

**PA-2017-00978**  
**232 Nutley**

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**Packet information submitted at the  
October 10, 2017 PC Meeting**



**PLANNING ACTION:** PA-2017-00978

**SUBJECT PROPERTY:** 232 Nutley Street

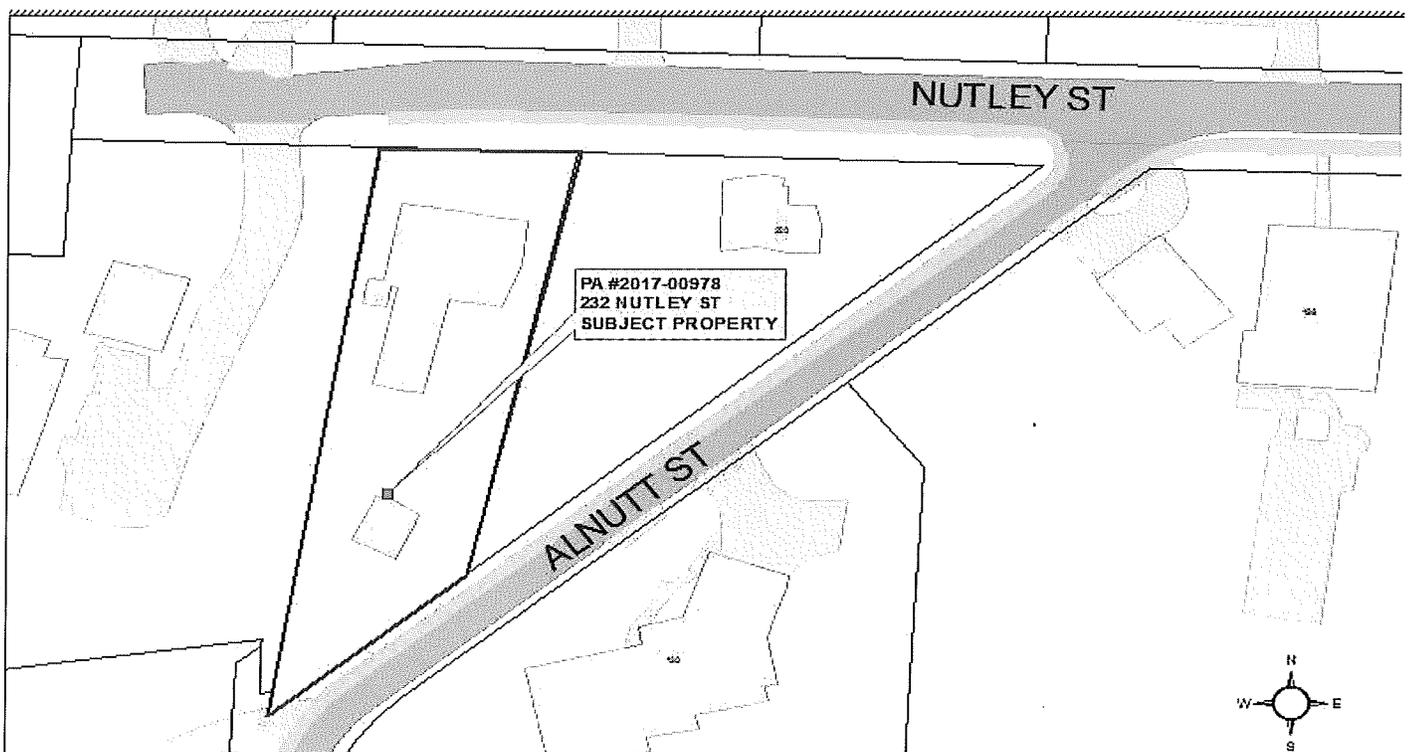
**OWNER/APPLICANT:** Leah K. Henigson Trust (Leah K. Henigson, *trustee*)

**APPELLANTS:** Patricia Zoline (Chris Hearn, *Attorney*)

Greg & Allison Koenig (Deborah K. Vincent, *Attorney*)

**DESCRIPTION:** The Planning Commission will consider appeals by neighbors of the Staff Advisor's approval of a request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street. The application also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development. **COMPREHENSIVE PLAN DESIGNATION:** Rural Residential;  
**ZONING:** RR-.5; **ASSESSOR'S MAP:** 39 1E 08AD; **TAX LOT #:** 8000.

**ASHLAND PLANNING COMMISSION MEETING:** *Tuesday October 10, 2017 at 7:00 PM, Ashland Civic Center, 1175 East Main Street*



Notice is hereby given that a PUBLIC HEARING on the following request with respect to the ASHLAND LAND USE ORDINANCE will be held before the ASHLAND PLANNING COMMISSION on meeting date shown above. The meeting will be at the ASHLAND CIVIC CENTER, 1175 East Main Street, Ashland, Oregon.

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. A copy of the Staff Report will be available for inspection seven days prior to the hearing and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Department, Community Development and Engineering Services, 51 Winburn Way, Ashland, Oregon 97520.

During the Public Hearing, the Chair shall allow testimony from the applicant and those in attendance concerning this request. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the applicable criteria. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least seven days after the hearing.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (28 CFR 35.102.-35.104 ADA Title I).

If you have questions or comments concerning this request, please feel free to contact the Ashland Planning Division, 541-488-5305.

## SITE DESIGN AND USE STANDARDS

### 18.5.2.050

The following criteria shall be used to approve or deny an application:

- 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.

## CONDITIONAL USE PERMITS

### 18.5.4.050.A

A Conditional Use 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.

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.
  - a. WR and RR. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - b. R-1. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - c. R-2 and R-3. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - d. C-1. The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.
  - e. C-1-D. The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 1.00 gross floor to area ratio, complying with all ordinance requirements.
  - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.
  - g. M-1. The general light industrial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, complying with all ordinance requirements.
  - h. CM-C1. The general light industrial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.50 gross floor to area ratio, complying with all ordinance requirements.
  - i. CM-OE and CM-MU. The general office uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area, complying with all ordinance requirements.
  - k. CM-NC. The retail commercial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area ratio, complying with all ordinance requirements.
  - l. HC, NM, and SOU. The permitted uses listed in chapters 18.3.3 Health Care Services, 18.3.5 North Mountain Neighborhood, and 18.3.6 Southern Oregon University District, respectively, complying with all ordinance requirements.

### 18.2.3.040 ACCESSORY RESIDENTIAL UNITS

Where accessory residential units are allowed, they are subject to Site Design Review under chapter 18.5.2, and shall meet all of the following requirements.

- B. **RR Zone.** In addition to the standards in subsection 18.2.3.040.A, accessory residential units in the RR zone shall meet the following requirements.
  1. If the accessory residential unit is not part of the primary dwelling, all construction and land disturbance associated with the accessory residential unit shall occur on lands with less than 25 percent slope.
  2. The lot on which the accessory residential unit is located shall have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters, and sidewalks.
  3. No on-street parking credits shall be allowed for accessory residential units.
  4. If located in the Wildfire zone, the accessory residential unit shall have a residential sprinkler system installed.

**ASHLAND PLANNING DEPARTMENT  
STAFF REPORT**

October 10, 2017

**PLANNING ACTION:** PA-2017-00978

**OWNER/APPLICANT:** Leah K. Henigson Trust (Leah K. Henigson, *trustee*)

**APPELLANTS:** Patricia Zoline (Chris Hearn, *Attorney*)  
Greg & Allison Koenig (Deborah K. Vincent, *Attorney*)

**LOCATION:** 232 Nutley Street

**ZONE DESIGNATION:** RR-.5

**COMP. PLAN DESIGNATION:** Rural Residential

**ORDINANCE REFERENCES:**

(See also [http://www.ashland.or.us/SIB/files/AMC\\_Chpt\\_18\\_current.pdf](http://www.ashland.or.us/SIB/files/AMC_Chpt_18_current.pdf))

18.1.4	Nonconforming Situations
18.2.3.040	Accessory Residential Units
18.2.4	General Regulations for Base Zones
18.2.5	Standards for Residential Zones
18.2.5.030.C	Standards for Rural Residential (RR) Zone
18.3.10	Physical & Environmental Constraints
18.4.2	Building Placement, Orientation & Design
18.4.3	Parking, Access and Circulation
18.4.4	Landscaping, Lighting & Screening
18.4.5	Tree Preservation and Protection
18.4.6	Public Facilities
18.5	Application Review Procedures and Approval Criteria
18.5.2	Site Design Review
18.5.4	Conditional Use Permits
18.5.5	Variances
18.5.7	Tree Removal
18.6.1	Definitions

**APPLICATION DEEMED COMPLETE ON:** July 20, 2017

**REQUEST:** The application involves a request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street, and also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development. Staff initially approved the application administratively subject to a number of conditions, and subsequent to the mailing of a Notice of Decision, the attorneys for

neighbors Patricia Zoline, who owns the property immediately to the west at 240 Nutley Street, and Gregory and Allison Koenig, who reside at 162 Alnutt Street, filed appeal requests.

## **I. Relevant Facts**

### **1) Background - History of Application**

In August of 1991, Planning Action #1991-00134 was administratively approved granting a request for a Variance to allow an eight-foot fence in a side yard setback along the west side of the property at 232 Nutley Street. All adjacent property owners signed letters of support for this application.

There are no other planning actions of record for this property.

### **2) Detailed Description of the Site and Proposal**

#### ***Site Description***

The subject property is located on the south side of Nutley Street, about 85 feet east of its terminus, at 232 Nutley Street. The property is generally trapezoidal and extends from Nutley Street south to Alnutt Street, with approximately 70 feet of frontage along Nutley and approximately 90 feet of frontage on Alnutt. The subject property has an area of approximately 12,632 square feet or 0.29-acres.

The property and those in the immediately surrounding area to the east, west and south are zoned RR-.5, a Rural Residential zoning with a ½-acre minimum lot size. Properties across Nutley Street to the north are zoned R-1-10 (Single Family Residential).

The property has slopes downhill to the east, with some areas along the west property line having slopes in excess of 35 percent. The application includes survey data indicating that slopes in the area proposed for development here are less than 25 percent.

Both Nutley and Alnutt Streets are residential neighborhood streets, and both are paved with curbs and gutters in place. Nutley Street has a five-foot curbside sidewalk in place which terminates at the applicant's driveway while Alnutt Street has a five-and-a-half-foot wide curbside sidewalk along the property's full frontage. The application notes that Nutley Street along the property's frontage was constructed as part of a local improvement district (LID) in the early 2000's, and that while there was adequate right-of-way available, it was ultimately improved in a manner that did not fully meet city standards. AMC 18.4.6.040.J provides that, "*Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.*" This section notes that in addition to typical considerations for an Exception, "*Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.*"

The property contains an existing single-story, single family residence with a basement which the application describes as being 2,035 square feet and built in the 1960's. In addition, there is an existing 16-foot by 16-foot barn structure with a small loft which the applicant proposes to remove in order to accommodate the proposed accessory residential unit.

There is an existing unpaved driveway which traverses the property from Nutley Street to Alnutt Street. The application notes that this driveway allows for one-way traffic from Nutley to Alnutt, and parking is currently stacked in the driveway, with one car parking and backing out to exit via Nutley while the car parked in front of it pulls through to exit on Alnutt. There is also a single unpaved parking space adjacent to the barn.

### ***Current Proposal***

The application involves a request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street. The application also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development.

## **II. Project Impact**

As detailed in AMC 18.5.2.020.B.1., the construction of two or more dwelling units, including the addition of an accessory residential unit, on a lot in any zoning district is subject to Site Design Review. Residential units of less than 10,000 square feet may be approved administratively through a Type I procedure as provided in AMC 18.5.2.030.E.

Because the proposal also involves the alteration of a nonconforming development, AMC 18.1.4.040.B requires that a Conditional Use Permit be obtained. In considering the Conditional Use component of the application, staff determined that while the proposal includes the construction of a new building, the Conditional Use Permit request itself had to do with the modification of existing non-conformities of the site rather than the new building and as such could be processed as a Type I procedure.

The current application was initially approved administratively subject to a number of conditions, and subsequent to the mailing of a Notice of Decision, the attorneys for neighbors Patricia Zoline, who owns the property immediately to the west at 240 Nutley Street, and Gregory and Allison Koenig, who reside at 162 Alnutt Street, filed timely appeal requests. Both appellants had standing to appeal as neighboring property owners who were entitled to receive notice, and because they had provided written comments on the original request.

AMC 18.5.1.050.G. explains that appeal hearings on Type I decisions made by the Staff Advisor are “*de novo*” hearings before the Planning Commission and follow the standard Type II public hearing procedure except that the decision of the Planning Commission is the final decision of the City. Consideration of the appeal is not limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.

### ***Accessory Residential Unit (ARU)***

The application materials explain that the proposed ARU would replace the 256 square foot barn, and would have an approximately 750 square foot footprint and be two stories in height with a habitable square footage not to exceed 999 square feet. The application suggests that the majority of the area of proposed disturbance for the ARU is pre-existing disturbed area from the existing barn. Two required parking spaces would be located off of the driveway adjacent to the barn, allowing the one-way use of the existing driveway to continue. In addition, two parking spaces for the existing home would be placed in the front yard adjacent to the driveway to accommodate the continued one-way use of the existing driveway. The application notes that the parking installation may necessitate the removal of some less-than-six-inch-diameter deciduous trees, a seven-inch DBH Oak near the parking at Nutley, as well as a seven-inch DBH Maple and a six-inch DBH walnut. The application notes that they will attempt to preserve a 12-inch pine located east of the driveway near the ARU parking, and that there will generally be minimal site disturbance resulting from the proposal. Where there is to be disturbance uphill of the existing barn, the applicant indicates that she will plant three 10¼-gallon Japanese Maples, with four three-gallon wintergreen boxwoods and four three-gallon Japanese Holly plants to be planted in the areas around the ARU.

The application explains that only one ARU is proposed, and that this will leave the maximum number of dwelling units on the property at two, and that the proposed ARU will be less than 50 percent of the gross habitable floor area of the primary residence and will not exceed 1,000 square feet, and will conform to the setback requirements. Expansion of the non-conforming lot coverage is addressed through the Conditional Use Permit discussion later in this document.

The application notes that the proposed ARU will not encroach into areas with slopes greater than 25 percent, and topographic survey data has been provided with the application by Stephan Barott Land Surveying to confirm the areas to be disturbed for the ARU footprint have slopes of 24.4 percent, while the areas to be disturbed for parking has slopes of 16-19.6 percent.

Lots proposed for Accessory Residential Units in the RR-.5 zoning district are to have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters, and sidewalks. Nutley Street has a five-foot curbside sidewalk in place which terminates at the applicant's driveway, while Alnutt Street has a five-and-a-half-foot wide curbside sidewalk along the property's full frontage. The application notes that Nutley Street along the property's frontage was constructed as part of a local improvement district (LID) in the early 2000's, and that while there was adequate right-of-way available, it was ultimately improved in a manner that did not fully meet city standards. AMC 18.4.6.040.J provides that, "*Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.*" This section notes that in addition to typical considerations for an Exception, "*Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.*" The application materials discuss that the lot has frontage on two improved city streets which were paved under a publicly-funded LID project; have curbs, gutters and sidewalk in place;

and were designed, installed and accepted by the city with a width that is in some areas less than 20-feet. (*City Engineering data puts the current improved width of Nutley Street at 27 feet within a 40-foot right-of-way, however both GIS data and on-site verification by staff have the paved width at or in some locations just below 20 feet.*) In staff's assessment, the standard was intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvement was deemed sufficient through an LID process and the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street. In addition, the application recognizes that within the Wildfire Overlay zone, fire sprinklers must be installed and indicates that this requirement will be met.

The application explains that the proposed ARU will be oriented to the street, and that a deck area will be provided to present an orientation to Alnutt Street while the primary access will face Nutley due to the parking space location. Covered bicycle parking is to be provided as well.

The application explains that the existing home is a large, four-bedroom three-bath house, and that as a single person with grown children the owner would like a smaller space and hopes to downsize, living in the ARU herself while renting the home to a larger family which she feels will help to address the shortage of more affordable family housing to the benefit of the city. She also explains that the existing barn is beginning to rot and fall apart and is becoming an eyesore, and she hopes to remove it while reclaiming the wood for use in the new ARU which will be sided in cedar to match the existing house.

### ***Site Design Review***

The application notes that the structure will have its primary orientation to Nutley Street, with a deck on the rear and side facing Alnutt, and that parking will be to the side of the structure, behind the primary residence. Materials are to match the existing residence, and refuse and recycling containers are to be stored under the proposed deck where they will not be visible from the adjacent rights-of-way. A separate underground electric service is to be provided to the ARU from a transformer on Alnutt Street, with meters to be grouped on the ARU.

The application recognizes that the 12,632 square foot property is subject to an eight percent open/recreational space requirement, and notes that because of the generally hilly nature of the property there are no yard areas *per se*, however the ARU will have a 380 square foot deck space while the primary residence has a 657 square foot deck to satisfy the open/recreational space requirement.

The application details that there will not be the typically required eight-foot landscape buffer between the ARU and the proposed parking, explaining that the lot is very narrow with an existing driveway traversing its full length, and topography which dictates where the ARU and its parking can be located. The applicants further note that the lower level of the ARU is not habitable space which would be negatively impacted by the proximity to parking, and that this will not impact adjacent properties.

In reviewing the Site and Floor Plans provided, staff have noted that a small triangular area of the deck and a small triangular area of the unit extend into the required rear yard setback

at the southeast corner of the site near Alnutt Street. A condition was added to the original staff approval and is again recommended below to require that the footprint and floorplan be adjusted to address the required setback, and that the property line, setback and footprint be marked on site for verification prior to the issuance of a building permit.

### ***Conditional Use Permit/Non-Conforming Development***

As discussed above, the street frontages are not fully improved to city standards, but were constructed as part of a local improvement district (LID). AMC 18.4.6.040.J provides that, *“Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.”* This section notes that in addition to typical considerations for an Exception, *“Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.”* As noted above, in staff’s assessment, the standards were intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvement was deemed sufficient through an LID process; the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street; and the application will be required to install an automatic sprinkler system as part of the approval.

The application notes that the existing lot is non-conforming in terms of the minimum required lot area. The RR-.5 zoning requires a minimum ½-acre minimum lot size while the existing property here is only 12,632 square feet in area. In addition, the application notes the property’s current lot coverage of approximately 38 percent exceeds the 20 percent maximum allowed lot coverage within the zoning district. The existing driveway is required to meet flag drive standards due to its being over 50 feet in length. A flag drive serving a single lot requires a 12-foot paved width centered in a 15-foot clear width. The existing driveway is non-conforming at approximately nine-feet in width, and is not being paved for its full length.

AMC 18.1.4.040.B addresses non-conforming developments, noting that planning approval is required for enlargement or alteration. Specifically, *“a nonconforming development may be enlarged or altered subject to approval of a Conditional Use Permit under chapter 18.5.4 and approval of required building permits, except that a planning action is not required for exempt alterations described in subsection 18.1.4.040.A, above, and for non-residential development subject to subsection 18.4.2.040.B.6.”*

Because the proposal involves the enlargement or alteration of a non-conforming development a Conditional Use Permit is required. Conditional Use Permits consider the adverse material effect of the proposal on the livability of the impact area when compared to the development of the subject lot according to the target use of the property, which in this instance is single family residential use. Typical consideration include: that adequate capacity of city facilities including utilities, access and transportation can and will be provided; similarity in scale, bulk, and coverage; generation of traffic; architectural compatibility; air quality, including the generation of dust, odors, or other environmental pollutants; generation of noise, light, and glare; the development of adjacent properties as

envisioned in the Comprehensive Plan, and other factors found to be relevant by the approval authority for review of the proposed use.

In addressing the site's lot coverage, the applicant emphasizes that the additional coverage will not negatively impact adjacent properties or the existing site. They further note that the existing non-conforming coverage is not self-imposed as the majority of improvements existed on site prior to the applicant's purchase of the property, and that the lot coverage will increase by only around 500 square feet for the footprint and additionally for decks and parking with the proposal. The application suggests that with very minimal lot disturbance, the deteriorating building will be removed and replaced with a new building very similar in style and appearance to the existing home.

In response to the driveway's width, the applicant explains that the unique driveway situation extending all the way from Nutley onto Alnutt allows for easy flow of cars at each unit with no further disturbance to the driveway or other hillside lands on the property. Cars parked for the primary residence can back onto Nutley and circulate out while cars parked for the ARU can exit forward to Alnutt.

### ***Tree Removal***

The application notes that the parking installation may necessitate the removal of some less-than-six-inch-diameter deciduous trees, a seven-inch DBH Oak near the parking at Nutley, as well as a seven-inch DBH Maple and a six-inch DBH walnut. The application notes that they will attempt to preserve a 12-inch pine located east of the driveway near the ARU parking, and that there will generally be minimal site disturbance resulting from the proposal. Where there is to be disturbance uphill of the existing barn, the applicant indicates that she will plant three 10¼-gallon Japanese Maples, with four three-gallon wintergreen boxwoods and four three-gallon Japanese Holly plants to be planted in the areas around the ARU.

As noted in AMC 18.5.7.020.C, the removal of trees in single family residential zones on lots occupied only by a single family detached dwelling and associated accessory structures is exempt from Tree Removal Permit requirements, except as otherwise regulated by chapters 18.3.10 Physical and Environmental Constraints and 18.3.11 Water Resource Protection Zones. In this instance, those trees to be removed are not located on slopes greater than 25 percent or within a Water Resource Protection Zone.

A condition has been included below to require that the building permit submittal include a Tree Protection Plan prepared by an arborist which addresses the trees to be preserved, their condition and ability to accommodate the proposed disturbance, and measures necessary to protect them during construction as required in AMC 18.4.5.030.

### **Initial Comments Received**

Subsequent to the mailing of a Notice of Complete Application (NOCA), property owners and residents from seven adjacent properties provided comments expressing concerns with the proposal, including:

- That the lot is undersized and over-built/covered and will be even more out of character with the neighborhood.**

In previous decisions, the Planning Commission has found that significantly under-sized lots within the district merited additional coverage on the basis that in setting a 20 percent coverage for a half-acre lot, 4,356 square feet was seen as a minimum coverage needed for typical development within the district.

In considering the request in terms of expanding an existing non-conforming development, staff believe that a 999 square foot detached ARU and associated parking in place of the existing barn amounts to a relatively minimal disturbance of the site that is in keeping with the rural residential character of the district.

**That the existing streets are sub-standard and pose a concern for fire access, particularly with increased traffic.**

The existing streets were improved under a publicly funded local improvement district. AMC 18.4.6.040.J provides that, *"Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards."* This section notes that in addition to typical considerations for an Exception, *"Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood."* In staff's assessment, the standards were intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvements were deemed sufficient through an LID process. The roughly seven additional daily vehicle trips attributable to an ARU are unlikely to create a significant increase in traffic, and the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street. The application will be required to install an automatic sprinkler system as a condition of approval.

**That the slope survey is questionable.**

A slope survey was prepared and stamped by a Professional Land Surveyor to address the requirement that, *"all construction and land disturbance associated with the accessory residential unit shall occur on lands with less than 25 percent slope."* The surveyor's assessment was limited to the areas of proposed disturbance.

**That the square footage of the existing house is inaccurately presented.**

There is a difference in the square footage in county records and that noted in the application. A condition was included on the original approval to require that scalable drawings of the existing house be provided with permit drawings to demonstrate that it has at least twice the gross habitable floor area of the ARU.

**That open space should be set aside for common use rather than in private decks.**

AMC 18.4.2.030.H.3 provides that, *"Decks, patios, and similar areas are eligible for open space."* In staff's view, individual deck space for the primary unit and accessory unit are an appropriate means of addressing the open space requirement, particularly in a setting where the sloped areas of the property are less suited to recreational use.

- That screening of the ARU is needed.**  
 There is no requirement to screen residential units from view in a residential zone. The application describes the planting of new landscaped materials around the ARU; conditions were included on the original approval to require a plan showing the specific placement of these plantings and that they be installed prior to occupancy.
- That the property could be rented.**  
 Any single family residentially zoned property can be rented, provided that there may be no more than two rentable units (with an approved ARU) on a property and rental periods may not be less than 30 days.
- That there will be construction impacts, including track-out from an un-paved driveway.**  
 Construction will be regulated like any other construction project in the city, and will be subject to standard limitations on track-out.
- That the angle of the driveway at Alnutt and its proximity to the adjacent drive pose concerns.**  
 The driveway is an existing condition that is not being physically altered, and in staff's assessment the roughly seven additional daily vehicle trips typically expected from an ARU are unlikely to have any substantial impact to the driveway's functioning. (*The anticipated trip counts for a multi-family residential unit are roughly 6.46 average daily trips according to the ITE Trip Generation Manual.*)
- That setbacks are not met.**  
 A condition was included on the original approval to require that two areas which do not meet the rear yard setback along Alnutt Street be adjusted to comply with the setback requirements, and that these be site-verified prior to the commencement of construction.
- That the application should not be handled as a Type I procedure, and that the non-conforming development allowance does not permit authorization to exceed lot coverage and should instead be a Type II Variance.**  
 AMC 18.1.4.010.C specifically speaks to non-conforming developments including "*sites that do not meet landscaped areas,*" while AMC 18.1.4.040.A notes non-conforming developments as including for example non-conformities with regard to "*paved area, parking areas, (and) landscaping.*" The non-conforming development section is specifically focused on addressing site non-conformities which including paved areas (i.e. coverage), parking, and landscaping.
- That parking is wedged into a narrow lot with difficult/hazardous maneuvering, and that the parking spaces are not accurately depicted and will encroach into the driveway.**  
 A condition was included on the original approval to require that parking be installed as illustrated, that parked vehicles not encroach into the driveway, and that the parking installation be site verified prior to occupancy.

### **Appeal Requests**

After staff initially approved the application administratively, subject to a number of conditions, and subsequent to the mailing of a Notice of Decision, the attorneys for neighbors

Patricia Zoline, who owns the property immediately to the west at 240 Nutley Street, and Gregory and Allison Koenig, who reside at 162 Alnutt Street, filed appeal requests.

### **Koenig Appeal**

The appeal submitted on behalf of Gregory and Allison Koenig by attorney Debbie Vincent raises the following issues:

1. **The proposal does not comply with the lot coverage allowed in the zone, and AMC 18.2.3.040.A.4 requires compliance with setbacks and maximum lot coverage.**
2. **The natural slope in the area to be disturbed is greater than 25 percent, and the survey methodology does not meet requirements.**
3. **The site does not have access to an improved city street paved to a minimum width of 20 feet with curbs, gutters and sidewalks as required in AMC 18.2.3.040.B.2.**
4. **The decision failed to require a Physical Constraints Review Permit.**
5. **Approval did not require plans for hillside grading, erosion control, drainage, and retaining wall design or impose conditions when disturbance of hillside lands can occur.**
6. **Approval did not include adequate plans (landscape plan, topographic map with intervals of five feet or less, or an accurate surveyed site plan).** The appellants note that the site plan did not identify a play structure on the site, a storage area under the main house's roofline, or large granite boulders and substantial rock outcroppings. They emphasize that there is a huge granite boulder where parking is proposed which will make the installation of proposed parking impossible.
7. **Approval did not require submittal requirements to be addressed.** The appellants note that there is no preliminary grading or drainage plan, no erosion control plan, no landscaping and irrigation plan and no narrative regarding lot coverage.
8. **Decision maker should not be approving a Variance, and the approval and the application have not addressed the Variance criteria.**
9. **Appellants have also objected to a decision being issued after the public comment period had closed.**

### **Zoline Appeal**

The appeal submitted on behalf of Patricia Zoline by attorney Chris Hearn raises the following issues:

1. **Non-conforming Development.** The appellants assert that the non-conforming lot coverage is based on additions made after the applicant acquired her property, and as such the non-conformities were not lawfully established and require a Variance. The appellants note that the applicant constructed an addition in 2002-2003 which rendered the lot more non-conforming with standards in place at the time, and as such the coverage issues are self-imposed. The appellant further asserts that the applicant

does not meet the standards and criteria necessary to justify the expansion of a non-conforming development and will negatively impact adjacent properties.

2. **Greater Adverse Impacts.** The appellant asserts that the approval will substantially negatively impact adjacent properties. The appellants assert that the unpaved driveway on granitic soils will increase track-out of dirt and mud onto the road, especially during construction. They further suggest that the *“inclusions of lesser sloped sites on the property does not preclude the requirement to obtain a Physical Constraints Review Permit on land that is generally steep in slope.”* They note that the building footings will likely encroach further toward the common property line and toe of existing terraced retaining wall, and without a properly detailed plan it is not possible to determine the impact to the appellant’s property. They further assert that the issuance of a Conditional Use Permit to allow additional lot coverage without a Physical Constraints Review will increase the risk of hazard to the appellant’s property and surroundings. The appellant also expresses concern that the deferral of plans which should be available for review during land use proceedings will not provide for public notice or opportunity for hearing and is an improper deferral that sufficient screening will occur to address permitting criteria.
3. **Procedural Handling.** The appellants assert that the application should have been subject to a Type II review initially as included a Conditional Use Permit request and involved a new structure.
4. **Physical Constraints Review Permit.** The appellants assert that based on the survey provided, the average slope across the lot is greater than 30 percent and as such a Physical Constraints Review Permit should have been required. The appellant’s have also provided information from Applied Geotechnical Engineering & Geologic Consulting which raises concerns with the underlying granitic soils, the topography of the proposed project site, the slopes of adjacent properties, the size of the footprint, the narrow access, the proposed parking installation and the need for a complete slope evaluation by a geotechnical engineer.
5. **Approval of the Conditional Use Permit renders the lot more non-conforming in terms of lot coverage.**
6. **Driveway and Access Issues.** The appellant argues that Site Design Review requires that the proposal comply with standards including paved access to and through the property and adequate transportation facilities, and that the streets and driveway are non-conforming and do not support the proposed level of development.
7. **ARU Square Footage.** The appellant asserts that a smaller ARU would still serve its purpose but would not render the lot non-conforming to such a great extent.
8. **Code Violations.** The appellant suggests that the applicant currently has two tenants on the property, with one living in a downstairs unit and a second living in the existing barn and as such should not be permitted to pursue the application while code violations are on-going. The appellant disagrees that the application meets the density provisions of the RR-zone.

9. **Variance.** The appellant asserts that the applicant should have sought a Variance rather than a Conditional Use Permit. The appellant further suggests that there is no demonstrable difficulty to merit a Variance.
10. **Primary Orientation.** The appellant asserts that the primary orientation will not be to Nutley Street.
11. **Recreational Space.** Appellant disagrees with the conclusion that deck areas qualify as recreational space.
12. **Affordable Housing Issues.** The appellant asserts that a smaller ARU would be more affordable.
13. **Tree Removal.** The appellant disagrees with the findings concerning tree removal, especially with regard to site disturbance.
14. **Parking.** Appellant disagrees with the findings concerning the approval of parking, particularly with regard to cars backing onto Nutley Street which is extremely steep.
15. **Staff Responses.** Appellant disagrees with staff responses to the issues raised by neighbors.

### Staff Response

#### **Lot Coverage & Non-Conforming Development**

In terms of the appellants' assertions that the existing coverage cannot be considered to be legal non-conforming as additions made by the applicant violated standards in effect at the time of their installation, permits issued in 2003 and 2004 were charged for 577 square feet and 72 square feet of new impervious square footage, suggesting that the planner reviewing those permits found the lot coverage to be consistent with the standards at the time. While residential building plans are not retained for more than two years and as such are not available to clarify what coverage was considered, staff would note that standards have changed since that time to affect the way lot coverage is considered.

With the Unified Land Use Ordinance adoption in 2014, decks that allow run-off to infiltrate the subsoil beneath the deck are allowed a porous solid surface exemption so that up to 200 square feet of deck area or five percent of the lot coverage, whichever is less, may be excluded from coverage calculations (See AMC 18.2.5.030.C). Until that time, decks that allowed run-off infiltration through the deck surface had been entirely excluded from lot coverage calculations, meaning that 575 square feet of deck area now considered coverage would not have been counted as such when the 2003-2004 permits were reviewed.

Similarly, the Unified Land Use Ordinance in 18.6.1 now defines lot coverage clearly to include all parking areas and driveways and the porous solid surface exemption explicitly does not apply for permeable driveways or parking areas, regardless of their surfacing. In the code in effect in 2003-2004, in AMC 18.08.160 coverage was defined to include "paved driveways" and it is unclear that the existing driveway which consists of only wheel ruts on granitic soil with grass growing between them would have been considered lot coverage when the applicant made additions. It is also unclear based on the information that the appellants have provided that a storage area under an existing roofline would be considered lot coverage because such a placement is already potentially a covered area. If only the area of the house including the additions proposed in 2003-2004, the paved portion of the

driveway, and the barn were considered at the time (i.e. not the deck or unpaved portion of the driveway), lot coverage could have been considered as follows:

House Coverage:	1,612
Driveway/Parking Coverage:	290
Barn Coverage:	256
<b>Lot Coverage:</b>	<b>2,158</b>

The allowed coverage of 2,526 square feet would have left the permits considered for the additions 368 square feet below the maximum allowed lot coverage at the time. The playhouse noted was included in the County Assessor's notes in 2002, and while its square footage is unclear it would likely have fallen within this additional square footage at that time. The Planning Commission will need to determine whether the existing coverage is considered to be a legal non-conforming situation; for staff, given that permits which included additional lot coverage were issued in 2003 and 2004, it seems a reasonable conclusion that these additions were considered to meet the standards in place at the time.

As detailed above, the application notes that the existing lot is non-conforming in terms of the minimum required lot area. The RR-.5 zoning requires a minimum ½-acre minimum lot size while the existing property here is only 12,632 square feet in area. In addition, the application materials indicate that property's current lot coverage of approximately 38 percent which exceeds the 20 percent maximum allowed lot coverage within the zoning district. The existing driveway is required to meet flag drive standards due to its being over 50 feet in length. A flag drive serving a single lot requires a 12-foot paved width centered in a 15-foot clear width. The existing driveway is non-conforming at approximately nine-feet in width, and is not paved – or proposed to be - for its full length.

AMC 18.1.4.040.B addresses non-conforming developments, noting that planning approval is required for enlargement or alteration. Specifically, *“a nonconforming development may be enlarged or altered subject to approval of a Conditional Use Permit under chapter 18.5.4 and approval of required building permits, except that a planning action is not required for exempt alterations described in subsection 18.1.4.040.A, above, and for non-residential development subject to subsection 18.4.2.040.B.6.”*

Because the proposal involves the enlargement or alteration of a non-conforming development a Conditional Use Permit is required. Conditional Use Permits consider the adverse material effect of the proposal on the livability of the impact area when compared to the development of the subject lot according to the target use of the property, which in this instance is single family residential use. Typical consideration include: that adequate capacity of city facilities including utilities, access and transportation can and will be provided; similarity in scale, bulk, and coverage; generation of traffic; architectural compatibility; air quality, including the generation of dust, odors, or other environmental pollutants; generation of noise, light, and glare; the development of adjacent properties as envisioned in the Comprehensive Plan, and other factors found to be relevant by the approval authority for review of the proposed use.

In addressing the site's lot coverage, the applicant emphasizes that the additional coverage will not negatively impact adjacent properties or the existing site. They further note that the

existing non-conforming coverage is not self-imposed as the majority of improvements existed on site prior to the applicant's purchase of the property, and that the lot coverage will increase by only around 500 square feet for the footprint and additionally for decks and parking with the proposal. The application suggests that with very minimal lot disturbance, the deteriorating building will be removed and replaced with a new building very similar in style and appearance to the existing home.

### **Slope & Hillside Development Permit**

For the RR-.5 zoning district, AMC 18.2.3.040.B.1 requires that, *"If the accessory residential unit is not part of the primary dwelling, all construction and land disturbance associated with the accessory residential unit shall occur on lands with less than 25 percent slope."* As detailed in AMC 18.3.10.020, Physical Constraints Review Permits are required for the alteration of land on Flood Plain Corridor Land, Hillside Land, or Severe Constraint Lands. The land classifications in section 18.3.10.060 determine the development standards applicable to the property, and 18.3.10.060 notes that Hillside Lands are, *"All areas defined as Hillside Lands on the Physical and Environmental Constraints Hillside Lands and Severe Constraints map **and which have a slope of 25 percent or greater.**"* This has been applied to require Physical Constraints Review Permits when areas with a slope of 25 percent or greater are disturbed, not when properties with general slopes of 25 percent or greater are altered in areas of lesser slope. The application includes information from a licensed professional land surveyor which indicates that the area proposed for alteration has slopes of less than 25 percent, and as such staff approved an ARU and did not require a Physical Constraints Review Permit.

Should the Commission determine that based on materials provided with the appeal that lands with slopes of 25 percent or greater will be disturbed, for example due to site grading, basement excavation, tree removal or the removal of large rocks, the application would not comply with the requirements of AMC 18.2.3.040.B.1. The Commission could deny the application on this basis or impose additional conditions to bring the proposal into compliance (for example, requiring that the applicant stake the area of proposed disturbance on site to ensure that it is limited to lands with slopes of less than 25 percent and/or limit the size of the ARU to lessen the area of disturbance (*i.e. an ARU of less than 500 square feet would have a smaller footprint and would require only one parking space, necessitating less disturbance of the site*).

### **Street & Driveway Improvements**

As discussed above, both Nutley and Alnutt Streets are residential neighborhood streets, and both are paved with curbs and gutters in place. Nutley Street has a five-foot curbside sidewalk in place which terminates at the applicant's driveway while Alnutt Street has a five-and-a-half-foot wide curbside sidewalk along the property's full frontage. The application notes that Nutley Street along the property's frontage was constructed as part of a local improvement district (LID) in the early 2000's, and that while there was adequate right-of-way available, it was ultimately improved in a manner that did not fully meet city standards. AMC 18.4.6.040.J provides that, *"Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design*

*standards.”* This section notes that in addition to typical considerations for an Exception, “*Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.*” As noted in the original approval, in staff’s assessment, the standards were intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvement was deemed sufficient through an LID process; the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street; and the application will be required to install an automatic sprinkler system as part of the approval.

With regard to the driveway’s width, the application materials explain that the unique driveway situation extending all the way from Nutley onto Alnutt allows for easy flow of cars at each unit with no further disturbance to the driveway or other hillside lands on the property. Cars parked for the primary residence can back onto Nutley and circulate out while cars parked for the ARU can exit forward to Alnutt. In the original decision, staff noted that widening the existing drive to current standards would provide little in terms of functional improvement while adding additional disturbance and coverage, and that the existing driveway, while narrower than a typical flag drive, functions in providing one-way circulation through the site from Nutley to Alnutt, and seemed able to accommodate the seven or so additional average daily vehicle trips anticipated for an ARU. In addition, the proposal would add parking to avoid having cars stacked within the drive. With regard to concerns over fire protection, in their pre-application comments the Fire Department indicated that they would be able to serve the ARU from the adjacent Alnutt Street right-of-way without using the driveway. In addition, as with all ARU’s in the Wildfire Overlay, fire sprinklers will be required.

### **Adequacy of Plans**

The appellants have noted that the original application did not include landscape or irrigation plans; hillside grading, erosion control, or drainage plans; retaining wall designs; that the topographic detail provided did not include the required topographic intervals of five feet or less; and that there were inaccuracies in the site plan provided including the omission of the playhouse and storage shed/area under the existing house’s roofline and the failure to address boulders and rock outcroppings on the site.

Staff would note that the submittal requirements are intended to address a broad range of applications, from large new subdivisions adding new streets to – as is the case here – the construction of an accessory residential unit to replace an existing building on an already developed site. While recognizing that the information provided was somewhat limited, staff determined that based on the limited scope of the proposal – again, an accessory residential unit replacing an existing building on already developed site, with a surveyor’s determination of slope’s in the area of disturbance and seeking to use an existing driveway – that the plans provided were sufficient to assess the proposal.

## **II. Procedural - Required Burden of Proof**

**The criteria for Site Review approval from the Site Design Review Chapter 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.

**The criteria for an Accessory Residential Unit are described in AMC 18.2.3.040 as follows:**

- A. **R-1 Zone.** *Accessory residential units in the R-1 zone shall meet the following requirements.*
  - 1. *One accessory residential unit is allowed per lot, and the maximum number of dwelling units shall not exceed two per lot.*
  - 2. *Accessory residential units are not subject to the density or minimum lot area requirements of the zone, except that accessory residential units shall be counted in the density of developments created under the Performance Standards Option in chapter 18.3.9.*
  - 3. *The maximum gross habitable floor area (GHFA) of the accessory residential unit shall not exceed 50 percent of the GHFA of the primary residence on the lot, and shall not exceed 1,000 square feet GHFA.*
  - 4. *The proposal shall conform to the overall maximum lot coverage and setback requirements of the underlying zone.*
  - 5. *Additional parking shall be provided in conformance with the off-street parking provisions for single-family dwellings in section 18.4.3.040, except that parking spaces, turn-arounds, and driveways are exempt from the paving requirements in subsection 18.4.3.080.E.1.*

- B. RR Zone.** *In addition to the standards in subsection 18.2.3.040.A, accessory residential units in the RR zone shall meet the following requirements.*
1. *If the accessory residential unit is not part of the primary dwelling, all construction and land disturbance associated with the accessory residential unit shall occur on lands with less than 25 percent slope.*
  2. *The lot on which the accessory residential unit is located shall have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters, and sidewalks.*
  3. *No on-street parking credits shall be allowed for accessory residential units.*
  4. *If located in the Wildfire zone, the accessory residential unit shall have a residential sprinkler system installed.*
- C. R-2 and R-3 Zones.** *Accessory residential units in the R-2 and R-3 zones shall meet the standards in subsection 18.2.3.040.A, except that the maximum gross habitable floor area (GHFA) of the accessory residential structure shall not exceed 50 percent of the GHFA of the primary residence on the lot, and shall not exceed 500 square feet GHFA.*

**The criteria for a Conditional Use Permit are described in AMC 18.5.4.050.A as follows:**

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.*

- a. *WR and RR. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*

#### **IV. Conclusions and Recommendations**

For staff, the key issues in the original approval came down to a consideration of whether the proposal was merited in light of the site's non-conformities: the frontage street's as they relate to street standards, the driveway's width, and the existing and proposed lot coverage.

In initially approving the application, staff noted that the street design was considered through an LID process and found to be appropriate to serve the neighborhood given the constraints of the surrounding environment (hillside lands, trees, etc.). The existing driveway, while narrower than a typical flag drive, functions in providing one-way circulation through the site from Nutley to Alnutt, and with the application parking is to be addressed to avoid having cars stacked within the drive. The additional vehicle trips anticipated for an ARU are seven daily trips or less on average, and the Fire Department indicated that they can serve the property from the adjacent street without using the driveway. Fire sprinklers will be required of the ARU. Staff also noted that widening the existing drive to current standards would provide little in terms of functional improvement while adding additional disturbance and coverage.

For staff, the limited additional coverage proposed in replacing the existing barn with a detached ARU and adding additional parking seem to remain in keeping with the rural residential character of the neighborhood while having minimal additional impacts.

In addition to these concerns, a number of the appeal issues focus on hillside development issues and the need for a Physical Constraints Review Permit. In the RR-.5 district, all construction and associated land disturbance for ARU's is to occur on lands with slopes of less than 25 percent while Physical Constraints Review Permits are required for the alteration of those lands on the Hillside Lands on the Physical and Environmental Constraints Hillside Lands and Severe Constraints map which have a slope of 25 percent or greater). An ARU requiring a Physical Constraints Permit would violate the standards for an ARU in the RR-.5 district. In this instance, the application includes information from a licensed professional land surveyor which indicates that the area proposed for alteration has slopes of less than 25 percent, and as such staff approved an ARU and did not require a Physical Constraints Review Permit. Should the Commission determine that based on materials provided with the appeal that lands with slopes of 25 percent or greater will be disturbed (e.g. due to site grading, basement excavation, tree removal or the removal of large rocks) the Commission could deny the application on that basis or impose additional conditions to bring the proposal into compliance such as requiring the applicant limit the area of proposed disturbance on site with fencing to ensure steeper areas are not disturbed and/or further limit the size of the ARU to lessen the area of disturbance.

Should the Commission choose to uphold the original approval, staff recommends that the following conditions be attached to the proposal:

1. That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein, including but not limited to that there shall be no more than two units on the property, that parking shall be installed as depicted in the approved plans, and that the driveway shall be limited to the one-way circulation depicted and kept free of parked vehicles.
2. That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in substantial conformance with those approved as part of this application, an application to modify this Site Design Review and Conditional Use Permit approval shall be submitted and approved prior to issuance of a building permit.
3. That prior to any demolition, the applicant shall obtain a demolition permit and any required associated inspections to allow verification that existing utilities serving the barn are properly dealt with during demolition.
4. That the building permit submittals shall include:
  - a. A revised size- and species-specific landscaping and irrigation plan for the disturbed areas around the Accessory Residential Unit. This plan shall include irrigation details satisfying the requirements of the Site Design and Use Standards Water Conserving Landscaping Guidelines and Policies.
  - b. A revised Tree Protection Plan consistent with the standards described in 18.4.5 shall be submitted for review and approval of the Staff Advisor prior to the issuance of a building permit. The plan shall identify the location and placement of fencing around the drip lines of trees identified for preservation. 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. 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.
  - c. Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard  $A_{in}$  the formula  $[(Height - 6)/(0.445 + Slope)] = Required\ Solar\ Setback$  and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
  - d. Lot coverage calculations including all building footprints, driveways, parking, circulation areas, and other areas of coverage. Additional lot coverage shall be limited to no more than that approved herein (*including the increased building footprint with porch, decks and parking spaces*).
  - e. 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 (i.e., curb gutter at public street, public storm pipe or public drainage way) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.

- f. The inverted u-racks shall be used for the bicycle parking. All bicycle parking shall be installed in accordance with placement, design, coverage and rack standards in 18.4.3.070.I and J prior to the issuance of the certificate of occupancy. The building permit submittals shall verify that the bicycle parking spacing and coverage requirements are met in accordance with 18.4.3.070.I
  - g. That exterior building materials and paint colors shall be compatible with the surrounding area, and sample exterior building colors shall be provided with the building permit submittals for review and approval of the Staff Advisor. Very bright or neon paint colors shall not be used in accordance with II-B-6a) of the Multi-Family Site Design and Use Standards.
  - h. The screening for the trash and recycling enclosure shall be identified in the building permit submittals and installed according to the approved plan, inspected and approved prior to the issuance of a certificate of occupancy. An opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure in accordance with 18.4.4.040.
  - i. Light fixture selection, placement, direction and shrouding shall be detailed in the building permit submittals. Fixtures shall be selected, placed, directed and if necessary shrouded to avoid direct illumination of adjacent properties.
  - j. Scale drawings of the existing house which demonstrate that its gross habitable floor area is at least twice that of the Accessory Residential Unit. The Accessory Residential Unit shall be no more than half the square footage of the main house, no more than 999 square feet, and the basement of the Accessory Residential Unit shall not be heated or used as habitable space, and shall not contain a bathroom.
  - k. Elevation drawings showing all four sides of the Accessory Residential Unit and calculations demonstrating that the building as proposed, based on all four elevations, does not exceed the allowed height.
5. That prior to the issuance of a building permit:
- a. Tree protection fencing shall be installed according to the approved plan prior to any site work, or storage of materials, or permit issuance. A Tree Verification Inspection shall be requested and approved by the Ashland Planning Division prior to site work, tree removal, building demolition, and/or storage of materials. This inspection to verify the on-site identification of the trees to be removed and the installation of tree protection fencing for trees to be preserved on and adjacent to the site. The tree protection shall be chain link fencing six feet tall and installed in accordance with the requirements of AMC 18.4.5.030.
  - b. All necessary building permits and associated fees and charges, including but not limited to permits and service connection fees for the new underground electrical services; any applicable system development charges for water,

- sewer, storm water, parks, and transportation; and permits for the automatic fire sprinkler system shall be paid prior to the issuance of a building permit.
- c. The building plans shall be adjusted to remove any intrusions into the required setbacks. The property line abutting Alnutt Street, the required setbacks, and the adjusted proposed building footprint shall be identified on the property, inspected and approved by the Staff Advisor.
6. That prior to the issuance of a certificate of occupancy:
- a. A separate underground electric service and meter for the Accessory Residential Unit shall be installed in accordance with Ashland Electric Department requirements, inspected and approved.
  - b. A separate address for the Accessory Residential Unit shall be applied for approved by the City of Ashland Engineering Division. Addressing shall meet the requirements of the Ashland Fire Department and be visible from the Public Right-of-Way, including addressing the Accessory Residential Unit from Alnutt Street.
  - c. The applicant shall screen recycle and refuse containers from adjacent properties and public right-of-ways.
  - d. All landscaping and irrigation in the new landscaped areas shall be installed according to the approved plan, inspected and approved prior to the issuance of a certificate of occupancy.
  - e. Requirements of the Ashland Fire Department shall be met, including that all addressing shall be approved prior to being installed, that fire apparatus access requirements shall be satisfied, that a residential fire sprinkler system shall be installed in the Accessory Residential Unit, and that a fuel break shall be provided, inspected and approved prior to bringing combustible materials onto the site.
  - f. Required bicycle parking shall be installed according to the approved plan, inspected and approved by the Staff Advisor.
  - g. All exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.



# Ashland Fire & Rescue

455 Siskiyou Boulevard  
Ashland, OR 97520  
541.482.2770

## Pre-Application Comments

<b>Project Address:</b>	232 NUTLEY ST	<b>Date:</b>	10/5/2017
<b>Project Description:</b>	Pre-app scheduled for 1/18/2017 @3PM	<b>Permit Number:</b>	PL-2017-00020
<b>Ashland Fire &amp; Rescue Contact:</b>	Margueritte Hickman	541-552-2229	Margueritte.hickman@ashland.or.us

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Fire department comments are based upon the 2014 Oregon Fire Code as adopted by the Ashland Municipal Code:

- **Addressing** - Building numbers or addresses must be at least 4 inches tall, be of a color that is in contrast to its background, and shall be plainly visible and legible from the street fronting the property. Additional directional signage may be necessary to guide emergency responders down a driveway, path or through a gate. All premises identification, street signs and building numbers, must be in place with temporary signs when construction begins and permanent signage prior to issuance of any occupancy. OFC 505
- **Fire Apparatus Access – Single Residential Lot-** If the furthest point on the structure is greater than 150' from the street, the entire length of the private drive or street must meet fire apparatus access. Fire apparatus access shall be 15 feet clear width, with the center 12 feet being constructed of an all weather driving surface. Fire apparatus access must support 60,000 pounds, no parking, have a maximum slope of 15 percent, and have vertical clearance of 13' 6". With the installation of fire sprinklers, 200' of the driveway is allowed to have an 18 percent slope. Inside turning radius is at least 20 feet and outside turning radius is at least 40 feet and must be indicated on site plans submitted for building permits. Fire apparatus access is required to be signed as "No Parking-Fire Lane". Final plat needs to indicate that the private drive is fire apparatus access and must state that it cannot be modified without approval of Ashland Fire & Rescue. *It appears that access could be met from the street if this structure is addressed off Alnutt. If this structure is addressed off Nutley, fire apparatus access will be required.*
- **Accessory Residential Units in Wildfire Hazard Areas** - Accessory Residential Units on land zoned RR-.5 in the Wildfire Hazard Areas are required to install a residential fire sprinkler system.
- **Wildfire Hazard Areas** – On lands designated as Wildfire Hazard Areas, a "Fuel Break" as defined in Ashland Municipal Code, section 18.62.090 is required. Once the "Fuel Break" is completed an inspection shall be requested from Ashland Fire & Rescue. Ashland Fire & Rescue must approve the "Fuel Break" prior to bringing combustible materials onto the site.
- **Vegetation** – existing and intentionally planted vegetation is required to meet the clearance requirements found in the International Wildland-Urban Interface Code. (OFC 304.1.2) The FireWise landscaping brochure provides diagrams and examples of how to meet these requirements. [www.ashlandfirewise.org](http://www.ashlandfirewise.org). Contact Ashland Fire & Rescue Fire Marshal for a fuel break inspection.

**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 Margueritte Hickman. She may be contacted at (541) 552-2229 or [hickmanm@ashland.or.us](mailto:hickmanm@ashland.or.us).**

## 18.2.5 – Standards for Residential Zones

### C. Rural Residential Zone. Standards for the Rural Residential (RR) zone follow:

<b>Table 18.2.5.030.C – Standards for Rural Residential (RR) Zone</b> (Except as modified under chapter 18.5.5 and Variances or chapter 18.3.9 Performance Standards Option.)		
Minimum Lot Area and Maximum Density <sup>1</sup>  See also 18.2.5.080 Residential Density.	<b>Zone</b>	<b>Min. Lot Size*</b>
	RR-.5	0.5 acre
	RR-1	1 acre
	RR-2.5	2.5 acres
<sup>1</sup> The minimum lot size depends on the topographic nature, service availability, surrounding land uses, and other relevant characteristics of the area.		
Lot Coverage – Maximum (% of lot area) <sup>2</sup>	<b>Lot Type</b>	<b>Lot Coverage</b>
	RR-.5	20%
	RR-1	12%
	RR-2.5	7%
<sup>2</sup> A total area up to 200 sf or 5% of the permitted lot coverage, whichever is less, may be developed in an approved, porous solid surface that allows storm water infiltration, and is exempt from the lot coverage maximum; the porous solid surface exemption does not apply to driveways and parking areas.		
Lot Width - Minimum (feet)	100 ft	
Lot Depth - Minimum and Maximum (feet)	150 ft and not more than 300% of width	
Standard Yards – Minimum <sup>3</sup> (feet)		
- Front – Standard	20 ft	
- Side – Standard, except:	6 ft	
- Side – Corner-Street/Alley Side	10 ft	
- Rear – Single-Story Building	10 ft	
- Rear – Multi-Story Building	10 ft per Bldg Story	
<sup>3</sup> See sections 18.2.4.050 and 18.2.5.060 for yard exceptions, and 18.2.5.040 for accessory structure setback exceptions; additional setbacks may be required to avoid easement encroachments, and to comply with Solar Access requirements in chapter 18.4.8.		
Maximum Building Height	35 ft or 2 ½ stories, whichever is less; except the height of agricultural structures is not limited, when the structure is placed 50 feet or more from all property lines.	

### 18.2.5.040 Accessory Buildings and Structures

Accessory buildings and structures shall comply with all requirements for the principal use, except where specifically modified by this ordinance, and shall comply with the following limitations:

- A. Setback Yard Exceptions.** See subsection 18.2.5.060.B.2.
- B. Guesthouse.** A guesthouse may be maintained accessory to a single-family dwelling provided there are no kitchen cooking facilities in the guesthouse.
- C. Greenhouse or Hothouse.** A greenhouse or hothouse may be maintained accessory to a dwelling in a residential zone. See section 18.2.3.190 for homegrown marijuana cultivation and production requirements.
- D. Livestock Structures.** Except as provided for micro-livestock in subsection 18.2.5.040.E, below, barns, stables, and other structures shall be located a minimum of 50 feet from any property line, and structures housing large livestock shall be more than 100 feet from dwellings on adjoining

**Commission.** The Planning Commission of the City.

**Common Area.** Land jointly owned to include open space, landscaping, parking, or recreation facilities (e. g., may be managed by a homeowners' association).

**Comprehensive Plan.** The current adopted Comprehensive Plan of the City.

**Condominium.** A development providing for individual ownership of units or airspace in a multi-unit structure or structures, in which the underlying land and/or structures are held under joint dominion. See ORS 100 for applicable requirements.

**Corbel.**

1. A horizontal masonry band with continuous or intermittent corbels.
2. A stepped portion of a masonry wall; the steps may be on top or on the bottom.

**Cornice.** The projecting moldings forming the top band of a wall or other element.

**Council.** The City Council of the City.

**County.** Unless otherwise specified, Jackson County, Oregon.

**Courtyard.** An exterior space surrounded on three or four sides by building and/or walls.

**Coverage, Lot or Site.** The total area of a lot covered by buildings, parking areas, driveways, and other solid surfaces that will not allow natural water infiltration to the soil. Landscaping, including living plants, vegetative ground cover, and mulch, which allows natural soil characteristics and water infiltration and retention is not considered lot or site coverage. See also, lot coverage exemption in Table 18.2.5.030.A – Standards for Urban Residential Zones.

## D

**Days.** Calendar days, unless specifically states as working days. Working days included Monday through Friday, excluding Federal holidays. See also, section 18.5.1.090.C Time Periods.

**Dead Tree.** A tree that is lifeless. Such evidence of lifelessness may include unseasonable lack of foliage, brittle dry branches, or lack of any growth during the growing season.

**Decorative.** Treatment applied to the surface of a building or structure to enhance its beauty.

**Deer Fence.** An open fence used to prevent entry by deer or other wildlife for the purpose of protecting gardens, vegetation, and yards.

**Density(ies).** A measurement of the number of dwelling units in relationship to a specified amount of land. A common standard is dwelling units per acre.

**Designer.** A person not registered as an architect or engineer, approved to plan and design single family homes and other buildings that area defined as exempt by the building code.

**Develop.** To construct or alter a structure or to make a physical change to the land including excavation, clearing, dredging, fill, or paving.

**Development.** All improvements on a site, including alterations to land and new or remodeled structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to

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## 18.6.1 – Definitions

- **Type II Procedure (Quasi-Judicial Review/Public Hearing Review).** Type II decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. See section 18.5.1.060 for the procedures for Type II actions.

**Plat.** A diagram, drawing, or replat containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision.

**Plaza.** An open public space.

**Porch.** Covered porches, exterior balconies, or other similar areas attached to a building and having dimensions of not less than six feet in depth and eight feet in width.

- **Enclosed Porch.** A porch that contains wall(s) that are more than 42 inches in height measured from finished floor level for 50 percent or more of the porch perimeter.
- **Unenclosed Porch.** All walls contained in an unenclosed porch are less than 42 inches in height, but an unenclosed porch may be covered.

**Porous Solid Surface.** Porous solid surface is a permeable surface built with an underlying stone reservoir that temporarily stores surface runoff before it infiltrates into the subsoil. Porous solid surfaces include pervious asphalt, pervious concrete, grass or permeable pavers, or decks that allow runoff to infiltrate the subsoil beneath the deck.

**Power-assisted Equipment or Machinery.** Equipment or machinery with wheels and a weight in excess of 100 pounds or that does not otherwise meet the definition of Hand-Held Equipment or Machinery. See also, definition of Hand-Held Equipment or Machinery.

**Pre-existing Structure.** For the purposes of implementing chapter 18.4.10 Wireless Communication Facilities, a structure in existence prior to an application for a wireless communication facility installation.

**Primary Residence.** The property that the taxpayer uses a majority of the time during the year ordinarily will be considered the taxpayer's principal residence. In addition to the taxpayer's use of the property, relevant factors in determining a taxpayer's principle residence may include, but are not limited to the following.

1. The taxpayer's place of employment.
2. The principal place of abode of the taxpayer's family members.
3. The address listed on the taxpayer's federal and state tax returns, driver's license, automobile registration, and voter registration card.
4. The taxpayer's mailing address for bills and correspondence.
5. The location of the taxpayer's banks.
6. The location of religious organizations and recreational clubs with which the taxpayer is affiliated.

**Primary Orientation.** Direction of the front of the building with the main entrance to the public.

**Primary Building or Structure.** A structure or combination of structures of chief importance or function on a site. In general, the primary use of the site is carried out in a primary structure. The difference between a primary and accessory structure may be determined by comparing the size, placement,

ASHLAND MUNICIPAL CODE

**SECTION 18.08.150 Court, inner.**

Area upon which any of four dwelling units in opposing (facing) dwellings opens.

**SECTION 18.08.160 Coverage, lot or site.**

Total area of all structures, paved driveways, or other soil disturbances that will not allow normal water infiltration. The coverage is expressed as a percentage of such area in relation to the total gross area of the lot or site. Landscaping which does not negatively impact the natural water retention and soil characteristics of the site shall not be deemed part of the lot or site coverage.

**SECTION 18.08.170 Day care, nursery or kindergarten.**

A school or care center housing five (5) or more children for no more than twelve (12) hours per day where the student-to-staff ratio is ten (10) to one (1) or less.

**SECTION 18.08.180 Development plan.**

Any plan adopted by the Planning Commission for the guidance of growth and improvement of the City, including modifications or refinements made from time to time.

**SECTION 18.08.185 Disc Antenna.**

A device incorporating a reflective surface that is solid, open mesh, or bar configured and is the shape of a shallow dish, cone, horn, or cornucopia. Such devices may be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition is meant to include, but is not limited to, what are commonly referred as satellite earth stations, TVROS, and microwave antennas. (Ord. 2475 S2, 1988)

**SECTION 18.08.190 District. A zoning district.**

- A. "R" district indicates any residential zoning district.
- B. "C" district indicates any commercial zoning district.
- C. "M" district indicates any industrial zoning district.
- D. "A" district indicates any airport overlay district.

**SECTION 18.08.195 Driveway.**

An accessway serving a single dwelling unit or parcel of land, and no greater than 50' travel distance in length. A flag drive serving a flag lot shall not be a driveway. Single dwelling or parcel accesses greater than 50' in length shall be considered as a flag drive, and subject to all of the development requirements thereof. (Ord. 2604 S1; Ord. 2663 S1, 1992)

**SECTION 18.08.196 Driving Surface.**

A paved access capable of supporting up to 44,000 lbs. gross vehicle weight. Surface to be of minimum width as required by ordinance. Width shall be increased on turns where necessary to ensure fire

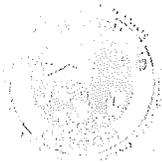
Permit Number	Permit Type	Permit Description	Permit Address	Customer Number	Customer First Name	Customer Last Name	Application Date	Issue Date	Approval State	Staff Notes
BD-2001-00342	Structural Permit		232 NUTLEY ST	00238		KANN JACOB/LEAH HENIGSON	4/5/2001	5/14/2001	final	Included 0 square feet of new impervious surface
BD-2002-00942	Addition		232 NUTLEY ST	05223		GRAHAM DENTON S/SUSAN	8/8/2002	8/22/2002	final	Included 577 square feet of new impervious surface
BD-2003-01351	Addition	72 SQ FT CLOSET 11/19 Per owner, Leah Henigson, switching contractors to Todd Martin Chuck at Martin Construction 951-5034	232 NUTLEY ST	00735	JOE	KANTOR	8/7/2003	8/13/2003	issued	Included 72 square feet of new impervious surface
BD-2004-00038	Addition		232 NUTLEY ST	00208	TODD	MARTIN	1/8/2004	1/15/2004	issued	Included 0 square feet of new impervious surface
BD-2004-00592	Standard Plumbing Permit		232 NUTLEY ST	00005		KOTTKE PLUMBING	4/6/2004	4/6/2004	issued	
BD-2004-00595	Standard Electric Permit	3 branch circuits	232 NUTLEY ST	00159		VALLEY ELECTRICAL CONTRACTORS	4/6/2004	4/9/2004	issued	
BD-2004-00811	Standard Mechanical Permit		232 NUTLEY ST	00102		ALLIED COMFORT PRO	5/7/2004	5/12/2004	final	
BD-2007-01170	Standard Electric Permit	Install Hot tub circuit	232 NUTLEY ST	00022		ROGUE VALLEY ELECTRIC	7/10/2007	7/10/2007	final	
BD-2009-00123	Structural Permit	Retaining Wall	232 NUTLEY ST	05152		HENIGSON LEAH	1/28/2009	1/29/2009	final	Included 0 square feet of new impervious surface

\* See additional attached permits which pre-date current computer system.









# PERMIT AND OCCUPANCY APPLICATION

City of Ashland  
Building Division  
City Hall  
482-3211 Ext. 45

Permit Number

5-36-80

APPLICATION TO W/STONE

STREET ADDRESS 232 NUTLEY

LEGAL DESCRIPTION \_\_\_\_\_

OWNER STOLP  
NAME ADDRESS PHONE

CONTRACTOR HOME COMFORT  
NAME ADDRESS PHONE

ENGINEER/ARCHITECT \_\_\_\_\_  
NAME PHONE

PERMIT FEES		STATE SURCHARGE
FEE		
Plan Check	\$ _____	
Building	_____	\$ _____
Plumbing	_____	_____
Mechanical	<u>14.50</u>	<u>.58</u>
Electrical	_____	_____
Subtotal	_____	_____
Total Fee	\$ <u>15.08</u>	

## PLANNING

Yards: Front \_\_\_\_\_

Left Side \_\_\_\_\_

Right Side \_\_\_\_\_

Rear \_\_\_\_\_

Coverage %

Exist \_\_\_\_\_

Added \_\_\_\_\_

Total \_\_\_\_\_

Approval:

Staff \_\_\_\_\_

P.C. \_\_\_\_\_

15 Day \_\_\_\_\_

Fxp. \_\_\_\_\_

Present Zone \_\_\_\_\_

Comp. Plan \_\_\_\_\_

Lot: \_\_\_\_\_

Width \_\_\_\_\_

Depth \_\_\_\_\_

Area \_\_\_\_\_

Conditions \_\_\_\_\_

Clerk \_\_\_\_\_ Date / / \_\_\_\_\_

## BUILDING

Valuation: 649.00

Estimated \_\_\_\_\_

Computed \_\_\_\_\_

Fire Zone \_\_\_\_\_

Occupancy \_\_\_\_\_

Type Const. \_\_\_\_\_

Occ. Load \_\_\_\_\_

Floor Area \_\_\_\_\_

No. Stories \_\_\_\_\_

Conditions \_\_\_\_\_

Plan Check By \_\_\_\_\_

Date \_\_\_\_\_

I HEREBY CERTIFY THE CONTENTS OF THIS APPLICATION TO BE CORRECT TO THE BEST OF MY KNOWLEDGE, AND FURTHER, THAT I HAVE READ, UNDERSTOOD, AND AGREED TO THE FOLLOWING:

1. THIS PERMIT SHALL REMAIN VALID ONLY IN ACCORDANCE WITH CODE OR REGULATION PROVISIONS RELATING TO TIME LAPSE AND REVOCATION.
2. WORK SHALL NOT PROCEED PAST APPROVED INSPECTION STAGE. ALL REQUIRED INSPECTIONS SHALL BE CALLED FOR 24 HOURS IN ADVANCE.
3. ANY MODIFICATION IN PLANS OR WORK SHALL BE REPORTED IN ADVANCE TO THE DEPARTMENT.
4. RESPONSIBILITY FOR COMPLYING WITH ALL APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, ORDINANCES, OR REGULATIONS RESTS SOLELY WITH THE APPLICANT.

Applicant Wendy E. Stolp

Clerk A. Lamb

Date 5-27-80

Receipt # 8091

# INSPECTION REPORT

Inspector Must Sign All Spaces Pertaining To This Job

	BUILDING
INSPECTION	CORRECTIONS
FDN./SETBK + FORMS:	
DATE _____	
INSPECTOR _____	
FDN. + FLOOR SYSTEM:	
DATE _____	
INSPECTOR _____	
FRAMING:	
DATE _____	
INSPECTOR _____	
INSULATION:	
DATE _____	
INSPECTOR _____	
INTERIOR WALL COVERING:	
DATE _____	
INSPECTOR _____	
FINAL:	
DATE _____	
INSPECTOR _____	

6/6 - w/s

## NOTES

3/2/87 No PLANNING COF 0-VEEDA S.J.



**CITY OF ASHLAND**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**BUILDING DIVISION**  
**BUILDING AND ZONING PERMIT**

Permit Number  
042586

APPLICATION TO Remodel-Addition SFR

STREET ADDRESS 232 Nutley

LEGAL DESCRIPTION 8 AC #800 402-8347

OWNER Al Robbins\* 225 Nutley 2-8281

CONTRACTOR Jerry Morgan 785

ENGINEER/ARCHITECT \_\_\_\_\_

BUILDERS BOARD # \_\_\_\_\_ EXP. DATE \_\_\_\_\_

CITY LICENSE Yes

PERMIT FEES	
FEE	STATE SURCHARGE
Plan Check \$ <u>119.60</u>	
Building <u>184.00</u>	\$ <u>7.36</u>
Plumbing _____	
Mechanical _____	
Mobile Home _____	
Subtotal <u>184.00</u>	<u>7.36</u>
Total Fee \$ <u>191.36</u>	
	<u>310.96 total</u>

Present Zone R-3 Reg'd Yards: Front N/A

Comp. Plan La Reno Left Side 6'

Hist. District \_\_\_\_\_ Right Side 6'

Hist. Commission Review \_\_\_\_\_ Rear 10' @ story

by \_\_\_\_\_ Date \_\_\_\_\_ Solar Criteria 1

Physical Constraints Yes North Slope N/A %

Approved to Issue \_\_\_\_\_ N. Bldg Height \_\_\_\_\_

HOLD \_\_\_\_\_ Roof Pitch \_\_\_\_\_

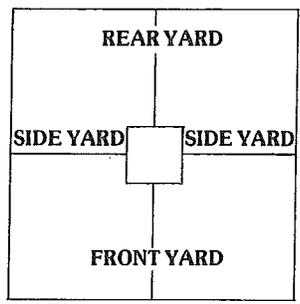
Setback From Shadow \_\_\_\_\_

Casting Portion \_\_\_\_\_

Conditions No solar encroachment. All of addn is to rear of structure.

Any construction to physical Capit 18.62

Planning Division Approval By [Signature] Date 3/21/86



Valuation: 27,500

Occupancy R-3

Type Const. I-N

Occ. Load -10

Floor Area 96 #

No. Stories TWO

Conditions \_\_\_\_\_

Estimated \_\_\_\_\_

Computed \_\_\_\_\_

Plan Check By [Signature]

Date 3/20/86

I HEREBY CERTIFY THE CONTENTS OF THIS APPLICATION TO BE CORRECT TO THE BEST OF MY KNOWLEDGE, AND FURTHERMORE, THAT I HAVE READ, UNDERSTOOD AND AGREED TO THE FOLLOWING:

- THIS PERMIT SHALL REMAIN VALID ONLY IN ACCORDANCE WITH CODE OR REGULATION PROVISIONS RELATING TO TIME LAPSE AND REVOCATION.
- WORK SHALL NOT PROCEED PAST APPROVED INSPECTION STAGE. ALL REQUIRED INSPECTIONS SHALL BE CALLED FOR 24 HOURS IN ADVANCE.
- ANY MODIFICATION IN PLANS OR WORK SHALL BE REPORTED IN AVANCE TO THE DEPARTMENT.
- RESPONSIBILITY FOR COMPLYING WITH ALL APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, ORDINANCES, OR REGULATIONS RESTS SOLELY WITH THE APPLICANT.

Applicant Jan Harrell

Clerk WB SA

Date 3/20/86 4-10-86

Receipt # 115179 115555

INSPECTION REPORT

INSPECTION	DATE	INSPECTOR	NOTES
Setbacks to PL.....			
Footings.....			
Foundation.....			
Concrete Slab /Underfloor Ducts			
Framing.....			
Enclosures: Recessed lights Metal Chimneys Gas vents			
Insulation: Floor Wall Ceiling .....			
Lath /Gypsum Board .....			
Retaining Walls.....			
Driveway Approach.....			
Fireplace /Woodstove			
Smoke Detectors.....			
.....			
.....			
.....			
.....			
FINAL (Before Occupancy).....			

5/5/86 Footings Yes JG  
 5/9/86 Steel & Grout Yes JG  
 5/30/86 Plumbing Yes EM  
 6/30/86 Framing Yes JG  
 10/14/86 Final - Not ready JG  
 11-7-86 Final - not ready JG  
 2-19-87 Final Yes JG

CITY OF ASHLAND BUILDING DIVISION PERMIT NO. 9710106

APPLICATION FOR PLUMBING PERMIT

LOCATION OF PLUMBING WORK 232 Nutley  
 LEGAL DESCRIPTION \_\_\_\_\_ VALUATION \$2500.00  
 OWNER ~~Jeff~~ Donald Yance PHONE \_\_\_\_\_  
 PLUMBING CONTRACTOR Mr. Rooter  
 CONTRACTOR ADDRESS 1624 Williams Hwy #65 G.P. 97527  
 LICENSE NO. 56356 PHONE 476-8216  
 DESCRIPTION OF WORK Replace Sewer RES  COMM \_\_\_\_\_

TYPE OF FIXTURE	NO.	FEE FOR EA.	TOTAL
SINK*		10.00	
LAVATORY*		10.00	
TUB & SHOWER*		10.00	
SHOWER - SEPARATE*		10.00	
WATER CLOSET/BIDET/URINAL*		10.00	
DISHWASHER		10.00	
DISPOSAL		10.00	
DRINKING FOUNTAIN*		10.00	
WASHING MACHINE*		10.00	
WATER HEATER		10.00	
FLOOR DRAINS		10.00	
SEWER - FIRST 100 FT.		30.00	30.00
SEWER - EA. ADD'L 100 FT.		20.00	
WATER SERVICE - FIRST 100 FT.		30.00	
WATER SERVICE - EA. ADD'L 100 FT.		20.00	
STORM AND RAIN DRAIN - FIRST 100 FT.		30.00	
STORM AND RAIN DRAIN - EA. ADD'L 100 FT.		20.00	
MOBILE HOME SPACE		50.00	
SWIMMING POOL/SPA PIPING		10.00	
LAWN SPRINKLER/BACKFLOW DEVICE		10.00	
CATCH BASINS		10.00	
SEWAGE AND SUMP PUMPS		10.00	
HOSE BIBB		10.00	
SPECIAL WASTE CONNECTION		10.00	
PLUMBING CONNECTIONS NOT LISTED ABOVE		10.00	
<b>SUBTOTAL (MIN. \$20.00)</b>			<b>30.00</b>
<b>STATE SUR CHARGE</b>			<b>1.50</b>
<b>PLAN CHECK FEE</b>			
<b>TOTAL</b>			<b>31.50</b>

I certify that all plumbing work will be done in accordance with applicable ordinances of the City of Ashland and Oregon Revised Statute Chapters 447 and 693 and applicable codes, and that no help will be employed unless licensed under ORS 693.

James B. [Signature]  
 Signature of Applicant or Contractor

Receipt # 39778  
 Issued by SR 10-28-97  
 Date

\* Subject to SDC's

BUILDING INSPECTION FINAL REPORT - 10/30/97

Permit # 9710106 Type P Date 10/28/97 Use (S/M/T/C)S New?N Closed?Y  
 Application to SEWER LINE Value 2500.00 SDC? N

Owner YANCE, DONALD Apt# Map Id Taxlot  
 Street 232 NUTLEY ST 391E08AC 800

Contractor MR. ROOTER PLUMBING Business Lic # 940979

# of Res Units 1 Floor Area/Sq. Ft. Present Zone

Heat Type (E/H/G) Super Good Cents Approved?

Planning Requirements? Planning Action #

Plan Check	0.00	Building	0.00		
Plumbing	30.00	Mechanical	0.00	State Surcharge	1.50
Electrical	0.00	ManufH Setup	0.00	Total Fees	31.50
Special	0.00	ManufH Assess	0.00		

=====

RECORD OF INSPECTIONS

--Date--	Init	Type-----	Comments
10/29/97	RLH	SEWER LINE	YES
10/30/97	NS	CLOSING	YES

October 3, 2017

To: City of Ashland Planning Commission

From: Alexis Packer, home owner at 235 Nutley Street

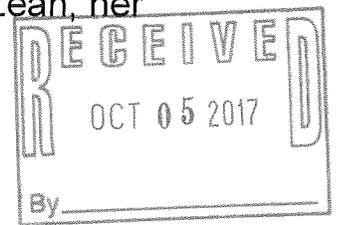
Re: ARU project at 232 Nutley St.

Since I am unable to attend the meeting on October 10, 2017, I am writing because I want to express my firm support for the proposed ARU project for which Leah Henigson has received approval from the Ashland Planning Department. Leah and I have been neighbors for 20 years; I live across Nutley Street and slightly up the hill from her.

I believe the project represents a improvement to our neighborhood. In terms of esthetics, having the worn-out barn removed and replaced with a beautifully-designed building will enhance the neighborhood and benefit not only the neighbors, but also people walking and driving on Alnutt Street. It is my understanding that the building is being designed by a local award-winning Ashland designer/builder, Don Sever, also a neighbor who cares about the artistic taste of our neighborhood.

I have no concern about adding approximately 350 sq of footprint to the existing building. Leah is a Licensed Clinical Social Worker and has served Ashland in this capacity for over 20 years. *I think it is important for the commission to consider that her proposed project will afford her the ability to stay in her home with a partial retirement while she continues to work and serve this community part-time.* Additionally, allowing the ARU to be built will create an affordable, four-bedroom house as a rental in Ashland where, as we all know, rentals are scarce.

As I understand the project, it will also create a safer flow of traffic in the neighborhood because cars will no longer be parked in the driveway, making it possible for cars to flow through from Nutley Street to Alnutt Street. Nutley street dead ends just above Leah's home. Only my home, and one other, is above her. If cars are to occasionally back out onto Nutley Street, there should be no concern about traffic flow. Leah, her



family and I have lived in this neighborhood for 20 years and we have had no traffic problems over that time.

In summary I think the benefits of allowing this project to go forward outweigh any burdens some seem to see.

I hope the Planning Commission will support and approve this project which has been well thought out and carefully considered and that, if approved, will allow a long time contributing member of our neighborhood and community to remain on her property in her retirement.

Very truly yours,



Alexis Packer  
235 Nutley Street  
Attorney and owner of  
Ashland Tennis & Fitness Club



## Carolyn Schwendener

---

**From:** Pat Haley <patibaja@hotmail.com>  
**Sent:** Wednesday, October 04, 2017 10:30 AM  
**To:** Carolyn Schwendener; agkoenig@msn.com  
**Subject:** response to PA 2017-00978  
**Attachments:** Image.jpg; alnutt survey of driveway 001.jpg

Dear Ashland City Planning Staff,

Given an upcoming appeal, you have requested input and feedback for the appeal on the proposed building development PA 2017-00978 made by Leah Henigson to build a residential unit at 232 Nutley Street. I am writing this letter to voice my objection to this development and provide input to the appeal process.

I object to the development for three reasons: First, PA 2017-00978 does not meet the standards set by Jackson County or the Ashland planning department regarding the acceptable amount of lot coverage given the .29 acre lot size. Second, I do not believe that a fire truck can on all occasions safely reach the structures by entering on Alnutt Street as Leah suggests on her application. Finally, it is apparent to me with Leah Henigsons plan that the driveway crosses my property in the vicinity of Alnutt Street. I believe that an accurate survey of the lot to expose correct and true lot lines should be completed prior to my approval.

In regards to the driveway issue I am enclosing a portion of a survey done by Polaris Land Survey done June 2006. This portion of the survey shows my property where the driveway from 232 intersects with my driveway. Strangely enough I have heard that the brass property markers from my corner are now missing. I would like to ask the city to evaluate that intersection. I gave nobody permission to enter my property and remove those brass pins. I am sure they were in place for the 2006 survey. I just learned of the possible missing markers and want to evaluate the driveway access and request an opinion from the planning department be withheld until this matter is resolved. I have contacted Polaris to request an evaluation of the driveway area.

Patricia Haley  
owner, 151 Alnutt Street

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Susan A. Hunt  
220 Nutley St.  
Ashland, OR

October 3, 2017

Ashland Planning Commission  
Ashland, OR, 97520

Re: 232 Nutley St.

I oppose Leah Henigson's application for an ARU on her approx. ¼ AC lot in this RR 0.5 zone. Her lot is .29, approximately half the required size, and is already over coverage at 40%, due to her (initially) unpermitted building of two rooms and another large deck, attached to the existing deck.

This whole hillside has very steep slopes exceeding 25 degrees, which may be viewed clearly on the City's topographic maps and Hillside Zone maps. Digging a new 750 square foot hole for the daylight basement, would be a serious and careless thing to attempt, on such a fragile, granitic hillside. There have been no engineering or geotech studies done by the proposing party, Ms. Henigson; and the City has not even required engineering or geotech studies to be done by her at any point, even when a building permit would be requested and issued.

I am very concerned regarding fire issues in this neighborhood. It would be difficult to impossible for firefighting equipment to adequately and quickly respond to a fire at the proposed ARU. The required indoor sprinkler system, though a good thing, would not give full fire protection, but would only give the ARU's inhabitants time to escape an in-home started fire. We are in the second highest fire hazard neighborhood in the entire town of Ashland (please see attached article). It would be a hazardous gamble to place a new residential structure on to that site, a structure of 1400 square feet, including its daylight basement, where firefighting access is woefully inadequate.

The proposed clearing of all the necessary trees and shrubs required for the building of this ARU structure, plus all clearance required for parking pads, etc., plus the required clearing for Firewise requirements, plus its closeness to Alnutt Street, will make this a glaring and serious eyesore for all the properties across from it, and will diminish the natural beauty that is the essence of this rural residential neighborhood, and will decrease property values accordingly.

Sincerely,



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<b>Notice of Land Use Appeal – Type I</b> (Ashland Municipal Code § 18.5.1.050.G.)		
<b>A. Name(s) of Person Filing Appeal:</b>		<b>B. Address(es):</b>
1. Greg Koenig		162 Alnutt Street, Ashland, OR 97520
2. Allison Koenig		162 Alnutt Street, Ashland, OR 97520
Attach additional pages of names and addresses if other persons are joining the appeal.		
<b>C. Decision Being Appealed</b>		
Date of Decision:	Planning Action #:	Title of planning action:
Sept. 11, 2017	PA-2017-00978	Type 1 -
<b>D. How Person(s) Filing Appeal Qualifies as a Party</b> (For each person listed above in Box A, check the appropriate box below.)		
The person named in Box A.1. above qualifies as a party because:	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.	
The person named in Box A.2. above qualifies as a party because:	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.	
Attach additional pages if others have joined in the appeal and describe how each qualifies as a party.		
<b>E. Specific Grounds for Appeal</b>		
1. The first specific ground for which the decision should be reversed or modified is: See attached <b>APPELLANTS' SPECIFIC GROUNDS FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED</b>		
2. The second specific ground for which the decision should be reversed or modified is: See attached <b>APPELLANTS' SPECIFIC GROUNDS FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED</b>		
3. The third specific ground for which the decision should be reversed or modified is: See Attached <b>APPELLANTS' SPECIFIC GROUNDS FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED</b>		
4. (On attached pages, list other grounds, in a manner similar to the above, that exist. For each ground list the applicable criteria or procedures in the Ashland Municipal Code or other law that were violated.)		

**Appeal Fee**

With this notice of appeal I(we) submit the sum of **\$150.00** which is the appeal fee required by § 18.5.1.050 of the Ashland Municipal Code.

Date: 9/25/2017

Signature(s) of person(s) filing appeal (attach additional pages if necessary):

  
Attorney for Greg and Allison Koenig

*Note: This completed Notice of Land Use Appeal together with the appeal fee must be filed with the Community Development Department, Attn: Planning Commission Secretary, 20 E Main St, Ashland, OR 97520, telephone 541-488-5305, prior to the effective date of the decision sought to be reviewed. Effective dates of decisions are set forth in Ashland Municipal Code Section 18.5.1.050.*

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(Continuation of Notice of Appeal Section E)

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**APPELLANTS' SPECIFIC GROUNDS  
FOR WHICH THE DECISION SHOULD  
BE REVERSED OR MODIFIED  
PA-2017-00978**

On September 11, 2017, the Community Development Director approved a request for a Site Design Review for, Leah K. Henigson (Leah K Henigson, Trustee) applicant, to construct an approximately 999 square foot Accessory Residential Unit (ARU) for her property located at 232 Nutley Street, Ashland. Her application also included a request for a Conditional Use Permit (CU) to allow the expansion of an existing non-conforming development on her property.

The applicant's property at 232 Nutley, hereinafter ("subject property") is zoned RR-.5 Rural Residential. It is bordered by two streets, Nutley and Alnutt. Nutley abruptly terminates in a dead end just one lot past the subject property. Alnutt is a one-way, very narrow street, with traffic traveling in the direction of uphill. The subject property is not half-acre, but is much smaller at .29 acres or approximately 12,632 square feet.

The Director's Decision ("Decision") is sectioned into the following areas of discussion.

Subject Property	Page 1 of the Decision
Accessory Residential Unit (ARU)	Page 2
Site Design Review	Page 3
Non-Conforming Development/ Conditional Use Permit (CU)	Page 4
Tree Removal	Page 5
Comments Review	Page 6-8
Decision	Page 8
The Criteria for Site Review - AMC 18.5.2.050	Page 8
The Criteria for ARU - AMC 18.2.3.040	Page 9
The Criteria for CU - AMC 18.5.4.050.A	Page 10
Approval with Conditions	Page 10-13

The format for this appeal set out below is that Appellants have eight (8) specific grounds for appeal and numbered them 1 through 8. Each one is in all caps and bolded. Appellants have included only those portions of the Ashland Municipal Code that are applicable to the Decision, and applicable to the subject property, whether considered by staff or not. The Decision appears to have included only criteria for Site Design Review, Assessorly Residential Units, and Conditional Use Permit, but there are other criteria that should have been applied, specifically the Development Standards for Hillside Lands, Standards for Residential Zones,

Standards for the Rural Residential (RR) zone, and Variances code section, which are set out below, along with Appellants' arguments as to why the Decision should be reversed or remanded.

In addition, Appellants request that all of the written comments and valid concerns that were submitted on or about August 3, 2017 during the comment period by the various neighbors, be incorporated herein as a part of this appeal.

Pursuant to the Scope of Review of the Planning Commission, "Appeal hearings on Type I decisions made by the Staff Advisor shall be **de novo** hearings before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision." Appellants intend to augment the stated objections, and reserve their right to present additional testimony and evidence at the Planning Commission hearing.

ASHLAND MUNICIPAL CODE AS IT RELATES TO THE REQUIREMENTS  
TO APPROVE AN ACCESSORY RESIDENTIAL UNIT.

Chapter 18.2.2 - Base Zones and Allowed Uses.

18.2.2.010 - Purpose - Chapter 18.2.2 regulates allowed land uses pursuant to the Comprehensive Plan and the purposes of this ordinance, per chapter 18.1.2.

18.2.2.020 - Applicability - **All uses of land in the City** are subject to the regulations of Chapter 18.2.2. Certain types of land uses are also subject to the **Special Use regulations** in chapter 18.2.3, and **some properties are subject to the overlay zone regulations** contained in part 18.3, as applicable. (Emphasis added).

18.2.2.030 - Allowed Uses

A. Uses Allowed in Base Zones. Allowed uses include those that are permitted, permitted subject to special use standards, and allowed subject to approval of a condition use permit. Where Table 18.2.2.030 does not list a specific use . . . the City may find that use is allowed.

B. Permitted Uses and Uses Permitted Subject to Special Use Standards. Uses listed as "Permitted (P)" are allowed. Uses listed as "Permitted Subject to Special Use Standards (S)" are allowed, provided they conform to chapter 18.2.3 Special Use Standards. (Emphasis added).

C. Conditional Uses. Uses listed as "Conditional Use Permit Required (CU)" are

allowed subject to the requirements of chapter 18.5.4

Looking at Table 18.2.2.030, Uses Allowed by Zone, an **Accessory Residential Unit** is a **Special Use** in the RR zone and subject to Section 18.2.3.040

### **18.2.3 - Special Use Standards**

“18.2.3.010 Purpose.

Special uses included in chapter 18.2.3 are uses, which, due to their effect on surrounding properties, must be developed in accordance with special conditions and standards. These special use standards may differ from the development standards established for other uses in the same zone.”

“18.2.3.020 Applicability

Chapter 18.2.3 supplements the other requirements of this ordinance. Uses designated as special uses (“S”) in Table 18.2.2.030, and uses the City determines to be similar to such uses, are subject to chapter 18.2.3. . . .”

“18.2.3.030 Review Process

The Staff Advisor or Planning Commission applies the standard of chapter 18.2.3 through the applicable review process (i.e. Ministerial Review, Type 1 review, or Type II review). Site Design Review pursuant to chapter 18.5.2 or a Conditional Use Permit pursuant to chapter 18.5.4 may be required for some uses.”

### **18.2.3.040 Accessory Residential Unit**

Where accessory residential units are allowed, they are subject to Site Design Review under chapter 18.5.2 and **shall meet all** of the following requirements. (Emphasis added.)

- A. R-1 Zone. Accessory residential units in the R-1 zone **shall meet** the following requirements.
1. One accessory residential unit is allowed per lot, and the maximum number of dwelling units shall not exceed two per lot.
  2. Accessory Residential units are not subject to the density or minimum lot area requirements of the zone, except that accessory residential units shall be counted in the density of developments created under the Performance Standards Option in chapter 18.3.9.
  3. The maximum gross habitable floor area (GHFA) of the accessory residential unit shall not exceed 50 percent of the GHFA of the primary

residence on the lot, and shall not exceed 1,000 square feet GHFA.

4. The proposal **shall conform to the overall maximum lot coverage and setback requirements of the underlying zone.**
5. Additional parking shall be provided in conformance with the off street parking provisions for single-family dwellings in section 18.4.3.040, except that parking spaces, turn-arounds and driveways are exempt from the paving requirements in subsection 18.4.3.080.E.1.

B. RR Zone. **IN ADDITION** to the standards in subsection 18.2.3.040.A (ABOVE), accessory residential units in the RR zone **shall meet** the following requirements.

1. If the accessory residential unit is not part of the primary dwelling, all construction and land disturbance associated with the accessory residential unit **shall occur on lands with less than 25 percent slope.**
2. The lot on which the accessory residential unit is located **shall have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters and sidewalks.**
3. No on street parking credits shall be allowed for accessory residential units.
4. If located in the Wildfire zone, the accessory residential unit shall have a residential sprinkler system installed.

**1. THE FIRST SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT APPLICANT'S PROPOSED ARU DOES NOT CONFORM TO THE OVERALL MAXIMUM LOT COVERAGE OF THE UNDERLYING ZONE. AMU 18.2.3.040.A.4.**

The City of Ashland Zoning District requirements for RR.5: Rural Residential, requires Lot Coverage to be a **maximum** of 20 percent lot coverage for half acre lots. The subject property is already non-conforming in size and is only .29 acres which is substantially less than a half-acre. The applicant purchased her property on 11/14/1997 and at that time the improvement was the 1612 square foot residence built in 1965. In 2003, the applicant herself added onto this residence a finished basement, additions to the existing structure and a deck which added to the square footage which is now 1980 square feet. The footprint for her existing barn is 16 feet x 16 feet, and the square footage is 256 Square feet. The lot coverage already exceeds the 20% maximum, even before you add in the long driveway, and the proposed four new parking spaces. In addition, the surveyor and the applicant conveniently left off the site plan the "playhouse" sporting a rooftop deck with railings all the way around, stairs leading to the door and house windows located just behind the 2003 main house addition.

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Also left off the site plan is the storage shed located under a large overhanging roofline of the main house, stuffed full with stored items with a door leading into the space and opened into the backyard, like a lean to. All of these existing structures on this tiny lot more than exceed the “maximum of 20% lot coverage.” Please note that the AMC uses the words, “shall conform . . .” which is a mandatory word. For this reason alone, the application should not have been approved. The Decision should be reversed or modified.

**2. THE SECOND SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE APPLICANT’S PROPOSAL FOR AN ARU DOES NOT MEET THE MANDATORY REQUIREMENTS THAT THE ARU SHALL OCCUR ON LANDS WITH LESS THAN 25% SLOPE. AMC 18.2.3.040.B.1**

The site plan prepared by applicant’s surveyor, Stephan Barott, indicates a corner of the ARU as a 24.5% slope. What methods and surveying techniques did he use to arrive at that convenient percentage? There is no “slope analysis” which is required under Ashland Municipal Code. 18.3.10(K). A proper slope analysis would reveal the actual **natural slope** of the subject property to be greater than 25%. The surveyors map uses 10 foot intervals, but is required to have 2 foot intervals for showing actual natural slope. 18.3.10 (K). In 2012, in a pre-application document for the same ARU, the city stated that the slope on the subject property was “greater than 25% slope” and required a slope analysis. This property is located in the Hillside Development area. While the area where the barn is currently located has been excavated and leveled, the 25% slope requirement is that the natural slope is not greater than 25% not just the buildable envelope. Anyone can see on a site visit, that the natural slope was excavated creating an unretained cut bank uphill from the barn. The excavated dirt was then pushed out to level the pad where the barn sits. The applicant proposes to build an ARU three times the size of the existing barn, remove numerous mature trees to fit it in and all without disturbing the soil? The City of Ashland’s Physical and Environmental Constraints, Hillside Lands and Severe Constraints map shows that the subject property falls into the Hillside Lands area, and more importantly, the portion alongside Alnutt is colored as an area of “Severe Constraints (>35% slope). If a person stands at the boundary line fence between Patricia Zolene’s property at 240 Nutley, and the Applicant’s property, and looks down to Alnutt past the existing barn, the natural slope of the land is very apparent, and obviously very steep. Because the ARU is proposed on Hillside Land with slopes that exceed 25%, it cannot be built there under the City code.

**3. THE THIRD SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE APPLICANT’S PROPOSAL FOR AN ARU DOES NOT HAVE ACCESS TO AN IMPROVED CITY STREET, PAVED TO A MINIMUM OF 20 FEET IN WIDTH, WITH CURBS, GUTTERS AND SIDEWALKS. AMC 18.2.3.040.B.2**

ARU’s located in Rural Residential zones are held to additional approval criteria than those in Single Family (R-1) zones. Those additional criteria include no on-street parking

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credits, all construction and land disturbance shall occur on lands with less than 25% slope, access to an improved city street, paved to a minimum of 20' in width, with curbs, and gutters, and sidewalks. The street Alnutt is a narrow, one way street. The curb to curb width of Alnutt is only 17.5 feet in width, which is below the 20' minimum required. The fact that Nutley and Alnutt were allowed to be constructed under an LID at less than the minimum width to preserve the banks and trees, doesn't transfer a right to the applicant to not comply with the City of Ashland's minimum standard of 20' for the ARU in this zone.

See additional criteria below that applies to the approval of the ARU, Standards for Residential Zones and the specific Standards for Rural Residential (RR) Zone.

**Chapter 18.2.5 - Standards for Residential Zones**

18.2.5.010 Purpose

Chapter 18.2.5 sets forth lot and development standards, including minimum dimensions, area, density, coverage, structure height, and other provisions that control the intensity, scale, and location of development, for Ashland's base residential zones, pursuant to the Comprehensive Plan and the purposes of this ordinance.

18.2.5.020 Applicability

The standards contained in this chapter apply to **all uses and development** in the City's residential zones. . .

**18.2.5.030.C - Standards for Rural Residential (RR) Zone**

(Except as modified under chapter 18.5.5 and Variances or chapter 18.3.9 Performance Standards Option).

Minimum Lot Area and  
Maximum Density<sup>1</sup>

RR-.5 zone

0.5 acre

1.

The minimum lot size depends on the topographic nature, service availability, surrounding land uses, and other relevant characteristics of the area.

Lot Coverage - Maximum (% of  
lot area)

RR-.5

**20%**

*The porous solid surface  
exemption does not apply to driveways  
and parking areas.*

Maximum Building Height

35 feet or 2 ½ stories, whichever is less.

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4. **THE FOURTH SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE DECISION MAKER FAILED TO REQUIRE A PHYSICAL CONSTRAINTS REVIEW PERMIT AS PART OF THE APPLICATION.**

ASHLAND MUNICIPAL CODE BELOW WHICH EXPLAINS WHY A PHYSICAL AND ENVIRONMENTAL CONSTRAINTS PERMIT SHOULD HAVE BEEN REQUIRED.

**18.3.10 - Physical and Environmental Constraints Overlay**

18.3.10.010 Purpose and Intent

The purpose of this chapter is to provide for safe, orderly, and beneficial development of districts characterized by diversity of physiographic conditions and significant natural features; to limit alteration of topography and reduce encroachment upon, or alteration of, any natural environment and; to provide for sensitive development in areas that are constrained by various natural features. Physiographic conditions and significant natural features can be considered to include, but not limited to; slope of the land, natural drainage ways, wetlands, soil characteristics, potential landslide areas, natural and wildlife habitats, forested areas, significant trees, and significant natural vegetation.

18.3.10.020 Applicability

A. Physical Constraints Review Permit. A physical Constraints Review Permit is **required** for the following activities in the land classifications in section 18.3.10.060.

1. Alteration of Land. The alteration of the land surface by any of the following activities in areas identified as Flood Plain Corridor Land, **Hillside Land**, or Severe Constraint Land.
  - a. Earth moving activities such as grading, filling, stripping or cutting involving more than 20 cubic yards on any lot, or earth-moving activity disturbing a surface area greater than 1000 square feet on any lot.
  - b. Construction of a building, road, driveway, parking area, or other structure, except that additions to existing buildings of less than 300 square feet to the existing building footprint shall not be considered development for section 18.3.10.090 Development Standards for Hillside Lands.
  
3. Tree Removal.
  - b. Hillside Land and Severe Constraints Land. **Tree removal, in areas identified as Hillside Land and Severe Constraint Land**, except that a permit need not be obtained for

tree removal that is not associated with development, and done for the purpose of wildfire management. . .

18.3.10.030 Review Procedure

- A. **If a development is part of a Site Design Review**, Performance Standards Development, **Conditional Use Permit**. . ., the Physical Constraints Review Permit shall be reviewed simultaneously as a consolidated procedure.

18.3.10.040 Application Submission Requirements

- H. Location and use of all proposed and existing buildings, fences, and structures within the proposed development.
- K. **Topographic map of the site at a contour interval of not less than two feet nor greater than five feet.** The topographic map **shall also include a slope analysis**, indicating buildable areas, as shown in Figure 18.3.10.040.K.
- M. Identify all **outcroppings of rocks, boulders**. Indicate any contemplated modifications to a natural feature, including trees, method of erosion control, water runoff control, and proposed tree protection for the development as required by this chapter.
- P. Location of all areas of land disturbance, including cuts, fills, driveways . . . maximum depths and heights of cuts and fill.
- Q. Location for storage or disposal of all excess materials resulting from cuts associated with the proposed development.

18.3.10.060 Land Classifications

The following factors shall be used to determine the classifications of various lands and their **constraints to building and development of them**.

- B. **Hillside Lands.** Hillside Lands are lands that are subject to damage from erosion and slope failure, and which include areas that are highly visible from other portions of the city. The following lands are classified as Hillside Lands: All areas defined as Hillside Lands on the Physical and Environmental Constraints Hillside and Severe Constraints map and which have a slope of 25 percent or greater.
- C. **Wildfire Lands.** Lands with potential of wildfire. The following lands are classified as Wildfire Lands: All areas defined as wildfire lands on the Physical and Environmental Constraints Wildfire Lands Map.

A physical constraints review permit is required by code for this subject property. The property clearly falls into the Hillside Lands area on the Physical and Environmental Constraints map. The applicant plans to construct a building and four new parking areas. The applicant proposes to “remove” many mature trees to make way for the ARU. A 12-inch mature pine they “hope” to preserve, but with all of the construction activities on this tiny overbuilt lot, it is doubtful that such a tree could survive. The surveyed site plan doesn’t meet the requirements of contours at two foot intervals. There is no “slope analysis” as required on hillside land that was submitted with the application. A written notation at one corner of the proposed ARU on the site plan is not adequate to show the natural slope of the subject property to be less than 25% slope. The application contains no methods of erosion control, or drainage control. Applicant did not follow the submission requirements in this overlay area because the site plan doesn’t include any outcroppings of rocks and boulders. There are huge granite boulders located in the area between the proposed ARU and the existing house that will affect whether any parking can actually be located there. The Decision must be reversed or modified because of the failure to address this criteria in reviewing the application.

**5. THE FIFTH SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE DECISION MAKER FAILED TO REQUIRE PLANS FOR HILLSIDE GRADING AND EROSION CONTROL, DRAINAGE AND RETAINING WALL DESIGN OR IMPOSE CONDITIONS WHEN SUCH DISTURBANCE OF THE HILLSIDE LAND CAN OCCUR.**

ASHLAND MUNICIPAL CODE REGARDING REQUIREMENTS  
ON HILLSIDE LANDS.

**18.3.10.090 Development Standards for Hillside Lands**

It is the purpose of the Development Standards for Hillside Lands to provide supplementary development regulations to underlying zones to ensure that development occurs in such a manner as to protect the natural and topographic character and identity of these areas, environmental resources, the aesthetic qualities and restorative value of lands, and the public health, safety, and general welfare by insuring that development does not create soil erosion, sedimentation or lower slopes, slide damage, flooding problems, and severe cutting or scarring. It is the intent of these development standards to encourage a sensitive form of development and to allow for a reasonable use that complements the natural and visual character of the City.

- B. Hillside Grading and Erosion Control. All development on lands classified as Hillside shall provide plans conforming to the following items.
1. All grading, retaining wall design, drainage, and erosion control plans for development on Hillside Lands shall be designed by a geotechnical expert.
  2. Timing of Improvements. For development, other than single family homes on

individual lots, all grading, drainage improvements, or other land disturbances shall only occur from May 1 to October 31.

The subject property is clearly within the Land area of the City of Ashland Classified as Hillside Lands. See the Hillside Lands on the Physical and Environmental Constraints Hillside and Severe Constraints map showing the subject property in the pink zone with a long strip of property all along Alnutt beginning at the intersection of Nutley and Alnutt and going through the access point of the proposed ARU driveway as SEVERE CONSTRAINTS >35% slope. The subject property is also within the Wildfire Lands Map.

6. **THE SIX SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE DECISION MAKER FAILED TO REQUIRE A LANDSCAPE PLAN, AND A TOPOGRAPHIC MAP OF THE SITE WITH INTERVALS OF FIVE FEET OR LESS AND THE SURVEYED SITE PLAN IS INACCURATE.**

ASHLAND MUNICIPAL CODE SECTIONS REGARDING REQUIREMENTS FOR APPROVAL OF A CONDITIONAL USE PERMIT

**18.5.4 Conditional Use Permits**

18.5.4.010 Purpose

The purpose of this chapter is to provide procedures and standards for permitting conditional uses.

18.5.4.020 Applicability

No conditionally permitted use may be established, enlarged or altered unless the city first issues a conditional use permit in accordance with the provisions of this chapter.

“18.5.4.030 Review Procedure

A. Type 1 Reviews. The following Conditional Use Permits are subject to Type 1 review in chapter 18.5.1.050

1. Conditional Use Permits involving existing structures or additions to existing structures . . .”

- B. Plan Submittal. **The plan or drawing accompanying the application shall include the following information.**

5. Location and use of all buildings existing and proposed on the subject property and schematic architectural elevations of all proposed structures.

7. **Schematic landscaping plan** showing area and type of landscaping proposed.
8. A topographic map of the site showing contour intervals of **five feet or less**.
9. Approximate location of all existing natural features in areas which are planned to be disturbed, including, but not limited to, all existing trees of greater than six inches DBH, any natural drainage ways pond or wetlands, and **any substantial outcroppings of rocks or boulders**.

18.5.4.050 Approval Criteria

A. Approval Criteria. A Conditional Use 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.

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 . . . .
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 . . .
  - a. Similarity in scale, bulk and coverage.

The surveyed site plan by Stephan Barott does not include the play structure that exists on the property, and does not include the storage area under the main house roofline, and the survey is not prepared with intervals of five feet or less, the intervals are 10 feet. The survey does not include any of the large granite boulders and substantial outcroppings of large rocks. If those rocks had been included in the site plan, the proposed parking area could not be feasible between the ARU and the primary residence. There is a HUGE granite immovable bolder in that location. There is no landscaping plan submitted as part of the application. See the applicable code sections below. AMC 18.5.4 The approval criteria for a conditional use permit requires that 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. The use is not in conformance with all standards within the zoning district. The use is not in compliance with most standards in the zoning district.

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 City of Ashland

7. **THE SEVENTH SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE DECISION MAKER FAILED TO REQUIRE, AS PART OF THE APPLICATION SUBMITTAL, ALL OF THE DOCUMENTATION REQUIRED FOR SITE DESIGN REVIEW, AND MADE NO WRITTEN DETERMINATION IN HIS DECISION AS TO WHY THAT DOCUMENTATION WAS NOT REQUIRED OR PERTINENT TO THE DECISION.**

ASHLAND MUNICIPAL CODE REQUIREMENTS FOR SITE DESIGN REVIEW

**18.5.2 Site Design Review**

18.5.2.010 Purpose

The purpose and intent of this chapter is to regulate the manner in which land in the City is used and developed, to reduce adverse effects on surrounding property owners and the general public, . . . and to ensure that high quality development is maintained throughout the City.

- B. Residential Uses. Site Design Review applies to the following types of residential uses and project proposals, pursuant to section 18.5.2.030 Review Procedures.

1. Two or more dwelling units, including the addition of an accessory residential unit, on a lot in any zoning district.

5. Any change in use that requires a greater number of parking spaces.

18.5.2.040 Application Submission Requirements

The following information is **required** for Site Design Review application submittal, except where the Staff Advisor determines that some information is not pertinent and therefore is not required.

1. Basic Plan Information
2. Site Analysis Map
3. Proposed Site Plan
4. Architectural Drawings
5. Preliminary Grading and Drainage Plan
6. Erosion Control Plan
7. Landscape and Irrigation Plans
8. Narrative
  - b. For residential Development
    - i. The total square footage in the development
    - ii. The number of dwelling units in the development

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11/25/17  
City of Ashland

- iii. Percentage of lot coverage by structures, streets, roads or drives;  
Common area/private recreation areas, landscaping, and parking areas

See Items 1-8 above, in 18.5.2.040 Application Submission Requirements. For this application, there is no preliminary grading and drainage plan, no erosion control plan, no landscaping and irrigation plan and no narrative regarding lot coverage. Appellant wants to know why the Staff Advisor did not require Applicant to provide that pertinent information?

**8. THE EIGHTH SPECIFIC GROUND FOR WHICH THE DECISION SHOULD BE REVERSED OR MODIFIED IS THAT THE DECISION MAKER SHOULD NOT BE APPROVING ANY VARIANCE FOR THE SUBJECT PROPERTY.**

To get a variance, applicant must meet the requirements for a variance and she cannot. See Chapter 18.100.020(A)(B) and (C) Variance. 18.100.020(A)(B) and (C) requires that for a variance, the applicant must show A) that there are unique or unusual circumstances which apply to this site which do not typically apply elsewhere; B) That 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; and C) That the circumstances or conditions have not been willfully or purposely self-imposed. Starting with C) In particular, the circumstances or conditions have certainly been willfully and purposely self-imposed by the applicant when she overbuilt her tiny .29 acre property and now wants a variance on her variances to expand.

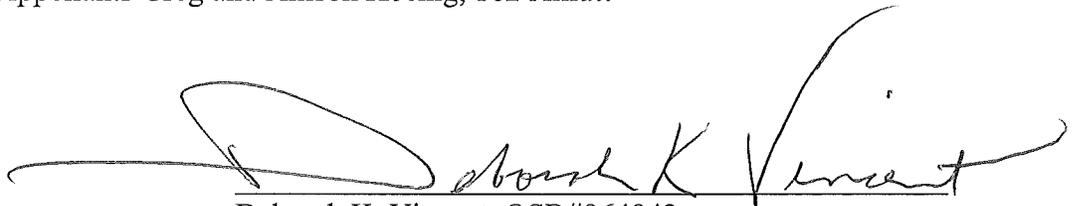
B) The comprehensive plan of the City of Ashland states, "Areas of steep slope on highly erosive granitic soils are very sensitive to development activities. The best control to erosion is to limit development in areas that are sensitive." Applicant wants to destroy many large mature trees on her tiny lot to make room for her expanded ARU and her four new parking spaces. Those mature trees and their roots stabilize the soils on this lot, and without those trees, soil erosion is likely. The Applicant's plans to expand her barn from 256 square feet to 999 square feet with four new parking spaces will undermine the stability of the lot and create a potential health and safety hazard downhill onto Alnutt. How can the proposal's benefits be greater than any negative impacts on the development of adjacent uses or further the purpose and intent of the ordinance? Finally A) There are no "unique or "unusual circumstances" except those created by the Applicant in overbuilding her tiny lot. Also see Standards for Rural Residential (RR) zone 18.2.5.030.C for Lot coverage maximums.

**CONCLUSION:**

The application should not have been approved for the ARU or conditional use permit. The subject lot is on a steep sloped hillside on a tightly constrained .29 acre lot that is already overbuilt and exceeds the maximum lot coverage of 20%. The access for the ARU comes off a one way street, Alnutt that is only 17.5 feet wide, and under the 20' requirement. There is no way that a fire truck could turn up Alnutt and access this driveway to the ARU. The driveway points

in the same direction that one drives on Alnutt and to drive from Alnutt onto the driveway with a vehicle is difficult at best and impossible for a fire truck. Appellants have no objection to the repair and improvement of the existing barn structure at it's current size. Appellants object to the expansion of the barn into an ARU requiring four additional parking spaces on site and the removal of countless mature trees, with the subsequent erosion and drainage problems that are likely to follow.

Submitted by: Deborah K. Vincent  
Attorney at Law  
for Appellants Greg and Allison Koenig, 162 Alnutt

A handwritten signature in black ink, appearing to read "Deborah K. Vincent". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Deborah K. Vincent, OSB#964942

RECEIVED  
JUN 25 2017  
City of Oakland



LAW OFFICE OF  
DEBORAH K. VINCENT  
*Attorney at Law*

---

September 25, 2017

Bill Molnar, Director  
Department of Community Development  
City of Ashland  
51 Winburn Way  
Ashland, OR 97520

RE: Appeal to Planning Commission  
PA-2017-00978  
232 Nutley, Ashland, Oregon

Dear Mr. Molnar:

Greg and Allison Koenig have standing to appeal the land use decision. They are the owners of the property located at 162 Alnutt, they participated by submitting a letter during the written comments period dated August 3, 2017. They received notice of the Development Director's Decision on September 11, 2017. They also submitted the attached letter to the Planning Department, dated September 8, 2017, authorizing me to act as their authorized representative pertaining to this planning action. In addition, I signed the City's form and submitted it on Friday, September 8, 2017, to receive a copy of the Decision for myself, and did receive a copy of the Development Department's Decision on September 11, 2017. Therefore, I also have standing in this appeal. Appellants will be adversely affected and aggrieved by the Applicant's development as proposed which will disturb the existing grade on hillside land directly adjacent to Alnutt, a street Appellant uses daily to get to their residence, increases the risk of wildfire hazard, increases traffic and parking demand to the substandard streets necessary for emergency vehicle ingress and egress for the neighborhood, and negatively affects livability and value to Appellants' property.

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City of Ashland

Ashland Planning Department  
51 Winburn Way  
Ashland, OR  
97520

September 8, 2017

RE: PA-2017-00978 and Koenig Representation

Dear Ashland Planning Department;

This letter is to inform you that as of September 11, 2017 Greg and Allison Koenig are authorizing Deborah K. Vincent, Attorney at Law, to act as our authorized representative pertaining to planning action PA-2017-00978 and subject property 232 Nutley Street, Ashland Oregon.

Sincerely,



Allison and Greg Koenig

162 Alnutt Street

Ashland, OR

541-499-4650

PA-2017-00978  
9/11/17  
Cj/S/V

Appellants raise each of the issues on appeal to identified specific issues in their written submittal of August 3, 2017 and raise the same specific issues on appeal. Appellant intends to augment the stated objections in the form provided by the City of Ashland attached hereto and reserve their right to present additional testimony at a *de novo* hearing in front of the Ashland Planning Commission, currently scheduled for October 10, 2017. Appellants further raise objections to the Director's Decision which was issued after the comment period and was therefore not available for public review prior to the NOCA deadline for submittal of comments. Neither the application nor the Director's Decision establish that the proposed development comply with the comprehensive plan for the City and all applicable land use regulations or ordinance provisions (ORS 227.175(4)).

On behalf of Appellants, I request that the Decision be reversed or remanded by the Planning Commission due to multiple errors in approving the application.

The appeal and some supporting documentation is attached hereto and incorporated herein along with my check for \$150.00.

Sincerely,

A handwritten signature in black ink that reads "Deborah K. Vincent". The signature is written in a cursive style and is positioned above a solid horizontal line.

Deborah K. Vincent

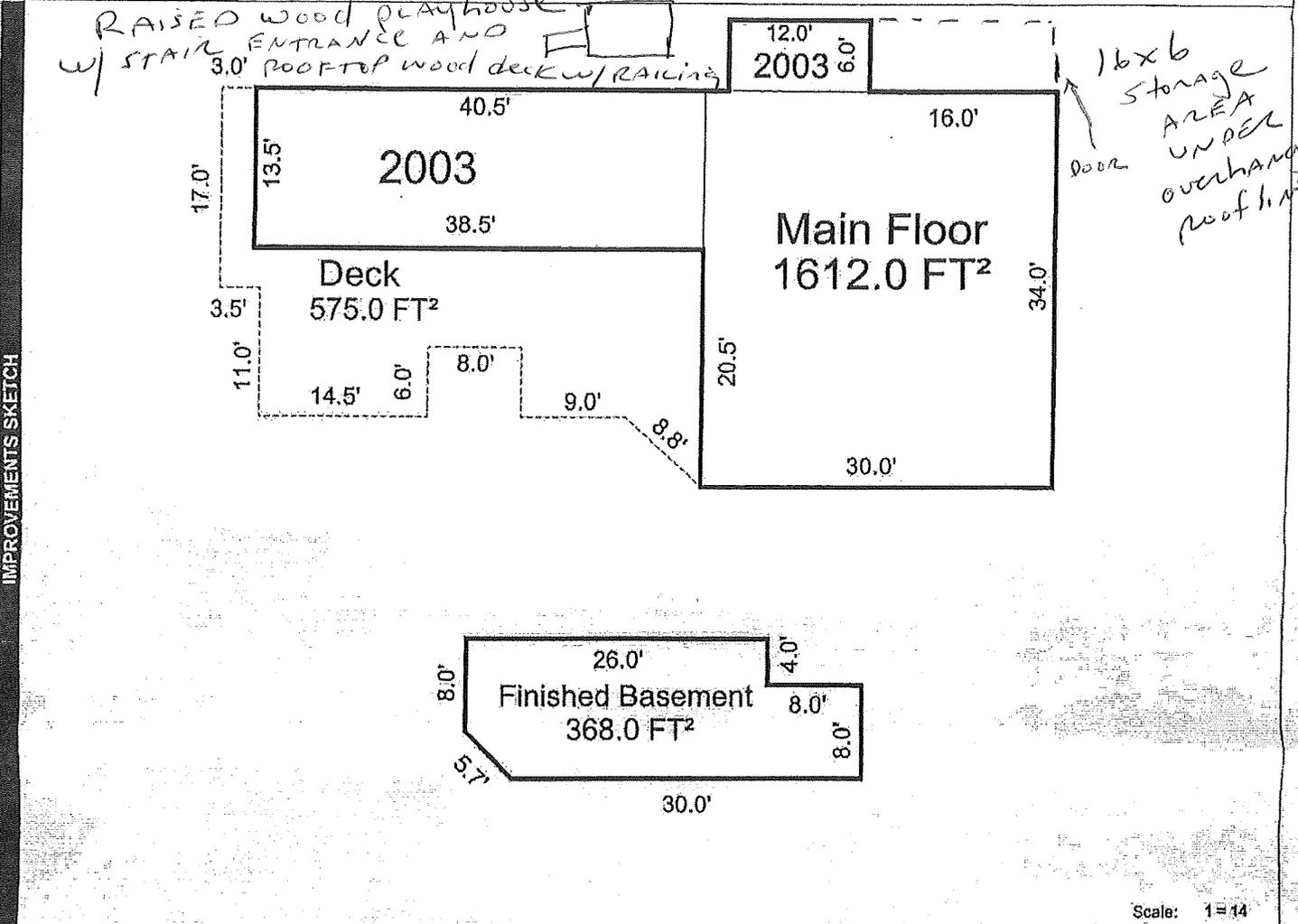
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City of Ashland

# SKETCH/AREA TABLE ADDENDUM

Date 03-19-03 JH

File No 1-005960-5

SUBJECT	Property Address	232 NUTLEY ST			
	City	Plans	YES	State	Zip
	Reason	ADDITIONS			
	Map/Tax Lot	<del>204E08AD-800</del>	391E08AD-8000	L/C Address	RE-DRAWN 4/4/03 AMW
	MA	2 CODE 5-01			



Scale: 1=1/4"

AREA CALCULATIONS SUMMARY						LIVING/BUILDING AREA BREAKDOWN			
Code	Description	Factor	Size	Perimeter	Totals	Breakdown		Subtotals	
1FLR	Main Floor	1.00	1611.75	217.0	1611.75	Main Floor			
FBSMT	Finished Basement	1.00	368.00	89.7	368.00	6.0 x 12.0			72.00
DECK	Deck	1.00	575.25	159.3	575.25	30.0 x 34.0			1020.00
						13.5 x 38.5			519.75
						Finished Basement			
						0.5 x 4.0 x 4.0			8.00
						4.0 x 30.0			120.00
						4.0 x 34.0			136.00
						4.0 x 26.0			104.00
TOTAL LIVABLE (rounded)					1612	7 Areas Total (rounded)		1980	
TOTAL BUILDING (rounded)					368				

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 APR 25 2003  
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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.

ASHLAND PLANNING DIVISION  
PRE-APPLICATION CONFERENCE  
COMMENT SHEET October 10, 2012

SITE: 232 Nutley St.  
APPLICANT: Leah Henigson  
REQUEST: CUP for ARU; Possible P&E  
for Hillside Development and Variance for  
parking

**PLANNING STAFF COMMENTS:**

*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.*

**Generally:** Accessory Residential Units located in Rural Residential (RR) zones are held to additional approval criteria than those in Single Family (R-1) zones; which includes no on-street parking credits, all construction and land disturbance shall occur on lands with less than 25% slope, access to an improved city street, paved to a minimum of 20' in width, with curbs, gutters, and sidewalks, and the installation of fire sprinklers in Wildfire Lands (18.16.030.J). A site visit to your property indicates that you will have difficulty in meeting a few of these standards, primarily of which will be parking, which is discussed further below, but also in the street width and slope determination.

**Nutley Street Width:** Staff measured the curb-to-curb width of Nutley Street adjacent to your property as 17½ feet, which is below the 20 foot minimum width indicated above. Solutions for this are either to physically widen the street to meet the minimum standard at your cost, or request a variance to the standard in which you would have to demonstrate a unique and unusual circumstance that does not typically apply elsewhere, and that the hardship is not self imposed.

**Slope Determination:** Our GIS data shows slopes greater than 25 percent surrounding the existing barn, and further into the proposed expansion area. A site visit shows there is a possibility that our GIS data may be inaccurate, specifically on the uphill (west) side of the barn. However, in order to comply with the above standard, a slope analysis would have to be done to ensure that requirement is met

**Parking:** As stated above, parking is likely your greatest hurdle moving forward. In accordance with AMC 18.92, Single family homes are required to have 2 off-street parking spaces, and ARUs greater than 500 square feet are also required to have 2 off-street parking spaces; for a total of 4 off street parking spaces required. Since the above requirements state that no on-street parking credits can be utilized, all parking spaces have to be provided for on your property.

There are multiple ways to comply with this standard; some of which may be costly, and more or less development than initially envisioned. As discussed at our meeting a few months ago, stacked parking (one vehicle parked in front of another) cannot be counted as multiple spaces because each parking space must be able to function independently.

Zimbra

*SAME*  
*Her thoughts on ARU*  
*IN 2012*

pinam@ashland.or.us

± Font Size ±

## Variances for Leah Henigson

**From :** Katie <katie1@jeffnet.org>

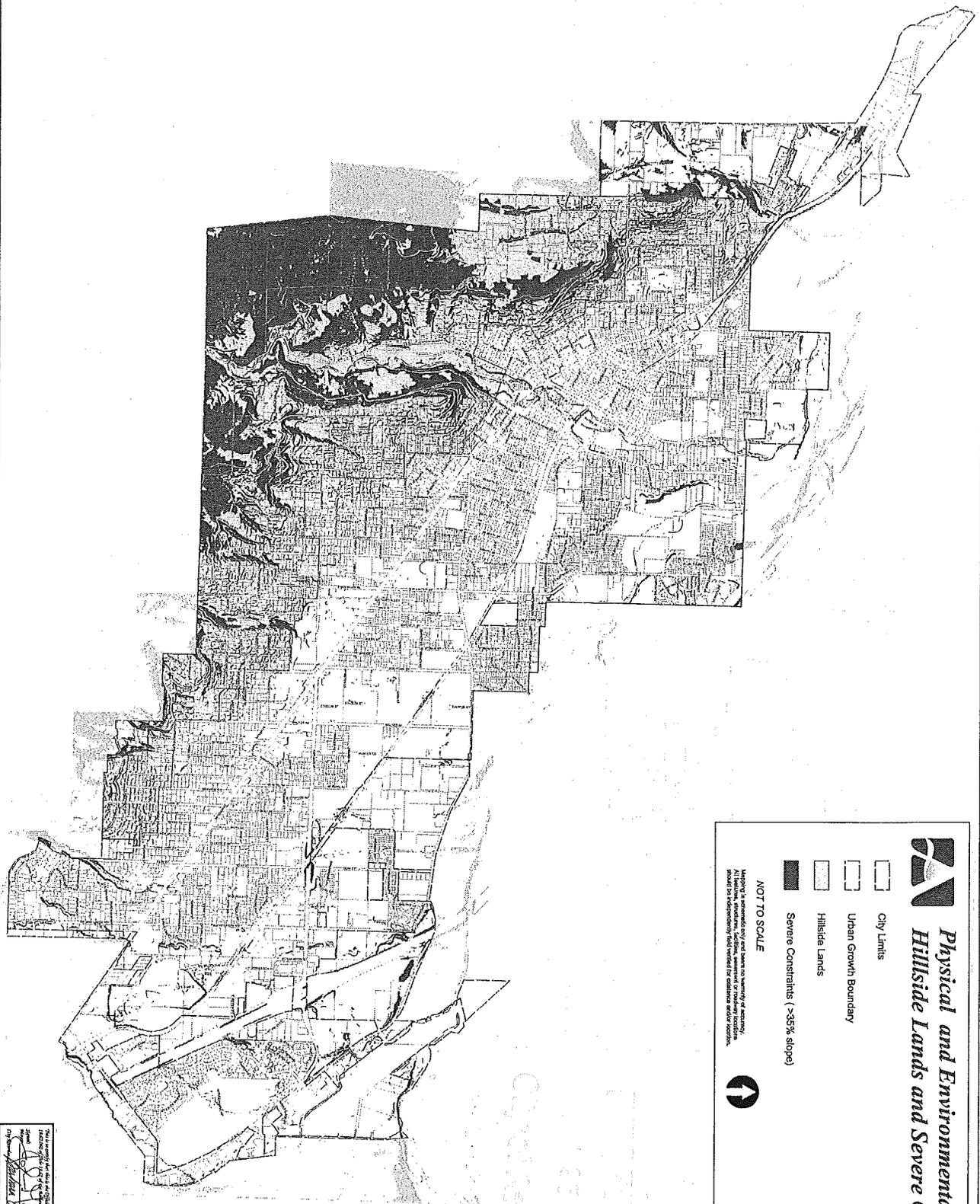
**Subject :** Variances for Leah Henigson

**To :** michael pina <michael.pina@ashland.or.us>

Sun, Oct 14, 2012 09:17 PM

- > To: Michael Pena
- >
- > From: Leah Henigson
- >
- > Re: ARU on Nutley St.
- >
- >
- > I'm writing to ask the planning department to consider a couple of variances so that we might be able to move forward with applying for a building permit.
- >
- > Regarding the street width, we live in a very unique situation where the streets are very narrow. I'm asking for a variance based on the following:
- >
- > 1. A structure already exists in the exact same location as the new proposed ARU.
- >
- > 2. Emergency vehicle access to the existing structure (and the new ARU) would be via Alnutt St. Access is actually much easier there than to our main house on Nutley St. On Nutley St. an emergency vehicle would have to go to the top and turn around. (I actually just observed this exact same situation occur at my friend's house just up Strawberry Lane. They live very near the ditch trail so the ambulance and fire truck had to go all of the way up Strawberry to the top, turn around and then come back to my friend's house.) To have access to our existing structure or the new ARU, an emergency vehicle would just pull up Alnutt St. (much less steepness than Nutley or Strawberry!) and pull off into the driveway area.
- >
- > 3. This ARU allowance and street width requirement were put into place after the streets were built.
- >
- > Regarding the parking requirement, I'm asking for a variance based on the following:
- >
- > 1. We have lived in this house for 15 years. During all of those years we have easily managed cars in and out of our existing driveway while using both the house and the existing structure (proposed ARU location). The existing structure has been used as an office and is currently being used as my son's music studio. People have been easily able to move in and out of our driveway to use either the existing structure or our house.
- >
- > 2. We have a unique situation. We have a very large lot (almost 1/3 acre) and a long driveway with openings at both ends, one opening onto Alnutt St. and one opening onto Nutley St. Off to the side of the driveway (near the existing building) is a pull-out for two cars. The new ARU will have a garage for one car, allowing for two cars to be parked outside the garage, still off the driveway. While cars are parked in these parking places, other cars (from the main house) will be free to pull straight forward onto Alnutt St. or to back out onto Nutley St.
- >
- > 3. In addition, there are two parking pull-outs on Alnutt St. very close to our driveway which have never been used and are available. We have never had to use them because we have always been able to manage the parking of four or five cars at our house on a regular basis.
- >
- > 4. Cutting into our existing rock wall (to allow extra parking) would create a huge impact on the existing landscape.
- >
- > Lastly, and most importantly, I would like to create an ARU so that my family and I can afford to stay in Ashland on this piece of land. We are asking to build a new unit almost identical to the existing building; in fact, we will be reclaiming wood from the existing building to be used in the new ARU. If we are allowed to build without creating new parking spaces, the impact to our very large lot will be minimal. In addition, building the ARU in almost the exact footprint as the existing building will have very minimal impact on the neighborhood. In fact, in my opinion, it will be an immense improvement to the neighborhood! The existing building is very old, is beginning to sag and droop and is becoming somewhat unattractive. In addition, the new ARU will be sided with cedar to be identical to our home.
- >
- > Thank you so much for your consideration.

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**Physical and Environmental Constraints**  
**Hillside Lands and Severe Constraints**

-  City Limits
-  Urban Growth Boundary
-  Hillside Lands
-  Severe Constraints (>35% slope)

NOT TO SCALE

Map data is derived from the City of San Francisco's Geographic Information System (GIS) and is not intended to be used for engineering or other professional purposes. All users are encouraged to verify the accuracy of the data for their intended use.



This map was prepared for the City of San Francisco by the City Engineer's Office. It is a technical drawing and should not be used for any other purpose. The City of San Francisco is not responsible for any errors or omissions in this map. The City of San Francisco is not responsible for any damages or losses resulting from the use of this map. The City of San Francisco is not responsible for any claims or liabilities arising from the use of this map. The City of San Francisco is not responsible for any claims or liabilities arising from the use of this map.



MIDDLE ST



WATER

WATER

WATER

WATER

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WATER

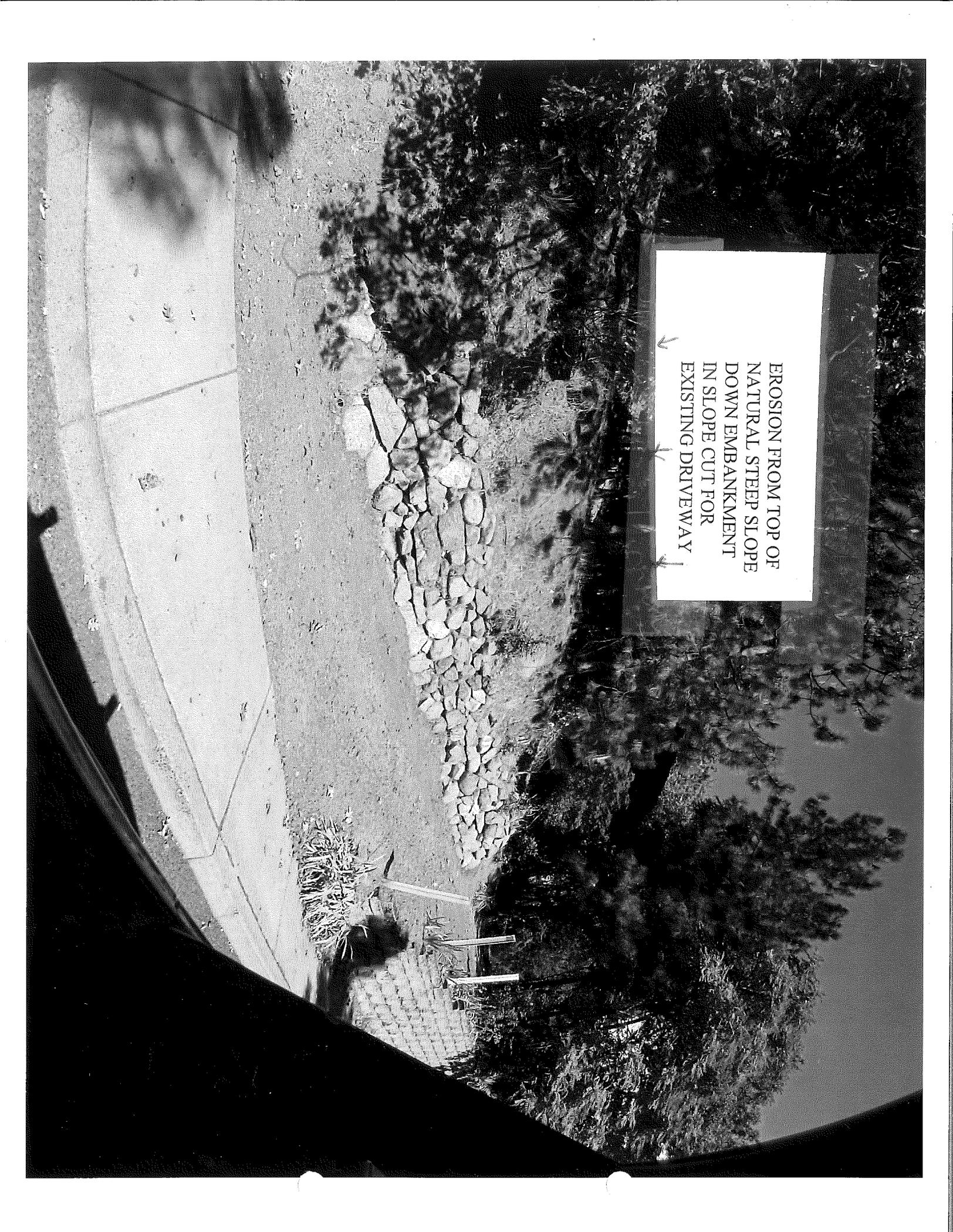
WATER



WOOD STRUCTURE  
(PLAYHOUSE) DETACHED  
WITH WINDOWS,  
STAIRS TO ENTRY DOOR,  
ROOF TOP DECK WITH  
RAILING →



WOOD STRUCTURE  
(PLAYHOUSE) DETACHED  
WITH WINDOWS,  
STAIRS TO ENTRY DOOR,  
ROOF TOP DECK WITH  
RAILING ↙

A black and white photograph showing a driveway on the left, a stone retaining wall in the center, and a wooded area on the right. A sign is placed on the right side of the driveway, pointing to the stone wall. The sign contains text and three arrows pointing to the wall. The driveway is paved with concrete slabs. The stone wall is made of irregularly shaped stones. The wooded area contains various trees and shrubs. The sign is rectangular with a white background and black text and arrows.

EROSION FROM TOP OF  
NATURAL STEEP SLOPE  
DOWN EMBANKMENT  
IN SLOPE CUT FOR  
EXISTING DRIVEWAY



WOOD STRUCTURE WITH ROOF  
TOP DECK WITH RAILINGS  
AND STAIRS TO ENTRY

DOOR TO STORAGE AREA  
UNDER ROOFLINE OF MAIN HOUSE



ALBERT



DRIVEWAY TO BARN FROM AVON



**Notice of Land Use Appeal – Type I**  
(Ashland Municipal Code § 18.5.1.050.G.)

<b>A. Name(s) of Person Filing Appeal:</b>	<b>B. Address(es):</b>
1. <b>Patricia Zoline</b>	<b>240 Nutley St.   Ashland, OR 97520</b>
2. Chris Hearn (OSB #911829), as: Attorney for Patricia Zoline	Davis Hearn Anderson & Turner PC 515 E. Main St   Ashland, OR 97520

Attach additional pages of names and addresses if other persons are joining the appeal.

**C. Decision Being Appealed**

Date of Decision:	Planning Action #:	Title of planning action:
Sept. 11, 2017	PA-2017-00978	Request for Site Design Review for ARU Type 1 - 232 Nutley St.   Applicant: Henigson

**D. How Person(s) Filing Appeal Qualifies as a Party**  
(For each person listed above in Box A, check the appropriate box below.)

The person named in Box A.1. above qualifies as a party because: <b>Adjacent property owner</b>	<input type="checkbox"/> I am the applicant. <input checked="" type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error. <b>&amp; submitted comments in response to applicant's planning application.</b>
--	---

The person named in Box A.2. above qualifies as a party because: N/A <b>Attorney for person in Box A.1. above (Patricia Zoline).</b>	<input type="checkbox"/> I am the applicant. <input type="checkbox"/> I received notice of the planning action. <input type="checkbox"/> I was entitled to receive notice of the action but did not receive notice due to error.
---	--

Attach additional pages if others have joined in the appeal and describe how each qualifies as a party.

**E. Specific Grounds for Appeal**

1. The first specific ground for which the decision should be reversed or modified is that  
**Please see Attachment, incorporated here by reference**  
 This is an error because the applicable criteria or procedure in the Ashland Municipal Code § \_\_\_\_\_ or other law in § \_\_\_\_\_ requires that

2. The second specific ground for which the decision should be reversed or modified is:  
**Please see Attachment, incorporated here by reference**  
 This is an error because the applicable criteria or procedure in the Ashland Municipal Code § \_\_\_\_\_ or other law in § \_\_\_\_\_ requires that

3. The third specific ground for which the decision should be reversed or modified is:  
**Please see Attachment, incorporated here by reference**  
 This is an error because the applicable criteria or procedure in the Ashland Municipal Code § \_\_\_\_\_ or other law in § \_\_\_\_\_ requires that

4. (On attached pages, list other grounds, in a manner similar to the above, that exist. For each ground list the applicable criteria or procedures in the Ashland Municipal Code or other law that were violated.)

**Please see Attachment, incorporated here by reference**

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City of Ashland

**Appeal Fee**

With this notice of appeal I(we) submit the sum of **\$150.00** which is the appeal fee required by § 18.5.1.050 of the Ashland Municipal Code. **(Enclosing Check #10559)**

Date: **September 22, 2017**

Signature(s) of person(s) filing appeal (attach additional pages if necessary):

A handwritten signature in black ink, appearing to be "E. B. A.", followed by a long horizontal line extending to the right.

*Note: This completed Notice of Land Use Appeal together with the appeal fee must be filed with the Community Development Department, Attn: Planning Commission Secretary, 20 E Main St, Ashland, OR 97520, telephone 541-488-5305, prior to the effective date of the decision sought to be reviewed. Effective dates of decisions are set forth in Ashland Municipal Code Section 18.5.1.050.*

**RECEIVED**

SEP 22 2017

City Of Ashland

JACK DAVIS  
CHRISTIAN E. HEARN  
EUGENE V. ANDERSON  
GARRISON F. TURNER  
TRICIA D. HAHN

**DAVIS HEARN**  
**ANDERSON & TURNER**  
ATTORNEYS AT LAW

a professional corporation

*Established 1953*

515 E. MAIN ST. | ASHLAND, OREGON 97520  
PHONE: 541.482.3111 | FAX: 541.488.4455  
[www.davishearn.com](http://www.davishearn.com)

SAM B. DAVIS (1922-2017)  
SIDNEY E. AINSWORTH (1927-2003)  
DONALD M. PINNOCK - Retired  
DANIEL L. HARRIS - Retired  
DAVID V. GILSTRAP - Retired  
SUSAN V. SALADOFF - Retired  
JEFFREY K. MCCOLLUM - Retired

**OCTOBER 4, 2017**

**TO:** Ashland Planning Commission  
c/o Director, Ashland Community Development  
Planning Division | 51 Winburn Way | Ashland, OR 97520

**FROM:** Chris Hearn | OSB # 911829 ([chearn@davishearn.com](mailto:chearn@davishearn.com))  
DAVIS HEARN ANDERSON & TURNER PC ([www.davishearn.com](http://www.davishearn.com))

**RE:** Appeal of Type 1 Staff Decision for ARU at 232 Nutley St.  
PA-2017-00978 | Site Design/Use Standards and CUP  
(1) Site Visit by Commissioners (use driveway at 240 Nutley St.);  
(2) Orientation of ARU / Rear Yard Setback not met; and  
(3) Staff recommended ARU be < 500 sq. ft.

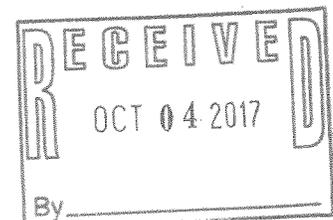
Dear Ashland Planning Commission:

Appellant Patricia Zoline (240 Nutley Street) ("Appellant") respectfully provides the following additional information in advance of the scheduled public hearing before the Commission in connection with her appeal of the above-referenced Type 1 staff decision (and the concurrent appeal filed by her neighbors, appellants Greg & Allison Koenig).

This information is respectfully submitted to the Commission as a supplement to Appellants' previously-submitted materials, specifically:

1. Notice of Land Use Appeal (Preliminary) submitted by Appellant Patricia Zoline (240 Nutley Street) (submitted 09/22/2017);
2. Supplemental Notice of Land Use Appeal submitted by Appellant Patricia Zoline (240 Nutley Street)(submitted 09/25/2017);
3. Notice of Land Use Appeal submitted by Appellants Greg & Allison Koenig (162 Allnut Street)(submitted 09/25/2017).

DAVIS HEARN ANDERSON & TURNER PC  
515 E. MAIN ST. | ASHLAND, OREGON 97520  
P: 541.482.3111 | F: 541.488.4455 | [www.davishearn.com](http://www.davishearn.com)



1. **“Site Visit” by Commissioners before October 10 Public Hearing.**  
Applicant’s Property at 232 Nutley St. and the surrounding neighborhood are characterized by steep slopes, large retaining walls, and access provided by non-conforming streets (upper Nutley St. and Alnutt St.).

It is respectfully suggested that site visits by commissioners in preparation for the October 10 public hearing before the Commission may prove pivotal to fully understanding and appreciating the topographical characteristics and challenges associated with Applicant’s Property and the neighboring properties surrounding it.

The most practical way to view part of Applicant’s Property from the “upslope” side is from Appellant Patricia Zoline’s driveway at 240 Nutley Street. Applicant invites commissioners to walk down her driveway at 240 Nutley Street (immediately uphill from Applicant’s Property at 232 Nutley Street), in order to enjoy a more thorough site inspection experience. Appellant’s driveway at 240 Nutley Street provides an excellent vantage point for better viewing the relevant portion of Applicant’s Property, and her existing improvements immediately below.

No Ex Parte Contact during Site Visit. Appellant is aware that “ex parte” contact with any members of the Planning Commission is prohibited. Commissioners may rest assured that – should they accept Appellant Patricia Zoline’s invitation to walk down her driveway at 240 Nutley Street in order to attain a better view of Applicant’s Property immediately below -- then Appellant will not approach or otherwise communicate with any Commission members.

Summary: The Planning Commission is respectfully encouraged to view the proposed project site from Appellant’s driveway at 240 Nutley Street (immediately above Applicant’s Property), for the purpose of conducting a more meaningful site inspection in preparation for the October 10 public hearing. To avoid any ex parte contact, Appellant will not approach or communicate with any Planning Commissioners who choose to walk down her driveway at 240 Nutley Street in order to better inspect Applicant’s proposed project area from above.



2. **Orientation of Proposed ARU at 232 Nutley Street; Rear Yard Setback.**  
Proposed ARUs must meet all setback and maximum lot coverage requirements of the RR zone. *AMC 18.2.3.040(B)(1).*

All construction and land disturbance associated with site work for an ARU must occur on lands with less than 25% slope. *AMC 18.2.3.040(B)(1).*

The lot on which any ARU is located shall have access to an improved city street paved to minimum 20-foot width, with curbs, gutters, and sidewalks.  
*AMC 18.2.3.040(A)(4).*

**Setbacks in the RR-.5 Zone.**

Minimum FRONT yard Setback from property line:	20 ft.
Minimum SIDE yard Setback from property line:	6 ft.
<u>Minimum REAR yard Setback from property line:</u>	<b>20 ft.</b> (two-story ARU)

As noted in Staff's Decision, Applicant's lot is non-conforming for the RR-.5 zone (.29 acres in size).

The architectural orientation of Applicant's proposed ARU, as proposed, clearly faces Alnutt Street (not Nutley Street). *See: Plans/Renderings submitted by Applicant. Copy attached as Exhibit "B".*

Applicant's proposed location for the ARU is substantially less than 20 feet from Appellant's property line at 240 Nutley St. (west boundary of Applicant's Property at 232 Nutley St.).

Conclusion: Applicant's proposed ARU fails to meet the required rear yard setback distance (20 ft.) between the proposed ARU structure and Appellant's adjacent property at 240 Nutley Street.

Discussion: Review of Applicant's architectural renderings depicting the north and east sides of her proposed ARU, make it clear the ARU is actually oriented towards Alnutt Street (from which it will be visible). *See attached Exhibit "B", pgs. 1 & 2.*



Despite the proposed addition of a small portico above the side door of the proposed ARU (which is obscured from Nutley Street by the primary residence), the ARU's design is oriented to face Alnutt Street, from which it will be clearly visible. *See: attached Exhibit "B"*.

Appellant respectfully submits that any finding that the proposed ARU's "front yard" is on Nutley Street is not supported by substantial evidence in the record.

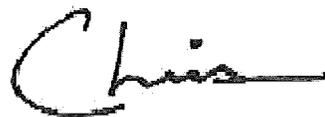
The Commission should find that the rear yard setback for the proposed ARU must be 20 feet from Appellant's property line at 240 Nutley (immediately to the west).

3. **Staff recommended ARU under 500 square feet in size.** Following a site inspection by Planning staff (Bill Molnar and Derek Severson), staff provided Applicant with a "232 Nutley St. Pre-Application Follow-Up" on February 1, 2017. **See: attached Exhibit "C"**.

Staff's recommendations to Applicant at that time was to advise Applicant that her best course of action was to consider "an ARU less than 500 square feet". *See: attached Exhibit "C"*.

Conclusion: The Application is substantially burdened by the fact that Applicant proposes a 999 sq. ft. ARU, instead of the more modest "less than 500 sq. ft. ARU" previously recommended by Staff. *Ex. "C"*. A smaller ARU would better address the concerns mandated by City's Conditional Use Permit criteria requiring the ARU better comply with the standards of the RR-.5 zone, and thereby savage less adverse impact on the livability of surrounding properties in terms of architectural compatibility with the impact area. *AMC 18.5.4.050.A.3.*

Respectfully submitted,  
DAVIS HEARN ANDERSON & TURNER  
A PROFESSIONAL CORPORATION



CHRISTIAN E. HEARN (OSB # 911829)  
Attorneys for Appellant Patricia Zoline



Page -5-  
Ashland Planning Commission  
PA-2017-00978  
October 4, 2017

**Attachments:**

Exhibit "B": Applicant's design renderings (with comments inserted)  
Exhibit "C": Email from Staff to Applicant dated 02/01/2017

DAVIS HEARN ANDERSON & TURNER PC  
515 E. MAIN ST. | ASHLAND, OREGON 97520  
P: 541.482.3111 | F: 541.488.4455 | [www.davishearn.com](http://www.davishearn.com)





September 25, 2017

Patricia Zoline  
 240 Nutley Street  
 Ashland, OR 97520

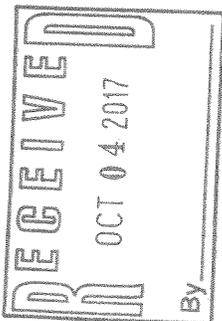
**SUBJECT:        Engineering Evaluation of Proposed Development  
                       New Accessory Residential Unit (ARU)  
                       232 Nutley Street  
                       Ashland, Oregon**

At your request, Applied Geotechnical Engineering and Geologic Consulting LLC (AGEGC) has conducted an engineering evaluation of the proposed new residence to be constructed at 232 Nutley Street in Ashland, Oregon. We understand a new accessory residential unit (ARU) will be constructed on the southern portion of the existing lot. We also understand that the footprint of the new home will be significantly larger than the existing building at this location. Work will include excavation for the new home, excavation for two new parking spaces next to the new home, and excavation for two new parking spaces at the front of the lot (which will require removal of an existing retaining wall). In addition, some grading should be required for improving the existing driveway.

A licensed geotechnical engineer, civil engineer, and geologist provided by AGEGC completed a site visit to the property on September 22, 2017. The intent of the site visit was to observe and evaluate existing site conditions at 232 Nutley Street and surrounding areas.

Engineering considerations for the new residence:

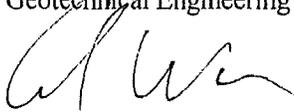
- 1) The site is underlain by granitic soils. Granitic soils are easily eroded when disturbed and exposed. Significant cuts and tree removal will be required for the new home, four parking spaces, and driveway. The disturbed area will extend beyond the footprint to allow installation of retaining walls for the new basement and for construction of the four parking spaces. Typically, retaining wall foundations extend beyond the location of the house basement wall.
- 2) Based on the topographic information completed by Stephan Barott Land Surveying for 232 Nutley Street, the average slope across the lot is greater than 30%. The average slope across the lot was determined by AGEGC by taking the topographic information from the surveyor and determining distance and change in elevation. Based on the 10 ft contour lines and a 30 ft spacing between contours, the average slope is 33%. This slope is consistent with the natural slopes observed in this area. The slopes immediately upslope (west) of this lot are significantly steeper than 40%. In our opinion, the two data points documenting slope on the lot (provided by the surveyor in the proposed building site) were completed in an area that had been previously graded for the existing structure and they do not provide an accurate reading of the average native slope across the lot.



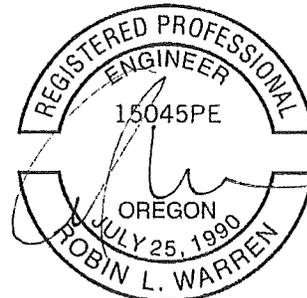
- 3) Large, intact blocks of hard granite were observed to be present at the ground surface in the proposed building site. Removal (excavation) of these blocks will result in significant disturbance to the surficial soils that will extend past the footprint of the proposed home. If required, rock excavation (such as a hoe-pack) will cause significant vibration in the area.
- 4) The slope west of the lot is retained with rockery walls. The uphill slope along Alnutt Street (located adjacent and downslope of 232 Nutley Street) is retained with a large MSE retaining wall. The only access to any structures on the 232 Nutley Street property is by using the existing narrow driveway. Given the limited access to the lot, in our opinion, the driveway should be improved (widened to city standards and possibly paved in steep sections) to accommodate emergency vehicles, including fire trucks.
- 5) Based on the proposed locations of four parking areas and proposed daylight basement for the new home, in our opinion, significant grading (excavation) will be required across the lot. Prior to construction, it would be prudent to determine actual cuts required for the new parking areas and building, and to insure the driveway slope onto Alnutt Street is not too steep for fire truck access and egress (a site grading plan). The driveway is currently gravel (unpaved).
- 6) Given the granitic soils and the steepness of the property and adjacent steep slopes, in our opinion, it would be prudent to complete a steep slope evaluation by a licensed geotechnical engineer. The intent of the report would be to provide recommendations for proper development of the property including the new home and parking areas.

Please contact AGEGC if you have any questions or require additional information.

Sincerely,  
Applied Geotechnical Engineering and Geologic Consulting LLC



Robin L. Warren, P.E., G.E., R.G.  
Principal



Renewal: June 2018

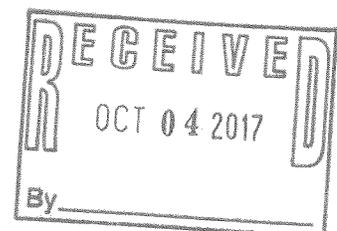
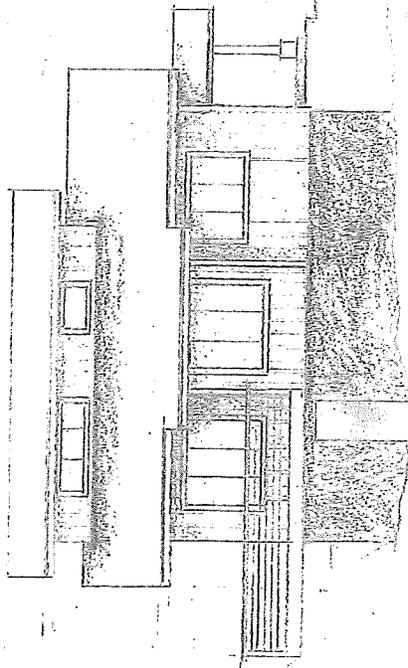


EXHIBIT "B" - PROPOSED ARU - 232 Nutley St.

FRONT VIEW  
(FACING ALNUTT STREET)  
(And visible from Alnutt Street)



FRONT ELEVATION

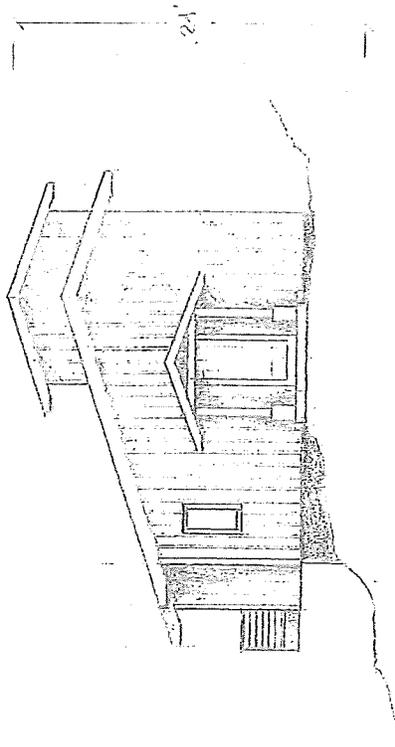
SEALING - BANNED BY HURT CRENSHAW  
REPAIRING - CONCRETE

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JUN 30 2017

City of Oakland

SIDE VIEW  
(FACING NUTLEY ST.)  
(But not visible due to location of Primary  
Residence)



SIDE ELEVATION

ELEVATIONS FOR ARU  
232 NUTLEY

RECEIVED  
OCT 04 2017  
BY \_\_\_\_\_

232 Nutley Street - Looking up at existing barn from Alnutt Street



RECEIVED  
OCT 04 2017  
BY

2012-10-05

Mail - derek.severson@ashland.or.us

Page 1 of 2

## 232 Nutley St Pre-Application Follow-Up

Derek Severson

Wed 2/1/2017 4:45 PM

Sent Items

To: Leah Henigson <katie1@jeffnet.org>; Amy Gunter <amygunter.planning@gmail.com>;

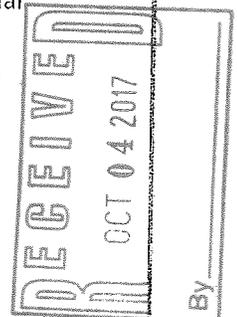
Cc: Derek Severson <derek.severson@ashland.or.us>;

Leah & Amy,

After talking to Bill and visiting the site with him, I wanted to follow-up on the pre-application conference a bit on a couple of issues:

1. Under 500 Square Feet - We would continue to advise that the best course of action may be to consider an Accessory Residential Unit less than 500 square feet. This would have a reduced parking requirement and could likely rely on the existing parking and circulation configurations with little or no modification to the site other than a very small building expansion. In the event that a larger unit was proposed, the parking configuration discussed with Don Sever on site, which would provide the required parking diagonally off the driveway while providing for circulation without moving the parked vehicles, would be preferable if it could be worked out
2. Site Slope - In terms of a slope determination, there will need to be something clear in the application materials showing the area of disturbance proposed, an explanation of the slope calculated and the methodology that was used. Bill and I looked at it with a clinometer on site and it appeared to be less than but very close to a 25 percent slope and will depend on the exact area disturbed. We'd need a clear explanation of how it was determined by the applicant team in the area(s) of disturbance proposed. The code is clear that the ARU and associated improvements such as parking cannot disturb any slopes over 25 percent in this zoning district.
3. Procedural Handling - After talking to Bill at some length, this application would be best handled as a request for a Site Design Review for an Accessory Residential Unit and a Conditional Use Permit to Expand a Nonconforming Development. Because the existing lot coverage and driveway/parking are non-conforming the expansion proposed would be subject to a Conditional Use Permit under AMC 18.1.4 rather than a Variance, which would be used to establish new nonconforming coverage. The application should respond to the discussion of non-conforming developments in AMC 18.1.4.040 and to the criteria for a Conditional Use Permit in AMC 18.5.4.050 rather than a Variance criteria. This might include an explanation of the existing structures and other coverage on the site, how city street improvements affected the site circulation, and the minimal additional disturbance of the site involved with creating an additional living unit. A Conditional Use Permit of this nature could be processed administratively, and would not require a public hearing unless it was appealed.

If I can clarify any of the above, or provide any additional information or assistance, please don't hesitate to contact me.

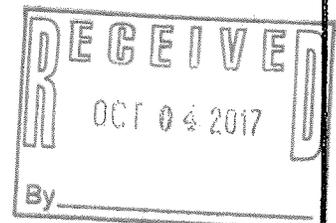


**Exhibit "C"**  
**Page 1 of 2**

- Derek

Derek Severson, *Senior Planner*  
City of Ashland, Department of Community Development  
51 Winburn Way, Ashland, OR 97520  
PH: (541) 552-2040 FAX: (541) 552-2050 TTY: 1-800-735-2900  
E-MAIL: derek.severson@ashland.or.us

*This e-mail transmission is the official business of the City of Ashland, and is subject to Oregon's public records laws for disclosure and retention. If you've received this e-mail in error, please contact me at (541) 552-2040. Thank you.*



**Exhibit "C"**  
**Page 2 of 2**

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**BEFORE THE PLANNING COMMISSION  
FOR THE CITY OF ASHLAND, OREGON**

<b>IN THE MATTER OF:</b>	)	<b>PA-2017-00978</b>
	)	
<b>Appeal of a Type 1 Land Use Decision</b>	)	<b>NOTICE OF APPEAL</b>
	)	<b>(Preliminary Notice)</b>
<b>A request for Site Design Review to</b>	)	
<b>construct an approximately 999 sq. ft.</b>	)	<b>[TO BE SUPPLEMENTED</b>
<b>Accessory Residential Unit at 232 Nutley)</b>	)	<b>ON SEPTEMBER 25, 2017]</b>
<b>Street; and Conditional Use Permit</b>	)	
<b>to allow expansion of existing</b>	)	
<b>non-conforming development</b>	)	
	)	
<b>Applicant: Leah K. Henigson, Trustee</b>	)	
	)	
<b>Appellant: Patricia Zoline</b>	)	
<b>240 Nutley Street</b>	)	
_____	)	

**Patricia Zoline (“Appellant”) respectfully submits the following Notice of Appeal (Preliminary Notice) in connection with the Type 1 Decision by Staff Advisor made without public hearing on September 11, 2017.**

**NOTE: The relevant Type 1 Decision by the staff advisor (Community Development Director) which is subject of this Notice of Appeal (Preliminary) is dated September 11, 2017 (and was presumable mailed to those entitled to notice on that date). Effective date of decision is 12 days following City’s mailing on Notice. *AMC 18.5.1.050(G)*. The 12-day appeal deadline falls on Saturday, September 23. When an appeal deadline falls on a weekend or holiday, it is customary to extend the deadline to the next business day – when Community Development offices are open to the public for document submittal. Appellant was informed by staff the filing deadline for this Notice of Appeal is Monday, September 25. In order to ensure timely filing, however, Appellant is submitting this Notice of Appeal (Preliminary Notice) on Friday, September 22. However, Appellant plans to**

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City Of Ashland

**NOTICE OF APPEAL | PA-2017-00978 | (Type 1 Non-Discretionary Decision by Staff)**

**Page -1-**

1 **supplement this Notice of Appeal on September 25, 2017.**  
2 **Since the 12-day appeal deadline falls on a weekend (when City Community**  
3 **Development offices are closed) Appellant has not been provided with**  
4 **adequate opportunity to complete her analysis of the issues involved in this**  
5 **appeal.**

6 **AMC 18.5.1(G) Appeal of Type I Decision.** A Type I decision may be appealed to  
7 the Planning Commission, pursuant to the following:

- 8 1. Who May Appeal. The following persons have standing to appeal a Type I  
9 decision.
  - 10 a. The applicant or owner of the subject property.
  - 11 b. Any person who is entitled to written notice of the Type I decision  
12 pursuant to subsection 18.5.1.050.B.
  - 13 c. Any other person who participated in the proceeding by submitting  
14 written comments on the application to the City by the specified  
15 deadline.

16 **FINDINGS/CONCLUSION - AMC 18.5.1(G)(1):**

17 Appellant's property (240 Nutley Street) is adjacent, above, and immediately  
18 adjacent to Applicant's property (232 Nutley Street). Appellant is entitled to  
19 notice of the Type I decision by the Staff Advisor in connection with Applicant's  
20 planning application. *AMC 18.5.1(G)(1)(b)*. Applicant also participated in the  
21 proceeding by submitting written comments to the City by the specified deadline.  
*AMC 18.5.1(G)(1)(c)*. Appellant has standing to pursue this appeal.

22 **2. Appeal Filing Procedure.**

- a. *Notice of Appeal.* Any person with standing to appeal, as provided  
in subsection 18.5.1.050.G.1, above, may appeal a Type I decision by  
filing a notice of appeal and paying the appeal fee according to the  
procedures of this subsection. The fee required in this section shall  
not apply to appeals made by neighborhood or community  
organizations recognized by the City and whose boundaries include  
the site. If an appellant prevails at the hearing or upon subsequent  
appeal, the fee for the initial hearing shall be refunded.

23 **FINDINGS/CONCLUSION - AMC 18.5.1(G)(2)(a):**

Appellant is filing this Notice of Appeal and paying the established fee for appeal

**NOTICE OF APPEAL | PA-2017-00978 | (Type 1 Non-Discretionary Decision by Staff)**

**Page -2-**

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SEP 22 2017  
City Of Ashland

1 for initial public hearing (Planning Commission). Appellant meets this  
2 requirement.

- 3 b. *Time for Filing.* A notice of appeal shall be filed with the Staff  
4 Advisor within 12 days of the date the notice of decision is mailed.

5 **FINDINGS/CONCLUSIONS.** *See preliminary remarks on Page 1, above.*

- 6 c. *Content of Notice of Appeal.* The notice of appeal shall be  
7 accompanied by the required filing fee and shall contain.

8 i. An identification of the decision being appealed, including  
9 the date of the decision.

10 ii. A statement demonstrating the person filing the notice of  
11 appeal has standing to appeal.

12 iii. A statement explaining the specific issues being raised on  
13 appeal.

14 iv. A statement demonstrating that the appeal issues were  
15 raised during the public comment period.

- 16 d. The appeal requirements of this section must be fully met or the  
17 appeal will be considered by the City as a jurisdictional defect and  
18 will not be heard or considered.

19 **FINDINGS/CONCLUSIONS.** **Appellant addresses these issues below.**

- 20 3. Scope of Appeal. Appeal hearings on Type I decisions made by the Staff  
21 Advisor shall be de novo hearings before the Planning Commission. The  
22 appeal shall not be limited to the application materials, evidence and other  
23 documentation, and specific issues raised in the review leading up to the  
24 Type I decision, but may include other relevant evidence and arguments.  
25 The Commission may allow additional evidence, testimony, or argument  
26 concerning any relevant ordinance provision.

- 27 4. Appeal Hearing Procedure. Hearings on appeals of Type I decisions follow  
28 the Type II public hearing procedures, pursuant to section 18.5.1.060,  
29 subsections A - E, except that the decision of the Planning Commission is  
30 the final decision of the City on an appeal of a Type I decision. A decision  
31 on an appeal is final the date the City mails the adopted and signed

1 decision. Appeals of Commission decisions must be filed with the State  
2 Land Use Board of Appeals, pursuant to ORS 197.805 - 197.860.

3 **Identification of Land Use Decision Being Appealed:**

4 Notice of Final Decision (City's Planning File # PA-2017-00978), and staff's  
5 "Type 1" Findings & Orders appended to same.

6 **Date of Type 1 Staff Decision Being Appealed:**

7 September 11, 2017.

8 **Preliminary Summary of Issues Addressing AMC 18.5.1(G)(2)(c):**

9 Appellant **Patricia Zoline** ("Appellant") has standing to appeal the above-referenced  
10 land use decision ("Decision"). Appellant owns and resides at 240 Nutley Street  
11 (Assessor's Map: 39-1E-08AC, Tax Lot 700) (Appellant's Property"). Appellant's  
12 Property is adjacent and upgrade (west) of subject property. Appellant is entitled to  
13 notice and, in fact, received Notice of Completed Application (NOCA) acceptance; and  
14 Notice of the Director's Decision in this matter. Appellant participated in the  
15 proceeding by submitting written comments on the Application (received by the City on  
16 August 3, 2017 -- which was the deadline for such submittal as stated on the Corrected  
17 Notice of Application dated July 20, 2017).

18 As an adjacent owner and resident of property, Appellant is adversely affected and  
19 aggrieved by Applicant's development, as proposed. Applicant's proposed development  
20 will disturb existing grade on hillside land (+/- 30% slope) directly adjacent and below  
21 Appellant's property. Applicant's development, as proposed, will also increase the risk  
of wildfire hazard, increase the neighborhood traffic and parking demand on the  
surrounding substandard streets necessary for normal and emergency ingress and  
egress for the neighborhood. Applicant's development, as proposed, will negatively  
affect the livability and value of Appellant's property.

Appellant and six other parties submitted written comments to City by the deadline  
specified in the NOCA.

Appellant hereby raises each of the issues on appeal to identified specific issues in her  
written submittal of August 3, 2017, and raises the same specific issues on appeal.

Appellant intends to provide additional evidence and testimony at the time of the *de  
novo* public hearing before the Planning Commission. Appellant reasserts the stated  
objections raised in the written comments previously submitted, and reserves her right

1 to present additional testimony at the *de novo* hearing – in accordance with AMC  
2 §18.5.1.050 (G); and ORS 227.175.

3 Appellant further raises objections to the Director's Decision, which was issued after the  
4 comment period – and was therefore not available for public review prior to the NOCA  
5 deadline for submittal of comments. Neither the application nor the Director's Decision  
6 establish that the proposed development complies with City's Comprehensive Plan and  
7 all applicable land use regulations and ordinance provisions. *ORS 227.175(4)*.

8 **Issues and Objections, as previously raised, are restated by topic below.**

9 **Non-Conforming Development**

10 Objections. Appellant raised the issue that the lot coverage was conforming when  
11 Applicant purchased Applicant's Property. Lot coverage on Applicant's Property only  
12 became non-conforming after Applicant constructed a substantial addition to her home  
13 a few years ago. Neither the Application nor the Director's Decision establish that the  
14 nonconforming development was created in conformance with development regulations  
15 then in effect, but then later became non-conforming due a subsequent zone changes to  
16 the applicable code provisions. In fact, Applicant acquired Applicant's Property on  
17 November 5, 1997 (Deed Record No. 97-42823). Jackson County Assessment records  
18 indicate Applicant constructed an addition to her home in 2002. The site plan  
19 submitted with the Application does not fully depict the extent of the existing house  
20 footprint, nor does it identify the location and extent of a play house structure that is  
21 noted as another added improvement in the assessment records. Page 2 of the  
Director's Decision simply states that the property contains an existing residence which  
the "application describes as being 2,035 feet and built in the 1960's". That is in conflict  
with County assessment records as to the building size and the built date of 1965.  
Obviously, the original 1965 home did not include Applicant's addition constructed in  
1992. At that time, the property was zoned RR-.5 (same as today) and City's Ordinance  
at that time already restricted lot coverage to 20%. Neither the Application nor the  
Director's report examine those facts in relation to City's code and comprehensive plan  
policies in effect at the time Applicant's nonconformity was established. Accordingly,  
the facts do not support a conclusion that the nonconformity was lawfully established  
per City's adopted definition of a non-conforming development. If the non-conformity  
is unlawful in any respect, then any proposal to alter same by replacing an existing  
building with a new building – having a footprint three times larger than the existing  
building's footprint to result in Applicant's overall lot coverage being nearly twice the  
allowable 20% – would necessarily require that a **variance** be approved. The 20% lot

NOTICE OF APPEAL | PA-2017-00978 | (Type 1 Non-Discretionary Decision by Staff)

Page -5-

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City Of Ashland

1 coverage limitation in City's code is mandated by *Policy 10 (Section 4.11) of the*  
2 *Environmental Element in City's Comprehensive Plan:*

3 "Insure that areas of general slope over 30% are zoned for two dwellings per acre  
4 or less, and permit total lot coverage to be no more than 20%."

5 The Director's Report states on page 6, in response to objections to further exceeding the  
6 lot coverage limitation, that in previous decisions (not identified in this decision) the  
7 Planning Commission has found that significantly under-sized lots within the district  
8 merited additional coverage on the basis that – in setting a 20% coverage for a half-acre  
9 lot -- 4,356 square feet was seen as the minimum coverage needed for typical  
10 development within the district.

11 Applicant's Property, however, is located within the Physical and Environmental  
12 Constraints Overlay and within the Hillside Lands Overlay, with inclusion of Severe  
13 Constraint Land. It is also mapped as within the Wildfire Lands area. The general slope  
14 of the land on which Applicant's and adjacent parcels are located is over 30%. As such,  
15 City's Comprehensive Plan policy dictates that lot coverage be no more than 20%, and  
16 residential density limited to two dwellings per acre or less (i.e., half-acre lots). The  
17 policy does not accord a right to develop undersized parcels with an equivalent-sized  
18 development site that would be yielded to a standard half-acre lot at 20% coverage (i.e.,  
19 4,356 square feet). If anything, development on smaller lots should be more carefully  
20 designed and reviewed to minimize risk of slope hazard, erosion, and wildfire risk where  
21 land disturbance is much more likely to occur immediately adjacent to property lines. If  
it is the City's desire to adopt a minimum allowance of square footage for lot coverage to  
undersize lots, then the appropriate procedure for doing so is a code amendment  
following the required legislative review procedure for amending a land use regulation.  
A blanket exception in the manner described in the Decision is not appropriately  
directed to the actual approval criteria.

In response to objections that the square footage of the house is inaccurately presented,  
which is related to the determination of lot coverage nonconformity, the Director's  
Decision states that a condition has been included to require that scalable drawings of  
the existing house be provided with permit drawings to demonstrate that it has at least  
twice the gross habitable floor area of the ARU. That condition does not provide  
opportunity for public notice and opportunity to request a hearing where a  
determination of compliance with an approval requirement has not yet been established.  
Again, the square footage relates also to the nature, extent and question of when the lot  
coverage nonconformity occurred. The lack of detail also masks whether the existing  
home already includes existing independent living quarters. Written comment

1 submitted by Erin Richards (received by the City on August 3, 2017) states that the  
2 downstairs has been rented to her. As only one ARU is allowed in the zone, the current  
3 occupancy needs to be verified to assure that a non-conforming multi-family use  
4 situation does not result. Appellant also understands that the barn on Applicant's  
5 Property is currently also leased as a residence, in violation of City's code provisions.

6 The Director's Decision repeatedly states staffs' belief that relief to normally applicable  
7 design standards is justified to avoid further disturbance to an already nonconforming  
8 lot coverage situation. However, an ARU could be designed with less floor area – as was  
9 recommended by staff in the pre-application conference report -- in a manner that  
10 would avoid the need for additional parking altogether. The owner of a non-standard lot  
11 who has already been allowed to double the pre-existing lot coverage and standard  
12 limitation without need for variance or CUP permit (which should have been required  
13 but was not), should have no expectation that the full ratio of ARU to primary home  
14 floor area will be either by City, or accepted by the neighborhood.

15 There are inconsistencies in the facts relating to how large the existing home really is,  
16 the plan does not show full footprint of the primary home nor all of the structures on the  
17 property that appear on the aerial photo from the pre-application record, and the  
18 proposed ARU will have a plumbed walk-in daylight basement area (with a bathroom)  
19 with no internal connection to the main floor area – which is not being calculated as  
20 habitable space. If providing affordable housing is the intent as stated, then certainly a  
21 smaller unit would be less costly to build.

### **Greater Adverse Impact**

14 **Objections.** The use of the unpaved driveway on granitic soils through from Nutley  
15 Street to Alnutt Street will increase trackout of dirt and mud onto the road, especially  
16 during construction. No geotechnical study or engineering consult has been done, nor  
17 have such plans been provided. A Physical Constraints Review Permit is required for  
18 Hillside Land and Severe Constraint Land given that the proposed building addition is  
19 greater than 300 square feet. A topographic map of the site at a contour level of not less  
20 than two feet nor greater than five feet is required and was not provided - Applicant's  
21 site plan provides contours at ten foot intervals which is of inadequate detail to  
determine if the required slope analysis comports with City standards. In fact, no slope  
analysis was provided with the Application. No narrative or calculations are provided to  
describe how the slope percentages noted on the plan were derived, nor does the plan  
clearly identify the intervals utilized for the measurement. There is no relation to the  
slope definitions in the City's code. The two contours shown at ten foot intervals

**NOTICE OF APPEAL | PA-2017-00978 | (Type 1 Non-Discretionary Decision by Staff)**

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City Of Ashland

1 indicate that natural slope is actually about **30%**, so the data on the plan itself does not  
2 support the notated slope percentage on the plan. That there may be inclusions of lesser  
3 sloped sites on the property does not preclude the requirement to obtain a Physical  
4 Constraints Review Permit on land that is generally steep in slope. The point of the  
5 review is to require adequately detailed information and design plans in areas identified  
6 as hazardous due to slope and other environmental constraints. Impacts and risks to  
7 adjacent and nearby properties cannot be properly determined if the permitting  
8 requirement is bypassed by simply asserting a small portion of the property is less than  
9 25% sloped utilizing information that would not otherwise meet the review  
10 requirements for slope determination. The proposed building is multi-storied to include  
11 a daylight basement. There will certainly be need for footings that will likely encroach  
12 further toward the common property line and toe of existing terraced retaining wall.  
13 Again, with a properly detailed plan it is not possible to determine the impact to  
14 Appellants property.

15 The development of properties in the RR-.5 zone where the general slopes of 30% or  
16 more prevail (Hillside Land) - in which this neighborhood is situated - is expected to be  
17 done with consideration of geotechnical review and careful analysis of slope and other  
18 natural constraints. Issuance of a conditional use permit to allow additional increase in  
19 the already exceeded lot coverage standard without requiring a Physical Constraints  
20 Review increases the risk of hazard to Appellant's property and needlessly jeopardizes  
21 the surrounding residents.

Appellant reasserts also previously stated concerns that the proposed design will triple  
the existing footprint of the site (not a modest increase) for an accessory structure and  
that it will loom over Alnutt Street constituting a substantial change to the bulk and  
visibility of structure in a manner inconsistent with existing and appropriate  
development of the neighborhood. The proposal to greatly increase the existing square  
footage and maximize the ratio of ARU space to primarily dwelling forces the number of  
parking spaces to be increased on an already constrained site. The additional spaces  
proposed cannot feasibly meet required dimensional standards without significant  
grading, construction of retaining walls, and further slope cuts. Additional parking as  
proposed encroaches into required setbacks to the side and front of the property  
contrary to code requirements - leaving inadequate provision for buffering and to absorb  
stormwater runoff.

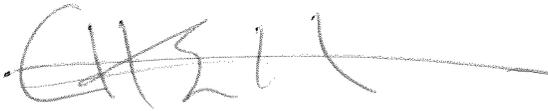
The Director's Decision imposes conditions to require submittal of design plans with  
details that should be available to review during these land use proceedings. A deferred  
staff review will not provide for public notice and opportunity for hearing. That is an  
improper deferral of determination that sufficient screening will occur to address the

1 conditional use permitting criteria on neighborhood impact, given the issue raised that  
2 there is inadequate yard space left to do so on this sloped site.

3 Additional issues to be raised at the de novo public hearing include setback calculations,  
4 street orientation, the use of deck areas as open space, and other issue which will be  
5 more specifically identified in Appellant's Amended Notice of Appeal and/or later  
6 submittals.

7  
8 DATED: September 22, 2017

9 DAVIS HEARN ANDERSON & TURNER PC

10 

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12 515 E. MAIN ST. | ASHLAND, OR 97520  
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16 ATTORNEYS FOR APPELLANT PATRICIA ZOLINE

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21 City Of Ashland

NOTICE OF APPEAL | PA-2017-00978 | (Type 1 Non-Discretionary Decision by  
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**BEFORE THE PLANNING COMMISSION  
FOR THE CITY OF ASHLAND, OREGON**

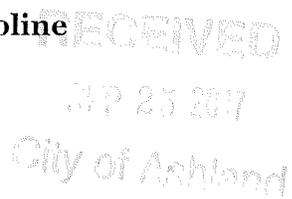
**IN THE MATTER OF:** ) **PA-2017-00978**  
)  
**Appeal of a Type 1 Land Use Decision** )  
) **SUPPLEMENTAL**  
**A request for Site Design Review to** ) **NOTICE OF APPEAL**  
**construct an approximately 999 sq. ft.** )  
**Accessory Residential Unit at 232 Nutley)** )  
**Street; and Conditional Use Permit** )  
**to allow expansion of existing** )  
**non-conforming development** )  
)  
**Applicant: Leah K. Henigson, Trustee** )  
)  
**Appellant: Patricia Zoline** )  
**240 Nutley Street** )  
\_\_\_\_\_ )

**Patricia Zoline (“Appellant”) respectfully submits this Supplemental Notice of Appeal in connection with the Type 1 Decision by Staff Advisor made without public hearing on September 11, 2017. This follows the Notice of Appeal (Preliminary), filed with City Community Development on September 22, 2017.**

**OREGON STATEWIDE PLANNING GOAL 1 - CITIZEN INVOLVEMENT**

*“To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” OAR 660-015-0000(1) .*

As the Planning Commission knows, during the several decades since the establishment of Oregon’s unique Statewide Planning Goals, the City of Ashland (“City”) has established a well-know legacy in its implementation of Goal 1. City pioneered Oregon’s first ordinance provisions regulating hillside development standards. City is known state-wide for its early-adoption of affordable housing ordinance provisions. City



1 recently completed a consummate forest resiliency project – which may one day serve as  
2 a national standard for wildfire suppression goals.

3 Several years ago, Council adopted a policy based, in part, on the proposition that the  
4 inherent gentrification factor resulting from Ashland’s strict land use regulations, might  
5 be mitigated, at least in part, by our ARU program – which we expanded as permitted or  
6 conditionally-permitted uses in a wider array of zoning districts. City came to believe  
7 that the more liberal expansion of ARU’s might promote at least two Council Goals: (1)  
8 promote the salutary aspiration of urban infill; and (2) provide a greater inventory of  
9 “affordable housing” within the confines of existing city limits. This part of our City’s  
10 decision not to expand City’s Urban Growth Boundary during the Regional Planning  
11 Process we completed several years ago.

12 However, this particular Type 1 nondiscretionary staff decision re: the specific Accessory  
13 Residential Unit (“ARU”) proposed by Applicant for construction at 232 Nutley Street  
14 “crosses the line” between promoting the broad policy objectives originally  
15 contemplated, and jeopardizing the livability and health/safety concerns of the  
16 neighborhood.

17 In this instance, the *Goal 1* concerns are particularly critical in connection with Planning  
18 Commission review of this particular ARU application.

19 **Facts and Issues previously raised in Appellant’s Preliminary**  
20 **Notice of Appeal (filed with City Planning on September 22,**

21 **2017)**: All matters previously raised in Appellant’s Preliminary Notice of Appeal are  
again incorporated here by reference as though fully set fort.

**Additional Issues Raised Pursuant to AMC 18.5.1(G)(2) for de**  
**novo Planning Commission Review at Public Hearing:**

1. **Appellant will offer additional evidence, testimony and argument in**  
**connection with the public hearing before the Planning Commission.**  
*AMC 18.5.1(G)(3)*. “Scope of Appeal. Appeal hearings on Type I decisions made  
by the Staff Advisor shall be de novo hearings before the Planning Commission.  
The appeal shall not be limited to the application materials, evidence and other  
documentation, and specific issues raised in the review leading up to the Type I  
decision, but may include other relevant evidence and arguments. The  
Commission may allow additional evidence, testimony, or argument concerning  
any relevant ordinance provision.” (emphasis added.)

2. **Application inappropriate for Type 1 Review.** City's Type 1 review procedure is expressly

18.1.4.040. Nonconforming Developments

- A. Exempt Alterations. Repair and maintenance of a nonconforming development (e.g., paved area, parking area, landscaping) are allowed subject to approval of required building permits if the development is not enlarged or altered in a way that brings the nonconforming site less in conformity with this ordinance. See also, section 18.3.11.050 related to nonconforming uses in Water Resource Protection zones.

**Issue:** Project does not qualify as Exempt. It is not "repair" and it does not improve the nonconforming condition. By replacing 265 sq. ft. barn with 999 sq. ft. ARU served by same driveway, Project renders site more nonconforming.

18.5.4.030. Review Procedure (Conditional Use Permit)

- A. Type I Reviews. The following Conditional Use Permits are subject to Type I review in chapter 18.5.1.050.

1. Conditional Use Permits involving existing structures or additions to existing structures, and not involving more than three residential dwelling units.

- B. Type I Reviews. Conditional Use Permits not listed in subsection 18.5.4.030.A, above, are subject to Type II review in section 18.5.1.060.

**Issue:** This review was for construction of a new structure, not an existing one. Nor does project represent an addition to any existing structure.

18.5.1.010.B.1. Ministerial Action (Staff Advisor Decision). The Staff Advisor makes ministerial decisions by applying City Standards and criteria that do not require the use of substantial discretion (e.g. fence, sign and home occupation permits). (No public notice required).

18.5.1.010.B.2. Type 1 Procedure (Administrative Decision with Notice). Type 1 decision made by the Staff Advisor with public notice and opportunity for an appeal to Planning Commission.

1 **Issue:** Application of relevant City standards and criteria to this particular  
2 application involved substantial exercise of legal and policy discretion. This  
3 application inappropriately processed under Type 1 procedure.

4 **3. The standards and criteria reflected AMC 18.3.10 (Physical and**  
5 **Environmental Constraints Overlay) were not properly applied to**  
6 **Application.**

7 AMC 18.3.10.020. Applicability.

8 A. Physical Constraints Review Permit. A Physical Constraints Review Permit  
9 is required for the following activities in the land classifications in section  
10 18.3.10.060.

11 1. Alteration of Land. The alteration of the land surface by any of the  
12 following activities in areas identified as Flood Plain Corridor Land,  
13 Hillside Land, or Severe Constraint Land.

14 a. Earth-moving activities such as grading, filling, stripping, or  
15 cutting involving more than 20 cubic yards on any lot, or  
16 earth-moving activity disturbing a surface area greater than  
17 1000 square feet on any lot.

18 b. Construction of a building, road, driveway, parking area, or  
19 other structure; except that additions to existing buildings of  
20 less than 300 square feet to the existing building footprint  
21 shall not be considered development for section 18.3.10.090  
Development Standards for Hillside Lands.

AMC 18.3.10.060. Land Classifications.

B. Hillside Lands. Hillside Lands are lands that are subject to  
damage from erosion and slope failure, and which include areas that are  
highly visible from other portions of the city. The following lands are  
classified as Hillside Lands: All areas defined as Hillside Lands on the  
Physical and Environmental Constraints Hillside Lands and Severe  
Constraints map and which have a slope of 25 percent or greater.

**Issue:** Staff decision is based on the erroneous proposition that, “the application  
has provided survey data indicating the slopes in the area proposed for  
development her has slopes of less than 25 percent.” *Staff Decision, Pg. 1.*  
Appellant produces evidence that, in fact, “Based on the topographical

1 information completed by Stephan Barott Land Surveying for 232 Nutley Street,  
2 the average slope across the lot is greater than 30%. The average slope across the  
3 lot was determined to by AGEGC by taking the topographical information from  
4 the surveyor and determining distance and change in elevation. Based on 10 ft.  
5 contour lines and a 30 foot spacing between contours, the average slope is 33%.”  
**September 25, 2017 Report from Oregon licensed geotechnical  
engineer Robin Warren of Applied Geotechnical Engineering &  
Geologic Consulting. See attached Exhibit “A”, incorporated here by  
reference.**

6 Staff should have applied to the application all relevant standards and criteria  
7 imposed by AMC Chapter 18.3.10 based on actual 33% slopes of Applicant’s lot,  
8 as well as the six (6) points raised by Appellants licensed geotechnical engineer in  
9 his report. *See: Exhibit “A”, incorporated here by reference.*

10 Appellant preserves for appeal to the Planning Commission the geotechnical  
11 points raised in the Applied Geotechnical Engineering & Geologic Consulting  
12 Report attached hereto as Exhibit “A”. The attached geotechnical engineering  
13 report, which followed site inspection by the engineer, raises important concerns  
14 relating to the site’s underlying granitic soils, the topography of the proposed  
15 project site, the slopes of the adjacent neighboring properties, the size of the  
16 ARU’s proposed footprint on the site, the narrow nonconforming driveway  
17 access, the proposed four parking locations on the site, and the need for a  
18 complete steep slope evaluation by a licensed geotechnical engineer. *See:  
19 attached Exhibit “A”.*

20 The geotechnical issues raised involve important health and safety concerns, as  
21 supported by the competent testimony of a licensed geotechnical engineer who  
has inspected the site. Appellant preserves all issues reflected in attached Exhibit  
“A” for de novo review in the context of this appeal under a number of City  
policies, standards and criteria reflected in AMC Chapter 18.3.10 (including but  
not limited to the standards and criteria reflected in AMC 18.3.10.090  
(Development Standards for Hillside Lands).

If an ARU is not part of the primary dwelling, all construction and disturbance  
must take place on lands with less than 25% slope. City’s Site Design and Use  
Standards require the project proposal comply with all applicable overlay zone  
requirements (part 18.3). *AMC 18.5.2.050(B).*

- 1 4. **Underlying zone is RR-0.5, but is nonconforming at 0.29 acres.**  
2 **Approval of CUP renders lot more nonconforming.** Applicant's lot is  
3 already nonconforming in size. The proposed project exceeds City's lot coverage  
standards. Appellant preserves this issue for the de novo Planning Commission  
hearing.
- 4 5. **Driveway and Access Issues.** AMC 18.5.2.050(D) requires the proposal  
5 comply with city standards, including paved access to and throughout the  
6 property, and adequate transportation facilities. The streets are nonconforming  
7 and do not support the proposed level of development. Appellant disagrees with  
8 Staff's interpretations AMC 18.4.040.J. concerning nonconforming streets  
serving the site. Further, the nonconforming 9' unpaved driveway access serving  
the proposed ARU and the nonconforming city streets serving the proposed  
project are not supported by substantial evidence in light of the record. Appellant  
preserves these issues for the de novo Planning Commission hearing.
- 9 6. **The proposed ARU could be smaller than 999 square feet, would still**  
10 **serve it's purpose, but would not render the lot nonconforming to**  
11 **such a great extent.** During Applicant's previous Pre-Application Conference,  
12 Staff recommended a smaller ARU be proposed. On February 1, 2017, following a  
13 site visit, staff recommended Applicant pursue approval of an ARU of "less than  
14 500 square feet." Applicant disregarded Staff's previous position, instead  
15 proposing an ARU at 999 square feet (one foot under the 1000 square foot  
16 maximum.
- 17 7. **During 2002-2003, Applicant constructed a substantial addition to**  
18 **primary residence. The reference in the Staff Decision to the home**  
19 **being built in the "1960s" does not mention Applicant's addition to**  
20 **the home in 2002-2003.** The conditions rendering lot coverage  
21 nonconforming do not date back to the 1960s when the original home was  
constructed. Applicant's expansion of the existing residence in 2002-2003  
(initially without permits) rendered her lot more non-conforming in light of City  
ordinance provisions in effect at the time of her expansion of the primary  
residence. The coverage issues are self-imposed since City's code provisions were  
in place at time of her home expansion project during 2002-2003 time frame.  
Per County Assessor records notations: "04/03/03 - ADDED NEW ADDITION  
AND DECK. OFFICE IN BSMENT IS 4TH BEDROOM & 3RD BATH. DRC IS  
SHED. DECK IS (575SF EA 2002) PER 88. 03/16/04 CALLED LEAH  
HENIGSON (OWNER), ADDN IS 100% COMPLETE, NO GARAGE PER  
83>>>3/6/08 ADD DRIVE WAY #154 >>>"

**SUPPLEMENTAL NOTICE OF APPEAL | Appellant: Patricia Zoline**  
**PA-2017-00978 | (Type 1 Non-Discretionary Decision by Staff)**  
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- 1 8. **Applicant pursuing land use permit application while code violations**  
2 **exist on property.** Applicant currently has two tenants on property. One lives  
3 in the downstairs unit and a second in the existing barn. Applicant should not be  
4 permitted to pursue this application while code violations are currently ongoing.
- 5 9. **Applicant should be applying for a variance.** Appellant contends that  
6 Applicant should have sought a variance, rather than a conditional use permit,  
7 under the circumstances presented in this application.
- 8 10. **No “demonstrable difficulty” in meeting specific requirements due to**  
9 **unique or unusual circumstances of existing structure or proposed**  
10 **use of site.** AMC 18.5.2.050(E)(1). Any demonstrable difficulty necessitating a  
11 Conditional Use Permit for this ARU is largely the result of: (1) Applicant’s  
12 pursuit of approval of a 999 squar foot ARU, rather than the 500 square foot  
13 ARU recommended by staff during and after Applicant’s Pre-Application  
14 Conference. *See, e.g.: email from Planner Severson to Applicant dated*  
15 *02/01/2017.* Additionally, Applicant’s addition/expansion of the primary  
16 residence in 2002-2003 further contributed to the issues necessitating exceptions  
17 to Site Design and Use Standards.
- 18 11. **Approval of Application will substantially negatively impact adjacent**  
19 **properties.** AMC 18.5.2.050(E)(1). As set forth in comments received by staff  
20 during public comment period, approval of application will substantially  
21 negatively impact neighboring properties. *See six letters from surrounding*  
*property owners received by staff during comment period.*
- 12 12. **Primary orientation of proposed ARU will not be toward Nutley**  
13 **Street.** Appellant will demonstrate that primary orientation of structure is  
14 actually toward Allnut Street. The orientation of the proposed ARU changes the  
15 setback calculations and renders the proposed ARU nonconforming because it  
16 does not meet the relevant setback requirements imposed by the AMC. Two-  
17 story structures require 20' rear yard setback from Appellant’s property  
18 boundary.
- 19 13. **Deck areas should not be counted as recreational space.** Appellant  
20 disagrees with staff’s conclusion that proposed deck areas qualify as meeting the  
21 code-required 8% open/recreational space requirement under the circumstances.
- 14 14. **Affordable housing issues.** While seeking opportunities for providing  
“affordable housing” is a valid City policy, it does not address the unnecessary  
size of the ARU proposed in this application. In fact, a smaller ARU would

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City of Ashland

1 logically be more “affordable” than that proposed by the Application.

- 2 15. **Staff notes that RR-0.5 requires 1/2-acre minimum lot size, 20%**  
3 **maximum lot coverage, and a driveway under 50 feet in length.** Staff  
4 provides several discretionary reasons for recommending approval of the  
5 application despite several critical non-conformities. Appellant disagrees and  
6 designates these issues on appeal. Lots over 50 feet in length must meet flag  
7 drive standards. They must have a 12-foot paved surface width centered in a 15-  
8 foot clear width. The existing driveway “is non-conforming at approximately  
9 nine-feet in width, and is not being paved.” *Staff report, pg. 4.* Appellant asserts  
10 that Applicant does not meet the standards and criteria necessary to justify  
11 expansion of non-conforming development under AMC 18.1.4.040.B. The  
12 additional requested lot coverage will negatively impact adjacent properties.
- 13 16. **Appellant disagrees that adequacy of city facilities, access and**  
14 **transportation, similarity in scale, bulk and coverage; architectural**  
15 **compatibility; generation of dust, noise, light and other factors**  
16 **support the proposed development.** Despite staff’s findings at page 5 of the  
17 Decision, Appellant disagrees these standards and criteria imposed by AMC  
18 18.5.4.050.A are met and reserves these issues for de novo appeal to the Planning  
19 Commission.
- 20 17. **Appellant disagrees that the application meets the density provisions**  
21 **for the “RR” zone.** AMC 18.5.4.050(A)(5)(a); AMC 18.2.5 Standards for  
Residential Zones.
- 18 18. **Tree Removal.** Appellant disagrees with staff’s findings concerning tree  
removal at page 5 of the staff decision, especially with regard to site disturbance.
- 19 19. **Parking.** Appellant disagrees with staff’s findings concerning the approval of  
the four off-street parking spaces associated with this application. Appellant is  
especially concerned with the proposal that parked cars back-out onto Nutley  
Street – which is extremely steep.
- 20 20. **Comments received by Staff (summarized at pages 6-8 of Staff**  
**Decision).** Appellant disagrees with staff’s response to the issues raised by  
neighboring property owners during the comment period, and designates all  
comments raised during the comment period as additional bases for de novo  
appeal to the planning commission.

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DATED: September ~~25~~, 2017

DAVIS HEARN ANDERSON & TURNER PC

*ss/ Christian E. Hearn*

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ATTORNEYS FOR APPELLANT PATRICIA ZOLINE  
(240 NUTLEY ST. | ASHLAND, OR 97520)

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**SUPPLEMENTAL NOTICE OF APPEAL | Appellant: Patricia Zoline**  
**PA-2017-00978 | (Type 1 Non-Discretionary Decision by Staff)**  
**Page -9-**

1 21. **Square footage of proposed ARU.** The proposed ARU is 999 square feet in  
2 size.

3  
4 DATED: September **25**, 2017

5 DAVIS HEARN ANDERSON & TURNER PC

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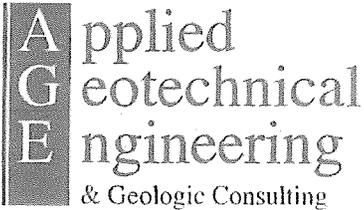
7 *ss/ Christian E. Hearn*

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PA-2017-00978  
City of Ashland



September 25, 2017

Patricia Zoline  
240 Nutley Street  
Ashland, OR 97520

**SUBJECT:        Engineering Evaluation of Proposed Development  
                      New Accessory Residential Unit (ARU)  
                      232 Nutley Street  
                      Ashland, Oregon**

At your request, Applied Geotechnical Engineering and Geologic Consulting LLC (AGEGC) has conducted an engineering evaluation of the proposed new residence to be constructed at 232 Nutley Street in Ashland, Oregon. We understand a new accessory residential unit (ARU) will be constructed on the southern portion of the existing lot. We also understand that the footprint of the new home will be significantly larger than the existing building at this location. Work will include excavation for the new home, excavation for two new parking spaces next to the new home, and excavation for two new parking spaces at the front of the lot (which will require removal of an existing retaining wall). In addition, some grading should be required for improving the existing driveway.

A licensed geotechnical engineer, civil engineer, and geologist provided by AGEGC completed a site visit to the property on September 22, 2017. The intent of the site visit was to observe and evaluate existing site conditions at 232 Nutley Street and surrounding areas.

Engineering considerations for the new residence:

- 1) The site is underlain by granitic soils. Granitic soils are easily eroded when disturbed and exposed. Significant cuts and tree removal will be required for the new home, four parking spaces, and driveway. The disturbed area will extend beyond the footprint to allow installation of retaining walls for the new basement and for construction of the four parking spaces. Typically, retaining wall foundations extend beyond the location of the house basement wall.
  
- 2) Based on the topographic information completed by Stephan Barott Land Surveying for 232 Nutley Street, the average slope across the lot is greater than 30%. The average slope across the lot was determined by AGEGC by taking the topographic information from the surveyor and determining distance and change in elevation. Based on the 10 ft contour lines and a 30 ft spacing between contours, the average slope is 33%. This slope is consistent with the natural slopes observed in this area. The slopes immediately upslope (west) of this lot are significantly steeper than 40%. In our opinion, the two data points documenting slope on the lot (provided by the surveyor in the proposed building site) were completed in an area that had been previously graded for the existing structure and they do not provide an accurate reading of the average native slope across the lot.

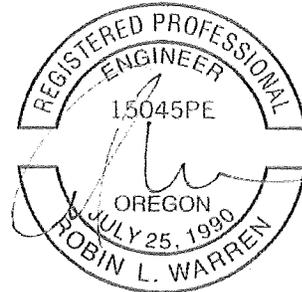
- 3) Large, intact blocks of hard granite were observed to be present at the ground surface in the proposed building site. Removal (excavation) of these blocks will result in significant disturbance to the surficial soils that will extend past the footprint of the proposed home. If required, rock excavation (such as a hoe-pack) will cause significant vibration in the area.
- 4) The slope west of the lot is retained with rockery walls. The uphill slope along Alnutt Street (located adjacent and downslope of 232 Nutley Street) is retained with a large MSE retaining wall. The only access to any structures on the 232 Nutley Street property is by using the existing narrow driveway. Given the limited access to the lot, in our opinion, the driveway should be improved (widened to city standards and possibly paved in steep sections) to accommodate emergency vehicles, including fire trucks.
- 5) Based on the proposed locations of four parking areas and proposed daylight basement for the new home, in our opinion, significant grading (excavation) will be required across the lot. Prior to construction, it would be prudent to determine actual cuts required for the new parking areas and building, and to insure the driveway slope onto Alnutt Street is not too steep for fire truck access and egress (a site grading plan). The driveway is currently gravel (unpaved).
- 6) Given the granitic soils and the steepness of the property and adjacent steep slopes, in our opinion, it would be prudent to complete a steep slope evaluation by a licensed geotechnical engineer. The intent of the report would be to provide recommendations for proper development of the property including the new home and parking areas.

Please contact AGE GC if you have any questions or require additional information.

Sincerely,  
Applied Geotechnical Engineering and Geologic Consulting LLC



Robin L. Warren, P.E., G.E., R.G.  
Principal



Renewal: June 2018

2017-2018  
2017-2018  
City of Ashland

September 11, 2017

**Notice of Final Decision**

On September 11, 2017, the Community Development Director approved the request for the following:

**Planning Action:** PA-2017-00978

**Subject Property:** 232 Nutley Street

**Applicant:** Leah K. Henigson Trust (Leah K Henigson, *trustee*)

**Description:** A request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street. The application also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development.

The Community Development Director's decision becomes final and is effective on the 12<sup>th</sup> day after the Notice of Final Decision is mailed. Approval is valid for a period of 18 months and all conditions of approval identified on the attached Findings are required to be met prior to project completion.

The application, all associated documents and evidence submitted, and the applicable criteria are available for review at the Ashland Community Development Department, located at 51 Winburn Way. Copies of file documents can be requested and are charged based on the City of Ashland copy fee schedule.

Prior to the final decision date, anyone who was mailed this Notice of Final Decision may request a reconsideration of the action as set forth in the Ashland Land Use Ordinance (ALUO) 18.5.1.050(F) and/or file an appeal to the Ashland Planning Commission as provided in ALUO 18.5.1.050(G). The ALUO sections covering reconsideration and appeal procedures are attached. The appeal may not be made directly to the Oregon Land Use Board of Appeals.

If you have any questions regarding this decision, please contact Derek Severson in the Community Development Department at (541) 488-5305.

cc: Parties of record and property owners within 200 ft



## SECTION 18.5.1.050 Type I Procedure (Administrative Decision with Notice)

**E. Effective Date of Decision.** Unless the conditions of approval specify otherwise or the decision is appealed pursuant to subsection 18.5.1.050.G, a Type I decision becomes effective 12 days after the City mails the notice of decision.

**F. Reconsideration.** The Staff Advisor may reconsider a Type I decision as set forth below.

1. Any party entitled to notice of the planning action, or any City department may request reconsideration of the action after the decision has been made by providing evidence to the Staff Advisor that a factual error occurred through no fault of the party asking for reconsideration, which in the opinion of the Staff Advisor, might affect the decision. Reconsideration requests are limited to factual errors and not the failure of an issue to be raised by letter or evidence during the opportunity to provide public input on the application sufficient to afford the Staff Advisor an opportunity to respond to the issue prior to making a decision.
2. Reconsideration requests shall be received within five days of mailing the notice of decision. The Staff Advisor shall decide within three days whether to reconsider the matter.
3. If the Staff Advisor is satisfied that an error occurred crucial to the decision, the Staff Advisor shall withdraw the decision for purposes of reconsideration. The Staff Advisor shall decide within ten days to affirm, modify, or reverse the original decision. The City shall send notice of the reconsideration decision to affirm, modify, or reverse to any party entitled to notice of the planning action.
4. If the Staff Advisor is not satisfied that an error occurred crucial to the decision, the Staff Advisor shall deny the reconsideration request. Notice of denial shall be sent to those parties that requested reconsideration.

**G. Appeal of Type I Decision.** A Type I decision may be appealed to the Planning Commission, pursuant to the following:

1. **Who May Appeal.** The following persons have standing to appeal a Type I decision.
  - a. The applicant or owner of the subject property.
  - b. Any person who is entitled to written notice of the Type I decision pursuant to subsection 18.5.1.050.B.
  - c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.
2. **Appeal Filing Procedure.**
  - a. *Notice of Appeal.* Any person with standing to appeal, as provided in subsection 18.5.1.050.G.1, above, may appeal a Type I decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection. The fee required in this section shall not apply to appeals made by neighborhood or community organizations recognized by the City and whose boundaries include the site. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded.
  - b. *Time for Filing.* A notice of appeal shall be filed with the Staff Advisor within 12 days of the date the notice of decision is mailed.
  - c. *Content of Notice of Appeal.* The notice of appeal shall be accompanied by the required filing fee and shall contain.
    - i. An identification of the decision being appealed, including the date of the decision.
    - ii. A statement demonstrating the person filing the notice of appeal has standing to appeal.
    - iii. A statement explaining the specific issues being raised on appeal.
    - iv. A statement demonstrating that the appeal issues were raised during the public comment period.
  - d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.
3. **Scope of Appeal.** Appeal hearings on Type I decisions made by the Staff Advisor shall be de novo hearings before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Type I decision, but may include other relevant evidence and arguments. The Commission may allow additional evidence, testimony, or argument concerning any relevant ordinance provision.
4. **Appeal Hearing Procedure.** Hearings on appeals of Type I decisions follow the Type II public hearing procedures, pursuant to section 18.5.1.060, subsections A – E, except that the decision of the Planning Commission is the final decision of the City on an appeal of a Type I decision. A decision on an appeal is final the date the City mails the adopted and signed decision. Appeals of Commission decisions must be filed with the State Land Use Board of Appeals, pursuant to ORS 197.805 - 197.860.



## ASHLAND PLANNING DIVISION

### FINDINGS & ORDERS

**PLANNING ACTION:** PA-2017-00978  
**SUBJECT PROPERTY:** 232 Nutley Street  
**OWNER/APPLICANT:** Leah K. Henigson Trust (Leah K. Henigson, *trustee*)  
**DESCRIPTION:** A request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street. The application also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development.  
**COMPREHENSIVE PLAN DESIGNATION:** Rural Residential; **ZONING:** RR-.5;  
**ASSESSOR'S MAP:** 39 1E 08AD; **TAX LOT #:** 8000.

<b>SUBMITTAL DATE:</b>	May 25, 2017
<b>DEEMED COMPLETE DATE:</b>	July 20, 2017
<b>STAFF APPROVAL DATE:</b>	September 11, 2017
<b>APPEAL DEADLINE (4:30 P.M.):</b>	September 25, 2017
<b>FINAL DECISION DATE (4:30 P.M.):</b>	September 25, 2017
<b>APPROVAL EXPIRATION DATE:</b>	March 25, 2019

#### DECISION

The application involves a request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street. The application also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development.

#### *Subject Property*

The subject property is located on the south side of Nutley Street, about 85 feet east of its terminus, at 232 Nutley Street. The property is generally trapezoidal and extends from Nutley Street south to Alnutt Street, with approximately 70 feet of frontage along Nutley and approximately 90 feet of frontage on Alnutt. The subject property has an area of approximately 12,632 square feet or 0.29-acres.

The property and those in the immediately surrounding area to the east, west and south are zoned RR-.5, a Rural-Residential zoning with a ½-acre minimum lot size. Properties across Nutley Street to the north are zoned R-1-10 (Single Family Residential).

The property has slopes downhill to the east, with some areas along the west property line having slopes in excess of 35 percent while the application has provided survey data indicating that slopes in the area proposed for development here has slopes of less than 25 percent.

Both Nutley and Alnutt Streets are residential neighborhood streets, and both are paved with curbs and gutters in place. Nutley Street has a five-foot curbside sidewalk in place which terminates at the applicant's driveway while Alnutt Street has a five-and-a-half-foot wide curbside sidewalk

along the property's full frontage. The application notes that Nutley Street along the property's frontage was constructed as part of a local improvement district (LID) in the early 2000's, and that while there was adequate right-of-way available, it was ultimately improved in a manner that did not fully meet city standards. AMC 18.4.6.040.J provides that, "*Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.*" This section notes that in addition to typical considerations for an Exception, "*Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.*"

The property contains an existing single-story, single family residence with a basement which the application describes as being 2,035 square feet and built in the 1960's. In addition, there is an existing 16-foot by 16-foot barn structure with a small loft which the applicant proposes to remove in order to accommodate the proposed accessory residential unit.

There is an existing unpaved driveway which traverses the property from Nutley Street to Alnutt Street. The application notes that this driveway allows for one-way traffic from Nutley to Alnutt. The application notes that parking is currently stacked in the driveway, with one car parking and backing out to exit via Nutley while the car parked in front of it pulls through to exit on Alnutt. There is a single unpaved parking space adjacent to the barn.

#### ***Accessory Residential Unit (ARU)***

The application materials explain that the proposed ARU would replace the 256 square foot barn, and would have an approximately 750 square foot footprint and be two stories in height with a habitable square footage not to exceed 750 square feet. The application suggests that the majority of the area of proposed disturbance for the ARU is pre-existing disturbed area from the existing barn. Two required parking spaces would be located off of the driveway adjacent to the barn, allowing the one-way use of the existing driveway to continue. In addition, two parking spaces for the existing home would be placed in the front yard adjacent to the driveway to accommodate the continued one-way use of the existing driveway. The application notes that the parking installation may necessitate the removal of some less-than-six-inch-diameter deciduous trees, a seven-inch DBH Oak near the parking at Nutley, as well as a seven-inch DBH Maple and a six-inch DBH walnut. The application notes that they will attempt to preserve a 12-inch pine located east of the driveway near the ARU parking, and that there will generally be minimal site disturbance resulting from the proposal. Where there is to be disturbance uphill of the existing barn, the applicant indicates that she will plant three 10.25 gallon Japanese Maples, with four three-gallon wintergreen boxwoods and four three gallon Japanese Holly plants to be planted in the areas around the ARU.

The application explains that only one ARU is proposed, and that this will leave the maximum number of dwelling units on the property at two, and that the proposed ARU will be less than 50 percent of the gross habitable floor area of the primary residence and will not exceed 1,000 square feet, and will conform to the setback requirements. Expansion of the non-conforming setbacks is addressed through the Conditional Use Permit discussion later in this document.

The application notes that the proposed ARU will not encroach into areas with slopes greater than 25 percent, and topographic survey data from Stephan Barott Land Surveying has been provided to confirm the areas to be disturbed for the ARU footprint have slopes of 24.4 percent, while the areas to be disturbed for parking has slopes of 16-19.6 percent.

Lots proposed for Accessory Residential Units in the RR-.5 zoning district are to have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters, and sidewalks. Nutley Street has a five-foot curbside sidewalk in place which terminates at the applicant's driveway, while Alnutt Street has a five-and-a-half-foot wide curbside sidewalk along the property's full frontage. The application notes that Nutley Street along the property's frontage was constructed as part of a local improvement district (LID) in the early 2000's, and that while there was adequate right-of-way available, it was ultimately improved in a manner that did not fully meet city standards. AMC 18.4.6.040.J provides that, "*Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.*" This section notes that in addition to typical considerations for an Exception, "*Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.*" The application materials discuss that the lot has frontage on two improved city streets which were paved under a publicly-funded LID project; have curbs, gutters and sidewalk in place; and were designed, installed and accepted by the city with a width that is in some areas less than 20-feet. (*City Engineering data puts the current improved width of Nutley Street at 27 feet within a 40-foot right-of-way, however both GIS data and on-site verification by staff have the paved width at or in some locations just below 20 feet.*) In staff's assessment, the standard was intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvement was deemed sufficient through an LID process and the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street. In addition, the application recognizes that within the Wildfire Overlay zone, fire sprinklers must be installed and indicates that this requirement will be met.

The application explains that the proposed ARU will be oriented to the street, and that a deck area will be provided to present an orientation to Alnutt Street while the primary access will face Nutley due to the parking space location. Covered bicycle parking is to be provided as well.

The application explains that the existing home is a large, four-bedroom three-bath house, and that as a single person with grown children the owner would like a smaller space and hopes to downsize, living in the ARU herself while renting the home to a larger family which she feels will help to address the shortage of more affordable family housing to the benefit of the city. She also explains that the existing barn is beginning to rot and fall apart and is becoming an eyesore, and she hopes to remove it while reclaiming the wood for use in the new ARU which will be sided in cedar to match the existing house.

### ***Site Design Review***

The application notes that the structure will have its primary orientation to Nutley Street, with a deck on the rear and side facing Alnutt, and that parking will be to the side of the structure, behind

the primary residence. Materials are to match the existing residence, and refuse and recycling containers are to be stored under the proposed deck where they will not be visible from the adjacent rights-of-way. A separate electric service is to be provided underground to the ARU from a transformer on Alnutt Street, with meters to be grouped on the ARU.

The application recognizes that the 12,632 property is subject to an eight percent open/recreational space requirement, and notes that because of the generally hilly nature of the property there are no yard areas *per se*, however the ARU will have a 380 square foot deck space while the primary residence has a 657 square foot deck to satisfy the open/recreational space requirement.

The application details that there will not be the typically required eight-foot landscape buffer between the ARU and the proposed parking, explaining that the lot is very narrow with an existing driveway traversing its full length, and topography which dictates where the ARU and its parking can be located. The applicants further note that the lower level of the ARU is not habitable space which would be negatively impacted by the proximity to parking, and that this will not impact adjacent properties.

In reviewing the Site and Floor Plans provided, staff have noted that a small triangular area of the deck and a small triangular area of the unit extend into the required rear yard setback at the southeast corner of the site near Alnutt Street. A condition has been added below to require that the footprint and floorplan be adjusted to address the required setback, and that the property line, setback and footprint be marked on site for verification prior to the issuance of a building permit.

#### ***Non-Conforming Development/Conditional Use Permit***

As discussed above, the street frontages are not fully improved to city standards, but were constructed as part of a local improvement district (LID). AMC 18.4.6.040.J provides that, “Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.” This section notes that in addition to typical considerations for an Exception, “Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.” As noted above, in staff’s assessment, the standards were intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvement was deemed sufficient through an LID process; the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street; and the application will be required to install an automatic sprinkler system as part of the approval.

The application notes that the existing lot is non-conforming in lot area. The RR-.5 zoning requires a minimum ½-acre minimum lot-size while the existing property here is only 12,632 square feet in area. In addition, the property’s current lot coverage of approximately 38 percent exceeds the 20 percent maximum-allowed lot coverage within the zoning district. The existing driveway is required to meet flag drive standards due to its being over 50 feet in length. A flag drive serving a single lot requires a 12-foot paved width centered in a 15-foot clear width. The existing driveway is non-conforming at approximately nine-feet in width, and is not being paved.

AMC 18.1.4.040.B addresses non-conforming developments, noting that planning approval is required for enlargement or alteration. Specifically, “ a nonconforming development may be enlarged or altered subject to approval of a Conditional Use Permit under chapter 18.5.4 and approval of required building permits, except that a planning action is not required for exempt alterations described in subsection 18.1.4.040.A, above, and for non-residential development subject to subsection 18.4.2.040.B.6.”

Because the proposal involves the enlargement or alteration of a non-conforming development a Conditional Use Permit is required. Conditional Use Permits consider the adverse material effect of the proposal on the livability of the impact area when compared to the development of the subject lot according to the target use of the property, which in this instance is single family residential use. Typical considerations include: that adequate capacity of city facilities including utilities, access and transportation can and will be provided; similarity in scale, bulk, and coverage; generation of traffic; architectural compatibility; air quality, including the generation of dust, odors, or other environmental pollutants; generation of noise, light, and glare; the development of adjacent properties as envisioned in the Comprehensive Plan, and other factors found to be relevant by the approval authority for review of the proposed use.

In addressing the site’s lot coverage, the applicant emphasizes that the additional coverage will not negatively impact adjacent properties or the existing site. They further note that the existing non-conforming coverage is not self-imposed as the majority of improvements existing on site prior to the applicant’s purchase of the property, and that the lot coverage will increase by only around 500 square feet for the footprint and additionally for decks and parking with the proposal. The application suggests that with very minimal lot disturbance, the deteriorating building will be removed and replaced with a new building very similar in style and appearance to the existing home.

In response to the driveway’s width, the applicant explains that the unique driveway situation extending all the way from Nutley onto Alnutt allows for easy flow of cars at each unit with no further disturbance to the driveway or other hillside lands on the property. Cars parked for the primary residence can back onto Nutley and circulate out while cars parked for the ARU can exit forward to Alnutt.

### ***Tree Removal***

The application notes that the parking installation may necessitate the removal of some less-than-six-inch-diameter deciduous trees, a seven-inch DBH Oak near the parking at Nutley, as well as a seven-inch DBH Maple and a six-inch DBH walnut. The application notes that they will attempt to preserve a 12-inch pine located east of the driveway near the ARU parking, and that there will generally be minimal site disturbance resulting from the proposal. Where there is to be disturbance uphill of the existing barn, the applicant indicates that she will plant three 10.25 gallon Japanese Maples, with four three-gallon wintergreen boxwoods and four three gallon Japanese Holly plants to be planted in the areas around the ARU.

As noted in AMC 18.5.7.020.C, the removal of trees in single family residential zones on lots occupied only by a single family detached dwelling and associated accessory structures is exempt from Tree Removal Permit requirements, except as otherwise regulated by chapters 18.3.10

Physical and Environmental Constraints and 18.3.11 Water Resource Protection Zones. In this instance, those trees to be removed are not located on slopes greater than 25 percent or within a Water Resource Protection Zone.

A condition has been included below to require that the building permit submittal include a Tree Protection Plan prepared by an arborist which addresses the trees to be preserved, their condition and ability to accommodate the proposed disturbance, and measures necessary to protect them during construction as required in AMC 18.4.5.030.

### ***Comments Received***

Subject to the mailing of a Notice of Complete Application (NOCA), property owners and residents from seven adjacent properties provided comments expressing concerns with the proposal, including:

- That the lot is undersized and over-built/covered and will be even more out of character with the neighborhood.**

In previous decisions, the Planning Commission has found that significantly under-sized lots within the district merited addition coverage on the basis that in setting a 20 percent coverage for a half-acre lot, 4,356 square feet was seen as a minimum coverage needed for typical development within the district.

In considering the request in terms of expanding an existing non-conforming development, staff believe that a 999 square foot detached ARU and associated parking in place of the existing barn amounts to a relatively minimal disturbance of the site that is in keeping with the rural residential character of the district.

- That the existing streets are sub-standard and pose a concern for fire access, particularly with increased traffic.**

The existing streets were improved under a publicly funded local improvement district. AMC 18.4.6.040.J provides that, "*Streets built or improved using a local improvement district (LID), or other public or grant funds may occur in areas constrained by the built environment or natural features, and as a result, are allowed exceptions to the street design standards.*" This section notes that in addition to typical considerations for an Exception, "*Street improvements constructed through a publicly-funded project shall be permitted to reduce the required curb-to-curb width required in section 18.4.6.040.G to preserve significant natural features, to accommodate existing structures and to ensure compatibility with the surrounding neighborhood.*" In staff's assessment, the standards were intended to ensure that development occurs on city streets adequately improved to provide vehicular and fire access, and in this instance the improvements were deemed sufficient through an LID-process. The roughly seven additional daily vehicle trips are unlikely to create a significant increase in traffic, and the Fire Department has indicated that adequate fire apparatus access can be provided from Alnutt Street. The application will be required to install an automatic sprinkler system as a condition of approval.

**That the slope survey is questionable.**

A slope survey was prepared and stamped by a Professional Land Survey to address the requirement that, “*all construction and land disturbance associated with the accessory residential unit shall occur on lands with less than 25 percent slope.*” The surveyor’s assessment was limited to the areas of proposed disturbance.

**That the square footage of the existing house is inaccurately presented.**

There is a difference in the square footage in county records and that noted in the application. A condition has been included below to require that scalable drawings of the existing house be provided with permit drawings to demonstrate that it has at least twice the gross habitable floor area of the ARU.

**That open space should be set aside for common use rather than in private decks.**

AMC 18.4.2.030.H.3 provides that, “Decks, patios, and similar areas are eligible for open space.” In staff’s view, individual deck space for the primary unit and accessory unit are an appropriate means of addressing the open space requirement, particularly in a setting where the sloped areas of the property are less suited to recreational use.

**That screening of the ARU is needed.**

The application describes the planting of new landscaped materials around the ARU; conditions have been included to require a plan of these plantings and that they be installed prior to occupancy.

**That the property could be rented.**

Any single family residentially zoned property can be rented, provided that no more than there may be no more than two rentable units on a property and rental periods may not be less than 30 days.

**That there will be construction impacts, including track-out from an un-paved driveway.**

Construction will be regulated like any other construction project in the city, and will be subject to standard limitations on track-out.

**That the angle of the driveway at Alnutt and its proximity to the adjacent drive pose concerns.**

The driveway is an existing condition that is not being physically altered, and in staff’s assessment the roughly seven additional daily vehicle trips are unlikely to have any substantial impact to driveways functioning. (*The anticipated trip counts for a multi-family residential unit are roughly 6.46 average daily trips according to the ITE Trip Generation Manual.*)

**That setbacks are not met.**

A condition has been included below to require that two areas which do not meet the rear yard setback along Alnutt Street be adjusted to comply with the setback and site-verified prior to the commencement of construction.

**That the application should not be handled as a Type I procedure, and that the non-conforming development allowance does not permit authorization to exceed lot coverage and should instead be a Type II Variance.**

AMC 18.1.4.010.C specifically speaks to non-conforming developments including “*sites that do not meet landscaped areas,*” while AMC 18.1.4.040.A notes non-conforming developments as including “*paved area, parking area, (and) landscaping.*” The non-

conforming development section is specifically focused on addressing site non-conformities including coverage, coverage and landscaping.

- **That parking is wedged into a narrow lot with difficult/hazardous maneuvering, and that the parking spaces are not accurately depicted and will encroach into the driveway.** A condition has been included to require that parking be installed as illustrated and that parked vehicles not encroach into the driveway. Installation will be site verified prior to occupancy.

### ***Decision***

For staff, the key issues with the request come down to a consideration of whether the proposal is merited in light of the site non-conformities: the frontage street's as they relate to street standards, the driveway's width, and lot coverage.

As discussed above, the street design was considered through an LID process and found to be appropriate to serve the neighborhood given the constraints of the surrounding environment (hillside lands, trees, etc.). The existing driveway, while narrower than a typical flag drive, functions in providing one-way circulation through the site from Nutley to Alnutt, and with the application parking is to be addressed to avoid having cars parked within the drive. The additional vehicle trips anticipated for an ARU are seven daily trips or less on average, and the Fire Department has indicated that they can serve the property from the adjacent streets without using the drive. Fire sprinklers will be required of the ARU. And widening the drive to current standards would provide little in terms of functional improvement while adding additional disturbance and coverage. In staff's assessment, the limited additional coverage proposed in replacing the existing barn with a detached ARU and adding additional parking will remain in keeping with the rural residential character of the neighborhood and have minimal additional impacts:

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### **The criteria for Site Review approval are described in AMC Chapter 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.

**The criteria for an Accessory Residential Unit are described in AMC Chapter 18.2.3.040, as follows:**

**A. R-1 Zone.** Accessory residential units in the R-1 zone shall meet the following requirements.

1. One accessory residential unit is allowed per lot, and the maximum number of dwelling units shall not exceed two per lot.
2. Accessory residential units are not subject to the density or minimum lot area requirements of the zone, except that accessory residential units shall be counted in the density of developments created under the Performance Standards Option in chapter 18.3.9.
3. The maximum gross habitable floor area (GHFA) of the accessory residential unit shall not exceed 50 percent of the GHFA of the primary residence on the lot, and shall not exceed 1,000 square feet GHFA.
4. The proposal shall conform to the overall maximum lot coverage and setback requirements of the underlying zone.
5. Additional parking shall be provided in conformance with the off-street parking provisions for single-family dwellings in section 18.4.3.040, except that parking spaces, turn-arounds, and driveways are exempt from the paving requirements in subsection 18.4.3.080.E.1.

**B. RR Zone.** In addition to the standards in subsection 18.2.3.040.A, accessory residential units in the RR zone shall meet the following requirements.

1. If the accessory residential unit is not part of the primary dwelling, all construction and land disturbance associated with the accessory residential unit shall occur on lands with less than 25 percent slope.
2. The lot on which the accessory residential unit is located shall have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters, and sidewalks.
3. No on-street parking credits shall be allowed for accessory residential units.
4. If located in the Wildfire zone, the accessory residential unit shall have a residential sprinkler system installed.

**C. R-2 and R-3 Zones.** Accessory residential units in the R-2 and R-3 zones shall meet the standards in subsection 18.2.3.040.A, except that the maximum gross habitable floor area (GHFA) of the accessory residential structure shall not exceed 50 percent of the GHFA of the primary residence on

*the lot, and shall not exceed 500 square feet GHFA.*

**The criteria for a Conditional Use Permit are described in AMC 18.5.4.050.A as follows:**

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.*
  - a. *WR and RR. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.*

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In staff's assessment, the application with the attached conditions complies with applicable ordinances and meets all required criteria.

Planning Action #2017-00978 is approved with the following conditions. Further, if any one or more of the following conditions are found to be invalid for any reason whatsoever, then Planning Action #2017-00978 is denied. The following are the conditions and they are attached to the approval:

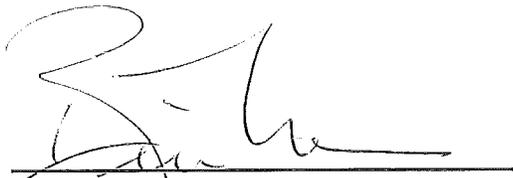
1. That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein, including but not limited to that there shall be no more than two units on the property, that parking shall be installed as depicted in the approved plans,

- and that the driveway shall be limited to the one-way circulation depicted and kept free of parked vehicles.
2. That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in substantial conformance with those approved as part of this application, an application to modify this Site Design Review and Conditional Use Permit approval shall be submitted and approved prior to issuance of a building permit.
  3. That prior to any demolition, the applicant shall obtain a demolition permit and any required associated inspections to allow verification that existing utilities serving the barn are properly dealt with during demolition.
  4. That the building permit submittals shall include:
    - a. A revised size- and species-specific landscaping and irrigation plan for the disturbed areas around the Accessory Residential Unit. This plan shall include irrigation details satisfying the requirements of the Site Design and Use Standards Water Conserving Landscaping Guidelines and Policies.
    - b. A revised Tree Protection Plan consistent with the standards described in 18.4.5 shall be submitted for review and approval of the Staff Advisor prior to the issuance of a building permit. The plan shall identify the location and placement of fencing around the drip lines of trees identified for preservation. 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. 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.
    - c. Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard A in the formula  $[(\text{Height} - 6) / (0.445 + \text{Slope}) = \text{Required Solar Setback}]$  and elevations or cross section drawings clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
    - d. Lot coverage calculations including all building footprints, driveways, parking, circulation areas, and other areas of coverage. Additional lot coverage shall be limited to no more than that approved herein (*including the increased building footprint with porch, decks and parking spaces*).
    - e. 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 (i.e., curb gutter at public street, public storm pipe or public drainage way) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.
    - f. The inverted u-racks shall be used for the bicycle parking. All bicycle parking shall be installed in accordance with placement, design, coverage and rack standards in 18.4.3.070.I and J prior to the issuance of the certificate of occupancy. The building

permit submittals shall verify that the bicycle parking spacing and coverage requirements are met in accordance with 18.4.3.070.I

- g. That exterior building materials and paint colors shall be compatible with the surrounding area, and sample exterior building colors shall be provided with the building permit submittals for review and approval of the Staff Advisor. Very bright or neon paint colors shall not be used in accordance with II-B-6a) of the Multi-Family Site Design and Use Standards.
  - h. The screening for the trash and recycling enclosure shall be identified in the building permit submittals and installed according to the approved plan, inspected and approved prior to the issuance of a certificate of occupancy. An opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure in accordance with 18.4.4.040.
  - i. Light fixture selection, placement, direction and shrouding shall be detailed in the building permit submittals. Fixtures shall be selected, placed, directed and if necessary shrouded to avoid direct illumination of adjacent properties.
  - j. Scale drawings of the existing house which demonstrate that its gross habitable floor area is at least twice that of the Accessory Residential Unit. The Accessory Residential Unit shall be no more than half the square footage of the main house, no more than 999 square feet, and basement of the Accessory Residential Unit shall not be heated or used as habitable space, and shall not contain a bathroom.
  - k. Elevation drawings showing all four sides of the Accessory Residential Unit and calculations demonstrating that the building as proposed, based on all four elevations, does not exceed the allowed height.
5. That prior to the issuance of a building permit:
- a. Tree protection fencing shall be installed according to the approved plan prior to any site work, or storage of materials, or permit issuance. A Tree Verification Inspection shall be requested and approved by the Ashland Planning Division prior to site work, tree removal, building demolition, and/or storage of materials. This inspection to verify the on-site identification of the trees to be removed and the installation of tree protection fencing for trees to be preserved on and adjacent to the site. The tree protection shall be chain link fencing six feet tall and installed in accordance with the requirements of AMC 18.4.5.030.
  - b. All necessary building permits and associated fees and charges, including but not limited to permits and service connection fees for the new underground electrical services; any applicable system development charges for water, sewer, storm water, parks, and transportation; and permits for the automatic fire sprinkler system shall be paid prior to the issuance of a building permit.
  - c. The building plans shall be adjusted to remove any intrusions into the required setbacks. The property line abutting Alnutt Street, the required setbacks, and the adjusted proposed building footprint shall be identified on the property, inspected and approved by the Staff Advisor.

6. That prior to the issuance of a certificate of occupancy:
- a. A separate underground electric service and meter for the Accessory Residential Unit shall be installed in accordance with Ashland Electric Department requirements, inspected and approved.
  - b. A separate address for the Accessory Residential Unit shall be applied for approved by the City of Ashland Engineering Division. Addressing shall meet the requirements of the Ashland Fire Department and be visible from the Public Right-of-Way, including addressing the Accessory Residential Unit from Alnutt Street.
  - c. The applicant shall screen recycle and refuse containers from adjacent properties and public right-of-ways.
  - d. All landscaping and irrigation in the new landscaped areas shall be installed according to the approved plan, inspected and approved prior to the issuance of a certificate of occupancy.
  - e. Requirements of the Ashland Fire Department shall be met, including that all addressing shall be approved prior to being installed, that fire apparatus access requirements shall be satisfied, that a residential fire sprinkler system shall be installed in the Accessory Residential Unit, and that a fuel break shall be provided, inspected and approved prior to bringing combustible materials onto the site.
  - f. Required bicycle parking shall be installed according to the approved plan, inspected and approved by the Staff Advisor.
  - g. All exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.



Bill Molnar, *Director*  
Department of Community Development

September 11, 2017

Date

Ashland Planning Department  
51 Winburn Way  
Ashland, OR  
97520

September 8, 2017

RE: PA-2017-00978 and Koenig Representation

Dear Ashland Planning Department;

This letter is to inform you that as of September 11, 2017 Greg and Allison Koenig are authorizing Deborah K. Vincent, Attorney at Law, to act as our authorized representative pertaining to planning action PA-2017-00978 and subject property 232 Nutley Street, Ashland Oregon.

Sincerely,

A handwritten signature in cursive script that reads "Allison Koenig". The signature is written in dark ink and is positioned above the typed name of the signatories.

Allison and Greg Koenig

162 Alnutt Street

Ashland, OR

541-499-4650

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SEP 08 2017  
City Of Ashland

232  
Nutley

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AUG 03 2017

City Of Ashland

Derek Severson <derek.severson@ashland.or.us>

AUG 03 11:03 AM

Re: Patrick Curtin

Mr. & Mrs. Curtin,

Thank you for your comments. I'll enter them into the record and we'll consider them in reaching a decision.

Just to verify, is the 942 Shevlin Drive in El Cerrito the best mailing address for you, for the purpose of mailing future notices? We'll mail you a copy of the decision and/or any public hearing notices for this action.

Thanks again,

- Derek

Derek Severson, *Senior Planner*  
City of Ashland, Department of Community Development  
51 Winburn Way, Ashland, OR 97520  
PH: (541) 552-2040 FAX: (541) 552-2050 TTY: 1-800-735-2900  
E-MAIL: derek.severson@ashland.or.us

*This e-mail transmission is the official business of the City of Ashland, and is subject to Oregon's public records laws for disclosure and retention. If you've received this e-mail in error, please contact me at (541) 552-2040. Thank you.*

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**From:** Patrick Curtin <patrickacurtin@yahoo.com>  
**Sent:** Thursday, August 3, 2017 3:27:22 PM  
**To:** Derek Severson  
**Subject:** nutley construction

Dear Sir:

WE are the owners of 220 Nutley where my wife's sister is the resident. We strongly oppose the addition of the additional unit at 232 Nutley because of the difficult access on that street, especially in winter, and adding more people would exacerbate this. Also it appears that the coverage of the lot would be excessive for that neighborhood.

Yours

Patrick and Sheila Curtin

Derek Severson  
Ashland Planning Dept.  
51 Winburn Way  
Ashland, OR 97520

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Re Proposed CUP @232 Nutley St., Ashland

Dear Mr. Severson:

I bought the property at 220 Nutley St 30 years ago. It is now owned by my sister and brother-in-law Patrick and Sheila Curtin, but I continue to reside in it. The area has always been very appealing to people, with the native trees and views, but street access and convenience have never been one of the pluses.

This area abuts the line of native 2nd and 3rd growth that extends down from upper Bear Ck., leading to the reservoir and Mt. Ashland on the left, and the forested slopes and ridge lines going to Talent on the right that burned in 1959. The resulting forest is much less fire-resistant than the original. The danger of human travel and activity in such a landscape is very great, especially in our now hotter and dryer climate.

The zoning here is RR.5, one residence on 1/2 acre. Ms. Henigson's lot, of .29 AC, is already overbuilt at 35% , exceeding the allowed coverage of 20%. To allow it to increase to 40% by allowing her to build the requested unit would be doubling the lot coverage. The concept of infill is a good one, but in resilient areas with easy access allowing for protection, i.e. fire trucks etc. Any increase in residences with the increased vehicular traffic increase the already high number of traffic-stopping accidents on these narrow, substandard, and, on upper Nutley, one-way traffic. Many winters here have left me and others stranded in our homes, unable to traverse the ice and snow. How terrible to die, incinerated, should a conflagration sweep down across the forest/city interface as happened in the Oakland Hills Fire.

The former Fire Chief of Ashland, Keith Woodley, said on multiple occasions that the Strawberry/Nutley area should never have been built on. He said, "It's not IF it burns. it's WHEN." He added that the environmental conditions in the Oakland Hills (which historically had three separate, very serious fires) are identical to our hillsides here.

There are many other issues of great concern regarding this proposed ARU. I request that you deny this application.

Sincerely,



Derek Severson, Planner  
Ashland Planning Department  
51 Winburn Way  
Ashland, OR 97520

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RE: PA-2017-00978     **232 Nutley Accessory Residential Unit Application**

Dear Mr. Severson;

I am writing to voice my concerns over this application. Putting a new Accessory Residential Unit on a property that is already substantially built out does not match the type of neighborhood planned for the Rural Residential zone. I am finding many areas where what is proposed does not conform to the relevant code sections, and therefore want you to consider these issues during your review. The notice describes this as an expansion of a non-conforming development. While the lot is non-conforming since it is smaller than the minimum lot size, it must be pointed out that contrary to the Applicant's claim that the excess lot coverage was not self-imposed, in fact it was self-imposed. When the Applicant bought 232 Nutley, it had a modest 1,083 square foot house on it that met the coverage standards. Subsequently, she chose to double the size of the house, taking its coverage to more than 15% over the allowed coverage. Now this application is asking for special permission to further exceed the coverage limit in order to build the maximum sized ARU allowed anywhere in the city.

In looking over the application, first of all, I am very concerned that this will not be reviewed by the Planning Commission. This application does not appear to qualify for your Type 1 review under Ashland Land Use Ordinance 18.5.4.030, since the proposed Accessory Residential Unit is a new structure, not an addition to an existing structure. The proposal clearly states the existing, decaying barn structure would be completely torn down. In addition, I looked at the variance standards and it appears that it should also be Type 2 variance, as the excess lot coverage proposed exceeds 10%, which is more what is allowed for a Type 1.

Second, in reviewing the criteria for approval, I have real concerns in relation to the Ashland Land Use Ordinance Section 18.5.4.050, that allowing construction of the proposed ARU will have a greater adverse impact to our neighborhood than keeping the property as it currently is developed. Key sections of concern include:

- 2. Facilities: No paved driveway access is proposed across the lot to replace what is essentially a dirt driveway. Increasing the number of vehicles using the exit driveway onto Alnutt Street will greatly increase the tracking of dirt and mud onto the road, especially during construction. No mention was made regarding how they will handle the storm drainage coming off of the ARU or the potential erosion due to its location in a 25 to 35% slope area. Note: It is especially concerning that in spite of the fact that steep slopes and loose granitic soils exist throughout the property, no geotech survey or engineering consult has been done regarding this proposed project.
- 3a. Similarity in coverage: the property already has a very large house and deck in relationship to the size of the lot. Adding a building that is three times the square feet of the existing barn, right near the Alnutt Street frontage, will be a substantial change to the bulk and visibility of buildings in this area. Also, the creation of a new, multi-windowed house, looming over the

edge of narrow Alnutt, will be an aesthetic detriment to the neighborhood. There will be no trees screening or buffering between the ARU and Alnutt as what is there will be removed during construction.

- 3b. Streets: Nutley Street is a sub-standard road and is barely 20 feet wide. It is one of the steepest street sections in Ashland and is extremely dangerous during icy weather. The two parking spaces proposed at an angle to the existing driveway will require the driver to back-up in a u-turn around a large tree, which will greatly increase the likelihood of accidents. The vision triangle from this driveway is completely blocked on the uphill side due to this tree.

Alnutt Street is a one-way road of sub-standard width. Although it is very narrow, it has relatively high traffic counts due to new subdivisions on Upper Strawberry. The applicant's driveway is nearly parallel to the road, making it difficult for drivers to see cars coming. Also, the ARU's apron at Alnutt merges with the neighboring property's apron. Both exits on to Alnutt are steep dirt surfaces, affording poor control of the vehicles as they approach Alnutt. Adding cars from a new ARU to this already constricted, dangerous road situation will greatly impact the existing residents.

The City decided in the early 2000s, when it was improving streets in the vicinity, that it would leave Alnutt and Nutley narrow and substandard for two main reasons: the physical devastation of the hillside that would be required to push these streets to "standard" would have been very costly; and the City recognized the neighbors' and community's wishes to spare as many significant trees as possible, and to honor the rustic and natural character of this neighborhood, which is a treasure and a gift to all of Ashland.

- 5a. Conformance with Zone standards: This property is already non-conforming in the RR .5 zone. At .29 acres it is substantially smaller than the required .5 acre minimum lot size. In addition, it already has substantially more lot coverage than is allowed in the zone. Numerous mathematical errors were noted in the application and drawings which made it difficult to calculate, but it appears that the current lot coverage is approximately 35%, which exceeds the allowed coverage of 20% by over 15%. Now the applicant is proposing to add an additional 558 square feet, which pushes the lot coverage to 40%, double the allowed coverage.

That amount of lot coverage is typical in urban zones, but not in Rural Residential zones. Such a high level of coverage is completely incompatible with the zone and the character of this neighborhood. Neighboring houses have coverages ranging from 9% to 20%, with the average being around 15%. Allowing one property to push to 40% coverage is completely unreasonable for this zone. While you are calling this property a "non-conforming development", the ordinance does not give you carte blanche to expand at will. Section 18.1.4.040 regarding Nonconforming Developments refers you back to the Conditional Use Permit section which says that you must be in conformance with the zone standards. In reviewing the potential conditions that can be imposed through a Conditional Use Permit, I do not see anything that allows authorization to exceed the lot coverage standards.

Therefore a variance is required which, while a request for one was included with the application, the notice does not say that it is being reviewed. From my reading of the variance section, since the increase in coverage is more than 10% over the zone standard, a Type 2

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variance is required in any case. Please be aware that any variance requested would be vigorously opposed by the neighborhood.

Site Design: The maps of the property were not drawn with care or accuracy. For instance there are no setback dimensions and the parking spaces are deceptively small because they were not drawn to scale. On careful inspection, I could see that the required parking areas will not meet requirements. The parking area closest to Alnutt encroaches on the driveway and is not 8 feet from the structure; one space is shown on top of a rock wall. The second ARU parking space is shown with a slope of 19.6% and also fails to have the required 8 foot buffer. The argument in support of its being released from the buffer requirement was not persuasive; it referenced Ms. Henigson's alleged, planned use of the building. This reasoning is sheer speculation. Good planning must be applied generally and for the long haul, not tied to the specific alleged use of the person asking for exceptions. Parking for the larger home is riddled with problems. The two parking spaces as drawn, encroach on the driveway and the City right-of-way. If moved forward to solve those issues, the space nearest the house fails to meet the 8 foot buffer. Also, the width of the parking and the driveway in the front yard exceeds the coverage limits for the front yard. As mentioned earlier, the exit from those parking spaces is a very dangerous maneuver, one made especially unsafe since Nutley Street is already a narrow, very steep, dangerous road. And finally, parking cars in that small front yard would be an eyesore, and would not honor the beautiful, natural aesthetics of the surrounding neighborhood.

There are many other issues which I have not raised here, however my main reason for opposing this application is that it is too much building on too small a lot. The submitted ARU is proposed at the absolute maximum size allowable under the code, plus a 400 foot daylight basement in which the Applicant was originally requesting a bathroom. It is too much building for the property. While I understand that the Applicant would like to rent out her house, I feel that it is inappropriate to increase the lot coverage on this parcel that is already substantially exceeding the lot coverage standard for the zone. Further intensifying the use and coverage on the property will be detrimental to our neighborhood. This ill-conceived project does not fit in the intended space--either physically, or in terms of safety, or in terms of its compatibility with its zoning and neighborhood. If built, it would be a serious detriment to the immediate neighbors and to the larger neighborhood as well. This is an RR-.5 neighborhood, and we wish to maintain its beautiful, natural, and rural character.

With all these concerns in mind, I ask the City to deny this Application. Thank you.



Patricia Zoline  
240 Nutley Street  
Ashland, Oregon

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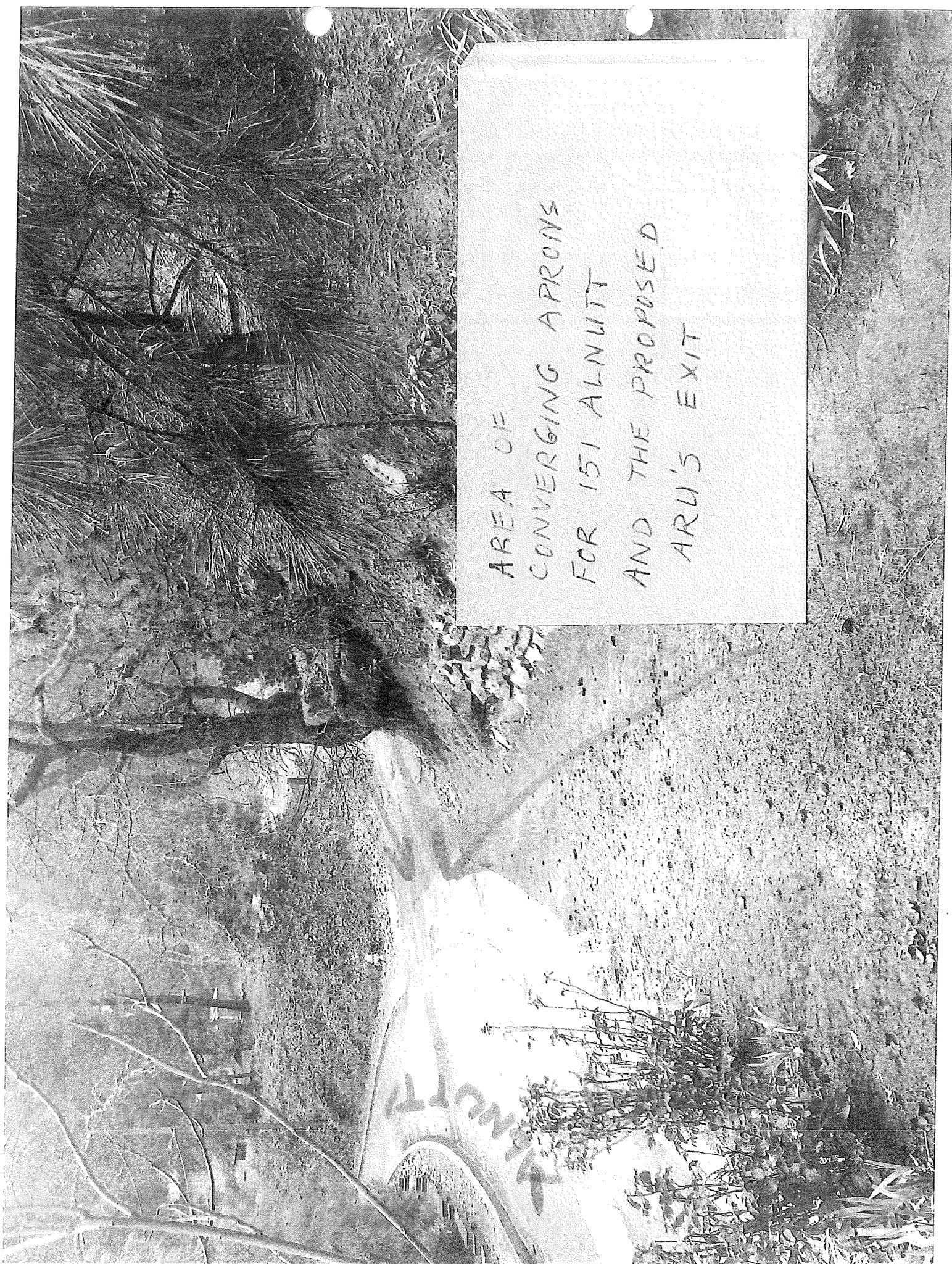
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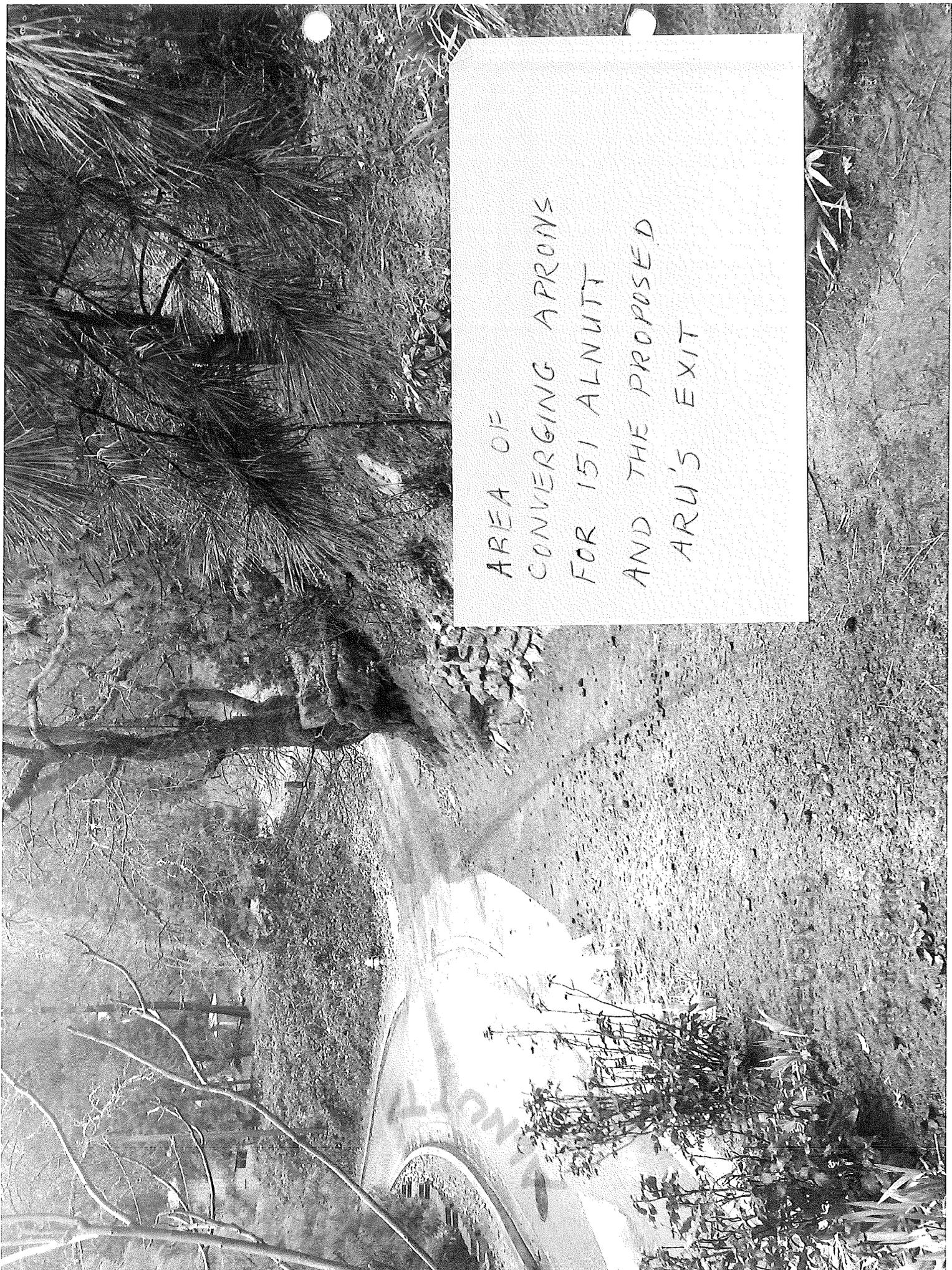


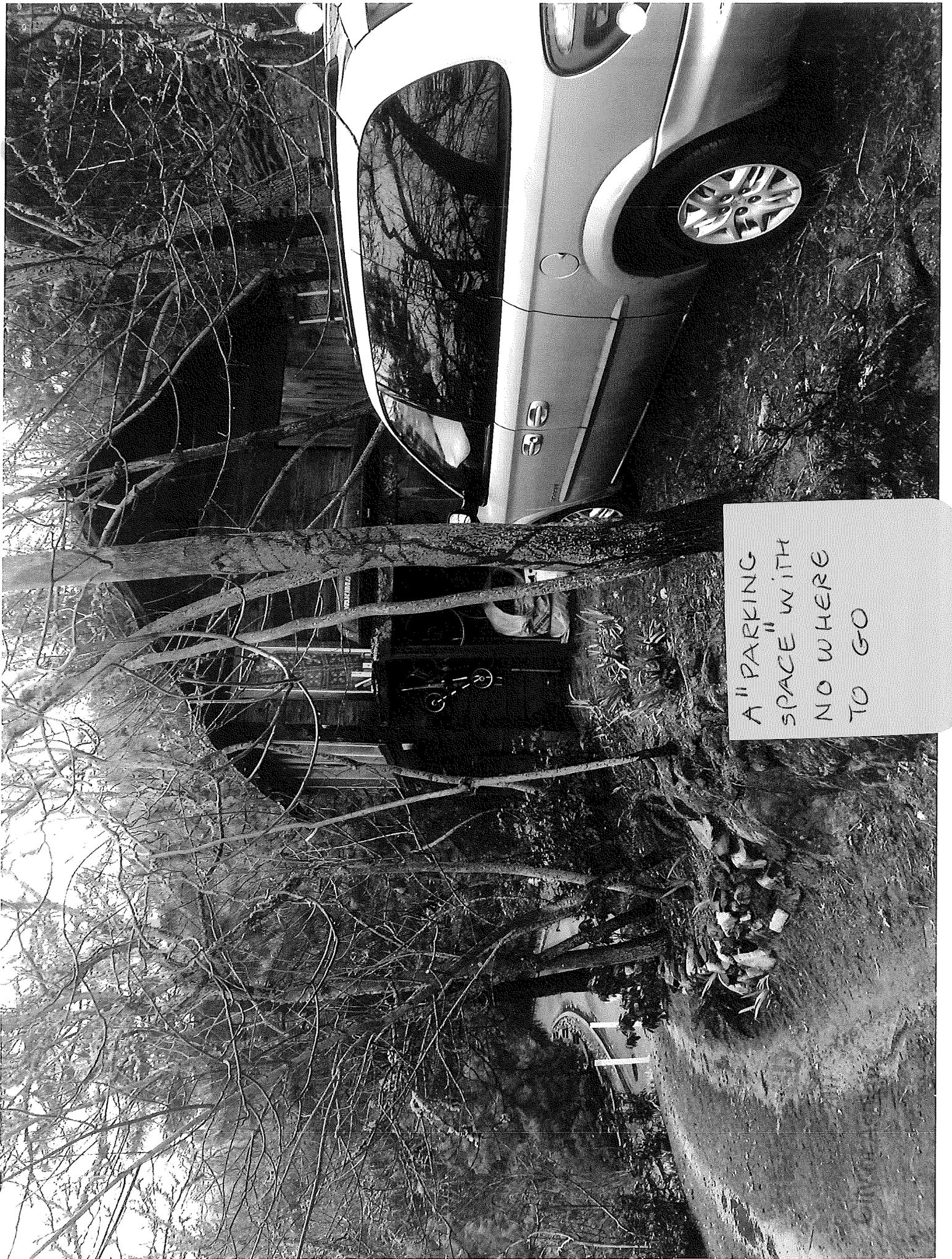
A "PARKING  
SPACE" WITH  
NO WHERE  
TO GO

AREA OF  
CONVERGING APRONS  
FOR 151 ALNUTY  
AND THE PROPOSED  
ARU'S EXIT

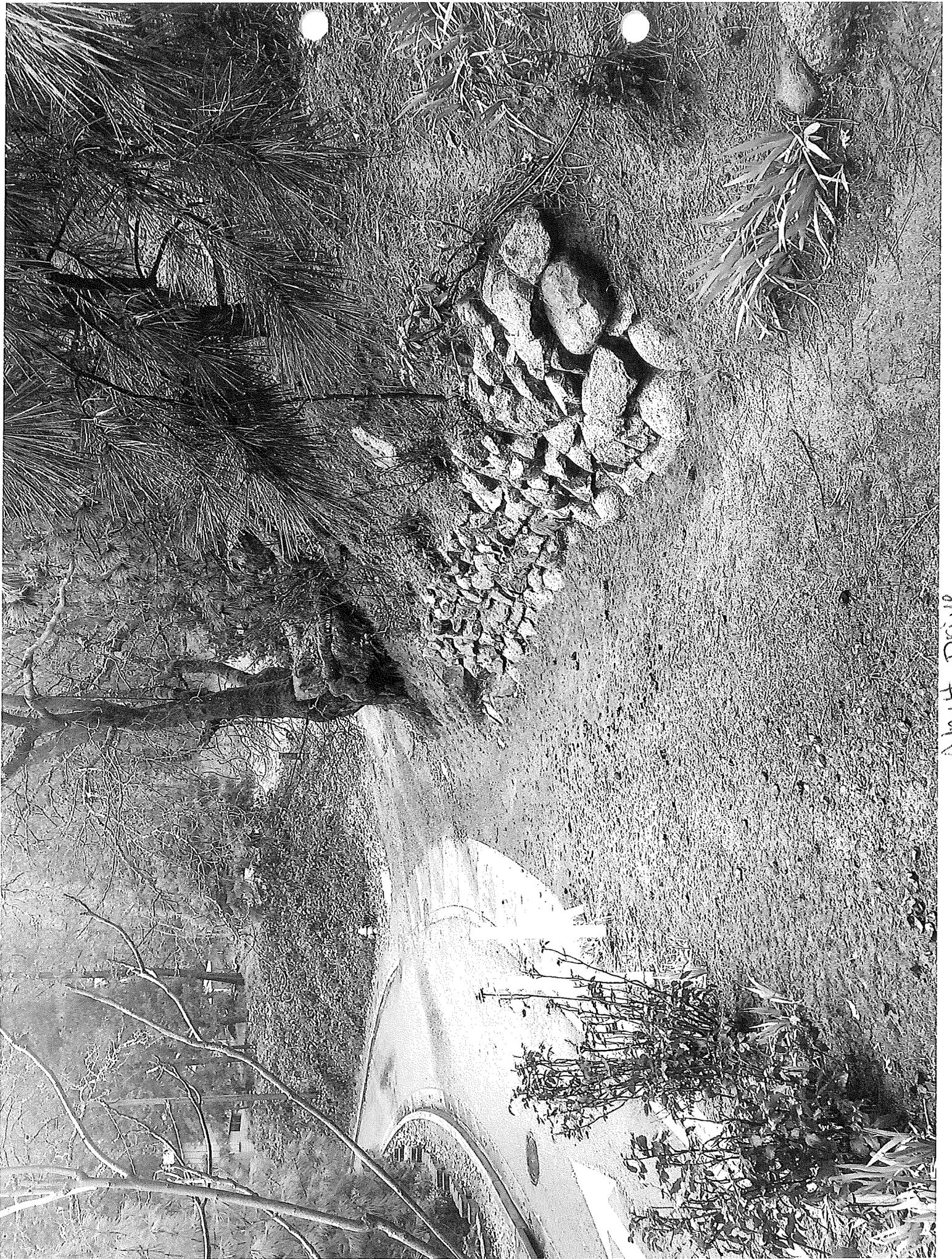


AREA OF  
CONVERGING APRONS  
FOR 151 ALNUTT  
AND THE PROPOSED  
ARU'S EXIT





A "PARKING  
SPACE" WITH  
NO WHERE  
TO GO



AmuH Drive



Driveway



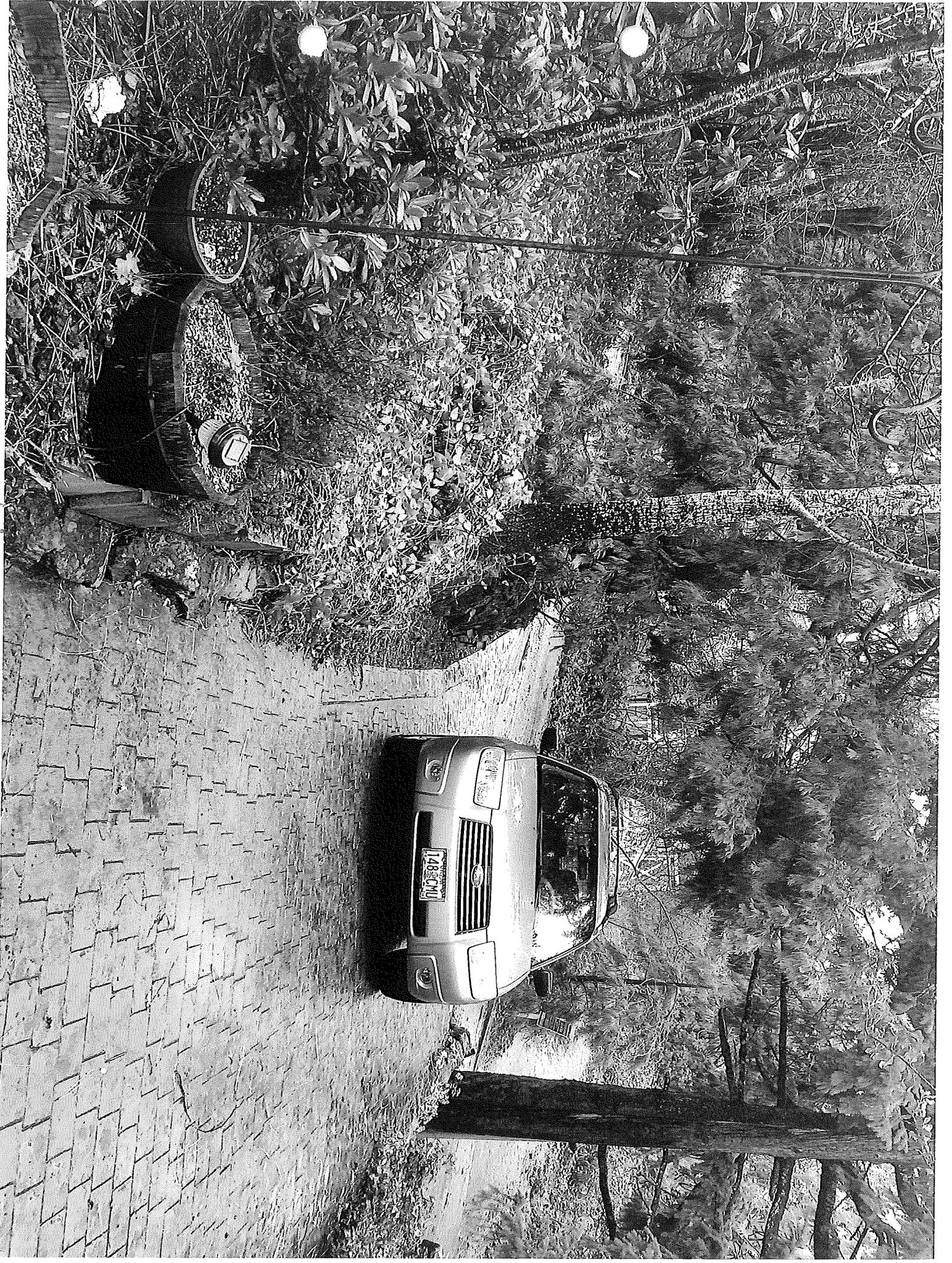
Barn



SFR Deck



Born Parkers/Drove out to Amvut



Stalled Parking in Driveway at Nutley



2017

To whom it may concern at the Ashland Planning  
Department,

Can you please keep me informed about  
activity and dates for construction or  
remodeling at 232 Nutley.

My dog and I rest downstairs and  
we would just like any advance notice of  
activity you may decide on as you know

at.

Best regards



Erinn Richards

(232 Nutley  
Ashland OR 97520)

415-786-2681 (preferred)

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City of Ashland

~~Wednesday~~  
Thursday, August 3, 2017

To:  
Ashland planning department  
51 Windburn Way  
Ashland, OR 97520

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AUG 03 2017  
City of Ashland

From:  
Robert and Esmey Gilbert  
130 Alnutt Street  
Ashland Oregon 97520

RE: zoning permit application: PA -2017-00978 for a Site Design Review for ARU and variance to lot coverage for the property located at 232 Nutley St.

Here are our comments as requested by your office from those adjacent or nearby properties that would be affected by this planning action. While we generally support any property owner's opportunity and right to improve that property, our opinion is that this requested action would be contrary to, or in violation of certain specific zoning and land-use guidelines applicable to this property. In addition, beyond specific infractions, there are more general aspects of the request that would seriously negatively impact our home and the neighborhood.

Specifically:

1- Re (18.2.5 .030.c) - Lot Coverage:

The current size of the applicant's lot, as well as the percentage of its structure coverage already exceeds, and is in variance with the lot's zoning designation of RR-.5. Approval of this request would only make that variance more egregious and out of sync with neighboring properties. Further, the one-way nature of the proposed driveway creates an access to a street (Alnutt), which does not meet the physical characteristics required by the above code citation.

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2- Re: 18.1.4.020; 18.1.4.030; and 18.1.4.040 -  
Nonconforming Use, Structures, and Developments.

The proposed non-conforming *use* of the property as an ARU, or rental, is not the same, or a more restricted use of the property under its current non-conforming designation as a "shed". The *structure* will be changed in size or shape from the original use as a barn or shed. Again, this is a different use from its current non-conforming designation. And finally, the proposed structure could create a rental business - an entirely different *purpose* of the property and certainly not just an enlargement or alteration of an existing structure.

Generally:

Currently, the shed structure on the property, while an eyesore, has a limited visual impact on the neighborhood because it is somewhat concealed by surrounding trees. However, the *necessary* removal of these trees to complete the proposed driveway would expose the unsightly bare basement walls of the new unit, as well as parked cars or trucks, to those who daily walk or drive by on Alnut Street, and to area residents passing on their way to their homes on Strawberry Lane. This certain disagreeable view will be prominently visible from the windows of the upstairs bedrooms and hallways of our home across the street, and, of course, from our exterior grounds and driveway.

Adding such a negative aspect to our property could only result in a reduction of its value, as well as the values of nearby residences of multiple homeowners who must daily drive by that location. Further, we also own the vacant lot adjacent to our own and fronting onto Alnut St. between us and the next lot at 162 Alnut St. The proposed structure would be highly visible to any new residence that might be built there and therefore suffer from the same distasteful view. The value of any such new home, as well as the lot itself, could also be reduced. Eventually, such reductions of value will be reflected in the loss of tax revenue to the city.

Yet another very real negative possibility is the potential use of this structure for two, possibly three rental units. The floor plan sketch with the application reveals two full and one half-bath for a structure of less than 1000 ft.<sup>2</sup> of living space. Despite the intended personal use of the property as described by the applicant, this overuse of the structure could potentially occur with a mere change of mind by the applicant, or intentionally occur by any new owner. In any case, such a use would be inconsistent with and disruptive to the character, nature, and the peaceful enjoyment of the neighborhood.

Additionally, during the tear down and construction phase of this proposal, we and our neighbors would experience multiple vehicle traffic disruptions as concrete pumper trucks, building supply boom-trucks, and other oversize vehicles attempt to navigate the narrow one-lane Alnutt Street, along with multiple parked trucks and cars from construction workers. Even the wider Nutley Street would experience serious negative traffic issues as well.

In summation, for these specific and general reasons, we strongly oppose the approval of this application as set forth. This does not mean that the owner is without other options. Perhaps a second-story could be added to the existing home; or, redesign the proposed structure to a smaller, more rectangular shape to better suit the shape of the property; or even, perhaps, an attached expansion of the existing home.

Respectively submitted,

*Ret Rex 8/3/17*  
*Esmy Gilbert 8-3-17*

Robert and Esmy Gilbert, owners,  
130 Alnutt Street

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AUG 03 2017

City of Ashland

Ashland Planning Department  
51 Winburn Way  
Ashland, OR  
97520

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August 3, 2017

RE: PA-2017-00978

Dear Ashland Planning Department;

This letter is in reply to your request for comment regarding the planning action: PA-2017-00978. Leah K Henigson of 232 Nutley Street (the property) has requested a site design review for the purposes of building a roughly 999-square foot auxiliary structure on the property. In physical size, the auxiliary structure will be 30'x25' with a maximum of three-story's including a daylight basement. Leah Henigson expressed to us that the auxiliary structure would in fact become her primary residence and the existing home on the property would revert to a rental. The auxiliary structure would be built on the site presently occupied by a roughly 15'x15' one-story shed (as defined by Jackson County).

As much as we appreciate Leah K Henigson, we are opposed to this development on the subject property. We are opposed to the development because we believe that the auxiliary structure as envisioned, will have a negative impact on the surrounding neighborhood. These impacts are in three critical areas.

#### **Character of Existing Neighborhood –**

The auxiliary structure as envisioned will be dissimilar in character and make-up then the existing neighborhood. If allowed to go forward, it will have a negative impact on the surrounding neighborhood. As such, the proposed structure is not in keeping with the Approval Criteria for a Conditional Use permit (18.5.4.050).

Our neighborhood and the surrounding hill is zoned RR-.5. The neighborhood is dominated by large lots, single family structures and open space. We are bordered by forest, oak woodlands and the Ashland watershed. Deer, rabbits, racoon, turkey, bear, quail and birds of prey are common visitors to our neighborhood. In one section of this neighborhood, the property owner is asking to have two residential structures placed on a lot that is considerably smaller then lots in the surrounding area and considerably smaller then zoning allows. Allowable lot coverage in our neighborhood is 20%, yet the property owner is requesting to build a new structure, which when taken together with the primary residence, will result in lot coverage that is between 35% to 40%. In no way is the proposed structure *similar in scale, bulk and coverage to the surrounding neighborhood.*

Given the size of the auxiliary structure, the resulting density of buildings on the property will also be dramatically out of character with areas north of the property on Nutley street. Also, out of character will be the 3 story auxiliary structures' placement within 20 feet of Alnutt street. As a result, this property will appear more in keeping with a small subdivided lot in a high-density area or with multi-family zoning. It will not be consistent with the neighborhood or current RR-.5 or other surrounding zoning.

Further, a dirt driveway will bridge the property and intersect both Nutley and Alnutt streets. Neither residence will have a garage but parking will be provided for four cars and will be visible from

both Nutley and Alnutt streets. As of this time, cars parking on the property appear to take up major portions of the vacant yard and dirt driveway. None of the driveway system, except for the apron on Nutley is paved or maintained. As the property owner looks to build a rental business, the volume of cars that will be present at any given time will be out of character for the neighborhood but more importantly, will present ongoing safety issues.

Specifically, Nutley and Alnutt streets are both narrow and ingress and egress will be challenging for all, particularly given the need for parked cars to maneuver to exit their dirt driveways. It is important to know that Alnutt street is one-way and an often-used route for traffic and for pedestrians traveling to and from Strawberry lane and the hill above. In the plans, the driveway down to Alnutt street appears to be less than the required 12' wide and does not comply with Ashland Land Use code (18.92.070.B.1). Further, the angle of the driveway in relation to Alnutt Street appears to present a safety hazard to drivers coming up the hill, particularly as they approach the driveway. It does not appear to conform with standards that Ashland requires for traffic safety.

**Slope and Erosion Control –**

The hill on which our neighborhood is built is fragile. Our property and the subject property sits on Shefflein loam with a slope of between 20-35%. The property above ours and above the subject property include Tallowbox gravelly sandy loam with slopes of 30%-70%. The auxiliary structure is located on a 25% slope while the land adjacent the building site encompasses the steepest parts of the subject property. The proposed structure also abuts one of the steepest areas of the property directly behind it. Given the footprint of the proposed structure will be almost three times the size of the existing shed, it's hard to understand how additional land will not be disturbed or surrounding slope and soils negatively impacted both during construction and after.

The city of Ashland and homeowners have already put protections in place to ensure Alnutt street and surrounding properties are not impacted by erosion. For example, the development area sits above a concrete retaining wall abutting Alnutt Street; large boulders and trees reside on one side of the development site that clearly work to hold the hill in place; and the property directly behind the subject property has a tall rock retaining wall abutting the proposed development area. Yet the proposed plan does not acknowledge or take into consideration the potential for erosion, impacts to soils or provide an approach for sediment control. Further, given the steep dirt driveway, drainage for ongoing water, gravel and rock sloughing off the driveway to Alnutt street and its sidewalks is also of concern. We already experience issues with this for properties with gravel driveways on the uphill side of Alnutt.

**Proper Land Use and Current Zoning –**

As described, the auxiliary structure envisioned for this property appears outside the bounds of current zoning for our neighborhood and land use guidelines. If building of the auxiliary structure is allowed, it has great potential for becoming a precedent setting event and thereby creating unintended planning consequences for our neighborhood.

It is important to note that the auxiliary structure requires the approval of several variances. In reviewing the materials provided for this Type 1 development, much information was missing. From the information provided, the following zoning and land use guidelines are at issue:

- a. Lot Coverage - Zoning for our neighborhood is RR-.5 with downtown overlay. It has a designated minimum lot size is ½ acre with lot coverage of no more than 20% (18.2.5.030.c). At present, the property in question is .29 acres and does not comply with RR-.5 zoning. Although categorized as an auxiliary structure, the proposed development is really envisioned as a second residence according to the property owner. It's scale and features bear out this designation. Whether it's called a second residence or an auxiliary structure designed to house people, the proposed development involves 35% to 40% lot coverage and does not meet current RR-.5 zoning guidelines. Exceeding maximum lot coverage by over 15% appears at odds with a Conditional Use permit.
- b. Street Access - Additionally, for an RR zone, accessory residential units must meet specific criteria beyond scope and size. Specifically, the lot on which the accessory residential unit is located must have access to an improved city street, paved to a minimum of 20 feet in width, with curbs, gutters, and sidewalks. The subject property does not meet this criterion. As pointed out earlier, streets abutting the property are narrow and Alnutt street is one way and supports considerable car and pedestrian traffic. Nutley is a dead-end street which can experience off-street parking as events occur in Lithia park. With narrow streets and then the property's own parking accommodation either on or adjacent to the dirt driveway, it's hard to understand how emergency vehicles will consistently have good access to the property and its two structures (residence and rental).
- c. Setbacks – From drawings available to us at the time of review, the proposed structure sits close to all associated property lines with its back facing the street. It's unclear from drawings, but the setback requirements appear to be narrowly met in all cases but one. The back of the structure with daylight basement appears to be a 2.5-3 story's tall. As such, the back of the structure with no deck should sit 25'-30' from Alnutt street. In one corner, it appears the structure falls short of setback requirements by 5' or 10'. This point is made to emphasize that the structure with a deck will sit very close to the street, close to the second structure on the property, and consumes almost the entire width of the property.
- d. Nonconforming use - The property in question has already received a nonconforming use designation due to its origins. The intent behind Nonconforming use was to allow structures to be grandfathered in when they were present prior to the establishment of current zoning. The intent behind Nonconforming use was to permit "nonconformities" to continue until they are removed, but not to encourage their perpetuation. As such, properties that are governed by nonconforming use are subject to important nonconforming use guidelines. The new auxiliary structure as described does not comply with these guidelines.
  - i. 18.1.4.020 Nonconforming Use - Land Use Ordinance 18.1.4.020 states that a change in nonconforming use may be changed to another nonconforming use of the same or a more restricted nature. The proposed auxiliary building on the property will be a replacement for a building described as a "shed" by Jackson County and a "barn" by the property owner. Given the original use of a shed was to house equipment or livestock, an auxiliary structure which forms the

basis of a primary residence or rental business is not another nonconforming use of the same or a more restricted nature.

- ii. 18.1.4.030 Nonconforming Structures – Land Use Ordinance 18.1.4.030 regulates alterations of existing nonconforming structures. The building of the auxiliary structures will be achieved by destroying an existing shed and replacing it with a larger building of different use. According to 18.1.4.030, the reconstruction of garages and sheds is allowed if the use is not changed and the structure is not changed in size or shape. If the structure in question is a building, the structure must not change in size or shape (i.e., three-dimensional building envelope). The proposed development does not meet this criterion.
- iii. 18.1.4.040 Nonconforming Developments – Land Use Ordinance 18.1.4.040 states that the nonconforming development may be continued, maintained, enlarged or altered subject to various approvals. Historically and in accordance with the nonconforming designation, the intent behind this ordinance was to convey that a structure on a nonconforming property may be enlarged subject city approval. Destruction of a shed on the property and the subsequent building of a new larger structure which serves to house people and support a rental business does not constitute enlargement or alteration of an existing structure. Rather it is an entirely new structure with an entirely new purpose. This seems outside the scope of both the Nonconforming Development ordinance and Conditional Use permits.

Given RR-.5 zoning requirements for our neighborhood and the questionable compliance of the auxiliary structure with Nonconforming Use guidelines, we believe it is inappropriate to allow this development to move forward. To do so would allow one landowner to operate outside the bounds of reasonable land use and zoning practices. As much as we appreciate our neighbor, the long-term negative implications of what is being proposed has caused us to speak up.

Please know that we envision ongoing development in our neighborhood. It is a neighborhood in transition. We only request that the city of Ashland work with the neighborhood to ensure that future development is uniform and occurs in well thought out and reasonable manor. This neighborhood is unique its proximity to Ashland and to the open space and woodlands surrounding Ashland. Allowing the area to evolve as a pragmatic urban/forest interface will benefit everyone in the long-run.

Sincerely,



Allison and Greg Koenig

162 Alnutt Street  
Ashland, OR  
97520

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AUG 03 2017  
City of Ashland

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AUG 03 2017  
City of Ashland

August 2, 2017

To the Ashland Planning Department re: the conditional use permit application for 232 Alnutt Street

I am the owner of the property at 151 Alnutt Street adjoining the property of Leah Henigson

I am unclear whether she intends to use the driveway access to 151 Alnutt as it intersects with my land and I am not comfortable with increased traffic and dust. I am enclosing a copy of a survey done in 2006 by Polaris which shows my corner of the property by the driveway. Please take note. It also appears that one additional parking place will be in the driveway of the 232 Nutley property. If that is the case how will a fire truck pass through? Can a fire truck even get to this additional structure? There are some very old trees and rock formations at the foot of the driveway. If she cuts out a new driveway they would surely be affected.

The open space issue. She is proposing to use her decks as open space. Is this allowable? She does not meet the open space criteria without the decks.

The property is nonconforming. It will have negative impacts on my property by the fire danger imposed by the lack of access for fire vehicles, by more traffic and dust on my driveway and the visual disruption of a 3 story building. The footprint that will be taken up by the house and the proposed building is too large for the lot given current zoning. Please reject this application. Please follow the guidelines of the City of Ashland.

Patricia Haley

Ensenada, Baja California, Mexico

619 713 7168, patibaja@hotmail.com

Rod & Linda Farmer  
196 Nutley St.  
Ashland, OR  
Date: August 2nd, 2017

RECEIVED  
AUG 02 2017  
City of Ashland

Written Comments in response to City of Ashland, Planning Action: PA-2017- 00978 and the request for a Conditional Use Permit, of property owned by Leah K. Henigson, 232 Nutley St.

1. Street Standards: The width of Nutley St. (19 feet) and Alnutt St., (13 feet) intersecting with the applicant's lot are nonconforming. We take exception to Item #4 under Variance to Street . At the time of the 2004 LID project ( of which we were participants ) the consensus of the area residents was to reduce the impact of traffic (vehicle and pedestrian) throughout the entire LID area. This was not imposed by the City (as implied) rather, the intention was to keep the area streets more rural and consistent with a quieter hillside zone. The LID was a comprehensive process that was well organized and allowed for property owners input and clarifications of how and why decisions were made. This even included group "walk-about" around the entire neighborhood with the City engineer, Mr. Olsen (retired) answering questions and taking suggestions. There was mutual agreement with the affected property owners and the City that the large trees on upper Nutley St. should not be cut down to complete the sidewalks to the top of Nutley St. Our recollection is that the applicant participated with this process.

The proposed 4 parking spaces appear to be wedged into areas of the narrow lot. The difficult maneuvering to back out onto Nutley St. would be hazardous, especially in the winter. Nutley St. above the intersection with Alnutt St. has been a yearly winter hazard since being paved in 2004. The residence at 232 Nutley and adjacent properties use care and caution most of the time, however, increasing the traffic with multiple residents will invite inevitable mishaps placing pedestrians and vehicles below at risk ( It happens every year as uncontrolled vehicles slide down the ice/slush, horn sounding to warn the innocent below).

The Site Review Request (SRR) document dated May 24, 2017 under Item E. explains that the impact of the automobiles parked adjacent to the ARU will be limited because the owner will be parking the vehicles—will this be in perpetuity?

2. Slope of the proposed ARU: The surveyor map accompanying the SSR purports a value of 24.6% for the ARU building envelope, while the City slope map for the same area finds the slope over 25%. With a critical 0.3% (24.9%-24.6%) affecting the hillside standard of less than 25%, one would want to verify the true slope of the ARU foundation with multiple slope readings onsite, rather than a surveyor's map with an arrow pointing to a tentative line of 24.6% slope.

3. Site Design Review Criteria - Item H. - Open Space - by definition from the Ashland Land Use Ordinance, the 1,010 sq. ft. of open space should be a common area and should be **permanently** set aside for **common use** by the residents of the development...also open space is defined as landscaped, such as shrubs or bark mulch or natural vegetation . It does not appear that the existing private deck at 232 Nutley and the proposed private deck of the ARU meet this criteria.

4. Maximum Lot Coverage in RR.5 Zone; The majority of residents in this zone have chosen to reside some distance from the high density zones in the city core. While at the front desk of the City Planning Office we asked staff for information that would show the number of RR

Rod & Linda Farmer  
196 Nutley St.  
Ashland, OR  
Date: August 2nd, 2017

properties that include an ARU and were told that this information was not able to be found with the computer system...however, in her long-term position, she had seen very few ARUs.

The aesthetics of large conifers and less surface area coverage per lot shift the priority to keep a natural terrain as a transition to the city's forest land. Few if any want to "shoehorn in" another residence structure on their property. We are opposed to any decision by the planning staff that will override the RR zone limit of 20% lot coverage. The application exceeds the standard and there do not appear to be any special circumstances identified by the applicant to warrant this.

The existing habitable barn structure, described in the application, has a long history. As with every aging barn it has a finite life and should be torn down when it's lifespan ends. The barn area could return to nature or a garden, the result then would be that the lot will be closer to meeting the 20% coverage for a .29 acre lot.

Additionally, the Jackson County Assessor staff completed an Apex drawing of the square footage of the residence, in 2003 determining a total of 1980 sq.ft.. The attached drawing is precise and consistent and verified by a certified assessor. The applicant's builder defines the value as 2,035 sq.ft. Although this is a small difference, the need for an accurate measurement should be independently verified.

Signed: *M.L. Farmer*  
*R. Farmer*

RECEIVED  
AUG 02 2017  
City of Ashland

RECEIVED

AUG 02 2017

City of Ashland

# SKETCH/AREA TABLE ADDENDUM

Parcel No 03-19-03 JH

File No 1-005960-5

Property Address 232 NUTLEY ST

City County YES State Zip

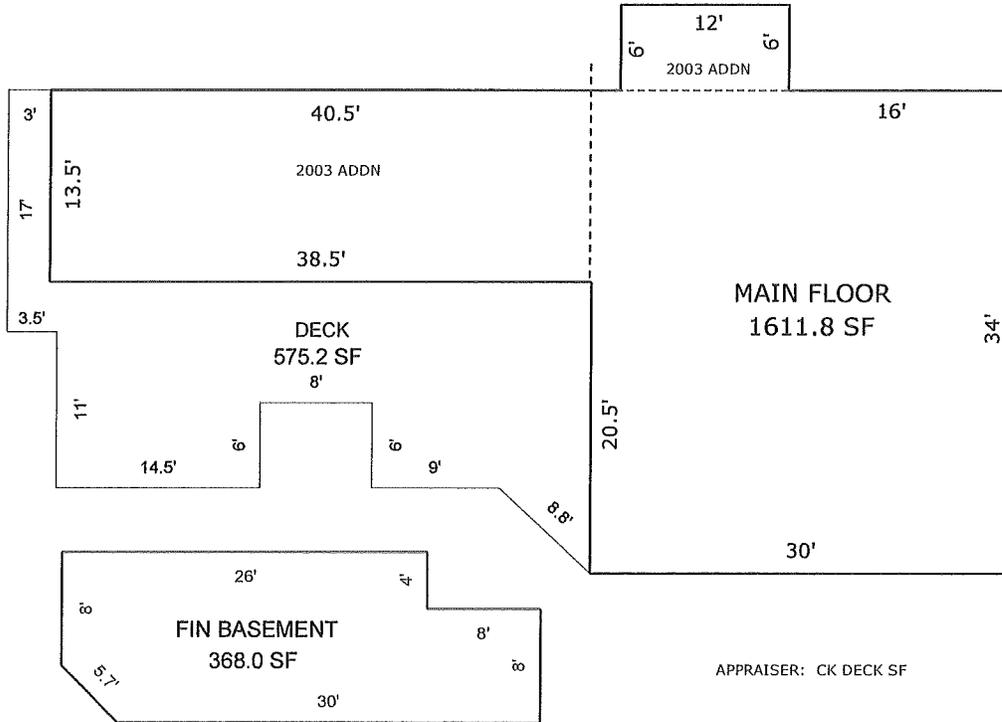
Owner ADDITIONS

Client 391E08AC-800 Client Address RE-DRAWN 4/4/03 AMW

Appraiser Name 2 CODE 5-01

SUBJECT

IMPROVEMENTS SKETCH



APPRAISER: CK DECK SF

Sketch by Apex Sketch v5 Pro™

Comments:

Scale: 1" = 20'

AREA CALCULATIONS

## AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
1FLR	MAIN FLOOR	1.00	1611.75	217.0	1611.75
FBSMNT	FIN BASEMENT	1.00	368.00	89.7	368.00
PORCH	DECK	1.00	575.25	159.3	575.25

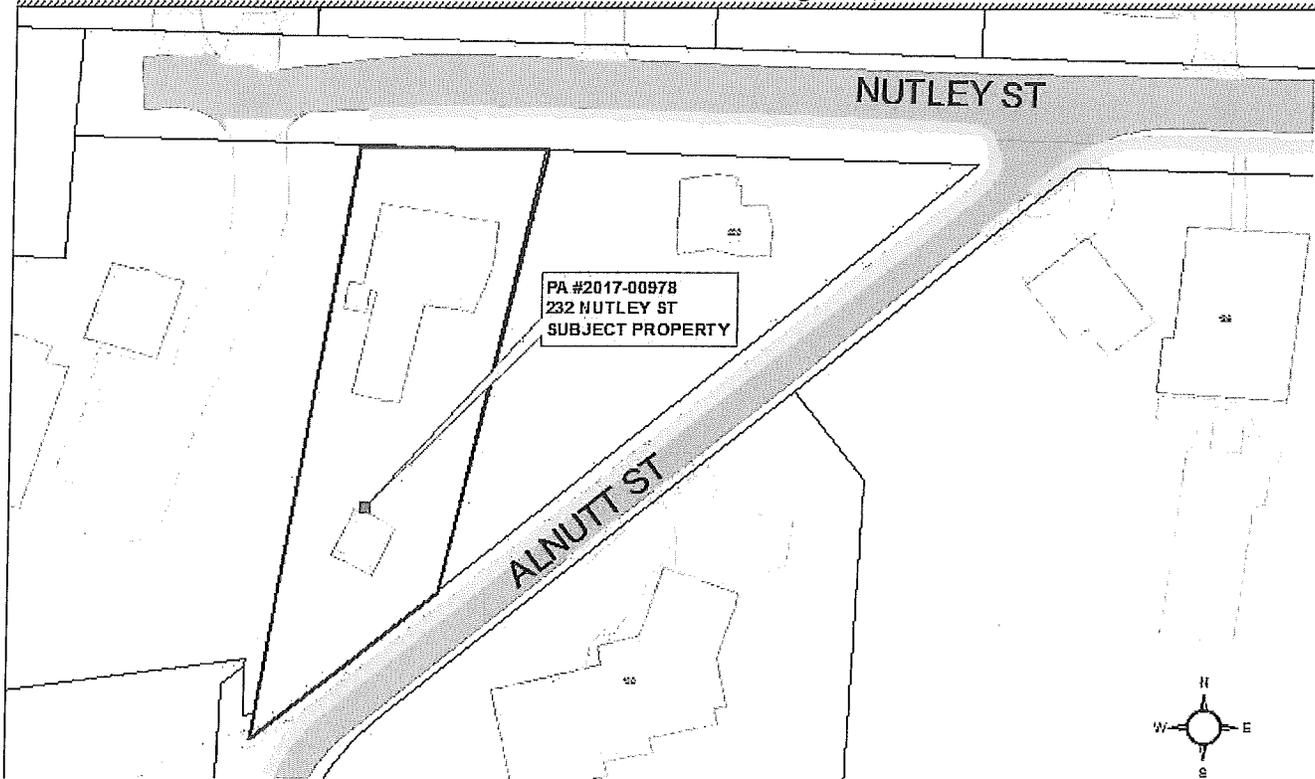



**CORRECTED NOTICE OF APPLICATION**

**PLANNING ACTION:** PA-2017-00978  
**SUBJECT PROPERTY:** 232 Nutley Street  
**OWNER/APPLICANT:** Leah K. Henigson Trust (Leah K. Henigson, *trustee*)  
**DESCRIPTION:** A request for a Site Design Review to construct an approximately 999 square foot Accessory Residential Unit for the property located at 232 Nutley Street. The application also includes a request for a Conditional Use Permit to allow the expansion of an existing non-conforming development.  
**COMPREHENSIVE PLAN DESIGNATION:** Rural Residential; **ZONING:** RR-.5; **ASSESSOR'S MAP #:** 391E08AD;  
**TAX LOT:** 8000

**NOTICE CORRECTED TO INCLUDE ACCESSORY RESIDENTIAL CRITERIA FOR RR-ZONES**

**NOTICE OF COMPLETE APPLICATION:** July 20, 2017  
**DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS:** August 3, 2017



The Ashland Planning Division Staff has received a complete application for the property noted above.

Any affected property owner or resident has a right to submit written comments to the City of Ashland Planning Division, 51 Winburn Way, Ashland, Oregon 97520 prior to 4:30 p.m. on the deadline date shown above.

Ashland Planning Division Staff determine if a Land Use application is complete within 30 days of submittal. Upon determination of completeness, a notice is sent to surrounding properties within 200 feet of the property submitting application which allows for a 14 day comment period. After the comment period and not more than 45 days from the application being deemed complete, the Planning Division Staff shall make a final decision on the application. A notice of decision is mailed to the same properties within 5 days of decision. An appeal to the Planning Commission of the Planning Division Staff's decision must be made in writing to the Ashland Planning Division within 12 days from the date of the mailing of final decision. (AMC 18.5.1.050.G)

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Department to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

If you have questions or comments concerning this request, please feel free to contact the Ashland Planning Division at 541-488-5305.

## SITE DESIGN AND USE STANDARDS

### 18.5.2.050

The following criteria shall be used to approve or deny an application:

- 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.

## CONDITIONAL USE PERMITS

### 18.5.4.050.A

A Conditional Use 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.

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.
  - a. WR and RR. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - b. R-1. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - c. R-2 and R-3. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - d. C-1. The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.
  - e. C-1-D. The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 1.00 gross floor to area ratio, complying with all ordinance requirements.
  - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.
  - g. M-1. The general light industrial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, complying with all ordinance requirements.
  - h. CM-C1. The general light industrial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.50 gross floor to area ratio, complying with all ordinance requirements.
  - i. CM-OE and CM-MU. The general office uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area, complying with all ordinance requirements.
  - k. CM-NC. The retail commercial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area ratio, complying



## NOTICE OF APPLICATION

**PLANNING ACTION:** PA-2017-00978

**SUBJECT PROPERTY:** 232 Nutley Street

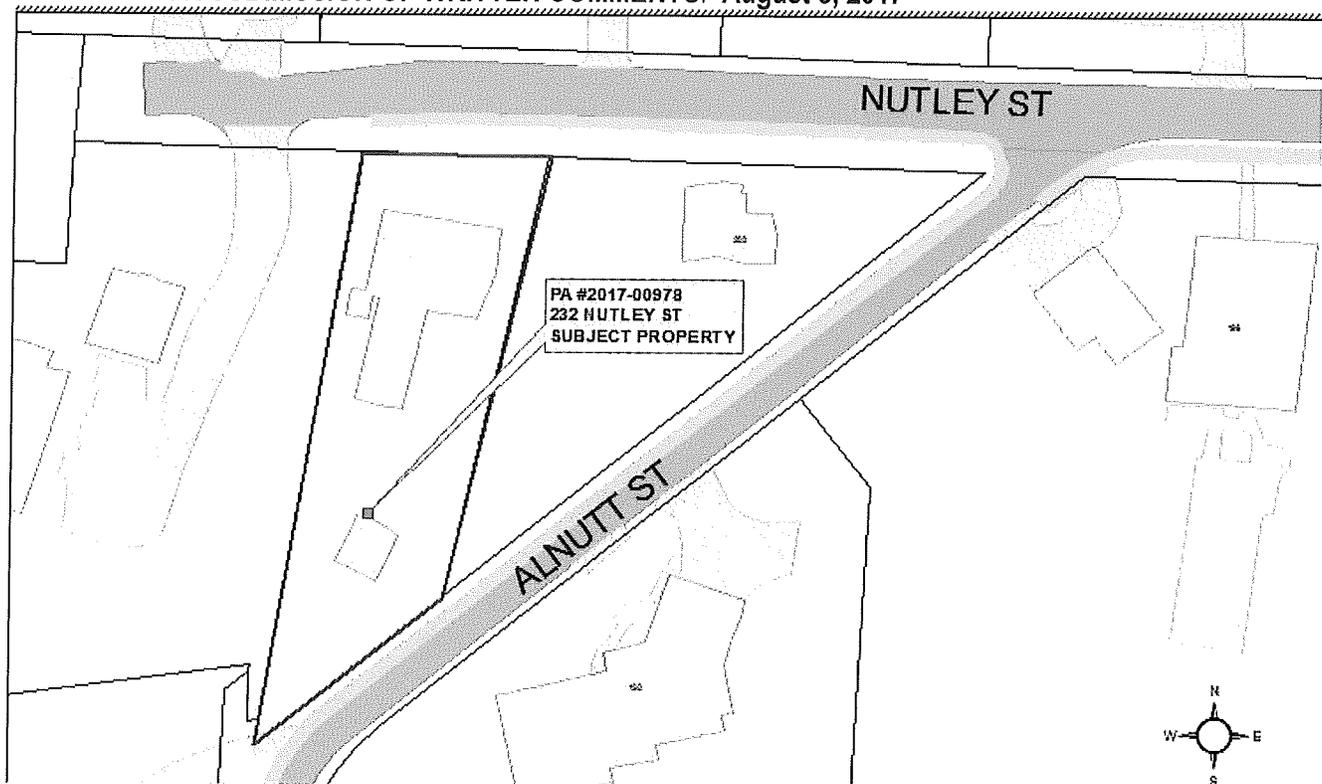
**OWNER/APPLICANT:** Leah K. Henigson Trust (Leah K. Henigson, *trustee*)

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**COMPREHENSIVE PLAN DESIGNATION:** Rural Residential; **ZONING:** RR-.5; **ASSESSOR'S MAP #:** 391E08AD; **TAX LOT:** 8000

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A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Division, Community Development & Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520.

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- 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.
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## CONDITIONAL USE PERMITS

### 18.5.4.050.A

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  - 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.
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  - g. M-1. The general light industrial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, complying with all ordinance requirements.
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  - k. CM-NC. The retail commercial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area ratio, complying

with all ordinance requirements.

- I. HC, NM, and SOU. The permitted uses listed in chapters 18.3.3 Health Care Services, 18.3.5 North Mountain Neighborhood, and 18.3.6 Southern Oregon University District, respectively, complying with all ordinance requirements.

## **ACCESSORY RESIDENTIAL UNITS**

### **18.2.3.040**

Where accessory residential units are allowed, they are subject to Site Design Review under chapter 18.5.2, and shall meet all of the following requirements.

- A. R-1 Zone. Accessory residential units in the R-1 zone shall meet the following requirements.
  1. One accessory residential unit is allowed per lot, and the maximum number of dwelling units shall not exceed two per lot.
  2. Accessory residential units are not subject to the density or minimum lot area requirements of the zone, except that accessory residential units shall be counted in the density of developments created under the Performance Standards Option in chapter 18.3.9.
  3. The maximum gross habitable floor area (GHFA) of the accessory residential unit shall not exceed 50 percent of the GHFA of the primary residence on the lot, and shall not exceed 1,000 square feet GHFA.
  4. The proposal shall conform to the overall maximum lot coverage and setback requirements of the underlying zone.
  5. Additional parking shall be provided in conformance with the off-street parking provisions for single-family dwellings in section 18.4.3.040, except that parking spaces, turn-arounds, and driveways are exempt from the paving requirements in subsection 18.4.3.080.E.1.

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June 29, 2017

## Additional information to support request for ARU at 232 Nutley Street

**Sidewalks:** When the City improved Nutley and Alnutt Streets approximately 10 years ago, a sidewalk was installed to just below (south) of my driveway at 232 Nutley St. This situation was not self-imposed, but a decision made by the City. The reality of Nutley St. is that other people do not walk above Alnutt on Nutley. I walk to and from work (Old Ashland Armory) from my house every day. I am the only person who ever walks on Nutley above Alnutt.

Also, regarding sidewalks, a mistake was made in my May 24, 2017 application. There is actually a sidewalk all along Alnutt Street starting at the intersection of Alnutt and Nutley, continuing along Strawberry all the way to Hitt Road.

**Electricity:** I spoke with Dave Tygerson who said it will be possible to bring underground electricity to the transformer on Alnutt St. to the ARU. Both meters (for 232 Nutley and the ARU) would be located together on the ARU.

**Landscaping:** As proposed, there will be very minimal area of land disturbance. Where there will be disturbance on the uphill side. I would like to plant three 10.25 gallon upright Japanese Maples. In any minimally disturbed areas on all four sides, close to the ARU, I would like to plant four 3 gallon wintergreen boxwood and four 3 gallons Japanese Holly.

**Purpose of ARU and benefit to City:** The house at 232 Nutley is a large, four-bedroom, three-bath house. As a single person, with grown children, a smaller space would work much better. I would like to downsize to the much smaller ARU and rent 232 Nutley house to a larger family. As an aside, I will also allow dogs in the rental! Since Ashland has a very serious shortage of affordable family housing, this infill would greatly benefit the

City.

Benefit to the property and the neighborhood: The old barn where the ARU would be situated is beginning to rot and is falling apart. It is becoming an eyesore. The building is to be removed in such a way that the wood will be reclaimed; it would be reused in the ARU. The new building would be sided with cedar that will match the existing house at 232 Nutley.

Proposed ARU size: Don Sever has measured the square footage of 232 Nutley; it is 2035 square feet. The ARU is proposed to be 999 square feet.

Parking: Don Sever was able to locate two parking spaces off the driveway, in front of the house. The other two parking spaces will include the existing space in front of the barn and one new space just adjacent to the barn.

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**STEPHAN BAROTT LAND SURVEYING**

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*Stephan Barott*

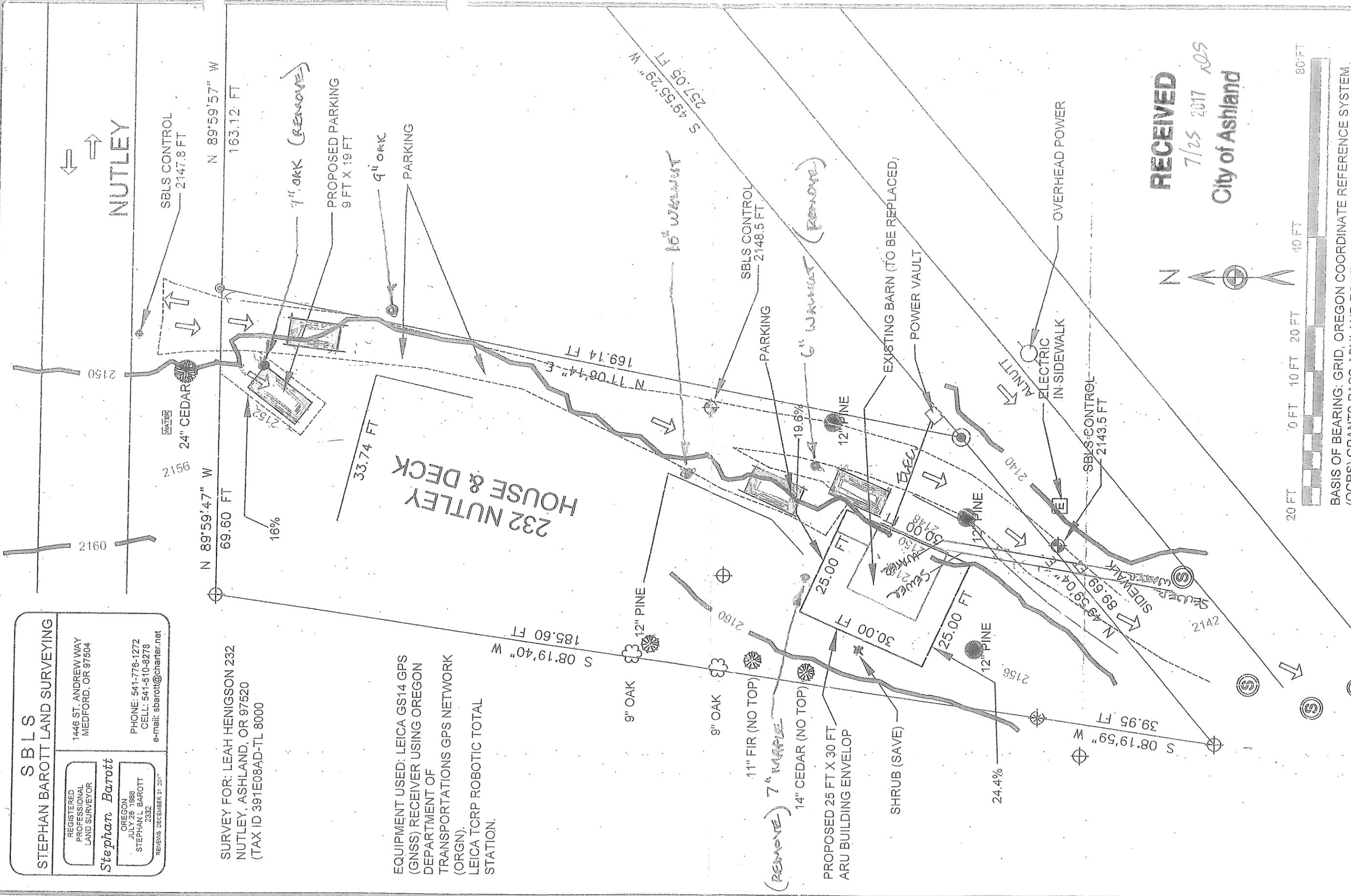
OREGON  
 JULY 28 1988  
 STEPHAN L. BAROTT  
 2332

PHONE: 541-776-1272  
 CELL: 541-510-8278  
 e-mail: sbarott@charter.net

RENEWED DECEMBER 31 2011

SURVEY FOR: LEAH HENIGSON 232  
 NUTLEY, ASHLAND, OR 97520  
 (TAX ID 391E08AD-TL 8000)

EQUIPMENT USED: LEICA GS14 GPS  
 (GNSS) RECEIVER USING OREGON  
 DEPARTMENT OF  
 TRANSPORTATIONS GPS NETWORK  
 (ORGN).  
 LEICA TCPR ROBOTIC TOTAL  
 STATION.



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BASIS OF BEARING: GRID, OREGON COORDINATE REFERENCE SYSTEM.  
 (OCRS) GRANTS PASS-ASHLAND ZONE NAD83 (2011 EPOCH 2010.00).  
 ELEVATIONS ARE NAVD88

**S B L S**  
**STEPHAN BAROTT LAND SURVEYING**

1446 ST. ANDREW WAY  
 MEDFORD, OR 97504

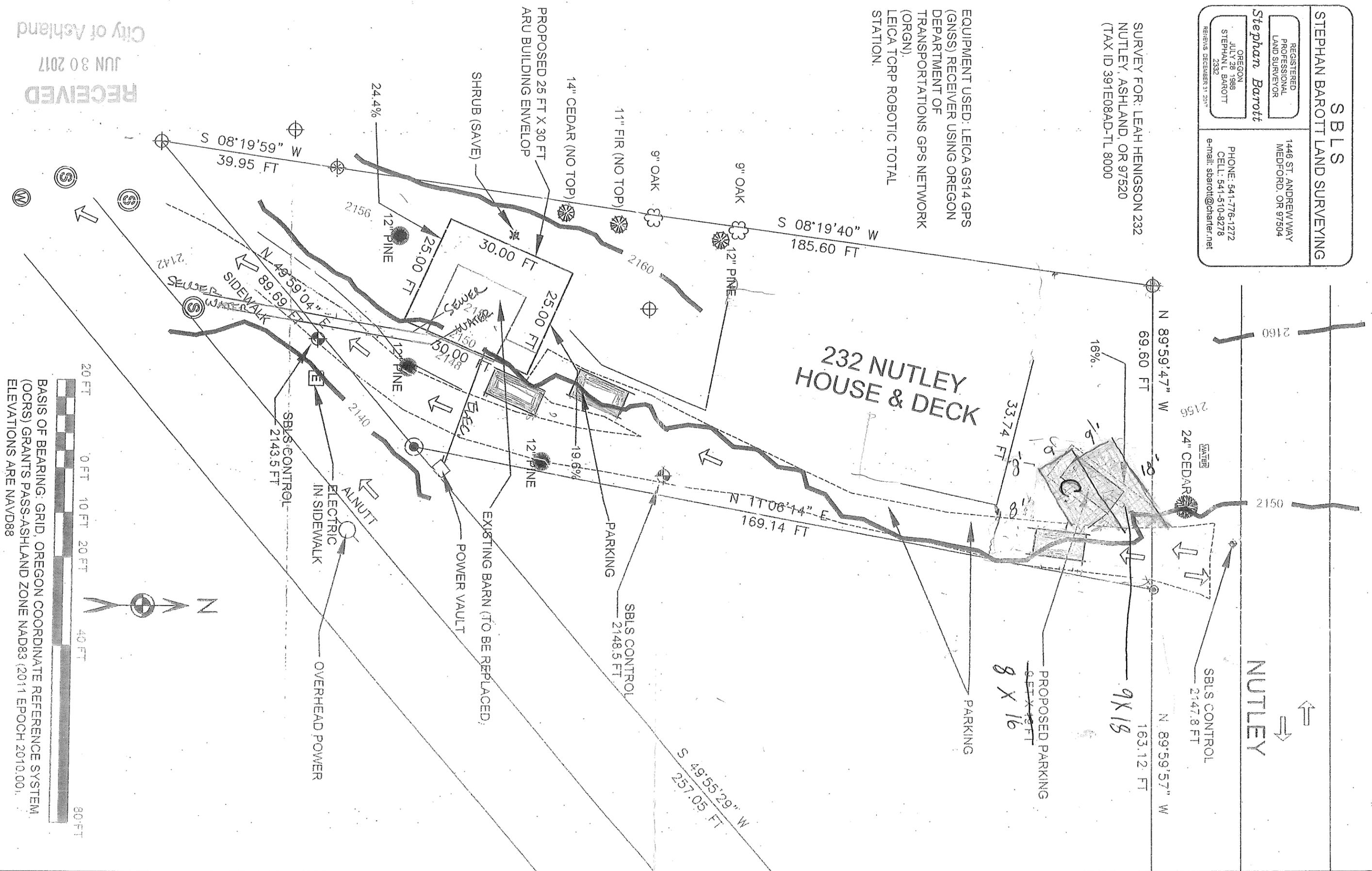
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OREGON  
 JULY 28, 1988  
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 RENEWS DECEMBER 31, 2017

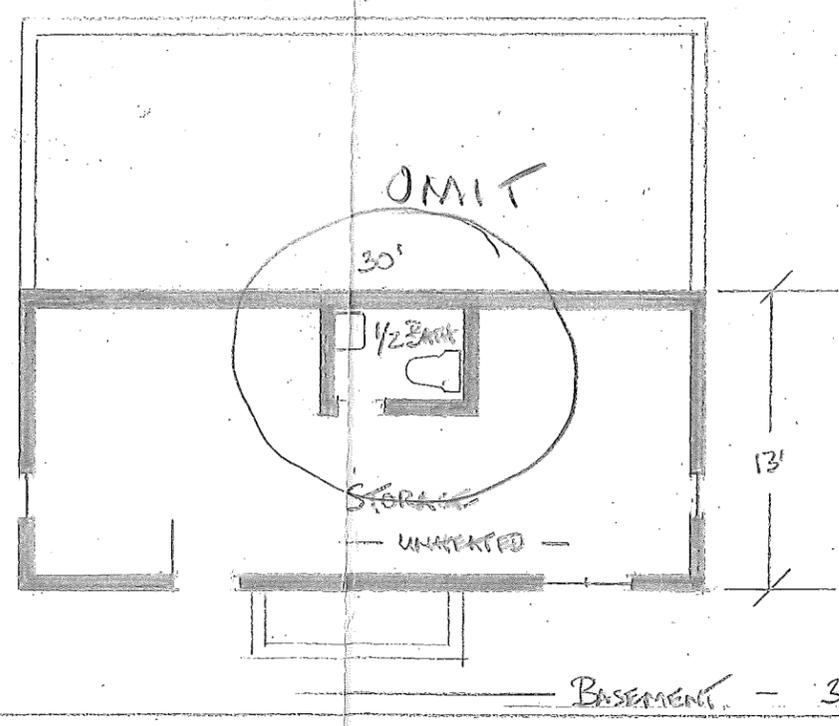
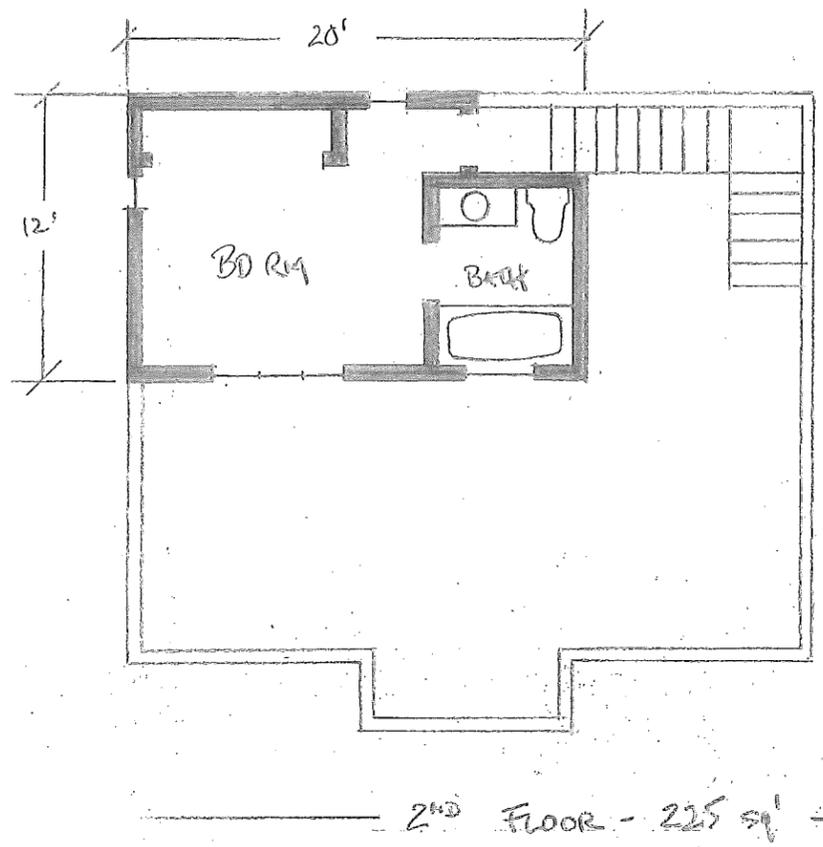
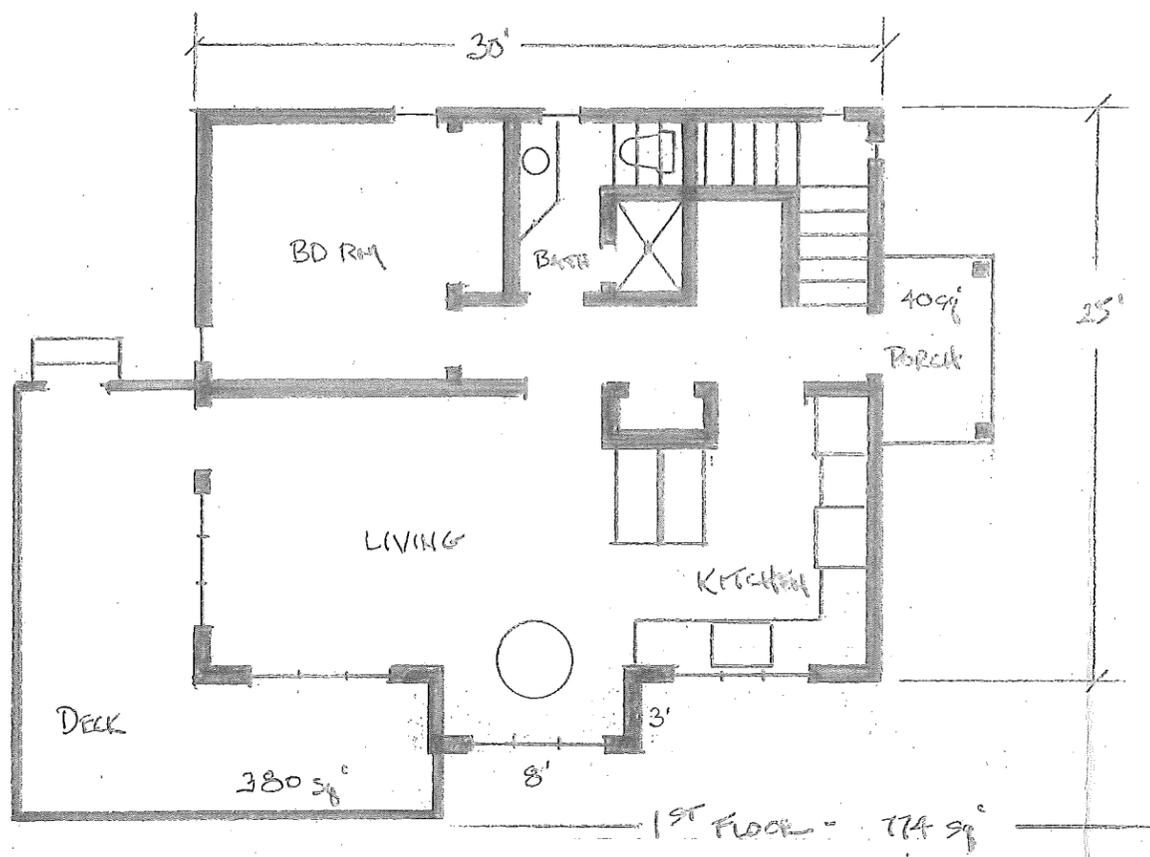
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 NUTLEY, ASHLAND, OR 97520  
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EQUIPMENT USED: LEICA GS14 GPS  
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 DEPARTMENT OF  
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39-1E-08AD-8000

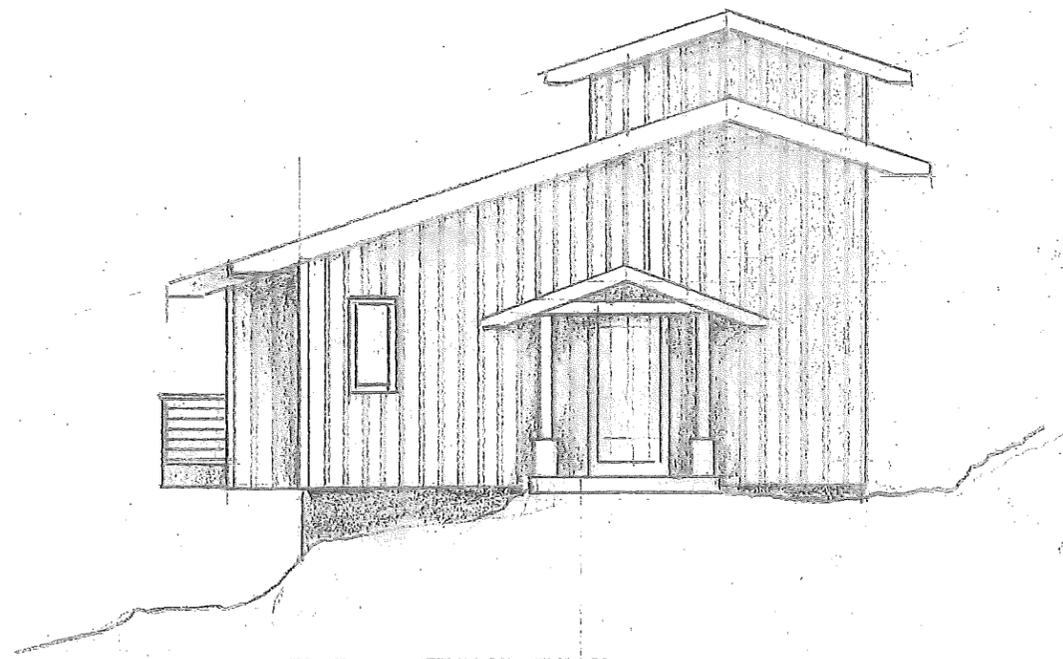
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 BASIS OF BEARING: GRID, OREGON COORDINATE REFERENCE SYSTEM,  
 (OGRS) GRANTS PASS-ASHLAND ZONE NAD83 (2011 EPOCH 2010.00).  
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FLOOR PLAN FOR ARU  
232 NUTLEY

999

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NORTH ELEVATION



EAST ELEVATION

ELEVATIONS FOR ARU  
232 - NUTLEY

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ROOFING - CEDAR

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City of Ashland

May 24, 2017

**Request for Site Review Approval:  
Accessory Residential Unit**

Address: 234 Nutley Street, Ashland, OR  
Map: 39 1E 08AD  
Tax lot: 3000  
Zoning: RR-.5  
Comp Plan Designation: Rural Residential  
Lot Area: .29Ac / 12,632 sf

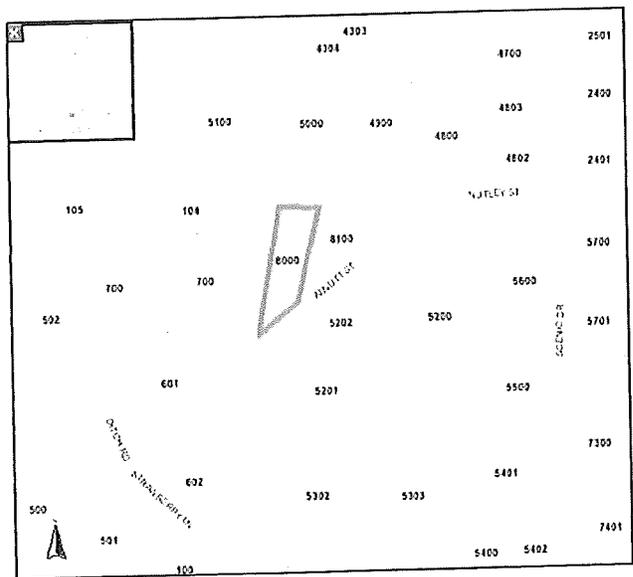
Owner/Applicant: Leah Henigson  
Building Designer: Don Sever

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**Request:** Site Design Review for a new Accessory Residential Unit including a Variance to the minimum street improvements and the maximum lot coverage in the Rural Residential Zone.

**Property Description:** The site is located on the south side of Nutley Street. Nutley Street terminates a few hundred feet past the property. The south property line abuts Alnutt Street. The site is an irregularly shaped with two street frontages. The subject property and the properties to the east, west and south are zoned Rural Residential (RR-.5). The properties across Nutley Street are zoned Single-Family Residential (R-1-10).

The site has a consistent slope from the west, downhill to the east. Along the west property line there are areas of more than 35 percent slope. The slope where the accessory residential unit (ARU), and the site improvements for the ARU is proposed is less than 25% slopes.



The site is occupied by a 1,980 square foot single story, with basement residence that was constructed in the 1960s.

There is an existing barn structure that is 16 feet by 16 feet and has a small loft. The barn structure will be removed to accommodate the ARU construction.

The driveway traverses the property from Nutley Street, south to Alnutt Street. The driveway allows for one way, "drive through" traffic. The property owner has historically stacked vehicles. One that backs onto Nutley Street and one that pulls through to Alnutt. There is a single vehicle parking space adjacent to the barn.

**Proposal:** The proposed accessory residential unit would replace the barn. The parking for the ARU is proposed to be located adjacent to the ARU. The two parking spaces for the single-family residence will occur in much the same manner as the current site configuration. One parking space is proposed to be located just off of the driveway and the second parking space in the driveway.

The proposed residence will not encroach into slopes identified as greater than 25 percent by the City of Ashland on the Hillside Development maps. Site evaluations and a survey of the areas of development found that the actual slope 24.4 percent on the building area and 19.6 percent slope where the proposed parking ARU parking is located.

The lot is non-conforming in lot area. The property is zoned Rural Residential, ½ acre minimum lot area. The lot is 12,632 square feet in area. Additionally, the existing lot coverage is non-conforming. Since gravel driveways are include into the impervious surface calculations, the lot's 4,804 square feet of impervious surfaces, exceeds the maximum lot coverage of 2,526 square feet.

The request is to remove the existing 256 square foot barn and replace it with an approximately 750 square foot footprint for a new two story ARU. The maximum habitable square footage of the ARU is 999 square foot.

The new ARU structure will be designed to be oriented towards the street. A deck area will be provided to present orientation towards Alnutt Street but the primary access will be facing Nutley Street due to the parking space locations. Bicycle parking will be provided for in accordance with the standards with covered areas that comply with the area requirements.

The majority of the footprint area for the proposed ARU is pre-existing disturbance from the existing barn structure.

Nutley Street along the frontage of the property was constructed in the early 2000s. At the time of the street installation, even though there is adequate right-of-way, the street was installed with less than street improvement and not to city standards. Nutley Street along the frontage of the parcel is improved to 20-feet that includes the paving, the curbs and gutters. There are no sidewalks. The applicant would seek a variance to this section of the code.

Findings addressing the criteria from the Ashland Municipal Code can be found on the following pages.

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### 18.2.3.040 Accessory Residential Unit

Where accessory residential units are allowed, they are subject to Site Design Review under chapter 18.5.2, and shall meet all of the following requirements.

**A. R-1 Zone.** Accessory residential units in the R-1 zone shall meet the following requirements.

1. One accessory residential unit is proposed, and the maximum number of dwelling units proposed is two.
2. No density calculation required.
3. The proposed ARU is less than 50 percent of the GHFA of the primary residence on the lot, and does not exceed 1,000 square feet GHFA.
4. The proposed ARU conforms with the maximum setback requirement and the variance to lot coverage request allows for conformance to the maximum lot coverage requirements.
5. Additional parking will be provided. Two additional parking spaces are proposed for the ARU that is a two-bedroom unit. Both parking spaces have been located adjacent to the driveway through the site. The vehicular access for the ARU will primarily be from Alnutt Street. The existing stacked parking in the driveway will be located adjacent to the driveway. This will require removal of some less than six-inch DBH deciduous trees. A 12-inch pine is located directly to the east of the driveway. This tree is proposed to be retained, it may require removal but is less than the DBH where a tree removal permit is required.

**B. RR Zone.** In addition to the standards in subsection 18.2.3.040.A, accessory residential units in the RR zone shall meet the following requirements.

1. All construction and land disturbance associated with the accessory residential unit will occur on lands with less than 25 percent slope.
2. The lot has access to an improved city street. Nutley and Alnutt Streets are paved with curb and gutter. Neither street is paved to 20 feet in width, with curbs, gutters, and sidewalks.

The lot is on two improved city streets. Both streets were installed by the City of Ashland in the early 2000s and both were not installed to city standards in width (Nutley Street, primary frontage) is approximately 20-feet wide (paving, curbs and gutters) but the sidewalk ends at the property to the east of the subject property. Alnutt Street is less than 20-feet wide and does not have sidewalks. A Variance to this standard will be requested.

3. No on-street parking credits are requested.
4. The property is within the wildfire overlay zone and a fire sprinkler system is required and will need to be installed.

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**Site Design Review Criteria:**

**C. Building Orientation.**

1. The proposed accessory residential unit is primarily oriented towards Nutley Street. A deck is proposed on the rear and the side of the structure that face Alnutt Street.
2. The parking area for the ARU is to the side of the structure. The ARU is behind the front residence and the parking for the ARU is directly adjacent to the ARU.
3. There are no build-to lines in the Rural Residential zone.

**D. Garages.**

No garage is proposed.

**E. Building Materials.**

The proposed building materials are to match the existing single family residence.

**F. Streetscape.** There are a number of trees on the property. Due to the street configuration, there are no formal street trees, one can be added if necessary.

**G. Landscaping and Recycle/Refuse Disposal Areas.** The refuse area for the ARU will be provided under the deck for the ARU. This area is not visible from the right-of-way.

**H. Open Space.**

The lot requires 1,010 square feet of open space. The lot is generally a hillside lot with areas of less slope. There is not a yard area per se. There is 380 square feet of deck for the ARU and 657 square feet of deck area on the main residence. This provides for 1,027 square feet of openspace.

**18.5.2.050 Approval Criteria**

The proposal complies with the Site Design Review criteria.

**A. Underlying Zone.** As shown above, the proposal complies with all of the applicable provisions of the underlying zone excepting the standard for the width of the public street and the lot coverage criteria. The proposed ARU complies with building and yard setback, there are no minimum lot area or dimensional criteria for ARU's.

**B. Overlay Zones.** The property is within Hillside Overlay zone. The areas where the ARU and the ARU improvements occur on land that is less than 25 percent slope. This is evidenced on the topographical survey.

**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

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Facilities, excepting the variance request for the less than 20-foot wide street improvements on Nutley and Alnutt Street. There is adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the 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 spacing requirement of an eight-foot buffer between parking space for the ARU. The site, with roughly half of the property area for lots in the Rural Residential zone. The lot is very narrow and has a driveway that traverses the entire length of the site. The topography of the site dictates where the ARU can be located. The lower level of the ARU is unheated space that will be utilized as storage area and not habitable area of a residence that would be negatively impacted by the automobile. Additionally, the automobile that is to use the space is that of the resident of the unit therefore limiting the impact. The proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties.

**Variance to Street Width:**

1) The variance is necessary because the subject code provision does not account for the public street being installed by the City of Ashland to a width that prevents the future development of the properties. The site is unique in that the lot is about ½ of the required square footage in the zone. The site has a pre-existing driveway that traverses the lot from N to S from Alnutt Street to Nutley Street which provides adequate access to and through the property. There are areas of steep slopes and large trees adjacent to the right-of-way which is likely why the street was installed by the City below the minimum standards in the zone.

2) The variance is the minimum necessary because the property owner would be unable to widen the street to install the sidewalks without significant disruption to the adjacent property owners and improving the street is financially unfeasible for a single property owner. The street being installed by the City less than the standards required in their own codes creates a unique situation that is not typically replicated on city streets.

3) The proposal will not have any negative impacts on the development of adjacent properties or on the uses of adjacent parcels. The variance will allow the construction of a new ARU where the street is below the minimum width required. The street dead ends beyond the property and the street is rarely used by anyone but the residents of the homes to the north and west of the subject property.

4) The need for the variance is not self-imposed by the applicant or property owner, in fact had the property owners in the vicinity known that the installation of the street below the minimum standards would prevent them from further developing their properties, they would have pushed the City to find a way to make the street wider.

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**Variance to Lot Coverage:**

The requested variance to exceed the maximum lot coverage in the zone is the minimum necessary. The property is zoned Rural Residential, ½ acre minimum lot area. The maximum lot coverage is 20%. The lot is only 12,632 square feet in area. Due to the RR-.5 zone, the maximum lot coverage is 2,526.4 square feet. The existing residence covers 1,612 sf with 647 sf of deck. There is also the 256-square foot barn. The existing driveway is approximately 290 sf of concrete (at Nutley Street) for a total of 3,173 square feet. The remainder of the driveway that traverses the site is a dirt, tire-track driveway with grass in the middle, this driveway is approximately 1,350 square feet in area. The “impervious” areas on the property, at 4,804 square feet exceeds the maximum in the zone. If the deck area (647 sf) which evidenced in the attached photos with vegetation growing underneath and the center grass median (815 sf) in the driveway are excluded from the total, the present lot coverage is 3,342 square feet.

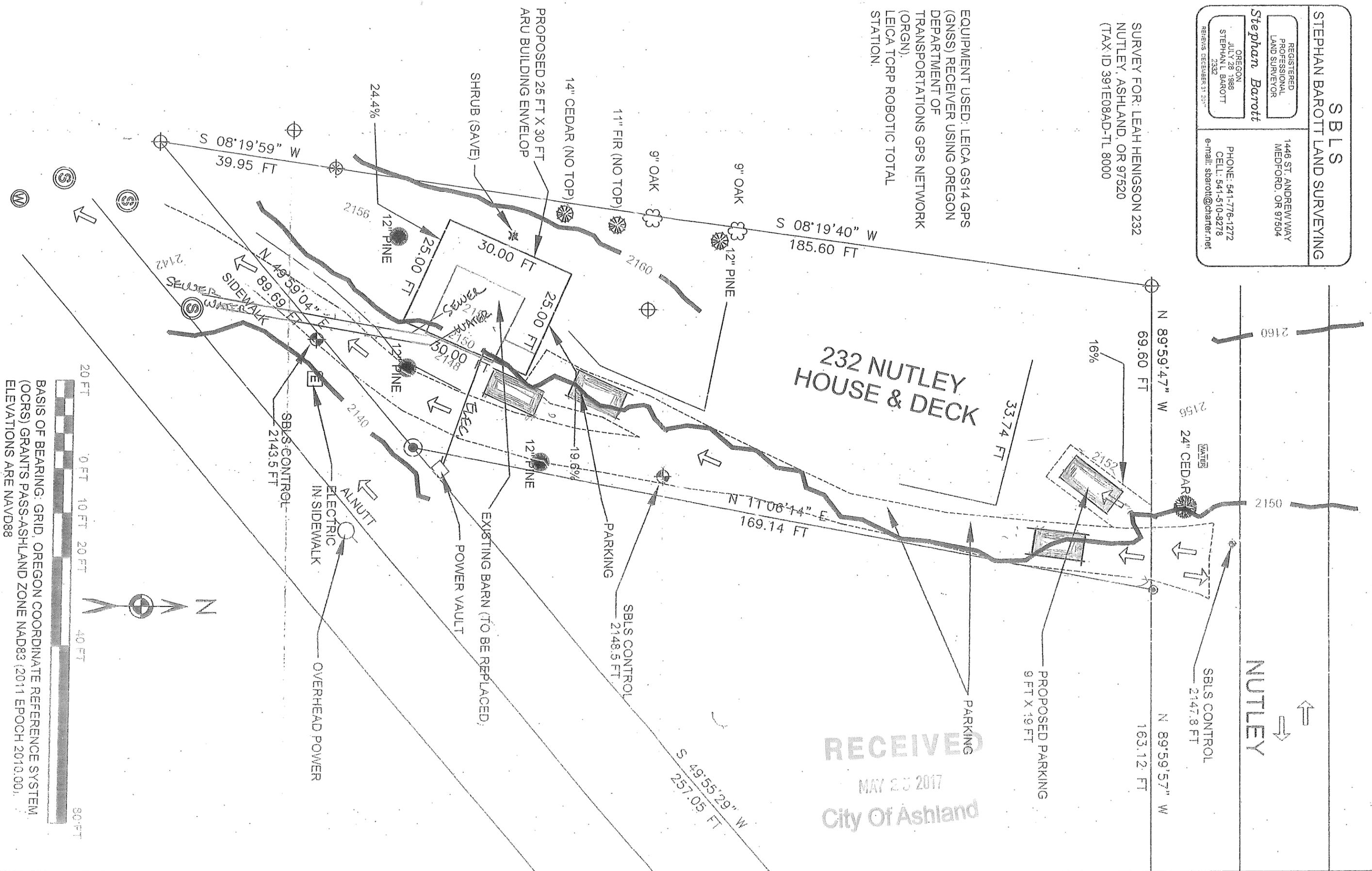
The proposed variance will not have negative impacts on the adjacent properties or to the existing site. The request for the variance is not self-imposed. The lot area and the majority of the improvements existed on site prior to the purchase of the property the additional square footage on the site increases the lot coverage by approximately 500 square foot.

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<b>S BLS</b>	
STEPHAN BAROTT LAND SURVEYING	
REGISTERED PROFESSIONAL LAND SURVEYOR	1446 ST. ANDREW WAY MEDFORD, OR 97504
<i>Stephan Barott</i>	PHONE: 541-776-1272 CELL: 541-510-8278 e-mail: sbarott@charter.net
OREGON JULY 28 1988 STEPHAN L. BAROTT 2332 RENEWED DECEMBER 31 2017	

SURVEY FOR: LEAH HENIGSON 232  
NUTLEY, ASHLAND, OR 97520  
(TAX ID 391E08AD-TL 8000)

EQUIPMENT USED: LEICA GS14 GPS  
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LEICA TCPR ROBOTIC TOTAL  
STATION.

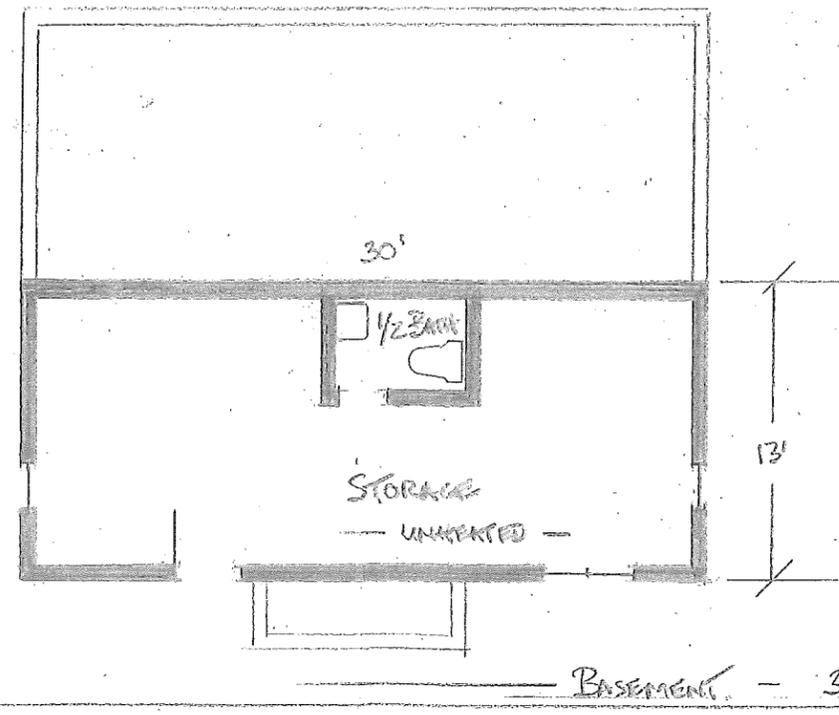
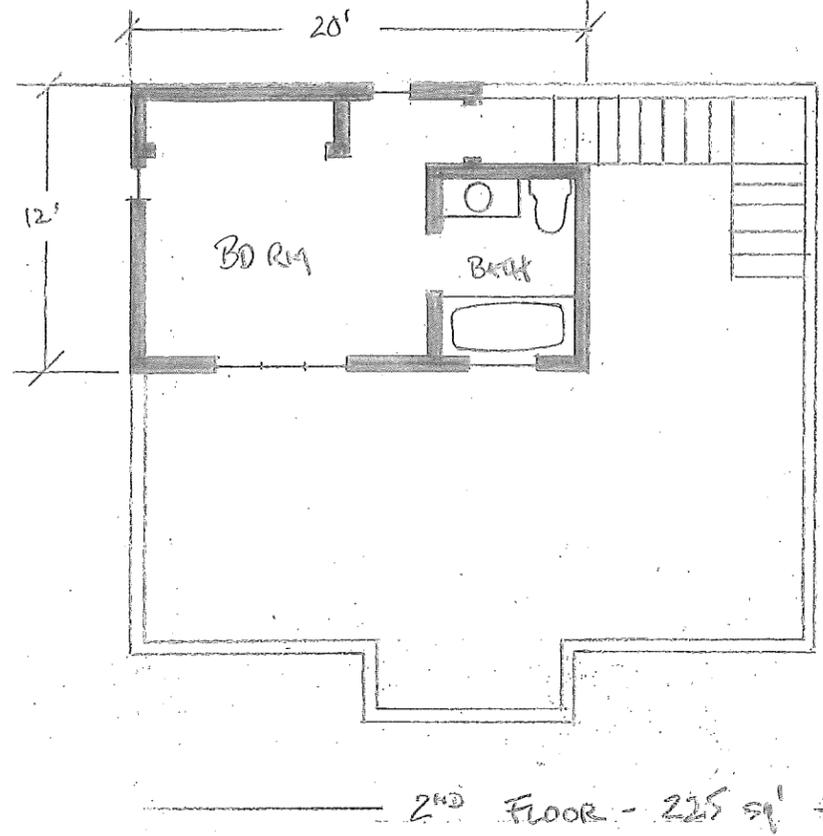
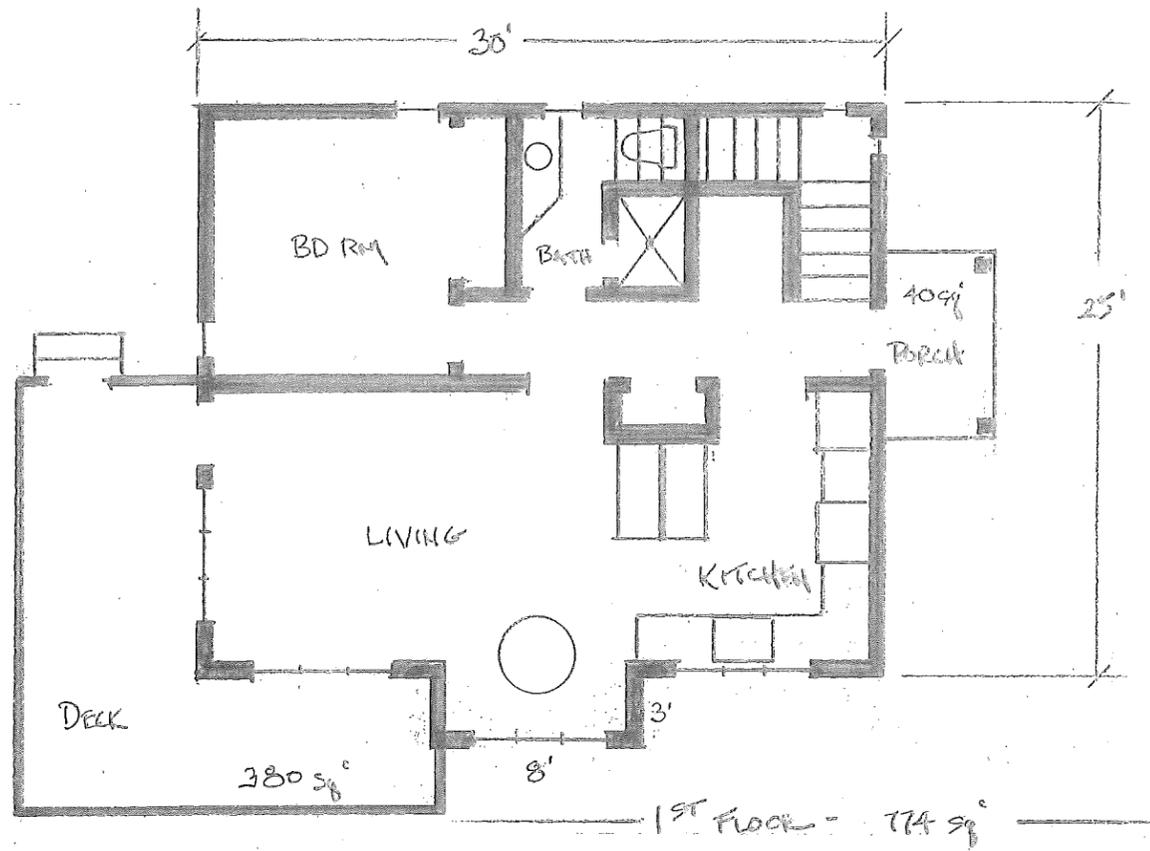


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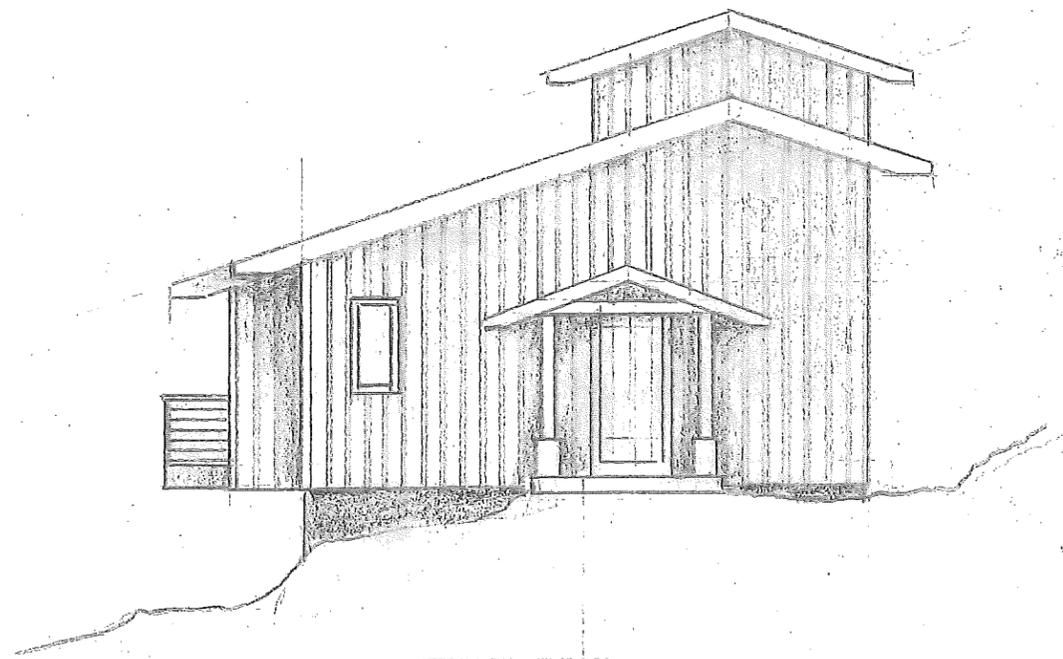
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ELEVATIONS ARE NAVD88

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FLOOR PLAN FOR ARU  
232 NUTLEY

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NORTH ELEVATION



EAST ELEVATION

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ELEVATIONS FOR ARU  
232 NUTLEY

SIDING - BOARD & BATT CEDAR  
ROOFING - COMP.