



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

May 14, 2007

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 001-07



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: May 31, 2007

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD. AS A RESULT YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Laren Woolley, DLCD Regional Representative
James Bassingthwaite, City of Newport

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FORM 2

D L C D NOTICE OF ADOPTION

This form must be mailed to DLCD within 5 working days after the final decision per ORS 197.610, OAR Chapter 660 - Division 18

(See reverse side for submittal requirements)

DEPT OF LAND CONSERVATION AND DEVELOPMENT MAY 11 2007

Jurisdiction: City of Newport Local File No.: 1-Z-07 (If no number, use none)

Date of Adoption: May 7, 2007 (Must be filled in) Date Mailed: May 10, 2007 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: February 8, 2007

- Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
Land Use Regulation Amendment
Zoning Map Amendment (small tract)
New Land Use Regulation
Other: (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

Established zone designation of C-2/Tourist Commercial to bring zoning designation into conformity with Comprehensive Plan "Commercial" designation.

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from : --- to ---

Zone Map Changed from: R-4/High Density Multi-Family Residential to C-2/Tourist Comercial

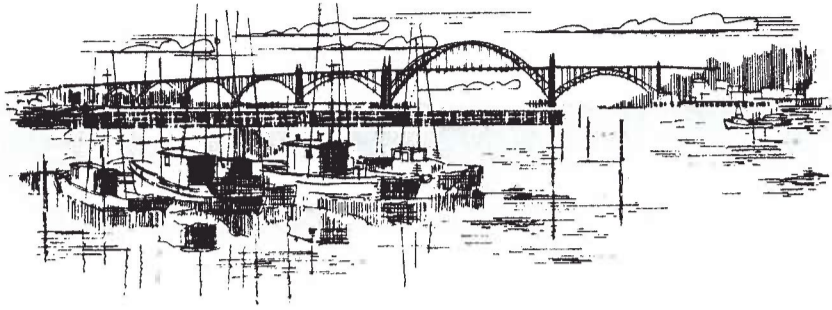
Location: 55 SW Coast Street (11-11-8-BB Tax Lot 22100) Acres Involved: 4,166 square feet

Specify Density: Previous: 1 unit per 1,250 sq.ft New: not specified in C-2 zone

Applicable Statewide Planning Goals: 2, 9

Was an Exception Adopted? Yes: No: X

DLCD File No.: 001-07 (15881)



CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

TDD/VOICE 1-800-735-2900

OFFICE OF Community Development

**CERTIFICATE OF MAILING OF NOTICE OF ADOPTION AND THE
ADOPTED TEXT AND FINDINGS AS APPLICABLE**

Local File # 1-2-05

Date of Deposit in the U.S. Mail: MAY 10, 2007

Name of Person Mailing JAMES BASSON WITH WASTE

Signature of Person Mailing [Handwritten Signature]

CITY OF NEWPORT

ORDINANCE NO. 1915

AN ORDINANCE AMENDING ORDINANCE NO. 1308 (AS AMENDED) OF THE CITY OF NEWPORT TO AMEND THE NEWPORT ZONING MAP

WHEREAS, a request by Patsy Lyles was filed on January 31, 2007, for an amendment (Newport File No. 1-Z-07) to the Newport Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended),

WHEREAS, the proposed request involves a Zoning Map amendment to change the Zoning classification of property currently identified as 55 S.W. Coast Street (Lincoln County Assessor's Map 11-11-8-BB Tax Lot 22100 - Lot 18, Block B, Wilson and Barlow Blocks) and consisting of approximately 4,166.5 acres of property from R-4 (HNBO)/"High Density Multi-Family Residential (Historic Nye Beach Design Review Overlay District)" to C-2 (HNBO)/"Tourist Commercial (Historic Nye Beach Design Review Overlay District)" such that the Zoning classification would be consistent with the existing Comprehensive Plan Map designation of Commercial for the subject property,

WHEREAS, the Planning Commission of the City of Newport, after providing the required public notification including the notification to the Department of Land Conservation & Development, held a public hearing on March 26, 2007, on the proposed amendment for the purpose of reviewing the proposed amendment and providing a recommendation to the City Council,

WHEREAS, the above said public hearing was held in accordance with the appropriate provisions of the city ordinances, and, after due deliberation and consideration of the proposed change, the Planning Commission, by a 4-0 vote, did recommend that the proposed amendment be adopted by the City Council of the City of Newport; and

WHEREAS, the City Council of the City of Newport, after providing the required public notification, held a duly noticed public hearing on April 16, 2007, regarding the question of the proposed Zoning Map amendment and voted 5-0 in favor of adoption of the proposed amendment after considering the application materials, the recommendation of the Planning Commission, the Planning Staff Report and attachments, and the evidence and argument presented at the public hearing,

NOW, THEREFORE, THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 1308 (as amended) is amended to amend the Newport Zoning Map to establish a C-2 (HNBO)/"Tourist Commercial (Historic Nye Beach Design Review Overlay District)" zoning designation for the subject property at 55 S.W. Coast Street consisting of Lot 18, Block B, Wilson and Barlow Blocks (currently identified as Lincoln County Assessor's Map 11-11-8-BB Tax Lot 22100) as identified in Exhibit "A".

Section 2. The City Council adopts the findings and conclusions contained in Exhibit "B" in support of approval of the requested amendment to the Newport Zoning Map.

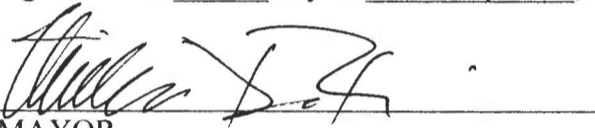
Section 3. The City Council adopts the following conditions on the approval of the requested amendments:

- A. The property owner shall sign and record a Measure 37 waiver for any claim arising out of the change in zone designation requested by the applicant prior to the effective date of the ordinance adoption.

Introduced and passed on first reading in a regular meeting of the City Council of the City of Newport, Oregon, held on the 7th day of MAY, 2007.

Passed on second reading, placed for final passage, and adopted by the City Council of the City of Newport, Oregon, on the 7th day of MAY, 2007.

Approved by the Mayor of the City of Newport, Oregon, on the 7th day of MAY, 2007.


MAYOR

ATTEST:


CITY RECORDER

Exhibit "A"

Newport File No. 1-Z-07

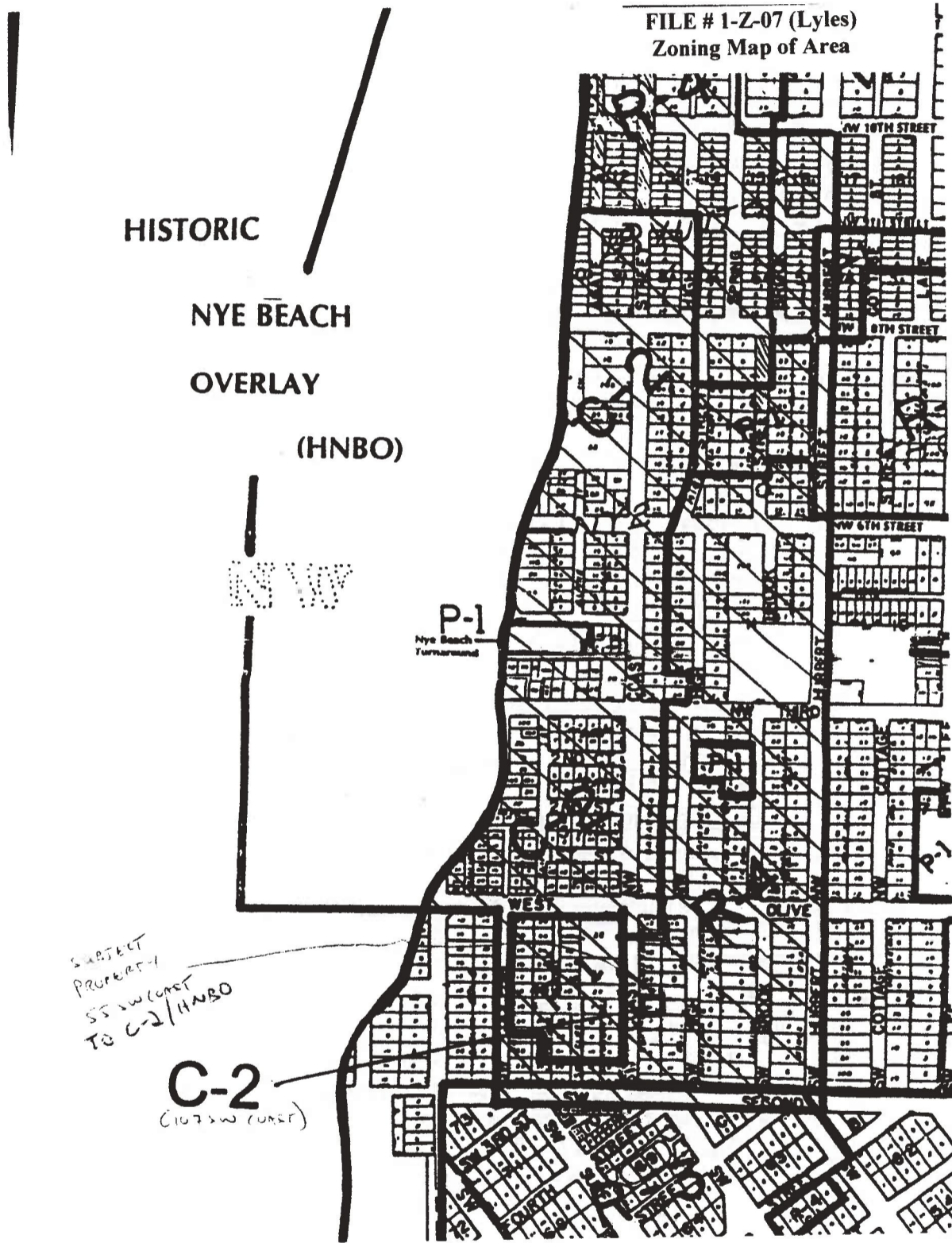


EXHIBIT "B"
File No. 1-Z-07

FINDINGS OF FACT

1. Patsy Ann Lyles (Gary C. Hamilton, authorized representative) submitted a request involving the following small tract zoning map amendment to the Zoning Map of the City of Newport to change the zoning designation of a small tract of property at 55 S.W. Coast Street consisting of approximately 4,166.5 square feet (involving Tax Lot 22100 of Lincoln County Assessor's Map 11-11-08-BB; further identified as Lot 18, Block B, WILSON & BARLOW BLOCKS) from R-4 (HNBO)/"High Density Multi-Family Residential (Historic Nye Beach Design Review Overlay District)" to C-2 (HNBO)/"Tourist Commercial (Historic Nye Beach Design Review Overlay District)". The Comprehensive Plan map designation for the property is currently "Commercial" and the proposed request would bring the Zoning Map designation into conformance with the Comprehensive Plan map designation.
2. Staff reports the following facts are associated with this application:
 - a. Plan Designation: Commercial.
 - b. Zone Designation: R-4/"High Density Multi-Family Residential" and within the Historic Nye Beach Design Review District (HNBO).
 - c. Surrounding Land Uses: A mixed-use neighborhood. Uses include public land, the Performing Arts Center, educational facilities, single and multi-family residences, and tourist-related and other commercial uses.
 - d. Topography and Vegetation: According to the applicant, the site is flat at street level and rises slightly eastward with native vegetation.
 - e. Existing Structures: Two single-family dwellings per applicant.
 - f. Utilities: All services are available to the site.
 - g. Development Constraints: None known.
 - h. Past Land Use Actions: None recently.
3. Upon acceptance of the application, notification was provided to the Department of Land Conservation & Development of the proposed amendment on February 8, 2007, using the DLCDD Notice of Proposed Amendment green form. For the Planning Commission public hearing, all applicable city departments and other public agencies and affected property owners within 300 feet of the subject property were notified on March 5, 2007. The notice of the Planning Commission hearing was published in the Newport News-Times on March 16, 2007. For the City Council public hearing, all applicable city departments and other public agencies and affected property owners within 300 feet of the subject property were notified on March 27, 2007. The notification of the City Council hearing was published in the Newport News-Times on April 6, 2007.

4. A Planning Staff Report dated March 16, 2007, was prepared for the Planning Commission hearing. The Planning Staff Report also included the following attachments:

Attachment "A"	Applicant Request
Attachment "A-1"	Site Survey
Attachment "B"	Notice of Public Hearing
Attachment "C"	Zoning Map of Area
Attachment "C-1"	R-4 and C-2 Zone Comparison Information
Attachment "D"	Comprehensive Plan Map of Area

5. The Newport Planning Commission held a public hearing on the request on March 26, 2007. The statement of rights and relevance and applicable criteria were read. The Planning Commissioners disclosed any ex parte contact, conflicts of interest, and/or bias and allowed for objections to any of the Planning Commissioners hearing the matter. The Planning Commission heard a report by staff and allowed for testimony by the applicant and others in favor or opposed to the request. In addition to the applicant testimony, other testimony received included a written letter from Brian Ruth (an abutting property owner asking questions and making comments about the application) and oral testimony in support of zone change from Norm Ferber (an abutting property owner). A "No Comment" comment from the Newport Public Works Department dated March 5, 2007, was also received. The Planning Commission voted unanimously (Patrick, Eisler, Brusselback, and Rehfuss) to recommend approval of the request with a recommended condition of approval regarding a Measure 37 waiver suggested by staff. The minutes of the March 26, 2007, Planning Commission meeting are hereby incorporated by reference into the findings.
6. A Planning Staff Report dated April 6, 2007, was prepared for the City Council hearing. The Planning Staff Report and the following attachments are hereby incorporated by reference into the findings. The City Council held a public hearing on the request on April 16, 2007:

Attachment "A"	Applicant Request
Attachment "A-1"	Site Survey
Attachment "B"	Notice of Public Hearing
Attachment "C"	Zoning Map of Area
Attachment "C-1"	R-4 and C-2 Zone Comparison Information
Attachment "D"	Comprehensive Plan Map of Area
Attachment "E"	Brian Ruth 3/23/07 Letter
Attachment "F"	3/26/07 Draft Planning Commission Minutes

7. The Newport City Council held a public hearing on the request on April 16, 2007. The statement of rights and relevance and applicable criteria were read. The City Councilors disclosed any ex parte contact, conflicts of interest, and/or bias and allowed for objections to any of the City Councilors hearing the matter. The City Council heard a report by staff

and allowed for testimony by the applicant and others in favor or opposed to the request. At the public hearing, the Council heard testimony from the applicant and abutting property owner Norm Ferber in support of the application. Previously submitted written testimony included two "No Comment" comments from the Newport Public Works Department dated March 5, 2007, and March 27, 2007, and a letter from abutting property owner Brian Ruth. The minutes of the April 16, 2007, Council hearing are hereby incorporated by reference into the findings.

8. The applicable criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended) are: 1) The change furthers a public necessity; and 2) The change promotes the general welfare.

CONCLUSIONS

1. The applicant is seeking the small tract change in the zoning map for the subject property in order to change the zoning designation from R-4 (HNBO)/"High Density Multi-Family Residential (Historic Nye Beach Design Review Overlay District)" to C-2 (HNBO)/"Tourist Commercial (Historic Nye Beach Design Review Overlay District)" to bring the property into compliance with the Comprehensive Plan Map designation of "Commercial". The Comprehensive Plan Map establishes general land use categories and the Zoning Map designations should be consistent with the Comprehensive Plan Map designation. The Newport Comprehensive Plan has the property fronting SW Coast Street from SW 2nd Street and Olive Street on the east side designated with a "Commercial" designation. See Planning Staff Report Attachment "D". The Newport Zoning Map originally had the property located on the east side of SW Coast Street between SW 2nd and Olive Street on the east side designated with an R-4/"High Density Multi-Family Residential". See Planning Staff Report Attachment "C". As the two maps are in conflict with each other, the City has approved several Zoning Map amendments for property on SW Coast Street to change from the R-4 zoning designation to a C-2 zoning designation consistent with the Comprehensive Plan Map "Commercial" designation. One of the Zoning Map amendment changes included the property (107 SW Coast Street – Tax Lot 21700) directly south of the subject property.
2. In regard to the applicable criteria established in NZO Section 2-5-5.005, the City Council concludes that the request meets the criteria after consideration of the following:
 - A. The applicant's proposed findings (Planning Staff Report Attachment "A") address the criteria established in NZO Section 2-5-5.005 for approving the request. In essence, the applicant contends within the findings that the requested Zoning Map amendment brings the zoning designation of the property into compliance with the Comprehensive Plan Map designation of Commercial and that the C-2 zoning designation is consistent with the other uses in the neighborhood and also with other city plans and policies. The applicant provided further explanation of the proposed request as part of the Planning Commission

hearing. See Planning Staff Report Attachment "F" (3/26/07 Draft Planning Commission Minutes). The City Council concludes that the applicant's findings demonstrate compliance with the applicable criteria.

- B. The Newport Zoning Ordinance in NZO Section 2-2-1.005 (Purpose) notes in part that "Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan." The City has previously amended the Zoning Map to bring the Zoning Map in conformance with the Comprehensive Plan Map at the request of property owners along this block of NW Coast Street. For example, the property (107 SW Coast Street – Tax Lot 21700) abutting the subject property to the south was changed from R-4 to C-2 at the request of the property owner in Ordinance No. 1832 (adopted February 21, 2001) (File No. 2-Z-00).
- C. Some of the differences between the R-4 zoning and the C-2 zoning include different types of uses and setback requirements as modified for the Historic Nye Beach Design Review District (see Planning Staff Report Attachment "C-1") as well as differences in the application of NZO Section 2-4-4 (Screening and Buffering Between Residential and Non-Residential Zones). Under the NZO Section 2-4-4 (as modified by the HNBO standards), the height and yard buffer for a commercial property that abuts a residentially zoned property begins at the property line, requires a site-obscuring fence or hedge at the property line, 10 feet of landscaping (modified to 5 foot of landscaping for commercial property in the HNBO) and requires a height buffer that requires a height limitation for a commercial property starting at a height of 10 foot at the common property line and rising 3:1 (3 foot in height for each 1 foot back) from the common property line abutting R-4 property until the height limitation otherwise applicable in the commercial zone is reached. Additionally, another difference between the R-4 and the C-2 zone would be that for commercially zoned property abutting Coast Street (pursuant to NZO Section 2-4-1 (Residential Uses in Nonresidential Zoning Districts) (B) (C-2 Zones)), residential use is prohibited at the street grade (although the regulations for HNBO allow for existing residential uses to continue as uses permitted outright for the footprint of the existing residential uses NZO Section 2-4-16.030 (A)(7), which addresses a question Mr. Ruth raised in his March 23, 2007, letter).
- D. The application of the C-2 zone to the existing subject property would remove some nonconforming situations on the subject property (especially in regard to the front yard and side yard setbacks along the front and southern side yard property line required in the R-4 zone but not required in the C-2 zone when abutting other commercially zoned property where the structure is currently a zero lot line structure – see Planning Staff Report Attachment "A-1" (Site Survey)) but also may create some nonconforming situations on the subject property in regard to NZO Section 2-4-4 along the northerly and easterly property lines that would abut existing R-4 zone designations. The proposed change would also remove some of

the nonconforming status (in regard to the NZO Section 2-4-4.005 (Height Buffer) and NZO Section 2-4-4.010 (Adjacent Yard Buffer)) that appear to be applicable to the property to the south (107 SW Coast Street – Tax Lot 21700) created by the change from R-4 to C-2 in 2001 in Ordinance No. 1832 (the building on the property at 107 SW Coast Street was actually constructed under the R-4 requirements as applied through the design review process prior to the change to the C-2 zone) as the property at 107 SW Coast Street would no longer abut an R-4 designated property.

3. In regard to Mr. Ruth's questions and comments from his letter of 3/23/07 (see Planning Staff Report Attachment "E"), the following conclusions are drawn from the staff comments:

A. Ruth Concern: The extension of the eaves into the public right-of-way over the west property line of 1.7 feet.

Response: Newport Ordinance No. 913 (Section 98) generally prohibits projections of buildings into the public right-of-way but allows building projections such as cornices or other projections (such as eaves) as long as the projections do not extend more than three feet over the sidewalk or property line and are placed at least 10 feet above the sidewalk.

B. Ruth question regarding use of the ground floor as commercial.

Response: The applicant as part of the testimony before the Planning Commission explained her intentions for the property. See Planning Staff Report Attachment "F". Additionally, the C-2 zone allows for a mix of uses, including residential and commercial uses. In most Commercial zones, residential use is not allowed at the street grade floor. In the C-2 zone within the HNBO, a single-family residential use is generally allowed on a floor other than a street grade floor on streets with frontage along Coast Street and other streets. However, in the HNBO with properties that front Coast Street and other specified streets with C-2 designations, NZO Section 2-4-1.010 provides that single family residences that were existing as of December 1, 2003, are allowed to be used as residences as a use permitted outright at the street grade floor for the footprint of the residence existing as of December 1, 2003. This provision was added as part of amendments to the HNBO in 2003 to allow for existing residences in the C-2 zone that fronted Coast Street (whether occupied or not at the time of the ordinance) to be used as a single-family residence for the footprint of the existing residential use at the street grade floor.

C. Ruth question regarding usage of the residences and grandfathering of the residential use.

Response: The current zone designation is R-4 which allows for single family residential use as a use permitted outright. Whether or not a residence has been occupied or not for a long time does not matter, as the residence can be reoccupied because the R-4 zone allows for single family residential use as a use permitted outright. As discussed above, NZO Section 2-4-1.010 allows those single family residences existing as of December 1, 2003, to be a use permitted outright for the footprint of the residence at the street grade floor. As a use permitted outright for the footprint of the residence at the street grade floor, there is not an issue with a nonconforming use or "grandfathering".

4. Measure 37 is the ballot measure approved by the Oregon voters that allows for property owners to seek compensation or waiver of regulations that are adopted after the property owner acquires property and that reduce the property value of the property. There are a number of uncertainties with the application of Measure 37 in general and there is insufficient information regarding the subject property to say whether or not there is a potential for a valid Measure 37 claim based on the proposed change in zoning, so it is not certain that there would be a potential Measure 37 issue. Measure 37 appears to be unclear as to whether or not a Measure 37 claim can be filed when the property owner was a part of the application for the requested change. As there could be a potential for a Measure 37 claim resulting from a change from the R-4 to C-2, a condition of approval is attached that would require the property owner to sign and record a Measure 37 waiver for any claim arising out of the requested change from R-4 to C-2 prior to the effective date of the ordinance adoption.

OVERALL CONCLUSION

After consideration of the application material, the Planning Staff Report, and other evidence and testimony in the record, the City Council concludes that the above findings of fact and conclusions support a determination that the applicant has demonstrated compliance with all the applicable criteria as described in the applicant findings and supporting documentation submitted in support of the requested small tract Zoning Ordinance map amendment and the request is hereby **APPROVED** with the following condition of approval:

- A. The property owner shall sign and record a Measure 37 waiver for any claim arising out of the change in zone designation requested by the applicant prior to the effective date of the ordinance adoption.