

CORRECTED

May 13, 2022

Notice of Final Decision

The Ashland Planning Commission has denied the request without prejudice for the following:

Planning Action: PA-T2-2022-00037

Subject Property: 165 Water Street, 160 Helman Street and 95 Van Ness
(corner of Van Ness & Water Streets)

Applicant: Rogue Planning & Development Services, LLC, agent for

Owner: Magnolia Investment Group, LLC and Gil Livni

Description: A request for a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 95 Van Ness Street, 165 Water Street and 160 Helman Street. The applicant's Phase I requests Site Design Review approval for five mixed-use commercial buildings with ground floor commercial spaces and two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site work completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way; and a request for an Exception to Street Standards to allow parking bays with street trees in bump-outs along Van Ness Avenue rather than standard park-row planting strips. *[Since the March Planning Commission hearing, the number of lots proposed has been reduced from eight to six. The application no longer includes a Solar Access Exception or an Exception to the plaza space requirement.]* **COMPREHENSIVE PLAN DESIGNATION:** Employment; **ZONING:** E-1; **ASSESSOR'S MAP:** 39 1E 04CC; **TAX LOTS #:** 2000, 2100 & 7100

The Planning Commission's decision becomes final and effective ten days after this Notice of Final Decision is mailed.

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

This decision may be appealed to the Ashland City Council if a Notice of Appeal is filed prior to the effective date of the decision and with the required fee (\$325), in accordance with section 18.5.1.060.I of the Ashland Municipal Code, which is also attached. The appeal may not be made directly to the Oregon Land Use Board of Appeals.



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

cc: Magnolia Investment Group, LLC and Gil Livni
Parties of record

SECTION 18.5.1.060.I

I. Appeal of Type II Decision. The City Council may call up a Type II decision pursuant to section 18.5.1.060.J. A Type II decision may also be appealed to the Council as follows.

1. Who May Appeal. Appeals may only be filed by parties to the planning action. "Parties" shall be defined as the following.
 - a. The applicant.
 - b. Persons who participated in the public hearing, either orally or in writing. Failure to participate in the public hearing, either orally or in writing, precludes the right of appeal to the Council.
 - c. Persons who were entitled to receive notice of the action but did not receive notice due to error.
2. Appeal Filing Procedure.
 - a. *Notice of Appeal.* Any person with standing to appeal, as provided in subsection 18.5.1.060.I.1, above, may appeal a Type II decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection.
 - b. *Time for Filing.* The notice of appeal shall be filed with the City Administrator within ten days of the date the notice of decision is mailed.
 - c. *Content of Notice of Appeal.* The notice shall include the appellant's name, address, a reference to the decision sought to be reviewed, a statement as to how the appellant qualifies as a party, the date of the decision being appealed, and 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.
 - d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.
3. Mailed Notice. The City shall mail the notice of appeal together with a notice of the date, time, and place to consider the appeal by the City Council to the parties, as provided in subsection 18.5.1.060.H.1, at least 20 days prior to the meeting.
4. Scope of Appeal.
 - a. Except upon the election to reopen the record as set forth in subsection 18.5.1.060.I.4.b, below, the review of a decision of the Planning Commission by the City Council shall be confined to the record of the proceeding before the Commission. The record shall consist of 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.
 - b. *Reopening the Record.* The City 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.
5. Appeal Hearing Procedure. The decision of the City Council is the final decision of the City on an appeal of a Type II decision, unless the decision is remanded to the Planning Commission.
- a. *Oral Argument.* Oral argument on the appeal shall be permitted before the Council. Oral argument shall be limited to ten minutes for the applicant, ten for the appellant, if different, and three minutes for any other party who participated below. A party shall not be permitted oral argument if written arguments have not been timely submitted. Written arguments shall be submitted no less than ten days prior to the Council consideration of the appeal. Written and oral arguments on the appeal shall be limited to those issues clearly and distinctly set forth in the notice of appeal; similarly, oral argument shall be confined to the substance of the written argument.
 - b. *Scope of Appeal Deliberations.* Upon review, and except when limited reopening of the record is allowed, the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal. No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.
 - c. *Council Decision.* The Council may affirm, reverse, modify, or remand the decision and may approve or deny the request, or grant approval with conditions. The Council shall make findings and conclusions, and make a decision based on the record before it as justification for its action. The Council shall cause copies of a final order to be sent to all parties participating in the appeal. Upon recommendation of the Administrator, the Council may elect to summarily remand the matter to the Planning Commission. If the Council elects to remand a decision to the Commission, either summarily or otherwise, the Commission decision shall be the final decision of the City, unless the Council calls the matter up pursuant to subsection 18.5.1.060.J.



6. Record of the Public Hearing. For purposes of City 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.
The public hearing record shall include the following information.
 - a. The notice of appeal and the written arguments submitted by the parties to the appeal.
 - b. Copies of all notices given as required by this chapter, and correspondence regarding the application that the City mailed or received.
 - c. All materials considered by the hearings body including the application and all materials submitted with it.
 - d. Documentary evidence, exhibits and materials submitted during the hearing or at other times when the record before the Planning Commission was open.
 - e. Recorded testimony (including DVDs when available).
 - f. All materials submitted by the Staff Advisor to the hearings body regarding the application;
 - g. The minutes of the hearing.
 - g. The final written decision of the Commission including findings and conclusions.
7. Effective Date and Appeals to State Land Use Board of Appeals. City Council decisions on Type II applications are final the date the City mails the notice of decision. Appeals of Council decisions on Type II applications must be filed with the State Land Use Board of Appeals, pursuant to ORS 197.805 - 197.860.

