

STAFF REPORT TO CITY COUNCIL

To: Manzanita City Council
From: Manzanita Planning Staff
Subject: LUBA Remand Manzanita Lofts
Date: July 19, 2023

I. BACKGROUND

- A. APPLICANT: Vito Cerelli.
- B. PROPERTY LOCATION: The property is located at the approximate southwest corner of Dorcas Lane and Classic Street. Classic Street borders the property along the east. The site address is 698 Dorcas Lane and the County Assessor places the property within Township 3 North; Range 10 West; Section 29D; Tax Lot #2100; and, Township 3 North; Range 10 West; Section 29DA; Tax Lot #2600.
- C. MAPPED AREA: Tax Lot #2100 - 3.42 acres; Tax Lot #2600 - 0.41 acres for 3.81 total acres.
- D. EXISTING DEVELOPMENT: The vacant subject area fronts two public streets and public services are available.
- E. ZONING: The property is zoned Special Residential/Recreation Zone (SR-R) and located within the Dune Overlay.
- F. ADJACENT ZONING AND LAND USE: Property to the north is zoned High Density Residential (R-3) and contains a mix of single-family homes. All remaining adjacent land is zoned SR-R and includes a golf course and residences to the west and south, and, residential development to the east.
- G. REQUEST: The applicant is requesting approval of a Planned Unit Development to construct a hotel complex upon remand from the Land Use Board of Appeals.
- H. DECISION CRITERIA: The review criteria for this application are MZO 3.030(4) and MZO 4.136(3)(c).
- I. REMAND ISSUES: The Planning Commission will review the application in accordance with the Oregon Land Use Board of Appeals' Final Opinion and Order dated February 27, 2023, and the City's Notice of a Public Hearing on the Remand of a Land Use Board of Appeals Decision published on February 27, 2023, issued May 8, 2023, which noticed the Planning Commission Hearing for May 30, 2023.

II. APPLICATION SUMMARY

- A. The applicant wishes to create a 34 Unit hotel complex on the subject property that will feature a combination of loft units and large and small cabins. The project will be developed over three phases:
1. Phase 1 is located at the north end of the site and will total 19 studio hotel rooms. There will be a total of 11 buildings with eight designed to contain two units and three single units. Each unit will be approximately 350 square feet in area. This Phase also includes a gathering space with a kitchen. This building will not contain a restaurant.
 2. Phase 2 will be located to the south of Phase 1, containing 9 hotel cabins, each approximately 1,000 square feet in area. These will be unattached and run perpendicular to the adjacent roadway.
 3. Phase 3 will be at the south end of the site and contain 6 small cottages, each approximately 350 square feet in area.
 4. A private roadway will run along the east side of the site, serving all three Phases. Required public facilities will also be located within this roadway. Appropriate levels of parking will be included for each Phase for a total of 53 parking spaces.
- B. Section 3.030(2)(h) permits a "motel, hotels, including an eating and drinking establishment therewith" in the Special Residential/Recreation Zone. In addition, Subsection (4)(c) requires the Planning Commission to use the Planned Development procedures in Section 4.136 when evaluating an application.
- C. This application and review are only considering the planned development layout, and not the individual buildings. While the applicant submitted photos and schematics identifying potential designs, this application does not include a design review for any structure. However, the layout does contain proposed building locations, and if approved, the Commission has the authority to condition their decision on the final layout substantially conforming to the proposal, including the relative size, position and design of

the buildings.

D. Two items for clarification:

1. The zoning map on the City's website identifies a right-of-way where the subject property is located. This is in error. The County Assessor maps clearly show the two tax lots without an intervening right-of-way.
2. Phase 2 includes the 1,000 square foot cottages. The submitted plan partitioning of the property is not under consideration with the current proposal. Again, the request is to develop the site for a hotel complex.

III. PROCEDURAL HISTORY

On March 21, 2022, the Planning Commission conducted a hearing on the application. The Commissioners were familiar with the site's location. Otherwise, no *ex parte* contacts, bias or conflicts of interest were declared. At the conclusion of the meeting, the Commission voted to continue the matter until the April 18, 2022, meeting, allowing the applicant to provide additional information regarding, traffic, wetlands and open space.

The Commission reconvened on April 18, 2022. The applicant was unable to submit the requested information to City staff to meet the April hearing deadline. To ensure a complete and proper review of the material, the applicant requested the Commission continue the matter to the May 16, 2022, Commission meeting. The Commission approved the continuation.

The Commission reconvened on May 16, 2022. At the May 16 meeting, the Commission reviewed the additional material, including traffic reports from the applicant and the City's review of said report, additional building details and landscaping information. At the conclusion of the meeting the Commission voted to continue the matter until the June 20 hearing to address the hotel's operations and vehicle parking.

The Commission reconvened on June 20, 2022. Prior to the June hearing, area property owners submitted written comments to the City and Planning Commission. Although the record was left open at that time only to review materials submitted by the applicant, the City agreed to comprehensively reopen the record to allow additional evidence, argument, and testimony. As a result, a new notice was mailed prior to the June 20 meeting indicating that public testimony will be accepted.

At their conclusion of the June 20 hearing, the Planning Commission voted to deny the application based on previous testimony and the submitted comments. The Commission found the proposal failed to comply with all applicable decision criteria for a Planned Unit Development contained in Manzanita Ordinance 95-4. Further, the Commission directed staff to prepare an Order for the

Chair's signature. Notice of the decision was provided, and the applicant submitted a timely appeal to the City Council.

The City Council elected to conduct the appeal review on the record, and held a hearing on ... After hearing argument from the applicant and those opposed to the application, the City Council adopted the Planning Commission's findings, and denied the application.

The applicant then submitted a timely petition for review to the Oregon Land Use Board of Appeals ("LUBA") on August 8, 2022. Before LUBA, the applicant asserted eight assignments of error against the City's denial. LUBA resolved the petition in a Final Opinion and Order dated February 27, 2023 (the "Remand Order"), remanding the decision to the City for further consideration with respect to three of the assignments of error. Specifically, LUBA agreed with the applicant's arguments that:

1. "[T]he [C]ity erred in relying on [Manzanita Comprehensive Plan] provisions as a basis for the limited land use decision, and in particular as a basis to deny the application for failure to satisfy MZO 4.136(3)(c)(2)." Remand Order at p. 23.
2. "[R]emand is appropriate for the city council to adopt a reviewable interpretation of all of the relevant MZO provisions" MZO 1.030 and MZO 3.030(4)(a), and to determine "whether the Density Standard applies to the proposal." Remand Order at p. 25.
3. The City's decision was not supported by substantial evidence in the record with respect to MZO 4.136(3)(c)(5) in that the record did not support the Planning Commission's conclusions that "the project will generate 'more than 309 vehicle trips'" and that "many of the trips would be directed to downtown." Remand Order at p. 28.

On March 30, 2023, the applicant requested that the City begin remand proceedings to address the three issues on remand. This request started a 120-day time clock for the City to issue its final decision.

The City Council held a special meeting on April 12, 2023 at which it remanded these proceedings to the Planning Commission.

On April 14, 2023 the City issued a Notice of Remand Hearing in accordance with the City Council's decision outlining the remand issues to be resolved at a public hearing before the Planning Commission on May 15, 2023. On May 8, 2023, the City issued a new Notice of Remand Hearing postponing the Remand Hearing to May 30, 2023. On May 22, 2023, the City issued a Staff Report for the May 30, 2023 hearing.

On May 30, 2023, the Planning Commission met to consider evidence, testimony, and argument regarding the remand issues. After considering comments and submitted materials from the applicant, the Oregon Coast Alliance, which was the intervenor in the LUBA proceedings, and members of the public, the Planning Commission made preliminary findings with respect to the remand issues relating to MZO 4.136(c)(2), (3), and (5). The Planning Commission then continued the hearing to June 16, 2023 to address the remand issue relating to MZO 3.030(4)(a), and the applicant requested a one-week extension to the 120-day period in which the City must make its decision. The Planning Commission left the record open for a period of seven days for

the parties to present new evidence and argument as described in the City's Notice continuing the hearing to June 16, 2023.

The City issued a Supplemental Staff Report on June 9, 2023. After the continued hearing on June 16, 2023 and reviewing the evidence submitted during the open record period, the Planning Commission determined that the application was not met with respect to MZO 4.136(c)(5) and MZO 3.030(4)(a). The Planning Commission issued its final decision on June 20, 2023.

On July 10, 2023, the applicant appealed the Planning Commission's decision to the City Council for review. A copy of the applicant's appeal letter is available at the link below.

On July 12, 2023, the City Council met to determine the type of review to conduct on appeal. The City Council decided to conduct an on-the-record review pursuant to MZO 10.180 and set the initial hearing date for July 26, 2023, and another hearing to discuss and deliberate on July 28, 2023. The City issued a notice of review hearing on July 13, 2023. At the July 26, 2023 portion of the review hearing, the City Council will accept oral argument and consider written argument submitted before the review hearing. At the July 28, 2023, portion of the review hearing the City Council will discuss, deliberate, and vote.

The City's remand decision must be made in writing, with no further appeals available within the City's process, on or before August 4, 2023. The Commission Decision may be appealed to the City Council and the Council must render a final decision, in writing, by August 4, 2023. The Council decision may again be appealed to LUBA.

IV. PROCEDURE ON REMAND

As anticipated in the Notice of a Public Hearing to Review the Planning Commission's Decision on Remand, issued on July 13, 2023, the issues before the City Council are limited to the issues on appeal from the Planning Commission.

The materials on review before the City Council include the existing record as was submitted to LUBA, previous Staff Reports, and submissions to the City and Planning Commission during its proceedings on remand. Written argument regarding the appeal to the City Council will also become part of the record, and may be submitted to cityhall@ci.manzanita.or.us before the hearing. The record is available at <https://ci.manzanita.or.us/planning-commission/>.

In accordance with the July 13 Notice of Review, the applicant, as well as others who have participated in these land use proceedings to date will have the opportunity to submit argument in support or opposition of the application on the issues on appeal from the City Council.

IV. PLANNED UNIT DEVELOPMENT PROVISIONS AT ISSUE ON REMAND

As reflected in the applicant's appeal of the Planning Commission's denial, the following issues are on review before the City Council.

- A. MZO 3.030(4) addresses density standards for development in the Special Residential/Recreational Zone, SR-R. In the SR-R zone the following standards shall apply:**

MZO 3.030(4)(a) Overall density for the SR-R zone is 6.5 dwelling units per gross acre. Dwellings may be clustered on one portion of a site within the SR-R zone and achieve a maximum density of 13 dwellings per acre where at least 40% of the total lot or parcel area is reserved or dedicated as permanent open space as a public or private park area or golf course. The open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City.

DISCUSSION: LUBA has accepted that the proposed use is a “hotel” and that the proposed use is therefore a permitted use in the City’s SR-R zone.

LUBA found that the City’s initial denial of the application “adopted an equivocal finding that [this] Density Standard could apply *if* the [hotel’s] units are ‘dwelling units’ as defined in MZO 1.030, without deciding whether the units are in fact dwelling units.” LUBA remanded this portion of the decision to the City to provide further interpretation, and determine whether the Density Standard in MZO 3.030(4)(a) applies to the application.

If the hotel’s units are “dwelling units” for purposes of MZO 1.030, the Density Standard in MZO 3.030(4)(a) applies to the proposed use. With a total project area of 3.81 acres and 34 proposed units, the proposed use does not meet the typical requirement of 6.5 dwelling units or less per gross acre.

In his request for a remand hearing and in his request for review on appeal, applicant noted that he disagrees that the Density Standard applies to the hotel project. However, applicant has also stated that he is nonetheless “willing to reserve or dedicate 40% of the site for open space or public or private park area or a golf course, thereby increasing maximum density to 13 units per acre.”

On remand before the Planning Commission, the Planning Commission requested additional information from the applicant to demonstrate whether the proposed use could qualify for the alternative maximum of 13 dwelling units per gross acre by dedicating or reserving 40% of the total lot or parcel area as permanent open space as a public or private park area.

On June 6, 2023, applicant submitted a proposed design describing the physical characteristics of the dedicated open space, to demonstrate how this criterion can be met. That document is available at the link provided above.

FINDINGS AND PLANNING COMMISSION DECISION: In accordance with LUBA’s Remand Order, the proposed use is a hotel and is a permitted use in the SR-R zone. With respect to the requirement in MZO 3.030(4)(a) that “[t]he open space shall be so indicated on the Plan and zoning map, and deed restrictions to that effect shall be filed with the City,” Staff finds that “Plan” refers to the proposed use as a planned development (for context, see MZO 3.030(4)(c) requiring that proposals in the SR-R zone be assessed under the Planned Development procedures). If the use is approved, Staff will initiate a zoning map amendment to indicate the designated open space.

At the June 16, 2023 hearing, the Planning Commission found that:

- The Density Standard applies to the proposed use because the hotel units are “dwelling units” for purposes of MZO 1.030, or whether the Density Standard in MZO 3.030(4)(a) applies to the proposed use.
- The applicant agreed to meet the Density Standard by designating at least 40% of the total lot as a private park and public trailway, thereby increasing the maximum density to 13 units per acre.
- The applicant’s site plan designating certain areas as private park space or public trailway was not sufficient to meet the definition of a park. Specifically, the Planning Commission found that the MZO does not define “park,” but the applicant did not demonstrate that the full portion of the property purportedly dedicated to park uses would meet the plain-meaning definition of a park. Specifically, the section of the site plan marked for park uses between Classic Street and the hotel’s driveway and parking lots is a thin strip of land and is too close to the Classic Street roadway to be suitable for recreation or maintaining in a natural space. With that section removed from the open space designation, the applicant cannot show that the site plan meets the 40% minimum designated area. Therefore, the applicant’s proposal does not demonstrate that at least 40% of the total lot or parcel area will be dedicated as permanent open space as a private park.

B. MZO 4.136(3), addresses the Planned Unit Development Procedure. With respect to the issues on remand, the following procedures shall be observed in applying for and acting on a planned development:

MZO 4.136(3)(c) The Planning Commission shall consider the preliminary development plan at a meeting, at which time the comments of persons receiving the plan for study shall be reviewed. In considering the plan, the Planning Commission shall seek to determine that:

- (5) The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.**

DISCUSSION: LUBA determined that the City’s denial was not supported by substantial evidence in the record with respect to MZO 4.136(3)(c)(5) in that the record did not support two of the Planning Commission’s conclusions. First, LUBA noted that both the applicant’s and the opponent’s traffic engineers “estimated that the project would generate ‘up to’ 309 vehicle trips on the peak day, a Saturday in the summer,” which did not support a finding that the project would generate “more than” 309 trips per day. Remand Order at 28. Second, LUBA found that there was no evidence in the record to support the City’s conclusion that many of the trips would be directed to downtown.

LUBA remanded this portion of the decision to the City. In accordance with the City's Notice of a Public Hearing, the record is reopened to consider new evidence and argument relating to this remand issue.

The City of Manzanita's Transportation Engineer provided a scoping letter to the Applicant on **April 13, 2023** to provide an updated Transportation Impact Study (TIS) to address the issues raised in the Remand Order. This letter is posted as part of the packet for the May 30th hearing and is available at the web address above.

On May 4, 2023 applicant submitted Transportation Impact Study Conducted by Mackenzie for Manzanita Lofts Hotel Dated May 3, 2023

On May 4, 2023 Lancaster Mobley, the City's Contract Traffic Engineer reviewed the findings from the Mackenzie Transportation Impact Analysis.

These materials are available and included in the Planning Commission Packet which can be found on the City's website: <https://ci.manzanita.or.us/planning-commission/>

FINDINGS AND PLANNING COMMISSION DECISION: There will be a single private driveway servicing the site. Neither Ordinance 95-4 or Ordinance 95-5 (Land Divisions) contains minimum driveway width and improvement requirements. To ensure two traffic lanes it is recommended the minimum width be 22-feet with paving acceptable to the Department of Public Works.

After reviewing the record and with input from the City's Contract Engineer, Staff found that the TIS for Manzanita Lofts submitted on May 4, 2023 complies with the scoping letter provided to the applicant and demonstrates that impacts from the project will be minor, with all study-area intersections operating acceptably with the project in place.

The Planning Commission found that this criterion was not met, however, because after reviewing the applicant's proposal for a trail through the site, the Planning Commission determined that it would not provide safe access for pedestrians and bicyclists. According to the applicant, the trail would not be suitable for bicycle traffic. The proposed trail would also involve areas that the Planning Commission finds are not suitable for pedestrian traffic—steep switchbacks and a section that traverses a parking lot.

After further deliberations, the Planning Commission also determined the traffic expected to be generated by this development at peak times will overload the adjoining roadways and that traffic concerns will not be alleviated by a pedestrian walkway as depicted on the site map.

V. SUMMARY OF DECISIONS BEFORE THE COUNCIL

The Council must determine whether, based on the evidence in the record before the Planning Commission, the proposed use meets the criteria in MZO 3.030(4)(a) and MZO 4.136(3)(c)(5).

A. With respect to MZO 3.030(4)(a) the Council has three options:

1. Interpret “dwelling units” as used in the code to exclude the proposed hotel’s units. This would result in a finding that the Density Standard does not apply to the proposed use. If the Council makes this determination, it should find that this criterion does not apply and therefore that the use cannot be denied on this basis.
2. Accept the applicant’s proposal to construct a private park and public trailway (or other configuration where at least 40% of the total lot is designated as a private or public park or golf course), without deciding whether the Density Standard applies to the proposed use. If the Council takes this action, it would find that this criterion is met with conditions.

OR

3. Interpret “dwelling units” as used in the code to include the proposed hotel’s units and that therefore the Density Standard applies. If the Council makes this determination, it would then need to determine:
 - a. Whether the applicant’s proposed site plan qualifies as a public or private park for purposes of compliance with the Density Standard.
 - b. Whether the applicant could meet the Density Standard with a different configuration designating 40% of the open space as a private or public park.

Under this option, if the Council determines that the applicant’s proposed site plan qualifies as a public or private park, or that the applicant could meet the Density Standard by designating a different configuration of open space as a public or private park it should approve the application.

If the Council determines that the applicant’s proposed site plan does not qualify as a public or private park, it should find that this criterion is not met, and deny the application.

B. With respect to MZO 4.136(3)(c)(5) the City Council must determine whether based on the evidence in the record the “[t]he streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.”

1. If the evidence shows that “[t]he streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.” It should determine that this criterion is met.
2. If the evidence shows that the streets are inadequate to support the anticipated traffic or that the development will overload the streets outside the planned area, it should determine that this criterion is not met.

V. RECOMMENDATION AND CONDITIONS OF APPROVAL

If the City Council determines that the requirements of MZO 3.030(4)(a) can be met with conditions, Staff recommends the Planning Commission approve the application subject to the following Conditions:

- A. The approval shall be limited to the layout submitted and approved as part of this application. Any modification involving altering the phase boundaries, a change in proposed uses, increasing the proposed building footprints by more than 10% or similar modifications shall require a new application and review to proceed.
- B. Construction for individual buildings shall require a building permit review application and approval. The applicant has the option of submitting a building permit review application for each building, for a group of similar buildings or for all the buildings within a Phase.
- C. Engineering plans for the entire development will be submitted as part of the development of the Phase 1. The applicant shall have the option of installing public facility improvements for the entire project or only for each Phase. Unless otherwise modified by City Public Works, the minimum improved roadway width serving the development shall be 22-feet.
- D. Building permit review applications, and associated engineering plans, for Phase 1 shall be submitted within two years of the date of final approval of this application. Associated submittals for the remaining phases shall be submitted within five years from the date of final approval of the building permit review of Phase 1. Modification to the Phasing or time extensions shall require the review and approval of the Planning Commission.
- E. All stormwater runoff shall be addressed on the subject property. Applicant shall provide a stormwater runoff design plan for approval to the City during the building permit review phase of the project.
- F. Applicant shall reserve or dedicate 40% of the site for a private park. The applicant shall provide the City with a site plan that indicates the percentage, location, and specific use for the open space on the site. The open space shall be so indicated on the Plan deed restrictions to that effect shall be filed with the City.
- G. Prior to issuance of building permits, the developer shall submit evidence from Tillamook County that the proposed hotel complies, with County regulations regarding the establishment and operation of a hotel/motel.
- H. Operations of the hotel shall continually comply with all necessary health and safety provisions of all State, County and local regulations.

- I. Prior to issuance of Building Permits, the applicant shall submit evidence of the consolidation of the two parcels (Township 3 North; Range 10 West; Section 29D; Tax Lot #2100; Township 3 North; Range 10 West; Section 29DA; Tax Lot #2600) into a consolidated parcel.
- J. Prior to beginning construction, the applicant shall submit the current wetland analysis to the Department of State Lands (DSL) for review and approval. If the DSL requires changes to the layout, these revisions shall require review and approval by the Planning Commission.
- K. The site shall contain 53 vehicle parking spaces as identified on the site plan. Sufficient parking shall be required throughout the development commensurate with the requirements in Ordinance 95-4, Section 4.090.
- L. Applicant is required to clear vegetation west of the site driveway location to achieve at least 225 feet of intersection sight distance, measured from a point 14.5 feet behind the edge of the traveled way on Dorcas Lane, consistent with intersection sight distance requirements in A Policy on Geometric Design of Highways and Streets (AASHTO Manual).
- M. Prior to occupancy of any structure, the developer shall complete the following:
 - 1. Install and/or extend necessary public facility improvements, consistent with City and/or NBWA approved engineering plans.
 - 2. Install parking improvements and landscaping consistent with approved building and engineering plans.
- N. Unless otherwise specifically modified by this decision, development of the site shall continually comply with applicable provisions in Ordinance 95-4 including building height, setbacks, parking, lot coverage and other applicable provisions.
- O. Compliance with these conditions, the requirements of the Manzanita Zoning Ordinance, Nehalem Bay Wastewater Agency, Nehalem Bay Fire & Rescue, Tillamook County Environmental Health, Department of State Lands and applicable building code provisions shall be the sole responsibility of the developer.

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VI. CITY COUNCIL ACTION

- A. The City Council has the following options:
 - a. Approve the application, by making findings and adopting or modifying conditions contained in the Staff Report;
 - b. Deny the application, and adopt modified findings as to why the application fails to comply with the decision criteria;
 - c. Deny the application, adopting the Planning Commission's findings.
- B. Staff will prepare the appropriate document for the Council President's signature.