

BEFORE THE PLANNING COMMISSION

May 10, 2022

IN THE MATTER OF PLANNING ACTION #PA-T2-2022-00037, A REQUEST FOR)
A SIX-LOT COMMERCIAL SUBDIVISION TO ACCOMMODATE A PHASED)
MIXED-USE DEVELOPMENT FOR THE THREE PROPERTIES AT 95 VAN NESS)
AVENUE, 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 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.)

**FINDINGS,
CONCLUSIONS
& ORDERS**

APPLICANT: ROGUE PLANNING & DEVELOPMENT SERVICES, LCC)
OWNERS: MAGNOLIA INVESTMENT GROUP, LLC & GIL LIVNI)

RECITALS:

- 1) Tax lot #2000, 2100 and 7100 of Map 39 1E 04CC are located at 165 Water Street and are zoned E-1, Employment.
- 2) The applicant is requesting 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. The proposal is outlined on plans on file at the Department of Community Development.

3) The criteria for the approval of a Preliminary Subdivision Plat are described in AMC 18.5.3.070 as follows:

A. Approval Criteria. *The approval authority, pursuant to subsection 18.5.3.030.A, may approve, approve with conditions or deny a preliminary subdivision plat on findings of compliance with all of the following approval criteria.*

1. *The subdivision plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.*
2. *Proposed lots conform to the requirements of the underlying zone, per part 18.2, any applicable overlay zone requirements, per part 18.3, and any applicable development standards, per part 18.4 (e.g., parking and access, tree preservation, solar access and orientation).*
3. *Access to individual lots necessary to serve the development shall conform to the standards contained in section 18.4.3.080 Vehicle Area Design.*
4. *The proposed streets, utilities, and surface water drainage facilities conform to the standards in chapter 18.4.6, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.*
5. *All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas (e.g., landscaping, tree preservation, common areas, access, parking, etc.) is ensured through appropriate legal instrument (e.g., Covenants, Conditions and Restrictions (CC&R's)).*
6. *Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.*

B. Conditions of Approval. *The approval authority may attach such conditions as are necessary to carry out provisions of this ordinance, and other applicable ordinances and regulations.*

4) 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.*

5) The 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.*

6) The criteria for a Physical & Environmental Constraints Review Permit are described in **AMC 18.5.4.050.A** as follows:

- A. *Through the application of the development standards of this chapter, the potential impacts to the property and nearby areas have been considered, and adverse impacts have been minimized.*
- B. *That the applicant has considered the potential hazards that the development may create and implemented measures to mitigate the potential hazards caused by the development.*
- C. *That the applicant has taken all reasonable steps to reduce the adverse impact on the environment. Irreversible actions shall be considered more seriously than reversible actions. The Staff Advisor or Planning Commission shall consider the existing development of the surrounding area, and the maximum development permitted by this ordinance.*

- 7) The criteria for an Exception to the Development Standards for Hillside Lands are described in AMC 18.3.10.090.H as follows:
1. *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.*
 2. *The exception will result in equal or greater protection of the resources protected under this chapter.*
 3. *The exception is the minimum necessary to alleviate the difficulty.*
 4. *The exception is consistent with the stated Purpose and Intent of chapter 18.3.10 Physical and Environmental Constraints Overlay chapter and section 18.3.10.090 Development Standards for Hillside Lands.*
- 8) The 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.

- 9) The Planning Commission, following proper public notice, held an electronic public hearing via Zoom on March 8, 2022 at which time testimony was received and exhibits were presented. Prior to the closing of the hearing, the electronic public hearing was continued at the applicant's request to 7:00 p.m. on Tuesday, April 12, 2022, again via Zoom, at which time additional testimony was received and additional evidence was presented. Subsequent to the closing of the hearing, the Planning Commission denied the application without prejudice.

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.

2.2 The Planning Commission finds that the proposal for Site Design Review approval does not meet all applicable criteria for Site Design Review approval described in AMC 18.5.2.050. The Planning Commission finds that the proposal for Subdivision, Physical & Environmental Constraints Review Permit, Exception to the Development Standards for Hillside Lands, Tree Removal Permit and Exception to Street Design Standards meets all applicable criteria for Subdivision approval described in AMC 18.5.3.070; for Physical & Environmental Constraints Review Permit approval described in Chapter 18.3.10.050; for Exception to the Development Standards for Hillside Lands approval described in AMC 18.3.10.090.H, and for Tree Removal Permit approval described in Chapter 18.5.7.040.B. The Planning Commission finds that an Exception to Street Standards as described in Chapter 18.4.6.020 is not applicable to the project as proposed.

2.3 The Planning Commission finds that AMC Title 18 Land Use regulates the development of land envisioned by the Comprehensive Plan and to encourage efficient land use among other goals. The

Planning Commission finds that there is substantial evidence in the record to find that the Subdivision, Physical & Environmental Constraints Review Permit, Exception to the Development Standards for Hillside Lands, and Tree Removal Permit component requests have been demonstrated to meet the relevant approval criteria or to meet those approval criteria with the imposition of certain binding conditions of approval.

2.5 The Planning Commission further finds that the applicant's proposal to place street trees within bump-outs in the Van Ness Avenue right-of-way in order to provide additional public parking in bays while still providing required street trees is in keeping with the Street Design Standards and the requested Exception to Street Standards is not required. Van Ness Avenue is a "neighborhood street" in the Transportation System Plan (TSP) and while neither Table 18.4.6.040.F nor the cross-section illustrated in Figure 18.4.6.040.G.4.a. detail a specific treatment for on-street parking in bays, the narrative description in AMC 18.4.6.040.G clearly notes that parking "... may be provided in 7 ft bays rather than as a continuous on-street lane." Neither the table, the figure or the description address the treatment of street trees where parking is provided in bays, but the Commission finds that the proposal here is in keeping with the intent of the standards.

2.7 The Planning Commission notes that Site Design Review approval requires a demonstration that *"The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below."* The Planning Commission notes that the subject properties are located within the Skidmore Academy Historic District and as such are subject to the Historic District Development Standards in AMC 18.4.2.050. As explained in AMC 18.4.2.050.A.2, *"The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District... If a development requires a Type I, II, or III review procedure (e.g., Site Design Review, Conditional Use Permit) and involves new construction, or restoration and rehabilitation, or any use greater than a single-family use, the authority exists in the law for the Staff Advisor and the Planning Commission to require modifications in the design to match these standards. In this case the Historic Commission advises both the applicant and the Staff Advisor or other City decision maker."*

The Planning Commission further notes that the Historic Commission initially reviewed the proposal at its March 2, 2022 meeting. During that review, the Historic Commission found that there was no historical precedent in Ashland for three nearly identical, large buildings being constructed together (side by side) in a historic district. The Historic Commission recognized that both the building designs and landscaping here were excellent, and that the high quality of the proposal helped to mitigate the large, identical buildings to a degree, however the Historic Commission ultimately determined that the initial designs were too repetitious, and that this repetition emphasized the significant difference in height and character relative to the residences on the other side of Helman Street.

The Historic Commission specifically expressed concerns that in terms of the Historic District Development Standards, the height, scale and massing of the three buildings (AMC 18.4.2.050.B.2-4) as initially proposed along Helman Street for Buildings #1, #3 and #4 were out of scale with the one- to one-and-a-half-story historic residential buildings across Helman Street. The Historic Commission recommended that the designs be revisited to look at changing the height of the individual stories, noting

that 11-foot ceiling heights seemed excessive where building height was at issue, and also recommended potentially reducing the number of stories on at least the two end buildings (Buildings #1 and #4). The Historic Commissioners explained that if the buildings on Helman were lower, the remaining buildings could cascade around the Van Ness corner as taller buildings there would be mitigated by the grade change and the fact that there was not a single-story, historic residential streetscape across Van Ness Avenue. The Historic Commission concluded their March recommendations noting that the designs would benefit from a greater variety of material treatment and finishes, and greater variations in height and/or number of stories to relieve the monotony as they present to the historic Helman Street streetscape.

At its April 6, 2022 meeting, the Historic Commission reviewed design revisions which had been provided in response to their March 2, 2022 comments. These revisions included stepping the center bay in the façade of Buildings 3 & 4 back three feet from wall plane of the second floor and adding a shed roof to emphasize this step back; cutting back the roofline to reduce the massing of the overhang; changing some surface and material treatments including adding a brick base, using white and lighter materials to de-emphasize the third story, and using open wire or mesh railings where solid railings were previously proposed; and increasing the length of the pedestrian overhang on the ground floor to add shadow lines and emphasize the pedestrian scale of the building at the sidewalk. After reviewing these revisions, the Historic Commission found that while the incremental changes were effective in addressing some issues with regard to the building façades and pedestrian amenities, the revisions fell short in addressing the larger issues identified in the March meeting, which had to do with the height, scale, and massing of the buildings as they relate to the Historic District Design Standards (AMC 18.4.2.050.B.2-B.4.)

The Historic Commission found that the three buildings facing Helman Street with heights near 40 feet and three stories would overwhelm the mostly single-story historic residences across the street, and that these proposed buildings fail to achieve an appropriate scale and façade compatibility to the adjacent historic streetscape. Additionally, the Historic Commission found that the zero setback to the sidewalk exacerbated the building mass and scale and will overwhelm the adjacent pedestrian traffic. The Historic Commission pointed out that by comparison, the Plaza Inn & Suites hotel on the same side of Helman Street, nearer to downtown, has 15- to 20-foot setbacks and is only two-stories in height at the street. The Historic Commission concluded that while the building architecture and landscape design on this project were very attractive and high quality, the buildings were just not compatible with the scale of the historic district residences in the impact area, directly across Helman Street, and for these reasons, the Historic Commission noted that they could not support the application and recommended that it be denied by the Planning Commission.

In considering the proposal as it relates to the Historic District Development Standards and in light of the Historic Commission's recommendation, the Planning Commission finds that the standard addressing "Transitional Areas" in AMC 18.4.2.050.B.1 is of particular importance here. This standard provides that, *"For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property."* In this instance, the subject properties are located at the boundary between E-1 (Employment) and R-3 (High Density Multi-Family Residential), and there is M-1 (Industrial), C-1 (Commercial), and R-2 (Low Density Multi-Family Residential) zoning a short distance

away. Similarly, the property is at the outer edge of the Skidmore Academy historic district, with district boundary to the north, the Railroad Addition historic district immediately across Water Street, and the Downtown historic district a half-block to the south. The Planning Commission finds that the subject properties are located within a transitional area, and that to address the transitional area standard, the building designs need to incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility with the transitional area which includes the existing historic residential block across Helman Street, while not losing sight of the underlying standards and requirements applicable to the subject properties which are zoned E-1 (Employment).

The Planning Commission notes that the applicant provided a number of examples of more commercial scale buildings in the vicinity, many of which were historical buildings which are no longer standing, to demonstrate compatibility and the applicant also emphasized that the designs proposed were within the maximum allowances of the E-1 zone. The Planning Commission finds that the transitional area standard is intended to address compatibility with the transitional area as it exists, rather than with historic buildings which are no longer standing. AMC 18.4.2.050 explains "... *sensitivity to surrounding buildings and the existing land use patterns is essential to the successful development* (18.4.2.050.A.1, emphasis added)" and "*The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District* (18.4.2.050.A.2, emphasis added)." The drawings illustrating each design standard are described as applying to historic buildings "*on and across the street* (18.4.2.050.B.2)" or "*in the immediate vicinity* (18.4.2.050.B.3 & B.4)." The Planning Commission further finds that considerations of compatibility are not limited to a simple comparison of the allowances of the zoning district (i.e. the E-1 zone allowing a 40-foot height and 85 percent lot coverage where the R-3 zone allows a 35-foot height and 75 percent lot coverage does not mean that any building complying with the allowances of the E-1 zone is automatically compatible with historic buildings in an immediately adjacent R-3 zone), but for transitional areas require "*appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment*" which address compatibility with the immediate vicinity while still considering the allowances of the underlying zone. The Planning Commission concurs with the Historic Commission in finding that the three very similarly designed three-story buildings facing Helman Street with heights of nearly 40 feet fail to achieve an appropriate scale and have heights and massing which, as designed, are not compatible with the adjacent historic streetscape. These issues are exacerbated by the buildings' very similar architectural and material treatments. The Planning Commission finds that here, measures such as setting the buildings back further and placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness could constitute "appropriate adjustments" to address compatibility with the transitional area by mitigating the buildings height, mass and scale, and could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. The Planning Commission finds, however, that the designs as revised fail to address the recommendations provided in March; do not incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility; and fail to satisfy the Historic Development Design Standards for height, scale and massing (AMC 18.4.2.050.B.2-B.4). The Planning Commission concludes that the application as presented has not sufficiently addressed the Historic District

Development Standards, and as such cannot be found to have fully satisfied the approval criteria for Site Design Review.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for a six-lot commercial subdivision, Site Design Review approval for five mixed-use commercial buildings, Physical & Environmental Constraints Review Permit, Exception to the Development Standards for Hillside Lands, Tree Removal Permit to remove 20 trees; and Exception to Street Standards is not supported by evidence contained within the whole record.

The Historic Commission reviewed the application initially, identifying issues of height, massing and scale where the designs did not satisfy the Historic District Development Standards for the transitional area where historic one and one-and-a-half story residences are located directly across Helman Street from the Employment zone here. The Historic Commission provided specific recommendations as to how these standards might be better addressed. The applicant provided revised drawings which were subsequently reviewed, however both the Historic and Planning Commissions determined that the revised designs had not sufficiently addressed the recommendations and did not satisfy the Historic District Development Standards. For both Commissions, the three very similarly designed three-story buildings facing Helman Street with heights of nearly 40 feet fail to achieve an appropriate scale and have heights and massing which, as designed, are not compatible with the adjacent historic streetscape, and these issues are exacerbated by the buildings' very similar architectural and material treatments. To respond to the transitional area here, where Employment and Residential zones intersect along a historic streetscape on Helman Street, greater adjustments to building form, massing, height, scale, placement, or architectural and material treatment would be necessary to address standards for height, massing and scale and achieve compatibility with the existing historic buildings in the immediate vicinity.

After consideration of all information contained in the record, the Planning Commission finds that the application fails to meet the burden of proof in addressing the Historic District Development Standards. Therefore, based on our overall conclusions, we deny Planning Action PA-T2-2022-00037 without prejudice.

Haywood Norton
Planning Commission Denial

May 10, 2022
Date