

BEFORE THE MANZANITA PLANNING COMMISSION

In the Matter of the)
Application of) Order on Remand re Manzanita Lofts
Vito Cerelli) Planned Unit Development

ORDER

I. NATURE OF THE APPLICATION

This matter comes before the Manzanita City Council on appeal by the applicant from the Planning Commission's decision to deny the application. This matter is on remand from the Land Use Board of Appeals, after Vito Cerelli's appeal of the City's denial of Planned Unit Development application to establish a 34-unit hotel on property zoned Special Residential/Recreation Zone (SR-R).

II. GENERAL INFORMATION

- 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 on remand are MZO 3.030(4)(a) and MZO 4.136(3)(c)(2), (3), and (5). The issues on review before the City Council relate to MZO 3.030(4)(a) and MZO 4.136(3)(c)(5) only.

III. 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.

IV. 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 June 19, 2022. After the June 19, 2022, hearing, during which the City Council heard 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. The materials on review before the Planning Commission included the existing record as was submitted to LUBA, including previous Staff Reports dated March 10, 2022 and June 10, 2022, finding that applicant's proposal complied with the applicable Planned Development criteria and recommending that the

Planning Commission approve the application. The record also includes the Remand Order, applicant's request for a remand hearing, Notices of Remand Hearing, and Applicant's letter dated May 5, 2023, public comments received prior to the May 30, 2023 hearing and during the open record period from May 31, 2023 to June 7, 2023. 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) as discussed in the June 9, 2023 Staff Report. The Planning Commission then continued the hearing to June 16, 2023 to address the remand issue relating to MZO 3.030(4)(a). 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.

On June 16, 2023, the Planning Commission reconvened to consider evidence and testimony raised during the open record period, written responses received before the hearing, and additional oral argument regarding the remand issues as described in the City's Notice continuing the hearing to June 16, 2023.

As a result of that hearing the Planning Commission found that the proposed use met the remand criteria of MZO 4.136(c)(2) and (3), but did not meet the remand criteria of MZO 3.030(4)(a) and MZO 4.136(c)(5) and voted to deny the application on those two grounds on June 16, 2023. A final order was issued on June 20, 2023.

On July 10, 2023 the applicant appealed the Planning Commission's decision to the City Council. After a special set meeting on July 12, 2023 the Council decided to review the appeal on the record.

On July 26, 2023, the City Council held a public hearing to consider argument but not new evidence from the parties. The City Council then continued the public hearing to July 28, 2023, for further discussion and deliberations. At the July 28 hearing, the City Council voted to approve the application with conditions.

The record in this matter is available at: <https://ci.manzanita.or.us/23015-698-dorcas-lane/>

The City now makes its final written decision, with no further appeals within the City's processes, as follows.

V. PLANNED UNIT DEVELOPMENT PROVISIONS AT ISSUE ON REMAND

The City Council makes its findings of fact and conclusions as follows.

- 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 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.

In his request for a remand hearing, applicant noted that he disagreed that the Density Standard applies to the hotel project. The applicant was willing however, to accept a condition of approval requiring the development to meet the Density standard by reserving or dedicating 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 June 6, 2023, applicant submitted a proposed site plan depicting the physical characteristics of the dedicated open space. That document is available at the link provided above.

During deliberations on July 28, the City Council determined that the Density Standard did apply to the proposed use. After making that determination, the City Council considered whether the application could meet the Density Standard with a condition of approval requiring that the 40% open space be designated in a different configuration than applicant’s proposed site plan, to achieve a maximum density of 13 units per gross acre.

The applicant then suggested a condition of approval reducing the number of units of the project to 6.5 units per acre to meet the general Density Standard and eliminate the need to dedicate 40% of the use for open space as a park. Council discussed that the reduction in density would not constitute a substantial change to the proposed use because the layout would remain the same but with fewer hotel units, which could potentially lessen certain impacts of the project. Council acknowledged that the applicant’s agreement to meet the general Density Standard reduced the Council’s decision to a mathematical calculation of how many units would be permissible on the 3.81 acre lot.

FINDINGS: In accordance with LUBA’s Remand Order, the proposed use is a hotel, which is a permitted use in the SR-R zone.

The hotel’s units are “dwelling units” for purposes of MZO 1.030 because the record shows that the units will have one or more rooms designed or intended for occupancy as separate living quarters and containing four or more of the following amenities: refrigeration, cooking facility (including cooking stove, hot plate, range hood, microwave,

or similar facility) or wiring or venting to support same, dishwashing machine, sink intended for meal preparation (not including a wet bar), garbage disposal, toilet, and/or shower or bathtub. The hotel's units also are expected to have a similar occupancy time to the City's short-term rentals, which are also considered dwelling units.

Therefore, the Density Standard in MZO 3.030(4)(a) applies to the proposed use. The proposed use will be limited to the layout proposed for a 34-unit hotel, reduced to 24 units through a condition of approval. This reduction in density does not constitute a new proposal or a new use, because there are no substantial changes to the proposed use other than a reduction in density.

With a total project area of 3.81 acres and 24 proposed units, the proposed use's density would be 6.3 dwelling units per gross acre, which meets the general density requirement of 6.5 dwelling units or less per gross acre.

CONCLUSION: The City Council finds that the Density Standard described in MZO 3.030(4)(a) applies to the proposed use. Because the proposed use will have a maximum density of 6.3 dwelling units per gross acre, this criterion is met.

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:

(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.

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 at the link provided above.

FINDINGS: 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.

Although the proposed use will impact traffic on the surrounding streets, the applicant's May 4 TIS, adequately addresses the items identified in the City's April 13 scoping memorandum. The May 4 TIS shows that the streets are adequate to support the anticipated traffic that would be generated by a 34-unit hotel, and that the streets outside the planned area will not be overloaded. According to the May 4 TIS, there will be no substantial impacts to bicycle or pedestrian traffic from a 34-unit hotel.

The traffic impacts from the same layout reduced to 24 units, will be even less.

Other information in the record regarding potential traffic impacts is not sufficient to rebut this evidence.

CONCLUSION: The City Council finds that this criterion is met.

- C. The Planning Commission found that the application meets MZO 4.136(3)(c)(2) and (3). No party appealed those findings to the City Council.**

V. CONDITIONS OF APPROVAL

If the City Council approves the application subject to the following Conditions:

- A. The approval shall be limited to the layout submitted and approved as part of this application, reduced to 24 units. 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. 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.
- G. Operations of the hotel shall continually comply with all necessary health and safety provisions of all State, County and local regulations.
- H. 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.
- I. 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.
- J. The site shall contain the required vehicle parking spaces for the 24 hotel units as determined by Staff. The vehicle parking spaces shall substantially conform to the locations and layout identified on the site plan. Sufficient parking shall be required throughout the development commensurate with the requirements in Ordinance 95-4, Section 4.090.
- K. 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).
- L. 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.

M. 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.

N. 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.

APPROVED BY A MAJORITY OF THE MANZANITA CITY COUNCIL ON THE 28th of JULY 2023.

DATED at Manzanita, Oregon, this 4th day of August, 2023.

SIGNED: Deb Simmons 8.4.23
Deb Simmons, Mayor Date