



March 27, 2025

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**VIA E-MAIL (LAMAN@CI.MANZANITA.OR.US;  
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Leila Aman, City Manager  
Scott Gebhart, Planning & Building  
City of Manzanita  
167 S. 5th Street  
P.O. Box 129  
Manzanita, OR 97130

**Re: Appeal of Manzanita Pines (Planning File No. 25001): First Open Record Period**

Dear Leila and Scott:

We have been retained in connection with the recent appeal of the Planning Commission's decision on February 18, 2025 (the "Decision"), to approve a Planned Unit Development application to construct a 60-unit affordable, multi-family housing project (the "Project"). The Project is in the Special Residential/Recreational (SR-R) zone and is commonly referred to as "Manzanita Pines." Please include this letter in the record of the above referenced application.

We have reviewed the appeal of the Decision filed on March 10, 2025, by Amy Gunter at Rogue Planning & Development Services, LLC, on behalf of several individuals (the "Appeal").

Simply stated, there is no basis to deny the Project. The issues raised in the Appeal are without merit. As detailed below:

- **Procedural items:** the alleged procedural errors are mooted by the Council's de novo review; and
- **Development standards:** state law requires that the adjustments to building height and parking requirements be approved. The requested setback adjustment is allowed through the planned development process; no variance is required.

We believe that it is important to be transparent about an appellant's financial consequences if this Project is appealed to the Oregon Land Use Board of Appeals ("LUBA"). In response to the housing crisis, state law was recently changed to discourage meritless appeals of affordable housing developments. State law now provides that if an affordable housing approval is appealed to LUBA and the local approval is affirmed, then LUBA "shall award attorney fees" to both the Project applicant and City, with covered attorney fees including "prelitigation legal

expenses, including preparing and processing the application and supporting the application in local land use hearings or proceedings.” ORS 197.843(4)(b).

If the approved Project is appealed to LUBA and the approval is affirmed, which we expect because there is no legal basis for remanding or reversing the Project, then the LUBA appellants will be required to pay all of the City’s and applicant’s legal fees. The amount of the attorney fees will depend upon the amount of time the law firms hired by the City and applicant must spend processing the Project application and defending the appeal, but in my experience, the combined legal fees would be tens of thousands of dollars.

### **Alleged Procedural Errors are Moot**

The Appeal asserts two procedural errors, both of which relate to appellants’ request to leave open the record or continue the public hearing held before the Planning Commission. On March 18, 2025, the City Council voted unanimously to hold a de novo hearing on the Appeal. The City Council’s de novo hearing will allow admission of new evidence and testimony, thereby curing the alleged procedural defect before the Planning Commission. As such, the procedural errors raised in the Appeal are moot.

### **Development Standards**

The only remaining errors identified in the Appeal relate to three development standards: front yard setbacks, maximum building height, and minimum parking. As indicated in the following table, each of these standards is subject to adjustment pursuant to one or both of Senate Bill (“SB”) 1537<sup>1</sup> and Manzanita Zoning Ordinance (“MZO”) 3.030(4)(b).

<b>Development Standard</b>	<b>Adjustment Standard</b>	
	<i>SB 1537</i>	<i>MZO 3.03(4)(b)</i>
Front Yard Setback		X
Maximum Building Height	X	X
Minimum Parking	X	

SB 1537 establishes mandatory adjustments for building height and parking, which the Planning Commission was required to apply to the Project. Similarly, MZO 3.030(4)(b) expressly authorizes the Planning Commission to “relax[]” development standards, including building setbacks and building height, to “permit flexibility in design.” **In short, each of the adjustments applied to the Project by the Planning Commission are either required by state law or within the Commission’s sole discretion to provide.**

As outlined below, SB 1537 and MZO 3.03(4)(b) allow all requested adjustments to development standards for the Project, and there are no grounds for denying approval of the Project.

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<sup>1</sup> Or Laws 2024, ch 110 § 38 (SB 1537).

**SB 1537 – Mandatory Adjustments**

SB 1537 was adopted by the Oregon State Legislature and signed into law in 2024. Section 38 of SB 1537, referred to as the “mandatory adjustment” provision, requires the City to grant adjustments to specific development and design standards for qualifying housing projects. There is no dispute that the mandatory adjustment requirements in SB 1537 apply to the Project.<sup>2</sup>

As relevant here, SB 1537 requires the City to make the following adjustments for maximum building height and parking:

Standard	SB 1537 – Mandatory Adjustment
Maximum Building Height	Must allow an adjustment up to the greater of “one story” or 20% of the base zone height.
Minimum Parking	Must be eligible for full adjustment.

Applying those standards, and as further discussed below, SB 1537 requires the City to make the following adjustments to the Project:

Standard	Project	Existing Standard	Adjustments Required by SB 1537	
Maximum Building Height	37’2”	28’6”	The “greater of”:	
			20% adjustment: 34’2”	“One story” adjustment: 37’6”
Minimum Parking	96 spaces	120 spaces	As few as 0 spaces <sup>3</sup>	

These adjustments to maximum building height and minimum parking are **required by state law**. SB 1537 leaves no room for the exercise of discretion in making these adjustments.

Adjustment to Maximum Building Height:

SB 1537 requires “an increase of the greater of: (I) One story; or (II) A 20 percent increase to base zone height[.]”<sup>4</sup> In this case, the Planning Commission applied a 20% adjustment to increase the maximum building height for the Project from 28’6” to 34’2”. The Planning Commission did not, however, consider or apply the “one story” adjustment. State law does not specify the height of “one story.” Based on industry minimum standard, “one story” in a multi-story building is at least 9 feet.<sup>5</sup> Accordingly, applying the “one story” adjustment to the Project would increase the maximum building height from 28’6” to at least 37’6”.

<sup>2</sup> Details confirming the Project’s eligibility for SB 1537 mandatory adjustments are included in Attachment 1.

<sup>3</sup> SB 1537 requires “full adjustment” of parking minimums. See Oregon Department of Land Conservation and Development, *Mandatory Adjustments – Section 38, Senate Bill 1537 (2024 Session)*. Accordingly, SB 1537 may be applied to eliminate all minimum parking requirements.

<sup>4</sup> Or Laws 2024, ch 110 § 38(4)(g)(B)(ii).

<sup>5</sup> Industry minimum standard is an 8-foot high ceiling with a minimum of 1-foot structure above, which makes each story at least 9 feet. In multifamily developments, such as the Project, the thickness of the structure between floors

SB 1537 requires the City to adjust maximum building height by “the greater of” one story or a 20 percent increase. Here, the “one story” adjustment (to 37’6”) is greater than the 20 percent adjustment (to 34’2”). As such, SB 1537 requires the City to adjust the maximum building height to 37’6”. The Project has a proposed maximum building height of 37’2”, which fits within the 37’6”-adjusted height limit required by SB 1537. As such, no further adjustment to the height standards is required. Even if further adjustment *were* required, such adjustment is permitted by MZO 3.03(4)(B), as discussed below.

Adjustment to Minimum Parking:

SB 1537 requires “full adjustment” of minimum parking requirements.<sup>6</sup> Consistent with SB 1537, the Planning Commission adjusted the minimum parking requirements from 120 spaces to 96 spaces. Appellants’ arguments that the Planning Commission “failed to provide adequate findings” regarding parking and that the City should have established “criteria or processes” within the MZO as to “how the [City] will implement the reductions allowed in SB 1537,” ignore the clear directives of SB 1537. SB 1537 does not require additional findings by the City. Nor does SB 1537 require additional criteria or processes. To the contrary, SB 1537 allows the City to “[d]irectly apply” the mandatory adjustments or to apply the mandatory adjustments as part of the City’s “existing process,”<sup>7</sup> which is what the Planning Commission did.

**MZO 3.03(4)(B) – Discretionary Adjustments**

In addition to the mandatory adjustments required by SB 1537, the Planning Commission properly exercised its discretion under MZO 3.030(4)(b) to “authorize relaxation of these standards [in the SR-R zone] to permit flexibility in design.” The Planning Commission applied MZO 3.030(4)(b) to make the following adjustments:

Standard	Project	Existing Standard	Existing Standard as Adjusted by SB 1537	Adjustment Under MZO 3.03(4)(b)
Front Yard Setback	10’	20’	20’	10’
Max Building Height	37’2	28’6”	20% Adjustment → 34’2”	37’2”
			** “One Story” Adjustment → 37’6”	N/A

*\*\* As noted above, there would be no requirement to apply MZO 3.03(4)(b) to adjust the maximum building height if the Planning Commission had applied the “one story” adjustment required by SB 1537.*

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must be greater than 1 foot to achieve the required sound and fire separation between units, which results in story height greater than 9 feet. The Project proposes story heights greater than 9 feet.

<sup>6</sup> See Oregon Department of Land Conservation and Development, *Mandatory Adjustments – Section 38, Senate Bill 1537 (2024 Session)*.

<sup>7</sup> Or Laws 2024, ch 110 § 38(3).

Appellants' arguments that the Planning Commission "failed to require a Variance" for the front yard setback and building height are spurious. The Project neither seeks nor requires a variance.

Further, appellants misinterpret MZO 3.030(4)(b) to preclude adjustments to building height. MZO 3.030(4)(b) allows "relaxation" of all development standards in the SR-R zone, other than density and use, which are separately addressed in MZO Section 3.030. These include height.

Finally, even if MZO 3.030(4)(b) did not allow for adjustments to height, SB 1537 requires the City to approve the maximum building height adjustment from 28'6" to 37'2", as detailed above.

### **Defense of the Decision and Future Appeal**

We understand that the City Council will hear the Appeal and may affirm, modify or reverse the Decision by the Planning Commission. As you know, any appeal of the City Council's decision would be to LUBA.

The applicants are fully committed to developing the Project and have retained our firm to defend the Decision before the City Council and before LUBA in any subsequent appeal. The Appeal has also caused the City to incur legal fees from the law firm that provides land use counsel to the City. Under ORS 197.843, these combined costs are recoverable "attorney fees." In the event of an appeal to LUBA, if Project applicants prevail, then such fees would be recoverable from LUBA appellants in accordance with ORS 197.843(4)(b).

The applicants appreciate City Staff's efforts and the Planning Commission's careful consideration of this much-needed affordable housing project. We look forward to presenting the Project to the City Council on April 14, 2025, where we will respectfully request that the City Council deny the Appeal and affirm the Planning Commission's Decision.

Very truly yours,



Dana L. Krawczuk

Attachment 1: SB 1537 Eligibility

March 27, 2025

Dana L. Krawczuk  
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Leila Aman, City Manager  
Scott Gebhart, Planning & Building  
City of Manzanita  
167 S. 5th Street  
P.O. Box 129  
Manzanita, OR 97130

**Re: Manzanita Pines – SB 1537 Eligibility (Planning File No. 25001)**

Dear Leila and Scott:

The purpose of this letter is to document the eligibility of the Manzanita Pines project (Planning File No. 25001) for mandatory adjustments under SB 1537. As you know, the project is seeking Planned Unit Development approval to construct of a 60-unit affordable, multi-family project.

The Manzanita Pines project qualifies for SB 1537 mandatory adjustments because it meets the conditions in Section 38(2), including:

- a) the application is for a quasi-judicial land use decision;
- b) on land zoned for mixed-use residential;
- c) with density that meets the minimum density of at least 5 units per net residential acre;
- d) within the UGB and the city limits;
- e) includes net new housing units in a new construction project for multifamily use;
- f) two distinct adjustments are requested (building height and parking minimums), which is below the maximum of not more than ten adjustments allowed; and
- g) all of the residential units are subject to an affordable housing covenant making them affordable to moderate income households for a minimum of 30 years.

Steve Miller  
March 27, 2025  
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A letter of intent from Oregon Housing and Community Services (“OHCS”), which documents the conditions of funding for the affordable housing project, is included as Attachment A. Please do not hesitate to contact me if you have any questions on this issue.

Very truly yours,



Dana L. Krawczuk

Attachment A: Letter from Oregon Housing and Community Services dated October 9, 2024

October 9, 2024,

Home First Development  
4351 SE Hawthorne Blvd  
Portland, OR 97215-3162

RE: OHCS LOI

Oregon Housing and Community Services (OHCS) is extending its intent to provide funding for the development of Manzanita Pines Apartments located in Manzanita, Tillamook County on the terms and conditions outlined below.

This expression of intent does not constitute a reservation of funds from OHCS. All final funding commitments are contingent upon the project’s ability to meet their assigned closing deadline, due diligence, underwriting, and programmatic requirements including the State of Oregon’s Qualified Allocation Plan requirements, if applicable. It’s imperative to meet all department timing requirements to avoid development schedule delays, loss of funding consideration, and the risk of project funding gaps. Application waivers and alterations are subject to a revisit of your recommendation of award.

OHCS has received and reviewed your application for funding consideration. Based on the information received, the request for an allocation is expected not to exceed \$21,470,000 in funding resources as supported by the application materials. The funding will be formally reserved by OHCS Finance Committee and/or Housing Stability Council upon motion and vote of approval of all applicable OHCS application and underwriting requirements.

**Project details:**

Project Name:	Manzanita Pines Apartments		
Project Address:	Lot 1401 Seaview Drive, Manzanita, 97130		
# of Units:	60	# of Buildings:	4
# of PBV	0	# of Years Affordability:	30
Type of Site Control:			
	Deed		
	Land sale contract		
	Earnest money agreement	Execution Date:	06/13/2024
	Option	Execution Date:	
	Other: Purchase and Sale Agreement	Execution Date:	06/13/2024



Unit Type by bedroom size:	Number of units by bedroom size:	Percent of Median Income as adjusted for family size will not exceed:	Rents not to exceed the following percent of median income:
1 Bedroom	6	60%	60%
2 Bedroom	23	60%	60%
3 Bedroom	19	60%	60%
3 Bedroom	4	30%	30%
1 Bedroom	8	30%	30%
Manager	0	N/A	N/A

**OHCS Funds identified:**

LIFT

**Funding Terms:**

LIFT

30 years

October 2027

Next Step - Having passed the Impact Assessment ORCA step, Project Applications are now required to meet all evaluation standards under the remaining ORCA steps, Financial Eligibility and Commitment steps as outlined in the current version of the ORCA Manual. Included with standards of those steps are the following Due Diligence submittals:

- Site Control
- Appraisal – Must meet OHCS appraisal requirements and be preformed by an OHCS approved appraiser
- Funding commitments and final approvals from all funders, including HUD PBV, must be in place a minimum of 10 business days prior to financial closing.
- All applicable 3<sup>rd</sup> party reports (ie. Phase I, Phase II, Environmental reports (LBP, WDO, Asbestos), Capital Needs Assessment (CNA))
- Finalized Relocation Plans
- General Contractor bids good through construction close
- Oregon Bureau of Labor and Industries (BOLI) determination letter
- Davis Bacon Determination (if applicable)
- Core Development Manual (CDM) forms – including variance requests if necessary

- MWESB Initial Report
- Title Insurance
- Preliminary Title Report
- Management Agent Packet – [preapproval submission](#)
- Building permits or permit ready letter

Please upload all documents to the Project's Procorem WorkCenter and notify your assigned Production Analyst once submission is complete and ready for review.

We look forward to working with you on the Manzanita Pines Apartments project. If you have any questions, please reach out to your assigned Production Analyst, Joshua G. Smith at 503-689-7928.

Sincerely,

*Joshua G. Smith*

Joshua G. Smith  
Production Analyst  
Affordable Rental Housing Division of OHCS