Minutes
City of Newport Planning Commission Regular Session
Monday, April 27, 2009

Commissioners Present: Jim Patrick, Mark Fisher, Jim McIntyre, John Rehfuss, and Dawn Newman.

Commissioners Absent: Teresa Atwill (excused).

City Staff Present: Community Development Director (CDD) James Bassingthwaite and Senior Administrative Assistant Wanda Haney.

Chair Patrick called the meeting to order in Room 105 of the Newport Recreation Center at 7:00 p.m. (Note: Due to a room conflict, tonight's Planning Commission meeting was moved to the Newport Recreation Center. Notice of the change was made public prior to the meeting date on the agenda and in a mailing to those required to receive notice of tonight's public hearing and was posted at City Hall.)

A. Approval of Minutes.

1. Approval of the work session and regular session Planning Commission meeting minutes of April 13, 2009. **MOTION** was made by Commissioner Rehfuss, seconded by Commissioner McIntyre, to approve the minutes of the Planning Commission meetings as presented. The motion carried unanimously in a voice vote.

B. Citizen/Public Comment. There was no public comment.

C. Consent Calendar.

1. Final Order for File No. 2-VAR-09. A final order denying the request submitted by Newport Hospitality, LLC (Dale Clark/Clark Signs, authorized representative) for approval of a Type I variance pursuant to Section 10.10.050(A) of the City of Newport Municipal Code to allow a proposed wall sign located on the gabled roof on the west side of the building at the new Holiday Inn Express to be 48 feet high from grade to the top of the sign. The Planning Commission held a public hearing on this matter on April 13, 2009, and voted unanimously to deny the request as the criteria were not met. There was brief discussion regarding the possible need for amending the sign variance criteria and/or wording to provide the Commission with more flexibility in certain types of sign variance applications. **Motion** was made by Commissioner Rehfuss, seconded by Commissioner McIntyre, to approve the final order for File No. 2-VAR-09 as presented. The motion carried 4-0 in a voice vote, with Commissioner Newman abstaining as she was not present at the hearing.

D. New Business. There was no new business to discuss.

E. Public Hearings.

Quasi-judicial actions:

Chair Patrick opened the public hearing portion at 7:10 p.m. by reading the statement of rights and relevance and asking the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Commissioner McIntyre declared that he is the next-door neighbor to the applicant, Don Huster. Bassingthwaite said that this would not be a conflict as McIntyre is not within the notification distance of the subject property, but it could be bias if he was unable to review the application request objectively. Patrick declared a site visit, and Rehfuss stated that he was familiar with the site and had been by it many times. Patrick asked for objections to any of the Planning Commissioners or the Commission as a whole hearing this matter; and no objections were heard.

1. File No. 4-PD-09/2-SUB-09. A request submitted by Don Huster (Newport Village, LLC, property owner) for an amendment to final planned development plan approval and tentative subdivision plat approval involving Condition of Approval No. 8 of the Final Order of Newport Planning Commission dated May 8, 2006, (final on May 23, 2006) for File No. 2-PD-06/2-SUB-06 (approving the preliminary and final development plans and tentative subdivision plan for the "Blue Water Ridge" subdivision (formerly called "Heritage Place")) involving the provision of expiration of the planned development permit approval. In the alternative, the applicant is requesting that if the condition of approval on substantial construction is not modified, that the permit as originally approved be reissued for another three year period. The subject property is Tax Lot 1403 of Lincoln County Assessor's Maps 10-11-20 (N Coast Hwy at NE 62nd St).

Patrick opened the hearing for File No. 4-PD-09/2-SUB-09 at 7:12 p.m. by reading the summary of the file from the agenda. He called for the staff report. Bassingthwaite entered into the record the affidavit of mailing of notice on April 7, 2009, and the proof

of publication in the Newport News-Times on April 17, 2009. He noted that a notice regarding the change of location had been sent to everyone receiving the original notice. He entered into the record the complete set of file materials for the current application as well as the previous application and the geologic permit. Bassingthwaite noted that a significant amount of activity had occurred since approval of the last application such as working on ODOT permitting, formal wetlands delineation concurrence from the Department of State Lands, completion of the geologic report, and infrastructure improvements as documented in the findings. Bassingthwaite added that the Planning Commission had received the current material and some documentation from the previously-approved request. He explained that the issue gets into the expiration of the planned development. The ordinance specifies that the planned development expires unless a certain amount of substantial construction occurs within three years of approval. When the Planning Commission approves a planned development, they establish what constitutes substantial construction. There are no particular guidelines set by the ordinance for that. For this development, substantial construction was set as platting completed for one phase (11%). After the approval of the application, the applicant has progressed on the project. There has been no real period of non-activity on the project. The applicant's findings go through what has been done on the site. The ODOT permitting process has taken longer than anticipated. Bassingthwaite explained that because of the Uniform Fire Code, the applicant was required to have a secondary access and went through the process to get an easement from an adjoining property owner. He gave the history of the process the applicant has gone through in trying to obtain an access off 101 from ODOT. He noted that the applicant is close to resolving the issues with ODOT for Highway 101 access. The draft cooperative agreement is being circulated. Once it is approved, it will permit the applicant to have access to Highway 101. Bassingthwaite said that it is pretty clear that the applicant has demonstrated a level of activity on this property that has been consistent, but some factors beyond his control contributed to the delay. The applicant has asked for one of two amendments: 1) To modify the original level of substantial construction to mean $2 million so that the planned development wouldn't expire but would still be governed by the original permit and conditions of approval; or 2) reissue the permit based on the same findings of approval for another three-year period. There was brief discussion regarding how much time the applicant lost due to the issues with ODOT. Bassingthwaite noted that the applicant started the process with ODOT even prior to receiving City approval, and likely didn't anticipate the amount of time that resulted from the issues with ODOT. If ODOT did not approve the Highway 101 access, the design of the project may have had to change substantially. With a lack of ODOT approval, the applicant worked on putting in a water system and preparing the road network and lots for future development. Bassingthwaite said that the delay wasn't due to a lack of effort on the part of the applicant. ODOT was aware of what was being proposed and was notified before the Planning Commission hearing process and didn't object at that time. After the establishment of the emergency access, ODOT was not initially willing to grant access directly to Highway 101 as originally proposed by the applicant. The applicant explored other options with abutting property owners, but an alternative access wasn't available. When questioned which option the applicant would prefer, Bassingthwaite said that he believed the applicant would rather the modification with $2 million as substantial construction. The applicant believes that a $2 million investment related to construction on the project is substantial construction. Bassingthwaite explained that what constitutes substantial construction is up to the Planning Commission. If the modification to the condition of approval is approved, the applicant would be locked into the planned development permit and there would not be an expiration date. The property would be governed by the approved planned development in the future unless the Planning Commission modifies the plan, which would have to go through the land use process. Bassingthwaite noted that the applicant has until May 23rd before the planned development approval expires. Bassingthwaite said that the $2 million of work could be verified through documentation of receipts or expenditures, though certain items may be confidential.

Proponents: The applicant, Don Huster, PO Box 800, South Beach, OR 97366, came forward to testify in support of the request. Huster said that the past three years of dealing with ODOT have been extremely trying. He said that essentially the approach they took with the challenges they were facing was rather than concentrating on a small piece of the project was to work the whole project. They did virtually all earth work; clearing trees, fixing bad spots in the soil, and getting ready for lot layout. The sewer is laid for about 50 homes. All of this has been a significant effort. He noted that another very significant project was to extend all utilities along 101 up to the entrance of the subdivision. The development needed an 8-inch water line, but they worked with the City and upgraded to a 12 inch, which will serve the north end of the City. NW Natural bored under the highway to connect the subdivision to the gas line on the west side. The emergency secondary access to 60th Street has been put in. Per the original condition number 4, the name has been changed to "Blue Water Ridge", which has been reserved with the county surveyor. The geologic investigation has been completed. The geologist was on site supervising the earthwork. The wetlands have been delineated and are maintained as part of the common area. Huster said that they have tried to do everything as well as they can and make sure that there are no issues. He said that the reason he is here tonight is the 8th condition of approval requiring 11% completed in 3 years, and that his preference would be to approve the change in the definition of substantial construction. He said that they are committed to the project. They will move forward as soon as they can and are making plans for next summer. They don't know what will happen in the next three years. Huster explained that the $2 million includes quite a broad range of expenses such as clearing, earthwork, and consultants. It does not include the cost of the land; and it does not include the amount in the ODOT agreement. Huster discussed the pedestrian underpass for trail access that will contribute to the City parks system. He noted that they will have to widen Hwy 101 at the subdivision entrance for right and left turn lanes. The easement through the neighbor's property for the secondary access has been secured and recorded. Huster said that they have accomplished quite a bit considering the starting condition of the property. Huster said that they also have an inventory of steel for the bridge supports sitting on the site. He discussed the steel and showed where the bridge would be located. He noted that another thing they offered the City is to bring the 12-inch water line across the bridge and then continue north to city-owned property, which avoids putting the water line across Schooner Creek. Bassingthwaite added that there are no wetland impacts proposed because the project has been designed to avoid wetland fill.

There were no other proponents wishing to testify.

Opponents or Interested Parties: There were no opponents or interested parties present wishing to testify.

Chair Patrick closed the hearing at 7:45 p.m. for deliberation. Newman said that since there is no definition of substantial construction, the applicant has demonstrated a consistent activity level, there have been significant factors contributing to the delay (including ODOT), and major items have been taken care of, she felt that a modification to condition #8 redefining substantial construction as $2 million is warranted as long as it was verified that $2 million was spent. She said she would recommend approval of that. Rehfuss believed that the work done to date is substantial and meets the intent of condition #8 requirements enough whether a phase is completed or not. Patrick agreed that with $2 million of the project done, there is substantial construction and was leaning toward modifying the condition since he sees the amount of work done. He believes that the applicant is already into the project more than 11%, and the delay is no fault of his own. He thought that without access, the applicant is doing all he can right now. Bassingthwaite noted that the 11% completion was a recommendation from staff at the time of the original approval because it consisted of one phase. When the Planning Commission sets substantial amount of construction, it is usually based on a percentage of the project but could be an amount. McIntyre said that he is in favor of the project and could go either way. He said that he knows there has been a substantial amount of work done based on the testimony and information received; but he thinks that if the condition of substantial construction is modified, the control is somewhat taken away from the City to require continued work on the project although the applicant has shown considerable work done and considerable money put into the project already. McIntyre said that he was leaning toward extension of the three years and was not in favor of modifying the condition because he believes then the development could go on forever. If the permit is granted based on substantial construction, then the project could lapse for months, and the City would have no recourse. McIntyre noted that for many reasons the applicant chose to do more on the overall development rather than completing one phase. Bassingthwaite noted that if the condition is modified so that substantial construction has been completed, the applicant is locked into the planned development approved, and all conditions of approval are applicable. He has to follow the plan. Bassingthwaite further noted that the applicant couldn't complete the phases until an access permit was obtained. Fisher thought there was substantial investment but not substantial construction. He noted that the original conditions would still be in control if the development were extended for three years. He also preferred a 3-year reissuance because that keeps the City involved. Further discussion ensued on the two options.

MOTION was made by Commissioner Rehfuss, seconded by Commissioner Newman, to approve the amendment request in File No. 4-PD-09/2-SUB-09 by changing condition #8 with a determination that substantial construction has been met with $2 million of improvements and related costs as verified by review of cost documentation. The motion carried 4-1 in a voice vote, with Commissioners Rehfuss, Patrick, Newman, and McIntyre voting in favor, and Commissioner Fisher opposed.

F. <u>Unfinished Business</u>. Bassingthwaite noted that if the Commissioners were interested, there will be a Georgia Pacific Task Force meeting at 5:30 p.m. on April 29th and on May 13th. He said that the committee is coming to some consensus to make a recommendation to the City Council on right-of-way issues for the pipeline. McIntyre noted that he may not be here for the May 11th Planning Commission meeting. Bassingthwaite noted that currently there are no public hearings for that meeting, just the approval of the final order; and he anticipates a work session. Rehfuss asked to be excused from the second meeting in May. Bassingthwaite noted that the second May meeting will be on Tuesday, May 26th because of the holiday on Monday the 25th. Finally, Bassingthwaite noted the volunteer dinner Tuesday night at 6:30 p.m.

G. <u>Adjournment</u>. There being no further business to come before the Planning Commission, the meeting adjourned at 8:03 p.m.

Respectfully submitted,

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Wanda Haney
Senior Administrative Assistant