

# Council Business Meeting

August 18, 2020

<b>Agenda Item</b>	Land Use Appeal of 210 Alicia Avenue	
<b>From</b>	Bill Molnar Derek Severson	Director of Community Development Senior Planner
<b>Contact</b>	<a href="mailto:Bill.molnar@ashland.or.us">Bill.molnar@ashland.or.us</a> <a href="mailto:Derek.severson@ashland.or.us">Derek.severson@ashland.or.us</a>	(541) 552-2042 (541) 552-2040

## **SUMMARY**

Consideration of an appeal of the Planning Commission’s July 14, 2020 approval of a request for Outline Plan subdivision and Site Design Review approvals to construct a 12-unit cottage housing development for the property located at 210 Alicia Avenue.

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

Comprehensive Plan:

Element VI – Housing. Goal 6.10.01 of the Housing Element is “*Ensure a range of different dwelling types that provide living opportunities for the total cross section of Ashland’s population.*”

## **PREVIOUS COUNCIL ACTION**

N/A

## **BACKGROUND AND ADDITIONAL INFORMATION**

### **Original Request**

The original application was a request for Outline Plan subdivision and Site Design Review approvals for a 12-unit, 13-lot Cottage Housing Development for the property located at 210 Alicia Avenue. The application also requested a Tree Removal Permit to remove two trees including one 36-inch diameter multi-trunked Willow tree proposed to be removed as a hazard, and a 20-inch Plum tree proposed to be removed to accommodate driveway installation.

### **Planning Commission Decision**

The Planning Commission approved the application subject to nine conditions.

### **Appeal Request**

Subsequent to the mailing of the Planning Commission’s adopted findings, an appeal was timely filed by neighbors Dan and Claudia Van Dyke, both of whom received notice of the original application, and participated in the Planning Commission hearing by providing oral and written testimony. This appeal will be processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified in the notice of appeal are:

- 1) The Planning Commission and Planning Department failed to provide an adequate public hearing as required in AMC 18.5.1.060 and the Governor’s Executive Order #20-16.
- 2) The Planning Commission erred in failing to mitigate a non-conforming development. The existing driveway is closer to the neighbor’s driveway than allowed by code, and use by 12 units rather than only one will intensify the use of the non-conforming driveway without mitigation.
- 3) The Planning Commission decision fails to meet the purpose and intent of the Cottage Housing Ordinance.
- 4) The Planning Commission erred in finding that the proposed development complies with City Street Standards.

- 5) The Planning Commission erred in finding that the proposed development will not cause a City facility (sewer) to operate beyond its capacity.

This appeal on the record is limited to these five grounds for appeal which were clearly and distinctly identified in the appeal request. As provided in AMC 18.5.1.060.I.5.b., in their review *“the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal.”*

### **Considering the Grounds for Appeal**

- 1) **The Planning Commission and Planning Department failed to provide an adequate public hearing as required in AMC 18.5.1.060 and the Governor’s Executive Order #20-16.**

In speaking to the “Conduct of the Public Hearing” in AMC 18.5.1.060.D, the code requires certain announcements at the beginning of a hearing (*applicable criteria by ordinance chapter, that testimony and evidence shall concern applicable criteria, that the failure to raise and issue with sufficient detail to allow the Planning Commission to respond may preclude an appeal on that issue*); declarations of *ex parte* contact; and sets rules for presenting and receiving evidence through oral testimony, written testimony and site visits. At the conclusion of the hearing, the Planning Commission is to deliberate and make a decision based on the facts and arguments in the public record.

On April 15, 2020 Governor Kate Brown issued Executive Order #20-16 *“Keep Government Working: Ordering Necessary Measures to Ensure Safe Public Meetings and Continued Operations by Local Government During Coronavirus (COVID-19) Outbreak”*. The Governor’s Order required that public bodies hold public meetings by telephone, video, or through some other electronic or virtual means, whenever possible; that the public body make available a method by which the public can listen to or virtually attend the public meeting or hearing at the time it occurs; that the public body does not have to provide a physical space for the public to attend the meeting or hearing; that requirements that oral public testimony be taken during hearings be suspended, and that public bodies instead provide a means for submitting written testimony by e-mail or other electronic methods that the public body can consider in a timely manner. *(The Governor’s Executive Order has not altered the state’s “120-Day Rule,” and as such by state law, applicants are still legally entitled to a final land use decision from the city within 120-days of making a complete application. Should the city process extend beyond 120-days without written consent from the applicant, they can seek remedy including approval of the application as submitted through the courts.)*

During the initial hearing on May 12, 2020 there were technical difficulties with broadcasting the meeting due to a power outage, with the broadcast failing after the hearing and record were closed. Commissioners briefly discussed sewer capacity, emergency egress and garbage pick-up as reflected on page 3 of 4 in the [May 12, 2020 minutes](#), but as soon as Commissioners and staff realized that the meeting was no longer being broadcast, deliberations stopped and the meeting was continued to Tuesday, June 9, 2020 at 7:00 p.m. for Planning Commission deliberations and decision.

Because the broadcast had already failed when the continuance was announced, staff sent a new public notice announcing that the remainder of the meeting would be handled at the next available Planning Commission meeting date, which was May 26, 2020 at 7:00 p.m. This notice explained that because technical difficulties had occurred at the May 12 hearing after the hearing and record were closed, this meeting would be limited to Planning Commission deliberations and

decision. However, the notice text incorrectly mentioned both May 26 and June 9 dates. Because of this confusion over the meeting date in the mailed public notice, at the May 26<sup>th</sup> electronic meeting Planning Commissioners simply opened the meeting and continued it to Tuesday, June 9, 2020 at 7:00 p.m.

On June 9, the Planning Commission reconvened electronically and, after consideration of the materials received during the May 12, 2020 hearing, approved the application subject to conditions pertaining to the appropriate development of the site.

The Governor's Order required:

- That public bodies hold public meetings by telephone, video, or through some other electronic or virtual means, whenever possible.
- That the public body make available a method by which the public can listen to or virtually attend the public meeting or hearing at the time it occurs.
- That the public body does not have to provide a physical space for the public to attend the meeting or hearing.
- That requirements that oral public testimony be taken during hearings be suspended, and
- That public bodies instead provide a means for submitting written testimony by e-mail or other electronic methods that the public body can consider in a timely manner.

Here the Planning Commission conducted the hearing by video-conference over Zoom and provided two methods for the public to listen or virtually attend the meeting at the time it occurred (either by watching on local television or by live-streaming over the internet). No physical space to attend the meeting was provided, and oral testimony was not taken, as allowed in the Governor's Order. However, the public was able to provide testimony via e-mail, and timely received e-mails were provided to Commissioners in advance of the hearing. The required announcements were made at the beginning of the hearing along with declarations of ex parte contact, and after admitting the written testimony submitted via e-mail to the record, both the public hearing and the record of the hearing were closed.

With technical difficulties, conducting the public meeting electronically was not without its challenges, however when Commissioners and staff became aware that the broadcast had ceased, they also ceased their discussion and the meeting was continued and re-noticed in order to remain in compliance with city code requirements and the Governor's Executive Order. Staff recommends that the Council find accordingly, deny this first appeal issue and uphold the Planning Commission's decision.

*[Note: The appellant also notes here that the map on the city website already showed the 12-cottages proposed in May, prior to the Commission hearing, giving the impression that planning decisions are made behind the scenes and that public process is done solely as a formality. The City's Geographic Information System (GIS) Department works with City utility departments to map schematic utility plans for proposed developments. For instance, the Electric Department works with applicants to prepare a City-approved electric service plan, and the Electric Department works with the GIS Department in creating these plans. The GIS Department maps development proposals to a "pending buildings" layer in the City mapping system to assist these efforts, and this layer is displayed on the maps on the City website with pending buildings depicted differently than existing buildings which can help to clarify development proposals on the City's "What's Happening in my City?" online map.]*

2) **The Planning Commission erred in failing to mitigate a non-conforming development. The existing driveway is closer to the neighbor’s driveway than allowed by code, and use by 12 units rather than only one will intensify the use of the non-conforming driveway without mitigation.**

The appellants explain that the proposal will result in an increase in vehicle use approaching 12 times more than the current use, and that this increase in use will increase the impact of the non-conformity. The appellant requests either a reduction in the number of units to reduce the risk of a vehicle collision, or the placement of a traffic sign (yield sign or stop sign) in the vicinity of the current fence line.

AMC 18.4.3.080.C.3 “*Intersection and Driveway Separation*” requires, “*The distance from a street intersection to a driveway, or from a driveway to another driveway shall meet the minimum spacing requirements for the street’s classification in the Ashland Transportation System Plan (TSP) as illustrated in Figures 18.4.3.080.C.3.a and Figure 18.4.3.080.C.3.b.*” Alicia Avenue is classified as a Residential Neighborhood Street in the TSP, and as such the required driveway separation illustrated in Figure 18.4.3.080.C.3.b “*Driveway Separation for Neighborhood Streets*” is 24 feet between driveways for two units or fewer per lot and 50 feet between driveways for three or more units per lot. The existing separation meets neither of these requirements, but is not being altered in a way that decreases the physical distance between driveways.

In considering the driveway separation, the Planning Commission found “... *that the existing driveways separation between the subject property and 732 Sylvia Street to the north is non-conforming. There are [no] curbs on Alicia or Sylvia, but the two driveways are immediately adjacent to one another and there is no additional frontage to create separation. The Commission finds that the existing non-conformity will not be made more non-conforming with the proposed development here.*”

Here, the Planning Commission found that the existing driveway separation was non-conforming, that the existing non-conforming separation would not be made more non-conforming with the proposal, and that there was no additional frontage available on the applicant’s property to shift the driveway and bring the separation more into conformity with the standards. The Commission decision considered the non-conforming physical separation between the driveways and that this separation was not being made more non-conforming with the proposal. Should the Council concur with the appellant that the intensification merits some mitigation, staff recommends that the Council require that the applicant’s site plan be modified to require a stop sign at the driveway exit so that future tenants will stop before entering the roadway as suggested by the appellant.

3) **The Planning Commission decision fails to meet the purpose and intent of the Cottage Housing Ordinance.**

The appellants explain that they believe the decision did not adequately address “*ensuring compatibility with established neighborhoods*” as intended in the ordinance, and they recommend one or more strategies to better address compatibility: a reduction in proposed open space from 27 percent down to 20 percent to provide additional off-street parking; a parking permit program to reduce parking impacts to the existing neighborhood; or a rewrite of the ordinance to make clear “*that cottage housing in Ashland will be done in a way that disregards compatibility with the existing neighborhood, with no modifications to minimize disturbance or maintain livability in the existing neighborhood.*”

The Planning Commission has previously made clear, and the Council has concurred, that the purpose and intent statement of the Cottage Housing Ordinance is a statement of legislative intent and is not a specific approval criterion or development standard, but rather that the development standards delineated in the Ordinance are intended to achieve compatibility with established single family neighborhoods by allowing a greater number of smaller units and regulating the floor area of each unit, the maximum permitted floor area ratio of the development as a whole, and building heights; minimizing the number of parking spaces, and requiring that they be consolidated on-site; and including standards for open space and stormwater management. To that end, the Commission found that:

*“... the proposal complies with the allowed development density, floor area ratio, height and lot coverage standards, with 12 cottages proposed for a 54,722 square foot parcel and a combined floor area ratio of 0.18. 75 percent of the proposed cottages are 800 square feet in gross habitable floor area, all of the cottages are proposed with roof peaks less than 25 feet from grade, exhibits have been provided to demonstrate that cottages within the development will not cast a shadow upon the roof of another cottage, and cottages along the north property line are noted as being designed to comply with Solar Setback Standard A. Lot coverage is proposed at 42 percent and is within the allowed standards for the R-1-5 zoning district (Adopted Findings, page 16).”*

The Commission further found:

*“With regard to the parking requirements in AMC 18.4.3, cottage housing units less than 800 square feet require one off-street parking space be provided per unit, while units greater than 800 square feet and less than 1,000 square feet require 1½ spaces. Cottage Housing Developments are exempted from the requirement to provide on-street parking. Here, nine of the 12 units are 800 square feet while three are 999 square feet, and a total of 14 spaces are required [(9 x 1) + (3 x 1.5) = 13.5]. The Commission finds that 14 off-street parking spaces are proposed to fully satisfy the requirements for the 12 units proposed units here. Carports are considered by code to be garages, and separate bicycle parking facilities are not required where a garage is available. The Planning Commission finds that all required off-street parking has been provided on site, that on-street and bicycle parking are not required, and concludes that the third criterion has been satisfied (Adopted Findings, page 16).”*

The appellant’s Notice of Land Use Appeal also indicated that, *“Recommendations for CCR’s have been provided that would reduce the impact on the existing neighborhood.”* No such recommendations were included with the appeal submittal, and no new evidence could be considered here because the appeal is limited to the existing record.

In staff’s assessment, while the Planning Commission did not speak directly to the purpose and intent of the ordinance in their adopted findings, the purpose and intent statement is not an applicable approval criterion or development standard and the findings do speak directly to the development standards which were adopted to achieve the compatibility sought in the purpose and intent statement. In terms of parking, which seems to be a primary compatibility concern for the appellant, the Commission determined that the off-street parking requirements of the code were met with the proposal. With that in mind, staff recommends that the Council reject this appeal issue and uphold the Commission’s original decision.

- 4) **The Planning Commission erred in finding that the proposed development complies with city street standards.**

The appellants further explained in their Notice of Land Use Appeal that traffic safety was overlooked in the loop of roadways with four right angles, and that the risk of traffic accidents will increase with the proposal.

In considering compliance with city street standards, the Planning Commission's findings were as follows:

*The final Outline Plan approval criterion is that, "The development complies with the Street Standards." The subject property fronts on Alicia Avenue for a width of approximately 35 feet at the intersection with Sylvia Street. Alicia Avenue is a residential neighborhood street, as are nearby Sylvia Street, Oak Lawn Avenue, and Sleepy Hollow Drive which form the neighborhood's street system off of Oak Street here. The Alicia Avenue right-of-way is 47 feet in width, and is paved to a width of approximately 20 feet. There are no sidewalks, curbs or gutters in place on either side of the street, and right-of-way beyond the pavement is largely surfaced in gravel and used both for pedestrian travel and scattered on-street parking.*

*For residential neighborhood streets, City street standards envision five-foot sidewalks, seven-foot parkrow planting strips, a six-inch curb and seven-foot parking bays on each side, with an 11- to 14-foot queuing travel lane. The city standard cross-section includes a 25- to 28-foot curb-to-curb paved width in a 50- to 55-foot right-of-way.*

*The Planning Commission notes that the existing street frontage is only 34-feet 4-inches in width, and the proposed driveway is to take up 30-feet of that width. The Commission finds that with the limited frontage taken up virtually in its entirety with required driveway improvements, there is no additional width for sidewalk installation. As such, a condition has been included below to instead require that the applicant instead sign-in favor of a Local Improvement District (LID) for the future improvement of Alicia Avenue, and of Oak Lawn Avenue which provides a connection out to Oak Street and its sidewalk system.*

*The Cottage Housing Development Standards (AMC 18.2.3.090.C.3.a) generally provide that except for street connections identified on the Transportation System Plan's Street Dedication Map (Figure 10-1), the Planning Commission may reduce or waive requirement to dedicate and construct a public street according to the Street Design Standards in AMC 18.4.6.040 upon a finding that the Cottage Housing Development meets connectivity and block length standards by providing public access for pedestrians and bicyclists with an alley, shared street, or multi-use path connecting the public street to adjoining properties. The Commission finds that the existing street system within the immediate neighborhood meets the block length standards – existing block lengths are 165-175 feet where the block length standards call for a maximum length of 300-400 feet – and while not fully improved to City street design standards, functions comparably to a shared street and provides adequate connectivity through the neighborhood and out to Oak Street. City park land is located along the Bear Creek corridor to the northeast, and a path from the subject property's driveway through the site, across a neighboring private property, to the park property would be approximately 450 feet and traverse severely constrained slopes. The park property is less than 500 feet from the driveway entrance traveling due north on Sylvia Street, and as such the Commission finds that additional right-of-way or easement dedication is not merited.*

With regard to the adequacy of transportation facilities, the Commission findings were as follows:

*Alicia Avenue is a residential neighborhood street, as are nearby Sylvia Street, Oak Lawn Avenue, and Sleepy Hollow Drive which form the street system for the neighborhood off of Oak Street here. The Alicia Avenue right-of-way is 47 feet in width, and is paved to a width of approximately 20 feet. There are no sidewalks, curbs or gutters in place on either side of the street, and right-of-way beyond the pavement is largely surfaced in gravel and accommodates pedestrian circulation and intermittent on-street parking.*

*The Planning Commission finds that the driveway leading to the site's proposed parking area is proposed to be 20-feet in width with a five-foot-wide sidewalk along its east side connecting from Alicia Avenue to the internal pedestrian circulation connecting to each unit and continuing through to the proposed open space. The scale of the proposed development does not trigger a Traffic Impact Analysis or other transportation assessment. Planning staff have noted that in recently considering a similarly sized cottage housing development at 476 North Laurel Street recently, a 12-unit cottage housing development was found to generate approximately 88 average daily trips (ADT) with eight p.m. peak hour trips and six a.m. peak hour trips while the trigger point for a Traffic Impact Analysis is 50 peak hour trips. Engineering staff have indicated that while no trip counts are available for Alicia Avenue, they would estimate that the existing daily trips on the street at around 100 ADT. The Commission finds that a residential neighborhood street is assumed to be able to accommodate up to 1,500 ADT, and as such the street has adequate transportation capacity to serve the 12 proposed small homes (Adopted Findings, Pages 10-11).*

In staff's assessment, the Planning Commission clearly found that while the street was not fully improved to city street design standards, the existing improvements functioned comparably to a shared street and provided adequate connectivity through the neighborhood and out to Oak Street. The Commission further found that with the subject property's limited frontage taken up virtually in its entirety with required driveway improvements, there was no additional width for sidewalk installation along the minimal remaining frontage. The Commission recognized that the Cottage Housing ordinance provided them with the authority to reduce or waive street dedication and improvement requirements where connectivity and block length standards were met, and they determined that these standards were satisfied here. As such, a condition was included to instead require that the applicant sign-in favor of a Local Improvement District (LID) for the future improvement of Alicia Avenue, and of Oak Lawn Avenue which provides a connection out to Oak Street and its sidewalk system. The Commission further found that while the scale of the development did not trigger a Traffic Impact Analysis, the surrounding street system had sufficient capacity available to accommodate the likely new trips from 12 small homes. On that basis, staff recommends that the Council reject this fourth appeal issue and uphold the Planning Commission's original decision with regard to street standards and traffic safety.

5) **The Planning Commission erred in finding that the proposed development will not cause a city facility (sewer) to operate beyond its capacity.**

Here the appellants explain that comments from the Public Works Department relied on in the record with regard to sewer capacity were "far from certain." E-mail communications referenced in the appeal note that, "... should not cause the system to operate beyond its

capacity...” and “Public Works staff do not believe that this development will be putting enough new flow into the system to negatively impact downstream capacity.” The appellants further note that, “Ashland has a poor record of protecting its citizens from damage associated with the sewer system. There appears to be a possibility that sewer problems will develop due to this city action. Neighbors cannot be made to pay for damage or repairs.”

The Planning Commission findings with regard to sanitary sewer capacity were as follows:

*The application explains, and Public Works has confirmed, that there is a six-inch sanitary sewer line within the right-of-way for Alicia Street and Sylvia Street. The applicant further notes that in discussions with the sanitary sewer department, there are no reported capacity issues in the vicinity. The application concludes that the 12 proposed small, water-efficient units should not cause the system to operate beyond its current capacity. Public Works staff have indicated they do not believe that this development will be putting enough new flow into the system to negatively impact downstream capacity, that lines are very flat in this neighborhood, and they see no issues for sanitary sewer capacity, noting that the development drains into a sewer trunk line east of Sylvia Street, and on into the Oak Street line north of Nevada Street where there are no known capacity issues (Adopted Findings, Page 9-10).*

The Planning Commission relied on information from the applicant and from Public Work’s staff to determine that there was a flat, six-inch sewer line available in the adjacent rights-of-way with no reported capacity issues in the vicinity; that 12 small, water-efficient units should not pose a capacity issue as Public Works indicated the development would not create enough new flow to negatively impact downstream capacity; and that the development would drain to a trunk line east of Sylvia Street and then into the Oak Street line north of Nevada where there are no known capacity issues. In staff’s assessment there was ample evidence in the record to support the Commission decision and staff recommends that the Commission reject this fifth appeal issue and uphold the Commission’s decision with regard to sewer capacity.

### **FISCAL IMPACTS**

There are no direct fiscal impacts related to the appeal of the planning action for 210 Alicia Avenue.

### **STAFF RECOMMENDATION**

Planning staff recommends that the Council affirm the decision of the Planning Commission, reject the appeal and direct staff to prepare findings for adoption by Council.

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

- 1) I move to affirm the decision of the Planning Commission, reject the appeal and direct staff to prepare written findings for approval reflecting the original Planning Commission decision from July 14, 2020 for adoption by Council.
- 2) I move to reverse the decision of the Planning Commission and support the written appeal, and direct staff to prepare written findings for adoption by Council (*include specific direction as to where the original decision was found to be in error relative to the five identified appeal issues*).
- 3) I move to modify the decision of the Planning Commission and direct staff to prepare written findings for adoption by Council (*include specific direction to staff as to the modifications to the Planning Commission decision being made*).
- 4) I move to send the decision back to the Planning Commission with the following instructions for further proceedings, with the understanding that subsequent actions by the Planning Commission will be the

final decision of the City (*include specific instructions relating to further proceedings*). [*Please note that this as a quasi-judicial land use application, this project is subject to the ‘120-Day Rule’ under Oregon land use law, and a final decision of the City is required by September 1, 2020 with findings to be adopted within 14-days thereafter, and as such remanding the decision back to the Planning Commission would only be an option if an extension were agreed to by the applicant.*]

**REFERENCES & ATTACHMENTS**

210 Alicia Avenue Application Materials: [ashland.or.us/210alicia](http://ashland.or.us/210alicia)

The link includes a list of meetings with packet materials linked, minutes and recordings of the meetings as well as a link to the full application record.