any development of the property that met all the development standards would be impactful to the neighbors.
21. 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 the following conditions of approval:

Condition 1. As stated in the applicant's project narrative, the variance is limited to:

A. 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.

B. 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).

C. 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