

Council Motions LU 13-214772 DZM MS AD

Council Meeting February 12, 2014

Motion to tentatively deny the appeal, uphold the Design Commission's decision, and approve the applicant's proposal with an additional condition requiring the applicant to submit a signed and recorded covenant for the transfer of 3:1 FAR from Park Block 5 to Park Block 4 prior to issuance of a building permit consistent with PCC 33.700.060.B. Prepare findings for March 5, 2014 at 10:00am
Time Certain: Moved by Fish and seconded by Fritz.

Council voted as follows:

Yea: Fritz, Fish, Saltzman, Novick, Hales.

Council Meeting March 5, 2014

Motion to deny the appeal and uphold Design Commission's decision with additional condition and adopt findings:

Moved by Fish

Seconded by Fritz

Council voted as follows:

Yea: Fritz, Fish, Saltzman, Hales.

Moore-Love, Karla

From: Fioravanti, Kara
Sent: Tuesday, February 11, 2014 12:18 PM
To: Moore-Love, Karla
Cc: Pfeiffer, Steven L. (Perkins Coie); david@norenlaw.com; Nicole Knudsen
Subject: Park Avenue West Tower appeal 13-214772

Attachments: 13_214772_CAB_Memo.pdf

Please add the attached memo to the record.

Let me know if you have questions.

Thank you. Kara



13_214772_CAB_
Memo.pdf (262 KB).



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
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MEMO

COMMISSIONER'S ASSISTANT BRIEFING ON QUASI-JUDICIAL CASES

Date: January 21, 2014
To: Commissioners' Assistants, City Attorney, Council Clerk
From: Kara Fioravanti, Development Review
503-823-5892
Re: LU 13-214772 DZM, MS, AD

Hearing Date: February 12, 2014 at 2:00 PM

Briefing Date: February 3, 2014 at 2:30 PM

1. Application/Request and Purpose of Request

- **Application.** Type III Design Review (DZ), Modification Requests (M), Central City Master Plan Amendment (MS), Adjustment Request (AD)
- **Purpose.** The applicant requested **Design Review (DZ)** for a new 30-story mixed-use tower (retail, office and housing). The **Central City Master Plan Amendment (MS)** is necessary to allow an increase in the transfer of floor area from Director Park (formerly known as Park Block 5) to the proposed tower site (Park Block 4). The maximum development capacity of each of the two blocks is 12:1 (9:1 base FAR + 3:1 bonus FAR). In 2009 an MS approval allowed a 9.1:1 FAR transfer. The current proposal is for an additional 2.6:1 FAR transfer, for a total FAR transfer of 11.7:1 from Director Park to Park Block 4. The **Adjustment (AD)** is to allow parking access off of SW Park Avenue (all four adjacent streets are "Parking Access Restricted Streets".) The **Modification (M)** requests are to: (1) allow the building spire to rise more than 10' above the height limit. The proposed spire will be 41'-7" above the site's 460' height limit; and (2) allow substandard loading (Two on-site 10' x 35' x 13' loading spaces are required. The proposal includes a loading dock on the SW Park Avenue façade. The loading dock can accommodate one full-size loading vehicle, one sub-standard loading vehicle for 22'-5" wide vehicles, and a dedicated trash pick-up space. Additionally, the full-size and sub-standard loading spaces cannot be utilized at the same time.)

2. Staff Findings and Recommendation

Staff recommended approval.

3. Review Body Decision and Findings

Approval. (Design Commission's decision attached.)

4. Applicant/Appellant

- **Applicant.** TMT Development
- **Appellant.** SEIU, Local 49 (represented by lawyer David Noren)

5. **Nature of Opposition.** SEIU, Local 49 appealed the Design Commission's decision of approval for the Park Avenue West Tower for the following reasons. (*Language in italics is directly quoted from the appellant's appeal statement.*)

These specific approval criteria are the source of the appeal: 33.720.020, 33.510.200, 33.730.060, 33.510.255.

Application not made by or with approval of owner; application decided by wrong hearings body; application fails to adequately address Central City Plan Policy 4 (Housing); proposed FAR transfer not allowed in Downtown subarea.

6. **Specific Council decision being requested**

The appellant, SEIU Local 49, is requesting that the approved Park Avenue West Tower be denied by the Council.

7. **Pertinent Land Use History and Facts**

The base zone of the site is CXd (Central Commercial with design overlay) and is within the Central City Plan District, Midtown Park Blocks.

The site is bounded by SW Yamhill, Morrison, Park and 9th, and located immediately north of Director Park.

Prior Land Use Reviews for the Park Avenue West Tower:

1. **LU 07-140633 MS DZM AD:** Type III Design Review approval of a 33-story mixed-use building (Park Avenue West Tower) consisting of retail, offices, condominiums, and six levels of below-grade parking with a total of approximately 341 parking stalls. This review also included a Central City Master Plan Review to enable floor area (base floor area and bonus floor area) to transfer from Park Block 5 [block bounded by Park, 9th, Yamhill and Taylor] to Park Block 4 [block bounded by Park, 9th, Yamhill and Morrison].
2. **LU 07-169105 PR:** Approval of a Central City Parking Review to allow the Park Avenue West parking access at SW Park Avenue to be within 75' of a light rail alignment.
3. **LU 09-104171 DZ:** Changes to the Design of the Park Avenue West Tower, including: An increase in the width of the curb-cut for the loading bay and parking garage from 46'-0" to 51'-3"; changes to the size and placement of balconies on the uppermost floors, and the addition of a balcony on the east façade of the seventh floor; the removal of one residential floor, and an increase in floor-to-floor heights to provide for structural and HVAC equipment, thereby maintaining the original approved building height of 476 ft (515 ft including spire); a reduction in the total floor area from 474,000 square feet to 473,986 square feet. As a result, there is a reduction in the Base FAR transferred from Park Block 5 to Park Block 4 (Park Avenue West Tower) from 8.7:1 or 174,000 square feet to 8.6993:1 or 173,986 square feet; a reduction in the total number of automobile parking spaces from 317 to 253; and an increase in the number of long-term bicycle parking spaces provided (from 60 to 69), a change in the bike parking stall dimensions and type (wall mounted), and an increase in the size of the bike parking locker rooms (from 688 square feet to 767 square feet).
4. **LU 09-136017 MS DZM:** Approval for changes to the Design of the Park Avenue West Tower, including: Reduction of the building height from 515'-0" to 450'-0", with a reduction in the total number of floors from 33 to 26; and elimination of 10 floors of residential use, and an increase in office floors by 4, for a total of 2 floors of retail, 24 floors of office use, and zero floors of residential use; An increase in the width of the curb-cut for the loading bay and parking garage

from 46'-0" to 51'- $\frac{3}{4}$ " (approved through the Type II review, LU 09-104171 DZ); A reduction in the total number of automobile parking spaces between the first Type III review and the current Type III review, from 317 to 259; An increase in the number of long-term bicycle parking spaces provided (from 60 to 80), and an increase in the size of the bike parking locker rooms (from 688 square feet to 700 square feet). Also, a Central City Master Plan approval to enable floor area to transfer from Park Block 5 to Park Block 4. Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures, and 9.1:1 FAR (181,750 SF) FAR will be transferred to Park Block 4. 2.6:1 (52,000 SF) will be retained, unused on-site. Park Block 4 will achieve a 2.3:1 bonus FAR, which includes 0.9 bonus FAR through the "retail use bonus option", and 1.4 bonus FAR through the "locker room bonus option". Park Block 4 will be allowed to develop the site with a 20.4:1 FAR (408,000 SF), including 9.1:1 FAR transferred from Park Block 5, and 11.3:1 from the base (9:1) and bonus FAR (2.3:1) achieved on Park Block 4.

5. **LU 13-181341 DZ:** Type II DZ appealed, but withdrawn before an appeal hearing occurred. The proposal was for changes to the design of the Park Avenue West Tower, including: adding 4 floors to the mid-section of the tower for a total of 30 stories – 2 floors of retail, 15 floors of housing, and 13 floors of office. All other exterior design components of the building remain the same. The building's total height will increase from 407' to 460' – including rooftop mechanical.

8. Previous Quasi-judicial actions taken by Council

As noted above, there were 5 land use reviews that considered different iterations of Park Avenue West Tower. The first land use review in 2007, LU 07-140633 MS DZM AD, received approval from the Design Commission and was appealed to City Council. City Council upheld Design Commission's decision and approved the Park Avenue West Tower. The appellant for that case was George Trinkaus (at the time, a nearby neighbor and concerned citizen). His appeal issues included the following (*Language in italics is directly quoted from the appellant's appeal statement*):

Land Use Issue - Questioning the process and appropriate review body. *Does the Council endorse a new wave of Fox Towers all over town?*

Bogus-bulk FAR transfer - Questions height allowance and FAR potential on a park.

No due process - Dissatisfaction with the public process – DAR process happening in advance of formal land use hearing, public notices *at the last minute*, final decision not being available, *ignoring* public input.

Traffic Impacts - *Insufficient examination* of the impacts, including intersection of Taylor and Park, pedestrian impacts, and loading operations.

View corridors destroyed - Impact on view corridor traditionally enjoyed between Yamhill and Morrison and impact on views to the north and south.

Contradicts 2004 Park Avenue Vision

Affordable housing - Loss of affordable housing should be replaced in this building.

9. Criteria

The proposal must meet the following 4 sets of approval criteria:

1. Central City Fundamental Design Guidelines (Design Review)

2. 33.825.040 Modifications That Would Better Meet Design Review Requirements (Modification Requests)
3. 33.805 Adjustments (Adjustment Request)
4. 33.510.255 Central City Master Plans, which includes the Policies of the Central City Plan (Central City Master Plan)

10. Issues

Several Issues were raised by the appellant during the Design Commission proceedings. Those Issues are now raised as appeal issues. The "Final Findings and Decision by the Design Commission" summarized each issue on pages 5-7. The issues and responses are copied here (*Language in italics is directly quoted from the appellant's appeal statement*):

1. Exhibit H.4 - The letter raises the issue of the lack of affordable and accessible housing in the Central City and requests the project include lower cost housing as part of the Master Plan approval; Staff response – The Central City Master Plan findings in the Final Decision address this concern. Policy 3, Housing, in the Central City Plan is intended to encourage the Central City plan district to provide housing in a "wide range of types and prices and rent levels". This policy is meant to apply to the entire plan district, but not to require certain types of housing for individual developments. The proposed Park Avenue West Tower provides a particular type of housing and, together with nearby housing and the likelihood for additional housing projects nearby (possibly spurred by this particular development), this Core area of downtown will have a healthy mix of housing types to meet the particular aspirational statements of Policy 3, Housing.
2. Exhibit H.5 - *The review body for a Central City Master Plan is the Hearings Officer*; Staff response – 33.720.020 C.4. describes one of the Design Commission's roles as, "Reviews in the Central City plan district for height and FAR bonuses and transfers." Additionally, prior Central City Master Plan reviews have been only reviewed by the Design Commission. Finally, the current request is a Type II Central City Master Plan Amendment as part of a Type III Design Review, in which the Design Commission is the delegated approval body.
3. Exhibit H.5 – *The Design Commission prejudices the parties' substantial rights*; Staff response – 33.710.050 B. outlines the representations of each of the participating Design Commission members. The current Design Commission complies with these requirements.
4. Exhibit H.5 – *The signed application does not identify Block 5 as part of the application*; Staff response – All City notifications listed Block 5 in the property description. The Zoning Map and plans include both blocks. The Block 5 owner, City of Portland Bureau of Parks and Recreation, is aware and supportive of the request (Exhibits D.6 and H.10). While all City materials identified the Block 5 property, the actual City of Portland owner was not listed on the front page of the Staff Recommendation. In reviewing the City's computer system where owner and site information is inserted at the time of initial application processing, there was a clerical error in not bringing forward the City of Portland into the computer-generated document on page one. This error is corrected in this document on page one. The application form is correctly signed by a representative (Robert Thompson) who acknowledges the "Responsibility Statement" at the bottom of the application. The "Responsibility Statement" makes several contentions, one of which is "...gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them."
5. Exhibit H.5 – *The revisions to the application were made less than 10 days before the notice of the request was mailed*; Staff response – The applicant originally thought the prior approved Adjustments and Modifications could be carried forward in this current request. That is reflected in the original application under Section I, Project Summary (Exhibit A.1). Despite this assumption, the application listed the Adjustments and Modifications and addressed the pertinent approval criteria for each. After the pre-application conference was held on October 8, 2013 (EA 13-212680 PC) it was determined that the Adjustments and Modifications were required to be processed again. An October 22nd applicant letter, which is 10 days before the

notice of the request was mailed, clarifies this current land use process will include the re-processing of the Adjustments and Modifications (Exhibit G.3). The City Public Notice and City Staff Recommendation include requests for the Adjustments and Modifications. The revised application Mr. Noren is referring to is Exhibit A.4, which is an update of the original application language to clarify the Adjustments and Modifications are not "remaining in force" but are now being "requested". The updated application did not change with regard to the drawings and the approval criteria addressing the Adjustments and Modifications.

6. Exhibit H.5 – *Housing Policy 3.C. is a compelling reason to require affordable housing as part of this master plan*; Staff response – The Central City Master Plan findings in the Final Decision address this concern. This policy, as all policies in the Central City Plan, includes aspirational statements for private development and the creation of City regulations; these aspirational statements using wording such as "encourage", "promote" and "foster" and are not meant for each and every development project or each and every City regulation to fully meet. The Plan and its policies are for the Central City as a whole to meet these statements, such as: "Promote the construction of at least 5,000 new housing units in the Central City by the year 2010," and "Encourage the development of housing in a wide range of types and prices and rent levels." The proposed Park Avenue West Tower provides a particular type of housing and, together with nearby housing and the likelihood for additional housing projects nearby (possibly spurred by this particular development), this Core area of downtown will have a healthy mix of housing types to meet these particular aspirational statements.
7. Exhibit H.5 – *Floor area ratio transfers are not allowed to cross rights of way in this subarea, even as part of a master plan*; Staff response – 33.510.255 B.1. permits a Central City Master Plan to allow a transfer of floor area across rights of way in this subarea.
8. Exhibit H.9 – *The City's Central City Plan policies are applicable*; Staff response – Yes, the Central City Master Plan includes the following approval criterion 33.510.255 E.1.: "The proposed plan is consistent with the policy objectives of the Central City Plan." Findings addressing the Central City Plan are included in the Design Commission's Final Findings and Decision.
9. Exhibit H.9 – *The restrictive covenant is relevant in considering whether to approve a master plan, because compliance with the Housing Policy 3.C objective should consider whether requiring affordable housing is appropriate in a particular instance*; Staff response – A private restrictive covenant may exist on Block 5, however per Zoning Code standards Block 5 has a maximum FAR potential of 12:1, which can be transferred. Regarding Policy 3, Housing, refer to Staff Responses under items #1 and #6 within this "Issues" Section.

11. City Attorney Issues

The applicant has elected to sign a 120-day waiver for this review. The case is a denovo hearing.

12. On the Record or De Novo

This appeal hearing is an evidentiary hearing, and new evidence can be submitted to the City Council.

13. Alternatives Facing Council

1. Deny the appeal, and uphold the Design Commission's decision to approve Park Avenue West Tower.
2. Uphold the appeal, thereby overturning the Design Commission's approval of Park Avenue West Tower. If this option is taken, the applicant has secured a building permit for the 26-story tower approved under LU 09-136017 and that construction project (which has commenced) will be allowed to continue.

3. Other - It is possible the City Council could uphold some appeal issues and require revisions to the building that address the appeal issues. This option would allow the building to be constructed, as revised by City Council's direction.

Portland, Oregon
FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT
For Council Action Items

(Deliver original to City Budget Office. Retain copy.)

1. Name of Initiator Kara Fioravanti		2. Telephone No. 503-823-5892	3. Bureau/Office/Dept. Bureau of Development Services (BDS)
4a. To be filed (hearing date): February 12, 2014 at 2:00 TC	4b. Calendar (Check One) <div style="display: flex; justify-content: space-around;"> Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/> </div>		5. Date Submitted to Commissioner's office and CBO Budget Analyst: February 3, 2014
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

1) Legislation Title:

LU 13-214772 DZM, MS, AD – Park Ave West Tower, 728 SW 9th

2) Purpose of the Proposed Legislation:

This is an appeal of a Type III Land Use Review decision (quasi-judicial action). Title 33, Zoning Code Section 33.730.030 F. provides Type III Land Use Review decisions may be appealed to City Council.

3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?

- | | | | |
|--|------------------------------------|------------------------------------|--------------------------------|
| <input type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East |
| <input checked="" type="checkbox"/> Central City | | | |

FINANCIAL IMPACT

4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

This is not a legislative action. This quasi-judicial action applies to one site. The decision will not solely or substantially impact City revenues.

5) Expense: What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future year, including Operations & Maintenance (O&M) costs, if known, and estimates, if not known. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)

Generally, Land Use Reviews are fee supported. Fees are charged to file an appeal. The appeal fee for this application was \$2,625 (on-half the application fee) and was paid in full on January 7, 2014.

6) Staffing Requirements:

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** *(If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)*

No.

- **Will positions be created or eliminated in future years as a result of this legislation?**

No.

(Complete the following section only if an amendment to the budget is proposed.)

7) Change in Appropriations *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)*

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]

PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

☒ **YES:** Please proceed to Question #9.

☐ **NO:** Please, explain why below; and proceed to Question #10.

9) If “YES,” please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item?

Consistent with State land use laws, the City’s Land Use Reviews provide for public participation. A public notice is mailed to nearby property owners, the site is posted with notice boards and the affected and nearby neighborhood association are notified. The public comments submitted to BDS staff and the Design Commission were taken into consideration before rendering a decision. This decision has been appealed by the Service Employees International Union (SEIU), Local 49. Given the interest in this proposal, the decision before the City Council will have an impact to the Central City Plan District and individuals and groups with an interest in affordable housing.

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?

For Type III Land Use Reviews, the Zoning Code requires public notice be mailed to recognized neighborhood and business associations as well as recognized organizations that are within 1,000 feet of the site. All property owners within 400 feet of the site are also mailed notice of the public hearing. The site is posted with notice boards. And, City Bureaus, Tri-Met, Metro, AIA Urban Design Committee and the Oregon Department of Transportation are also mailed notice.

For this appeal all who participated in the initial hearing (SEIU, Local 49) were also mailed notice of the appeal hearing.

c) How did public involvement shape the outcome of this Council item?

The outcome of the appeal will not be known until the City Council makes its final decision.

d) Who designed and implemented the public involvement related to this Council item?

The Zoning Code mandates procedural requirements for the public notice and hearing. State Land Use law applies procedural requirements for the hearing and decision. BDS staff implement the Zoning Code requirements.

e) Primary contact for more information on this public involvement process (name, title, phone, email):

Kara Fioravanti, Senior Planner, 503-823-5892, kara.fioravanti@portlandoregon.gov

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.

If City Council denies the appeal the project may proceed. The Council's decision may be appealed to the State Land Use Board of Appeals (LUBA).



Paul L. Scarlett, Bureau of Development Services Director

APPROPRIATION UNIT HEAD (Typed name and signature)