

Brent Thompson
P.O. Box 201
Ashland, OR 97520

July 25, 2023

Ashland City Council
20 East Main Street
Ashland
OR 97520

RE: Siskiyou Boulevard Needs a Plaque Explaining Why It Exists.

To the City Council

Besides Lithia Park, Siskiyou Boulevard is the most distinguishing feature of Ashland. Few cities have grand boulevards such as Siskiyou Blvd. Its history should be commemorated. Lithia Park has a sign near its entrance explaining how it came to be, but there is no monument nor plaque explaining why we have Siskiyou Boulevard. We do have the "public art" sculpture some call The Bicycle Wreck, which was approved by a former misguided City Council. But the "Bicycle Wreck" is a monument to nothing.

Let's add a plaque below the Bicycle Wreck" which commemorates the origins of Siskiyou Boulevard. It could read something like the following gleaned from: (1) Images of America -Ashland; Joe Peterson c 2009 p. 25: (2) Legendary Locals of Ashland; Sam Wheeler c 2015 p 20: (3) Ashland --The first 130 Years; Marjorie Lutz O'Harra c 1981 p 36.

Henry and Harriet Carter arrived in Ashland in 1884 and became involved in banking and orchards. They planted hundreds of acres of orchards south of the downtown, and on September 16, 1888 gave the City of Ashland a 60' wide swath of land later expanded to 100 ' through the middle of their orchards with the idea that some day it would become a grand boulevard. Initially their donated right of way led nowhere because most traffic going east and south used East Main Street. Later as the city grew their donated roadway became Siskiyou Blvd.

Other knowledgeable people about Ashland history who might help are George Kramer, Peter Finkle, Jeff LeLand sp?, and Terry Skibby. They would be good composers of a plaque if the above attempt might not suffice. But let's have something commemorating the origins of our most noteworthy street before another 130 years passes.

Thank you.

Brent Thompson
541 944-6954

cc. Historic Commission, Planning Commission, Parks Commission



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

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,

A handwritten signature in blue ink, appearing to read 'Craig Anderson', with a long horizontal line extending to the right.

Craig Anderson
Member, Rogue Advocates

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Ashland, OR 97520
craig.ashland@gmail.com

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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

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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.

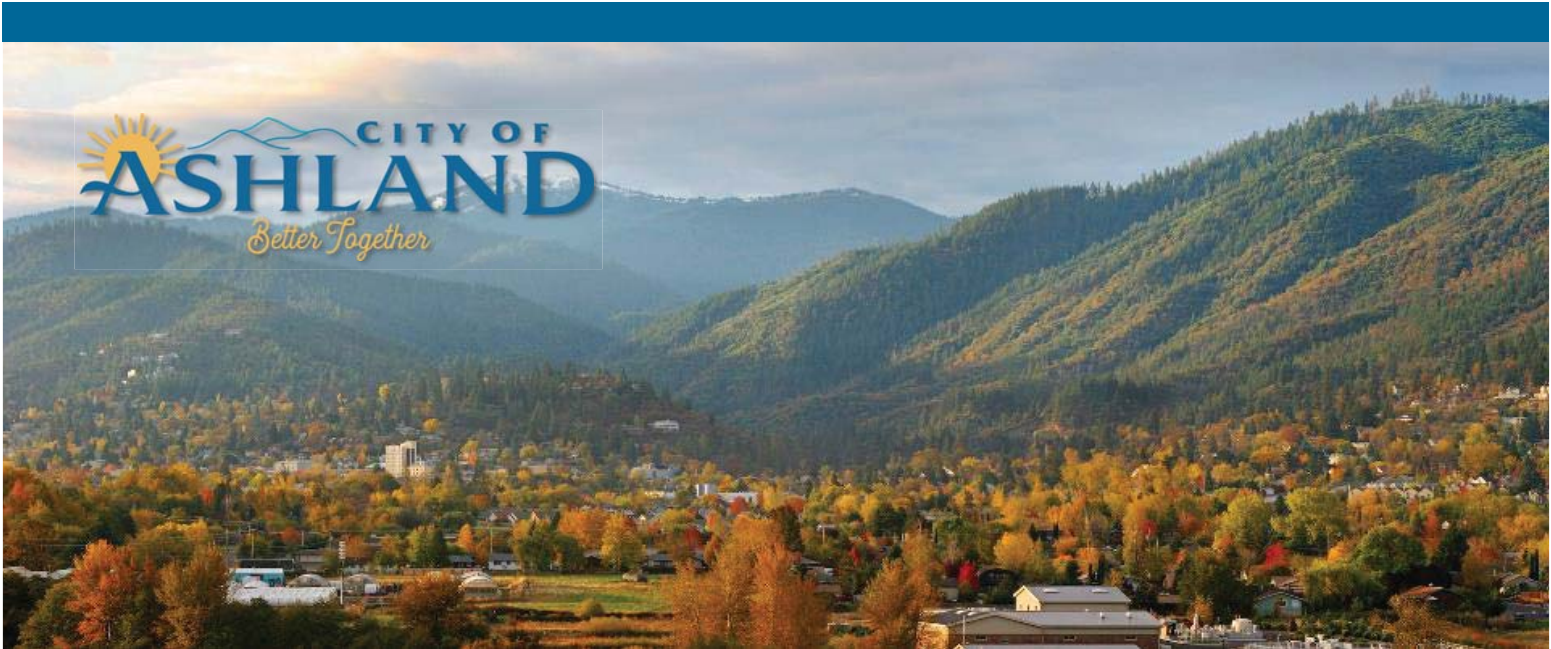
Very Truly Yours,

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

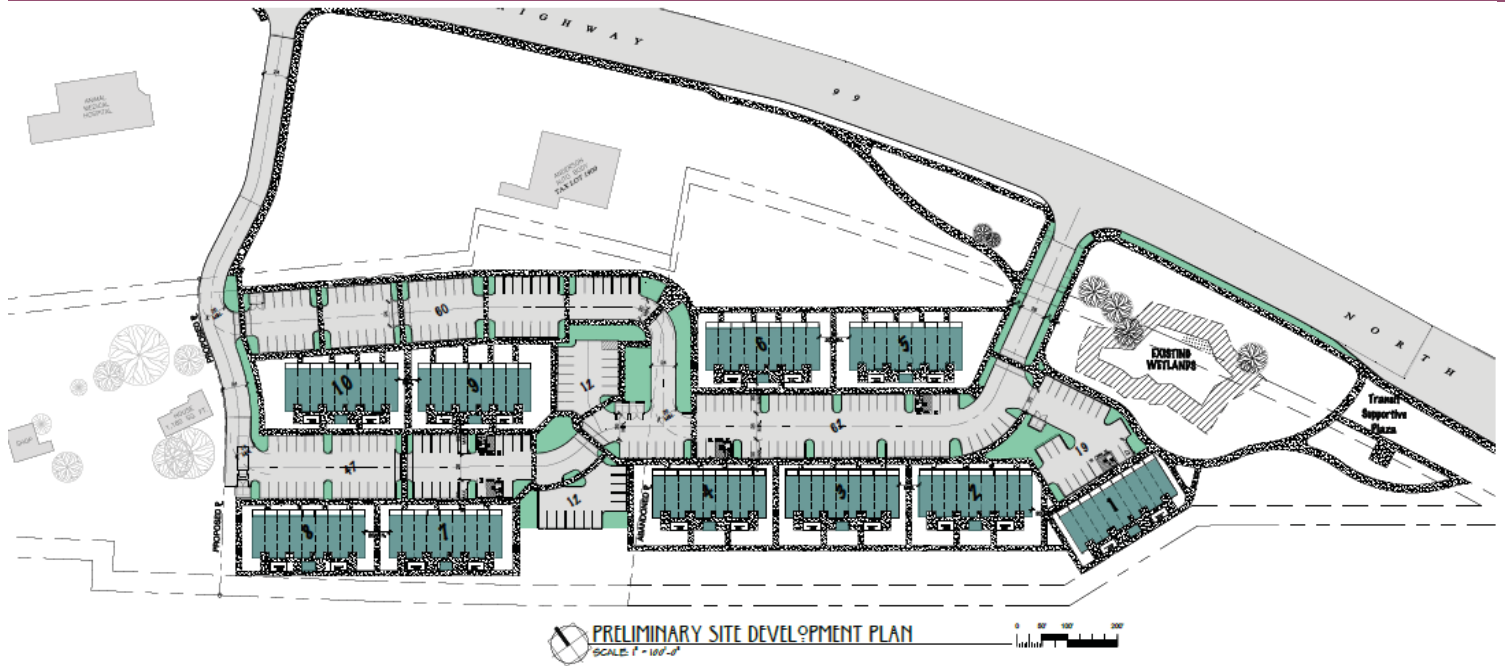
Remanded 5/23



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"



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

HVAC COMPRESSOR BANKS CONCEALED BEHIND LANDSCAPING

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"



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

SURFACE MOUNTED ELECTRICAL METERS AND CABLE BOXES

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.

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.*



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?

