



Land of Cheese, Trees and Ocean Breeze

**VARIANCE REQUEST #851-22-000063-PLNG
FEINBLUM**

STAFF REPORT

Decision: APPROVED AS MODIFIED

Staff Report Date: June 16, 2022

Report Prepared By: Sarah Absher, CFM, Director

I. GENERAL INFORMATION:

Request: Variance request to reduce the required 30-foot front and rear yard combination setback to a (zero) 0-foot front yard setback and to further reduce the 50% lot coverage allowance for the expansion of a deck on a property developed with a single-family dwelling (Exhibit B).

Location: The subject property is located within the Unincorporated Community of Oceanside at 1665 Portland Avenue, a County Road, and designated as Tax Lot 11300 of Section 25AA, Township 1 South, Range 11 West, W.M., Tillamook County, Oregon (Exhibit A).

Zone: Residential Oceanside Zone (ROS).

Applicant & Property Owner: Daniel Feinblum, 4311 SE 57th Avenue, Portland, OR 97206

Property & Vicinity Description: The subject property is 0.04 acres in size (approximately 1,751 sq. ft.); is vegetated with grasses, trees and shrubs; is rectangular in shape and developed with a single-family dwelling. Topography of the site varies, and generally slopes in a downward direction to the west, towards Portland Avenue. The subject property is bordered by residential properties to the north and south, Portland Avenue, a County road, to the west and an undeveloped property to the east (Exhibit A).

The subject property is located within an area of residentially developed properties also zoned Residential Oceanside (ROS) to the north, south, east and west. Properties zoned Commercial Oceanside (COS) are located further west and include commercial eating and drink establishments. Oceanside State Beach Park and other recreational amenities are also located further west of the subject property in the Park Oceanside (POS) Zone.

(POS) Zone.

There are no known wetland or riparian features identified on the subject property. The subject property is located outside of the Tsunami Hazard Overlay zone and the Flood Hazard Overlay zone (Exhibit A). The subject property is within an area of known geologic hazard (inactive landslide topography).

Public facilities and services in the area include the Oceanside Water District, Netarts-Oceanside Sanitary District and the Netarts-Oceanside Rural Fire District.

County records indicate the single-family dwelling was constructed in the mid-1940's (Exhibit A). Permit records located within the Tillamook County Department of Community Development include a deck repair permit in 2012 and a permit to construct a retaining wall along the westerly property boundary line in 2017. It was later confirmed through this review process that the retaining wall is sited approximately 2-feet inland from the westerly property line upon inspection by Tillamook County Surveyor Michael Rice (Exhibit E).

Prior to the footprint expansion, County records indicate the deck was approximately 207 square feet, irregular in shape, 28-feet wide, 4-foot six-inches deep in the narrowest location and was located roughly 3-feet from the westerly property line. During the site visit on June 10, 2022, County Surveyor Rice also confirmed the deck expansion in relation to the property corner markers encroaches roughly 1-foot into Portland Avenue County road right-of-way.

The construction activities took place earlier this year to replace and expand the deck and were completed without land use and building permit approval. Applicant's narrative states they were unaware the replacement and expansion were completed without permitting. This Variance request has been submitted in efforts to achieve compliance with permitting requirements, including approval of a zero (0) foot front yard setback along the westerly property boundary (Exhibit B).

II. APPLICABLE ORDINANCE AND COMPREHENSIVE PLAN PROVISIONS:

The desired use is governed through the following Sections of the Tillamook County Land Use Ordinance (TCLUO). The suitability of the proposed use, in light of these criteria, is discussed in Section III of this report:

- A. Section 3.310: Residential Oceanside (ROS) Zone
- B. Article VIII: Variance Procedure and Criteria

III. ANALYSIS:

A. Section 3.310: Residential (ROS) Zone

PURPOSE: The purpose of the ROS zone is to designate areas for low-density one and two-family residential development and other, compatible, uses. Suitability of land for low-density uses is determined by the availability of public sewer services, and limitations to density such as geologic and flood hazards, shoreline erosion, and the aesthetic or resource values of nearby natural features. Where any provision of the ROS zone imposes a restriction on the use of land greater than is provided by other ordinance provisions, then the ROS zone shall prevail.

1. Section 3.310 (2) Uses Permitted Outright

(a) Single-family dwelling

2. Section 3.310(4) Standards

...

(d) The minimum front yard setback shall be 20 feet.

...

(i) Structures shall not occupy more than 50% of the lot area.

Findings: The Applicant is seeking relief through the Variance process to reduce the existing front yard setback along the westerly property line to 0-feet and to allow for lot 51.8% lot coverage (Exhibit B). Prior to the recent expansion of the deck footprint, the front yard setback for the deck was approximately 3-feet and 46.4% lot was covered by structural improvements (Exhibit B).

Staff finds Variance approval is required to permit the deck as expanded to the westerly front property line and to allow for the 50% lot coverage maximum of the ROS zone to be exceeded by 1.8% (Exhibit B) .

B. Article VIII: Variance Procedure and Criteria; including Section 4.005 Residential and Commercial Zone Standards

The purpose of a VARIANCE is to provide relief when a strict application of the dimensional requirements for lots or structures would cause an undue or unnecessary hardship by rendering the parcel incapable of reasonable economic use. No VARIANCE shall be granted to allow a use of property not authorized by this Ordinance.

Article VIII of the Tillamook County Land Use Ordinance governs the applications of Variances within the County. Section 4.005 lists the purposes of the land use standards in each of the residential and commercial zones.

1. **Section 8.020** requires public notice in accordance with TCLUO Section 10.070 which requires notification of the request to be published in a newspaper of local distribution and mailed to landowners within 250 feet of the subject property.

Findings: Notice of hearing for the Variance request was mailed to property owners within 250-feet and affected agencies on March 28, 2022. Public comments received to date are included as “Exhibit C”. Comments include:

- Precedent of allowing a Variance “after-the-fact”.
- Precedent of allowing a zero-foot front yard setback.
- Circumstances are self-created.
- Reasonable alternatives exist.
- Concern of traffic and proximity to County Road Right-of-Ways.
- Character of the proposed building aligning with the current character of the area specifically with regards to living square footage utilized on small-lots in Oceanside.
- Deck as expanded does not conform to provisions of TCLUO Section 4.005.

Relevant comments are addressed in the analysis of the criteria outlined in this report.

2. **Section 8.030** states that a Variance may be authorized if the applicants/property owners adequately demonstrate that the proposed use satisfies all relevant requirements, including all four review criteria in Section 8.030. These criteria, including Section 4.005 Residential and Commercial Zone Standards, along with Staff’s findings and conclusions are indicated below:

(1) *Circumstances attributable either to the dimensional, topographical, or hazardous characteristics of legally existing lot, or to the placement of structures thereupon, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity, if all applicable standards were to be met. Such circumstances may not be self-created.*

Findings: Applicant's justification is based upon the fact that many properties in this vicinity are nonconforming in many ways such as the inability to meet lot coverage and setback standards due to small lot sizes as well as topographical and dimensional constraints.

Applicant states a substantial property right (construction of a single-family dwelling including construction of structures necessary or incidental to that purpose) is the primary outright allowed use in the ROS zone and argues there is a significant portion of the other properties in the vicinity improved with structures resulting in little or no front yard setback- a substantial property right enjoyed by the majority of landowners in the vicinity (Exhibit B).

Applicant's submittal also states that the existing limitations of the property, non-conforming issues and topographical constraints were not created by the Feinblums (Exhibit B).

A Geographic Information Services (GIS) map of the vicinity depicting the location of structures on properties within the vicinity is included as "Exhibit D". The subject property is identified by a yellow arrow. The GIS depiction confirms several properties within the vicinity contain structural improvements that extend to the front property line or encroach into road right-of-way (Exhibit D). The majority of the properties depicted on the GIS analysis are also zoned ROS and application of ROS zone development standards, specifically the front yard setback and lot coverage maximum, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity (Exhibit D).

Staff concurs that the placement of structures resulting in little to no front yard setback are largely the result of dimensional and topographical constraints as well as date of construction of many structures prior to implementation of zoning standards in this area. Staff concurs that development and use of residential improvements absent a front yard setback is a property right enjoyed by a majority of landowners within the vicinity. Staff also concurs that several improved properties in the vicinity contain structural improvements that exceed the 50% lot coverage maximum due to small lot sizes and dimensional constraints (Exhibit D).

This criterion is met.

(2) A variance is necessary to accommodate a use or accessory use on the lot which can be reasonably expected to occur within the zone or vicinity.

Findings: Applicant states the requested variance accommodates use of the property for single family dwelling purposes- a use reasonably expected to occur in the area and one of the few outright permitted uses in the ROS Zone (Exhibit B).

Staff concurs with the Applicant's findings. Development of single-family dwellings (including construction of structures necessary or incidental to that purpose) is expected to occur within the vicinity. As stated above, dimensional and topographic constraints are shared by properties in the vicinity for residential improvements resulting in the established pattern of development within the ROS zone and the vicinity.

This criterion has been met.

(3) The proposed variance will comply with the purposes of relevant development standards as enumerated in Section 4.005 and will preserve the right of adjoining property owners to use and enjoy their land for legal purposes.

Findings: “Exhibit E” of this report contains email correspondence between staff, Tillamook County Public Works Department, Tillamook County Surveyor’s Office and the Applicant’s attorney, Michael Kittel. The conversations captured in the emails confirm location of the existing retaining wall. The email also indicates the deck now encroaches approximately 1-foot into Portland Avenue County road right-of-way. Corresponding evidence included with County Surveyor Michael Rice’s email includes a property survey filed with Tillamook County (B-3616) and a photograph taken by County Surveyor Rice that identifies the southwest property pin at the corner of the subject property (Exhibit E).

Tillamook County Public Works (TCPW) Director Chris Laity confirms the deck expansion to the front property line is acceptable, provided the Conditions of Approval outlined by Director Laity are met. These conditions include removal of all deck and physical encroachments from Portland Avenue County road right-of-way, the construction of a side wall and installation of stormwater improvements and the requirement for a utility permit with inspections by TCPW for installation of these improvements (Exhibit E).

Mr. Kittell has responded to these conditions confirming that with the exception of the removal of structural improvements encroaching into Portland Avenue Road right of way, Applicant will comply with the TCPW Conditions of Approval (Exhibit E). In a follow-up email, Mr. Kittell states that the Applicant is continuing to investigate the encroachment issue and will have this issue resolved prior to submittal of a consolidated zoning/building permit for the deck (Exhibit E).

It should be noted that encroachments into County road right of way are permitted outside of the land use review process. Further, a building permit shall not be issued without demonstration of compliance with County ordinances- including County ordinances governing County roads.

In a conversation with Netarts-Oceanside Fire Chief Tim Carpenter on June 7, 2022, staff confirmed Chief Carpenter is agreeable to the expansion of the deck to the front yard property line provided the Conditions of Approval outlined by TCPW Director Chris Laity are met.

The deck footprint has been expanded 3-feet (Exhibit B). Adherence to the Conditions of Approval imposed by the Tillamook County Public Works Department will require approximately 1-foot of the deck footprint to be removed (Exhibits B & E).

Section 4.005: Residential and Commercial Zone Standards of the Tillamook County Land Use Ordinance lists the purposes of the land use standards in each of the residential and commercial zones as follows:

- (1) *To ensure the availability of private open spaces;*
- (2) *To ensure that adequate light and air are available to residential and commercial structures;*
- (3) *To adequately separate structures for emergency access;*
- (4) *To enhance privacy for occupants or residences;*
- (5) *To ensure that all private land uses that can be reasonably expected to occur on private land can be entirely accommodated on private land, including but not limited to dwellings, shops, garages, driveway, parking, areas for maneuvering vehicles for safe access to common roads, alternative energy facilities, and private open spaces;*
- (6) *To ensure that driver visibility on adjacent roads will not be obstructed;*
- (7) *To ensure safe access to and from common roads;*

Findings: Applicant states the deck has been designed in a manner to be consistent with safe flow of traffic and to accommodate parking on Portland Avenue. Applicant adds that the deck adequately preserves light

and air to structures, preserves privacy for occupants in other residences, does not obstruct pleasing views and ensures that all private uses of land are located on private land (Exhibit B).

Applicant also states the retaining wall and reconstruction of the deck was necessary to permit for safer transport and additional parking along Portland Avenue in accordance with the standards outlined above and that the reconstructed deck was specifically designed to avoid interference with parking along Portland Avenue (Exhibit B).

The subject property abuts Portland Avenue to the west (Exhibit A). The Tillamook County Public Works Department provided comments supporting approval of the Variance request subject to conditions that require removal of that portion of the deck that encroaches into Portland Avenue road right-of-way (Exhibit E).

Staff finds the deck as expanded remains uncovered and unenclosed. Provided the Conditions of Approval stated in "Exhibit E" are adhered to, the standards listed above are met. In adherence to the TCPW Conditions of Approval, no encroachments will be within the road right-of-way ensuring emergency access is not impeded. The deck as adjusted to be wholly sited within the property boundaries and constructed in a manner that is uncovered and unenclosed maintains existing privacy and adequate access to air, light and open space for the subject property and the surrounding properties. Staff also finds that access to adjacent properties will not be impacted by the deck and that driver visibility will not be obstructed.

Staff finds that these standards have been met and can be met through the Conditions of Approval.

(8) *To ensure that pleasing view are neither unreasonably obstructed nor obtained;*

Findings: The County regulates views through compliance with building height requirements. Staff visited the site on June 4, 2022. The subject property and properties in the vicinity are part of the coastal headland that slopes south and west towards the Pacific Ocean. The face of this slope is benched by road right-of-way. Traveling in a southwesterly direction, the majority of residentially developed properties are sited downslope to the south and west from those properties to the north and east, and residential improvements on the east side of road rights-of-way generally sit higher in elevation than neighboring properties to the south and west.

Staff finds that the deck, as altered to extend no farther than to the front property line, remains located within the boundaries of the subject property and does not unreasonably result in view obstruction. Given the development pattern established in the vicinity and location of residential improvements, staff also finds that views are not unreasonably obtained.

(9) *To separate potentially incompatible land uses;*

Findings: The use is allowed outright in the ROS zone and this vicinity is predominantly dedicated to residential use.

(10) *To ensure access to solar radiation for the purpose of alternative energy production.*

Findings: County records do not indicate any such facilities are in the vicinity of the subject property. The deck as altered to remain within the property boundaries does not unreasonably shadow or otherwise inhibit access to solar radiation on adjacent properties.

Staff concludes the standards in Section 4.005(8) through (10) have been met. Staff also concludes this criterion has been met.

(4) *There are no reasonable alternatives requiring either a lesser or no variance.*

Findings: Applicant states that the only alternative to allowing a useable ocean-facing deck on the property would be to reposition the house further east on the property, an alternative that is cost-prohibitive and unreasonable (Exhibit B).

Staff finds that the lot dimensions and location of existing residential improvements on the subject property limit the westerly, ocean-facing buildable area available for a deck. Applicant is requesting this Variance be approved for the deck as constructed (Exhibit B & E). Staff finds that a reasonable alternative requiring a lesser Variance is to modify the footprint so that the deck no longer encroaches into Portland Avenue Road right-of-way. Staff finds this is a reasonable alternative that affords the Applicant a property right enjoyed by a majority of landowners in the vicinity and ensures conformance to the standards enumerated in TCLUO Section 4.005.

Staff concludes this criterion can be met through the Conditions of Approval.

IV. DECISION: APPROVED WITH CONDITIONS

Staff concludes, based on the findings of fact and other relevant information in the record, that the applicant has satisfied/or is able to satisfy the applicable ordinance requirements through the Conditions of Approval, and therefore, approves the request subject to the provisions in Section V below.

By accepting this approval, the applicants and property owners agree to indemnify, defend, save and hold harmless Tillamook County, and its officers, agents, and employees from any claim, suit, action or activity undertaken under this approval, including construction under a Building Permit approved subject to this approval. The applicants/property owners shall obtain all of the necessary local, state, and federal permits and comply with all applicable regulations for the proposed building site.

This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. Forms and fees must be filed in the office of this Department before **4:00 PM on June 28, 2022.**

V. CONDITIONS OF APPROVAL:

Section 8.060: COMPLIANCE WITH CONDITIONS and Section 8.070: TIME LIMIT requires compliance with approved plans and conditions of this decision, and all other ordinance provisions, and allows 24 months for compliance with Conditions and start of construction. Failure to comply with the Conditions of Approval and ordinance provisions could result in nullification of this approval.

1. The applicant and property owner shall obtain all Federal, State, and Local permits, as applicable.
2. The applicant and property owner shall adhere to the conditions of approval set forth in the Tillamook County Public Works email dated June 9, 2022 (Exhibit E). A letter from the Tillamook County Public Works Department confirming the conditions of approval have been met shall be submitted to the Department of Community Development prior to final structural inspection by the Building Division.
3. A to-scale site plan shall be submitted at the time of consolidated Zoning/Building Permit application submittal. The site plan shall confirm the deck does not extend beyond the westerly property boundary line and does not encroach into Portland Avenue County road right-of-way.
4. The deck shall remain uncovered and unenclosed.

5. This approval shall be void on June 16, 2024, unless construction of approved plans has begun, or an extension is requested from, and approved by this Department.

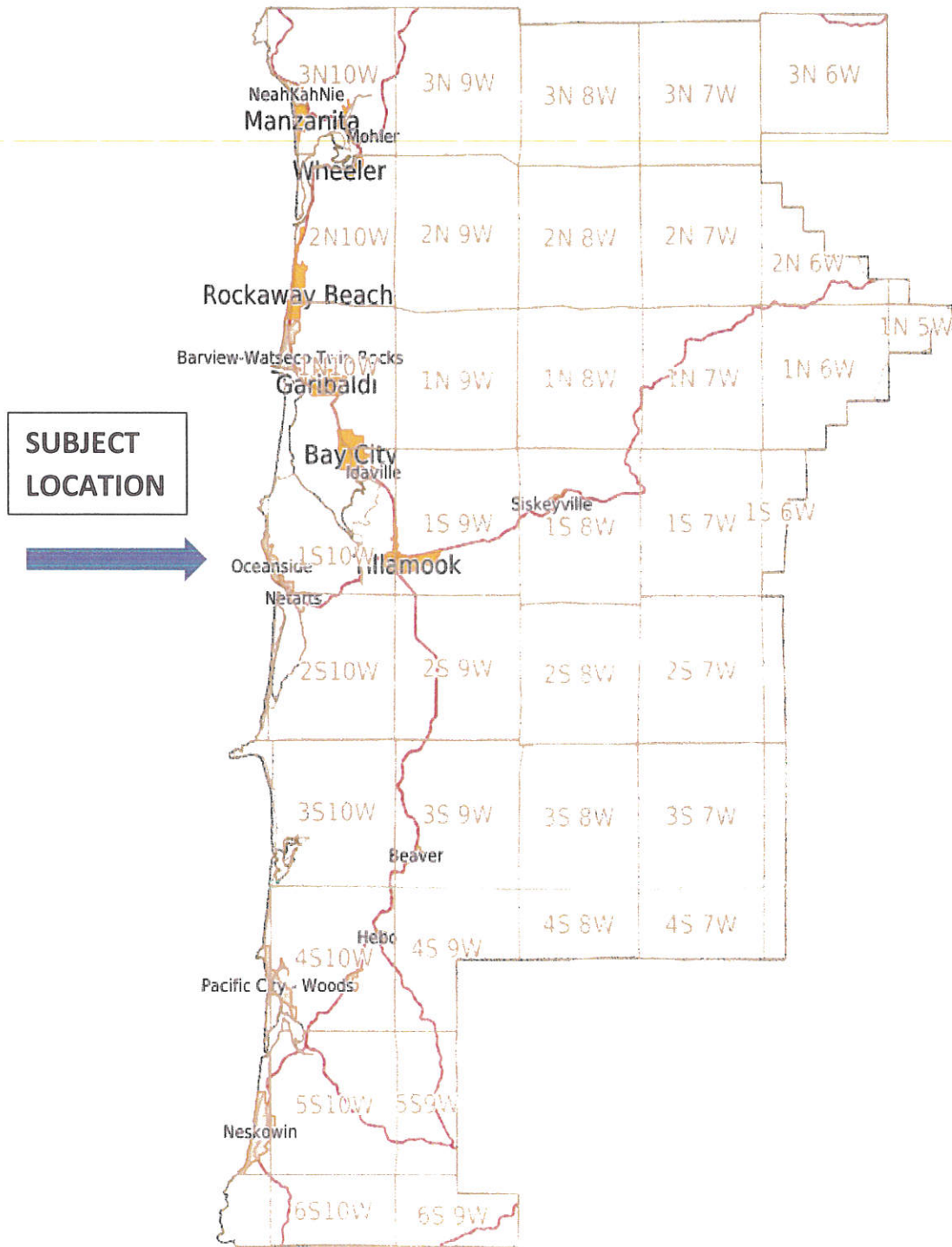
VI. **EXHIBITS**

All Exhibits referred to herein are, by this reference, made a part hereof:

- A. Location map, Assessor map, Zoning map, Assessor's Summary Report, DOGAMI Hazard Map, FEMA FIRM
- B. Applicant's submittal
- C. Public Comments
- D. GIS Analysis Vicinity Map
- E. Tillamook County Public Works & Surveyor Office Correspondence

EXHIBIT A

VICINITY MAP



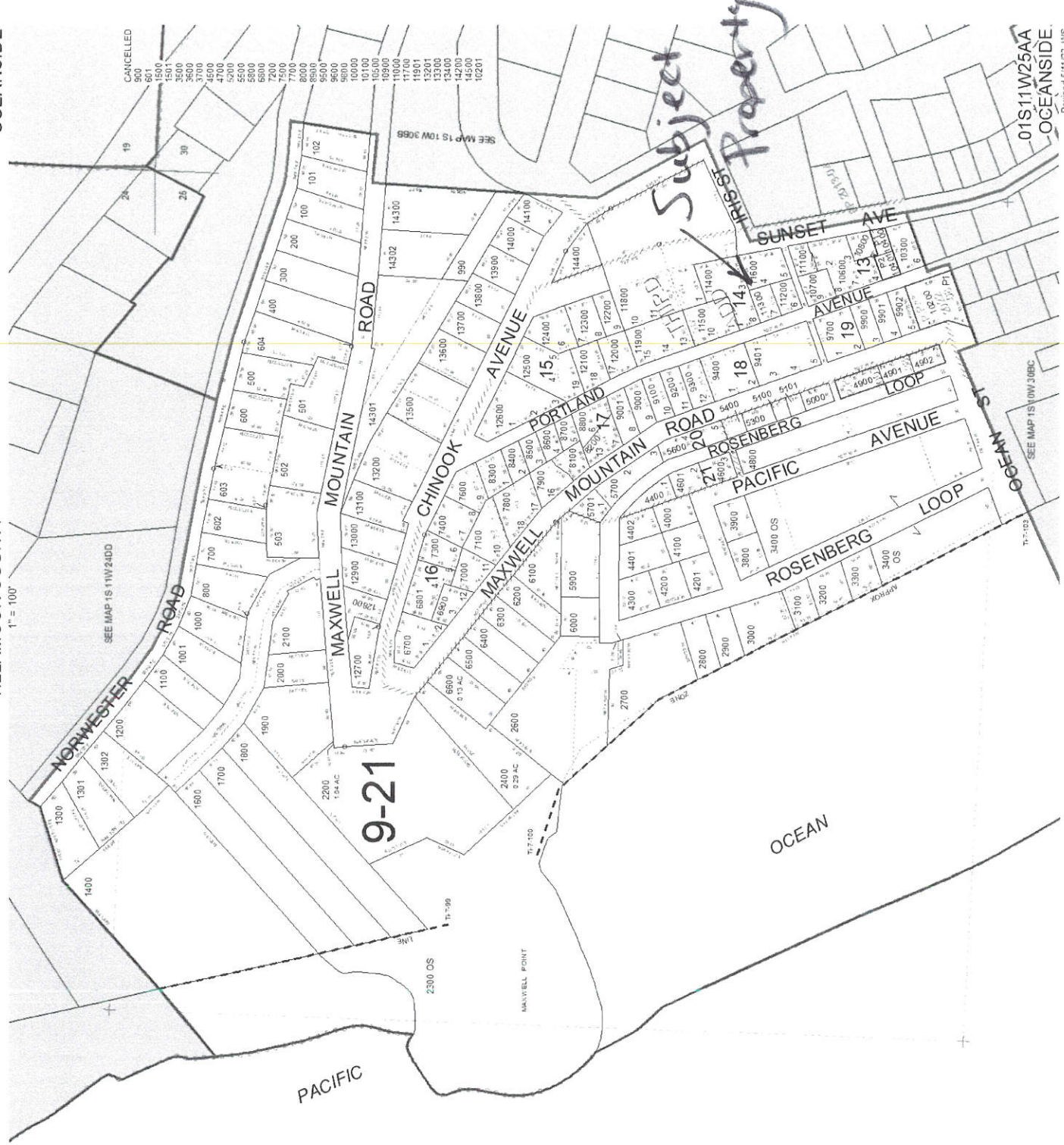
#851-22-000063-PLNG: FEINBLUM

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 50 100 150 200 Feet

N.E. 1/4 N.E. 1/4 SEC. 25 T.1S. R.11W. W.M.
TILLAMOOK COUNTY

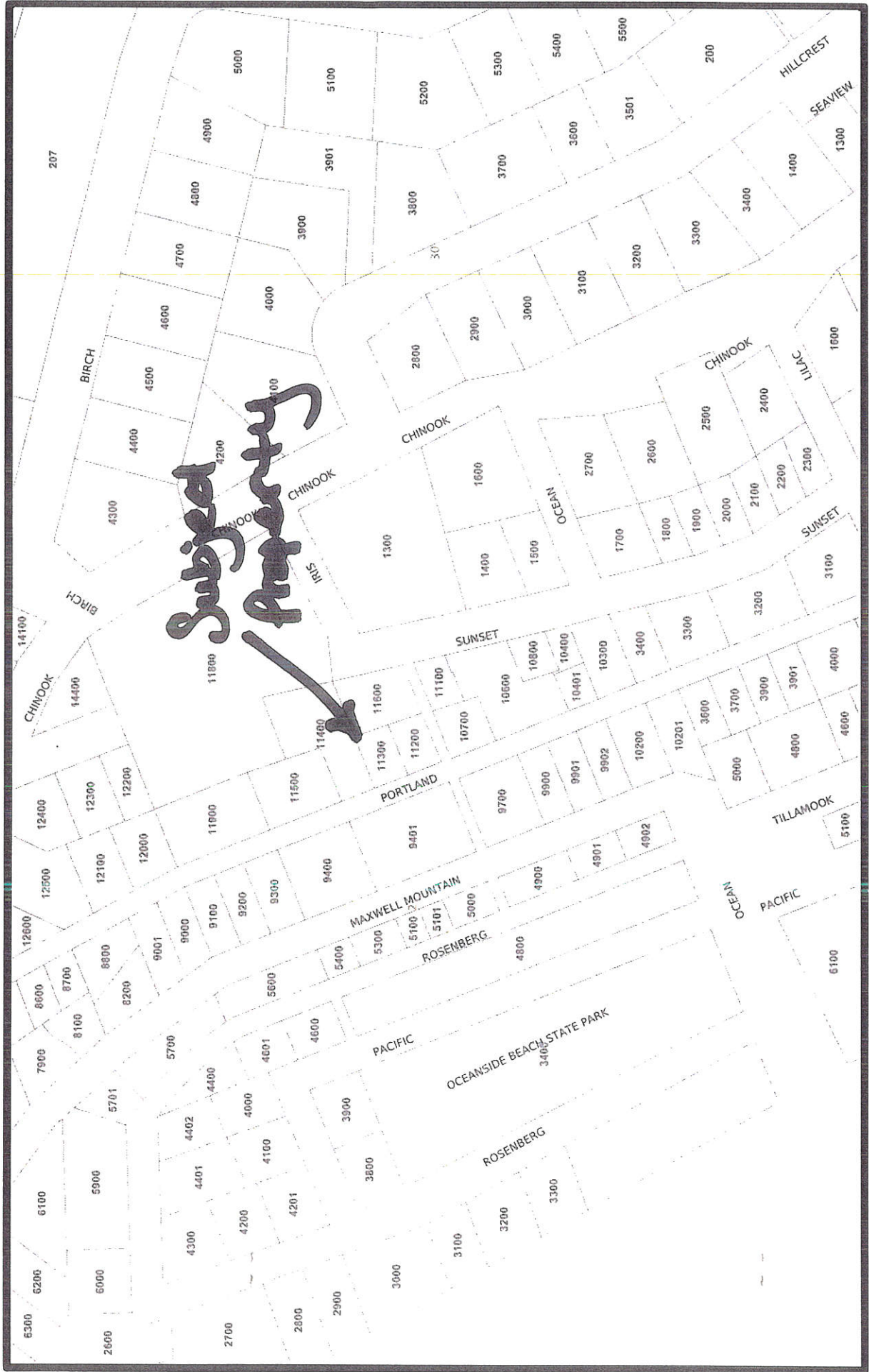
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OCEANSIDE



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OCEANSIDE
Revised 5/11/22, V/S

Map



Map



TILLAMOOK County Assessor's Summary Report

Real Property Assessment Report

FOR ASSESSMENT YEAR 2021

June 16, 2022 8:50:38 am

Account # 196825 Map # 1S1125AA11300 Code - Tax # 0921-196825 Legal Descr OCEANSIDE 3RD ADD Block - 14 Lot - 7 Mailing Name FEINBLUM, BARNET M & Agent In Care Of FEINBLUM, DANIEL R Mailing Address 4311 SE 57TH AVE PORTLAND, OR 97206 Prop Class 101 MA SA NH Unit RMV Class 101 08 OV 805 20586-1	Tax Status ASSESSABLE Acct Status ACTIVE Subtype NORMAL Deed Reference # 2015-493 Sales Date/Price 01-26-2015 / \$252,000.00 Appraiser ELIZABETH LOFTIS
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Situs Address(s)	Situs City
ID# 1 1665 PORTLAND AVE	COUNTY

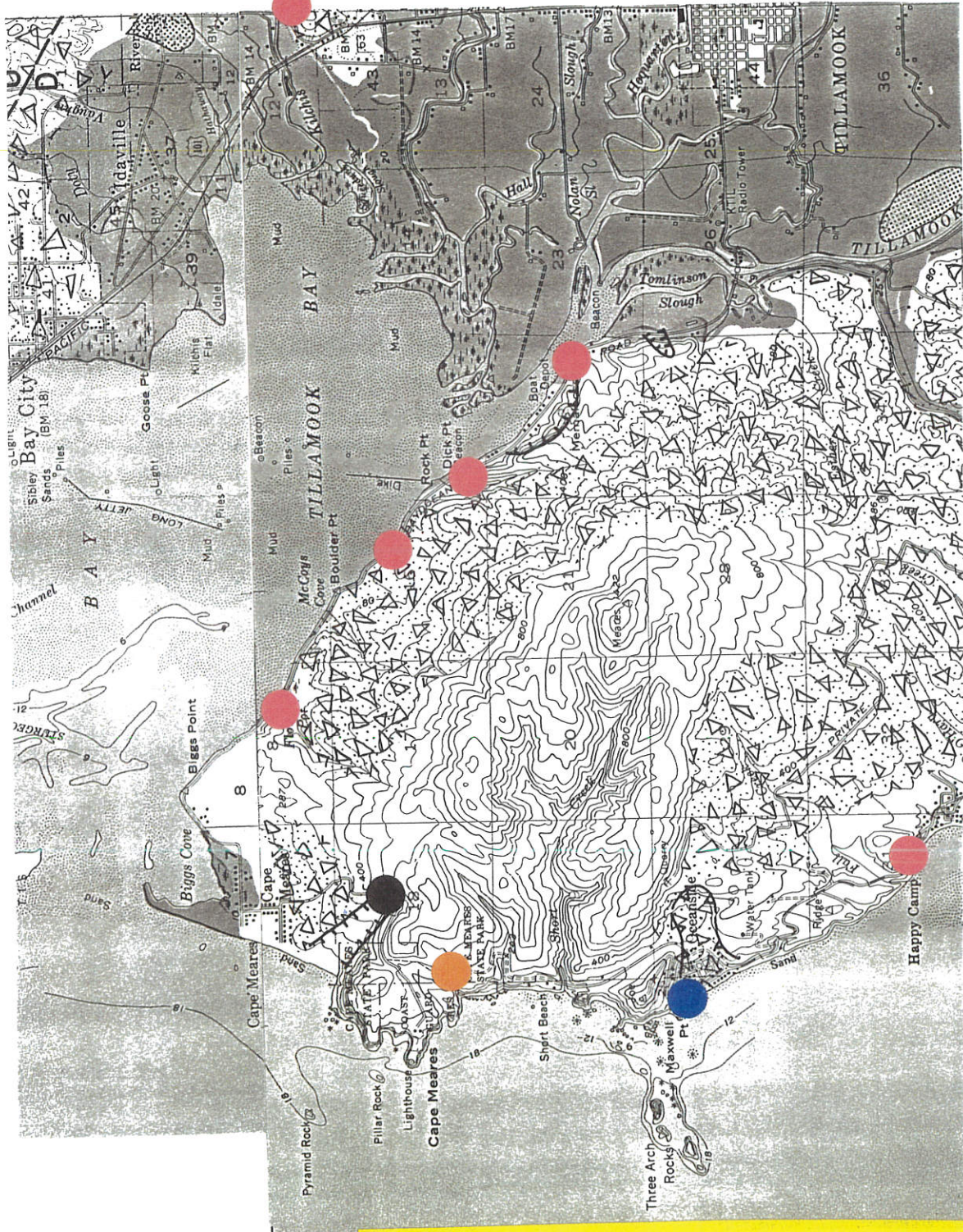
Code Area	RMV	MAV	Value Summary AV	RMV Exception	CPR %
0921	Land	216,870		Land	0
	Impr.	70,260		Impr.	0
Code Area Total		287,130	185,010		0
Grand Total		287,130	185,010		0

Code Area	ID#	RFPD	Ex	Plan Zone	Value Source	TD%	LS	Size	Land Class	Trended RMV
0921	1	<input checked="" type="checkbox"/>		ROS	Market	110	A	0.04		197,470
0921					OSD - AVERAGE	100				19,400
Grand Total								0.04		216,870

Code Area	ID#	Yr Built	Stat Class	Description	Improvement Breakdown	TD%	Total Sq. Ft.	Ex%	MS Acct #	Trended RMV
0921	1	1947	131	One story		121	631			70,260
Grand Total									631	70,260

Exemptions / Special Assessments / Potential Liability										
Code Area	0921									
SPECIAL ASSESSMENTS:										
■ SOLID WASTE	Amount	12.00	Acres	0	Year	2021				

Comments: 2/8/12 Land reappraisal, tabled land.LM
 6/19/13 Updated inventory. New siding, increased effective year built to 1970 - GOMAR. EJ.



National Flood Hazard Layer FIRMette



123°58'27"W 45°27'54"N

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

Legend

<p>SPECIAL FLOOD HAZARD AREAS</p> <ul style="list-style-type: none"> Without Base Flood Elevation (BFE) <i>Zone A, V, A99</i> With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i> Regulatory Floodway 	<p>OTHER AREAS OF FLOOD HAZARD</p> <ul style="list-style-type: none"> 0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile <i>Zone X</i> Future Conditions 1% Annual Chance Flood Hazard <i>Zone X</i> Area with Reduced Flood Risk due to Levee. See Notes, <i>Zone X</i> Area with Flood Risk due to Levee <i>Zone D</i> 	<p>OTHER AREAS</p> <ul style="list-style-type: none"> NO SCREEN Area of Minimal Flood Hazard <i>Zone X</i> Effective LOMRS Area of Undetermined Flood Hazard <i>Zone X</i> 	<p>GENERAL STRUCTURES</p> <ul style="list-style-type: none"> Channel, Culvert, or Storm Sewer Levee, Dike, or Floodwall 	<p>OTHER FEATURES</p> <ul style="list-style-type: none"> Cross Sections with 1% Annual Chance Water Surface Elevation Coastal Transect Base Flood Elevation Line (BFE) Limit of Study Jurisdiction Boundary Coastal Transect Baseline Profile Baseline Hydrographic Feature 	<p>MAP PANELS</p> <ul style="list-style-type: none"> Digital Data Available No Digital Data Available Unmapped
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The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 6/16/2022 at 11:53 AM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and modernized areas cannot be used for regulatory purposes.



123°57'50"W 45°27'29"N



1:6,000

EXHIBIT B



PLANNING APPLICATION

OFFICE USE ONLY	
Date Stamp	
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Received by: <i>SS</i>	
Receipt #: 124466	
Fees: 1089.00	
Permit No: 851-22-00063-PLNG	

Applicant (Check Box if Same as Property Owner)

Name: *Daniel Feinblum* Phone: *503 999 0178*

Address: *1665 4311 SE 52nd Ave*

City: *Portland* State: *OR* Zip: *97206*

Email: *pigbaby03@gmail.com*

Property Owner

Name: *1* Phone: *(pigbaby03@gmail.com)*

Address: _____

City: _____ State: _____ Zip: _____

Email: _____

Request: *Deck Modification*

Type II

- Farm/Forest Review
- Conditional Use Review
- Variance
- Exception to Resource or Riparian Setback
- Nonconforming Review (Major or Minor)
- Development Permit Review for Estuary Development
- Non-farm dwelling in Farm Zone
- Foregone Grading Permit Review
- Neskowin Coastal Hazards Area

Type III

- Appeal of Director's Decision
- Extension of Time
- Detailed Hazard Report
- Conditional Use (As deemed by Director)
- Ordinance Amendment
- Map Amendment
- Goal Exception

Type IV

- Appeal of Planning Commission Decision
- Ordinance Amendment
- Large-Scale Zoning Map Amendment
- Plan and/or Code Text Amendment

Location:

Site Address: *1665 Portland Ave*

Map Number: *15* Township *11* Range *259A* Section *11300* Tax Lot(s)

Clerk's Instrument #: _____

Authorization

This permit application does not assure permit approval. The applicant and/or property owner shall be responsible for obtaining any other necessary federal, state, and local permits. The applicant verifies that the information submitted is complete, accurate, and consistent with other information submitted with this application.

[Signature]
 Property Owner Signature (Required)

2/16/21
 Date

Applicant Signature

Date

Section 8.030

1665 portland ave Oceanside Oregon

Daniel Fienblum porch extension

Essay regarding porch extension

1. House was built in 1951 and the porch was within 3 ft. of property boundary. Construction of a retaining wall was approved and installed to provide safety to the home and property. Retaining wall also increased the safety of the county road and improved parking on Portland Avenue by two spots. Engineering of wall was done also to include porch and weight to benefit. Wall was designed for increased weight; the more sable it gets. For majority of land owners within the vicinity; the extension will insure private open space. It will ensure adequate light and air are available to residential and commercial structures. Does not obstruct the road way from any emergency access. Porch does not take privacy away from any surrounding residents. Porch will still accommodate any future dwelling, shops, garages, driveways, parking, areas for maneuvering vehicles for safe access to common roads, alternative energy facilities and private open spaces. It will still ensure driver visibility on adjacent roads. Porch will still ensure safe access to and from common roads. Porch will ensure access to solar radiation for the purpose of alternative energy production.

Thank you



Sarah Absher

From: Danny Feinblum <pigbaby03@gmail.com>
Sent: Saturday, March 26, 2022 10:30 AM
To: Sarah Absher
Subject: EXTERNAL: 1665 Portland ave

[NOTICE: This message originated outside of Tillamook County -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe.]

Thank you Sarah Absher,

I appreciate the opportunity to reply to you regarding criteria 2 and 4 for the County's review of my request for a variance at 1665 Portland Ave., Oceanside, Oregon. As you are aware, I purchased the existing residence in 2013. I believe, the existing house was built in 1947. A concern I had from the date of purchase, was the steepness of the slope of the property and the lack of parking along Portland Ave. After discussions with the County, it was mutually agreed that a structural retaining wall set in on the property to accommodate car parking on Portland Ave. would be a good solution. This would permit car parking and structurally tie the existing house to the retaining wall with a new replacement deck. After initially getting Strickter Engineering firm to design the retaining wall it was redesigned to accommodate the County's request. I was informed (incorrectly) by my contractor that a permit was not required to replace my worn out deck. All the work has now been completed and the new deck secures the existing house to the new concrete retaining wall. The new deck extends 3 ft beyond the old deck which was only 4 feet wide.

Criteria 2: Having a new deck extended 3 ft allows for structural stability on a steep slope by bracing the house to the new concrete retaining wall. This also allows for a slightly larger deck facing the ocean. We also paid to underground the electric wires to improve the view from the deck.

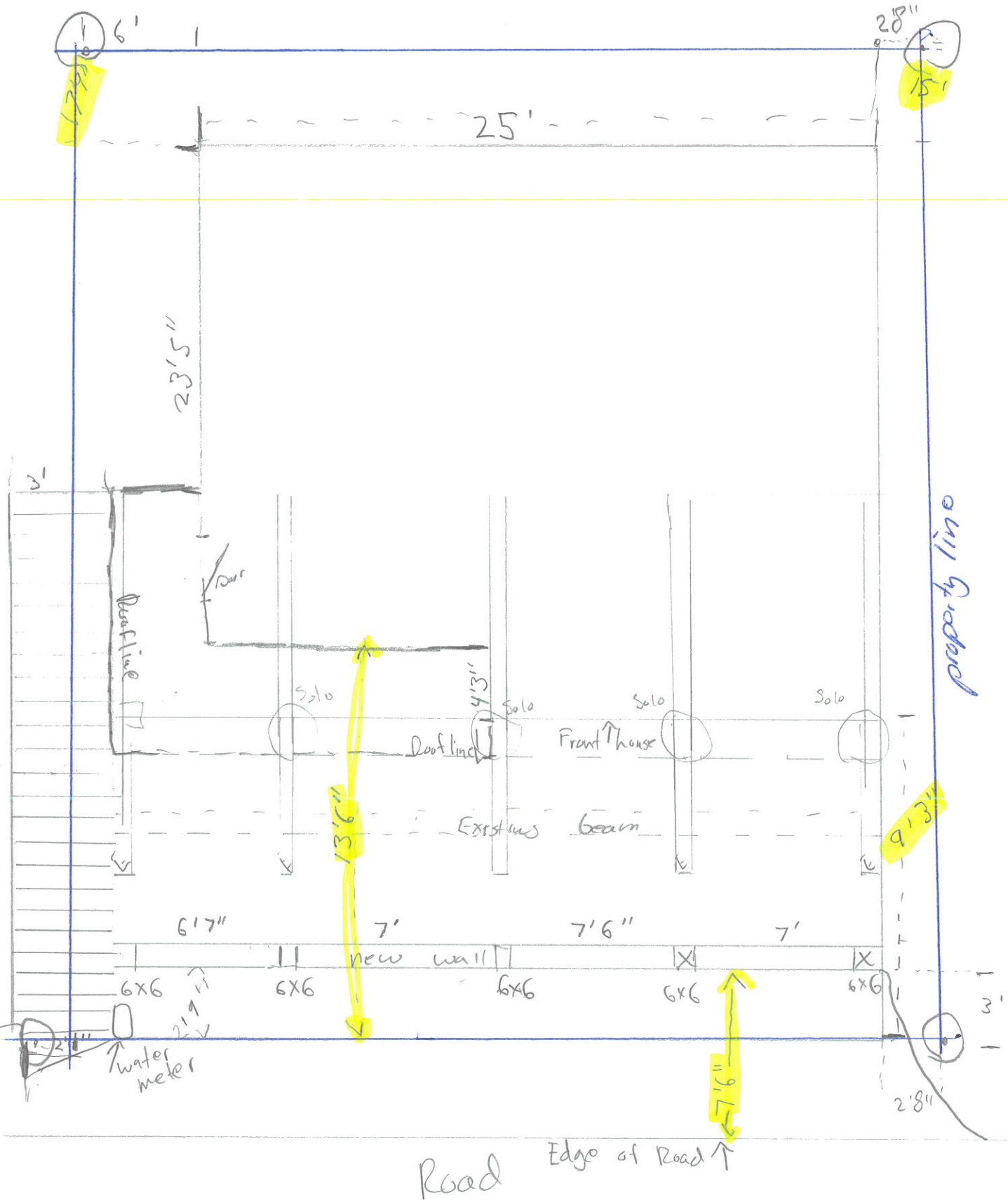
Criteria 4: We think this Variance should be granted as the existing deck already was beyond the setback requirements, and the new deck will have no effect on neighboring properties. There is no reasonable alternative that provides as much structural support for an existing residence on this steep a slope as the work already constructed.

Please add this email to the submission. Sincerely,

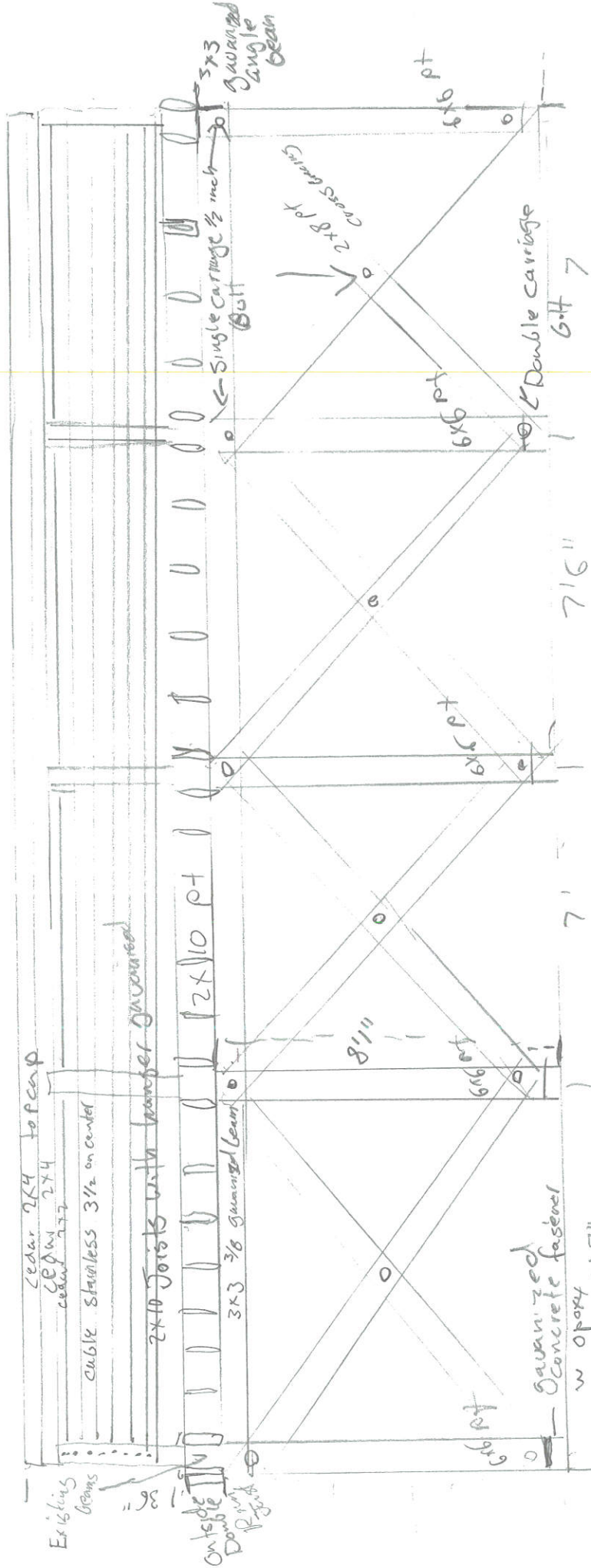
Daniel Feinblum
Owner

Sent from my iPhone

1665 Portland Ave Oceanside Oregon
 measurements



1665 Portland Avenue Oceanside Oregon



131

Concrete Wall

tree backs

off stairs
 property
 corner

meter

looking East



Sarah Absher

From: Michael Kittell <Michael@Breakwater-law.com>
Sent: Friday, May 20, 2022 12:22 PM
To: Sarah Absher
Cc: Barney Feinblum; pigbaby03@gmail.com
Subject: EXTERNAL: Variance Request #851-22-000063-PLNG: Feinblum
Attachments: Feinblum.Absher.5.20.22.pdf; Feinblum1.pdf; Feinblum2.pdf; Feinblum3.pdf; Feinblum4.pdf; Feinblum5.pdf

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Hi Sarah –

Please find attached correspondence and documents relating to the Feinblums' Variance Request, No. 851-22-000062-PLNG.

Let me know if you have any questions. Many thanks,



Michael Kittell | Breakwater Law

michael@breakwater-law.com

Portland Office: 503.878.8948 | 9900 SW Wilshire St., Suite 200, Portland, OR 97225

Tillamook Office 503.842.6633 | 2308 3rd Street, Tillamook, OR 97141

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TAYLOR S. KITTELL, ATTORNEY

taylor@breakwater-law.com

MICHAEL B. KITTELL, ATTORNEY

michael@breakwater-law.com

May 20, 2022

FIRST CLASS MAIL AND EMAIL

Sarah Absher, Director
1510-B Third Street
Tillamook, OR 97141
sabsher@co.tillamook.or.us

Re: *Variance Request #851-22-000063-PLNG: Feinblum
Additional Application Materials*

Dear Director Absher,

This firm represents Daniel and Barnet Feinblum, owners of the property located at 1665 Portland Ave., Tillamook, Oregon (located in the Oceanside community) (“**Property**”) with respect to Variance Request #851-22-000063-PLNG (“**Application**”). The Feinblums’ application was submitted on or about February 16, 2022, and Notice of Administrative Review was issued March 28, 2022 (“**Notice**”). A decision has not yet been made. I understand that the Application is subject to Type II review under the Tillamook County Land Use Ordinance (“**TCLUO**”). Please consider this letter as supporting argument in favor of approval of the Application.¹

As stated in the Notice, the Application seeks approval of a variance to TCLUO 4.100(3) (“[n]ot more than 50% of the lot area shall be covered with any structure of any height”) and TCLUO 4.100(4) (“[f]ront and rear setbacks in combination must be at least 30 feet, with each minimum of 10 feet [sic]”).

The Application relates to the replacement and slight expansion of a pre-existing deck, associated with and integral to the installation of an engineering and County-approved retaining wall on the west end of the Property, adjacent to Portland Ave. (a County road). The pre-existing deck was severely nonconforming (like most improvements in the vicinity), in that it encroached significantly into the front yard setback area. The retaining wall and reconstruction of the deck was necessary to permit for safer transport and additional parking along Portland Avenue, in accordance with e.g. TCLUO 4.005(5), (6) and (7). The reconstructed deck was specifically designed to avoid interference with parking along Portland Avenue.

¹ Nothing in this letter should be considered a modification, requiring review or noticing under TCLUO 10.010(6)(f).

Like many properties in Oceanside, the Property is diminutive in size, comprised only of approximately 1,795.2 sq. ft. The Property is improved with an old house about 631 sq. ft. in livable size according to the Tillamook County Assessor. As you know, essentially all of the properties in this vicinity are nonconforming in many ways – e.g. dimensional minimum standards, front, rear, and side-yard setbacks, lot coverage standards – and the Property is no different. The reality is that nonconformance with applicable development standards is essential for the productive use of most properties in Oceanside. Indeed, the community is comprised almost entirely of single-family residences, which is one of only a few uses allowed outright in the Residential Oceanside (“ROS”) Zone.

Tillamook County allows for the avoidance of dimensional standards by the variance process if the strict application of those standards would unreasonably interfere with an approved use of the property. A variance analysis is never conducted in a vacuum; a request for a variance is analyzed relative to the existing improvements and dimensions of other properties located in the same vicinity. For example, the merit of a variance request to reduce a setback in large acreage and sparsely developed residential area is entirely different than a variance request in, say, Oceanside. With that in mind, below is an application of the variance criteria in Article 8 of the TCLUO to the Application.

Criteria Discussion

1. TCLUO 8.030(1): *Circumstances attributable either to the dimensional, topographic, or hazardous characteristics of a legally existing lot, or to the placement of structures thereupon, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity, if all applicable standards were to be met. Such circumstances may not be self-created.*

The severe dimensional and topographic limitations of the Property (which is a legally existing lot) have not been created by the Feinblums, nor has the placement of the existing house on the Property – i.e. neither are self-created. Certainly, the location of the existing house towards the west side of the Property – presumably due to the steep topography and relatively inaccessibility of the east side of the Property – is not the fault of the Feinblums; this location necessitates the placement of a deck in the limited portion of the Property to the west of the house (of course, like all decks in the area, to take advantage of the obvious ocean view). The employment of the Property for single family dwelling purposes, including the construction of structures necessary or incidental to that purpose (especially those consistent with character of the neighborhood), is certainly a substantial property right – indeed, it is the primary outright allowed use in the applicable zone.

Importantly, a significant portion of other properties in the vicinity are improved with structures resulting in little or no front yard setback. Such nonconformance is commonplace, as shown in the attached photographs depicting improvements in the immediate vicinity of the Property. As you know, TCLUO 11.030 defines “setback” as “[a] linear distance perpendicular to a lot line that describes the depth of a lot or parcel that shall not be occupied by a structure,

unless specifically provided for in this Ordinance.” That same ordinance defines “structure” as “[a]nything constructed or installed or portable, the use of which requires a location on a parcel of land” and “yard” as “any portion of a lot or parcel that is not occupied by a structure, unless specifically allowed by this Ordinance”. As suggested in these definitions, certain types of structures are permitted in setback areas – most notably small decks and porches, as per TCLUO 4.110(8), and building projections, as per TCLUO 4.110(7) – but the general rule applicable to almost all other “structures” is that they are prohibited in applicable setback areas. The Tillamook County GIS system indicates that the majority of the properties in the vicinity are improved with a “structure” located essentially up to – and sometimes over – the front yard property line.² The essential point here is that structures subject to setback requirements regularly project to the applicable lot line in the vicinity of the Property, including retaining walls, decks, dwelling and garage walls, and other incidental structures. Examples are shown in the attached photographs, which of course are not comprehensive. The variance is a tool whose *raison d’être* is to avoid the unfairness that would result in also prohibiting the Feinblums this same right.

A similar analysis applies to the lot coverage standard in TCLUO 4.100(3). A review of the Tillamook County’s GIS system reveals that the vast majority of properties in the vicinity are almost entirely comprised of structures (typically a home and a deck) – *see e.g.* tax lots 9300, 9200, 9100, 9000, 9001, 8200, 8600, 8500, 8400, and 7600. The Feinblums’ house is positioned an average of approximately 18.5’ from its rear lot line, 3’ from its south lot line, and 3’ from its north lot line, resulting in a conservative estimate of approximately 864.5 sq. ft. not covered by structures, or about 45.8%. The slight extension of the deck added about 98 sq. ft. of structure coverage, increasing structure coverage percentage from approximately 46.4% to 51.8% on the Property. Rough measurements using the Tillamook County’s GIS system of other properties in the area result in significantly greater coverage percentages. For example, tax lot 9100 appears to be at least 80% covered by structures, and tax lot 9000 appears to have an even greater percentage of structure coverage. Similar or greater percentages appear to apply to tax lots 8500, 8400, and 8600.

Ultimately, like many other property owners in the vicinity, the Feinblums also have the right to construct structures related or incidental to their single-family residence up to the front yard property line and over the applicable 50% structure coverage threshold, provided they comply with the other applicable criteria.

² *E.g.* tax lots 9100, 9000, 9400, 1001, 5000, 5101, 5100, 5300, 5400, 5600, 4600, 5700, 5701, 8800, 8500, 8400, 7100, 6900, 10600, 10800, 10400, 5000, among others. Clearly, a surveyed analysis of the exact location of the structures on these properties is not practical or reasonable (or necessary for this Application), and reliance on the County’s GIS system is the best readily-available tool to analyze the development patterns in the vicinity.

2. TCLUO 8.030(2): *A VARIANCE is necessary to accommodate a use or accessory use on the parcel which can be reasonably expected to occur within the zone or vicinity.*

The requested variance accommodates the use of the Property for single family dwelling purposes, which is not only “reasonably expected to occur” in the area but is indeed one of the very few outright permitted uses in the applicable zone.

3. TCLUO 8.030(3): *The proposed VARIANCE will comply with the purposes of relevant development standards as enumerated in Section 4.005 and will preserve the right of adjoining property owners to use and enjoy their land for legal purposes.*

Unlike many of the structures approaching a zero-lot-line position in the area, the deck for which the variance is sought was specifically designed to be consistent with the safe flow of traffic, and to accommodate parking, on Portland Avenue. See TCLUO 4.005(5), (6) and (7). The slightly extended deck conforms with all other standards in TCLUO 4.005 – e.g. it adequately preserves light and air to residential and commercial structures, it preserves the privacy of occupants in other residences, it does not obstruct pleasing views, and it ensures that all private uses of land are located on private land (by providing onsite parking off of Portland Avenue).

4. TCLUO 8.030(4). *There are no reasonable alternatives requiring either a lesser or no VARIANCE.*

The only apparent alternative to allowing a useable ocean-facing deck on the Property would be to reposition the house further east on the Property, which would be cost-prohibitive and manifestly unreasonable (it also would not avoid the necessity of a variance to the lot coverage standard).

Final Comments

Of course, the improvement that my clients seek to approve has already been constructed. However, they relied on an experienced contractor to obtain all necessary permits and approvals for the deck, and were caught completely off-guard by the County’s notice of noncompliance. They are not sophisticated developers with experience constructing in tight quarters, and do not have experience with setbacks and variances. The Application is a good-faith effort by my clients to legitimize or rectify the purported wrong, of which they are not guilty. Denial of the Application by the County would result in needless waste, at the injury of my clients, who were not responsible for the noncompliance (in fact, they paid significant sums to construct the deck and would need to pay significant sums to deconstruct the deck). As a general matter, the law seeks to avoid waste.

As you know, public comments have been received on this Application from neighbors to the Property as well as from Director Laity of the Tillamook County Public Works. My

understanding is that my clients have resolved Mr. Laity's concerns, and that Mr. Laity will soon (or already has) indicated his support of the Application.

As a final note, one of the compelling charms of Oceanside is the hodgepodge of nonconforming dwellings and narrow, winding streets. **It is the very noncompliance with setbacks – often to zero – that gives Oceanside its wonderful character.** The Feinblums' deck is naturally consistent with this character. I encourage you to approve the Application.

Sincerely,

BREAKWATER LAW

A handwritten signature in black ink, appearing to read "Michael Kittell", written in a cursive style.

MICHAEL KITTELL³

Encls.

³ Licensed in Oregon and Washington











EXHIBIT C

Sarah Absher

From: JANE SANDQUIST <turtlejane@mac.com>
Sent: Sunday, April 10, 2022 8:00 PM
To: Sarah Absher
Subject: EXTERNAL: Tillamook County Community Development RE: Variance Request
851-22-000063-PLNG: Feinblum

[**NOTICE:** This message originated outside of Tillamook County -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

April 10, 2022

Sarah Absher, Director

Dear Sarah-

Thank you for giving residents of the immediate neighborhood opportunity to make comments on this request. Our property extends from Portland Avenue to Maxwell Mountain Road adjacent to this property.

The applicant has requested a variance for a zero-foot front yard setback after the fact. I do not think it is a good precedent to set. I believe it would encourage others to go ahead and do whatever they want without a permit and then ask forgiveness, which is not how it should be done.

The previous owner of our property told me that she inquired about putting a deck on the front of our building that would have been 10' from the edge of the road and was told no. Now this request is for the deck to have NO variance at all.

I respectfully request that the front deck on this property not exceed the dimensions of the original deck shown in county assessor records. Please deny this variance request.

Jane Sandquist

1685 Maxwell Mt. Rd.

Oceanside, OR 97134

Sarah Absher

From: kathie Norris <knorris43@charter.net>
Sent: Wednesday, April 6, 2022 12:03 PM
To: Sarah Absher
Subject: EXTERNAL: Variance Request #851-22-000063-PLNG: FEINBLUM

[NOTICE: This message originated outside of Tillamook County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

To whom it may concern:

I recommend that the referenced variance request be denied on principle for the following reasons:

- The circumstances are self-created.
- There are reasonable alternatives requiring either a lesser or no variance.

Sincerely,
Kathryn S. Norris
1655 Sunset Avenue
Oceanside, OR 97134
503-842-4146

April 10, 2022

Sarah Absher, Director
Tillamook County Community Development

RE: Variance Request 851-22-000063-PLNG: Feinblum

Dear Sarah-

Thank you for this opportunity to comment on Variance Request #851-22-000063-PLNG: Feinblum regarding the property at 1665 Portland Ave, Oceanside. My home, at 1690 Portland Ave. is situated directly across the street from the subject property.

The applicant has requested a variance for a zero foot front yard setback in order to accommodate a newly built deck. The new deck, estimated at ten feet deep (see Photo 2) replaces the original 5 foot deep deck (per county assessor record). The new deck may currently extend into the county right of way by about 2 feet. A deck reaching the property line is estimated to be 7 to 8 feet deep.

I respectfully ask Tillamook County Department of Community Development to **deny this variance request** because the applicant has not shown the proposed variance satisfies all of the review criteria in Section 8.030. In addition, allowing a zero foot front yard setback impacts a number of residential zone standards listed in Section 4.005, negatively affecting private open space (1), light and air availability (2), and privacy (4), as well as unreasonably obtaining a pleasing view (8). These are discussed in more detail, below.

Approving this variance request would provide a precedence for all other properties in Oceanside to extend their decks to their property lines. For example, the future Hite residence at 1655 Portland Ave, next door to the applicant, recently obtained a variance request to reduce their front yard setback to 10 feet. If the Feinblum variance request is approved, there seems little reason why a similar request from the Hite property would be denied.

Allowing a zero foot setback variance for decks has the potential to change the character of Portland Ave, as well as other hillside roads in Oceanside, turning the east side of each road from a profile of a steeply inclined slope to a row of 10 to 30 foot-high concrete and wood cliffs rising directly from the roadside. Enjoyment of the area, privacy, light and air, and open space would all be negatively affected. Please see the photos at end of this letter showing homes and decks along Portland Ave.

I respectfully request that the front deck on this property not exceed the dimensions of the original deck shown in county assessor records.

SECTION 8.030: REVIEW CRITERIA

A VARIANCE shall be granted, according to the procedures set forth in Section 8.020, if the applicant adequately demonstrates that the proposed VARIANCE satisfies all of the following criteria:

- (1) Circumstances attributable either to the dimensional, topographic, or hazardous characteristics of a legally existing lot, or to the placement of structures thereupon, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity, if all applicable standards were to be met. Such circumstances may not be self-created.*

DISCUSSION:

Since it was built in the 1940's, the applicant's house and original deck pre-existed most of the surrounding homes on Portland Ave as well as current building code. Extending from the house five feet, the original deck was closer to the western property line than most current ocean-facing decks along Portland Avenue. Approving a zero foot setback variance would allow this homeowner to enjoy a substantial property right NOT enjoyed by surrounding landowners. Therefore, if this variance request were denied, the applicant would not be precluded the enjoyment of a substantial property right enjoyed by other landowners in the vicinity.

- (2) *A VARIANCE is necessary to accommodate a use or accessory use on the parcel which can be reasonably expected to occur within the zone or vicinity.*

DISCUSSION:

It is not clear to me how a larger (zero lot-line) deck is necessary to accommodate a use on this parcel that was not already available with the original deck. According to the county assessor's plot plan, this property had 229 sq ft of front deck which extended 5 feet from the west-most wall of the house toward Portland Ave.

The applicant seems to be making the case that the design stability of the newly built retaining wall is incumbent on the presence of a larger deck that extends to the wall, near the property line. If this were true, the engineering design for the retaining wall would include the deck design, and the deck would most likely have been included in the building permit design specifications for the wall. Instead, the current deck was built without a building permit and after the retaining wall was complete. To date, I have been unable to get information on whether the engineer designed the wall and larger deck to work together. I would like to see the applicant's data on this.

- (3) *The proposed VARIANCE will comply with the purposes of relevant development standards as enumerated in Section 4.005 and will preserve the right of adjoining property owners to use and enjoy their land for legal purposes.*

DISCUSSION:

I believe the proposed variance does not comply with the purposes of Residential Zone Standards, Section 4.005, subsections 1, 2, 4 & 8. Granting a zero foot front yard setback will negatively impact private open space, availability of light, air, and privacy. It also allows for an unreasonably obtained pleasing view. For details, please see discussion under Section 4.005, below.

Approving this variance will reduce the enjoyment of both nearby property owners and others who drive and walk along Portland Ave, especially as it **sets the stage for all property owners to build decks that reach out to the road from houses situated 10 to 30+ feet above road grade.**

Such looming decks are directly contradicted by the intent of Article 4 Development Standards. Section 4.110 (8) states "for exceptions to yard setback requirements for decks: (a) Decks may be constructed within setback areas provided that the intruding portion of **the floor does not exceed 30 inches in height above finished grade (i)**". Instead of 30 INCHES, the applicant's deck is almost 30 FEET above road grade.

Please see Photos 1-6 for views of setbacks and decks for typical homes on Portland Ave. compared to that of applicant's wall and deck.

- (4) *There are no reasonable alternatives requiring either a lesser or no VARIANCE.*

DISCUSSION:

A reasonable alternative is to rebuild the deck to it's original dimensions. The dimensions of the previous deck allowed for outdoor social activity and pleasing views, similar to a larger deck. Applicant should show proof of their assertion that the larger deck is required to stabilize the retaining wall.

SECTION 4.005: RESIDENTIAL AND COMMERCIAL ZONE STANDARDS

PURPOSE: In all RESIDENTIAL AND COMMERCIAL ZONES, the purpose of land use standards are the following:

- (1) To ensure the availability of private open space;*
- (2) To ensure that adequate light and air are available to residential and commercial structures;*
- (4) To enhance privacy for occupants of residences;*

DISCUSSION:

Allowing the applicant's request for a zero foot front yard setback to accommodate a deck results in a 25-foot high by 29-foot wide wall of concrete and wood rising directly from the edge of Portland Ave (see Photos 2 & 3). This structure looms over the road. Private open space is reduced (1), and light and air to users of the road and neighboring structures is reduced (2). Noise from social activity on the deck will be closer to neighboring residences, and privacy for my across-the-street residence would be negatively affected (4).

- (8) To ensure that pleasing views are neither unreasonably obstructed nor obtained;*

DISCUSSION:

Granting the applicant's request allows a larger, deeper deck in order to obtain a more pleasing view. Building right up to the county right-of-way, with no front-yard setback, is an unreasonable way to obtain better views.

Please see photos, below, showing typical setbacks and deck sizes along Portland Ave.

Respectfully Submitted-

Carol Horton
1690 Portland Ave, Oceanside
75 SW 89th Ave, Portland

Photo 1: Feinblum residence with old deck

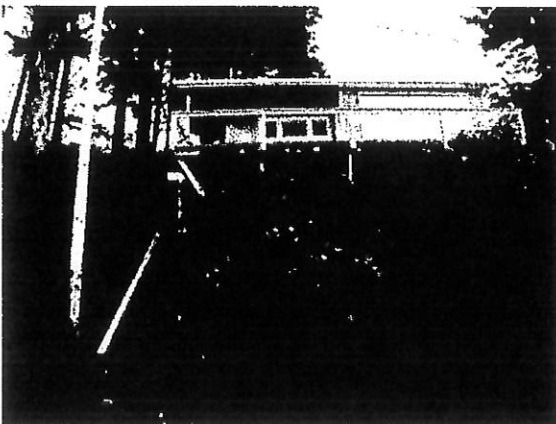


Photo 2: Feinblum residence with estimated 10' deep new deck.

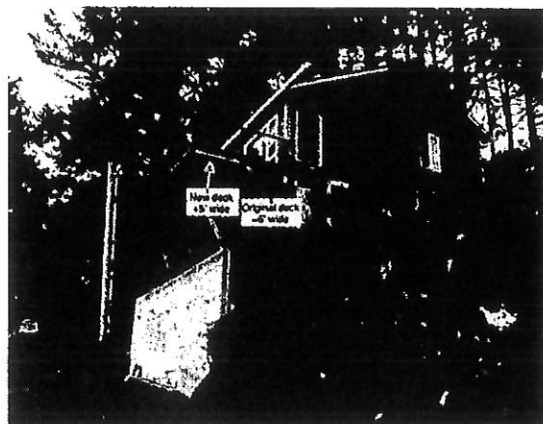


Photo 3: Feinblum residence on right

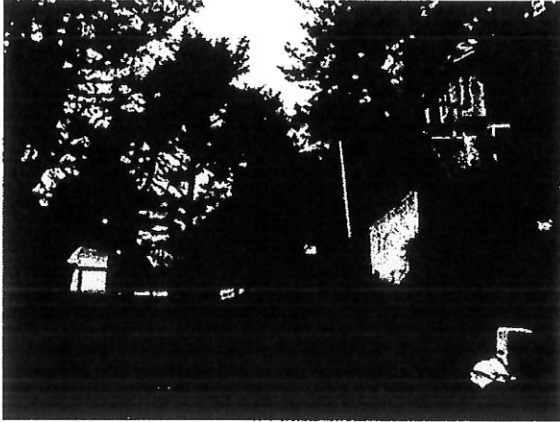


Photo 4: 4ft wide deck at 1685 Portland Ave (left) with Feinblum residence further down on same side of road.

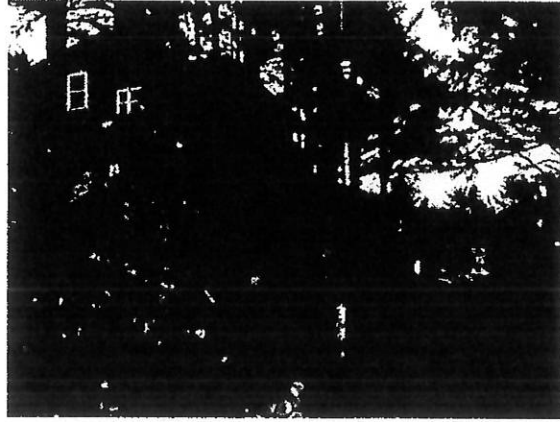
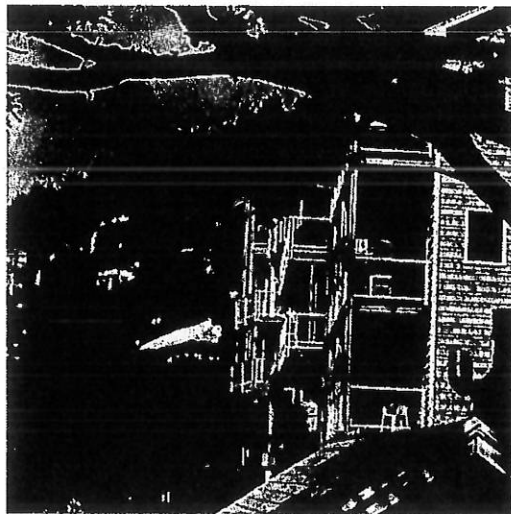


Photo 5: Sunset Ave homes (1510, 1540, 1560) backing onto Portland Ave.



Photo 6: Portland Ave west-side decks, 4-5' deep is typical.



Sarah Absher

From: Chris Laity
Sent: Monday, March 28, 2022 11:31 AM
To: Sarah Absher
Cc: Ron Newton; Lynn Tone; Jasper Lind
Subject: RE: 851-22-000063-PLNG
Attachments: 063.pdf

Sarah,

I recommend denying this request. The request included "... structurally tie the existing house to the retaining wall..." The retaining wall will need to be reviewed and stamped by a professional engineer if the existing stamped design did not determine if it can support the additional eccentric load. PW was initially involved in the wall design, but the wall was relocated a few feet and is now located on private property. The final retaining wall design and approval was handled by the building department without the opportunity for PW review. PW completed a post construction review of the retaining wall and was unable to determine how the wall drains, causing a structural concern relating to hydrostatic pressure. PW could not determine if drainage rock and fabric were used behind the wall that would be required to facilitate drainage. It was further noted that the wall does not fully contain soil material located behind the wall and material is "spilling" out to the south of the wall and appears to be impacting the drainage of Portland Avenue as the catch basin is partially blocked off.

Until these issues are addressed, I will continue to recommend denying the request.

Sincerely,



Chris Laity, P.E. | Director
TILLAMOOK COUNTY | Public Works
503 Marolf Loop Road
Tillamook, OR 97141
Phone (503) 842-3419
claity@co.tillamook.or.us

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From: Lynn Tone <ltone@co.tillamook.or.us>
Sent: Monday, March 28, 2022 9:34 AM
To: captainjhaugen@gmail.com <captainjhaugen@gmail.com>
Subject: 851-22-000063-PLNG

Please see attached for Notice of Administrative Review.



Lynn Tone | Office Specialist II

TILLAMOOK COUNTY | Surveyor's Office/Community Development

1510 3rd Street Ste C

Tillamook, OR 97141

Phone (503) 842-3423

ltone@co.tillamook.or.us

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EXHIBIT D

FEINBLUM VARIANCE REQUEST GIS MAP

#851-22-000063-PLNG

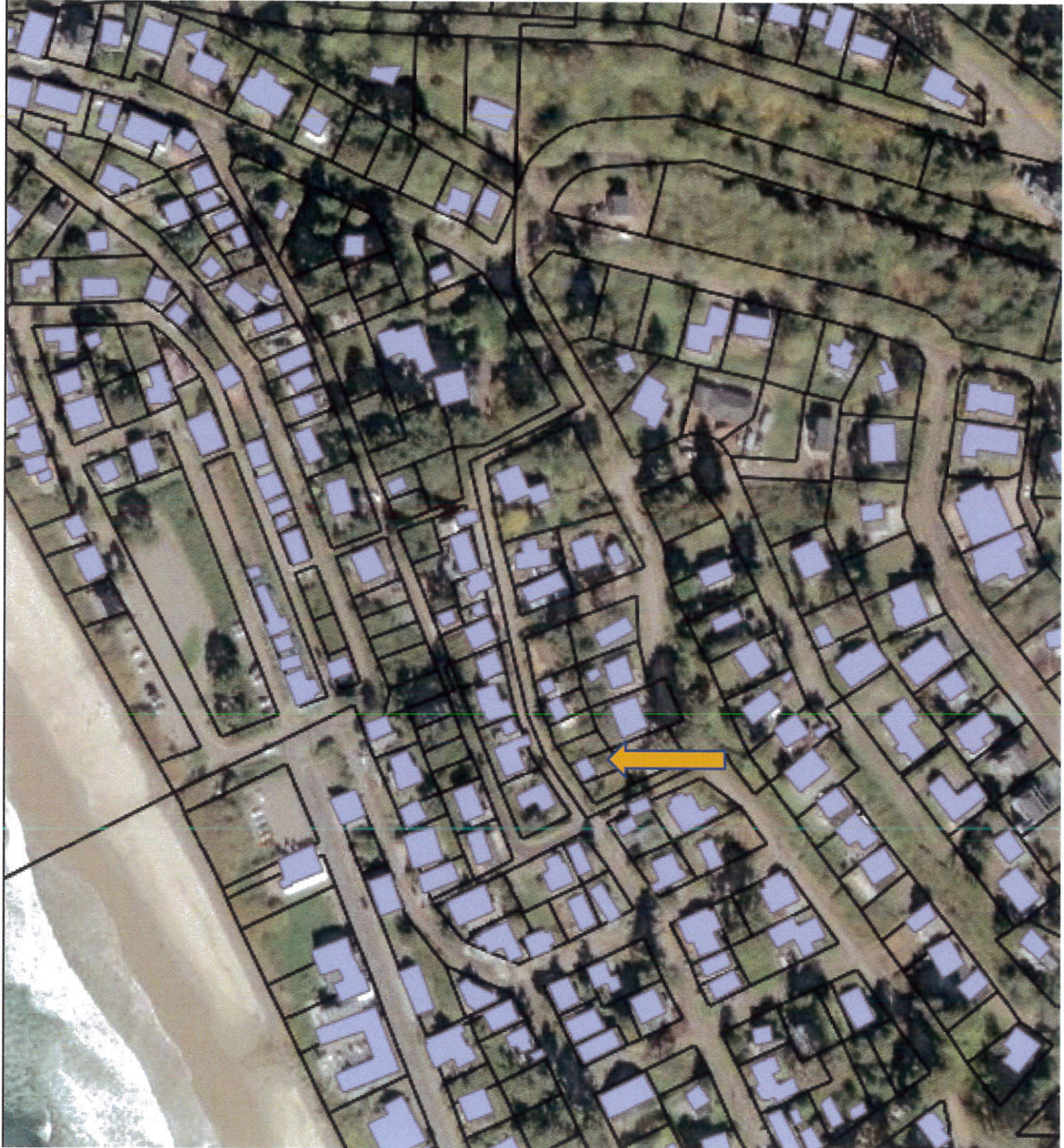


EXHIBIT E

Sarah Absher

From: Michael Kittell <Michael@Breakwater-law.com>
Sent: Tuesday, June 14, 2022 10:38 AM
To: Chris Laity
Cc: Sarah Absher; Barney Feinblum; pigbaby03@gmail.com
Subject: EXTERNAL: FW: 1665 Portland Ave.
Attachments: LaityEmail.6.10.22.pdf

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Hi Chris –

I'm forwarding you an email that I received from Director Absher regarding the 1665 Portland variance application (see below). I was previously forwarded the attached email that you sent to Ms. Absher regarding this application.

The Feinblums intend to construct the side wall requested in your email. Also, they intend to connect the retaining wall pipe to the drain inlet in Portland Ave, and need a non-utility permit from Public Works for this work. I expect that Danny Feinblum or his contractor will contact you directly to obtain this permit.

Based on Mike Rice's findings, it appears that the deck either does not encroach or only encroaches a very insignificant amount (2-3"). We are continuing to investigate this issue, and will have it resolved prior to submission of the building/zoning permit for the deck.

Thanks,



Michael Kittell | Breakwater Law

michael@breakwater-law.com

Portland Office: 503.878.8948 | 9900 SW Wilshire St., Suite 200, Portland, OR 97225

Tillamook Office 503.842.6633 | 2308 3rd Street, Tillamook, OR 97141

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From: Sarah Absher <sabsher@co.tillamook.or.us>
Sent: Saturday, June 11, 2022 10:16 AM
To: Michael Kittell <Michael@Breakwater-law.com>
Subject: FW: 1665 Portland Ave.

From County Surveyor, Michael Rice. Please see below.

Sincerely,



Sarah Absher, CBO, CFM, Director
TILLAMOOK COUNTY | Community Development
1510-B Third Street
Tillamook, OR 97141
Phone (503) 842-3408 x3317
sabsher@co.tillamook.or.us

From: Michael R. Rice <mrice@co.tillamook.or.us>
Sent: Friday, June 10, 2022 3:07 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: 1665 Portland Ave.

Good afternoon,

Per your request, I went to verify the R/W line of Portland Ave. in relation to the retaining wall at 1665 Portland Ave. in the Community of Oceanside. I used map B-3616, see attached, to find the corners of Lot 7, Block 14, Third Addition to Oceanside.

The retaining wall is +/- 2' outside of the R/W of Portland Ave. See attached pic.

Let me know if you need anything else.



Michael R. Rice, PLS | Tillamook County Surveyor
TILLAMOOK COUNTY | Tillamook County Surveyor's Office
1510 3rd Street, Suite C
Tillamook, OR 97141
Phone (503) 842-3423 x3430
mrice@co.tillamook.or.us

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Sarah Absher

From: Michael R. Rice
Sent: Friday, June 10, 2022 3:07 PM
To: Sarah Absher
Subject: 1665 Portland Ave.
Attachments: B-3616.pdf; 1665 Portland.pdf

Good afternoon,

Per your request, I went to verify the R/W line of Portland Ave. in relation to the retaining wall at 1665 Portland Ave. in the Community of Oceanside. I used map B-3616, see attached, to find the corners of Lot 7, Block 14, Third Addition to Oceanside.

The retaining wall is +/- 2' outside of the R/W of Portland Ave. See attached pic.

Let me know if you need anything else.



Michael R. Rice, PLS | Tillamook County Surveyor
TILLAMOOK COUNTY | Tillamook County Surveyor's Office
1510 3rd Street, Suite C
Tillamook, OR 97141
Phone (503) 842-3423 x3430
mrice@co.tillamook.or.us

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SURVEY FOR
GEORGE BEEMAN

LOTS 6 AND 7, BLOCK 14, THIRD ADDITION TO OCEANSIDE
NE 1/4 NE 1/4 SECTION 25, T.1S., R.11 W., M.M.
TILLAMOOK COUNTY, OREGON

DATE: AUGUST 20, 2014 SCALE: 1" = 20'

NARRATIVE

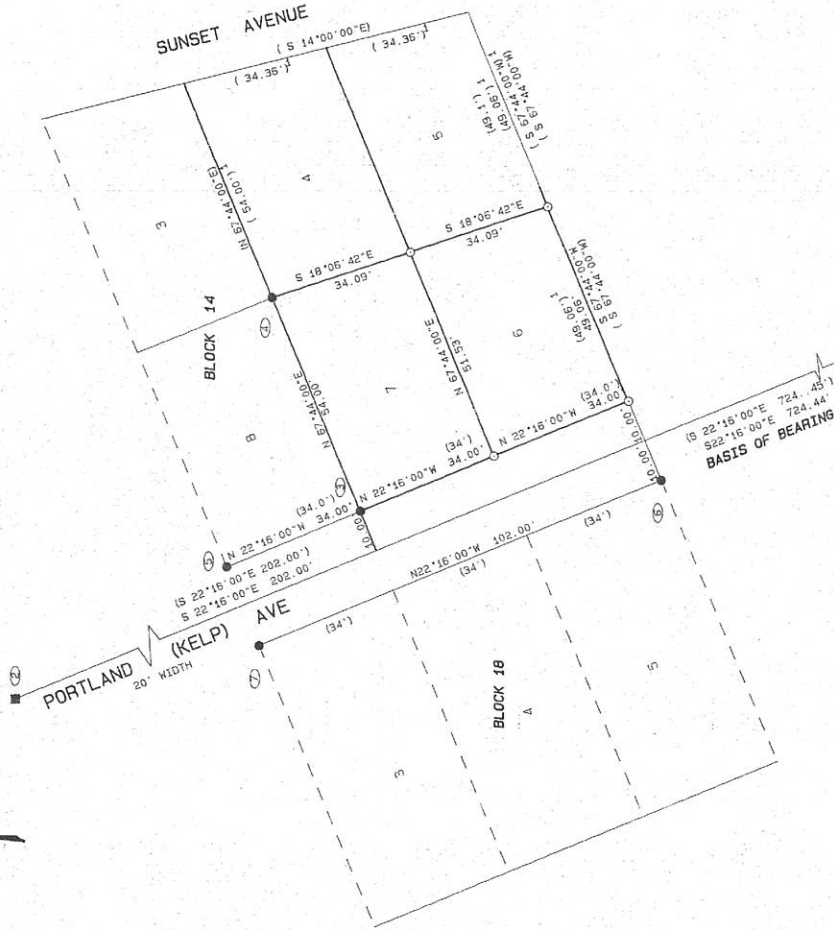
THIS SURVEY WAS CONDUCTED AS A DEPENDENT RESURVEY OF LOTS 6 AND 7, BLOCK 14, THIRD ADDITION TO OCEANSIDE FOR THE PURPOSE OF CORRECTING THE INTERIOR VALUES OF THE SURVEY BOUNDARY AND CALCULATED THE INTERIOR VALUES OF THE SURVEY BOUNDARY TO THE EXISTING CONCRETE STAIRWAY DEES SURVIVING INTO LOT 6 AS SHOWN ON MAP A-7753.

BASIS OF BEARING

THE LINE BETWEEN THE FOUND MONUMENTS (C) AND (D) BEARS NORTH 22°15'00" WEST, THE RECORD VALUE ON MAP C-106

LEGEND

- (C) SET 5/8" IRON ROD WPC MARKED "R J OLSEN LS 701"
- (D) INDICATES FOUND MONUMENTS AS SHOWN HEREON
- (E) INDICATES FOUND MONUMENTS AS SHOWN HEREON AND HELD FOR CONTROL
- (F) INDICATES RECORD VALUES FROM RECORD MAP C-106
- (G) INDICATES RECORD VALUES FROM MAP A-7753
- ND () INDICATES MEASURED VALUES
- WPC - WITH YELLOW PLASTIC CAP



MONUMENT NOTES

- (C) FOUND 3/4" IP WITH WOODEN PLUS AND NAIL, 0.8' DEEP, HELD FOR BASIS OF BEARING, A-6100
- (D) FOUND 5/8" IR INSIDE 1 1/4" IP, 0.8' DEEP HELD FOR BASIS OF BEARING AND POSITION, A-6100
- (E) FOUND PK NAIL WITH 1 1/4" ALUMINUM WASHER MARKED "C M COOK PLS 1098" IN CONCRETE STAIRWAY STEP, N 0.02' AND W 0.02' FROM POSITION, A-7753
- (F) FOUND 5/8" IR WPC MARKED "DON MARK PLS 362", TOP 0.3' UP, N 0.08' AND W 0.08'
- (G) FOUND 5/8" IR WPC MARKED "C WAYNE COOK PLS 1098", SET IN STEEP ROAD BANK TOP NOW 1.5' UP, S 0.08' AND N 0.18' FROM POSITION, A-7753
- (H) FOUND 5/8" IR WPC MARKED "TERRY JONES LS 2507", TOP FLUSH, S 0.00' AND W 0.04' FROM POSITION, A-9384
- (I) FOUND 5/8" IR WPC MARKED "TERRY JONES LS 2507", TOP FLUSH, S 0.02' AND W 0.10' FROM POSITION, A-9384

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Robert Olsen

ROBERT J. OLSEN
701

RENEWED THRU 12/31/14
ROBERT J. OLSEN
4701 HOLLY HEIGHTS AVENUE
TILLAMOOK, OREGON 97141
503-642-4384





Sarah Absher

From: Michael Kittell <Michael@Breakwater-law.com>
Sent: Friday, June 10, 2022 2:14 PM
To: Sarah Absher
Subject: EXTERNAL: RE: Feinblum Variance - 1665 Portland Ave

[NOTICE: This message originated outside of Tillamook County -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

Hi Sarah –

My clients agree to the conditions of approval proposed by Chris, with the exception of the first one. As we discussed, that condition of approval should be the three-part condition we discussed – i.e. removal, license, or proof of no encroachment.

Let me know when Mike Rice can determine whether the deck encroaches.

Thanks,



Michael Kittell | Breakwater Law

michael@breakwater-law.com

Portland Office: 503.878.8948 | 9900 SW Wilshire St., Suite 200, Portland, OR 97225

Tillamook Office 503.842.6633 | 2308 3rd Street, Tillamook, OR 97141

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From: Sarah Absher <sabsher@co.tillamook.or.us>
Sent: Friday, June 10, 2022 7:42 AM
To: Michael Kittell <Michael@Breakwater-law.com>
Subject: FW: Feinblum Variance - 1665 Portland Ave

FYI

From: Chris Laity <claity@co.tillamook.or.us>
Sent: Thursday, June 9, 2022 8:11 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Cc: Jasper Lind <jlind@co.tillamook.or.us>
Subject: Feinblum Variance - 1665 Portland Ave

Sarah,

A recent field visit identified that the Feinblum porch overhangs the right of way line. Public Works opposes encroachments into the right of way. Encroachment licenses are recommended to the BOCC when the physical

structure supports the road. Since the porch does not support the road, Public Works will require that the porch be removed from the right of way.

Public Works objects to the setback variance needed for the porch. Modifications to the retaining wall, as described below, need to be made in order for Public Works to withdraw the objection. Please consider the following conditions of approval should the variance request advance:

- Remove the porch and physical elements from the right of way.
- Construct a side wall to the retaining wall to prevent fill material from spilling onto the road.
- Connect the retaining wall perforated pipe that drains the fill material behind the wall to the drain inlet located Portland Avenue just downslope of the retaining wall. Note that a non-utility permit, including inspections, from Public Works is required to perform work in the right of way. The non-utility permit needs to be filed prior to the work.

Sincerely,



Chris Laity, P.E. | Director
TILLAMOOK COUNTY | Public Works
503 Marolf Loop Road
Tillamook, OR 97141
Phone (503) 842-3419
claity@co.tillamook.or.us

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