



# CITY OF CANNON BEACH

## AGENDA

*Amended August 11, 2023*

Meeting: City Council Special Meeting  
Date: Tuesday, August 15, 2023  
Time: 6:00 p.m.  
Location: Council Chambers, City Hall

### CALL TO ORDER AND APPROVAL OF AGENDA

### PUBLIC COMMENT

*The Presiding Officer will call for statements from citizens regarding issues relating to the City. The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.*

### ACTION ITEM

- (1) **Approval of Findings of Fact regarding Stanley A. Roberts, remand from LUBA of an approval of a type I development permit in conjunction with a building permit (164-22-000006-DWL) for the development of a new residence and accompanying road development. The property is located west of Hemlock at its intersection with the undeveloped Nenana Avenue right-of-way, just north of the 'S' curves.**
- (2) **Review of Cannon Beach Elementary School Design for DRB Submittal**
- (3) **Good of the Order**

### ADJOURNMENT

To join from your computer, tablet or smartphone

Join Zoom Meeting

<https://zoom.us/j/99261084699?pwd=TkpjbGcxS0pCOGIMOCtSbSsxVWFMZz09>

Meeting ID: 992 6108 4699

Password: 365593

To join from your phone:

Phone: 1.669.900.6833

Meeting ID: 992 6108 4699

Password: 365593

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**Public Comment:** If you wish to provide public comment via Zoom for this meeting please use the raise your hand Zoom feature. Except for a public hearing agenda item, all Public to be Heard comments will be taken at the beginning of the meeting for both Agenda and Non-Agenda items. If you are requesting to speak during a public hearing agenda item, please indicate the specific agenda item number as your comments will be considered during the public hearing portion of the meeting when the public hearing item is considered by the Council. All written comments received by 3:00 pm the day before the meeting will be distributed to the City Council and the appropriate staff prior to the start of the meeting. These

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written comments will be included in the record copy of the meeting. Written comments received at the deadline will be forwarded to Council and included in the record, but may not be read prior to the meeting.

*Please note that agenda items may not be considered in the exact order listed. For questions about the agenda, please contact the City of Cannon Beach at (503) 436.8052. The meeting is accessible to the disabled. If you need special accommodations to attend or participate in the meeting per the Americans with Disabilities Act (ADA), please contact the City Manager at (503) 436.8050. TTY (503) 436-8097. This information can be made in alternative format as needed for persons with disabilities.*

Posted: 2023.08.10

*Amened: 2023.08.11*



# CANNON BEACH CITY COUNCIL

## BEFORE THE CITY COUNCIL OF THE CITY OF CANNON BEACH

IN THE MATTER OF STANLEY A. ROBERTS, REMAND FROM LUBA OF AN APPROVAL OF A TYPE I DEVELOPMENT PERMIT IN CONJUNCTION WITH A BUILDING PERMIT (164-22-000006-DWL) FOR THE DEVELOPMENT OF A NEW RESIDENCE AND ACCOMPANYING ROAD DEVELOPMENT:

Tax lot# 51031AA00600

Undeveloped Parcel located west of Hemlock at its intersection with the undeveloped Nenana Avenue right-of-way, just north of the 'S' curves.

FINDINGS OF FACT, CONCLUSIONS AND ORDER NUMBER – DP#22-06

Applicant: Stanley A. Roberts  
925 Lake St., # 201  
Kirkland, WA 98033

Zone: Residential Lower Density (RL)

The above-named applicant applied for a received development permit DP#22-06 in conjunction with a building permit at Tax lot 51031AA00600. This permit conditionally authorized the development of a 1,290 square foot two-story single-family residence on an oceanfront lot accessible by an undeveloped segment of the Nenana Avenue right-of-way. The development permit also conditionally authorized the development of a driveway for access to the residence and a tree removal permit for the property. The dwelling authorized by DP#22-06 is a smaller structure that was submitted as an alternative design to a larger design that was denied by the City in 2020.

During the review of DP#22-06, the Community Development Director found that the application conditionally satisfied the criteria of the City's land use regulations and issued a development permit on March 21, 2022. That permit was appealed to the Land Use Board of Appeals (LUBA) and, on March 16, 2023, LUBA remanded the decision to the City for failing to provide proper notice of the decision and to allow for the opportunity to seek a de novo hearing on the matter.

On May 9, 2023, the City Council met and determined that it would not require a local appeal to be filed and, instead, it would hold a hearing and determine compliance of the application with the requirements of the City's land use regulations in Chapter 17 of the Municipal Code.

The public hearing on the above-entitled matter was opened before the City Council on 07/10/23; the applicant requested a continuance at that hearing; the City Council granted the continuance, closed the hearing on July 10, 2023 but left the record open for seven (7) days allowing for additional written evidence, arguments and testimony which ended on July 17, 2023; participants in the hearing submitted written documentation to the City requesting seven (7) days to respond to the new evidence submitted during the period the record was left open; the City reopened the record to receive response which ended on July 24, 2023; the record was then left open for an additional seven (7) days to provide the applicant an opportunity to submit final written comments which ended on July 31, 2023, when the record was closed.

At their August 9, 2023 meeting, the City Council discussed several procedural issues prior to deliberating on all of the testimony and written information towards a decision.

THE CITY COUNCIL HEREBY ORDERS that DEVELOPMENT PERMIT DP#22-06 is DENIED and adopts the findings of fact, conclusions and conditions contained in Exhibit "A." The effective date of this ORDER is 21 days following the signing of this order, subject to the findings contained in Exhibit "A."

This decision may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by an affected party by filing a notice of intent to appeal a land use decision within 21 days after the date of the decision sought to be reviewed becomes final.

All information submitted to and utilized by the City Council to make this decision are adopted by reference (including but not limited to applications, plans, documentation, written and oral testimony, exhibits, etc.).

The complete record, including all of the submissions of the applicant, as well as all comments from the public, for the 2023 LUBA Remand of Development Permit DP#22-06 at Tax lot #51031AA00600 is available on the City's website at the following address: <https://www.ci.cannon-beach.or.us/planning/page/2023-luba-remand-development-permit-dp22-06-taxlot51031aa00600>

The complete case, including the final order is available for review at the city.

CANNON BEACH CITY COUNCIL

\_\_\_\_\_  
Mayor Barb Knop

\_\_\_\_\_  
Date



# CANNON BEACH CITY COUNCIL

## FINDINGS OF FACT AND CONCLUSIONS OF LAW – DP#22-06

IN THE MATTER OF STANLEY AND REBECCA ROBERTS, REMAND FROM LUBA OF AN APPROVAL OF A TYPE I DEVELOPMENT PERMIT IN CONJUNCTION WITH A BUILDING PERMIT (164-22-000006-DWL) FOR THE DEVELOPMENT OF A NEW RESIDENCE AND ACCOMPANYING ROAD DEVELOPMENT, TAXLOT# 51031AA00600

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**Agenda Date:** August 15, 2023

**Prepared by:** Steve Sokolowski, Director  
Community Development Department

### SUMMARY & BACKGROUND

On March 21, 2022, the Community Development Department approved development permit DP#22-06 in conjunction with a building permit at Tax lot 51031AA00600. This permit conditionally authorized the development of a 1,290 square foot two-story single-family residence on an oceanfront lot accessible by an undeveloped segment of the Nenana Avenue right-of-way. The development permit also conditionally authorized the development of a driveway for access to the residence and a tree removal permit for the property. The dwelling authorized by DP#22-06 is a smaller structure that was submitted as an alternative design to a larger design that was denied by the City in 2020.

During the review of DP#22-06, the Community Development Director found that the application conditionally satisfied the criteria of the City's land use regulations and issued a development permit on March 21, 2022. That permit was appealed to the Land Use Board of Appeals (LUBA) and, on March 16, 2023, LUBA remanded the decision to the City for failing to provide proper notice of the decision and to allow for the opportunity to seek a de novo hearing on the matter. On May 9, 2023, the City Council met and determined that it would not require a local appeal to be filed and, instead, it would hold a hearing and determine compliance of the application with the requirements of the City's land use regulations.

The public hearing on the above-entitled matter was opened before the City Council on 07/10/23; the applicants requested that the matter be continued, or the record be left open. The City Council granted the request, closing the hearing on July 10, 2023, but leaving the record open for seven (7) days allowing for additional written evidence, arguments and testimony which ended on July 17, 2023; a second seven (7) day period then ensued, allowing all parties to respond to the new evidence submitted during the first open record period; that period ended on July 24, 2023. Finally, the record was then left open for an additional seven (7) days to provide the applicant an opportunity to submit final written argument, and that period ended on July 31, 2023, at which point, the record was closed.

At their August 9, 2023, meeting, the City Council deliberated, discussing several procedural issues prior to deliberating on all of the testimony and written information towards a decision.

### PROCEDURAL ISSUES

The first procedural issue discussed involved a challenge to the participation of City Councilor Kerr. The City Council followed the process outlined in CBMC Section 17.88.070(4). The applicants made their challenge and submitted the facts that they rely on for their challenge. Those facts include several emails that are in the record at item A-75. The emails include correspondence between Dianna Turner and Will Rasmussen, the attorney representing Haystack Rock, LLC, an opponent of the application, as well as emails between Mr. Rasmussen and Councilor Kerr. The emails between Ms. Turner and Mr. Rasmussen involve Ms. Turner expressing her belief regarding what she believed Councilor Kerr would do, but no indication that she had spoken with or received that information from Councilor Kerr directly. The emails between Councilor Kerr and Mr. Rasmussen are from 201 and 2022, related to a request from the applicants for an easement across City right-of-way.

Councilor Kerr had the opportunity to respond to that challenge and read a statement informing the council that she could determine its merits on the basis of the evidence and arguments presented. The remaining members of the City Council discussed the matter and unanimously voted to deny the challenge finding that Councilor Kerr did not have a personal bias – would make a decision solely on the facts and regulations at issue - and permitted Councilor Kerr to participate in the decision. Specifically, the Council notes that the emails with Ms. Turner provided no indication that Councilor Kerr was involved in any discussion and the emails between Councilor Kerr and Mr. Rasmussen involved a different matter before the Council.

The next procedural issue involved a written request from Mr. Rasmussen to re-open the record after it had been closed. Because the request was not made according to the open record period, the Council has not seen the request. The members of the City Council discussed the matter and unanimously voted to deny reopening the record because all parties had a full and fair opportunity to participate and to potentially avoid violating the 120-day deadline. Additional procedural matters are considered later in this report. Accordingly, the Council rejects the letter dated July 26, 2023, from Mr. Rasmussen, and will not consider it.

Finally, the Council notes that the applicant has requested an opportunity to offer an amendment or propose conditions of approval that would make the application consistent with the City’s land use regulations under ORS 197.522(3). ORS 197.522(3) states:

“If an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations.”

However, ORS 197.522 applies to applications for “needed housing” and, as identified by ORS 197.522(1), “needed housing has the meaning given that term in ORS 197.303.” ORS 197.303 provides that “needed housing” means the following:

“All housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a. “Needed housing” includes the following housing types:

“\* \* \* \* \*

“(b)Government assisted housing;

“(c)Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490 [and]

“\* \* \* \* \*

“(e)Housing for farmworkers.”

In this case, because the City’s population is below 2,500, subsections (a) and (d) do not apply to its “needed housing.” Instead, to qualify as “needed housing” in Cannon Beach, the City’s Comprehensive Plan would have to identify a need for the particular type of housing and the applicants have not identified any such need. They first point to certain provisions in the City’s Comprehensive Plan that they state support a “need” for single family housing. A-69, Kellington Letter dated July 24, 2023, p 7. However, the Council finds that those policies simply state that the Tolovana Park area of the City shall remain residential, but do not identify any specific need identified in ORS 197.303 that must be met, much less a need “at price ranges and rent levels that are affordable to households within the county with a variety of incomes.” Contrary to the Comprehensive Plan at issue in *Montgomery v. City of Dunes City*, 236 Or App 194, 236 P3d 750 (2010), the City’s Comprehensive Plan simply does not identify any such need. Applicants also include several tables from, and the entire document entitled “Clatsop County Housing Strategies Report” (found at exhibit A-79). However, there is no indication in the record that this document was adopted by the County, much less by the City, or that it was incorporated into any Comprehensive Plan. The City does not discount the need for affordable housing – there is a real need for working families to be able to live in the

City, but the applicants have identified no need for the oceanfront view residence that is proposed here and, accordingly, ORS 197.522(3) does not apply, and the applicants do not get a second opportunity to meet the City's land use regulations.

## **APPLICABLE CRITERIA**

### **17.10.020, RL Residential Lower Density Zoning District, Uses Permitted Outright**

*In an RL zone the following uses and their accessory uses are permitted outright: A. Single-family dwelling, modular housing and manufactured home meeting the standards of Section 17.68.020:*

#### **Findings:**

Tax lot 51031AA00600 is within the Residential Lower Density (RL) zone and, pursuant to 17.10.020(A), single family dwellings, such as the one proposed in this application, are an outright permitted use subject to the standards contained in 17.10.040 and elsewhere in the City's land use regulations.

### **17.10.040, RL Residential Lower Density Zoning District, Standards**

*In an RL zone, the following standards shall apply except as they may be modified through the design review process pursuant to Chapter 17.44:*

- A. *Lot Size. Lot area shall be at least ten thousand square feet. Lots of less than ten thousand square feet may be buildable pursuant to Section 17.82.020; provided, that such lots were not part of an aggregate of contiguous lots with an area or dimension of ten thousand square feet or greater held in a single ownership at the time of enactment of Ordinance 79-4A. Where there are lots held in a single contiguous ownership and one of the lots or combination of lots meets the minimum lot size but the other lot or combination of lots does not meet the minimum lot size, there shall be only one buildable lot. Example: three contiguous lots in a single ownership, each lot with an area of five thousand square feet, constitute one buildable lot. The minimum lot size for all uses, including single-family dwellings, shall be adjusted for average slope using the standards in Section 16.04.310(A).*

*The planning commission may authorize the placement of a governmental or municipal structure necessary for public service on a lot of less than ten thousand square feet if it is found that a larger lot is not required and that the smaller lot size will not have a detrimental effect on adjacent areas or uses.*

#### **Findings:**

The lot area is 5,394 square feet, which is less than the 10,000 square feet minimum lot size for the RL Zone, and thus this is a non-conforming lot and subject to review under 17.82.020. 17.82.020(A) limits the development of a lot that "does not meet the minimum lot size for the zone in which the property is located" to only a single-family home. The application proposes only a single-family home.

#### **B. Lot Dimensions.**

1. *Lot Width. Lot width shall be at least seventy-five feet.*
2. *Lot Depth. Lot depth shall be at least ninety feet.*
3. *Front Yard. A front yard shall be at least fifteen feet.*

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.*
6. *Yard Abutting the Ocean Shore. For all lots abutting the ocean shore, any yard abutting the ocean shore shall conform to the requirements of Section 17.42.050(A)(6), Oceanfront setback.*

**Findings:**

The proposed residential structure meets all lot dimensional requirements. The front yard, the yard abutting Nenana Avenue, is 15 feet in depth, the side yard abutting the property to the east, which is not a street, is five feet, the rear yard, abutting the property to the north, is five feet, which is allowed because the property is a corner lot, located at the corner of Nenana and Ocean Avenue, and the other side yard, abutting Ocean Avenue, exceeds the 15 foot minimum setback and, in addition, is subject to the oceanfront setback, discussed below. If approved, the proposal will be subject to a condition of approval to obtain a survey after completion to ensure that the final residential structure meets these standards. However, as discussed further below under section 17.42.060 and 17.54.030, the elevated roadway and at grade driveway both include accessory structures that are not permitted in the required side and ocean yards.

- C. *Lot Coverage. The lot coverage for a permitted or conditional use shall not exceed fifty percent.*

**Findings:**

The lot area is 5,394 and the area covered does not exceed 2,076, for a lot coverage of approximately 39%. If approved, the proposal would have been subject to a condition of approval to obtain a survey after completion to ensure that the final structure meets these standards.

- D. *Floor Area Ratio. The floor area ratio for a permitted or conditional use on a lot of six thousand square feet or more shall not exceed 0.5. The maximum gross floor area for a permitted or conditional use on a lot of more than five thousand square feet, but less than six thousand square feet, shall not exceed three thousand square feet. The floor area ratio for a permitted or conditional use on a lot with an area of five thousand square feet or less shall not exceed 0.6.*

**Findings:**

Because this lot is between 5,000 and 6,000 square feet, the maximum FAR is 3,000 square feet. The proposed single-family home has a FAR of 2,712. If approved, the proposal would have been subject to a condition of approval to obtain a survey after completion to ensure that the final structure meets these standards.

- E. *Building Height. Maximum height of a vertical structure is twenty-four feet, measured as the vertical distance from the average elevation of existing grade to the highest point of a roof surface of a flat roof, to the top of a mansard roof or to the mean height level between the eaves and the ridge for a pitched roof. The ridge height of a pitched roof shall not exceed twenty-eight feet. Pitched roofs are considered those with a 5-12 pitch or greater.*

**Findings:**

The roof of the proposed residential structure is a pitched roof, meaning the ridge height must not exceed 28 feet and the mean height level must not exceed 24 feet. In this case, the proposed roof has a maximum ridge height of 27' 5/8" and a mean height of 23'3". The proposed elevated roadway also appears to not exceed 20 feet above grade level and would also meet this standard. If approved, the proposal would have been subject to a condition of approval to obtain a survey after completion to ensure that all structures meet this standard.



F. *Signs. As allowed by Chapter 17.56.*

**Findings** - No signs are proposed, this criterion does not apply.

G. *Parking. As required by Section 17.78.020.*

**Findings:**

As the application seeks approval for a single-family dwelling, the application is required to provide two parking spaces that are 9' x 18'. The site plan provided by the applicants demonstrates that this standard is met, although it appears that a portion of the parking is located in the ocean yard setback. Development in the oceanfront setback is not permitted and violates the City's oceanfront setback requirement, which is prohibited, as discussed further below.

H. *Design Review. All uses except single-family dwellings and their accessory structures are subject to the provisions of Chapter 17.44.*

**Findings:**

The use proposed is a single-family dwelling and its accessory structures. This criterion is not applicable.

I. *Geologic or Soils Engineering Study. As required by Chapter 17.50.*

**Findings** - See discussion regarding Chapter 17.50 below.

J. *Claims for Compensation Under ORS 197.352. The standards of Section 17.08.040(A) through (K) (Standards), shall apply except as specifically modified pursuant to a development agreement created as part of the city's final action modifying, removing or not applying the city's land use regulation(s) on a demand for compensation under ORS 197.352.*

**Findings:**

This application does not involve a claim for compensation. This criterion is not applicable.

K. *Site Plan. Except for interior renovation of existing structures and exterior renovations such as siding replacement where there will be no ground disturbance, no new construction shall be approved unless a site plan meeting the requirements of Section 17.90.190 has been submitted and approved.*

**Findings:**

A site plan that meets the requirements of section 17.90.190 has been submitted. This criterion is met.

**CHAPTER 17.38 – FLOOD HAZARD OVERLAY (FHO) ZONE.**

Section 17.42.050(A)(1) provides that all development in the Oceanfront Management Overlay (OM) Zone is subject to the requirements of the Flood Hazard Overlay (FHO) Zone.

**Findings** - The proposed development is consistent with all requirements of the FHO overlay zone.

**CHAPTER 17.42 – OCEANFRONT MANAGEMENT OVERLAY (OM) ZONE**

*17.42.030 Uses and activities permitted.*

*D. For lots or right-of-way that do not consist of a beach, active dunes, or other foredunes which are conditionally stable and that are subject to wave overtopping or ocean undercutting, or interdune areas that are subject to ocean flooding: in*

*addition to the uses permitted in the underlying zone, the following uses and activities are permitted subject to provisions of Section 17.92.010, Development permits:*

- 1. Private beach access improvements, subject to the provisions of Section 17.42.060(A)(7);*
- 2. Maintenance and repair to existing shoreline stabilization structure, subject to the provisions of Section 17.80.230(K);*
- 3. Remedial dune grading.*

*E. For lots or right-of-way that do not consist of a beach, active dunes, or other foredunes which are conditionally stable and that are subject to wave overtopping or ocean undercutting, or interdune areas that are subject to ocean flooding: in addition to the uses permitted in the underlying zone, the following uses and activities are permitted subject to provision of Chapter 17.44, Design Review:*

- 1. Public beach access improvements, subject to the provisions of Section 17.42.060(A)(7);*
- 2. Stormwater outfalls or facilities, which may include infiltration or water quality systems.*

*F. For lots or right-of-way that do not consist of a beach, active dunes, or other foredunes which are conditionally stable and that are subject to wave overtopping or ocean undercutting, or interdune areas that are subject to ocean flooding: the following uses and activities are permitted subject to provision of Chapter 17.80, Conditional Uses:*

- 1. Shoreline stabilization, subject to the provisions of Section 17.80.230;*
- 2. Nonstructural shoreline stabilization program, subject to the provisions of Section 17.42.060(A)(5);*
- 3. A new road, driveway approach, or other access that has fifty feet or more of linear length in OM Zone right-of-way, or in right-of-way within one hundred feet of a stream, watercourse or wetland. Access is new if vehicular access did not previously exist at the location, it was blocked for a period of one year, or an unimproved right-of-way would be improved to provide vehicular access. Alteration of an existing access is not new access.*

Before turning to the applicable portions of this section of the oceanfront management zone, it is important to note that subsection (F)(3) was added to the code after the application was submitted and, under ORS 227.178, the state's "Goal Post" rule, this provision does not apply to this application. However, the remainder of this section of the City's land use regulations remains applicable and, by its own terms, applies to development in the rights-of-way. Specifically, the Council notes that CBMC 17.42.050 explicitly states that the requirements of the Oceanfront management zone apply to "all areas contained in the OM zone" and does not distinguish between areas that are located in right-of-way and areas located on private property. Both the elevated roadway and the at-grade driveway propose significant development in the Nenana Avenue right-of-way, but there is no indication that such development is allowed under 17.42.030. Subsections (D) and (E) are applicable to this application, but neither allows for the development as proposed by the applicant. Accordingly, this criterion is not met.

*17.42.050, Oceanfront Management Overlay Zone – General Standards.*

- A. The uses and activities permitted in all areas contained in the OM zone are subject to the following:*
  - 1. Flood Hazard Overlay Zone, Chapter 17.38;*
  - 2. Geologic hazard areas requirements, Chapter 17.50;*
  - 3. Maintenance of beach access in conformance with Section 17.90.030;*
  - 4. All construction proposed west of the Oregon Coordinate Line shall obtain permits as required by the Oregon Parks and Recreation Department;*
  - 5. All construction proposed west of the line of vegetation shall obtain permits as required under the Oregon Removal-Fill Law;*
  - 6. Oceanfront Setback.*

## Findings:

The requirements of subsections (A)(1) – (A)(3) require compliance with other portions of the City code and those requirements are analyzed elsewhere in this staff report. All structures are located east of the Oregon Coordinate Line and east of the line of vegetation, so criteria (A)(4) and (A)(5) do not apply to the proposal. In addition, the proposed residential dwelling complies with the oceanfront setback; however, the elevated roadway and the at-grade driveway result in development within the oceanfront setback. Unless those uses or structures are authorized in the oceanfront yard, the access portion of the proposal does not meet this criterion. This is discussed further in addressing the oceanfront setback in 17.42.060(9), and accessory structures in 17.54.030 and 17.90.070(E).

In addition, both the elevated roadway and at-grade driveway propose significant development that does not meet the oceanfront setback. The oceanfront setback continues across the Nenana Avenue right-of-way and the turning areas of both proposed access result in significant structures that are within the oceanfront setback on the Nenana Avenue right-of-way. This criterion is not met.

17.42.060(A)(9) provides the entirety of types of structures that are allowed within the oceanfront setback, and it identifies only fences, decks, and beach access stairs, each of which is subject to additional regulation. The Council interprets the language in that provision to prohibit all other non-identified structures within the oceanfront setback. The code defines a “structure” in 17.04.540 as follows:

“‘Structure’ means any man-made assemblage of materials extending above the surface of the ground and permanently affixed or attached, or where not permanently affixed or attached to the ground not readily portable, but not including landscape improvements such as rock walls, retaining walls less than four feet in height, flag poles, and other minor incidental improvements similar to those described above.”

The elevated driveway and retaining wall are both “man-made assemblage[s] of materials extending above the surface of the ground,” both on the lot as well as within the Nenana right-of-way. Applicant’s do not provide any detailed argument regarding the structure supporting the elevated roadway and the Council finds that the elevated roadway violates the oceanfront setback both within the Nenana right-of-way and on applicants’ property.

Regarding the at-grade driveway, applicants acknowledge that the driveway requires extensive retaining walls, both on the property and in the Nenana right-of-way. In the right-of-way, applicants’ only argument is that the oceanfront setback does not apply to the right-of-way – they do not argue that the driveway is not a structure. The Council first notes that, as discussed above, the requirements of 17.42.050, including the oceanfront setback, applies to “all areas contained in the OM zone, and the Nenana right-of-way is within the OM zone. This interpretation is supported by the language in 17.42.030. That provision identifies the specific uses allowed within the OM zone and for each of the subdivisions identifying those allowed uses, it specifically notes what is permitted “for lots or right-of-way” within the OM zone. The portion of the Nenana right-of-way at issue in this application is located within the OM zone. The terms of the OM zone make clear that it is intended to regulate within the right-of-way and, therefore, the Council concludes that development in the right-of-way is subject to the general standards contained in 17.42.050, including the oceanfront setback at 17.42.050(6).

In addition to the development in the Nenana right-of-way, the proposal includes structures within the oceanfront setback on the applicants’ lot. This is shown most clearly in exhibit A-66, the “revised site plan” submitted on July 17, 2023. The first page of that document shows the oceanfront setback as a red line going from the northwest to the southeast, along the southern facade of the proposed residence. The setback continues across the southern part of the lot and crosses the driveway/roadbed, where the 2 required parking spots are located. The second page of that document shows the west elevation and that the top of the retaining wall is at least 4 feet above the existing grade.

The applicants acknowledge that “the west side of the driveway must be reinforced with a retaining wall.” Applicants’ Final Written Argument, p 19. Nonetheless, applicants argue that the proposed driveway retaining wall is not a “structure.” The Council disagrees. Applicant’s first argue that the retaining wall “will not ‘extend above the surface of the ground.’” That is simply inaccurate – the retaining wall is at least 2 ½ feet above the finished grade, and over four feet above the existing grade of the property.

Applicants go on to argue that the retaining wall is less than 4 feet tall when measured from the finished grade. As applicants note, the city's code does not explicitly note the referent point for measuring the height of the retaining wall; however, the code does contain an explicit definition for measuring building height in 17.04.090:

““Building height” means the vertical distance measured from the average elevation of existing grade to the highest point of the roof surface of a flat roof, to the top of a mansard roof, or to the mean height level between the eaves and the ridge for a pitched roof. Average elevation of existing grade shall be measured at the vertical projection of the enclosed building space.”

This is the only method for measuring height contained within the City's land use regulations and the Council interprets this method of measurement to apply to measuring the height of structures as well.

In any event, the four-foot height limit does not apply in this case. 17.04.540 provides that the definition of a structure “does not include landscape improvements such as rock walls, retaining walls less than four feet in height,” and other improvements. The Council interprets the term “retaining walls less than four feet in height” as being part of the list of “landscape improvements,” and not a separate category. In addition, the Council interprets the phrase “minor incidental improvements” to not include structural retaining walls that support driving or parking surfaces. In this case, the retaining wall is not a landscape improvement, nor is it a minor incidental improvement, but a structural support for the required driveway and parking and, therefore, is not subject to the four-foot limitation in any event.

In this case, the retaining wall in the Nenana right-of-way is a structure that is prohibited within the oceanfront setback, which is applicable to all areas subject to the OM zone. The retaining wall on the applicants' lot itself is also prohibited by the oceanfront setback, as it is not a landscape improvement or minor incidental improvement and, moreover, is over four feet in height from the existing grade. The application proposes development in the oceanfront setback which is not permitted and violates the City's oceanfront setback requirement.

*B. The uses and activities permitted in beach and dune areas contained in the OM zone are subject to the following additional standards:*

*1. For uses and activities located in beach and dune areas, other than older stabilized dunes, findings shall address the following:*

- a. The adverse effects the proposed development might have on the site and adjacent areas;*
- b. Temporary and permanent stabilization proposed and the planned maintenance of new and existing vegetation;*
- c. Methods for protecting the surrounding area from any adverse effects of the development; and*
- d. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.*

*2. For uses and activities located on beaches, active dunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas that are subject to ocean flooding, findings shall address the following:*

- a. The standards of subsection (B)(1) of this section;*
- b. The development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and*
- c. The development is designed to minimize adverse environmental effects.*

*3. Determination of Building Line. For residential or commercial buildings proposed for lots that may consist of the beach, an active dune, or other foredunes which are conditionally stable and that are subject to wave overtopping or ocean undercutting, or interdune areas that are subject to ocean flooding the geologic site investigation required by Chapter 17.50 shall include a determination of where these features are located on the lot. The map titled “Active and conditionally stable dunes, Cannon Beach, May 1993” shall be used as the basis for locating the active dune area. The “The Flood Insurance Study for Clatsop County, Oregon and Incorporated Areas”, dated June 20, 2018” and the “Active and conditionally stable dunes, Cannon Beach, May 1993” shall be used as the basis for locating the conditionally stable foredunes that are subject to wave overtopping and interdune areas subject to ocean flooding. Conditionally stable foredunes subject to ocean undercutting shall be determined as part of the site investigation report.*

**Findings** - The application does not propose any development in a beach and dune area, or on beaches, active dunes or other foredunes. These criteria are not applicable.

4. *Conformance with the dune construction standards of Chapter 17.52.*

**Findings** -The application does not propose any construction in a dune area. This criterion is not applicable.

**17.42.060, Oceanfront Management Overlay Zone – Specific Standards.**

9. *Structures in the Ocean Yard. The following structures are permitted in an ocean yard:*

- a. *Fences subject to the provisions of Section 17.54.020(C);*
- b. *Decks subject to the provisions of Section 17.90.070(E);*
- c. *Beach access stairs subject to Section 17.42.030(A)(5) and (D)(1).*

17.42.060 provides specific standards for certain uses or activities in the OM zone. The only applicable provision is subsection (9), which applies to structures in the Ocean Yard. 17.04.540 defines a “structure” as follows:

“‘Structure’ means any man-made assemblage of materials extending above the surface of the ground and permanently affixed or attached, or where not permanently affixed or attached to the ground not readily portable, but not including landscape improvements such as rock walls, retaining walls less than four feet in height, flag poles, and other minor incidental improvements similar to those described above”

**Findings:**

The residential structure is outside of the ocean yard, although the application proposes to construct a deck in the ocean yard that must comply with 17.90.070(E). However, both accesses, the elevated roadway and at-grade driveway, propose structures within the ocean yard that are not allowed as discussed above.

**CHAPTER 17.50 – DEVELOPMENT REQUIREMENTS FOR POTENTIAL GEOLOGIC HAZARD AREAS.**

*17.50.040 Reports and plans required.*

*A. Geologic Site Investigation Report.*

1. *A geologic site investigation report shall be prepared by a registered geologist or engineering geologist. The report is to be prepared in conformance with the city’s site investigation report checklist.*
2. *Where recommended by the geologic site investigation report, or required by the building official, an engineering report prepared by a registered civil engineer shall be prepared. The report shall discuss the engineering feasibility of the proposed development and include findings and conclusions for: the design and location of structures; the design and location of roads; the design and location of utilities; land grading practices, including excavation and filling; stormwater management; and vegetation removal and replanting.*
3. *The burden of proof shall be upon the applicant to show construction feasibility. A proposed use will be permitted only where:*
  - a. *The geologic site investigation report indicates that there is not a hazard to the use proposed on the site or to properties in the vicinity; or*
  - b. *The geologic site investigation report and engineering report specifies engineering and construction methods which will eliminate the hazard, or will minimize the hazard to an acceptable level.*
4. *The standards and recommendations contained in the geologic site investigation and engineering report, upon acceptance by the building official, shall become requirements of any building permit that is issued.*
5. *The building official may have the geologic site investigation report, or the engineering report reviewed by an independent expert of his or her choosing. Such a review may address either the adequacy or completeness of the site*

*investigation, or the construction methods recommended in the engineering report. The applicant shall pay for the cost of the review.*

*6. A geologic site investigation report shall remain valid for a period of not more than five years from the date of its preparation. The continued reliance on a geologic site investigation report that is more than five years old requires the following additional new information:*

- a. An on-site re-inspection of the site by a qualified individual to determine if there has been any change in circumstances.*
- b. If no change in circumstances is found, a short report noting or including:
  - I. A description of site conditions and any changes between the date of the original geologic site investigation report and the date of the re-inspection;*
  - II. Any additional maps, aerial photographs or other documents consulted; and*
  - III. Conclusions regarding the accuracy of the original geologic site investigation report.**
- c. If a change in circumstances is noted, the information in subsection (b) of this section shall be provided along with:
  - I. Additional field data needed to verify and document any change in the status of the area;*
  - II. Revised mapping;*
  - III. Data, documentation, and other information as needed to define the existing geologic condition of the property; and*
  - IV. Revised recommendations and conclusions based on the changed circumstances applicable to the property.**

## **Findings:**

Chapter 17.50 requires applicants that are subject to it to obtain a “Geologic Site Investigation Report” (“GSIR”) that addresses certain topics and reaches the required conclusions; in particular, the applicant must show construction feasibility by either demonstrating that there is no hazard to the use on the property or properties in the vicinity, or that, if there is such a hazard, there are engineering and construction methods that will minimize the hazard to an acceptable level. The applicants submitted multiple reports and the City’s consultants, Windsor Engineering and Pali Consulting, reviewed the material submitted by the applicants and the consultant concluded that the applicants had not met its burden.

Windsor notes that all of the GSIRs submitted by the applicants identify that there are hazards with the use proposed on the site. In particular, the proposed residence and Nenana Avenue right-of-way are located in an area of active sliding, colloquially called the “S-Curves” slide. As described in the applicants’ submittals, the area has been the subject of significant ground movement in the past and that ground movement has interfered with City infrastructure in the area, most particularly, Hemlock Avenue, a significant thoroughfare for the City and the developed street to which the applicants’ access would occur.

Beginning in 2007, the City attempted to address the ground movement by installing long, deep horizontal drains to reduce storm rainfall related spikes in groundwater levels within the slide and, thereby, reduce land movement as part of the S-Curves slide. Monitoring of the site over the past 15 years has indicated that the groundwater levels and slide movement have decreased, but that the ground movement has not stopped. On at least three separate occasions over the last 12 years, significant ground movement was detected following rainfall events. Notably, as acknowledged in the report of Earth Engineers, Inc., the applicants’ own geotechnical engineer has concluded that “the slide is still moving fractions of an inch on deep shear surfaces in high intensity rainfall events” and that “it is not feasible” to stop all future movements of the S-Curves slide.

The City’s consulting engineers reviewed the proposal with two different accesses, either an at-grade driveway and an elevated, bridge-like roadway, both located in the Nenana Avenue right-of-way. The consultants concluded that, under either scenario, the applicants have not met its burden to show that the hazards will be eliminated or minimized to an acceptable level. As discussed in the report from Pali Consulting, the geotechnical engineer, the industry standard for landslide hazards are based on “factors of safety,” also abbreviated as “FS.” Typically, new construction is required to meet a FS of 1.5 or higher, while existing development can go as low as a FS of 1.3

Regarding the at-grade driveway, the applicants did not provide full engineering drawings, nor did the applicants provide any slope stability analysis directed towards the at-grade driveway and thus, there was no FS provided. Without this information, there is no way to determine compliance with 17.50.040(A)(3). As far as the elevated roadway, as noted in the report from the City's consulting geotechnical engineer, the applicants' own analysis shows that construction of the elevated roadway will actually reduce the FS at the site. Although the amount of reduction is relatively minor, there is no explanation of why any reduction in FS is acceptable, given the development's location on an active landslide. In addition, as noted in the report from Windsor Engineering, the City's civil engineer, although construction of the roadway may be feasible, there is no explanation of how the elevated roadway would be coordinated in relation with the proposed home.

Finally, regarding the residence itself, the City's geotechnical engineer concluded that the applicants have not adequately eliminated or minimized the hazard for the residence. In particular, although the hazard of shallow landsliding has been addressed, the applicants have not addressed the deeper, underlying landslide.

The report from Pali Consulting demonstrates that the improvements identified by the applicants may protect the residence from shallow landslides to the west of the residence, but the improvements do not address the underlying S-Curves slide and that slide currently has a FS of approximately 1.0 under high groundwater conditions. That is not an acceptable level of safety for residences and, therefore, this criterion is not met. However, ORS 197.307(4) prohibits the City from applying land use standards that are not "clear and objective" to an application for housing and 17.50.040(A)(3) requires the Council to make a subjective decision in determining whether the engineering and construction methods specified in the applicants' expert reports "will minimize the hazard to an acceptable level." Accordingly, the City is prohibited by state law from applying this standard.

#### **Chapter 17.54 – ACCESSORY USES GENERALLY**

##### *17.54.030 Accessory structure or building.*

*A. Structures and buildings accessory to a residential use shall comply with all yard requirements except that accessory structures and buildings may be located in the rear yard where a Type 3 development permit is issued for pursuant to Section 17.92.010. Structures and buildings six feet in height or less do not require a development permit. Structures and buildings accessory to a residential use located in the required rear yard shall comply with the following standards:*

- 1. The structures or buildings do not have a total area of more than one hundred twenty square feet; and*
- 2. The structures or buildings are not closer than five feet to the rear property line; and*
- 3. The structures or buildings do not exceed twelve feet in height, measured as the vertical distance from the average existing grade to the highest point of the roof surface; and*
- 4. The structures or buildings are located in such a way as to not be detrimental to abutting property and shall not obstruct views from adjacent buildings.*

*B. Structures or buildings, more than one hundred twenty square feet in size, accessory to a residential use shall not be metal clad (metal roofs are permissible).*

*C. Structures or buildings accessory to a commercial, industrial or institutional use shall comply with all yard requirements.*

*D. A guest house may be maintained accessory to a dwelling provided that there are no kitchen facilities in the guest house.*

## **Findings:**

The proposed residence has a deck immediately to the west that is allowed in the ocean yard pursuant to 17.90.070(E), discussed below. However, both of the proposed accesses for this development include accessory structures that are not permitted as discussed above.

## **CHAPTER 62 – GRADING, EROSION, AND SEDIMENT CONTROL**

### **17.62.040 Grading standards.**

*A. The review and approval of development permits involving grading shall be based on the conformance of the proposed development plans with the following standards. Conditions of approval may be imposed to assure that the development plan meets the appropriate standards.*

#### *1. Cuts.*

*a. Designs shall minimize the need for cuts;*

*b. The slope of cut surfaces shall not be steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical unless an engineering report finds that a cut at a steeper slope will be stable and not create a hazard to public or private property;*

*c. Cuts shall not remove the toe of any slope where a potential land slide exists;*

*d. Cuts shall be set back from property lines so as not to endanger or disturb adjoining property;*

*e. Retaining walls shall be constructed in accordance with Section 2308(b) of the Oregon State Structural Specialty Code.*

#### *2. Fills.*

*a. Designs shall minimize the need for fills;*

*b. The slope of fill surfaces shall not be steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical unless an engineering report finds that a steeper slope will be stable and not create a hazard to public or private property. Fill slopes shall not be constructed on natural slopes steeper than two horizontal to one vertical;*

*c. Fills shall be set back from property lines so as not to endanger or disturb adjoining property;*

*d. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials, and scarifying to provide a bond with the new fill;*

*e. Any structural fill shall be designed by a registered engineer, in accordance with standard engineering practices.*

#### *3. Drainage.*

*a. Proposed grading shall not alter drainage patterns so that additional storm water is directed onto adjoining property;*

*b. All cut and fill slopes shall be provided with subsurface drainage as necessary for stability.*

## **Findings:**

Chapter 17.62 establishes grading, erosion, and sedimentation control standards designed to minimize the hazards associated with grading; minimize the erosion of land during clearing, excavation, grading, construction, and post-construction activities; prevent the transport of sediment into water courses, wetlands, and riparian areas in order to protect water quality and fish & wildlife habitat; and prevent the transport of sediment onto adjacent properties. When applicable, such as in this case, excavation and grading work is to be carried out in a manner consistent with the geotechnical reports required by CBMC 17.50 and frequently a geotechnical engineer is required to be present during excavation or the driving pilings in order to ensure that work is being carried out in an appropriate manner. If the proposal is approved, it would have been subject to conditions of approval 7 through 12 to implement these standards:

7. No tree removal or grading of the city right-of-way is permitted as part of this development permit until an approved Right-of-Way permit is issued;

8. Work shall be completed under the Public Works approved construction staging and timing schedule and any ground disturbance of exposed surfaces during the wet season (November 1 through April 30) should be temporarily planted with grasses, or protected with erosion control blankets, hydro-mulch, or hand broadcast straw a minimum of 3 inches thick and punched into the soil.



9. Exposed sloped areas steeper than 3 horizontal to 1 vertical should be protected with a straw erosion control blanket (North American Green S150, or equivalent) to provide erosion protection until permanent vegetation can be established. Erosion control blankets should be installed as per the manufacturer's recommendations.

10. The use of motorized equipment shall be limited to the hours between 7:00am and 7:00pm per Municipal Code Section 8.18.040(F).

11. Existing city infrastructure shall not be disturbed, and any damages shall be at the expense of the applicants.

12. A certified geo-tech should monitor the pile installation during construction to verify that the structure's design objectives have been achieved, and notice will be provided to the City at least five days prior to site disturbance.

## **CHAPTER 17.70 – TREE REMOVAL AND PROTECTION**

### 17.70.020 Permit issuance—Criteria.

*The city shall issue a tree removal permit if the applicant demonstrates that one of the following criteria is met:*

\* \* \* \* \*

*D. Removal of a tree(s) in order to construct a structure or development approved or allowed pursuant to the Cannon Beach Municipal Code, including required vehicular and utility access, subject to the requirements in Section 17.70.030(B) and (Q).*

### 17.70.030 Additional requirements.

\* \* \* \* \*

*B. For actions which require the issuance of a building permit, tree removal shall occur only after a building permit has been issued for the structure requiring the removal of the tree(s).*

\* \* \* \* \*

*Q. An application for a tree removal permit under Section 17.70.020(D), submitted under the direction of a certified tree arborist for removal of a tree(s) to construct a structure or development, must include the following:*

- 1. A site plan showing the location of the tree(s) proposed for removal, the location of the proposed structure or development, and the location of any other trees six-inch DBH or larger on the subject property or off site (in the adjoining right-of-way or on adjacent property) whose root structure might be impacted by excavation associated with the proposed structure, or by soil compaction caused by vehicular traffic or storage of materials.*
- 2. Measures to be taken to avoid damaging trees not proposed for removal, both on the subject property and off site (in the adjoining right-of-way or on adjacent property).*
- 3. The area where a tree's root structure might be impacted by excavation, or where soil compaction caused by vehicular traffic or storage of materials might affect a tree's health, shall be known as a tree protection zone (TPZ).*
- 4. Prior to construction the TPZ shall be delineated by hi-visibility fencing a minimum of three and one-half feet tall, which shall be retained in place until completion of construction. Vehicular traffic, excavation and storage of materials shall be prohibited within the TPZ.*

### **Findings:**

The subject property is located in the RL zone and a single-family dwelling is an outright allowed use; therefore, the applicants are authorized to remove trees in order to construct a structure such as a single-family home, including the vehicle access. The applicants have submitted the required site plan for the proposed house as well as two potential accesses. To the extent the City approves the application for development, it would have been subject to conditions to ensure the other provisions of this chapter are met.

## CHAPTER 17.78 – OFF-STREET PARKING

### 17.78.010 Requirements generally.

*The following general provisions shall govern the application of off-street parking requirements:*

*A. The provision and maintenance of off-street parking is a continuing obligation of the property owner. No building permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking. The subsequent use of property for which the building permit is issued is conditional upon the unqualified continuance and availability of the amount of off-street parking required by this chapter. Should the owner or occupant of a lot or building change the use to which the lot or building is put, thereby increasing required off-street parking, it shall be a violation of this chapter to begin or maintain such altered use until the required increase in off-street parking is provided.*

*E. Off-street parking spaces for one or two-family dwellings shall be located on the same lot with the dwelling. Other required parking spaces shall be located no farther than two hundred feet from the building or use they are required to serve measured in a straight line from the building, except that in the downtown commercial area the provisions of Section 17.22.050(E) apply. For uses where parking is permitted within two hundred feet of the intended use, the parking must be located in a zone which permits the use for which the parking is to be provided.*

### 17.78.020 Off-street parking requirements.

*A. At the time a structure is erected or enlarged or the use of a structure or parcel of land changes, off-street parking spaces shall be provided in accordance with this section and Sections 17.78.010, 17.78.030 and 17.78.040.*

*D. Residences - Single-family dwelling, two-family dwelling and multiple family dwelling in condominium ownership: 2 per dwelling unit, except that 1 per dwelling unit is required for residences that are provided in conjunction with a commercial use where those residences constitute no more than 50% of the building area*

### 17.78.030 Design standards.

*A. The following design requirements shall apply to an off-street parking area consisting of five or more parking spaces:*

*2. A parking space must be at least nine feet by eighteen feet. Where parallel parking spaces are provided, the minimum dimension is nine feet by twenty-two feet.*

*9. The number of access points from the adjacent public street(s) to the parking area shall be limited to the minimum that will allow the property to accommodate the anticipated traffic. Access points shall be located on side streets or existing driveways wherever possible so as to avoid congestion of arterial or collector streets. The width of the access point(s) to the parking area shall comply with the standards of Municipal Code Section 12.08.040.*

*10. Maneuvering space (to prevent backing onto streets) shall be provided for all lots which provide access onto arterial streets (Hemlock Street, Sunset Boulevard, and US Highway 101).*

*C. Areas for required off-street parking associated with single-family dwellings, modular housing, manufactured homes, accessory dwellings, duplexes and limited triplexes, shall comply with the standards of Section 17.78.030(A)(2), (9), (10).*

### **Findings:**

As the application seeks approval for a single-family dwelling, the application is required to provide two parking spaces that are 9' x 18'. The site plan provided by the applicants demonstrates that this standard is met, although it appears that a portion of the parking structure is located in the ocean yard setback. Development in the oceanfront setback is not permitted and violates the City's oceanfront setback requirement which is prohibited.

## CHAPTER 17.82 – NONCONFORMING LOTS, USES AND STRUCTURES—PRE-EXISTING USES

### 17.82.020 Nonconforming lots.

A. If a lot, or the aggregate of contiguous lots held in a single ownership as recorded in the office of the county clerk on or before June 19, 1979, has an area or dimension which does not meet the lot size requirements of the zone in which the property is located, the lot or the aggregate of contiguous lots may be occupied by a use permitted in the zones, subject to the other requirements of the zone. If the lot does not meet the minimum lot size for the zone in which the property is located, residential use shall be limited to a single-family dwelling.

#### **Findings:**

As noted above in discussing the requirements of Chapter 17.10 regarding the RL Zone, the zone has a minimum lot size of 10,000 square feet. The lot proposed for development does not meet that minimum requirement and, thus, is a nonconforming lot. 17.82.020(A) limits the development of such a lot to a single-family development, which is what is proposed in this application. This criterion is met.

## CHAPTER 17.90 – GENERAL REQUIREMENTS AND REGULATIONS

### 17.90.020 Access Requirement.

Every lot shall abut a street, other than an alley, for at least twenty-five feet. Lots which were created prior to adoption of the zoning ordinance which do not meet this provision may be accessed via an irrevocable recorded easement of a minimum of ten feet in width.

#### **Finding:**

The lot at issue abuts a public right-of-way in the dedicated Nenana Avenue, but that right-of-way is not accessible by vehicular or pedestrian traffic. The Council finds that the applicant's lot does abut the Nenana Avenue right-of-way for twenty-five feet and meets this criterion.

### 17.90.030 – Maintenance of Beach Access.

The city shall review, under ORS 271.080 through 271.230, proposals for the vacation of public easements or rights-of-way which provide access to the ocean beach or estuarine waters. Existing rights-of-way and similar public easements which provide access to coastal waters shall be retained or replaced if they are sold, exchanged or transferred. Rights-of-way may be vacated so long as equal or improved access is provided as part of a development project.

#### **Findings:**

This provision is applicable to this proposal because of 17.42.050(A)(3), which requires compliance with this section. The application does not propose the vacation, sale, exchange, or transfer of any rights-of-way. This criterion is met.

### 17.90.040 – Clear-Vision Areas.

A. Requirement. A clear-vision area shall be maintained on the corners of all property adjacent to the intersection of two streets. A clear-vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction exceeding three feet in height, measured from the top of the curb or, where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area, provided all branches and foliage are removed to a height of eight feet above the grade.

## **Findings:**

The Council expressed several concerns and find that the applicants do not meet all of the clear vision criteria regarding egress on onto Hemlock by the S-Curves and how this does not create a greater danger for pedestrians cars, wildlife/elk, etc. This area can also become an attractive nuisance because people stop in the road to view elk and park on this narrow section of Hemlock to view Haystack Rock which also leads to potential pedestrian/wildlife conflict with vehicles traveling along Hemlock. There are also safety concerns regarding the turnaround in the Nenana right-of-way and whether adequate emergency services can be provided. Engineered plans reviewing the exact street and/or driveway to be constructed are necessary in order to determine if such a street/driveway can be constructed in a safe manner with regards to grades, clear vision, etc.

### *17.90.065 – Architectural design elements.*

*All single-family dwellings, modular housing and manufactured homes located in the RVL, RL, R1, R2, RAM, R3, RM, and C1 zones shall utilize at least two of the following architectural features: dormers; more than two gables; recessed entries; covered porch/entry; bay window; building off-set; deck with railing or planters and benches; or a garage, carport or other accessory structure.*

## **Findings:**

The design includes a triangular deck with railings on the western façade of the upper or main level and a covered entry on the southern façade of the lower level. These features can be seen in Exhibit A-9 which shows the floor plans and Exhibit A-12 which shows the exterior elevations. This criterion is met.

### *17.90.070(E) – Decks in Ocean Yard.*

*E. Patios and decks, including any fixed benches, railings, or other attachments, which are no more than thirty inches in height above the existing grade may project into a required yard, but may not be closer than two feet to any property line. For lots abutting the oceanshore, a deck or patio permitted in the required yard may not be closer than two feet to the western property line or the Oregon Coordinate Line, whichever is further east. Patios and decks constructed in a required yard shall not obstruct significant views of the ocean, mountains or similar features from abutting property.*

## **Findings:**

The application includes a proposed deck located immediately east of the home and that deck complies with all requirements in 17.90.070(E). The proposal will be subject to a condition of approval to obtain a survey after completion to ensure that the final structure meets these standards.

## **DECISION AND CONDITIONS**

**Motion:** Having considered the evidence in the record, based on a motion by Councilor Ogilvie, seconded by Councilor Hayes, the Cannon Beach City Council unanimously moved to deny the Stanley A. Roberts, remand from LUBA of an approval of a type I development permit (DP#22-06) in conjunction with a building permit (164-22-000006-dwl) for the development of a new residence and accompanying road development, taxlot# 51031aa00600 as discussed at this public hearing.