

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers by Video
September 14, 2020

Planning Commissioners Present by Video Conference: Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, and Bill Branigan.

Planning Commissioners Absent: Mike Franklin, and Gary East (*all excused*).

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 7:02 p.m. On roll call, Commissioners Hardy, Berman, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

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

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to approve the Planning Commission Regular Session Meeting Minutes of August 24, 2020 as written. 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 7:04 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. Hardy reported a drive by. Hanselman Branigan and Patrick reported a site visit. Berman reported he had a private conversation with Hanselman concerning the property. 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-VAR-20.**

Tokos read the letter submitted by Charlotte Boxer into the record. He then reviewed the staff report and explained the request was 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 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 wanted 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 constituted a 100% deviation from the 1,000 square foot building area standard noted above.

Berman asked if it was common to begin development of a parcel before the land division was completed and asked why the parcel wasn't split in 2007. Tokos explained the reason they were doing this was to make

sure the property lines were exactly where the common walls were. Once foundations were set they would know where the common walls are and then they could come back in and do the land division. If they had done the land division earlier, they probably wouldn't have done the final plat piece of it because they would want to know where the common wall was. If they set the interior lines beforehand, there would be problems. If they had done a tentative approval it would have expired by now. Hanselman asked if when they constructed the foundations in 2007 they had the necessary information to plat the property and separate the parcels. Tokos didn't know what information the applicant had at that time. He explained the applicant could have pursued a subdivision at that time to set the lines where the common walls were. Branigan asked if there was any time limit for them to subdivide. Tokos explained that when someone got their tentative subdivision approval they would then record a final plat. If the final plat didn't get done within two years of the subdivision approval, it would expire and they would have to start over.

Hanselman asked if there were any outstanding permits for the property. Tokos reported the 2007 building permit had expired. The applicant had submitted building plans under the current code. Hanselman asked if a geologic permit was required. Tokos explained they weren't doing enough earthwork to require a geologic permit. There wasn't a geological permit done at the time the foundations were built because it wasn't required at that time. Tokos reported that the Building Official satisfied that the foundations met the current building codes.

Hardy asked if there would be a requirement that when people sold the lots they would have to fully disclose the presence of a geological hazard to potential buyers. Tokos explained this was part of the disclosure form when selling property. Hardy asked if the potential first buyers needed to have a disclosure. Tokos would have to look at the language of the real estate disclosure rules. The extent of what they would have to disclose were part of the disclosure form and would be where this would be picked up. Berman noted that the City Council chose to not include a disclosure as part of the geologic hazards ordinance.

Proponents: Jim Vick addressed the Commission. He acknowledged Boxer's letter and noted that it would be grounds for a lawsuit if they didn't disclose what they knew. Vick explained that they agreed with the staff report. They stopped construction and applying for a subdivision at that time because they went onto other projects, which put this project on the back burner. Vick noted that they disagreed with Boxer's letter saying that condominium ownership would not substantially hurt this project. The project value would change significantly. If the project was single family properties instead of condominiums, it would raise the value significantly. Vick noted it was important to not just have a hole in the ground and have a project that enhanced the community. He explained what having condos meant to the project. He thought the complex rules of condos wouldn't apply to this type of project. Vick thought the City wouldn't have liability because they were going through this process now. This would fall on the structural engineer who would carry the liability. Vick explained that financing would be more expensive for condo purchasers. He agreed with the staff report and noted they were only dealing with the legal issue with title in this case.

Hardy asked if there would be a home owners association (HOA) for the planned development or would the owners live side by side with no proof of liability coverage on the part of their neighbors, and no cohesive exterior maintenance planning so over time they didn't end up with a mishmash of well-maintained versus poorly maintained units. Vick noted they typically did common law agreements, and as part of the agreements they could put in some of the things Hardy mentioned. He noted that when he talked to insurance providers, they really didn't provide insurance that would cover the movement of soils. The policies available were very expensive and most insurances wouldn't provide it. So in practical terms it probably wasn't available. There was earthquake insurance which was more easily purchased by individual owners than condominium associations. Berman asked if they were aware this was in a landslide area and if they had consulted with a geologic engineer on the foundation. Vick explained that a geologic report had been done before the foundations were built and the report advised that the ground was stable enough to support the foundations. They had plans to have a structural engineer go back in before they started construction. They hoped to start construction in a month or two.

Jeff Barnes addressed the Commission and noted that he was the contractor on the project and was present to answer questions. None were heard.

Opponents: Hann Cheng addressed the Commission. He asked how the parking would be done. Tokos noted the plans showed each unit would have a single car garage with a driveway for a total of two parking spaces. Chang was concerned that there would be too many driveways on one little street.

Rebuttal: None were heard.

The hearing was closed at 7:45 p.m.

Branigan was bothered by the geology but when they started the project it has been cleared and there was nothing to prevent him from continuing. The staff report showed all the criteria had been met. He would vote to go forward provided that before final construction began there be an engineering study done to ensure that the existing foundations could support proposed townhouses.

Hanselman had problems with the geological aspect but noted it wasn't a required in 2007. He thought there hadn't been a convincing argument for why it shouldn't be developed as it was originally planned as condominiums. Hanselman was leaning toward denying the variance but thought it would make the neighbors feel better knowing the Commission did their due diligence to require an engineering report, though they didn't have any legal standing for this. He thought that they had a way forward as originally permitted and suggested that was where he would cast his vote.

Berman had a problem with concept of this variance. He thought they couldn't use the reason that they didn't have funds as an argument against the criteria saying it wasn't through any fault of their own. They didn't proceed with the project due to financial circumstances and they were not allowed to consider this as a reason to grant the variance. Berman noted that if the recession hadn't happened they would have built this and subdivided the land and things would have been well out of the way before the new ordinance. He didn't think this reason raised it to the level of a variance. Berman also wanted a condition added requiring a new geologic assessment if the variance passed. He didn't think the variance was justified.

Hardy thought Boxer's comments had a lot of merit and were fairly accurate. She reported that she managed 18-19 HOAs and had experience that it wasn't an onerous undertaking. She thought condos gave better protection for the neighborhood in terms of consistent maintenance of the structures. Hardy didn't think the variance was warranted and agreed an updated geological report or engineering study was warranted from a risk prevention standpoint. She hated to see townhomes consisting of four disjointed buyers who don't pay attention to what's happening next door and don't care. She was against a variance.

Patrick thought he could argue both ways on this. He noted it wasn't the same code that they originally built under so they did have to upgrade it to the current code. Patrick understood they started on a certain set of plans and got half way through the build, and acknowledged it was hard to change gears in the middle of work. He was torn on how to go with his decision.

Branigan said after hearing comments of the other Commissioners he would probably go with a nay. Patrick didn't want to get into ownership or condo associations because it wasn't their purview. He thought they could make a good argument that given the safety standards of the ordinance, this type of application was the reason for the ordinance and they wanted to make sure it worked. He thought it didn't mean anything if a foundation looked great, because it was about what was supporting the foundation. Patrick noted the foundation didn't have the weight on it yet and noted a house would weigh a lot more. He thought he would choose to be a nay.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to deny File 1-VAR-20. The motion carried unanimously in a voice vote.

Tokos would bring the final order and findings to the next meeting and base them on the Commission's conversation in deliberations.

6. **New Business.**

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

Tokos noted the date of the week was wrong on the agenda. They were looking to do a special meeting for the week of October 19th in the evening. Patrick was available for every night except for Monday. Berman was available for all nights. Tokos noted the special meeting would be concerning a request by J. T. Roth saying the requirements for the approved variance and geologic report to widen the street on Spring Street by two feet was unconstitutional. The special hearing would accommodate a special appeal to the Commission and then it would go to the City Council.

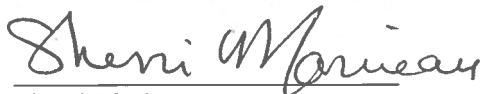
Branigan was available all week. Hanselman couldn't confirm any date yet. Hardy noted she wouldn't know until they were further into October. Tokos said the meeting would most likely happen on a Tuesday or Thursday. He suggested locking in a tentative time and letting the Commission know. Berman asked that a doodle poll done so they could get feedback from the Commissioners that weren't present. Tokos would do this.

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

8. **Director Comments.** None were heard.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:00 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant