

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

ASHLAND PLANNING COMMISSION  
February 13, 2018  
AGENDA

- I. **CALL TO ORDER:** 7:00 PM, Civic Center Council Chambers, 1175 E. Main Street
  
- II. **ANNOUNCEMENTS**
  
- III. **AD-HOC COMMITTEE UPDATES**
  
- IV. **CONSENT AGENDA**
  - A. **Approval of Minutes**
    - 1. January 9, 2018 Regular Meeting.
  
- V. **PUBLIC FORUM**
  
- VI. **UNFINISHED BUSINESS**
  - A. **Approval of Findings for PA-2017-02129, 475 East Nevada Street.**
  
- VII. **TYPE II PUBLIC HEARINGS**
  - A. **PLANNING ACTION: PA-2017-01911**  
**SUBJECT PROPERTY: 181 A Street**  
**OWNER/APPLICANT: Jorge Yant**  
**DESCRIPTION: A continued public hearing from December 12, 2017 to review an application for a Conditional Use Permit for Marijuana Retail Sales in the existing building located at 181 A St. The applicant withdrew the previously proposed Marijuana Production (Indoor Grow) located at 185, 191 and 195 A St and as a result, the indoor grow is no longer a part of the application. COMPREHENSIVE PLAN DESIGNATION: Employment; ZONING: E-1; ASSESSOR'S MAP: 39 1E 09BA; TAX LOT #: 14600 & 14900.**
  
- VIII. **ADJOURNMENT**

CITY OF  
ASHLAND



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Community Development office at 541-488-5305 (TTY phone is 1-800-735-2900). Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title 1).

**CITY OF  
ASHLAND**  
**ASHLAND PLANNING COMMISSION**  
**MINUTES**  
**January 9, 2018**

**CALL TO ORDER**

Chair Roger Pearce called the meeting to order at 7:01 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

**Commissioners Present:**

Troy Brown, Jr.  
Michael Dawkins  
Debbie Miller  
Melanie Mindlin  
Haywood Norton  
Roger Pearce  
Lynn Thompson

**Staff Present:**

Bill Molnar, Community Development Director  
Derek Severson, Senior Planner  
Dana Smith, Executive Assistant

**Absent Members:**

**Council Liaison:**

Dennis Slattery, absent

**ANNOUNCEMENTS**

Community Development Director Bill Molnar announced John and Scott Fregonese would provide a presentation on the Infill Strategy January 16, 2018, at the City Council Meeting. Staff originally continued PA-2017-01911, regarding the proposal for a 4,000 square foot (sq. ft.) marijuana grow and 2,000 sq. ft. of retail to the January 23, 2018, Planning Commission meeting. The applicants requested postponing until February. Since there was no date certain, staff would re-notice it to the surrounding property owners. The applicant modified the application and withdrew the marijuana grow from the proposal. The annual Mayor's State of the City address was scheduled for January 29, 2018, at the Ashland Springs Hotel.

**AD-HOC COMMITTEE UPDATES**

The Wildfire Lands Committee would meet January 31, 2018.

**CONSENT AGENDA**

**A. Approval of Minutes**

1. December 12, 2017 Regular Meeting.

**Commissioners Thompson/Mindlin m/s to approve the Consent Agenda. Voice Vote: all AYES.**

**Motion passed 7-0.**

**PUBLIC FORUM**

**Eric Elerath/419 Clinton Street/**Recently purchased a house in the river walk neighborhood. He thought some of the Covenants, Conditions, and Restrictions (CC&Rs) were flagrant violations of rights to speech. He received a letter of Findings from Community Development Director Bill Molnar regarding 345 Clinton and a density transfer. He had objected to it because there were a lot of issues not addressed in the application. He had issues with the conditions and the language of any CC&Rs required as part of the density transfer. If they were found invalid, the density transfer was revoked. He wanted to know the process that determined whether conditions were invalid.

Chair Pearce explained the Community Development staff made that type of determination. It was not in the Planning Commission's purview. He suggested Mr. Elerath talk to Mr. Molnar or his staff.

## **UNFINISHED BUSINESS**

### **A. Approval of Findings for PA-2017-02134, 1068 Main Street.**

The Commission had no ex parte contacts regarding the matter.

**Commissioners Miller/Thompson m/s to approve the Findings for PA-2017-02134, 1068 Main Street. Voice Vote: all AYES. Motion passed 7-0.**

## **TYPE III PUBLIC HEARINGS**

### **A. PLANNING ACTION: PA-2017-02129**

**SUBJECT PROPERTY: 475 E. Nevada St.**

**OWNER/APPLICANT: Young Family Trust & City of Ashland/Rogue Planning & Dev. Services**

**DESCRIPTION: A request for Comprehensive Plan Map Amendment; Zone Change; Outline Plan approval for a 20-lot, 23-unit subdivision; Site Design Review; and Tree Removal Permit for the properties located at 475 East Nevada Street. The existing Comprehensive Plan designation is "Single Family Residential Reserve" and the existing zoning is "Rural Residential (RR-.5-P)". The proposal would change the Comprehensive Plan Map designation to "North Mountain Neighborhood Plan" and the zoning to "North Mountain Multi-Family (NM-MF)." (NOTE: Portions of the subject properties are located outside of the city limits; the current request involves only those portions within the city limits.)** **COMPREHENSIVE PLAN MAP DESIGNATION: Single Family Residential Reserve (Existing), North Mountain Neighborhood (Proposed); ZONING: RR-.5-P (Existing), NM-MF (Proposed); ASSESSOR'S MAP #: 39 1E 04A; TAX LOT #'S : 39 1E 04A 1100, 1200 & 1300 and 39 1E 04AD 100.**

Chair Pearce read aloud the public hearing procedures for land use hearings.

### **Ex Parte Contact**

The Planning Commission declared no ex parte contact and one site visit with staff. Chair Pearce spoke to Mark Knox five years ago regarding the matter. He recalled Mr. Knox had explained the project would need a Comprehensive Plan amendment and a rezone for density. Chair Pearce also participated in one site visit with the Commission and staff.

This was a Type III hearing of a rezone that needed a Comprehensive Plan amendment. There were permit applications. The action was a legislative rezone. The Planning Commission would make a recommendation to the City Council who had full legislative discretion. In all rezones and map amendments, the City had to make Findings that it was consistent with statewide planning goals and guidelines. The Planning Commission could only make a conditional decision for the City Council to consider. The City Council could send it back for adoption by the Planning Commission or they could adopt the Findings provided.

Senior Planner Derek Severson clarified the only items preliminary or conceptual in the submittal was the building designs. The applicant's intention was doing the project in phases. It would be sold to different people to build out each phase. This was incorporated into the conditions and would come back as a Type I if there were no significant modifications.

### **Staff Report**

Mr. Severson explained the subject property consisted of three lots along the north side of East Nevada Street, Tax Lot 1100, 1200, and 1300. The subject properties had the city limit line and the Urban Growth Boundary (UGB) line running through the back two-thirds of the land. There was a portion outside the city limits and the UGB. Under the Regional Problem Solving Agreement in 2012, the City was committed to not go beyond the UGB for the next 50-60 years depending on how long it took to double the population.

The current application would amend the Comprehensive Plan, change the zone, and have approvals only to the portion within city limits. The three lots were 4.5 acres with 2.4 acres actually in city limits. The proposal would demolish the existing house on Tax Lot #1200. The trailer house would most likely remain until that area was developed. There was a City tax lot in the proposal and staff recommended including the .35 acre in the rezone for the affordable housing development.

The application included the following components:

- Comprehensive Plan Map Amendment (Single Family Residential Reserve to North Mountain Neighborhood Plan).
- Zone change (RR-.5 to NM-MF).
- Outline Plan approval for a 20-lot, 23-unit subdivision.
- Site Design Review approval.
- Tree Removal Permit to remove ten trees greater than 6-inches in diameter at breast height (d.b.h.).
- The exception to Street Standards to not install bike lanes, and to not install sidewalks on a portion of East Nevada.

**Note:** Portions of the subject properties are located outside of the city limits; the current request involves only those portions within the city limits.

- **Ashland Municipal Code (AMC) 18.5.9.020.B - Plan Amendments and Zone Changes - Type III.** It may be necessary from time to time to make **legislative amendments** in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, **zone changes requiring comprehensive plan amendment**, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.
  1. Zone changes or amendments to the Zoning Map or other official maps, except where **minor amendments** or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
  2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
  3. Land Use Ordinance amendments.
  4. Urban Growth Boundary amendments.
- **Type II.** The Type II procedure is used for applications involving zoning map amendments consistent with the Comprehensive Plan map, and minor map amendments or corrections. Amendments under this section may be approved if in compliance with the Comprehensive Plan and the application demonstrates that **one or more of the following**.
  1. The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan.
  2. A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances.
  3. Circumstances relating to the general public welfare exist that require such an action.
  4. Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will **provide 25 percent of the proposed base density as affordable housing** consistent with the approval standards set forth in subsection 18.5.8.050.G.
  5. Increases in residential zoning density of four units or greater on commercial, employment, or industrial zoned lands (i.e., Residential Overlay), will not negatively impact the City's commercial and industrial land supply as required in the Comprehensive Plan, and will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection 18.5.8.050.G.
  6. The total number of affordable units described in 18.5.9.020.A, subsections 4 or 5, above, shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. 18.5.9.020.A, subsections 4 and 5 do not apply to Council initiated actions.

The existing R-5 zoning dated back to the 1970s. The City began the neighborhood plan process in 1994 and adopted it as the North Mountain Neighborhood Plan (NMNP) in 1997. The area filled out with the NMNP in place along with the facilities to support current and future development. The proposal would update the half-acre minimal lot size zoning at the subject property and continue the same level of development.

The applicants proposed two units on Tax Lot 1100. The rock outcropping on the lot was steeper than 35% and not buildable per code. The applicants provided site plans depicting attached housing, detached units and two attached units

sharing an attached garage. They did not want to install sidewalks along the rock outcropping of East Nevada Street or bike lanes at another section of the street. Camelot Drive would extend into the site as a public street with full street improvements on both sides. They would also extend the North Mountain Avenue right of way and rename it Franklin Street to access an alley at the rear of the site. The applicants wanted the alley to be public but the Public Works Department disagreed and thought it should be private. The applicants provided a Civil Site Plan, plans for Grading and Drainage, Landscape Irrigation, Planting, Electric Service, Tree Removal and Protection, and Conceptual Elevations for the units.

The Tree Commission thought Tree #1 was a native Juniper and not a Cedar as indicated in the applicant's plan. They initially wanted Trees #1, #2, and #5 preserved and protected. However, due to 5-8-feet of grading near trees #1, #2, #3 and #5 for access, the Tree Commission recommended the following:

1. That all native species such as the Oaks to be removed be mitigated on a one-for-one basis with four-inch caliper native species that will attain a similar size to the tree being removed at maturity.
2. That the conifers to be removed such as the Juniper & Ponderosa Pine be mitigated on a one-for-one basis with conifers that will attain a similar size to the tree being removed at maturity, and that is at least ten feet tall at planting.

Key Items from the Staff Report included:

- **Open/Recreation Space** – Staff asked for a revised plan with usable recreation space placement and treatment.
- **Building Orientation** – Staff recommended a condition that corner units at Camelot Drive and Franklin Street have an orientation with entry and pedestrian connection directly to the higher order East Nevada Street.
- **Street Improvements**
  - Nevada Street to include standard Avenue improvements where the rock is not impacting.
  - Staff supported the exception for sidewalks at the rock.
  - Staff supported the exception for Bike Lanes (sign-in favor of future bridge L.I.D.) There were 107 vehicle trips per day on that section of Nevada Street. The Avenue Standard called for bike lanes under all circumstances with a trip generation number of at least 3,000 vehicle trips per day.
  - Staff recommended a Pedestrian Refuge at the toe of the rock with 18 to 24-inches flattened, surfaced with decomposed granite or concrete maintained weed-free as a refuge for pedestrians.

Staff recognized the following changes in circumstances:

- Extension of essential services in conjunction with NMNP adoption and build-out.
- Regional Problem Solving (RPS) Commitments to Efficient Land Use within existing boundaries.
- Housing Crisis.
- Need for More Land to Accommodate Moderately Priced and Affordable Ownership & Rental Units.

The changes supported the requested up-zoning. The additional units were in the public interest. The Planning Commission could recommend that the Council consider requiring the three ARU units currently listed as optional as well as additional density to utilize available density and bonuses.

### **Questions of Staff**

Mr. Severson explained the applicants were offering 23 units. The maximum number of houses would be 24 units. With density bonuses, it could increase to 28 units, possibly 30. The Avenue Classification was in the Transportation System Plan (TSP). If the bridge went in, it would connect to Oak Street and Mountain Avenue.

When the original subdivision was developed, it looked like it needed an alternative connection for fire access. That resulted in the avenue designation. With the recent discussions regarding the bridge, the Public Works Department was considering revisiting the avenue designation during the next TSP update. They also discussed the potential of Kestrel Parkway taking over the avenue function.

In terms of not having bike lanes, the Public Works Department could have the Transportation Commission investigate the use of bike Sharrows.

Community Development Director Bill Molnar explained sidewalk and park row were the same whether it was a residential neighborhood street or a residential avenue. The Avenue Standard allowed parking bays that were one foot smaller in dimension.

Mr. Severson clarified the application would provide 4 units of affordable housing that was 25% of the base density. A memo in the file spoke to transferring the land to an affordable housing provider in the future. It would be a 60% area median income level of affordability that had a conversion factor. The base density would be 25% or six units. Because they were at 60% area median income, there was a 1.5 conversion factor resulting in 4 units at the lower level.

The code discussed having affordable housing completed before 50% of the units were built. The applicants did not want it tied to this requirement because the affordable housing provider was not related to the project and applicants would not be building the affordable housing. Commissioner Thompson wanted to know what methods existed that would ensure the affordable housing would be built. Mr. Molnar thought it could be recommended to City Council as a condition. The specific standard stated that **“50% of the affordable units shall have been issued building permits prior to the issuance of a certificate of occupancy for the last of the first 50% of the market rate units.”** Mr. Severson noted the applicants were asking for an exception to that standard.

### **Applicant’s Presentation**

**Amy Gunter/Rogue Planning and Development Services/1424 South Ivy/Medford, OR** Thought the Planning Commission could find the change in circumstances with the development of the North Mountain Neighborhood, Skylark, Mountain Meadows, Julian Square and the Great Oaks Subdivision to necessitate changing the zoning and the comprehensive plan map designation for the subject property. The need for all housing types and compliance with the standards from the NMNP was in substantial conformance with the Ashland Land Use Ordinance and the Comprehensive Plan.

The proposed development for 20-23 units addressed minimum density standards for the NMNP. The layout was similar to a townhouse development and provided a mix of housing types. It allowed four affordable housing units restricted to the 60% area median income. This type of affordable housing was in higher demand.

The Conceptual Elevations complied with the NMNP. The C Units were proposed to front on Camelot Drive. The applicants wanted to rotate these units to face on North Mountain Avenue with access from the rear. It would improve orientation to Nevada Street and provide ease of construction. This was a 10% substantial change for orientation from Outline Plan to the Final Plan. It could trigger a Type II planning action at the final plan stage. The Ashland Municipal Code (AMC) called for orientation to “a street” and not a “higher order street.” It also spoke to the design of the front facade, the entry layout, corresponding setbacks, and a primary orientation to the front. The front entrances to the D corner units at Camelot Drive and Nevada Street faced West and the other corner unit at Franklin Street and Nevada Street faced East. Both were oriented to their front. The sides would be oriented towards Nevada Street. The Site Design Chapter stated when buildings are located within 20 feet of a street, the primary entrance opening facing the street connected via a right-of-way. The proposed units complied with the **North Mountain Neighborhood District 18.3.5.100 Site Development and Design Standards**. It also met the standards in **18.3.5.100(A) Housing**.

Adequate area was provided for the open spaces. The Subdivision open space exceeded the required 5,270 square feet of area. The multi-family recreational space was required to be 8,422 square feet. The application provided 2,500 square feet of play area, 1,870 square feet of deck and 2,100 square feet of patio all more than 6' by 8'. There was also more than 5,150 square feet of lawn area. Many areas of open space could be private or common. Ms. Gunter described potential landscape features that included a path to a vista viewpoint.

### **Public Facilities - Water**

- There are no wells on site.

- The proposed civil engineering plans have located a public water line to extend to the development from Nevada Street and through the development via the public alley and Camelot Drive. The meters would be located as close to the units as practical without the need for pressure increasing devices or cross-connection issues.
- Without the alley and with Camelot Drive as a public street, private lines can be extended via private laterals to the detached residences without the “premises isolation” issues.
- Fire Hydrants are proposed at the intersection of the alley and Franklin and Camelot and the alley. In the event the alley becomes private, the hydrants would be verified to be within the right-of-way of the two streets.

#### **Electric**

- Electric services to the properties outside of the Urban Growth Boundary are required to be provided and maintained (tax lot 201 has City of Ashland electric service).
- Electric service is allowed to and through the development via either a public alley or private driveway.

#### **Transportation**

- Alleys: The City of Ashland Comprehensive Plan (10.05.05) recommends alleys. Throughout the Land Use Ordinance specifically in the connectivity standards found in 18.4.6.040(E) regarding 1) Interconnection; 2) Connectivity to Abutting Lands: 5) Use of alleys is recommended where possible.
  - Accessing more than three lots via a private driveway requires an exception with demonstrable difficulty. In the development of the subdivision layout, all indications in the code are to provide alleys, not private driveways.
- Pedestrian Refuge: Decomposed granite has been discouraged in other applications. The applicant is worried about creating a safety hazard by encouraging pedestrians to walk in the roadway on a blind curve against the flow of traffic. There is a sidewalk along the South side where pedestrians should walk instead of the roadway.

The requested modifications to conditions of approval included the mitigation standard in Condition 4 from the Tree Commission. The mitigation exceeded what was required by code. The AMC required 1.5-inch caliper trees. The applicant proposed 2-2.5-inch caliper trees. Kerry KenCairn was an arborist and landscape architect. She did not recommend using trees larger than 2.5-inch caliper due to the rocky terrain. The adjacent neighborhood was unable to plant one tree per thirty feet of frontage required by the code because of the impenetrable rock they encountered. The applicant wanted flexibility with the spacing standards in case they encountered something similar. It would also be difficult to find a 10-foot conifer tree. In addition, they were hard to plant and sustain. The applicant wanted the Conditions to allow for 2.5-inch caliper deciduous trees, and six to eight-foot tall native conifer trees.

Another request for modification was Condition 9 requiring orientation to a “higher order” street. This was not supported by the AMC for Site Design Review or the North Mountain Design Standards.

A final request for modification was requiring dedication of an additional right-of-way. The applicant proposed the layouts to meet the NMNP standards. It was a 3-foot difference to widen the park row, sidewalk, and parking bay that would encroach on the property and require dedication. The applicant requested it to be a public pedestrian access easement if found to be necessary by the Commission versus a dedication of a public right of way.

#### **Questions of the Applicant**

Ms. Gunter addressed affordable housing and noted the code was not clear. When there was a transfer of property to a different developer, the applicant was excepted from all of the construction standards. When the property was sold, deeded, or transferred to a different developer, she did not think it should hold up a development no longer associated with affordable housing.

With the maximum conservation density bonus, open space density provided a 35% density bonus that equated to 8.4 additional units. They could not find more space for additional units on the property due to the pond size for stormwater retention treatment, the number of impervious surfaces, and the parking spaces for three-bedroom units. It was built in a manner that maxed out parking, open spaces, and setbacks. The three optional accessory dwelling units had parking provided.

Commissioner Brown confirmed the applicant could not sell the affordable housing land to anyone not building affordable housing. Ms. Gunter addressed the applicant's Findings and the request for an exception from the standards in **18.5.8.050 Approval Criteria and Standards (G) Subsections 4 and 6**, timing, location, distribution, and design. They planned to sell the land for affordable housing. Once sold, it would be difficult to control the development of the affordable housing units. Habitat for Humanity was interested in the property. Mr. Molnar clarified **18.5.8.050(G2-G5)** allowed for exceptions.

Ms. Gunter thought it would cost \$200,000 to build each affordable unit. She confirmed street improvements would be constructed prior and were not the responsibility of the affordable housing developer. Due to construction, the applicant wanted to defer installing park rows, sidewalks, and street trees until just before the site review.

Staff had rejected the request to bond and the exception to delay improvements for Franklin Street. The areas of exception were Camelot Drive to the rock outcropping. The applicant had requested to bond for the sixty-foot lot at the base of the hill because there were no other sidewalks or pedestrian crossings when the adjacent property to the west was developed. There was a sidewalk opposite the rock outcropping on Nevada Street.

Ms. Gunter addressed removing trees #12, #13, #14, and #15. The proposal would build a 3-foot retaining wall at the base of the hill. The lot from the base of the hill to the property line was 60-feet wide. In addition to the retaining wall, there was a driveway with a 20-foot clear width and a 15-foot paved width and two lots. Construction would have a negative impact on the trees. One of the two units would front on Nevada Street and the other would face the driveway.

**Kerry KenCairn/545 A Street/**Explained there was a flat surface area and anything above that was too steep for a road. It was already graded and in order to make both lots viable, it was practical to remove tree #15. The graded driveway already went under the two Oak trees in the back northeast corner and would not affect them. Ms. Gunter commented Jackson County code did not require paving that part of the driveway. The applicants did not plan to pave that section. Ms. KenCairn noted tree #15 was too close to the construction to preserve. Ms. Gunter added native trees would not flourish when irrigation was installed.

#### **Public Testimony**

**Gerald Stein/989 Camelot Drive/**Wanted to know how many parking spaces, garage spaces, outdoor spaces were proposed. Camelot Drive was narrow and parking was already a challenge. He was concerned parking would encroach where he lived on Nevada Street. He had traffic concerns with the extension of Camelot Drive and wanted to know if a traffic study had occurred. Another concern was water pressure.

**Tom Marr/955 N Mountain Avenue/**Lived there for more than 25 years and would be the most impacted as far as proximity to the project. He thought parking should go in first to accommodate the construction that would be extremely disruptive. He wanted constraints for dust control, noise, hours of operation, and traffic control. He testified before the Tree Commission to preserve as many native trees as possible. He also wanted an assurance the electric, water, and sewer would not enter his property for the use of these 22-28 homes. He supported a buffer for the freeway. He liked the pedestrian refuge. He did not support the Nevada Street Bridge or the City requiring the applicant to sign a future LID to build the bridge. He suggested not developing the City property and keeping it natural.

He confirmed that he was affected by freeway noise almost constantly. The sound would change. At times it was very loud and he could hear it from inside his house.

**Andrea Napoli/325 Stoneridge Avenue/**Was concerned about adding more car-dependent density to the neighborhood. Currently, there was no bike connection from North Mountain to the rest of town. There were no bike lanes, the streets were narrow and there was limited sight distance if a bicyclist was on the road. There was not a bike-pedestrian bridge that connected to Nevada Street but it was in the NMNP. The Outline Plan approval noted adequate key facilities could be provided including adequate transportation. It also stated the proposal complied with applicable standards in **Section 18.4.6 Public Facilities**. Adequate transportation included pedestrians and bicyclists. She questioned how the plan met adequate transportation without a bike connection to the rest of town.

**Iraj Ostovar/566 Park Street/**Supported the annexation. It would add 20-22 lots and there were not many lots available for building at this time. The proposal provided affordable housing. It would add to the base revenue for Jackson County and the City. He thought it was a valuable project.

**Dan Thomas/18227 Hwy 66/**Was the construction manager for Habitat for Humanity. This was a prime opportunity for Habitat for Humanity to build houses. With their corporation partnerships, donations, and volunteer base, they could build a house that would sell as an affordable home. They sold to the federal standard of 40% -70%. The cost of land in Ashland was an issue. There were questions regarding the proposal that needed to be resolved. Habitat for Humanity fund raised because they sold at a zero interest loan. Most families stayed in their homes for 30 years. This was an opportunity for Habitat for Humanity but they were limited by funds and could not spend \$100,000 for property and then pay another \$200,000 to build a home for a family on minimum wage. Currently, they built 5-6 homes a year. He thought they could start building within a year or two.

### **Applicant's Rebuttal**

Ms. Gunter explained thirteen three-bedroom units would require 26 parking spaces. The seven detached and semi-detached three-bedroom units would need 14 parking spaces. The three units less than 500 square feet required three for a total of 43 on-site spaces. On-street parking at one space per lot required twenty parking spaces for a grand total of 63. Not all the units would be three-bedroom so the parking ratio could decrease. There were twelve garage units. The remainder were surface and on-street parking.

Steve Walker, the water quality supervisor for the Public Works Department had addressed water pressure with the applicant. There was one hundred-pounds static PSI on one side of the street and 90 pounds PSI on the other side. He did not see any impacts to water pressure for the proposed development.

She addressed Mr. Thomas' testimony and explained the code allowed for 60%-80% that gave the pro rata of the 1.5 units per 1 for affordability. Habitat for Humanity was within that range at 40%-75%.

Ms. Gunter responded to testimony regarding adequate key facilities, transportation, and circulation. The applicants had a transportation engineer look at the project. Through the analysis, offsite improvements were not required because of the number of trips generated by the project were below development thresholds. They looked at the rationale nexus of what improvements the City could require based on the transportation impacts of the project. The proposed transportation improvements along the entire frontage of the project complied with the City standards. They addressed the exception and believed there was demonstrable difficulty meeting the exception. The transportation analysis did not show a rationale for offsite improvements to the bridge or North Mountain Avenue.

Additionally, developments were required to pay system development charges (SDCs) for transportation that could pay for offsite bicycle facilities that would better serve the community. There was not an adequate right of way to develop bike lanes. The bike lanes would go from Franklin Street to Camelot Drive then stop.

Mr. Molnar explained there were two ways an applicant could provide affordable housing. They could build it or provide title to sufficient amount of buildable land for development transfer to a non-profit affordable housing developer. The provision clearly did not require the applicant to give it to a not for profit housing developer. Community Development staff and the City Legal Department had been discussing that language. They concluded that it was clearly an obligation as part of the application to make that a reality. By the time it went to Council, it should be clear that if a not for profit developer was involved, they had a very strong agreement in place to make the four units a reality under that provision. City Attorney Dave Lohman was not sure it did not require an obligation to negotiate or provide that land to the not for profit developer.

Ms. Gunter responded it had been done differently in the past for a variety of affordable housing developments. The code was originally written because people had shirked their responsibility. That was not the intention here. It did not appear

there was a precedent in the code to give the land away. Past practices varied from selling, donating, or transferring the land. It was not clear in the code.

### **Deliberations & Decision**

Mr. Severson explained there was a North Mountain Avenue Standard in the NMNP. It contained a median down the middle of the street and was approximately 3-feet smaller for the park row and parking bays. The Planning Commission agreed to keep the North Mountain Avenue Standards for park rows and sidewalks.

For the private alley, staff looked at functional access versus legal access. With the exception of the A Unit, all of the units fronted directly on the public right of way. While they were accessed from an alley at the rear, they all had frontage on a public street. Typically, with flag drives, staff did not count the flag drive lots that had frontage on a public street even though they took access from the flag drive. The applicant could convert to a private alley without requiring exceptions to the access requirement.

In the affordable housing requirements, different phases were acceptable provided there were assurances the project would be built. It was not clear where it fell under the statutory provision. Nor was it clear whether it referred to getting an exception to phasing that would require building the affordable units before 50% of the project was completed. If that was the case, it might set a standard for an exception and would need adequate assurances that the project would be built. The Commission could make a recommendation to the City Council that having a deed restriction on the property was adequate assurance it would remain affordable and transferred to an affordable housing provider.

Mr. Molnar thought there were strong similarities between the City Street Standards and North Mountain Avenue Standards. The only difference was 6-feet versus 5-feet for sidewalks. The parking bay standard of 7 on a residential street would ultimately be decided by the Public Works Director. Commissioner Dawkins spoke to the bike lane exception. It did not make sense to have a bike lane going up the hill. He suspected people would bike through the old mill lumber site to Bear Creek because it was flat. If a bridge went in, bicyclists would most likely follow Kestrel Parkway and a private roadway that connected to North Mountain Avenue.

The Planning Commission supported applying the North Mountain Avenue Standards and agreed with the exception made for the bike lane. Chair Pearce noted they would have to make Findings that the application met the street criteria exceptions and there were adequate transportation facilities.

The Commission agreed to modify **9(m)(i)** and remove the language referring to the refuge area by the rock outcropping.

They supported the applicant signing the agreement to participate in a future Local Improvement District (LID) regarding the Nevada Street bridge.

**Commissioners Dawkins/Mindlin m/s to extend the meeting to 10:00 p.m. Voice Vote: ALL AYES.  
Motion passed 7-0.**

The Commission discussed the affordable housing component. Commissioner Mindlin supported having them build 50% of their project but at that time they had to start building the affordable units. If they transferred the land, it should be restricted so that it returned to the applicant if the affordable units were not built in a timely manner. She thought the affordable housing provider should be able to access the additional density if they wanted. Commissioner Miller did not support making the units smaller than 2 or 3-bedrooms. Commissioner Dawkins clarified the ordinance already had the language regarding building 50% of a project then requiring construction to begin on the affordable housing portion. Commissioner Norton thought all the D Units should be built at the same time. It would be less expensive. The units should look similar as well. He supported language to build the affordable units at the 50% point. Chair Pearce suggested having them all built by the time certificates of occupancy were issued.

The Commission agreed that by the time 50% of the project was complete, construction should start on the affordable units.

They retained all the requirements in **18.5.8.050(G)** with the exception of allowing the units to be clustered.

Chair Pearce explained the project needed to be in conformity with the Statewide Planning Goals and Guidelines. He had written a document that addressed compatibility with the goals for inclusion in the Findings.

The Planning Commission discussed the proposed changes to the trees. They reduced the caliper to 2.5" and the size of the evergreens to 6-8 feet. The applicant could plant comparable trees. They also agreed on not paving the driveway past the western post units to protect Trees #16 and #17. The applicant needed to further identify the condition for the new site plan for open space.

The Commission addressed **9-C-1** and gave the applicant permission to rotate the C Units on Camelot Drive and Nevada Street and Nevada Street and Franklin Street. They agreed to keep the alley private and not public. For the right of way improvement along Nevada Street, the Commission and staff supported it being a public easement if improvements extended outside the existing right of way. Building the three additional accessory dwelling units would remain optional.

**Commissioners Dawkins/Mindlin m/s to extend the meeting to 10:10 p.m. Voice Vote: ALL AYES.  
Motion passed 7-0.**

The Commission was fine with the applicants having the option to get a bond for the 60-foot street improvements.

**Commissioners Dawkins/Mindlin m/s to approve Planning Action PA-2017-02129 with the following items:**

- **Retain the North Mountain Avenue Standard.**
- **Accept the bike lane exception.**
- **Modify 9(m)(i) and remove the language referring to the pedestrian refuge area by the rock outcropping.**
- **Retain signing the agreement to participate in a future Local Improvement District (LID) regarding the Nevada Street bridge.**
- **Retain all the requirements in 18.5.8.050(G4-G6) with the exception of permitting the units to be clustered.**
- **Reduce the caliper of trees to 2.5 inches and the size of the evergreens to 6-8 feet and allow the applicant to plant comparable trees.**
- **Not paving the drive just past the garage at the western post units to protect Trees #16 and #17.**
- **The applicant needed to further identify the condition for the new site plan for open space.**
- **For 9-C-1, rotate the C Units on Camelot Drive and Nevada Street and Nevada Street and Franklin Street to comply with driveway length if the developer wanted.**
- **The alley will be private and not public.**
- **Have a public easement for the right of away improvement along Nevada Street if improvements extended outside of the existing right of way.**
- **Keep the 3 accessory dwelling units as optional.**
- **The applicants had the option to get a bond for the 60-foot street improvements.**

**DISCUSSION:** Chair Pearce clarified these were recommendations on legislation and proposed findings, conclusions and conditions on the Outline Plan, and the Site Design Review. All conditional on Council approval of the rezoning. The Council could send them back to the Planning Commission for final approval or they could approve them themselves. **Roll Call Vote: Commissioner Brown, Norton, Thompson, Mindlin, Dawkins, Pearce, and Miller, YES. Motion passed 7-0.**

## **ADJOURNMENT**

Meeting adjourned at 10:02 p.m.

*Submitted by,  
Dana Smith, Executive Assistant*

**BEFORE THE PLANNING COMMISSION**  
**February 13, 2018**

IN THE MATTER OF PLANNING ACTION #2017-02129, A REQUEST FOR )  
COMPREHENSIVE PLAN MAP AMENDMENT; ZONE CHANGE; OUTLINE PLAN )  
APPROVAL FOR A 20-LOT, 23-UNIT SUBDIVISION; SITE DESIGN REVIEW; )  
TREE REMOVAL PERMIT TO REMOVE TEN TREES GREATER THAN SIX- )  
INCHES IN DIAMETER AT BREAST HEIGHT; AND EXCEPTION TO STREET )  
STANDARDS FOR THE PROPERTIES LOCATED AT 475 EAST NEVADA ST. )  
THE EXISTING COMPREHENSIVE PLAN DESIGNATION IS "SINGLE FAMILY )  
RESERVE" AND THE EXISTING ZONING IS "RURAL RESIDENTIAL (RR-.5-P)". ) **FINDINGS,**  
THE PROPOSAL WOULD CHANGE THE COMPREHENSIVE PLAN MAP DES- ) **CONCLUSIONS,**  
IGNATION TO "NORTH MOUNTAIN NEIGHBORHOOD PLAN" AND THE ZON- ) **ORDERS &**  
ING TO "NORTH MOUNTAIN MULTI-FAMILY (NM-MF)". [**NOTE: PORTIONS** ) **RECOMMENDATIONS**  
*OF THE SUBJECT PROPERTIES ARE LOCATED OUTSIDE OF THE CITY LIMITS.* )  
*THE CURRENT REQUEST INVOLVES ONLY THOSE PORTIONS WITHIN THE CITY* )  
*LIMITS.]* )  
)  
)  
**OWNER/APPLICANT:** Young Family Trust & City of Ashland )  
)  
)

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**RECITALS:**

- 1) Tax lots #1100, 1200 and 1300 of Map 39 1E 04A and Tax Lot #100 of Map 39 1E 04AD are located at 475 East Nevada Street and are presently zoned RR-.5-P, Rural Residential.
  
- 2) The applicants are requesting Comprehensive Plan Map Amendment; Zone Change; Outline Plan approval for a 20-lot, 23-unit subdivision; Site Design Review; Tree Removal Permit to remove ten trees greater than six-inches in diameter at breast height (d.b.h.) and Exception to Street Standards for the properties located at 475 East Nevada Street. The existing Comprehensive Plan designation is "Single Family Residential Reserve" and the existing zoning is "Rural Residential (RR-.5-P)". The proposal would change the Comprehensive Plan Map designation to "North Mountain Neighborhood Plan" and the zoning to "North Mountain Multi-Family (NM-MF)." (**NOTE: Portions of the subject properties are located outside of the city limits; the current request involves only those portions within the city limits.**) The proposal is outlined in plans on file at the Department of Community Development.
  
- 3) The criteria for Plan Amendments and Zone Changes are described in AMC 18.5.9.020 as follows:
  - A. **Type II.** *The Type II procedure is used for applications involving zoning map amendments consistent with the Comprehensive Plan map, and minor map amendments or corrections. Amendments under this section may be approved if in compliance with the Comprehensive Plan and the application demonstrates that one or more of the following.*

1. *The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan.*
2. *A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances.*
3. *Circumstances relating to the general public welfare exist that require such an action.*
4. *Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection 18.5.8.050.G.*
5. *Increases in residential zoning density of four units or greater on commercial, employment, or industrial zoned lands (i.e., Residential Overlay), will not negatively impact the City's commercial and industrial land supply as required in the Comprehensive Plan, and will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection 18.5.8.050.G.*
6. *The total number of affordable units described in 18.5.9.020.A, subsections 4 or 5, above, shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. 18.5.9.020.A, subsections 4 and 5 do not apply to Council initiated actions.*

**B. *Type III.*** *It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.*

1. *Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.*
2. *Comprehensive Plan changes, including text and map changes or changes to other official maps.*
3. *Land Use Ordinance amendments.*
4. *Urban Growth Boundary amendments.*

4) The criteria for Outline Plan approval are described in AMC 18.3.9.040.A.3 as follows:

*a. The development meets all applicable ordinance requirements of the City.*

- b. *Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*
  - c. *The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.*
  - d. *The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*
  - e. *There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*
  - f. *The proposed density meets the base and bonus density standards established under this chapter.*
  - g. *The development complies with the Street Standards.*
- 5) 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.*
- 6) 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.*

- 7) 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.*

8) The Planning Commission, following proper public notice, held a public hearing on January 9, 2017 at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the Planning Commission approved the application, contingent upon the City Council's ultimate approval of the requested Comprehensive Plan Map Amendment and Zone Change, subject to conditions pertaining to the appropriate development of the site.

Now, therefore, the Planning Commission of the City of Ashland finds, concludes, orders 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. FINDINGS & CONCLUSIONS**

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 Outline Plan, Site Design Review, Tree Removal Permit and Exception to Street Standards approvals meets all applicable criteria for Outline Plan approval described in AMC 18.3.9.040.A.3; for Site Design Review approval described in AMC 18.5.2.050; for a Tree Removal Permit as described in AMC 18.5.7.040.B; and for Exception to Street Standards as described in AMC 18.4.6.020.B.1. The Planning Commission further finds that the requested Comprehensive Plan Map Amendment and Zone Change meets the applicable criteria in AMC 18.5.9.020.

2.3 The Planning Commission finds that, as detailed in AMC 18.5.9.020, Zone Changes may be processed as a Type II procedure when they are consistent with the Comprehensive Plan, however when a Zone Change is proposed that is inconsistent with the Comprehensive Plan designation as is the case here it requires a Type III procedure with a hearing and recommendations from the Planning Commission followed by decision through a hearing before the City Council in conjunction with the adoption of necessary ordinances and amended maps.

The approval criteria for a Type II Zone Change, where the Zone Change is consistent with the existing Plan designation, require that one or more of the following be demonstrated:

- 1) The change implements a public need, other than the provision of affordable housing, supported by the Comprehensive Plan;
- 2) A substantial change in circumstances has occurred since the existing zoning or Plan designation was proposed, necessitating the need to adjust to the changed circumstances;
- 3) Circumstances relating to the general public welfare exist that require such an action;
- 4) Proposed increases in residential zoning density resulting from a change from one zoning district to another zoning district, will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection 18.5.8.050.G;
- 5) Increases in residential zoning density of four units or greater on commercial, employment, or industrial zoned lands (i.e., Residential Overlay), will not negatively impact the City's commercial and industrial land supply as required in the Comprehensive Plan, and will provide 25 percent of the proposed base density as affordable housing consistent with the approval standards set forth in subsection 18.5.8.050.G; and
- 6) The total number of affordable units described in 18.5.9.020.A, subsections 4 or 5, above, shall be determined by rounding down fractional answers to the nearest whole unit. A deed restriction, or similar legal instrument, shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years. 18.5.9.020.A, subsections 4 and 5 do not apply to Council initiated actions. In terms of these criteria, in staff's view #4 dealing with the provision of affordable housing seems the most relevant.

Where a Zone Change request is inconsistent with the Comprehensive Plan designation, the Land Use Ordinance calls for a Type III review, noting that, *"It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for*

*annexation information), and urban growth boundary amendments.” Type III reviews typically involve “large-scale implementation of public policy” rather than looking at one owner’s relatively small property, however because the current request requires not only a zone change for a relatively small group of properties but also an amendment to their Comprehensive Plan Map designation and as such triggers Type III review. In past applications involving what are essentially minor, property specific changes to the Comprehensive Plan, the Planning Commission and Council have looked for a compelling public need but have also relied upon the “Type II” criteria of AMC 18.5.9.020.A in considering the more property-specific aspects of the requests. The Planning Commission’s consideration in making a recommendation here accordingly looks at the changes in circumstances or conditions which necessitate the request, but does so with the more property-specific criteria in mind as well.*

*The application explains that, “There has been a significant change in the neighborhood development pattern since the North Mountain Neighborhood Plan’s adoption in 1997. The subject properties were part of the large area of underdeveloped land on the north side of Bear Creek, accessed only by a gravel-surfaced North Mountain Avenue. Between 1997 and today, major public and private expenditures were made to bring paved streets, sewer and water service to this area. The current property owner sees the great value in working with the City and providing additional developable land consistent with the adjacent property zones and development pattern allowing for further the Comprehensive Plan with respect to urbanization.”*

*The application goes on to note that the “primary change in circumstances is the development and build-out of the adjacent Meadowbrook Park II Subdivision properties (immediately) to the south. When the comprehensive plan designations were set, the properties to the north of East Nevada Street and the areas to the south were designated as Rural Residential. With the North Mountain Plan overlay, the zoning of the properties to the south of East Nevada Street was modified to correspond to the North Mountain Plan Overlay. The properties to the north of East Nevada Street were not included in the North Mountain Plan Overlay.”*

The Planning Commission finds that in the 1970’s, prior to the adoption of the North Mountain Neighborhood Plan, the entire area - *including the subject properties* – was given residential half-acre zoning because it lacked key city facilities and had limited paved access. In the early 1990’s, city services were extended and upgraded to serve the Mountain Meadows development on the east side of North Mountain Avenue. At that point, there began to be interest on the part of property owners in developing the west side of the street. The City was aware of the property owners’ interest in developing the area, but there were concerns about a piecemeal approach to development versus a more coordinated effort. This ultimately lead to a grant-funded master planning process that began in January of 1994 and ended in May of 1997, with the City Council’s adoption of the North Mountain Neighborhood Plan which included Comprehensive Plan and Zoning Map amendments in conjunction with new chapter in the Ashland Land Use Ordinance that set the zoning framework for the district and provided design standards for development within the approximately 75-acre North Mountain Neighborhood.

The Planning Commission finds that, while we concur with the applicants’ recounting of the changes in the area, these changes in and of themselves do not necessitate a change in the properties’ zoning. However, the current housing shortage and the well-documented need for more land to accommodate

moderately priced and affordable ownership and rental units is a change in circumstances which we believe necessitates the requested up-zoning, particularly in light of the city's commitment to more efficiently use lands within its existing boundaries under the Regional Problem Solving (RPS) process, and the changes noted by the applicant in bringing city facilities to the area in conjunction with the North Mountain Neighborhood's development support this more efficient land use.

The applicant requests to rezone the properties to North Mountain, Multi-Family (NM-MF) zoning, which allows for up to 12 dwelling units per acre. The mix of units proposed includes townhouses, four single family units attached at the garages, and three detached single family residences with the possibility for three attached second units, and the application suggests that the proposed mixture of housing types and density is consistent with the adjacent North Mountain Neighborhood context and further cites the Townhouse Residential discussion in 2.04.04 of the Comprehensive which notes that this townhouses at a density of up to 12 units per acre *“encourage innovative residential housing to provide low-cost, owner-occupied housing in addition to lower density rental units.”*

Planning staff had noted that in considering the need for low- and moderately-priced rental and ownership housing, the Planning Commission and Council may wish to consider requiring the applicant to construct the three small accessory units currently described as “optional” in the application, and also to consider requiring the applicants to look at other options to further increase the density of the development with the inclusion of more and/or smaller units that would be possible by using available density bonuses. The Planning Commission finds that requiring the applicant to provide additional residential units or smaller units as a condition of a Type III application approval would fall under the legislative authority of the City Council. The Planning Commission would however be open to considering an increase in the requested density by utilizing available density bonus options at the time of Final Plan, and in particular believes that the applicants should make the option of requesting available density bonuses utilizing the parent parcel density and available density bonuses to an affordable housing provider partner.

The application emphasizes that the property owner is committed to partnering with a non-profit affordable housing provider and has been in discussions with Rogue Valley Habitat for Humanity about dedicating the area for four units of housing and associated street improvements, parking, private yard/setback areas, access to common refuse area and recreation space and full participation in the homeowners' association. This portion of the development would be deed restricted as affordable to those at 60 percent of the area median income for 60 years. The applicants propose to extend water, sewer, storm drain and electric facilities to and through the development with the Outline Plan approval, but hope to defer sidewalk, parkrow and irrigation for the new Franklin Street extension proposed until housing is developed by posting a bond for these improvements.

The criteria for affordable units calls for the units to be completed proportionally with the market rate units, distributed evenly throughout the project and to be constructed using comparable building materials and include equivalent amenities to the market rate units. Because they propose to provide property directly to an affordable housing provider to be developed separately, the applicants have requested Exception to these standards. AMC 18.5.8.050.G. provides for exceptions where an alternative mix of housing types, phasing or distribution would accomplish additional benefits and be completed in a timely fashion. The applicants explain that the dedicated land must be located in one area to limit development

costs, and that this further facilitates coordinated site planning so that the building placement, yard areas, play areas, parking, etc. can be planned as part of the initial development to further minimize development costs. They further suggest that attached wall, townhouse structures that are contiguous to one another with similar designs and floorplans minimize development and long-term maintenance costs and are thus beneficial to the affordable housing providers. They conclude that in their discussions with Habitat, it has been indicated that the housing need for affordable units is critical, and they believe that with the zone change it would be possible to transfer title to the property, and complete Final Plan and Site Review in the very near future. In addition, the city has proposed to include an adjacent, city-owned 0.35 parcel in the zone change in hopes that it might be able to be incorporated into a future affordable housing development to provide for additional affordable units and allow the development of both sites with more efficient use of funds, labor and materials than would occur with the development of the same number of units on “scattered sites.”

In considering the requested Exceptions, the Planning Commission finds that while clustering the affordable units contrary to the distribution requirements of AMC 18.5.8.050.G.5 is acceptable in facilitating coordinated site planning as requested by the applicants, the project should remain subject to the other standards and requirements for affordability, including timely completion of the affordable units (AMC 18.5.8.050.G.4) and for the use of comparable materials and amenities (18.5.8.050.G.6). The Co

A zone change to NM-MF, which differs from the property’s current Comprehensive Plan Map designation, requires a legislative amendment of the city’s Comprehensive Plan Map. This is a discretionary decision by the City Council, and in similar previous requests, the Council has looked for a compelling argument that such a change addresses a clear public need. The Planning Commission finds that the compelling change of circumstance necessitating the requested change is the housing shortage and the need for more land to accommodate affordable and moderately-priced rental and ownership housing. The Commission further finds that the extension of city facilities to the area, adoption of the North Mountain Neighborhood Plan, and subsequent development of the Meadowbrook Park II subdivision immediately to the south can be found to be significant changes in circumstances since the original zoning was established which further support the requested Zone Change and Comprehensive Plan Amendment. When considered in conjunction with the city’s current commitment to maintain the existing Urban Growth Boundary for the foreseeable future as adopted in the Regional Plan Element (XIV) of the Comprehensive Plan, and instead seek to accommodate anticipated growth with more efficient land use inside existing boundaries, the Commission believes that that these circumstances necessitate the requested up-zoning, and we accordingly recommend that the City Council approve the requested Zone Change and Comprehensive Plan Amendment.

2.4 The Planning Commission finds that the proposal satisfies all applicable criteria for Outline Plan approval.

The first approval criterion for Outline Plan approval is that, “*The development meets all applicable ordinance requirements of the City.*” The Commission finds that the proposal meets or can meet all applicable ordinance requirements, and that this criterion has been satisfied.

The second approval criterion for Outline Plan approval is that, “*Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*” The Commission finds that adequate public facilities for electricity, natural gas, telephone, television and internet are immediately available to the subject properties from the adjacent rights-of-way and these services will be placed underground to serve the property. With regard to specific facilities, the application materials note:

- **Sanitary Sewer:** Existing sanitary sewer lines are available in Camelot Drive approximately 30-foot south of the intersection of Camelot and East Nevada Street, and there is another line in East Nevada Street at its intersection with Patton. The application explains that the Engineering Division has indicated that the lines are in adequate condition and have capacity to support the proposed subdivision, and the applicants indicate that they will extend the sewer lines up East Nevada to service the subdivision.
- **Water:** An existing 15-inch water line is in place within East Nevada Street, and the application notes that extension of the line through the development with fire hydrant installation to meet Fire Code will have adequate capacity and availability to service the proposed residences. In discussing the proposal with Water Department staff, they have noted that because of the grade change between the curb and some developable areas of the property, there may be more than a 30-foot elevation gain between the water main and two-story buildings on the embankment above. This poses a potential cross-connection issue, as does an existing well in place on the property, and the Water Department has indicated that this cross-connection potential will need to be addressed for “premises isolation.”
- **Storm Drainage:** The application materials indicate that storm drainage on site will be controlled through an on-site detention system with a bio-swale at the terminus of Camelot Drive and the proposed new alley.
- **Streets & Transportation:** The application explains that the properties front on East Nevada Street and will have direct access by way of the proposed new street, the extension of Camelot Drive and a new proposed alley. The application notes that the proposed improvements are generally consistent with city street standards, and that based on the applicants’ analysis 23 new residential units will not trigger a Transportation Impact Analysis (TIA).

More specifically, with regard to East Nevada Street, a two-lane avenue, the application notes that there is a paving, curb and gutter in place along the property frontage. The applicants propose a five-foot sidewalk and seven-foot parkrow along the eastern section of the properties’ East Nevada Street frontage, with the parkrow planting strip proposed to be reduced to five-feet where eight on-street parking bays are proposed on Nevada Street. These eight on-street parking

bays will require relocation of the existing curb and gutter. In the area of the steep, rocky outcropping the applicants have requested an exception to the street standards to not extend sidewalks along the frontages of tax lots #1100 and #1200 due to the physically impenetrable rock and the difficulties associated with its excavation. The application suggests that they would be willing to post a bond in lieu of installing sidewalks on the flatter approximately 40-foot section of tax lot #1100 in order to allow its frontage to be completed in conjunction with the future development of the large adjacent property to the west at 375 East Nevada Street, rather than extending a short section of sidewalk that would not connect to adjacent properties at this time, particularly given that there are no crosswalks connecting to the sidewalks on the south side in this vicinity. The Commission finds that the sidewalk and parkrows proposed on East Nevada Street are consistent with the Avenue standard illustrated in the North Mountain Neighborhood Plan, and given the Exceptions requested elsewhere, the parkrow should be kept to their minimum seven-foot width detailed for an Avenue, even where parking bays have been proposed.

The applicants propose enhanced intersection treatments at East Nevada Street and Camelot to include amenities such as street lighting, a seating area, and a widened crosswalk using contrasting color or material (i.e. scored or colored concrete) to provide connectivity between the proposed sidewalks and the sidewalks for the existing and future development in the North Mountain Neighborhood to the south. In discussions of the crosswalk treatment with Public Works, Engineering and Planning staff, they have noted that the ramp and crossing need to be placed to better align with ramps opposite so that the ramps are directly connected to those across the street with the shortest, most direct routes possible as this is an Americans with Disabilities Act (ADA) concern for visually-impaired pedestrians.

Camelot Drive is proposed to be extended onto the property as a neighborhood street with a proposed 48-foot right-of-way width providing a 15-foot travel surface, eight-foot planting strips and five-foot sidewalks on each side. Two seven-foot wide parking bays would be provided on the west side, with street improvements on this extension to generally match those on the existing street and enhanced crossing treatments with truncated domes and enhanced crosswalks provided at the Nevada Street intersection.

The application also proposes to extend half-street improvements from a newly named Franklin Street within existing right-of-way at the east end of the Young property. The applicants note that this would be a neighborhood street with a 60-foot right-of-way and improved with a five-foot sidewalk, seven-foot landscaped parkrow, seven-foot on-street parking bays and a 15-foot

travel lane. The application suggests that these improvements would be bonded and completion deferred until the residential units adjacent to the new street were developed.

The applicants also propose a 22-foot public alley extending from the proposed Franklin Street to the fire truck turn-around on the west side of the upper level of development. Parking for the proposed units would be accessed from this alley, eliminating the need for front yard driveways for units on East Nevada and Franklin Streets. Public Works and Engineering staff have indicated that given that this alley will function essentially as a private driveway serving the development without either a need for or benefit from public access, it should be a private driveway or private alley and not necessitate city maintenance responsibilities. In addition, Public Works and Engineering staff have expressed concern with what appears to be services stubbed out to serve the applicants' property outside the city limits and urban growth boundary and have asked that these be corrected in the final civil drawings to avoid the potential illegal extension of urban services outside of the urban growth boundary. Conditions to this effect have been included below.

The application includes preliminary civil drawings prepared by Thornton Engineering, and conditions have been included below to require that final electric service, utility and civil plans be provided for the review and approval of the Staff Advisor and city departments, and that these plans address the Water Department's comments regarding cross-connection concern and premises isolation; the Engineering Department's concerns about the alignment of the crossings at Camelot Drive, treatment of the alley as private, and extension of services outside the urban growth boundary; and that the civil infrastructure be installed, inspected and approved prior to the signature of the final survey plat.

The third criterion for approval of an Outline Plan is that, "*The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.*" The Commission finds that there is an approximately 18,000 square foot steeply sloped area of the property associated with the large roadside outcropping which has been proposed for inclusion in the subdivision's open space. The Commission finds that the inclusion of this rock outcropping and the sloped area adjacent in common open space provides a significant amenity to the future residents of the development, and further finds that some form of pedestrian access (i.e. a path to a gazebo or other sitting area) should be provided to give future residents access to the vista here. A condition to this effect has been included below.

The applicants have provided a survey identifying 27 trees on the property which are greater than six-inches in diameter at breast height. Of these, ten are proposed to be removed in conjunction with the application including a 16-inch diameter at breast height (d.b.h.) Ponderosa Pine, a 16-inch d.b.h. Cedar tree, a nine-inch d.b.h. Pine, a 30-inch d.b.h. Ash tree, four seven-to-eight-inch d.b.h. Oak trees, and a six-inch and a ten-inch d.b.h. Walnut tree. The Commission finds that the trees proposed for removal are the

minimum necessary to permit the parcel to be developed as proposed under the requested zoning. The trees are noted as being located where streets, driveways and building envelopes are proposed to comply with the applicable standards while responding to the site's significant topographical constraints.

The fourth criterion for approval of an Outline Plan is that, *"The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan."* The Planning Commission finds that the proposal, which seeks to include the city's adjacent tax lot #100 in the requested Plan Amendment and Zone Change, will enable this parcel to develop with four affordable housing units instead of the single family residence that would be possible under the current designation, and the properties to the west and south will not be prevented from developing according to its Comprehensive Plan designation, while properties to the north are outside of the city limits.

The fifth approval criterion is that, *"There are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project."* The Commission finds that there will be provisions in the CC&R's to address the maintenance of the proposed open space and common areas. A condition has included below to require that a draft copy of the CC&R's be provided for review and approval of the Staff Advisor with the Final Plan submittal.

The sixth criterion is that, *"The proposed density meets the base and bonus density standards established under this chapter."* The Planning Commission finds that the developable portion of the subject property is approximately two acres, and at the 12-dwelling unit per acre density of the requested NM-MF zoning, the base density of the subject properties is 24 units. The North Mountain Neighborhood Plan calls for a minimum density of between 75 and 110 percent meaning that at a density of between 18 and 26.4 dwelling units is required. As proposed, the applicants would develop at least 20 units, with three additional small units over the detached residences' garages reserved as optional putting the proposal within the requirements of the requested zoning district. Despite indications in the application that the proposal may qualify for density bonuses with regard to affordability and energy efficiency, no density bonuses are being requested. The Planning Commission finds that density bonuses not requested here may be available, and the Commission would be open to considering additional affordable units supported by a density bonus at the Final Plan should the applicants decide to pursue them.

The final Outline Plan approval criterion is that, *"The development complies with the Street Standards."* The Planning Commission finds that the application generally complies with the Street Standards but has requested some Exceptions, discussed later in this document, to address the physical constraints posed by the large rock-outcropping.

2.5 The Planning Commission finds that the development of attached housing requires Site Design Review approval and is subject to the "Building Placement, Orientation and Design" standards for residential development found in AMC 18.4.2.030.

The Commission finds that the application includes the identification of building envelopes, site landscaping and open space, and required parking and circulation along with conceptual building elevations intended to illustrate that the property can and will be developed according to the applicable

standards under the requested zoning. The application explains that it is the applicants' intent that Site Design Review approvals for the specific buildings to be proposed will be delayed until each phase develops, and that these Site Design Reviews will include final building designs as well as final landscaping and irrigation details. Conditions of approval have been included below to require that Site Design Review approvals for buildings within each phase be obtained concurrently with Final Plan approval for each phase, and that these Site Design Reviews be *generally* consistent with the site lay-out and conceptual designs here, with the exception of final building designs.

The first 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 Planning Commission finds that the proposed development will comply with all applicable provisions for the underlying zone.

The second approval criterion is that, "*The proposal complies with applicable overlay zone requirements (part 18.3).*" The Planning Commission finds that the property is proposed for inclusion in the NM-MF district within the North Mountain Neighborhood overlay zone, and that all applicable standards have been addressed.

The Commission further finds that the North Mountain Neighborhood Plan's "Supplemental Setback Requirements for Garages and Accessory Structures" in AMC 18.3.5.100.A.4 require that where no alleys are present, that garages be located a minimum of 15 feet behind the primary façade and a minimum of 20 feet from the sidewalk. The applicant notes that the garages which take access from a public street will be ten feet behind the primary façade. In assessing the site plan, it appears that the only units with a garage taking access from a public street are the two units on the west side of Camelot Drive. These units are at the juncture of the alley and Camelot, and have an 18-foot wide driveway and a garage ten feet (*rather than the required 15 feet behind the façade of the units*). This appears to conflict with the standard both in terms of having a garage from the street where alley access is available to at least one of the units, and in having the garage five feet closer to the façade than allowed. Given that the Site Review request is conceptual at this stage, the Commission does not believe an Exception is appropriate and have accordingly included a condition that this situation be addressed in the Final Plan/Site Design Review submittal to either meet the standard or request an Exception.

The third criterion for the Site Design Review approval is that, "*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E (which addresses Exceptions) below.*" The application materials assert that the proposal complies with Site Development and Design Standards and includes site layout plans, landscaping, irrigation and planting plans as well as conceptual elevations to supplement the written findings provided. In considering these standards, the Commission finds that multi-family residential property requires that eight percent (here 8,433 square feet) of the site be provided as recreational space, and the Performance Standards requires that at least five percent (here 5,270 square feet) of the site be provided in common open space. While the application indicates that approximately 22 percent of the site (or 23,305 square feet) is provided in multi-family open space, the landscape plan illustrates only approximately 4,533 in lawn area, with the remainder of the property planted with trees, shrubs and ground cover which are not suitable for recreational use. Some

of the lawn areas shown have depths as narrow as four feet, some are placed immediately adjacent to the parking area or street right-of-way, and one is within a required park-row planting strip. To demonstrate that the eight percent recreation space requirement is met, a plan clearly illustrating all areas to be counted towards open and recreation space needs to be provided. Landscaped areas counted toward recreation space requirements need to be outside of the right-of-way and placed where they are likely to be used recreationally, surfaced for recreational use, of sufficient depth to allow recreational use, and not include thoroughfares for pedestrian circulation, and individual patio, porch or deck areas need to have a minimum dimension of six feet in depth and eight feet in width (the minimum porch dimension as defined in AMC 18.6.1) exclusive of circulation routes, door swing areas, etc. to accommodate recreational use. Placement of utility infrastructure such as vaults, transformers or cabinets needs to be considered, and areas set aside for these items should not be counted as required open or recreational space. The Commission has accordingly included a condition requiring a revised plan fully addressing these issues be provided for review and approval with the Final Plan application.

The fourth approval criterion for Site Design Review addresses city facilities and requires 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.”* Public facilities requirements are addressed in detail in the Outline Plan section 2.4 earlier in these findings.

2.6 The Planning Commission finds that the application includes a request for an Exception to Street Standards to not extend sidewalks along the frontages of Tax Lots #1100 and #1200, west of the intersection of Camelot and East Nevada, due to the steep and rocky slope in this area, and to not install a multi-use path or other alternative to the sidewalk due to the same rocky slopes. The application asserts that the rock is impenetrable here, and has included a report by a geotechnical expert. The applicants note that they considered installing a multi-use path as an alternative, but the slopes were too steep to do so safely, and they further note anecdotally that when the subdivision to the south was installed a local backhoe operator broke many pieces of equipment trying to install street improvements here and the rock ultimately dictated the location of the existing curb. To provide for pedestrian connectivity, the applicants propose to install enhancements to the intersection of Camelot Drive and East Nevada so pedestrians using the north side sidewalk on the eastern portion of the proposed development can cross to the south side in the area where no sidewalks will be installed. These enhancements are to include amenities such as street lighting, seating, and a widened crosswalk using contrasting color or material (i.e. scored or colored concrete) to provide connectivity between the proposed sidewalks and the sidewalks for the existing and future development in the North Mountain Neighborhood to the south

After visiting the site, Planning staff had noted that they believed there were opportunities in the area at the base of the rock outcropping where sidewalks are not currently proposed to instead remove weeds and flatten an 18- to 24-inch area behind the curb and surface it in concrete or compacted decomposed granite in order to provide an area of refuge where pedestrians could step out of the roadway when cars pass to provide. Staff had recommended that the civil plans provided for Final Plan review include such a pedestrian refuge in this area. After consideration, the Commission finds that that this area is still constrained by the presence of the rock outcropping and that the presence of a small refuge area might

encourage pedestrians to that side of the street where there would be minimal facilities and very limited area to step out of the right-of-way to avoid cars. The Commission accordingly finds that the small pedestrian refuge is not an appropriate treatment here. The Commission further finds that the rock outcropping does pose a demonstrable difficulty in completing city standard frontage improvements on East Nevada Street, and that the proposed intersection enhancements will yield equivalent facilities and connectivity in terms of providing for the ability to safely and efficiently cross the roadway to the sidewalks on the opposite side. This exception is the minimum necessary to alleviate the difficulty posed by the rock outcropping and is consistent with the purpose and intent of the Street Standards.

Planning staff had noted that the street cross-section illustrated for the properties' East Nevada Street frontage were inconsistent with the standard improvements for an Avenue under the Street Standards, and had recommended that the civil drawings be updated to reflect the required park row and sidewalk width in the standards. The applicants asserted that the North Mountain Neighborhood Plan provided for an alternate Avenue standard within the North Mountain Neighborhood. Planning Commissioners find that there are differing street standards in the code with regard to Avenues. The standard Avenue cross-section described in AMC 18.4.6.040.F calls for a seven- to eight-foot park row planting strip and a six-foot sidewalk to be installed in residential areas; the cross section called out in the North Mountain Neighborhood Plan for North Mountain Avenue calls for a five-foot sidewalk with a seven-foot park row planting strip. Planning Commissioners find that the North Mountain Neighborhood Plan should govern in this case, and that a five-foot sidewalk and seven-foot park row planting strip are an appropriate Avenue treatment for East Nevada Street here.

The applicants have also requested an Exception to not install bicycle lanes on East Nevada Street because there are none elsewhere on this corridor, the rock slope limits the ability to expand the right-of-way, and the average daily trip counts are very low. Subsequent to the mailing of a notice of public hearing, neighbors Andrea Napoli and Don Morehouse who reside on nearby Stoneridge Avenue submitted written comments indicating that they believed that bicycle access was necessary for the neighborhood before a zone change could occur, noting that currently there is no real bicycle access between the North Mountain Neighborhood and the rest of town, describing the existing bicycle lanes on North Mountain Avenue as dangerous and disappearing, and noting that there is currently no bridge connection over Bear Creek to Oak Street or the Bear Creek Greenway and suggesting that they do not believe a finding of adequate transportation can be made with regard to bicycle access. As noted by the neighbors, there are bicycle lanes on North Mountain Avenue in some places, but they are not continuous and require cyclists to merge into traffic or use a variable width gravel shoulder. While properties in adjacent developments including Meadowbrook Park II immediately to the south have been required to sign in favor of a future Local Improvement District for East Nevada Street which would include construction of a bridge over Bear Creek, this bridge is not currently in place.

The Planning Commission finds that an Avenue is typically envisioned to accommodate between 3,000 and 10,000 average daily trips (ADT) as a design assumption. For lesser order streets, the Street Design Standards specifically note, "*Bike lanes are generally not needed on streets with low volumes (less than 3,000 ADT) or low motor vehicle travel speeds (less than 25mph). For over 3,000 ADT or actual travel speeds exceeding 25 mph, six-foot bike lanes [are required]; one on each side of the street moving in the same direction as motor vehicle traffic.*" While the design assumptions for an Avenue put the ADT within

the threshold which requires bike lanes, the most recent actual ADT counts for this section of East Nevada Street, taken by the Engineering Division in 2017, have the ADT at 107 trips. On nearby Fair Oaks Avenue, which likely is taking more of the traffic from the Meadowbrook Park II subdivision out to Mountain Avenue because it is a less circuitous route, ADT was only slightly over 400 trips in 2016, and Engineering staff indicated that it was doubtful even with additional construction completed in 2017 that the current ADT there would be over 500 trips now. The Planning Commission finds that the current ADT on East Nevada Street do not necessitate bicycle lanes, and could accommodate cyclists as shared users of the street without frequent conflicts due to vehicle cross traffic, although the Avenue classification typically requires them. The Planning Commission further finds that an Exception is merited, but that the applicants will be required to sign in favor of a future Local Improvement District (LID) for East Nevada Street as have others in the North Mountain Neighborhood. Such an LID could include both bicycle lanes and bridge construction.

2.7 The Planning Commission finds that the applicants have provided a survey identifying 27 trees on the property which are greater than six-inches in diameter at breast height. Of these, ten are proposed to be removed in conjunction with the application including a 16-inch diameter at breast height (d.b.h.) Ponderosa Pine, a 16-inch d.b.h. Cedar tree, a nine-inch d.b.h. Pine, a 30-inch d.b.h. Ash tree, four seven-to-eight-inch d.b.h. Oak trees, and a six-inch and a ten-inch d.b.h. Walnut tree. The Commission finds that the trees proposed for removal are the minimum necessary to permit the parcel to be developed as proposed under the requested zoning. The trees are located where streets, driveways and building envelopes are proposed to comply with the applicable standards while responding to the significant topographical constraints of the site.

The applicants further explain that the trees to be removed on the upper level of the development include the Cedar, Ponderosa Pine and Ash trees which are requested for removal to accommodate the extension of Camelot Drive, which must respond to the existing street location, topography, block length and fire truck turn-around standards.

The applicants go on to note that the majority of the trees to be removed are on the lower level of the property on tax lot #1100. These trees are described as being crowded together where the driveway will need to be located to access the proposed lower level units and to maintain vehicular access for the portion of the applicants' property which is outside the city limits while complying with driveway separation requirements.

The Commission finds that the removals will not have a significant negative impact on erosion or soil stability, noting that the development of the property will address erosion and soil stability. The applicants emphasize that there are no surface waters on the site, and that the trees proposed for removal are not part of any windbreaks. They also suggest that the removals will generally have no significant impact on tree densities, canopy size or species diversity, although they recognize that the Ponderosa and Cedar may have adverse impacts with regard to this criterion while suggesting that their removals could not be avoided. They explain that with shallow soil depths and significantly rocky soils, large conifers require wider spreading root structure and necessitate larger protection zones which would make it more difficult to preserve and protect them with the proposed development. The applicants propose to plant numerous deciduous trees that are more than 1½- inch caliper to mitigate the removals proposed, and that three

conifers will be planted on the applicants' property to the north to assist in buffering the freeway to mitigate the large conifers to be removed.

In reviewing the proposal at their regular meeting in January, the Tree Commissioners noted that the proposed planting list was generally well-selected. They further noted that they believed that Tree #1 identified in the tree inventory as a Cedar was actually a native Juniper, and that Tree #5 identified as an Ash was actually an Elm. The Tree Commissioners generally discussed that they would prefer to see Trees #1, #2, and #5 preserved and protected, but after discussions of the need for five- to eight-feet of grading near trees #1, #2, #3 and #5 to address access, infrastructure, drainage and home placement according to standards the Commissioners ultimately expressed support for the project subject to a recommendation that the trees proposed for removal being replaced with larger than normal mitigation trees as follows: 1) That all native species such as the Oaks to be removed shall be mitigated on a one-for-one basis with four-inch caliper native species that will attain a similar size to the tree being removed at maturity; 2) That conifers to be removed such as the Juniper & Ponderosa Pine shall be mitigated on a one-for-one basis with conifers that will attain a similar size to the tree being removed at maturity, and that are at least ten feet tall at the time of planting.

In considering these recommendations, the Planning Commission finds that smaller trees are generally better at quickly establishing themselves, and accordingly adjusts the Tree Commission recommendations to require that the native species be mitigated with at least 2 ½-inch caliper trees and that conifers be mitigated with six- to eight-foot tall replacement trees of a comparable variety. The Planning Commission further finds that the applicants should not pave the driveway on the lower/western-most units past the garage in order minimize the development impacts and benefit Trees #16 and #17.

2.8 The Planning Commission finds that Oregon state law requires that amendments to comprehensive plans to be in compliance with the Statewide Planning Goals & Guidelines (ORS 195.175(2)(a)). The proposed Comprehensive Plan Amendment would change the site Comprehensive Plan Map designation from "Single Family Residential Reserve" to "North Mountain Neighborhood Plan." Consistent with that state law requirement, the Planning Commission finds that the proposed Comprehensive Plan Map Amendment and the project proposed for the site under PA #2017-02129 comply with the Statewide Planning Goals & Guidelines as described below:

- **Goal 1: Citizen Involvement** - The Comprehensive Plan Amendment and rezone affect four parcels, so its impacts are not widespread. The City publicized the proposal as required by the City's Land Use Ordinance by posting the property, mailing notice to all property owners within 200 feet of the sites, and providing notice of the Planning Commission hearing on the City's website and in the local newspaper.
- **Goal 2: Planning** - The sites are on the edge of the City immediately adjacent to the City's North Mountain Neighborhood District, which is a large planned district in the northern part of the Ashland. The proposed Comprehensive Plan designation and zoning effectively brings these parcels into the North Mountain Neighborhood District. Permits for the proposed development of the parcels will follow the City's existing land use permitting procedures.

- **Goal 3: Agricultural Lands** - The sites that are the subject of the Comprehensive Plan amendment and rezone are within both the City limits and the Urban Growth Boundary (UGB) of the City of Ashland. No Agricultural lands are affected by the proposed development of the site under the proposed amendments. Adjacent lands in Jackson County to the north are not designated Agricultural. To the extent this rezone allows for greater density within the City's UGB, there is less pressure for housing outside the UGB.
- **Goal 4: Forest Lands** - The sites that are the subject of the Comprehensive Plan amendment and rezone are within both the City limits and the Urban Growth Boundary (UGB) of the City of Ashland. No Forest lands are affected by the proposed development of the site under the proposed amendments. Adjacent lands in Jackson County to the north are not designated Forest. To the extent this rezone allows for greater density within the City's UGB, there is less pressure for housing outside the UGB.
- **Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces** - No natural resources, scenic resources, or historic resources have been identified on the sites. The proposed development of the site under PA-2017-02129 has been determined by the Ashland Planning Commission to comply with the City's Site Design Review process, which requires eight (8) percent of the site to be dedicated to recreational open space.
- **Goal 6: Air, Water and Land Resources Quality** - The rezone sites are planned for residential development and this development is not anticipated to negatively impact air, water or land resources. The sites will be fully served by City utilities, which is not currently the case pre-rezone.
- **Goal 7: Areas Subject to Natural Hazards** - The sites are not within any flood, landslide or liquefaction-prone areas identified by the City's natural resources mapping.
- **Goal 8: Recreational Needs** - The sites are near City parks and other recreational resources. The proposed development of the site under PA-2017-02129 has been determined by the Ashland Planning Commission to comply, as conditioned, with City Land Use Code requirements for recreational open space on site.
- **Goal 9: Economic Development** - The City has adequate industrial and commercially zoned land elsewhere. The subject properties have been zoned residential reserve. The residential nature of the zoning will not change, but greater density will be allowed, and some affordable housing units will be provided.
- **Goal 10: Housing** - The Comprehensive Plan amendment and rezone will further the City's housing goals and policies by increasing zoned residential density in an area that is already developing with urban levels of housing density. The proposed development for the site will also provide some needed affordable housing in the City of Ashland.
- **Goal 11: Public Facilities and Services** - The City's Public Works Department has determined that there are adequate public facilities and services to serve the rezoned parcels and to serve the proposed development of the site under PA-2017-02129.

- **Goal 12: Transportation** - The street grid in the North Mountain Neighborhood area is adequate to handle the additional traffic from development of the subject parcels at the higher, rezoned density. The proposed project for the site under PA 2017-02129 will provide additional street parking and sidewalks for the area. The transportation study done for the proposed development found that it did not meet any of the thresholds to require a transportation impact analysis.
- **Goal 13: Energy Conservation** - Greater density on these sites within the City’s Urban Growth Boundary and City Limits will promote the more efficient use of land and energy.
- **Goal 14: Urbanization** - The Urbanization Goal is furthered by greater residential density within the City’s Urban Growth Boundary.
- **Goal 15: Willamette River Greenway** - Not applicable.
- **Goal 16: Estuarine Resources** - Not applicable.
- **Goal 17: Coastal Shorelands** - Not applicable.
- **Goal 18: Beaches and Dunes** - Not applicable.
- **Goal 19: Ocean Resources** - Not applicable.

State law also requires a change in City land use regulations to comply with the City’s Comprehensive Plan (ORS 195.175(2)(b)). With approval of the Comprehensive Plan Map designation amendment to “North Mountain Neighborhood Plan,” the zoning designation change to North Mountain Multi-Family (NM-MF)” will comply with the City’s Comprehensive Plan. The NM-MF designation is one of the zoning designations approved by the City for adoption within the North Mountain Neighborhood District.

The Commission conditionally approves the proposed Outline Plan and Site Design Review for Planning Action PA #2017-02129, subject to City Council approval of the proposed Comprehensive Plan Map Amendment to “North Mountain Neighborhood Plan” and rezone of the sites consistent with that Comprehensive Plan Map Amendment to NM-MF. The Council may wish to adopt the Outline Plan and Site Design Review approvals prior to acknowledgment of the Comprehensive Plan Map Amendment by the Oregon Department of Land Conservation and Development (DLCD) by adopting these findings as well, or could alternatively send the Outline Plan and Site Design Review requests back to the Planning Commission for final approval following acknowledgment.

### **SECTION 3. DECISION**

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for Comprehensive Plan Map Amendment, Zone Change, Outline Plan approval, Site Design Review approval for a 20-lot, 23-unit Performance Standards Option subdivision, and Tree Removal Permit is supported by evidence contained within the whole record.

For the Commission, it is clear that the extension of city facilities to the area, adoption of the North Mountain Neighborhood Plan, and subsequent development of the Meadowbrook Park II subdivision immediately to the south represent a change in circumstances since the current zoning was established in the 1970’s which supports the requested Plan Amendment and Zone Change, but for Commissioners the compelling changes in circumstance which *necessitate* the requested Plan Amendment and Zone Change

are the well-documented housing shortage around the lack of rental and ownership units that are affordable to a broad spectrum of the community and the city's commitment through the Regional Problem Solving process to accommodate anticipated growth with more efficient land use inside existing city boundaries. The extension of public facilities to support more dense development than was possible when the current zoning was established nearly 50 years ago sets the table for more efficient land use now, and given the current need for more housing, the Commission recommends that the City Council approve the requested Comprehensive Plan Amendment and Zone Change.

Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, the Planning Commission recommends in favor of the Council's approval of the requested Comprehensive Plan Map Amendment and Zone Change and we further approve the Outline Plan, Site Design Review, Tree Removal and Exception to Street Standards components of Planning Action #2017-01059 subject to the Council approval of the Comprehensive Plan Map Amendment and Zone Change. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #2017-01059 is denied. The following are the conditions and they are attached to the approval:

1. That proposals of the applicant shall be conditions of approval unless otherwise modified herein.
2. That any new addresses or street names shall be assigned by City of Ashland Engineering Department.
3. That permits shall be obtained from the Ashland Public Works Department prior to any work in the public right of way.
4. That 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, storage of materials or issuance of any permits. 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. The final Tree Protection Plan shall incorporate the following requirements: 1) That all native species such as the Oaks to be removed shall be mitigated on a one-for-one basis with at least 2½-inch caliper trees of a comparable variety (i.e. one that will attain a similar size to the tree being removed at maturity); 2) That conifers to be removed such as the Juniper & Ponderosa Pine shall be mitigated on a one-for-one basis with conifers of a comparable variety, and that are at least six- to eight-feet tall at the time of planting; and 3) That the applicants shall not pave the driveway on the lower/western-most units (i.e. Tax Lot #1100) past the garage in order minimize the development impacts and benefit Trees #16 and #17.
5. That the applicants shall obtain necessary Demolition and Relocation Review Permits from the Building Division prior to the demolition of any buildings over 500 square feet as required in AMC 15.04, if deemed necessary by the Building Official.
6. The requirements of the Ashland Fire Department, including approved addressing, fire apparatus access and approach, fire flow, hydrant distance and clearance, and fire sprinklers where applicable, 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.

7. That prior to the Comprehensive Plan Map Amendment and Zone Change being formalized, the applicants shall sign in favor of a Local Improvement District for the future improvements to East Nevada Street including future bridge construction and street improvements, including but not limited to bike lanes sidewalks, parkrow, curb, gutter and storm drainage, prior to signature of the final survey plat. The agreement shall be signed and recorded concurrently with the final survey plat. 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.
8. That prior to Final Plan approval:
  - a. A revised plan to demonstrate that the open and recreation space requirements are met illustrating all areas to be counted towards open and recreation space and their placement, dimension and treatment, and shall include some form of pedestrian access (i.e. a path to a gazebo or other sitting area) to provide access for future residents to the vista here. Landscaped areas counted toward recreation space need to be placed and surfaced for recreational use and not include thoroughfares for pedestrian circulation, and individual patio, porch or deck areas need to have a minimum dimension of six feet in depth and eight feet in width exclusive of circulation routes, door swing areas, etc. to accommodate recreational use. Areas containing above-ground utility infrastructure such as transformers, vaults and cabinets are not to be included as open/recreational space. Common area and open space improvements (i.e. landscaping and irrigation, etc.) shall be installed according to the approved plan, inspected and approved prior to signature of Final Survey Plat.
  - b. A phasing plan be provided which details the proposed phasing/timing of the development with the final plan submittal.
  - c. Site Design Review approval for the final building designs shall be obtained concurrently with Final Plan approval for each phase. Site Designs shall be generally consistent with that approved here, with the exception of final building designs.
    - i. The Site Design Review shall address the two units on the west side of Camelot Drive which are at the corner of the alley and Camelot, and have an 18-foot wide driveway and a garage ten feet, rather than the required 15 feet, behind the façade of the units. The Site Design Review shall consider this both in terms of having a garage where alley access is available to at least one of the units, and in having the garage five feet closer to the façade than allowed and shall either adjust the design or request an Exception.
  - d. Final Plan and Site Design Review submittals which include the city-owned property (Tax Lot #100) will need to include a tree inventory/protection plan and determination of wetland presence for this property.
  - e. All requirements of the geo-technical expert's report, including that the geo-technical expert reviews grading and building plans for compliance with recommendations and that the geo-technical expert observes earthwork, foundation and drainage installation phases

of construction and provides a written report of these observations certifying that all construction was consistent with recommendations shall be conditions of approval. The final plan submittals shall include written verification from the project geo-technical expert addressing the consistency of the grading and drainage plans with the report recommendations, and shall include a detailed inspection schedule addressing needed inspections and their timing associated with the project's development.

- f. Final Site lighting details. Street lights shall be consistent with the city's residential street lighting standard which calls for the "Eurotique" unless another lighting type is already deployed in the neighborhood.
- g. Final Trash enclosure placement and screening details.
- h. Final lot coverage calculations demonstrating how lot coverage is to be allocated to comply with the 75 percent lot coverage allowance in the NM-MF zoning district, including all building footprints, driveways, parking, circulation areas and other proposed lot coverage.
- i. The identification of all proposed easements for public and private utilities, fire apparatus access, and reciprocal utility, maintenance, access and parking shall be indicated on the Final Plan submittal for review by the Planning, Engineering, Building and Fire Departments.
- j. That a final utility plan shall be submitted for review and approval by the Planning, Engineering, and Building Divisions with the Final Plan application. The utility plan shall include the location of connections to all public facilities including the locations of water lines and meter sizes, fire hydrants, sanitary sewer lines, storm drain lines and electric services. The utility plan shall also address the issues raised by the Water Department relative to cross connections and premises isolation due to the grade difference between the water main in East Nevada Street and the residential units. The utility plan shall not include the stubbing out of future services connection to serve the applicants' properties outside the city limits/urban growth boundary.
- k. That the location and final engineering for all storm drainage improvements associated with the project, shall be submitted for review and approval by the Departments of Public Works, Planning and Building Divisions with the Final Plan application.
- l. That the applicant shall submit an electric design and distribution plan including load calculations and locations of all primary and secondary services including transformers, cabinets and all other necessary equipment with the Final Plan application. This plan must be reviewed and approved by the Electric Department prior to the signature of the final survey plat. Transformers and cabinets shall be located in areas least visible from streets and outside of vision clearance areas, while considering the access needs of the Electric Department. Electric services shall be installed underground to serve all proposed units prior to signature of the final survey plat. At the discretion of the Staff Advisor, a bond may be posted for the full amount of underground service installation (with necessary permits and connection fees paid) as an alternative to installation of service prior to signature of the final survey plat. In either case, the electric service plan shall be reviewed and approved by the Ashland Electric Department and Ashland Engineering Division prior to installation.
- m. That the engineered construction drawings for the proposed street improvements including East Nevada Street, the extension of Camelot Drive, the extension of the proposed new

street (Franklin Street), and the intersection enhancements at Camelot Drive and East Nevada Street shall be submitted for review and approval of the Ashland Planning and Engineering Divisions with the Final Plan application, prior to work in the street rights-of-way or installation of improvements in the pedestrian corridor.

- i. For the proposed 22-foot alley at the rear of the property, the alley shall be a private facility rather than a public alley.
  - ii. For East Nevada Street, the section which is to sidewalks shall include the minimum five-foot width, seven-foot park row planting strips (even where parking bays are proposed) required for an Avenue in the North Mountain Neighborhood Plan.
  - iii. For the Camelot Drive extension, a 15-foot queuing lane shall be provided with seven-foot parking bays on one side, with eight-foot park rows and five-foot sidewalks on both sides, and for the enhanced intersection treatment, revised drawings shall be provided which address the ramp and crossing placement to better align with ramps opposite so that the ramps are directly connected to those across the street with the shortest, most direct routes possible in compliance with the Americans with Disabilities Act (ADA).
  - iv. For the Franklin Street extension, a 15-foot queuing lane shall be provided with seven-foot parking bays on one side, with seven-foot park rows and five-foot sidewalks the west side.
- n. Where necessary to accommodate city standard improvements or to align frontage improvements, necessary additional right-of-way shall be dedicated to the city or easements provided. All public improvements including but not limited to the sidewalk, park row planting strips with irrigated street trees, and standard Eurotique residential street lights shall be installed to City of Ashland standards under permit from the Public Works Department and in accordance with the approved plan prior to signature of the final survey plat.
  - o. That CC&Rs for the Homeowner's Association shall be provided for review and approval of the Staff Advisor with the Final Plan application. The CC&R's shall describe responsibility for the maintenance of all common use-improvements including landscaping, driveways and parking areas, planting strips, shared garage spaces and street trees.
  - p. That all fencing shall be consistent with the provisions of the "Fences and Walls" requirements in AMC 18.4.4.060. The draft CC&Rs shall include stipulations on height limitations for front, side and rear yard, and shall note that fences adjacent to common open space areas shall not exceed four feet. The location and height of fencing shall be identified at the time of building permit submittals, and fence permits shall be obtained prior to installation.
  - q. The approved Tree Protection Plan and accompanying standards for compliance shall be noted in the CC&Rs. The CC&Rs must state that deviations from the plan shall be considered a violation of the Planning Application approval and therefore subject to penalties described in the Ashland Municipal Code.

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Planning Commission Approval

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February 13, 2018  
Date

PA #2017-02129  
February 13, 2018  
Page 24



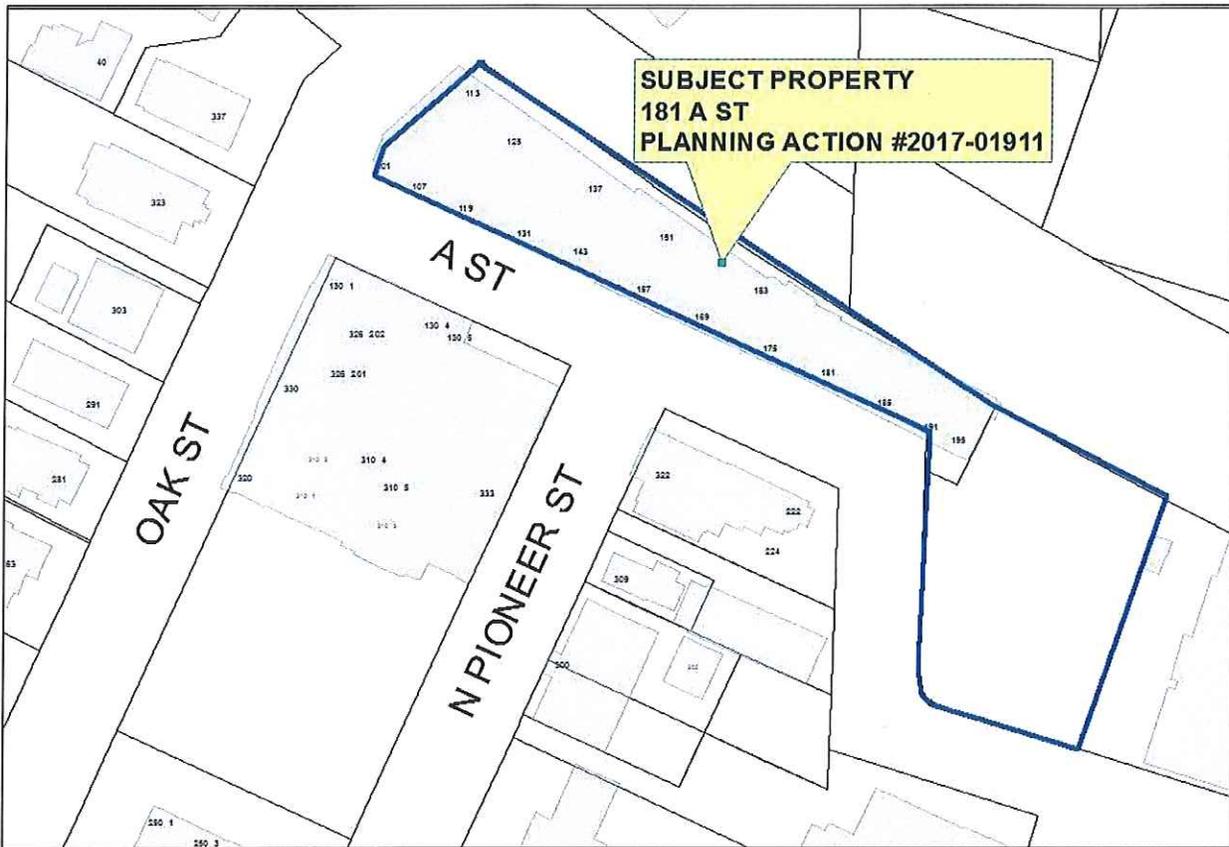
**PLANNING ACTION:** PA-2017-01911

**SUBJECT PROPERTY:** 181 A Street

**OWNER/APPLICANT:** Jorge Yant

**DESCRIPTION:** A continued public hearing from December 12, 2017 to review an application for a Conditional Use Permit for Marijuana Retail Sales in the existing building located at 181 A St. The applicant withdrew the previously proposed Marijuana Production (Indoor Grow) located at 185, 191 and 195 A St and as a result, the indoor grow is no longer a part of the application. **COMPREHENSIVE PLAN DESIGNATION:** Employment; **ZONING:** E-1; **ASSESSOR'S MAP:** 39 1E 09BA; **TAX LOT #:** 14600 & 14900.

**ASHLAND PLANNING COMMISSION MEETING:** *Tuesday, February 13, 2018 at 7:00 PM, Ashland Civic Center, 1175 East Main Street.*



Notice is hereby given that a PUBLIC HEARING on the following request with respect to the ASHLAND LAND USE ORDINANCE will be held before the ASHLAND PLANNING COMMISSION on meeting date shown above. The meeting will be at the ASHLAND CIVIC CENTER, 1175 East Main Street, Ashland, Oregon.

The ordinance criteria applicable to this application are attached to this notice. Oregon law states that failure to raise an objection concerning this application, either in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court.

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost, if requested. A copy of the Staff Report will be available for inspection seven days prior to the hearing and will be provided at reasonable cost, if requested. All materials are available at the Ashland Planning Department, Community Development and Engineering Services, 51 Winburn Way, Ashland, Oregon 97520.

During the Public Hearing, the Chair shall allow testimony from the applicant and those in attendance concerning this request. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the applicable criteria. Unless there is a continuance, if a participant so requests before the conclusion of the hearing, the record shall remain open for at least seven days after the hearing.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (28 CFR 35.102.-35.104 ADA Title I).

If you have questions or comments concerning this request, please feel free to contact the Ashland Planning Division, 541-488-5305.

## CONDITIONAL USE PERMITS

### 18.5.4.050.A

A Conditional Use 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.

1. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.
2. That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.
3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.
  - a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
  - c. Architectural compatibility with the impact area.
  - d. Air quality, including the generation of dust, odors, or other environmental pollutants.
  - e. Generation of noise, light, and glare.
  - f. The development of adjacent properties as envisioned in the Comprehensive Plan.
  - g. Other factors found to be relevant by the approval authority for review of the proposed use.
4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.
5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
  - a. WR and RR. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - b. R-1. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - c. R-2 and R-3. Residential use complying with all ordinance requirements, developed at the density permitted by chapter 18.2.5 Standards for Residential Zones.
  - d. C-1. The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.
  - e. C-1-D. The general retail commercial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 1.00 gross floor to area ratio, complying with all ordinance requirements.
  - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.
  - g. M-1. The general light industrial uses listed in chapter 18.2.2 Base Zones and Allowed Uses, complying with all ordinance requirements.
  - h. CM-C1. The general light industrial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.50 gross floor to area ratio, complying with all ordinance requirements.
  - i. CM-OE and CM-MU. The general office uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area, complying with all ordinance requirements.
  - k. CM-NC. The retail commercial uses listed in chapter 18.3.2 Croman Mill District, developed at an intensity of 0.60 gross floor to area ratio, complying with all ordinance requirements.
  - l. HC, NM, and SOU. The permitted uses listed in chapters 18.3.3 Health Care Services, 18.3.5 North Mountain Neighborhood, and 18.3.6 Southern Oregon University District, respectively, complying with all ordinance requirements.

## SITE DESIGN AND USE STANDARDS

### 18.5.2.050

The following criteria shall be used to approve or deny an application:

- 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.

**ASHLAND PLANNING DEPARTMENT  
STAFF REPORT  
Addendum**

February 13, 2018

**PLANNING ACTION:** PA-2017-01911

**OWNER/APPLICANT:** Plexis Healthcare Systems Inc./Jorge Yant

**LOCATION:** 181 A St.

**ZONE DESIGNATION:** E-1

**COMP. PLAN DESIGNATION:** Employment

**ORDINANCE REFERENCES:**

(See also [http://www.ashland.or.us/SIB/files/AMC\\_Chpt\\_18\\_current.pdf](http://www.ashland.or.us/SIB/files/AMC_Chpt_18_current.pdf) )

18.2.3.190 Marijuana-Related Uses  
18.5.4 Conditional Use Permits

**APPLICATION DEEMED COMPLETE ON:** 11/3/2017

**REQUEST:** A request for a Conditional Use Permit for marijuana retail sales located at 181 A St.

**I. Relevant Facts**

**1) Background - History of Application**

The Planning Commission held a public hearing on December 12, 2017 to review the application. During the proceedings, the applicant requested a continuance to address the issues raised in the staff report and granted a 30-day extension to 120-day review period required by Oregon Revised Statute (ORS) 227.178. As a result, the Commission continued the public hearing to the January 23, 2018 meeting.

Subsequent to the December 12 meeting, the applicant submitted a letter requesting to move the public hearing to the February 13, 2018 meeting to allow adequate time to collect traffic field data and complete the transportation analysis. In addition, the applicant withdrew the marijuana production (indoor grow) component of the application and granted a 60-day extension to the 120-day review period. The 60-day extension moves the required final decision date to May 2, 2018.

A notice of complete application was mailed and posted in November 2017. The City received a variety of written comments about the application during the comment period and the application was scheduled for the December 12, 2017 public hearing.

## **2) Detailed Description of the Revised Proposal**

The applicant withdrew the marijuana production (indoor grow) component of the application. As a result, the revised proposal is limited to a marijuana retail sales use located at 181 A St. Marijuana retail sales that are located on streets that are not classified as a boulevard and are located 200 feet or more from a residential zone are a conditional use. A Street is classified as a neighborhood collector. As a result, the proposal to locate marijuana retail sales at 181 A St. requires a Conditional Use Permit.

According to the application, the building is 16,225 square feet in size. The proposed retail sales area is 1,850 square feet in size, which is approximately 11 percent of the total building area. The findings of fact included in the application state that the remainder of the building is currently vacant and there is no new use currently proposed.

The parking area for the site is located to the southeast of the building and contains 43 parking spaces. Oak St. is designated as an avenue and A Street is designated as a neighborhood collector. Sidewalks are in place along the property frontage and both streets are shared facilities for automobiles and bicycles.

The proposal does not involve any changes to the exterior of the building or site.

## **II. Project Impact**

As discussed in the previous staff report, the building was repurposed and remodeled beginning in 1999 from an industrial use to the A St. Plaza, nightclub and subsequent office use. The proposal doesn't involve additions to the existing structure, changes to the exterior of the building or changes to the site or parking area. During the past 19 years, City facilities for water, sewer, electricity, urban storm drainage, and transportation have been in place to serve the building and previously approved uses. The existing building and site meet the requirements for the E-1 zone.

The primary issues are those raised at the December 12, 2017 public hearing including the generation of traffic by the proposed marijuana retail sales establishment and the method for measuring the required 200 or more feet from a residential zone.

### **1) Traffic Impacts**

The approval criteria for a Conditional Use Permit require that adequate transportation can and will be provided to the subject property. In addition, the approval criteria involve an evaluation of the generation of traffic in the impact area in comparison to the target use of the E-1 zone. The impact area is shown in Exhibit

9 of the original application that was reviewed at the December 12, 2017 Planning Commission meeting.

Previously, staff raised three issues regarding traffic impacts: a) whether the application demonstrates that the additional traffic generated by the proposed marijuana retail sales use will have no greater adverse material effect on the livability of the impact area when compared to the target use of a general office, b) the impact of the additional vehicle trips on the performance of the nearby intersections, pedestrian travel, pedestrian crossings and safety, and bicycle safety, and c) addressing traffic impacts throughout the day in addition to evaluating the p.m. peak hour between 4 and 6 p.m.

At the time of writing, the Public Works Department was reviewing the revised submittals.

*a. Target Use Comparison*

The applicant's findings evaluate the traffic impacts based on a comparison of the traffic generated by the 1,850 square foot space used as marijuana retail sales and the same size space used as a general office. The trip generation analysis submitted with the original application estimates that a marijuana dispensaries create 28.2 trips for every 1,000 square feet of floor area during the p.m. peak hour. In comparison, the trip generation analysis used a rate of 1.49 to 1.74 trips for every 1,000 square feet of office floor area during the p.m. peak hour.

The application asserts that the proposed marijuana retail sales use generates on average one additional car per intersection movement at nearby intersections every 6 – 12 minutes in the p.m. peak hour compared to an office use of the same space. The revised application also indicates that the A St./Oak St./VanNess Ave. intersection will not have operational or safety concerns and the project traffic volumes are within the range typical for the intersection. In terms of street volume, the findings state that there will be about a five percent increase in traffic volume on A St. to the east and west of the proposed location. The application asserts that the increase “is too small to cause significant impacts on livability from a traffic change standpoint.”

The approval criteria for a **Conditional Use Permit** outline the requirements for the target use comparison in AMC 18.5.4.050.A as follows.

3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.
  - a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in

pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.

- c. Architectural compatibility with the impact area.
- d. Air quality, including the generation of dust, odors, or other environmental pollutants.
- e. Generation of noise, light, and glare.
- f. The development of adjacent properties as envisioned in the Comprehensive Plan.
- g. Other factors found to be relevant by the approval authority for review of the proposed use.

Because the property is located in the Detail Site Review Overlay, the target use in the E-1 zone is a general office use developed at an intensity of .50 floor to area ratio. The floor-area ratio or FAR is defined in AMC 18.6.1.030 as “The gross floor area of all building on a lot divided by the lot area.” In this case, the site area is 40,738 square feet. As a result, the target use of the site is a general office building that is half of the size of the lot or 20,369 square feet in size.

***b. Intersections, Pedestrian and Bicycle Safety***

The revised application includes an intersection evaluation (Exhibit 12 in the revised application) that is limited to the intersection of A St./Oak St./VanNess Ave. The engineering evaluation determined that the traffic increase from the proposed marijuana retail sales use “will not create operational or queuing concerns at the intersection.” The report recommends three changes to the area of the intersection to improve safety – lighting the crosswalk, centerline yellow striping and removal of a ramp area on the north side of the building to discourage pedestrian movements.

***c. Daily Traffic***

The revised application doesn’t address the issue of the impact of cumulative daily trips. The Public Works Department previously suggested that amount of traffic generated throughout the day by the proposed uses should be reviewed and considered in addition to the p.m. peak hour analysis. The Trip Generation Analysis included in the application reviews the change in vehicle trips during the p.m. peak hour (4 to 6 p.m.). The concern is the amount of vehicle trips generated throughout the day and the cumulative impact on transportation system performance, particularly as it relates to safety and pedestrian and bicycle travel.

***d. Summary***

The revised application addresses some but not all of the previously raised issues regarding traffic impacts. According to the original application materials, the number of vehicle trips generated by a marijuana dispensary is significantly higher than the target use of general office. In terms of making the target use comparison, the Conditional Use Approval criteria list seven factors that are to be evaluated when

assessing the material effect on the livability of the impact area including, “f. The development of adjacent properties as envisioned in the Comprehensive Plan.”

The Planning Commission has the ability to consider whether traffic from the proposed marijuana retail sales use will reduce transportation capacity for future permitted uses and development in the vicinity. For example, most of the square footage of the building on the subject property is vacant and could house a range of uses that would be permitted outright, or there are other properties in the vicinity that could potential redevelop to house future permitted uses. The application and engineering analysis appear to be focused on current conditions and the performance of one intersection. At a basic level, intersections and related transportation systems can accommodate a certain level of vehicle traffic. As a result, the vehicle capacity or adequacy of a transportation system is a finite resource that if used now, may not be available for future uses and development.

In the written comments and testimony received at the first public hearing, the area was described as a walkable neighborhood and shopping area that residents regularly use and travel to and through on foot. The sidewalk on A St. is a relatively narrow curbside sidewalk and bicycles are required to share the travel lanes with motorized vehicles. Traffic impacts to pedestrian and bicycle travel are usually focused on safety at street crossings and the walkability of an area isn't typically addressed. Again, the issue of whether an increase in vehicle traffic from the proposed marijuana retail sales use creates a greater adverse material effect on pedestrian and bicycle travel in the area compared to a general office as the target use is a factor that could be considered under the Conditional Use Permit approval criteria.

It isn't clear from the revised application whether the intersection evaluation includes the remaining 14,375 square feet of the building in the assessment of the A St./Oak St./VanNess Ave. intersection volumes, operations and safety. Additionally, while the revised application says the proposed marijuana retail sales use will not create operational or queuing concerns, the evaluation doesn't provide an assessment or measure of the performance of the A St./Oak St./VanNess Ave. intersection currently or in the future. This information can be important in assessing how the intersection is performing now and at what point in the future, it may begin to experience problems. Finally, the revised application doesn't address two of the three intersections located in the impact area – A St./Pioneer and A St./First St.

As mentioned above, the amount of traffic generated throughout the day isn't covered in the revised submittals.

**Issue:** The application appears to address a limited set of transportation issues, specifically increases in traffic on A St. and operations of the A St./Oak St./VanNess Ave. intersection. In comparison, the Conditional Use Permit approval criteria require a somewhat broader assessment, both in terms of a larger geographic area and of the type and range of impacts.

According to the application, the number of vehicle trips created by a marijuana dispensary during the p.m. peak hour (28.2 trips/1,000 square feet) is projected to be significantly higher than the target use of a general office (1.49 – 1.74 trips/1,000 square feet). The Conditional Use Permit approval criteria allow the consideration of whether traffic from the proposed marijuana retail sales use will reduce transportation capacity for future permitted uses and development in the vicinity, as well as potentially negatively impact pedestrian and bicycle travel.

The revised application doesn't address the impact of the daily traffic generated by the marijuana retail sales establishment, or the traffic impact to other nearby intersections. In addition, it isn't clear whether the intersection evaluation includes the remaining 14,375 square feet of the building in the assessment of the A St./Oak St./VanNess Ave. intersection volumes, operations and safety. The revised application also doesn't include an assessment or measure of the performance of the A St./Oak St./VanNess Ave. intersection.

## 2) Measuring 200 feet from Residential Zone

The special use standards for **Marijuana-Related Businesses** include the requirements for the 200-foot buffer from residential zones in AMC 18.2.3.190.B as follows.

### B. Marijuana-Related Businesses.

3. Marijuana Retail Sales. In addition to the standards described above in subsection 18.2.3.190.B.1, marijuana retail sales shall meet the following requirements. See definition of marijuana retail sales in part 18.6.

a. *Location*.

ii. Marijuana retail sales, except as allowed above in subsection 18.2.3.190.B.3.a.i, must be located 200 feet or more from a residential zone and are subject to a Conditional Use Permit under chapter 18.5.4.

The nearest residential zone is situated on the west side of Oak St. According to the application, the proposed marijuana retail sales is 230 feet to the residential zone measured from the closest point of the interior of the building.

The revised application includes a letter from Mark S. Bartholomew regarding the measurement of the 200-foot buffer requirement. The letter argues that the required 200 feet or more from a residential zone is focused on the use and therefore, the

measurement should be from the portion of a building where the marijuana retail business occurs to the nearest edge of a residential zone. At the time of writing, the Legal Department was reviewing the revised application materials.

The floorplan included in the revised application submittals (Exhibit 10b) shows an interior door connecting the proposed marijuana retail sales establishment to the western portion of the building. It appears that there is pedestrian access from the Oak St. end of the building through what appears to be a main hall or corridor to the proposed marijuana retail sales store. If this is the case, then presumably a visitor to or employee of the proposed marijuana retail sales establishment could enter from Oak St. at the far western end of the building. The question then becomes whether the required buffer from the residential zone should be measured from the west end of the building. In addition, the interior door to the proposed marijuana retail establishment may be necessary to reach other building facilities (e.g., bathrooms) or to meet a building code (e.g., emergency routes).

The Oak St. end of the building is approximately 24 feet from the residential zone to the west. If the Planning Commission agrees with the attorney's letter and the application of the 200-foot requirement to the marijuana retail sales use, it appears the interior door connecting the proposed marijuana retail establishment to the western portion of the building needs to be eliminated to meet the buffer requirement. A condition is suggested at the end of this report requiring the interior building access to be eliminated.

**Issues:**

The special use standards for marijuana-related businesses in AMC 18.2.3.190.B.a.ii require marijuana retail sales to be located 200 feet or more from a residential zone.

Based on the floorplan submitted with the location, the proposed marijuana retail sales establishment does not appear to meet the 200-foot requirement because of an interior door linking the proposed store to the remainder of the building. It appears a visitor to or employee of the proposed marijuana retail sales establishment could enter from Oak St. at the far western end of the building and travel through a hall/corridor to the proposed store. The west end of the building is approximately 24 feet from the residential zone to the west. A condition is suggested at the end of this report requiring the interior building access to be eliminated.

**III. Procedural - Required Burden of Proof**

The special use standards for **Marijuana-Related Businesses** are detailed in AMC 18.2.3.190.B as follows:

**B. Marijuana-Related Businesses.**

1. Marijuana-related businesses may require Site Design Review under chapter 18.5.2 or a Conditional Use Permit under chapter 18.5.4. See Table 18.2.2.030 –

Uses Allowed by Zone for zones where marijuana-related businesses are allowed. See definition of marijuana-related businesses in part 18.6. Marijuana-related businesses shall meet all of the following requirements.

- a. The business must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor marijuana production, cultivation, and storage of merchandise, raw materials, or other material associated with the business are prohibited.
- b. Any modifications to the subject site or exterior of a building housing the business must be consistent with the Site Design Use Standards, and obtain Site Design Review approval if required by section 18.5.2.020. Security bars or grates on windows and doors are prohibited.
- c. The business must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the business' exterior refuse containers.
- d. *Light and Glare.* Shield lighting systems and use window coverings to confine light and glare from light systems associated with indoor cultivation so as to confine light and glare to the interior of the structure. Grow light systems within a greenhouse are prohibited.
- e. *Building Code.* Any structure, accessory structure, electrical service, plumbing, or mechanical equipment (e.g., lighting, fans, heating and cooling systems) associated with a business shall satisfy the Building Code requirements and obtain all required building permits prior to installation.
- f. *Methodology for Measuring Separation Requirements.* The following methodology shall be used for marijuana related- businesses that are required to be separated by a specific distance (i.e., marijuana production facility, marijuana wholesale facility, marijuana retail outlet). For the purposes of determining the distance between a marijuana related-business and another marijuana-related business, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of an approved marijuana related- business to the closest point anywhere on the premises of a proposed marijuana-related business of the same type. If any portion of the premises of a proposed marijuana related-business is within 1,000 feet of an approved marijuana related business of the same type, it may not be approved. For the purpose of this section, premises is all public and private enclosed areas within a building at the location that are used in the business operation, including offices, kitchens, rest rooms, and storerooms.
- g. The property owner shall record a declaration which waives any claim or right to hold the City liable for damages they or a tenant may suffer from state or federal enforcement actions for activities the City permits as a result of its approval of the proposed use or development once such approval is granted. Furthermore, the owner and tenant agrees not to unreasonably disobey the City's order to halt or suspend business if state or federal authorities order or otherwise subject the City to enforcement to comply with laws in contradiction to the continued operations of the business as permitted under section 18.2.3.190.



The approval criteria for a **Conditional Use Permit** are described in AMC 18.5.4.050.A as follows.

1. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.
2. That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.
3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.
  - a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
  - c. Architectural compatibility with the impact area.
  - d. Air quality, including the generation of dust, odors, or other environmental pollutants.
  - e. Generation of noise, light, and glare.
  - f. The development of adjacent properties as envisioned in the Comprehensive Plan.
  - g. Other factors found to be relevant by the approval authority for review of the proposed use.
4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.
5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
  - f. *E-1*. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.

#### **IV. Conclusions and Recommendations**

There continue to be two key considerations for the Planning Commission: 1) the comparison of the generation of traffic from the proposed marijuana retail sales establishment and the target use of general office and whether there is a greater adverse material effect on the

livability of the impact area, and 2) the manner in which the required 200 feet or more from the nearest residential zone to the proposed marijuana retail sales establishment is applied.

As discussed above, the revised application submittals appear to address a limited set of transportation issues, specifically increases in traffic on A St. and operations of the A St./Oak St./VanNess Ave. intersection. In comparison, the Conditional Use Permit approval criteria require a somewhat broader assessment, both in terms of a larger geographic area and of the type and range of impacts.

The proposed marijuana retail sales establishment at 1,850 square feet is modest in size. However, marijuana dispensaries generate 18 times more vehicle trips during the p.m. peak hour (4 – 6 p.m.) than the target use of a general office according to the application materials. The effect of the proposal on development of adjacent properties is as a factor that can be considered in the Conditional Use Permit approval criteria. Given that capacity of any transportation system to accommodate vehicle traffic is limited, staff believes an important issue to consider is whether traffic from the proposed marijuana retail sales use will reduce transportation capacity for future permitted uses and development in the vicinity, as well as potentially create an adverse material effect on pedestrian and bicycle travel.

The revised application doesn't address the impact of the daily traffic generated by the marijuana retail sales establishment, or the traffic impact to other nearby intersections. In addition, it isn't clear whether the intersection evaluation includes the remaining 14,375 square feet of the building in the assessment of the A St./Oak St./VanNess Ave. intersection volumes, operations and safety. The revised application also doesn't include an assessment or measure of the performance of the A St./Oak St./VanNess Ave. intersection.

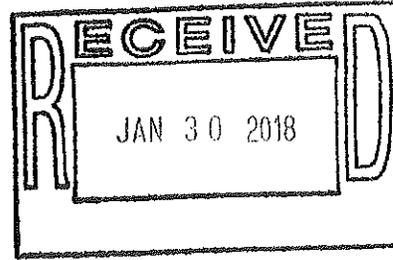
The floorplan included in the revised application submittals shows an interior door connecting the proposed marijuana retail sales establishment to the western portion of the building. It appears a visitor to or employee of the proposed marijuana retail sales establishment could enter from Oak St. at the far western end of the building and travel through a hall/corridor to the proposed store. The west end of the building is approximately 24 feet from the residential zone to the west. Condition 2.a below is suggested and requires the interior building access to be eliminated.

Should the Commission decide to approve the application, staff recommends that the following conditions be attached to the proposal:

1. That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.
2. That the building permit submittals shall include:
  - a. The interior door connecting the approved marijuana retail sales establishment with the remainder of the building shall be eliminated. The building permit submittals shall verify that the marijuana retail sales establishment meets all applicable building codes without the interior access/egress.

- b. An air filtration and ventilation system that meets the requirements of AMC 6.50.060.F shall be reviewed and approved by the Ashland Building and Planning Divisions.
  - c. Demonstrate compliance with the use standards in AMC 18.2.3.190.B.d including but not limited to secure disposal, no outdoor storage and shielding lighting systems to confine light and glare from light systems associated with indoor cultivation.
3. That prior to the issuance of a building permit:
- a. That the property owner shall record a declaration which waives any claim or right to hold the City liable for damages they or a tenant may suffer from state or federal enforcement actions for activities the City permits as a result of its approval of the proposed use or development once such approval is granted in accordance with AMC 18.2.3.190.B.1.g.
4. That prior to the issuance of a certificate of occupancy:
- a. That verification that the marijuana-related business has an approved license or registration from the State of Oregon and meet all applicable Oregon Revised Statutes and Oregon Administrative Rules.in accordance with AMC 18.2.3.190.B.1.h.
  - b. That City of Ashland business licenses are approved for the marijuana retail use. The marijuana retail sales use shall meet all requirements of AMC 6.50 including but not limited to operation hours no earlier than 9:00 a.m. or later than 7:00 p.m.
  - c. That a sign permit in accordance with AMC 18.4.7 shall be obtained prior to the installation of any signage that is visible from the public right-of-way.
  - d. That any dead or dying landscaping in and surrounding the parking lot shall be replaced and irrigated in accordance with the originally approved landscape plan.
  - e. That a plan for the improvements to the A St./Oak St./VanNess Ave. intersection described in the intersection evaluation by Sandow Engineering dated January 16, 2018 shall be submitted and approved by Ashland Planning and Engineering Divisions and installed according to the approved plan.

City Council & Hon. John Stromberg, Mayor  
20 E. Main St.  
Ashland OR 97520



Re: Plexis dispensary retail business on A Street

What a disaster this would be!

Do, PLEASE, reject this very ill-conceived idea. If you are not already completely familiar with A Street during busy retail hours, in any months but January and February (when there are no tourists and a significant number of affluent retiree residents decamp for warmer climes), please consult with me and others who are familiar with this street.

The Railroad District is anchored by A Street, and several businesses that are a key part of my life reside here:

- Ace Hardware, which I can't live without, literally!
- My vet – A Street Vet
- The Grange, which my 7 animals can't live without.
- A Street Printer, the best in town
- My bank is best approached from A during tourist season. Umpqua is closing the convenient (to us) uptown office and only has this one office after March.
- The Co-Op, which generates a lot of traffic.

Now you know what A Street is like.

- We need on-street parking so don't even THINK of trying to solve this problem by restricting on-street parking, unless you WANT to run all these businesses out of town and into the tax coffers of Phoenix, Talent and Medford. Uh, no.
- With parking on both sides of the street – which we need! – **A Street can only accommodate ONE traffic lane. We Ashlanders are a polite and courteous bunch, in general, and people wait and let you go, and then someone else waits, etc.**

**Add more traffic and the courteous system breaks down. You can't go one at the time when there is a continuous stream of traffic trying to get by in both directions. We'll have chaos, followed by a lot of**

**business going elsewhere, followed by the Grange, Ace, etc. – LONG-time businesses that we need here in Ashland!!! – going elsewhere. They will have to.**

- You can allocate \$\$ to widen A Street.
- You can extract Plexis \$\$ to widen the road as a price of putting his busy retail business right smack in the Railroad District, which isn't set up for a high level of traffic.

Now, you KNOW Plexis' CEO will do everything he possibly can to get as much traffic in there as possible. And sure he'll tell you that he has a parking lot. But he WON'T address how people get to his parking lot! Most people will try to get there without traversing A Street, if they are locals. Will this biz only attract locals? Heck, no.

Does the tax revenue sound attractive?

Subtract the projected tax revenue from all the businesses that will pack up and leave – so local citizens have to go to Phoenix for hardware. Does the Excel spreadsheet still show black? No, it doesn't. And that does not even take into account the bank, the Co-Op and all the other businesses one block away from the chaos on A Street.

It's not just a huge retail shop, of course. It is a huge cannabis shop. Where customers will sample the wares before they get into their car and drive home. Or will arrive, not entirely sober. So you not only have hell on A Street, but stoned hell on A Street.

It doesn't make sense. He needs to rent it as office space, for workers who will come to work, park their cars and stay off A Street during prime retail hours on a narrow street that cannot accommodate a huge influx of midday retail traffic.

He wants the higher profits of a retail shop? Too bad. He doesn't get to trash 5 long-time businesses – and our Ashland lives – so Mr. Millionaire can get richer.

Do the Right Thing.

Sincerely,

Victoria C. Leo

Ashland homeowner/taxpayer

1/27/18



Richard W. Baird  
350 Mobile Dr.  
Ashland, OR 97520

Heri John Stromberg, Mayor  
City Council  
20 Main St  
Ashland OR 97520

9752031814 0009



December 28, 2017

Ashland Planning Commission  
Planning Action: 2017 - 01911  
181 A Street

**RECEIVED**

DEC 29 2017

**City Of Ashland**

I attended the 12/12/17 public hearing on this planning action. I came away with my opposition to this proposal strongly reinforced by two things I learned. One was that there was no criteria for determining how the odor issue could be monitored except the very subjective "neighborhood livability". I agree that this would be an enforcement nightmare. And two, the fact that at the hearing and in the letters submitted there was no one supporting this Conditional Use Permit.

Since the public hearing I have learned two things that reconfirm my opposition. I spoke to a man who operates a cannabis dispensary and he said the majority of his business happens between 4 and 6 P.M. when people get off work. I also looked at the Planning approval of a large commercial development at the corner of Van Ness and Water Streets. I'm convinced these two situations would exacerbate an already troublesome intersection at A and Oak Streets. Having to exit my driveway at this intersection I fear more traffic here when (4 to 6 P.M) already existing area businesses are experiencing high volume.

Barry Peckham  
315 Oak Street  
Ashland, OR.  
(541) 482-2073



**CSA Planning, Ltd**

4497 Brownridge, Suite 101  
Medford, OR 97504

Telephone 541.779.0569  
Fax 541.779.0114

Jay@CSAplanning.net

January 27, 2018

City of Ashland Planning Commission  
c/o Maria Harris, Planning Manager  
51 Winburn Way  
Ashland, OR 97520

**RE: *Revised Application and Supplemental Evidence***

Dear Mr. Chair and fellow Commissioners:

Please find under cover of this letter an updated Findings of Fact and Conclusions of Law document. As the Commission is aware, the Applicant withdrew the marijuana production component of the application. The updated document is intended to provide a "clean" version of findings for the Commission's consideration that reflects the current request. The document has also been provided in a "track changes" format so that the Staff and the Commission can easily identify the changes to the Findings of Fact and Conclusions of Law.

Additional evidence is provided with this transmittal. Specifically, a legal opinion from a qualified land use attorney concerning the proper application of the 200-foot separation standard from a residential zone and some additional transportation analysis information. These are Applicant's Exhibit 12 and Exhibit 13. There is also a revised floor plan, Exhibit 10b, that shows the production area has been removed from the project.

Based upon the record and testimony to-date and the changes made to the application in response to that testimony, the Applicant believes the burden of proof for all relevant criteria has been shown to be satisfied. On this basis, the Applicant believes the application should be approved.

Very Truly Yours,

CSA Planning, Ltd.

A handwritten signature in blue ink, appearing to read 'Jay Harland', is written over a horizontal line.

Jay Harland  
President

cc. File

**RECEIVED**

**JAN 29 2018**

BEFORE THE CITY OF ASHLAND PLANNING COMMISSION

FOR THE CITY OF ASHLAND

JACKSON COUNTY, OREGON

IN THE MATTER OF A CONDITIONAL USE )  
PERMIT FOR RECREATIONAL )  
MARIJUANA RETAIL SALES AND IN AN )  
EXISTING BUILDING. THE PROJECT )  
INVOLVES AN INTERIOR REMODEL OF A )  
PORTION OF AN EXISTING BUILDING AND )  
UTILIZES AN EXISTING PARKING LOT ON )  
PRIVATE LAND. THE RETAIL PROJECT IS )  
LOCATED AT 181 A STREET IN THE CITY )  
OF ASHLAND, OREGON. )

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
Applicant's Exhibit 2

Applicant: Jorge Yant )  
Owner: Plexis Healthcare Systems, Inc. )  
Agent of Record: CSA Planning, Ltd. )

I

SCOPE AND NATURE OF THE APPLICATION

The Applicant proposes a Recreational Marijuana Retail Sales facility within an existing building. The Recreational Marijuana Retail Sales use is a conditional use in the E-1 zone where it is not located on a Boulevard. The remaining portion of the building is currently vacant and no new uses for that portion of the building are proposed at this time; the most recent use of that portion of the building was for professional offices.

RECEIVED

JAN 29 2018



## II EVIDENCE SUBMITTED WITH CONSOLIATED APPLICATION

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The following evidence is submitted in support of this Conditional Use Permit and Site Design Review:

- Exhibit 1.** Signed and Completed Application Forms and Authorization from the current property owners Plexis Healthcare Systems, Inc. and the Applicant Jorge Yant
- Exhibit 2.** The proposed findings of fact and conclusions of law (this document) which demonstrates how this Consolidated Land Use Application complies with the relevant substantive criteria of the City of Ashland, with revisions dated January 27, 2018 that reflects withdrawal of the production use part of the original application per the letter dated December 21, 2017.
- Exhibit 3.** Vicinity Map
- Exhibit 4.** Jackson County Assessor plat map 39S-1E-09BA which contains and depicts the subject property
- Exhibit 5.** Current City of Ashland Comprehensive Plan Map depicting the subject property
- Exhibit 6.** City of Ashland Marijuana Eligibility Maps
  - a) Area Map
  - b) Detail Map
- Exhibit 7.** Current City of Ashland Zoning Map on Aerial depicting the subject property
- Exhibit 8.** Overlays Map depicting the subject property
- Exhibit 9.** 200-Foot Impact Area Map of Recreational Retail Conditional Use
- Exhibit 10.** Site Plans
  - a) 1999 & 2002 Site Plan Design Materials
  - b) Project Floor Plan (production area removed)
  - c) Existing Elevation Photos
- Exhibit 11.** Transportation Impact Analysis and Parking Demand Analysis prepared by Sandow Engineering
- Exhibit 12.** Transportation Impact Analysis Addendum (Intersection Evaluation) prepared by Sandow Engineering
- Exhibit 13.** Legal Opinion Letter from Mark Bartholomew, Attorney at Law with Hornecker Cowling LLP.

III

**APPLICABLE SUBSTANTIVE CRITERIA**

The criteria under which the consolidated land-use application must be reviewed are laid forth in the Ashland Municipal Code Chapter 18. The relevant approval criteria are recited verbatim below:

**PROCEDURAL CRITERIA**

**18.5.1.010 Purpose and Applicability**

- A. Purpose. This chapter establishes procedures to initiate and make final decisions on planning actions under the Land Use Ordinance (“this ordinance”), pursuant to City policy and state law.
- B. Applicability of Review Procedures. All planning actions shall be subject to processing by one of the following procedures summarized in subsections 1 - 4, below, and as designated in Table 18.5.1.010. Building permits and other approvals, including approvals from other agencies such as the state department of transportation or a natural resource regulatory agency, may be required. Failure to receive notice of any such requirement does not waive that requirement or invalidate any planning action under this ordinance.
  - 1. Ministerial Action (Staff Advisor Decision). The Staff Advisor makes ministerial decisions by applying City standards and criteria that do not require the use of substantial discretion (e.g., fence, sign and home occupation permits). A public notice and public hearing are not required for Ministerial decisions. Procedures for Ministerial actions are contained in section 18.5.1.040.
  - 2. Type I Procedure (Administrative Decision With Notice). Type I decisions are made by the Staff Advisor with public notice and an opportunity for appeal to the Planning Commission. Alternatively the Staff Advisor may refer a Type I application to the Commission for its review and decision in a public meeting. Procedures for Type I actions are contained in section 18.5.1.050.
  - 3. Type II Procedure (Quasi-Judicial Review/Public Hearing Review). Type II decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. Applications involving zoning map amendments consistent with the Comprehensive Plan map and minor map amendments or corrections are subject to quasi-judicial review under the Type II procedure. Quasi-judicial decisions involve discretion but implement policy. Procedures for Type II actions are contained in section 18.5.1.060.
  - 4. Type III Procedure (Legislative Decision). The Type III procedure applies to the creation, revision, or large-scale implementation of public policy (e.g., adoption of regulations, zone changes, comprehensive plan amendments, annexations). Type III reviews are considered by the Planning Commission, who makes a recommendation to City Council. The Council makes the final decision on a legislative proposal through the enactment of an ordinance.

<b>Planning Actions</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Conditional Use Permit	Type I or II	Section 18.5.4
Site Design Review	Type I or II	Chapter 18.5.2

**18.5.1.020 Determination of Review Procedure**

Where Table 18.5.1.010 designates more than one possible review procedure, e.g., Type I or Type II, the applicable review procedure shall be based on the criteria contained in the ordinance chapters or sections referenced in the table.



**18.5.1.050 Type I Procedure (Administrative Decision with Notice)**

Type I decisions are made by the Staff Advisor, following public notice and a public comment period. Type I decisions provide an opportunity for appeal to the Planning Commission.

C. Decision.

1. At the conclusion of the comment period, the Staff Advisor shall review the comments received and prepare a decision approving, approving with conditions, or denying the application based on the applicable ordinance criteria. The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period. Alternatively, the Staff Advisor may transmit written comments received along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.
2. Where the Staff Advisor refers a Type I application to the Planning Commission, the Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable ordinance criteria. The Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 120-day period prescribed under State law (ORS 227.178) and as described in subsection 18.5.1.090.B of this ordinance.

**SUBSTANTIVE CRITERIA**

**Special Use Standards**

18.2.3.190 Marijuana-Related Uses

B. Marijuana-Related Businesses..

1. Marijuana-related businesses may require Site Design Review under chapter [18.5.2](#) or a Conditional Use Permit under chapter [18.5.4](#). See Table [18.2.2.030](#) – Uses Allowed by Zone for zones where marijuana-related businesses are allowed. See definition of marijuana-related businesses in part [18.6](#). Marijuana-related businesses shall meet all of the following requirements.
  - a. The business must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor marijuana production, cultivation, and storage of merchandise, raw materials, or other material associated with the business are prohibited.
  - b. Any modifications to the subject site or exterior of a building housing the business must be consistent with the Site Design Use Standards, and obtain Site Design Review approval if required by section [18.5.2.020](#). Security bars or grates on windows and doors are prohibited.
  - c. The business must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the business' exterior refuse containers.
  - d. Light and Glare. Shield lighting systems and use window coverings to confine light and glare from light systems associated with indoor cultivation so as to confine light and glare to the interior of the structure. Grow light systems within a greenhouse are prohibited.
  - e. Building Code. Any structure, accessory structure, electrical service, plumbing, or mechanical equipment (e.g., lighting, fans, heating and cooling systems) associated with a business shall satisfy the Building Code requirements and obtain all required building permits prior to installation.
  - f. Methodology for Measuring Separation Requirements. The following methodology shall be used for marijuana related- businesses that are required to be separated by a specific distance (i.e., marijuana production facility, marijuana wholesale facility, marijuana retail outlet). For the purposes of determining the distance between a marijuana related-business and another marijuana-related business, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of an approved marijuana related- business to the closest point anywhere on the premises of a proposed marijuana-related business of the same type. If any portion of the premises of a proposed marijuana related-business is within 1,000 feet of an approved marijuana related business of the same type, it may not be approved. For the purpose of this section, premises is all public and



with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.

- a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
  - c. Architectural compatibility with the impact area.
  - d. Air quality, including the generation of dust, odors, or other environmental pollutants.
  - e. Generation of noise, light, and glare.
  - f. The development of adjacent properties as envisioned in the Comprehensive Plan.
  - g. Other factors found to be relevant by the approval authority for review of the proposed use.
4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.
  5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
    - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.

IV

FINDINGS OF FACT

The City of Ashland reaches the following facts and finds them to be true with respect to this matter:

1. **Property Location:** The subject property is located on the east side of A Street between Oak and 1<sup>st</sup> Street and is bordered to the east by the CORP Railroad right-of-way. Tolman Creek Road and Washington Street. The property is south of Highway 66 (Ashland Street). The situs address is 640 Tolman Creek Road in Ashland, Oregon.
2. **Ownership:** Tax Lot 14900 and Tax Lot 14600 are both owned in fee simple by Plexis Healthcare Systems, Inc.
3. **Property Description and Size:** The subject properties are identified as Tax Lots 14900 and Tax Lot 14600 in Township 39 South, Range 1 East, Section 09BA in the Assessor's records of Jackson County. Tax Lot 14900 is approximately 0.49 acres and Tax Lot 14600 is approximately 0.43 acres. The prior "A Street Marketplace" project resulted in the building being demised into a number of "suites" which are assigned separate addresses. These addresses range from 101 A Street to 195 A Street with the lowest numbers at the west end of the building and the largest numbers at the east end of the building; the land use application concerns the 181 A Street Address for the proposed retail.
4. **Existing Land Use and Prior Approvals:** Tax Lot 14900 contains the "Ashland Fruit & Produce Association Building later known as the Oak Street Tank & Steel Building". Most of this building has existed in this location since 1912. In 1999, the site changed in use from the prior steel tank manufacturing business to the "A Street Marketplace" use. The primary use was retail. The conversion of the building involved an internal and external remodel of the building as well as the construction of a new parking lot. That project went through full Site Design Review and was approved through Planning File No. 99-108.  
  
Following Site Design Review and use as the "A Street Marketplace", the property was acquired by Plexis Healthcare Systems, Incorporated. Plexis eventually converted the entire building to office space with some employee recreation space in the metal building on the east end of Tax Lot 14900. Plexis is now located in Medford and the property is currently vacant.
5. **Comprehensive Plan Map:** The Comprehensive Plan Map designation for the subject property is Employment.
6. **Existing Zoning:** The zoning on the properties is uniform and they are designated E-1. The properties are located in the Detail Site Review Zone, the National Historic District overlay and the Railroad District Overlay.

**7. Surrounding Land Uses Description:** The aerial/zoning map, Exhibit 7, accurately depicts the pattern of land partitioning and development in the surrounding area. *See also*, Exhibits 3 and 4. The land uses which presently surround the property are:

**West:** Immediately to the west of the proposed retail marijuana use is the remainder of Oak Street Tank and Steel building that is currently vacant and for which no new use is currently proposed. Beyond this portion of the subject property, is Oak Street and further to the west are single-family dwellings. These residential lands are planned multi-family and are zoned R-2.

**South:** Immediately south of the subject properties across A Street is a large building with a collection of uses that are retail, offices and service in nature. Tenancy in this building is varied and has changed over the years with many smaller tenants within the larger building. This building consumes the block between Pioneer Street and Oak Street. To the east of Pioneer Street is a corrugated steel building attached to a split face block building. This building appears to house small retail tenants. Further to the southeast is the Ashland Food Co-Op building. These lands are all planned Employment and zoned E-1.

**East:** Land to the east is Ashland Hardware. This land is planned Employment and zoned E-1.

**North:** To the north is the Central Oregon and Pacific Railroad (CORP) Siskiyou line. Across the railroad to the north is Ashland Lumber and some vacant land. These lands are all planned Employment and zoned E-1.

**8. Essential Public Facilities (except streets):**

- a. **Water:** The existing building is served by municipal water. Water demands are not expected to increase to any meaningful degree for the proposed retail use when compared to prior uses of the building.
- b. **Sanitary Sewer:** The building is currently connected to sanitary sewer and no significant changes to sewerage are expected to be necessary to serve the retail.
- c. **Storm Drainage:** The site is currently served by municipal storm drainage. No changes to the site design are proposed that would alter the storm drainage conditions on the site.
- d. **Electricity:** The existing building has a number of large electrical services already installed. The proposed retail marijuana use will likely reduce the demand for electricity for that portion of the building when compared to the prior Plexis office use or will be comparable to the prior A Street Marketplace retail uses.

**9. Transportation Facility Analysis:**

- a. **Functional Classification and Standards Analysis:** The existing building is located at the corner of Oak Street and A Street. Oak Street is functionally classified as an Avenue which provides concentrated pedestrian, bicycle, and motor vehicle access from boulevards to neighborhoods and to neighborhood activity centers and is planned for traffic volumes from 3,000 to 10,000 ADT. A Street is functionally

classified as a Neighborhood Collector distributes traffic from boulevards or avenues to neighborhood streets and is planned for traffic volumes from 1,500 to 5,000 ADT.

- b. Trip Generation and Potential Impacts Analysis:** The Applicant engaged Sandow Engineering to evaluate potential transportation impacts from the proposed Marijuana Retail Facility Use, see Exhibit 11. The analysis indicates that trip generation will only be approximately 47 peak hour trips more than an office building use. Once these trips are distributed on the street network to and from the site, the potential additional traffic volumes are nominal when compared to existing traffic conditions<sup>1</sup>.

The planning staff report before the initial planning commission hearing in December requested additional transportation analysis information. The Applicant's traffic engineer, Kelly Sandow, produced a traffic impact analysis addendum in response to this request for additional information, see Exhibit 12. That analysis did not identify any operational concerns from the proposed retail marijuana use but did identify some safety issues at the intersection of Oak Street and A Street. The January 16<sup>th</sup> letter recommends three mitigation measures that include improved lighting at the crosswalk, centerline yellow striping, and removal of a concrete ramp and replacement with landscaping to discourage pedestrian movements in an undesirable location. The Applicant has no objection to these mitigation measures and will accept them as a condition of approval if the City imposes the same. With these mitigation measures, the expert opinion of Applicant's traffic engineer is that the project will represent a net benefit to the transportation system.

- c. Access:** The project proposes to use the existing parking lot access on A Street. The driveway is somewhat unusual because it exists right where the centerline of A Street jogs about 60 degrees to the south (if one were heading west to east). At the access location, the centerline of the driveway lines up with the centerline of A Street. While unusual, the geometry works well. The right-turn into the lot is made acute by the geometry but the only conflicting movement is the "left" into the parking lot which is readily visible to any northwest bound traffic on A Street looking to turn into the parking lot. The "left" into the parking lot physically involves going straight. Sight distance to northwest bound traffic is about 160 feet and the curve and relative narrowness of the street will keep northwest bound traffic moving slow so visibility to identify gaps for entry into the parking lot is good. For exiting traffic, there is a sight line down the sidewalk that provides about 130 feet of visibility to identify cars moving northwestbound that would conflict with outgoing movements. For left turns exiting the parking lot, sight distance is directly down A Street all the way to Oak.

## 10. Site Design Review Discussion and Analysis:

- a. Site Grading:** No grading of the site is proposed or required.

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<sup>1</sup> At the intersections nearest the site, additional volumes would be on the order of 4 to 6 cars per turning movement per hour. This can be conceptualized as one additional car in each turning movement every 6-12 minutes which is functionally imperceptible from daily traffic variations that normally occur in the peak hour due to a variety of factors.

- b. **Parking:** Applicant engaged Sandow Engineering to estimate parking demand for the proposed uses, see Exhibit 11. According to that analysis, the site is adequately parked to meet peak parking demands of retail use. No changes to the existing parking lot are proposed or necessary to serve the use.
  - c. **Loading:** The existing site plan does not depict a dedicated loading area. A dedicated loading area is not required for this use. Retail deliveries in small vehicles (UPS/FED-EX/etc.) can utilize standard parking spaces and or on-street parking in front of the building. On only rare occasions a larger semi loading need may occur. Use of the parking lot will be adequate and straightforward for semi-loading and unloading outside the retail hours of operation; applicant will stipulate to limiting semi deliveries between the hours of 6am and 9am.
  - d. **Elevations:** No changes to the building elevations approved through Planning File No. 99-108 are proposed or required (except for new signage that will comply with the City’s sign code and be obtained through a future sign permit ministerial action).
  - e. **Historic Context:** No changes to the historic context are expected to result from the proposed use. No external changes to the building are proposed and interior changes will not include structural changes or removal of any major historic building components. The building’s interior is a mix of modern and historic elements from the prior A Street Marketplace remodel and subsequent remodel for the Plexis Corporate headquarters.
  - f. **Landscaping and Tree Removal:** No existing landscaping is proposed to be changed and all trees are planned to be retained. New landscaping is proposed on the parkrow on the north side of the building to remove the concrete ramp and replace it with landscaping as transportation mitigation measure to discourage pedestrian crossings at this location.
- 11. State Licensing:** Applicant has state licenses pending for Recreational Marijuana Retail Location and an Indoor Recreational Marijuana License Tier 1 (less than 5000ksf) with the Oregon Liquor Control Commission (OLCC). The pending review has been issued the following permit numbers by OLCC:
- Retail-050-1008499FD7C

**12. Marijuana Special Uses Standards for Recreational Retail:**

- a. **Locational Analysis:** See Exhibits 6(a) and 6(b), which show the City’s Marijuana eligibility maps. The analysis indicates that the entrance to the recreational retail use will be approximately 270 feet from the nearest residential zone and the northwestern most portion of the interior of the recreational marijuana retail use will be approximately 230 feet from the nearest residential zone. In the original staff report prior to the December 12<sup>th</sup> hearing, the staff report raised the issue of code’s application of the 200-foot to something other than the specific area of the building that will be occupied by retail marijuana use. Applicant requested a legal opinion on

this issue from an attorney with expertise in land use related matters, Mark Bartholomew at HorneckerCowling LLP. Mr. Bartholomew provided a letter, see Exhibit 13, that analyzes this issue from a legal perspective. Mr. Bartholomew's opinion is that the proper application of the 200 foot separation standard from a residential zone is to the retail use itself and would not properly be applied to something like the building as a whole or the parcel boundary. Applicant agrees with this legal opinion and requests the Planning Commission apply the standard in a manner consistent with this legal opinion.

- b. **General Standards:** OLCC permit standards require secure disposal of all marijuana refuse and applicant will accept a condition of approval requiring such storage be located inside the building. The use is proposed in a permanent building and no modifications to the site or building exterior are proposed or required. No changes in exterior lighting are proposed or required. Building permits will be obtained for all the interior remodel work requiring permits. Applicant agrees and will stipulate to the liability waiver at ALOU 18.2.3.190(g).

**13. Livability Impacts Analysis (Delimited to Recreational Retail CUP Only):** The below evidence constitutes the testimony of Applicant's agent, CSA Planning Ltd., on potential impacts to livability associated with the proposed Recreational Retail Marijuana use<sup>2</sup>. The recreational retail marijuana use is proposed to have the following operating characteristics:

- **Hours of Operation:** The recreational retail facility is proposed to operate from 9am to 9pm seven days a week; this time is two hours less in the morning and one hour less in the evening than allowed by OLCC permit (7am-10PM). This is the time for public sales; Applicant herewith stipulates to limiting public sales during this time period if the same is made a condition of approval by the City of Ashland. Employees may arrive before or after public sales times.
- **Operating Requirements:** Sales and Operations will be conducted in a manner consistent with OLCC permitting requirements and the established operating rules for Recreational Marijuana Retail Facilities, see OAR 845-025. These operating regulations include requirements such as prohibiting sales to minors, prohibiting on-site consumption, requiring a security plan and implementation of the approved security plan, etc.

The impacts analysis testimony in this section is based upon the above described operating characteristics. The analysis compares the potential impacts in relation to the general office uses that would otherwise be allowed as the "target use" of the E-1 zone. The analysis is directed at the impact area which is a defined term in the Ashland Land Use Ordinance (ALUO) at section 18.6.1. The impact area is analyzed as the 200-foot notice area for the

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<sup>2</sup> CSA Planning Ltd. has over 35 years of land use planning experience in the State of Oregon. CSA principal Jay Harland has been involved in numerous land use proceedings in Oregon and has broad experience in all matters of real estate development in Oregon generally and Southern Oregon specifically.

project, see Exhibit 9 for a map depicting the notice area/impact area. The below Table details the general information applicable to properties in the impact area:

**Table 1**  
**Impact Area Property Details**  
 Source: CSA Planning Ltd. & Jackson County GIS

Map/Lot	Property Owner	Situs Address	Acreage	Zoning	Improvement Description	Assessor Real Mkt Improvement Value
391E09BA 14700	Spur Rail Property Owners Assoc. Inc.		0.56	E1-Res	None	\$0
391E09BA 1100	A Street Arts Building LLC	258 A Street	0.21	E1-Res	18,565 sq ft Comm. Bldg.	\$1,402,780
391E04CD 1200	Fellowship Inc	50 E Hersey St	3.42	E1-Res	2944 sq ft Church/Temple	\$3,325,450
391E09BA 1200	Dennis/Darlene Donnelly	246 A Street	0.28	E1-Res	1447 sq ft Comm. Bldg.	\$164,790
391E09BA 1300	RNN Properties LLC	270 First St N	0.05	R2	Residence	125,900
391E04CD 1400	Robert/Mary Hodges Living Trust	468 Oak St	1.43	E1-Res	2048 sq ft Lumber Yard	\$131,250
391E04CD 3400	Robert/Mary Hodges Living Trust	Clear Creek Dr	0.1	E1-Res	None	\$0
391E04CD 3500	Robert/Mary Hodges Living Trust	Clear Creek Dr	0.26	E1-Res	None	\$0
391E04CD 3600	Clear Creek Investments LLC	120 Clear Creek Dr	1.29	E1-Res	None	\$0
391E04CC 5800	John Michael Van Ausdall	40 Van Ness Ave	0.46	E1-Res/R2	Residence	\$163,550
391E04CC 5801	Lisa Dawn Vanderzwan	337 Oak St	0.18	R2	Residence	\$159,470
391E04CC 5900	Margaret Nash Rubin	323 Oak St	0.42	E1-Res/R2	Residence	\$209,590
391E09BA 13400	Valley of the Rogue Bank	250 Pioneer St N	0.77	E1-Res/R2	Bank	\$1,072,310
391E09BA 13401	Ashland Food Coop	237 First St N	0.98	E1-Res/R2	Supermarket	\$1,549,880
391E09BA 13500	Ashland Food Coop	294 Pioneer St N	0.08	E1-Res	Parking Lot	\$2,710
391E09BA 13600	Ashland Food Coop	Pioneer St N	0.08	E1-Res	None	\$0
391E09BA 13601	Ashland Food Coop	300 Pioneer St N	0.11	E1-Res	Office	\$190,650.00
391E09BA 13700	Ashland Food Coop	309 Pioneer St N	0.05	E1-Res	Converted SFR	\$50,790
391E09BA 13800	Ashland Food Coop	A St	0.11	E1-Res	Storage	\$50,790
391E09BA 13900	ASC Properties LLC	222/224 A St and 322 Pioneer St N	0.19	E1-Res	Misc Comm	\$190,330
391E09BA 14000	Bjorklund LLC		1.03	E1-Res	Retail/Apts	\$1,793,690
391E09BA 14600	Plexis Healthcare Sys Inc	A St	0.43	E1-Res	Parking Lot	\$25,420
391E09BA 14602	Emard Properties LLC	249 A St	1.12	E1-Res	Ashland General Hardware	\$1,569,330
391E09BA 14800	Union Pacific RR Co	Clear Creek Dr	2.27	E1-Res	RR Tracks	\$0

**Consolidated Land Use Application – Site Design Review and Conditional Use Permit**  
**Applicant: Jorge Yant**  
**Ownership: Plexis Healthcare Systems, Inc.**

391E09BA	14900	Plexis Healthcare Sys Inc	A St	0.49	E1-Res	A Street Market Place	\$1,593,010
391E09BB	16700	Oaky Doaky LLC	295 Oak St	0.24	R-2	Residence	\$191,920
391E09BB	16800	Clair Van Der Zwan	303 Oak St	0.11	R-2	Residence	\$134,320
391E09BB	16801	Francis Peckham	315 Oak St	0.16	R-2	Residence	\$147,640
391E04CD	1400	David Clawson	384 Oak St	1.43	E1-Res	Lumber Yards	Purged Acct
391E09BA		Jackson County	384 Oak St		E1-Res		Purged Acct
14600A3							
391E09BA		Southern Pacific Trans Co			E1-Res		Purged Acct
14600M1							
391E09BA		Southern Pacific Trans Co			E1-Res		Purged Acct
14602M1							

- a. Scale, Bulk and Coverage Analysis:** The proposed recreational marijuana retail conditional use will occupy just 1,850 square feet of space within an existing building that was most recently used as part of a single-tenant office but has previously been used as a retail use (for which the most recent Site Design Review approval was concerned). Nothing about the exterior of the building will be changing or must be changed so the scale, bulk and coverage of the use is no different than an office use would otherwise require.
- b. Traffic Livability Impact Analysis:** Applicants engaged Sandow Engineering to evaluate the potential traffic impacts. In real world terms, the proposed recreational marijuana retail use will generate, on average, about one additional car per intersection movement at nearby intersections every 6-12 minutes in the pm peak hour, when compared to an office use of that space. A change in traffic volumes of this magnitude is on the order of the daily fluctuation in traffic volumes that occurs due to a variety of exogenous and/or stochastic factors on streets functionally classified as Neighborhood Collectors and Avenues.

Another way to conceptualize the impacts on livability related to traffic is the effect the proposed use will have in relation to the planned volumes of the streets it will utilize. It is common to assume that 10% of the daily traffic volume on a street will occur in the PM Peak Hour. Using this assumption, A Street is planned to carry up to 500 PM peak hour strips and Oak Street is planned to carry up to 1,000 PM peak hour trips<sup>3</sup>. The change in volumes on A street east and west of the site represent about 5 percent each direction of the planned volume of A Street which is a volume change that is too small to cause significant impacts on livability from a traffic change standpoint.

Following the initial hearing, Applicant’s traffic engineer Kelly Sandow evaluated the traffic conditions in the area as well as bicycle and pedestrian activities. During that evaluation, she identified three minor transportation system improvements that will result in a net positive effect on transportation system operations and safety in the area even with the addition of the retail marijuana use traffic.

<sup>3</sup> See ALUO Table 18.4.6.040.F



- c. Architectural Compatibility Analysis:** No external changes to the building are proposed that would change the architectural character of the building. Thus, its compatibility in relation to the office use that was there previously will be unchanged.
- d. Air Quality, Emissions:** The retail use is not expected to produce any detectable emissions or odor beyond the property line. No dust suspension of any significance is expected. These potential sources are minimal overall and, to the extent they exist at all, are no greater than would be expected to result from an office use of the site. In preparation of the subject Application, the Applicant's agent went to three recreational retail uses in Medford and in all three sites no discernable odor outside the building was present and there is no reason to believe the subject retail use cannot control odor in a similar manner.
- e. Noise, Light and Glare Analysis:** Noise sources are minimal and are limited to associated traffic noise which is nominal in relation to the background noise from traffic already on the higher order streets adjacent to the site. No new exterior lighting is proposed or required. The direct sidewalk entrance to the recreational retail facility already has an exterior light that overhangs from the roof and A Street has pedestrian scale street lights on the south side of the street. Since no new lights are proposed or required and were in existence to serve the office use, no new potential source of impact is identified.
- f. Development of Adjacent Properties Analysis:**
- i. Existing Development:** There are 27 properties in the Impact Area, 22 of which are developed. Based upon the assessors data, aerial photo surveys and site investigations these lands are generally developed with the types of uses and at intensities typical of the E-1 zoning district and R-2 zoning districts that are located in the impact area. Applicant has not identified any potential source of impact that would affect the continued operations of these properties for uses allowed in the zone to any meaningful degree.
- ii. Vacant Land:** There are five vacant properties in the Impact Area and these are analyzed in turn, as follows:
- TL 14700- The assessor lists this property as “vacant” and attributes no land value or improvement value. In reality, it has some pavement and functions as the drive aisle and parking for some office buildings off of Clear Creek Drive. This property is separated by the railroad tracks from the subject property and there is nothing about the proposed retail use that would prevent this property from being used as parking and a drive aisle to serve the office buildings in the area.
  - TLs 3400 & 3500- The assessor lists these properties as “vacant” with no improvement values. However, aerial inspection indicates they are used in conjunction with Ashland Lumber Company yard. Applicant identifies no

potential impacts with a lumber yard operated in the E-1 zone across the railroad tracks from the proposed use.

- TL 3600- This property is 1.29 acres in size and is located across the railroad tracks from the subject property and is approximately 900 feet of walking distance (if you do not cross the tracks) from the proposed recreational retail marijuana use. The site is vacant and could be used for future office buildings or a variety of other uses in the E-1 zone. Applicant cannot identify any likely impacts from the proposed recreational retail marijuana use on a potential future development of this site.
- TL 13600 – The assessor attributes no improvements to this site but it is improved with pavement and is used as a parking lot in conjunction with the Ashland Food Co-Op. The proposed use is adequately parked so there is no reason to expect parking conflicts from the recreational marijuana retail use to spill over onto this lot. Except for this potential issue that is unlikely to cause any impacts, no potential conflicts with this lot were have been identified.

V

**PROCEDURAL  
CONCLUSIONS OF LAW**

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The City of Ashland reaches the following conclusions of law with respect to the review procedure for the subject land use action:

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***Procedural Criterion 1***

**PROCEDURAL CRITERIA**

**18.5.1.010 Purpose and Applicability**

- A. Purpose. This chapter establishes procedures to initiate and make final decisions on planning actions under the Land Use Ordinance ("this ordinance"), pursuant to City policy and state law.
- B. Applicability of Review Procedures. All planning actions shall be subject to processing by one of the following procedures summarized in subsections 1 - 4, below, and as designated in Table 18.5.1.010. Building permits and other approvals, including approvals from other agencies such as the state department of transportation or a natural resource regulatory agency, may be required. Failure to receive notice of any such requirement does not waive that requirement or invalidate any planning action under this ordinance.
  - 1. Ministerial Action (Staff Advisor Decision). The Staff Advisor makes ministerial decisions by applying City standards and criteria that do not require the use of substantial discretion (e.g., fence, sign and home occupation permits). A public notice and public hearing are not required for Ministerial decisions. Procedures for Ministerial actions are contained in section 18.5.1.040.

2. Type I Procedure (Administrative Decision With Notice). Type I decisions are made by the Staff Advisor with public notice and an opportunity for appeal to the Planning Commission. Alternatively the Staff Advisor may refer a Type I application to the Commission for its review and decision in a public meeting. Procedures for Type I actions are contained in section 18.5.1.050.
3. Type II Procedure (Quasi-Judicial Review/Public Hearing Review). Type II decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. Applications involving zoning map amendments consistent with the Comprehensive Plan map and minor map amendments or corrections are subject to quasi-judicial review under the Type II procedure. Quasi-judicial decisions involve discretion but implement policy.

Procedures for Type II actions are contained in section 18.5.1.060.

4. Type III Procedure (Legislative Decision). The Type III procedure applies to the creation, revision, or large-scale implementation of public policy (e.g., adoption of regulations, zone changes, comprehensive plan amendments, annexations). Type III reviews are considered by the Planning Commission, who makes a recommendation to City Council. The Council makes the final decision on a legislative proposal through the enactment of an ordinance.

<b>Table 18.5.1.010 – Summary of Approvals by Type of Review Procedure</b>		
<b>Planning Actions</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Conditional Use Permit	Type I or II	Section 18.5.4
Site Design Review	Type I or II	Chapter 18.5.2

**Conclusions of Law:** The City of Ashland concludes the submitted land use application is a consolidated review that includes determinations of compliance with Special Use standards applicable to marijuana-related uses as well as approval of a Conditional Use Permit. These inter-related permits can all be processed as a Type I procedure subject to request of hearing in front of the Planning Commission.

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***Procedural Criterion 2***

**18.5.1.020 Determination of Review Procedure**

Where Table 18.5.1.010 designates more than one possible review procedure, e.g., Type I or Type II, the applicable review procedure shall be based on the criteria contained in the ordinance chapters or sections referenced in the table.

**Conclusions of Law:** The City of Ashland concludes the submitted land use application is a consolidated review that includes several inter-related permits that all fall under the Type I procedure and the Type I procedure is the correct procedure for the subject application.

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### ***Procedural Criterion 3***

#### **18.5.1.050 Type I Procedure (Administrative Decision with Notice)**

Type I decisions are made by the Staff Advisor, following public notice and a public comment period. Type I decisions provide an opportunity for appeal to the Planning Commission.

##### **C. Decision.**

1. At the conclusion of the comment period, the Staff Advisor shall review the comments received and prepare a decision approving, approving with conditions, or denying the application based on the applicable ordinance criteria. The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period. Alternatively, the Staff Advisor may transmit written comments received along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.
2. Where the Staff Advisor refers a Type I application to the Planning Commission, the Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable ordinance criteria. The Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 120-day period prescribed under State law (ORS 227.178) and as described in subsection 18.5.1.090.B of this ordinance.

**Conclusions of Law:** With respect to the application of the Type I procedure itself, the Applicant believes the subject permit requests are relatively straightforward. Nevertheless, the Staff elected to send the matter to the Planning Commission for an initial hearing and these findings were revised based upon the updated information.

## **VI**

### **CONCLUSIONS OF LAW**

Based upon the Evidence submitted with the Application and listed in Section II and the Findings of Fact in Section IV, the City of Ashland reaches the following conclusions of law with respect to the relevant substantive approval criteria for the subject land use application:

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### ***Special Use Standards 1***

#### **Special Use Standards**

##### **18.2.3.190 Marijuana-Related Uses**

##### **B. Marijuana-Related Businesses:**

1. Marijuana-related businesses may require Site Design Review under chapter [18.5.2](#) or a Conditional Use Permit under chapter [18.5.4](#). See Table [18.2.2.030](#) – Uses Allowed by Zone for zones where marijuana-related businesses are allowed. See definition of marijuana-related businesses in part [18.6](#). Marijuana-related businesses shall meet all of the following requirements.



**Consolidated Land Use Application – Site Design Review and Conditional Use Permit**  
**Applicant: Jorge Yant**  
**Ownership: Plexis Healthcare Systems, Inc.**

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- a. The business must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor marijuana production, cultivation, and storage of merchandise, raw materials, or other material associated with the business are prohibited.
- b. Any modifications to the subject site or exterior of a building housing the business must be consistent with the Site Design Use Standards, and obtain Site Design Review approval if required by section 18.5.2.020. Security bars or grates on windows and doors are prohibited.
- c. The business must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the business' exterior refuse containers.
- d. Light and Glare. Shield lighting systems and use window coverings to confine light and glare from light systems associated with indoor cultivation so as to confine light and glare to the interior of the structure. Grow light systems within a greenhouse are prohibited.
- e. Building Code. Any structure, accessory structure, electrical service, plumbing, or mechanical equipment (e.g., lighting, fans, heating and cooling systems) associated with a business shall satisfy the Building Code requirements and obtain all required building permits prior to installation.
- f. Methodology for Measuring Separation Requirements. The following methodology shall be used for marijuana related- businesses that are required to be separated by a specific distance (i.e., marijuana production facility, marijuana wholesale facility, marijuana retail outlet). For the purposes of determining the distance between a marijuana related-business and another marijuana-related business, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of an approved marijuana related- business to the closest point anywhere on the premises of a proposed marijuana-related business of the same type. If any portion of the premises of a proposed marijuana related-business is within 1,000 feet of an approved marijuana related business of the same type, it may not be approved. For the purpose of this section, premises is all public and private enclosed areas within a building at the location that are used in the business operation, including offices, kitchens, rest rooms, and storerooms.
- g. The property owner shall record a declaration which waives any claim or right to hold the City liable for damages they or a tenant may suffer from state or federal enforcement actions for activities the City permits as a result of its approval of the proposed use or development once such approval is granted. Furthermore, the owner and tenant agrees not to unreasonably disobey the City's order to halt or suspend business if state or federal authorities order or otherwise subject the City to enforcement to comply with laws in contradiction to the continued operations of the business as permitted under section 18.2.3.190.
- h. A marijuana-related business must obtain an approved license or registration from the State of Oregon and meet all applicable Oregon Revised Statutes and Oregon Administrative Rules.

**Conclusions of Law:** The City of Ashland herewith concludes as follows with respect to the above general standards applicable to all Marijuana Related Businesses:

- The retail use is proposed to be located in permanent building.
- The recreational retail use does not require modification to the subject site or the exterior of the building.
- OLCC requires secure disposal of by-products as a State Permit requirement, see OAR 845-025-7750. Applicant will accept a condition of approval requiring the secure disposal storage to be located within the building.
- Building permits will be required for all interior work that requires a building permit.
- The locational analysis utilized the City's methodology and the City's published map to determine that all required separations are satisfied.
- Applicant herewith agrees to accept a condition of approval requiring recordation of a declaration of liability waiver.

- The recreational retail use has a pending permit with OLCC and the Applicant will accept a condition of approval requiring state permit issuance prior to the conduct of sales activities.

\* \* \* \* \*

### ***Special Use Standards 2***

3. Marijuana Retail Sales. In addition to the standards described above in subsection 18.2.3.190.B.1, marijuana retail sales shall meet the following requirements. See definition of marijuana retail sales in part 18.6.

a. Location.

- i. Marijuana retail sales are allowed if located on a property with a boundary line adjacent to a boulevard.
- ii. Marijuana retail sales, except as allowed above in subsection 18.2.3.190.B.3.a.i, must be located 200 feet or more from a residential zone and are subject to a Conditional Use Permit under chapter 18.5.4.
- iii. Marijuana retail sales are not permitted in the Downtown Design Standards Zones.
- iv. A marijuana retail sales outlet shall be located more than 1,000 feet from another marijuana retail sales outlet. Medical and recreational marijuana retail sales do not need to be separated by 1,000 feet if located together in one building if the configuration meets all applicable Oregon Revised Statutes and Oregon Administrative Rules. No more than two registrations or licenses issued by the State of Oregon (e.g., a medical dispensary registration and a recreational sales license) may be located in one building. See subsection 18.2.3.190.B.1.f for methodology for measuring the required distance between marijuana related-businesses.

b. Drive-up Use. The marijuana retail sales outlet must not include a drive-up use.

**Conclusions of Law:** The City of Ashland herewith concludes as follows with respect to the above general standards applicable to Recreational Marijuana Retail Businesses:

- The proposed recreational retail sales use is not located on a Boulevard, therefore, the use requires a conditional use permit under ii above.
- Applicant has applied for and addressed the conditional use permit criteria herein below. The location of 200 feet from a residential zone, based upon the City’s map, indicates that the nearest interior portion of the use is approximately 230 feet from a residential zone and the entrance to the use is approximately 270 feet from the residential zone across Oak Street to the northwest, see Exhibits 6(a) & 6(b).
- The proposed recreational retail site is not located in the Downtown Design Standards Zone, see Exhibit 8.
- The 1,000 foot separation requirement from the nearest retail sales establishment, based upon the City’s map, indicates there are no other permitted retail establishments that are within a 1,000 feet.
- No drive-up sales are proposed and the same is prohibited by OAR 845-025-1300(g).
- In the initial staff report, the proper interpretation of AMC 18.2.3.190.B was raised as an issue. Applicant engaged Mark Bartholomew to provide a legal opinion on this issue and the same is provided as Exhibit 13<sup>4</sup>. Mr. Bartholomew’s opinion is that the

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<sup>4</sup> Mark Bartholomew is an Oregon licensed attorney with extensive expertise in Oregon land use.

correct legal interpretation of AMC 18.2.3.190.B is to apply the 200-foot separation standard to retail sales use itself and therefore to the portion of the building devoted the retail use.

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**Conditional Use Criterion 1**

**Conditional Use Permit (Delimited to Recreational Retail Use Only)**

**18.5.4.050 Approval Criteria**

- A. Approval Criteria. A Conditional Use 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.
1. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.

**Conclusions of Law:** The City of Ashland herewith concludes that Recreational Retail Marijuana uses can be allowed in conformance with the Comprehensive Plan at the proposed location subject to Conditional Use Permit approval and the same is requested herein. The City further concludes that it can feasibly conform with applicable standards for the zoning district generally and the special use standards applicable to Marijuana Related Businesses as addressed herein above.

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**Conditional Use Criterion 2**

2. That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.

**Conclusions of Law:** Based upon the evidence in Findings of Fact in Section IV and the traffic analysis in Exhibit 11, the City of Ashland herewith concludes that the site is already served by water, sewer, electricity, storm drainage, and transportation and the proposed use will not appreciably increase demand for such utilities from the prior use to which the property is already served. The City of Ashland further concludes the site has access and the parking lot is paved. During the initial hearing on this matter, considerable questions and testimony concerned water, sewer and power demands of the initially proposed production use. The production component of the application has been withdrawn, and therefore, those concerns are no longer relevant<sup>5</sup>. The retail use will have no greater demand for water, sewer or power than a general office use or many uses that have historically occupied the existing building.

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<sup>5</sup> Applicant observes that the production use is an allowed use in the applicable zone and therefore these concerns were of questionable relevance to the application given that the site design review criteria requires no such detailed facility adequacy analysis.

With respect to transportation, the initial staff report raised the issue that the application did not provide adequate information about the, “impact of the additional vehicle trips on the performance of nearby intersections, pedestrian travel, pedestrian crossings and safety and bicycle safety. Applicant’s traffic engineer has provided an addendum to the original report at Exhibit 12 and dated January 16, 2018. That report indicates that the added traffic from the CUP will not cause queueing or other operational concerns. The only identified traffic issue concerned lane usage on Oak Street where cars were observed making wide turns that disrupted other traffic flows. The report did identify two pedestrian safety issues one concerning lighting at the crosswalk and the other concerning crossing at an inappropriate location. The report recommends yellow striping on Oak Street to provide a visual cue to motorists to stay in the appropriate lane when turning, improving lighting at the crosswalk across A street and removing the concrete ramp on the north side of the building and replacing it with landscaping. The Applicant is willing to perform these mitigations as a condition of approval. With these mitigations in place, Sandow Engineering’s expert opinion is that, “the net effect on the operations and safety of the transportation system will be positive even with the addition of the CUP traffic for the retail marijuana use.”

\*\*\*\*\*

**Conditional Use Criterion 3**

3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.
  - a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
  - c. Architectural compatibility with the impact area.
  - d. Air quality, including the generation of dust, odors, or other environmental pollutants.
  - e. Generation of noise, light, and glare.
  - f. The development of adjacent properties as envisioned in the Comprehensive Plan.
  - g. Other factors found to be relevant by the approval authority for review of the proposed use.

**Conclusions of Law:** The City of Ashland herewith incorporates and adopts the Findings of Fact Number 13 in Section IV, and concludes thereupon, that the proposed use will have no greater adverse effect on the livability within the impact area when compared to an office use in terms of any of the listed factors in a through f above.

\*\*\*\*\*

**Conditional Use Criterion 4**

4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.

**Conclusions of Law:** The City of Ashland herewith concludes that Recreational Retail Marijuana uses can be allowed in conformance with the Comprehensive Plan at the proposed location subject to Conditional Use Permit approval and the same is requested herein.

\*\*\*\*\*

**Conditional Use Criterion 5**

- 5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
  - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.

**Conclusions of Law:** The City of Ashland herewith concludes that the analysis of potential impacts on the proposed use on the impact area was evaluated in comparison to a general office use which is the proper target use for the E-1 zone pursuant to ALUO 18.5.4.050(5)(f) above.

VII

**ULTIMATE CONCLUSIONS**

Based upon the foregoing findings of fact and conclusions of law, the City of Ashland herewith concludes the Application satisfies all the relevant substantive criteria of the City of Ashland. On this basis, the Application is herewith approved.

Respectfully submitted on behalf of applicant:

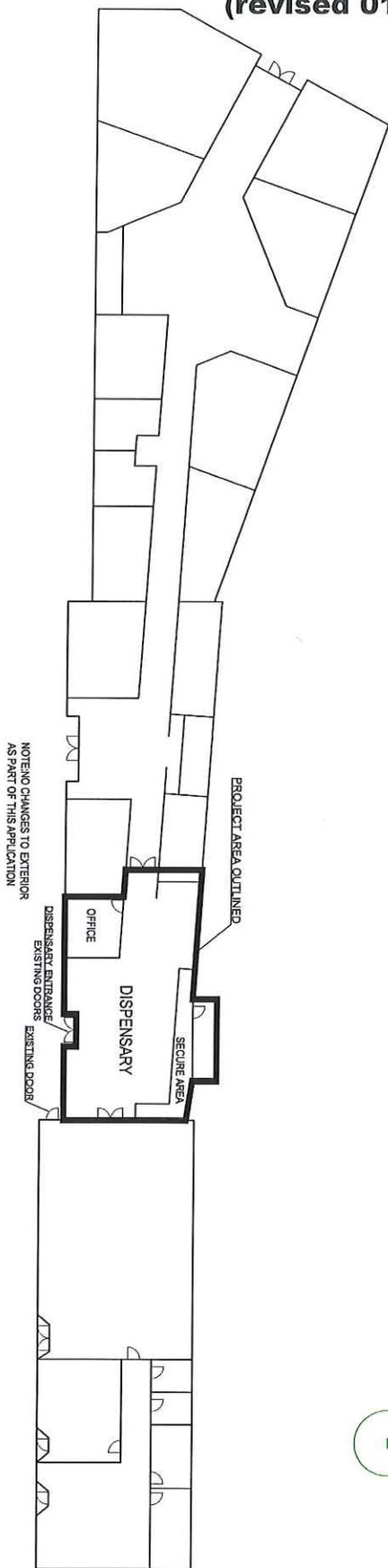
CSA PLANNING, LTD.

  
\_\_\_\_\_  
Jay Harland  
Consulting Planner

**Revisions Dated January 27, 2018**

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Applicant's Exhibit 10b  
(revised 01\_29\_18)



FLOOR PLAN - SUITE 181 'A' STREET ASHLAND, OR

PLEXIS HEALTHCARE SYSTEMS, INC  
MAP: 39-1E-09BA TAXLOT 14900

DATE: 1/29/18  
SCALE: 1/32" = 1'-0"

January 16, 2018

Karl Johnson, E.I.T., Associate Engineer  
City of Ashland, Public Works/Engineering  
20 East Main St  
Ashland, Oregon 97520



RENEWAL 06 / 30 / 18

RE: A St. Market Place CUP – Intersection Evaluation

Dear Mr. Johnson

Sandow Engineering has evaluated the intersection of Oak Street/A Street/Van Ness Avenue for safety and operations and to determine if the traffic from the proposed CUP would negatively impact the intersection.

Sandow Engineering performed a field evaluation of the intersection(s) on January 9<sup>th</sup> between 4 and 6 PM and January 10<sup>th</sup> between 8:30 and 9:30 AM. The observation included PM peak hour vehicle, pedestrian, and bicycle counts, geometry evaluation, and other observations of traffic movements. The following are the findings of the analysis:

#### VEHICLE MOVEMENTS:

- The intersection traffic volumes are well within the range typical for the type of intersection.
- There were no queuing or blocking issues that are considered atypical for this type of intersection. Queues were observed to not be more than 3 vehicles long and did not last more than a few seconds.
- The added traffic from the proposed CUP will not cause queuing or other operational concerns.
- It was observed the traffic turning into/out of A Street or Van Ness Avenue would turn wide and would occasionally block additional movements or through traffic. It is recommended that yellow centerline striping be added on Oak Street between the railroad tracks and A Street to channel the vehicle movements to minimize the obstruction to other vehicles.
- The cross section of A Street along the street frontage was evaluated. No issues were identified that warrant further investigation or improvements.

#### PEDESTRIAN MOVEMENTS:

- Several pedestrians were observed using the crosswalk on the west side (currently striped with continental striping). Once it was dark, it was difficult for the vehicles to see the pedestrians on the ramp or on the crosswalk. It is recommended that the crosswalk have improved lighting to better illuminate the crossing.

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- Pedestrians were observed to cross Oak Street on the east side of Van Ness Avenue. Pedestrians were using an existing vehicle ramp (which is not a pedestrian ramp) along the buildings edge across from Van Ness Avenue (see figure 1). The sight lines for vehicles approaching this location are not adequate which puts a pedestrian in danger. It is recommended that the ramp be removed and replaced with landscaping to deter pedestrians from crossing at this location.
- The pedestrian crossings were evaluated on A street south of Oak Street. No issues were identified that warrant further investigation or improvements.



In summary, the traffic increase from the proposed CUP will not create operational or queuing concerns at the intersection. However, some improvements can be made to maximize safety. These improvements are yellow centerline striping between the railroad tracks and A Street, improved lighting for the crosswalk on the west side A Street, and removal of the ramp along the north edge of the building to discourage pedestrians from crossing at that location. With the above recommended mitigations in place, the net effect on the operations and safety of the transportation system will be positive even with the addition of the CUP traffic for the retail marijuana use.

Please let me know if you have any questions

Sincerely,  
*Kelly Sandow*  
Kelly Sandow, PE

HORNECKER COWLING LLP

Applicant's Exhibit 13

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December 12, 2017

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Gregory T. Hornecker 1933-2009  
B. Kent Blackhurst 1922-2007  
Ervin B. Hogan 1927-2000

\*Also admitted in California

Ashland Planning Commission  
c/o Community Development Dept.  
51 Winburn Way  
Ashland, OR 97520

Re: PA-2017-01911 – Conditional Use Permit

Dear Commissioners:

Our client, Plexis Healthcare Systems, Inc./Jorge Yant (“Applicant”) has applied for a Conditional Use Permit to conduct a retail marijuana business and marijuana production site at 181 A. Street. This letter clarifies how Applicant’s proposed use meets the Ashland Municipal Code’s 200-foot buffer requirement between marijuana retail and residential zones.

The proposed use meets the buffer requirement because the portion of the proposed site dedicated to sales is more than 200 feet from a residential zone. Ashland’s buffer requirement for retail sales focuses on the use, and therefore, on the portion of the premises used for retail. Specifically, “[m]arijuana retail sales . . . must be located 200 feet or more from a residential zone and are subject to a Conditional Use Permit.” AMC 18.2.3.190(B)(3)(a)(ii). The plain language denotes that the buffer is measured from the location of the use itself, not the building it is in or the parcel boundary. If the 200-foot buffer were intended to be measured from the building footprint or parcel boundary, the Code language would reflect that intent. It does not. Because the buffer must exist between “retail sales” and “residential zone[s]” the only defensible interpretation of this provision is that there must be 200 feet from the portion of a building where the retail business occurs and the edge of a residential zone.

Interpreting the buffer to extend from the building or property lines would produce unusual and impractical results. For instance, if a retail marijuana business were permitted at west end of a multi-tenant retail complex, and a residential zone existed within 200 feet of the east end of the complex, the use would be prohibited. If instead the retail marijuana store were located in a free-standing building immediately next to the west end of the complex, the use would meet the buffer requirement, despite the sales being located the same physical

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**HORNECKER COWLING LLP**

December 12, 2017

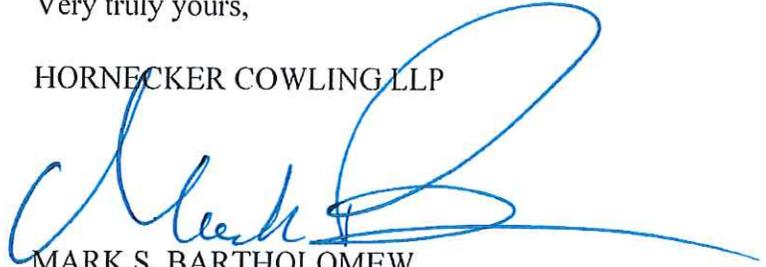
Page 2

distance from the residential zone. The property boundary or size of the building housing the use does not make the use closer or farther from a residential zone.

It should be noted that the City's past practice has been to measure the location of the use to calculate the buffer distance. It would be improper to apply a new methodology when calculating buffers, especially when any other methodology would be contrary to the Code. Finally, measurement from the actual location of the conditional use is consistent with the method for measuring distance between marijuana businesses. AMC 18.2.3.190(B)(1)(f) requires a 1000-foot buffer between any portion of the premises of marijuana businesses. "Premises" are defined as all portions of the building "that are used in the business operation." *Id.* The upshot of the foregoing provision is that a marijuana business use is not imputed to the entire building in which it is located. Rather, it is measured from the portion of the building devoted to the use. Applicant's proposed use meets the buffer requirement.

Very truly yours,

HORNECKER COWLING LLP



MARK S. BARTHOLOMEW

msb@roguelaw.com

BEFORE THE CITY OF ASHLAND PLANNING COMMISSION

FOR THE CITY OF ASHLAND

JACKSON COUNTY, OREGON

IN THE MATTER OF A CONDITIONAL USE )  
 PERMIT FOR RECREATIONAL )  
 MARIJUANA RETAIL SALES AND )  
~~PRECAUTIONARY APPLICATION FOR~~ )  
~~SITE DESIGN REVIEW FOR A PORTION OF~~ )  
 IN AN EXISTING BUILDING, PROPOSED )  
~~FOR RECREATIONAL MARIJUANA RETAIL~~ )  
~~SALES AND MARIJUANA PRODUCTION.~~ )  
 THE PROJECT INVOLVES AN INTERIOR )  
 REMODEL OF A PORTION OF AN )  
 EXISTING BUILDING AND UTILIZES AN )  
 EXISTING PARKING LOT ON PRIVATE )  
 LAND. THE RETAIL PROJECT IS )  
 LOCATED AT 181 A STREET AND THE )  
~~PRODUCTION USE IS LOCATED AT 185,~~ )  
~~191, AND 195 A STREET~~ IN THE CITY OF )  
 ASHLAND, OREGON. )

FINDINGS OF FACT AND  
 CONCLUSIONS OF LAW  
 Applicant's Exhibit 2

Applicant: Jorge Yant )  
 Owner: Plexis Healthcare Systems, Inc. )  
 Agent of Record: CSA Planning, Ltd. )

I

SCOPE AND NATURE OF THE APPLICATION

The Applicant proposes a Recreational Marijuana Retail Sales facility ~~and a General Manufacture use which includes Marijuana Production facility~~ within an existing building. The Recreational Marijuana Retail Sales use is a conditional use in the E-1 zone where it is not located on a Boulevard, ~~and the Marijuana Production facility is a permitted use in the E-1 zone. A precautionary Site Design Review is being submitted for both uses.~~ The remaining ~~portion of the north half of the~~ building is currently vacant and no new uses for that portion of the building are proposed at this time; the most recent use of that portion of the building was for professional offices. ~~The Site Design Review treats the remainder of the building as professional office uses from an overall site use standpoint.~~



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JAN 29 2018

**Consolidated Land Use Application – Site Design Review and Conditional Use Permit**  
**Applicant: Jorge Yant**  
**Ownership: Plexis Healthcare Systems, Inc.**

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**II**  
**EVIDENCE SUBMITTED WITH CONSOLIDATED APPLICATION**

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The following evidence is submitted in support of this Conditional Use Permit and Site Design Review:

- Exhibit 1.** Signed and Completed Application Forms and Authorization from the current property owners Plexis Healthcare Systems, Inc. and the Applicant Jorge Yant
- Exhibit 2.** The proposed findings of fact and conclusions of law (this document) which demonstrates how this Consolidated Land Use Application complies with the relevant substantive criteria of the City of Ashland, with revisions dated January 27, 2018 that reflects withdrawal of the production use part of the original application per the letter dated December 21, 2017.
- Exhibit 3.** Vicinity Map
- Exhibit 4.** Jackson County Assessor plat map 39S-1E-09BA which contains and depicts the subject property
- Exhibit 5.** Current City of Ashland Comprehensive Plan Map depicting the subject property
- Exhibit 6.** City of Ashland Marijuana Eligibility Maps
  - a) Area Map
  - b) Detail Map
- Exhibit 7.** Current City of Ashland Zoning Map on Aerial depicting the subject property
- Exhibit 8.** Overlays Map depicting the subject property
- Exhibit 9.** 200-Foot Impact Area Map of Recreational Retail Conditional Use
- Exhibit 10.** Site Plans
  - a) 1999 & 2002 Site Plan Design Materials
  - b) Project Floor Plan (production area removed)
  - c) Existing Elevation Photos
- Exhibit 11.** Transportation Impact Analysis and Parking Demand Analysis prepared by Sandow Engineering
- Exhibit 12.** Transportation Impact Analysis Addendum (Intersection Evaluation) prepared by Sandow Engineering
- Exhibit 13.** Legal Opinion Letter from Mark Bartholomew, Attorney at Law with Hornecker Cowling LLP.
- Exhibit 11.**

III

**APPLICABLE SUBSTANTIVE CRITERIA**

The criteria under which the consolidated land-use application must be reviewed are laid forth in the Ashland Municipal Code Chapter 18. The relevant approval criteria are recited verbatim below:

**PROCEDURAL CRITERIA**

**18.5.1.010 Purpose and Applicability**

- A. Purpose. This chapter establishes procedures to initiate and make final decisions on planning actions under the Land Use Ordinance ("this ordinance"), pursuant to City policy and state law.
- B. Applicability of Review Procedures. All planning actions shall be subject to processing by one of the following procedures summarized in subsections 1 - 4, below, and as designated in Table 18.5.1.010. Building permits and other approvals, including approvals from other agencies such as the state department of transportation or a natural resource regulatory agency, may be required. Failure to receive notice of any such requirement does not waive that requirement or invalidate any planning action under this ordinance.
  - 1. Ministerial Action (Staff Advisor Decision). The Staff Advisor makes ministerial decisions by applying City standards and criteria that do not require the use of substantial discretion (e.g., fence, sign and home occupation permits). A public notice and public hearing are not required for Ministerial decisions. Procedures for Ministerial actions are contained in section 18.5.1.040.
  - 2. Type I Procedure (Administrative Decision With Notice). Type I decisions are made by the Staff Advisor with public notice and an opportunity for appeal to the Planning Commission. Alternatively the Staff Advisor may refer a Type I application to the Commission for its review and decision in a public meeting. Procedures for Type I actions are contained in section 18.5.1.050.
  - 3. Type II Procedure (Quasi-Judicial Review/Public Hearing Review). Type II decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. Applications involving zoning map amendments consistent with the Comprehensive Plan map and minor map amendments or corrections are subject to quasi-judicial review under the Type II procedure. Quasi-judicial decisions involve discretion but implement policy. Procedures for Type II actions are contained in section 18.5.1.060.
  - 4. Type III Procedure (Legislative Decision). The Type III procedure applies to the creation, revision, or large-scale implementation of public policy (e.g., adoption of regulations, zone changes, comprehensive plan amendments, annexations). Type III reviews are considered by the Planning Commission, who makes a recommendation to City Council. The Council makes the final decision on a legislative proposal through the enactment of an ordinance.

<b>Table 18.5.1.010 – Summary of Approvals by Type of Review Procedure</b>		
<b>Planning Actions</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Conditional Use Permit	Type I or II	Section 18.5.4
Site Design Review	Type I or II	Chapter 18.5.2

**18.5.1.020 Determination of Review Procedure**

Where Table 18.5.1.010 designates more than one possible review procedure, e.g., Type I or Type II, the applicable review procedure shall be based on the criteria contained in the ordinance chapters or sections referenced in the table.



#### 18.5.1.050 Type I Procedure (Administrative Decision with Notice)

Type I decisions are made by the Staff Advisor, following public notice and a public comment period. Type I decisions provide an opportunity for appeal to the Planning Commission.

##### C. Decision.

1. At the conclusion of the comment period, the Staff Advisor shall review the comments received and prepare a decision approving, approving with conditions, or denying the application based on the applicable ordinance criteria. The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period. Alternatively, the Staff Advisor may transmit written comments received along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.
2. Where the Staff Advisor refers a Type I application to the Planning Commission, the Commission shall approve, approve with conditions, or deny the application through the Type II procedure based on the applicable ordinance criteria. The Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 120-day period prescribed under State law (ORS 227.178) and as described in subsection 18.5.1.090.B of this ordinance.

### SUBSTANTIVE CRITERIA

#### Special Use Standards

##### 18.2.3.190 Marijuana-Related Uses

##### B. Marijuana-Related Businesses..

1. Marijuana-related businesses may require Site Design Review under chapter [18.5.2](#) or a Conditional Use Permit under chapter [18.5.4](#). See Table [18.2.2.030](#) – Uses Allowed by Zone for zones where marijuana-related businesses are allowed. See definition of marijuana-related businesses in part [18.6](#). Marijuana-related businesses shall meet all of the following requirements.
  - a. The business must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor marijuana production, cultivation, and storage of merchandise, raw materials, or other material associated with the business are prohibited.
  - b. Any modifications to the subject site or exterior of a building housing the business must be consistent with the Site Design Use Standards, and obtain Site Design Review approval if required by section [18.5.2.020](#). Security bars or grates on windows and doors are prohibited.
  - c. The business must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the business' exterior refuse containers.
  - d. Light and Glare. Shield lighting systems and use window coverings to confine light and glare from light systems associated with indoor cultivation so as to confine light and glare to the interior of the structure. Grow light systems within a greenhouse are prohibited.
  - e. Building Code. Any structure, accessory structure, electrical service, plumbing, or mechanical equipment (e.g., lighting, fans, heating and cooling systems) associated with a business shall satisfy the Building Code requirements and obtain all required building permits prior to installation.
  - f. Methodology for Measuring Separation Requirements. The following methodology shall be used for marijuana related- businesses that are required to be separated by a specific distance (i.e., marijuana production facility, marijuana wholesale facility, marijuana retail outlet). For the purposes of determining the distance between a marijuana related-business and another marijuana-related business, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of an approved marijuana related- business to the closest point anywhere on the premises of a proposed marijuana-related business of the same type. If any portion of the premises of a proposed marijuana related-business is within 1,000 feet of an approved marijuana related business of the same type, it may not be approved. For the purpose of this section, premises is all public and

- private enclosed areas within a building at the location that are used in the business operation, including offices, kitchens, rest rooms, and storerooms.
- g. The property owner shall record a declaration which waives any claim or right to hold the City liable for damages they or a tenant may suffer from state or federal enforcement actions for activities the City permits as a result of its approval of the proposed use or development once such approval is granted. Furthermore, the owner and tenant agrees not to unreasonably disobey the City's order to halt or suspend business if state or federal authorities order or otherwise subject the City to enforcement to comply with laws in contradiction to the continued operations of the business as permitted under section 18.2.3.190.
  - h. A marijuana-related business must obtain an approved license or registration from the State of Oregon and meet all applicable Oregon Revised Statutes and Oregon Administrative Rules.
2. Marijuana Laboratories, Processing, Production, and Wholesale. In addition to the standards described in subsection 18.2.3.190.B.1, above, marijuana laboratories, processing, production, and wholesale shall meet the following requirements as applicable. See definition of marijuana processing and production in part 18.6.
- b. Marijuana Production.
    - i. Marijuana production shall be limited to 5,000 square feet of gross leasable floor area per lot.
    - ii. A marijuana production facility shall be located more than 1,000 feet from another marijuana production facility. See subsection 18.2.3.190.B.1.f for methodology for measuring the required distance between marijuana related-businesses.
3. Marijuana Retail Sales. In addition to the standards described above in subsection 18.2.3.190.B.1, marijuana retail sales shall meet the following requirements. See definition of marijuana retail sales in part 18.6.
- a. Location.
    - i. Marijuana retail sales are allowed if located on a property with a boundary line adjacent to a boulevard.
    - ii. Marijuana retail sales, except as allowed above in subsection 18.2.3.190.B.3.a.i, must be located 200 feet or more from a residential zone and are subject to a Conditional Use Permit under chapter 18.5.4.
    - iii. Marijuana retail sales are not permitted in the Downtown Design Standards Zones.
    - iv. A marijuana retail sales outlet shall be located more than 1,000 feet from another marijuana retail sales outlet. Medical and recreational marijuana retail sales do not need to be separated by 1,000 feet if located together in one building if the configuration meets all applicable Oregon Revised Statutes and Oregon Administrative Rules. No more than two registrations or licenses issued by the State of Oregon (e.g., a medical dispensary registration and a recreational sales license) may be located in one building. See subsection 18.2.3.190.B.1.f for methodology for measuring the required distance between marijuana related-businesses.
  - b. Drive-up Use. The marijuana retail sales outlet must not include a drive-up use.

#### Conditional Use Permit (Retail Use Only)

##### 18.5.4.050 Approval Criteria

- A. Approval Criteria. A Conditional Use 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.
1. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.
  2. That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.
  3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant

- with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.
- a. Similarity in scale, bulk, and coverage.
  - b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
  - c. Architectural compatibility with the impact area.
  - d. Air quality, including the generation of dust, odors, or other environmental pollutants.
  - e. Generation of noise, light, and glare.
  - f. The development of adjacent properties as envisioned in the Comprehensive Plan.
  - g. Other factors found to be relevant by the approval authority for review of the proposed use.
4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.
  5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
    - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.

### Site Design Review

#### 18.5.2.050 — Approval Criteria

~~An application for Site Design Review shall be approved if the proposal meets the criteria in subsections A, B, C, and D below. The approval authority may, in approving the application, impose conditions of approval, consistent with the applicable criteria.~~

- ~~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.~~~~

IV

FINDINGS OF FACT

The City of Ashland reaches the following facts and finds them to be true with respect to this matter:

1. **Property Location:** The subject property is located on the east side of A Street between Oak and 1<sup>st</sup> Street and is bordered to the east by the CORP Railroad right-of-way. Tolman Creek Road and Washington Street. The property is south of Highway 66 (Ashland Street). The situs address is 640 Tolman Creek Road in Ashland, Oregon.
2. **Ownership:** Tax Lot 14900 and Tax Lot 14600 are both owned in fee simple by Plexis Healthcare Systems, Inc.
3. **Property Description and Size:** The subject properties are identified as Tax Lots 14900 and Tax Lot 14600 in Township 39 South, Range 1 East, Section 09BA in the Assessor's records of Jackson County. Tax Lot 14900 is approximately 0.49 acres and Tax Lot 14600 is approximately 0.43 acres. The prior "A Street Marketplace" project resulted in the building being demised into a number of "suites" which are assigned separate addresses. These addresses range from 101 A Street to 195 A Street with the lowest numbers at the west end of the building and the largest numbers at the east end of the building; the land use application concerns the 181 A Street Address for the proposed retail ~~use and the 185 & 191 & 195 addresses for the proposed production use.~~
4. **Existing Land Use and Prior Approvals:** Tax Lot 14900 contains the "Ashland Fruit & Produce Association Building later known as the Oak Street Tank & Steel Building". Most of this building has existed in this location since 1912. In 1999, the site changed in use from the prior steel tank manufacturing business to the "A Street Marketplace" use. The primary use was retail. The conversion of the building involved an internal and external remodel of the building as well as the construction of a new parking lot. That project went through full Site Design Review and was approved through Planning File No. 99-108.  
  
Following Site Design Review and use as the "A Street Marketplace", the property was acquired by Plexis Healthcare Systems, Incorporated. Plexis eventually converted the entire building to office space with some employee recreation space in the metal building on the east end of Tax Lot 14900. Plexis is now located in Medford and the property is currently vacant.
5. **Comprehensive Plan Map:** The Comprehensive Plan Map designation for the subject property is Employment.
6. **Existing Zoning:** The zoning on the properties is uniform and they are designated E-1. The properties are located in the Detail Site Review Zone, the National Historic District overlay and the Railroad District Overlay.

**7. Surrounding Land Uses Description:** The aerial/zoning map, Exhibit 7, accurately depicts the pattern of land partitioning and development in the surrounding area. *See also*, Exhibits 3 and 4. The land uses which presently surround the property are:

**West:** Immediately to the west of the proposed retail marijuana use is the remainder of Oak Street Tank and Steel building that is currently vacant and for which no new use is currently proposed. Beyond this portion of the subject property, is Oak Street and further to the west are single-family dwellings. These residential lands are planned multi-family and are zoned R-2.

**South:** Immediately south of the subject properties across A Street is a large building with a collection of uses that are retail, offices and service in nature. Tenancy in this building is varied and has changed over the years with many smaller tenants within the larger building. This building consumes the block between Pioneer Street and Oak Street. To the east of Pioneer Street is a corrugated steel building attached to a split face block building. This building appears to house small retail tenants. Further to the southeast is the Ashland Food Co-Op building. These lands are all planned Employment and zoned E-1.

**East:** Land to the east is Ashland Hardware. This land is planned Employment and zoned E-1.

**North:** To the north is the Central Oregon and Pacific Railroad (CORP) Siskiyou line. Across the railroad to the north is Ashland Lumber and some vacant land. These lands are all planned Employment and zoned E-1.

**8. Essential Public Facilities (except streets):**

- a. **Water:** The existing building is served by municipal water. Water demands are not expected to increase to any meaningful degree substantially for the proposed retail use when compared to prior uses of the building. ~~The marijuana production use will increase water use above the existing office and prior retail uses. However, water usage will remain at levels typical of many types of industrial uses allowed in the E-1 zone.~~
- b. **Sanitary Sewer:** The building is currently connected to sanitary sewer and no significant changes to sewerage are expected to be necessary to serve the retail ~~or production uses~~.
- c. **Storm Drainage:** The site is currently served by municipal storm drainage. No changes to the site design are proposed that would alter the storm drainage conditions on the site.
- d. **Electricity:** The existing building has a number of large electrical services already installed. The proposed retail marijuana use will likely reduce the demand for electricity for that portion of the building when compared to the prior Plexis office use or will be comparable to the prior A Street Marketplace retail uses. ~~The marijuana production uses are expected to increase demand for electricity beyond the prior office uses. However, this portion of the building has an existing service that appears to be a 3-phase 480volt service so it appears the site has historically been served with power appropriate for the proposed marijuana production facility.~~

## 9. Transportation Facility Analysis:

**a. Functional Classification and Standards Analysis:** The existing building is located at the corner of Oak Street and A Street. Oak Street is functionally classified as an Avenue which provides concentrated pedestrian, bicycle, and motor vehicle access from boulevards to neighborhoods and to neighborhood activity centers and is planned for traffic volumes from 3,000 to 10,000 ADT. A Street is functionally classified as a Neighborhood Collector distributes traffic from boulevards or avenues to neighborhood streets and is planned for traffic volumes from 1,500 to 5,000 ADT.

**b. Trip Generation and Potential Impacts Analysis:** The Applicant engaged Sandow Engineering to evaluate potential transportation impacts from the proposed Marijuana Retail Facility Use, see Exhibit 11. The analysis indicates that trip generation will only be approximately 47 peak hour trips more than an office building use. Once these trips are distributed on the street network to and from the site, the potential additional traffic volumes are nominal when compared to existing traffic conditions<sup>1</sup>.

**b. The planning staff report before the initial planning commission hearing in December requested additional transportation analysis information. The Applicant's traffic engineer, Kelly Sandow, produced a traffic impact analysis addendum in response to this request for additional information, see Exhibit 12. That analysis did not identify any operational concerns from the proposed retail marijuana use but did identify some safety issues at the intersection of Oak Street and A Street. The January 16<sup>th</sup> letter recommends three mitigation measures that include improved lighting at the crosswalk, centerline yellow striping, and removal of a concrete ramp and replacement with landscaping to discourage pedestrian movements in an undesirable location. The Applicant has no objection to these mitigation measures and will accept them as a condition of approval if the City imposes the same. With these mitigation measures, the expert opinion of Applicant's traffic engineer is that the project will represent a net benefit to the transportation system.**

**c. Access:** The project proposes to use the existing parking lot access on A Street. The driveway is somewhat unusual because it exists right where the centerline of A Street jogs about 60 degrees to the south (if one were heading west to east). At the access location, the centerline of the driveway lines up with the centerline of A Street. While unusual, the geometry works well. The right-turn into the lot is made acute by the geometry but the only conflicting movement is the “left” into the parking lot which is readily visible to any northwest bound traffic on A Street looking to turn into the parking lot. The “left” into the parking lot physically involves going straight. Sight distance to northwest bound traffic is about 160 feet and the curve and relative narrowness of the street will keep northwest bound traffic moving slow so visibility

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<sup>1</sup> At the intersections nearest the site, additional volumes would be on the order of 4 to 6 cars per turning movement per hour. This can be conceptualized as one additional car in each turning movement every 6-12 minutes which is functionally imperceptible from daily traffic variations that normally occur in the peak hour due to a variety of factors.

to identify gaps for entry into the parking lot is good. For exiting traffic, there is a sight line down the sidewalk that provides about 130 feet of visibility to identify cars moving northwestbound that would conflict with outgoing movements. For left turns exiting the parking lot, sight distance is directly down A Street all the way to Oak.

#### 10. Site Design Review Discussion and Analysis:

- a. **Site Grading:** No grading of the site is proposed or required.
- b. **Parking:** Applicant engaged Sandow Engineering to estimate parking demand for the proposed uses, see Exhibit 11. According to that analysis, the site is adequately parked to meet peak parking demands of ~~retail use~~the proposed uses. No changes to the existing parking lot are proposed or necessary to serve the use.
- c. **Loading:** The existing site plan does not depict a dedicated loading area. A dedicated loading area is not required for this use. Retail deliveries in small vehicles (UPS/FED-EX/etc.) can utilize standard parking spaces and or on-street parking in front of the building. On only rare occasions a larger semi loading need may occur. Use of the parking lot will be adequate and straightforward for semi-loading and unloading outside the retail hours of operation; applicant will stipulate to limiting semi deliveries between the hours of 6am and 9am.
- d. **Elevations:** No changes to the building elevations approved through Planning File No. 99-108 are proposed or required (except for new signage that will comply with the City's sign code and be obtained through a future sign permit ministerial action).
- e. **Historic Context:** No changes to the historic context are expected to result from the proposed use. No external changes to the building are proposed and interior changes will not include structural changes or removal of any major historic building components. The building's interior is a mix of modern and historic elements from the prior A Street Marketplace remodel and subsequent remodel for the Plexis Corporate headquarters.
- f. **Landscaping and Tree Removal:** No existing landscaping is proposed to be changed and all trees are planned to be retained. New landscaping is proposed on the parkrow on the north side of the building to remove the concrete ramp and replace it with landscaping as transportation mitigation measure to discourage pedestrian crossings at this location.

**11. State Licensing:** Applicant has state licenses pending for Recreational Marijuana Retail Location and an Indoor Recreational Marijuana License Tier 1 (less than 5000ksf) with the Oregon Liquor Control Commission (OLCC). The pending review has been issued the following permit numbers by OLCC:

- Retail-050-1008499FD7C
- ~~Producer-020-1008876F722~~

**12. Marijuana Special Uses Standards ~~Analysis: Locational Analysis for Recreational Retail:~~**

**~~a. Recreational Retail:~~**

- ~~i. **Locational Analysis:** See Exhibits 6(a) and 6(b), which show the City’s Marijuana eligibility maps. The analysis indicates that the entrance to the recreational retail use will be approximately 270 feet from the nearest residential zone and the northwestern most portion of the interior of the recreational marijuana retail use will be approximately 230 feet from the nearest residential zone. In the original staff report prior to the December 12<sup>th</sup> hearing, the staff report raised the issue of code’s application of the 200-foot to something other than the specific area of the building that will be occupied by retail marijuana use. Applicant requested a legal opinion on this issue from an attorney with expertise in land use related matters, Mark Bartholomew at HorneckerCowling LLP. Mr. Bartholomew provided a letter, see Exhibit 13, that analyzes this issue from a legal perspective. Mr. Bartholomew’s opinion is that the proper application of the 200 foot separation standard from a residential zone is to the retail use itself and would not properly be applied to something like the building as a whole or the parcel boundary. Applicant agrees with this legal opinion and requests the Planning Commission apply the standard in a manner consistent with this legal opinion.~~

~~a.~~

- ~~ii.b. **General Standards:** OLCC permit standards require secure disposal of all marijuana refuse and applicant will accept a condition of approval requiring such storage be located inside the building. The use is proposed in a permanent building and no modifications to the site or building exterior are proposed or required. No changes in exterior lighting are proposed or required. Building permits will be obtained for all the interior remodel work requiring permits. Applicant agrees and will stipulate to the liability waiver at ALOU 18.2.3.190(g).~~

~~b. **Indoor Production**~~

- ~~i. **Locational Analysis:** Unlike the “retail” component of the Marijuana eligibility map at Exhibit 6 that depicts where retail could potentially be allowed, the production component of the map shows where marijuana production is prohibited based upon the separation requirement of 1,000 feet. In other words, marijuana production uses are allowed in any zone where they are permitted and provided the 1,000 foot separation is maintained. As the City’s map shows, there is no marijuana production use within a 1,000 feet of the proposed project and indoor marijuana production of less than 5,000 feet is permitted in the E-1 zoning district.~~
- ~~ii. **General Standards:** OLCC permit standards require secure disposal of all marijuana refuse and applicant will accept a condition of approval requiring such storage be located inside the building. The use is proposed in a permanent~~

~~building and no modifications to the site or building exterior are proposed or required. No changes in exterior lighting are proposed or required. Building permits will be obtained for all the interior remodel work requiring permits. Applicant agrees and will stipulate to the liability waiver at ALOU 18.2.3.190(g).~~

~~iii. Size Limitation: Applicant’s proposed marijuana production space is less than 5,000 square feet.~~

**13. Livability Impacts Analysis (Delimited to Recreational Retail CUP Only):** The below evidence constitutes the testimony of Applicant’s agent, CSA Planning Ltd., on potential impacts to livability associated with the proposed Recreational Retail Marijuana use<sup>2</sup>. The recreational retail marijuana use is proposed to have the following operating characteristics:

- **Hours of Operation:** The recreational retail facility is proposed to operate from 9am to 9pm seven days a week; this time is two hours less in the morning and one hour less in the evening than allowed by OLCC permit (7am-10PM). This is the time for public sales; Applicant herewith stipulates to limiting public sales during this time period if the same is made a condition of approval by the City of Ashland. Employees may arrive before or after public sales times.
- **Operating Requirements:** Sales and Operations will be conducted in a manner consistent with OLCC permitting requirements and the established operating rules for Recreational Marijuana Retail Facilities, see OAR 845-025. These operating regulations include requirements such as prohibiting sales to minors, prohibiting on-site consumption, requiring a security plan and implementation of the approved security plan, etc.

The impacts analysis testimony in this section is based upon the above described operating characteristics. The analysis compares the potential impacts in relation to the general office uses that would otherwise be allowed as the “target use” of the E-1 zone. The analysis is directed at the impact area which is a defined term in the Ashland Land Use Ordinance (ALUO) at section 18.6.1. The impact area is analyzed as the 200-foot notice area for the project, see Exhibit 9 for a map depicting the notice area/impact area. The below Table details the general information applicable to properties in the impact area:

**Table 1**  
**Impact Area Property Details**  
 Source: CSA Planning Ltd. & Jackson County GIS

Map/Lot	Property Owner	Situs Address	Acreage	Zoning	Improvement Description	Assessor Real Mkt Improvement Value
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<sup>2</sup> CSA Planning Ltd. has over 35 years of land use planning experience in the State of Oregon. CSA principal Jay Harland has been involved in numerous land use proceedings in Oregon and has broad experience in all matters of real estate development in Oregon generally and Southern Oregon specifically.



**Consolidated Land Use Application – Site Design Review and Conditional Use Permit**  
**Applicant: Jorge Yant**  
**Ownership: Plexis Healthcare Systems, Inc.**

391E09BA	14700	Spur Rail Property Owners Assoc. Inc.		0.56	E1-Res	None	\$0
391E09BA	1100	A Street Arts Building LLC	258 A Street	0.21	E1-Res	18,565 sq ft Comm. Bldg.	\$1,402,780
391E04CD	1200	Fellowship Inc	50 E Hersey St	3.42	E1-Res	2944 sq ft Church/Temple	\$3,325,450
391E09BA	1200	Dennis/Darlene Donnelly	246 A Street	0.28	E1-Res	1447 sq ft Comm. Bldg.	\$164,790
391E09BA	1300	RNN Properties LLC	270 First St N	0.05	R2	Residence	125,900
391E04CD	1400	Robert/Mary Hodges Living Trust	468 Oak St	1.43	E1-Res	2048 sq ft Lumber Yard	\$131,250
391E04CD	3400	Robert/Mary Hodges Living Trust	Clear Creek Dr	0.1	E1-Res	None	\$0
391E04CD	3500	Robert/Mary Hodges Living Trust	Clear Creek Dr	0.26	E1-Res	None	\$0
391E04CD	3600	Clear Creek Investments LLC	120 Clear Creek Dr	1.29	E1-Res	None	\$0
391E04CC	5800	John Michael Van Ausdall	40 Van Ness Ave	0.46	E1-Res/R2	Residence	\$163,550
391E04CC	5801	Lisa Dawn Vanderzwan	337 Oak St	0.18	R2	Residence	\$159,470
391E04CC	5900	Margaret Nash Rubin	323 Oak St	0.42	E1-Res/R2	Residence	\$209,590
391E09BA	13400	Valley of the Rogue Bank	250 Pioneer St N	0.77	E1-Res/R2	Bank	\$1,072,310
391E09BA	13401	Ashland Food Coop	237 First St N	0.98	E1-Res/R2	Supermarket	\$1,549,880
391E09BA	13500	Ashland Food Coop	294 Pioneer St N	0.08	E1-Res	Parking Lot	\$2,710
391E09BA	13600	Ashland Food Coop	Pioneer St N	0.08	E1-Res	None	\$0
391E09BA	13601	Ashland Food Coop	300 Pioneer St N	0.11	E1-Res	Office	\$190,650.00
391E09BA	13700	Ashland Food Coop	309 Pioneer St N	0.05	E1-Res	Converted SFR	\$50,790
391E09BA	13800	Ashland Food Coop	A St	0.11	E1-Res	Storage	\$50,790
391E09BA	13900	ASC Properties LLC	222/224 A St and 322 Pioneer St N	0.19	E1-Res	Misc Comm	\$190,330
391E09BA	14000	Bjorklund LLC		1.03	E1-Res	Retail/Apts	\$1,793,690
391E09BA	14600	Plexis Healthcare Sys Inc	A St	0.43	E1-Res	Parking Lot	\$25,420
391E09BA	14602	Emard Properties LLC	249 A St	1.12	E1-Res	Ashland General Hardware	\$1,569,330
391E09BA	14800	Union Pacific RR Co	Clear Creek Dr	2.27	E1-Res	RR Tracks	\$0
391E09BA	14900	Plexis Healthcare Sys Inc	A St	0.49	E1-Res	A Street Market Place	\$1,593,010
391E09BB	16700	Oaky Doaky LLC	295 Oak St	0.24	R-2	Residence	\$191,920
391E09BB	16800	Clair Van Der Zwan	303 Oak St	0.11	R-2	Residence	\$134,320
391E09BB	16801	Francis Peckham	315 Oak St	0.16	R-2	Residence	\$147,640
391E04CD	1400	David Clawson	384 Oak St	1.43	E1-Res	Lumber Yards	Purged Acct
391E09BA	14600A3	Jackson County	384 Oak St		E1-Res		Purged Acct
391E09BA	14600M1	Southern Pacific Trans Co			E1-Res		Purged Acct
391E09BA	14602M1	Southern Pacific Trans Co			E1-Res		Purged Acct

- a. **Scale, Bulk and Coverage Analysis:** The proposed recreational marijuana retail conditional use will occupy just 1,850 square feet of space within an existing building that was most recently used as part of a single-tenant office but has previously been used as a retail use (for which the most recent Site Design Review approval was concerned). Nothing about the exterior of the building will be changing or must be changed so the scale, bulk and coverage of the use is no different than an office use would otherwise require.
- b. **Traffic Livability Impact Analysis:** Applicants engaged Sandow Engineering to evaluate the potential traffic impacts. In real world terms, the proposed recreational marijuana retail use will generate, on average, about one additional car per intersection movement at nearby intersections every 6-12 minutes in the pm peak hour, when compared to an office use of that space. A change in traffic volumes of this magnitude is on the order of the daily fluctuation in traffic volumes that occurs due to a variety of exogenous and/or stochastic factors on streets functionally classified as Neighborhood Collectors and Avenues.

Another way to conceptualize the impacts on livability related to traffic is the effect the proposed use will have in relation to the planned volumes of the streets it will utilize. It is common to assume that 10% of the daily traffic volume on a street will occur in the PM Peak Hour. Using this assumption, A Street is planned to carry up to 500 PM peak hour strips and Oak Street is planned to carry up to 1,000 PM peak hour trips<sup>3</sup>. The change in volumes on A street east and west of the site represent about 5 percent each direction of the planned volume of A Street which is a volume change that is too small to cause significant impacts on livability from a traffic change standpoint.

Following the initial hearing, Applicant's traffic engineer Kelly Sandow evaluated the traffic conditions in the area as well as bicycle and pedestrian activities. During that evaluation, she identified three minor transportation system improvements that will result in a net positive effect on transportation system operations and safety in the area even with the addition of the retail marijuana use traffic.

- c. **Architectural Compatibility Analysis:** No external changes to the building are proposed that would change the architectural character of the building. Thus, its compatibility in relation to the office use that was there previously will be unchanged.
- d. **Air Quality, Emissions:** The retail use is not expected to produce any detectable emissions or odor beyond the property line. No dust suspension of any significance is expected. These potential sources are minimal overall and, to the extent they exist at all, are no greater than would be expected to result from an office use of the site. In preparation of the subject Application, the Applicant's agent went to three recreational retail uses in Medford and in all three sites no discernable odor outside

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<sup>3</sup> See ALUO Table 18.4.6.040.F

the building was present and there is no reason to believe the subject retail use cannot control odor in a similar manner.

e. **Noise, Light and Glare Analysis:** Noise sources are minimal and are limited to associated traffic noise which is nominal in relation to the background noise from traffic already on the higher order streets adjacent to the site. No new exterior lighting is proposed or required. The direct sidewalk entrance to the recreational retail facility already has an exterior light that overhangs from the roof and A Street has pedestrian scale street lights on the south side of the street. Since no new lights are proposed or required and were in existence to serve the office use, no new potential source of impact is identified.

f. **Development of Adjacent Properties Analysis:**

i. **Existing Development:** There are 27 properties in the Impact Area, 22 of which are developed. Based upon the assessors data, aerial photo surveys and site investigations these lands are generally developed with the types of uses and at intensities typical of the E-1 zoning district and R-2 zoning districts that are located in the impact area. Applicant has not identified any potential source of impact that would affect the continued operations of these properties for uses allowed in the zone to any meaningful degree.

ii. **Vacant Land:** There are five vacant properties in the Impact Area and these are analyzed in turn, as follows:

- TL 14700- The assessor lists this property as “vacant” and attributes no land value or improvement value. In reality, it has some pavement and functions as the drive aisle and parking or some office buildings off of Clear Creek Drive. This property is separated by the railroad tracks from the subject property and there is nothing about the proposed retail use that would prevent this property from being used as parking and a drive aisle to serve the office buildings in the area.
- TLs 3400 & 3500- The assessor lists these properties as “vacant” with no improvement values. However, aerial inspection indicates they are used in conjunction with Ashland Lumber Company yard. Applicant identifies no potential impacts with a lumber yard operated in the E-1 zone across the railroad tracks from the proposed use.
- TL 3600- This property is 1.29 acres in size and is located across the railroad tracks from the subject property and is approximately 900 feet of walking distance (if you do not cross the tracks) from the proposed recreational retail marijuana use. The site is vacant and could be used for future office buildings or a variety of other uses in the E-1 zone. Applicant cannot identify any likely impacts from the proposed recreational retail marijuana use on a potential future development of this site.

- TL 13600 – The assessor attributes no improvements to this site but it is improved with pavement and is used as a parking lot in conjunction with the Ashland Food Co-Op. The proposed use is adequately parked so there is no reason to expect parking conflicts from the recreational marijuana retail use to spill over onto this lot. Except for this potential issue that is unlikely to cause any impacts, no potential conflicts with this lot were have been identified.

V

**PROCEDURAL  
CONCLUSIONS OF LAW**

The City of Ashland reaches the following conclusions of law with respect to the review procedure for the subject land use action:

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***Procedural Criterion 1***

**PROCEDURAL CRITERIA**

**18.5.1.010 Purpose and Applicability**

- A. Purpose. This chapter establishes procedures to initiate and make final decisions on planning actions under the Land Use Ordinance ("this ordinance"), pursuant to City policy and state law.
- B. Applicability of Review Procedures. All planning actions shall be subject to processing by one of the following procedures summarized in subsections 1 - 4, below, and as designated in Table 18.5.1.010. Building permits and other approvals, including approvals from other agencies such as the state department of transportation or a natural resource regulatory agency, may be required. Failure to receive notice of any such requirement does not waive that requirement or invalidate any planning action under this ordinance.
  - 1. Ministerial Action (Staff Advisor Decision). The Staff Advisor makes ministerial decisions by applying City standards and criteria that do not require the use of substantial discretion (e.g., fence, sign and home occupation permits). A public notice and public hearing are not required for Ministerial decisions. Procedures for Ministerial actions are contained in section 18.5.1.040.
  - 2. Type I Procedure (Administrative Decision With Notice). Type I decisions are made by the Staff Advisor with public notice and an opportunity for appeal to the Planning Commission. Alternatively the Staff Advisor may refer a Type I application to the Commission for its review and decision in a public meeting. Procedures for Type I actions are contained in section 18.5.1.050.
  - 3. Type II Procedure (Quasi-Judicial Review/Public Hearing Review). Type II decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council. Applications involving zoning map amendments consistent with the Comprehensive Plan map and minor map amendments or corrections are subject to quasi-judicial review under the Type II procedure. Quasi-judicial decisions involve discretion but implement policy.

Procedures for Type II actions are contained in section 18.5.1.060.

- 4. Type III Procedure (Legislative Decision). The Type III procedure applies to the creation, revision, or large-scale implementation of public policy (e.g., adoption of regulations, zone changes,



**Consolidated Land Use Application – Site Design Review and Conditional Use Permit**  
**Applicant: Jorge Yant**  
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comprehensive plan amendments, annexations). Type III reviews are considered by the Planning Commission, who makes a recommendation to City Council. The Council makes the final decision on a legislative proposal through the enactment of an ordinance.

Table 18.5.1.010 – Summary of Approvals by Type of Review Procedure		
Planning Actions	Review Procedures	Applicable Regulations
Conditional Use Permit	Type I or II	Section 18.5.4
Site Design Review	Type I or II	Chapter 18.5.2

**Conclusions of Law:** The City of Ashland concludes the submitted land use application is a consolidated review that includes determinations of compliance with Special Use standards applicable to marijuana-related uses as well as approval of a Conditional Use Permit ~~and a precautionary Site Design Review Approval~~. These inter-related permits can all be processed as a Type I procedure subject to request of hearing in front of the Planning Commission.

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**Procedural Criterion 2**

**18.5.1.020 Determination of Review Procedure**

Where Table 18.5.1.010 designates more than one possible review procedure, e.g., Type I or Type II, the applicable review procedure shall be based on the criteria contained in the ordinance chapters or sections referenced in the table.

**Conclusions of Law:** The City of Ashland concludes the submitted land use application is a consolidated review that includes several inter-related permits that all fall under the Type I procedure and the Type I procedure is the correct procedure for the subject application.

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**Procedural Criterion 3**

**18.5.1.050 Type I Procedure (Administrative Decision with Notice)**

Type I decisions are made by the Staff Advisor, following public notice and a public comment period. Type I decisions provide an opportunity for appeal to the Planning Commission.

C. Decision.

1. At the conclusion of the comment period, the Staff Advisor shall review the comments received and prepare a decision approving, approving with conditions, or denying the application based on the applicable ordinance criteria. The Staff Advisor shall prepare a decision within 45 days of the City's determination that an application is complete, unless the applicant agrees to a longer time period. Alternatively, the Staff Advisor may transmit written comments received along with a copy of the application to the Planning Commission for review and decision at its next regularly scheduled meeting.
2. Where the Staff Advisor refers a Type I application to the Planning Commission, the Commission shall approve, approve with conditions, or deny the application through the Type II procedure



based on the applicable ordinance criteria. The Commission may continue its review to the next meeting to allow the applicant time to respond to questions, provided the Commission must make a final decision within the 120-day period prescribed under State law (ORS 227.178) and as described in subsection 18.5.1.090.B of this ordinance.

**Conclusions of Law:** With respect to the application of the Type I procedure itself, the Applicant believes the subject permit requests are relatively straightforward. ~~Consequently, the Applicant respectfully requests the permits be reviewed at the staff level through the standard Type I procedure and then made subject to notice and opportunity to request a hearing in front of the Planning Commission. Nevertheless, the Staff elected to send the matter to the Planning Commission for an initial hearing and these findings were revised based upon the updated information.~~

VI

**CONCLUSIONS OF LAW**

Based upon the Evidence submitted with the Application and listed in Section II and the Findings of Fact in Section IV, the City of Ashland reaches the following conclusions of law with respect to the relevant substantive approval criteria for the subject land use application:

\* \* \* \* \*

***Special Use Standards 1***

**Special Use Standards**

18.2.3.190 Marijuana-Related Uses

B. Marijuana-Related Businesses:

1. Marijuana-related businesses may require Site Design Review under chapter 18.5.2 or a Conditional Use Permit under chapter 18.5.4. See Table 18.2.2.030 – Uses Allowed by Zone for zones where marijuana-related businesses are allowed. See definition of marijuana-related businesses in part 18.6. Marijuana-related businesses shall meet all of the following requirements.
  - a. The business must be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle. Outdoor marijuana production, cultivation, and storage of merchandise, raw materials, or other material associated with the business are prohibited.
  - b. Any modifications to the subject site or exterior of a building housing the business must be consistent with the Site Design Use Standards, and obtain Site Design Review approval if required by section 18.5.2.020. Security bars or grates on windows and doors are prohibited.
  - c. The business must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the business' exterior refuse containers.
  - d. Light and Glare. Shield lighting systems and use window coverings to confine light and glare from light systems associated with indoor cultivation so as to confine light and glare to the interior of the structure. Grow light systems within a greenhouse are prohibited.
  - e. Building Code. Any structure, accessory structure, electrical service, plumbing, or mechanical equipment (e.g., lighting, fans, heating and cooling systems) associated with a business shall satisfy the Building Code requirements and obtain all required building permits prior to installation.



- f. Methodology for Measuring Separation Requirements. The following methodology shall be used for marijuana related- businesses that are required to be separated by a specific distance (i.e., marijuana production facility, marijuana wholesale facility, marijuana retail outlet). For the purposes of determining the distance between a marijuana related-business and another marijuana-related business, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of an approved marijuana related- business to the closest point anywhere on the premises of a proposed marijuana-related business of the same type. If any portion of the premises of a proposed marijuana related-business is within 1,000 feet of an approved marijuana related business of the same type, it may not be approved. For the purpose of this section, premises is all public and private enclosed areas within a building at the location that are used in the business operation, including offices, kitchens, rest rooms, and storerooms.
- g. The property owner shall record a declaration which waives any claim or right to hold the City liable for damages they or a tenant may suffer from state or federal enforcement actions for activities the City permits as a result of its approval of the proposed use or development once such approval is granted. Furthermore, the owner and tenant agrees not to unreasonably disobey the City's order to halt or suspend business if state or federal authorities order or otherwise subject the City to enforcement to comply with laws in contradiction to the continued operations of the business as permitted under section 18.2.3.190.
- h. A marijuana-related business must obtain an approved license or registration from the State of Oregon and meet all applicable Oregon Revised Statutes and Oregon Administrative Rules.

**Conclusions of Law:** The City of Ashland herewith concludes as follows with respect to the above general standards applicable to all Marijuana Related Businesses:

- ~~The Both the production and~~ retail use iss are proposed to be located in permanent building.
- ~~Neither~~ the recreational retail use ~~nor the production use does not~~ requires modification to the subject site or the exterior of the building; ~~the Site Design Review criteria has been addressed herein as a precautionary measure to demonstrate the existing building is substantially appropriate to serve the needs of the proposed uses without need for site or exterior building modifications.~~
- OLCC requires secure disposal of by-products as a State Permit requirement, see OAR 845-025-7750. Applicant will accept a condition of approval requiring the secure disposal storage to be located within the building.
- ~~The proposed production facility is located in a portion of the building with minimal glazing. These windows can be easily covered to eliminate glare from grow lights inside the "flower room". No new lighting is proposed or required for the retail facility.~~
- Building permits will be required for all interior work that requires a building permit.
- The locational analysis utilized the City's methodology and the City's published map to determine that all required separations are satisfied.
- Applicant herewith agrees to accept a condition of approval requiring recordation of a declaration of liability waiver.
- ~~TBoth~~ the recreational retail use ~~and the production use has~~ ave pending permits with OLCC and the Applicant will accept a condition of approval requiring state permit issuance prior to the conduct of sales ~~or production~~ activities.

~~\*\*\*\*\*~~

~~**Special Use Standards 2**~~

~~2. Marijuana Laboratories, Processing, Production, and Wholesale. In addition to the standards described in subsection 18.2.3.190.B.1, above, marijuana laboratories, processing, production, and wholesale shall meet the following requirements as applicable. See definition of marijuana processing and production in part 18.6.~~

~~b. Marijuana Production.~~

~~i. Marijuana production shall be limited to 5,000 square feet of gross leasable floor area per lot.~~

~~ii. A marijuana production facility shall be located more than 1,000 feet from another marijuana production facility. See subsection 18.2.3.190.B.1.f for methodology for measuring the required distance between marijuana related businesses.~~

~~**Conclusions of Law:** The City of Ashland herewith concludes as follows with respect to the above general standards applicable to all Marijuana Production Businesses:~~

- ~~• The actual flower room is proposed to be less than 2,000 square feet and the total OLC permitted area will be less than 5,000 square feet.~~
- ~~• Exhibit 6(a) and 6(b) shows that there are no marijuana production facilities within a 1,000 feet in any direction.~~

~~\*\*\*\*\*~~

~~**Special Use Standards 23**~~

~~3. Marijuana Retail Sales. In addition to the standards described above in subsection 18.2.3.190.B.1, marijuana retail sales shall meet the following requirements. See definition of marijuana retail sales in part 18.6.~~

~~a. Location.~~

~~i. Marijuana retail sales are allowed if located on a property with a boundary line adjacent to a boulevard.~~

~~ii. Marijuana retail sales, except as allowed above in subsection 18.2.3.190.B.3.a.i, must be located 200 feet or more from a residential zone and are subject to a Conditional Use Permit under chapter 18.5.4.~~

~~iii. Marijuana retail sales are not permitted in the Downtown Design Standards Zones.~~

~~iv. A marijuana retail sales outlet shall be located more than 1,000 feet from another marijuana retail sales outlet. Medical and recreational marijuana retail sales do not need to be separated by 1,000 feet if located together in one building if the configuration meets all applicable Oregon Revised Statutes and Oregon Administrative Rules. No more than two registrations or licenses issued by the State of Oregon (e.g., a medical dispensary registration and a recreational sales license) may be located in one building. See subsection 18.2.3.190.B.1.f for methodology for measuring the required distance between marijuana related businesses.~~

~~b. Drive-up Use. The marijuana retail sales outlet must not include a drive-up use.~~



**Conclusions of Law:** The City of Ashland herewith concludes as follows with respect to the above general standards applicable to Recreational Marijuana Retail Businesses:

- The proposed recreational retail sales use is not located on a Boulevard, therefore, the use requires a conditional use permit under ii above.
- Applicant has applied for and addressed the conditional use permit criteria herein below. The location of 200 feet from a residential zone, based upon the City’s map, indicates that the nearest interior portion of the use is approximately 230 feet from a residential zone and the entrance to the use is approximately 270 feet from the residential zone across Oak Street to the northwest, see Exhibits 6(a) & 6(b).
- The proposed recreational retail site is not located in the Downtown Design Standards Zone, see Exhibit 8.
- The 1,000 foot separation requirement from the nearest retail sales establishment, based upon the City’s map, indicates there are no other permitted retail establishments that are within a 1,000 feet.
- No drive-up sales are proposed and the same is prohibited by OAR 845-025-1300(g).
- In the initial staff report, the proper interpretation of AMC 18.2.3.190.B was raised as an issue. Applicant engaged Mark Bartholomew to provide a legal opinion on this issue and the same is provided as Exhibit 13<sup>4</sup>. Mr. Bartholomew’s opinion is that the correct legal interpretation of AMC 18.2.3.190.B is to apply the 200-foot separation standard to retail sales use itself and therefore to the portion of the building devoted the retail use.

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**Conditional Use Criterion 1**

**Conditional Use Permit (Delimited to Recreational Retail Use Only)**

**18.5.4.050 Approval Criteria**

- A. Approval Criteria. A Conditional Use 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.
1. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.

**Conclusions of Law:** The City of Ashland herewith concludes that Recreational Retail Marijuana uses can be allowed in conformance with the Comprehensive Plan at the proposed location subject to Conditional Use Permit approval and the same is requested herein. The City further concludes that it can feasibly conform with applicable standards for the zoning district generally and the special use standards applicable to Marijuana Related Businesses as addressed herein above.

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<sup>4</sup> Mark Bartholomew is an Oregon licensed attorney with extensive expertise in Oregon land use.



**Conditional Use Criterion 2**

2. That adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the development, and adequate transportation can and will be provided to the subject property.

**Conclusions of Law:** Based upon the evidence in Findings of Fact in Section IV and the traffic analysis in Exhibit 11, the City of Ashland herewith concludes that the site is already served by water, sewer, electricity, storm drainage, and transportation and the proposed use will not appreciably increase demand for such utilities from the prior use to which the property is already served. The City of Ashland further concludes the site has access and the parking lot is paved. During the initial hearing on this matter, considerable questions and testimony concerned water, sewer and power demands of the initially proposed production use. The production component of the application has been withdrawn, and therefore, those concerns are no longer relevant<sup>5</sup>. The retail use will have no greater demand for water, sewer or power than a general office use or many uses that have historically occupied the existing building.

With respect to transportation, the initial staff report raised the issue that the application did not provide adequate information about the, “impact of the additional vehicle trips on the performance of nearby intersections, pedestrian travel, pedestrian crossings and safety and bicycle safety. Applicant’s traffic engineer has provided an addendum to the original report at Exhibit 12 and dated January 16, 2018. That report indicates that the added traffic from the CUP will not cause queueing or other operational concerns. The only identified traffic issue concerned lane usage on Oak Street where cars were observed making wide turns that disrupted other traffic flows. The report did identify two pedestrian safety issues one concerning lighting at the crosswalk and the other concerning crossing at an inappropriate location. The report recommends yellow striping on Oak Street to provide a visual cue to motorists to stay in the appropriate lane when turning, improving lighting at the crosswalk across A street and removing the concrete ramp on the north side of the building and replacing it with landscaping. The Applicant is willing to perform these mitigations as a condition of approval. With these mitigations in place, Sandow Engineering’s expert opinion is that, “the net effect on the operations and safety of the transportation system will be positive even with the addition of the CUP traffic for the retail marijuana use.”

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**Conditional Use Criterion 3**

3. That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone, pursuant with subsection 18.5.4.050.A.5, below. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone.

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<sup>5</sup> Applicant observes that the production use is an allowed use in the applicable zone and therefore these concerns were of questionable relevance to the application given that the site design review criteria requires no such detailed facility adequacy analysis.



- a. Similarity in scale, bulk, and coverage.
- b. Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.
- c. Architectural compatibility with the impact area.
- d. Air quality, including the generation of dust, odors, or other environmental pollutants.
- e. Generation of noise, light, and glare.
- f. The development of adjacent properties as envisioned in the Comprehensive Plan.
- g. Other factors found to be relevant by the approval authority for review of the proposed use.

**Conclusions of Law:** The City of Ashland herewith incorporates and adopts the Findings of Fact Number 13 in Section IV, and concludes thereupon, that the proposed use will have no greater adverse effect on the livability within the impact area when compared to an office use in terms of any of the listed factors in a through f above.

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***Conditional Use Criterion 4***

- 4. A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.

**Conclusions of Law:** The City of Ashland herewith concludes that Recreational Retail Marijuana uses can be allowed in conformance with the Comprehensive Plan at the proposed location subject to Conditional Use Permit approval and the same is requested herein.

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***Conditional Use Criterion 5***

- 5. For the purposes of reviewing conditional use permit applications for conformity with the approval criteria of this subsection, the target uses of each zone are as follows.
  - f. E-1. The general office uses listed in chapter 18.2.2 Base Zones and Allowed Uses, developed at an intensity of 0.35 floor to area ratio, complying with all ordinance requirements; and within the Detailed Site Review overlay, at an intensity of 0.50 floor to area ratio, complying with all ordinance requirements.

**Conclusions of Law:** The City of Ashland herewith concludes that the analysis of potential impacts on the proposed use on the impact area was evaluated in comparison to a general office use which is the proper target use for the E-1 zone pursuant to ALUO 18.5.4.050(5)(f) above.

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***Site-Design-Review-Overarching-  
Applicability-Conclusion***

~~**Overarching Site Design Review Applicability Conclusions of Law:** Applicant herewith provides conclusions of law addressing the Site Design Review criteria as a precautionary measure in the event Site Design Review is found to be applicable. The Applicant seeks to~~



~~move forward with their project and wishes to avoid multiple land use procedures in the event some narrow aspect of the project is ultimately found to require Site Design Review. The code includes several internal tensions regarding Site Design Review applicability as applied to the facts of this particular project, as follows:~~

- ~~• Section 18.5.2.020(A) sets forth applicability requirements for Site Design Review for commercial and industrial uses and subsections (7) and (8) thereunder could plausibly trigger a Site Design Review.~~
- ~~• Section 18.2.3.190(B)(b) refers to requirements for site plan review where changes to the site or exterior of the building are proposed (or necessary to serve the use); no such changes are proposed or necessary for this site to serve the proposed use.~~
- ~~• Section 18.4.2.040(B)(6) expressly provides that existing sites need only be improved to current standards in proportion to the amount of building increase proposed. No new building increase is proposed in this instance; it would be absurd to read the code to require 100% site design improvement compliance for an internal remodel project and 35% site design improvement compliance on a 35% building expansion proposal.~~
- ~~• The building is located in the Railroad Historic District where preservation is a key consideration. Building or site changes that are not needed to serve a change in use of an existing building runs counter to preservation considerations.~~
- ~~• The last major alteration of this building occurred about 17 years ago and was reviewed under the Detail Site Design Review requirements. The vast majority of these same standards continue to apply.~~

~~To resolve the above tensions, the Applicant has provided findings and conclusions addressing the Site Design Review criteria a precautionary measure. Applicant contends that if Site Design Review is required at all, it is required in a limited way. Specifically, to evaluate the degree to which the existing building is adequate to accommodate the proposed uses and design requirements and if changes to the building or site are found to be necessary to serve the proposed uses then current standards would apply to those uses.~~

~~\*\*\*\*\*~~

~~**Site Design Review Criterion 1**~~

**SUBSTANTIVE CRITERIA**

**Site Design Review**



~~18.5.2.050 Approval Criteria~~

~~An application for Site Design Review shall be approved if the proposal meets the criteria in subsections A, B, C, and D below. The approval authority may, in approving the application, impose conditions of approval, consistent with the applicable criteria.~~

~~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.~~

~~**Conclusions of Law:** The City of Ashland concludes that no changes to the building, setbacks, lot area and dimensions, density, floor area, lot coverage, building height, building orientation, or architecture are proposed or required. The City of Ashland concludes, based upon the letter from Sandow Engineering at Exhibit 11 that the site has existing parking that will be adequate to serve the us as well as an office use of the remaining portion of the building.~~

~~\*\*\*\*\*~~

~~**Site Design Review Criterion 2**~~

~~B. Overlay Zones. The proposal complies with applicable overlay zone requirements (part 18.3).~~

~~**Conclusions of Law:** The City of Ashland concludes that the property is within the Detail Site Review overlay and the Railroad District overlay. The City concludes that the proposed design was found to comply with both of the requirements of this overlay the last time the building exterior and site design were modified and no new exterior or site design changes are proposed or required to serve the subject use.~~

~~\*\*\*\*\*~~

~~**Site Design Review Criterion 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.~~

~~**Conclusions of Law:** Consistent with its overarching conclusions of law with respect to the applicability of Site Design Review, the City concludes that the major change in site design considerations are the following:~~

- ~~• Changes to parking demand to serve the new use. If additional parking was necessary to serve the new use then current site design standards would apply to the parking lot redesign. Based upon the evidence in Exhibit 11, the site will continue to have adequate parking to the meet the needs of the proposed uses.~~
- ~~• If changes to the structure itself were necessary to serve the new use that would affect the exterior of the building. In this instance, the existing building is well laid out for the proposed uses so the changes to the interior design of the building are not ones that are expected to trigger any structural changes that would affect the exterior of the building.~~

~~As such, the current site and building design has been reviewed through the Detail Site Design Review process in 1999 and no changes to the exterior of the building or the site are needed and therefore the site can continue to be found to comply with Section 18.4 to the extent those standards are applicable to a change in use that does not necessitate a change to the building exterior or site design layout.~~

~~\*\*\*\*\*~~

~~**Site Design Review Criterion 4**~~

~~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.~~

~~**Conclusions of Law:** The City of Ashland herewith incorporates and adopts Number 8 in the Section of IV Finding of Fact, and concludes based thereupon, that the site is already served with adequate water, sewer, electricity, storm drainage and transportation facilities. The City of Ashland further concludes that the site has paved access to and throughout the parking lot (as well as concrete sidewalks for pedestrian circulation).~~

~~\*\*\*\*\*~~

~~**Site Design Review Criterion 5**~~

~~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.~~

~~**Conclusions of Law:** *[Reserved at the time of filing]*<sup>6</sup>~~

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<sup>6</sup> Applicant reserves the right to apply Section E in the event the land use review process points up site design issues wherein the City seeks to require changes to the site which are not necessary to serve the proposed change of occupancy.



VII

ULTIMATE CONCLUSIONS

Based upon the foregoing findings of fact and conclusions of law, the City of Ashland herewith concludes the Application satisfies all the relevant substantive criteria of the City of Ashland. On this basis, the Application is herewith approved.

Respectfully submitted on behalf of applicant:

CSA PLANNING, LTD.

  
\_\_\_\_\_  
Jay Harland  
Consulting Planner

**Revisions Dated ~~October~~ January 27, 2018, 2017**



## Memorandum

To: City of Ashland Planning Commission  
Cc: Maria Harris, Planning Manager  
Date: December 21, 2017  
Subject: Continuance and Partial Withdrawal for PA-2017-01911

### CSA Planning, Ltd

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Applicant herewith requests a 60-day continuance to the regular City of Ashland planning commission meeting of February 13, 2018 for the marijuana retail conditional use permit. By transmittal of this memo, the Applicant herewith extends the timeline for final decision by 60 days pursuant to ORS 227.178.

In response to testimony and questions, the Applicant has elected to withdraw the indoor grow (marijuana production) component of the application. Considerable neighborhood opposition testimony was directed at odor associated with the indoor grow. As such, by transmittal of this memo, please consider this component of the planning action withdrawn.

At the prior hearing, the Planning Commission made clear their desire that all additional materials be provided to the City in time for staff to review them and all new materials be placed in the packet in advance of the next hearing on the merits. For this reason, we request the Planning Commission continue the hearing one additional month to February. Additional time is necessary for the additional transportation information being requested. Field data must be collected on a "regular day" and this can be a challenge over the holidays between weather systems and odd holiday travel patterns.

Thank you for your attention to this matter and we intend to provide all new materials by January 31<sup>st</sup> for the February 13<sup>th</sup> hearing.

CSA Planning, Ltd.

Jay Harland  
President

cc: File

