

April Lucas



**From:** Chris Hearn <chearn@davishearn.com>  
**Sent:** Monday, October 11, 2021 9:59 AM  
**To:** Planning Commission - Public Testimony  
**Cc:** Aaron Anderson  
**Subject:** 10/12/21 PC Hearing Testimony  
**Attachments:** Hearn Memo to Mr. Guenther of CCB re Breach of CCB Settlement - 10-10-2021-signed.pdf

[EXTERNAL SENDER]

Aaron:

Please provide the attached written testimony into the record for PA-T1-2021-00159 (329 Granite Street).

**ATTACHMENT.** This message is sent with ONE (1) “.pdf” file attachment appended to it. The file attachment appended to this message is provided for your review, information and files. Please contact me if you have questions or concerns after reviewing the attachment.

Thanks & Best Regards,

*Chris*

Christian E. Hearn | OSB #911829  
Davis Hearn Anderson & Turner PC  
515 E. Main St. | Ashland, Oregon 97520  
phone: 541-482-3111 | fax: 541-488-4455  
email: [chearn@davishearn.com](mailto:chearn@davishearn.com) | web: [www.davishearn.com](http://www.davishearn.com)

**DAVIS HEARN**  
**ANDERSON & TURNER**  
ATTORNEYS AT LAW

**Confidentiality:** This email message is from a law firm and may contain confidential and legally-privileged information protected by state and federal privacy laws. If you're a client, the attorney-client privilege strictly protects the confidentiality of this email and any file attachments appended to it. Receipt of this email by anyone not already a client does not create an attorney-client relationship. If you're a lawyer working with our firm under a joint-defense arrangement, then this email is also legally privileged under that arrangement. If you've received this email by mistake, we'd appreciate a short reply email letting us know. Then, please promptly delete this email from your system (along with any file attachments) and shred any printed copies. We don't waive the attorney-client privilege by misdelivered email or attachments. **No Tax Advice:** We do not give tax advice. Our clients are advised to consult their CPA concerning any tax issues. Thanks, Davis Hearn Anderson & Turner PC ([www.davishearn.com](http://www.davishearn.com)).

JACK DAVIS  
CHRISTIAN E. HEARN  
EUGENE V. ANDERSON  
GARRISON F. TURNER

**DAVIS HEARN  
ANDERSON & TURNER**  
ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION

*Established 1953*

515 E. MAIN ST. | ASHLAND, OREGON 97520  
PHONE: 541.482.3111 | FAX: 541.488.4455  
[www.davishearn.com](http://www.davishearn.com)

October 11, 2021

SAM B. DAVIS (1923-2017)  
SIDNEY E. AINSWORTH (1927-2003)  
DONALD M. PINNOCK - Retired  
DANIEL L. HARRIS - Retired  
DAVID V. GILSTRAP - Retired  
SUSAN V. SALADOFF - Retired  
JEFFREY K. MCCOLLUM - Retired



TRANSMITTED BY EMAIL

**TO:** City of Ashland Planning Commission  
[pc-public-testimony@ashland.or.us](mailto:pc-public-testimony@ashland.or.us)

**FROM:** Chris Hearn ([chearn@davishearn.com](mailto:chearn@davishearn.com))  
DAVIS HEARN ANDERSON & TURNER, PC ([www.davishearn.com](http://www.davishearn.com))

**RE:** Interpretation of AMC 18.5.3.060(F) (Driveway Grade/Distance)  
Planning Action: PA-T1-2021-00159  
Clients: Katie & Joe Clarke (Applicants) | 329 Granite Street

Dear Planning Commission:

Our office represents applicants Katie & Joe Clarke, owners of the property at 329 Granite Street. Applicants respectfully request the Commission's interpretation of AMC 18.5.3.060(F)'s "200-foot rule" governing flag driveway grades.

**BACKGROUND**

**The 2004 Donation of Land to City for Public Open Space and Recreational Trail Use.** Although the application solicits the Commission's interpretation of an unclear ordinance provision, the history of Applicants' property is compelling from a public policy standpoint. On May 28, 2004, Applicants' predecessors partitioned the 16.93-acre parent parcel at 329 Granite Street for the purpose of donating the 13.71 acres of the property to the City of Ashland for public open space and recreational trail use, based on the understanding that the remaining 3.22-acre parcel retained by the grantors (Applicants' Property) would be developable for one single family residence. According to the Conveyance Agreement, City's valuation of the land donation from Applicants' predecessors was \$1,025,000.00.

DAVIS HEARN ANDERSON & TURNER, PC  
515 E. MAIN ST. | ASHLAND, OREGON 97520  
541.482.3111 | [chearn@davishearn.com](mailto:chearn@davishearn.com) | [www.davishearn.com](http://www.davishearn.com)



Lending credence to the adage that no good deed goes unpunished, Applicants paid full market value and purchased the 329 Granite Street property to build a home for their young family, yet now encounter municipal code provisions threatening to render their property effectively unbuildable, despite City's representations to the contrary in connection with their predecessors' generous donation of land to the community. We can assume the resulting situation may have a chilling effect on donation of parkland to the community in the future.

Staff's Memo of April 26, 2004, issued in connection with the Applicants' predecessors' then-pending land donation to City, represented that City's Hillside Development Standards would not prevent development of Applicants' Property after the land donation, and that it would be buildable for one single family dwelling, since the parent parcel was created before the Standards were adopted.<sup>1</sup> The current Staff Report reiterates that the property, "... is acknowledged to be developable for a single family home consistent with the underlying zoning."<sup>2</sup>

**Needed Housing Concerns – ORS 197.307(4).** ORS 197.307(4) requires that, "a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing." In 2017, the Oregon Legislature adopted Senate Bill 1051, which further clarified the definition of "needed housing", removed the prior statutory references requiring "needed housing" be constructed only on "buildable land", and codified the requirement that the clear and objective standard applies to "all housing types".<sup>3</sup>

---

<sup>1</sup> "The partition creating the subject parcel was approved in July 1988 by the Planning Commission (PA 88-102), and the Development Standards for Hillside Lands were adopted in 1997. Therefore, in accordance with 18.62.080.A.I.a, the parcel is buildable for one unit." April 26, 2004 Staff Memo to File re: 39-1E-08DD, Tax Lot 704. (Pages 21-23 of Application record submitted to Commission by Staff.)

<sup>2</sup> Staff Report, pg. 2.

<sup>3</sup> See, e.g., *Warren v. Washington County*, 296 Or. App. 595 (2019):  
<https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:cfff4a1c-c3cb-4be1-a4c5-e9c7385dd55e>

In recent years, LUBA and Oregon's appellate courts have repeatedly enforced ORS 197.307(4)'s mandate that local governments may only apply clear and objective standards to land use applications for "needed housing" (which means all housing).<sup>4</sup>

**General Oregon Standard for Statutory Construction.**

ORS 174.010, provides the following standard for interpretation of statutory provisions generally:

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all." *ORS 174.010*.

Where the text of a statutory provision is unclear, a court may resort to consideration of the context of the provision, and also consider the legislative history in an effort to interpret the provision. *State v. Gaines*, 346 Or. 160 (2009).

**Applicants Request the Commission's Interpretation of AMC 18.5.3.060.F.**

Applicants request an interpretation of Ashland Municipal Code (AMC) 18.5.3.060.F, which states:

"F) Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess of 15 percent but no greater than 18 percent for not more than 200 feet. Such variances shall be required to meet all of the criteria for approval in chapter 18.5.5 Variances."

As reflected in the application, the text of the above provision is unclear concerning whether a variance may be granted for flag drives with grades in excess of 15%, but no greater than 18%, over any single 200 foot segment of a proposed driveway; or whether the 200-foot rule means the cumulative number of linear feet over the entire length of the proposed driveway. Based on City's Interpretation Criteria in AMC 18.5.1.060, the most reasonable interpretation of this ambiguous code provision is that

---

<sup>4</sup> See, e.g., *Nieto v. City of Talent*, LUBA No. 2020-100:  
<https://www.oregon.gov/luba/Docs/Opinions/2021/03-21/20100.pdf>



no driveway should exceed a grade of 15% over any single segment of more than 200 feet.

**City of Ashland Ordinance Interpretations.**

City's Land Use Ordinance establishes its own Interpretation Criteria in AMC 18.1.5.030, based on three prongs:

- A. The interpretation is consistent with applicability policies of the Comprehensive Plan.
- B. The interpretation is consistent with the purpose and intent of the ordinance provision that applies to the particular ordinance section, or sections, in question.
- C. The interpretation is consistent with the opinion of the City Attorney.

*AMC 18.1.5.030.*

- A. **The interpretation is consistent with applicability policies of the Comprehensive Plan.** Applying the AMC 18.1.5.030 interpretation criteria to Applicants' proposed interpretation (that the 200 foot rule applies only to individual segments of a proposed driveway) is generally supported by the Housing Element of the City of Ashland's Comprehensive Plan. The Rogue Valley was in a housing crisis even before the Almeda fire, and City's Comprehensive Plan Map has designates 329 Granite Street as an existing parcel zoned for single-family residential use. Applicants' proposed interpretation of 18.5.3.060.F is consistent with the Comprehensive Plan because it allows development of an existing parcel in City's Buildable Lands Inventory, consistent with its established zoning.
- B. **The interpretation is consistent with the purpose and intent of the ordinance provision that applies to the particular ordinance section, or sections, in question.** The purpose and intent of AMC 18.5.3 provides rules, regulations, and standards governing the approval of subdivisions, partitions, and property line adjustments. Although Applicants' parcel is an existing residential parcel created when Applicants' predecessors donated land to City for open space and trails, the prescribed purposes of AMC 18.5.3 are

nevertheless met by Applicants' proposed interpretation of the 200 foot rule. AMC 18.5.3.010 enumerates the Purposes of the particular ordinance section.

- A. To carry out the development pattern envisioned by the Comprehensive Plan. Applicants' interpretation meets this purpose because it will allow Applicants to build a home on their property, which is zoned for that specific purpose.
- B. To encourage efficient use of land resources and public services, and to provide transportation options. Applicant's interpretation encourages efficient use of land and public services and provides transportation options equal to any contrary interpretation.
- C. Protect the natural environment and encourage sustainable building practices. The 200 foot rule interpretation proposed by Applicants will allow construction of a driveway engineered to minimize erosion, preserve the maximum amount of existing vegetation, protect the Twin Creek corridor, and minimize erosion by limiting disturbance. Limiting hillside cut and fill is consistent with the Environmental Resources policies of the Comprehensive Plan. "The proposal emphasizes preservation of the majority of the large stature forest vegetation while reducing the wildfire hazard risks. The design standards for the flag driveway ensure that development of the forested areas will provide erosion control and stormwater management to prevent erosion."<sup>5</sup>
- D. Promote the public health, safety and general welfare through orderly and efficient urbanization. The Additional Preliminary Flag Lot Partition Plat Criteria reflected in 18.5.3.060 make it clear the primary purpose of the 200 foot rule is fire access. "Flag drives and fire work areas shall be deemed Fire Apparatus Access Roads under the Oregon Fire Code and subject to all the requirements thereof." *AMC 18.5.3.060.I.*

In this regard, Consulting Fire Marshal Margueritte Hickman of Sage Fire Solutions LLC, finds:

---

<sup>5</sup> Applicants' Narrative, pg. 2.



"The intent of limiting the grade for fire apparatus access is as much about the ability to respond to an incident quickly and efficiently as it is about the capabilities of the apparatus performance both uphill and downhill. By limiting the section of the grade to no more than 200 feet, it limits the power needed for the engine or ambulance to climb the grade and it limits the brake usage to descend the grade. It is my opinion that the intent of this section of the code from a fire apparatus perspective is that there could be multiple sections of up to 18% grade up to 200 feet length on a driveway depending on the total length of the driveway and the distance between the segments. While the code does not specify the distance between segments, it may not be reasonable to have two 200 foot segments separated by 20 feet, but it may be reasonable for example to have two 200 foot segments separated by 200 feet."<sup>6</sup>

Ashland Fire & Rescue's Chief Ralph Santain also finds, in relevant part:

"With you providing a sprinklered residence, a wide turning radius on your approach, "turn-out" locations allowing vehicles to pass, and the fact you are creating a fire break and defensible space surrounding this property I do not have issue with the application submitted."<sup>7</sup>

Since the primary reason for the 200-foot rule is to ensure emergency vehicle access, the interpretations in the record provided by fire-fighting professionals should be of critical importance to the Commission's determination.

### **Conclusion.**

For the foregoing reasons, and those submitted by Applicants in connection with the application, we respectfully request the Commission determine that the 200-foot rule refers to particular segments of a proposed driveway grade, and not an arbitrary cumulative limitation.

---

<sup>6</sup> Fire Access Findings for 329 Granite Street, Sage Fire Solutions, pg. 2.

<sup>7</sup> Email from Ashland Fire & Rescue Chief Ralph Santain dated October 6, 2021. Copy attached as Exhibit 1, for easy reference.

Page -7-  
City of Ashland Planning Commission  
October 11, 2021

Respectfully submitted,  
DAVIS HEARN ANDERSON & TURNER, PC

A handwritten signature in blue ink, appearing to read 'CHEARN', with a horizontal line drawn through it.

Christian E. Hearn | OSB #911829  
Email: [chearn@davishearn.com](mailto:chearn@davishearn.com)



## Regan Trapp

---

**From:** City of Ashland, Oregon <administration@ashland.or.us>  
**Sent:** Sunday, October 10, 2021 9:56 AM  
**To:** planning  
**Subject:** Planning Commission Contact Form Submitted



[EXTERNAL SENDER]

\*\*\* FORM FIELD DATA \*\*\*

Full Name: **christopher uhtoff**

Phone: **5415007675**

Email: **cuhtoff65@gmail.com**

Subject: **opposition to proposed road on 329 granite st.**

Message: **I'm writing this letter to oppose allowing a steeper than normal driveway on 329 granite street.**

**I am a member of the bicycle and running community which uses a trail on this property to descend to Lithia Park from Hitt road area. All of the Trails that descend from the irrigation ditch below hitt road, do not allow bicycles and this is a fun short trail that provides good access to a bicycle or running loop.**

**The best solution would have been for the public to purchase the property as open space and build a legitimate trail. However the best solution that would still allow housing development would be to only allow a driveway to be built if the the public would be given an easement to access and ride on the driveway. Thank you, Thank you, Chris uhtoff 78 fourth st. Ashland, OR 97520**

Attachment 1 file:

Attachment 2 file:

Attachment 3 file:

\*\*\* USER INFORMATION \*\*\*

SubscriberID: **-1**

SubscriberUserName:

SubscriberEmail:

RemoteAddress: **66.241.70.76**

RemoteHost: **66.241.70.76**

RemoteUser: