

ASHLAND MID-TOWN LOFTS



COUNCIL REVIEW of PLANNING COMMISSION DECISION

- Council shall not re-examine issues of fact. Council review on appeal limited to:
- Are Planning Commission findings supported by substantial evidence?
- Did Planning Commission commit errors of law?
- Were all issues raised clearly and distinctly set forth in Notice of Appeal?

AMC 18.5.1.060.1.5.b.

“SUBSTANTIAL EVIDENCE”

- Evidence a reasonable planning commission would rely on in reaching a decision.

Portland v. BOLI, 298 Or. 104 (1984).

“Substantial Evidence Rule”:

- Did Planning Commission have reasonable basis for decision?

Younger v. Portland, 305 Or. 346 (1988).

“Needed Housing” ⁽¹⁾

- 1) “Needed Housing” is all residential housing determined to meet a need within a city’s UGB, including multi-family housing for renter occupancy.

ORS 197.303(1)(a).

- 2) City may only apply “clear and objective” standards, conditions, and procedures to a project proposing “Needed Housing” -- including provisions regulating density.

ORS 197.307(4)(a).

“Needed Housing” (2)

(continued)

- 3) City’s land use standards, conditions and procedures ... **may not have the effect, either in themselves or cumulatively, of discouraging “Needed Housing” through unreasonable cost or delay.**

ORS 197.307(4)(b).

- 4) City standards applied to a “Needed Housing” proposal **must be clear and objective on the face of the ordinance.**

ORS 227.173(2).

Conditions of Approval

- If Planning Commission finds compliance with City criteria is “feasible”, then “it is entirely appropriate to impose Conditions of Approval to assure those criteria are met and defer responsibility for assuring compliance with those Conditions to planning and engineering staff as part of a second stage.”

Rhyne v. Multnomah County, 23 Or. LUBA 442 (1992).

- “Feasible”: Defined as, “possible, likely & reasonably certain to succeed.”

Meyer v. City of Portland, 67 Or. App. 274 (1984).

1. Conservation Housing Density Bonus

- Density Bonus “shall be awarded” if Units meet minimum requirements for City’s Earth Advantage Program certification.

AMC 8.2.5.080.F.3.a.

- “The Planning Commission finds that conservation housing is feasible and can be documented at building permit submittal.” *Rec: pg. 23 (P.C. Decision).*

- Program requires 3rd-Party Approval of Final Plans by Earth Advantage®.

2. Outdoor Recreation Space Density Bonus

- 8% of lot area shall be dedicated open space for recreational use by tenants; including “decks, patios, and similar areas” providing “suitable surface for human use.”

AMC 18.4.2.030.H.

- “Open Space” is landscaped or natural vegetation common areas; except thoroughfares, parking areas, or improvements other than recreational facilities.

AMC 18.6.1.

MidTown Lofts Open Space

- Criteria require 18% open space / outdoor recreation space. (16,465 sq. ft.).
- Applicant provides 23.6% open space / outdoor recreation space (20,465 sq. ft.).
- 15,019 sq. ft. courtyard & lawn areas.
- 13,147 sq. ft. outdoor recreation space (including patios and lawns which could be “otherwise developed”).
- Substantial Evidence supports Commission decision.

3. Major Recreation Facilities Density Bonus

- Flexible Outdoor Activity Space for “lawn” games (badminton, spike ball, cornhole, croquet, ladder golf, etc.)
- Covered BBQ Kitchen Area, Gas Fire Pit, Covered Seating Area.
- Planning Commission found proposed facilities qualify for density bonus based on recreational functionality and unique combination of facilities.

4. Bicycle Parking

- Planning Commission found “bicycle closet with rack” in each unit meets AMC 18.4.3.070.1 (‘a bicycle storage room, bicycle lockers or racks inside the building.’)
- Planning Commission found the 12 covered outdoor bicycle parking spaces qualified for alternative vehicle parking credit under AMC 18.4.3.060.B.2. *Rec: pg. 25.*

5. Existing Water & Sewer Facilities

- City of Ashland Public Works Department, there is adequate capacity in the City's system for the development of the property to be served by water, electric, sanitary sewer services and stormwater.

P.C. Public Hearing Testimony and Rec: pg. 176.

- Applicant's licensed engineer provided utility plan. *Rec: pg. 189.*
- Condition 5(f) ensures compliance, which is "feasible". *Rec: pgs. 30-31.*

6. 500 sq. ft. Studio Units

- Planning Commission found it was feasible for each Units to meet <500 sq. ft. “gross habitable floor area per unit” formula.
- Final unit sizes will be adjusted to ensure each unit has less than 500 sq. ft. “gross habitable floor area” under AMC 18.6.1 formula. *Rec: pg. 23-24.*
- Applicant’s architect demonstrated <500 sq. ft. per unit “feasible” under AMC 18.6.1 formula.
- Decision based on “substantial evidence”.

7. On-Street Parking Credits

- Applicant submitted ample evidence that justifying the seven (7) on-street parking credits, which is de minimus based on site's 600 linear-feet street frontage (reflecting more than 30 off-street parking spaces available). *Rec: pgs. 63-79.*
- Even if available on-street parking spaces reduced from 30 to 25, Applicant only requested credit for seven (7) off-street parking credits – or only 28% of remaining off-street parking spaces. *Rec: pgs. 63-79.*

8. Existing Driveway Curb Cut on Quincy Street

- Existing driveway curb cut does not require a variance. (Existing curb cuts served site's former Rivergate Church development).
- Driveway curb cut is "existing non-conforming structure." *AMC 18.1.4.040.*
- "Exempt Alteration" requires neither variance nor exception. *AMC 18.1.4.030.A.*
- Commission found existing curb cut location was "unusual aspect of site" and results in equal or superior connectivity." Rec: pg. 28.

9. Planning Commission Hearing Notice

- Any “error” in the notice of first Planning Commission hearing (Oct. 9), was “harmless error”, because Planning Commission continued public hearing to October 23.
- Technical or procedural errors do not support remand, where the petitioner does not demonstrate the procedural error played a role in final decision, or otherwise prejudiced petitioner’s substantial rights.

J4J Misc PAC v. City of Jefferson, 75 Or LUBA 120 (2017).

10. Stormwater Facilities

- Exception to Site Development & Design Standards to allow combination of bio-swales, underground treatment, and detention ponds will equally or better achieve stated purposes of SD&DS.

AMC 18.5.2.050.E.2.

- Exception based on substantial evidence in record from licensed Oregon engineer.

Rec: pg. 177.

11. New Evidence

- On October 16, 2018, (more than seven days before the continued hearing), Applicant submitted additional evidence for the record, which was made available to Appellants on City's web site. *Rec: pgs. 60-85.*
- Applicant's October 23 presentation tracked evidence submitted October 16.
- Under circumstances, any new evidence submitted played no role in final decision.

J4J Misc PAC v. City of Jefferson, 75 Or LUBA 120 (2017).

12. Staff Report & Record

- Draft Staff Report provided to Appellants 7 days before hearing. Final Staff Report 5 days before.
- Planning Commission continued public hearing from Oct. 9 to Oct. 23.
- Technical or procedural errors do not support remand, where the petitioner does not demonstrate the procedural error played a role in final decision, or otherwise prejudiced petitioner's substantial rights. J4J Misc PAC v. City of Jefferson, 75 Or LUBA 120 (2017).

CONCLUSION

- **“Substantial evidence”** supports Planning Commission Decision.
- Application proposes **“Needed Housing”** and **State law requires only standards which are clear and objective on the face of the City’s ordinance may be applied.**
- **Important Opportunity for Council to demonstrate City is serious about addressing Ashland’s Rental Housing Crisis.**