



CITY OF NEHALEM

35900 8th Street - P.O. Box 143

Nehalem, OR 97131

Tel. (503) 368-5627

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NEHALEM PLANNING COMMISSION MEETING WEDNESDAY, JUNE 26, 2019 - 6:00 p.m.

**CALL TO ORDER:
PLEDGE OF ALLEGIANCE
ROLL CALL:
GUESTS:**

APPROVAL OF MINUTES: May 23, 2019 Planning Commission Minutes

OLD BUSINESS:

1. Draft Comprehensive Plan Review
2. DLCDC Addressing Climate Change in Plan

NEW BUSINESS:

1. Public Hearing

A Quasi-Judicial Public Hearing on the application from Mark Zawadzki for a variance.

All public hearing notices and the required mailed notice to area property owners and neighborhood associations have been sent,

2. Public Hearing

A public hearing on proposed rules/regulations for allowing ADU's in the Nehalem Urban Growth Boundary as required by SB1051

**ANY OTHER BUSINESS
PUBLIC COMMENTS**

ADJOURNMENT

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours prior to the meeting. Please contact City Hall at 503-368-5627 to make a request for an interpreter or other accommodations for persons with disabilities.

**NEHALEM PLANNING COMMISSION
PLANNING MINUTES
REGULAR MEETING
MAY 23, 2019**

Chair Coopersmith called the Planning Commission Meeting to order at 6:00 p.m.

**PLANNING COMMISSION
MEMBERS PRESENT:**

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

STAFF PRESENT:

Dale Shafer, City Manager
Melissa Thompson-Kiefer, Asst. City Mgr. /Recorder
David Mattison, Planning Consultant

VISITORS:

Sarah Smyth McInstosh
Gary McIntosh
Doug Firstbrook
Barbara McLaughlin
Mark McLaughlin
Lane deMoll
Karin Walczak
Peter Walczak
Kate Romanov
Jack Bloom
Gail Downie
David Wiegand, North County Recreation District
Jim Fanjoy, Britell Architecture

Chair Coopersmith led those present in the Pledge of Allegiance.

MINUTES

The Commission reviewed the minutes of the April 18, 2019 Planning Commission meeting. Vice-Chair Lease **MOVED** to approve the minutes from the April 18, 2019 meeting as presented. Commissioner Stockton **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Lease, Stockton, Anderson and Chick; No: None).**

OLD BUSINESS

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

City Manager Shafer reported that she will be meeting with Christine Shirley and Lisa Phipps of DLCDC to discuss wording to address climate change in the Comprehensive Plan. A draft should be available for the next Planning Commission meeting.

DRAFT COMPREHENSIVE PLAN REVIEW – GOAL 10: HOUSING

The Commission reviewed a draft of Comprehensive Plan for Goal 10: Housing. There was a question from the public regarding the lack of a clear definition for Accessory Dwelling Units (ADUs) in the Zoning Ordinance. Chair Coopersmith responded that he would like to see the City adopt a policy regarding ADUs. City Manager Shafer said that a law passed stating that cities with populations under 2,000 are not required to allow ADUs within city limits, but if the County population is over 15,000, ADUs must be allowed in the Urban Growth Boundary. She said that the City was in the process of developing standards for ADUs and should have them at next month's Planning Commission meeting. City Manager Shafer said that someone who lives in the UGB was interested in building an ADU and the City wanted to have standards in place. She answered additional clarifying questions. Planning Consultant David Mattison answered a clarifying question regarding zoning.

There was a question from the public asking what metric was used to determine "smaller single-family housing" as a housing type with low inventory. There was an additional question from the public requesting the definition of the "other mechanisms" referred to in Policy 2. Mr. Mattison shared that some of the wording was taken from recommendations in the Housing Needs Analysis. Chair Coopersmith asked if City Manager Shafer could contact Planning Consultant John Morgan for clarification. City Manager Shafer suggested that the public email their questions to her and she would contact Mr. Morgan for answers. She added that she would ask Mr. Morgan to attend the next Planning Commission meeting.

There was a public comment about concern that the city would get locked into ADUs. There was public comment in support of ADUs as a solution to affordable housing, and the importance of having buildable land above the tsunami hazard area. There was public comment regarding ADUs as a housing solution for aging baby boomers. There was public comment that small ADUs were not an easy place to house a family. There was additional public comment regarding wheelchair accessibility and size of ADUs. There was public comment suggesting clarifying the language in Policy 7 about allowing ADUs in "certain residential zones." There was public comment suggesting that the Plan could refer to other agency's definitions of terms.

There was a Commissioner comment regarding the frustration of limitations created by State and County laws.

Chair Coopersmith noted that there would be a public hearing at a City Council meeting before ADU standards were adopted. City Manager Shafer explained that the draft of Goal 10 would be revised based on the new standards for ADUs.

NEW BUSINESS

PUBLIC HEARING: A Quasi-Judicial Land Use Hearing on an application from the North County Recreation District (NCRD) requesting a setback variance to reduce the required 15 foot setback to 5 feet, which would allow NCRD to construct a new lobby addition to the performing arts center that would include handicapped accessible toilets.

At 6:30 p.m., Chair Coopersmith opened the public hearing.

DECLARATIONS OF CONFLICT OF INTEREST

Chair Coopersmith declared a conflict of interest and recused himself because he serves on the Board for NCRD. Chair Coopersmith turned the meeting over to Vice-Chair Lease.

There was no ex-parte contact to declare and were no objections to the ability of a Commissioner to make a fair decision.

Vice-Chair Lease described the hearing process and performed the required statements for the hearing.

STAFF REPORT

Vice-Chair Lease read aloud the Staff Report. Vice-Chair Lease noted that the Findings for Criteria B should include the sentence, "The criteria is met." The staff report concluded that the proposed variance meets the standards necessary for approval and should be approved. (A copy of the staff report is attached to and made a part of these minutes as Attachment A.)

APPLICANT PRESENTATION

Jim Fanjoy, Architect, displayed a copy of the site plan from the application and provided a brief overview of plan. Mr. Fanjoy answered clarifying questions from the public.

TESTIMONY IN FAVOR

Lane deMoll, Peter Walczak and Barbara McLaughlin testified in support of the application.

TESTIMONY OPPOSED

None

APPLICANT REBUTTAL

Mr. Fanjoy expressed thanks for support of the NCRD request.

DELIBERATION & DECISION

There being no further testimony, request for continuance or request to hold the record open, Vice-Chair Lease closed the record and public hearing at 6:49 p.m. The applicant waived the opportunity to submit final written argument after the close of the record.

Mr. Mattison noted that the motion should include the additional language in Criteria B that the criteria is met. There were no further comments or questions.

Commissioner Anderson **MOVED** that the Planning Commission approve the application of the North County Recreation District for a variance to corner lot setback requirements and adopt the findings of fact in the staff report as justification for the variance, with the addition to the findings for Criteria B that “the criteria is met.” Commissioner Stockton **SECONDED** the motion. **MOTION APPROVED 4-0 (Yes: Lease, Stockton, Anderson and Chick; No: None).**

PUBLIC COMMENTS

Peter Walczak asked if City Manager Shafer could provide him with any answers to questions from John Morgan. She confirmed she could forward answers via email.

COMMISSION COMMENTS

Commissioner Chick requested that City Manager Shafer provide the Commission with any questions that are submitted for John Morgan.

ADJOURNMENT

The next Planning Commission meeting was scheduled for June 27, 2019.

There being no further business, Vice-Chair Lease adjourned the meeting at 6:55 p.m.

APPROVED: _____
John Coopersmith, Planning Commission Chair

ATTEST: _____
Melissa Thompson-Kiefer, Assistant City Manager/Recorder

CITY OF NEHALEM PLANNING COMMISSION
STAFF REPORT

VARIANCE CASE 19-01

APPLICANT: North County Recreation District
 OWNER: North County Recreation District
 LOCATION: 36155 9th Street; Nehalem, Oregon
 ZONING: RM – Medium Density Residential
 LAND USE: Performing Arts Center

INTRODUCTION

This is an application of the North County Recreation District (NCRD) to allow a variance to reduce the required corner lot side yard from 15 feet to 5 feet.

The purpose of the variance is to allow construction of a lobby/restroom addition to the existing building housing the Performing Arts Center. The proposed addition will have a 968 square foot footprint. It will house a new lobby and restrooms and will be fully compliant with the Americans with Disabilities Act allowing access to the building and restrooms by people with disabilities.

The applicant cites the variance as necessary to meet ADA requirements, to allow service to all citizens, and responding to the fact the primary structure was built in the early 1900's before zoning setback standards had been established. Also, the auditorium area faces west therefore all public access must come from the east side of the building, where the addition is proposed. There is no room for the proposed expansion without building into the setback area.

The applicant notes the proposed addition will still allow for approximately 25 feet of landscaped yard between the addition and the paved street.

CRITERIA

The criteria for a variance are found in the Nehalem Zoning Ordinance in Section 17.020. That section reads:

1. *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 the Ordinance, 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.*
- d. *The variance request is the minimum variance which would alleviate the hardship.*

FINDINGS OF FACT

Based on the available information, Staff makes the following findings of fact:

CRITERIA 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.

FINDING: The existing building was built before setback requirements were established. The placement of the building and the configuration of its interior make the only practical place to build the addition is where it is proposed. Conforming to the 15 foot setback does not allow room to build a workable lobby and restroom area. Providing access for those with disabilities to the lobby and to restrooms, in compliance with the Americans with Disabilities act, is not possible without granting the variance. The criterion is met.

CRITERIA 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.

FINDING: The setback variance is necessary to allow for compliance with the Americans with Disabilities Act, as is applicable to all other properties in the zone or vicinity. The existing building, being sited before setback standards were established, is hampered by those standards making expansions of any kind difficult.

CRITERIA c: The variance would not be materially detrimental to the purposes of the Ordinance, 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.

FINDING: The variance is not materially detrimental to the purposes of this Ordinance, the Comprehensive Plan, or other properties. It provides for a needed, and legally required, expansion without violating the clear vision area at the street intersection. It still leaves a substantial landscaped area between the new expansion and the paved street. The criterion is met.

CRITERIA d: The variance request is the minimum variance which would alleviate the hardship.

FINDING: The proposed lobby is designed to allow for free passage and movement of those with wheelchairs and other mobility limitations to the waiting area within the lobby, the ticket counter, the drinking fountain, and the restrooms. Reduction of this space would limit that functionality. The criterion is met.

CONCLUSION

The proposed variance meets the standards necessary for approval and should be approved.

RECOMMENDATION:

It is recommended the Planning Commission APPROVE the application and adopt the findings of fact found within the staff report.

Suggested Motion: I move the Planning Commission approve the application of the North County Recreation District for a variance to corner lot setback requirements and adopt the findings of fact in the staff report as justification for the variance.

DRAFT Comments on Nehalem Comp Plan Modifications to Include Climate Change

Prepared by Christine Shirley, DLCD, 06/05/2019

Nehalem recognizes that the city must both mitigate our contributions to climate change and adapt to likely impacts.

Goal 1: Citizen Involvement

The city is aware that people may be disproportionately affected or made vulnerable by efforts to reduce greenhouse gas emissions and adapt to climate change.

Goal 2: Land Use Planning

Encourage development outside the Special Flood Hazard Area and in areas identified as flood prone as a result of sea level rise.

Encourage use of construction materials and standards that limit greenhouse gas emissions during building use (including installation of automobile electrical charging stations).

Goal 3: Agricultural Land

No comment.

Goal 4: Forest Lands

No comment.

Goal 5: Natural Features

The language changes in the introductory paragraph are good.

Policy 7 is not really specific to Natural Features. How about: Climate change has the potential to change natural features and as a result the City intends embrace opportunities reduce emissions of greenhouse gases, foster sequestration of carbon, and adapt to unavoidable changes.

New Policy: The City recognizes that climate change stresses the forested watersheds upon which the City depends, and that human activity in these watersheds exacerbates these stresses by increasing the potential for wildfire, introduction of pathogens, and spread of invasive species. Furthermore, mature forests are more resilient to climate induces stress. The City intends to manage its watersheds to minimize forest stress due to climate change.

Goal 6: Air, Water and Land Resources Quality

Add policy: The City will encourage actions that limit emission of greenhouse gases.

Goal 7: Natural Hazards

The Objective addresses only flood. I suggest it be modified: The City intends to protect people and property from harm caused by natural hazards.

The current Objective can be deleted because it is essentially repeated in the Flood policies

I suggest the addition of one more policy: The City intends that staff are sufficiently trained to take advantage of Federal and State natural hazard mitigation grant programs.

Goal 8: Recreational Needs

No comment.

Goal 9: Economic Development

No comment. **Goal 10: Housing** (not included) policy not including hazard zones in the BLI encourage limiting factors for development – SLR and changing information

Goal 11: Public Facilities and Services

Goal 12: Transportation

Goal 13: Energy

No comment

Goal 14: Urbanization

No comment

Goal 15: Willamette Greenway

No comment

Goal 16: Estuarine Resources

The City intends to work with Tillamook County and others to preserve estuarine and shoreline landward migration zones. Buffers in the estuary zone

Goal 17: Coastal Shorelands

See discussion under Goal 16. Adhere to the Statewide Planning Goal about buffers

Goal 18: Beaches and Dunes

No comment

Goal 19:

No comment



CITY OF NEHALEM

35900 8TH STREET • P.O. BOX 143
NEHALEM, OREGON 97131
PH. (503) 368-5627
FX. (503) 368-4175

PLANNING APPLICATION

- | | | |
|--|--|--|
| <input type="checkbox"/> Admin Review | <input type="checkbox"/> Zone Change | <input type="checkbox"/> Non Conform Major Rev |
| <input type="checkbox"/> Conditional Use | <input type="checkbox"/> Major / Minor Partition | <input type="checkbox"/> Non Conform Minor Rev |
| <input type="checkbox"/> Exception | <input type="checkbox"/> Ordinance Amend | <input type="checkbox"/> LUC Review |
| <input type="checkbox"/> GHZ Report | <input type="checkbox"/> Sub - Pre Lim | |
| <input checked="" type="checkbox"/> Variance | <input type="checkbox"/> Sub - Final Plat | |

REQUEST (Describe request) Change townhouse set back requirement to single family square foot

APPLICANT:
Name: MARK ZAWADZKI Phone: 503 806 0807
Address: 4862 SW Garden Home Rd City Point State: OR Zip 97219

LEGALLY RECORDED OWNER:
Name: MARK ZAWADZKI Phone: 503 452 8651
Address: 4862 SW Garden Home Rd City Point State: OR Zip 97219

- LEGAL DESCRIPTION OF THE PROPERTY INVOLVED IN THIS APPLICATION
Township 3N Range 10W Section 27 AB Tax Lot 808
Subdivision Hilltop estates Lot 8+9 Block _____
- Zoning R3
- IS THE PROPERTY DEED RESTRICTED TO PROHIBIT THE USE AS PROPOSED IN THIS APPLICATION?
 Yes No

4. I HEREBY APPLY FOR THE ABOVE REQUEST:
I agree to abide by the requirements of the City of Nehalem Comprehensive Plan, Zoning and Land-Use Ordinances as they apply to this request.

PROPERTY OWNER'S SIGNATURE [Signature] Date 4/22/19

5. I AUTHORIZE THIS REQUEST BY THE APPLICANT:
APPLICANT'S SIGNATURE [Signature] Date 4/22/19

*****FOR OFFICE USE ONLY*****

Date: _____ Received by: _____ Fee Paid: _____ Receipt #: _____



CITY OF NEHALEM

35900 8TH STREET · P.O. BOX 143

NEHALEM, OR 97131

PH. (503) 368-5627

FX. (503) 368-4175

June 10, 2019

Dear Property Owner,

The City of Nehalem has received a completed application for 3 Variances from Mark Zawadzki. As an owner of property within 250 feet of the parcel on which a decision is requested you are entitled to notice of this request.

Mr. Zawadzki recently purchased 2 lots that were originally platted for town homes which make them smaller than the standard 5,000 square foot lot. He has combined these lots into one tax lot, but it is still less than 5,000 square feet. Therefore Mr. Zawadzki is asking for a two (2) foot variance on the required length of his driveway, a fourteen and a half (14 ½) foot variance on the rear yard setback and a variance allowing him to build on a 3360 square foot lot instead of a 5,000 square foot lot as required in our Ordinance. The property in question is located at Hilltop Estates, 13150 D Street in Nehalem.

You have the right to respond with oral or written comments or objections to the proposal. The City of Nehalem Planning Commission shall hold a public hearing on the application on June 26, 2019 at 6:00 pm. Please send any written comments to the above mailing address prior to June 18, 2019 so they may be included in the written report on this matter. Or written comments may also be presented at the hearing.

Failure of an issue to be raised either in writing before or during the hearing or orally at the hearing or raised with sufficient specificity to afford the Planning Commission an opportunity to respond to the issue shall preclude appeal to the City Council on that issue.

The City will prepare a report on the matter which along with a copy of the application, all documents and evidence relied upon by the applicant shall be available on line at www.ci.nehalem.or.us or copying at a reasonable cost at City Hall ten days before the hearing.

If you have any questions regarding this matter please contact me at the above phone number.

Sincerely,

A handwritten signature in cursive script that reads "Dale Shafer".

Dale Shafer
City Manager

Mark Zawadzki

MZ Construction LLC

4862 SW Garden Home Road

Portland, OR 97219

May 8, 2019

Nehalem Planning Commission

c/o Dale Shafer

Nehalem City Manager

PO Box 143

Nehalem, OR 97131

Re: Construction in Hilltop Estates

Dear Members of the Planning Commission:

Last year I purchased two adjoining lots at Hilltop Estates, 13150 D Street in Nehalem. The developer apparently intended to build two, three story, connected units on those lots, and had even put in the foundations and utility hookups. The developer abandoned the project before building on these lots. The Hilltop Estates Homeowner's Association ("HOA") controls access to the lots since there is a private driveway from the street to the site. The HOA was opposed to building three story units. It would only agree to a 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.

I determined that two units on the property were not economically feasible, and would not work with the foundation already in place. Therefore, I designed a single three bedroom unit using the existing foundation. I recently discovered that I will need three variances to build this unit. I am writing to request these variances.

The two lots I bought were designed for condominium units and are smaller than normal lots. The total size of the two lots is 3360 square feet, smaller than the 5000 square feet lot size required for a detached house. Because of the size of the lot the driveway is only 18 feet in length, rather than the 20 feet required by Code. Also due to the limited size of the lots, but because of the extensive common space behind the lots, the setback in the rear is five and a half feet rather than 20 feet.

Thus, I need three variances:

- 1) Allow a lot size of 3360 square feet;
- 2) Allow a driveway 18 feet in length; and
- 3) Allow a rear setback of 5.5 feet.

I believe that each of these requests meet the conditions for variances required by Section 157.401 of the Nehalem, OR Code of Ordinances. Because the variances are interconnected by the size of the lots I will address all three in discussing each condition.

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

The lots' size were permitted for attached condominium units, and are generally consistent with the other lots at Hilltop Estates. However, as described above, the HOA will not allow me 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. In fact, one lot is only 21 feet in width, which would require me to build a unit only 16 feet wide.

The topography of the site is a reason to allow the variance for the rear setback. As can be deduced from the name of the development, this is on a hill. Behind these lots is a sharp dropoff from the hill to North Fork Road below. This is common area, and nothing can be ever built in this area.

Finally, there are several other "circumstances" which I cannot control, and are exceptional circumstances in favor of granting the variances. First, the information I was provided when I bought the two lots showed that both were 26 feet in width. However, at some point the developer changed the plans to reduce the width of one lot to 21 feet. I only recently became aware of that. As noted above, if I built two connected units I would have one very narrow unit. Also, that required a change in plans to reduce the width of the single unit I had planned to build. It also caused an issue with the setback on each side. I have changed my plans to comply with the setback on the sides and am not seeking a variance for that.

The second circumstance which is an exceptional circumstance is another condition put upon me by the HOA. The HOA requires that the exterior of this unit be similar to the other units at Hilltop Estates, which is reasonable. That dictates my plans, especially the size of the unit, the length of the driveway, and the rear setback.

The final circumstance which I would hope you will consider is the existing foundation in place. Although there will some changes required for the side setbacks, to have a 20 foot driveway and especially a 20 foot setback would require major changes in the foundation which may not even be possible. In the rear I would be very concerned about the effect that taking out 15 feet of the foundation 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.

The property right that I seek to preserve is the simply the right to build a home that will fit in with the condominium units that already exist at Hilltop Estates. The other owners already have homes on less than 5000 square feet. (The other lots vary in size, but are generally around 1770 square feet.) All the units with a garage have driveways 18 feet in length. Finally, all the units have limited rear setback. However, all units have common area behind the units which keeps them more than 20 feet from another unit. As noted above, the lots I am building on have a steeply sloped common area in the back.

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.

The requested variances are not intended to be detrimental to the zoning code, the Comprehensive Plan or 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 that situation. As far as detrimental to the property in the vicinity, I would argue that these variances are beneficial.

Most of the condominium units were sold to the homeowners in a 2009 auction. Since that time these two lots have been an eyesore as weeds and ugly trees grew up in and 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 become a house which will be consistent with the surrounding condominium units and no longer an eyesore and a danger. Finally, it will also produce additional tax revenue.

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

As discussed above, the restrictions on building on these 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 restrictions sought are necessary if I am 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 feet long driveways. Finally a shorter rear setback is necessary to give the house enough size and keep the price reasonable by using what is already on the property.

I look forward to meeting with the Planning Commission and hope you find the reasons presented for the variance to be persuasive.

Sincerely Yours,

Mark Zawadzki

cc: Hilltop Estates Homeowners Association



EL 91'0" "9S" "0,27" "0,EE" "0,S" EL 91'0"

5'6"

40'0"

71'6"

8'0"

18'0"

EXISTING TREES



PROPOSED RESIDENCE

LOT AREA 3360 SF

BUILDING FOOTPRINT 1296 SF

COVERED PORCH

EXISTING CONCRETE DRIVEWAY

1'6" ROOF OVER HANG

EL 100'0"

EL 100'0" PROJECT LEGAL TOWNSHIP 3N RANGE 10W SECTION 27AB TAXLOT 808

SCALE 1/8" = 1'0"

**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.

City of Nehalem
Zawadzki Variance Request
PRELIMINARY PLANNING COMMISSION STAFF REPORT

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.

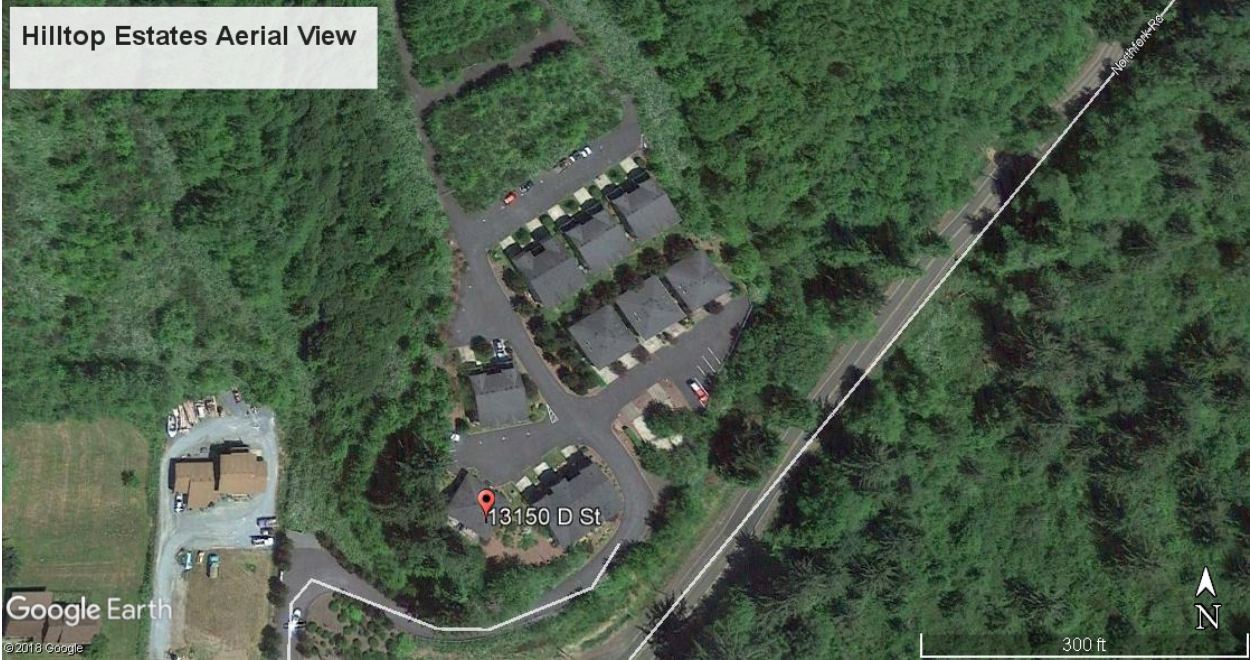
Conclusion: The applicant has provided sufficient evidence and analysis to justify the request for the variances in lot size, driveway length and rear yard setback. Any approval, however, must bind the applicant to the development activities portrayed in the application and upon which the analysis is 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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Amend the Nehalem Code by adding changes as noted below:

Article II. Marine Residential – MR Zone

Section 2.020 Permitted Principal Uses and Activities

1. The following uses and their accessory uses and activities are permitted outright:
 - k. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article III. Low Density Residential – RL Zone

Section 3.020 Permitted Principal Uses and Activities

1. In the “RL” zone, the following uses and their accessory uses and activities are permitted outright:
 - h. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article IV. Medium Density Residential – RM Zone

Section 4.020 Permitted Principal Uses and Activities

1. In the “RM” zone, the following uses and their accessory uses and activities are permitted outright:
 - h. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article V. Medium-Density Residential – R1 Zone

Section 5.020 Permitted Principal Uses and Activities

1. The following uses and their accessory uses and activities are permitted outright:
 - h. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article VI. Medium-Density Residential – R2 Zone

Section 6.020 Permitted Principal Uses and Activities

1. In the “R2” zone, the following uses and their accessory uses and activities are permitted outright:
 - i. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article VII. Medium Density Residential – R3 Zone

Section 7.020 Permitted Principal Uses

1. In the “R3” zone, the following uses and their accessory uses and activities

are permitted outright:

- k. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article VIII. Residential Trailer – RT Zone

Section 8.020 Permitted Principal Uses

- 1. In the “RT” zone, the following uses and their accessory uses and activities are permitted outright:
 - j. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Article XII. Planned Development

Section 12.030 Potential Uses

- 1. The following uses are allowed in a planned development if the Planning Commission considers them appropriate for the particular development being proposed and if other applicable standards are satisfied:
 - f. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits wherever a Planned Development incorporates single-family homes. Accessory Dwelling Units are allowed at a ratio not to exceed one Accessory Dwelling Unit per single-family home. Accessory Dwelling Units will be developed in accordance with Section 14.170.

Article XIII. Low Density Residential, Agricultural, Forestry and Recreation – A1 Zone

Section 13.020 Permitted Principal Uses

- 1. The following uses and their accessory uses and activities are permitted outright:
 - w. Accessory Dwelling Units on land inside the Urban Growth Boundary but outside the City Limits developed in accordance with Section 14.170.

Section 14.170 Accessory Dwelling Units

Where permitted, an accessory dwelling unit may be sited on a lot with an existing or under-construction single-family home, shall conform to all building code requirements, and shall meet the following use and development standards:

- 1. Location. The accessory dwelling unit, if free standing, shall be located within the side or rear yard and physically separated from the primary residence by a minimum distance of 6 feet. A covered walkway, which contains no habitable space, may connect the two buildings without violation of the setback requirements.

Nehalem Code Update – Accessory Dwelling Units

2. Number. Only one accessory dwelling unit shall be permitted per lot or parcel.
3. Design. All accessory dwelling units shall be set on a continuous concrete foundation; have any wheels, tongues, and running gear removed; and be connected to domestic sewer and water. A separate address may be required for the residence.
4. Area. The floor area of a detached accessory dwelling unit or an addition to an existing residence to add an accessory dwelling unit shall not exceed 100% of the floor area of the primary residence or 800 square feet, whichever is greater. An accessory dwelling unit created by a remodel of an existing residence may not occupy more than one floor of the residence regardless of size.
5. Setbacks. The minimum rear yard setback shall be 10 feet; the minimum side yard setback shall 5 feet.
6. Height. The maximum height of a freestanding accessory dwelling unit shall be 25 feet but in no case shall the height exceed the height of the primary residence. Accessory dwelling units built within or as additions to the primary dwelling unit, or over detached garages, shall not exceed the maximum height of the zone.
7. Owner Occupied. Either the primary dwelling unit or the accessory dwelling unit must be owner occupied.
8. Lot Coverage. The impervious surface associated with the Accessory Dwelling Unit, including the unit and driveways, parking, walkways, and patios, is counted toward the maximum lot coverage for the lot.
9. Parking – a minimum of 1 off-street parking space shall be provided for an accessory dwelling unit. The additional space need not be paved but shall remain unobstructed and available for parking.