

**NEHALEM PLANNING COMMISSION  
PLANNING MINUTES  
REGULAR MEETING  
JUNE 26, 2019**

Chair Coopersmith called the Planning Commission Meeting to order at 6:03 p.m.

**PLANNING COMMISSION  
MEMBERS PRESENT:**

John Coopersmith, Chair  
Janet Lease, Vice-Chair  
Lance Stockton, Commissioner  
Mary Jo Anderson, Commissioner

**EXCUSED:**

Julie Chick, Commissioner

**STAFF PRESENT:**

Dale Shafer, City Manager  
Melissa Thompson-Kiefer, Asst. City Mgr. /Recorder  
John Morgan, Planning Consultant  
David Mattison, Planning Consultant (arrived 6:11)

**VISITORS:**

Sarah Absher, Tillamook County Comm. Dev. Director  
Erin Skaar, CARE Executive Director (arrived 6:06)  
Lisa Phipps, DLCDC North Coast Rep. (arrived 6:13)  
James Ray Streinz, Hilltop Estates HOA Board  
Sarah Smyth McIntosh, Law Manzanita  
Lark Miller                      Lane deMoll  
Vicki Chase                      Brian M. Chase  
Karin Walczak                      Maureen Walczak (and infant)  
Peter Walczak                      Paul Walczak  
Ed Gallagher                      Kate Romanov  
Kathleen Marvin                      Kathy Jean Hrywnak  
Mark Zawadzki                      Lori Welch  
Tina Chick                      Glenda Sonies  
Gail Downie                      Lynda Chick (arrived at adjournment)

Chair Coopersmith led those present in the Pledge of Allegiance.

**MINUTES**

The Commission reviewed the minutes of the May 23, 2019 Planning Commission meeting. Commissioner Anderson **MOVED** to approve the minutes from the May 23, 2019 meeting as

presented. Vice-Chair Lease **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Coopersmith, Lease, Stockton, and Anderson; No: None).**

## **OLD BUSINESS**

### **DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT (DLCD) ADDRESSING CLIMATE CHANGE IN PLAN**

City Manager Shafer explained that the *Draft Comments on Nehalem Comp Plan Modifications to Include Climate Change* were suggestions prepared by Christine Shirley of DLCD. City Manager Shafer clarified for Sarah Smyth McIntosh that Lisa Phipps of DLCD previously gave a presentation to the Planning Commission on ethics and the role of the Planning Commission, not climate change. City Manager Shafer also clarified for Ms. McIntosh that DLCD has not issued guidelines regarding climate change, they only provided suggestions for language to include in the Comprehensive Plan. Ms. Phipps arrived and reconfirmed that there is currently no requirement to adopt climate change policies, but it will be eventually be included in the Statewide Planning Goals.

There was a Commissioner comment in favor of the idea of electric vehicle charging stations. There was a Commissioner suggestion to add comments urging the Oregon Department of Transportation (ODOT) to plan for sea level rise effects on Highway 101. Chair Coopersmith suggested that the Commission could consider a motion to request that the City Council request that ODOT plan for sea level rise. City Manager Shafer suggested that the Commissioner attend a Council Meeting to make the request to the City Council. Maureen Walczak commented that she is a climate scientist and offered education on climate change.

Ms. Phipps shared that she prepared a draft incorporating Ms. Shirley's climate change comments into the Draft Comprehensive Plan. Commissioner Anderson clarified that only Christine Shirley's comments were in the Planning Commission agenda packet and online. Once the Commission approves the comments, the draft incorporating Ms. Shirley's climate change comments into the Draft Comprehensive Plan will be available.

Vice-Chair Lease **MOVED** to add the Comprehensive Plan modifications to include climate change into the Draft Comprehensive Plan. Commissioner Stockton **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Coopersmith, Lease, Stockton, and Anderson; No: None).**

## **NEW BUSINESS**

**PUBLIC HEARING: A Quasi-Judicial Land Use Hearing on an application from Mark Zawadzki requesting a variance to allow him to build on a smaller lot of 3,360 square feet instead of 5,000 square feet, allow a shorter driveway 18 feet in length instead of 20 feet and allow a rear setback of only 5.5 feet instead of 20 due to topography. The property in question is 3N10W27AB0808, it is in Hilltop estates and is zoned RM.**

At 6:26 p.m., Chair Coopersmith opened the public hearing.

## **DECLARATION OF EX-PARTE CONTACT**

Commissioner Anderson declared ex-parte contact, explaining that she visited the site on June 26, 2019 in order to confirm the location. There were no conflicts of interest to declare and were no objections to the ability of a Commissioner to make a fair decision.

Chair Coopersmith described the hearing process and performed the required statements for the hearing.

## **STAFF REPORT**

Planning Consultant David Mattison presented the staff report. Mr. Mattison explained that the marker on the map in the staff report was not in the correct location. Mr. Mattison noted that the existing foundation did not meet setback requirements and other existing townhouses do not meet setback requirements.

Mr. Mattison's staff report concluded that the three variance requests met the standards necessary for approval and recommended approval subject to the following conditions:

- a. The property will be developed in compliance with the intent expressed on the record of this proceeding and as identified in section 157.403(a).
- b. Any change in plans for development will require submittal of a new application to the City and hearing before City Planning Commission as identified in section 157.403(c).

(A copy of the staff report is attached to and made a part of these minutes as Attachment A.)

Mr. Mattison answered clarifying questions for the Commission. Commissioner Anderson noted that the only access road to the property was having issues with sloughing off the hill.

## **APPLICANT PRESENTATION**

Mark Zawadzki explained that the Hilltop Estates Homeowner's Association (HOA) would not allow him to build anything other than a one-story house on the property because they did not want to lose the view. Mr. Zawadzki said he would do anything he needed to do to build on the property and requested approval. Mr. Zawadzki answered a clarifying question from the Commission.

## **TESTIMONY IN FAVOR**

James Ray Streinz, Hilltop Estates HOA Board Secretary, testified in support of the application. Mr. Streinz shared that the HOA was aware of the issues with the access road and explained how they will be addressing the issue. He noted that the HOA will have a condition limiting Mr. Zawadzki's use of large trucks and an engineer will be supervising construction of the property. Mr. Streinz stated that at an HOA meeting on June 15, 2019, a motion to support Mr. Zawadzki's variance application passed unanimously. The HOA has approved Mr. Zawadzki's design.

### **TESTIMONY OPPOSED**

Chair Coopersmith shared that a letter received from Linda Govednik indicating that she would be ok with the variance if Mr. Zawadzki performed a geological survey on the driveway area and repaired it. Mr. Streinz noted that Ms. Govednik was not present at the HOA Board meeting.

### **APPLICANT REBUTTAL**

Mr. Zawadzki explained that he would not damage or repair the driveway. He said he would be using smaller trucks. He said if the driveway was damaged, he would address it with the HOA.

### **DELIBERATION & DECISION**

There being no further testimony, request for continuance or request to hold the record open, Chair Coopersmith closed the record and public hearing at 6:58 p.m. The applicant waived the opportunity to submit final written argument after the close of the record.

Vice-Chair Lease **MOVED** to approve the application of the Mark Zawadzki for three variances as submitted. Commissioner Stockton **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Coopersmith, Lease, Stockton, and Anderson; No: None).**

### **PUBLIC HEARING: A Public Hearing on proposed rules/regulations for allowing Accessory Dwelling Units (ADUs) in the Nehalem Urban Growth Boundary as required by SB1051.**

Planning Consultant John Morgan explained that the consideration of the proposed rules and regulations for ADUs is a legislative process, not a quasi-judicial hearing. Mr. Morgan read aloud portions of the state statute (SB1051) and explained it was intended to allow affordable housing to be made in an easier manner by permitting them outright. He explained that Nehalem must allow ADUs in the Urban Growth Boundary because it is required for counties with a population greater than 15,000. Mr. Morgan presented the proposed regulations for ADUs. Mr. Morgan noted that the proposed regulations were numbered according to the Zoning Ordinance before it was codified and would be renumbered according to the codified version if adopted by the City Council.

There was a Commissioner question about requiring separate sewer and water connections. Mr. Morgan suggested that details regarding water and sewer connections were Public Works standards and processes that should be decided by Council outside of the zoning code document. City Manager Shafer and Mr. Morgan clarified for the Commission that the City was not required to address ADUs within city limits at this time but could if they choose to.

There was public comment that Section 2.060 (2)(8) of the current Comprehensive Plan states that the City will allow for accessory dwelling units in residential zones. Mr. Morgan noted that it had obviously never been implemented within the development code.

There was additional comment that normally there would be more density within the city and less within the UGB, and that there must be resistance to density within city limits.

There was public comment suggesting the description of the floor area requirement within the proposed regulations should state “whichever is less,” rather than “whichever is greater.” Mr. Morgan agreed that was the intent and noted the correction.

Ms. Absher, Tillamook County Director of Community Development, noted that Nehalem’s development code currently allows short-term rentals outright in residential zones as outright permitted use. She suggested that if the Planning Commission and City Council desire to preserve the intent of the ADUs for housing opportunities to address the housing crisis, the regulations should be clarified whether the primary dwelling unit or ADU could be converted into a short-term rental. Ms. Absher shared that she was one of the staff liaisons to the Housing Commission. She also encouraged the City Council to look at alternatives to System Development Charges (SDCs) to ensure the construction of ADUs is not cost prohibitive.

There were public comments that the intent of ADUs was workforce/affordable housing and SDCs would make it cost prohibitive. There was public comment encouraging the Planning Commission to recommend that the City Council allow ADUs within the City. There was public comment that ADUs were an important option for the aging population for additional income or caregiver housing. There was public comment regarding concern about ADUs being used as short-term rentals. There was public comment encouraging providing long-term rentals. There was public comment that ADUs don’t provide a path to home ownership. There was public comment suggesting that SDCs should not be waived, but there could be reduced fees. There was additional discussion regarding SDCs. Chair Coopersmith reiterated that water hookups and short-term rental were issues for the City Council to address and citizens can request that the Council take up the issues.

There was a public question regarding perceived fear about short-term rentals or desire to restrict them. City Manager Shafer explained that at a public visioning meeting about a year ago, there were community members on both sides of the issue.

City Manager Shafer noted that the proposed regulations require that either the primary dwelling or ADU be owner occupied.

There was Commissioner comment that ADUs can be used by low income homeowners as a short-term rental to provide additional income. It was suggested that the City consider a cap or quota for short-term rentals.

There being no further comments, Commissioner Anderson **MOVED** to strike “greater” and replace with “less” in number 4. Area. Vice-Chair Lease **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Coopersmith, Lease, Stockton, and Anderson; No: None)**.

At the recommendation of Mr. Morgan, Commissioner Stockton **MOVED** to modify number 5. Setbacks to read “For a detached accessory dwelling unit, the minimum rear yard setback shall be 10 feet; the minimum side yard setback shall be 5 feet.” Vice-Chair Lease **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Coopersmith, Lease, Stockton, and Anderson; No: None)**.

Commissioner Anderson **MOVED** to accept the new code updates for the accessory dwelling units pertaining to the Urban Growth Boundary and recommend approval to the City Council. Commissioner Stockton **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Coopersmith, Lease, Stockton, and Anderson; No: None).**

**PUBLIC COMMENT**

There was a question from the public regarding a reference to wetlands in the Buildable Lands Inventory. There was discussion regarding the tsunami inundation zones and recent state legislation. Ms. Phipps clarified that tsunami inundation zones and wetlands may be included in the Buildable Lands Inventory but are still subject to other regulatory conditions for building in those types of conditions. Ms. Absher concurred. After brief discussion, Mr. Morgan said he would clarify or answer additional questions by correspondence. Chair Coopersmith clarified for the public that the Commission had already reviewed and discussed Goal 5.

There was public comment from a member of the Housing Commission that the discussion regarding ADUs was helpful.

There was public comment regarding the change to the June meeting date. City Manager Shafer explained that the meeting date changed so that Mr. Morgan could attend.

**ADJOURNMENT**

The next Planning Commission meeting is scheduled for July 18, 2019.

There being no further business, Chair Coopersmith closed the public hearing and adjourned the meeting at 7:55 p.m.

**APPROVED:** \_\_\_\_\_  
Janet Lease, Planning Commission Vice-Chair

**ATTEST:** \_\_\_\_\_  
Melissa Thompson-Kiefer, Assistant City Manager/Recorder

**City of Nehalem  
Zawadzki Variance Request  
PRELIMINARY PLANNING COMMISSION STAFF REPORT**

Request: The applicant is requesting three (3) variances to the City Zoning Requirements

- 1) Allow for a variance of 1,640 square feet for a lot size of 3,360 square feet instead of the required 5,000 square feet for a detached single-family dwelling in the R3 zone district.
- 2) Allow for a variance of 2 feet for a driveway of 18 feet instead of the required 20 feet.
- 3) Allow for a variance of 14 ½ feet for a rear yard setback of 5 ½ feet instead of the required 20-foot setback.

Applicant: Mark Zawadzki, MZ Construction LLC  
4862 SW Garden Home Road  
Portland, OR 97219

Location: 13150 D Street, Nehalem. Map #3N 10W Sec 27AB, Tax Lot 808. Lots 8 and 9 of the Hilltops Estates Subdivision.

Zone: R3, Medium Density Residential Zone District. In §157.098, Development Standards, for the R3 Zone, the following standards apply.

- (A) The minimum lot size for a single-family dwelling and mobile home shall be 5,000 square feet. For multiple-family dwellings (duplexes and larger), the minimum lot size shall be 5,000 square feet for the first dwelling and 2,500 square feet for each additional dwelling.
- (B) The minimum lot width shall be 40 feet; except on a corner lot, it shall be 60 feet.
- (C) The minimum lot depth shall be 85 feet.
- (D) The minimum front yard shall be 20 feet.
- (E) The minimum side yard shall be five feet.
- (F) The minimum rear yard shall be 20 feet.

Parcel Size: The total size of Tax Lot 808, lots 8 and 9, is approximately 3,360 square feet.

Adjacent Uses: Adjacent uses include townhouses in the Hilltop Subdivision to the north and west respectively, and sloped open space to the south and sloped open space and off-street parking to the east respectively, prior to Northfork Road. An Aerial view is shown on Page 5.

Hearing Date: June 26, 2019

**Background:**

The applicant purchased 2 adjoining lots at Hilltop Estates, 13150 D Street. The developer intended to build two connected three-story units on those lots and had put in the foundations and utility hook-ups. The developer abandoned the project before building on these lots.

The Hilltop Estates HOA opposes building three-story units. It would only agree to two-story units with only one-story on the driveway level. The second story is a 'daylight basement' built into the natural slope of the hill.

The applicant states that two units on the property would not be economically feasible and would not work with the foundation already in place. The applicant designed a single three-bedroom unit using the existing foundations, and needs these three variances approved to build this unit.

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The two lots are designed for condominium units and are smaller than normal lots. The total size of the two lots is 3,360 square feet, smaller than the 5,000 square foot lot size required for a detached house. Because of the size of the lots, the driveway is only 18 feet in length rather than the 20-foot driveway required by code with the 20-foot front yard setback. Due to the size of the lot, the rear lot setback is proposed to be only 5 ½ feet rather than the required 20-foot setback.

Applicable Criteria for a Variance Request: The applicable conditions to consider for granting a variance are found in the Nehalem City Zoning Ordinance, a part of the City of Nehalem Development Code.

The Nehalem Development Code establishes these City standards in Section 157.400 – 157-403 as described below.

§ 157.400 Intent.

- (A) The purpose of this subchapter is to allow for the granting of a variance permit from specified site-development requirements of this chapter where it can be shown that owing to special and unusual circumstances related to a specific lot, strict interpretation of the site-development requirements would cause undue or unnecessary hardship.
- (B) In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property, or vicinity and otherwise achieve the purpose of this chapter.

§ 157.401 Conditions For Granting a Variance. No variance shall be granted by the Planning Commission unless it can be shown that all of the following conditions exist:

- (A) Exceptional or extraordinary circumstances apply to the property and result from lot size and shape, topography or other circumstances over which the owners of the property have no control;
- (B) The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess;
- (C) The variance would not be materially detrimental to the purposes of this chapter, the Comprehensive Plan, or to property in the same zone or vicinity in which the property is located or otherwise conflict with the objectives of any city policy; and
- (D) The variance request is the minimum variance which would alleviate the hardship.

§ 157.402 Application.

- (A) A request for a variance may be initiated by a property owner, or his or her authorized agent, by filing an application with the City Manager/Recorder.
- (B) The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development.
- (C) For waterfront property, the location of mean higher high water shall also be shown.
- (D) The City Manager/Recorder or Planning Commission may request other drawings or materials essential to an understanding of the proposed use and its relationship to surrounding properties.

§ 157.403 Time Limit.

- (A) Authorization of a variance shall be void after one year unless substantial construction has taken place.
- (B) Upon request, the Planning Commission may grant one six-month extension.
- (C) A change in plan requires a new application.



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Analysis of the Variance Request: The applicant has provided responses to the Conditions for Granting a Variance (the required conditions are underlined and the responses are in plain text).

- (A) Exceptional or extraordinary circumstances apply to the property and result from lot size and shape, topography or other circumstances over which the owners of the property have no control.

According to the applicant, the lots were permitted for attached condominium unit and are generally consistent with other lots at Hilltop Estates. However, the HOA will not allow the applicant to build the three-story units which were planned for these lots, and building two units with one story in front would be too small to sell. One lot is only 21 feet in width, which would require the applicant to build a unit only 16 feet in width.

The topography of the site is reason to allow the variance for the rear setback. Behind these lots is a sharp drop-off from the hill to North Fork Road below. This is common area and nothing can ever be built in this area.

The information the applicant was provided when purchasing the two lots showed that both were 26 feet in width. However, the developer changed the plans to reduce the width of one lot to 21 feet. If the applicant built two connecting units one would be a very narrow unit.

The next exceptional circumstance is a condition put upon the applicant by the HOA. The HOA required that the exterior of this proposed unit be similar to the other units at Hilltop Estates. That dictates the applicant's plans especially the size of the unit, the length of the driveway, and the rear setback.

The final exceptional circumstance is the location of the existing foundation in place on site. Although there will be some changes required for the side setbacks, to have a 20-foot driveway and a 20-foot setback would require major changes in the foundation which may not even be possible. In the rear, the applicant would be very concerned about taking out 15 feet of the foundation and the effect it may have on the stability of the hillside.

- (B) The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess.

According to the applicant, the property right that the applicant seeks to preserve is the right to build a home that will fit in with the condominium units that already exist at Hilltop Estate. The other owners already have homes on lots less than 5,000 square feet, with lots generally around 1,770 square feet. All the units with garages have driveways that are 18 feet in length. All the existing units have limited rear setbacks. All units have common areas behind the units which keeps them more than 20 feet from one another.

- (C) The variance would not be materially detrimental to the purposes of this chapter, the Comprehensive Plan, or to property in the same zone or vicinity in which the property is located or otherwise conflict with the objectives of any city policy.

According to the applicant, the requested variances are not intended to be detrimental to the Zoning Code, to the Comprehensive Plan, or towards any City policy. The need for the variances is an unusual situation in which a detached home is being built in an existing condominium development of attached townhouses. The code does not contemplate the situation. As far as detrimental to the property in the vicinity, the applicant argues that these variances are beneficial.

Most of the condominium units were sold to the homeowners in a 2009 auction. Since that time these two vacant lots have been an eyesore, as weeds and ugly trees have grown up around the foundations. The foundations are on two levels, with no barrier at the edge of the top foundation, creating a hazard for children who might play on them. By allowing these variances the site will be

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used for a single-family home which will be consistent with the surrounding condominium units and no longer an eyesore and a danger.

(D) The variance request is the minimum variance which would alleviate the hardship.

According to the applicant, as discussed above, the restrictions on building on the two lots, and the limited width of the one lot make it impractical to build anything but a single detached unit on these lots. The variances to the restrictions are necessary if the applicant is going to be able to build a house on these lots. The lots are not going to get any bigger. Lengthening the driveway is impractical, and unnecessary in a development with 18-foot long driveways. Finally, a shorter rear setback is necessary to give the house enough size and keep the reasonable by using what is already on the property.

It appears these are the minimum variances that will alleviate this hardship.

Comments Received: None.

Conclusion: The applicant has provided sufficient evidence and analysis to justify the request for the variances in lot size, driveway length and rear yard setback. Any approval, however, must bind the applicant to the development activities portrayed in the application and upon which the analysis is predicated.

There is sufficient evidence to justify the approval of the lot size variance of 1,640 square feet, the driveway length variance of 2 feet, and the rear yard setback variance of 14 ½ feet.

Recommended Conditions: It is recommended the Planning Commission:

1. Open and conduct the public hearing for this application.
2. Close the hearing and deliberate based on the record.
3. Approve the application for three variance requests (a variance of the required Lot Size, Driveway Length, Rear Yard Setback), adopting the analysis and findings within both the application and staff report as justifications for the approval, subject to the following conditions:
  - a. The property will be developed in compliance with the intent expressed on the record of this proceeding and as identified in section 157.403(a).
  - b. Any change in plans for development will require submittal of a new application to the City and hearing before City Planning Commission as identified in section 157.403(c).

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