



# Council Business Meeting

October 3, 2023

<b>Agenda Item</b>	Public Hearing and First Reading of LUBA remand for PA-T3-2022-00004 for the property at 1511 Hwy 99	
<b>From</b>	Brandon Goldman Derek Severson	Community Development Director Planning Manager
<b>Contact</b>	<a href="mailto:brandon.goldman@ashland.or.us">brandon.goldman@ashland.or.us</a> <a href="mailto:derek.severson@ashland.or.us">derek.severson@ashland.or.us</a>	541-552-2076 541-552-2040
<b>Item Type</b>	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input checked="" type="checkbox"/>	

## SUMMARY

In December of 2022, the City Council approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation (ODOT) state highway right-of-way and 7.68 acres of California Oregon & Pacific (CORP) railroad property. These properties are currently zoned Rural Residential (RR-5) in Jackson County; with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including at least 38 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six inches in diameter at breast height. The full record for this application can be reviewed on-line at: <https://www.ashland.or.us/grandterrace>.

The City's approval of the project was subsequently appealed to the Land Use Board of Appeals (LUBA) by Rogue Advocates and has been remanded to the City to further consider two issues:

- 1) **That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and**
- 2) **That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.**

The Planning Commission held a limited public hearing on August 8, 2023 to consider only these two remand issues, and has provided the attached findings and recommendations to the Council.

## POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan, Housing Element  
Housing Needs Analysis (HNA)  
Housing Capacity Analysis (HCA)  
Ashland 2020: A Strategic Plan for Ashland's Future  
City Council Goals (2019)





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## **BACKGROUND AND ADDITIONAL INFORMATION**

### **Remand Issue #1: On-Street Parking Exception**

The originally approved application included a request for Outline Plan subdivision approval under the Performance Standards Options (Chapter 18.3.9) to create ten buildable lots and two common open space properties. During the public hearing process, the Planning Commission noted that AMC 18.3.9.060 dealing with Parking Standards for subdivisions processed under AMC 18.3.9 required that:

*All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter [18.4.3](#) Parking, Access, and Circulation.*

**A. On-Street Parking Required.** *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*

**B. On-Street Parking Standards.** *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public parking may be provided pursuant to minimum criteria established under subsection [18.4.3.060.A](#).*

While no Variance or Exception to this standard had been requested as part of the original application, the Planning Commission determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking was not to be provided, and that such an Exception was merited.

New Climate-Friendly and Equitable Communities (CFEC) rules were adopted July 21, 2022, by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown and took effect August 17, 2022. The CFEC rules address how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking. Among the new CFEC rules:

- Oregon Administrative Rule (OAR) 660-012-0430(2) states that “*Cities and counties may not require more than one **parking space** per unit in residential developments with more than one dwelling unit on a single legally established property.*” **Parking spaces** are defined in OAR 660-012-00005(29) as meaning “... *on and off-street spaces designated for automobile parking, other than parking spaces reserved for carpools, vanpools, or parking under the Americans with Disabilities Act.*”



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- OAR 660-012-430(3) states that, “*Cities and counties may not require parking for the following development types.... (d) Residential units smaller than 750 square feet; (e) Affordable housing as defined in OAR 660-039-0010;*” All of the residential units proposed in the application under consideration are smaller than 750 square feet, and under the new CFEC rules the city may not require parking for this development type.
- OAR 660-012-440(3) states that “*Cities and counties may not enforce **parking mandates** for development on a lot or parcel that includes land within one-half mile of frequent transit corridors, including... corridors with the most frequent transit route or routes in the community if the scheduled frequency is at least once per hour during peak service.*” In OAR 660-012-00005(27), **parking mandates** are defined as “*requirements to include a minimum number of off-street parking spaces with development or redevelopment, or a fee-in-lieu of providing parking for residential development.*” In this instance, the Rogue Valley Transit District’s (RVTDs) Route 10 runs on Highway 99 North, which fronts directly on the subject properties here, with a peak hour scheduled frequency of every 20 minutes, and as such qualifies as frequent transit. Under the new CFEC rules, Ashland may not enforce parking mandates (i.e., require off-street parking) for the subject properties.

Under OAR 660-012-0012(5)(e) cities and counties were required to “*implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.*” Guidance from the Department of Land Conservation and Development (DLCD) has been that cities must either modify their regulations or implement these new rules directly from the OAR and disregard local regulations. Ashland is in the process of amending its parking codes to comply with these new CFEC rules, and others which took effect on June 30, 2023, and has received an extension allowing these code amendments to occur no later than December 31, 2023. In the interim, the City has been directly applying the applicable state rules.

With regard to the current application, it was initially submitted on July 8, 2022, however it remains in process now more than eight months after these new CFEC rules have taken effect. The Performance Standards subdivision process requires a preliminary or outline plan review followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to parking requirements under the new CFEC rules and could request to amend their proposal with regard to parking.

In staff’s view, the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules, which remove the requirement for parking since all proposed residential units are smaller than 750 square feet. The fact that the CFEC parking regulations have been in effect for eight months, along with the LUBA remand for further review leading to the final decision of the City to occur after the new regulations were implemented, supports the consideration of the application under the current State law specified in OAR 660-012-0430 and 0440. Additionally, the applicant will need to submit a second development application, Final Plan review, during which the city will be unable to enforce parking requirements under the new Climate Friendly and Equitable Communities rules.



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Therefore, the staff recommends evaluating the current request under the new CFEC rules without requiring parking, considering the nature of the proposed residential units.

DLCD's implementation guidance to cities notes that the parking rule changes seek to help "meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity." In staff's view, applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek to enable, and requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

The Planning Commission further found that Oregon Revised Statute (ORS) 197.307(4) requires that local governments adopt and apply only clear and objective standards, conditions, and procedures in regulating the development of housing, particularly "needed housing." Standards and conditions may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. This is to ensure that communities do not use discretionary or subjective criteria or procedures to deny housing projects. The Planning Commission found that the parking rules having changed so that an applicant proposing needed housing is subject to one set of rules for the first part of a two-part application process and a different set of rules for the second part of the procedure does not provide the applicant a clear path to approval without unreasonable cost or delay. In addition, the city's parking on-street parking requirement under AMC 18.3.9.060 in this instance would require that the applicant install on-street parking facilities on a state highway for which the city has no jurisdiction and where on-street parking is not allowed by the Oregon Department of Transportation (ODOT), which regulates this roadway. The Planning Commission found that the city's on-street parking standard being in direct conflict with ODOT's standard for the roadway does not provide a clear procedure for the applicant to move forward without unreasonable cost or delay. As such, the Planning Commission found that the on-street parking requirement in AMC 18.3.9.060 should not be applied to the application.

On that basis, the Planning Commission recommended that the City Council determine that the CFEC parking rules are appropriate here, to not require either on- or off-street parking, and to amend the findings for the original approval accordingly.

## **Remand Issue #2: Affordable Unit Sizes**

The original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units, assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.



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AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. The adopted conditions relating to affordability are:

**Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

**Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

The City's approval was remanded by LUBA on the basis **"That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."**

In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by three-inches to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS ORIGINALLY PROPOSED:**  $12.5 \times 42 = 525$  square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:**  $12.5 \times 42 = 525$  square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios would be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

In considering this issue, the Planning Commission noted that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable (*i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.*).



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The Planning Commission found that the second remand issue could be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the City Council, a modified condition #7e was recommended as follows:

**Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AML, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Council accepts the Planning Commission recommendations above with regard to both remand issues, staff recommends that the Council adopt the Commission's findings formalizing this approach, approve first reading of the ordinance and schedule second reading.

## **FISCAL IMPACTS**

There are no direct fiscal impacts related to the proposed annexation and LUBA Remand response from the City.

The applicant has informed our staff that they may consider submitting a new application under two circumstances: first, if they receive an unfavorable ruling from LUBA on this remand, and second, if they believe that reapplying with the same proposal under the new Climate Friendly and Equitable Communities (CFEC) parking standards would speed up their project's development. They hold the view that the planning fees associated with processing a new application that is substantially the same as the prior application should be waived. The authority to grant such a fee waiver rests with the Council. From the staff's perspective, it seems reasonable to waive these fees for processing a similar application if the new one is submitted within 12 months of when either LUBA issues its final decision, or the existing application is withdrawn by the applicant. This is because the original application was previously reviewed and approved by the city, and the issues currently under appeal mainly revolve around conflicts between state and city requirements, which are beyond the applicant's control. *[Fees for resubmittal would otherwise be \$31,914.50 for Annexation, Site Design Review for 230 units & Outline Plan approval for a 12-lot subdivision.]*

## **SUGGESTED NEXT STEPS**

If the Council concurs with the Planning Commission's recommended approach, the Council can choose to conduct the first reading of the ordinance and move the ordinance to second reading. The Council



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will also need to adopt written findings formalizing tonight's decision, and if accepting the Planning Commission's recommendations, the Commission's findings could be adopted by the Council and attached to the ordinance.

## **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

- I move approval of first reading of the ordinance and scheduling of second reading of the ordinance for October 17, 2023; and to adopt the Planning Commission's recommendations and findings as an attachment thereto.
- I move to approve a fee waiver if a substantially similar application is resubmitted by the applicant within 12 months.

## **REFERENCES & ATTACHMENTS**

The full record for the original application can be reviewed on-line at:

[https://www.ashland.or.us/grandterrace.](https://www.ashland.or.us/grandterrace)

**Attachment 1:** Ordinance #3225

**Attachment 2:** Ordinance Exhibit A: Planning Commission Findings, Orders & Recommendations

**Attachment 3:** August 8<sup>th</sup> Planning Commission Packet

**Attachment 4:** August 8<sup>th</sup> Planning Commission Minutes

**Attachment 5:** August 8<sup>th</sup> Planning Commission Testimony Received

1 **ORDINANCE NO. 3225**

2 **AN ORDINANCE AMENDING ORDINANCE #3215 TO RESPOND TO**  
3 **ISSUES RAISED WITH THE GRAND TERRACE ANNEXATION**  
4 **REMAND WITH REGARD TO ON-STREET PARKING AND**  
5 **AFFORDABLE HOUSING UNITS SIZES**  
6 **(Grand Terrace Annexation – Planning Action #PA-T3-2022-00004)**

7 **WHEREAS**, the Ashland City Council adopted Ordinance #3215 annexing the property at 1511  
8 Highway 99 North and adjacent railroad corridor and state highway right-of-way and  
9 withdrawing the annexed area from Jackson County Fire District #5 on December 20, 2022.

10 **WHEREAS**, the City’s approval of the annexation and associated land use approvals to  
11 subdivide the property into ten building buildable lots and two common/open space lots and  
12 develop 230 small apartments including at least 38 required affordable units was subsequently  
13 appealed to the Oregon Land Use Board of Appeals (LUBA) by Rogue Advocates.  
14

15 **WHEREAS**, after considering the matter on appeal, LUBA remanded the application back to the  
16 city with regard to further address two specific elements of the original decision: 1) That the city  
17 erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2)  
18 That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which  
19 requires that affordable studios be a minimum of 350 square feet and that affordable one-  
20 bedroom units be a minimum of 500 square feet.  
21

22 **WHEREAS**, the Planning Commission conducted a limited public hearing focused on the two  
23 remand issues on August 8, 2023 and adopted specific recommendations to the Council on  
24 September 9, 2023. The Planning Commission found that requiring on-street parking in this  
25 instance did not result in a clear and objective procedure as required under ORS 197.307(4) both  
26 because it put the applicant in a position of providing on-street parking required by the City on a  
27 state facility where on-street parking is not allowed, and because the city’s Performance  
28 Standards Options subdivision chapter (AMC 18.3.9) requires a two-step application process  
29 that, with the implementation of the state Climate-Friendly and Equitable Communities rules  
30 under OAR 660-012-430 to -440, means that the applicant’s must plan for parking required in the  
first step in the application process but which will not be required in the second step which does



1 not provide a clear path to developing needed and affordable housing. With regard to the  
2 affordable unit size issue, the Planning Commission found that a *de minimus* adjustment of the  
3 one-bedroom units sizes by shifting a door three-inches into a recessed entry could satisfy the  
4 minimum affordable unit size requirements of the city’s code.

5  
6 **WHEREAS**, the Ashland City Council conducted a limited public hearing focused on the two  
7 remand issues on October 3, 2023 and after considering the Planning Commission’s  
8 recommendations and the testimony presented during the limited public hearing, the Ashland  
9 City Council concurred with the Planning Commission’s recommendations and adopted the  
10 Planning Commission’s findings with regard to both remand issues.

11 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

12 **SECTION 1.** The above recitals are true and correct and are incorporated herein by this  
13 reference.

14  
15 **SECTION 2.** The City Council hereby adopts the Findings, Conditions and Orders which are  
16 attached hereto as Exhibit A of this ordinance. These findings include a revised condition #7e  
17 which is hereby adopted as a condition of the original land use approval (PA-T3-2022-00004) to  
18 replace the original condition #7e. These Findings, Conditions and Orders supplement the  
19 original written findings which were adopted in conjunction with Ordinance #3215.

20  
21 The foregoing ordinance was first read by title only in accordance with Article X, Section  
22 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2023, and duly PASSED and  
23 ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023.

24 ATTEST: \_\_\_\_\_  
25 Dana Smith, Clerk of the Council Pro Tem

26 SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2023.

27  
28 \_\_\_\_\_  
29 Tonya Graham, Mayor

30 Reviewed as to form: \_\_\_\_\_  
Douglas M. McGeary, Acting City Attorney

**BEFORE THE PLANNING COMMISSION**  
**September 12, 2023**

IN THE MATTER OF PLANNING ACTION #PA-T3-2022-00004, A )  
REMAND OF THE ANNEXATION OF 16.86 ACRES LOCATED AT 1511 )  
HIGHWAY 99 NORTH INTO THE CITY OF ASHLAND, ALONG WITH )  
6.6 ACRES OF ADJACENT OREGON DEPARTMENT OF )  
TRANSPORTATION (ODOT) STATE HIGHWAY RIGHT-OF-WAY AND )  
7.68 ACRES OF CALIFORNIA, OREGON & PACIFIC (CORP) RAILROAD )  
PROPERTY. THE PROPERTIES ARE CURRENTLY LOCATED IN )  
JACKSON COUNTY AND ARE ZONED RURAL RESIDENTIAL (RR-5); )  
WITH ANNEXATION THESE PROPERTIES WOULD BE BROUGHT )  
INTO THE CITY AS LOW-DENSITY, MULTI-FAMILY RESIDENTIAL (R- )  
2). CONCURRENT WITH ANNEXATION, THE APPLICANT ALSO )  
REQUESTS OUTLINE PLAN SUBDIVISION APPROVAL TO CREATE 12 )  
LOTS; SITE DESIGN REVIEW APPROVAL TO CONSTRUCT 230 )  
APARTMENTS IN TEN BUILDINGS INCLUDING AT LEAST 38 )  
AFFORDABLE UNITS; EXCEPTIONS TO THE STREET DESIGN )  
STANDARDS; AND TREE REMOVAL PERMITS TO REMOVE TWO )  
TREES GREATER THAN SIX-INCHES IN DIAMETER-AT-BREAST- )  
HEIGHT (DBH).

**FINDINGS,  
CONCLUSIONS &  
ORDERS**

**OWNER:** LINDA ZARE/CASITA DEVELOPMENTS, LLC  
**APPLICANT:** CASITA DEVELOPMENTS, LLC

**RECITALS:**

- 1) Tax lots #1700 and #1702 of Map 38 1E 32 are located at 1511 Highway 99 North, are presently outside the city limits within the city's urban growth boundary, and are currently zoned RR-5, Jackson County Rural Residential.
  
- 2) The applicant requested the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. The property is currently located in Jackson County and zoned Rural Residential (RR-5); with Annexation these properties would be brought into the City as Low Density, Multi-Family Residential (R-2). Concurrent with Annexation, the application also requests Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including at least 38 affordable units; an Exceptions to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height. The proposal is outlined in plans on file at the Department of Community Development.

3) The approval criteria for Annexation are described in AMC 18.5.8.050 as follows:

*An application for an annexation may be approved if the proposal meets the applicable criteria in subsections A through H below. The approval authority may, in approving the application, impose conditions of approval consistent with the applicable criteria and standards, and grant exceptions and variances to the criteria and standards in this section in accordance with subsection 18.5.8.050.I.*

- A. The annexed area is within the City's Urban Growth Boundary.*
- B. The annexation proposal is consistent with the Comprehensive Plan plan designations applicable to the annexed area, including any applicable adopted neighborhood, master, or area plan, and is an allowed use within the proposed zoning.*
- C. The annexed area is contiguous with the city limits.*
- D. Adequate City facilities for the provision of water to the annexed area as determined by the Public Works Department; the transport of sewage from the annexed area to an approved waste water treatment facility as determined by the Public Works Department; the provision of electricity to the annexed area as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided from the annexed area. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities. All required public facility improvements shall be constructed and installed in accordance with 18.4.6.030.A.*
- E. Adequate transportation can and will be provided to serve the annexed area. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.*
  - 1. For vehicular transportation a minimum 22-foot wide paved access exists, or can and will be constructed, providing access to the annexed area from the nearest fully improved collector or arterial street. All streets bordering on the annexed area shall be improved, at a minimum, to an applicable City half-street standard. The approval authority may, after assessing the impact of the development, require the full improvement of streets bordering on the annexed area. All streets located within annexed areas shall be fully improved to City standards unless exception criteria apply. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.*
  - 2. For bicycle transportation safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation)*

*exist, or can and will be constructed. Should the annexed area border an arterial street, bike lanes shall be constructed along the arterial street frontage of the annexed area. Likely bicycle destinations within a quarter of a mile from the annexed area shall be determined and the approval authority may require the construction of bicycle lanes or multi-use paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.*

3. *For pedestrian transportation safe and accessible pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation). exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side of all streets bordering on the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the annexed area is within a quarter of a mile of an existing sidewalk system or a location with demonstrated significant pedestrian activity, the approval authority may require sidewalks, walkways or multi-use paths to be constructed and connect to either or both the existing system and locations with significant pedestrian activity.*
4. *For transit transportation, should transit service be available to the annexed area, or be likely to be extended to the annexed area in the future based on information from the local public transit provider, the approval authority may require construction of transit facilities, such as bus shelters and bus turn-out lanes.*
5. *Timing of Transportation Improvements. All required transportation improvements shall be constructed and installed in accordance with 18.4.6.030.A.*

**F.** *For all residential annexations, a plan shall be provided demonstrating that the development of the annexed area will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units are necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the annexed area shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, slopes greater than 35 percent, or land area dedicated as a public park, shall not be included.*

**G.** *Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or*

*commercial, employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the following requirements.*

1. *The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.*
  - a. *Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.*
  - b. *Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.*
  - c. *Ownership or rental units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.*
2. *As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.*
  - a. *The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.*
  - b. *All needed public facilities shall be extended to the area or areas proposed for transfer.*
  - c. *Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.*
  - d. *The land to be transferred shall be deed restricted to comply with Ashland's affordable housing program requirements.*
  - e. *Transfer of title of buildable land in accordance with this subsection shall exempt the project from the development schedule requirements set forth in 18.5.8.050.G.4.*

3. *The affordable units shall be comparable in bedroom mix with the market rate units in the development.*
  - a. *The number of bedrooms per dwelling unit in the affordable units within the residential development shall be in equal proportion to the number of bedrooms per dwelling unit in the market-rate units within the residential development. This provision is not intended to require the same floor area in affordable units as compared to market-rate units. The minimum square footage of each affordable unit shall comply with the minimum required floor area based as set forth in Table 18.5.8.050.G.3, or as established by the U.S. Department of Housing and Urban Development (HUD) for dwelling units developed under the HOME program.*

<i>Table 18.5.8.050.G.3 – Minimum Required Floor Area for</i>	
<i>Unit Type</i>	<i>Minimum Required Unit Floor Area</i>
	<i>(Square Feet)</i>
<i>Studio</i>	<i>350</i>
<i>1 Bedroom</i>	<i>500</i>
<i>2 Bedroom</i>	<i>800</i>
<i>3 Bedroom</i>	<i>1,000</i>
<i>4 Bedroom</i>	<i>1,250</i>

4. *A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.*
  - a. *That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.*
  - b. *Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.*
5. *That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.*
  - a. *The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the*

*development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units*

- b. Affordable units may differ from market-rate units with regard to floor area, interior finishes and materials, and housing type provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.*
- 6. Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.*
  - a. That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, then would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.*
  - b. That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.*
  - c. That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.*
- 7. The total number of affordable units described in this section 18.5.8.050.G shall be determined by rounding up fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years for units qualified as affordable rental housing, or 30 years for units qualified as affordable for-purchase housing.*

**H.** *One or more of the following standards are met.*

- 1. The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.*
- 2. A current or probable danger to public health exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.*
- 3. Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.*

4. *The proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.*
5. *The proposed area for annexation is an island surrounded by lands within the city limits.*

***I. Exceptions and Variances to the Annexation Approval Criteria and Standards.*** *The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.*

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

***Approval Criteria for Outline Plan.*** *The Planning Commission shall approve the outline plan when it finds all of the following criteria have been met:*

- a. *The development meets all applicable ordinance requirements of the City.*
- b. *Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*
- c. *The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.*
- d. *The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*
- e. *There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*
- f. *The proposed density meets the base and bonus density standards established under this chapter.*
- g. *The development complies with the street standards.*
- h. *The proposed development meets the common open space standards established under section 18.4.4.070. Common open space requirements may be satisfied by public open space in accordance with section 18.4.4.070 if approved by the City of Ashland.*

***Approval of the Outline Plan.***

- a. *After the City approves an outline plan and adopts any zone change necessary for the development, the developer may then file a final plan in phases or in its entirety.*
- b. *If an outline plan is phased, 50 percent of the value of the common open space shall be provided in the first phase and all common open space shall be provided when two-thirds of the units are finished.*



- 5) The criteria for Site Design Review approval are described in 18.5.2.050 as follows:
- A. **Underlying Zone:** *The proposal complies with all of the applicable provisions of the underlying zone (part 18.2), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
  - B. **Overlay Zones:** *The proposal complies with applicable overlay zone requirements (part 18.3).*
  - C. **Site Development and Design Standards:** *The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*
  - D. **City Facilities:** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property and adequate transportation can and will be provided to the subject property.*
  - E. **Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part 18.4 if the circumstances in either subsection 1 or 2, below, are found to exist.*
    - 1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty.;*  
*or*
    - 2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards.*
- 6) The criteria for the approval of a Tree Removal Permit are described in 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 18.3.10.*
  - b. *Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks.*
  - c. *Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property. The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone.*
  - d. *Nothing in this section shall require that the residential density to be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures of alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with the other provisions of this ordinance.*
  - e. *The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to section 18.5.7.050. Such mitigation requirements shall be a condition of approval of the permit.*
- 7) The criteria for an Exception to the Street Design Standards are described in AMC Section 18.4.6.020.B.1 as follows:
- a. *There is demonstrable difficulty in meeting the specific requirements of this chapter due to a unique or unusual aspect of the site or proposed use of the site.*
  - b. *The exception will result in equal or superior transportation facilities and connectivity considering the following factors where applicable.*
    - i. *For transit facilities and related improvements, access, wait time, and ride experience.*
    - ii. *For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.*
    - iii. *For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level of walking along roadway), and ability to safety and efficiency crossing roadway.*

- c. *The exception is the minimum necessary to alleviate the difficulty.*
- d. *The exception is consistent with the Purpose and Intent of the Street Standards in subsection 18.4.6.040.A.*

8) The Planning Commission, following proper public notice held a public hearing on September 13, 2022 at which time testimony was received and exhibits were presented both in person and via Zoom. Prior to the conclusion of this initial evidentiary hearing, participant Steve Rouse representing Rogue Advocates requested an opportunity to present additional evidence, arguments or testimony regarding the application as provided in ORS 197.797(6)(a). The Planning Commission granted this request by continuing the public hearing to October 11, 2022 at 7:00 p.m. at the Ashland Civic Center at 1175 East Main Street.

The Planning Commission reconvened the continued hearing on October 11, 2022 and an opportunity was provided at this continued hearing for persons to present and rebut new evidence, arguments or testimony. Subsequent to the closing of the hearing and the record, the Planning Commission approved the request for Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including at least 38 affordable units; Exceptions to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height subject to the City Council's approval of the Annexation request. The Planning Commission also adopted a recommendation that the City Council approve the Annexation request subject to a number of conditions.

9) The City Council, following proper public notice held a public hearing and conducted first reading of an ordinance annexing the property and withdrawing it from Fire District #5 on December 6, 2022, at which time testimony was received and exhibits were presented. Subsequent to the closing of the hearing, the City Council approved the Annexation request subject to a number of conditions. The second reading of the annexing ordinance was conducted on December 20, 2022.

10) Subsequent to the City's approval of the application and mailing of a Notice of Decision, the approval was timely appealed to the Oregon Land Use Board of Appeals (LUBA) by Rogue Advocates. After considering the application on the appeal, LUBA remanded the decision back to the City with regard to two issues:

- 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and
- 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.

11) The Planning Commission, following proper public notice held a limited public hearing on August 8, 2023, at which time testimony was received and exhibits were presented. As explained in the Notice of Public Hearing, this hearing was strictly limited to consideration of the two remand issues. Subsequent to the closing of the limited hearing and the record, the Planning Commission found that with regard to the first remand issue dealing with on-street parking requirements, the Climate Friendly and Equitable Community parking rules as adopted under OAR660-012-430(3) could be appropriately applied here to not require either on- or off-street parking, and the findings for the original approval amended accordingly. With regard to the minimum size requirements for affordable units, in relation to the stipulated conditions for approval, it

should be noted that the initial approval criteria mandated adherence to the specifications outlined in 18.5.8.050.G. This encompassed the requisite fulfillment of the minimal unit dimensions as outlined in Table 18.5.8.G.3. To elucidate, the original condition of approval could be satisfied through the presentation of architectural layouts by the applicant. These layouts demonstrated the feasibility of accommodating augmented floor areas within the existing building footprints.

The Commission determined that the concern raised in this subsequent remand review is effectively resolved by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. This resolution entails a slight augmentation in the dimensions of the one-bedroom units, an alteration adding one-half of a square-foot to each designated affordable unit, ensuring compliance with AMC 18.5.8.050.G.3. Furthermore, the commission clarified that, as per the initial proposal's configuration, the studio units need not be regarded as mandated affordable units.

In light of this determination, the Planning Commission recommended a modification to the wording of the original condition #7e for the purposes of clarity. Moreover, it proposed that the City Council adopt this course of action in its response to the remand review process. Now, therefore, with regard to the two remand issues, the Planning Commission of the City of Ashland finds, concludes and recommends as follows:

## **SECTION 1. EXHIBITS**

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

Staff Exhibits lettered with an "S"

Proponent's Exhibits, lettered with a "P"

Opponent's Exhibits, lettered with an "O"

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

## **SECTION 2. FINDINGS & CONCLUSIONS**

2.1 The Planning Commission finds that it has received all information necessary to make a decision with regard to the two remand issues, and to make a recommendation to the City Council based on the staff's report, public hearing testimony and the exhibits received.

2.2 The Planning Commission notes that the originally approved application included a request for Outline Plan subdivision approval under the Performance Standards Options (Chapter 18.3.9) to create ten buildable lots and two common open space properties. During the public hearing process, the Planning Commission noted that AMC 18.3.9.060 dealing with Parking Standards for subdivisions proposed under AMC 18.3.9 requires that:

All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter [18.4.3](#), Parking, Access, and Circulation.

**A. On-Street Parking Required.** At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.

**B. On-Street Parking Standards.** On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public parking may be provided pursuant to minimum criteria established under subsection [18.4.3.060.A](#).

The Planning Commission finds that while no Variance or Exception to this standard was requested as part of the original application, the Planning Commission at the time determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking could not be provided, and that such an Exception was merited.

The Planning Commission notes that new Climate-Friendly and Equitable Communities (CFEC) rules were adopted July 21, 2022, by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown and took effect August 17, 2022. The CFEC rules address how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking. Among these new CFEC rules:

- Oregon Administrative Rule (OAR) 660-012-0430(2) states that “*Cities and counties may not require more than one parking space per unit in residential developments with more than one dwelling unit on a single legally established property.*” **Parking spaces** are defined in OAR 660-012-00005(29) as meaning “... *on and off-street spaces designated for automobile parking, other than parking spaces reserved for carpools, vanpools, or parking under the Americans with Disabilities Act.*”
- OAR 660-012-430(3) states that, “*Cities and counties may not require parking for the following development types.... (d) Residential units smaller than 750 square feet; (e) Affordable housing as defined in OAR 660-039-0010;*” The Planning Commission notes here that all of the residential units proposed in the application under consideration are smaller than 750 square feet, and under the new CFEC rules the city may not require parking for this development type.
- OAR 660-012-440(3) states that “*Cities and counties may not enforce parking mandates for development on a lot or parcel that includes land within one-half mile of frequent transit corridors, including... corridors with the most frequent transit route or routes in the community if the scheduled frequency is at least once per hour during peak service.*” In OAR 660-012-00005(27),

**parking mandates** are defined as “*requirements to include a minimum number of off-street parking spaces with development or redevelopment, or a fee-in-lieu of providing parking for residential development.*” In this instance, the Rogue Valley Transit District’s (RVTDs) Route 10 runs on Highway 99 North, which fronts directly on the subject properties here, with a peak hour scheduled frequency of every 20 minutes, and as such qualifies as frequent transit. Under the new CFEC rules, Ashland may not enforce parking mandates (i.e., require off-street parking) for the subject properties.

The Planning Commission further notes that under OAR 660-012-0012(5)(e) cities and counties were required to “*implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.*” Guidance from the Department of Land Conservation and Development (DLCDD) has been that cities must either modify their regulations or implement these new rules directly from the OAR and disregard local regulations. Ashland is in the process of amending its parking codes to comply with these new CFEC parking rules, and others which took effect on June 30, 2023, and has received an extension allowing these code amendments to occur no later than December 31, 2023. In the interim, the City has been directly applying the applicable state rules.

With regard to the current application, the Planning Commission notes that it was initially submitted on July 8, 2022, however it remains in process now more than eight months after these new CFEC rules have taken effect. The Commission further notes that the Performance Standards subdivision process requires a preliminary or outline plan review followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to parking requirements under the new CFEC rules and could request to amend their proposal as it relates to parking.

The Planning Commission further finds that Oregon Revised Statute (ORS) 197.307(4) requires that local governments adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including “needed housing.” Standards and conditions may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. This is to ensure that communities do not use discretionary or subjective criteria to deny housing projects. The Planning Commission finds that the rules having changed so that an applicant proposing needed housing is subject to one set of rules for the first part of a two-part application process and a different set of rules for the second part of the procedure does not provide the applicant a clear path to approval without unreasonable cost or delay. In addition, the city’s parking on-street parking requirement under AMC 18.3.9.060 in this instance would require that the applicant install on-street parking facilities on a state highway for which the city has no jurisdiction and where on-street parking is not allowed by the Oregon Department of Transportation (ODOT), which regulates this roadway. The Planning Commission finds that the city’s on-street parking standard being in direct conflict with ODOT’s standard for the roadway does not provide a clear procedure for the applicant to move forward without unreasonable cost or delay. As such, the Planning Commission finds that this standard should not be applied to the application.

The Planning Commission believes that the Council has the discretion to assess the current request based on the new CFEC rules, which remove the requirement for parking since all proposed residential units are smaller than 750 square feet. The CFEC parking regulations have been in effect for eight months, and the LUBA remand for further review here means the final decision of the City on this application is occurring well after the new regulations were implemented. In addition, the applicant will be required to submit a second development application, Final Plan review, during which the city will be unable to enforce parking requirements under the new Climate Friendly and Equitable Communities rules. The Planning Commission further finds that to comply with ORS 197.307(4), which requires that the City apply only clear and objective standards, conditions, and procedures, when regulating the development of housing, the on-street parking standard in AMC 18.3.9.060 should not be applied. The Planning Commission accordingly recommends that the application be considered by the City Council under the current State law specified in OAR 660-012-0430 and -0440, without requiring on- or off-street parking given the size of the proposed residential units.

DLCD's implementation guidance to cities notes that the parking rule changes seek to help "*meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity.*" The Planning Commission finds that applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support both transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek to enable, and requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

2.3 The Planning Commission notes that the original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.

AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. The adopted conditions relating to affordability were as follows:

**Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

**Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and

recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

The Commission notes that the approval was remanded by LUBA on the basis “That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.”

In response to this issue, the applicant has provided a revised floor plan demonstrating how the floor area of the one-bedroom units could be modified by reducing their recessed entry depth by three-inches to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:**  $12.5 \times 42 = 525$  square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:**  $12.5 \times 42 = 525$  square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios could be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

The Planning Commission notes that the affordability requirements for the project call for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and three studio units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable, rather than being deed-restricted as affordable. Those units not required as affordable would not subject to the square footage requirements of AMC 18.5.8.050.G.3.

The Planning Commission finds that the original condition intended that the units’ sizes would be adjusted a *de minimis* amount (*i.e., a three-inch adjustment to recessed entry depth*) to comply with AMC 18.5.8.050.G, however this should have been articulated in the condition itself. The Commission finds that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and by making clear in the findings that as configured in the original proposal the studio units need not be considered among the required affordable units. The Planning Commission accordingly recommends that the City Council modify the previous Condition #7e as follows:

**Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a**



**minimum of 500 square feet, and any affordable studio units being a minimum of 350 square feet.**

2.4 The Planning Commission finds that while the project's density was not an issue under remand, the appellant has provided written testimony questioning the project density both in the original proposal and as modified here through the increase in square footage of the affordable units to comply with AMC 18.5.8.050.G.3. The Planning Commission finds that the *de minimis* increase in affordable unit sizes does nonetheless affect the project density, and as such needs to be addressed. The Planning Commission first notes that no density bonuses were granted with the original proposal. The *base* density of the subject property is 185.625 units (13.75 buildable acres x 13.5 units/acre). The *minimum* density of the subject property as required for annexation is 167.0625 units (0.90 x 185.625). The Planning Commission further notes that as initially proposed, all units were less than 500 square feet, and units less than 500 square feet are counted as 0.75 units for purposes of density calculations as detailed in AMC 18.2.5.080.B.2. The density as originally proposed was 172.5 units (230 x 0.75 units).

The Planning Commission finds that the increase in size of the 38 affordable units from 499.5 square feet to 500 square feet to comply with the minimum affordable unit size requirement will increase the project density to 182 units ([192 x 0.75 units] + [38 x 1.0 units]). The Planning Commission concludes that this is within the 185.625 unit base density of the property without the grant of any bonuses and that it exceeds the minimum 167.0625 unit density required for annexation.

### **SECTION 3. DECISION**

3.1 The issues remanded to the City are limited to addressing the on-street parking requirements of AMC 18.3.9.060, and to the minimum size requirements for studio and one-bedroom affordable units under AMC 18.5.8.050.G.3.

For the first remand issue regarding on-street parking, the Commission notes that the application was initially submitted on July 8, 2022, but remains in process, now more than eight months after new Climate Friendly & Equitable Communities (CFEC) rules limiting cities' abilities to require parking took effect. In addition, the Performance Standards subdivision process requires outline plan review, as requested here, followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the application will no longer be subject to parking requirements under the new CFEC rules and the applicant could request to amend their proposal as it relates to parking. Oregon Revised Statutes (ORS) 197.307(4) require that local governments adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including "needed housing." The proposal here involves market-rate and deed-restricted affordable multi-family residential rental units, both of which are needed housing types locally. Standards and conditions may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. The Planning Commission finds that rules relating to parking having changed so that an applicant proposing needed housing is subject to one set of rules for the first part of a two-part application process and a different set of rules for the second part of the procedure does not provide the applicant a clear path to their development approval without unreasonable cost or delay. In addition, the city's on-street parking requirement under AMC 18.3.9.060 in this instance requires that

the applicant install on-street parking facilities on a state highway for which the city has no jurisdiction and where on-street parking is not allowed by the Oregon Department of Transportation (ODOT), which has jurisdiction over improvements to the highway. The Planning Commission finds that the city's on-street parking standard being in direct conflict with the standards of the jurisdiction with authority for the roadway does not provide a clear procedure for the applicant to move forward without unreasonable cost or delay. As such, the Planning Commission finds that the on-street parking standard should not be applied to the application, and it should instead be considered in light of the new CFEC parking rules.

The Department of Land Conservation and Development (DLCD) implementation guidance to cities notes that the parking rule changes seek to help "*meet Oregon's climate pollution reduction targets, while providing more housing and transportation choices and improving equity.*" The Planning Commission finds that applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support both transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek to enable. The Planning Commission further finds that requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, is not a clear or objective process and would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

For the second remand issue, the Planning Commission notes that the original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner. AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. In response to this discrepancy between the proposed and required affordable unit sizes, the applicant has provided a revised floor plan demonstrating that the one-bedroom units could be modified with a de minimis reduction in their recessed entry depth (i.e., reducing the depth by three-inches) to achieve the required 500 square feet per affordable one-bedroom unit. The applicant further indicates that the affordable basement level studios could be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

The Planning Commission finds that the affordability requirements for the project call for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and three studio units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with 19 one-bedroom units in each of the two buildings, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable, rather than being deed-restricted as affordable. Those units not required as affordable would not subject to the square footage requirements of AMC 18.5.8.050.G.3.

The Planning Commission finds that while the original condition intended that the units' sizes would be adjusted a de minimis amount (*i.e., a three-inch adjustment to recessed entry depth*) to comply with AMC 18.5.8.050.G, this was not clearly articulated in the condition itself. The Commission finds that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and by making clear in the findings that as configured in the original proposal the studio units need not be considered among the required affordable units. The Planning Commission accordingly recommends that the City Council modify the previous Condition #7e as follows:

**Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and any affordable studio units being a minimum of 350 square feet.**

The Planning Commission recommends that the City Council find that the Climate Friendly & Equitable Communities parking rules are appropriate for this planning action, that neither on- or off-site street parking are required in this case, and that the findings for the original approval should be amended accordingly.

Therefore, based on our overall conclusions, the Planning Commission recommends that the City Council adopt findings addressing the two remand issues as discussed above, and modify existing Condition #7e as detailed below, with all other conditions to remain as originally adopted:

**#7e)** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and any affordable studio units being a minimum of 350 square feet.**



Planning Commission Approval

September 12, 2023

Date

REMAND.PA-T3-2022-00004

September 12, 2023

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Planning Commission 8/08/2023  
Packet Materials

**TYPE III**  
**PUBLIC HEARING**

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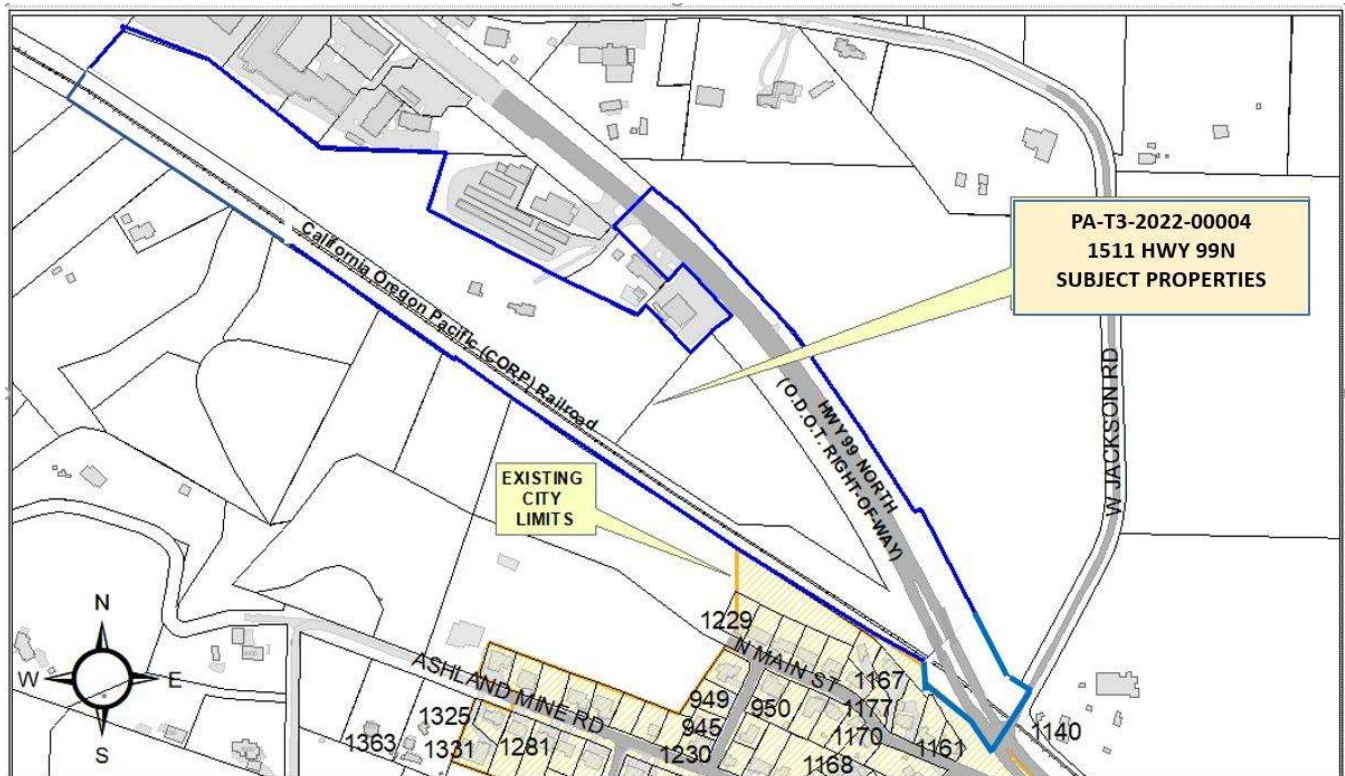
**PA-T3-2022-00004**  
**1511 Highway 99 North**



**NOTICE OF LIMITED PUBLIC HEARING**

**PLANNING ACTION:** PA-T3-2022-00004  
**SUBJECT PROPERTY:** 1511 Highway 99 North  
**APPLICANT/OWNER:** Casita Developments, LLC for owner Linda Zare  
**DESCRIPTION:** The City Council previously approved the **Annexation** of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. These properties are located in Jackson County and zoned Rural Residential (RR-5); with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included **Outline Plan** subdivision approval to create 12 lots; **Site Design Review** to construct 230 apartments in ten buildings including 37 affordable units; an **Exception to the Street Design Standards**; and **Tree Removal Permits** to remove two trees greater than six-inches in diameter at breast height. *This approval was appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the city to consider two issues: 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet. This Planning Commission hearing will be strictly limited in scope to the consideration of these two issues on remand.*

**COMPREHENSIVE PLAN DESIGNATION:** Multi-Family Residential; **ZONING:** Existing – County RR-5 Rural Residential, **Proposed** – City R-2 Low Density Multi-Family Residential; **ASSESSOR’S MAP:** 38 1E 32; **TAX LOT #’s:** 1700 & 1702



## PLANNING COMMISSION LIMITED PUBLIC HEARING

Tuesday, August 8, 2023 at 7:00 p.m.

at the Ashland Civic Center/City Council Chambers, 1175 East Main Street

### PLANNING COMMISSION HEARING

Notice is hereby given that the Ashland Planning Commission will hold a limited public hearing on the above described remand issues for PA-T3-2022-00004 on the meeting date and time shown above. The meeting will be held at the Ashland Civic Center/Ashland City Council Chambers at 1175 East Main Street in Ashland, Oregon. You can watch the meeting on local channel 9, on Charter Communications channels 180 & 181, or you can stream the meeting via the internet by going to [rvtv.sou.edu](http://rvtv.sou.edu) and selecting 'RVTV Prime.'

The ordinance criteria applicable to this planning action are attached to this notice. Oregon law states that failure to raise an objection concerning this application, or failure to provide sufficient specificity to afford the decision makers an opportunity to respond to the issue, precludes your right of appeal to the Land Use Board of Appeals (LUBA) on that issue. Failure to specify which ordinance criterion the objection is based on also precludes your right of appeal to LUBA on that criterion. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow this Commission to respond to the issue precludes an action for damages in circuit court. **This hearing will be limited to the two issues on remand as they relate to the applicable criteria.**

A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant is available on-line at <http://www.ashland.or.us/grandterrace>. Copies of application materials will be provided at reasonable cost, if requested. A copy of the staff report will be available on-line at <http://www.ashland.or.us/PCpackets> seven days prior to the Planning Commission hearing. Alternative arrangements for reviewing the application can be made by contacting (541) 488-5305 or [planning@ashland.or.us](mailto:planning@ashland.or.us).

During the Public Hearing, the Planning Commission Chairperson will allow testimony from the applicant and those in attendance only concerning the two remand issues described above. The Chair shall have the right to limit the length of testimony and require that comments be restricted to the two remand issues.

Those wishing to submit written comments can do so by sending an e-mail to [PC-public-testimony@ashland.or.us](mailto:PC-public-testimony@ashland.or.us) with the subject line "**August 8<sup>th</sup> PC Hearing Testimony**" by 10:00 a.m. on Monday, August 7, 2023. If the applicant wishes to provide a rebuttal to the testimony, they can submit the rebuttal via e-mail to [PC-public-testimony@ashland.or.us](mailto:PC-public-testimony@ashland.or.us) with the subject line "**August 8<sup>th</sup> PC Hearing Testimony**" by 10:00 a.m. on Tuesday, August 8, 2023. *Written testimony received by these deadlines will be available for Planning Commissioners to review before the hearing and will be included in the meeting minutes.*

Oral testimony will also be taken via Zoom during the in-person public hearing. If you wish to provide oral testimony via Zoom during the hearing, send an email to [PC-public-testimony@ashland.or.us](mailto:PC-public-testimony@ashland.or.us) by 10:00 a.m. on Monday, August 7, 2023. In order to provide testimony at the public hearing, please provide the following information: 1) make the subject line of the email "**August 8 Speaker Request**", 2) include your name, 3) the agenda item on which you wish to speak on, 4) specify if you will be participating by computer or telephone, and 5) the name you will use if participating by computer or the telephone number you will use if participating by telephone.

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at 541-488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (28 CFR 35.102.-35.104 ADA Title I). If you have questions or comments concerning this request, please feel free to contact Planning Manager Derek Severson, the staff planner assigned to this application, at 541-552-2040 or e-mail: [derek.severson@ashland.or.us](mailto:derek.severson@ashland.or.us).

### **AMC 18.5.8.050 Annexation Approval Criteria & Standards**

An application for an annexation may be approved if the proposal meets the applicable criteria in subsections A through H below. The approval authority may, in approving the application, impose conditions of approval consistent with the applicable criteria and standards, and grant exceptions and variances to the criteria and standards in this section in accordance with subsection 18.5.8.050.I.

- A. The annexed area is within the City's Urban Growth Boundary.
- B. The annexation proposal is consistent with the Comprehensive Plan plan designations applicable to the annexed area, including any applicable adopted neighborhood, master, or area plan, and is an allowed use within the proposed zoning.
- C. The annexed area is contiguous with the city limits.
- D. Adequate City facilities for the provision of water to the annexed area as determined by the Public Works Department; the transport of sewage from the annexed area to an approved waste water treatment facility as determined by the Public Works Department; the provision of electricity to the annexed area as determined by the Electric Department; urban storm drainage as determined by the Public Works Department can and will be provided from the annexed area. Unless the City has declared a moratorium based upon a shortage of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for these facilities. All required public facility improvements shall be constructed and installed in accordance with 18.4.6.030.A.
- E. Adequate transportation can and will be provided to serve the annexed area. For the purposes of this section "adequate transportation" for annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the following standards.
  - 1. For vehicular transportation a minimum 22-foot wide paved access exists, or can and will be constructed, providing access to the annexed area from the nearest fully improved collector or arterial street. All streets bordering on the annexed area shall be improved, at a minimum, to an applicable City half-street standard. The approval authority may, after assessing the impact of the development, require the full improvement of streets bordering on the annexed area. All streets located within annexed areas shall be fully improved to City standards unless exception criteria apply. Where future street dedications are indicated on the Street Dedication Map or required by the City, provisions shall be made for the dedication and improvement of these streets and included with the application for annexation.
  - 2. For bicycle transportation safe and accessible bicycle facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation) exist, or can and will be constructed. Should the annexed area border an arterial street, bike lanes shall be constructed along the arterial street frontage of the annexed area. Likely bicycle destinations within a quarter of a mile from the annexed area shall be determined and the approval authority may require the construction of bicycle lanes or multi-use paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.
  - 3. For pedestrian transportation safe and accessible pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation) exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side of all streets bordering on the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the annexed area is within a quarter of a mile of an existing sidewalk system or a location with demonstrated significant pedestrian activity, the approval authority may require sidewalks, walkways or multi-use paths to be constructed and connect to either or both the existing system and locations with significant pedestrian activity.
  - 4. For transit transportation, should transit service be available to the annexed area, or be likely to be extended to the annexed area in the future based on information from the local public transit provider, the approval authority may require construction of transit facilities, such as bus shelters and bus turn-out lanes.
  - 5. **Timing of Transportation Improvements.** All required transportation improvements shall be constructed and installed in accordance with 18.4.6.030.A.
- F. For all residential annexations, a plan shall be provided demonstrating that the development of the annexed area will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units are necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the annexed area shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing unbuildable lots, parcels, or portions of

the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, slopes greater than 35 percent, or land area dedicated as a public park, shall not be included.

**G.** Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial, employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the following requirements.

1. The total number of affordable units provided to qualifying buyers, or to qualifying renters, shall be equal to or exceed 25 percent of the base density as calculated using the unit equivalency values set forth herein. The base density of the annexed area for the purpose of calculating the total number of affordable units in this section shall exclude any unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, water resource areas, slopes greater than 35 percent, or land area dedicated as a public park.
  - a. Ownership units restricted to households earning at or below 120 percent the area median income shall have an equivalency value of 0.75 unit.
  - b. Ownership units restricted to households earning at or below 100 percent the area median income shall have an equivalency value of 1.0 unit.
  - c. Ownership or rental units restricted to households earning at or below 80 percent the area median income shall have an equivalency value of 1.25 unit.
2. As alternative to providing affordable units per section 18.5.8.050.G.1, above, the applicant may provide title to a sufficient amount of buildable land for development complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC 501(3)(c) affordable housing developer or public corporation created under ORS 456.055 to 456.235.
  - a. The land to be transferred shall be located within the project meeting the standards set forth in sections 18.5.8.050.G.5 and 18.5.8.050.G.6.
  - b. All needed public facilities shall be extended to the area or areas proposed for transfer.
  - c. Prior to commencement of the project, title to the land shall be transferred to the City, an affordable housing developer which must either be a unit of government, a non-profit 501(C)(3) organization, or public corporation created under ORS 456.055 to 456.235.
  - d. The land to be transferred shall be deed restricted to comply with Ashland’s affordable housing program requirements.
  - e. Transfer of title of buildable land in accordance with this subsection shall exempt the project from the development schedule requirements set forth in 18.5.8.050.G.4.
3. The affordable units shall be comparable in bedroom mix with the market rate units in the development.
  - a. The number of bedrooms per dwelling unit in the affordable units within the residential development shall be in equal proportion to the number of bedrooms per dwelling unit in the market-rate units within the residential development. This provision is not intended to require the same floor area in affordable units as compared to market-rate units. The minimum square footage of each affordable unit shall comply with the minimum required floor area based as set forth in Table 18.5.8.050.G.3, or as established by the U.S. Department of Housing and Urban Development (HUD) for dwelling units developed under the HOME program.

<b>Unit Type</b>	<b>Minimum Required Unit Floor Area (Square Feet)</b>
Studio	350
1 Bedroom	500
2 Bedroom	800
3 Bedroom	1,000
4 Bedroom	1,250



4. A development schedule shall be provided that demonstrates that that the affordable housing units per subsection 18.5.8.050.G shall be developed, and made available for occupancy, as follows.
  - a. That 50 percent of the affordable units shall have been issued building permits prior to issuance of a certificate of occupancy for the last of the first 50 percent of the market rate units.
  - b. Prior to issuance of a building permit for the final ten percent of the market rate units, the final 50 percent of the affordable units shall have been issued certificates of occupancy.
5. That affordable housing units shall be constructed using comparable building materials and include equivalent amenities as the market rate units.
  - a. The exterior appearance of the affordable units in any residential development shall be visually compatible with the market-rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as for market-rate units
  - b. Affordable units may differ from market-rate units with regard to floor area, interior finishes and materials, and housing type provided that the affordable housing units are provided with comparable features to the market rate units, and shall have generally comparable improvements related to energy efficiency, including plumbing, insulation, windows, appliances, and heating and cooling systems.
6. Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be approved by the City Council upon consideration of one or more of the following.
  - a. That an alternative land dedication as proposed would accomplish additional benefits for the City, consistent with the purposes of this chapter, then would development meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.
  - b. That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.
  - c. That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection 18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.
7. The total number of affordable units described in this section 18.5.8.050.G shall be determined by rounding up fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years for units qualified as affordable rental housing, or 30 years for units qualified as affordable for-purchase housing.

**H. One or more of the following standards are met.**

1. The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.
2. A current or probable danger to public health exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.
3. Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.
4. The proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.
5. The proposed area for annexation is an island surrounded by lands within the city limits.

**I. Exceptions and Variances to the Annexation Approval Criteria and Standards.** The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.

### **AMC 18.3.9.040.A Performance Standards Options Subdivision/Outline Plan Approval Criteria & Standards**

3. **Approval Criteria for Outline Plan.** *The Planning Commission shall approve the outline plan when it finds all of the following criteria have been met:*
- a. *The development meets all applicable ordinance requirements of the City.*
  - b. *Adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection, and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.*
  - c. *The existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the common open space, common areas, and unbuildable areas.*
  - d. *The development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.*
  - e. *There are adequate provisions for the maintenance of common open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.*
  - f. *The proposed density meets the base and bonus density standards established under this chapter.*
  - g. *The development complies with the street standards.*
  - h. *The proposed development meets the common open space standards established under section [18.4.4.070](#). Common open space requirements may be satisfied by public open space in accordance with section [18.4.4.070](#) if approved by the City of Ashland.*
4. **Approval of the Outline Plan.**
- a. *After the City approves an outline plan and adopts any zone change necessary for the development, the developer may then file a final plan in phases or in its entirety.*
  - b. *If an outline plan is phased, 50 percent of the value of the common open space shall be provided in the first phase and all common open space shall be provided when two-thirds of the units are finished.*

### **AMC 18.5.2.050 Site Design Review Approval Criteria & Standards**

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

- A. Underlying Zone.** *The proposal complies with all of the applicable provisions of the underlying zone (part [18.2](#)), including but not limited to: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other applicable standards.*
- B. Overlay Zones.** *The proposal complies with applicable overlay zone requirements (part [18.3](#)).*
- C. Site Development and Design Standards.** *The proposal complies with the applicable Site Development and Design Standards of part [18.4](#), except as provided by subsection E, below.*
- D. City Facilities.** *The proposal complies with the applicable standards in section 18.4.6 Public Facilities, and that adequate capacity of City facilities for water, sewer, electricity, urban storm drainage, paved access to and throughout the property, and adequate transportation can and will be provided to the subject property.*
- E. Exception to the Site Development and Design Standards.** *The approval authority may approve exceptions to the Site Development and Design Standards of part [18.4](#) if the circumstances in either subsection 1, 2, or 3, below, are found to exist.*

1. *There is a demonstrable difficulty meeting the specific requirements of the Site Development and Design Standards due to a unique or unusual aspect of an existing structure or the proposed use of a site; and approval of the exception will not substantially negatively impact adjacent properties; and approval of the exception is consistent with the stated purpose of the Site Development and Design; and the exception requested is the minimum which would alleviate the difficulty;*
2. *There is no demonstrable difficulty in meeting the specific requirements, but granting the exception will result in a design that equally or better achieves the stated purpose of the Site Development and Design Standards; or*
3. *There is no demonstrable difficulty in meeting the specific requirements for a cottage housing development, but granting the exception will result in a design that equally or better achieves the stated purpose of section [18.2.3.090](#). (Ord. 3147 § 9, amended, 11/21/2017)*

#### **AMC 18.4.6.020.B Exception to the Street Design Standards Approval Criteria & Standards**

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

#### **AMC 18.5.7.040.B Tree Removal Permit Approval Criteria & Standards**

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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 18.3.10.*
  - 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.*

# Memo

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**DATE:** August 8, 2023  
**TO:** Planning Commissioners  
**FROM:** Derek Severson, Planning Manager  
**RE:** Land Use Board of Appeals (LUBA) Remand of PA-T3-2022-00004  
1511 Highway 99 North "Grand Terrace" Annexation Approval

## **Background**

In December of 2022, the City Council approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation (ODOT) state highway right-of-way and 7.68 acres of California Oregon & Pacific (CORP) railroad property. These properties are currently zoned Rural Residential (RR-5) in Jackson County; with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 38 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six inches in diameter at breast height. The record for this application can be reviewed on-line at: <https://www.ashland.or.us/grandterrace>.

The City's approval of the project was subsequently appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the City to consider two issues:

- 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and**
- 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of**

## **COMMUNITY DEVELOPMENT DEPARTMENT**

51 Winburn Way  
Ashland, Oregon 97520  
[ashland.or.us](http://ashland.or.us)

Tel: 541.488.5305  
Fax: 541.552.2050  
TTY: 800.735.2900

**350 square feet and that affordable one-bedroom units be a minimum of 500 square feet.**

To consider these two remand issues, staff has scheduled this limited public hearing before the Planning Commission. The notices mailed to parties made clear that the substance of the hearing would be strictly limited in scope to the consideration of only these two issues on remand from LUBA.

**Remand Issue #1: On-Street Parking Exception**

The originally approved application included a request for Outline Plan subdivision approval under the Performance Standards Options (Chapter 18.3.9) to create 10 buildable lots and two common open space properties. During the public hearing process, the Planning Commission noted that AMC 18.3.9.060 dealing with Parking Standards for subdivisions proposed under AMC 18.3.9 required that:

*All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter [18.4.3](#), Parking, Access, and Circulation.*

**A. On-Street Parking Required.** *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*

**B. On-Street Parking Standards.** *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public parking may be provided pursuant to minimum criteria established under subsection [18.4.3.060.A](#).*

While no Variance or Exception to this standard had been requested as part of the original application, the Planning Commission determined that AMC 18.3.9.060 was applicable, that

**COMMUNITY DEVELOPMENT DEPARTMENT**

51 Winburn Way  
Ashland, Oregon 97520  
[ashland.or.us](http://ashland.or.us)

Tel: 541.488.5305  
Fax: 541.552.2050  
TTY: 800.735.2900

an Exception to the Street Design Standards was the appropriate procedure if on-street parking would not be provided, and that such an Exception was merited.

New Climate-Friendly and Equitable Communities (CFEC) rules were adopted July 21, 2022, by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown and took effect August 17, 2022. The CFEC rules address how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking. Among the new CFEC rules:

- Oregon Administrative Rule (OAR) 660-012-0430(2) states that *"Cities and counties may not require more than one **parking space** per unit in residential developments with more than one dwelling unit on a single legally established property."* **Parking spaces** are defined in OAR 660-012-00005(29) as meaning *"... on and off-street spaces designated for automobile parking, other than parking spaces reserved for carpools, vanpools, or parking under the Americans with Disabilities Act."*
- OAR 660-012-430(3) states that, *"Cities and counties may not require parking for the following development types.... (d) Residential units smaller than 750 square feet; (e) Affordable housing as defined in OAR 660-039-0010;"* All of the residential units proposed in the application under consideration are smaller than 750 square feet, and under the new CFEC rules the city may not require parking for this development type.
- OAR 660-012-440(3) states that *"Cities and counties may not enforce **parking mandates** for development on a lot or parcel that includes land within one-half mile of frequent transit corridors, including... corridors with the most frequent transit route or routes in the community if the scheduled frequency is at least once per hour during peak service."* In OAR 660-012-00005(27), **parking mandates** are defined as *"requirements to include a minimum number of off-street parking spaces with development or redevelopment, or a fee-in-lieu of providing parking for residential development."* In this instance, the Rogue Valley Transit District's (RVTDs) Route 10 runs on Highway 99 North, which fronts directly on the subject properties here, with a peak hour scheduled frequency of every 20 minutes, and as such qualifies as frequent transit. Under the new CFEC rules, Ashland may not enforce parking mandates (i.e., require off-street parking) for the subject properties.

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Under OAR 660-012-0012(5)(e) cities and counties were required to *“implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.”* Guidance from the Department of Land Conservation and Development (DLCD) has been that cities must either modify their regulations or implement these new rules directly from the OAR and disregard local regulations. Ashland is in the process of amending its parking codes to comply with these new CFEC rules, and others which took effect on June 30, 2023, and has received an extension allowing these code amendments to occur no later than December 31, 2023. In the interim, the City has been directly applying the applicable state rules.

With regard to the current application, it was initially submitted on July 8, 2022, however it remains in process now more than eight months after these new CFEC rules have taken effect. The Performance Standards subdivision process requires a preliminary or outline plan review followed by a final plan review, so prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to parking requirements under the new CFEC rules and could request to amend their proposal accordingly.

In staff’s view, the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules, which remove the requirement for parking since all proposed residential units are smaller than 750 square feet. The fact that the CFEC parking regulations have been in effect for eight months, along with the LUBA remand for further review leading to the final decision of the City to occur after the new regulations were implemented, supports the consideration of the application under the current State law specified in OAR 660-012-0430 and 0440. Additionally, the applicant will need to submit a second development application, Final Plan review, during which the city will be unable to enforce parking requirements under the new Climate Friendly and Equitable Communities rules. Therefore, the staff recommends evaluating the current request under the new CFEC rules without requiring parking, considering the nature of the proposed residential units.

DLCD’s implementation guidance to cities notes that the parking rule changes seek to help *“meet Oregon’s climate pollution reduction targets, while providing more housing and transportation choices and improving equity.”* In staff’s view, applying the new parking rules to a project that combines small market rate units with deed-restricted affordable housing, situated on a transit route and providing substantial improvements to support transit and pedestrian travel is exactly what the Climate Friendly and Equitable Communities rules seek

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to enable, and requiring an applicant to withdraw and reapply with an identical proposal now in order to be subject to the new rules, when their application is still in process eight months after the new rules have taken effect, would pose an unreasonable impediment which would discourage the production of needed housing during a housing crisis.

In staff's view, the Planning Commission should advise the City Council to determine that the CFEC parking rules are appropriate here, to not require either on- or off-street parking, and to amend the findings for the original approval accordingly.

### **Remand Issue #2: Affordable Unit Sizes**

The original application identified each of the ten identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each. Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.

AMC 18.5.8.050.G.3 requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet. The adopted conditions relating to affordability are:

**Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

**Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

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The City's approval was remanded by LUBA on the basis **"That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."**

In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by three-inches in order to achieve the required 500 square feet per affordable one-bedroom unit.

- **AS PROPOSED:**  $12.5 \times 42 = 525$  square feet less 25.98 square feet for recessed entry = 499.02 square feet.
- **AS MODIFIED:**  $12.5 \times 42 = 525$  square feet less 24.8975 feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios would be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit.

Here, staff would also note that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units, and assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable (*i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.*)

Staff believe that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the Planning Commission and City Council, staff would recommend that Condition #7e be modified as follows:

**Condition #7e.** A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2)** **and** that should the applicant opt to

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dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Planning Commission accepts the approaches outlined above for both of the remand issues, staff will draft findings and bring them back to the September meeting for adoption.

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TTY: 800.735.2900





## REQUEST TO PROCEED WITH APPLICATION ON LUBA REMAND

Robert Kendrick <bobk213@icloud.com>

Fri 2023-06-30 04:09 PM

To: Brandon Goldman <brandon.goldman@ashland.or.us>

Cc: Derek Severson <derek.severson@ashland.or.us>; Doug McGeary <doug.mcgeary@ashland.or.us>; Chris Hern <chearn@davishearn.com>; Amy Gunter <amygunter.planning@gmail.com>; Robert J Kendrick <bobk213@icloud.com>

[EXTERNAL SENDER]

Brandon Goldman  
Director of Community Development  
City of Ashland Community Development

June 30, 2023

Re: LUBA Decision Rogue Advocates vs City of Ashland  
LUBA Case No. 2023-007  
REMANDED 05/09/2023

Following up on LUBA's remand in case number 2023-007, this email is the applicant's request pursuant to ORS 227.181 for the city to proceed with the application on remand.

Please advise us as to the next steps.

Thank You  
Robert Kendrick  
Casita Developments LLC





July 18, 2023

## **REQUEST FOR REVIEW OF LUBA No. 2023-007 REMAND**

On behalf of the Property Owner, Casita Development LLC, please accept this request for review and public hearing of the Remand of a Land Use Board of Appeals Decision LUBA No. 2023-007, Final Opinion and Order, published on May 09, 2023.

It can be found that the information herein, the original application materials and supplemental record of PA-T3-2022-0004, the conditions of approval, and the record demonstrates compliance with the City of Ashland standards subject to remand.

Summary of Assignments of Error Subject to Remand:

### **FIRST ASSIGNMENT OF ERROR**

#### **B . Second Subassignment of Error**

AMC 18.3.0.060(A) provides:

On-Street Parking Required. At least one on-street parking space per dwelling unit shall be provided in addition to the off-street parking requirements for all development in an R-1 zone, with the exception of cottage housing developments, and for all developments in the R-2 and R-3 zones that create or improve public streets.

LUBA found in part that, the city council did not conclude that Casita's application satisfies AMC 18.3.9.060(A) at all, let alone by AMC 18.3.9.060(B). Record 69 (expressly concluding that Casita's application does not satisfy AMC 18.3.9.060). Rather, the city council approved an exception to the on-street parking requirement. Because this alternative basis is not presented in the city council's findings and appears for the first time in the respondent's brief, we will not consider it. The city may choose, on remand, to consider whether its decision could be justified on that basis. *Anderson v. Coos County*, 51 Or LUBA 454,472 (2006) (LUBA will remand a decision where an alternative theory for affirming the decision does not appear in the challenged findings). (LUBA Final Opinion and Order Pg. 10; Lines 16 – 24; Pg. 11; Lines 1 and 2).

Based on this finding, the second sub-assignment of error was sustained. The first assignment of error is sustained, in part.



**RESPONSE:**

Recent legislative amendments to the Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) which direct cities and counties on Comprehensive Plan and Land Use Ordinance compliance with state law and legislative rulemaking adopted, Climate Friendly and Equitable Communities (CFEC) Rules that have direct consequences on the city's ability to require both on-site and off-site parking. The adopted OAR mandated that larger cities such as Ashland remove parking mandates.

As of January 1, 2023, consistent with OAR 660-012-400, Parking Management, that required that cities removed their parking mandates, Ashland no longer requires on-site parking from AMC 18.4.3.040, for dwelling units that are less than 750 square feet in area (OAR 660-012-0430(3d), for qualified affordable housing (OAR 660-12-0430)(3e) on properties that are within 1/2 mile of frequent transit corridors (OAR 660-012-440(3)). OR HWY 99 is a frequent transit corridor with Rogue Valley Transit District (RVTD) Route 10 and a transit stop for the southbound bus is proposed on the property frontage. RVTD Route 10 qualifies as Ashland's most frequent transit route per OAR 660-012-0440(3c). See attached emails from Ashland Planning Department.

Following State approval of amendments to OAR 660-012-400 through OAR 660-012-0450, a map depicting the areas of town where the parking mandates are no longer enforced as of January 1, 2023 was presented to Ashland Planning Commission at a regularly noticed public meeting on August 9<sup>th</sup>, 2022. This map is included as an exhibit.

Where parking areas are provided, the construction of the parking area must comply with the CFEC standards, Oregon Building Code Standards for access to EV charging (OAR 660-012-0410), and city of Ashland Standards for landscaping, stormwater management, accessibility, and the city's parking area development standards.

This addresses the remand of the First Assignment of Error, Second Sub assignment of Error (LUBA Final Opinion and Order. Pages 9-11 and Page 12 Lines 1-4).

**B. Fourth Assignment of Error**

**Second Sub Assignment of Error** - The City's decision is inconsistent with AMC 18.5.8.050.G3. AMC 18.5.8.05.G.3 requires that the minimum square footage of each affordable unit shall comply with the minimum required floor area based as outlined in Table 18.5.8.050.G.c, The application materials propose units that are 499 square feet (one-bedroom units) and 250 square feet (studio units). This issue was remanded for clarification.

**RESPONSE:**

The attached floor plan graphic demonstrates how with a minor adjustment to the floor area, any designated affordable one-bedroom units are enlarged to 500 square feet in gross habitable





floor area. Any designated affordable studio units will be enlarged to no less than 350 square feet. This is in conformance with the city of Ashland Condition of Approval #7e which states.

*“A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.”*

These square footages are consistent with the Housing and Urban Development (HUD) unit size standards as found in Table 18.5.8.050(G)(3).

Therefore, it can be found that the information provided herein demonstrates that the city of Ashland can take further action to comply with Oregon amend their decision to comply with the Oregon Climate Friendly and Equitable Communities rule changes effective January 1, 2023 in lieu of applying parking mandates under AMC 18.4.3.040 and as directed in the LUBA Final Opinion and Order to Remand PA-T3-2022-0004.

Thank you,

Amy Gunter  
Rogue Planning & Development Services, LLC

Attachments:

LUBA Final Opinion and Order  
Unit Schematics  
Floor Plans (First Floor and Basement)  
CFEC Parking Handout Rapid Transit Map  
Ashland Planning Division Staff email



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

3  
4                               ROGUE ADVOCATES,  
5   *Petitioner,*

6  
7   vs.

8  
9                               CITY OF ASHLAND,  
10   *Respondent.*

11  
12   LUBA No. 2023-007

13  
14   FINAL OPINION  
15   AND ORDER

16  
17                 Appeal from City of Ashland.

18  
19                 Sean Malone filed the petition for review and reply brief and argued on  
20 behalf of petitioner.

21  
22                 Douglas M. McGeary, Acting City Attorney, filed the respondent's brief  
23 and argued on behalf of respondent.

24  
25                 RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board  
26 Member, participated in the decision.

27  
28                                 REMANDED                                 05/09/2023

29  
30                 You are entitled to judicial review of this Order. Judicial review is  
31 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a city council decision approving (1) the annexation of two parcels totaling 16.86 acres, a railroad track corridor totaling 7.68 acres, and highway right-of-way totaling 6.6 acres; (2) an exception to the city’s street design standards; (3) an outline plan for a subdivision creating 12 lots; (4) a site design for 230 apartments in 10 buildings; and (5) tree removal permits.

**FACTS**

This is the second time that the city has approved the challenged annexation. *Rogue Advocates v. City of Ashland*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2021-009, May 12, 2021) (*Casita I*). We restate the description of the property from our decision in *Casita I*:

“[Casita Developments (Casita)] own[s] two parcels (the property) totaling 16.8[6] acres that are located outside the city limits but within the city’s adopted urban growth boundary (UGB). The property is zoned Rural Residential 5-acre minimum (RR-5) by Jackson County and contains an existing dwelling. The property slopes from the southeast to the northwest, with slopes generally between 10 and 15 percent. The portion of the property west of the existing residence contains steep slopes in excess of 35 percent.

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

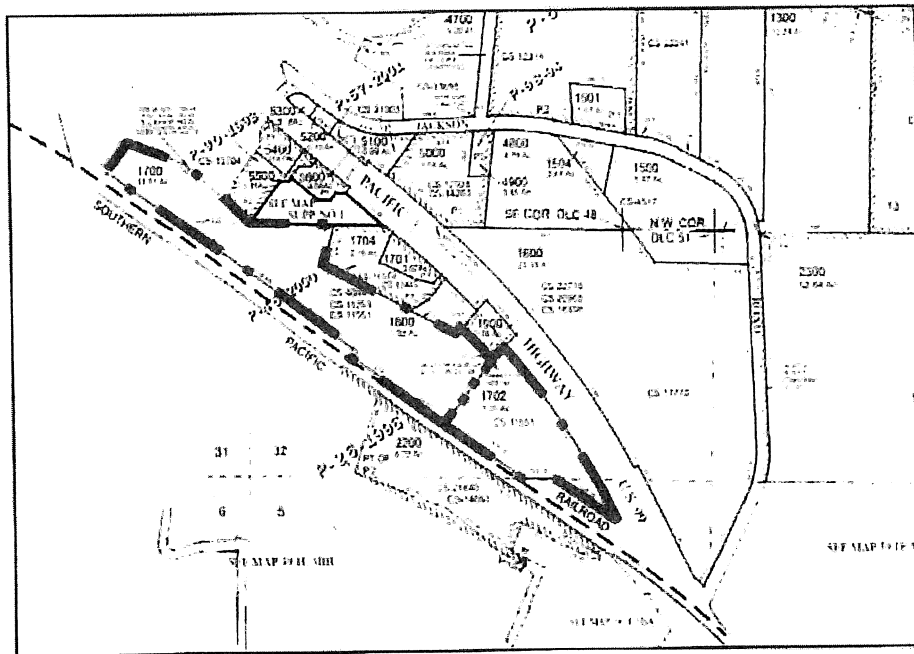


Figure 1: Assessor's Map

1

2 “The property is bounded on the west by Central Oregon and Pacific  
 3 Railroad (COPR) tracks, which separate the property from the  
 4 existing city boundary; on the south by the junction of the railroad  
 5 tracks and Highway 99 North; on the east by Highway 99 North and  
 6 commercial development adjacent to Highway 99 North; and on the  
 7 north by commercial development on lands that are within the  
 8 county’s jurisdiction and within the city’s UGB. Highway 99 North  
 9 is owned and managed by the Oregon Department of Transportation  
 10 (ODOT).” \_\_\_ Or LUBA at \_\_\_ (citation omitted) (slip op at 3-4).

11 In *Casita I*, we explained that Casita applied to the city to annex its property, and  
 12 city staff subsequently included both the adjacent railroad tracks and the portion  
 13 of Highway 99 North adjacent to Casita’s property in the annexation proposal. In  
 14 *Casita I*, we sustained the first assignment of error, and reversed the city’s  
 15 decision. *Id.* at \_\_\_ (slip op at 12-19).

1           In December 2021, in response to our decision in *Casita I*, the city council  
2 amended the Ashland Municipal Code (AMC) to require that annexation  
3 applications be accompanied by planning applications for the annexation area,  
4 and to expressly allow the city to approve an annexation application with an  
5 exception to the city’s street design standards. In July 2022, Casita again applied  
6 to the city to annex the property (and the adjacent railroad corridor and highway  
7 right-of-way) and zone it Residential – Low Density Multiple Family (R-2).  
8 Casita’s application proposed sidewalk improvements along the property’s  
9 frontage on Highway 99 North and beyond the property’s frontage to connect to  
10 existing sidewalks north and south. In addition, the application proposed a new  
11 bus shelter, bus pull-out lane, and rectangular rapid flashing beacon (RRFB)  
12 crosswalk. Because only a portion of the proposed sidewalk improvements would  
13 have met the city’s street design standards, the application requested an exception  
14 to those standards pursuant to AMC 18.4.6.020(B).<sup>1</sup> The application also

---

<sup>1</sup> The city council’s decision explains:

“There are some areas where Exceptions to the Street Standards are requested due to topographical difficulties, utility encroachments, and physical encumbrances in the form of the railroad trestle, a drainage ditch, private driveway approaches and other private property encroachments. The proposal seeks Exceptions to the Street Design Standards for the sidewalk and bike lane under the overpass of the railroad trestle where a shared sidewalk will be installed, and where city standard sidewalks are not possible due to physical constraints, ODOT-compliant frontage improvements are proposed. In addition, on-street parking is not proposed.” Record 18.

1 requested approval of an outline plan to subdivide the property into 12 lots, a site  
2 design for 230 apartments in 10 buildings, and tree removal permits.

3 The planning commission held hearings on the application and, at the  
4 conclusion, voted to recommend approval to the city council. The city council  
5 held a hearing and voted to approve the application. This appeal followed.

6 **FIRST ASSIGNMENT OF ERROR**

7 Casita sought to subdivide the property under the “performance standards  
8 option” in AMC chapter 18.3.9. “The purpose of [AMC chapter 18.3.9] is to  
9 allow an option for more flexible design than is permissible under the  
10 conventional zoning codes.” AMC 18.3.9.010. Casita’s application requested  
11 approval of an outline plan to subdivide the property.<sup>2</sup>

12 In the first assignment of error, petitioner argues that the city council  
13 improperly construed the outline plan approval criteria. ORS 197.835(9)(a)(D).

14 **A. First Subassignment of Error**

15 AMC 18.3.9.040(A)(3) provides, in part:

16 “Approval Criteria for Outline Plan. The Planning Commission  
17 shall approve the outline plan when it finds all of the following  
18 criteria have been met:

19 “\* \* \* \* \*

---

<sup>2</sup> There are two required steps under the performance standards option: outline plan approval and final plan approval.

1           “g. The development complies with the street standards.”  
2                           (Underscoring in original.)

3 The city council adopted the planning commission’s findings by reference.

4 Record 31. The planning commission found:

5           “[Casita is] requesting Exceptions to the Street Design Standards to  
6           install some portions of the proposed sidewalks at curbside, without  
7           a city-standard parkrow planting strip between the curb and  
8           sidewalk, and to not install on-street parking along the highway.  
9           These Exceptions are discussed in Section E below. The Planning  
10          Commission finds that other than those areas where these  
11          Exceptions have been requested, the street improvements proposed  
12          are to be consistent with the applicable street design standards.”  
13          Record 59.

14           In the first subassignment of error, petitioner argues that the city council  
15          improperly construed AMC 18.3.9.040(A)(3)(g) in concluding that it could  
16          approve an exception to the requirement that an outline plan comply with the  
17          “street standards.” Petitioner argues that while AMC 18.4.6.020(B)(1) authorizes  
18          “exceptions to the street design standards in section 18.4.6.040,” neither that  
19          provision nor any provision in AMC chapter 18.3.9 authorizes exceptions to the  
20          “street standards” referenced in AMC 18.3.9.040(A)(3)(g). Petitioner argues that  
21          the city may therefore not approve an exception to those “street standards” in  
22          approving an outline plan.

23           The city responds that the “street standards” referenced in AMC  
24          18.3.9.040(A)(3)(g) are the street design standards in AMC 18.4.6.040. The city  
25          argues that applications for approval of an outline plan under the city’s  
26          performance standards option require a Type II review procedure and public



1 facility improvements. We understand the city to argue that such applications are  
2 “planning actions requiring a Type I, Type II, or Type III review procedure” for  
3 purposes of AMC 18.4.6.020(A), and that the city may therefore approve  
4 exceptions to the referenced “street standards” pursuant to AMC 18.4.6.020(B).<sup>3</sup>

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

13 “Whether the city’s interpretation of its comprehensive plan is  
14 inconsistent with the plan, or the purposes or policies underlying  
15 that plan, depends on whether the interpretation is plausible, given  
16 the interpretive principles that ordinarily apply to the construction  
17 of ordinances under the rules of *PGE v. Bureau of Labor and*  
18 *Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), as modified

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<sup>3</sup> AMC 18.4.6.020(A) provides:

“**Applicability.** This chapter applies to all new development *and planning actions requiring a Type I, Type II, or Type III review procedure* where public facility improvements are required. All public facility improvements within the City shall occur in accordance with the standards and procedures of this chapter.” (Emphasis added.)

1 by *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009).” *Id.*  
2 (quoting *Friends of the Hood River Waterfront v. City of Hood*  
3 *River*, 263 Or App 80, 88-89, 326 P3d 1229 (2014)) (internal  
4 quotation marks and brackets omitted).

5 The standard of review under ORS 197.829(1) and *Siporen* is “highly deferential”  
6 to the city, and the “existence of a stronger or more logical interpretation does  
7 not render a weaker or less logical interpretation ‘implausible.’” *Mark Latham*  
8 *Excavation, Inc. v. Deschutes County*, 250 Or App 543, 555, 281 P3d 644 (2012)  
9 (citing *Siegert v. Crook County*, 246 Or App 500, 509, 266 P3d 170 (2011)). Our  
10 task in this appeal, as it was in *Casita I*, is to determine whether the city council’s  
11 interpretation of the relevant provisions of the AMC plausibly accounts for the  
12 text and context of those provisions.

13 We conclude that an implied interpretation of the interrelationship between  
14 AMC 18.3.9.040(A)(3)(g) and AMC 18.4.6.020 can be understood from the  
15 findings in support of the decision and is adequate for review. *Alliance for*  
16 *Responsible Land Use v. Deschutes Cty.*, 149 Or App 259, 266-67, 942 P2d 836  
17 (1997), *rev dismissed as improvidently allowed*, 327 Or 555 (1998). As seen in  
18 the findings quoted above, the planning commission and then the city council  
19 interpreted the “street standards” in AMC 18.3.9.040(A)(3)(g) to be the street  
20 design standards in AMC 18.4.6.040 and that it interpreted the exception  
21 standards at AMC 18.4.6.020(B) as being applicable to applications for approval  
22 of an outline plan under the city’s performance standards option. Petitioner has  
23 not established that that interpretation is implausible.

24 The first subassignment of error is denied.

1           **B.     Second Subassignment of Error**

2           AMC 18.3.9.060(A) provides:

3           **“On-Street Parking Required.** At least one on-street parking space  
4           per dwelling unit shall be provided, in addition to the off-street  
5           parking requirements for all developments in an R-1 zone, with the  
6           exception of cottage housing developments, and for all  
7           developments in R-2 and R-3 zones that create or improve public  
8           streets.” (Boldface in original.)

9           The city council applied the exception standards at AMC 18.4.6.020(B) and  
10          found that “the approval criteria for an Exception to the Street Design Standards  
11          to not provide on-street parking with the limited street improvements proposed  
12          have been satisfied.” Record 70.

13          In the second subassignment of error, petitioner argues that the city council  
14          improperly construed AMC 18.3.9.060(A) in concluding that it could approve an  
15          exception to the requirement that an outline plan provide on-street parking. While  
16          AMC 18.4.6.020(B) authorizes “exceptions to the street design standards in  
17          section 18.4.6.040,” petitioner observes that neither that provision nor any  
18          provision in AMC chapter 18.3.9 authorizes exceptions to the requirement for  
19          on-street parking in AMC 18.3.9.060(A). Petitioner argues that the city may  
20          therefore not approve an exception to that requirement in approving an outline  
21          plan.

22          The city does not dispute that the city council erred in approving an  
23          exception to the requirement for on-street parking in AMC 18.3.9.060(A).  
24          Instead, in the respondent’s brief the city argues that “under Oregon’s Equitable

1 Communities and Climate Friendly Act of 2023, as of January 1, 2023, cities  
2 within Oregon’s [eight] Metropolitan Planning Organizations (MPOs), including  
3 the City of Ashland, can no longer require more tha[n] one parking space per  
4 multi-family unit.” Respondent’s Brief 10. The city argues that because Casita’s  
5 application proposes one off-street parking space per unit, the referenced  
6 legislation prevents it from requiring on-street parking as well. We understand  
7 the city to argue that the issue of whether the city council improperly construed  
8 AMC 18.3.9.060(A) is moot because the city is precluded from applying that  
9 provision by virtue of the described legislation.

10 Petitioner replies that, because the described legislation took effect on  
11 January 1, 2023, and the challenged decision was made on December 20, 2022,  
12 the legislation does not apply to Casita’s application. Neither the city nor  
13 petitioner provides us with a citation to or a reference to the text of “Oregon’s  
14 Equitable Communities and Climate Friendly Act of 2023.” However, we  
15 assume, as the parties appear to agree in their briefs, that the legislation exists  
16 and that it did not take effect before January 2023. Because the challenged  
17 decision was made in December 2022, we agree with petitioner the legislation  
18 does not apply to Casita’s application. The city may or may not be correct that  
19 the legislation prevents it from requiring more than one parking space per multi-  
20 family unit and that, on remand, it will be unable to apply the requirement for on-  
21 street parking in AMC 18.3.9.060(A). However, the city does not develop that  
22 argument sufficiently for our review in the respondent’s brief. We will therefore

1 not conclude that the issue of whether the city council improperly construed  
2 AMC 18.3.9.060(A) is moot.

3 AMC 18.3.9.060(B) provides:

4 **“On-Street Parking Standards.** On-street parking spaces shall be  
5 immediately adjacent to the public right-of-way on publicly or  
6 association-owned land and be directly accessible from public right-  
7 of-way streets. On-street parking spaces shall be located within 200  
8 feet of the dwelling that it is intended to serve. In addition, on-street  
9 public parking may be provided pursuant to minimum criteria  
10 established under subsection 18.4.3.060.A.” (Boldface in original.)

11 The city asserts that the on-street parking spaces proposed in Casita’s application  
12 will be on association-owned land. We understand the city to argue that, even if  
13 the issue is not moot, Casita’s application satisfies AMC 18.3.9.060(A) because  
14 AMC 18.3.9.060(B) allows the required on-street parking spaces to be located on  
15 association-owned land.

16 The problem with that argument is that the city council did not conclude  
17 that Casita’s application satisfies AMC 18.3.9.060(A) at all, let alone by virtue  
18 of AMC 18.3.9.060(B). Record 69 (expressly concluding that Casita’s  
19 application does not satisfy AMC 18.3.9.060). Rather, the city council approved  
20 an exception to the on-street parking requirement. Because this alternative basis  
21 is not presented in the city council’s findings and appears for the first time in the  
22 respondent’s brief, we will not consider it. The city may choose, on remand, to  
23 consider whether its decision could be justified on that basis. *Anderson v. Coos*  
24 *County*, 51 Or LUBA 454, 472 (2006) (LUBA will remand a decision where an

1 alternative theory for affirming the decision does not appear in the challenged  
2 findings).

3 The second subassignment of error is sustained.

4 The first assignment of error is sustained, in part.

5 **SECOND ASSIGNMENT OF ERROR**

6 Petitioner's second assignment of error generally relates to the  
7 improvements that the application proposes along and beyond the property's  
8 frontage on Highway 99 North.

9 **A. First Subassignment of Error**

10 In the first subassignment of error, petitioner makes a variety of arguments  
11 that the city's findings are inadequate and unsupported by substantial evidence.  
12 Because the parties agree that the challenged decision is legislative, we assume  
13 for purposes of this opinion only that the decision is a legislative decision.<sup>4</sup> There  
14 is no generally applicable requirement that legislative land use decisions be  
15 supported by findings. However, the decision and record must be sufficient to  
16 demonstrate that applicable criteria were applied and "required considerations  
17 were indeed considered." *Citizens Against Irresponsible Growth v. Metro*, 179  
18 Or App 12, 16 n 6, 38 P3d 956 (2002). In addition, Statewide Planning Goal 2

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<sup>4</sup> AMC 18.5.8.030 provides that all annexations must be processed under the city's Type III procedure, which applies to legislative decisions. The record demonstrates that the city processed the application according to that procedure. Record 579 (staff report explaining that the 120-day rule for quasi-judicial actions at ORS 227.178 did not apply to the application).

1 (Land Use Planning) requires that a legislative land use decision be supported by  
2 “an adequate factual base,” which is an evidentiary standard that is equivalent to  
3 the requirement that a quasi-judicial decision be supported by substantial  
4 evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27  
5 Or LUBA 372, 378, *aff’d*, 130 Or App 406, 882 P2d 1130 (1994). Substantial  
6 evidence exists to support a finding of fact when the record, viewed as a whole,  
7 would permit a reasonable person to make that finding. *Dodd v. Hood River*  
8 *County*, 317 Or 172, 179, 855 P2d 608 (1993); *Younger v. City of Portland*, 305  
9 Or 346, 351-52, 752 P2d 262 (1988).

10 **1. ODOT Standards**

11 The annexation standards at AMC 18.5.8.050(E)(2) and (3) provide:

12 “2. For bicycle transportation, *safe and accessible bicycle*  
13 *facilities according to the safety analysis and standards of the*  
14 *governing jurisdiction of the facility or street (e.g., City of*  
15 *Ashland, Jackson County, [ODOT]) exist, or can and will be*  
16 *constructed.* Should the annexed area border an arterial street,  
17 bike lanes shall be constructed along the arterial street  
18 frontage of the annexed area. Likely bicycle destinations  
19 within a quarter of a mile from the annexed area shall be  
20 determined and the approval authority may require the  
21 construction of bicycle lanes or multiuse paths connecting the  
22 annexed area to the likely bicycle destinations after assessing  
23 the impact of the development proposed concurrently with the  
24 annexation.

25 “3. For pedestrian transportation, *safe and accessible pedestrian*  
26 *facilities according to the safety analysis and standards of the*  
27 *governing jurisdiction of the facility or street (e.g., City of*  
28 *Ashland, Jackson County, [ODOT]) exist, or can and will be*  
29 *constructed.* Full sidewalk improvements shall be provided

1 on one side of all streets bordering on the proposed annexed  
2 area. Sidewalks shall be provided as required by ordinance on  
3 all streets within the annexed area. Where the annexed area is  
4 within a quarter of a mile of an existing sidewalk system or a  
5 location with demonstrated significant pedestrian activity, the  
6 approval authority may require sidewalks, walkways or  
7 multiuse paths to be constructed and connect to either or both  
8 the existing system and locations with significant pedestrian  
9 activity.” (Emphases added.)

10 To demonstrate compliance with AMC 18.5.8.050(E), Casita submitted a  
11 Traffic Impact Analysis (TIA) and an Access Safety Evaluation, both of which  
12 were prepared by Sandow Engineering. Record 1244-505. With respect to AMC  
13 18.5.8.050(E)(2), the city council found:

14 “With regard to bicycle transportation, the application materials  
15 explain that Highway 99 N[orth] which is an arterial street and state  
16 highway, currently has bicycle lanes buffered by striping along the  
17 frontage of the property, with bicycle lanes on both sides of the  
18 highway extending north of Valley View Road and south into  
19 downtown Ashland. The bike lanes are of typical width and the  
20 striped buffer along the frontage provides an additional measure of  
21 safety. The proposal maintains these bicycle lanes in accordance  
22 with City standards along the frontage with two multi-use path  
23 connections into the site. A crossing will be installed on Highway  
24 99 N[orth] at Schofield Street with pedestrian- or cyclist-activated  
25 [RRFBs] to support crossing Highway 99 N[orth] near RVTD’s  
26 northbound flag stop. *The bicycle facilities that exist or will be*  
27 *provided as part of the annexation comply with the design and safety*  
28 *criteria for ODOT as the governing jurisdiction, and [Casita] thus*  
29 *asserts that this criterion is satisfied.*

30 “Bicycle destinations within 1/4-mile include two coffee shops, two  
31 restaurants, a new financial institution now under construction, and  
32 a bicycle shop, and the Bear Creek Greenway is accessible at Valley  
33 View Road within 1/2-mile of the site. The application materials  
34 assert that all of these destinations are easily accessed from the



1 existing protected bicycle lanes which are to be maintained, and that  
2 these bicycle lanes continue the 1 1/4-miles into downtown  
3 Ashland.” Record 20 (emphasis added).

4 With respect to AMC 18.5.8.050(E)(3), the city council found:

5 “In responding to the safe and accessible pedestrian facilities  
6 criterion, [Casita] explains that there are currently no sidewalks  
7 along Highway 99 N[orth] on either side of the street between the  
8 subject properties’ frontage and Schofield Street to the south which  
9 limits pedestrian access and safety for north Ashland residents.  
10 [Casita] proposes street frontage improvements including sidewalk  
11 improvements which comply with the design and safety criteria of  
12 ODOT as the governing jurisdiction, and as such asserts that this  
13 criterion is satisfied.

14 “There are no interior streets proposed within the development,  
15 however the site circulation system includes pedestrian connections  
16 between the public sidewalks along the highway, the apartments,  
17 parking areas and other areas of the site. These include two ADA-  
18 compliant multi-use paths through the landscape open spaces into  
19 the site from the north and the south along the highway frontage for  
20 pedestrians and bicycles, including the main entrance driveway with  
21 adjacent sidewalks that are also ADA-compliant.

22 “To the south of the project, towards Ashland, the width of the  
23 highway is restricted to the single travel lane, bike lane and shoulder  
24 by the railroad overpass. The railroad overpass currently lacks any  
25 sidewalk or lighting, but a shared bicycle and pedestrian path with  
26 overhead lighting is proposed. As an extra measure of caution, a  
27 vertical barrier will be provided at the curb. This will provide a safer,  
28 well-lit area increasing the comfort and safety over what currently  
29 exists. [Casita] *emphasizes that ODOT Engineering staff have been*  
30 *actively involved in this design, and has confirmed that all the*  
31 *improvements conform to ODOT standards.*

32 “The application materials further explain that [Casita] will be  
33 providing a high-visibility crosswalk across Highway 99 N[orth]  
34 with [RRFBs]. The application further notes that mid-block

1 crosswalks are dangerous, and RRFBs increase the safety of  
2 pedestrians and cyclists crossing when compared to a traffic signal.  
3 The application materials go on to indicate that studies have shown  
4 that RRFBs increase motorist yielding rates because the lights are  
5 controlled by the pedestrian's presence and will not go off until they  
6 are safely out of the crosswalk. The proposed RRFB crossing is to  
7 be placed between North Main Street at Schofield Street, between  
8 the north- and south-bound bus stops. The RRFB crossing will  
9 provide a safe pedestrian and bicyclist crossing for all the residents  
10 in north Ashland where none existed before, both to access to Grand  
11 Terrace and to cross the highway to access these bus stops safely.  
12 [Casita] notes that local ODOT authorities have given preliminary  
13 approval to install a crossing with RRFBs in this location, and that  
14 final approval will be subject to review of the final engineered  
15 designs by the regional office in Salem. The developer will be  
16 responsible for the design, cost and installation of the crosswalk and  
17 RRFBs. A condition has been included below requiring that the final  
18 location and design of the RRFB crossing be detailed in the Final  
19 Plan submittal." Record 20-21 (emphasis added).

20 Petitioner argues that the city council's findings that AMC  
21 18.5.8.050(E)(2) and (3) are satisfied are inadequate and not supported by  
22 substantial evidence. Petitioner argues that the city council's findings that the  
23 proposed bicycle and pedestrian facilities satisfy those standards are inadequate  
24 and not supported by substantial evidence where neither Casita's Access Safety  
25 Evaluation nor the findings identify the ODOT standards that they applied to  
26 reach those conclusions.

27 We agree with the city's response that the city council was not required to  
28 list and apply ODOT's standards. In response, the city points to a letter that  
29 ODOT submitted into the record stating that ODOT reviewed Casita's TIA,  
30 stating that the city's street design standards exceed ODOT's standards,

1 acknowledging that exceptions would be required in some areas, and approving  
2 the proposed improvements with certain refinements.<sup>5</sup> Record 481. The city

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<sup>5</sup> ODOT's letter provides, as relevant here:

“ODOT has worked with the City and [Casita] to try to find solutions which work for all parties. ODOT supports the proposal with conditions described below.

“i. ODOT has reviewed the [TIA] prepared by Sandow Engineering and generally agree with the findings, believing that the analysis satisfies the requirements of the Transportation Planning Rule related to Plan and Land Use Amendments (OAR 660-012-0060).

“ii. ODOT supports frontage improvements consistent with City of Ashland standards and the adopted Transportation System Plan, which exceed minimum standards identified in the State Highway Design Manual. We understand Right-of-Way constraints will require exceptions in certain locations.

“iii. The most recent set of civil plans will need to be further refined prior to approval by ODOT. City of Ashland Municipal Code 18.4.6.030 requires installation of public improvements prior to issuance of building permits. No disturbance or construction within the State Right of Way is permitted until [Casita] has obtained an ODOT misc./utility permit. Legal access will not be granted to Highway 99 North until [Casita] has obtained an ODOT reservation indenture and access permit.

“iv. Refined civil plans will need to incorporate:

“a. Access points and curb cuts along the frontage improvements at existing accesses[, and]

1 council also imposed conditions of approval requiring Casita to (1) submit final  
2 civil plans for the street improvements for review and approval by ODOT at the  
3 final plan approval stage, (2) provide engineered construction drawings for the  
4 required street improvements for review and approval by ODOT, and (3) obtain  
5 any necessary permit approvals from ODOT prior to any work within the right-  
6 of-way. Record 34-35, 37. In light of ODOT's letter, a reasonable person could  
7 find that safe and accessible bicycle and pedestrian facilities, according to  
8 ODOT's standards, can and will be constructed. The city council's findings that  
9 AMC 18.5.8.050(E)(2) and (3) are satisfied are adequate and supported by  
10 substantial evidence.

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“b. Details related to the striped pedestrian crossing and [RRFB] in the vicinity of North Main Street.

“v. ODOT has had discussions with the City, [Casita] and Rogue Valley Transit District about the proposed bus pull out and bus stop within the State Right of Way and is supportive pending review and approval of final civil plans.

“vi. ODOT's Region 3 staff supports the proposal for a striped crossing and RRFB. ODOT Region 3 Traffic evaluated a number of potential locations, and recommend a location south of the Subject Property near North Main Street. Approval from the State Traffic Engineer in Salem will be required once civil plans have been reviewed and accepted by local staff.” Record 481.

1                   **2.     *Nollan/Dolan Findings***

2           As explained above, Casita’s application proposed sidewalk improvements  
3 along the property’s frontage on Highway 99 North and beyond the property’s  
4 frontage to connect to existing sidewalks north and south. In addition, the  
5 application proposed a new bus shelter and bus pull-out lane, and an RRFB  
6 crosswalk. The city council imposed conditions of approval incorporating all of  
7 the application’s proposals and setting out the required improvements along  
8 different segments of Highway 99 North. Record 32, 35-36.

9           Petitioner argues that the city council’s findings are inadequate because  
10 they do not address the requirements of the United States Supreme Court  
11 decisions *Nollan v. California Coastal Comm’n*, 483 US 825, 107 S Ct 3141, 97  
12 L Ed 2d 677 (1987), and *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309,  
13 129 L Ed 2d 304 (1994). In *Nollan*, the Court held that “a permit condition that  
14 serves the same legitimate police-power purpose as a refusal to issue the permit  
15 [is] not \* \* \* a taking if the refusal to issue the permit would not constitute a  
16 taking.” 483 US at 836. *Nollan* requires an “essential nexus” between a permit  
17 condition and the public purpose the condition is intended to further. In *Dolan*,  
18 the Court discussed the required relationship between a development and a  
19 proposed exaction, concluding:

20           “[A] term such as ‘rough proportionality’ best encapsulates what we  
21 hold to be the requirement of the Fifth Amendment. No precise  
22 mathematical calculation is required, but the city must make some  
23 sort of individualized determination that the required dedication is  
24 related both in nature and extent to the impact of the proposed

1 development.” 512 US at 391.

2 In *Koontz v. St. Johns River Water Mgmt. Dist.*, the Court explained that  
3 *Nollan* and *Dolan* “reflect an overarching principle, known as the  
4 unconstitutional conditions doctrine, that vindicates the Constitution’s  
5 enumerated rights by preventing the government from coercing people into  
6 giving them up.” 570 US 595, 604, 133 S Ct 2586, 186 L Ed 2d 697 (2013). In  
7 other words, the requirements of *Nollan* and *Dolan* protect land use permit  
8 applicants from being *coerced* into giving up their Fifth Amendment right to just  
9 compensation for property the government takes.

10 We agree with the city that those requirements do not apply where, as here,  
11 the applicant proposes the improvements themselves and the local government  
12 merely accepts that proposal and memorializes it in the decision as a condition of  
13 approval. Accordingly, petitioner’s *Nollan/Dolan* argument provides no basis for  
14 reversal or remand.

15 **3. Inconsistent Findings**

16 We understand petitioner to argue that the city’s findings are inconsistent  
17 because they simultaneously (1) require Casita to construct certain improvements  
18 along and beyond the property’s frontage on Highway 99 North and (2) conclude  
19 that it would be impossible for Casita to construct those improvements. The city  
20 found:

21 “[P]hysical barriers are present for approximately 2,218-feet of the  
22 approximately 3,088-feet of frontage proposed to be improved as  
23 part of this annexation. \* \* \* [T]he combination of unique and

1 unusual aspects makes the installation of city-standard  
2 improvements impossible when private ownership of much of the  
3 abutting property is taken into consideration.” Record 67.

4 Petitioner misreads the above-quoted findings. The city did not find that it  
5 would be impossible for Casita to construct the proposed improvements. Rather,  
6 the city found that it would be impossible for Casita to construct improvements  
7 that comply with the street design standards in AMC 18.4.6.040 in some cases.  
8 That is in part why the city council granted the exception to those standards  
9 pursuant to AMC 18.4.6.020(B). There is no inconsistency.

#### 10 **4. Curb Cuts and RRFB Crosswalk**

11 The city council relied on Casita’s proposal to construct an RRFB  
12 crosswalk on Highway 99 North to conclude that AMC 18.5.8.050(E)(3) is  
13 satisfied. Petitioner argues that certain drawings in the record do not depict the  
14 RRFB crosswalk among the proposed improvements. Petition for Review 20  
15 (citing Record 707-08). Petitioner also argues that the drawings show a  
16 continuous sidewalk along Highway 99 North with no curb cuts, which,  
17 petitioner argues, will cut off access to several existing businesses. We  
18 understand petitioner to argue that, for those reasons, the city’s conclusion that  
19 the proposed pedestrian facilities will be safe and accessible, as required by AMC  
20 18.5.8.050(E)(3), is not supported by substantial evidence.

21 First, AMC 18.5.8.050(E)(3) does not require that pedestrian facilities be  
22 “safe and accessible” generally. Rather, the provision requires that pedestrian  
23 facilities be safe and accessible “according to the safety analysis and standards

1 of the governing jurisdiction of the facility or street.” We conclude above that  
2 substantial evidence supports the city’s conclusion that safe and accessible  
3 pedestrian facilities, according to ODOT’s standards, can and will be constructed.  
4 Accordingly, any arguments that the proposed pedestrian facilities will not be  
5 safe and accessible, as a general matter, provide no basis for reversal or remand.

6 Second, to the extent that petitioner is arguing that curb cuts and an RRFB  
7 crosswalk are required by ODOT’s standards, we agree with the city that a  
8 reasonable person could find that they can and will be constructed. We agree with  
9 the city that the drawings to which petitioner refers are preliminary. As petitioner  
10 itself concedes, the drawings contain a note which reads, “Plan created by others  
11 during annexation applicant and approval process. Shown for reference only.”  
12 Record 707-08. The drawings also contain text which reads, “Not for  
13 construction.” Record 707-09. In addition, unlike other drawings in the record,  
14 the drawings to which petitioner refers are not stamped by a registered  
15 professional engineer. As explained above, ODOT submitted a letter approving  
16 the proposed improvements with certain refinements. That letter provides:

17 “ODOT supports the proposal with conditions described below.

18 “\* \* \* \* \*

19 “iv. Refined civil plans will need to incorporate:

20 “a. Access points and curb cuts along the frontage  
21 improvements at existing accesses[, and]



1                   “b. Details related to the striped pedestrian crossing and  
2                   [RRFB] in the vicinity of North Main Street.” Record  
3                   481.

4 The city council imposed conditions of approval setting out the required  
5 improvements along different segments of Highway 99 North, including an  
6 RRFB crosswalk. Record 35. The city council also imposed conditions of  
7 approval requiring Casita to (1) submit final civil plans for the street  
8 improvements for review and approval by ODOT at the final plan approval stage,  
9 (2) provide engineered construction drawings for the required street  
10 improvements for review and approval by ODOT, and (3) obtain any necessary  
11 permit approvals from ODOT prior to any work within the right-of-way. Record  
12 34-35, 37. In order to satisfy the conditions of approval, Casita will be required  
13 to construct ODOT-approved curb cuts and an RRFB crosswalk. The city  
14 council’s conclusion that the proposed pedestrian facilities satisfy AMC  
15 18.5.8.050(E)(3) is supported by substantial evidence.

16                   **5. Effectiveness of RRFB Crosswalks**

17                   With respect to the proposed RRFB crosswalk, the city council found:

18                   “The application materials further explain that [Casita] will be  
19                   providing a high-visibility crosswalk across Highway 99 N[orth]  
20                   with [RRFBs]. The application further notes that *mid-block*  
21                   *crosswalks are dangerous, and RRFBs increase the safety of*  
22                   *pedestrians and cyclists crossing when compared to a traffic signal.*  
23                   The application materials go on to indicate that studies have shown  
24                   that RRFBs increase motorist yielding rates because the lights are  
25                   controlled by the pedestrian’s presence and will not go off until they  
26                   are safely out of the crosswalk. The proposed RRFB crossing is to  
27                   be placed between North Main Street at Schofield Street, between

1 the north- and south-bound bus stops. The RRFB crossing will  
2 provide a safe pedestrian and bicyclist crossing for all the residents  
3 in north Ashland where none existed before, both to [provide] access  
4 to Grand Terrace and to cross the highway to access these bus stops  
5 safely. [Casita] notes that local ODOT authorities have given  
6 preliminary approval to install a crossing with RRFBs in this  
7 location, and that final approval will be subject to review of the final  
8 engineered designs by the regional office in Salem. The developer  
9 will be responsible for the design, cost and installation of the  
10 crosswalk and RRFBs. A condition has been included below  
11 requiring that the final location and design of the RRFB crossing be  
12 detailed in the Final Plan submittal.” Record 21 (emphasis added).

13 In concluding that RRFB crosswalks are more effective than traffic lights, the  
14 city council relied on Casita’s representation that

15 “RRFB’s increase the safety of pedestrians and cyclists crossing  
16 when compared to a traffic signal, and mid-block crosswalks are  
17 dangerous. Studies have shown that RRFB’s increase motorist  
18 yielding rates because the lights are controlled by the pedestrians[’]  
19 presence and will not go off until they are safely out of the  
20 crosswalk.”<sup>6</sup> Record 1176.

21 Petitioner argues that the city council’s conclusion that RRFB crosswalks  
22 are more effective than traffic lights is not supported by substantial evidence.  
23 Petitioner points to studies that it submitted into the record indicating that traffic  
24 lights have higher yield rates than RRFB crosswalks and that the former are  
25 therefore more effective than the latter. Given those studies, petitioner argues that

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<sup>6</sup> As far as we know, the studies to which Casita referred were not submitted into the record.

1 a reasonable person would not rely on Casita's mere representations to conclude  
2 that RRFB crosswalks are more effective than traffic lights.

3 As explained above, AMC 18.5.8.050(E)(3) requires that pedestrian  
4 facilities be safe and accessible "according to the safety analysis and standards  
5 of the governing jurisdiction of the facility or street." Petitioner does not explain  
6 how the city council's finding that RRFB crosswalks are more effective than  
7 traffic lights is necessary to support its conclusion that the proposed pedestrian  
8 facilities will be safe and accessible according to ODOT's standards. *Krueger v.*  
9 *Josephine County*, 17 Or LUBA 418, 421 (1989) (citing *Pardee v. City of Astoria*,  
10 17 Or LUBA 226, 240 (1988); *Bonner v. City of Portland*, 11 Or LUBA 40, 52  
11 (1984)). Accordingly, absent any argument that the city's finding is necessary to  
12 support its conclusion, petitioner's argument provides no basis for reversal or  
13 remand.

#### 14 **6. Suggestion in Access Safety Evaluation**

15 The RRFB crosswalk is proposed to be located southeast of the property's  
16 frontage on Highway 99 North. According to petitioner, Casita's Access Safety  
17 Evaluation assumes that bicyclists wishing to access the property from the  
18 southeast will dismount when they reach the crosswalk, walk their bikes south  
19 through the crosswalk, and then walk their bikes northwest on the sidewalk for  
20 .3 miles until they reach the property. Petitioner argues that that assumption is  
21 unsupported by substantial evidence and that bicyclists are more likely to ride  
22 their bikes through the crosswalk and then continue until they reach the property

1 either (1) going the wrong way in the bike lane or (2) riding their bikes on the  
2 sidewalk, both of which are dangerous.

3 Petitioner does not explain how the assumption in Casita’s Access Safety  
4 Evaluation was necessary to support the city council’s conclusion that the  
5 proposed bicycle and pedestrian facilities will be safe and accessible according  
6 to ODOT’s standards. Accordingly, petitioner’s argument provides no basis for  
7 reversal or remand. *Krueger*, 17 Or LUBA at 421.

8 The first subassignment of error is denied.

9 **B. Second Subassignment of Error**

10 The improvements beyond the property’s frontage on Highway 99 North  
11 are proposed to be located within the Highway 99 North right-of-way, which is  
12 owned and managed by ODOT. In the second subassignment of error, petitioner  
13 argues that the city’s conclusion that safe and accessible bicycle and pedestrian  
14 facilities, according to ODOT’s standards, can and will be constructed, as  
15 required by AMC 18.5.8:050(E)(2) and (3), is not supported by substantial  
16 evidence because there is no evidence in the record that it is feasible for Casita  
17 to obtain ODOT’s approval to construct improvements within the right-of-way.

18 In *Bouman v. Jackson County*, we explained:

19 “[W]here a local government finds that approval criteria will be met  
20 if certain conditions are imposed, and those conditions are  
21 requirements to obtain state agency permits, \* \* \* a decision  
22 approving the subject application simply requires that there be  
23 substantial evidence in the record that the applicant is not precluded  
24 from obtaining such state agency permits as a matter of law. There

1 does not have to be substantial evidence in the record that it is  
2 feasible to comply with all discretionary state agency permit  
3 approval standards because the state agency, which has expertise  
4 and established standards and procedures, will ultimately determine  
5 whether those standards are met.” 23 Or LUBA 628, 646-47 (1992).

6 The city council imposed conditions of approval (1) setting out the  
7 required improvements along different segments of Highway 99 North and (2)  
8 requiring Casita to obtain any necessary permit approvals from ODOT prior to  
9 any work within the right-of-way. Record 35-36, 37. If Casita is unable to obtain  
10 ODOT’s approval, it will be unable to proceed with the development. As  
11 explained in *Bouman*, the record need not demonstrate that it is feasible for Casita  
12 to obtain ODOT’s approval to construct the improvements, only that Casita is not  
13 precluded as a matter of law from obtaining such approval. Petitioner does not  
14 contend that Casita is precluded as a matter of law from obtaining ODOT’s  
15 approval. Accordingly, petitioner’s argument provides no basis for reversal or  
16 remand.

17 The second subassignment of error is denied.

18 **C. Third Subassignment of Error**

19 In the third subassignment of error, petitioner argues that “[t]he street  
20 design standards are intended to provide safe pedestrian and bicycle facilities,  
21 and the exception creates dangerous conditions for those same pedestrian and  
22 bicycle facilities[.]” Petition for Review 25-26. Petitioner does not develop this  
23 argument further. AMC 18.4.6.020(B)(1)(a) allows the city to grant an exception  
24 to the street design standards where, as relevant here, “the exception is consistent

1 with the purpose, intent, and background of the street design standards in  
2 subsection 18.4.6.040.A[.]” The city adopted findings addressing that criterion.<sup>7</sup>  
3 Record 70. To the extent that petitioner argues that those findings misconstrue

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<sup>7</sup> The city found:

“AMC 18.4.6.040.A details the purpose and intent of the standards as, *‘This section contains standards for street connectivity and design as well as cross sections for street improvements. The standards are intended to provide multiple transportation options, focus on a safe environment for all users, design streets as public spaces, and enhance the livability of neighborhoods, consistent with the Comprehensive Plan.’* The Planning Commission here finds that the exception is consistent with the intent of providing for multiple transportation options focused on a safe environment for all users and designing streets as public spaces which enhance livability. As noted, both jurisdictional limitations and physical constraints in the form of a larger than normal separation between the development and the right-of-way and the presence within that separation of other properties, significant grade changes, and an identified wetland pose difficulties in providing on-street parking immediately adjacent to the roadway as envisioned in the standard street cross-section, however such on-street parking here would also conflict with the bus pull-out lane being required as a condition of the annexation, and with the desire to better accommodate bicycles along the frontage. The proposal seeks to provide needed housing in the form of smaller and more affordable rental units along a transit corridor with a focus on providing increased connectivity not just for motor vehicles, but also for pedestrians, cyclists and transit users. The Planning Commission concludes that this is in keeping with the purpose and intent of the street standards, consistent with the Comprehensive Plan vision, and ultimately in line with the recently passed Climate Friendly and Equitable Communities rulemaking just adopted by the State of Oregon.” Record 70 (italics in original).

1 AMC 18.4.6.020(B)(1) or AMC 18.4.6.040(A), are inadequate, or are  
2 unsupported by substantial evidence, petitioner does not develop that argument  
3 sufficiently for our review. We will not develop that argument for petitioner.  
4 *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

5 The third subassignment of error is denied.

6 The second assignment of error is denied.

7 **THIRD ASSIGNMENT OF ERROR**

8 **A. Feasibility**

9 AMC 18.4.6.020(B) provides:

10 **“Exceptions and Variances.** Requests to depart from the  
11 requirements of this chapter are subject to chapter 18.5.5, Variances,  
12 except that deviations from section 18.4.6.040, Street Design  
13 Standards, are subject to subsection B.1, Exception to the Street  
14 Design Standards, below.

15 “1. Exception to the Street Design Standards. The approval  
16 authority may approve exceptions to the street design  
17 standards in section 18.4.6.040 if the circumstances in either  
18 subsection B.1.a or b, below, are found to exist.

19 “a. There is demonstrable difficulty in meeting the specific  
20 requirements of this chapter due to a unique or unusual  
21 aspect of the site or proposed use of the site; and the  
22 exception is the minimum necessary to alleviate the  
23 difficulty; and the exception is consistent with the  
24 purpose, intent, and background of the street design  
25 standards in subsection 18.4.6.040.A; and the  
26 exception will result in equal or superior transportation  
27 facilities and connectivity considering the following  
28 factors where applicable:

- 1                    “i. For transit facilities and related improvements,  
2                    access, wait time, and ride experience.
- 3                    “ii. For bicycle facilities, feeling of safety, quality of  
4                    experience (i.e., comfort level of bicycling along  
5                    the roadway), and frequency of conflicts with  
6                    vehicle cross traffic.
- 7                    “iii. For pedestrian facilities, feeling of safety,  
8                    quality of experience (i.e., comfort level of  
9                    walking along roadway), and ability to safely  
10                    and efficiently cross roadway; or
- 11                    “b. There is no demonstrable difficulty in meeting the  
12                    specific requirements, but granting the exception will  
13                    result in a design that equally or better achieves the  
14                    stated purposes, intent, and background of the street  
15                    design standards in subsection 18.4.6.040.A.”  
16                    (Boldface and underscoring in original.)

17                    Again, the improvements beyond the property’s frontage on Highway 99  
18 North are proposed to be located within the Highway 99 North right-of-way,  
19 which is owned and managed by ODOT. In the third assignment of error,  
20 petitioner argues that the city’s conclusion that the application satisfies the  
21 exception standards at AMC 18.4.6.020(B) is not supported by substantial  
22 evidence because there is no evidence in the record that it is feasible for Casita  
23 to obtain ODOT’s approval to construct those improvements. Petitioner argues  
24 that without ODOT’s approval to construct those improvements, the city’s  
25 decision will result in an “island of sidewalk” along the property’s frontage on  
26 Highway 99 North, which will not “result in equal or superior transportation  
27 facilities and connectivity” considering “feeling of safety,” “quality of



1 experience,” “frequency of conflicts with vehicle cross traffic,” and “ability to  
2 safely and efficiently cross roadway,” as required by AMC 18.4.6.020(B).  
3 Petition for Review 28.

4 Again, the city council imposed conditions of approval (1) setting out the  
5 required improvements along different segments of Highway 99 North and (2)  
6 requiring Casita to obtain any necessary permit approvals from ODOT prior to  
7 any work within the right-of-way. Record 35-36, 37. If Casita is unable to obtain  
8 ODOT’s approval, it will be unable to proceed with the development at all. As  
9 explained in *Bouman*, the record need not demonstrate that it is feasible for Casita  
10 to obtain ODOT’s approval to construct the improvements, only that Casita is not  
11 precluded as a matter of law from obtaining such approval. 23 Or LUBA 628.  
12 Petitioner does not contend that Casita is precluded as a matter of law from  
13 obtaining ODOT’s approval. Accordingly, petitioner’s argument provides no  
14 basis for reversal or remand.

15 **B. Contradictory Statements in Application**

16 Petitioner argues that Casita’s application simultaneously states that (1)  
17 various impediments, including physical constraints and private property issues,  
18 limit Casita’s ability to construct sidewalk improvements beyond the property’s  
19 frontage on Highway 99 North and (2) constructing those improvements  
20 nevertheless “can be done.” Petition for Review 28-29. We understand petitioner  
21 to argue that those statements are contradictory and that, given that contradiction,  
22 the city’s conclusion that there is “demonstrable difficulty” in meeting the street

1 design standards, as required by AMC 18.4.6.020(B), is unsupported by  
2 substantial evidence.

3 The statements to which petitioner refers appear in Casita’s submittal.  
4 Record 681-82, 1116-17, 1197-98. Petitioner misreads those statements. Casita  
5 did not state that there were physical and legal impediments to constructing the  
6 *proposed* sidewalk improvements. Rather, Casita stated that there were physical  
7 and legal impediments to constructing sidewalk improvements *that comply with*  
8 *the street design standards in AMC 18.4.6.040*. There is no contradiction.

9 The third assignment of error is denied.

10 **FOURTH ASSIGNMENT OF ERROR**

11 Petitioner’s fourth assignment of error generally relates to the affordable  
12 units that will be provided as part of the development.

13 **A. First Subassignment of Error**

14 The annexation standards at AMC 18.5.8.050(G)(1) and (2) provide:

- 15 “1. The total number of affordable units provided to qualifying  
16 buyers, or to qualifying renters, shall be equal to or exceed 25  
17 percent of the base density as calculated using the unit  
18 equivalency values set forth herein. The base density of the  
19 annexed area for the purpose of calculating the total number  
20 of affordable units in this section shall exclude any  
21 unbuildable lots, parcels, or portions of the annexed area such  
22 as existing streets and associated rights-of-way, railroad  
23 facilities and property, wetlands, floodplain corridor lands,  
24 water resource areas, slopes greater than 35 percent, or land  
25 area dedicated as a public park.

- 1           “a.    Ownership units restricted to households earning at or  
2           below 120 percent of the area median income shall  
3           have an equivalency value of 0.75 unit.
- 4           “b.    Ownership units restricted to households earning at or  
5           below 100 percent of the area median income shall  
6           have an equivalency value of 1.0 unit.
- 7           “c.    Ownership or rental units restricted to households  
8           earning at or below 80 percent of the area median  
9           income shall have an equivalency value of 1.25 unit.
- 10          “2.    As an alternative to providing affordable units per section  
11          18.5.8.050.G.1, above, the applicant may provide title to a  
12          sufficient amount of buildable land for development  
13          complying with subsection 18.5.8.050.G.1.b, above, through  
14          transfer to a non-profit (IRC 501(3)(c)) affordable housing  
15          developer or public corporation created under ORS 456.055  
16          to 456.235.
- 17          “a.    The land to be transferred shall be located within the  
18          project meeting the standards set forth in sections  
19          18.5.8.050.G.5 and 18.5.8.050.G.6.
- 20          “b.    All needed public facilities shall be extended to the area  
21          or areas proposed for transfer.
- 22          “c.    Prior to commencement of the project, title to the land  
23          shall be transferred to the City, an affordable housing  
24          developer which must either be a unit of government, a  
25          non-profit 501(c)(3) organization, or a public  
26          corporation created under ORS 456.055 to 456.235.
- 27          “d.    The land to be transferred shall be deed restricted to  
28          comply with Ashland’s affordable housing program  
29          requirements.
- 30          “e.    Transfer of title of buildable land in accordance with  
31          this subsection shall exempt the project from the

1 development schedule requirements set forth in  
2 subsection 18.5.8.050.G.4.”

3 With respect to AMC 18.5.8.050(G)(1), the city council found:

4 “The application materials explain that the proposed annexation has  
5 a density of more than four residential units, that the development  
6 proposal demonstrates that minimum density can be met with the  
7 future development of the residentially zoned land, and that 25  
8 percent of the base density shall be dedicated as affordable housing.  
9 The proposed units will be rentals under item ‘c’. The application  
10 further asserts that the proposal provides the necessary land area for  
11 the development for the affordable housing required, as the  
12 ordinance stipulates that when utilized as rentals, the affordable  
13 units would be restricted to households earning 80 percent or less of  
14 the area median income (AMI), with an equivalency value of 1.25  
15 units. Twenty-five percent of the 185.625 base density is 46.406  
16 units, which the application equates to 37 affordable units being  
17 required ( $46.406/1.25 = 37.125$ ).” Record 25-26.

18 With respect to AMC 18.5.8.050(G)(2), the city council found:

19 “The application materials indicate that [Casita] intends to create  
20 separate lots for legally separate title to provide the flexibility to  
21 transfer a legal lot to a non-profit. These lots are to have in place all  
22 the infrastructure, driveways, parking and open space. [Casita]  
23 indicates that the land area will be provided and thus the criterion is  
24 satisfied. The application materials further explain that the land to  
25 be transferred is located within the project and the affordable units  
26 will meet the standards set forth in AMC 18.5.8.050.G.5 and G.6  
27 below. The land area is proposed as two of the building pads in the  
28 proposed Grand Terrace development as illustrated on the  
29 preliminary property boundary map provided. The necessary  
30 facilities for the area of the affordable housing units to be transferred  
31 will be extended to the building pad area. The common area  
32 improvements include the utility infrastructure, sidewalks, curbs,  
33 gutters, parking lot improvements, shade trees for the development  
34 of the affordable housing units. The building pad areas for the  
35 affordable housing are to be the same as the building pad areas of

1 the market rate building areas. The title to the land area for  
2 development of the affordable housing units will be transferred to  
3 the city, an affordable housing development or other appropriate  
4 non-profit organization or public corporation that meets the ORS  
5 456.055 to 456.235 prior to the commencement of the project, and  
6 the land transferred will be deed restricted to comply with the  
7 affordable housing program requirements.” Record 26-27.

8 The city council explained:

9 “[U]ncertainty over whether the developer will provide the required  
10 affordable units themselves or dedicate the required land area to an  
11 affordable housing provider poses some potential complication  
12 \* \* \*. \* \* \* The City Council has included a condition of approval  
13 requiring that the Final Plan submittal make clear how the  
14 affordability requirements are to be addressed, and that if [Casita]  
15 opts to dedicate land to an affordable housing provider, rather than  
16 constructing them themselves or with a provider partner, that the  
17 dedication comply with the requirements of AMC 18.5.8.050.G.2  
18 and include adequate land area to accommodate the required number  
19 of 47 affordable ownership units at 100 percent AMI on the final  
20 plat. A condition has also been included below to require that a deed  
21 restriction be recorded on the property to require that the  
22 affordability requirements for annexation be addressed with any  
23 future development of the site.” Record 30.

24 Condition 7 provides, in part:

25 “[P]rior to final approval and annexation of the property, [Casita]  
26 shall provide:

27 “\* \* \* \* \*

28 “e. A deed restriction agreement that development of the  
29 property shall comply with the affordability requirements for  
30 annexations in AMC 18.5.8.050.G including that where the  
31 required number of affordable units is fractional it shall be  
32 rounded up, and that should [Casita] opt to dedicate land area  
33 to an affordable housing provider, it will require that the  
34 dedication comply with the requirements of AMC

1 18.5.8.050.G.2 and dedicate sufficient land area to  
2 accommodate 47 ownership units affordable at 100 percent  
3 AMI.” Record 33-34.

4 In *Rhyne v. Multnomah County*, we explained:

5 “Where the evidence presented during the first stage approval  
6 proceedings raises questions concerning whether a particular  
7 approval criterion is satisfied, a local government essentially has  
8 three options potentially available. First, it may find that although  
9 the evidence is conflicting, the evidence nevertheless is sufficient to  
10 support a finding that the standard is satisfied or that feasible  
11 solutions to identified problems exist, and impose conditions if  
12 necessary. Second, if the local government determines there is  
13 insufficient evidence to determine the feasibility of compliance with  
14 the standard, it could on that basis deny the application. Third, if the  
15 local government determines that there is insufficient evidence to  
16 determine the feasibility of compliance with the standard, instead of  
17 finding the standard is not met, it may defer a determination  
18 concerning compliance with the standard to the second stage. In  
19 selecting this third option, the local government is not finding all  
20 applicable approval standards are complied with, or that it is feasible  
21 to do so, as part of the first stage approval (as it does under the first  
22 option described above). Therefore, the local government must  
23 assure that the second stage approval process to which the decision  
24 making is deferred provides the statutorily required notice and  
25 hearing, even though the local code may not require such notice and  
26 hearing for second stage decisions in other circumstances.” 23 Or  
27 LUBA 442, 447-48 (1992) (footnotes and citation omitted).

28 In the first subassignment of error, petitioner argues that, by imposing  
29 Condition 7(e), which allows Casita to determine whether it wishes to comply  
30 with AMC 18.5.8.050(G)(1) or (2) at a later time, the city council improperly  
31 deferred findings of compliance with either AMC 18.5.8.050(G)(1) or (2) to a  
32 subsequent proceeding that does not provide an opportunity for notice or public

1 participation, contrary to *Rhyne*. The city responds, initially, that petitioner failed  
2 to preserve this argument below and is precluded from raising it for the first time  
3 at LUBA. ORS 197.835(3); ORS 197.195(3); ORS 197.797(1). The so-called  
4 “raise or waive it” doctrine applies only to quasi-judicial proceedings. *Columbia*  
5 *Pacific v. City of Portland*, 76 Or LUBA 15, 24-25 (2017), *rev’d and rem’d on*  
6 *other grounds*, 289 Or App 739, 412 P3d 258, *rev den*, 363 Or 390 (2018); *DLCD*  
7 *v. Columbia County*, 24 Or LUBA 32, 36, *aff’d*, 117 Or App 207, 843 P2d 996  
8 (1992); *Parmenter v. Wallowa County*, 21 Or LUBA 490, 492 (1991).  
9 Throughout its brief, the city takes the position that the challenged decision is  
10 legislative. We explained above that we assume for purposes of this opinion that  
11 the decision is legislative. Accordingly, we agree with petitioner that it is not  
12 precluded from raising this argument for the first time at LUBA.

13         However, we reject petitioner’s argument on the merits. We do not  
14 understand the city council to have concluded, as petitioner argues, that there is  
15 insufficient evidence to determine Casita’s compliance with either AMC  
16 18.5.8.050(G)(1) or (2). We do not understand Condition 7(e) to be the city  
17 council’s attempt to defer a determination of the feasibility of Casita’s  
18 compliance with either AMC 18.5.8.050(G)(1) or (2) to a second stage. Rather,  
19 we understand the city council to have concluded that “the evidence \* \* \* is  
20 sufficient to support a finding that the standard is satisfied, or that feasible  
21 solutions to identified problems exist” under the first *Rhyne* option. 23 Or LUBA  
22 at 447. In other words, we understand the city council to have concluded that it

1 is feasible to meet either AMC 18.5.8.050(G)(1) or (2) and to leave it to Casita  
2 to choose the path.

3 The first subassignment of error is denied.

4 **B. Second Subassignment of Error**

5 AMC 18.5.8.050(G)(3) provides:

6 “The affordable units shall be comparable in bedroom mix with the  
7 market rate units in the development.

8 “a. The number of bedrooms per dwelling unit in the affordable  
9 units within the residential development shall be in equal  
10 proportion to the number of bedrooms per dwelling unit in the  
11 market rate units within the residential development. This  
12 provision is not intended to require the same floor area in  
13 affordable units as compared to market rate units. The  
14 minimum square footage of each affordable unit shall comply  
15 with the minimum required floor area based as set forth in  
16 Table 18.5.8.050.G.3, or as established by the U.S.  
17 Department of Housing and Urban Development (HUD) for  
18 dwelling units developed under the HOME program.”

19 The minimum floor area in AMC Table 18.5.8.050(G)(3) for studios is 350  
20 square feet, and the minimum floor area in AMC Table 18.5.8.050(G)(3) for one-  
21 bedroom units is 500 square feet.

22 Casita’s application proposes 230 apartments in 10 buildings. “Each of the  
23 buildings are proposed to have twenty, 499-square foot, one-bedroom units and  
24 three, 250 square foot studio units.” Record 1506. The city council found:

25 “The application materials indicate that the required affordable units  
26 are proposed to be developed by the developer or by others, and that  
27 in either case the units will be comparable to the proposed one  
28 bedroom deluxe and micro-studio units. The proportion of



1 affordable units and the unit types and sizes will be similar in  
2 proportion to the market rate units as detailed in Table  
3 18.5.8.050.G.3.” Record 27.

4 In the second subassignment of error, petitioner argues that the city council  
5 improperly construed AMC 18.5.8.050(G)(3) in concluding that Casita’s  
6 application satisfies that provision. Petitioner argues that an application that  
7 proposes affordable units with square footages lower those set forth in AMC  
8 Table 18.5.8.050(G)(3) does not comply with AMC 18.5.8.050(G)(3).

9 The city does not dispute that an application that proposes affordable units  
10 with square footages lower than those set forth in AMC Table 18.5.8.050(G)(3)  
11 does not comply with AMC 18.5.8.050(G)(3). Instead, the city responds that  
12 Casita will be required to demonstrate compliance with AMC 18.5.8.050(G)(3)  
13 at the final plan approval stage under the city’s performance standards option.  
14 The city also argues that Casita “will be required to meet the conditions of  
15 approval included in the final decision of Respondent’s Council with respect to  
16 the minimum square footage required by Respondent’s code.” Respondent’s  
17 Brief 37.

18 We do not understand either of the city’s arguments. Under AMC  
19 18.3.9.040(B)(5), final plan approval requires the city to demonstrate “substantial  
20 conformance with the outline plan.” The city does not identify a provision of the  
21 AMC, or a condition of approval, that requires Casita to demonstrate compliance  
22 with AMC 18.5.8.050(G)(3) at the final plan approval stage, and we are aware of  
23 none.

1           Moreover, the city council did not, as the city argues, conclude that Casita  
2 will be required to demonstrate compliance with AMC 18.5.8.050(G)(3) at the  
3 final plan approval stage. The city council concluded that Casita’s application  
4 satisfied AMC 18.5.8.050(G)(3) because it proposed affordable units with square  
5 footages “comparable” or “similar” to those set forth in AMC Table  
6 18.5.8.050(G)(3). Record 27. Accordingly, we agree with petitioner that the city  
7 council’s interpretation of AMC 18.5.8.050(G)(3) as being satisfied where the  
8 proposed square footages are “comparable” or “similar” to those set forth in  
9 AMC Table 18.5.8.050(G)(3) is inconsistent with the express language of AMC  
10 18.5.8.050(G)(3), which provides that the proposed square footages “shall”  
11 comply with those set forth in AMC Table 18.5.8.050(G)(3). ORS 197.829(1)(a).

12           The second subassignment of error is sustained.

13           The fourth assignment of error is sustained, in part.

14           The city’s decision is remanded.

## Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2023-007 on May 9, 2023, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Douglas M. McGeary  
Acting City Attorney, City of Ashland  
20 E Main St  
Ashland, OR 97520

Sean T. Malone  
Attorney at Law  
259 E. 5th Avenue, Suite 200-C  
Eugene, OR 97401

Dated this 9th day of May, 2023.



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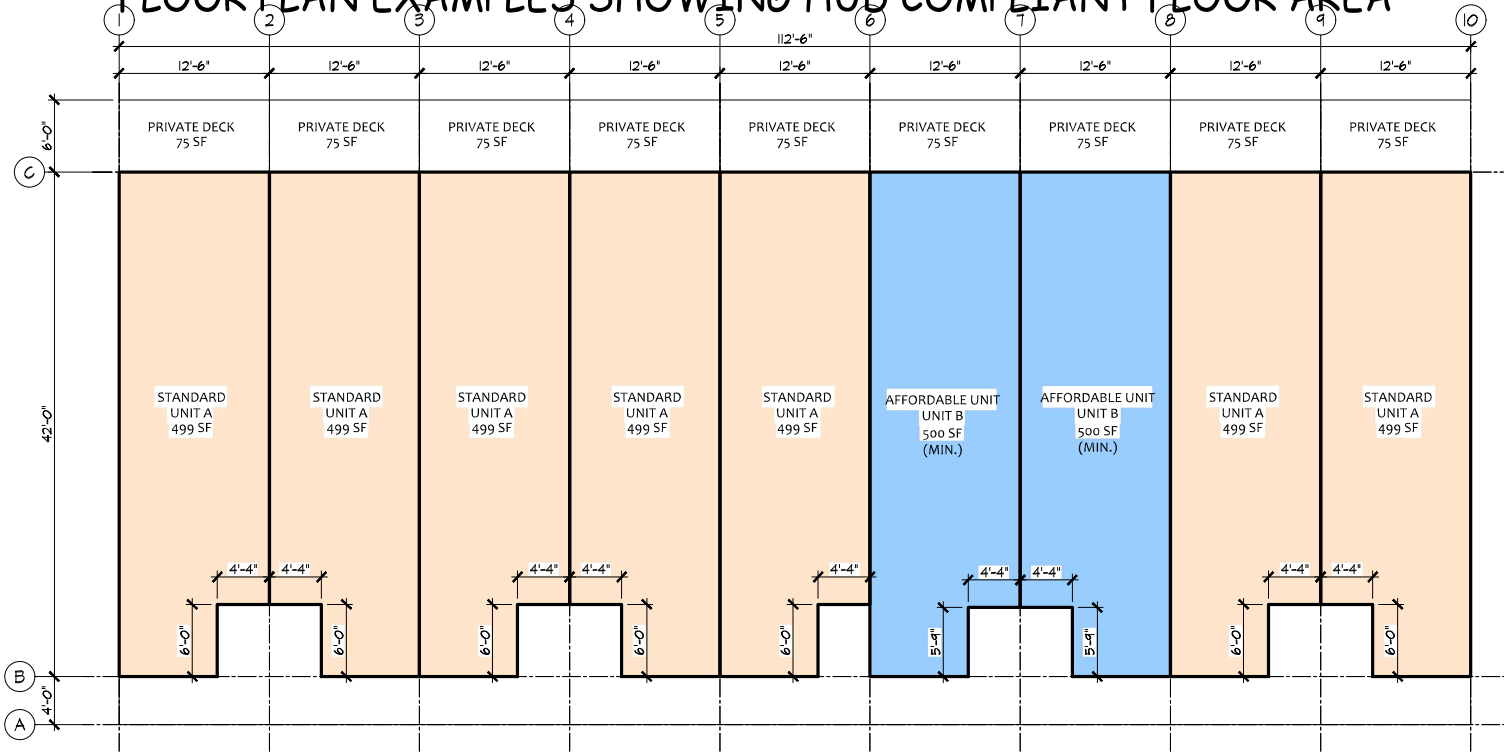
Erin Pence  
Executive Support Specialist

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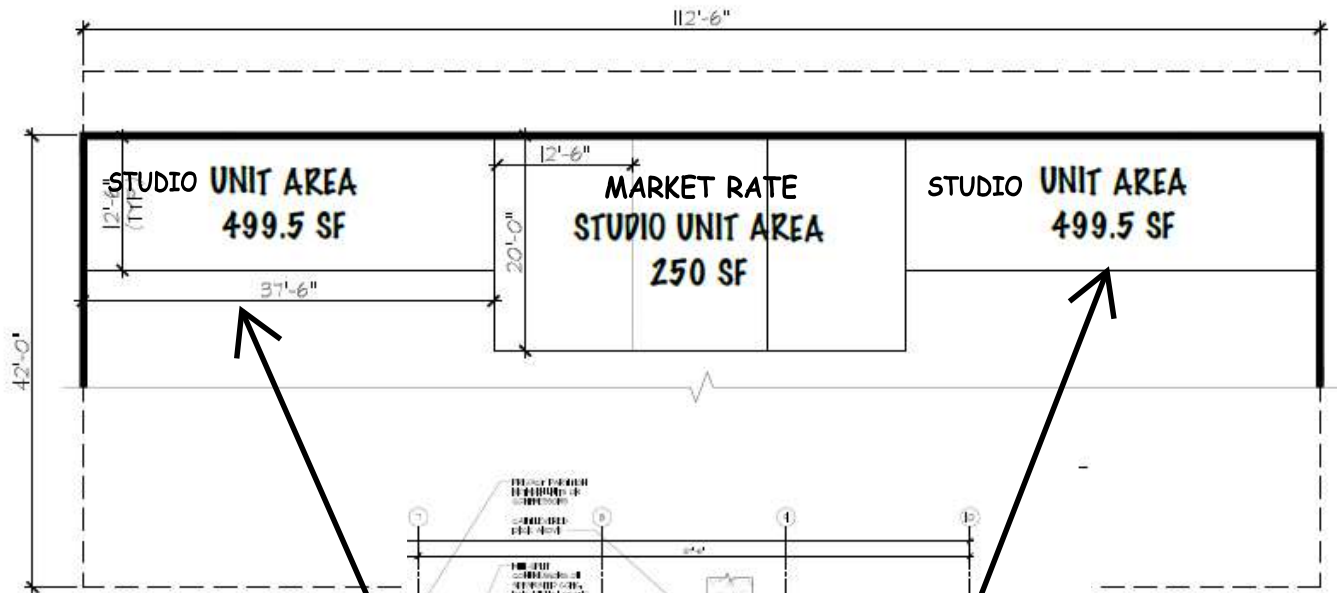
Jessica Loftis  
Executive Support Specialist



# FLOOR PLAN EXAMPLES SHOWING HUD COMPLIANT FLOOR AREA



GROUND FLOOR / SECOND FLOOR SCHEMATIC  
UNIT PLAN SUMMARY



BASEMENT FLOOR SCHEMATIC  
UNIT PLAN SUMMARY



18.VT.40.1 Site Plan 03.01.22.dwg  
11/17/2022

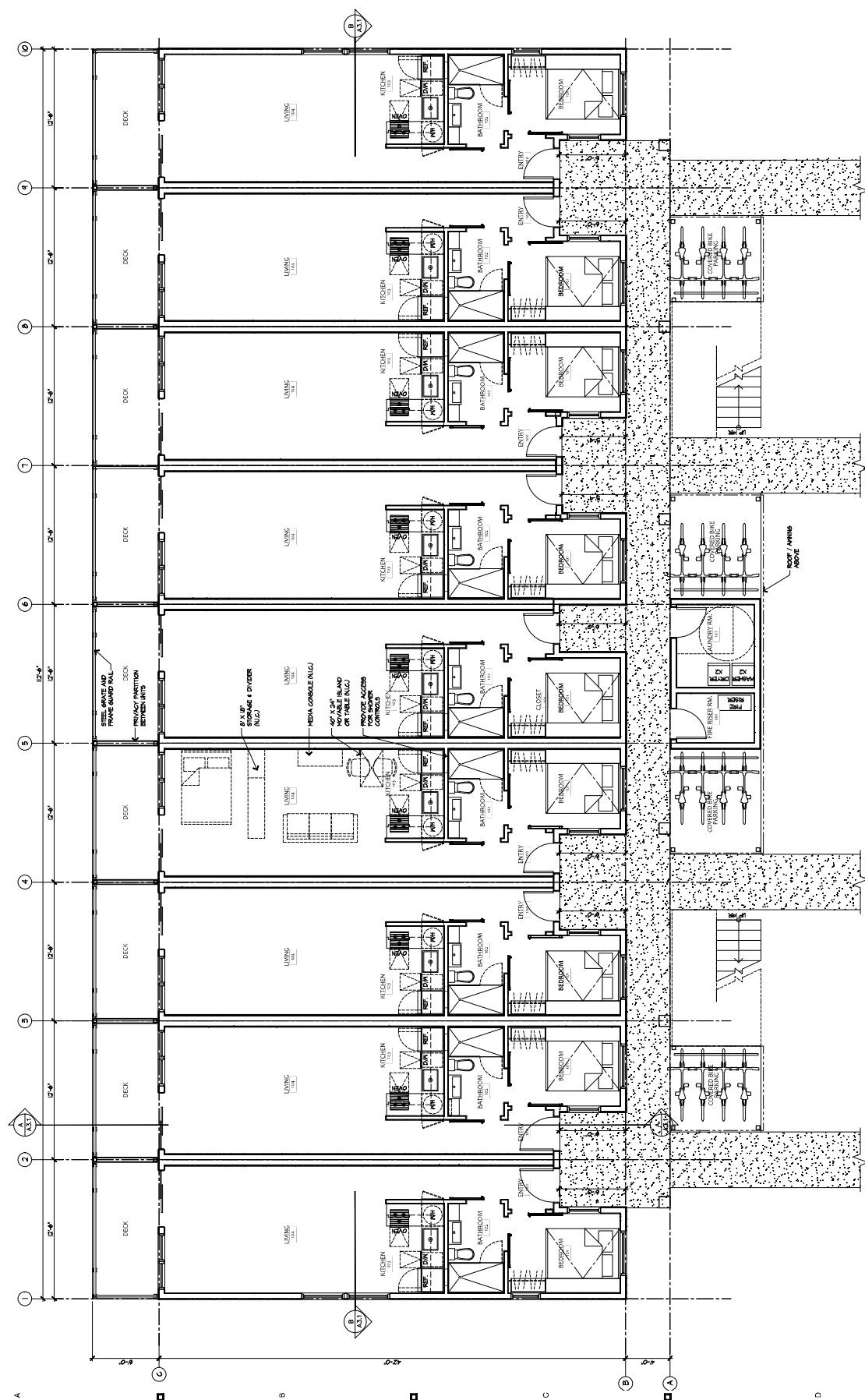




APPROVAL BY:	DATE:
DESIGNED BY:	04/27/17 BY JT
CHECKED BY:	07/06/17 LMT EKSON
DATE:	07/06/17 LMT EKSON
REVISION:	07/06/17 LMT EKSON
PROJECT NO.:	2017048
DRAWN BY:	JAK
SCALE:	AS SHOWN

**CONCEPTUAL 1ST FLOOR PLAN**

**A1.1**  
 PRELIMINARY  
 NOT FOR CONSTRUCTION



**FIRST FLOOR PLAN**  
 SCALE: 1/4" = 1'-0"

NET COMPLAINT AREA = 500 SF  
 STAIRWAY NET AREA = 441 SF



PROJECT NO.	27324-B
DATE	11/20/16
DESIGNER	JRC
DRAWN BY	JRC
CHECKED BY	JRC
SCALE	1/4" = 1'-0"
DATE	11/20/16
PROJECT NO.	27324-B
DATE	11/20/16
DESIGNER	JRC
DRAWN BY	JRC
CHECKED BY	JRC

**A1.3**  
**BASEMENT FLOOR PLAN**  
 PRELIMINARY  
 NOT FOR CONSTRUCTION

5

4

3

2

1

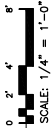
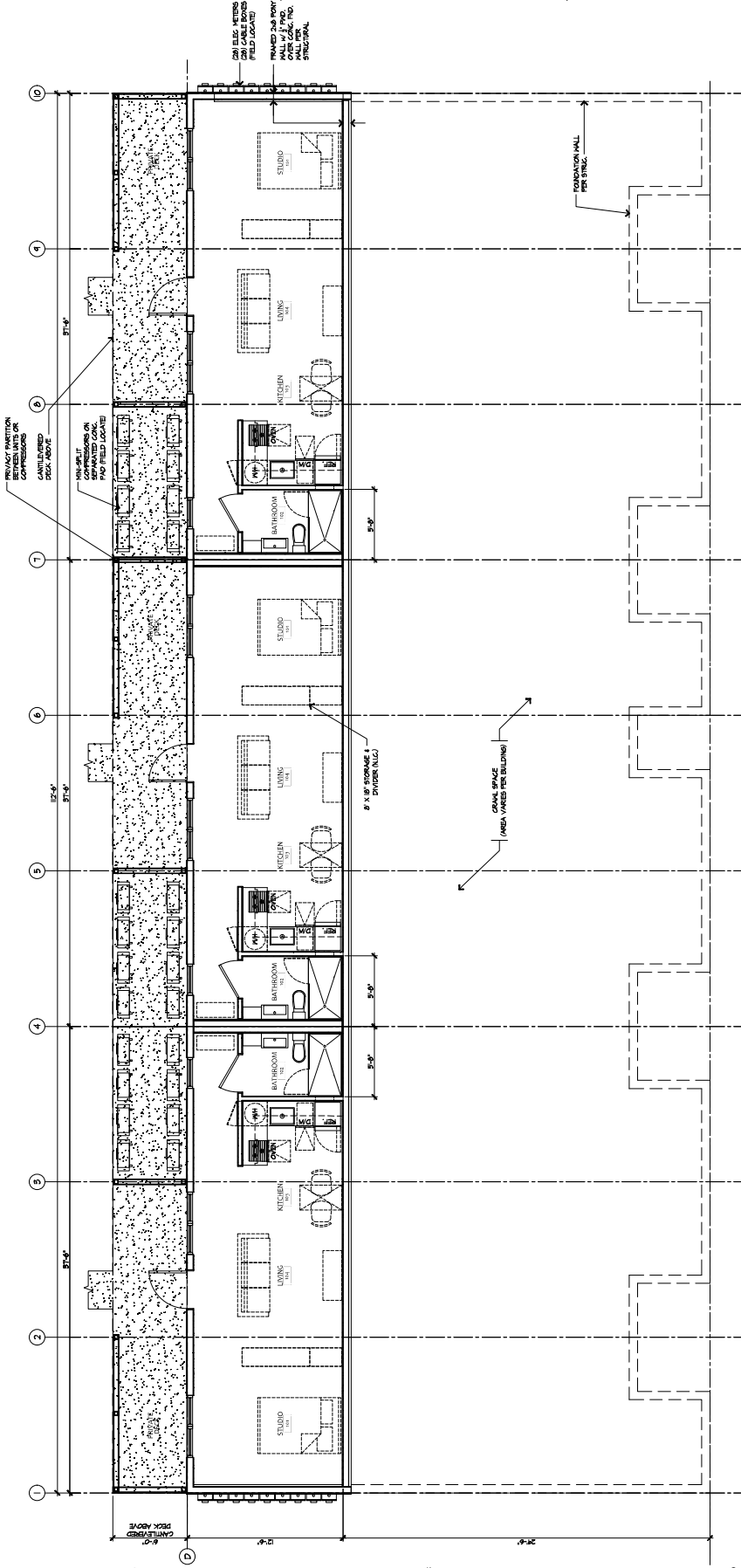
1

2

3

4

5



**BASEMENT FLOOR PLAN**  
 SCALE: 1/4" = 1'-0"  
 STUDIO UNIT 468/73 SF

5

4

3

2

1

1

2

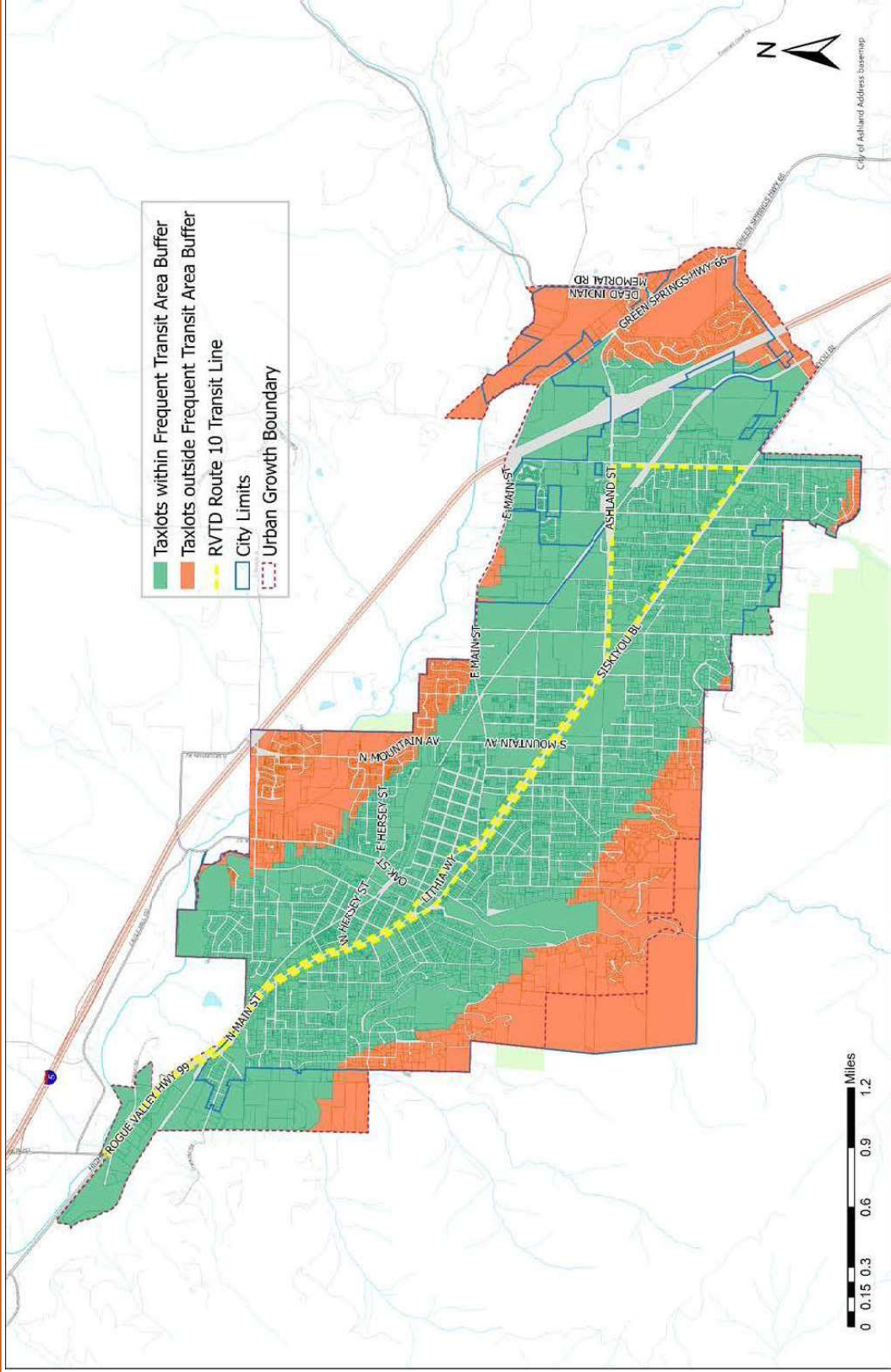
3

4

5



Based on new "Climate Friendly & Equitable Community" rules adopted by the State of Oregon, beginning on **January 1, 2023** the cities in Oregon's eight metro areas (including Ashland) will no longer be able to enforce any minimum parking requirements within a ½-mile buffer of frequent transit routes (i.e. the area in green on the map below, which is within ½-mile of RVTD's Route 10). In addition, cities can no longer mandate parking for small units (<750 s.f.), affordable units, single room occupancy housing, shelters, child care facilities, or facilities for people with disabilities or shelters, and cities can no longer require more than one parking space per dwelling unit for residential developments with more than one dwelling unit.





**Fwd: PA-T3-2022-00004 remand**

1 message

**Robert Kendrick** <bobk213@icloud.com>  
To: Amy Gunter <amygunter.planning@gmail.com>

Tue, Jul 18, 2023 at 2:10 PM

Sent from my iPad

Begin forwarded message:

**From:** Derek Severson <derek.severson@ashland.or.us>  
**Date:** June 27, 2023 at 3:35:50 PM PDT  
**To:** Robert Kendrick <bobk213@icloud.com>  
**Subject:** Re: PA-T3-2022-00004 remand

Bob,

The Climate Friendly &amp; Equitable Communities rules, adopted by the state in July of 2022, are such that:

- Cities can no longer mandate parking within ½ mile of frequent transit. That rule took effect on January 1, 2023 and is the basis for the map I sent you previously. We are not enforcing any parking mandates in areas within ½ mile of frequent transit (RVTD Routes 10 & 17) even though parking regulations remain in our code.
- In addition, cities can no longer mandate parking for small units (<750 s.f.), affordable units, single room occupancy housing, shelters, child care facilities, or facilities for people with disabilities or shelters. Ashland will also no longer require more than one parking space per dwelling unit for residential developments with more than one dwelling unit.
- As a next step, cities have to either change their codes to eliminate parking mandates city-wide or adopt new rules from a menu of options. Ashland has received an extension for this step and we are scheduled to adopt new rules by the end of the year. We are auditing codes relative to parking now in preparation for that process.

Elimination of parking mandates citywide is discussed in the Oregon Administrative Rules (OAR) in OAR 660-012-420. The menu of other options are in OAR 660-012-425 to -450. See <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3062>.

The state's climate friendly page has a lengthy list of explanatory materials on parking at <https://www.oregon.gov/lcd/CL/Pages/CFEC.aspx> under "Parking Reform & Guidance."

Just to be clear, *since I fully agree this is all confusing*, none of this at this point is in city codes - OAR 660-012-440(3) under the new rules says that cities may not enforce parking mandates (i.e. the requirements currently in the cities' codes) within ½ mile of frequent transit. So by state rule, we have to ignore our current parking codes until we go through the process of updating them. You would want to reference the state rules as the basis for the different treatment of parking.

**Derek Severson, Planning Manager***Pronouns He/him/his***City of Ashland****Community Development**

51 Winburn Way, Ashland, Oregon 97520

541.552.2040 | TTY 800.735.2900

[derek.severson@ashland.or.us](mailto:derek.severson@ashland.or.us)Online [ashland.or.us](http://ashland.or.us); social media (Facebook @CityOfAshlandOregon | Twitter @CityofAshland)

*This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541.552.2040.*

**From:** Robert Kendrick <bobk213@icloud.com>  
**Sent:** Tuesday, June 27, 2023 03:04 PM  
**To:** Brandon Goldman <brandon.goldman@ashland.or.us>  
**Cc:** Amy Gunter <amygunter.planning@gmail.com>; Chris Hearn <chearn@davishearn.com>; Derek Severson <derek.severson@ashland.or.us>; Robert J Kendrick <bobk213@icloud.com>  
**Subject:** Re: PA-T3-2022-00004 remand

[EXTERNAL SENDER]

Brandon, Derek

One another subject. We talked about the elimination of parking and no parking mandated, and i'm told there is a schedule on the look ahead to make it official, and also the city no longer mandates parking. This gives me a little pause to move because I'm confused.

On your June 12 email you said, " However, due to the CFEC rules Ashland is no longer mandating on-site parking at this time."

Bob, We have been working on formal code revisions relating to parking with the expectation of presenting them at Public Hearings for adoption in Oct, Nov, and December to the PC and CC. DLCD has provided for such changes to be completed by December 31, 2023. Ashland City Council's second hearing on the elimination of Parking mandates is on their look ahead for December 19, 2023. **However, due to the CFEC rules Ashland is no longer mandating on-site parking at this time.**

I was also sent some maps [https://www.ashland.or.us/SIB/files/FINAL\\_CFEC\\_Parking\\_Handout\(2\).pdf](https://www.ashland.or.us/SIB/files/FINAL_CFEC_Parking_Handout(2).pdf) of the areas where parking is eliminated from Derek and a copy of the state requirements <https://www.oregon.gov/lcd/CL/Documents/ParkingReformOverview.pdf>.

The City map says the following

"Based on new rules adopted by the State of Oregon, beginning January 1, 2023 the cities in Oregon's eight metro areas (including Ashland) will no longer enforce minimum parking requirements within a 1/2-mile buffer of frequent transit routes (the green area on the map below is within 1/2-mile of RVTD's Route 10). In addition, **Ashland will no longer mandate parking for small units (<750 s.f.), affordable units**, single room occupancy housing, shelters, child care facilities, or facilities for people with disabilities or shelters. Ashland will also no longer require more than one parking space per dwelling unit for residential developments with more than one dwelling unit".

Im sorry about my persistent questioning but I need some definitive answers so i can move forward.

This is what is confusing me:

1. You said parking is no longer mandated.
2. The city is working on the final code revisions for the parking and it's elimination.
3. There is a statement attached to the map that says the City is no Longer enforcing minimum parking requirements.

My question is "what can i refer to in the City that officially says parking is not required in the areas noted above in the emails and the Map and the Look Ahead agenda"?

Like i said i understand what I'm being told, but i want to make sure we are going to state exactly what is legal and official in the city for Grand Terrace to comply. Since the City hasn't adopted the new regulations does that mean the state law trumps the City and I refer to the State Law, or do I point to the just the Map of the areas that are exempt and to what I've been told in the emails from both you and Derek.

I want to make sure we do this correct.

Thanks for all your help.

Bob  
Kendrick Enterprise LLC  
Casita Developments LLC

Sent from my iPad

On Jun 27, 2023, at 12:23 PM, Brandon Goldman <[brandon.goldman@ashland.or.us](mailto:brandon.goldman@ashland.or.us)> wrote:

Bob, you are correct, I was incorrectly referencing the ORS citation in the example letter you sent, which applies to Counties, not cities.

So as noted the correct reference for a City remand from LUBA is ORS 227.181.

(1)

*Pursuant to a final order of the Land Use Board of Appeals under ORS 197.830 (Review procedures) remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limited land use decision or zone change within 120 days of the effective date of the final order issued by the board. For purposes of this subsection, the effective date of the final order is the last day for filing a petition for judicial review of a final order of the board under ORS 197.850 (Judicial review of board order) (3). If judicial review of a final order of the board is sought under ORS 197.830 (Review procedures), the 120-day period established under this subsection shall not begin until final resolution of the judicial review.*

Moving forward, the City's actions will commence once you formally request in writing that the application proceed on remand. Please note that you have 180 days from the effective LUBA order to make this request. It would be wise to determine the best course of action before submitting the request, as the City will follow the review procedures (120 days) outlined in ORS 227.181 once we receive the written request.

**Brandon Goldman, AICP**  
**Director of Community Development**

Pronouns: he, him, his



**City of Ashland**  
**Community Development**

51 Winburn Way, Ashland, Oregon 97520

541-552-2076 | TTY 800.735.2900

[Brandon.goldman@ashland.or.us](mailto:Brandon.goldman@ashland.or.us)

Online [ashland.or.us](http://ashland.or.us); social media (Facebook @CityOfAshlandOregon | Twitter @CityofAshland)

*This email transmission is official business of the City of Ashland, and it is subject to Oregon Public Records Law for disclosure and retention. If you have received this message in error, please contact me at 541-552-2076.*

---

**From:** Robert Kendrick <[bobk213@icloud.com](mailto:bobk213@icloud.com)>  
**Sent:** Tuesday, June 27, 2023 10:45 AM  
**To:** Brandon Goldman <[brandon.goldman@ashland.or.us](mailto:brandon.goldman@ashland.or.us)>

**PRELIMINARY SUBDIVISION MAP**

LOCATED AT

1511 North Highway 99

Ashland, Oregon

LYING WITHIN

SOUTHWEST QUARTER OF SECTION 32  
TOWNSHIP 36 NORTH RANGE 12 EAST  
CITY OF ASHLAND, JACKSON COUNTY, OREGON

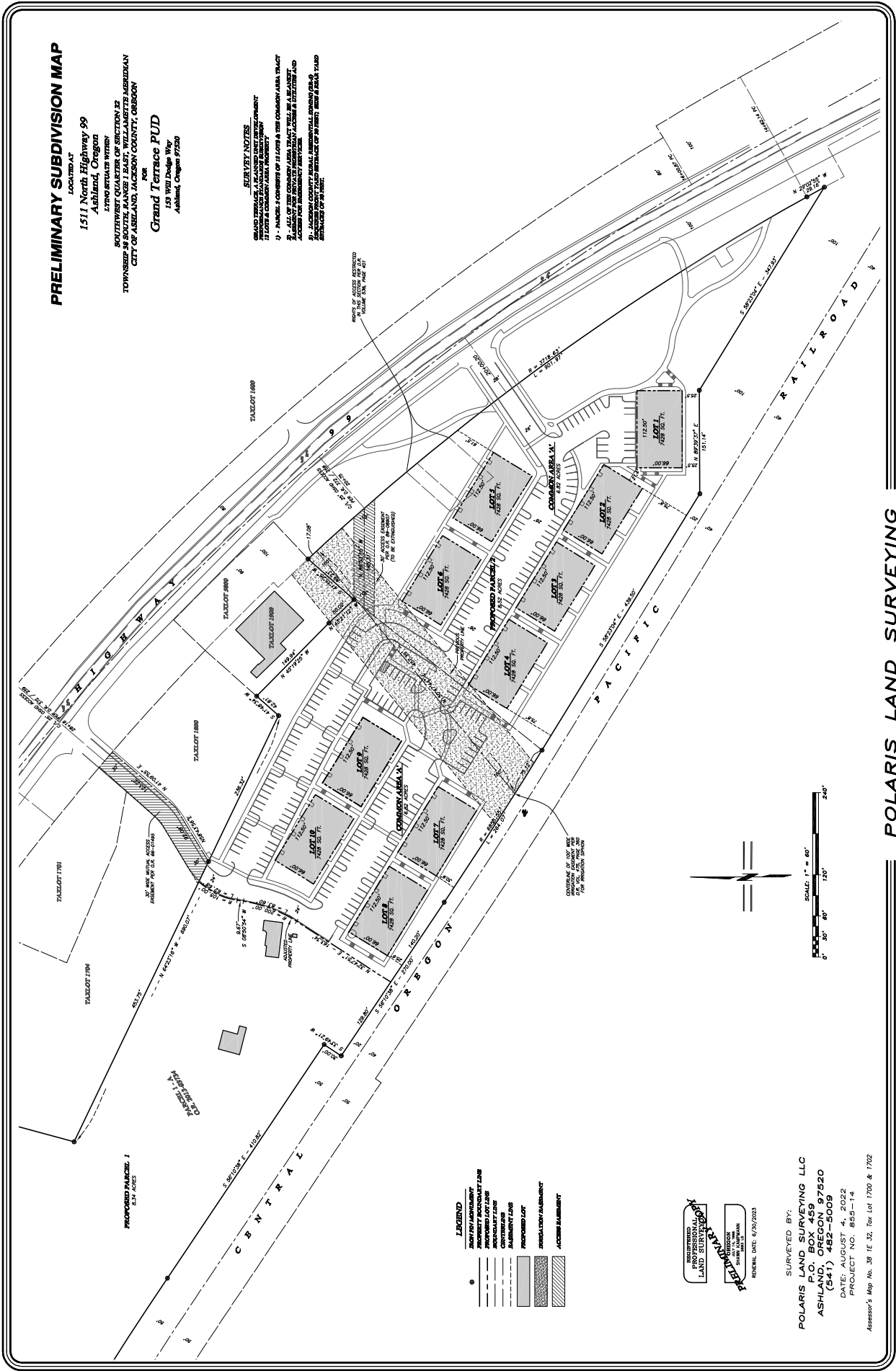
FOR

**Grand Terrace PUD**

153 West Dodge Way  
Ashland, Oregon 97520

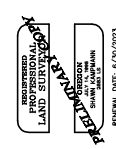
**SURVEY NOTES**

- 1. GRAND TERRACE PUD IS A COMMON AREA TRACT
- 2. THIS MAP IS A PRELIMINARY SUBDIVISION MAP
- 3. THIS MAP IS NOT A GUARANTEE OF TITLE AND DOES NOT CONSTITUTE A WARRANTY OF ANY KIND
- 4. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON
- 5. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON
- 6. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON
- 7. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON
- 8. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON
- 9. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON
- 10. THIS MAP IS NOT A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREON



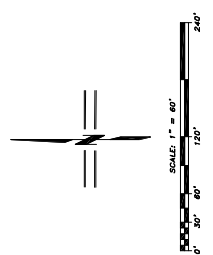
**LEGEND**

	PROPOSED PARCEL
	PROPOSED LOT
	COMMON AREA
	PROPOSED LOT
	PROPOSED PARCEL
	ACCESS EASEMENT



**SURVEYED BY:**  
**POLARIS LAND SURVEYING LLC**  
 P.O. BOX 459  
 ASHLAND, OREGON 97520  
 (541) 462-5009

DATE: AUGUST 4, 2022  
 PROJECT NO. 855-14  
 Assessor's Map No. 38 1E 32, Tax Lot 1700 & 1702



**POLARIS LAND SURVEYING**



**GARY R. CAPERNA**  
**ARCHITECT**  
 architecture  
 planning

180 North Polaris Lane, Medford, Oregon  
 541.773.8205 Cell 541.842.4123  
 Email: gcaperna@arcaperna.com  
 Medford, Oregon 97504  
 Main: 430-881-0182, Colorado: 424-2426  
 Oregon: 5031, Washington: 1420

5/1/16



**JB STEEL, INC.**  
 COMMERCIAL & INDUSTRIAL

10000 NE 100th Street, Suite 100  
 Portland, Oregon 97220  
 Office: 503.773.8205 • Fax: 503.773.8209  
 98105 NE 100th Street, Suite 100  
 Vancouver, Washington 98686  
 Office: 360.583.2222 • Fax: 360.583.2223  
 www.jbsteel.com

**GRAND TERRACE**  
 PROJECT: AN APARTMENT COMPLEX FOR  
 Map & Tek Lot #: 381E32 1700 & 1702  
 Highway 89, Ashland, OR 97520  
 Project Location:  
 Kenrick Enterprises LLC  
 653 Will Dodge Way, Ashland, OR 97520

CLIENT

NO.	DATE	DESCRIPTION
1	7/28/2016	ISSUE DATE: 7/28/2016 2:00 PM
2	8/1/2016	ISSUE DATE: 8/1/2016 10:00 AM
3	8/1/2016	ISSUE DATE: 8/1/2016 10:00 AM
4	8/1/2016	ISSUE DATE: 8/1/2016 10:00 AM

DRW: GRC  
 SHEET TITLE: CONCEPTUAL ELEVATIONS

**A2.0A**  
 FOR LAND USE APPROVAL  
 NOT FOR CONSTRUCTION



**SOUTHWEST EXTERIOR ELEVATION**  
 SCALE: 1/8" = 1'-0"

0 2 4 8  
 1/8" = 1'-0"

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY



**NORTHEAST EXTERIOR ELEVATION**  
 SCALE: 1/8" = 1'-0"

0 2 4 8  
 1/8" = 1'-0"

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

HVAC COMPRESSOR BANKS  
 CONCEALED BEHIND LANDSCAPING

**GARY R. CAPERNA**  
**ARCHITECT**  
 architecture planning

180 North Peace Lane, Medford, Oregon  
 541.773.8235 Cell 541.486.4123  
 Email: gcaperna@arcplanning.com  
 Medford, Oregon  
 License: A00000184, CO-0000-00000000  
 Oregon 5021, Washington 14120

5/19/18

**JB STEEL, INC.**  
 COMMERCIAL & INDUSTRIAL

11000 NE 10th Street, Portland, Oregon 97220  
 503.281.1111  
 401 NE 10th Street, Portland, Oregon 97232  
 503.281.1111  
 11000 NE 10th Street, Portland, Oregon 97220  
 503.281.1111  
 11000 NE 10th Street, Portland, Oregon 97220  
 503.281.1111

P.O. Box 4460 • 100 North River Lane  
 Clatsop • 541.773.8235 • Fax: 541.773.8239  
 97131 • WWW.JBSTEEL.COM

**PROJECT: AN APARTMENT COMPLEX FOR GRAND TERRACE**

CLIENT: Kentrick Enterprises LLC  
 153 Will Dodge Way, Ashland, OR 97520  
 Project Location: Highway 89, Ashland, OR 97520  
 Map & Text Lot #: 381E22 1700 & 1702

NO.	DATE	DESCRIPTION

ISSUE DATE: 7/26/2018  
 DRAWN BY: JAC  
 CHECKED BY: JAC  
 TITLE: CONCEPTUAL ELEVATIONS

**A2.0B**  
 FOR LAND USE APPROVAL  
 NOT FOR CONSTRUCTION







# Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

**August 8, 2023**  
**REGULAR MEETING**  
**Minutes**

**I. CALL TO ORDER:**

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street.

**Commissioners Present:**

Lisa Verner  
Doug Knauer  
Eric Herron  
Russell Phillips  
Susan MacCracken Jain

**Staff Present:**

Brandon Goldman, Community Development Director  
Derek Severson, Planning Manager  
Michael Sullivan, Executive Assistant

**Absent Members:**

Kerry KenCairn  
Gregory Perkinson

**Council Liaison:**

Paula Hyatt

**II. ANNOUNCEMENTS**

Community Development Director Brandon Goldman made the following announcement:

- The annual Planning Commission annual retreat will be held on August 29, 2023, and the August 22, 2023 Study Session will be cancelled.

**III. CONSENT AGENDA**

1. **Approval of Minutes**

- a. June 27, 2023, Study Session
- b. July 11, 2023, Regular Meeting

**Commissioners Knauer/MacCracken Jain m/s to approve the consent agenda as presented.**

**Voice Vote: All AYES. Motion passed 5-0.**

**IV. PUBLIC FORUM**

Chair Verner noted that the Commission had received a letter from Brent Thompson prior to the meeting (see attachment #1).





## Planning Commission Minutes

**Echo Fields/**Ms. Fields introduced herself as the Housing and Human Services Advisory Committee (HHSAC). She stated that there is significant overlap between items reviewed by the HHSAC and those reviewed by the Commission, and that she looks forward to working with them in the future.

**Brent Thompson/**Mr. Thompson implored the Commission to consider new projects and the rezoning of existing districts before approving annexations, and that the Croman Mill Site could be rezoned as a trailer park. Mr. Thompson stated that the periphery doesn't sustain the City as much as the core. He cautioned that large annexation projects are likely to get appealed to the Land Use Board of Appeals (LUBA), but that smaller projects and rezonings might not be appealed.

### V. **TYPE III PUBLIC HEARING**

#### A. **PLANNING ACTION:** PA-T3-2022-00004

**SUBJECT PROPERTY:** 1511 Highway 99 North

**OWNER:** Casita Developments, LLC for owner Linda Zare

**DESCRIPTION:** The City Council previously approved the Annexation of 16.86 acres located at 1511 Highway 99 North into the City of Ashland, along with 6.6 acres of adjacent Oregon Department of Transportation state highway right-of-way and 7.68 acres of California Oregon & Pacific railroad property. These properties are located in Jackson County and zoned Rural Residential (RR-5); with Annexation they are to be brought into the City as Low Density, Multi-Family Residential (R-2). In addition to Annexation, the approved application included Outline Plan subdivision approval to create 12 lots; Site Design Review to construct 230 apartments in ten buildings including 37 affordable units; an Exception to the Street Design Standards; and Tree Removal Permits to remove two trees greater than six-inches in diameter at breast height. *This approval was appealed to the Land Use Board of Appeals (LUBA) and has been remanded to the city to consider two issues: 1) That the city erred in approving an exception to the on-street parking requirement in AMC 18.3.9.060; and 2) That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet. This Planning Commission hearing will be strictly limited in scope to the consideration of these two issues on remand.* **COMPREHENSIVE PLAN DESIGNATION:** Multi-Family Residential; **ZONING:** Existing – County RR-5 Rural Residential, Proposed – City R-2 Low Density Multi-Family Residential; **ASSESSOR'S MAP:** 38 1E 32; **TAX LOT #'s:** 1700 & 1702.

Chair Verner related how this project was approved by the City Council on December 6, 2022, but was subsequently appealed to LUBA by Rogue Advocates. LUBA remanded it to the City on the two counts noted above, which will be the only items considered by the Commission at this limited Public





## Planning Commission Minutes

Hearing. Chair Verner noted that public testimony was submitted by Rogue Advocates prior to the meeting (see attachment #2).

Chair Verner stated that a letter was received from lawyers on behalf of the owners of Knox Storage, LLC, the property adjacent to 1511 Highway 99 North. She noted that the issue raised in the letter is a civil matter and will not be considered by the Commission (see attachment #3).

Chair Verner stated that Commissioners Phillips and MacCracken Jain were not present when this item was reviewed by the Commission on September 13 and October 11, 2022 meetings. She stated that they could both participate in the discussions and deliberations if they could attest to having reviewed the minutes from the aforementioned meetings, and read the Findings, Conclusions and Orders adopted at the November 8, 2022 meeting. Both Commissioners Phillips and MacCracken Jain attested that they had.

### **Ex Parte Contact**

No ex parte contact was reported, and no site visits were conducted since this item was remanded back to the City.

### **Staff Presentation**

Mr. Goldman reiterated that this item was remanded back to the City on two main issues; that the City erred in approving and Exception to the on-street parking requirements in Ashland Municipal Code (AMC) 18.3.9.060; and that the affordable unit sizes as approved did not comply with AMC 18.5.8.050.G.3. Mr. Goldman noted that these unit sizes do not apply to market-rate housing units but are applied to affordable-housing units. The Commission's comments and recommendations will be incorporated into written findings which would be recommended by this body to the Council. He stated that the annexation portion of the application was adopted by ordinance by the Council, and any changes to the findings that reference the annexation would result in changes to the ordinance.

Planning Manager Derek Severson provided a brief background on the project, showing the proposed site layout, parking lot ingress/egress points, and the easement to the north of the property (see attachment #4). He restated that the affordable unit sizes, as approved, don't apply to the table laid out in AMC 18.5.8.050.G.3, which requires studios be at least 350sqft if affordable, and that one-bedroom affordable units be no less than 500sqft.

Mr. Severson noted that no Exception or Variance was requested to the on-street parking standards in the application, but that the Commission determined that these standards did apply based on the street improvements proposed, therefore an Exception to the street standards would be appropriate. Subsequently, the Climate Friendly and Equitable Communities (CFEC) rules were approved in July 2022 by the Land Conservation and Development Commission (LCDC) and went into effect on January 1, 2023. Part of these new CFEC rules prevent cities from enforcing existing off-street parking





## Planning Commission Minutes

mandates within ½-mile of frequent transit, and that cities may not require parking for units less than 750sqft or affordable units. Staff recommended that the Commission evaluate the application based on the new CFEC rules. Mr. Severson noted that the City had dealt with similar situations where ordinances that have been adopted but not taken effect have been applied to planning actions being reviewed at the time. He cited Ordinance 3015 and its application to the Grand Terrace decision in 2019.

Mr. Severson stated that, in consultation with City Attorney Doug McGeary, Rogue Advocates' application of ORS 227.178(3)(a) to the project is erroneous, and that the rule is meant to protect applicants from being held to more stringent guidelines that were not in effect when the application was submitted. Mr. McGeary asserted that it is not used to prevent the City from applying a rule that is less strict, where the applicant accepts that rule, and doesn't require resubmitting the same request to get a different result under the new rule.

Mr. Severson related how the original application designated each of the ten identical proposed buildings as containing 20 one-bedroom units at 499.5sqft each, and three studio-units at 250 sqft each. Two of those buildings would be relied on to meet affordability requirements, which called for 38 deed-restricted units, assuming the applicant was building the units themselves or partnering with an affordable housing provider. Mr. Severson noted that AMC 18.5.8.050.G.3 requires the affordable one-bedroom units be a minimum of 500sqft, and that the affordable studios be a minimum of 350sqft. Mr. Severson pointed out that the original application was approved with the following added conditions relating to affordability:

**Condition #7e.** [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

**Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.

Mr. Severson stated that LUBA remanded the City's approval on the basis that the affordable unit seizes did not comply with AMC 18.5.8.050.G.3. The applicants had subsequently submitted a revised floor plan increasing the size of the one-bedroom units to meet the 500sqft minimum standard. Additionally, the applicant noted that affordable basement level studios would be modified to 499.5





## Planning Commission Minutes

square feet to significantly exceed the required 350 square feet per affordable studio unit requirement. As such, staff recommended modifying Condition #7e to the following:

**Condition #7e.** [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If approved by the Commission, Mr. Severson stated that staff will draft findings that address both remand issues and bring them back to the Commission at the September 12, 2023, Regular Meeting.

Mr. Severson noted that the letter from Rogue Advocates raised concerns over unit density with density bonuses, particularly after adjusting the unit sizes to meet the standards found in AMC 18.5.8.050.G.3. Mr. Severson stated that no density bonuses were included in the original application. He added that the increase of 38 affordable to 500sqft would increase the density of the property to 182 units, where the minimum density is 167.0625 units.

### **Questions of Staff**

Commissioner Knauer asked if there would not be any 250sqft units in the revised proposal. Mr. Goldman responded that there would not be. He added that the increase of the 250sqft units to 499.5sqft resulted in a 182-unit density for the whole project.

Commissioner Knauer remarked that the remand issue over parking was seemingly due to the approval timeline of the application in relation to the recent implementation of CFEC rules. Mr. Goldman responded that neither the applicant nor the appellant addressed the CFEC rules during LUBA's deliberations, and so it was not considered. He indicated that LUBA did not feel that the City made an adequate argument for why the CFEC rules should be applied to this project, but that this would not be the case if the project is appealed again.

Commissioner MacCracken Jain requested clarification regarding the number of affordable housing units the applicant is required to provide. Mr. Goldman responded that the applicant is required to provide 38 affordable units, rented at 80% Area Median Income (AMI), if they partner with an affordable housing provider. However, if the applicant dedicates the land, then they are required to





## Planning Commission Minutes

provide an additional 25% of the base density as affordable housing, which would result in 47 affordable units. He added that LUBA ruled in favor of the City on this issue.

### **Applicant Presentation**

Applicants Robert Kendrick and Amy Gunter stated that staff had adequately presented their submitted materials and that they would reserve the remainder of their time for rebuttal.

### **Public Comments**

**Craig Anderson**/Mr. Anderson began by noting an error he made on page three, paragraph two of the letter he submitted to the Commission. He stated that he erred in referring to a Type I planning action as a non-discretionary approval.

Mr. Anderson lamented that there had been no attempts by the applicants to meet with Rogue Advocates and expressed the opinion that there had been multiple breaches of conduct throughout the application process. Mr. Anderson stated that LUBA acts as a judiciary body, and can only rule on the evidence that is provided to them. He remarked that this project was finalized on December 20, 2022, and that it was incorrect to refer to it as “in-process” or to apply CFEC rules that went into effect on January 1, 2023. Mr. Anderson stated that Rogue Advocates would appeal any approval of this project by the Council to LUBA.

Chair Verner closed the Public Hearing and Public Record at 7:41.

### **Deliberation and Decision**

Commissioner Knauer inquired if it is standard practice to have a preliminary outline plan that is approved before the final plan is reviewed. Mr. Goldman responded that it is, and that the final plan is an opportunity for the applicant to revise their plans, provided these changes do not deviate more than 10% from the outline plan. Commissioner Knauer asked how a 10% deviation would be measured. Mr. Goldman responded that it is relative to the plan itself but could involve items such as parking spaces and unit sizes, to be determined by the Commission. Mr. Severson added that any deviation of more than 10% would require the application to go back through the approval process.

Commissioner Knauer asked if staff was confident that the application did not need to restart the review process. Mr. Goldman assured him that staff was confident, and that the Commission can amend the findings on remand to clarify those issues that were previously approved, particularly regarding the affordable unit sizes and the parking requirements. Mr. Goldman pointed out that the discretionary review process of the final plan would be taking place after the CFEC rules went into effect. Therefore, the applicant would no longer be held to the City’s parking requirements. In consultation with the City’s legal department, it was determined that the application could move forward without going through the outline plan process.





## Planning Commission Minutes

Commissioner Knauer remarked that the Commission made its recommendation for approval in December 2022, before the CFEC guidelines went into effect. He noted that Rogue Advocates cited an Oregon code where it is dictated that a project be subject to laws in effect at the time of approval, not those made after. Mr. Goldman stated that there is precedent for the City to apply less-stringent standards after an application has been approved, and that staff will clarify this in its findings. Commissioner Knauer emphasized the importance of basing any decision the Commission makes in established case law, to which Mr. Goldman agreed.

Chair Verner pointed out that the City approved the outline plan, and that the applicants would still be required to submit a final plan for approval. Mr. Goldman stated that the aspects of the application that were approved were the site review, annexation, and the outline plan. The site review and annexation will not be reviewed during the final plan process, but the outline plan that encompasses parking requirements will be subject to further review.

Commissioner MacCracken Jain requested clarification regarding the City Attorney's assessment of the CFEC rules overriding the City's current parking requirements. Mr. Goldman responded that the City Attorney considered the CFEC rules as superseding the City's parking requirements. Commissioner MacCracken Jain asked how many parking spaces would be included in the project. Staff responded that there will be 212 parking spaces for the 230 units, but that public transit facilities will also be provided.

### **Commissioners MacCracken Jain/Herron m/s to approve the application with the following amendments:**

1. To insert a paragraph in the Planning Commission's findings as follows:  
The Planning Commission recommends that the City Council find that the Climate Friendly & Equitable Communities parking rules are appropriate for this planning action, that neither on- or off-site street parking are required in this case, and that the findings for the original approval should be amended accordingly.
2. To amend Condition #7e of the original approval as follows:  
Condition 7e. A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: 1) where the required number of affordable units is fractional it shall be rounded up, 2) that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, and 3) that each of the required affordable units comply with the minimum affordable unit size requirements of





## Planning Commission Minutes

AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet and affordable studio units being a minimum of 350 square feet.

**Roll Call Vote: All AYES. Motion passed 5-0.**

### VI. OTHER BUSINESS

#### A. Croman Mill Site Sampling Results & Next Steps

##### Staff Presentation

Mr. Goldman informed the Commission that the owners of the Croman Mill Site have engaged in a voluntary cleanup effort in consultation with SCS Engineering and under the regulatory authority of the Department of Environmental Quality (DEQ). Mr. Goldman stated that the DEQ is committed to engaging the community throughout this process, and that representatives already spoke before the Council on July 31, 2023. Mr. Goldman noted that several contaminants have been identified on the site, and the DEQ has already received an interim removal plan from SCS Engineering.

Townmakers, LLC is requiring that the owners clean the site to residential standards as a pre-condition for this project. SCS Engineering's report noted different levels of safety for environmental cleanup for the intended use, with residential being the highest level of environmental quality. Some areas could be considered for non-residential uses if they could not be cleaned to residential levels. Mr. Goldman concluded that Townmakers, LLC is committed to and eager to proceed with the development.

##### Questions of Staff

Chair Verner asked how long the cleanup effort could take. Mr. Goldman responded that the most optimistic estimate is a matter of months but will likely be years. Some removal of contaminated materials is set to begin in sometime between September and November of 2023.

Commissioner Phillips asked if the cleanup will be done in phases. Mr. Goldman answered that the southern portion of the property, outside the City limits, has no contaminants, so development could begin there if applicant wished. However, Townmakers, LLC has indicated that it would like to receive a "no further action required" notice from the DEQ for the entire site before beginning any development.

#### B. Discussion of August 29, 2023 Planning Commission Retreat Details

The Commission discussed which items they would like to review as part of their annual retreat. Commissioner Knauer suggested discussing opportunities for regional cooperation, such as the sharing of general services.







## Planning Commission Minutes

Mr. Goldman informed the Commission that staff had arranged for site visits to the Water Treatment Plant, as well as the Reeder Reservoir dam. Mr. Severson stated that the remaining site visits will include the West Village subdivision and cottages, the Railroad property, the Beach Creek subdivision, the former Croman Mill Site, Kingston Cannabis at 2366 Ashland Street, and the new Tesla charging station at 580 Clover Lane.

The Commission deliberated and decided to move the date of the retreat from August 29 to August 30, 2023.

### **VII. ADJOURNMENT**

*Meeting adjourned at 8:20 p.m.*

*Submitted by,  
Michael Sullivan, Executive Assistant*



Advocating for a livable and sustainable  
Rogue Valley through responsible land use

August 8, 2023

Ashland Planning Commission

Filed via email: [derek.severson@ashland.or.us](mailto:derek.severson@ashland.or.us)

**RE:** Land Use Board of Appeals (LUBA) Remand of PA-T3-2022-00004, 1511 Highway 99  
North “Grand Terrace” Annexation Approval

Dear Ashland Planning Commission,

Rogue Advocates is a land use advocacy organization with members in Ashland. We are supportive of Ashland’s goal of increasing the availability of affordable housing. We are also supportive of Ashland’s longstanding efforts to accomplish their housing goals while emphasizing reduced dependency on the automobile and while improving conditions for walking, cycling and transit. The achievement of these goals requires an adherence to Ashland’s municipal code. Unfortunately, with respect to the Grand Terrace annexation, this has not been the case.

Rogue Advocates, as the petitioner in the appeal of Ashland’s approval of Grand Terrace, submits the below comments for your consideration during these remand proceedings.

**I. First Assignment of Error, Second Subassignment - AMC 18.3.9.060.A**

Under petitioner’s assignment of error here, LUBA found that:

*The city does not dispute that the city council erred in approving an exception to the requirement for on-street parking in AMC 18.3.9.060(A). Instead, in the respondent's*

**BOARD MEMBERS**

Jamie Talarico Jimmy MacLeod Steve Rouse Hugo Hamblin-Agosto Pepper Trail Robin Elliott  
RogueAdvocates.org \* 541-846-1083 \* PO Box 624 Ashland, OR 97520

*brief the city argues that "under Oregon's Equitable Communities and Climate Friendly Act of 2023, as of January 1, 2023, cities within Oregon's [eight] Metropolitan Planning Organizations (MPOs), including the City of Ashland, can no longer require more than one parking space per multi-family unit."*

LUBA goes on to conclude that:

*Because the challenged decision was made in December 2022, we agree with petitioner the legislation does not apply to Casita's application. The city may or may not be correct that the legislation prevents it from requiring more than one parking space per multi-family unit and that, on remand, it will be unable to apply the requirement for on-street parking in AMC 18.3.9.060(A). However, the city does not develop that argument sufficiently for our review in the respondent's brief. We will therefore not conclude that the issue of whether the city council improperly construed AMC 18.3.9.060(A) is moot.*

On remand, the city must show how the Climate-Friendly and Equitable Communities (CFEC) legislation prevents it from requiring more than one parking space per multi-family unit as per AMC 18.3.9.060.A.

In the August 8, 2023 memo to the Planning Commission, staff notes that OAR 660-012-0012(5) (e) requires cities and counties to “implement the requirements of OAR 660-012-0430 and 660-012-0440 when reviewing development applications submitted after December 31, 2022.” Staff goes on to describe the final plan review process under the city’s Performance Standards Option claiming that (the Grand Terrace approval) “remains in process now more than eight months after these new CFEC rules have taken effect.” Staff further claims that “prior to the physical development of the site, another development application for final plan approval will be required at which time the applicant will not be subject to (AMC 18.3.9.060.A) parking requirements” and that “the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules.”

Staff is incorrect in multiple respects. Firstly, the Grand Terrace annexation is not “in process,” as staff claims. Final approval of the application occurred on December 20, 2022. The application was submitted on July 8, 2022, more than five months prior to that date. The CFEC rules are applicable to applications submitted after December 31, 2022, not applications that have been approved before that date. Further, Oregon law requires that “*approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*” [ORS 227.178(3)(a)] The plain language of OAR 660-012-0012(5)(e) renders the CFEC rules inapplicable to the city’s (unlawful) approval.

Secondly, AMC 18.3.9.060.A is not rendered “moot” through the final plan approval process, which is a “Type I”/non-discretionary approval that serves only to verify “substantial conformance with the outline plan.” [AMC 18.3.9.040.B.5] There is nothing within the final plan approval criteria that requires a reevaluation of outline plan criteria under AMC 18.3.9.060, and if there were, such a reevaluation could not be done through a “Type I” process.

In conclusion, the city’s approval of an exception to the parking standards under AMC 18.3.9.060.A was unlawful, as the city has already acknowledged. Further, the city has failed to show how AMC 18.3.9.060.A is rendered “moot” by legislation that went into effect after the city’s approval.

## **II. Fourth Assignment of Error, Second Subassignment - AMC 18.5.8.050.G.3**

Under petitioner’s assignment of error here, LUBA found that:

*The city does not identify a provision of the AMC, or a condition of approval, that requires Casita to demonstrate compliance with AMC 18.5.8.050(G)(3) at the final plan approval stage, and we are aware of none.*

On remand, the city must identify a provision of the AMC, or a condition of approval, that requires Casita to demonstrate compliance with AMC 18.5.8.050.G.3 at the final plan approval stage.

The city does not directly address LUBA's remand. Rather, in the August 8, 2023 memo to the Planning Commission, staff describes a proposed amendment to the approved annexation application that would presumably satisfy the requirements under AMC 18.5.8.050.G.3. Applicant's proposed amendments to increase dwelling unit sizes represent a substantial modification of the city's approval, particularly given the density bonuses that have been awarded under AMC 18.2.5.080.B.2.

As outlined in the city's ordinance findings of approval, only 185.625 dwelling units would be allowed under the applicant's modified proposal, not 230. This fact does not seem to have been considered by either the applicant or staff. Other impacts associated with increasing the size of the dwelling units, along with approval criteria that may be invoked through such a modification, have also not been evaluated by staff.

With regard to the proposed amendments as outlined by staff, these do not respond to LUBA's remand of this assignment of error, which is specific to determining how, given the city's approval, Casita would be required to demonstrate compliance with AMC 18.5.8.050.G.3 at the final plan approval stage. The city has no authority under this remand proceeding to approve a substantial modification to a prior approval in an effort to paper-over an illegal decision.

LUBA's rules [OAR 661-010-0071] require reversal of a decision that violates a provision of applicable law. The city's proposed method of complying with AMC 18.5.8.050.G.3, as outlined in the August 8, 2023 memo to the Planning Commission, amounts to an admission - the second such admission - that the Grand Terrace annexation approval violated a provision of applicable law.

### III. Conclusion

The Grand Terrace annexation application was subject to approval criteria within AMC 18.3.9.060.A and AMC 18.5.8.050.G.3. Through their approval of the application, the city of Ashland made erroneous and illegal findings claiming that the application complied with these provisions when it clearly did not. Given the above facts, and the city's inability to absolve themselves from the assignments of error subject to LUBA's remand here, there are two options available to the applicant: 1) Withdrawal and resubmittal; or 2) Reversal at LUBA.

Respectfully submitted,



Craig Anderson  
Member, Rogue Advocates

575 Elizabeth Ave.  
Ashland, OR 97520  
craig.ashland@gmail.com

JARVIS,  
GLATTE,  
LARSEN &  
BUNICK, LLP

ATTORNEYS AT LAW

MEDFORD OFFICE

823 Alder Creek Drive  
Medford, OR 97504-8900  
541-772-1977  
Fax 541-772-3443

ASHLAND OFFICE

320 East Main Street  
Suite 209  
Ashland, OR 97520-6801  
541-482-8491  
Fax 541-772-3443

office@medfordlaw.net  
www.medfordlaw.net

*Partners*

Darrel R. Jarvis  
Erik J. Glatte\*  
Erik C. Larsen  
Jacquelyn Bunick

*Associates*

Riley J. MacGraw

\*Also admitted in Idaho

Writer's Direct E-mail:  
[rmacgraw@medfordlaw.net](mailto:rmacgraw@medfordlaw.net)

July 26, 2023

**FIRST CLASS MAIL**

Doug McGeary  
City Attorney, City of Ashland  
20 East Main Street  
Ashland, OR 97520

**RE: GRAND TERRACE DEVELOPMENT**

Dear Doug:

Enclosed please find a copy of my office's letter to Linda Zare pertaining to the annexation of her property located at 1511 Highway 99 in Ashland. In short, plans for the Grand Terrace development on Ms. Zare's property appear to rely on an easement through property owned by Knox Storage LLC, an Oregon limited liability company, to provide one of two required points of access.

As articulated in the enclosed letter, Knox Storage takes the position that the dramatic increase in traffic along such easement which will result from the Grand Terrace development will impermissibly overburden the easement and interfere with the use and enjoyment of Knox Storage's use of its property. To the extent it may factor into the City's future approval of Grand Terrace development plans, Knox Storage intends to take any and all legal action necessary to prevent the overburdening of the above-referenced easement and protect its property interest.

Please feel free to contact me if discussion of this matter is necessary.

Very Truly Yours,

JARVIS, GLATTE, LARSEN & BUNICK, LLP

*s/ Riley J. MacGraw*  
RILEY J. MACGRAW

RJM

Enclosed: Letter to Zare

JARVIS,  
GLATTE,  
LARSEN &  
BUNICK, LLP

ATTORNEYS AT LAW

MEDFORD OFFICE

823 Alder Creek Drive  
Medford, OR 97504-8900  
541-772-1977  
Fax 541-772-3443

ASHLAND OFFICE

320 East Main Street  
Suite 209  
Ashland, OR 97520-6801  
541-482-8491  
Fax 541-772-3443

office@medfordlaw.net  
www.medfordlaw.net

*Partners*

Darrel R. Jarvis  
Erik J. Glatte\*  
Erik C. Larsen  
Jacquelyn Bunick

*Associates*

Riley J. MacGraw

\*Also admitted in Idaho

Writer's Direct E-mail:  
[rmacgraw@medfordlaw.net](mailto:rmacgraw@medfordlaw.net)

July 26, 2023

**FIRST CLASS MAIL**

Linda Zare  
1511 Highway 99  
Ashland, Oregon 97520

**RE: GRAND TERRACE DEVELOPMENT**

Dear Ms. Zare:

This office represents Knox Storage LLC, an Oregon limited liability company, and owner of the real property located at 1515 Highway 99, Ashland, Oregon ("Knox Storage Property"). As you are aware, the annexation of your property located at 1511 Highway 99, Ashland, Oregon ("Zare Property") into the City of Ashland, and to facilitate the Grand Terrace housing development, is likely in its final stages of approval.

According to the Grand Terrace development plans, the development will be accessed from Highway 99 at two separate points, one of which is over the existing 30-foot-wide easement for ingress and egress through the Knox Storage Property and depicted on Survey No. 12814 (the "Easement"). Robert Kendrick, on behalf of Casita Developments LLC, previously provided verbal assurances that the Easement would be used only for emergency ingress and egress from the Grand Terrace development, but the development plans clearly contemplate using the Easement as one of two main access point.

Although Knox Storage does not dispute your right to the above-referenced Easement, it firmly believes that the drastic increase in traffic along the Easement that will result from the Grand Terrace development would overburden the Knox Storage Property. The increase in vehicle trips per day resulting from the Grand Terrace development is estimated to be approximately 1,800. Assuming those trips are split evenly between the two contemplated points of access to Grand Terrace, that would result in an approximately 900% increase in traffic along the Easement.

The Zare Property has historically been used for agricultural purposes and is currently zoned as RR-5. When the Easement was granted, the grantor did not, and could not have, reasonably envisioned the prospect of a 200+ apartment complex on the Zare Property and the associated increase in traffic along the Easement. Indeed, the December 9, 2019, letter from grantor Leo van Dijk confirms as much. This letter and the previous use and zoning of the Zare Property would be highly relevant in determining the scope of the easement and whether a 900% increase in traffic would overburden it. Although there is no expressly restrictive language in the grant of Easement document, the dominant estate can only make such use of the Easement as is reasonably necessary for its intended purpose. *See, e.g., Clark v. Kuhn*, 171 Or. App. 29, 33 (2000). The



Linda Zare  
July 26, 2023  
Page 2

intended purpose of the Easement is for ingress and egress to a single residence. And while there is little doubt some increase in traffic would be within the scope of the Easement, the drastic increase in traffic that would result from the Grand Terrace development would overburden the Easement to extent it would interfere with the use and enjoyment of the servient estate.

Notwithstanding the above, Knox Storage's desire is to avoid litigation (abiding by Mr. Kendrick's verbal assurances that the Easement would be used only for emergency access would be acceptable and preferable to Knox Storage) but given the enormous increase in traffic along the Easement that will result from the Grand Terrace development, and the significant disruption it would have on Knox Storage's business located on the Knox Storage Property, and on the veterinary practice and grooming business adjacent to the Knox Storage Property, Knox Storage intends to take any and all legal action necessary to protect its interests and prevent the Grand Terrace development from overburdening the Easement.

Please feel free to contact me, or have your legal counsel contact me, to discuss this matter further.

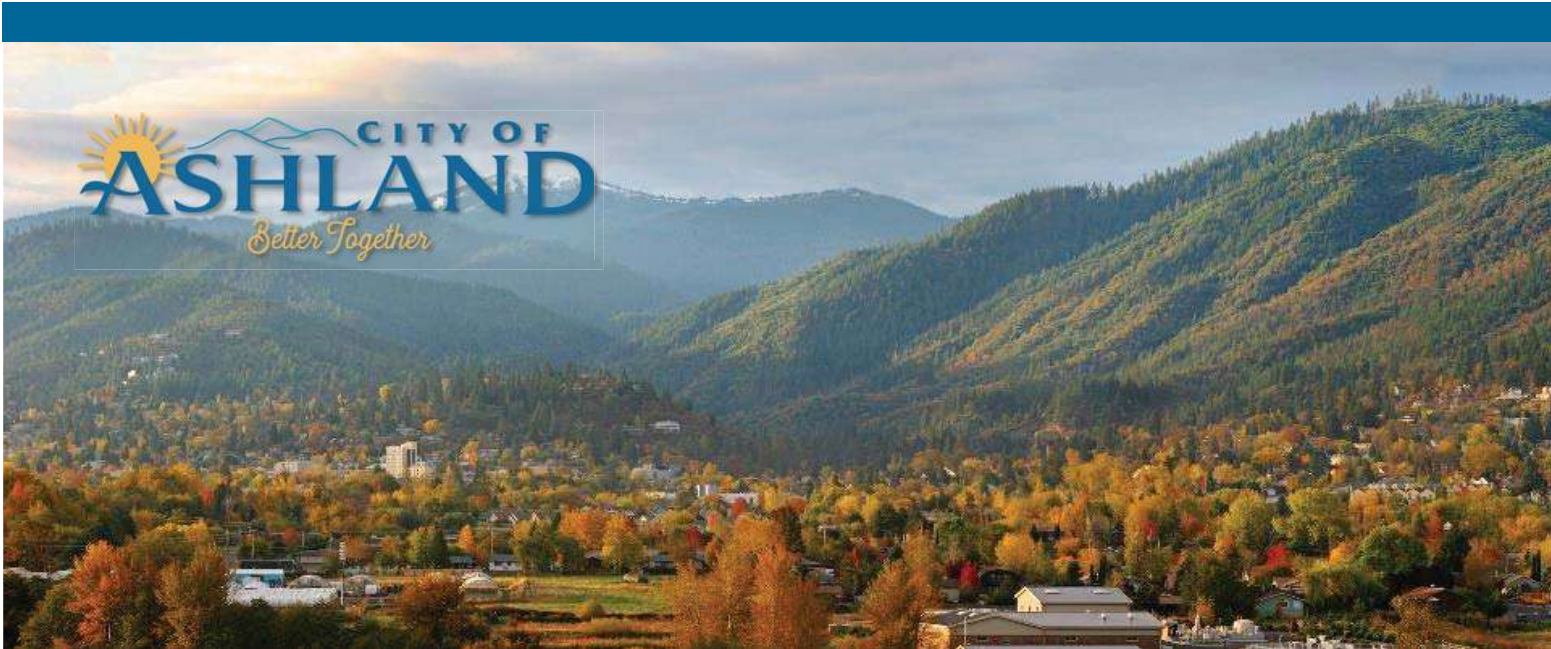
Very Truly Yours,

JARVIS, GLATTE, LARSEN & BUNICK, LLP

*s/ Riley J. MacGraw*  
RILEY J. MACGRAW

RJM

Copy to: Client (via email); Casita Developments LLC; City of Ashland



# Grand Terrace Remand

Planning Commission  
*Limited* Public Hearing  
August 8, 2023

Planning Commission

## Grand Terrace Annexation (1511 Hwy 99N)

*Annexation, Outline Plan Subdivision, Site Design Review & Exceptions to Street Standards*

### Remanded on Two Issues

*On-Street Parking Exception & Affordable Unit Size Requirements*

PA-T3-2019-00001  
Annexation

*Approved 12/20*

LUBA Appeal 2021-009

*Reversed 5/21*

PA-T3-2002-00004

*Approved 12/22.*

LUBA Appeal 2023-007

*Remanded 5/23*



# 1511 Highway 99N

## Site Design Review

CITY OF  
ASHLAND



# 1511 Highway 99N

## Site Design Review – Front/Rear Elevations

CITY OF  
ASHLAND



# 1511 Highway 99N

## Site Design Review – Front/Rear Elevations



**SOUTHWEST EXTERIOR ELEVATION**

SCALE: 1/8" = 1'-0"



NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY



**NORTHEAST EXTERIOR ELEVATION**

SCALE: 1/8" = 1'-0"



HVAC COMPRESSOR BANKS CONCEALED BEHIND LANDSCAPING

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

# 1511 Highway 99N

## Site Design Review – Side Elevations



**NORTHWEST EXTERIOR ELEVATION**

SCALE: 1/8" = 1'-0"



NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES



**SOUTHEAST EXTERIOR ELEVATION**

SCALE: 1/8" = 1'-0"



SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES

NOTE: SEE A2.0 FOR EXTERIOR FINISHES AND FINISH KEY

# 1511 Highway 99N

## Site Review – Transit Supportive Plaza

CITY OF  
ASHLAND



Bus pull-out lane, Bus Stop & Transit Supportive Plaza

# 1511 Highway 99N

## Site Design Review – Southern Driveway

CITY OF  
ASHLAND





## LUBA REMAND ISSUES

The city erred in approving an Exception to the on-street parking requirements in AMC 18.3.9.060

- ❑ Performance Standards require one on-street space/unit.
- ❑ Approval granted an Exception to this standard, where a Variance was required.

That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3

- ❑ Affordable studio-units are to be at least 350 square feet (*Studios proposed were 250 square feet.*)
- ❑ Affordable one-bedroom units are to be at least 500 square feet. (*One-bedrooms proposed were 499.5 square feet..*)

### REMAND ISSUE #1

## On-Street Parking Exception

*AMC 18.3.9.060 All development under this chapter shall conform to the following parking standards, which are in addition to the requirements of chapter 18.4.3, Parking, Access, and Circulation.*

- On-Street Parking Required.** *At least one on-street parking space per dwelling unit shall be provided, in addition to the off-street parking requirements for all developments in an R-1 zone, with the exception of cottage housing developments, and for all developments in R-2 and R-3 zones that create or improve public streets.*
- On-Street Parking Standards.** *On-street parking spaces shall be immediately adjacent to the public right-of-way on publicly or association-owned land and be directly accessible from public right-of-way streets. On-street parking spaces shall be located within 200 feet of the dwelling that it is intended to serve. In addition, on-street public parking may be provided pursuant to minimum criteria established under subsection 18.4.3.060.A.*



## On-Street Parking Exception

- No Variance or Exception to the on-street requirement was requested as part of the application.
- Planning Commission determined that AMC 18.3.9.060 was applicable, that an Exception to the Street Design Standards was the appropriate procedure if on-street parking could not be provided, and that such an Exception was merited.
- New Climate-Friendly and Equitable Communities (CFEC) rules were adopted in July of 2022 by the Land Conservation and Development Commission (LCDC) in response to Executive Order #20-04 by Governor Kate Brown.
- These CFEC rules delineate how cities may regulate a variety of land use and transportation issues, including a number of changes to the ways cities may regulate parking, going forward.

Among the new CFEC rules:



## On-Street Parking Exception

- After January 1, 2023, the Climate-Friendly & Equitable Communities rules prevent cities from enforcing existing *off-street* parking mandates within ½-mile of frequent transit.
- Cities may not require more than one parking space (on- or off-street) for multi-family residential units.
- **Cities may not require parking for units less than 750 square feet or for affordable units.**
- Cities are to implement the new CFEC parking rules for development applications submitted after December 31, 2022.
- Cities may modify ordinances or implement directly from the new rules. Pending ordinance modifications, Ashland is implementing directly from the new rules.



REMAND ISSUE #1

## On-Street Parking Exception

- Grand Terrace application submitted July 8, 2022 but remains in process now, 13 months after submittal and eight months after new rules are in place.
- LUBA remand for further review now, before City decision is final, is occurring after the new regulations were implemented.
- Final Plan approval, another development application, will be required before site development occurs.
- In staff's view, the Planning Commission and Council have the discretion to assess the current request based on the new CFEC rules, which remove parking requirements since all proposed residential units are smaller than 750 square feet.
- Staff recommends evaluating the current request under the new CFEC rules without requiring parking.



REMAND ISSUE #2

## Affordable Unit Size Requirements

- Original application identified each of the 10 identical buildings proposed as containing 20 one-bedroom units of 499.5 square feet each, and three studio units of 250 square feet each.
- Two of these ten buildings were to be relied on in meeting the affordability requirements, which were a total of 38 deed restricted affordable units assuming that the applicant either builds the units themselves or does so in cooperation with a non-profit affordable housing provider partner.
- **AMC 18.5.8.050.G.3** requires that the minimum square footage for affordable one-bedroom units be 500 square feet, and that the minimum square footage for affordable studios be 350 square feet.





REMAND ISSUE #2

## Affordable Unit Size Requirements

- The adopted conditions relating to affordability are:

**Condition #7e.** *[That prior to final approval and annexation of the property, the applicant shall provide:]* A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that where the required number of affordable units is fractional it shall be rounded up, and that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI.

**Condition #10g.** If the applicant opts to dedicate land area to a non-profit affordable housing developer, dedication shall occur in a manner consistent with AMC 18.5.8.050.G.2 and recording of deed restrictions guaranteed affordability described herein shall occur in conjunction with plat signature and recording.



REMAND ISSUE #2

## Affordable Unit Size Requirements

The City's approval was remanded by LUBA on the basis **"That the affordable unit sizes as approved do not comply with AMC 18.5.8.050.G.3 which requires that affordable studios be a minimum of 350 square feet and that affordable one-bedroom units be a minimum of 500 square feet."** In response to this issue, the applicant has provided a revised floor plan demonstrating how the one-bedroom units could be modified by reducing their recessed entry depth by 3-inches in order to achieve the required 500 square feet per affordable one-bedroom unit.

- AS PROPOSED:**  $12.5 \times 42 = 525$  square feet less **25.98** square feet for recessed entry = 499.02 square feet.
- AS MODIFIED:**  $12.5 \times 42 = 525$  square feet less **24.8975** feet for recessed entry = 500.1025 square feet.

In addition, the applicant notes that affordable basement level studios would be modified to be 499.5 square feet to significantly exceed the required 350 square feet per affordable studio unit requirement.



REMAND ISSUE #2

## Affordable Unit Size Requirements

- Staff note that the affordability requirement for this project calls for 38 affordable units to be provided. Each building proposed has 20 one-bedroom units and 3 studios (i.e. 23 units).
- Assuming that two buildings will be developed by an affordable housing provider partner or the applicant themselves, the 38 required affordable units could be accommodated entirely with one-bedroom units, leaving one one-bedroom unit and three studios in each of the two buildings to be rented at market rate or provided as voluntarily affordable (i.e. not deed-restricted and not subject to the square footage requirements of AMC 18.5.8.050.G.3.).
- Staff believe that the second remand issue can be fully addressed by increasing the size of the one-bedroom units by a *de minimis* amount to comply with AMC 18.5.8.050.G.3 and making clear that as configured in the original proposal the studio units need not be considered among the required affordable units. If this approach is satisfactory to the Planning Commission and City Council, staff would recommend that Condition #7e be slightly modified as follows:



REMAND ISSUE #2

## Affordable Unit Size Requirements

**Modified Condition #7e.** [That prior to final approval and annexation of the property, the applicant shall provide:] A deed restriction agreement that development of the property shall comply with the affordability requirements for annexations in AMC 18.5.8.050.G including that: **1)** where the required number of affordable units is fractional it shall be rounded up, **2) and** that should the applicant opt to dedicate land area to an affordable housing provider, it will require that the dedication comply with the requirements of AMC 18.5.8.050.G.2 and dedicate sufficient land area to accommodate 47 ownership units affordable at 100 percent AMI, **and 3) that each of the required affordable units comply with the minimum affordable units size requirements of AMC 18.5.8.050.G.3, with one bedroom affordable units being a minimum of 500 square feet, and affordable studio units being a minimum of 350 square feet.**

If the Planning Commission accepts the approaches outlined above for both of the remand issues, staff will draft findings and bring them back to the September meeting for adoption.



# Density

- No density bonuses were granted with the original proposal. The base density of the subject property is **185.625 units** (13.75 buildable acres x 13.5 units/acre). The minimum density of the subject property is **167.0625 units** (0.90 x 185.625).
- As initially proposed, all units were less than 500 square feet, and units of less than 500 square feet count as 0.75 units for density calculations (AMC 18.2.5.080.B.2). The density as proposed was **172.5 units** (230 x 0.75 units).
- Increasing the size of 38 affordable units from 499.5 to 500 square feet to comply with the minimum affordable unit size would increase the density to **182 units** ([192 x 0.75 units] + [38 x 1.0 units]). This is within the base density of the property without bonuses and exceeds the minimum density required for annexation.



QUESTIONS?

