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*The comments of this pre-app are preliminary in nature and subject to change based upon the submittal of additional or different information. The Planning Commission or City Council are the final decision making authority of the City, and are not bound by the comments made by the Staff as part of this pre-application.*

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**ASHLAND PLANNING DIVISION  
PRE-APPLICATION CONFERENCE  
COMMENT SHEET**  
May 20, 2020

**SITE:** 104 Bush Street  
**APPLICANT:** Coleman Creek Const.  
**REQUEST:** Variance to MPFA Standards

## **PLANNING DIVISION COMMENTS**

*This pre-application conference is intended to highlight significant issues before the applicant prepares and submits a formal application.*

**Summary:** The Ashland Land Use Ordinance sets a Maximum Permitted Floor Area (MPFA) for properties in the historic districts based on the property size and number of units. The code also provides the ability to exceed this MPFA with a Conditional Use Permit by demonstrating compliance with specific Historic District Development Standards, however the code sets an absolute maximum that even with a Conditional Use Permit no one shall exceed the MPFA by more than 25 percent.

<b>Lot Size</b>	5,250 square feet
<b>Adjustment Factor</b>	0.97
<b>Floor Area Ratio (FAR) For One Res. Unit</b>	0.38
<b>MPFA</b>	1,935.15 square feet
<b>Current Square Footage (1.22 x 1935.15)</b>	2,362 square feet
<b>MAX MPFA x 1.25 (CUP)</b>	2,418.94 square feet
<b>Proposed Square Footage (1.33 x 1935.15)</b>	2,573 square feet

The existing home at 104 Bush Street as described in the application materials appears to currently exceed the MPFA by 22 percent (i.e.  $2,362/1,935.15 = 1.22$ ), and as proposed would be 33 percent over the MPFA ( $2,573/1,935.15 = 1.3296$ ), or eight percent beyond the maximum overage allowed with a Conditional Use Permit. The Land Use Ordinance has no provision which would allow exceeding the MPFA by more than 25 percent; this would require a Variance to the MPFA regulations in AMC 18.2.5.070.C which state, “.... *In no case shall the permitted floor area exceed 25 percent of the MPFA.*”

In and of themselves, Variances are discretionary approvals and are difficult to justify, and very difficult to defend if appealed. In staff’s recollection, no Variance to the MPFA has been approved in the 20 years since this ordinance was adopted, and in staff’s view, receiving approval of a Variance of this nature would be exceedingly difficult and could be seen as setting a dangerous precedent in opening the door to similar requests and weakening the MPFA standards. An application would need to make a compelling argument that the Variance was necessitated by a unique physical circumstance that was specific to this property, and would also need to strongly demonstrate how the proposal was

in keeping with the Historic District Development Standards and was supported by the Historic Commission.

### **VARIANCE APPROVAL CRITERIA (AMC 18.5.5.050)**

- A.** The approval authority through a Type I or Type II procedure, as applicable, may approve a variance upon finding that it meets all of the following criteria.
  - 1. The variance is necessary because the subject code provision does not account for special or unique physical circumstances of the subject site, such as topography, natural features, adjacent development, or similar circumstances. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance.
  - 2. The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site.
  - 3. The proposal's benefits will be greater than any negative impacts on the development of the adjacent uses and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.
  - 4. The need for the variance is not self-imposed by the applicant or property owner. For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant.
  
- B.** In granting a variance, the approval authority may impose conditions similar to those provided for conditional uses to protect the best interests of the surrounding property and property owners, the neighborhood, or the City as a whole.

Generally, the application would need to successfully demonstrate that there are unique physical circumstances specific to this property that would not apply to other lots of the same size and subject to the same MPFA, that a 33 percent overage was the minimum Variance that could address the unique physical circumstance, that the proposal would have benefits that would outweigh any negative impacts to adjacent property and which would further the purpose and intent of the city codes, and that the need for a Variance is not self-imposed. A key question to consider in moving forward would be to consider why the previously enclosed garage could not be re-opened to provide desired parking rather than relaxing a standard intended to protect the broader character of the historic districts. In preliminary assessment, staff believe that it would be exceedingly difficult to obtain a Variance to exceed the MPFA by more than 25 percent.

The applicants would also be well-advised to try to address the Conditional Use Permit criteria and the Historic District Development Standards which would apply for overages up to 25 percent; staff do not believe the Planning or Historic Commission would be willing to consider any request where these were not very well addressed.

### **CONDITIONAL USE PERMIT APPROVAL CRITERIA**

- 1. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not

implemented by any City, State, or Federal law or program.

2. That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.
3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.
  - a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
  - c. Architectural compatibility with the impact area.
  - d. Air quality, including the generation of dust, odors, or other environmental pollutants.
  - e. Generation of noise, light, and glare.
  - f. The development of adjacent properties as envisioned in the Comprehensive Plan.
  - g. Other factors found to be relevant by the approval authority for review of the proposed use.
4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.
5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
  - b. *R-1*. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.

Typically, exceeding the MPFA requires a Conditional Use Permit addressing the above criteria and speaking to the Historic District Design Standards. Here, the requested overage exceeds that allowed through a Conditional Use Permit and would require a Variance to the MPFA, however in staff's view were the Planning Commission to consider such a request, they would also want to see that the Conditional Use Permit criteria and Historic District Design Standards were well-addressed.

**Garage Placement:** The Historic District Design Standards (**AMC 18.4.2.050.B.13**) explicitly discourage the placement of a garage beside or in front of the primary building. It would be difficult to make a finding that the proposed addition was in keeping with the Design Standards.

**Historic Commission:** As provided in AMC 18.4.2.050.A.2.b, if a development requires a land use procedure, the authority exists in the law for the Staff Advisor and the Planning Commission to require modifications in the design to match the Historic District Development Standards. In these cases, the Ashland Historic Commission advises both the applicant and the City decision maker. *The Historic Commission and its weekly Review Board are not currently meeting due to*

*the COVID-19 crisis, and it would be difficult for staff or the Planning Commission to approve a request to significantly exceed the Maximum Permitted Floor Area without the Historic Commission's review of the request in light of the Historic District Design Standards and a favorable recommendation.*

**Tree Preservation/Protection:** All land use applications require a Tree Protection Plan to ensure that trees are protected during site disturbance (including demolition, construction, driveway/parking installation, staging of materials, etc.) This plan is required to address all trees on the property over six-inches in diameter at breast height (d.b.h.) and all trees that are located on adjacent properties within 15 feet of the property line as well, including any existing street trees.

**Submittal Requirements:** All submittals are currently being taken electronically. The application will need to include PDF drawings formatted to print clear, scalable 11x17 site plans along with elevation of the existing and proposed buildings. Plans should clearly indicate distance to property lines, and elevation drawings should include exterior details of the existing and proposed buildings, with window, door, trim, color and material details, etc.

**Neighborhood Outreach:** Staff always recommends that applicants approach the affected neighbors, particularly those who are likely to receive notice of an application, in order to make them aware of the proposal and to try to address any concerns that may arise as early in the process as possible. Notices are typically sent to neighboring property owners within a 200-foot radius of the perimeter subject property.

**Written Findings/Burden of Proof:** This pre-application conference is intended to highlight significant issues of concern to staff and bring them to the applicant's attention prior to their preparing a formal application submittal. Applicants should be aware that written findings addressing the ordinance and applicable criteria are required, and are heavily depended on when granting approval for a planning action. In addition, the required plans are explained in writing below. The burden of proof is on the applicant(s) to ensure that all applicable criteria are addressed in writing and that all required plans, written findings, and other materials are submitted even if those items were not discussed in specific, itemized detail during this initial pre-application conference.

**OTHER ORDINANCE REQUIREMENTS:** See AMC Table 18.2.5.030.A. – Standards for Urban Residential Zones. The subject property is zoned R-1-7.5, a single family residential zoning with a 7,500 square foot minimum lot size.

## **OTHER CITY OF ASHLAND DEPARTMENT COMMENTS**

**BUILDING:** Please contact Building Official Steven Matiaco in the Building Division for any building codes-related questions at 541-488-5305.

**CONSERVATION:** For more information on available water conservation programs, including any available appliance rebates or assistance with landscaping and irrigation system requirements, please contact Water Conservation Specialist Julie Smitherman of Conservation Division at 541-552-2062 or via e-mail to [julie.smitherman@ashland.or.us](mailto:julie.smitherman@ashland.or.us) . For information on any financial or

technical assistance available for the construction of Earth Advantage/Energy Star buildings, please contact Conservation Analyst/Inspector Dan Cunningham at 541-552-2063 or via e-mail to [dan.cunningham@ashland.or.us](mailto:dan.cunningham@ashland.or.us)

**ENGINEERING:** *Any construction or closure within the public right of way will require a Public Works permit, separate from land use or building permits, and MUST be obtained before any work in the right of way commences. Applicant would need to verify with Public Works that the proposed curb cut expansion falls within standards.* Please contact Karl Johnson of the Engineering Division for any Public Works/Engineering information at 541-552-2415 or via e-mail to [karl.johnson@ashland.or.us](mailto:karl.johnson@ashland.or.us) .

**FIRE:** Please contact Ralph Sartain from the Fire Department for any Fire Department-related information at 541-552-2229 or via e-mail to [ralph.sartain@ashland.or.us](mailto:ralph.sartain@ashland.or.us).

**WATER AND SEWER SERVICE:** If the project requires additional water services or upgrades to existing services the Ashland Water Department will excavate and install in the city right of way all water services up to and including the meter on domestic and commercial water lines. If a fire line is required, the water department will also only install a stub out to the location where the double detector check assembly complete with a Badger brand cubic foot bypass meter should be placed in a vault external to the building. The vault and the DCDA device housed in it are the responsibility of the property owner and should be placed at the property line. Fees for these installations are paid to the water department and are based on a time and materials quote to the developer or contractor. Meter sizes and fire line diameters will need to be provided to the Water Department at the time of a quote being requested. Please Contact Steve Walker at [541-552-2326](tel:541-552-2326) or e-mail [walkers@ashland.or.us](mailto:walkers@ashland.or.us) with any questions regarding water utilities.

**ELECTRIC SERVICE:** Please contact Dave Tygerson in the Electric Department for service requirements and connect fee information at (541) 552-2389 or via e-mail to [tygersod@ashland.or.us](mailto:tygersod@ashland.or.us). Dave will arrange an on-site meeting, and develop a preliminary electrical service plan for the site. Please allow additional time to accommodate scheduling of this on-site meeting and preparing the preliminary plan. Submittals will not be deemed complete without a preliminary approved plan from the Electric Department.

## PROCEDURE

The Variance necessary here would be to exceed the Maximum Permitted Floor Area within a Historic District by 33 percent, and would require approval by the Planning Commission through a Public Hearing (a “Type II” procedure). Type II procedures are subject to appeal on the record to the City Council. On the record appeals require a demonstration that there is a factual or procedural error underlying the decision, and consideration on the appeal is limited to the identified error(s) viewed in light of evidence already in the record.

## APPLICATION REQUIREMENTS

### Submittal Information.

The application shall include all of the following information.

- a. The information requested on the application form. [The zoning permit application form is available on-line at:  
<http://www.ashland.or.us/Files/Zoning%20Permit%20Application.pdf>.]
- b. Plans and exhibits required for the specific approvals sought.
- c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail.
- d. Information demonstrating compliance with all prior decision(s) and conditions of approval for the subject site, as applicable.
- e. The required fee. [*The Type 2 Variance application fee is \$2,190.75.*]

The Ashland Land Use Ordinance, which is Chapter 18 of the Municipal Code, is available on-line in its entirety at: <https://ashland.municipal.codes/LandUse> .

### Written Statements

Please provide two copies of a written statements (aka written findings) explaining how the application meets the approval criteria and applicable standards from the sections of the Ashland Municipal Code listed below. These written statements provide the Staff Advisor or Planning Commission with the basis for considering the application:

- |                                           |                      |
|-------------------------------------------|----------------------|
| ○ <b>Variance</b>                         | <b>AMC 18.5.5050</b> |
| ○ Conditional Use Permit                  | AMC 18.5.4.050       |
| ○ Historic District Development Standards | AMC 18.4.5.050       |

### Plans & Exhibits Required

Please provide plans and exhibits addressing the submittal requirements from the sections of the Ashland Municipal Code listed below. These exhibits are used to copy the Planning Commission packets and for notices that are mailed to neighbors. Please provide PDF files to [planning@ashland.or.us](mailto:planning@ashland.or.us) that are formatted to print clearly and to a standard architect’s or engineer’s scale at 11-inches by 17-inches.

- **Variance** **AMC 18.5.5.040**
- Conditional Use Permit: AMC 18.5.4.040
- **Tree Protection Plan:** **AMC 18.4.5.030**

**PLANNING APPLICATION FEES:**

Variance (Type II) \$2,190.75

***NOTE:** Applications are accepted on a first come-first served basis. All applications received are reviewed and must be found to be complete before being processed or scheduled at a Planning Commission meeting. Applications will not be accepted without a complete application form signed by the applicant(s) and property owner(s), all required materials and full payment. Applications are reviewed for completeness in accordance with ORS 227.178.*

**For further information, please contact:**

Derek Severson, *Senior Planner*

City of Ashland, Department of Community Development

Phone: 541-552-2040 or e-mail: [derek.severson@ashland.or.us](mailto:derek.severson@ashland.or.us)

May 20, 2020

Date

## **Public Works Pre-Application Comments**

1. Engineered Plans - Where public improvements are required or proposed, the applicant's engineer shall submit design plans for approval of all public improvements identified on the approved plan or as specified in conditions of approval. One set of these civil plans MUST be submitted DIRECTLY to the Public Works/Engineering Department. All design plans must meet the City of Ashland Public Works Standards. Engineered construction plans and specifications shall be reviewed and signed by the Public Works Director, prior to construction. All public facilities within the development will be designed to the City of Ashland Engineering Design Standards for Public Improvements. The engineered plans shall also conform to the following:

- If drawings are submitted to the City of Ashland digitally, they shall be true scale PDF drawings. If AutoCAD drawings are also submitted, they shall be compatible with the AutoCAD release being used by the City at that time and shall be located and oriented within the Oregon State Plane Coordinate System (NAD83-89).
- Drawings sizes shall comply with ANSI-defined standards for page width and height. Review drawings may be submitted in B size (11x17). Bidding and construction documents may also be printed at B size; however, all final as-constructed drawings must be submitted to scale on D-size (24x36) Mylar. Digital files of the as-constructed drawings shall also be submitted. Drawings shall be drawn such that reduction of plans from full size (D sized) to half size (B sized) can be done to maintain a true scale on the half-sized plans.

2. Right of Way – No additional right of way dedication, beyond that necessary to comply with City Street Standards, will be required at this time.

3. Erosion & Sediment Control - The following requirements shall be met:

- All ground disturbances exceeding 1,000 square feet shall implement an Erosion and Sediment Control Plan (ESCP).
- A 1200-C permit will be secured by the developer where required under the rules of the Oregon State DEQ. City of Ashland Engineering Department must receive a copy of this permit before any construction shall begin.
- Erosion Prevention and Sediment control measures that meet the minimum standards set forth by the City of Ashland Public Works/Engineering Standard Drawing CD282 must be in place before any construction related to the project begins.
- Pollution, track out, and sediment dumping into storm water are strictly prohibited per AMC 9.08.060.
- Drainage from automotive use areas shall be limited to oil concentrations of 10 mg/l by a pre-approved means.
- Trash storage areas shall be covered or provide additional storm water treatment by an approved means.
- Off street parking areas shall conform to Ashland Municipal Code 18.4.3.080.B.5, including provisions to minimize adverse environmental and microclimatic impacts.

4. Driveway Access – The proposed driveway opening must be no larger than the 12'-18' City of Ashland residential driveway standard and the proposal appears to be larger than this. The applicant proposed improvements must be reviewed and permitted by the City of Ashland Engineering Department.

5. Permits – Any construction or closure within the public right of way will require a Public Works permit and before any work in the right of way commences all necessary permits MUST be obtained

6. Addresses – Any new addresses must be assigned by City of Ashland Engineering Department.

## **Fire Department Pre-Application Comments**

Date: 04-13-2020  
Project Address: 104 Bush St Permit Number: PreApp-2020-00198  
Project Description: Garage Addition

Ashland Fire & Rescue Contact: Ralph Sartain 541-552-2229 ralph.sartain@ashland.or.us

Fire department comments are based upon the 2019 Oregon Fire Code as adopted by the Ashland Municipal Code, and Ashland Land Use Laws:

- **Fire has no additional comment for this project**

Final determination of fire hydrant distance, fire flow, and fire apparatus access requirements will be based upon plans submitted for Building Permit review. Changes from plans submitted with this application can result in further requirements. Any future construction must meet fire code requirements in effect at that time. The fire department contact for this project is Fire Marshal Ralph Sartain. He may be contacted at (541) 552-2229 or ralph.sartain@ashland.or.us.