



PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, September 28, 2020 - 6:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

This meeting will be held electronically. The public can live-stream this meeting at <https://newportoregon.gov>. To access the livestream, visit the Planning Commission page at <https://www.newportoregon.gov/citygov/comm/pc.asp>. Once there, an "in progress" note will appear if the meeting is underway; click on the "in progress" link to watch the livestream. It is not possible to get into a meeting that will be livestreamed before the meeting starts. The meeting will also be broadcast on Charter Channel 190.

Public comment may be made, via e-mail, by noon on the scheduled date of the meeting at publiccomment@newportoregon.gov. To make a "real time" comment during a meeting, a request to speak must be received by 2:00 P.M. on the scheduled date of the meeting. The request to speak should include the agenda item on which the requestor wishes to speak. If the comments are not related to a particular agenda item, the request to speak should include a notation that the request is for general public comment, and the general topic. The request should be e-mailed to publiccomment@newportoregon.gov. Once a request to speak has been received, staff will send the requestor the Zoom meeting link. This link will allow a requestor to participate via video or telephone.

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.

1. CALL TO ORDER AND ROLL CALL

2. APPROVAL OF MINUTES
 - 2.A Approval of the Planning Commission Work Session Meeting Minutes of September 14, 2020.
[Draft PC Work Session Minutes 09-14-2020](#)

 - 2.B Approval of the Planning Commission Regular Session Meeting Minutes of September 14, 2020.

Draft PC Reg Session Minutes 09-14-2020

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 1-VAR-20: Final Order and Findings for Variance to NMC 13.05.030(H) Which Requires New Lots or Parcels in a Subdivision Possess at Least 1,000 SF of Buildable Area Outside of Active Landslide Areas.

[Final Order and Findings](#)

[Request for Reconsideration-James D Vick](#)

[Public Testimony - Charlotte Boxer](#)

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
September 14, 2020
6:00 p.m.

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

Planning Commissioners Absent: Mike Franklin, and Gary East (*all excused*).

PC Citizens Advisory Committee Members Present by Video Conference: Dustin Capri, and Braulio Escobar.

PC Citizens Advisory Committee Members Absent: Greg Sutton.

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 6:03 p.m.
2. **Unfinished Business.**
- A. **Draft OARs Implementing HB 2001 (Large City Model Code) and HB 2003 (Housing Production Strategies).** Tokos reviewed his staff memo. He noted the city had until the end of June next year to complete this and suggested that they package things together as a single amendment.

Tokos reviewed Chapter 3, Triplexes and Quadplexes section of the model code. Patrick asked how the maximum floor area ratio was determined. Tokos explained that you're allowed 1.4 feet of floor area for every foot of lot there is. This was defined in the document as well.

Tokos reviewed how the minimum lot size for detached single family dwellings and maximum floor area ratio (FAR) worked, and what the building setbacks and maximum building heights were. Berman asked if what they were saying was that they couldn't set the maximum height to 35 feet. Tokos confirmed this was correct. Hanselman asked if someone would only need one off-street parking if they put a duplex on a lot that was less than 4,000 feet. Tokos confirmed this was correct. The model code was looking to minimize any kind of parking requirements because they viewed off-street parking requirements as a deterrent to density needs, and to get people to walk, bike and use alternate modes of travel. Tokos reminded that this was a model code for cities bigger than Newport with more robust transit. Berman asked what the difference was between the requirements for off-street parking for duplexes and triplexes, and asked if they could require off-street parking for duplexes. Tokos explained that this was just a model code, but the city had the ability under administrative rule to have off-street parking requirements. He thought the maximum number of spaces for duplexes was two. Tokos reminded the city was under no obligation to incorporate any provision out of the model code. The Commission could decide what options they wanted to adopt. Hanselman was discourage this was making as much imperviable surfaces on a lot as possible. He thought this was a step backwards for the community environmentally. Hardy agreed.

Tokos reviewed the entry orientation, widows, garage and off-street parking sections next. He noted that at this point the city didn't regulate standards for these areas much. Tokos reviewed the driveway approaches, improved alley access and unit definitions next. Escobar asked if Newport had to adopt rules for duplexes and if the higher density standards were optional. He didn't see a lot of the standards that would work well in Newport and thought it would be wise to focus on duplexes and come back to other issues on higher density after the review.

Berman asked if Newport, as a medium city, was not required to allow these things in R-1 and R-2 zones but some of the standards or the code could be added where they were already allowed in the city to try and clean up eye sores. Tokos agreed this was correct, and noted they currently allowed townhouses in R-2, R-3 and R-4 zones but they weren't subject to design standards. He explained that the question was if they wanted to potentially incorporate some design standards. If so, he could work this into the same package as the duplexes. This was because he would have to do a lot of work on the code, he could pull some of this in as well.

Capri thought keeping design standards a bit lenient was helpful. He liked having a list of standards to choose from such as the Nye Beach Standards instead of having to meet a whole list of standards. Capri thought that encouraging developers to do some of the standards, not all, would be good. Tokos pointed out that the Commission had the option to mix and match with this. Berman asked if it was necessary for the timeframe to mix in the design standards with the duplex standards. Tokos said it wasn't. He just wanted to package them together for time efficiency.

Tokos reviewed the Cottage Clusters section and noted this was an area where they could do work and provide some clarity. He explained there were ways to do this in the existing standards but these updates would provide clarity on when people wanted to do this type of common courtyard housing. Berman thought tiny homes could fit into the same pattern as these. Tokos confirmed they could and noted a project in Nye Beach where they were doing multiple homes with accessory dwelling units that weren't required to have off-street parking.

Tokos asked if the Commission had interest in allowing higher density in R-1 and R-2 zones. If not, he asked if there was interest in potentially pulling some of the design standards to apply in the higher density areas where they allowed the use but didn't have any design standards for the use. Berman thought that having design standards would be good but they needed to be flexible and give an "either/or" choice. Capri didn't want to rush this and make it difficult to design to the standard. He thought there were a lot of examples where this was done well but they could go overboard. Patrick didn't see putting anything in the duplex code except driveway standards. He thought it was interesting to look at the cottage standards. He felt the townhouse and the rest of the standards were for places other than Newport. There were some parts on the setbacks that would work and thought it would allow people to build instead of requiring them to get a nonconforming use approval. Hardy thought the driveway access suggestions were poor. She didn't see any benefit for limiting the length of a driveway. There was nothing that interested her in terms of configurations because it over densified, under parked, and there were substandard streets in Newport that couldn't handle a lot of on-street parking. Branigan didn't see much in the standards that applied to Newport. If you tried to mandate design changes it would take away from the feel of Newport. Branigan didn't see an advantage to them.

Hanselman questioned what problems Newport had that this program addressed. He didn't think it would solve problems This felt like they were shoehorning additional density wherever they could. Hardy agreed. Berman noted the issue was if they wanted to adopt design standards and if the city wanted any say in the configuration and how things looked. Capri noted there already were requirements in the Oregon Specialty Code and City requirements that dictated how a structure would end up looking like. Adding designs standards ran the risk of adding things that would start to create one typology in a community. Hanselman asked if Capri saw anything that was onerous if this was adopted. Capri didn't, but thought the hard part was when it became a city requirement. When reading the code it was straight forward but when someone had a certain budget, site, constraints and needs for a particular piece of land, this was when some of the standards became problematic. Berman noted when considering typography of a lot it forced some choices that might or might not be in conflict with the design standard. Capri agreed and noted a duplex project he designed. At first the lot looked flat but when they looked at the typography onsite the duplexes had to be built with offset heights from each other. Patrick noted that what he was hearing was that none of the Commissioners like the townhouse and triplex standards at all, there wasn't a lot of support for driveway standards, there was a little bit of support for cottage standards, and limited support for design standards. The Commission was in general agreement with this.

Tokos would move ahead with the duplex work, and put together some thoughts on what they could do with cottage clusters. He would review if there were some target standards they felt strongly about as staff for design standards for some of the existing uses like townhouses, triplexes, or four-plexes. He would bring it forward with the rationale for review. Capri asked if the design standards could be a separate discussion or if they should be a part of this discussion. Tokos thought it should be bundled together to handle it as efficiently as

possible because they would have to do design standards for duplexes. He explained that this would be a refining exercise for the Commission as they moved forward.

Escobar asked if the standards would override CC&Rs in some neighborhoods. Tokos explained that there were some specific provisions that if the CC&Rs were in effect prior to the adoption of the law, the CC&Rs would still be enforceable. Prospectively, new CC&Rs would be a problem.

Branigan asked if duplexes could span over contiguous lots or would they be restricted to just one lot. Tokos explained that it depended on what they were trying to do, and if it was in an area where a triplex could span multiple lots. These could be done if they were willing to deed restrict the properties and manage them singularly. Tokos gave an example of a currently built apartment complex that straddled lot lines where they had to do a covenant to maintain it as a single large unit of land. If the object of the property was to sell individually, they would have to get their lot lines adjusted. Branigan asked if the Fisherman's Wharf Estates project could build across lots. Tokos explained these lots were R-2 zoned and town houses could be built but it wasn't what they were approved for in their subdivision. They were approved for a 10 lot residential division and noted the developer submitted an extension on their subdivision approval.

Tokos explained that the HB 2003 applied to the City and changed rules relative to planning for housing. Traditionally this was done with a land use assessment and looked at different tools we had to encourage housing. The House Bill increased the frequency the City would have to do that type of assessment. Previously there really wasn't any deadlines and most jurisdictions did this every 10 years. Now it would be every eight years for Newport and we would have to comply with annual requirements and midcycle check ins. This encouraged the city to be aggressive to promote and adopt rules that incentivized housing. This would now require things like providing supportive services to get homeless into stable housing. Tokos explained that this was starting to go beyond the city's traditional role and created a regulatory framework for construction of housing to a more proactive role. This administrative rule along with the one they were looking at for HB 2001 would have an initial public hearing on September 25th, and the hearing for adoption would be in early November. The city would have to comply with HB 2023 by the end of the 2022 calendar year and they would be starting the process at the beginning of the next budget cycle. 2014 was the last time the city updated the housing needs and buildable lands work when they did the OSU housing supplement.

B. Revised TSP Update Schedule & Summary of Public Outreach Virtual Event No. 1. Tokos noted the documents for the TSP public outreach and events would be shared online. There would be two virtual online events. One would be where people could work their own way through it and fill out surveys. The other event would be more interactive. The Policy Advisory Committee provided input on the work that needed to be done. The outreach would be online because of the pandemic and it would allow the public to participate and hopefully give input. Berman noted that there needed to be a good way to get ideas from all the public, especially ones who weren't technically inclined.

3. New Business. None were heard.

4. Adjourn. The meeting adjourned at 6:57 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

Draft MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers by Video
September 14, 2020

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

Planning Commissioners Absent: Mike Franklin, and Gary East (*all 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 7:02 p.m. On roll call, Commissioners Hardy, Berman, Hanselman, Branigan, and Patrick were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission Regular Session Meeting Minutes of August 24, 2020.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to approve the Planning Commission Regular Session Meeting Minutes of August 24, 2020 as written. The motion carried unanimously in a voice vote.

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

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

5. **Public Hearings.** At 7:04 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. Hardy reported a drive by. Hanselman Branigan and Patrick reported a site visit. Berman reported he had a private conversation with Hanselman concerning the property. 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 1-VAR-20.**

Tokos read the letter submitted by Charlotte Boxer into the record. He then reviewed the staff report and explained the request was for an approval of a variance to Section 13.05.030 “Lots and Parcels” of the Newport Municipal Code to allow the completion of the construction of four partially built attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05.030(H)). The foundations are located within an active landslide area. The applicant wanted to finish the units and subdivide the property into four lots, each containing a townhome, as opposed to setting up the project as condominiums, which they could proceed to do without the variance. This constituted a 100% deviation from the 1,000 square foot building area standard noted above.

Berman asked if it was common to begin development of a parcel before the land division was completed and asked why the parcel wasn’t split in 2007. Tokos explained the reason they were doing this was to make

sure the property lines were exactly where the common walls were. Once foundations were set they would know where the common walls are and then they could come back in and do the land division. If they had done the land division earlier, they probably wouldn't have done the final plat piece of it because they would want to know where the common wall was. If they set the interior lines beforehand, there would be problems. If they had done a tentative approval it would have expired by now. Hanselman asked if when they constructed the foundations in 2007 they had the necessary information to plat the property and separate the parcels. Tokos didn't know what information the applicant had at that time. He explained the applicant could have pursued a subdivision at that time to set the lines where the common walls were. Branigan asked if there was any time limit for them to subdivide. Tokos explained that when someone got their tentative subdivision approval they would then record a final plat. If the final plat didn't get done within two years of the subdivision approval, it would expire and they would have to start over.

Hanselman asked if there were any outstanding permits for the property. Tokos reported the 2007 building permit had expired. The applicant had submitted building plans under the current code. Hanselman asked if a geologic permit was required. Tokos explained they weren't doing enough earthwork to require a geologic permit. There wasn't a geological permit done at the time the foundations were built because it wasn't required at that time. Tokos reported that the Building Official satisfied that the foundations met the current building codes.

Hardy asked if there would be a requirement that when people sold the lots they would have to fully disclose the presence of a geological hazard to potential buyers. Tokos explained this was part of the disclosure form when selling property. Hardy asked if the potential first buyers needed to have a disclosure. Tokos would have to look at the language of the real estate disclosure rules. The extent of what they would have to disclose were part of the disclosure form and would be where this would be picked up. Berman noted that the City Council chose to not include a disclosure as part of the geologic hazards ordinance.

Proponents: Jim Vick addressed the Commission. He acknowledged Boxer's letter and noted that it would be grounds for a lawsuit if they didn't disclose what they knew. Vick explained that they agreed with the staff report. They stopped construction and applying for a subdivision at that time because they went onto other projects, which put this project on the back burner. Vick noted that they disagreed with Boxer's letter saying that condominium ownership would not substantially hurt this project. The project value would change significantly. If the project was single family properties instead of condominiums, it would raise the value significantly. Vick noted it was important to not just have a hole in the ground and have a project that enhanced the community. He explained what having condos meant to the project. He thought the complex rules of condos wouldn't apply to this type of project. Vick thought the City wouldn't have liability because they were going through this process now. This would fall on the structural engineer who would carry the liability. Vick explained that financing would be more expensive for condo purchasers. He agreed with the staff report and noted they were only dealing with the legal issue with title in this case.

Hardy asked if there would be a home owners association (HOA) for the planned development or would the owners live side by side with no proof of liability coverage on the part of their neighbors, and no cohesive exterior maintenance planning so over time they didn't end up with a mishmash of well-maintained versus poorly maintained units. Vick noted they typically did common law agreements, and as part of the agreements they could put in some of the things Hardy mentioned. He noted that when he talked to insurance providers, they really didn't provide insurance that would cover the movement of soils. The policies available were very expensive and most insurances wouldn't provide it. So in practical terms it probably wasn't available. There was earthquake insurance which was more easily purchased by individual owners than condominium associations. Berman asked if they were aware this was in a landslide area and if they had consulted with a geologic engineer on the foundation. Vick explained that a geologic report had been done before the foundations were built and the report advised that the ground was stable enough to support the foundations. They had plans to have a structural engineer go back in before they started construction. They hoped to start construction in a month or two.

Jeff Barnes addressed the Commission and noted that he was the contractor on the project and was present to answer questions. None were heard.

Opponents: Hann Cheng addressed the Commission. He asked how the parking would be done. Tokos noted the plans showed each unit would have a single car garage with a driveway for a total of two parking spaces. Chang was concerned that there would be too many driveways on one little street.

Rebuttal: None were heard.

The hearing was closed at 7:45 p.m.

Branigan was bothered by the geology but when they started the project it has been cleared and there was nothing to prevent him from continuing. The staff report showed all the criteria had been met. He would vote to go forward provided that before final construction began there be an engineering study done to ensure that the existing foundations could support proposed townhouses.

Hanselman had problems with the geological aspect but noted it wasn't a required in 2007. He thought there hadn't been a convincing argument for why it shouldn't be developed as it was originally planned as condominiums. Hanselman was leaning toward denying the variance but thought it would make the neighbors feel better knowing the Commission did their due diligence to require an engineering report, though they didn't have any legal standing for this. He thought that they had a way forward as originally permitted and suggested that was where he would cast his vote.

Berman had a problem with concept of this variance. He thought they couldn't use the reason that they didn't have funds as an argument against the criteria saying it wasn't through any fault of their own. They didn't proceed with the project due to financial circumstances and they were not allowed to consider this as a reason to grant the variance. Berman noted that if the recession hadn't happened they would have built this and subdivided the land and things would have been well out of the way before the new ordinance. He didn't think this reason raised it to the level of a variance. Berman also wanted a condition added requiring a new geologic assessment if the variance passed. He didn't think the variance was justified.

Hardy thought Boxer's comments had a lot of merit and were fairly accurate. She reported that she managed 18-19 HOAs and had experience that it wasn't an onerous undertaking. She thought condos gave better protection for the neighborhood in terms of consistent maintenance of the structures. Hardy didn't think the variance was warranted and agreed an updated geological report or engineering study was warranted from a risk prevention standpoint. She hated to see townhomes consisting of four disjointed buyers who don't pay attention to what's happening next door and don't care. She was against a variance.

Patrick thought he could argue both ways on this. He noted it wasn't the same code that they originally built under so they did have to upgrade it to the current code. Patrick understood they started on a certain set of plans and got half way through the build, and acknowledged it was hard to change gears in the middle of work. He was torn on how to go with his decision.

Branigan said after hearing comments of the other Commissioners he would probably go with a nay. Patrick didn't want to get into ownership or condo associations because it wasn't their purview. He thought they could make a good argument that given the safety standards of the ordinance, this type of application was the reason for the ordinance and they wanted to make sure it worked. He thought it didn't mean anything if a foundation looked great, because it was about what was supporting the foundation. Patrick noted the foundation didn't have the weight on it yet and noted a house would weigh a lot more. He thought he would choose to be a nay.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to deny File 1-VAR-20. The motion carried unanimously in a voice vote.

Tokos would bring the final order and findings to the next meeting and base them on the Commission's conversation in deliberations.

6. New Business.

A. Planning Commission Availability for Special Meeting on the Week of October 12, 2020.

Tokos noted the date of the week was wrong on the agenda. They were looking to do a special meeting for the week of October 19th in the evening. Patrick was available for every night except for Monday. Berman was available for all nights. Tokos noted the special meeting would be concerning a request by J. T. Roth saying the requirements for the approved variance and geologic report to widen the street on Spring Street by two feet was unconstitutional. The special hearing would accommodate a special appeal to the Commission and then it would go to the City Council.

Branigan was available all week. Hanselman couldn't confirm any date yet. Hardy noted she wouldn't know until they were further into October. Tokos said the meeting would most likely happen on a Tuesday or Thursday. He suggested locking in a tentative time and letting the Commission know. Berman asked that a doodle poll done so they could get feedback from the Commissioners that weren't present. Tokos would do this.

7. Unfinished Business. None were heard.

8. Director Comments. None were heard.

9. Adjournment. Having no further business, the meeting adjourned at 8:00 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 FILE NO. 1-VAR-20,)
APPLICATION FOR A VARIANCE, AS SUBMITTED BY) FINAL
NEWPORT TOWNHOMES, LLC, PROPERTY OWNER) ORDER
(JAMES VICK, MANAGER))**

ORDER DENYING A REQUEST for approval of a variance to Section 13.05.030 "Lots and Parcels" of the Newport Municipal Code to allow the completion of the construction of four partially built attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05.030(H)). The foundations are located within an active landslide area. The applicant wants to finish the units and subdivide the property into four lots, each containing a townhome, as opposed to setting up the project as condominiums, which they could proceed to do without the variance. This constitutes a 100% deviation from the 1,000 square foot building area standard noted above. The property address is 815 SW 13th Street (Assessor's Map 11-11-08-CA, Tax Lots 3100 & 3500).

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and
- 2.) The Planning Commission has duly reviewed the request and has given proper and timely notice to affected property owners; and
- 3.) At the September 14, 2020 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, the Planning Commission denied the request for a variance.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact, Exhibit "A," support the denial of the variance request involving the above referenced property.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a variance does not comply with applicable provisions of the City of Newport Municipal Code, and cannot be made to comply through the imposition of reasonable conditions.

Dated this 28th day of September 2020.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 1-VAR-20

FINDINGS OF FACT

1. Newport Townhomes, LLC (James Vick, manager) submitted a request on July 30, 2020 for approval of a variance to Section 13.05.030 "Lots and Parcels" of the Newport Municipal Code to allow the completion of the construction of four partially built attached dwelling units located in a geologic hazard area. Foundations for the units were constructed in 2007, before the City amended its subdivision regulations to require that any newly created lot or parcel possess at least 1,000 sq. ft. of building area outside of active and high hazard zones and active landslide areas (NMC 13.05.030(H)). The foundations are located within an active landslide area. The applicant wants to finish the units and subdivide the property into four lots, each containing a townhome, as opposed to setting up the project as condominiums, which they could proceed to do without the variance. This constitutes a 100% deviation from the 1,000 square foot building area standard noted above.
2. 815 SW 13th Street; Lincoln County Assessor's Map 11-11-08-CA, Tax Lots 3100 & 3500 (Lots 8 and 9, Block 1, Plan of Newport, and adjoining vacated rights-of-way). The property is approximately 7,405.2 square feet in size per the Assessor's Map.
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: High Density Residential.
 - b. Zone Designation: R-3/"Medium Density Multi-Family Residential."
 - c. Surrounding Land Uses: Surrounding uses include single-family detached, single-family attached, and multi-family structures to the north, south and west. Commercial development exists downslope to the east along the historic bayfront.
 - d. Topography and Vegetation: The property overlooks the bayfront. The property slopes moderately from the edge of sidewalk down to the west side of the foundations. From there it slopes steeply down to the neighboring commercial development. The site was cleared when the foundations were constructed. Grasses and blackberry have since reestablished.
 - e. Existing Structures: None.
 - f. Utilities: All are available to the property.
 - g. Past Land Use Actions: None.
4. NMC Chapter 13.05 applies to the subdivision of real property, and the applicant would need to demonstrate compliance with the applicable provisions of this chapter in order to subdivide the subject property into four townhouse lots. NMC 13.05.030(H) provides that each new, undeveloped lot or parcel shall include a minimum 1,000 square foot building footprint within which a structure could be constructed that is located outside of an active landslide area. The subject property is almost entirely within an active landslide area (ref: Attachment "F").

Deviation from this standard is possible if a variance were to be approved pursuant to the standards and procedures for variances in the zoning ordinance (NMC 13.05.105(B)).

5. Pursuant to NMC Section 14.33.030(C), a deviation of greater than 40% from a numerical standard shall satisfy criteria for a variance as determined by the Planning Commission using a Type III decision making procedure. This application seeks a 100% deviation from the 1,000 square foot building footprint requirement.
6. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on September 4, 2020 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., September 14, 2020. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on September 4, 2020.
7. A letter submitted by Charlotte Boxer, Bay Blvd, LLC, and Elm Street, LLC, dated September 13, 2020, objects to the variance request. Ms. Boxer argues that the project could move forward as a condominium development, that such form of ownership would not substantially hurt the project from a financing perspective, and that a condominium form of ownership would be advantageous should a landslide occur in that one entity (i.e. the HOA) would be responsible for addressing damage as opposed to potentially four separate owners in a townhouse subdivision. Property owned by Ms. Boxer is immediately downslope of the subject site at 808 and 818 SW Bay Blvd. Ms. Boxer's letter was distributed to the Commission members in advance of the hearing and it was read into the record at the hearing.
8. A public hearing was held September 14, 2020. At the hearing, the Planning Commission received the staff report and the applicant, James Vick, made a brief presentation. Jeff Barnes, a contractor working with Mr. Vick, attended the meeting but did not testify. Both staff and the applicant fielded questions from Commission members. Hann Cheng, owner of property at 818 SW 13th Street, addressed the Commission expressing concern over the number of driveways that would access the street and its impact on parking. The applicant was given time to provide rebuttal testimony, but chose to forgo that opportunity. The Commission then closed the hearing, deliberated, and rendered an oral decision with direction to staff to prepare a final order and findings for consideration and possible adoption at the next regular meeting.
9. The minutes of the September 14, 2020 meeting are hereby incorporated by reference into the findings. The Planning Staff Report with Attachments, and materials submitted by opponents, are incorporated by reference into the findings. The Planning Staff Report Attachments are identified as follows:

Attachment "A" – Land use application form

Attachment "B" – Lincoln County Property Reports (both tax lots)

Attachment "C" – Property survey (Record No. 18726)

Attachment "D" – Application narrative

Attachment "E" – Aerial map with zoning designations

Attachment "F" – Aerial map with landslide hazard and contours

Attachment "G" – Site plan, building permit, and footing inspection records from 2007 City approval

Attachment "H" – Public hearing notice

10. The applicable criteria for approval of a variance are found in NMC Section 14.33.060 as follows:

- i. 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.
- ii. Criterion #2. 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. Criterion #3. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
- iv. 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.
- v. Criterion #5. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.
- vi. 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.

CONCLUSION

The applicant is requesting a 100% variance to NMC 13.05.030(H)), which provides that each new, undeveloped lot or parcel in a subdivision include a minimum 1,000 square foot building footprint within which a structure could be constructed that is located outside of an active landslide area. Accordingly, Planning Commission approval 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 Commission, at the close of the hearing, concluded that Criterion No. 2 and No. 3 have not been met.

Evidence in the record shows that construction of the four attached dwelling units was commenced in 2007 with footings and foundations being completed before work was ceased. The Commission accepts that a partially constructed project of this nature was not a situation anticipated at the time the City amended its ordinances to identify active landslide areas, and to prohibit new lots or parcels from being created wholly within those areas. It further accepts that such unanticipated situations may qualify as a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property, satisfying Criterion #1.

Criterion #2 stipulates that the circumstance or condition outlined in Criterion #1 cannot be of the present property owner's making or result from personal circumstances of the owner, including financial circumstances. Mr. Vick, as the applicant and owner's representative, testified that he elected to cease construction of the four attached dwelling units because it was not financially profitable to proceed with the project. The provision of the City's subdivision ordinance that is the subject of this variance application did not apply to the property at that time, and did not become effective until 2011, roughly four years after the applicant-initiated construction (ref: Ordinance No. 2017, effective August 17, 2011). The applicant had ample time to complete the project in the intervening period and cannot expect City ordinances to remain static over time. Considering the above, the Commission concludes that it was the applicant and present property owner's choice to leave the property in a partially developed state for such an extended period of time that they are now compelled to seek this variance, and that such decision was made as a result of their personal financial circumstances. For this reason, Criterion #2 has not been satisfied.

Even had Criterion #2 been met, Criterion #3 requires the applicant demonstrate that application of the standards for which the variance is sought creates a practical difficulty or unnecessary hardship to the property owner. Evidence in the record shows that the applicant can develop four attached dwellings on the property as a condominium project. Such a project would not require the property to be subdivided, making a variance of the type requested unnecessary. While the applicant testified that the value of the four units would be less in a condominium form of ownership, he did not provide evidence to show that completion of the units as condominiums is not viable. Consequently, the Planning Commission cannot conclude that application of the subdivision ordinance standard for which the variance is sought will result in a practical difficulty or unnecessary hardship on the property owner.

Since the applicant did not meet approval Criterion #2 and #3, it is not necessary for the Planning Commission to address the other approval standards because all of them must be met in order for the application to be approved.

September 25, 2020

Planning Commission

City of Newport

City Hall, Newport

RE: Rejected Variance Request

Dear Commission:

Thank you for taking your time to consider our request for a variance that would allow a patrician of two lots into four lots so that legal title could be conveyed to purchases. As several members of the Commission mentioned, this is a close question with equities running in both directions.

We are prepared to accept the decision of the Commission without an appeal to the City Council or LUBA; however, in fairness to the Commission, you should be informed of the consequence of your decision, as these decisions are not made in a vacuum.

This project is one that is barely profitable as proposed. Due to the high construction costs at the Oregon coast, which has been affirmed by the bids we obtained this month, the project cannot be constructed as condominiums. I had hoped that a favorable decision from the Commission would give us the slight edge that we needed to make this project feasible. Unfortunately, we are forced to abandon any plans to construct the project, either now or in the future.

We are listing the property for sale. We have listed it several time without success in the past during the period we have owned. I do not expect any development on this site for years and perhaps decades to come. This is unfortunate for the City of Newport, not only for increased tax revenue but for general attractiveness of the site.

I doubt that knowing the result of your decision will make any difference. But I felt that you deserved to know the “rest of the story” as Paul Harvey used to say. If you desire, you may consider this letter as a request for reconsideration.

Thanks again for your time.

Newport Townhomes, LLC

James D. Vick, Manager

September 27, 2020

Planning Commission
City of Newport
Newport, OR.

Re: File NO. 1-VAR-20
Newport Townhomes LLC

To the Planning Commission,

I have read the letter of reconsideration regarding the 100% variance for the 4 townhomes noted above.

- The developer states that the project is barely profitable based on construction costs, however, he does not elaborate on why selling them as condos v. townhomes would make the construction more costly. When the developer poured the foundations in 2007, the units were scheduled to be condominiums. In order to obtain approval to pour the foundations, the HOA documents would have needed to be approved by the State of Oregon, so there should be useable documents available to be updated.
- Condominiums do not sell for less than townhomes. Many people want a condominium so that the upkeep and maintenance of the exterior is facilitated by the HOA. The landscaping, siding, and roofing will be taken care of by the HOA rather than 4 individual owners, whereas one or two owners could neglect their portion while the other owner(s) take care of their landscaping and exterior maintenance.
- The developer says they have tried to sell the property during their period of ownership. If they tried to sell from 2007 to 2012, it is likely no one was interested as that was the period when the housing bubble burst and foreclosures were rampant. I have never seen a sign on the property, although it may have been a pocket listing. The developer did not give any details on the number of times it was listed, when it was listed, or for how long. It is a very weak argument.
- It is doubtful the site will sit unsold for decades. The housing market in Newport is exceptionally strong, and it is a seller's market. The developer states "it is unfortunate for the City of Newport not only for increased revenue but for general attractiveness of the site". The site has sat vacant for 13 years! It has been neglected and overgrown with weeds,

blackberries (I've had to cut the blackberries back several times to keep them from piercing my commercial VC roof) and they have given no care or attention towards the attractiveness of the site during the 13 years.

- I have attached a screen shot of the property, my property, and the new Basic's Market site and you can see 2 of the foundations lie directly above my property and 2 lie above the Basic's Market manufacturing area. IF a landslide were to occur, can you imagine the nightmare scenario of having to try to work with 4 insurance companies and 4 different owners who may or may not have adequate insurance? It is not likely that scenario would result in full compensation for any destruction caused by a landslide. That may make the City of Newport liable for the gap in insurance proceeds if any of the owners choose not to cooperate or their insurance is inadequate. This is honestly not a threat of any kind; it is the reality of what could happen if the City grants a 100% variance to the project. Why implement restrictions in a landslide area if the restrictions are not enforced by the City?
- You will recall the large landslide across from the Coast Guard Station a couple years ago. A large portion of the hillside slide down to the street. It happens.
- Lastly, please tell me why it is the responsibility of the City of Newport to maximize a private developer's profit by granting a variance at the potential expense of the downhill commercial properties should a landslide occur?

There would be no argument for converting the site from condos to single-family townhomes but for the fact that they are in an active landslide zone.

If the developer really wants the variance, perhaps they should propose constructing a retaining wall the length of the property which would be sufficiently engineered to hold back the impact of a landslide. That would likely cost more than platting the units as condominiums but could offset the landslide potential if the earth were to slide into the downhill properties.

Thank you,

Charlotte Boxer
Bay Blvd LLC
Elm Street LLC

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