

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
August 22, 2022

Planning Commissioners Present: Jim Patrick, Bob Berman, Braulio Escobar, Jim Hanselman, Bill Branigan (*by video*), and John Updike.

Planning Commissioners Absent: Gary East (*excused*).

City Staff Present: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

Public Members Present: Bill Rowley, Jeff Bertuleit, Robert Hoefs, and Traci McDowall.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:02 p.m. On roll call, Commissioners Patrick, Branigan, Hanselman, Berman, Escobar, and Updike were present.

2. **Approval of Minutes.**

A. **Approval of the Planning Commission Regular Session Meeting Minutes of July 25, 2022.**

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Regular Session meeting minutes of July 25, 2022 with minor corrections. The motion carried unanimously in a voice vote.

B. **Approval of the Planning Commission Work Session Meeting Minutes of August 8, 2022.**

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to approve the Planning Commission Work Session meeting minutes of August 8, 2022 with minor corrections. The motion carried unanimously in a voice vote.

3. **Public Comment.** Daniel Myrick addressed the Commission. He reported he was a homeless individual who was having struggles with being harassed at the Gino's Blue Ocean Restaurant. Myrick was told to move away from their business by staff when he was on the sidewalk next to their business. He reported he had asked the Finance Department if Gino's had approval on their business license to have outdoor seating on their sidewalk. Myrick stated he was told that Gino's did not. He pointed out that the outdoor seating blocked wheelchair access on the sidewalks. Myrick stated he hadn't broken any rules by resting on the sidewalk, but Gino's had. He requested that code enforcement be sent out to enforce the seating, and asked that Gino's be fined for having fixtures placed in the concrete on the sidewalk. Myrick said that when he was told to move from the restaurant he explained to them that they were violating his civil rights.

4. **Action Items.**

A. **Initiate Legislative Amendments to Adopt Yaquina Head Traffic Study.**

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to initiate the legislative amendments to adopt the Yaquina Head Traffic Study. The motion carried unanimously in a voice vote.

B. Citizen Advisory Board Position.

MOTION was made by Commissioner Branigan, seconded by Commissioner Berman to appoint Gail (Annie) McGreenery to the Planning Commission Citizen Advisory Board. The motion carried unanimously in a voice vote.

5. Public Hearings. At 7:13 p.m. Chair Patrick opened the public hearing portion of the meeting. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Branigan, Berman, Hanselman, and Patrick reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. File 1-CP-22 / 2-Z-22 (Continuation).

Tokos acknowledged the letter that was received from Anheuser-Busch, LLC earlier that day. He reviewed the staff report for the continuation of the public hearing covering the zoning map changes for the Aquarium Village and industrial condo sites first. Berman asked what was happening at this property that would be nonconforming with the changes. Tokos explained it would be the principal activity that would be changed. Berman asked if there was a reference to a watchman residence there. Tokos reported that this was in the condo building and it would be permissible. Berman asked if the nonconforming use was discontinued would they lose the status. Tokos confirmed if the discontinued the use it would lose the nonconforming use status after 12 months. Escobar asked how they enforced this. Tokos explained the property would be viewed as an entire facility, not an individual unit. If the entire facility was abandoned it could lose its use status. Escobar asked if there had been any discussion that came forward about the Aquarium Village. Tokos confirmed the only testimony they received was for the industrial condo units.

Tokos reviewed the map changes from I-1 to C-1. Escobar asked how the restaurant would be affected. Tokos explained the restaurant would still be permitted in a C-1. The second story dwelling was nonconforming currently but would become permissible. The Auto Doctors would have gone to prohibited as a vehicle repair, but under the current draft it would be conditional. Berman asked if it would be nonconforming if they made the changes. Tokos explained it was fine as it was, but if they looked to expand it could be a conditional use review process. Escobar asked what would happen to Auto Doctors if it was changed to C-3. Tokos explained if it was C-3 all three uses would be permissible. He noted there was a possible hotel/motel that might be developed in the C-1 area behind the Toyota dealership. Escobar asked if the hotel would be allowed in a C-3. Tokos explained it could but noted the C-3 was heavy commercial and allowed uses that weren't compatible with retail and service use. If they were trying to pull in retail and service uses, they would more so be looking at a C-1 because it was the most flexible for these types of services.

Tokos reviewed the I-1 to C-3 changes. Escobar asked if this was where the property owners accepted the C-3 designation. Tokos confirmed it was.

Tokos discussed the change to leave the I-3 as it was instead of changing it to an I-1.

Tokos covered the Comprehensive Plan change to the State Park property. Berman asked if this would be part of the future annexation. Tokos confirmed it wouldn't because it was too far south.

Tokos reviewed the code changes since the last meeting covering the setbacks and landscaping changes. Berman asked what the 15 foot setback and landscaping requirement meant. Tokos explained the first 15 feet on US 101 had to be landscaping but there would also be parking along US 101. There would be some separation between the parking and the highway and sidewalks. There was a process for adjustments for this that would come before the Commission for developers to go narrower. Berman asked if they could have more than a 15 foot setback. Tokos confirmed there could be.

Opponents: Bill Rowley addressed the Commission. He reported he had multiple properties in South Beach and his property on 32nd Street was a warehouse. He asked if it could be a warehouse if it was sold. Tokos explained if it stayed as a warehouse it could continue. Rowley didn't like the language that said there could be no new towing companies in South Beach. Tokos noted the towing company was outside of the city limits and these changes didn't apply to it now. If it was annexed in, these properties would come in as nonconforming. It could continue as a towing business as a nonconforming use. Tokos explained there would be an option to do an alteration expansion of a nonconforming use if they wanted to expand the self-storage. Rowley was concerned that if he closed the business for years they couldn't reopen because of this. Berman confirmed that if they locked the doors for more than a year they would lose the right to open it automatically. Rowley noted that it was a permitted use in the light industrial but the code changes were saying it was a non-permitted use. He wanted to see this taken out of the code. Escobar asked if the change at his property on 32nd Street would be impacted if it was changed to a C-1. Rowley preferred it to stay light industrial. Tokos noted that going to a C-1 didn't mean it couldn't be used as it currently was used, it would become nonconforming. He reported that there was nothing that was being considered in these changes that would cause any business to close. Tokos noted that what he had heard from the Commission was that the nonconforming rules made sense to allow businesses to continue as they were. Patrick pointed out that they were trying to change the look of South Beach. As time went on they would see the primary uses change to more of a C-1 type of use. There would always be winners and losers with these changes. This was what the majority of people said they wanted to see when they did the outreach for the Urban Renewal in South Beach. If they wanted to encourage that this type of use, this was what they wanted to go with. Escobar thought the concept of making something currently in place a nonconforming use would have an impact for owners, which concerned him. Patrick noted this was why they made it conditional. Rowley stated he didn't want to see anything added that said that if the use went away they couldn't come back to it.

Jeff Bertuleit addressed the Commission. He reported he had a property located south of 40th Street. It didn't make sense to him to say zoning made jobs, it was more about compatibility. Bertuleit thought they needed to take the self-storage part out. He noted there were uses they wanted to add that might be a problem in the tsunami zones. Bertuleit noted the parking lot requirement went from 5 percent to 10 percent for landscaping. He gave examples of different properties in the city that didn't currently meet the 15 foot setbacks. Bertuleit didn't understand the need to not have buildings next to the highways. He was concerned about the overall plan for the area. Bertuleit pointed out there were about 10 landowners in the area that as far as he knew hadn't been contact. He noted that until they had a light at 40th Street they wouldn't get a gas station and store in South Beach. Bertuleit thought the city should buy additional footage of the right-of-way to make it wide enough for people to ride bikes in the area. He didn't think there was vision in the plan. Bertuleit thought they should talk to owners and look at a land plan before they moved on. He thought that saying all the uses were incompatible was wrong. There were no current businesses that weren't compatible. Bertuleit thought they needed a design review for South Beach. He was

okay with the I-3 because if there was no concrete or asphalt plant it made it difficult to build in Newport.

Berman noted there would be plenty of announcements for the annexations in South Beach beforehand. He asked if Bertuleit would be participating. Bertuleit confirmed he would. He questioned why they would annex if they didn't have any use for the land.

Robert Hoefs addressed the Commission. He asked for clarification on how the apartment he had above his candy shop wasn't allowed in the light industrial zone. Tokos explained residences weren't allowed in the light industrial except for the narrow provision to allow a watchman's residence. He reminded Hoefs that he went through a nonconforming use approval to have the apartment because of this. Hoefs noted that when they tore down the building that was there before he was told they couldn't have two apartments on the top floor of the new building, only one for a watchman's apartment. He asked if the zone was changed to C-1 could he have more than one apartment. Tokos thought there could be potentially, but he would have to go back and look at the history. He recalled that when they went through the nonconforming review, they proved they could have the residential use on the top floor. He explained that they could have residential on anything other than the ground floor. Hoefs noted that in 1982 his dad fought for the current zoning to allow the city to put in a turning lane in. There was a warranty deed to allow access for southbound traffic to his property. Hoefs noted how the changes to the traffic lanes near his property caused traffic to run through his property to get to 32nd Street. He reported they operated everything in the light industrial and this gave them the widest opportunity for business. Escobar asked if the apartment was used by employees. Hoefs confirmed it was. He reported how his staff couldn't find affordable housing so they could work in Newport. Hoefs noted there has been a store and gas station at that location before but they weren't there now. He didn't think this setup would work there again.

Escobar asked if the Anheuser-Busch property located on 32nd Street was subject to the potential zone change. Tokos explained they were and noted they had an existing distribution center there.

Patrick closed the hearing at 8:24pm.

Escobar thought the primary issue was on the property owned by Hoefs. He was okay with the C-2 at the Aquarium, the C-3 that the three land owners agreed with, and keeping the concrete plant with no change. Escobar had difficulty with the C-1 change from US 101 to Ferry Slip Road making it a nonconforming use. He pointed out that Hoefs had housing over the restaurant and thought that under a C-1 there couldn't be residential. Tokos confirmed this wasn't correct. Residential was allow on any level above street grade in a commercial. With that, Escobar noted he was good with the changes and wanted to see a C-3 zone on Hoefs property. If the other Commissioners didn't agree with this, he would consider supporting the C-1.

Hanselman noted there would be some pains for some members of the community in South Beach with these changes. They were trying to change the look in South Beach. It was difficult to try to create a body of consistent rules, and nonconforming seemed to be the biggest help they could give to property owners who thought the changes were doing damage to them. Most people were running businesses they wanted to run and would continue to run these businesses. Hanselman thought that most wouldn't see damage to thier businesses. Things changed over time and the Commission had tried to change the zoning as minimally to allow the businesses to continue to operate their businesses the way they had been running them for years. Hanselman stated he could go along with the plan even though it wasn't perfect.

Branigan agreed with Hanselman and noted there had been public outreach done in the area. The feedback was that they wanted to see more retail types businesses in South Beach. The C-1 was more attractive for investing in future business than any other zones. Branigan reminded that change happened. The businesses involved could continue what they were doing without any issues and they really didn't know what would happen down the road. Branigan hoped they could improve housing overall. He supported the recommendation with the zoning changes and thought it was the right thing to do.

Berman agreed with the concept of tailoring the zoning to encourage a better street scape. He liked the fact that the nonconforming use designation didn't have any immediate impact on anyone and they could continue what they were doing. If there was some kind of change the property owners needed they could do an adjustment, but overall it was a good plan. Berman noted there might be people who may not be able to realize their dreams as to what they could do with their properties, but this was the price of progress. The effort to develop South Beach and make it a real part of Newport with Urban Renewal funds was a key piece to the property. Berman thought the designs looked very attractive and he supported the proposal as it was modified and presented at the night's meeting.

Urdike noted this was his first meeting as a Commissioner. He reported that he had reviewed the video archives and he agreed with the proposed changes. The protections afforded by a nonconforming use allowed businesses to have their continued use. Urdike took to heart the concern about the economic viability of developing the properties, but if a template was not set it wouldn't happen. Urdike thought the changes provided an opportunity but didn't cause harm to existing users. He always looked to try to do no harm while looking to the future, and felt this accomplished it in a modest way.

Patrick was in favor of the proposal as it stood. He pointed out that the Aquarium Village had been a nonconforming use for a while. Patrick thought the proposal was a good idea and it was an end of a long process through Urban Renewal. They were trying to make it what they thought was the most viable option in order to make things happen in the area. They tried to be as accommodating as possible but there were no guarantees in the future.

Escobar reported that after hearing the other Commissioner's comments he would support the proposal as it was presented.

MOTION was made by Commissioner Berman, seconded by Commissioner Escobar to forward File 2-Z-22 - 1-CP-22 to the City Council with a favorable recommendation for approval. The motion carried unanimously in a voice vote.

Tokos reported that a notice for the City Council hearing that would happen in last September or early October would be published and sent out to the public who had been participating.

6. **New Business.** None were heard.

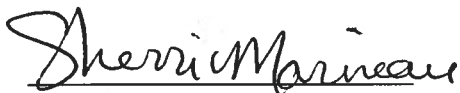
7. **Unfinished Business.** None were heard.

8. **Director Comments.** Tokos noted there was a Housing Advisory Committee meeting being held on Thursday, August 25th at 6 p.m. This process was moving forward and the Commission would be kept informed of their progress.

Tokos reported that the Transportation System Plan had been approved at the last City Council meeting which would be effective 30 days after. Hanselman asked if the couplet was include. Tokos explained that it as one of two options that were included. The Transportation Growth Management grant that they received for the city center work that they were going to be doing the Oregon Department Transportation would be put through a mini RFP process. The consultant selection process would wrap up in mid-October, and the process would wrap up shortly after. It would be a 12 to 18 month process to get a final recommendation for the transportation solution. They would also be recommending other changes that needed to be made relative to land use regulations, the city center, and incentive programs that used urban renewal funding.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:39 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant