

May 5, 2023

VIA EMAIL

Newport City Council
c/o Derrick Tokos
Newport City Hall
169 SW Coast Hwy
Newport, Oregon 97365

Re: Applicant's Support Brief in the Appeal of Planning Commission Decision on Case File No. 1-CUP-23/1-ADJ-23 (Hotel Abbey)

Dear Members of City Council:

Our firm represents VIP Hospitality Group LLC and John Lee, the applicant in the above-referenced land use appeal involving applicant's Hotel Abbey development project. This letter provides applicant's brief in support of the appeal before the City Council, per Newport Municipal Code ("NMC") 14.52.100(D)(1)(b).

I. Question Presented on Appeal

The question before the City Council is narrow:

Did the Planning Commission err, when it voted 4 to 3, to deny applicant's conditional use permit application on the basis of off-street parking?

Applicant respectfully maintains that yes, the evidence in the record, including the alternative off-street parking layout (Option 2) and the staff reports, show that Applicant can satisfy the applicable off-street standards, as adjusted, and the conditional use permit application may be approved subject to staff's recommended conditions.

II. The Project

Applicant seeks to redevelop approximately 17,242 square feet of W-2 (“Water Related”) zoned land located off SW Bay Boulevard for a three-story, 47 room hotel with accessory general retail/food and drinking uses on the first floor. The site is the former location of the Forinash Gallery, Sharke’s Restaurant, M&P Thai Restaurant, and Apollo’s Night Club.

Applicant proposes to name the hotel “Hotel Abbey” as a nod to the historic three-story Abbey Hotel that was located a few blocks from the site on SW Bay Boulevard. The Abbey Hotel was constructed in 1911 and lost to a fire in 1964. See Record (“Record”) at H-13, p. 77-78 for photos of the historic hotel scale and style.

III. Procedural Background

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. 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. 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). 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.

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 14.14.050(1)(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. This appeal follows.

IV. Legal Analysis

This appeal is limited to whether the Planning Commission properly applied and considered the off-street parking requirements in NMC 14.14 and the adjustment requirements in NMC 14.33. For the reasons set forth below, the Planning Commission failed to properly consider evidence in the record and the purpose of an adjustment to numerical development standards. 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.

A. Off-Street Parking Requirements

Off-street parking requirements are provided in NMC 14.14.030. Applicant’s hotel development involves three types of uses for purposes of calculating off-street parking:

Table 1: Off-Street Parking Standards

<i>Off-Street Parking Use Category</i>	<i>Standard</i>
Hotel/Motel	1 space/room + 1 space for manager
General Retail	1 space/300 SF
Eating & Drinking Establishment	1 space/150 SF
Bayfront Special Area Credit	5 spaces

The General Retail and Eating & Drinking Establishment uses will occupy the first floor and the Hotel use will occupy the second and third floors. The allocation of square feet between General Retail and Eating & Drinking Establishment is not yet final – it depends on the tenant lease negotiations for the two commercial spaces (one being 1,204 SF and one being 1,419 SF for a total of 2,626 SF). See Record at H-3, p. 10 (Option 2 Parking Layout). Given the uncertainty regarding the ultimate commercial use, Applicant considers two commercial use scenarios when calculating parking:

Table 2: 1st Floor Commercial Use Parking Scenarios

<i>Scenario</i>	<i>SF</i>	<i>Parking Use Category</i>	<i>Parking Ratio</i>	<i>Required Parking</i>
Scenario A	2,626 SF	General Retail	1 space/300 SF	9 spaces
Scenario B	2,626 SF	Eating & Drinking	1 space/150 SF	17 spaces

The two scenarios assume that all the commercial space will be used for General Retail or all the space will be used for Eating & Drinking Establishment. In all likelihood, the actual use will be a combination of the two. The use of Scenario A and Scenario B ensure that the full range of potential impacts are evaluated.

Using the two scenarios, Applicant evaluates the required parking:

Table 3: Required Parking

<i>Parking Use Category</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 (see Table 2) Scenario B: 17 spaces
	TOTAL	Scenario A: 57 spaces Scenario B: 65 spaces

B. Applicant’s Parking Calculations

Applicant evaluated potential parking layouts that could fit on the site. The reality is that the site is not large enough to strictly comply with the off-street parking requirements under any scenario in Table 3. Applicant proposes a combination of standard and compact spaces to maximize the parking on-site, while minimize the need for adjustments under NMC 14.33.¹

Applicant revised the parking layout presented in the original application in response to public and Planning Commission comments. Applicant presented an alternative parking layout to the Planning Commission, referred to as “Option 2.” See Record at H-3, p. 10. With Option 2, Applicant requests one adjustment to the off-street parking standard.

Table 4: Option 2 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 5 spaces</i>
NMC 14.33, Adjustments	<i>Minus 14 spaces (Scenario A)</i> <i>Minus 22 spaces (Scenario B)</i>

¹ Parking Layout Option 1 has more compact spaces and required a second adjustment to the parking standards. Option 2 eliminates the need for a second adjustment to the parking standards.

NMC 14.14.030 and 14.14.060 ²	43 off-street parking spaces, with 26 standard spaces and 17 compact spaces (Option 2 Parking Layout)
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Depending on the method of calculation, the percentage adjustment ranges from 21 percent to 34 percent, as shown below:

Table 5: Requested Percentage Adjustments

<i>Bayfront Special Area Credit</i>	<i>Required Parking</i>	<i>Adjustment Request</i>
No credit	57 off-street parking spaces (Scenario A) 65 off-street parking spaces (Scenario B)	43/57 = 25 percent adjustment 43/65 = 34 percent adjustment
With credit (5 spaces)	52 off-street parking spaces (Scenario A) 60 off-street parking spaces (Scenario B)	43/52 = 21 percent adjustment 43/60 = 28 percent adjustment

The City Council has authority to approve the requested adjustment of 21 to 34 percent under NMC 14.33.030(B) because the requested percentage adjustment is less than 40 percent under any scenario presented. The City Council may approve the requested adjustment under the approval criteria in NMC 14.33.050 for the reasons presented in Applicant’s Proposed Findings. As demonstrated in the Proposed Findings, the requested adjustment is appropriate to allow “reasonable and economically practical development of a property” consistent with the NMC.

C. Applicant’s Proposed Findings

Applicant presents proposed findings in Attachment 1. The proposed findings modify the recommended findings from the March 13 staff report and take into consideration the alternative parking layout provided in Option 2. There is substantial evidence in the record to support findings of compliance under NMC 14.33.050(A) and (B), the two criteria that the Planning Commission concluded were not met. Applicant maintains 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.

² As mentioned above, Option 1 was before Planning Commission required an adjustment to for the compact parking space standard (NMC 14.14.060). Option 2 no longer requires a compact parking space adjustment because no more than 40 percent of the parking spaces are compact.

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V. Conclusion

In sum, Applicant respectfully requests that the City Council consider the evidence and arguments before it, conclude that Applicant can satisfy NMC 14.33.050(A) and (B), and approve the conditional use permit subject to staff's recommended conditions. Thank you for your consideration and we look forward to appearing before you on May 15, 2023.

Very Truly Yours,

Davis Wright Tremaine LLP

A handwritten signature in blue ink that reads "Elaine R. Albrich". The signature is written in a cursive, flowing style.

Elaine Albrich

Enclosures

cc: John Lee and Denny Han

Attachment 1
Applicant’s Proposed Findings
Case File No. 1-CUP-23/1-ADJ-23

Applicant proposes revised findings to address the alternative parking layout (Option 2) and NMC 14.33.050(A) and (B) to support approval of the requested adjustment to the off-street parking standard. The City Council may rely on the recommended findings in the March 13 Staff Report affirm the requested adjustment to the yard buffer standard and the conditional use approval criteria. Together, the proposed findings presented below, and the recommended staff findings from March 13 and 24, support the City Council’s approval of the conditional use permit application. The City Council may conclude that the Planning Commission did not fully consider the evidence before it when it denied the application on the basis of parking.

NMC 14.33.050, Adjustment Approval Criteria

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

Option 2 provides 43 off-street parking spaces, with 25 standard and 17 compact spaces. Applicant request one adjustment to accommodate parking on the site. The exact percentage adjustment for off-street parking will ultimately depending on the allocation of General Retail and Eating & Drinking Establishment uses in the commercial space on the first floor (totaling 2,626 SF). Applicant states that the as-built allocation of square feet between General Retail and Eating & Drinking Establishment will depend on the tenant lease negotiations for the commercial space.

The City Council agrees with Applicant’s approach to evaluate a range given this uncertainty, as presented in Applicant’s support brief. The City Council also agrees with Applicant’s presentation of the project’s parking calculations and adopts them as the City’s own:

Table 1: Off-Street Parking Standards

<i>Off-Street Parking Use Category</i>	<i>Standard</i>
Hotel/Motel	1 space/room + 1 space for manager
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<i>NMC Standards</i>	<i>Parking Calculations</i>
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NMC 14.14.100(B), Bayfront Special Parking Area credit	Minus 5 spaces
NMC 14.33, Adjustments	Minus 14 spaces (Scenario A) Minus 22 spaces (Scenario B)
NMC 14.14.030 and 14.14.060 ¹	43 off-street parking spaces, with 26 standard spaces and 17 compact spaces (Option 2 Parking Layout)

¹ As mentioned above, Option 1 that was before Planning Commission required an adjustment to for the compact parking space standard (NMC 14.14.060). Option 2 no longer requires a compact parking space adjustment because no more than 40 percent of the parking spaces are compact.

Depending on the method of calculation, the percentage adjustment may range from 21 percent to 34 percent, as shown below:

Table 4: Requested Percentage Adjustments

<i>Bayfront Special Area Credit</i>	<i>Required Parking</i>	<i>Adjustment Request</i>
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With credit (5 spaces)	52 off-street parking spaces (Scenario A) 60 off-street parking spaces (Scenario B)	43/52 = 21 percent adjustment 43/60 = 28 percent adjustment

For the reasons outlined below, the City Council finds that an adjustment to the off-street parking standard, ranging from 21 to 34 percent, equally or better meets the purpose of the off-street parking standard and the Bayfront Special Area Parking allowance.

The purpose section of the City's off-street parking requirements is set out in NMC 14.14.010 which reads as follows:

"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. "

The Bayfront is a 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)."

City Council agrees with Applicant that the Bayside Special Parking Area allocation of a five (5) off-street parking space credit shall be applied before calculating the percentage allocation. Therefore, for purposes of the analysis, the required off-street parking standard requires 52 spaces or 60 spaces depending on the ultimate allocation of commercial uses.

In addition, City Council agrees with staff in that while not directly applicable, the prior development and its intensity of use is relevant for evaluating Applicant's requested adjustment. The City Council exercises its discretion to give weight to this evidence despite the Planning Commission's reasoning. The prior use consisted of the former Forinash Gallery, Shark's Restaurant, M&P Thai Restaurant, and Apollo's Nightclub and if these uses had not been discontinued in 2020, with the nightclub being demolished that same year, then the amount of off-street parking provided by Applicant would satisfy the requirements of NMC Chapter 14.14 and there would be no cause for them to seek an adjustment. These prior uses were discontinued in 2020, during the COVID pandemic. There were exceptional circumstances at play that may not have otherwise resulted in the demise of these businesses.

Further, Applicant's narrative pulled parking analysis from File No. 1-CUP-20, where the City approved a conditional use permit for Basics Market. That analysis, as presented in the March 13 Staff Report and incorporated herein, showed that the existing use at the time had a parking credit of 49 spaces. Those uses, like most on the Bayfront, relied heavily on on-street parking to meet its needs. A conditional use permit approved in 2006 indicated that there were 20 off-street parking spaces. This was generous, considering that parking to the rear of the building was never striped as depicted with that approval and was difficult to access. That said, assuming 20 off-street spaces were available, that accounted for approximately 40% of the parking need with the remaining 60% being met with available on-street spaces.

The hotel and commercial uses included with the applicant's proposal generate a need for up to 60 off-street spaces (account for the Bayfront credit), 48 being attributed to the hotel at a ratio of one off-street space per unit, plus one for a manager. The balance is associated with retail (at a ratio of 1 space, per 300 SF of floor area) or eating and drinking establishments (at 1 space, per 150 SF of floor area). 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 is well above that requirement. It is relevant to note that this does not account for the five (5) spaces they would be able to deduct per the Bayfront Special Parking Area (Resolution No. 3864). Quantifiably, applicant's proposal will have a lower impact on demand for available on street spaces than the previous uses.

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 our opinion, these facts are relevant in evaluating the requested parking adjustment.

Finally, Applicant has 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 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. 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 NMC 14.33.050(A) is met.

(B) That any impacts resulting from the adjustment are mitigated to the extent practical

The availability of public parking in the Bayfront in and of itself helps mitigate the 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. Nonetheless, City Council agree with staff and impose a condition of approval as mitigation to ensure impacts to neighbors are avoided. Applicant will be required, as a condition of approval to advise guests of the parking limitations attributed to their off-street parking is a reasonable step to mitigate limitations associated with the lot having a higher percentage of compact spaces than the City's parking code would typically allow. For these reasons, City Council finds that NMC 14.33.050(B) is met.