

THE CITY COUNCIL OF THE CITY OF NEWPORT,  
COUNTY OF LINCOLN, STATE OF OREGON

In the Matter of:

APPEAL OF THE PLANNING COMMISSION'S	)	
FINAL ORDER AND FINDINGS OF FACT	)	ORDER NO.
DENYING A CONDITIONAL USE PERMIT	)	2023-1
WITH ADJUSTMENTS FOR A HOTEL WITH	)	
GROUND FLOOR COMMERCIAL USES	)	

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WHEREAS, on March 2, 2023, the City of Newport ("City") received a complete conditional use permit and adjustment application from John Lee, on behalf of property owner Elsinore Investments, LLC ("Applicant"), for a new 47 room, 26,656 sq. ft. three-story hotel, with 2,626 sq. ft. of street level commercial space (File No. 1-CUP-23/1-ADJ-23); and

WHEREAS, the subject site is 17,424 sq. ft. in size and is located at 836 - 856 SW Bay Blvd on Lots 2, 3, & 4, Block 1, Plan of Newport, including a portion of a vacated alley, together with Parcels 1 and 2 of Partition Plat 1999-18 (Assessor's Map 11-11-08-CA, Tax Lots 2500, 2501, 2800, and 3300); and

WHEREAS, pursuant to Newport Municipal Code (NMC) Sections 14.33.030(B) and 14.34.030, an application for approval of a conditional use permit with adjustments is subject to review and approval by the Newport Planning Commission ("Commission") after notice and a public hearing in cases, such as this, where the proposal generates more than 50 vehicle trips per day and the requested adjustments are between 10 - 40% of the relevant numerical standards; and

WHEREAS, the Commission held de novo (full evidentiary) hearings on March 13, 2023 and March 27, 2023 to consider the conditional use permit and adjustment application and, after taking testimony and considering evidence and information in the record, the Commission closed the hearing, deliberated, and voted to deny the application; and

WHEREAS, in rendering its decision, the Commission found that applicant did not meet NMC 14.33.050(A) and (B), two out of the four criteria for granting the requested off-street parking adjustment and on that basis, denied the conditional use permit application in a 4 to 3 vote; and

WHEREAS, on April 13, 2023, the applicant appealed the Commission's decision, and on May 5, 2023 they submitted a support brief, both of which were filed in a timely manner. Notice of the appeal was provided by the City to individuals that submitted written

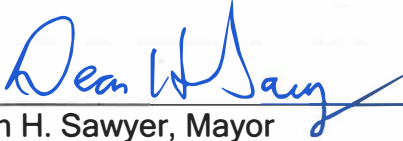
comment or appeared in person at one of the two Commission hearings consistent with NMC 14.52.100(C); and

WHEREAS, the City Council held an on-the-record appeal hearing on May 15, 2023, where it considered the entire record of evidence that was before the Commission, and accepted argument from the applicant and comments from staff. Council members had an opportunity to ask questions, and then closed the hearing to deliberate on the matter. Following deliberation, the City Council voted 5-2 to overturn the Commission's decision and approved the applicant's request for the reasons set forth in the supplemental findings.

THE CITY OF NEWPORT ORDERS AS FOLLOWS:

1. The foregoing recitals are hereby confirmed and adopted as findings in support of this order, along with the supplemental findings of fact enclosed as Exhibit "A."
2. The City Council of the City of Newport hereby enters its final order in favor of the appeal, and approving this conditional use permit and adjustment application, including the listed conditions of approval, as the city's final decision.

SO ORDERED this 5<sup>th</sup> day of June 5, 2023.



Dean H. Sawyer, Mayor

ATTEST:



Erik Glover, City Recorder

**SUPPLEMENTAL FINDINGS OF FACT**  
**Case File No. 1-CUP-23/1-ADJ-23**

**I. BACKGROUND**

- A. APPLICANT:** John Lee, 13635 NW Cornell Road, Suite 100, Portland, OR 97229 (applicant). Elsinore Investments, LLC, 1855 SW Teton Ave, Tualatin, OR 97062 (owner).
- B. REQUEST:** Approval per Chapter 14.03.080(18) /“Water-Dependent and Water-Related Uses” of the Newport Municipal Code (NMC) for a conditional use permit to replace the former location of Forinash Gallery, Shark’s Restaurant, M&P Thai Restaurant and Apollo’s Night Club with a new 47 room, 26,656 sq. ft. three-story hotel, with 2,626 sq. ft. of street level commercial space. Adjustments are also being requested to adjacent yard buffer and off-street parking.
- C. LOCATION:** 836,838,844,846,848,852, & 856 SW Bay Blvd.
- D. LEGAL DESCRIPTION:** Lots 2, 3, & 4, Block 1, Plan of Newport, including a portion of a vacated alley, together with Parcels 1 and 2 of Partition Plat 1999-18 (Assessor’s Map 11-11-08-CA, Tax Lots 2500, 2501, 2800, and 3300).
- E. LOT SIZE:** Approximately 17,424 sq. ft. per Lincoln County Tax Assessor records.

**F. REPORT OF FACT**

- i. Plan Designation: Yaquina Bay Shoreland.
- ii. Zone Designation: W-2/“Water-Related.”
- iii. Surrounding Land Uses: Tourist-oriented retail (north), tourist-oriented retail and fish processing (east), condominiums (west), and Coast Guard operations (south).
- iv. Topography and Vegetation: The property is relatively level having been cleared for development in the past. A large retaining wall exists near the west property boundary, with the finished grade of the condominiums to the west being 20-25 feet above that of the subject site. A small amount of landscaping exists at the southwest corner of the property. Otherwise, the property is largely devoid of vegetation.
- v. Existing Structures: Forinash Gallery (1,224 sq. ft.) and Shark’s Restaurant (978 sq. ft.). Apollo’s Night Club/M&P Thai Restaurant (8,256 sq. ft.) was demolished in 2020.
- vi. Utilities: All are available to the site.
- vii. Development Constraints: Geologic hazards area.

viii. Past Land Use Actions:

- i. File No. I-CUP-20 - Approval of Basics Public Market, a new 11,859 square foot mixed-retail, light industrial building. The facility was to include 3,000 sq. ft. of retail market space, 2,000 sq. ft. of restaurant space, and 6,859 sq. ft. of industrial space for food production. Project did not move forward.
- ii. File No. I-TSP-11 - Approval of a temporary structures permit for a 20-ft x 30-ft tent and fenced area to expand Apollo's footprint during the Seafood and Wine Festival. Approved 2/7/11.
- iii. File No. 4-CUP-07. Permitted a 335 sq. ft. portion of the Apollo's Nightclub building for use of a real estate office. Approved 6/4/07.
- iv. File No. 4-CUP-06. Permitted 600 sq. ft. of the Apollo's Night Club building for use as a retail gift shop. Approved 4/24/06.
- v. File No. 9-CUP-03. Approved use of the building at 836-848 SW Bay Blvd as a restaurant and bar (i.e., Apollo's Night Club).
- vi. File No. 6-PAR-99. Approved a partition creating the parcels upon which Forinash Gallery and Shark's Restaurant are situated. Affects 852, & 856 SW Bay Blvd. Approved 8/4/99.
- vii. File No. 2-CUP-91. Permitted the remodeling and retail use of buildings located at 852 & 856 SW Bay Blvd. Approved 3/11/91.

## II. PROCEDURAL HISTORY

- A. Applicant filed the conditional use permit application on February 9, 2023. Applicant then filed supplemental information, and the Community Development (Planning) Department deemed the application complete on March 2, 2023.
- B. Planning mailed notice to neighboring property owners on March 3, 2023, and requested comments by March 13, 2023. Planning issued a staff report ahead of the Planning Commission hearing ("March 13 staff report"). See Record at H-13, p. 37-92.
- C. The Planning Commission held a public hearing on March 13, 2023, and continued the hearing to March 27, 2023. During the continuation period, Applicant prepared and filed supplemental information in response to public comments and questions from the Planning Commission, including an alternative off-street parking layout (Option 2).
- D. On March 24, 2023, Planning issued an updated staff report, summarizing the new information and noted that either parking layout (Option 1 or Option 2) could satisfy the applicable NMC approval criteria ("March 24 staff report"). See Record at H-18, p. 188-225.

- E. The Planning Commission held the continued hearing on March 27, 2023, and at the end of the hearing, found that applicant did not meet NMC 14.33.050 (A) and (B), two out of the four criteria for granting the requested off-street parking adjustment and on that basis, denied the conditional use permit application in a 4 to 3 vote (“PC Decision”).
- F. Applicant filed an appeal of the PC Decision on April 13, 2023, and on April 19, 2023, Planning mailed notice of the public hearing for the appeal.
- G. On May 5, 2023, Applicant filed its support brief and on May 11, 2023, Planning filed a staff report for the City Council.
- H. The City Council held an on-the-record appeal hearing on May 15, 2023, where Applicant presented its case, the City Council asked questions, and then closed the hearing to deliberate on the matter. Following deliberation, the City Council voted 5-2 to overturn the PC Decision and approve Applicant’s request for the reasons set forth in these findings.

### **III. FINDINGS AND LEGAL CONCLUSIONS**

- A. Requested Reviews. Applicant’s request required conditional use and adjustment reviews under the NMC. Applicant requested a conditional use review to construct a three-story, 26,656 sq. ft. hotel. The main hotel services will be on the second and third floors. General retail / food and drinking establishment uses will be provided on the first floor. A roof deck will be incorporated into the design and it will be 2,075 sq. ft. in size. Sales oriented general retail, hotels/motels, and eating and drinking establishments are permitted outright in a C-2 zone district under NMC 14.03.070(2)(a) and (2)(d) and allowed conditionally in the W2 zone. Applicant requested two adjustments to certain dimensional standards, described as follows:
  - a. Adjacent Yard Buffer. Approval of a 40% adjustment to the adjacent yard buffer, reducing it to 6 ft. along the west property line that is adjacent to the residential zone. The zoning code requires a 10 ft. adjacent yard buffer per NMC 14.18.020.
  - b. Off-Street Parking. Approval of up to 28 percent adjustment to the off-street parking standards on the ground floor parking. The zoning code requires up to 60 parking spaces per NMC 14.14.030, accounting for the Bayfront Special Parking Area credit in NMC 14.14.100(B).
- B. Required Reviews. Applicant’s requested adjustments did not deviate more than 40 percent from the numerical standards (adjacent yard buffer and off-street parking) and therefore required review as a Type III review per NMC 14.33.030(B). Applicant’s proposal also triggered Type III review per NMC 14.34.030 because it will generate more than 50 vehicle trips per day. The City Council finds that that Type III review requirements have been met through the Planning Commission and City Council reviews.

C. Adjacent Yard Buffer Adjustment Review. To authorize the requested adjustment, the City Council needed to find that Applicant's yard buffer adjustment met the approval criteria in NMC 14.33.050. The City Council finds that it did for the reasons set forth below.

a. *Criteria (1) Granting the adjustment will equally or better meet the purpose of the regulation to be modified.*

- i. In regard to this criterion, the City Council considered whether Applicant sufficiently demonstrated that granting the yard buffer adjustment will equally or better meet the purpose of the regulation to be modified.
- ii. NMC 14.18.020, Adjacent Yard Buffer, stipulates that *"on any portion of a site in a non-residential zone that abuts a residential zone, a minimum interior yard of 10 feet planted and maintained as a landscaped screen shall be required."* A zoning map of the property shows that the west property line of the subject property serves as a boundary between the W-2/"Water Related" non-residential zone and the R-3/"Medium Density Multi-Family" residential zone. This is the only portion of the property that borders a residential zone, and is the only property line from which Applicant is subject to a building setback since the W-2 zone does not otherwise have required setbacks (Table "A," NMC 14.13.020).
- iii. In addition, the applicant notes that they are proposing to build a 6 to 8 foot high wall along the 6 foot west yard buffer line to address concerns of potential future failure of the existing retaining wall that belongs to the condo owners to the west. They point out that visual observation shows deterioration of wood lagging and parts of the wall, including steel piles, that are leaning towards the subject property. The proposed wall will serve as protection in the case of future failure of any portions of the existing wall and will be built according to the recommendations of a soils engineer and structural engineer.
- iv. The City Council agrees with Applicant that the utility and terrain map demonstrate that there is a significant grade separation between the two properties and it's reasonable to find that such terrain warrants a reduced setback because it provides comparable visual relief. Further, the City Council finds that it is not practical to attempt to establish screening vegetation along the west property line because the area is constrained between a retaining wall on the west and any kind of building that would be constructed on the property, depriving the space of sunlight for significant portions of the day. This is evident on the zoning map, which shows the shadow pattern from the previous development. Finally, the City Council considers the existing development pattern along the Bayfront, much of which is similarly situated with R-3 zoned land being situated upslope, and adjacent to W-2 zoned properties. There is no visible evidence of a landscape buffer existing in these

areas. Many of the W-2 properties, such as the one immediately north of Applicant's property are built to the property line given the constrained amount of land available for development along the Bayfront. Terrain provides visual relief for upslope residential properties that face the bay for the view (and would likely object to screening that could obstruct their views). Thus, it is reasonable to conclude that authorizing the adjustment would not create conditions on the ground that are inconsistent with the existing development pattern.

- v. Evidence in the record reflects testimony from neighbors that the requested yard buffer adjustment will impede any maintenance or repair of the existing wall. This is not a factor the City Council considers when determining whether or not an adjustment should be granted as it is not relevant to the purpose behind the adjacent yard buffer. The wall was constructed as part of the condominium development, and the condominium association appears to be the party responsible for its maintenance. A survey of Applicant's property shows that, for the most part, the wall is on the common property line; however, a portion of it encroaches a few feet onto Applicant's property. A maintenance easement is typically acquired when one wants to use another's property to maintain their own. In this case it does not appear that an easement was ever obtained. Applicant is proposing to construct a new wall six feet from the existing retaining wall because they are concerned that the existing wall may fail and damage their property. While six feet of separation between walls may not be an ideal width, it does provide a means of meaningful access for both parties to maintain their improvements. If in the future, Applicant and adjacent property owner are able to reach agreement, the City Council finds that reconstructing or reinforcing the existing retaining wall in partnership with the condominium association, would provide a desirable outcome and would also meet the purpose of NMC 14.18.020.

b. *Criteria (2) That any impacts resulting from the adjustment are mitigated to the extent practical.*

- i. The City Council finds that the terrain difference between the condominium development to the west and Applicant's property mitigates impacts associated with setback reduction from 10-feet to 6-feet. The aerial and topographic map in the record illustrate that Applicant's property is 10-12 feet below the lowest elevation of the residential property to the west. The condominium building is a further 5-feet higher in elevation and its first floor is dedicated to parking (another 10-feet+/-). This equates to roughly a 25-foot difference in vertical elevation between condominium living areas and the finished grade of the property. That is the equivalent of a significant amount, and age, of landscape screening were the properties at similar elevations. The same principal applies to other residential properties to the west,

which are even further away from Applicant's property. Accordingly, the City Council finds that Criteria 2 is met.

c. *Criteria (3) That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access.*

- i. The site borders SW Bay Street and SW Bay Boulevard and a hydrant is in place at the intersection of those streets, adjacent to the site. Applicant's elevation drawings shows that the new building will be setback almost 16-feet from the existing retaining wall and 9-feet from the wall that the applicant intends to construct. Chief Murphy, with the Newport Fire Department, confirmed that Applicant's plans provide for adequate fire access. In addition, the City Council imposes Condition 4 below. Criteria 3 is met.

d. *Criteria (4) That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.*

- i. The purpose of the zoning district is to support water-related uses and with conditional use approval, retail and commercial uses. No water-related users like the nearby fishing operations commented on the record, raising any concern over the proposal. The requested yard adjustment does not impact the support of water-related uses, nor does the off-street parking adjustment given that on balance, the proposal accounts for all of its increased parking demand on site. See Section D below. Accordingly, the City Council finds that Criteria 4 is met.

D. Off-street Parking Adjustment Review. To authorize the requested parking adjustment, the City Council needed to find that Applicant's off-street parking adjustment met the approval criteria in NMC 14.33.050. The City Council finds that it did for the reasons set forth below.

a. *Criteria (1) Granting the adjustment will equally or better meet the purpose of the regulation to be modified.*

- i. Applicant requests an adjustment to the off-street parking standard to reduce the required number of off-street parking spaces. Before addressing the adjustment review criteria, the City Council first makes findings as to its interpretation of the applicable NMC provisions. The off-street parking requirements are provided in NMC 14.14.030, Off-Street Parking Requirements, and NMC 14.14.100(B), Bayfront Special Parking Area.
- ii. The City Council finds that when determining the required number of off-street parking spaces under NMC 14.14.030, it is proper to calculate the parking requirements under NMC 14.14.030 and then apply the Bayfront

Special Parking Area credit in NMC 14.14.100(B) when determining the total number of required off-street parking spaces for the site. The Bayfront Special Parking Area was setup so that uses would not have to provide off-street parking to meet 100% of their parking demand and that should be taken into consideration before calculating the required parking and subsequently, the necessary adjustment percentage.

- iii. Table 1 shows the required parking as applied to the proposes uses. Because the allocation of SF between the two types of commercial uses has yet to be determined, the City Council agrees with Applicant that analyzing the two potential scenarios (all general retail or all eating and drinking establishment) accurately captures the required parking. The all General Retail is reflected in Scenario A; the all Eating and Drinking Establishment is reflected in Scenario B.

Table 1. NMC 14.14.030, Parking Requirements

<i>Parking Category</i>	<i>Use</i>	<i>Proposed</i>	<i>Required Parking</i>
Hotel/Motel		47 rooms + 1 manager	48 spaces
General Retail/Eating & Drinking Establishment		2,626 SF	Scenario A: 9 spaces Scenario B: 17 spaces
		TOTAL	Scenario A: 57 spaces Scenario B: 65 spaces

Table 2 shows the parking calculations for the site and the requested adjustment percentage.

Table 2. Parking Calculations

<i>NMC Standards</i>	<i>Parking Calculations</i>
NMC 14.14.030, Off-Street Parking Requirements	Scenario A: 57 off-street parking spaces Scenario B: 65 off-street parking spaces
NMC 14.14.100(B), Bayfront Special Parking Area credit	<i>Minus</i> 5 spaces
Required Parking	Scenario A: 52 spaces Scenario B: 60 spaces

Proposed Parking (Option 2)	43 off-street parking spaces
NMC 14.33, Adjustments	Scenario A: 9 spaces (17%) Scenario B: 17 spaces (28%)

- iv. The site has been previously developed and used for years for commercial purposes. There currently are two buildings onsite and a third building was demolished in 2020. The prior uses of the site included the former Forinash Gallery, Shark's Restaurant, M&P Thai Restaurant, and Apollo's Nightclub. The site has two existing buildings, utility connections, and years of commercial use that required use of public facilities and services. In addition, the prior use relied heavily on on-street parking to meet its parking needs. Applicant's narrative pulled parking analysis from File No. I-CUP-20, where the Planning Commission approved a conditional use permit for Basics Market at the site. That analysis showed that the existing use (described above) had a parking credit of 49 spaces and provided only 20 off-street parking spaces. This likely a generous allocation of off-street spaces considering that parking to the rear of the building was never striped as depicted with that approval and was difficult to access. Using these assumptions, however, the City Council concludes that the prior uses provided for approximately 40% of its parking off-street 60% being met with available on-street spaces. The City Council finds that the Planning Commission erroneously applied a three-year look back for determining whether the site was vacant and therefore disregarded the prior use when evaluating potential impacts of an adjustment. The City Council does not adopt a numeric look back period for determining whether a property is vacant; rather, the proper test is to look at the evidence in the record and analyze the facts on a case by case basis. Here, the record demonstrates that the intensity and characteristics of the prior uses on the site are relevant for determining whether the proposed use warrants an adjustment.
- v. Further, the City Council reads NMC 14.14.030 to allow for consideration of prior use when calculating parking for a new use. Specifically, " \* \* \* *For any expansion, reconstruction, or change of use, the entire development shall satisfy the requirements of Section 14.14.050, Accessible Parking. Otherwise, for building expansions the additional required parking and access improvements shall be based on the expansion only and for reconstruction or change of type of use, credit shall be given to the old use so that the required parking shall be based on the increase of the new use*" (emphasis added). The code language does not define when a proposal involves "reconstruction" or "change of type of use" for purposes of applying the parking credit. Applicant is

proposing to redevelop the site for the proposed use and in order to do so, Applicant has to remove the existing buildings and reconstruct a new building. The City Council has discretion when interpreting and applying its own code. Here, the City Council finds that the language should be flexible to allow for an applicant to account for a prior use when the site was previously developed for commercial use, having a demand on public services, and off-site impacts from the use of on-street parking. With a 49-space credit, Applicant would be required to provide 16 off-street spaces, in addition to the 20 that had been previously provided (for a total of 36 off-street parking spaces). The 43 that they are providing with Option 2 is well above that requirement and does not even consider the Bayfront Special Parking Area credit of five (5) spaces. Accordingly, the City Council finds that Applicant arguably does not even require an adjustment to meet the off-street parking standard. The City Council nonetheless makes findings under the adjustment criteria to ensure that the proposal also meets the adjustment criteria if the City Council's interpretation of NMC 14.14.030 was ever considered by a reviewing body to be "not plausible."

- vi. Criteria 1 examines whether the adjustment will equally or better meet the purpose of the regulation to be modified. The purpose of the regulation to be modified are in reflected in the following provisions:

NMC 14.14.010. *"The purpose of this section is to establish off-street parking and loading requirements, access standards, development standards for off-street parking lots, and to formulate special parking areas for specific areas of the City of Newport. It is also the purpose of this section to implement the Comprehensive Plan, enhance property values, and preserve the health, safety, and welfare of citizens of the City of Newport."*

NMC 14.14.030. *"Off-street parking shall be provided and maintained as set forth in this section. Such off-street parking spaces shall be provided prior to issuance of a final building inspection, certificate of occupancy for a building, or occupancy, whichever occurs first. For any expansion, reconstruction, or change of use, the entire development shall satisfy the requirements of Section 14.14.050, Accessible Parking. Otherwise, for building expansions the additional required parking and access improvements shall be based on the expansion only and for reconstruction or change of type of use, credit shall be given to the old use so that the required parking shall be based on the increase of the new use."*

NMC 14.14.100. *"Uses within a special area are not required to provide the parking required in this section if a parking district authorized by the City Council is formed in all or part of the special area. In such circumstances, off-street parking shall be provided as specified by the*

*parking district. (Section 14.14.100 adopted by Ordinance No. 2081, adopted on May 18, 2015: effective June 18, 2015.)”*

The site is located in the Bayfront Special Parking Area, the boundary of which is set in NMC 14.14.100, and graphically depicted with Council Resolution No. 3864 (Attachment “M”). Section 4 of Resolution No. 3864 provides:

*“NMC 14.14.100 provides that off-street parking within a Parking District shall be provided as specified by the Parking District. For that purpose, the business license annual fee established herein shall exempt new development or redevelopment from having to provide up to five (5) off-street parking spaces, just as it did when the economic improvement districts were effective. Businesses that require more than five (5) off-street parking spaces shall provide the additional spaces in accordance with applicable provisions of the Newport Zoning Ordinance (NMC Chapter 14).”*

Applicant has requested an adjustment of up to 28 percent of the off-street parking standard. Factors the City Council considers when determining whether the adjustment will satisfy Criteria 1 include:

- The purpose of the applicable standard requires balancing of multiple factors to minimize neighborhood impact, encourage economic development, recognize physical and historic constraints within the Bayfront, and allow some flexibility in establishing required parking for redevelopment projects.
- Applicant proposed to eliminate or minimize the commercial spaces SF to reduce the required off-street parking requirements to avoid or minimize the adjustment. The City Council maintains that ground floor commercial use is important to the City and promotes vibrancy to the Bayfront area, both visually and economically.
- The Bayfront Special Parking Area was setup so that uses would not have to provide off-street parking to meet 100% of their parking demand. There are uses within the Bayfront Special Parking Area that provide no off-street parking for their employees or guests (e.g., the fish plants that were referenced in the record). They rely entirely on available public parking. Evidence in the record, and noted above, establishes that Applicant’s proposal would have less of an impact on the availability of on-street parking, and associated congestion, relative to the previous mix of uses that existed on the property just a few years ago. The City Council considers these facts relevant for purposes of evaluating whether the requested adjustment “will equally or better meet the purpose of the regulation to be modified.”

- City Council recognizes that there is considerable public parking in the Bayfront area and there are planned improvements to regulate public parking. City Council notes that the Planning Commission disregarded these considerations and in the City Council's opinion, these facts are relevant in evaluating the requested parking adjustment and weight in favor of finding that the adjustment will satisfy Criteria 1.
  - The City Council finds that the Planning Commission simply did not go far enough in their evaluation of the evidence when reaching its decision or consider the express purpose of an adjustment to give a project some flexibility when dealing with site constraints. The City has a mechanism with its adjustment review to allow adjustments of numerical development standards like the off-street parking standards to facilitate "reasonable and economically practical development of a property." NMC 14.33.030. This case is exactly the situation where an adjustment to the off-street parking standard is appropriate to facilitate redevelopment of an underutilized commercial property, bring additional revenue to the City, and further contribute to the vibrancy of the Bayfront.
  - Applicant revised the off-street parking to reduce the amount of compact spaces to ensure that the larger guest vehicles will be able to be accommodated in the off-street parking spaces. This modification (reflected in Option 2) eliminated the need for a second adjustment to the off-street parking standards. City Council recognizes that this concession was done in response to public concerns and maintains that it helps further meeting the purpose of the off-street parking requirement.
- vii. For these reasons, City Council finds that Option 2 with 43 off-street parking spaces will at least equally achieve the purpose of the off-street parking standards and up to a 28 percent adjustment to the off-street parking standard can meet NMC 14.33.050(A).
- b. *Criteria (2) That any impacts resulting from the adjustment are mitigated to the extent practical.*
- i. The City Council finds that the availability of public parking in the Bayfront in and of itself helps mitigate the Applicant's parking adjustment. It is the purpose of the special area to not require uses to accommodate all parking onsite, recognizing the site constraints of the area. The City Council agrees with staff and adopts a condition of approval as further mitigation to ensure impacts to neighbors are avoided. Applicant will be required guests of the parking limitations attributed to their off-street parking is a reasonable step to mitigate limitations associated with the lot having fewer off-street spaces than the

City's parking code would typically allow (see Condition 5). On this basis, the City Council finds that Criteria 2 is met.

c. *Criteria (3) That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access.*

- i. The site borders SW Bay Street and SW Bay Boulevard and a hydrant is in place at the intersection of those streets, adjacent to the site. Applicant's elevation drawings shows that the new building will be setback almost 16-feet from the existing retaining wall and 9-feet from the wall that the applicant intends to construct. Chief Murphy, with the Newport Fire Department, confirmed that Applicant's plans provide for adequate fire access. The requested adjustment to the amount of required parking do not impact access to the property for fire suppression or the installation and maintenance of utilities. Criteria 3 is met.

d. *Criteria (4) That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.*

- i. The City Council finds that any cumulative effect of the yard buffer adjustment and the off-street parking adjustment do not result in adverse impacts that would undercut the purpose of the W-2 zone and the Bayfront. Appropriate mitigation is imposed through conditions of approval, and the proposed development will contribute to the ongoing vibrancy of the working Bayfront. The City Council finds that the analysis above considers the effect of the requested adjustments and, when taken in aggregate, is sufficient to establish that the cumulative effect of the adjustments is consistent with the overall purpose of the zoning district, which is to support water-related uses and, with conditional use approval, uses that are retain and entertainment-oriented in nature. Criteria 4 is met.

E. Conditional Use Review, NMC 14.34.050.

a. *Criteria (1) The public facilities can adequately accommodate the proposed use.*

- i. Public facilities are defined in the NMC as sanitary sewer, water, streets and electricity. All public facilities are available and serve the property.
- ii. Applicant notes that the site currently consists of two separate building structures that are in poor condition. One building was used as a restaurant and the other building was used as an art gallery. Applicant also notes that there was a third building used as a nightclub, restaurant, retail space and office building that was recently demolished. Applicant

asserts, and the City Council agrees, that due to the large occupancies of these uses, there has already been considerable demand on the public facilities along SW Bay Blvd.

- iii. The records shows that the site has adequate street and sidewalk access off SW Bay Blvd. This public street is a fully improved, paved collector roadway. The City provides water service to the site via a 12-inch main in SW Bay Blvd. Sewer service is provided by a 10-inch gravity line in SW Bay Blvd. Storm drainage is collected in catch basins and directed under SW Bay Blvd. to the bay. The existing and historic development utilized these services and the services have been sized to accommodate regional development in the area, including industrial users such as the fish plants along SW Bay Blvd. The City Council relies on the presence of these utilities to establish that the water, sewer, and storm drainage services are adequate to support the proposed uses. Electric service is available to the existing building.

b. *Criteria (2) The request complies with the requirements of the underlying zone or overlay zone.*

- i. This criterion addresses requirements of the underlying or overlay zone. Each zoning district includes “intent” language. For the W-2 district, it includes the following:

*“All conditional uses in a W-2 district shall also comply with the following standard: In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.”*(NMC 14.03.040)

Applicant provided architectural renderings, elevation drawings, and signage details into the record. These reflect provide a clear sense of how the new building will look when it is completed. The new hotel is located down SW Bay Blvd. from the historic “Abbey Hotel,” which was built in 1911. The Abbey Hotel was known to be one of Newport’s most prestigious hotels for honeymooners and visitors alike before it was burned down in 1964. The orientation and mass of the proposed building, its exterior appearance, roof line, and the placement of the elevator shaft give the building a look that is similar to the original “Abbey Hotel.” Images of the Abbey Hotel are included in the record. Like the current proposal, the Abbey Hotel included commercial on the ground floor, with hotel rooms on the second and third floors. As the photos show the Bayfront then, like it is now, was a mix of one, two, and three- story structures. The City Council relies on the evidence on the evidence in the record to conclude that as proposed, Applicant’s new hotel (a three story mixed use building, with main floor commercial and hotel uses on the upper floors), is consistent with the historic, unique, or scenic quality of the area. This includes the fact that hotel lodging has

historically been a type of use on the bayfront. Even the hotel's proposed name - "Hotel Abbey" - and its similar design to the Abbey Hotel, reflect the rich history found in Newport. The City Council finds that the proposal aligns with the spirit of the W-2 zoning provision that states, "In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality." The hotel building will enhance and serve as an anchor to the Southern portion of the Bayfront by replacing old existing buildings that are in disrepair and providing a new facility that will promote local retail businesses and increase tourism.

- ii. The City Council's findings rely on Applicant site plan and exterior elevations illustrate in the record, showing that the building will be three stories high with a 35- foot peak height, which is the maximum building height allowed in the W-2 zone district (Table "A," NMC 14.13.020). The elevator shafts and other mechanical enclosures are permitted to extend above 35-feet per NMC 14.10.020(A), provided they do not exceed 5% of the main building footprint or 200 sq. ft., whichever is less. To ensure compliance with this requirement, the City Council adopts a condition to include a condition that stipulates the enclosures must adhere to these requirements.
- c. *Criteria (3) The proposed use does not have an adverse impact greater than existing uses on nearby properties: or impacts can be ameliorated through imposition of conditions of approval.*
- i. This criterion relates to the issue of whether the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the NMC as including, but not being limited to, the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. Adequate off-street parking, or the lack thereof, may also be considered under this criterion.
  - ii. Applicant demonstrated that the proposed replacement building will not adversely impact nearby properties. The reasons are based on the fact that the use of the building will be consistent with the current retail businesses and restaurants that have historically occupied the site as well as the other nearby establishments along Bay Blvd. Further, the appearance and design of the building will not only enhance the overall quality of the area but also encourage higher quality for future developments. The operation of the hotel will not result in unreasonable noise, dust or loss of air quality and as the City Council discusses more fully above under Section D(a) above, the proposed use will have a lower parking demand than the previous use of the property. The City Council acknowledges the comments on the record about potential adverse impacts from the off-street parking adjustments and while the City

recognizes these concerns, the City Council finds that they do not rise to the level of an adverse impact under Criteria 3.

- iii. The proposed mass and height of the building is consistent with what exists on other W-2 zoned properties. This zone allows lot coverage of up to 90% with no setbacks other than the adjacent yard buffer previously discussed and a 35-foot maximum building height (Table A, NMC 14.13.020). The proposed development adheres to these requirements. The City Council acknowledges that the record contains comments from neighbors about the proposed building obstructing views of the bay, and that this constitutes an “adverse impact.” This would be a potential adverse impact only if Applicant were seeking to exceed the permissible building height, which is not the case with this application. Accordingly, the City Council disregards this argument.

- d. *Criteria (4) A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height. considering both existing buildings and potential buildings allowable as uses permitted outright.*

- i. The proposal will comply with allowable heights permitted outright per the NMC. The record provides illustrations of the proposed buildings scale and design and the City Council finds that the proposal is not only consistent with the overall character of the area but improves it through the level of detail and quality of materials used. The boutique design character will add to the unique character of the area that also includes very tall seafood processing buildings on the bay front. The hotel building has been designed to create variation both in the horizontal and vertical planes of the front facade facing Bay Blvd. In addition, the building has been set back 4 ft from the front property line to create pockets of landscaping and outdoor seating areas for a more pedestrian friendly and dynamic street experience. Finally, the commercial storefronts may have low hanging trellis canopies on the front facade also help to create more human scale. All these reasons ensure that the development is consistent with the Bayfront neighborhood.
- ii. Applicant may need to adjust aspects of the exterior design to comply with building codes, fire codes, and other public health and safety regulations, including accessibility requirements. It is unlikely though that such changes would materially impact size or height of the building, Applicant may be required to seek an amendment to the conditional use permit per Condition 1 below.
- iii. Given the above, the City Council finds that the use will be consistent with the overall development character of the neighborhood regarding building size and height.

#### **IV. DECISION AND CONDITIONS OF APPROVAL**

The City Council hereby approves the conditional use permit with the requested adjustments and imposes the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to the staff report and Option 2 Parking Layout presented on the record. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.
2. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building to comply with these codes, then a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.
3. The square footage of the elevator enclosure and related appurtenances shall not exceed 5% of the area of the main building footprint or 200 sq. ft., whichever is less.
4. Applicant may construct a 6 to 8-ft. wall parallel to the existing retaining wall in the location shown on the site plan and exterior elevations (Attachment E to the March 15 Staff Report) or they may elect to reconstruct or reinforce the existing retaining wall in partnership with the neighboring condominium association.
5. The hotel shall inform guests via their website or other similar means of the limitations of the on-site parking, and restrict vehicles that are too large to be accommodated.