

# Council Business Meeting

December 18, 2018

<b>Agenda Item</b>	880 Park Street Appeal - Adoption of Findings	
<b>From</b>	Bill Molnar Derek Severson	Director of Community Development Senior Planner
<b>Contact</b>	<a href="mailto:Bill.molnar@ashland.or.us">Bill.molnar@ashland.or.us</a> <a href="mailto:Derek.severson@ashland.or.us">Derek.severson@ashland.or.us</a>	(541) 552-2042 (541) 552-2040

## **SUMMARY**

Adoption of findings to formalize the Council's decision on the 880 Park Street appeal.

## **POLICIES, PLANS & GOALS SUPPORTED**

N/A.

## **PREVIOUS COUNCIL ACTION**

At the December 4, 2018 meeting, the Council considered an appeal of the Planning Commission's approval a 15-unit apartment project at 880 Park Street. The Council rejected the appeal on all five issues raised and reaffirmed the Planning Commission's approval.

## **BACKGROUND AND ADDITIONAL INFORMATION**

The attached findings formalize the Council's decision in terms of the procedural handling of the appeal hearing and the five appeal issues and adopt the Planning Commission's approved findings for the original land use decision as an attachment.

## **FISCAL IMPACTS**

There are no direct fiscal impacts related to the appeal of the planning action related to 880 Park Street.

## **STAFF RECOMMENDATION**

Planning staff recommends that the Council adopt the findings as presented.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

- 1) I move to adopt the findings for the appeal PA-APPEAL-2018-00004 as presented.
- 2) I move to adopt the findings for the appeal PA-APPEAL-2018-00004 with the following amendments [explain proposed amendments to findings].

## **REFERENCES & ATTACHMENTS**

Attachment 1: DRAFT Findings for PA-APPEAL-2018-00004 for Council Adoption.

Attachment 2: October 23, 2018 Planning Commission Findings for PA-T2-2018-00002 to be adopted as an attachment to the Council findings

**BEFORE THE CITY COUNCIL  
December 18, 2018**

IN THE MATTER OF PLANNING ACTION PA-APPEAL-2018-00004, AN APPEAL )  
TO THE ASHLAND CITY COUNCIL OF THE PLANNING COMMISSION'S )  
APPROVAL OF PLANNING ACTION PA-T2-2018-00002, 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 INCLUDES RE- )  
QUESTS FOR EXCEPTION TO THE STREET STANDARDS TO RETAIN THE EX- )  
ISTING ASPHALT MULTI-USE PATH ALONG SISKIYOU BOULEVARD AND TO )  
CONSTRUCT A MEANDERING SIDEWALK ALONG THE PROPERTY'S PARK )  
STREET FRONTAGE RATHER THAN INSTALLING CITY STANDARD SIDE- )  
WALKS AND PARKROW PLANING STRIPS, AND FOR A TREE REMOVAL PER- )  
MIT TO REMOVE FIVE TREES GREATHER THAN SIX-INCHES IN DIAMETER )  
AT BREAST HEIGHT (D.B.H.), INCLUDING TWO GREEN ASH, ONE MODESTO )  
ASH, AND TWO REDWOODS INCLUDING A MULTI-TRUNKED CLUSTER WITH )  
FIVE TRUNKS OF DIAMETERS RANGING FROM EIGHT- TO 14-INCHES D.B.H. )  
AN EXISTING APPROXIMATELY 895 SQUARE FOOT SHOP BUILDING ON THE )  
SOUTHEASTERN PORTION OF THE PROPERTY IS PROPOSED TO BE DEMO- )  
LISHED IN CONJUNCTION WITH THE PROPOSAL. )

**FINDINGS,  
CONCLUSIONS  
& ORDERS**

**OWNER/APPLICANT:** Tudor Properties, LLC/Kistler Small + White, LLC )  
**APPELLANT:** Colby Morgan )

-----  
**RECITALS:**

- 1) Tax lot #3402 of Map 39 1E 15 AD is located at 880 Park Street within the R-3 High Density Multi-Family Residential zoning district.
  
- 2) The applicants are requesting 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 includes 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 property's Park Street frontage rather than installing city standard sidewalks and parkrow planting strips, and for 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. An existing approximately 895 square foot shop building on the southeastern portion of the property is proposed to be demolished in conjunction with the proposal. The proposal is outlined in plans on file at the Department of Community Development.

3) The criteria for Site Design Review approval are described in **AMC 18.5.2.050** as follows:

- A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
- B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
- C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
- D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
- E. **Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
  - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
  - 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

4) The approval criteria for an Exception to Street Standards are described in **AMC 18.4.6.020.B.1** as follows:

- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
- b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*
  - i. *For transit facilities and related improvements, access, wait time, and ride experience.*
  - ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
  - iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*
- c. *The exception is the minimum necessary to alleviate the difficulty.*
- d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

- 5) The approval criteria for a Tree Removal Permit are described in **AMC 18.5.7.040.B** as follows:
1. **Hazard Tree.** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
    - a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part 18.6.*
    - b. *The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*
  2. **Tree That is Not a Hazard.** *A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
    - a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.10.*
    - b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
    - c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.*
    - d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.*
    - e. *The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*

6) The Planning Commission, following proper public notice, held a public hearing 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 meeting was continued for Planning Commission deliberations until 7:00 p.m. on October 9, 2018 at the City Council Chambers at which time the Planning Commission reconvened and after consideration of the materials received, approved the application subject to conditions pertaining to the appropriate development of the site.

7) This matter came before the City Council as an appeal on the record pursuant to Ashland Municipal Code (AMC) 18.5.1.060.I. Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by Colby Morgan, a neighbor of the project who received required notice of the initial evidentiary hearing and participated in the hearing process by providing both oral and written testimony. AMC 18.5.1.060.I.2.c requires that each appeal set forth a clear and distinct identification of the specific grounds for which the decision should be reversed or modified, based on identified applicable criteria or procedural irregularity. The five clearly and distinctly identified grounds for appeal in this case were: 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; and 5) That the traffic study is flawed in considering a multi-family development rather than 60 motoring adults.

8) 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 any 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 Council is confined to the record of the proceeding as defined in AMC 18.5.1.060.I.4.a. to include:

*"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."*

As provided in AMC 18.5.1.060.I.5.b., the Council is not to re-examine issues of fact and the appeal is limited to review to determine whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Planning Commission, with regard only to the five appeal issues detailed above.

9) The City Council, following proper public notice, held a public hearing on December 4, 2018 at which time oral arguments were presented. Subsequent to the closing of the hearing, the City Council rejected the appeal on all five grounds, upheld the Planning Commission's original decision and approved the application.

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

## **SECTION 1. EXHIBITS**

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

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

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

## **SECTION 2. CONCLUSORY FINDINGS**

2.1 The City Council finds that it has received all information necessary to make a decision based on the staff reports, public hearing testimony and the exhibits contained within the whole record.

2.2 The City Council finds that the Planning Commission was correct in determining that the proposal for Site Design Review approval met all applicable criteria for Site Design Review approval described in AMC section 18.5.2.050; that the proposal for an Exception to Street Design Standards met all applicable

criteria for an Exception to Street Design Standards described in AMC section 18.4.6.020.B.1; and that the proposal for a Tree Removal Permit to remove five trees met all applicable criteria for Tree Removal described in AMC section 18.5.7.040.B. The Planning Commission's adopted findings for Planning Action #PA-T2-2018-00002 are hereby adopted in their entirety as Exhibit A to these findings.

2.3 With regard to appeal issue #1, that the Planning Commission was provided illegal evidence by staff and the applicant after the record had closed, the City Council finds 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 prepared and distributed by staff.

The City Council finds that the Planning Commission made a specific finding in Section 2.1 of the Commission's adopted findings 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. The City Council rejects this appeal issue and finds that the Commission's striking the new materials from the record and removing them from consideration in the decision remedied this issue. The Planning Commission clearly recognized that new evidence had been provided and excluded these materials which did not affect the decision and the appellant has provided no evidence to the contrary.

2.4 With regard to appeal 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, the City Council finds that 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). Group Living, Room and Board Facility, and Dwelling are defined as follows:

**Group Living.** *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.** *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.*

**Dwelling.** *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.*

The City Council finds that 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 Council further finds that 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. The Council rejects the argument that a kitchen shared by members of a single household living within one dwelling unit constitutes common dining facilities, and finds that common dining facilities would require that some larger grouping of separate dwelling units all share a single common kitchen. The Council further finds

that to insure compliance with the definition of a multi-family dwelling unit, a condition of approval was included by the Planning Commission 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.”*

The Council finds that the Land Use Ordinance clearly addresses dormitories as a type of ‘Room and Board Facility’ under ‘Group Living’ in the Definitions chapter, and further finds that the Planning Commission considered this, and correctly found 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. The Council rejects appeal issue #2 and supports the findings of the Planning Commission that the units proposed are multi-family dwelling units rather than dormitory rooms.

2.5 With regard to appeal issue #3, that multi-family parking requirements should not be used and that parking requirements should be considered in terms of a dormitory, the City Council finds the Land Use Ordinance does include specific parking requirements for dormitories, however the Council further finds that 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 and the Council concurs 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. The Council further finds that 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.”*

The Council finds that based on the determination that the proposed units were multi-family dwelling units, the Planning Commission correctly made the finding 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:

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

The Council finds that the Planning Commission correctly determined 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 Council finds that the Planning Commission correctly determined that the proposal satisfied the applicable off-street parking requirement. The City Council

finds that the Planning Commission also made findings that the standard parking ratio provides for units of “3-bedrooms or greater” and that 4-bedrooms clearly falls into this category. The City Council further finds that the Planning Commission carefully considered the issue and determined 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. The City Council rejects the third appeal issue, and finds that the Planning Commission did not err with regard to the parking requirements for the proposal.

2.6 With regard to appeal issue #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, the City Council finds that 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 Council finds that 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...*” and 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.*”

The Council finds that 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 Planning Commission decision supported by Tree Commission recommendations includes a specific requirement that the building permit submittals include a revised tree protection plan which addresses the trees on neighboring properties. The City Council rejects the fourth appeal issue and finds that the Planning Commission correctly included Condition #9e to remedy the tree protection plans inadequacy in addressing trees on neighboring properties within 15 feet of the property line.

2.7 With regard to issue #5, that the traffic study is flawed in considering a multi-family development rather than 60 motoring adults, the City Council finds that under Public Works’ standards, the project does not reach threshold levels to require a traffic study be conducted. The Council further finds that the applicant nonetheless chose to provide a technical memorandum prepared by a transportation engineer to address neighbors’ concerns raised during the hearing process. This memorandum included a safety and performance evaluation of the intersection of Park Street and Siskiyou Boulevard which concluded 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.**

The City Council finds that, as discussed in detail 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. The Council further finds to insure compliance with the definition of a multi-family dwelling unit, the Planning Commission included 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.”* The Council rejects the fifth appeal issue and finds that 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.

### **SECTION 3. DECISION**

3.1 With regard to the appeal request, the City Council finds that the issues raised hinge largely upon the type of units proposed, each of which consists of four bedrooms, two bathrooms and a kitchen. The appellants and 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 consequently have a greater number of tenants than a typical apartment and would bring greater associated 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 by definition considered to be a type of room and board facility for group living. The Commission determined 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, and the Council concurs, that the units proposed were self-contained, as each proposed four-bedroom/two-bathroom dwelling unit includes its own kitchen, and as such each four-bedroom unit is a multi-family dwelling unit rather than a dormitory room. To insure that rental of the units in practice was consistent

with the parameters defining the units, the Planning Commission imposed a condition of approval making 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.*” If the units are multi-family dwelling units, and the Council concurs with the Planning Commission in determining that they are, then the parking requirements and traffic study must consider them as such.

Based on the record of the Public Hearing on this matter, the City Council concludes that the Planning Commission’s original decision to approve the requested Site Design Review, Exceptions to the Street Standards, and Tree Removal Permits is supported by evidence contained within the whole record.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, the City Council rejects the appeal #PA-APPEAL-2018-00004 on all five issues and reaffirms the Planning Commission’s decision to approve the original application Planning Action #PA-T2-2018-00002 subject to the Planning Commission’s original conditions of approval. Further, if any one or more of those conditions are found to be invalid, for any reason whatsoever, then Planning Action #PA-T2-2018-00002 is denied. The Planning Commission attaches the following condition to this approval:

- 1) That all conditions of Planning Action #PA-T2-2018-00002 attached hereto as “Exhibit A” shall remain in effect.

---

John Stromberg, *Mayor*  
City of Ashland

---

December 18, 2018  
Date

BEFORE THE PLANNING COMMISSION  
October 23, 2018

IN THE MATTER OF PLANNING ACTION PA-T2-2018-00002, 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 INCLUDES RE- )  
QUESTS FOR EXCEPTION TO THE STREET STANDARDS TO RETAIN THE EX- )  
ISTING ASPHALT MULTI-USE PATH ALONG SISKIYOU BOULEVARD AND TO )  
CONSTRUCT A MEANDERING SIDEWALK ALONG THE PROPERTY'S PARK )  
STREET FRONTAGE RATHER THAN INSTALLING CITY STANDARD SIDE- )  
WALKS AND PARKROW PLANING STRIPS, AND FOR A TREE REMOVAL PER- )  
MIT TO REMOVE FIVE TREES GREATHER THAN SIX-INCHES IN DIAMETER )  
AT BREAST HEIGHT (D.B.H.), INCLUDING TWO GREEN ASH, ONE MODESTO )  
ASH, AND TWO REDWOODS INCLUDING A MULTI-TRUNKED CLUSTER WITH )  
FIVE-TRUNKS OF DIAMETERS RANGING FROM EIGHT- TO 14-INCHES D.B.H. )  
AN EXISTING APPROXIMATELY 895 SQUARE FOOT SHOP BUILDING ON THE )  
SOUTHEASTERN PORTION OF THE PROPERTY IS PROPOSED TO BE DEMO- )  
LISHED IN CONJUNCTION WITH THE PROPOSAL. )

FINDINGS,  
CONCLUSIONS  
& ORDERS

OWNER/APPLICANT: Tudor Properties, LLC/Kistler Small + White, LLC )  
)  
)

-----  
RECITALS:

- 1) Tax lot #3402 of Map 39 1E 15 AD is located at 880 Park Street within the R-3 High Density Multi-Family Residential zoning district.
  
- 2) The applicants are requesting 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 includes 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 property's Park Street frontage rather than installing city standard sidewalks and parkrow planting strips, and for 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. An existing approximately 895 square foot shop building on the southeastern portion of the property is proposed to be demolished in conjunction with the proposal. The proposal is outlined in plans on file at the Department of Community Development.

- 3) The criteria for Site Design Review approval are described in **AMC 18.5.2.050** as follows:
- A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
  - B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
  - C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
  - D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
  - E. **Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
    - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
    - 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*
- 4) The approval criteria for an Exception to Street Standards are described in **AMC 18.4.6.020.B.1** as follows:
- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
  - b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*
    - i. *For transit facilities and related improvements, access, wait time, and ride experience.*
    - ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
    - iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*
  - c. *The exception is the minimum necessary to alleviate the difficulty.*
  - d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

- 5) The approval criteria for a Tree Removal Permit are described in **AMC 18.5.7.040.B** as follows:
1. **Hazard Tree.** *A Hazard Tree Removal Permit shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
    - a. *The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard (i.e., likely to fall and injure persons or property) or a foreseeable danger of property damage to an existing structure or facility, and such hazard or danger cannot reasonably be alleviated by treatment, relocation, or pruning. See definition of hazard tree in part 18.6.*
    - b. *The City may require the applicant to mitigate for the removal of each hazard tree pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*
  2. **Tree That is Not a Hazard.** *A Tree Removal Permit for a tree that is not a hazard shall be granted if the approval authority finds that the application meets all of the following criteria, or can be made to conform through the imposition of conditions.*
    - a. *The tree is proposed for removal in order to permit the application to be consistent with other applicable Land Use Ordinance requirements and standards, including but not limited to applicable Site Development and Design Standards in part 18.4 and Physical and Environmental Constraints in part 18.10.*
    - b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
    - c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.*
    - d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.*
    - e. *The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*

6) The Planning Commission, following proper public notice, held a public hearing 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 meeting was continued for Planning Commission deliberations until 7:00 p.m. on October 9, 2018 at the City Council Chambers at which time the Planning Commission reconvened and after consideration of the materials received, approved the application subject to conditions pertaining to the appropriate development of the site.

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

## SECTION 1. EXHIBITS

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

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

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

## SECTION 2. CONCLUSORY FINDINGS

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

The Planning Commission further finds that the materials submitted by the applicant on October 2, 2018 as "Applicant's Closing Legal Argument" which 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 hereby strikes pages 2, 3 and 8-19 of the applicant's October 2, 2018 submittal from the record and from consideration in this decision as they are found to contain new evidence after the hearing and record were closed.

2.2 The Planning Commission finds that the proposal for Site Design Review approval meets all applicable criteria for Site Design Review approval described in AMC section 18.5.2.050; that the proposal for an Exception to Street Design Standards meets all applicable criteria for an Exception to Street Design Standards described in AMC section 18.4.6.020.B.1; and that the proposal for a Tree Removal Permit to remove five trees meets all applicable criteria for Tree Removal described in AMC section 18.5.7.040.B.

2.3 The Planning Commission finds that, the first approval criterion for Site Design Review is that, *"The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards."* The

application materials provided assert that the applicable provisions of the property's R-3 zoning from AMC 18.2, including building and yard setbacks, lot area and dimensions, floor area, lot coverage, building height, building orientation, architecture and other applicable standards are being complied with.

The Planning Commission finds that the base density of the subject R-3 property is 14.8 units (0.74 acres x 20 dwelling units/acre = 14.8 dwelling units) and 15 units are proposed. The applicant proposes to address this additional density with a bonus for additional outdoor recreational space beyond the required 8 percent. The Commission further finds that while the application suggests that this additional density could be accomplish with a 0.2 percent bonus, a 1.35 percent density bonus is actually required ( $14.8 \times 1.013513514 = 15$ ) and also finds that there is adequate space available with minor modifications to the landscape treatments to provide this additional recreation space. A condition requiring that 9.35 percent of recreational space be identified in a final revised site plan is attached to the approval.

A number of those commenting have suggested that the use proposed is more akin to a dormitory than to multi-family housing units. In considering this distinction, the Planning Commission finds that a dormitory is considered a type of "room and board facility" under "group living" in the Definitions Chapter (AMC 18.6.1). The Commission further finds that "group living" is defined as typically accommodating a group larger than the average size of a household in structures that do not include self-contained units but rather have common dining, social, recreational, and laundry facilities. By contrast, a dwelling unit is defined in terms of having one set of cooking facilities and accommodating one "family", which is separately defined as not more than five unrelated persons. A multi-family dwelling is defined as a dwelling in a structure or group of structures containing two or more dwelling units on one lot.

The Planning Commission finds that the units proposed here are self-contained, as each proposed dwelling unit includes four bedrooms, two bathrooms and its own kitchen, and as such are multi-family dwelling units rather than a group living establishment or room and board facility such as a dormitory. The Commission further finds that to insure compliance with the definition of a multi-family dwelling unit, a condition of approval has been included to make clear that each dwelling unit here is not to house more than five persons who are not related by blood, marriage, legal adoption or guardianship.

**2.4** The Planning Commission finds that the second Site Design Review approval criterion is that, "*The proposal complies with applicable overlay zone requirements (part 18.3).*" The Commission further finds that the application explains that the subject property is not located in a special district or overlay zone and as such is not subject to the requirements of part 18.3.

**2.5** The Planning Commission finds that the third approval criterion is that, "*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*" Generally, these Site Development & Design Standards seek to improve each project's appearance; to create a positive, human scale relationship between proposed buildings and the streetscape which encourages bicycle and pedestrian travel; to lessen the visual and climatic impacts of parking; and to screen adjacent uses from adverse impacts of development. To these ends, buildings are to have their primary orientation to the street rather than to parking areas, with visible, functional and attractive entrances oriented to the street, placed within 20 feet of the street, and accessed directly from the public sidewalk. Sidewalks and street trees are to be provided along subject properties' frontages, and

automobile parking and circulation areas are not to be placed between buildings and the street and buffered and screened from surrounding properties.

The Commission finds that the application materials assert that the proposal complies with the applicable Site Development and Design Standards of AMC Chapter 18.4, and that only one exception to the Site Development and Design Standards is required for the parking lot stormwater treatment. Section 2.7 below addresses the required exception.

With regard to the Residential Site Review standards, the application materials explain that while there are primary entrances for all buildings from the site's interior, the buildings fronting on Siskiyou Boulevard and Park Street have architectural features intended to present a more traditional residential entry to these streets with prominent stairways centered on the building and a porch with a single wood door, wider posts on the patios, and a different window configurations, with pedestrian connections to the sidewalks and multi-use path. Colors and materials are noted as being selected to blend with the surrounding area, and street trees are to be provided along both frontages. The application further explains that parking is located to the rear of the site, behind the buildings.

The Commission also finds that the application materials provided include landscaping and site plans identifying a screened trash and recycling area. Section 18.4.3.080.E.6 requires that a sight-obscuring fence, wall or hedge between five and six feet high measured from the high grade side be provided as a buffer to an adjacent residential zone. The applicants have indicated that they intend to provide a hedge between the parking area and sidewalk, and will maintain existing fencing in place which screens the adjacent residential property.

The Planning Commission finds that in AMC Table 18.4.3.040, 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 finds that based on this table, at 2.00 spaces per unit for "3-bedroom or greater units", 15 multi-family dwelling units requires 30 off-street parking spaces. 30 off-street parking spaces are proposed here. 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 finds that the proposal satisfies the applicable off-street parking requirement. The Commission also finds that the standard parking ratio provides for units of "3-bedrooms or greater" and that 4-bedrooms falls into this category. The Commission further finds that the parking ratios in the code do not provide for extrapolation of additional parking demand based on any number of bedrooms beyond three. The Commission finds that the proposed use, as further detailed above, 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.

The Commission further finds that 30 covered bicycle parking spaces are required for 15 two bedroom units, that 30 covered bicycle parking spaces are to be provided. Conditions are included below to require that all proposed bicycle parking spaces are to be designed in compliance with the Bicycle Parking Design Standards for number, spacing and coverage noted in AMC 18.4.070.

**2.6** The Planning Commission finds that the fourth criterion for Site Design Review approval is that, “*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.*” The application materials indicate that all key facilities are available within the adjacent rights-of-way and will be extended at the time of construction to serve the subject property. The Commission further finds that the application materials address the specific public facilities as follows:

- **Water** – The proposed water services, including both the fire sprinkler system and the domestic water service, will connect to an existing six-inch water main in Park Street. The application notes that there is an existing fire hydrant located on the west side of Park Street near the intersection of Siskiyou Boulevard that will remain.
- **Sanitary Sewer** – The application explains that the proposed sanitary sewer lines will tie into an existing eight-inch diameter sanitary sewer main located in the Siskiyou Boulevard right-of-way.
- **Electricity** – The application notes that there is overhead power running on-site on the east side of Park Street on the project side of the road. The application explains that power can be dropped down from the existing power poles to serve the site. The application notes that the applicant’s team has met with the Electric Department and determined that there is adequate power to serve the proposed project and have developed a preliminary electric service plan.
- **Urban Storm Drainage** – The application explains that the site’s storm water pre-treatment and detention requirements will be met by draining the on-site storm water into a proposed storm water detention pond system at the corner of Park Street and Siskiyou Boulevard. The pond will drain into an existing roadside ditch along Siskiyou Boulevard and then into an existing, underground 18-inch storm drain pipe. The application materials note that the site is too steep to allow for the proper design of a drainage swale per Rogue Valley Sewer Services (RVSS) requirements. (*RVSS is a regional service provider that has developed standards which have been cooperatively adopted to provide consistency by the various regional municipalities and service providers.*) The applicant has also indicated that they would be willing to take existing drainage from uphill property currently draining into a catch basin near the southeast corner of the proposed parking lot without any easements and address it within their proposed drainage system.
- **Paved Access & Adequate Transportation** – Siskiyou Boulevard along the property’s frontage is a Boulevard or Arterial, and is also a state highway under the jurisdiction of the Oregon

Department of Transportation. It is currently improved with paving including two travel lanes and bike lanes, as well as a parkrow planting strip and a multi-use path which is paved in asphalt. The frontage currently lacks curbs, and there are no street trees within the planting strip. The applicants seek an Exception to Street Standards to forego the installation of a new park row and new sidewalk, asserting that the existing conditions including the large storm drainage swale and wide multi-use path are in excellent condition, and that the path is continuous along the length of Siskiyou while the installation of a new sidewalk would result in an inconsistent improvement.

The Planning Commission finds that arriving that installation of incremental improvements here out of context with a more comprehensive improvement that takes into account the broader drainage and circulation systems poses a difficulty, and that retention of the existing path and drainage swale combined with the installation of street trees on the private property behind the path is the minimum exception to deal with this difficulty and provides an equivalent facility.

Park Street is a residential neighborhood collector street, and has paving, curb and gutters in place, but lacks sidewalks or parkrows along the subject property's frontage. The street standards call for a seven- to eight-foot landscaped parkrow with irrigated street trees and five- to six-foot sidewalk five-foot hardscape parkrow with tree wells, but the applicants have requested to install a modified sidewalk and parkrow configuration which would jog to accommodate the placement of new power poles and an existing electrical cabinet. Staff has noted that in discussions with the electric department it may be possible to place arms on the power poles which would allow their placement in a standard parkrow but this is questionable in that the line tension must be maintained and the lines must continue to align with the broader system to the north and south. Staff has recommended, and the Commission finds that if a standard parkrow and sidewalk configuration cannot be constructed according to standards by the placement of arms on the power poles, it would be preferable to install a curbside sidewalk for the full frontage of the property as this would respond to the difficulty posed by the power pole placement while resulting in a continuous/consistent sidewalk system without jogs or meanders that would provide a better pedestrian facility and would like better align with the future installation along Park Street to the south.

In reviewing the Transportation System Plan (TSP) in considering neighbors' comments and the applicant's traffic engineer's September 17, 2018 "Tech Memo", The Planning Commission finds that there is a TSP Project identified as Project #R13 "Siskiyou Boulevard (OR99)/Park Street Intersection Improvements" at the intersection of Siskiyou Boulevard and Park Street. This project is described as, "Realign Park Street approach to eliminate offset." The project is noted as being development driven, with no specific timeframe and is not identified in the Capital Improvement Projects (CIP) list. The engineering and construction cost is listed at \$296,000, however the project

description notes that “Right-of-way costs are not included in the cost estimate.” The project goals are noted as improving safety and balancing mobility and access. The Planning Commission finds that as illustrated in the TSP, the realignment would take a significant portion of the subject property to better align the north and south legs of the Park Street intersection with Siskiyou Boulevard, and in so doing would eliminate some of the proposed buildings.

The Planning Commission further finds that Planning staff have discussed Project #R13 with Public Works/Engineering staff and visited the site with Public Works Director Paula Brown. In considering this project in light of the application under review, including the applicant’s September 17 Tech Memo, staff have noted that the applicants engineer has performed a safety and performance evaluation for the intersection concluding that:

- **The proposed apartment traffic will generate five trips in the A.M. peak hour and 7 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.**

Based on the Tech Memo and staff observations on site, the Planning Commission finds that there is no clear nexus which necessitates realignment of the intersection here. The peak hour trips generated are minimal, there are no apparent safety issues based on the crash history, the intersection operates better than city or state standards, sight distances are met, and there are no operational issues or turning movement conflicts that will be impacted by the proposal. The Planning Commission finds that realignment of the intersection would address underlying systemic issues that are neither caused nor exacerbated by the current proposal.

The Commission finds that TSP Project #R13 shifted the burden of the necessary right-of-way dedication and improvements disproportionately to the subject property because the properties on the north side of the intersection are already fully developed, and further finds that it would not be proportional to the impacts of the proposed development to require the necessary right-of-way dedication to correct this underlying issue which is not caused or exacerbated by the applicant’s proposal. The Commission also finds that in discussing these issues with the Public Works Director, staff noted that she does not believe that the existing or anticipated trip counts on Park

Street necessitate this realignment, whereas the level of trips at Wimer and Hersey Streets, a recently completed realignment project in the TSP, clearly necessitated the realignment project there.

The Planning Commission finds that based on the above information, that existing public facilities and utilities are in place and available to serve the project, and have been preliminarily identified on the Site Plan provided and discussed in the narrative. Electric, water, sanitary sewer and storm drainage facilities are available from the adjacent rights-of-way, and the application indicates that services will be extended by the applicant as necessary to connect to the proposed buildings. Conditions have been included below requiring that final electrical distribution, utility, storm drainage, and street improvement plans be provided for review and approval prior to building permit submittal, and that any fees for necessary service upgrades or connection to address specific service requirements for the proposed buildings be paid for prior to permit issuance.

2.7 The Planning Commission finds that the final criterion for Site Design Review approval provides that the Planning Commission may approve Exceptions to the Site Development and Design Standards of part 18.4 if certain circumstances are found to exist.

With regard to the parking lot treatment, the Planning Commission finds that section 18.4.3.080.B.5 requires that parking areas of more than seven spaces minimize the adverse microclimatic impacts of the parking through design and materials by utilizing light-colored paving, using at least 50 percent porous paving materials or providing 50 percent of the parking area shaded with trees or solar carports, and capturing and treating stormwater run-off in landscaped medians and swales. While the application proposes to treat the parking area in pervious concrete, the applicants have indicated that the site's grades do not readily accommodate the installation of swale, and have instead proposed to pipe the site's drainage to a detention pond near the northwest corner of the property where it would be held before entering the city's storm drain system in the Siskiyou Boulevard right-of-way. Here, the Commission finds that the site grades are too great for a swale according to regional stormwater standards and further finds that the combined use of pervious concrete for the parking area and installation of a detention pond is the minimum necessary to alleviate this difficulty, will not substantially negatively impact adjacent properties given that microclimatic impacts of the parking area will continue to be minimized while providing for a measure of groundwater recharge.

2.8 The Planning Commission finds that the application includes a request for 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.

The Planning Commission finds that the larger Redwood (Tree #6) is noted in the arborist report as having a 35-inch diameter, and being a large, healthy tree. The arborist notes that as the project is now designed, the tree is located within a building's footprint and would need to be removed. The arborist indicates that he does not see options for preservation of this tree short of a complete project re-design.

The Commission further finds that the cluster of Redwood trees (#7) is noted by the landscape professional as being in good condition. The arborist indicates that this tree does not appear to fall within a building footprint, and suggests that it seems feasible that this tree could be preserved through protection measures but would require adjustment of the landscape plans.

The Commission finds that the arborist further notes that in considering the two Redwoods (#6 & #7) both are conifers in close proximity to building, and if either were ultimately to be preserved, any necessary fuels-reduction pruning should be considered as a condition of approval. The arborist further recommends that supplemental watering for the trees to be preserved be provided, especially during summer months, and that the Tree Protection Plan be revisited to address trees on the neighboring property to the south, with particular attention to the large Deodar Cedar near the southeast corner.

The Commission also finds that with regard to the removals requested, the application explains that no one individual factor lead to the Tree Removal Permit request, but that it was instead a combination of several factors: First, the applicants felt that it was questionable that a site layout could be achieved which would result in keeping the large Redwood healthy over the long-term. The applicants emphasize that given the tree's location and the size of its protection zone, it would certainly be impacted during construction and the foundation of at least one of the structures would negatively impact its root system regardless of the final layout of the buildings. Second, they note that the placement of the parking is a key limiting factor with development of the site, suggesting that an appropriate design would place the parking to the south, behind buildings and a safe distance from the intersection with Siskiyou Boulevard. The design sought a straight, limited length, two-way entry to the parking area and given the number of spaces required the parking area uses the entire southern end of the property and eliminates the potential use of this area for buildings. Third, the applicants suggest that with the housing market being what it is, it is incumbent on a successful multi-family development to maximize the number of units that can reasonably be provided on any given site. Finally, the applicants note site design standards not only dictate the placement of the parking behind the buildings, but require that buildings be placed near and oriented to the street which further limits the site design options, particularly in avoiding the removal of the large Redwood.

The Planning Commission finds that the Landscape Plan (**Sheet L1.0**) identifies a variety of new trees to be planted including Raywood Ash, Golden Rain, Redspire Flowering Pear, Little-leaf Linden and Japanese Zelkova.

In considering the applicants Tree Preservation and Protection Plan, the Commission finds that the Tree Protection Zone for the Redwoods would encompass a significant area of the site plan beyond that depicted on the applicants' current drawings, and further finds that staff have suggested that preserving and protecting the large Redwood could require that the site density be reduced below the permitted density allowed by the zone particularly given the larger likely protection zone and that the buildings currently proposed along Siskiyou in closest proximity to the tree will require excavation to accommodate a basement. The Planning Commission finds that the Ashland Tree Commission reviewed the application at its regular meeting on September 6, 2018 and was generally supportive of the application as submitted, including the proposed removal of the Redwoods. The Commission did not

believe that Tree #7, the Redwood cluster, could be preserved given its proximity to construction and the excavation necessary to construct a basement. The Tree Commission recommended that street trees be selected from the approved list, but that Raywood Ash trees not be chosen. The Tree Commission suggested that at least half of the Raywood Ash trees be replaced with a variety of Oak. The Tree Commission also recommended that the trees to be retained be watered at least twice per week. The Tree Commission concluded that the proposed mitigation planting would have a net positive impact on the site and surroundings in terms of canopy coverage in the long-run. The Planning Commission accepts these recommendations and has included conditions making them conditions of the approval here.

**2.9** In considering the request as a whole, the Planning Commission finds that the proposal will provide much needed housing in a flexible configuration similar to that used in the applicants' adjacent apartments to the east, and that the applicants have chosen to provide the full amount of required parking on-site rather than seeking reductions based on the available on-street parking on Park Street. While the removal of the large Redwood is unfortunate, its location on the site and large protection zone make its retention difficult when seeking to develop much needed multi-family housing at R-3 densities and the application includes the planting of a number and variety of new trees. The Commission therefore finds that with the conditions attached below, the proposal merits approval.

### **SECTION 3. DECISION**

**3.1** The Planning Commission concludes that based on the record of the Public Hearing on this matter, the proposal 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; Exceptions to the Street Standards to retain the existing asphalt multi-use path along Siskiyou Boulevard and to construct a meandering sidewalk along the subject property's Park Street frontage rather than installing city standard sidewalks and parkrow planting strips; and for a Tree Removal Permit to remove five tree at 880 Park Street is supported by evidence contained within the whole record.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, the Planning Commission approves Planning Action #T2-2018-00002. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2018-T2-00002 is denied. The following are the conditions attached to the approval:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein, including but not limited to the applicant's agreement to take drainage currently going into the catch basin near the southeast corner of the site without easements and to accommodate it within the site's proposed drainage system.
- 2) That the plans submitted for the building permit shall be in conformance with those approved as part of this application. If the plans submitted for the building permit are not in conformance with those approved as part of this application, an application to modify this approval shall be submitted and approved prior to the issuance of a building permit.
- 3) The requirements of the Ashland Fire Department, including approved addressing, fire apparatus access including angle of approach and any necessary easements; applicable aerial access;

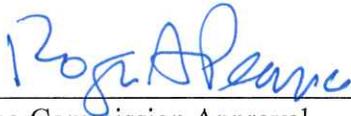
provisions for firefighter access pathways; fire flow; fire hydrant spacing, distance and clearance; work area; fire department connection (FDC); fire extinguishers; limitations on access obstructions; and fire sprinklers, shall be complied with prior to issuance of the building permit or the use of combustible materials. Fire Department requirements shall be included on the engineered construction documents. If a fire protection vault is required, the vault shall not be located in the sidewalk corridor.

- 4) That mechanical equipment shall be placed and screened from view from Siskiyou Boulevard and Park Street in a manner consistent with AMC 18.2.4.020.B, and the location and screening of all mechanical equipment shall be detailed on the building permit submittals.
- 5) That all recommendations of the Ashland Tree Commission from its September 6, 2018 regular meeting shall be conditions of approval where consistent with applicable standards and criteria and with final approval by the Staff Advisor.
- 6) That the applicants shall obtain approval of a Demolition Permit through the Building Division prior to the demolition of the existing metal shop building if deemed necessary by the Building Official.
- 7) That any new addresses shall be assigned by City of Ashland Engineering Department.
- 8) That permits shall be obtained from the Oregon Department of Transportation (ODOT) and evidence of approval provided to the Ashland Public Works/Engineering Division prior to any work in the Siskiyou Boulevard state highway right-of-way.
- 9) That building permit submittals shall include:
  - a) The identification of all easements, including but not limited to public or private utility or drainage easements, fire apparatus access easements, and public pedestrian access easements.
  - b) The identification of exterior building materials and paint colors for the review and approval of the Staff Advisor. Colors and materials shall be consistent with those described in the application and very bright or neon paint colors shall not be used.
  - c) Specifications for all exterior lighting fixtures. Exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.
  - d) A final landscaping and irrigation plan to include irrigation details satisfying the requirements of the Water Conserving Landscaping Guidelines and Policies found in AMC 18.4.4 which includes: 1) A clear delineation of the proposed treatment of the required recreation/open space with calculations demonstrating that a total of 9.35 percent of the site is provided in recreational space; 2) Identification and placement of required street trees and mitigation trees; and 3) Final proposed lot coverage calculations including all building footprints, driveways, parking, and circulation areas shall be provided for the review and approval of the Staff Advisor. Lot coverage shall be limited to no more than 75 percent as allowed in the R-3 zoning district.
  - e) 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, and shall include a watering schedule for trees to be preserved and protected, with watering to occur at least twice per week.

- f) Final stormwater drainage, grading and erosion control plans for the review and approval of the Engineering, Building and Planning Departments. The stormwater plan shall address Public Works/Engineering standards requiring that post-development peak flows do not exceed pre-development levels. Any necessary drainage improvements to address the site's stormwater shall be provided at the applicants' expense. Storm water from all new impervious surfaces and run-off associated with peak rainfall events must be collected on site and channeled to the city storm water collection system (*i.e., curb gutter at public street, public storm pipe or public drainage way*) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals.
- g) A final utility plan for the project for the review and approval of the Engineering, Planning and Building Divisions. The utility plan shall include the location of any necessary connections to public facilities in and adjacent to the development, including the locations of water lines and meter sizes, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins. Meters, cabinets, vaults and Fire Department Connections shall be located outside of pedestrian corridors and in areas least visible from streets, sidewalks and pedestrian areas, while considering access needs. Any necessary service extensions or upgrades shall be completed by the applicant at applicant's expense.
- h) An electric design and distribution plan including load calculations and locations of all primary and secondary services including any transformers, cabinets and all other necessary equipment. This plan must be reviewed and approved by the Electric, Engineering, Building and Planning Departments prior to the issuance of excavation or building permits. Transformers, cabinets and vaults shall be located outside the pedestrian corridor in areas least visible from streets, sidewalks and pedestrian areas, while considering the access needs of the Electric Department. Any necessary service extensions or upgrades shall be completed at the applicant's expense.
- i) That the applicants shall provide engineered plans for the installation of street frontage improvements for the full Park Street frontage of the subject property, including city-standard seven-foot width landscaped parkrow planting strips with irrigated street trees, five-foot sidewalks, and city-standard street lighting for the review of the Planning and Public Works/Engineering Departments. (*If an Electric Department-approved power pole configuration cannot be arrived at which will accommodate city-standard parkrow installation without meandering the sidewalks, an Exception is approved to install continuous curbside five-foot width sidewalks with irrigated street trees placed behind the sidewalk.*) If necessary to accommodate city standard street frontage improvements, the applicant shall dedicate additional right-of-way or provide public pedestrian access easements. Any necessary easements or right-of-way dedications shall be submitted for the review and approval of the Planning and Public Works/Engineering Departments. Permits for any work in the right-of-way shall be obtained from the Public Work/Engineering Department.
- j) Identification or required bicycle parking, which includes 30 covered bicycle parking spaces. Inverted u-racks shall be used for the outdoor bicycle parking, and the building permit submittals shall verify that the bicycle parking, spacing and coverage requirements are met.

- k) Solar setback calculations demonstrating that all new construction complies with Solar Setback Standard A. Calculations shall be in the formula  $[(\text{Height} - 6) / (0.445 + \text{Slope}) = \text{Required Solar Setback}]$  and elevations or cross section drawings shall be provided clearly identifying the highest shadow producing point(s) and the height(s) from natural grade.
  - l) That the building permit drawings shall including calculations demonstrating that the proposed buildings comply with the Separation Between Buildings requirements of AMC 18.3.9.070.B.
- 10) That prior to the issuance of the building permit, the commencement of site work including staging or the storage of materials:
- a) That all necessary building permits fees and associated charges, including permits and connections fees for new, separate, underground electrical services to each proposed unit, and system development charges for water, sewer, storm water, parks, and transportation shall be paid.
  - b) That the tree protection fencing and other tree preservation measures shall be installed according to the approved plan, inspected and approved by the Staff Advisor prior to any site work including demolition, staging or storage of materials, or the issuance of a building permit. The tree protection shall be chain link fencing six feet tall and installed in accordance with 18.4.5.030.C. and no construction shall occur within the tree protection zone including dumping or storage of materials such as building supplies, soil, waste, equipment, or parked vehicles.
  - c) That the property owner shall sign in favor of a Local Improvement District (LID) for the future street improvements, including but not limited to paving, curbs, gutters and storm drainage, park rows with street trees, and sidewalks for Siskiyou Boulevard. Nothing in this condition is intended to prohibit an owner/developer, their successors or assigns from exercising their rights to freedom of speech and expression by orally objecting or participating in the LID hearing or to take advantage of any protection afforded any party by City ordinances and resolutions.
- 11) That prior to the final approval of the project or issuance of a certificate of occupancy:
- a) All hardscaping including the sidewalk corridor, parking lot and driveway; landscaping; common area and open space improvements; and the irrigation system shall be installed according to the approved plan, inspected, and approved by the Staff Advisor.
  - b) All utility service and equipment installations shall be completed according to Electric, Engineering, Planning, and Building Departments' specifications, inspected and approved by the Staff Advisor.
  - c) Sanitary sewer laterals, water services including connection with meters at the street, and underground electric services shall be installed according to the approved plans to serve all units prior to signature of the final survey plat or issuance of a certificate of occupancy.
  - d) That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent residential properties.

- e) All required street frontage improvements, including but not limited to the Park Street sidewalk, parkrow with irrigated street trees spaced at one tree per 30 feet of frontage, and street lighting, shall be installed under permit from the Public Works Department and in accordance with the approved plans, inspected and approved by the Staff Advisor.
  - f) That street trees, one per 30 feet of street frontage, shall be installed behind the sidewalk on the applicants' property along the Siskiyou Boulevard frontage. All street trees shall be chosen from the adopted Street Tree List, but shall not include Raywood Ashes, and shall be planted on the property in accordance with the specifications contained therein. The street trees shall be irrigated.
  - g) Screening for the trash and recycling enclosure shall be installed in accordance with the Site Design and Use Standards, and an opportunity to recycle site of equal or greater size than the solid waste receptacle shall be included in the trash enclosure as required in AMC 18.4.4.040.
  - h) 30 required covered bicycle parking spaces shall be installed according to approved plan, inspected and approved by the Staff Advisor.
  - i) That the applicants shall install and maintain a sight-obscuring fence, wall or hedge at the property line between the parking area and driveway and adjacent residential property in a manner consistent with AMC 18.4.3.080.E.6.b. This sight-obscuring fence, wall or hedge shall be between five and six feet high as measured from the high grade side of the property line, and may be installed within the required five-foot landscape strip. Any screen plantings shall be of a size and number to provide required screening within 12 months of installation.
- 12) That each of the proposed multi-family dwelling units here shall house no more than one family, which is defined in AMC Part 18.6.1 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."*




---

 Planning Commission Approval

---

 October 23, 2018

Date