

**PROPOSED FINDINGS SUSTAINING THE APPEAL OF
PEARL DISTRICT NEIGHBORHOOD ASSOCIATION
LU 16-278621 DZM GW
PC #16-262122
(Fremont Apartments)**

I. INTRODUCTION

This matter is before us on appeal of the Design Commission's approval of the Fremont Apartment project under the Design Review and Greenway development criteria discussed below. In summary, the applicant seeks a number of modifications to our standards in order to justify the requested height, F.A.R., siting, and massing of this riverfront project, as well as the nature and placement of the required public amenities.

We address the application and the appealed decision in light of the applicable approval standards, as follows.

II. FAILURE TO COMPLY WITH RIVER DISTRICT DESIGN GUIDELINES.

A2 EMPHASIZE PORTLAND THEMES

Finding: The City Council finds that the proposed structure's massing concept does not properly take the view of the Fremont Bridge into account and inappropriately shifts much of the mass to the north. By exceeding the normal height limitation of 100 feet by a total of 85 additional feet, the proposed structure actually obliterates a key view of the bridge itself from the Fields Park and elsewhere, which would not be impaired if the applicant complied with the 100-foot limit.

A3 RESPECT THE PORTLAND BLOCK STRUCTURES

Finding: The City Council finds that this proposal does not respect Portland's typical 200-foot block pattern. The placement of the building so close to the southern property line violates the typical 200-foot Portland block pattern, setting a precedent for future development on the adjacent parcel to create a combined development far in excess of 200 feet in length along NW Naito Parkway

A3-1 PROVIDE CONVENIENT PEDESTRIAN LINKAGES

Finding: The City Council finds that this proposal blocks off pedestrian access to the Willamette River and the Greenway path for a full city block.

A4 USE UNIFYING ELEMENTS

Finding: The City Council finds that the proposed design does not use unifying elements but, as noted by the Design Commission's chair, creates a visual mishmash. It is not internally unified, and its design is discordant with surrounding and nearby development.

A5-1 REINFORCE SPECIAL AREAS

A5-1-1 REINFORCE THE IDENTITY OF THE PEARL DISTRICT NEIGHBORHOOD

Finding: The City Council finds that this proposal does not reinforce the identity of the Pearl District Neighborhood, but serves to substantially detract from it. It creates its own neighborhood along the river almost entirely for the benefit of high-rent tenants. In cutting the neighborhood's connection to the river physically and visually, and in cutting it off visually from the landmark Fremont Bridge, it significantly harms the neighborhood's identity.

A5-1-5 REINFORCE THE IDENTITY OF THE WATERFRONT AREA

Finding: The City Council finds that the wall-like design proposed by the applicant, with a narrow open space area confined to one end, does not reinforce, but minimizes, this key waterfront area. We have compared this proposal with the design of what we would previously have considered a significant, large development on this stretch of the Willamette—the Waterfront Pearl condominiums. These are comprised of two large, landmark 10-story structures, much lower in height than the proposed building, which are surrounded by open space on all sides and by a large water feature wrapping around and between the buildings, creating a broad space between the structures and the Greenway trail. The Waterfront Pearl provides the city with the amenity of a true water feature, with moving water in ponds large enough to attract ducks. It is open and engaging to all. It reinforces and enhances the identity of the waterfront and the Greenway. It shows what *can* be done to build out a large project while meeting this design guideline.

In this case, however, the applicant contends that the Willamette is its water feature and it need not do more. The developer of the Waterfront Pearl did not have the temerity to suggest the same. It chose compliance over defiance.

This project in no way integrates an active mix of uses along the waterfront and fails to make development open and accessible in order to maintain the publicness of the Greenway. Instead, it turns the riverfront into a private benefit and amenity.

A5-3 INCORPORATE WATER FEATURES

Finding: As explained above, the City Council finds that proposed project does not incorporate water features which enhance the quality, character and image of the River District. The stormwater planters are not a legitimate water feature and in no way form the focal point for integrated open spaces. They do not take cues from the river, bridges, or the historic industrial character in the design of structures and/or open spaces. No legitimate water feature is incorporated into this project—the Willamette River is already there, and does not count for this purpose.

A5-4 INTEGRATE WORKS OF ART

Finding: The City Council finds that this project fails to integrate any works of art, as required. The supposed structural effects of the proposed benches should not and do not comprise works of art in compliance with this guideline by any rational definition of the term. These effects simply call into question whether the benches will be sufficiently comfortable to be of use to members of the public.

B4 PROVIDE STOPPING & VIEWING PLACES

Finding: The City Council finds that the proposed plazas, parks and open space are not successful. The proposed plaza/open space has minimal engagement with the existing three-story office building to the north, and a planter and grade change between the proposed plaza and existing sidewalk adjacent to the office building would block off all but one connection point on NW Naito Parkway.

C4 COMPLEMENT THE CONTEXT OF EXISTING BUILDINGS

Finding: The City Council finds that this proposal fails to complement the context of existing buildings. It fails to use and add to the local design vocabulary, as described above with particular respect to the Waterfront Pearl, or as to historic Centennial Mills, or to the Bridgetown Lofts apartments just beyond the Fremont Bridge (which top out at six stories and step down from there to the Greenway), or to the McCormick Pier condominiums, or to any other relevant development.

In this instance, the applicant proposes a gated, walled stair entrance to a second floor roof terrace. The developments north of the Fremont Bridge have residential entries, gardens and balconies opening directly onto the Greenway trail. There is no visual connection to the Greenway trail in this proposal.

C5 DESIGN FOR COHERENCY

Finding: The City Council finds that due to its F.A.R.-maximizing, unharmonious mix of design features and wall-like cutting off of the riverfront and Greenway from the surrounding community, the proposed project is not designed for coherency.

III. MISCONSTRUCTION OF SITE AREA FOR PURPOSES OF CALCULATING FAR

PZC 33.930.025 provides in material part as follows:

33.930.025 Measuring Development Standards

Unless otherwise stated below or elsewhere in this Title, all measurements involving development standards are based on the property lines and area of the site after dedication of public rights-of-way and/or designation of private rights-of-way. Standards include, but are not limited to, building coverage, floor area ratio, setbacks, and landscaping requirements. * * * (Emphasis added)

For the purposes of calculating site area in order to determine allowable Floor Area Ratio (F.A.R.), the City Council finds that the square footage of the area lying lower than the “line of ordinary high water” must be excluded, as it is owned by the State of Oregon and not the applicant. (ORS 274.025 and definitions set out in ORS 274.005) The applicant has included all the area down to the line of ordinary low water instead. In addition, the 25-foot public Greenway strip and the 60-foot wide public open space connection between SW Naito Parkway and the river must be omitted because they are effectively public or private rights of way under PZC 33.930.025, above.

The result is a base permissible floor area of at most 40,000 square feet rather than the 72,080 square feet accepted as fact by the commission. Thus, even if all requested modifications were allowed, the City Council finds that the permissible square footage for this project would have to be reduced by 44 percent.

IV. MODIFICATION REQUESTS REVIEWED UNDER PROVISIONS OF PORTLAND ZONING CODE

33.825.040 Modifications That Will Better Meet Design Review

Requirements. *The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:*

- A. Better meets design guidelines.*** *The resulting development will better meet the applicable design guidelines; and*
- B. Purpose of the standard.*** *On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.*

Findings: This provision allows *only* “modifications that will **better meet Design Review requirements.**” Based upon the testimony of witnesses with planning and architectural expertise and that of lay witnesses familiar with the features of the affected neighborhood, the City Council finds that the proposed modifications do not provide for better compliance with the Design Review requirements. Consideration of such modifications outside the adjustment process is strictly permissive (“The review body may consider modification of site-related development standards * * * as part of the design review process.”) It was therefore in no way mandatory for the Design Commission to approve any of the requested modifications. These could more appropriately have been reviewed through the more formal adjustment process, and held to the strict approval criteria for adjustments. Indeed, under this code section, “[a]djustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process.”

The City Council finds that each of the proposed modifications violates PZC 33.825.040.A for failure to better meet the applicable design standards addressed above, and PZC 33.825.040.B because each is inconsistent with the purpose of the standards in question.

With respect to proposed Modification #1, for height under PZC 33.140.210.B.2 (enclosures for rooftop mechanical equipment), we note that the normal maximum height for this site (excluding bonuses) is 100 feet. Even with all the requested bonuses, the maximum height would be 175 feet. However, the applicant has requested more, seeking a further modification to allow rooftop mechanical equipment screening to extend an additional 10 feet. This will further obstruct the view of the Fremont Bridge. We find that it fails to better meet the applicable design guidelines than would adhering to the 100-foot height limit, or even to the requested 175-foot height with modifications. It results in further violation of the River District Design Guidelines discussed above.

By the same token, proposed Modification #1 fails in any way to be consistent with the purpose of the standard. It conflicts with both the applicable design guidelines and the purpose of the height standard.

33.266.220.C. Standards for all bicycle parking.

1. **Purpose.** *These standards ensure that required bicycle parking is designed so that bicycles may be securely locked without undue inconvenience and will be reasonably safeguarded from intentional or accidental damage.*
2. **Bicycle lockers.** *Where required bicycle parking is provided in lockers, the lockers must be securely anchored.*
3. **Bicycle racks.** *The Office of Transportation maintains a handbook of racks and siting guidelines that meet the standards of this paragraph. Required bicycle parking may be provided in floor, wall, or ceiling racks. Where required bicycle parking is provided in racks, the racks must meet the following standards:*
 - a. *The bicycle frame and one wheel can be locked to the rack with a high security, U-shaped shackle lock if both wheels are left on the bicycle;*
 - b. *A space 2 feet by 6 feet must be provided for each required bicycle parking space, so that a bicycle six feet long can be securely held with its frame supported so that the bicycle cannot be pushed or fall in a manner that will damage the wheels or components. * * **

Finding: The City Council finds that the applicant initially requested this modification was for the purpose of spacing long term bicycle racks closer than required by PZC 33.266.220.C.3.b., and it may subsequently have been withdrawn. This requested modification is noted in that it reflects the creation of 275 long-term bicycle parking spaces in the residential units, *i.e.*, at least one per living unit, thus eliminating the need for the locker room and bicycle parking area which are included in the applicant's plans, and the resulting bonus F.A.R. This issue is discussed in additional findings below.

33.510.205.H. North Pearl Subarea height opportunity area.

1. *Purpose. In the North Pearl Subarea, additional building height may be appropriate to support the goals of the North Pearl Plan. The regulations of this subsection:*
 1. *Promote the use of development bonus and transfer provisions to create and support a range of community amenities to serve the diversity of residents and employees in the Central City;*
 2. *Create a skyline and urban form that is visually permeable by providing visual access to locations within and beyond the subarea;*
 3. *Encourage the development of taller buildings that may accommodate a range and diversity of land uses;*
 4. *Result in a dynamic and varied skyline and urban form that contributes to the health, vibrancy, and livability of urban living;*
 5. *Shape building massings that allow light and air to penetrate to the street level, enhance pedestrian scale, and create a pleasant, versatile, and active public realm; and*
 6. *Provide flexibility to allow a range of uses and building types to be developed in a manner that fulfills the design objectives of this purpose statement.*

Additionally, along the waterfront of the North Pearl Subarea the regulations of this subsection also:

7. *Increase access to sunlight along the greenway and within public and private open space areas developed along the waterfront;*

8. *Develop a dense, active urban waterfront with a vibrant public realm;*
 9. *Work with the open area and waterfront development provisions of the North Pearl Subarea in the creation of well designed public and private urban open space amenities;*
 10. *Facilitate visual and physical access to and along the riverfront for all members of the public;*
 11. *Create expanded opportunities for views of the river as viewed from Naito Parkway and Front Avenue, landward portions of the subarea, and locations west of the subdistrict; and*
 12. *Ensure bonus height granted to sites adjacent to the Fremont Bridge does not significantly affect views of or diminish the aesthetic qualities of the bridge or its iconic stature in the Portland skyline.*
2. *Additional building height above the maximum height limits shown on Map 510-3 may be approved as a modification through design review if H.2.a and b are met, and either H.2.c or d. Except as specifically allowed, adjustments and modifications to this paragraph are prohibited.*
 - a. *The site must be in the height opportunity area shown on Map 510-16.*
 - b. *The floor area of the building above the maximum height limit shown on Map 510-3 must be:*
 - (1) *Earned through bonus FAR provisions;*
 - (2) *Transferred by a Central City Master Plan; or*
 - (3) *Transferred from an Historic Resource in conformance with 33.510.200.H, Transfer of floor area from Historic Resources in specified areas.*

- c. *The regulations of this subparagraph apply to sites northeast of SW Naito Parkway. Building heights may be increased to 175 feet in the height opportunity area if the following are met:*
- (1) *The floors of the building above 100 feet are limited to 12,500 square feet in area or less; and*
 - (2) *The length of any facade above 100 feet may not exceed 120 feet. However, a dimension of up to 150 feet may be requested as a modification through design review.*
- d. *The regulations of this subparagraph apply to sites southwest of SW Naito Parkway. For sites in the height opportunity area where the maximum height allowed for the site by Map 510-3 is 100 feet, applicants may choose to increase height using one of the options of this subparagraph.*
- (1) *Option One: The height may be increased to 175 feet if the length of any facade above 100 feet in height does not exceed 150 feet. However, a dimension of up to 180 feet may be requested as a modification through design review; or*
 - (2) *Option Two: There is no maximum height limit if the following are met:*
13. *The floors of the building above 100 feet are limited to 12,500 square feet in area or less; and*
 14. *The length of any facade above 100 feet may not exceed 120 feet. However, a dimension of up to 150 feet may be requested as a modification through design review.*

Findings: Modification #3 addresses the North Pearl Subarea Height Opportunity Area, seeking authorization for a 175-foot height, exceeding the normal maximum base height of 100 feet. The proposed modification would also allow the length of the facades above 100 feet to exceed 120 feet in length, with the proposed facade length on the

southwest and northeast facades of the building to be 125 feet 2 inches long, and the southeast and northwest facades to be 142 feet 8 inches long.

The City Council finds that each of the above modifications is substantial and, under the applicable code provisions, need not have been considered at all by the Design Commission, or could simply have been denied. Instead, Modification #3 was approved, resulting in the maximum adverse impact upon the North Pearl Subarea and the River District. The Purpose Statement of this code section states that in “the North Pearl Subarea, additional building height *may* be appropriate to support the goals of the North Pearl Plan.” Thus, the proposed building height may also serve to defeat the goals of the North Pearl Plan, and may not be appropriate. The requested modification would therefore never be mandatory, but would always be discretionary at best. Moreover, contrary to the Design Commission’s conclusion, this provision makes the goals of the North Pearl Plan directly relevant to review of this application.

With respect to the specific purposes set out here, the City Council finds as follows:

- The requested additional height will in no way create and support a range of community amenities.
- It will not create a visually permeable skyline and urban form providing visual access to locations in and beyond the subarea, but will have the opposite effect.
- It will not result in a dynamic or varied skyline or urban form contributing to the health, vibrancy, or livability of urban living.
- It will not shape building massings allowing light and air to penetrate the street level, or enhance pedestrian scale, or create a pleasant, versatile and active public realm. It will achieve the opposite result.
- It will not provide a range of building types fulfilling the design objectives of the purpose statement, but create a visual mess instead.

In addition, the proposed additional height will not comply with the purpose statement as to development along the waterfront of the North Pearl Subarea, as follows:

- It will not increase sunlight along the Greenway and within the public and private open space areas developed along the waterfront. It will have the opposite effect.
- It will not create an active urban waterfront with a vibrant public realm. Instead, it will have a suppressive effect.
- It will not work with the open area and waterfront development provisions of the North Pearl Subarea in the creation of well designed public and private urban open space amenities.
- It will not facilitate visual and physical access to and along the riverfront for all members of the public. It will have the opposite effect—that of a great wall.
- It will not create expanded opportunities for views of the river as viewed from Naito Parkway and Front Avenue, landward portions of the subarea, and locations west of the subdistrict. It will have the opposite effect.
- With respect to the specific purpose of ensuring that bonus height granted to sites adjacent to the Fremont Bridge not significantly affect views of or diminish the aesthetic qualities of the bridge or its iconic stature on the skyline, the proposed additional height will again have the opposite effect.

We find that with respect to the requested bonus height, PZC 33.510.205.H.2.c.2 does not allow bonus height if the length of any facade above 100 feet of building height is more than 120 feet long, unless there is a further modification for facade length. Accordingly, the applicant only achieves the additional, excessive building height by stacking modifications and obtaining permission for excessive facade length. The end result is the collection of inappropriate impacts described here.

In making these findings, the City Council also incorporates by reference here its findings with respect to the applicable Design Guidelines, above.

33.510.251 Additional Standards in the North Pearl Subarea. Sites in the North Pearl Subarea south of the Fremont Bridge must meet the following standards:

* * *

B. Open area requirement.

1. *Purpose. The open area requirement promotes adequate amounts of light and air, year-round opportunities for outdoor active and passive recreation, visual relief from the built environment, and facilitates circulation for pedestrians to and throughout the North Pearl Subarea. The open area requirement is intended to produce open areas at a scale comparable to what large sites would have if divided by the 200 foot street grid pattern. * * **

C. Required open area development standards.

* * *

3. *Shadow standard. Parks and plazas must be sited so that shadows from buildings cover no more than 50 percent of a park or plaza at noon and 75 percent at 3:00 PM on April 21 of any year. Trees are not to be included in consideration of the limitation on shadows. * * **

Findings: The City Council finds that proposed Modification #4 would magnify the other defects in this proposal through violation of the required open area development standards under PZC 33.510.251.C.3. In particular, the relevant shadow standard applicable to the plaza area creating the applicant's designated open space would result in 84% coverage by shadow, 34% above the limit of 50% at noon on April 21 of each year. This in no way better meets the applicable design guidelines, addressed at length above. Rather, it again has the opposite effect. It also fails to meet the purpose of the relevant standard, which is to provide a reasonable amount of sunlight to users of the open area.

D. North Pearl Subarea waterfront development.

1. *Purpose. These standards are intended to assure both frequent views of the river and physical connections to the river and its activities.*
2. *Where these standards apply. This section applies only to lands between NW Front Avenue and the Willamette River within the North Pearl Subarea.*

3. *Development standards.*
 - a. *View corridors. At least 25 percent of the width of the site (as measured along NW Naito Parkway) must be maintained as a view corridor or corridors. Buildings and covered structures are not allowed in the view corridor.*
 - b. *Setbacks for all development from the Willamette River. The minimum setback for all development from the Willamette River is regulated by the Greenway Overlay zones; see Chapter 33.440. In addition, buildings or portions of buildings over 35 feet in height must be set back from the Greenway setback line 1 foot for every 1 foot of height above 35 feet.*
 - c. *Maximum building dimension. The maximum building dimension is 200 feet. This standard applies to both building length and depth.*
 - d. *Public access. As part of each development, public access for pedestrians must be available and clearly posted between NW Naito Parkway and the Greenway trail.*

Findings: The City Council finds that as applied for, this project does not comply with PZC 33.510.251.D.3.b and c. Modification #5 proposes to exceed the North Pearl Subarea waterfront development standards both as to setback for development from the Willamette River, and maximum building dimension. Again we see a compounding of the accumulated modifications. The applicant proposes to allow portions of the building over 35 feet in height to extend into the Greenway setback area, and for the maximum building dimension to exceed the permitted 200 feet perpendicular to the river by nearly 31 feet. We find that this will not better meet the applicable design guidelines or be consistent with the purpose of the standard sought to be modified. With all the accumulated, requested modifications, the proposed project is already oppressive to users of the Greenway and as to its uninterrupted mass. The applicant's decision to confine the sole open area to the north side of the property will not allow for the requisite views and physical connections to the river and its activities.

V. GREENWAY REVIEW UNDER PZC 33.440.350

33.440.350 Approval Criteria

The approval criteria for a greenway review have been divided by location or situation. The divisions are not exclusive; a proposal must comply with all of the approval criteria that apply to the site. A greenway review application will be approved if the review body finds that the applicant has shown that all of the approval criteria are met.

- A. For all greenway reviews. The Willamette Greenway design guidelines must be met for all greenway reviews.*

The City Council finds that as to Issue A, Relationship of Structures to the Greenway Setback Area, Guideline 1, "Structure Design," the structure design does not complement or enhance the Greenway Setback Area. Rather, as we have explained, it intrudes upon it to a significant extent, and effectively walls it in.

Under Guideline 2, regarding structure alignment, we find that the proposed modification results in a failure to follow the Central City's typical 200-foot grid.

Under Issue B, Public Access, Guideline 1, we find that Public Access Opportunities are not sufficiently integrated along the river. There is just one access point on this project of more than one city block's length.

VI. NONCOMPLIANCE WITH DEVELOPMENT STANDARDS

33.510.210 Floor Area and Height Bonus Options

* * *

C. Bonus Floor Area

Findings: The City Council finds that the applicant has requested a significant amount of bonus floor area on various grounds under PZC 33.510.210.C. We find that the first 144,160 square feet of the project would be allowed through the 2:1 base F.A.R. available for the 72,080 square feet of the site, assuming that were the relevant square footage instead of 40,000 square feet as provided by PZC 33.930.025. The Design Commission has allowed a 100% floor area bonus of an additional 144,160 square feet through the residential bonus provisions of PZC 33.510.210.C.1.a.2.

However, as we have explained above, the allowance of this bonus F.A.R. is discretionary and not mandatory, as would be the accommodation of any such bonus F.A.R. by means for modification of the 100-foot height standard. For all the reasons explained above, neither the requested bonus F.A.R. nor the height requested to accommodate it have been adequately justified under the applicable approval standards.

Among the other issues on this record, the applicant claims additional F.A.R. of 15,200 feet as a locker room bonus for its designated locker room/bike storage/shower and dressing area under PZC 33.510.210.C.8. A review of the history of this bonus provision shows that it has been requested by developers on approximately nine occasions. We find that, in each instance, this was for office/commercial uses as to which employees would bicycle to work. In other words, this provision is intended to benefit incoming bicycle commuters.

We find that this provision was not intended for residential structures, where residents shower in their own units. With particular regard to this project, there will already be a bicycle storage area in each apartment. We find it unreasonable to expect that, after storing their bicycles in their units, residents will run downstairs to shower in the locker room rather than in their apartments. It appears that the locker room proposed for this project is not intended for any real use, but simply to achieve additional, bonus F.A.R. We find that this request for added F.A.R., along with the others before us, must be denied.

VII. PROPOSED RESTAURANT/RETAIL USE; PROPOSED MODIFICATION REGARDING PARKING

Findings: We find that, based upon observation of riverfront restaurant development, the proposed restaurant and retail use along the Greenway at the northeast corner of the site is intended only to justify the large number of requested underground parking spaces for apartment tenants, which would not otherwise be allowable. The chance of the businesses in question actually succeeding and remaining open for business is substantially less than the chance had by *Lucier* restaurant near the Strand condominiums, which failed in spite of a quantity of foot traffic from Tom McCall Waterfront Park and nearby residential development and hotels far exceeding that likely here. *Lucier* never reopened and the building is a vacant shell. The proposed condition of approval in this case requiring restaurant use guarantees only empty space which cannot be used for anything else, and is thus likely to denigrate from the experience of Greenway users. We find that if this project were approved, no additional underground parking should be allowed on account of the proposed restaurant/retail use.

PZC 33.266.130.G.2.c.

We find that PZC 33.266.130.G governs parking area setbacks and landscaping for most development in the city other than houses and duplexes. Subsection (c) requires that the minimum required setbacks for surface parking areas are those stated in Table 266-5. The applicant's proposed Modification #7 is requested in order to avoid compliance with the applicable standard. Specifically, to further its underground parking feature, the applicant wishes to do without required landscaping, in part substituting a concrete wall for the required trees, shrubs, and ground cover. We find that the proposed modification violates the purpose of creating an environment inviting to pedestrians, and does not better meet the applicable design guidelines. This modification too must thus be denied under PZC 33.825.040.

VIII. CONCLUSION

Based upon the findings set out above, the City Council concludes that the applicant has not met its burden of proof under the approval standards we have addressed.

The appeal of the Pearl District Neighborhood Association is sustained, and the underlying application is therefore denied.

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March 6, 2018

Mayor Ted Wheeler and Members of the City Council
City of Portland
City Hall
1221 SW Fourth Avenue, Room 340
Portland, OR 97204

Re: LU 16-278621 DZM GW, PC #16-262122 (Fremont Apartments)

Dear Mayor Wheeler and Commissioners:

I am writing to present the rebuttal of the Pearl District Neighborhood Association (“PDNA”) to the open record submittals filed by the applicant’s representatives on February 28, 2018, under the open record schedule established by the Council. While the applicant filed voluminous materials, these shed little light upon the key issues arising under the city’s approval standards.

While the parties may dispute in good faith the size of the applicant’s site area and its impact upon allowable F.A.R., the maximum allowable F.A.R. in no way dictates what is permissible under the independent criteria herein. That is why the applicant needs as many modifications to the standards of the North Pearl Subarea as it has sought. That is also why the applicant relies upon ostensible precedents set by the far less overwhelming and intrusive projects to the north and south—Bridgetown Lofts and the Waterfront Pearl. As shown in the photos comprising Exhibit 1 to PDNA’s February 28 submittal, *those* projects are net contributors to the broader public use, enjoyment, and views of the Willamette and the Greenway. Their developers meticulously avoided doing what the applicant in this case seeks to do by means of the challenged modifications (including an 85% increase in allowable height), blocking off and obscuring the river and Greenway for the private benefit of tenants of luxe apartments.

The city is not required to allow any of the requested modifications. Each, and for that matter all of them in combination, can only be allowed if the applicant has met its burden of proving the modifications’ *public* benefits under PZC 33.825.040:

- A. **Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and*
- B. **Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.*

PDNA has presented both expert (from a professor of planning and an architectural designer) and lay evidence, which is persuasive in proving that the opposite is true.

The most significant modifications are these:

(1) Modification in height from 100 feet to 185 feet (including rooftop equipment parapet). Also, allow the length of the facades above 100 feet to exceed 120 feet in length, with length of the southeast and northwest facades to be 142 feet 8 inches, and the southwest and northeast facades to be 125 feet 2 inches. Thus, the increase in height would be accompanied by an increase in the massing of the heightened structure.

(2) Modification to exceed the North Pearl Subarea waterfront development standards both as to setback for development from the Willamette River, and maximum building dimension. This would allow portions of the building over 35 feet in height to violate the required setback angle from the Greenway, and the maximum building dimension to exceed the permitted 200 feet perpendicular to the river by nearly 31 feet.

(3) Modification for size of the screened mechanical area, to cover 73% of the tower's roof surface and to be set back five and 10 feet from the tower's roof edge along the SW Naito frontage.

We now pose the following questions and answers as to the Design Guidelines cited in PDNA's proposed findings filed on February 21, 2018, and in our letter of February 28:

(1) Whether separately or together, do the above modifications result in a project that better emphasizes Portland themes? They do not.

(2) Whether separately or together, do the above modifications result in a project that better respects the Portland block structures? They do not.

(3) Whether separately or together, do the above modifications result in a project that better provides convenient pedestrian linkages? They do not.

(4) Whether separately or together, do the above modifications result in a project that better makes use of unifying elements? They do not. As Chair Livingston has stated, they achieve the opposite effect.

(5) Whether separately or together, do the above modifications result in a project that better reinforces the identity of the Pearl District Neighborhood? They do not. Again, they accomplish the opposite.

(6) Whether separately or together, do the above modifications result in a project that better reinforces the identity of the waterfront area? They do not. They seal the waterfront off for private benefit. In fact, the applicant claims the Willamette itself as the water feature provided by this project.

(7) Whether separately or together, do the above modifications result in a project that better incorporates water features? The only proffered water feature is the river, which would appear to exist with or without the Fremont Apartments.

(8) Whether separately or together, do the above modifications result in a project that better integrates works of art? Sculptural benches? Really?

(9) Whether separately or together, do the above modifications result in a project that better provides stopping and viewing places? No. The proposed modifications result in a structure looming over the Greenway.

(10) Whether separately or together, do the above modifications result in a project that better complements the context of *existing* buildings? No. As we have explained at length, the modified project would have the contrary effect to a remarkable extent. It would establish an entirely new context for blockbuster, view-and-access-impairing projects along the riverfront.

(11) Whether separately or together, do the above modifications result in a project that better designs for coherency? No. It results in a project that designs only for maximum square footage. As Chair Livingston has made clear, this is not a project designed for coherency.

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Similarly, as discussed at length at pages 8 through 15 of PDNA's February 28 letter, the proposed modifications do not comply with PZC 33.825.040.B. This section requires the applicant to prove that "the proposal will be consistent with the purpose of the standard for which a modification is requested." PDNA has explained how the proposed modifications fail to achieve the purposes of PZC 33.510.205.H relating to the North Pearl Subarea height opportunity area. We have also explained how the proposed modifications fail to achieve the purposes set out in the Code for North Pearl Subarea waterfront development.

Finally, we address the applicant's February 28 assertion that PDNA has not accurately stated Chair Livingston's position in voting to deny the as-modified proposal. In our own letter of February 28, we set out relevant excerpts from the hearing transcripts prepared by the applicant's attorneys. We would also note the following language in the appealed decision itself:

"The one dissenting commissioner found that the proposal did not satisfy guidelines relating to the context of the North Pearl Subarea and waterfront, particularly the overly-complicated massing of the proposal in relation to other buildings found within the subarea (Guidelines A5- Enhance, Embellish, and Identify Areas, A5-1-1 - Reinforce the Identity of the Pearl District, A5-1-5 - Reinforce the Identity of the Waterfront Area, C4 - Complement the Context of Existing Buildings, & CS - Design for Coherency). Additionally, the commissioner found that the number of Modifications required to arrive at the proposed building form-and particularly Modification #5--resulted in too many impacts to the Greenway that did not satisfactorily address concerns about impacts to the view of the Fremont Bridge from The Fields Park (Guidelines A2 - Emphasize Portland Themes, A5, and A5-1-1)."

Final Findings and Decision by the Design Commission Rendered on December 21, 2017, at 4.

The applicant has not contested the accuracy of the above portion of the commission's findings.

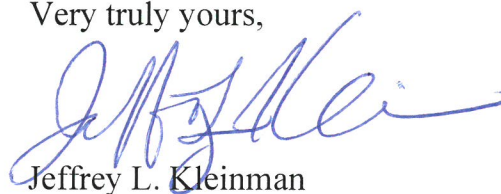
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Conclusion

For all the reasons presented on the record before you, the applicant has failed to meet the requisite burden of proof in this matter. The subject site will indeed be developed. However, the applicant should bring the city a code-compliant design with the additional public benefit of compliance with the city's inclusionary zoning requirements.

Very truly yours,



Jeffrey L. Kleinman

JLK:cme
Enclosures
cc: PDNA

Feb. 21, 2018

Commissioners of the City of Portland:

My name is George Galster, PhD, a resident owner in The Pearl District and a retired Professor of Urban Studies and Planning, Wayne State University, Detroit.

I strongly support the PDNA's appeal of the Portland Design Commission's decision on Dec. 22, 2017 to approve Design Review and concurrent Greenway Review for the proposed Fremont Apartments (case LU 16-278621 DZM GW). I support the appeal because the Design Commission in this case incorrectly applied Central City, River District and Willamette Greenway Design Guidelines and Portland Zoning Code regulations. Specifically, the Design Commission erroneously:

1. *Approved building modifications that will degrade Design Review requirements in violation of code;*
2. *Set a dangerous precedent for the long-term development of the River District;*
3. *Accepted the developer's miscalculation of site area for the purposes of determining allowable building mass (FAR), in violation of code*

Background

In cities such as Portland, *plans* set forth visions and goals for the city; *design guidelines* provide detailed objectives for achieving these goals, and *zoning codes* specify the permissible means to obtain these goals. Large-scale developments proposed for especially significant sites are required to pass an added level of scrutiny: a *Design Commission* review. In the case of the Fremont Apartments, the Portland Design Commission must apply as approval criteria those specified in Title 33, Portland Zoning Code (PZC):¹

- Central City Fundamental Design Guidelines
- River District Design Guidelines
- Willamette Greenway Design Guidelines
- PZC 33.820.040, Modifications That Will Better Meet Design Review Requirements
- PZC 33.440.350, Approval Criteria

¹ City of Portland, Bureau of Development Services/Land Use Services, LU 16-278621 DZM GW (Fremont Apartments) *Revised Notice of Appeal of the Portland Design Commission* (1-30-2018), p. 4.

Given these approval criteria, it is crucial to understand the planning goals stated in Central City Fundamental Design Guidelines, River District Design Guidelines, and Willamette Greenway Design Guidelines that are central to the PDNA appeal.

Planning Goals Embodied in the Central City, River District and Willamette Greenway Design Guidelines and Portland Zoning Code

Five common themes of relevance to this case unite all these documents. They ultimately are intended to enhance “Portland’s personality”² by: emphasizing Portland themes, integrating the river into the community, supporting parks and public spaces, enhancing and protecting views, and reinforcing special districts. For each category, I cite *verbatim* text from these guidelines and zoning codes (with emphasis added).

Emphasizing Portland Themes. “There are many themes unique to Portland’s culture and geography that promote the city’s identity and image. Examples of elements that identify Portland include roses,...bridges,...”³ “Bridges perform a vital and important role in the Willamette Greenway. Apart from their primary function as transportation linkages, *bridges add visual character* to the Greenway, both in terms of *creating architectural landmarks*, and in defining space and form.”⁴

Integrating the River into the Community. “The Willamette River is the Central City’s most significant geographic feature. The *bridges* that cross the river reinforce the river’s role as the binding element of the Central City.”⁵ [Two of our goals are to] “extend the river into the community to develop a functional and symbolic relationship with the Willamette River, and *strengthen connections* within the River District, *and to adjacent areas.*”⁶ “Linking the river to the community *visually* and physically will lean heavily on the expression and orientation of...buildings and open spaces in order to celebrate the river’s importance to the community.”⁷ “Creating physical and *visual* links across NW Front/ Naito Parkway is also key in strengthening the connection to the Willamette River.”⁸ “View corridors to and from the river are an important component of the public access system...View corridors provide visual access to the river and allow the public to enjoy its scenic qualities *even when at some distance from the river.*”⁹

² City of Portland, Bureau of Planning, *Central City Fundamental Design Guidelines* (2001, updated 2003), p. 20.

³ City of Portland, Bureau of Planning, *Central City Fundamental Design Guidelines* (2001, updated 2003), p. 24.

⁴ City of Portland, *Willamette Greenway Plan Ordinance 160237* (1988), p. 16.

⁵ City of Portland, Bureau of Planning, *Central City Fundamental Design Guidelines* (2001, updated 2003), p. 20.

⁶ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p.4.

⁷ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p.10.

⁸ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p.13.

⁹ City of Portland, *Willamette Greenway Plan Ordinance 160237* (1988), p. 16.

Supporting Parks and Public Spaces. “The Tanner Creek Parks (Jamison Square, Tanner Springs Park, and Fields Park) function as both a neighborhood park system and as *one of Portland’s primary promenades*, extending the North Park Blocks northward to the Willamette River...[the design guideline aims to] *strengthen and enhance the Tanner Creek Parks* as both a neighborhood park system and an extension of the North Park Blocks.”¹⁰ “Open spaces that enhance views of the Willamette River *or features associated with it, such as... bridges...*, will strengthen the river’s significance within the district.”¹¹

Enhancing and Protecting Views. “Significant existing public views of both the natural *and built environments* are preserved in the Central City through building height limitations and other mechanisms...Taking advantage of the surrounding *view opportunities* increases the desirability of living, visiting, and working in the Central City.”¹² The corresponding design guideline is, “Size and place new buildings *to protect existing views.*”¹³ “Projects should ... consider means to enhance their neighbor’s views of the river.”¹⁴ “View corridors to the river along public rights-of-way are to be protected...Buildings, structures, or other features *must be located to avoid blocking view corridors.*”¹⁵

Reinforcing Special Districts. “Design should acknowledge the *context* of its surroundings, with an approach that *responds to the character and identity of three blocks in every direction.*”¹⁶ The Portland Zoning Code amplifies the above themes when it articulates the purposes of the code in reinforcing the North Pearl Subarea. “The regulations of this subsection ...create a skyline and urban form that is *visually permeable* by providing visual access to locations within *and beyond the subarea.*”¹⁷ “Additionally, along the waterfront of the North Pearl Subarea the regulations of this subsection also:

- ...Increase access to sunlight along the *greenway and within public and private open space areas developed along the waterfront;*
- ...Facilitate *visual* and physical access to and along the riverfront for all members of the public;
- Create expanded opportunities for views of the river as viewed from Naito Parkway and Front Avenue, landward portions of the subarea, *and locations west of the sub-district;*

¹⁰ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p.40.

¹¹ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p.10.

¹² City of Portland, Bureau of Planning, *Central City Fundamental Design Guidelines* (2001, updated 2003), p. 92.

¹³ City of Portland, Bureau of Planning, *Central City Fundamental Design Guidelines* (2001, updated 2003), p. 94.

¹⁴ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p. 46.

¹⁵ City of Portland, *Willamette Greenway Plan Ordinance 160237* (1988), p. 40.

¹⁶ City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p. 16.

¹⁷ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.205.H.2.

- *Ensure bonus height granted to sites adjacent to the Fremont Bridge does not significantly affect views of or diminish the aesthetic qualities of the bridge or its iconic stature in the Portland skyline.”¹⁸*

Does the Fremont Apartments Proposal Help or Hinder Achieving these Goals for Portland?

The proposed Fremont Apartments development substantially hinders achieving all five of the aforementioned goals:

Emphasizing Portland Themes. The excessive height of the proposed development de-emphasizes the iconic Fremont Bridge by obscuring its view from many directions.

Integrating the River into the Community. The excessive mass of the proposed development walls off the river from Naito Parkway and points west, both physically and visually.

Supporting Parks and Public Spaces. The proposed development obscures the view of the Fremont Bridge from Fields Park, overshadows the public promenade on its north side, and impinges on the Willamette Greenway.

Enhancing and Protecting Views. The proposed development obscures the view of the Fremont Bridge and the Willamette River from Fields Park and its residential environs, 10th and 11th Avenues, NW Naito Parkway, and locales in the River District between the Fremont and Broadway Bridges.

Reinforcing Special Districts. The proposed development weakens the Pearl District and the River District because of all the foregoing effects.

How Did the Design Commission Err in its Approval of the Fremont Apartments Proposal?

The Design Commission erred in approving this proposal because it did not apply the Zoning Code appropriately and overlooked the broader context established by Portland’s urban plans and design guidelines.

¹⁸ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.205.H.2.

Specifically, the Design Commission erroneously:

1. *Approved building modifications that will degrade Design Review requirements, in violation of code;*
2. *Set a dangerous precedent for the long-term development of the River District;*
3. *Accepted the developer's miscalculation of site area for the purposes of determining allowable building mass (FAR), in violation of code*

Building Modifications in Violation of Code. Zoning Code allows only “modifications that will *better meet* Design Review requirements.”¹⁹ The Code interprets this as *both* “better meeting applicable design standards” *and* being “consistent with the purposes of the standards in question.”²⁰ Though all of the modifications approved by the Design Commission failed these criteria, three are especially egregious because of the special nature of the site in question. Modification #3 seeks to extend the normal maximum base height of 100 feet in the North Pearl Subarea to 175 feet and lengthen the facades above 100 feet beyond the normal 120-foot limit.²¹ Modification #1 seeks an additional 10 feet in height beyond the 175-foot limit requested in Modification #3.²² Modification #5 seeks an additional 31 feet in building width beyond the 200 feet permitted.²³

These three modifications are blatantly inconsistent with the purposes of the standards in question, which are unambiguously delineated in the Zoning Code. “Along the waterfront of the North Pearl Subarea the regulations of this subsection also:

- ...Increase access to sunlight along the greenway and *within public and private open space areas developed along the waterfront;*
- ...Facilitate *visual* and physical access to and along the riverfront for all members of the public;
- Create expanded opportunities for views of the river *as viewed from Naito Parkway and Front Avenue, landward portions of the subarea, and locations west of the sub-district;* [and especially:]
- *Ensure bonus height granted to sites adjacent to the Fremont Bridge does not significantly affect views of or diminish the aesthetic qualities of the bridge or its iconic stature in the Portland skyline.*²⁴

¹⁹ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.825.040.

²⁰ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.825.040 A. & B.

²¹ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.205.H.2 through 2.c.

²² City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.140.210.B.2.

²³ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.251.D.3.b & c.

²⁴ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.205.H.2.

That the granted modifications #1, #3 and #5 violate these purposes of the standard could not be more clear. Nevertheless, in their Revised Staff Report and Recommendation to the Design Commission, Bureau of Development Services staff attempted semantic gymnastics in justifying the granting of these modifications. Ignoring the Zoning Code’s explicit guidance above, they instead retreated to the vaguer River District Design Guideline A.2. “Emphasize Portland Themes.” They argued:

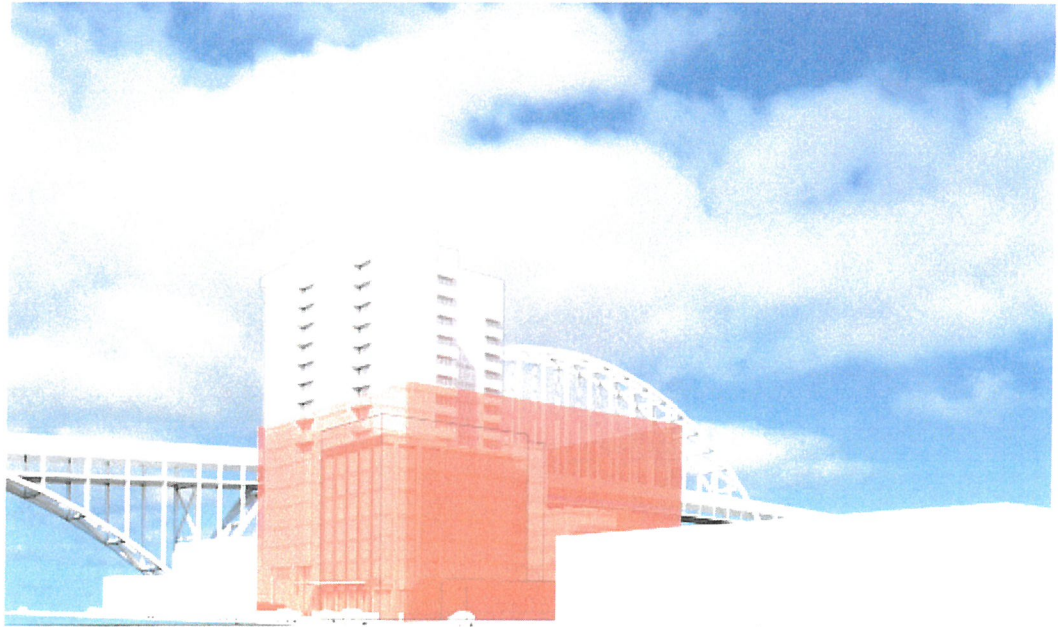
“The applicants have shown through massing studies that the building could be constructed up to its base 100-foot height limit and nearly-completely block the view of the Fremont Bridge from The Fields Park, and likely from much of the rest of the North Pearl, as well. The building’s massing concept takes the bridge view from the park into account, and shifts much of the mass to the north, opening the bridge view back up to The Fields Park.”²⁵

The staff’s use of language here is highly misleading. The view of the bridge is only “opened back up to the Fields Park” *compared to the initial proposal*. The revised (and approved) *proposal, far from offering “open” views, merely blocks a different part of the view!* The misleading language of the BSM staff cannot obviate the fact that the Design Commission erred in granting Modifications #1, #3 and #5 because they are in direct violation of the purposes of Zoning Code 33.510.205.H.2.

Figure 1. shows two versions of how the Fremont Apartments could be massed, as proposed by the developer’s own architects. Essentially, the developer has said, “We can obstruct the view either by massing the building as a cube (shown in orange), or by rearranging it as a tower (shown in white); which obstruction do you want?” The Design Commission chose the latter. This was a false choice—one that the Commission should not have been forced into—had the correct bases for calculating allowable building mass been applied, as I will amplify in my last point below.

²⁵ City of Portland, Bureau of Development Services, *Revised Staff Report and Recommendation to the Design Commission-Fremont Apartments* (12-20-2017), p. 19.

Figure 1. TVA Architect's Rendering of Two Versions of Fremont Apartment Massing



Setting a Dangerous Precedent. The Design Commission must evaluate a proposed development with an eye towards its long-term implications for achieving the goals of *Portland's Central City, River District and Willamette Greenway plans*. In particular, it must consider whether the proposed development would set a precedent that would set in motion an inexorable sequence of future developments.

In this case, the Design Commission's failure to challenge the developer's miscalculation of site area (explained below) and reject building modifications in violation of the code's purposes establish a dangerous precedent for future developments in the River District, especially between the Fremont and Broadway Bridges, including the Centennial Mills site. Future developers would expect that they, too, would be allowed to apply exaggerated floor area calculations and be granted modifications that would permit their buildings to be equally massive as the Fremont Apartments. Were these forthcoming developments to manifest such building massing, the aforementioned goals of the River District Design Guidelines would be thwarted. Instead of free airflows, unimpeded sunlight, unconstrained Greenways, and clear views of both the Fremont Bridge and the Willamette River, the North Pearl Subarea would essentially be walled off from the river.

What the dangerous precedent set by the Design Commission's decision might produce is portrayed in Figure 2. Figure 2A shows the current view of the Fields Park, Fremont Bridge, Willamette River, and Centennial Mills development site. Figure 2B shows how this picture would be degraded if the Fremont Apartments were built in the approved configuration. Figure 2C shows what would happen if a developer of the site immediately south of the proposed Fremont Apartments constructed a residential tower of approximately the same mass. Figure 2D shows what would happen if a developer of the Centennial Mills site constructed another residential development of approximately the same mass.

This long-term development picture is antithetical to the goals articulated in the River District Design Guidelines and the express purposes of the Zoning Code/North Pearl Subarea, which have been articulated above. It will not emphasize Portland themes, integrate the river into the community, support parks and public spaces, enhance and protect views, or reinforce special districts like The Pearl. Nevertheless, this is our inevitable future if the Fremont Apartments are permitted in current form. The Design Commission's approval thus represents a *Poison Pill for the Pearl*.

Figure 2. Projected Long-Term Development Pattern in North Pearl Subarea if Fremont Apartment Proposal is Approved

Figure 2A. Current Context



Figure 2B. Situation with Fremont Apartments as Approved



Figure 2C. Situation with Potential Development South of Fremont Apartments

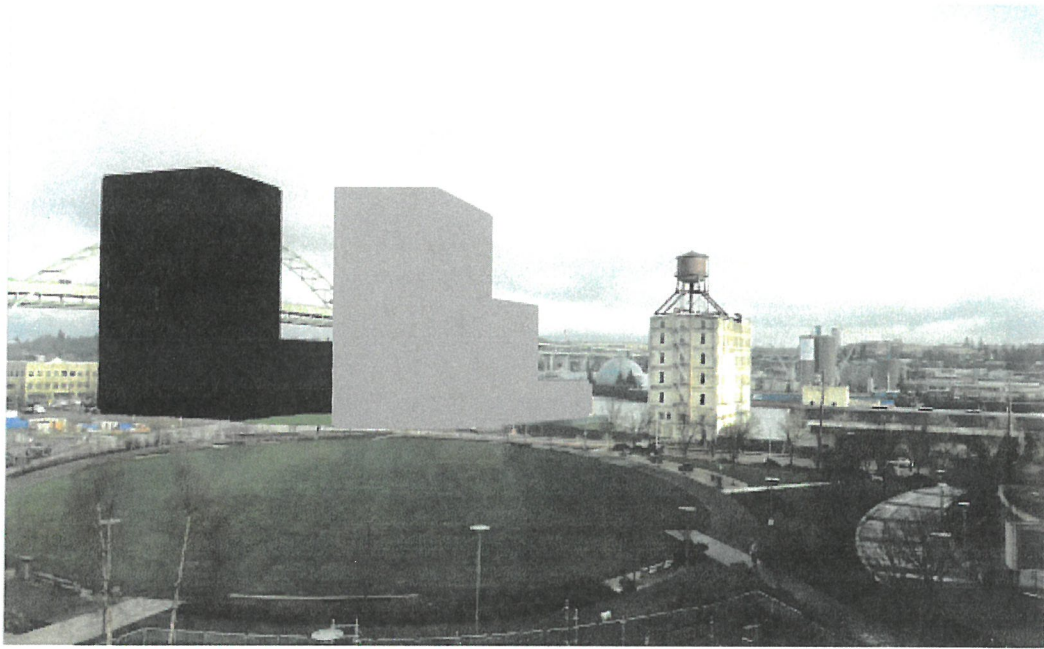
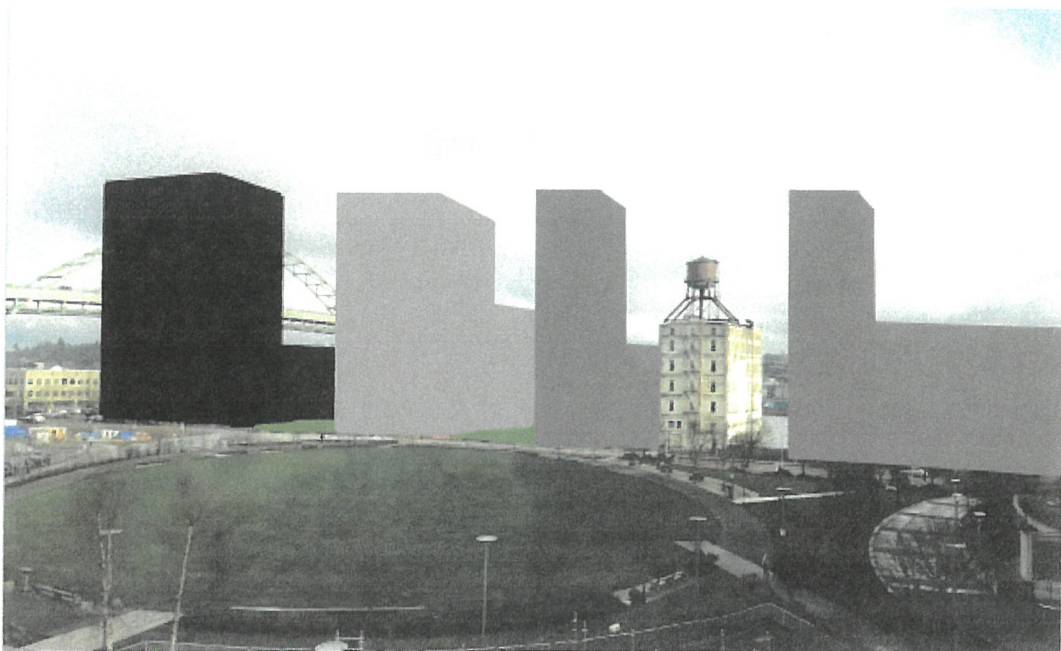


Figure 2D. Situation with Potential Centennial Mills Development



Miscalculation of Site Area for the Purposes of Determining Allowable FAR.

The proposed development is fundamentally flawed because it is based on a significant error in calculating the buildable area of the site. The Zoning Code clearly specifies how measurements must be taken for the purposes of applying development standards:

“...all measurements involving development standards are based on the property lines and area of the site *after dedication of public rights of way and/or designation of private rights-of-way*. Standards include...*building coverage, floor area ratio, setbacks and landscaping requirements.*”²⁶

The developers assert that their permissible base floor area for their building is 72,080 square feet, the area of the entire ground property from the sidewalk of NW Naito Parkway to the retaining wall on the Willamette River *plus* an extension of over 40 feet into the Willamette River! When the combined areas of the public rights-of-way—the river, minimum 25-foot wide Greenway on the river (as per code), minimum 60-foot public view corridor from Naito Parkway to the river (as per code)—are deducted (as per code above), the permissible base floor area for their building is only 42,300 square feet.²⁷ The claimed base floor area for the Fremont Apartments is thus *70% greater than permissible by Code*. This error in calculations makes a huge difference for permissible building mass when development regulations are applied.

The difference is portrayed visually in Figure 3A-F. Let each square represent 10,000 square feet. Figure 3A portrays in green the approximate base floor area of the Fremont Apartments, had proper zoning code measurements been applied. Figure 3B shows that the developer’s erroneous calculations resulted in an excess, impermissible area of about 30,000 additional square feet (shown in red). The remaining panels of Figure 3 show the consequences of this error when zoning regulations are applied. The area has baseline zoning of 2:1 floor area ratio (FAR), which means that the base floor areas get doubled when specifying permissible building volumes; see Figure 3C showing permissible mass.

The Design Commission compounded the error by granting at its discretion a 1:1 FAR bonus for all areas of the building that are residential, which is permitted but not mandated by Zoning Code.²⁸ Assuming for simplicity that all the areas shown will be residential, the building will again double its permissible mass; see Figure 3D.

²⁶ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.930.025.

²⁷ These public rights of way mandated by the North Pearl Subarea standards in the Portland Zoning Code are as follows. PZC 33.510.251 D requires that at least 25% of the width of the site, as measured along NW Naito (60 ft. here), must be view corridor (area=14,280 sq. ft. in this case). The Greenway setback PZC 33.440.210 is minimum 25 feet (area = 6,000 sq. ft. in this case). The area of the Willamette River (also a public right-of-way) claimed as buildable property by the developer is approximately 9,600 sq. ft. When the (non-duplicated) areas of these components are deducted from the developer’s claimed base buildable area, the result is 42,300 square feet.

²⁸ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.210.C1.a.2.

The Design Commission further compounded the error by granting the developer yet another, discretionary FAR bonus for a locker/shower room for cyclists.²⁹ Such a bonus was clearly intended in the code for commercial/retail structures only. This inappropriate bonus added still more volume and mass to the building (15,200 cubic feet), as shown in Figure 3E.

All this excess erroneous mass made it difficult for the developer to fit a medium-rise building on the site. This necessitated a rearrangement of the mass into a tower that not only exceeded the 100-foot baseline height restriction but also the 175 foot exceptional height restriction.³⁰ See Figure 3F. Despite this code-prohibited height, the excess erroneous mass yielded a building that exceeded zoning codes limiting maximum horizontal building dimensions to 200 feet at street level and facades to 120 feet on floors higher than 100 feet, and violated mandated setbacks from the Greenway.³¹ It was this excess mass that forced the developer to apply for all the aforementioned modifications that were approved. As a result, the building impinges on the Greenway, overshadows the public plaza, destroys views of the Fremont Bridge and walls off the river from Naito Parkway and beyond. Virtually all of the ways that this building hinders the achievement of Portland's planning objectives can be traced to this fundamental error in calculating base floor area, and the modification requests that the resulting excess erroneous building mass subsequently generated. The Design Commission failed to recognize and disapprove of this fundamental error.

²⁹ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.210.C.8.

³⁰ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.510.205.H.2:

³¹ City of Portland, *Portland Zoning Code*, Title 33 (2017), 33.440.210 and 33.510.251.D.

Figure 3. Consequences of Miscalculating Base Floor Area for Building Mass

Figure 3A

Permissible Footprint of Fremont Apartments
(each square represents approx. 10,000 square feet)

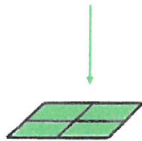


Figure 3D

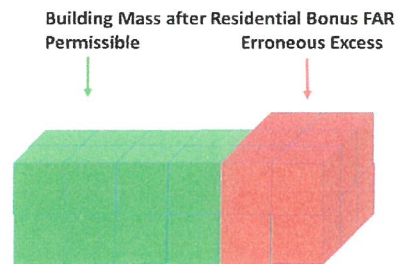


Figure 3B

Erroneously added Footprint of Fremont Apartments
(failed to exclude area of river, greenway and public plaza)

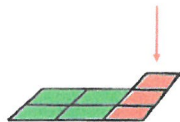


Figure 3E

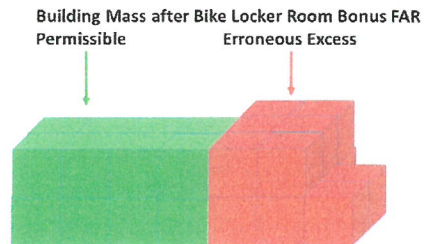


Figure 3C

Building Mass after Base Zoning 2:1 FAR
Permissible

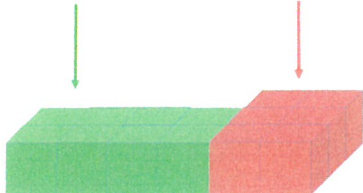
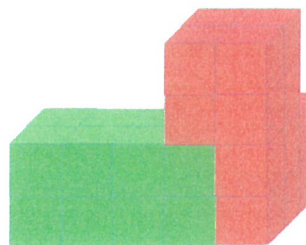


Figure 3F

Erroneous Excess Mass Creates Building Too Big for Site;
Forces Rearranging Mass Upward and Outward to Greenway



Conclusion

The case of the Fremont Apartments represents a crucial decision point for Portland. Will we hold fast to our duly adopted plans for a humane, livable, distinctive city? Or, will we build at all costs? *By its approval of the Fremont Apartments proposal, the Design Commission has opted for the latter. It has approved a proposal that has bent some zoning codes and broken others, a proposal that frustrates the intent of the relevant design guidelines. By doing so, the Design Commission has set a dangerous precedent that will inevitably lead to a long-term pattern of development along the river that is anathema to Portland's stated goals.*

Good planning principles say that a new development must take into consideration the context of its surroundings, as the River District Design Guidelines emphasize.³² *The Fremont Apartment proposal is a blatant case of failure to consider context. Myopic arguments about technical details should not distract us from the big picture, both short-term and long-term. This is the wrong building for a special site.*

The Fremont Apartment proposal should not have approved by the Portland Design Commission. The PDNA appeal must be upheld, so we can get the right building for this special site.

³² City of Portland, Bureau of Planning, *River District Design Guidelines* (amended 2008), p. 16.