

From: Lynn Cole

Sent: Sunday, November 25, 2018 12:02 PM

~~REDACTED~~ CITY OF NEWPORT

Subject: RELIEF FROM STREET IMPROVEMENT

**APPEAL of Staff Decision Denying my Request for Relief from Street Improvement Requirements**

Dated

October 12, 2018

**TO: CITY OF NEWPORT PLANNING COMMISSION      NOVEMBER 24, 2018**

The City required me to (a) replace or reline the sewer lateral and to (b) replace the timber "curb" along the property frontage with a concrete curb before they will issue my occupancy permit.

The sewer lateral was relined on November 24<sup>th</sup>, 2018.

I am appealing (b) for the following:

**REBUTTAL #1**

The Community Development Director's conclusion No. 6 that "NMC 14.44.050(A)(4) (see below) applies to my property .

- 1) The transportation standards DO NOT APPLY to my property because
  - (A) Does not apply as it is not a new use or development
    - (1.) It is NOT a new lot
    - (2.) It is NOT subject to Chapter 13.05, Subdivision and Partition as it is NOT a land division or partition as defined.
    - (3.) It is NOT a new street development
    - (4.) Substandard streets adjacent to existing lots shall be brought into conformance with the standards of Chapter 13.05 which is the chapter applying to subdivisions and partitions –

**14.44.050 Transportation Standards**

A. Development Standards. The following standards shall be met for all new uses and developments:

1. All new lots created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.
2. Streets within or adjacent to a development subject to Chapter 13.05, Subdivision and Partition, shall be improved in accordance with the Transportation System Plan, the provisions of this Chapter, and the street standards in Section 13.05.015.
3. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance Chapter 13.05, and public streets shall be dedicated to the applicable road authority;
4. Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05.

**CHAPTER 13.05 SUBDIVISION AND PARTITION**

**13.05.001 Purpose**

This chapter provides uniform standards for the **division of land** and the installation of related improvements within the corporate limits of the city for the purposes of protecting property values, and

**furthering the health, safety and general welfare of the citizens of Newport.** The provisions of this chapter implement Statewide Planning Goals as addressed in the Newport Comprehensive Plan along with the applicable portions of Chapters 92 and 227 of the Oregon Revised Statutes.

#### 13.05.005 Definitions

The following definitions apply in this chapter:

A. Land Division. A subdivision or partition.

B. Lot. A unit of land that is created by a subdivision of land.

G. Replat. The act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. A replat shall not serve to vacate any public street or road.

**H. Replat. Minor. A replat that involves five or fewer lots or any number of lots or parcels totally contained within a city block in the original configuration and that does not involve any public street rights-of-way. A minor replat shall not serve to vacate any public street or road.**

#### REBUTTAL #1 CONTINUED:

See H. Above

**The closest NMC applying to my property is Chapter 13.05.001(H) listed above describing a MINOR REPLAT and the code does allow for "original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming." SEE BELOW**

#### 13.05.095 Minor Replats and Partitions

A. Procedure for Review. After an application for minor replat or partition is deemed complete, the community development director shall send notice to persons within 100 feet of the subject property and, if there are existing public easements, affected utilities, that the tentative plan has been filed. Notified parties shall be given 14 days to provide written comments. After the 14 day period, the community development director shall decide whether the application complies with the criteria and provide a written decision. The criteria for approval are:

1. The tentative plan complies with the definition of a replat or partition, as appropriate.
2. **All lots or parcels within the tentative plan meet the requirements of Section 13.05.030.**

**Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.**

3. Approval of the tentative plan does not interfere with the provision of key public facilities.

#### REBUTTAL #2

**When I bought the property in 2001 from Mr. and Mrs. McKeVitt the were kind enough to take me through the property and show me pertinent items. At that time they told me they had redone the front yard landscaping in the mid 1990's putting in a new drive, walkways, outdoor lighting and landscaping. Part of that new landscaping was putting in a decorative timber border on the front property line. It was never meant to be a substitute for a curb. One of the reasons the City of Newport gave me requiring I replace the timber "curb" with a concrete curb was that the timber "curb" would soon fail. Since it has been there for over 20 years and in good shape and was never meant to function as a curb, I ask what would it fail as? A decorative border?**

#### REBUTTAL #3

**Two new houses built within the last two years on either side of my home were NOT required to install curbs.**

I have lived in and owned the property for 18 years and there is NO change in the purpose of the property which has been a single family residence for 68 years.

**REBUTTAL #4**

There are currently NO CURBS on either side of 5<sup>th</sup> Street within 1,000 feet of my property.

The possibility of damage to the existing street by installing a concrete curbs is as follows:

1. By digging out an 80 foot long by 3 foot deep trench alongside the existing street, you would be compromising the compacted dirt which is now serving as a barrier to rain water seeping under the pavement. In "unpacking" this compacted dirt it would allow rainwater an easier path to seep under the street and create a problem which does not currently exist.
2. Installation of an 80 foot curb along the south side of 5<sup>th</sup> Street would actually create a "chute" for rainwater to faster flow down the 15% grade rushing into the Fogarty Street intersection where no drainage lines currently exist. Currently the existing vegetation and dirt lining this 80 foot path abutting 5<sup>th</sup> Street is actually serving to absorb and slow down the flow of rainwater on 5<sup>th</sup> Street.

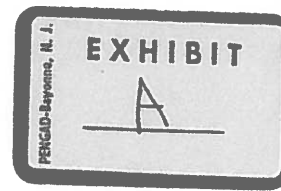
I respectfully ask you consider my request for relief from street improvements which will not solve any problem which has not existed for the past 68 years, but may actually cause damage to the public roadway.

Sincerely,



Patricia L Cole  
640 SE 5<sup>th</sup> Street  
Newport, or 97365

NOVEMBER 24, 2018



BEFORE THE COMMUNITY DEVELOPMENT  
DIRECTOR OF THE CITY OF NEWPORT,  
COUNTY OF LINCOLN, STATE OF OREGON

IN THE MATTER OF PLANNING COMMISSION )  
FILE NO. 6-MISC-18, APPLICATION FOR RELIEF )  
FROM REQUIREMENT THAT CURB AND DRIVEWAY ) FINAL  
APRON BE REPLACED IN CONJUNCTION WITH ) ORDER  
REPLACEMENT DWELLING (LYNN COLE, OWNER) )

Order denying a request for relief from City requirements that a timber curb and driveway apron be replaced along a street frontage in conjunction with a replacement dwelling. The property is located at 640 SE 5<sup>th</sup> Street (Assessor's Map 11-11-08-AD, Tax Lot 7800).


WHEREAS:

- 1.) The Community Development Director has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and
- 2.) The Community Development Director has duly reviewed the request; and
- 3.) The Community Development Director allowed for evidence and recommendations from the applicant, various City departments, and the Community Development staff; and
- 4.) At the conclusion of said review, after consideration, the Newport Community Development Director found the requirement that the owner replace the timber curb and driveway apron in conjunction with the replacement dwelling is consistent with the requirements of the Newport Municipal Code and is roughly proportional to the impact the new development will have on public facilities.

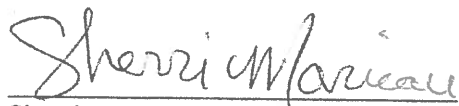
THEREFORE, LET IT BE RESOLVED by the City of Newport Community Development Director that the attached findings of fact and conclusions (Exhibit "A") support denial of the applicant's request for relief from these public improvement requirements.

BASED UPON THE ABOVE, the Newport Community Development Director determines that the requirement that the curb and driveway apron be replaced is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 12<sup>th</sup> day of October 2018.

  
Derrick I. Tokos, AICP  
Community Development Director

Attest:

  
Sherri Marineau  
Executive Assistant

2. The required improvements have been completed.
3. The final plat complies with all conditions attached to the tentative plan.
4. Planned public facilities that were relied on to comply with Section 13.05.045 at the time of tentative plan approval have been completed and are available for use.

If the final plat is approved, the plat shall be forwarded to the Planning Commission chair for signature. If the final plat is denied, the applicant shall be notified in writing why the final plat was denied and what items need to be corrected before the final plat can be approved.

- K. Recording of Final Plat. After final approval, the final plat shall be forwarded to Lincoln County for review and recording as required by law. Within 90 days of approval, the developer shall submit to the city a mylar copy and two paper copies of the recorded final plat.

13.05.095 Minor Replats and Partitions

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1. The tentative plan complies with the definition of a replat or partition, as appropriate.
2. All lots or parcels within the tentative plan meet the requirements of 13.05.030 13.030. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.
3. Approval of the tentative plan does not interfere with the provision of key public facilities.

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4. Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of [Chapter 13.05](#).

B. Guarantee. The city may accept a future improvement guarantee in the form of a surety bond, letter of credit or non-remonstrance agreement, in lieu of street improvements, if it determines that one or more of the following conditions exist:

1. A partial improvement may create a potential safety hazard to motorists or pedestrians;
2. Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;
3. The improvement would be in conflict with an adopted capital improvement plan; or