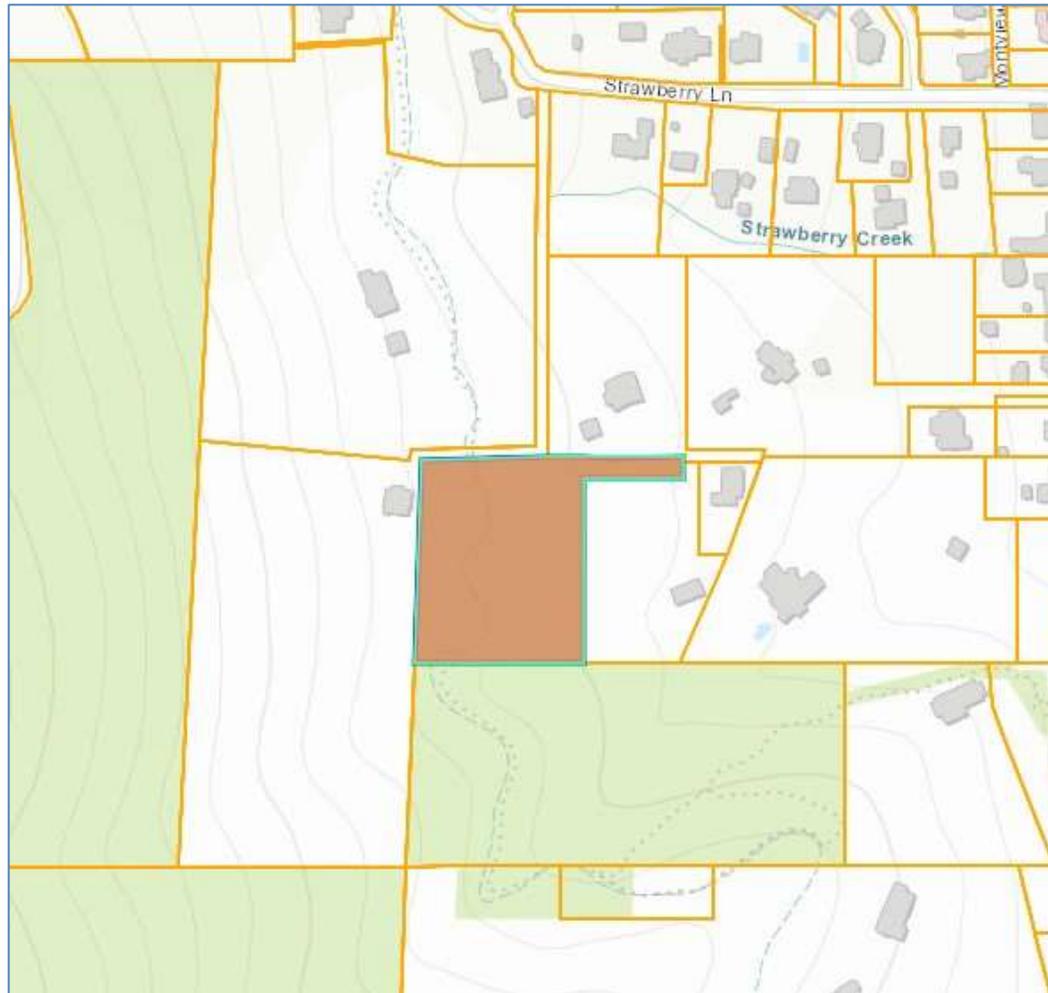


## NOTICE OF APPEAL HEARING

**PLANNING ACTION:** PA-APPEAL-2025-00021  
**SUBJECT PROPERTY:** 231 Granite Street  
**PROPERTY OWNERS:** Stephanie & Bryan DeBoer  
**APPLICANTS:** Carlos Delgado, Architect  
**APPELLANTS:** Len Eisenberg and Kent & Pamela McLaughlin  
**DESCRIPTION:** An appeal on the record of the Planning Commission's approval of PA-T2-2024-00053, a Physical and Environmental (P&E) Constraints Review Permit to allow the construction of a new single-family dwelling on Hillside Lands/Severe Constraints Lands. The Planning Commission's original approval included an Exception to the Development Standards for Hillside Lands, a Variance to the length and grade standards for a flag drive in AMC 18.5.3.060.F, and a Tree Removal Permit to remove 74 trees, including nine significant trees. *(This appeal will be processed on the record according to AMC 18.5.1.060.I. The specific grounds for the appeal identified by the appellant are detailed in the attached.)*  
**COMPREHENSIVE PLAN DESIGNATION:** Low Density Residential; **ZONING:** RR-5; **MAP:** 39 1E 08 DA; **TAX LOTS:** 1800

**ASHLAND CITY COUNCIL MEETING: Tuesday June 17, 2025 at 6:00 PM, Ashland Civic Center, 1175 East Main Street**



This appeal will be processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified by the appellant are listed below:

### COMMUNITY DEVELOPMENT DEPARTMENT

51 Winburn Way  
Ashland, Oregon 97520  
[ashlandoregon.gov](http://ashlandoregon.gov)

Tel: 541.488.5305  
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**Appellants' Grounds for Appeal (AMC 18.5.1.060.1.2.c)**

- a. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in approving a Physical Constraints Review Permit without addressing or demonstrating compliance with the requirements of 18.3.10.050.A.
- b. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in approving a Physical Constraints Review Permit without addressing or demonstrating compliance with the requirements of 18.3.10.050.B.
- c. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in approving a Physical Constraints Review Permit without addressing or demonstrating compliance with the requirements of 18.3.10.050.C.
- d. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving development of unbuildable slopes greater than 35% in violation of 18.3.10.090.A.1 and 2.
- e. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in concluding that the parcel has inadequate buildable area less than or equal to 35% under 18.3. 10.090.A. 1.a when much of the property is comprised of 25% to 30% slopes.
- f. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving the proposed development within a partition without the geotechnical study required by 18.3.10.090.A.4.
- g. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by allowing terracing for purposes other than developing a building pad and vehicular access including landscaping, a pool and spa, and an outdoor kitchen and lounge contrary to 18.3.10.090.B.8.a.
- h. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by allowing the applicant to develop a pad for a swimming pool and spa contrary to 18.3.10.090.A.8.c.
- i. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving a building envelope which is not located and sized to preserve the maximum number of trees on site as required by 18.3. 10.090.D.3.b.
- j. The Planning Commission improperly construes applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving an exception to the wall height requirements at 18.3.10.090.E.2.c without addressing or demonstrating compliance with the requirements of 18.3.10.090.H.
- k. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by allowing the driveway grade for the new driveway to exceed 20% contrary to 18.4.3.080.D.8.
- l. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving a variance to allow an average flag drive grade over 20% when 18% is the maximum grade allowed for flag drive variances by 18.5.3.060.F.
- m. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving a variance that allows the applicant to exceed the 15% maximum grade for a flag drive where the cumulative length of such variances exceeds 200 feet contrary to 18.5.3.060.F.

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- n. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by allowing an overlength flag drive without the turnaround required by 18.5.3.060.J.
- o. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in approving a variance to 18.5.3.060.F without addressing or demonstrating compliance with the requirements of 18.5.5.050.
- p. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in determining that the lot configuration, site topography and existing natural features are unique circumstances warranting a variance under 18.5.5.050.A.1.
- q. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence in holding that the proposed variance is the minimum necessary variance under 18.5.5.050.A.2.
- r. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by relying on determinations made by a former Ashland planning director in place of the required findings under the variance provisions in section 18.5.5.050.
- s. The Planning Commission improperly construes 18.5.5.050.A.3 and makes a decision that is not supported by adequate findings or substantial evidence in holding that the proposal's benefits are greater than the negative impacts and will further the purpose and intent of the Ashland Land Use Ordinance and the Comprehensive Plan of the City when in fact the opposite is true.
- t. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by holding that the proposed variance under 18.5.5.050.A.4 was not the result of a self-imposed hardship.
- u. The Planning Commission improperly construes applicable law and makes a decision that is not supported by adequate findings or substantial evidence by approving a tree removal permit without addressing or demonstrating compliance with each of the criteria set forth in 18.5.7.040.
- v. The Planning Commission improperly construes applicable law and makes a decision that is not supported by adequate findings or substantial evidence by failing to analyze the impact of tree removal within 200 feet of the property as required by 18.5.7.040.B.2.c.
- w. The Planning Commission improperly construes applicable law and makes a decision that is not supported by adequate findings or substantial evidence by failing to consider required tree protection measures as set forth under 18.4.5.030.C.1 and 18.4.5.030.C.6.
- x. The Planning Commission errs by adopting conclusory findings that do not address the relevant criteria or explain how the facts found demonstrate compliance with those criteria, and which improperly incorporates by reference materials which do not support the decision of approval and are internally inconsistent.
- y. The Planning Commission improperly construes the applicable law and makes a decision that is not supported by adequate findings or substantial evidence by imposing a condition requiring future development to conform to the requirements of the Ashland Fire Department where the applicant has not demonstrated such a condition to be feasible.

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Notice is hereby given that the ASHLAND CITY COUNCIL will meet to consider an Appeal on the Record for Planning Action PA-T2-2024-00053 on the meeting date and time shown above. The meeting will be at the ASHLAND CIVIC CENTER, 1175 East Main Street, Ashland, Oregon.

Review of a decision of the Planning Commission by the City Council shall be confined to the record of the proceeding before the Planning Commission in accordance with AMC 18.5.1.060.I. The record shall consist of the application and all materials submitted with it; documentary evidence, exhibits and materials submitted during the hearing or at other times when the record before the Planning Commission was open; recorded testimony; the executed decision of the Planning Commission, including the findings and conclusions. In addition, for purposes of City Council review, the notice of appeal and the written arguments submitted by the parties to the appeal, and the oral arguments, if any, shall become part of the record of the appeal proceeding. The record and appeal materials are available for review at <https://ashlandoregon.gov/1094/231-Granite-PA-T2-2024-00053> or can be reviewed in the Planning Department offices at 51 Winburn Way at no cost. Copies will be provided at a reasonable cost, if requested.

Oral argument on the appeal shall be permitted before the Council. Oral argument shall be limited to ten minutes for the applicant, ten minutes for the appellant, if different, and three minutes for any other party who participated in the original decision. A party shall not be permitted oral argument if written arguments have not been timely submitted. Written arguments shall be received in the Planning Department on or before 4:30 p.m., June 6, 2025. Written and oral arguments on the appeal shall be limited to those issues clearly and distinctly set forth above in this Notice of Appeal; similarly, oral argument shall be confined to the substance of the written argument. *Statements of support or opposition are not argument.* The record on this matter remains closed and no new evidence may be submitted. Argument may be submitted only by parties to the planning action and is to be directed to the Ashland Planning Department, Community Development and Engineering Services Building, 51 Winburn Way, Ashland, Oregon 97520 or e-mailed to [PC-public-testimony@ashland.or.us](mailto:PC-public-testimony@ashland.or.us). Submissions which do not constitute legal argument on identified issues in the notice of appeal will not be forwarded to City Council.

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 the assigned staff planner, Planning Manager Derek Severson in the Ashland Planning Department at 541-488-5305 or via e-mail to [planning@ashlandoregon.gov](mailto:planning@ashlandoregon.gov). Participating parties wishing to provide their oral testimony electronically can contact the assigned staff planner to make arrangements.

#### **PHYSICAL & ENVIRONMENTAL CONSTRAINTS REVIEW PERMIT (AMC 18.3.10.050)**

An application for a Physical Constraints Review Permit is subject to the Type I procedure in section 18.5.1.050 and shall be approved if the proposal meets all of the following criteria.

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

#### **EXCEPTION TO THE DEVELOPMENT STANDARDS FOR HILLSIDE LANDS (AMC 18.3.10.090.H)**

An exception under this section is not subject to the variance requirements of chapter 18.5.5 Variances. An application for an exception is subject to the Type I procedure in section 18.5.1.050 and may be granted with respect to the development standards for Hillside Lands if the proposal meets all of the following criteria.

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

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**VARIANCE (AMC 18.5.5.050)**

1. The variance is necessary because the subject code provision does not account for special or unique physical circumstances of the subject site, such as topography, natural features, adjacent development, or similar circumstances. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance.
2. The variance is the minimum necessary to address the special or unique physical circumstances related to the subject site.
3. The proposal's benefits will be greater than any negative impacts on the development of the adjacent uses and will further the purpose and intent of this ordinance and the Comprehensive Plan of the City.
4. The need for the variance is not self-imposed by the applicant or property owner. For example, the variance request does not arise as result of a property line adjustment or land division approval previously granted to the applicant.

**TREE REMOVAL PERMIT (AMC 18.5.7.040.B)**

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

**ADDITIONAL PRELIMINARY FLAG LOT PARTITION PLAT CRITERIA (AMC 18.5.3.060)**

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

- A. The criteria of section [18.5.3.050](#) are met.
- B. For the purpose of meeting the minimum lot area requirement, the lot area, exclusive of the flag drive area, must meet the minimum square footage requirements of the zoning district.
- C. Flag drives shall be in the same ownership as the flag lots served. Where two or more lots are served by the same flag drive, the flag drive shall be owned by one of the lots and an easement for access shall be granted to the other lot or lots.
- D. Except as provided in subsection 18.5.3.060.H, below, the flag drive serving a single flag lot shall have a minimum width of 15 feet and contain a 12 foot wide paved driving surface. For drives serving two flag lots, the flag drive shall be 20 feet wide, with a 15 foot wide driving surface to the back of the first lot, and a 12 foot wide driving surface to the rear lot. Drives shared by adjacent properties shall have a width of 20 feet, with a 15 foot paved driving surface. Width shall be increased on turns where necessary to ensure fire apparatus remain on a paved surface during travel.
- E. Curb cuts have been minimized, where possible, through the use of common driveways. No more than two flag lots are served by the flag drive.
- F. Flag drive grades shall not exceed a maximum grade of 15 percent. Variances may be granted for flag drives for grades in excess

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of 15 percent but no greater than 18 percent for not more than 200 feet. Such variances shall be required to meet all of the criteria for approval in chapter [18.5.5](#) Variances.

- G. Flag drives shall be constructed to prevent surface drainage from flowing over sidewalks or other public ways.
- H. Flag lots adjacent to an alley shall meet all of the requirements of this section, except that:
  - 1. Vehicle access shall be from the alley only where required as a condition of approval.
  - 2. No screening and paving requirements shall be required for the flagpole.
  - 3. A four foot pedestrian path shall be installed within the flagpole and improved and maintained with either a concrete, asphalt, brick, or paver block surface connecting the street to the buildable area of the flag lot.
  - 4. The flag pole width shall be no less than eight feet wide and the entrance of the pole at the street shall be identified by the address of the flag lot clearly visible from the street on a four-inch by four-inch post that is 3½ feet high. The post shall be painted white with black numbers three inches high running vertically down the front of the post. For flagpoles serving two or more dwellings, the addresses of such dwellings shall be on a two foot by three foot white sign clearly visible from the street with three-inch black numbers.
- I. Flag drives and fire work areas shall be deemed Fire Apparatus Access Roads under the Oregon Fire Code and subject to all requirements thereof.
- J. When required by the Oregon Fire Code, flag drives greater than 150 feet in length shall provide a turnaround (see Figure [18.4.6.040.G.5](#)). The Staff Advisor, in coordination with the Fire Code Official, may extend the distance of the turnaround requirement up to a maximum of 250 feet in length as allowed by Oregon Fire Code access exemptions.
- K. Each flag lot has at least three parking spaces situated to eliminate the necessity for vehicles backing out.
- L. There shall be no parking within ten feet of the centerline of the drive on either side of the flag drive entrance.
- M. Flag drives serving structures greater than 24 feet in height, as defined in part 18.6, shall provide a fire work area of 20 feet by 40 feet clear of vertical obstructions and within 50 feet of the structure. The fire work area requirement shall be waived if the structure served by the drive has an approved automatic sprinkler system installed.
- N. Both sides of the flag drive have been screened with a site-obscuring fence, wall or fire resistant broadleaf evergreen site-obscuring hedge to a height of from four to six feet, except in the front yard setback area where, starting five feet from the property line, the height shall be from 30 to 42 inches in the remaining setback area. Such fence or landscaping shall be placed to ensure fire apparatus access is not obstructed by the encroachment of mature landscaping.
- O. The applicant has executed and filed with the Community Development Department an agreement between applicant and the City for paving and screening of the flag drive. Such an agreement shall specify the period within which the applicant, or agent for applicant, or contractor shall complete the paving to standards as specified by the Public Works Director and screening as required by this section, and providing that if applicant should fail to complete such work within such period, the City may complete the same and recover the full cost and expense thereof from the applicant. An agreement shall also provide for the maintenance of the paving and screening pursuant to this section, and assurance ongoing maintenance.
- P. Flag lots shall be required to provide a useable yard area that has a minimal dimension of 20 feet wide by 20 feet deep. As used in this chapter, the term "useable yard area" means a private yard area which is unobstructed by a structure or automobile from the ground upward.

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## **APPEAL OF TYPE II DECISION (AMC 18.5.1.060.I)**

**Appeal of Type II Decision.** The City Council may call up a Type II decision pursuant to section 18.5.1.060.J. A Type II decision may also be appealed to the Council as follows.

1. **Who May Appeal.** Appeals may only be filed by parties to the planning action. "Parties" shall be defined as the following.
  - a. The applicant.
  - b. Persons who participated in the public hearing, either orally or in writing. Failure to participate in the public hearing, either orally or in writing, precludes the right of appeal to the Council.
  - c. Persons who were entitled to receive notice of the action but did not receive notice due to error.
2. **Appeal Filing Procedure.**
  - a. ***Notice of Appeal.*** Any person with standing to appeal, as provided in subsection 18.5.1.060.I.1, above, may appeal a Type II decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection.
  - b. ***Time for Filing.*** The notice of appeal shall be filed with the City Administrator within ten days of the date the notice of decision is mailed.
  - c. ***Content of Notice of Appeal.*** The notice shall include the appellant's name, address, a reference to the decision sought to be reviewed, a statement as to how the appellant qualifies as a party, the date of the decision being appealed, and a clear and distinct identification of the specific grounds for which the decision should be reversed or modified, based on identified applicable criteria or procedural irregularity.
  - d. The appeal requirements of this section must be fully met or the appeal will be considered by the City as a jurisdictional defect and will not be heard or considered.
3. **Mailed Notice.** The City shall mail the notice of appeal together with a notice of the date, time, and place to consider the appeal by the City Council to the parties, as provided in subsection 18.5.1.060.I.1, at least 20 days prior to the meeting.
4. **Scope of Appeal.**
  - a. Except upon the election to reopen the record as set forth in subsection 18.5.1.060.I.4.b, below, the review of a decision of the Planning Commission by the City Council shall be confined to the record of the proceeding before the Commission. The record shall consist of the application and all materials submitted with it; documentary evidence, exhibits, and materials submitted during the hearing or at other times when the record before the Commission was open; recorded testimony; (including DVDs when available), the executed decision of the Commission, including the findings and conclusions. In addition, for purposes of Council review, the notice of appeal and the written arguments submitted by the parties to the appeal, and the oral arguments, if any, shall become part of the record of the appeal proceeding.
  - b. ***Reopening the Record.*** The City Council may reopen the record and consider new evidence on a limited basis, if such a request to reopen the record is made to the City Administrator together with the filing of the notice of appeal and the City Administrator determines prior to the Council appeal hearing that the requesting party has demonstrated one or more of the following.
    - i. That the Planning Commission committed a procedural error, through no fault of the requesting party, that prejudiced the requesting party's substantial rights and that reopening the record before the Council is the only means of correcting the error.
    - ii. That a factual error occurred before the Commission through no fault of the requesting party which is relevant to an approval criterion and material to the decision.
    - iii. That new evidence material to the decision on appeal exists which was unavailable, through no fault of the requesting party, when the record of the proceeding was open, and during the

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period when the requesting party could have requested reconsideration. A requesting party may only qualify for this exception if he or she demonstrates that the new evidence is relevant to an approval criterion and material to the decision. This exception shall be strictly construed by the Council in order to ensure that only relevant evidence and testimony is submitted to the hearing body.

- iv. Re-opening the record for purposes of this section means the submission of additional written testimony and evidence, not oral testimony or presentation of evidence before the Council.

5. **Appeal Hearing Procedure.** The decision of the City Council is the final decision of the City on an appeal of a Type II decision, unless the decision is remanded to the Planning Commission.

- a. ***Oral Argument.*** Oral argument on the appeal shall be permitted before the Council. Oral argument shall be limited to ten minutes for the applicant, ten for the appellant, if different, and three minutes for any other party who participated below. A party shall not be permitted oral argument if written arguments have not been timely submitted. Written arguments shall be submitted no less than ten days prior to the Council consideration of the appeal. Written and oral arguments on the appeal shall be limited to those issues clearly and distinctly set forth in the notice of appeal; similarly, oral argument shall be confined to the substance of the written argument.
- b. ***Scope of Appeal Deliberations.*** Upon review, and except when limited reopening of the record is allowed, the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal. No issue may be raised on appeal to the Council that was not raised before the Commission with sufficient specificity to enable the Commission and the parties to respond.
- c. ***Council Decision.*** The Council may affirm, reverse, modify, or remand the decision and may approve or deny the request, or grant approval with conditions. The Council shall make findings and conclusions, and make a decision based on the record before it as justification for its action. The Council shall cause copies of a final order to be sent to all parties participating in the appeal. Upon recommendation of the Administrator, the Council may elect to summarily remand the matter to the Planning Commission. If the Council elects to remand a decision to the Commission, either summarily or otherwise, the Commission decision shall be the final decision of the City, unless the Council calls the matter up pursuant to subsection [18.5.1.060.J](#).

6. **Record of the Public Hearing.** For purposes of City Council review, the notice of appeal and the written arguments submitted by the parties to the appeal, and the oral arguments, if any, shall become part of the record of the appeal proceeding.

The public hearing record shall include the following information.

- a. The notice of appeal and the written arguments submitted by the parties to the appeal.
- b. Copies of all notices given as required by this chapter, and correspondence regarding the application that the City mailed or received.
- c. All materials considered by the hearings body including the application and all materials submitted with it.
- d. Documentary evidence, exhibits and materials submitted during the hearing or at other times when the record before the Planning Commission was open.
- e. Recorded testimony (including DVDs when available).
- f. All materials submitted by the Staff Advisor to the hearings body regarding the application;
- g. The minutes of the hearing.
- g. The final written decision of the Commission including findings and conclusions.

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7. **Effective Date and Appeals to State Land Use Board of Appeals.** City Council decisions on Type II applications are final the date the City mails the notice of decision. Appeals of Council decisions on Type II applications must be filed with the State Land Use Board of Appeals, pursuant to ORS 197.805 - 197.860.

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## **Appeal on the Record Frequently Asked Questions**

A recent land use decision of the Planning Commission has been appealed to the City Council. The appeal of a Planning Commission decision is handled according to the procedures found in AMC 18.5.1.060.I as “*An Appeal on the Record.*”

### **What is “An Appeal on the Record”?**

An “*Appeal on the Record*” is an appeal of a land use decision where the City Council must consider the same facts and information (i.e. “the record”) that the Planning Commission saw. The City Council may not consider new facts or information.

Prior to 2008, City Council appeals were handled through a *de novo* hearing process and the City Council was able to consider new information during an appeal that was not previously included in the record upon which the Planning Commission based their decision. *Since 2008, City Council appeals have been handled through an appeal on the record.*

### **What are the steps to appeal?**

Once the Planning Commission makes a decision on a land use matter, a party to the original decision may appeal that decision to the City Council. The appellant must identify, in writing, specific areas where they think the Planning Commission made a mistake. The mistake has to be an error in interpretation of a fact, an interpretation of a rule or regulation, or in procedure. *The City Council will review only those specific issues raised as “errors.”*

The Council will decide: 1) whether there is substantial evidence to support the decision of the Planning Commission, and 2) if the Planning Commission committed an error.

### **What will happen at the hearing?**

At the City Council meeting, the only people who will be allowed to talk directly to the Council will be the City staff; the applicant; people who have filed the written appeal; and participants who provided oral or written testimony during the original Planning Commission hearing and who submit written arguments at least 10 days in advance of the City Council meeting. The applicant will be allowed 10 minutes and the people who have filed the written appeal will be allowed 10 minutes. Participants who have filed written arguments will be allowed 3 minutes to summarize their argument for the City Council. *No one can introduce new information or facts.*

### **What may the Council consider in reaching a decision?**

Except when limited reopening of the record is allowed as provided in AMC 18.5.1.060.I.4.b., the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. City Council review is limited to the issues clearly and distinctly set forth in the notice of appeal. No issue may be raised on appeal to the Council that was not raised before the Planning Commission with sufficient specificity to enable the Planning Commission and the parties to respond.

Ultimately, the Council may:

- Affirm the decision of the Planning Commission and reject the appeal;
- Reverse the decision of the Planning Commission and support the written appeal;
- Modify the decision of the Planning Commission; or
- Send the decision back to the Planning Commission with instructions for further proceedings. In this case, subsequent actions by the Planning Commission will be the final decision of the City.
- The final decision of the City can be appealed to the State Land Use Board of Appeals (LUBA).

## **COMMUNITY DEVELOPMENT DEPARTMENT**

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