



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

11/17/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Newport Plan Amendment
DLCD File Number 010-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, November 27, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Derrick I. Tokos, City of Newport
Gloria Gardiner, DLCD Urban Planning Specialist
Laren Woolley, DLCD Coastal Shores Specialist
Matt Spangler, DLCD Coastal-Newport Regional Representative

<paa> YA

FORM 2

DLCD

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18



Jurisdiction: **City of Newport**

Local file number: **8-Z-09**

Date of Adoption: **11/3/09**

Date Mailed: **11/6/09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 8/26/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Comprehensive rewrite of the variance section of the Newport Zoning Ordinance. Variance provisions of the Newport Municipal Code were also amended, relative to signage.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location: **City of Newport**

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

None.

Local Contact: **Derrick I. Tokos**

Phone: **(541) 574-0626** Extension:

Address: **169 SW Coast Highway**

Fax Number: **541-574-0644**

City: **Newport**

Zip: **97365**

E-mail Address: **d.tokos@thecityofnewport.net**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist**.

Updated March 17, 2009

CITY OF NEWPORT

ORDINANCE NO. 1992

**AN ORDINANCE AMENDING THE NEWPORT ZONING ORDINANCE
(ORDINANCE NO. 1308, AS AMENDED) AND NEWPORT MUNICIPAL CODE
TO UPDATE CRITERIA AND PROCEDURES FOR VARIANCES TO
NUMERICAL STANDARDS OF THE ZONING ORDINANCE AND SIGN CODE**

Findings:

1. The City of Newport Zoning Ordinance (No. 1308, as amended) contains criteria and procedures for evaluating requests to deviate from the numerical zoning standards that apply to structural development. Similarly, the Newport Municipal Code contains criteria and procedures for requests to deviate from numerical standards that apply to construction of signs. Such deviations are known as Variances.
2. The City of Newport Planning Commission and its Citizens Advisory Committee completed a comprehensive review of the Variance section of the Zoning Ordinance and Variance section of the Newport Municipal Code, relative to signage, and determined that the procedures need to be clarified and consolidated and that greater flexibility, in the form of an Adjustment review, is needed to allow minor deviations to numerical standards without requiring evidence of hardship or practical difficulty.
3. The Newport Planning Commission and Planning Commission Citizens Advisory Committee reviewed changes to the Variance sections of the Zoning Ordinance and Newport Municipal Code (Newport File No. 8-Z-09) at work sessions on July 27, 2009 and August 24, 2009. Following a public hearing on October 12, 2009, the Planning Commission voted unanimously to recommend adoption of the proposed amendments.
4. The City Council held a public hearing on November 2, 2009 regarding the question of the proposed revisions (Newport File No. 8-Z-09), and voted in favor of their adoption after considering the recommendation of the Planning Commission and evidence and argument in the record.
5. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

Based on these findings,

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Section 2-5-2 of Ordinance No. 1308 (as amended), Variances, is deleted in

its entirety and replaced with a new Section as shown in Exhibit "A".

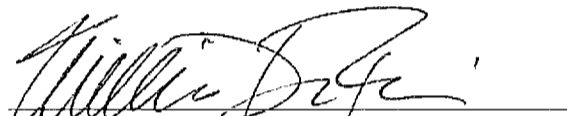
Section 2. Section 10.10.140 of the Newport Municipal Code, Signs, is deleted in its entirety and replaced with a new Section as shown in Exhibit "B".

Section 3. This ordinance shall take effect on January 1, 2010.

Date adopted on initial vote and read by title only: November 2, 2009.

Date adopted on final roll call vote: November 2, 2009.

Signed by the Mayor on November 3, 2009.


William D. Bain, Mayor

ATTEST:

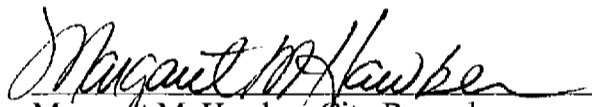

Margaret M. Hawker, City Recorder

Exhibit A to Ordinance No. 1992, Amending the Newport Zoning Ordinance (Ordinance No. 1308, as Amended) to Revise the Criteria and Procedures for Variances and Add Adjustments as an Alternative to Variances in Certain Circumstances

Section 2-5-2. ADJUSTMENTS AND VARIANCES

2-5-2.005. Purpose. The purpose of this section is to provide flexibility to numerical development standards in recognition of the wide variation in property size, configuration, and topography within the City of Newport and to allow reasonable and economically practical development of a property.

2-5-2.010. General Provisions.

A. Application for an Adjustment or Variance from a numerical standard including, but not limited to, size, height, or setback distance may be processed and authorized under a Type I or Type III decision making procedure as provided by Section 2-6-1, Procedural Requirements, in addition to the provisions of this section.

B. No Adjustment or Variance from a numerical standard shall be allowed that would result in a use that is not allowed in the zoning district in which the property is located, or to increase densities in any residential zone.

C. In granting an Adjustment or Variance the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

2-5-2.015. Approval Authority. Upon receipt of an application the Community Development Director or designate shall determine if the request is to be processed as an Adjustment or as a Variance based on the standards established in this sub-section. There shall be no appeal of the Director's determination as to the type of application and decision making process, but the issue may be raised in any appeal from the final decision on the application.

A. A deviation of less than or equal to 10% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Community Development Director using a Type I decision making procedure.

B. A deviation of greater than 10% but less than or equal to 40% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision making procedure.

C. Deviations of greater than 40% from a numerical standard shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision making procedure.

2-5-2.020. Application Submittal Requirements. In addition to a land use application form with the information required in Section 2-6-1.020, the petition shall include a site plan prepared by a registered surveyor that is drawn to scale and illustrates proposed development on the subject property

A. For requests to deviate from required setbacks, the site plan shall also show survey monuments along the property line subject to the Adjustment or Variance.

B. For requests to deviate from building height limitations, the application shall include exterior architectural elevations, drawn to scale, illustrating the proposed structure and adjoining finished ground elevations.

2-5-2.025. Criteria for Approval of an Adjustment. The approval authority may grant an Adjustment using a Type I or Type III decision making process when it finds that the application complies with the following criteria:

A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

B. Any impacts resulting from the Adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

C. The Adjustment will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access; and

D. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zoning district.

2-5-2.030. Criteria for Approval of a Variance. The approval authority may grant a Variance using a Type III decision making process when it finds that the application complies with the following criteria:

A. A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

(3) The nature of the use compared to surrounding uses, or

(4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district, or

(5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

(6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

B. The circumstance or condition in (A) above is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

C. There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

D. Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.

E. The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

F. Any impacts resulting from the Variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

Exhibit B to Ordinance No. 1992, Amending the Newport Municipal Code to Revise the Criteria and Procedures for Variances to the Sign Code

10.10.140 Sign Adjustment and Variance Requirements

A. Purpose. Adjustments and Variances to the numerical standards of the sign code are intended to allow flexibility while still fulfilling the purpose of the Code.

B. Procedure.

1. Any person may seek an Adjustment or Variance to the numerical provisions of this chapter or of Chapter 10.15 by filing an application with the Community Development Director or designate on a form prescribed for that purpose. Upon receipt of an application the Director or designee shall determine if the request shall be processed as an Adjustment or as a Variance according to the procedure provided in §2-5-2.015 of the Zoning Ordinance.

2. The fee shall be the same as for a zoning Adjustment or Variance. No Adjustment or Variance shall be permitted that would negate the provisions of 10.10.045, Prohibited Signs.

3. In addition to the application submittal requirements of Section 2-5-2 of the Zoning Ordinance, the applicant must provide an inventory of all signs including the location, type, and size of each sign on the property.

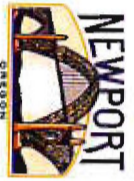
4. Approval criteria in (C) below are to be used when evaluating applications for Adjustments or Variances to the sign code, rather than those provided in Section 2-5-2 of the Zoning Ordinance.

C. Criteria. The approval authority must find that the application for an Adjustment or Variance complies with the following criteria:

1. The Adjustment or Variance is consistent with the purposes of the sign code, as provided in §10.10.010; and

2. The Adjustment or Variance will allow for placement of a sign with exceptional design, style, or circumstance, or will allow a sign that is more consistent with the architecture and development of the site; and

3. The Adjustment or Variance will not significantly increase or lead to street level sign clutter, nor will it create a traffic or safety hazard.



City of Newport
169 SW Coast Hwy
Newport, OR 97365

ATTN: PLAN AMENDMENT SPECIALIST

DLCD

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SALEM OR 97301-2540



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