

**BEFORE THE PLANNING COMMISSION**

**OF**

**ROCKAWAY BEACH, OREGON**

Applicants: Stuart M. and Karen C. Hunt  
Agent: Lewallen Architecture, LLC

) Case File: VAR-24-05  
) Findings, Conclusions, and Final Order

**Nature of the Application**

The Applicants are seeking a variance to build a new home. The Applicants seek a height variance and a reduction in the front yard setback to construct the home. The property is located in the R1 zone which has a 15-foot front yard setback. The Applicants are requesting the front yard setback be reduced 3'3", for an 11'7" front yard setback. Building height for this property is limited to 29'. The Applicants seek to construct a home that is 39' in height.

**Relevant Facts**

The following is a summary of the facts and testimony found to be relevant to this decision:

1. The property is unimproved vacant land in Rockaway Beach and is further identified on Tillamook County Assessor's Map # 1N1005BA Lot #9900. The subject property is approximately 37,170 square feet. Zoning designation for the property is R1 (Single Family Zoning). The subject property is surrounded by unimproved vacant lots on the North, South, and East and existing single-family dwellings on West.
2. The subject property is located in the Pacific View Estates neighborhood and is on an exceptionally steep slope off the Western side of Pacific View Drive. The area where the subject property is located is further identified as an area of potential landslide.
3. The Comprehensive Plan designation is single-family residential.
4. Details of the Applicant's request can be found in the staff's report and evidence submitted by the Applicant, which is incorporated into the record herein.
5. A public hearing was held before the Rockaway Beach Planning Commission on Thursday, January 18, 2024. All interested parties were given an opportunity to attend the public hearing and to present written and oral testimony.

6. Written comments from the public are on record and were provided to the Applicants for review prior to the public hearing. These comments included arguments that:
  - a. The Applicants provided no evidence that they had attempted to or were unable to design a home which would meet the City's zoning criteria;
  - b. The Applicant's did not provide evidence that the subject property's topography is more burdensome than other properties in the Pacific View Estates neighborhood, therefore creating an "extraordinary circumstance" in which the variance request should be granted;
  - c. The encroachment into the front yard setback would be harmful to the riparian vegetation of the steep slope where the subject property is located and granting the front yard setback variance request would be in opposition to the Rockaway Beach Comprehensive Plan which specifically states that "special consideration must also be given to development on steep slope areas to ensure that landslide hazard and erosion is minimized.";
  - d. The encroachment into the front yard setback would be harmful to the riparian vegetation of the steep slope where the subject property is located and granting the front yard setback variance could create a safety hazard to surrounding properties due to the potential erosion resulting from the riparian vegetation removal from the setback; and
  - e. The Applicants should not be granted approval for the variance requests as they had not demonstrated that this is a case of "unnecessary hardship" and further argued that the Applicant's themselves had created the hardship based on their choice of the size of the home.
7. The Agent for the Applicants gave testimony on the request, summarizing the proposal and responding to questions raised by the Planning Commissioners. The Agent for the Applicants acknowledged that the home had been designed to the specifications of the Applicant's request and had not attempted to meet the criteria of the Rockaway Beach Zoning Ordinance.
8. The Agent for the Applicant provided further testimony in response to questions raised by the Planning Commissioners that it was possible that a different home design may not require the requested front yard and building height variances, though they had not attempted to create this home design.
9. Testimony in opposition to the request were presented as follows:
  - a. Doug Circosta, a resident of the Pacific View Estates neighborhood, stated that he had recently built his home in the Pacific View Estates neighborhood on a steeply sloped lot. He shared that he had designed his residence to meet the criteria of the Rockaway Beach Zoning Ordinance. He further stated that he believed the Applicants could reduce the overall building height by selecting a different roofline for their home. He welcomed

additional development in the neighborhood; however, he felt the Applicant's should attempt to meet the City's zoning regulations.

- b. Rosario Circosta, a resident of the Pacific View Estates neighborhood, shared that she is the wife of Doug Circosta and agreed with the statement he had made the Planning Commissioners. She urged the Planning Commissioners to consider his testimony, not as a resident, but as that of a professional architect with over thirty years of experience.
  - c. Earl Dunn, a resident of the Pacific View Estates neighborhood, stated that he was in attendance to provide testimony in opposition to the Applicant's request, but felt the written and oral testimony that had been provided summarized his concerns.
10. Written testimony in opposition to the request was received from Doug Sellers, Nirmala and Sanjay Dhar, and Doug Circosta, which are incorporated into the record herein.
  11. Additional written testimony in opposition to the request was received from Nancy O'Neal during the public hearing. Ms. O'Neal's testimony was read into the record at the meeting by the City Planner and is incorporated into the record herein.
  12. The Agent for the Applicants declined to provide rebuttal to the opposing testimony.
  13. The Agent for the Applicant requested the record be left open an additional seven days to allow for the submission of additional written testimony. The Planning Commission moved and voted in favor of closing the public hearing and keeping the record open for seven days to allow for additional written testimony.
  14. A special meeting was held by the Rockaway Beach Planning Commission on Thursday, January 25, 2024 to consider the additional written testimony. Written testimony in support of the request was received from the Agent for the Applicants, which is incorporated into the record herein.

### **Relevant Criteria**

1. Rockaway Beach Zoning Ordinance
  - a. Section 3.010 – Single Family Zone (R-1)
  - b. Article 8 – Variances

### **Findings**

The Planning Commission finds:

1. The subject property consists of approximately 37,170 square feet and land zoned R1 (Single Family Zoning). The subject property located on an exceptionally steep slope off Pacific View Drive and is further identified as an area of potential land slide.

2. The application is for a single-family home, which is a use permitted outright in the R1 zone.
3. The applicable standards for the R1 zone have been met, with the exception of the minimum front yard setback and building height maximum, for which the Applicants are seeking variance approval.
4. The Applicants have submitted a variance application to reduce the front yard setback 3'3", for a 11'7" front yard setback and to build a 39' home, which is 10' above the 29' building height limit.
5. That the reduction to the front yard setback is inconsistent with the Rockaway Beach Comprehensive Plan. The encroachment into the front yard setback would be harmful to the riparian vegetation of the steep slope where the subject property is located and could create a safety hazard to surrounding properties due to the potential erosion resulting from the riparian vegetation removal from the setback.
6. The home had been designed to the specifications of the Applicant's request and had not attempted to meet the criteria of the Rockaway Beach Zoning Ordinance. The Applicants failed to provide any evidence that they had attempted to or were unable to design a home which would meet the City's zoning criteria.
7. The Applicants failed to demonstrate that this is a case of unnecessary hardship and that they (the Applicants) had created the hardship based on their choice of the home design.

### **Conclusion**

The record and findings support the conclusion that:

1. Substantive evidence in the record demonstrates that the requested front yard setback and height variance fails to meet the applicable standards of the Rockaway Beach Zoning Ordinance.

### **Order**

It is ORDERED by the Rockaway Beach Planning Commission that Case File #VAR-23-05 be DENIED.

This ORDER was presented to and approved by the Rockaway Beach Planning Commission Chair on January 26<sup>th</sup>, 2024.

  
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William Hassell