Council Business Meeting

December 18, 2018

Agenda Item	188 Garfield Street Appeal	
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SUMMARY

Consideration of an appeal of the Planning Commission's November 13, 2018 approval of a request for Site Design Review approval to construct a 72-unit studio apartment community ("The Mid Town Lofts") for the properties located at 188 Garfield 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 72-unit studio apartment community ("The Mid Town Lofts") for the properties located at 188 Garfield Street. All of the proposed units are studio units that are less than 500 square feet in gross habitable floor area and each counts as ¾ of a unit for purposes of density calculation; density bonuses are requested for conservation housing, outdoor recreation space and major recreation facilities. The application also includes requests for a Tree Removal Permit to remove 15 trees that are more than six-inches in diameter at breast height (d.b.h.); an Exception to the Site Development and Design Standards to treat stormwater run-off in a combination of bio-swales, underground treatment facilities and detentions ponds rather than in landscaped parking lot medians and swales; and for

Exceptions to Street Standards to retain the existing curbside sidewalk system along the frontage of the property and for the location of the driveway curb cut on Quincy Street, which is proposed to be shared with the property to the east and which would exceed the maximum driveway curb cut width for residential developments.

Planning Commission Decision

The Planning Commission approved the application including the requested density bonuses for Conservation housing (15 percent increase in base density), Outdoor Recreation Space (10 percent increase in base density) and Major Recreation Space (4 percent increase in base density) for a total density bonus of 29 percent. The Exception to the Site Development and Design Standards to treat stormwater run-off in a combination of bio-swales, underground treatment facilities and detentions ponds rather than in landscaped parking lot medians and swales was approved. The Exceptions to Street Standards to retain the existing curbside sidewalk system along the frontage of the property was partially approved, however standard parkrow planting strips with irrigated street trees were required on the north portion of Garfield Street and the full Quincy Street frontage. The Commission did not approve the requested Exception with regard to the driveway curb cut on Quincy Street, which was proposed to be shared with the property to the east and which would have exceeded the maximum driveway curb cut width for residential developments. The Commission instead approved an alternative which retained separate driveways in the existing driveway locations.

Appeal Request

Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by neighbors Devin Huseby and Michael Hitsky, both of whom 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) **The Planning Commission erred in approving the conservation housing density bonus;**
2) **The Planning Commission erred in approving the outdoor recreation space density bonus;**
3) **The Planning Commission erred in approving the major recreational facility density bonus;**
4) **The Planning Commission erred in approving the alternative bicycle parking solution proposed by the applicant;**
5) **The Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies;**
6) **The Planning Commission erred in calculating each of the 72 units as .75 units;**
7) **The Planning Commission erred in granting the on-street parking credits and by approving a project with insufficient off-street parking;**
8) **The Planning Commission erred in approving a driveway location on Quincy Street in exception to the street standards;**
9) **The content of the notice of public hearing was insufficient in not including the name and phone number of a City contact person and in failing to cite the applicable criteria and citations for decision;**
10) **The Planning Commission erred in approving an alternative to the landscaped medians and swales;**
11) **The Planning Commission erred procedurally and failed to provide due process by admitting new evidence during the applicant's rebuttal without providing other parties an opportunity to respond and in making findings which contradict the conditions of approval with regard to unit sizes, density bonuses and open and recreation space;**

12) The City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly.

The appeal on the record is limited to the 12 grounds for appeal which were clearly and distinctly identified in the appeal request.

Considering the Grounds for Appeal

1) The Planning Commission erred in approving the conservation housing density bonus.

The appellants assert that there is not substantial evidence in the record so support this density bonus, and that by granting the bonus without such evidence and deferring the requirement to additional evidence provided to the Building Division, the Commission abdicated their duty and granted authority to the Building Division in excess of its jurisdiction.

Here, staff would first note that the appellant seems to suggest that the grant of the density bonus is an Exception. AMC 18.2.5.080.F.3.a provides for a Conservation Housing density bonus as follows: "*The maximum bonus for conservation housing is 15 percent. One hundred percent of the homes or residential units approved for development, after bonus point calculations, shall meet the minimum requirements for certification as an Earth Advantage home, as approved by the Conservation Division under the City' s Earth Advantage program as adopted by resolution 2006-6.*" Resolution #2006-6 provides that the City adopts Earth Advantage Standards as the standards for the City's program for purposes of calculating the conservation housing density bonus. Earth Advantage is a third-party home certification program which seeks more sustainable, energy efficient homes. Compliance in design and construction is certified by a third-party inspector, and staff review is limited to verifying that the building plans and point sheets have been provided to Earth Advantage for review. Staff do not conduct discretionary review for Earth Advantage compliance; evidence of certification by Earth Advantage is required prior to occupancy approval.

The application materials provided note that,

- "*The new, energy efficient units are proposed to be developed to Earth Advantage Multi-Family Standards. High efficiency HVAC systems, Low E windows and insulation with high R values will be provided. The proposed thermal envelopes will provide for more comfortable and stable room temperatures. LED lighting will be utilized both interior and throughout the property to further reduce energy consumption* (**pg. 162**)."
- "*All of the units are proposed to have an energy efficient envelope. The units are proposed to have LED and low electricity usage appliances. All of the proposed units will comply with Earth Advantage Multi-Family Standards* (**pg. 165**)."
- "*All of the units are proposed to have an energy efficient envelope. The units are proposed to have LED and low electric usage appliances. All of the proposed units will comply with Earth Advantage and Energy Star Requirements for new construction* (**pg.168**)."
- "*Energy Usage: All of the units within the proposed development will be constructed to the Earth Advantage and Energy Star Standards. A detailed analysis of the actual energy consumption has not been determined but due to the high energy standards of the two programs the units will require substantially less energy to operate than typical construction. The units will be high performance, using the best practices and innovative construction technologies to gain efficiency in design, energy systems and materials for increased energy efficiency, superior indoor air quality, lower water usage*

and responsible use of natural resources (**pg. 170**)."

- "*All of the units are proposed to have an energy efficient envelope. The units are proposed to have LED and low electric usage appliances. All of the proposed units will comply with Earth Advantage and Energy Star Requirements for new construction. Specifically, points from the Earth Advantage® Multifamily Homes 2012 Standard Measures Resource Guide (Modified) will be implemented on site. Due to the proximity to transit, community services, retail, schools; the small footprints, the amount of proposed open space areas, low water consuming landscaping, solar orientation, etc. the proposal will greatly exceed the minimum standards for compliance. This will be demonstrated on the building permit submittals* (**pg. 61**)."

During the applicant's October 9th hearing testimony, it was indicated that the project team had met with a representative of Earth Advantage®, and that a points list based on Earth Advantage specifications would be provided with the building permit submittals as required to demonstrate compliance (**pg. 117**).

The Planning Commission made the finding that, "*With respect to the conservation housing bonus, the Planning Commission finds that conservation housing is feasible and can be documented at building permit submittal.* (**page 23**)." Condition #5m required that the building permit submittals include, "*Demonstrations that the conservation housing, additional recreation space and major recreational facilities requirements are satisfied to meet the requirements for the requested density bonuses*. (**page 32**)." Condition #7h required that prior to project approval or the issuance of a certificate of occupancy, "*The applicant shall provide evidence of Earth Advantage certifications necessary to satisfy the requirements for the conservation housing density bonus requested* (**page 33**)."

In staff's view, the Planning Commission was correct in finding that based on the evidence contained in the record, it was feasible that the applicant could obtain the required third party certification to verify compliance with the standards of the Earth Advantage® program as required for the density bonus, and the conditions attached by the Commission require that the applicant demonstrate at building permit submittal that they are pursuing certification and that prior to occupancy they provide evidence that certification has been obtained. Staff would recommend that the Council support the Commission's findings with regard to this issue and find that the Commission relied on evidence within the record and expert testimony that compliance at the building permit phase was feasible and typical and that the appellants have provided no evidence that compliance would not be feasible.

2) The Planning Commission erred in approving the outdoor recreation space density bonus.

AMC 18.2.5.080.F.3.b provides for a density bonus for "Outdoor Recreation Space" as follows: "*The maximum bonus for provision of outdoor recreation space above minimum requirement established by this ordinance is ten percent. The purpose of the density bonus for outdoor recreational space is to permit areas that could otherwise be developed as a recreational amenity. It is not the purpose of this provision to permit density bonuses for incidental open spaces that have no realistic use by project residents on a day-to-day basis. One percent increased density bonus for each percent of the project dedicated to outdoor recreation space beyond the minimum requirement of this ordinance."*

Separate from any bonus, there is a minimum "Open Space" requirement for Residential Developments in the Building Placement, Orientation and Design Standards chapter (AMC 18.4.2) which is detailed as follows in AMC 18.4.2.030:

H. Open Space. *Residential developments that are subject to the provisions of this chapter shall conform to all of the following standards.*

1. ***Recreation Area****. An area equal to at least eight percent of the lot area shall be dedicated to open space for recreational use by the tenants of the development.*
2. ***Surfacing.*** *Areas covered by shrubs, bark mulch, and other ground covers that do not provide suitable surface for human use may not be counted towards this requirement.*
3. ***Decks and Patios.*** *Decks, patios, and similar areas are eligible for open space.*
4. ***Play Areas.*** *Play areas for children are required for projects of greater than 20 units that are designed to include families. Play areas are eligible for open space.*

The Definitions chapter in AMC 18.6.1.030 defines Open Space as, *"A common area designated on the final plans of the development, permanently set aside for the common use of the residents of the development. Open space area is landscaped and/or left with a natural vegetation cover, and does not include thoroughfares, parking areas, or improvements other than recreational facilities."* Outdoor Recreation Space is not defined in the ordinance.

The appellants argue that the record and decision are entirely unclear as to what parts of the project are counted for the outdoor recreation space bonus except for the private patios and deck areas, which were improperly counted as outdoor recreation space. The appellants further argue that other areas including incidental open space and the space dedicated to the purported major recreational facility were improperly counted, and that by granting the bonus (*which is not an Exception as suggested*) without substantial evidence and then deferring the requirement to review by Building and Planning staff the Commission abdicated their duty and granted authority to the staff being their jurisdiction.

The applicant's request explains (**pages 61-62**):

> *"The required eight percent outdoor recreation space for a 91,474 square foot parcel is 7,318 square feet. In order to obtain an outdoor recreation area credit an additional 9,147 square feet in area for outdoor recreation is required (16,465.32 square feet)."*
>
> *"The proposed outdoor recreation space for the property is a combination of semi-private patios and balconies and the larger open space with lawn areas, large patio area with table and chairs, community BBQs and fire pit and a shade structure. There are substantial lawn areas that are also outdoor recreation areas."*
>
> *"The total lot area devoted to outdoor recreation area for the MidTown Lofts 'community' is 21,643 square feet in area or 23.6 percent."*
>
> *"Each unit also has a semi-private outdoor space that is either a deck or a patio area which accounts for 6,624 square feet. The courtyard and lawn area (evidence by hashed line on AP 1.1.1 attached) 15,019 square feet. These areas total 21,643 square feet in area of the property devoted to outdoor recreation space."*
>
> *"To be consistent with Staff and Commission's previous decisions regarding 'usable' area of the outdoor recreation area, approximately 15.5 square feet of area from each unit was excluded for*

entry areas (findings state 5,616 this is the area of the patio excluding the entry area in front of each door). This reduces the total provided area to 20,635 which still exceeds the required area of 16,465.32 square feet in area."

The applicant's October 23, 2018 submittals include sheet AP1.1 "Site Plan w/Areas (**page 85**) which illustrates the proposed recreation space including the central courtyard area, patios and lawn area.

The Planning Commission found that, *"With respect to the outdoor recreation space bonus, the Planning Commission finds that the bonus provisions do not specifically require outdoor recreation space to meet the "Open Space" definition in 18.6.1.030, so the spaces proposed for patios and decks can comply with this requirement and there is more than sufficient outdoor recreation square footage in the proposal to justify the requested bonus (***Page 23***)."*

In addition, to insure that final permit submittals are consistent with the approval, a condition #5m was included to require that the final building permit plans include, "*Demonstrations that the conservation housing, additional recreation space and major recreational facilities requirements are satisfied to meet the requirements for the requested density bonuses.*"

In staff's view, the Planning Commission correctly found that there was more than sufficient outdoor recreation space square footage to justify the requested bonus. As noted above, the narrative submittal and supporting drawings indicated that a total of 23.6 percent of the site was to be provided in required open space and proposed additional outdoor recreation space where only 18 percent of the project area (eight percent for required open space plus 10 percent for outdoor recreation space to support the requested density bonus) was required. 18 percent equated to 16,465 square feet, while the project plan identifies 20,465 square feet after excluding the portion of the semi-private patios dedicated to the entry path to doorways (which would be unavailable for recreational use), of total project open space. The project plans show that 15,019 square feet is proposed in broad common areas including courtyard and lawn which easily meet the 8 percent/7,318 square foot minimum open space requirement, and that the remaining 13,147 square feet provides outdoor recreation space, including decks and patios, in areas that could have "otherwise developed" with other types of uses per 18.2.5.080.F.3.b. Staff would recommend that the Council reject this point of the appeal, and support the Planning Commission's findings and their determination that semi-private patios and decks, which provide outdoor areas for residents to have a personal barbeque, outdoor seating, or patio garden, are appropriately considered as outdoor recreation space.

3) The Planning Commission erred in approving the major recreational facility density bonus.

AMC 18.2.5.080.F.3.c addresses the Major Recreational Facilities density bonus as follows: '*The maximum bonus for provision of major recreational facilities is ten percent. Density bonus points shall be awarded for the provision of major recreational facilities, such as tennis courts, swimming pools, playgrounds, or similar facilities. For each one percent of the total project cost devoted to recreational facilities, a six percent density bonus shall be awarded to a maximum of ten percent. Total project cost shall be defined as the estimated sale price or value of each residential unit times the total number of units in the project. Estimated value shall include the total market value for the structure and land. A qualified architect or engineer using current costs of recreational facilities shall estimate the cost of the recreational facility for City review and approval.*"

The applicant requested a four percent bonus for major recreational facilities. The applicant's "Value of Major Recreational Facilities for the Ashland Urban Lofts (page 80) notes that the total project cost is

estimated at $11,775,000 and the one percent of that amount necessary for a six percent bonus would be $117,750. This would equate to a six percent bonus; a four percent bonus would necessitate a major recreational facilities expenditure of $78,500. The qualified architect's estimate indicates that the proposed improvements to the courtyard area will total $164,000 which significantly exceeds the amount necessary for the requested bonus.

The appellant suggests that the facilities proposed do not meet the requirements for the bonus because the facilities proposed are not similar to the facilities identified in the code, and the applicant's submittals were contradictory and insufficient, including the financial calculations and estimates used to justify the amount of the bonus sought. The appellant argues that the area for the major recreational facilities appears to have been improperly double counted in support of other/inconsistent purposes. The appellant also asserts that the decision is not supported by substantial evidence, and that by deferring the review of additional evidence to the Building and Planning Division staff, the Commission has abdicated their duty and granted authority to the Building and Planning staff in excess of their jurisdiction.

The Planning Commission found that, "*…AMC Section 18.2.5.080.F.3.c allows a density bonus for "major recreational facilities in exchange for the applicant providing "tennis courts, swimming pools, playgrounds or similar facilities." The bonus allowed is six percent additional density for each one percent of project cost, based on the estimated sale price or market value of structures and land, devoted to major recreational facilities. The facility proposed here is identified as a "flexible outdoor activity space…for 'lawn' games such as badminton, spike ball, cornhole, croquet, ladder golf, and others." Also included within the proposed recreation space are a fire pit, barbecue kitchen area, and covered seating area. The Planning Commission finds that the facilities proposed are "similar facilities" akin to a playground for the likely adult tenants of the development and that the combination of facilities proposed for lawn games, fire pit, barbecue, kitchen area and covered seating areas constitute major recreational facilities which will be heavily used by tenants and which will serve to build community within the development. The Commission finds that these facilities qualify for the requested bonus based both on the recreational functionality of the unique combination of facilities proposed for anticipated tenants, and based on the estimated value provided (***page 24***).*" The applicant provided an estimate from project architect Raymond Kistler using current costs of the proposed recreation facilities to estimate the cost of the recreational facility (**page 80**). The applicants also provided their sheet AP1.1 "Site Plan w/Areas" which illustrates the proposed recreation space and provides associated area calculations (**page 85**). The applicant's hearing presentation included a preliminary courtyard plan and photo-realistic color rendering illustrating the improvements proposed.

In staff's assessment, the Planning Commission correctly found that the applicant had proposed facilities for lawn games, a fire pit, barbecue, kitchen area and covered seating areas which constituted major recreational facilities that would likely be heavily used by tenants and which would serve to build community within the development. The Commission found that these facilities qualified for the requested bonus based on the recreational functionality of the unique combination of facilities proposed for anticipated tenants which the Commission determined were similar to an adult playground, and based on the estimated value provided from a qualified architect. Staff would recommend that the Council find that the Commission found correctly based on evidence in the record and that the appellants have not demonstrated that the facilities proposed are not a "similar facility."

4) The Planning Commission erred in approving the alternative bicycle parking solution proposed by the applicant.

The application explains that "*one covered bicycle parking space is required for each unit. In order to provide for bicycle security, a hanging bicycle rack for a single bicycle will be provided within each unit except for the two A-Type (ADA accessible) units. The hanging rack has a nook provided for the bike hanger, the A-type units require a larger bathroom and doorways that eliminate the area for the bike hanger. Outside of the units, in covered areas as stand-alone structures, found near the parking area that parallel Iowa Street, inverted U-racks in groups of six providing for 12 spaces for visitors, or tenants that chose to park outside of their unit* (**pg. 170**)." Exterior rack placement is illustrated on the Preliminary Landscape Site Plan (**pg. 190**).

The appellants argue that the Commission erred in approving the proposed bicycle parking as the indoor hangers are not an acceptable bicycle parking rack located in an appropriate location as and do not comply with AMC 18.4.3.070.I.2 or 18.4.3.070.J

AMC 18.4.3.040.C.1 requires one sheltered bicycle parking space per studio or one-bedroom unit. AMC 18.4.3.070.I.2 provides that bicycle parking requirements can be met either by providing bicycle racks or lockers outside the main building, underneath an awning or marquee, or in an accessory parking structure; by providing a bicycle storage room, bicycle lockers, or racks inside the building, or by providing bicycle racks on the public right of way, subject to review and approval by the Staff Advisor. Bicycle parking is to be located so that it is visible to and conveniently accessed by cyclists, and promotes security from theft and damage. The land use ordinance provides a number of standards for exterior bicycle parking and for racks, but with regard to interior parking notes only that, "A bicycle parking space located inside of a building for employee bike parking shall be a minimum of six feet long by three feet wide by four feet high (**AMC 18.4.3.070.I.7**)." The applicant's proposal is for residential units and does not involve employee bike parking.

The Planning Commission found, "*that the applicants proposal to provide a bicycle closet with rack in each unit is consistent with the allowance in AMC 18.4.3.070.I to address bicycle parking by providing "a bicycle storage room, bicycle lockers or racks inside the building." In addition, the applicants have proposed 12 covered bicycle parking spaces outside in requesting an alternative vehicle parking credit under AMC 18.4.3.060.B.2. The Planning Commission finds that the parking proposed satisfies the parking requirements for the proposed units* (**page 25**)".

In staff's assessment, the Planning Commission found correctly that the proposed bicycle closets within each unit satisfied the bicycle parking standards, which allow required parking to be provided indoors with "*a bicycle storage room, bicycle lockers, **or** racks inside the building*." This arrangement accommodates required bicycle parking as allowed under the standards and *"promotes security from theft and damage*." Staff would recommend that the Council determine that the Commission's findings were not in error.

5) The Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies.

The appellants argue that the Planning Commission erred in failing to address evidence in the record regarding the inadequacy of existing water and sewer facilities and failed to plan to rectify those deficiencies through the proposed development in violation of AMC 18.4.6.070.D.

The applicant's findings note:

"*Adequate city facilities exist to service the proposed development.*"

*"**Water:** A water meter serves the property on Garfield Street. There is a fire hydrant at the intersection of Garfield Street and Iowa Street. Another fire hydrant is present across Quincy Street from the subject property. Water mains are present in Iowa Street (six-inch main), Garfield Street (four-inch main), and in Quincy Street where there is a four-inch main. A single service for the units, a service for the open space and fire connections are proposed on the north side of the driveway accessing the site from Garfield Street."*

*"**Sanitary Sewer:** Sanitary sewer services are present in Iowa Street, Garfield Street and in Quincy Street. Each has a six-inch sanitary sewer main. There is adequate capacity in the lines to service the new units. (**page 176**).*"

The applicant's sheet C1 includes a Conceptual Grading and Drainage Plan (**page 189**) prepared by Marquess & Associates, Inc. which addresses proposed grading, drainage and utilities and which illustrates the proposed existing sanitary sewer and waterlines within the adjacent rights-of-way and the proposed extension of services to serve proposed irrigation and domestic water service meters and hydrant and fire vaults.

The Site Design Review approval criteria in AMC 18.5.2.050.D. address water and sewer facilities as follows: "*The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that **adequate capacity of City facilities for water, sewer**, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation **can and will be provided to the subject property.**"*

With regard to water and sewer facilities, AMC 18.4.6.070 details the following:

18.4.6.070 Sanitary Sewer and Water Service Improvements.

A. Sewers and Water Mains Required. *All new development is required to connect to city water and sanitary sewer systems. Sanitary sewer and water system improvements must be installed to serve new development and to connect developments to existing mains, considering the City's adopted facility master plans and applicable standards. Where streets are required to be stubbed to the edge of the development, sewer and water system improvements, and other utilities, must also be stubbed with the streets, except where alternate alignment(s) are approved by the City Engineer.*

B. Sewer and Water Plan Approval. *Development permits for sewer and water improvements in the public right-of-way or public easements must be approved by the City Engineer.*

C. Over-Sizing. *The approval authority may require as a condition of approval that sewer and water lines serving new development be sized to accommodate future development within the area as projected by the applicable facility master plans; and the City may authorize other cost-recovery or cost-sharing methods as provided under state law.*

D. Inadequate Facilities. *Development permits may be restricted or rationed by the City where a deficiency exists in the existing water or sewer system that cannot be rectified by the development and which if not rectified will result in a threat to public health or safety, surcharging of existing mains,*

or violations of state or federal standards pertaining to operation of domestic water and sewerage treatment systems.

With regard to water and sewer facilities, the Planning Commission findings noted:

- ***Water:*** *The application notes that a water meter currently serves the property from Garfield Street, and that there is a fire hydrant in place at the intersection of Garfield and Iowa Streets and another is present on the opposite side of Quincy Street. The application further explains that there is a six-inch water main in Iowa Street, a four-inch water main in Garfield Street, and a four-inch water main in Quincy Street. The application proposes to provide a single water service for the proposed units, a service for the open space, and a fire connection on the north side of the driveway accessing the site from Garfield Street.*
- ***Sewer:*** *The application notes that there are six-inch sewer lines available in Iowa, Garfield and Quincy Streets, and indicates that these lines provide adequate capacity to serve the proposed units (***page 25***).*

The Planning Commission further found, *"…that the application includes conceptual plans detailing grading, drainage and utilities proposed to serve the project. Conditions have been included to require that prior to the issuance of a building permit, revised civil drawings including final grading, drainage, erosion control, utility, and electric service plan with load calculations be provided for the review and approval of the Building, Planning, Public Works/Engineering and Electrical Departments (***page 25***).*"

In staff's assessment, AMC 18.4.6.070 requires that applicant connects to city water and sewer systems, provide plans for the City Engineer's approval prior to the approval of development permits for work in the public rights-of-way, and further provide that if existing facilities are deficient and cannot be rectified development permits may be restricted. The application proposes to connect to city systems, includes a plan to do so, and has been conditioned to provide a final plan with the development permit for approval by the City Engineer. No inadequacy has been identified through the hearing process, nor has evidence been provided that if facilities were inadequate that inadequacies could not be rectified by the development. The Planning Commission accepted the applicant's plan prepared by a professional engineer and assurances by the applicant's team of professionals that the water and sewer facilities were adequate and adequately sized, and the appellants have not presented any evidence that these facilities are inadequate or pose a hazard to public health. Staff would recommend that the Council find that the Commission did not err, and that there was sufficient evidence in the record to support their findings.

6) The Planning Commission erred in calculating each of the 72 units as .75 units.

The appellants argue that each of the proposed units in the application were of greater than 500 square feet in gross habitable floor area, and the Commission erred in allowing the applicant to submit evidence during their rebuttal argument that the units would be adjusted to be less than 500 square feet. The appellants also assert that the Planning Commission failed to adequately address definitional irregularities in the calculation of square footage.

AMC 18.2.5.080.B.2 "Residential Density Calculation in R-2 and R-3 Zones" provides that, "*Units less than 500 square feet of gross habitable area shall count as 0.75 units for the purposes of density calculations.*"

In the Definitions chapter (AMC 18.6.1), "Floor Area, Gross Habitable" is defined as, "*The total area of all floors in a dwelling measured to its outside surfaces that are under the horizontal projection of the roof or floor above with at least seven feet of head room, excluding uninhabitable spaces accessed solely by an exterior door.*"

The applicant had proposed to construct all of the proposed units at less than 500 square feet of gross habitable floor area, however during the hearing process it was noted that their measurements of gross habitable floor area were inconsistent with the definition as they were measuring to interior walls when the code requires gross habitable floor area be measured to the outside surfaces (i.e. exterior walls). During their rebuttal testimony, the applicants indicated that the unit sizes would be adjusted to comply with the correct measuring methodology so that each unit was less than 500 square feet in gross habitable floor area. The Planning Commission included a condition of approval (#1) which reads, "*That all proposals of the applicant shall be conditions of approval unless otherwise modified herein, including that the final units' dimensions shall be adjusted in the building permit submittals so that each unit has less than 500 square feet of gross habitable floor area which is defined in AMC 18.6.1 as, 'The total area of all floors in a dwelling measured to its outside surfaces that are under the horizontal projection of the roof or floor above with at least seven feet of head room, excluding uninhabitable spaces accessed solely by an exterior door' (***page 29***).*"

In their initial submittals, the applicant had calculated floor area of the units to the inside wall surfaces, which is contrary to the code defined methodology for measuring gross habitable floor area. When the measurement was noted, the applicant indicated that the unit sizes could and would be corrected to comply with the definitional requirements. In staff's assessment, the Planning Commission correctly found that it was feasible to correct the unit size in the building permit drawings. Decks and other similar areas that are not inside the structure do not fit within the defined measurement methodology as they are aren't within the outside surfaces (i.e. the exterior walls). In staff's view, the Council should find that the Commission did not err here and should further find that the appellants have not shown that correcting the unit size is not feasible.

7) The Planning Commission erred in granting the on-street parking credits and by approving a project with insufficient off-street parking.

The appellants argue that the Planning Commission's finding that there was more than 600 linear feet of frontage with roughly 30 on-street parking spaces available were not supported by evidence in the record as Quincy Street is unavailable and it is unclear how much of the remaining frontage on Garfield and Iowa Streets is available due to new yellow curbs and the proximity to the SOU zoning overlay. The appellant further argues that the Commission erred in accepting evidence regarding yellow curbed areas during applicant's rebuttal without giving other parties the opportunity to respond, and the evidence regarding the number of spaces in the parking lot is insubstantial and contradictory, and because the units are greater than 500 square feet (see appeal issue #6, above) 108 parking spaces are required rather than the 72 indicated by the applicant.

In Table 18.4.3.040, the Parking, Access and Circulation chapter requires that multi-family dwellings less than 500 square feet provide one parking space per unit based on gross floor area, with fractions rounded to the nearest whole number. AMC 18.4.3.060 "Parking Management Strategies" provides that credit for on-street parking spaces may reduce the required off-street parking spaces up to 50 percent (18.4.3.060.A). On-street spaces may not be counted for credits when they are within 200 feet of the SOU zone

(18.4.3.060.A.3.d). The applicant's submittals note that the SOU zone is located approximately 200 feet to the northeast of the property (**page 161**) and as such on-street parking on Quincy Street at the northeastern portion of the subject property would not be excluded from consideration for credits.

In addition, AMC 18.4.3.060.B provides that alternative vehicle parking may reduce the required off-street parking spaces by up to 25 percent, with one off-street parking space credit for each five additional, non-required bicycle parking spaces.

The applicant's request explains that, "*The proposed development requires 72 parking spaces. The required parking was proposed as a combination of on-site parking in a 67-space surface parking lot and a request for five on-street parking credits. The shift of the driveway from a consolidated driveway to the existing curb-cut requires the elimination of five of the on-site parking spaces. This translates to an increase in on-street credits requested from five to seven. With the provision of 12-bicycle parking spaces above the 72 required, two vehicle parking credits are possible from the Parking Management Strategies found in AMC 18.4.3.060. With the approval of seven on-street credits, the revised 63-space parking area and on-site bicycle parking complies with the minimum parking standard for the proposed development.*"

*"Attached are photographs of the on-street parking from 2012, 2015 and 2018. In all photos, there is ample on-street parking present along the more than 600-feet of street frontage abutting the property. On average over the past six years, there have been between six to ten cars on Garfield Street; zero to two on Iowa Street and two-five on Quincy Street. There are newly painted yellow curbs that restrict parking within the vision clearance triangle of Iowa and Garfield Streets. With more than 30 available on-street credits, the request for seven is de minimis and should be allowed to off-ste the increase in on-site pavement, and reductions in landscaping. (***page 63***)."*

During rebuttal by the applicant, the applicant indicated that the proposed driveway location ("Option B") reduced on-site parking to a total of 64 spaces (**see minutes on page 37**)

The applicant's submittals include photos of on-street parking availability (**pages 66-78**) and sheet AP1.1 "Site Plan w/Areas" (**page 85)** which illustrates nine potential on-street parking spaces on Quincy Street, 15 potential on-street parking spaces along Garfield Street, and six potential on-street parking spaces along Iowa Street. One of the appellants, Mr. Huseby, also provided a declaration regarding parking and traffic (**pages 87-90**) which includes photos and observations of parking on the frontage streets.

The Planning Commission found that, "*With regard to off-street parking requirements detailed in AMC 18.4.3, the Planning Commission finds that 72 studio units less than 500 square feet require 72 parking spaces. The applicant proposes to provide 64 off-street parking spaces in surface parking lots and have requested the remaining eight spaces be addressed through a combination of six on-street parking credits and two credits for the additional exterior covered bicycle parking to be provided on-site. The subject properties have more than 600 linear feet of frontage with roughly 30 on-street parking spaces available. The site-specific evidence in the record shows that the requested on-street parking credit is reasonable, and that on-street parking is available except during relatively infrequent events such as larger events at the nearby Ashland High School. The Planning Commission further finds that the applicants proposal to provide a bicycle closet with rack in each unit is consistent with the allowance in AMC 18.4.3.070.I to address bicycle parking by providing "a bicycle storage room, bicycle lockers or racks inside the building." In addition, the applicants have proposed 12 covered bicycle parking spaces outside in requesting an alternative vehicle parking credit under AMC 18.4.3.060.B.2. The Planning Commission finds that the parking proposed satisfies the parking requirements for the proposed units* **(page 25)**."

As noted in the discussing of issue #6 above, the units are required to have less than 500 square feet of gross habitable floor area as Condition #1 of the approval and as such require only on space per unit for a total of 72 parking spaces. The Planning Commission's approval allowed for an eight space reduction in required off-street parking from 72 to 64 through a combination of six on-street parking credits and two credits for additional covered bicycle parking to be provided on site. In staff's assessment, six on-street parking spaces require only 132 linear feet of curb frontage while there is over 600 linear feet of curb frontage noted, and even the parking observations provided by the appellant suggest that there is ample parking along the properties' street frontages except for unusual events such as sporting events at the high school or university, and the written testimony established that there sufficient parking available on street. Staff would recommend that the Council find that the Planning Commission did not err in their findings and that there is sufficient parking available to satisfy the requirements for the proposal.

8) The Planning Commission erred in approving a driveway location on Quincy Street in exception to the street standards.

AMC 18.4.3.080.C.3.i requires that street and driveway access points in the R-3 zone for developments of three or more units shall provide a distance of 50 feet between driveways.

The separation between the subject property's driveway on Quincy Street and the adjacent driveway to the east is approximately 18 feet, and rather than bringing this into conformity with the standard as part of the application the applicant had instead proposed to shift the driveway east toward the adjacent driveway, paving the area between the two drives to provide a wider, single curb cut to accommodate the two drives. The application explained their intent was to mitigate the lack of required separation by combining the curb cuts to improve the pedestrian and vehicular environment by reducing the number of curb cuts and better aligning with the driveways on the opposite side of Quincy Street. The application further explained that a recorded ingress/egress easement for 181 California Street, a flag lot which takes vehicular access through the subject property, must be retained and prevents the applicant from either combining the two driveways to a single driveway or providing the required separation. The application notes that the proposed curb cut would be 36 feet in width, exceeding the maximum residential curb cut width of 18 feet and necessitating an Exception. Through the hearing process, when it seemed that this Exception was unlikely to be approved, the applicant offered options including an "Option B" which would involve retaining the current driveway separation.

With regard to the driveway separation/curb cut width request, the Planning Commission found, *"that the existing driveway location on Quincy Street does not currently comply with the minimum 24-foot driveway separation requirements applicable for the lot as it currently contains less than three units. Distances from driveway standards are detailed in AMC section 18.4.3.080.C.3, and developments of three units or more per lot are required to provide a 50-foot separation between driveways on neighborhood streets like Quincy Street. To address the separation requirement, the application proposes to shift the driveway east toward the adjacent driveway, paving the area between to provide a wider, single curb cut to accommodate the two drives, noting that this may necessitate protection or relocation of an existing power pole between the two drives. The application explains that this attempts to mitigate the lack of required separation by combining the curb cuts to improve the pedestrian and vehicular environment by reducing the number of curb cuts and better aligning with the driveways on the opposite side of Quincy Street. The application further explains that a recorded ingress/egress easement for 181 California Street, a flag lot which takes vehicular access through the subject property, must be retained and prevents the applicant from combining the two driveways to a single driveway or providing the required separation. The application notes that*

the proposed curb cut would be 36 feet in width, exceeding the maximum residential curb cut width of 18 feet and necessitating an Exception."

The Planning Commission further found that, *"the requested Exception does not address the underlying intent of the driveway separation/controlled access requirements, which seek to reduces conflicts between vehicles entering or exiting to the street and vehicles, bicycles and pedestrians already using the street. The Commission further finds that having multiple driveways come together at the curb within a single, wider-than-normally-allowed curb cut, rather than combining circulation on-site to enter and exit from a single driveway within a single, standard curb cut has the potential to create more conflicts and add confusion as there continues to be multiple driveways using a single curb cut without any coordination of circulation to reduce conflicts. The Commission finds that this would only be exacerbated if a power pole, and any measures needed to protect it from vehicles, were to be retained in the middle of the curb cut. The Commission finds that absent a clear depiction of how turning movements with the adjacent driveway might be addressed, the Exception to combine driveways within a wider than normal curb cut is not merited. The Commission further finds that if the applicant is unable to combine driveways and circulation on site to provide a single driveway exiting from a single standard curb cut due to the existing ingress/egress easement for the neighbor, the most appropriate treatment for the driveway would be the alternative "Option B" presented by the applicant during the hearing which would retain the existing non-conforming separation between the driveways which has been in place for years, and which has served Rivergate Church and its large parking lot The Planning Commission finds that allowing the project to use the existing curb cut location, rather than requiring the applicant to cure the existing non-conforming site condition to create a 50-foot curb cut separation, is appropriate. The existing curb cut location is required because of the easement owned by an off-site use, and this constitutes an "unusual aspect of the site." The use of the existing curb cut location, rather than requiring yet another curb cut further to the west, will result in equal or superior transportation connectivity because it will minimize the number of curb cuts along Quincy Street and will locate the project curb cut along Quincy Street further from the intersection with Garfield Street.* **(page 28)***"*

The appellants argue that the Commission erred in approving a driveway location on Quincy Street as an Exception to the Street Standards under AMC 18.4.6.020.B.1 rather than considering the driveway location in terms of the Variance criteria in AMC 18.5.5. The appellants further argue that there are no unusual or unique aspects of the property which warrant a Variance, and further assert that an existing easement which allows a neighboring property use of the driveway in its existing location does not qualify as such a condition. The appellants also argue that there is no evidence in the record that denying the requested Variance/Exception would result in an additional driveway on Quincy Street or that such a Variance/Exception is the minimum necessary to address any site specific concerns, or that the Variance/Exceptions results in any benefits that would be greater than the alternative of compliance with the standards.

In addressing Exceptions and Variances with regard to the Parking, Access and Circulation Chapter, AMC 18.4.3.020.D notes, "*Requests to depart from the requirements of this chapter are subject to chapter 18.5.5 Variances, except that deviations from the standards in subsections 18.4.3.080.B.4 and 5 and section 18.4.3.090 Pedestrian Access and Circulation are subject to 18.5.2.050.E Exception to the Site Development and Design Standards.*" Intersection and Driveway Separation are addressed in 18.4.3.080.C.3 and as such are subject to Variances rather than Exceptions to the Street Standards. As such, a request to install a *new* driveway closer than allowed by the standards would be subject to a Variance rather than an Exception. However, the existing driveway which remains from the Rivergate Church development that was previously in place on the property is a non-conforming development in

that the driveway is not presently located the required distance from the adjacent driveway to the east. AMC 18.1.4.040 addresses "Nonconforming Developments" as follows:

> ***A. Exempt Alterations.*** *Repair and maintenance of a nonconforming development (e.g., paved area, parking area, landscaping) are allowed subject to approval of required building permits if the development is not enlarged or altered in a way that brings the nonconforming site less in conformity with this ordinance. See also, section 18.3.11.050 related to nonconforming uses in Water Resource Protection zones.*
>
> ***B. Planning Approval Required.*** *A nonconforming development may be enlarged or altered subject to approval of a Conditional Use Permit under chapter 18.5.4 and approval of required building permits, except that a planning action is not required for exempt alterations described in subsection 18.1.4.040.A, above, and for non-residential development subject to subsection 18.4.2.040.B.6.*
>
> ***C. Roadway Access.*** *The owner of a nonconforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the nonconforming access into conformance with the standards of the approval authority.*

In this instance, because the driveway represents a non-conforming development and "Option B" presented by the applicant during the hearing and accepted by the Commission would retain the existing non-conforming separation between the driveways which has been in place for years, and which has served Rivergate Church and its large parking lot, staff believe it could appropriately be found to comply with the "Exempt Alterations" of 18.1.4.040.A above and be allowed without either a Variance or Exception because the non-conforming driveway and associated separation are not being altered in a way that brings the non-conforming separation less in conformity with the Ordinance.

AMC 18.1.4.040.C does provide specifically for Roadway Access in noting that the owner *may* be required as a condition of approval to bring the nonconforming access into conformance with the standards, however the Planning Commission found that "*allowing the project to use the existing curb cut location, rather than requiring the applicant to cure the existing non-conforming site condition to create a 50-foot curb cut separation, is appropriate. The existing curb cut location is required because of the easement owned by an off-site use, and this constitutes an "unusual aspect of the site." The use of the existing curb cut location, rather than requiring yet another curb cut further to the west, will result in equal or superior transportation connectivity because it will minimize the number of curb cuts along Quincy Street and will locate the project curb cut along Quincy Street further from the intersection with Garfield Street.*"

In staff's assessment, while the Planning Commission findings were not clear in addressing their decision relative to the initial Exception request in terms of the allowances for nonconforming developments, their decision to accept the applicant's "Option B" in lieu of approving the initially requested Exception was nonetheless in keeping with AMC 18.1.4.040 and the Council should find accordingly and reject this point of appeal. However, should the Council determine that the roadway access should be addressed otherwise in response to the issues raised by the appellants, staff believes that the appropriate procedural handling would be to remand the matter to the Planning Commission for consideration of a Conditional Use Permit to allow the alteration of a nonconforming development under AMC 18.1.4.040.B, rather than requiring a Variance, with the understanding that the subsequent decision of the Planning Commission would be the final decision of the City.

10) The Planning Commission erred in approving an alternative to the landscaped medians and swales.

AMC 18.4.3.080.B.5.b. calls for applicants to "*Design parking lots and other hard surface areas in a way that captures and treats runoff with landscaped medians and swales.*"

The approval of an Exception to the Site Development and Design Standards requires a demonstration that 1, 2 or 3 below are found to exist as detailed in AMC 18.5.2.050.E:

1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty;*

2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or*

3. *There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section. (Ord. 3147 § 9, amended, 11/21/2017)*

The stated purpose of the Site Development and Design Standards is noted in AMC 18.4.1.010 as, "*Part 18.4 contains design standards for development. The regulations are intended to protect public health, safety, and welfare through standards that promote land use compatibility, resource protection, and livability, consistent with the goals and policies of the Comprehensive Plan. Where an applicant requests an exception to a design standard, the approval authority evaluates the request against the purpose of the ordinance chapter in which the design standard is located.*" The stated purpose of Chapter 18.4.3, where the parking lot runoff standard is located, is noted in AMC 18.4.3.010 as, "*to provide safe and effective access and circulation for pedestrians, bicyclists, and vehicles.*"

The applicant requested:

> *"An exception (to) 18.4.3.080.B.5.b. to not have the parking lots designed in a way that captures and treats runoff with landscaped medians and swales. The proposed bio-swales and underground treatment and detention ponds treat the hard surfaces and the parking lot surface. The proposed methods are a more efficient, cost effective stormwater detention and treatment facility. Since the parking lot medians are often walked upon by tenants entering and exiting vehicles, a traditional, walkable ground cover is a better use of the space than a variable grade, rocky and/or sloped landscape buffer with a grate system and possibly filled with water. It can be found that the proposal to include light colored, some pervious paving techniques, larger bio-swales outside of the area where vehicle entry and exiting occurs, is a superior low impact development design that the parking lot median bio-swales. The parking lot landscape buffer and parking lot landscape peninsulas are provided that are sized and design with species that will do well in the parking lot while achieving the purposed and intent of the Site Design Standards as they relate to landscape buffers (***page 177***)."*

The application includes information provided by Jim Higday of Marquess and Associates. Mr. Higday asserts that adopted design guidelines require that the project engineer design site drainage to address a water quality storm event and a ten-year storm. Mr. Higday notes that swales would need to be a minimum of eight- to 12-feet wide to meet these standards, and this would render them not feasible for the proposed parking lot. As such, Mr. Higday notes that his firm designed a combination of above ground ponds, pervious concrete and underground Storm Tec chambers which all are approved methods in the Rogue Valley Stormwater Quality Design Manual used by a number of Rogue Valley cities including the City of Ashland (**pages *81-84***).

The appellants argue that the evidence in the record is insufficient to support the requested exception to the standard.

The Planning Commission found "*that the parking lot standards in AMC 18.4.3.080.B.5.b call for capturing run-off in a landscaped median or swale to mitigate parking impacts, reduce stormwater leaving the site and recharge groundwater. The applicant has instead proposed to detain run-off in a combination of underground treatment facilities, detention ponds and bio-swales as they assert that these methods are more efficient and cost-effective. The applicant suggests that light-colored paving with some of it pervious, and larger bio-swales separate from the parking lot are superior to parking lot median swales and allow for occasional pedestrian traffic and better landscape buffers in the parking lot medians. The Planning Commission finds that the measures proposed adequately mitigate the parking lot's impacts while reducing stormwater leaving the site and serving to recharge groundwater* **(page 27)**.*"*

In staff's assessment, the purpose of the Site Development and Design Standards in Part 18.4 speaks to standards that in part promote resource protection, while Chapter 18.4.3 is more narrowly focused "*to provide safe and effective access and circulation for pedestrians, bicyclists, and vehicles.*" For staff, it seems clear that the applicant sought an Exception not in response to a "*demonstrable difficulty in meeting the specific requirements"* but rather because they asserted that *"granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards."* While the applicant's engineer noted that meeting accepted regional stormwater design standards seeking to promote resource protection was not compatible with the parking lot setting, the applicant specifically noted, *"Since the parking lot medians are often walked upon by tenants entering and exiting vehicles, a traditional, walkable ground cover is a better use of the space than a variable grade, rocky and/or sloped landscape buffer with a grate system and possibly filled with water."* Staff believes that there is substantial evidence in the record to support the Planning Commission's finding that, while there was no demonstrable difficulty, the proposed alternative equally addressed the purpose and intent of the Standards in mitigating the parking lot's impacts, adequately reducing stormwater leaving the site and serving to recharge groundwater while seeking to provide safer and more effective pedestrian access within the parking lot that would be achieved by *"a variable grade, rocky and/or sloped landscape buffer with a grate system and possibly filled with water."* Staff recommend that the Council find that the Commission did not err, and reject this issue.

9) The content of the notice of public hearing was insufficient in not including the name and phone number of a City contact person and in failing to cite the applicable criteria and citations for decision.

11) The Planning Commission erred procedurally and failed to provide due process by admitting new evidence during the applicant's rebuttal without providing other parties an opportunity to respond and in making findings which contradict the conditions of approval with regard to unit sizes, density

bonuses and open and recreation space.

12) The City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly.

With regard to the first part of appeal issue #9, AMC 18.5.1.060.C.3.f addresses the "Content of Notice of Public Hearing" noting that "*Notices mailed and posted pursuant to this section shall contain all of the following information… The name and phone number of a City contact person.*" The notice of public hearing **(pages 139-140)** mailed and posted for the October 9, 2018 Planning Commission hearing noted, "*If you have any questions or comments concerning this request, please feel free to contact the Ashland Planning Division at (541) 488-5305.*" Based on the notice mailed and posted, the appellants were able to call this front desk number to determine the assigned staff planner for the project, discuss the application, and request information and materials. Both of the appellants were able to participate in the initial evidentiary hearing on October 9, 2018 with oral testimony; to request that the hearing be continued; and to present written testimony at the continued hearing on October 23, 2018. To rectify this issue in the future, the Notice of Public Hearing template has been changed to include the name and contact information for the assigned project planner.

With regard to the second part of issue #9, that the Notice of Public Hearing failed to cite the applicable criteria, the notice of public hearing (**page 140**) cited criteria for Site Design Review (AMC 18.5.2.050), for Exception to Street Standards (AMC 18.4.6.020.B.1), and for Tree Removal Permit (AMC 18.5.7.040.B). While the appeal notice is not entirely clear on this point, it is staff's assumption that the appellants' issue is that the hearing notice and subsequent findings did not address the Variance criteria (AMC 18.5.050) in dealing with the Quincy Street driveway. In discussing Exceptions and Variances with regard to the Parking, Access and Circulation Chapter, AMC 18.4.3.020.D notes, "*Requests to depart from the requirements of this chapter are subject to chapter 18.5.5 Variances, except that deviations from the standards in subsections 18.4.3.080.B.4 and 5 and section 18.4.3.090 Pedestrian Access and Circulation are subject to 18.5.2.050.E Exception to the Site Development and Design Standards.*" Intersection and Driveway Separation are addressed in 18.4.3.080.C.3 and as such are subject to Variances rather than Exceptions to the Street Standards. This issue is addressed in detail under issue #8 above.

With regard to issue #11, that new evidence was admitted during rebuttal without providing other parties to respond and making findings which contradict the conditions of approval, the applicant proposed units of less than 500 square feet in their application. When it was noted that the unit dimensions illustrated did not measure less than 500 square feet according to the definition of gross habitable floor area they explained that they were unaware of the correct methodology but that it was feasible to make minor adjustments to comply with the square footage limit (as discussed under issue #6 above), and a condition was imposed to insure that the final drawings complied. Where similar issues with the open space and recreation space were noted through the hearing process, findings were made that the application complied and conditions were included to insure that final permit drawings addressed these discrepancies and demonstrated compliance. AMC 18.1.6.050 "Conditions of Approval" provides that, *"…the Planning Commission… when acting as the hearing authority, may impose conditions of approval on any planning action to modify that planning action to comply with the criteria of approval or to comply with other applicable City ordinances. Such conditions shall be binding on the approved planning action, and a violation of a condition imposed by the hearing authority shall be a violation of this ordinance, and subject to all the penalties thereof.*"

With regard to issue #12, that the City erred procedurally and failed to provide due process by failing to provide the parties with the staff report and initial recommendations at least seven days before the initial public hearing, and in not making the full record available publicly, staff would note that the appellants requested the staff report and initial recommendations seven days prior to the hearing and were provided a draft with the explanation that these materials were still being reviewed by the Community Development Director and as such the initial staff recommendations might change slightly. Final documents were provided approximately five days prior to the hearing. The concerns with the availability of the physical record are unclear here. The full physical record has been available in the Community Development office at all times, and video recordings of the October 9th meeting were posted on-line, however because the initial evidentiary hearing was continued at the appellants' request to October 23rd, which was originally scheduled for a Planning Commission study session, the meeting was not video-taped. Rogue Valley Community Television does not record video for study sessions, and as such recordings were limited to audio recordings which took some time to make available on the city website. While the audio recordings were being uploaded to the website, a physical copy was burned to DVD and provided to the applicant at a charge of $5 to cover copying costs. The full record, including audio recording, is available on-line at: http://www.ashland.or.us/Page.asp?NavID=17699 .

In staff's view, with regard to appeal issues #9, #11 and #12 the Council should determine that the appellants were able to fully participate in the hearing process, did not raise these issues for the Planning Commission to respond to at either hearing, and the appeal request does not demonstrate that the alleged errors resulted in any substantial prejudice to a substantive right of the appellants (*i.e. in spite of the alleged errors, the appellants were able to fully participate in the hearing process for this matter*).

FISCAL IMPACTS

There are no direct fiscal impacts related to the appeal of the planning action for 188 Garfield Street.

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 November 13, 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 12 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 28, 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

188 Garfield Street appeal materials are posted on-line at: http://www.ashland.or.us/Page.asp?NavID=17699 These include a list of meetings, meeting packets, minutes and recordings of the meetings as well as a link to the full record at:

- **Public Meeting Materials/Recordings/Minutes and Argument Submittals** http://www.ashland.or.us/Page.asp?NavID=17699
- **Record** http://www.ashland.or.us/SIB/files/2018-11-21_188Garfield-PA_Record.pdf