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MEMORANDUM

DATE: July 2, 2021 for July 12, 2021 Planning Commission Hearing
TO: Planning Commission
FROM: Brianna Addotta, Associate Planner
RE: Appeal of Planning Commission decision on Conditional Use and Design Review applications for Memory Care Facility on Ivy St. and 13th Ave.

Background

The Canby Planning Commission voted to deny a project 5-0 at their April 12, 2021 meeting. The project is a two story memory care facility and independent senior duplexes, with associated parking and landscaping at 1300 S. Ivy St, a 2.3 acre parcel zoned R-1, low density residential. Nursing homes are allowed by Conditional Use in the R-1 zone. The file numbers for this project are DR 20-03 and CUP 20-02. The duly noticed meeting on April 12, 2021 included a public hearing and presentation by planning staff summarizing the staff report dated April 2, 2021 (Attachment E).

Because planning Staff recommended approval with conditions in the staff report, revised findings were crafted and incorporated into the final findings for the decision, which were then approved and signed off by Planning Commission Chair John Savory. The minutes of the April 12th meeting were approved by the Planning Commission on May 10th, 2021 and are included with this memorandum. A notice of the decision and final findings was distributed to all parties of the record including the applicant on April 16, 2021, beginning the 10 day appeal period. The applicant submitted an application to appeal the Planning Commission decision on April 20, 2021. The appeal was taken to the June 2, 2021 City Council hearing, where it was unanimously decided that the appeal would be remanded back to Planning Commission so that Commissioners may consider additional information submitted by the applicant in their appeal application materials.

Final Findings

The final findings of the Planning Commission decision are listed below. Staff will discuss how the applicant addresses each of these findings later in this memo.

1. **Unclear definition of use.** Applicant materials stated intent to construct a “102-bed elderly care facility with a memory care endorsement licensed by the State of Oregon.” It was disclosed during the meeting the first floor of the facility would have 55 memory care beds and the second floor

would have 49 senior residential assisted living rooms. Commissioners expressed concern the impacts of a residential assisted living use would differ from a memory care use.

2. **Unclear number of beds.** It was disclosed during the meeting the first floor of the facility would have 55 memory care beds and the second floor would have 49 residential care rooms, which is a total of 104 beds. Applicant materials stated primary facility would house 102 total beds.
3. **Unclear allocation of parking spaces.** The applicant materials provide inconsistent parking space counts. The site plan states there will be 52 parking spaces and 3 handicap spaces. Counting the parking spaces on the site plan shows there are 60 total parking spaces proposed. During the meeting the applicant stated there would be 61 total parking spaces.
4. **Building massing and density.** Commissioners expressed concerns that the massing and size of the primary facility was incongruous with the R-1 zone, and states fewer beds would facilitate a more compatible building.
5. **Traffic analysis** for intersection of SE 13th Ave and S Ivy St. Commissioners expressed concerns sufficient information was not given by the applicant to provide confidence the intersection would not be negatively impacted. Additionally, concerns were expressed about the ingress and egress from the driveway on S Ivy St.

Summary of Appeal Application

The applicant's submittal requests an appeal of the Planning Commission decision because "[Commissioners] did not adequately consider, or provide opportunity to further present or detail, all of the information presented to them on or before the public hearing; specifically with regards to the nature of the proposed use of the building, parking calculation and reductions, and other details provided in the application and staff report." The applicant calls out three specific points they believe should be considered, as follows:

1. The specific property was an area of special concern and one of the most desired uses of this was an assisted living facility.
2. Asteria Facility Residents cannot drive, so they don't have cars or need parking.
3. Asteria's proposed amount of parking is high for industry standards, and would be the most parking in the region for similar facilities if the City wants to use Asteria's alternate site plan.

For full application and narrative, see Attachment A to this memorandum.

Staff Discussion of Appeal Application

1. Special Area K was a designation given in the Comprehensive Plan in 2003 as part of a buildable lands inventory. This designation allowed a "holding zone" of C-R (Residential/Commercial) to be placed over the primary zoning of R-1, which reduced perceived risk of applying for an official rezoning to C-R. This was

done to encourage future developers to consider land uses more intense than allowed in the R-1 zone. There have been proposals for the property, but the parcel was never officially rezoned and remains R-1. Ordinance 1514 removed the “holding zone” Special Area K from the Comprehensive Plan in 2019 following a public process and approval by City Council.

Staff provided this information to Planning Commission in the Staff Report dated April 2, 2021 and discussed it during the April 12, 2021 hearing, as referenced in the approved minutes for the hearing. Staff agrees with the applicant that Planning Commission and City Council ultimately decided the C-R designation was not appropriate for this parcel, but do not agree that discussion during a City Council hearing on October 3, 2018 supported an assisted living facility as one of the most desired uses for the property.

The applicant has kindly provided the approved minutes from the October 3, 2018 City Council meeting, in which the property was considered for a rezone from R-1 to C-R. The proposal was ultimately denied. The minutes can be found in the Applicant Materials, Attachment A. Staff did not find any language captured in the minutes asserting or implying an assisted living facility was one of the most desired uses for the property. The only occurrence of the phrase ‘assisted living facility’ included in the minutes is as follows:

“Mayor Hodson asked if the TSP [Transportation System Plan] took into account the worst case scenario for how the corner would be developed. Mr. Brown [Planning Director at the time] said it used a reasonable worst case scenario. There were a limited number of commercial uses that could go in, such as a daycare or assisted living facility.”

Assisted living facilities are a Conditional Use in the R-1 zone, they are not permitted outright. According to the CMC 16.50.110 Conditional Use proposals are subject to a discretionary process culminating in the Planning Commission “weigh[ing] the proposals positive and negative features that would result from authorizing the particular development at the location proposed and to approve such use [subject to Conditional Use criteria and Conditions of Approval].” Thus, without specific reference to the contrary, it is inaccurate to state that for this particular parcel a Conditional Use would be the most desired use, even over the uses permitted outright in the R-1 zone.

2. The applicant has provided additional discussion asserting the residents of the facility will not drive. A previously undisclosed ratio of ‘memory care’ residents to ‘assisted living’ residents brought up at the Planning Commission hearing made Commissioners question whether the two types of resident would create different levels of impact, particularly whether any of the assisted living residents would be capable of driving and whether the number of anticipated visitors would remain the same. The applicant has provided two letters from health care professionals in the field of elderly care in support of the fact that assisted living residents are not capable of driving for myriad of possible reasons. The applicant reiterates that the only traffic or parking comes from the employees, visitors, or deliveries. A condition of approval requiring residents of the facility do not drive or park cars on-site may be appropriate. The condition could relate to the applicant providing written assurance of long term use of the site for each resident. It would be difficult for staff to monitor compliance with this condition of approval outside of written assurance documentation provided by the applicant.

Staff note a designated loading berth or area was not included in the applicant's original materials and refer to Section CMC 16.10.060 for Off-Street Loading facility standards. The alternate site plan provided shows a loading area next to the refuse containers at the southeastern quadrant of the site.

3. The applicant states the proposal provides an above average capacity for parking compared to similar facilities in the area. They have provided new information regarding required parking ratios for comparable uses in other jurisdictions around the region including Oregon City (0.14 space per bed), Happy Valley (0.33 space per bed), Clackamas County (0.2 space per bed), Washington County (0.25 per bed), and the City of Portland (0.025 spaces per bed), which are all lower than the ratio required in the City of Canby (0.5 spaces per bed + 1 space per employee).

They have also provided parking ratios of six elder care facilities that are currently operating in the region. The ratios of parking spaces to resident beds range from .19 to .71 and capture several business models, including all assisted living, all memory care, day care only, or a combination. Staff note the ratio of parking spaces to resident beds proposed for the facility currently being reviewed is .42 if the garage and driveway spaces specifically designated for independent living duplexes are not considered, or .58 if those spaces are considered.

The applicant has also provided an alternate site plan that adds an additional 12 parking spaces to serve the facility on-site, which would create a ratio of .54 if the garage and driveway spaces specifically designated for independent duplexes are not considered, or .70 if those spaces are considered.

Staff notes additional parking spaces would create a conflict with the maximum impervious surface coverage allowed for the property designated by the R-1 standards, which is 60%. The original site plan for the project showed 60.3% impervious surface coverage. A variance would be required to exceed the maximum impervious surface coverage allowed in the R-1 Zone. The applicant has the option of using pervious pavement on the site which they have bought up to reduce overall coverage. This would require an additional Condition of Approval be adopted requiring full engineering and a maintenance agreement. Draft language for this Condition is included later in this memo.

Staff Discussion of Final Findings

1. **Unclear Definition of Use.** The applicant has provided additional detail on the use of the facility, namely the type of resident who will live there. The applicant states the impacts of assisted living residents on the second floor and memory care residents on the first floor would be no different than if the residents were all memory care patients. The services inside are very similar, and will incur the same impacts.

Staff finds this additional clarification useful and anticipate the impact for the types of resident will indeed be the substantially similar. Further, whether the specific patient needs physical care, mental care, or a combination of both is not considered in the definition 'nursing home' found in the CMC. Section 16.04.445 defines *Nursing Home* as

“a means any institution or facility defined as a long term care facility for licensing purposes under state statute or the rules of the Department of Human Services, including a long term care facility operated as part of a dual facility. “Dual facility” means a facility that operates both a hospital and a long term care facility on the same campus.”

Because this proposal required a Conditional Use approval from Planning Commission it was in their purview to discuss the use of the facility in more particular detail than provided by the definition found in the Code. Staff believe with the additional information provided by the applicant that both resident types are appropriate under the umbrella land use designation of Nursing Home.

2. **Unclear number of beds.** The applicant has clarified there will be 102 beds in the facility. The confusion may have come from the designation of 'rooms' to 'beds', as some rooms will have two beds and some will have one. A change in bed count would require a major modification to this Conditional Use permit, a Type 3 process that will be reviewed by Planning Commission.

Staff find this sufficient clarification to address the previously unclear number of beds in the facility.

3. **Unclear Allocation of Parking Spaces.** The applicant has provided additional parking ratio comparables for other facilities in the region, as well as an alternate site plan proposing 72 parking spaces. They also clarify that the discrepancy between 60 and 61 spaces was due to the allocation of a loading area, which is not considered a parking space.

Staff find the parking ratio information from comparable facilities compelling supporting information for the ratio proposed at this facility. CMC Section 16.10.110 allows for discretion in determining appropriate parking ratios provided the applicant provide information enough to prove the modified number of spaces is sufficient. The additional information provided, in addition to the reaffirmed assurance that none of the residents of the facility will drive or own cars, provides confidence that 60 spaces will be sufficient, therefore a variance will not be needed. Given the unique use of the site, it is appropriate to provide the discretion to accept the proposed number of parking spaces.

4. **Building Mass and Density.** The applicant has provided additional renderings of the facility clarifying the articulation and separation of the two buildings created by pedestrian pathways and entryway pergolas.

Staff believe the supplemental renderings do provide clarity on the proposed design of the facility and reaffirm that it will meet setback and height requirements of the R-1 zone.

Conditional Use approval criteria require "the characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, existence of improvements and natural features" (16.50.010.B). The 2.3 acre site is located at the southeast corner of S Ivy Street and SE 13th Avenue, both classified as arterial roads in the Transportation System Plan (TSP). The TSP provides an access spacing standard of 330' between driveways and/or local streets taking access off of an arterial road. Due to the dimensions of the lot (330' x 315') and because there are existing driveways on parcels to the south and an existing local street access to the east, this site would require an exception to the spacing standard regardless of the proposed use. The trip generation estimated for the proposed development is less than 30 peak hour am or pm trips, and 295 daily trips. Typically, this volume of trips would not even necessitate a second access point to the site, meaning one access is sufficient for all proposed trips. Because of the nursing home use however, a second restricted access has been shown off of Ivy Street providing right-in right-out access only with a mountable curb, specifically to allow for navigation of emergency vehicles without requiring them to back up. This accommodation is supported by Oregon Administrative Rule 411-054-0200 (2)(h) "Facilities must have an entry and exit drive that will allow for [vehicle circulation] without

the need for vehicles to back up.” Staff feel this accommodation is appropriate and believe a second access will further disperse the estimated daily trips between the two roads.

Conditional Use approval criteria also require “the proposed use will not alter the character of the surrounding areas in a manner which substantially limits, or preclude the use of surrounding properties for the uses listed as permitted in the zone” (16.50.010.D). Staff note that other Conditional Uses common in the R-1 zone such as schools and community centers typically have structures with similar massing, for example Lee Elementary and the Canby Adult Center, located directly North of the subject property. There are also existing R-1 parcels which have been granted Conditional use approval for the specific use of nursing home, as proposed here.

5. Traffic Impacts on Ivy and 13th. The applicant reiterates what their consulting engineer has asserted and that the City’s consulting traffic engineer affirmed that the impacts of this development will not cross operational thresholds which require additional study and do not necessitate any required mitigation.

Conditional Use approval criteria also require “all public facilities and services exist to adequately meet the needs of the proposed development” (16.50.010.C). Staff agree the transportation engineers have produced accurate information to support the above finding, and also reference previous discussion regarding the unique access spacing restrictions of the site which makes any use with a low trip generation preferable.

Lastly, Planning Commission’s concerns regarding the 2010-2030 study period of the City Transportation System Plan should not inordinately impact this development when the same document has been used for other projects in the same area. The TSP will be updated before the close of the study period, the year 2030.

Staff Recommendation

Staff believe additional information and sufficient clarification has been provided for Planning Commission, as directed by remand from City Council, to determine whether the original findings have been addressed. The applicant has waived the state mandated 120 day timeline for a limited duration in order to put forth a good faith effort to refine their proposal in response to the findings and are entitled to judicial efficiency to the extent possible.

Therefore, staff recommend Planning Commission overturn their original decision and approve APP21-01.

Should the Planning Commission decide a Condition of Approval addressing pervious pavement be required, draft language for the Condition is included here and should be stated as part of the Motion put forth by the Commission.

Condition of Approval: Before site work begins, the applicant shall submit full engineering plans and a maintenance agreement for all pervious pavement to be installed on site. At no point shall the impervious coverage ratio on the site exceed 60.3%. The pervious pavement cannot be replaced with impervious material without additional review by Canby Planning Staff.

Planning Commission Action

The Planning Commission denied the applicant’s applications based on a series of findings that responded to approval criteria found in the Municipal Code for the two application types, Design Review and

Conditional Use. These findings and those originally prepared by planning staff recommending approval of the project are included as attachments to this memorandum as Attachments D and E, respectively.

The Planning Commission has two options:

1. Uphold the denial of the applications and affirm the Planning Commission's original final written findings.
2. Approve the project as amended with the new information, including any additional Conditions of Approval.

Sample language: *"I move to approve Option __ as indicated in the Planning Commission Staff Memorandum dated July 2, 2021."* [Note that all choices require the Commission to identify findings that support their decision.]

Attachments:

- A. Project Applicant's Appeal Application and Materials
- B. Alternate Site Plan and Additional Renderings from Project Applicant (received after Planning Commission decision.)
- C. Public Comments Submitted after Planning Commission decision.
- D. Planning Commission Minutes for April 12, 2021 Hearing
- E. Planning Commission Findings, Conclusion & Final Order for Applications DR 20-03 & CUP 20-03
- F. Planning Commission Packet from April 12, 2021 Hearing, including:
 - a. Staff Report dated April 2, 2021 for the April 12, 2021 Hearing
 - b. Written Comments received for April 12, 2021 Hearing
 - c. Applicant Submittal for Applications DR 20-02 & CUP 20-03