



## **PLANNING COMMISSION REGULAR SESSION AGENDA**

**Monday, July 24, 2023 - 7:00 PM**

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

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All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Erik Glover, City Recorder at 541.574.0613, or [e.glover@newportoregon.gov](mailto:e.glover@newportoregon.gov).

All meetings are live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day. To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

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**

*Commission Members: Bill Branigan, Bob Berman, Jim Hanselman, Gary East, Braulio Escobar, John Updike, and Marjorie Blom.*

### **2. APPROVAL OF MINUTES**

**2.A Approval of the Planning Commission Regular Session Meeting Minutes of July 10, 2023.**

[Draft PC Reg Session Minutes 07-10-2023](#)

**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 File 3-VAR-23: Final Order and Findings of Fact for the Front Yard Variance for the Construction of a Single-Family Dwelling at 1515 NW Spring Street.**

[Final Order and Findings of Fact](#)

**5. PUBLIC HEARINGS**

**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**  
**July 10, 2023**

**Planning Commissioners Present:** Bill Branigan, Bob Berman, Jim Hanselman, John Updike, and Marjorie Blom.

**Planning Commissioners Absent:** Gary East, and Braulio Escobar (*excused*).

**City Staff Present:** Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Branigan called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Branigan, Berman, Hanselman, Updike, and Blom were present.

2. **Approval of Minutes.**

A. **Approval of the Planning Commission Work Session Meeting Minutes of June 12, 2023.**

**MOTION** was made by Chair Branigan, seconded by Commissioner Hanselman to approve the Planning Commission Work Session meeting minutes of June 12, 2023 with minor corrections. The motion carried unanimously in a voice vote.

B. **Approval of the Planning Commission Regular Session Meeting Minutes of June 12, 2023.**

**MOTION** was made by Chair Branigan, seconded by Commissioner Hanselman to approve the Planning Commission Regular Session meeting minutes of June 12, 2023 with minor corrections. The motion carried unanimously in a voice vote.

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

4. **Action Items.**

A. **File 4-CUP-23 / 2-ADJ-23: Final Order and Findings of Fact for the Conditional Use Permit for Samaritan Drug and Alcohol Rehab Offices.**

**MOTION** was made by Commissioner Hanselman, seconded by Commissioner Updike to approve the Final Order and Findings of Fact for File 4-CUP-23 / 2-ADJ-23 with conditions. The motion carried in a voice vote. Berman abstained.

B. **File 2-VAR-23: Final Order and Findings of Fact for the Sign Variance for Port of Newport, Port Dock 1, on Behalf of the Newport Sea Lion Foundation.**

**MOTION** was made by Commissioner Hanselman, seconded by Commissioner Blom to approve the Final Order and Findings of Fact for File 2-VAR-23 with conditions. The motion carried unanimously in a voice vote.

## **5. Public Hearings.**

At 7:04 p.m. Chair Branigan opened the public hearing portion of the meeting. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman and Hanselman reported site visits. Hanselman reported he spoke to members of the Spring Street community as well. Branigan 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 3-VAR-23: Front Yard Variance for the Construction of a Single-Family Dwelling at 1515 NW Spring Street.**

Tokos reviewed the staff report and noted this was an identical application to what was approved in 2020. He acknowledged the public testimony received from Mona Linstromberg and Joseph Fahrendorf. Tokos read Linstromberg's testimony into the record.

**Applicant:** Kenzie Roth addressed the Commission. He thanked the Commission for their time and thought the staff report was thorough, and a comprehensive evaluation of the application. Roth noted that this lot had already been approved for a variance, and hoped that the Commission would take this into account.

Berman pointed out that this lot dropped off at the edge of road and asked if the plans called for fill. Kenzie reported that there was a serious foundation and retaining wall with some backfill. This was done with a geotechnical engineer. Roth reported the house would line up with the other houses they built. Berman noted that during the last variance hearing there was a discussion about a swale and stormwater drain pipe. He asked if these had been installed. Roth reported that all the storm pipe and catch basin had been installed but the street improvements hadn't been done yet. Berman asked if the city funds they budgeted for storm sewers would be directed toward this development. Tokos didn't have clear information on this at that time. JT Roth Construction had completed the agreed upon improvements and was reimbursed by the city for the work they performed. The city engineers had signed off on the work as well.

Branigan asked why this hadn't been completed in the last 18 months. Roth explained that the other lots had been challenging to build on and they took longer than they thought it would. They applied for the original variance thinking they could do all three, but there had been challenges to do it. Branigan asked if the dwellings on other two lots had been sold. Roth reported that his family owned one of the houses and the other duplex had been sold. Branigan asked if they saw any further erosion happening since the 18 months previously. Roth reported he hadn't see anything considerable on their lot. When they built the homes, they put in roof systems to collect the water into the storm system.

Hanselman asked if they had a geologic report to build that indicated they could build on the slope and that it was stable enough to build on. Roth explained that there were setback in the rear of the property that they had to stay away from. They played around with the design and tried to put the house further back. This would have pushed it too close to the embankment. This led to design challenges to building a house with proportional sizes that would make it desirable to sell. Roth explained that they had to think about what a buyer would want. Tokos reported that any further earth work and retaining wall work had to be signed off by the engineering geologist and geotechnical engineer of record under the original geologic report. They had completed the earth work across all three lots, so they were vested in the original decision and operating under that geologic report. The development of this property would have to be signed off by the original engineering geologists and geotechnical engineer to say that the improvements were consistent

with their report and recommendations. Roth noted that they had worked closely with the architects to make sure the building flowed and had the correct proportions. He pointed out that this would be a 10 foot setback variance, but there would be 30 feet from the curb to the garage. Hanselman asked if Roth owned the duplex. Roth reported he didn't. Hanselman asked if these properties would be short-term rentals. Tokos reported they could not be used as a vacation rentals. Hanselman asked what the size of the new dwelling was. Roth reported it was around 3,400 square feet.

**Proponents:** None were heard.

**Opponents:** Jim Hoffman addressed the Commission. He reported that he lived directly across the street from this lot. When they bought the property they were aware of the development. They had indications from the developer and a realtor that the southernmost house would be closer to the setback and elevation of the existing house to the south. Hoffman felt that having the house closer to their house would make things worse. They were currently dealing with garage and porch lights shining in their bedroom from the existing duplexes across the street.

Hoffman reviewed the criteria of approval and listed how they had not been met. He noted they didn't meet Criterion 1 that said that the condition should only apply to the specific property, and not to other properties in the same vicinity or zoning district. There were two properties at 1507 and 1409 NW Spring Street that were identical situations. These properties had been there for decades and showed how this didn't apply to the new home and didn't meet the criterion. Hoffman stated that Criterion 2 was not applicable because it was related to Criterion 1. He explained that for Criterion 3, concerning how the standard should be a hardship for the property owner, the developer bought the lot knowing it would be difficult to build on the slope. Hoffman felt this criterion was valid. He noted that Criterion 4 stated the variance shouldn't result in substantial impact. Moving the building toward his home would be a substantial impact to his property. Hoffman noted he conceded Criterion 5 and thought it was satisfied. He noted that Criterion 6 stated that impacts of the resulting variance should be mitigated to the extent practical hadn't been met. By moving the house farther east, and closer to his property, he would have less privacy. Hoffman noted that the properties in the area were being bought as vacation homes. A variance gave speculation developers a little more curb appeal for a one-time sale, but it would have a bigger impact on the full-time residents. Hoffman submitted his testimony in writing for the record.

Berman asked if Hoffman purchased his home after the first variance had been approved. Hoffman reported they bought the house in mid-2020 after the variance was approved. He noted that he didn't know about the variance approval at that time.

Rick Hickson addressed the Commission and reported that he lived one house north on the opposite side of the street from this development. He felt the impacts could be considerable. Hickson explained that loose roofing on the northern most property currently made a racket so loud that it could be heard a block away when the wind blew. He stated that he was there in support Mr. Hoffman's testimony. He opposed giving up what was essentially the public right of way. The Municipal Code was the expression of the will of the people as expressed through the Council. To grant an exception to that was not pro forma. Hickson pointed out that Spring Street was a popular street that had many pedestrians. He felt that all of the variances pushed properties to the street and precluded the chance of the street having sidewalks or being a proper street. Hickson thought this variance was one more thing that would prevent them from having sidewalks. He reported that the past construction of the other lots ruined Spring Street. Hickson described how large equipment had been placed on the street without street pads or cleats, causing damage. Any patches to the street would deteriorate. It would be the city tax payer who would have to replace this or it would

have to be done through a Special Improvement District. Hickson felt it was unfair to ask the local neighbors to pay for the improvements to the street after it had been ruined by this construction project.

**Rebuttal:** Roth said that with regard to the streets, they couldn't control contractors. He would make sure going forward to talk to his contractors about using pads and doing things correctly. Roth didn't think this variance would preclude a sidewalk ever being able to be installed. They could still install an six foot sidewalk and have 24 feet for the street. Roth acknowledged that there were pedestrians and dog walkers on the street. He pointed out that the street served eight houses and he saw people driving down the street and turning around. Roth said he could talk to the neighbors to make sure they turned off their lights that were shining into other houses. He reported that the owners that they had sold the duplexes to intended to move there permanently. Roth reiterated that they weren't asking to move this home any closer to the street than the other two properties.

Chair Branigan closed the hearing at 7:45 p.m.

Blom asked for clarification on the sidewalk location. Tokos noted in the Transportation System Plan (TSP) the city's emphasis for sidewalks were for higher volume areas where there was a higher volume of vehicle traffic and a higher degree for a need for separation between vehicle traffic, cyclists and pedestrians. This street was a low volume area as a whole, and they would expect that the pedestrians and cycling needs were being accommodated the same as vehicles were. This wasn't a high priority area in the TSP where there would be demand for sidewalks. Blom asked if they would be required to put in a curb, gutter or sidewalk. Tokos explained they worked through an agreement with the three properties to widen the street to 24 feet where it was 22 feet and to put in a curb, gutter and a structured storm drainage system. They then entered into a partnership with the city where they provided a portion of the funding for the corrections to the public storm drain system that served that entire slope, because the section they were hoping to connect into was failing.

Urdike was comfortable with the proposal. He heard the neighbor's concerns and thought some of them were things they could address with the variance, such as dealing with the construction crews. He supported moving it forward.

Berman was generally supportive of the request. He understood the neighbor's concerns and hoped there would be some effort to have a neighborhood meeting to come up with some ideas so that the applicant would monitor the construction. Berman stated he supported the request due to the fact that the setback would still allow a 24 foot driveway.

Hanselman pointed out a number of issues had been raised and he was sorry to hear them. He noted that housing was one of the problems in Newport, and housing was needed. Hanselman noted that houses were sometimes second homes for owners. People wanted to buy properties and this was how capitalism worked. Hanselman recommended that developers consider putting dark skies into their plans because this was respectful to neighbors. He was concerned that Mr. Roth said he couldn't control the contractors. Hanselman thought Mr. Roth was the only one who could control them and was disappointed with that attitude. He was disappointed that they could only build big houses. Hanselman didn't think that houses had to be big to sell. They needed more houses instead of large houses.

Blom stated she listened to the opponents and liked the idea of neighbors getting together with the developer to figure out some of the issues. Overall she was in favor of the request.

Branigan reminded that the Commission had approved the variance once and there wasn't a lot that had changed. He personally dealt with the same types of light issues. Branigan noted the lights were annoying but they weren't a city problem. He thought it would be nice to have sidewalks on the street, but this was a low volume street. Overall he didn't see anything to change his mind from the last time the Commission approved the variance.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Updike to approve File 3-VAR-23 with conditions. The motion carried unanimously in a voice vote.

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

7. **Unfinished Business.**

A. **Planning Commission Work Program Update.** Tokos reviewed the updated work program. He noted that he had some degree of confidence that the OSU housing application would be submitted within four weeks. They were still working through details.

Tokos noted that HB 3414 didn't get adopted. He didn't think this was over, and thought it would come back up again. Hanselman asked if this would come back with major changes. Tokos didn't know how it would play out in a future session, but thought there were a number of concepts that would be reintroduced.

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

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

Respectfully submitted,

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Sherri Marineau  
Executive Assistant

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

<b>IN THE MATTER OF PLANNING COMMISSION</b>	)	
<b>FILE NO. 3-VAR-23, APPLICATION FOR A VARIANCE,</b>	)	<b>FINAL</b>
<b>AS SUBMITTED BY J. T. ROTH CONSTRUCTION, INC.</b>	)	<b>ORDER</b>
<b>ON BEHALF OF THERESA ROTH, OWNER</b>	)	

**ORDER APPROVING A VARIANCE** pursuant to Chapter 14.33 of the Newport Municipal Code (NMC) to allow construction of a single-family dwelling 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 property is identified as 1515 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2302 (Lot 1, Block 49, Oceanview Subdivision). It is approximately 0.37 acres in size per County assessment records, with 0.17 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.

**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, with a public hearing a matter of record of the Planning Commission on July 10, 2023; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, public, and 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 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 24 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 24<sup>th</sup> day of July, 2023.

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Bill Branigan, Chair  
Newport Planning Commission

Attest:

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Derrick I. Tokos, AICP  
Community Development Director

## **EXHIBIT "A"**

Case File No. 3-VAR-23

### **FINDINGS OF FACT**

1. J.T. Roth Construction, Inc., on behalf of property owner Theresa Roth, submitted a request on May 23, 2023, for 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 a single-family dwelling 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.
  
2. The property subject to the variance application is identified as 1515 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2302 (Lot 1, Block 49, Oceanview Subdivision). It is approximately 0.37 acres in size per County assessment records, with 0.17 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.
  
3. Staff reports the following facts in connection with the application:
  - 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 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 lot is moderate to steeply sloped, dropping in elevation as the property extends west from NW Spring Street. The average slope is 35-40 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.
  - e. Existing Structures: None.
  - f. Utilities: All are available to the property. The southernmost portion of the lot is encumbered by a City of Newport storm drainage line.
  - 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. *File No. 1-VAR-19*. Authorized construction of new single-family dwellings or two-family dwellings with a 10 foot setback on property identified as 1515, 1525, & 1535 NW Spring Street. Variance approval expired 2/11/22 before development was commenced at 1515 NW Spring Street.
  
4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on June 5, 2023, 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 3:00 p.m., July 10, 2023. Comments could also be

submitted during the course of the public hearing. The notice was also published in the Newport News-Times on June 30, 2023. Two letters were received, one from Joseph Fahrendorf, on behalf of Wizards of Sea Condos, dated July 5, 2023 in support of the application and the other from Mona Linstromberg, dated July 6, 2023, in opposition to the variance. Both letters were received after the staff report was prepared, were distributed to the Commission members in advance of the hearing, and are incorporated by reference into the findings.

5. A public hearing on the application was held on July 10, 2023. At the hearing, the Planning Commission received the staff report and oral testimony from the applicant. There was no testimony from proponents of the application. Jim Hoffman and Rick Hickson testified in opposition to the application, and Mr. Hoffman submitted written testimony on behalf of himself, Susan Hoffman, and Jennifer Hoffman. That letter, and the minutes of the July 10, 2023 hearing are hereby incorporated by reference into the findings. The Planning Staff Report and attachments are hereby incorporated by reference into the findings. The Planning Staff Report attachments included the following:

- Attachment "A" – Land use application form
- Attachment "B" – County property report and assessment map
- Attachment "C" – Application narrative
- Attachment "D" – Applicant's site plan
- Attachment "E" – Aerial map with zoning designation
- Attachment "F" – 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 "G" – Final Order and Findings for File No. 1-VAR-19 approving construction of new single-family dwellings or two-family dwellings with a 10-ft setback on property identified as 1515, 1525, & 1535 NW Spring Street.
- Attachment "H" – Letter dated 8/12/21 extending the approval of File No. 1-VAR-19 an additional 6-mo. per NMC 14.52.140(C).
- Attachment "I" – Public hearing notice

6. The variance request will allow construction of a single-family dwelling 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. Pursuant to Section 14.33.030(C), Approval Authority, of the Newport Municipal Code, applications seeking more than a 40% deviation from a numerical standard shall satisfy criteria for a variance as determined by the Planning Commission following a public hearing.

7. 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 home 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 has widened it to 24 feet, with concrete curb and gutter along the property frontage. The NW Spring Street right-of-way is 60 feet in width, with there being roughly 24-feet of undeveloped area between the property line and the proposed curb line (Attachment "D"). 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 approximately 34 feet in length, which is more than sufficient for off-street parking, particularly considering the applicant proposes to construct a garage with

the dwelling. The Planning Commission approved an identical request with File No. 1-VAR-19, for the subject parcel and the two properties to the north. The two northerly properties were developed with a single-family residence and duplex; however, the variance approval expired before construction could commence on this third and final lot (Attachments "H" and "I").

8. Section 14.33.060 lists approval criteria for approval of variance application. Those criteria are as follows:

- a. 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.
- b. 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.
- c. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
- d. 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.
- e. 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.
- f. 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

In order to grant the variance, the Planning Commission must review the application to determine whether or not it meets the criteria listed in Section 14.33.060. With regard to those criteria, the following conclusions can be made:

- a. *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.)*
  - i. 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.
  - ii. The applicant, J. T. Roth Construction, Inc., provided narrative responses to this criterion and the other approval standards (Attachment "C"). They note that the property is located on the west side of NW Spring Street and is an oceanfront site with steep sloped terrain. Further, they point out that the westerly (approx.) 50 feet of the 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.
  - iii. This property has previously received approval for a front yard setback variance File #1-VAR-19 which included two other lots which have been built. The applicant notes that construction of those homes took more time than expected due to site constraints and the previously approved setback variance expired before they could act upon it with regards to this lot.
  - iv. The homes located on the three (3) lots immediately north of the subject property, two of which were built by the applicant, were approved for a 10-ft front yard setback with variances issued in 2020 and 1979 respectively. The City's justification in granting the variance related to the topography of the site (Attachments "F" and "G").
  - v. 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.

- vi. The lot was platted with a width of approximately 54 feet, meaning that a home constructed on the lot would have a narrow width and longer depth. The applicant points out that the outcome of this characteristic of the lot 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 width of the lot is further restricted by a 15 foot storm drainage easement that runs along the south property line.
  - vii. 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.
  - viii. 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 (Ref: Applicant's Site Plan, Attachment "D"). This area, in conjunction with the requested 10 foot setback, provides sufficient space for residential driveways.
  - ix. Considering the above, the Commission concludes that the narrow configuration of the lot, steep terrain, and embankment creates 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.
- b. *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.*
- i. The applicant notes that the circumstances described existed before the owner secured a possessory interest in the property. They further point out that they have made no changes or improvements to the property that would have exacerbated the conditions that currently exist, and that there are no personal circumstances (financial or otherwise) relevant to the existing condition of the lot.
  - ii. The lot 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.
  - iii. Considering the above, the Planning Commission concludes that the unique configuration of the property, terrain, embankment, and zoning are not circumstances or conditions created by the applicant.

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

- i. The applicant 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.
- ii. The City has historically viewed the application of dimensional standards, such as setbacks, as creating a practical difficulty when they would force development to occur on more steeply sloped terrain or close to a bluff/embankment. 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 can be said for development that has occurred in reliance upon 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").
- iii. Conditions inherent to the applicant's property are effectively the same as those that exist on the above referenced lots, which were granted the same 10 foot variance now being requested, and the fact that homes were constructed in reliance upon those variances is evidence that a 10 foot reduction is sufficient to alleviate a practical difficulty attributed to the application of the City's setback requirements.
- iv. Given this information, the Planning Commission concludes 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.

d. 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.*

- i. The applicant 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. They further note 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, established residential building line, and the applicant 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)). They note that the effective setback of 34 feet exceeds the zoning code setback of 20 feet that would apply to a normal building lot. The driveway depth will allow for off-street parking of no less than 2 cars per lot, in addition to a 2 car garage included with the proposed dwelling.

- ii. NW Spring Street is not a through-street. The applicant 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 applicant's property. They note that this condition limits the traffic servicing the 8 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.
  - iii. The applicant acknowledges that the dwelling they plan to construct will be required to conform to the City's building height limitations, and they point 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).
  - iv. 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.
  - v. Considering the above, the Planning Commission concludes that the authorization of this 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 criterion has been satisfied.
- e. 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.*
- i. The applicant indicates that the proposed variance will not interfere with access to the existing utilities. Sewer and water are existing in Spring Street. The new dwelling that they are planning to construct will require they provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.
  - ii. Storm drainage improvements are in place to serve the proposed development and, as noted by the applicant and depicted on their site plan, the project will not interfere with existing drainage structures.
  - iii. Considering the above, the Planning Commission concludes that granting 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. 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.*



- i. 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. The applicant argues that the variance to allow the dwelling to be located 10 feet from the front property line will have no impact to the adjoining properties. They further point out that moving the dwelling forward helps create more separation from the existing beachfront embankment.
- ii. There does not appear to be any impacts attributed to the variance that require mitigation. If approved, the building line of the new dwelling 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.
- iii. Considering the above, the Planning Commission concludes that there are no adverse impacts requiring mitigation.

### **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 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 24 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.