Cannon Beach Planning Commission

Staff Report Addendum, November 5, 2020:

PUBLIC HEARING AND CONSIDERATION OF **AA 20-02, 3 & 4**, STANLEY AND REBECCA ROBERTS APPEAL OF A THE CITY'S ADMINISTRATIVE DECISION TO APPROVE, WITH CONDITIONS, A DEVELOPMENT PERMIT DP#20-04 OF TAX LOT 51031AA00600. THE APPLICANTS HAVE FILED MULTIPLE APPEALS OF THE SAME DECISION CHALLENGING THE CITY'S APPLICATION OF THE OCEANFRONT SETBACK UNDER SECTION 17.42.050(A)(6), INCLUDING CHALLENGING A CONDITION OF APPROVAL REQUIRING (1) THE PERFORMANCE OF AN OCEANFRONT SETBACK SURVEY AND COMPLIANCE WITH THE SAME OR (2) OBTAINING A SETBACK REDUCTION PURSUANT TO CHAPTER 17.64 OF THE MUNICIPAL CODE TO ACCOMMODATE THE SITING OF A NEW SINGLE-FAMILY RESIDENCE. THE PROPERTY IS A VACANT LOT LOCATED NORTH OF NENENA AVE (TAX LOT 00600, MAP 51031AA), AND IN A RESIDENTIAL LOWER DENSITY (RL) ZONE. THE APPEALS WILL BE REVIEWED PURSUANT TO MUNICIPAL CODE, SECTION 15.04.150 AND SECTION 17.88.180, REVIEW CONSISTING OF ADDITIONAL EVIDENCE OR DE NOVO REVIEW AND APPLICABLE SECTIONS OF THE ZONING ORDINANCE.

Agenda Date: November 17, 2020 **Prepared By**: Jeffrey S. Adams, PhD

EXHIBITS

The following Exhibits are attached hereto as referenced. All application documents were received at the Cannon Beach Community Development office on September 4, 2020 unless otherwise noted.

"A" Exhibits – Application Materials

Please See Staff Report for A-1 through A-4

A-1 Administrative Appeal Application of Administrative Decision (Development Permit) by Jeff Adams, dated September 4, 2020, received September 4, 2020;

A-2 Precautionary Appeal Application of Administrative Decision (CBMC 15.04.150) by Jeff Adams, dated September 4, 2020, received September 4, 2020;

A-3 Precautionary Appeal Application of Administrative Decision (CBMC 17.92.010) by Jeff Adams, dated September 4, 2020, received September 4, 2020;

A-4 Appeal of Development Permit Decision DP# 20-04 (AA# 20-02, 3 & 4) PowerPoint Presentation, received October 12, 2020;

A-5 Jay Raskin, Letter sent via email, dated October 15, with map showing '27 Beachfront Houses, 52 House West of Hemlock,' received October 21, 2020;

A-6 Kellington Law Group, PC, Power-Point presentation presented at the October 22, 2020;

A-7 Jay Raskin, Letter hand-submitted by Wendie Kellington, of Kellington Law Group, PC, regarding 'Roberts Appeal comments,' dated October 22, 2020, at the October Planning Commission meeting, October 22, 2020;

A-8 AA20-02, 03, & 04, Appeal by Stanley and Rebecca Roberts of an administrative decision to approve, with conditions, a development permit DP#20-04, Letter dated October 29, 2020, received via email, October 29, 2020;

A-9 October 29 Exhibit 1, received via email, October 29, 2020;

A-10 October 29 Exhibit 2, received via email, October 29, 2020;

A-11 October 29 Exhibit 3, received via email, October 29, 2020;

A-12 October 29 Exhibit 4, received via email, October 29, 2020;

A-13 October 29 Exhibit 5, received via email, October 29, 2020;

A-14 October 29 Exhibit 6, received via email, October 29, 2020;

A-15 October 29 Exhibit 7, received via email, October 29, 2020;

A-16 October 29 Exhibit 8, received via email, October 29, 2020;

A-17 Final October 29 Roberts Exhibit Additional Legislative History 2019, received via email, October 29, 2020;

A-18 Clatsop County Assessor's Office data of Ocean front properties, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, (Records 1 of 5), November 5, 2020;

A-19 Clatsop County Assessor's Office data of Ocean front properties, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, (Records 2 of 5), November 5, 2020;

A-20 Clatsop County Assessor's Office data of Ocean front properties, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, (Records 3 of 5), November 5, 2020;

A-21 Clatsop County Assessor's Office data of Ocean front properties, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, (Records 4 of 5), November 5, 2020;

A-22 Clatsop County Assessor's Office data of Ocean front properties, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, (Records 5 of 5), November 5, 2020;

A-23 Clatsop County Assessor's Office Tax Assessor's Maps, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, November 5, 2020;

A-24 Cannon Beach Table of Clatsop County Assessor's Office data of Ocean front properties, received via email, submitted by Andrew Stamp, on behalf of Kellington Law Group, November 5, 2020;

A-25 AA 20-02, 3 & 4, Stanley and Rebecca Roberts (Appeal) letter, from Wendie Kellington, Kellington Law Group, PC, dated November 5, 2020, received via email, November 5, 2020;

A-26 Geotechnical Engineering Consultation, Horizontal Drains and Oceanfront Stability, Roberts Tax Lot 600 – Cannon Beach, Oregon letter, from Don Rondema, Geotech Solutions, Inc., (Exhibit 1), Dated November 3, 2020, received via email, November 5, 2020;

A-27 Clatsop County Property Information (Exhibit 2), received via email, submitted by Wendie Kellington, on behalf of Kellington Law Group, PC, November 5, 2020;

A-28 Haystack Rock LLC 1981 Pacific Ave. Cannon Beach, Tax Map (51031AA00500), letter from Wendie Kellington, on behalf of Kellington Law Group, to William L. Rasmussen, Miller Nash Graham & Dunn LLP, dated November 2, 2020, (Exhibit 3) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-29 Land Acquisition Costs as a Percentage of Total Project Costs, letter from Bryan Cavaness, on behalf of Stafford Development Company, to Ms. Wendie L. Kellington, undated, (Exhibit 4) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-30 City of Cannon Beach, S-Curves Dewatering Pilot Project – As Builts and other materials, undated, (Exhibit 5) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-31 New house sizes in Cannon Beach, Email correspondence from Jay Raskin, Jay Raskin Architect, to Wendie Kellington, dated November 4, 2020, (Exhibit 6), submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-32 Photo montage, undated, (Exhibit 7), submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-33 Property Analysis Methodology Report, "Non-Oceanfront Lots" in Cannon Beach, Subject Property: 6N 10W 31AA Tax Lot 600, Tolovana Park Block 1 (1907 Lot Plat date), Sabrina Pearson, Project Planner, Draft September 16, 2019, (Exhibit 8) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-34 Clatsop County Assessor's Office Tax Maps, (Exhibit 9) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-35 Planning Commission Review of Single-Family Homes, Memorandum to Cannon Beach Planning Commission, dated July 13, 2020, Bill Kabeiseman, City of Cannon Beach Land Use Attorney, (Exhibit 10) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-36 Fire Damage – Log Cabin, 1981 Pacific Drive, letter from Franklin G. Drake, to Tim Lindsay, Building Official, City of Cannon Beach, Dated March 26, 1992, and other materials, (Exhibit 11), submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-37 Proposed Roadway on 1974 Survey, Roberts Residence, by Jay Raskin, Architect, (Exhibit 12) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-38 Global Stability Beam, Stan Roberts, plans, Miller Consulting Engineers, dated October 14, 2020, (Exhibit 13) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-39 Development Permit #20-08 for Taxlot# 51031AA00600, for stabilization pinning of a geologically hazardous area through chapter 17.50 development requirements for potential geologic hazard areas and chapter 17.62 grading, erosion and sediment control, dated 10/21/2020, by Jeffrey S. Adams, PhD, Community Development Director, City of Cannon Beach, (Exhibit 14) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-40 1981 Pacific Ave., Cannon Beach OR, Clatsop County Property Information, Clatsop County Assessor's Office, (Exhibit 15) submitted by Wendie Kellington, on behalf of Kellington Law Group, received via email, November 5, 2020;

A-41 Geotechnical Engineering Consultation, Mr. Rondema's History with the S-curves Slide, Pre-Horizontal Drains, Roberts Tax Lot 600 – Cannon Beach, Oregon, from Don Rondema, Geotech Solutions, Inc., (Exhibit 16), Dated November 5, 2020, received via email, November 5, 2020;

"B" Exhibits – Agency Comments

NA

"C" Exhibits – Cannon Beach Supplements

C-1 Staff Report, dated October 22, 2020;

C-2 Roberts Residence Plan Submission Portfolio,

C-3 Roberts Residence Plan Completeness, from Jeff Adams, Cannon Beach Community Development Department to Stanley Roberts, dated August 3, 2020;

C-4 Cannon Beach Oceanfront Lot Defined, Addendum to, in part, address the City Planner August 3, 2020 review. Building Permit Application: Tolovana Park Block 1 Lot 13 for Stanley and Rebecca Roberts. August 5, 2020, Sabrina Pearson, Plan Development LLC;

C-5 Stanley and Rebecca Roberts. Applications to develop Tolovana Park Block 1 Lot 13. August 6, 2020 ADDENDUM: Response to City Planner August 3, 2020 Letter, Sabrina Pearson, Plan Development, LLC;

C-6 Addendum Portfolio Submittal, Roberts Residence, received August 7, 2020;

C-7 Roberts Oceanfront Lot Defined Response, from Jeff Adams, Cannon Beach Community Development Department to Stanley Roberts, dated August 13, 2020;

C-8 City of Cannon Beach Building Permit Application for Roberts Dwelling, Tolovana Park Block 1 Lot 13, a Residentially Zoned Lot, letter from Wendie L. Kellington, Kellington Law Group, PC, dated August 25, 2020, with attached Raskin Declaration, dated August 17, 2020, received August 25, 2020;

C-9 Cannon Beach Development Permit, Findings of Fact, Conclusions and Order DP# 20-04, issued September 4, 2020;

C-10 Jay Raskin, Email correspondence to City Staff, received July 1, 2019, with additional email correspondence on oceanshore lots;

C-11 Staff Report Addendum, November 5, 2020;

"D" Exhibits – Additional Public Comment

D-1 October 22, 2020 Planning Commission Meeting mailer, Miller, Nash, Graham & Dunn, Attorneys at Law, received October 13, 2020;

D-2 William and June Lattin, Email correspondence, received October 14, 2020;

D-3 Maria Goodrich and Jack Fischer, letter sent via email, dated October 15, 2020, received October 15, 2020;

D-4 Blair and Jan Kramer, Email correspondence, received October 15, 2020;

D-5 Dave Blanchard, Email correspondence, received October 14, 2020;

D-6 Blair and Jan Kramer, Email correspondence, received October 17, 2020;

D-7 Deborah Neilson Faurot, Email correspondence on behalf of the Ronald Neilson Family LLC (Deborah, Leslie Nielson, Ronald Neilson), received October 17, 2020;

D-8 Dennis O. Mayer, MD, Email correspondence, received October 18, 2020;

D-9 Timothy and Louise Saponas, Email correspondence, received October 19, 2020;

D-10 Michael Tutmarc, Tutmarc Architects, Inc., Email correspondence, received October 19, 2020;

D-11 Michael "Mick" French, Email correspondence, received October 20, 2020;

D-12 Jane and Steve Ditewig, Email correspondence, received October 20, 2020;

D-13 Nancy and Larry Peters, Email correspondence, received October 20, 2020;

D-14 Gerald and Maureen Ritter, Email correspondence, received October 20, 2020;

D-15 William L. Rasmussen, Miller, Nash, Graham & Dunn, LLP, Letter sent via email on behalf of Haystack Rock, LLC, dated October 20, 2020, received October 20, 2020;

D-16 Louise and Darren Demetre, Letter sent via email, undated, received October 21, 2020;

D-17 Marie McCauley, Letter sent via email, dated October 21, 2020, received October 21, 1010;

D-18 Guy and Kim Randles, Email correspondence, received October 21, 2020;

D-19 Cameron La Follette, on behalf of the Oregon Coast Alliance, Email correspondence, received October 21, 2020;

D-20 Justin Coughlin and Tanya Sorenson, Email correspondence, received October 21, 2020;

D-21 Bill and Jan Perry, Email correspondence, received October 21, 2020;

D-22 Susan Lindsay, Email correspondence, received October 22, 2020;

D-23 Bonnie Brod, Email correspondence, received October 22, 2020;

D-24 **'**Proposed Planning Commission Decision Language Regarding Public Process', hand-submitted by Will Rasmussen, of Miller Nash Graham & Dunlap, LLP, at the October Planning Commission meeting, October 22, 2020;

D-25 Jack Clark, Email correspondence, received October 23, 2020;

D-26 George Gottardi and Maxine Milligan, Email correspondence, with attached visual rendering from appellant's testimony, received October 26, 2020;

D-27 Mariana Granger, Email correspondence, received October 27, 2020;

D-28 Diane and Rex Amos, Email correspondence, received October 28, 2020;

D-29 Michelle Clark, Email correspondence, received October 28, 2020;

D-30 Angela Benton, Email correspondence, received October 28, 2020;

D-31 Luanne Barrett, Email correspondence, received October 28, 2020;

D-32 Robert Wayne, Email correspondence, received October 28, 2020;

D-33 Alex Carney, Email correspondence, received October 28, 2020;

D-34 Betty Gearen, Email correspondence, received October 28, 2020;

D-35 Lucinda Hayes, Email correspondence, received October 28, 2020;

D-36 Betsy Ayres, Email correspondence, received October 29, 2020;

D-37 Lisa Fraser, Email correspondence, received October 29, 2020;

D-38 Oregon Coast Alliance Open Record Testimony regarding the Roberts Appeal, AA 20-02, AA 20-03, and AA 20-04, with Exhibit, Sean T. Malone, Attorney for LandWatch Lane County, letter sent via email, dated October 29, 2020, received October 29, 2020;

D-39 Additional Evidence and Argument Regarding Appeal by Stanley and Rebecca Roberts (the "Appeal") of Development Permit for Tax Lot 51031AA00600 (the "Property"), with Exhibit, William L. Rasmussen, Miller Nash Graham & Dunn, LLP, letter via email, dated October 29, 2020, received October 29, 2020;

D-40 Jim Gustavson, Email correspondence, received October 29, 2020;

D-41 William L. Rasmussen, Miller, Nash, Graham & Dunn, LLP, Letter resubmitted (D-15), sent via email on behalf of Haystack Rock, LLC, dated October 20, 2020, originally received October 20, 2020, resubmitted October 29, 2020;

D-42 Brent Burton, Email correspondence, received October 29, 2020;

D-43 Dianna Turner and Jeff Harrison, on behalf of The Friends of the Dunes at Cannon Beach, along with Briana Goodwin, of the Surfrider Foundation, Email correspondence, received October 29, 2020;

D-44 Cindy Richter, Email correspondence, received October 29, 2020;

D-45 Marc Mueller, Email correspondence, received October 29, 2020;

D-46 Sarah and Jad Davis, Email Correspondence, received October 29, 2020;

D-47 Oregon Coast Alliance Open Record Testimony regarding the Roberts Appeals, AA 20-02, AA 20-03, and AA 20-04 letter, Sean T. Malone, Attorney for LandWatch Lane County, on behalf of Oregon Coast Alliance, dated November 5, 2020, received November 5, 2020;

D-48 Responsive Evidence and Argument Regarding Appeal by Stanley and Rebecca Roberts (the "Appeal") of Development Permit for Tax Lot 51031AA00600 (the "Property") letter, from William L. Rasmussen, Miller Nash Graham & Dunn, LLP, letter via email, dated November 5, 2020, received November 5, 2020;

Staff Response

There are two points that staff would like to address in this supplemental staff report. At the last Planning Commission meeting, there was testimony and evidence regarding the oceanfront setback line and the Floor Area Ratio limitation on building size. That material was further discussed in the letter from the Applicant's attorney (Exhibit A-08), First, as noted in footnote six of the original Staff Report of October 22, 2020, there has been no evidence provided by the appellant of just how staff has "flip-flopped on the meaning, applicability, and scope of the OSS." However, Exhibit C-10, clearly shows that City staff had communicated its position to the applicants and they knew that position on the Oceanfront Setback Standard from as early as July of 2019.

In response to the testimony regarding the oceanfront setback and FAR, staff notes that the testimony misrepresents or mis-understands the CBMC. The rear-yard or side-yard of this corner lot, regardless of how one wants to read the northern parcel line of this Ocean Ave/Nenana Ave. location, falls under the definitions below, which requires the rear or side-yard (northern) to be five feet, not fifteen from the parcel line, as depicted, since it does not abut a street.

CBMC 17.10.040(B)
{…}
4. Side Yard. A side yard shall be at least five feet, except on a corner or through lot the minimum side yard from the street shall be fifteen feet.
5. Rear Yard. A rear yard shall be at least fifteen feet, except on a corner or through lot it shall be a minimum of five feet, except where a rear lot line abuts a street, it shall be a minimum of fifteen feet.

Secondly, contrary to the testimony in the record, which states the parking for the two required off-street parking spaces would also require three feet of the building footprint, there is nothing in the code that the parking be part of the structure, leaving the possibility of locating the parking spaces to the west of the structure, in the ocean-yard. This leaves the calculation at approximately 1,400 SF.

Further, the testimony ignores the potential for Setback Reduction that could be sought through the Planning Commission. Although the applicants would have to meet the criteria in the code, it is possible that there could be somewhere in the neighborhood of 675 (or 1,350 SF if a second-story is granted) additional square-feet of lot area that could be requested through a Setback Reduction from the Planning Commission, not to mention Variance requests that could be sought. Each of these options have not been explored by the applicant and are provided by CBMC.