

**MINUTES**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**Monday, August 28, 2017**

**Planning Commissioners Present:** Jim Patrick, Lee Hardy, Jim Hanselman, Bob Berman, Mike Franklin, and Bill Branigan.

**Planning Commissioners Absent:** Rod Croteau (*excused*)

**City Staff Present:** City Attorney, Steve Rich, and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:02 p.m. On roll call, Commissioners Hardy, Berman, Patrick, Hanselman, Franklin, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission regular session meeting minutes of July 24, 2017.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission meeting minutes as presented. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of August 14, 2017.

Hardy noted that on page three of the minutes it states that Rich explained the agreement with Airbnb. She requested it be changed to say that Rich suggested why the City didn't want to pursue the matter. Patrick read the email sent by Cathey Briggs to Marineau that noted some corrections to the minutes. The PC reviewed the changes and approved them.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission meeting minutes with two sets of corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** No public comments.

4. **Action Items.** No action items.

5. **Public Notices.** At 7:04 p.m. Chair Patrick opened the public hearing portion of the meeting by reading a legislative hearing script outlining the proceedings for the hearing. He then read the statement of rights and relevance. Patrick asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. None were heard. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File No. 2-Z-17.** Patrick called for the staff report for File No. 2-Z-17. Rich read the staff report. Berman asked for clarification on if design guidelines were the same as conditional use. Rich wasn't sure but explained that Derrick Tokos said that one would involve discretion with a certain set of guidelines and the other would not.

**PUBLIC TESTIMONY:** Patrick called for public testimony. Kathy Cleary reviewed a memo that she shared with the ad hoc group years before. The memo was created by Nye Beach community members in 2015 to propose a zone change to allow changes to the guideline and standard process. They were concerned about keeping the character of Nye Beach. She reported her concerns for the zero setbacks. She reflected on a visit her blind friend had to the area and his safety concerns about navigating the area around the new residential build on Olive and Coast Street. Patrick asked her what her understanding was of the 2,000 square feet rule. She said the understanding was that it applied to commercial and the community members wanted it to apply to residential. Patrick asked for her preference for garage setbacks. She preferred the 20-foot setback.

Branigan asked if the ad hoc report on setbacks made it to the City Council. Patrick reported that it was a part of the public hearings but didn't get highlighted. City Councilor, Wendy Engler, said it was never called out and the group never discussed it. Berman asked if the memo Cleary shared was part of the ad hoc group discussions. Cleary explained that it was from an interested neighborhood committee and separate from the ad hoc committee. The group attended ad hoc committee meetings but weren't able to vote. Cleary stated they hoped that it would be part of the process but since it was presented half way through it, she thought it may not have been a good idea to present it at the time. She said she was presenting the memo at the current meeting for further consideration. Berman asked if the memo pertained to the discussion items at the current meeting. She said it was concerning zoning and wanted it to have further consideration by the PC.

Branigan asked if the vacation rental sign was still up at the Olive Street property. No. Hanselman asked Cleary who she thought parking in the Nye Beach area should be for. Cleary said anyone who comes to Nye Beach should park there. Engler gave her thoughts on how the core zone applied to the hearing.

Hardy asked Cleary for a clear narrative of Nye Beach. Cleary described it as period cottage homes, small scale, period siding, shingle with trim, limited to two stories, with beach charm. Hardy stated that there are buildings in the Nye Beach overlay that are non-compliant with the description. She thought it was a lot of subjective descriptions that needed to be defined more clearly in terms of garage setbacks.

Erin Tomey felt the zero garage setbacks were a fundamental change that she thought didn't have a lot of public input. She stated her concerns about the Olive Street residence being allowed to be built so close to the overhead lines. She advocated for 20-foot setbacks for garages which allowed for discretion.

Marlette Noe stated she saw a lot of change in Nye Beach. She didn't see a difference between a 20-foot or zero setback because parking would be lost regardless. She thought the City should go back to the original plan. Branigan asked if she was affirming that she didn't care about the zero setback. She did not and said drivers would have to be careful when backing out.

Cathey Briggs passed out a letter to the PC concerning the residential dwelling at the NW corner of Olive and Coast Street. She felt the plans for the build should have been reviewed as a Conditional Use with notice and an opportunity to appeal. She said Alternative #2 addressed her concerns. She noted that the 2,000 square foot limit did not distinguish between commercial and residential. Her concern was that the code, as it was read, didn't discern between the two. She thought it was a violation of the Code and the State Land Use Law. She felt a procedural issue such as this was grounds for an appeal to the Land Use Board of Appeals. She felt it was a big interpretation to not go through the conditional use on the Olive Street property.

Gus Willeman was concerned about safety issues on backing up on sidewalks with zero setbacks. He noted that truck drivers have warning buzzers when backing up. Willeman thought that the safety and security of community members should be the main concern and didn't want to City to wait until something happened.

Briggs asked if building permits for the other two lots on Olive Street had been applied for. She thought it raised the level of concern because the applications were vested under the current code and compounded the danger for the public.

Engler agreed with Hardy about the character of the Nye Beach neighborhood. When changes were being done on the plan, there wasn't an overall plan for the neighborhood or update. Under the old plan, the build on Olive Street wouldn't have been allowed. She felt the plan needed to be refreshed to give a clearer direction to developers. She noted that the CC wanted to talk about the garage setbacks but didn't want it to end there. Franklin agreed with Engler and said it seemed there were people at the meeting that thought the ad hoc group didn't do enough. He felt the group made good changes for the community. He noted that the Silvia Beach Hotel wouldn't have been approved with the new design overlay. Engler thought it was something the neighborhood should talk about. Franklin said the ad hoc chose to do residential in blocks instead of residential over commercial. He thought this needed to be looked at by the CC and something that should have been addressed with the ad hoc group. Engler agreed that they made a mistake.

Berman asked Engler for her thoughts on if the 2,000 square feet restriction should be commercial or all buildings. Engler said she hadn't studied the implications and would like scenarios of what the change would mean. Patrick clarified that the gross residential square footage doesn't include the garage square footage. He felt it was ambiguous because they know the intent. Berman asked if it should be limited to commercial going forward. Patrick noted there

was never a discussion of size limit on residential. Hardy noted that 5-plexes were commercial. Briggs noted that Tokos said in the August 14<sup>th</sup> PC work session meeting that there could be a residential square footage cap. Patrick said it wasn't done in the past but could be. Engler thought it should be defined. She suggested the PC talk to Dustin Capri about form based code as he was experienced with it.

Nancy Middleman addressed the Commission and said she was active with the Performing Arts Center. She saw a lot of traffic at the Olive and Coast Street intersection. She thought the build on the corner would create more accidents. She wanted the City to be more proactive and look at what was happening and correct it.

Deliberations started at 8:27 p.m.

Commissioner Hardy felt public safety trumps subjective values. She was in favor of 20-foot setbacks as long as the house had an adequate setback so you could see around the house when backing out. She was concerned about a conditional use for anything less than a 20-foot setback because violations could be complaint driven. She thought the vague language of the Nye Beach character should be defined objectively.

Commissioner Berman wanted the residential size in a C-2 zone and rezoning to be looked at another time. He thought developers needed options to present reasons for alternatives to 20-foot setbacks. He was in favor of Alternative #1, because the CC asked for it, and for Alternative #2.

Commissioner Franklin agreed with Berman and was in favor with Alternatives #1 & 2.

Commissioner Hanselman thought safety was an important issue. He didn't like the zero setbacks and would like the 20 foot setback. He was concerned about short driveways and cars parking across sidewalks. He said code enforcement doesn't work. Felt the descriptions of the Nye Beach neighborhood was romanticizing it but saw why the community wanted to protect it. He was in favor of alternatives #1 & 2. He also wanted the PC to revisit the 2,000 square foot or commercial/residential.

Commissioner Branigan thought that safety was foremost and was concerned that enforcement wasn't happening as it should. He would recommend just a 20-foot setback and to look at the design review again to close up any loop holes.

Chair Patrick was in favor of Alternative #2 because the grounds for conditional use was narrow. He thought the PC would need to think about what the standards would be if Alternative #2 was passed. He reiterated that the 2,000 square foot requirement was always commercial and never about residential. He thought Hardy was correct when talking about 5-plexes being commercial. He said the PC needed to be more clear on mixed use because they have never talked about it. He pointed out that there was no difference between one and two car garages because they still would have to back up.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin, to recommend Alternatives #1 and #2 for File 2-Z-17: Nye Beach Design Review Overlay District revisions for Chapter 14.30 for City Council review. The motion carried unanimously in a voice vote.

Berman recommended to insert the word "commercial" to NMC 14.03.090 (A)(1). Hardy wanted to make sure that it stated that it didn't include residential. Patrick reminded the PC that the building code referenced this but not the zoning code. Berman changed his motion to say, "as defined in the zoning code".

**MOTION** was made by Commissioner Hardy, seconded by Commissioner Branigan, to approve the recommend changes to insert the word "commercial", as defined in the zoning code, to NMC 14.03.090 (A)(1) for City Council review. The motion carried unanimously in a voice vote.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Hardy, to recommend wording changes to NMC 14.03.100 (5)(A) for City Council review. The motion carried unanimously in a voice vote.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin, to request that staff prepare materials related to a Nye Beach "core area" proposal, and recommendations on how to proceed for Planning Commission review. The motion carried unanimously in a voice vote.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Hanselman, to request staff put together information to potentially define commercial use, reassess ground floor residential in C-2 zones, and identify options for alarms on zero set back garages for Planning Commission review. The motion carried unanimously in a voice vote.

Rich noted to Tomey that the utilities at the corner of Olive and Coast Streets would be required to be placed underground at the expense of the owner. A discussion ensued regarding who would pay for the movement of the utilities. Tomey asked if story poles were used in the community and suggested they be used in the future. Berman said that the City couldn't deny a permit because of this. Patrick didn't know if any story poles were being used in the State. Tomey was concerned about the public having to pay for movement of utilities for new buildings. Patrick explained that poles have been in wrong places all the time and needed to be moved. Franklin said every time a new build goes in there are changes to utilities.

Cleary asked if the 20-foot setback is confirmed, would the two other residences on Olive and Coast Streets, which were waiting on permits to be issued, be built at zero setbacks. Berman explained that whatever ordinance was in affect at the time of application is what it would be subject to. Cleary asked if there was anything that could be done about the two properties. Hardy said she could talk to the developer to see if they wanted to make changes. Briggs mentioned that she heard that the two lots on Olive and Coast Streets were offered for sale and asked if the PC knew about it. They did not.

Tomey asked if there could have been an ally for the six lots on Olive and Coast Streets. Franklin said that there would need to be an easement for an ally on the properties because they weren't owned by the same person.

Branigan asked if a backup alarm could be mandatory. Rich said it was just like any other health and safety measure and it could be done. It would be a policy measure. Berman said you couldn't go back and require older homes with zero setbacks to have the alarms. Rich explained this would be part of the policy considerations to ask if you go back or just require them going forward. He said that the City would need to decide how much of a setback would be required for alarms.

6. **New Business.** No new business.
7. **Unfinished Business.** No unfinished business.
8. **Director Comments.** No Director comments.
9. **Adjournment.** Having no further business, the meeting adjourned at 9:10 p.m.

Respectfully submitted,



Sherri Marineau  
Executive Assistant