



CANNON BEACH CITY COUNCIL

STAFF REPORT

SCOPE OF REVIEW DETERMINATION FOR NAJIMI APPEAL OF PLANNING COMMISSION DECISION TO REVERSE AN ADMINISTRATIVE DECISION TO ISSUE A BUILDING/DEVELOPMENT PERMIT

Agenda Date: November 10, 2020

Prepared by: Jeff Adams
Community Development Director

BACKGROUND

The City of Cannon Beach Planning Commission (PC) rendered a decision to reverse the Administrative Decision to approve a Building/Development Permit (BP#19-1084) for the Najimi Residence, at 544 N. Laurel, Tax Lot 7000, Map 51019AD, of the Cannon Beach Preservation Planned Development Subdivision, at the request of Jeffrey Harrison, of 539 N. Laurel St., at its October 22nd, 2020 regularly scheduled Planning Commission meeting. The PC's Findings are attached as Exhibit 2.

Mr. Dean N. Alterman, on behalf of Mr. M.J. Najimi, requested a review of the decision, in an application and letter received November 3, 2020, within the 14 consecutive calendars appeal period, from the date the final order was signed. The City Council is to hold a Scope of Review meeting to discuss, as a non-public hearing item, the terms under which it wishes to review the matter, according to Section 17.88.160 of the Cannon Beach Municipal Code.

The City Council shall use the application and request for review, under the guidance of 17.88.140 & 150 to inform their decision on whether to restrict the review to the record before the Planning Commission, limited to additional materials that it feels are warranted, de novo, or remand the matter to the Planning Commission for additional consideration.

The applicant has requested a limited scope of review for the two reasons provided in Exhibit 1. The next available public hearing, meeting notice requirements, will be December 1, 2020.

List of Attachments

A: Notice of Appeal of Planning Commission Application, Dean N. Alterman, on behalf of M.J. Najimi, with attached Request for Review of Decision, Dean N. Alterman, Alterman Law Group, PC, dated and received, November 3 2020;

B: City of Cannon Beach Planning Commission Findings for **AA# 20-01** Request by Jeff Harrison, for an Appeal of Administrative Decision, Najimi, Tax Lot 7000 of Map 510019AD.

Chapter 17.88 PUBLIC DELIBERATIONS AND HEARINGS

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17.88.140 Request for review of decision.

An appeal of a development permit, design review board or planning commission decision shall contain the following:

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D. For a review of a decision by the design review board or planning commission, if a de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.88.180.

17.88.150 Requirements of a request for appeal of a development permit, design review board or planning commission decision.

An appeal of a development permit, design review board or planning commission decision shall contain the following:

- A. An identification of the decision sought to be reviewed, including the date of the decision;
- B. A statement of the interest of the person seeking the review. For a review of a decision by the design review board or planning commission, a statement that he/she was a party to the initial proceedings;
- C. The specific grounds relied upon for review. For a review of a decision by the design review board or planning commission, a statement that the criteria against which review is being requested was addressed at the design review board or planning commission hearing;
- D. For a review of a decision by the design review board or planning commission, if a de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.88.180.

17.88.160 Scope of review.

- A. An appeal of a permit or development permit shall be heard as a de novo hearing.
- B. In an appeal of a design review board or planning commission decision, the reviewing body may determine, as a nonpublic hearing item, that the scope of review, on appeal will be one of the following:
 - 1. Restricted to the record made on the decision being appealed;
 - 2. Limited to the admission of additional evidence on such issues as the reviewing body determines necessary for a proper resolution of the matter;
 - 3. Remand the matter to the hearing body for additional consideration;
 - 4. A de novo hearing on the merits.

17.88.170 Review on the record.

- A. Unless otherwise provided for by the reviewing body, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include the following:
 - 1. A factual report prepared by the city manager;
 - 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review;
 - 3. The final order and findings of fact adopted in support of the decision being appealed;

4. The request for an appeal filed by the appellant;
 5. The minutes of the public hearing. The reviewing body may request that a transcript of the hearing be prepared.
- B. All parties to the initial hearing shall receive a notice of the proposed review of the record. The notice shall indicate the date, time and place of the review and the issue(s) that are the subject of the review.
- C. The reviewing body shall make its decision based upon the record after first granting the right of argument, but not the introduction of additional evidence, to parties to the hearing.
- D. In considering the appeal, the reviewing body need only consider those matters specifically raised by the appellant. The reviewing body may consider other matters if it so desires.
- E. The appellant shall bear the burden of proof. (Ord. 89-3 § 1; Ord. 79-4 § 1 (10.083))

17.88.180 Review consisting of additional evidence or de novo review.

- A. The reviewing body may hear the entire matter de novo; or it may admit additional testimony and other evidence without holding a de novo hearing. The reviewing body shall grant a request for a new hearing only where it finds that:
1. The additional testimony or other evidence could not reasonably have been presented at the prior hearing; or
 2. A hearing is necessary to fully and properly evaluate a significant issue relevant to the proposed development action; and
 3. The request is not necessitated by improper or unreasonable conduct of the requesting party or by a failure to present evidence that was available at the time of the previous review.
- B. Hearings on appeal, either de novo or limited to additional evidence on specific issue(s), shall be conducted in accordance with the requirements of Sections 17.88.010 through 17.88.100.
- C. All testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.