

CITY OF ROCKAWAY BEACH

APPEAL #24-1: SCOPE OF REVIEW

NEDONNA WAVE PUD - PHASE 2
#PUD - 24-1

BACKGROUND

OVERVIEW

In 2008, the City approved Nedonna Wave's application for a phased 28-lot development with PUD overlay. In 2009, the Applicant applied for and received final approval for the first phase of the PUD, and recorded the plat of Nedonna Wave - Phase 1.

The Applicant is now ready to plat Phase 2 and requested modifications to the approved final plan, as follows:

1. To plat Phase 2 as two separate sub-phases – Phase 2 and Phase 3.
2. To create two lots instead of one lot at the north end of Jackson Street.
3. To create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street
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.

A noticed public hearing was held before the Planning Commission on June 20, 2024. At the hearing, staff presented their report, Dean Alterman (on behalf of the Applicant) gave testimony and summarized the request, testimony in support of the request was presented, followed by testimony in opposition, Mr. Alterman provided a rebuttal to the opposing testimony, and questions were raised by the Planning Commissioners. The hearing was continued to June 27, 2024.

At the continued public hearing, on June 27th, testimony that was neutral or the request or questions regarding the application were presented, followed by testimony in opposition to the request, Mr. Alterman provided a rebuttal to the opposing testimony, and questions were raised by the Planning Commission. The Planning Commission moved to close the public hearing and left the record open until July 4th for final written arguments from the Applicant.

The Planning Commission met on July 18, 2024, asked questions of staff and deliberated on the application.

The Planning Commission found that:

1. Substantive evidence in the record demonstrated that the Applicant's request to (1) create two lots instead of one lot at the north end of Jackson Street and to create four lots instead of three lots at the northeast corner of Kittiwake Drive and Riley Street could be developed in accordance with the applicable standards of the Rockaway Beach Zoning Ordinance.
 2. Insufficient evidence existed to support the Applicant's request to plat Phase 2 as two separate subphases.
 3. During the public hearing, the Applicant withdrew the request to vacate the East stub of Riley Street.
 4. Future review and necessary approval of the Applicant's detailed engineering plans by the City Engineer is necessary. Such review and approval, prior to development, will ensure that the required improvements are in accordance with applicable City of Rockaway Beach Technical Specifications and Design Standards.
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FINAL ORDER & APPEAL

The Planning Commission's Final Order was posted to the City's website and mailed to all interested parties on August 2, 2024. Section 11.070 of the Rockway Beach Zoning Ordinance provides that an affected party may file an appeal of the Planning Commission's decision to the City Council within 15 days of the date the final order is signed.

On August 14, 2024, Rockaway Beach City Recorder received an appeal of the Planning Commission's decision. An appeal of a Planning Commission decision shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
 2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
 3. The specific grounds relied upon for the review, including a statement that the criteria against which review is being requested were addressed at the Planning Commission hearing; and
 4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Rockaway Beach Zoning Ordinance Section 11.070(6).
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SCOPE OF REVIEW

***RBZO Section 11.070 -
Request for Review of a
Decision (Appeal)***

THE CITY COUNCIL SHALL DETERMINE, AS A NON-PUBLIC HEARING ITEM, THAT THE SCOPE OF THE REVIEW WILL BE ONE OF THE FOLLOWING:

1. Restricted to the record made in the decision being appealed.
 2. Limited to the presentation of additional evidence on such issues as the reviewing body determines what is necessary for a proper resolution of the matter.
 3. A de novo hearing.
 4. A remand of the matter to the hearing body for additional consideration.
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OPTION 1

RESTRICTED TO THE RECORD MADE IN THE DECISION BEING APPEALED.

If the City Council selects option 1, unless otherwise provided for by the City Council, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section.

The record shall include:

1. All exhibits, materials, pleadings, memoranda, and motions submitted by any party and received or considered in reaching the decision under review.
 2. The final order and findings of fact adopted in support of the decision being appealed.
 3. The request for an appeal filed by the appellant.
 4. The minutes of the public hearing. The reviewing body may request that a transcript of the hearing be prepared.
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OPTION 2

LIMITED TO THE PRESENTATION OF ADDITIONAL EVIDENCE ON SUCH ISSUES AS THE REVIEWING BODY DETERMINES IS NECESSARY FOR A PROPER RESOLUTION OF THE MATTER.

If the City Council selects option 2, it may admit additional testimony and other evidence without holding a de novo hearing.

In making this selection, the City Council will need to specify which issues require additional evidence to allow for proper resolution of this matter.

The Applicant has expressed a desire to see the scope of review limited to the presentation of additional evidence on appeal criteria 3: Rockaway Beach Zoning Ordinance, Section 3.080, Special Area Wetlands.

OPTION 3

A DE NOVO HEARING.

If the City Council selects option 3, they would hear the appeal de novo. In practice, this means that the Council would hear and review the appeal on a “clean” slate. Essentially, a de novo hearing is a new hearing. This would allow the parties, including members of the public, to submit new evidence or testimony related to this appeal. The Council would then rely on this new evidence in making its decision.

In the request for appeal, the Appellant did not make a request for a de novo hearing. If the Appellant did want a de novo hearing, they were required to note this in their appeal.



OPTION 4

A REMAND OF THE MATTER TO THE HEARING BODY FOR ADDITIONAL CONSIDERATION.

If the City Council selects option 4, this matter would go back to the Planning Commission for additional consideration.

