

ATTACHMENT "D"
FILE # 16-CUP-05 (Oakdell)
Final Order for File No. 10-CUP-98

BEFORE THE PLANNING COMMISSION OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON

IN THE MATTER OF PLANNING COMMISSION FILE 10-CUP-98)
APPLICATION FOR A CONDITIONAL USE PERMIT) FINAL ORDER
AS SUBMITTED BY WRIGHT & ASSOC. AND MROCZEK)
COASTAL PROPERTIES)

ORDER approving a request for a conditional use permit to allow a 54-unit condominium/motel in the City of Newport within a W-2/Water Related zoning district.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request for a conditional use permit, with a public hearing a matter of record of the Planning Commission on; and
- 3.) At the public hearing on said application, the Planning Commission received evidence and recommendations from the applicant, interested persons, and Planning Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, granted the request for a conditional use permit.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact, Exhibit "A" (applicant's findings) and Exhibit "B" (staff report), support the approval of the request for a conditional use permit with the following conditions:

1. There shall be an agreement between the Embarcadero Unit Owners Association and the applicant that will address the needs of the Embarcadero (an easement of the applicant's property for access to Docks D & E, reciprocal easements for driveways, utility easements, construction of new restrooms to replace the ones lost, access to Docks D and E over the fuel docks and provide a mechanism to allow the Embarcadero and marina owners use of the applicant's parking). The applicant shall submit a letter from the Embarcadero Unit Owners Association advising that an agreement has been reached. Such agreement shall be reviewed by the City Attorney.

2. Signage shall be subject to review and approval by the Planning Department for its conformance to standards reflective of the unique and historic character of the Bay Front. Signs shall be made of wood or a material that simulates wood. Said sign(s) shall not be internally illuminated and shall conform to standards consistent with the purpose and intent of the Sign Ordinance (No. 1330, as amended).
3. Consistent with Section 2-5-3.025/"Time Limit on a Conditional Use Permit of the Zoning Ordinance (No. 1308, as amended), in the event the proposed use is not established within 18 months after the date the final order is signed, this approval shall become void.
4. Any agreement made as a result of the first condition shall be recorded on the applicant's property, shall run with the land and shall be a perpetual encumbrance on that property.
5. The project shall be built in substantial conformance to the colored plans presented at the hearing and labeled Exhibit C, save and except for refinement of exterior building surfaces and aesthetic design differences as explained by applicant.

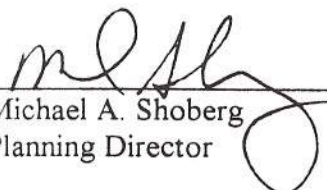
BASED UPON THE ABOVE, the Planning Commission determines that the request for a conditional use permit is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 8 day of MAY, 1999.



Dietmar Goebel, Chairman
Newport Planning Commission

Attest:



Michael A. Shoberg
Planning Director

Exhibit "A"
Findings of Fact

Nature of the Request

The applicants requested conditional use approval to allow a 54-unit condominium/motel in the City of Newport within a W-2/"Water-related" zoning district. This is a conditional use request in the City of Newport Zoning Ordinance.

Initially, the applicants requested a height variance for the condominiums and a variance to allow a residential use on the ground floor of a building within the W-2/"Water Related" zone. However, both variance requests were withdrawn by the applicants' agent prior to the hearing. As a result the applicants request was simply for the above-described conditional use request for the 54-unit condominium/motel.

Relevant Criteria

NZO 2-2-1.040.(20) Water-dependent and Water-related Uses.

NZO 2-3-5. Table of Standards.

NZO 2-3-6. Parking, Loading & Access Requirements.

(48) Motel.

NZO 2-3-6.020. Parking Requirements for Uses Not Specified.

NZO 2-3-6.025. Disabled Person Requirements.

NZO 2-3-6.030. Compact Spaces.

NZO 2-4-1. Residential Uses in Non-Residential Zoning Districts.

NZO 2-4-5. Landscaping Requirement.

NZO 2-5-3.015. Conditional Uses. Type I Decisions.

Relevant Facts

The following is a summary of the facts and testimony found to be relevant to this decision:

1. The City of Newport Comprehensive Plan designates the subject property as "Shoreland".
2. The site is zoned W-2/"Water Related".
3. The subject property is located adjacent to the Embarcadero Resort on the bay front on Bay Boulevard.

4. The site is bordered by the Embarcadero marina and Yaquina Bay to the southwest; the Embarcadero Resort Hotel to the east; Englund Marine and port docks to the west; and residential uses to the north.
5. The subject property is situated in a developed location that is flat and paved. There is little vegetation.
6. All public utilities are available to the property, subject to certain extensions of some utilities.
7. There are currently a bait shop/charter boat rental office, cafe', boardwalk, and the Nautamatic Marine Facility on the subject property.
8. The current City of Newport Zoning Ordinance (No. 1308 as amended) is by reference incorporated into the record herein.
9. The staff report is by reference incorporated into the record herein.
10. The application is by reference incorporated into the record herein.
11. The application includes the following:

a. Project Description: Applicants wish to operate the proposed development primarily as a condominium/motel. The applicants plan to build two high quality, three-story buildings with a total of 54 condominium/motel units. Additionally, there will be one manager's unit, an office for the condominiums, and a charter boat office/bait shop/store. The charter boat operation will be relocated on-site. The fuel dock will be properly decommissioned. Nautamatic Marine will be relocated off-site. The Boardwalk Café will close permanently or relocate off-site.

All 54 condominium/motel units will be handicapped accessible via elevators, wide walks, and ramps. These handicapped accessible units will complement the existing Embarcadero units which are not designed for handicapped access. Of the 54 proposed units, 15 will be "A" units and designed with 2 bedrooms and 1 bath (864 sq. ft. each); and 39 will be "B" units with 1 bedroom and 1 bath (765 sq. ft. each). The manager's unit will have 2 bedrooms and 2 baths (1,047 sq. ft). The rental office will be on the first floor and will be 483 sq. ft. Covenants, codes and restrictions are not available at this time but will be recorded for the final project.

In terms of visual layout, the project is designed with three floors and a basement. The basement floor will hold parking beneath the condominium units and the storage area for the charter boat office. The first floor is designed to hold a variety of uses including the existing boardwalk, the relocated charter boat office/store, the

condominium rental office, an open plaza, decks, and condominium/motel units. The second floor has the manager's unit above the office and condominiums. The third floor will hold condominiums only. The existing boardwalk will continue to be retained and owned and managed by the Embarcadero Homeowner's Association.

Up to 15 of the condominiums will be used as private residences. These will all be on the second and third floors. The remaining units will be managed in a condominium/motel rental pool.

b. Access: The subject property will be accessed directly from Bay Boulevard.

c. Lot Coverage: The projected lot coverage from structures will only be 47%. The property will be well-landscaped, similar to that shown in the colored renderings entered as Exhibit C.

d. Parking: Parking will be available adjacent to and below the condominiums. Parking will meet requirements for a condominium/motel with 15 residences and 39 commercial condominiums. There are 65 parking stalls provided of which 4 will be for handicapped accessible use, 18 will be compact stalls and the remaining regular stalls. The NZO off-street parking requirement for a motel use is 55 spaces including one for the manager. Two spaces will also be required for the charter boat office/bait store. The parking requirement for the residential condominiums is 1.5 spaces per unit.

f. Building Height: The variance requested for the condominiums was withdrawn. As a result, they will be built within the 35' height limitation stated in the City of Newport Zoning Ordinance.

g. Application Materials: The applicants submitted written narrative with a series of exhibits including a site plan, illustrated site plan/rendering, A list of names and addresses of property owners within the 200 foot notification area was also submitted.

12. A public hearing was held before the City of Newport Planning Commission on February 8, 1999. Deliberations were held on the conditional use request by the Planning Commission on February 22, 1999. All interested parties were given an opportunity to testify.
13. Commissioner Michael Shulz excused himself from the public hearing and deliberations because he had a conflict of interest due to his ownership of one of the boat slips in the Embarcadero Marina.

14. Mr. Michael Shoberg, Planning Director, City of Newport, stated the applicable criteria for the request and outlined the rights of people participating in the public hearing. Mr. Shoberg gave an oral summary of the staff report for the request. He then asked the Planning Commission for any questions.
15. The applicants and their representatives presented testimony on behalf of the request. Mr. Kurt Carstens, 407 N. Coast Hwy. Newport, Oregon, agent for the applicant, described the project request in detail and how the proposal complied with the applicable criteria. He explained the history of the property and how it relates to the current request. Mr. Carstens reminded the Planning Commission of their recent approval of the draft Bay Front Plan and explained how the applicants' proposal coincided with elements of that plan particularly allowing the Embarcadero area to site other than water-related uses. Mr. Carstens explained the decline in fishing and the resultant change in the character and uses of the bay front. The decline in fishing results in less need for water-dependent (W-1) and water-related land (W-2).
16. The applicants' representative explained the design and concept of the proposed hotel and condominiums with respect to the site's suitability for the proposed use and compatibility with surrounding land uses. A history of the site including the Embarcadero development was explained. Mr. Carstens emphasized each of the applicable criteria and explained why the proposed project was in compliance.

Mr. Carstens explained that he and the applicants had met with representatives of the Embarcadero to solve some of the concerns which had been raised. As a result, the applicants will, at their expense, build on Embarcadero property, new restrooms, garbage area, and oil recycling area to be owned and used by the Embarcadero and the moorage owners.
17. The Planning Commission questioned the proposed density of the project and how it was calculated. Ms. Dawn Pavitt, 407 N. Coast Hwy. Newport, Oregon, explained that the fuel dock was not included in any density calculations. The density was calculated based on the 45,000+ square feet shown on the site plan.

At the meeting on February 8, 1999 the Planning Commission questioned whether or not the proposed project would meet the densities listed in the NZO "Table A" for motels and residences in the R-4 zone. However, Mr. Michael Shoberg, Planning Director reviewed the matter, and recommended to the Planning Commission in a memorandum that was reviewed at the February 22, 1999 meeting that those density requirements do not apply to commercial uses in the W-2 zone.
18. Other proponents spoke in favor of the proposal including Ms. Rhonda Hamstreet, one of the owners of the subject property, and co-developer of the Embarcadero

Resort. She gave some history about the Embarcadero development and the prospectus agreement signed by every purchaser of a unit or boat slip which acknowledges that the subject property might be sold at some time and not be available for long-term Embarcadero parking. Ms. Hamstreet also testified about the local economic need for the project with the decline of the salmon harvest.

19. Letters evidencing support for the project are included in the record.
20. Opponents of the project then spoke about their concerns regarding the proposal. Those concerns included:
 - a. The proposed design does not consider the effects of high winds.
 - b. The project is within and subject to Estuarine Management Unit 5.
 - c. There is no legal access to the underground parking.
 - d. The height variance is not necessary and should not be allowed.
 - e. There is a shortage of W-2 property and it should be retained for strictly water-related uses.
 - f. The density limitations for the R-4 zone should be observed for the W-2 zone.
 - g. The separated yard buffer needs to be designed in to the project.
 - h. Loading and unloading areas should be designated on-site.
 - i. A variance should not be allowed for street-level residential condominiums.
 - j. The view obstruction should be considered.
 - k. Access should be re-aligned to be directly across from John Moore Road.
 - l. Residences are not allowed in the W-2 zone.
 - m. Policy 7 - Comprehensive Plan policies are not review criteria.
 - n. Handicap accessibility is not designed to code.
 - o. An easement is necessary for access to Docks D and E.
 - p. Parking for the charter office should be six rather than two spaces.
21. The applicants' representative testified that opposition testimony on record is supposition testimony and that no factual evidence had been submitted demonstrating that the proposed use is incompatible with existing and projected uses on surrounding lands or does not meet the applicable criteria. Mr. Carstens explained that the property is not within Management Unit 5 because that controls in-water development for the estuary, not upland development. Mr. Carstens also explained the parking calculation in detail. Some discussion occurred between the Commissioners and Mr. Carstens regarding required landscaping and the location of the necessary separated yard buffer.

Planning Commissioners asked staff, the applicant, applicants' agent and the opponents a variety of questions about the proposed project. Additional testimony is of record in the minutes for the Planning Commission.

22. Rebuttal was offered to the opposition's concerns by the applicants' agent and planning staff as follows:

a. The proposed design does not consider the effects of high winds.

This will be addressed in final design and be reviewed by the city's building official.

b. The project is within and subject to Estuarine Management Unit 5.

Much discussion and evidence was submitted regarding this concern. The applicant and the Planning Director testified that the intent of the Yaquina Bay Estuary Plan was to manage in-water development such as dolphins, piers and pilings - not upland development.

c. There is no legal access to the underground parking.

There is direct access from the subject property to Bay Boulevard with easements which provide access to the underground parking area. A copy of the recorded easements were submitted to the record.

d. The height variance is not necessary and should not be allowed.

The request for a height variance was withdrawn.

e. There is a shortage of W-2 property and it should be retained for strictly water-related uses.

The applicants' submitted into the record the draft Bay Front Plan which had been recently approved by the Planning Commission. It supports rezoning the Embarcadero property from W-2 to C-2 because of the surplus W-2 land. Additional testimony was given by bay front operators regarding the poor salmon harvest and the impact on businesses, causing a surplus of W-2 land.

f. The density limitations for the R-4 zone should be observed for the W-2 zone.

Both staff and the applicant submitted information stating that the density requirements in the R-4 zone do not apply to W-2 zoned property in commercial use. There is no density limit to motel units in the non-residential zones. Density is regulated in those non-residential zones by parking requirements.

g. The separated yard buffer needs to be designed in to the project.

The applicant stated that he would provide the required 10' wide separated yard buffer.

h. Loading and unloading areas should be designated on-site.

The Planning Commission has previously determined that there is no requirement necessary for a separate loading/unloading space for motels.

- i. A variance should not be allowed for street-level residential condominiums.
The variance request was withdrawn.
 - j. The view obstruction should be considered.
The request for a height variance was withdrawn. There are no protected views within the city of Newport. The applicant proposes to build within the 35' height limit.
 - k. Access should be re-aligned to be directly across from John Moore Road.
Todd Mobley, Traffic Engineer, assessed this suggestion and recommended the intersection remain unchanged.
 - l. Residences are not allowed in the W-2 zone.
Residences are conditionally allowed in the W-2 zone per NZO 2-2-1.040 (18) and NZO 2-2-1.035 (Group 88)(881).
 - m. Policy 7 - Comprehensive Plan policies are not review criteria.
The City Council has determined that Comprehensive Plan policies cannot be used as review criteria.
 - n. Handicap accessibility is not designed to code.
The building official will review the plans for compliance with handicapped accessible standards.
 - o. An easement is necessary for access to Docks D and E.
The applicants will sign an agreement with the representatives of the Embarcadero unit owners which will provide for access to Docks D and E.
 - p. Parking for the charter office/ bait shop should be six rather than two spaces.
The office space/bait shop is actually only 483 square feet. The remaining 483 square feet is storage. It is not reasonable to require double-counting of the parking requirements for the same space.
23. After applicants' rebuttal, the Planning Commission decided to leave the record open for 7 days to allow the opponents time to address the new evidence. The applicants would then be allowed to rebut those arguments at the Planning Commission meeting on February 22, 1999.
 24. Rebuttal information was submitted by Mr. Ullrey and Mr. Arakawa in opposition to the proposal and by Mr. Carstens in support. The topics covered are included in the

above-described list of issues (Point 20). Mr. Shoberg, City Planning Director, also wrote a memorandum regarding the inapplicability of the density criteria in the R-4 zone to this project in the W-2 zone.

25. The Planning Commission then closed the public hearing and deliberated.

Findings and Conclusions

The Commission finds:

1. The subject property is land zoned W-2 where condominium motels and residences are conditionally allowed.
2. The applicants have provided sufficient parking for the proposed development. However, since parking could be a problem, any agreement between the Embarcadero and the applicants should include the right for the Embarcadero and marina users to use the parking associated with the Villa by the Bay project. A specific issue raised was the parking for the charter office/bait shop. An opponent calculated that the number of parking spaces needed for that facility was six because of the office use ($950 \pm$ square feet divided by 600 square feet, the parking ratio for offices equals two) and the retail use ($950 \pm$ square feet divided by 300 square feet, the parking ratio for retail, equals four). As explained in the staff memo, this is double counting the parking requirement and is an error in calculation. The actual parking required is two based on the office calculations.
3. An issue concerning the buildings' ability to handle wind loads and the effects of wind on the surrounding property was raised. The Uniform Building Code (UBC) deals with wind loads and the project will be reviewed by the City's plans examiner to make sure the structure complies with those requirements. There was no evidence in the record that would indicate that the proposed development would have any unusual wind patterns as a result of construction. The impact from wind is therefore a moot point.
4. The subject property is not in Management Unit 5 (MU5). The Comprehensive Plan, the Port Plan, as referenced in the Comprehensive Plan and the Zoning Ordinance all deal with development within the boundaries of various management units. Those documents contain descriptions of the various units and prescribe procedural requirements for development within the units. An argument was raised that the subject property is in MU5 and therefore subject to the requirements contained in the Zoning Ordinance. After input from staff and the applicant, the Commission determines that the property is not in MU5 for the following reasons:

A. The management unit program deals with estuary development. Since the entire project is on upland and not in the water, the MU5 does not apply.

B. The Comprehensive Plan and the Port Plan refer to various portions of the Bay that do include uplands but only in very specific instances. The description referred to in one of the opponent's letters states that MU5 consists of the area along the north shore of the bay from the bridge to McLean Point. That referral goes on to state that the unit is used extensively for shallow and medium draft navigation, moorage of small and large boats, and recreation.

Those definitions obviously refer to the estuary in that it refers to areas along the north shore of the bay, not the uplands adjacent to the bay and lists a number of uses that imply water use such as moorage and navigation.

C. A reference was made that the Port Plan, a part of the Comprehensive Plan by reference, included the subject property because, again, the definitions included the Embarcadero property. This is not correct. The sections of the Port Plan that the opponent referred to described that portion of the bay and adjacent uplands bayward of Bay Boulevard between Port Dock 5 and the Embarcadero and from the Embarcadero to McLean Point. The description does not include the subject property and the Embarcadero property. The maps associated with those descriptions clearly exclude those properties.

5. Access to parking on the subject property is from a public street as required by ordinance. The ordinance does not require that all parking be available from a street so an easement to access the underground parking does comply with the requirement.
6. All variance requests have been withdrawn so any objection to the variances is moot.
7. A shortage of W-2/"Water-Related" property was raised but no supporting data was included in that objection. Considering the amount of property located on the adjacent property which is owned by the Port of Newport terminal area (over 40 acres), and considering the amount of property that has been used for water-dependent development in the past few years (only the fish meal plant which used about 2 acres), it does not appear that there is a shortage of water-related or dependent property. This does not include additional land in South Beach where exact acreage is unknown at this time.

8. Density limitations do apply to the residential portion of the project (15 residential units at 1,250 square feet of lot per unit for a total of 18,750 square feet) but does not apply to the motel/hotel portion of the project. The density limitation of one motel/hotel unit per 750 square feet only applies to R-4/High Density Multi-Family Residential zoned land so, since the property is zoned W-2/"Water-Related", those density requirements are moot. The only limitation on the number of motel/hotel units is development limitations such as setbacks, height, lot coverage and parking. The plan submitted complies with all of those requirements so the density issue has been addressed.
9. Separated yard buffer along the Bay Boulevard of 10 feet will be provided since no variance to the standard was requested.
10. The Zoning Ordinance requires that uses that normally require the interurban transport of goods must have a loading and unloading space. The City does not require such a space for motels and hotels so that requirement does not apply.
11. The building will meet height requirement so view protection is not an issue.
12. The applicants supplied a report from a traffic engineer with Lancaster Engineering stating that realigning the driveway with John Moore Road was not a good idea, so that will not be a condition of approval.
13. Residences in a W-2/"Water-Related" zone are allowed per Section 2-2-1.040(20) of the Newport Zoning Ordinance.
14. Comprehensive Plan goals and policies are not review criteria based on an interpretation of the City Council in the South Shore project annexation. Therefore, any objection to the project because of a Comprehensive Plan policy is not valid.
15. Handicap accessibility is a UBC issue and will be addressed during plan review. The applicant has supplied the required handicapped parking stalls.

Case File: #10-CUP-98.
Date Filed: November 17, 1998.
Hearing Date: December 14, 1998/Planning Commission

PLANNING STAFF REPORT

- A. **APPLICANT:** Wright & Associates Development Company and Mroczek Coastal Properties, LLC.(Kurt Carstens, Authorized Agent).
- B. **REQUEST:** Consideration of the following land use actions in a W-2/“Water Related ~~Multi-Family Residential~~” zoning district: (1) Approval of a conditional use permit to allow for the construction and use of a 54-unit condominium/motel complex, as provided by Section 2-2-1.040(18) and Section 2-5-3.015 of the Zoning Ordinance; (2) approval of a variance per Section 2-5-2.025 of the Zoning Ordinance, allowing the height of the proposed building to exceed the standard 35-foot building height limitation by 3.5 feet; and (3) approval of a variance per Section 2-5-2.025 of the Zoning Ordinance, allowing for the use of a residential unit on the ground floor in the W-2 zone.
- C. **LOCATION:** West and southwest of the Embarcadero on SE Bay Boulevard (Lincoln County Assessor’s Tax Map 11-11-9CB, Tax Lots 103, 104, and 80233).
- D. **LOT SIZE:** 65,495 ± square feet.

F. STAFF REPORT

1. REPORT OF FACT

- a. **Plan Designation:** Shoreland.
- b. **Zone Designation:** W-2/“Water Related.”
- c. **Surrounding Land Uses:** To the east is the Embarcadero Resort Hotel; to the southwest and south are the Yaquina Bay and marina; to the west is the Englund Marine Supply Store; and to the north (across SE Bay Boulevard) are residential uses.
- d. **Topography and Vegetation:** The subject property is flat with very little vegetation.
- e. **Existing Structures:** Bait shop, Boardwalk Café, Nautamatic Marine Facility, fuel dock and the boardwalk.
- f. **Utilities:** All are available to the site.

- g. **Development Constraints:** Portions of the subject property are within an area designated by the Federal Emergency Management Agency (FEMA) as an "A2" zone with base flood elevation of 9 feet, which requires certain development limitations and standards.
 - h. **Past Land Use Actions:** None known.
2. **Explanation of the Request:** See Nature of the Request below (under "Staff Analysis" and page 1 of the Applicant's Findings (Exhibit "A")).
 3. **Evaluation of the Request:**
 - a. **Agency Comments:** (All affected city departments and public utilities were notified on November 19, 1998). To date, we received only one response, which was a "no comment" response from the Public Works/Engineering Department.
 - b. **Applicable Criteria (Section 2-5-3.015 & Section 2-5-2.025):**

Conditional Use Permit: The public facilities can adequately accommodate the proposed use; the request complies with any special requirements of the underlying or overlay zone; the proposed use does not have an adverse impact, or impacts can be ameliorated through conditions; and the proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

Variance: That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulties; that granting the variance will not be materially injurious to the neighborhood in which the property is located; that the request is the minimum variance necessary to alleviate the practical difficulty; that the request is not in conflict with the intent and purpose of this Ordinance, the Comprehensive Plan, or any other applicable ordinance or plan.

In evaluating a particular request, the Planning Commission shall consider the following, together with any other relevant facts or circumstances:

- (1) Relevant factors, over which the applicant has no control and are not self-imposed, to be considered in determining whether a practical difficulty exists include:

- (a) Physical circumstances (i.e., lot size, lot shape, topography, etc.) related to the piece of property involved.
 - (b) Whether a use similar to like properties can be made of the property without the variance.
 - (c) The private burden to be borne by the applicant if the ordinance is literally applied.
- (2) Relevant factors to be considered in determining whether or not development consistent with the request is injurious include:
- (a) The physical impacts if the variance is granted (such as noise, traffic, and the increased potential for drainage, erosion, and landslide hazards) on the surrounding neighborhood.

c. **Staff Analysis:**

Nature of the Request:

The applicants propose to develop a 54-unit condominium/motel complex in a W-2 zone. Pursuant to Section 2-2-1.040(18)/"Water-dependent and Water-related Uses" of the Zoning Ordinance, uses permitted outright in a C-2/"Tourist Commercial" zone (such as motels and hotels) require approved conditional use permits to be located in a W-2 zone.

Also, pursuant to Section 2-3-1.005/"Height Limitations" and Table "A" of the Zoning Ordinance, the maximum building height in the W-2 zone is 35 feet. The applicants wish to construct a building that will exceed the height limitation by 3.5 feet. Consequently, a height variance is required for the proposed structure.

Furthermore, pursuant to Section 2-2-1.040(20) of the Zoning Ordinance, residences may be allowed as a conditional use on floors other than the ground floor in W-2 zones. However, the applicants are seeking a variance to be allowed to locate a residence on the ground floor of the proposed building.

Analysis:

The applicants have furnished detailed findings of fact (Exhibit "A") meticulously addressing the criteria which have been established in the Zoning Ordinance for approving the requested land use actions. Pages 1 and 2 of the applicant's findings (Exhibit "A") describe the proposed development in details.

The Planning Commission must determine whether the request meets the following standards for approving proposed land use actions:

Conditional Use Permit

- (1) The public facilities can adequately accommodate the proposed use.

Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and electricity. All those facilities are available to the site. The Public Works/Engineering Department has been notified about the proposed action. But, at the time of this report, we have received only a "no comment" response from that department, and, there is no indication that the existing public facilities cannot adequately accommodate the proposed use.

- (2) The request complies with any special requirements of the underlying or overlay zone.

Page 3 of the applicant's findings (Exhibit "A") have addressed this criterion.

The Bayfront contains a mix of water-dependent, water-related and tourist commercial uses and the Newport Comprehensive Plan acknowledge (on page 230) the existence of conflicts or potential for conflicts between tourist-commercial businesses and water-related or water-dependent businesses as they compete for available space and other use conflicts, such as traffic and parking

The main issues regarding any development on the Bayfront relate to availability of parking, circulation, and signing.

Parking

The parking requirement for the proposed 54-unit motel use is 55 parking spaces (at the rate of one space per unit plus one space for the manager). The parking requirement for the proposed 483-square-foot charter boat office/bait store is two spaces. Therefore, the total required on-site parking for the entire project is 57 spaces. However, the applicants propose to provide 65 parking spaces on the basement floor the condominium units -- exceeding the required parking by nine spaces.

Signing

The Bayfront is considered historic and unique, thereby, requiring the preservation and enhancement of its characteristics [See Section 2-2-1.020(W-2/"Water-Related")(B) of the Zoning Ordinance]. Signing is an important issue in maintaining the uniqueness and scenic quality of the area.

The city's policy regarding signing for commercial use on the Bayfront has been to review and approve sign plans, on a case-by-case basis, for their conformance to standards reflective of the unique and historic character of the Bayfront. Consequently, a condition of approval has been recommended below to that effect.

Portions of the subject property are within an area designated by the Federal Emergency Management Agency (FEMA) as in the "A2"-zone, which requires certain building restrictions to ensure that the lowest habitable floor elevation is above the specified elevations shown on the Flood Insurance Rate Map (FIRM).

However, the reviews of construction plans to assure compliance with those standards are ministerial in nature and are therefore more appropriate at the time of building permit application.

- (3) The proposed use does not have an adverse impact, or impacts can be ameliorated through conditions.

As defined in the Zoning Ordinance, "impacts" are the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. This criterion relates to the issue of whether or not the proposed use has potential for such adverse impacts, and, if there are potentials for such impacts, whether the Planning Commission may want to attach conditions to ameliorate those adverse impacts.

See pages 3 through 4 of the applicant's findings (Exhibit "A") for the applicant's arguments which meticulously address this criterion.

In any case, notices were mailed to affected property owners within 200 feet of the subject property and to affected city departments and public utilities on November 19, 1998, and, at the time of this report, we have received two letters from affected property owners Donald S. Moir and Peter L. Powers, both of whom expressed opposition to the request. (See Exhibit "C" for Moir's letter dated November 23, 1998, and Powers' letter dated December 1, 1998).

The letters raised issues such as strict compliance to established zoning standards, view protection, geologic problems, preservation of the existing boardwalk, traffic safety and inadequacy of parking, for the proposed use.

However, as indicated above, the applicants propose to install 65 parking spaces, which exceed the required parking spaces by nine spaces. About 52 of the spaces will be located on the basement floor beneath the condominium units, and about 13 of the spaces will be located in the proposed parking lot adjacent

to the right-of-way of SE Bay Boulevard.

- (4) The proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

Currently, the city does not have design criteria or guidelines in this zoning district in terms of color, material and form. Therefore, the building size and height are the main concern.

Pages 4 and 5 of the applicants' findings (Exhibit "A") describe how the proposed use is consistent with the overall development character of the neighborhood, especially with the Embarcadero Resort complex, which is adjacent to the proposed site.

The Zoning Ordinance states that in a W-2 zoning district, maximum building height is 35 feet and the lot coverage is between 85% and 90%. The proposed lot coverage for this development is only 47%.

However, the average building height for the proposed building is 38.5 feet, which exceeds the maximum height limit in the W-2 zone by 3.5 feet. Therefore, the applicants are requesting a height variance for the structure.

Furthermore, as indicated above, the applicants are also seeking a variance to be allowed to locate a residence on the ground floor of the proposed building.

Variance

In order to grant the two variances, the Planning Commission must review the application to determine whether they meet the following criteria:

1. That a strict or literal interpretation and enforcement of the specified requirement would result in practical difficulties.

This criterion relates to conditions inherent in the property that would result in practical difficulties or unreasonable hardship if a strict or literal interpretation and enforcement of the specified requirement are applied.

The applicants' arguments addressing this criterion can be found on page 5 of the applicant's findings of fact (Exhibit "A").

2. That granting the variance will not be materially injurious to the neighborhood in which the property is located.

Usually, the burden is on the applicant to prove that granting the variance will not be materially injurious to the neighborhood in which the subject property is located.

See pages 5 and 6 of the applicant's findings (Exhibit "A") for the arguments addressing this criterion.

In any event, notices of the proposed action were sent on November 19, 1998, to affected property owners within 200 feet of the subject property, affected public utilities within Lincoln County, and affected state agencies and city departments. The notice contained the criteria for which the request for the variance is to be assessed. As indicated above, at the time of this report, we have received letters from two affected property owners expressing opposition to the request.

- 3. That the request is the minimum variance necessary to alleviate the practical difficulty.

The burden is on the applicant to demonstrate that without the requested variance, there is no other alternative for him to build the proposed structure.

See page 6 of the applicant's findings (Exhibit "A") for the arguments addressing this criterion.

- 4. That the request is not in conflict with the intent and purpose of this Ordinance, the Comprehensive Plan, or any other applicable ordinance or plan.

The Comprehensive Plan designation for the subject property is "Shoreland" and the zoning designation is W-2/"Water Related." Hotels and motels are permitted in the W-2 zone as conditional uses. Also, residences on floors other than ground floors are permitted as conditional uses.

On page 6 of Exhibit "A," the applicants have addressed the issues pertaining to the Comprehensive and Zoning Ordinance designations for the subject property. Therefore, if the Planning Commission concurs with the applicants' findings on these issues, and the request meets the rest of the criteria established for granting a variance, then the request will be consistent with the Comprehensive Plan's goals and policies.

In evaluating a particular request, the Planning Commission shall consider the following, together with other relevant facts or circumstances:

(1) Relevant factors, over which the applicant has no control and are not self-imposed, to be considered in determining whether a practical difficulty exists include:

(a) Physical circumstances (i.e., lot size, lot shape, topography, etc.) related to the piece of property involved.

This criterion relates to physical circumstances that are inherent to the land of which the applicant has no control over.

(b) Whether a use similar to like properties can be made of the property without the variance.

This criterion relates to the issue of whether the variance is justified because there are special physical conditions inherent to the subject property, which is distinguishable from the other properties, but, deprive it of its full utilization as enjoyed by the other similar properties in the city.

(c) The private burden to be borne by the applicant if the ordinance is literally applied.

The burden is on the applicant to prove that if the ordinance is literally applied, it would result in unreasonable hardship.

(2) Relevant factors to be considered in determining whether or not development consistent with the request is injurious include:

(a) The physical impacts if the variance is granted (such as noise, traffic, and the increased potential for drainage, erosion, and landslide hazards) on the surrounding neighborhood.

This criterion relates to physical impact on the neighborhood as the result of the requested variances, and, the applicants have meticulously addressed this criterion on pages 3 and 4 of Exhibit "A."

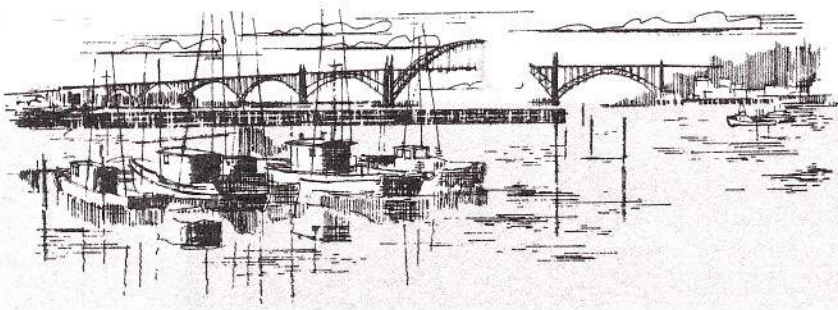
4. **Conclusion:** If the Planning Commission finds that the applicants have met the criteria established in the Zoning Ordinance for granting the requested approvals, then you should adopt the applicant's findings (Exhibit "A") and approve the request. As always, you could attach any reasonable conditions of approval which you believe are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan. If, on the other hand, you find that the request does not comply with the criteria, then you should make findings for denial.

A final order reflecting your decision will be brought back to you at your next meeting.

G. **STAFF RECOMMENDATION:** If you decide to approve the request, you may want to consider attaching any reasonable conditions of approval which you believe are necessary to carry out the purposes of the Zoning Ordinance and the Comprehensive Plan, such as the recommended conditions of approval:

- > Signage shall be subject to review and approval by the Planning Department for its conformance to standards reflective of the unique and historic character of the Bayfront. Signs shall be made of wood or a material that simulates wood. Said sign(s) shall not be internally illuminated and shall conform to standards consistent with the purpose and intent of the Sign Ordinance (No. 1330, as amended).
- > Consistent with Section 2-5-3.025/"Time Limit on a Conditional Use Permit" of the Zoning Ordinance (No. 1308, as amended), in the event the proposed use is not established within eighteen (18) months after the date the final order is signed, this approval shall become void.
- > Consistent with Section 2-5-2.025(G)/"Time Limit on a Permit for a Variance" of the Zoning Ordinance (No. 1308, as amended), authorization of a Type I Variance shall be void after 18 months unless substantial construction has taken place.

Victor Mettle
Code Administrator/Planner
City of Newport
December 7, 1998



CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

TDD/VOICE 1-800-735-2900

OFFICE OF COMMUNITY PLANNING & DEVELOPMENT

(541) 574-0629

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NOTICE OF DECISION

January 24, 2006

The Newport Planning Commission, by final order signed January 23, 2006, has approved a request for a Type I Conditional Use Permit as described herein:

FILE NO: # 16-CUP-05.

APPLICANT: Oakdell, LLC (dba The Landing) (Curtis Hofstetler, authorized agent).

REQUEST: The request is for the approval of a conditional use permit to allow for one of the units of The Landing to be converted from a water-related use (former charter office/bait shop/store space) to a condominium motel unit thereby modifying the original conditional use permit (File No. 10-CUP-98) which approved The Landing as a 54-unit condominium/motel by adding the additional condominium motel unit. The subject property is located in a W-2/"Water-Related" zoning district; and pursuant to Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-2-1.040 (18)/"Water-Dependent and Water-Related Uses," a use permitted outright in a C-2 District (such as the proposed motel use) is permitted in the W-2 zone upon issuance of a conditional use permit.

PROPERTY

LOCATION: Tax Map 11-11-09-CB (Supplemental), Tax Lot 70320 (890 SE Bay Blvd. Unit B-2).

CONDITIONS: See Final Order.

THIS DECISION MAY BE APPEALED TO THE NEWPORT CITY COUNCIL WITHIN 15 CALENDAR DAYS (February 7, 2006) OF THE DATE THE FINAL ORDER WAS SIGNED. Contact the Community Development (Planning) Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541/574-0629) for information on appeal procedures.

A person may appeal a decision of the Planning Commission to the City Council if the person appeared before the Planning Commission either orally or in writing.

Consistent with NZO Section 2-5-3.025/"Time Limit on a Conditional Use Permit" and Section 2-5-2/"Variances", in the event the proposed use is not established within 18 months after the approval becomes judicially final, this approval shall become void.

Sincerely,

Wanda Haney
Administrative Secretary

Enclosure

cc Oakdell, LLC (dba The Landing) (applicant)
Curtis Hofstetler (Authorized agent)

Business License Department (letter only)
Elwin Hargis (Building Official) (letter only)

BEFORE THE PLANNING COMMISSION OF THE CITY OF NEWPORT,

COUNTY OF LINCOLN, STATE OF OREGON

IN THE MATTER OF PLANNING COMMISSION)
FILE # 16-CUP-05, APPLICATION FOR A TYPE I CONDITIONAL) FINAL
USE PERMIT AS SUBMITTED BY OAKDELL, LLC (dba THE) ORDER
LANDING) (CURTIS HOFSTETLER, AUTHORIZED AGENT))

ORDER APPROVING A TYPE I CONDITIONAL USE PERMIT to allow for one of the units (Unit B-2) of The Landing at 890 SE Bay Blvd (Lincoln County Assessor's Tax Map 11-11-09-CB (Supplemental), Tax Lot 70320) to be converted from a water-related use (former charter office/bait shop/store space) to a condominium motel unit thereby modifying the original conditional use permit (File No. 10-CUP-98) which approved The Landing as a 54-unit condominium/motel by adding the additional condominium motel unit.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on January 9, 2006, and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence from the applicant, interested persons, and Community Development Department staff, and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested conditional use permit with the following condition(s):

1. Consistent with NZO Section 2-5-3.025/"Time Limit on a Conditional Use Permit", in the event the proposed use is not established or substantial construction has not begun within eighteen (18) months after the approval becomes judicially final, this approval shall become void.

2. Approval of this conditional use permit does not act to modify any of the conditions of approval from File No. 10-CUP-98.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a Type I Conditional Use Permit with the attached conditions of approval is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 23 day of January, 2006.



Darren Romney, Chair
Newport Planning Commission

Attest:



James Bassingthwaite
Community Development Director

EXHIBIT "A"

Case File No. 16-CUP-05

FINDINGS OF FACT

1. Oakdell, LLC (dba The Landing) (Curtis Hofstetler, authorized agent) submitted an application on December 5, 2005, for a Type I Conditional Use Permit approval to allow for one of the units of The Landing to be converted from a water-related use (former charter office/bait shop/store space) to a condominium motel unit thereby modifying the original conditional use permit (File No. 10-CUP-98) which approved The Landing as a 54-unit condominium/motel by adding the additional condominium motel unit. The subject property is located in a W-2/"Water-Related" zoning district; and pursuant to Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-2-1,040 (18)/"Water-Dependent and Water-Related Uses," a use permitted outright in a C-2 District (such as the proposed motel use) is permitted in the W-2 zone upon issuance of a conditional use permit.
2. The subject property is located at 890 SE Bay Blvd. (Lincoln County Assessor's Tax Map 11-11-09-CB (Supplemental), Tax Lot 70320). The Landing property is approximately 65,395 square feet; and Unit B-2, based on the floor plans, is 507 square feet.
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Yaquina Bay Shoreland.
 - b. Zone Designation: W-2 / "Water-Related".
 - c. Surrounding Land Uses: The surrounding land uses include a mix of condominium motel (Embarcadero), marina/moorage facilities, Oregon Coast Bank, an RV park, Englund Marine Service, Yaquina Bay Yacht Club, Port of Newport office and properties, residential uses to the north across Bay Blvd., tourist-oriented and seafood processing uses further to the west along Bay Blvd, and the Port International terminal facilities further to the east.
 - d. Topography and Vegetation: Property slopes away from Bay Blvd to the water. Vegetation includes landscaped areas.
 - e. Existing Structures: The property contains an existing condominium motel complex known as The Landing.
 - f. Utilities: All are available to the site.
 - g. Development Constraints: Portions of the subject property are within an area designated by the Federal Emergency Management Agency (FEMA) as an "A2" zone (for the purposes of the 100 year flood maps) with a base flood elevation of 9 feet.
 - h. Past Land Use Actions:
 - File No. 10-CUP-98, which approved The Landing as a 54-unit condominium/motel by adding the additional condominium motel unit.
 - File No. 7-VAR-98, proposed height variance application for The Landing that was withdrawn by the applicant (Wright & Associates).

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on December 19, 2005, to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., January 9, 2006, or be submitted in person at the hearing. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on December 30, 2005. The affidavit of mailing and proof of publication were entered into the record during the course of the hearing on January 9, 2006. The only comment received prior to the hearing was a "no comment" response from the Newport Public Works Department, dated December 29, 2005.

5. A public hearing was held on January 9, 2006. At the hearing, the Planning Commission received the staff report and heard testimony from Steve Lindell on behalf of the applicant. The minutes of the January 9, 2006, meeting are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Applicant Request
- Attachment "A-1" – Site Plan
- Attachment "A-2" – Floor Plans
- Attachment "A-3" – Building Elevations
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map
- Attachment "D" – Final Order for File No. 10-CUP-98

6. The applicable criteria for the conditional use request is found in Section 2-5-3.015(A) of the Newport Zoning Ordinance (No. 1308, as amended):

- (1) The public facilities can adequately accommodate the proposed use.
- (2) The request complies with any special requirements of the underlying or overlay zone.
- (3) The proposed use does not have an adverse impact, or impacts can be ameliorated through conditions.
- (4) The proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

In addition to the above criteria, the following standard is applicable to all conditional uses in a W-2 district:

- (5) 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. **NZO Section 2-2-1.020 (W-2/"Water-related.")(B).** This criterion is addressed under criterion # 2.

CONCLUSIONS

Criterion #1: *The public facilities can adequately accommodate the proposed use.*

1. The Planning Commission finds that public facilities are defined in the Newport Zoning Ordinance as sanitary sewer, water, streets and electricity. The property has frontage on Bay Boulevard, which is an improved city street. The applicants noted in the proposed findings that the proposed use will not require any changes or additions to the existing public facilities. The applicant also noted that the unit has sufficient existing facilities. See Planning Staff Report Attachment "A" (Applicant Request).

2. Based on the above, the Planning Commission concludes that the existing public facilities of sanitary sewer, water, streets, and electricity can adequately accommodate the proposed use.

Criterion #2: *The request complies with any special requirements of the underlying or overlay zone.*

3. NZO Section 2-2-1.020/"Intent of Zoning Districts" requires that in all areas which are considered to be historic, unique, or scenic waterfront communities, proposed conditional uses shall be designed to maintain or enhance the historic, unique, or scenic quality of the area. The Bay Front in which the proposed use will be located is considered a historic and unique waterfront community by the adopted Bay Front Plan, thereby, requiring the preservation and enhancement of its characteristics. The applicant is proposing to convert a portion of an existing building to a different use. The building was reviewed as part of the original conditional use permit in File No. 10-CUP-98 and was approved by the Planning Commission. See Planning Staff Report Attachment "D" (Final Order for File No. 10-CUP-98). Additionally, a condition of approval was adopted in the Final Order for File No. 10-CUP-98 for the purposes of ensuring that signage was reflective of the unique and historic character of the Bay Front.

4. The applicant noted that there are no special requirements related to this request to convert the store to a motel use. The applicant also noted that the proposed use of the unit will not change its character or the character of the surrounding area. See Planning Staff Report Attachment "A" (Applicant Request).

5. Additionally, staff noted that the Bay Front Plan in Goal 1, Policy 2 states that: "The W-2 zone currently allows tourist-related uses as a conditional use. On the water side of Bay Boulevard, if the W-2 zoning is retained, those uses may be allowed only on a finding that the use does not interfere with the functioning of the water dependent uses." While the Goal 1, Policy 2 does not establish a standard for tourist-related uses as Policy 2 says "may" (rather than "shall"), because the proposal is a conversion of use within an existing building, the Commission finds that there will be no interference with water-dependent uses in the area.

6. Based on the above, the Planning Commission concludes that the request will comply with the special requirements of the underlying zone.

Criterion #3. The proposed use does not have an adverse impact, or impacts can be ameliorated through conditions.

7. The Planning Commission finds that this criterion relates to the issue of whether or not the proposed use has potential "adverse impacts" and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Newport Zoning Ordinance as the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. The applicant has submitted findings indicating that changing Unit B-2 from a commercial unit to a condominium hotel unit will not change the impact to the area. The applicant further stated that the unit has been vacant for approximately 3 years with the exception of last summer (2005) when the homeowners attempted to utilize the space as a store, which was unsuccessful. The applicant contends that the use of the space as a condominium hotel unit would finally put the space to good use. See Planning Staff Report Attachment "A" (Applicant Request). The change of use from the commercial unit to a motel unit will require a building permit for a change of occupancy.

8. Based on the above, the Planning Commission concludes that the proposed use will not have an adverse impact through the effect of nuisances on the neighborhood.

Criterion #4. The proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

9. Currently, the City does not have design criteria or guidelines in terms of color, material and form. Therefore, the building size and height are the main concern. The maximum height for a building in the W-2 zone is 35 feet. This is an existing building and has already been reviewed for these standards in the conditional use permit approved in 1999. See Planning Staff Report Attachment "D" (Final Order for File No. 10-CUP-98). The applicant is not proposing any exterior changes to the existing building. The building elevations are included as Planning Staff Report Attachment "A-2" (Building Elevations).

10. The surrounding land uses include a mix of condominium motel (Embarcadero), marina/moorage facilities, Oregon Coast Bank, an RV park, Englund Marine Service, Yaquina Bay Yacht Club, Port of Newport office and properties, residential uses to the north across Bay Blvd., tourist-oriented and seafood processing uses further to the west along Bay Blvd, and the Port International terminal facilities further to the east.

11. The Planning Commission concludes, based on the above, uses in the immediate vicinity, the applicant findings and testimony, site plan, floor plans, and building elevations, that the proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material, and form.

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and

conclusions demonstrate compliance with the criteria for a Type I conditional use permit found in Section 2-5-3.015(A) of the Newport Zoning Ordinance (No. 1308, as amended), and, therefore, the requested conditional use permit as described in the applicant findings, site plan, and building elevations as submitted, is hereby approved with the following conditions:

1. Consistent with NZO Section 2-5-3.025/"Time Limit on a Conditional Use Permit", in the event the proposed use is not established or substantial construction has not begun within eighteen (18) months after the approval becomes judicially final, this approval shall become void.
2. Approval of this conditional use permit does not act to modify any of the conditions of approval from File No. 10-CUP-98.