

Council Business Meeting

December 4, 2018

Agenda Item	Park Square Apartments Appeal	
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SUMMARY

Consideration of an appeal of the Planning Commission’s October 23, 2018 approval of a request for Site Design Review approval to construct a 15-unit apartment complex consisting of six apartment buildings, a separate 221 square foot laundry facility and a 30-space parking lot for the property at 880 Park Street.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan:

Element VI – Housing. Goal 6.10 of the Housing Element is “*Ensure a variety of dwelling types and provide housing opportunities for the total cross-section of Ashland’s population, consistent with preserving the character and appearance of the city.*”

Element XIV - Regional Problem Solving. Through the associated Regional Problem Solving (RPS) plan and agreement, the city committed to accommodating a doubling of regional population within current boundaries. RPS included a commitment to achieving Regional Transportation Plan benchmarks for the number of new dwelling units in mixed-use/pedestrian friendly areas.

Housing Needs Analysis: A Technical Supporting Document to the Housing Element of the City of Ashland Comprehensive Plan, the Housing Needs Analysis (HNA) notes that “*the housing types most needed, including multi-family rentals and government assisted housing are not being developed in accordance with needs.*” The HNA advises that the City develop strategies to encourage more multi-family housing.

PREVIOUS COUNCIL ACTION

N/A.

BACKGROUND AND ADDITIONAL INFORMATION

Original Request

The original application was a request for Site Design Review approval to construct a 15-unit apartment complex consisting of six apartment buildings, a separate 221 square foot laundry facility and a 30-space parking lot for the property at 880 Park Street. The application included requests for Exception to the Street Standards to retain the existing asphalt multi-use path along Siskiyou Boulevard and to construct a meandering sidewalk along the subject properties Park Street frontage rather than installing new city standard sidewalks and parkrow planting strips; a Tree Removal Permit to remove five trees greater than six-inches in diameter at breast height (d.b.h.), including two Green Ash (*Fraxinus pennsylvanica*), one Modesto Ash (*Fraxinus velutina*), and two Redwoods (*Sequoia sempervirens*) including a multi-trunked cluster with five trunks of diameters ranging from eight- to 14-inches d.b.h.; and the existing approximately 895 square foot shop building on the southeastern portion of the property is proposed to be demolished.

Planning Commission Decision

The Planning Commission ultimately approved the application. Issues raised by neighbors during the hearing process focused largely on the type of units proposed, which consist of four bedrooms, two bathrooms and a kitchen in each unit, and the potential impacts based on the type of units. A number of those testifying in opposition during the hearing expressed concerns that these units were more akin to dormitory rooms than to multi-family dwelling units, and that they would have a greater number of tenants than a typical apartment and would consequently bring greater impacts in terms of parking, traffic, etc.

The Planning Commission's decision was predicated on the fact that under the Ashland Municipal Code, a dormitory is considered a type of "room and board facility" under "group living" in the Definitions Chapter (AMC 18.6.1). The Commission found that "group living" was defined as typically accommodating a group larger than the average size of a household in structures that are not self-contained but rather have common dining, social, recreational, and laundry facilities whereas a multi-family dwelling unit is defined in terms of having one set of cooking facilities and accommodating one family.

The Planning Commission found that the units proposed were self-contained, as each proposed four-bedroom/two-bathroom dwelling unit includes its own kitchen, and as such is a multi-family dwelling unit rather than a dormitory room. To insure compliance with the definition of a multi-family dwelling unit, a condition of approval was included to make clear that each dwelling unit was not to house more than one family, which is defined as "*An individual or two or more persons related by blood, marriage, legal adoption, or guardianship; or not more than five persons who are not related by blood, marriage, legal adoption, or guardianship.*"

Appeal Request

Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by neighbor Colby Morgan. Mr. Morgan is immediate neighbor of the proposed development and received notice of the original application, and participated in the Planning Commission hearing by providing both oral and written testimony. This appeal will be processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified in the notice of appeal are:

- 1) That the Planning Commission was provided illegal evidence by staff and the applicant after the record had closed.
- 2) That there is currently no code for the type of dwelling being proposed, and the project should be considered a dormitory rather than multi-family dwelling units.
- 3) That multi-family parking requirements should not be used; parking requirements should be considered in terms of a dormitory.
- 4) That the tree protection plan is inadequate, and that tree protection for the project site's trees and neighbor's trees should be applied equally.
- 5) That the traffic study is flawed in considering a multi-family development rather than 60 motoring adults.

The appeal on the record is limited to the five grounds for appeal which were clearly and distinctly identified in the appeal request.

Request to Reopen the Record

The Notice of Appeal included a "*request that the entire record including recordings of meetings be opened for the appeal process.*" The Ashland Municipal Code (AMC) specifically addresses "Reopening the Record" in AMC 18.5.1.060.I.4.b, noting that the Council may reopen the record and consider new evidence on a limited basis, if such a request to reopen the record is made to the City Administrator together with the

filing of the notice of appeal and the City Administrator determines prior to the Council appeal hearing that the requesting party has demonstrated one or more of the following:

- i. *That the Planning Commission committed a procedural error, through no fault of the requesting party, that prejudiced the requesting party's substantial rights and that reopening the record before the Council is the only means of correcting the error.*
- ii. *That a factual error occurred before the Commission through no fault of the requesting party which is relevant to an approval criterion and material to the decision.*
- iii. *That new evidence material to the decision on appeal exists which was unavailable, through no fault of the requesting party, when the record of the proceeding was open, and during the period when the requesting party could have requested reconsideration. A requesting party may only qualify for this exception if he or she demonstrates that the new evidence is relevant to an approval criterion and material to the decision. This exception shall be strictly construed by the Council in order to ensure that only relevant evidence and testimony is submitted to the hearing body.*
- iv. *Re-opening the record for purposes of this section means the submission of additional written testimony and evidence, not oral testimony or presentation of evidence before the Council.*

The City Administrator in consultation with the Staff Advisor determined that the appeal request failed to demonstrate that reopening the record to allow new evidence would correct the alleged error, that a factual error was demonstrated, or that new evidence was available, and the City Administrator made the determination to limit the appeal to the five appeal issues specifically identified. This means that the review of the Planning Commission's decision by the City Council is confined to the record of the proceeding before the Planning Commission which as defined in AMC 18.5.1.060.I.4.a includes:

"the application and all materials submitted with it; documentary evidence, exhibits, and materials submitted during the hearing or at other times when the record before the Commission was open; recorded testimony; (including DVDs when available), the executed decision of the Commission, including the findings and conclusions. In addition, for purposes of Council review, the notice of appeal and the written arguments submitted by the parties to the appeal, and the oral arguments, if any, shall become part of the record of the appeal proceeding."

Considering the Grounds for Appeal

1) That the Planning Commission was provided illegal evidence by staff and the applicant after the record had closed.

The Planning Commission convened the initial evidentiary hearing on this matter on September 11, 2018 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, participants requested that the hearing or record remain open pursuant to ORS 197.763(6) to present additional evidence or argument. The Planning Commission closed the hearing, but left the record open to the submittal of new evidence until 4:30 p.m. on September 18, 2018; to the submittal of responses to the new submittals until 4:30 p.m. on September 24, 2018; and to the submittal of written arguments, but no new evidence, *by the applicant only*, until 4:30 p.m. on October 2, 2018.

The materials submitted by the applicant before 4:30 p.m. on October 2, 2018 contained new evidence in addition to the written arguments provided. The applicant's full submittal from October 2, 2018 was provided in the Planning Commission packet.

The Planning Commission made a specific finding in Section 2.1 that the materials submitted by the applicant on October 2, 2018 as “Applicant’s Closing Legal Argument” were to have been limited to legal arguments and applicant’s rebuttal and were not to contain new evidence, included new evidentiary submittals. The Commission recognized that new evidence was provided along with closing legal arguments, and the Planning Commission moved to strike pages 2, 3 and 8-19 of the applicant’s October 2, 2018 submittal from the record and from consideration in the decision as these pages were found to contain new evidence after the hearing and record had closed.

In staff’s view, the Commission striking the new materials from the record and removing them from consideration in the decision remedies this issue.

2) That there is currently no code for the type of dwelling being proposed, and the project should be considered a dormitory rather than multi-family dwelling units.

As noted above, while “dormitory” is not defined separately in the land use ordinance, dormitories are addressed as a type of “Room and Board Facility” under “Group Living” in the Definitions chapter (AMC 18.6.1) as follows:

“Group Living” is defined as, “Group living is characterized by the long-term residential occupancy of a structure by a group of people. The size of the group typically is larger than the average size of a household. Group Living structures do not include self-contained units but rather have common facilities for residents including those for dining, social and recreational, and laundry. Residential Care Homes, Residential Care Facilities, and Room and Board Facilities are types of Group Living.”

“Room and Board Facility” is defined as a subcategory of “Group Living” as a “Group living establishment located in a dwelling or part thereof, other than a travelers’ accommodation or hotel, where lodging, with or without meals, is provided for compensation for a minimum period of 30 days. Personal care, training, and/or treatment is not provided at a room and board facilities. Examples include dormitories, fraternities, sororities, and boarding houses.”

A “Dwelling” is defined as, “A structure conforming to the definition of a dwelling under applicable building codes and providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Buildings with more than one set of cooking facilities are considered to contain multiple dwelling units or accessory dwelling units, as applicable, unless the additional cooking facilities are clearly accessory to the primary use, such as an outdoor grill or wet bar. For the purposes of this ordinance, the following types of dwelling units are defined:

- **Accessory Residential Unit.** A secondary dwelling unit on a lot where the primary use is a single-family dwelling, either attached to a single-family dwelling or in a detached building located on the same lot, and having an independent means of access (i.e., door).
- **Duplex Dwelling.** A structure that contains two dwelling units located on one lot. The units must share a common wall or common floor/ceiling.
- **Manufactured Home.** A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being

used for residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

- **Mobile Home.** *A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.*
- **Multifamily Dwelling.** *A dwelling in a structure or grouping of structures containing two or more dwelling units located on one lot.*
- **Senior Housing.** *Housing designated and/or managed for persons over a specified age. Specific age restrictions vary, and uses may include assisted living facilities, retirement homes, convalescent or nursing homes, and similar uses not otherwise classified as Residential Homes or Residential Facilities.*
- **Single-Family Dwelling.** *A detached or attached structure containing one dwelling unit located on its own lot.”*

In reaching its decision, the Planning Commission found that “Group Living” was defined as typically accommodating a group larger than the average size of a household in structures that are not self-contained but rather have common dining, social, recreational, and laundry facilities whereas a multi-family dwelling unit is defined in terms of a grouping of dwellings units, each having one set of cooking facilities and accommodating one family, located on one lot.

The Planning Commission found that the units proposed by the applicant were self-contained, as each proposed dwelling unit includes four bedrooms, two bathrooms and one kitchen, and as such was a multi-family dwelling unit rather than a dormitory room. To insure compliance with the definition of a multi-family dwelling unit, a condition of approval was included to make clear that each dwelling unit was not to house more than one family, which is defined as “*An individual or two or more persons related by blood, marriage, legal adoption, or guardianship; or not more than five persons who are not related by blood, marriage, legal adoption, or guardianship.*”

In staff’s view, the code clearly addresses dormitories as a type of ‘Room and Board Facility’ under ‘Group Living’ in the Definitions chapter. The Planning Commission considered this, and made the finding that the units being self-contained with their own kitchens disqualified them from consideration in this category, and further determined that they fit the definition of multi-family dwelling units.

3) That multi-family parking requirements should not be used; parking requirements should be considered in terms of a dormitory.

The Land Use Ordinance does include specific parking requirements for dormitories, however in considering parking requirements for the proposal, the Planning Commission made an explicit finding that, “*the proposed use... is a multi-family dwelling and does not constitute either a group living establishment or room and board facility such as a dormitory within the meaning of the Land Use Ordinance, AMC Part 18.6.1 or an “unspecified use” within the meaning of AMC 18.4.3.030.A.2.*” As noted above, the Planning Commission found that the units proposed by the applicant were self-contained, as each proposed dwelling unit includes its own kitchen, and as such the units are multi-family dwelling units rather than dormitory rooms. To insure compliance with the definition of a multi-family dwelling

unit, a condition of approval was included to make clear that each dwelling unit was not to house more than one family, which is defined as “*An individual or two or more persons related by blood, marriage, legal adoption, or guardianship; or not more than five persons who are not related by blood, marriage, legal adoption, or guardianship.*”

Based on the determination that the proposed units were multi-family dwelling units, the Planning Commission made the findings that parking requirements were based on AMC Table 18.4.3.040, where both single family and multi-family dwelling units are subject to the following parking requirements:

a.	Studio units or 1-bedroom units less than 500 sq. ft.	1 space/unit.
b.	1-bedroom units 500 sq. ft. or larger	1.50 spaces/unit.
c.	2-bedroom units	1.75 spaces/unit.
d.	3-bedroom or greater units	2.00 spaces/unit.

The Planning Commission found that based on this table, at 2.00 spaces per unit for “3-bedroom *or greater* units”, 15 multi-family dwelling units required 30 off-street parking spaces. 30 off-street parking spaces are proposed to be provided by the applicant. In addition, there are approximately eight on-street parking spaces along the property’s Park Street frontage for which no on-street credits have been requested. The Planning Commission found that the proposal satisfied the applicable off-street parking requirement. The Commission also found that the standard parking ratio provides for units of “3-bedrooms or greater” and that 4-bedrooms falls into this category. The Commission further found that the parking ratios in the code do not provide for any sort of extrapolation of additional parking demand based on any number of bedrooms beyond three.

4) That the tree protection plan is inadequate, and that tree protection for the project site’s trees and neighbor’s trees should be applied equally.

AMC 18.4.5.030 requires that a tree protection plan be approved concurrent with applications for Type I, Type II or Type III planning actions. The Land Use Ordinance further provides that the tree protection plan submitted with the action shall include the “*Location, species, and diameter of each tree on site and within 15 feet of the site.*”

The arborist report submitted by the applicant dated July 17, 2018 and received into the record on August 14, 2018 from Arborist Christopher John of Canopy, LLC included the recommendation that, “*I also recommend that the trees on the neighboring property to the South be addressed, especially the large deodar cedar near the southeast corner. The tree protection plan should extend to these trees as well.*”

Planning staff recommended to the Tree Commission and Planning Commission, “*That a revised Tree Inventory and Tree Protection Plan be provided for the review and approval of the Staff Advisor. This plan shall identify and address protection of all trees to be preserved on the site and those on adjacent to the site within 15 feet of the property line which are six-inches in diameter at breast height or greater...*”

Staff recommended Condition #9e of the Planning Commission’s adopted findings require that the building permit submittals include, “*... a revised Tree Inventory and Tree Protection Plan be provided for the review and approval of the Staff Advisor. This plan shall identify and address protection of all trees to be preserved on the site and those on adjacent to the site within 15 feet of the property line which are six-inches in diameter at breast height or greater, and shall include a watering schedule for trees to be preserved and protected, with watering to occur at least twice per week.*”

In staff's view, the applicant's own submittals recognized that the tree protection plan needed to be revised to consider the trees on neighboring properties, staff conveyed this to the Tree Commission and Planning Commission through their reviews, and the final decision includes a specific requirement that the building permit submittals include a revised tree protection plan which addresses the trees on neighboring properties.

5) That the traffic study is flawed in considering a multi-family development rather than 60 motoring adults.

Here it should be noted that under Public Works' standards, the project does not reach threshold levels to require a traffic study, however the applicant provided a technical memo prepared by a transportation engineer in response to neighbors' concerns. This memo included a safety and performance evaluation of the intersection of Park Street and Siskiyou Boulevard concluding that:

- **The proposed apartment traffic will generate five trips in the A.M. peak hour and seven trips in the P.M. peak hour.**
- **The intersection of Park Street and Siskiyou Boulevard has had no reported crashes within the past five years. There is no apparent safety issue with the intersection.**
- **The intersection of Park Street at Siskiyou Boulevard operates better than the ODOT and city standard.**
- **The queuing of vehicles entering and exiting the site will not cause operation issues at the intersection.**
- **There are no significant issues or turning movement conflicts that will be impacted by the apartment complex.**
- **All sight distances are met for the south side Park Street apartments.**

As detailed above, the Planning Commission found that the units proposed by the applicant were self-contained, as each proposed dwelling unit includes its own kitchen, and as such the units are multi-family dwelling units rather than dormitory rooms. To insure compliance with the definition of a multi-family dwelling unit, a condition of approval was included to make clear that each dwelling unit was not to house more than one family, which is defined as "*not more than five persons who are not related by blood, marriage, legal adoption or guardianship.*" In staff's assessment, based on the determination by the Planning Commission that the proposal is a multi-family development rather than a dormitory, the technical memo prepared by the applicant's transportation engineer correctly considered the proposed multi-family dwelling units.

FISCAL IMPACTS

If approved, the project would require staff time to review subsequent civil plans and building permit drawings similar to other development applications for vacant properties in the City, as well as inspections by Public Works, Engineering, Planning and Building staff as the project builds out. Staff does not believe that approval would result in workload issues or adversely affect project prioritization.

STAFF RECOMMENDATION

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

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move to affirm the decision of the Planning Commission, reject the appeal and direct staff to prepare written findings for approval reflecting the original Planning Commission decision from October 23, 2018 for adoption by Council.
- 2) I move to reverse the decision of the Planning Commission and support the written appeal, and direct staff to prepare written findings for adoption by Council (*include specific direction as to where the original decision was found to be in error relative to the five identified appeal issues*).
- 3) I move to modify the decision of the Planning Commission and direct staff to prepare written findings for adoption by Council (*include specific direction to staff as to the modifications to the Planning Commission decision being made*).
- 4) I move to send the decision back to the Planning Commission with the following instructions for further proceedings, with the understanding that subsequent actions by the Planning Commission will be the final decision of the City (*include specific instructions relating to further proceedings*). **[Please note that this application is subject to the 120-day rule under Oregon land use laws, and a final decision of the City is required by December 19, 2018, with findings to be adopted within 14-days thereafter, and as such remanding the decision back to the Planning Commission would only be an option if an extension were agreed to by the applicant.]**

REFERENCES & ATTACHMENTS

880 Park Street appeal materials are posted on-line at: <http://www.ashland.or.us/Page.asp?NavID=17660> . These include a list of meetings, their packets, minutes and recordings as well as a link to the full record:

- Record Part 1:**
http://www.ashland.or.us/SIB/files/Comm%20Dev/Planning/880_Park_Planning_Record_-_Part_1.pdf
- Record Part 2:**
http://www.ashland.or.us/SIB/files/Comm%20Dev/Planning/880_Park_Planning_Record_-_Part_2.pdf
- Written Argument from Parties:**
http://www.ashland.or.us/SIB/files/880Park_APPEAL_Written_Argument-Parties.pdf
- Written Argument from the Applicant:**
http://www.ashland.or.us/SIB/files/2018-11-23_880Park_Applicant_email_argument.pdf

1. November 26, 2018	Written Argument Submittals	(Links above)
2. November 14, 2018	Mailed Notice for City Council Appeal Hearing	(pp. 1-5 in Record Part 1)
3. November 2, 2018	Notice of Appeal submitted by neighbor Colby Morgan	(pp. 6-17 in Record Part 1)
4. October 25, 2018	Notice of Planning Commission Decision	(pp. 18-21 in Record Part 1)
5. October 23, 2018	Adopted findings for the Planning Commission Decision	(pp. 22-37 in Record Part 1)
6. October 23, 2018	Planning Commission Hearing Minutes	(pp. 38-45 in Record Part 1)
7. October 23, 2018	Planning Commission Packet Materials	(pp. 46-63 in Record Part 1)
8. October 9, 2018	Planning Commission Hearing Minutes	(pp. 64-73 in Record Part 1)
9. October 9, 2018	Planning Commission Packet Materials	(pp. 74-261 in Record Part 1)
10. September 11, 2018	Planning Commission Hearing Minutes/Exhibits	(pp. 262-289 in Record Part 2)
11. September 11, 2018	Planning Commission Packet Materials	(pp. 290-351 in Record Part 2)
12. Materials submitted prior to September 11, 2018 Hearing		(pp. 352-358 in Record Part 2)