

**CITY OF SILVERTON**  
**RESOLUTION**  
**16-03**

**A RESOLUTION REVERSING A PLANNING COMMISSION DENIAL OF A DESIGN REVIEW TO CONSTRUCT 93 APARTMENT UNITS WITHIN 14 BUILDINGS ON 4.66 ACRES AT 329 FOSSHOLM STREET AND APPROVING THE APPLICATION SUBJECT TO CONDITIONS OF APPROVAL**

**WHEREAS**, Mark Grenz of Multi-Tech Engineering submitted an Design Review Application which was deemed complete on May 19<sup>th</sup>, 2015 on behalf of Silver Place, LLC (applicant), to construct 93 apartments at 329 Fossholm Street, a property located on the east side of Fossholm Street; Marion County Assessor's Map 61W34AC Tax Lot 05900 and Marion County Assessor's Map 61W34BD Tax Lot 02300; and

**WHEREAS**, after adequate notice, the Planning Commission held a public hearing to consider this application on July 14, 2015 and August 11, 2015 and the Planning Commission met to deliberate and decide the application on September 8, 2015; and

**WHEREAS**, the Planning Commission reviewed the application, testimony, and evidence in the record, and decided on a vote of 3 in favor and 2 opposed to deny the Design Review and adopt findings that the application does not meet the applicable criteria; and

**WHEREAS**, the Planning Commission denial was based on information contained within the record; and

**WHEREAS**, the applicant appealed the denial to the City Council by submitting a complete application within the appeal period; and

**WHEREAS**, the City Council met in a duly advertised special meeting on October 14, 2015 to consider the appeal from the a Planning Commission's decision to deny the application and failed to reach a decision; and

**WHEREAS**, because a majority of the City Council present at the meeting could not reach a decision on the appeal, the Planning Commissions' decision became the City's final decision; and

**WHEREAS**, the applicant appealed the denial to the State Land Use Board of Appeals by submitting a Notice of Intent to Appeal within the appeal period; and

**WHEREAS**, the City Council met in a duly noticed special meeting on November 19, 2015 and voted to withdraw the decision for purposes of reconsideration; and

**WHEREAS**, the City Council met in a duly advertised meeting on December 7, 2015 to reconsider the decision and directed staff to prepare revised findings of fact; and

**WHEREAS**, the City Council met in a duly advertised meeting on January 4, 2016 to review the revised findings of fact and voted to reverse the denial and approve the application, subject to conditions of approval; and

**WHEREAS**, the record contains the Planning Commission minutes and staff presentations of July 14, 2015 and August 11, 2015, a staff report dated July 7, 2015, a Transportation Impact Analysis dated July 2015, a staff report dated August 7, 2015, a staff memo dated September 2, 2015, 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 applicant's final argument, the Planning Commission Resolution, the applicant's appeal, a staff report dated October 6, 2015, the presentation, minutes and transcript of the October 14, 2015 City Council meeting, the city's final order, the applicant's notice of intent to appeal, the presentation and minutes of the November 19 meeting, the presentation and minutes of the December 7, 2015 meeting, the minutes of the January 4, 2016 meeting and all attachments to these documents. Public hearing notices to affected property owners, published public hearing notices, and posted notices; and

**WHEREAS**, the file, full staff report, and meeting minutes for DR-15-03 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:**

**A. THE CITY COUNCIL ADOPTS THE FOLLOWING FINDINGS OF FACT AND CONCLUSION OF LAW IN SUPPORT OF THIS DECISION:**

1. The site of this Design Review is a 4.66 acre parcel located at 329 Fossholm Street, on the east side of Fossholm Street; Marion County Assessor's Map 61W34AC Tax Lot 05900 and Marion County Assessor's Map 61W34BD Tax Lot 02300.
2. The applicant submitted an application on March 30, 2015 requesting a Design Review to construct 93 apartment units at 329 Fossholm Street. On April 16<sup>th</sup> the applicant was informed the application was not complete and that a Traffic Impact Analysis and a signed written authorization of the property owner of record were required. The applicant submitted the letter of authorization on April 29, 2015 and the TIA on May 19, 2015.
3. The Planning Commission convened the Public Hearing on July 14<sup>th</sup>, 2015 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 continued the public hearing record to the August 11, 2015 Regular Planning Commission meeting.

4. The applicant submitted revisions to the application on August 3<sup>rd</sup>, 2015. A revised staff report was prepared on August 7<sup>th</sup> that addressed the revisions.
5. The Planning Commission reconvened the Public Hearing on August 11<sup>th</sup>, 2015 and allowed testimony from all individuals to address the revisions. The applicant requested they be allowed to submit their final argument within 7 days of the record being closed. The record was closed on August 11<sup>th</sup> 2015. The applicant granted a 30 day extension to the 120 day rule. The applicant submitted their final argument on August 18<sup>th</sup>, 2015.
6. The Planning Commission met on September 8<sup>th</sup>, 2015 to deliberate and make a decision on the application. Additional written items were submitted to the City after the close of the record on August 11<sup>th</sup>, 2015. The Planning Commission considered and rejected the testimony received after the close of the record.
7. The record contains the Planning Commission minutes and staff presentations of July 14, 2015 and August 11, 2015, a staff report dated July 7, 2015, a Transportation Impact Analysis dated July 2015, a staff report dated August 7, 2015, a staff memo dated September 2, 2015, 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 applicant's final argument and all attachments to these documents. Public hearing notice to affected property owners, published public hearing notice, and posted notice.
8. The applicant appealed the denial by submitting a complete application within the appeal period.
9. The City Council met in a duly advertised special meeting on October 14, 2015 to consider the appeal of the Planning Commission's decision to deny the application and failed to reach a decision.
10. A majority of the City Council present at the meeting could not reach a decision on the appeal. As a result, the Planning Commission's decision became the City's final decision.
11. The applicant appealed the denial to the State Land Use Board of Appeals by submitting a Notice of Intent to Appeal within the appeal period.
12. The City Council met in a duly advertised special meeting on November 19, 2015 and voted to withdraw the decision for purposes of reconsideration.
13. The City Council met in a duly advertised meeting on December 7, 2015 to reconsider the decision and directed staff to prepare revised findings of fact.

14. The review criteria for a Design Review is contained in the Silverton Development Code Section 4.2.600 that states, “The city shall consider the following review criteria and may approve, approve with conditions, or deny a design review based on the following; the applicant shall bear the burden of proof..” The following are the review criteria:

**A. Complete.** The application is complete, as determined in accordance with Chapter 4.1 - Types of Applications and Section 4.2.500, above.

**B. Zoning District.** The application complies with all of the applicable provisions of the underlying Zoning District (Article 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

**C. Conformance.** The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning district standards, in conformance with Chapter 5.2, Non-Conforming Uses and Development;

**D. Design Standards.** The application complies with all of the Design Standards in Article 3:

1. Article 2 – Design standards and special use standards of the applicable district;
2. Chapter 3.1 - Access and Circulation;
3. Chapter 3.2 - Landscaping, Street Trees, Fences and Walls;
4. Chapter 3.3 - Parking and Loading;
5. Chapter 3.4 - Public Facilities;

**E. Conditions of Approval.** Existing conditions of approval required as part of a prior land division (Chapter 4.3 SDC), conditional use (Chapter 4.4 SDC), planned development (Chapter 4.5 SDC) or other approval shall be met.

15. The following findings are related to Criterion A.

**A. Complete.** The application is complete, as determined in accordance with Chapter 4.1 - Types of Applications and Section 4.2.500, above.

15.1 The applicant submitted an application that was deemed complete on May 19<sup>th</sup> 2015.

16. The following findings are related to Criterion B.

**B. Zoning District.** The application complies with all of the applicable provisions of the underlying Zoning District (Article 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;

- 16.1 The property is currently zoned RM-10 – Multiple-Family Residential. The applicant requested a Design Review to 93 apartment units which is classified as a Multifamily Use which is allowed through the Design Review process in the RM-10 Zone.
- 16.2 The site is 4.66 acres in size (202,989 square feet). The site is zoned for 10 – 20 units per acre, which allows up to 93 units. The applicant is proposing 93 units on the site, within the allowable density range. The minimum lot area for Multiple-family development in the RM-10 zone is 2,000 sq. ft. per dwelling unit. The proposal is providing 2,182 sq. ft. per dwelling unit. The site is irregular in shape and has a lot width ranging from 76 feet to 308 feet, where the minimum width is 40 feet. The lot depth is approximately 1,085 feet where 60 feet in the minimum. Maximum building height is 35 feet which is measured by vertical distance from the grade plane to the average height of a pitched (gable or hip) roof, or the top of a mansard or flat roof including the parapet walls. The buildings measure 34' 7" or less from the average height of the roof. The applicant is proposing a 6' tall sight obscuring fence around the side and rear property lines. Lot coverage by buildings and structures exceeding 30" above grade is limited to 65% of the site. The footprint of the proposed structures that exceed 30" above grade is approximately 40,525 square feet, or 20% of the site. The area not covered by structures or pavement is proposed to be landscaped with a combination of trees and shrubs with the remaining area to be lawn, accounting for 39% of the site, above the 10% minimum. The setback for the west property line is 15', 7' for the north and south property lines and 20' for the east property line. All proposed buildings are within, or have been conditioned to be within the building envelope of the site. The residential district standards are met.
- 16.3 Minimum and maximum housing densities are calculated by multiplying the total parcel or lot area by the applicable density range. Properties must be developed within the minimum and maximum range. The site is 4.666 acres in size and has a density range of 10-20 units per acre. The allowable density range for the site is 47 – 93 units. The applicant is proposing 93 units on the site. The standard is met.
- 16.4 Lot coverage, the footprint of the proposed structures that exceed 30" above grade, is approximately 40,525 square feet, or 20% of the site, below the 65% maximum. The setback yards are primarily to be landscaped with Spring Bouquet shrubs. The entry driveway is the only impervious surface located in the required yard setback and only accounts for 17% of the required front yard setback. The standard is met.
- 16.5 The site is irregular in shape and has 140 feet of frontage on a public street. Building 1 is the only building near Fossholm Street. There are no parking areas between Building 1 and the street. Building 1 will have a street facing façade designed to look like the front of a building that includes a primary entrance, meeting the building orientation standard.
- 16.6 The continuous horizontal distances, as measured from end-wall to end-wall, of individual buildings shall not exceed 88 feet in the RM-10 district. The buildings incorporate varying roof lines, balconies, recessed or covered entries and changes in

materials every 20 feet. There are material changes between each story that break up large expanses of uninterrupted building surfaces. Each upper story unit has a balcony. Roofs contain breaks that are 2 feet in height. Gable ends have varying material that is not the predominant elevation material.

16.7 Each building is arranged end to end and has the required 10 feet of separation. The site is providing 47,973 square feet of common usable open space comprising a pool, sports court, recreational building, play area and open space areas that have an average width that is not less than 20 feet and an average length that is not less than 20 feet. The area accounts for 23% of the site, meeting the 15% minimum standard. Private open space is provided to all units in excess of the 48 square foot minimum. An enclosed trash area is provided that is to be screened and will be located at least 10 feet from any residence. The standards are met.

16.8 The site meets the standard of a minimum lot area standard of 2,000 square feet per dwelling unit. The site meets the minimum lot width standard of 40 feet and minimum lot depth standard of 60 feet. The application meets the maximum lot coverage standard of 65%.

16.9 The Silverton Development Code appears to have two or more clear and objective criteria that are inconsistent with each other or are silent on some aspect of a development. The height limit for a residential structure is 35 feet regardless of the type of structure (single or multifamily) or the number of stories. The setback standards, describe three different types of structures: primary, one- story and two-story buildings. All of these are “clear and objective” standards but it’s not clear how they work together. The purpose of a setback is to ensure adequate light and air to adjacent properties. Because a smaller building blocks less light and air than a larger building, development codes typically increase the setback for larger buildings. The purpose of a setback is ensuring adequate space between properties and structures, not to determine the type of structure that can be built, particularly in a multifamily zone where a range of building types is anticipated. The side and rear setbacks seem to apply only to one- and two-story structures, the front yard setback applies to a “primary” structure and the height limit doesn’t mention building type at all. Accordingly, the code is effectively silent on how to apply the side and rear setbacks to a proposed residential structure that complies with the height limit and front/street setbacks but is more than 2 stories. Given that, the City finds applying the two-story setback to residential buildings that are two-stories or greater is in conformance with the standard.

16.10 Maximum building height is 35 feet which is measured by vertical distance from the grade plane to the average height of a pitched (gable or hip) roof, or the top of a mansard or flat roof including the parapet walls. The buildings measure 34’ 7” or less from the average height of the roof. The project has also been conditioned to meet the 35’ maximum height.

17. The following findings are related to Criterion C.

**C. Conformance.** The applicant shall be required to upgrade any existing development that does not comply with the applicable zoning district standards, in conformance with Chapter 5.2, Non-Conforming Uses and Development;

17.1 The site was previously approved as a 64 unit condominium development. A Comprehensive Plan Amendment and Zone Change application was approved in 2005 that rezoned the majority of the site from Single Family Residential to Multiple Family Residential-10. A portion of the off-site improvements and on-site utilities were constructed previously that was conducted in compliance with applicable zoning district standards.

18. The following findings are related to Criterion D.

**D. Design Standards.** The application complies with all of the Design Standards in Article 3:

1. Article 2 – Design standards and special use standards of the applicable district;
2. Chapter 3.1 - Access and Circulation;
3. Chapter 3.2 - Landscaping, Street Trees, Fences and Walls;
4. Chapter 3.3 - Parking and Loading;
5. Chapter 3.4 - Public Facilities;

18.1 Findings relating to compliance with Article 2 were discussed previously and the Design Review was found to be in non-compliance with the setback standards.

18.2 Findings for compliance with section 3.1.200 and chapters 3.2, 3.3 and 3.4 can be found in the staff report dated August 7<sup>th</sup>, 2015 and are adopted in support of the decision.

18.3 Section 3.1.300 requires the development to connect to off-site adjacent uses to the site to the extent practicable. Practicable means capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Off-site uses exist to the south and a gap in the off-site sidewalk system exists for a distance of 210 feet. In the applicant's final argument, they request the City replace Condition 20 with the following. "The applicant shall contribute \$50,000 toward off-site pedestrian improvements on Fossholm Street NE, including pedestrian improvements on the rail right-of-way, as its proportionate share of the improvement of the improvement. For any further cash contributions from the applicant prior to the time when TSDC charges are payable, the City will compensate the applicant with TSDC credits equal to 100% of the applicant's actual costs. Once the applicant has paid all TSDC fees (less any redeemable credits) to obtain structural building permits, the applicant shall have no further responsibility for the costs, design, permitting or construction of the off-site pedestrian facilities."

19. The following findings are related to Criterion E.

**E. Conditions of Approval.** Existing conditions of approval required as part of a prior land division (Chapter 4.3 SDC), conditional use (Chapter 4.4 SDC), planned development (Chapter 4.5 SDC) or other approval shall be met.

19.1 The previous approval was not a land division, conditional use, or planned development. The criterion is not applicable.

**B. THE PROJECT IS SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:**

1. All improvements on the site shall be in substantial conformance to the submitted plans taking all conditions of approval into account.
2. All applicable building permits shall be obtained prior to any work that requires a building permit.
3. Turning radii shall be designed to accommodate Silverton Fire District vehicles and School Busses.
4. A fire turnaround shall be provided at the terminus of the parking lot near Building 14.
5. Marked pedestrian crosswalks shall be provided between Buildings 12 & 13, 11 & 10, 7 & 9, & 6 and the BBQ Area.
6. There are two 15" fir trees near Fossholm Street on the southern property line that are outside the required yard setback that shall be retained and one 16" ash tree in the northeast corner that is outside the required yard setback that shall be retained a part of development.
7. The front yard shall be landscaped with one tree at least six feet in height (two-inch minimum caliper) and five five-gallon shrubs or accent plants per 1,000 square feet of required yard area with the remaining area to be treated with an attractive ground cover.
8. The applicant shall provide 15 canopy trees and 30 understory trees, evenly spaced along the entire length of the northern property line.
9. The applicant shall submit construction plans meeting applicable Silverton Public Works Design Standards.
10. In accordance with SMC 13.70.110 this design review does increase the impacts to the public improvement facility and is therefore not exempt from sanitary SDC charges.



11. All improvements to the public water system shall be in accordance with City of Silverton requirements.
12. In accordance with SMC 13.70.110 this design review/conditional use permit does increase the impacts to the public improvement facility and is therefore not exempt from water SDC charges.
13. A Knox Box may be required prior to occupancy to each building space.
14. Buildings shall be located within 30' of a fire apparatus access road as applicable.
15. A fire hydrant map shall be provided to the Silverton Fire District meeting applicable standards.
16. The developer shall coordinate with Silverton Fire District to ensure all applicable Code standards are met.
17. Additional storm sewer improvements shall meet all applicable City of Silverton requirements. Prior to issuance of a permit to construct storm sewer and connect to the existing public storm system, the developer's engineer must submit a detailed plan of the drainage basin used in the calculations which is acceptable to the City's Public Works Director showing storm drain pipe sizes, slopes, invert elevations, and materials. Additional detail drawings and calculations must be submitted for connections to the existing system. Also submit design calculations used to determine drainage quantities and pipe sizes. In certain cases where down stream conveyance is limited, the design engineer will be required to provide an analysis of the downstream system to ensure it can handle the added flow, or determine if additional improvements are needed.
18. In accordance with SMC 13.70.110 this design review/conditional use permit does increase the impacts to the public improvement facility and is therefore not exempt from stormwater SDC charges.
20. The applicant shall contribute \$50,000 toward off-site pedestrian improvements on Fossholm Street NE, including pedestrian improvements on the rail right-of-way, as its proportionate share of the improvement of the improvement. For any further cash contributions from the applicant prior to the time when TSDC charges are payable, the City will compensate the applicant with TSDC credits equal to 100% of the applicant's actual costs. Once the applicant has paid all TSDC fees (less any redeemable credits) to obtain structural building permits, the applicant shall have no further responsibility for the costs, design, permitting or construction of the off-site pedestrian facilities.
21. All utilities to the project shall be served underground services. No overhead crossings of public right of way shall be approved by the city.
22. No public improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting, parks, or other requirements shall be undertaken except after the plans

have been approved by the City, permit fee paid, and permit issued. The City may require the developer or subdivider to provide assurance, bonding or other performance guarantees to ensure completion of required public improvements.

23. Improvements installed by the developer either as a requirement of these regulations or at his/her own option, shall conform to the requirements of this Chapter, approved construction plans, and to improvement standards and specifications adopted by the City. Improvements shall be constructed under the inspection and to the satisfaction of the City. The City may require minor changes in typical sections and details if unusual conditions arising during construction warrant such changes in the public interest.
24. In accordance with SMC 13.70.110 this multifamily design review permit is not exempt from parks SDC charges.
25. All buildings shall be 35 feet or less in height as measured by vertical distance from the grade plane to the average height of a pitched (gable or hip) roof, or the top of a mansard or flat roof including the parapet walls
26. A primary entrance shall be located on the street facing side of Building 1.
27. Buildings 8 & 10 shall be setback a minimum of 12 feet from the northern property line and meet the Screening and Buffering Standards of SDC 3.2.300.
28. The Developer shall furnish a plan for an arrangement with the Silver Falls School District for both temporary and permanent school bussing including suitable pickup and drop-off locations prior to approval of Building Permits. The County, as road authority, would need to review and concur with such a plan since pickup and/or drop-offs would likely occur on, or adjacent to, Fossholm Street or McClaine Street / Silverton Road.
29. The parking bay south of Building 8 shall be broken up with a landscape island into a row of not more than 10 contiguous (side-by-side) parking spaces.
30. 10 feet of additional Right-of-Way shall be dedicated to the Public along the site's frontage of Fossholm Street.
31. The applicant shall install a "Left Turn Only" sign at the intersection of the project's driveway and Fossholm Street.

**C. DECISION:**

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

Section 1: That the City Council has reviewed the submitted proposal and REVERSES the Planning Commission DENIAL of Design Review DR-15-03 and APPROVES the application subject to Conditions of Approval.

Section 2: 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 4<sup>th</sup> day of January, 2016.

  
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Mayor, City of Silverton  
Rick Lewis

ATTEST

  
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City Manager/Recorder, City of Silverton  
Bob Willoughby