

ORDER No. 2011-0031

AN ORDER DENYING THE APPEAL AND AFFIRMING THE PLANNING COMMISSION'S DECISION TO APPROVE A TWO PARCEL PRELIMINARY PARTITION PLAT, A VARIANCE TO ALLOW THE NORTH PARCEL TO USE THE ALLEY FOR REQUIRED EMERGENCY AND SITE ACCESS, AND A TYPE I SITE DESIGN REVIEW FOR A NEW SINGLE FAMILY HOME AND ON-SITE PARKING AT 803 E. NINTH STREET, TAX LOT 3219DA-2700

RECITALS:

1. Newberg Area Habitat for Humanity filed an application for a partition, variance, and design review to allow them to split a lot located at 803 E. Ninth Street, build a new house on the north parcel, and use the alley for primary access to the new house.
2. On April 6, 2011, the Planning Director approved the application with conditions.
3. On April 20, 2011, a neighboring property owner filed an appeal of the Planning Director's decision.
4. On May 12, 2011, the Newberg Planning Commission held a hearing to consider the appeal. The Planning Commission found the proposal meets the Development Code criteria for a partition, variance, and site design review. They approved Planning Commission Resolution 2011-290 with findings and conditions of approval. The Planning Commission's findings and conditions are shown in Exhibit "A" of this order.
5. On May 26, 2011, a neighboring property owner filed an appeal of the Planning Commission's decision.
6. On June 20, 2011, the Newberg City Council held a record hearing to consider the appeal. The Council found the proposal meets the Development Code criteria for a partition, variance, and site design review. Findings and conditions of approval are shown in Exhibit "A", and the preliminary partition plat is shown in Exhibit "B", which are hereby attached and by this reference incorporated.


THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. The appeal is denied and the Planning Commission's decision is affirmed to approve a two-parcel preliminary partition plat, a variance to allow the north parcel to use the alley for required emergency and site access, and type I site design review for a new single family home. The approval is subject to the conditions shown in Exhibit "A".


2. The denial of the appeal and affirmation of the Planning Commission's decision is based on the staff report, Planning Commission findings shown in Exhibit "A", public testimony, other evidence in the record of the Planning Commission hearing, and additional written arguments received by the Council.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: June 21, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 20th day of June, 2011.


Norma I. Alley, City Recorder

ATTEST by the Mayor this 23rd day of June, 2011.


Bob Andrews, Mayor

QUASI-JUDICIAL HISTORY

By and through the Planning Commission at the 5/12/ 2011 meeting.
Also, the Planning Director on 4/6/2011.

**EXHIBIT A: FINDINGS AND CONDITIONS OF APPROVAL
ORDER 2011-0031**

File: PAR-11-001 & VAR-11-001

I. Applicable Partition Criteria - Newberg Development Code § 151.241.2:

Note: The applicant is requesting approval for a two parcel partition.

(A) *Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.*

Finding: Approval of the partition does not adversely affect future development of adjoining property. Potential future development of adjacent properties will benefit from the improvements that will be constructed as part of the conditions of approval.

(B) *The partition complies with this Code and implementing ordinances and resolutions.*

NDC §151.567 Lot Dimensions and Frontage

- 1) *Width. Width of lots shall conform to the standards of this Code.*
- 2) *Depth. Each lot and parcel shall have an average depth between the front and rear lines of not more than 2 ½ times the average width between the side lines. Depths of lots shall conform to the standards of this Code.*
- 3) *Area. Lot sizes shall conform to standards set forth in this Code. Lot area calculations shall not include area contained in public or private streets as defined by this Code.*
- 4) *Frontage.*
 - a) *No lot or development site shall have less than the following lot frontage standards:*
 - b) *Each lot or development site shall have either frontage on a public street for a distance of at least 25 feet or have access to a public street through an easement that is at least 25 feet wide. No new private streets, as defined in § 151.003, shall be created to provide frontage or access.*
 - c) *Each lot in an R-1, R-2, R-3 or RP zone shall have a minimum width of 50 feet at the front building line.*

Finding: The proposal meets the dimensional standards of the NDC. Each parcel is 50 feet wide. The average depth to width ratio is less than 2:1. Each parcel exceeds 3,000 square feet – the minimum parcel size required in the R-2 zone. The proposal conditionally meets the frontage standards of the NDC. The proposed north parcel does not have frontage or access to a public street through an easement. The applicant is requesting a variance to this standard. The findings for the variance request are shown in section three of the findings.

NDC § 151.565: Lot Area; Lot Area Per Dwelling Unit

- 1) *In the following districts, each lot or development site shall have an area as shown below except as otherwise permitted by this code. In the R-2, R-3, RP, C-1, C-2, and C-3 Districts, each lot or development site shall have a minimum of 3,000 square feet or as may be established by a sub-district.*
- 2) *Lot or development site area per dwelling unit. In the R-2 and R-P Districts, there shall be a minimum of 3,000 square feet of lot or development site area per dwelling unit.*

Finding: Each proposed parcel exceeds 3,000 square feet. One single family detached dwelling is proposed on each parcel. Each parcel exceeds a minimum 3,000 square feet per dwelling.

NDC § 151.718: Water Supply

All lots and parcels within subdivisions and partitions shall be served by the water system of the City of Newberg.

NDC § 151.719: Sewage

All lots and parcels within subdivisions and partitions shall, where practicable, as determined by the Director, in accordance with the provisions of this Code, be served by the sewage system of the City.

NDC § 151.720: Land Surface Drainage

Such grading shall be done and such drainage facilities shall be constructed by the land divider as are adequate for the purpose of proper drainage of the partition or subdivision, of areas affected thereby, and for the preservation of healthful and convenient surroundings and conditions for residents of the subdivision or partition, and for the general public, in accordance with specifications adopted by the City Council under § 151.717.

NDC § 151.721: Streets and Alleys

The land divider shall grade and pave all streets and alleys in the subdivision or partition to the width specified in § 151.686, and provide for drainage of all such streets and alleys, construct curbs and gutters within the subdivision or partition in accordance with specifications adopted by the City Council under § 151.717. Such improvements shall be constructed to specifications of the City under the supervision and direction of the Director. It shall be the responsibility of the land divider to provide street signs.

NDC § 151.722: Existing Streets

A subdivision or partition abutting or adjacent to an existing road of inadequate width, shall dedicate additional right-of-way to and improve the street to the width specified in § 151.686.

NDC § 151.723: Sidewalks

Sidewalks shall be located and constructed in accordance with the provisions of §151.717.

NDC § 151.725: Street Trees

Street trees shall be provided adjacent to all public rights-of-way abutting or within a subdivision or partition. Street trees shall be installed in accordance with the provisions of § 151.580(B)(4).

Finding: Sufficient public water and waste water infrastructure capacity exists in Ninth Street to serve the site. As a condition of approval the proposed dwelling on the north parcel is required to extend a lateral connection directly to the Ninth Street waste water mainline across the south parcel, which requires a private utility easement. At the discretion of the Public Works Director an alternate

method may be approved. Specific details about the required lateral connection is shown in Exhibit “B”. One street tree is located on the Ninth Street frontage – no additional street trees are required. The existing curb, gutter, and sidewalk along the Ninth Street frontage are in good condition and do not need to be replaced as part of this application. The Fire Code requires hydrants located within a certain distance of residential development. As a condition of approval the location of all hydrants on the block shall be shown on a revised site plan. Additional hydrants may be required, at the discretion of the Fire Marshal. At the discretion of the Fire Marshal the installation of fire sprinklers in the proposed house may be an acceptable alternative to an additional hydrant. The existing alley right of way width is 12 feet adjacent to the development site. The Fire Code requires a 20 foot wide clear area for access purposes, except as allowed by the Fire Marshal. The proposed development site’s share is 4 feet of additional right of way, which would make the alley right of way 16 feet wide adjacent to the site. As a condition of approval approximately four feet of right of way shall be dedicated. The existing alley is gravel. Per the Fire Code a 20 foot clear area is required. As a condition of approval the entire length of the alley is required to be improved between College Street and Meridian Street, and signed no parking. As a condition of approval all trees, shrubs, fencing, and any other structures between the development site and College Street are required to be removed from the 20 foot horizontal clear area, and the 13.5 foot vertical clear area. The design of the 20 foot horizontal clear area shall be approved by the Fire Marshal. Specific construction details regarding the required improvements are shown in Exhibit “B” conditions of approval.

(C) *Either,*

- 1) *Improvements required to be completed as part of the partition will be completed prior to final plat approval; or*
- 2) *The partitioner will substantially complete, as defined by City policies, required improvements prior to final plat approval, and enter into a performance agreement to complete the remaining improvements. The performance agreement shall include security in a form acceptable to the City in sufficient amount to insure completion of all required improvements; or*
- 3) *A local improvement district shall have been formed to complete the required improvements;*
or
- 4) *The required improvements are contained in a City or other government agency Capital Improvement Project that is budgeted and scheduled for construction.*

Finding: The required improvements will be completed in accordance with City policies prior to final plat approval.

II. Applicable Type I Site Design Review Criteria - Newberg Development Code § 151.194:

Note: The applicant is requesting Type I Site Design review approval for the remodel of an existing single family home, development of one new single family detached dwelling, and on-site parking.

(A) *Type I. The following criteria are required to be met in order to approve a Type I design review request:*

- 1) *Parking. Parking areas shall meet the requirements of § 151.610.*
- 2) *Setbacks and general requirements. The proposal shall comply with §§ 151.535 et seq. dealing with height restrictions and public access; and §§ 151.550 et seq. dealing with setbacks, coverage, vision clearance, and yard requirements.*
- 3) *Landscaping requirements. The proposal shall comply with § 151.580 dealing with landscape requirements and landscape screening.*

- 4) *Signs. Signs shall comply with §§ 151.590 et seq. dealing with signs. Zoning district compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in §§ 151.280 through 151.438 of this code.*

Finding: The dwellings for both parcels meet the minimum setback requirements of the R-2 zone. The proposed remodel of the existing home on the south parcel shows a 20 foot front yard setback, and 8 foot, 5 foot, and 5 foot setbacks for the interior yards. All yards on the north parcel are interior yards. The proposed house on the north parcel shows all setbacks exceeding the minimum 5 feet required. No signs are proposed. Each parcel has less than 40% maximum lot coverage. The proposal shows two single family detached homes on separate parcels, which are permitted outright in the R-2 district. The proposed parking on the south parcel meets the Development Code requirements. The parking plan for the south parcel shows that the existing driveway will be widened to 18 feet to accommodate two vehicles. The parking plan on the north parcel shows two parallel parking stalls, without right of way dedication. With the required right of way dedication the proposed parking stall design does not meet the Development Code standards. Furthermore, the proposed parallel design would make entering and exiting the site difficult and would likely result in vehicles parking in the alley. Because the north parcel is not adjacent to available on-street parking one additional off-street parking stall is required as part of the variance. As a condition of approval the site plan for the north parcel shall be revised to show three 90 degree parking stalls. This will require that the proposed location for the dwelling be moved to the south to accommodate the stalls.

III. Applicable Variance Criteria - Newberg Development Code § 151.163

Note: The applicant is requesting a variance to the Development Code standard that requires each parcel or development site to have either frontage on a public street for a distance of at least 25 feet or have access to a public street through an easement that is at least 25 feet wide.

The Type II procedure shall be used to process a variance request. The hearing body shall grant the variance if the following criteria are satisfied:

- (A) *That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this code.*

Finding: The purpose of the frontage and access requirement is to ensure standard vehicle and emergency vehicle access to developed sites. The proposed development site has 50 feet of frontage on two public right of ways – the alley to the north and Ninth Street to the south. The City of Newberg Fire Marshal finds that with conditions, the proposed development does not compromise the safety of the new dwelling or properties that abut the alley. With conditions the proposed development will improve emergency access for all the homes that abut the alley by improving the alley surface, by ensuring that there is a 20 foot clear area for emergency vehicles, and by posting no parking signs along the alley. Currently the Development Code allows two detached single family dwellings on one parcel, with no additional frontage requirements for the second dwelling. The strict interpretation of the Development Code would be inconsistent with the objective of the code to permit two single family dwellings on a parcel in the R-2 zone. Under the current Development Code, if a second dwelling was proposed on the existing site the alley would remain unpaved, continue to be narrow, and would not have “no parking” signs.

- (B) *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.*

Finding: There are exceptional conditions applicable to the property. The existing home occupies most of the width of the parcel, thereby restricting access to the north portion of the site. If access was not restricted by previous development, it may have been possible to access the north parcel via an access easement. It is unreasonable to demolish a portion of the existing dwelling to create a new access when a safe alternative exists. The proposed development site is in the R-2 zone. The R-2 zone allows for a minimum parcel size of 3,000 square feet. The site is approximately 7,200 square feet, about 2 and ½ times the minimum required parcel size. This site was not originally developed to R-2 density, as the comprehensive plan and zoning map intended. Other parcels in the R-2 zone have excess parcel area, but not all parcels in the zone have excess parcel area. Today it is common for partitions to be developed closely to the minimum parcel size, making this parcel atypical for the R-2 zone.

- (C) *That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.*

Finding: Strict enforcement of the regulation would deprive the applicant of privileges enjoyed by other property owners. Taking into consideration Fire Marshal approval there are several sites in the R-2 district and sites that abut the existing alley that could be partitioned and use the alley for access. Alleys, as defined in the Newberg Development Code, are intended to provide secondary access to sites that abut a public street. The term secondary as used here means “in addition to”, not “substandard” or “less than adequate”. All alleys are required to be designed in a manner to allow for emergency vehicle access. All developed property in the R-2 district that abuts an alley is allowed to use the abutting alley for access. Homeowners are not precluded from using an existing alley more frequently than the street-side access. In Newberg many residential parcels in the R-2 district that abut an alley have vehicle parking areas that are accessed by an alley. The proposed development site has an existing garage off the alley, in addition to off street parking that uses Ninth Street access. With the proposed new dwelling, the occupants of the existing home will no longer be able to use the alley to access the garage parking. Occupants of the existing home will now use parking that is located on the south parcel, where before the partition they were allowed to use the alley to access the site. Therefore the amount of future traffic accessing the site will be about the same that was allowed prior to the partition.

- (D) *That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.*

Finding: The granting of the variance will not be inconsistent with the limitations for other properties. All parcels in the R-2 that abut an alley and have access to a public street are allowed to use the abutting alley for site access. Other properties in the R-2 district with parcels exceeding 6,000 square feet, and abut an alley, are allowed two single family homes on one site. Establishing two parcels, where there once was one, does not create any functional difference as compared to a single parcel with two single family homes.

(E) *That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.*

Finding: The granting of a variance will not be materially injurious to properties in the vicinity. The existing structure was dilapidated, apparently used for many years as an illegal and unsafe dwelling, and considered by some of the neighbors as an “eyesore”. The proposal shows demolition of the existing illegal dwelling, construction of a new single family dwelling and improved parking area, and remodel of the existing single family home located on the proposed south parcel. The granting of the variance will improve safety by improving the alley surface, by ensuring that there is a 20 foot clear area for emergency vehicles, and by posting no parking signs along the alley.

CONDITIONS OF APPROVAL

ORDER 2011-0031

File: PAR-11-001 & VAR-11-001

1. **The applicant must provide the following information for review and approval prior to construction of any improvements:**
 - a. **Revised Preliminary Partition Plat:** Provide a revised preliminary plat that shows the following:
 - i. Dedication of approximately 4 feet of right of way along the alley.
 - b. **Public Improvements Development Permit with Engineered Construction Drawings.** Submit engineered construction drawings for review and approval. The construction drawings should show a revised right of way and utility plan including:
 - i. A total alley right of way width of 16 feet abutting the site.
 - ii. The alley with a minimum 20 foot wide (16 foot wide adjacent to the parcel) horizontal drivable surface and with a 13.5 foot vertical clear area. The 20 foot wide clear area shall be designed in a manner to accommodate emergency vehicles. The design shall be approved by the Fire Marshal. **Note:** This condition applies only to the portion of the alley right-of-way between College Street and the western most point of the parcel.
 - iii. A minimum 12 foot wide paved alley extending from College Street to Meridian Street. The asphalt shall be a minimum of 3 inches thick.
 - iv. A concrete approach and 5 foot wide concrete sidewalk at the College Street end of the alley. The approach shall have low curb openings and be a minimum of 12 feet wide. At the discretion of the Public Works Director an approach may be required on the Meridian Street end of the alley if the on-site parking is modified from the required 90 degree design.
 - v. All surface waters originating on the improved portion of the alley directed to the public storm water system.
 - vi. The location of alley “street” signs. The alley shall be named 8 ½ Alley. The signs shall be located at each end of the alley.
 - vii. The location of “Fire Lane – No Parking” signs along the entire length of the alley between Meridian Street and College Street.
 - viii. The location of all existing fire hydrants on the block. Note: additional hydrants may be required. Fire sprinklers may be an acceptable alternative to an additional fire hydrant, at the discretion of the Fire Marshal.
 - ix. The location of a new waste water lateral that taps into the existing manhole in Ninth Street using an inside drop. A 4 inch clean out is required to be installed at the right of way. At the discretion of the Public Works Director an alternate method may be approved.
 - x. A grind out of 2 inches of existing asphaltic concrete road surface on Ninth Street for 20 feet curb to curb on each side of the common waste water and water trench. Show an inlay with a slip form paver 2 inch class “C” A. C. At the discretion of the Public Works Director an alternate method may be approved.
 - xi. A common trench for new water and waste water service.
 - xii. The required water meter size.
 - c. **Revised Site Plan:** Provide a revised site plan shows:
 - i. Three 90 degree paved parking stalls on the north parcel. This will require relocation of the proposed house.

2. **The applicant must complete the following prior to final plat approval.**
 - a. **Maintenance Agreement:** Please submit a 2-year maintenance warranty bond for all public right of way improvements.
 - b. **Substantially Complete Conditions of Approval:** Prior to final plat approval, complete all required conditions of approval for this application – this includes all improvements shown on the revised plans required in section “1” above.

3. **Final Plat Application: In accordance with NDC § 151.250, submit the following for City review of the final plat application. Construction improvements should be substantially complete at this point.**
 - a. **Application Materials:**
 - i. Type I application form (found either at City Hall or on the website – www.ci.newberg.or.us in the Planning Forms section) with the appropriate fees.
 - ii. A current title report for the property. “Current”, as defined here, is a report issued within 6 months prior to the application date. Include copies of all existing easements and CC&Rs that pertain to the property.
 - iii. A written response to these Conditions of Approval that specifies how each condition has been met.
 - iv. Two blue-line copies of the final partition plat for preliminary review by the City Engineering Division. The City Surveyor will make red-line comments on these sheets for your surveyor/engineer to correct prior to printing final Mylar copies.
 - v. Any other documents required for review.

 - b. **Dedications/Easements Required:** The plat must show the following:
 - i. Dedication of approximately 4 feet of right away along the entire length of the north parcel line.
 - ii. Private utility easement for the house on the north parcel to access Ninth Street.

 - c. **Final Mylar Copies of the Partition Plat:** Submit final Mylar copies of the corrected final partition plat (after red-line corrections have been made). Three sets (one original and two copies), 18 inches by 24 inches in size, of the final partition plan drawn in black India ink in clear and legible form. Original plats shall be in substantial conformity to the approved tentative plan and shall conform to the Yamhill County Surveyor’s specifications and requirements pertaining to material that has the characteristics of adequate strength and permanency, as well as suitability for binding and copying. Plats shall be in clear and legible form and may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for all plats placed upon three or more sheets. Scale requirements shall be the same as specified for the tentative plans.

4. **The final plat process must be completed prior to issuance of any building permits. The City will review the final plat application after the applicant has completed all of the conditions of approval listed above.**
 - a. **City Review:** In accordance with NDC §§ 151.250.2 and 151.251, Planning staff shall determine that:
 - i. Streets, roads, and alleys for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.
 - ii. The proposal complies with this code.
 - iii. The plat is in substantial conformity with the provisions of the tentative plan for the partition, as approved.

- iv. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems.
- v. Explanations of all common improvements required as conditions of approval of the tentative plan of the partition have been accounted for and referenced on the plat.
- vi. There will be an adequate quantity and quality of water and an adequate sewage disposal system to support the proposed use of the land described in the plat.
- vii. Either:
 - a) Improvements as required by this code or as a condition of tentative plan approval have been filed with the Director; or
 - b) A performance agreement (bond) or suitable substitute as agreed upon by the city and applicant has been filed with the Director in sufficient amount to insure the completion of all required improvements; or
 - c) A petition for improvements has been properly executed by the applicant who is effecting the subdivision and will be assessed for said improvements.
- viii. Taxes, as well as public liens, assessments and fees, with respect to the subdivision area have been paid, or adequate guarantee has been provided assuring said taxes, liens, assessments and fees will be paid prior to recordation.
- ix. The partitioner has entered into agreement with the city relating to completion of improvements, payment of sewer and water hookup fees, inspection fees, public lands payments, monumentation or any other elements deemed relevant to the purpose of this or any other city ordinance, state statute or federal law.
- x. If the conditions set at the time of tentative land division approval are not fulfilled and the final plat or final map is not recorded by the tentative plan expiration date, the tentative land division approval is null and void.

b. Required Signatures: According to NDC § 151.251, approval of a final partition plat must be acknowledged and signed by the following:

- i. The Director
- ii. City Recorder
- iii. The County Assessor
- iv. The County Surveyor

c. Recording: Deliver the approved partition plat to the office of the County Clerk for recording. The County Clerk's office is located at 414 NE Evans St, McMinnville, OR 97128.

d. Completion: Return an exact copy of the recorded plat to the Director to complete the partition process.

e. Development Notes:

- i. The Planning Division will assign addresses for the partition. Planning Division staff will send out notice of the new addresses after they receive a recorded Mylar copy of the final partition plat.
- ii. A demolition permit is required for the existing structure.
- iii. Fire sprinklers required for the new home if no fire hydrant is installed.

EXHIBIT "B" TO ORDER 2011-0031 PRELIMINARY PARTITION PLAT

