



PLANNING COMMISSION REGULAR SESSION AGENDA

Monday, January 13, 2020 - 7:00 PM

City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

The meeting location is accessible to persons with disabilities. A request for an interpreter for the DEAF AND HARD OF HEARING, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Regular Session Meeting Minutes of December 9, 2019.

[Draft PC Minutes 12-09-19](#)

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

4.A Appointment of Planning Commission Officers.

5. PUBLIC HEARINGS

5.A File No. 1-VAR-19: Variance to allow construction of new single-family dwellings or two-family dwellings with a 10-foot setback.

[Staff Report](#)

[Attachment A](#)

[Attachment B](#)

[Attachment C](#)

[Attachment D](#)

[Attachment E](#)

[Attachment F](#)

[Attachment G](#)

[Public Testimony - Mona Linstromberg](#)

6. NEW BUSINESS

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

9. ADJOURNMENT

***Draft* MINUTES**
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
December 9, 2019

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

City Staff Present: Community Development Director (CDD), Derrick Tokos; 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 7:00 p.m. On roll call, Commissioners East, Hardy, Berman, Franklin, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work and Regular Session Meeting Minutes of October 28, 2019 and the Work Session Meeting Minutes of November 12, 2019.

Commissioner Berman submitted minor corrections to the minutes.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to approve the Planning Commission Work and Regular Session Meeting Minutes of October 28, 2019 and the Work Session Meeting Minutes of November 12, 2019 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** None were heard.

4. **Action Items.** None were heard.

5. **Public Hearings.** At 7:02 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Commissioners Franklin, Hanselman, Branigan, and Patrick reported site visits. 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 2-SV-19.**

Tokos reviewed his staff report. He pointed out areas where the right-of-way (ROW) would be widened and where it would be vacated. Tokos reminded the Commission that the vacation was not for construction. They were trying to get the ROW configured so it could meet the needs of the adjoining properties, and insuring that the utilities were developed properly.

Berman asked if the part of the ROW that would be vacated would have any implications for future development on Harney Street. Tokos explained there wouldn't be any because they were matching up with the existing planned ROW width for that type of street. Branigan asked if the red triangle area on the map, on Harney and 31st Street, had any pavement plans to make it easier for vehicles to turn. Tokos explained there wasn't any immediate plans. The long term future of 31st Street was part of the Transportation System Plan (TSP) Update and there would be more discussion on the street. The ROW width was sufficient for a minor arterial and wouldn't get any larger than this.

Franklin asked if the black line for 31st Street illustrated on Exhibit “A” was an old route. Tokos reported it was an initial cut by Wyndhaven to begin to frame the issue for the City Council. The map that had been shown to the Commission at the meeting was more refined.

Berman asked if the blue line on Attachment “C” should be 31st Street. Tokos confirmed the labeling should have been 31st Street. Berman asked if Harney St went outside of the city limits and if it could potentially be a problem. Tokos said the exhibit showed it correctly and the street might go outside of the City limits and UGB. The was a fully developed roadway that would be something to address in the future, but it wouldn't affect this project.

Patrick asked what the width of the Harney ROW was. Tokos didn't have the measurements but noted it would match up with the width identified for a minor arterial. Hanselman asked if no City utilities would need to be moved. Tokos explained this was correct, there would be no physical alterations with the vacation. When the Commission made a recommendation to City Council, Wyndhaven would prepare legal descriptions that would describe the areas that would be vacated in blue and the areas that were dedicated in red, then describe an easement reservation over the portions that were blue, south of 31st Street. If the developer moved the water lines in the future, the City would look to release that easement reservation.

Branigan asked if this was the only road that needed to have a ROW adjusted in the City. Tokos explained this was an instance brought to the City's attention by Wyndhaven to do planning for developable properties. There were other locations in the City that needed adjustments to ROWs, and areas where there were ROW dedications unknown where the City needed to do street legalizations. Big Creek Road was the last legalization that was done. There are sections of Oceanview Drive ROW that needs to be legalized as well. Branigan wanted it noted that the whole City needed to be reviewed to get everything taken care of. Patrick asked if this would be part of the TSP. Tokos noted that TSP identified project priorities. For priority projects the City would first look at the ROWs and what needed to be handled first.

Hanselman noted at one time there was a slip in the road and asked if the new alignment of ROWs would give the City a greater opportunity to move the road to better footing. He also wanted to know what DOGAMI said about the hillside between 31st and 32nd Street. Tokos couldn't speak for DOGAMI but noted the City had addressed stability issues along 31st Street in the past. There had been a discussion on if they should retain the full the alignment as a long-term through road. Tokos thought that when 36th Street was constructed they intended to replace this portion of the road because of its chronic issues, but policy makers decided to keep both roads open. They could choose to change this sometime down the road, if necessary.

Proponents: Todd Woodley, manager of Wyndhaven Ridge, addressed the Commission. He noted that Wyndhaven bore the expense for the engineering and recording for the vacation. The basis of their application right size the ROW all the way to Highway 101. Woodley explained that the intersection of Harney and 31st Streets, noted as the red triangle on the map, was for provisions to widen the intersection radius if the City chose to improve the road in the future. He noted the map was an overlay of property boundaries and the issue of whether the triangle area got paved or not, would be a separate matter.

Franklin asked if Wyndhaven was ever responsible for the costs of repairing the road in the past when there were slides. Woodley said they hadn't been given any bills for repairs to the road. Franklin asked by vacating the land would they then be exempt from future costs to repair slides. Woodley didn't think they would. Berman asked if the City decided to not use the road and require people to use 36th Street, what kind of problems would it present to their development and would the developers consider stepping up to make it a private road. Tokos explained that if the City elected to eliminate it as a through roadway, 36th Street and Highway 101 would need to be signalized. This was already a priority in the TSP and the City is collecting system development funds to help pay for the work. The City would partner in the signalization and the developer that tripped the need would have a financial obligation to contribute to signalization. Tokos noted the City needed to sort out Big Creek Road to decide if they wanted to kept it one way. This will be part of the TSP. There are only a few means of access to the area and there is quite a bit of undeveloped properties and existing neighborhoods in that area. The city needed to think strategically about

which points of access to lean on to make sure they existed in a proper way. Berman asked if there was already a requirement for signalization, and was the City already getting non-remonstrance agreements. Tokos would look into this, and if there weren't any agreements the City would follow up with the owners of those properties once signal warrants are met. He noted there were a lot of agreements off of 73rd Street and this was another area for potential signalization if they got enough side street trips to meet Oregon's warrants for signalizing. Hanselman asked if the City had any idea how close they were to meeting the warrants. Tokos explained they didn't know off hand, but each time there was a new development of any size, a transportation analysis would be done and this was the time the city would take a look to see if it met the number of required vehicle trips.

Opponents: Elaine Lynch, manager of the Pacific Homes Beach Club Park, addressed the Commission. She stated that she and members of the HOA were in attendance to listen to the proceedings and asked questions. Lynch noted that the owners above 31st Street were concerned that widening the road would risk the slopes. She was also concerned that widening the roads would mean an increase of traffic and change the tenor of the neighborhood. Lynch hoped the City would consider making 31st Street a one way street to alleviate any negative impact to the area. She thought it was premature to consider the vacation because the intent wasn't know.

Hearing closed at 7:35pm.

Branigan thought the vacation proposal satisfied the standards. He would recommend it to the City Council and wanted to include the utility easement reservations and dedications of ROW by Wyndhaven Ridge concurrent with the vacation of portions of 31st Street. Hanselman felt the application met the criteria. He liked the idea of 31st Street being designated as a one way street but thought that decision would be made later by the City Council. Hanselman wanted to pass along to the City Council that the vacation and concerns for 31st Street's future should be a part of the TSP Update. He would vote to recommend.

Franklin didn't have any problems with the request and thought it was a positive step to clear up concerns. Berman thought the criteria had been met and there needed to be some serious thought given to changing 31st Street to a one way street. As the TSP representative, he would see if he could get it included. Hardy was in favor of recommending it to the City Council. She didn't think it made sense to change 31st Street to be one way. East thought it should be sent to the City Council. He thought that as plans came in for site development there would be plenty of time to address issues. Patrick agreed to send a recommendation to the City Council. He thought this fixed issues with the development and the City. He suggested the issues for the street be brought to the City Council.

MOTION was made by Commissioner Branigan, seconded by Commissioner East to approve File 2-SV-19 and forward a favorable recommendation to the City Council. The motion carried unanimously in a voice vote.

B. File 5-Z-19.

Tokos reviewed his staff report. He pointed out the areas on the Nye Beach C-2 zoned map where the amendments would apply. He reported the property owner at 620 NW Alpine St was in support of the action and wanted to build a house or duplex on their lot. Tokos noted he heard from the neighbor of the Alpine property, Mr. Chenoweth, who wanted the Commission to know he supported the amendments as well.

Franklin asked what the reason was to include the section of Coast Street, north of NW 8th Street, when the right side of the street was already developed. Tokos said this area went in as permissible with the 2008 amendments and explained why it was included. Hanselman asked if residential in the Nye Beach Overlay was restricted to a 1,250 square foot footprint. Tokos explained it was not. The 1,250 limitation was for development standards that applied to density, meaning there could be one unit per 1,250 square feet of land, provided they could meet parking, setbacks, and didn't cover more than 64 percent of the property. Hanselman asked if someone could build a larger house on a double lot and still stay within the 64 percent, but end up with an edifice that didn't fit within the historical Nye Beach. Tokos noted in the

Engelmann/Boyles case they had one house on two lots. He reported the Nye Beach Overlay included thresholds for guideline reviews for length of a building. Tokos explained that if the building was over 65 feet in length, or 35 feet in height, it would be a triggering threshold. Buildings below that are subject to clear and objective standards.

Hanselman asked if there were any density standards for Short-Term Rentals (STR) in the C-2 zones. Tokos said the STR ordinance said in the commercial and water related zoned, the preexisting STR dwellings could continue as such and sold as such, notwithstanding the density limitations. When new STRs came into the area, they would need to meet the spacing requirements and the cap on the number of STRs. Hanselman didn't want to see residences turned in the STRs when there needed to be more long-term rentals. He was concerned that there weren't any density restrictions for STRs in the Nye Beach Overlay. A discussion ensued on the capped number of STRs in the overlay zone and how new homes would have restrictions on STR licensing. Berman asked if spacing standards applied for new STRs in the C-2 zone. Tokos confirmed they did.

Berman asked what the parking requirements were for building residences in the Nye Beach Overlay. Tokos explained that the ordinance said that if there was one full parallel parking space in front of the property, they could count this as a parking space. A discussion ensued regarding the way parking was counted for residential and commercial in the C-2 zone.

Franklin asked if the rules could work backwards and a commercial business could change to residential. Tokos said any business that currently fronted Coast Street and was south of NW 2nd Court could have residential at street grade under the 2008 rules. If a business went away they could do something else at street grade. If it was currently north of NW 2nd Court and south of 6th Street, residences at street grade were limited to what existed in 2004.

Public Testimony: Mona Linstromberg addressed the Commission. She expressed concern about STRs in the C-2 zone and hoped that unintended consequences could be avoided.

Wendy Engler addressed the Commission. She handed out a photo of a property on Cliff Street and explained that the intent was to have development in the Nye Beach areas be walking streets combined with traffic. Engler didn't have any problems with the items discussed at the hearing. She reminded the Commission that Kathy Cleary talked about the C-2 zone areas that weren't addressed in the last amendments. Engler noted that the lots on Cliff Street she showed were for sale and the only people who wanted to buy it wanted to build one large home on them. Engler urged the Commission to take a walking tour of the area to see what had been built. She wanted to see small scale residential encouraged, and asked the Commission to think about properties that weren't long term and would be redeveloped. She also asked the Commission to think about what they wanted Nye Beach to look like in five years. Engler reported that the DLCD TGM program needed staff support and it would be a great way to engage the neighborhood and meet housing needs.

Engler asked what the rules were for residential mixed in commercial such as landscaping. Tokos noted that there are no landscaping requirements for residential use, but pointed out that lot coverage restrictions would mean that part of the lot would have to be left open. The 64 percent lot coverage applied to residential unless they did underground parking, which changed it to 90 percent. Commercial/Residential would have to be within five feet of the front property line. A discussion ensued regarding setbacks and lot coverage for commercial and residential in commercial zones. Patrick was concerned that people could convert commercial properties that were built larger than what was allowed for residential and then later convert the buildings to residential. Tokos said he hadn't seen that done because structures built to commercial code aren't typically conducive to a residential space. He noted that commercial construction was more expensive to build than residential. Engler thought there were no landscaping required for the lots that were built in Nye Beach. Tokos said there were no landscaping requirements in Newport. Engler thought landscaping should be part of the Nye Beach design. Hanselman explained that if design review for residential use went to the Director under clear and objective standards, there wouldn't be a landscaping requirement. If design review went to the Commission, it would have a landscaping requirement. Engler

suggested looking into how landscaping and impermeable surface requirements complied with the character of Nye Beach.

Hearing closed at 8:26pm.

East thought the Commission should approve the decision and noted there were a lot of other issues that needed to be addressed. He thought for the purpose of allowing flexibility for development, it was good amendment. Hardy thought they should forward the recommendation as crafted. Berman and Franklin agreed. Hanselman was fine to pass a recommendation to City Council. Branigan thought it made sense to pass it along to the City Council. Patrick thought they should pass it along to the City Council. He liked the idea of increasing choices so people could go either way for commercial and residential.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to approve File 5-Z-19 and forward a favorable recommendation to the City Council. The motion carried unanimously in a voice vote.

6. **New Business.** None were heard.

7. **Unfinished Business.** None were heard.

8. **Director Comments.**

Tokos noted he would be doing interviews for the open planner position on Tuesday, Dec 10th. Second interviews would happen in mid-January. Tokos hoped they would have someone on hired by early February.

Tokos reported there would be a City Council work session on parking on January 6th. They are taking it to a work session to understand the recommended package from the Parking Committee. The City Council hadn't made any decisions yet.

Tokos noted there would be a work session and regular session meeting for the Commission on January 13th. He would be providing an updated work program at these meetings. Tokos explained that the City Council asked staff to work on a car camping ordinance as part of the homelessness taskforce recommendations. This would be picked up in a work session meeting as there are land use ramifications.

Tokos reported that the 32nd/35th Street and Highway 101 signalization/Urban Renewal project in South Beach was moving along with ODOT having prepared advanced plans. They were just about done with the planning piece and going through to ROW acquisition. When this was done, construction would start by winter of 2020 and would extend into spring/summer 2021. He noted that all the planning work for the project had been done by the Commission and that is a fully budgeted project.

Tokos would be attending another rule making meeting on House Bill 2001 and 2003 on December 16th to help with developing rules for infrastructure exemptions. He reported there would be no other Planning Commission meetings for 2019.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:34 p.m.

Respectfully submitted,

Sherri Marineau
Executive Assistant

PLANNING STAFF REPORT
File No. 1-VAR-19

- A. **APPLICANT(S) & OWNER(S):** J.T. Roth, Jr. applicant, J.T. Roth, Jr. and Theresa Roth, owners.
- B. **REQUEST:** Approval of a variance to Sections 14.11.010/"Required Yards" and 14.11.030/"Garage Setback" of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10 foot setback. This constitutes a 5 foot variance (33% deviation) from the 15 foot front yard setback, and a 10 foot variance (50% deviation) from the 20 foot garage setback. The variance will apply to all three building lots.
- C. **LOCATION:** 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision).
- D. **LOT SIZE:** Roughly 1.22 acres per Assessor's Map, with .46 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.
- E. **STAFF REPORT:**
 - 1. **REPORT OF FACT:**
 - a. **Plan Designation:** Low Density Residential.
 - b. **Zone Designation:** R-2/"Medium Density Single-Family Residential."
 - c. **Surrounding Land Uses and Zoning:** Surrounding uses include a single-family homes to the north and east, condominiums to the south, and the Pacific Ocean to the west.
 - d. **Topography:** The developable portion of the lots is moderate to steeply sloped, dropping in elevation as the property extends west from NW Spring Street. The average slope is 30 percent from the street right-of-way line west to the edge of the bluff overlooking the Pacific Ocean. From the bluff, the property drops in elevation precipitously to the statutory vegetation line (60 percent slope). The developable portion of the lots, between the street right-of-way line and edge of bluff, varies from about 105 feet deep on the north line to a little more than 130 feet on the south line (Ref: Site Plan labeled as Attachment 2 to the applicant's narrative (Staff Report Attachment "C")).
 - e. **Existing Structures:** None.
 - f. **Utilities:** All are available to the property.
 - g. **Past Land Use Actions:** *File No. 5-PLA-07.* Minor property line adjustment to the south line of Lot 1, Block 49, Oceanview Subdivision to

prevent a side-yard setback encroachment identified when the foundation was poured for the condominium development to the south. *File No. 8-GP-18*. Geologic permit to establish home sites on each of the three lots. Development may be in the form of single family dwellings or two-family attached (duplex) units.

- h. **Notification:** All affected property owners within 200 feet, applicable city departments, and other agencies were notified on December 23, 2019. The public hearing notice was published in the Newport News-Times on January 8, 2020 (Ref: Staff Report Attachment "G").

- i. **Attachments:**

Attachment "A" – Land use application form

Attachment "B" – County property report and assessment map

Attachment "C" – Application narrative with attachments and exhibits

Attachment "D" – Aerial map with zoning designation

Attachment "E" – Records from File No. 91-VAR-79 approving a 10 foot front yard setback variance for the property at 1541 NW Spring Street (Lot 4, Block 49, Oceanview Subdivision)

Attachment "F" – Final Order for File No. 1-VAR-12 approving a variance to eliminate the front yard setback for property at 845 SW 12th Street to allow the construction of a two-story, two car garage.

Attachment "G" – Public hearing notice

- 2. **Explanation of the Request:** Approval of a variance to Sections 14.11.01 0/"Required Yards" and 14.11.030/"Garage Setback" of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10 foot setback. This constitutes a 5 foot variance (33% deviation) from the 15 foot front yard setback, and a 10 foot variance (50% deviation) from the 20 foot garage setback. The variance will apply to all three building lots.

The variance request is being made because of the topographic constraints inherent to oceanfront property in this particular portion of the City. The variance will allow the homes to be located further away from the bluff, where the property is most steeply sloped and subject to erosion over time. NW Spring Street is improved to 22 feet in width, and the applicant will widen the street to 24 feet, with concrete curb and gutter along the property frontage, concurrent with construction of the dwellings. The NW Spring Street right-of-way is 60 feet in width and the street is located on the east side of the right-of-way (Ref: Staff Report Attachment "D"). The edge of pavement is 20 to 25 feet from the right-of-way line, and it is unlikely that NW Spring Street will be widened beyond 24 feet at this location given the limited number of properties being served. This means that even with the variance being granted, the driveways serving the homes will be close to, if not more than 30 feet in length, which is more than sufficient for off-street parking, particularly considering the applicant proposes to construct garages with the dwellings.

3. **Evaluation of the Request:**

- a. **Written Comments:** As of January 7, 2019, no written comments have been submitted in response to this application.
- b. **Applicable Criteria (NZO Section 14.33.060):**
 - i. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.
 - ii. That the circumstance or conditions above are not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.
 - iii. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
 - iv. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.
 - v. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.
 - vi. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

c. **Staff Analysis:**

In order to grant the variance, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis could be made:

Criterion #1. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.)

To grant a variance the Commission must find that a circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district and that the circumstance or condition prevents the owner from using the property in a manner comparable to how similarly-situated and zoned properties are used in the area.

The applicant, J. T. Roth, Jr., provided narrative responses to this criterion and the other approval standards (Ref: Staff Report Attachment "C"). Mr. Roth notes that the property is located on the west side of NW Spring Street and is an oceanfront site with steep sloped terrain. He points out that the westerly (approx.) 50 feet of the developable portion of each lot consist of a 2:1 sloped embankment that drops down to the beach. This is typical for the neighboring properties located on this west side of NW Spring Street.

An existing residence located on the lot immediate north of the applicant's property, at 1541 NW Spring Street, was held forward when constructed, and the front yard setback for that property is approximately 10 feet. This is the same setback that the applicant is requesting. The property to the north was approved for a 10 foot front yard setback with a variance granted in 1979. The City's justification in granting the variance related to the topography of the site (Staff Report Attachment "D").

The applicant explains that similarly zoned properties located on the east side of NW Spring Street do not share the same or similar characteristics, as properties situated on the west side of the street, and argues that this makes the subject property unique to the vicinity and zoning.

The lots were platted with a width of approximately 54 feet, meaning that a home(s) constructed on the lot(s) would have a narrow width and longer depth. The applicant points out that the outcome of this characteristic of the lot(s) is that the further the house structure is pushed back on the lot the closer the structure is located to the steep (2:1) sloped embankment.

The public right-of-way for NW Spring Street fronting the subject property has a dedicated street width of 60 feet, and is currently improved (paved) to a width of 22 feet with no curbs on either side of the street. The applicant notes that they have been informed by the City that they will have to widen NW Spring Street to a paved width of 24 feet with concrete curb/gutter along the property frontage concurrent with development of the property. They further acknowledge that they will need to prepare civil engineering documents, subject to City approval, before the work is performed (Ref: Exhibit 1 to Staff Report Attachment "C").

With the improved street width of 24 feet, and approximately 2 feet of unimproved ROW along the east side of NW Spring Street, the applicant notes that there is approximately 24 feet of unimproved public ROW fronting their property between the proposed curb/gutter and property line. This area, in conjunction with the requested 10 foot setback, provides sufficient space for residential driveways.

For the reasons stated, it is reasonable for the Commission to find that this criterion has been satisfied.

Criterion #2. That the circumstance or condition in Criterion #1 is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

Mr. Roth notes that the circumstances described existed before he and his wife secured a possessory interest in the property. He further points out that they have made no changes or improvements to the property that would have exacerbated the conditions that currently exist.

The three lots subject to this request were created with the Oceanview Subdivision Plat, recorded in 1884, in Book 1 at Page 19 of the Lincoln County Plat Records. The property was designated by the City of Newport for low-density residential development with the adoption of the City's first Comprehensive Land Use Plan (Resolution No. 1788, effective March 3, 1975), and has been continuously under such residential land use designation since that time.

Considering the above, it is reasonable for the Planning Commission to find that the unique configuration of the property, terrain, and zoning are not circumstances or conditions created by the applicant.

Criterion #3. *That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.*

Mr. Roth notes that the dimensional limitations of the property, when considered in conjunction with the terrain and location/configuration of the street, create a condition that warrants moving the improvements (structures) forward and further away from the sloped embankment.

The Planning Commission has historically viewed the application of dimensional standards, such as setbacks, in manner that would force development on more steeply sloped terrain or close to a bluff/embankment, as creating a practical difficulty that justifies the granting of a variance. Examples include the 10 foot front yard variance approved for the residence immediately to the north, under criteria in effect in 1979 (Ref: Staff Report Attachment "E"). The same has been done for development under the current variance criteria, as evidenced with the approval of a variance for a garage addition on property adjacent to SW 12th Street (Ref: Staff Report Attachment "F").

Conditions inherent to the applicant's property are effectively the same as those that exist on the lot to the north, which was granted the same 10 foot variance now being requested, and the fact that a home was constructed in reliance upon that variance is evidence that a 10 foot reduction is sufficient to alleviate a practical difficulty attributed to the application of the City's setback requirements.

Given this information, it is reasonable for the Planning Commission to find that applying a 20 foot garage setback and 15 foot front yard setback creates a practical difficulty for the owner and that a 10 foot variance is sufficient to alleviate the practical difficulty.

Criterion #4. *That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.*

Mr. Roth points out that adjacent properties to the north and to the south are currently improved with residential structures, and that their planned improvements are in line with such development. He further notes that property(s) to the east, on the opposite side of Spring Street, will not be impacted by a reduction to the front yard setbacks. The new development will be consistent with the existing building line established with the home to the north, and Mr. Roth points out that the 24 feet of unimproved right-of-way creates an additional buffer (i.e. a 34 foot setback from the back of

curb/gutter to front of the improved structure(s)). He goes on to state that the effective setback of 34 feet exceeds the zoning code setback of 20 feet that would apply to a normal building lot. Additionally, Mr. Roth points out that the additional setback will allow for off-street parking of no less than 2 cars per lot, in addition to the parking garage designed with the structures.

NW Spring Street is not a through-street. Mr. Roth points out that the north end of the street was vacated by the City, allowing a residential structure to be constructed at the end of the street, approximately 140 feet to the north of the subject lots. He notes that this condition limits the traffic servicing the 5 existing homes on the street. This is also a reason why a 24 foot wide paved street is sufficient to meet the needs of adjoining and nearby development.

Mr. Roth acknowledges that the dwellings he is planning to construct will be required to conform to the City's building height limitations, and points out that such height limitations would apply to the structure(s) regardless of the front yard setbacks being 20 feet (current zoning code) or 10 feet (requested variance).

While the property has been surveyed, and property corners adjacent to the NW Spring Street right-of-way have been identified, the location of that line may not be evident when construction is commenced. If the Planning Commission is inclined to grant the variance, it would be appropriate to require the right-of-way line to be confirmed by survey and 10 foot setback line staked before construction of the dwellings is commenced. This can be addressed with a condition of approval.

Based on the above, it is reasonable for the Planning Commission to find that this criterion has been satisfied.

Criterion #5. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

Mr. Roth indicates that the proposed variance will not interfere with access to the existing utilities. Sewer and water are existing in Spring Street. The new dwellings he is planning to construct will require he provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.

The City's storm drainage requirements (Ref: Exhibit 4 to Staff Report Attachment "C") will require the applicant install a new catch-basin along the curb line. Mr. Roth further notes that he has been working with the City to resolve needed improvements to the public storm drainage system and that such work will not be impacted by the requested variance.

Utilities are located within the right-of-way, so as long as the addition does not extend beyond the property line, it should not interfere with the utilities in the area.

Given the above, it is reasonable for the Planning Commission to find that this criterion has been satisfied.

Criterion #6. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

This criterion is limited to impacts that can be directly tied to the variance, as opposed to other impacts that might be associated with site development. Mr. Roth argues that the variance to allow the structure(s) to be located 10 feet closer to the front property line will have no impact to the adjoining properties. He further points out that moving the structure(s) forward helps create more separation from the existing embankment.

There does not appear to be any impacts attributed to the variance that require mitigation. If approved, the building line of the new dwellings would be consistent with what has already been established for the property to the north. Undeveloped right-of-way between the street and property line provides additional separation that has the effect of establishing a setback that is more than sufficient to address any lighting or privacy concerns.

Considering the above, it would be reasonable for the Commission to find that there are no impacts attributed to the variance that require mitigation.

4. **Conclusion:** If the Planning Commission finds that the application has met the criteria established in the Zoning Ordinance for granting a variance, or can meet the criteria with the imposition of reasonable conditions, then it should approve the request. There must be a rational nexus between any conditions of approval and the nature of the request, and such conditions must be roughly proportional to the impact of the proposal. If the Planning Commission finds that the application does not comply with the approval criteria, and cannot be brought into compliance with the imposition of reasonable conditions, then it should make findings for denial.

F. **STAFF RECOMMENDATION:** If the Planning Commission decides to approve the request, Staff would recommend the following condition(s) of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.

2. The property owner shall survey and stake the property line adjacent to NW Spring Street and 10 foot setback line and stakes shall be in place until footing inspections have been performed.
3. Pursuant to NMC 14.52.140/"Expiration and Extension of Decision," this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.



Derrick I. Tokos AICP
Community Development Director
City of Newport

January 8, 2020

City of Newport Land Use Application

Attachment "A" 17
1-VAR-19

PLEASE PRINT OR TYPE • COMPLETE ALL BOXES • USE ADDITIONAL PAPER IF NEEDED

Applicant Name(s): <div style="text-align: center;">J.T. Roth, Jr.</div>	Property Owner Name(s): <i>If other than applicant</i> <div style="text-align: center;">SAME</div>
Applicant Mailing Address: <div style="text-align: center;">12600 W 72nd Ave #200</div>	Property Owner Mailing Address: <i>If other than applicant</i> <div style="text-align: center;">SAME</div>
Applicant Telephone No.: <div style="text-align: center;">503 639 2639 timr@jtrothinc.com</div>	Property Owner Telephone No.: <i>If other than applicant</i>
E-mail: 	E-mail:
Authorized Representative(s): <i>Person authorized to submit and act on this application on applicants behalf</i> <div style="text-align: center;">SAME</div>	
Authorized Representative Mailing Address: <div style="text-align: center;">SAME</div>	
Authorized Representative Telephone No.:	E-Mail:

Project Information

Property Location: <i>Street name if address # not assigned</i> <div style="text-align: center;">15th & Spring St.</div>	
Tax Assessor's Map No.: 11-11-05-BB	Tax Lot(s): 02300 Oceanview Blk 49 Lots 1,2,3
Zone Designation: R-2 Single-F	Legal Description: <i>Add additional sheets if necessary</i>
Comp Plan Designation: <div style="text-align: center;">Nye Beach</div>	
Brief Description of Land Use Request(s): <div style="text-align: center;">To reduce the front yard set from property line to front of structure from 20' to 10'.</div>	
<i>Examples</i> 1. Move north Property line 5 feet south, or 2. Variance of 2 feet from the required 15-foot front yard setback.	
Existing Structures: <i>If any</i> NONE	
Topography and Vegetation:	

APPLICATION TYPE (please check all that apply)

- | | | |
|--|---|---|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Interpretation | <input type="checkbox"/> UGB Amendment |
| <input type="checkbox"/> Appeal | <input type="checkbox"/> Minor Replat | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> Comp Plan/Map Amendment | <input type="checkbox"/> Partition | <input checked="" type="checkbox"/> Variance/Adjustment |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Planned Development | <input type="checkbox"/> PC |
| <input type="checkbox"/> PC | <input type="checkbox"/> Property Line Adjustment | <input type="checkbox"/> Staff |
| <input type="checkbox"/> Staff | <input type="checkbox"/> Shoreland Impact | <input type="checkbox"/> Zone Ord/Map Amendment |
| <input type="checkbox"/> Design Review | <input type="checkbox"/> Subdivision | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Geologic Permit | <input type="checkbox"/> Temporary Use Permit | |

FOR OFFICE USE ONLY

Date Received: <u>12/12/19</u>	File No. Assigned: <u>1-VAR-19</u>	Date Accepted as Complete: _____
Received By: <u>DT</u>	Fee Amount: <u>617-</u>	Accepted By: _____
	Receipt No.: <u>3742</u>	

CITY OF NEWPORT

(SEE REVERSE SIDE)


Community Development & Planning Department • 169 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tokos, AICP, Director

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I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

 _____ Applicant Signature(s)	<u>12-12-19</u> _____ Date Signed
Same _____ Property Owner Signature(s) (if other than applicant)	_____ Date Signed
Same _____ Authorized Representative Signature(s) (if other than applicant)	_____ Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R427767	Neighborhood:	NNOB	Owner and	ROTH J T JR &
Map Taxlot:	11-11-05-BB-02300-00	Property Class:	100	Mailing Address:	ROTH THERESA PO BOX 4564 TUALATIN, OR 97062
Tax Map:	11s11w05BB			Site Address(es):	1515 NW SPRING ST ;1525 NW SPRING ST ;1535 NW SPRING ST
Web Map:	View Map				
Info:	OCEANVIEW, BLOCK 49, LOT 1-3, MF209-1923 LESS DOC200713004				
Tax Code:	104				
Acres:					

Improvements					
No Inventory					

Value History					
Year	Imp.	Land	Total Market	Total Assessed	Levied Tax
2019	0	258,190	258,190	194,870	3,542.36
2018	0	258,190	258,190	189,200	3,433.48
2017	0	281,650	281,650	183,690	3,402.92
2016	0	281,650	281,650	178,340	3,330.75
2015	0	281,650	281,650	173,150	3,088.01
2014	0	281,650	281,650	168,110	3,018.55
2013	0	281,650	281,650	163,220	2,862.57
2012	0	328,560	328,560	158,470	2,747.69

Sales History					
No Sales Data					

Land				Related Accounts	Disclaimer
Description	Acres	Market Value	Special Use Value		
UNDEV OCEANFRONT SITE	0.46	258,010			For assessment purposes only. Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the appropriate City, County or State Department or Agency concerning allowed land uses, required permits or licenses, and development rights on specific properties before making decisions based on this information. Tax data exported 10/2019.
MISC					
VALUE;UNBUILDABLE,EXCESS,SMALL PARCELS,ROADWAYS	0.09	180			
WEST OF VEG LINE	0.67				

Today's Date: 01/07/2020





Dec. 12, 2019

Derrick Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

RE: **Land Use Application**
*Front Setback Variance
02300 Oceanview Blk 49 lots 1-3

Subject Property

This application addresses three (3) building lots located north of NW 15th and west of NW Spring Street.
Lots 1,2,3 Block 49, Oceanview
See Attachment 1

Proposed Development

The subject property consists of three (3) building lots zoned R-2, with permitted uses including Single-Family Dwellings and Two-Family Dwellings (attached duplex).
The intended use for this property is to incorporate both a Single-Family Dwelling as well as Two-Family Dwelling, however, the option would still exist to construct all Single-Family or all as Two-Family. The actual construction type would be determined at the time of building permit submittal.
A concept site plan is attached that suggests how these two building types would apply.
See Attachment 2

Zoning

The subject property is zoned R-2 Residential-Medium Density Single Family with permitted uses including *Single-Family Dwellings (house), and *Two-Family Dwellings (duplex).

Front Setback Requirements: Duplex on interior lot 15'
House 20'

See *Zoning Map (Attachment #3) *R-2 residential Permitted Uses (Attachment #3.a and Table A)

Geologic Permit Application

Geologic Permit has been approved, Geological Permit # 8-GP-18
See Attachment 4

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1. Request to deviate from required setbacks

This application is requesting a front yard setback reduction from 20' to 10' for the Single-Family Dwelling and from 15' to 10' for the Two-Family Dwelling.

See attached Exhibit 1

2. Request to deviate from building height limitations.

N/A

Additional Documents submitted with Application

3. -A current 18" x 24" Lincoln County Assessor's tax map(s) showing the subject property and the notification area. The notification area is all properties within 200 feet of the subject property.

See attached Exhibit 2.a & 2.b

4. -A list of names and addresses of property owners, as shown in the records of the Lincoln County Assessor, within the notification area.

See attached Exhibit 3 (5 pages)

5. Findings of Facts

5.a The property is located on the west side of NW Spring Street and is an ocean front property located within a steep slope terrain. Where the defined boundary depth of these lots extend (approx.) 150', the westerly (approx.) 50' of each lot exists as a 2:1 sloped embankment, sloping downward toward the bottom of the break at the sand beach. This is typical for the neighboring properties located on this west side of NW Spring St.

The home located on the lot immediate north of this subject property was held forward when constructed, the front yard setback for this property is approx. 10'.

Properties located on the east side of NW Spring St. do not share the same or similar characteristics, which makes the subject property unique to the vicinity and zoning.

The lots were platted with a width of approx. 54', meaning that a home(s) constructed on the lot(s) would have a narrow width and longer depth. The outcome of this characteristic of the lot(s) is that the further the house structure is pushed back on the lot the closer the structure is located to the steep (2:1) sloped embankment.

The public right-of-way (NW Spring Street) fronting the subject property has a dedicated street width (public ROW) of 50', where it is currently improved (paved) at a width of 22' with no curbs on either side of the street. The city has informed me that a condition of improving my property will include improving (paving) NW Spring Street to a street width of 24' with concrete curb/gutter along my property frontage. These additional public improvements will require civil engineering documents for city approval prior to the work being performed. See attached Exhibit 4

With the improved street width of 24', and approx. 2' of unimproved ROW along the east side of Spring Street, there is an area of approx. 24' of unimproved public ROW fronting this subject property, this area is located between the (proposed) curb/gutter and my front property line. This area is noted on "Attachment 1" and "Exhibit 1".

5.b The circumstances defined above (paragraph 5.a) were existing prior to my ownership, and there have been no changes or improvements made to the property during my ownership that would have exacerbated the conditions that currently exist.

There are no personal circumstances (financial or otherwise) that have contributed to the existing conditions of these lots.

5.c The dimensional limitations described above (paragraph 5.a) creates a condition and circumstance that would be lessened by the practical application of moving the improvements (structure) forward and further away from the sloped embankment.

5.d The physical characteristics of the property(s) located within the vicinity or zoning district will not be impacted by the authorization of the requested front yard setback variance.

*The adjacent property to the north and to the south are currently improved with residential structures, which will require improvements to my lot(s) to conform to their existing conditions. The improved property to the north was constructed with a front yard setback of approx. 10'.

*Property(s) to the east (opposite side of Spring Street) will not be impacted by a reduction in my front yard setbacks.

*The frontage street (Spring Street) will be improved to a width of 24', leaving approx. 24' of unimproved ROW along my property frontage. This, along with the requested 10' front yard setback, will effectively provide for a 34' setback from the back of curb/gutter to front of the improved structure(s).

The effective setback of 34' exceeds the zoning code setback of 20' that would apply to a normal building lot. This additional setback will allow for off-street parking of no less than 2 cars per lot, in addition to the parking garage designed with the structures.

*Spring Street is not a through-street. This street was vacated by the city, allowing a residential structure to be constructed at the end of the street, approx. 140' to the north of the subject lots. This condition limits the traffic servicing the 5 existing homes on the street.

*The improvements to my lots will still be required to conform to the building height limitations. These height limitations would apply to the structure(s) regardless of the front yard setbacks being 20' (current zoning code) or 10' (requested variance).

5.e The proposed variance will not interfere with access to the existing utilities.

*Sewer and water are existing in Spring St.

*The improvements to my lots will require that I provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.

The Storm Drainage requirements by the city (see attached Exhibit 4) will require that I install a new catch-basin along the curb line.

I have been working with the city to resolve some needed improvements to their existing storm drainage system. All of this will not be impacted by the requested variance.

5.f Impacts resulting from the variance are mitigated to the extent practical.

*Arguably, the variance of allowing the structure(s) to be located 10' closer to the front property line will have no impact to the adjoining properties.

*The question of topography would be addressed as a benefit to the existing conditions, in that, moving the structure(s) forward helps create more separation from the existing embankment.


6. This request for a front yard variance would be applied to the Single-Family Dwelling as a 50% reduction from the existing 20' zoning code requirement and a 33% reduction to the Two-Family Dwelling zoning code requirement.

While the existing conditions will allow for a set back from the street curbs to the structure of (approx.) 34', after the variance is applied, pulling the structures forward 10' will allow the improvements constructed on these lots to gain additional separation from the steep sloping embankment providing additional insurance from natural weather events.

7. Fee of \$617.00 is enclosed

This concludes the description of the Application Submittal Requirements for the land-use application specific to the Front Yard Setback Variance Permit Application for the Roth property located at 15th and Spring St., Newport Oregon.

Submitted



J.T. Roth, Jr.
J.T. Roth Construction, Inc.
12600 SW 72nd Ave., suite 200
Portland, Or, 97223
503 639 2639
timr@jtrothinc.com

ENGINEER TO CONFIRM
ELEV. AND LOT LINE LOCATION

FILES ARE TO BE LOCATED IN THE SIDE SETBACK AREAS.

FEHRA FLOOD PLAN - OREGON
ZONE VE - ELEVATION 38'
MAP - 4104IC0368D



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PLAN



FOWLER
HOME + DESIGN

800-460-3771

Attachment #3

ZoneType: R-2
ZoneDes: Residential-Medium Density Single-Family
Minimum Lot Area (Sq. Ft.): Interior Duplex: 7,500 Corner Duplex: 5,000 House: 5,000
Minimum Width: 50'
Setback Requirements Front/2nd Front: 15' and 15' or 20' and 10'
Side: 5'
Rear: 10'
Lot Coverage in Percent: 57%
Maximum Building Height: 30'
Density is Sq. Ft. per Unit: Interior Duplex: 3,750 Corner Duplex: 2,500 House: 5,000



Stone Back Beach
College Newport

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Attachment #3.a

Rev. 2/98

**CITY OF NEWPORT
USES IN THE RESIDENTIAL DISTRICTS**

R-1/"LOW DENSITY RESIDENTIAL":*Permitted Uses*

Single-Family Dwellings
Accessory Uses
Home Occupations
Parks
Child Care Facilities
Residential Care Homes

Conditional Uses

Publicly Owned Recreational Facilities
Libraries
Utility Substations
Public or Private Schools
Day Care Facilities
Churches
Colleges and Universities
Golf Courses
Necessary Public Utilities and Public
Services Uses or Structures

**R-2/"MEDIUM DENSITY SINGLE-FAMILY
RESIDENTIAL":***Permitted Uses*

Single-Family Dwellings
Two-Family Dwellings
Mobile Home Parks
Accessory Uses
Home Occupations
Parks
Child Care Facilities
Residential Care Homes
Condominiums

Conditional Uses

Publicly Owned Recreational Facilities
Libraries
Utility Substations
Public or Private Schools
Day Care Facilities
Churches
Colleges and Universities
Golf Courses
Necessary Public Utilities and Public
Service Uses or Structures
Assisted Living Facilities

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14.13.020
TABLE "A"

District	Minimum Lot Area (Sq. Ft.)	Minimum Width	Setback Requirements:			Lot Coverage In Percent	Maximum Building Height
			Front/2nd Front ¹	Side	Rear		
R-1/"Low Density Single-Family Residential"	7,500	65'	15' and 15' or 20' and 10'	5' & 8'	15'	54%	30'
R-2/"Medium Density Single-Family Residential"							
Duplex on interior lot	7,500	50	15' and 15'	5'	10'	57%	30'
Duplex on corner lot	5,000	50'	or	5'	10'	57%	30'
House	5,000	50'	20' and 10'	5'	10'	57%	30'
R-3/"Medium Density Multi-Family Residential"	5,000	50'	15' and 15' or 20' and 10'	5'	10'	60%	35'
R-4/"High Density Multi-Family Residential" ³	5,000	50'	15' and 15' or 20' and 10'	5'	10'	64%	35'
C-1/"Retail and Service Commercial"	5,000	0'	0'	0'	0'	85-90%*	50'
C-2/"Tourist Commercial"	5,000	0'	0'	0'	0'	85-90%*	50'
C-3/"Heavy Commercial"	5,000	0'	0'	0'	0'	85-90%*	50'
I-1/"Light Industrial"	5,000	0'	50' from Hwy. 101	0'	0'	85-90%*	50'
I-2/"Medium Industrial"	20,000	0'	50' from Hwy. 101	0'	0'	85-90%*	50'
I-3/"Heavy Industrial"	5 acres	0'	50' from Hwy. 101	0'	0'	85-90%*	50'
* See Section 2-4-4			n/a - not applicable				

¹ Front and second front yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from t

² Amended by Ordinance No. 1642 (8-3-92).

³ Density of hotels, motels, and nonresidential units shall be one unit per 750 square feet.

NEWPORT ZONING ORDINANCE (NO. 1308, AS AMENDED)

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169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA



www.newportoregon.gov

MOMBETSU, JAPAN, SISTER CITY

COMMUNITY DEVELOPMENT DEPARTMENT

(541) 574-0629
FAX: (541) 574-0644

Attachment #4

June 19, 2019

J.T. Roth, Jr. & Theresa Roth
12600 SW 72nd Ave #200
Portland, OR 97223

Re: Geologic Permit #8-GP-18 (Northwest corner of the intersection of NW Spring Street and NW 15th Street, Lots 1-3, Block 49, Oceanview Subdivision (Tax Lot 2300 of Lincoln County Assessor's Tax Map 11-11-05-BB)).

Dear J.T. & Theresa:

Please be advised that at the end of the appeal period June 18, 2019, for the above-referenced land use action:

- ☒ No appeal was received, and the decision is final.
- ☐ An appeal has been filed, and we will be notifying you of a hearing date before the Planning Commission.

If you have any questions, please contact our office at (541) 574-0629.

Sincerely,

Sherri Marineau
Executive Assistant

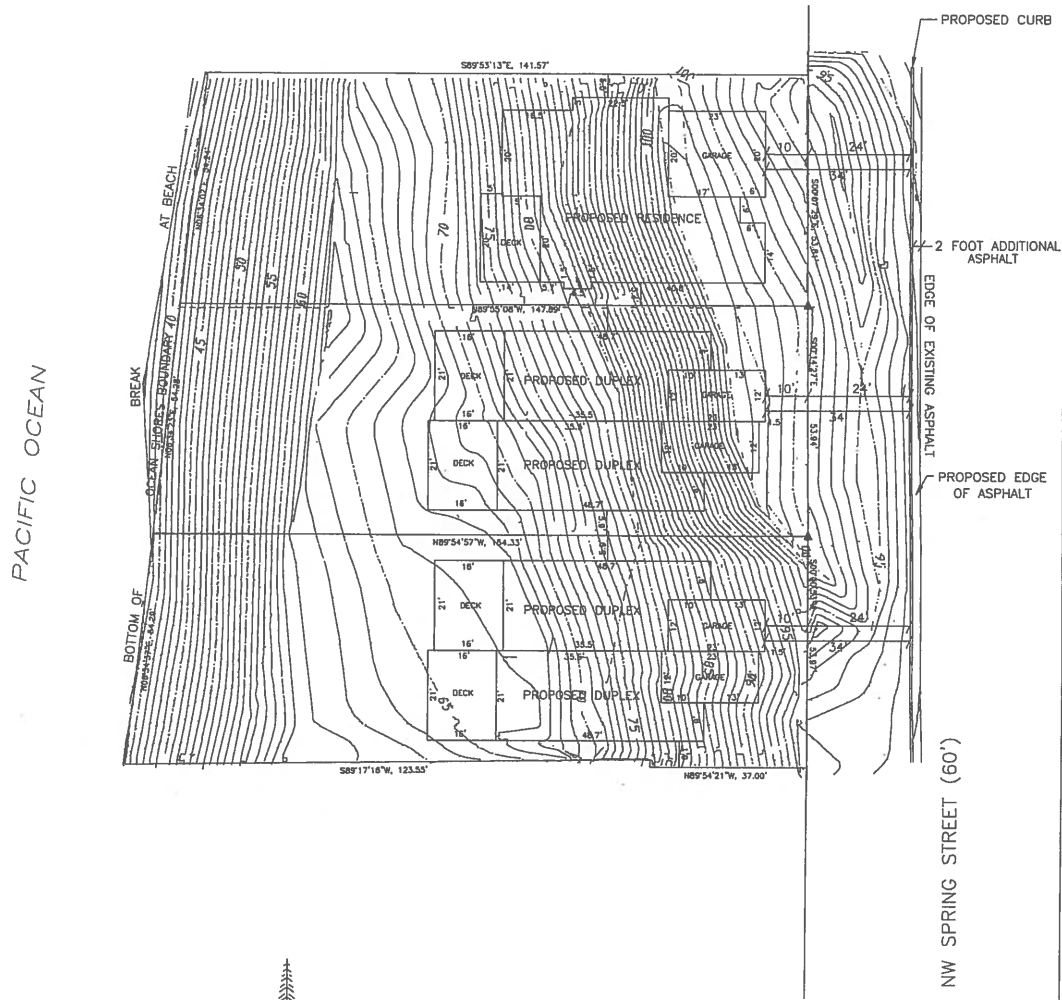
cc: Derrick Tokos, Community Development Director (via email)
Rachel Cotton, Associate Planner (via email)
Joseph Lease, Building Official (via email)

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EST.
1882

VARIANCE SURVEY PREPARED FOR
TIM ROTH
LOTS 1, 2 AND 3, BLOCK 49 "OCEAN VIEW ADDITION TO NEWPORT"
LOCATED IN THE NW 1/4 OF SECTION 5, T11S, R11W, W.M.
CITY OF NEWPORT, LINCOLN COUNTY, OREGON

NOVEMBER 8, 2019
(11-11-05-BB TAX LOT 2300)



SCALE
1"=20'



NOTE
CONTOURS AT 1 FOOT INTERVALS
ELEVATION NEED TO BE VERIFIED BY
ENGINEER BEFORE EXCAVATION.

LEGEND

▲ MONUMENT FOUND: HELD FOR CONTROL
C.S. 18,134

CITY OF NEWPORT

DEC 12 2019

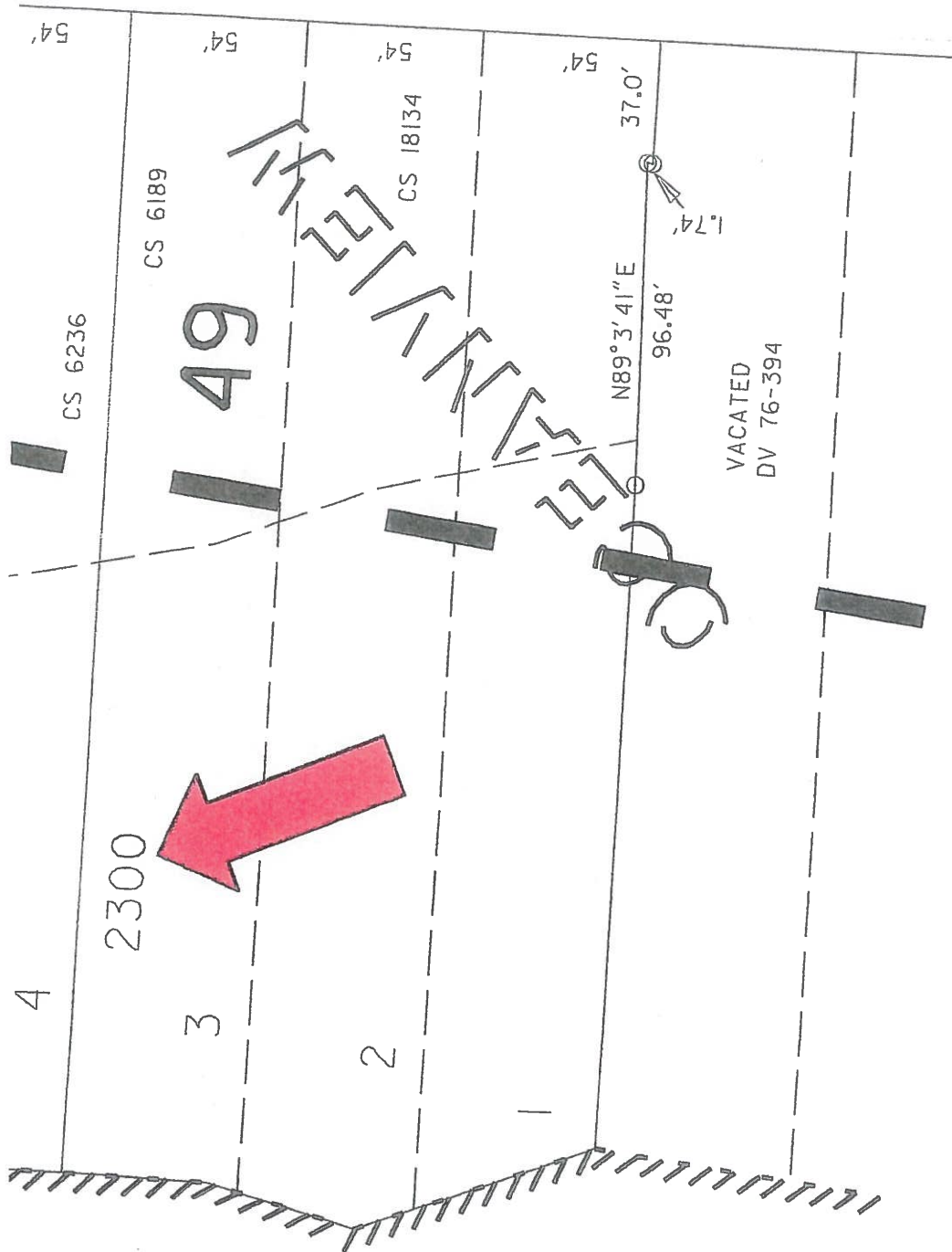
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NYHUS SURVEYING INC. GARY NYHUS / STEVEN NYHUS PROFESSIONAL LAND SURVEYOR P.O. BOX 206 740 E. THISSELL RD. TIDEWATER, ORE 97390 (541) 528-3234		CHECKED BY: GKN DRAWN BY: GAM DATE: 11-8-2019 SCALE: 1" = 20' PROJECT: 18141
DRAWN BY: GM MAPPING -GREG MURRY- (541) 528-7062 / 51ASITETE		

NW SPRING

Exhibit 2.a

32



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33

Exhibit 2.b

SEE MAP 11 11 05 BB

SEE
SUPP. MAP
NO. 3

SEE
SUPPLEMENTAL
MAP NO. 1

48

CS 8067

CS 17709

LI 7-239

VACATED
DV 273-17

104

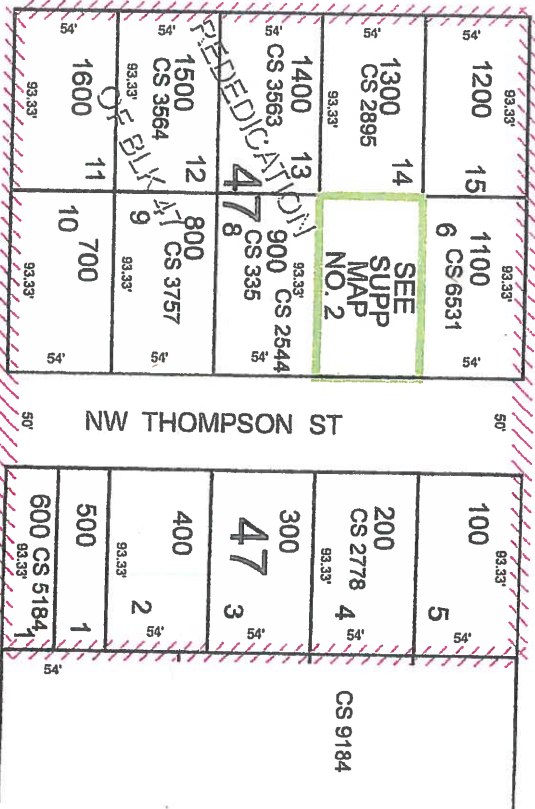
1903

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6

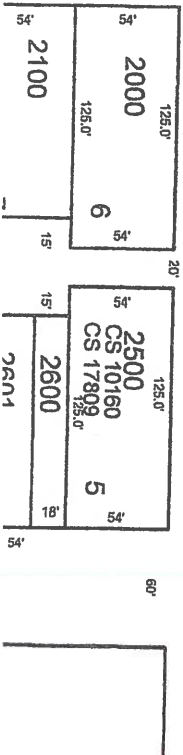
302

NW 15TH ST
(HOME ST)



NW 14TH ST
(ROCK ST)

6'



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DEC 12 2019

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11 11 05 BD

CITY OF NEWPORT
DEC 12 2003
RECEIVED

Cancelled
1000
1700
1801
1901
2800
2900
3200
3201
3900
4001
80007

Exhibit 2.b

SEE MAP 11 11 05 BB

SEE
SUPP. MAP
NO. 3

SEE
SUPPLEMENTAL MAP NO. 1

8 CS 8087

104

1903

1900

3700	:
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34	3801	UNITED STATES
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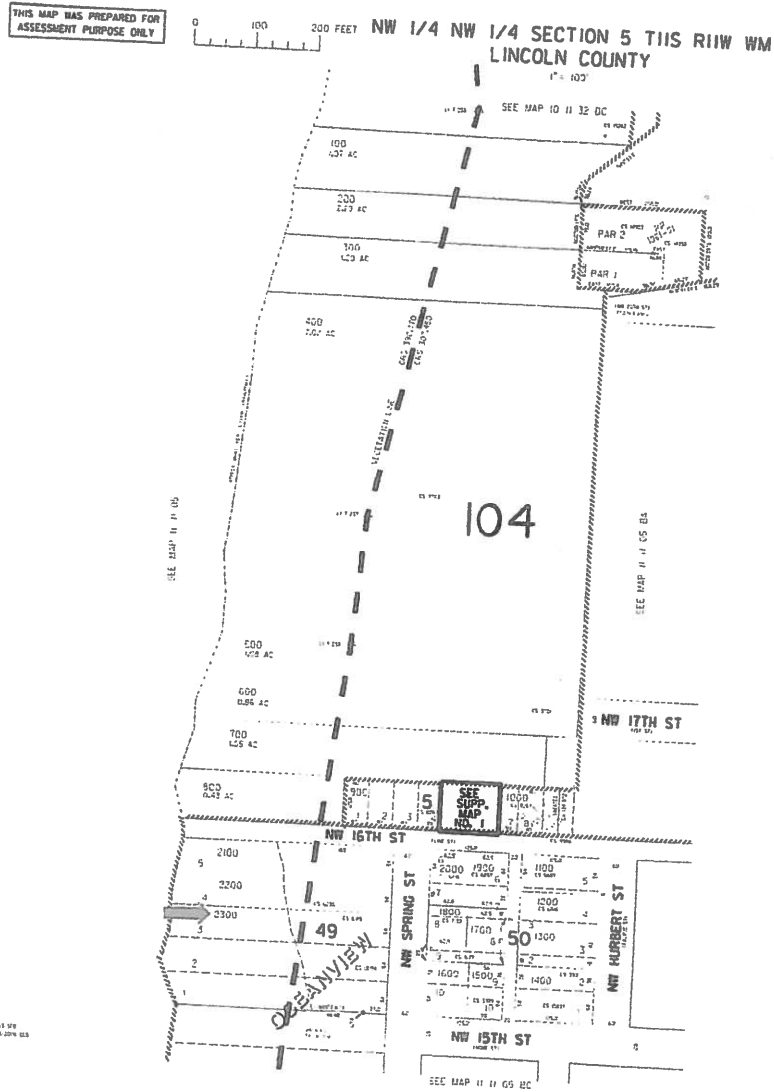
SEE MAP 11 11 05 CE

1/16 CO

Revised: SEB
08/25/2016

NEWPORT
11 11 05 BC

Exhibit 3 5 pages



11 11 05 BB
NEWPORT

CANCELLED NO.

11 11 05 BB
NEWPORT

ParcelId	OwnerNmFirst	OwnerNmLast	OwnerAddr	OwnerCityNm	OwnerState	OwnerZIP	SiteAddr	SiteCity
R101630	Michael	Parsons	1447 NW Thompson St	Newport	OR	97365	1447 NW Thompson St	Newport
R104001	Mindy	McDowell	6553 S Madison Ct	Centennial	CO	80121	1452 NW Spring St	Newport
R106487	Pat Joan	Linstromberg	931 Washington SW	Albany	OR	97321	1442 NW Spring St	Newport
R108937	Conrad	Willett	1426 NW Spring St	Newport	OR	97365	1426 NW Spring St	Newport
R115836		The Assn Of Unit Owners Of	1505 NW Spring St	Newport	OR	97365		Newport
R182334		Lookout Condominium The	433 N Coast Hwy	Newport	OR	97365		Newport
R418148	Donald	Knight	660 Driver Valley Rd	Oakland	OR	97462	1610 NW Spring St	Newport
R423043	Anne	Sigleo	1541 NW Spring St	Newport	OR	97365	1541 NW Spring St	Newport
R429980	Richard	Hixson	PO Box 11536	Bozeman	MT	59718	1542 NW Spring St	Newport
R432529	Mark G	Peterson	4450 S Shasta Loop	Eugene	OR	97405	535 NW 16th St	Newport
R434855	Yuval	Yaron	155 Greenwood Way	Mill Valley	CA	94941	1534 NW Spring St	Newport
R437171	Michael	Callahan	PO Box 12345	Portland	OR	97212	1522 NW Spring St	Newport
R439460	Michele	Osterhoudt	544 NW 15th St	Newport	OR	97365	544 NW 15th St	Newport
R506799		Whales Spout Condominium	370 SW Columbia	Bend	OR	97702		Newport
R507071		Seasong Condominium	544 NW 16th St	Newport	OR	97365		Newport
R511025	David Dustin	Nielsen	31947 W Ocean Ave	Arch Cape	OR	97102		Newport
R519109	Ethel	Krause						Newport

SiteState	SiteZIP	TaxAcctNum	LegalDsc	DocRcrdgDt	SaleAmt	OwnerOccupiedInd
OR	97365	111105BC0110000	OCEANVIEW - REDEDICATION OF BLK 47, LOT 6, DOC200713416	09/19/2007	\$595,000.00	TRUE
OR	97365	111105BC0120000	OCEANVIEW - REDEDICATION OF BLK 47, LOT 15, DOC201506220	06/26/2015	\$355,000.00	FALSE
OR	97365	111105BC0130000	OCEANVIEW - REDEDICATION OF BLK 47, LOT 14, MF264-1917			FALSE
OR	97365	111105BC0140000	OCEANVIEW - REDEDICATION OF BLK 47, LOT 13, MF180-2044			TRUE
OR	97365	111105BC7000000	WIZARDS OF THE SEA CONDOMINIUMS, COMMON ELEMENTS, MF152-1391			FALSE
OR	97365	111105BC9000000	LOOKOUT CONDO, ACRES 0.12, COMMON ELEMENTS, MF157-407			FALSE
OR	97365	111105BB0090000	BEACH PARK ADDN.-NEWPORT, BLOCK 5, LOT 1-3 & PTN 4, DOC200802121	12/07/2009	\$0.00	FALSE
OR	97365	111105BB0220000	OCEANVIEW, BLOCK 49, LOT 4, MF259-2412			TRUE
OR	97365	111105BB0200000	OCEANVIEW, BLOCK 50, LOT 6 & 7, PTNS OF, DOC201809829	10/02/2018	\$367,500.00	FALSE
OR	97365	111105BB0190000	OCEANVIEW, BLOCK 50, LOT 6 & 7, PTNS OF, DOC201903797	04/29/2019	\$0.00	FALSE
OR	97365	111105BB0180000	OCEANVIEW, BLOCK 50, LOT 7 & 8, PTNS OF, DOC201904046	05/06/2019	\$432,500.00	FALSE
OR	97365	111105BB0170000	OCEANVIEW, BLOCK 50, LOT 7-9, PTNS OF, DOC201901815	02/28/2019	\$500,000.00	FALSE
OR	97365	111105BB0160000	OCEANVIEW, BLOCK 50, LOT 9 & 10, PTNS OF, DOC201103262	03/31/2011	\$350,000.00	TRUE
OR	97365	111105BC8000000	WHALES SPOUT CONDO, ACRES 1.01, COMMON ELEMENTS, MF142-0570			FALSE
OR	97365	111105BB9000000	SEASONG CONDO, COMMON ELEMENTS, MF302-1465			FALSE
OR	97365	111105BB0150000	OCEANVIEW, BLOCK 50, LOT 9 & 10, PTNS OF, DOC200812576	10/29/2008	\$0.00	FALSE
OR	97365	111105BB0080000	TWNShp 11, RNG 11, ACRES 0.48, DV110-0550			FALSE

Parcelld	OwnerNmFirst	OwnerNmLast	OwnerAddr	OwnerCityNm	OwnerState	OwnerZIP	SiteAddr	SiteCity	SiteState	SiteZIP	TaxAcctNum
R 6E10	Michael	Parsons	1447 NW Thompson St	Newport	OR	97365	1447 NW Thompson St	Newport	OR	97365	111105BC0110
R 6E11	Mindy	McDowell	6553 S Madison Ct	Centennial	CO	80121	1452 NW Spring St	Newport	OR	97365	111105BC0120
R106487	Pat Joan	Linstromberg	931 Washington SW	Albany	OR	97321	1442 NW Spring St	Newport	OR	97365	111105BC0130
R108937	Conrad	Willett	1426 NW Spring St	Newport	OR	97365	1426 NW Spring St	Newport	OR	97365	111105BC0140
R115836		The Assn Of Unit Owners Of	1505 NW Spring St	Newport	OR	97365		Newport	OR	97365	111105BC7000
R182334		Lookout Condominium The	433 N Coast Hwy	Newport	OR	97365		Newport	OR	97365	111105BC9000
R418148	Donald	Knight	660 Driver Valley Rd	Oakland	OR	97462	1610 NW Spring St	Newport	OR	97365	111105BB0090
R423043	Anne	Sigleo	1541 NW Spring St	Newport	OR	97365	1541 NW Spring St	Newport	OR	97365	111105BB0220
R429980	Richard	Hixson	PO Box 11536	Bozeman	MT	59718	1542 NW Spring St	Newport	OR	97365	111105BB0200
R432529	Mark G	Peterson	4450 S Shasta Loop	Eugene	OR	97405	535 NW 16th St	Newport	OR	97365	111105BB0190
R434855	Yuval	Yaron	155 Greenwood Way	Mill Valley	CA	94941	1534 NW Spring St	Newport	OR	97365	111105BB0180
R437171	Michael	Callahan	PO Box 12345	Portland	OR	97212	1522 NW Spring St	Newport	OR	97365	111105BB0170
R439460	Michele	Osterhoudt	544 NW 15th St	Newport	OR	97365	544 NW 15th St	Newport	OR	97365	111105BB0160
R506799		Whales Spout Condominium	370 SW Columbia	Bend	OR	97702		Newport	OR	97365	111105BC8000
R507071		Seasong Condominium	544 NW 16th St	Newport	OR	97365		Newport	OR	97365	111105BB9000
R511025	David Dustin	Nielsen	31947 W Ocean Ave	Arch Cape	OR	97102		Newport	OR	97365	111105BB0150
R519109	Ethel	Krause						Newport	OR	97365	111105BB0080

The City of Newport Public Works
169 S.W. Coast Highway
Newport, OR 97365



phone: 541.574.3366
fax: 541.265.3301
www.newportoregon.gov

Coast Guard City, U.S.A.

Home Port of NOAA Pacific Fleet

May 21, 2019

Exhibit #4

Tim Roth
JT Roth Construction, Inc.
12600 SW 72nd Ave Suite 200
Portland, Oregon 97223

RE: NW 15th and NW Spring St. Development

Dear Mr. Roth,

The public improvement requirements for the current design concept are as follows:

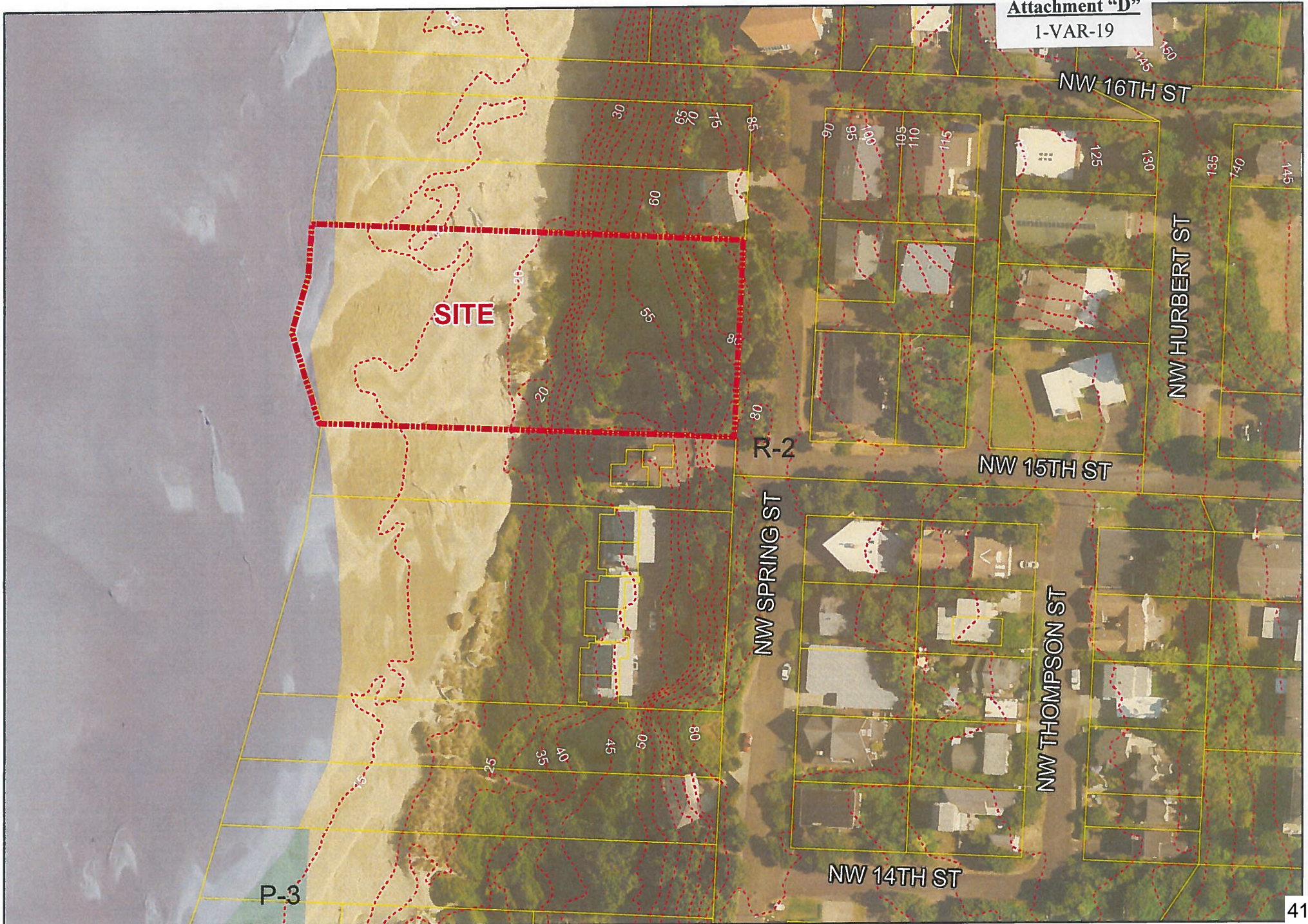
1. **Frontage improvements:**
 - a. **Paving and curb:** City development standards require curb and gutter along all street frontages. Although Lee and I did discuss the possibility of a non-remonstrance agreement, it is not appropriate considering the geologic hazard associated with street runoff directed above ground. We will require curb and gutter along the property frontage and paving to meet the curb, a minimum of 24-foot street width.
 - b. **Lighting:** We will not require the installation of street lighting.
2. **Storm drainage:**
 - a. Storm drainage may be directed off-site to the west, but there may be other requirements from State Parks.
 - b. The existing City 12" line that you have proposed to tie into is not adequately sized for the additional drainage from your property, and is in poor condition. If you desire to connect to this pipe it will need to be replaced and upsized to 18". There are several conditions outlined in Keven's letter (Alternate two, Option two) that we can discuss.
 - c. Additional drainage from the street, along the curb line, will also need to be addressed. The manhole that is in the street to the south of your property has a short stub to the north that is a possible point of connection.
3. **Water service:** This area is currently served by a 2" line. There appears to be adequate capacity to serve domestic water to the additional five proposed units.
4. **Sewer service:** The sewer along Spring St. is 8", PVC pipe. Since the proposed properties are below the sewer, each unit will need to pump to the City system.

We acknowledge that there are substantial requirements for private developments, but these are to ensure that infrastructure can serve the City and the development now and into the future. Thank you.

Sincerely,

Clare C. Paul
Assistant City Engineer

Cc: Tim Gross, Director Public Works/City Engineer
Derrick Tokos, Director Community Development



City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Phone: 1.541.574.0629
Fax: 1.541.574.0644

Zoning Map **1515, 1525 & 1535 NW Spring Street**

Image Taken July 2018
4-inch, 4-band Digital Orthophotos
Quantum Spatial, Inc. Corvallis, OR



FOR OFFICE USE ONLY

RECEIPT OF APPLICATION AND FEE

April 30-1979 Date Fee ReceivedApplication No. 97Type of Request Variance Application Fee Amount 35.00

ADMINISTRATIVE RECORD

4-27-79 Date Application Received
5-14-79 Date Hearing Scheduled
4-30-79 Date Personal Notice Sent (if any)
5-9-79 Date Notice Published in Paper
14 MAY 79 Date of Actual Hearing
Date of Continuance of Hearing (if any)

ACTION OF PLANNING COMMISSION

Approved ☒Recommended ☐Denied ☐Not Recommended ☐Conditions Attached (if any) NONEForwarded without Recommendation ☐Appealed by Proponent ☐

Date Appeal Filed _____

ACTION OF CITY COUNCIL

Date for Hearing set by Council.

Date Personal Notice Sent

Date Notice Published in Paper

Date Actual Hearing

Date of Continuance of Hearing (if any) ...

Approved ☐Denied ☐Referred back to Planning Commission ☐

EFFECTIVE DATE _____

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, is considering granting a variance to Ivan L. Sundstrom, to the requirements of Section 19, Paragraph B.1 of the Newport Zoning Ordinance No. 731, as amended, said request being for a variance of 10 feet to the required 20-foot front yard setback, reducing the front yard to 10 feet, for the following described property, to-wit:

Lot No. 4, Block No. 49, Oceanview Subdivision

The Planning Commission of said City, at their regular meeting to be held in the Council Chambers on the 14th day of May, 1979, at 7:30 p.m., P.D.T., will hold a public hearing at which time all persons particularly interested and the general public will be afforded the opportunity to be heard relative to the granting of said variance.

Jan E. Monroe
City Planner

PUBLISH: May 9, 1979

Planning Commission
May 14, 1979
7:30 P.M.

The Planning Commission met in regular session on the above date, Chairman Nielsen presiding. Commissioners present were Jan Monroe, City Planner, Rober Beal, Vice-Chairman, Jean Barker, Ray Carter, Jack Gesik, Mark Collson and Barbara Spangler.

Minutes of the previous meeting were approved.

The first item of business was a public hearing on a request for a Conditional Use permit for Mariner Enterprises to place an Antique Car and Wax Museum in an M-1 zone. The City Planner gave an oral presentation of his staff report, and a written copy is on file.

At the conclusion of the staff report, Chairman Nielsen asked if there were any objections. There were none.

Attorney Kurt Carstens, representing Mariner Enterprises, introduced proponents and asked Mr. John Storrs to speak first in favor of the proposed plan.

Mr. John Storrs of 11925 S.W. Military Road, Portland, Oregon is an Architect who was active in the development of the Salishan Resort area. He presented a model of the proposed structure and parking area to the committee. Mr. Storrs also presented drawings of the proposed structure emphasizing the parking which would be available to the public.

Mr. Robert Updenkelder of 319 N.W. 26th, Newport, Oregon also spoke in behalf of the proponents stating that the zoning of this land was from a plan made years ago. He stated that people are attracted to the bay front in Newport and that this building has been designed so that it could be turned into something else if necessary.

Mr. Kurt Carstens spoke in behalf of the proponents. He stated information from the Jack Jarvis report which said that by 1980 there will be a projected 2,500,000 tourists visiting the City of Newport. He further stated that the goals of this city should be to increase the facilities for tourism. He stated that a street would be put in to the east of the Yeck property, along with the proposed parking and, therefore, the proposal should not increase traffic congestion on the bay front.

He gave his interpretation of the LCDC goals and guidelines referring to Goal 16 (Estuarine Goal) and Goal 17 (Shore Lands Goal). He presented the committee with a topographic survey (on file) and a survey done on the land (on file).

He also presented to the committee a study made of both sides of Bay Blvd. from the Coast Guard Station to the Embarcadero (on file), and a listing of enterprises backed by the Wax Museum in the City of Newport (on file). He further mentioned that people taking buses would be able to embark or disembark on the provided walkway in front of the museum.

Elaine Baker of 665 N.W. Nye Street, Newport, Oregon from Neptunes Wharf stated that she was in favor of the proposed structure and would be the closest neighbor to the development.

Chairman Nielsen asked if there was any cross examination of the proponents. There was none.

Bob Jacobson of 2176 N.W. Ocean View Drive, Newport, Oregon spoke on behalf of the opponents. He is a Marine Extension Agent, a fisherman and President of the Coast Fishermens Association.

He stated there has been a tremendous increase in the fishing industry and that the land in question could be utilized further for the fishing industry.

Chairman Nielsen asked if there was any cross examination of the opponents.

Jan Monroe received a letter from the Port of Newport asking the Planning Commission "to take a hard look" at this proposal, (the letter is on file).

Kurt Carstens then presented rebuttal for the proponents. He asked the question, What marine use in an M-1 zone can be made of this property that is in need now? He further stated that the marine related possible use for this property is minimal.

The public hearing was closed at 9:02 P.M.

After questions by the commission, it was proposed that the deliberations be continued to the next Planning Commission meeting on Tuesday, May 29, 1979, in order to give the commission time to "digest" the material presented. It was moved by Robert Beal and seconded by Barbara Spangler that finding of facts be prepared and sent to the Planning Commission by proponents and opponents for their review. There were six ayes and two nays.

A ten minute recess was then declared.

The next item on the agenda was a request from Mr. R.D. Stumpf to build a duplex as a third story on an existing building. The proponent was not present for the hearing, and the public hearing was continued to May 29, 1979.

The next item on the agenda was a public hearing of a variance for Ivan Sundstrom. The City Planner presented his staff report, and a written copy is on file.

At the conclusion of the staff report, Chairman Nielsen asked if there were any objections to the jurisdiction of the deliberating body. There were none. It was then asked if any member wished to abstain.

Ivan Sundstrom of 2392 Cleveland Street, Eugene, Oregon (the proponent) spoke in favor of the variance. He stated that soil engineers and architects worked on this project. He stated that if the variance is granted, the structure would still be under the 30 foot limit. He presented the committee with aerial photos of the surrounding land and a drawing of the proposed structure.

Chairman Nielsen asked if there were any further proponents present at the hearing. There were none. It was asked if there was any cross examination of the proponents. There was none.

Paul Creech of 544 N.W. 15th Street, Newport, Oregon spoke on behalf of the opponents. He stated that if a 10 foot variance is allowed for one person then a variance would have to be allowed for anyone requesting it. He presented a petition to the committee opposing this structure.

Robin Linstromberg of 1442 N.W. Spring Street, Newport, Oregon stated on behalf of the opponents that rules that are set down should be followed with no exceptions.

Chairman Nielsen asked if any further opponents wished to speak. It was then asked if there was any cross examination of the proponents. There was none.

Mr. Ivan Sundstrom stated his rebuttal at this time. He stated that the pole structure is a most effective design in an area that landslides occur. He further stated that this is a well designed project.

The public hearing was closed at 9:53 P.M.

Members of the committee discussed the proposal. Robert Beal stated that each piece of property on the coast is different and that by granting a variance to one does not mean that a variance will be granted to another. Each piece of property must be considered on its own merit.

Barbara Spangler stated that this proposed structure is probably more stable than other structures along the coast.

It was moved by Jack Gisek and seconded by Mark Collson that the variance be granted as recommended in the staff report. It was also stated that they adopt the staff report recommendation as the finding of facts. There were five ayes, with Jean Barker voting nay and Ray Carter abstaining.

The last item of business, not on the agenda, was a request by the Community First Savings and Loan Association to receive a temporary building permit.

Philip Hutchinson of 316 N.E. 6th, Newport, Oregon spoke on behalf of the Community First Savings and Loan Association. He requested a temporary building permit for a mobile office to be located on the corner of Highway 101 and N.E. Lee Street. He presented the committee with a drawing of the completed structure. He further stated that they hope to construct the building while leaving the mobile home intact and that they plan construction of the building within one to two months.

It was moved by Mark Collson that they approve a temporary building permit for a period of nine months. It was seconded by Jack Gesik. The commission unanimously approved the permit.

There being no further business, the meeting was adjourned at 10:10 P.M.

Marsha Stewart,
Secretary to the City Planner

Planning Commission Staff Report
Prepared for Presentation 14 May 1979

Applicant: Ivan L. Sundstrom

Request: Approval of a variance of 10 feet to the required 20 feet front yard set back, reducing the front yard to 10 feet.

Location: Lot #4, Block #49, Ocean View Addition (On the west side of Spring Street between 15th and 16th).

Comprehensive Plan Designation: LOW DENSITY RESIDENTIAL

Current Zoning: "R-2", Two Family Residential.

Analysis: The property owner seeks to build a pole foundation building on his property. Because of the unusual topography (a steeply sloping bank) if the house were to be built at street level with the minimum setbacks, the house would exceed the height limit for this zone (30 feet). The alternatives appeared to be: One-redesign the building, Two-ask for a height variance, or Three-ask for a front yard variance and move the structure closer to the property line. The least expensive option is to move the structure closer to the street and this is what the owner has requested. In addition, moving the structure further from the ocean should add additional life to the structure. A GEOLOGICAL HAZARD REPORT has been performed and recommended the type of design the owner will use. (See letter).

I have received letters from Jon Carnahan and Charles and Cora McDowell opposing the variance and Herman Ruddell not opposed. Mr. Donald Knight called me and said he had no objection. The opposition to this proposal apparently stems from any building rather than this specific proposal and a

general complaint against traffic congestion. The solution to the prevention of building would have been through purchase of the property by those opposed to such building. The question of access from Spring Street is a legal right for the property abbatting it as in any subdivision. The solution to the problem of encroachment from traffic on Spring Street or property on the east side would be through the construction of curbs purchased through a local improvement district where benefitting property owners would pay the costs.

Recommendation: I recommend that the variance be granted because of the exceptional conditions due to topography as the variance is necessary to preserve the property right of the applicant who has no control over the topography or the location of the street. I do not believe that this variance is materially detrimental to the purposes of this ordinance nor would it injure adjoining property anymore than a building which conformed to the zoning ordinance.

Attachment "F"

1-VAR-19

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

IN THE MATTER OF PLANNING COMMISSION)
FILE NO. 1-VAR-12, APPLICATION FOR A)
VARIANCE, AS SUBMITTED BY VERN C. AND) **FINAL**
PAULETTE P. BARTLEY) **ORDER**

ORDER APPROVING A VARIANCE to Section 2-3-2.015/"Garage Setback" and Section 2-3-2.005/"Required Yards" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended) to allow construction of a proposed two-story two-car garage with a "0" setback at property located at 845 SW 12th St. (Assessor's Map 11-11-08-CA, Tax Lots 8301 and 8302).

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request for a variance, with a public hearing a matter of record of the Planning Commission on May 29, 2012; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, and from Community Development Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, **APPROVED** the request for the variance.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the variance as requested by the applicant with the following condition(s):

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.

2. The property owner shall flag or otherwise identify the property line adjacent to SW 12th Street, using the surveyed property corners and stake the location of the property line adjacent to the proposed addition. The stake(s) shall be kept in place until a footing inspection has been completed.
3. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
4. Pursuant to Section 2-6-1.070/"Expiration and Extension of Decision" of the Newport Zoning Ordinance, this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

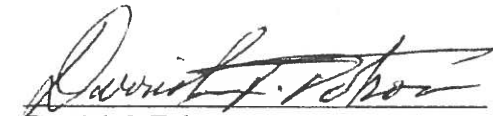
BASED UPON THE ABOVE, the Planning Commission determines that the request for a variance is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 11th day of June, 2012.



 James Patrick, Chair
 Newport Planning Commission

Attest:



 Derrick I. Tokos, AICP
 Community Development Director

EXHIBIT "A"

Case File No. 1-VAR-12

FINDINGS OF FACT

1. Vern C. & Paulette P. Bartley, applicant and agent for owner, Yeltrab Family LLC, submitted a request on April 23, 2012, for approval of a variance to Section 2-3-2.015/"Garage Setback" and Section 2-3-2.005/"Required Yards" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended) to allow construction of a proposed two-story two-car garage with a "0" setback.

2. The subject property is located at 845 SW 12th Street (Assessor's Map 11-11-08-CA, Tax Lots 8301 and 8302) and is roughly 8,712 square feet in size.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: High Density Residential.
- b. Zone Designation: R-3/"Medium Density Multi-Family Residential.
- c. Surrounding Land Uses: Surrounding uses are single-family and multi-family residences, the Newport Rehabilitation facility, the Samaritan Pacific Communities Hospital and related facilities, and the US Coast Guard. See Planning Staff Report Attachment "C" (Zoning Map of Area).
- d. Topography and Vegetation: The eastern portion of the property is steeply sloped, dropping in elevation as it approaches SW 13th Street. The site is vegetated.
- e. Existing Structures: A 1200 square foot residence and a 225 square foot garage.
- f. Utilities: All are available to the subject property.
- g. Past Land Use Actions: None known.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on April 25, 2012, to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments and other agencies. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., May 29, 2012. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on May 18, 2012. Prior to the hearing, the Community Development Department received the following letters in support of the variance application from neighbors:

- Ken and Cheryl Huff, 821/825 SW 12th St. The Huffs explain that their property is one house from the applicant's. They state that the lots on this street have very little room for building; and, because of the bluff, the usual setback requirements are not practical for these lots.
- Bill and Cheryl Lalack, 811 SW 12th St. The Lalacks explain that they own two properties just to the north of the applicant's. They state that since they were granted

a "0" front-yard setback in 2006 to construct a home, they feel it is only appropriate to grant one for the applicant. They note that the properties along the east side of SW 12th Street are so narrow that it makes it almost impossible to construct or remodel a home to modern standards and meet the current setback requirements.

- Ashley Forsyth, D.O., 1211 SW Bay St. Mr. Forsyth is the next door neighbor, and he is in support of the variance application request. He states that he is aware of the limitations on their properties on the east side of 12th, and there are other structures positioned in a similar manner along the street.

5. A public hearing was held on May 29, 2012. At the hearing, the Planning Commission received the staff report and received oral testimony from the applicant, and from Bill Lalack in support. The minutes of the May 29, 2012, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" – Applicant's Written Variance Request
 Attachment "A-1" – Applicant's Site Plan Showing Proposed Addition
 Attachment "A-2" – Property Survey
 Attachment "A-3" – Elevations of Proposed Addition
 Attachment "A-4" – Floor Plan
 Attachment "A-5" – Front Elevation Drawing
 Attachment "B" – Public Hearing Notice and Map
 Attachment "C" – Zoning Map of Area
 Attachment "D" – Neighbor Letters of Support

6. The applicable criteria for a variance are found in NZO Section 2-5-2.030(A) as follows:

- i. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.
- ii. That the circumstance or conditions above are not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.
- iii. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
- iv. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a

separate section addressing geologic limitations.

v. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

vi. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

CONCLUSIONS

Criterion #1. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district.

The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

1. In regard to this criterion, the Planning Commission considered whether the applicant sufficiently demonstrated that there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district and that the circumstance or condition prevents the owner from using the property in a manner comparable to how similarly-situated and zoned properties are used in the area.

2. The applicant has submitted findings in regard to this criterion in Planning Staff Report Attachment "A" (Applicant's Written Variance Request). The findings state that the exceptional, extraordinary circumstances and conditions that apply to the applicant's lot are related to the physical characteristics of the land with the steep embankment to the rear of the property. The applicant explains that the entire rear lot line is near or partially over the embankment which falls away approximately 80' with an approximate 60-70° slope downward to SW 13th Street to the east. The steep terrain is depicted in Planning Staff Report Attachment "C" (Zoning Map).

3. The applicant states in their findings that, based on the immediate area topography, properties in the neighborhood to the north (across SW 12th Street) and to the west (along SW 12th Street) and across SW Bay Street to the south do not generally have the same issues with the steep embankment that the applicant's property and other properties close by have. The applicant explains that of the twenty-nine properties within the required 200' notification radius of the subject property, only six properties share this exceptional and extraordinary circumstance; all of which are located on the east side of SW 12th Street between SW Bay Street and SW Case Street adjacent to the applicant's property.

4. The applicant further notes that the lots on the east side of SW 12th Street are situated so that it is nearly impossible to develop them without a front yard/garage setback variance. Of the six houses on the block, four have zero lot line status with structures at or slightly beyond their front yard lot line; and the fifth house has an encroachment permit for their front yard landscaping. The applicant states that it appears that the current zoning requirement substantially restricts the use of their property to a greater degree than it restricts other properties in the immediate vicinity or zoning district.

5. Based on the above, the Planning Commission concludes that Criterion # 1 has been satisfied.

Criterion #2. That the circumstance or condition in Criterion #1 is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

6. The applicant's property consists of Lots 2 and 11, Block 9 of the Plan of Newport. This plat and the adjoining public road rights-of-way were created before the property was acquired by the applicant. The residence was constructed in 1979.

7. Based on the above, the Planning Commission concludes that the unique configuration of the property is not a circumstance or condition created by the applicant and that Criterion #2 has been satisfied.

Criterion #3. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

8. The applicant notes that the garage that is proposed to be attached to the front of the house will mean less vehicles parked on the street or in the gravel areas in front of the house. The steep slope to the rear of the lot prevented construction of the residence any further back on the lot.

9. Steep slopes cover much of the property, and the toe of the slope is within a mapped geologic hazard area for landslide risk. The area closest to SW 12th is the only developable area where a residence could have been located leaving little room for even modest building improvements.

10. Based on the above, the Planning Commission concludes that applying the setback requirements creates a practical difficulty for the owner making the type of modest addition to a dwelling that can be made in conformance with the dimensional requirements on other similarly sized and zoned properties. Criterion #3 has been satisfied.

Criterion #4. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.

11. The applicant notes that the addition of the proposed two-story, two-bay garage will not cause any adverse physical impacts to the neighbors or the neighborhood. The proposed addition will improve the appearance and will mean less vehicles parked on the street or in the gravel areas in front of the house. It will provide for ample off-street parking for guests, and it will upgrade the safety and convenience of being able to drive into the garage, close the door, and enter the home without having to load and unload in the weather.

12. The applicant further notes that the addition of the proposed garage will not add to the traffic in the neighborhood nor the carrying capacities of the road that now exists. It will not increase the dust or air quality in any way.

13. Constructing an addition up to a property line presents a risk of encroachment onto the public road right-of-way. Such an encroachment would constitute a physical adverse impact, which could adversely impact development within the right-of-way. To ensure that this does not occur, it is appropriate to require that the surveyed location of the property line be identified in the field through the course of construction. This can be addressed with a condition of approval.

14. Based on the above, the Planning Commission concludes that, as conditioned, Criterion #4 is satisfied.

Criterion #5. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

15. The applicant notes that construction of the proposed garage will not interfere with any of the common utilities, all of which are currently being utilized by the applicant in the existing home.

16. The applicant explains that there will be no changes to sewer. The existing water meter will have to be raised slightly, but will remain in its current position. All roof water from the existing buildings currently flow into a piped drainage system that channels the water over the rear embankment and down the hill to the storm drainage system on 13th Street. The proposed garage drainage water will be plumbed into the same drainage system. The SW 12th Street right-of-way in front of the property is currently a 60-foot right-of-way. The existing street is gravel. The applicant notes that the electricity is currently overhead to the meter base on the existing studio/garage. Pending approval of the variance and building permit, the power will be rerouted to the northwest corner of the proposed garage and will be delivered underground rather than overhead. Natural gas is currently being utilized on the existing property, and no changes are anticipated. No land line service is utilized on the existing property, and no change is anticipated. Charter Cable is overhead to the existing home. It is planned to enter the northwest corner of the proposed garage approximately where the power will come in, and it will be changed to an underground service as well. Utilities are located within the right-of-way, so as long as the addition does not extend beyond the property line, it should not interfere with the utilities in the area.

17. Given the above, the Planning Commission concludes that Criterion #5 is satisfied.

Criterion #6. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

18. The applicant contends, and the Planning Commission accepts, that there are no adverse physical impacts anticipated that would necessitate mitigation, provided the applicant adheres to applicable building codes, fire codes, and other public health and safety regulations.

19. Based on the above, the Planning Commission concludes that Criterion #6 has been satisfied.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate that the applicant has demonstrated compliance with the criteria for granting a variance, and, therefore, the request is **APPROVED** with the following conditions of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall flag or otherwise identify the property line adjacent to SW 12th Street, using the surveyed property corners and stake the location of the property line adjacent to the proposed addition. The stake(s) shall be kept in place until a footing inspection has been completed.
3. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
4. Pursuant to Section 2-6-1.070/"Expiration and Extension of Decision" of the Newport Zoning Ordinance, this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING¹**

Attachment "G"
1-VAR-19

58

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on January 13, 2020, to consider approval of the following request:

File No. 1-VAR-19:

Applicant: J. T. Roth, Jr.

Request: Approval of a variance to Sections 14.11.010/"Required Yards" and 14.11.030/"Garage Setback" of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10-foot setback. This constitutes a 5-foot variance (33% deviation) from the 15-foot front yard setback, and a 10-foot variance (50% deviation) from the 20-foot garage setback. The variance will apply to all three building lots.

Location: Assessor's Map 11-11-05-BB, Tax Lot 2300 (1515, 1525, & 1535 NW Spring St).

Applicable Criteria: Newport Municipal Code Section 14.33.060; Criteria for Approval of a Variance: (A.) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (B.) The circumstance or condition in "A" above is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances. (C.) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard. (D.) Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations. (E.) The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access. (F.) Any impacts resulting from the Variance are mitigated to the extent practical.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department (address under "Reports/Materials") must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Materials: The staff report may be reviewed or a copy purchased at the Newport Community Development Department, City Hall, 169 S.W. Coast Hwy, Newport, Oregon, 97365 seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address.

Contact: Derrick Tokos, Community Development Director, (541) 574-0626 (address above in "Reports/Materials").

Time/Place of Hearing: Monday, January 13, 2020; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

MAILED: December 23, 2019.

PUBLISHED: Friday, January 3, 2020/News-Times.

¹This notice is being sent to affected property owners within 200 feet of the subject property (according to Lincoln County tax records), affected public utilities within Lincoln County, and affected city departments.

MEMO

City of Newport
Community Development Department



*****Distributed Via Email*****

Date: December 23, 2019

To: Spencer Nebel, City Manager
Tim Gross, Public Works
Rob Murphy, Fire
Jason Malloy, Police
Mike Murzynksy, Finance
Judy Mayhew, Parks & Rec.
Laura Kimberly, Library
Derrick Tokos, Community Development Dept.
Joseph Lease, Building Official
Public Utilities

From: Sherri Marineau, Executive Assistant

RE: Conditional Use Permit # 1-VAR-19

I have attached a copy of a public notice concerning a land use request. The notice contains a brief explanation of the request, a property description and map, and a date for a public hearing. You may want to review this information to determine if there are any effects to your department and if you would like to make comments.

We must have your comments at least 10 days prior to the hearing period in order for them to be considered. **Should no response be received, a “no comment” will be assumed.**

sm

Attachment

1431 NW SPRING STREET LLC
1143 MANOR DR
SONOMA, CA 95476

1505 NW SPRING STREET LLC
1143 MANOR DR
SONOMA, CA 95476

BUUS LESLIE TRUSTEE &
DARLING BUUS DAWN TRUSTEE
3361 EL DORADO AVE N
LAKE HAVASU CITY, AZ 86406

CALLAHAN MICHAEL &
CASSELL SANTHA A
PO BOX 12345
PORTLAND, OR 97212

CITY OF NEWPORT
CITY MANAGER
169 SW COAST HWY
NEWPORT, OR 97365

EGGLESTON MARK S TSTEE &
COOPER SUSAN L TSTEE
29513 N 140TH ST
SCOTTSDALE, AZ 85262

GREGORY DAVID &
BENEDETTI CHRISTINE
424 SW 297TH ST
FEDERAL WAY, WA 98023

HIXSON RICHARD S &
STOODY JOCELYN L
PO BOX 11536
BOZEMAN, MT 59718

HOFER VANDEHEY ROBERTA
20481 WINLOCK LN
FOSSIL, OR 97830

KNIGHT DONALD C TRUSTEE &
KNIGHT PATSY M TRUSTEE
660 DRIVER VALLEY RD
OAKLAND, OR 97462

MCDOWELL MINDY &
MCDOWELL SCOTT
6553 S MADISON CT
CENTENNIAL, CO 80121

LINSTROMBERG PAT JOAN TTEE
ATTN LESLIE HOGAN
931 WASHINGTON SW
ALBANY, OR 97321

LOOKOUT CONDOMINIUM THE
ASSOCIATION OF UNIT OWNERS
433 N COAST HWY
NEWPORT, OR 97365

OSTERHOUDT MICHELE R
544 NW 15TH ST
NEWPORT, OR 97365

MONTGOMERY BARBARA
1431 NW SPRING ST
UNIT A
NEWPORT, OR 97365

NIELSEN DAVID DUSTIN TRUSTEE &
NIELSEN TOBY LYNN TRUSTEE
31947 W OCEAN AVE
ARCH CAPE, OR 97102

PETERSON MARK G &
YOUNG PETERSON STEPHANIE A
4450 S SHASTA LOOP
EUGENE, OR 97405

PARSONS MICHAEL G &
PARSONS SANDRA A
1447 NW THOMPSON ST
NEWPORT, OR 97365

PESTANA RICKY D &
PESTANA JANICE M
750 1ST
UNIT 12
LAKE OSWEGO, OR 97034

ROTH J T JR &
ROTH THERESA
12600 SW 72ND AVE, SUITE 200
PORTLAND, OR 97223

ROTH J T JR &
ROTH THERESA
PO BOX 4564
TUALATIN, OR 97062

SEASONG CONDOMINIUM
ASSOCIATION OF UNIT OWNERS
544 NW 16TH ST
NEWPORT, OR 97365

SIGLEO ANNE C
1541 NW SPRING ST
NEWPORT, OR 97365

STARK NEAL E TRUSTEE
5034 SW VERMONT ST
PORTLAND, OR 97219

THE ASSN OF UNIT OWNERS OF
WIZARDS OF THE SEA CONDO
1505 NW SPRING ST
NEWPORT, OR 97365

WHALES SPOUT CONDOMINIUM
HOMEOWNERS ASSOCIATION
370 SW COLUMBIA
BEND, OR 97702

WILLETT CONRAD J &
GAIL E
1426 NW SPRING ST
NEWPORT, OR 97365

YARON YUVAL
1534 NW SPRING ST
NEWPORT, OR 97365

Adjacent Property Owners Within 200 Ft

File No. 1-VAR-19

NW Natural
ATTN: Dave Sanders
1405 SW Hwy 101
Lincoln City, OR 97367

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

Central Lincoln PUD
ATTN: Randy Grove
PO Box 1126
Newport OR 97365

Email: Lisa Phillips
DLCD Coastal Services Center
lisa.phillips@state.or.us

EMAIL
odotr2planmgr@odot.state.or.us

Joseph Lease
Building Official

Rob Murphy
Fire Chief

Tim Gross
Public Works

Derrick Tokos
Community Development Dept

Jason Malloy
Police Chief

Mike Murzynsky
Finance Director

Laura Kimberly
Library

Judy Mayhew
Interim Parks & Rec

Spencer Nebel
City Manager

Sherri Marineau

From: Sherri Marineau
Sent: Monday, December 23, 2019 8:10 AM
To: 'odotr2planmgr@odot.state.or.us'; 'lisa.phipps@state.or.us'
Subject: Variance Permit File 1-VAR-19
Attachments: File 1-VAR-19 - Notice.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments. We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
 City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 ph: 541.574.0629 fax: 541.574.0644
s.marineau@newportoregon.gov



Sherri Marineau

From: Sherri Marineau
Sent: Monday, December 23, 2019 8:11 AM
To: Derrick Tokos; Spencer Nebel; Tim Gross; Robert Murphy; Michael Murzynsky; Joseph Lease; Jason Malloy; Laura Kimberly; Judy Mayhew
Subject: RE: Geologic Permit - 9-GP-19

Please note that the previous email was for a Variance Permit File No. 1-VAR-19, not a Geologic Permit.

Thank you,

Sherri

From: Sherri Marineau
Sent: Monday, December 23, 2019 8:10 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>; Spencer Nebel <S.Nebel@NewportOregon.gov>; Tim Gross <T.Gross@NewportOregon.gov>; Robert Murphy <R.Murphy@NewportOregon.gov>; Michael Murzynsky <M.Murzynsky@NewportOregon.gov>; Joseph Lease <j.lease@newportoregon.gov>; Jason Malloy <J.Malloy@newportpolice.net>; Laura Kimberly <L.Kimberly@NewportLibrary.org>; Judy Mayhew <J.Mayhew@NewportOregon.gov>
Subject: Geologic Permit - 9-GP-19

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments. We must have your comments at least 10 days prior to the hearing period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
 City of Newport
 Community Development Department
 169 SW Coast Highway
 Newport, OR 97365
 ph: 541.574.0629 fax: 541.574.0644
s.marineau@newportoregon.gov



CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Planning Commission of the City of Newport, Oregon, will hold a public hearing in the City Hall Council Chambers at 7:00 p.m. on Monday, January 13, 2020, to consider File No. 1-VAR-19, which is a request submitted by J.T. Roth, Jr. The request is for an approval of a variance to Sections 14.11.010/“Required Yards” and 14.11.030/“Garage Setback” of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10-foot setback. This constitutes a 5-foot variance (33% deviation) from the 15-foot front yard setback, and a 10-foot variance (50% deviation) from the 20-foot garage setback. The variance will apply to all three building lots at 1515, 1525, & 1535 NW Spring St; Assessor's Map 11-11-05-BB, Tax Lot 2300. Per Newport Section 14.33.060; the criteria for approval of a variance are: (A.) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (B.) The circumstance or condition in “A” above is not of the applicant’s or present property owner’s making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances. (C.) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard. (D.) Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations. (E.) The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access. (F.) Any impacts resulting from the Variance are mitigated to the extent practical. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address. Contact Derrick Tokos, Community Development Director, (541) 574-0626 (address above).

(FOR PUBLICATION ONCE ON FRIDAY, January 3, 2020)

In fact, digital devices that don't work can be devastating to your ability to function at home, at work and everywhere in between. If something goes haywire, the panic starts to set in, and you are desperate for any possible way to recover the lost information. Unfortunately, as our dependency on our devices has increased, so have the number of reports that the FBI's

Here's one version of how the scam works: you find someone online to fix your problem and pay the requested amount for the repair services. Shortly after, you receive a call from a scam-

At this point, the caller asks for access to your computer, and you watch as he supposedly

tim wants to help
authorizes a trial
of several thousand
dollars back. Only
does the victim dis
that it was all a scam.
To avoid this scam:
- Use a tech support
company that you
and trust. Research
name of the company
with words such as
“scam,” “fraud” or
“plaints.”

L
W

January 8, 2020

Newport Planning Commission

Applicant J.T. Roth, Jr.

Map 1-11-05-BB, Tax Lot 2300 (1515, 1525, & 1535 NW Spring St.)

Re: January 13, 2020 Public Hearing 1-VAR-2019 Request for Variance, Front Setback

Partly for nostalgia's sake, I am attaching a 1979 request for a front setback variance on the property just north of Mr. Roth's three lots on NW Spring St. The applicant, in his request for front setback variance, mentions this adjacent property, 1541 NW Spring St. Under Finding of Fact 5.a. in paragraph 2, the applicant states that this property to the north has a front yard setback of approximately 10', similar to his variance request. Applicable criteria NMC 14.33.060 (A) reads "a circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district." Yes, the property to the north did receive such a variance. However, the property directly to the south, 1505 NW Spring St., did not. Applicant was being selective in making his point.

In the attached minutes on the 1979 requested variance, the City Planner "Robert Beal stated that each piece of property on the coast is different and that by granting a variance to one does not mean that a variance will be granted to another. Each piece of property must be considered on its own merits." Variances are the exception to the rule not the other way around.

The applicant under Finding of Fact 5.a. makes the case that by not having structures closer to the street, those structures would then be pushed back closer to the steep sloped embankment. From this argument, it would appear that the structures are not being designed (and the structures are not yet designed) to fit the lots but that the code is being altered to fit a non-existent building plan (see Attachment 2, concept site plan). Instead of altering code, the depth of the buildings could reasonably be modified and comparably accomplish the applicant's goal in preserving the integrity of the steep sloped embankment. In fact, if there was true concern about the integrity of the steep sloped embankment, the applicant wouldn't be, essentially, clear cutting these three treed lots.

I accept the narrative under 5.b. at face value.

Under 5.c., again, staying within the confines of code, the depth of all buildings could be modified and comparably accomplish a stated goal. The applicant has not

provided any substantive demonstrable evidence of “practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.”

Under 5.d., “Adverse physical impacts may include, but are not limited to...” During extensive review of land use applications, when I read “noise” impact, visual impact is often included in the listing. From basic geometry, a structure 30’ in height with a 10’ setback from the front property line is going to intrude further into the skyline than either the code setbacks of 15’ and 20’. Of course, this will depend on a neighbor’s perspective, but the applicant’s last point under d. is misleading.

I will agree with the narrative under 5.e. when it states that improvements are needed to this neighborhood’s storm drainage system. Although, in his narrative, the applicant refers to Exhibit 4 as if it validates his point that the proposed variance will not interfere with access to the existing utilities, I see no reference to these variances in Exhibit 4 so, superficially at least, this is a conclusory statement with no evidence in the record substantiating this is the case.

As to mitigation, 5.f., the applicant’s first argument does not take into consideration visual impact. No need to mitigate if reasonable code requirements are met. The second argument, again, does not consider modifying the dimension of depth of structure. No need to mitigate if code requirements are met. There is no practical difficulty or unnecessary hardship and no substantial evidence that would be the case.

The attached 1979 minutes of the consideration of a similar variance request and the attached petition show my parents signed the petition forty years ago, and my father spoke at the hearing. It is telling a number of neighbors signed that petition. Our neighborhood is now riddled with vacation rentals, and community involvement has diminished (that is a conclusory statement).

The application lacks substantial evidence, contains conclusory statements, and, whether intentional or not, contains misleading statements. Variance request 1-Var-19 must be denied.

Thank you for your attention.

Mona Linstromberg
Family home: 1442 NW Spring St.
Newport, OR 97365 Lindym@peak.org

Please enter in the record

Planning Commission
May 14, 1979
7:30 P.M.

The Planning Commission met in regular session on the above date, Chairman Nielsen presiding. Commissioners present were Jan Monroe, City Planner, Rober Beal, Vice-Chairman, Jean Barker, Ray Carter, Jack Gesik, Mark Collson and Barbara Spangler.

Minutes of the previous meeting were approved.

The first item of business was a public hearing on a request for a Conditional Use permit for Mariner Enterprises to place an Antique Car and Wax Museum in an M-1 zone. The City Planner gave an oral presentation of his staff report, and a written copy is on file.

At the conclusion of the staff report, Chairman Nielsen asked if there were any objections. There were none.

Attorney Kurt Carstens, representing Mariner Enterprises, introduced proponents and asked Mr. John Storrs to speak first in favor of the proposed plan.

Mr. John Storrs of 11925 S.W. Military Road, Portland, Oregon is an Architect who was active in the development of the Salishan Resort area. He presented a model of the proposed structure and parking area to the committee. Mr. Storrs also presented drawings of the proposed structure emphasizing the parking which would be available to the public.

Mr. Robert Updenkelder of 319 N.W. 26th, Newport, Oregon also spoke in behalf of the proponents stating that the zoning of this land was from a plan made years ago. He stated that people are attracted to the bay front in Newport and that this building has been designed so that it could be turned into something else if necessary.

Mr. Kurt Carstens spoke in behalf of the proponents. He stated information from the Jack Jarvis report which said that by 1980 there will be a projected 2,500,000 tourists visiting the City of Newport. He further stated that the goals of this city should be to increase the facilities for tourism. He stated that a street would be put in to the east of the Yeck property, along with the proposed parking and, therefore, the proposal should not increase traffic congestion on the bay front.

He gave his interpretation of the LCDC goals and guidelines referring to Goal 16 (Estuarine Goal) and Goal 17 (Shore Lands Goal). He presented the committee with a topographic survey (on file) and a survey done on the land (on file).

Attachment to comment on variance request 1-VAR-19
see pages 2 and 3, 1979 minutes on variance request 1541 NW Spring St.
see pages 5 through 10 for petition in opposition, staff report, and following comments in opposition

He also presented to the committee a study made of both sides of Bay Blvd. from the Coast Guard Station to the Embarcadero (on file), and a listing of enterprises backed by the Wax Museum in the City of Newport (on file). He further mentioned that people taking buses would be able to embark or disembark on the provided walkway in front of the museum.

Elaine Baker of 665 N.W. Nye Street, Newport, Oregon from Neptunes Wharf stated that she was in favor of the proposed structure and would be the closest neighbor to the development.

Chairman Nielsen asked if there was any cross examination of the proponents. There was none.

Bob Jacobson of 2176 N.W. Ocean View Drive, Newport, Oregon spoke on behalf of the opponents. He is a Marine Extension Agent, a fisherman and President of the Coast Fishermens Association.

He stated there has been a tremendous increase in the fishing industry and that the land in question could be utilized further for the fishing industry.

Chairman Nielsen asked if there was any cross examination of the opponents.

Jan Monroe received a letter from the Port of Newport asking the Planning Commission "to take a hard look" at this proposal, (the letter is on file).

Kurt Carstens then presented rebuttal for the proponents. He asked the question, What marine use in an M-1 zone can be made of this property that is in need now? He further stated that the marine related possible use for this property is minimal.

The public hearing was closed at 9:02 P.M.

After questions by the commission, it was proposed that the deliberations be continued to the next Planning Commission meeting on Tuesday, May 29, 1979, in order to give the commission time to "digest" the material presented. It was moved by Robert Beal and seconded by Barbara Spangler that finding of facts be prepared and sent to the Planning Commission by proponents and opponents for their review. There were six ayes and two nays.

A ten minute recess was then declared.

The next item on the agenda was a request from Mr. R.D. Stumpf to build a duplex as a third story on an existing building. The proponent was not present for the hearing, and the public hearing was continued to May 29, 1979.

1541 Spring St. just
north of Roth
property

The next item on the agenda was a public hearing of a variance for Ivan Sundstrom. The City Planner presented his staff report, and a written copy is on file.

At the conclusion of the staff report, Chairman Nielsen asked if there were any objections to the jurisdiction of the deliberating body. There were none. It was then asked if any member wished to abstain.

Ivan Sundstrom of 2392 Cleveland Street, Eugene, Oregon (the proponent) spoke in favor of the variance. He stated that soil engineers and architects worked on this project. He stated that if the variance is granted, the structure would still be under the 30 foot limit. He presented the committee with aerial photos of the surrounding land and a drawing of the proposed structure.

Chairman Nielsen asked if there were any further proponents present at the hearing. There were none. It was asked if there was any cross examination of the proponents. There was none.

Paul Creech of 544 N.W. 15th Street, Newport, Oregon spoke on behalf of the opponents. He stated that if a 10 foot variance is allowed for one person then a variance would have to be allowed for anyone requesting it. He presented a petition to the committee opposing this structure.

Robin Linstromberg of 1442 N.W. Spring Street, Newport, Oregon stated on behalf of the opponents that rules that are set down should be followed with no exceptions.

Chairman Nielsen asked if any further opponents wished to speak. It was then asked if there was any cross examination of the proponents. There was none.

Mr. Ivan Sundstrom stated his rebuttal at this time. He stated that the pole structure is a most effective design in an area that landslides occur. He further stated that this is a well designed project.

The public hearing was closed at 9:53 P.M.

Members of the committee discussed the proposal. Robert Beal City Planner stated that each piece of property on the coast is different and that by granting a variance to one does not mean that a variance will be granted to another. Each piece of property must be considered on its own merit.

Barbara Spangler stated that this proposed structure is probably more stable than other structures along the coast.

It was moved by Jack Gisek and seconded by Mark Collson that the variance be granted as recommended in the staff report. It was also stated that they adopt the staff report recommendation as the finding of facts. There were five ayes, with Jean Barker voting nay and Ray Carter abstaining.

The last item of business, not on the agenda, was a request by the Community First Savings and Loan Association to receive a temporary building permit.

Philip Hutchinson of 316 N.E. 6th, Newport, Oregon spoke on behalf of the Community First Savings and Loan Association. He requested a temporary building permit for a mobile office to be located on the corner of Highway 101 and N.E. Lee Street. He presented the committee with a drawing of the completed structure. He further stated that they hope to construct the building while leaving the mobile home intact and that they plan construction of the building within one to two months.

It was moved by Mark Collson that they approve a temporary building permit for a period of nine months. It was seconded by Jack Gesik. The commission unanimously approved the permit.

There being no further business, the meeting was adjourned at 10:10 P.M.

Marsha Stewart,
Secretary to the City Planner

RECEIVED

MAY 14 1979

May 10, 1979

CITY OF NEWPORT

TO: Planning Commission of the City of Newport
Newport, Oregon 97365

In reference to your letter regarding the request for a variance of 10 feet to the required 20-foot front yard setback, reducing the front yard to 10 feet for the property of Lot No. 4, Block No. 49, Oceanview Subdivision, the under-signed object to a variance of any or all kinds on Northwest Spring Street between streets 12th through 16th:

Jo Norgorden	1522 NW Spring	(OWNER)
Robin C. Linstromberg	1442 N.W. Spring	(OWNER)
Pat J. Linstromberg	1442 N.W. Spring	(OWNER)
Dorothy Dee Groves	1420 N.W. Spring	(OWNER)
Connie Gates	510 N.W. 15 TH	(OWNER)
Paul Creed	544 N.W. 15 TH St.	(OWNER)
Agnes Creep	544 N.W. 15 TH St.	(OWNER)
William Johnson	1534 N.W. Spring	(RENT)
Carole Johnson	1534 N.W. Spring	(RENT)
Carolyn M. McKean	1426 N.W. Spring	(OWNER)
Louis H. Forsythe	1404 N.W. Thompson	(OWNER)
Roberta A. Forsythe	1404 N.W. Thompson	(OWNER)
Nancy Luther	1312 NW Thompson	(OWNER)
Larry D. E. Paul	1346 N.W. Spring	(OWNER)
Gene W. Powell	1340 NW Spring	(OWNER)
Sharon Heth	1330 NW Spring	(owner)
Thomas + Earle	1320 N.W. Spring	(owner)

May 10, 1979

TO: Planning Commission of the City of Newport
Newport, Oregon 97365

In reference to your letter regarding the request for a variance of 10 feet to the required 20-foot front yard setback, reducing the front yard to 10 feet for the property of Lot No. 4, Block No. 49, Oceanview Subdivision, the under-signed object to a variance of any or all kinds on Northwest Spring Street between streets 12th through 16th:

Maria Branford
Ben Mason

1242 NW Spring St (OWNER)
1405 NW Thompson (OWNER)

Mr. & Mrs. LeRoy A. Schroeder

1427 NW Thompson
Newport (OWNER)

Mr. & Mrs. Douglas Barclay

1450 N.W. Thompson
Newport (OWNER)

Mr. & Mrs. Alvin Butch

1217 NW - Oceanview Dr. (owner)
Newport, Or.

Cora McDowell

1452 NW Spring (owner)

Charles W. McDowell

1452 N.W. Spring Street owner

Richard L. Mason

1405 N.W. Thompson - OWNER

Planning Commission Staff Report
Prepared for Presentation 14 May 1979

Applicant: Ivan L. Sundstrom

Request: Approval of a variance of 10 feet to the required 20 feet front yard set back, reducing the front yard to 10 feet.

Location: Lot #4, Block #49, Ocean View Addition (On the west side of Spring Street between 15th and 16th).

Comprehensive Plan Designation: LOW DENSITY RESIDENTIAL

Current Zoning: "R-2", Two Family Residential.

Analysis: The property owner seeks to build a pole foundation building on his property. Because of the unusual topography (a steeply sloping bank) if the house were to be built at street level with the minimum setbacks, the house would exceed the height limit for this zone (30 feet). The alternatives appeared to be: One-redesign the building, Two-ask for a height variance, or Three-ask for a front yard variance and move the structure closer to the property line. The least expensive option is to move the structure closer to the street and this is what the owner has requested. In addition, moving the structure further from the ocean should add additional life to the structure. A GEOLOGICAL HAZARD REPORT has been performed and recommended the type of design the owner will use. (See letter).

I have received letters from Jon Carnahan and Charles and Cora McDowell opposing the variance and Herman Ruddell not opposed. Mr. Donald Knight called me and said he had no objection. The opposition to this proposal apparently stems from any building rather than this specific proposal and a

general complaint against traffic congestion. The solution to the prevention of building would have been through purchase of the property by those opposed to such building. The question of access from Spring Street is a legal right for the property abbatting it as in any subdivision. The solution to the problem of encroachment from traffic on Spring Street or property on the east side would be through the construction of curbs purchased through a local improvement district where benefitting property owners would pay the costs.

Recommendation: I recommend that the variance be granted because of the exceptional conditions due to topography as the variance is necessary to preserve the property right of the applicant who has no control over the topography or the location of the street. I do not believe that this variance is materially detrimental to the purposes of this ordinance nor would it injure adjoining property anymore than a building which conformed to the zoning ordinance.

D. Jon Carnahan
180 NW Merrill Place
Albany, OR 97321
May 8, 1979

Jan E. Monroe
City Planner
810 SW Alder Street
Newport, OR 97365

Dear Ms. Monroe:

Because I live in Albany, I will be unable to make it to the public hearing on May 14, 1979, concerning the variance on the front yard setback of Lot #4, Block #49, Oceanview Subdivision. I would, however, like you to know our feeling concerning this variance.

To my knowledge, there have not been any variances approved concerning setbacks in our immediate area and I do not feel that it would be appropriate to approve one at this time. The property remaining in our area is, at best, difficult to build on and I feel that with this approval, it may set a precedence and others would request additional variances in order to build.

Thank you for your information concerning this matter.

Sincerely,



Jon Carnahan

JC:scv

Charles & Cora McDowell

1452 Spring Street

Newport, Oregon

May 8, 1979

Planning Commission

City of Newport

Re: Variance to Ivan Sundstrom

Lot No.4, Block No. 49, Oceanview Subdivision

We would like to go on record opposing granting a variance of 10 feet to the required 20 feet front yard setback to the Sundstrom property.

The parking in this area is extremely limited and a constant source of trouble. We have serious traffic congestion in this area now because of three duplex units below Spring Street. Many of their cars must park on Spring Street because their hill is too steep to navigate.

We need relief from the congestion already there. Granting this variance would only compound our traffic problems.

Yours truly,

Charles & Cora McDowell

Charles & Cora McDowell