



**CITY OF ROCKAWAY BEACH
PLANNING COMMISSION ACTION**

STAFF REPORT

Case File #PUD-24-1

Continued Hearing Date: June 27, 2024

APPLICANT: Nedonna Development LLC

AGENT FOR APPLICANT: Dean N. Alterman

REQUEST: The Applicant is requesting a modification to the Nedonna Wave Planned Unit Development that was approved by the City of Rockaway Beach in 2008. The Applicant seeks the following modifications to Phase 2 of the 2008 approval:

1. To develop Phase 2 in two sub-phases, instead of one phase;
2. To create two lots instead of one lot at the north end of Jackson Street (identified as lot 24 on the 2008 approved plan), identified as lots 21 and 22 on the plans submitted with the Application;
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street (identified as Lots 14, 15, and 16 on the 2008 approved plan), identified as lots 13, 14, 15 and 16 on the plan submitted with the Application; and
4. Provide that when the owner of the land to the south extends Jackson Street south into that property, the City will vacate the east stub of Riley Street, so that Riley Street will terminate in a T intersection with Jackson Street, and the vacated stub can be combined with Tract E to form an additional building lot.

STAFF SUMMARY

The Applicant has requested approval of an amendment to Phase 2 of the Nedonna Wave Planned Unit Development, as detailed above, which was approved by the City of Rockaway Beach in 2008. The Memorandum provided with the Application materials contains history of the previously approved application, reasons for the requested modifications, and responses to some of the criteria of the Rockaway Beach Zoning Ordinance.

Staff have solicited comments from other affected agencies and stakeholders, and those comments have been included in the record. In response to public comment received in writing and at the public hearing on June 20th, Staff have confirmed with the City of Rockaway Beach Public Works Department and City of Rockaway Beach Engineer, HBH Engineering, that the City has sufficient water supply to service the 2008 approved PUD of 20 homes (yet to be built), as well as the additional 2 homes requested in this amendment.

Additionally, Staff would like to address the comments brought forth that the application should have been denied based upon ORS 92.040(3). After consultation with the City's legal counsel, no direct case law or authority could be found to support the claim that a PUD/subdivision approval cannot exceed 10 years. Instead, the case law suggests that ORS 92.040(3) pertains to the standards applicable to a PUD/subdivision approval, not the approval itself.



In LUBA, *Claus v. City of Sherwood* (LUBA No. 2022-080), it was concluded that ORS 92.040(3) concerns the “standards” to apply to the subdivision decision.

In the Court of Appeals, *Athletic Club of Bend, Inc. v. City of Bend* (OR App 89), it was found that ORS 92.040(3) offered developers the choice between the rules in force at the time of approval and the rules in force at the time of a later application.

Based upon the applicable case law and advice from the City’s legal counsel, Staff have accepted the application request to amend the 2008 PUD approval. The Planning Commission’s role is to determine if the application meets the City of Rockaway Beach criteria.

The City Engineer has identified necessary permitting and improvements to existing City sewer facilities. In general, necessary public infrastructure improvements that are triggered by a proposed development must be provided by the developer of the project. If approved, conditions of approval related to infrastructure improvements, both on and off-site, must be met prior to final plat approval and paid for by the Applicant.

Furthermore, additional conditions of approval are recommended to:

Address requirements outlined by the State of Oregon Fish and Wildlife Department;

Ensure Oregon Department of Environmental Quality permits and approvals have been obtained;

Ensure emergency evacuations needs and peak season traffic for the development are analyzed through a traffic study;

Address the Department of State Lands requirement for review and approval of wetlands boundaries and related permits;

Ensure all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands; and

Ensure approval is received from the State Fire Marshall and that all applicable Fire Code requirements have been met.

CONCLUSION

The Planning Commission should carefully consider the request, including all oral and written testimony on record and presented at the public hearing, including comments from the City Engineer, government agencies, and other interested parties. After considering testimony as it relates to the applicable criteria, the Planning Commission will need to make a decision on the request.

If the Commission determines that the modifications to the Nedonna Wave Planned Unit Development meet the standards of the Rockaway Beach Zoning Ordinances, it can make a motion to approve the request, including a statement that generally reflects the facts and rationale relied upon to reach the decision. The motion should also direct staff to prepare findings, conclusions, and a final order to implement the decision.



A motion to deny the request should set forth the general facts and rationale for the decision and direct staff to prepare the final order.

A decision to approve or deny the request will be subject to a 15-day appeal period that will begin after written findings to support the decision have been signed by the Planning Commission Chair.

STAFF RECOMMENDATION

Approval of the Applicants requests to (1) develop Phase 2 in two sub-phases, instead of one phase, (2) create two lots instead of one lot at the north end of Jackson Street, numbered as lots 21 and 22 on the plans submitted with this application, and to (3) create four lots instead of three lots out of the lots numbered as 13, 14, 15, and 16 on the plans submitted with this application, with conditions as identified below; and

Denial of the Applicants request to vacate the east stub of Riley Street at Jackson Street.

In the event of an approval, Staff offer the following conditions for the Commissioner's consideration:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a PUD amendment.
2. The Applicant shall submit drafts of appropriate deed restrictions or protective covenants to provide for the maintenance of common areas and to assure that the objectives of the PUD shall be followed.
3. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
4. The Applicant shall submit evidence that all required improvements of Section 44 of the Rockaway Beach Subdivision Ordinance have been met.
5. The Applicant shall submit evidence that the requirements for monuments and survey as identified in Section 45 and 46 of the Rockaway Beach Subdivision Ordinance have been met.
6. Within one year the Applicant shall submit a final portion plat in conformance with the approved plan and Sections 30 and 31 of the Rockaway Beach Subdivision Ordinance. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all phases of the development have been granted final plat approval.
7. Any utilities serving the development shall be installed underground.



8. All public underground utilities including, but not limited to, water, gravity sanitary sewer, sanitary sewer force main, and storm drainage, installed on Phase 2 or for future use by Phase 2 or have not been used since constructed, shall be tested at the expense of the Applicant and accepted by the City Engineer.
9. All stream crossings, including utilities, are to comply with fish passage requirements. The Oregon Department of Fish and Wildlife shall approve in advance any stream crossing.
10. The development shall avoid entering City designated riparian setback of 15' for McMillan Creek. If site constrains will not allow for this, the Applicant coordinate with Oregon Department of Fish and Wildlife to develop a plan to mitigate for these impacts and shall provide evidence of approval. Any development within these areas which could result in a loss of fish and wildlife habitat would require that the impact be mitigated consist with current habitat mitigation standards.
11. The Applicant shall construct all public improvements, not limited to sewer, water, storm and street design, and construction shall meet or exceed the City of Rockaway Beach Design Standards and Technical Specifications. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
12. The Applicant shall submit an acceptable storm drainage report prior to final design of the storm drainage system, including basin map and flow rates, for review by the City Engineer.
13. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
14. The Applicant shall provide evidence that all sanitary sewer designs have received written approval from the Department of Environmental Quality, including a pre-design report for the new regional pump station to serve the development.
15. The Applicant shall provide the following off-site improvements:
 - a. Regional sanitary sewer pump station and related infrastructure including, but not limited to the following: three-phase submersible duplex pump station with controls, davit crane, on-site generator, telemetry, lighting, and fencing. The tract on which the pump station is to be located is to be dedicated to the City.
 - b. Sanitary sewer force main from the regional pump station to the existing White Dove pump station.
 - c. Extend the White Dove sanitary sewer force main from NW 23rd Avenue to the pump station at NW 17th Avenue.
 - d. All public improvements shall be constructed within the existing public right-of-way or right-of-way that will be dedicated to the City as part of this development.
16. The Applicant shall provide a traffic study for the development, including peak season and emergency evacuation needs, as well as the intersection of US Highway 101 and Beach Street.



17. The Applicant shall complete a wetland delineation to be reviewed and approved by the Department of State Lands to determine if there is a change in the wetland boundaries and if a wetland removal-fill permit is required. This delineation shall be sufficiently sized to include both Phases 2 and 3. The approval from Department of State Lands must be current (no more than 2 years old).
18. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
19. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
20. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
21. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed development.
22. The Applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.