



**PLANNING COMMISSION REGULAR SESSION AGENDA**  
**Monday, September 14, 2020 - 7:00 PM**  
**City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365**

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This meeting will be held electronically. The public can live-stream this meeting at <https://newportoregon.gov>. The meeting will also be broadcast on Charter Channel 190. Public comment may be made, via e-mail, up to two hours before the meeting start time at [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov).

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.

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**1. CALL TO ORDER AND ROLL CALL**

**2. APPROVAL OF MINUTES**

**2.A Approval of the Planning Commission Regular Session Meeting Minutes of August 24, 2020.**

[Draft PC Reg Session Minutes 08-24-2020](#)

**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**

**5. PUBLIC HEARINGS**

**5.A File 1-VAR-20: Variance to Allow the Completion of the Construction of Four Partially Built Attached Dwelling Units Located in a Geologic Hazard Area.**

[Staff Report](#)

[Attachment A.](#)

[Attachment B](#)

[Attachment C](#)

[Attachment D](#)

[Attachment E](#)

[Attachment F](#)

[Attachment G](#)

[Attachment H](#)

[Additional Testimony - Charlotte Boxer](#)

**6. NEW BUSINESS**

**6.A Planning Commission Availability for Special Meeting on the Week of October 12, 2020.**

**7. UNFINISHED BUSINESS**

**8. DIRECTOR COMMENTS**

**9. ADJOURNMENT**

*Draft* MINUTES  
City of Newport Planning Commission  
Regular Session  
Newport City Hall Council Chambers by Video  
August 24, 2020

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

**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 Hardy, Berman, Franklin, East, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Work Session Meeting Minutes of August 10, 2020 and the Planning Commission Regular Session Meeting Minutes of August 10, 2020.

Commissioner Berman submitted minor corrections to both meeting minutes.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission Work Session and Regular Session Meeting Minutes of August 10, 2020 with minor corrections. The motion carried unanimously in a voice vote.

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

4. **Action Items.**

A. **File 1-PD-20: Final Order and Findings for the OSU Student Housing Planned Development Amendments.**

Hardy wanted it noted that the questions the Commission asked about occupancy and the fire code for the development hadn't been answered. She thought the occupancy density was too high given the square footage of the units, and the parking was one third of the capacity of the units. Hardy thought this was poorly thought out. Franklin agreed with Hardy's comments.

**MOTION** was made by Commissioner Branigan, seconded by Commissioner East, to approve the Final Order and Findings for File No. 1-PD-20 with conditions. The motion carried in a voice vote. Commissioners Hardy and Franklin were a nay.

5. **Public Hearings.** At 7:04 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. None were heard. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

**A. File 1-Z-20.**

Tokos reviewed the staff report and covered the change to the 3-vehicle limitation cap on commercial, industrial, or public properties, and residential landlord-tenant laws. He explained that there were amendments other than those for car camping. Tokos reviewed the updates to Chapters 6.25, 9.50, 9.80, 14.03, and 14.06. He explained that the Commission would be giving a recommendation to the City Council. The Council would have a work session meeting on September 8th and a public hearing on Sept 21st.

Berman question why they wouldn't set the vehicle limit to the normal capacity of a porta potty instead of just over three vehicles. Tokos said this could be done and the Commission could set the occupancy to what they thought would be appropriate without requiring a permitting review process. Franklin was concerned that commercial and industrial areas were being used as housing in South Beach. He questioned if this would allow residential use in the areas where the residential wasn't allowed. Tokos explained the ordinance was targeted to car camping for homeless individuals and wouldn't affect this. Patrick had concerns about facilities allowing parking spaces to be used up for camping that would take away from the specific number of required parking spaces for business.

East noted that some ordinances were set up for car camping for homeless who had jobs and worked. He asked if this was the type of people they anticipated camping. Tokos thought it would vary. Berman didn't think there was a way to enforce this for homeless people. He was concerned that a business who needed employees would offer the spaces to staff instead of the homeless. Berman didn't think there was a way to distinguish who was homeless or not. Tokos said this example was a good reason to limit to three vehicles. Hanselman thought three vehicles would give everyone a chance to see how it was adopted by the community and whether there was a need to expand it based on the behavior and success of the program. He asked how "place of worship" was defined. Hanselman was concerned about places of worship ending up in homes in a residential area and creating a battle with homeowners. Tokos wasn't sure a place of worship had been defined. Berman thought there should be a definition. Tokos explained that if someone claimed their house was a place of worship it would be defined as an additional use and would be subject to a land use action. Hardy asked if the city would ask for a permit for anyone who wanted to institute car camping on their religious or commercial property. Tokos explained that this would be limited to three vehicles and there wouldn't be a permit.

Berman suggested instead of setting the hard number vehicles to three, they could add a conditional use provision to justify more than three. Patrick noted they would need a clear and objective standard to apply in order to grant the conditional use. He suggested they just start at three vehicles, see how it went, and then consider expanding later. Hardy thought there should be a permit process. Branigan asked if the three vehicle limit applied to public areas as well as commercial and religious properties. Tokos confirmed that it was.

Franklin thought a permitting process should be done without a fee, but with an inspection. Hardy suggested they ascertain liability coverage. If a problem occurred it would go back on the property owners, most of whom would be ignorant on what they were responsible for if something happened on their property. Patrick like requiring a permit to make sure they were complying, and to insure they knew all the parts of what they were signing up for, such as number of vehicles and access to facilities. Tokos thought they could do a simple permit. He recommended this be added to a motion to present it to the City Council.

Patrick asked if the Commission wanted to limit this to 30 day stays. Branigan liked it limited to 30 days. Berman thought they should leave it open and make it clear to the land owner they could make their own decision on length of stay. Branigan was concerned that the landlords wouldn't understand this. Hardy noted there wouldn't be a way to determine if someone had been there for 30 days. If they set a time limit there would need to be documentation recorded on the stays. If there wasn't a time limit the neighborhood needed to be engaged and notified that the event was going to occur and how long it would last, otherwise

there could be the same resistance as seen with short-term rentals. Tokos agreed it would be hard to enforce a 30 day stay. The landlord-tenant laws would be between the host and the guest and he didn't think there was anything in the local code the city could do to impact that one way or the other. Franklin asked if a city code with a 30 day stay limit gave the person who was offering the space an opportunity to have a police officer show up to tell the campers to leave after 30 days. He was also concerned that someone could move from a different parking slot to start the time stay over. Tokos didn't know if a standard in the municipal code would affect landlord tenant laws. Any stay over 30 days would be between the owner and tenant, and there wasn't much in the municipal code that would impact it. Hardy noted it was very different to remove an unauthorized occupant who didn't have paperwork and wasn't paying rent. She explained that the protections for the property owner had deteriorated. So rather than solving the base problems of homelessness to get them self-sufficient, they put band aids on it. Tokos reminded that there was language put together for 30 day stays but it wasn't in the code. Berman wanted it left that way. Patrick thought they should pass on the 30 day stay, do a maximum of three vehicles, and add that a permit is required to show a plan on how they would comply with the rules. Tokos noted the permit would be to arrange an inspection to make sure they had the required components.

Berman suggested adding in Section 9.50.050 that sanitary facilities needed to be open 24 hours a day. Hardy asked if the facilities had to have more than just a toilet. Berman confirmed they did.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Hanselman to approve File 1-Z-20 with a positive recommendation to the City Council and include a change to require access to sanitary and trash facilities 24 hours a day/7 days a week, require a permit prior to occupancy, and make the maximum occupancy 3-vehicles with no time limit on stays. The motion carried in a voice vote. Hardy was a nay.

Berman requested that the Commission be informed if any facility chose to offer camping.

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

**7. Unfinished Business.**

**A. OSU Newport Housing - Biofiltration-Oil Removal.**

Tokos reported that documentation on the biofiltration-oil removal was provided for informational purposes. Patrick noted there was another biofiltration in place in Agate Beach.

**B. Work Program Update.**

Tokos reported the State wasn't where it should be as far as the middle housing piece. The Commission would have a September work session meeting to discuss. Tokos explained the Commission wasn't required to adopt middle housing codes but they had the option to do so under the statute.

Tokos reported the City Council asked to put together information for a work session to go over what they might do for electric vehicle (EV) readiness. The State Building Code Division was doing ongoing rulemaking to meet the Governor's' executive orders to make sure any new commercial construction and development would be required to have a level-2 fast charger or above. The State Building Codes Division had until 2022 to complete this. If the Council wanted to mandate that charging stations be installed, it would be a land use change that would have to go to the Planning Commission and would be in the parking code.

**8. Director Comments.**

Tokos reviewed the new virtual meeting policy concerning written comment for agenda items needing to be submitted by noon of the hearing. These written comments will be acknowledged in the meeting but not read into the meeting. Notification would need to be received by 2:00 p.m. in order to provide the dial in information to the participant. This would be included in the scripts of notices that were sent out going forward.

Tokos reported that Public Works Director, Tim Gross resigned his position effective October 5th. Hardy asked if they would be interviewing new candidates. Tokos explained that this was the City Manager's call and something he would have to tackle.

Berman asked if under the new policy the public would be able to join in the Zoom meetings and watch the proceedings without commenting. Tokos noted they would have to contact the city to be able to dial into the meeting. There were no rules that required them to provide comment if they joined the meeting.

**9. Adjournment.** Having no further business, the meeting adjourned at 7:59 p.m.

Respectfully submitted,

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Sherri Marineau  
Executive Assistant

**PLANNING STAFF REPORT**  
**File No. 1-VAR-20**

- A. **APPLICANT(S) & OWNER(S)**: Newport Townhomes, LLC (James Vick, manager).
- B. **REQUEST**: Approval of a variance to Section 13.05.030 "Lots and Parcels" of the Newport Municipal Code to allow the completion of the construction of four partially built attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05.030(H)). The foundations are located within an active landslide area. The applicant wants to finish the units and subdivide the property into four lots, each containing a townhome, as opposed to setting up the project as condominiums, which they could proceed to do without the variance. This constitutes a 100% deviation from the 1,000 square foot building area standard noted above.
- C. **LOCATION**: 815 SW 13<sup>th</sup> Street; Lincoln County Assessor's Map 11-11-08-CA, Tax Lots 3100 & 3500 (Lots 8 and 9, Block 1, Plan of Newport, and adjoining vacated rights-of-way).
- D. **LOT SIZE**: Roughly 7,405.2 square feet per Assessor's Map.
- E. **STAFF REPORT**:
1. **REPORT OF FACT**:
    - a. **Plan Designation**: High Density Residential.
    - b. **Zone Designation**: R-3/"Medium Density Multi-Family Residential."
    - c. **Surrounding Land Uses**: Surrounding uses include single-family detached, single-family attached, and multi-family structures to the north, south and west. Commercial development exists downslope to the east along the historic bayfront.
    - d. **Topography and Vegetation**: The property overlooks the bayfront. The property slopes moderately from the edge of sidewalk down to the west side of the foundations. From there it slopes steeply down to the neighboring commercial development. The site was cleared when the foundations were constructed. Grasses and blackberry have since reestablished.
    - e. **Existing Structures**: None.
    - f. **Utilities**: All are available to the property.
    - g. **Past Land Use Actions**: None.

h. **Notification:** All affected property owners within 200 feet, applicable city departments, and other agencies were notified on August 17, 2020. The public hearing notice was published in the Newport News-Times on September 4, 2020 (Attachment "H").

i. **Attachments:**

- Attachment "A" – Land use application form
- Attachment "B" – Lincoln County Property Reports (both tax lots)
- Attachment "C" – Property survey (Record No. 18726)
- Attachment "D" – Application narrative
- Attachment "E" – Aerial map with zoning designations
- Attachment "F" – Aerial map with landslide hazard and contours
- Attachment "G" – Site plan, building permit, and footing inspection records from 2007 City approval
- Attachment "H" – Public hearing notice

2. **Explanation of the Request:** Approval of a variance to Section 13.05.030 “Lots and Parcels” of the Newport Municipal Code to allow the completion of the construction of four partially built attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05.030(H)).

Applicant notes that this variance request is being made because they intend to continue construction of four townhomes with common/shared walls on what is now two building lots. They note that construction was started in 2007, but discontinued as a result of a recession. Construction was put on hold until the real estate market in the Newport area increased to the point that the project would be profitable. The property has remained in a partially constructed state for over a decade.

3. **Evaluation of the Request:**

a. **Written Comments:** As of September 10, 2020, 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.

The applicant notes in their narrative that the fact that construction of this project occurred prior to the enactment of the City ordinance in 2011, establishing the requirement that new lots possess at least 1,000 square feet of buildable area outside of an active landslide area, is a circumstance that does not apply to other properties in the same vicinity.

The ordinance the applicant is referring to is Ordinance No. 2017, effective August 17, 2011. That ordinance applied an active landslide overlay to most of applicant's property (Attachment "F") and established the requirement that new, undeveloped lots or parcels include at least 1,000 square feet of buildable area outside of active landslide areas (NMC 13.05.030(H)).

Applicant's site plan from 2007, and the approved building permit, show that they intended to construct townhomes (Attachment "G"), and the foundations physically evident on the property were constructed before work was stopped.

Townhouses, as opposed to a condominium project, require that each unit be placed on its own lot or parcel created by subdivision or partition (NMC 14.31.090). This provision was in the Newport Municipal Code in 2007 just as it is today. It is not uncommon for an applicant to apply to the City of Newport to subdivide property for townhouse purposes after the foundations are constructed to ensure the new lot/parcel lines align with the common walls. The provision in the City's subdivision code that the applicant is seeking a variance to would apply when a land division application is submitted.

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 may result from a situation that was not anticipated at the time the Code requirement was adopted. Most construction projects, once commenced, are completed within a couple of years. The reinforced concrete foundations built in 2007 are robust, making it evident that a substantial amount of work was performed before the project was put on hold. It would be reasonable for the Commission to find that a project so fully committed to a future use is a unique situation that was not anticipated when Ordinance No. 2017 was adopted.

Considering the above, 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.*

The amendments contained within Ordinance No. 2017 that now prohibit the applicant from moving forward with the townhouse project were initiated by the City of Newport as part of a comprehensive update to its geologic hazard ordinance. It was not a circumstance created by the applicant.

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

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

The practical difficulty present in the subject circumstance is the extent to which the property was committed to townhouse development at the time Ordinance No. 2017 went into effect. The foundations are setup in a common wall arrangement for the express purpose of dividing the property so that each dwelling would be on its own parcel/lot, as opposed to other foundation configurations that might be more conducive to a condominium development.

Additionally, were the applicant to proceed with developing the dwelling units, and then place them in a condominium form of development where units are individually owned and the land under common ownership, the result is four dwellings in an active landslide area. In other words, they can achieve the same result (i.e. four units) without the variance. The purpose of this code provision at issue, NMC 13.05.030(H), was to prevent new lots/parcels from being created that would force development to occur in an active landslide area. That objective can't be achieved here, in that the applicant can develop the property as a four-unit condominium project without triggering this provision of the subdivision code. Given this is the case, the Commission can reasonably find that preventing the applicant from achieving their desired "ownership arrangement" with the same number of dwelling units is an unnecessary hardship.

Considering the above, it is reasonable for the Commission to find that this criterion 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.*

The variance requested is to a dimensional requirement in the subdivision ordinance that applies to the division of land. Foundations for the dwelling units are in place to support a condominium project, without the variance, or townhouse units if the variance is granted. Physical impacts attributed to either option are the same.

Considering the above, it is reasonable for the 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.*

The property abuts SW 13<sup>th</sup> Street, which is a fully developed public street with curb, gutter, and sidewalk. With a townhouse development, utilities will be extended to individual lots whereas with a condominium they can be configured off of a shared service. In either case, utilities are available within the SW 13<sup>th</sup> street right-of-way to meet the needs of the development.

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

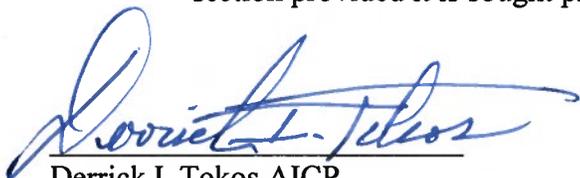
*Criterion #6. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography,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

The physical extent of the development will be the same whether or not the project moves forward as condominiums or townhouses.

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. 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

September 10, 2020



# City of Newport Land Use Application

**Attachment "A"**  
1-VAR-20

Applicant Name(s):	Property Owner Name(s) if other than applicant
Newport Townhomes, LLC	
Applicant Mailing Address:	Property Owner Mailing Address:
3317 Augusta National Dr. S. Salem, OR 97302	
Applicant Phone No.	Property Owner Phone No.
503-302-3210	
Applicant Email	Property Owner Email
jimvick2020@outlook.com	
Authorized Representative(s): Person authorized to submit and act on this application on applicant's behalf	
James D. Vick, Manager	
Authorized Representative Mailing Address:	
_____	
Authorized Representative Telephone No.	
_____	
Authorized Representative Email.	

**Project Information**

Property Location: Street name if address # not assigned  
S.W. 13th Street

Tax Assessor's Map No. 11-11-08-CA-0350-00 / 11-11-08-CA-03100-00 Tax Lot(s) R404491 R397440

Zone Designation: R-3 Medium Density Multi-Family Legal Description: Add additional sheets if necessary  
NEWPORT, BLOCK 1, LOTS 8 and 9

Comp. Plan Designation: High Density Residential

Brief description of Land Use Request(s):  
Examples:  
1. Move north property line 5 feet south  
2. Variance of 2 feet from the required 15-foot front yard setback  
Variance from 1000 square foot building footprint requirement.

Existing Structures: if any Concrete Foundations

Topography and Vegetation: Hillside - no trees

**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 checked="" 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
<input type="checkbox"/> Design Review	<input type="checkbox"/> Subdivision	<input type="checkbox"/> Amendment
<input type="checkbox"/> Geologic Permit	<input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> Other

FOR OFFICE USE ONLY

File No. Assigned: 1-VAR-20

Date Received: 7/30/2020 Fee Amount: 594- \$ Date Accepted as Complete:

Received By: sm Receipt No. 4267 \$ Accepted By:

City Hall  
169, SW Coast Hwy  
Newport, OR 97365  
541.574.0629



## City of Newport Land Use Application

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 and 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.

<i>Newport Townhomes, LLC by</i> Applicant Signature(s)	<i>7/27/20</i> Date
<i>James D. Vitek, Manager</i>	
<i>[Signature]</i> Property Owner Signature(s) (if other than applicant)	Date
Authorized representative Signature(s) (if other than applicant)	Date

**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

**Attachment "B"**  
1-VAR-20

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R404491	Neighborhood:	NENB	Owner and	NEWPORT TOWNHOMES LLC
Map Taxlot:	11-11-08-CA-03500-00	Property Class:	100	Mailing Address:	ATTN BOOKS TO GO 8101 SW NYBERG ST #218 TUALATIN, OR 97062
Tax Map:	11s11w08CA			Site Address(es):	815 SW 13TH ST
Web Map:	<a href="#">View Map</a>				
Info:	NEWPORT, BLOCK 1, LOT 8 & PTN VAC ALLEY ADJ, 13/14 VALUE SUSTAINED BY BOPTA, 2010/11 VALUE SUSTAINED BY BOPTA, DOC200710684				
Document:	DOC200710684				
Tax Code:	104				
Acres:					

Improvements					
No Inventory					
Value History					
Year	Imp.	Land	Total Market	Total Assessed	Levied Tax
2019	0	109,340	109,340	76,950	1,398.81
2018	0	117,750	117,750	74,710	1,355.82
2017	0	117,750	117,750	72,540	1,343.83
2016	0	117,750	117,750	70,430	1,315.39
2015	0	117,750	117,750	68,380	1,219.51
2014	0	117,750	117,750	66,390	1,192.06
2013	0	117,750	117,750	64,460	1,130.50
2012	0	117,750	117,750	62,590	1,085.25
Sales History					
Sale Date	Price	Document	Type	Code	
07/16/2007	\$280,250	200710684	33	BSD	
02/03/2006	\$295,000	200602528	31	WD	
06/17/2005	\$130,000	200509441	32	WD	
02/18/2000	\$53,000	MF397-1816	20	WD	

Land	Related Accounts	Disclaimer								
<table border="1"> <thead> <tr> <th>Description</th> <th>Acres</th> <th>Market Value</th> <th>Special Use Value</th> </tr> </thead> <tbody> <tr> <td>UNDEV BAYVIEW LOT 0.1</td> <td>109,340</td> <td></td> <td></td> </tr> </tbody> </table>	Description	Acres	Market Value	Special Use Value	UNDEV BAYVIEW LOT 0.1	109,340				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,
Description	Acres	Market Value	Special Use Value							
UNDEV BAYVIEW LOT 0.1	109,340									

and development rights on  
specific properties before  
making decisions based on this  
information. **Tax data exported  
10/2019.**

Today's Date: 09/10/2020

# Lincoln County Property Report

Account # & Prop. Info		Account Details		Owner & Address	
Account #:	R397440	Neighborhood:	NENB	Owner and	NEWPORT TOWNHOMES LLC
Map Taxlot:	11-11-08-CA-03100-00	Property Class:	100	Mailing Address:	ATTN BOOKS TO GO 8101 SW NYBERG ST #218 TUALATIN, OR 97062
Tax Map:	11s11w08CA			Site Address(es):	815 SW 13TH ST
Web Map:	<a href="#">View Map</a>				
Info:	NEWPORT, BLOCK 1, LOT 9, PTN OF & VAC ALLEY, 13/14 VALUE SUSTAINED BY BOPTA, 2010/11 VALUE SUSTAINED BY BOPTA, DOC200710684				
Document:	DOC200710684				
Tax Code:	104				
Acres:					

Improvements					
No Inventory					
Value History					
Year	Imp.	Land	Total Market	Total Assessed	Levied Tax
2019	0	105,210	105,210	62,320	1,132.85
2018	0	113,300	113,300	60,510	1,098.10
2017	0	113,300	113,300	58,750	1,088.36
2016	0	113,300	113,300	57,040	1,065.32
2015	0	113,300	113,300	55,380	987.66
2014	0	113,300	113,300	53,770	965.49
2013	0	113,300	113,300	52,210	915.67
2012	0	113,300	113,300	50,690	878.92
Sales History					
No Sales Data					

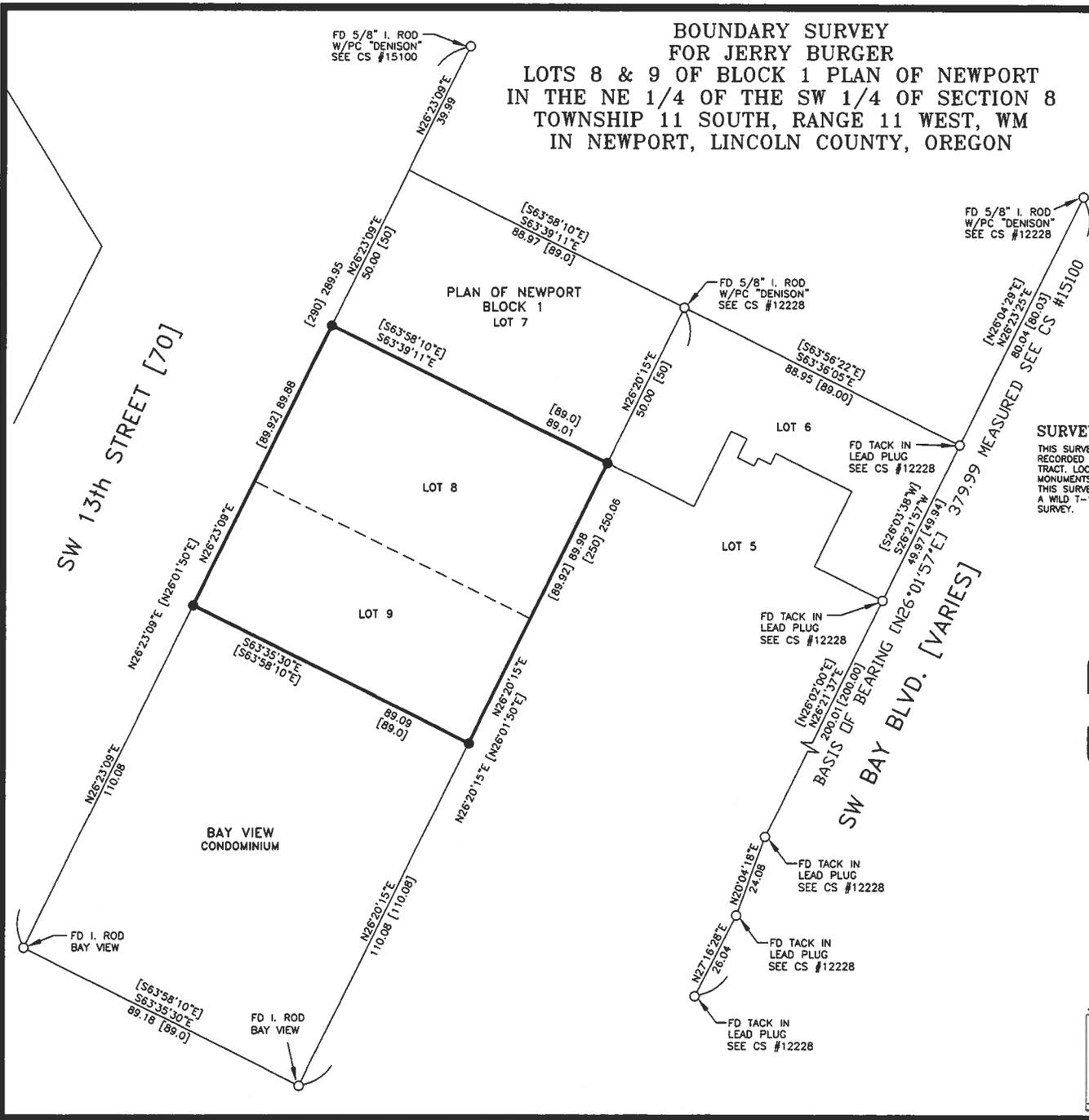
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Description	Acres	Market Value	Special Use Value							
UNDEV BAYVIEW LOT 0.07	105,210									

Today's Date: 09/10/2020

BOUNDARY SURVEY  
FOR JERRY BURGER  
LOTS 8 & 9 OF BLOCK 1 PLAN OF NEWPORT  
IN THE NE 1/4 OF THE SW 1/4 OF SECTION 8  
TOWNSHIP 11 SOUTH, RANGE 11 WEST, WM  
IN NEWPORT, LINCOLN COUNTY, OREGON

C.S. # 18720

FILED 11 September 2010  
LINCOLN COUNTY SURVEYOR



- LEGEND**
- FOUND SURVEY MONUMENT AS SHOWN
  - SET 5/8" x 30" IRON ROD WITH A PLASTIC CAP "LOOMIS PLS 1908"
  - [ ] RECORD DATA
  - PROPERTY DEED BOUNDARY

**SURVEYOR'S NARRATIVE**  
THIS SURVEY WAS DONE TO MARK THE BOUNDARY OF LOT 8 AND 9 BLOCK 1 PLAN OF NEWPORT, RECORDED IN DOC: 200602528 LINCOLN COUNTY RECORDS PRIOR TO A SUBMISSION OF SAID TRACT. LOCAL MONUMENTS WERE FOUND AND LOTS WERE PROPORTIONED BETWEEN FOUND MONUMENTS. THIS SURVEY WAS STARTED IN 2007 AND DROPPED LATER THAT YEAR. A WILD T-1600 ONE SECOND THEODOLITE AND EDM WERE USED TO GATHER THE DATA IN THIS SURVEY.

REGISTERED PROFESSIONAL LAND SURVEYOR  
*David Loomis*  
OREGON  
JULY 18, 1980  
DAVID A. LOOMIS  
1908  
RENEWAL DATE:  
JANUARY 1, 2011



1" = 20'



SURVEY FOR: JERRY BURGER  
LOCATION: 11-11-08-CA-3100 & 3500  
LOT 8&9 BLOCK 1 PLAN OF NEWPORT

SURVEYED BY



**DAVID LOOMIS SURVEYING**  
= DAVID A. LOOMIS LS 1908 =  
459 PIONEER MOUNTAIN LOOP  
TOLEDO, OR, 97391  
541.336.2994 - 541.270.2928  
FAX: 541.336.2994

CHECKED BY: DAL  
DRAWN BY: SAM  
SCALE: 1" = 20'  
DATE: JAN 2010  
No. 0106-068

## REQUEST FOR VARIANCE

**Petitioner:** Newport Townhomes LLC  
**Legal:** Newport, Block 1, Lots 8 and 9  
**Map:** 11-11-08-CA-03100-00  
11-11-08-CA-03500-00  
**Submitted:** July 29, 2020

Petitioner requests a variance from the NMC 13.05.030(H) requirement of 1000 square feet lot size required by the ordinance. The ordinance reads as follows:

### THE ORDINANCE

H. Lots and Parcels within Geologic Hazard Areas. Each new undeveloped lot or parcel shall include a **minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones)**. New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.  
**(13.05.030(H) added by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)**

### THE PROJECT

Petitioner intends to continue construction of four townhomes with common/shared walls on **what is now two building lots. Construction of these townhomes was begun in 2007. The lots are partially in a geologically hazardous zone. The four units will be a continuous structure** spanning the two lots on which they are situated. The building plans have been slightly modified to meet new code upgrades. We are pending approval of the plan from the City of Newport and intend to start construction immediately thereafter.

### THE RECESSION

Construction of these townhomes was begun in 2007. Shortly thereafter a decision was made **to stop work when it was evident that there was a dramatic drop in prices in the coastal real estate market. Further construction was put on hold until prices increased making profitable construction feasible.** Unfortunately, market conditions were extremely slow to recover at the Oregon coast. The project has remained in its partially constructed state for over a decade.

### THE VARIANCE REQUEST

Because construction of this project was begun prior to the enactment of the ordinance in 2011, the situation here is unique to this property. These circumstances do not apply to other properties in the same vicinity.

As mention above, **petitioner commenced construction on this project prior to the time that the Newport Municipal Code provision (H.) enacted.** Major hillside excavation had been done

and the concrete foundations for the buildings had been poured. These foundations have remained in place and the project status unchanged until now. The site has remained stable.

Petitioner is currently desiring to resume construction. Building plans have been updated to meet new City of Newport code requirements.

**A circumstance such as this, that is, a partially completed project, was not anticipated at the time the code requirement was adopted. Had petitioner requested this partition at the time construction began, it would most like have been routinely granted.**

The reason for requesting this partition now is to change the legal title so that an individual fee simple conveyance may be given to townhome purchasers. If the partition is granted, purchasers of these townhomes would receive a deed conveying fee simple ownership to their property.

If the partition is not granted, one of two things would occur. Either the density would be reduced to two units instead of four units, or a condominium association would have to be formed. Both results affect the use of this property negatively to a degree greater than surrounding properties.

Reducing the density is not in line with the comprehensive plan goal of high-density residential development. This alternative would require destroying the existing foundations that have been in place for years and then constructing new foundations.

Forming an association would also substantially hurt this project. Condominium unit ownership regulations are complex and burdensome. The Oregon statutory requirements are found in by ORS 100.005 to ORS 100.990. These complex statutory requirements were not intended for small projects like this. Condominium laws require review and reporting to the Real Estate Agency of the State of Oregon, annual reporting, annual special meetings, quorums, requirements for sale and more. Compliance is expensive requiring legal assistance. Unfortunately, the owners would be burdened with these requirements indefinitely.

Additionally, purchasers of condominium units will face challenges in attempting to obtain financing for their purchase. Many banks are reluctant to loan to condominium purchasers due to the complexity with ownership and frequent litigation. Not only is financing more difficult, it may be at a higher interest rate.

## CONCLUSION

**At the time the ordinance was enacted, it was not anticipated that any projects were in an uncompleted state. Although the City of Newport has a vested interest in consistency of enforcement of its ordinances, a variance is justified in this case due to this exceptional circumstance.**

**The community is benefited by completion of this project. An uncompleted project devalues surrounding properties, does not accomplish density goals, and does not provide tax dollars for**

the city. Because this is an exceptional case, it is not a precedent for enforcement of this ordinance in the future. Strict compliance here would serve no useful purpose. Granting the variance will have numerous beneficial effects.

For the reasons stated above, petitioner requests a variance from NMC 13.05.030(H).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'JD Vick', is written over the text 'Respectfully submitted,'.

Newport Townhomes, LLC by James D. Vick, Manager



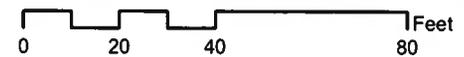
P-1



**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**  
**815 SW 13th Street**

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



This map is for informational use only and has not been prepared for, nor is it suitable for legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the City of Newport Community Development Department.

**Legend**

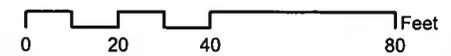
-  Active Landslide Hazard Zones
-  5 foot Contours



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

**Geologic Hazards Overlay Active Landslide Area**  
**815 SW 13th Street**

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



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PUBLIC SAFETY DEPARTMENT

CITY OF NEWPORT OREGON PERMIT

INSPECTIONS DIVISION

FOR OFFICE USE ONLY

Permit 12223

Land Zone R-3 Type of Building IB Residence 4 No. Families Occ. Cert. No. Motel Occupancy Group R-3 Apartment Sprinkler System or Fire Walls Required

Permit To Erect 4plex

Address 815 SW 1314 ST

Tax Lot 3100-3500 Map 11-11 & CA Lot 8 & 9 Block 1 Addition Plan of Newport

BUILDING PERMIT

Application is made to { Erect [X] Alter [ ] Relocate [ ] Demolish [ ] Building Structure [ ] Residence [X] Relocated [ ] Reroof [ ] Building Structure [ ] Demolition [ ] Construction [ ] Demolition [ ] Entire work when completed will cost, including labor and materials: \$ 680,000 Fee \$ 2447.90

EXCAVATION & FILL

Excavation [ ] Cubic yds. Fill [ ] Cubic yds. Fee \$ 1900

MISCELLANEOUS PERMITS

Sewer \$ Curb Cut \$ Sign Temporary \$ SQ. FT. Sidewalk \$ Structures \$ Sign \$ SQ. FT. Driveway \$ Opening \$ Other \$ % State \$ 195.83 Plan Review Fee \$ 1591.14 TOTAL FEES \$ 4234.87

Owner Newport Townhomes LLC Address 698 12th St SE Salem 97301 Phone 364-6488 Builder Jan Hryczyk Address 796 N panther cr RD 0+5 Phone 97368 Builder's Board No. 72924 Exp. Date Architect Melinda Hassos Address 265 Commercial St SE Ste 250 Salem 97301 Phone 363-1684 Geologist Address Phone

DESCRIPTION OF WORK Erect 4 townhouses

ONLY WORK DESCRIBED ABOVE INCLUDED IN PERMIT

I agree to build according to above description, plans and specifications and the Ordinances and Codes of the City of Newport. Variance No. Date

Applicant

Table with 3 columns: APPLICATION RECEIVED, PLANS CHECKED BY PLAN EXAMINER, PERMIT ISSUED. Includes signatures and dates.

Final Date



**CITY OF NEWPORT  
NOTICE OF A PUBLIC HEARING<sup>1</sup>**

**Attachment "H"  
1-VAR-20**

**This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the hearing.**

**NOTICE IS HEREBY GIVEN** that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on September 14, 2020, to consider approval of the following request:

**File No. 1-VAR-20:**

**Applicant:** Newport Townhomes, LLC (James D Vick, representative)

**Request:** Approval of a variance to Section 13.05.030 "Lots and Parcels" of the Newport Municipal Code to allow the completion of the construction of four partially constructed attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05030(H)). The foundations are located within an active landslide area. The applicant wants to finish the units and subdivide the property into four lots, each containing a townhome, as opposed to setting up the project as condominiums. This constitutes a 100% deviation from the 1,000 square foot building area standard noted above.

**Location:** Assessor's Map 11-11-08-CA, Tax Lots 3100 & 3500 (815 SW 13th Street).

**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.

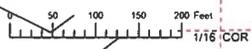
**Contact:** Derrick Tokos, Community Development Director, (541) 574-0626 (address above in "Reports/Materials").

**Time/Place of Hearing:** Monday, September 14, 2020; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

**MAILED:** August 17, 2020.

**PUBLISHED:** Friday, September 4, 2020/News-Times.

<sup>1</sup>This 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.



N.E. 1/4 S.W. 1/4 SEC. 8 T. 11S. R. 11W. W.M.  
 LINCOLN COUNTY  
 1" = 100'

THIS MAP WAS PREPARED FOR  
 ASSESSMENT PURPOSE ONLY

11 11 08 CA  
 NEWPORT

- Cancelled
- 1000-22
- 1100-21
- 1100-23
- 1300-21
- 1400-21
- 1400-22
- 1400-23
- 1500
- 1600
- 1600-21
- 1900-22
- 2100-21
- 2100-22
- 2100-L1
- 2200-21
- 2300
- 2300-21
- 2400-21
- 2401
- 2401-21
- 2401-22
- 2401-23
- 2700
- 2900
- 3000
- 3200
- 3700-21
- 3800-21
- 7400
- 7800
- 8000
- 8100
- 8200
- 8900
- 9700
- 11300
- 11700
- 11800
- 11900
- 12100
- 12301
- 12400
- 12800
- 13800-21
- 14000
- 14100
- 14500
- 14900
- 15000
- 15300-21
- 15500
- 15600-42
- 15700-20



115

104

YAQUINA  
 BAY

Subject Properties  
 File No. 1-VAR-20

Revised: SEB  
 12/04/2019

NEWPORT  
 11 11 08 CA

# MEMO

City of Newport  
Community Development Department



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

**Date:** August 17, 2020

**To:** Spencer Nebel, City Manager  
Tim Gross, Public Works  
Clare Paul, Public Works  
Rob Murphy, Fire  
Jason Malloy, Police  
Mike Murzynksy, Finance  
Michael Cavanaugh, Parks & Rec.  
Laura Kimberly, Library  
Derrick Tokos, Community Development Dept.  
Beth Young, Associate Planner  
Joseph Lease, Building Official  
Public Utilities

**From:** Sherri Marineau, Executive Assistant

**RE:** Variance Permit # 1-VAR-20

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

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

**Charter Communications  
ATTN: Keith Kaminski  
355 NE 1<sup>st</sup> 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**

**Michael Cavanaugh  
Parks & Rec**

**Spencer Nebel  
City Manager**

**Beth Young  
Associate Planner**

**Clare Paul  
Public Works**

**EXHIBIT 'A'  
(Affected Agencies)**

**(1-VAR-20)**

769 SW BAY BLVD LLC  
113 SE BAY BLVD  
NEWPORT; OR 97365

BAKER JON P &  
BAKER LYNN D J  
38695 RIVER DR  
LEBANON; OR 97355

BAY BLVD LLC  
ATTN CHARLOTTE BOXER  
4627 N CONGRESS AVE  
PORTLAND; OR 97217

BAY VIEW CONDOMINIUM  
ASSOCIATION OF UNIT OWNERS  
833 13TH ST SW  
NEWPORT; OR 97365

CAPRI DUSTIN &  
CAPRI AMANDA  
747 SW 13TH  
NEWPORT; OR 97365

CHENG HANN S &  
FEY LILLIE C  
818 SW 13TH ST  
NEWPORT; OR 97365

DARNER AARON &  
DARNER RACHEL  
811 SW 12TH ST  
NEWPORT; OR 97365

DRAGER WILLIAM G JR COTTEE &  
DRAGER RAEBETH C COTTEE  
ATTN BORST VALERIE  
635 35TH AVE SE  
ALBANY; OR 97322

DULCICH REALTY ACQUISITION LLC  
ATTN PACIFIC SHRIMP CO  
ATTN DEBBIE SELLERS  
PO BOX 1230  
NEWPORT; OR 97365

EASTMAN GLEN W II &  
EASTMAN LORAIN D  
OR THEIR SUCCESSORS IN TRST  
835 SW 12TH ST  
NEWPORT; OR 97365

EGGERT CHARLES W  
18555 SW TETON AVE  
TUALATIN; OR 97062

ELM STREET LLC  
ATTN CHARLOTTE BOXER  
606 N TOMAHAWK ISLAND DR  
PORTLAND; OR 97217

ELSINORE INVESTMENTS LLC  
18555 SW TETON AVE  
TUALATIN; OR 97062

ERLANDER J MARK  
1211 SW BAY ST  
APT A  
NEWPORT; OR 97365

EVEN PETER R &  
EVEN SANDRA K  
PO BOX 670  
WALTERVILLE; OR 97489

HUFF KENNETH J TRUSTEE &  
HUFF CHERYL A TRUSTEE  
4646 NE 12TH AVE  
PORTLAND; OR 97211

LAFRANCHISE JANINE  
833 SW 13TH ST  
APT #2  
NEWPORT; OR 97365

MCENTEE CINDY M &  
DIXON JUDITH A &  
DIXON KEVIN ETAL  
622 SW BAY BLVD  
NEWPORT; OR 97365

MCENTEE WILSON GABRIELLE  
PO BOX 717  
NEWPORT; OR 97365

MO PROPERTIES LLC  
622 SW BAY BLVD  
NEWPORT; OR 97365

NEWPORT REAL ESTATE LLC  
3 E RAMONA AVE  
COLORADO SPRINGS; CO 80905

NEWPORT TOWNHOMES LLC  
ATTN BOOKS TO GO  
8101 SW NYBERG ST  
#218  
TUALATIN; OR 97062

NORTHWEST NATURAL GAS CO  
123 NW FLANDERS ST  
PORTLAND; OR 97209

OLIVER PAULA M TRUSTEE  
1314 NW LAKE ST  
NEWPORT; OR 97365

REED CRAIG B &  
REED LISA M  
3841 N STRATFORD ST  
LAKE HAVASU; AZ 86404

ROLES WILMA E (TOD)  
834 SW 13TH ST  
NEWPORT; OR 97365

SELVEY VICTOR B  
381 SUNSHINE AVE  
PHILOMATH; OR 97370

SMITH BRADFORD M &  
SMITH BEVERLY M  
2455 S 5TH ST  
LEBANON; OR 97355

STARLIGHT ONE LLC  
ATTN BORNSTEIN SEAFOODS INC  
ATTN RICH GRIFFITH  
PO BOX 188  
BELLINGHAM; WA 98227

UNITED STATES OF AMERICA  
% US COAST GUARD  
DISTRICT 13  
915 2ND AVE  
SEATTLE; WA 98104

**WISHOFF BRADDEN J &  
WISHOFF SALLY A  
18886 LAFAYETTE AVE  
OREGON CITY; OR 97405**

**YELTRAB FAMILY LLC  
845 SW 12TH ST  
NEWPORT; OR 97365**

**NEWPORT TOWNHOMES LLC  
ATTN: JAMES VICK  
3317 AUGUSTA NATIONAL DR S  
SALEM, OR 97302**

**MARC KARDELL  
801 SW 12TH ST  
NEWPORT, OR 97365**

**OLIVER PAULA M TRUSTEE  
PO BOX 1948  
NEWPORT; OR 97365**

**File 1-VAR-20**

**Adjacent Property Owners Within 200 ft**

## CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

**This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the 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, September 14, 2020, to consider File No. 1-VAR-20, which is a request submitted by Newport Townhomes, LLC (James D Vick, representative). The request is for an approval of a variance to Section 13.05.030 "Lots and Parcels" of the Newport Municipal Code to allow the completion of the construction of four partially constructed attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05030(H)). The foundations are located within an active landslide area. The applicant wants to finish the units and subdivide the property into four lots, each containing a townhome, as opposed to setting up the project as condominiums. This constitutes a 100% deviation from the 1,000 square foot building area standard noted above. The subject property is located at 815 SW 13th Street; Assessor's Map 11-11-08-CA, Tax Lots 3100 & 3500. 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, September 4, 2020)***

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### NOTICE TO INTERESTED PERSONS

# SALE

Sunday and Monday • (September 6<sup>th</sup> & 7<sup>th</sup>)  
9:00 am – 3:00 pm

We will have hardware, electrical, plumbing, tools, paint, housewares, automotive, lawn & garden, junior & women's clothing, shoes, baby girl & boy clothing, toys, bedding, dressers, books, craft items, a kitchen sink and much, much more. Everything is priced to sell!

620 W Highway 20  
Toledo, OR 97391



Breakfast, Lunch & Dinner is Served all Day, Everyday!

NE 6<sup>th</sup> STREET & HWY 101  
541-574-6847 • THENEWPORTCAFE.COM

9/4/2020

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN PROBATE DEPARTMENT; Case No. 20PB05448. IN THE MATTER OF THE ESTATE OF: BRANDON ALBERT BUTCHAS, DECEASED. NOTICE IS HEREBY GIVEN that Anita Sophie Butchas and Mercedes Ann Butchas have been appointed co-personal representatives. All persons having claims against the estate are required to present them, with vouchers attached, to the undersigned co-personal representative at the office of Braulio Escobar, Attorney at Law, PO Box 747, Newport, Oregon 97365, within four months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the Court, the personal representative, or the lawyer for the co-personal representative, Braulio Escobar. Dated and first published on August 28, 2020. /s/ Braulio Escobar, OSB #781920 Attorney for Co-Personal Rep. Braulio Escobar OSB 78192 Attorney for co-PR PO Box 747 Newport, Oregon 97365 541-265-7717. Anita Sophie Butchas co-PR, 15506 118th Place NE Bothell, WA 98011 425-354-0323. Mercedes Ann Butchas co-PR 1360 Shady Lane NE Keizer, OR 97303 541-961-1502. A28 S4 S11 (91-11)

NOTICE TO INTERESTED PERSONS IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN; In the Matter of the Estate of: MARY LEE SAPP, Deceased. Case No. 20PB05693. NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative. All persons having claims against the estate are required to pres-

ent them, with vouchers attached, to the undersigned personal representative at: Kathie Lynn Bailey, Personal Representative c/o Tankersley & Wright, LLC Attorneys At Law 701 NE Evans Street, PO Box 625 McMinnville, OR 97128 Phone: 503-472-0344 within four months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the court, the personal representative, or the attorneys for the personal representative, Catherine A. Wright. Dated and first published August 28, 2020. /s/ Kathie Lynn Bailey, Personal Representative. /s/ Catherine A. Wright, OSB #000831 Attorney for Personal Representative. A28 S4 S11 (89-11)

NOTICE TO INTERESTED PERSONS IN THE CIRCUIT COURT OF THE STATE OF OREGON, FOR THE COUNTY OF LINCOLN. PROBATE DEPARTMENT; ESTATE OF EDWIN LEARMONT BEDFORD, DECEASED. CASE No. 20PB05585; Notice is given pursuant to ORS 113.155 that Jennifer A. Bedford has been appointed personal representative of the above estate. All persons having claims against the estate are required to present them within four (4) months after the date of the first publication of this Notice, or their claims may be barred. Claims are to be presented at the address of the attorney for the personal representative, set forth below. All persons whose rights may be affected by this estate proceeding may obtain additional information from the records of the Circuit Court, the personal representative, or Jeffrey C. Hollen, attorney for the personal representative. Date of first publication: August 28, 2020. Jeffrey

C. Hollen, OSB #761757, Attorney for Personal Representative. 541-574-1630, P.O. Box 1167 615 SW Hurbert Street, Suite A, Newport, OR 97365. Jennifer A. Bedford, Personal Representative, 622 Prospect Ave #1, South Pasadena, CA 91030. A28 S4 S11 (88-11)

FORECLOSURE SALE at South Beach Mini Storage, 4844 S Coast Hwy South Beach, OR 97366. Starting at 4:00 PM on 9-18-20 for unit B-9 rented by Jonah McCabe and unit D-19 rented by Maria Acosta. A28 S4 (87-04)

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four lots, each containing a townhome, as opposed to setting up the project as condominiums. This constitutes a 100% deviation from the 1,000 square foot building area standard noted above. The subject property is located at 815 SW 13th Street; Assessor's Map 11-11-08-CA, Tax Lots 3100 & 3500. 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). S4 (82-04)

September 13, 2020

City of Newport  
Planning Commission

Re: File NO. 1-VAR-20  
Newport Townhomes LLC

To the Planning Commission,

My properties at 808 and 818 SW Bay Blvd. are located directly below or adjacent to the site of the Newport Townhomes. I would like to comment on the letter written by the petitioner asking for the variance.

Condominium ownership would NOT substantially hurt the project. Financing is readily available for condominiums, and the interest rates are the same as for single-family financing. I recently refinanced my condominium and it did not take any longer nor was it more costly than a fee simple ownership because it is a condominium. However, it does take time to put together a Homeowners Association (HOA) and to file the documents with the State of Oregon. To say that condominium ownership is not intended for projects of this size is not correct, there are many condominium projects consisting of 4 units. Most likely the owners do not want to spend the time and effort to document the project as a condominium project.

If a landslide were to occur and the units slid down the hillside towards my property (and the new Basics Market property – their manufacturing area will also be directly under these lots) I believe that the City of Newport may have some liability if they approve the 100% deviation from the 1,000 square foot building area standard. You may disagree, but that does not stop legal action from being commenced. If the project is a condominium and a landslide occurred, the HOA would have the responsibility of repairing the damage to the 4 units, or any units which sustained damage. That means all the units would either be repaired or demolished. If they are 4 single family lots, each individual owner would have the responsibility to repair their home. Since the townhomes are

being constructed with a common wall, what happens if one-unit owner wants to rebuild and the other does not? What happens if one of the two attached units suffers more damage than the other unit? What happens if one-unit owner carries adequate insurance and the other does not? You cannot mandate the amount or type of insurance coverage when the lots are individually owned. These are significant issues to consider because of the attached wall configuration and the location in the active landslide area. It seems to me the project works much better as a condominium so that there is common ownership by the HOA of the exteriors so the HOA can carry the appropriate insurance and assume the responsibility for any repairs or destruction to adjoining properties.

Since my properties (808 and 818 SW Bay Blvd) are located directly below and adjacent to the townhome site, I would like to ask the Planning Commission to deny the variance and keep the project as an approved condominium.

Thank you,

Charlotte Boxer  
Bay Blvd LLC  
Elm Street LLC  
Charboxer2@comcast.net