

Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, March 25, 2013

Commissioners Present: Jim Patrick, Jim McIntyre, Rod Croteau, Glen Small, Mark Fisher, Gary East, and Bill Branigan.

City Staff Present: Community Development Director Derrick Tokos, Public Works Director Tim Gross, and Executive Assistant Wanda Haney.

A. Roll Call. Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, all Commissioners were present.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of March 11, 2013.

MOTION was made by Commissioner Fisher, seconded by Commissioner McIntyre, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. Citizen/Public Comment. No comments on non-agenda items.

D. Consent Calendar. Nothing on the consent calendar.

E. Public Hearings.

Quasi-Judicial Actions:

Chair Patrick opened the public hearing portion of the meeting at 7:01 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declaration of conflicts of interest, ex parte contact, or site visits. Croteau declared a site visit for File No. 1-ADJ-13, Fisher has driven by the property over the years, and Branigan recently drove by. Patrick asked for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 1-ADJ-13:** A request submitted by Michael & Michelle Mantei for approval of an adjustment to Section 14.11.30 (Garage Setback) of the Newport Municipal Code (NMC) to allow construction of a proposed garage with a setback of 12 feet rather than the required 20 feet. The request is a 40 adjustment and requires Planning Commission decision pursuant to NMC Section 14.33.030(B). The request also necessarily involves a 7-foot reduction to the 19 foot front yard setback from NW Biggs Street for the garage building. The property is located at 5705 NW Biggs St (Assessor's Map 10-11-29-BB; Tax Lot 3600) in an R-2 zoning district.

Patrick opened the public hearing for File No. 1-ADJ-13 at 7:03 p.m. by reading the summary of the action from the agenda. He called for the staff report. Tokos noted that the staff report included in the packet contains detailed findings for each of the criteria and a site plan provided by the applicant showing the layout of the new house and garage. The applicant also provided survey information establishing the property corners. Tokos read the standards required for approval of an adjustment. He noted that there are two adjustments to this request; one to the garage and one to the second front yard setback. With the applicant's proposal, as outlined in the findings, it is obvious that with the garage setback there is sufficient space to park off-street. The applicant does take into consideration that the public streets may be fully improved at some point and has addressed that by having off-street space to the rear of the structure. He said that is something that the Commission could accept as satisfying this standard. The setbacks are otherwise met. There is sufficient access for fire suppression unit and to run hose around the unit. Staff is not recommending any specific mitigation in this case. In terms of recommended conditions, he called out one that is not out of the norm for an adjustment request; and that is that the applicant actually stake out the corner of the structure during the course of construction so that they are known up until a footing inspection. Then they could be taken down. Tokos said that he thinks the Commission has ample grounds to authorize the adjustment if they feel it satisfies the standards.

Proponents: Michael Mantei, PO Box 86342, Portland, OR 97286, as the applicant and property owner came forward. Mantei said this garage is to protect his boat. He did some checking on setbacks and regulations. He has a good architect working on the house and garage, who looked into what would work in that space. The architect told him that the maximum allowed for an adjustment is 40%, so two feet could be added to the building with no problem. Mantei said that his boat is 32 feet long with the trailer, so he needs the space. He said they can park cars to the inside of the lot so they are not blocking the view when turning the corner. The garage is situated next to the garage next door. There is plenty of room for parking between the garage and the street,

even if an improved road goes in. The house is set back toward the back property line so that there is plenty of room in front. That way he can pull in with his truck and boat when he isn't parking in the garage and will be completely off the street. There is off-street parking there too. He is asking for the garage to be built out 8 feet toward the street.

Branigan asked if Mantei will be building the garage simultaneously with the house, and Mantei confirmed that he would be. Branigan asked if the garage is going to be higher. Mantei said that the rooflines are going to be the same. He said they will have to build that lot up because it is the low spot in the neighborhood. He explained that there was a little shack there. It had been a rental for years, and he called it the problem house in the neighborhood. The arrangement he had with family was that when he acquired it, he would take the house down; which he did last fall. He said he will have to build up about two feet and then the roof lines will match. Fisher asked if the upper level of the garage is not for use to be occupied but would be for storage. Mantei said it is an open truss plan with a pull-down ladder to get up there for storage. He said the garage door itself is 10' x 12' and the garage is 16' wide. McIntyre noted that the plan shows it as 18' x 33'.

Mantei explained that in seven years or sooner, he will become a permanent resident of Newport. That garage is essentially for his boat and gear for crabbing.

Opponents: There were no opponents present wishing to testify, so rebuttal was waived.

Patrick closed the public hearing at 7:11 for Commission deliberation. McIntyre said that he is familiar with the neighborhood but not with this particular piece of property. He noted that it seems what is being proposed is consistent with the rest of the development in the area. He had no concerns about it. Small said that it seems like the concern for off-street parking has been thought through, and there are provisions in place. He has no concern. Croteau felt the request was in order and saw no problem. Fisher thought it was a reasonable request, and East agreed. Branigan agreed that it is a reasonable request and recommended the Commissioners approve it. Patrick thought that it fulfills the requirements. He said that as long as we can get cars off the street that is what we are looking for with that setback. He noted that it is a neighborhood of nonconforming uses anyway. He said that it more than meets the criteria.

MOTION was made by Commissioner McIntyre, seconded by Commissioner Croteau, to approve the adjustment request of File No. 1-ADJ-13 with the inclusion of the conditions set forth in the staff report. The motion carried unanimously in a voice vote.

MOTION was made by Commissioner Fisher, seconded by Commissioner McIntyre, to adopt the final order for File No. 1-ADJ-13 as presented. The motion carried unanimously in a voice vote.

Legislative Actions:

2. Continued Hearing on File No. 2-UGB-12. Review and consideration of further testimony on an application to expand the Newport Urban Growth Boundary by approximately 353 acres to include the City's domestic water storage reservoirs, along with the associated access road and water infrastructure and for a regional park with a looped trail around the reservoirs. On February 25th, the Planning Commission held a public hearing, took testimony, and continued the hearing to tonight in order to make a recommendation to the City Council on this matter.

Patrick continued the public hearing for File No. 2-UGB-12 at 7:15 p.m. by reading the summary of the action from the agenda. He called for the staff report. Tokos noted that he would be brief since he covered it on February 25th. He explained that we now have the actual ordinance with the final legal description. There were some minor modifications, mainly in the northwest corner of the expansion area to align with property lines; adding an acre and a half. The acreage is back to a total of 354.5 now. Tokos said that he made some changes to the findings in order to reflect the change to the map and the ownership list, and to correct some procedural pieces that need to be clarified. The substance is the same as the February 25th presentation. The City Attorney has copies of the findings and has been involved. She assisted in the response to DLCD; and since they are taking a neutral stance, she doesn't believe that she needs to provide anything else at this point. He said that the Commission can take testimony and make a recommendation to the City Council if they so choose.

Testimony: Bob Etherington, 3249 NE Big Creek Rd, said that he owns 6.5 acres that is included in the UGB expansion. He said the only reason he can see for including his 6.5 acres is that technically he owns to the center of the county road. He asked if it was necessary to include his whole 6.5 acres in order to get the County road in the UGB. He said that he just as soon not be in the UGB. Tokos noted that Etherington's property is that piece that was adjusted in the far northwest corner of the expansion area. Etherington explained that it is adjacent to the Lakewood Drive development. Tokos said that most of that property has always been included in the expansion proposal. As part of the final cleanup, the line was matched up to the north property line. He said the reason was twofold. One, we have a master plan that calls for a looped trail all the way through there. Secondly, we desire to include properties immediately adjacent to the reservoir for this expansion. That is why this piece was picked up along with pieces to the east. It's not so much that the property be included to bring the road under city jurisdiction. That would be part of annexation and is not a factor. Etherington's property is within the immediate watershed of the reservoir and the park master plan calls for the looped trail to run along the north side of the road, which would run through the middle of his property. For purposes of the UGB expansion, instead of taking 2.3 of the property, the line was moved up to the north property line for cleanliness of

descriptions. Etherington said what he has heard is that at some future point, the City is planning on annexing part of the property in order to put a trail on it. Tokos said that in terms of near-term annexation plans, the City would only be annexing property it owns. To eventually get the looped trail constructed, we would need to acquire easement rights or something; but in terms of next steps, the only plan is to annex property the City owns. Etherington said that his objection to that is that plans have a way of changing so he would just as soon not be in the UGB, which leaves him open to being annexed into the City at some point down the road. He said that things tend to change. Fisher asked Tokos what the negative impact would be if Etherington's property wasn't included. Tokos said that we wouldn't be able to include the looped trail, and we couldn't provide that need to the DLCD. Tokos said this expansion is about getting the water distribution systems and the immediate watershed in and taking that piece out doesn't meet that objective. Fisher asked if being in the UGB would limit Etherington's use of his land. Tokos said none whatsoever at this point. It remains under county jurisdiction with county zoning and their existing policies. Etherington said that he would prefer to head it off at this stage. If he is not in the UGB, then he doesn't have to worry about being annexed into the City at sometime in the future. He would feel more comfortable if that couldn't happen.

PWD Gross said that the City is trying to encapsulate as much of the watershed as possible. It is his intention to capture as much as possible through open sale when it becomes possible. By putting it in the UGB now, when it comes up for sale, the City is able to purchase it and then annex it into the City. Gross said that he doesn't see the City condemning properties, but he would actively pursue them. We need to set up reserves. If we don't put it in the UGB now, we will do another review in the future to bring it into the UGB. Gross said that some 6 months ago when the City started going through the UGB expansion, we knew that it is very convoluted, so at that time you identify anything that makes sense and do it once. This is greasing the skids. He said it impacts property owners not at all unless they are annexed without their consent; which is not the City's intention at all. Etherington said that his concern is that somebody may be making those decisions twenty years from now. Gross said that it is one step closer, and they can do that because they will have a common need. He noted that properties identified in the watershed drain directly into the reservoir now. Etherington noted that there are a lot of other properties that drain into the reservoir too. Gross agreed, but he said what we have tried to do with the boundary is to capture those within 100-500 feet that drain right into the reservoir. He said that the impact of those immediately adjacent to the reservoir is far more significant than something up stream that impacts the watershed of other jurisdictions too. He mentioned the Siletz. Gross said that we are trying to capture the area that would be impacted if we did work to the system and those that drain directly into our system. The intent is to obtain and protect and to use it as a park as well for a regional trail around our reservoir. He said that he would like to be in ownership of anything that directly accesses our reservoirs. Etherington said that he can sympathize with what the City has done, but he would just as soon be outside the boundary. He said that he can see that his land directly drains into the reservoir, but Braxling's next to him drains one acre to get into the lake; and he is outside the boundary. Gross noted that Braxling wasn't originally. Gross said this expansion gets really tight and close to the boundary we need. Originally it was based on the watershed, and the State didn't like that. We punched it down as much as we should. He is hesitant to bring it down any more.

Tokos said that in terms of Etherington's annexation concern, it would be highly unlikely the City could pursue forced annexation because of the public designation without a Measure 49 issue. It takes away basic use rights. If it were like any other typical UGB expansion, you would be looking at commercial or housing and no loss in property value; if anything it is positive. When looking at this area, when the City annexes (but only those it controls), that is the time to put the public zoning on it. Until that time, he would fully believe they would stay the T-C zoning that they are. Patrick noted that the City is not annexing until we have a plan in place for what to do with the dams, and that is quite a ways down the road. Etherington asked that when you are talking about annexing into the City, when that goes from UGB to city limits is that parcel by parcel or a majority of the property owners. The City owns about 95% of the property; and if it is a majority decision the City is the majority and he doesn't have any say. Patrick said that most likely what you will see when we get to that stage is that we will annex city-owned properties. For others, we may end up having to purchase or something because they may end up going under the inundation of the dam. Etherington thought he was outside the inundation area. Gross said it is a pretty big statement to say that that property will be outside the inundation area. The intention is not to remove the lower dam. We want to reinforce one of our dam structures, and the cheapest one to do would be the upper dam. The lower dam is our water supply. Until the upper reservoir is modified and we can run another intake, we would run both until the lower dam would no longer function. That could be 50-60 years. In the meantime, it does serve as the City's water supply reservoir, and we have to treat it as such. Etherington noted that he has raised his objection and put in his request.

Norm Ferber, 5726 NE Big Creek Rd, came forward to testify. Ferber noted that he came tonight just to enter into the public record the easement that he has with the City. When Greg Warren traded property he was guaranteed an easement forever for a road that accesses his property. Ferber said that he found it interesting that a month ago when he was here and DLCD made their presentation, he was confused what they were stipulating as part of their requirement and what they recognize as fulfillment to their objections. He said Tokos made it that looped trail; and Gross was pragmatic that it was the water quality of the community. Ferber said that telling Etherington that he has to be in the UGB because Tokos needs the looped trail to satisfy DLCD seems a lot more serendipitous than the pragmatic conversation in regards to the community water. He noted that Fisher had made a comment that if he had been aware that any property owner would be put out, he would not have been inclined to endorse it. Fisher explained that he believes owners shouldn't be losing use of their property just for us to have a UGB. Ferber said he was in favor of looped trails, but he doesn't think this is priority. He concedes that we need a reliable water source because of an earthquake, which is coming. Not having the looped trail will not inconvenience anybody in the community. He said that what he had said at the last meeting about Curt Carstens being able to tear holes in this argument is true because he could. Ferber said he initially

came to the meeting tonight to reiterate comments made by Gross that the road to the end of the lake would be part of the process; and at that point, Tokos had said there are easements, and the City intends to honor those. Ferber said that he had his "get out of jail free" card with the copy of the easement that he brought to enter into the record. Ferber mentioned his neighbor, Johnson, who would also very much like to access his property. Ferber said that is Johnson's retirement, and his intention is to turn it over to his daughters. Ferber said he is just outside the UGB, but part of his road would be inundated. He said that he understands he will be able to access his property until the city annexes it. Fisher said that even then he doesn't expect the City to take any access of property without paying for it. If the water is going over the road, there is something that has to be done. Norm said that old growth timber and the road will be compromised. Fisher feels it is the City's obligation to work that out before hand.

Gross said we would be foolish if we didn't acquire property early on. It is very black and white. We need to be prepared to make those purchases at that time. As long as there is need for that road to be able to access those properties, he finds it hard to believe that the City would acquire all those properties and not maintain it. The City needs that road ourselves to maintain the reservoirs. Gross said the purpose for this now is to pave the way and start mediation that we need to do. The start is this land use process. He said the RFP is nearly ready to move into the next analysis, and that will build a picture of what the mediation techniques may be, the cost, and how much property is impacted. Gross said that nobody is going to take anything.

Ferber said also in the response to DLCD's concerns, it was noted that the City shouldn't open itself up to Measure 49 counter suits. Once again, his intention tonight was to reiterate that DLCD's understanding was that this UGB expansion wasn't going to interfere with the people that still live around the reservoir; at least at this present time. He said that he understands the City's concern about getting it all in there now. He has seen other communities do it. One point he made last time was that even though the conditional use permit process may be burdensome, the purpose of it is the hearings so that people have a chance to say what is on their minds.

Branigan asked that if we go with the UGB expansion would the road then be maintained by the City. Gross said the road is maintained by Lincoln County. The City wouldn't take over jurisdiction until we actually annex the land around it, which is city-owned. Then the County would like the City to take over the road. He noted that the road was never legalized, which means it was never platted or recorded or identified as a public roadway. That happened to us on Big Creek and Harney Roads. It takes months to complete the legalization process. Tokos said the road is addressed in the ordinance as one of the recitals. He doesn't believe it would be an issue with the County. So there shouldn't be a problem linking that up with the annexation.

With no one else wishing to testify, Patrick closed the public hearing at 7:49 for Commission deliberation. Branigan noted that the Planning Commission has had several work sessions regarding this subject and has heard from opponents, city staff, and DLCD. He said his main concern is that if we have a moderate earthquake, we can lose the city water systems, which will affect the entire population. He agreed with Fisher that people that own private property in the UGB shouldn't be hindered in any way from being able to use their property. The City needs to be able to provide them access. He said that he would be in favor of going forward with the UGB expansion and state that the City will make sure whoever falls into the UGB will be able to access their property. East agreed with going forward with the expansion with the condition that as the process goes forward that all governing bodies are committed to those property owners to make sure their properties are always accessible and is not lost over the years. He said that maybe some instrument should be put in place for follow-up so that it is not forgotten over time. Fisher agreed. He said it makes sense to him that when any land in that area becomes available for sale, the City should be buying it. He thinks that is important. He said the long-term goal is even greater than what we have here. He thought that for the City, the bridge and the water supply are the two things that are scary. He noted that he will always be up front in protecting the common citizen, like himself. He will make sure people can use their property in whatever way they should be able to use it. He said that all of the Commissioners feel very strongly that the City needs to get this going. He said that we are greasing the wheels for years down the road with almost no negative impact. He thinks it is the best we can do. Croteau said that the overarching issue is a secure water supply. There are a lot of details to work out with citizens that have a stake. He believes that we need to start getting this on paper and moving forward with the process. Small was in agreement with that. The protection of the neighbors and all citizens is a concern of his. He said that the Commissioners have asked the question about how this is going to impact property owners many times in the process. He understands Etherington's concern that hearing "trust us, we're from the government" is unsettling. But these are prudent steps to address a larger concern. The City needs to take what steps are needed now. McIntyre agreed with all of his colleagues that expansion of the UGB is absolutely necessary to assure that we can perform the necessary improvements to our dam to secure our water supply and make it safe for everybody. If we have an earthquake of any proportion, it can wipe out those dams; and we would have a catastrophe and lose our water supply for everybody in Newport. He agreed that the Commission should approve the UGB expansion and send this forward. Patrick said that he is assuming that the Commissioners agree with the boundary lines as laid out. He said the access issue is important, but we also must realize that there is not a legally-defined access right at the moment. He said that all we can say is the City will attempt to keep the accesses to the properties as they exist right now; not those that don't have access now. He agrees that we need to do this process. He said he would be happier if it were the larger acre version. He thinks that we cut it as far as we can to get the State's approval.

MOTION was made by Commissioner Small, seconded by Commissioner Fisher, to forward to the City Council the draft ordinance for File No. 2-UGB-12 with a recommendation of approval of the Urban Growth Boundary Expansion of 354.5 acres as presented. The motion carried unanimously in a voice vote.

F. **New Business.** No new business.

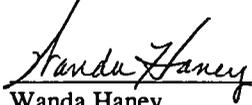
G. **Unfinished Business.** No unfinished business.

H. **Director's Comments.**

1. As he had mentioned in work session, Tokos noted that the Teevin Bros. TIA approval issued by staff has been appealed. The appeal hearing will be held before the Planning Commission on April 22nd.

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

Respectfully submitted,



Wanda Haney
Executive Assistant