

# Council Business Meeting

September 1, 2020

<b>Agenda Item</b>	Adoption of Findings for 210 Alicia Avenue Land Use Appeal	
<b>From</b>	Bill Molnar Derek Severson	Director of Community Development Senior Planner
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## **SUMMARY**

Adoption of findings on the 210 Alicia Avenue land use appeal are being presented to Council to formalize the Council's decision on the appeal.

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

N/A

## **PREVIOUS COUNCIL ACTION**

At the August 18, 2020 meeting, the Council considered an appeal of the Planning Commission's approval a 12-unit cottage housing development at 210 Alicia Avenue. The Council rejected the appeal on all five 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 five 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 210 Alicia Avenue.

## **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-2020-00012 as presented.
2. I move to adopt the findings for the appeal PA-APPEAL-2020-00012 with the following amendments [explain proposed amendments to findings].

## **REFERENCES & ATTACHMENTS**

Attachment 1: DRAFT Findings for PA-APPEAL-2020-00012 for Council Adoption.

Attachment 2: July 14, 2020 Planning Commission Findings for PA-T2-2020-00017 to be adopted as "Exhibit A" of the Council findings

**BEFORE THE CITY COUNCIL**  
**September 1, 2020**

IN THE MATTER OF PLANNING ACTION PA-APPEAL-2020-00012, AN APPEAL )  
TO THE ASHLAND CITY COUNCIL OF THE PLANNING COMMISSION'S )  
APPROVAL OF PLANNING ACTION PA-T2-2020-00017, A REQUEST FOR )  
OUTLINE PLAN SUBDIVISION AND SITE DESIGN REVIEW APPROVALS FOR A )  
12-UNIT/13-LOT COTTAGE HOUSING DEVELOPMENT LOCATED AT 210 ALICIA )  
AVENUE. THE APPLICATION ALSO REQUESTS A TREE REMOVAL PERMIT TO )  
REMOVE TWO TREES INCLUDING ONE 36-INCH DIAMETER MULTI-TRUNKED ) **FINDINGS,**  
WILLOW TREE PROPOSED TO BE REMOVED AS A HAZARD, AND A 20-INCH ) **CONCLUSIONS &**  
PLUM TREE PROPOSED TO BE REMOVED TO ACCOMMODATE DRIVEWAY ) **ORDERS**  
INSTALLATION. )  
)  
)

**OWNER/APPLICANT:** DAVID SCOTT CONSTRUCTION, LLC )  
ROGUE PLANNING & )  
DEVELOPMENT SERVICES, LLC )  
)

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**RECITALS:**

- 1) Tax lot #1700 of Map 39 1E 04DB is located at 210 Alicia Avenue and is zoned Single Family Residential (R-1-5).
  
- 2) The applicant is requesting Outline Plan subdivision and Site Design Review approvals for a 12-unit, 13-lot Cottage Housing Development for the property located at 210 Alicia Street. The application also requests 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. The proposal is outlined in plans on file at the Department of Community Development.
  
- 3) The criteria for Outline Plan approval are described in **AMC 18.3.9.040.A.3** as follows:
  - a. *The development meets all applicable ordinance requirements of the City.*
  - b. *Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*
  - c. *The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.*
  - d. *The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*

- e. *There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*
  - f. *The proposed density meets the base and bonus density standards established under this chapter.*
  - g. *The development complies with the Street Standards.*
- 4) The criteria for Site Design Review approval are detailed 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.*
- 5) The development standards for Cottage Housing standards are detailed in **AMC 18.2.3.090** as follows:
- C. **Development Standards.** *Cottage housing developments shall meet all of the following requirements.*
    - 1. **Cottage Housing Density.** *The permitted number of units and minimum lot areas shall be as follows:*

<b>Table 18.2.3.090.C.1 Cottage Housing Development Density</b>
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<b>Zones</b>	<b>Maximum Cottage Density</b>	<b>Minimum number of cottages per cottage housing development</b>	<b>Maximum number of cottages per cottage housing development</b>	<b>Minimum lot size (accommodates minimum number of cottages)</b>	<b>Maximum Floor Area Ratio (FAR)</b>
<b>R-1-5, NN-1-5 NM-R-1-5</b>	1 cottage dwelling unit per 2,500 square feet of lot area	3	12	7,500 sq.ft.	0.35
<b>R-1-7.5 NM-R-1-7.5</b>	1 cottage dwelling unit per 3,750 square feet of lot area	3	12	11,250 sq.ft.	0.35

**2. Building and Site Design.**

- a. **Maximum Floor Area Ratio:** The combined gross floor area of all cottages and garages shall not exceed a 0.35 floor area ratio (FAR). Structures such as parking carports, green houses, and common accessory structures are exempt from the maximum floor area calculation.
- b. **Maximum Floor Area.** The maximum gross habitable floor area for 75 percent or more of the cottages, within developments of four units or greater, shall be 800 square feet or less per unit. At least two of the cottages within three unit cottage housing developments shall have a gross habitable floor area of 800 square feet or less. The gross habitable floor area for any individual cottage unit shall not exceed 1000 square feet.
- c. **Height.** Building height of all structures shall not exceed 18 feet. The ridge of a pitched roof may extend up to 25 feet above grade.
- d. **Lot Coverage.** Lot coverage shall meet the requirements of the underlying zone outlined in Table 18.2.5.030.A.
- e. **Building Separation.** A cottage development may include two-unit attached, as well as detached, cottages. With the exception of attached units, a minimum separation of six feet measured from the nearest point of the exterior walls is required between cottage housing units. Accessory buildings (e.g., carport, garage, shed, multipurpose room) shall comply with building code requirements for separation from non-residential structures.

f. **Fences.** Notwithstanding the provisions of section 18.4.4.060, fence height is limited to four feet on interior areas adjacent to open space except as allowed for deer fencing in subsection 18.4.4.060.B.6. Fences in the front and side yards abutting a public street, and on the perimeter of the development shall meet the fence standards of section 18.4.4.060.

3. **Access, Circulation, and Off-Street Parking Requirements. Notwithstanding the provisions of chapter 18.3.9 Performance Standards Option and 18.4 Site Development and Site Design Standards, cottage housing developments are subject to the following requirements:**

- a. **Public Street Dedications.** Except for those street connections identified on the Street Dedication Map, the Commission may reduce or waive the requirement to dedicate and construct a public street as required in 18.4.6.040 upon 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.
- b. **Driveways and parking areas.** Driveway and parking areas shall meet the vehicle area design standards of section 18.4.3.
- i. Parking shall meet the minimum parking ratios per 18.4.3.040.
- ii. Parking shall be consolidated to minimize the number of parking areas, and shall be located on the cottage housing development property.
- iii. Off-street parking can be located within an accessory structure such as a multi-auto carport or garage, but such multi-auto structures shall not be attached to individual cottages. Single-car garages and carports may be attached to individual cottages. Uncovered parking is also permitted provided that off street parking is screened in accordance with the applicable landscape and screening standards of chapter 18.4.4.

4. **Open Space. Open space shall meet all of the following standards.**

- a. A minimum of 20 percent of the total lot area is required as open space.
- b. Open space(s) shall have no dimension that is less than 20 feet unless otherwise granted an exception by the hearing authority. Connections between separated open spaces, not meeting this dimensional requirement, shall not contribute toward meeting the minimum open space area.
- c. Shall consist of a central space, or series of interconnected spaces.
- d. Physically constrained areas such as wetlands or steep slopes cannot be counted towards the open space requirement.

- e. *At least 50 percent of the cottage units shall abut an open space.*
- f. *The open space shall be distinguished from the private outdoor areas with a walkway, fencing, landscaping, berm, or similar method to provide a visual boundary around the perimeter of the common area.*



g. *Parking areas and driveways do not qualify as open space.*

**Figure 18.2.3.090 Cottage Housing Conceptual Site Plans**

- 5. **Private Outdoor Area.** *Each residential unit in a cottage housing development shall have a private outdoor area. Private outdoor areas shall be separate from the open space to create a sense of separate ownership.*
  - a. *Each cottage unit shall be provided with a minimum of 200 square feet of usable private outdoor area. Private outdoor areas may include gardening areas, patios, or porches.*
  - b. *No dimension of the private outdoor area shall be less than 8 feet.*
- 6. **Common Buildings, Existing Nonconforming Structures and Accessory Residential Units.**
  - a. **Common Buildings.** *Up to 25 percent of the required common open space, but no greater than 1,500 square feet, may be utilized as a community building for the sole use of the cottage housing residents. Common buildings shall not be attached to cottages.*
  - b. **Carports and garage structures.** *Consolidated carports or garage structures, provided per 18.2.3.090.C.3.b, are not subject to the area limitations for common*

buildings.

- c. **Nonconforming Dwelling Units.** *An existing single-family residential structure built prior to the effective date of this ordinance (date), which may be nonconforming with respect to the standards of this chapter, shall be permitted to remain. Existing nonconforming dwelling units shall be included in the maximum permitted cottage density. 1,000 square feet of the habitable floor area of such nonconforming dwellings shall be included in the maximum floor area permitted per 18.2.3.090C.2.a. Existing garages, other existing non-habitable floor area, and the nonconforming dwelling's habitable floor area in excess of 1,000 square feet shall not be included in the maximum floor area ratio.*
- d. **Accessory Residential Units.** *New accessory residential units (ARUs) are not permitted in cottage housing developments, except that an existing ARU that is accessory to an existing nonconforming single-family structure may be counted as a cottage unit if the property is developed subject to the provisions of this chapter.*

**7. Storm Water and Low-Impact Development.**

- a. *Developments shall include open space and landscaped features as a component of the project's storm water low impact development techniques including natural filtration and on-site infiltration of storm water.*
- b. *Low impact development techniques for storm water management shall be used wherever possible. Such techniques may include the use of porous solid surfaces in parking areas and walkways, directing roof drains and parking lot runoff to landscape beds, green or living roofs, and rain barrels.*
- c. *Cottages shall be located to maximize the infiltration of storm water run-off. In this zone, cottages shall be grouped and parking areas shall be located to preserve as much contiguous, permanently undeveloped open space and native vegetation as reasonably possible when considering all standards in this chapter.*

**8. Restrictions.**

- a. *The size of a cottage dwelling may not be increased beyond the maximum floor area in subsection 18.2.3.090.C.2.a. A deed restriction shall be placed on the property notifying future property owners of the size restriction.*

6) The 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.*

7) 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.

8) The Planning Commission, following proper public notice, held an electronic public hearing on May 12, 2020. In keeping with Executive Order #20-16, this meeting was broadcast live on local television channel 9 and on Charter Communications channels 180 & 181, and was live-streamed over the internet on RVTV Prime at <http://www.rvtv.sou.edu>. A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report were made available on-line at <http://www.ashland.or.us/Page.asp?NavID=17902> seven days prior to the hearing. The applicant was required to submit any presentation materials for consideration at the hearing by 3:30 p.m. on Friday, May 8<sup>th</sup>, and these materials were made available on-line and e-mailed to Commissioners. Those wishing to provide testimony were invited to submit written comments via e-mail to [PC-public-testimony@ashland.or.us](mailto:PC-public-testimony@ashland.or.us) with the subject line “May 12 PC Hearing Testimony” by 3:30 p.m. on Monday, May 11, 2020, and these comments were made available on-line and e-mailed to Commissioners. The applicant was invited to provide written rebuttal to these public comments by 3:30 p.m. on Tuesday, May 12<sup>th</sup> and these arguments were posted on-line and e-mailed to Commissioners in advance of the electronic public hearing. All written testimony received by the deadlines was made available for Commissioners to review before the hearing and has been included in the meeting minutes. As provided in the Governor’s Executive Order #20-16, no oral public testimony was taken during the hearing.

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 but before Planning Commission deliberations had concluded. When the broadcast failed, deliberations were stopped and the meeting was continued for the Planning Commission deliberations and decision until 7:00 p.m. on Tuesday, June 9, 2020. Because the broadcast had already failed when the continuance was announced, city planning 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, and because of this confusion over the meeting date in the mailed public notice, at the May 26<sup>th</sup> electronic meeting the Planning Commissioners simply opened the meeting and continued the matter to Tuesday, June 9, 2020 at 7:00 p.m. When the meeting reconvened electronically on June 9, 2020 the Planning Commission, after consideration of the materials received during the initial public hearing, approved the application subject to conditions pertaining to the appropriate development of the site.

9) 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 Dan and Claudia Van Dyke, neighbors to the subject property who had received required notice of the initial evidentiary hearing and participated in the hearing process by providing 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 five clearly and distinctly identified grounds for appeal in this case were:

- 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.*

11) The City Council, following proper public notice, held an electronic public hearing on August 18, 2020 at which time oral arguments were presented. Subsequent to the closing of the hearing, the City Council rejected the appeal on all five grounds, upheld the Planning Commission's original decision and approved the application subject to two additional conditions.

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.

The City Council further finds that AMC 18.5.1.060.I.5.a. provides that *“Written and oral arguments on the appeal shall be limited to those issues clearly and distinctly set forth in the notice of appeal; similarly, oral argument shall be confined to the substance of the written argument.”* Argument provided by neighbor Kent Patrick-Riley, who was a party to the original decision and who had timely provided written arguments, included arguments with regard to errors in the public noticing and issues relative to the possible wetland on the subject property. The Council hereby strikes these portions of Mr.

Patrick-Riley's arguments, which were redacted by staff, from the record and from consideration in this decision as these arguments related to issues which were not clearly and distinctly set forth in the notice of appeal.

2.2 The City Council finds that the Planning Commission was correct in determining that the proposal for Outline Plan subdivision approval met all applicable criteria for Outline Plan approval in AMC 18.3.9.040.A.3; 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 a Cottage Housing Development met all applicable development standards for Cottage Housing described in AMC section 18.2.3.090; 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 Planning Commission's adopted findings for Planning Action #PA-T2-2020-00017 are hereby adopted in their entirety as "Exhibit A" to these findings.

2.3 With regard to appeal issue #1, that "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," the City Council notes that 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.

The City Council further notes that 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 City Council further notes that the Governor's Executive Order did not alter 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.

The City Council finds that during the initial public 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 had been 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.

The City Council further finds that because the broadcast had already failed when the continuance was announced, city planning 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, and because of this confusion over the meeting date in the mailed public notice, at the May 26<sup>th</sup> electronic meeting the Planning Commissioners simply opened the meeting and continued the matter to Tuesday, June 9, 2020 at 7:00 p.m.

The City Council finds that 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 City Council finds that 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 Council finds that 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.

The Council further finds that while there were technical difficulties which posed challenges in conducting the public meeting electronically, 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.

The City Council accordingly finds that neither the Planning Commission nor the 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. The City Council rejects appeal issue #1 and supports the findings of the Planning Commission with regard to the conduct of the public hearing.

2.4 With regard to appeal issue #2, that *“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 assert 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 existing 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 – either a “Yield” sign or a “Stop” sign – where the driveway exits to the street.

The City Council notes that 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 driveway 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.”*

The Planning Commission found, and the City Council concurs, 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 Council concludes that the Planning Commission decision rightly considered the non-conforming physical separation between the driveways and that this separation was not being made more non-conforming with the proposal. As such, the City Council rejects appeal issue #2 and supports the findings of the Planning Commission with regard to the existing non-conforming driveway separation.

However, the Council further finds that while the non-conformity is not being increased, with the increased traffic likely associated with development of the subject property the appellants have suggested that a Stop sign would mitigate the potential traffic increase to a degree and the applicants have indicated that if it were found to be necessary, they would install a Stop sign. The City Council finds that the placement of a Stop sign here is appropriate and necessary and has added a condition accordingly.

2.5 With regard to appeal issue #3, that *“The Planning Commission decision fails to meet the purpose and intent of the Cottage Housing Ordinance,”* the appellants assert 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: 1) a reduction in proposed open space from 27 percent down to 20 percent to provide additional off-street parking; 2) a parking permit program to reduce parking impacts to the existing neighborhood; or 3) 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 Council notes that 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  $[(9 \times 1) + (3 \times 1.5) = 13.5]$ . 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 City Council finds that while the Planning Commission decision did not speak directly to the purpose and intent of the ordinance in the 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. The Council further finds that there is some ambiguity in the parking ratios of AMC 18.4.3.040 which, for Cottage Housing Developments, require that units less than 800 square feet provide one off-street parking space per unit and that units greater than 800 square feet but less than 1,000 square feet provide 1½ off-street parking spaces per unit but do not speak to parking requirements for units that are exactly 800 square feet. The Council finds that those units providing only one off-street parking space must be less than 800 square feet in gross floor area, and a condition to this effect has been included below. In terms of parking, which seems to be a primary compatibility concern for the appellant, the Commission determined, and the Council concurs, that the off-street parking requirements of the code were met with the proposal. With that in mind, the City Council rejects this third appeal issue and upholds the Commission's original decision.

2.6 With regard to appeal issue #4, that "*The Planning Commission erred in finding that the proposed development complies with city street standards,*" the appellants asserted 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.

The City Council notes that 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.*

The City Council further notes that 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**).*

The City Council finds that the Planning Commission clearly determined 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. The City Council concludes that there was sufficient evidence in the record to support the Planning Commission's findings with regard to street standards, and the Council therefore rejects this fourth appeal issue and upholds the Planning Commission's original decision with regard to street standards and traffic safety.

2.7 With regard to appeal issue #5, that, "*The Planning Commission erred in finding that the proposed development will not cause a city facility (sewer) to operate beyond its capacity,*" the Council notes that the appellants assert that comments from the Public Works Department relied on in the record with regard to sewer capacity were "*far from certain*" as 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 City Council further notes that 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 City Council finds that 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. The Council concludes that there was ample evidence in the record to support the Commission decision and the Council therefore rejects this fifth and final appeal issue and uphold the Commission's decision with regard to sewer capacity.

### **SECTION 3. DECISION**

3.1 With regard to the first appeal issue, that the Planning Department and Planning Commission failed to conduct an adequate public hearing, the Council finds that while there were technical difficulties which posed challenges in conducting the public meeting electronically, when Commissioners and staff became aware that the televised 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 requirement that citizens be able to view the hearing as it occurs.

With regard to the second appeal issue dealing with the intensification of use of an existing driveway location which does not comply with separation requirements, the Council finds that the Planning Commission correctly recognized 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.

With regard to the third appeal issue which speaks to the purpose and intent of the Cottage Housing Ordinance in seeking to ensure compatibility with existing neighborhoods, the City Council finds that while the Planning Commission decision did not speak directly to the purpose and intent of the ordinance in the adopted findings, the purpose and intent statement is a statement of legislative intent rather than 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, the primary compatibility concern raised by the appellants, the Commission determined, and the Council concurs, that the off-street parking requirements of the code were met with the proposal.

With regard to the fourth appeal issue dealing with compliance with city street standards, the City Council finds that the Planning Commission clearly determined 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. As such, the Commission instead included a condition requiring 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. The City Council concludes that there was sufficient evidence in the record to support the Planning Commission’s findings with regard to street standards and traffic safety.

With regard to the final appeal issue, the Council finds that 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. The Council concludes that there was ample evidence in the record to support the Commission decision with regard to sewer capacity.

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 Outline Plan, Site Design Review, Cottage Housing Development, and Tree Removal Permit was supported by ample evidence contained within the whole record.

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-2020-00012 on all five issues and reaffirms the Planning Commission’s decision to approve the original application Planning Action #PA-T2-2020-00017 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-T2-2020-00017 is denied. The Planning Commission attaches the following condition to this approval:

- 1) That all conditions of Planning Action #PA-T2-2020-00017 attached hereto as “Exhibit A” shall remain in effect.
- 2) That prior to the issuance of a certificate of occupancy for any of the cottages proposed, the applicant shall install a stop sign where the driveway exits to the street.
- 3) That the small cottages and duplex units shall be no more than 799 square feet in gross habitable floor area if they are to qualify for the one parking space per unit parking ratio.

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John Stromberg, *Mayor*  
City of Ashland

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September 1, 2020  
Date

**BEFORE THE PLANNING COMMISSION  
July 14, 2020**

IN THE MATTER OF PLANNING ACTION #PA-T2-2020-00017, A REQUEST FOR )  
OUTLINE PLAN SUBDIVISION AND SITE DESIGN REVIEW APPROVALS FOR A )  
12-UNIT/13-LOT COTTAGE HOUSING DEVELOPMENT LOCATED AT 210 ALICIA )  
AVENUE. THE APPLICATION ALSO REQUESTS 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 ) FINDINGS,  
20-INCH PLUM TREE PROPOSED TO BE REMOVED TO ACCOMMODATE DRIVE- ) CONCLUSIONS &  
WAY INSTALLATION. ) ORDERS  
)  
)

**OWNER/APPLICANT:** DAVID SCOTT CONSTRUCTION, LLC/ )  
ROGUE PLANNING )  
& DEVELOPMENT SERVICES, LLC )  
)  
)

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**RECITALS:**

- 1) Tax lot #1700 of Map 39 1E 04DB is located at 210 Alicia Avenue and is zoned Single Family Residential (R-1-5).
  
- 2) The applicant is requesting Outline Plan subdivision and Site Design Review approvals for a 12-unit, 13-lot Cottage Housing Development for the property located at 210 Alicia Street. The application also requests 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. The proposal is outlined in plans on file at the Department of Community Development.
  
- 3) The criteria for Outline Plan approval are described in **AMC 18.3.9.040.A.3** as follows:
  - a. *The development meets all applicable ordinance requirements of the City.*
  - b. *Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*
  - c. *The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.*
  - d. *The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*
  - e. *There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*
  - f. *The proposed density meets the base and bonus density standards established under this chapter.*

- g. *The development complies with the Street Standards.*
- 4) The criteria for Site Design Review approval are detailed 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.*
- 5) The development standards for Cottage Housing Development are detailed in **AMC 18.2.3.090** as follows:
- C. **Development Standards.** *Cottage housing developments shall meet all of the following requirements.*
    - 1. **Cottage Housing Density.** *The permitted number of units and minimum lot areas shall be as follows:*

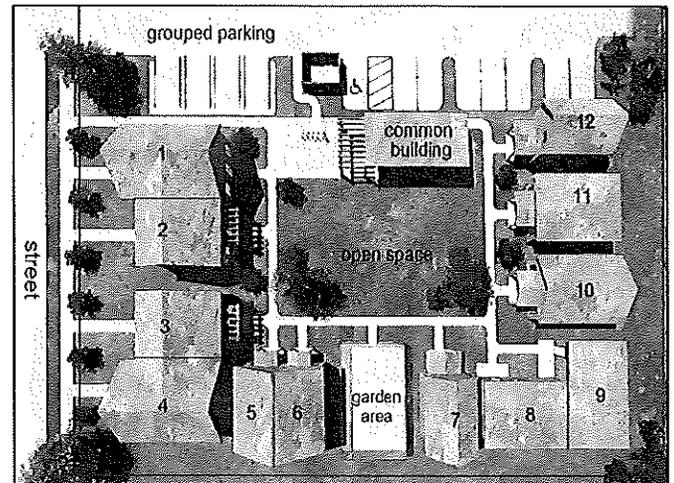
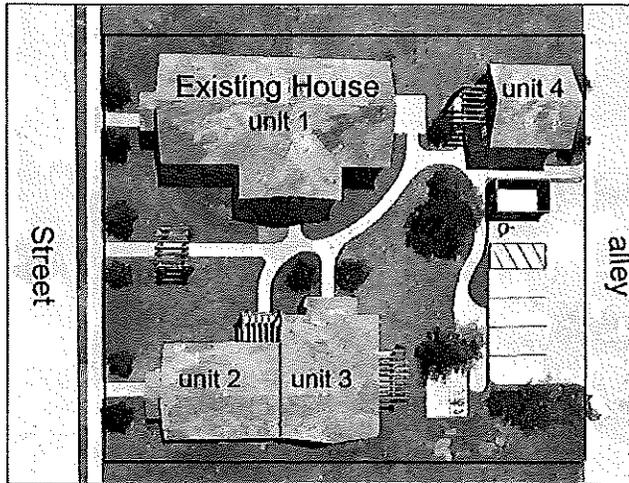
<b>Zones</b>	<b>Maximum Cottage Density</b>	<b>Minimum number of cottages per cottage housing development</b>	<b>Maximum number of cottages per cottage housing development</b>	<b>Minimum lot size (accommodates minimum number of cottages)</b>	<b>Maximum Floor Area Ratio (FAR)</b>
<b>R-1-5, NN-1-5 NM-R-1-5</b>	1 cottage dwelling unit per 2,500 square feet of lot area	3	12	7,500 sq.ft.	0.35
<b>R-1-7.5 NM-R-1-7.5</b>	1 cottage dwelling unit per 3,750 square feet of lot area	3	12	11,250 sq.ft.	0.35

**2. Building and Site Design.**

- a. **Maximum Floor Area Ratio:** The combined gross floor area of all cottages and garages shall not exceed a 0.35 floor area ratio (FAR). Structures such as parking carports, green houses, and common accessory structures are exempt from the maximum floor area calculation.
- b. **Maximum Floor Area.** The maximum gross habitable floor area for 75 percent or more of the cottages, within developments of four units or greater, shall be 800 square feet or less per unit. At least two of the cottages within three unit cottage housing developments shall have a gross habitable floor area of 800 square feet or less. The gross habitable floor area for any individual cottage unit shall not exceed 1000 square feet.
- c. **Height.** Building height of all structures shall not exceed 18 feet. The ridge of a pitched roof may extend up to 25 feet above grade.
- d. **Lot Coverage.** Lot coverage shall meet the requirements of the underlying zone outlined in Table 18.2.5.030.A.
- e. **Building Separation.** A cottage development may include two-unit attached, as well as detached, cottages. With the exception of attached units, a minimum separation of six feet measured from the nearest point of the exterior walls is required between cottage housing units. Accessory buildings (e.g., carport, garage, shed, multipurpose room) shall comply with building code requirements for separation from non-residential structures.



- e. *At least 50 percent of the cottage units shall abut an open space.*
- f. *The open space shall be distinguished from the private outdoor areas with a walkway, fencing, landscaping, berm, or similar method to provide a visual boundary around the perimeter of the common area.*



g. *Parking areas and driveways do not qualify as open space.*

**Figure 18.2.3.090 Cottage Housing Conceptual Site Plans**

- 5. **Private Outdoor Area.** *Each residential unit in a cottage housing development shall have a private outdoor area. Private outdoor areas shall be separate from the open space to create a sense of separate ownership.*
  - a. *Each cottage unit shall be provided with a minimum of 200 square feet of usable private outdoor area. Private outdoor areas may include gardening areas, patios, or porches.*
  - b. *No dimension of the private outdoor area shall be less than 8 feet.*
- 6. **Common Buildings, Existing Nonconforming Structures and Accessory Residential Units.**
  - a. **Common Buildings.** *Up to 25 percent of the required common open space, but no greater than 1,500 square feet, may be utilized as a community building for the sole use of the cottage housing residents. Common buildings shall not be attached to cottages.*
  - b. **Carports and garage structures.** *Consolidated carports or garage structures, provided per 18.2.3.090.C.3.b, are not subject to the area limitations for common buildings.*
  - c. **Nonconforming Dwelling Units.** *An existing single-family residential structure*

*built prior to the effective date of this ordinance (date), which may be nonconforming with respect to the standards of this chapter, shall be permitted to remain. Existing nonconforming dwelling units shall be included in the maximum permitted cottage density. 1,000 square feet of the habitable floor area of such nonconforming dwellings shall be included in the maximum floor area permitted per 18.2.3.090C.2.a. Existing garages, other existing non-habitable floor area, and the nonconforming dwelling's habitable floor area in excess of 1,000 square feet shall not be included in the maximum floor area ratio.*

- d. **Accessory Residential Units.** *New accessory residential units (ARUs) are not permitted in cottage housing developments, except that an existing ARU that is accessory to an existing nonconforming single-family structure may be counted as a cottage unit if the property is developed subject to the provisions of this chapter.*

**7. Storm Water and Low-Impact Development.**

- a. *Developments shall include open space and landscaped features as a component of the project's storm water low impact development techniques including natural filtration and on-site infiltration of storm water.*
- b. *Low impact development techniques for storm water management shall be used wherever possible. Such techniques may include the use of porous solid surfaces in parking areas and walkways, directing roof drains and parking lot runoff to landscape beds, green or living roofs, and rain barrels.*
- c. *Cottages shall be located to maximize the infiltration of storm water run-off. In this zone, cottages shall be grouped and parking areas shall be located to preserve as much contiguous, permanently undeveloped open space and native vegetation as reasonably possible when considering all standards in this chapter.*

**8. Restrictions.**

- a. *The size of a cottage dwelling may not be increased beyond the maximum floor area in subsection 18.2.3.090.C.2.a. A deed restriction shall be placed on the property notifying future property owners of the size restriction.*

- 6) The 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.*

7) 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

8) The Planning Commission, following proper public notice, held an electronic public hearing on May 12, 2020. In keeping with Executive Order #20-16, this meeting was broadcast live on local television channel 9 and on Charter Communications channels 180 & 181, and was live-streamed over the internet on RVTV Prime at <http://www.rvtv.sou.edu>. A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report were made available on-line at <http://www.ashland.or.us/Page.asp?NavID=17902> seven days prior to the hearing. The applicant was required to submit any presentation materials for consideration at the hearing by 3:30 p.m. on Friday, May 8<sup>th</sup>, and these materials were made available on-line and e-mailed to Commissioners. Those wishing to provide testimony were invited to submit written comments via e-mail to [PC-public-testimony@ashland.or.us](mailto:PC-public-testimony@ashland.or.us) with the subject line "May 12 PC Hearing Testimony" by 3:30 p.m. on Monday, May 11, 2020, and these comments were made available on-line and e-mailed to Commissioners. The applicant was invited to provide written rebuttal to these public comments by 3:30 p.m. on Tuesday, May 12<sup>th</sup> and these arguments were posted on-line and e-mailed to Commissioners in advance of the electronic public hearing. All written testimony received by the deadlines was made available for Commissioners to review before the hearing and has been included in the meeting minutes. As provided in the Governor's Executive Order #20-16, no oral public testimony was taken during the hearing.

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 but before Planning Commission deliberations had concluded. As such, the meeting was continued for the Planning Commission deliberations and decision until 7:00 p.m. on Tuesday, June 9, 2020 at which time the meeting was reconvened electronically and the Planning Commission, after consideration of the materials received, 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. FINDINGS & CONCLUSIONS

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

2.2 The Planning Commission finds that the proposal for Outline Plan approval, Site Design Review approval, Cottage Housing, and Tree Removal Permit meets all applicable criteria for Outline Plan approval described in AMC 18.3.9.040.A.3; for Site Design Review described in AMC 18.5.2.050; for a Cottage Housing Development described in AMC 18.2.3.090; and for a Tree Removal Permit as described in AMC 18.5.7.040.B.

2.3 The Planning Commission concludes that the proposal satisfies all applicable criteria for Outline Plan approval.

The first approval criterion for Outline Plan approval is that, *“The development meets all applicable ordinance requirements of the City.”* The Commission finds that the proposal meets all applicable ordinance requirements, is requesting no Variances or Exceptions, and that this criterion has been satisfied.

The second approval criterion for Outline Plan approval is that, *“Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.”*

The Planning Commission notes that the application materials assert that adequate key City facilities can be provided to serve the development, and that based on consultations with representatives of the various City departments (i.e. water, sewer, streets and electric) the proposed small cottage housing units will not cause a City facility to operate beyond capacity.

### Water, Sewer, Electricity and Urban Storm Drainage

#### **Water**

The application explains, and Public Works has confirmed, that there is a six-inch water main in Sylvia Street, a four-inch water main in Alicia Street, and a fire hydrant is in place directly across from the driveway on Alicia Street. The applicant further asserts that there is adequate water pressure available to provide water service to the proposed new units.

#### **Sanitary Sewer**

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.

***Electricity***

The application indicates that electrical infrastructure is available in the immediate vicinity, and that the applicant has worked with the electrical department to design the provided electrical service plan, and is seeking to address desired solar panel installation and net-metering while addressing the neighborhood's existing electrical infrastructure.

***Urban Storm Drainage***

The application notes, and Public Works has confirmed, that there is a ten-inch storm sewer line within the Sylvia Street right-of-way. The applicant explains that the project is required to employ low impact development standards under the City's Cottage Housing Development Standards as well as under the Rogue Valley Sewer Services (RVSS) Standards for Storm Water Management, and the low impact development measures proposed including the use of pervious walkways and rain-barrel catchment of roof drainage to reduce the amount of storm water generated. The applicant proposes to capture, detain, treat and regenerate all storm drainage on the property through the use of a StormTech system which will detain and treat storm water before releasing it into the existing irrigation ditch adjacent to the parking lot. The applicant asserts that this should result in no added impacts to the Sylvia Street storm drain facilities.

***Police & Fire Protection***

An existing fire hydrant is in place directly across Alicia Avenue from the driveway entrance. As is typical, the Fire Marshal will review the final civil drawings and building permit submittals for compliance with fire codes relative to water supply and fire apparatus access, and conditions have been included below to require that the applicants address the requirements of the Fire Department including but not limited to approved addressing, fire apparatus access, fire hydrant distance and fire flow, as part of the Final Plan application submittal. With regard to the current Outline Plan, the Fire Marshal has indicated that he sees no issues which would preclude this development from occurring as they would be required to provide adequate access as well as hydrant placement and potentially sprinkling units that cannot meet fire requirements. The Fire Marshal concludes that in the event of an evacuation order from this area, there are two current means to access Oak Street and at some point, with infill likely, additional access to Carol and/or Clinton could develop.

***Adequate Transportation***

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.

The application includes preliminary Grading, Utility and Erosion Control Plans prepared by Registered Professional Engineer Scott D. Pingle of KAS & Associates, Inc. which identify existing facilities available in the adjacent rights-of-way along with proposed connections; meter and transformer placement; and storm water control, detention and treatment systems. The Planning Commission finds that the site's utilities will be extended to and through the subject property from public utility easements and street right-of-way adjacent to the site, and that based on the conceptual plans and details from the various service providers, adequate key city facilities are available within the adjacent rights-of-way and will be extended by the applicant to serve the proposed development. Conditions have been included below to require that final electric service, utility and civil plans be provided for the review and approval of the Staff Advisor and city departments in conjunction with the Final Plan submittal, and that civil infrastructure be installed by the applicants, inspected and approved prior to the signature of the final survey plat.

The third criterion for approval of an Outline Plan is that, *"The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas."*

### **Trees**

The Commission notes that six trees are identified on the subject property including: a 20-inch Plum which is proposed to be removed due to its location relative to necessary driveway improvements; a 14-inch unspecified deciduous tree; a 10-inch Walnut; an eight-inch Willow; a ten-inch Willow; and a 36-inch multi-trunked Willow which is proposed to be removed as a hazard tree. There is also a 14-inch Pine on the adjacent property near the west property line.

The Commission finds that the application includes an assessment of the trees by Christopher John, a certified arborist with Canopy, LLC. John notes that the large Willow has three trunks

(21½-inches, 24-inches and 30-inches) in close proximity to one another, and that all three exhibit evidence of previous large limb failure, extensive rot and fungal growth, and multiple structural defects including cracks, and overall poor health. The arborist's assessment is that this Willow is not suitable for an urban setting and would pose a hazard for people on the property, all the more so with further development, and he accordingly recommends that this Willow be removed and replaced with a more suitable tree.

With regard to the 20-inch Plum located near the northern entrance to the property, the arborist explains that the tree is quite large for its species, and as the species is prone to do it has been losing limbs. He goes on to emphasize that Plums require maintenance that this tree has not received and as a result it has a poor form and limb failure. He concludes that this combined with the location relative to the driveway and parking lead him to recommend removal and replacement of the tree.

For the remaining trees to be preserved and protected, the arborist recommends installation of tree protection fencing as required in the City's Tree Preservation & Protection Ordinance (AMC 18.4.5), avoiding compaction within the tree protection zones, root protection during work within tree protection zones, and periodic watering during the months of June through September.

#### ***Potential Wetland***

The Commission notes that a possible wetland which is not noted on the city's Local Wetlands Inventory has been identified on the subject property, and the applicant suggests it was formed because the "Million Ditch" irrigation canal passes through the property and continues on to the property immediately to the east. The potential wetland area has been preliminarily assessed by a wetland biologist with Northwest Biological Consultants who has provided a letter indicating the wetland is a small area affected by irrigation water overflow from an open ditch and disconnected pipe which has since been repaired, and notes that the presence of upland soils and weak indicators of soils, plants, and hydrology suggest the presence of a small, marginal wetland. The letter goes on to note that with the pipe repaired and the artificial water source eliminated, new data will be collected this spring to determine whether removal of the artificial water source has eliminated the source of artificial hydrology for the potential wetland. The wetland biologist indicates that they believe this will be the case and that as such, the area will be determined not to be a jurisdictional wetland upon review by the Oregon Department of State Lands (DSL). The wetland biologist concludes that pending that review by DSL, no ground disturbing activities are to take place within the wetland area or its buffer.

The Planning Commission finds that if the possible wetland is found to be jurisdictional by DSL, an area extending 20 foot beyond its upland edge would be required to be protected within a Water Resource Protection Zone (WRPZ) as provided in AMC 18.3.11. While there is not a clear identification in the materials of the potential wetland's full extent with its protection zone, there is an area identified for protection with silt fencing within the proposed open space on the applicant's Erosion Control Plan (Sheet B2) which correlates to cattails and reeds growing on-site.

The Planning Commission finds that the applicant has identified and assessed the site's natural features including a possible wetland and six trees and proposed to preserve and protect all but two of the trees. One, a large Willow, has been found by a certified arborist to pose a hazard due to overall poor health including large limb failures, extensive rot, fungal growth and multiple structural defects. The other, a large Plum, has not been properly cared for resulting in poor form, and limb failure and it is proposed for removal as well. The remaining trees are to be preserved and protected. Similarly, the applicant has enlisted the services of a wetland biologist to assess a possible wetland on the property – the site's irrigation system has been repaired, further assessment and formal delineation of the wetland is underway, the site plan incorporates an open space configuration to preserve and protect the possible wetland and buffer, and no further ground disturbance is to occur pending DSL concurrence with the applicant's delineation. If determined to be jurisdictional through a formal delineation, the full extent of the wetland and associated buffer zone will need to be clearly detailed in the Final Plan materials and protected from disturbance within the development's open space. Conditions have been included below to require that for the wetland, a delineation be prepared, submitted for review and concurrence obtained from DSL, and the results incorporated into the Final Plan drawings including protection of the WRPZ. For the trees, conditions have been recommended to include tree protection fencing installation and verification before site work, and incorporation of the arborist's recommendations into a revised Tree Protection Plan for inclusion with the Final Plan submittal.

The fourth criterion for approval of an Outline Plan is that, *"The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan."* The Planning Commission finds that the development will not prevent adjacent land from being developed with the uses envisioned by the Comprehensive Plan. Adjacent properties to the north, south and west are largely developed with single family residences as envisioned in the Comprehensive Plan. The property immediately to the east is separated from the subject property by slopes ranging from 15 percent to more than 35 percent, and as such any future development would need to take access from Clinton Street.

The fifth approval criterion is that, *"There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project."* The Planning Commission finds that at the time the Final Plan application is submitted, "Covenants, Conditions and Restrictions (CC&R's)" documents will be drafted by the project's land use attorney and surveyor for review and approval by the City. These documents will address the project's common area in order to provide adequate assurances relative to open space maintenance. The Commission further finds that if the project is to be completed in phases, the open space shall be completed no later than the sixth unit's occupancy, and all private landscaping improvements are to be completed prior to each unit's individual occupancy. Conditions requiring draft CC&R's and phasing details be included with the final plan submittal have been included below. Based on the foregoing, the Commission concludes that the proposal complies with the fifth approval criterion.

The sixth criterion is that, *"The proposed density meets the base and bonus density standards established under this chapter."* AMC Table 18.2.3.090.C.1 Cottage Housing Development Density addresses the permissible number of cottages for a cottage housing development in the R-1-5 zoning district providing

that one cottage per 2,500 square feet of lot area is allowed, with a maximum number of 12 cottages. The Planning Commission finds that the 54,722 square foot property here will accommodate 12 cottages ( $54,722/2,500 = 21.89$ ) and 12 are proposed which complies with the allowed Cottage Housing Development Density. Based on the foregoing, the Commission concludes that the proposal complies with the sixth approval criterion.

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.

The Planning Commission concludes that as detailed above and with the conditions discussed, the proposal complies with the requirements for Outline Plan subdivision approval under the Performance Standards Options chapter.

2.4 The Planning Commission concludes that the proposal satisfies all applicable criteria for Site Design Review approval.

The first approval criterion addresses the requirements of the underlying zone, requiring 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 building and yard setbacks and other applicable standards have been evaluated to ensure consistency with the applicable provisions of part 18.2, and all regulations of the underlying R-1-5 zoning will be satisfied.

The second approval criterion deals with overlay zones, and requires that, *“The proposal complies with applicable overlay zone requirements (part 18.3).”* The Planning Commission finds that the property is within the Performance Standards Option (PSO) overlay zone, which requires that all developments other than partitions or individual dwelling units be processed under Chapter 18.3.9., and that the proposal involves a 12-unit cottage housing development and 13-lot subdivision for which the applicant has requested Outline Plan approval under the PSO-Overlay chapter 18.3.9.

The Planning Commission further finds that the subject property is located within the Wildfire Lands Overlay, and as such a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 will need to be provided for the review of the Fire Marshal prior to bringing combustible materials onto the property. New landscaping proposed will need to comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028. Conditions to this effect have been included below.

The Commission finds that while no wetlands are identified on the subject property in the Local Wetlands Inventory, the applicant has identified a possible wetland on the property, a wetland biologist has been retained to assess the possible wetland, the possible wetland and a 20-foot buffer has been incorporated into the proposed open space, the applicant has proposed to limit ground disturbance until a delineation has been reviewed by the Oregon Department of State Lands and the applicant has planned all site improvements outside of the possible wetland and its buffer zone. The applicant further proposes to include a conservation area with restrictions stipulates that the uses and activities within the Water Resource Protection Zone shall be consistent with the provisions of AMC 18.3.11.

Based on the foregoing, the Planning Commission finds that this criterion is satisfied.

The third criterion addresses the Site Development and Design Standards, requiring 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 the proposal complies with the applicable Site Development and Design and that the various plans have been prepared based on these standards

and the recently adopted Cottage Housing ordinance. 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  $[(9 \times 1) + (3 \times 1.5) = 13.5]$ . 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.

The fourth approval criterion addresses city facilities, specifically requiring 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.”* The Planning Commission finds that adequate capacity of city facilities, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property, and that these items are addressed in detail in the Outline Plan discussion in section 2.3 above. The Commission concludes that this criterion has been satisfied.

The final criterion for Site Design Review approval addresses “Exception to the Site Development and Design Standards.” The Planning Commission finds that the applicant has not requested any Exceptions to the Site Development and Design Standards, and as such this criterion does not apply.

The Planning Commission concludes that as detailed above and with the conditions discussed, the proposal complies with the requirements for Site Design Review approval.

2.5 The Planning Commission finds that the proposal satisfies all applicable standards specific to Cottage Housing Development.

The Planning Commission finds 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.

The Commission further finds that building separations are equal or greater than the six-foot minimum for cottages. With the exception of the attached units all cottages are separated by at least nine feet.

The Commission finds that any fencing will comply with the limitations of the fence code and will not exceed four feet on interior areas adjacent to open space except as allowed for deer fencing, and a

condition has been included below to requires that the CC&R's detail the fencing limitations.

The Planning Commission finds that the existing driveways separation between the subject property and 732 Sylvia Street to the north is non-conforming. There are 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.

The Commission finds that the driveway and parking area proposed meet the vehicle area design standards in AMC 18.4.3. All spaces are to be standard nine-foot by 18-foot spaces with a 24-foot back-up area provided. The Commission further finds that the proposal meets the off-street parking requirements of AMC 18.4.3.040, providing 14 spaces for the 12 cottages in a single, consolidated parking area. Parking is to be provided in carports on each side of the drive aisle, and the carports will include solar panels as part of the applicant's effort to achieve zero net energy for the project. The driveway is proposed to be improved to 20-feet in width which complies with the minimum driveway width for access to a parking area for 14-parking spaces. The driveway has been designed to accommodate a fire truck turn-around, and will be designated as such on-site, as required by the Ashland Fire Department.

The property has frontage along Alicia Avenue. There are no street connections identified in the vicinity on the City's Street Dedication Map, and adjacent development, natural features and topography pose difficulties for future street extension. The applicant has proposed a walkway along the east side of the driveway extending from the street into and around the development for the use of residents and guests of the proposed cottage housing development.

The Planning Commission finds that 14,701 square feet, or 26.86 percent of the site, is proposed in open space, where a minimum of 20 percent is required. The proposed common area open spaces consist of turf areas with pathways for easy access to and from the covered parking spaces to the cottage units. To the east of the parking area, a large landscape common area with decomposed granite paths at the edges of the estimated wetland buffer zone is proposed. This common area is connected to the formal walkways and a 20-foot turf strip to a community garden area that is along the west property line. A total area of 14,701 square feet of the lot area is dedicated to open spaces, which include 12,028 square feet of open space plus the possible wetland and its buffer which total 2,673 square feet in area.

The Commission finds that the open spaces have no dimensions of less than 20 feet, and are connected with five-foot walkways. The open space is generally centrally located, and all units abut common open spaces that are 20-feet in width or greater. The cottages are arranged around the edges of the property with the primary common open space generally centered on the site. Eight of the units abut this open space. Additionally, along the north and south sides of the parking area, a 20-foot landscaped area with common walkway is proposed, and Lot #6 abuts the community garden open space. Of the 12 units proposed, seven directly abut the larger open spaces and all abut an at least 20-foot wide common open space.

The Commission further finds that the common open space is separated from the private outdoor areas. Private outdoor areas are proposed adjacent to the units with pathways that connect the entrances of the units to and through the open space with a walkway leading to the parking areas and public street beyond. Each cottage unit has a private, useable outdoor area of at least 200 square feet which includes garden areas, and porches or patios. These private areas do not have any dimensions less than eight feet. Low fencing and landscaping will provide visual boundaries around the perimeter of the common areas and between the private yards.

The Commission finds that the development proposes on-site infiltration through an on-site catchment system that is a part of the project's low impact development storm water measures detailed in the civil and landscape drawings. Landscape garden bed filtration systems, permeable walkways and rain barrels are to be provided to allow for natural filtration and on-site filtration, and site drainage has been engineered to be filtered per regional (RVSS) standards with a StormTech system which, based on percolation rate of the soils and the storm water event studies, will retain and regenerate all storm water on-site.

Based on the foregoing, The Planning Commission concludes that, as detailed above and with the conditions discussed, the proposal is consistent with the Cottage Housing Development Standards.

2.6 The Planning Commission notes that there are six trees on the subject property including: a 20-inch Plum which is proposed to be removed due to its location relative to necessary driveway improvements; a 14-inch unidentified deciduous tree; a 10-inch Walnut; an eight-inch Willow; a ten-inch Willow; and a 36-inch multi-trunked Willow which is proposed to be removed as a hazard tree. The application also notes that there is a 14-inch Pine on the adjacent property near the west property line.

The Commission also notes that the application includes an assessment of the trees by Christopher John, a certified arborist with Canopy, LLC. The project arborist notes that the large Willow has three trunks (21½-inches, 24-inches and 30-inches) in close proximity to one another, and that all three exhibit evidence of previous large limb failure, extensive rot and fungal growth, and multiple structural defects including cracks, and overall poor health. His assessment is that this Willow is not suitable for an urban setting and poses a hazard for people on the property, all the more so with further development of the site. He recommends that this Willow be removed as a hazard and replaced with a suitable tree. This tree is located within the buffer zone of the possible wetland identified, however hazard tree removal is exempt from regulation under the Water Resources Protection Zones (WRPZ) Ordinance in AMC 18.3.11.

The Commission further notes that with regard to the 20-inch Plum located near the northern entrance to the property, the arborist indicates that the tree is quite large for its species, and as the species is prone to do it has been losing limbs. He goes on to emphasize that Plums require maintenance that this tree has not received and as a result it has a poor form and has experienced limb failure. He concludes that this combined with the location relative to the driveway and parking lead him to recommend removal and replacement of the tree. The applicant notes that removal of this tree allows the site to develop in a manner consistent with applicable Site Design standards, and that the removal will not have any impact

on erosion, soil stability, flow of surface waters, protection of adjacent trees, windbreaks, or tree densities. The Commission finds that 23 new trees are identified in the Landscape Plan provided (Sheet L-101), which more than satisfies the one-for-one mitigation requirement.

The Commission further notes that the Ashland Tree Commission was unable to convene its regular monthly meeting for May of 2020 due to the City Administrator's state of emergency declaration for the Coronavirus (COVID-19) outbreak, which suspended advisory commission meetings. As such there is no Tree Commission recommendation. As provided in AMC 2.25.040, the failure of the Tree Commission to make a recommendation on any individual planning action shall not invalidate that action.

The Commission finds that the remaining trees which are to be preserved are proposed to be protected with six-foot tall chain link fencing as recommended by the arborist and required in the City's Tree Preservation & Protection Ordinance (AMC 18.4.5). In addition, the arborist has recommended that the applicant avoid soil compaction within the tree protection zones, provide for root protection during any work within tree protection zones, and periodically water preserved trees from during the warmer months (June through September). Conditions have been included to require tree protection fencing installation and verification before site work, and to incorporate the arborist's recommendations into a revised Tree Protection Plan for inclusion with the Final Plan submittal.

The Planning Commission concludes that as detailed above and with the conditions discussed, the proposal complies with the requirements for Tree Protection and for Tree Removal Permits to remove two trees.

### **SECTION 3. DECISION**

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for Outline Plan subdivision and Site Design Review approvals for a 12-unit/13-lot Cottage Housing development, and Tree Removal Permit to remove two trees is supported by evidence contained within the whole record.

The project is intended to as a zero net energy development with solar panels installed on the two carport buildings, and will include 12 modestly sized units developed around a generous central open space which includes an area reserved to protect a possible wetland, and in the Commission's assessment is the type of development envisioned with the adoption of the Cottage Housing ordinance. The Commission believes that the development merits approval with the conditions detailed below.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #PA-T2-2020-00017. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2020-00017 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 no ground-disturbing activities are to take place within the potential wetland area or its associated buffer until it has been determined whether the potential wetland is jurisdictional and concurrence has been obtained from the Oregon Department of State Lands (DSL).
2. That any new addresses shall be assigned by City of Ashland Engineering Department. Street and subdivision names shall be subject to City of Ashland Engineering Department review for compliance with applicable naming policies.
3. That permits shall be obtained from the Ashland Public Works Department prior to any work in the public right of way, including but not limited to permits for new driveway approaches or any necessary encroachments.
4. That a Tree Verification Permit shall be applied for and approved by the Ashland Planning Division prior to any site work including excavation, staging or storage of materials, or excavation permit issuance. The Tree Verification Permit is to inspect the identification of the two trees to be removed and the installation of tree protection fencing for trees to be protected on adjacent properties. Standard tree protection consists of chain link fencing six feet tall and installed in accordance with the requirements of AMC 18.4.5.030.B. No construction shall occur within the tree protection zone including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles.
5. That the applicant shall obtain approval of Demolition/Relocation Review Permits through the City of Ashland Building Division prior to demolition of existing structures on the subject property if found to be necessary by the Building Official.
6. That a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 of the Ashland Land Use Ordinance shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the Prohibited Flammable Plant List per Resolution 2018-028.
7. That the Final Plan submittal shall include:
  - a. That draft CC&Rs for the Homeowner's Association shall be provided for review and approval of the Staff Advisor with the Final Plan application. The CC&R's shall describe responsibility for the maintenance of all common use-improvements including driveways, parking areas, carports, landscaping/open space, and storm water facilities. The cottage housing fencing limitations, floor area limitations and the prohibition on ARU's shall be clearly addressed in the CC&R's.
  - b. The approved Tree Protection Plan and accompanying standards for compliance shall be noted in the CC&Rs. The CC&Rs must state that deviations from the plan shall be considered a violation of the Planning Application approval and therefore subject to penalties described in the Ashland Municipal Code.
  - c. A wetland delineation with concurrence from the Oregon Department of State Lands (DSL). If the delineation identifies a jurisdictional wetland, the wetland and its protection zone shall be clearly identified in the Final Plan drawings.
  - d. A phasing plan for the completion of the development.
  - e. Final site lighting details.
  - f. Final lot coverage calculations demonstrating how lot coverage is to comply with the applicable coverage allowances of the zoning district. Lot coverage includes all building

footprints, driveways, parking areas and other circulation areas, and any other areas other than natural landscaping.

- g. All easements including but not limited to public and private utilities, irrigation, mutual access and circulation, and fire apparatus access shall be indicated on the Final Plan submittal for review by the Planning, Engineering, Building and Fire Departments.
- h. Final electric service, utility and civil engineering plans including. All civil infrastructure shall be installed by the applicants, inspected and approved prior to the submittal of the final survey plat for review and signature.
  - i. The utility plan shall include the location of connections to all public facilities including the locations of water lines and meter sizes, fire hydrants, sanitary sewer mains and services, manholes and clean-outs, and storm drainage pipes and catch basins, along with any backflow prevention measures required by the Water Department because there is a non-potable water source (irrigation) on the property. Any required private or public utility easements shall be delineated on the civil plans.
  - ii. The final electric design and distribution plan shall include load calculations and locations of all primary and secondary services including transformers, cabinets and all other necessary equipment with the Final Plan application. This plan must be reviewed and approved by the Electric Department prior to the signature of the final survey plat. Transformers and cabinets shall be located in areas least visible from streets and outside of vision clearance areas, while considering the access needs of the Electric Department. Electric services shall be installed underground to serve all lots within the applicable phase prior to submittal of the final survey plat for review and signature. At the discretion of the Staff Advisor, a bond may be posted for the full amount of underground service installation (with necessary permits and connection fees paid) as an alternative to installation of service prior to signature of the final survey plat. In either case, the electric service plan shall be reviewed and approved by the Ashland Electric Department and Ashland Engineering Division prior to installation.
  - iii. The storm drainage plan shall detail the location and final engineering for all storm drainage improvements associated with the project, and shall be submitted for review and approval by the Departments of Public Works, Planning and Building Divisions. The storm drainage plan shall demonstrate that post-development peak flows are less than or equal to the pre-development peak flow for the site as a whole, and that storm water quality mitigation has been addressed through the final design.
- i. A final grading and erosion control plan.
- j. A final Tree Protection Plan addressing the trees on the property to be preserved and trees on adjacent properties within 15 feet of the property line. The plan shall identify the location and placement of fencing around the drip lines of trees identified for preservation as required in AMC 18.4.5.030.B.1. The amount of fill and grading within the drip line shall be minimized. Cuts within the drip line shall be noted on the tree protection plan,

- and shall be executed by handsaw and kept to a minimum. No fill shall be placed around the trunk/crown root. The recommendations of the project arborist in terms of soil compaction, root protection and periodic water shall be incorporated into this plan.
- k. A final size- and species-specific landscaping plan including irrigation details satisfying the Water Conserving Landscaping Guideline in AMC 18.4.4.030.I. New landscaping shall comply with the General Fuel Modification Area requirements and shall not include plants listed on the Prohibited Flammable Plant List adopted by Resolution #2018-028. All landscaping shall be installed according to the approved plan, and tied into the existing irrigation system, inspected and approved prior to the issuance of a certificate of occupancy.
  - l. That the requirements of the Ashland Fire Department relating to fire hydrant distance, spacing and clearance; fire flow; fire apparatus access, approach, turn-around, and firefighter access pathway; approved addressing; fire sprinkler and extinguishers as applicable; limits on fencing and gates which would impair access; and wildfire hazard area requirements shall be satisfactorily addressed in the Final Plan submittals. Fire Department requirements shall be included in the civil drawings, and a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements of AMC 18.3.10.100.A.2. shall be included with the Final Plan submittal.
8. A final survey plat shall be submitted for the review and approval of the Staff Advisor within 12 months and approved by the City of Ashland within 18 months of this approval. Prior to submittal of the final subdivision survey plat for review and signature:
- a. The final survey plat shall include a deed restriction notifying future property owners that the size of a cottage dwelling may not be increased beyond the maximum floor area in subsection 18.2.3.090.C.2.a. This size limitation shall also be addressed in the development CC&R's.
  - b. All easements including but not limited to public and private utilities, mutual access, and fire apparatus access shall be indicated on the final survey plat as required by the Ashland Engineering Division.
  - c. The driveway approach shall be installed under permit from the Public Works Department and in accordance with the approved plan, inspected and approved prior to the submittal of the final survey plat for signature.
  - d. Subdivision infrastructure improvements including but not limited to utility installations shall be completed according to approved plans prior to submittal of the final survey plat for review and signature.
  - e. The driveway shall be paved to 20-foot width, a vertical clearance of 13-feet, 6-inches and be able to withstand 44,000 lbs. The flag drive shall be constructed so as to prevent surface drainage from flowing over the private property lines and/or the public way.
  - f. Electric services shall be installed underground to serve all lots, inspected and approved. The electric service plan shall be reviewed and approved by the Ashland Electric, Building, Planning and Engineering Divisions prior to installation.
  - g. Sanitary sewer laterals and water services including connection with meters at the street shall be installed to serve all lots, inspected and approved.

- h. The property owner shall sign in favor of Local Improvement Districts (LIDs) for the future street improvements, including but not limited to paving, sidewalks, parkrow with irrigated street trees, curb, gutter, storm drainage and undergrounding of utilities, for Alicia and Oak Lawn Avenues. This LID agreement shall be signed and recorded concurrently with the final survey plat. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by City ordinances and resolutions.
9. That the building permit submittals shall include:
- a. Final permit drawings addressing all requirements of the Building Division, including but not limited to that the attached units or any units where exterior walls are less than three feet from a property line shall address fire separation requirements, and fire-rated assemblies for attached units shall include a sound transmission class rating of 45 for airborne sound.
  - b. Identification of all easements, including public and private utility easements, mutual access easements and fire apparatus access easements.
  - c. Solar setback calculations demonstrating that the northern units comply 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. Other cottage housing units shall provide demonstration of compliance with the Cottage Housing Development Standards requiring that the not cast a shadow on the roof area of another cottage.
  - d. That 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 through the curb or gutter at a public street, a public storm pipe, an approved 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.

  
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Planning Commission Approval

July 14, 2020  
\_\_\_\_\_  
Date