PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, July 10, 2023 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

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.

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. 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 Work Session Meeting Minutes of June 12, 2023.
Draft PC Work Session Minutes 06-12-2023

2.B Approval of the Planning Commission Regular Session Meeting Minutes of June 12, 2023.
Draft PC Reg Session Minutes 06-12-2023

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

4.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.
2-VAR-23 Final Order and Findings of Fact

5. PUBLIC HEARINGS

5.A File 3-VAR-23: Front Yard Variance for the Construction of a Single-Family Dwelling at 1515 NW Spring Street.
Staff Report
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
Attachment G - Final Order and Findings for File No. I-VAR-19
Attachment H - Letter dated 8/12/21 extending the approval of File No. 1-VAR-19
Attachment I - Public hearing notice
Public Testimony - Mona Linstromberg

Public Testimony - Joseph B. Fahrendorf

6. NEW BUSINESS

7. UNFINISHED BUSINESS

7.A Planning Commission Work Program Update.

PC Work Program - 07-07-2023

8. DIRECTOR COMMENTS

9. ADJOURNMENT

***Draft* MINUTES**
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers
June 12, 2023
6:00 p.m.

Planning Commissioners Present: Bill Branigan, Jim Hanselman, Gary East, John Updike, and Marjorie Blom.

Planning Commissioners Absent: Bob Berman, and Braulio Escobar (*both excused*).

PC Citizens Advisory Committee Members Absent: Dustin Capri, and Greg Sutton.

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

1. **Call to Order.** Chair Branigan called the Planning Commission work session to order at 6:00 p.m.

2. **New Business.**

A. **Presentation on Update to Yaquina Bay Estuary Management Plan.** Tokos introduced Meg Reed, the Coastal Policy Specialist with the Oregon Department of Land Conservation Development. Reed gave an overview of the process to update the Yaquina Bay Estuary Management Plan since 2021. She reviewed the coastal goals and how they were implemented on the landscape of Oregon and Newport. Reed noted that Goal 16 required all estuaries had to have an estuary management plan. There were three types of classifications of estuaries, which included natural, conservation or development. Yaquina Bay was a development estuary. There were three levels of development in these types of estuaries. These levels were about what kinds of permissible uses and activities were allowed, based on sort of the inventory of resources within the area and how it had been historically used. Reed reported that Yaquina Bay could have all three types of management units because it was a development estuary.

Reed covered the Yaquina Bay Estuary Management Plan, noting that each estuary had rules on what was allowed, not allowed, or conditional. The current plan was adopted in 1982 and why they needed to review and update it.

Reed covered the modernization support for a Yaquina Bay Estuary Management Plan update. She noted they were awarded a special merit funding for the update. Reed listed the ways they received support to update the plan; the regulatory extent of estuaries; and all the management units on the Yaquina Bay.

Reed talked about the modernization objectives for Yaquina Bay. Branigan asked if the climate change noted was what was occurring currently or in the future. Reed explained it was the anticipation of potential impacts. The main change was called the Impact Assessment that would include all the normal things that would be happening and with the addition of climate vulnerabilities in the estuary. Branigan asked if it took into account large natural disasters. Reed explained the tsunami layer was a map of the inventories and was there to be used in individual permit applications. She didn't know if

it was taking into account what Branigan was asking. They had used the maps to the extent that they had the data for.

Reed reviewed the timeline of how they had been working on the updates. She then covered the process to do the updates; the updated inventories and maps; and the proposed revisions in 2023. She noted that the biggest change was to the data. They changed the permitted use matrix to the Estuary Zone Districts, and the boundaries of specific areas. Reed explained that the updates included changes to maps, language, implementation approach, updates to certain management units, climate change, and adaptive management.

Reed reviewed the full plan table of contents and how things were updated or removed with the process. She went back to the timeline and noted the Commission would be coming into the process next for the formal review and adoption process. Reed noted that if the Commission wanted updates they could share them with her.

Hanselman noted that the updates were done by governmental agencies and a few private businesses. He didn't see any representation by sportsman groups and thought that was a mistake. Hanselman didn't think that the government spoke for the fishermen. He wasn't happy with the dredging schedule because how one of the iconic species in the bay was being affected by dredging. It seemed to him like the group was ignoring the issues in the bay. Hanselman was disappointed that the advisory group was mainly government officials and didn’t include people who used the estuary. Reed would reach out to the advisory committee to see if they invited the fishermen, or if it was an oversight. She noted they still had time to reach out to different groups to talk about the impacts. For the dredging part, this would be a marine spatial planning tool for the most part, and it was the permits that would give a yes or no to dredge timing. The other agencies had the regulations that were outside of the scope of this plan. Hanselman thought as management, they should take into account the organisms that lived there and how they would be negatively impacted by the drain. He didn't think this had been a consideration.

B. **<u>HB 3414 Requiring Adjustments to Land Use Standards</u>**. Tokos reviewed components of the HB 3414-18 housing bill amendments. The bill, introduced at the Governor’s request, would seek to promote the construction of housing by requiring cities approve adjustments (previously termed variances) to land use regulations requested by residential developers. The legislation also stood up for a Housing Accountability and Production Office to assist local governments in complying with housing laws and to enforce against them when they are not being followed.

Tokos discussed how the key pieces of the adjustment were for setbacks; a limitation of the number of adjustments per application to just 10; landscaping in common areas; parking minimums; minimum and maximum lots sizes, lot width and depth requirements; bicycle parking; lot coverage, and building heights. The Commission would need to put some thought into how they would tackle these. Tokos noted that if this was adopted, the city wouldn't be able to hold to the exterior treatment requirements when it came to residential for Nye Beach. Hanselman noted that towns would often create a historical district in order to protect this. Tokos explained how attorneys who represented historic districts argued that they should be exempt from this. It didn’t get included and the districts wouldn't be protected.

Branigan asked who was behind this legislature. Tokos noted Newport didn’t lead this and wasn’t the driver of the deficiency housing unit statewide. The ones that were driving this were affluent metro jurisdictions that were having to take on additional density affordable housing. The governor stated that the housing crisis was a state of emergency, and developers were saying that if they got rid of the red tape they would be able to get more units on the ground.

Tokos reported the legislature also designed the Housing Accountability Office that would be the gatekeeper on complaints if developers were feeling that local jurisdictions weren't following the housing laws. They would be the office to submit complaints or issues. Tokos noted that before they talked about implementing changes to Newport's code from the Housing Productions Strategy, they needed to understand that this legislature, if adopted, could influence how Newport tackled certain things.

Blom asked if infrastructure had been discussed. Tokos reported it wasn't the target of this legislature, even though infrastructure was a major impediment to housing development. He noted that room taxes were also being limited by the legislature on how the city could use them.

Hanselman asked if the changes were saying that if developers asked for adjustments, the city would have to approve them. Tokos said on a staff level they could deny them, but only in the limited circumstances provided in the bill. He pointed out that fire life and safety issues might come into play to help justify having limitations.

Hanselman asked what "building heights transitional requirements" meant. Tokos explained this was to prevent very large buildings to be right next to very small ones, unless there was a transition from a high density to a lower density area. This would keep somebody's house from being entirely shadowed by a brand new development.

Updike asked if they considered dialing back some incentives, would they run the risk of groups saying the developments weren't consistent with the plan. Tokos didn't think the legislature was in a position where they could compel local government to provide financial incentives on a project that were inconsistent with the local government policies and rules. Tokos thought they could push local governments to provide those subsidies but they couldn't compel it.

Hanselman didn't think this would lead to affordable housing. Building taller and covering more of a lot would add to the cost of construction because costs were based on square footage. Tokos thought the legislature was struggling to come up with a coherent strategy, which would certainly impacts local governments.

Blom asked how much longer of a process would this be. Tokos said once the State Senate convened they would expect to see a deluge of bills coming through in a short window of time. Hanselman asked how the local representatives stood on this. Tokos reported the City Council shared the same comments on the letter with State Representatives Gomberg and Anderson, and they knew where the Council stood.

C. <u>Discuss Scope of Land Use Amendments to Facilitate Needed Housing (An HPS Recommendation)</u>. Tokos reviewed the areas the city could look for amendments based on the housing production strategy. He then reviewed the bullet list of what the Commission should look at. Tokos asked the Commission if they had additional items they should be looking at.

Updike noted this was what they had reviewed in prior discussions and thought it looked right. Tokos reported that once the legislative session was done they could pull this into the package of code changes. Updike asked if the goal was to get the changes done in 2024. Tokos said that was correct.

2. <u>Unfinished Business</u>.

A. <u>Planning Commission Work Program Update</u>. No discussion was heard.

3. <u>Adjourn.</u> The meeting adjourned at 6:52 p.m.

Respectfully submitted,

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Sherri Marineau,
Executive Assistant

***Draft* MINUTES**
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
June 12, 2023

Planning Commissioners Present: Bill Branigan, Jim Hanselman, Gary East, John Updike, and Marjorie Blom.

Planning Commissioners Absent: Bob Berman, and Braulio Escobar (*both 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, East, Hanselman, Updike, and Blom were present.

2. Approval of Minutes.

A. Approval of the Planning Commission Work Session Meeting Minutes of May 8, 2023.

MOTION was made by Commissioner Branigan, seconded by Commissioner Blom to approve the Planning Commission Work Session meeting minutes of May 8, 2023 as written. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission Regular Session Meeting Minutes of May 8, 2023.

MOTION was made by Commissioner Branigan, seconded by Commissioner Blom to approve the Planning Commission Regular Session meeting minutes of May 8, 2023 as written. The motion carried unanimously in a voice vote.

C. Approval of the Planning Commission Work Session Meeting Minutes of May 22, 2023.

MOTION was made by Commissioner Branigan, seconded by Commissioner Blom to approve the Planning Commission Work Session meeting minutes of May 22, 2023 as written. The motion carried unanimously in a voice vote.

3. Public Comment. At 7:02 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. Branigan, Hanselman, and Updike reported site visits. 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 4-CUP-23 / 2-ADJ-23: Conditional Use Permit for Samaritan Drug and Alcohol Rehab Offices.

Tokos reviewed the staff report and acknowledged the testimony that was received from Susan Hogg. She raised an issue stating that residential units were limited to no more than 15 individual

units. Tokos explained that residential treatment facilities were a function of the city's zoning code, and under state rules, they were allowed to have up to 16 units. He noted they would have to reconcile the difference and he would work the applicant to do this. Under ORS 197.670 the city was required to allow outright residential facilities in zones that allowed multifamily. Whether it was 15 or 16 units, they could work this out with the applicant and it wasn't a key point of the application. They could do this outright and wouldn't come before the Commission for approval. Tokos reported the part of the application the Commission was reviewing only had to do with the 8,300 square foot addition to the 4,700 square foot building that would be used for counseling support services, outpatient programs and the like.

Updike thought that given where the trash enclosure was, there would have to be a loop route for the trucks. He wanted to know if the trash enclosure would be 12 feet wide if they approved the application. Tokos reminded it was a 10.5 foot driveway and was directed towards compactors and drop boxes. He didn't think either were proposed here.

Hanselman asked how many fire trucks one hydrant could serve. Tokos didn't know, but he noted that they had a 12 inch main. This was a good water supply and the fire chief was good with this. Hanselman asked if the Fire Department has signed off on this. He didn't want to see a structure where they could only fight fires on one side. Tokos reported the Fire Department didn't provide comments. He had contacted the Fire Chief and he said he was comfortable with this project as proposed. Their equipment would stage off of NW Biggs Street and they would have sufficient area to get their hoses around the entire building. Hanselman was more concerned about the back of the property. Tokos said it was rare to have access on all four sides and why they needed to look closely at the adjustments. Blom asked if the building would be required to have fire sprinklers. Tokos reported that decision would fall under the building code requirements, not this land use decision.

Applicants: Dr. Leslie Ogden, CEO of Samaritan Hospitals, and Teresa Kruse with Clark/Kjos Architects, addressed the Commission. Kruse reported that the delivery driveway on the north side would have a safe buffer from the dog park, and they would be providing a fence along the edge of the property. Kruse reported that they were constrained by the existing building and property line to achieve the 12 foot line through there. This would be a one way only area for trained staff and delivery persons for the kitchen. They didn't expect the public or visitors to go through this area. Kruse noted they would clearly mark the site as one way. She also reported the entry driveway would be clearly marked where the outpatients and residents would be entering the property.

Kruse noted that for R-4 compliance, they were beautifying the neighborhood by adding landscape buffers along Biggs Street. She pointed out that the trash, electrical transformers, and parking would be at the rear of the property. The activities and the recovery services components would be within the building and the new addition. Outdoor components would be in the outdoor activity area, which was completely screened.

Branigan asked how many staff would work at the facility. Ogden reported it was a 24 hour facility and they would have four therapists working during the day and two people working at night. There would also be four peer counselors, kitchen staff, and some greeters at the front desk. Ogden thought the total would be around 10 to 15 staff. Hanselman asked if this included security. Ogden reported they didn't provide security. The building was secure and this was a voluntary type of program where everyone signs an agreement that they will follow the rules and regulations, and that they wanted to be a part of the program. Hanselman asked if they had other facilities like this. Ogden said they had an identical facility in Lebanon, Oregon that had been in operation for about five years.

Branigan asked if there was enough parking on the premise for staff, or if they parked on the street. Kruse reported that the parking they provided was calculated by the city requirements. They were required to provide 19 spaces, but they were actually providing 20 onsite. Branigan asked if they would have a fire sprinkler system installed. Kruse reported they would be providing sprinklers as required by the Oregon Structural Specialty Code, so it depended on what was required for the residential use component.

Branigan asked if any MD's would be part of the staff or if it would just be therapists. Ogden reported there would be one medical director who would occasionally come in because he would share the oversight of outpatients of this clinic and the Lebanon clinic. He wouldn't be there on a daily basis, but would have the oversight on all the clinical type of things that happened. Branigan questioned if a hospitalist would be required. Ogden reported they wouldn't, because this was a type of facility that wouldn't require a high level of acute care. It would be a residential facility. If they needed a hospital care, this would be taken care of in the hospital. Branigan asked if someone got sick, would they be transported to the hospital. Ogden confirmed they would. If they needed urgent care there would be a transport van to take care of any patients in this manner. Branigan asked if residents would have the ability to have a vehicle on site. Ogden explained that the residents would have an average stay of one to two months, and the length of stay was crafted to the person's needs. They would ask the family members to drop the residents off and they wouldn't have extended vehicles parked there. The only person coming and going would be staff members and out patients for small classes at various time and days. Branigan asked if the residents were allowed to come and go as they pleased. Ogden reported they would check in and they were there to work on themselves and sobriety. This didn't include leaving the facility until they checked out. The only time they left was in the care of a staff member. This was a locked facility with cameras. It would have a controlled entrance as well. If they chose to leave, they wouldn't belong there and would not stay with them.

Kruse reported they had been in contact with the Fire Department concerning the access. They discussed how the fire trucks could come in through the back of the building, and their hoses could reach all four sides.

Hanselman noted they indicated the facility would be open from 8:30 a.m. to 8:30 p.m. with some outpatient counseling. He asked if that meant that the outpatient counseling would start or end at 8:30 p.m. Ogden said it depended on the day and when they could accommodate the people's schedules. Everything would be completed and it would just be residential after 8:30 p.m. Hanselman asked about the note that they might add a 7 a.m. outpatient time. Ogden reported this was for the workers, and they would need to know there were people who needed this first. It wasn't a part of their current operations but they added it to the application in case they needed it down the road.

Hanselman asked if their other facilities had ever had police called to them. Ogden reported they didn't have any calls to the Lebanon facility. Hanselman asked if they restricted visitations. Ogden reported it was restricted to half of the residents being able to have a two hour visitation period on Saturdays and the other half of residents could have visits for two hours on Sundays. Hanselman was concerned about the people that had relationships with the residents who were substance abusers and were a difficult population to deal with. He questioned if these people liked to show up at the facilities. Ogden said they tried to carefully screen each visitor before they arrived. The people who weren't abiding by the rules were not welcome.

Kruse reviewed the image of the facilities. She noted how the two story addition would keep to the look and feel of the neighborhood. Kruse noted they wouldn't be adding a free standing sign. They were only adding what was minimally required by the Fire Marshal to identify the property address. would be at the entrance. The signage for Samaritan Pacific Communities Health Services would be at the entry area where there was a canopy. This would be kept to the residential scale. Kruse then showed an image of how the internal area would be enclosed by the building.

Hanselman asked about turnover of staff and if full employment has been reached at the hospital. He expressed concerns on if Samaritan could staff the facility regularly with qualified people, and asked if they had concerns on this. Ogden reported they had plans for this. From a restriction and staffing standpoint, during COVID they learned to admit based on staffing levels. If they didn't have staff for 16 inpatients they wouldn't admit 16 patients. Ogden expected that as they started up they wouldn't start with a full staff and would see some difficulties with some workforce issues. In order to attract the people they needed they would start early and do their best. Ogden reported they had a low turnover rate at the hospital, which was lower than the national average. Hanselman asked if Samaritan would stand by those rules to only hold as many patients that they had staff to accommodate. Ogden reported it was correct and was how they ran their hospital as well.

Blom asked if the sign would be in the back of the property. Kruse said it would be more towards the front door and they were planning on signage that was only required by the Fire Marshal. Tokos noted they would also have a small freestanding sign for the delivery only.

Proponents: Lonnie Martinez address the Commission. He stated he was a volunteer for the Lincoln County Jail and a member of the Specialty Treatment Court Advisory Board, the Newport Police Advisory Committee and a member of the Coast to Cascades Community Wellness Network. Martinez was excited for the outpatient treatment facility and asked the Commission to approve the request. He reported how his spouse had went in and out of facilities for four years, and he was also a member of the recovering community with 13 years of recovery. He gave statistics on the number of Oregon residents who had alcohol and substance use disorders. Oregon ranked last in the country for access to treatment. Martinez asked for approval of the request in order to carry out the business of changing people's lives.

Brian and Linda Haggerty addressed the Commission. They were in favor of the project. Brian noted that they had attended the neighborhood meeting and were impressed at the attractiveness of the facility and the depth of planning that had gone into making sure that this was going to be a working facility. They felt the overall infrastructure needed for the facility would be a net positive for the neighborhood and street, along with the wastewater lines. Linda asked if the applicants planned for traffic calming on 58th Street to make sure traffic kept their speed down. She wanted a 4-way stop sign to be added at 50th and Biggs Streets. Linda didn't think the neighbors would notice the facility much and thought that people needed their help. She pointed out that the building was already set up for this use.

Cheryl Blank addressed the Commission. She stated she lived close to the facility and worked for the hospital. She was excited for the facility and felt it was important for it to open because of the lives that had already been lost. Blank thought these programs were important and that the facility would enhance the neighborhood. She felt it would create a safety net for the neighborhood as well as enhance it. Blank explained that she was going back to school to be a part of this project. They needed to bring all those that were hurting back to life and she was in support of this.

Opponents: Joe Wade addressed the Commission. He said he was concerned about the project but not necessarily an opponent of it. Wade reported that he lived close to the facility and was concerned about the increase to traffic. The handout Samaritan had shared said they were looking forward to 600 people visiting a year. He had experienced speeding traffic in the area and thought that if the classes started at 7:30 a.m. they would happen at the same time that kids would be waiting at the bus stop. Wade said there was no stop sign there and he was concerned about the increase of traffic. There were no sidewalks and kids were walking on the streets. Wade was concerned about how the neighborhood could absorb this safely.

Laura Ehret noted here property was behind the facility and the facility would be creating light pollution over the fence into her bedroom. She reported that she hadn't received notification from Samaritan for their open house. Ehret reported that her concerns for the criteria for NMC 14.34.050 concerned traffic, water, sewer and security. She thought that medical office service staff vehicles and added traffic would be going to the neighborhoods street where children, adults, seniors and pets walked. Ehret reported that Biggs and 58th Streets had no stop signs and the city refused the add them. This would make the traffic even more threatening to their population. Ehret's objections weren't for the inpatient facility, but the office building being placed in their neighborhood. She felt this would bring in additional traffic from unwanted visitors and staff. Ehret pointed out that this wasn't a commercial area but a residential zone. She noted that the neighborhood had a historically vulnerable water and sewer system. What she was hearing was that they would be extending the sewer instead of fixing it. Ehret thought Samaritan had saved a lot of money by buying in a low income/middle income area rather than buying in a commercial area. She thought that a commercial area was where this should have been located. Ehret thought Samaritan should be more helpful to the improvement of the water and sewer system. She reported that the fire hydrant was in her front yard and the water pressure was low. The security of the outpatient facility would mean that people would be trying to visit and would stay in the neighborhood. Ehret thought a remedy for traffic and congestion could be to establish a shuttle from Fred Meyers and have it driven by a local person who had interest in preserving safety. There were existing outpatient facilities who offered outpatient services through the Newport Center for Health Education and Lincoln Community Health Center. Ehret thought the Lincoln County addiction treatment facility would be better served by improving its quality rather than building another building.

Rick Wright addressed the Commission. He thought the fire hydrant issue could be solved by adding a condition to have them put in a private hydrant. Wright was concerned about the traffic on Biggs Street. There was no drainage on either side of the road. Wright asked where that would be placed and where would the water go. He noted that if this was a bare lot and developed today, perhaps that whole street would have to be at least paved with a curb and sidewalk for at least two thirds of it. Wright thought the infrastructure, roadways, and sidewalks were a major concern.

Rebuttal: Ogden clarified that Samaritan wasn't the owner of the property. It was publicly owned by the Pacific Communities Health District. Ogden reported they had worked on the light pollution to direct the lights downward, not outward. They tried to meet with all the owners and apologized for those they missed. Ogden thought they needed to do more work to reach out to those they didn't reach, and they were trying hard to be a good neighbor. She reported they wanted to make sure the fence was a privacy fence and the entire facility was well contained so it was better than what was there in the past.

Kruse noted the lights were nighttime light compliant. The 6-foot fence would be located on the facility's property. Kruse noted the roadway on Biggs Street was a low volume street. The profiles on that street had a 20 foot paved roadway with four foot ditches on both sides. This was well

within Newport standards. Tokos confirmed it was consistent with a low volume street cross section they had included in the new Transportation System Plan. He noted it looked like the street centerline was more or less in the middle of the 50 foot right of way, and there would be swales on either side. That would then direct the runoff north to a structured drainage system that could be changed to a fully structured stormwater management system based on recommendations from a geotechnical engineer with respect to the stop signs on Biggs Street. The stop signs on Biggs Street would need to be assessed by the Public Works Engineer to see if it was warranted. Tokos expected that they would look at this as part of the street improvements. Hanselman asked if this was the same as speed bumps. Tokos said they could include a recommendation that this had been assessed as to whether or not it was a viable option with the improvements. Blom asked if there were any rules on where the bus stops could be. Tokos said this wasn't regulated under the transportation standards.

Linda Haggerty asked that if the city didn’t approve the stop sign could the owners put them up themselves. Branigan said they couldn't and would need to go to a City Council meeting to request that engineering to look at it.

Chair Branigan closed the hearing at 8:20 p.m.

Blom thought most of her questions were answered regarding stop signs, speed bumps, the adequacy of stormwater mitigation in the right of way, and the water line extension. She also saw that the requirements of geotechnical report were in process. Blom felt the questions on the sprinklers and the signage were also answered. She would wait to hear how the other Commissioners were leaning before making her decision.

Updike thought his questions had been answered. He was comfortable moving this forward. Updike thought they should add that the traffic mitigation be assessed along with warrants for traffic control signage. He wanted to adhere to the street standards but if that wasn’t a part of the standard for this type of street, that was the way it would be.

Hanselman thanked everyone who spoke. He thought it was good to see people attend the meetings. Those who presented in opposition had presented clearly. Hanselman appreciated the proponents clear message as well. He was pleased they saw the need for this service. Hanselman believed the traffic was a legitimate concern for the neighborhood. There needed to be a discussion about calming traffic and storm runoff. Samaritan convinced him that the security of the facility would be okay. Hanselman wanted to see Samaritan take positive steps to manage the people they were inviting into the neighborhood.

East agreed that this was something the community needed. It was important for the neighborhood to have safety. East asked that they make sure as part of their inpatient and outpatient classes to stress that they were in a neighborhood and to be aware it was where kids would be picked up and to be cautious. He felt the concerns about water runoff had been addressed. East recommended they send this to Engineering to look at the stop signs and speed bumps. He wanted to move this forward with an approval.

Branigan thought the conditions for the Condition Use Permit had been addressed and satisfied. He felt traffic mitigation needed to be done in this residential neighborhood. Branigan thought the applicants submitted a detailed application and all the concerns had been addressed. He was in favor.

Hanselman questioned how they could add a condition for traffic contingencies to the approval. Tokos suggested adding a condition of approval requiring traffic control and calming measures be assessed as part of the Bigg Street improvements.

MOTION was made by Commissioner Hanselman, seconded by Commissioner Updike to approve File 4-CUP-23 / 2-ADJ-23 with an additional condition of approval to require traffic control and calming measures be assessed as part of the Bigg Street improvements. The motion carried unanimously in a voice vote.

B. File 2-VAR-23: Sign Variance for Port of Newport, Port Dock 1, on Behalf of the Newport Sea Lion Foundation.

Tokos gave his staff report and showed the example of the design of the sign. Branigan asked if Clearwater Restaurant had any issues with the sign. Janelle Goplen with Clearwater reported they didn't. Updike asked what material the sign was made of. Tokos said he would let the applicant speak to this.

Applicant: Aaron Bretz, Director of Operations at the Port of Newport addressed the Commission. He reported that the Port was the applicant because the sign would be on their property. The Sea Lion Foundation had completed most of the work already. Bretz thought the sign was more artistic than it was functional. It would be placed perpendicular to the right of way. There had been signs placed there before to alert people about the Foundation, but they hadn't been aesthetically pleasing. This sign didn't obstruct the view and made it cleaner.

Branigan asked if the fishermen had any objections to the sign. Bretz reported this application was for the sign and wasn't about the fishermen supporting the Foundation's cause. East asked how the process of building the new sea lion docks was going. Bretz reported that this was the Foundation's project.

Janell Goplen, with Clearwater Restaurant, and Camille Fournier, with the Sea Lion Foundation addressed the Commission. Goplen reported she didn't know what the specific materials of the sign were. Tokos reported it was a laminated sign material. Branigan asked if they were worried about the sign in the wind. Goplen reported it was very secure and shouldn't move. East asked if it would have four panels. Goplen reported it had three panels. Fournier noted this was a project they were working on with Discover Newport.

No proponents or opponents were present.

Chair Branigan closed the hearing at 8:44 p.m.

East thought this was a good idea and that it looked nice. Updike, Hanselman, and Blom were in support of it. Branigan liked the mural and thought it would add to it.

MOTION was made by Commissioner Blom, seconded by Commissioner East to approve File 2-VAR-23 with the staff recommendations. The motion carried unanimously in a voice vote.

C. File 6-Z-22: Amendments to NMC Chapter 14.11 Related to Multi-Family/Commercial Trash Enclosure Standards.

Tokos reviewed the staff report. Amy and Rob Thompson with Thompsons Sanitary Services addressed the Commission. They thanked staff and Commission, and noted that they thought this would help to the community, and be a great improvement.

Hanselman thanked Thompsons for their guidance. He liked their openness to working with problematic developments. Amy noted that they had added in the text that Thompsons could be contacted to help do waste audits and add signage.

No proponents or opponents were present.

Chair Branigan closed the hearing at 8:51 p.m.

Blom, Hanselman, and East were in support. Updike was also in support and thanked Thompsons for their input. Branigan was in favor of the amendments.

MOTION was made by Commissioner Blom, seconded by Commissioner East to recommend File 6-Z-22 to the City Council. The motion carried unanimously in a voice vote.

4. **Action Items**. None were heard.

5. **Public Hearings.** None were heard.

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

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

8. **Director Comments.** Tokos noted the updated work program was included in the work session agenda. A variance would be coming the Commission soon. Tokos reported that the trash enclosure amendments were timely because the city could have a pre application meeting in the coming week for a 60 to 75 apartment complex on SE 35th Street. He also noted that OSU received their funding for their 75 unit housing development. The city was also in discussion about the final phase of the Wyndhaven apartment development at 36th and Harney Street. Tokos reported the Housing Authority in Lincoln County was working to liquidate their single family detached type assets to create more funds to do some new affordable housing. He also noted that Wilder had about half of their 26 unit development under construction.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:58 p.m.

Respectfully submitted,

_____

Sherri Marineau
Executive Assistant

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

IN THE MATTER OF PLANNING COMMISSION FILE #4-CUP-23/	**)**
2-ADJ-23, CONDITIONAL USE AND ADJUSTMENT PERMIT	**) FINAL**
APPLICATIONS FOR THE PACIFIC COMMUNITIES HEALTH	**) ORDER**
DISTRICT (JON CONNER, APPLICANT)	**)**

ORDER APPROVING CONDITIONAL USE AND ADJUSTMENT PERMITS, to add an 8,300 +/- sq. ft. office addition onto the east side of an existing 4,700 sq. ft. building. The addition will be used for counseling and support services for both the residential unit and extended outpatient programs. The existing 4,700 sq. ft. building will be renovated into a residential facility (the "residential unit") serving 16 clients. The adjustment request relates to the north driveway, which at 10-ft, 6-in. in width is narrower than the 12-ft. typically required for one-way traffic. The subject property is located at 5840 and 5842 NW Biggs Street, and it is identified as Parcel 1 of Partition Plat 2015-05 (Assessor's Map 10-11-29-BB, Tax Lot 04902). The site is approximately 0.67 acres in size per Lincoln County Tax Assessor records.

WHEREAS:

1.) The Planning Commission has duly accepted the applications filed consistent with the Newport Municipal Code; and

2.) The Planning Commission duly held a public hearing on the request, with such hearing occurring on June 12, 2023; and

3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and

4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

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 requested conditional use and adjustment permits 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 the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.

2. The applicant shall extend the gravity sewer line from its current terminal point in the NW 59th Street right-of-way east across NW Biggs Street, and replace the existing 12-inch asbestos concrete water main in accordance with the Newport Public Works Department

standards. Such work shall be completed and accepted by the City Engineer prior to occupancy.

3. NW Biggs Street shall be paved to a width of 20-ft. with 4-ft. shoulders between NW 58th and NW 59th Street. The applicant may complete the improvements themselves or negotiate with the Newport Urban Renewal Agency to extend NW 60th Street further north to NW 60th Street. The design of the roadway drainage system is to conform to the recommendations of a licensed geotechnical engineer, or individual with equivalent expertise, and the improvements shall adhere to Newport Public Works Department standards. The completed improvements must be accepted by the City Engineer prior to occupancy of the new facility.

4. The applicant shall obtain a City of Newport sign permit for the signage conceptually described in this conditional use application, unless such signage is listed as exempt under NMC 10.15.020.

5. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building to comply with these codes, then a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.

6. The City Manager, or designee, shall evaluate whether or not traffic control or traffic calming measures should be deployed along NW Biggs Street as part of the design process to extend NW Biggs Street through to NW 60th Street. The results of such evaluation shall be documented in writing and included as part of the case record.

BASED UPON THE ABOVE, the Planning Commission determines that this request for Conditional Use and Adjustment Permits are in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport, and the request is therefore granted.

Accepted and approved this 10th day of July, 2023.

_____
Bill Branigan, Chair
Newport Planning Commission

Attest:

_____
Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 4-CUP-23/2-ADJ-23

FINDINGS OF FACT

1. On May 8, 2023, the applicant John Conner, on behalf of property owner Pacific Communities Health District, applied for a Conditional Use Permit and Adjustment to add an 8,300 +/- sq. ft. office addition onto the east side of an existing 4,700 sq. ft. building. The addition will be used for counseling and support services for both the residential unit and extended outpatient programs. The existing 4,700 sq. ft. building will be renovated into a residential facility serving 16 clients. An application for an adjustment has also been submitted. It relates to the north driveway, which at 10-ft, 6-in. in width is narrower than the 12-ft. typically required.

2. The property address is 5840 and 5842 NW Biggs Street, and it is identified as Parcel 1 of Partition Plat 2015-05 (Assessor's Map 10-11-29-BB, Tax Lot 04902). The site is approximately 0.67 acres in size per Lincoln County Tax Assessor records.

3. Staff reports the following facts in connection with the application:

   A. Plan Designation: High Density Residential.

   B. Zone Designation: R-4/"High Density Multi-Family Residential." The southernmost 25-feet of the property is within an R-2/"Medium Density Single Family Residential" Zone District. It contains the access driveway and is not material to the project. All site improvements are within the R-4 zoned portion of the site.

   C. Surrounding Land Uses: Park uses, single and multi-family uses (north), vacant and multi-family uses (east), single family detached and attached uses (west/south).

   D. Topography and Vegetation: The property is relatively level having been cleared for development in the past. An existing concrete pad is to be removed and landscaping will be introduced with the development.

   E. Existing Structures: 4,700 sq. ft. building (formerly a group home).

   F. Utilities: All are available to the site.

   G. Development Constraints: None known.

   H. Past Land Use Actions: *File No. 1-PAR-14* – Approval to divide the property into two parcels, ultimately recorded as Partition Plat 2015. Approved 5/30/14. *File No. 1-TB-89* – Approval to place a temporary travel trailer on the site for the contractor to reside in while the United Methodist Church Building was being constructed (later converted to a group home). Approved 4/24/89.

4. Explanation of Request: In their narrative (Attachment "D"), the applicant notes that the redevelopment of the substance use disorder treatment facility will contain two major components: renovating the existing building that will house the resident program and adding an 8,300 sq. ft. two story addition to the east of the existing building that will house counseling and support services that will serving both the resident unit and extended outpatient programs. Oregon ranks 2nd in the nation for people with substance use disorder yet 50th for access to treatment. Substance use disorder involves patterns of symptoms caused by using a substance that an individual continues taking despite its negative effects (DSM5). The Regional Mental Health/Substance Use Disorder Coalition reported that 1933 (4.5% of the adult population) Lincoln County residents had a substance use disorder between 9/1/19 and 8/31/21. There is no inpatient facility in Lincoln County and the nearest one is 50 miles from the county seat. Often there a long wait lists and residents are forced to drive up to 300 miles for residential treatment. By providing both inpatient and outpatient services, Samaritan will be able to begin intensive outpatient treatment for individuals waiting for inpatient services to become available as well as provide aftercare for people who graduate from the inpatient program. As a nonprofit service provider, Samaritan doesn't turn anyone away for inability to pay or insurance type.

   The residential care facility will have a 16-bed capacity serving all gender identities with substance use disorder. Clients in the facility will have enrolled in the treatment program on a voluntary basis because they are actively seeking help with their problems. There will be no "court ordered" treatment and all clients will be permitted to end their treatment and leave when they wish. Clients will have already been through a detox program before they begin treatment at the facility.

   A typical stay at the facility is 90-days, though it can be longer or shorter based on individual need. As a resident graduates, another person is enrolled in the program. So, enrollment is more of a slow trickle rather than a large group being admitted or graduating at once. Generally inpatient clients do not come and go on a regular basis, except to take walks or go to occasional appointments. Clients may have one outside visitor per week during the visitation hours of 1pm – 4pm on Saturday or Sunday.

   The goal of the outpatient counseling is to provide services to people waiting for an inpatient bed to become available as well as aftercare for clients who have graduated from inpatient programs, to prevent relapse. This includes both private, group and family counseling sessions scheduled throughout the week, including:

   - Morning Groups for all gender identities, including those who are pregnant, parenting, or experiencing a life transition.
   - Evening Intensive Outpatient Groups - Intensive treatment group sessions for those who work during the day.
   - Substance Abuse Assessments - Check-in sessions to assess progress, current state, and make treatment plan adjustments.
   - DUII Education and Intervention Groups.
   - Medication-Assisted Recovery.
   - Support and Referral for Mental Health Needs.
   - Skill-Based Groups, designed for ongoing support and education.

Outpatient visits will be up to three hours in length and will occur between the hours of 8:30 a.m. and 8:30 p.m. up to five days a week. Currently, the program in Lebanon offers (2) three-hour sessions (one in the morning and one in the afternoon) three days per week and (2) two-hour sessions (one in the morning and one in the afternoon) one day per week, with approximately 25 outpatient participants entering the facility throughout each of those four days (resulting in a weekly average of 100 outpatient visits). Their current usage is a representative average, and the Coastal STARS facility can expect a similar average. In the future the facility might add a 7 am outpatient class to serve patients before their workday.

The overall goal for the project is to treat 200 in-resident patients and 600 outpatients each year. The project anticipates opening in the summer of 2024.

Staff for both the inpatient and outpatient services are anticipated to be approximately 15 total including medical staff, counselors, office specialists, Peer Support Specialists, kitchen staff, Program Manager, Medical Director, and Program Director. Typically, 2-3 staff members will be on the site during nighttime hours and the rest of the staff will be on site during the operating hours of 8am to 6pm Monday - Friday.

The remodeled residential area will include an intake area to receive new patients, a 16-bed resident unit, an area for support staff and a small gym, library and living room. The addition will include a reception area, lobby and vestibule accessed from the main entrance on the south side of the addition. Also included will be a kitchen and dining room that will primarily serve both the outpatient and the residential units, with a snack cabinet and occasional, as-needed meal service available to outpatients. Therapy sessions will occur in one of the 4 new group rooms, or in one of the 9 individual counseling rooms. There will also be administrative offices, a staff break room and storage. The second floor will be accessed by two staircases and an elevator. Located between the two sections of the building will be a protected outdoor courtyard that will include landscaping and outdoor furnishings.

Site work includes paving the existing south driveway and adding a new deliveries-only driveway on the north side of the building that will provide direct access to the new kitchen. Food delivery is anticipated to occur twice a week on the same schedule as Samaritan Pacific Communities Hospital. The food delivery would occur either before or after the hospital delivery in the early morning. The current hospital food delivery trucks are typically 50-55 feet long which cannot make the internal parking lot turn at the northeast corner of the site. Therefore, the plan for a large delivery truck would be to park on the gravel in front of the facility and then use a hand cart along the north driveway to deliver the boxes to the kitchen. If a smaller delivery truck is used it could turn into the delivery drive and stop directly in front of the kitchen door.

A new paved parking lot providing spaces for 20 vehicles, including 2 ADA spaces will be created south and east of the building. A concrete sidewalk connecting the ADA spaces to the main entrance of the building on the south will be provided. A new trash enclosure will also be added to the parking area. New landscaping will be added throughout the site, with new lawn and non-invasive ornamental plantings being proposed around the building and non-invasive canopy trees provided in the parking lot at a rate of once per 12 parking spaces.

Landscaping will be primarily native plants that can withstand costal conditions. New trees will also be added between the building and NW Biggs Street and near the main entrance. There are currently no existing trees on the site, so no trees will be removed with this proposal.

Improvements to NW Biggs Street will be coordinated with the City of Newport, Newport Urban Renewal Agency and Pacific Communities Health District per an intergovernmental agreement that would be executed before construction is commenced. When completed, Biggs Street will include 4 parallel parking spaces along the site frontage and will connect through to NW 60th Street.

5. Conditional Use Permit Required. Per Newport Municipal Code (NMC) Section 14.03.050(I), a conditional use permit is required for the 8,300+/- sq. ft. office addition that is to be used for counseling and support services. The addition will be constructed onto the east side of an existing 4,700 sq. ft. building that will be renovated into a residential facility serving 16 clients. A residential facility is an outright permitted use per NMC 14.03.050(U), so that portion of the project does not require conditional use approval.

   Per NMC 14.34.030, an application for a Conditional Use Permit shall be processed and authorized using a Type II decision making procedure where specifically identified as eligible for Type II review elsewhere in this Code or when characterized by the following:

   - The proposed use generates less than 50 additional trips per day as determined in the document entitled Trip Generation, an informational report prepared by the Institute of Traffic Engineers; and

   - Involves a piece(s) of property that is less than one (1) acre in size. For an application involving a condominium unit, the determination of the size of the property is based on the condominium common property and not the individual unit.

   All other applications for Conditional Uses shall be processed and authorized as a Type III decision making procedure.

   The existing 4,700 sq. ft. building was formerly used as a group home, and its conversion to a 16 unit residential facility will have a negligible impact on vehicle trips to and from the site. On the other hand, the 8,300 sq. ft. medical office an outpatient program will increase vehicle traffic. Medical office (ITE Code 720) may be the most similar use, with a facility of this size projected to generate 300 daily trips. General office (ITE 710) uses typically generate less traffic because they don't have patients travelling to and from the site. Even that use is projected to generate 91 vehicle trips per day. It may be that the subject project lands somewhere in between the two, generating more than 50 vehicle trips per day. Planning Commission review under a Type III decision making procedure is required given the number of anticipated vehicle trips attributed to the proposed development.

6. Adjustment Required. Applicant has further applied for an adjustment to reduce the 12-ft. minimum width required for a one-way driveway per NMC 14.46.030(P) by 12.4% to 10-ft, 6-in. in width. Pursuant to NMC Section 14.33.030(B), a deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision making procedure.

7. Conditional Use Approval Criteria. Criteria for approval of a conditional use are found in NMC Section 14.34.050, and read as follows:

   A. The public facilities can adequately accommodate the proposed use.

   B. The request complies with the requirements of the underlying zone or overlay zone.

   C. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.

   D. A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

8. Adjustment Approval Criteria. Criteria for approval of an adjustment are found in NMC Section 14.33.050, and read as follows:

   A. That granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

   B. That any impacts resulting from the adjustment are mitigated to the extent practical; and

   C. That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and

   D. That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.

9. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on May 15, 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., June 12, 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 2, 2023.

10. A public hearing was held on June 12, 2023. A statement of rights and relevance and applicable criteria was read by the Chair and the Planning Commission members disclosed any ex-parte contacts, conflicts of interest, and/or bias related to the application. No objections were made to any of the Planning Commissioners hearing the matter. The Commission received the staff report and the applicant's representatives, Dr. Leslie Ogden with Samaritan Health Services and Teresa Kruse with Clark/Kjos Architects, presented the application and fielded questions from Commission members. Several members of the public were in attendance to provide testimony in support and in opposition to the application. Those

testifying in support of the application included Lonnie Martinez, Brain and Linda Haggerty, and Cheryl Blank. Persons testifying in opposition to the application included Joe Wade, Laura Ehret, and Rick Wright. After the Commission accepted public testimony, the applicant provided rebuttal testimony. Following rebuttal, the Commission closed the public hearing, deliberated, and elected to approve the permit applications, with conditions, based upon the findings outlined herein.

11. The minutes of the June 12, 2023 hearing are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments, and other submitted materials are incorporated by reference into the findings. The Planning Staff Report Attachments are identified as follows:

    Attachment "A" – Application Form
    Attachment "B" – Lincoln County Assessor Property Reports
    Attachment "C" – Lincoln County Assessor Map
    Attachment "D" – Application Narrative
    Attachment "E" – Site Plan and Elevation Drawings, Clark/Kjos Architects, LLC, dated 5/5/23
    Attachment "F" – Public Improvements Plan and Details, Devco Engineering, dated 4/19/23
    Attachment "G" – Zoning Map of the Area
    Attachment "H" – Terrain and Utility Map of the Area
    Attachment "I" – Public Hearing Notice

12. Written testimony submitted after the staff report was prepared but prior to the June 12, 2023 hearing is hereby incorporated by reference into the findings. Such testimony was received from the following individuals.

    Email from Susan Hogg, dated 6/12/23
    Email from Laura Ehret, dated 6/12/23

CONCLUSION

Regarding the applicable criteria for the conditional use and adjustment applications, the following conclusions can be made:

A. *Adjustment Criterion #1. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and*

1. NMC 14.46.030(P) stipulates that "Approaches and driveways shall be a minimum of twelve (12) feet for a one-way drive and twenty (20) feet for a two-way drive." Applicant's site plan (Sheet A1.01, Attachment "E") shows that the northern entrance only driveway, which is new, will be 10 ft., 6 in. in width, a 12.4% reduction to the standard.

2. In their narrative, the applicant indicates that the adjustment is being requested because the location of the existing building limits the area available for the new north driveway. They further assert that the drive aisle, as proposed, will be adequate for its intended use, which is to provide delivery-only access to the kitchen which is located on the north side of the new addition. The drive aisle will be marked as a one-way driveway, so it will not need to

be wide enough to allow two vehicles to pass each other. Additionally, the driveway entrance will be signed as "deliveries only" so that all visitors will be aware that they are to use the main driveway to the south which is proposed as 20 feet wide. The main driveway will also be available for emergency vehicles and trash pick-up since it is wide enough to accommodate larger vehicles.

3. Context for why the City imposes a minimum driveway width requirement can be found in the purpose section of NMC Chapter 14.46, Vehicular Access and Circulation, which states:

   "Chapter 14.46 implements the street access policies of the City of Newport Transportation System Plan. It is intended to promote safe vehicle access and egress to properties, while maintaining traffic operations in conformance with adopted standards. "Safety," for the purposes of this chapter, extends to all modes of transportation."

4. The fact that the applicant will be restricting the north driveway to deliveries only makes it a controlled access where they can coordinate with vendors to ensure that the limited width is not an issue for their vehicles. While there will be staff and delivery entries off the driveway, they are ancillary to the principal entrance on the south side of the facility. Pedestrians are not being directed down the one-way drive, limiting the potential of conflict with vehicles along the narrow drive.

5. Operational safety issues are often most acute at the driveway intersection, which the applicant's site plan shows will be at a conforming width with good line of sight for pedestrians walking along NW Biggs Street and vehicles entering the property. As noted by the applicant, the bulk of the traffic to and from the facility will use the southern entrance, which is a conforming two-way driveway approach and drive aisle.

6. Considering the above, the Planning Commission concludes that granting the adjustment will equally or better meet the purpose of the regulation to be modified.

B. *<u>Adjustment Criterion #2</u>. Any impacts resulting from the adjustment 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; and*

1. In their narrative (Attachment "D"), the applicant notes that some potential impacts from a reduced width drive aisle could be: inadequate emergency vehicle access, and not enough maneuvering room for vehicles to easily move around the site. They point out that both of these potential impacts will be resolved by providing the second (south) driveway on the site that will exceed the required width standard allowing all vehicles to easily access and maneuver around the site. By clearly marking the north driveway as "one-way" and providing signage that indicates that it is for "deliveries only" any impacts from visitors accidentally using this driveway will be mitigated.

2. The applicant notes that beyond the potential impacts to site access mentioned above, the reduced width driveway will have no impact on the light or privacy of adjoining properties.

The property directly north of the site is a City Park and the new addition will not be moving closer to this property than the setback established by the existing building. They also indicate that deliveries to the site will be infrequent, and that beyond these deliveries there will be no other activities occurring on the north side of the site that could impact the use of the park. Additionally, a wood fence is proposed to be installed along the north property line that will help screen the new driveway from the park, mitigating any potential noise or visual impacts related to having the driveway located adjacent to the north property line.

3. Considering the above, the Planning Commission concludes that the site design considerations identified by the applicant adequately mitigate impacts to neighboring properties attributed to the adjustment.

C. *Adjustment Criterion #3. The adjustment 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; and*

1. The proposed adjustment to the drive aisle width will not interfere with any of the proposed utilities that will serve the site. A new sanitary sewer and storm sewer line are proposed to run along the north side of the building under the proposed driveway, and the width of the drive aisle is adequate to accommodate both these utility lines with adequate spacing from both the building and the north property line. As described above, fire access to the site will be available from the south driveway that will be wide enough to accommodate a large emergency vehicle.

2. The Terrain and Utility Map (Attachment "H") shows that there is an existing hydrant at the northeast corner of NW 58th and NW Biggs available for the Newport Fire Department's use and their vehicles can respond directly from NW Biggs since the facility fronts this street. The structures will adhere to building setbacks, which ensures that fire personnel have access to all sides of the building. There are no city utilities internal to the property and the applicant's site utility plan shows how services for the facility can be brought into the property with the one-way driveway at the proposed width (Sheet C240, Attachment "E").

3. Given the above, the Planning Commission concludes that granting the adjustment will not interfere with utility or fire access.

D. *Adjustment Criterion #4. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.*

1. Only one adjustment is being requested, so this criterion is not applicable.

E. *Conditional Use Criterion #1. The public facilities can adequately accommodate the proposed use.*

1. Public facilities are defined in the Zoning Ordinance as sanitary sewer, water, streets and

electricity. All public facilities are available and serve the proposed use.

2. The applicant notes that the existing building and new addition will be connected to an 8-inch public wastewater gravity line located in NW 59th Street. This will require the extension of the public gravity line from its current terminal point in the NW 59th Street right-of-way east across NW Biggs Street as generally depicted on the applicant's Public Improvement Plan (Sheet C320, Attachment "F"). Public water will be supplied to the development by way of a main in NW Biggs Street. The existing 12-inch diameter asbestos concrete main is in poor condition and will need to be replaced. A preliminary design for the replacement line, including stubs into the site, is shown on the applicants Public Improvement Plan (Sheet C330, Attachment "F"). The applicant notes that stormwater runoff will be captured from all the roof areas and paved surfaces on the site and directed to a public storm line located just east of the site. Its location is identified on the Terrain and Utility Map (Attachment "H").

3. In their narrative, the applicant acknowledges that NW Biggs Street is currently under-improved, with only an unpaved vehicle surface. Concurrent with development of the project, the roadway will need to be paved to a width of 20-ft. with 4-ft. shoulders between NW 58th and NW 59th Street, which aligns with the City standards for low-volume local streets (NMC 14.44.060(B)). NW Biggs Street is presently 20-ft in width south of NW 58th Street. If this project is approved, the Newport Urban Renewal Agency would look to partner with the Pacific Communities Health District to extend NW Biggs Street north to NW 60th Street. The applicant has provided a conceptual alignment of the needed street improvements demonstrating that they can be constructed within the 50-foot NW Biggs Street right-of-way (Sheet C320, Attachment "F").

4. Brain and Linda Haggerty, Joe Wade, and Rick Wright expressed concerns about traffic speeds and pedestrian safety along NW Biggs Street once it is extended through to NW 60th Street. This street section is designed as a low volume, shared use roadway with vehicles, pedestrians, and cyclists sharing the same paved space. Pedestrians and cyclists may also use the road shoulder. NW Biggs Street is classified in the Newport Transportation System Plan as a local roadway. NMC 14.44.050(C) provides that speed tables, speed humps and similar traffic calming measures may be required when local and neighborhood collector roadways are improved, and the Commission finds that the scope of the planned improvements to NW Biggs Street, and traffic generated from the proposed development, is substantial enough that their use should be evaluated. Similarly, the Commission acknowledges concerns raised about the potential need for stop signs at intersections along NW Biggs Street once the street is improved. Per NMC 6.05.015(B), the City Council delegated to the City Manager, or designee, the authority to make all initial decisions relating to the exercise of the powers of a road authority under state law. This includes whether or not traffic control or traffic calming measures should be deployed. With that in mind, the Commission finds that it is appropriate to impose a condition of approval requiring that the City Manager, or designee, evaluate whether or not traffic control or traffic calming measures should be deployed along NW Biggs Street when the improvements are designed to ensure that the street can adequately accommodate the proposed use along with anticipated background traffic.

5. Goal 1, Policy 5, Stormwater, of the Comprehensive Plan's Public Facilities Goals and Polices Section provides that "*storm run-off attributed to new development in geologically hazardous areas is evaluated by qualified professionals to minimize impacts to the subject, or nearby properties.*" Much of the Agate Beach area is within a geologic hazard area; however, the subject property is not. That said, the applicant has secured the services of a geotechnical engineering firm to assess the planned public street improvements to determine if it is appropriate to shed and infiltrate run-off or if structured storm drainage improvements are needed. The applicant's conceptual street alignment shows storm drainage being collected in a roadside ditch where it is then directed north into a structed drainage system at NW 60th. It is not clear that the plans have been informed by the geotechnical engineering firm's storm drainage assessment.

6. Considering the above, the Planning Commission concludes that public infrastructure and facilities are adequate to accommodate the proposed development provided applicant completes the proposed water, wastewater, street and storm drainage improvements.

F. <u>Conditional Use Criterion #2</u>. *The request complies with the requirements of the underlying zone or overlay zone.*

1. The 4,700 sq. ft. existing building that is to be renovated into a residential unit serving 16 clients is a "Residential Facility," permitted outright in the R-4/"High Density Multi-Family" zone district where the property is located (NMC 14.03.050(U)). A residential facility can include a number of different state regulated group living arrangements, like the subject circumstance, which is categorized as a residential treatment facility. A residential treatment facility, as defined in ORS 443.400(11), is a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties. Since it is an outright permitted use in the existing building, the use is not subject to the conditional use application.

2. The 8,300 sq. ft. addition on the east side of the building that is to be used for counseling and support services for both the residential unit and extended outpatient programs is the subject of this permit application, as professional offices of this nature are only allowed conditionally in the R-4 zone district (NMC 14.03.050(I)). This use will be housed in the two-story addition, and it is that addition which is driving the need for off-site and on-site improvements.

3. Section III of the applicant's narrative (Attachment "D") describes in detail how the residential facility with the addition for counseling, support services, and outpatient programs satisfies the development standards of the R-4 zone district. An explanation of how the project satisfies relevant code requirements starts on page I-5, and is supported by the applicant's site plan and exterior architectural elevations (Attachment "E"), which illustrate that the project will comply with development standards applicable to R-4 zoned areas.

4. City Zoning Maps do not show any overlay zones applicable to the applicant's property.

5. Agate Beach has its own sign regulations, contained in Chapter 10.15 of the Newport Municipal Code. Conditional uses in R-4 zoned areas are allowed one freestanding sign that, in the case of the subject property, cannot exceed 5-ft. in height and 50 sq. ft. in size (NMC 10.15.030(B)(2)). Any other freestanding signs will need to fall within the exempt parameters, which allow non-illuminated signs up to 2 sq. ft. in size (NMC 10.15.020(C)). A sign permit will be required for the proposed freestanding sign (NMC 10.15.015).

6. Considering the above, the Planning Commission concludes that this criterion has been satisfied.

G. *Conditional Use Criterion #3. The proposed use does not have an adverse impact greater than existing uses on nearby properties; or impacts can be ameliorated through imposition of conditions of approval.*

1. This criterion relates to the issue of whether the proposed use has potential "adverse impacts" greater than existing uses and whether conditions may be attached to ameliorate those "adverse impacts." Impacts are defined in the Zoning Ordinance as including, but not being limited to, the effect of nuisances such as dust, smoke, noise, glare, vibration, safety, and odors on a neighborhood. Adequate off-street parking, or the lack thereof, may also be considered by the Commission under this criterion.

2. The applicant indicates that they believe the proposed replacement building will not adversely impact nearby properties. Their narrative (Attachment "D") includes a chart listing the parking credit associated with the former uses of the property. Using City parking ratios listed in NMC Chapter 14.14, the site is credited with 49 spaces. By the same measure, the proposed use generates a demand for 29 parking spaces.

3. In their narrative, the applicant notes that proposed changes to the existing facility will have minimal impact on the livability of the surrounding neighborhood. To date, the use of the site by Samaritan Health Systems has not had any negative impacts on the surrounding properties since the facility is well-maintained and the individuals using the facility are respectful of the neighbors in terms of noise, trash, and other potential nuisances.

4. The applicant acknowledges that the addition of the professional office use on the site will create an increase in the intensity of the use, but point out that it is not anticipated to create any additional impacts to the surrounding neighborhood. With the planned improvements, the street system will be capable of serving the existing traffic volume as well as the increase in vehicle trips associated with the proposed use without creating any capacity issues. The applicant further indicates that the additional traffic to the site will be spread throughout the day and due to the daytime operational hours of the outpatient facility no additional traffic is anticipated on nights and weekends.

5. The proposed professional office use will not create any significant noise or air quality issues since the entire use will take place inside the building. The applicant notes that visitors to the site will continue to be directed by Samaritan Health Services to be respectful of the surrounding neighbors in terms of noise and trash when they are outside of the facility.

Additionally, they point out that the new enclosed courtyard in the center of the facility will provide the residents with new outdoor activity space, but it should not create any off-site impacts since noise from the courtyard will be buffered by the surrounding building. Lastly, the applicant notes that paving the existing parking lot will result in less dust from the site during dry periods.

6. Given the above, the Planning Commission concludes that this criterion has been satisfied.

H. Conditional Use Criterion #4. *A proposed building or building modification is consistent with the overall development character of the neighborhood with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.*

1. The applicant notes that the site has most recently been used as an adult foster care facility. They point out that during that time the visual character of the property has remained residential, with the house looking like any other house in the neighborhood. In addition to the single-family dwellings in the neighborhood, several multi-story apartment buildings reside to the east and northeast of the site.

2. As illustrated on the architectural elevations (Attachment "E"), the new addition to the facility has been designed to match or complement the existing building in terms of siding materials and color, roof slope, window size and placement and trim. The applicant notes that the detailing of the new doors and windows of the addition have been selected to appear more residential in nature than commercial.

3. The new two-story addition will be 34'-6" feet tall to the peak of the roof, which will not exceed the 35-foot height limit of the R-4 zone and is consistent with other two-story dwellings in the neighborhood. The applicant acknowledges that the overall size of the building is larger than most houses, but points out that the addition will be setback away from the street, behind the existing building to help minimize this impact. The building size is comparable to apartment buildings in the surrounding area. The applicant asserts that along the NW Biggs Street frontage, the building will appear much as it always has, and the addition will not dominate the appearance of the property from the public street. Additionally, new trees and landscaping are proposed in the front yard to soften the appearance of the facility and a new wood fence will surround the site on the north, east and south property lines to provide privacy to surrounding neighbors.

4. Given the above, the Planning Commission concludes that the use will be consistent with the overall development character of the neighborhood regarding building size and height.

I. Other Considerations. In a 6/12/23 email, Susan Hogg expressed concerns about whether or not the proposed office addition, with outpatient counseling and support services, is a "professional office" eligible for approval as a conditional use in the R-4 zone district. The term "professional office" is not defined; however, the characteristics of an "office use" are described in NMC 14.03.060(C)(1) as activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services. Traffic is primarily from employees with limited customer interaction. Ms. Hogg takes issue with the outpatient and support services

being limited customer interactions. That same section of the Municipal Code lists examples of uses that qualify as "offices," including medical and dental clinics. In approving this application, the Planning Commission concludes that the proposed use, with its outpatient and support services, has a level of customer interaction akin to a medical clinic and; therefore, fits under the City's broader definition of "office" and "professional office" uses.

Ms. Hogg further argues that the residential facility, which is not a part of the conditional use, is limited to a maximum occupancy of 15 individuals. NMC 14.01.020 includes a definition for "residential facility" that reads:

> "A facility licensed by or under the authority of the Department of Human Services (DHS) as defined in ORS 443.400, which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Required staff persons shall not be counted in the number of facility residents. This definition includes the state definitions of "residential care facility," "residential training facility," and "residential treatment facility."

This definition is similar, but slightly different than the one in ORS 197.660(1), which is the statute that requires cities allow residential facilities in areas where multi-family uses are allowed (ORS 197.670(1)(b)). That definition for "residential facility" reads as follows:

> Residential Facility means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400 (Definitions for ORS 443.400 to 443.455), that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

The City's definition, while it could be clearer, sets 15 as the top end occupancy for residential facilities unless the residential facility is a "residential care facility," a "residential training facility," or a "residential treatment facility." For these three types of residential facilities, the City adopted the state definitions for those terms. The proposed use is a "residential treatment facility" which the state defines under ORS 443.400(11) as follows:

> ORS 443.400(11), "Residential treatment facility" means a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

This statutory definition does not have a top end occupancy limit; however, the Oregon Administrative Rule (OAR) that implements the statute does set an occupancy limit, stating "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six to 16 individuals as described in ORS 443.400(9). An RTF does not include the entities set out in ORS 443.405 (Ref: OAR 309-035-0105(55)).

Considering the above, the Planning Commission concludes that a top end occupancy of 16 individuals for this "residential treatment facility" is consistent with the state definition of the term and; therefore, conforms with the City's definition of a "residential facility" that is permitted outright in the R-4 zone district per NMC 14.03.050(U).

OVERALL CONCLUSION

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for a conditional use permit found in Section 14.34.050 of the Newport Municipal Code (NMC); and, therefore, the requested conditional use permit is hereby approved with the imposition of 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 the staff report. No use shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the applicant/property owner to comply with these documents and the limitations of approval described herein.

2. The applicant shall extend the gravity sewer line from its current terminal point in the NW 59th Street right-of-way east across NW Biggs Street, and replace the existing 12-inch asbestos concrete water main in accordance with the Newport Public Works Department standards. Such work shall be completed and accepted by the City Engineer prior to occupancy.

3. NW Biggs Street shall be paved to a width of 20-ft. with 4-ft. shoulders between NW 58th and NW 59th Street. The applicant may complete the improvements themselves or negotiate with the Newport Urban Renewal Agency to extend NW 60th Street further north to NW 60th Street. The design of the roadway drainage system is to conform to the recommendations of a licensed geotechnical engineer, or individual with equivalent expertise, and the improvements shall adhere to Newport Public Works Department standards. The completed improvements must be accepted by the City Engineer prior to occupancy of the new facility.

4. The applicant shall obtain a City of Newport sign permit for the signage conceptually described in this conditional use application, unless such signage is listed as exempt under NMC 10.15.020.

5. The applicant shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicant is responsible for obtaining the necessary approvals and permits pertaining to the proposed use. If the applicant must materially modify the size or height of the building to comply with these codes, then a conditional use permit shall be submitted to establish that the changes are consistent with the overall development character of the neighborhood.

6. The City Manager, or designee, shall evaluate whether or not traffic control or traffic calming measures should be deployed along NW Biggs Street as part of the design process to extend NW Biggs Street through to NW 60th Street. The results of such evaluation shall be documented in writing and included as part of the case record.

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

IN THE MATTER OF PLANNING COMMISSION FILE NO. 2-VAR-23, APPLICATION FOR A SIGN VARIANCE, AS SUBMITTED BY THE PORT OF NEWPORT (AARON BRETZ, AUTHORIZED REPRESENTATIVE)	)))))	**FINAL ORDER**

ORDER APPROVING A VARIANCE pursuant to Section 10.10.130 of the Newport Municipal Code (NMC) to allow a laminated freestanding sign with 114 sq. ft. of display area (i.e. 12-ft. wide x 9-ft. 6-in. tall). The sign will be placed at Port Dock 1, which possesses roughly 21-ft of frontage along SW Bay Boulevard. Freestanding signs in marine districts are limited to one sq. ft. of display area for each lineal foot of street frontage (Section 10.10.085(B)), meaning a sign at this location is limited to 21 sq. ft. of display area (effectively a 5-ft x 4-ft display area). Properties are also limited to a single freestanding sign and this location already has one, that being the Port of Newport Port Dock 1 identification sign. The property subject to the variance application is located at Port Dock 1 (adjacent to Clearwater Restaurant at 325 SW Bay Blvd). It is identified as Tax Lot 02400, on Lincoln County Assessor's Map 11-11-08-DB. The upland area is roughly 435.6 sq. ft. per County assessment records.

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 application for a variance, with the public hearing a matter of record of the Planning Commission on June 12, 2023; and

3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, and from 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 sign 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. The applicant shall obtain a City of Newport sign permit for the signage conceptually described in this variance application.

BASED UPON THE ABOVE, the Planning Commission determines that the application for a sign variance is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 10th day of July, 2023.

_____
Bill Branigan, Chair
Newport Planning Commission

Attest:

_____
Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 2-VAR-23

FINDINGS OF FACT

1. Port of Newport (Aaron Bretz, authorized representative) submitted a request on April 19, 2023, for approval of a Type III variance pursuant to Newport Municipal Code Section 10.10.130 of the City of Newport Municipal Code to allow a laminated freestanding sign with 114 sq. ft. of display area (i.e. 12-ft. wide x 9-ft. 6-in. tall). The sign will be placed at Port Dock 1, which possesses roughly 21-ft of frontage along SW Bay Boulevard. Freestanding signs in marine districts are limited to one sq. ft. of display area for each lineal foot of street frontage (Section 10.10.085(B)), meaning a sign at this location is limited to 21 sq. ft. of display area (effectively a 5-ft x 4-ft display area). Properties are also limited to a single freestanding sign and this location already has one, that being the Port of Newport Port Dock 1 identification sign.

2. The property subject to the variance application is located at Port Dock 1 (adjacent to Clearwater Restaurant at 325 SW Bay Blvd). It is identified as Tax Lot 02400, on Lincoln County Assessor's Map 11-11-08-DB. The upland area is roughly 435.6 sq. ft. per County assessment records.

3. Staff reports the following facts in connection with the application:

A. Plan Designation: Shoreland.
B. Zone Designation: W-2/"Water-Related."
C. Surrounding Land Uses: Tourist oriented retail and commercial fishing facilities.
D. Topography: Moderately sloping into Yaquina Bay. Port Dock One is constructed on piling, extending out over the bay. The decking is relatively level and it is at street grade. The dock is subject to a lease with the Department of State Lands in the tidal influenced areas.
E. Existing Structures: Publicly accessed dock and freestanding sign identifying the dock as Port Dock 1.
F. Utilities: All are available to the subject property.
G. Past Land Use Actions: *File #1-EUP-14*, an estuarine use permit authorizing the installation of pile and a new floating dock for use by the sea lions. A second phase of the project involves the installation of a 80 foot long by 6 foot wide public viewing platform abutting the pier of Port Dock One.

4. Explanation of the Request: The Port of Newport is requesting approval of the installation of a 144 in x 114 in laminated sign depicting the Newport Bridge and Yaquina Bay. It will include text for "Newport Oregon," "Discover Newport," and the web address for the Newport Sea Lion Foundation "newportsealions.com." The applicant notes that the sign was approved by the Discover Newport Committee in 2021 and funded using transient tax dollars via the Newport Chamber and Discover Newport. It is to be built locally by Newport Signs Company.

The sign will be 11-ft, 6-in. tall and is to be secured to deck railing on the south side of the walkway entering Port Dock 1, with the northeasterly elevation of the Clearwater Restaurant building serving as a backdrop. The applicant indicates that this portion of the dock is on the upland area of the property that would not be subject to the terms of a Department of State Lands lease. A graphic

illustration of the sign, including how and where it will be placed on the dock, is included as Attachment "E."

5. Applicable Criteria. Per Newport Municipal Code (NMC) Section 10.10.140(C), the Planning Commission must find that the application for a sign variance complies with the following criteria:

A. The variance is consistent with the purposes of the sign code, as provided in Chapter 10.10.010 of the Newport Municipal Code, as applicable; and

B. The variance will allow for placement of a sign with exceptional design, style, or circumstance, or will allow a sign that is more consistent with the architecture and development of the site; and

C. The variance will not significantly increase or lead to street level sign clutter, or will it create a traffic or safety hazard.

6. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on May 23, 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., June 12, 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 2, 2023. The Community Development Department received no comments from any of the affected parties.

7. A public hearing was held on June 12, 2023. At the hearing, the Planning Commission received the staff report and received oral testimony from Aaron Bretz with the Port of Newport, Janell Goplen, with Clearwater Restaurant, and Camille Fournier with the Sea Lion Foundation. The applicant waived their right to provide rebuttal testimony and the Commission closed the hearing, deliberated, and elected to approve the variance based upon the findings outlined herein.

8. The minutes of the June 12, 2023, meeting are hereby incorporated by reference into the findings. The Planning Staff Report with attachments is hereby incorporated by reference into the findings. The Planning Staff Report attachments included the following:

Attachment "A" – Application form
Attachment "B" – Applicant's narrative
Attachment "C" – Lincoln County Property Record Card
Attachment "D" – Record of Survey No. 11713
Attachment "E" – Illustration of the size and location of the freestanding sign
Attachment "F" – Public hearing notice

CONCLUSIONS

Regarding the applicable criteria for the variance application, the following conclusions can be made:

A. *The variance is consistent with the purposes of the sign code, as provided in Chapter 10.10.010 of the Newport Municipal Code, as applicable; and.*

The purposes of the Newport Sign Code are:

- *To protect and promote the health, safety, property, and welfare of the public, including but not limited to promotion and improvement of traffic and pedestrian safety.*
- *To improve the neat, clean, and orderly appearance of the city for aesthetic purposes.*
- *To allow the erection and maintenance of signs consistent with the restrictions of the Newport Sign Code.*
- *To prevent distraction of motorists, bicyclists and pedestrians.*
- *To allow clear visibility of traffic signs and signal devices, pedestrians, driveways, intersections, and other necessary clear vision areas.*
- *To provide for safety to the general public and especially for firemen who must have clear and unobstructed access near and on roof areas of buildings.*
- *To preserve and protect the unique scenic beauty and the recreational and tourist character of Newport.*
- *To regulate the construction, erection, maintenance, electrification, illumination, type, size, number, and location of signs.*

1. The applicant's narrative, submitted by the Newport Sea Lion Foundation, lists the "purpose" provisions of the sign code and explains why they believe the proposed sign is consistent with the stated objectives (Attachment "B"). They view the large face of the sign as an attractive tourist promotion feature where visitors can take pictures of themselves while visiting the sea lions. The applicant also explains that the style and design of the sign is aesthetically pleasing and that its location, secured to railing adjacent to the Clearwater Restaurant building, will not interfere with pedestrian traffic. The applicant also points out that the sign should not be a distraction to motorists, cyclists, or pedestrians given that it is located away from highly travelled areas.

2. The Commission reviewed the applicant's narrative, as it relates to each of the listed purpose provisions, and concludes that the proposed sign is consistent with those provisions.

B. *The variance will allow for placement of a sign with exceptional design, style, or circumstance, or will allow a sign that is more consistent with the architecture and development of the site; and.*

1. The Commission finds that the applicant's proposal, illustrated in Attachment "E," exhibits exceptional design and style that emphasize artistic elements as opposed to text messaging. In this way, the proposal is akin to a mural sign, a type of signage that is common along the Bayfront and which is not subject to display area dimensional limitations.

2. The proposed sign will conceal from view a portion of the Port Dock 1 railing, along with fencing and a staircase on the Clearwater Restaurant property. These are ancillary architectural elements, and there is no signage on the portion of the Clearwater building that this sign would compete with or highlight. Further, the Commission considers the presence of the sea lions at Port Dock 1 as an exceptional circumstance justifying the sign variance.

C. *The variance will not significantly increase or lead to street level sign clutter, or will it create a traffic or safety hazard.*

1. The Port of Newport has a large freestanding sign further down the dock, and there are a number of murals and signs of various sizes along the Bayfront at street level. For these reasons, the Commission finds that a sign of this size will not cause or significantly increase street level sign clutter. The sign will also be placed far enough down the Port Dock 1 walkway that it shouldn't be a traffic hazard. The City requires a sign permit to ensure that the sign structure is secured such that it will not pose a safety hazard. Provided that permit is obtained, the Commission concludes that this criterion has been satisfied.

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 application complies with the criteria for granting a sign variance, and, therefore, the application is **APPROVED** with the following conditions of approval:

1. The applicant shall obtain a City of Newport sign permit for the signage conceptually described in this variance application.

Case File: 3-VAR-23
Date filed: May 23, 2023
Hearing Date: July 10, 2023/Planning Commission

PLANNING STAFF REPORT
File No. 3-VAR-23

A. **APPLICANT(S) & OWNER(S):** J.T. Roth Construction, Inc. (Theresa Roth, owner).

B. **REQUEST:** 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.

C. **LOCATION:** 1515 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2302 (Lot 1, Block 49, Oceanview Subdivision).

D. **LOT SIZE:** Roughly 0.37 acres per Assessor's Records, with .17 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.

E. **STAFF REPORT:**

1. **REPORT OF FACT:**

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 a single-family residences 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.

h. **Notification:** All affected property owners within 200 feet, applicable city departments, and other agencies were notified on June 5, 2023. The public hearing notice was published in the Newport News-Times on June 30, 2023 (Ref: Staff Report Attachment "I").

i. **Attachments:**

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

2. **Explanation of the Request:** 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. The variance will apply to all three building lots.

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 will widen the street to 24 feet, with concrete curb and gutter along the property frontage, concurrent with construction of the dwelling. 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").

3. **Evaluation of the Request:**

a. **Written Comments:** As of July 5, 2023, no written comments have been submitted in response to this application.

b. **Applicable Criteria (NZO Section 14.33.060):**

i. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

ii. That the circumstance or conditions above are not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

iii. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

iv. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.

v. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

vi. That any impacts resulting from the variance are mitigated to the extent

practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

c. **Staff Analysis:**

In order to grant the variance, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis could be made:

Criterion #1. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.)

To grant a variance the Commission must find that a circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district 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.

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.

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.
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").

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.

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.

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.

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.

For the reasons stated, it is reasonable for the Commission to find that this criterion has been satisfied.

<u>Criterion #2</u>. That the circumstance or condition in Criterion #1 is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

The 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.

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.

Considering the above, it is reasonable for the Planning Commission to find that the unique configuration of the property, terrain, and zoning are not circumstances or conditions created by the applicant.

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

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.

The Planning Commission has historically viewed the application of dimensional standards, such as setbacks, in a manner that would force development on more steeply sloped terrain or close to a bluff/embankment, as creating a practical difficulty that justifies the granting of a variance. Examples include the 10 foot front yard variance approved for the residence immediately north of the applicant's three lots, under criteria in effect in 1979 (Attachment "F"). The same was done in 2020 under the current variance criteria, for development of the applicant's two lots to the north (Attachment "G").

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.

Given this information, it is reasonable for the Planning Commission to find 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.

Criterion #4. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street,

unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.

The 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 additional to a 2 car garage included with the proposed dwelling.

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.

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).

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.

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

<u>Criterion #5</u>. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

The 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 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.

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.

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

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

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.

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.

Considering the above, it would be reasonable for the Commission to find that there are no impacts attributed to the variance that require mitigation.

4. **Conclusion:** If the Planning Commission finds that the application has met the criteria established in the Zoning Ordinance for granting a variance, or can meet the criteria with the imposition of reasonable conditions, then it should approve the request. There must be a rational nexus between any conditions of approval and the nature of the request, and such conditions must be roughly proportional to the impact of the proposal. If the Planning Commission finds that the application does not comply with the approval criteria, and cannot be brought into compliance with the imposition of reasonable conditions, then it should make findings for denial.

F. **STAFF RECOMMENDATION:** If the Planning Commission decides to approve the request, staff would recommend the following condition(s) of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.

2. 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.

Derrick I. Tokos AICP
Community Development Director
City of Newport

July 6, 2023

Attachment "A"
3-VAR-23

City of Newport
Land Use Application

PLEASE PRINT OR TYPE · COMPLETE ALL BOXES · USE ADDITIONAL PAPER IF NEEDED

Applicant Name(s): J.T. Roth Construction, Inc.	Property Owner Name(s): *If other than applicant* J.T. Roth, Jr & Theresa Roth
Applicant Mailing Address: 12600 SW 72nd Ave., Portland	Property Owner Mailing Address: *If other than applicant* 12600 SW 72nd Ave #200, Portland, OR 97223
Applicant Telephone No.: 5036392639/kenzier@jtrothinc.com E-mail:	Property Owner Telephone No.: *If other than applicant* E-mail:
Authorized Representative(s): *Person authorized to submit and act on this application on applicants behalf* McKenzie Roth and Austin Roth	
Authorized Representative Mailing Address: 12600 SW 72nd. Ave, Portland, OR 97223	
Authorized Representative Telephone No.: 503-639-2639	E-Mail: kenzier@jtrothinc.com

Project Information

Property Location: *Street name if address # not assigned* 1515 ~~SW~~ No Spring St., Newport, OR 97365	
Tax Assessor's Map No.: 11-11-05-BB	Tax Lot(s): ~~02300~~ Oceanview Blk 49 Lot 1
Zone Designation: R-2 Single	Legal Description: *Add additional sheets if necessary* 02302
Comp Plan Designation: Nye Beach	
Brief Description of Land Use Request(s): Variance of 10 feet from the front yard setback from 20 feet to 10 feet. *Examples:* *1. Move north Property line 5 feet south, or* *2. Variance of 2 feet from the required 15 foot front yard setback*	
Existing Structures: *If any* NONE	
Topography and Vegetation: site has been cleared of vegetation and engineered walls are built to create building pad.	

APPLICATION TYPE (please check all that apply)

☐ Annexation	☐ Interpretation	☐ UGB Amendment
☐ Appeal	☐ Minor Replat	☐ Vacation
☐ Comp Plan/Map Amendment	☐ Partition	☑ Variance/Adjustment
☐ Conditional Use Permit	☐ Planned Development	☐ PC
☐ PC	☐ Property Line Adjustment	☐ Staff
☐ Staff	☐ Shoreland Impact	☐ Zone Ord/Map Amendment
☐ Design Review	☐ Subdivision	☐ Other_____
☐ Geologic Permit	☐ Temporary Use Permit	

FOR OFFICE USE ONLY

File No. Assigned: 3-VAR-23

Date Received: 5/23/23 Fee Amount: $699 Date Accepted as Complete: 5/26/23

Received By: SM Receipt No.: 16998 Accepted By: _____

(SEE REVERSE SIDE)

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Applicant Signature(s)	5/24/23 Date Signed
Verna Roth Property Owner Signature(s) *(if other than applicant)*	5/25/23 Date Signed
Authorized Representative Signature(s) *(if other than applicant)*	Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Attachment "B"
3-VAR-23

LINCOLNPROD PROPERTY RECORD CARD

roperty ID: R533987 | **Map and Taxlot:** 11-11-05-BB-02302-00 | **Tax Year:** 2023 | **Run Date:** 7/5/2023 2:09:12 PM

PROPERTY SITUS ADDRESS

515 NW SPRING ST
laintenance Area: E-08

OWNER NAME AND MAILING ADDRESS

OTH THERESA
O BOX 4564
UALATIN, OR 97062

LEGAL DESCRIPTION

CEANVIEW, BLOCK 49, LOT 1

GENERAL PROPERTY INFORMATION

Prop Class:	100
NBH Code:	NNOB
Prop Type Code:	RES
Prop Code:	Z2: CENTRAL COAST RES
Next Appr Date:	
Next Appr Reason:	
Last Appr Date:	03/14/2023
Appraiser:	CJH
Zoning:	R-1
Code Area:	104
Related Accts:	

VALUE HISTORY

Year	Land RMV	Imp RMV	Total RMV	Total AV	LSU Value
2022	315,060	0	315,060	73,140	
2021	284,070	0	284,070	71,010	

ASSESSMENT INFORMATION

Land Non-LSU:	346,050	**Prior MAV:**	73,140	**Except RMV:**	
Improvement:	0	**Prior MAV Adj:**	0	**CPR:**	
Non-LSU RMV Total:	346,050	**Prior AV:**	73,140	**EX. MAV:**	
Land LSU:	0	**Prior AV Adj:**	0	**LSU:**	
RMV Total:	346,050	**AV +3%:**	75,334	**New M50 AV:**	75,33

SALES INFORMATION

Date	Type	Sale Price	Adj Sale Price	Validity	Inst. Type	Sale Ref
				NON_SALE	DC DEATH CERTIF	202303747

cres: 0 **Sqft:**
ffective Acres: 0

BUILDING PERMITS AND INSPECTIONS

ype	Appraiser	Issue Date	Date Checked	% Comp	Comment
NC1: HOUSE - RESID	Z2, Z	01/01/2024		0	

PARCEL COMMENTS

enFlag- M_21C,M_22NC,M_23NC
enCom- 2022-23 JV#414 CORRECT EXCEPTION CALCULATION ERRORS, ENTERED 11-23-21. 2022/23 JV#176 YEAR 2 EXCEPTI

EXEMPTIONS

Code	Exempt RMV

Exceptions

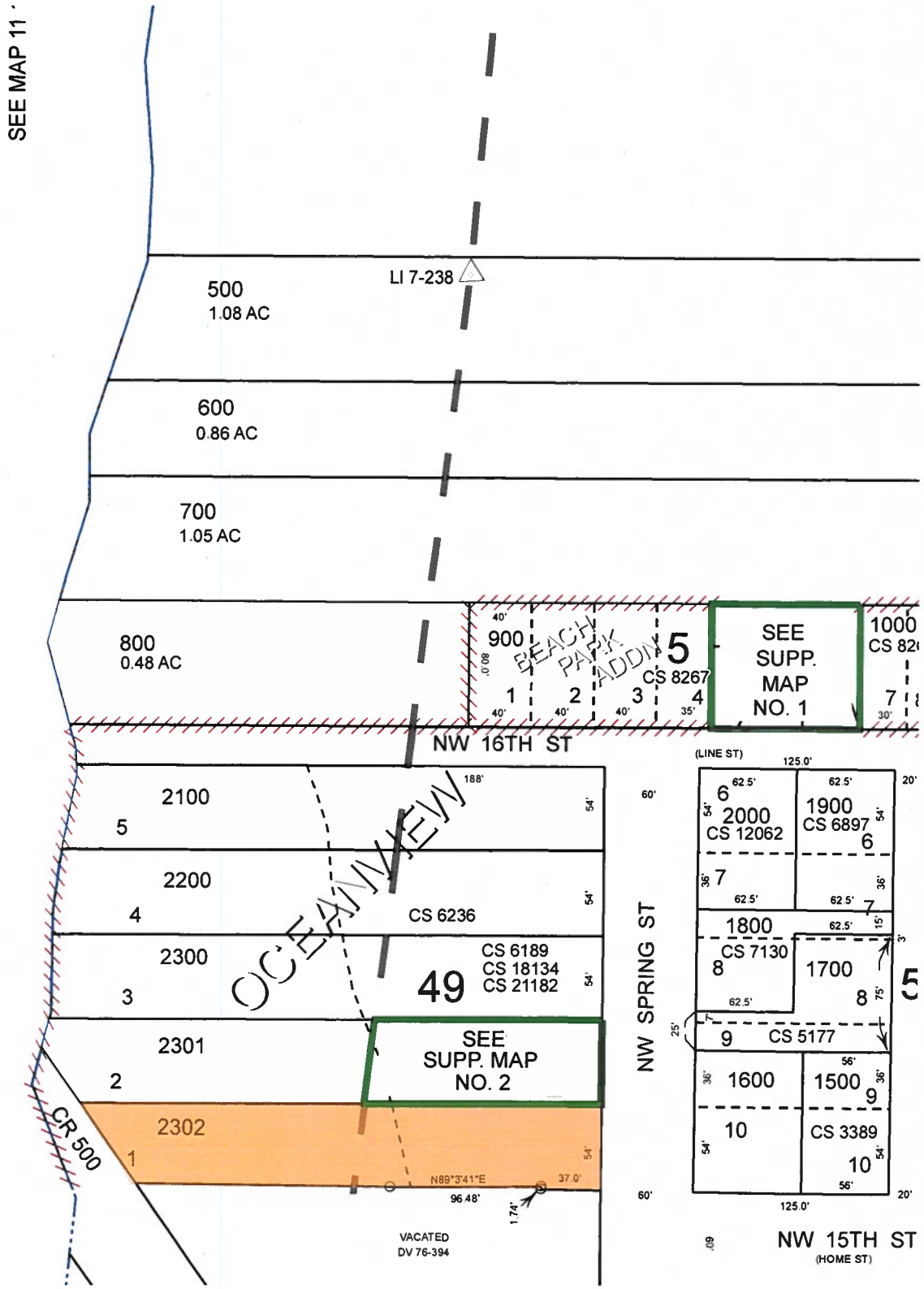
Code	Year	Amount	Metho
DVN	2021	68,950	

MARKET LAND INFORMATION

ype	Table	Method	Acres	Base Value	Adjustment Code - %	NBHD %	Total Adj %	Final Value
SUOF: UNDEV OCEANFRONT	NNO	FFB	0.190	335,000	V-110,D-90	0.000	0.990	346,050
L: WEST OF VEG LINE		F	0.180	0		0.000	0.000	0
		Total Acres:	**0.370**			**Total Market Land Value:**		**346,050**

LAND SPECIAL USE

Code	SAV Unt Pr	MSAV Unt Pr	LSU
		Total LSU:	


SEE MAP 11
LI 7-238
500
1.08 AC
600
0.86 AC
700
1.05 AC
800
0.48 AC
900
BEACH PARK ADDN
5
CS 8267
SEE SUPP. MAP NO. 1
1000
CS 82
NW 16TH ST
2100
5
2200
4
2300
3
2301
2
2302
1
OCEANVIEW
CS 6236
CS 6189
CS 18134
CS 21182
49
SEE SUPP. MAP NO. 2
CR 500
N89°3'41"E
96.48'
37.0'
1.74'
VACATED
DV 76-394
NW SPRING ST
(LINE ST)
125.0'
6
2000
CS 12062
1900
CS 6897
6
7
7
1800
CS 7130
8
1700
8
9
CS 5177
1600
9
1500
10
CS 3389
10
NW 15TH ST
(HOME ST)

Attachment "C"
3-VAR-23

JT Roth CONSTRUCTION
CCB# 31700

May 23, 2023

Derrick Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365

RE: **Land Use Application**
*Front Setback Variance
02300 Oceanview Blk 49 lot 1

Subject Property

This application is for one (1) building lot located north of NW 15th and west of NW Spring Street.
Lot 1 Block 49, Oceanview
Physical Address: 1515 NW Spring St., Newport, OR 97365
See Attachment Site plan

Proposed Development

The subject property consists of one (1) building lot zoned R-2, with permitted uses we intend to build one Single-Family Dwelling.
A concept site plan is attached that suggests how this building types would apply.
See Attachment Site plan

Zoning

The subject property is zoned R-2 Residential-Medium Density Single Family with permitted uses including *Single-Family Dwellings (house).

Front Setback Requirements:

House	20'
Garage	15'

Geologic Permit Application

Geologic Permit has been approved, Geological Permit # 8-GP-18

1. Request to deviate from required setbacks

This application is requesting a front yard setback reduction from 20' to 10' for the Single-Family dwelling.
See Attachment Site plan

2. Request to deviate from building height limitations.
N/A

Additional Documents submitted with Application

3. -A current 18" x 24" Lincoln County Assessor's tax map(s) showing the subject property and the notification area. The notification area is all properties within 200 feet of the subject property.
See attached

4. -A list of names and addresses of property owners, as shown in the records of the Lincoln County Assessor, within the notification area.
See attached

5. Findings of Facts

5.a The property is located on the west side of NW Spring Street and is an ocean front property located within a steep slope terrain. Where the defined boundary depth of this lot extends (approx.) 150', the westerly (approx.) 50' of the lot exists as a 2:1 sloped embankment, sloping downward toward the bottom of the break at the sand beach. This is typical for the neighboring properties located on this west side of NW Spring St. 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 construction of these homes on these challenging lots took more time than expected and the previous approved setback variance has expired therefore the need for this new request.

The homes located on the three (3) lots immediate north of this subject property (2 of which were recently constructed by us and one which was built in the 70's) all of which were held forward when constructed, the front yard setback for these properties is approx. 10'.

Properties located on the east side of NW Spring St. do not share the same or similar characteristics, which makes the subject property unique to the vicinity and zoning.

The lot was platted with a width of approx. 54', meaning that a home constructed on the lot would have a narrow width and longer depth. 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. However on this lot 1 specifically, The Storm Drainage requirements by the city (see attached Exhibit 4) required that I install a new catch-basin along the curb line, which has been installed. We have worked with the city to resolve some needed improvements to their existing storm drainage system by installing a new storm drain in a 15' storm easement that runs along the south property line which furthermore makes this lot more challenging to build on by restricting the width. All of this will not be impacted by the requested variance.

The public right-of-way (NW Spring Street) fronting the subject property has a dedicated street width (public ROW) of 50', where it is currently improved (paved) at a width of 22' with no curbs on either side of the street . The city has informed me that a condition of improving my property will include improving (paving) NW Spring Street to a street width of 24' with concrete curb/gutter along my property frontage. These additional public improvements will require civil engineering documents for city approval prior to the work being performed.

With the improved street width of 24', and approx. 2' of unimproved ROW along the east side of Spring Street, there is an area of approx. 24' of unimproved public ROW fronting this subject property, this area is located between the (proposed) curb/gutter and my front property line. This area is noted on "Attachment 1" and "Exhibit 1".

5.b The circumstances defined above (paragraph 5.a) were existing prior to my ownership, and there have been no changes or improvements made to the property during my ownership that would have exacerbated the conditions that currently exist.
There are no personal circumstances (financial or otherwise) that have contributed to the existing conditions of these lots.

5.c The dimensional limitations described above (paragraph 5.a) creates a condition and circumstance that would be lessened by the practical application of moving the improvements (structure) forward and further away from the sloped embankment.

5.d The physical characteristics of the property located within the vicinity or zoning district will not be impacted by the authorization of the requested front yard setback variance.

*The adjacent property to the north and to the south are currently improved with residential structures, which will require improvements to my lot to conform to their existing conditions. The improved properties to the north were constructed with a front yard setback of approx.10'.

*Property(s) to the east (opposite side of Spring Street) will not be impacted by a reduction in my front yard setbacks.

*The frontage street (Spring Street) will be improved to a width of 24', leaving approx. 24' of unimproved ROW along my property frontage. This, along with the requested 10' front yard setback, will effectively provide for a 34' setback from the back of curb/gutter to front of the improved structure.
The effective setback of 34' exceeds the zoning code setback of 20' that would apply to a normal building lot. This additional setback will allow for off-street parking of no less than 2 cars per lot, in addition to the 2 car garage designed with the structures and 2 more cars in the driveway.

*Spring Street is not a through-street. This street was vacated by the city, allowing a residential structure to be constructed at the end of the street, approx. 140' to the north of the subject lots. This condition limits the traffic servicing the 8 existing homes on the street.

*The improvements to my lot will still be required to conform to the building height limitations. These height limitations would apply to the structure(s) regardless of the front yard setbacks being 20' (current zoning code) or 10' (requested variance).

5.e The proposed variance will not interfere with access to the existing utilities.

*Sewer and water are existing in Spring St.

*The improvements to my lot will require that I provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.
The Storm Drainage requirements by the city (see attached Exhibit 4) required that I install a new catch-basin along the curb line, which has been installed.
We have worked with the city to resolve some needed improvements to their existing storm drainage system. All of this will not be impacted by the requested variance.

5.f Impacts resulting from the variance are mitigated to the extent practical.

*Arguably, the variance of allowing the structure to be located 10' closer to the front property line will have no impact to the adjoining properties.

*The question of topography would be addressed as a benefit to the existing conditions, in that, moving the structure forward helps create more separation from the existing embankment.

6. This request for a front yard variance would be applied to the Single-Family Dwelling as a 50% reduction from the existing 20' zoning code requirement.
While the existing conditions will allow for a set back from the street curbs to the structure of (approx.) 34', after the variance is applied, pulling the structures forward 10' will allow the improvements constructed on this lot to gain additional separation from the steep sloping embankment providing additional insurance from natural weather events.

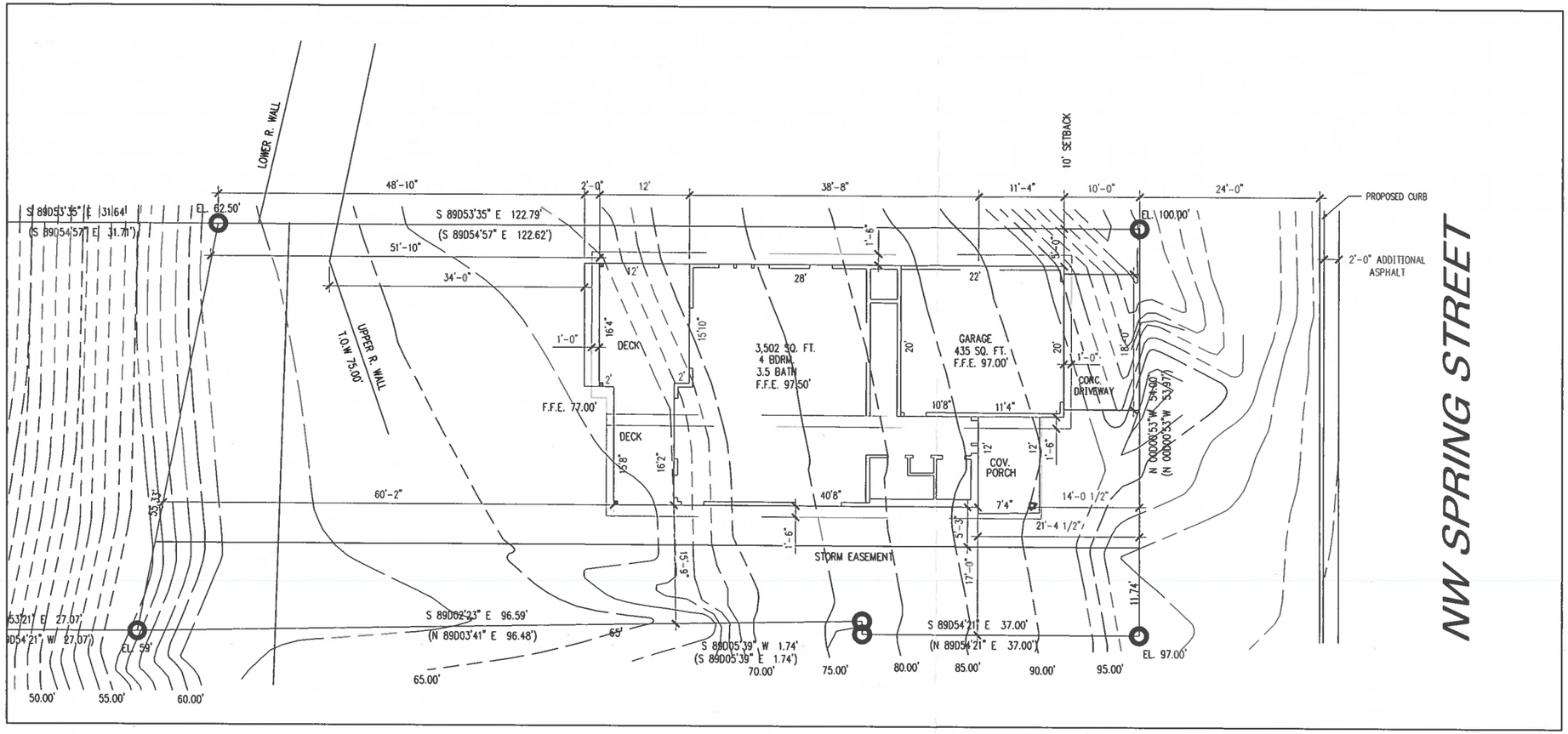
7. Fee of $699.00 will be paid via invoice.

This concludes the description of the Application Submittal Requirements for the land-use application specific to the Front Yard Setback Variance Permit Application for the Roth property located at 15th and Spring St., Newport Oregon.

Submitted

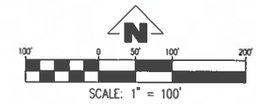
McKenzie Roth
J.T. Roth Construction, Inc.
12600 SW 72nd Ave., suite 200
Portland, Or, 97223
503 639 2639
kenzier@jtrothinc.com

Attachment "D"
3-VAR-23



TENTATIVE SITE LAYOUT

SCALE: 1" = 100'



FEMA FLOOD PLAIN – OREGON

ZONE VE – ELEVATION 38'
MAP – 41041C0368D

ELEV. AND LOT LINE LOCATION ENGINEER TO CONFIRM

LOT 1: NEWPORT, OR.

- ALL FILL AREAS ie: UNDER GARAGE FLOORS, SIDEWALKS, DRIVEWAYS, ETC... TO BE COMPACTED GRANULAR FILL.
- THERE WILL BE A SLIGHT OVER EXCAVATION TO PROVIDE CONCRETE FORMING ALL AROUND NEW STRUCTURE.
- PROVIDE COUNTY/CITY APPROVED STABILIZED GRAVELED CONSTRUCTION ENTRANCE PRIOR TO EXCAVATION AND CONSTRUCTION.
- CONTRACTOR/ SUB-CONTRACTOR TO VERIFY LOCATION OF ALL UTILITIES PRIOR TO EXCAVATION AND CONSTRUCTION.
- BOUNDARY AND TOPOGRAPHY INFORMATION HAS BEEN PROVIDED TO FOWLER HOME DESIGN INC. FOWLER HOME DESIGN, INC, WILL NOT BE HELD LIABLE FOR THE ACCURACY OF THIS INFORMATION, IT IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR /OWNER TO VERIFY ALL SITE CONDITIONS INCLUDING FILL PLACED ON SITE.
- ELEVATION LEGEND:
  - EE= EXISTING GRADE ELEVATION
  - FE= FINAL GRADE ELEVATION
  - FFE= FINISHED FLOOR ELEVATION
- PROVIDE A MINIMUM GRAVEL BASE UNDER ALL DRIVEWAY AREAS.
- PROVIDE A 4" MINIMUM GRAVEL BASE UNDER ALL SIDEWALK AND PATIO AREAS.
- PIPE ALL STORM DRAINAGE FROM THE BUILDING TO A COUNTY/CITY DISPOSAL POINT/CONNECTION.
- MAXIMUM SLOPE OF CUTS AND FILLS TO BE TWO (2) HORIZONTAL TO ONE (1) VERTICAL FOR BUILDINGS, STRUCTURES, FOUNDATIONS, AND RETAINING WALLS.
- PROVIDE AND MAINTAIN FINISH GRADE WITH POSITIVE DRAINAGE AWAY FROM STRUCTURE ON ALL SIDES WITH A SLOPE OF 6" MINIMUM IN 10'-0".

PRELIMINARY PLANS, NOT FOR CONSTRUCTION

IMPORTANT DISCLOSURE
– PLEASE READ:

THE PLANS YOU HAVE PURCHASED ARE FOR THE CONSTRUCTION ONE HOME ONLY. UNDER NO CIRCUMSTANCES IS IT LEGAL TO BUILD FROM THESE PLANS MORE THAN ONCE WITHOUT THE WRITTEN CONSENT FROM THE DESIGNER TROY FOWLER. THESE PLANS ARE COPYRIGHTED AND IT IS A VIOLATION OF FEDERAL COPYRIGHT LAWS TO REPRODUCE THESE PLANS. FOWLER HOME DESIGN LLC. WILL FULLY PROSECUTE ANY VIOLATION OF ITS COPYRIGHTED DESIGNS AND PLANS. FURTHERMORE IT IS UNDERSTOOD THAT IT IS COMPLETELY THE RESPONSIBILITY OF THE CONTRACTOR TO CONSTRUCT THE HOME DESCRIBED HEREIN, ON ANY PARTICULAR SITE AND WITHIN THE CONFINES OF THE GOVERNING JURISDICTION. FOWLER HOME DESIGN LLC. TAKES NO RESPONSIBILITY FOR THE CONFORMANCE OF THIS PLAN TO ANY CODE OR ANY BUILDING SITE.

FOR JT ROTH CONSTRUCTION
TAX MAP 11-11-05-BB-0-000
TAX LOT 2300
NEWPORT , OREGON

TENTATIVE SITE LAYOUT
LOT 1 SPRING STREET

REVISIONS

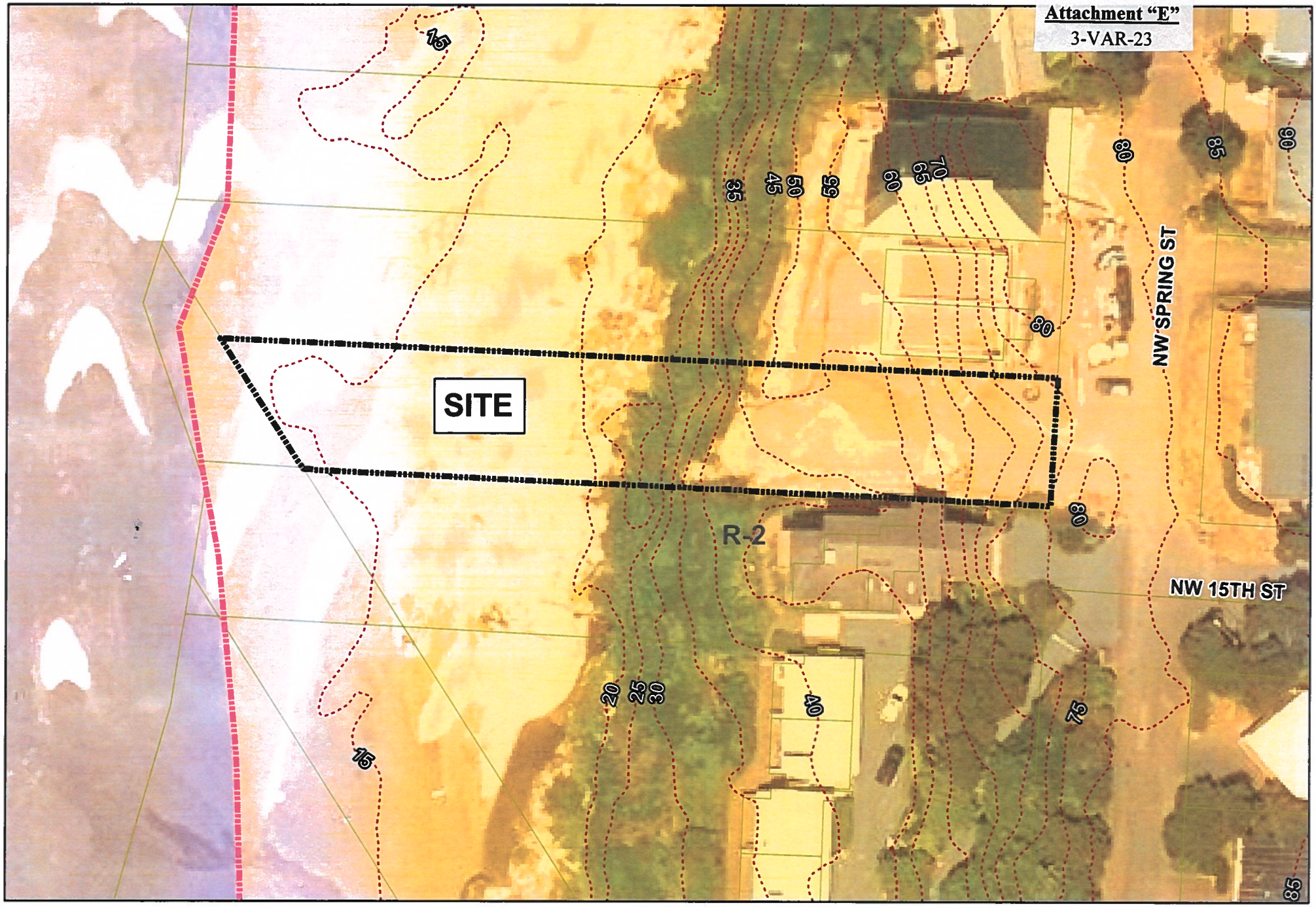
NO.	DATE	DESCRIPTION

EMERIO
ENGINEERING • SURVEYING • DESIGN
6445 SW FALLBROOK PLACE SUITE 100
BEAVERTON, OREGON 97008
TEL: (503) 746-8812
FAX: (503) 746-8813
www.emeriodesign.com

REGISTERED PROFESSIONAL ENGINEER 84283 OREGON MAY 13, 2016 ROY W. HANKINS
EXPIRES: 6/30/2023

SHEET 1 OF 1

FILE P: \0200-016 Mosier Subdivision Sherwood\dwg\plan\Exhibits\0200-016_Dsite_Layout 01 Tentative Site Layout, Plot Date: 5/22/2023 3:27 PM, by: Peyton Hankins



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

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

1515 NW Sping Street
Zoning Map and Aerial Image

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

0 25 50 100 Feet

N

Attachment "F"
3-VAR-23

FOR OFFICE USE ONLY

RECEIPT OF APPLICATION AND FEE

April 30-1979 Date Fee Received Application No. 97

Type of Request Variance Application Fee Amount 35.00

ADMINISTRATIVE RECORD

4-27-79 Date Application Received
5-14-79 Date Hearing Scheduled
4-30-79 Date Personal Notice Sent (if any)
5-9-79 Date Notice Published in Paper
14 MAY 79 Date of Actual Hearing
_____ Date of Continuance of Hearing (if any)

ACTION OF PLANNING COMMISSION

Approved ☒ Recommended ☐

Denied ☐ Not Recommended ☐

Conditions Attached (if any) NONE

Forwarded without Recommendation ☐

Appealed by Proponent ☐ Date Appeal Filed _____

ACTION OF CITY COUNCIL

_____ Date for Hearing set by Council.
_____ Date Personal Notice Sent
_____ Date Notice Published in Paper
_____ Date Actual Hearing
_____ Date of Continuance of Hearing (if any)

Approved ☐ Denied ☐

Referred back to Planning Commission ☐

_____ EFFECTIVE DATE

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, is considering granting a variance to Ivan L. Sundstrom, to the requirements of Section 19, Paragraph B.1 of the Newport Zoning Ordinance No. 731, as amended, said request being for a variance of 10 feet to the required 20-foot front yard setback, reducing the front yard to 10 feet, for the following described property, to-wit:

Lot No. 4, Block No. 49, Oceanview Subdivision

The Planning Commission of said City, at their regular meeting to be held in the Council Chambers on the 14th day of May, 1979, at 7:30 p.m., P.D.T., will hold a public hearing at which time all persons particularly interested and the general public will be afforded the opportunity to be heard relative to the granting of said variance.

Jan E. Monroe
City Planner

PUBLISH: May 9, 1979

Planning Commission
May 14, 1979
7:30 P.M.

The Planning Commission met in regular session on the above date, Chairman Nielsen presiding. Commissioners present were Jan Monroe, City Planner, Rober Beal, Vice-Chairman, Jean Barker, Ray Carter, Jack Gesik, Mark Collson and Barbara Spangler.

Minutes of the previous meeting were approved.

The first item of business was a public hearing on a request for a Conditional Use permit for Mariner Enterprises to place an Antique Car and Wax Museum in an M-1 zone. The City Planner gave an oral presentation of his staff report, and a written copy is on file.

At the conclusion of the staff report, Chairman Nielsen asked if there were any objections. There were none.

Attorney Kurt Carstens, representing Mariner Enterprises, introduced proponents and asked Mr. John Storrs to speak first in favor of the proposed plan.

Mr. John Storrs of 11925 S.W. Military Road, Portland, Oregon is an Architect who was active in the development of the Salishan Resort area. He presented a model of the proposed structure and parking area to the committee. Mr. Storrs also presented drawings of the proposed structure emphasizing the parking which would be available to the public.

Mr. Robert Updenkelder of 319 N.W. 26th, Newport, Oregon also spoke in behalf of the proponents stating that the zoning of this land was from a plan made years ago. He stated that people are attracted to the bay front in Newport and that this building has been designed so that it could be turned into something else if necessary.

Mr. Kurt Carstens spoke in behalf of the proponents. He stated information from the Jack Jarvis report which said that by 1980 there will be a projected 2,500,000 tourists visiting the City of Newport. He further stated that the goals of this city should be to increase the facilities for tourism. He stated that a street would be put in to the east of the Yeck property, along with the proposed parking and, therefore, the proposal should not increase traffic congestion on the bay front.

He gave his interpretation of the LCDC goals and guidelines referring to Goal 16 (Estuarine Goal) and Goal 17 (Shore Lands Goal). He presented the committee with a topographic survey (on file) and a survey done on the land (on file).

He also presented to the committee a study made of both sides of Bay Blvd. from the Coast Guard Station to the Embarcadero (on file), and a listing of enterprises backed by the Wax Museum in the City of Newport (on file). He further mentioned that people taking buses would be able to embark or disembark on the provided walkway in front of the museum.

Elaine Baker of 665 N.W. Nye Street, Newport, Oregon from Neptunes Wharf stated that she was in favor of the proposed structure and would be the closest neighbor to the development.

Chairman Nielsen asked if there was any cross examination of the proponents. There was none.

Bob Jacobson of 2176 N.W. Ocean View Drive, Newport, Oregon spoke on behalf of the opponents. He is a Marine Extension Agent, a fisherman and President of the Coast Fishermens Association.

He stated there has been a tremendous increase in the fishing industry and that the land in question could be utilized further for the fishing industry.

Chairman Nielsen asked if there was any cross examination of the opponents.

Jan Monroe received a letter from the Port of Newport asking the Planning Commission "to take a hard look" at this proposal, (the letter is on file).

Kurt Carstens then presented rebuttal for the proponents. He asked the question, What marine use in an M-1 zone can be made of this property that is in need now? He further stated that the marine related possible use for this property is minimal.

The public hearing was closed at 9:02 P.M.

After questions by the commission, it was proposed that the deliberations be continued to the next Planning Commission meeting on Tuesday, May 29, 1979, in order to give the commission time to "digest" the material presented. It was moved by Robert Beal and seconded by Barbara Spangler that finding of facts be prepared and sent to the Planning Commission by proponents and opponents for their review. There were six ayes and two nays.

A ten minute recess was then declared.

The next item on the agenda was a request from Mr.R.D. Stumpf to build a duplex as a third story on an existing building. The proponent was not present for the hearing, and the public hearing was continued to May 29, 1979.

The next item on the agenda was a public hearing of a variance for Ivan Sundstrom. The City Planner presented his staff report, and a written copy is on file.

At the conclusion of the staff report, Chairman Nielsen asked if there were any objections to the jurisdiction of the deliberating body. There were none. It was then asked if any member wished to abstain.

Ivan Sundstrom of 2392 Cleveland Street, Eugene, Oregon (the proponent) spoke in favor of the variance. He stated that soil engineers and architects worked on this project. He stated that if the variance is granted, the structure would still be under the 30 foot limit. He presented the committee with aerial photos of the surrounding land and a drawing of the proposed structure.

Chairman Nielsen asked if there were any further proponents present at the hearing. There were none. It was asked if there was any cross examination of the proponents. There was none.

Paul Creech of 544 N.W. 15th Street, Newport, Oregon spoke on behalf of the opponents. He stated that if a 10 foot variance is allowed for one person then a variance would have to be allowed for anyone requesting it. He presented a petition to the committee opposing this structure.

Robin Linstromberg of 1442 N.W. Spring Street, Newport, Oregon stated on behalf of the opponents that rules that are set down should be followed with no exceptions.

Chairman Nielsen asked if any further opponents wished to speak. It was then asked if there was any cross examination of the proponents. There was none.

Mr. Ivan Sundstrom stated his rebuttal at this time. He stated that the pole structure is a most effective design in an area that landslides occur. He further stated that this is a well designed project.

The public hearing was closed at 9:53 P.M.

Members of the committee discussed the proposal. Robert Beal stated that each piece of property on the coast is different and that by granting a variance to one does not mean that a variance will be granted to another. Each piece of property must be considered on its own merit.

Barbara Spangler stated that this proposed structure is probably more stable than other structures along the coast.

It was moved by Jack Gisek and seconded by Mark Collson that the variance be granted as recommended in the staff report. It was also stated that they adopt the staff report recommendation as the finding of facts. There were five ayes, with Jean Barker voting nay and Ray Carter abstaining.

The last item of business, not on the agenda, was a request by the Community First Savings and Loan Association to receive a temporary building permit.

Philip Hutchinson of 316 N.E. 6th, Newport, Oregon spoke on behalf of the Community First Savings and Loan Association. He requested a temporary building permit for a mobile office to be located on the corner of Highway 101 and N.E. Lee Street. He presented the committee with a drawing of the completed structure. He further stated that they hope to construct the building while leaving the mobile home intact and that they plan construction of the building within one to two months.

It was moved by Mark Collson that they approve a temporary building permit for a period of nine months. It was seconded by Jack Gesik. The commission unanimously approved the permit.

There being no further business, the meeting was adjourned at 10:10 P.M.

Marsha Stewart,
Secretary to the City Planner

Planning Commission Staff Report
Prepared for Presentation 14 May 1979

Applicant: Ivan L. Sundstrom

Request: Approval of a variance of 10 feet to the required 20 feet front yard set back, reducing the front yard to 10 feet.

Location: Lot #4, Block #49, Ocean View Addition (On the west side of Spring Street between 15th and 16th).

Comprehensive Plan Designation: LOW DENSITY RESIDENTIAL

Current Zoning: "R-2", Two Family Residential.

Analysis: The property owner seeks to build a pole foundation building on his property. Because of the unusual topography (a steeply sloping bank) if the house were to be built at street level with the minimum setbacks, the house would exceed the height limit for this zone (30 feet). The alternatives appeared to be: One-redesign the building, Two-ask for a height variance, or Three-ask for a front yard variance and move the structure closer to the property line. The least expensive option is to move the structure closer to the street and this is what the owner has requested. In addition, moving the structure further from the ocean should add additional life to the structure. A GEOLOGICAL HAZARD REPORT has been performed and recommended the type of design the owner will use. (See letter).

I have received letters from Jon Carnahan and Charles and Cora McDowell opposing the variance and Herman Ruddell not opposed. Mr. Donald Knight called me and said he had no objection. The opposition to this proposal apparently stems from any building rather than this specific proposal and a

general complaint against traffic congestion. The solution to the prevention of building would have been through purchase of the property by those opposed to such building. The question of access from Spring Street is a legal right for the property abbatting it as in any subdivision. The solution to the problem of encroachment from traffic on Spring Street or property on the east side would be through the construction of curbs purchased through a local improvement district where benefitting property owners would pay the costs.

Recommendation: I recommend that the variance be granted because of the exceptional conditions due to topography as the variance is necessary to preserve the property right of the applicant who has no control over the topography or the location of the street. I do not believe that this variance is materially detrimental to the purposes of this ordinance nor would it injure adjoining property anymore than a building which conformed to the zoning ordinance.

Attachment "G"
3-VAR-23

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

IN THE MATTER OF PLANNING COMMISSION	**)**	
FILE NO. 1-VAR-19, APPLICATION FOR A	**)**	**FINAL**
VARIANCE, AS SUBMITTED BY J. T. ROTH, JR., ON	**)**	**ORDER**
BEHALF OF HIMSELF AND THERESA ROTH, OWNERS	**)**	

ORDER APPROVING A VARIANCE pursuant to Chapter 14.33 of the Newport Municipal Code (NMC) to allow construction of new single-family dwellings or two-family dwellings 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 variance will apply to all three building lots. The property is identified as 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision). It is approximately 1.22 acres in size per County assessment records, with 0.46 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 January 13, 2020; and

3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, and from 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 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

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 27th day of January, 2020.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 1-VAR-19

FINDINGS OF FACT

1. J.T. Roth, Jr., on behalf of himself and Theresa Roth, submitted a request on December 12, 2019, 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 new single-family dwellings or two-family dwellings 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 variance will apply to all three building lots.

2. The property subject to the variance application is identified as 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision). It is approximately 1.22 acres in size per County assessment records, with 0.46 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 a 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 lots is moderate to steeply sloped, dropping in elevation as the property extends west from NW Spring Street. The average slope is 30 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 (60 percent slope). The developable portion of the lots, between the street right-of-way line and edge of bluff, varies from about 105 feet deep on the north line to a little more than 130 feet on the south line (Ref: Site Plan labeled as Attachment 2 to the applicant's narrative (Staff Report Attachment "C")).
e. Existing Structures: None.
f. Utilities: All are available to the property.
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.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on December 23, 2019, 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 5:00 p.m., January 13, 2020.

Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on January 8, 2020. Two letters were received, one from Mona Linstromberg, dated January 8, 2020, in opposition to the variance and the other from the joint owners of the Wizards of the Sea Condos (David Gregory, Christine Benedetti, and Joseph Fahrendorf), dated January 10, 2020, in support of the variance request. Both letters were received after the staff report was prepared, and 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 January 13, 2020. At the hearing, the Planning Commission received the staff report and oral testimony from the applicant and Ms. Linstromberg. The minutes of the January 13, 2020 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 with attachments and exhibits
Attachment "D" – Aerial map with zoning designation
Attachment "E" – 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 "F" – Final Order for File No. 1-VAR-12 approving a variance to eliminate the front yard setback for property at 845 SW 12th Street to allow the construction of a two-story, two car garage.
Attachment "G" – Public hearing notice

6. 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 homes 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 will widen the street to 24 feet, with concrete curb and gutter along the property frontage, concurrent with construction of the dwellings. The NW Spring Street right-of-way is 60 feet in width and the street is located on the east side of the right-of-way (Ref: Staff Report Attachment "D"). The edge of pavement is 20 to 25 feet from the right-of-way line, and 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 close to, if not more than 30 feet in length, which is more than sufficient for off-street parking, particularly considering the applicant proposes to construct garages with the dwellings.

7. 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.

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

The subject proposal constitutes a 50% deviation from the 20-foot garage setback required pursuant to Section 14.11.030; therefore, Planning Commission approval of the variance is required. In order to grant the variance, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis can be made:

1. Compliance with Section 14.33.060, Criteria for Approval of a Variance Application:

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, Jr., provided narrative responses to this criterion and the other approval standards (Ref: Staff Report Attachment "C"). Mr. Roth notes that the property is located on the west side of NW Spring Street and is an oceanfront site with steep sloped terrain. He points out that the westerly (approx.) 50 feet of the developable portion of each lot consist of a 2:1 sloped embankment (i.e. bluff) that drops down to the beach. This is typical for the neighboring properties located on this west side of NW Spring Street.

iii. An existing residence located on the lot immediate north of the applicant's property, at 1541 NW Spring Street, was held forward when constructed, and the front yard setback for that property is approximately 10 feet. This is the same setback that the applicant is requesting. The property to the north was approved for a 10 foot front yard setback with a variance granted in 1979. The City's justification in granting the variance related to the topography of the site (Staff Report Attachment "D").

iv. The applicant explains, and the Commission accepts, that similarly zoned properties located on the east side of NW Spring Street do not share the same terrain constraints and exposure to embankment erosion, as properties situated on the west side of the street.

v. Each of the three lots owned by the applicant were platted with a width of approximately 54 feet, meaning that a home(s) constructed on the lot(s) would have a narrow width and longer depth. The applicant points out that the outcome of this characteristic of the lot(s) 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.

vi. 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 (Ref: Exhibit 1 to Staff Report Attachment "C").

vii. 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 points out that there is approximately 24 feet of unimproved public ROW fronting their property between the proposed curb/gutter and property line. This area, in conjunction with the requested 10 foot setback, provides sufficient space for residential driveways.

viii. Considering the above, the Commission concludes that the narrow configuration of the lots, 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. Mr. Roth notes that the circumstances described existed before he and his wife secured a possessory interest in the property. He further points out that they have made no changes or improvements to the property that would have exacerbated the conditions that currently exist.

ii. The three lots 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. Mr. Roth 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 lot to the north, which was granted the same 10 foot variance now being requested, and the fact that a home was constructed in reliance upon that variance 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. In objecting to the variance, Ms. Linstromberg argued that the applicant could have altered the design of the dwellings such that a variance wouldn't have been necessary. Two Planning Commissioners shared this concern; however, a majority of the Commission felt that topographic constraints inherent to the property, coupled with the desire to see development setback further from the bluff/embankment, were the more compelling factors. The majority further pointed out that the City has granted setback variances due to topographic constraints on many occasions without requiring that applicants design dwellings smaller than what they would otherwise be permitted to develop pursuant to the underlying zoning, and to do so now would be inconsistent with past precedent.

v. 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. <u>Criterion #4</u>. *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. Mr. Roth 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. He further notes 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 building line established with the home to the north, and Mr. Roth 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)). He goes on to state that the effective setback of 34 feet exceeds the zoning code setback of 20 feet that would apply to a normal building lot. Additionally, Mr. Roth points out that the additional setback will allow for off-street parking of no less than 2 cars per lot, in additional to the parking garage designed with the structures.

ii. NW Spring Street is not a through-street. Mr. Roth 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 subject lots. He notes that this

condition limits the traffic servicing the 5 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. Mr. Roth acknowledges that the dwellings he is planning to construct will be required to conform to the City's building height limitations, and points 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. Therefore, it is necessary to require the right-of-way line 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 this criterion has been satisfied.

e. <u>Criterion #5</u>. *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. Mr. Roth indicates that the proposed variance will not interfere with access to the existing utilities. Sewer and water are existing in Spring Street. The new dwellings he is planning to construct will require he provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.

ii. The City's storm drainage requirements (Ref: Exhibit 4 to Staff Report Attachment "C") will require the applicant install a new catch-basin along the curb line. Mr. Roth further notes that he has been working with the City to resolve needed improvements to the public storm drainage system and that such work will not be impacted by the requested variance.

iii. Utilities are located within the right-of-way, so as long as the addition does not extend beyond the property line it should not interfere with the utilities in the area.

iv. Considering the above, the Planning Commission concludes that this criterion has been satisfied.

f. <u>Criterion #6</u>. *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. Mr. Roth argues that the variance to allow the structure(s) to be located 10 feet closer to the front property line will

have no impact to the adjoining properties. He further points out that moving the structure(s) forward helps create more separation from the existing 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 dwellings 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 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

Attachment "H"
3-VAR-23

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA

phone: 541.574.0629
fax: 541.574.0644
http://newportoregon.gov

mombetsu, japan, sister city

August 12, 2021

Tim Roth,
JT Roth Construction, Inc.
12600 W 72nd Ave #200
Portland, Oregon 97223

Dear Mr. Roth,

Please accept this letter as confirmation that the expiration date for the City of Newport land use decision approving a front yard setback variance for Lots 1, 2, and 3, Block 49, Oceanview Subdivision) has been extended for a period of 6-months. Section 14.52.140(C) of the Newport Municipal Code (NMC) authorizes the Community Development Department to extend any approved decision for a period of 6-months provided the permit holder:

1. *Submits a written request for an extension of time prior to expiration of the approval period; and*
2. *Has applied for all necessary additional approvals or permits required as a condition of the land use permit; and*
3. *There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.*

The City of Newport land use decision approving the variance was issued on January 27, 2020 (Final Order, File No. 1-VAR-19). That decision was subject to a 15-day appeal period, which closed on February 11, 2020. No appeal was filed and the land use decision became final on that date. Per NMC 14.52.140(A), land use decisions expire in 18-months unless all necessary building permits have been issued. On March 26, 2021 you requested, in writing, that the City extend the approval. The final order granting the variance did not impose a condition(s) requiring additional approvals or permits, and there have been no changes to the City's comprehensive plan policies and ordinance provisions that would be pertinent to the variance. Therefore, since the criteria for an extension have been met, the Community Development Department may, and with this correspondence does, extend the expiration date of the land use decision. The new expiration date for the variance granted with Final Order, File No. 1-VAR-19 is February 11, 2022.

Sincerely,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626

xc: File

Attachment "I"
3-VAR-23

CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING[1]

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on July 10, 2023, to consider approval of the following request:

File No. 3-VAR-23:

Applicant: J. T. Roth, Jr. & Theresa Roth (McKenzie Roth & Austin Roth, J.T. Roth Construction, representatives)

Request: 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 new 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.

Location: Assessor's Map 11-11-05-BB, Tax Lot 2302 (1515 NW Spring St).

Applicable Criteria: Newport Municipal Code Section 14.33.060; Criteria for Approval of a Variance: (A.) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (B.) The circumstance or condition in "A" above is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances. (C.) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard. (D.) Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations. (E.) The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access. (F.) Any impacts resulting from the Variance are mitigated to the extent practical.

Testimony: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department (address under "Reports/Materials") must be received by 3:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.797 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Materials: The staff report may be reviewed or a copy purchased at the Newport Community Development Department, City Hall, 169 S.W. Coast Hwy, Newport, Oregon, 97365 seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address.

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

Time/Place of Hearing: Monday, July 10, 2023; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

MAILED: June 5, 2023.
PUBLISHED: Friday, June 30, 2023/News-Times.

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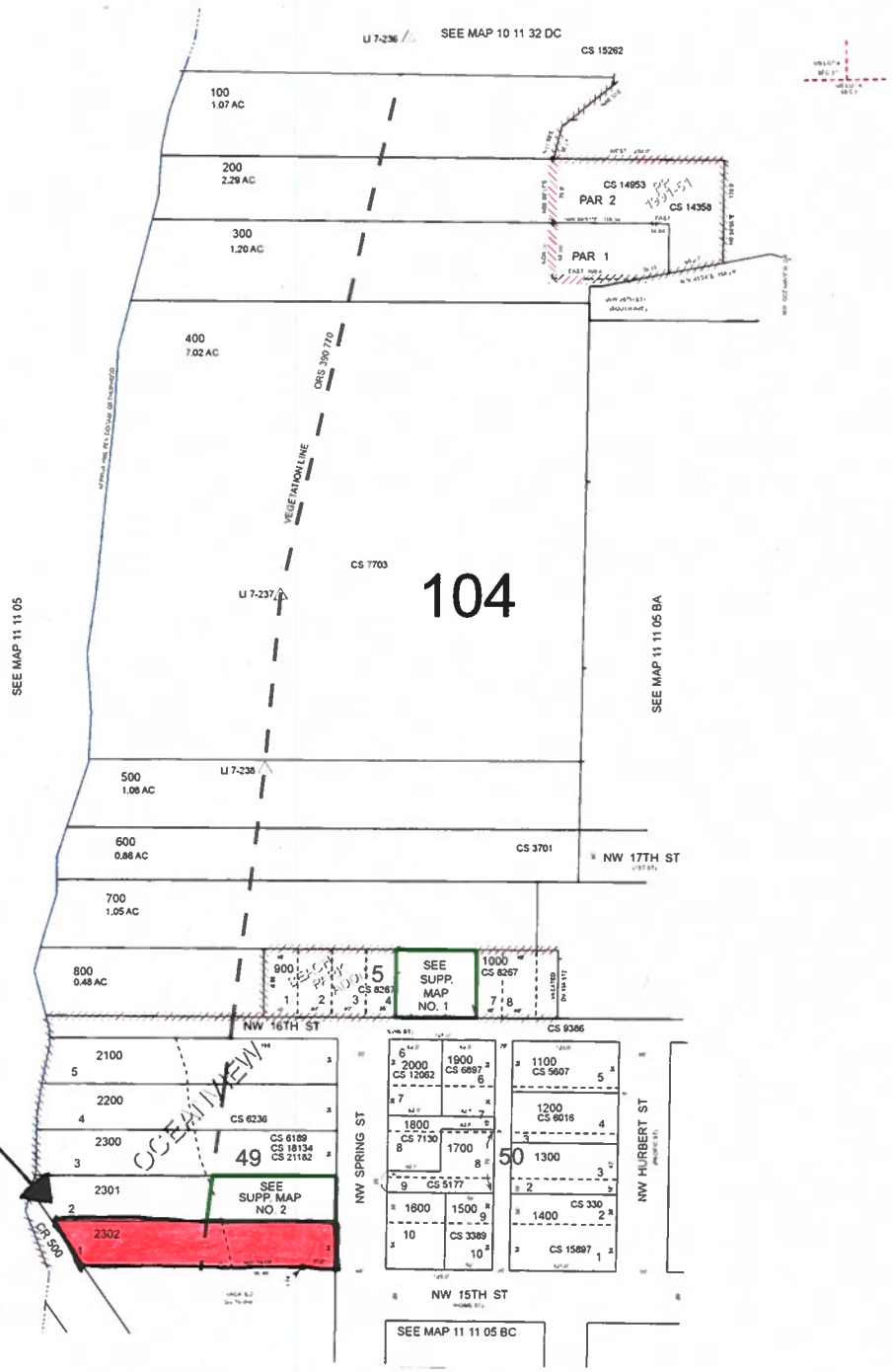
[1]This notice is being sent to affected property owners within 200 feet of the subject property (according to Lincoln County tax records), affected public utilities within Lincoln County, and affected city departments.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

0 50 100 150 200 Feet

N.W.1/4 N.W.1/4 SEC.5 T.11S. R.11W. W.M.
LINCOLN COUNTY
1" = 100'

11 11 05 BB
NEWPORT



Subject Property
File No. 3-VAR-23

Revised: SAO
06/09/2022

NEWPORT
11 11 05 BB

1505 NW SPRING STREET LLC
1143 MANOR DR
SONOMA,CA 95476

BEACH STREET RETREAT LLC
PO BOX 12345
PORTLAND,OR 97212

CITY OF NEWPORT
CITY MANAGER
169 SW COAST HWY
NEWPORT,OR 97365

GREGORY DAVID & BENEDETTI
CHRISTINE
424 SW 297TH ST
FEDERAL WAY,WA 98023

HOFER VANDEHEY ROBERTA
20481 WINLOCK LN
FOSSIL,OR 97830

HOFFMAN SUZAN J
2000 AVON AVE
CAMBRIA,CA 93428

HOGAN JAMES J TSTEE & HOGAN
LESLIE L TSTEE & LINDSTROMBERG
SETH C
931 WASHINGTON ST SW
ALBANY,OR 97321

JT ROTH CONSTRUCTION INC
ATTN: MCKENZIE & AUSTIN ROTH
12600 SW 72ND AVE
STE 200
TIGARD,OR 97223

LEDONNE RONALD DEAN JR &
LEDONNE DEBBI L
2740 N PLACITA MIA
TUCSON,AZ 85749

LIKENS LYNNANNE TSTEE & NEBEL
RANDY J TSTEE
3050 NW THARP AVE
BEND,OR 97703

MCDOWELL SCOTT A TSTEE &
MCDOWELL MINDY M TSTEE
6553 S MADISON CT
CENTENNIAL,CO 80121

MONTGOMERY BARBARA
1431 NW SPRING ST
UNIT A
NEWPORT,OR 97365

NIELSEN DAVID DUSTIN TRUSTEE &
NIELSEN TOBY LYNN TRUSTEE
31947 W OCEAN AVE
ARCH CAPE,OR 97102

PARSONS MICHAEL G & PARSONS
SANDRA A
1447 NW THOMPSON ST
NEWPORT,OR 97365

PAVLICEK JOHN J TSTEE & PAVLICEK
VIVIAN JILL TSTEE
4369 SW TOMMY ARMOUR CT
REDMOND,OR 97756

PESTANA RICKY D & PESTANA JANICE
M
1939 YORK ST
NAPA,CA 94559

PETERSON MARK G & YOUNG
PETERSON STEPHANIE A
4450 S SHASTA LOOP
EUGENE,OR 97405

ROTH J T JR & ROTH THERESA
PO BOX 4564
TUALATIN,OR 97062

SIGLEO ANNE C
1541 NW SPRING ST
NEWPORT,OR 97365

SOLOVJOVS JURIS TSTEE &
SOLOVJOVS CANDY D TSTEE
2350 NW SAVIER ST
#240
PORTLAND,OR 97210

STARK NEAL E TRUSTEE
5034 SW VERMONT ST
PORTLAND,OR 97219

STOODY JOCELYN L TSTEE
1542 NW SPRING ST
NEWPORT,OR 97365

THE ASSN OF UNIT OWNERS OF
WIZARDS OF THE SEA CONDO
1505 NW SPRING ST
NEWPORT,OR 97365

THOMAS MATTHEW (TOD) & THOMAS
LISA POTTER
855 WEST 52ND ST
CARTHAGE,MO 64836

VILLAS AT NYE BEACH
CONDO ASSN
12600 SW 72ND AVE
STE 200
TIGARD,OR 97223

WHALES SPOUT CONDOMINIUM
HOMEOWNERS ASSOCIATION
370 SW COLUMBIA
BEND,OR 97702

WILLETT CONRAD J & WILLETT GAIL E
1426 NW SPRING ST
NEWPORT,OR 97365

ORANGE LINDA
1420 NW SPRING ST
NEWPORT,OR 97365

KNIGHT DONALD
660 DRIVER VALLEY RD
OAKLAND, OR 97462

NEBEL RANDY
62703 MCCLAIN DR
BEND, OR 97703

MOSSBARGER JOHN
PO BOX 1362
NEWPORT,OR 97365

PERSISTENCE & DETERMINAT TRUST
1527 NW SPRING ST
NEWPORT,OR 97365

EGGLESTON MARK
1590 NW SPRING ST
NEWPORT,OR 97365

JACKS THOMAS
2650 SUZANNE WAY
EUGENE,OR 97408

File No. 3-VAR-23

Adjacent Property Owners Within 200 Ft

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

Charter Communications
ATTN: Keith Kaminski
355 NE 1st St
Newport OR 97365

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

Central Lincoln PUD
ATTN: Ty Hillebrand
PO Box 1126
Newport OR 97365

Email: Bret Estes
DLCD Coastal Services Center
brett.estes@dlcd.oregon.gov

EMAIL
odotr2planmgr@odot.state.or.us

Joseph Lease
Building Official

Rob Murphy
Fire Chief

Aaron Collett
Public Works

Derrick Tokos
Community Development Dept

Jason Malloy
Police Chief

Steve Baugher
Finance

Laura Kimberly
Library

Michael Cavanaugh
Parks & Rec

Spencer Nebel
City Manager

Beth Young
Associate Planner

Clare Paul
Public Works

David Powell
Public Works

Lance Vanderbeck
Airport

EXHIBIT 'A'
(Affected Agencies)

(3-VAR-23)

Sherri Marineau

From: Sherri Marineau
Sent: Monday, June 05, 2023 8:52 AM
To: Derrick Tokos; Spencer Nebel; Robert Murphy; Joseph Lease; Jason Malloy; Laura Kimberly; Michael Cavanaugh; Beth Young; Clare Paul; David Powell; Aaron Collett; Lance Vanderbeck; Steve Baugher
Subject: Variance Permit 3-VAR-23
Attachments: File 3-VAR-23- Notice.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments. We must have your comments at least 10 days prior to the hearing period in order for them to be considered. **Should no response be received, a "no comment" will be assumed**.

Sherri Marineau
Executive Assistant
City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0629, option 2
fax: 541.574.0644
s.marineau@newportoregon.gov

PUBLIC RECORDS LAW DISCLOSURE. This e-mail is a public record of the City of Newport, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This e-mail is subject to the State Records Retention Schedule for Cities.

Sherri Marineau

From: Sherri Marineau
Sent: Monday, June 05, 2023 8:52 AM
To: 'odotr2planmgr@odot.state.or.us'; Brett Estes
Subject: Variance Permit 3-VAR-23
Attachments: File 3-VAR-23- Notice.pdf

Attached is a notice concerning a land use request. The notice contains an explanation of the request, a property description and map, and a date for the public hearing. Please review this information to see if you would like to make any comments. We must receive comments prior to the last day of the comment period in order for them to be considered. **Should no response be received, a "no comment" will be assumed.**

Sherri Marineau
Executive Assistant
City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0629, option 2
fax: 541.574.0644
s.marineau@newportoregon.gov

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CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING

The Planning Commission of the City of Newport, Oregon, will hold a public hearing in the City Hall Council Chambers at 7:00 p.m. on Monday, July 10, 2023, to consider File No. 3-VAR-23, which is a request submitted by J. T. Roth, Jr. & Theresa Roth (McKenzie Roth & Austin Roth, J.T. Roth Construction, representatives). The request is for an 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 new 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 located at 1515 NW Spring St; Assessor's Map 11-11-05-BB, Tax Lot 2302. Per Newport Section 14.33.060; the criteria for approval of a variance are: (A.) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (B.) The circumstance or condition in "A" above is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances. (C.) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard. (D.) Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations. (E.) The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access. (F.) Any impacts resulting from the Variance are mitigated to the extent practical. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.797 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address. Contact Derrick Tokos, Community Development Director, (541) 574-0626 (address above).

(FOR PUBLICATION ONCE ON FRIDAY, June 30, 2023)

Manag- and (iii) ests In: k, LLC; , LLC; Cam- ditional -Debtor n-Debt- rations, LLCs, "Hem- SMC, mstreet actively, ty") and as the endants Order. ic Stay. RTHER to ORS entry of s as an plicable entities, llection comtinuaadmin- action against means enerally ions to m the Prop- vership npt to xercise of the . For stay is cannot roperty, collect receiv- ersons violate equired mages, onable red as blation. 7). The er also Defembers, atives, n intery with anagelion of ty and of the e. Do at This rms of eceiver establate or s proholding unless mines, gment, urpose ore, at rs do claim they tice to s may ss and cess is by the e and ess of Manration, Way,). Casration, Way, . Mark 07 NE d, OR e and eceiver ce Ten 1 Cali- '0 Email: 'partie and eiver's Torp Con- Danny th Ave d, OR n.con-

way@tonkon.com ava.schoen@tonkon.com danny.newman@tonkon.com Procedures for Notifying Receiver if Notice Recipient is Represented by Counsel: If you are a creditor or interested party who is represented by counsel, you must notify the Receiver and the Receiver's attorney of such representation and provide contact information for your counsel. Such notification may be sent to the Receiver and the Receiver's attorney by first class mail and/or by email using the contact information and addresses shown above in Sections D and E. Requesting Special Notice: If you desire further information regarding the receivership, or wish to receive special notice of actions taken or proposed in the receivership, you must provide your name, contact information, and the post-office and email addresses of the creditor/interested party and attorney (if any) to the Receiver's counsel's office as follows: Tonkon Torp LLP, Attn: Megan Holley 888 SW 5th Ave, Suite 1600, Portland, OR 97204, Email: Megan.Holley@tonkon.com Please note, you may not receive notice of further proceedings unless you specifically request to be placed on the special notice list. Dated this 23rd day of June, 2023. TONKON TORP LLP By s/ Ava Schoen Timothy J. Conway, OSB No. 851752, Ava Schoen, OSB No. 044072, Danny Newman, OSB No. 200518, tim.conway@tonkon.com ava.schoen@tonkon.com danny.newman@tonkon.com Attorneys for Brian Weiss, Receiver. J23, J30 34-30

NOTICE OF SHERIFF'S SALE #23-0601

On August 3, 2023, at the hour of 10:00 a.m., at the Lincoln County Courthouse, 225 W Olive St, Room 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: 2211 NW Oar Place, Lincoln City, OR 97367. The court case number is 22CV39820, Kimber Lee Ericksen, plaintiff(s) vs. Kirk B.J. Ericksen, Candice Ericksen, and Oceanlake Homeowners Association, defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to http://www.oregonsheriffssales.org/county/lincoln/ J23, J30, JY7, JY14 33-14

TRUSTEE'S NOTICE OF SALE

TRUSTEE'S NOTICE OF SALE TS No.: 109657-OR Loan No.: ******9145 Reference is made to that certain trust deed (the "Deed of Trust") executed by LORI L. KEMLER, A SINGLE WOMAN, as Grantor, to FIRST AMERICAN TITLE, as Trustee, in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS DESIGNATED NOMINEE FOR QUICKEN LOANS INC., BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, as Beneficiary, dated 6/4/2018, recorded 6/5/2018, as Instrument No. 2018-05455, the subject Deed of Trust was modified by Loan Modification recorded on 7/22/2022 as Instrument 2022-07162 in the Official Records of Lincoln County, Oregon, which covers the following described real property situated in Lincoln County, Oregon: LOT 2, BLOCK 1, BIG CREEK ESTATES, IN THE COUNTY OF LINCOLN AND STATE OF OREGON. APN: R55459/ 14-12-02-AJ-06100-00 Commonly known as: 7347 SW BURL DR WALDPORT, OR 97394-9026 The current beneficiary is: Rocket Mortgage, LLC f/k/a Quicken Loans, LLC f/k/a Quicken Loans Inc. Both the beneficiary and the trustee have elected to sell the above-described real property to satisfy the obligations secured by the Deed of Trust and notice has been recorded pursuant to ORS 86.752(3). The default for which the foreclosure is made is the grantor's failure to pay when due, the following sums: Delinquent Payments: Dates: Total: 8/1/2022 – 6/1/2023 $22,687.55 Late Charges: $202.62 Beneficiary Advances: $$1,936.00 Total Require to Reinstate: $24,826.17 TOTAL REQUIRED TO PAYOFF: $406,554.21 By reason of the default, the beneficiary has declared all obligations secured by the Deed of Trust immediately due and payable, including: the principal sum of $387,954.31 together with interest thereon at the rate of 3.25 % per annum, from 7/1/2022 until paid, plus all accrued late charges, and all trustee's fees, foreclosure costs, and any sums advanced by the beneficiary pursuant to the terms and conditions of the Deed of Trust Whereof, notice hereby is given that the undersigned trustee, CLEAR RECON CORP, whose address is 111 SW Columbia Street #950, Portland, OR 97201, will on 10/18/2023, at the hour of 9:00 AM, standard time, as established by ORS 187.110, AT THE FRONT ENTRANCE TO THE LINCOLN COUNTY COURTHOUSE, 225 WEST OLIVE STREET, NEWPORT, OR 97365, sell at public auction to the highest bidder in the form of cash equivalent (certified funds or cashier's check) the interest in the above-described real property which the grantor had or had power to convey at the time it executed the Deed of Trust, together with any interest which the grantor or his successors in interest acquired after the execution of the Deed of Trust, to satisfy the foregoing obligations thereby secured and the costs and expenses of sale, including a reasonable charge by the trustee. Notice is further given that any person named in ORS 86.778 has the right to have the foreclosure proceeding dismissed and the Deed of Trust reinstated by payment to the beneficiary of the entire amount then due (other than the portion of principal that would not then be due had no default occurred), together with the costs, trustee's and attorneys' fees, and curing any other default complained of in the Notice of Default by tendering the performance required under the Deed of Trust at any time not later than five days before the date last set for sale. Without limiting the trustee's disclaimer of representations or warranties, Oregon law requires the trustee to state in this notice that some residential property sold at a trustee's sale may have been used in manufacturing methamphetamines, the chemical components of which are known to be toxic. Prospective purchasers of residential property should be aware of this potential danger before deciding to place a bid for this property at the trustee's sale. In construing this notice, the masculine gender includes the feminine and the neuter, the singular includes plural, the word "grantor" includes any successor in interest to the grantor as well as any other persons owing an obligation, the performance of which is secured by the Deed of Trust, the words "trustee" and "beneficiary" include their respective successors in interest, if any. Dated: 6/8/2023 CLEAR RECON CORP 1050 SW 6th Avenue, Suite 1100 Portland, OR 97204 Phone: 858-750-7777 866-931-0036 Hamsa Uchi, Authorized Signatory of Trustee. J30, JY7, JY14, JY21 27-21

NOTICE TO INTERESTED PERSONS

In the Matter of the Estate of Donald Michael Foultner NOTICE TO INTERESTED PERSONS Lincon County Case No. 23PB04205 NOTICE IS HEREBY GIVEN that the Circuit Court of Lincon County, State of Oregon, has appointed the undersigned as Personal Representative of the Estate of Donald Michael Foultner, deceased. All persons having claims against said estate are required to present the same, with proper vouchers, to the personal representative in care of Sarah Castleton, Attorney at Law, Jarvis Bridge Halttunen & Weyer, LLC, 201 1st Ave, W, Albany, OR 97321, within four (4) months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the court, the personal representative or the attorney for the personal representative. DATED and first published: June 23, 2023. Shawn J. Foultner, Personal Representative, c/o Sarah Castleton, Jarvis Bridge Halttunen & Weyer, LLC, 201 1st Ave, W., Albany, OR 97321, (541) 926-5504 J23, J30, JY7 26-07

NOTICE OF SHERIFF'S SALE #23-0567

On August 1, 2023, at the hour of 10:00 a.m., at the Lincoln County Courthouse, 225 W Olive St, Room 203, in the City of Newport, Oregon, the defendant's interest will be sold, subject to redemption, in the real property commonly known as: Parcel 1 of PARTITION PLAT 1996-16, filed for record on March 25, 1996, Lincoln County Plat Records, in the City of Waldport, Lincoln County, Oregon. EXCEPTING THEREFROM that portion contained in PARTITION PLAT 2001-18, 18a, filed for record October 10, 2001, in Plat Records for Lincoln County, Oregon. MORE CORRECTLY DESCRIBED AS FOLLOWS: Parcel 1 of PARTITION PLAT 1996-16, filed for record on March 25, 1996, Lincoln County Plat Records, in the City of Waldport, Lincoln County, Oregon. EXCEPTING THEREFROM Parcels 1 and 2 of PARTITION PLAT 2001-18, filed for record October 10, 2001 in Plat Records for Lincoln County, Oregon. More commonly known as: Map Tax Lot No. 13-11-20-CA-01800. The court case number is 23CV06677, JON L. MELVILL, Trustee of the Leslie and Betty Melvill Living Trust, dated March 4, 2004, plaintiff(s) vs. KRISHNA RAO, an individual; and ROXANA RHODES, an individual; defendant(s). This is a public auction to the highest bidder for cash or cashier's check, in hand. For more details go to http://www.oregonsheriffssales.org/county/lincoln/ J23, J30, JY7, JY14 25-14

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

The Planning Commission of the City of Newport, Oregon, will hold a public hearing in the City Hall Council Chambers at 7:00 p.m. on Monday, July 10, 2023, to consider File No. 3-VAR-23, which is a request submitted by J. T. Roth, Jr. & Theresa Roth (McKenzie Roth & Austin Roth, J.T. Roth Construction, representatives). The request is for an 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 new 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 located at 1515 NW Spring St; Assessor's Map 11-11-05-BB, Tax Lot 2302. Per Newport Section 14.33.060; the criteria for approval of a variance are: (A.) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (B.) The circumstance or condition in "A" above is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances. (C.) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard. (D.) Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations. (E.) The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access. (F.) Any impacts resulting from the Variance are mitigated to the extent practical. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/ Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 3:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.797 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address. Contact Derrick Tokos, Community Development Director, (541) 574-0626 (address above). J30 03-03

CIVIL SUMMONS

IN THE CIRCUIT COURT OF THE STATE OF OREGON IN AND FOR THE COUNTY OF LINCOLN PennyMac Loan Services, LLC, Plaintiff, vs. UNKNOWN HEIRS AND DEVISEES OF JAMES ALBERT DERHAM; JOSEPH DEWEESE; DONNA OLSON; PARTIES IN POSSESSION Defendants. No. 23CV13263 CIVIL SUMMONS TO THE DEFENDANTS: Unknown Heirs and Devisees of James Albert Derham NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY! A lawsuit has been started against you in the above-entitled Court by PennyMac Loan Services, LLC, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is on file at the Lincoln County Courthouse. You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff. The object of the complaint is to foreclose a deed of trust dated March 16, 2021 and recorded as Document No. 2021-05218 given by James Derham on property commonly known as 4634 SE Lee Avenue, Lincoln City, OR 97367 and legally described as: Lot 2, Block 7, FIRST ADDITION TO TAFT, in the City of Lincoln City, County of Lincoln, and State of Oregon, according to the official plat thereof, recorded in Plat Book 7, Page 30, Plat Records. The complaint seeks to foreclose and terminate all interest of Unknown Heirs and Devisees of James Albert Derham and all other interests in the property. The "motion" or "answer" (or "reply") must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee. The date of first publication of the summons is June 9, 2023. If you are in the active military service of the United States, or believe that you may be entitled to protection of the SCRA, please contact our office. If you do not contact us, we will report to the court that we do not believe that you are protected under the SCRA. If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636. Attorneys for Plaintiff, JANEWAY LAW FIRM, LLC By: /s/ James A Craft, James A. Craft #090146 [jcraft@janewaylaw.com] 1499 SE Tech Center Place, Suite 255, Vancouver, WA 98683, (360) 260-2253; Fax (360) 260-2285. J9, J16, J23, J30 85-30

Sherri Marineau

From: Derrick Tokos
Sent: Friday, July 07, 2023 10:24 AM
To: Sherri Marineau
Subject: FW: File No. 1-VAR -23 public comment
Attachments: Roth 2023 setback variance.pdf

From: Lindym@peak.org <Lindym@peak.org>
Sent: Friday, July 7, 2023 9:33 AM
To: Derrick Tokos <D.Tokos@NewportOregon.gov>
Subject: FW: File No. 1-VAR -23 public comment

[WARNING] This message comes from an external organization. Be careful of embedded links.

Derrick, the date on my comment should have been July 6, 2023,

Thank you, Mona

Sent from Mail for Windows

From: Lindym@peak.org
Sent: Thursday, July 6, 2023 3:29 PM
To: Derrick Tokos
Subject: File No. 1-VAR -23 public comment

Derrick, not sure this will make it in time for your staff report but I am asking that this comment be read at the public hearing.

Thank you for your consideration.

Mona Linstromberg
Family home: 1442 NW Spring St.
Newport, OR 97365

Sent from Mail for Windows

July 14, 2023

File No. 3-Var 23
Property owners: J.T. Roth Jr and Theresa Roth
Applicant: J.T. Roth Construction, Inc.
Property Location: 1515 NW Spring St, Newport, OR

January 8, 2020, I submitted comment re 1- VAR-2019, property locations 1515, 1525, and 1535 NW Spring St. That variance approval lapsed for 1515 NW Spring and this current application allows the Planning Commission to reconsider the findings of the 2020 Commission decision. At that public hearing, the Commission Chairman intimated that variances were often approved as if variances were the rule and not the exception. In fact, I quoted from the 1979 minutes on a requested variance in the general vicinity. Robert Beal, vice-chair of the 1979 Planning Commission stated that each piece of property on the coast is different and that by granting a variance to one does not mean that a variance will be granted to another. Each piece of property must be considered on its own merits." By reference to my submitted comment in 2020, there was attached a copy of these minutes.

The applicant under Finding of Fact 5.a. makes the case that by not having structures closer to the street, those structures would then be pushed back closer to the steep sloped embankment. From this argument, it would appear that the structures are not being designed (see TENTATIVE SITE LAYOUT attached to the application)[*] to fit the lots but that the code is being altered to maximize the development of this lot. Instead of altering code, the depth of the buildings could reasonably be modified and comparably accomplish the applicant's goal in preserving the integrity of the steep sloped embankment. In fact, it there was true concern about the integrity of the steep sloped embankment, the applicant wouldn't have, essentially, clear cut these three treed lots.

I accept the narrative under 5.b. at face value.

[*] I was emailed the application with a request for all attachments. The only attachment to the narrative was the Tentative Site Layout. Yet in the narrative there is reference to Attachment 1, Exhibit 1 and later reference to Exhibit 4. If there is an Exhibit 1 and an Exhibit 4, I would guess there are Exhibits 2 and 3. If there aren't, then this application is not complete and must be denied.

Under 5.c., again, staying within the confines of code, the depth of all buildings could be modified and comparably accomplish a stated goal. **The applicant has not provided any substantive demonstrable evidence of "practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.** This application must be denied.

5.d. "*Property(s) to the east (opposite side of Spring Street) will not be impacted by a reduction in my front yard setbacks." This is a conclusory statement with no evidence to back it up. Given that one's view of the ocean very well might be of great concern to these residents (as it is to our family at 1442 NW Spring St), only those people can speak directly to the subjective nature of how they will be impacted.

I will take the narrative under 5.e. at face value.

As to mitigation, 5.f., the applicant's first argument does not take into consideration visual impact. No need to mitigate if reasonable code requirements are met. The second argument, again, does not consider modifying the dimension of depth of structure. No need to mitigate if code requirements are met. There is no practical difficulty or unnecessary hardship and no substantial evidence that would be the case.

The 1979 minutes of the consideration of a similar variance request and the petition attached to that testimony show my parents signed the petition forty years ago, and my father spoke at the hearing. It is telling that a number of neighbors signed that petition. Our neighborhood is now riddled with vacation rentals, and community involvement has diminished (that is a conclusary statement).
The application lacks substantial evidence, contains conclusary statements, and, whether intentional or not, contains misleading statements. Variance request File No.1-Var-23 must be denied.

Thank you for your attention.
Mona Linstromberg
Family home: 1442 NW Spring St.
Newport, OR 97365 Lindym@peak.org
Please enter in the record

July 5, 2023

Testimony

TO: CITY OF NEWPORT PLANNING COMMISSION

ATTENTION: Derrick Tokos, Director, Community Development Department

REFERENCE: File No. 3-VAR-23 - Public Hearing 7/11/23

REGARDING: Applicant JT Roth, Jr. Map 1-11-05, Tax Lot 2300 (1515 NW Spring Street

FROM: Joseph Fahrendorf: 1505 NW Spring Street: Newport, Oregon – Owner
David Gregory: 1507 NW Spring Street; Newport, Oregon – Owner
Christine Beneditti: 1507 NW Spring Street; Newport, Oregon – Owner

We are joint property owners of the Wizards of Sea Condos, the southern abutting property to the above captioned development requesting a set back variance.

We previously Testified in support of the earlier granted set back variance # 1-VAR-19 granted January 28, 2020 that expired due to passage of time and after two of the three lots this original varance was granted for were constructed.

We had supported this requested set back initially in 2020 and do affirmatively support the expired set back request to allow the third structure of the three structures initially approved with the set back variance in 2020 to be constructed in accordance with the original plans.

The request of a set back variance initially made sense to us as adjacent property owners located on the southern abutting property and makes more sense now as the subject properties have been developed. This reinstatement / approval would be consistent with what has been built and set back variance had been granted and recognizes that simply due to the passage of time that this set back variance should be reinstated.

Please enter into the record our support for the requested set back variance approval / reinstatement.

JB Fahrendorf

Joseph B. Fahrendorf – President on behalf of Wizards of Sea Condos

Attachements: Original Support Letter 2020
Notice of Decision – January 27, 2020

January 10, 2020

TO: CITY OF NEWPORT PLANNING COMMISSION

REFERENCE: January 13, 2020 Public Hearing 1-VAR-2019 Request for Variance, Front Setback

REGARDING: Applicant J.T. Roth, Jr. Map 1-11-05-BB, Tax Lot 2300 (1515, 1525, & 1535 NW Spring St)

FROM: Joseph B. Fahrendorf; 1505 NW Spring Street, Newport - Owner

David Gregory; 1507 NW Spring Street, Newport - Owner

Christine Benedetti; 1507 NW Spring Street, Newport - Owner

We are joint property owners of the Wizards of Sea Condos, the southern abutting property to the above captioned development and request for a set back variance.

We have discussed the project with Tim Roth, reviewed the proposed plans, the issues regarding development, the interruptions likely during construction, the potential impact on our future quality of life living here and the impact on the neighborhood. We do affirmatively support the project development itself.

This specific request for a set back variance makes sense to us as property owners located on low oceanfront adjoining the project. Those set back variance issues were dealt with in the variance request, so we will not go over them again, but note we have no issue with them.

We recognize that not all of our neighbors will agree with our position and note in our discussions with them that their issues are more based on "no development" rather than reasoned and measured development, personal property rights and increased housing opportunities for the community.

Please enter in the record our support for the project and the requested set back variance approval.

David Gregory | Christine Benedetti | Joseph Fahrendorf

169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA

NEWPORT
OREGON

www.newportoregon.gov

MOMBETSU, JAPAN, SISTER CITY

COMMUNITY DEVELOPMENT DEPARTMENT
(541) 574-0629
FAX: (541) 574-0644

NOTICE OF DECISION

January 28, 2020

The Newport Planning Commission, by final order signed January 27, 2020, has approved a request for a Variance as described herein:

FILE NO: # 1-VAR-19

APPLICANT & PROPERTY OWNERS: J. T. Roth, Jr.

PROPERTY LOCATION: Assessor's Map 11-11-05-BB, Tax Lot 2300 (1515, 1525, & 1535 NW Spring St).

REQUEST: 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 new single-family dwellings or two-family dwellings 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 variance will apply to all three building lots.

THIS DECISION MAY BE APPEALED TO THE NEWPORT CITY COUNCIL WITHIN 15 CALENDAR DAYS (February 11, 2020) OF THE DATE THE FINAL ORDER WAS SIGNED. Contact the Community Development Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541/574-0629) for information on appeal procedures.

A person may appeal a decision of the Planning Commission to the City Council if the person appeared before the Planning Commission either orally or in writing.

Sincerely,

Sherri Marineau

Sherri Marineau
Executive Assistant

Enclosure

cc: J. T. Roth, Jr. (owner)
David Gregory (proponent)
Christine Benedetti (proponent)
Joseph Fahrendorf (proponent)
Mona Linstromberg (opponent)
Joseph Lease (Building Official) *(letter only by email)*
Derrick Tokos (Community Development Director) *(letter only by email)*

Tentative Planning Commission Work Program

(Scheduling and timing of agenda items is subject to change)

July 10, 2023 Regular Session

- Findings and Final Order on Conditional Use Permit for Samaritan Drug/Alcohol Rehab Facility Offices
- Findings and Final Order on Sign Variance for Port of Newport at Port Dock 1
- Hearing on File 3-VAR-23, Front Yard Variance for J.T. Roth Construction at 1515 NW Spring Street

July 24, 2023 Work Session

- City Center Revitalization Project Update (Consultant to be under contract)
- Review 2023 State of Oregon Legislative Changes (Land Use and Related Bills)
- Second Review of Amendments to Special Parking Area Regulation (Relates to Bayfront Pkg Management Plan)

July 24, 2023 Regular Session

- Initiate Legislative Amendments to Special Parking Area Regulations (Relates to Bayfront Pkg Management Plan)
- Final Order & Findings for File 3-VAR-23, Front Yard Variance for J.T. Roth Construction at 1515 NW Spring St

August 14, 2023 Work Session

- Initial Review of Land Use Amendments to Facilitate Needed Housing (Implementing the HPS)
- Outreach Plan for Bayfront Parking Management Plan Rollout

August 14, 2023 Regular Session

- TBD

August 28, 2023 Work Session

- Initial Review of Legislative Amendments to Comply with 2023 Oregon Legislative Mandates
- Schedule for Fall Outreach and Engagement for City Center Revitalization Project
- Status of South Beach Island Annexation Project

August 28, 2023 Regular Session

- TBD

September 11, 2023 Work Session

- Discussion about potential craft/cottage industry code language for Nye Beach, City Center, and the Bayfront (Carol Shenk/Janet Webster).
- Second Review of Land Use Amendments to Facilitate Needed Housing (Implementing the HPS)

September 11, 2023 Regular Meeting

- Initiate Legislative Land Use Amendments to Facilitate Needed Housing (Implementing the HPS)
- Public Hearing on Amendments to Special Parking Area Regulations (Relates to Bayfront Pkg Management Plan)

September 25, 2023 Work Session

- Placeholder for Land Use Training (DLCD Staff)
- Draft Legislative Amendments (2023 Oregon Legislative Session)
- Discuss HOLTE Homebuyer Incentives and Changes to Affordable Housing Excise Tax (HPS Recommendations)

September 25, 2023 Regular Session

- Hearing on Amended Final Development Plan for OSU Student/Faculty Housing in Wilder
- Initiate Legislative Amendments to Comply with 2023 Oregon Legislative Mandates