

Moore-Love, Karla

From: Reynolds, Allison J. (Perkins Coie) <AReynolds@perkinscoie.com>
Sent: Tuesday, March 06, 2018 4:05 PM
To: Moore-Love, Karla
Cc: 'Patrick Gilligan'; Pfeiffer, Steven L. (Perkins Coie); Bonnie Chiu; Tim Wybenga
Subject: Applicant's Final Open Record Submission (LU 16-278621 DZM GW - Fremont Place Apartments)
Attachments: Applicant's Final Written Argument Requesting Denial of Appeal (LU 16-278621 DZM GW).pdf

Hi Karla,

Attached is the final open record submission from the Applicant for tomorrow's City Council item 212.

If possible, we would greatly appreciate the chance to review any other record submittals that come in this evening before tomorrow's meeting.

Thank you!

Allison

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March 6, 2018

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Portland City Council
1221 SW 4th Avenue, Room 130
Portland, OR 97204
Attention: Council Clerk

**Re: Opposition to Appeal of Design Review Approval LU 16-278621 DZM GW,
Fremont Place Apartments**

Applicant's Second Open Record Period Submittal

Dear Mayor Wheeler and Members of the City Council:

This office represents Lincoln Property Company ("Lincoln" or the "Applicant"), owner of the property at 1650 NW Naito Parkway (the "Property" or "site") and proponent of the project approved as LU 16-278621 DZM-GW (the "Decision"), commonly known as the Fremont Place Apartments (the "Project"). The Decision was appealed (the "Appeal") to the City Council by the Pearl District Neighborhood Association ("PDNA"). At the City Council's February 21, 2018 public hearing on this matter, the Council left the record open for evidentiary submittals until February 28, 2018 at 5:00 PM and left the record open for non-evidentiary (i.e. argument-only) responses to such submittals until March 6, 2018 at 5:00 PM. This letter is our second and final open record submittal for this matter.

PDNA and supporters of the Appeal raise several issues previously addressed in our February 20 and February 28 letters. A few new issues were also raised during the first open record period that we address in Section B, below.

A. Final Rebuttal to PDNA Testimony

PDNA challenges the Decision on a number of grounds directly related to the approval criteria for the Project, but also makes many arguments that are not relevant to the criteria. We hope this letter and our previous submissions make the Council's job easier by focusing the discussion before you on the approval criteria as applied to this Project by the Design Commission.

The design guidelines are inherently subjective and this Council has delegated decisions about compliance with the guidelines to the Commission, a volunteer board of design professionals and other experts. The Commissioners do not always agree about the right design for a project and

the Commission's votes are not always unanimous. However, the Commission and its staff consistently do a good job of working with applicants and the public to address design concerns and strive to find a solution that the applicant can construct which the Commission deems approvable under the guidelines. The Design Review process is not intended to force the Commission or this Council to design a building. Instead it seeks to ensure that buildings as different as the Fair-Haired Dumbbell and Park Avenue West are constructed to meet a set of common design objectives, and allows different buildings to meet these guidelines in diverse ways. Just because this Project does not meet a guideline in the same way as another Portland project, even one close by, does not mean that the options selected for this Project are invalid.

The Commission found that the Project, *with several modifications*, met the relevant design guidelines. PDNA and Project opponents characterize the modifications as "benefits" to the developer that allow the Project to maximize massing, and detract from public benefits the Project might otherwise provide. In fact, many of the modifications were requested in response to Commission-initiated changes to the design, and the massing approved is approximately 55,000 square feet short of the site's maximum.

The modifications for extra height and an encroachment into the greenway step back angle allow appropriate density on the site while preserving a certain view of the Fremont Bridge from the Fields Park. The Commission determined that this view was a better alternative to a different view of the Bridge preserved without the height and massing modifications. The PDNA is free to disagree with the Commission's decision about which view is better, but this alone does not invalidate that Commission's interpretation of the guidelines and modification criteria on this issue.

The modifications to façade length shift the building's mass into a longer, but narrower form, allowing a 60-foot wide plaza that connects Naito Parkway to the greenway and the river. Modifications 4, 6 and 7 were also deemed necessary to provide and enhance this design feature. Many supporters of the Appeal argue that the building "walls off" the river from Naito Parkway and the rest of the Pearl, but fail to notice or acknowledge this 60-foot wide, 10,000 square foot public plaza that was specifically designed to connect these areas. The Commission and the Applicant spent many hours discussing opportunities to fine-tune this important new public space and found modifications were necessary to allow a design with this feature. The Commission found that the Project was able to better meet several design guidelines than a building that did not include the modifications that made this element work, which is why the modification process is included in the Code.

Finally, the Commission found that the Project's mechanical equipment should be placed atop the tower, rather than on the building's podium (which would not raise the overall height of the Project, to which PDNA objects) to ensure that the lower roof space was available for green roof, and to shield the view of unsightly building elements from adjacent buildings to the extent

possible. The Commission preferred that the mechanical area be flush with the edges of the tower to create a more cohesive massing. This necessitated this particular modification as approved, since the base Code requires the mechanical areas to be set back from the roof's edge by at least 15 feet.

In sum, the Commission thought carefully about this Project and took the time during numerous hearings and re-designs to fine tune the Project's design elements. The Decision contains well-reasoned conclusions about how the Project meets the design guidelines and modification criteria. PDNA and supporters of the Appeal may disagree with the decisions made by the Commission but have not provided evidence or sufficient rationale to warrant a reversal of the Decision. PDNA may dislike the Code and design guidelines as they are currently written, but this Appeal is not the appropriate forum for those arguments.

B. Additional Points Raised by PDNA and Supporters of the Appeal in February 28, 2018 Submission

Below we respond to new arguments and evidence introduced by PDNA and Appeal supporters during the first open record period. Many of PDNA's arguments from its hearing testimony and earlier submissions are repeated. Please refer to our earlier letters which address these issues. In the interest of brevity, we do not re-address those arguments here.

Site and FAR Calculations for the Project:

As we pointed out in our February 28, 2018 correspondence, PDNA's arguments about the size of the development site are irrelevant to the decision before this Council, because they are not germane to the approval criteria (the design guidelines and modification criteria) for the Project. In that letter we also directed the Council to our submission on February 20, 2018 which debunked PDNA's arguments that the greenway and plaza areas must be excluded from the "site" for FAR calculations.

PDNA now makes two additional arguments along these same lines. As explained in the zoning Code, the Decision, and by Commission staff member Ben Nielsen at the hearing, the DZM-GW process does not determine the size of the development site or whether the proposed Project meets the development standards. To safeguard the use of City resources, City staff and the Design Commission often perform a cursory check of the proposed building to ensure that the proposal is capable of meeting the zoning Code standards, which occurred here and was satisfactory.

1. PDNA appears to have noticed for the first time, despite its participation in the Project's four Design Review hearings where this information was presented, that the development site is being adjusted through a lot confirmation and property line adjustment

process. PDNA now argues that because the development site is not yet finalized that the Decision is invalid and must be overturned by this Council.¹ PDNA is incorrect and cites no legal authority for its position.

The development site is part of a larger property with an existing internal lot line that Lincoln owns. The lot line is being adjusted to the south to form the development site. A property line adjustment is a non-discretionary administrative review² and staff processing the PLA have indicated that adjusting the line to the desired location is feasible. After adjustment of the lot line, the Property will be placed in separate ownership, creating a separate site under the Code for this development. This is a common practice and allows the Project to be placed on an appropriately-sized site that will meet the development standards. This process will be required to be completed before the Project can receive a building permit. During the building permit process, the Project will be required to meet the development standards of the Code.

2. PDNA again argues that the development “site” must exclude the greenway and plaza areas for purposes of calculating FAR. PDNA again relies on a section of the Code (PCC 33.930.025) that is not part of the regulations governing the Project to make this argument.

PDNA newly argues that its erroneous interpretation of the Code on this issue was “confirmed” by Commission staff member Ben Nielsen. Mr. Neilson apparently stated to a PDNA member that he believed the change to the Code under this new section (PCC 33.930.025) would not result in a different development site calculation. (See Rebuttal Testimony of Kurt Sorensen, February 28, 2018). Mr. Neilson confirmed his belief that the site calculation would not change in his presentation to the Council on February 21, 2018, in which he stated that the correct FAR calculation was based on the entire site size, including the greenway and plaza areas.³ The only “confirmation” given by Mr. Neilson, is that he believes PDNA’s interpretation is wrong under both the applicable and revised Code language. Regardless, Mr. Nielsen’s interpretation of a Code section that does not apply to this Project is irrelevant to the Council’s decision on the Appeal. The Council must reject any arguments made by PDNA based on language that is not part of the regulations that govern this Project. The regulations that do govern the Project are clear and the site calculation metrics presented to this Council are accurate under the Code. Please refer to our discussion of this matter in our February 20, 2018 letter for additional details.

¹ PDNA also separately notes that the “site” as currently configured is adjacent to and stretches under the Fremont Bridge. The development site for the Project is not adjacent to or under the Fremont Bridge.

² See PCC 33.667.

³ See City Council Hearing Video February 21, 2018 at 3:20:00-3:21:00 for Mr. Nielsen’s response to Commissioner Eudaly’s question on this issue.

Cited Concerns Raised by the Chair of the Design Commission Regarding Massing Were Addressed Through Changes to the Building:

PDNA and supporters of the Appeal include excerpts from the November 16, 2017 Design Review hearing transcripts in which the Commission Chair raises concerns about massing. It is true that the Chair did not vote to approve the Project, however, the massing discussed at the November 16th hearing was related to a stepped element between the podium and tower that was eventually removed at the Commission's request. While this particular design revision was viewed positively by the majority, it may or may not have been the basis for the Chair's final vote. We encourage the City Council to review the full transcripts or hearing audio from the Design Commission's four hearings on this Project to understand the context of this and other statements by Commissioners.

Definition of "Context" is Not Part of the Zoning Code:

George Galster's February 25, 2018 letter (attached to Mr. Kleinman's February 28, 2018 testimony as Exhibit 2) states that his arguments rely on "Portland Zoning Code Title 33 (2017), 33.510.205.H.2, which defines context for design purposes as '*the character and identity of three blocks in every direction.*'" This section, and the zoning Code definition section, do not define the word "context," in 2016, 2017 or today. The section cited by Mr. Galster does not even include the word context, much less a definition. Mr. Galster's statements and his and Mr. Kleinman's arguments that rely on this "misstatement" of the Code must be disregarded. We are confident that Project opponents cannot expect to convince the Council to approve their Appeal by citing Code language which does not exist.

C. Conclusion

We appreciate the City Council's consideration of these materials. For the reasons stated above, we request that the Council deny PDNA's appeal. We appreciate the Council's efficiency in reviewing this matter and closing the record. We look forward to deliberations on March 7th.

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March 6, 2018
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Very truly yours,



Allison J. Reynolds



Stephen L. Pfeiffer

cc: Patrick Gilligan, Lincoln Property Company