

**ASHLAND PLANNING COMMISSION
SPECIAL MEETING
May 25, 2021
AGENDA**

- I. **CALL TO ORDER:** 7:00 PM

- II. **ANNOUNCEMENTS**
 - A. LUBA decision for PA-T3-2019-00001, 1511 Hwy 99 North (Attached)

- III. **PUBLIC FORUM**

- IV. **UNFINISHED BUSINESS**
 - A. Approval of Findings for PA-T1-2021-00141, 599 East Main Street.
 - B. Approval of Findings for PA-L-2021-00010, Duplex and Accessory Residential Units code amendments.

- V. **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).

ANNOUNCEMENTS

**PA-T3-2019-00001
LUBA DECISION**

Memo

DATE: 5/21/2021

TO: Ashland Planning Commission

FROM: Bill Molnar, Community Development Director

RE: LUBA decision for PA-T3-2019-00001, 1511 Hwy 99 North

On May 12th, the Oregon Land Use Board of Appeals (LUBA) provided their Final Opinion and Order and reversed the city's annexation approval for two parcels totaling 16.87 acres at 1511 Highway 99N (Applicant: Kendrick Enterprise LLC and Casita Developments). In reversing the city's approval, LUBA determined that the city's annexation criteria require that Highway 99N, which runs adjacent to the property, be improved to full city street standards with a public sidewalk separated from the travel lane by a seven to eight-foot wide landscaped planting strip. The city's approval granted an Exception to allow installation of a section of curbside sidewalk to accommodate a bus pull-out lane for a new transit stop and an additional curbside section necessary to adjust to topographical constraints and an existing roadside drainage ditch. LUBA agreed with the Appellant, finding that the Ashland Municipal Code does not allow the city to approve Exceptions to the annexation approval criteria. Under the Ashland Municipal Code, Exceptions apply to proposals for new development or land divisions, neither of which were proposed as part of the application for annexation.



1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 ROGUE ADVOCATES,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF ASHLAND,
10 *Respondent,*

11
12 and

13
14 KENDRICK ENTERPRISE, LLC, and
15 CASITA DEVELOPMENTS,
16 *Intervenors-Respondents.*

17
18 LUBA No. 2021-009

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Ashland.

24
25 Sean T. Malone filed the petition for review and reply brief and argued on
26 behalf of petitioner.

27
28 No appearance by City of Ashland.

29
30 Michael M. Reeder filed the response brief and argued on behalf of
31 intervenors-respondents.

32
33 RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board
34 Member, participated in the decision.

35
36 REVERSED

05/12/2021

1 You are entitled to judicial review of this Order. Judicial review is
2 governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioner appeals a city council decision approving a request to annex two parcels totaling 16.87 acres.

MOTION TO INTERVENE

Kendrick Enterprise LLC and Casita Developments (intervenors), the applicants below, move to intervene on the side of the city. There is no opposition to the motion and it is allowed.

FACTS

Intervenors own two parcels (the property) totaling 16.87 acres that are located outside the city limits but within the city’s adopted urban growth boundary (UGB). The property is zoned Rural Residential 5-acre minimum (RR-5) by Jackson County and contains an existing dwelling. The property slopes from the southeast to the northwest, with slopes generally between 10 and 15 percent. The portion of the property west of the existing residence contains steep slopes in excess of 35 percent.

The property is arrow-shaped, with the arrow “tip” at the southeastern end of the property:

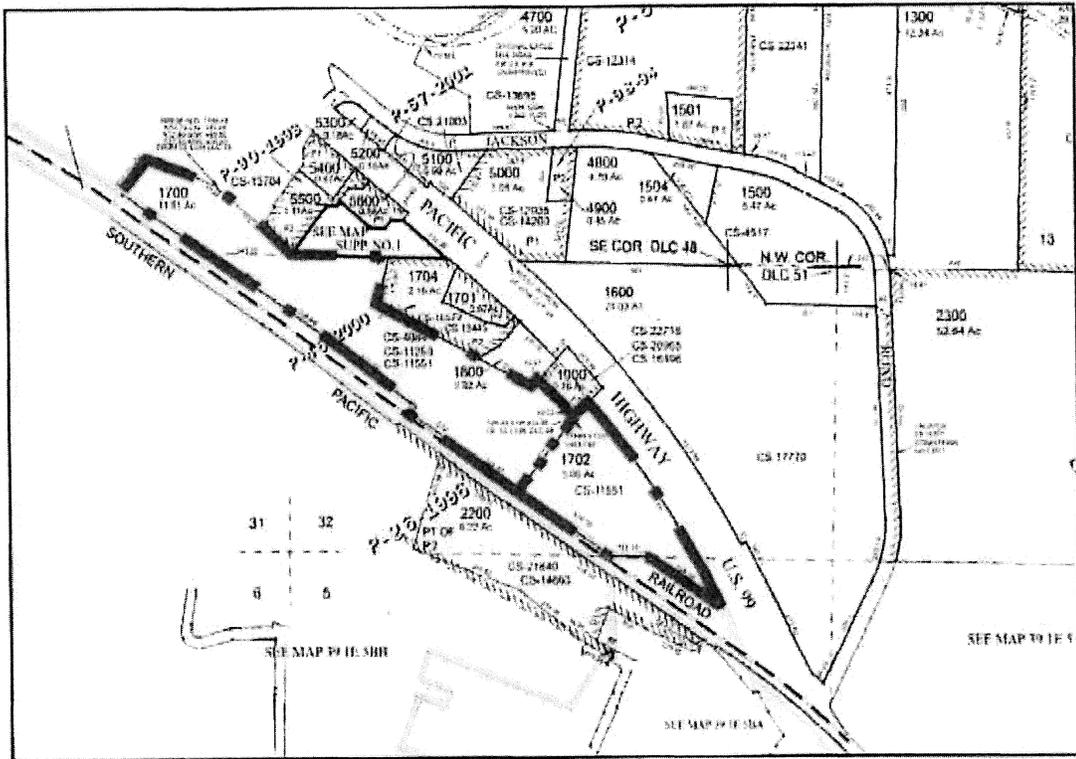


Figure 1: Assessor's Map

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2 Record 943. The property is bounded on the west by Central Oregon and Pacific
 3 Railroad (COPR) tracks, which separate the property from the existing city
 4 boundary; on the south by the junction of the railroad tracks and Highway 99
 5 North; on the east by Highway 99 North and commercial development adjacent
 6 to Highway 99 North; and on the north by commercial development on lands that
 7 are within the county's jurisdiction and within the city's UGB. Highway 99 North
 8 is owned and managed by the Oregon Department of Transportation (ODOT).

9 Intervenor's applied to the city to annex the property and zone it Low
 10 Density Multiple Family Residential (R-2). City staff then included both the

1 adjacent COPR railroad tracks and the portion Highway 99 North adjacent to the
2 property in the annexation proposal.¹

3 Intervenors did not apply for site design review concurrently with their
4 annexation application but, instead, included a “conceptual multi-family
5 development plan * * * to demonstrate how the property could be developed to
6 the required minimum density in keeping with applicable standards” (Concept
7 Plan). Record 17. The Concept Plan includes conceptual details for the future
8 development of 196 apartments in 14 two-story buildings.

9 The Concept Plan originally proposed sidewalk improvements and was
10 later amended to also propose a new bus shelter and bus pull-out lane along the
11 property’s frontage on Highway 99 North. Record 947-48, 895. The
12 approximately 900 feet of Highway 99 North on which the property fronts

13 “has one motor vehicle travel lane in each direction separated by a
14 single, shared center turn lane, and bicycle lanes on shoulders. There

¹ Ashland Municipal Code (AMC) 18.5.8.060 provides:

“When an annexation is initiated by a private individual, the Staff Advisor may include other parcels of property in the proposed annexation to make a boundary extension more logical and to avoid parcels of land which are not incorporated but are partially or wholly surrounded by the City. The Staff Advisor, in a report to the Planning Commission and City Council, shall justify the inclusion of any parcels other than the parcel for which the petition is filed. The purpose of this section is to permit the Commission and Council to make annexations extending the City’s boundaries more logical and orderly.”

1 are currently no curbs, park rows or sidewalks in place along the
2 property frontage, and roadside ditches are present in some
3 locations. On the opposite of the roadway, a guardrail is in place at
4 the outside edge of the bike lane.” Record 20.

5 In addition to proposing sidewalk improvements along the property’s frontage on
6 Highway 99 North, the Concept Plan also proposed sidewalk improvements
7 along Highway 99 North beyond the property’s frontage to connect to existing
8 sidewalks north and south of the property. Record 948-50.

9 Only a portion of the proposed sidewalk improvements would meet the
10 street design standard for park rows (also known as planting strips), due to limited
11 right-of-way, topographical constraints, roadside drainage ditches, a railroad
12 trestle, and the proposed bus pull-out lane.² Record 22, 305. Due to the inability
13 to meet street design standards along the entire proposed sidewalk improvements,
14 intervenors sought, along with the annexation, an “Exception to the Street Design
15 Standards” (Exception) pursuant to AMC 18.4.6.020(B). Record 22. We set out
16 and discuss that provision in detail below.

17 The planning commission held hearings on the annexation proposal and,
18 at the conclusion, voted to recommend approval of the proposal to the city

² The city’s Transportation System Plan classifies Highway 99 North as a boulevard or arterial. Record 20. The street design standards for three-lane boulevards in residential areas (such as the property, if zoned R-2 as requested) require a six-foot bicycle lane, a seven-to-eight foot landscape parkrow, and a six-foot sidewalk. AMC 18.4.6.040(F). A parkrow or planter strip is “[a] landscape area for street trees and other plantings within the public right-of-way, usually in the form of a continuous planter area between the street and sidewalk.” AMC 18.6.1.030

1 council. The city council held a hearing on the proposal and voted to approve the
2 annexation proposal and the Exception. This appeal followed.

3 **FIRST ASSIGNMENT OF ERROR**

4 We set out the relevant AMC provisions before turning to the first
5 assignment of error.

6 **A. AMC 18.5.8.050(E)**

7 AMC 18.5.8.050 provides, as relevant here:

8 “An annexation may be approved if the proposed request for
9 annexation conforms, or can be made to conform through the
10 imposition of conditions, with all of the following approval criteria:

11 “* * * * *

12 “E. Adequate transportation can and will be provided to and
13 through the subject property. For purposes of this section
14 “adequate transportation” for annexations consists of
15 vehicular, bicycle, pedestrian, and transit transportation
16 meeting the following standards.

17 “1. For vehicular transportation a 20-foot wide paved
18 access exists, or can and will be constructed, along the
19 full frontage of the project site to the nearest fully
20 improved collector or arterial street. All streets
21 adjacent to the annexed area shall be improved, at a
22 minimum, to a half-street standard with a minimum 20-
23 foot wide driving surface. The City may, after
24 assessing the impact of the development, require the
25 full improvement of streets adjacent to the annexed
26 area. *All streets located within annexed areas shall be*
27 *fully improved to City standards.* Where future street
28 dedications are indicated on the Street Dedication Map
29 or required by the City, provisions shall be made for

1 the dedication and improvement of these streets and
2 included with the application for annexation.

3 “2. For bicycle transportation safe and accessible bicycle
4 facilities exist, or can and will be constructed. Should
5 the annexation be adjacent to an arterial street, bike
6 lanes shall be provided on or adjacent to the arterial
7 street. Likely bicycle destinations from the project site
8 shall be determined and safe and accessible bicycle
9 facilities serving those destinations shall be indicated.

10 “3. For pedestrian transportation safe and accessible
11 pedestrian facilities exist, or can and will be
12 constructed. Full sidewalk improvements shall be
13 provided on one side adjacent to the annexation for all
14 streets adjacent to the proposed annexed area.
15 *Sidewalks shall be provided as required by ordinance*
16 *on all streets within the annexed area.* Where the
17 project site is within one-quarter (1/4) mile of an
18 existing sidewalk system, the sidewalks from the
19 project site shall be constructed to extend and connect
20 to the existing system. Likely pedestrian destinations
21 from the project site shall be determined and the safe
22 and accessible pedestrian facilities serving those
23 destinations shall be indicated.

24 “4. For transit transportation, should transit service be
25 available to the site, or be likely to be extended to the
26 site in the future based on information from the local
27 public transit provider, provisions shall be made for the
28 construction of adequate transit facilities, such as bus
29 shelters and bus turn-out lanes. All required
30 transportation improvements shall be constructed and
31 installed prior to the issuance of a certificate of
32 occupancy for any new structures on the annexed
33 property.” (Emphases added.)

34 There is no dispute that the proposed sidewalk improvements do not comply with
35 city standards, specifically street design standards, and that the annexation

1 proposal therefore does not satisfy AMC 18.5.8.050(E)(1) and (3). The city
2 council’s decision explains that the proposed improvements along the property’s
3 frontage on Highway 99 North do not comply with street design standards
4 because “the sidewalk must be pushed to curbside [(i.e., with no planting strip)]
5 to accommodate the installation of a bus pull-out lane associated with a new
6 southbound bus stop.” Record 22. The decision also explains that, “due to
7 physical constraints in the form of roadside ditches and limited right of way[,]
8 standard parkrow planting strips with street trees cannot be installed” beyond the
9 property’s frontage. *Id.*

10 However, the city council concluded that it could approve the annexation
11 proposal by approving intervenors’ request for an Exception, pursuant to AMC
12 18.4.6.020(B), to the requirements in AMC 18.5.8.050(E)(1) and (3) that the
13 streets within the proposed annexation area conform to street design standards,
14 based on the improvements depicted on the Concept Plan.³ That Exception is the
15 central dispute in this appeal.

³ AMC 18.4.6.020(B) provides:

“**Exceptions and Variances.** Requests to depart from the requirements of this chapter are subject to chapter 18.5.5 Variances, except that deviations from section 18.4.6.040 Street Design Standards are subject to 18.4.6.020.B.1 Exceptions to the Street Design Standards, below.

“1. Exception to the Street Design Standards. The approval authority may approve exceptions to the standards section in

1 **B. Preservation of Error**

2 Intervenors respond, initially, by challenging petitioner’s statement in the
3 petition for review that the city’s decision is a legislative decision and, therefore,
4 petitioner is not required to demonstrate that the issue was preserved. According
5 to intervenors, the decision is quasi-judicial and, therefore, petitioner is required

18.4.6.040 Street Design Standards if all of the following circumstances are found to exist.

“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.” (Boldface and underscoring in original.)

1 to demonstrate that the issue was preserved. In the reply brief, petitioner responds
2 that the decision is a legislative one and ORS 197.763(1) therefore does not apply
3 but, even if it is quasi-judicial in nature, the issue presented in the first assignment
4 of error was discussed repeatedly during the proceedings before the planning
5 commission and the city council, citing Record 94, 116, 309 to 310, 314, 320,
6 340, and 366.

7 We tend to agree with petitioner that the challenged annexation decision is
8 a legislative decision because the record demonstrates that the city processed the
9 annexation application according to the AMC procedures for legislative
10 decisions. Record 215 (email from city staff explaining that the 120-day rule at
11 ORS 227.178 did not apply to the application because it was not a quasi-judicial
12 action); *see West Side Rural F.P.D. v. City of Hood River*, 43 Or LUBA 546, 551-
13 53 (2003) (explaining that the test for whether a decision is legislative or quasi-
14 judicial under *Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm.*, 287 Or
15 591, 601 P2d 769 (1979), does not control where a city abides by land use
16 regulations that prescribe a particular process for a particular type of decision).
17 However, because we agree with petitioner that the issue presented in the first
18 assignment of error was raised with sufficient specificity throughout the
19 proceeding leading to the city council's decision, as evidenced on the record
20 pages cited in the reply brief, we need not resolve the issue of whether the
21 decision is legislative or quasi-judicial.

1 **C. Availability of Exceptions to Annexation Criteria**

2 The city council interpreted the Exception standards at 18.4.6.020(B) to
3 apply to annexation proposals. The city council relied on AMC part 18.4, which
4 the purpose statement at AMC 18.4.1.010 explains

5 *“contains design standards for development.* The regulations are
6 intended to protect public health, safety, and welfare through
7 standards that promote land use compatibility, resource protection,
8 and livability, consistent with the goals and policies of the
9 Comprehensive Plan. Where an applicant requests an exception to a
10 design standard, the approval authority evaluates the request against
11 the purpose of the ordinance chapter in which the design standard is
12 located.”⁴ (Emphasis added.)

13 AMC 18.4.1.020 explains, in relevant part, “Part 18.4 applies to permits and
14 approvals granted under this ordinance, and other City actions, as summarized in
15 Table 18.4.1.020.” AMC 18.4.1.030(A) explains that, in AMC Table 18.4.1.020,
16 “[t]he individual chapters identify the standards which are subject to the
17 Exception and Variance processes.” AMC Table 18.4.1.020, in turn, sets out the
18 “Applicability of Design Standards to Planning Approvals and Permits.” The

⁴ AMC 18.4.6.010 provides that “[t]he standards of chapter 18.4.6 implement the public facility policies of the Comprehensive Plan.” AMC 18.4.6.040(1) provides the purpose of the street design standards:

“This section contains standards for street connectivity and design as well as cross sections for street improvements. The standards are intended to provide multiple transportation options, focus on a safe environment for all users, design streets as public spaces, and enhance the livability of neighborhoods, consistent with the Comprehensive Plan.”

1 table lists “Annexation” as a “Type of Action.” For that type of action, there is a
2 “Y” under “18.4.6 Public Facilities.” A footnote to the table explains that “Y”
3 means “yes, chapter is applicable.” The city council found:

4 “In considering the proposed frontage improvements in light of the
5 adequate transportation criterion, the City Council finds that the
6 criteria calling for streets within the annexation to be ‘*fully improved*
7 *to City standards*’ (AMC 18.5.8.050.E.1) and for full sidewalks to
8 be provided ‘*as required by ordinance*’ (AMC 18.5.8.050.E.3) are
9 intended to insure that at Annexation, streets are improved in
10 keeping with the standards and procedures of the city’s Public
11 Facilities chapter (AMC 18.4.6) which details the city’s street
12 standards not only in terms of the required cross-sections which
13 illustrate the specific improvements required for each street type, but
14 which also includes criteria in AMC 18.4.6.020.B for considering
15 Exceptions to the Street Design Standards where merited by site-
16 specific circumstances. In making this determination, the Council
17 notes that Table AMC 18.4.1.020, which details the applicability of
18 design standards to specific planning approval types, explicitly
19 provides that Annexations are subject to the Public Facilities
20 Chapter (AMC 18.4.6) rather than limiting Annexation only to the
21 Street Design Standards found in section 18.4.6.040. In addition,
22 AMC 18.4.1.030 makes clear that the individual chapters identify
23 the standards which are subject to the Exception process, and
24 Chapter 18.4.6 provides that deviations from the Street Design
25 Standards are allowed subject to Exceptions to the Street Design
26 Standards in AMC 18.4.6.020.B.1.” Record 22 (emphases and
27 underscoring in original).

28 In its first assignment of error, petitioner argues that the city council
29 improperly construed AMC 18.5.8.050 and AMC 18.4.6.020(B) when it
30 concluded that it could approve an Exception to the annexation approval criteria
31 in AMC 18.5.8.050(E)(1) and (3). According to petitioner, the express language
32 of AMC 18.5.8.050 requires conformance with “all of the following approval

1 criteria,” which means that the provision is not satisfied if an annexation proposal
2 conforms with only some of the criteria. In addition, petitioner argues that the
3 express language of AMC 18.5.8.050 provides the only two ways in which an
4 annexation application may satisfy the provision: either through conformance
5 with all of the street design standards at the time of the decision or through the
6 imposition of conditions that lead to future conformance with all of those
7 standards. That provision does not reference Exceptions as a means of satisfying
8 the criteria. Third, petitioner argues that the express language of AMC
9 18.5.8.050(E)(1), the provision requiring that “[a]ll streets located within
10 annexed areas * * * be fully improved to City standards,” does not authorize the
11 city to grant Exceptions to allow only some streets to be fully improved to street
12 design standards.

13 More importantly, petitioner argues, AMC 18.4.6.020(B) does not allow
14 the city to approve Exceptions to the annexation approval criteria. Petitioner
15 points to the plain language of AMC 18.4.6.020(A), which provides, “*Chapter*
16 *18.4.6 applies to all new development*, including projects subject to Land
17 Division (Subdivision or Partition) approval and developments subject to Site
18 Design Review, where public facility improvements are required. All public
19 facility improvements within the City shall occur in accordance with the
20 standards and procedures of this chapter.” (Emphasis added.) As petitioner points
21 out, the annexation application did not propose any development at all and was
22 therefore not a “project[] subject to Land Division (Subdivision or Partition)

1 approval [or] Site Design Review, where public facility improvements are
2 required,” to which AMC chapter 18.4.6 applies. Petitioner argues that the city’s
3 interpretation of AMC 18.4.6.020(A) and its reliance on the word “procedures”
4 in the last sentence of that subsection is implausible because, by its terms, AMC
5 chapter 18.4.6 applies only to “new development.” As petitioner puts it, “[t]he
6 City is engaged in a classic bootstrapping argument by looking at the very chapter
7 that allows Exceptions to justify an Exception.” Petition for Review 15. Petitioner
8 disputes the city’s interpretation of the inclusion of “Annexation” as a “Type of
9 Action” in AMC Table 18.4.1.020, and the confirmation in the table that “18.4.6
10 Public Facilities” applies to that type of action, to mean that an Exception is
11 available to excuse nonconformance with the annexation criteria. According to
12 petitioner, the table negates neither the express requirement in AMC
13 18.5.8.050(E) that “[a]ll streets * * * be fully improved to City standards” nor the
14 express limitation of AMC chapter 18.4.6’s applicability to “new development.”

15 Under ORS 197.829(1), as construed in *Siporen v. City of Medford*, 349
16 Or 247, 259, 243 P3d 776 (2010), LUBA must defer to a local governing body’s
17 interpretation of its comprehensive plan and land use regulations, unless the local
18 government’s interpretation is inconsistent with the express language, purpose,
19 or underlying policy of the comprehensive plan or land use regulation. *Crowley*
20 *v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018). In *Crowley*,
21 an appeal that involved the city council’s interpretation of the city’s
22 comprehensive plan, the Court of Appeals explained:

1 “Whether the city’s interpretation of its comprehensive plan is
2 inconsistent with the plan, or the purposes or policies underlying
3 that plan, depends on whether the interpretation is plausible, given
4 the interpretive principles that ordinarily apply to the construction
5 of ordinances under the rules of *PGE v. Bureau of Labor and*
6 *Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), as modified
7 by *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009).” *Id.*
8 (internal quotation marks and brackets omitted).

9 The standard of review under ORS 197.829(1) and *Siporen* is “highly deferential”
10 to the city, and the “existence of a stronger or more logical interpretation does
11 not render a weaker or less logical interpretation ‘implausible.’” *Mark Latham*
12 *Excavation, Inc. v. Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012).

13 Our task in this appeal is to determine whether the city council’s
14 interpretation of the relevant provisions of the AMC plausibly accounts for the
15 text and context of those provisions. For the reasons explained below, we agree
16 with petitioner that the city council’s interpretation is inconsistent with the
17 express language of AMC 18.5.8.050 and AMC 18.4.6.020(A), and does not
18 plausibly account for the text and context of those provisions.

19 First, nothing in the language of AMC 18.5.8.050, governing annexations,
20 expressly or impliedly allows the city to approve an annexation application that
21 demonstrates only substantial or incomplete conformance with the approval
22 criteria through an Exception. The provision requires either full conformance at
23 the time of the decision or future full conformance through the imposition of
24 conditions. In contrast, AMC 18.5.2.050(E), governing site design review,
25 expressly allows exceptions to the site development and design standards in

1 certain circumstances.⁵ Accordingly, AMC 18.5.2.050(E) demonstrates that,
2 when the city intends to allow exceptions to approval criteria, the city knows how
3 to do so expressly.

4 Second, AMC chapter 18.4.6, including the Exception standards at AMC
5 18.4.6.020(B), expressly applies “to new development.” AMC 18.4.6.020(A). As
6 noted, no development is proposed here. Thus, the city’s interpretation that the

⁵ AMC 18.5.2.050(E) provides:

“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, 2, or 3, 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;
- “2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or
- “3. There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section 18.2.3.090.”

1 Exception standards can apply to an annexation proposal is expressly inconsistent
2 with AMC 18.4.6.020(A).⁶

3 The city council’s interpretation also relies on AMC Table 18.4.1.020’s
4 inclusion of “Annexation” as a “Type of Action” and the confirmation in the table
5 that “18.4.6 Public Facilities” applies to that type of action. However, the table
6 negates neither the express requirement in AMC 18.5.8.050 that streets be fully
7 improved to street design standards nor the express limitation of AMC chapter
8 18.4.6’s applicability to “new development.” Further, and more importantly, the
9 text of AMC 18.4.1.030(A), which immediately precedes the table, explains that
10 “[t]he individual chapters identify the standards which are subject to the
11 Exception and Variance processes.” While the table states that AMC chapter
12 18.4.6 applies to annexation proposals, AMC chapter 18.4.6 itself provides that
13 the chapter applies only to “new development.”

14 For those reasons, we conclude that the city council’s interpretation that
15 the Exception standards at AMC 18.4.6.020(B) apply to annexation applications
16 is inconsistent with the express language of AMC 18.4.6.020(A), which provides
17 that AMC chapter 18.4.6 applies to new development that proposes public
18 improvements. The city council’s interpretation is also inconsistent with AMC
19 18.5.8.050, which requires full conformance with the street design standards.

⁶ We express no opinion about whether the city could rely on the Exception standards to waive compliance with the annexation criteria if an annexation application included a concurrent proposal for “new development.”

1 Accordingly, the city council improperly construed AMC 18.5.8.050 and AMC
2 18.4.6.020(B) to find that, pursuant to an Exception, the annexation could be
3 approved in spite of its nonconformance with the street design standards. ORS
4 197.835(9)(a)(D).

5 The first assignment of error is sustained.

6 **SECOND AND THIRD ASSIGNMENTS OF ERROR**

7 In its second assignment of error, petitioner challenges the city council's
8 concurrent annexation of the COPR property and Highway 99 North, ODOT's
9 property, pursuant to AMC 18.5.8.060. *See* n 1. In its third assignment of error,
10 petitioner argues that the city's findings regarding AMC 18.5.8.050(E), quoted
11 in full above, are inadequate and not supported by substantial evidence in the
12 record. Because we conclude that the city may not rely on the Exception
13 standards to approve an annexation application that does not satisfy the
14 annexation criteria, as we explain below, the city's decision is prohibited as a
15 matter of law. Accordingly, we need not and do not resolve the second and third
16 assignments of error.

17 **DISPOSITION**

18 Petitioner requests that LUBA reverse or remand the decision. ORS
19 197.835(9)(a)(D) allows LUBA to reverse or remand a decision where the local
20 government "[i]mproperly construed the applicable law." OAR 661-010-
21 0071(1)(c) provides that LUBA will reverse a decision that "violates a provision
22 of applicable law and is prohibited as a matter of law." OAR 661-010-0071(2)(d)

1 provides that LUBA will remand a decision that “improperly construes the
2 applicable law, but is not prohibited as a matter of law.”

3 We sustain petitioner’s first assignment of error and conclude that the
4 city’s decision improperly construed the relevant provisions of the AMC, and
5 that the city may not rely on the Exception standards to approve an annexation
6 application that fails to comply with the applicable approval criteria. Although
7 intervenors argue that the decision should be affirmed, they do not argue that
8 remand, rather than reversal, is the appropriate remedy if the first assignment of
9 error is sustained. When compliance with an applicable approval criterion would
10 require more than insignificant changes to the application, if not a new
11 application, reversal is the appropriate remedy. *Richmond Neighbors v. City of*
12 *Portland*, 67 Or LUBA 115, 129 (2013).⁷ As far as we can tell, demonstrating

⁷ As we explained in *Richmond Neighbors*:

“OAR 661-010-0071 provides that LUBA shall reverse a decision when ‘[t]he decision violates a provision of applicable law and is prohibited as a matter of law,’ while LUBA shall remand a decision when ‘[t]he decision improperly construes the applicable law, but is not prohibited as a matter of law.’ * * * [W]hether reversal or remand is appropriate depends on whether it is the decision or the proposed development that must be corrected. If the identified errors can be corrected by adopting new findings or accepting new evidence, * * * then remand is appropriate. If the identified errors require a new or amended development application, then reversal is appropriate.” 67 Or LUBA at 129 (citing *Angius v. Washington County*, 35 Or LUBA 462, 465-66 (1999); *Seitz v. City of Ashland*, 24 Or LUBA 311, 314 (1992)).

1 compliance with AMC 18.5.8.050(E)(1) and (3), if possible, will require at a
2 minimum more than insignificant changes to the application, if not a new
3 application. Absent some assistance from intervenors on this point, we conclude
4 that reversal is the appropriate remedy.

5 The city's decision is reversed.

FINDINGS

PA-T1-2021-00141
599 East Main

BEFORE THE PLANNING COMMISSION
May 25, 2021

IN THE MATTER OF PLANNING ACTION #PA-T1-2021-00141, A REQUEST FOR)
SITE DESIGN REVIEW APPROVAL TO MODIFY THE EXISTING BUILDING AT)
599 EAST MAIN STREET INCLUDING CONVERTING THE FORMER CHURCH TO)
A MODERN OFFICE BUILDING AND ADDING A NEW ENTRY . THE APPLI-)
CATION ALSO INCLUDES REQUESTS FOR A CONDITIONAL USE PERMIT AS IT)
INVOLVES THE ALTERATION OF AN EXISTING, NON-CONFORMING DEVELOP-) **FINDINGS,**
MENT WHERE NO OFF-STREET PARKING IS AVAILABLE, AND STREET TREE) **CONCLUSIONS,**
REMOVAL PERMITS TO REMOVE AND REPLACE TWO CALLERY PEAR STREET) **&**
TREES (10.2-INCH AND 12.7-INCH DIAMETER AT BREAT HEIGHT) IN THE PARK) **ORDERS**
ROW PLANTING STRIP ALONG EAST MAIN STREET.)

APPLICANT/OWNERS: Rogue Planning & Development Services, LLC/)
Livni Family Trust (Gil Livni, trustee))

RECITALS:

- 1) Tax lot #7600 of Map 39 1E 09AC is located at 599 East Main Street and is zoned C-1 (Commercial). The property is also within the Ashland Railroad Addition Historic District, the Detail Site Review and the Wildfire Lands overlay zones.
- 2) The applicant is requesting Site Design Review approval to modify the existing building at 599 East Main Street including converting the former church to use as office space and adding a new entry. The application also includes requests for a Conditional Use Permit as it involves the alteration of an existing non-conforming development where no off-street parking is available, and Street Tree Removal Permits to remove and replace two Callery Pear street trees (10.2-inch & 12.7-inch DBH) in the park row planting strip along East Main Street. The proposal is outlined in plans on file at the Department of Community Development.
- 3) The approval criteria for Site Design Review approval are detailed in **AMC 18.5.2.050** as follows:
 - A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
 - B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
 - C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
 - D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm*

drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.

E. **Exception to the Site Development and Design Standards.** The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.

1. There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or
2. There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.

4) The approval criteria for a Conditional Use Permit are detailed 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.*
- 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.*
- 5) Non-conforming developments are discussed in the Ashland Municipal Code in AMC 18.1.4.040 as follows:

- A. Exempt Alterations.** *Repair and maintenance of a nonconforming development (e.g., paved area, parking area, landscaping) are allowed subject to approval of required building permits if the development is not enlarged or altered in a way that brings the nonconforming site less in conformity with this ordinance. See also, section 18.3.11.050 related to nonconforming uses in Water Resource Protection zones.*
- B. Planning Approval Required.** *A nonconforming development may be enlarged or altered subject to approval of a Conditional Use Permit under chapter 18.5.4 and approval of required building permits, except that a planning action is not required for exempt alterations described in subsection 18.1.4.040.A, above, and for non-residential development subject to subsection 18.4.2.040.B.6.*
- C. Roadway Access.** *The owner of a nonconforming driveway approach or access to a public street or highway, upon receiving land use or development approval, may be required as a condition of approval to bring the nonconforming access into conformance with the standards of the approval authority.*
- D. Destruction.** *A legal nonconforming development that is damaged by means beyond the owner's control, such as fire, flood, earthquake, or similar catastrophe, to an extent of 50 percent or more of its replacement cost, may be*

restored or reconstructed within the original three-dimensional building envelope (i.e., relative to coverage, height, setbacks, and other dimensions of the developed area) provided the nonconformity shall not increase.

6) The permission to plant or remove street trees within public right-of-way is considered a ministerial action, and is discussed in AMC 13.06.030 as follows:

The City encourages the planting of appropriate trees. No trees shall be planted in or removed from any public planting strip or other public property in the City until a permit has been issued by the City Administrator or a duly authorized representative. Applicants for a removal permit may be required to replace the tree or trees being removed with a tree or trees of comparable value.

If the tree is determined to be dead or dying, then the replacement need be no larger than the minimum described in this chapter. The replacement tree(s) shall be of a size specified in the permit and no smaller than eight feet in height or one inch in caliper 12 inches above root crown and shall be an appropriate species selected from and planted according to the Recommended Street Tree List.

7) On April 15, 2020 Governor Kate Brown issued Executive Order #20-16 “*Keep Government Working: Ordering Necessary Measures to Ensure Safe Public Meetings and Continued Operations by Local Government During Coronavirus (COVID-19) Outbreak.*” The Governor’s Order required that public bodies hold public meetings by telephone, video, or through some other electronic or virtual means, whenever possible; that the public body make available a method by which the public can listen to or virtually attend the public meeting or hearing at the time it occurs; that the public body does not have to provide a physical space for the public to attend the meeting or hearing; that requirements that oral public testimony be taken during hearings be suspended, and that public bodies instead provide a means for submitting written testimony by e-mail or other electronic methods that the public body can consider in a timely manner. The subsequently adopted House Bill #4212 further authorized governing bodies in Oregon to conduct all public meetings using telephone or video conferencing technology or through other electronic or virtual means.

8) The Planning Commission, following proper public notice, held an electronic public hearing on April 13, 2021. In keeping with Executive Order #20-16 and subsequent House Bill #4212, this meeting was broadcast live on local television channel 9 and on Charter Communications channels 180 & 181, and was live-streamed over the internet on RVTV Prime at <http://www.rvtv.sou.edu>. A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report were made available on-line seven days prior to the hearing. Those wishing to provide written testimony were able to submit it via e-mail in advance of the hearing, as detailed the mailed and posted notices, and all written testimony received by the established deadlines was made available for Commissioners to review before the hearing and was included in the meeting minutes. In addition, those wishing to participate during the hearing could arrange to provide oral testimony by making arrangements to do so in advance of the meeting.

Prior to the closing of the public hearing on April 13, the Planning Commission continued the hearing to their next regular meeting on May 11, 2021 at 7:00 p.m. to allow for further review and analysis of a Technical Memo from Sandow Engineering which was submitted into the record by the applicant shortly before the hearing began.

The Planning Commission reconvened the electronic public hearing on May 11, 2021 at which time written testimony submitted in advance of the hearing was considered and new oral testimony was presented. Following the closing of the public hearing and the record, the Planning Commission considered the materials received and testimony presented and approved the project, subject to a number of conditions pertaining to the appropriate development of the site.

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

SECTION 1. EXHIBITS

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

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

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

SECTION 2. FINDINGS & CONCLUSIONS

2.1 The Planning Commission finds that it has received all information necessary to make a decision based on the application materials, staff report, public testimony and exhibits received.

2.2 The Planning Commission finds that the proposal for Site Design Review, Conditional Use Permit and Street Tree Removal Permit approvals meets all applicable criteria for Site Design Review described in AMC 18.5.2.050, for a Conditional Use Permit described in AMC 18.5.4.050.A., and for a Street Tree Removal Permit described in AMC 13.06.030.

2.3 The Planning Commission concludes that the proposal satisfies all applicable criteria for Site Design Review approval.

The Planning Commission finds that the application involves a new addition in the C-1 zone, and as such requires Site Design Review approval as required in AMC 18.5.2.020.A.1. The Planning Commission further finds that because the building and site improvements are already in place, the requested Site Design Review is largely limited to consideration of the proposed changes as they relate

to the applicable criteria and standards. The changes proposed include the addition of a new entry at the corner, changes to the exterior treatment of the existing building, and the removal and replacement of the rear stairs and creation of a new rear entry and courtyard space, as well as a proposed interior remodel and change of use.

The first approval criterion for Site Design Review approval addresses the requirements of the underlying zone, requiring 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 building and yard setbacks, lot area and dimensions, density and floor area, lot coverage and building height are existing conditions which are not changing with the current proposal. The Planning Commission further finds that the exterior modifications proposed will change the building’s orientation, as the new corner addition with an atrium and storefront entry creates a stronger orientation the corner as sought in the Building Placement, Orientation and Design Standards.

The second approval criterion deals with overlay zones, and requires that, *“The proposal complies with applicable overlay zone requirements (part 18.3).”* The Planning Commission finds that the property is located within the Detail Site Review, Ashland Railroad Addition Historic District, and Wildfire Lands overlay zones.

The Detail Site Review overlay requires that the application address the Detail Site Review Standards in AMC 18.4.2.040.C. Buildings are required to have a minimum floor area ratio of at least 0.50. In this instance, the subject property is 3,484 square feet in area and a floor area of at least 1,742 square feet is required. The Planning Commission finds that the existing building’s 4,630 square feet, which represents a floor area ratio of approximately 1.32, more than satisfies the minimum floor area ratio requirement. The Commission further finds that more than 20 percent of the wall area facing the street is provided in windows and doorways, that there are no blank walls, and that there are substantial changes in relief on the surface of the existing building. The proposal here improves relief and fenestration, and adds a new roof extension to provide pedestrian coverage from the rain and sun at the entry.

Where proposed buildings are greater than 10,000 square feet in gross floor area or contain more than 100 feet of building frontage, the Additional Standards for Large Scale Projects in AMC 18.4.2.040.D must also be addressed. The Planning Commission finds that in this instance, the existing building is less than 10,000 square feet in gross floor area and does not have frontages of more than 100 feet, and as such is not subject to the Additional Standards for Large Scale Projects.

The Historic District Development Standards and Historic Commission review are discussed under part 18.4 below.

The Planning Commission further finds that the subject property is located within the Wildfire Lands overlay zone, and as such a Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 must be provided for the review of the Fire Marshal prior

to bringing combustible materials onto the property, and any new landscaping proposed will need to comply with these standards and shall not include plants listed on the ‘Prohibited Flammable Plant List’ per Resolution #2018-028. A condition to this effect has been included below.

Based on the foregoing, the Planning Commission finds that this second criterion is satisfied.

The third criterion addresses the Site Development and Design Standards, requiring that “*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*”

The Building Placement, Orientation and Design Standards for Non-Residential Development seek buildings with their primary orientation to the street, and where located at a corner this orientation is to be to the corner or the higher order street and should include a public entrance to the street with access from the public sidewalk. The Planning Commission finds that the proposed new entry addition establishes a much stronger orientation to the corner as envisioned in the standards. In addition, the standards require the planting of street trees according to city standards along street frontages, and here the Commission finds that the applicant has proposed to remove trees which are not thriving in the location and to plant better selected specimens in their place.

The Detail Site Review overlay requires that the application address the Detail Site Review Standards in AMC 18.4.2.040.C. Buildings are required to have a minimum floor area ratio of at least 0.50. In this instance, the subject property is 3,484 square feet in area and a floor area of at least 1,742 square feet is required. The Planning Commission finds that the existing building’s 4,630 square feet, which represents a floor area ratio of approximately 1.32, more than satisfies the minimum floor area ratio requirement. The Commission further finds that more than 20 percent of the wall area facing the street is provided in windows and doorways, that there are no blank walls, and that there are substantial changes in relief on the surface of the existing building. The Commission finds that the proposal here improves relief and fenestration, and adds a new roof extension to provide pedestrian coverage from the rain and sun at the entry.

Where proposed buildings are greater than 10,000 square feet in gross floor area or contain more than 100 feet of building frontage, the Additional Standards for Large Scale Projects in AMC 18.4.2.040.D must also be addressed. The Planning Commission finds that in this instance, the existing building is less than 10,000 square feet in gross floor area and does not have frontages of more than 100 feet, and as such is not subject to the Additional Standards for Large Scale Projects.

In its review of the proposal for compliance with the Historic District Development Standards of AMC 18.4.2.050, the Ashland Historic Commission had three specific recommendations. The Historic District Development Standards speak to a building’s sense of base or platform in AMC 18.4.2.050.B.8, noting that, “*A clearly defined base, or platform characteristic of historic buildings in the immediate vicinity (is recommended, and) walls that appear to rise straight out of the ground without a distinct platform or base at the ground level (are to be avoided).*” With regard to the base or platform standards, the Historic Commission recommended that one of the following design options be pursued:

- Provide detail demonstrating that the “vener brick cladding” shown on the revised elevations SD-4.1, SD-4.2 and SD-4.3 will fit properly around the window and door openings. The “brick cap course” needs to be more substantial and a heavier weight than shown on the application submittals. Extend the brick base around the back corner of the building on the Fifth Street side (*i.e. the northwest corner*) for at least a column width.
- Rather than extending the “vener brick cladding” on the Fifth Street side of the building, use it to accent the front entry and end the brick at the north side of the main entrance facing the intersection of East Main and Fifth Streets. Brick should be used on the east side of the tower as shown in the revised elevation SD-4.1. The “brick cap course” needs to be more substantial and a heavier weight than shown on the application submittals.
- Retain stucco as the base material rather than adding the “vener brick cladding.”

With regard to rehabilitations of historic buildings and additions, the standards in AMC 18.4.2.050.C.2.g explain that, “*Replacement windows in historic buildings shall match the original windows. Windows in new additions shall be compatible in proportion, shape and size, but not replicate original windows in the historic building.*” The Historic Commission recommended that all windows be replaced with true divided light clad windows as shown on the applicant’s revised elevations, including on the east side of the building (SD-4.1) unless modifications to this elevation are prohibited by building code due to the proximity to the property line.

With regard to siding, the standards for rehabilitations and additions include that, “*Replacement finishes on exterior walls of historic buildings shall match the original finish. Exterior finishes on new additions to historic buildings shall be compatible with, but not replicate, the finish of the historic building (18.4.2.050.C.2.c.)*”; “*Diagonal and vertical siding shall be avoided on new additions or on historic buildings except in those instances where it was used as the original siding (C.2.d.)*”; and “*Imitative materials including but not limited to asphalt siding, wood textured aluminum siding, and artificial stone shall be avoided (C.2.f.)*.” The Historic Commission recommended that all siding be replaced as shown on revised elevations using Hardie® lap siding with a seven-inch exposure, including the east side of the building (SD-4.1) unless modifications to this elevation are prohibited by building code due to the proximity to the property line.

In considering the proposal, the Historic Commission expressed their appreciation that the applicant had added a stucco element on the east side of the building to add definition to the “tower” element as was initially discussed with the Commission, and commended the applicant both for the proposed design and for the efforts being made to remodel and repurpose a historic structure that has been significantly modified over time. The recommendations of the Historic Commission have been incorporated as requirements in the conditions of approval attached hereto.

Based on the foregoing, the Planning Commission concludes that the proposal complies with the applicable Site Development and Design Standards for part 18.4.

The fourth approval criterion addresses city facilities, specifically requiring 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.” Water, sanitary sewer, electric and stormwater facilities are in place from the Fifth Street right-of-way and presently serve the building, and both East Main Street and Fifth Streets are public streets which are improved with paving, curb, gutter, sidewalk, storm drain, and park row planting strips in place, with street trees in place or to be replaced in conjunction with the current proposal. The Planning Commission finds that there are public facilities in place to serve the existing building, and that no changes to the property are proposed which would further impact public facilities. The Commission concludes that this criterion has been satisfied.

The final criterion for Site Design Review approval addresses “*Exception to the Site Development and Design Standards.*” The application has requested no exceptions, and as such this criterion does not apply.

As detailed above, the Planning Commission concludes that the proposal satisfactorily addresses the requirements for Site Design Review approval.

2.4 The Planning Commission finds that the existing development of the property is considered a non-conforming development as detailed in AMC 18.1.4.010.C. The existing buildings on the subject Tax Lot #7600 and the adjacent Tax Lot #7500, which is not part of the current request, have previously been used as a church which held weekly services with seating for up to 244 churchgoers. The required off-street parking ratio for a religious institution is one off-street parking space per four seats, and as such 244 seats would require 61 off-street parking spaces. There are no off-street parking spaces available on the subject Tax Lot #7600. AMC 18.1.4.040.A provides that repair and maintenance of non-conforming developments where the development is not altered in a way that brings the development less into conformity with standards is exempt from land use review, but that the enlargement or alteration of a non-conforming development is subject to Conditional Use Permit approval. The Planning Commission finds that the non-conforming development is being altered here beyond repair and maintenance both by the change in use from the previous church to the proposed office, and by separating the two contiguous tax lots which together have made up the church campus since 1993 and instead seeking to consider the future use of each tax lot separately. As such, the request is subject to Conditional Use Permit approval. The Planning Commission finds that the proposal satisfies the applicable criteria specific to a Conditional Use Permit.

The first criterion for approval of a Conditional Use Permit is, “*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.*” The proposed office use is an outright permitted use within the C-1 district as detailed in AMC Table 18.2.2.030.E “*Uses Allowed by Zone.*” The Planning Commission finds that the proposed change of use is in keeping with the standards of the district but is more in line with employment generation sought within the zone, supports preserving a historic building, conserves energy and materials versus demolishing the existing structure to reconstruct a smaller building with off-street parking on site, and is in keeping with the goals and policies of the Economic Element of the Comprehensive Plan in terms of seeking to “*ensure the local economy increases its health and diversifies the number, type and size of businesses consistent with the local social needs, public service*

capabilities, and the retention of a high-quality environment (Goal 7.07.03)”

The second criterion for Conditional Use Permit approval is, “*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.*” As discussed in 2.4 above, water, sanitary sewer, electric and stormwater facilities are in place and serve the building from the adjacent Fifth Street right-of-way, and both East Main Street and Fifth Streets are public streets which are improved with paving, curb, gutter, sidewalk, storm drain, and park row planting strips in place, with street trees in place or to be replaced in conjunction with the current proposal. The Planning Commission finds that there are public facilities in place to serve the existing building, and that no changes to the property are proposed which would further impact public facilities. The Commission concludes that this criterion has been satisfied.

The third approval criterion is, “*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 18.5.4.050.5, 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; and g. Other factors found to be relevant by the approval authority for review of the proposed use.*”

The Planning Commission notes that the application includes a Technical Memo from Sandow Engineering which assesses the trip generation for the previous church use, proposed office use and target retail use using the ITE Trip Generation Manuals, 10th Edition, as illustrated in the table below, and concludes that the proposed office use has less of a trip generation impact to the neighborhood than either the previous church or the target retail use of the zone.

USE	PM PEAK HOUR TRIPS	SATURDAY PEAK HOUR TRIPS	SUNDAY PEAK HOUR TRIPS
Previous Church	7	99	271
Proposed Office	11	2	1
Target Retail	27	25	37

The Commission finds that the Technical Memo and subsequent clarifications by the applicant make clear that any assembly component of the proposed use will be limited to occasional gatherings associated with the office tenant, accessory to and part of the regular operations of the office tenant, and would only occur a few times a year. The Technical Memo explains that the target retail use could similarly see occasional gatherings in the form of sales, product launches, holiday parties, etc. and as such these assemblies allowed accessory to either primary use would be negligible in comparing the proposed and target uses.

Sandow's Technical Memo further looks at the likely distribution of parking demand based on the ITE Parking Generation Manual, 6th Edition. Sandow explains that there is ample on-street parking available within a comfortable walk of the site, and goes on to detail that the peak parking demand for the previous church use was between 9:00 a.m. and 1:00 p.m. on weekends, whereas the proposed office use would typically generate parking demand between 7:00 a.m. and 7:00 p.m. on weekdays with the peak demand between 11:00 a.m. and 12:00 noon and again between 4:00 p.m. and 5:00 p.m. There would be little or no parking demand on weekends for the proposed office use. The target retail use would have parking demand every day, with a peak between 12:00 noon and 1:00 p.m. The Technical Memo goes on to note that because the surrounding uses are largely residential, their periods of peak demand are from 7:00 p.m. to 7:00 a.m. on weekdays but they also generate a consistently high demand on weekends. The memo concludes that the peak parking demand periods for the proposed office use and the surrounding residential uses are effectively offset so as not to be in conflict (*i.e. office parking demand is highest when surrounding residential demand is lowest*) whereas the peak retail parking demand overlaps the peak residential parking demand meaning that the proposed office use would be less impactful to the surrounding area in terms of parking demand than would either the target retail use, or the prior church use.

The Planning Commission finds that in terms of parking and trip generation, the proposed office use will generate fewer peak hour trips than the target retail use of the property and its peak parking demand periods are materially offset from the surrounding residential neighborhood so that, while the office use for this nonconforming development relies on on-street parking, it would do so largely when on-street demand from residential uses in the neighborhood is at its lowest and would thus limit the adverse impacts in the impact area. In contrast, peak hour trip generation for the target retail use would be 25-37 trips while only five off-street parking spaces would be required, yielding a substantially greater impact to the surrounding neighborhood and doing so when residential demand was at its peak.

The Planning Commission finds that in terms of architectural compatibility with the impact area, the building has been a fixture in the neighborhood since 1928, and the current request which includes new exterior treatments and a new entry addition to establish a much better relationship with the pedestrian streetscape, is supported by the Ashland Historic Commission and represents a substantial improvement that will benefit the immediate neighborhood and surrounding historic district. The Historic Commission commended the applicant for the design and for the effort to remodel and repurpose a historic building that had seen significant modifications over time.

The Planning Commission recognizes that one neighbor had expressed concern with noise, and specifically with construction noise. The Commission finds that the proposed office use is likely to have no more impact in terms of noise, light, glare or air quality than would have been generated by the previous church or target retail uses, and if anything would be less impactful. The Commission further finds that construction noise is governed by AMC 9.08.170.D.6, which allows construction noise in the city to occur between 7:00 a.m. and 7:00 p.m. on weekdays, and between 8:00 a.m. and 6:00 p.m. on weekends and holidays, and that the current proposal – or any work which might be done on the subject property without the need for land use approval – would be limited by these same parameters.

The Planning Commission finds that AMC 18.5.4.050.A.3.g provides for the consideration of “*Other factors found to be relevant by the approval authority for review of the proposed use*” in evaluating Conditional Use Permit requests. Here, the Commission finds that the existing historic building on the property poses a demonstrable difficulty preventing the applicant from alleviating any of the development’s parking non-conformity, as the existing building covers the subject property virtually from lot line to lot line. The Commission finds that the benefits of preserving and renovating the historic building must be weighed against the generation of traffic and its effect on the surrounding streets that result from the continuing parking non-conformity. With all of things considered, the Commission concludes that the effect of parking and trip generation on the surrounding streets for the proposed office use compares favorably to the target use as evidenced in Sandow’s Technical Memo, particularly when weighed alongside the benefit of preserving and renovating the historic building.

The fourth approval criterion is that, “*A conditional use permit shall not allow a use that is prohibited or one that is not permitted pursuant to this ordinance.*” The Planning Commission finds that the proposed office use is an outright permitted use within the C-1 district as detailed in AMC Table 18.2.2.030.E “*Uses Allowed by Zone.*”

The final criterion notes that, “*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....*”
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.” The Planning Commission finds that the subject property is located with the C-1 zoning district and the Detailed Site Review overlay, and as such the target use of the property for the purpose of reviewing the Conditional Use Permit application is general retail commercial use developed at an intensity of 0.50 floor to area ratio which equates to 1,742 square feet of retail space for the 3,484 square foot lot. The Commission further finds that 1,742 square feet of retail space would require five off-street parking spaces (1,742 sq. ft./1 parking space per 350 sq. ft. = 4.977 parking spaces).

2.5 The Planning Commission finds that the application proposes to remove and replace two Callery Pear (*Pyrus calleryana*) street trees in the park row planting strip along East Main Street. The Commission further finds that Street Tree Removal Permits are generally a ministerial action as they are not considered to require the exercise of substantial discretion and are regulated through AMC Section 13.06 rather than the Land Use Ordinance. The Street Tree Removal Permit request is included here as AMC 18.5.1.030.B “*Consolidated Review Procedures*” allows the applicant to apply for all permits for a project proposal at one time. The Planning Commission finds that the Ashland Tree Commission has reviewed the request and noted that while the tree removals were not requested based on the trees being hazardous, dead or in immediate danger of collapse, the trees here have been in place for more than 30 years and have not shown substantial growth over that time. In addition, Callery Pears are described by the applicant as a poor landscape choice in a valley that has a commercial pear-growing industry where poorly maintained trees could become a vector for pests or disease. As such, the Tree Commissioners supported the request provided that the removals were mitigated within 12 months with two-inch caliper specimens that would achieve a large stature at maturity, such as “Autumn Blaze” (*Acer x freemanii*

vars) or “Red Flame” (*Acer rubrum* ‘flame’) maples, and that irrigation be provided for the mitigation trees. The Planning Commission concludes that the Street Tree Removal Permit request here merits approval, and has incorporated the recommendations of the Tree Commission into a condition of this approval.

SECTION 3. DECISION

3.1 Based on the record of the Public Hearing on this matter, the Planning Commission concludes that the proposal for Site Design Review and Conditional Use Permit approval to modify the existing non-conforming development at 599 East Main Street by converting the former church sanctuary building to a modern office building is supported by evidence contained within the whole record.

For the Commission, the existing historic building, which covers the subject property virtually from lot line to lot line, creates a demonstrable difficulty which prevents the applicant from adding parking to alleviate any measure of the parking non-conformity. The applicant proposes to renovate the building with the full support of the Historic Commission and repurpose it with a use better-suited to the neighborhood. The Planning Commission finds that the proposal represents a reasonable adaptive reuse of the building; that the renovations represent a significant improvement to the site and the building, which sits at a prominent entry point to the historic neighborhood; that the proposed office use will be less impactful than the previous church; that the office use will generate fewer peak hour trips than the target retail use of the property; and that the office use will generate peak parking demands which are materially offset from the surrounding residential neighborhood so that, while the office use relies on on-street parking, it will do so at times when on-street demand from residential uses in the neighborhood is at its lowest to lessen the adverse impacts. The Commission finds that the effect of parking and trip generation on the surrounding streets for the proposed office use compares favorably to the target use as evidenced in Sandow’s Technical Memo, particularly when weighed alongside the benefit of preserving and renovating the historic building.

The Planning Commission concludes that the proposal merits approval with the conditions detailed below. Therefore, based on our overall conclusions, and upon the proposal being subject to each of the following conditions, we approve Planning Action #PA-T1-2021-00141. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then Planning Action #PA-T1-2021-00141 is denied. The following are the conditions and they are attached to the approval:

1. All proposals of the applicant shall be conditions of approval unless otherwise modified herein, including but not limited to that any assembly use shall be accessory to the office use and that larger office-associated events shall occur no more than once per quarter.
2. The plans submitted for the building permit shall be in substantial conformance with those approved as part of this application. If the plans submitted for the building permit are not in substantial conformance with those approved as part of this application, an application to modify this Site Design Review approval shall be submitted and approved prior to issuance of a building permit.
3. Any new addresses shall be assigned by City of Ashland Engineering Department.

4. Permits shall be obtained from the Ashland Public Works Department prior to any work in the public right of way.
5. The windows on the ground floor shall not be tinted so as to prevent views into the interior of the building
6. The front entrance at the corner of East Main and Fifth Streets shall remain functional and open to the public during all business hours.
7. No signage or fencing is approved with this application. Sign and fence permits shall be obtained prior to installation of any new signage or fencing. All signage shall meet the requirements of Chapter 18.4.7, and all fencing shall meet the requirements of Chapter 18.4.4.060.
8. The Ashland Tree Commission's recommendations shall be conditions of approval for the Street Tree Removal Permit request, including that the two pear tree removals shall be mitigated with two-inch caliper replacement trees selected to achieve a large stature at maturity, such as "Autumn Blaze" (*Acer x freemanii vars*) or "Red Flame" (*Acer rubrum* 'flame') maples, and that irrigation be provided for the mitigation trees.
9. That the Conditional Use Permit approval is limited to the office use described. Any change in use which alters parking or trip generation beyond that described herein, or otherwise changes the way the non-conforming development relates to applicable standards, shall be required to obtain Conditional Use Permit approval as a new application.
10. That the building permit submittal shall include:
 - a. Identification of all easements, including but not limited to any public and private utility easements.
 - b. Final electric service, utility and civil engineering plans including grading, erosion control and drainage. 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 mains and services, manholes and clean-outs, and storm drainage pipes and catch basins, along with any backflow prevention measures required by the Water Department. Any required private or public utility easements shall be delineated on the civil plans. All civil infrastructure shall be installed by the applicants, inspected and approved prior to final inspection/occupancy approval.
 - c. The final electric design and distribution plan shall include 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.
 - d. That storm water from all new impervious surfaces and runoff associated with peak rainfalls must be collected on site and channeled to the City storm water collection system (i.e., curb gutter at public street, public storm pipe or public drainage way) or through an approved alternative in accordance with Ashland Building Division policy BD-PP-0029. On-site collection systems shall be detailed on the building permit submittals. The storm drainage plan shall detail the location and final engineering for all storm drainage improvements associated with the project, and shall be submitted for review and approval by the Departments of Public Works, Planning and Building Divisions. The storm drainage plan shall demonstrate that post-development peak flows are less than or equal

to the pre-development peak flow for the site as a whole, and that storm water quality mitigation has been addressed through the final design.

- e. Final site lighting details including the fixture type, placement and any measures necessary to avoid directly illuminating adjacent properties (down-directed placement, shrouding, etc.).
- f. The requirements of the Ashland Fire Department relating to approved addressing; commercial fire apparatus access; a firefighter access pathway; fire flow; hydrant installation, distance, spacing and clearance; fire work area; applicable fire sprinkler requirements; fire department connection; key box; extinguishers; limitations on obstructions to fire access; and wildfire hazard area requirements shall be satisfactorily addressed in the permit submittals.
- g. A Fire Prevention and Control Plan addressing the General Fuel Modification Area requirements in AMC 18.3.10.100.A.2 shall be provided prior to bringing combustible materials onto the property, and any new landscaping proposed shall comply with these standards and shall not include plants listed on the ‘Prohibited Flammable Plant List’ adopted with Resolution #2018-028.
- h. A Tree Protection Plan consistent with the standards described in AMC 18.4.5 addressing protection of the existing street trees along Fifth Street shall be submitted for review and approval by the Staff Advisor prior to the issuance of a building permit. The plan shall identify the location and placement of fencing around the drip lines of the street trees to be retained. Tree protection fencing shall be installed according to the approved plan, inspected and approved prior to any site work including demolition, staging or storage of materials.
- i. The building permit submittals shall verify that the bicycle parking, spacing and coverage requirements are met in accordance with 18.4.3.070.I. Inverted U-racks shall be used for the bicycle parking, and all bicycle parking shall be installed in accordance with design and rack standards in 18.4.3.070.I and J, inspected and approved by the Staff Advisor prior to the issuance of the certificate of occupancy.
- j. Exterior building materials and paint colors shall be compatible with the surrounding area and consistent with those illustrated in the application, and sample exterior building colors shall be provided with the building permit submittals for review and approval of the Staff Advisor. Very bright or neon paint colors shall not be used in accordance AMC 18.4.2.040.C.4.b.
- k. That the building permit submittals shall incorporate the recommendations of the Ashland Historic Commission, including that:
 - i. For the base of the building, one of the following three options:
 - Provide detail demonstrating that the “vener brick cladding” shown on the revised elevations SD-4.1, SD-4.2 and SD-4.3 will fit properly around the window and door openings. The “brick cap course” needs to be more substantial and a heavier weight than shown on the application submittals. Extend the brick base around the back corner of the building on the Fifth Street side (*i.e. the northwest corner*) for at least a column width.

- Rather than extending the “veneer brick cladding” on the Fifth Street side of the building, use it to accent the front entry and end the brick at the north side of the main entrance facing the intersection of East Main and Fifth Streets. Brick should be used on the east side of the tower as shown in the revised elevation SD-4.1. The “brick cap course” needs to be more substantial and a heavier weight than shown on the application submittals.
 - Retain stucco as the base material rather than adding the “veneer brick cladding.”
 - ii. Replace all windows with True Divided Light Clad Windows shown on revised elevations including the east side of the building (SD-4.1) unless prohibited by building code (e.g. due to proximity to property line).
 - iii. Replace all siding as shown on revised elevations (i.e. Hardie® lap siding with seven-inch exposure) including the east side of the building (SD-4.1) unless prohibited by building code (e.g. due to proximity to property line).
11. That prior to the final inspection approval or issuance of a certificate of occupancy:
- a. Utility installations and the planting of two irrigated street trees to replace the removed pear trees along the East Main Street frontage shall be completed, inspected and approved by the Staff Advisor.
 - b. Trash and recycling facilities and associated screening shall be installed in accordance with the “*Recycling and Refuse Disposal Areas*” requirements of AMC 18.4.040 prior to the issuance of a certificate of occupancy or final inspection approvals. An opportunity to recycle site of equal or greater size than the solid waste receptacle shall be provided.
 - c. That all exterior lighting shall be directed on the property and shall not directly illuminate adjacent properties.
 - d. That the bicycle parking facilities shall be installed according to the approved plan, inspected and approved by the Staff Advisor. The approved bicycle parking plan includes three inverted U-racks at the rear of the building.

Haywood Norton, *Chair*
Planning Commission Approval

May 25, 2021
Date

FINDINGS

**PA-L-2021-00010
Duplex & ARU code
amendments**

**BEFORE THE CITY COUNCIL
CITY OF ASHLAND, JACKSON COUNTY, OREGON**

June 1, 2021

In the matter of amendments to the Ashland Municipal Code (AMC) Title 18 Land Use concerning the allowances and development standards for duplexes and accessory residential units as required by House Bill 2001 from the 80th Oregon Legislative Assembly, 2019 Regular Legislative Session.)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
)
)

PURPOSE:

The proposal includes a series of amendments to AMC Title 18 Land Use to update the allowances and standards for the development of duplexes and accessory residential units (ARUs) to meet new state requirements. New state legislation, in the form of House Bill (HB) 2001 and subsequently adopted Oregon Administrative Rules (OAR) Chapter 660 Division 46 Middle Housing in Medium and Large Cities, requires Ashland to update the local land use code to meet new state laws and rules pertaining to duplexes and ARUs by June 30, 2021.

PUBLIC HEARINGS:

Notice was published in The Ashland Daily Tidings on April 30, 2021 prior to the Planning Commission public hearing, and on May 20, 2021 prior to the City Council public hearing. A public hearing was held at the Planning Commission on May 11, 2021 and at the City Council on June 1, 2021. Notice was also sent to the Department of Land Conservation and Development on April 1, 2021.

SUMMARY OF AMENDMENTS

The primary changes to the land use code for duplexes are that duplexes are permitted in all of the residential zones including the single-family zones, are required to have two on-site parking spaces, and the approval process requires a building permit prior to construction or conversion of an existing structure. These changes are required by the new state laws and rules referenced above.

The current code allows duplexes on corner lots within the single-family zones as part of a subdivision developed under the Performance Standards Option, and within the multifamily zones as a multifamily development through the Site Design Review process. Planning approvals are required for both a subdivision and multifamily development. In addition, the current code calculates the required parking for a duplex based on the requirements for a multifamily dwelling, which are based on the number of bedrooms in a unit. Generally, any duplex with units larger than 1-bedroom units would require four or more on-site parking spaces under the current code requirements.

The primary changes to the land use code for ARUs are that ARUs do not require on-site parking spaces and the approval process requires a building permit prior to construction

or conversion of an existing structure. The elimination of the on-site parking requirement for ARUs is a requirement of HB 2001.

The current code requires a planning approval, Site Design Review, for attached ARUs that are over 500 square feet in size, detached ARUs, and ARUs located in the historic district that include exterior building modifications. ARUs that are attached to a single-family dwelling and less than 500 square feet do not require a planning approval. Currently, ARUs under 800 square feet in size require one on-site parking space and ARUs 800 square feet and larger require two on-site parking spaces.

The code amendments result in two options for the development of two dwelling units located on one lot. One option is an ARU along with a single-family dwelling. The ARU is required to meet the existing size limits and does not have to provide on-site parking for the ARU. The approval process for constructing an ARU is a building permit.

The second option is a duplex with two dwellings, either in attached or detached structures, located on one lot. Duplexes do not have size limits and are required to provide two on-site automobile parking spaces. The approval process for constructing a duplex is a building permit.

In any of the options, whether a lot includes a single-family dwelling, a single-family dwelling and an ARU, or a duplex, the development must meet the dimensional requirements of the zone such as lot coverage, setbacks and building height.

REVIEW CRITERIA

The decision of the City Council together with the recommendation by the Planning Commission was based on consideration and findings of consistency with the following factors.

- A. Consistency with City of Ashland approval criteria for legislative amendments, AMC 18.5.9.020.B
- B. Consistency with City of Ashland Comprehensive Plan and Other City Policies
- C. Consistency with Oregon Statewide Planning Goals
- D. Consistency with Oregon land use laws and administrative rules including specifically HB 2001 and OAR Chapter 660 Division 46 Middle Housing in Medium and Large Cities

EVALUATION AND COUNCIL FINDINGS:

A. Consistency with City of Ashland approval criteria for legislative amendments and zoning map amendments, AMC 18.5.9.020.B

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

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.*

Ashland Municipal Code (AMC) 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. The City Council finds it is necessary to amend the land use ordinance to meet the new state requirements for middle housing in HB 2001 and OAR Chapter 660 Division 46 Middle Housing in Medium and Large Cities.

In the 2019 legislative session, the Oregon State Legislature passed HB 2001 which requires “medium” cities such as Ashland to amend local zoning codes to allow duplexes on residentially zoned lots that allow the development of detached single-family homes. A medium city is defined as with a population between 10,000 and 25,000 and outside the Portland Metro boundary. The 2020 population estimate for Ashland from Portland State University is 21,105, and Ashland is located outside the Portland Metro boundary.

HB 2001 also includes a provision that prohibits jurisdictions from requiring off-street parking and owner-occupancy requirements for ARUs. ORS 197.312(5) requires cities with populations over 2,500 to allow the development of at least one ARU for each detached single-family dwelling in areas that are zoned for detached single-family dwellings “subject to reasonable local regulations relating to siting and design.”

The current code is not consistent with the new state requirements in that a planning approval is required to construct or convert a structure to a duplex as part of a subdivision or a multifamily development. In contrast, the approval process for a detached single-family home, assuming the home meets all standard dimensional requirements of the zone, is a building permit. In addition, the current code calculates the required parking for a duplex based on the requirements for a multifamily dwelling, which are based on the number of bedrooms in a unit. Generally, any duplex with units larger than 1-bedroom units would require four or more on-site parking spaces under the current code requirements. In addition, ARUs under 800 square feet in size currently require one on-site parking space and ARUs 800 square feet and larger require two on-site parking spaces.

HB 2001 says that cities may regulate the siting and design of duplexes as long as the regulations do not, individually or cumulatively, deter the development of duplexes through unreasonable cost and delay. The administrative rules clarify that siting and

design standards that create unreasonable cost and delay include any standards applied to duplex development that are more restrictive than those applicable to detached single-family dwellings in the same zone.

In Ashland, detached single-family homes are a permitted use and in most cases simply require a building permit. The exceptions are planning approvals required for exceeding the maximum permitted house size (MPFA) in the historic districts, exceptions for the solar setback, variances to dimensional, parking and access requirements, tree removal permits, and permits for construction in natural hazard and resource areas such as hillside lands (25 percent slope and greater), floodplains, riparian areas and wetlands.

The City Council finds the land use ordinance amendments are necessary to update the development standards and approval process for duplexes to comply with HB 2001 and OAR Chapter 660 Division 46 Middle Housing in Medium and Large Cities, and are therefore consistent with AMC 18.5.9.020.B.

B. Consistency with the Ashland Comprehensive Plan and other City Policies

The *Ashland Comprehensive Plan* includes a goal in the Housing Element to “ensure a range of different dwelling types that provide living opportunities for the total cross section of Ashland’s population (6.10.01).” Included with this goal are the following applicable policies: “Policy 1: Provide for a mix of housing types that are attractive and affordable to a diversity of ages, incomes, household sizes, and household types,” and “Policy 3: Integrate housing with other compatible land uses through flexible zoning provisions.”

The Housing Element includes another goal to “support the creation and preservation of housing that is affordable to low and moderate income households and that is commensurate with the incomes of Ashland’s workforce (6.10.02),” along with the following applicable policy “Policy 14: Provide for minimal off-street parking requirements in locations where it is demonstrated that car ownership rates are low for resident populations in order to help reduce housing costs and increase affordability and where the impact on neighborhoods allow.” The 2012 *Ashland Housing Analysis* identified a deficit in rental housing and recommended more rental studio and one-bedroom units.

Finding: The proposed land use code amendments provide two different options to construct second units in the form of duplexes or ARUs in all of the residential zones. These second units will not require a planning approval and instead, as outright permitted uses, can be built or a structure converted with the approval of a building permit. Since the proposed land use ordinance amendments allow duplexes and ARUs without a planning application and approval, this change in the approval process eliminates \$850 to \$1,380 in planning application fees and two to three months for the review and public noticing process for a property owner who wishes to develop a duplex or ARU.

The reduction in the required on-site parking for a duplex and elimination of an on-site parking requirement for ARUs as required by the new state laws and administrative rules

is consistent with the City's housing policy to provide minimal off-street parking requirements to help reduce housing costs and increase affordability.

The Climate and Energy Action Plan (CEAP) includes an action to “Revise community development plans to favor walkable neighborhoods and infill density. Ashland has a series of long-range planning documents that guide development across Ashland districts, neighborhoods, and natural areas. Revisiting these plans to ensure that they support climate-ready development needs, such as walking, biking, transit, parking management, and climate adaptation features, will ensure that Ashland development is consistent with the City's climate goals and commitments. It will be important to ensure that these activities do not come at the expense of higher housing costs, which could disadvantage low-income populations (CEAP ULT-4-2).”

Finding: The proposed land use code amendments will provide opportunities to develop duplexes and ARUs as infill density within existing neighborhoods which is consistent with the CEAP.

The *Ashland Comprehensive Plan* includes a regional plan element with performance indicators including a committed residential density for the city limits of 6.6 dwelling units per acre.

Finding: The City of Ashland participated in the regional planning process that resulted in the adoption of the *Greater Bear Creek Valley Regional Plan* in 2012. Cities throughout the region identified urban reserve areas (URAs) to accommodate housing for future population growth. The City of Ashland decided to accommodate housing for future population with the Ashland's current boundaries rather than identify future growth areas on the perimeter of the city.

As a result, Ashland committed to exploring ways to increase land use efficiency and accommodate future housing needs without identifying URAs. Changes to the zoning and land use ordinance that encourage development of residential units in existing neighborhoods can provide needed multifamily residential units to contribute toward accommodating future housing needs.

The City Council finds and determines that the proposed land use code amendments are consistent with the Comprehensive Plan and other aforementioned City documents and policies.

C. Consistency with Oregon Statewide Planning Goals

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that ensures the opportunity for cities to be involved in all phases of the planning process.

Finding: The City of Ashland meets this requirement by having the Planning Commission serve as the Committee on Citizen Involvement, as well as having various Findings of Fact and Conclusions of Law

citizen commissions with opportunities for the public to testify on general or specific matters.

The Planning Commission discussed the proposed code amendments at four electronic public meetings on October 13, 2020, December 22, 2021, February 23, 2021 and April 27, 2021. The Planning Commission held an electronic public hearing on May 11, 2021 and recommended approval of the attached ordinance. The code amendments were also presented to the Housing and Human Services Commission on April 22, 2021 and the Historic Commission on May 5, 2021. Opportunities to provide written and oral testimony were available at all of the commission meetings. All of the aforementioned meetings were held electronically because of the City of Ashland emergency declaration for the COVID-19 pandemic that began on March 15, 2020 and the Governor's Executive Order 20-16 that suspended all in-person public meetings.

In addition to the Planning Commission meetings, an electronic development roundtable meeting was held on April 21, 2021 to provide information and obtain comments on the proposed code amendments. Thirty-five development professionals including planners, design professionals, contractors and developers were invited. In addition, three notices were sent to the same group of development professionals regarding meeting and code updates to the same group for the above mentioned Planning Commission meetings.

A project web page at www.ashland.or.us/duplexcode with the draft code amendments, meeting materials and reference materials was available throughout the duration of the project and was included in all meeting notices and announcements. This Goal is met.

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual bases for such decisions and actions.

Finding: The proposed land use code amendments have an adequate factual base and are required by HB 2001 and OAR Chapter 660 Division 46, as has been thoroughly described in this application. The implementation measures proposed are consistent with and adequate to carry out HB 200, OAR Chapter 660 Division 46, and Comprehensive Plan polices as noted in these findings. The alternative to amending the land use code would be to follow the Model Code and OAR Chapter 660 Division 046 for duplex requirements. The Goal is met.

GOAL 3: AGRICULTURAL LANDS

To preserve and maintain agricultural lands.

Finding: Not applicable because the proposal does not propose any land use regulation changes to agricultural lands outside of the Ashland Urban Growth Boundary.

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Finding: Not applicable because the proposal does not propose any land use regulation changes to forest lands outside of the Ashland Urban Growth Boundary.

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces.

Finding: The proposed land use code amendments will not negatively impact inventoried Goal 5 resources.

The proposal for duplex dwellings with the Water Resource Protection Zones (i.e., stream bank and wetland protection zones) follow the same provisions for detached single-family dwellings including activities requiring permits in AMC Chapter 18.3.11 Water Resource Protection Zones (Overlays).

For designated historic resources, duplex dwellings are treated the same as detached single-family dwellings. AMC 18.5.2.020 requires Site Design Review of exterior changes to any residential structure that is individually listed on the National Register of Historic Places and require a building permit, regardless of the number of dwelling units. AMC 18.2.5.070 Maximum Permitted Residential Floor Area in Historic District limits the floor area of residential dwellings in the City of Ashland's four national register historic districts. The maximum permitted floor area (MPFA) allows more floor area for a duplex than for a single-family, and therefore the existing regulation is not more restrictive for a detached single-family dwelling as compared to a duplex. In addition, the proposed amendments provide an exemption for a detached duplex dwelling from the MPFA calculation if it is separated from the other structures by six feet or more. This same exemption from MPFA is currently in place for detached accessory structures and ARUs. This Goal is met.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of the air, water and land resources of the state.

Finding: The City of Ashland has an acknowledged Comprehensive Plan that complies with this goal. This proposal does not modify the existing goals and policies, and compliance with HB 2001 and OAR Chapter 660 Division 46 does not negatively impact Goal 6. This Goal is met.

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards.

Finding: The City of Ashland has an acknowledged Comprehensive Plan that complies with this goal. This proposal does not modify the existing goals and policies and compliance with HB 2001 and OAR Chapter 660 Division 46 does not negatively impact Goal 7.

AMC 18.3.10 Physical and Environmental Constraints Overlay regulates flood plan corridor lands, hillside and severe constraint lands, and wildfire lands. The standards that apply to the aforementioned natural hazard areas follow the same provisions for any structure whether a detached single-family dwelling or a duplex, with one exception which is discussed below.

AMC 18.3.10.090.A limits the development of existing parcels without adequate buildable area less than or equal to 35 percent slope to be buildable for one unit. The proposed land use code amendments revise the allowance for one unit to an accessory residential unit in combination with a single-family dwelling or a duplex. There are thirty-one vacant parcels, which is less than one percent of the residential parcels in the Ashland city limits, that do not have a buildable area that is less than or equal to 35 percent slope. Given that any development in the regulated Hillside Lands area is subject to the dimensional requirements of the underlying zone including lot coverage and that the Hillside Development Standards in AMC 18.3.10.090 regulate the areas of cut and fill, surface and groundwater design, building location and design, and tree preservation, the development of a single-family dwelling, a single-family dwelling and an accessory residential unit or a duplex will result in comparable impact to the natural hazard area. In addition, development in areas over 35 percent slope are required to include a geotechnical study that addresses site geology and suitable of the site for the proposed development from a geologic standpoint. This Goal is met.

GOAL 8: RECREATIONAL NEEDS

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Finding: The City of Ashland has an acknowledged Comprehensive Plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 7 and recreational needs. This Goal is met.

GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to health, welfare, and prosperity of Oregon's citizens.

Finding: HB 2001 and OAR Chapter 660 Division 046 for duplexes do not apply to lands with a nonresidential Comprehensive Plan designation and that are zoned for employment uses. The proposal does not modify the existing goals and policies related to Goal 9 and economic development. This Goal is met.

GOAL 10: HOUSING

To provide for the housing needs of citizens of the state.

Finding: The proposed land use code amendments provide two different options to construct second units in the form of duplexes or ARUs in all of the residential zones. These second units will not require a planning approval and instead, as outright permitted uses, can be built or a structure converted with the approval of a building permit. Since the land use ordinance amendments allow duplexes and ARUs without a planning application and approval, this change in the approval process eliminates \$850 to \$1,380 in planning application fees and two to three months for the review and public noticing process for a property owner who wishes to develop a duplex or ARU.

The reduction in the require on-site parking for a duplex and elimination of an on-site parking requirement for ARUs is required by the new state laws and administrative rules, and is consistent with the City’s housing policy to provide minimal off-street parking requirements in locations to help reduce housing costs and increase affordability.

The City of Ashland with the assistance of a grant from DLCD recently completed a draft Housing Capacity Analysis (HCA) that is scheduled for a public hearing at the Ashland City Council in August 2021.

The proposed land use ordinance amendments comply with HB 2001 and OAR Chapter 660 Division 046 and allow the development of duplexes using the same approval process and standards as a detached single-family dwelling in all of the residential zones in Ashland. This Goal is met.

GOAL 11: PUBLIC FACILITIES AND SERVICES

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Finding: The City of Ashland has master plans in place for water, wastewater and stormwater that address project population growth in the Ashland city limits and UGB. The Water Master Plan was completed in 2020 and projects and plans for an adequate water supply for a 20-year planning period. The Wastewater Master Plan was completed in 2012 and projects and plans for an adequate water supply for a 20-year planning period. The Stormwater and Drainage Master Plan was completed in 2020 and projects and plans for an adequate water supply for a 20-year planning period.

GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system.

Oregon Administrative Rules

660-046-0030

Implementation of Middle Housing Ordinances

(3) When a local government amends its comprehensive plan or land use regulations to allow Middle Housing, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

Finding: The City of Ashland adopted a Transportation System Plan (TSP) in 2013 which has gone through the post acknowledgement amendment process. The transportation system is planned to accommodate the population growth of the community for the 20-year planning period.

The City of Ashland has not evaluated the impacts of duplex dwellings on the transportation system in accordance with OAR 660-046-0030. This Goal is met.

GOAL 13: ENERGY CONSERVATION

To conserve energy.

Finding: This goal is not applicable because the proposed land use code amendments to not directly affect energy conservation.

GOAL 14: URBANZIATION

To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Finding: The proposed land use code amendments do not include changes to the Ashland Urban Growth Boundary (UGB). The changes to the duplex approval process and standards facilitate the efficient use of land with the existing city limits and UGB to meet the project population for Ashland. This Goal is met.

D. Consistency with HB 2001 and OAR Chapter 660 Division 46 Middle Housing in Medium and Large Cities

Applicable Oregon Revised Statute

197.758 Development of middle housing; local regulations. (1) *As used in this section:*

(a) *“Cottage clusters” means groupings of no fewer than four detached housing units per acre with a footprint of less than 900 square feet each and that include a common courtyard.*

(b) *“Middle housing” means:*

(A) *Duplexes;*

(B) *Triplexes;*

(C) *Quadplexes;*

(D) *Cottage clusters; and*

(E) *Townhouses.*

(c) *“Townhouses” means a dwelling unit constructed in a row of two or more attached units, where each dwelling unit is located on an individual lot or parcel and shares at least one common wall with an adjacent unit.*

(2) *Except as provided in subsection (4) of this section, each city with a population of 25,000 or more and each county or city within a metropolitan service district shall allow the development of:*

(a) All middle housing types in areas zoned for residential use that allow for the development of detached single-family dwellings; and

(b) A duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings.

(3) Except as provided in subsection (4) of this section, each city not within a metropolitan service district with a population of more than 10,000 and less than 25,000 shall allow the development of a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. Nothing in this subsection prohibits a local government from allowing middle housing types in addition to duplexes.

(4) This section does not apply to:

(a) Cities with a population of 1,000 or fewer;

(b) Lands not within an urban growth boundary;

(c) Lands that are not incorporated and also lack sufficient urban services, as defined in ORS 195.065;

(d) Lands that are not zoned for residential use, including lands zoned primarily for commercial, industrial, agricultural or public uses; or

(e) Lands that are not incorporated and are zoned under an interim zoning designation that maintains the land's potential for planned urban development.

(5) Local governments may regulate siting and design of middle housing required to be permitted under this section, provided that the regulations do not, individually or cumulatively, discourage the development of all middle housing types permitted in the area through unreasonable costs or delay. Local governments may regulate middle housing to comply with protective measures adopted pursuant to statewide land use planning goals.

(6) This section does not prohibit local governments from permitting:

(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle housing in areas not required under this section. [2019 c.639 §2]

Note: Sections 3 and 4, chapter 639, Oregon Laws 2019, provide:

Sec. 3. (1) Notwithstanding ORS 197.646, a local government shall adopt land use regulations or amend its comprehensive plan to implement section 2 of this 2019 Act [197.758] no later than:

(a) June 30, 2021, for each city subject to section 2 (3) of this 2019 Act; or

(b) June 30, 2022, for each local government subject to section 2 (2) of this 2019 Act.

(2) The Land Conservation and Development Commission, with the assistance of the Building Codes Division of the Department of Consumer and Business Services, shall develop a model middle housing ordinance no later than December 31, 2020.

(3) A local government that has not acted within the time provided under subsection (1) of this section shall directly apply the model ordinance developed by the commission under subsection (2) of this section under ORS 197.646 (3) until the local government acts as described in subsection (1) of this section.

(4) In adopting regulations or amending a comprehensive plan under this section, a local government shall consider ways to increase the affordability of middle housing by considering ordinances and policies that include but are not limited to:

(a) Waiving or deferring system development charges;

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to 307.523, 307.540 to 307.548 or 307.651 to 307.687 or property tax freezes under ORS 308.450 to 308.481; and

(c) Assessing a construction tax under ORS 320.192 and 320.195.

(5) When a local government makes a legislative decision to amend its comprehensive plan or land use regulations to allow middle housing in areas zoned for residential use that allow for detached single-family dwellings, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility. [2019 c.639 §3]

Sec. 4. *(1) Notwithstanding section 3 (1) or (3) of this 2019 Act, the Department of Land Conservation and Development may grant to a local government that is subject to section 2 of this 2019 Act [197.758] an extension of the time allowed to adopt land use regulations or amend its comprehensive plan under section 3 of this 2019 Act.*

(2) An extension under this section may be applied only to specific areas where the local government has identified water, sewer, storm drainage or transportation services that are either significantly deficient or are expected to be significantly deficient before December 31, 2023, and for which the local government has established a plan of actions that will remedy the deficiency in those services that is approved by the department. The extension may not extend beyond the date that the local government intends to correct the deficiency under the plan.

(3) In areas where the extension under this section does not apply, the local government shall apply its own land use regulations consistent with section 3 (1) of this 2019 Act or the model ordinance developed under section 3 (2) of this 2019 Act.

(4) A request for an extension by a local government must be filed with the department no later than:

(a) December 31, 2020, for a city subject to section 2 (3) of this 2019 Act.

(b) June 30, 2021, for a local government subject to section 2 (2) of this 2019 Act.

(5) The department shall grant or deny a request for an extension under this section:

(a) Within 90 days of receipt of a complete request from a city subject to section 2 (3) of this 2019 Act.

(b) Within 120 days of receipt of a complete request from a local government subject to section 2 (2) of this 2019 Act.

(6) The department shall adopt rules regarding the form and substance of a local government's application for an extension under this section. The department may include rules regarding:

(a) Defining the affected areas;

(b) Calculating deficiencies of water, sewer, storm drainage or transportation services;

(c) Service deficiency levels required to qualify for the extension;

(d) The components and timing of a remediation plan necessary to qualify for an extension;

(e) Standards for evaluating applications; and

(f) Establishing deadlines and components for the approval of a plan of action. [2019 c.639 §4]

Finding: Compliance with 197.758 is addressed in the findings below under OAR Chapter 660, Division 46 Middle Housing in Medium and Large Cities.

Applicable Oregon Administrative Rules

OAR Chapter 660, Division 46 Middle Housing in Medium and Large Cities

660-046-0000

Purpose

The purpose of this division is to prescribe standards guiding the development of Middle Housing types as provided in Oregon Laws 2019, chapter 639. OAR 660-046-0010 to OAR 660-046-0235 establish standards related to the siting and design of Middle Housing types in urban growth boundaries. OAR 660-046-0300 to OAR 660-046-0370 establish the form and substance of an application and the review process to delay the enactment of standards related to the siting and design of Middle Housing types in areas with significant infrastructure deficiencies.

660-046-0010

Applicability

(1) A local government that is a Medium City or Large City must comply with this division.

Finding: The City of Ashland is classified as a Medium City. A medium city is defined as with a population between 10,000 and 25,000 and outside the Portland Metro boundary. The 2020 population estimate for Ashland from Portland State University is 21,105 and is located outside the Portland Metro boundary.

(2) Notwithstanding section (1), a Medium or Large City need not comply with this division for:

- (a) Lots or Parcels that are not zoned for residential use, including but not limited to Lots or Parcels zoned primarily for commercial, industrial, agricultural, or public uses;*
- (b) Lots or Parcels that are Zoned For Residential Use but do not allow for the development of a detached single-family dwelling; and*
- (c) Lots or Parcels that are not incorporated and that are zoned under an interim zoning designation that maintains the land's potential for planned urban development.*

Finding: The proposed land use code amendments to allow duplexes as an outright permitted use is applied to all residential zones in the City of Ashland. The implementation of HB 2001 for duplexes does not apply to the commercial, employment and industrial zones where the primary use is intended for employment uses.

(3) A Medium or Large City may regulate Middle Housing to comply with protective measures (including plans, policies, and regulations) adopted and acknowledged pursuant to statewide land use planning goals. Where Medium and Large Cities have adopted, or shall adopt, regulations implementing the following statewide planning goals, the following provisions provide direction as to how those regulations shall be implemented in relation to Middle Housing, as required by this rule.

(a) Goal 5: Natural Resources, Scenic, and Historic Areas – OAR chapter 660, division 23, prescribes procedures, and in some cases, standards, for complying with Goal 5. OAR chapter 660, division 16 directed implementation of Goal 5 prior to division 23. Local protection measures adopted pursuant to divisions 23 and 16 are applicable to Middle Housing.

(A) Goal 5 Natural Resources – Pursuant to OAR 660-023-0050 through OAR 660-023-0110, Medium and Large Cities must adopt land use regulations to protect water quality, aquatic habitat, and the habitat of threatened, endangered and sensitive species. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 5:

(i) Medium and Large Cities may apply regulations to Duplexes that apply to detached single-family dwellings in the same zone;

(ii) Medium and Large Cities may limit the development of Middle Housing other than Duplexes in significant resource sites identified and protected pursuant to Goal 5; and

(iii) If a Medium or Large City has not adopted land use regulations pursuant to OAR 660-023-0090, it must apply a 100-foot setback to Middle Housing developed along a riparian corridor.

Finding: AMC 18.3.11 Water Resource Protection Zones (Overlays) regulates riparian areas and wetlands, and follow the same provisions for any structure whether a detached single-family dwelling or a duplex. There are no changes proposed to AMC 18.3.11 Water Resource Protection Zones (Overlays).

(B) Goal 5: Historic Resources – Pursuant to OAR 660-023-0200(7), Medium and Large Cities must adopt land use regulations to protect locally significant historic resources. This includes regulations applicable to Middle Housing to comply with protective measures as it relates to the integrity of a historic resource or district. Protective measures shall be adopted and applied as provided in OAR 660-023-0200. Medium and Large Cities may apply regulations adopted under OAR 660-023-0200 to Middle Housing that apply to detached single-family dwellings in the same zone, except as provided below. If a Medium or Large City has not adopted land use regulations to protect significant historic resources listed on the National Register of Historic Places, it must apply protective measures to Middle Housing as provided in OAR 660-023-0200(8)(a) until the Medium or Large City adopts land use regulations in compliance with OAR 660-023-0200. Medium or Large Cities may not apply the following types of regulations specific to Middle Housing:

(i) Use, density, and occupancy restrictions that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings; and

(ii) Standards that prohibit the development of Middle Housing on historic properties or districts that otherwise permit the development of detached single-family dwellings.

Finding: AMC 18.5.2.020 requires Site Design Review of exterior changes to any residential structure that is individually listed on the National Register of Historic Places and requires a building permit, regardless of the number of dwelling units. AMC 18.2.5.070 Maximum Permitted Residential Floor Area in Historic District limits the Findings of Fact and Conclusions of Law

floor area of residential dwellings in the City of Ashland's four national register historic districts. The maximum permitted floor area (MPFA) allows more floor area for a duplex than for a single-family, and therefore the existing regulation is not more restrictive for a detached single-family dwelling as compared to a duplex. In addition, the proposed land use code amendments exempt a detached duplex dwelling unit from the MPFA calculation if it is separated from the other structures by six feet or more. This same exemption from MPFA is currently in place for detached accessory structures and ARUs. There are no changes proposed to AMC 18.5.2.020 and AMC 18.2.5.070.

AMC 18.5.2.020 requires Site Design Review of two or more dwelling units on a lot and AMC 18.5.2.020.C exempts single-family dwellings and ARUs (i.e., accessory dwelling units) from Site Design Review. The proposed land use code amendments change the threshold for Site Design Review in AMC 18.5.2.020 to three or more units in residential zones and duplexes are added to the exemptions from Site Design Review in AMC 18.5.2.030.C.

(b) Goal 6: Air, Water and Land Resources Quality – Pursuant to OAR 660-015-0000(6), a Medium or Large City may limit development within an urban growth boundary to support attainment of federal and state air, water, and land quality requirements. Medium and Large Cities may apply regulations adopted pursuant to Goal 6 to the development of Middle Housing.

Finding: The City of Ashland has an acknowledge Comprehensive Plan that complies with this goal, and the proposed land use code amendments do not modify the exiting goals and policies.

(c) Goal 7: Areas Subject to Natural Hazards – Pursuant to OAR 660-015-0000(7), Medium and Large Cities must adopt comprehensive plans (inventories, policies, and implementing measures) to reduce risk to people and property from natural hazards. Such protective measures adopted pursuant to Goal 7 apply to Middle Housing, including, but not limited to, restrictions on use, density, and occupancy in the following areas:

(A) Special Flood Hazard Areas as identified on the applicable Federal Emergency Management Agency Flood Insurance Rate Map; and

(B) Other hazard areas identified in an adopted comprehensive plan or development code, provided the Medium or Large City determines that the development of Middle Housing presents a greater risk to life or property than the development of detached single-family dwellings from the identified hazard. Greater risk includes but is not limited to actions or effects such as:

(i) Increasing the number of people exposed to a hazard;

(ii) Increasing risk of damage to property, built, or natural infrastructure; and

(iii) Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.

Finding: AMC 1.3.10 Physical and Environmental Constraints Overlay regulates flood plan corridor lands, hillside and severe constraint lands, and wildfire lands. The standards that apply to the aforementioned natural hazard areas follow the same provisions for any Findings of Fact and Conclusions of Law

structure whether a detached single-family dwelling or a duplex, with one exception which is discussed below.

AMC 18.3.10.090.A limits the development of existing parcels without adequate buildable area less than or equal to 35 percent slope to be buildable for one unit. The proposed land use code amendments revise the allowance for one unit to allow a duplex or an accessory residential unit in combination with a single-family dwelling. Thirty-one parcels, which is less than one percent of the residential parcels in the Ashland city limits, do not have a buildable area that is less than or equal to 35 percent slope. Given that any development in the regulated Hillside Lands area is subject to the dimensional requirements of the underlying zone and that the Hillside Development Standards in AMC 18.3.10.090 regulate the areas of cut and fill, surface and groundwater design, building location and design, and tree preservation, the development of a single-family dwelling, a single-family dwelling and an accessory residential unit or a duplex will result in comparable impact as a single-family dwelling to the natural hazard area. In addition, development in areas over 35 percent slope are required to include a geotechnical study that addresses site geology and suitability of the site for the proposed development from a geologic standpoint.

(d) Goal 9: Economic Development - Pursuant to OAR 660-009-0025, Medium and Large Cities must adopt measures adequate to implement industrial and other employment development policies, including comprehensive plan designations. Medium and Large Cities may limit the development of Middle Housing on Lots or Parcels Zoned For Residential Use designated for future industrial or employment uses.

Finding: The implementation of HB 2001 for duplexes does not apply to lands with a nonresidential Comprehensive Plan designation, including the commercial, employment and industrial designations and zones in Ashland.

(e) Goal 11: Public Facilities and Services - Pursuant to OAR 660-011-0020(2), a public facility plan must identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. This includes public facility projects to support the development of Middle Housing in areas zoned for residential use that allow for the development of detached single-family dwellings. Following adoption of Middle Housing allowances by a Large City, the Large City shall work to ensure that infrastructure serving undeveloped or underdeveloped areas, as defined in OAR 660-046-0320(8), where Middle Housing is allowed is appropriately designed and sized to serve Middle Housing.

Finding: The City of Ashland has an acknowledge Comprehensive Plan that complies with this goal. In addition, the City of Ashland has master plans for transportation as well as the public utilities (i.e., water, sanitary sewer and storm drainage) that are regularly updated and include projected buildouts for infill and vacant lands.

(f) Goal 15: Willamette Greenway – Pursuant to OAR 660-015-0005, Medium and Large Cities must review intensifications, changes of use or developments to insure their

compatibility with the Willamette River Greenway. Medium and Large Cities may allow and regulate the development of Middle Housing in the Willamette Greenway, provided that applicable regulations adopted pursuant to Goal 15 comply with ORS 197.307.

Finding: This goal is not applicable to the City of Ashland because Ashland is not located in the Willamette Greenway.

(g) Goal 16: Estuarine Resources – Pursuant to OAR 660-015-0010(1) and OAR chapter 660, division 17, Medium and Large Cities must apply land use regulations that protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features, and water quality. Medium and Large Cities may prohibit Middle Housing in areas regulated to protect estuarine resources under Goal 16 in the same manner as the Medium or Large City prohibits detached single-family dwellings to protect estuarine resources under Goal 16.

Finding: This goal is not applicable to the City of Ashland because Ashland does not have identified estuarine resources.

(h) Goal 17: Coastal Shorelands – Pursuant to OAR 660-015-0010(2) and OAR 660-037-0080, local governments must apply land use regulations that protect shorelands for water-dependent recreational, commercial, and industrial uses. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 17. Local governments may apply regulations to Middle Housing that apply to detached single-family dwellings in the same zone.

Finding: This goal is not applicable to the City of Ashland because Ashland is not a coastal community and does not have coastal shorelands.

(i) Goal 18: Beaches and Dunes – Pursuant to OAR 660-015-0010(3), Medium and Large Cities must apply land use regulations to residential developments to mitigate hazards to life, public and private property, and the natural environment in areas identified as Beaches and Dunes under Goal 18. This includes regulations applicable to Middle Housing to comply with protective measures adopted pursuant to Goal 18 including but not limited to restrictions on use, density, and occupancy; provided the development of Middle Housing presents a greater risk to life or property than development of detached single-family dwellings. Greater risk includes but is not limited to actions or effects such as:

(A) Increasing the number of people exposed to a hazard;

(B) Increasing risk of damage to property, built or natural infrastructure; and

(C) Exacerbating the risk by altering the natural landscape, hydraulics, or hydrology.

(4) For the purposes of assisting local jurisdictions in adopting reasonable siting and design standards for Middle Housing, the applicable Model Code adopted in this section will be applied to A Local Government That Has Not Acted to comply with the provisions of ORS 197.758 and this division. For such Medium and Large Cities, the applicable Model Code completely replaces and pre-empts any provisions of those Medium and Large Cities' development codes that conflict with the Model Code. The Commission

adopts the following Middle Housing Model Codes:

(a) The Medium City Model Code as provided in Exhibit A; and

(b) The Large City Model Code as provided in Exhibit B.

(5) This division does not prohibit Medium or Large Cities from allowing:

(a) Single-family dwellings in areas zoned to allow for single-family dwellings; or

(b) Middle Housing in areas not required under this division.

Finding: The proposed land use code amendments provide standards and an approval process for duplexes that are consistent with the standards and approval process applied to detached single-family dwellings in the same residential zones.

660-046-0020

Definitions

As used in this division, the definitions in ORS 197.015 and ORS 197.758 apply, unless the context requires otherwise. In addition, the following definitions apply:

(1) “A Local Government That Has Not Acted” means a Medium or Large City that has not adopted acknowledged land use regulations that are in compliance with ORS 197.758 and this division.

(2) “Cottage Cluster” means a grouping of no fewer than four detached dwelling units per acre with a footprint of less than 900 square feet each that includes a common courtyard. A Medium or Large City may allow Cottage Cluster units to be located on a single Lot or Parcel, or on individual Lots or Parcels.

(3) “Department” means the Department of Land Conservation and Development.

(4) “Design Standard” means a standard related to the arrangement, orientation, materials, appearance, articulation, or aesthetic of features on a dwelling unit or accessory elements on a site. Design standards include, but are not limited to, standards that regulate entry and dwelling orientation, façade materials and appearance, window coverage, driveways, parking configuration, pedestrian access, screening, landscaping, and private, open, shared, community, or courtyard spaces.

(5) “Detached single-family dwelling” means a detached structure on a Lot or Parcel that is comprised of a single dwelling unit.

(6) “Duplex” means two attached dwelling units on a Lot or Parcel. A Medium or Large City may define a Duplex to include two detached dwelling units on a Lot or Parcel.

(7) “Goal Protected Lands” means lands protected or designated pursuant to any one of the following statewide planning goals:

(a) Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces;

(b) Goal 6 Air, Water and Land Resource Quality;

(c) Goal 7 Areas Subject to Natural Hazards;

(d) Goal 9 Economic Development;

(e) Goal 15 Willamette River Greenway;

(f) Goal 16 Estuarine Resources;

(g) Goal 17 Coastal Shorelands; and

(h) Goal 18 Beaches and Dunes.

(8) “Large City” means a city with a certified Portland State University Population Research Center estimated population of 25,000 or more or a city with a population over 1,000 within a metropolitan service district. A Large City includes unincorporated areas

of counties within a metropolitan service district that are provided with sufficient urban services as defined in ORS 195.065. Sufficient urban services means areas that are within an urban service district boundary.

(9) “Lot or Parcel” means any legally created unit of land.

(10) “Master Planned Community” means a site that is any one of the following:

(a) Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary that is zoned for or proposed to be Zoned For Residential Use, and which is not currently developed with urban residential uses, for which a Large City proposes to adopt, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan;

(b) Greater than 20 acres in size within a Large City or adjacent to the Large City within the urban growth boundary for which a Large City adopted, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan after the site was incorporated into the urban growth boundary; or

(c) Added to the Large City’s urban growth boundary after January 1, 2021 for which the Large City proposes to adopt, by resolution or ordinance, a master plan or a plan that functions in the same manner as a master plan.

(11) “Medium City” means a city with a certified Portland State University Population Research Center estimated population more than 10,000 and less than 25,000 and not within a metropolitan service district.

(12) “Middle Housing” means Duplexes, Triplexes, Quadplexes, Cottage Clusters, and Townhouses.

(13) “Model Code” means the applicable Model Code developed by the Department and contained in the exhibits in OAR 660-046-0010(4).

(14) “Quadplex” means four attached dwelling units on a Lot or Parcel. A Large City may define a Quadplex to include any configuration of four detached or attached dwelling units on one Lot or Parcel.

(15) “Siting Standard” means a standard related to the position, bulk, scale, or form of a structure or a standard that makes land suitable for development. Siting standards include, but are not limited to, standards that regulate perimeter setbacks, dimensions, bulk, scale, coverage, minimum and maximum parking requirements, utilities, and public facilities.

(16) “Sufficient Infrastructure” means the following level of public services to serve new Triplexes, Quadplexes, Townhouses, or Cottage Cluster development:

(a) Connection to a public sewer system capable of meeting established service levels;

(b) Connection to a public water system capable of meeting established service levels;

(c) Access via public or private streets meeting adopted emergency vehicle access standards to a city’s public street system; and

(d) Storm drainage facilities capable of meeting established service levels for storm drainage.

(17) “Townhouse” means a dwelling unit that is part of a row of two or more attached dwelling units, where each unit is located on an individual Lot or Parcel and shares at least one common wall with an adjacent dwelling unit.

(18) “Townhouse Project” means one or more townhouse structures constructed, or proposed to be constructed, together with the development site where the land has been divided, or is proposed to be divided, to reflect the Townhouse property lines and the any

commonly owned property.

(19) “Triplex” means three attached dwelling units on a Lot or Parcel. A Large City may define a Triplex to include any configuration of three detached or attached dwelling units on one Lot or Parcel.

(20) “Zoned for Residential Use” means a zoning district in which residential dwellings are the primary use and which implements a residential comprehensive plan map designation.

660-046-0030

Implementation of Middle Housing Ordinances

(1) Before a local government amends an acknowledged comprehensive plan or a land use regulation to allow Middle Housing, the local government must submit the proposed amendment to the Department for review and comment pursuant to OAR chapter 660, division 18.

Finding: The proposed land use code amendments were submitted to the Department of Land Conservation and Development on April 1, 2021 providing 40 days prior to the first public scheduled hearing on May 11, 2021.

(2) In adopting or amending regulations or amending a comprehensive plan to allow Middle Housing, a local government must include findings demonstrating consideration, as part of the post-acknowledgement plan amendment process, of methods to increase the affordability of Middle Housing through ordinances or policies that include but are not limited to:

(a) Waiving or deferring system development charges;

Finding: The Ashland City Council adopted Resolution 2018-30 on November 6, 2018 implementing discounts on transportation systems development charges (SDCs) for small market rate dwelling units. The 2012 Housing Needs Analysis identified a need for studio and one-bedroom rental units in Ashland and the SDC discounts are intended to support the development of small market rate units. These same discounts will support the development of middle housing in the form of duplexes as well as dwellings meeting the size requirements such as accessory dwelling units, cottages and multifamily dwellings.

The updated SDC methodology included in Resolution 2018-30 went into effect on January 1, 2018. The discounts include: 1) a 50 percent discount in transportation SDCs for new dwellings that are 500 square feet or smaller. 2) a 25 percent discount in transportation SDCs for dwellings that are 501 to 800 square feet, and 3) provides a 20 percent discount in transportation SDCs for developers planning to employ Transportation Demand Management (measures aimed at reducing single occupancy vehicle use); as an example this credit recognizes developing near transit (e.g., Transit Triangle Overlay); eligible projects must demonstrate achievable transportation impact reductions and parking reductions.

Additionally to support the creation of new affordable housing and provide a means of reducing the upfront costs of SDCs, the Ashland City Council approved Ordinance 3174

in 2019 which codified the following SDC waivers: 1) maintained and codified the existing affordable housing 100 percent discount for all SDCs for qualified as affordable housing by the City of Ashland Housing Program and deed restricted to remain affordable for a minimum of 30 years, and 2) regarding collection of SDC charges a new section AMC 4.20.090 was added to include an option to pay the SDC obligation over 10 years in semi-annual payments if the SDC obligation is over \$2,000.

(b) Adopting or amending criteria for property tax exemptions under ORS 307.515 to ORS 307.523, ORS 307.540 to ORS 307.548 or ORS 307.651 to ORS 307.687 or property tax freezes under ORS 308.450 to ORS 308.481; and

Finding: The City of Ashland with the assistance of a grant from DLCD recently completed a draft Housing Capacity Analysis (HCA) that is scheduled for a public hearing at the Ashland City Council in August 2021. The HCA includes the following recommendation which will be considered in the upcoming Housing Production Strategy: ***Strategic Issue 3: Provide opportunities for development of housing affordable to all income levels, Action 3.2: Evaluate using the Multiple Unit Property Tax Exemption to incentivize preservation and development of housing for low- to middle-income households for needed housing types.***

(c) Assessing a construction tax under ORS 320.192 and ORS 320.195.

Finding: The City of Ashland with the assistance of a grant from DLCD recently completed a draft Housing Capacity Analysis (HCA) that is scheduled for a public hearing at the Ashland City Council in August 2021. The HCA includes the following recommendation which will be considered in the upcoming Housing Production Strategy: ***Strategic Issue 4: Identify funding sources to support development of infrastructure and housing affordability programs, Action 4.1: Evaluate establishing a Construction Excise Tax (CET) for residential, commercial, and industrial development. When the City evaluates implementing a CET, the City should consider how much funding the CET could produce and decide if that funding would meaningfully help in production of affordable housing. The City may want to consider a methodology that exempts a portion of the permit value (such as the first \$100,000 or more permit value), as a way of focusing CET charges on units with a higher permit value.***

(3) When a local government amends its comprehensive plan or land use regulations to allow Middle Housing, the local government is not required to consider whether the amendments significantly affect an existing or planned transportation facility.

Finding: The City of Ashland adopted a Transportation System Plan in 2013 which includes a transportation system that will accommodate the population growth of the community for a 20-year planning period.

660-046-0040

Compliance

(1) A Medium or Large City may adopt land use regulations or amend its comprehensive

plan to comply with ORS 197.758 and the provisions of this division.

(2) A Medium or Large City may request from the Department an extension of the time allowed to complete the action under section (1) pursuant to the applicable sections of OAR 660-046-0300 through OAR 660-046-0370.

(3) A Medium City which is A Local Government That Has Not Acted by June 30, 2021 or within one year of qualifying as a Medium City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) in its entirety to all proposed Middle Housing development applications until such time as the Medium City has adopted provisions under section (1).

(4) A Large City which is A Local Government That Has Not Acted by June 30, 2022 or within two years of qualifying as a Large City pursuant to OAR 660-046-0050 and has not received an extension under section (2), shall directly apply the applicable Model Code contained in OAR 660-046-0010(4) for the specific Middle Housing type that is not in compliance with the relevant rules in this division to all proposed development applications for that specific Middle Housing type until such time as the Large City has adopted provisions under section (1).

(5) If a Medium or Large City has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the Medium or Large City's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an appellate court solely on procedural grounds, the Medium or Large City is deemed to have acted. Accordingly, the Medium or Large City may continue to apply its own land use regulations and comprehensive plan as they existed prior to the adoption of land use regulations or comprehensive plan amendments that were the subject of procedural remand until the first of the two options:

(a) The Medium or Large City has adopted land use regulations or amended its comprehensive plan in response to the remand; or

(b) 120 days after the date of the remand. If the Medium or Large City has not adopted land use regulations or amended its comprehensive plan within 120 days of the date of the remand, the Medium or Large City is deemed not to have acted under sections (3) and (4).

(6) If a Medium or Large City has adopted land use regulations or amended its comprehensive plan by the date provided under sections (3) and (4) and the Medium or Large city's land use regulations or comprehensive plan changes are subsequently remanded by the Land Use Board of Appeals or an appellate court on any substantive grounds, the Medium or Large City is deemed to have not acted under sections (3) and (4).

(7) If a Medium or Large City acknowledged to be in compliance with this division subsequently amends its land use regulations or comprehensive plan, and those amendments are remanded by the Land Use Board of Appeals or an appellate court, the Medium or Large City shall continue to apply its land use regulations and comprehensive plan as they existed prior to the amendments until the amendments are acknowledged.

(8) Where a Medium or Large City directly applies the Model Code in accordance with sections (3), (4) and (5), the Model Code completely replaces and pre-empts any provisions of that Medium or Large City's development code that conflict with the applicable sections of the Model Code.

Finding: The Ashland Planning Commission held a public hearing and recommended approval of the proposed land use code amendments on May 11, 2021. A public hearing and first reading are scheduled at the Ashland City Council on June 1, 2021, and second reading is scheduled at the Ashland City Council on June 15, 2021.

660-046-0050

Eligible Local Governments

(1) If a local government was not previously a Medium City and a certified Portland State University Population Research Center population estimate qualifies it as a Medium City, the local government must comply with this division within one year of its qualification as a Medium City.

Finding: Not applicable because Ashland is classified as a Medium City.

(2) If a local government was not previously a Large City and a certified Portland State University Population Research Center population estimate qualifies it as a Large City, the local government must comply with this division within two years of its qualification as a Large City.

Finding: Not applicable because Ashland is classified as a Medium City.

660-046-0100

Purpose of Middle Housing in Medium Cities

OAR 660-046-0105 through OAR 660-046-0130 are intended to measure compliance with ORS 197.758 et seq and Goal 10 Housing for Medium Cities.

Finding: The City of Ashland is proposing to amend the land use regulations to comply with ORS 197.758 and OAR Chapter 660 Division 46 as they relate to duplex dwellings.

660-046-0105

Applicability of Middle Housing in Medium Cities

(1) A Medium City must allow for the development of a Duplex, including those Duplexes created through conversion of an existing detached single-family dwelling, on each Lot or Parcel zoned for residential use that allows for the development of detached single-family dwellings.

(2) OAR 660-046-0105 through OAR 660-046-0130 do not require a Medium City to allow more than two dwellings units on a Lot or Parcel, including any accessory dwelling units.

Finding: The City of Ashland is proposing to amend the land use regulations to comply with ORS 197.758 and OAR Chapter 660 Division 46 as they relate to duplex dwellings. The proposed land use code amendments allow duplexes outright with an approved building permit, whether new construction or conversion of an existing structure, in all of the residential zones in Ashland. All of the residential zones in Ashland allow the development of a detached single-family dwellings.

660-046-0110

Provisions Applicable to Duplexes in Medium Cities

(1) Medium Cities may regulate Duplexes to comply with protective measures, including plans, policies and regulations, as provided in OAR 660-046-0010(3).

Finding: Analysis is provided under 660-046-0010(3) to meet this requirement.

(2) Medium Cities may regulate siting and design of Duplexes, provided that the regulations:

(a) Are clear and objective standards, conditions, or procedures consistent with ORS 197.307; and

(b) Do not, individually or cumulatively, discourage the development of Duplexes through unreasonable costs or delay.

Finding: The proposed land use code amendment address siting and design standards that include the dimensional requirements including building height, setbacks, lot size, and lot coverage that are clear and objective standards and are the same for single-family and duplex dwellings.

(3) Siting and design standards that create unreasonable cost and delay include any standards applied to Duplex development that are more restrictive than those applicable to detached single-family dwellings in the same zone.

Finding: The proposed land use code amendment uses the same standards for duplexes as detached single-family dwellings in the same zone, and therefore the standards are not more restrictive for a duplex than the standards applied to detached single-family dwellings.

(4) Siting and design standards that do not, individually or cumulatively, discourage the development of Duplexes through unreasonable cost and delay include only the following:

(a) Regulations to comply with protective measures adopted pursuant to statewide land use planning goals provided in OAR 660-046-0010(3);

(b) Permitted uses and approval process provided in OAR 660-046-0115;

(c) Siting standards provided in OAR 660-046-0120;

(d) Design standards in Medium Cities provided in OAR 660-046-0125;

(e) Duplex Conversions provided in OAR 660-046-0130; and

(f) Any siting and design standards in the Model Code contained in section OAR 660-046-0010(4)(a).

660-046-0115

Permitted Uses and Approval Process

Medium Cities must apply the same approval process to Duplexes as detached single-family dwellings in the same zone. Pursuant to OAR 660-007-0015, OAR 660-008-0015, and ORS 197.307, Medium Cities may adopt and apply only clear and objective

standards, conditions, and procedures regulating the development of Duplexes. Nothing in this rule prohibits a Medium City from adopting an alternative approval process for applications and permits for Middle Housing based on approval criteria that are not clear and objective as provided in OAR 660-007-0015(2), OAR 660-008-0015(2), and ORS 197.307(6).

Finding: The City of Ashland is not proposing an alternative review process for duplex dwellings.

660-046-0120

Duplex Siting Standards in Medium Cities

The following standards apply to all Duplexes:

(1) Minimum Lot or Parcel Size: A Medium City may not require a minimum Lot or Parcel size that is greater than the minimum Lot or Parcel size required for a detached single-family dwelling in the same zone. Additionally, Medium Cities shall allow the development of a Duplex on any property zoned to allow detached single-family dwellings, which was legally created prior to the Medium City's current lot size minimum for detached single-family dwellings in the same zone.

Finding: The proposed land use code amendments includes the same lot size for detached single-family dwellings and duplex in all of the residential zones. In addition, duplexes are exempted from the minimum lot size requirements to address existing, legally created lots that may not meet current lot size requirements.

(2) Density: If a Medium City applies density maximums in a zone, it may not apply those maximums to the development of Duplexes.

Finding: The proposed land use code amendments apply density maximums to developments of three or more units, and exempt duplexes from maximum density calculations.

(3) Setbacks: A Medium City may not require setbacks to be greater than those applicable to detached single-family dwellings in the same zone.

Finding: The proposed land use code amendments includes the same setbacks for detached single-family dwellings and duplexes in all of the residential zones.

(4) Height: A Medium City may not apply lower maximum height standards than those applicable to detached single-family dwellings in the same zone.

Finding: The proposed land use code amendments includes the same height restrictions for detached single-family dwellings and duplexes in all of the residential zones.

(5) Parking:

(a) A Medium City may not require more than a total of two off-street parking spaces for a Duplex.

(b) Nothing in this section precludes a Medium City from allowing on-street parking credits to satisfy off-street parking requirements.

Finding: The proposed land use code amendments revise the off-street parking requirements to a total of two off-street spaces.

(6) Lot Coverage and Floor Area Ratio: Medium Cities are not required to apply lot coverage or floor area ratio standards to new Duplexes. However, if the Medium City chooses to apply lot coverage or floor area ratio standards, it may not establish a cumulative lot coverage or floor area ratio for a Duplex that is less than established for detached single-family dwelling in the same zone.

Finding: The proposed land use code amendments include the same lot coverage maximums for detached single-family dwellings and duplexes in all of the residential zones. There is no floor area ratio requirement for single-family dwellings except for the MPFA in historic districts, which allows more floor area for a duplex than a detached single-family home.

(7) A Medium City or other utility service provider that grants clear and objective exceptions to public works standards to detached single-family dwelling development must allow the granting of the same exceptions to Duplexes.

Finding: No exceptions are proposed for duplexes from public works standards that would apply differently to detached single-family dwellings.

660-046-0125

Duplex Design Standards in Medium Cities

(1) Medium Cities are not required to apply design standards to new Duplexes. However, if the Medium City chooses to apply design standards to new Duplexes, it may only apply the same clear and objective design standards that the Medium City applies to detached single-family structures in the same zone.

(2) A Medium City may not apply design standards to Duplexes created as provided in OAR 660-046-0130.

Finding: The existing design standard for single-family homes are also applied to duplexes, and the standards are clear and objective standards.

660-046-0130

Duplex Conversions

Conversion of an existing detached single-family dwelling to a Duplex is allowed, pursuant to OAR 660-046-0105(2), provided that the conversion does not increase nonconformance with applicable clear and objective standards in the Medium City's development code, unless increasing nonconformance is otherwise allowed by the Medium City.

Finding: The proposed land use code amendments include provisions for conversion of a

