

Council Business Meeting

February 7, 2023

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| Agenda Item | 165 Water Street Appeal Findings Adoption | |
| From | Brandon Goldman Derek Severson | Interim Director of Community Development Senior Planner |
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SUMMARY

Adoption of the written findings to formalize the Council decision from the January 3, 2023 appeal hearing for the phased mixed-use development of three properties at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue.

POLICIES, PLANS & GOALS SUPPORTED

Not applicable.

PREVIOUS COUNCIL ACTION

Council conducted an “on the record” appeal hearing on January 3, 2023. There were four grounds for appeal including that the staff report was not timely received, that staff introduced new information during the public hearing, that the Historic Commission Chair had *ex parte* contact with a neighbor, and that the Planning Commission misapplied the transitional area standard in AMC 18.4.2.050.B.1.

The Council rejected, and the appellants waived, the first three grounds for appeal during the hearing. On the fourth ground, the Council found that the property was in a transitional area and that the standard was applicable, however the Council found it was an error that specific measures to bring the project into compliance with the applicable standards were identified by the Planning Commission but the project was denied rather than approving it subject to the specific measures identified being made conditions of approval. AMC 18.5.2.080.G empowers the Planning Commission to amend plans to comply with applicable standards.

The Council reversed the denial on that basis, approving the project with conditions consistent with those identified by the Planning Commission to comply with the Historic District Development Standards. The applicant agreed to these conditions during the appeal hearing.

BACKGROUND AND ADDITIONAL INFORMATION

Not applicable.

FISCAL IMPACTS

There are no direct fiscal impacts related to the appeal of the planning action for 165 Water Street.

STAFF RECOMMENDATION

Staff believes the attached findings reflect the Council decision from the January 3, 2023 appeal hearing. Staff recommends that the Council adopt these findings as presented.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move to adopt the findings for PA-APPEAL-2022-00015 as presented.
- 2) I move to adopt the findings for PA-APPEAL-2022-00015 with the following amendments...

REFERENCES & ATTACHMENTS

Attachment #1: Draft Findings for Adoption

The full public record for the 165 Water Street application is posted on-line at:

<http://www.ashland.or.us/165Water>. This webpage includes a list of each of the meetings where the project was discussed with links to meeting packet materials, minutes and audio/video recordings of the meetings which are all included in the record for this appeal review.

BEFORE THE ASHLAND CITY COUNCIL
February 7, 2023

IN THE MATTER OF PLANNING ACTION PA-APPEAL-2022-00015, AN)
APPEAL ON THE RECORD OF THE PLANNING COMMISSION'S)
DENIAL OF PA-T2-2022-00037, A SIX-LOT SUBDIVISION TO)
ACCOMMODATE A PHASED MIXED-USE DEVELOPMENT FOR THE)
THREE PROPERTIES AT 165 WATER ST., 160 HELMAN ST. AND 95)
VAN NESS AV. THE APPLICANT REQUESTS SITE DESIGN REVIEW)
APPROVAL FOR FIVE MIXED-USE COMMERCIAL BUILDINGS WITH)
GROUND FLOOR COMMERCIAL SPACES AND TWO RESIDENTIAL)
UNITS ABOVE IN EACH BUILDING, AS WELL AS ASSOCIATED)
SURFACE PARKING, UTILITY INFRASTRUCTURE AND STREET)
IMPROVEMENTS AS A FIRST PHASE. THE THREE REMAINING LOTS)
WOULD HAVE INITIAL SITE WORK COMPLETED WITH PHASE I, BUT)
BUILDING CONSTRUCTION FOR THE REMAINING BUILDINGS)
WOULD OCCUR ONLY AFTER SITE DESIGN REVIEW APPROVALS IN)
A FUTURE PHASE II. THE APPLICATION INCLUDES REQUESTS FOR:)
A PHYSICAL & ENVIRONMENTAL CONSTRAINTS REVIEW PERMIT)
BECAUSE THE PROPOSAL INCLUDES DEVELOPMENT ON SEVERE)
CONSTRAINTS LANDS WITH SLOPES GREATER THAN 35 PERCENT)
AND ON FLOODPLAIN CORRIDOR LANDS; AN EXCEPTION TO THE)
DEVELOPMENT STANDARDS FOR HILLSIDE LANDS; AND A)
REQUEST FOR A TREE REMOVAL PERMIT TO REMOVE 20 TREES ON)
THE THREE PROPERTIES AND WITHIN THE ADJACENT RIGHTS-OF-)
WAY.)

FINDINGS,
CONCLUSIONS &
ORDERES

OWNER: MAGNOLIA INVESTMENT GROUP/GIL LIVNI)
APPLICANT: ROGUE PLANNING & DEVELOPMENT SERVICES)
(OWNERS' AGENT))
APPELLANTS: GIL LIVNI AND ERIC BONETTI)

RECITALS:

- 1) Tax lots 2000, 2100 & 7100 of Map 39 1E 04CC are located at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue, and are zoned E-1 (Employment).

- 2) The application is an appeal on the record of the Planning Commission's denial of a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 165 Water St., 160 Helman St. and 95 Van Ness Av. The applicant's Phase I requests Site Design Review approval for five mixed-use commercial buildings with ground floor commercial spaces and two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site

work completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; and a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way. The proposal is outlined in plans on file at the Department of Community Development.

On the record appeals are subject to AMC 18.5.1.060.I. The grounds for the appeal as identified by the appellants here are: 1) That the staff report was not received seven days prior to the hearing; 2) That staff presented new information during the public hearing; 3) That a member of the Historic Commission had *ex-parte* contact with a member of the public outside of the public hearing; and 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas (“*For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.*”) was misapplied by the Planning Commission. As an appeal on the record, matters considered in this appeal are limited to these four grounds for appeal as identified in the appeal request.

3) The preliminary subdivision plat approval criteria are detailed in AMC 18.5.3.070 as follows:

A. Approval Criteria. *The approval authority, pursuant to subsection [18.5.3.030.A](#), may approve, approve with conditions or deny a preliminary subdivision plat on findings of compliance with all of the following approval criteria.*

1. *The subdivision plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.*
2. *Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).*
3. *Access to individual lots necessary to serve the development shall conform to the standards contained in section [18.4.3.080](#) Vehicle Area Design.*
4. *The proposed streets, utilities, and surface water drainage facilities conform to the standards in chapter [18.4.6](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.*
5. *All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas (e.g., landscaping, tree preservation, common areas, access, parking, etc.) is*

ensured through appropriate legal instrument (e.g., Covenants, Conditions and Restrictions (CC&R's).

6. *Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.*

B. Conditions of Approval. *The approval authority may attach such conditions as are necessary to carry out provisions of this ordinance, and other applicable ordinances and regulations.*

4) The criteria for Site Design Review approval are described in 18.5.2.050 as follows:

A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*

B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*

C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*

D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*

E. **Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*

1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*

2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

5) The approval criteria for a Physical & Environmental Constraints Review Permit are detailed in AMC 18.3.10.050 as follows:

- A. *Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.*
- B. *That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.*
- C. *That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum development permitted by this ordinance.*

6) The approval criteria for an Exception to the Development Standards for Hillside Lands are detailed in AMC 18.3.10.090.H as follows:

1. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
2. *The exception will result in equal or greater protection of the resources protected under this chapter.*
3. *The exception is the minimum necessary to alleviate the difficulty.*
4. *The exception is consistent with the stated Purpose and Intent of chapter [18.3.10](#) Physical and Environmental Constraints Overlay chapter and section 18.3.10.090 Development Standards for Hillside Lands.*

7) The criteria for the approval of a Tree Removal Permit are described in 18.5.7.040.B as follows:

1. **Hazard Tree.** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
 - a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part [18.6](#).*
 - b. *The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section [18.5.7.050](#). Such mitigation requirements shall be a condition of approval of the permit.*
2. **Tree That is Not a Hazard.** *A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*

- a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.3.10.*
- b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
- c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.*
- d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.*
- e. *The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*

8) The criteria for an Exception to the Street Design Standards are described in AMC Section 18.4.6.020.B.1 as follows:

- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
- b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*
 - i. *For transit facilities and related improvements, access, wait time, and ride experience.*
 - ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
 - iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*
- c. *The exception is the minimum necessary to alleviate the difficulty.*
- d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

9) The Planning Commission, following proper public notice, held an electronic public hearing via Zoom on March 8, 2022 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, the electronic public hearing was continued at the applicant's request to

PA-APPEAL-2022-00015

February 7, 2023

Page 5

7:00 p.m. on Tuesday, April 12, 2022, again via Zoom, at which time additional testimony was received and additional evidence was presented. Subsequent to the closing of the hearing, the Planning Commission denied the application without prejudice.

10) Subsequent to the mailing of the Planning Commission’s adopted findings, an appeal was timely filed by applicant Gil Livni and his agent Eric Bonetti, both of whom had participated in the Planning Commission hearing. Appeals of Planning Commission decisions are processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified in the notice of appeal were: 1) That the staff report was not received seven days prior to the hearing; 2) That staff presented new information during the public hearing; 3) That a member of the Historic Commission had *ex parte* contact with a member of the public outside of the public hearing; and 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas (“*For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.*”) was misapplied by the Planning Commission. As an appeal on the record, Council consideration is limited to these four grounds for appeal which were clearly and distinctly identified in the appeal request. As provided in AMC 18.5.1.060.I.5.b., in their review “*the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal.*”

An appeal hearing was initially scheduled for June 21, 2022, however subsequent to the mailing of the Notice of Appeal to the parties, the appellant/applicant requested that the appeal hearing be postponed and submitted a 245-day extension to the 120-day rule, the maximum extension allowed under ORS 227.178(5) on June 16, 2021. The appeal hearing was re-scheduled for January 3, 2023 to allow for a timely final decision from the city.

11) The City Council, following proper public notice held an appeal hearing on the record on January 3, 2023 at which time oral arguments were received from the parties. Subsequent to the closing of the hearing, the City Council rejected the first three grounds for appeal, which had been waived by the applicant during the hearing. However, with regard to the fourth ground for appeal (*That the standard in AMC 18.4.2.050.B.1 addressing ‘Transitional Areas’ was misapplied by the Planning Commission*) the Council found that the Planning Commission had erred in identifying specific means by which the application could be modified to meet the Historic District Development Standards including the ‘Transitional Areas’ standard but subsequently denying the application rather than exercising its power to amend plans to approve the application subject to the conditions identified. On that basis, the Council supported the appeal on the fourth ground, reversing the Planning Commission denial, and approving the application subject to conditions previously recommended by staff and to new conditions to achieve compliance with the Historic District Development Standards including the Transitional Areas standard. These conditions were agreed to by the applicant/appellant during the appeal hearing.

Now, therefore, the City Council of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The City Council finds that it has received all information necessary to make a decision based upon the record of the Planning Commission decision, the appeal notice and subsequent written and oral arguments received.

2.2 The City Council finds that the proposal meets the applicable criteria for Subdivision preliminary plat approval in AMC 18.5.3.070; for Site Design Review approval in AMC 18.5.2.050; for a Physical & Environmental Constraints Review Permit for the development on severe constraints lands with slopes greater than 35 percent and floodplain corridor lands in AMC 18.3.10.050; for an Exception to the Development Standards for Hillside Lands in AMC 18.3.10.090.H; and for Tree Removal in AMC 18.5.7.040.B.

2.3 The City Council notes that the appellants' first ground for appeal is, *"That the staff report was not received seven days prior to the hearing."* The appeal notice further explains that, *"The staff report recommending denial of the application was not received seven days before the Historic Commission Hearing nor the Planning Commission Hearing. This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.C.3.g or other law in ORS 197.763 (3)(i) requires that a copy of the City's staff report and recommendations to the hearings body will be available for review at no cost at least seven days before the hearing."* The appellants waived this ground for appeal during the appeal hearing.

The City Council further notes that both AMC 18.5.1.060.C.3.g and ORS 197.763(3)(i) require that public notices include a clear statement that the staff report will be available seven days prior to the Planning Commission hearing, and AMC 18.5.1.060.C.3.g indicates that a copy will be provided *on request*. Specifically, ORS 197.763(3)(i) requires that the notice provided by the jurisdiction, *"State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost."* Similarly, AMC

18.5.1.060.C.3.g requires that the Notice of Public Hearing contain, “*A statement that a copy of the City’s staff report and recommendation to the hearings body will be available for review at no cost at least seven days before the hearing, and that a copy will be provided on request at a reasonable cost.*” The City Council finds that the public notice for the application (see https://www.ashland.or.us/SIB/files/00_Water_165_PA-T2-2022-00037_NOC.pdf) indicated that, “*A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report will be available on-line at www.ashland.or.us/PCpackets seven days prior to the hearing. Copies of application materials will be provided at reasonable cost, if requested.*” The City Council further finds that there is no indication in the appeal notice or within the record that the applicant ever requested the staff report. Staff has indicated that the staff report was provided to the applicant six days prior to the Planning Commission hearing via e-mail and that it was posted on-line at that time. Given that the staff report was provided six days prior to the hearing without being requested, the City Council does not believe that this was a procedural error which adversely impacted the applicant/appellant, and finds that any error with the one-day delay in posting the staff report on-line has been remedied by the applicant’s ability to appeal, which they have taken full advantage of. As such, the City Council rejects this first appeal issue.

2.4 The City Council notes that the appellants’ second ground for appeal is, “*That staff presented new information during the public hearing.*” Their appeal notice explains that, “*New information was presented by staff during the hearing that had never been discussed previously with the applicant, the project team or during the previous hearing. The project team believes this new information regarding the Transit Triangle standards created confusion and obscures the relevant criteria Site Design and Use Standards and Historic District Design Standards through the introduction of irrelevant municipal code sections.*” The appellants waived this ground for appeal during the appeal hearing.

The City Council notes that the new information referenced consisted of staff pointing out how building massing was addressed in terms of compatibility with adjacent residential buildings elsewhere in the Ashland Land Use Ordinance (in the Transit Triangle at AMC 18.3.14.060 and in the Croman Mill District at AMC 18.3.2.060.B.7.c). The City Council finds that this information was presented by staff while both the public hearing and the public hearing record were open to the submittal of any new information (see page 5 of 8 of the April 12, 2022 Minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf.) The Council further finds that staff explained clearly during the hearing that this information was not applicable to the subject property specifically and was instead being provided for reference to show how adjustments for compatibility between commercial and residential development were dealt with elsewhere in the Ashland Land Use Ordinance as the Planning Commission was considering what

might constitute “*appropriate* adjustments.” (see page 7 of 8 of the April 12, 2022 Minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf.)

The City Council finds that new information may be presented during an open public hearing, and in this instance, the new information was directly from the adopted Ashland Land Use Ordinance and it was clearly explained that it was not directly applicable to the current application and was instead being presented for reference. On that basis, the Council rejects this second ground for appeal.

2.5 The Council notes that the third ground for appeal is, “*That a member of the Historic Commission had ex parte contact with a member of the public outside of the public hearing.*” The appellants’ Notice of Appeal goes on to explain that, “*The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. One of the co-chairs of the Historic Commission had communications with a member of the public outside the hearing process. Though unclear to the applicant team during the Historic Commission meeting at 4.6.20222 what the substance of the ex parte comments were, the process is flawed when it is clear that conversation(s) occurred outside the hearing. This interaction taints the integrity of the hearing process. This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.D.2 requires that the hearing body be impartial and free from potential conflicts of interests and pre-hearing and outside of the hearing contacts. It is unclear what exactly occurred between the co-chair of the Historic Commission and a member of the public but there was a declaration of ex parte*”. The appellants waived this ground for appeal during the appeal hearing as well.

The Council notes that the Historic Commission is not a decision making body, and serves in an advisory role to the Planning Commission. AMC 18.5.1.060.D.2 specifically references only the Planning Commission and City Council. The City Council finds that in this instance, the *ex parte* contact in question occurred after the Historic Commission had conducted its March meeting and made its initial advisory recommendation to the Planning Commission. When the application came back to the Historic Commission for further consideration in April of 2022, the *ex parte* contact in question was declared by Historic Commission Chair Beverly Hovenkamp. The minutes for the April 6, 2022 meeting note, “*Hovenkamp disclosed that she had ex-parte contact with Mr. Brouillard, a neighbor who submitted his comments to the Commission via email. Hovenkamp expressed that this would have no impact on her decision moving forward.*”

The Council further notes that in a February 24, 2022 e-mail, Mark Brouillard - who is a neighbor of the project site and who had attended a Historic Commission meeting in 2018 to comment on a previous development proposal for the subject property - expressed concerns that during the 2018 meeting, a presenter from Rogue Planning and Development Services had commented that “*now*

that there aren't any pesky home owners here we might get something accomplished." Mr. Brouillard's email indicated that he was present as a home owner at that 2018 meeting and made objection to this comment at the time. He further suggested that the Historic Commissioners at the time had laughed and seemed entertained, and he took their response at the time as an expression of bias. (Mr. Brouillard's e-mail is on pages 1-2 of 18 at https://www.ashland.or.us/SIB/files/Water_165_PA-T2-2022-00037_Public_Comment_Record.pdf).

The City Council further notes that, as reflected between 44:45 and 47:15 of the Historic Commission's April 2022 meeting recording, Chair Hovenkamp stated that the concerns over bias expressed by neighbor Mark Brouillard had not been addressed at the March 2022 hearing, so she had called Mr. Brouillard subsequent to the March meeting as a courtesy, after the Commission had already made its initial recommendation. She indicated that she told him it was unfortunate that a disrespectful comment had been made at the 2018 meeting and that the Historic Commission was working hard to be impartial. She explained that this was why he had raised the importance of *ex parte* contact conversations and being careful about recusals. She indicated that she was unsure if this call made Mr. Brouillard feel any better, but said she felt it was important as a courtesy to respond directly to the concerns he had raised on behalf of the Historic Commission.

The City Council also notes that during that April 2022 Historic Commission meeting, planning staff directly asked Chair Hovenkamp if any aspect discussed relating to the project during that call would bias her going forward; she responded that when Mr. Brouillard raised issues he had raised previously during the hearing, she pointed out to him that it seemed the Commission had heard his concerns at the meeting and they were reflected in the Commission's initial recommendations. She confirmed that nothing said during the conversation would have the effect of biasing her moving forward. Neither the other Historic Commissioners present, the applicant or his agents challenged Ms. Hovenkamp's *ex parte* contact declaration at the meeting, although the applicant did subsequently raise the issue of Hovenkamp's *ex parte* contact during testimony at the April 2022 Planning Commission hearing (see page 6 of 8 in the April 12, 2022 minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf).

The Council finds that, procedurally speaking, Chair Hovenkamp declared the *ex parte* contact prior to the Historic Commission's April meeting, as recognized in the appellants' appeal notice, explained the substance of the contact and confirmed that it would not bias her moving forward. Her declaration went unchallenged and, on that basis, the Council reject this third ground for appeal.

2.6 The Council notes that the fourth and final ground for appeal is, “*That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas was misapplied by the Planning Commission.*” The appellants’ appeal notice cites the Overlay Development Standards (AMC 18.5.2.050.B) and Historic District Development Standards (AMC 18.4.2.050) and specifically references the ‘Transitional Areas’ standard in AMC 18.4.2.050.B.1 which reads:

For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

The appellants go on to indicate that denial on this basis is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.4.2.050 requires that projects at the boundary between zones or overlays may have appropriate adjustments considered but that the underlying zoning standards and requirements applicable to the subject property must be kept in sight.

The appellants argue that the transitional areas standard applies only to property “*at the boundary*” and suggest that because the boundary between zones here is at the centerline of the street, the standard cannot be applied. The Council finds that this argument goes beyond the substance of the written argument submitted by the submittal deadline, and further finds that as provided in AMC 18.2.1.030, zoning boundaries typically are lot lines, the center line of streets or railroad rights-of-way, and limiting the standard to apply only to those properties immediately abutting the boundary line – rather than to properties across the street from one another - would severely limit the applicability of the standard. The Council finds that the transitional area is an area in the vicinity or across the street, rather than abutting the boundary line itself, like other historic district development standards in AMC 18.4.2.050.B. and that the subject property here along Helman Street is within a transitional area and subject to the standards.

In considering this final appeal issue, the Council notes that within the adopted findings for their decision, under 2.7 the Planning Commission noted that “... Site Design Review approval requires a demonstration that “*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*” The Planning Commission further noted that the subject properties were located within the Skidmore Academy Historic District and as such were subject to the Historic District Development Standards in AMC 18.4.2.050. As explained in AMC 18.4.2.050.A.2:

The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District...If a development requires a Type I, II, or III review procedure (e.g., Site Design Review, Conditional Use Permit) and

involves new construction, or restoration and rehabilitation, or any use greater than a single-family use, the authority exists in the law for the Staff Advisor and the Planning Commission to require modifications in the design to match these standards. In this case the Historic Commission advises both the applicant and the Staff Advisor or other City decision maker.

The City Council notes that as provided in AMC 18.2.4.040.D, the Historic Commission is charged “*To review and make recommendations concerning the improvement of designated historic properties in connection with the issuance of building permits, zone changes, conditional use permits, variances, sign permits, and site reviews.*” Here, the Historic Commission reviewed the initial proposal at its March 2, 2022 meeting. During that review, the Historic Commission found that there was no historical precedent in Ashland for three nearly identical, large buildings being constructed side by side in a historic district. The Historic Commission recognized that both the building designs and landscaping here were excellent, and that the high quality of the proposal helped to mitigate the large, identical buildings to a degree, however the Historic Commission ultimately determined that the initial designs were too repetitious, and that this repetition emphasized the significant difference in height and character relative to the historic residences on the other side of Helman Street. The Historic Commission specifically expressed concerns that in terms of the Historic District Development Standards, the height, scale and massing of the three buildings (**AMC 18.4.2.050.B.2-4**) as initially proposed along Helman Street for Buildings #1, #3 and #4 were out of scale with the one- to one-and-a-half-story historic residential buildings across Helman Street. The Historic Commission recommended that the designs be revisited to look at changing the height of the individual stories, noting that 11-foot ceiling heights seemed excessive where building height was at issue, and also recommended potentially reducing the number of stories on at least the two end buildings (Buildings #1 and #4). The Historic Commissioners explained that if the buildings on Helman were lower, the remaining buildings could cascade around the Van Ness corner as taller buildings there would be mitigated by the grade change and the fact that there was not a single-story, historic residential streetscape across Van Ness Avenue. The Historic Commission concluded their March recommendations noting that the designs would benefit from a greater variety of material treatment and finishes, and greater variations in height and/or number of stories to relieve the monotony as they present to the historic Helman Street streetscape.

At its April 6, 2022 meeting, the Historic Commission reviewed design revisions which had been provided in response to their March 2, 2022 comments. These revisions included stepping the center bay in the façade of Buildings 3 & 4 back three feet from the wall plane of the second floor and adding a shed roof to emphasize this step back; cutting back the roofline to reduce the massing of the overhang; changing some surface and material treatments including adding a brick base, using white and lighter materials to de-emphasize the third story, and using open wire or mesh

railings where solid railings were previously proposed; and increasing the length of the pedestrian overhang on the ground floor to add shadow lines and emphasize the pedestrian scale of the building at the sidewalk. After reviewing these revisions, the Historic Commission found that while the incremental changes were effective in addressing some issues with regard to the building façades and pedestrian amenities, the revisions fell short in addressing the larger issues identified in the March meeting, which had to do with the height, scale, and massing of the buildings as they relate to the Historic District Design Standards (**AMC 18.4.2.050.B.2-B.4.**)

The Historic Commission noted that the three buildings facing Helman Street with heights near 40 feet and three stories would overwhelm the mostly single-story historic residences across the street, and that these proposed buildings failed to achieve an appropriate scale and façade compatibility to the adjacent historic streetscape. Additionally, the Historic Commission further noted that the zero setback to the sidewalk exacerbated the building mass and scale and would overwhelm the adjacent pedestrian traffic. The Historic Commission pointed out that by comparison, the Plaza Inn & Suites hotel on the same side of Helman Street, nearer to downtown, has 15- to 20-foot setbacks and is only two-stories in height at the street. The Historic Commission concluded that while the building architecture and landscape design on this project were very attractive and high quality, the buildings were just not compatible with the scale of the historic district residences in the impact area, directly across Helman Street, and for these reasons, the Historic Commission noted that they could not support the application and recommended that it be denied by the Planning Commission.

In considering the proposal as it relates to the Historic District Development Standards and in light of the Historic Commission’s recommendation, the Planning Commission found that the standard addressing “Transitional Areas” in AMC 18.4.2.050.B.1 was of particular importance here. This standard provides that:

For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

In this instance, the subject properties are located at the boundary between E-1 (Employment) and R-3 (High Density Multi-Family Residential), and there is M-1 (Industrial), C-1 (Commercial), and R-2 (Low Density Multi-Family Residential) zoning a short distance away. Similarly, the property is at the outer edge of the Skidmore Academy historic district, with district boundary to the north, the Railroad Addition historic district immediately across Water Street, and the Downtown historic district a half-block to the south. The Planning Commission found that the subject properties were

located within a transitional area, and that to address the transitional area standard, the building designs needed to incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility with the transitional area which includes the existing historic residential block across Helman Street, while not losing sight of the underlying standards and requirements applicable to the subject properties which are zoned E-1 (Employment).

The Planning Commission noted that the applicant had provided a number of examples of more commercial scale buildings in the vicinity, many of which were historical buildings which were no longer standing, to demonstrate compatibility and the applicant also emphasized that the designs proposed were within the maximum allowances of the E-1 zone. The Planning Commission found, and the City Council concurs, that the transitional area standard was intended to address compatibility with the transitional area as it exists, rather than with historic buildings which are no longer standing. AMC 18.4.2.050 explains “... *sensitivity to surrounding buildings and the existing land use patterns is essential to the successful development* (AMC 18.4.2.050.A.1, emphasis added)” and “*The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District* (AMC 18.4.2.050.A.2, emphasis added).” The Planning Commission further found, and the Council again concurs, that the drawings illustrating each design standard are described as applying to historic buildings “*on and across the street* (AMC 18.4.2.050.B.2)” or “*in the immediate vicinity* (AMC 18.4.2.050.B.3 & B.4).”

The Planning Commission further found, and the Council concurs, that considerations of compatibility were not limited to a simple comparison of the allowances of the zoning district (i.e. the E-1 zone allowing a 40-foot height and 85 percent lot coverage where the R-3 zone allows a 35-foot height and 75 percent lot coverage does not mean that any building complying with the allowances of the E-1 zone is automatically compatible with historic buildings in an immediately adjacent R-3 zone), but for transitional areas require “*appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment*” which address compatibility with the immediate vicinity while still considering the allowances of the underlying zone.

The Planning Commission ultimately concurred with the Historic Commission in finding that the three very similarly designed three-story buildings facing Helman Street with heights of nearly 40 feet failed to achieve an appropriate scale and have heights and massing which, as designed, were not compatible with the adjacent historic streetscape. The Planning Commission noted that these issues were exacerbated by the buildings’ very similar architectural and material treatments. The Planning Commission found that here, measures such as setting the buildings back further and

placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness could constitute “appropriate adjustments” to address compatibility with the transitional area by mitigating the buildings height, mass and scale, and could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. The Planning Commission further found that the designs as revised failed to address the recommendations provided in March; did not incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility; and failed to satisfy the Historic Development Design Standards for height, scale and massing (AMC 18.4.2.050.B.2-B.4). The Planning Commission concluded that the application as presented had not sufficiently addressed the Historic District Development Standards, and as such could not be found to have fully satisfied the approval criteria for Site Design Review. The application was thus denied without prejudice, which allows the applicant to make a revised application for the same property immediately where they would otherwise be required to wait at least 12 months.

For the Council it is clear that the Planning Commission considered the application materials and information presented by the applicant during the hearings as well as testimony by neighbors and the recommendations of the Historic Commission. In their decision, the Planning Commission noted specific measures such as setting the buildings back further and placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness which the Commission indicated constituted “appropriate adjustments” to address compatibility with the transitional area by mitigating the buildings’ height, mass and scale, and which could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. The Council concludes that, while the Planning Commission was correct in considering the application in light of the ‘Transitional Areas’ standard, the Commission did err in applying the standards in that it identified specific “appropriate adjustments” which could be made in order to achieve compliance with the applicable standards, but rather than using its power to amend plans in AMC 18.5.2.080.G and approving the proposal with the specified conditions, the Commission instead denied the application.

On that basis, the Council accepts this fourth ground for appeal, reverses the Planning Commission’s denial of the application, and approved the application subject to the recommendations and conditions found in the staff reports presented to the Planning Commission for their March and April 2022 hearings and to the following conditions necessary to comply with

the Historic District Development Standards including the ‘Transitional Areas’ standard and the standards for height, scale and massing, which the applicant/appellants accepted during the appeal hearing: 1) That the design of the southernmost building (#4) shall be modified to step back the third story at least six feet from the second story façade; 2) That the middle building (#3) shall be set back at least six feet from the sidewalk, and this additional setback area between the face of the building and the street shall be improved as plaza space, and the final building design shall be modified to step back the third story at least six feet from the second story façade; 3) That the three buildings facing Helman Street shall have wall plate heights on their residential floors (i.e. the second and third stories) no greater than ten (10) feet to provide for nine (9) foot floor-to-ceiling heights which are unobstructed by mechanical ducting or plumbing installation; 4) That the final building designs shall incorporate the material changes previously presented to the Planning Commission for its April 2022 hearing.

2.7 In considering the preliminary plat approval for the proposed Subdivision, the Council finds that there are no applicable City-adopted neighborhood or district plans which relate to the subject property, and previous land use approvals for the subject property have expired.

As detailed in the Site Design Review discussion below in section 2.8, the Council finds that the proposed lots and associated development proposed conform to the requirements of the underlying zone, per part [18.2](#); any applicable overlay zone requirements, per part [18.3](#); and any applicable development standards, per part [18.4](#) (including parking and access, vehicle area design, tree preservation, solar access and orientation). The Council further finds, as discussed in section 2.8 below that the proposed streets, utilities, and surface water drainage facilities conform to the standards in chapter [18.4.6](#), and allow for transitions to existing and potential future development on adjacent lands.

The Council further finds that all proposed private common areas and improvements, have been identified on the preliminary plat and the maintenance of such areas, including landscaping, common areas, access, parking) shall be ensured through appropriate legal instruments (i.e. Covenants, Conditions and Restrictions (CC&R’s)) as conditioned below. The applicant has indicated that any required State and Federal permits, will be obtained prior to development.

2.8 The Council notes that the applicant’s Phase I proposal here requests Site Design Review approval for five mixed-use buildings as well as associated surface parking, utility infrastructure and street improvements, with the remaining three building sites to be developed in a later phase. Each of the five proposed buildings would include a shared wall, two-unit commercial office ground floor, and two three-bedroom residences on the upper floors. When all phases are complete, the eight buildings would include a total of 16 residential units above the ground floor commercial spaces.

The City Council finds that the proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and

dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.

The City Council finds that the proposal complies with applicable overlay zone requirements of part 18.3, except where Exceptions have been requested. Compliance with the applicable overlay zone requirements for the Physical and Environmental Constraints Overlay detailed in AMC 18.3.10 is discussed in sections 2.10 and 2.11 below. In terms of the Site Development and Design Overlays of AMC 18.3.12, the Council finds that the subject property is located within both the Detail Site Review and Historic District Overlays. The standards for both overlays are found in part 18.4, and both are discussed further below. With regard to the standards for the Residential Overlay of AMC 18.3.13, the City Council finds that the subject property is within the Residential Overlay and that the revised floor plans presented for Planning Commission review at the April 2022 meeting show adjustments to the area configurations so that all five buildings under consideration have at least 65 percent of their ground floors dedicated to commercial use as required for mixed use buildings within the Residential Overlay.

The City Council finds that the proposal complies with the applicable Site Development and Design Standards of part 18.4. Seven of the eight buildings will be directly adjacent to the public streets with direct connections from the public sidewalks to the entrance of the commercial spaces provided, while one building (Building #5) is behind a street facing building. This building is accessed from the pedestrian walkways that connect to the public sidewalk. All proposed parking is to the side and rear of the buildings, and the residential parking is to be within the footprints of the buildings in enclosed garages. Bicycle parking is provided throughout the property.

The City Council notes that within the Detail Site Review overlay, developments that are greater than 10,000 square feet in gross floor area or contain more than 100 feet of building frontage are required to provide at least ten percent of the building area in plaza space which includes four of six requisite features. As initially proposed and considered by the Planning Commission in March of 2022, the application included a request for Exception to this standard in order to provide 3,087 square feet rather than the required 5,624 square feet of plaza space, however the revised submittals provided for the April of 2022 meeting revisited the plaza space requirements with a clearer and more detailed plan of the plaza space to be provided in each phase. As now proposed, the City Council finds that the plaza space is demonstrated to exceed the minimum requirement. Four distinct plaza areas totaling 8,774 square feet are now shown, where a minimum of 5,581 square feet is required, and as such the City Council concludes that the application no longer requires an Exception to the plaza space standard.

The subject property is located within the Skidmore Academy Historic District and is subject to the Historic District Development Standards. Compliance with the Historic District Development Standards was the most significant point of the appeal, and is discussed in detail in section 2.5 above. The Council finds that with the conditions included requiring design modifications for the buildings along Helman Street, the application complies with the Historic District Development Standards.

In considering off-street parking requirements and the on-street parking credits requested, the City Council notes that the application materials explain that the proposal requires 15.72 vehicle parking spaces for commercial uses in Phase One and an additional 9.198 parking spaces for commercial office use in Phase Two for a total of 25 (24.91) off-street parking spaces required for the commercial office uses. In addition, 32 off-street parking spaces are required for the two- and three-bedroom residences proposed. This residential parking is proposed to be provided within the private garages. The application proposes to provide a total of 17 of the 25 required commercial off-street parking spaces on site, and to rely on eight on-street parking credits. With the proposed Van Ness Street improvements, seven new on-street parking spaces will be created in bays, in addition to the five on-street spaces available on Water Street and seven on-street spaces present on Helman Street. The Council notes that during the 2017 application to develop 165 Water Street, there was lengthy discussion of the appropriate magnitude for a reduction in off-street parking requirements based on on-street credits, based on a recognition that while there was significant street frontage where on-street parking was allowed, there was also a spill-over in parking demand from the nearby downtown during the busiest times. The Planning Commission at that time ultimately determined that an eight space on-street credit was appropriate, particularly given that the applicant was proposing to create additional on-street parking spaces and in the Council view, the similar request here is reasonable.

Site Design Review approval also requires a demonstration “... *that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*” The Council finds that adequate city facilities exist to service the proposed development, and the application submittals include a Preliminary Utility Plan (C2.0), a Preliminary Grading & Drainage Plan (C1.0), and a Stormwater Diagram (L3.0). The application materials speak to the individual utilities as follows:

- **Water:** There is an existing 16-inch water main in Water Street, a 16-inch main in Van Ness Avenue, and a four-inch water main in Helman Street. New water services are proposed to be installed by the applicant adjacent to the street frontages, with four meters per structure proposed. There is a fire hydrant on Water Street and another fire hydrant across Helman Street from the subject property. The application indicates that the water line sizes and pressures are substantial enough to comply with the water needs for the proposed development.
- **Sanitary Sewer:** There is an eight-inch sanitary sewer line in the Water Street, and the applicant indicates that in discussion with the Wastewater Department Supervisor, there are no capacity issues with the public sanitary sewer lines. New sewer connections will be made to connect the proposed structure to the public sanitary sewer infrastructure.
- **Electrical:** Substantial upgrades are required to the electrical infrastructure. Primary power will be extended from a pole on Helman and Van Ness, and a new transformer will be installed. The new transformer will connect to a new junction box to be located on the south side of the public alley. A public utility easement will be provided for all public utilities proposed on the private property.
- **Storm Sewer:** There is a 12-inch storm sewer main in Van Ness Avenue, and a ten-inch

main in Water Street. The applicant indicates they have consulted the Street Division, and there are no capacity issues with the city's storm sewer facilities. The application emphasizes that because the post development peak flows from the site may not exceed pre-development peak flows, the proposal should have little discernable impact on the storm sewer system.

- **Transportation:** According the Transportation System Plan (TSP), both Water and Van Ness Avenue and Water Street are classified as Neighborhood Collectors, a street classification which anticipates less than 1,500 average daily trips (ADT) meant to provide access to residential and neighborhood commercial areas.

Water Street has a 40-foot right-of-way and has a varied improvement width. Water Street is currently "improved" with curb and gutter on the subject property side of the street (west) and curb, gutter, and a five-foot curbside sidewalk on the opposite (east) side. The applicant proposes to upgrade Water Street with five-foot hardscape park row constructed of a pervious surface and eight feet of sidewalk. A public pedestrian access easement will be provided to provide the required pedestrian access across the property.

Van Ness Avenue has a variable width right-of-way with 60-feet of ROW at the west side of the property which decreases to 40-feet at the intersection of Van Ness and Water Street. Van Ness Avenue is improved with curb, gutter and a four-foot curbside sidewalk. The proposal is for the majority of the sidewalk along the frontage of the proposed building to be brought into conformance with the city standard street cross-section (five-foot hardscape park row planting strip and an eight-foot sidewalk), but the sidewalk is proposed to transition to curbside adjacent to the new, on-street parking bays. Where the parking bays are proposed, the street trees are proposed to be provided in bump-outs.

Helman Street is classified as an Avenue, and is presently improved with a landscaped park row planting strip and sidewalk. This historic development pattern is proposed to be retained and new street trees are proposed to be added within a reconstructed park row.

The public alley along the south side of the property cannot be completed through to Helman Street due to the topography, and the applicant proposes to install a pedestrian stairway to provide pedestrian access to and through the development.

In terms of adequate transportation, the submitted materials include a new Traffic Impact Analysis (TIA) prepared by Kelly Sandow of Sandow Engineering. The new TIA concludes that all intersections meet mobility standards with the development in place, that the addition of development traffic will not substantially increase queueing conditions over the background conditions, and that all site driveways are projected to operate safely and efficiently. Where a previous TIA prepared for a development on the subject property in 2017 had identified mitigation necessary at the intersection of Water Street and North Main Street, no mitigation has been identified as necessary with the current analysis.

2.9 The Council notes that the original application submittal included a request for an Exception to the Street Design Standards in order to allow street trees to be provided in bump-outs within the Van Ness Avenue right-of-way rather than in standard five-foot by five-foot street tree grates within the sidewalk corridor in order to enable the placement of on-street parking in bays. The Council finds that while neither Table 18.4.6.040.F nor the cross-section illustrated in Figure 18.4.6.040.G.4.a. detail on-street parking in bays, the narrative description in AMC 18.4.6.040.G clearly notes that parking “... *may be provided in 7 ft bays rather than as a continuous on-street lane.*” Neither the table, the figure or the description address the treatment of street trees where parking is provided in such bays, however the City Council finds that placing street trees within bump-outs in the right-of-way as proposed in order to provide additional public parking in bays while still providing required street trees is consistent with the intent of the standards and an Exception to the Street Design Standards is not required.

2.10 The Council notes that the application here includes a request for a Physical and Environmental (P&E) Constraints Review Permit because the proposal includes development on both floodplain corridor lands and severe constraints lands, and also requests Exception from the associated Development Standards. A geotechnical report prepared by the Galli Group Geotechnical Consulting has been provided. This report explains that in Galli’s professional opinion, other than the potential flooding from an upstream dam failure or the unlikely chance of site liquefaction during a seismic event, there are no existing on site or nearby slopes or other geologic hazards that will potentially cause damage at the site. Galli notes that a final geotechnical report will further verify the liquefaction susceptibility of the project site and provide liquefaction mitigation design recommendations where necessary. These will likely consist of accomplishing subsurface improvements such as amending (lime or cement treatment) or removing and replacing all liquefiable soils or providing deep foundation support (piers or piles) for structures, which would transfer structural loads through the soft/liquefiable soils zones and into the underlying very dense soils/weathered bedrock. This final report will be provided prior to final design and construction of the project, and include final geotechnical design recommendations for site preparation, structural fill and earthwork and grading operations (including cuts and fills), fill on steep slopes, building pad preparation, footing design, lateral load resistance for retaining walls, seismic design parameters, and structure/site drainage and erosion control. The geotechnical report here concludes that, “... *this parcel and the surrounding area is considered to be stable for the construction of the proposed project... The re-grading of the site for the proposed mixed-use development, when constructed properly and in accordance with the final geotechnical, structural and civil design plans and specifications for the project, will not adversely impact the general slope stability of this or adjacent parcels. Proper erosion control measures, grading techniques (fill removal, cut and fill slope construction, fill placement and compaction, and fill-on-slope and retaining wall construction) and proper surface water control on all parts of the site will assure that the overall stability of this or adjacent parcels is not compromised. Therefore, in our professional opinion, the construction of the proposed Magnolia Terrace mixed use development on this parcel will not adversely impact the slope stability of this or adjacent parcels and will maintain public safety in the immediate area.*”

Based on the project geotechnical engineer's report, the City Council finds that the potential impacts to the property and nearby areas have been considered and that adverse impacts will be minimized through the final design and construction. The Council further finds that the applicant has considered the potential hazards and will implement measures to mitigate them. The Council concludes that the has taken all reasonable steps to reduce the adverse impact on the environment.

2.11 The Council notes that the application includes a request for Exception to the Development Standards for Hillside Lands. The application materials suggest that when the Hillside Ordinance was originally adopted, there was no discussion of it applying to commercial or employment zoned lands. The applicant further asserts that applying largely *residential* standards to a *commercial* development presents unique unusual and difficulties and notes that Exceptions to a number of the Development Standards for Hillside Lands are necessary including those for buildable area, retention in a natural state, grading and cuts, and the building location and design standards in order to comply with commercial development standards. The applicant further explains that because the site is zoned Employment but has a narrow band of steep slopes in the middle of the site, in order to develop the site in keeping with the standards for Basic Site Review, Detail Site Review, Additional Standards for Large Scale Projects and Historic District Development, encroachment into the steeply sloped area is necessary.

The Council finds that the development standards for hillside lands were not originally envisioned in terms of commercial development, and the building design standards found in AMC 18.3.10.090.E were specifically noted as not being applicable in historic districts as historic design compatibility was seen as taking precedence. The Council further finds that the 2017 application for 165 Water Street impacted these same slopes with a ten- to 12-foot retaining wall, and requested Exception to the Development Standards for Hillside Lands to allow a cut slope in excess of seven feet without terracing. At that time, the Planning Commission recognized that the site was *“relatively unique in being E-1 zoned, outside of the Hillside Lands overlay, with a limited area of Severe Constraints Lands near the rear of the property, and with developable E-1 land both above and below the slope which are to be protected from slope failure with structural retaining to enable development typical of E-1 lands and their associated development and design standards.”* The Council finds that while the current application now includes development both above and below these slopes, the 2017 findings remain applicable here. The Council concludes that the site's physical constraints are relatively unique for a commercially-zoned site within an historic district and, in light of the geotechnical report's assurances, the requested exception is merited.

2.12 The City Council notes that the application materials include a Tree Protection & Removal Plan (**Sheet L0.2**) which identifies 20 trees on the three subject properties and within the adjacent rights-of-way and proposes to remove them all. The written findings provided explain that:

“The site is proposed to be fully redeveloped with commercial structures and required parking areas. The amount of site work required to achieve the level of development required in the commercial zone, often necessitates the removal trees

that are within the buildable areas of the property. The trees are proposed for removal to permit the applicant to be consistent with other applicable ordinance requirements and standards applicable to the Site Design Standards and the Physical and Environmental Constraints ordinance.”

The application materials go on to explain that mitigation trees are proposed throughout the property, with 27 trees proposed to be planted within the parking lot and open space areas, and another 16 new street trees to be planted in the adjacent rights-of-way, to more than mitigate the removals requested. The Tree Commission reviewed the application at its regular meeting on March 3, 2022 and unanimously recommended that the application be approved as submitted.

The City Council finds that the removals requested are in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards to develop this E-1 property in keeping with its zoning designation, and that the request satisfies the applicable criteria for Tree Removal. The Council concludes that with the mitigation proposed, the project results in a net gain for the property in terms of trees.

SECTION 3. DECISION

3.1 The application before the Council is an appeal on the record of the Planning Commission’s denial of a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 165 Water St., 160 Helman St. and 95 Van Ness Av. The applicant’s original proposal includes a request for Site Design Review approval for five mixed-use commercial buildings, as well as associated surface parking, utility infrastructure and street improvements, as the first phase of developing the properties. The three remaining lots would have initial site work completed with the first phase, but building construction for the second phase would occur only after Site Design Review approvals are obtained for the three remaining buildings. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; and a request for a Tree Removal Permit to remove 20 trees from the three properties and within the adjacent rights-of-way.

The appeal identified four grounds for the Council’s consideration: 1) That the staff report was not received seven days prior to the hearing; 2) That staff presented new information during the public hearing; 3) That a member of the Historic Commission had *ex-parte* contact with a member of the public outside of the public hearing; and 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas was misapplied by the Planning Commission. In considering the appeal request, the City Council rejects the first three grounds for appeal, which were also waived by the applicant during the appeal hearing. However, with regard to the fourth ground for appeal (*That the standard in AMC 18.4.2.050.B.1 addressing ‘Transitional Areas’ was misapplied by the Planning Commission*) the Council finds that the Planning Commission did err in identifying specific means by which the application could be modified to meet the ‘Transitional Areas’ standard but subsequently denying the application rather than exercising its power to amend plans from AMC

18.5.2.080.G to approve the application subject to the conditions identified. On that basis, the Council supports the appeal on the fourth ground, reverses the Planning Commission's denial, and approves the application subject to conditions previously identified in the staff reports presented to the Planning Commission and new conditions incorporating design modifications previously identified by the Planning Commission as means to achieve compliance with the Historic District Development Standards, including the Transitional Areas standard. These conditions were agreed to by the applicant/appellant during the appeal hearing.

The subject property here is a complex one given its location within the Employment zone and the Detail Site Review and Historic overlay zones. It is subject to a high level of urban design review, but is also located partly within Ashland Creek's floodplain corridor lands and contains areas that are considered to be severely constrained by their steep slopes. In addition, the property is located at the outer edge of the Ashland Skidmore Academy Historic District in a transitional area where there are five zoning districts (R-2, R-3, E-1, C-1 and M-1) in the vicinity. Development of the site must balance all of these elements while addressing sometimes contradictory standards, and in the final analysis, the Council finds that with the conditions below an appropriate balance can be achieved.

Therefore, based on our overall conclusions, the City Council supports PA-APPEAL-2022-00015 only on the fourth ground for appeal, reverses the Planning Commission's denial, and approves PA-T2-2022-00037 with the conditions listed below.

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.
- 2) That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in conformance with those approved as part of this application, an application to modify this Site Design Review approval shall be submitted and approved prior to the issuance of a building permit.
- 3) That prior to the installation of any signage, a sign permit shall be obtained. All signage shall meet the requirements of the Sign Ordinance (AMC 18.4.7).
- 4) That all requirements of the Fire Department shall be satisfactorily addressed, including approved addressing (OFC 505); commercial fire apparatus access including angle of approach and any necessary fire apparatus or shared access easements (OFC 503.2.8); limitations on the installation of gates or fences; fire flow (OFC Appendix B, Table B105.1); fire hydrant clearance; fire department connection (FDC); a Knox key box; and fire sprinklers where required for mixed-use buildings or due to access constraints.
- 5) That a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.
- 6) That mechanical equipment shall be screened from view from surrounding rights-of-way, and the location and screening of all mechanical equipment shall be detailed on the building

- permit submittals.
- 7) That the front entrances of ground floor commercial spaces adjacent to Van Ness Av., Helman St. and Water St. shall remain functional and open to the public during all business hours, and the windows on the ground floor, including those adjacent to public plaza spaces, shall not be tinted so as to prevent views into the interior of the commercial spaces.
 - 8) That all measures installed for the purposes of long-term erosion control, including but not limited to vegetative cover, rock walls, retaining walls and landscaping shall be maintained in perpetuity on all severe constraints lands.
 - 9) That prior to the installation of stairs, parking, or utility infrastructure within the public alley right-of-way, an encroachment permit from the Ashland Public Works Department shall be obtained. Stairs, transformers, and any other improvements within the alley right-of-way shall be located so as to accommodate and not interfere with any neighbor's already approved circulation plan. A final revised site plan illustrating the placement of these proposed improvements shall be provide for the review and approval of the Public Works/Engineering Department and Staff Advisor prior to the issuance of an encroachment permit.
 - 10) If necessary to accommodate or align required street frontage improvements, the area for required street improvements shall be dedicated as public street right-of-way or a public pedestrian access easement provided as deemed appropriate by the Engineering Division and Staff Advisor. The right-of-way dedication or easement shall be submitted for review and approval of the Planning and Engineering Divisions prior to signature of the final survey plat.
 - 11) That prior to the submittal of a final survey plat for review and signature:
 - a. All easements including but not limited to public and private utilities and irrigation, public pedestrian access, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.
 - b. The applicant shall provide evidence that the replacement of existing irrigation lines has been planned in coordination with the Talent Irrigation District, Watermaster and/or the ditch users' association, and any necessary easements to accommodate the relocation shall be detailed on the final survey plat.
 - c. Final stormwater drainage, grading, erosion and sediment control plans shall be provided for the review and approval of the Engineering, Building and Planning Departments. The stormwater plan shall address Public Works/Engineering standards requiring that post-development peak flows not exceed pre-development levels. Any necessary drainage improvements to address the site's stormwater shall be provided at the applicants' expense. Storm water from all new impervious surfaces and run-off associated with peak rainfall events must be collected on site and channeled to the city storm water collection system (*i.e., curb gutter at public street, public storm pipe or public drainage way*) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.
 - d. A final utility plan for the project shall be provided for the review and approval of the Engineering, Planning and Building Divisions. The utility plan shall include the

location of any necessary connections to public facilities in and adjacent to the development, including the locations of water lines and meter sizes, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. Meters, cabinets, vaults and Fire Department Connections shall be located outside of pedestrian corridors and in areas least visible from streets, sidewalks and pedestrian areas, while considering access needs. Any necessary service extensions or upgrades shall be completed by the applicant at applicant's expense, and the applicants shall obtain all necessary permits and inspections from the Public Works/Engineering Department for work to be completed within the public rights-of-way.

- e. An electric design and distribution plan including load calculations and locations of all primary and secondary services including any transformers, cabinets and all other necessary equipment shall be provided for the review and approval of the Electric, Engineering, Building and Planning Departments prior to the issuance of excavation or building permits. Transformers, cabinets and vaults shall be located outside the pedestrian corridor in areas least visible from streets, sidewalks and pedestrian areas, while considering the access needs of the Electric Department. Any necessary service extensions or upgrades shall be completed at the applicant's expense.
- f. That the engineered construction drawings for the public sidewalk along Water Street shall be submitted for review and approval of the Ashland Planning and Engineering Divisions prior to work in the street right-of-way and prior to installation of improvements in the pedestrian corridor. The sidewalk shall be a minimum of eight feet in width with five-foot hardscape parkrows with irrigated street trees in five-foot by five-foot tree grates the sidewalk and the curb. All frontage improvements, including but not limited to the sidewalk, street trees, and street lighting, shall be constructed across the entire Water Street frontage of the site. The sidewalk shall be constructed to City of Ashland Street Standards, and shall be installed in *San Diego Buff* color as required in the historic districts.
- g. That the engineered construction drawings for the public sidewalk along Van Ness Avenue shall be submitted for review and approval of the Ashland Planning and Engineering Divisions prior to work in the street right-of-way and prior to installation of improvements in the pedestrian corridor. The sidewalk shall be a minimum of six-feet in width where bays are proposed and shall be installed according to the configuration approved herein. All frontage improvements, including but not limited to the sidewalk, parking bays, street trees in bump-outs, and street lighting, shall be constructed across the entire Van Ness Avenue frontage of the site. The sidewalk shall be constructed to City of Ashland Street Standards, and shall be installed in *San Diego Buff* color as required in the historic districts.
- h. That engineered construction drawings for the public sidewalk along Helman Street shall be submitted for review and approval of the Ashland Planning and Engineering Divisions prior to work in the street right-of-way and prior to installation of improvements in the pedestrian corridor for any modifications of the Helman Street pedestrian corridor. At a minimum, the existing sidewalks and

parkrow configuration on Helman Street shall be maintained, and new street trees with irrigation shall be planted in the parkrow across the entire Helman Street frontage of the site. Any newly constructed sidewalk within the historic districts shall be installed in *San Diego Buff* color as required in the historic districts.

- i. That the tract of land shall be surveyed and the final survey plat shall be submitted to the city for review and signature within 18 months of the final decision date of the preliminary partition plat.
- 12) That prior to the signature of the final survey plat:
- a. That street trees, one per 30 feet of street frontage, shall be installed on the Helman, Van Ness and Water Street frontages prior to final building inspection approval or the issuance of a certificate of occupancy. All street trees shall be chosen from the adopted Street Tree List and shall be installed in accordance with the specifications noted in Section E of the Site Design and Use Standards. The street trees shall be irrigated.
 - b. All utility service and equipment installations shall be completed according to Electric, Public Works/Engineering, Planning, and Building Departments' specifications, inspected and approved by the Staff Advisor.
 - c. Sanitary sewer laterals, water services including connection with meters at the street, and underground electric services shall be installed according to the approved plans to serve all units.
 - d. That all public improvements including but not limited to the street frontage improvements, alley, sidewalk, street trees, and street lighting shall be installed to City of Ashland standards under permit from the Public Works Department and in accordance with the approved plan.
 - e. That common area and open space improvements be installed or bonded for in accordance with the procedures in the Subdivision chapter prior to signature of Final Survey Plat.
 - f. That the CC&Rs or a similar maintenance agreement shall be provided for the review and approval of the Staff Advisor prior to signature of the final survey plat. This agreement shall describe the responsibility for the maintenance of all common use-improvements including landscaping, parking areas, driveways, planting strips and street trees. The CC&Rs or maintenance agreements shall state that deviations from the approved plan shall be considered a violation of the Planning Application approval and therefore subject to penalties described in the Ashland Municipal Code.
- 13) That building permit submittals shall include:
- a) The identification of all easements, including but not limited to public or private utility, drainage, access or parking easements, fire apparatus access easements, and public pedestrian access easements.
 - b) The identification of exterior building materials and paint colors for the review and approval of the Staff Advisor. Colors and materials shall be consistent with those approved in the application, and very bright or neon paint colors shall not be used.

- c) Specifications for all exterior lighting fixtures. Exterior lighting shall be selected, placed and directed on the property to avoid directly illuminating adjacent properties.
- d) Final revised Site, Landscape and Irrigation plans shall be provided for the review and approval of the Staff Advisor with the building permit submittals. These revised plans shall address: 1) a final size- and species-specific planting and irrigation plan, including the requirements for programmable automatic timer controllers and a maintenance watering schedule with seasonal modifications; 2) final lot coverage and required landscaped area calculations, including all building footprints, driveways, parking, and circulation areas, and landscaped areas. Lot coverage shall be limited to no more than 85 percent, and the calculations shall demonstrate that the requisite 15 percent landscaping and seven percent parking lot landscaping are provided;
- e) Identification and placement of required bicycle parking. Inverted u-racks shall be used for the outdoor bicycle parking, and all bicycle parking shall be installed in accordance with the standards in 18.4.3.070.I, inspected and approved prior to the issuance of the certificate of occupancy. The building permit submittals shall verify that the bicycle parking spacing and coverage requirements are met.
- f) A final geotechnical report which includes final geotechnical design recommendations for site preparation, structural fill and earthwork and grading operations (including cuts and fills), fill on steep slopes, building pad preparation, footing design, lateral load resistance for retaining walls, seismic design parameters, and structure/site drainage and erosion control. This report shall also include a detailed inspection schedule listing the inspections necessary to verify compliance with the geotechnical recommendations for the project.
- g) Retaining walls and building foundations to be constructed on severe constraints lands shall be designed by an engineer or architect with demonstrable geotechnical design experience, and written verification from the project geotechnical expert addressing the consistency of the building permit submittals with the geotechnical report recommendations (e.g. grading plan, storm drainage plan, erosion control plan, etc.) shall be provided with the building permit submittals.
- h) Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard B in the formula **[(Height – 16)/(0.445 + Slope) = Required Solar Setback]** and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
- i) Revised design drawings to address the conditions imposed by the Council here, including: 1) That the design of the southernmost building (**#4**) shall be modified to step back the third story at least six feet from the second story façade; 2) That the middle building (**#3**) shall be set back at least six feet from the sidewalk, and this additional setback area between the face of the building and the street shall be

improved as plaza space, and the final building design shall be modified to step back the third story at least six feet from the second story façade; 3) That the three buildings facing Helman Street shall have wall plate heights on their residential floors (i.e. the second and third stories) no greater than ten (10) feet to provide for nine (9) foot floor-to-ceiling heights which are unobstructed by mechanical ducting or plumbing installation; 4) That the final building designs shall incorporate the material changes previously presented to the Planning Commission for its April 2022 hearing.

- 14) That prior to the issuance of the building permit, the commencement of site work including staging or the storage of materials:
 - a) A Tree Verification Permit shall be obtained. Trees to be removed shall be tagged and tree protection measures installed according to the approved plan, inspected and approved by Staff Advisor. The Verification Permit is to verify tree identification prior to removal and to inspect the installation of tree protection fencing for the trees to be retained and protected. Tree protection measures shall be in the form of chain link fencing six feet tall, installed and maintained in accordance with the requirements of AMC 18.4.5.030.C.
 - b) That all necessary building permits fees and associated charges, including permits and connections fees for new, separate, underground electrical services to each proposed unit, and system development charges for water, sewer, storm water, parks, and transportation shall be paid.

- 15) That prior to the final approval of the project or issuance of a certificate of occupancy:
 - a) That all hardscaping and landscaping improvements including plaza spaces, landscaping, and the irrigation system shall be installed according to the approved plan, inspected, and approved by the Staff Advisor. Replacement trees to mitigate the trees removed shall be planted and irrigated according to the approved plan.
 - b) That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent residential properties.
 - c) Screening for the trash and recycling enclosure shall be installed in accordance with the Site Design and Use Standards, and an opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure as required in AMC 18.4.4.040.
 - e) That the project geotechnical expert shall inspect the site according to the inspection schedule, and prior to final building inspection approval or the issuance of the certificate of occupancy, the geotechnical expert shall provide a final report indicating that the approved grading, drainage and erosion control measures were installed as per the approved plans, and that all scheduled inspections were conducted by the project geotechnical expert periodically throughout the project.
 - f) That inverted u-racks shall be used for the bicycle parking. All bicycle parking shall be installed in accordance with design and rack standards in 18.4.3.070.I and J prior to final building inspection approval or the issuance of the certificate of occupancy.

The building permit submittals shall verify that the bicycle parking spacing and coverage requirements are met in accordance with 18.4.3.070.I.

- 16) That new driveway approaches shall be permitted through the Engineering Division and are required to be separated from existing driveways and each other by a minimum of 24-feet per City Street Standards. The driveway curb cuts shall be installed, inspected and approved, and any old/unused approaches removed, prior to final building inspection approval or the issuance of a final certificate of occupancy.
- 17) That the buildings included in the second phase are not approved here and shall require separate Site Design Review approval prior to the commencement of Phase II.

Ashland City Council Approval

February 7, 2023

Date