

# Council Business Meeting

January 15, 2019

<b>Agenda Item</b>	188 Garfield Street Appeal - Adoption of Findings	
<b>From</b>	Bill Molnar Derek Severson	Director of Community Development Senior Planner
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## **SUMMARY**

Adoption of findings to formalize the Council's decision on the 188 Garfield Street appeal.

## **POLICIES, PLANS & GOALS SUPPORTED**

N/A.

## **PREVIOUS COUNCIL ACTION**

At the December 18, 2018 meeting, the Council considered an appeal of the Planning Commission's approval a 72-unit apartment project at 188 Garfield Street. The Council rejected the appeal on all 12 issues raised and reaffirmed the Planning Commission's approval.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The attached findings formalize the Council's decision in terms of the procedural handling of the appeal hearing, address the 12 appeal issues, and adopt the Planning Commission's approved findings for the original land use decision as an attachment.

## **FISCAL IMPACTS**

There are no direct fiscal impacts related to the appeal of the planning action related to 188 Garfield Street.

## **STAFF RECOMMENDATION**

Planning staff recommends that the Council adopt the findings as presented.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

- 1) I move to adopt the findings for the appeal PA-APPEAL-2018-00005 as presented.
- 2) I move to adopt the findings for the appeal PA-APPEAL-2018-00005 with the following amendments [explain proposed amendments to findings].

## **REFERENCES & ATTACHMENTS**

Attachment 1: DRAFT Findings for PA-APPEAL-2018-00005 for Council Adoption

Attachment 2: November 13, 2018 Planning Commission Findings for PA-T2-2018-00003 to be adopted as Exhibit A of the Council findings

**BEFORE THE CITY COUNCIL**  
**January 15, 2019**

IN THE MATTER OF PLANNING ACTION PA-APPEAL-2018-00005, AN APPEAL )  
TO THE ASHLAND CITY COUNCIL OF THE PLANNING COMMISSION'S )  
APPROVAL OF PLANNING ACTION PA-T2-2018-00003, A REQUEST FOR )  
SITE DESIGN REVIEW APPROVAL TO CONSTRUCT A 72-UNIT STUDIO )  
APARTMENT COMMUNITY LOCATED AT 188 GARFIELD STREET. THE )  
APPLICATION ALSO INCLUDES REQUESTS FOR A TREE REMOVAL PERMIT )  
TO REMOVE 15 TREES THAT ARE MORE THAN SIX-INCHES IN DIAMETER AT )  
BREAST HEIGHT (D.B.H.); AN EXCEPTION TO THE SITE DEVELOPMENT AND )  
DESIGN STANDARDS TO TREAT STORMWATER RUN-OFF IN A COMBI- )  
NATION BIO-SWALES, UNDERGROUND TREATMENT FACILITIES AND DE- )  
TENTION PONDS RATHER THAN IN LANDSCAPED PARKING LOT MEDIANS )  
AND SWALES; AND FOR EXCEPTIONS TO STREET STANDARDS TO RETAIN ) **FINDINGS,**  
THE EXISTING CURBSIDE SIDEWALK SYSTEM ALONG THE FRONTAGES OF ) **CONCLUSIONS**  
THE PROPERTY AND FOR THE LOCATION OF THE DRIVEWAY CURBCUT ON ) **& ORDERS**  
QUINCY STREET, WHICH IS PROPOSED TO BE SHARED WITH THE PROP- )  
ERTY TO THE EAST AND WHICH WOULD EXCEED THE MAXIMUM DRIVE- )  
WAY CURB CUT WIDTH FOR RESIDENTIAL DEVELOPMENTS. ALL OF THE )  
PROPOSED UNITS ARE STUDIOS WITH LESS THAN 500 SQUARE FEET IN )  
GROSS HABITABLE FLOOR WHICH COUNT AS ¾ OF A UNIT FOR DENSITY )  
CALCULATIONS; DENSITY BONUSES ARE REQUESTED FOR CONSERVATION )  
HOUSING, OUTDOOR RECREATION SPACE AND MAJOR RECREATION FACIL- )  
ITIES. )

**OWNER/APPLICANT:** Spartan Ashland Rivergate Real Estate )  
Rogue Planning & Development Services )  
**APPELLANTS:** Devin Huseby and Michael Hitsky )  
)

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**RECITALS:**

- 1) Tax lot #2100 of Map 39 1E 10 CB is located at 188 Garfield Street within the R-3 High Density Multi-Family Residential zoning district.
- 2) The applicant is requesting Site Design Review approval to construct a 72-unit studio apartment community ("The MidTown Lofts") for the properties located at 188 Garfield Street. All of the proposed units are studio units that are less than 500 square feet in gross habitable floor area and each counts as ¾ of a unit for purposes of density calculation; density bonuses are requested for conservation housing, outdoor recreation space and major recreation facilities. The application also includes requests for a Tree Removal Permit to remove 15 trees that are more than six-inches in diameter at breast height (d.b.h.); an Exception to the Site Development and Design Standards to treat stormwater run-off in a combination of bio-swales, underground treatment facilities and detentions

ponds rather than in landscaped parking lot medians and swales; and for Exceptions to Street Standards to retain the existing curbside sidewalk system along the frontage of the property and for the location of the driveway curb cut on Quincy Street, which is proposed to be shared with the property to the east and which would exceed the maximum driveway curb cut width for residential developments. Site improvements are outlined on the plans on file at the Department of Community Development.

3) The criteria for Site Design Review approval are described in **AMC 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.*

4) The approval criteria for an Exception to Street Standards are described in **AMC 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.*
- 5) The approval criteria for a Tree Removal Permit are described in **AMC 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 18.10.*
    - 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.*

6) The Planning Commission, following proper public notice, held a public hearing on October 9, 2018 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, participants requested that the hearing or record remain open pursuant to ORS 197.763(6) to present additional evidence or argument. The Planning Commission continued the hearing to 7:00 p.m. on October 23, 2018 at the City Council Chambers, at which time testimony was again received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission approved the application subject to conditions pertaining to the appropriate development of the site.

Findings, Conclusions and Orders were subsequently adopted by the Planning Commission on November 13, 2018 and mailed to parties on November 14, 2018.

7) This matter came before the City Council as an appeal on the record pursuant to Ashland Municipal Code (AMC) 18.5.1.060.I. Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by Devin Huseby and Michael Hitsky, neighbors of the project who received required notice of the initial evidentiary hearing and participated in the hearing process by providing both oral and written testimony. AMC 18.5.1.060.I.2.c requires that each appeal set forth a clear and distinct identification of the specific grounds for which the decision should be reversed or modified, based on identified applicable criteria or procedural irregularity. The 12 clearly and distinctly identified grounds for appeal in this case were:

- 1) **The Planning Commission erred in approving the conservation housing density bonus;**
- 2) **The Planning Commission erred in approving the outdoor recreation space density bonus;**
- 3) **The Planning Commission erred in approving the major recreational facility density bonus;**
- 4) **The Planning Commission erred in approving the alternative bicycle parking solution proposed by the applicant;**
- 5) **The Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies;**
- 6) **The Planning Commission erred in calculating each of the 72 units as .75 units;**
- 7) **The Planning Commission erred in granting the on-street parking credits and by approving a project with insufficient off-street parking;**
- 8) **The Planning Commission erred in approving a driveway location on Quincy Street in exception to the street standards;**
- 9) **The content of the notice of public hearing was insufficient in not including the name and phone number of a City contact person and in failing to cite the applicable criteria and citations for decision;**
- 10) **The Planning Commission erred in approving an alternative to the**

- landscaped medians and swales;
- 11) **The Planning Commission erred procedurally and failed to provide due process by admitting new evidence during the applicant's rebuttal without providing other parties an opportunity to respond and in making findings which contradict the conditions of approval with regard to unit sizes, density bonuses and open and recreation space;**
  - 12) **The City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly.**

8) The City Council, following proper public notice, held a public hearing on December 18, 2018 at which time oral arguments were presented. Subsequent to the closing of the hearing, the City Council rejected the appeal on all 12 grounds, upheld the Planning Commission's original decision and approved the application.

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. CONCLUSORY FINDINGS**

2.1 The City Council finds that it has received all information necessary to make a decision based on the staff reports, public hearing testimony and the exhibits contained within the whole record.

2.2 The City Council finds that the Planning Commission was correct in determining that the proposal for Site Design Review approval met all applicable criteria for Site Design Review approval described in AMC section 18.5.2.050; that the proposal for an Exception to Street Standards with regard to the curbside sidewalks met all applicable criteria for an Exception described in AMC section 18.4.6.020.B.1; and that the proposal for a Tree Removal Permit to remove five trees met all applicable criteria for Tree Removal described in AMC section 18.5.7.040.B.

The Council further finds that the Planning Commission erred in addressing the request for an Exception to Street Design Standard with regard to the Quincy Street driveway, and should have instead

determined that the approved “Option B” for treatment of the Quincy Street driveway was an exempt alteration of a non-conforming development and did not require an Exception. The record shows that the nonconforming driveway curb cut location is pre-existing and cannot be relocated by the applicant because it serves an adjacent parcel not belonging to the applicant. The Council interprets AMC section 18.1.4.040 to allow the applicant to retain the existing driveway curb cut location as a nonconforming development, and the curb cut location will not be enlarged to further increase the nonconformity (i.e., bring it closer to other nearby curb cuts).

The Planning Commission’s adopted findings for Planning Action #PA-T2-2018-00002 are hereby adopted as Exhibit A to these findings, with the recognition that the initially-requested Exception to Street Standards with regard to the Quincy Street driveway in 2.4 was rejected by the Planning Commission and the alternative “Option B” approved by the Commission was an exempt alteration of a non-conforming development and did not require an Exception.

2.3 The Council finds that the proposed development of the 72 apartments is supported by the Comprehensive Plan: Element VI – Housing. Goal 6.10 of the Housing Element is “*Ensure a variety of dwelling types and provide housing opportunities for the total cross-section of Ashland’s population, consistent with preserving the character and appearance of the city.*” The Council further finds that the proposed development is supported by Element XIV - Regional Problem Solving. Through the associated Regional Problem Solving (RPS) plan and agreement, the city committed to accommodating a doubling of regional population within current boundaries. RPS included a commitment to achieving Regional Transportation Plan benchmarks for the number of new dwelling units in mixed-use/pedestrian friendly areas.

The Council further finds that the proposed development is a documented “Needed Housing” type in the Housing Needs Analysis: A Technical Supporting Document to the Housing Element of the City of Ashland Comprehensive Plan. The Housing Needs Analysis (HNA) notes that “*the housing types most needed, including multi-family rentals and government assisted housing are not being developed in accordance with needs.*” The HNA advises that the City develop strategies to encourage more multi-family housing.

2.4 Appeal Issue #1 is that the Planning Commission erred in approving the Conservation Housing density bonus. The appellants assert that there is not substantial evidence in the record to support the Conservation Housing density bonus, and that by granting the bonus without such evidence and deferring the requirement to additional evidence provided to the Building Division, the Commission abdicated their duty and granted authority to the Building Division in excess of its jurisdiction.

In considering this issue, the City Council first finds that, counter to the appellants’ assertions, the granting of a density bonus is not an Exception. AMC 18.2.5.080.F.3.a provides for a Conservation Housing density bonus as follows: “*The maximum bonus for conservation housing is 15 percent. One*

*hundred percent of the homes or residential units approved for development, after bonus point calculations, shall meet the minimum requirements for certification as an Earth Advantage home, as approved by the Conservation Division under the City's Earth Advantage program as adopted by resolution 2006-6.*" Resolution #2006-6 provides that the City adopts Earth Advantage Standards as the standards for the City's program for purposes of calculating the conservation housing density bonus.

The City Council finds that Earth Advantage is a third-party home certification program which seeks more sustainable, energy efficient homes. Compliance in design and construction is certified by a third-party inspector, and city staff review is limited to verifying that the building plans and point sheets have been provided to Earth Advantage for review. City staff do not conduct discretionary review for Earth Advantage compliance, and evidence of certification by an Earth Advantage third-party inspector is required prior to occupancy approval.

The City Council further finds that the application materials provided note that, *"The new, energy efficient units are proposed to be developed to Earth Advantage Multi-Family Standards. High efficiency HVAC systems, Low E windows and insulation with high R values will be provided. The proposed thermal envelopes will provide for more comfortable and stable room temperatures. LED lighting will be utilized both interior and throughout the property to further reduce energy consumption (Applicant's Amended Findings 8/23/18, pg. 4 of 22)."* *"All of the units are proposed to have an energy efficient envelope. The units are proposed to have LED and low electricity usage appliances. All of the proposed units will comply with Earth Advantage Multi-Family Standards (Applicant's Amended Findings 8/23/18, pg. 7 of 22)."* *"All of the units are proposed to have an energy efficient envelope. The units are proposed to have LED and low electric usage appliances. All of the proposed units will comply with Earth Advantage and Energy Star Requirements for new construction (Applicant's Amended Findings 8/23/18, pg. 10 of 22)."* *"Energy Usage: All of the units within the proposed development will be constructed to the Earth Advantage and Energy Star Standards. A detailed analysis of the actual energy consumption has not been determined but due to the high energy standards of the two programs the units will require substantially less energy to operate than typical construction. The units will be high performance, using the best practices and innovative construction technologies to gain efficiency in design, energy systems and materials for increased energy efficiency, superior indoor air quality, lower water usage and responsible use of natural resources (Applicant's Amended Findings 8/23/18, pg. 12 of 22)."* *"All of the units are proposed to have an energy efficient envelope. The units are proposed to have LED and low electric usage appliances. All of the proposed units will comply with Earth Advantage and Energy Star Requirements for new construction. Specifically, points from the Earth Advantage® Multifamily Homes 2012 Standard Measures Resource Guide (Modified) will be implemented on site. Due to the proximity to transit, community services, retail, schools; the small footprints, the amount of proposed open space areas, low water consuming landscaping, solar orientation, etc. the proposal will greatly exceed the minimum standards for compliance. This will be demonstrated on the building permit submittals (Applicant's Written Submittal 10/16/18, pg. 2 of 20)."*



The Council further finds that during the applicant's October 9<sup>th</sup> hearing testimony, it was indicated that the project team had met with a representative of Earth Advantage®, and that a points list based on Earth Advantage specifications would be provided with the building permit submittals as required to demonstrate compliance (Ashland Planning Commission Minutes 10/9/2018, pg. 8 of 10).

The City Council also finds that the Planning Commission made the finding that, *"With respect to the conservation housing bonus, the Planning Commission finds that conservation housing is feasible and can be documented at building permit submittal. (Planning Commission Findings 11/13/2018, page 4)."* The Planning Commission's condition #5m required that the building permit submittals include, *"Demonstrations that the conservation housing, additional recreation space and major recreational facilities requirements are satisfied to meet the requirements for the requested density bonuses. (Planning Commission Findings 11/13/2018, page 13)."* Condition #7h required that prior to project approval or the issuance of a certificate of occupancy, *"The applicant shall provide evidence of Earth Advantage certifications necessary to satisfy the requirements for the conservation housing density bonus requested (Planning Commission Findings 11/13/2018, page 14)."*

The City Council concludes that the Planning Commission determined based on evidence in the record that it was feasible to obtain the required third-party Earth Advantage® certification as required for the Conservation Housing density bonus, and included conditions to require evidence that the applicant was pursuing certification with the submittal of a building permit and that certification had been obtained prior to final occupancy. The Council further concludes that the Commission relied on evidence within the record and expert testimony that compliance at the building permit phase was feasible and typical and that the appellants had provided no evidence that compliance would not be feasible. The City Council rejects Appeal Issue #1.

2.5 Appeal Issue #2 is that the Planning Commission erred in approving the Outdoor Recreation Space Density Bonus. AMC 18.2.5.080.F.3.b provides for a density bonus for "Outdoor Recreation Space" as follows: *"The maximum bonus for provision of outdoor recreation space above minimum requirement established by this ordinance is ten percent. The purpose of the density bonus for outdoor recreational space is to permit areas that could otherwise be developed as a recreational amenity. It is not the purpose of this provision to permit density bonuses for incidental open spaces that have no realistic use by project residents on a day-to-day basis. One percent increased density bonus for each percent of the project dedicated to outdoor recreation space beyond the minimum requirement of this ordinance."*

The City Council finds that separate from any density bonus, there is a minimum "Open Space" requirement for Residential Developments in the Building Placement, Orientation and Design Standards chapter (AMC 18.4.2) which is detailed as follows in AMC 18.4.2.030:

**H. Open Space.** *Residential developments that are subject to the provisions of this chapter shall conform to all of the following standards.*

1. **Recreation Area.** *An area equal to at least eight percent of the lot area shall be dedicated to open space for recreational use by the tenants of the development.*
2. **Surfacing.** *Areas covered by shrubs, bark mulch, and other ground covers that do not provide suitable surface for human use may not be counted towards this requirement.*
3. **Decks and Patios.** *Decks, patios, and similar areas are eligible for open space.*
4. **Play Areas.** *Play areas for children are required for projects of greater than 20 units that are designed to include families. Play areas are eligible for open space.*

The Council further finds that the Definitions chapter in AMC 18.6.1.030 defines “Open Space” as, “A common area designated on the final plans of the development, permanently set aside for the common use of the residents of the development. Open space area is landscaped and/or left with a natural vegetation cover, and does not include thoroughfares, parking areas, or improvements other than recreational facilities.” The Council finds that “Outdoor Recreation Space” is not defined in the ordinance.

The Council finds that the appellants argue that the record and decision are entirely unclear as to what parts of the project are counted for the outdoor recreation space bonus except for the private patios and deck areas, which were improperly counted as outdoor recreation space. The appellants further argue that other areas including incidental open space and the space dedicated to the purported major recreational facility were improperly counted, and that by granting the density bonus, which they again incorrectly describe as an Exception, without substantial evidence and then deferring the requirement to review by Building and Planning staff the Commission abdicated their duty and granted authority to the staff being their jurisdiction.

The City Council finds that the applicant’s request explains (Applicant’s Written Submittal 10/16/18, pg. 2-3 of 20):

*“The required eight percent outdoor recreation space for a 91,474 square foot parcel is 7,318 square feet. In order to obtain an outdoor recreation area credit an additional 9,147 square feet in area for outdoor recreation is required (16,465.32 square feet).”*

*“The proposed outdoor recreation space for the property is a combination of semi-private patios and balconies and the larger open space with lawn areas, large patio area with table and chairs, community BBQs and fire pit and a shade structure. There are substantial lawn areas that are also outdoor recreation areas.”*

*“The total lot area devoted to outdoor recreation area for the MidTown Lofts ‘community’ is 21,643 square feet in area or 23.6 percent.”*

*“Each unit also has a semi-private outdoor space that is either a deck or a patio area which accounts for 6,624 square feet. The courtyard and lawn area (evidence by hashed line on AP 1.1.1 attached) 15,019 square feet. These areas total 21,643 square feet in area of the property devoted to outdoor recreation space.”*

*“To be consistent with Staff and Commission’s previous decisions regarding ‘usable’ area of the outdoor recreation area, approximately 15.5 square feet of area from each unit was excluded for entry areas (findings state 5,616 this is the area of the patio excluding the entry area in front of each door). This reduces the total provided area to 20,635 which still exceeds the required area of 16,465.32 square feet in area.”*

The City Council finds that the applicant’s October 23, 2018 submittals include sheet AP1.1 “Site Plan w/Areas which illustrates the proposed recreation space including the central courtyard area, patios and lawn area.

The Council further finds that the Planning Commission made a finding that, *“With respect to the outdoor recreation space bonus, the Planning Commission finds that the bonus provisions do not specifically require outdoor recreation space to meet the “Open Space” definition in 18.6.1.030, so the spaces proposed for patios and decks can comply with this requirement and there is more than sufficient outdoor recreation square footage in the proposal to justify the requested bonus* (Planning Commission Findings 11/13/2018, page 4).”

The Council further finds that in addition, to insure that final permit submittals would be consistent with the approval, a condition #5m was included to require that the final building permit plans include, *“Demonstrations that the conservation housing, additional recreation space and major recreational facilities requirements are satisfied to meet the requirements for the requested density bonuses.”*

The City Council concludes that the Planning Commission correctly found that there was more than sufficient outdoor recreation space square footage to justify the requested bonus. As noted above, the narrative submittal and supporting drawings indicated that a total of 23.6 percent of the site was to be provided in required open space and proposed additional outdoor recreation space where only 18 percent of the project area (eight percent for required open space plus 10 percent for outdoor recreation space to support the requested density bonus) was required. 18 percent equated to 16,465 square feet, while the project plan identifies 20,465 square feet - *after excluding the portion of the semi-private patios dedicated to the entry path to doorways, which would be unavailable for recreational use* - of total project open and recreational space. The project plans show that 15,019 square feet is proposed in broad common areas including courtyard and lawn which easily meet the 8 percent/7,318 square foot minimum open space requirement, and that the remaining 13,147 square feet provides outdoor recreation space, including decks and patios, in areas that could have “otherwise developed” with other types of uses per 18.2.5.080.F.3.b. The City Council rejects Appeal Issue #2, and support the Planning Commission’s findings and their determination that semi-private patios and decks, which provide outdoor areas for residents to have a personal barbeque, outdoor seating, or patio garden, can appropriately be considered as outdoor recreation space rather than requiring them to meet the definition of “Open Space.”

2.6 Appeal Issue #3 is that the Planning Commission erred in approving the Major Recreational Facility density bonus. AMC 18.2.5.080.F.3.c addresses the “Major Recreational Facilities” density bonus as follows:

*‘The maximum bonus for provision of major recreational facilities is ten percent. Density bonus points shall be awarded for the provision of major recreational facilities, such as tennis courts, swimming pools, playgrounds, or similar facilities. For each one percent of the total project cost devoted to recreational facilities, a six percent density bonus shall be awarded to a maximum of ten percent. Total project cost shall be defined as the estimated sale price or value of each residential unit times the total number of units in the project. Estimated value shall include the total market value for the structure and land. A qualified architect or engineer using current costs of recreational facilities shall estimate the cost of the recreational facility for City review and approval.’*

The City Council finds that the applicant requested a four percent bonus for Major Recreational Facilities. The applicant’s October 16, 2018 “Value of Major Recreational Facilities for the Ashland Urban Lofts notes that the total project cost is estimated at \$11,775,000 and the one percent of that amount necessary for a six percent bonus would be \$117,750. This would equate to a six percent bonus; a four percent bonus would necessitate a major recreational facilities expenditure of \$78,500. The qualified architect’s estimate indicates that the proposed improvements to the courtyard area will total \$164,000 which significantly exceeds the amount necessary for the requested bonus.

The Council finds that the appellant suggests that the facilities proposed do not meet the requirements for the bonus because the facilities proposed are not similar to the facilities identified in the code, and the applicant’s submittals were contradictory and insufficient, including the financial calculations and estimates used to justify the amount of the bonus sought. The appellant argues that the area for the major recreational facilities appears to have been improperly double counted in support of other/inconsistent purposes. The appellant also asserts that the decision is not supported by substantial evidence, and that by deferring the review of additional evidence to the Building and Planning Division staff, the Commission has abdicated their duty and granted authority to the Building and Planning staff in excess of their jurisdiction.

The City Council finds that the Planning Commission made a finding that,

*“...AMC Section 18.2.5.080.F.3.c allows a density bonus for major recreational facilities in exchange for the applicant providing “tennis courts, swimming pools, playgrounds or similar facilities.” The bonus allowed is six percent additional density for each one percent of project cost, based on the estimated sale price or market value of structures and land, devoted to major recreational facilities. The facility proposed here is identified as a “flexible outdoor activity space... for ‘lawn’ games such as badminton, spike ball, cornhole, croquet, ladder golf, and others.” Also included within the proposed recreation space are a fire pit, barbecue kitchen area, and covered seating area. The Planning Commission finds that the facilities proposed are “similar facilities” akin to a playground for the likely adult tenants of the development and that the combination of facilities proposed for lawn games, fire pit, barbecue, kitchen area and covered seating areas constitute major recreational facilities which will be heavily used by tenants and which will serve to build community within the development. The Commission*

*finds that these facilities qualify for the requested bonus based both on the recreational functionality of the unique combination of facilities proposed for anticipated tenants, and based on the estimated value provided (Planning Commission Findings 11/13/2018, page 5)."*

The Council further finds that the applicant provided an estimate from project architect Raymond Kistler using current costs of the proposed recreation facilities to estimate the cost of the recreational facility (Applicant's Value of Major Recreational Facilities..., 10/16/2018). The applicants also provided their sheet AP1.1 "Site Plan w/Areas" which illustrates the proposed recreation space and provides associated area calculations. The applicant's hearing presentation included a preliminary courtyard plan and photo-realistic color rendering illustrating the improvements proposed.

The City Council concludes that the Planning Commission made the determination that the applicant had proposed facilities for lawn games, a fire pit, barbecue, kitchen area and covered seating areas which constituted major recreational facilities that would likely be heavily used by tenants and which would serve to build community within the development. The Commission found that these facilities qualified for the requested bonus based on the recreational functionality of the unique combination of facilities proposed for anticipated tenants which the Commission determined were similar to an adult playground, and based on the estimated value provided from a qualified architect and thus satisfied the requirements for the density bonus. The City Council rejects Appeal Issue #3.

2.7 Appeal Issue #4 is that the Planning Commission erred in approving the alternative bicycle parking solution proposed by the applicant.

The City Council finds that the application explains *"one covered bicycle parking space is required for each unit. In order to provide for bicycle security, a hanging bicycle rack for a single bicycle will be provided within each unit except for the two A-Type (ADA accessible) units. The hanging rack has a nook provided for the bike hanger, the A-type units require a larger bathroom and doorways that eliminate the area for the bike hanger. Outside of the units, in covered areas as stand-alone structures, found near the parking area that parallel Iowa Street, inverted U-racks in groups of six providing for 12 spaces for visitors, or tenants that chose to park outside of their unit (Applicant's Amended Findings 8/23/2018, pg. 12 of 22)."* Exterior rack placement is illustrated on the applicant's Preliminary Landscape Site Plan (Sheet L01, 8/23/2018).

The Council finds that the appellants argue that the Commission erred in approving the proposed bicycle parking as the indoor hangers are not an acceptable bicycle parking rack located in an appropriate location as and do not comply with AMC 18.4.3.070.I.2 or 18.4.3.070.J.

The Council further finds that AMC 18.4.3.040.C.1 requires one sheltered bicycle parking space per studio or one-bedroom unit. AMC 18.4.3.070.I.2 provides that bicycle parking requirements can be met either by providing bicycle racks or lockers outside the main building, underneath an awning or marquee, or in an accessory parking structure; by providing a bicycle storage room, bicycle lockers,

or racks inside the building, or by providing bicycle racks on the public right of way, subject to review and approval by the Staff Advisor. Bicycle parking is to be located so that it is visible to and conveniently accessed by cyclists, and promotes security from theft and damage. The Land Use Ordinance provides a number of standards for exterior bicycle parking and for racks, but with regard to interior parking notes only that, “A bicycle parking space located inside of a building for employee bike parking shall be a minimum of six feet long by three feet wide by four feet high (AMC 18.4.3.070.I.7).” The applicant’s proposal is for residential units and does not involve employee bike parking.

The City Council finds that the Planning Commission made the finding, “that the applicants proposal to provide a bicycle closet with rack in each unit is consistent with the allowance in AMC 18.4.3.070.I to address bicycle parking by providing ‘a bicycle storage room, bicycle lockers or racks inside the building.’ In addition, the applicants have proposed 12 covered bicycle parking spaces outside in requesting an alternative vehicle parking credit under AMC 18.4.3.060.B.2. The Planning Commission finds that the parking proposed satisfies the parking requirements for the proposed units (Planning Commission Findings 11/13/2018, pg. 6)”.

The City Council concludes that the Planning Commission correctly found that the proposed bicycle closets with hangers within each unit satisfied the bicycle parking standards, which allow required parking to be provided indoors with “a bicycle storage room, bicycle lockers, or racks inside the building,” and that this arrangement accommodates required bicycle parking as allowed under the standards and “promotes security from theft and damage.” The City Council supports these findings and rejects Appeal Issue #4.

2.7 Appeal Issue #5 is that the Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies. The appellants argue that the Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies through the proposed development in violation of AMC 18.4.6.070.D.

The City Council finds that Appeal issue #5 is limited to water and sewer, which are considered separately from urban storm drainage both in the approval criterion and in the section (18.4.6.070) cited by the appellants in the appeal notice, and as issues raised with urban storm drainage are outside the scope of the Council’s consideration of Appeal Issue #5.

The City Council also finds that the applicant’s findings note:

*“Adequate city facilities exist to service the proposed development.”*

**“Water:** A water meter serves the property on Garfield Street. There is a fire hydrant at the intersection of Garfield Street and Iowa Street. Another fire hydrant is present across Quincy Street from the subject property. Water mains are present in Iowa Street (six-inch main),

*Garfield Street (four-inch main), and in Quincy Street where there is a four-inch main. A single service for the units, a service for the open space and fire connections are proposed on the north side of the driveway accessing the site from Garfield Street.”*

*“**Sanitary Sewer:** Sanitary sewer services are present in Iowa Street, Garfield Street and in Quincy Street. Each has a six-inch sanitary sewer main. There is adequate capacity in the lines to service the new units. (Applicant’s Amended Findings 8/23/2018, pg. 18 of 22).”*

The Council further finds that the applicant’s sheet C1 includes a Conceptual Grading and Drainage Plan prepared by Marquess & Associates, Inc. which addresses proposed grading, drainage and utilities and which illustrates the proposed existing sanitary sewer and waterlines within the adjacent rights-of-way and the proposed extension of services to serve proposed irrigation and domestic water service meters and hydrant and fire vaults.

The Council also finds that the Site Design Review approval criteria in AMC 18.5.2.050.D. address water and sewer facilities as follows: *“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.**”* With regard to water and sewer facilities, AMC 18.4.6.070 details the following:

***18.4.6.070 Sanitary Sewer and Water Service Improvements.***

- A. Sewers and Water Mains Required.** *All new development is required to connect to city water and sanitary sewer systems. Sanitary sewer and water system improvements must be installed to serve new development and to connect developments to existing mains, considering the City’s adopted facility master plans and applicable standards. Where streets are required to be stubbed to the edge of the development, sewer and water system improvements, and other utilities, must also be stubbed with the streets, except where alternate alignment(s) are approved by the City Engineer.*
- B. Sewer and Water Plan Approval.** *Development permits for sewer and water improvements in the public right-of-way or public easements must be approved by the City Engineer.*
- C. Over-Sizing.** *The approval authority may require as a condition of approval that sewer and water lines serving new development be sized to accommodate future development within the area as projected by the applicable facility master plans; and the City may authorize other cost-recovery or cost-sharing methods as provided under state law.*
- D. Inadequate Facilities.** *Development permits may be restricted or rationed by the City where a deficiency exists in the existing water or sewer system that cannot be rectified by the development and which if not rectified will result in a threat to public health or safety, surcharging of existing mains, or violations of state or federal standards pertaining to*

*operation of domestic water and sewerage treatment systems.*

The Council further finds that, with regard to water and sewer facilities, the Planning Commission findings noted:

- **Water:** *The application notes that a water meter currently serves the property from Garfield Street, and that there is a fire hydrant in place at the intersection of Garfield and Iowa Streets and another is present on the opposite side of Quincy Street. The application further explains that there is a six-inch water main in Iowa Street, a four-inch water main in Garfield Street, and a four-inch water main in Quincy Street. The application proposes to provide a single water service for the proposed units, a service for the open space, and a fire connection on the north side of the driveway accessing the site from Garfield Street.*
- **Sewer:** *The application notes that there are six-inch sewer lines available in Iowa, Garfield and Quincy Streets, and indicates that these lines provide adequate capacity to serve the proposed units (Planning Commission Findings 11/13/2018, pg. 5).*

The Council finds that the Planning Commission also made the finding that, “...that the application includes conceptual plans detailing grading, drainage and utilities proposed to serve the project. Conditions have been included to require that prior to the issuance of a building permit, revised civil drawings including final grading, drainage, erosion control, utility, and electric service plan with load calculations be provided for the review and approval of the Building, Planning, Public Works/Engineering and Electrical Departments (Planning Commission Findings 11/13/2018, pg. 5).”

The Council finds that the approval criteria require adequate capacity, and that the associated standards call for connection to city systems and require the approval of development permits by the City Engineer. The City Council further finds that compliance with the adopted water and sewer master plans is not an approval criterion, and that these master plans are intended to guide the city’s long-term planning to insure that infrastructure projects are adequate for full build-out of the city, rather than to identify specific projects necessary for current developments. The criteria provide that development may be restricted or rationed where a system deficiency exists that cannot be rectified by the development.

The Council further finds that the application included an engineered plan showing connection to the specific facilities within the adjacent right-of-way, and the applicant noted in October 9, 2018 presentation that “According to the various City of Ashland Public Works Departments, 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.”

The City Council concludes that AMC 18.4.6.070 requires that the applicant connect to city water and sewer systems, provide plans for the City Engineer’s approval prior to the approval of development permits for work in the public rights-of-way, and further provides that if existing facilities are deficient and cannot be rectified development permits may be restricted. The application proposes to connect



to city systems, includes a plan prepared by an engineer detailing these connections, and the Planning Commission approval was conditioned to provide a final plan with the development permit for approval by the City Engineer. While issues were raised during the hearing process that the existing facilities were not sized consistently with minimum pipe sizes for future master plan projects, the Council concludes that the master plan identifies projects and parameters for accommodating population growth over the long-term and are not intended to impose requirements on individual developments. The Planning Commission accepted the applicant's plan prepared by a professional engineer and assurances by the applicant's team of professionals that the water and sewer facilities were adequate and adequately sized, and that this had been confirmed by the Public Works Department. The Council concludes that the Planning Commission did not err, that there was sufficient evidence in the record to support their findings, and rejects Appeal Issue #6.

2.8 Appeal Issue #6 is that the Planning Commission erred in calculating each of the 72 units as .75 units. The appellants argue that each of the proposed units in the application were illustrated as being greater than 500 square feet in gross habitable floor area, and the Commission erred in allowing the applicant to submit evidence during their rebuttal argument that the units would be adjusted to be less than 500 square feet. The appellants also assert that the Planning Commission failed to adequately address definitional irregularities in the calculation of square footage.

The City Council finds that AMC 18.2.5.080.B.2 "Residential Density Calculation in R-2 and R-3 Zones" provides that, "*Units less than 500 square feet of gross habitable area shall count as 0.75 units for the purposes of density calculations.*" In the Definitions chapter (AMC 18.6.1), "Floor Area, Gross Habitable" is defined as, "*The total area of all floors in a dwelling measured to its outside surfaces that are under the horizontal projection of the roof or floor above with at least seven feet of head room, excluding uninhabitable spaces accessed solely by an exterior door.*"

The Council further finds that the applicant had proposed to construct all of the proposed units at less than 500 square feet of gross habitable floor area, however during the hearing process it was discovered that their methodology for measuring gross habitable floor area was inconsistent with the definition as they were measuring to interior walls when the code requires gross habitable floor area be measured to the outside surfaces, i.e. to exterior walls. During their rebuttal testimony, the applicants recognized the error in their methodology and indicated that the unit sizes could be adjusted to comply with the correct measuring methodology so that each unit would be less than 500 square feet in gross habitable floor area. The Planning Commission included a condition of approval (#1) which read, "*That all proposals of the applicant shall be conditions of approval unless otherwise modified herein, including that the final units' dimensions shall be adjusted in the building permit submittals so that each unit has less than 500 square feet of gross habitable floor area which is defined in AMC 18.6.1 as, 'The total area of all floors in a dwelling measured to its outside surfaces that are under the horizontal projection of the roof or floor above with at least seven feet of head room, excluding uninhabitable spaces accessed solely by an exterior door'*" (Planning Commission Findings 11/13/2018, pg. 10)."

The Council finds that in their initial submittals, the applicant had calculated floor area of the units to the inside wall surfaces, which is contrary to the code defined methodology for measuring gross

habitable floor area. When the measuring error was discovered, the applicant indicated that the unit sizes could and would be corrected to comply with the definitional requirements. The Council further finds that the Planning Commission found that it was feasible to correct the unit size in the building permit drawings, and that decks and other similar areas that are not inside the structure do not fit within the defined measurement methodology as they are aren't within the outside surfaces, i.e. the exterior walls, and that the appellants have not shown that correcting the unit size is not feasible. The Council concludes that the Commission did not err here, and rejects Appeal Issue #6.

2.9 Appeal Issue #7 is that the Planning Commission erred in granting on-street parking credits and by approving a project with insufficient off-street parking. The appellants argue that the Planning Commission's findings that there was more than 600 linear feet of frontage with roughly 30 on-street parking spaces available were not supported by evidence in the record as Quincy Street is unavailable and it is unclear how much of the remaining frontage on Garfield and Iowa Streets is available due to new yellow curbs and the proximity to the SOU zoning overlay. The appellant further argues that the Commission erred in accepting evidence regarding yellow curbed areas during applicant's rebuttal without giving other parties the opportunity to respond, and the evidence regarding the number of spaces in the parking lot is insubstantial and contradictory, and because the units are greater than 500 square feet (see appeal issue #6, above) 108 parking spaces are required rather than the 72 indicated by the applicant.

The City Council finds that in Table 18.4.3.040 in the Parking, Access and Circulation chapter, multi-family dwellings less than 500 square feet are required to provide one parking space per unit based on gross floor area, with fractions rounded to the nearest whole number. AMC 18.4.3.060 "Parking Management Strategies" provides that credit for on-street parking spaces may reduce the required off-street parking spaces up to 50 percent (18.4.3.060.A). On-street spaces may not be counted for credits when they are within 200 feet of the SOU zone (18.4.3.060.A.3.d). The applicant's submittals note that the SOU zone is located approximately 200 feet to the northeast of the property (Applicant's Amended Findings 8/23/2018, pg. 3 of 22) and includes a reference map illustrating the relationship to the zone, and as such on-street parking on Quincy Street at the northeastern portion of the subject property is not excluded from consideration for credits.

The Council further finds that AMC 18.4.3.060.B provides that alternative vehicle parking may reduce the required off-street parking spaces by up to 25 percent, with one off-street parking space credit for each five additional, non-required bicycle parking spaces.

The Council finds that the applicant's request explains that:

*"The proposed development requires 72 parking spaces. The required parking was proposed as a combination of on-site parking in a 67-space surface parking lot and a request for five on-street parking credits. The shift of the driveway from a consolidated driveway to the existing curb-cut requires the elimination of five of the on-site parking spaces. This translates to an increase in on-street credits requested from five to seven. With the provision of 12-bicycle parking spaces above the 72 required, two vehicle parking credits are possible from the Parking Management Strategies found in AMC 18.4.3.060. With the approval of seven on-*

*street credits, the revised 63-space parking area and on-site bicycle parking complies with the minimum parking standard for the proposed development.”*

*“Attached are photographs of the on-street parking from 2012, 2015 and 2018. In all photos, there is ample on-street parking present along the more than 600-feet of street frontage abutting the property. On average over the past six years, there have been between six to ten cars on Garfield Street; zero to two on Iowa Street and two-five on Quincy Street. There are newly painted yellow curbs that restrict parking within the vision clearance triangle of Iowa and Garfield Streets. With more than 30 available on-street credits, the request for seven is de minimus and should be allowed to off-set the increase in on-site pavement, and reductions in landscaping. (Applicant’s Additional Submittals 10/16/2018, pg. 4 of 20).”*

The Council further finds that during rebuttal by the applicant, the applicant indicated that the proposed driveway location (“Option B”) reduced on-site parking to a total of 64 spaces (Ashland Planning Commission Minutes 10/23/2018, pg. 4 of 8). The applicant’s submittals include photos of on-street parking availability (Applicant’s Additional Submittals 10/16/2018, pp. 7-19 of 20) and sheet AP1.1 “Site Plan w/Areas” which illustrates nine potential on-street parking spaces on Quincy Street, 15 potential on-street parking spaces along Garfield Street, and six potential on-street parking spaces along Iowa Street. One of the appellants, Mr. Huseby, also provided a declaration regarding parking and traffic (Appellant Huseby’s 10/16/2018 E-Mail submittal) which includes photos and observations of parking on the frontage streets.

The Council notes that the Planning Commission found that:

*“With regard to off-street parking requirements detailed in AMC 18.4.3, the Planning Commission finds that 72 studio units less than 500 square feet require 72 parking spaces. The applicant proposes to provide 64 off-street parking spaces in surface parking lots and have requested the remaining eight spaces be addressed through a combination of six on-street parking credits and two credits for the additional exterior covered bicycle parking to be provided on-site. The subject properties have more than 600 linear feet of frontage with roughly 30 on-street parking spaces available. The site-specific evidence in the record shows that the requested on-street parking credit is reasonable, and that on-street parking is available except during relatively infrequent events such as larger events at the nearby Ashland High School. The Planning Commission further finds that the applicants proposal to provide a bicycle closet with rack in each unit is consistent with the allowance in AMC 18.4.3.070.I to address bicycle parking by providing “a bicycle storage room, bicycle lockers or racks inside the building.” In addition, the applicants have proposed 12 covered bicycle parking spaces outside in requesting an alternative vehicle parking credit under AMC 18.4.3.060.B.2. The Planning Commission finds that the parking proposed satisfies the parking requirements for the proposed units (Planning Commission Findings 11/13/2018, pg. 6).”*

The Council finds that, as noted in the discussing of Appeal Issue #6 above, the units are required to have less than 500 square feet of gross habitable floor area by Condition #1 of the Planning Commission’s approval, and as such require only on space per unit for a total of 72 parking spaces. The Planning Commission’s approval allowed for an eight space reduction in required off-street

parking from 72 to 64 through a combination of six on-street parking credits and two credits for additional covered bicycle parking to be provided on site. The Council concludes that six on-street parking spaces require only 132 linear feet of curb frontage (six spaces x 22 feet/space = 132 feet) while there is over 600 linear feet of curb frontage noted, and the parking observations provided by the appellant suggest that there is ample parking along the properties' street frontages to accommodate six cars except during unusual events such as sporting events at the high school or university, and the written testimony established that there is sufficient parking available on street. The Council concludes that Planning Commission did not err in their findings and that there was sufficient evidence in the record that the parking requirements had been satisfied. The Council rejects Appeal Issue #7.

2.10 Appeal Issue #8 is that the Planning Commission erred in approving a driveway location on Quincy Street as an Exception to the Street Standards. The Council notes that the separation between the subject property's driveway on Quincy Street and the adjacent driveway to the east is approximately 18 feet, and that with regard to the driveway separation/curb cut width request, the Planning Commission made the finding:

*“that the existing driveway location on Quincy Street does not currently comply with the minimum 24-foot driveway separation requirements applicable for the lot as it currently contains less than three units. Distances from driveway standards are detailed in AMC section 18.4.3.080.C.3, and developments of three units or more per lot are required to provide a 50-foot separation between driveways on neighborhood streets like Quincy Street. To address the separation requirement, the application proposes to shift the driveway east toward the adjacent driveway, paving the area between to provide a wider, single curb cut to accommodate the two drives, noting that this may necessitate protection or relocation of an existing power pole between the two drives. The application explains that this attempts to mitigate the lack of required separation by combining the curb cuts to improve the pedestrian and vehicular environment by reducing the number of curb cuts and better aligning with the driveways on the opposite side of Quincy Street. The application further explains that a recorded ingress/egress easement for 181 California Street, a flag lot which takes vehicular access through the subject property, must be retained and prevents the applicant from combining the two driveways to a single driveway or providing the required separation. The application notes that the proposed curb cut would be 36 feet in width, exceeding the maximum residential curb cut width of 18 feet and necessitating an Exception.”*

Through the hearing process, when it seemed that this Exception was unlikely to be approved by the Planning Commission, the applicant offered options including their “Option B” which involved retaining the current driveway location with the existing separation. The Planning Commission further found that:

*“the requested Exception does not address the underlying intent of the driveway separation/controlled access requirements, which seek to reduce conflicts between vehicles entering or exiting to the street and vehicles, bicycles and pedestrians already using the street. The Commission further finds that having multiple driveways come together at the curb within a single, wider-than-normally-allowed curb cut, rather than combining circulation on-site to*

*enter and exit from a single driveway within a single, standard curb cut has the potential to create more conflicts and add confusion as there continues to be multiple driveways using a single curb cut without any coordination of circulation to reduce conflicts. The Commission finds that this would only be exacerbated if a power pole, and any measures needed to protect it from vehicles, were to be retained in the middle of the curb cut. The Commission finds that absent a clear depiction of how turning movements with the adjacent driveway might be addressed, the Exception to combine driveways within a wider than normal curb cut is not merited. The Commission further finds that if the applicant is unable to combine driveways and circulation on site to provide a single driveway exiting from a single standard curb cut due to the existing ingress/egress easement for the neighbor, the most appropriate treatment for the driveway would be the alternative "Option B" presented by the applicant during the hearing which would retain the existing non-conforming separation between the driveways which has been in place for years, and which has served Rivergate Church and its large parking lot. The Planning Commission finds that allowing the project to use the existing curb cut location, rather than requiring the applicant to cure the existing non-conforming site condition to create a 50-foot curb cut separation, is appropriate. The existing curb cut location is required because of the easement owned by an off-site use, and this constitutes an "unusual aspect of the site." The use of the existing curb cut location, rather than requiring yet another curb cut further to the west, will result in equal or superior transportation connectivity because it will minimize the number of curb cuts along Quincy Street and will locate the project curb cut along Quincy Street further from the intersection with Garfield Street (Planning Commission Findings 11/13/2018, pg. 9)."*

The appellants argue that the Commission erred in approving a driveway location on Quincy Street as an Exception to the Street Standards under AMC 18.4.6.020.B.1 rather than considering the driveway location in terms of the Variance criteria in AMC 18.5.5. The appellants further argue that there are no unusual or unique aspects of the property which warrant a Variance, and further assert that an existing easement which allows a neighboring property use of the driveway in its existing location does not qualify as such a condition. The appellants also argue that there is no evidence in the record that denying the requested Variance/Exception would result in an additional driveway on Quincy Street or that such a Variance/Exception is the minimum necessary to address any site specific concerns, or that the Variance/Exceptions results in any benefits that would be greater than the alternative of compliance with the standards.

The City Council finds that in addressing Exceptions and Variances with regard to the Parking, Access and Circulation Chapter, AMC 18.4.3.020.D notes, "*Requests to depart from the requirements of this chapter are subject to chapter 18.5.5 Variances, except that deviations from the standards in subsections 18.4.3.080.B.4 and 5 and section 18.4.3.090 Pedestrian Access and Circulation are subject to 18.5.2.050.E Exception to the Site Development and Design Standards.*" Intersection and Driveway Separation are addressed in 18.4.3.080.C.3 and as such are subject to Variances rather than Exceptions to the Street Standards. As such, the Council finds that a request to install a *new* driveway closer than allowed by the standards would be subject to a Variance rather than an Exception. However, the City Council further finds that the existing driveway, which remains from the Rivergate Church development that was previously in place on the property, and cannot be move by applicant

because it also serves as easement access to an adjacent parcel not part of the application, is not a new proposed driveway but is instead a non-conforming development pursuant to AMC 18.1.4.040(A) in that the driveway is not presently located the required distance from the adjacent driveway to the east. AMC 18.1.4.040 addresses “Nonconforming Developments” as follows:

- A. **Exempt Alterations.** Repair and maintenance of a nonconforming development (e.g., paved area, parking area, landscaping) are allowed subject to approval of required building permits if the development is not enlarged or altered in a way that brings the nonconforming site less in conformity with this ordinance. See also, section 18.3.11.050 related to nonconforming uses in Water Resource Protection zones.*
- B. **Planning Approval Required.** A nonconforming development may be enlarged or altered subject to approval of a Conditional Use Permit under chapter 18.5.4 and approval of required building permits, except that a planning action is not required for exempt alterations described in subsection 18.1.4.040.A, above, and for non-residential development subject to subsection 18.4.2.040.B.6.*
- C. **Roadway Access.** The owner of a nonconforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the nonconforming access into conformance with the standards of the approval authority.*

The City Council further finds that the driveway represents a non-conforming development, and “Option B” presented by the applicant during the hearing and accepted by the Planning Commission would retain the existing non-conforming separation between the driveways which has been in place for years, and which has served Rivergate Church and its large parking lot and serves an easement to an adjacent parcel. The Council interprets AMC 18.1.4.040.A to allow the existing curb cut location to remain as an “Exempt Alterations” pursuant to 18.1.4.040.A above and be allowed without either a Variance or Exception because the non-conforming driveway and associated separation are not being altered in a way that brings the non-conforming separation less in conformity with the Ordinance.

The City Council finds that AMC 18.1.4.040.C specifically addresses Roadway Access in noting that the owner may be required as a condition of approval to bring the nonconforming access into conformance with the standards, and further finds that the Planning Commission found that:

*“allowing the project to use the existing curb cut location, rather than requiring the applicant to cure the existing non-conforming site condition to create a 50-foot curb cut separation, is appropriate. The existing curb cut location is required because of the easement owned by an off-site use, and this constitutes an “unusual aspect of the site.” The use of the existing curb cut location, rather than requiring yet another curb cut further to the west, will result in equal or superior transportation connectivity because it will minimize the number of curb cuts along Quincy Street and will locate the project curb cut along Quincy Street further from the intersection with Garfield Street.”*

The Council further interprets 18.1.4.040.C not to apply to this circumstance, where the

nonconforming driveway location is serves (is “owned”) by both the applicant and the adjacent easement holder. The City Council concludes that the Planning Commission did err in addressing the Quincy Street driveway, however the error was not, as asserted by the appellants, in failing to treat the request as a Variance but rather in failing to clearly articulate in the decision that the Commission was denying the requested Exception and instead determining that the proposed “Option B” to retain the existing driveway location and its non-conforming separation amounted to an exempt alteration of a non-conforming development and as such did not require either an Exception or a Variance. Despite this error, the Planning Commission’s decision was in keeping with AMC 18.1.4.040, and considered the possibility to require that the non-conforming Roadway Access be remedied with development and determined that this was not appropriate given the specific circumstances. The City Council concludes that the driveway location as approved was an exempt alteration of a non-conforming development, and rejects Appeal Issue #8’s assertion that the driveway location should have been considered as a Variance instead of an Exception.

2.11 Appeal Issue #9 is that the content of the Notice of Public Hearing was insufficient in not including the name and phone number of a City contact person and in failing to cite the applicable criteria and citations for decision.

With regard to the first part of Appeal Issue #9, the City Council notes that AMC 18.5.1.060.C.3.f addresses the “Content of Notice of Public Hearing” noting that “*Notices mailed and posted pursuant to this section shall contain all of the following information... The name and phone number of a City contact person.*” The Notice of Public Hearing mailed and posted for the October 9, 2018 Planning Commission hearing noted, “*If you have any questions or comments concerning this request, please feel free to contact the Ashland Planning Division at (541) 488-5305.*” The Council finds that based on the notice mailed and posted on site, the appellants were able to call this front desk number to determine the assigned staff planner for the project, have their call forwarded directly, discuss the application, and request information and materials. Both of the appellants were able to participate in the initial evidentiary hearing on October 9, 2018 with testimony; to request that the hearing be continued; and to present further testimony at the continued hearing on October 23, 2018. To rectify this issue in the future, the Planning Department’s Notice of Public Hearing template has been changed to include the name and contact information for the assigned project planner for future projects. The Council concludes that the appellants were able to fully participate in the hearing process, did not raise issue with the notice for the Planning Commission to respond to at either hearing, and that the appeal request did not demonstrate that the errors alleged resulted in any substantial prejudice to a substantive right of the appellants.

With regard to the second part of Appeal Issue #9, that the Notice of Public Hearing failed to cite the applicable criteria, the Council notes that the Notice of Public Hearing cited criteria for Site Design Review (AMC 18.5.2.050), for Exception to Street Standards (AMC 18.4.6.020.B.1), and for Tree Removal Permit (AMC 18.5.7.040.B). The Council finds that, while the appeal notice is not entirely clear on this point, the issue is that the Notice of Public Hearing and subsequent findings did not address the Variance criteria (AMC 18.5.050) in dealing with the Quincy Street driveway. In discussing Exceptions and Variances with regard to the Parking, Access and Circulation Chapter, AMC 18.4.3.020.D notes, “*Requests to depart from the requirements of this chapter are subject to*

*chapter 18.5.5 Variances, except that deviations from the standards in subsections 18.4.3.080.B.4 and 5 and section 18.4.3.090 Pedestrian Access and Circulation are subject to 18.5.2.050.E Exception to the Site Development and Design Standards.” Intersection and Driveway Separation are addressed in 18.4.3.080.C.3 and as such would be subject to Variances rather than Exceptions to the Street Standards. However, as discussed under Appeal Issue #8 in 2.10 above, the Council finds that because the existing driveway is considered a non-conforming development and the non-conformity is not to be altered with the application, and as such neither a Variance nor an Exception is required. The Council concludes here that the Notice did not fail to cite the applicable criteria, and the Council rejects Appeal Issue #9.*

2.12 Appeal Issue #10 is that the Planning Commission erred in approving an alternative to the landscaped medians and swales. The Council notes that AMC 18.4.3.080.B.5.b. calls for applicants to *“Design parking lots and other hard surface areas in a way that captures and treats runoff with landscaped medians and swales,”* and that the approval of an Exception to the Site Development and Design Standards requires a demonstration that 1, 2 or 3 below are found to exist as detailed in AMC 18.5.2.050.E:

- 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;*
- 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; or*
- 3. There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section 18.2.3.090. (Ord. 3147 § 9, amended, 11/21/2017)*

The Council further notes that the stated purpose of the Site Development and Design Standards is noted in AMC 18.4.1.010 as, *“Part 18.4 contains design standards for development. The regulations are intended to protect public health, safety, and welfare through standards that promote land use compatibility, resource protection, and livability, consistent with the goals and policies of the Comprehensive Plan. Where an applicant requests an exception to a design standard, the approval authority evaluates the request against the purpose of the ordinance chapter in which the design standard is located.”* The stated purpose of Chapter 18.4.3, where the parking lot runoff standard is located, is detailed in AMC 18.4.3.010 as, *“to provide safe and effective access and circulation for pedestrians, bicyclists, and vehicles.”*

The Council finds that the applicant requested:



*“An exception (to) 18.4.3.080.B.5.b. to not have the parking lots designed in a way that captures and treats runoff with landscaped medians and swales. The proposed bio-swales and underground treatment and detention ponds treat the hard surfaces and the parking lot surface. The proposed methods are a more efficient, cost effective stormwater detention and treatment facility. Since the parking lot medians are often walked upon by tenants entering and exiting vehicles, a traditional, walkable ground cover is a better use of the space than a variable grade, rocky and/or sloped landscape buffer with a grate system and possibly filled with water. It can be found that the proposal to include light colored, some pervious paving techniques, larger bio-swales outside of the area where vehicle entry and exiting occurs, is a superior low impact development design that the parking lot median bio-swales. The parking lot landscape buffer and parking lot landscape peninsulas are provided that are sized and design with species that will do well in the parking lot while achieving the purposed and intent of the Site Design Standards as they relate to landscape buffers (Applicant’s Amended Findings 8/23/2018, pg. 19 of 22).”*

The Council notes that the application includes information provided by engineer Jim Higday of Marquess and Associates. Mr. Higday asserts that adopted design guidelines require that the project engineer design site drainage to address a water quality storm event and a ten-year storm. Mr. Higday notes that swales would need to be a minimum of eight- to 12-feet wide to meet these standards, and this would render them not feasible for medians and swales within the proposed parking lot. As such, Mr. Higday notes that his firm designed a combination of above ground ponds, pervious concrete and underground Storm Tec chambers which all are approved methods for addressing storm water in the Rogue Valley Stormwater Quality Design Manual used by a number of Rogue Valley cities including the City of Ashland (Engineer Jim Higday’s 10/10/2018 e-mail and attachment).

The appellants argue that the evidence in the record is insufficient to support the requested exception to the standard.

The Council finds that the Planning Commission finding was:

*“that the parking lot standards in AMC 18.4.3.080.B.5.b call for capturing run-off in a landscaped median or swale to mitigate parking impacts, reduce stormwater leaving the site and recharge groundwater. The applicant has instead proposed to detain run-off in a combination of underground treatment facilities, detention ponds and bio-swales as they assert that these methods are more efficient and cost-effective. The applicant suggests that light-colored paving with some of it pervious, and larger bio-swales separate from the parking lot are superior to parking lot median swales and allow for occasional pedestrian traffic and better landscape buffers in the parking lot medians. The Planning Commission finds that the measures proposed adequately mitigate the parking lot’s impacts while reducing stormwater leaving the site and serving to recharge groundwater (Planning Commission Findings 11/13/2018, pg. 8).”*

The Council finds that the second criterion for and Exception is that “*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.*” The Council further finds that the applicant’s engineer noted that swales located in the parking lot medians and buffers were not suited to meeting drainage requirements because of the necessary size, and the applicant indicated that the medians within the parking lot were likely to be walked on by tenants entering or exiting their vehicles at times, and that a variable grade, rocky or sloped swale possibly filled with a grate system and standing water was a less safe or effective option for tenant pedestrians than the alternative proposed which addressing the parking lot drainage in landscaped swales which are not located within the parking lot itself. The Council further finds that the purpose of the broader Site Development and Design Standards in Part 18.4 speaks to standards that in part promote resource protection, which was addressed by the project engineer, while the purpose of the specific chapter involved (18.4.3) that more narrowly focuses on “safe and effective access and circulation for pedestrians, bicyclists, and vehicles” was addressed by the applicant in expressing concern that swales in the parking lot posed a potential problem for tenants going to and from their cars while the swales outside the parking lot equally addressed the stormwater while leaving the medians in the parking lot more suited to tenants on foot. The Council concludes that the applicant sought an Exception not in response to a “*demonstrable difficulty in meeting the specific requirements*” but rather because they asserted that “*granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards,*” and that there is substantial evidence in the record to support the Planning Commission’s finding that, while there was no demonstrable difficulty, the proposed alternative equally addressed the purpose and intent of the Standards in mitigating the parking lot’s impacts, adequately reducing stormwater leaving the site and serving to recharge groundwater while seeking to provide safer and more effective pedestrian access within the parking lot that would be achieved by “*a variable grade, rocky and/or sloped landscape buffer with a grate system and possibly filled with water.*” The Council rejects Appeal Issue #10, finds that the Planning Commission did not err, and further finds that the decision was supported by evidence in the record.

2.13 Appeal Issue #11 is that the Planning Commission erred procedurally and failed to provide due process by admitting new evidence during the applicant’s rebuttal without providing other parties an opportunity to respond and in making findings which contradict the conditions of approval with regard to unit sizes, density bonuses and open and recreation space, the applicant proposed units of less than 500 square feet in their application.

The Council notes that when it was discovered that the unit dimensions illustrated did not measure less than 500 square feet according to the definition of gross habitable floor area, the applicant explained that they were unaware of the correct methodology but that it was feasible to make minor adjustments to comply with the square footage limit, as discussed under Appeal Issue #6 above. A condition was imposed to insure that the final drawings complied. Where similar issues with the open space and recreation space were noted through the hearing process, findings were made that the application complied and conditions were included to insure that final permit drawings addressed these discrepancies and demonstrated compliance.

The Council finds that AMC 18.1.6.050 “Conditions of Approval” provides that, “*...the Planning*

*Commission... when acting as the hearing authority, may impose conditions of approval on any planning action to modify that planning action to comply with the criteria of approval or to comply with other applicable City ordinances. Such conditions shall be binding on the approved planning action, and a violation of a condition imposed by the hearing authority shall be a violation of this ordinance, and subject to all the penalties thereof.”* The Council concludes that the Planning Commission determined based on evidence in the record that compliance with the applicable standards and criteria was feasible in the area’s in question, and was within its authority in imposing conditions to require that the applicant’s demonstrate compliance in their final permit drawings. The Council rejects Appeal Issue #11.

2.14 Appeal Issue #12 is that the City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly.

The Council finds that based on testimony, the appellants requested the staff report and initial recommendations seven days prior to the hearing and were provided a draft with the explanation that these materials were still being reviewed by the Community Development Director and as such the initial draft recommendations might change slightly. Final documents were provided five days prior to the hearing, and as previously noted the appellants were able to participate both in the initial hearing and a continued hearing, which they requested.

The Council finds that the concerns with the availability of the full record are somewhat unclear; the full physical record has been available in the Community Development office at all times, and video recordings of the October 9<sup>th</sup> meeting were posted on-line. Because the initial evidentiary hearing was continued at the appellants’ request to October 23<sup>rd</sup>, which was originally scheduled for a Planning Commission study session, the meeting was not video-taped. The City’s contract with Rogue Valley Community Television does not including video recording for scheduled study sessions, and as such recordings of the continued hearing were limited to audio recordings which took some time to make available on the city website. While the audio recordings were being uploaded to the website, a physical copy of the audio recording was copied to DVD and provided to the applicant at a charge of \$5 to cover copying costs. When audio files became available they were added to the Council record which was available on-line at: <http://www.ashland.or.us/Page.asp?NavID=17699> .

The Council concludes that these issues were not raised during the Planning Commission hearings to allow a Commission response, that despite the alleged errors, the appellants were able to fully participate in the hearing process and were given additional time with the hearing’s continuation, and that the appeal request does not demonstrate that the errors alleged resulted in any substantial prejudice to a substantive right of the appellants. The Council rejects Appeal Issue #12.

### **SECTION 3. DECISION**

3.1 With regard to the appeal request, the City Council finds that there was substantial evidence in the record to support the original decision of the Planning Commission, and that the Commission’s sole error was in regard to the Quincy Street driveway. This error was not however, as asserted by the

appellants, in failing to treat the request as a Variance but rather in failing to clearly articulate in the decision that the Commission was denying the initially-requested Exception and instead determining that the proposed “Option B” to retain the existing driveway location and its non-conforming separation amounted to an exempt alteration of a non-conforming development and as such did not require either an Exception or a Variance. The record shows that the nonconforming driveway curb cut location is pre-existing and cannot be relocated by the applicant because it serves an adjacent parcel not belonging to the applicant. The Council interprets AMC section 18.1.4.040 to allow the applicant to retain the existing driveway curb cut location as a nonconforming development, and the curb cut location will not be enlarged to further increase the nonconformity (i.e., bring it closer to other nearby curb cuts).

Based on the record of the Public Hearing on this matter, the City Council concludes that the Planning Commission’s original decision to approve the requested Site Design Review, Exception to Street Standards, and Tree Removal Permits is supported by evidence contained within the whole record, and that with the approval of the applicant’s “Option B” for the Quincy Street driveway, this Exception is not required as the driveway proposed amounts to exempt alteration of a nonconforming development.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, the City Council rejects the appeal #PA-APPEAL-2018-00005 on all 12 issues and reaffirms the Planning Commission’s decision to approve the original application Planning Action #PA-T2-2018-00003 subject to the Planning Commission’s original conditions of approval. Further, if any one or more of those conditions are found to be invalid, for any reason whatsoever, then Planning Action #PA-T2-2018-00003 is denied. The Planning Commission attaches the following condition to this approval:

- 1) That all conditions of Planning Action #PA-T2-2018-00003 (attached hereto as “Exhibit A”) shall remain in effect.

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John Stromberg, *Mayor*  
City of Ashland

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January 15, 2019

Date

**BEFORE THE PLANNING COMMISSION**  
**November 13, 2018**

IN THE MATTER OF PLANNING ACTION #T2-2018-00003, A REQUEST FOR )  
 SITE DESIGN REVIEW APPROVAL TO CONSTRUCT A 72-UNIT STUDIO )  
 APARTMENT COMMUNITY LOCATED AT 188 GARFIELD STREET. THE )  
 APPLICATION ALSO INCLUDES REQUESTS FOR A TREE REMOVAL PERMIT )  
 TO REMOVE 15 TREES THAT ARE MORE THAN SIX-INCHES IN DIAMETER AT )  
 BREAST HEIGHT (D.B.H.); AN EXCEPTION TO THE SITE DEVELOPMENT AND )  
 DESIGN STANDARDS TO TREAT STORMWATER RUN-OFF IN A COMBI- )  
 NATION BIO-SWALES, UNDERGROUND TREATMENT FACILITIES AND DE- )  
 TENTION PONDS RATHER THAN IN LANDSCAPED PARKING LOT MEDIANS )  
 AND SWALES; AND FOR EXCEPTIONS TO STREET STANDARDS TO RETAIN )  
 THE EXISTING CURBSIDE SIDEWALK SYSTEM ALONG THE FRONTAGES OF ) **FINDINGS,**  
 AND FOR THE LOCATION OF THE DRIVEWAY CURBCUT ON QUINCY ) **CONCLUSIONS,**  
 STREET, WHICH IS PROPOSED TO BE SHARED WITH THE PROPERTY TO THE ) **& ORDERS**  
 EAST AND WHICH WOULD EXCEED THE MAXIMUM DRIVEWAY CURB CUT )  
 WIDTH FOR RESIDENTIAL DEVELOPMENTS. ALL OF THE PROPOSED UNITS )  
 ARE STUDIOS WITH LESS THAN 500 SQUARE FEET IN GROSS HABITABLE )  
 FLOOR WHICH COUNT AS ¾ OF A UNIT FOR DENSITY CALCULATIONS; )  
 DENSITY BONUSES ARE REQUESTED FOR CONSERVATION HOUSING, OUT- )  
 DOOR RECREATION SPACE AND MAJOR RECREATION FACILITIES. )  
 )  
**APPLICANT/OWNER:** ROGUE PLANNING & DEVELOPMENT SERVICES )  
 SPARTAN ASHLAND RIVERGATE REAL ESTATE )

**RECITALS:**

1) Tax lots #2100 and #2101 of Map 39 1E 10CB are located at 188 Garfield Street and are zoned R-3 (High-Density Multi-Family Residential).

2) The applicant is requesting Site Design Review approval to construct a 72-unit studio apartment community ("The MidTown Lofts") for the properties located at 188 Garfield Street. All of the proposed units are studio units that are less than 500 square feet in gross habitable floor area and each counts as ¾ of a unit for purposes of density calculation; density bonuses are requested for conservation housing, outdoor recreation space and major recreation facilities. The application also includes requests for a Tree Removal Permit to remove 15 trees that are more than six-inches in diameter at breast height (d.b.h.); an Exception to the Site Development and Design Standards to treat stormwater run-off in a combination of bio-swales, underground treatment facilities and detentions ponds rather than in landscaped parking lot medians and swales; and for Exceptions to Street Standards to retain the existing curbside sidewalk system along the frontage of the property and for the location of the driveway curb cut on Quincy Street, which is proposed to be shared with the property to the east and which would exceed the maximum driveway curb cut width for residential developments. Site improvements are outlined on the plans on file at the Department of Community Development.

3) The criteria for Site Design Review approval are described in AMC 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.*

4) The criteria for an Exception to Street Standards are described in AMC 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.*

5) The criteria for a Tree Removal Permit to remove a "Tree That is Not a Hazard" are described in AMC 18.5.7.040.B.2 as follows:

1. *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 18.10.*
2. *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.*
3. *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.*
4. *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.*
5. *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.*

6) The Planning Commission, following proper public notice, held a public hearing on October 9, 2018 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, participants requested that the hearing or record remain open pursuant to ORS 197.763(6) to present additional evidence or argument. The Planning Commission continued the hearing until 7:00 p.m. on October 23, 2018 at the City Council Chambers at which time at which time testimony was again received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission approved the application subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission 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. CONCLUSORY FINDINGS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the Staff Report, public hearing testimony and the exhibits received.

2.2 The Planning Commission finds that the proposal for Site Design Review, Exception to the Site Development and Design Standards, Exceptions to Street Standards and Tree Removal Permit meets all applicable criteria for Site Design Review approval as described in Chapter 18.5.2.050; for Exception to the Site Development and Design Standards described in Chapter 18.5.4.050; for Exception to Street Standards described in Chapter 18.4.6.020.B.1; and for Tree Removal Permit described in Chapter 18.5.7.040.B.2; with the attached conditions of approval. The site plan and elevation drawings provided delineate the proposed building location, design and associated site improvements.

2.3 The Planning Commission finds that the first criterion for Site Design Review approval is 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 Planning Commission finds that the subject properties are zoned R-3 (High Density, Multi-Family Residential) and the 91,474 square foot, 2.1-acre parcel exceeds the minimum lot area and minimum dimensions for the zoning district. The proposal is for nine groups of two-story, eight-plex units that consist of 496-square foot studio units. These units are proposed in a "modern, Danish inspired architecture" with a mix of wood, stucco and metal, and the design seeks to provide a strong orientation to the public street. Each unit has a semi-private patio, and while the patio doors are not intended as a primary entry the application emphasizes that they can function as a front entry and provide a strong orientation to the street. The application includes varying roof forms, pitches and heights to break up the massing, and that standard solar access will be met.

The Planning Commission further finds that the base density for the R-3 zone is 20 dwelling units (d.u.) per acre. The subject property is 2.1 acres and has a base density of 42 d.u. (2.1 acres x 20 d.u./acre = 42 d.u.). Density bonuses are approved for Conservation housing (15%), Outdoor Recreation Space (10%) and Major Recreation Space (4%) for a total density bonus of 29%. With respect to the conservation housing bonus, the Planning Commission finds that conservation housing is feasible and can be documented at building permit submittal. With respect to the outdoor recreation space bonus, the Planning Commission finds that the bonus provisions do not specifically require outdoor recreation space to meet the "Open Space" definition in 18.6.1.030, so the spaces proposed for patios and decks can comply with this requirement and there is more than sufficient outdoor recreation square footage in the proposal to justify the requested bonus. Major recreation facilities are discussed in more detail below. This brings the property density to 54.18 d.u. (42 d.u. x 1.29 = 54.18 d.u.). All of the proposed units are less than 500 square feet and count as 0.75 units for purposes of density. As such, the density allows 72.24 studio units less than 500 square feet (54.18 d.u./0.75 = 72.24 d.u.) The Planning Commission finds that the proposed density is 72 units, with all proposed at less than 500 square feet, which is consistent with the density



allowed by the zoning with the requested density bonuses. The Planning Commission further finds that the applicants made clear during the hearing that the units were proposed and intended to have less than 500 square feet of gross habitable floor area per unit to qualify as  $\frac{3}{4}$  units for density purposes, and indicated that the final units' sizes would be adjusted in the building permit submittals so that each unit has less than 500 square feet of gross habitable floor area. Gross habitable floor area is defined in AMC 18.6.1 as, "*The total area of all floors in a dwelling measured to its outside surfaces that are under the horizontal projection of the roof or floor above with at least seven feet of head room, excluding uninhabitable spaces accessed solely by an exterior door.*" A condition requiring that the units meet this definition prior to building permit approval has been included below.

The Planning Commission finds that AMC Section 18.2.5.080.F.3.c allows a density bonus for "major recreational facilities in exchange for the applicant providing *"tennis courts, swimming pools, playgrounds or similar facilities."* The bonus allowed is six percent additional density for each one percent of project cost, based on the *estimated sale price or market value of structures and land*, devoted to major recreational facilities. The facility proposed here is identified as a "flexible outdoor activity space... for 'lawn' games such as badminton, spike ball, cornhole, croquet, ladder golf, and others." Also included within the proposed recreation space are a fire pit, barbecue kitchen area, and covered seating area. The Planning Commission finds that the facilities proposed are "similar facilities" akin to a playground for the likely adult tenants of the development and that the combination of facilities proposed for lawn games, fire pit, barbecue, kitchen area and covered seating areas constitute *major* recreational facilities which will be heavily used by tenants and which will serve to build community within the development. The Commission finds that these facilities qualify for the requested bonus based both on the recreational functionality of the unique combination of facilities proposed for anticipated tenants, and based on the estimated value provided.

The second approval criterion is that, "*The proposal complies with applicable overlay zone requirements (part 18.3).*" The Planning Commission finds that the subject property is not located within any overlay zones.

The third criterion for Site Design Review approval is 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 finds that all ground floor units will have a semi-private patio area with a clear entrance to the unit, while the upper floor units have a deck area that provides a visual connection and clear orientation to the public street. Parking is located to the side or behind the structures. Building are proposed to have a 19  $\frac{1}{2}$  foot width with a separation of approximately eight-feet between connected buildings and the required 12-foot separation between the connected eight-plexes. This is similar to the massing of structures in the vicinity. The Planning Commission finds that the proposal complies with setbacks for the zone, and that while the buildings designs and materials are modern they are compatible with the surrounding area and include clear-coated wooden siding, corrugated metal siding, standing seam metal roofing, metal railings and vinyl windows. The application also notes that while final paint colors have not been selected, they will not be bright primary or neon colors. Landscaping and recycling/refuse disposal containers are proposed to comply with AMC 18.4.4, with a common, screened refuse and recycling area to be provided adjacent to the parking area.

The Planning Commission finds that AMC 18.4.2.030.H requires that residential developments subject to Site Design Review are to provide recreation area equal to at least eight percent of the lot area dedicated to open space for recreational use by the tenants of the development. This area is to be surfaced suitably for human recreational use, and as considered in addressing the requirements of this section decks, patios and similar areas are eligible for consideration as open space. The applicants have also requested a density bonus for providing an additional ten percent of outdoor recreation space above the minimum requirement, for a total of 18 percent. Eighteen percent of the total lot area here is approximately 16,643 square feet and the applicants have provided a plan identifying approximately 21,643 square feet as recreation space including semi-private patio spaces. The Commission finds that the combination of open and recreation space provided satisfactorily addresses these requirements. The Planning Commission finds specifically that the larger open spaces meet the open space requirements for Open Space in AMC 18.4.2.030.H.

With regard to off-street parking requirements detailed in AMC 18.4.3, the Planning Commission finds that 72 studio units less than 500 square feet require 72 parking spaces. The applicant proposes to provide 64 off-street parking spaces in surface parking lots and have requested the remaining eight spaces be addressed through a combination of six on-street parking credits and two credits for the additional exterior covered bicycle parking to be provided on-site. The subject properties have more than 600 linear feet of frontage with roughly 30 on-street parking spaces available. The site-specific evidence in the record shows that the requested on-street parking credit is reasonable, and that on-street parking is available except during relatively infrequent events such as larger events at the nearby Ashland High School. The Planning Commission further finds that the applicants proposal to provide a bicycle closet with rack in each unit is consistent with the allowance in AMC 18.4.3.070.I to address bicycle parking by providing "a bicycle storage room, bicycle lockers or racks inside the building." In addition, the applicants have proposed 12 covered bicycle parking spaces outside in requesting an alternative vehicle parking credit under AMC 18.4.3.060.B.2. The Planning Commission finds that the parking proposed satisfies the parking requirements for the proposed units.

The fourth criterion is that, *"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."*

- **Water:** The application notes that a water meter currently serves the property from Garfield Street, and that there is a fire hydrant in place at the intersection of Garfield and Iowa Streets and another is present on the opposite side of Quincy Street. The application further explains that there is a six-inch water main in Iowa Street, a four-inch water main in Garfield Street, and a four-inch water main in Quincy Street. The application proposes to provide a single water service for the proposed units, a service for the open space, and a fire connection on the north side of the driveway accessing the site from Garfield Street.
- **Sewer:** The application notes that there are six-inch sewer lines available in Iowa, Garfield and Quincy Streets, and indicates that these lines provide adequate capacity to serve the proposed units.
- **Electricity:** The applicant notes that there is overhead power present on the south side of Iowa Street, on the west side of Garfield Street, and along the property frontage on Quincy Street. There is a cobra head style streetlight on the south side of Iowa Street, near the intersection of Garfield and Iowa Streets. The

application indicates that all electrical service on site will be served by a single transformer to be installed on the property from the primary poles across Garfield Street. This transformer is to be to the north of the relocated driveway, and the application goes on to note that while the exact location has not been determined there is adequate open space and lot coverage to allow for the placement. The application further notes that the power pole within the driveway on Quincy Street will be relocated to meet the needs of the Ashland Electric Department. A preliminary electric service plan is included with the application.

- **Storm Drainage:** The application explains that there are currently no storm drainage facilities on the subject property, but that there are 12-inch storm sewer mains in the rights-of-way for both Garfield and Quincy Streets.
- **Paved Access/Adequate Transportation:** Iowa Street is an avenue or major collector street as classified in the Transportation System Plan, while both Garfield and Quincy Streets are residential neighborhood streets. The application details that all street frontages are paved with curbs, gutters, curbside sidewalks and street trees in place, and an Exception to Street Standards has been requested (see 2.4 below) to retain the existing curbside sidewalks rather than providing standard parkrow planting strips with irrigated street trees between the curb and sidewalk.

The application materials include a trip generation analysis prepared by Sandow Engineering which explains that the anticipated trip generation from the proposed 72-unit studio apartment complex would be 33 trips during the A.M. peak hour and 40 trips during the P.M. peak hour. This analysis concludes that because the peak hour trips are less than 50, no new traffic controls or geometric improvements are proposed and fewer than 20 additional heavy vehicle trips per day will be generated, a full traffic impact analysis (TIA) is not warranted.

The Planning Commission finds that the application includes conceptual plans detailing grading, drainage and utilities proposed to serve the project. Conditions have been included to require that prior to the issuance of a building permit, revised civil drawings including final grading, drainage, erosion control, utility, and electric service plan with load calculations be provided for the review and approval of the Building, Planning, Public Works/Engineering and Electrical Departments.

The final criterion has to do with *“Exception to the Site Development and Design Standards,”* providing that, *“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.”*

The Planning Commission finds that the parking lot standards in AMC 18.4.3.080.B.5.b call for capturing run-off in a landscaped median or swale to mitigate parking impacts, reduce stormwater leaving the site and recharge groundwater. The applicant has instead proposed to detain run-off in a combination of underground treatment facilities, detention ponds and bio-swales as they assert that these methods are more efficient and cost-effective. The applicant suggests that light-colored paving with some of it pervious, and larger bio-swales separate from the parking lot are superior to parking lot median swales and allow for occasional pedestrian traffic and better landscape buffers in the parking lot medians. The Planning Commission finds that the measures proposed adequately mitigate the parking lot's impacts while reducing stormwater leaving the site and serving to recharge groundwater.

2.4 The Planning Commission finds that the application includes two requests for Exceptions to Street Standards, one to retain the existing curbside sidewalk system along the frontage of the property and the other for the location of the driveway curb cut on Quincy Street, which is proposed to be shared with the property to the east and which would exceed the maximum driveway curb cut width for residential developments.

With regard to the sidewalks, the applicant's narrative requests an Exception to retain the existing curbside sidewalks around the full perimeter of the site, arguing that the existing pedestrian environment is already established and that the Exception allows for the preservation of larger stature, existing, healthy street trees. The Planning Commission finds, however, that the plans provided illustrate removal of the trees along the northern Garfield frontage and all trees along Quincy Street, and further illustrate the installation of standard sidewalks and parkrows in those areas. Given that the project proposes to fully redevelop the site at well more than the base density, the Planning Commission finds that providing standard sidewalks with parkrows to safely support and encourage pedestrians is of particular importance and accordingly has included conditions to require that standard parkrows and sidewalks be provided on the northern portion of Garfield Street and the full Quincy Street frontage, and that the approved Exception to allow curbside sidewalks shall be limited to Iowa Street and the portion of Garfield Street necessary to preserve the existing Elm, Mulberry and Sweetgum street trees (#7, #9-#17, #19-23). The Commission finds that these existing, well-established trees are the barrier to providing standard sidewalks, and that their preservation and protection is beneficial both to the site and to the neighborhood streetscape, and that this partial exception would be the minimum necessary to alleviate the difficulty while providing the feeling of safety and quality of experience sought for the pedestrian facilities by the standards.

With regard to the driveway separation/curb cut width request, the Planning Commission finds that the existing driveway location on Quincy Street does not currently comply with the minimum 24-foot driveway separation requirements applicable for the lot as it currently contains less than three units. Distances from driveway standards are detailed in AMC section 18.4.3.080.C.3, and developments of three units or more per lot are required to provide a 50-foot separation between driveways on neighborhood streets like Quincy Street. To address the separation requirement, the application proposes to shift the driveway east toward the adjacent driveway, paving the area between to provide a wider, single curb cut to accommodate the two drives, noting that this may necessitate protection or relocation of an existing power pole between the two drives. The application explains that this attempts to mitigate the lack of required separation by combining the curb cuts to improve the pedestrian and vehicular environment by reducing the number of curb cuts and better aligning with the driveways on the opposite

side of Quincy Street. The application further explains that a recorded ingress/egress easement for 181 California Street, a flag lot which takes vehicular access through the subject property, must be retained and prevents the applicant from combining the two driveways to a single driveway or providing the required separation. The application notes that the proposed curb cut would be 36 feet in width, exceeding the maximum residential curb cut width of 18 feet and necessitating an Exception.

The Planning Commission finds that the requested Exception does not address the underlying intent of the driveway separation/controlled access requirements, which seek to reduce conflicts between vehicles entering or exiting to the street and vehicles, bicycles and pedestrians already using the street. The Commission further finds that having multiple driveways come together at the curb within a single, wider-than-normally-allowed curb cut, rather than combining circulation on-site to enter and exit from a single driveway within a single, standard curb cut has the potential to create more conflicts and add confusion as there continues to be multiple driveways using a single curb cut without any coordination of circulation to reduce conflicts. The Commission finds that this would only be exacerbated if a power pole, and any measures needed to protect it from vehicles, were to be retained in the middle of the curb cut. The Commission finds that absent a clear depiction of how turning movements with the adjacent driveway might be addressed, the Exception to combine driveways within a wider than normal curb cut is not merited. The Commission further finds that if the applicant is unable to combine driveways and circulation on site to provide a single driveway exiting from a single standard curb cut due to the existing ingress/egress easement for the neighbor, the most appropriate treatment for the driveway would be the alternative "Option B" presented by the applicant during the hearing which would retain the existing non-conforming separation between the driveways which has been in place for years, and which has served Rivergate Church and its large parking lot. The Planning Commission finds that allowing the project to use the existing curb cut location, rather than requiring the applicant to cure the existing non-conforming site condition to create a 50-foot curb cut separation, is appropriate. The existing curb cut location is required because of the easement owned by an off-site use, and this constitutes an "unusual aspect of the site." The use of the existing curb cut location, rather than requiring yet another curb cut further to the west, will result in equal or superior transportation connectivity because it will minimize the number of curb cuts along Quincy Street and will locate the project curb cut along Quincy Street further from the intersection with Garfield Street.

2.5 The Planning Commission finds that the Tree Protection & Removal Plan provided identifies 30 trees on and adjacent to the subject property and requests Tree Removal Permits to remove 15 trees. Four of these 15 are noted as having been removed prior to the project, either as exempt/dead trees or in conjunction with the Rivergate Church demolition. The remaining 11 are proposed for removal to accommodate the buildings, driveways, parking and circulation areas and utility installations proposed.

The applicant's submittals indicate that the requested removals will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees or existing windbreaks and further asserts that the removals will not have significant negative impacts to tree densities, sizes, canopies or species diversity within 200 feet of the subject property, and that replacement trees will be provided with one or more trees planted in the new landscape to mitigate each removal.

The Tree Commission reviewed the proposal at its regular meeting on October 11, 2018 and recommended that the application be approved, that every effort be made to preserve the existing trees, that they be pruned professionally, and that synthetic turf not be used. A condition has been included below to make the recommendations of the Tree Commission conditions of approval, where consistent with applicable standards and criteria, and with final approval by the Staff Advisor. A condition has also been added to require a revised Tree Protection Plan be provided with the building permit submittal addressing a maintenance watering schedule for trees to be retained during construction and addressing Tree Protection any necessary tree protection measures for trees on adjacent properties within 15 feet of the property line.

### SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for Site Design Review, Exception to the Site Development and Design Standards, Exceptions to the Street Standards, and Tree Removal Permits to construct a 72-unit studio apartment community is supported by evidence contained within the whole record.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #T2-2018-00003. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #T2-2018-00003 is denied. The following are the conditions and they are attached to the approval:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified herein, including that the final units' dimensions shall be adjusted in the building permit submittals so that each unit has less than 500 square feet of gross habitable floor area which is defined in AMC 18.6.1 as, *"The total area of all floors in a dwelling measured to its outside surfaces that are under the horizontal projection of the roof or floor above with at least seven feet of head room, excluding uninhabitable spaces accessed solely by an exterior door."*
- 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 substantial conformance with those approved as part of this application, an application to modify this approval shall be submitted and approved prior to the issuance of a building permit.
- 3) That the recommendations of the Ashland Tree Commission from their October 11, 2018 meeting, where consistent with the applicable ordinances and standards and with final approval of the Staff Advisor, shall be conditions of approval unless otherwise modified herein.
- 4) That the requirement of the Fire Department, including approved addressing; fire apparatus access including approach, turn-around, and any necessary easements; fire flow; hydrant distance and clearance; fire sprinklers where applicable; fire department connection; and provisions for "Knox Box" key boxes; shall be satisfactorily addressed.
- 5) That the building permit submittals shall include:

- a) The identification of all easements, including but not limited to any required public or private utility easements, mutual access easements, public pedestrian access easements, and fire apparatus access easements.
- b) The identification of exterior building materials and paint colors for the review and approval of the Staff Advisor. Very bright or neon paint colors shall not be used in accordance with the requirements of the Site Design Standards, and the colors and materials selected shall be consistent with those identified in the application.
- c) Specifications for all exterior lighting fixtures. Exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.
- d) Revised Landscape, Irrigation and Tree Protection Plans shall be provided for the review and approval of the Staff Advisor with the building permit submittals. These plans shall address: 1) Any recommendations of the Tree Commission from their October 11, 2018 meeting where consistent with the applicable Site Development and Design Standards and with final approval by the Staff Advisor; 2) The identification of replacement trees to mitigate the trees to be removed. The mitigation trees shall be planted and irrigated according to the approved plan, inspected and approved by the Staff Advisor prior to occupancy; 3) a maintenance watering schedule for trees to be retained; 4) Tree Protection details for trees on adjacent properties within 15 feet of the property line; 5) Clear demonstration that a pedestrian connection is provided from the sidewalk to each semi private patio entrance on the street-fronting units, without obstruction by landscape materials; and 6) The required irrigation plans, including the requirements for programmable automatic timer controllers and a maintenance watering schedule with seasonal modifications. The applicant shall also obtain the required plumbing permits and inspections for installation of any required double-check valve(s) associated with the irrigation system.
- e) Storm water from all new impervious surfaces and runoff associated with peak rainfalls 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. A revised stormwater drainage plan, including any necessary on-site detention measures, shall be provided for the review and approval of the Engineering, Building and Planning Departments with the building permit submittal. The drainage plan shall be designed to ensure that post-development peak stormwater flows are less than or equal pre-development levels as required by the Engineering Division.
- f) Final utility, grading, erosion and sediment control plans 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 connections to all public facilities in and adjacent to the development, including the locations of water lines and meter sizes to accommodate necessary water and fire services, sewer mains and services, manholes and clean-outs,

storm drainage pipes and catch basins. Any necessary service upgrades shall be completed by the applicant at applicant's expense. Meters, cabinets, and vaults shall be located outside of the pedestrian corridor in those areas least visible from streets, sidewalks and pedestrian areas, while considering vision clearance and the access needs of the utility departments.

- g) The applicant shall submit an electric design and distribution plan including load calculations and locations of all primary and secondary services including transformers, cabinets, street lights, and all other necessary equipment. This plan must be reviewed and approved by the Electric, Engineering, Building and Planning Departments prior to the issuance of demolition, excavation or building permits. Transformers, cabinets and vaults shall be located outside of the pedestrian corridor in those areas least visible from streets, sidewalks and pedestrian areas, while considering the access needs of the Electric Department. Any necessary service upgrades shall be completed by the applicant at applicant's expense.
- h) That the applicant shall provide engineered plans for the installation of a seven-foot width parkrow with irrigated street trees, five-foot sidewalk, and pedestrian scale street lighting on the property's full Quincy Street frontage and the section of the Garfield Street frontage north of Tree #23/Units 31-32 for the review of the Planning and Public Works/Engineering Departments. These plans shall detail the removal of any existing unused curb-cuts and the transition from the new sidewalks to the existing curbside sidewalks to the south, which are to be retained. If necessary to accommodate these street frontage improvements, the applicant shall dedicate additional right-of-way or provide public pedestrian access easements. Any necessary easements or right-of-way dedications shall be submitted for the review and approval of the Planning and Public Works/Engineering Departments.
- i) Engineering construction drawings for the new driveway approaches on Quincy and Garfield Streets. The centerline of the driveway on Garfield Street shall align with the centerline of the alley across the street, and the driveway on Quincy Street shall be limited to a standard width in generally the current location (rather than combined with the driveway to the east) for the review and approval of the Public Works/Engineering and Planning Divisions. Driveway approach permits shall be obtained through the Public Works/Engineering Division, and new driveway approaches shall be installed, inspected and approved, and any unused curb cuts closed, inspected and approved, prior to the issuance of a certificate of occupancy.
- j) The building permit drawings shall include details demonstrating that the proposed parking area complies with the requirements of AMC 18.4.3.080.B.5 in providing a pervious pavement system for a minimum of 50 percent of the parking area surface.
- k) Final lot coverage calculations including all building footprints, driveways, parking, and circulation areas. Lot coverage shall be limited to no more than 75 percent as allowed in the R-3 zoning district.



- l) The building permit submittals shall verify that the bicycle parking is provided in accordance with 18.4.3.070 for the 72 required sheltered bicycle parking spaces. Bicycle parking provided shall include the interior bicycle parking areas with hanging racks provided within each unit and the 12 spaces of exterior bicycle parking proposed by the applicants. Inverted u-racks shall be used for the exterior bicycle parking. All exterior bicycle parking shall be installed in accordance with design and rack standards in 18.4.3.070 and according to the approved plan prior to the issuance of the certificate of occupancy.
  - m) Demonstrations that the conservation housing, additional recreation space and major recreational facilities requirements are satisfied to meet the requirements for the requested density bonuses.
  - n) Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard A in the formula  $[(\text{Height} - 6) / (0.445 + \text{Slope}) = \text{Required Solar Setback}]$  and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
  - o) A revised plan to demonstrate that the open and recreation space requirements are met illustrating all areas to be counted towards open and recreation space and their dimension and treatment, and shall include a final estimate of the cost of the major recreational facilities proposed consistent with the requirements of AMC 18.2.5.080.F.3.c. which does not include land cost in estimating the cost of the facilities. A minimum of 18 percent of the site must be provided in open/recreation space for the proposed density bonus. Landscaped areas counted toward recreation space need to be surfaced for recreational use and not include thoroughfares for pedestrian circulation. Individual patios or porch areas may be included provided that their dimensions are at least six-feet by eight-feet exclusive of any circulation areas. Areas containing above-ground utility infrastructure such as transformers, vaults and cabinets, bio-swale/detentions ponds are not to be included as open/recreational space.
- 6) That prior to the issuance of a building permit:
- a) That in lieu of providing city standard frontage improvements along the full frontages with the current application, the property owner shall sign in favor of local improvement districts for the future street improvements, including but not limited to sidewalks, parkrow, curb, gutter and storm drainage, for Iowa and Garfield Streets prior to signature of the final survey plat. The agreement shall be signed and recorded prior to the issuance of a building permit.
  - b) That prior to the issuance of the building, excavation, staging, storage of materials or the commencement of site work, a Tree Verification Permit shall be obtained, and tree protection measures installed, inspected and approved by Staff Advisor. The Verification Permit is to inspect the identification of trees to be removed and the installation of tree protection fencing for the trees to be retained and protected on and adjacent to the site. 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.

- c) 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 (SDC's) for water, sewer, storm water, parks, and transportation (*less any credits for previously demolished structures*) shall be paid.
- 7) That prior to the final approval of the project and issuance of a certificate of occupancy:
- a) That all open space areas and recreational facilities, landscaping and the irrigation system shall be installed according to the approved plan, inspected, and approved by the Staff Advisor.
  - b) All hardscape improvements including courtyards, walkways, driveways, parking areas, fire apparatus and other accessways shall be installed according to the approved plans, inspected and approved prior to issuance of the final certificate of occupancy.
  - c) All utility service and equipment installations shall be completed according to Electric, Engineering, Planning, and Building Departments' specifications, inspected and approved by the Staff Advisor.
  - d) The screening for the trash and recycling enclosure shall be installed in accordance with the approved plan, inspected and approved by the Staff Advisor. An opportunity to recycle site of equal or greater size than the solid waste receptacle shall be identified in the building permit submittals and shall be in place, inspected and approved by the Staff Advisor.
  - e) That the bicycle parking facilities including interior bicycle parking areas with hanging racks inside each unit and 12 sheltered exterior bicycle parking spaces shall be installed according to the approved plans, inspected, and approved by the Staff Advisor prior to the issuance of the certificate of occupancy. The building permit submittals shall verify the design and placement of bicycle parking.
  - f) That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent residential properties.
  - g) All required street frontage improvements, including but not limited to the sidewalk, parkrow with irrigated street trees spaced at one tree per 30 feet of frontage, and street lighting shall be installed under permit from the Public Works Department and in accordance with the approved plans, inspected and approved by the Staff Advisor.
  - h) The applicant shall provide evidence of Earth Advantage certifications necessary to satisfy the requirements for the conservation housing density bonus requested.

  
 Planning Commission Approval

November 13, 2018  
 Date