

CITY OF SILVERTON
RESOLUTION
18-02

A RESOLUTION OF THE SILVERTON CITY COUNCIL UPHOLDING THE APPEAL, REVERSING THE PLANNING COMMISSION DECISION, AND DENYING THE APPLICATION OF A PLANNED DEVELOPMENT CONCEPT PLAN APPROVAL TO DIVIDE 608 NORTH JAMES STREET INTO 56 LOTS

WHEREAS, a Planned Development Concept Plan application was made by Gene Oster, PO Box 222 Silverton, OR 97381 to divide 608 North James Street into 56 lots. The site contains a total area of 9.51 acres and proposed to be divided into 56 lots ranging in size from 4,002 square feet to 6,327 square feet, and contain 62,006 square feet of open space, Marion County Assessors Map 061W27AD, Taxlot 00700; and

WHEREAS, the Planning Commission met in a duly advertised public hearing on October 10, 2017 to consider the application, evidence in the record, and testimony received; and

WHEREAS, the Planning Commission, after review of Planned Development (PD-17-01) application, testimony, and evidence in the record, found that the application met the applicable review criteria, or can meet the criteria through compliance with certain Conditions of Approval; and

WHEREAS, A person with standing appealed the approval by submitting an appeal within the required timeframe and requested that the City Council hear the appeal de novo pursuant to Silverton Development Code (SDC) 4.2.400(E)(7)(c)(iii); and

WHEREAS, The City Council met at a duly advertised meeting on December 4th, 2017 to consider the appeal, the application, evidence in the record, and testimony received, and upheld the appeal, reversed the Planning Commission decision, and denied the application of a Planned Development Concept Plan approval to divide 608 North James Street into 56 lots; and

WHEREAS, the record contains the Planning Commission minutes and staff presentations of October 10, 2017, a staff report dated October 3, 2017, the applicant's submittal information, the applicant's revised submittal information, written testimony submitted prior to and at the public hearing, public testimony and rebuttal, the appellant's appeal, a staff report dated November 27, 2017, the City Council minutes and staff presentations of December 4, 2017, written testimony submitted prior to and at the public hearing, public testimony and rebuttal, all attachments to these documents, minutes of all meetings, and all staff presentations. The record also contains public hearing notice to affected property owners, published public hearing notice, and posted notice, notice of decision, and city resolutions; and

WHEREAS, the file, full staff report, and meeting minutes for PD-17-01 can be found in the Silverton Planning Department and only the portions expressly adopted as findings are adopted in support of this decision.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF SILVERTON, AS FOLLOWS:

Section 1: THE CITY COUNCIL ADOPTS THE FOLLOWING FINDINGS OF FACT AND CONCLUSION OF LAW IN SUPPORT OF THIS DECISION:

1. The site of this Planned Development is a 9.51 acre parcel located at 608 North James Street on the northeast side of the Jefferson Street and North James Street intersection; Marion County Assessor's Map 61W27AD Tax Lot 00700.
2. The applicant submitted an application on September 1, 2017 requesting a Planned Development Concept Plan approval to divide 608 North James Street into 56 lots. On September 12th the applicant was informed the application was not complete. The applicant submitted the additional information on September 19, 2017.
3. The Planning Commission convened the Public Hearing on October 10, 2017 after appropriate public notice had been provided. Planning Commissioners made appropriate disclosures regarding ex parte contacts, site visits, bias, or other conflicts of interest. The Planning Commission heard the staff report, the applicant's presentation, and considered evidence in the record. The Planning Commission also received testimony in support, in opposition, and rebuttal to testimony. The Planning Commission approved the Planned Development Concept Plan application subject to Conditions of Approval.
4. A person with standing appealed the approval by submitting an appeal within the required timeframe and requested that the City Council hear the appeal de novo pursuant to SDC 4.2.400(E)(7)(c)(iii).
5. Notice of appeal was mailed to all property owners and residents within 700' of the site on November 14th, 2017. The site was posted on November 22, 2017.
6. Pursuant to SDC 4.2.400(E)(7)(b)(iii)(E), the City Council decided to hear the appeal de novo.
7. The City Council convened a Public Hearing on December 4, 2017 after appropriate public notice had been provided. City Councilors made appropriate disclosures regarding ex parte contacts, site visits, bias, or other conflicts of interest. The City Council heard the staff report, the appellant's presentation, the applicant's presentation, and considered evidence in the record. The City Council also received testimony in support, in opposition, and rebuttal to testimony. The City Council upheld the appeal, reversed the Planning Commission decision, and denied the application of a Planned Development Concept Plan approval to divide 608 North James Street into 56 lots.
8. The record contains the Planning Commission minutes and staff presentations of October 10, 2017, a staff report dated October 3, 2017, the applicant's submittal information, the

applicant's revised submittal information, written testimony submitted prior to and at the public hearing, public testimony and rebuttal, the appellant's appeal, a staff report dated November 27, 2017, the City Council minutes and staff presentations of December 4, 2017, written testimony submitted prior to and at the public hearing, public testimony and rebuttal, all attachments to these documents, minutes of all meetings, and all staff presentations. Public hearing notice to affected property owners, published public hearing notice, and posted notice, notice of decision, and city resolutions are contained in the record.

9. The review criteria for a Planned Development Concept Plan is contained in the Silverton Development Code Section 4.5.150 that states, "The city shall consider the following review criteria and may approve, approve with conditions, or deny a planned development concept plan based on the following; the applicant shall bear the burden of proof." The following are the review criteria.

A. Comprehensive Plan. All relevant provisions of the comprehensive plan are met;

B. Land Division Chapter. All of the requirements for land divisions, including requirements for pre-planning large sites under SDC 4.3.112;

C. Article 2 and Article 3 Standards. All of the land use, development, and design standards contained in Articles 2 and 3 are met, except as may be modified in SDC 4.5.130.

D. Open Space. Master plans shall contain a minimum of 15 percent usable common open space. Common open space shall be integral to the master plan. Plans shall emphasize public gathering places such as plazas, neighborhood parks, trails, and other publicly accessible spaces that integrate land use and transportation and contribute toward a sense of place. Where public or common private open space is designated, the following standards apply:

1. The open space area shall be shown on and recorded with the final plat; and
2. The open space shall be conveyed in accordance with one of the following methods:
 - a. By dedication to the city as publicly owned and maintained open space. Open space proposed for dedication must be acceptable to the community development director with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities;
 - b. By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity, with the city retaining the development rights to the property. The terms of such lease or other conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to the city.

10. The City Council upheld the appeal, reversed the Planning Commission decision, and denied the application of the Planned Development Concept Plan to divide 608 North James Street into 56 lots. The City Council explained the applicable review criteria and considered the facts of the application and relied on them in reaching their decision. The findings being adopted are based on evidence in the record and justify the decision.
11. The City Council finds that the Planned Development Concept Plan review criteria are subjective in nature and are permissive under the needed housing statute, given that there are two methods within the Silverton Development Code (SDC) in which to create lots for residential development. The first is the Subdivision process which is based on clear and objective standards, and the second is the Planned Development process, which is an alternative approval process for residential development based on discretionary approval criteria regulating, in whole or in part, appearance or aesthetics . The applicant retains the right to submit a Subdivision application for the parcel, which meets the needed housing requirement for review under clear and objective standards. The Planned Development process is the alternative process, which does not require clear and objective standards, which the applicant elected to apply for. There is no requirement that the applicant is required to, or can only proceed with a Planned Development review. The Needed Housing provisions of ORS 197.307(4) do not apply to the City's Planned Development process.
12. The City Council finds that the Planned Development application does not meet Review Criterion C and adopts only findings adequate to demonstrate that its requirements have not been met.
13. The following findings are related to Criterion C.

C. Article 2 and Article 3 Standards. All of the land use, development, and design standards contained in Articles 2 and 3 are met, except as may be modified in SDC 4.5.130.

13.1 The site was proposed to be subdivided into 56 lots and 1.42 acres of open space. The lots were proposed to be from 4,106 square feet to 6,327 square feet in area. The minimum lot area for interior lots is 7,000 square feet and the minimum lot area for corner lots is 8,000 square feet. The application requested a modification to the minimum lot area, which would require findings that the following criteria are met.

A. Comprehensive Plan. The modification or adjustment equally or better meets the intent of the comprehensive plan and development code section(s) to be modified, as compared to a project that strictly conforms to code standards.

B. Public Benefit. The modification or adjustment results in an overall net benefit to the public; e.g., clustering of smaller lots results in a greater variety of housing, greater affordability in housing, more open space or more usable open space, greater protection of natural features, avoidance of natural hazards (e.g., geological hazards or drainage ways), superior architecture, and/or improved transportation planning in new development.

13.2 The City Council finds that the proposed modification to minimum lot sizes does not benefit the public due to the site plan not providing greater variety of housing as compared to a project that strictly conforms to code standards. The proposal only includes single family lots ranging in size from 4,106 square feet to 6,327 square feet. The only type of housing that would result from the proposal would be single family detached homes, which does not provide a greater variety of housing since that would be expected from a project following the subdivision process which requires strict conformance with code standards. The smaller lot size does not promote greater variety of housing as compared to a project that strictly conforms to code as the building envelope of the lots in the 4,106 square foot range could result in a dwelling with a building floor area of over 3,100 square feet, which is comparable to what would be expected for a project that strictly conforms to code standards. Given the proposal would result in comparable housing variety one would expect in a project strictly conforming to code standards, the City Council finds that there is not a net benefit to the public since a greater variety of housing will not be achieved. One way to satisfy the standard would be to propose a greater variety of housing types, such as cottages, apartments, townhomes, or duplexes.

13.3 The City Council finds that the proposed modification to minimum lot sizes does not benefit the public because there is a lack of evidence in the record that the site plan proposed would provide greater affordability in housing. Given the proposal would result in comparable housing variety one would expect if the project would strictly conform to code standards, the Council concludes that reduction in lot size is not a sufficient basis to adopt a finding that the proposal would provide greater affordability in housing. While there was some evidence provided indicating that the lots would be more affordable than a 7,000 square foot lot, there was also evidence provided that the lots would be comparable in price. The Council finds the criterion to be subjective in nature and that the record contains credible, conflicting evidence and the City Council's judgment is that even if the lots do cost somewhat less than a standard 7,000 square foot lot, any benefit to the public, if any, would be minimal, and that the lack of substantial evidence of a public benefit does not support a modification to the standards in the development code. One way to satisfy the standard would be to propose a greater variety of housing types that would more clearly provide greater affordability, such as having an amount of small cottages or studio apartments.

13.4 The City Council finds that the modification or adjustment does not equally or better meet the intent of the comprehensive plan and development code section(s) to be modified. A purpose of the Planned Development code section is to encourage innovative planning that results in projects that benefit the community (i.e., through compatible mixed-use development, affordable housing, improved protection of open spaces, transportation options and consistent application of standards in phased developments). The Council does not find the design to be innovative because of the limited housing variety proposed. The proposal is simply for single family detached lots and open space, which the Council does not find to be innovative or a valid basis to justify modifying development code standards. The Council finds this criterion to be

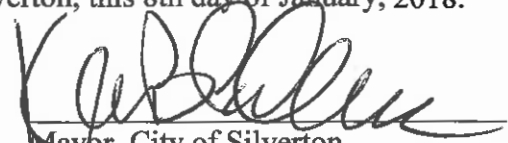
subjective and noted that while it generally supports the concept of planned developments due to the flexibility and possibility of a variety of housing types, the proposal does not offer variety or innovation. The Council notes that a way to meet the standard would be to propose a variety of housing types that would provide for more affordable housing, such as a number of apartments or small cottages.

BE IT FURTHER RESOLVED THAT THE CITY COUNCIL OF THE CITY OF SILVERTON DECIDED:

Section 2: That the City Council has reviewed the submitted proposal and UPHOLDS the appeal, REVERSES the Planning Commission decision, and DENIES the application of a Planned Development Concept Plan approval (PD-17-01) to divide 608 North James Street into 56 lots.

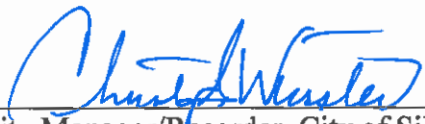
Section 3: That this resolution is and shall be effective after its passage by the City Council.

Resolution adopted by the City Council of the City of Silverton, this 8th day of January, 2018.



Mayor, City of Silverton
Kyle Palmer

ATTEST



City Manager/Recorder, City of Silverton
Christy S. Wurster