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APRIL 1, 2025

Transmitted by Email

TO: Ashland Planning Commission (planning@ashland.or.us)
c/o Michael Sullivan, City of Ashland Community Development
51 Winburn Way | Ashland, OR 97520

FROM: Chris Hearn (chearn@davishearn.com)

RE: **APPLICANT FINAL WRITTEN ARGUMENT/REBUTTAL**
Planning Action: PA-T2-2024-00053
Applicants: Bryan & Stephanie DeBoer
Subject Property: 231 Granite Street (39-1E-08DA, Tax Lot 1800)

Dear Ashland Planning Commission:

Our firm represents applicants Bryan & Stephanie DeBoer (“Applicants”) in their pending planning action for 231 Granite Street. Please include this final written argument in the record for PA-T2-2024-00053. This memorandum summarizes the key issues to aid the Commission in its decision. Please note that this memo is not intended to abandon any arguments made by Applicants elsewhere in the record; those arguments are retained and incorporated here by reference.

Introduction

Applicants seek approval to construct a single-family residence for their daughter’s family at 231 Granite Street (Tax Lot 1800), a pre-existing undeveloped hillside lot that was created with City approval and recognized as buildable nearly 30 years ago. Due to the unique access and topography of Tax Lot 1800, Applicants’ proposal requires a Physical & Environmental Constraints Permit for development on Hillside Lands, including a Type II Variance to allow use of the historic nonconforming driveway access from Granite Street, and a Tree Removal Permit for removal of a limited number of trees necessary to safely develop the site.

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Planning staff have thoroughly evaluated the application and recommended approval with conditions, confirming that all applicable criteria are satisfied or can be satisfied with feasible conditions of approval.¹ Some neighbors raised concerns about driveway safety, hillside disturbance, home size, and tree removal. However, these concerns are either fully addressed by the proposal, reasonably handled via conditions of approval, appropriately deferred to final plan review, or simply not valid grounds for denial under the applicable approval criteria in the City's Land Use Ordinance (AMC's Title 18). As detailed below, the application meets each required approval criterion, and state law mandates a favorable, clear-and-objective review of this needed housing proposal. The Planning Commission should approve the application, allowing this long-planned homesite to be developed in a safe and environmentally responsible manner. (For the Commission's ease of reference, citations to the record and legal authorities are provided in bracketed footnotes.)

Home Size Context: Opponents have characterized the proposed home as too large. In fact, the home's habitable floor area is approximately 3,426 square feet (plus a garage and basement, as defined by building code) – a size that is proportional to the large lot and well within code limits. Moreover, as discussed below, over 80% of the property will remain undisturbed natural open space, far exceeding the minimum required. Subjective opinions that the home is “too big” are not approval criteria and cannot be the basis for denial.

Variance for Driveway Access – Not Self-Imposed and Justified by Unique Circumstances

Applicants request a Type II Variance from the strict limitations on flag-drive slope and length in order to use the only possible access to this landlocked hillside parcel. Under AMC 18.5.5.050, a variance may be granted if the Commission finds that four criteria are met. Here, each criterion is satisfied:

(1) Unique Physical Circumstances (18.5.5.050.A.1):

The historic nonconforming driveway access is a product of the property's unique history and topography, not a situation of the Applicants' making. Tax Lot 1800, in its current configuration, was approved by the Planning Commission in 1995 in connection with Planning Action #PA-95-024, as identified on the 1996 partition plat recorded as

¹ See: Staff Report for the Commission's March 11, 2025 public hearing; Email from Community Development Director Brandon Goldman (3/14/2025); and Director Goldman's Memo (3/18/2025) with attachments.

Partition Plat P-43-1996.²

In connection with approving the relevant “Land Partition Survey Partition Plat” in 1995, Tax Lot 1800 is clearly identified as “Parcel 3”, and thus a legal residential lot appropriate for the development of a single-family home, with access via the historic (“grandfathered”) nonconforming private easement extending uphill from Granite Street.³ In a 1992 letter, then-Planning Director John McLaughlin acknowledged that the grade of the access easement for Tax Lot 1800 exceeded then-current city standards, but concluded that, because the flag drive provided the landlocked Tax Lot 1800 with historic access to Granite Street, the existing nonconforming driveway’s use for a future residence on Tax Lot 1800 “would be allowable.”⁴ The 1992 letters from City’s Planning Director effectively recognize the special circumstances associated with Tax Lot 1800’s driveway access – which was and is the only feasible access for the landlocked Lot. Based on Planning Director’s 1993 letters, the historic owners of Tax Lot 1800 secured an access easement on the existing nonconforming driveway in 1994; then pursued Planning Action #PA-95-024 in 1995. The official Partition Plat was recorded in 1996, and includes the signature of the Planning Commission’s chair.⁵

The existing access from Granite Street, and the City’s acknowledgment of the nonconforming nature of the driveway easement serving Tax Lot 1800, were established more than 30 years ago by the historic owners and the City. The circumstances necessitating the driveway variance were not created by the Applicants, who reasonably relied on the buildable status of Tax Lot 1800 when they purchased the Lot in December of 2023. This is a textbook example of the type of “special or unique physical circumstance” foreseen by the Code as justification for a variance.

² Tax Lot 1800 is identified as “Parcel 3” in Partition Plat P-43-1996, signed by the Planning Commission’s chair on 08/10/1995 (PA# 95-024).

³ See: Applicant’s Easement Agreement recorded 02/02/1994, JCOR #94-04302.

⁴ See: Memo and attachments provided by Community Development Director Brandon Goldman’s Memo dated 03/18/2025.

⁵ See: Sheet 1 of Land Partition Survey Partition Plat PA-43-1996 (Survey No. 14932), signed by “Ashland Planning Commission” on 08/10/1995.

(2) Minimum Deviation Necessary & No Negative Impacts (18.5.5.050.A.2):

The variance requested is narrowly tailored to what is necessary to develop a home on Tax Lot 1800. The residence is sited at the closest feasible location to the end of the existing flag drive, minimizing any new driveway length or grading. Steep portions of the existing driveway (which currently reaches grades of ~23%) will be improved and paved to enhance safety and durability. Fire safety will be addressed with residential sprinklers and, if required, a new hydrant and pump, per Fire Department standards anticipated when the lot was created. In staff's assessment, the variance sought is the minimum necessary deviation from the 18% slope / 200-foot length standard to allow use of this pre-existing nonconforming access, and all variance criteria are met because the code's general limits simply do not account for the property's unique situation.

Importantly, allowing this driveway variance will not harm adjacent properties or the public since the driveway is private and will serve only this one home. In fact, improving the driveway will enhance emergency access to this area (as discussed further below in the Fire Safety section). Any minor impacts of allowing the steeper drive are outweighed by the benefits of providing safe access to a new residence on a legal lot.

(3) Public Benefits Exceed Any Negative Impacts (18.5.5.050.A.3):

Granting the requested driveway variance will provide significant and unique public benefits with minimal downsides. The primary benefit is allowing a new family home to be built within the City on an existing infill lot – furthering Ashland's infill housing goals, and adding to the City's tax base, and addressing the "needed housing" supply.

The third variance approval criterion is:

*"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.**"*
(emphasis supplied.)

Public Trail Easement. Applicants have voluntarily offered a condition of approval dedicating a permanent Public Trail Easement across their Tax Lot 1800 in the location of the popular TID "Ditch Trail". This represents a substantial public recreational benefit that more than compensates for the relatively minor impacts of the driveway variance. The City's Comprehensive Plan expressly identifies the trail across Tax Lot 1800 as a desired link in Ashland's trails network (listed as Project #11, "Talent

Irrigation Ditch Trail Segment,” in the 2024 Parks, Trails, and Open Space Plan).⁶ This easement will guarantee the community’s perpetual use of this critical trail segment crossing Tax Lot 1800. Applicants have submitted a draft Public Trail Easement document into the record as a voluntary condition of approval.⁷ Tax Lot 1800 appears in the Open Space & Trails Plan as “Project #11, Talent Irrigation Ditch Trail Segment,”. City’s Open Space Trails Plan was adopted by Council during 2024, and is a part of City’s Comprehensive Plan. By offering to formalize this trail connection as a voluntary condition of approval, Applicants are directly furthering a specific Comprehensive Plan goal. In sum, the “public benefit” criterion for a variance is easily met: “The proposal’s benefits will be greater than any negative impacts on development of adjacent uses and will further the purpose and intent of the ordinance and Comprehensive Plan of the City.”⁸

The public benefits of this proposal are substantial and clear, while any potential negative effects are minimal.

(4) Not a Self-Imposed Hardship (AMC 18.5.5.050.A.4):

The need for the variance “is not self-imposed by the applicant or property owner.” (AMC 18.5.5.050.A.4.) This requirement is unequivocally met. The physical constraints (steep terrain and the long-existing nonconforming access easement) were established by others long before the Applicants acquired the property in 2023. Applicants had no role in creating the lot’s access situation. Denying the variance would therefore deny any reasonable use of this residential lot – a result wholly contrary to the intent of the code and fairness (and potentially triggering regulatory takings issues).

Again, City’s former Planning Director effectively recognized in 1993 that insisting on full compliance with the driveway slope standards here would serve “no

⁶ See: Letter from APRC attached to Community Development Director Goldman’s Memo the the Planning Commission. dated 03/18/2025[5]

⁷ See: Recitals in Public Trail Easement offered by Applicants, submitted into the record on 03/25/2025.

⁸ Ashland Parks, Trails, and Open Space Plan (2024), adopted as part of the Ashland Comprehensive Plan. See Ashland Parks & Recreation Dept. Letter to Planning Division (Mar. 12, 2024) (noting Tax Lot 1800 as Project #11, "Talent Irrigation Ditch Trail Segment," targeted for trail acquisition).

practical purpose” given the lack of any alternative access.⁹

In short, allowing use of the steeper existing driveway harms no one, whereas denying the variance would deprive the owner of any use of Tax Lot 1800. Such a denial would not only conflict with the broader public interest in utilizing residential land, but it would also raise serious fairness and legal concerns (as discussed under Needed Housing law, below).

Conclusion (Variance):

Substantial evidence in the Commission’s record demonstrates that this variance is necessary to permit development of a home on a pre-existing legal lot, and that approving it is consistent with the purpose of the code (ensuring safe access and reasonable use of residential land). City staff, after careful review, concluded that all variance criteria (AMC 18.5.5.050.H) are met and that the unique physical characteristics of the site warrant approval. We urge the Commission to reach the same conclusion as Planning staff and approve the driveway variance, so that this infill lot can finally be put to its intended use as a homesite after 30 years in City’s inventory of buildable lands.

Hillside Development Standards – Design is Safe, Minimizes Impacts, and Exceeds Requirements

Apart from the driveway variance, the proposed development is designed to meet or exceed Ashland’s Hillside Development Standards (AMC 18.3.10.090) – which were adopted after Tax Lot 1800 was created.¹⁰ The application carefully minimizes disturbance on this steep, wooded site, complying with both the purpose and the specific requirements of the City’s Physical & Environmental Constraints chapter. Initially, Applicants requested a couple of exceptions to the Hillside Design Standards pursuant to AMC 18.3.10.090.H (for a slightly taller downhill building wall and a less-than-6-foot upper-story offset). Findings were provided showing those exception criteria would be met. However, Applicants have since modified the home’s design to eliminate these exceptions. The plans were revised (during the post-hearing information period) to increase the upper-floor step-backs to a full 6 feet on the downhill elevations, and to ensure the downhill wall height meets the 20-foot limit. These design changes reduced

⁹ 1993 Letters from Planning Director McLaughlin (acknowledging that a driveway variance would be necessary and appropriate for this parcel's development).

¹⁰ City of Ashland Ordinance No. 2808, adopted 12/02/1997, establishing the Hillside Development Standards.

the home's floor area by about 44 square feet, and brought the project into compliance with those two standards. As a result, no major exceptions to the Hillside Standards are needed at this time (the only relief now being sought is the driveway variance discussed above). Even if an exception had been required, the record shows the criteria could be met – but importantly, the project as revised fully complies with City's Hillside Design Standards for building wall height and step-backs.

Overall, the project will be safe and environmentally sound – as confirmed by the geotechnical reports and by staff. Any visual or aesthetic impacts will be negligible due to the home's location and extensive natural screening. The home will be tucked against the slope and not visible from Granite Street or other public vantage points. Applicants address a few key hillside development issues in turn:

- **Slope Stability & Hazard Mitigation:** Applicants have thoroughly evaluated potential geologic hazards (landslide, erosion, etc.) and incorporated all required measures to mitigate them, per AMC 18.3.10.090.A. The home and driveway will be engineered with appropriate retaining systems and drainage to stabilize the slope. A geotechnical engineering report and site-specific grading plans (in the record) include detailed recommendations to ensure the development will be safe on the steep terrain. City staff concluded that the proposal adequately “considered the potential hazards” and that conditions of approval (e.g. erosion control plans, construction management measures) will reduce risks to acceptable levels. No evidence in the record refutes the expert analysis provided by Applicants, which demonstrates that Tax Lot 1800 can be developed as proposed without jeopardizing neighboring properties or hillside stability. Furthermore, Applicants will post a bond and obtain a Physical & Environmental Constraints Verification Permit before construction, giving the City additional oversight to confirm all hazard-mitigation measures are in place (a standard condition of approval). In sum, Applicants’ proposed development complies with the City’s Hillside Standards intended to prevent unsafe construction on steep lands.
- **Limiting Disturbance / “Natural State” Preservation:** Ashland’s Hillside Development Standards require that a substantial portion of a hillside lot remain in its natural state (undisturbed). Applicants’ site plan far exceeds this requirement. Approximately 18.7% of the lot area will be disturbed by development, meaning over 81% of the property remains in its natural, untouched condition – well beyond the 52% minimum natural area required (i.e. a maximum of 48% disturbance allowed under AMC 18.3.10.090.B.3). Similarly, lot coverage by impervious surfaces is substantially less than the 20% coverage allowed in this zoning. In other words, the proposed development easily meets

the code's objective of minimizing grading and preserving the majority of the site in natural hillside vegetation. The disturbance that does occur (driveway, building footprint, small yard areas) is concentrated in one portion of the lot to avoid spreading impacts. All retained areas will remain densely vegetated. Thus, the project is in harmony with the natural terrain and will maintain the hillside's overall character.

- **Hillside Building Design (Height & Step-Backs):** The home design incorporates stepped massing and vertical articulation to break up bulk, and it is well under the City's normal height limit for this zone. In fact, the building's overall height will be roughly 15 feet above natural grade at its tallest point, which is less than half the 35-foot height limit permitted on hillside lands. The design also meets all building envelope requirements. As noted, Applicants revised the design to comply fully with the specific Hillside Design Standards for downhill wall height and upper-story step-backs. The final plans demonstrate that the vertical wall portion on the downhill side is under 20 feet high, and the additional height above that (the roof gable and eaves) does not count as "wall" for the step-back rule. By adding 6-foot offsets to the upper floor, the continuous building plane on each elevation now conforms to the 36-foot maximum length standard (no exception needed). Staff concluded that, due to the site's steep slope and the desire to cluster development, allowing a modest exception in these areas would be justified to better protect the hillside. But now that the plans have been adjusted, no exception is required. It is worth noting that the project's approach (a two-story design snug against the slope) actually protects hillside resources better than a sprawling single-story or further stepped design. By concentrating the house on a small portion of the lot near the driveway entrance, grading outside the driveway and footprint is minimized, also preserving the vast majority of the trees (over 70 out of 75 significant trees on site will remain). Applicants have adhered to the primary objective of the Hillside Ordinance: reduce hillside disturbance while allowing reasonable development consistent with Tax Lot 1800's residential zoning. The result will be a well-designed home that respects its environment.
- **Retaining Walls:** Some neighbors raised a concern about the height of a proposed retaining wall along the north side of the driveway cut. The plans do not actually show a 22-foot-tall unbroken wall, as the neighbors asserted. The notations "+14 TOW, +15 TOW, +22 TOW" on Applicants' Landscape Plan refer to elevations relative to a datum, not exposed wall height. In fact, those correspond to actual wall heights of approximately 1 foot, 2 feet, and 5 feet above adjacent grade, respectively, for segments of the wall. All retaining walls will be engineered and will comply with AMC 18.3.10.090.B.4.b at the building permit

stage (which requires terracing or other measures for cuts over 7 feet). If necessary, the final design will incorporate terraced wall segments or other structural solutions so that no single vertical cut exceeds code limits without mitigation. In any event, Applicants are not asking to simply cut a 22-foot vertical bank with no terracing or stabilization. If minor adjustments (such as an additional terrace or shifting the wall location slightly inward) are needed during final engineering, Applicants can and will accommodate them – there is ample room on site to modify slopes or wall design as needed. The Commission can impose a condition that *“final grading and retaining wall plans shall meet the terracing requirements of AMC 18.3.10.090.B.4.b to the satisfaction of the Staff Advisor,”* and Applicants will gladly comply. This specific technical detail can be resolved between the project engineers and staff during final plan review; it does not affect the fundamental approvability of the project. Moreover, the retaining wall will be entirely on the Applicants’ property and will be properly constructed so as not to undermine soils on the downslope neighbor’s side. To the extent the wall may end up closer to the property line than the guideline of “half the wall height,” that guideline applies to raw cut slopes without structural support – here a structural wall is proposed, which by intent of the code allows more flexibility. If a small exception or variance is ultimately deemed necessary for the wall placement, the same hardship (steep topography and narrow lot configuration) justifies it, and it can be handled as a condition of approval. In summary, the retaining wall issue is a normal part of detailed hillside engineering and will be addressed in the final plan. It is not grounds for denial of the project.

Conclusion (Hillside Standards): The proposed home complies with or exceeds the Hillside Development Standards intended to protect the environment and public safety on steep lands. Where minor relief was initially sought from certain design standards, Applicants proactively modified the design to meet those standards outright. The project’s design represents the minimum necessary disturbance to develop a single-family home on this lot, and in many respects it goes above and beyond the code’s requirements (for example, preserving far more natural area and trees than required). City staff found the hillside development criteria satisfied (with conditions), and no evidence to the contrary has been provided.

Tree Removal Permit – Consistent with Standards and Necessary to Allow Reasonable Use

The application includes a request to remove a total of 67 trees from the site, 63 of which are small diameter (< 6 inches DBH) saplings or scrub trees that serve as ladder fuels. Only four significant trees (6 inches DBH or greater) are planned for removal, which is the minimum necessary to accommodate the driveway and the

homesite in a safe manner. The Ashland Tree Commission reviewed the proposal and, as reflected in the Staff Report, did not oppose the removals subject to recommended conditions (all of which Applicants accept). Staff likewise concluded that, with conditions, the Tree Removal criteria are met and the permit should be granted.

Under AMC 18.5.7.040.B, a Tree Removal Permit for hillside lands must satisfy two key approval criteria (in addition to fire safety considerations):

- (1) **Removal is Necessary for Allowed Use:** The proposed removals are necessary to enable reasonable development of this residential lot. The trees slated for removal directly conflict with the planned driveway location or building footprint, or are within the mandatory wildfire defensible space around the new home. In particular, a few trees near the driveway must be cleared to widen and improve the drive to meet safety standards, and a cluster of trees in the immediate construction area must be removed for the house foundation and fire clearance. It is not feasible to construct the home and driveway on Tax Lot 1800 without removing these specific trees – they lie essentially within the only developable area of the Lot. The code asks whether the tree removal is the “minimum necessary” to allow the use of the property, and here it clearly is.¹¹ Applicants have already modified their plans during the review process to preserve certain trees that were initially proposed for removal. For example, two trees that straddle the property line with the neighbors (a 16-inch oak and a dual-stem madrone ~10”/12”) were originally marked for removal but, to address the neighbor’s concerns, Applicants adjusted the driveway design to avoid cutting those trees. Those shared trees will be retained if at all possible, with the driveway shifted slightly and construction under the supervision of the project arborist to protect their roots. The only tree located near the property line that still must be removed is a large madrone (approximately 34–36” DBH) situated entirely within the recorded driveway easement area. That tree lies in the direct path of the Applicant’s recorded legal access easement and must be taken out to achieve the necessary driveway improvements (and importantly, the terms of Applicant’s easement allow removal of any obstructions within the easement area to allow for access). No trees are being removed solely to create yard amenities – for instance, the proposed patio and pool are sited on the portion of the lot with the least slope and outside any significant tree canopy, so no additional tree removal is required for those features. In summary, the trees proposed for removal have been limited to those absolutely needed for the driveway, building

¹¹ AMC 18.5.7.040.B.2.c (tree removal criterion requiring that removal be the minimum necessary to allow the lawful development).

pad, or required wildfire safety clearances. Applicant's requested Tree Removal Permit must be granted to the extent necessary to allow a home to be built on this pre-existing residential lot (denying it would preclude development – effectively a regulatory taking of the property).

- (2) **No Significant Negative Environmental Impacts:** The trees removed will have no significant adverse impact on the environment (erosion, soil stability, runoff, or impacts to remaining trees). An erosion control plan and other construction-phase safeguards will be in place to prevent any soil runoff or instability resulting from the clearing. The majority of the site's tree cover will remain intact, providing continued slope stability and erosion control. In terms of the forest ecology, the removals have been evaluated by a certified arborist and a forester; both professionals concluded that removing this small subset of trees (mostly suppressed understory growth) will not appreciably diminish canopy cover or species diversity in the area. Even with the removal of up to five significant trees, there will be no notable reduction in overall tree canopy density within 200 feet of the site – the hillside will remain heavily treed. Numerous mature madrone, pine, fir, and oak trees on the property and adjacent properties will be retained. Any trees removed will be mitigated as required by planting of new trees on site. With the recommended mitigation, the project proposes no net loss of tree values over the long term – the scenic and environmental functions of the trees will be replenished by new growth. Additionally, many of the smallest trees being removed are actually fire-prone ladder fuels; eliminating these combustibles improves wildfire safety for the property and its neighbors (an ancillary environmental benefit). In short, the limited tree removals proposed will not cause undue environmental harm.

Fire Safety and Forest Health Considerations:

Although not an explicit approval criterion in the Tree Removal chapter, it bears noting that the removal of many of the smaller trees is beneficial for wildfire safety. The property is in a designated Wildfire Hazard area where creating defensible space around structures is critical. Applicants' fire fuel reduction plan (included in the application) was reviewed by Ashland Fire & Rescue. It entails clearing brush and closely spaced small trees around the home. Many of the "67 trees" counted for removal are actually slender understory saplings or scrub that pose fire risks. Eliminating this excess fuel will improve safety for the new home and the neighborhood, while healthy larger trees will remain to provide shade and soil stability. In sum, Applicants' Tree Removal Plan, aligns with recommended wildfire mitigation practices. All trees to be removed are concentrated on a limited area of one private lot; adjacent properties and the broader neighborhood will still enjoy substantial tree cover. To further offset the removal of four

significant trees, Applicants will contribute to off-site tree planting as needed (per city requirements) to ensure no overall loss of urban forest canopy. With these measures, the project advances both safety and environmental stewardship.

Conclusion (Tree Removal):

Applicant's Tree Removal Plan satisfies the criteria of AMC 18.5.7.040, supporting the requested for a Tree Removal Permit. The few significant trees to be removed are the minimum necessary to accommodate code-compliant development of this lot, and their removal will not cause significant environmental harm. The tree removed will be mitigated as required. The Ashland Tree Commission reviewed the plan and did not oppose the proposed tree removals given the mitigation and safety rationale. Staff likewise concluded that, with conditions, the tree removal criteria are met and the permit should be approved. Applicants respectfully request that the Commission concur with its staff and approve the needed tree removals to allow the project to proceed. This will allow the new home to be built while ensuring the long-term health and safety of the remaining urban forest on and around the site.

Applicants' Rebuttal to Opponent Comments (Submitted March 12–25, 2025)

Applicants will now briefly respond to specific issues raised by various neighbors during the open-record period (March 12–25). Many of the neighbors' concerns were already addressed in the Rebuttal Memorandum submitted by Applicant's consulting planner, Amy Gunter of Rogue Planning & Development Services, on March 25, 2025, which is incorporated here by reference. Below, we summarize each key issue raised and provide a concise rebuttal, often referring back to the more detailed discussions in the sections above:

1. Tree Ownership and Removal Near the Property Line

Summary of Opponents' Argument: Neighbors (including the Eisenbergs and McLaughlins) assert that certain trees near the driveway area – specifically a 16-inch Oregon White Oak and a two-stem madrone (~10" and 12" DBH, identified as tree #68 and #71 on the plans) – straddle the property line between the subject property (Tax Lot 1800) and the McLaughlins' property (Tax Lot 700). They argue these trees are co-owned by Applicant and the neighbor and thus "cannot be removed without the neighbor's consent." Opponents also point out a recently identified ~34" diameter madrone at the northeast corner of the flag lot (within the access easement) that straddles the boundary, suggesting Applicants failed to account for this shared tree in the initial submittals.

Applicants' Response: Applicants acknowledge the updated survey information confirming that these three trees lie on or very near the shared property line. However, none of these shared trees creates an insurmountable problem for the

project. In fact, Applicant's development plans have now been adjusted to address the neighbor's concerns and to preserve the two property-line trees (#68 the oak, and #71 the small madrone). As noted above, the driveway design was slightly shifted and construction methods will be employed (under the project arborist's guidance) to protect those two trees so they can remain in place. The only large tree on the border – the ~34" madrone at the northeast flag lot corner – falls within the driveway easement area and is slated for removal, but that tree is entirely within the recorded access easement and its removal is permitted as part of Applicants' legal rights under the terms of the Easement Agreement (i.e. the Applicants have the legal right to remove it as necessary to allow use their access for its intended purpose). In any event, any tree that technically lies on a property line will only be removed in compliance with legal requirements – meaning if neighbor consent is required, Applicants will obtain it, or if consent is not granted, the plans will be adjusted to retain the tree. Applicants have every intention of being good neighbors and will work with the McLaughlins regarding any co-owned trees. Notably, by revising the plan during the post-hearing period, the only shared tree now planned for removal is the large madrone lying directly within the easement, and that removal is necessary for access and allowed by the terms of Applicant's recorded easement. This is a manageable issue and not grounds for denial. In fact, Ms. Gunter's March 25 memo confirms that the minimum number of significant trees are being removed to accommodate development, and that all such removals are necessary for the driveway, the residence footprint, or the wildfire safety buffer – none are being taken out gratuitously. Even with these removals, there will be no significant reduction in overall tree canopy or diversity in the vicinity. The shared trees in question do not derail the project: Applicants will either secure the neighbors' consent or simply design around the shared trees if need be (as they have already done for two of them). The Tree Removal Permit criteria are met, as detailed above – the removal is the minimum necessary for the project and will not have significant adverse impact on the area. (For additional details on tree protection measures, please refer to the March 25 Gunter Rebuttal and the arborist's reports in the record.) Finally, to reiterate: the large madrone located within the driveway easement may be removed under the terms of that easement, so its straddling the property line does not prevent the driveway improvements from moving forward.

2. Driveway Slope and Length (Variance Validity)

Summary of Opponents' Argument: Some neighbors (e.g. Ms. Sarah Sameh and Dr. Jay Reeck) argue that the flag-lot driveway's grade and length violate city standards and that the required variance should be denied. They suggest that because the driveway doesn't meet the standard 18% slope/200-foot length, the project is unacceptable or that this "self-imposed" condition should not be relieved by a variance.

Applicants' Response: This issue was the central focus of the application and has been fully addressed in the application narrative, staff reports, and in Applicants' prior submittals in the Commission's record (including Ms. Gunter's planning analysis).

In summary, the need for the driveway slope/length variance is driven by the lot's unique circumstances and historic approvals – it is the only possible access to a legal hillside lot that was created decades ago with the City's approval and knowledge that the driveway would exceed the usual standards. Again, the City explicitly contemplated this situation when the parcel was created in the 1990s. As previously mentioned, during 1992, Planning Director John McLaughlin acknowledged in writing that the access grade of the pre-existing nonconforming driveway would exceed code limits, but concluded that a variance for the driveway would be necessary and allowable to develop the lot. In fact, City staff correspondence from 1992–1993 (now in the record) confirms that Tax Lot 1800 would be recognized as a legal lot once an access easement was provided, and noted that “the future development of the driveway would require a variance.” City later approved Planning Action #PA95-024, and signed the official Plat showing Tax Lot 1800 as “Parcel 3” on 09/10/1995. The need for a steep, lengthy driveway is not a self-created hardship – it is an inherent condition of the lot's location and history. City staff today have likewise concluded that the variance criteria are met for all the reasons discussed earlier in this memo. As explained in the Variance section above, denying the variance would essentially preclude any home from ever being built on this lot, which was never the City's intent, and creates regulatory takings issues. In short, this variance is justified by the unique physical circumstances and prior City actions. The opponents have not introduced any new facts to refute the comprehensive variance justification already in the record – they largely repeat general objections to any steep driveway – and the historic driveway in question has existed for decades as a nonconforming use. The evidence remains that the variance meets all criteria and will ensure safe, reasonable access. Applicants incorporate by reference the full analysis provided in Section (1) of this memo and in the staff report. There is no basis to withhold the driveway variance in this case.

3. Emergency Vehicle Access and Fire Safety

Summary of Opponents' Argument: Building on the driveway length issue, opponents contend that emergency vehicle access will be unsafe or non-compliant due to the long, steep driveway. They question whether fire trucks can adequately reach the new house and whether lack of a standard turnaround near the house will pose a safety risk.

Applicants' Response: Applicants agree that fire safety and emergency access are critical, and have taken multiple steps to ensure the project will comply with all Fire Code requirements. First and foremost, the new house will be equipped with a NFPA-compliant fire sprinkler suppression system throughout. Adding sprinklers

dramatically improves fire safety for the occupants and neighbors, and it is a key factor that allows flexibility in fire apparatus access distance. Under AMC 18.5.3.060.J (and the Oregon Fire Code), the Fire Marshal may allow a turnaround to be farther from a home (up to 250 feet away) when the building is sprinklered. In this case, because the driveway is longer than normal, Applicants worked closely with Ashland Fire & Rescue to craft an acceptable alternative to the typical on-site turnaround. Ashland's Fire Marshal has indicated (in email correspondence in the record) that providing a widened turnout along the driveway – designed to Jackson County standards – would be an acceptable solution instead of a full hammerhead or cul-de-sac turnaround near the house (which is not feasible on this steep site). In other words, rather than having a turnaround at the top, a strategically placed pull-out on the driveway will allow a fire engine to stop and reverse direction as needed. This approach has been deemed acceptable by the Fire Marshal and is within his discretion under the code. While a formal sign-off letter from the Fire Marshal was not yet in the March 18 evidence, Applicants anticipate providing final written confirmation before the Commission's decision. In any event, the Commission can impose a condition of approval that final fire department approval of the access plan (turnouts, etc.) be obtained – and Applicants are amenable to such a condition. Applicants will comply with any and all fire code provisions (turnouts, sprinklers, fuel reduction, etc.) required by the Fire Official to ensure emergency access is safe. It is also worth noting that the shared lower portion of the driveway already serves multiple existing homes and is generally of adequate width for fire apparatus in most places. Applicants will be improving the driveway surface and ensuring that the new upper driveway segment meets the Fire Code's width requirement (minimum 12 feet clear) and weight capacity for firefighting equipment. Defensible space and vegetation management will be implemented around the new home in accordance with the Wildfire Lands ordinance. In sum, although the total driveway length exceeds the norm, the combination of a fully sprinklered residence, a mid-drive turnout, and Fire Marshal oversight will meet the intent of the fire code – which is to provide reasonable and safe access for emergency responders. The opponents' fears about wildfire are understandable given the site's wooded nature, but the appropriate way to address those fears is exactly what Applicants are doing: complying with enhanced fire safety measures. Importantly, no evidence exists in the Planning Commission's record supporting the assertion that emergency access will be insufficient once these measures are in place. This issue has been addressed by Ms. Gunter's memo and in discussions with the Fire Department, and it will be finalized as a condition of approval rather than serving as any basis for denial.

4. Retaining Wall Height and Hillside Impacts

Summary of Opponents' Argument: Opponents (Ms. Sameh and Dr. Reeck) argue that the north-side retaining wall along the driveway cut will not meet the City's Hillside Development Standards – claiming it might be as tall as 22 feet and too close to

the property line.

Applicants' Response: The final engineered design of the driveway retaining walls will comply with applicable standards or approved exceptions. Applicants believe the opponents have misinterpreted the preliminary plan schematic. As explained earlier, the plan's callouts "+14," "+15," and "+22" for the wall do not represent exposed wall height in feet – they are elevation references. The actual heights of the wall segments, relative to adjacent grade (driveway or landscaped planters), are on the order of 1 foot, 2 feet, and 5 feet, respectively. In any case, even if a taller combined retaining structure is needed for the steep cut, the Hillside Standards provide methods to address it. AMC 18.3.10.090.B.4.b requires that cut slopes over 7 feet be terraced or structurally stabilized. Here, a structural retaining wall is proposed to retain the cut. If the wall needs to be tiered to meet the 7-foot terracing rule, it can be designed with two shorter tiers (for example, two ~11-foot walls with a planting terrace between). If, alternatively, the geotechnical engineer determines a single taller wall is more appropriate for stability, a minor exception can be sought – but that scenario is unlikely given Applicants can terrace if needed. Importantly, Applicants are not asking for permission to simply cut a 22-foot vertical bank with no mitigation. Applicants fully intend to meet the code's requirements through proper engineering. The Commission can comfortably condition approval on the requirement that "final grading and retaining wall plans shall meet the terracing requirements of AMC 18.3.10.090.B.4.b," as noted above. Applicants will comply with that. Notably, this retaining wall detail was not a focus of the March 11 hearing (likely because it is understood to be solvable at the staff/engineering level). It does not affect the basic approvability of the project – it is a typical item to be resolved during final plan review. All retaining walls will be designed by a licensed engineer to ensure stability and code compliance. If that means adding a terrace or shifting the wall further inward onto Applicants' property, that can be done – there is ample room to make such adjustments. As for the wall's proximity to the property line (adjacent to Mr. Eisenberg's lot at 223 Granite), Applicants will ensure no adverse impact to the neighbor's property. All construction will occur on Applicants' side of the line, with proper structural support to avoid soil encroachment. It is true the wall may be closer to the property line than the guideline of "half the wall's height," but again, that guideline is meant for earthen slopes; a structural wall provides more flexibility. If a formal variance or exception is technically required for the wall's setback or height, Applicants will request it and can demonstrate the same hardship (steep slope and narrow lot) justifies it. In summary, the retaining wall concern is addressable in final engineering and is not a reason to deny the application.

5. Construction Access via the Shared Easement

Summary of Opponents' Argument: Some neighbors have expressed concern about construction impacts to the shared driveway easement (the lower access from Granite Street). They worry that heavy construction vehicles on the narrow, steep driveway could cause damage, block access for existing residents, or otherwise create problems – especially since multiple families use this easement. They question how equipment will reach the site and whether the Applicants have the right to use the easement for large construction vehicles.

Applicants' Response: The easement serving Tax Lot 1800 is a legal access and utility easement benefitting Tax Lot 1800 – it was granted specifically to allow not only residential traffic but also whatever access is necessary to build and maintain a residence (which was the very purpose of securing the easement in the 1990s). Using the easement for construction ingress/egress is clearly within the rights of the easement holder (Applicants). That said, Applicants are committed to minimizing construction disturbances for the neighbors. Applicants will coordinate a construction management plan that addresses the scheduling of large deliveries, contractor parking, and roadway maintenance. For example, Applicants can ensure that concrete trucks or excavation equipment access the site during off-peak hours for the neighbors, and will provide advance notice to adjacent residents of any temporary disruptions. If any damage occurs to the shared driveway surface or its edges due to construction activities, Applicants will promptly repair and restore the driveway. Applicants' goal is to leave the easement in equal or better condition than it was before construction. It's important to note that temporary construction inconvenience is not a land use approval criterion under the code. The Planning Commission typically does not base a decision on construction-period impacts, as the City has separate procedures (and the building permit can include conditions) to manage those issues. The key point for the Commission's purposes is that the Applicants' recorded easement establishes their right to access their property – and that inherently includes access during construction. Applicants will be good neighbors in exercising that right, employing best practices to reduce construction impacts. In sum, this concern, to the extent it has been raised, does not relate to any applicable approval criterion and thus should not affect the Commission's decision on the land use application.

6. Open Space and Trail Easement Commitments

Summary of Opponents' Argument: Many public comments alluded to the property's role in the city's open space and trails network. Given the parcel's size and location, neighbors want to ensure that the existing TID Ditch trail is preserved. Some suggested that allowing development might jeopardize this community trail connection or the general open-space value of the land.

Applicants’ Response: Applicants have gone above and beyond to address open space and trail concerns. As noted at the hearing, Applicants have repeatedly stated their willingness to dedicate a perpetual public pedestrian easement along the TID Ditch Trail segment that crosses their property. In fact, as mentioned above, Applicant Bryan DeBoer met with Ashland Parks & Recreation Commission (APRC) members in early 2024 and offered to grant such a trail easement. Although APRC never followed-up with provided Applicants with any easement documents, Applicants did not withdraw the offer. Applicants now formalized their offer by submitting a draft Public Trail Easement into the record, which they propose as a voluntary Condition of Approval in this land use action. This means that the portion of the trail crossing Tax Lot 1800 will be permanently secured for public recreational use for generations to come, enhancing the City’s trail system. This voluntary easement directly advances a specific goal incorporated into the City’s Comprehensive Plan (connected open spaces and trails) and provides a public benefit that more than compensates for the single variance Applicants request. In terms of general open space, it is also important to highlight that over 80% of the lot will remain undeveloped natural hillside. The development footprint (home, driveway, small yard/patio areas) is confined to about 18–19% of the parcel, leaving more than four-fifths of the land in its natural state. This far exceeds the code’s requirements (which would allow up to 48% of the site to be disturbed). Thus, neighbor concerns about “losing” open space are largely unfounded – the vast majority of the property’s natural land will remain untouched and will continue to provide wildlife habitat and scenic value.

7. Home Design, Size, and Aesthetic Concerns

Summary of Opponents’ Argument: Opponents raise general objections to the size and scale of the proposed home, and to certain design features (e.g., that it doesn’t “blend in,” or that it includes a swimming pool, which the Hillside Guidelines discourage but do not prohibit). Some suggest the home is too large for the neighborhood or otherwise aesthetically inappropriate.

Applicants’ Response: Applicants have worked diligently to ensure the home design complies with all clear-and-objective standards in the code. Where feedback was received, Applicants have made design concessions to address concerns. For example, as noted above, the plans were modified after the March 11 hearing to eliminate the need for any exception on the east and south elevations by providing full 6-foot offsets in the upper story, thereby meeting the horizontal plane standard (this change slightly reduced the home’s floor area as well). At this point, the project meets all applicable building design standards, and the only relief being sought is the driveway variance. The comment about the downhill wall height exceeding 20 feet has been addressed – the revised plans show that the vertical wall portion is under 20 feet, with only the roof structure above that height (which does not count toward the 20-foot wall limit). In

short, the design now conforms to the letter of the hillside development standards. To the extent opponents argue the project doesn't meet the "spirit" of those standards, Applicants believe the opposite is true: The primary objective of the Hillside Ordinance is to reduce impacts to hillsides while allowing reasonable development. As described, the project concentrates development in a small area, minimizes grading and retains the vast majority of existing trees (70+ out of ~75 significant trees will remain). In doing so, the design actually achieves the goals of the ordinance – it results in a home that is both site-appropriate and environmentally sensitive. Applicants fully intend for 231 Granite to be another example of a well-designed Ashland home that respects its natural setting. Finally, it must be stressed that general opposition to development or subjective aesthetic preferences are not approval criteria on which the Commission can base a denial. This is a privately owned, buildable lot created with the Planning Commission's approval in 1995. The owners are entitled to develop it in accordance with the City's Land Use Ordinance. As confirmed by staff's findings, the application meets or exceeds all applicable standards (or seeks proper relief where needed, in the case of the driveway). Personal preferences of neighbors – for instance, a desire to keep this lot undeveloped as quasi "open space," or dislike of the home's modern appearance or the inclusion of a pool – cannot override the fact that the proposal is code-compliant. The Hillside Development Standards about blending structures into the natural setting have been applied by staff in a reasonable, objective manner consistent with state law. The Planning Commission's role is to apply the law and standards as adopted, not to impose subjective design critiques. In this case, those standards support approval. The opponents' post-hearing submittals did not reveal any new instance of non-compliance with the code; they mainly re-emphasized concerns that were already considered and addressed by staff and the Applicants during the initial hearing.

Oregon's Needed Housing Law – Clear and Objective Standards Must Govern the Decision

Finally, it is important to recognize that this application is for "needed housing" under Oregon law. ORS 197.303 broadly defines needed housing to include "all housing on residentially zoned land" that meets the community's housing needs – explicitly including detached single-family homes like the one proposed here. The opponents' suggestion that a single large home is not "needed" is misplaced; the statute expressly includes single-family homes in the definition of needed housing. Because this application is for needed housing, the City may only apply "clear and objective" standards, conditions, and procedures in its decision, per ORS 197.307(4) (the State's Needed Housing mandate). Oregon law prohibits local governments from applying discretionary approval criteria in a way that would discourage needed housing through unreasonable cost or delay. In practical terms, this means that if the evidence shows the application meets the literal requirements of an approval criterion (or can meet them

with reasonable conditions), the City cannot deny or downsize the housing project based on subjective policies or extra-stringent interpretations not stated in clear terms.

Oregon courts and the Land Use Board of Appeals (LUBA) have consistently enforced these needed housing provisions. In *Rogue Valley Association of Realtors v. City of Ashland* (involving Ashland’s original 1997 hillside standards), the Court of Appeals struck down the City’s attempt to apply subjective architectural design conditions to a housing development, holding that appearance or aesthetic standards must be clear and objective if they are to be applied to needed housing developments.¹² In other words, if a standard has no purpose other than aesthetics, it falls under ORS 197.307(4)’s mandate for clarity and objectivity. That precedent is directly relevant here because much of the opposition to this project centers on subjective aesthetic preferences (such as the home’s size or appearance, or the inclusion of a swimming pool which the code “discourages” but pointedly does not prohibit). Under the Needed Housing law, the City cannot deny – or require a redesign of – a housing project due to aesthetic concerns unless those concerns are codified in clear and objective standards. Ashland’s Hillside standards about blending with the natural setting are indeed important, but they have been applied in this case in the clear-and-objective manner intended: specifically, staff identified how the project meets all the quantifiable limits (coverage, height, open space, etc.) and reasonably exercised professional judgment on the discretionary aspects in favor of approval, consistent with the needed housing mandate. This approach is in line with the state law.

Because no entirely clear-and-objective approval path was available for developing a home on this particular Hillside lot (the process inherently required a discretionary Physical & Environmental Constraints Permit and variance), the City must apply the required criteria as objectively as possible in order to comply with ORS 197.307(4). Unlike some applicants who voluntarily choose a discretionary track, here the Applicants had no alternative “clear and objective” track to select – so they did not waive their rights under the Needed Housing statute. Therefore, the only available path (the discretionary review) must be applied with an eye toward fulfilling the needed housing mandate, not frustrating it. In practical terms, this means the Commission should not impose any subjective or extra-statutory hurdles on this application. If the evidence demonstrates that the proposal meets the literal requirements of the code criteria (or can do so with conditions), the City should approve it. The law does not allow Ashland to deny needed housing on the basis of rigid or subjective application of standards that the property cannot practically meet.

¹² *Rogue Valley Ass’n of Realtors v. City of Ashland*, 158 Or App 1 (1999).

Recent LUBA cases underscore that local governments cannot use discretionary variance or conditional use criteria to thwart needed housing when no clear-and-objective alternative is available. For example, in *Zirker v. City of Bend*, LUBA overturned a denial of a housing project where the city had applied a variance “hardship” test too strictly, noting that a property’s unique characteristics must be considered and that a variance should be granted if needed for development of the housing and no adverse impacts would result.¹³ Similarly, in *Nordlund v. Clackamas County*, LUBA emphasized that a “physical characteristic of the property” (in that case, topography) can justify variance relief for housing, and if a condition is common to many properties (i.e. not unique), that is a different situation – but where the hardship is unique, the variance should be allowed to enable the housing use.¹⁴ The point is that needed housing may not be denied on the basis of slavish application of standards that the property cannot meet, when those standards can be flexibly applied or varied without undermining their purpose. Here, the physical constraints are unique and were known to the City when the lot was approved and created; applying the variance criteria with reasonable flexibility to allow this house is in keeping with the spirit of the law. Put simply, the law does not allow Ashland to deny this application unless it fails to meet an applicable clear and objective standard – and as discussed, it does not so fail. A denial or onerous conditions based on open-ended criteria would risk violating ORS 197.307. Fortunately, in this case, we do not face that issue because the proposal, as conditioned by staff, satisfies all applicable standards.

Conclusion

Applicants appreciate the neighbors’ engagement in this process and understand their concerns. Applicants have strived to address each substantive point with factual corrections or mitigation measures. Many issues – such as tree removal, fire safety, and driveway design – were thoroughly examined in Applicants’ prior submittals and by their team of professionals (planner, engineer, surveyor, and arborist). The record before the Commission is replete with substantial evidence justifying approval of the application, subject to the reasonable conditions recommended by Staff (most of which Applicants had already proposed or do not object to). In conclusion, Applicants respectfully request approval of the Physical & Environmental Constraints Permit (with the driveway slope/length variance), the Tree Removal Permit, and associated conditions, so that this long-planned family home can finally be built. The application meets all applicable approval criteria or seeks proper relief where needed, and it advances the City’s housing and trails objectives in the process. We urge the Planning

¹³ *Zirker v. City of Bend*, 59 Or LUBA 1 (2009).

¹⁴ *Nordlund v. Clackamas County*, 64 Or LUBA 100 (2011).

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Commission to affirm staff's recommendation and approve the project. Thank you for your careful consideration.

Respectfully submitted,
DAVIS HEARN ANDERSON & SELVIG, PC

A handwritten signature in blue ink, appearing to read "Chris", is centered below the typed name.

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Of Attorneys for Applicants