

**DESIGN REVIEW COMMITTEE MEETING  
ASTORIA CITY HALL COUNCIL CHAMBERS  
December 6, 2012**

CALL TO ORDER – ITEM 1:

President Pearson called the meeting to order at 5:00 p.m.

ROLL CALL – ITEM 2:

Members Present: President Dave Pearson, Bill Jablonski and Paul Tuter. Jared Rickenbach arrived after Roll Call.

Members Excused: Ryan Davis

Staff Present: Planner Rosemary Johnson, Community Development Director Brett Estes and City Attorney Blair Henningsgaard

MINUTES – ITEM 3(a):

President Pearson asked if any corrections are needed for the meeting minutes of June 7, 2012 and called for a motion. President Pearson moved to approve the June 7, 2012 meeting minutes as presented; seconded by Member Tuter. Motion unanimously approved.

PUBLIC HEARINGS

Planner Johnson noted for the record that Member Rickenbach had arrived.

President Pearson explained the procedures governing the conduct of public hearings to the audience and advised that the substantive review criteria were listed in the Staff report, which was available.

ITEM 4(a):

DR05-14 Amendment to Existing Permit AEP12-18 by Rodger and Madeline Gobel to amend the existing Design Review permit (DR05-14) as amended (AEP07-10) to allow the existing configuration of windows and design elements on an existing single family dwelling to remain at 2879 Mill Pond Lane within the Gateway Arena in the AH-MP, Attached Housing Mill Pond zone.

President Pearson asked if anyone objected to the jurisdiction of the Design Review Committee to hear this matter at this time. There were no objections. President Pearson asked if any member of the Design Review Committee had a conflict of interest, or any ex parte contacts to declare. None declared.

Planner Johnson reviewed the written Staff report and recommendation. No correspondence has been received and Staff recommends approval with no conditions.

President Pearson opened the public hearing and called for testimony from the Applicants.

Rodger Gobel, 2879 Mill Pond Lane, Astoria, OR, stated that when the room in contention was being built, the building inspector, who had been hired, looked at the blueprints and said, "I don't like this. You don't have enough bracing or cross-beaming." When the builder asked what could be done, the inspector replied that the windows could be moved out. He noted that this had been stated at the first hearing, but he was told that the inspector's comments were of no importance. However, the inspector's comments are the only reason the room appears as it does. He added that the crown molding had not been done because his builder was terrible and Mr. Gobel could not get the project finished. That builder is no longer in business. He had approached other builders on the bump out room, but no one wants to warranty their work if they have to change the wall that would have to be pulled out.

President Pearson called for testimony in favor of, impartial, or opposed to the application.

Helen Westbrook, 2860 Log Bronc Way, Astoria, OR, spoke in opposition to the application and on behalf of the Mill Pond Homeowners Association (HOA) Board. She stated the requests being made were for the City to accept after-the-fact, the existing configuration of the west end windows and elimination of approved design elements of the windows and doors. The existing configuration did not conform to the plans originally approved in 2005 by the City and the Mill Pond Architecture Committee at that time. The City's Design Review Committee denied these same after-the-fact amendments at a hearing in October 2007. The Design Review findings were subsequently appealed by the Applicants to the Astoria City Council in March 2008, who had agreed with the Design Review Committee (DRC) and denied the appeal.

- In a June 2008 letter to the Applicants' builder, Biamont Construction, Planner Johnson listed all the pending conditions of approval and the status of each. Regarding the west end bump out window, she stated, "The Applicant shall replace these features in locations as previously approved. Windows shall be replaced by October 1, 2008." Now, four years later, the Applicants are asking the City to accept the same window configuration that did not meet approved design standards after the consideration by the City's Design Review Committee (DRC), Astoria City Council, and Mill Pond Architecture Committee and Board. In fact, there were significant differences between the house that was actually built and the 2005 house plans that were approved, but the vast majority of the changes, as Planner Johnson has stated, made to the house during construction had subsequently been allowed.
- The current application for tonight's hearing did not explain why the Applicants believed the same after-the-fact request that had been previously denied should now be considered again and approved, although several reasons had been given by the Applicants in prior years. In the 2007 appeal to City Council, the Applicants suggested that "the structural integrity of the west wall may be compromised with a reconfiguration of the windows to conform to the original design approval." However, no evidence was provided to support that contention. Rather, the contractor, Tony Biamont, stated for the record that the owners wanted the west bump out windows "to be on the outer edges of the wall due to proposed placement of furniture inside."
  - The Applicants also stated in their appeal that there would be a financial burden to replace and reconfigure the windows. The Mill Pond Board agrees, which is why it is important to build to the actual approved plans or to request approval for any necessary changes through the appropriate processes prior to the construction of the changed elements.
  - The Applicants' statement to the Mill Pond Architecture Committee stated that changes in the number and location of windows on the west and south elevations were made "because of an error in the engineering of the house." It is not uncommon in residential buildings to discover error or omissions during construction, but it is generally required that errors be corrected when discovered. She could give specific examples of construction errors or unanticipated results within Mill Pond that had to be corrected at discovery at the owner's or contractor's expense.
  - Finally, the Applicants told City Council that "there is not a negative impact to the neighborhood with the current windows." The Mill Pond Board strongly disagrees. This is not a question of whether the home should be considered beautiful, but of being in violation of City and Mill Pond design requirements. Currently, 38 other single-family residences have been constructed at Mill Pond and none were in violation of conformance with the design permits or have pending enforcement issues, even though meeting the standards may have been inconvenient or expensive to the property owners. At this time, 41 vacant lots remain to be developed to single-family residences at Mill Pond. If the City approves the remaining after-the-fact exceptions outlined in the Staff Report, in addition to the many amendments allowed for this residence by the City over the years, Mill Pond Board's ability to hold any other property owners to City or Mill Pond Village design standards would be severely compromised. The Board's hope and expectation was that the Gateway Historic District Standards adopted by the City would be important enough for the City to enforce.
- The Mill Pond Board asked that documentation of all prior decisions on this matter be included into tonight's hearing record, and that the DRC consider including in tonight's decision, any reasons why the west end window request be any different from the Applicants' previous efforts to have an after-the-fact amendment for the same issue. The Mill Pond Board issued a denial for the after-the-fact request years ago and has not subsequently reversed its decision. The Mill Pond Board also noted there has been no enforcement action taken by the City in the last four years despite clear and continuing violations. Copies of her testimony on behalf of the Mill Pond Board were provided for the record.

Ken Kennedy, Owner, Lots 41 and 42, Astoria, OR, stated that as a future resident of Mill Pond, he would be most affected by these clear violations of the City and Mill Pond Design Review Committee regulations since

2005 and 2006 because his lots are located directly across from the Applicants'. At that time, the Applicants were given temporary approval to move into the home with the understanding and commitment that all violations would be corrected in a timely manner. After seven years, the Applicants continue to defy and request amendments for their existing status, while others building in Mill Pond have complied with both City and Mill Pond regulations and design requirements. These regulations and architectural standards set by the City are designed to preserve the historical integrity of the City of Astoria, as well as Mill Pond village. The Council has an obligation to its constituents to rule that the violations need to comply with City regulations. Approving these requests would set a dangerous precedent that would have a negative impact on future projects at Mill Pond and in the city of Astoria. The Applicants were part of a group that had taken action against his own project about one-and-a-half years earlier that had cost him and the homeowners of Mill Pond tens of thousands of dollars. It was time the Applicants comply and make sure their own house is in order and start living by the rules instead of trying to change them.

Tom Oxwang, 2865 Mill Pond Lane, Astoria, OR, stated the Mill Pond Village and its HOA was created by the City of Astoria when collaboration began to clean up the old mill site. The HOA Covenants, Conditions, and Restrictions (CC&Rs) and design review guidelines were accepted in their entirety by the HOA at the initial turnover. He doubted any current property owners or residents had input on creating those regulations. The CC&Rs are similar to most used by other homeowners associations. The design review guidelines represent a vision of the community and attempt to encourage, discourage, or require structures consistent with the neighborhood. Language in the design review guidelines indicate much give and take occurred prior to finalizing the agreement between the City and Mill Pond.

- A residence in an HOA is a valuable asset because individual units tend to be maintained, the landscape is kept under guidance, and neighbors can help if needed. He believes such care and concern by the HOA has helped maintain his property value. While he does not like unnecessary rules and regulations, he chose to live in Mill Pond after carefully reading the bylaws, CC&Rs, and design review regulations and felt he would protect it. He assumed other residents and property owners did the same. In this case, he believed the Applicants were ignoring both the City of Astoria and Mill Pond Village HOA guidelines. He encouraged the Commission to deny the amendment, because the home in question did not resemble the home in the plan, and it is the only home not consistent with the rest of the homes in Mill Pond. Further, the DRC and City Council previously denied the request and he could not find any compelling reason in the Staff report for the approval, which would only set an unfortunate precedent, in his opinion.

President Pearson called for any rebuttal from the Applicants.

Mr. Gobel stated that most of the problems in building the house stemmed from the builder, who failed to go to the City to receive approval for every variation. At the time, the Applicants did not live in Astoria during the entire building process and had to travel between Astoria and Nevada every other month or so to check on the building process. He regretted that things had not been done in order. The Applicants have been in Astoria for a few years now and had replaced \$10,000 worth of windows, which he assumed passed inspection. He assured that they would do what the Committee decided. He was not sure whether the structural issue really exists because he is not an engineer and did not know if the builders were telling the truth, but he asked that the request be approved based on those facts.

President Pearson called for any closing remarks by Staff.

Planner Johnson clarified that the Design Committee has encouraged and discouraged features, not requirements, and that the Applicants would still need Mill Pond Association Design Review Committee approval to proceed. She confirmed two separate processes are involved, one is private and the other is City. She also confirmed that approval from the Mill Pond Design Review Committee had not yet occurred.

President Pearson closed the public testimony and called for Committee discussion and deliberation.

Member Jablonski asked if the Committee could revisit the request if City Council had held the DRC's 2008 decision to deny the treatments and window configurations. Planner Johnson answered yes, a Development Code section stated that an applicant could return to a commission with substantially the same request after six months. Director Estes acknowledged the Applicants had replaced the windows, which had been another part of the appeal.

Planner Johnson added the Applicants also fixed other issues that were on the appeal, leaving only a few remaining items. She reviewed the issues that had been amended or addressed as follows:

- Windows. All the sliding windows had to be replaced.
- How high the building was off the property and the skirting.
- The tower element on the north was originally going to be a vaulted, covered, second-story porch, but had ended up being an enclosed room.
- Siding. The Applicants had used a board and batten hardy material which left seams that the Commission had not approved originally. The siding had to be reconfigured with proper seam boards at specific levels, rather than just cutting a board at odd levels and leaving seams.
- Changes to the support post on the porch.
- Some window configurations.
- Crown moldings.
- The materials used had to be slightly different.
- She noted Page 3 showed the difference in the siding, which showed board and batten on the bottom and the seam going across just above the two windows. Previously, the seam had been higher and had to be repaired. Multiple items had been repaired and accomplished.

Member Rickenbach understood the slider windows had been eliminated, but the image on Page 3 showed that two sliders on the bump out had not been changed out. Planner Johnson explained that those windows were not sliders, an example of which could be seen in the picture on the front. Upon closer inspection, Member Rickenbach agreed it was a reflection.

President Pearson commented that when formed, the Gateway District was an ambitious plan to create a new area of housing in Astoria that blended commercial and residential uses with the intent to create a neighborhood. The neighbors have testified and made some very valid points and he struggled to go against their testimony based on what was presented. The packet presented a case both ways, but many people have gone through the same review process and in the end, for him it would come down to the windows.

Member Rickenbach empathized with the Applicants given the issues were caused by a contractor and understood the disappointment of not having a professional's proper representation. However, he was also concerned about a lay committee's ability to make a decision upheld by City Council and then later change its decision. This changed one's ability to respect the responsibilities of a committee and a City that tries to enforce what everyone else has had to perform. He agreed with the opposing comments about reading requirements before building in a development. A lot has happened in seven years, but he did not see anything that carried enough weight to change the original recommendations, although he understood the items were discouraged, and not prohibited. A lot of energy had been put into making the decisions at one point, and if such decisions were reversible, that would be a tough call.

Member Tuter understood the Applicants had gone through a lot to change things, but there were rules for living in Mill Pond. It was unfortunate the Applicants were done wrong by the builder, but he agreed with Mr. Oxwang that homeowners in the development should feel protected about how things are done.

Member Jablonski said he has been on the DRC since 2005 and the Committee has worked with each applicant in securing their construction permits and working with them to tweak their designs. The Committee has gone through the review process a couple times with the Applicants regarding conditions needing to be different than originally submitted. The Committee recommended denial on these items that have now returned for review and he also did not see a precedent to change their 2007 decision. The City did go through a lot of work to set up the overlay district and this commission to establish a neighborhood with elements indicative of the upper town area. He noted Planner Johnson's comments that the home had become more contemporary since going through the changes. He hoped there was a way to bring back some of the design features originally presented in 2005, such as the crown molding and windows configuration that were originally approved.

Planner Johnson proposed several changes to the Staff report.

Member Rickenbach empathized with the parties on both sides of the issue. Rather than denying everything, he asked if certain elements of the original application that were removed could return to the DRC on another application, such as the window trim. Many homes in Mill Pond do not have crown moldings, but the window trim on the subject application was similar to other homes in Mill Pond. He recalled an early site visit and certain

elements were more important than others, allowing less emphasis on some items if certain things were accomplished. For example, if the crown moldings were done, another item might not be as essential. He asked if any record existed of such tradeoffs. He did not want to forget any tradeoffs that may have been made throughout the process. Planner Johnson did not believe any one item was tied to another; rather the issue was achieving an overall appearance. The crown molding was something the Committee believed was important to keep some details of design on the house. She did not recall having any specific tradeoffs involving certain elements, like the crown moldings

Member Rickenbach asked if some compromise could be found. The homeowner had been wronged by a general contractor and he understood the need for the HOA to hold them accountable to the original application. He suggested doing some kind of redesign; however, such changes would be required to return to the DRC for a public hearing. He would support denial of the subject application, with the soft recommendation that the Applicants find something workable with the HOA as a repair, but perhaps not exactly the same as the original application, but something that was remediable and acceptable to both parties, yet staying out of the discouraged items. He was more interested in accepting something that showed the parties attempted to solve the problem, rather than simply being asked to approve the same problems again. Member Tuter agreed it would be nice to find a solution that would satisfy both sides.

President Pearson asked if Staff would have time to explore other options if the hearing was continued to the January meeting. Director Estes did not believe the Applicants had asked for the hearing to be continued, but was pursuing what has been proposed this evening.

City Attorney Henningsgaard added that with the design features, a new application would be required. He would not want to try to predict the Committee's position.

President Pearson moved to approve the application as presented with the following changes by Planner Rosemary Johnson to deny the application;

Page 4, IV.B, Finding, add: ... "The proposal has been reviewed and denied in the past by the DRC and by City Council on appeal. Non-compliance with the requirements of these decisions is a continuing code violation."

Page 5, Paragraph 1 to read: " The location of the structure is highly visible due to its corner location on the north adjacent to the River Trail and other homes in Mill Pond. The overall design of the house has window design and configuration that is more contemporary. The applicant did comply with other requirements to change the lower sliding windows to a design more compatible with the Uppertown neighborhood. To change the bump-out windows would involve extensive structural changes to that portion of the building. While the design is a feature that does not meet the guidelines, the Code allows flexibility with "guidelines" rather than "requirements". The DRC can balance the overall design of the building in making their decision. However, due to the overall design, which as a whole is compatible as constructed, this feature continues to be non-compatible with the designs in the Uppertown area."

Page 6, Section 14.025(E), Finding, the last sentence to read: "However, even with a more contemporary appearance, the crown moldings should be installed as previously approved."

Page 6, V., Conclusion and Recommendation, to read: "The request does not meet the design objectives of the Design Review Guidelines. The DRC denies the request. ...".

Motion seconded by Member Jablonski. Motion passed unanimously.

President Pearson read the rules of appeal into the record.

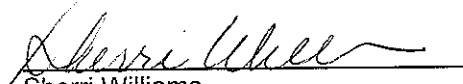
#### REPORT OF OFFICERS – ITEM 5

There were no reports.

#### ADJOURNMENT – ITEM 6

The meeting was adjourned at 5:44 p.m.

ATTESTED:

  
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Sherri Williams  
Secretary

APPROVED:

  
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Brett Estes, Community Development Director /  
Assistant City Manager