



CITY OF MANZANITA

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BEFORE THE CITY COUNCIL OF THE CITY OF MANZANITA ORDER

APPLICANT: Keith Daily (Polyphon Architecture and Design, LLC)
LOCATION: Township 3 North; Range 10 West; Section 28; Tax Lot 1401
ZONING: Special-Residential/Recreation (S-R/R)
REQUEST: Planned Unit Development (PUD) for a 60-unit affordable, multi-family housing project

The above-named applicant submitted a Planned Unit Development (PUD) application to construct a 60-unit affordable, multi-family housing project. The Planning Commission held a public hearing on the above request on February 10, 2025, and approved the application. On March 10, 2025, the Planning Commission's decision was appealed by Amy Gunter on behalf of Steven Albrechtsen.

On March 18, 2025, the City Council held a special session and decided to review this matter de novo. The City Council reopened the record as described in its March 21, 2025 Notice of Hearing. On April 14, 2025, the City Council held a de novo land use appeal hearing. At the hearing, the City Council upheld the Planning Commission's decision to approve the application with additional findings and conditions of approval. The Council's supplemental findings addressing the issues raised on appeal (the "Supplemental Findings") are described in Exhibit A to this Order. The Council further adopts and incorporates by reference as its own the findings in pages 1 – 9 of the Staff Report dated April 7, 2025 (the "Staff Report"), and in pages 2 – 17 of Exhibit A to the Order of the Planning Commission dated February 18, 2025 (the "Planning Commission Order"). The Council further adopts the conditions of approval listed in Exhibit B to this Order.

THE CITY COUNCIL OF THE CITY OF MANZANITA HEREBY ORDERS that the Planned Unit Development request be APPROVED and adopts the findings of fact in the Staff Report, Planning Commission Order, and Exhibit A to this Order, and conditions of approval in Exhibit B to this Order, in support of the decision.

Any appeals pertaining to this application must be made to the Land Use Board of Appeals (LUBA) within 21 days of the date a public notice of this Order is mailed. This ORDER constitutes a limited land use decision with respect to any adjustments requested pursuant to Senate Bill ("SB") 1537 (2024), Section 38. The City's decision regarding those adjustments may only be appealed by the applicant.

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The complete record is available for review on line at www.ci.manzanita.or.us/city-council



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or at City Hall, 167 South 5th Street, Manzanita, Oregon.

Date: April 25, 2025

City of Manzanita Mayor


Kathryn Stock

Exhibit A

Supplemental Findings Addressing Issues Raised During Appeal

The Council adopts the following Supplemental Findings to address certain matters raised on appeal and during the Council's de novo review. Together, these Supplemental Findings and the findings in the April 7 Staff Report and February 18 Planning Commission Order detail the project's compliance, with all applicable criteria, including the Manzanita Zoning Ordinance No. 95-4 ("MZO"), the City Comprehensive Plan, and state law. To the extent there is a conflict among the findings that are not expressly or implicitly adopted in the alternative, these Supplemental Findings supersede the findings in the April 7 Staff Report and February 18 Planning Commission Order.

Certain public comments were not directed at applicable approval criteria. Issues raised in public comment and not addressed in findings are deemed irrelevant to the decision criteria that apply to the application.

A. Procedures before the Planning Commission and City Council

Appellants asserted that the Planning Commission committed procedural error by failing to leave open the record, as required by MZO 10.110(B)(7) and provided for in ORS 197.797(6)(a). During the City Council's de novo hearing, a member of the public raised a procedural issue that the notice of the initial hearing before the Planning Commission failed to include information on SB 1537. As discussed in the Staff Report, , and in these Supplemental Findings any procedural error has been cured.

Following appeal of the Planning Commission's decision, on March 18, 2025, the Council held a special session meeting to determine the scope of the Council's review of the appeal. The Council voted unanimously to hold a "de novo" hearing in accordance with MZO 10.170, meaning that the Council could consider evidence and arguments not already raised at the Planning Commission hearing.

Prior to the Council hearing, the Council also allowed submission of new evidence as follows:

- March 21, 2025 – March 27, 2025: Council re-opened the record to allow submissions of new evidence, testimony, and argument, including any responses to information or materials in the existing record.
- March 28, 2025 – April 3, 2025: Council allowed submission of materials responding to evidence submitted during the March 21, 2025 – March 27, 2025 re-opened record period.
- April 4, 2025 – April 10, 2025: Council allowed the applicant to submit final written argument in support of the application.

The procedures implemented by the City Council, including the de novo hearing and the re-opening of the record prior to the hearing, ensured that appellants and other

interested persons had ample opportunity to present testimony and evidence to the City Council and that no person's substantial rights were prejudiced by the procedural error before the Planning Commission. No individual testified before the City Council that, despite the de novo appeal hearing, their substantial rights to prepare and participate fully in the process was prejudiced.

In addition, the City Council finds that interested persons had ample opportunity to provide comment and evidence on issues related to all applicable review criteria, including SB 1537. The Staff Report dated January 20, 2025, which preceded the Planning Commission hearing, identified SB 1537 as an applicable standard and included findings relating to SB 1537. That Staff Report's discussion of SB 1537 was incorporated in the findings in the Planning Commission's decision, and additional testimony was submitted before the City Council regarding the applicability of SB 1537. Accordingly, all interested persons were put on notice regarding application of SB 1537 to the project.

B. Adjustments to Development Standards

Appellants asserted that the Planning Commission erred by failing to require variances for adjustment of certain development standards for the project. The application requests adjustment of three development standards: (1) maximum building height, (2) minimum parking spaces, and (3) front yard setbacks. As detailed below, each of these three development standards is subject to adjustment pursuant to one or both of SB 1537 and MZO 3.030(4)(b). Approval of the application does not require, and the application does not seek, approval of any variances.

SB 1537 - Mandatory Adjustments:

SB 1537 establishes mandatory adjustments for building height and parking, which the City is required to apply to the project.

SB 1537 was adopted by the Oregon State Legislature and signed into law in 2024 (Or Laws 2024, ch 110). 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. The applicant submitted testimony and evidence demonstrating that the project qualifies for SB 1537 mandatory adjustments, because the project meets the conditions in Section 38(2) of SB 1537. No evidence or testimony was submitted to the contrary, and the Council finds that the mandatory adjustments in Section 38 of SB 1537 apply to the project.

As well, the Council finds that the proper procedures were applied to implement the SB 1537 mandatory adjustment standards. SB 1537 does not establish any additional process requirements related to mandatory adjustments under its provisions. Instead, 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.” Or Laws 2024, ch 110 § 38(3). As permitted by SB 1537, the City applied the mandatory adjustments required by SB 1537 as a part of the City’s existing review process.

Maximum Building Height:

SB 1537 requires the City to allow an “an increase of the greater of: (I) One story; or (II) A 20 percent increase to base zone height[.]” Or Laws 2024, ch 110 § 38(4)(g)(B)(ii).

Under the MZO, the maximum building height in the SR-R zone is 28’6”. The Planning Commission applied a 20% adjustment to increase the maximum building height of the project from 28’6” to 34’2”.

The Council finds that, as applied to the project, an adjustment of “one story” is greater than an adjustment of 20% of the base zone height. State law does not define “one story.” Likewise, the MZO does not define “story.” Based on evidence and testimony submitted by the applicant (based upon the project architect’s explanation), industry minimum standard for the height of one story in a multi-story residential building is at least 9 feet, based on an 8-foot-high ceiling with a minimum of 1-foot structure. This is because at least one foot of structure is needed to achieve the required sound and fire separation between stories. No testimony or evidence was offered challenging the height of “one story” for a multi-story residential building.

Based on the determination that “one story” in this context (i.e., multi-story residential building) means a height of at least 9 feet, Council finds that an adjustment of “one story” (to 37’6”) is greater than an adjustment of 20% of the base zone height (to 34’2”). Accordingly, SB 1537 requires the City to apply the “one story” adjustment to adjust the maximum building height for the project from 28’6” to 37’6”.

The project has a proposed maximum building height of 37’2”, which is less than 37’6”-adjusted height limit required by SB 1537. Thus, SB 1537 requires the City to allow the requested maximum building height of 37’2”. In the alternative, even if SB 1537 did not require the requested height adjustment, the Planning Commission had authority to grant and the City Council also approves the requested height adjustment pursuant to MZO 3.030(4)(B), as discussed below.

Minimum Parking Spaces:

SB 1537 requires full adjustment of minimum parking requirements, meaning that the minimum parking requirement can be completely eliminated. Or Laws 2024, ch 110 § 38(4)(c). Consistent with SB 1537, the Planning Commission granted and the City Council approves adjustment of the minimum parking requirements from 120 spaces to 96 spaces.

MZO 3.030(4)(b) – Discretionary Adjustments:

MZO 3.030(4)(b) states that “[s]tandards other than density in the SR-R zone shall conform to those established in the R-3 zone (Section 3.020) except that the Planning Commission may authorize relaxation of these standards to permit flexibility in design such as cluster development, with respect to lot size, setbacks and lot coverage, but not use.” Pursuant to this provision, all development standards in MZO 3.020 apply to development in the SR-R zone, except for standards relating to use and density. For development in the SR-R zone, MZO 3.030(4)(b) gives the Council authority to “relax[]” any of the standards in MZO 3. Based on the plain text and purpose of MZO 3.030(4)(b) to allow “flexibility in design,” the Council interprets that section to authorize adjustment of all development standards in MZO 3.020, except for density and use. MZO 3.030(4)(b) introduces “lot size, setbacks and lot coverage” with the phrase “such as,” which signals that those lot size, setbacks, and lot coverage are examples, rather than an exclusive list, of development standards that may be adjusted. Thus, under MZO 3.030(4)(b), authority to “relax[]” standards is not limited to those standards listed under the section.

Front Yard Setback

The Planning Commission properly exercised its discretion under MZO 3.030(4)(b) to reduce the minimum front yard setback for the project from 20 feet to 10 feet, and the Council approves the setback adjustment. The Council finds that the reduction in the front yard setback enables the proposed residential buildings to be located nearer to “Loop Road” and further from the existing residential development located to the east of the property.

Appellants argued based on MZO 3.020(3)(d) that the front yard setback cannot be reduced beyond 12 feet. MZO 3.020(3)(d) specifies the minimum front yard setback in the R-3 zone, which “shall be 20 feet, or the average setback of buildings within 100 feet of both sides of the proposed building on the same side of the street, whichever is less,” but “[i]n no case shall . . . be less than 12 feet.”

This project does not rely on averaging setbacks and instead falls under the 20-foot setback requirement in MZO 3.020(3)(d), which, as discussed above is subject to the relaxation of standards set out in MZO 3.030(4)(b). Additionally, based on its plain text, MZO 3.030(4)(b), allows relaxation of all of the standards in MZO 3.020, except density and use. So even if the 12-foot minimum setback requirement in MZO 3.020(3)(d) applied to this project, it is permitted to be relaxed by development standards in the SR-R zone under MZO 3.030(4)(b). Said another way, there is no evidence that the 12-foot minimum setback requirement in MZO 3.020(3)(d) is exempt from adjustment under the authority provided by MZO 3.030(4)(b). As such, the Council interprets MZO 3.030(4)(b), if it applies, to allow adjustment of the 12-foot minimum setback requirement in MZO 3.020(3)(d).

Maximum Building Height

As stated above, SB 1537 requires the City to allow a “one story” adjustment to the maximum building height, which adjustment accommodates the proposed building height of 37’2”. In the alternative, even if the “one story” adjustment in SB 1537 did not apply, MZO 3.03(4)(B) gives the Planning Commission discretion, and the Council authority on appeal, to adjust the maximum building height for the project to 37’2”. Adjusting the maximum building height to 37’2” allows the three-story residential buildings to be constructed with 9-foot ceilings, which improves the quality and feel of residential dwelling units for residents. In addition, renderings provided by the applicant show that adjusting the maximum building height from 34’2” (reflecting a 20% adjustment under SB 1537) to 37’2” has a negligible effect on the exterior visual impact of the residential buildings.

Appellants argued that MZO 3.030(4)(B) does not allow for adjustment to the maximum building height, because height is not one of the development standards listed in MZO 3.030(4)(B). The Council interprets MZO 3.030(4)(B) as being intended to allow adjustment of all development standards in MZO 3.020 that apply to development in the SR-R zone, except for density and use; this includes maximum building height. Council incorporates by reference its interpretation of MZO 3.030(4)(B), above.

C. Loop Road

The project will receive access via a road, temporarily named “Loop Road,” that will extend from Necarney City County Road to a location slightly north of the northern access driveway for the project. Upon construction, Loop Road is planned to be named “Legacy Place.”

Loop Road is located within “Parcel 1” of the partition plat approved by the City under Planning File No. 24032 (the “Partition”). The Partition identifies a 40-foot-wide access easement over Parcel 1, in the location of Loop Road, to provide access to the subject property. Appellants argued that there is insufficient right-of-way to construct Loop Road in accordance with the City’s street standards. According to the City’s Transportation Systems Plan, Loop Road will be classified as a “local street.” Such local streets are currently referred to as “residential” in the City’s Street Improvements Ordinance, Ordinance No. 91-2, Section 3. A residential street is defined as having a right-of-way of 40-feet and a paving width of 20-feet. Applicant’s proposal for a 40-foot right-of-way and paving width of 20 feet for Loop Road meets the requirements for a residential street in Ord. 91-2. Additionally, a condition of approval requires the applicant to complete construction of Loop Road to the City’s standards and to dedicate the road to the City before the City will issue a certificate of occupancy for any building within the project.

Appellants also argued that Loop Road must extend further westward, to the western border of the property or to Meadow Drive. Nothing in the City’s Subdivision Ordinance No. 95-5 nor in the MZO requires Loop Road to be extended further westward, beyond the terminus of Loop Road that is shown in the site plans. Subdivision Ordinance No. 95-5, Section 39(4), Future Street Extension, states: “[w]here necessary to give access to, or permit a satisfactory future division of adjoining land, streets shall extend to the boundary of the subdivision or partition, and the resulting dead-end streets may be approved without a turn-around.” This section requires extension to the boundary of a subdivision or partition only where “necessary to give access to, or permit a satisfactory future division of adjoining land.” Such extension is not required to provide access to the subject property or to properties to the west of the subject property because those properties have direct access to Meadow Drive or Necarney City County Road.

D. Consistency with Comprehensive Plan and Application of MZO 4.136(3)(c) Standards.

To the extent the City’s decision constitutes a limited land use decision, MZO 4.136(3)(c)(2) is inapplicable. *Cerelli v. Manzanita*, Or LUBA 2022-073, at 23 (2023) (remanding for reconsideration because City erred in relying on its comprehensive plan as a basis to deny limited land use decision).

To the extent that MZO 4.136(3)(c)(2) applies, the City finds that the resulting development is not inconsistent with the Comprehensive Plan or zoning objectives of the area for the reasons described in these Supplemental Findings, the Staff Report, and the Planning Commission Order. The Council further adopts and incorporates as its own the findings in pages 6-13 of the applicant’s narrative dated January 2, 2025, addressing Comprehensive Plan consistency.

The Council further finds that applicant's self-imposed conditions offered at the Council's de novo hearing also support this conclusion. For instance, multiple public comments requested construction of a privacy fence along the eastern edge of the project, to mitigate any visual impacts of the project. In response to this testimony, the applicant offered and agreed to a condition of approval requiring construction of a privacy fence. In addition, the applicant offered and agreed to a condition of approval requiring the applicant, in consultation with the applicant's arborist and civil engineering consultants, to make all reasonable efforts to protect existing vegetation within a 10-foot buffer along the eastern edge of the subject property. The privacy fence and vegetation buffer mitigates potential visual impacts of the project on the abutting, existing residential neighborhood, which further protects the character of the existing residential neighborhood and increases the compatibility of the project with that neighborhood.

The applicant also submitted testimony that "[c]ertain standards in MZO 4.136(3)(c) do not appear to be 'clear and objective,' as those terms have been interpreted and applied by Oregon courts," and as required under ORS 197.400(1). The Council acknowledges the applicant's testimony, and that no testimony, evidence, or argument was presented that contradicts the applicant's testimony. The Council has determined that the application meets all applicable criteria in MZO 4.136(3)(c). In the alternative, in light of the lack of any argument, testimony, or evidence to the contrary, the Council finds that to the extent the standards in MZO 4.136(3)(c)(1)-(3) are not clear and objective and that these criteria do not apply to the application.

E. Open Space

The application includes a 1.88-acre natural area, open space located in the northern portion of the property. The 1.88-acre natural area comprises approximately 40.6% of the site. The 1.88-acre natural area is in addition to and does not include the open plaza, playground, stormwater swales, or other landscaped portions of the property.

The Council finds that locating the 1.88-acre open space area in the northern portion of the subject property allows the applicant to cluster development in the southern portion of the property, away from the Beaches and Dunes Overlay Zone (MZO Section 3.080) identified on the City's zoning map. Although the northeastern portion of the subject property is located within the Beaches and Dunes Overlay Zone, the project does not propose any development within overlay area.

The applicant offered and agreed to a condition of approval requiring that a legal instrument be recorded that permanently reserves the 1.88-acre area as open space and the Council adopts this condition as reflected in Exhibit B.

F. Traffic Impacts – MZO 4.136(3)(c)(5)

The applicant provided a Transportation Impact Analysis (TIA) prepared by Mackenzie, dated November 19, 2024, and a revised TIA, dated February 4, 2024 (the “Revised TIA”). The Revised TIA concluded that:

- The project will not cause any study intersections to operate beyond acceptable levels and the project will not cause vehicle queues to exceed available storage at those intersections.
- Although minimum required sight distance for the proposed intersection between Loop Road and Necarney City County Road will be addressed through the design process, adequate sight distance appears to be available.
- Based on traffic volumes at the intersection of Loop Road and Necarney City County Road, left turn lanes are not required.

The applicant also provided a supplemental memorandum from Mackenzie, dated April 10, 2025, addressing testimony regarding traffic impacts from the project on Necarney City County Road.

Based on the findings in the Revised TIA, and the April 10, 2025 memorandum from Mackenzie, the Council finds that the streets are adequate to support anticipated traffic from the project and that the project will not overload the streets outside of the project area.

Exhibit B

Conditions of Approval

The City Council approves the application subject to the following conditions:

- A. The preliminary approval shall be limited to the layout submitted, and approved, as part of this application and include the following:
 - 1. The minimum front yard setback shall be 10-feet.
 - 2. The site shall include a minimum of 96 vehicle parking spaces and 32 bicycle parking spaces.
 - 3. The maximum building height for any structure shall be 37-feet, 2-inches.
- A. The final plan shall be approved within two years of the final date of approval.
- B. The applicant shall submit evidence confirming that adequate intersectional sight distances shall be available at the "Loop Road" at Necarney City Road intersection as part of its design process. This evidence shall be prepared by a licensed individual and shall be reviewed and approved by the City prior to commencing construction of any one structure. The plans must be stamped by a licensed Engineer.
- C. No one structure shall be occupied until such time the proposed "Loop Road" is platted and dedicated to the public. During construction, "Loop Road" shall be sufficiently improved, according to Nehalem Bay Fire District requirements, to ensure emergency vehicle access.
- D. The applicant will construct a privacy fence along the eastern border of the property, which fence shall extend approximately from the southern border of the property to the northern edge of the parking lot.
- E. The applicant will record a legal instrument permanently reserving the 1.88-acre natural area as open space.
- F. In consultation with its arborist and civil engineering consultants, the applicant will make all reasonable efforts to protect existing vegetation within a 10-foot buffer along the eastern edge of the property.
- G. Compliance with the Conditions of Approval shall be the sole responsibility of the applicant.

