



**PLANNING COMMISSION REGULAR SESSION AGENDA**  
**Monday, July 27, 2020 - 7:00 PM**  
**City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365**

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This meeting will be held electronically. The public can live-stream this meeting at [newportoregon.gov/citygov/comm/pc.asp](http://newportoregon.gov/citygov/comm/pc.asp). The meeting will also be broadcast on Charter Channel 190. Public comment may be made, via e-mail, up to two hours before the meeting start time at [publiccomment@newportoregon.gov](mailto:publiccomment@newportoregon.gov). Additionally, anyone wishing to speak on any agenda item, or during public comment, should e-mail their telephone number, and the item they wish to address, up to two hours before the start of the meeting, to [s.marineau@newportoregon.gov](mailto:s.marineau@newportoregon.gov), and staff will telephone that person when that item is being discussed at the 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**

**2. APPROVAL OF MINUTES**

**2.A Approval of the Planning Commission Work Session Meeting Minutes of July 13, 2020.**  
[Draft PC Work Session Minutes 07-13-2020](#)

**2.B Approval of the Planning Commission Regular Session Meeting Minutes of July 13, 2020.**  
[Draft PC Reg Session Minutes 07-13-2020](#)

**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 5-NCU-20: Final Order and Findings Approving Conversion of a Short-Term Rental From a 2-Bedroom to a 4-Bedroom Occupancy at 406 NW High Street.**  
[Final Order and Findings](#)

**5. PUBLIC HEARINGS**

**6. NEW BUSINESS**

**7. UNFINISHED BUSINESS**

**8. DIRECTOR COMMENTS**

**9. ADJOURNMENT**

**Draft MINUTES**  
**City of Newport Planning Commission**  
**Work Session**  
**Newport City Hall Council Chambers by Video Conference**  
**July 13, 2020**  
**6:00 p.m.**

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

**Planning Commissioners Absent:** Gary East (*excused*).

**PC Citizens Advisory Committee Members Present by Video Conference:** Dustin Capri, and Greg Sutton.

**PC Citizens Advisory Committee Absent:** Braulio Escobar.

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

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:04 p.m.
2. **Unfinished Business.**
  - A. **HB 2001 Infrastructure Based Time-Extension Final Rules (DLCD Hearing set for 7/23/20).** Tokos reviewed the final rules for the infrastructure based time extension process to allow local governments to defer adoption of land use regulations to allow for additional density in areas where there were significant infrastructure deficiencies. He explained that if a local government filed, they would have an obligation to fix infrastructure problems. The rules went to hearing on July 23rd and would be up for adoption before the Land Conservation Development Commission on the 5th of October. Tokos reported that Newport was a medium sized city and only mandated to allow duplexes on lots where single family dwellings were permitted. He wanted to see if the Commission felt there was any reason to provide comment or start positions to file a request.

Tokos provided three area examples and reviewed their issues. These areas included the Vista Drive, Rock Way, and Golf Course Drive areas. These were areas that a municipality could apply for a delay and if approved the City would have an obligation to fix the issue within a specified time period. The administrative rules didn't specify how much time a jurisdiction could get, but he didn't think the State would give anything over 10 years. Tokos noted that the other approach they could take was to allow duplexes on any lot where single family dwellings were allowed, and then deal with these issues with non-land use codes such as the Fire Code or adding requirements for developers to put in private pump stations.

Tokos reviewed the different area plans for infrastructure. He explained that he had talked to the Fire Chief and State Fire Chief and the City had the ability to adopt their own local fire provisions to deal with emergency access issues. Tokos noted that the Vista Drive issues would be hard to address. There weren't a lot of options for secondary access and it was not wise to put a burden on the City for things they couldn't address.

Berman asked if the application was done area by area, or case by case. Tokos explained that the infrastructure needed to be localized and not city wide. Berman asked if the city chose to not do anything could they apply later for things they couldn't handle. Tokos explained that the deadline was at the end of the calendar year. If they didn't file by the deadline, a new code would have to be adopted by June 30th of next year. Tokos didn't think it was worth their while to apply for an extension because they probably had the tools to deal with it outside of the land use context. A better solution would be to adopt a local fire code provision that said every additional dwelling above 30 on Vista Drive, whether the dwelling was a duplex or single family home, would have to have sprinklers. The risk to life safety would be what they would lean on. Capri asked if this put all the burden on the people who wanted to develop a property. Tokos confirmed it would. The traditional context in

terms of development was that the developer carried the burden to address service issues if services were deficient. Capri questioned if this would discourage development because the cost would be on the developer. Tokos explained that he was only showing three areas in the city with issues and there were a lot of other areas that were fine. If they adopted the regulations to allow duplexes on every lot where there were single family homes, they would start to incrementally see attached housing in the R-1 zones in the city. In the areas such as Vista Drive, this would become problematic and was where the sprinkler issues could come in to the fire code. The infrastructure time extension flipped the burden. If they took advantage of the infrastructure time extension the city had the obligation to address the issues. Berman asked if the city would then make a fire code that said if you lived on Visa Drive you would have different rules than everyone else in the city. Tokos explained that any new dwelling unit on a dead end road with more than 30 units on it would be required to have fire sprinklers.

Hanselman was concerned about the area west of Golf Course Drive where there wasn't any infrastructure. There were other single access streets in the areas in the city that they didn't have money to fix. Hanselman felt those areas should be restricted from additional development. He was worried about the areas without stormwater infrastructure. Hanselman thought writing a new ordinance would be too time consuming and there might not be motivation to protect all the areas in the city.

Franklin asked why the Vista Drive subdivision was approved to be developed without turnaround access. Tokos explained that the property was annexed in from the County and was platted by them. The State Fire Marshall's thought was that the requirement for fire sprinklers for over 30 dwellings started in the 80's. Franklin asked if there would be a requirement for fire sprinklers for tiny homes, and asked what the demand on water for sprinklers would be. Tokos didn't think the demand was the issue. If the sprinklers were separate from the residential use and a secondary system. The city had the option to apply under the local fire code what size of the dwelling should be required to have sprinklers. He thought the deficiencies were for the larger communities. Newport was a medium size community and duplexes were the consideration here. If the city made the application they could defer duplexes in the area, but this would mean they were saying they would fix the problems and they would have to say how long it would take to do it. If they didn't submit the application they would put the zoning in place that would allow the duplexes, and could still deal with the challenging areas incrementally through the application of things like the Fire Code with provisions. Tokos sensed that most jurisdictions would try to deal with it without submitting for the time extension requests because if they did the burden would be placed on the city to fix it.

Branigan asked how long the time extension was good for. Tokos explained that it wasn't specified in the rules and was intentional. This was because nobody knew what this would look like and every jurisdiction would be different. Tokos thought it might be around 5-10 years. Patrick didn't see any fixes happening anytime soon. Berman was concerned with doing targeted code changes to get around the issue of insufficient infrastructure. He thought it sounded discriminatory to the people who fell on certain streets and felt it sounded marginal to change the code to get around another issue. Berman didn't think they should file for this. Tokos thought they could frame it as the city was happy to adopt the provisions that the State was asking us to allow additional density in the R-1 areas and some of the R-2 areas, but we recognize that there are certain pockets such as Vista Drive with inadequate access that needed to be dealt with. Tokos explained they could deal with it through the fire code, and this meant that as more and more dwellings went into the area the developers would have to incur some costs that those that built decades ago did not have to. This was a way to reduce risk to life safety. Hardy thought it was unfair to require someone who was developing to fund the infrastructure. Historically the city changed rules for decades and this shouldn't be a consideration. Hardy thought that life safety was their consideration.

Hanselman thought that if they were to use the fire code with a limit of 30 houses on a street, the number seemed arbitrary. Access was more important than the number of dwellings. Tokos explained that the number 30 was an arbitrary number set by the State Fire Marshall and was the break point from the fire protection side saying that there was too much risk to the public and there had to be a secondary access. Berman asked if San-Bay-O Drive was an example. Tokos thought it could be. Berman asked if it was 30 dwellings or lots. Tokos confirmed it was lots. Berman asked if there were any stormwater standards. Hanselman explained that there wasn't, but the State rules included some water mitigation infrastructure as part of the infrastructure that needed to be considered. Tokos noted that the stormwater provisions were more for those communities that were 25,000

and over in population. This was because they would have to go up to 4-plexes and these communities had higher density.

Patrick asked the Commissioners if there was a good reason to file for a time extension. The Commission was in general agreement there was not. Tokos would be bringing a draft code to comply with the House Bill and a mockup of a local fire code with some options for the Commission to take a look at.

### 3. New Business.

- A. Review and Comment on TGM Grant Application for Newport City Center Revitalization Project. Tokos reviewed his memorandum. He noted that the City submitted a preapplication for city revitalization to ferret out how to deal with the public right-of-way, but it didn't deal with the private side as much. They would need to retool the old C-1 and C-2 regulations that resulted in the built form seen in the City Center that hadn't been working well. The pandemic slowed down the public outreach to find out what they wanted to do in the City Center area. Tokos could file the application but needed help on how to frame it. He reviewed photos of the City Center and a street cross section illustration to show how tight it was. Tokos then showed the different options for couplets traveling south and north through the City Center. He noted the TSP project would include discussions on how to do this. Tokos asked for input on how to frame the application and asked if the areas on the map were where the Commission wanted to concentrate.

Hardy asked what was broke that they had to fix. Tokos said what they were trying to do was to catalyze reinvestment in the commercial core area where there wasn't the level of investment, redevelopment in maintenance, and commercial activity they wanted to see. Hardy didn't think this was traffic related and asked if they had addressed these concerns with the individuals who were the problem. Hanselman said there was an effort to revitalize the area and thought they could partly frame it on revitalization. Hardy asked if a survey was done on what the stakeholders' wishes were for revitalization. Tokos said the TSP process had stakeholder engagement to find out what their needs were and what the issues were. This hadn't been totally completed and they needed to roll out options based on what they heard from stakeholders. This hasn't been done because of the pandemic. Patrick noted that Benton Street wasn't picked up on the couplet options from Benton Street north of Highway 20. Tokos would check on this. Franklin asked if the Harney Street extension was included. Tokos explained that it wasn't a part of this request. The thought was that the focus would be on the City Center commercial areas because if they did something like couplets it would be a significant change that would potentially help catalyze redevelopment in the area, and there would be a chance to change the land use regulations to influence what the development would look like.

Tokos asked if it made sense to file or if it made more sense to wait until next year when they had a better idea of the TSP process. Patrick thought it was better to wait but didn't think there would be money next year. Tokos noted that TGM was a joint ODOT/DLCD group and there was a chance there would be Federal stimulus money for infrastructure. Patrick was concerned that they would have to be vague with the proposal. Tokos could put a resolution in front of the City Council and get a letter of support together. If letters of support were needed, the Council would want to know exactly what the plan was. Hanselman thought it was best to wait until next year because anything for this year wouldn't be plausible. Tokos noted that it might feel like they were putting the cart before the horse without public input. Franklin thought they should wait. Patrick thought they should wait until they knew what they wanted to do. Tokos stated he would feel better if he knew the clear idea of what the preferred alternatives were. Sutton agreed. Capri agreed on waiting but hated giving up getting money. He didn't think they had any other alternatives though. Berman asked how much money the grant would be. Tokos said it would be \$100,000 to do the work and the city would have to match 12 percent. Patrick felt they would get pushback without public outreach. Capri asked if there was an option to defer. Tokos thought they would have to have a strong proposal to do so, but the grants were annual and there should be an opportunity next year. He would let the City Manager know the Commission had a chance to talk about this in a work session and given where they were with the TSP, they should hold off until they had a better idea of what their plan would be.

4. Adjourn. The meeting adjourned at 6:58 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 by Video**  
**July 13, 2020**

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

**Planning Commissioners Absent:** Gary East (*excused*)

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

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

2. **Approval of Minutes.**

A. Approval of the Planning Commission Regular Session Meeting Minutes of June 8, 2020 and the Planning Commission Work Session Meeting Minutes of June 22, 2020.

Commissioner Berman submitted minor corrections to both meeting minutes.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Franklin to approve the Planning Commission Regular Session Meeting Minutes of June 8, 2020 and the Planning Commission Work Session Meeting Minutes of June 22, 2020 with minor corrections. The motion carried unanimously in a voice vote.

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

4. **Action Items.**

A. **File 2-NCU-20: Final Order and Findings Approving Conversion of a Short-Term Rental From a 2-Bedroom to a 3-Bedroom Occupancy at 736 NW 3rd Street.**

**MOTION** was made by Commissioner Hardy, seconded by Commissioner Franklin, to approve the Final Order and Findings for File No. 2-NCU-20 with conditions. The motion carried unanimously in a voice vote.

5. **Public Hearings.** At 7:03 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman, Hanselman, Franklin and Hardy reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. **File 5-NCU-20.**

Tokos reviewed his staff report explaining the request was to change a currently licensed 2-bedroom short-term rental (STR) into a 4-bedroom STR following a recent remodel of the home. He reported that the STR was nonconforming because there were other STRs on the same street and why the Commission was reviewing the request under the nonconforming code. Tokos read the character and history of the use for

approval of a nonconforming use into the record. He noted that because there already were three STRs on the street and this wasn't a new STR, he felt it wouldn't add to the impact.

**Proponents:** Michael Ditlefsen addressed the Commission and noted that they covered everything in their packet submittal. He explained that his property management thought it would be a good idea to switch the STR to a 4-bedroom after the remodel and why they were making the request.

Berman asked if there were any complaints against this property. Tokos didn't look to see if there were any complaints on the complaint log, but didn't think there were any. Berman thought that complaint logs should be included in all future decisions of this type. Ditlefsen reported that he wasn't aware of any complaints for the property and if there had been, management would have notified him. He confirmed that he had not been notified by management about any complaints. Branigan asked if management was taking care of the cleaning after renters left. Ditlefsen confirmed this was done through their management company, Vacasa.

Hanselman disagreed with the staff report concerning traffic patterns. He felt increasing the number of bedrooms would increase trips. Hanselman noted that he was thankful this property had ample off-street parking. He hoped that Ditlefsen would ask his renters be cognoscente of all the additional traffic due to the STR, and asked him to add this to the instructions for the renters. Ditlefsen confirmed he would talk to management about adding this.

**Opponents:** None were heard.

Hearing closed at 7:20pm.

Hardy didn't have a problem with the request and thought it met criteria. Franklin had no problem with the request and thought it was great for the neighborhood. Berman supported it and asked the owner to convey to the renters that they were required to use off-street parking before they parked on the street. Hanselman approved and told the owners the property was in stellar shape and their upkeep was great. He reiterated his concerns on parking but stated he would still approve. Branigan agreed that the property was well maintained. He felt they had great parking and wished other short-term rentals could have the same. Patrick thought it met the conditions.

Berman noted that he hoped these types of expansions didn't become a regular Commission event to approve.

**MOTION** was made by Commissioner Berman, seconded by Commissioner Hanselman to approve File No. 5-NCU-20 with one condition. The motion carried unanimously in a voice vote.

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

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

8. **Director Comments.** Tokos reported that the OSU student housing would a public hearing for an amended planned development on the 10th of August. Berman asked how many units there would be in the new plan. Tokos explained that there were five building that were duplexes that were dormitories that had a maximum occupancy of 160 students. He noted the change meant there wouldn't be as many building as first submitted.

Tokos reported that the Stormwater amendments were going to the City Council on the July 20th meeting.

Berman asked if there was any news on the city's water filters. Tokos reported that he didn't have any information because he wasn't involved with them.



Tokos noted that the small business grant awards had been done. There were 117 awards and the list of who received them was on the city's website. Tokos explained that there would be a second round of awards that Business Oregon, Lincoln County, Newport, and Yachats was participating in. The rules for these grants were different than the previous grants and would be handled through Lending Works. Anyone who had received PPEs were ineligible. The group would try to reach out to those who didn't have other assistance. There was a link on the city's website to the County's webpage giving information on the grant that tied over to Lending Works. Applicants would submit for grants through Lending Works. The City would not have a part in managing the grant awards.

9. **Adjournment.** Having no further business, the meeting adjourned at 7:26 p.m.

Respectfully submitted,

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Sherri Marineau  
Executive Assistant

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

**IN THE MATTER OF PLANNING COMMISSION )  
FILE # 5-NCU-20, APPLICATION FOR VERIFICATION, ) FINAL  
ALTERATION, & EXPANSION OF A NONCONFORMING ) ORDER  
USE, AS SUBMITTED BY MICHAEL DITLEFSEN AND )  
JANIE JENNE, OWNERS )**

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**ORDER APPROVING** a request per Chapter 14.32 (“Nonconforming Uses, Lots, and Structures”) of the Newport Municipal Code (NMC) for an alteration of a non-conforming, licensed short-term rental from a two-bedroom to a four-bedroom unit. Maximum overnight occupancy will increase from six to ten individuals. The subject property is located at 406 NW High Street. It is identified as Lot 5 and the northern 6-feet of Lot 4, Block 2, Cressy Blocks (Tax Lot 13400 of Lincoln County Assessor’s Tax Map 11-11-05-CC). The property is approximately 4,577 sq. ft. in size per Survey Record CS 17553.

**WHEREAS:**

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on July 13, 2020; 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 nonconforming use permit.

**BASED UPON THE ABOVE**, the Planning Commission determines that the request to verify, alter, and expand a nonconforming use is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport; and the request is, therefore, granted subject to the following conditions:

- 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.

Accepted and approved this 13<sup>th</sup> day of July, 2020.

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Jim Patrick, Chair  
Newport Planning Commission

Attest:

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Derrick I. Tokos, AICP  
Community Development Director

## EXHIBIT "A"

Case File # 5-NCU-20

### FINDINGS OF FACT

1. Michael Ditlefsen and Janie Jenne (owners) submitted an application on May 28, 2020, per Chapter 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code, for an alteration of a non-conforming, licensed short-term rental from a two-bedroom to a four-bedroom unit. Maximum overnight occupancy will increase from six to ten individuals.

2. The subject property is located at 406 NW High Street. It is identified as Lot 5 and the northern 6-feet of Lot 4, Block 2, Cressy Blocks (Tax Lot 13400 of Lincoln County Assessor’s Tax Map 11-11-05-CC). The property is approximately 4,577 sq. ft. in size per Survey Record CS 17553.

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” and Historic Nye Beach Design Review Overlay.
- c. Surrounding Land Uses: A mix of single-family and multi-family residential properties.
- d. Topography and Vegetation: The existing dwelling is situated on gradually sloped terrain and the lot is landscaped.
- e. Existing Structures: Single-family residence and trash enclosure.
- f. Utilities: All are available to the site.
- g. Development Constraints: None known.
- h. Past Land Use Actions: File No. 4-CUP-02 – authorized use of the dwelling as a vacation rental.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on June 23, 2020 to affected property owners required to receive such notice by the Newport Municipal Code, and to various city departments, agencies, and public utilities. 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. July 13, 2020, or be submitted in person at the hearing. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on July 3, 2020. No comments were received in response to the public notice.

5. At the July 13, 2020 public hearing, the Planning Commission received the staff report and allowed for testimony on the request. The minutes of the July 13, 2020 meeting are hereby incorporated by reference. The Planning Staff Report with Attachments and written testimony submitted at the hearing are hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Application form
- Attachment "B" – Lincoln County Property Report
- Attachment "C" – Record of Survey No. 17553, dated April 2005
- Attachment "D" – Applicant’s narrative

- Attachment "E" – Aerial image and zoning map
- Attachment "F" – Applicant's site plan
- Attachment "G" – 2019 Google Map image of the property
- Attachment "H" – Building Permit No. 625-19-000733-STR, finalized 3/20/20
- Attachment "I" – Plans for Building Permit No. 625-19-000733-STR
- Attachment "J" – STR rental records July 2019 to October 2019
- Attachment "K" – List of utility transactions
- Attachment "L" – Public hearing notice

6. **Explanation of the Request:** Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Non-conforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a non-conforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any non-conforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

The applicant recently remodeled the basement of their home to include two additional bedrooms, and is seeking approval to rent the new rooms on a transient basis. This will increase occupancy from a two-bedroom, 6-person limit, to a four-bedroom, 10-person limit. They note that their driveway is 22-ft wide by 60-ft long, which can accommodate four vehicles (Attachment “D”).

7. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicants provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

**8. Applicable Criteria (Section 14.32.070):** After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;
- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;
- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

## CONCLUSIONS

In order to grant the permit, the Planning Commission must find that the applicants have provided a complete application, that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070.

1. The nature and extent of the existing non-conforming use is that of a 2-bedroom vacation rental, operated out of a 2,050 sq. ft. single family residence constructed in 1932. Assessment records confirm the size of the structure and year that it was built (Attachment "B"). In their narrative, the applicant notes that they purchased the property in 2002. At that time, the City required a conditional use permit to operate a vacation rental in a residential area, a permit that was granted that same year (File No. 4-CUP-02). The applicant indicates that they started renting the residence as a two-bedroom vacation rental, with a maximum occupancy of six, in 2003 and continue to operate it as a vacation rental (Attachment "D").

The unit became non-conforming with the passage of Ordinance No. 2144, effective May 7, 2019. The ordinance limits vacation rental use to a single building on a lot, or group of lots, that abut a street segment (Ref: NMC 14.25.030(B)). An aerial image and zoning map of the area shows that there are presently three buildings containing vacation rentals along the subject segment of NW High Street (Attachment "E"). All three were in existence prior to the effective date of Ordinance No. 2144, and enactment of the ordinance rendered them non-conforming.

Rental records from July to October of 2019 and a list of utility transactions for calendar year 2019 (Attachments “J” and “K”) demonstrate that the property is actively being used as a short-term rental. Further, a photograph of the property shows that it is being maintained in habitable condition (Attachment “G”).

Considering the above, evidence in the record is sufficient to establish that the dwelling is a non-conforming, 2-bedroom vacation rental and that use of the dwelling as a rental has not been discontinued.

2. After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the Planning Commission may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. Findings addressing the criteria for a “no greater adverse impact” determination are as follows:

*a. The character and history of the use and of development in the surrounding area.*

i. The applicant notes that they started operating the two-bedroom vacation rental, with a maximum occupancy of 6, in 2003 and that this has not changed over the years. They hired a contractor in 2019 to remodel the finished basement to create two additional bedrooms. That work was completed in March of this year and was reviewed and inspected by the City for conformance with applicable building codes (Attachments “H” and “I”).

ii. Nye Beach is a mixed-use neighborhood with tourist commercial venues, such as restaurants and retail stores, near the applicant’s property. Further, short-term rentals have a long history in Nye Beach, with units like the applicant’s having existed for decades. These are some of the reasons why short-term rentals are permitted in this portion of the City, subject to limitations, and the Planning Commission finds the fact that the dwelling is located within the permissible area boundary (as opposed to an area where short-term rentals are being slowly phased out) to be a compelling factor in finding this criterion to be satisfied. Further, the Commission concludes that an increase in occupancy will not exacerbate the condition that makes the unit non-conforming, that is it will not result in any additional vacation rentals being located along the subject segment of NW High Street.

iii. Based on findings and testimony regarding the character and history of the use and of development in the surrounding area, the Planning Commission concludes that a change from a two-bedroom to a four-bedroom rental will not cause any greater adverse impact on the neighborhood relative to this criterion.

*b. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.*

i. The applicant indicates that the addition of two bedrooms in the basement should not impact the degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood. They further note that their rental management company prohibits noise audible outside of the dwelling between the hours of 10 pm and 8 am.

ii. This application involves the transient (i.e. short-term) residential occupancy of a dwelling. Increasing the number of occupants results in a higher level of use; however, it is still residential and unlikely to have any measurable impacts relative to these factors, which tend to be more relevant to non-conforming commercial or industrial uses.

iii. Based on findings and testimony regarding the comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectible within the neighborhood, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood relative to this criterion.

c. Adequacy of infrastructure to accommodate the use (including sewer, water, and streets.)

i. The applicant notes that they obtained the requisite permits from the City of Newport to remodel the finished basement, and the Commission finds that City issuance of those permits is evidence that infrastructure at this location is adequate.

ii. Based on findings and testimony regarding the adequacy of infrastructure, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood relative to this criterion.

d. The comparative numbers and kinds of vehicular trips to the site.

i. The applicant notes that the number of trips should be the same, and that at most there would be two additional vehicles.

ii. The comparative number of vehicle trips associated with a two-bedroom versus a four-bedroom short-term rental, when viewed in the context of the larger mixed-use neighborhood, is a very minor change, and the Planning Commission finds that this is not a compelling factor considering that NW High Street, at this location, is fully developed in terms of its paved street width.

iii. Based on findings and testimony regarding the comparative numbers and kinds of vehicular trips to the site, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood relative to this criterion.

e. The comparative amount and nature of outside storage, loading, and parking.

i. The photograph of the property shows that the site is not used for outside storage and none is proposed. Since the occupancy is residential, there is no need for loading areas and none are required.

ii. In their narrative, the applicant points out that the existing turf stone driveway is 22-ft in width and 60-feet long. The driveway dimensions are listed on their site plan (Attachment "F"). Per Ordinance No. 2144, off-street parking spaces must be at least 9-ft x 18-ft in size. Accordingly, the Commission finds that the driveway can accommodate at least four vehicles, which is what the ordinance requires for a four-bedroom rental, with a maximum occupancy of 10. Further, since the applicant is accommodating the increased parking demand on-site, the



Commission concludes that a larger vacation rental at this location will not adversely impact the availability of parking in the area.

iii. Based on findings and testimony regarding the comparative amount and nature of outside storage, loading, and parking, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood.

f. The comparative visual appearance.

i. The applicant notes that they have improved the exterior appearance of the property over the years, removing a dilapidated garage, repairing the damaged retaining wall and installing landscaping. They further point out that no changes are planned for the house itself, outside of the recently completed remodel.

ii. Based on findings and testimony regarding the comparative visual appearance, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood relative to this criterion.

g. The comparative hours of operation.

i. The applicant notes that the hours of operation will remain the same. Guests check-in by 4 pm on their arrival date and check out by 11 am on their date of departure.

ii. Based on findings and testimony regarding the comparative hours of operation, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood relative to this criterion.

h. The comparative effect on solar access and privacy.

i. The applicant notes that there will be no effect on solar access or privacy since no changes are proposed to the exterior of the dwelling or yard. Further, the building plans illustrate that the remodel was limited to the existing footprint of the building.

ii. Based on findings and testimony regarding the comparative effect on solar access and privacy, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood relative to this criterion.

i. Other factors which impact the character or needs of the neighborhood.

The applicant indicates that they could not identify any other factors that impact the character or needs of the neighborhood, and the Planning Commission concludes that no such factors exist.

j. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

i. The current spacing standard of one building being dedicated to vacation rental use per street segment is not met. The applicant's proposal; however, does not exacerbate the situation. That

is there are three buildings dedicated to vacation rental use now, and the same would be true if the applicant's proposal is approved.

ii. Based on findings and testimony regarding the purpose of the current zoning provision that cannot be satisfied, the Planning Commission concludes that expansion of the short-term rental use would not cause any greater adverse impact on the neighborhood.

### **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 the verification, alteration and expansion of a nonconforming use found in Chapter 14.32 of the Newport Municipal Code (NMC), subject to the following:

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.