

Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, September 22, 2014

Commissioners Present: Jim Patrick, Rod Croteau, Lee Hardy, Gary East, and Bill Branigan.

Commissioners Absent: Mike Franklin and Bob Berman (*excused*).

City Staff Present: Community Development Director Derrick Tokos and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, Hardy, Croteau, Patrick, East, and Branigan were present. Berman and Franklin were absent, but excused.

B. **Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of July 28, 2014, and the work session minutes of September 8, 2014.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hardy, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No comments on non-agenda items.

D. **Consent Calendar.** Nothing on the consent calendar.

E. **Action Items.** No items requiring action.

F. **Public Hearings.**

Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance applying to the hearing on tonight's agenda. He asked the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Croteau and East both declared site visits, and Hardy and Branigan both had driven by the site. Patrick called for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 4-CUP-14.** Consideration of a request submitted by Great American Yogurt & Food Co, dba Mt. Angel Sausage Co (Jim Hoke) (Chris Minor, authorized representative) (Jack's Seafood, Inc., property owner) per Chapter 14.03.080(18)/ "Water-dependent and Water-related Uses" of the Newport Municipal Code (NMC) for a conditional use permit in order to expand a 200 square-foot restaurant into a 325 square-foot storage area historically used as a smokehouse and for storage of seafood products; and also to expand 247 square feet into the public right-of-way for patio use. Since restaurant uses are permitted outright in a C-2 district, they are allowed in the W-2 district following issuance of a conditional use permit. The property is located at 460 SW Bay Blvd (Assessor's Map 11-11-08-DB; Tax Lot 1800).

Patrick opened the hearing for File No. 4-CUP-14 at 7:03 p.m. by reading the summary from the agenda. He called for the staff report. Tokos noted that in the Commissioners' packets the applicant has some information as well as the staff report outlining the approval criteria along with various other analyses. He noted that he also had the complete case file should anyone need to review it. Tokos noted that tonight the Commissioners received additional pieces of information; an email from Janet Webster and one from Cris Torp, both of whom serve on the Bay Front Parking District Committee. As noted, this request is for the authorization for a restaurant on the Bay Front at 460 SW Bay Blvd. There is approximately 527 square feet of total restaurant space on the property along with 247 square feet of outdoor patio space, which would be within the public right-of-way. There is a corresponding temporary encroachment permit that the applicant has applied for as well, which would be handled at the staff level. It is not something we would issue until after the Commission has made a decision on the conditional use permit. Tokos noted that the criteria are found in NMC Chapter 14.34; and he read those for the record. Tokos said the staff analysis provides a background and why this is before the Planning Commission. With conditional use permits, 50 vehicle trips per day automatically go before the Planning Commission. Our code calls for using the ITE manual, a transportation engineer manual with fixed ratios for uses to figure out how many trips are generated. This application clearly exceeded 50 trips per day; therefore, it is brought to the Planning Commission. There is also a site plan requirement. The applicant provided sufficient information for the Commission to evaluate; but one suggested condition to impose is that the applicant provide a scaled site plan that shows the specific area being used for restaurant use. We have it for the patio; but for the portion of the building that will be used, it is less clear. Having that helps for

recordkeeping and when questions come up in the future. Especially when there are mixed uses as with this building, it helps to understand which areas go with which conditional use approval.

Going through the criteria, first regarding the adequacy of the public facilities, Tokos noted that as outlined in the staff report, this is an existing developed area and building. We actually have some robust infrastructure in terms of water and sewer. It's designed to handle robust users like the fish plants; so a restaurant of this size is not an issue. There is good street access and sidewalks along Bay Boulevard and Fall Street. With the information included in the record and reflected in the staff report, there is more than adequate evidence for the Commission to find that the application meets this criterion. Next, regarding the request complies with the underlying zone or overlay zone, the applicant provided analysis in that regard. It is sufficient to find that this criterion has been met. Regarding the criterion that the use does not have an adverse impact greater than existing uses, the biggest thing that jumps out on the Bay Front is parking and its adequacy. He walked through that issue with this application by explaining how it satisfied the requirement in large part because of the Bay Front Parking District, which was formed to replace the payment-in-lieu-of program. As part of that parking district, those businesses are paying business license surcharges to be part of the district, which is used to make incremental improvements; small changes here and there. Those businesses get the benefit of five off-street spaces "gratis" for being in the district. This use falls within five spaces; so they are fine as proposed. They don't have to provide new off-street parking spaces; and they can't because there's not sufficient area on the property. The last criterion relates to building modifications; and there are none proposed. The applicant provided good photos of how the building looks now. The portion they are expanding into was originally a smokehouse for storage only. Some changes may be required to meet building code for changing it to a restaurant; and we don't know if that will require exterior modifications. If they need to modify the building to meet code for restaurant occupancy, the Commission may want to impose a condition that this comes back because you should see that because it should be evaluated as part of the conditional use process.

That gets to the conditions of approval. The first is one imposed as practice, which is that what is authorized is what is presented by the applicant. The second condition is for the applicant to provide a scaled site plan. The third condition is that the applicant complies with all applicable building codes, fire codes, and other public health and safety regulations. The applicant indicates that they intend to do that. But in addition, if it leads to modifications of size or height of the building, that a conditional use permit application be submitted to establish the changes are consistent with the character of the neighborhood. The last condition is that the applicant obtain an encroachment permit for that portion of the patio that extends in the public right-of-way. Tokos said if the Commission chooses to find this application satisfies the criteria and approves the request this evening with instructions to bring the final order back at the next meeting, we would sequence the encroachment permit so it's ready at the same time.

Croteau asked about the issue about garbage cans that was raised by Janet Webster. Tokos said with respect to Webster's comments regarding trash, he doesn't see linkage to conditional use permit criteria. Without criteria having a relationship with the condition, you really can't impose it. He doesn't believe the conditional use permit is the appropriate place to tackle that. It's typically handled through the nuisance code, and we do have code enforcement officials for that. We have a franchise agreement with Thompsons Sanitary, and that's how we manage common and shared trash receptacles in the public rights-of-way throughout the city. He doesn't see a good linkage with the conditional use permit criteria for addressing that issue. Patrick said Webster speaks about an overall plan for the Bay Front; and he asked if there's a plan he doesn't know about. Tokos thought that is something that has come up in discussions with the Bay Front Parking District. He did want to note that Webster's letter did say that she didn't see an issue with this request, as did the two other members of the Parking District. Tokos said that we are required to provide conditional use applications to the Parking District so they can speak to parking issues. The district is formed of citizens appointed by Newport City Council to basically work on parking issues on the Bay Front. What is available to them is the surcharge and also \$240 thousand from the old payment-in-lieu-of parking fund reserved for the Bay Front funds collected over the years. He said what Webster is referring to are discussions they've had about how basically this parking district can use the surcharge for an interim term. This was just a transition from the payment-in-lieu-of program. This is working better but doesn't lessen the need to address the parking issue. There needs to be a discussion long-term about where parking goes, whether it be more robust transit or a parking structure; but looking harder at the Bay Front area and how parking issues can be addressed. It can't be incrementally with each of these applications; it needs to be holistic. Tokos thinks that is what Webster is looking for.

Proponents: The applicant's representative, Chris Minor, PO Box 510, Newport (236 W. Olive St.), and the applicant, Jim Hoke, came forward. Minor first wanted to mention that he brought marked copies of a photo that was an exhibit in the application and had provided them to the Commission. He said that the reason for that was Tokos had mentioned determining the exact area for which the conditional use is sought. He provided this marked photo for the Commission's information to better visualize it. The storefront portion is marked in yellow where the restaurant will be. Above there, that is not used by or leased by the applicant. The area where you see the big butterfly above the yellow storefront and to the right is Jambo's Restaurant, which has no relationship to Mr. Hoke's operation. Minor noted that Tokos did a really thorough job in the staff report analysis; and he knows that this is a real investment of the Commissioners' time to come to these hearings. Minor also wanted to mention that Dave Gesik for Jack Gesik of Jack's Seafood, was in attendance as well and could answer questions. He said if you're interested in history, the property has been used by many, many different businesses over the years; Jack's Seafood, Deep Down Dave's, and he thinks some crab operation was there. Minor said that Mr. Hoke is trying to be a good citizen. Some of this building may be grandfathered in as nonconforming; but he wanted to do a straightforward approach and apply for a conditional use permit and not get into an argument with that sort of thing. Minor said they have no issues with the staff report; but he might clarify number 3 of the recommended conditions on the last page. That states that the applicant shall comply with all codes; and if the applicant must modify the size or height of the building,

a new conditional use permit could be required. He asked what if he puts in a skylight, a vent, or an exhaust fan. He's thinking that's not the sort of things that are meant. He wondered if we might say "if the applicant must materially modify the size or height" or "the slightest changes won't require a whole new hearing." Tokos said that he had no problem with that. Minor said on the first condition, it states no work unless what is specified in the documents. He wondered if when you say work, aren't we really basing this on the use of a restaurant, so do we mean conversion to a restaurant use. He doesn't know if the exact description of all work to accomplish that is described in the application. He's unsure what to say they are doing. He's a little uncomfortable with that. Tokos said, as discussed, the authorization would be for restaurant use within the designated area. This is getting at that you are bound by that. You may use it for storage for a period of time and then full out restaurant. Our view is that a restaurant is a restaurant. A restaurant has these different components, it doesn't matter how you use it in the future. Minor said what bothers him is the use of the word "work." Tokos said it could read, no "use" shall occur other than specified; that's fine. Minor thought that was good. He said that he looked at the material from Torp and Webster. He thought that Webster's comments are directed at general concerns for Bay Front development more than this project. He agrees with Tokos that probably those issues are irrelevant to conditional use permit standards. Just to set his mind at ease a bit, Minor had asked Mr. Hoke if he has adequate garbage disposal; and Mr. Hoke told him that Thompsons is doing fine. Also Mr. Hoke has no problem suggesting that employees don't park on the street; it's time-limited anyway. Minor said he could comment that this business doesn't generate any trips. Although some restaurants generate trips; for example he expects that the restaurant in the old city hall generates trips. He said that the people doing business at Mr. Hoke's establishment are wandering up and down the Bay Front anyway.

Branigan asked how many tables Mr. Hoke is talking about; what's the occupancy of the restaurant. Hoke said two tables on the patio to sit about twelve people; no tables in the building. It is take-out sales.

There were no other proponents present wishing to testify.

Opponents or Interested Parties: There were no opponents present wishing to testify; so the applicant waived rebuttal.

Patrick closed the public hearing at 7:25 for Commissioner deliberation. Branigan said that, having reviewed the materials and the graphics which really helped, it looks as though all of the bases are covered. He would recommend that the Commission go forward with the conditional use permit. East agreed; and he thought the Commission should approve it, following the staff recommendations. Croteau saw no problems; and he would also recommend approval including the modified wording of the conditions. Hardy thought it was fine, too. Patrick felt that the application meets the criteria. He said he would be looking for a motion for approval with the two changes: in the second sentence of the first paragraph, changing the word "work" to "use;" and in the third sentence of the third paragraph, adding the work must "materially" modify.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to approve the conditional use permit application with the modified conditions indicated. The motion carried unanimously in a voice vote.

G. New Business. Patrick thought that the Commission may want to discuss the Bay Front plan. Tokos said that this is something that we will pick up with the Bay Front Parking District before it expires. The districts ran for five years. We'll look at it before it goes out for re-authorization and talk a bit about it. In the beginning, they were looking at transit; but they're unsure that is the solution. There is a desire to have some discussion about doing metered parking down there as a real revenue source for financing construction of a parking structure on maybe the Abbey Street lot. The carrot being able to lift off-street parking off the Bay Front because they wouldn't require it anymore. We can't really do it now; we would send the congestion off the deep-end if we removed it without a solution. That group wants to talk about it and maybe forward a recommendation to the City Council and the Planning Commission. He said it sounds like what Webster was talking about is what Nye Beach did. Webster is not sure parking is the only issue, and we shouldn't limit it to that. With a parking district, that is usually what you limit all discussion to. Tokos said with that group, it's hard to get a quorum. With their different schedules and commitments, it is hard to get those folks together. Tokos knows that Webster doesn't want to limit it to parking; but he doesn't know the full extent. There are no design standards on the Bay Front; it's not like Nye Beach. Branigan asked how the Port authority fits into this. Tokos said the Port fits in under the district requirements. We have an IGA with the Port regarding the parking district. They contribute \$6 thousand annually. For one thing, the Port has added the most meaningful spaces at Port Dock 7. With Local Ocean Seafood, Laura Anderson purchased the lots next to her building. They expanded the restaurant to the second floor, and where the fishermen used to park is now used for the restaurant. Tokos said also, there is a fair amount of development potential that can't be realized without a solution to the parking. There are small buildings that could be upsized and probably would. People have come in and talked to Tokos; but there's no way. There no place to put cars. The City owns property on some of those steep slopes. We looked at pushing the Abbey Street lot back into the hill; but it requires retaining walls and is not cost-effective. The City owns part of the Lee Street parking lots and looked at public and private partnering on those, too, but couldn't squeeze out more spaces. We've made a better experience with sidewalks, striping, improving the cross walks and handicapped locations. Those are small things. Patrick asked if the districts are coming up on five years, isn't Nye Beach first? Tokos said yes, they are first; and that should be soon. He noted that staffing with three districts is difficult; at the time they were formed, we had a Senior Planner.

H. Unfinished Business. Tokos wanted to update the Commissioners on the Nye Beach Design Review progress. The ad hoc work group met last week and had a healthy discussion. SERA Architects came in and made recommendations on what could be done with the design guidelines and had tiered them 1, 2 or 3; 1 taking the least amount of effort and resources, and 3 the most. The

group had a healthy discussion about that. They worked through that. There are differing opinions. There is not consensus on some items. There was consensus to engage SERA to do a refreshment of the guidelines, update the illustrations, and clarify the language. They will also take a look and make a recommendation for the triggering thresholds for the Planning Commission. They will be refining the criteria so the end result is more in line with what the Plan calls for in terms of architectural development. He has talked to SERA, and it will be 2-3 months for SERA to get this in their queue. Tokos will update the zoning code to cross-reference to the new refreshed guidelines. That is what will come back to the group in 2-3 months; then they will provide feedback, and it will be brought back to the Planning Commission. The group was disappointed it would take 2-3 months; but it takes a little bit of time. If it's sooner, we'll move it along; but we want to be realistic. Patrick thought that is what we actually need. Tokos said some of them were looking at solar access guidelines, view corridor, view shed studies; but that's not going to happen. Those were outside the scope and would require substantial effort. There wasn't consensus that that should be tackled. There was some discussion of why consensus is important. We want to move forward on the general work that there was mutual agreement on. We don't want things that there isn't consensus on to highjack things where there is agreement. That's not to say that shouldn't be brought back to the Planning Commission. It would just be handled in a different way. We'd come back and say here are the issues that weren't resolved through consensus and here is why. The Commission will have to think about that to see if there is anything in that basket that really should be considered now or at a later date after we see how the near-term things go. Trying to get your arms around the concerns that buildings are too big or too tall is hard. You can adjust the tolerances; so instead of 35 feet it is 30 feet for the trigger, or instead of 100 feet in length it's 75 feet. You can play around with different tolerances. People will put more into the design because they don't want to go to the Planning Commission where there is a certain amount of uncertainty. Tokos said we will see how it goes. His hope is that by having the refreshed guidelines and the changes on the zoning end to cross-reference, those targets will get a little bit clearer and points of disagreement will get clearer. Then you are dealing with specifics; not just general. Then the Planning Commission will have to take that and run with it. Patrick agreed there are a lot of differing opinions on that committee. Tokos said it's a good time to tackle this. There hasn't been a big project in Nye Beach for several years. It's better to fine-tune it now than trying to have this conversation when a large, contentious project is moving through.

I. Director's Comments.

1. Tokos noted that Elwin Hargis is officially retiring for the second time as of October 1st. He will stay on through the recruitment as our official Building Official and will provide transition for the new Building Official. We will be hiring a full-time official. The position is open until filled. The initial screening was September 15th. Interviews will be on October 1st. Patrick, as a contractor representative, will be involved in that along with Public Works Director Tim Gross, Fire Chief Rob Murphy, and Hargis. It will be a full day of interviews of eight candidates. They are charged with recommending two to three for final interviews the next week with Tokos and Michael Morter from the State Building Codes Division. The new human resources person will be getting packets, schedules, questions, and the rating system to those doing the interviews. In the end the interview team will be putting collective heads together to come up with two or three for final interviews. This possibly means we will scale back on our contract services. It will allow us to provide more robust building services. Instead of just Tuesday and Thursday inspections we may be able to add a third day. We will be working on a schedule. He could certainly see office hours every day of the week. East asked if that makes more sense than contract. Tokos said that contract services have been great. There can be some issues with quality all the way through. Having it in house, you can address things that you can't with contract services. You can get out with contractors; deal with unsafe buildings, which haven't been dealt with; and take advantage of "e" permitting. There are definite advantages there. We don't want to think about it, but if we have damaged structures in a disaster, it's good to have a local to do structural assessments. It's good having local expertise. Tokos added that we had a great candidate pool.

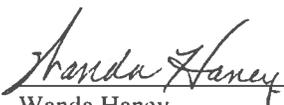
2. Croteau asked if Tokos has heard anything on the electronic sign issue. He keeps getting questions about Nye Beach becoming the new Las Vegas. Tokos said he has had some of the same emails. He got back to them. He can give language to the Commission to get around not allowing them on public-zoned property if that is something they really want to take on.

3. Tokos said October should be pretty light for the Planning Commission. The legislative items won't hit. November and December is looking to build up. Urban renewal will be coming back at that time. There are two or three code revisions. He is anticipating that the Commission is having only one December meeting; not one around the holiday. Patrick reminded everyone that he won't be at the second meeting in October.

4. Tokos informed the Commissioners that there will be a going away get-together for Elwin Hargis and Chuck Crawford, our electrical inspector, on September 30th from 8:30 a.m. to 10:00 a.m. The Commissioners are welcomed to attend.

K. Adjournment. Having no further business to discuss, the meeting adjourned at 7:48 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant