

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please fill out a Speaker Request Form and place it in the Speaker Request Box by staff. You will then be allowed to speak. Please note that the public testimony may be limited by the Chair and normally is not allowed after the Public Hearing is closed.

**ASHLAND PLANNING COMMISSION  
REGULAR MEETING  
May 10, 2022  
AGENDA**

<https://zoom.us/j/92925161973>

- I. **CALL TO ORDER:** 7:00 PM via Zoom
  
- II. **ANNOUNCEMENTS**
  
- III. **CONSENT AGENDA**
  - A. **Approval of Minutes**
    - 1. April 12, 2022 Regular Meeting
  
- IV. **PUBLIC FORUM**
  
- V. **UNFINISHED BUSINESS**
  - A. Approval of Findings for PA-APPEAL-2022-00014, 34 Scenic Dr.
  - B. Approval of Findings for PA-T2-2022-00037, 165 Water St.
  
- VI. **DISCUSSION ITEMS**
  - A. Memo - Legislative Update
  
- VII. **ADJOURNMENT**

**CITY OF  
ASHLAND**



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



**CITY OF  
ASHLAND**  
ASHLAND PLANNING COMMISSION  
REGULAR MEETING  
*Draft* Minutes  
April 12, 2022

I. **CALL TO ORDER:** 7:00 PM, via Zoom  
Chair Haywood Norton called the meeting to order at 7:00 p.m.

**Commissioners Present:**

Michael Dawkins  
Haywood Norton  
Roger Pearce  
Lynn Thompson  
Lisa Verner  
Kerry KenCairn  
Doug Knauer

**Staff Present:**

Bill Molnar, Community Development Director  
Brandon Goldman, Planning Manager  
Derek Severson, Senior Planner  
Aaron Anderson, Associate Planner  
Michael Sullivan, Administrative Assistant

**Absent Members:**

None

**Council Liaison:**

Paula Hyatt (absent)

II. **ANNOUNCEMENTS**

Community Development Director Bill Molnar made the following announcements:

- The Social Equity and Racial Justice (SERJ) Commission requested that a member of the Planning Commission and Housing and Human Services Commission attend their meeting on May 5, 2022. Commissioner Knauer volunteered to attend.
- The City Council will hold a hybrid Council meeting on April 19, 2022. The City Council members will be in attendance, as well as key members of staff. Members of the public will still participate virtually. City Commissions could potentially use this template for future meetings.
- Mr. Molnar expressed gratitude to Commissioner Roger Pearce for his years of service on the Planning Commission. This will be Commissioner Pearce's final Commission meeting before his move to Seattle. Commissioner Pearce said that it had been a privilege to work with the Commission and Planning staff.

III. **CONSENT AGENDA**

**Approval of Minutes**

1. March 8, 2022 Regular Meeting
2. March 22, 2022 Study Session

Commissioners KenCairn/Verner m/s to approve the Consent Agenda. Voice Vote: all AYES. Motion passed. 7-0.

IV. **PUBLIC FORUM** - None

V. **TYPE I PUBLIC HEARINGS – Appeal**

A. **PLANNING ACTION:** PA-APPEAL-2022-00014

**SUBJECT PROPERTY:** 34 Scenic Dr.

**APPLICANT/OWNER:** Rogue Development for Gobelman & Stahmann

**DESCRIPTION:** The Planning Commission to hear an appeal of staff's decision approving PA-T1-2021-00168 which was a request for a minor land partition to divide a 1.32-acre parcel into three parcels. Proposed Parcel 1 is proposed as a 10,076 square foot (SF) parcel, to the south is proposed Parcel 2 is proposed to have 8,000 SF, and parcel 3 is proposed to be 39,534 square foot parcel. The large parcel is not proposed for any development at this time. **COMPREHENSIVE PLAN DESIGNATION:** Single Family Residential; **ZONING:** R-1-7.5; **MAP:** 39 1E 08 AD, **TAX LOT:** 7300

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

### Ex Parte Contact

No ex parte contact was reported. All Commissioners except for Commissioner Thompson visited the site.

### Staff Presentation

Associate Planner Aaron Anderson detailed the staff's report on the appeal for the partition of the property at 34 Scenic Dr. The lot would be divided into three parcels, with parcel #3 remaining currently undeveloped. Mr. Anderson directed attention to the relevant criteria that were the main subjects of the appeal, and stated that staff found the criteria had been met by the applicants original submittal. Therefore it was staff's recommendation that the appeal be denied and the original staff approval be upheld with the conditions recommended in the staff report (see attachment #1).

### Questions of Staff

Commissioner Thompson asked for clarification from staff regarding the use of an easement across the appellant's property to access parcel #3. Mr. Anderson related how the current easement would not be sufficient for any future single family homes per the Ashland Municipal Code (AMC), but that staff did not weigh in on this issue because it was a civil matter between the two parties. Any future development would be required to show how the easement would allow for any necessary driveway standards before moving forward.

### Applicant Presentation

Amy Gunter gave a brief presentation to the Commission detailing how the minimum standards for a lot partition were met in the original proposal. She stated that several parcel layouts were discussed before deciding on the current proposal, which would have sufficient lot depth, width and street access, and would comply with chapter 18.5.3 of the AMC. Ms. Gunter addressed one concern made by the appellants over the lack of a development plan for parcel #3. She explained that the applicants had several potential plans for the parcel, but that it was their intention to leave it undeveloped at this time. The development plan recently submitted by the applicants was made to convey the development potential to the appellants and alleviate any concerns that they held. Ms. Gunter then noted that the applicants had sought the expertise of an engineer to demonstrate that a driveway could be developed for parcel #3 and conform to existing AMC standards. She also drew attention to the recorded easement, which stipulated that the property owners would be permitted to drive, walk, and place utilities within that 15ft wide easement, and would be a legal access point to the property.

Ms. Gunter addressed the connectivity issue raised by the appellants due to block length, pointing out that the Granite Street easement could grant access to Lithia Park in the event of increased foot traffic through the property. She stated that this is not the current intention of the applicants, but that this could be employed to alleviate the concerns of the appellants. Speaking on behalf of the applicants, Ms. Gunter summarized the contentious and protracted legal suit that settled the current easement over the property. The applicants also wanted the Commission to be aware of the increasing urbanization of the Scenic Drive area, and that this partition conforms to all development standards and criteria required by the AMC.

### Questions of the Applicant

Commissioner Verner inquired if the applicants would be averse to removing the easement from the bottom of lot #3 in order to disconnect it from lot #2. Ms. Gunter replied that she would be hesitant to do this because of the potential

for utilities through that easement. The original intention of the partition was to provide driveway access from the bottom of the lot and remove any need for parcels #1 and #2 to share a driveway. She stated that the site naturally lends itself to preserving the driveway of parcel #1 for access to parcel #2, and that the easement at the bottom of the lot could be amended to only allow for utilities along that easement and no longer support an ingress/egress point.

### **Appellant Testimony**

Raul Woerner spoke on behalf the appellants, Susan and Rod Reid, and stated that the intent of the appeal was not to deny the partition, but to address concerns primarily regarding access to the parcel. The concern was that the nearby retaining wall would necessitate any future development to use the 15ft wide easement as a principal access point, a concept that the appellants believed would be untenable with increased traffic through the parcel. Therefore the appellants requested that the Commission impose a condition for approval stating that any issuance of development permits for parcel #3 be restricted until an access point that meets AMC standards is provided. Mr. Woerner contested page 2 of staff's report that a single family could use the easement as a access point without further review. He stated that this was incorrect because the AMC required that driveways over 50ft in length would need to be wider than the 15ft easement would allow. He also pointed out that the engineering plan was not provided in the initial application and was instead supplied afterwards, but was encouraged that such a development would be possible.

Mr. Woerner concluded by informing the Commission that the Reids supported amending the terms of the easement at the bottom of parcel #2 to include utility use only.

### **Public Testimony**

Richard and Joyce Stanley/Mr. and Mrs. Stanley conveyed their misgivings over access and lack of a development plan for parcel #3. They were concerned that the integrity of the nearby retaining wall would be compromised if forced to support a relatively steep driveway. They inquired if building a driveway in a swale would be problematic, and how the development could impact the parcel as a natural wildlife corridor. Mr. and Mrs. Stanley concluded by inquiring if a development plan could be requested, particularly with regards to the potential for up to twelve cottages being developed on the site and what that could mean for the narrow access point.

### **Applicant Rebuttal**

Ms. Gunter responded that many of the concerns raised by Mr. and Mrs. Stanley were code criteria and directed those inquiries to staff. She pointed out that no development plan was originally required in the application, but that one was provided in response to the appeal and that the plan for twelve cottages was one of many options for development and not a current proposal. Ms. Gunter clarified that the design for the driveway was done by one of the engineers responsible for the original retaining wall, which was the reason the applicant's team sought him out. She conceded that such a development would be difficult, but that the only lots left available in City were the ones with restrictive access points. She detailed how cottage housing would not require off-street parking as opposed to a subdivision, which would have different standards for development.

Ms. Gunter then informed the Commission that she had contacted the appellants and agreed to change the easement for parcel #2 to be for utility use only.

Chair Norton closed the Public Hearing and Record at 7:55 p.m.

### **Discussion and Deliberation**

Commissioner Verner stated that the Commission should deny the appeal because she believed that the requisite criteria had been met, but with the condition of approval regarding the use of language for parcel #3. There was general discussion over the Commission's jurisdiction over the language of the easement, but it was determined that because the applicants had consented to the change it could be listed as a condition of approval.

Commissioners Verner/Dawkins m/s to uphold the original approval including the four conditions recommended by staff, with the addition of a fifth condition consistent with the applicant's proposal that the final survey plat identify the easement at the bottom of lot #3 as an easement for utility access to lot #2. Roll Call Vote: Commissioners Dawkins, KenCairn, Pearce, Thompson, Verner, Knauer, and Norton, all AYES. Motion passed. 7-0.

**B. PLANNING ACTION: PA-T2-2022-00037 – CONTINUED**

**SUBJECT PROPERTY:** 165 Water Street, 160 Helman Street and 95 Van Ness (*corner of Van Ness & Water Streets*)

**APPLICANT/OWNER:** Rogue Planning & Development Services, LLC, *agent for*

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

**COMPREHENSIVE PLAN DESIGNATION:** Employment; **ZONING:** E-1; **ASSESSOR'S MAP:** 39 1E 04CC; **TAX LOTS #:** 2000, 2100 & 7100

**Ex Parte Contact**

No ex parte contact was reported. Commissioner KenCairn wanted it noted that she resides in the neighborhood, but believes that she treats all projects that go before the Commission impartially.

**Staff Report**

Senior Planner Derek Severson first outlined the changes made to the commercial subdivision proposal since the March 8, 2022 Commission meeting (see attachment #2). The significant changes included:

- The number of lots was reduced from eight to six. Eight buildings are still proposed but they would be constructed as condominiums.
- The resultant lot configuration would alter the property lines and a Solar Access Exception would no longer be requested.
- The resultant lot configuration would eliminate a previously identified street frontage issue for the previously proposed lot #5.
- Each building would now be configured to provide 65% of the ground floor area for commercial use.
- Plaza space had been clearly detailed, and identified plaza space totaling 8,774 square feet, over the initial proposal of 5,581 square feet. An exception for reduced plaza space would no longer be requested.
- A Traffic Impact Analysis (TIA) was provided, and concluded that development would not significantly impact traffic in the area.
- A geotechnical report had been provided by the Galli Group Geotechnical Consulting firm. This report concluded that, with their recommendations, the site would be suitable for development without adversely affecting the stability of the slope.

Mr. Severson pointed out that the ceiling and building heights had not changed since the March 8, 2020 Planning Commission meeting. He directed the Commission's attention to the recommendation made by the Historic Commission at its April 6, 2022 meeting, which had determined that the three buildings along Helman Street did not fit with the surrounding historic district and should be reduced in height, scale, and mass. The Historic Commission stated that the designs would benefit from a greater variety of materials, height, and number of stories to alleviate the monotony that the buildings would present along the Helman streetscape. The Historic Commission thanked the applicants for the changes that had been made to the design of the buildings, but concluded that too few of their significant issues with the project had been addressed since their meeting on March 2, 2022. The Historic Commission unanimously recommended that the application be denied.

Mr. Severson outlined how the key consideration for staff when examining the project was how to apply the Historic District Development Standards addressed in AMC 18.4.2.050.B.1. Regarding Transitional Areas, these standards stated that "appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property."

Mr. Severson stated that in staff's opinion the massing of the buildings along Helman Street remained an issue. He suggested that greater third-floor step backs or plaza space in front of the buildings be considered to make the Helman Street frontage more compatible with the surrounding area. He cited a project on First Street that employed third-story step backs in order to meet transitional building standards. Mr. Severson also drew attention to design standards in the Transit Triangle Overlay and the Croman Mill site and their use of transitional zones to incorporate future developments.

In staff's opinion the application did not meet appropriate design and massing adjustments to meet the compatibility standards of the Historic District. Mr. Severson recommended that the Commission consider whether a more substantial third-floor step back might better address the buildings' massing, and whether some additional park-row and sidewalk width, or front plaza space, would work to provide some additional buffer space and better accommodate street tree growth which would ultimately support greater tree canopy as a further buffer.

### **Questions of Staff**

Commissioner Verner requested clarification on the decision to deny the application by the Historic Commission. Mr. Severson responded that on March 2nd the Historic Commission had given the applicants recommendations on how to better incorporate the project into the Historic District. At the subsequent April 8<sup>th</sup> meeting the Historic Commission determined that the applicants had not made significant enough changes to the project design and therefore recommended that the application be denied.

Commissioner Pearce asked for clarification from staff on their interpretation of the transitional zones, and whether this referred to the transition between zones or the transition between individual projects. Mr. Severson stated that when the Historic Commission looks at projects they focus on the impact area, which is typically within 200 feet of the proposed site, and look at the existing development within that area. He pointed out that larger buildings have historically existed in the area, as well as some currently, but not within the 200ft impact area of the development site.

### **Applicant Presentation**

Ms. Gunter gave a brief overview of the zoning and historical overlays of the development site and the surrounding area. She summarized the site history and showed several examples of large scale buildings that had formerly existed in the Historic District. Ms. Gunter also noted that streets previously named "Mechanic" and "Factory" could be found in the area, which in her opinion alluded to industrial, employment, and commercial zoning being the predominant zoning types and uses of the area. She stated that the proposed buildings met Historic District design standards for massing, design, scale, mass, and materials used are within compliance for a mixed-use residential and commercial development in this zone. Ms. Gunter added that the development would be consistent with the

surrounding area and was under the maximum allowed building height. She noted that the lot numbers may change due to ORS 92 requirements, but that the layout would not change.

Piper von Chamier spoke to the plaza space throughout the project, and detailed how the applicant team was able to fully develop the plazas throughout the sites. She remarked that the design team had also considered naming the central promenade either "Factory" or "Mechanic" Way as a nod to the formerly named streets. Ms. Chamier emphasized her firm's desire to include stormwater as a part of the landscape, as well as for fountains and irrigation. The largest plaza space would be Helman Plaza, which would have raised stormwater planters, fountains, trees, and raised steps out to the parking area.

Ms. Gunter mentioned that she found the Historic District design standards text largely addressed residential dwellings and the immediately adjacent properties, but seemed to primarily focus on the compatibility between two homes. She stated that the Transitional Zone between the districts would therefore need to be the most heavily considered criteria, which the proposed development would conform to. Ms. Gunter detailed how the designs also reflected the Historic District design standards, in the form of numerous traditional design elements and materials, despite the scale and massing appearing more modern in relation to the nearby houses.

Ms. Gunter directed the Commission's attention back to the Historic Design standards and its lack of guidelines for a commercial development in relation to the existing residences. She stated that her team's interpretation of the transition zone indicates that the Historic District standards are superseded when considering the underlying zoning standards, and expressed the opinion that the design standards should be more objectively written.

Mr. Gunter briefly presented side-by-side comparisons between the earlier building designs and those currently proposed. She showed further comparisons between her team's proposal and previously approved projects. Included was one that was accepted by the Commission but never developed, and would have included similar buildings in mass and scale to those proposed by the applicants. Ms. Gunter expressed concern that staff had cited the Transit Triangle and Croman Mill development standards in their report, despite those standards not being applicable to this proposal.

Gil Livni, the property owner voiced his frustration over what he believed were shifting design standards from previously approved projects. He said that his team could make further design adjustments, but that denials seemingly based on subjective reasoning were disheartening. Mr. Livni expressed concern that the code of conduct regarding ex parte contact for Public Hearings had been breached.

### **Public Comments**

**Mark Brouillard**/Mr. Brouillard rejected the concern that any improper contact had taken place. He drew the Commission's attention to two commercial buildings at 92 Van Ness Avenue and 152 Helman Street as a comparison to the proposed development. Mr. Brouillard also contended that the applicant's TIA report contained inaccurate information. He cited section 18.3.13.010.a of the AMC which states that the Residential Overlay is intended to encourage a concentration and mix of businesses that provide a variety of housing types, a standard that he believes this project fell short of. Mr. Brouillard concluded by suggesting that the Commission follow the recommendation of the Historic Commission and deny the application.

**Eric Bonetti**/Mr. Bonetti informed the Commission that he is Mr. Livni's neighbor and has worked with him on numerous projects. Mr. Bonetti contended that this district has not yet been fully utilized as an E-1 zone. He showed examples of several commercial buildings already in the Historic District and expressed the opinion that the applicant's project could help revitalize the area. Mr. Bonetti acknowledged the difficulties of developing a parcel that encompasses and abuts the R-3, E-1, and M-1 zones, but that the applicants had put forth a convincing and appropriate proposal for development. He went on to say that if the application was rejected then this would remain an undeveloped and underutilized area, and warned that unsightly commercial developments could one day occupy the lot. Mr. Bonetti presented examples of undeveloped lots near the proposal site, and voiced frustration a project

with the potential to revive the area was not being readily approved. He cited the four-story Plaza Inn and Suites hotel on Water Street and three-story development on First Street as examples of similarly sized developments, and expressed the opinion that it could be seen as hypocritical if the Commission denied the applicant's proposal.

Planning Manager Brandon Goldman wanted it noted that, while Mr. Brouillard does serve on the Transportation Commission, his comments were made as a resident of the neighborhood and not made on behalf of the Transportation Commission.

### **Applicant's Rebuttal**

Ms. Gunter pointed out that the buildings in the proposal were similar in mass and scale, but they would not be identical. She stated that the development, when the base lot area relative to building size is taken into account, would be similar in massing and scale to the commercial building on 92 Van Ness Avenue cited by Mr. Brouillard. Ms. Gunter concluded by stating that citing existing single-story or underdeveloped Employment zone properties doesn't provide an Historic District comparison because those properties could be redeveloped to the Employment District site design review standards. Therefore they cannot be taken as direct comparisons to the applicant's proposal.

Chair Norton closed the Public Hearing and Record at 9:16 p.m.

### **Discussion and Deliberation**

Mr. Severson stated that it was not staff's intention to suggest that the proposal would be subject to the design standards of the Croman Mill Site or Transit Triangle, merely to provide concrete examples of where the Commission determined those types of treatments were appropriate of ways to mitigate mass.

Commissioner KenCairn suggested that the enclosed plaza spaces within the development be placed in front and provide set-backs for the development, alleviating the scale and mass of the development in relation to nearby single-story houses. She noted that the four-story development on Water Street had been approved because the site was at a lower elevation than Helman Street, and wasn't in a residential neighborhood which made it more compatible with the area. Therefore the applicant's submittal could not be judged in relation to previously approved projects.

Commissioner Pearce praised the plaza designs, adding that they met all the design standards necessary for approval. He voiced the opinion that the Transition Zone had been misinterpreted by the Historic Commission, which he stressed speaks to the transitions between zones, not individual buildings. He stated that the only source of contention is the transition between the development site in the Employment District and the R-3 Zone across Helman Street, and stated that the proposal was compatible with the neighboring R-3 Zone.

Commission Verner disagreed with Commissioner Pearce's interpretation of the transition zones and stated that existing buildings should be taken into account when considering a new development. She suggested that the applicants consider placing four-story buildings along Water Street and two-story buildings along Helman Street, thereby remove the issue of mass and scale in relation to the neighboring houses. Commissioner Verner remarked that she saw no significant change in the plazas since the applicant's first brought their proposal to the Commission, and voiced disappointment that the parking lots and entrance ways were being included as plaza spaces.

Commissioner Thompson agreed with Commission Verner, adding that the code refers to the transition being between zones, and stated that the examples used in that section compared new developments to the existing historic buildings in the immediate vicinity. She stated that any transition between the Employment and R-3 zones would therefore need to take the Historic District code into account when considering any new development. Commissioner Thompson would support the Helman Street buildings being reduced to two-stories in favor of increasing the Water Street developments to four-stories, and remarked that the mass and scale of the buildings

along Helman Street is compounded by the number of buildings proposed along that streetscape. Commissioner Thompson expressed her disappointment with the plaza spaces in the application.

**Commissioners Dawkins/KenCairn m/s to extend the meeting until 10:00. Voice Vote: all AYES. Motion passed. 7-0.**

The Commission discussed the interpretation of the transition zone and massing along the Helman streetscape, and there was general agreement that the applicants should submit a proposal dealing with this issue. Chair Norton remarked that the Planning Commission and Historic Commission had recommended to the applicants that they adjust their proposal to reduce scale and mass along Helman Street. Commissioner Pearce agreed that the building mass remained an issue, but that the Commission should encourage such development projects.

Commissioner Dawkins asked staff what would happen to the project if the Commission denied it. Mr. Severson replied that the Commission could deny the application without prejudice, which would allow the applicants to submit a new proposal for the site without delay. If it was denied outright then the only recourse for the applicants would be an appeal of the decision before the City Council or to wait one year before resubmitting.

Chair Norton voiced frustration that the Commission had been put in the position to deny the application after the applicants had been given instructions for approval. Commissioner Pearce agreed that it should be denied without prejudice to allow the applicants to resubmit their development plans without delay.

**Commissioners Dawkins/KenCairn m/s to deny the application without prejudice. Roll Call Vote: Commissioners Dawkins, KenCairn, Pearce, Thompson, Verner, Knauer, and Norton, all AYES. Motion passed. 7-0.**

**V. ADJOURNMENT**

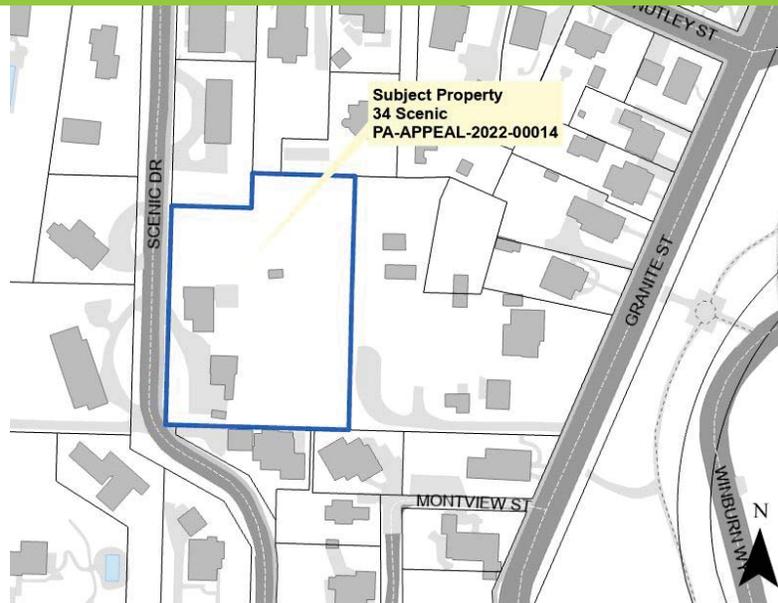
Meeting adjourned at 9:52 p.m.

*Submitted by,  
Michael Sullivan, Administrative Assistant*

# 34 Scenic Street Minor Land Partition

CITY OF  
ASHLAND

Planning Commission Appeal Hearing  
April 12, 2022



## 34 Scenic St. Appeal Vicinity Map

CITY OF  
ASHLAND



# 34 Scenic St. Appeal

## Aerial Photo

CITY OF  
ASHLAND



# 34 Scenic St. Appeal

CITY OF  
ASHLAND

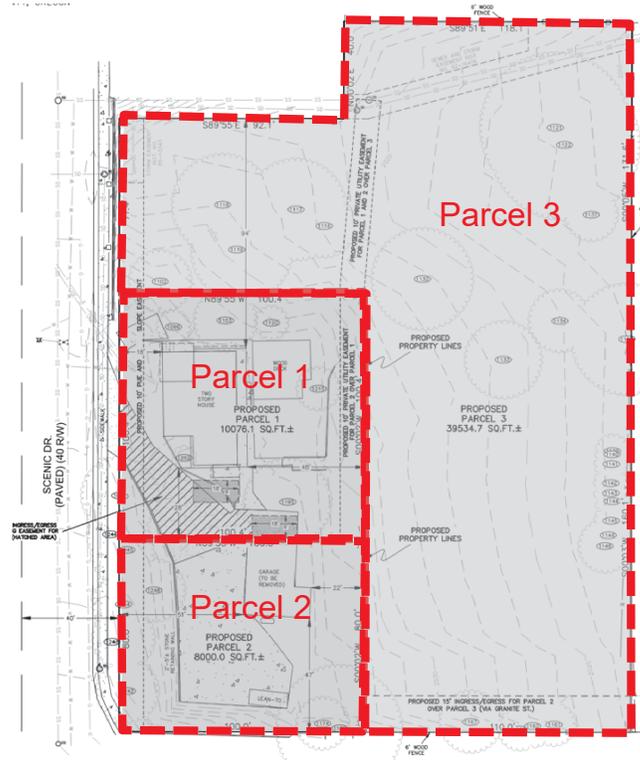
An appeal of the Staff Advisor's approval of a request for a **Land Partition** to partition the property into three lots.

- The parent parcel is a 1.32 - acres
- The tentative partition plat submitted with the application indicates that parcel 1 will be 10,076 sq. ft. and retain the existing home, parcel 2 will be 8,000 sq. ft., and parcel 3 will be 39,534 sq. ft.
- An exception to the street standards is proposed to retain the existing infrastructure and not install parkrow and replacement sidewalk.

# 34 Scenic St. Appeal

## Preliminary Plat

CITY OF  
ASHLAND



# 34 Scenic St. Appeal

CITY OF  
ASHLAND

## 18.5.3.050 Preliminary Partition Plat Criteria

The approval authority shall approve an application for preliminary partition plat approval only where all of the following criteria are met.

- A. The future use for urban purposes of the remainder of the tract will not be impeded.**
- Staff found that the future development potential was not impeded based, and that there is no required minimum density in the R-1-7.5 zone. The property could easily develop with a single-family house and satisfy the 'future' urban use. Despite the change in grade from Scenic drive the applicant has submitted materials demonstrating that a future Physical & Environmental constraints review could authorize the construction of a drive that would meet all standards of the land use ordinance.
- B. The development of the remainder of any adjoining land or access thereto will not be impeded.**
- The only adjoining land that remains suitable for subdivision or infill development is the appellants lot to the east which has considerable frontage along Granite.

# 34 Scenic St. Appeal

## 18.5.3.050 Preliminary Partition Plat Criteria

- C. **The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.**
- There is no neighborhood or district plan or condition of approval from previous land use actions that apply to the subject property.
- D. **The tract of land has not been partitioned for 12 months.**
- The tract of land has not been partitioned for 12 months.

# 34 Scenic St. Appeal

## 18.5.3.050 Preliminary Partition Plat Criteria

- E. **Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).**
- The proposed lots conform to the base standards of the zone including lot size, lot coverage, etc.
- F. **Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.**
- In supplemental materials the applicant has provided engineered plans showing how a driveway could be developed from the Scenic frontage that could be approved with a Physical and Environmental Constraints permit. A single-family home could even be developed with a 'bridge driveway' as has been done in other steep areas in town. Staff finds that based on the engineered drawings provided that access to the individual lots can conform to the standards with the approval of a future Physical and Environmental Constraints permit, and a condition of approval to that effect has been added.

# 34 Scenic St. Appeal

## 18.5.3.050 Preliminary Partition Plat Criteria (cont'd)

- G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
- Adjacent rights-of-way have city services with adequate capacity to serve two new lots. No public improvements are proposed with the current land use action.
- H. **Unpaved Streets.**
1. **Minimum Street Improvement.** When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
- Frontage streets are paved,
  - Scenic lacks park row adjacent to the new parcel, and an exception to this standard was requested.

# 34 Scenic St. Appeal

## 18.5.3.050 Preliminary Partition Plat Criteria (con't)

- I. **Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.**
- Not applicable - there is no alley adjacent to the proposed partition
- J. **Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.**
- Development is not proposed at this time, and no State or Federal permits appear to be required..
- K. **A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).**
- Not applicable – the application does not propose to create a flag lot.

# 34 Scenic St. Appeal

## Staff Decision

CITY OF  
ASHLAND

<b>APPLICATION DATE:</b>	November 12, 2021
<b>DEEMED COMPLETE ON:</b>	December 23, 2021
<b>STAFF DECISION:</b>	February 4, 2022
<b>APPEALED:</b>	February 16, 2022

Planning staff approved the application administratively on February 4<sup>th</sup> 2022 subject to several conditions of approval.

On February 16<sup>th</sup> 2022 a Notice of Intent to Appeal was timely received citing the following issues:

- Lack of a Future Development Plan
- Concerns about vehicle access
- Concerns about Block Length / Connectivity standards
- Exception to street standards

# 34 Scenic St. Appeal

## Appeal Issue 1

CITY OF  
ASHLAND

### Lack of a Future Development Plan

**Staff Response:** The R-1-7.5 zone has no minimum density and there is no requirement for a future development plan.

# 34 Scenic St. Appeal

CITY OF  
ASHLAND

## Appeal Issue 2

### Concerns about vehicle access

The primary issue raised both during the initial public comment as well as on appeal are concerns about vehicle access across a driveway / access easement that already supports a number of dwellings on the appellant's property.

**Staff Response:** Staff is aware of the easement, but instead focuses on the scenic frontage and the supplemental engineering materials that have been submitted showing that in concert with a Physical and Environmental Constraints a driveway that could serve a number of different potential development options could be constructed meeting all city standards

# 34 Scenic St. Appeal

CITY OF  
ASHLAND

## Appeal Issue 3

### Concerns about Block Length / Connectivity standards

**Staff Response:** Connectivity and block length standards are only relevant when there is a proposed road. New public roads are required when serving four or more lots. Each of the proposed lots will be able to take vehicle access from Scenic therefor no new public road is required.

# 34 Scenic St. Appeal

CITY OF  
ASHLAND

## Appeal Issue 4

### Exception to street standards

**Staff Response:** The Scenic ROW is presently developed with a curb tight sidewalk next to a large retaining wall. Staff finds that the work that would be required to install widen the ROW and install a park row would not be proportional to the proposed partition and that the exception is reasonable.

# 34 Scenic Street Minor Land Partition

CITY OF  
ASHLAND

Planning Commission Appeal Hearing

April 12, 2022

### Staff Recommendation

Staff recommends that the appeal be denied and that the original staff approval be upheld with the conditions recommended in the staff report, as detailed in your packets.

# Magnolia Terrace

165 Water St, 160 Helman St & 95 Van Ness Av

CITY OF  
ASHLAND

## Planning Commission Hearing

April 12, 2022



## Magnolia Terrace Proposal

CITY OF  
ASHLAND

- ~~Six-Eight~~ lot commercial **Subdivision** to construct a phased mixed-use development for the three properties including 95 Van Ness Street, 165 Water Street and 160 Helman Street.
- Site Design Review** approval for five mixed-use buildings consisting of two ground floor commercial spaces with two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The remaining three building sites would be developed in a later phase.
- ~~Exception to the Site Development and Design Standards~~ to allow 3,087 square feet of plaza space where the standards require 5,624 square feet;
- Exception to Street Standards** to allow parking bays with street trees in bump-outs along Van Ness Avenue rather than standard park row planting strips.
- Physical & Environmental (P&E) Constraints Review Permit** because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands.
- Exceptions to the Development Standards for Hillside Lands.**
- ~~Solar Access Exceptions~~ for Lots #3 and #4 (*request received after noticing*).
- Tree Removal Permit** to remove all 20 of the trees on the property and within adjacent rights-of-way.

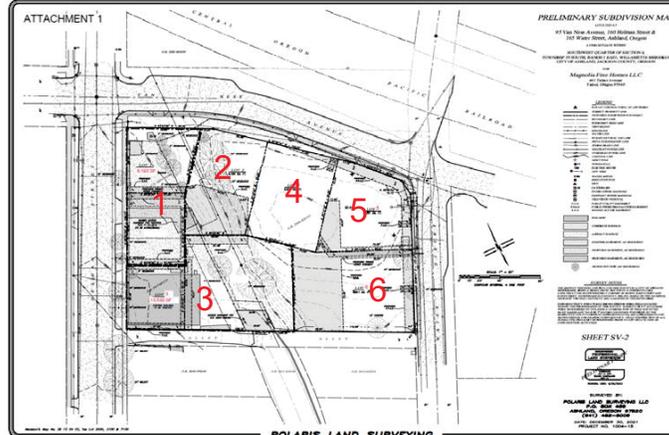
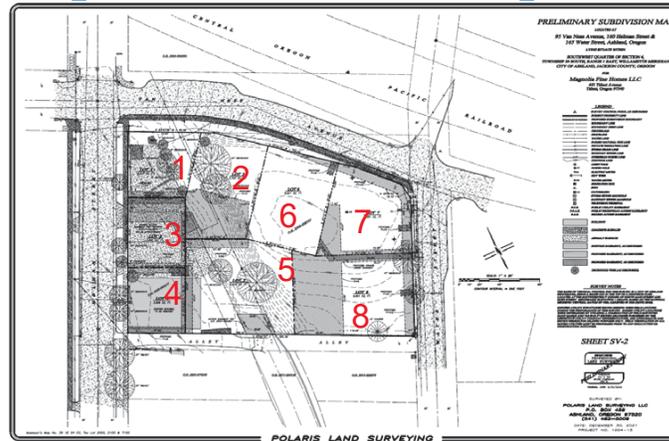
# Magnolia Terrace

## Changes to the Proposal Since March

The number of lots to be created through the proposed subdivision has been reduced from the originally-proposed eight lots considered during the Planning Commission hearing in March down to six lots here. The previous Lots 1 & 3 and Lots 4 & 5 have been combined. Eight buildings are still proposed in the same locations, but they would be constructed as condominiums.

- The resultant lot configuration alters property line locations and north property lines relative to the proposed buildings, and **Solar Access Exceptions are no longer requested.**
- The resultant lot configuration **eliminates a previously identified street frontage issue** for the previously proposed Lot 5.
- Each building has been reconfigured to provide 65 percent of the ground floor area in commercial uses.
- Plaza space has been more clearly detailed in the revised materials provided. The revised materials provided identify four distinct plaza areas totaling 8,774 square feet where a minimum of 5,581 square feet is required. **An exception is no longer requested.**
- **A Traffic Impact Analysis (TIA) has been provided.** The TIA concludes that all intersections meet mobility standards with the development in place, that the addition of development traffic will not substantially increase queuing conditions over the background conditions, and that all site driveways are projected to operate safely and efficiently.
- **A geotechnical report has been provided** to speak to the narrow, steeply-sloped band through the middle of the site.

### Magnolia Terrace Lot Configuration



# Magnolia Terrace Site Plan

**BUILDING HEIGHT**  
ALL BUILDINGS ARE 36'-4" FROM T.O. RIDGE TO T.O. MAIN FLOOR  
MAXIMUM BUILDING HEIGHT ALLOWED IS 40'-0"

**LOT COVERAGE**  
SITE AREA 81,887  
BUILDING FOOT PRINTS 2,585 SQ. FT. X.6 = 20,520  
UPPER PARKING 3,549  
LOWER PARKING 7,419  
PEDESTRIAN PLAZAS/PATHS 1,075  
TOTAL 43,348.1,887 • 77.3%

**PARKING LEGEND**

	STREET PARKING
	OFFSTREET PARKING
	RESIDENTIAL PARKING

**COMMERCIAL PARKING CALCULATION**  
OFFICES: (2,918) + (3,220) = 24 SPACES  
17 ON SITE SPACES PROVIDED  
19 OFF SITE SPACES PROVIDED  
36 TOTAL PARKING SPACES PROVIDED

**(RESIDENTIAL):** 8 BUILDINGS X 4 SPACES = 32 SPACES  
32 SPACES PROVIDED (GARAGE PARKING)

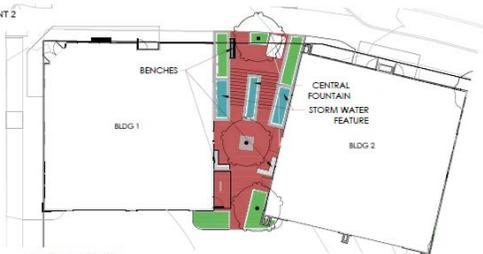
**BIKE PARKING:** 3 PER RESIDENTIAL UNIT IN GARAGE  
SEE LANDSCAPE PLANS FOR ON-SITE BIKE SPACES

**NOTE:** SEE LANDSCAPE AND CIVIL PLANS FOR SITE DESIGN  
INCLUDING PATHS, INTERIORS, PLANTINGS, LIGHTING, AND  
RESERVED FURNISHING, TERRACING, ETC.



# Magnolia Terrace Phase I Plaza Space

ATTACHMENT 2



WEST VAN NESS PLAZA  
Scale: 3/32" = 1'-0"

**WEST VAN NESS PLAZA (1,090 SQ. FT.)**  
- 5 TREES TOTAL (1 PER 263 SQ. FT.)  
- 3 SEATS TOTAL (1 PER 363 SQ. FT.)  
- WIND PROTECTION FROM BLDGS 1 & 2  
- WATER FEATURE  
- RAIN COLLECTION PLANTERS



CONCEPT GRAPHICS SCHEDULE

	PLANTING TAKEROFF: 203 SF
	PAVING TAKEROFF: 797 SF
	WATER FEATURE TAKEROFF: 90 SF



FOUNTAIN



STORM WATER FEATURE



HELMAN PLAZA  
Scale: 3/32" = 1'-0"

**HELMAN PLAZA (2,993 SQ. FT.)**  
- 6 TREES TOTAL (1 PER 498 SQ. FT.)  
- 8 SEATS TOTAL (1 PER 374 SQ. FT.)  
- OUTDOOR EATING TABLES  
- WIND PROTECTION FROM BLDGS 3, 4 & 5  
- WATER FEATURE  
- RAIN COLLECTION PLANTERS & STORM WATER FEATURE



CONCEPT GRAPHICS SCHEDULE

	PLANTING TAKEROFF: 377 SF
	PAVING TAKEROFF: 2,504 SF
	WATER FEATURE TAKEROFF: 85 SF



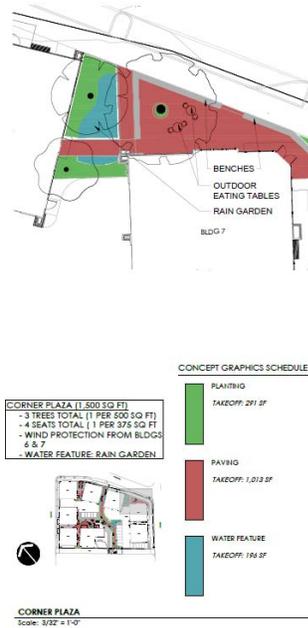
BENCHED PLAZA



BENCHED AT WALL

# Magnolia Terrace Phase II Plaza Space

ATTACHMENT 3



BENCHED PLAZA



BRIDGE @ RAIN GARDEN



STORMWATER FOUNTAIN



RAIN GARDEN



LINEAR PLAZA

# Magnolia Terrace P&E Permit & Exceptions

A geotechnical report prepared by the Galli Group Geotechnical Consulting has been provided. The geotechnical report concludes that, "... this parcel and the surrounding area is considered to be stable for the construction of the proposed project... The re-grading of the site for the proposed mixed-use development, when constructed properly and in accordance with the final geotechnical, structural and civil design plans and specifications for the project, will not adversely impact the general slope stability of this or adjacent parcels. Proper erosion control measures, grading techniques (fill removal, cut and fill slope construction, fill placement and compaction, and fill-on-slope and retaining wall construction) and proper surface water control on all parts of the site will assure that the overall stability of this or adjacent parcels is not compromised. Therefore, in our professional opinion, the construction of the proposed Magnolia Terrace mixed use development on this parcel will not adversely impact the slope stability of this or adjacent parcels and will maintain public safety in the immediate area."

The 2017 application for 165 Water Street impacted these same slopes with a ten- to 12-foot retaining wall, and requested Exception to the Development Standards for Hillside Lands to allow a cut slope in excess of seven feet without terracing. At that time, the Planning Commission recognized that the site was "relatively unique in being E-1 zoned, outside of the Hillside Lands overlay, with a limited area of Severe Constraints Lands near the rear of the property, and with developable E-1 land both above and below the slope which are to be protected from slope failure with structural retaining to enable development typical of E-1 lands and their associated development and design standards." In staff's view, the Commission could make a similar finding in granting the requested Exception from the Standards here.

# Magnolia Terrace

## Severe Constraint Lands



# Magnolia Terrace

## March Historic Commission Recommendation

The Historic Commission finds that there is no historical precedent in Ashland for three nearly identical, large buildings being constructed together (side by side) in a historic district. The designs and landscaping here are excellent, and help to mitigate this to a degree, however the designs are too repetitious and this emphasizes the significant difference in height and character relative to the residences on the other side of Helman Street.

The Historic Commission has concerns that the **height, scale and massing** of the three buildings (**AMC 18.4.2.050.B.2-4**) proposed along Helman Street for Buildings #1, #3 and #4 are out of scale with the one- to one-and-a-half-story historic residential buildings across Helman Street. **The Commission asks that the designs be revisited to look at changing the height of the individual stories (i.e. 11-foot ceilings seemed excessive when height is an issue), and potentially reducing the number of stories on at least the two end buildings (#1 and #4).** In the Commission's view, if the buildings on Helman were lower, the remaining buildings could "cascade" around the Van Ness corner as taller buildings there would be mitigated by the grade change and the fact that there is not a single-story, historic residential streetscape across Van Ness Avenue.

**The Historic Commission believes that the designs would benefit from a greater variety of material treatment and finishes, and greater variations in height and/or number of stories to relieve the monotony as they present to the historic Helman Street streetscape.**

# Magnolia Terrace

## Helman Street Elevations from March



7  
A0.4

HELMAN STREET ELEVATION

SCALE: 3/32" = 1'-0"



# Magnolia Terrace

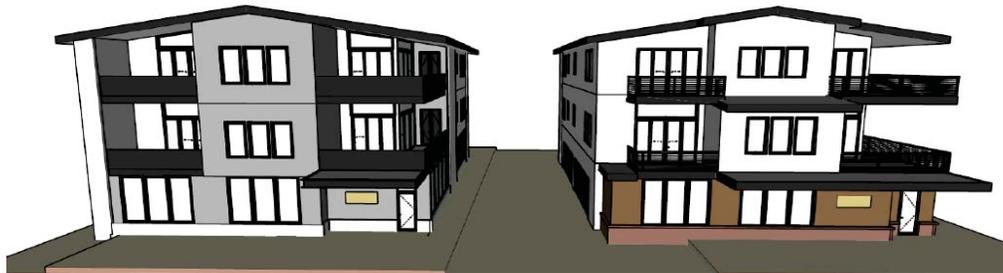
## Helman Streetscape (Opposite Side)



# Magnolia Terrace

## Applicant's Revised Helman Street Designs

- Step the façade back to reduce the presence of the height. The center bay on Buildings 3 & 4 steps back three feet for the third floor from the wall plane of the second floor, and a shed roof has been added that emphasize the step back.
- The roofline has been cut back to reduce the massing of the overhang.
- There have been surface and material changes to Buildings 3 & 4.
- A brick base has been added.
- The pedestrian overhang on the ground floor has been increased in length to add shadow lines and increase the pedestrian scale of the building when at the sidewalk.
- White and lighter materials used on the third story to fade the building away.
- Open wire or mesh railings instead of the previously proposed solid panel railings.



**March**  
Building 3 (Helman Street)  
Original Elevation

**April**  
Building 3 (Helman Street)  
Revised Elevation

# Magnolia Terrace

## Helman Street Elevations



March

7  
A0.4 HELMAN STREET ELEVATION  
SCALE: 3/32" = 1'-0"



April

# Magnolia Terrace

Rendering of Revised Designs on Helman



# Magnolia Terrace

Rendering of Revised Designs on Helman



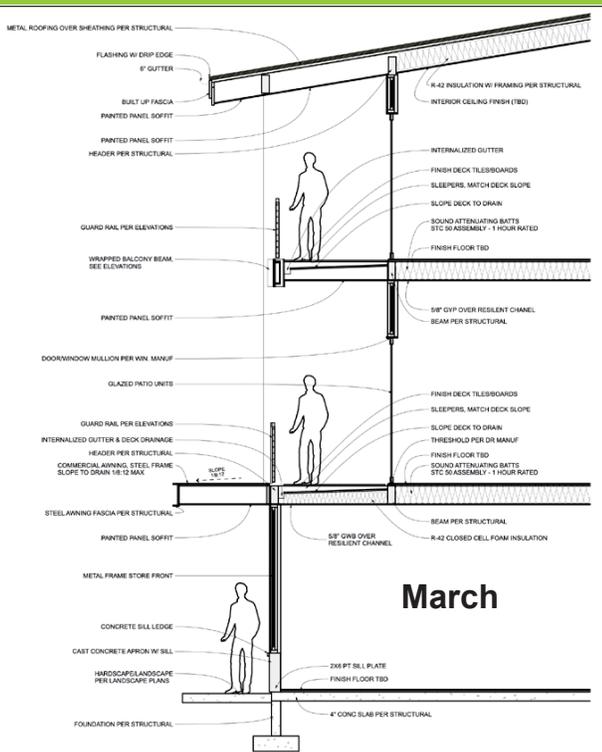
# Magnolia Terrace

## Rendering of Revised Designs on Helman

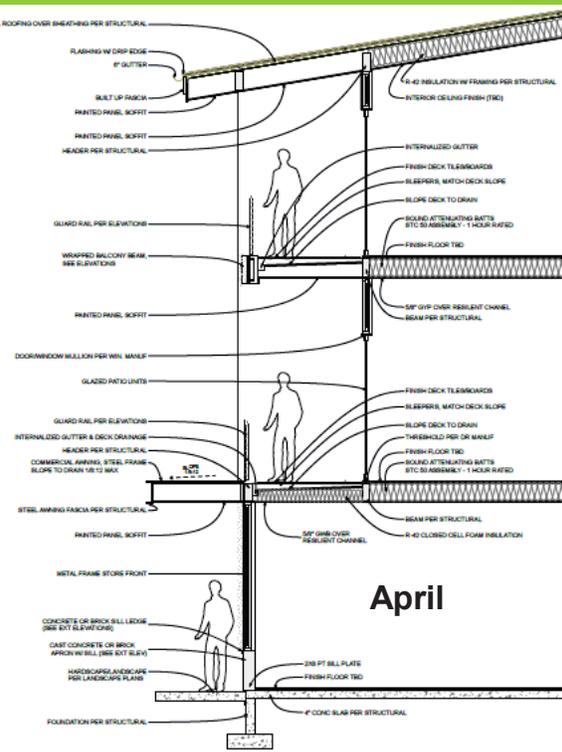


# Magnolia Terrace

## Typical Wall Section



2  
AD5 TYPICAL WALL SECTION



2  
AD5 TYPICAL WALL SECTION

# Magnolia Terrace

## Historic Commission April 6<sup>th</sup> Recommendation

The Historic Commission would like to thank the applicants for the proposed building design modifications since the Commission reviewed the project last month. The Commission finds that most of the incremental changes are effective in that they address some of the Commission's concerns regarding the building façades and pedestrian amenities, but these revisions fall short in focusing on the major issues identified in the March meeting, which had to do with the height, scale, and massing of the buildings as they relate to the Historic District Design Standards (**AMC 18.4.2.050.B.2-B.4.**)

This massive development of eight nearly identical "cookie cutter" designs has no precedent in Ashland or its historic districts. The Commission cannot support approval of a project that has demonstrated such disregard in their attempt to comply with our historic standards and the scale of our city and neighborhoods. In particular, the three buildings facing Helman Street with a height of up to 40 feet and three stories will overwhelm the mostly single-story historic residences across the street.

These proposed buildings fail to achieve an appropriate scale and façade compatibility to the adjacent historic streetscape. Additionally, the zero setback to the sidewalk exacerbates the building mass and scale that will overwhelm the adjacent pedestrian traffic. By comparison, the Plaza Inn & Suites hotel on the same side of Helman Street, nearer to downtown, has 15- to 20-foot setbacks and is only two-stories in height.

In the Historic Commission's view, the building architecture and landscape design on this project is very attractive and high quality, but, the buildings are just not compatible with the scale of the historic district residences in the impact area, across Helman Street. For these reasons, the Commission cannot support moving this application forward.

With that in mind the Historic Commission voted unanimously to recommend that the project be denied.

# Magnolia Terrace

## "Appropriate Adjustments"

For staff, the key consideration with regard to the Historic District Development Standards here is how to apply **AMC 18.4.2.050.B.1** which addresses "Transitional Areas" noting that, *"For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property."*



A Street Example



# Magnolia Terrace

## Residential Buffering in the Croman Overlay Zone

Figure 18.3.2.060.B.7.c. Residential Buffer Zone

- B. 7. c. i. Maximum Height. The maximum height allowance without a performance standards bonus for all structures within the Residential Buffer Zone is 35 feet in the NC zone and 40 feet in the MU zone, and the maximum height with a bonus is 40 feet in accordance with subsection 18.3.2.060.C.13.
- ii. Upper Floor Setback Requirements. Buildings taller than two stories must step back the third story by at least six feet measured from the façade facing the street, alleyway, park or common open space.

Croman includes an upper floor setback requirement in its residential buffer zone. Buildings taller than two stories must step back the third story by at least six feet from the façade facing the street.

# Magnolia Terrace

## “Appropriate Adjustments”

**AMC 18.4.2.050.B.1 Transitional Areas.** *For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.*

For staff, this standard is about a finding the right balance between the allowances of the underlying zone and appropriate design adjustments to achieve compatibility with the surroundings historic neighborhood. For the neighbors and the Historic Commission, the design revisions did not go far enough in making the necessary “appropriate adjustments” to address compatibility. More needs to be done with the “building form, massing, height, scale, placement, or architectural and material treatment” to better respond to the historic neighborhood context while still developing to the vision of the Employment zone. Staff recommend that the Planning Commission consider whether a more substantial third-floor step back would better address the buildings’ massing and whether some additional parkrow and sidewalk width, or front plaza space, would work to provide some additional buffer space and better accommodate street tree growth which would ultimately support greater tree canopy as a further buffer.



# Magnolia Terrace

165 Water St, 160 Helman St & 95 Van Ness Av

CITY OF  
ASHLAND

Planning Commission Hearing

April 12, 2022



# Magnolia Terrace

## Helman Streetscape (Opposite Side)

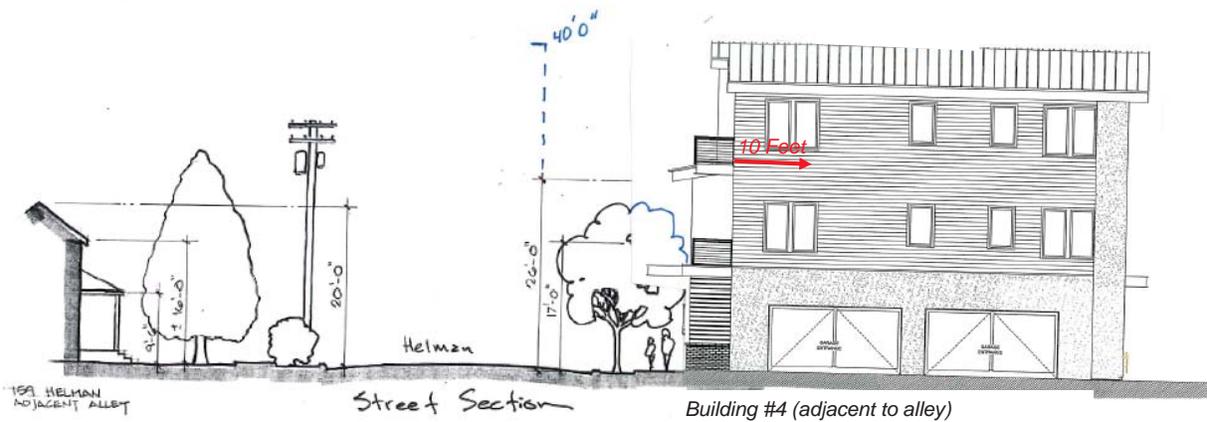
CITY OF  
ASHLAND



# Magnolia Terrace

## Staff Exhibit S-1

CITY OF  
ASHLAND



# Magnolia Terrace

## ORS 197.307 Needed Housing

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

- (a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
- (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

- (a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.
- (b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.*

# Magnolia Terrace

165 Water St, 160 Helman St & 95 Van Ness Av

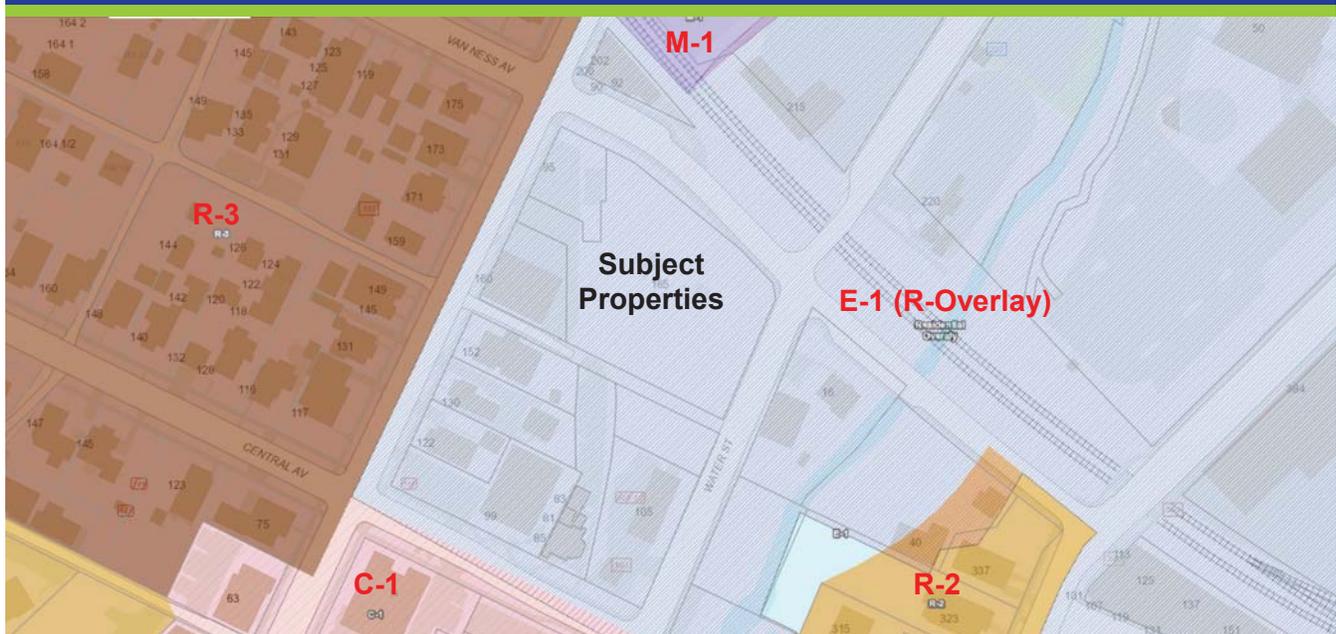
Planning Commission Hearing  
March 8, 2022



# Magnolia Terrace Proposal

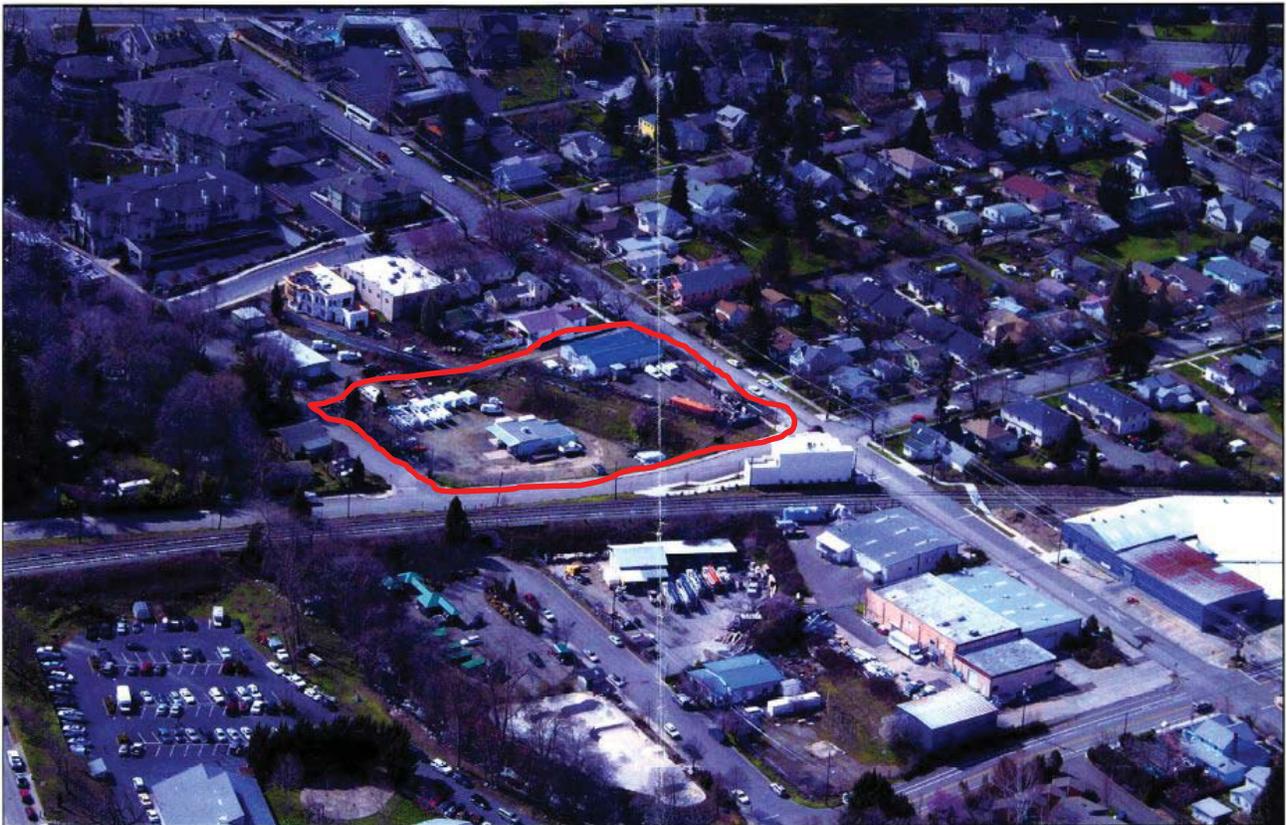
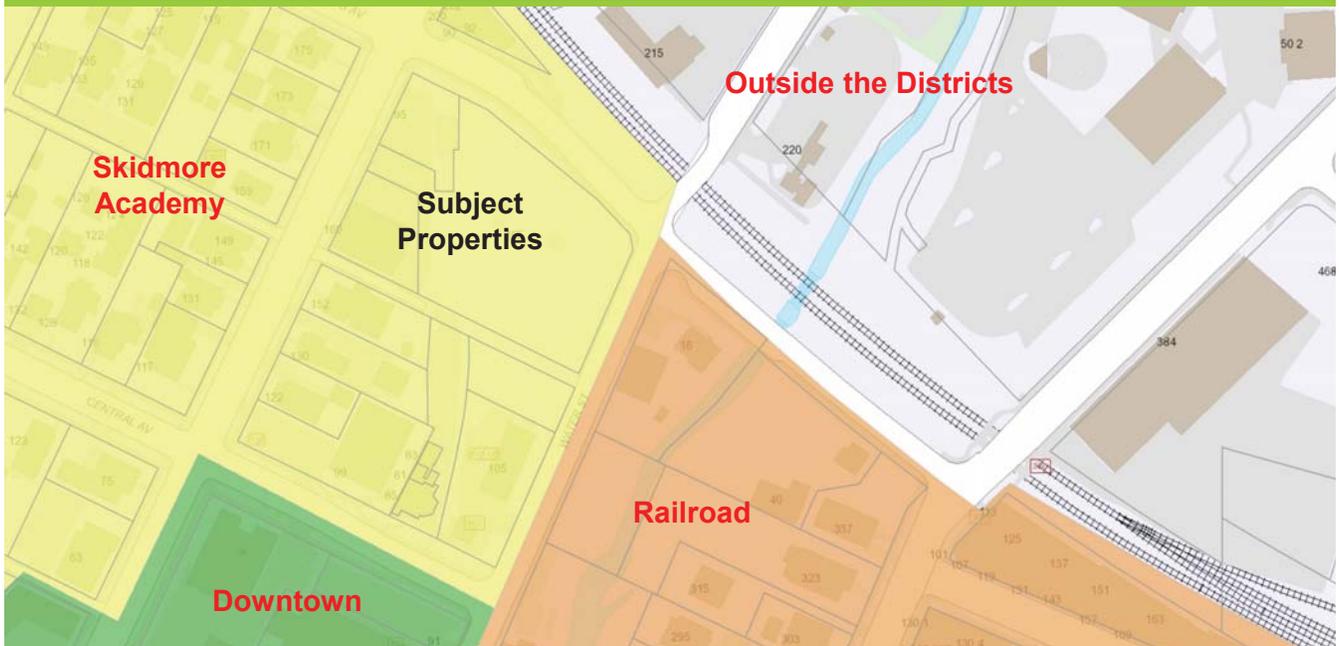
- ❑ Eight-lot commercial **Subdivision** to construct a phased mixed-use development for the three properties including 95 Van Ness Street, 165 Water Street and 160 Helman Street.
- ❑ **Site Design Review** approval for five mixed-use buildings consisting of two ground floor commercial spaces with two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The remaining three building sites would be developed in a later phase.
- ❑ **Exception to the Site Development and Design Standards** to allow 3,087 square feet of plaza space where the standards require 5,624 square feet;
- ❑ **Exception to Street Standards** to allow parking bays with street trees in bump-outs along Van Ness Avenue rather than standard park row planting strips.
- ❑ **Physical & Environmental (P&E) Constraints Review Permit** because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands.
- ❑ **Exceptions to the Development Standards for Hillside Lands.**
- ❑ **Solar Access Exceptions** for Lots #3 and #4 (*request received after noticing*).
- ❑ **Tree Removal Permit** to remove all 20 of the trees on the property and within adjacent rights-of-way.

# Magnolia Terrace Vicinity Map – Zoning



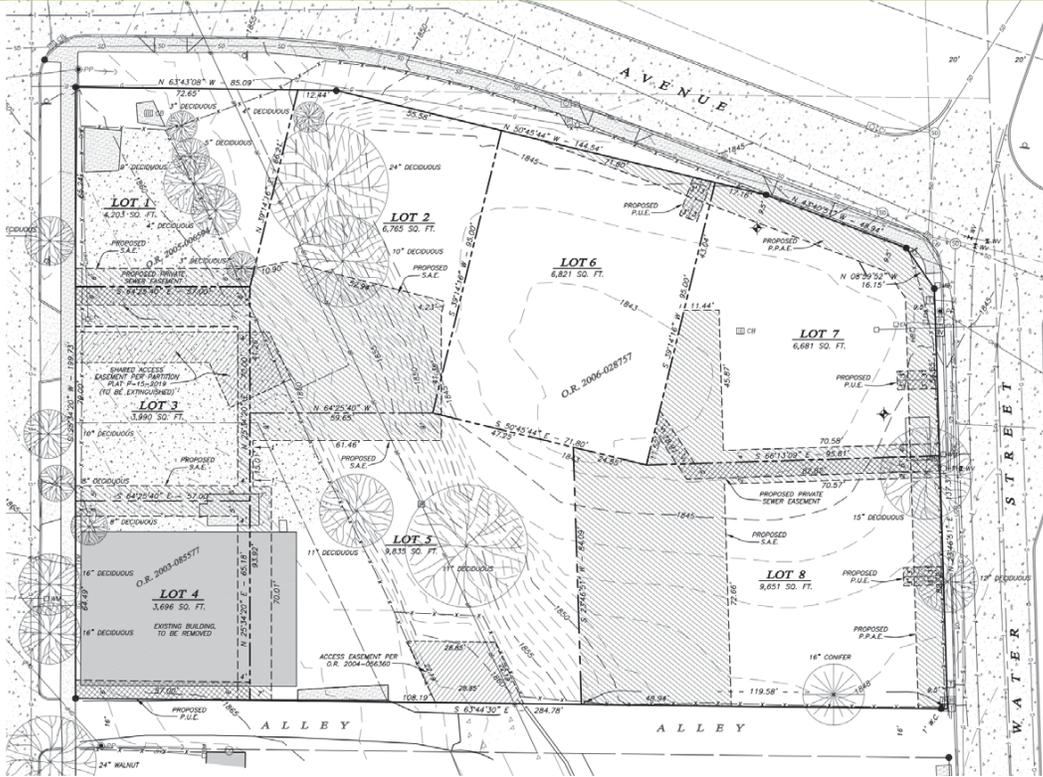
# Magnolia Terrace

## Vicinity Map – Historic Context



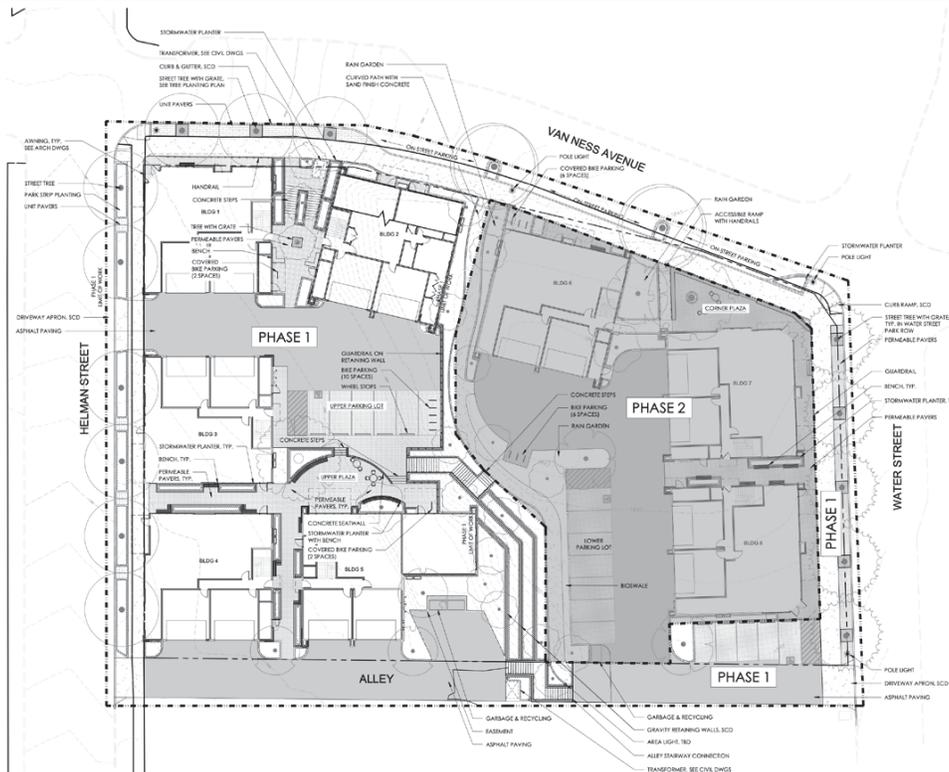
# Magnolia Terrace

## Preliminary Partition Plan



# Magnolia Terrace

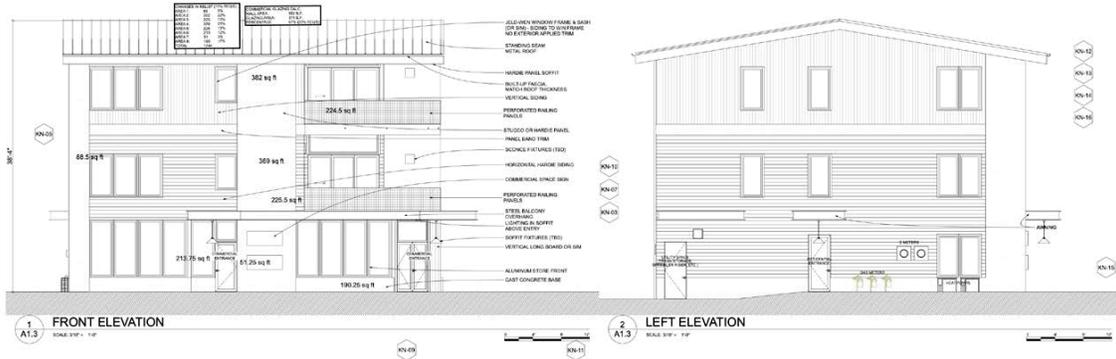
## Phasing Plan



# Magnolia Terrace Site Plan



# Magnolia Terrace Building #1 – Sheet A1.3



# Magnolia Terrace

Building #1 from Corner

CITY OF  
ASHLAND



# Magnolia Terrace

Building #1 from Helman

CITY OF  
ASHLAND



# Magnolia Terrace

## Building #2 - Sheet A2.3



Note: SEE A1.3 FOR MATERIALS AND DIMENSIONS



# Magnolia Terrace

## Building #3 – Sheet A3.3



Note: SEE A1.3 FOR MATERIALS AND DIMENSIONS



# Magnolia Terrace

## Building #4 – Sheet A4.3



Note: SEE A1.3 FOR MATERIALS AND DIMENSIONS

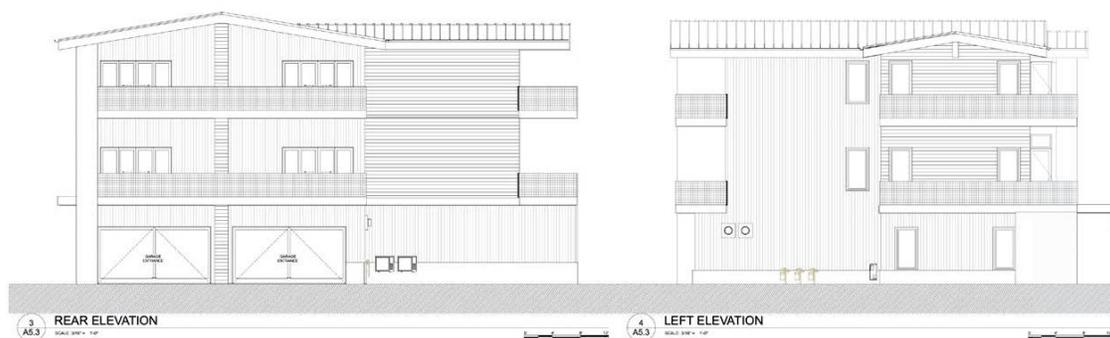


# Magnolia Terrace

## Building #5 – Sheet A5.3



Note: SEE A1.3 FOR MATERIALS AND DIMENSIONS



# Magnolia Terrace

## Water Street Elevations

CITY OF  
ASHLAND



6 WATER STREET ELEVATION  
A0.3 SCALE: 3/32" = 1'-0"



# Magnolia Terrace

## Helman Street Elevations

CITY OF  
ASHLAND

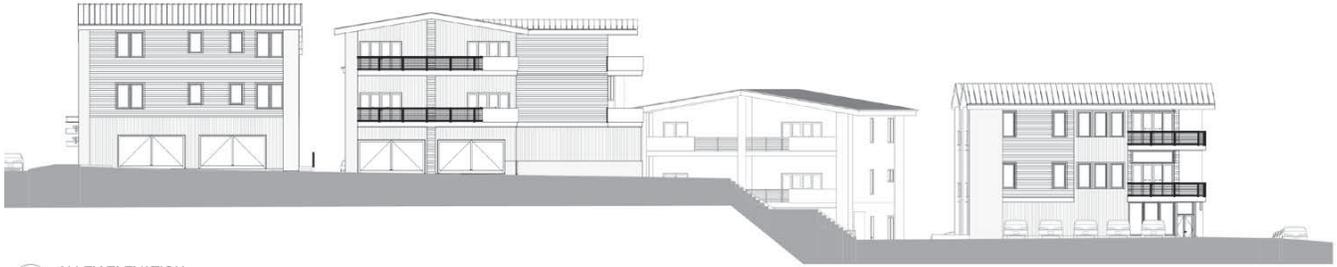


7 HELMAN STREET ELEVATION  
A0.4 SCALE: 3/32" = 1'-0"



# Magnolia Terrace

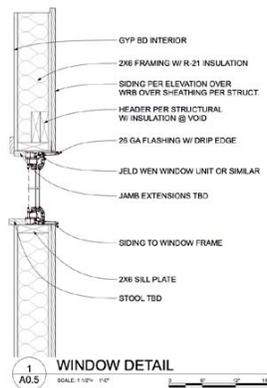
## Alley Elevations



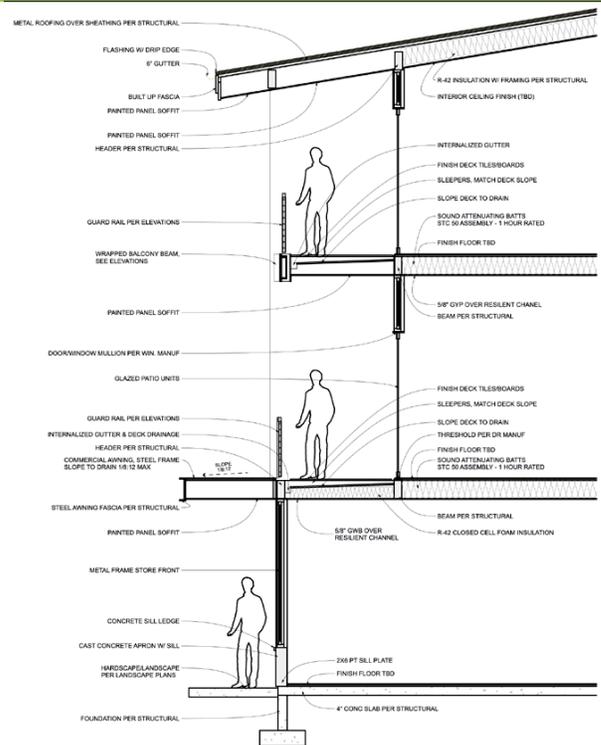
8 ALLEY ELEVATION  
A0.4 SCALE: 3/8" = 1'-0"

# Magnolia Terrace

## Typical Wall Section



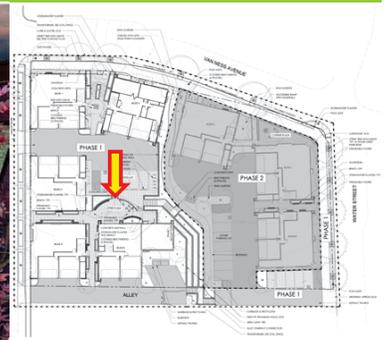
1 WINDOW DETAIL  
A0.5 SCALE: 1/8" = 1'-0"



2 TYPICAL WALL SECTION  
A0.5 SCALE: 1/8" = 1'-0"

# Magnolia Terrace

## Central Plaza Space (conceptual rendering)



# Magnolia Terrace

## Surrounding Streetview Comparisons – Sheet A0.2



# 165 Water St., 160 Helman St. & 95 Van Ness Ave.



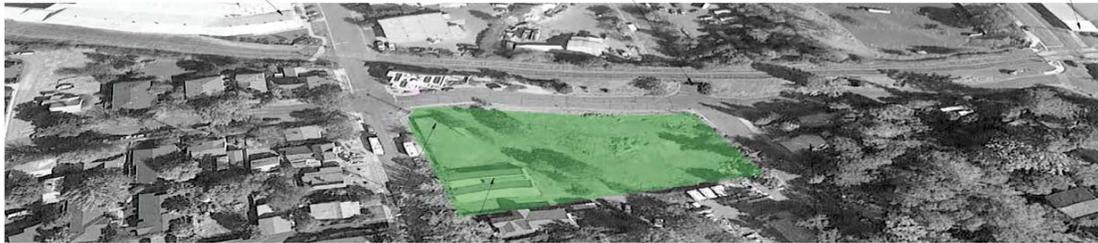
1 255 Helman St.  
SCALE: LARGE  
MATERIAL: METAL SIDING, STEEL  
USE: COMMERCIAL



2 Tunnel Under Roll  
SCALE: MEDIUM  
MATERIAL: CONCRETE, EARTH  
USE: HIGHWAY



3 Ashland Lumber  
SCALE: LARGE  
MATERIAL: METAL, WOOD, GABLE ROOF  
USE: COMMERCIAL



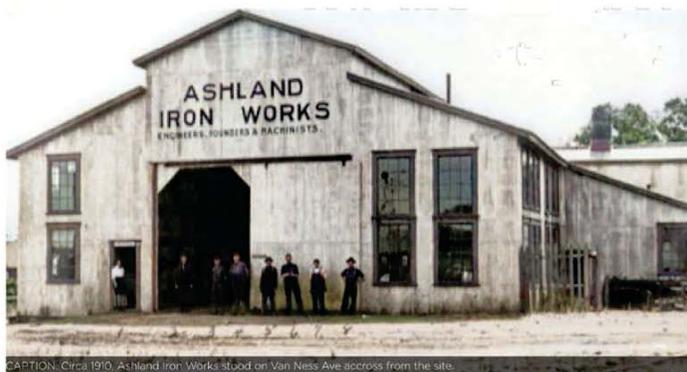
4 Proposed Mixed Use Development  
SCALE: LARGE  
MATERIAL: METAL SIDING, STEEL, GABLE ROOF  
USE: COMMERCIAL AND RESIDENTIAL

5 Proposed Inlets  
SCALE: MEDIUM  
MATERIAL: WOOD SIDING, GABLE ROOF  
USE: RESIDENTIAL

6 1/4 Van Ness Ave.  
SCALE: MEDIUM  
MATERIAL: METAL, ANTI-HORIZONTAL WOOD  
USE: RESIDENTIAL



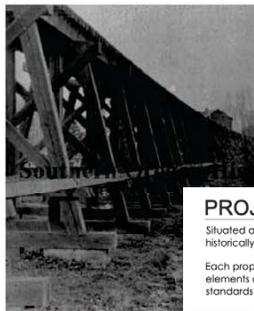
# 165 Water St., 160 Helman St. & 95 Van Ness Ave.



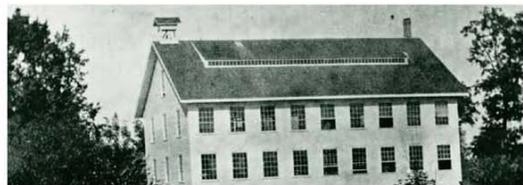
1 ASHLAND IRON WORKS  
HISTORICAL CONTEXT  
CAPTION: Circa 1910, Ashland Iron Works stood on Van Ness Ave. across from the site.



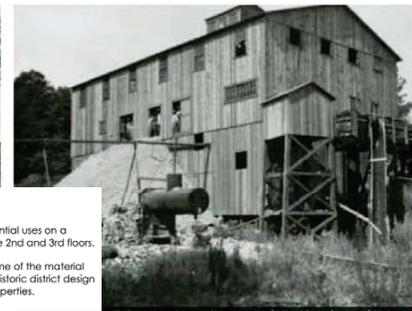
2 AERIAL OF SITE  
HISTORICAL CONTEXT  
CAPTION: Site as shown above is bordered by Helman Street, Van Ness Ave. and Water Street. The property is located within the boundary of the Skidmore Academy Historic District, and the retail site Review zone.



3 RAIL BRIDGE  
HISTORICAL CONTEXT  
CAPTION: Rail detail that borders the site.



4 ASHLAND WOODEN MILLS  
HISTORICAL CONTEXT  
CAPTION: Ashland Wooden Mills stood south of the site near Water Street and B Street.



5 WOOD MILL  
HISTORICAL CONTEXT  
CAPTION: Wood mill that stood near the corner of Van Ness Ave and Helman Street.

**PROJECT DESCRIPTION**

Situated at the intersection of three preservation districts, this mixed use development will provide commercial and residential uses on a historically significant but vacant site. Eight buildings are proposed with 1st floor commercial uses and residential units on the 2nd and 3rd floors. Each proposed building has numerous traditional architectural elements and materials. The scale, form, and massing of some of the material elements are more modern in styling. It can be found that the proposed buildings are architecturally compatible with the historic district design standards and provide a solid neighborhood anchor for the future redevelopment of the adjacent employment zoned properties.



# Magnolia Terrace 2018 Approval – 160 Helman St.



From corner of Van Ness & Helman



# Magnolia Terrace Neighbors' Concerns (Brouillards' Letter)

“Our original suggestion for the now 95 Van Ness Avenue building would be to make it the height limit of the historic district, which is 30 feet. It should have a setback as well. The type of building that they are wanting to build is one that is better suited for the Clear Creek Drive area.

Here are our other concerns (again) with the project:

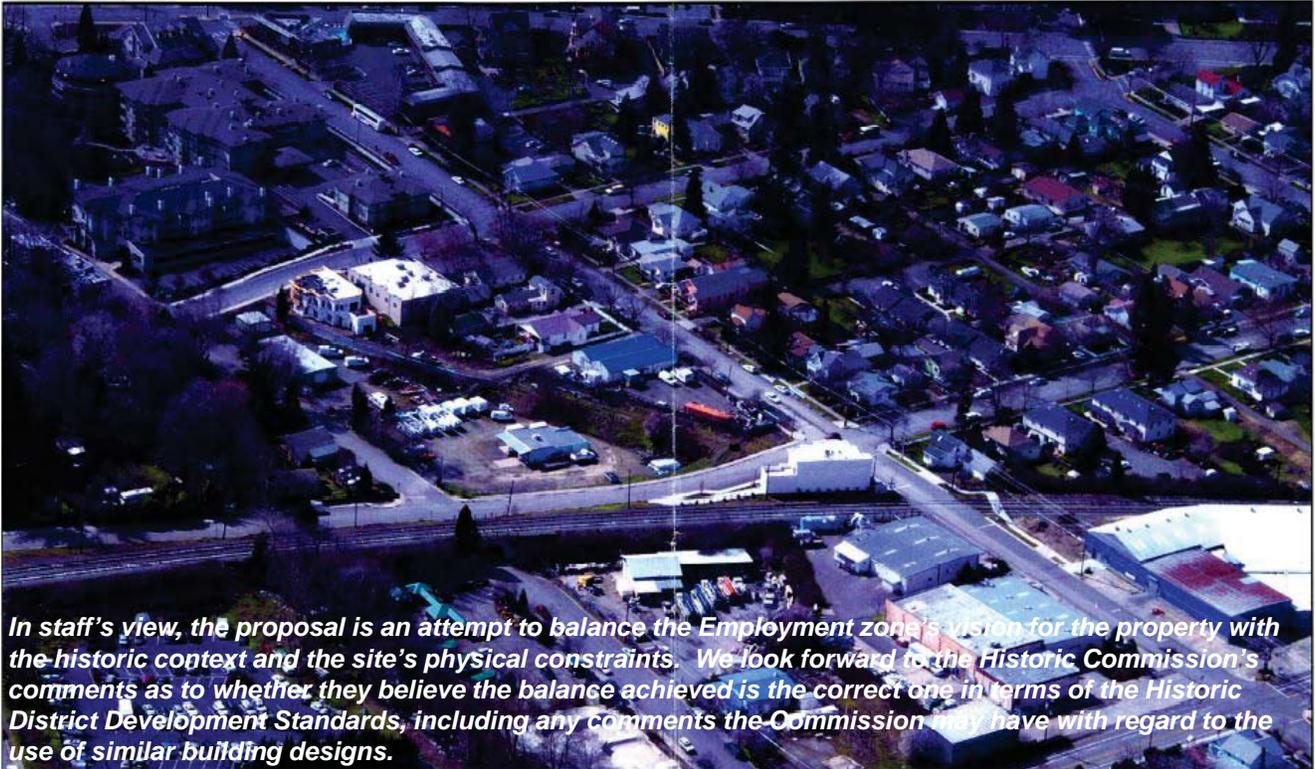
In our opinion the buildings do not meet the basic requirements of **AMC 18.4.2.050**. First, the buildings will be considerable taller than the “historic buildings in the vicinity” pursuant to **18.4.2.050.B.2**. The buildings, in our opinion, also does not meet the criteria for the following sections: **18.4.2.050. B.3, B.4, B.5, B.6, B.7, B.8, B.9, and B.10**.

We also believe that according to **AMC 18.2.3.130.A** which states that “Dwellings in the E-1 zone are limited to the R-overlay zone. See **chapter 18.3.13 Residential Overlay**.” This property is not in the residential overlay (**Figure 18.3.13.010**) and should be held to R-2 standards. If this holds true, and with the Historic District overlay, the maximum height is to be 30 feet not the 39.5 feet that is planned. It would also need the proper setbacks as well. Having a building directly at the edge of the sidewalk also does not fit with **AMC 18.4.2.050.B.6**.

Again, the main topic is to have impartial meetings...”

# Magnolia Terrace

CITY OF  
ASHLAND



*In staff's view, the proposal is an attempt to balance the Employment zone's vision for the property with the historic context and the site's physical constraints. We look forward to the Historic Commission's comments as to whether they believe the balance achieved is the correct one in terms of the Historic District Development Standards, including any comments the Commission may have with regard to the use of similar building designs.*

# Magnolia Terrace

CITY OF  
ASHLAND

165 Water St, 160 Helman St & 95 Van Ness Av

Planning Commission Hearing

March 8, 2022



# Magnolia Terrace Building #1 Elevations - Sheet A0.6

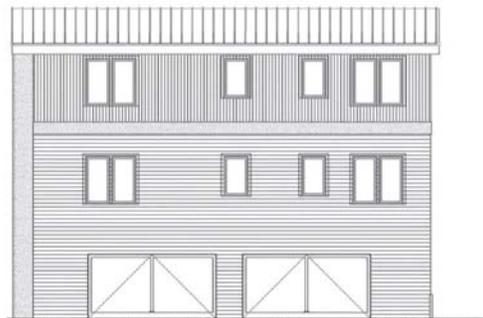


FRONT ELEVATION



LEFT ELEVATION

NOTE: ELEVATIONS OF BUILDING 1 ARE SHOWN FOR REFERENCE; REMAINING BUILDINGS WILL SHARE THE SAME MATERIALS PALETTE. SEE ARCH DWGS FOR FURTHER MATERIALS INFORMATION



REAR ELEVATION



RIGHT ELEVATION

# **FINDINGS**

---

**PA-APPEAL-2022-00014,  
34 Scenic Dr.**



**BEFORE THE PLANNING COMMISSION**

May 10, 2022

IN THE MATTER OF PLANNING ACTION #PA-APPEAL-2022-00014, )  
AN APPEAL OF THE ADMINISTRATIVE APPROVAL OF PLANNING )  
ACTION #PA-T1-2022-00168, A THREE-LOT PARTITION OF A 1.32- )  
ACRE LOT FOR THE PROPERTY LOCATED AT 34 SCENIC ST. THE )  
TENTATIVE PARTITION PLAT CREATES THREE PARCELS THAT )  
ARE 0.18, 0.23, AND 0.90 ACRES IN SIZE. STAFF INITIALLY ) **FINDINGS,**  
APPROVED THE APPLICATION. SUBSEQUENT TO THE MAILING OF A ) **CONCLUSIONS,**  
NOTICE OF DECISION AN APPEAL REQUEST WAS TIMELY FILED. ) **AND ORDERS.**  
)  
**OWNER:** JOYCE STAHMANN AND LARRY GOBELMAN )  
**APPLICANT:** ROGUE DEVELOPMENT SERVICES )  
**APPELLANT:** ROD AND SUSAN REID )  
\_\_\_\_\_ )

**RECITALS:**

- 1) Tax lot #7300 of Assessor’s Map 39-1E-08-AD is located at 34 Scenic Street is in the R-1-7.5 zoning district and is 1.32 acres in size.
- 2) The application proposed a three-lot partition and included a tentative partition plat showing three parcels that are proposed to be 0.18, 0.23 and 0.90 acres in size.
- 3) On December 23, 2021 the application was deemed complete, and in accordance with AMC 18.5.1.050.B.4 a Notice of Complete (NOC) application was posted at the subject property in clear view from the public right-of-way and mailed to all property owners of record within 200 feet of the parcel.
- 4) The Staff Advisor approved the application on February 4, 2022, subject to several conditions of approval and a Notice of Decision (NOD) was mailed on the same date. The NOD listed the deadline to appeal as February 14, 2022, which was a scrivener’s error. The correct deadline to appeal was in fact February 16, 2022
- 5) On February 16, 2022, a Notice of Land Use Appeal was timely filed by Rod and Susan Reid who reside at 153 Granite Street. The Reid’s have standing to appeal as they were both: entitled to written notice, and by having submitted written comments on the application during the initial comment period.
- 6) Due to scheduling the applicant was unable to commit to being able to attend the March Planning Commission meeting, this required an extension to the 120-day time limit set forth in ORS 227.178(1). On February 21, 2022, the applicant submitted a request for a 45-day extension to the time limit.
- 7) The Planning Commission, following proper public notice, held a public hearing on April 12,

2022. The meeting was conducted electronically by Zoom due to the ongoing emergency order in response to the COVID-19 pandemic. Public testimony was received, and exhibits were presented.

- 8) After the close of the public hearing the Planning Commission deliberated and determined that staff had not erred in approving the three-lot partition. A motion was made to deny the appeal and approve the application subject to conditions listed in the staff report, and the additional condition that the easement shown on the preliminary partition plat for the benefit of Parcel 2, along the southern edge of Parcel 3, be limited to a utility easement.
- 9) The criteria of approval for a Land Partition are described in Ashland Municipal Code (AMC) 18.5.3.050 which state that the approval authority shall approve an application for preliminary partition plat approval only where all the following criteria are met:
  - A. The future use for urban purposes of the remainder of the tract will not be impeded.
  - B. The development of the remainder of any adjoining land or access thereto will not be impeded.
  - C. The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.
  - D. The tract of land has not been partitioned for 12 months.
  - E. Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).
  - F. Accesses to individual lots conform to the standards in section [18.4.3.080](#) Vehicle Area Design. See also, [18.5.3.060](#) Additional Preliminary Flag Lot Partition Plat Criteria.
  - G. The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part [18.4](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.
  - H. **Unpaved Streets.**
    1. Minimum Street Improvement. When there exists a 20-foot wide access along the entire street frontage of the parcel to the nearest fully improved collector or arterial street, as designated in the Comprehensive Plan, such access shall be improved with an asphaltic concrete pavement designed for the use of the proposed street. The minimum width of the street shall be 20-feet with all work done under permit of the Public Works Department.
    2. Unpaved Streets. The Public Works Director may allow an unpaved street for access for a land partition when all of the following conditions exist.
      - a. The unpaved street is at least 20-feet wide to the nearest fully improved collector or arterial street. The City may require the street to be graded (cut and filled) to its standard physical width, and surfaced as required in chapter [18.4.6](#) prior to the signature of the final partition plat by the City.
      - b. The centerline grade on any portion of the unpaved street does not exceed ten percent.

- c. The final elevation of the street shall be established as specified by the Public Works Director except where the establishment of the elevation would produce a substantial variation in the level of the road surface. In this case, the slope of the lot shall be graded to meet the final street elevation.
- d. Should the partition be on an unpaved street and paving is not required, the applicant shall agree to participate in the costs and to waive the rights of the owner of the subject property to remonstrate both with respect to the owners agreeing to participate in the cost of full street improvements and to not remonstrate to the formation of a local improvement district to cover such improvements and costs thereof. Full street improvements shall include paving, curb, gutter, sidewalks, and the undergrounding of utilities. This requirement shall be precedent to the signing of the final survey plat, and if the owner declines to so agree, then the application shall be denied.
- I. Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.
- J. Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.
- K. A partition plat containing one or more flag lots shall additionally meet the criteria in section [18.5.3.060](#).

10) The criteria of approval for an exception to the street standards are described in Ashland Municipal Code (AMC) 18.4.6.020.B.1 which state that the approval authority may approve exceptions to the standards section in 18.4.6.040 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](#).

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, and Miscellaneous Exhibits lettered with an "M"

## SECTION 2. CONCLUSORY FINDINGS

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

2.2 The Planning Commission finds that the proposal for a three-lot partition meets all applicable criteria described in section 18.5.3.050, for preliminary partition plat approval. The Planning Commission notes that the preliminary partition plat details the three proposed parcels to be 0.18, 0.23 and 0.90 acres in size.

2.3 The Planning Commission finds that the application was deemed complete on December 23, 2021, and notice was both posted at the frontage of the subject property and mailed to all property owners within 200-feet of the subject property. The Planning Commission further finds that the application was approved by the Staff Advisor on February 4, 2022, and a Notice of Decision (NOD) was mailed on the same date. The Planning Commission notes that the NOD contained a scrivener's error with regard to the deadline to appeal. The correct deadline to appeal was in fact February 16, 2022.

2.4 The Planning Commission finds that on February 16, 2022(the end of the appeal period), Sue and Rod Reid timely filed a notice of land use appeal. Mr. & Mrs. Reid own an adjacent parcel to the east and also submitted written comments during the public comment period and thus had standing to appeal. The Planning Commission finds that the appellant has standing to appeal.

2.6 The Planning Commission finds that the subject property is located within the R-1-7.5 zoning district and that land divisions are governed by AMC 18.5.3.

2.7 The Planning Commission finds that AMC Title 18 Land Use regulates the division of land to carry out the development pattern envisioned by the Comprehensive Plan and to encourage efficient use of land resources among other goals. When considering the decision to approve or deny an application for land partition, the Staff Advisor considers the application materials against the relevant approval criteria in the AMC. The approval criteria for a preliminary partition plat are in Ashland Municipal Code (AMC) 18.5.3.050. The Planning Commission finds that there is substantial evidence in the record to make findings that each of the criteria have been met, as follows:

2.7.1 The Planning Commission notes the first approval criterion for preliminary partition plat approval is "*The future use for urban purposes of the remainder of the tract will not be impeded.*" The application includes a discussion regarding the future development plan to demonstrate that the proposed partition will not impede future development of the

parcels. The future development plan indicates that the proposed new parcel would be able to be subdivided to create as many as three lots for the development of single-family homes with access provided by a future driveway from Scenic. The Planning Commission finds that the future urban purposes of the oversized parcel 3 can be met with the development a single home as there is no minimum density requirements in the R-1 zones.

The Planning Commission notes that the applicant has provided a driveway design to serve Parcel 3 that would meet the standards for vehicle access upon obtaining a Physical and Environmental Constraints review and approval for the driveway at the time of future development. The Planning Commission finds that the applicants proposal demonstrates that primary vehicular access from Scenic Drive is possible. The Planning Commission finds that with a condition of approval that requires that any future development of Parcel 3 shall demonstrate compliance with the vehicle access standards of AMC 18.4, that the approval criterion is met.

The existing access easement provided across the adjacent property at 153 Granite Street would remain available as secondary access to Parcel 3, as well as for the extension of utilities to serve the property.

2.7.2 The Planning Commission notes the second approval criterion for preliminary partition plat approval is *“The development of the remainder of any adjoining land or access thereto will not be impeded.”* The Planning Commission notes that no adjacent parcel would be impeded from future development due to this partition. Specifically, an adjacent property with additional development potential can obtain direct access for future development by virtue of its frontage along Granite Street without requiring access through the subject property. The Planning Commission finds that this criterion of approval is met.

2.7.3 The Planning Commission notes the third approval criterion for preliminary partition plat approval is *“The partition plan conforms to applicable City-adopted neighborhood or district plans, if any, and nay previous land use approvals for the subject area.”* The Planning Commission notes that the only relevant district plan would be the Historic district which has a requirement for Maximum Permitted Floor Area (MPFA). The Planning Commission finds that the size of proposed parcel 1 allows for a house that is 2,718 sq. ft. which is greater than the existing house which the county assessor indicates is 2,485 meeting this standard. The Planning Commission concludes that this criterion is satisfied.

2.7.4 The Planning Commission notes the fourth approval criterion for preliminary partition plat approval is *“The tract of land has not been partitioned for 12 months.”* The Planning Commission notes that the land has not been partitioned for more than 12 months. The Planning Commission finds that this criterion is satisfied.

2.7.5 The Planning Commission notes the fifth approval criterion for preliminary partition plat approval is the *“Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).”* The Planning Commission notes that each of the three parcels comply with lot width and depth requirements, coverage, MPFA standards, solar access

standards,” and the application provides calculations showing compliance with the applicable standards can be achieved. The Planning Commission finds that the proposed lots do conform to the requirements of the base zone. The Planning Commission concludes that this criterion is satisfied.

2.7.6 The Planning Commission notes the sixth approval criterion for preliminary partition plat approval is that “*Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design.*” The Planning Commission finds that all three proposed parcels have frontage of greater than seventy feet Scenic Drive, which is a fully paved public street. Additionally, with the condition that future development of Parcel 3 would require primary vehicle access from Scenic Drive, as discussed in 2.7.1 above, the Planning Commission finds that this can be accomplished through approval of a Physical and Environmental Constraints review for the driveway installation as demonstrated by the applicant’s supplemental materials. The Planning Commission concludes that this criterion is satisfied.

2.7.7 The Planning Commission notes the seventh approval criterion for preliminary partition plat approval is “*The proposed streets, utilities, and surface water drainage facilities conform to the street design standards and other requirements in part 18.4, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.*” The Planning Commission finds that the subject property, and each of the proposed parcels, have frontage on Scenic Drive which is a paved and has curb, gutter, and sidewalk. The application materials make clear that all city facilities are available within the adjacent rights-of-way, including sanitary sewer, water, and franchise utilities. There are no newly proposed streets, or public facilities proposed to be installed to serve the new vacant parcels. The Planning Commission concludes that this criterion has been satisfied.

2.7.8 The Planning Commission notes the eighth approval criterion for preliminary partition plat approval addresses minimum improvements to the roadway where there are unpaved streets. The Planning Commission notes that Scenic Drive is improved with a curb-to-curb width is approximately twenty-two feet paved meeting the standard for a local street. The Planning Commission concludes that this criterion has been satisfied based in the existing improvements.

2.7.9 The Planning Commission notes the ninth approval criterion for preliminary partition plat approval is that “*Where an alley exists adjacent to the partition, access may be required to be provided from the alley and prohibited from the street.*” The Planning Commission finds that this criterion does not apply as there is no alley adjacent to the subject property.

2.7.10 The Planning Commission notes the tenth approval criterion for preliminary partition plat approval is that “*Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.*” The Planning Commission finds that at this time that the future development of the property would not require such permits as there are no identified wetlands or waterways on the property. The Planning Commission concludes that this criterion is met.

2.7.11 The Planning Commission notes the final approval criterion for preliminary partition plat approval is that “*A partition plat containing one or more flag lots shall additionally meet the criteria in section 18.5.3.060.*” The Planning Commission finds that this criterion does not apply as there is no proposed flag lot<sup>1</sup> as all three parcels as proposed have frontage on Scenic Drive meeting or exceeding the minimum lot width requirement.

2.7.12 The Planning Commission notes that the application includes an exception from the street standards to leave the non-conforming frontage along scenic in its current state (curb tight sidewalk). The Planning Commission notes that the standard for a local street requires a park-row. The Planning Commission finds that this is a reasonable accommodation considering the existence of a curbside sidewalk along the full property frontage, the slope of the property adjacent to Scenic Dr., and the extant retaining wall. Furthermore, the Planning Commission notes that the required improvements would not be proportional to the proposal considering the request is a simple partition with no other proposed development.

2.8 The Planning Commission notes the notice of appeal included the standard Land Use Appeal form which has spaces for up to three specific grounds for appeal and a citation for the relevant applicable criteria that it relates to. The items listed were as follows:

- “The future use for urban purposes for proposed Parcel 3 will be impeded.” [citing 18.5.3.050.A]
- “Existing easement access from Granite Street as proposed to serve parcel 3 and also to be extended to parcel 2 does not conform the the [sic] standards in section 18.4.3.080.” [citing 18.5.3.050.F]
- “Proposed partition plan does not conform to the applicable development standards for connectivity and block lengths.” [citing 18.5.3.060].

The form continues and says, “on attached pages, list other grounds, *in a manner similar to the above*” (emphasis added). The appeal included four other pages that included a one-page letter from the appellants, and a three-page memo from CSA Planning Ltd to the appellants. The one-page letter asserts that the proposed partition “Limits any practical access to Scenic Dr.” Based on the predicate that no access from Scenic is possible, the remainder of the letter focus on issues relating to an easement across the appellants property. The memo from CSA states that it was prepared “to outline the bases for your to appeal” to the partition. The memo outlines the required contents of appeal provided at AMC 18.5.1.050.G.2.c which provides for the following four items

- i. An identification of the decision being appealed, including the date of the decision.
- ii. A statement demonstrating the person filing the notice of appeal has standing to appeal.

---

<sup>1</sup> AMC 18.6 Definitions provides: “Flag Lot” - A lot with two distinct parts. [figure omitted] 1) The flag, which is the building site; and is located behind another lot. 2) The pole, which connects the flag to the street; provides the only street frontage for the lot with less than 40 feet of frontage on a street; and unless an alley provides access, includes a driveway providing access.

- iii. A statement explaining the specific issues being raised on appeal.
- iv. A statement demonstrating that the appeal issues were raised during the public comment period.

The memo provides specific responses to the first, second, and fourth items, but does not provide anything below the third item (specific issues being raised on appeal). Staff understands that the intent of the memo was to bolster the four items that were listed in the public comment submitted by Mrs. Reid during the initial application period taking issue with 1) Lack of a Future Development Plan, 2) Concerns about vehicle access, 3) Concerns about Block Length / Connectivity standards, 4) Exception to street standards

2.8.1 The Planning Commission notes that the first appeal issue was that “The future use for urban purposes for proposed Parcel 3 will be impeded.” [citing 18.5.3.050.A]. The Planning Commission finds that there is no barrier to the future urban use of the proposed Parcel 3. As stated above, there is significant frontage along Scenic to provide future access. The Planning Commission notes the applicants’ supplemental materials prepared by a professional engineer demonstrate that a driveway access could be developed in conjunction with the approval of a Physical & Environmental constraints review. Such a driveway could serve as many as three lots consistent with the standards for a private drive. Finally, because there is no minimum density for the R-1-7.5 zone if the oversized parcel only developed with a single-family home it would be consistent the urban standards for the zone. The Planning Commission concludes that the first appeal issue regarding the future use of the parcel is not valid.

2.8.2 The Planning Commission notes that the second appeal issue was that “Existing easement access from Granite Street as proposed to serve parcel 3 and also to be extended to parcel 2 does not conform the the [sic] standards in section 18.4.3.080.” [citing 18.5.3.050.F] The standard cited at AMC 18.5.3.050.F provides, “Accesses to individual lots conform to the standards in section 18.4.3.080 Vehicle Area Design. See also, 18.5.3.060 Additional Preliminary Flag Lot Partition Plat Criteria.” The standards provided at AMC 18.4.3.080 only addresses easements in a limited fashion. The relevant part the code requires that driveway curb cuts be minimized through the use of shard driveways as is proposed for Parcels 1 and 2 on this proposal. The Planning Commission finds that this appeal issue is not valid.

2.8.3 The Planning Commission notes that the third appeal issue was that “Proposed partition plan does not conform to the applicable development standards for connectivity and block lengths.” [citing 18.5.3.060]. The approval criteria at AMC 18.5.3.060 contain a total of 16 items numbered A through P, so it is unclear exactly which standard is being referenced. That said, AMC 18.5.3.060 is titled ‘Additional Preliminary Flag Lot Partition Plat Criteria.’ The Planning commission understands that these approval criteria would only apply when there is a proposed Flag Lot. The Planning Commission finds that based on the definitions at AMC 18.6 no ‘flag lot’ is being proposed, as such none of the approval criteria at AMC 18.5.3.060 are relevant to the application.

In the alternative, the Planning Commission presumed that the section cited was in error and will address the concerns about connectivity and block length. Section AMC 18.4.6.040

address Street Design Standards and their applicability. Under the applicability section it states: “The following standards apply to all street improvements, including new streets, alleys and pathways, and the extension or widening of existing streets.” The present application does not propose a new road, nor is one required as a new public street must only be dedicated when it is serving four units or greater. The Planning Commission concludes that the third appeal issue is not valid.

2.8.4 The Planning Commission notes above that the CSA Planning Ltd. memo mainly argues the four points that were raised in the initial public comment by the appellant which included

- Lack of a Future Development Plan
- Concerns about vehicle access
- Concerns about Block Length / Connectivity standards
- Exception to street standards

Each are addressed in turn:

There is no requirement for a future development plan nor is there a required base density of development for the R-1-7.5 zone. The Planning Commission notes the applicant’s supplemental materials and finds that the applicant has demonstrated sufficiently with an engineered plan for a new driveway accessing Scenic Drive that with a Physical and Environmental constraints review a driveway could be developed from Scenic Drive to support future development of a single family home, and possibly even further subdivision of proposed Parcel 3. A condition of approval has been added that any proposed future development of Parcel 3 will require a primary vehicular access be provided that is in compliance with the Ashland Land Use Ordinance standards.

The Planning Commission notes that with regard to both the concerns about block length / connectivity standards and exceptions to the street design standards, the CSA Planning Ltd. memo does not further develop these appeal issues. That said, the Planning Commission refers to appellant’s January 5th 2022 letter, submitted with the original planning application. As mentioned previously under the third appeal issue the standards for both block length and connectivity are not relevant as the partition does not propose a new road nor is one required. With regard to the exceptions to street standards the January 5th letter raises them only briefly and then turns to discussion to connectivity which, as was just pointed out, are not relevant here.

The Planning Commission further notes that the appellant argues that change in grade presents difficulties to improve the Right-of-Way with a park row then it would logically also preclude the development of a driveway. The Planning Commission notes that there is presently a curbside sidewalk along the entire frontage of Scenic Dr., and removal of the retaining wall, dedication of additional Right-of-Way, potential relocation of the sidewalk, and installation of a park row would not be proportional to the impacts of the proposed partition, and that when considering the present condition of the Right-of-Way the Planning Commission finds that the exception to the street standards for installation of a park row is valid and was administratively approved. The Planning commission further finds that the

applicant, with their supplemental materials, have satisfactorily demonstrated that with a Physical and Environmental Constraints permit a driveway could successfully be developed from Scenic to serve proposed Parcel 3.

2.9 The Planning Commission finds that with the conditions below attached, the proposal satisfies the applicable approval criteria and that none of the appeal issues provide a basis to reverse the initial approval decision of the Staff Advisor.

### **SECTION 3. DECISION**

3.1 Based on the record of the Public Hearings on this matter, the Planning Commission concludes that the request for the partition approval to divide the property is supported by evidence contained within the whole record.

3.2 The Planning Commission denies the appeal and re-affirms the Staff Advisor's original approval of the partition. Further, if any one or more of the conditions below are found to be invalid, for any reason whatsoever, then the Planning Action is denied. The following are the conditions, and they are attached to the approval:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise specifically modified herein.
- 2) That any future developments of Parcel 3 shall demonstrate compliance with the vehicle access standards of AMC 18.4. The applicant's proposal to satisfy this requirement by providing primary vehicular access from Scenic Drive will require a separate approval of a Physical and Environmental constraints review.
- 3) That the proposed easement shown to the benefit of parcel 2 over parcel 3 be limited to utilities only.
- 4) That a final survey plat shall be submitted, reviewed and approved within 18 months of the final decision date of the preliminary partition plat approval by the City of Ashland.
- 5) That prior to the submittal of the final survey plat for the review, approval and signature of the Ashland Planning Division, all easements for public and private utilities, fire apparatus access, and reciprocal utility, maintenance, and access shall be indicated on the final survey plat as required by the Ashland Engineering Division.

---

Planning Commission Approval

May 10, 2022  
Date

# **FINDINGS**

---

**PA-T2-2022-00037,  
165 Water St.**



**BEFORE THE PLANNING COMMISSION**

**May 10, 2022**

IN THE MATTER OF PLANNING ACTION #PA-T2-2022-00037, A REQUEST FOR )  
A SIX-LOT COMMERCIAL SUBDIVISION TO ACCOMMODATE A PHASED )  
MIXED-USE DEVELOPMENT FOR THE THREE PROPERTIES AT 95 VAN NESS )  
AVENUE, 165 WATER STREET AND 160 HELMAN STREET. THE APPLICANT’S )  
PHASE I REQUESTS SITE DESIGN REVIEW APPROVAL FOR FIVE MIXED-USE )  
COMMERCIAL BUILDINGS WITH GROUND FLOOR COMMERCIAL SPACES )  
AND TWO RESIDENTIAL UNITS ABOVE IN EACH BUILDING, AS WELL AS )  
ASSOCIATED SURFACE PARKING, UTILITY INFRASTRUCTURE AND STREET )  
IMPROVEMENTS. THE THREE REMAINING LOTS WOULD HAVE INITIAL )  
SITE WORK COMPLETED WITH PHASE I, BUT BUILDING CONSTRUCTION )  
WOULD OCCUR ONLY AFTER SITE DESIGN REVIEW APPROVALS IN A )  
FUTURE PHASE II. THE APPLICATION ALSO INCLUDES A REQUEST FOR A )  
PHYSICAL & ENVIRONMENTAL CONSTRAINTS REVIEW PERMIT BECAUSE )  
THE PROPOSAL INCLUDES DEVELOPMENT ON SEVERE CONSTRAINTS )  
LANDS WITH SLOPES GREATER THAN 35 PERCENT AND ON FLOODPLAIN )  
CORRIDOR LANDS; A REQUEST FOR AN EXCEPTION TO THE DEVELOPMENT )  
STANDARDS FOR HILLSIDE LANDS; A REQUEST FOR A TREE PERMIT TO )  
REMOVE 20 TREES ON THE THREE PROPERTIES AND WITHIN THE )  
ADJACENT RIGHTS-OF-WAY; AND A REQUEST FOR AN EXCEPTION TO )  
STREET STANDARDS TO ALLOW PARKING BAYS WITH STREET TREES IN )  
BUMP-OUTS ALONG VAN NESS AVENUE RATHER THAN STANDARD PARK- )  
ROW PLANTING STRIPS. )

**FINDINGS,  
CONCLUSIONS  
& ORDERS**

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

---

**RECITALS:**

- 1) Tax lot #2000, 2100 and 7100 of Map 39 1E 04CC are located at 165 Water Street and are zoned E-1, Employment.
- 2) The applicant is requesting a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 95 Van Ness Street, 165 Water Street and 160 Helman Street. The applicant’s Phase I requests Site Design Review approval for five mixed-use commercial buildings with ground floor commercial spaces and two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site work completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also includes a request for a Physical & Environmental Constraints Review Permit because

the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way; and a request for an Exception to Street Standards to allow parking bays with street trees in bump-outs along Van Ness Avenue rather than standard park-row planting strips. The proposal is outlined on plans on file at the Department of Community Development.

- 3) The criteria for the approval of a Preliminary Subdivision Plat are described in AMC 18.5.3.070 as follows:
- A. Approval Criteria.** *The approval authority, pursuant to subsection [18.5.3.030.A](#), may approve, approve with conditions or deny a preliminary subdivision plat on findings of compliance with all of the following approval criteria.*
1. *The subdivision plan conforms to applicable City-adopted neighborhood or district plans, if any, and any previous land use approvals for the subject area.*
  2. *Proposed lots conform to the requirements of the underlying zone, per part [18.2](#), any applicable overlay zone requirements, per part [18.3](#), and any applicable development standards, per part [18.4](#) (e.g., parking and access, tree preservation, solar access and orientation).*
  3. *Access to individual lots necessary to serve the development shall conform to the standards contained in section [18.4.3.080](#) Vehicle Area Design.*
  4. *The proposed streets, utilities, and surface water drainage facilities conform to the standards in chapter [18.4.6](#), and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications.*
  5. *All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas (e.g., landscaping, tree preservation, common areas, access, parking, etc.) is ensured through appropriate legal instrument (e.g., Covenants, Conditions and Restrictions (CC&R's)).*
  6. *Required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.*
- B. Conditions of Approval.** *The approval authority may attach such conditions as are necessary to carry out provisions of this ordinance, and other applicable ordinances and regulations.*

- 4) The criteria for Site Design Review approval are described in **AMC 18.5.2.050** as follows:
- A. Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
- B. Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
- C. Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*

- D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
- E. **Exception to the Site Development and Design Standards:** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
  - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.; or*
  - 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*

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

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

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

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

7) The criteria for an Exception to the Development Standards for Hillside Lands are described in **AMC 18.3.10.090.H** as follows:

1. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
2. *The exception will result in equal or greater protection of the resources protected under this chapter.*
3. *The exception is the minimum necessary to alleviate the difficulty.*
4. *The exception is consistent with the stated Purpose and Intent of chapter [18.3.10](#) Physical and Environmental Constraints Overlay chapter and section 18.3.10.090 Development Standards for Hillside Lands.*

8) The criteria for a Tree Removal Permit are described in **AMC 18.5.7.040.B** as follows:

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

*approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*

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

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

## **SECTION 1. EXHIBITS**

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

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

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

## **SECTION 2. CONCLUSORY FINDINGS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### SECTION 3. DECISION

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

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

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

---

Planning Commission Denial

May 10, 2022

Date



# **DISCUSSION ITEM**

---

## **Legislative Updates**



# Memo

---

**DATE:** May 10, 2002  
**TO:** Planning Commission  
**FROM:** Derek Severson, *Senior Planner*  
**RE:** Legislative Update

Two items currently in progress at the state level will require local action in the coming months.

## ***Climate Friendly & Equitable Communities Rulemaking***

In 2007, the Oregon state legislature adopted a goal of reducing Oregon's greenhouse gas emissions by 75 percent by 2050 recognizing that this level of reduction was necessary to avoid catastrophic impacts to our environment, communities, and economy. Now, 15 years later, Oregon is off track in meeting this goal, and the state is experiencing the real-world impacts of climate disruption, with wildfires increasing in size, severity, and timing, and record heat waves. Oregon is particularly off-track in reducing pollution from transportation, which is responsible for about 38 percent of greenhouse gas emissions. On our current path, Oregon will only reduce transportation pollution by about 20 percent by 2050. In seeking to avoid more weather events, more wildfires, more ocean acidification, and more record heat waves, the Governor directed state agencies to initiate a rulemaking effort which seeks to promote cleaner vehicles, cleaner fuels, and less driving.

This "Climate Friendly & Equitable Communities" rulemaking which is now well underway seeks to reduce greenhouse gas emissions from light vehicles in Oregon's eight metropolitan areas by reducing driving and encouraging walking, biking and transit, as well as supporting greater usage of electric vehicles. This is to be accomplished through the creation of more pedestrian friendly areas with compact, mixed-use development to be called "climate friendly areas" or CFAs. The rulemaking includes looking at minimum parking requirements; prioritizing investments in high quality, connected and safe pedestrian, bicycle and transit networks; and changing the methodology used in transportation planning including the standards used to determine the success or failure of a roadway.

As presently envisioned under the draft rules, by June 30, 2023 cities will be required to identify CFAs which would accommodate up to 30 percent of anticipated population growth. CFAs will likely have specific minimum density and employment targets, require that additional building height be allowed, and the new rules may also include limits on what minimum parking requirements can be applied in and around the CFAs. The state is providing funding for consultants to support both the technical analysis necessary in identifying CFA's, and the associated public outreach process.



---

Once CFAs are identified, the next step for cities will be updating Comprehensive Plan maps to include the identified CFAs and updating zoning regulations and Transportation System Plans to be consistent with the new rules. This second step is to be completed by June 30, 2024, and it is anticipated that state funding will again be available to fund consultants for both the technical work and public outreach process.

The rulemaking is anticipated to be completed this month, and the process of identifying CFAs – the first step envisioned for cities in the rulemaking - should begin soon thereafter. Cities are currently working with the Department of Land Conservation and Development (DLCD) to develop scopes of work and select consultants.

### **Senate Bill 458 “Middle Housing Lot Divisions (MHL D)”**

As a follow-up to House Bill 2001, which required cities to allow certain types of middle housing, Senate Bill 458 provides a process for lot divisions to allow ownership opportunities for middle housing units built under HB 2001. *SB 458 does not apply to accessory residential units.*

Where a standard Land Partition under AMC 18.5.3 creates new legal lots with full development rights, this new process for middle housing lot divisions (MHL Ds) approved under Senate Bill 458 will create new middle housing lots within a legal parent lot solely for the purpose of providing ownership opportunities. These new middle housing lots will not be granted additional development rights and must be maintained to meet the criteria applicable to the “parent lot” (height, lot coverage, open space, etc.). A duplex divided under SB 458 will still be considered part of the original duplex and subject to its conditions of approval, and even if someone owns one of these middle housing units on its own middle housing lot in a single family residential zone, it will not have the development rights to construct an accessory residential unit.

### **Requirements Under SB 458**

Senate Bill 458 lays out some specific requirements for MHL Ds:

- **All Middle Housing Types:** SB 458 applies to any lot that allows middle housing under ORS 197.758.
- **Resulting Lots:** A middle housing lot division must result in exactly one dwelling per lot, with the only exception being that common areas may be located on a separate lot or shared tract.
- **Utilities:** Separate utilities for each dwelling unit must be provided if a development is to qualify for a middle housing land division under SB 458.
- **Easements:** Easements are required to be provided for:
  - Pedestrian access (e.g., all pedestrian paths circulating through the parent parcel)
  - Common areas (e.g., common courtyards, community buildings, etc.)
  - Driveways and parking areas, if shared.
  - Utilities
- **Building Code:** A MHL D proposal must meet the requirements of the Oregon Residential Specialty Code. For example, if an attached duplex is being divided, there must be firewall construction between the two units.
- **Timing of MHL D.** In a typical land division, the land division is approved, infrastructure installed and plat signed prior to building permits being reviewed and issued for construction. However, SB 458 does not state that a middle housing land division must occur either before or after the issuance of a building permit. Therefore, arguably land could be divided pursuant to SB 458 prior to submission of an application



for building permits, after a middle housing development is approved for development, or after it is constructed. SB 458 also gives cities the option of allowing concurrent review of building permits and the land division. **In all cases, MHL D applications must include a middle housing development (either proposed or built) that complies with the building code and the City's middle housing development code.** *(There is some discussion as well of whether SB 458 will enable the division of existing middle housing that was created prior to HB 2001 taking effect, as long as the development meets the building code and the City's adopted middle housing code standards. This will likely be a point of discussion in the ordinance adoption process, as allowing such divisions could result in the removal of existing needed rental units from Ashland's limited inventory in favor of ownership opportunities.)*

## Options Under SB 458

Senate Bill 458 also specifically identifies items where the city has the options of imposing requirements:

- **Street Frontage Improvements.** SB 458 specifies that cities can require street frontage improvements for newly created lots abutting a street. Land divisions are often a trigger for requiring frontage improvements, whereas infill development on an existing lot may not trigger such improvements. Under SB 458, frontage improvements may be required with an MHL D.
- **Right-of-way Dedication:** SB 458 specifies that cities may require dedication of right-of-way if the original parcel did not previously provide a dedication. Like frontage improvements, such a dedication requirement would be dependent upon the City making findings to demonstrate consistency with constitutional requirements (*i.e. a demonstration of proportionality under Dolan*).
- **Concurrent Review.** The City may allow concurrent review of building permits and an MHL D application for a middle housing development. Even if permits are not requested concurrently, the applicant is required to demonstrate that the application meets the Oregon Residential Specialty Code.
- **Tentative/Final Plats:** Cities may require that applicants submit tentative and final plats in a manner consistent with their applicable platting requirements.

## Limitations Under SB 458

Cities are precluded from applying criteria other than those specified in SB 458:

- **Minimum Street Frontage:** Newly created lots are typically subject to access and minimum frontage on a public street as detailed in AMC 18.2.4.010, however SB 458 specifies that cities cannot require street frontage for lots created through a MHL D (*i.e. a middle housing lot at the rear of the parent parcel could take access to the street via an access easement*).
- **Parking or Driveway Access to Each Lot:** While the housing must meet applicable parking requirements, cities cannot require that each resulting lot have its own parking space or driveway access. For example, a duplex could have a shared parking area, and the City cannot preclude the duplex lot from being divided such that one of the resulting lots only has access to the parking area via an access easement.
- **Minimum Lot Size or Dimensions:** Cities cannot specify minimum area or dimensions for lots resulting from a MHL D.
- **Other Review Criteria.** Cities cannot apply any approval criteria other than the approval criteria specified in SB 458 to applications for an MHL D—*i.e. the allowable criteria include the City's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.*



## **Expedited Land Divisions (ELDs)**

SB 458 requires cities to apply the expedited land division (ELD) process outlined in ORS 197.360 to 197.380 to middle housing land divisions (MHLDs). The ELD process provides an alternative procedure intended to streamline the review of residential land divisions under state law. Currently, land divisions must meet very specific criteria to qualify for an expedited land division, and SB 458 expands the applicability to all middle housing land divisions that meet the standards outlined in the bill. The expedited land division process is outlined below:

- Submittal requirements are consistent with typical land divisions.
- Completeness review must occur by the City within 21 days of application submittal.
- Notice is given to properties within 100 feet of the site, to utility providers and to applicable neighborhood association(s).
- There is a 14-day comment period.
- A decision must be made by the city within 63 days after a complete application is submitted, unless extended by the Council under limited circumstances. This is in contrast to the 120 days typically allowed for land use actions.
- Only the applicant and any person or organization who files written comments in the time period specified in the bill may appeal. An appeal must be filed within 14 days of mailing the notice of decision. A \$300 deposit to cover costs must be paid with the appeal submittal.
- A City-appointed “referee” decides any appeal decision—often this is a city’s Hearings Officer - who must issue a decision within 42 days of the appeal being filed. The decision of the referee is the final local decision on the MHLD application.
- Appeals of the referee’s decision go to the Oregon Court of Appeals.

An ELD is not considered to be a land use decision, and would not be heard by the Planning Commission. The Staff Advisor makes the initial administrative decision, and any appeals go to a referee who cannot be a city employee or city official, but could be a hearings officer. Appeals of the hearings officer’s decision go directly to the Oregon Court of Appeals rather than to the Land Use Board of Appeals (LUBA).

## **Timeline**

Cities are being encouraged to adopt new zoning regulations addressing SB 458’s MHLD requirements, however in those instances where regulations have not been fully adopted by June 30, 2022 cities will be required to implement the requirements of SB 458 directly from the bill. Given this tight timeline, staff will be bringing ordinance materials back to the Commission as soon as possible.



# Climate-Friendly and Equitable Communities

## Why this Rulemaking

In 2007, Oregon legislators adopted a goal to reduce Oregon’s climate pollution by 75% by 2050. That’s what the science calls for, if we’re going to avoid catastrophic impacts to our environment, communities, and economy.

Fifteen years later, we’re far off track in our efforts to meet those goals – and we’re already experiencing real-world impacts of climate disruption, with increasing wildfires, in size, severity, and timing, and record heat waves that have cost Oregonians their homes, and their lives.

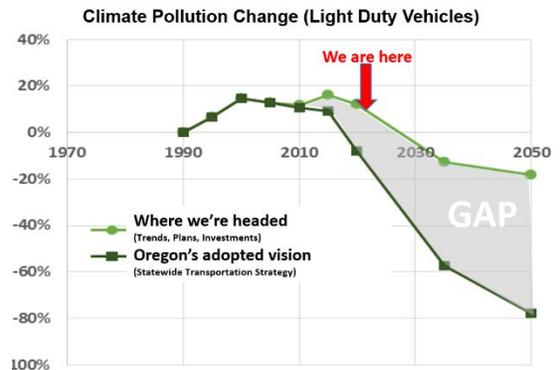
We’re particularly off-track in reducing pollution from transportation, responsible for about 38% of Oregon’s climate pollution. On our current path, Oregon will only reduce transportation pollution by about 20% by 2050. That means we’re polluting far more than we hoped, meaning more extreme weather events, more wildfires, more ocean acidification, and more record heat waves. In response, Governor Kate Brown directed state agencies to promote cleaner vehicles, cleaner fuels, and less driving.

Meanwhile, the State of Oregon is grappling with a troubling history and current patterns of inequity and discrimination, including in our land use, zoning, and transportation investment (and disinvestment) decisions. Wealth and health have been concentrated in the privileged, at the expense of others. This rulemaking aims to take some steps in redressing past harms.

## Rulemaking Overview and Desired Outcomes

The Land Conservation and Development Commission launched the Climate-Friendly and Equitable Communities rulemaking in response to Governor Brown’s order. It directed the Department of Land Conservation and Development (DLCD), Oregon’s land use planning agency, to draft changes in Oregon’s planning system for communities in Oregon’s eight most populated areas (see map at right).

The rules require those communities to change their local transportation and land use plans to do more to ensure Oregonians have more safe, comfortable ways to get around, and don’t have to drive long distances just to meet their daily needs. The rules also aim to improve equity, and help community transportation, housing, and



*Oregon is dramatically off-track. If current trends continue, Oregon will release more than 4 times more transportation pollution than our goal by 2050.*



*Thousands of Oregonians have lost their homes in recent wildfires. Missing our climate goals will mean more extreme and more frequent weather events such as heat bombs, droughts, and wildfires.*



*The rules apply in Oregon’s eight metropolitan areas shown above.*

planning serve all Oregonians, particularly those traditionally underserved and discriminated against.

What does that mean on the ground? It means having some areas where rules don't get in the way of more walkable neighborhoods. The draft rules ask cities to designate climate-friendly areas, and to allow people to build taller buildings providing more housing. The rules don't *require* taller buildings, but make sure those buildings are *allowed*. In climate-friendly areas, a minimum density standard would help ensure transit can serve the neighborhood.

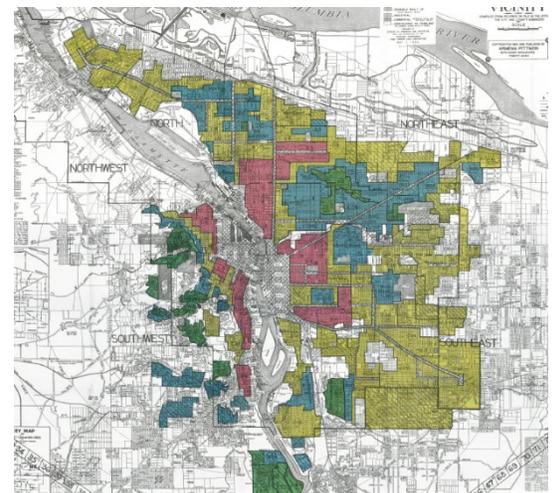
Other provisions of the rulemaking call for new buildings to support the growing electric vehicle transformation, reduce one-size-fits-all parking mandates, and increase local planning requirements to address critical gaps in our walking, biking, and transit networks. The rules ask communities to identify transportation projects needed so our climate goals could be met.

The rulemaking is mainly about letting climate-friendly development happen where people want to build it and the market calls for it. There's a lot of demand for housing where people can walk to where they want to go. While single-family homes will continue to be allowed and provide most housing, Oregonians have a diverse set of housing desires and deserve more affordable and climate-friendly choices. Those could better meet the changing shape of American households, as nearly a third of homes hold just one person. But again, people can choose what best meets their needs.

## **Equitable Mapping, Engagement and Decision-Making**

One central outcome of this rulemaking is an increased emphasis on equity. The rulemaking has worked to integrate equity, starting with the rulemaking charge and title. Equity was key as DLCDC attempted to have the composition of the advisory committee reflect the diversity of Oregon's communities, and equity was one of the first tasks tackled by the group.

The rulemaking advisory committee spent significant time at many of its meetings discussing equity, and developed an [Equitable Outcomes Statement](#) to guide the rulemaking drafting and implementation. The rulemaking conducted a racial equity analysis of the rules and an analysis on how the rules could be improved to serve people with disabilities. The committee subsequently reviewed a table listing how each item in the Equitable Outcomes Statement was or was not brought forth into the draft rules, and what next steps might be.



*1938 Redlining map of Portland. Redlining allowed white people to build wealth through homeownership.*

The proposed rules define traditionally underserved populations to include Black and African American people, Indigenous people, People of Color, people with limited English proficiency, people with disabilities, low-income Oregonians, youth and seniors, and more. They require mapping of traditionally underserved populations, local consideration of a set of anti-displacement actions should decisions contribute toward displacement, centering the voices of underserved populations in decision-making, and regular reporting on efforts to engage traditionally underserved populations.

## Climate-Friendly Areas

A climate-friendly area is an area where residents, workers, and visitors can meet most of their daily needs without having to drive. They are urban mixed-use areas that contain, or are planned to contain, a greater mix and supply of housing, jobs, businesses, and services. These areas are served, or planned to be served, by high quality pedestrian, bicycle, and transit infrastructure to provide frequent, comfortable, and convenient connections to key destinations within the city and region.

Why are climate-friendly areas important? A key component of Oregon's plan to meet our climate pollution reduction and equity goals is facilitating development of urban areas in which residents are less dependent upon the single occupant vehicle. Before the automobile became common in American life, cities grew more efficiently, with a variety of uses in city centers and other areas that allowed for working, living, and shopping within a walkable or transit accessible area. Over the last 100 years, the automobile and planning practices have served to separate activities, creating greater inequities within cities and widespread dependence upon climate-polluting vehicles to meet daily needs. Climate friendly areas will help to reverse these negative trends, with some actions taking place in the short term, and others that will occur with development and redevelopment over time.

The proposed rules will require cities, and some urbanized county areas, with a population over 5,000 within the seven metropolitan areas outside of Portland Metro to adopt regulations allowing walkable mixed-use development in defined areas within urban growth boundaries. The proposed rules for the Portland Metro area support implementation of the region's 2040 Growth Concept. Areas will be sized to accommodate a portion of the community's housing, jobs, and services. Local governments will determine where these areas will be located, but many of these areas will likely be established in existing downtowns that may currently allow for mixed uses and higher densities.

Associated requirements will ensure high quality pedestrian, bicycle, and transit infrastructure is available within these areas to provide convenient transportation options. The rules provide a process for local governments to first identify potential climate friendly areas, then later to adopt development standards for the areas best-suited for this purpose. The rules provide some minimum requirements for climate friendly areas, with a set of clear and objective standards that may be adopted, or a process for local governments to craft their own standards. Cities of more than 10,000 will monitor housing production within these areas over time and develop strategies to facilitate desired development.

## Reforming Costly Parking Mandates

Excess parking has a significant negative impact on housing costs, business costs, the feasibility of housing development and business redevelopment, walkability, air and water pollution, climate pollution, and general community character. Parking mandates force people who don't own or use cars to pay indirectly for other people's parking. Carless households tend to be the poorest households. Parking demand varies significantly



*Oregon already has some climate-friendly areas, pleasant places to meet one's needs without needing to drive.*



*Parking uses a huge amount of high-value land. Off-street parking in downtown Corvallis in red.*

from development to development, and about one-sixth of Oregon renter households own zero vehicles. Planning practices of the past have imposed a one-size-fits-all requirement everywhere, creating incentives to own more cars and drive more.

The proposed rules encourage the diversity of parking needs to be met by the diversity of development. The rules would reduce or remove costly parking mandates for desired types of development, such as smaller housing types, small businesses, childcare facilities, multi-family housing, and historic buildings. The rules would completely remove parking mandates within one-half mile of frequent transit, where parking demand is lower per unit.

The rules give communities options to improve parking management. Those who adopt best practice parking policies would get more flexibility. The rules require more populous cities to do more management of on-street parking, through studying parking usage and using permits or meters to manage location or time-specific demand.

### **Getting Ready for Oregon's Electric Vehicle Future**

Making our vehicles cleaner is a key part in meeting Oregon's climate goals. Oregon has a vision where 90% of new vehicles will be electric by 2035. To meet that goal, we need to ensure people can charge their vehicles. The most convenient place to do so is at home, but many Oregonians live in older multi-family homes that would be very expensive to retrofit.



*Building a complete network of EV charging stations at commercial and multi-family housing locations could cut up to 11.9% of climate pollution*

Thus, the rules propose new housing and mixed-use development would include electrical conduit (pipes) to 50% of spots, ready for adding wiring and charging stations to support electric vehicles as the market expands. Those providing faster chargers could provide conduit to fewer spaces.

### **Planning for a Future of Transportation Options**

DLCD and other state agency partners including the Oregon Department of Transportation will provide a range of new and amplified services to help meet greenhouse gas reduction goals, including grants, technical assistance, tools, and publications, to help local governments adopt plans that meet or exceed the state's greenhouse gas reduction goals.



*Transportation options are critical for everyone, but particularly the one-in-three Oregonians who cannot drive.*

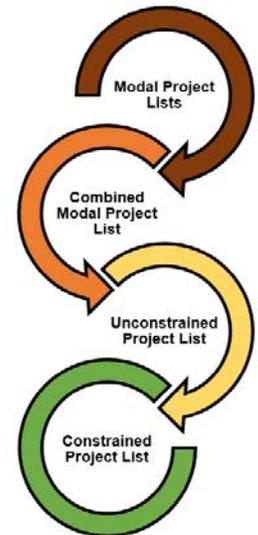
Local governments in Oregon have been required to make coordinated land use and transportation plans for decades. The updated rules would require local governments in metropolitan areas to:

- Plan for greater development in transit corridors and downtowns, where services are located and less driving is necessary;
- Prioritize system performance measures that achieve community livability goals;
- Prioritize investments for reaching destinations without dependency on single occupancy vehicles, including in walking, bicycling, and transit;
- Plan for needed infrastructure for electric vehicle charging; and
- Regularly monitor and report progress.

## Planning to Meet Our Climate Goals

DLCD’s regional greenhouse gas reduction program allows areas to work together to consider statewide, regional, and local needs and issues. The flexible regional planning process allows communities to study economic development, fiscal impacts, resource use, pollution impacts, and the effects of different choices on the state, region, community, or households. The results are intended to help local government community members, elected and appointed leaders better understand issues and quantify the effect of potential policies as they review and update the area’s long-range plans and make investment decisions.

The rules would expand requirements for regional plans to meet the state’s climate pollution reduction targets from the Portland metropolitan area to the next largest metropolitan areas in the state (Eugene-Springfield and Salem-Keizer) initially. Other metropolitan areas will be required to evaluate their local plans towards meeting the state’s climate pollution reduction targets and amend their local plans towards meeting the target.



## Community Engagement

We’ve heard from lots of Oregonians over the past eighteen months. We’ve heard from a 40-person advisory committee including representatives from all of Oregon’s impacted eight urban areas, several people who are home builders, realtors, representatives of the trucking industry, affordable housing advocates, land use advocates, community-based and other community-serving organizations.

To supplement those deliberations, staff held two separate series of virtual community conversations in 2021 – five in the spring, and four in the fall. Staff have hosted a series of nine technical work group meetings on specific topics, a series of practitioner meetings with local government staff in each region, and dozens of additional meetings with local elected officials, planning staff, and interest groups.



*Some members of the rulemaking advisory committee*

Upcoming conversations include events focused on what will be needed at the community level to support implementation and ongoing engagement strategies.

We’ve heard from hundreds of Oregonians who have attended one or more of the scores of meetings, community conversations, work groups, or practitioner meetings, and from hundreds of people who’ve submitted comments ([summary here](#)). Our rules are better for it, having continued to evolve and improve.

We’ll continue to hear from Oregonians through May, when we hope to adopt the rules. We invite your feedback and comments.

But the engagement won’t end there – the rules require local governments to engage their communities as they make key decisions on how the rules apply locally. If you’re interested in these issues, we encourage you to stay engaged beyond May.

## **Implementing the Rules: Resources and Timelines**

If the Land Conservation and Development Commission adopts the rules, local governments will be asked to implement them. Many of the rules take effect when a community next does a major update of its Transportation System Plan (TSP), a community's core document describing its transportation needs and future plans. The rules do not set a specific deadline for most TSP updates. The rules have Salem-Keizer and Eugene-Springfield areas on a schedule to do regional scenario plans and update their TSPs by the end of 2027.

The land use components of the rules have specific deadlines. Communities are asked to study potential Climate-Friendly Areas by June 30, 2023, and adopt Areas by June 30, 2024. Parking reform is scheduled to happen in two phases - the first by the end of 2022, and the second by March 31, 2023. Communities may ask for some flexibility around most of these dates.

DLCD is providing or working to find resources for local governments to do this work, along with our agency partners at the Oregon Department of Transportation and the Oregon Housing and Community Services Department. The Oregon Legislature provided \$768,000 to assist with implementation.

### **Learn More**

Information on how to submit comments, get rulemaking updates via email, and or review many additional materials including the draft rules language can be found at [www.oregon.gov/lcd/LAR/Pages/CFEC.aspx](http://www.oregon.gov/lcd/LAR/Pages/CFEC.aspx)

### **Contact Information**

Bill Holmstrom, Transportation Planner  
[bill.holmstrom@dlcd.oregon.gov](mailto:bill.holmstrom@dlcd.oregon.gov)  
971-375-5975

Kevin Young, Senior Urban Planner  
[kevin.young@dlcd.oregon.gov](mailto:kevin.young@dlcd.oregon.gov)  
503-602-0238

**March 2022**



## Senate Bill 458 Guidance

*(Updated July 8, 2021)*

### *Background*

Senate Bill 458 was adopted by the Oregon Legislature in 2021. The bill is a follow-up to House Bill 2001 - the bill that legalizes middle housing in many cities throughout the state - and allows lot divisions for middle housing that enable them to be sold or owned individually.

### *Senate Bill 458 Summary*

For any city or county subject to the requirements of House Bill 2001, Senate Bill 458 requires those jurisdictions to allow middle housing lot divisions for any HB 2001 middle housing type (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) built in accordance with ORS 197.758. Senate Bill 458 only applies to middle housing land divisions permitted on or after June 30, 2022.

The bill sets forth a series of parameters on how a city must process middle housing lot division applications. The city must apply an “expedited land division” process defined in ORS 197.360 through 197.380, and the applicant must submit a tentative plan for the division including the following:

- A proposal for development of middle housing in compliance with the Oregon residential specialty code and applicable middle housing land use regulations,
- Separate utilities for each dwelling unit,
- Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways/parking, and dedicated common area,
- One dwelling unit per each resulting lot or parcel (except common areas), and
- Demonstration that the buildings will meet the Oregon residential specialty code.

Additionally, cities retain the ability to require or condition certain things, including further division limitations, street frontage improvements, and right-of-way dedication if the original parcel did not make such dedications. They *may not* subject applications to approval criteria outside of what is provided in the bill, including that a lot or parcel require driveways, vehicle access, parking, or min/max street frontage, or requirements inconsistent with House Bill 2001, including [OAR Chapter 660, Division 046](#).

### *Guidance*

DLCD staff have received a significant number of questions regarding Senate Bill 458 and how cities or counties can best prepare to comply with the law. Below are answers to commonly asked questions. If you find that you have a question that has not been addressed in this document, please reach out to the Housing Team at [housing.dlcd@dlcd.oregon.gov](mailto:housing.dlcd@dlcd.oregon.gov).

### **SB 458 Deadline**

**Question:** This bill applies to middle housing lot divisions permitted on or after June 30, 2022. Will cities or counties need to incorporate these standards before this deadline?



---

**Answer:** *It is highly advisable, but not required, for cities or counties to incorporate middle housing lot division standards into their development codes. On the June 30, 2022 deadline, a city or county that has not incorporated lot division standards within their development codes would utilize the bill language directly to process middle housing lot divisions under SB 458.*

**Question:** Medium cities need to allow duplexes on lots/parcels that allow single-family detached dwellings by June 30, 2021 (i.e. this year). Are duplexes built between this deadline and the SB 458 deadline eligible for a middle housing lot division?

**Answer:** *A duplex built pursuant to ORS 197.758 (i.e. House Bill 2001) during this time period would be eligible to apply for a middle housing land division under SB 458 on June 30, 2022, provided it met the applicable requirements outlined in the bill.*

**Question:** Do cities or counties need to allow lot divisions for middle housing built prior to House Bill 2001?

**Answer:** *SB 458 requires a middle housing lot division application submit: "A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5)". This means that any lot division proposal will need to demonstrate compliance with both applicable building code and HB 2001 middle housing code in order to be eligible for a lot division under SB 458.*

*There is a potential hypothetical scenario in which a pre-HB 2001 middle-housing type could make this demonstration, but 1.) this is an unlikely scenario and 2.) a jurisdiction retains the ability to require the applicant demonstrate the middle housing type complies with applicable building code and middle housing code before approving a middle housing lot division proposal.*

## Applicability, Application Process, and Submittal Requirements

**Question:** What middle housing types are eligible for division under SB 458?

**Answer:** *The bill specifies any lot or parcel that allows middle housing under ORS 197.758 (2) or (3) qualifies for a middle housing land division under SB 458. This includes duplexes, triplexes, quadplexes, townhouses, and cottage clusters in applicable cities and unincorporated, urban portions of Metro counties. Accessory dwelling units are not eligible for lot division under SB 458.*

**Question:** SB 458 requires cities or counties to apply the expedited land division process. What is this?

**Answer:** *The expedited land division process is outlined in ORS 197.360 to 197.380. It is an alternative procedure application intended to streamline the review of land divisions under state law. While typical land use applications must be completed within 120 days (ORS 227.178), an expedited land division must be processed within 63 days or extended by the governing body of a local jurisdiction (not to exceed 120 days).*

**Question:** The expedited land division process under ORS 197.360(1)(b) seems to only include divisions of three or fewer parcels. Does this mean that a middle housing land division is limited to three total parcels?



---

**Answer:** No. First, ORS 197.360(1)(a) allows an expedited land division to be any size, while ORS 197.360(1)(b) clarifies that the expedited land division process is also extended to divisions of three or fewer parcels.

Additionally, SB 458 requires that local jurisdictions apply the expedited land division procedure outlined in ORS 197.360 to 197.380, a “middle housing land division” is distinct from an “expedited land division” and may contain more than three parcels, provided that each resultant lot or parcel contains one unit.

**Question:** Can a city or county apply a typical land division process to a middle housing land division application?

**Answer:** SB 458 specifies that a city or county “shall apply the procedures under ORS 197.360 to 197.380”. This means that a city or county cannot require a middle housing land division to undergo a standard land division pathway.

**Question:** This bill seems to suggest that the jurisdiction must approve an application for middle housing land division after or concurrent with the issuance of a building permit, which is backwards in comparison to typical subdivisions. Can you clarify when an applicant may submit an application for a middle housing lot division?

**Answer:** Senate Bill 458 does not state that a middle housing land division must occur either before or after the issuance of a building permit. We anticipate that most middle housing land divisions will occur before the application for a building permit, similar to other housing land division processes. However, we also anticipate that there may be circumstances in which an applicant submits a land division application after developing a middle housing type. In both scenarios, the applicant must demonstrate that the proposal meets applicable building code and middle housing code as well as the requirements outlined in SB 458.

Additionally, the bill specifies that a city or county may allow the submission of a middle housing land division at the same time as submission of an application for a building permit, but they are not required to.

## Lot Division Standards and Conditions for Approval

**Question:** SB 458 sets out several requirements that applicants must demonstrate outlined in the summary above. What else are jurisdictions allowed to require or condition?

**Answer:** The bill allows jurisdictions to require or condition the following:

- Prohibition of further division of the resulting lots or parcels
- Require notation in the final plat indicating approval was provided under SB 458 (later on, this will be the resultant ORS reference)
- Require street frontage improvements where a lot or parcel abuts a street (consistent with House Bill 2001)
- Require right-of-way dedication if the original parcel did not previously provide a dedication

**Question:** Will jurisdictions be able to require applicants to submit tentative and final plats consistent with local platting standards?



---

**Answer:** Yes, jurisdictions may require that the applicant submit tentative and final plats in a manner consistent with their applicable platting standards.

**Question:** Can jurisdictions require that easements be submitted in a form approved by the City Attorney and address specific issues like maintenance and repair, cost-sharing, access, notice, damage, disputes, etc.?

**Answer:** Yes, cities are permitted to specify the format and issues an easement addresses, provided that they are specific to the types of easements specified in Section 2(2)(c) of the bill, including:

- A. Locating, accessing, replacing and servicing all utilities;
- B. Pedestrian access from each dwelling unit to a private or public road;
- C. Any common use areas or shared building elements;
- D. Any dedicated driveways or parking; and
- E. Any dedicated common area;

**Question:** What requirements are jurisdictions limited in requiring for a middle housing lot division?

**Answer:** The bill specifies that a jurisdiction may not subject a middle housing lot division application to approval criteria except as provided in Section 2 of the bill. The bill specifies that this includes the following:

- Require that a lot or parcel provide driveways, vehicle access, parking or minimum or maximum street frontage
- Subject an application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with Section 2 of the bill or ORS 197.360 to 197.380.

**Question:** Does that mean jurisdictions cannot require off-street parking for middle housing?

**Answer:** Jurisdictions are still permitted to require off-street parking and all other land use regulations in accordance with the parameters set forth in administrative rule, OAR Chapter 660, Division 046, but they may not require that each resultant lot or parcel have off-street parking. Such a lot or parcel would be provided access to off-street parking via easement.

**Question:** Cities or counties cannot require street frontage under SB 458, but can they limit how many lots within a land division do not have street frontage? For example, could a city limit the number of cottages in a cottage cluster development that only have street access from an access easement?

**Answer:** The bill states that a city or county “may not subject an application to approval criteria except as provided in this section”. The restriction on minimum or maximum frontage is an explicit example of this prohibition. Because there is nothing in this section specifying the number of units that may only have street access from an access easement, a local jurisdiction would not be able to include such a limitation as a standard or condition of approval.



---

**Question:** Section 2 (4)(b) allows cities or counties to require street frontage improvements. Would this enable them to require frontage improvements that might otherwise be exempted for single-family detached dwellings, which is prohibited in OAR Chapter 660, Division 046?

**Answer:** *Yes. This provision would enable a city to require street frontage improvements in situations where it might not otherwise be permitted under administrative rule. We also think this can be a compelling incentive to better address the street frontage deficiencies that persist today in older single-family neighborhoods.*

**Question:** Does SB 458 require local jurisdictions to approve vertical divisions (i.e. divisions in which one or more units of middle housing is not on the ground floor) of middle housing in addition to horizontal divisions?

**Answer:** *Senate Bill 458 does not speak to vertical divisions of middle housing and requires that each resultant lot or parcel contain exactly one unit. Therefore, cities are not required to allow vertical divisions of middle housing.*

### **Townhouses**

**Question:** Does SB 458 apply to lot divisions for townhouses allowed under HB 2001?

**Answer:** *The bill applies to any lot or parcel that allows middle housing under ORS 197.758, including townhouses. Local jurisdictions must allow townhouse proposals to undergo the lot division process outlined in SB 458, including the application of the procedures outlined in ORS 197.360 through 197.380.*

**Question:** The bill restricts cities or counties from applying minimum or maximum frontage requirements to lots or parcels created under SB 458. This seems to conflict with OAR 660-046-0220(3)(b) regarding minimum street frontages applied to townhouses. Are jurisdictions permitted to apply minimum street frontages to townhouses?

**Answer:** *Yes, SB 458 specifies that in order for a middle housing proposal to be eligible for a land division, it must comply with all of the land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5), which includes the full scope of administrative rules outlined in OAR Chapter 660, Division 046. Therefore, local governments are able to, but are not required to, apply minimum street frontages to townhouses as permitted in OAR 660-046-0220(3)(b).*

*Local governments will not be able to apply minimum street frontage requirements for individual units for plexes and cottage clusters. However, they may apply lot dimensional standards to the parent lot as provided in OAR 660-046-0220. We recommend that local jurisdictions carefully consider the incentives and resulting form for each middle housing type when developing middle housing land use regulations.*