

**ASHLAND PLANNING COMMISSION
REGULAR MEETING
October 13, 2020
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM

- II. **ANNOUNCEMENTS**

- III. **CONSENT AGENDA**
 - A. **Approval of Minutes**
 - 1. September 22, 2020 Special Meeting

- IV. **PUBLIC FORUM**

- V. **UNFINISHED BUSINESS**
 - A. Approval of Findings for PA-T3-2019-00001, 1511 Hwy 99 N
 - B. Approval of Findings for PA-APPEAL-2020-00011, 345 Clinton Street

- VI. **DISCUSSION ITEMS**
 - A. Update on New State Rules for Middle Housing
 - B. Discussion of Potential Changes to Standards for Accessory Residential Units (ARUs)

- VII. **ADJOURNMENT**

**CITY OF
ASHLAND**



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 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 1).

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
SPECIAL MEETING
MINUTES - Draft
September 22, 2020

I. CALL TO ORDER:

Chair Haywood Norton called the meeting to order at 7:00 p.m.

Commissioners Present:

Michael Dawkins
Alan Harper
Kerry KenCairn
Haywood Norton
Roger Pearce
Lynn Thompson

Staff Present:

Bill Molnar, Community Development Director
Derek Severson, Senior Planner
Aaron Anderson, Assistant Planner
Dana Smith, Executive Assistant

Absent Members:

Council Liaison:

Stef Seffinger, absent

II. ANNOUNCEMENTS

Community Development Director Bill Molnar explained the recent fire event disrupted the City Council agenda on September 8, 2020. Subsequently, the public hearing on the Open Space Amendments Ordinance was moved to the City Council meeting on October 20, 2020. The Planning Commission meeting on October 27, 2020 would be a Special meeting with a public hearing on changes to the affordable housing standards. The annexation for PA-T3-2019-00001, 1511 Highway 99 North would go before the City Council in November. There was still a vacancy on the Planning Commission. The City of Ashland had taken a strong support role in the region regarding the recent fires. The Ashland Parks and Recreation Department had added a webpage to the city website that provided regional resources for the Alameda Fire. The Housing Authority of Jackson County had broken ground on Phase II of the Snowberry Brook project. Columbia Care would pick up their building permits soon. The permit process for the 70 units at 188 Garfield Street would come in soon as well. A permit was issued for the Ashland Middle School project. The Helman Elementary School project was waiting for building review.

Commissioner Harper asked about city personnel working on the regional response to the fire. Mr. Molnar explained City staff from the Fire Department and the Community Development Department had helped as needed. He confirmed there was minor damage to the urban growth boundary.

III. CONSENT AGENDA

A. Approval of Minutes

1. July 28, 2020 Special Meeting
2. August 11, 2020 Regular Meeting

Commissioner Dawkins joined the meeting at 7:19 p.m.

Commissioner Pearce/Thompson m/s to approve the minutes of the meeting on July 28, 2020. Voice Vote: all AYES. Motion passed.

Commissioner Thompson/Pearce m/s to approve the minutes of the meeting on August 11, 2020. Voice Vote: all AYES. Motion passed.

IV. PUBLIC FORUM

Amy Gunter/Medford OR Spoke to a letter she submitted into the record from Brent Hall (see attached) regarding the urban growth boundary in the Katherine May subdivision. Maps adopted and created in the 1970s and 1980s differed substantially. Mr. Hall's letter was sent to the Community Development Department in June and had not received a response. They were asking for direction from the Planning Commission.

Mr. Molnar explained staff was looking into it and confirmed the old maps were substantially different. Staff would contact the City Attorney for an interpretation and process for map corrections. It would come before the Planning Commission who would provide a recommendation to the City Council. If there was a potential correction for one of the properties, they might look at the quadrant as well.

V. UNFINISHED BUSINESS

A. Approval of Findings for PA-T2-2020-00020, 705 Helman Street (Helman Elementary School)

Commissioner KenCairn recused herself from the item because she was part of the project. She left the meeting.

Commissioner Thompson and Dawkins declared no ex parte contact. Commissioner Pearce and Harper both spoke with City Attorney Dave Lohman regarding his memo and otherwise had no ex parte contact. Chair Norton discussed Mr. Lohman's memo with Mr. Molnar and otherwise had no ex parte contact as well.

Mr. Molnar summarized the memo from the city attorney. Mr. Lohman had concluded that draft findings could uncover issues previously addressed in the record that warranted clarification. The Planning Commission's decision was not final until the findings were approved. Whether it was legal to mandate public access to public property would take more research. Mr. Molnar suggested having the City Attorney attend a meeting to discuss how to approach a similar situation in the future.

Commissioner Dawkins/Pearce m/s to approve the Findings for PA-T2-2020-00020, 705 Helman Street. Voice Vote: all AYES. Motion passed.

Commissioner KenCairn returned to the meeting.

B. Approval of Findings for PA-T3-2019-00001, 1511 Hwy 99 N

Commissioner Thompson suggested replacing the word "**legitimacy**" with "**intent**" in the second paragraph under **Access Easement** on page 13. There was language throughout the findings on not satisfying the street standards that were unclear. Senior Planner Derek Severson explained the language was based on a previous discussion with the Commission. The applicant had requested an exception and the application did not have a development proposal and was not subject to that sort of review. The intent was forwarding a recommendation in support while recognizing the actual exception would be considered later. Commissioner Thompson thought the findings should state what they were going to do with the street standards. The Commission was suggesting to City Council that they approve the exception to the standards. Commissioner Pearce had the same comment as Commissioner Thompson. The first paragraph on page 9, last sentence read an exception was merited. He did not think the Commission could make that finding because it was not being considered. They could say an exception could be merited under existing conditions. There was not a development and it currently did not meet the standards. The City Council could either require it or not.

Commissioner Thompson noted the civil drawings on page 21. They were asking the City Council to make a set of findings on what those street improvements would be. The findings needed to state it would be considered later and they wanted the City Council to approve an annexation without addressing the street standards. Commissioner Harper thought the findings were saying they had demonstrated it was possible. Commissioner Thompson explained it was written with shall. Commissioner Pearce thought they were written incorrectly because no construction had

been proposed. Commissioner Thompson commented all they could say was to recommend approval and the applicant did not have compliance with that requirement of the annexation code. It should be addressed at site design review but was mentioned several times in the findings.

On page 10, under **Water**, the third bullet, Commissioner Thompson did not understand how it would be determined. It was not stated as a requirement. She suggested it be revised. Commissioner Harper thought it was irrelevant at this time. Commissioner Pearce observed a lot of it was written “as will be required” and the wording should be changed.

Commissioner Thompson disagreed with the affordable housing language on page 18, second full paragraph, last sentence. It implied that reasonableness was the standard for modifying a legislative requirement. She suggested using “**in accordance with the existing code the applicant should satisfy the affordable housing requirements**” and acknowledge the applicant had requested a reduced requirement. The City Council could decide what standard they wanted to supply. Mr. Severson explained they had changed that to reflect the discussion stated at an earlier meeting. Commissioner Pearce added that was what the proposed affordable housing legislation they had passed on to the City Council, would do. Commissioner Thompson disagreed. If someone wanted to make a recommendation on affordable housing rules, let the City Council look at it and create an exception or variance. Mr. Molnar explained the code change to affordable housing would go before the City Council at their meeting in November before they saw the findings for this application. Commissioner Thompson wanted to change the language and recommend the applicant comply with whatever the affordable housing rule was as set by the City Council. Commissioner Harper agreed. The City Council could make a different interpretation. The Planning Commission could not approve something other than what the standard currently required. Commissioner Pearce thought they should have language that let the City Council know there would be a modification to the code. Commissioner Harper thought that could be relayed in the staff report and not the findings.

Mr. Molnar suggested removing the part of the last sentence that it did not strictly comply. Then add the Planning Commission noted the City Council had the option to use legislative discretion. Commissioner Thompson thought it should say the Commission recommended the City Council approve something consistent with the legislation as it existed now or is modified by the City Council. Mr. Molnar explained Commission majority had not felt that way at the last meeting. However, if the Commission agreed, they could modify it now.

Chair Norton added the street standards needed to be clear as well. Commission majority had wanted to make a statement regarding the affordable housing piece. Commissioner Thompson said it was not reflected in the minutes and it was not her understanding. Chair Norton commented it was something the Commission would have to vote on. Commissioner Thompson asked why the Commission would need to make a recommendation to the City Council on changing the rule around affordability. Chair Norton thought it was a question of which one went before the City Council first. It could be handled in the staff report and not in the findings. Chair Pearce suggested language in the findings that the Commission recommended legislation changing that it did not comply with current annexation legislation. That there was recommended legislation before the City Council to change the annexation statute based on what the applicant had proposed.

Commissioner Pearce thought the conditions about construction, etc. should be removed. The conditions should only address the annexation standard. Commissioner Harper agreed. Commissioner Pearce noted that page 7 and 8 included the criteria for site design and street standards and wanted paragraphs 4 and 5 removed as well. The findings should be rewritten.

Mr. Molnar confirmed sections on the approval standards not being applied and conditions that focused on improvements would be removed. They would replace “**legitimacy**” with “**intent**” on page 13. Staff would bring back a couple options for the Commission to consider regarding affordable housing and constrained lands. The findings would come back for approval at the next Commission meeting on October 13, 2020.

Commissioner Pearce/Thompson m/s to continue the discussion of the findings for PA-T3-2019-00001 to the next meeting on October 13, 2020 for staff to make changes. Voice Vote: all AYES. Motion passed.

The Commission acknowledged the findings for this application were difficult to write.

VI. TYPE II PUBLIC HEARINGS

A. PLANNING ACTION: #PA-APPEAL-2020-00011 (appealing PA-T1-2020-00109)

SUBJECT PROPERTY: 345 Clinton Street

OWNER/APPLICANT: Rogue Planning and Development/Paul Mace & Kathleen Kahle

DESCRIPTION: Consideration of an appeal of the administrative approval PA-T1-2020-00109 of a two-lot partition of a 12.29-acre lot for the property located at 345 Clinton. The tentative partition plat creates two parcels that are 8.943 ac. and 3.35 ac in size, with the smaller parcel situated in the southeast of the parent parcel. COMPREHENSIVE PLAN DESIGNATION: Single Family Residential; ZONING: R-1-5; MAP: 39 1E 04 DB; TAX LOT: 401

Residential; ZONING: R-1-5; MAP: 39 1E 04 DB; TAX LOT: 401

Chair Norton explained the record and public hearing were closed.

Ex Parte Contact

The Commission declared no ex parte contact on the matter.

Deliberation and Decision

Commissioner Pearce understood the appellant's frustration. The pandemic and subsequent lockdown had made accessing and physically viewing the documents difficult. However, in the end, the appellant was able to access all the information. If any of that was a procedural error, it was cured. The appellant did not show there was any substantial prejudice to him that he could not prepare his appeal. The argument about the easements and not knowing what they were was not a crime of the partition statute. The easements could create an impact but that was an issue for a future development application, not for a partition application.

Commissioner Pearce/KenCairn m/s to deny the appeal and approve the application. The findings would include all the appellant's issues and Condition 1(a). DISCUSSION: Commissioner Harper asked staff if there was a condition on the partition where the access points lined up. Mr. Severson recommended a condition that cured the connectivity for the draft findings but was it not included in the packet. Assistant Planner Aaron Anderson had a copy of the draft findings and read "**Condition 1(a) That the partition plat shall be adjusted such that the north-south property line between parcel 1 and parcel 2 is shifted to allow a future extension to Phelps Street with two lanes of travel without alignment issues and that the driveway accessing the larger parcel be relocated to meet minimum spacing requirements.**" Commissioner Pearce included it in the motion.

Roll Call Vote: Commissioner Norton, Dawkins, KenCairn, Harper, Thompson and Pearce, YES. Motion passed.

VII. ADJOURNMENT

Meeting adjourned 8:22 p.m.

*Submitted by,
Dana Smith, Executive Assistant*

Brent H. Hall
Attorney at Law
718 SW 1st Street
Pendleton, OR 97801
(541) 215-0404

June 7, 2020

Planning Division, City of Ashland
20 East Main Street
51 Winburn Way
Ashland, OR 97520

Dear City of Ashland:

I represent the Young Family Trust. The Young Family Trust owns Tax Lots 1100, 1200 & 1300 in Township 39 Range 1E, Section 04A; the street address is 475 East Nevada Street. There is currently an approved Planning Action 2017-02129 in place for development of this property into a 20 lot, 23-unit subdivision, with associated proposed Comprehensive Plan designation changes. The planned development is consistent with the goals of the City of Ashland and Oregon land use law, and will benefit the City of Ashland. It will provide additional housing for the City's residents, and will include low income housing. The purpose of this letter is to request a formal interpretation pursuant to Ashland Municipal Code § 18.1.5.020 et seq., of the Urban Growth Boundary (UGB) line along these three tax lots.

There is currently a question as to the location of the UGB along the north side of these three tax lots. The City has previously taken the position that the UGB follows the City limits boundary, which is approximately 100 feet south of the northern most property line of each lot. This position appears to be based on a visual interpretation of a thick marker line on the latest Comprehensive Plan map, and a GIS map adopted by City Council. It is our understanding that this position is also inconsistent with previous maps and agreements as jointly adopted and agreed to by Jackson County and the City, such as the Ashland/Jackson County Urban Growth Boundary Agreement dated May 20, 1982. *See* Attachment 1, Ashland/Jackson County Urban Growth Boundary Agreement. *See also*, Attachment 2, Excerpt from 1982 Comprehensive Plan; Chapter 12: Urbanization (Comprehensive Plan Map Pg. 9), adopted November 2, 1982, ORD 2227. It is also inconsistent with the Jackson County Planning Office's interpretation in December 2018. *See* Attachment 3, Pre-application Conference Request, Katherine Mae Subdivision at p. 2. *See also* Attachment 4, 1982 map received from Jackson County. And finally, maps based on GIS mapping and not physical surveys, such as the one adopted by the City of Ashland, are necessarily imprecise by virtue of the imprecise method in which they are created, as opposed to maps from actual surveys which can and did serve as the legal basis of the 1982 agreement between Jackson County and Ashland. For these reasons the exact location of the UGB with respect to these properties is unclear.

In addition, the City's position would result in that land being subject to County jurisdiction, and we understand a Goal 14 Exception is not feasible. (ORS-660-004-040 Application of Goal 14 to Rural Residential Areas). If, on the other hand, that land is within the UGB then the property

could be annexed, brought into the development and provide additional housing for the City of Ashland and its citizens.

Accordingly, pursuant to Ashland Municipal Code § 18.1.5.020 et seq., we request a formal interpretation of the exact location of the City of Ashland Urban Growth Boundary [Comprehensive Plan, Chapter 12; Urbanization: Adopted November 2, 1982. ORD 2227] along Tax Lots 1100, 1200 & 1300 in Township 39 Range 1E, Section 04A, and to determine whether the adopted line from the aforementioned map has a width of along the adopted city limits boundary, which would be the south edge of mapped line, or along the north property line boundary of the subject property, which would be the north edge of mapped line.

Again, we believe the map from with the 1982 boundary agreement with the County is the accurate map and is not based on GIS interpretation which is generally not a precise form of map. Please contact me if you have any questions. In the meantime, we look forward to the City's formal interpretation.

Best regards,

Brent H. Hall

Attachments:

Attachment 1: Ashland/Jackson County Urban Growth Boundary Agreement.

Attachment 2: 1982 Comprehensive Plan Chapter 12: Urbanization (Comprehensive Plan Map p. 9). Adopted November 2, 1982. ORD 2227

Attachment 3: Pre-Application Conference Request, Katherine Mae Subdivision

Attachment 4: 1982 Map received from Jackson County

cc: Oregon Department of Land Conservation and Development
Amy Gunter, Rogue Planning and Development Services
Client

FINDINGS

PA-T3-2019-00001
1511 Hwy 99 N

Memo

DATE: 10/7/2020
TO: Planning Commissioners
FROM: Derek Severson, Senior Planner
RE: Findings Adoption for Grand Terrace Annexation

In discussing the findings for the Grand Terrace Annexation at 1511 Highway 99N last month, the Commission had looked at removing all conditions relative to specific utility or transportation improvements because the annexation request does not include a concurrent development proposal, and those details will need to be reviewed and approved in conjunction with a future Site Design Review for a specific development proposal.

In making these changes, staff has some concern that without some requirement to complete the frontage improvements and utility extensions to at least the level described in the application as a condition of annexation, a future developer could argue that these improvements – *including 0.63 miles of new sidewalk, which is well beyond what would typically be required at Site Review* - were not required with annexation and are not proportional to the development proposed for a property within the city, and could rely on state needed housing statutes to support such an argument.

As such, staff would recommend that the Commission consider including a condition similar to the following in their recommendation to the City Council: *“That to address the annexation approval criteria and standards that adequate transportation and city facilities be provided, at a minimum any future development of the property shall require completion of the street frontage improvements, including but not limited to sidewalks and a bus stop, and the extension of utility infrastructure as described in 2.3 above at the owner’s expense, in addition to any improvements necessary to serve the future development of the property.”*



- B.** *The proposed zoning for the annexed area is in conformance with the designation indicated on the Comprehensive Plan Map, and the project, if proposed concurrently with the annexation, is an allowed use within the proposed zoning.*
- C.** *The land is currently contiguous with the present city limits.*
- D.** *Adequate City facilities for the provision of water to the site as determined by the Public Works Department; the transport of sewage from the site to the waste water treatment plant as determined by the Public Works Department; the provision of electricity to the site as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided to and through the subject property. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities.*
- E.** *Adequate transportation can and will be provided to and through the subject property. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.*
 - 1.** *For vehicular transportation a 20-foot wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20-foot wide driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to City standards. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.*
 - 2.** *For bicycle transportation safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.*
 - 3.** *For pedestrian transportation safe and accessible pedestrian facilities exist or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.*

4. *For transit transportation, should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.*

- F.** *For all residential annexations, a plan shall be provided demonstrating that the development of the entire property will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the property shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35 percent, shall not be included.*

- G.** *Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the following requirements.*
 1. *The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein.*
 - a. *Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.*
 - b. *Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.*
 - c. *Ownership units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.*
 - d. *Ownership or rental units restricted to households earning at or below 60 percent the area median income shall have an equivalency value of 1.5 unit.*

 2. *As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.*

- a. *The land to be transferred shall be located within the project meeting the standards set forth in 18.5.8.050.G, subsections 4 - 6.*
 - b. *All needed public facilities shall be extended to the area or areas proposed for transfer.*
 - c. *Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.*
 - d. *The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.*
3. *The affordable units shall be comparable in bedroom mix and housing type with the market rate units in the development.*
- a. *The number of bedrooms per dwelling unit in the affordable units within the residential development shall be in equal proportion to the number of bedrooms per dwelling unit in the market-rate units within the residential development. This provision is not intended to require the same floor area in affordable units as compared to market-rate units. The minimum square footage of each affordable unit shall comply with the minimum required floor based as set forth in Table 18.5.8.050.G.3.*

Table 18.5.8.050.G.3

<i>Unit Type</i>	<i>Minimum Required Unit Floor Area (Square Feet)</i>
<i>Studio</i>	<i>350</i>
<i>1 Bedroom</i>	<i>500</i>
<i>2 Bedroom</i>	<i>800</i>
<i>3 Bedroom</i>	<i>1,000</i>
<i>4 Bedroom</i>	<i>1,250</i>

- b. *The required on-site affordable units shall be comprised of the different unit types in the same proportion as the market dwelling units within the development.*

4. *A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.*
 - a. *That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.*
 - b. *Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.*
5. *That affordable housing units shall be distributed throughout the project*
6. *That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.*
 - a. *The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units*
 - b. *Affordable units may differ from market-rate units with regard to interior finishes and materials provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.*
7. *Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.*
 - a. *That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, than would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.*
 - b. *That an alternative mix of housing types not meeting the requirements of subsection 18.5.8.050.G.3.b would accomplish additional benefits to the City consistent with this chapter, than would the development providing a proportional mix of unit types.*

- c. *That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.*
 - d. *That the distribution of affordable units within the development not meeting subsection 18.5.8.050.G.5 is necessary for development of an affordable housing project that provides onsite staff with supportive services.*
 - e. *That the distribution of affordable units within the development as proposed would accomplish additional benefits for the city, consistent with the purposes of this chapter, than would development meeting the distribution requirement of subsection 18.5.8.050.G.5.*
 - f. *That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.6, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.*
8. *The total number of affordable units described in this section 18.5.8.050.G shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. Properties providing affordable units as part of the annexation process shall qualify for a maximum density bonus of 25 percent.*

H. *One or more of the following standards are met.*

- 1. *The proposed area for annexation is to be residentially zoned, and there is less than a five-year supply of vacant and redevelopable land in the proposed land use classification within the current city limits. "Redevelopable land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period. The five-year supply shall be determined from vacant and redevelopable land inventories and by the methodology for land need projections from the Housing Element of the Comprehensive Plan.*
- 2. *The proposed lot or lots will be zoned CM, E-1, or C-1 under the Comprehensive Plan, and that the applicant will obtain Site Design Review approval for an outright permitted use, or special permitted use concurrent with the annexation request.*
- 3. *A current or probable public health hazard exists due to lack of full City sanitary sewer or water services.*
- 4. *Existing development in the proposed annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.*

5. *The area proposed for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.*
6. *The lot or lots proposed for annexation are an island completely surrounded by lands within the city limits.*

4) The Planning Commission, following proper public notice, held a public hearing on November 12, 2019 and electronic hearings on June 23, 2020 and July 28, 2020 at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission recommended that the City Council approve the Annexation request subject to a number of conditions, and that the Council direct staff to work with the Oregon Department of Transportation to initiate a speed study and advocate for a reduction in the speed limit on the adjacent state highway corridor.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

Hearing Minutes, Notices, Miscellaneous Exhibits lettered with an "M"

SECTION 2. FINDINGS & CONCLUSIONS

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

2.2 The Planning Commission finds that the proposal for Annexation meets the applicable criteria in AMC 18.5.8.050 with two exceptions. First, as discussed in 2.3 below, with regard to affordability requirements in AMC 18.5.8.050.G, the calculations provided exclude constrained lands from the initial calculation. The application argues that both state and city regulations do not consider these to be buildable lands, and that similar exclusions have been allowed in past applications. The exclusion of constrained lands is allowed in the code when calculating minimum density, but there is no similar provision with regard to affordability calculations. To comply with the Annexation criteria in the ordinance as presently written, the number of affordable units would need to be increased to account for the full area of the subject properties

in the calculation. The Planning Commission recognizes that the Council will soon be considering legislation which would address this issue, and could opt to consider the action in light of the new regulations.

Second, while the annexation criteria require that *“All streets located within annexed areas shall be fully improved to City standards”* the improvements outlined in the proposal do not comply with City street standards. Along the property’s immediate frontage, the application proposes city standard improvements except where the sidewalk must be pushed to curbside to accommodate the installation of a bus pull-out lane associated with a new southbound bus stop, and while the application proposes approximately 0.63 miles of new sidewalk to connect to existing sidewalks to the north and south, due to physical constraints in the form of roadside ditches and limited right-of-way, standard parkrow planting strips with street trees cannot be installed. The application includes arguments in support of an Exception to the Street Standards. The Planning Commission finds that while an Exception may be merited here, such a request cannot be considered independently from a Site Design Review proposal as the Annexation criteria by themselves make no allowance for exceptions. Absent a concurrent development proposal, the Council could exercise its legislative discretion to accept the improvements as proposed.

2.3 The Planning Commission notes that the approval standards for an Annexation require that the subject property be located within the City's Urban Growth Boundary, that the proposed zoning for the annexed area be in conformance with the Comprehensive Plan Map designation, and that the land be currently contiguous with the present city limits. In this instance, the subject property is located within the city’s Urban Growth Boundary, and the requested R-2 zoning is consistent with the site’s Comprehensive Plan designation of “Multi-Family Residential.” While Site Design Review approval is not currently requested for development of the site, a conceptual multi-family development plan is provided to demonstrate how the property could be developed to the required minimum density in keeping with applicable standards.

The two subject parcels are separated from the current city limits by the railroad property, however AMC 18.5.8.060 provides that *“When an annexation is initiated by a private individual, the Staff Advisor may include other parcels of property in the proposed annexation to make a boundary extension more logical and to avoid parcels of land which are not incorporated but are partially or wholly surrounded by the City. The Staff Advisor, in a report to the Planning Commission and City Council, shall justify the inclusion of any parcels other than the parcel for which the petition is filed. The purpose of this section is to permit the Commission and Council to make annexations extending the City’s boundaries more logical and orderly.”* The Staff Advisor has accordingly included both the adjacent railroad property and the Oregon Department of Transportation (ODOT) right-of-way for Highway 99N as allowed in AMC 18.5.8.060 to provide a more logical and orderly boundary, noting that if the railroad property were to remain as a barrier, all of the property within the Urban Growth Boundary (UGB) to the north of the current city limits could not be annexed, and the inclusion of the ODOT highway right-of-way enables the necessary extension of urban services.

The Commission notes that the most recent public notices have included these properties, and notices were sent to their owners. Subsequent to receiving notice, ODOT has expressed agreement with the inclusion of their property while representatives of the railroad have indicated they do not wish to be

annexed. The Commission finds that as provided in state law (ORS 222.170), an annexation may be approved by consent through a public hearing, without requiring an election, when: more than one-half of the owners with land in the area to be annexed consent to the annexation; owners of more than one-half the land in the area to be annexed consent to the annexation; and that land represents more than one-half of the total assessed value in the area to be annexed. The Planning Commission finds that with the consent of the applicant and ODOT, the proposal to annex the subject properties, adjacent state highway right-of-way and railroad property recommended by the Staff Advisor to achieve contiguity satisfies the requirements for annexation under state law and can be approved despite the Railroad's objection.

Public Facilities

The Commission further notes that annexation requests must demonstrate that adequate public facilities can and will be provided to and through the subject property. With regard to specific public facilities:

- **Water:** The Water Department has noted that the property is not currently served by a water main, and a new main will need to be installed to connect to the existing city water system. The nearest point of connection is the intersection of North Main Street and Highway 99 North. The application notes that water lines to service the property are proposed to be extended, and indicates that these will be adequately sized to provide water pressure for residential service and fire suppression systems. The Water Department has indicated that with extension of a new main, there will be adequate supply of potable water available to the site subject to the following:
 - Extension of the existing 12-inch main line at a location uphill and south of the site, between Fox & Schofield Streets, to a location north of the railroad trestle at the site's northernmost driveway.
 - Given high water pressures (160+ psi) at the low-end of the city system, a pressure reducing valve (PRV) will be necessary at the point of connection. PRV's may be necessary for individual buildings with subsequent development as well.
 - Water meter placement must be within the public right-of-way and within the city limits, and as such the proposed annexation needs to extend at least to centerline of the adjacent ODOT right-of-way.
 - The applicant will need to work with the Bureau of Reclamation (BOR) on any necessary modifications to proposed site improvements and associated permitting to address the "Billings Siphon" irrigation easement and associated federal requirements.
 - The Water Department comments are limited to determining that adequate capacity can and will be extended to the subject properties to enable annexation, with on-site utilities to be considered with subsequent Site Review.
- **Sanitary Sewer & Storm Drainage:** City code requirements typically necessitate that all utilities transition to city services with Annexation, however in this instance the property is well outside and downhill of the city's sanitary and storm sewer systems, and a significant extension of new services would be needed and all sewage and stormwater would need to be pumped. There is a "Cooperative Agreement/Urban Services Agreement" in place between the City of Ashland, Jackson County and the Bear Creek Valley Sanitary Authority - now Rogue Valley Sewer Service (RVSS) - which dates to November 8, 1995 and which provides that with Annexation, the sewer district shall continue to provide an urban level of sanitary sewer and/or storm water services that it has historically provided

to territory within the district's existing limits and that the City and the sewer district may agree to joint provision of service to areas within the City or its UGB by contract, mutual agreement or other method. As proposed, RVSS will continue to provide these services to the subject properties per the 1995 agreement. Public Works has indicated that RVSS continuing to serve the property as allowed under the 1995 agreement is the most appropriate option and is acceptable here, and RVSS has confirmed that their sanitary sewer system has adequate capacity for the proposed development, and that there is an eight-inch main in the right-of-way due north of the project site.

On-site storm water drains to a roadside ditch that is within the state highway right-of-way and maintained by the Oregon Department of Transportation (ODOT). The application indicates that the future development of the property is required to be compliant with the regionally-adopted Rogue Valley Stormwater Design Manual, and further notes that the project Civil Engineers have performed preliminary stormwater generation calculations based on the maximum coverage areas in the zone and have proposed potential surface detention, and recognize that below-grade collection, detention and treatment will be necessary with the future development of the site. With the 1995 agreement, the existing sanitary and storm sewer services to the property would continue, but may need to be formalized with an intergovernmental agreement between the City, RVSS and ODOT to finalize the logistics of RVSS providing sewer and storm water service to the properties once they are annexed to the City.

- **Electric:** The application explains that the property is currently served by Pacific Power, but that with the development the property will be served by the City of Ashland Electric Department with the installation of new electrical infrastructure by the applicant. The application explains that there is presently low-voltage city electric service in place to power street and landscape lighting in and around the central median at the railroad trestle overpass. With the proposal, electric lines are to be provided in or adjacent to the highway right-of-way to provide adequate infrastructure to the proposed development and future development in the vicinity. The Electric Department has indicated that they have preliminarily approved the applicant's service plan which would provide the necessary capacity to serve anticipated future development of the property. They have further noted that this preliminary service plan does not consider how development would be served on site, and is limited to bringing necessary capacity to the property.

The Planning Commission finds that with the extension of city water and electrical infrastructure and utilization of Rogue Valley Sewer Services for storm water and sanitary sewer, adequate capacity of public facilities can and will be provided, with the understanding that the necessary infrastructure to serve future development of the property will be considered with Site Design Review.

Adequate Transportation

The Planning Commission notes that the annexation criteria include that, "*Adequate transportation can and will be provided to and through the subject property. For the purposes of this section 'adequate transportation' for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.*"

Vehicular Transportation

For vehicular transportation, the criterion requires that “...a 20-foot wide paved access exists, or can and will be constructed, along the full frontage of the project site to the nearest fully improved collector or arterial street. All streets adjacent to the annexed area shall be improved, at a minimum, to a half-street standard with a minimum 20-foot wide driving surface. The City may, after assessing the impact of the development, require the full improvement of streets adjacent to the annexed area. All streets located within annexed areas shall be fully improved to City standards. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.”

The subject properties here front on Highway 99 North, sometimes referred to as the Rogue Valley Highway, which is a state highway under the jurisdiction of the Oregon Department of Transportation. Highway 99 North becomes North Main Street within the city limits south of the site. North Main Street is a boulevard or arterial as classified in the Transportation System Plan (TSP). City street standards for a boulevard or arterial street generally call for 11-foot motor vehicle travel lanes, a 12-foot median/center turn lane, six-foot bike lanes on each side, eight- to nine-foot parking lanes where on-street parking is appropriate, a six-inch curb, a seven- to eight-foot parkrow planting strip with irrigated street trees, and six-foot sidewalks. As it currently exists under the recent lane reduction, sometimes referred to as “The Road Diet”, Highway 99N has one motor vehicle travel lane in each direction separated by a single, shared center turn lane, and variable width bicycle lanes on the shoulder. There are currently no curbs, park rows or sidewalks in place along the property frontage, and roadside ditches are present in some locations. On the opposite side of the roadway, a guardrail is in place at the outside edge of the bike lane.

Transportation Impact Analysis (TIA)

The applicant’s traffic engineer, Kelly Sandow, P.E., has submitted a TIA and a supplementary technical memorandum which evaluates the transportation impacts of the proposal. Key findings of the TIA include:

- The TIA shows all studied intersections (Hwy 99N at South Valley View, Highway 99N at Jackson Road, North Main Street at Jackson Road, North Main Street at Maple Street, and Hwy 99N at the project access points) will meet the mobility standards through the Year 2034 with the addition of the traffic associated with anticipated development of the subject property.
- The addition of development traffic will not substantially increase queuing conditions over the background conditions. The TIA technical memo further explains that the recent reduction in through lanes with the road diet has resulted in increased queuing lengths when disruptions to traffic such as garbage trucks, stopped buses or cars stopping for pedestrians create back-up’s. No mitigation is recommended to address these queue lengths.
- All site driveways are projected to operate safely and efficiently.
- The TIA recommends that Highway 99N be restriped to include a left-turn lane for vehicles entering the site.

The TIA concludes that the Transportation Planning Rule (TPR) has been demonstrated to be met. After review of the TIA and the subsequent supplementary technical memo, the Oregon Department of Transportation (ODOT) which has jurisdiction over the roadway has accepted the TIA.

Access Easement

The Planning Commission notes that the one of the two access points to the property is to be provided via a 30-foot wide access easement and notes that there are no reservations or limitations noted upon this easement. The application further explains that there is a 25-foot wide right of access to the highway from the easement, and includes a survey noting the easement area along with the easement language. The Planning Commission finds that while the adjacent property owners have raised questions as to the original intent underlying the granting of the easement, it is not the Commissioners' role to analyze this historical intent but rather to determine if a legitimate easement is now in place to support a finding that adequate transportation can and will be provided.

The Planning Commission finds that while city standards generally seek a gridded, interconnected street system within and through the development that provides for broader connectivity, the presence of the railroad tracks along one boundary of the subject properties combined with site topography prevents connection to the adjacent street system. In this instance, multi-family zoned property is not required to provide a dedicated public street with development (AMC 18.4.6.040.C.1) and no dedications are identified through the subject properties on the current Street Dedication Map, however AMC 18.4.3.080.C.3.d does require that two driveway access points be provided if a multi-family development will generate over 250 trips per day as is the case here. The Planning Commission finds that the intent of this standard is to provide options for the orderly flow of traffic into and out of the site, and here, two driveways are proposed, and the supplementary technical memo to the Traffic Impact Analysis (TIA) indicates that ODOT will be permitting unrestricted turning movements at both driveways – allowing both right-in/right-out and left-in/left-out movements. With development of the site, a future application will need to respond to the approval criteria and associated standards dealing with parking, access and circulation including vehicle area design and pedestrian access and circulation standards.

The Planning Commission finds that Highway 99N is the only street within or adjacent to the proposed annexation, and while the annexation criteria require that “*All streets located within annexed areas shall be fully improved to City standards,*” the Highway 99N improvements described in the application do not comply with City street standards. Along the property's immediate frontage, the application proposes city standard improvements except where the sidewalk must be pushed to curbside to accommodate the installation of a bus pull-out lane associated with a new southbound bus stop, and while the application proposes approximately 0.63 miles of new sidewalks to connect to existing sidewalks to the north and south, due to physical constraints in the form of roadside ditches and limited right-of-way standard parkrow planting strips with street trees cannot be installed with those connections. The application includes findings in support of an Exception to the Street Standards. The Commission finds that while an Exception may be merited, such a request would not be considered independent from a Site Design Review proposal as the annexation criteria do not provide for exceptions, however the Council could exercise its legislative discretion to accept the improvements as proposed.

Bicycle Transportation

For bicycle transportation, the approval criterion is that, “...safe and accessible bicycle facilities exist, or can and will be constructed. Should the annexation be adjacent to an arterial street, bike lanes shall be provided on or adjacent to the arterial street. Likely bicycle destinations from the project site shall be determined and safe and accessible bicycle facilities serving those destinations shall be indicated.” The Planning Commission finds that Highway 99N is classified as a boulevard or arterial street in the Transportation System Plan, and that there are existing bike lanes in place which are to be retained with the proposal.

Pedestrian Transportation

The pedestrian transportation criterion is that, “... safe and accessible pedestrian facilities exist or can and will be constructed. Full sidewalk improvements shall be provided on one side adjacent to the annexation for all streets adjacent to the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the project site is within a quarter of a mile of an existing sidewalk system, the sidewalks from the project site shall be constructed to extend and connect to the existing system. Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving those destinations shall be indicated.”

Frontage Improvements

The Planning Commission notes that the application details frontage improvements which mix city-standard treatments with a parkrow planting strip between the curb and sidewalk, and curbside sidewalk installations to connect the existing sidewalks from the north of the site in the county to the south within the city. The sidewalk installation proposed equates to approximately 0.63 miles. A city standard sidewalk and parkrow configuration is proposed along the subject properties’ frontage, except where the installation of a proposed bus pull-out lane and bus shelter necessitate an eight-foot curbside sidewalk. Beyond the frontages, curbside sidewalks are proposed where the right-of-way is constrained by right-of-way width, slopes, or existing improvements. The application proposes to place either an ODOT-standard cobra-head style street light or a City-standard pedestrian-scaled streetlight near the improved driveway apron, and a total of five additional street lights are proposed to be installed along the property frontage. The application includes Exception findings to address those areas of sidewalk that aren’t designed to city street standards, but as noted above the Annexation criteria do not provide for exceptions and as such they cannot be approved independently of a development proposal. The application details specific sidewalk sections in terms of the station numbers on the civil drawings.

- **Stations 1-16 (North of Land of Paws):** An 8-foot curbside sidewalk is proposed. The application explains that there is a large roadside ditch and private property belonging to Anderson Autobody which prevent standard parkrow installation, and further notes that this curbside sidewalk will connect to the curbside sidewalk to the north of the subject properties.
- **Stations 16-23:** A 3-foot bike buffer, 6-foot bike lane, 7-½ foot parkrow, and 6-foot sidewalk are proposed along this section of the property frontage.

- **Stations 23-27:** A bus turn-out lane, bus stop and 8-foot curbside sidewalk are proposed along this section of the property frontage. The parkrow here has been displaced by the proposed bus turn-out lane.
- **Station 27-34:** A 3-foot bike buffer, 6-foot bike lane, and curbside sidewalk are proposed. The application explains that this section is physically constrained by a steep roadside embankment and by the existing railroad trestle, and submittal materials have shown the sidewalk at varying widths in this area, however ODOT has indicated that for a state facility, a 6-foot sidewalk is the minimum acceptable width under the railroad trestle.
- **Station 34 – Schofield/North Main:** A 6-foot bike lane, 7½ -foot parkrow and 6-foot sidewalk are proposed in this section.

Speed reduction

The Planning Commission notes that the application suggests that with a change in roadside culture through annexation and the introduction of higher density residential development, driving habits on the corridor may change. They further suggest that after improvements are made, a formal speed study to seek a reduction in highway speeds could be undertaken and if speeds are ultimately reduced and pedestrian volumes increase, marked crossings could potentially be approved by the Oregon Department of Transportation (ODOT).

The Planning Commission notes that ODOT has indicated that the TIA is satisfactory, that the bus lane is satisfactory with a slight adjustment to its taper, and that they support a median cut to provide a pedestrian refuge at North Main Street and pedestrian crossing signage. ODOT has further indicated that they are satisfied with bicycle and pedestrian facilities as proposed, emphasizing the need for at least a six-foot sidewalk under the trestle; and that ODOT permits will be required to complete improvements. ODOT has also noted that they will need to review and approve final storm-drainage engineering at Site Review since storm drainage is to outflow into a ditch in the ODOT right-of-way.

The Planning Commission recognizes that ODOT has jurisdiction on this state highway with regard to issues including highway markings for pedestrian crossings and speed limits, and that a request to initiate a speed study will ultimately need to be made by the City to ODOT. Planning and Engineering staff have indicated that preliminary discussions with ODOT staff have begun and that ODOT is open to conducting a speed study, which has not been done for this corridor since the lane reconfiguration (“The Road Diet”) completed a few years ago. The Planning Commission recommends that with any Annexation approval here, the City Council direct staff to work with ODOT to initiate a speed study and that the city strongly advocate for a speed reduction to make the corridor a more pedestrian, bicycle and transit friendly facility.

Transit Transportation

For transit transportation, the criterion is that, “... should transit service be available to the site, or be likely to be extended to the site in the future based on information from the local public transit provider, provisions shall be made for the construction of adequate transit facilities, such as bus shelters and bus turn-out lanes. All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.”

Southbound RVTB Bus Stop

The Planning Commission finds that the applicant has worked with Rogue Valley Transportation District (RVTB), the RVTB Bus Stop Committee and the Oregon Department of Transportation (ODOT) to provide design details for a new southbound RVTB bus stop on the subject property's frontage to include a bus turn-out lane, bus shelter with lighting, sidewalk, accessible loading pad and accessible route to the site, any necessary retaining, and a merge lane for the bus to re-enter the travel lane at an appropriate speed. Exhibit C.4 of the application illustrates the proposed bus turn-out lane, shelter and street light placement, and a proposed walkway connecting from the shelter onto the project site.

Northbound RVTB Bus Stops

The Planning Commission finds that there are two existing northbound RVTB "flag stops" within 1,800-2,000 feet of the property, with one near the intersection of North Main Street and Highway 99N and the other near Valley View and Highway 99N. The application indicates that the potential for enhancing crossings in these locations has been explored, but further notes that ODOT has determined that new striping, rectangular rapid flash beacons (RRFB's) or similar treatments are not appropriate given the observed traffic speeds, traffic volumes, sight and stopping distances when weighed against the anticipated number of pedestrians. The application further indicates that ODOT does support a median refuge at the intersection of North Main and Highway 99N along with "Pedestrian Crossing" signage.

The Planning Commission concludes that the subject property is within a Transit Supportive Area in the RVTB 2040 Transit Master Plan as the property is within the "quarter-mile walkshed" of transit stops, which typically equates to a five-minute walk at a normal pace, and that a new southbound stop along their property's frontage will be provided to support transit use by future residents of the property.

Transportation Conclusions

In considering Annexations, the approval criteria call for all streets within the annexed area to be fully improved to city street standards, and all adjacent streets to be improved to at least a half-street standard. The criteria make no provision for Exceptions. The application as proposed does not meet these street standards. In the area to be annexed, the property's immediate frontage is proposed with city standard improvements except where the sidewalk must be pushed to curbside to accommodate the installation of a bus pull-out lane associated with a new southbound bus stop. On Highway 99N adjacent to the area to be annexed, the application proposes approximately 0.63 miles of new sidewalk to connect to existing sidewalks to the north and south, but due to physical constraints in the form of roadside ditches and limited right-of-way, city standard park row planting strips with street trees cannot be installed. The application includes findings to support an Exception to the Street Standards, and while an Exception may be merited it is not an option under the Annexation criteria and cannot be considered independently of a formal development proposal for the site.

The proposal includes the installation of roughly 3,340 linear feet – or 0.63 miles - of sidewalk connecting from the existing sidewalk terminus near El Tapatio restaurant south into the city limits to the existing sidewalk at Schofield Street; the installation of a new bus stop with pull-out and merging lane; and improvements to the crossing from North Main Street across Highway 99N to the northbound RVTB flag stop to include an improved median refuge and pedestrian crossing signage. In considering the adequacy of the proposed transportation facilities, the Planning Commission notes that the Transportation

Commission had expressed concerns with pedestrians headed to the northbound bus route and cyclists turning north on the highway without additional crossing improvements or a speed reduction. In the Planning Commission's site visit to the property, Commissioners raised similar concerns. For the Planning Commission, the application illustrates what can currently be done to provide adequate transportation within the existing constraints of the state highway. Staff has indicated that ODOT is open to a speed study to determine whether a reduction in the posted speed limit is feasible, and in the Commission's view, such a study should be initiated by the city with annexation in conjunction with strong advocacy for a speed reduction from Valley View to the existing city limits to yield an environment that is better suited to bicyclists, pedestrians and transit users.

Minimum Density

The Planning Commission notes that for all residential annexations, a plan is required to be provided to demonstrate that the development of the entire property will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units is necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The code further provides that for purposes of computing density, portions of the annexed area containing undevelopable areas such as wetlands, floodplain corridor lands, or slopes greater than 35 percent, shall not be included. To ensure compliance with this requirement, the code also requires that the owner sign an agreement for recording with the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan.

The Planning Commission finds that after excluding undevelopable areas due to significant natural features and physical constraints posed by slopes exceeding 35 percent, the riparian drainage area, and the wetland area and its buffer zone, the developable area of the property is 13.75 acres. For the proposed R-2 zoning, the base density for 13.75 acres is 185.625 dwelling units and the minimum density is 167 dwelling units ($13.75 \text{ acres} \times 13.5 \text{ dwelling units/acre} = 185.625 \text{ dwelling units} \times 0.90 \text{ minimum density} = 167.0625 \text{ dwelling units}$). The application notes that the property owner will sign an agreement with annexation that future development will occur in accord with this minimum density, and includes a conceptual development plan with building designs, site lay-out and findings to demonstrate how this could be achieved on site.

Affordability Requirement

The Planning Commission notes that annexations are required to demonstrate that they will meet the affordability requirements set forth in AMC 18.5.8.050.G., which generally requires that the total number of units shall equal or exceed 25 percent of the base density of the subject property. The application explains that the project is proposed as rental units and that the affordable rental units will be restricted to 60 percent of the area median income (AMI) as provided in AMC 18.5.8.080.G.1. At this level, each rental unit provided counts as 1.5 units for the purposes of meeting the standard, and the application explains that these type units will be provided with the future Site Design Review for multi-family development of the property. The affordable units are to be evenly dispersed through the development and will be of a comparable bedroom mix to the market rate units, and it is anticipated that 12 of the future buildings would contain two units each while two of the future buildings would contain three units each for a total of 30 affordable units. The application notes that they envision the future development to consist of 28 two bedroom units and 168 one bedroom units of around 500 square feet in area.

The Planning Commission further notes that AMC 18.5.8.050.G.1 requires that, “*The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein.*” The application excludes lands constrained by hillside slopes, water resource protection zones for streams or wetlands, and lands with significant natural features from the initial base density calculation, arguing that both state and city regulations do not consider these to be buildable lands, and that similar exclusions have been allowed in past applications. The Planning Commission finds that while there is a provision which allows for the exclusion of constrained lands (*hillsides, water resource protection zones for streams and wetlands, and lands with significant natural features*) when calculating the minimum density of a property, the ordinance currently has no similar provision to exclude these lands from the base density when calculating the required number of affordable units for annexation.

The Planning Commission recognizes that the Council is considering legislation which would resolve this issue, but the Commission finds that to comply with the ordinance as presently written, the number of affordable units required with annexation of the property would need to be increased to account for the full base density of the subject properties. The R-2 subject properties here have a base density of 13.5 dwelling units per acre, which for this 16.87 acre property equates to a 227.75 dwelling unit base density and would require 56 affordable dwelling units, or 37 units offered at 60 percent of area median income (AMI), rather than the 30 affordable units at 60 percent AMI proposed in the application.

Five-Year Supply

The Planning Commission notes that the final annexation criterion is that one or more of the standards in AMC 18.5.8.050.H. are met. Of these, the applicable standard addressed with the current proposal is a demonstration that there is less than a five-year supply of vacant and re-developable land in the proposed land use classification within the current city limits. The application provides detail based on city data which notes there is a 4.8-year supply of available Multi-Family Residential land combined between the R-2 and R-3 zones. The Planning Commission finds that the area is envisioned and proposed for annexation as Multi-Family Residential, and based on city data in the Housing Element and Buildable Lands Inventory there is less than a five-year supply of available Multi-Family Residential zoned land.

2.4 The Planning Commission notes that the application submittal includes written findings responding to AMC 18.5.9.020 to address a Zoning Map Amendment for the zone change from the current County zoning of RR-5 (Rural Residential) to the City’s R-2 (Low Density, Multi-Family Residential) zoning, which is consistent with the properties’ Comprehensive Plan designation. The Planning Commission finds that annexation of the property into the city with zoning corresponding to the Comprehensive Plan designation does not necessitate a Zoning Map Amendment and is necessary for Annexation to occur.

2.5 The Planning Commission finds that while neither Outline Plan subdivision nor Site Design Review approvals for development of the property are requested here, the application includes conceptual details for the future phased development of 196 apartments (One- and Two-Bedrooms, ranging from 480-701 square feet) in 14 two-story buildings with building placement and site and building designs to address Site Review criteria to address the requirement that the application include a plan demonstrating that with annexation, the property will develop to at least 90 percent of the base density. A deed restriction will be

recorded on the property to require that it be developed to the minimum density.

The Planning Commission finds that the site plan details presented for future development here are conceptual, and that Site Review approval for development of the property is not being considered at this time. Outline Plan subdivision, Site Design Review and any other necessary land use approvals will need to be obtained subsequent to Annexation approval before the site can be developed,

2.6 The Planning Commission finds that while the site has a generally consistent grade and is moderately sloped with an approximate ten- to 15-percent slope from southeast to northwest, the western half of Tax Lot #1700, west of the existing residence, consists of large terraces with areas of steep slopes between and a substantial amount of this lot has slopes in excess of 35 percent which, by city codes, would be considered “severe constraints” lands which are unbuildable.

The Planning Commission further finds that there is a riparian land drainage identified as a tributary of Bear Creek at the north end of Tax Lot #1700, and that two wetlands have been identified on the subject properties in the draft wetland delineation. provided. One is only 60-square feet and is located at the base of a small depression northwest of the existing single family residence on Tax Lot #1700. The other is larger at approximately 4,606 square feet in area and located on Tax Lot #1702.

The Planning Commission has included recommended conditions below which would require that evidence of concurrence from the Oregon Department of State Lands (DSL) with the wetland delineation be provided prior to a development application for the site, and that the properties be included in the Wildfire Lands, Physical & Environmental Constraints Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays in order to fully incorporate land-use based protection of the subject properties’ natural features with annexation and subsequent development.

SECTION 3. DECISION

3.1 The application includes a request for the annexation of two parcels totaling 16.87 acres with a current zoning of Jackson County RR-5 (Rural Residential) and a proposed zoning of City of Ashland R-2 (Low Density, Multi-Family Residential) for the properties located at 1511 Highway 99 North. The annexation is to include adjacent railroad property and state highway right-of-way added by the Staff Advisor for a more orderly and logical boundary. The application includes *conceptual* details for the future phased development of 196 apartments in 14 two-story buildings. Outline Plan subdivision and Site Design Review development approvals are not requested at this time, but would be applied for subsequent to annexation approval. The application includes a request for an Exception to Street Standards to deviate from city standard parkrow and sidewalk improvements in response to constraints of right-of-way width and existing encroachments, however such Exceptions are not considered independent of a development proposal.

The subject properties pose a number of challenges to development: there are significant road cuts, large areas of unimproved right-of-way along the frontage, and established commercial uses between the highway and the subject properties, all of which pose barriers for access and improvements; there are

limited utility or transportation facilities currently in place; and railroad right-of-way restricts connectivity between the property and contiguous areas of the city. Site topography, wetlands, a stream corridor and steeply sloped, forested areas pose further challenges, and the “Billings Siphon,” critical infrastructure for the valley’s irrigation system, bisects the property with a 100-foot wide easement. However, for the Commission, the key challenge here is in safely accommodating the multi-modal transportation needs of future residents along a state highway where the posted speeds, traffic and pedestrian volumes, and limited sight distances complicate multi-modal improvements such as marked or signalized crossings, particularly for those needing to cross the highway by bicycle heading north or on foot to access the northbound bus route.

The Planning Commission concludes that after the applicant’s efforts in working with the City, Rogue Valley Sewer Services, Rogue Valley Transportation District, Oregon Department of Transportation, Talent Irrigation District and the Bureau of Reclamation to address these challenges in extending utilities and installing 0.63 miles of new sidewalks and a new bus stop with pull-out lane to provide much needed rental housing along a transit route, the proposal merits approval, however with that recommendation the Commission also strongly recommends that the city work with the Oregon Department of Transportation to conduct a speed study and advocate for a reduction in speeds on Highway 99N from Valley View south the existing city limits.

Therefore, based on our overall conclusions, the Planning Commission recommends that the City Council approve the requested annexation subject to each of the conditions below.

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified herein, with the understanding that the conceptual development proposal is conceptual only and not approved here. The current approval is limited to the Annexation request, with required land use approvals including but not limited to Outline Plan subdivision and Site Design Review approvals, as applicable, as well as any necessary federal or state approvals necessary, for development of the property to be obtained subsequently.
- 2) That prior to final approval and annexation of the property, the applicant shall provide:
 - a. A final revised boundary description and map of the properties to be included in the annexation prepared by a registered land surveyor in accordance with ORS 308.255, to include the adjacent Highway 99N right-of-way and the adjacent railroad property. The boundary shall be surveyed and monumented as required by statute subsequent to City Council approval of the proposed annexation.
 - b. A final, signed irrevocable consent to annexation as required in AMC 18.5.8.020.A.
 - c. A final signed agreement to deposit an amount sufficient to retire any outstanding indebtedness of special districts defined in ORS 222.510 as required in AMC 18.5.8.020.B.
 - d. A deed restriction agreement ensuring that any future development will occur in accord with the minimum required 90 percent of the subject properties’ base density as required in AMC 18.5.8.050.F.

- e. A deed restriction agreement that development of the property shall comply with the affordability requirements of AMC 18.5.8.050.G, and that future development of the site shall address these affordability requirements at Site Design Review, including but not limited to the affordability levels, number of affordable units, and how the applicant will qualify potential renters and provide annual reporting to the city to verify compliance with these requirements.
- 3) That prior to the submittal of the Outline Plan subdivision or Site Design Review applications, the applicant shall obtain and provide evidence of concurrence from the Division of State Lands (DSL) for a wetland delineation.
- 4) That with annexation, the Wildfire Lands, Physical & Environmental Constraints - Hillside Lands and Severe Constraints, and Water Resource Protection Zones maps and associated overlays shall be revised to fully incorporate the subject properties' natural features. Any future development of the property shall be subject to regulation under these overlays.
- 5) That to address the annexation approval criteria and standards that adequate transportation and city facilities be provided, at a minimum any future development of the property shall require completion of the street frontage improvements, including but not limited to sidewalks and a bus stop, and the extension of utility infrastructure as described in 2.3 above at the owner's expense, in addition to any improvements necessary to serve the future development of the property.

Planning Commission Approval

October 13, 2020
Date

FINDINGS

PA-APPEAL-2020-00011
345 Clinton Street

BEFORE THE PLANNING COMMISSION

October 13, 2020

IN THE MATTER OF PLANNING ACTION #PA-APPEAL-2020-00011,)
AN APPEAL OF THE ADMINISTRATIVE APPROVAL OF PLANNING)
ACTION #PA-T1-2020-00109, A TWO-LOT PARTITION OF A 12.29-)
ACRE LOT FOR THE PROPERTY LOCATED AT 345 CLINTON ST. THE)
TENTATIVE PARTITION PLAT CREATES TWO PARCELS THAT ARE)
8.94 ACRES AND 3.35 ACRES IN SIZE. STAFF INITIALLY APPROVED)
THE APPLICATION SUBJECT TO A NUMBER OF CONDITIONS.)
SUBSEQUENT TO THE MAILING OF A NOTICE OF DECISION, ERIC)
ELERATH AND BETSY MCLANE WHO RESIDE IN THE NOTICE AREA)
FILED AN APPEAL REQUEST.)

**FINDINGS,
CONCLUSIONS,
AND ORDERS.**

OWNER: PAUL MACE AND KATHLEEN KAHLE)
APPLICANT: ROGUE DEVELOPMENT SERVIES)
APPELLANT: ERIC ELERATH AND BETSY MCLANE)
_____)

RECITALS:

- 1) Tax lot #401 of Assessor’s Map 39-1E-04-DB is located at 345 Clinton Street is in the R-1-7.5 zone and is 12.29 acres in size.
- 2) The application proposed a two-lot partition and included a tentative partition plat showing two parcels that are 8.94 acres and 3.35 acres in size.
- 3) In response to the COVID-19 pandemic, Governor Kate Brown issued the “Stay home, stay safe” order on March 23, 2020, after which the city took numerous actions including closing City offices to the public including the Community Development building.
- 4) State of Oregon Executive order 20-16 “Keep government working: Ordering necessary measures to ensure safe public meetings and continued operations by local governments during coronavirus (COVID-19) outbreak” provides that any requirement of the ORS for public meetings may be satisfied by providing a method of appearing or meeting by telephone, video, or other electronic methods. As such, planning commission meetings have been conducted via Zoom.
- 5) On May 15, 2020 the application was deemed complete, and in accordance with AMC 18.5.1.050.B.4 a Notice of Complete application was posted at the subject property in clear view from the public right-of-way and mailed to all property owners of record within 200 feet of the parcel.
- 6) The Staff Advisor approved the application on June 30, 2020 subject to several conditions of approval and a Notice of Decision (NOD) was mailed on the same date.

- 7) After the mailing of the NOD, Eric Elerath and Betsy McLane, who reside at 419 Clinton Street, submitted an application to appeal the approval of the partition on July 13, 2020.
- 8) The Planning Commission, following proper public notice, held a public hearing on August 11, 2020. The meeting was conducted electronically by Zoom due to the ongoing emergency order in response to the COVID-19 pandemic. Public testimony was received, and exhibits were presented.
- 9) After the public hearing had concluded the appellant requested that the record remain open pursuant to ORS 197.763(6). Therefore the record remained open to new evidence or argument from parties to the hearing until August 18, 2020 at 4:30 p.m., open to argument only from parties in response to new submittals until August 25, 2020 at 4:30 p.m., and open to final legal argument from the applicant until September 1, 2020 at 4:30 p.m. The hearing was continued to a date and time certain: September 8, 2020 at 7 p.m.
- 10) During the period that the record remained open no additional arguments or evidence were submitted.
- 11) September 12, 2020 was the 120-day time limit after the application was deemed complete. On September 10, 2020 the applicant signed a 30-day extension to the time limit set forth in ORS 227.178(1).
- 12) On September 8, 2020 the Alameda fire took place which caused the scheduled hearing to be canceled. After the cancellation of the meeting a new notice was posted at the subject property in clear view from the public right-of-way and mailed to all property owners of record within 200 feet of the parcel that the hearing was rescheduled to September 22, 2020 at 7:00 p.m.
- 13) The Planning Commission reconvened on September 22, 2020 to deliberate. Ultimately, they determined that staff had not erred in approving the two-lot partition, denying the appeal and approving the application subject to conditions listed in the staff report, with the addition of condition 1a below.
- 14) The criteria of approval for a Land Partition are described in Ashland Municipal Code (AMC) 18.5.3.050 which state that the approval authority shall approve an application for preliminary partition plat approval only where all the following criteria are met:
 - A. The future use for urban purposes of the remainder of the tract will not be impeded.
 - B. The development of the remainder of any adjoining land or access thereto will not be impeded.
 - C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
 - D. The tract of land has not been partitioned for 12 months.
 - E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).
 - F. Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.

G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.

H. Unpaved Streets.

1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
 - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter [18.4.6](#) prior to the signature of the final partition plat by the City.
 - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.
 - c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
 - d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.
- K. A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).

Now, therefore, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

SECTION 1. EXHIBITS

For the purposes of reference to these Findings, the attached index of exhibits, data, and testimony will be used.

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"
Hearing Minutes, Notices, and Miscellaneous Exhibits lettered with an "M"

SECTION 2. CONCLUSORY FINDINGS

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

2.2 The Planning Commission finds that the proposal for a two-lot partition meets all applicable criteria described in section 18.5.3.050, for preliminary partition plat approval. The Planning Commission notes that the preliminary partition plat details the two proposed parcels as 8.94 acres and 3.35 acres in size.

2.3 The Planning Commission finds that the application was deemed complete on May 15, 2020 and notice was both posted at the frontage of the subject property and mailed to all property owners within 200-feet of the subject property. The Planning Commission further finds that the application was approved by the Staff Advisor on June 30, 2020 with a 12-day appeal period which extended through July 13, 2020.

2.4 The Planning Commission finds that on July 13, 2020 prior to the end of the appeal period, Eric Elerath and Betsy McLane timely filed a notice of land use appeal. Mr. Elerath and Ms. McLane reside in the noticing area and Mr. Elerath had also submitted written comments during the public comment period and thus had standing to appeal.

2.5 The Planning Commission notes that the notice of appeal identified the following issues on appeal: 1) Incomplete application, 2) Defective notice, 3) Failure to provide access to personally inspect the application materials etc., 4) Failure to provide digital access to application materials etc., 5) the Staff Advisor's failure to grant Mr. Elerath's request for additional time to review the application materials, and 6) Defective submittal analysis. Following this list of six specific grounds of appeal the appellant goes on raise a seventh issue saying "implicit in these issues is the apparent fact that two land use decisions were actually made. One decision was made by staff about the application's completeness, and the other was made regarding compliance with criteria for a preliminary partition plat."

The Notice of Appeal further stated that the appellant reserved the right to raise other issues at the hearing. 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.

2.6 The Planning Commission finds that the subject property is located within the R-1-7.5 zoning district and that land divisions are governed by AMC 18.5.3.

2.7 The Planning Commission finds that AMC Title 18 Land Use regulates the division of land to carry out the development pattern envisioned by the Comprehensive Plan and to encourage efficient use of land resources among other goals. When considering the decision to approve or deny an application for land partition, the Staff Advisor considers the application materials against the relevant approval criteria in the AMC. The approval criteria for a preliminary partition plat are in Ashland Municipal Code (AMC) 18.5.3.050. The Planning Commission finds that there is substantial evidence in the record to make findings that each of the criteria have been met, as follows:

2.7.1 The Planning Commission notes the first approval criterion for preliminary partition plat approval is *“The future use for urban purposes of the remainder of the tract will not be impeded.”* The application includes a discussion regarding the future development plan to demonstrate that the proposed partition will not impede future development of the parcels. The future development plan indicates that the proposed new parcel would be able to be subdivided to create approximately fifteen lots for the development of single-family homes with access provided by an extension of Briscoe and Phelps Streets as well as the alley between Clinton and Briscoe Place. The development plan is not a subdivision proposal and is not approved with this two-lot partition approval. The Planning Commission finds that the two proposed lots are significantly larger than the minimum lot size for the zone, that both lots have frontage on the adjacent public streets, and that the development plan demonstrates that the further development of the new parcel is feasible while not limiting possible future development. The Planning Commission further finds that future development of either lot created here is likely to require the extension of Phelps Street, and that the access as illustrated in the application materials has the potential to complicate the street extension once the two properties are under separate ownership. Phelps Street will need to be extended in alignment with its current terminus and ultimately completed to residential neighborhood street standards while addressing the Driveway Separation for Neighborhood Streets in AMC Figure 18.4.3.080.C.3.b. The current configuration does not provide for the extension of Phelps in alignment with its current terminus or account for driveway separation if the existing driveway to Parcel 1 is retained. A condition has been included below to require that the current configuration be adjusted to allow the extension of Phelps Street in keeping with residential neighborhood street standards and in alignment with its current terminus while addressing the driveway separation requirements.

2.7.2 The Planning Commission notes the second approval criterion for preliminary partition plat approval is *“The development of the remainder of any adjoining land or access thereto will not be impeded.”* The Planning Commission finds that based on the proposed property configuration on the preliminary partition plat the larger proposed parcel will continue to have access from Clinton St. stratifying this criterion. The Planning Commission notes that all other adjoining properties are either developed or constrained by the flood plain.

2.7.3 The Planning Commission notes the third approval criterion for preliminary partition plat approval is *“The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and nay previous land use approvals for the subject area.”* The Planning Commission notes that there are no adopted neighborhood or district plan that applies to the subject property, nor are there any conditions of approval from

previous land use approvals that are relevant. The Planning Commission concludes that this criterion is satisfied.

2.7.4 The Planning Commission notes the fourth approval criterion for preliminary partition plat approval is *“The tract of land has not been partitioned for 12 months.”* The Planning Commission finds that the land has not been partitioned for more than 12 months and that the last plat that adjusted the subject property was a property line adjustment that took place in 2018.

2.7.5 The Planning Commission notes the fifth approval criterion for preliminary partition plat approval is the *“Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).”* The Planning Commission finds that the preliminary partition plat indicates that the two proposed lots comply with the base standards for the zone including minimum area requirements and lot coverage, and that both proposed parcels substantially exceed the 5,000 square feet minimum lot size and minimum width standards as well as lot width to depth ratio. The Planning Commission concludes that this criterion is satisfied.

2.7.6 The Planning Commission notes the sixth approval criterion for preliminary partition plat approval is that *“Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design.”* The Planning Commission finds that with the condition discussed in 2.7.1 above, the lot configuration will be adjusted to provide for the future extension of Phelps Street in alignment with its current terminus to the south and in keeping with street standards while addressing the driveway separation requirements of AMC Figure 18.4.3.080.C.3.b, and that with the further development of Parcel 2, individual lots created will need to address the Vehicle Area Design standards. The Planning Commission concludes that this criterion is satisfied.

2.7.7 The Planning Commission notes the seventh approval criterion for preliminary partition plat approval is *“The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.”* The Planning Commission finds that the application materials make clear that all city facilities are available within the adjacent rights-of-way, including sanitary sewer, water and franchise utilities. There are no public utilities proposed to be installed to serve the new vacant parcel. The application explains that the size of these utilities will be predicated by the future development. Clinton, Ann and Briscoe streets are designated as residential neighborhood streets in the City of Ashland Transportation System Plan and are designed to have a capacity of up to 1500 daily trips. The most recent trip count data (captured between 2005 and 2008) indicates that each of these roads operate far below their design capacity: Carol 388 Average Daily Trips (ADT), Phelps 207 ADT, Clinton 143 ADT and Ann 157 ADT. According to City records in the past twenty years there have been two accidents at the point where Clinton St turns into Carol, one accident at the intersection of Clinton and Ann, and another at Phelps and Clinton, for a total of four accidents. The Land Use Ordinance does not require

a Traffic Impact Analysis (TIA), and Public Works had no concerns regarding traffic impacts of the proposed partition. The Planning Commission concludes that this criterion has been satisfied.

2.7.8 The Planning Commission notes the eighth approval criterion for preliminary partition plat approval addresses minimum improvements to the roadway: *“When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.”* The Planning Commission finds that the existing curb-to-curb width along Clinton and Ann Streets is twenty-seven feet which exceeds the required minimum width for residential neighborhood streets and allows for parking on both sides. The Planning Commission further finds that Clinton and Ann Street lack park row planting strips and sidewalks adjacent to the new parcel, and notes that the application requests to sign in favor of a Local Improvement District (LID) for the future improvement of Clinton and Ann Streets. A condition has been added below requiring that the applicant sign in favor of a LID prior to approval of the final plat. The Planning Commission concludes that this criterion has been satisfied.

2.7.9 The Planning Commission notes the ninth approval criterion for preliminary partition plat approval is that *“Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.”* The Planning Commission finds that this criterion does not apply as there is no alley adjacent to the subject property.

2.7.10 The Planning Commission notes the tenth approval criterion for preliminary partition plat approval is that *“Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.”* The Planning Commission finds that at this time there is no development that would require such permits and that at the time of future development or land division the applicant will be required to address the Water Resource Protection standards and delineation of the possible wetland as identified in the Wetland Inventory and obtain the required state and federal permits should they be required.

2.7.11 The Planning Commission notes the final approval criterion for preliminary partition plat approval is that *“A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).”* The Planning Commission finds that this criterion does not apply as there is no proposed flag lot.

2.8 The Planning Commission notes the notice of appeal identified six specific items. It should be noted that none of these issues address the applicable approval criteria and are all focused on alleged failures to adequately notice the application and provide access to the application materials. The six specific items listed were:

- A. Incomplete application.
- B. Defective notice.

- C. Failure to provide access to personally inspect the application file, evidence, and documents.
- D. Failure to provide digital access to application file, material evidence and documents.
- E. Elerath's request for additional time and the Director's failure to provide such.
- F. Defective submittal analysis.

The Planning Commission further acknowledges that the Notice of Intent to Appeal (NITA) document continues under a heading "Specific Grounds for Appeal" there are two sections numbered one and two (A&E above). These two sections develop Mr. Elerath's arguments, the first being that "The Director's decision was made without a complete application having been produced." The second being that "The Director failed to grant an extension of time to allow access to review the application." None of the other specific points listed (B, C, D, F above) have their arguments further developed. As stated above, following the list of six appeal issues the appellant raises a seventh issue stating that two separate land use decision were made. Additionally, in a supplemental submittal the appellant raises the issue that the city failed to properly send a separate notice to co-appellant Betsy McLane, and that his due process rights under the 14th amendment had been prejudiced. Finally, during the hearing the appellant raised issues with easements of record that were not shown on the plat. Below each of these appeal issues is addressed in turn.

2.8.1 The Planning Commission notes that the first appeal issue was that the application was incomplete because the materials provided online did not include the application form itself or receipt for payment. The Planning Commission finds that the receipt and application were included in the physical record. The Planning Commission concludes that the application was complete, and further notes the application requirements of AMC 18.5.1.050.A are not approval criteria applicable to approving or denying a preliminary partition plat.

2.8.2 The Planning Commission notes that the second appeal issue was that the notice was defective. The Planning Commission notes that the notice that was posted stated that the documents would be available at the Community Development Building which was closed to the public during the public comment period. The Planning Commission notes that during the review period the appellant was in contact with staff and was directed to the City web site where the application materials were available. The Planning Commission further notes that while the posted notice stated that the application materials were available for review in the Community Development Building, with the Governor's Executive Order #20-16 and the city's declared State of Emergency in response to the COVID-19 pandemic, city offices were closed to the public, and that the mailed and posted notices included the name and phone number of a city contact person as required in AMC 18.5.1.050.B.3.h. The Planning Commission notes that the application materials were made available on the "What's Happening in My City" page of the City web site, and people who called or emailed and were interested in reviewing the file were directed to the City's web site. The Planning Commission finds that any issue with defective notice was remedied by the notice for the appeal hearing.

2.8.3 The Planning Commission notes that the third appeal issue was failure to provide access to personally inspect the application file, evidence, and documents. The Planning

Commission finds that staff contacted Mr. Elerath multiple times to ensure that he had access to the electronic materials. The Planning Commission finds that after the Notice of Decision was sent but prior to the end of the appeal period the city made accommodations to allow Mr. Elerath access to the building to review the physical materials. Despite being contacted multiple times he did not respond to staff or take those opportunities that were available to him to review the application materials in person. The Planning Commission further finds that prior to the appeal hearing the appellant did visit the Community Development building on August 3, 2020 and reviewed the application materials in person. The Planning Commission concludes that this point of appeal is resolved.

2.8.4 The Planning Commission notes that the fourth appeal issue was an alleged failure to provide digital access to application file, material evidence and documents. The Planning Commission finds that as noted previously the application materials were published on the City web site.

2.8.5 The Planning Commission notes that the fifth appeal issue was the appellant's request for additional time and the Director's failure to provide such. The Planning Commission finds that AMC 18.5.1.050.C requires that, "The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period." In addition, in keeping with the state's "120-Day Rule," AMC 18.5.1.090.B requires that, "*The City shall take final action on Administrative... land use applications, pursuant to this chapter, including resolution of all appeals, within 120 days from the date the Staff Advisor deems the application complete for purposes of processing, unless the applicant requests an extension in writing.*" The Planning Commission concludes that there is no requirement in the code to provide additional time for review, and additionally, staff's review timeline is constrained by the time limits set by both city ordinance and state law to render a final decision.

2.8.6 The Planning Commission notes that the sixth appeal issue was an alleged 'defective submittal analysis.' The Planning Commission finds that because this specific point of appeal was left undeveloped in the NITA the Planning Commission is left to surmise that this is an argument that ties into the complete application determination addressed below.

2.8.7 The Planning Commission notes that the final appeal issue raised was that the determination of a complete application was a second discrete 'land use decision' which also required public notice etc. The Planning Commission finds that determination that an application meets the Type I application requirements of AMC 18.5.1.050.A is a procedural component of all Type I land use decisions, and AMC 18.5.1.090.A requires the Staff Advisor make such a determination for each application within 30 days of submittal. Completeness review in and of itself is not treated as a separate land use decision requiring substantial discretion, and as such is not included as a type of Planning Action approval in Table AMC 18.5.1.010 "*Summary of Approvals by Type of Review Procedures.*"

2.8.8 In a supplemental submittal on August 10, 2020 the appellant raised additional issues including: the failure of staff to provide separate notice to co-appellant Betsy McLane, concerns with due process and equal protection under the 14th Amendment, requesting additional time to review and inspect the application, and questioning the credibility of the

preliminary plat map prepared based on easements which could not be precisely located.

The Planning Commission notes that after the notice of appeal, appellant Eric Elerath raised concerns with staff that co-appellant Betsy McLane had not received a mailed notice addressed to her. The Commission notes that Ms. McLane was listed as an appellant on the appeal form, however she did not sign the form. The Commission further notes that, as detailed in AMC 18.5.1.050.G.4, hearings for appeals of Type I decisions are to follow the Type II hearing procedures in AMC 18.5.1.060 A-E, which include that notices be mailed to owners of record of property on the most recent tax rolls (AMC 18.5.1.060.C.2) and posted on the property within view of the right-of-way. Mr. Elerath and Ms. McLane are both listed as owners of the property at 419 Clinton Street, and the current tax rolls list their mailing address as, and mailed notice was sent to, “Elerath, Eric J *et al*, 419 Clinton St, Ashland, OR 97520”. The Planning Commission notes that AMC 18.5.1.020 speaks to “Failure to Receive Notice” noting, “*The failure of a property owner to receive notice... shall not invalidate such proceedings if the City can demonstrate by affidavit that such notice was mailed. The failure to receive notice shall not invalidate the decision after the action is final if a good faith attempt was made to notify all persons entitled to receive notice.*” The Planning Commission finds that a copy of the notice received by the appellants is included in their August 10th submittal, and that required notice was also posted on the property in view of the right-of-way. The Planning Commission concludes that proper notice was provided as required in AMC 18.5.1.060.C.

Appellant argues that the 120-day rule for final decision on a permit, as required by the Oregon Legislature at ORS 227.178, violates his right to due process of law under the 14th Amendment of the United States Constitution. Appellant has provided no authority for his argument, and the Planning Commission will abide by the requirements of state law as enacted by the Legislature.

The appellant’s request for additional time are addressed in 2.8.5 above.

The Planning Commission notes that the appellant also raised concerns over notations on the preliminary plat that there were some easements identified through a title report which could not be precisely located on the property. These were noted on the preliminary plat with reference to the applicable Jackson County deed records and a notation that they cannot be located, and the appellant suggested that a partition should not be approved until these easement locations were resolved. The Planning Commission finds that such notations are typically made when a title report identifies older easements which are not described in sufficient detail to precisely locate them on the plat, and further finds that these easement locations do not relate to an approval criterion and as such do not provide a basis to approve or deny a partition application.

2.9 The Commission finds that with the conditions below attached, the proposal satisfies the applicable approval criteria and that neither the appeal issues raised in the initial notice nor those issues raised during the hearing provide a basis to reverse the initial decision of the Staff Advisor.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearings on this matter, the Planning Commission concludes that the request for the partition approval to divide the property is supported by evidence contained within the whole record.

3.2 The Planning Commission denies the appeal and re-affirms the Staff Advisor's original approval of the partition. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then the Planning Action 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.
- 2) That a final survey plat shall be submitted, reviewed and approved within 18 months of the final decision date of the preliminary partition plat approval by the City of Ashland.
 - a. That the partition plat shall be adjusted such that the north-south property line between parcel 1 and parcel 2 is shifted to allow a future extension of Phelps St. consistent with the standards for a neighborhood street and in alignment with Phelps St. to the south, and that the drive way accessing the larger parcel be relocated to meet minimum spacing requirements.
- 3) That the property owner shall sign in favor of a Local Improvement District (LID) for the future street improvements, including but not limited to paving, curb gutter, storm drainage, sidewalks and undergrounding of utilities for Clinton and Ann Streets prior to signature of the final survey plat. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by City ordinances and resolutions.
- 4) That prior to the submittal of the final survey plat for the review, approval and signature of the Ashland Planning Division, all easements for public and private utilities, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.

Planning Commission Approval

October 13, 2020
Date

DISCUSSION ITEM

Update on New State Rules for Middle Housing

Memo

DATE: October 13, 2020

TO: Ashland Planning Commission

FROM: Maria Harris, Planning Manager

RE: State requirements for middle housing (duplexes) and accessory residential units

Summary

This is an informational item to update the Planning Commission on new State rules that require allowing duplexes and the related upcoming code amendment project.

Background

In the 2019 legislative session, the Oregon State Legislature passed House Bill (HB) 2001 “relating to housing; creating new provisions; amending ORS197.296, 197.303, 197.312 and 455.610 and section 1, chapter 47, Oregon Laws 2018; and declaring an emergency.” The bill became effective on August 8, 2019. See attached “House Bill 2001: More Housing Choices for Oregonians” by the Department of Land Conservation and Development (DLCD).

HB 2001 requires cities to allow “middle housing” including duplexes, triplexes, quadplexes, cottage clusters and townhouses on residentially zoned lots or in residential areas where single-family dwellings are permitted. HB 2001 also includes a provision that prohibits jurisdictions from requiring off-street parking and owner-occupancy requirements for accessory dwelling units (ADUs).

“Medium cities” with a population between 10,000 and 25,000 and outside the Portland Metro boundary are required to amend codes to allow duplexes on residentially zoned lots that allow the development of detached single-family homes. “Large cities” with a population of more than 25,000 or located in the Portland Metro boundary with a population of more than 1,000 are required to provide all types of middle housing. In the Rogue Valley, Ashland and Central Point are medium cities and Medford is a large city. The attached map details the medium and large cities throughout the state.

Medium cities such as Ashland are required to amend local codes or adopt the model code by June 30, 2021 to address the requirements of House Bill 2001. The State’s model code is attached.

The Land Conservation and Development Commission(LCDC) adopted Chapter 660 Division 46 Middle Housing in Medium and Large Cities in July 2020 and the administrative rules became effective on August 7, 2020. The administrative rules provide standards for medium cities for the development of middle housing as well as a model code.

HB 2001 says that cities may regulate the siting and design of duplexes as long as the regulations do not, individually or cumulatively, deter the development of duplexes through unreasonable cost and delay.



The administrative rules clarify that siting and design standards that create unreasonable cost and delay include any standards applied to duplex development that are more restrictive than those applicable to detached single-family dwellings in the same zone.

State Requirements

The following is a summary of the provisions of the administrative rules for duplexes that apply to medium cities such as Ashland.

- **Permitted Use:** Duplexes must be allowed on residentially zoned lots where detached single-family dwellings are permitted.
- **Approval Process:** Cities must apply the same approval process to duplexes as is in place for detached single-family dwellings in the same zone.
- **Definition:** A duplex is two attached dwelling units on one lot or parcel. Cities have the option of defining two detached units on a lot as a duplex.
- **Type of Construction:** Duplexes must be allowed as new construction or as conversion of an existing detached single-family dwelling. Conversions of detached single-family dwellings to duplexes does not have to be permitted if it increases nonconformance with applicable clear and objective standards.
- **Siting and Design Standards:** Cities may have siting and design standards for duplexes that are clear and objective; however, standards cannot be more restrictive than those applicable to detached single-family dwellings in the same zone.
 - **Permitted Standards:** The following standards are permitted and are not considered “discouraging the development through unreasonable cost or delay.”
 - Adopted and acknowledged regulations to comply with statewide land use planning goals for the **protection of natural resources and areas subject to natural hazards** such as wetlands and riparian areas, floodplains and hillside and wildfire lands. Regulations that apply to detached single-family residences in the same zone can be applied to duplexes.
 - **Prohibited Standards:** The following siting and design standards are **not** permitted for duplexes. Here again, the threshold is a city may not require a more restrictive standard for a duplex than is used for a detached single-family residence.
 - **Historic Properties or Districts:** Use, density, occupancy restrictions and standards that prohibit the development of duplexes on **historic properties or districts** that otherwise permit the development of detached single-family dwellings.
 - **Minimum Lot Size:** Standards cannot require a larger minimum lot size for duplexes.
 - **Density:** Density maximums cannot be applied to development of duplexes.
 - **Height and Setbacks:** Standards for development of duplexes cannot require greater setbacks or lower building heights.
 - **Lot Coverage:** Standards cannot require less lot coverage for duplexes.
 - **Parking and Public Works**
 - May require no more than two off-street parking spaces for a duplex.
 - Must allow exceptions to public works standards for detached single-family homes also for duplexes.



Project Approach

Staff anticipates the HB 2001 code amendments will take approximately seven to eight months.

October/November 2020	Develop Draft Code Set Up Project Web Page Draft Article for City Source
January 2021	Planning Commission Study Session
February 2021	City Council Study Session
March 2021	Planning Commission Public Hearing
April 2021	City Council Public Hearing
May 2021	City Council First Reading
June 2021	City Council Second Reading



House Bill 2001: More Housing Choices for Oregonians

In 2019, the Oregon Legislature passed House Bill 2001, a bipartisan bill to help provide Oregonians with **more housing choices**, especially housing choices **more people can afford**.

The new law lets people build certain traditional housing types that already exist in most cities, instead of being limited to a single housing type.

House Bill 2001 requires updates of local rules that have limited what sorts of housing people could build. These limitations have led to increased housing costs.

The Need for More Diverse, Affordable Choices

People need a variety of housing choices. Today, too many Oregonians are paying too much for the housing they have and are limited to renting or buying detached single-unit homes. Meanwhile, the composition of Oregon households is shifting; more than a quarter of households today are a single person living alone.

At different times in their lives, we have different needs. Imagine what sort of housing a young adult might want or be able to afford, or think of the needs of a retired person.

The Bill: Traditional Housing Types Allowed in Most Neighborhoods Soon

Under the bill, by June 30, 2021, Oregon's medium-sized cities must allow Oregonians to build duplexes in areas zoned for single-family dwellings. Most cities already allowed duplexes in certain circumstances.

By June 30, 2022, cities in the Portland Metro region and Oregon's other largest dozen cities (those over 25,000 population), must allow people to build duplexes, triplexes, fourplexes, cottage clusters, and townhouses in residential areas.

These houses can be more affordable and meet the housing needs of many younger people, older people, and people who work hard but can't afford a large detached house of their own.

The bill also provided \$3.5 million for technical assistance to cities, and has other details. Read the bill for details: olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2001/Enrolled

Siting and Design Flexibility; Transformation Expected to be Gradual

While the bill re-legalizes certain housing types, the bill is about choices. People can still build detached single-family homes. We expect most homes in residential areas to be built as such.

Cities can set reasonable siting and design requirements on the houses, including making sure there is adequate infrastructure. The bill directs the Department of Land Conservation and Development (DLCD) to help cities figure this out.

While the law allows traditional housing types, DLCD expects the transformation of housing choices to be gradual. Cities have allowed some of these types in certain areas. Not many have been built. Local knowledge of how to build these housing types will grow over time. The building of them will depend on local housing markets.

Learn More and Sign Up to Stay Informed

www.oregon.gov/lcd/UP/Pages/Housing-Choices.aspx

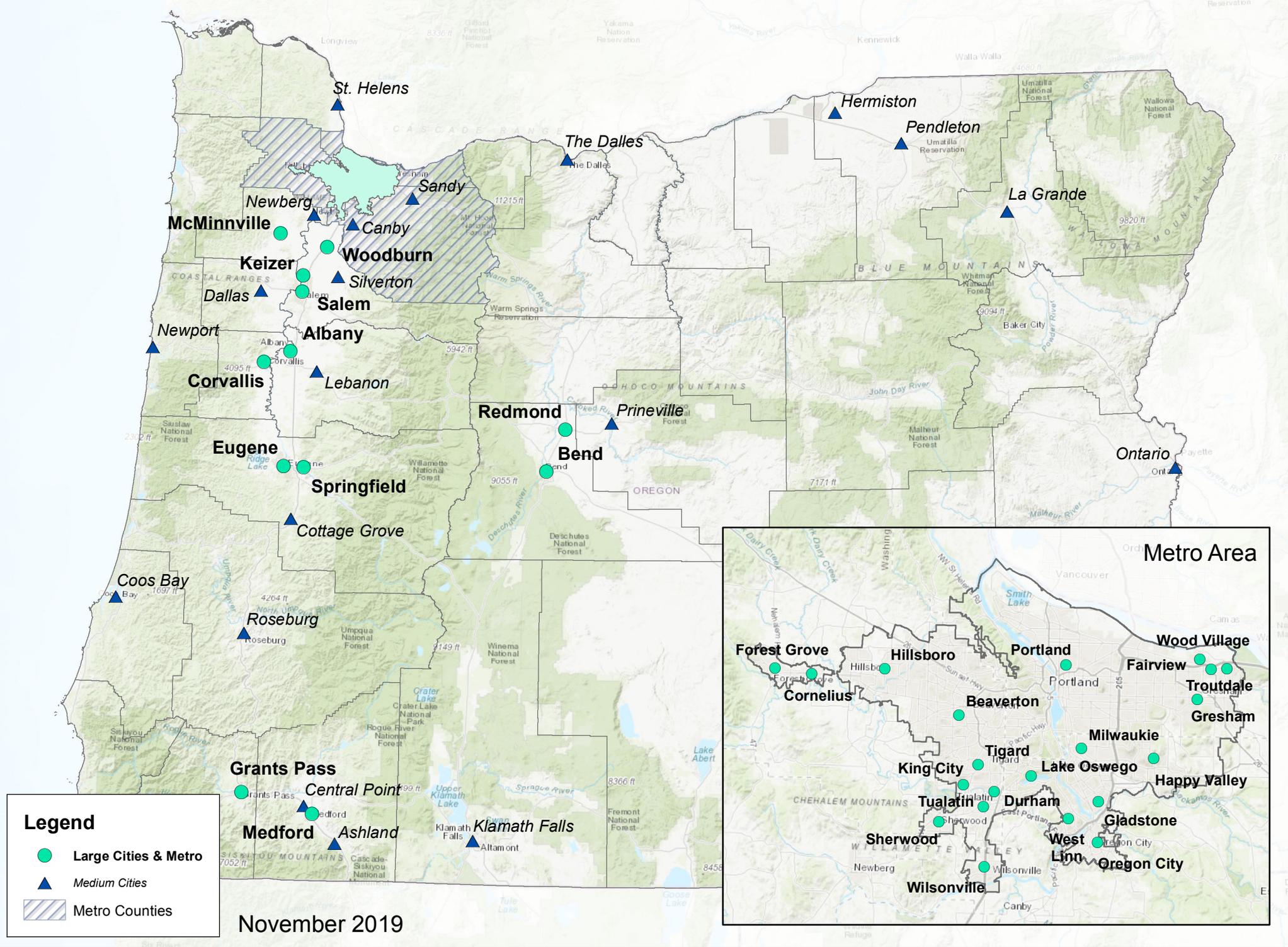
Ethan Stuckmayer, Senior Housing Planner, ethan.stuckmayer@state.or.us (503) 934-0619



Before being outlawed, non-single-unit homes have long been built in our cities; this is a Salem triplex.



Cities and Counties Affected by HB 2001





MEMORANDUM

Model Code for Medium Cities (LCDC DRAFT REVISED) DLCD Middle Housing Model Code

DATE July 7, 2020
TO Oregon Land Conservation and Development Commission
FROM Matt Hastie, Cathy Corliss, and Kate Rogers, Angelo Planning Group
CC Ethan Stuckmayer and Robert Mansolillo, DLCD
Project Team

Middle Housing Model Code for Medium Cities

User's Guide:

Oregon House Bill 2001 (2019) (HB 2001) requires that "Medium Cities" (defined as cities with a population of more than 10,000 and less than 25,000 that are not within Metro's jurisdiction) allow a duplex on each lot or parcel zoned for residential use that allows for the development of detached single family dwellings. Duplexes provide an opportunity to increase housing supply in developed neighborhoods and can blend in well with detached single-family dwellings.

The bill allows local governments to regulate siting and design of duplexes, provided that the regulations do not, individually or cumulatively, discourage duplex development through unreasonable costs or delay. When regulating siting and design of duplexes, Medium Cities should balance concerns about neighborhood compatibility and other factors against the need to address Oregon's housing shortage by removing barriers to development and should ensure that any siting and design regulations do not, individually or cumulatively, discourage the development of duplexes through unreasonable costs or delay.

Medium Cities may develop their own standards in compliance with the requirements of HB 2001. This model code may provide guidance toward that end. However, if Medium Cities do not wish to prepare their own standards or if Medium Cities do not adopt the required code amendments by June 30, 2021, they must directly apply this model code prepared by the Department of Land and Conservation Development (DLCD) to development in their jurisdictions. The model code is intended to be straightforward and implementable by Medium Cities

throughout the state. The model rules are consistent with the requirements and intent of HB 2001 and are intended to ensure that a duplex is no more difficult to develop than a detached single family home. The model code will be adopted by reference into Oregon Administrative Rules.

To the extent they are applicable, the Administrative Rules contained in Chapter 660, Division 46 apply to and may be used to interpret this model code.

Sections:

- A. Purpose**
- B. Definitions**
- C. Applicability**
- D. Relationship to Other Regulations**
- E. Permitted Uses and Approval Process**
- F. Development Standards**
- G. Design Standards**
- H. Duplex Conversions**
- I. Figures**

A. Purpose

The purpose of this model middle housing code (“code”) is to implement HB 2001, codified in ORS 197.758 et seq, by providing siting and design standards for duplexes developed on lots or parcels that allow for the development of detached single family dwellings.

B. Definitions

The following definitions shall apply for the purposes of this code, notwithstanding other definitions in the development code:

1. “Detached single family dwelling” means a detached structure on a lot or parcel that is comprised of a single dwelling unit. Detached single family dwellings may be constructed off-site, e.g., manufactured dwellings or modular homes.
2. “Duplex” means two dwelling units on a lot or parcel in any configuration. Figures 1–6 in Section I illustrate examples of possible duplex configurations. In instances where a development can meet the definition of a duplex and also meets the definition of a primary dwelling unit with an accessory dwelling unit (ADU), the applicant shall specify at the time of application review whether the development is considered a duplex or a primary dwelling unit with an ADU.
3. “Lot or Parcel” means any legally created unit of land.

4. “Zoned for residential use” means a zoning district in which residential dwellings are the primary use and which implements a residential Comprehensive Plan map designation.

C. Applicability

1. Except as specified in subsection (2) of this section (C), the standards in this code allow for the development of duplexes, including those created through conversion of existing detached single family dwellings, on lots or parcels zoned for residential use that allow for the development of detached single family dwellings.
2. The standards in this code do not allow the following, unless otherwise permitted by the development code:
 - Creation of duplexes on lots or parcels on lands that are not zoned for residential use. This includes lands zoned primarily for commercial, industrial, agricultural, public, or mixed uses, even if those zones allow for the development of detached single family dwellings.
 - Creation of more than two dwelling units on a single lot or parcel.

D. Relationship to Other Regulations

1. Conflicts. In the event of a conflict between this code and other standards applicable to a duplex, the standards of this code control.
2. Public Works Standards. Clear and objective exceptions to public works standards granted to single family dwellings shall also be granted to duplexes.
3. Protective Measures. Duplexes shall comply with protective measures (plans, policies, or regulations) adopted pursuant to statewide land use planning goals (e.g., environmental and natural hazard protections).

E. Permitted Uses and Approval Process

Duplexes are permitted outright on lots or parcels zoned for residential use that allow for the development of detached single family dwellings. Duplexes are subject to the same approval process as that for detached single family dwellings in the same zone and are subject only to clear and objective standards, approval criteria, conditions, and procedures. Alternatively, an applicant may choose to submit an application for a duplex subject to discretionary standards and criteria adopted in accordance with ORS 197.307, if such a process is available.

F. Development Standards

Except as specified below, duplexes shall meet all clear and objective development standards that apply to detached single family dwellings in the same zone (including, but not limited to, minimum and maximum lot size, minimum and maximum setbacks, and building height), unless those standards conflict with this code.

The following development standards are invalid and do not apply to duplexes being developed on lots or parcels zoned for residential use that allow the development of a detached single family dwelling:

1. Maximum Density. The jurisdiction's pre-existing density maximums and minimum lot sizes for duplexes do not apply.
2. Setbacks. A minimum front setback of greater than 20 feet or a minimum rear setback of greater than 15 feet except for those minimum setbacks applicable to garages and carports.
3. Off-Street Parking. Any off-street parking requirement.

G. Design Standards

New duplexes shall meet all clear and objective design standards (e.g., entry orientation, window coverage, articulation, etc.) that apply to detached single family dwellings in the same zone, unless those standards conflict with this code. Facades of dwellings that are separated from the street property line by another dwelling are exempt from meeting building design standards.

Any design standards that apply only to duplexes are invalid.

H. Duplex Conversions

Conversion of an existing detached single family dwelling to a duplex is allowed, pursuant to Section C, provided that the conversion does not increase nonconformance with applicable clear and objective standards.

I. Figures

The following figures illustrate examples of possible duplex configurations. Other configurations may also be acceptable, provided the development meets the definition of duplex, pursuant to Section B.

Figure 1. Stacked Duplex

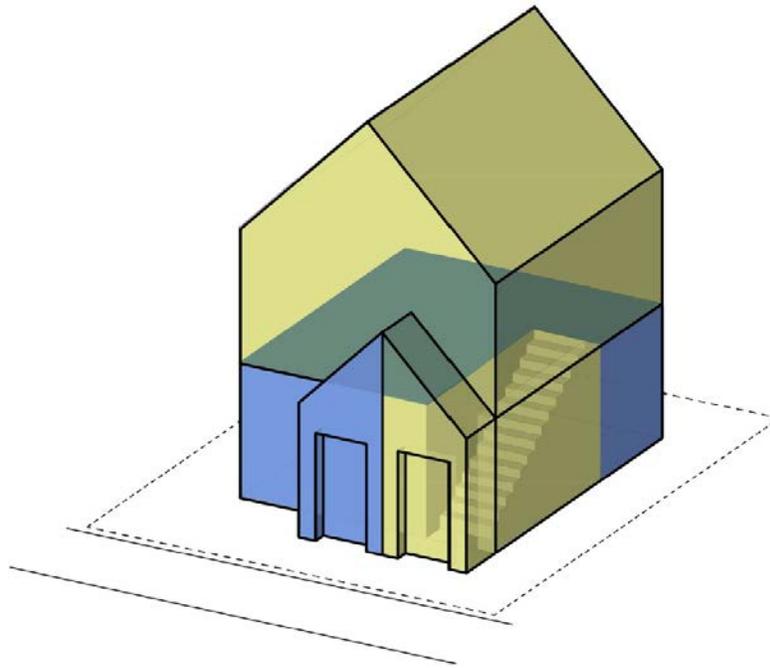


Figure 2. Side-by-Side Duplex

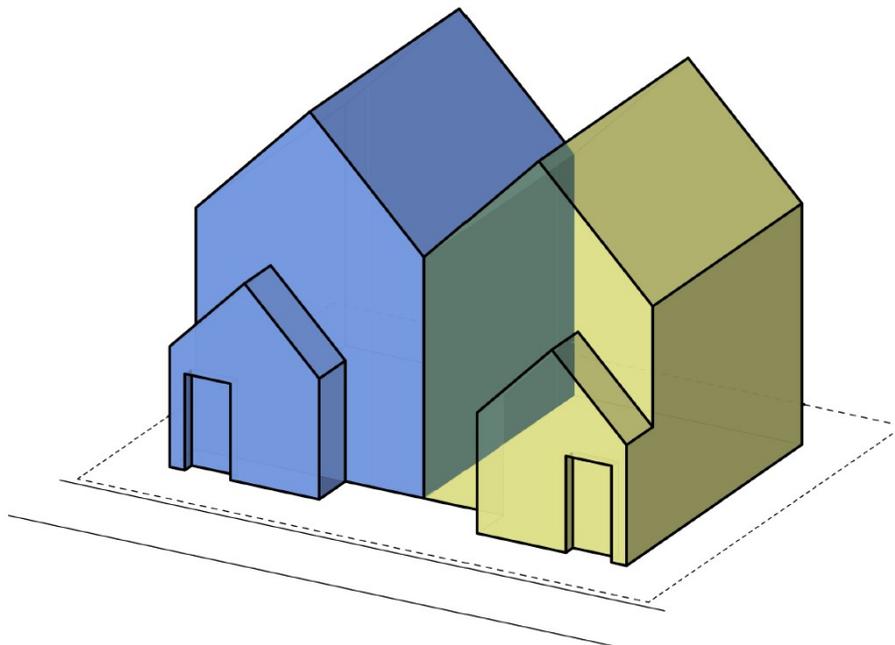


Figure 3. Duplex Attached by Garage Wall

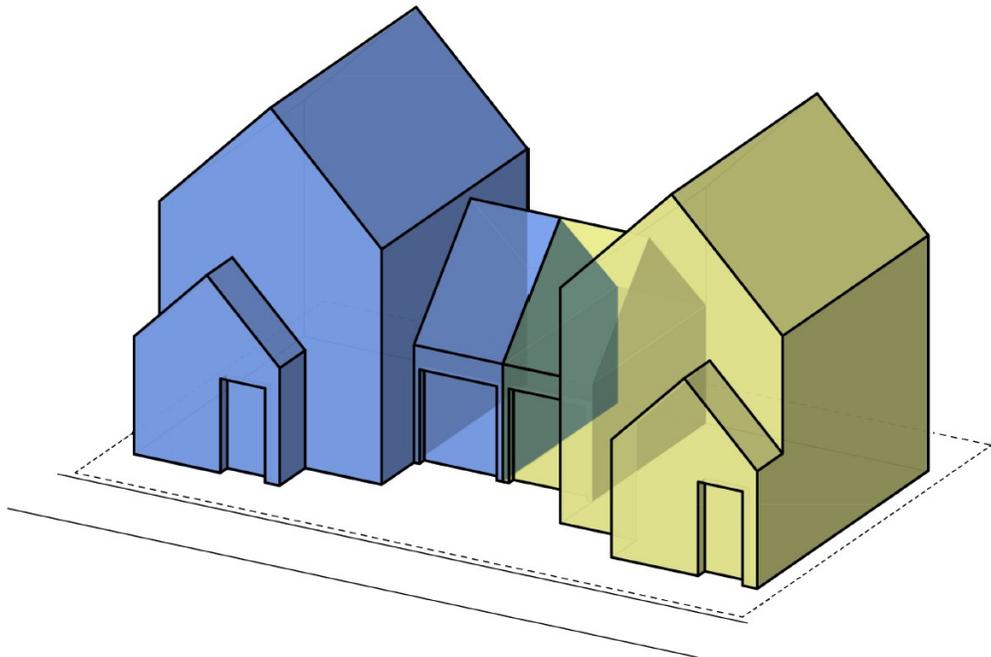


Figure 4. Duplex Attached by Breezeway

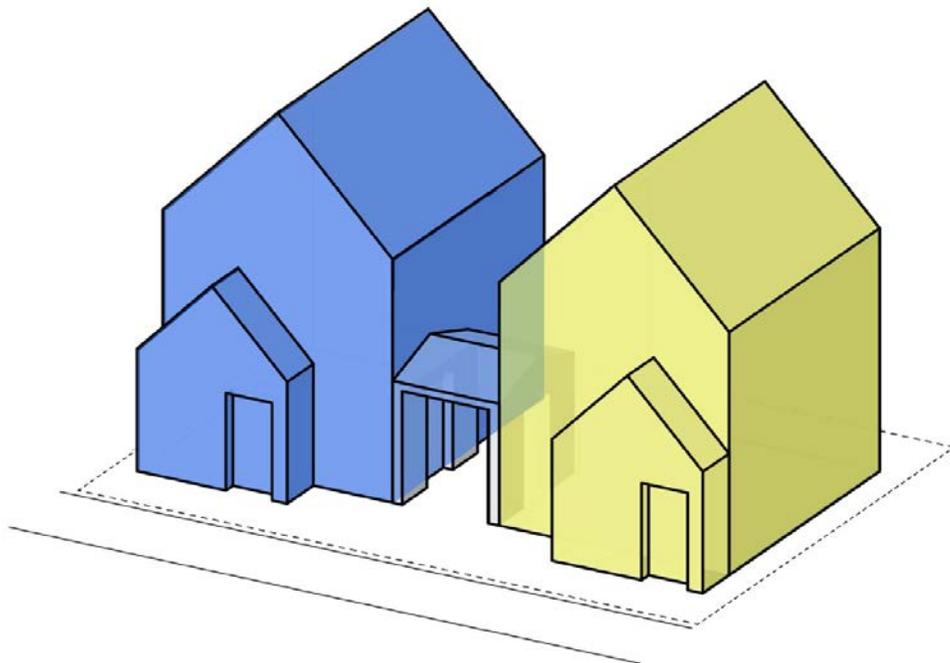


Figure 5. Detached Duplex Units Side-by-Side

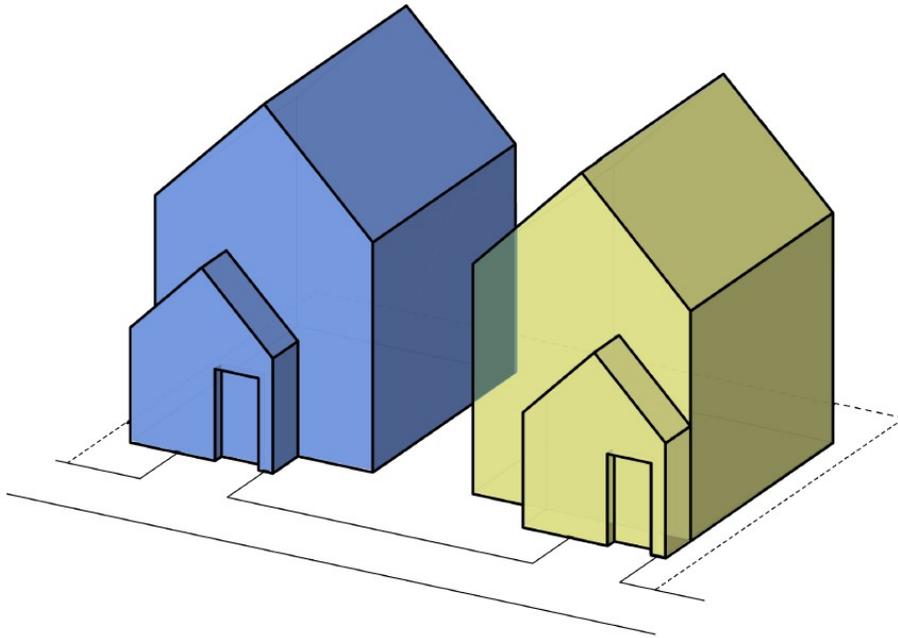
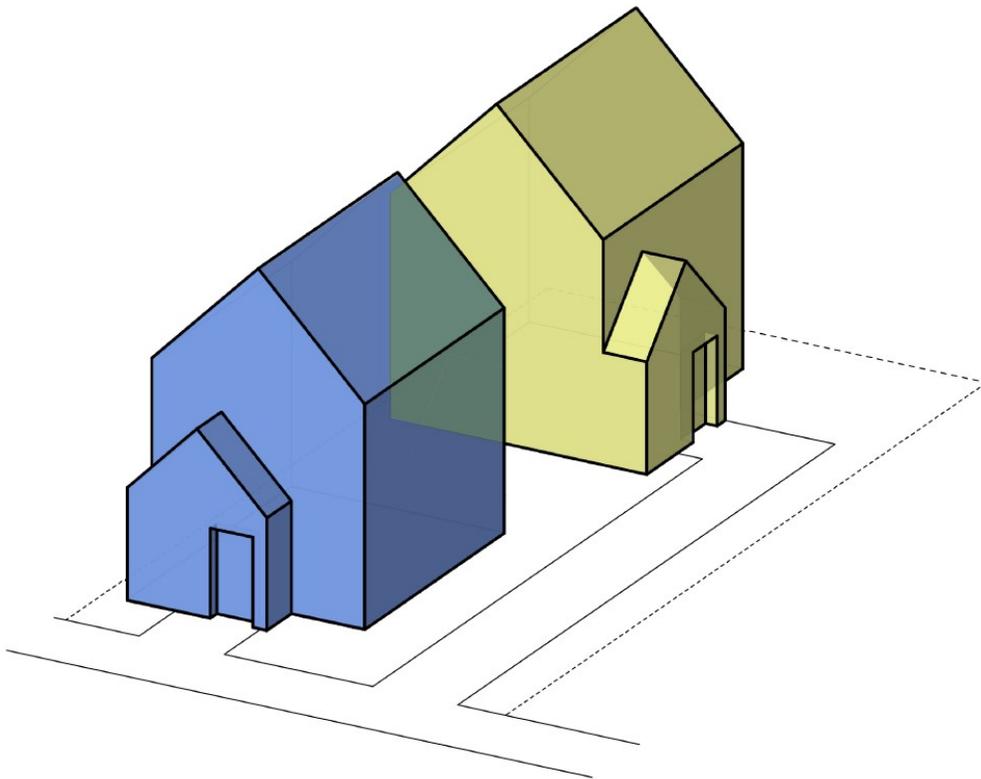


Figure 6. Detached Duplex Units Front and Back



DISCUSSION ITEM

Potential Changes to Standards for Accessory Residential Units (ARUs)

Memo

DATE: October 13, 2020

TO: Ashland Planning Commission

FROM: Maria Harris, Planning Manager

RE: Potential changes to standards for accessory residential units (ARUs)

Summary

This is a discussion item for the Planning Commission regarding potentially amending the standards for ARUs. Staff suggests the Planning Commission consider amending the standards to allow more ARUs to be permitted outright and approved with a building permit.

The attached draft expands the exempted ARUs that are less than 500 square feet in size to include detached units and units in the multi-family zones (R-2 and R-3). The draft also allows ARUs less than 500 square feet in size and that are located in the Historic Districts with a building permit if the property is not listed on the National Register of Historic Places or if it is not identified as historic contributing.

Finally, the draft eliminates the off-street parking requirements for ARUs. As discussed in the staff memo on middle housing, the Oregon State Legislature passed House Bill (HB) 2001 in the 2019 legislative session which prohibits jurisdictions from requiring off-street parking for ARUs.

Background

In July 2018, the ARU standards were amended to create a streamlined approval process for small ARUs. Specifically, the 2018 ordinance amendments exempted ARUs from the planning application process that are less than 500 square feet in size and located within or attached to a single-family home. This allowed a property owner to obtain a building permit to convert existing floor area or construct an ARU that is less than 500 square feet in size and attached to a home.

Similar to the 2018 ARU amendments, the objective of further amendments to the ARU standards would be to increase the rental housing supply and the supply of smaller housing units for Ashland's significant share of single-person and small households. ARUs continue to be a popular housing unit type that seem to fit in well with existing neighborhoods. In addition, expanding the types of ARUs that can be built by obtaining a building permit may assist in providing housing units for households displaced by the Alameda fire.

Since Ashland began allowing ARUs in 1991, 232 units have been approved. In 2018 and 2019, ARUs represented 17 to 18 percent of the new housing units that were issued building permits in the same year. As a proportion of new housing units in single-family zones, ARUs represented 20 to 30 percent of the new housing units.



Prior to the 2018 amendments, a planning approval was required for all ARUs. Ashland began allowing ARUs almost three decades ago when the land use ordinance was amended in 1991 to allow ARUs in the Single-Family Residential (R-1) zones. In 2002, the allowance for ARUs was extended to the Rural Residential (RR) zone and in 2008 was extended to the Multi-Family (R-2 and R-3) zones. In 2015, the planning approval process for ARUs was changed from a conditional use to a permitted use. As a result, the planning application process was shifted to Site Design Review from the more discretionary Conditional Use Permit process.



18.2.3.040 Accessory Residential Unit

Accessory residential units are subject to Site Design Review under chapter 18.5.2, except as exempted in subsection 18.2.3.040.A, below.

A. Exemptions. Accessory residential units are permitted outright with an approved building permit, and are allowed without a Site Design Review under chapter 18.5.2 provided that the accessory residential unit meets all of the following requirements.

1. The accessory residential unit is located in the R-1, R-1-3.5, R-2, R-3, RR, NN and NM zones. ~~Accessory residential units in the R-2 and R-3 zones require Site Design Review under chapter 18.5.2 and are not permitted outright under this subsection.~~
2. The accessory residential unit meets all of the requirements of the applicable zone in subsections 18.2.3.040.B, C, E and F, below, except as otherwise exempted in subsection 18.2.3.040.A.
3. The size of the accessory residential unit is less than 500 square feet of gross habitable floor area (GHFA).
4. The accessory residential unit ~~is may be attached to the primary residence or within an existing detached from the primary residence in a separate structure. ~~Accessory residential units located in the Historic District overlay and including exterior building changes that require a building permit, and accessory residential units located in detached structures (i.e., not attached to the primary residence) require Site Design Review under chapter 18.5.2 and are not permitted outright under this subsection.~~~~
5. The ~~property~~primary residence must have two off-street parking spaces, except that parking spaces, turn-arounds, and driveways are exempt from the requirements in subsections 1 and 2 of 18.4.3.080.D and paving requirements in subsection 18.4.3.080.E.1.
6. Additional off-street parking is not required for the accessory residential unit ~~if on-street parking is permitted within 200 feet of the property. Alternatively, one off-street parking space may be provided on the property in conformance with the off-street parking provisions for accessory residential units in section 18.4.3.080.~~
7. Accessory residential units including exterior building changes that require a building permit and that are attached to a structure listed on the National Register of Historic Places or located on a contributing property within an Historic District require Site Design Review under chapter 18.5.2 and are not permitted outright under this subsection.

B. 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.
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 18.4.3.080, except that parking spaces, turn-arounds, and driveways are exempt from the requirements in subsections 1 and 2 of 18.4.3.080.D and paving requirements in subsection 18.4.3.080.E.1.~~

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

~~1. No on-street parking credits shall be allowed for accessory residential units.~~

21. If located in the Wildfire zone, the accessory residential unit shall have a residential sprinkler system installed.

- D. **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.B, 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.

- E. **NN Zones.** Accessory residential units in the Normal Neighborhood District under chapter 18.3.4 shall meet the standards in subsection 18.2.3.040.B.

- F. **NM Zones.** Accessory residential units in the North Mountain Neighborhood NM zones under chapter 18.3.5 shall meet the standards in subsection 18.2.3.040.B, except that the maximum gross habitable floor area (GHFA) of the accessory residential unit must not exceed 750 square feet GHFA and that second story accessory residential units constructed above a detached accessory building must not exceed 500 square feet GHFA.