



CITY OF REDMOND
Community Development Department

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EXHIBIT 1

STAFF REPORT - Clarifications

DATE: December 17, 2018
TO: Planning Commission
THROUGH: Deborah McMahon, Planning Manager
FROM: Scott Woodford, Senior Planner
SUBJECT: Residences at the Crossings Appeal Application (City File ##711-18-000230-A)

Report in Brief:

The application is an Appeal submitted by the applicant in response to an administrative denial of a Modification of Approval (City File #711-18-000149-MA) request to remove the alleys from the single-family subdivision located at 3885 SW Obsidian Avenue (Deschutes County Tax Lot 151318DD02000).

Summary:

At the December 3, 2017 meeting, the Planning Commission deliberated on the merits of the appeal and voted to continue the application until December 17, 2018. The reason for the continuance was to allow additional time for the staff to prepare clarified findings of denial of the appeal of an administrative decision. Staff has prepared clarifications to the findings that are attached to this report.

Since the December 3rd meeting, the applicant has submitted a letter from their attorney (see attached) in addition to the letter submitted at the hearing. In the letter, the attorney makes claims the City Planning Manager *required* the applicant to provide alleys in the original master development plan, but that was never a formal requirement of the City, nor was it appealed or presented as an issue to the City Council. While staff is supportive of alleys, the applicant's original presentation to Council did not mention *any* concerns with alleys. The evidence shows the alleys were a component of the overall design and this was the layout as submitted and approved without any objection by the applicant.

The second claim is that providing alleys and constructing a garage in the rear of the lot will eliminate the possibility of outdoor space for the residents. Alley loaded lots can be designed to have an adequate backyard because the proposed lots are deep – between 128 to 148 feet deep and about 50 feet wide. Further, the lots are located within a master planned area complete with a neighborhood park immediately and a recreation center with pool immediately adjacent to the lots to provide open and recreational space.

The Master Development Plan for this property was approved by City Council on May 3, 2016. The plan showed alley access to the single-family lots. The Master Development Plan requires all subsequent development located within the area master plan boundaries shall be consistent with the approved master plan. Tentative Subdivision approval for the single-family lots – called the Residences at the Crossings subdivision - was approved April 18, 2017, which gave the developer approval to construct the subdivision. It was designed in accordance with the MPD and showed alley access.

Attachments -

Attachment A – Staff Findings

On June 22, 2018, the applicant submitted a Modification Application to modify several aspects of the MPD, including requesting removal of the alley between SW Lava Avenue and SW Magma Avenue. On October 3, 2018, the staff issued a decision to deny the alley removal request. Staff found that removal of the alley was a substantial alteration to the approved plan.

On October 16, 2018, the City received an appeal from the applicant of the staff's decision for denial, which was within the 12-day appeal period from when the decision was sent out (October 4th). On November 9, 2018, the applicant sent an email to staff requesting to **remove all of the alleys** in the subdivision. On December 3, 2018, the Planning Commission reviewed the appeal and voted to continue the hearing for written testimony until December 17, 2018.

During the December 3rd hearing, the Planning Commission focused on the Modification criteria, which states:

Modifications

- A. *A Modification shall be processed as an Administrative Land Use Action as provided for in Section 8.1300 - 1315. Modifications are requests for revision or deletion of a condition of approval or a change to a site development plan that is the result of **changed circumstances**, an error in the original decision or inconsistency with the current code. Modifications may only be accepted after 90 days has elapsed from the effective date of the initial land use approval.*
- B. *The applicant for a modification shall include reasons for the modification and demonstrate that the request is consistent with the provisions of the code and is necessary due to a change of circumstances.*
- C. *At the discretion of the Community Development Director or designee, modifications to a decision rendered by a Hearings Body shall be processed by the same Hearings Body.*
- D. *An application as a modification to an approval shall be directed to one or more specific aspects of the approval. The review shall be limited to the criteria applicable to that particular aspect of the proposal.*
- E. *Proposals that would modify an approval in multiple areas with a scope greater than allowable as a modification shall be treated as an application for a new proposal.*
- F. *Modifications shall not be accepted in such cases where a variance would be required. (Added 2/98)*

In their deliberation, the Commission questioned whether there had been a “change of circumstance” necessitating a modification. The applicant stated alley loaded lots are not marketable and that a potential buyer of the property – Horton – didn’t work out due to the alley design. Neither staff or the Planning Commission found this to be compelling enough to warrant a “change of circumstance.” As noted in the hearing, Staff found the “change of circumstance” criteria were not met by the applicant. Moreover, staff finds the alley-loaded lots will still result in development of single family homes at a variety of price points; price points that perhaps do not meet the highest possible profit but do provide a variety of housing types - thus, meeting City requirements.

The public hearing is closed, and the applicant has chosen to not waive final argument. This means the applicant is afforded 7 days to submit final argument. The Planning Commission will need to select a special meeting day in December to conclude and make its decision. The special meeting can occur anytime of the day and we hope to accommodate everyone’s busy schedule.

Courses of Action:

- 1. Receive the materials and applicant’s submittal. Staff can answer any questions, if needed.
- 2. Select a Special Meeting date for review the record materials and making a decision - after the 7 day final argument period afforded to the applicant is met.

Recommendation/Suggested Motion:

Move to deny the Appeal application.

Submitted by:

Scott Woodford,
Senior Planner

FINDINGS OF THE REDMOND PLANNING COMMISSION FOR THE RESIDENCES AT THE CROSSINGS APPEAL OF AN ADMINISTRATIVE DENIAL DECISION

FILE NO. Residences at the Crossings Subdivision / City File #711-18-000230-A)

REQUEST: Appeal of an administrative denial of a Modification of Approval request to remove the alleys from the single-family lots in the Residences at the Crossings subdivision

LOCATION: 3885 SW Obsidian Avenue (Deschutes County Tax Lot 151318DD02000) of Residences at the Crossings Subdivision, Redmond, OR 97756

APPLICANT: HT Investments Properties, LLC (Obsidian Avenue, LLC listed as owner)

STAFF: Scott Woodford, Senior Planner

HEARINGS BODY: Redmond Urban Area Planning Commission

DATE & TIME: December 3rd and 17th, 2018 at 6:30 pm in front of the Redmond Urban Area Planning Commission; Meetings held at City Council Chambers, 411 SW 9th Street, Redmond, Oregon



EXHIBIT A – DECISION

DECISION

Based on the submitted plans, staff findings and conclusions, the Planning Commission issues a decision of denial of the Appeal (City File #711-18-000230-A) submitted by the applicant in response to an administrative denial of a Modification of Approval request to remove the alleys from the single-family lots in the Residences at the Crossings subdivision (City File #711-18-000149-MA)

EXHIBIT B –CONCLUSIONARY FINDINGS

I. APPLICABLE CRITERIA:

The following are the applicable sections from The City of Redmond Urban Area Comprehensive Plan and Chapter 8 of the Redmond Development Code.:

- The City of Redmond Urban Area 2020 Comprehensive Plan.
- The City of Redmond Development Code, Chapter 8;
 - Section 8.1400, Modifications of Approval
 - Section 8.1500 – 8.1560, Appeals

II. BACKGROUND:

The Residences at the Crossing – a 49 single family lot subdivision - was approved by the City of Redmond on April 5, 2017 with alley access to all lots. The subdivision is a component of the Obsidian Master Development Plan, which was approved by City Council on May 3, 2016, which also proposed a subdivision with alley access.

The applicant recently submitted a Modification application to amend several aspects of the approved subdivision (under the City File #711-18-000149-MA), including requesting approval to remove the alleys between SW Lava Avenue and SW Magma Avenue. The staff – citing the extensive public reviews that occurred with the original Master Development Plan and that the criteria were not met – denied the request to remove the alleys. The applicant submitted an Appeal Application within the 12-day appeal period and paid the appropriate appeal fee. Their request has since expanded to include removal of all of the alleys within the subdivision.

III. SITE DESCRIPTION: 3885 SW Obsidian Avenue (Deschutes County Tax Lot 151318DD02000) of Residences at the Crossings Subdivision, Redmond, OR 97756

V. EXHIBITS:

The following exhibits make up the record in this matter:

1. Proposed Findings and Conclusions included herein.
2. The Staff Report.
3. Public Notices.
4. Planning Commission Staff Reports.
5. Public testimony received.

VI. SUMMARY:

1. This is a proposed Appeal submitted by the applicant in response to an administrative denial of a Modification of Approval request to remove the alleys from the single-family lots in the Residences at the Crossings subdivision.
2. The criteria set forth in RDC Section 8.1500 – 8.1560, Appeals are addressed herein/below, as well as all applicable state laws and requirements.

VII. FINDINGS AND CONCLUSIONS:

APPEALS

8.1500 DEFINITIONS: the following definitions shall apply:

1. **City Council** shall mean the Redmond City Council
2. **Planning Division** shall mean the Planning Division of the Community Development Department of the City of Redmond.
3. **De Novo Review** shall mean that both old and new testimony or information may be presented at the hearing.
4. **On The Record Appeal** shall mean that the review is based only on testimony or information presented at the lower body's proceedings.

8.1505 Who May Appeal.

1. The following persons may file an appeal:
 - A. A party;
 - B. In the case of an appeal of an administrative decision without prior notice, a person entitled to notice; and
 - C. A person entitled to notice and to whom no notice was mailed.
 2. A person to whom notice is mailed is deemed notified, even if notice is not received.
- **Staff Response: According to Section 8.1310 of the Redmond Development Code, Administrative Land Use Decisions with Prior Notice, the applicant and all persons commenting as provided in this section constitute parties to the administrative decision. Any party can appeal the decision in accordance with Sections 8.1500 through 8.1560 herein. The applicant has filed an appeal of the Administrative Land Use Decision denial (City File #711-18-000149).**

8.1510 Filing Appeals.

1. To file an appeal, an appellant must file a completed notice of appeal on a form prescribed by the Planning Division, accompanied by the required appeal fee, and a transcript of any hearing appealed from.
 2. The notice of appeal and appeal fee must be received at the offices of the City of Redmond Community Development Department no later than 5 p.m. on the twelfth day following mailing of the decision. Notices of Appeals may not be filed by facsimile machine.
 3. If the City Council is the hearings body and the City Council declines review, a portion of the appeal fee may be refunded. The amount of any refund will depend upon the actual costs incurred by the City in reviewing the appeal.
- **Staff Response: The applicant filed an appeal on the correct form, with the fee, and was received prior to the twelfth day after the mailing of the decision.**

8.1515 Notice of Appeal. Every notice of appeal shall include:

1. A statement raising any issue relied upon for appeal with sufficient specificity to afford the hearings body an adequate opportunity to respond to and resolve each issue in dispute.
2. If the City Council is the hearings body, a request for review by the City Council stating the reasons why the City Council should review the lower hearings body's decision.

3. *If the City Council is the hearings body and de novo review is desired, a request by the applicant for de novo review shall state the reasons why the City Council should provide such review.*
- **Staff Response:** The applicant submitted a statement, with sufficient specificity, the components of the land use decision which they are appealing. In this case, it is the denial of a request to remove the alleys for single family lots in the Residences at the Crossings Subdivision. The City Council is not the hearings body, so #2 and #3 above are not applicable.

Staff does not support the removal of the alleys for the following reasons:

1. The alleys were a fundamental component of the overall layout of the Obsidian Master Development Plan that was reviewed and approved by the public, the Planning Commission and City Council.
2. Alleys were proposed for all of the townhome and single family lots comprising 92 of the total 272 residential units. The remainder of the units are comprised of apartment buildings – all accessed off a few curb cuts from the public streets, thus reducing conflict points between vehicles and pedestrians and bicyclists and facilitating a high quality walkable and bikeable environment.
3. Safe and convenient pedestrian and bicycle mobility was master planned into the site and included sidewalks and a trail system connecting residential units and the recreation center, the park, and the neighborhood commercial center. Included in the trail system was an 8' wide, multi-use trail was proposed across the front of lots along SW Metolius Place. The safety of the trail is vastly increased due to the presence of the alleys where there are not multiple driveways crossing the trail in short succession and creating safety concerns when residents are backing up out of their driveways.
4. Comprehensive Plan - New Residential Development: Garages should be accessed from alleys where alleys are provided.
5. Comprehensive Plan - Design of Streets: Alleys shall be an option in new residential areas, providing rear access and backyard parking.
6. Alleys serve several key functions for form. With rear alley access, there is no need for a driveway entrance from the street. This allows for narrower lots, greater density, less disjointed frontages and greater walkability.

8.1520 Determination of Jurisdictional Defects

1. *Any failure to conform to the requirements of Sections 8.1510 and 8.1515 shall constitute a jurisdictional defect.*
 2. *Determination of jurisdictional defects in an appeal shall be made by the hearings body to which an appeal has been made.*
- **Staff Response:** No jurisdictional defects have been determined, therefore, this provision is not applicable.

8.1525 Transcript Requirement.

1. *Except as otherwise provided in this section, the appellants shall provide a complete transcript of any hearing appealed from, from recorded magnetic tapes provided by the Planning Division.*

2. *Appellants shall submit to the Planning Division the transcript no later than ten days after the date notice of appeal is filed or within ten days after the hearing tape is mailed or given to the appellant, whichever is later. Unless excused under this section, an appellant's failure to provide a transcript shall cause the City Council to decline to consider the appellant's appeal further and shall, upon notice mailed to the parties, cause the lower hearings body's decision to become final.*
 3. *An appellant shall be excused from providing a complete transcript if appellant was prevented from complying by: (1) the inability of the Planning Division to supply appellant with a magnetic tape or tapes of the prior proceeding; or (2) defects on the magnetic tape or tapes of the prior proceeding that make it not reasonably possible for Appellant to supply a transcript.*
- **Staff Response: The appellant is not appealing a hearing, therefore, there is no transcript to be provided.**

8.1530 Consolidation of Multiple Appeals

1. *If more than one party files a notice of appeal on a land use action decision, the appeals shall be consolidated and noticed and heard as one proceeding.*
 2. *To the extent its costs are less because multiple appeals are filed, the Planning Division may refund a portion of the appeal fees to the appellants in an equitable manner.*
 3. *In instances of multiple appeals where separate appellants have asked for a differing scope of review, any grant of de novo review shall control over a separate request for a more limited review on appeal.*
 4. *In instances of multiple appeals, all appellants shall share equally the costs of providing a complete transcript of any hearing appealed from. (Amended 9/2000)*
- **Staff Response: Only one party has filed a notice of appeal of the land use action denial, therefore, there is no need to consolidate multiple appeals.**

8.1535 Scope of Review

1. *Before hearings officer or planning commission: The review on appeal before the hearings officer or planning commission shall address all issues properly raised consistent with Section 8.1515 and shall be de novo. Additional issues not expressly provided for in the notice of appeal may be addressed at the discretion of the hearings officer or planning commission.*
 2. *Before the City Council:*
 - A. *Review before the City Council, if accepted, shall be on the record. The City Council may decide on its own to hear a timely filed appealed de novo.*
- **Staff Response: The review on appeal will be before the Planning Commission. The appellant has provided a letter addressing the issues they dispute with the land use decision. In the letter, the appellant cites that they can still provide a high-quality neighborhood design with front loaded products and that the Redmond Development Code does not require alleys.**

8.1540 Hearing on Appeal.

1. *The appellant and all other parties to the decision below shall be mailed notice of the hearing on appeal at least twenty (20) days prior to any de novo hearing or deadline for submission of written arguments as provided in Section 8.1335.*

- **Staff Response: The appellant was notified of the hearing date at least twenty days prior to the hearing.**
 - 2. *Except as otherwise provided in this chapter, the appeal shall be heard as provided in Section 8.1335 of the Redmond Code.*
 - **Staff Response: The appeal is being heard in accordance with Section 8.1335.**
 - 3. *The order of hearings body shall be as provided in Section 8.1330 of the Redmond Code.*
 - **Staff Response: The hearings body will be Planning Commission at the discretion of the Community Development Director, as provided for in Section 8.1330.**
 - 4. *The record of the proceeding from which appeal is taken shall be a part of the record on appeal.*
 - **Staff Response: The record of the proceeding is the Modification file (#711-18-000149-MA)**
 - 5. *The record for a review on the record shall consist of the following:*
 - A. *A written transcript of any prior hearing or meeting;*
 - B. *All written and graphic materials that were part of the record below;*
 - C. *The hearings body decision appealed from;*
 - D. *Written arguments, based upon the record developed below, submitted by any party to the decision;*
 - E. *Written comments submitted by the planning commission or individual planning commissioners, based upon the record developed below; and*
 - F. *A staff report and staff comment based on the record.*
 - **Staff Response: The record consists of all written and graphic materials that are part of the record, the land use decision from which the appeal emanates from, written arguments submitted by the appellant, and staff reports based on the record.**
 - 6. *In a review on the record, testimony shall be limited to arguments based on evidence in the record, no new oral or written evidence may be submitted except as otherwise permitted by the City Council.*
 - **Staff Response: Testimony will be limited to arguments based on evidence in the record.**
- 8.1545 Declining Review.** *When there is an appeal of a land use action and the City Council is the hearings body:*
- 1. *The City Council may on a case-by-case basis or by standing order for a class of cases decide at a public meeting that the decision of the lower hearings body of an individual land use action or a class of land use action decisions shall be the final decision of the City.*
 - 2. *If the City Council decides that the lower hearings body decision shall be the final decision of the City, then the City Council shall not hear the appeal and the party appealing may continue the appeal as provided by law. In such a case, the City shall provide written notice of its decision to all parties. The decision on the land use application becomes final upon mailing of the City Council's decision to decline review.*
 - 3. *The decision of the City Council not to hear a land use action appeal is entirely discretionary.*

- **Staff Response:** Per the authority of the Community Development Director, the Planning Commission, not the City Council, is the appeal body. Therefore, this standard is not applicable.

8.1550 Development Action Appeals. Notice of the hearing date set for appeal shall be sent only to the applicant. Only the applicant, his or her representatives, and his or her witnesses shall be entitled to participate. Continuances shall be at the discretion of the hearings body, and the record shall close at the end of the hearing.

- **Staff Response:** This provision is not applicable as the appeal is of a Land Use Action, not a Development Action.

8.1560 Withdrawal of an Appeal. An appeal may be withdrawn in writing by an appellant at any time prior to the rendering of a final decision. Subject to the existence of other appeals on the same application, in such event the appeal proceedings shall terminate as of the date the withdrawal is received. An appeal may be withdrawn under this section regardless of whether other non-filing parties have relied upon the appeal filed by the appellant. (Added 9/2000) Once an appeal is withdrawn, the effective date of the decision will be as provided in the original decision. Where no effective date is provided, any land use decision shall be final as of 21 days from the mailing date of the notice of final decision. Where the decision requires the adoption of an ordinance, the effective date shall be as provided in the language of the ordinance and consistent with the Redmond City Charter.

- **Staff Response:** The appellant has not withdrawn their appeal.

Modifications

- A. A Modification shall be processed as an Administrative Land Use Action as provided for in Section 8.1300 - 1315. Modifications are requests for revision or deletion of a condition of approval or a change to a site development plan that is the result of **changed circumstances**, an error in the original decision or inconsistency with the current code. Modifications may only be accepted after 90 days has elapsed from the effective date of the initial land use approval.
- B. The applicant for a modification shall include reasons for the modification and demonstrate that the request is consistent with the provisions of the code and is necessary due to a change of circumstances.
- C. At the discretion of the Community Development Director or designee, modifications to a decision rendered by a Hearings Body shall be processed by the same Hearings Body.
- D. An application as a modification to an approval shall be directed to one or more specific aspects of the approval. The review shall be limited to the criteria applicable to that particular aspect of the proposal.
- E. Proposals that would modify an approval in multiple areas with a scope greater than allowable as a modification shall be treated as an application for a new proposal.
- F. Modifications shall not be accepted in such cases where a variance would be required. (Added 2/98)

- **Staff Response:** The applicant is requesting an Appeal of the administrative decision to deny a Modification of Approval request to remove the alleys from the Residences at the Crossings Subdivision. Citing a lack of a market for alley loaded homes, the applicant requests that the alleys be removed so that the homes can be accessed via the public street in the front of the proposed homes. Staff's position is that the alley loaded units

were part of the overall master plan for the 30.5 acres that comprise townhomes, apartments, single family lots, mixed use neighborhood, parks, open space and recreation areas. Pedestrian access throughout the site was an emphasis in the design of the neighborhood, the safety of which, is greatly improved by not having multiple driveways crisscrossing the sidewalk. It also helped the proposed master development plan better comply with the Great Neighborhood Principles. The applicant did meet the criteria showing that a change of circumstance had been met. In their deliberation, the Commission questioned whether there had been a “change of circumstance” necessitating a modification. The applicant stated alley loaded lots are not marketable and that a potential buyer of the property – Horton – didn’t work out due to the alley design. Neither staff or the Planning Commission found this to be compelling enough to warrant a “change of circumstance.” As noted in the hearing, Staff found the “change of circumstance” criteria were not met by the applicant. Moreover, staff finds the alley-loaded lots will still result in development of single family homes at a variety of price points; price points that perhaps do not meet the highest possible profit but do provide a variety of housing types - thus, meeting City requirements.

CONCLUSION: Based upon the information included herein, staff believes the criteria cannot be met to support the modification and that the Appeal to an administrative denial of a Modification of Approval request to remove the alleys should be denied.

Prepared by Scott Woodford
City of Redmond

December 10, 2018