



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Chloe Eudaly, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

**Second Revised NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND DESIGN COMMISSION**

CASE FILE: LU 16-184524 DZM – Ankeny Apartments
WHEN: WEDNESDAY, APRIL 12, 2017, 2 PM
WHERE: **THE PORTLAND BUILDING, 1120 SW FIFTH AVENUE,
2ND FLOOR, AUDITORIUM**

Date: March 22, 2017
To: Interested Person
From: Grace Jeffreys, Land Use Services, 503-823-7840

You just received a revised Notice of a Public Hearing before the City Council on an Appeal of the Portland Design Commission to be held on Wednesday, April 12, 2017 in the Council Chambers at 1221 SW Fourth Avenue.

The location of this hearing has now been changed to The Portland Building, 1120 SW Fifth Avenue, 2nd Floor, Auditorium. This is because the Council Chambers in City Hall will be updated with new audio technology March 1 - April 14; therefore, the City Council meetings will be held in the Portland Building Auditorium on the 2nd floor while the changes are made.

The Design Commission's decision of a **denial** has been appealed by **Landon K. Crowell**.

A public hearing will be held to consider an appeal of the Design Commission's decision to deny Design Review for a new 5- to 6-story, approximately 70' tall, seventeen (17) unit apartment building in the Central Eastside Subdistrict of the Central City Plan District at 1122 SE Ankeny Street. The Design Commission's decision of denial has been appealed by Landon K. Crowell. At the hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an Evidentiary hearing, one in which new evidence can be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

GENERAL INFORMATION

Appellant: Landon K Crowell
1122 SE Ankeny St., Portland, OR 97214

Applicant: Brian Durban, YGH Architecture
707 SW Washington St., Suite 1200, Portland OR 97205

Owner: Landon K Crowell
1122 SE Ankeny St., Portland, OR 97214

Site Address: **1122 SE ANKENY ST**

Legal Description: BLOCK 238 W 34' OF LOT 7&8, EAST PORTLAND; BLOCK 238 S 30' OF E 66' OF LOT 7, EAST PORTLAND
Tax Account No.: R226515860, R226515880
State ID No.: 1N1E35CD 03600, 1N1E35CD 03900
Quarter Section: 3031
Neighborhood: Buckman, contact Zachary Brooks at 503-482-8252.
Business District: Central Eastside Industrial Council, contact ceic@ceic.cc.
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.
Plan District: Central City - Central Eastside
Zoning: **EXd**, Central Employment (EX) with Design (d) overlay
Case Type: **DZM**, Design Review (DZ) with Modification (M) requests
Procedure: **Type III**, with a public hearing before the Design Commission. The decision of the Design Commission can be appealed to City Council.

PROPOSAL:

The applicant seeks Design Review approval for a new 5- to 6-story, approximately 70' tall, seventeen (17) unit apartment building in the Central Eastside Subdistrict of the Central City Plan District. Located on a unique "L" shaped, 5,380 SF site, the ground floor contains retail and service spaces fronting SE Ankeny, and a residential unit fronting SE 12th. Fifteen (15) long-term bike parking spaces are proposed in two secure rooms on the ground floor; the remaining thirteen (13) required long-term bike spaces will be located within the units. Flow-through stormwater planters are proposed at ground and second levels. Proposed materials include: white textured plaster skim coat and steel panels at the ground floor, flat-lock zinc panels in two sizes and 3-coat plaster render above, stainless steel cable mesh, aluminum-clad windows, and solar panels. Additional reviews are requested:

A Modification is requested to *Long-term Bike Parking Standards* (33.266.220):

- To reduce the required bike parking spacing from 2'-0" to 1'-6" for 11 vertically hung spaces in the ground floor secure rooms; and,
- To reduce the rack requirement of a high security, U-shaped shackle lock spanning the frame and one wheel, to allow the u-lock to reach just one wheel for the in-unit racks.

An Exception is requested to *Window Projections into the Right-of-Way* (OSSC/32/#1)

- To increase the maximum width of the oriel projections from 12' to: 15'-9.5" on SE Ankeny, and 14'-8" on SE 12th.

Design review is necessary because the project proposes new development within a design overlay zone, per section 33.420.041 of the Portland Zoning Code.

RELEVANT APPROVAL CRITERIA:

In order to be approved, this proposal must comply with the approval criteria of Title 33 of the Portland Zoning Code. The relevant approval criteria are:

- Central City Fundamental Design Guidelines
- Special Design Guidelines for the Design Zone of the Central Eastside District
- Modifications Through Design Review, 33.825.040

DESIGN COMMISSION CONCLUSIONS

The design review process exists to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. Design Review also ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. While there are aspects of the proposal that are admirable, such as the net zero goals, and meet some of the required design guidelines, fundamental challenges of scale, massing and compatibility have not been successfully addressed. While the applicant

pursued some significant changes such as eliminating ground floor parking, the remaining changes were far too modest for the proposal to ultimately meet the approval criteria.

Therefore, due to the massing, scale and bulk of the sidewalls, the open stairwells, and the extent of metal cladding, the Commission found that the following guidelines are not met:

- A4. *Use Unifying Elements.*
- A5. *Enhance, Embellish, and Identify Areas.*
- C3-1 *Design to Enhance Existing Themes in the District.*
- C3-2. *Respect Adjacent Residential Neighborhoods.*
- C4. *Complement the Context of Existing Buildings.*
- C5. *Design for Coherency.*

Given the fundamental challenges of this high density development on an extremely restrictive lot size and unusual, mid-block “L” shape, a Design Advice Request would have been extremely beneficial to the process and the timeline for this development, as was advised by Staff at the beginning of the process, and by the Design Commission at subsequent hearings. At the final hearing on January 19, 2017, the applicant chose not to make additional changes in order to meet the approval criteria, and requested a decision of denial with the intent of appealing to City Council.

DESIGN COMMISSION DECISION

It is the decision of the Design Commission to **deny** Design Review for a new 5- to 6-story, seventeen (17) unit apartment building in the Central Eastside Subdistrict of the Central City Plan District, with ground floor retail, service spaces, and a residential unit fronting SE 12th.

APPEAL

The Design Commission’s decision of a **denial** has been appealed by **Langdon K. Crowell**. According to the appellants' statement, the appeal of the Design Commission’s decision is based on arguments that:

The applicant appeals the Design Commission denial under Central City Fundamental Design Guidelines A4, AS, C3-1, C3-2, C4 and C5. Under each of these Guidelines, the Design Commission concluded:

"Therefore, due to concerns about the massing, bulk and scale of the side walls, the open stairwells, and the compatibility of the metal paneling, these guidelines are not yet met." (Design Commission Decision at pages 8, 12 and 14).

The applicants states that contrary to this finding:

1. The Project is within the allowed height and density for the Site under both the EXd and the Central City Plan District ("CCPD") regulations;
2. The open stairwells were thought to be endorsed by a majority of the Commission at one of the 5 hearings on the proposal, earning the project a revised staff report and recommendation of approval on the stairwell design, but that conclusion was reversed in the final hearing; and
3. The metal paneling was modified during the hearing process to respond to the comments by the Design Commission.

APPLICATION TIMELINES

Application Filed: June 7, 2016
Deemed complete: August 5, 2016
120 day expiration: August 5, 2017

Decision Rendered: February 2, 2017
Decision Filed: February 3, 2107
Decision Mailed: February 17, 2017

Review of the case file: The Design Commission’s decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, Suite

5000, Portland, OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

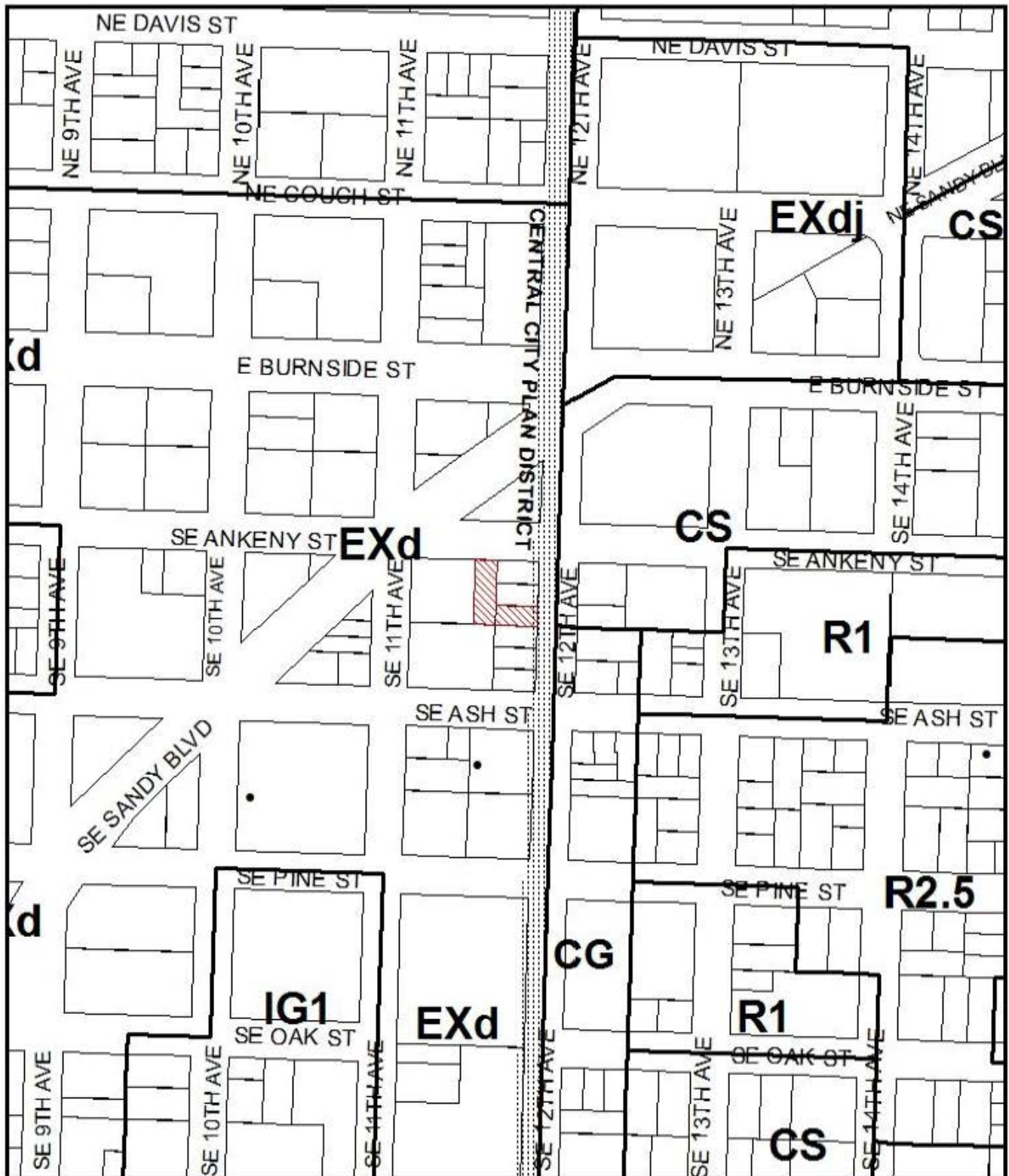
If you choose to provide testimony by electronic mail, please direct it to the Council Clerk at karla.Moore-Love@portlandoregon.gov. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.


If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plan
3. Elevations
4. Appeal Statement
5. City Council Appeal Process



ZONING

 Site

• Historic Landmark



NORTH

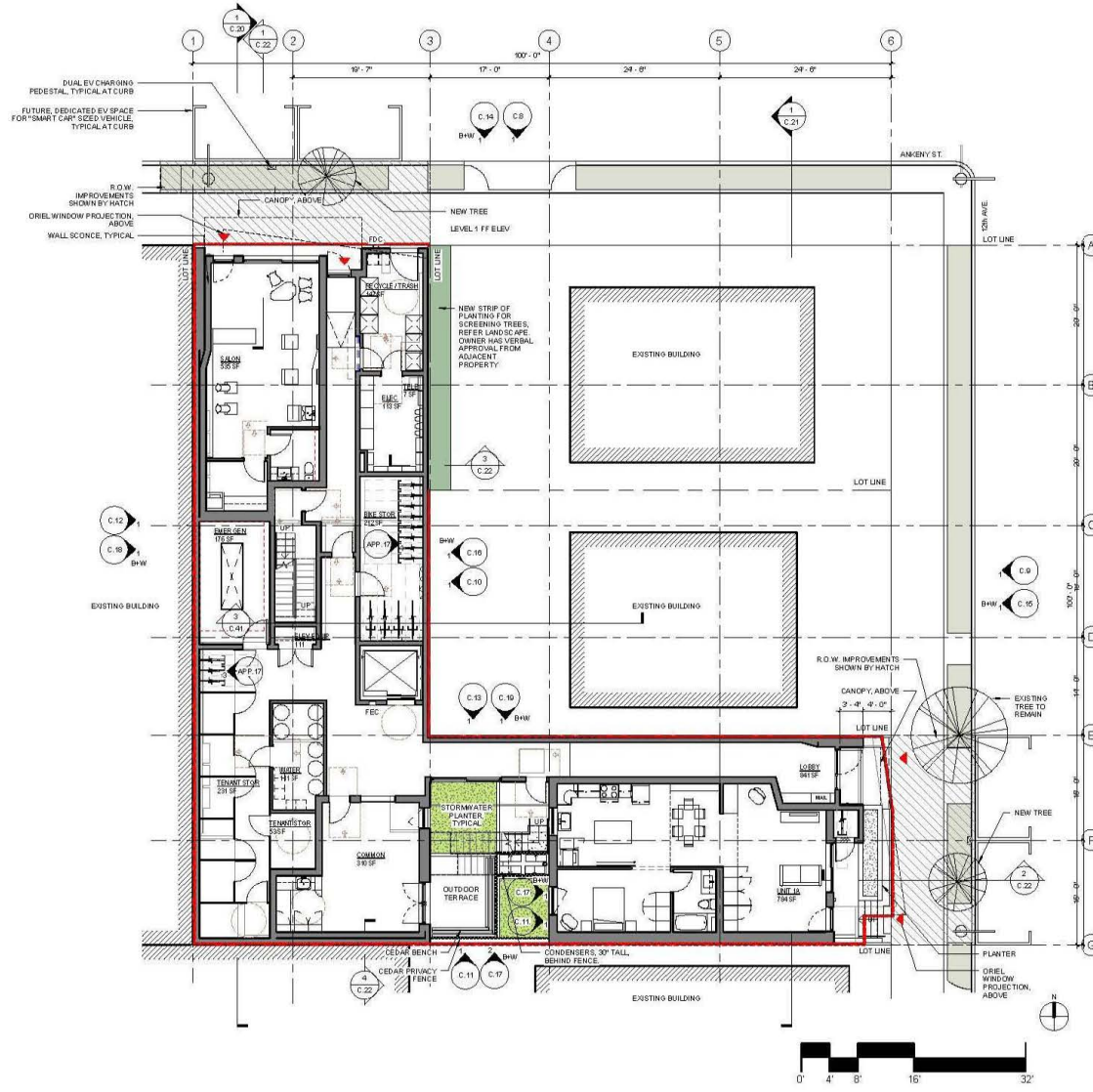
This site lies within the:
CENTRAL CITY PLAN DISTRICT
CENTRAL EASTSIDE SUBDISTRICT

File No. LU 16-184524 DZM
1/4 Section 3031
Scale 1 inch = 200 feet
State_Id 1N1E35CD 3600
Exhibit B (Aug 08, 2016)

Plan / Site Plan - Level 1
1/16" = 1'-0"

Lot Size: 5,380 SF

Level 1	
Building Area	5,250 GSF
FAR	0.98
Level 2	
Building Area	5,030 GSF
FAR	0.93
Level 3	
Building Area	4,505 GSF
FAR	0.84
Level 4	
Building Area	4,505 GSF
FAR	0.84
Level 5	
Building Area	4,220 GSF
FAR	0.78
Level 6	
Building Area	2,940 GSF
FAR	0.55
Total	
Building Area	26,450 GSF
Max Building Area	32,280 GSF
FAR	4.92
FAR Allowed	6.00

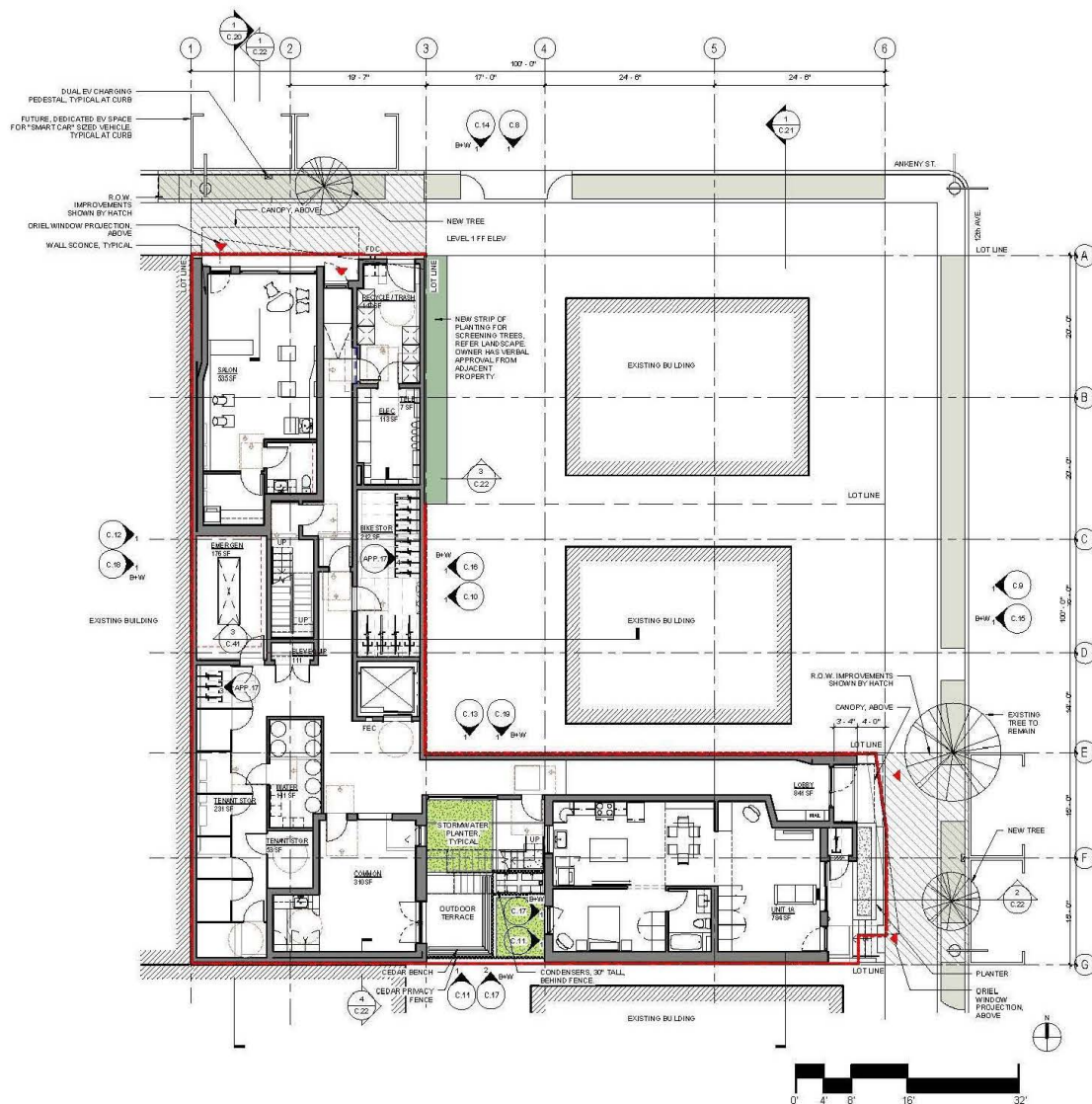


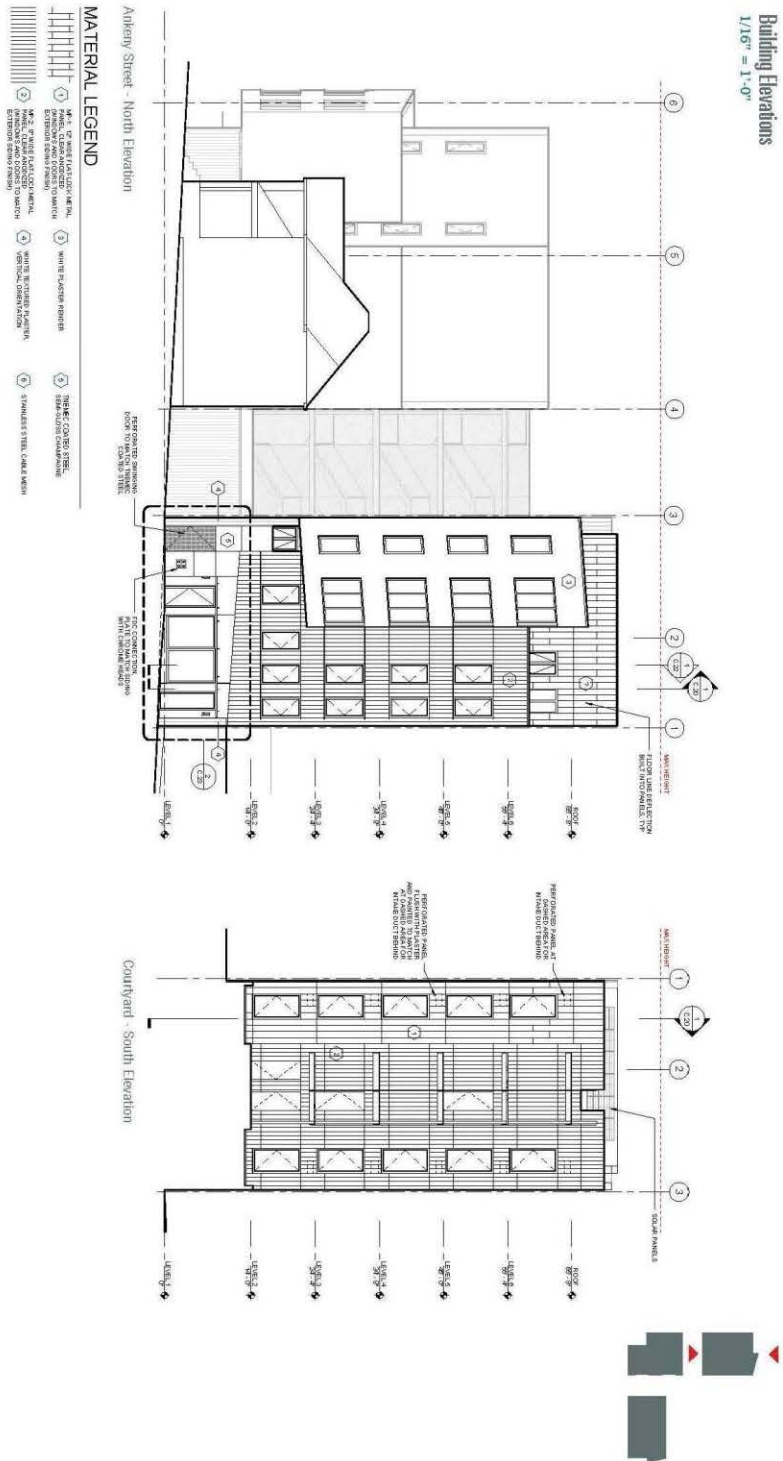
C.1

$$1/16'' = 1'-0''$$

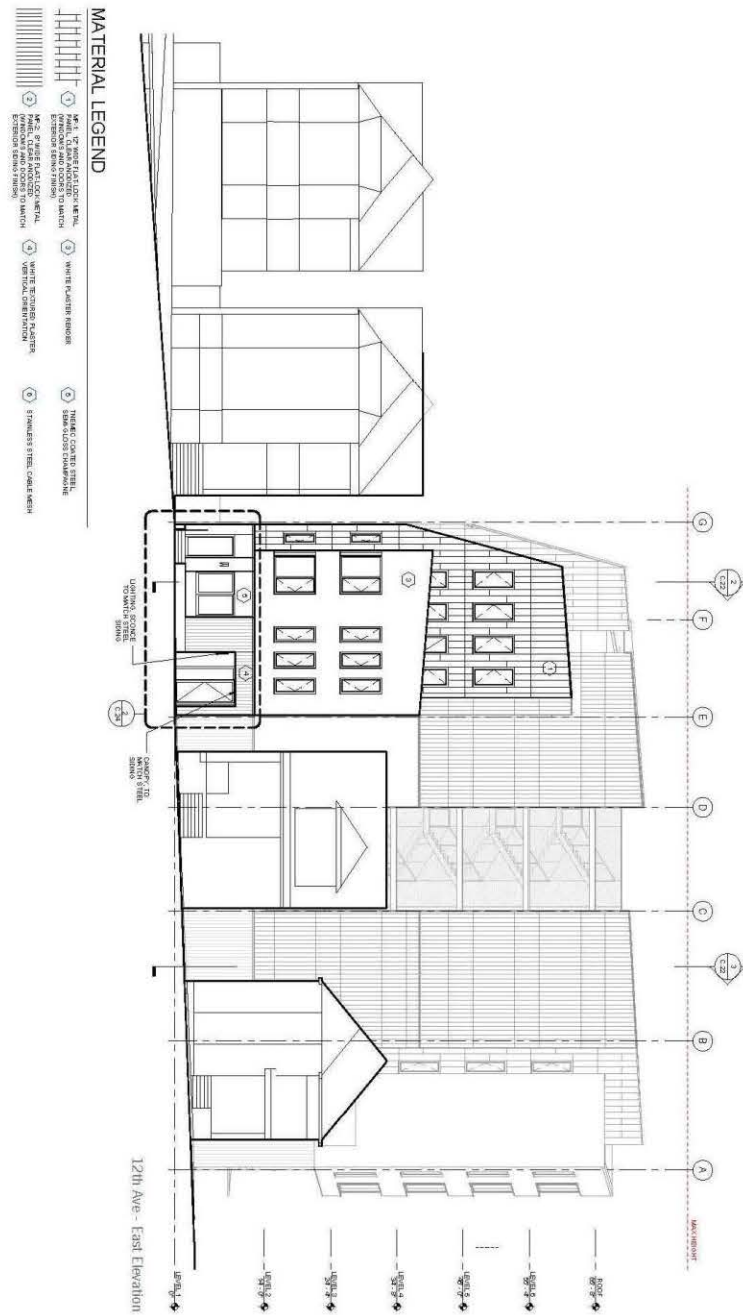
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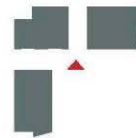
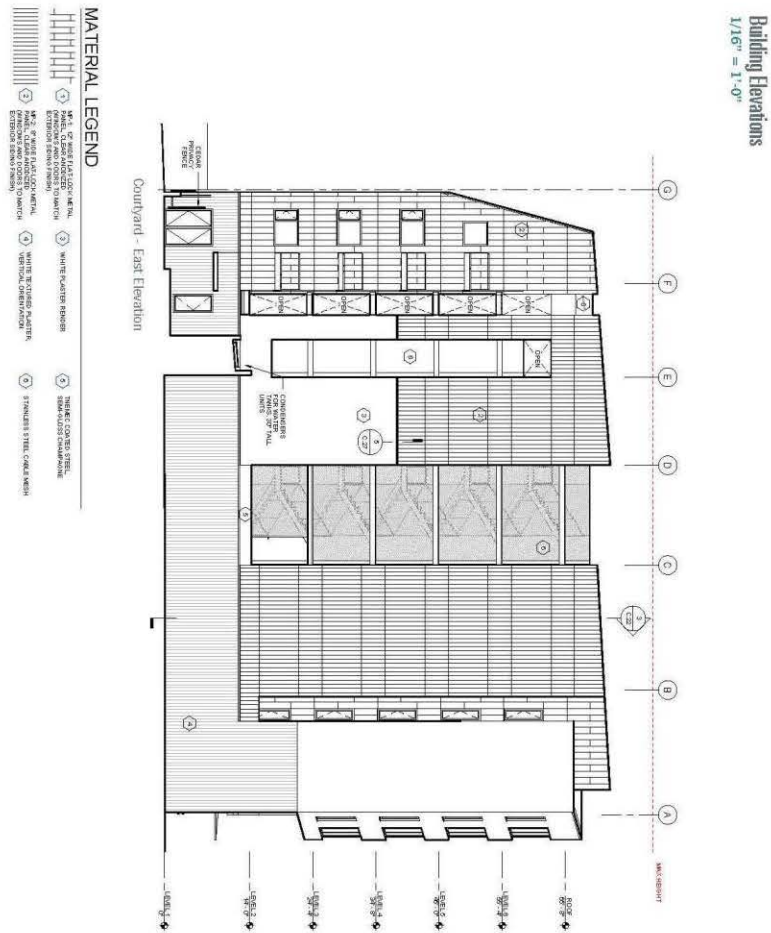
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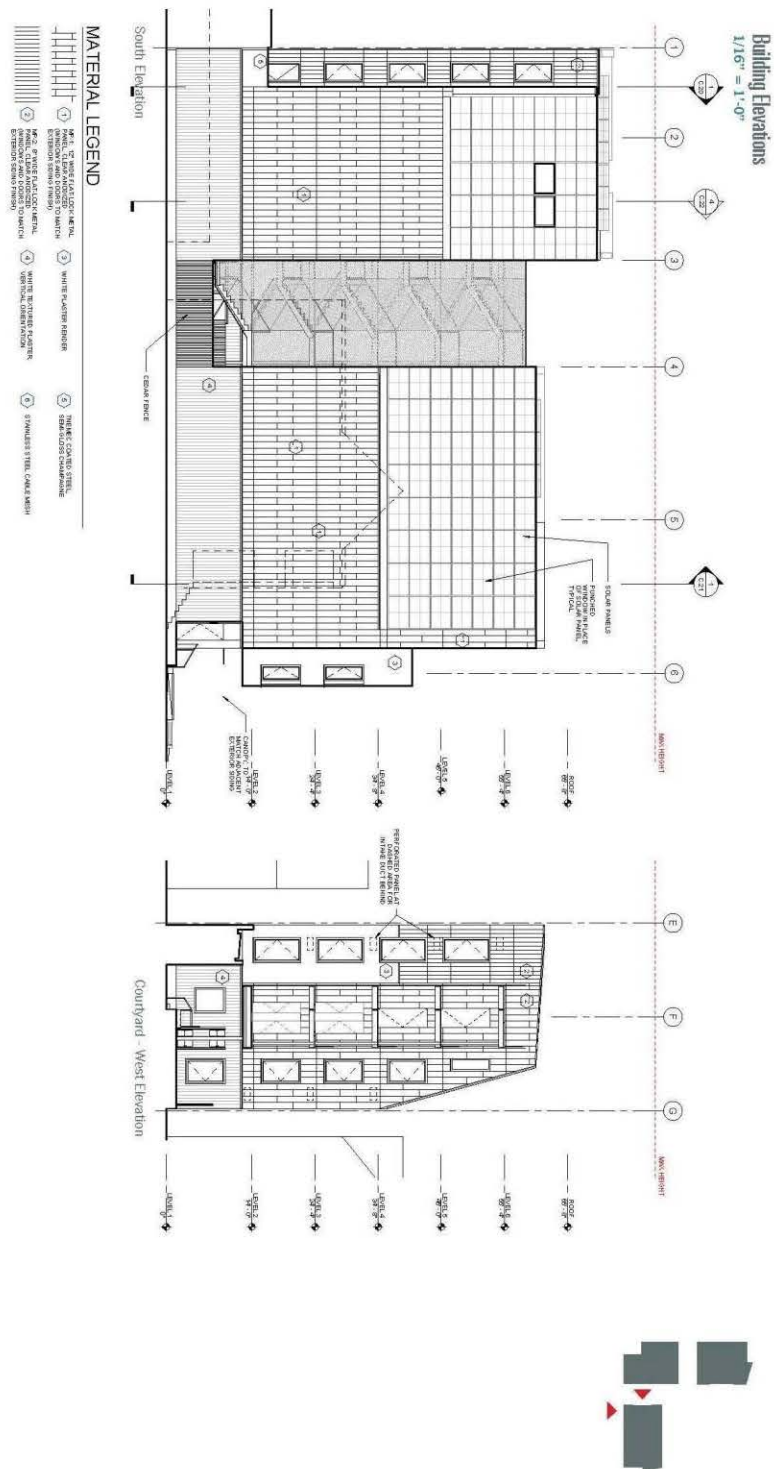




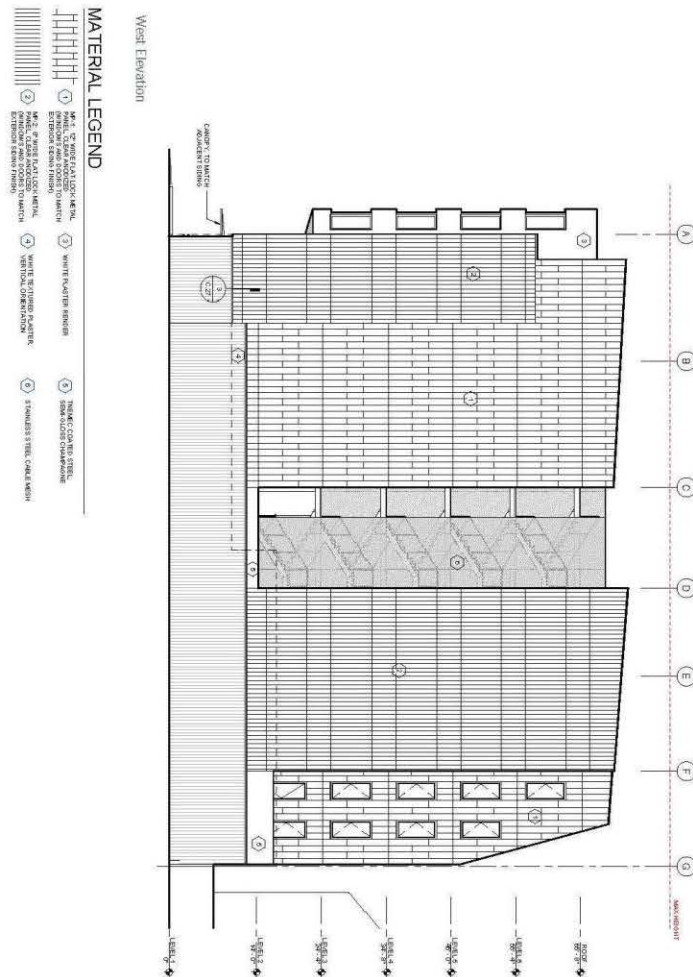
Building Elevations

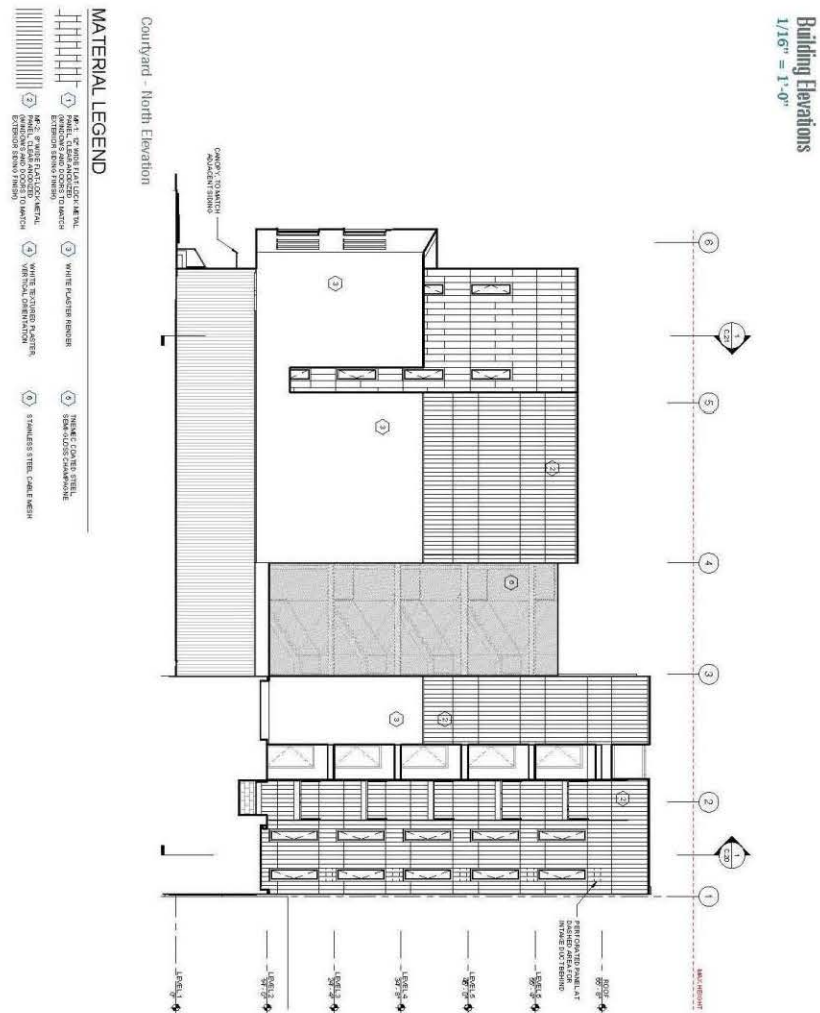
 $1/16" = 1'-0"$ 





Building Elevations
1/16" = 1'-0"

 $1/16" = 1'-0"$ 





City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: LU 16-184524

FOR INTAKE, STAFF USE ONLY

Date/Time Received 3/2/17; 3:55 PM ☒ Action Attached _____
 Received By 5th Floor reception (Elizabeth) Fee Amount \$5000.00
 Appeal Deadline Date 3/3/17 [Y] [X] Fee Waived
☐ Entered in Appeal Log _____ Bill # 4085611
☐ Notice to Auditor _____ [Y] [X] Unincorporated MC
☐ Notice to Dev. Review _____

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 1122 SE Ankeny Street DEADLINE OF APPEAL March 3, 2017
 Name Landon K. Crowell
 Address 1122 SW Ankeny City Portland State/Zip Code OR/97205
 Day Phone 503.281.1877 Email landdevelopment@gmail.com Fax _____
 Interest in proposal (applicant, neighbor, etc.) Applicant

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. 825 . 055 Zoning Code Section 33. _____ . _____
 Zoning Code Section 33. _____ . _____ Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See attached.

Appellant's Signature

FILE THE APPEAL - Submit the following:

- ☒ This completed appeal form
- ☒ A copy of the Type III Decision being appealed
- ☒ An appeal fee as follows:
 - ☒ Appeal fee as stated in the Decision, payable to City of Portland
 - ☐ Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - ☐ Fee waiver request letter for low income individual is signed and attached
 - ☐ Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

Narrative in Support of Appeal of Design Commission Denial of the Ankeny Apartment Project

The applicant appeals the Design Commission denial under Central City Fundamental Design Guidelines A4, A5, C3-1, C3-2, C4 and C5. Under each of these Guidelines, the Design Commission concluded:

“Therefore, due to concerns about the massing, bulk and scale of the side walls, the open stairwells, and the compatibility of the metal paneling, these guidelines are not yet met.”
(Design Commission Decision at pages 8, 12 and 14).

Contrary to this finding:

1. The Project is within the allowed height and density for the Site under both the EXd and the Central City Plan District (“CCPD”) regulations;
2. The open stairwells were thought to be endorsed by a majority of the Commission at one of the 5 hearings on the proposal, earning the project a revised staff report and recommendation of approval on the stairwell design, but that conclusion was reversed in the final hearing; and
3. The metal paneling was modified during the hearing process to respond to the comments by the Design Commission.

Allowed Height and Density

The Ankeny Apartment project is located at 1122 SE Ankeny Street (the “Site”). The Site is zoned EXd and is in the CCPD. The EXd zone and the CCPD contain specific provisions that establish the expected height and mass of a structure in the EXd zone within the District. The recent description of the EXd zone in the City’s CC 2035 process states:

“The EX Zone in the Central City is a high density, mixed use zone intended for corridors or where a wider variety of uses is sought in historically industrial areas. In this zone, buildings can be built up to the street lot line and may cover 100% of the lot. Development is intended to be pedestrian oriented with a strong emphasis on a safe and attractive streetscape.” (Emphasis added).

The CCPD carries a mapped base height of 50 feet. The City also intentionally and explicitly located this site and all other properties on the block in the “area eligible for general and housing height bonuses.” The general height bonus is non-discretionary and permits an additional 15 feet of height for every 1:1 FAR bonus earned on the site up to a maximum of 45 feet. Thus, the non-discretionary permitted and entitled maximum height on this site is 95 feet based on a 3:1 FAR bonus.

In the 2035 Comprehensive Plan and Zoning Code changes, the City retained the EX base zoning and the 50-foot base height allowance. The City also increased the maximum allowed bonus height that can be earned through the FAR bonus. After the zoning code changes become effective sometime next year, the Project would be permitted a height of 125 feet based on earning an FAR bonus or transfer of at least 1:1.

Narrative in Support of Appeal – LU 16-184524 DZM
March 1, 2017
Page 2

The appealed Project is only 63 feet and 73 feet in height, 20 and 30 feet below the allowed height and only about half that future bonus height.

Turning to FAR, the Site has an entitled base FAR of 3:1 and, because it is in the Central City, it is permitted to earn up to another 3:1 in FAR bonuses. If the applicant meets the bonus requirements, this additional FAR is not discretionary. It is awarded based on an objective evaluation of the FAR bonus standards. The Project site can therefore earn up to 3:1 in FAR bonus for a total allowed FAR of 6:1.

The Project is below the allowed FAR at 4.9:1.

Yet the Design Commission's primary finding of denial is that the Project is too big ("massing, scale and bulk of side walls"). We do not believe the code gives the Design Commission the authority to base a denial on height and density when that height and density is permitted outright under the CCPD. Title 33 anticipates the Design Commission's current dilemma in PCC 33.500.040 and 33.700.070.E.1.a. There, the code establishes the hierarchy of regulations:

"Where there is a conflict between the plan district regulations and base zone, overlay zone, or other regulations of this Title, the plan district regulations control. The specific regulations of the base zone, overlay zones or other regulations of this Title apply unless the plan district provides other regulations for the same specific topic." PCC 33.500.040.

"When the regulations conflict...the regulations of a plan district supersede regulations in overlay zones, base zones, and regulations in the 600s series of chapters." PCC 33.700.070.E.1.a.

The Design Commission is applying design guidelines that are found in an Overlay Zone. The size allowances for the Project, such as FAR and height, are found in the Plan District. The code is clear. When faced with a Plan District regulation on the specific topic of massing (height and FAR), the Plan District regulation controls over any lower tier design guideline which is part of an Overlay Zone. Thus, if a design guideline is used to reduce height or density below the CCPD, the application of that design guideline conflicts with an entitlement specifically articulated in the higher-level Plan District and such an interpretation is not permitted under PCC 33.500.040 and 33.700.070.E.1.a.

The Design Commission also incorrectly imported a generally worded purpose statement from the Design Overlay Zone as an approval guideline under C3-2, C4 and C5. PCC 33.420.010 provides the following overall purpose for design review:

"Design Review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area."

This purpose statement is not a design guideline and therefore is not a relevant approval criterion in this review. Further, this purpose statement is used in the findings to suggest that if the Design Commission believes that a mapped height and FAR is not appropriate on a given site, they can reduce the height and FAR on a case by case basis even if that height and FAR was adopted by the Planning Commission and City Council in a thorough and deliberate legislative process that also considered the existing environment and the City's objectives for density on the site and in the area. Lastly, the purpose statement used by the

Narrative in Support of Appeal – LU 16-184524 DZM
March 1, 2017
Page 3

Design Commission is found in an Overlay Zone. Under the code hierarchy, the Plan District height and FAR supersede any conflicting and generally-worded regulation in the lower-tier Overlay Zone.

Therefore, the Design Commission did not have the authority to deny the Project on this basis.

Open Stairwells

The open stairwells are a strategic architectural design element within this proposal which provide natural light access for both the residents of this building and the neighboring buildings. The mid-property location of each stairwell provides a gap in the development and reduces the property line sidewalls on each side of both wings of the development by approximately twenty-five percent. The architectural detailing of the full height, floor-to-floor, stainless steel wire mesh allows a maximum amount of light to pass through the stair opening while providing full-height protection to occupants. The lighting has been designed and detailed to provide the required amount of egress light while being directed and shielded to only light the top surfaces of the stairs and landings, thus eliminating light trespass and minimizing visible light from adjacent property. Natural ventilation is also increased for both this property and adjacent sites which supports the sustainability goals of this project. Additionally, there are storm water planters placed on the second level of these stairwell openings further supporting project sustainability and providing a garden element connection to the adjacent properties which adds a seasonal variation to the visual party wall condition.

The one staff report¹ that recommended approval for this proposal mentions that, “The two light-wells are intended to break down the mass of the project into three smaller masses and allows for daylight and views through the building; and the light material choices are intended to aid in reflecting daylight into the lots to the north of this development.” The use of the lightwells and stairs as an architectural approach to achieve the required circulation/egress and incorporate strategies for improving light, air and water quality for both this development and the neighboring properties meets the design guidelines.

Zinc metal wall cladding

The zinc metal wall cladding was not initially proposed as a wall material for this project, but in fact, over the course of the Design Review process was considered a high-quality choice. Initially the cladding materials being proposed were a clear vertical grain cedar with a semi-transparent finish and a stiff .040 anodized aluminum in both clear and bronze colors. The cedar, originally selected for its residential connotations, was quickly changed out for the stucco render which related to the industrial character of the area. In a later hearing, the zinc was selected to replace the aluminum as the clear anodized was thought to be too reflective, the zinc having a slightly darker natural matte finish and greater longevity. Using the zinc in two different panels sizes and only one color was considered an elegant simplification encouraged by the Commission to strive for a “Dutch styled” intervention into the existing building fabric.

The one staff report which recommended approval of the proposed project stated, “The metal cladding has been changed to zinc, which has a more matte finish and is more in keeping with the residential nature

¹ There were multiple staff reports, one of which recommended approval based on one of the hearings before the Design Commission.

Narrative in Support of Appeal – LU 16-184524 DZM
March 1, 2017
Page 4

of the adjacent houses. These compositional and material changes help better integrate and unify the proposal with SE 12th and the surrounding area.”

The proposed zinc cladding, in color, thickness (18 gauge as to prevent oil-canning), matte finish, concealed mechanical fastening and quality meets all the applicable guidelines with concern for adjacent coherency, quality and permanence. Zinc has long been considered a top-self building material and is rarely proposed on buildings of this nature due to its initial cost. The willingness of this owner to propose such a material, and a Net-Zero project, illustrates a deep commitment to long term ownership and stewardship of both the neighborhood and the environment.

Because the project is within the density allowances of the code and meets the design guidelines we are seeking a reversal of the Design Commission denial.

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR
EVIDENTIARY/DE NOVO APPEALS****1. SUBMISSION OF TESTIMONY**

- a. Testimony may be submitted via email to CCTestimony@portlandoregon.gov or in writing to the Council Clerk, 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204. Written comments must be received by the time of the hearing and should include the case file number.
- b. Testimony may be submitted orally (see below).

2. HEARINGS PROCESS

- a. The order of appearance and time allotments is generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent of the Appeal	15 minutes
Other Opponents of the Appeal	3 minutes each
Appellant Rebuttal	5 minutes
Council Discussion	

- b. The applicant has the burden of proof to show that each and every element of the approval criteria can be satisfied. If the applicant is opposing the Hearings Officer's recommendation, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the application must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidence submitted in support of the application demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong criteria are being applied or additional approval criteria should be applied.
- d. The failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the Review Body decision are available for review by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.