

February 8, 2021

City of Portland Bureau of Development Services: Applicant's Final Argument to an Appeal

LU 20-134213 AD

We support the city staff's height AD approval on this development. Below is our response to the LU 20-134213 AD appeal February 2nd, 2021.

Dear Commissioners,

We ask that the commissioners accept the city's decision on this land use case and deny this appeal. The appeal attempts to use subjective arguments to gain more sight view despite the proposed home meeting city code and sight view easement. The city has effectively communicated the intent of the code and our proposed design is aligned with the requirements of the code. This is not an outrageous application of the code; it is to harmoniously fit into the existing neighborhood that has numerous evidence of 2 level downhill side homes which unquestionably support this decision. **(Please see below evidence provided of 2 level downhill side homes in table 1 our response to the LU 20-134213 AD appeal December 31 2020).**

The intent of the sight view easement created under the previous partition understood that height of the building would be 2 stories above grade. **The city code allows us to build 23 feet above street grade as illustrated by Andrew Gulizia, city planner:**

On lots that slope downhill from the street with an average slope of 20 percent or greater, the height limit is the higher of either 23 feet above the average grade of the street, or the normal height limit calculated as stated in Chapter 33.930, Measurements...staff also finds the code writers intended to allow a two-story building scale to be exposed above the street on steeply down-sloping lots. If the code writers anticipated no more than one story exposed above the street, the maximum building height above the street grade would have been set significantly lower than 23 feet.

Evidence provided for the record to illustrate the relationship between the proposed home and the appellant's home has also been met and approved by city staff. The sight view easement limits 20% blockage of the neighboring window coverage in such a fair manner that both homes could realize or maintain a reasonable potential. We have met all these conditions and objectives. We do not feel the previous partition was approved with the intent to compound the restrictions of the code and of the sight view easement by preventing this site from achieving an inviting home.

Evidence provided in exhibit C4 and A5 illustrate relationship between the proposed home met sight view easement requirement here:

<https://hcpaw.portlandoregon.gov/u/mW2jq43to66LbaOq/LU%2020-134213%20AD%20exhibits?l>.

This land use adjustment positively impacts the livability of the proposed home and the surrounding development. Without this approval, livability of the house is significantly reduced. It will look and feel like a dungeon under a viaduct, and hardly accessible to full sunlight because most of it will be below street grade. This will not be appealing from the street which negatively impacts surrounding development, future livability and significantly reduced marketability.

We have thoughtfully adjusted the design numerous times to mitigate the negative impacts to the maximum extent feasible. This height adjustment is the key to improve architecture, scale, proportion and marketability; without it, it will detract from the neighborhood. The final proposed architecture is a reasonable compromise that won't have a massive appearance from the street. We have the smallest building footprints in the neighborhood; this height adjustment will enhance architecture scale proportioned to the neighboring homes. Without the height adjustment scale, proportion, balance, livability, and architecture will immensely impact marketability of the property but also the neighboring homes.

Evidence provided to the record shows numerous neighboring down hillside buildings that are 2 stories at the street face facade. **(Please see below evidence provided of 2 level downhill side homes in table 1 our response to the LU 20-134213 AD appeal December 31 2020).** We do believe the intent of the code was to restrict the downhill side of the street to 2 stories at the building face such that the uphill side would generally be allowed to achieve 3 to 4 stories in height, in an attempt to allow all properties to realize a reasonable view and development size.

We trust the city staff's knowledge and vast experience in their judgment. The city staff has gone above and beyond to help us understand code to apply to this very unique and challenging site. Our design was thoughtfully refined through this process to meet city code and sight view easement. We feel that staff has done their job in critique of our original design which helps us make modifications that are consistent with widely accepted application of the height code.

Again we ask that the commissioners accept the city's decision on this land use case and deny the appeal based on city code, sight view easement, and evidence of existing homes in the neighborhood.

Best regards,

Diem Le, Applicant

Below is the original appeal response January 2nd, 2021. Providing evidence to the record of down hillside buildings that are 2 stories at the street face facade.

January 19, 2021

City of Portland Bureau of Development Services: Response to Appeal

LU 20-134213 AD

We support the city staff's height AD approval on this development. Below is our response to the LU 20-134213 AD appeal December 31 2020.

1. Appeal Statement

The additional height accommodates a home that is significantly larger than surrounding homes (page 2, par 5).

Response

Please see table 1 and photos below illustrate that our development is modest in relationship to one residence to another, reasonable in scale, and reflect the general building scale and placement of houses in the city's Neighborhoods. Our findings show 5 downhill side homes similar to our home that are 2 stories at their building face including the appellant's home to the south. Unlike the other 2 level downhill homes that look massive the following characteristics of our home will look particularly smaller in scale:

- Our driveway measures 40 ft from Upper Hall street access to the face of our home compared to almost all other homes along Upper Hall and College Street that was built

at street front. All the homes built at the turn of the century are massive 4,000 and 5,000 square foot homes.

- Our driveway slopes downward toward the face of our home. The lot slopes very steeply in three directions.
- Our home will measure 17ft above street grade at the frontage and the back is 22 ft. above street grade.
- Our home footprint is generally half the footprint of other homes. Our home is 37x40.

Table 1

DOWNHILL SIDE HOMES	UPHILL SIDE HOMES
<ul style="list-style-type: none"> • Proposed Development R538363 PARTITION PLAT 2003-51, LOT 1 2 level home 17ft above street grade in front 22 ft above street grade in back 37' x 40' foot print 	<ul style="list-style-type: none"> • 1597 SW Upper Hall Street Portland OR 97201 2 level home Above street grade
<ul style="list-style-type: none"> • Appellant's home (Directly South) 1598 SW Upper Hall Portland OR 97201 2 level home above street grade Dimensions 50' x 50' 	<ul style="list-style-type: none"> • 1960 SW Upper Hall Street Portland OR 97201 3 level home Above street grade
<ul style="list-style-type: none"> • 1558 SW Upper Hall Portland OR 97201 Directly North 2 level home above street grade (vaulted roof instead of 2 floor) Massive lateral build Measures 90 feet along the street frontage Is also 4 stories on the back side Garage has 10 to 12 foot doors with gable roofs. 	<ul style="list-style-type: none"> • 1438 SW Upper Hall Street Portland OR 97201 4 level home Above street grade
<ul style="list-style-type: none"> • 1531 SW Upper Hall Street Portland OR 97201 2 level home above street grade 60' along street frontage. This area of homes is tightly packed in next to each other 	<ul style="list-style-type: none"> • 1436 SW Upper Hall Street Portland OR 97201 4 level home Above street grade

<ul style="list-style-type: none"> • 1517 SW College Street Portland OR 97201 2 level home above street grade Is a 40' x 40' foot print 	<ul style="list-style-type: none"> • 1432 SW Upper Hall Street Portland OR 97201 4 level home Above street grade
<ul style="list-style-type: none"> • 1319 SW College Street Portland OR 97201 2 level home above street grade 80' along street frontage x 30' 	<ul style="list-style-type: none"> • 1610 SW Upper Hall Street Portland OR 97201 2 level home Above street grade

Based on our findings and observing all the homes in the neighborhood, there are numerous 2 level homes above street grade on the downhill side of the streets and almost all the homes are 3 stories or more on the uphill side of the streets. The uphill side homes (See table 1) with 2, 3 to 4 levels sitting above grade appear massive in scale compared to the downhill side homes. The standard 2 stories with gables on downhill side homes are at least 23 ft above street grade. To the contrary of the appeal, the height AD for this development is appropriate and our home will not be any larger and is generally smaller in footprint and height as measured above street grade than most of the surrounding homes including the neighbor to the south.

1. Appeal Statement

An alternative to the Administrative Decision would be to allow the 14.2 additional feet at the street level, but reduce the height to the average elevation of 23 feet towards the east side of the home...it potentially would no longer tower over the back 37 feet of our property and present a less massive appearance to the neighbors to the east (page 2, par 7)...If the plans are revised with lower height toward the eastern part of the property, it might be possible to move the balconies further west so as not to intrude into our primary windows at all (p3, par10)...The scale of the proposed house, from the perspective of our home and the homes to the east and north, is not modest. It is a massive block-like structure. This is a direct result of the increased height AD. We will see all floors of the home, from the foundation to the roof. This proposed massive home significantly detracts from the livability and appearance of the residential area and does not meet the criteria (p3,par13).

Response

We feel this is subjective and not applicable. This is repeated in the appeal that our home has a "massive appearance" and we should mitigate by significantly reducing height and changing our design. Our property was an approved partition with a view easement so as not to block the views of the appellants home. We have designed a home that meets the criteria of the view easement agreed to in the partition. This view easement significantly reduces our ability to use our land within the developable area if the height AD is not approved. The view easement was the trade off for approving the partition.

The same can be said about the appellant's home, it will have a massive 4 story presence in perspective to our home no matter how we build our home. We also feel that without the height

AD our home will detract from the character of the neighborhood. We'll end up with a flat roof home, and no opportunity for a view to anything from our lot due to the home being so low compared to the lot to the south, east, north, and to any future development of the adjacent lots. Without the height AD we lose 1,480 sf of floor area that can actually obtain solar access.

We will meet city development requirements pertaining to the tree code, and landscaping and other required setbacks and screening. Planting trees between our home and the appellants may be appropriate but the maximum height of those trees at maturity is very important to the appellants ability to maintain views from their windows so I'm concerned if I plant too many trees I'll just be contested for blocking the appellants views with trees.

We believe this appeal is not based on ordinance but more so based on personal subjectivity. The appellant recently purchased property 1598 SW Upper Hall St in 2019. We are not responsible for maintaining a level of aesthetics that the appellant may have thought would remain in relation to their home. We have a right to develop our property as much as everyone else is or has been afforded in this neighborhood. The appellant told me that if she had known there will be a new development directly north of hers, she would've never bought the home. We cannot apologize for other people's unknown disappointments. Every home on the hill will appear massive when the perspective is from downhill. All the homes are massive when viewed from different perspectives too. For example, please see a photo of property 1558 SW Upper Hall . It is a 1 story home above SW Upper Hall relative to the west street face with vaulted roof and the peak of the roof is 17 plus feet above the adjacent street and is only set back 10 feet from the street, however the lot size allows lateral build with massive footprint and height size in the back, towering over the street when viewed from the east, naturally it looks massive when looking at a lower elevation. While we cannot build laterally nor build toward the east, we can only compensate in scale vertically, thus we emphasize the need for extra height to develop square footage that makes economic sense due to our lot being one of the smallest in the neighborhood. The zoning code Chapter 33.110 was not written specifically for this development that has numerous constraints such as lot size, sight view easement, LU ordinance of 20% window blockage, and 50% steep slope; the height AD is only reasonable given the circumstances and our home foot print clearly supports and promotes a reasonable building scale and relationship of one residence to another because our proposed footprint is still smaller than almost every home in the immediate area.

3. Appeal Statement

I disagree with City Staff's Appeal Statement that from 'a plain reading of the text above from Zoning Code Section 33.110.215.D.1, it seems likely the code writers intended for a maximum 23-foot building height to be exposed to public view above an elevation commonly perceived as the "street"(pg 2, par 10,11).

Response

The appellant argues that code intent is not for allowing 23' above street grade. Our findings of the downhill homes (table 1) will clearly show that many of the homes on the downhill sides of streets on steeply sloping lots is 23' above street grade. In addition, most lots that the code was written for have much flatter grades along street property lines. Our property site is almost 50%

or 2H:1V slope down from south to north along its 16th Avenue west property line. If 16th Avenue could be constructed the street grades would not be allowed to be steeper than 18% or 5.5H:1V, this means that the code measures grades along typical streets is 2.75 times flatter than the slope along our west property line which in turn the code ends up allowing generally a 23 foot tall home at the homes street lot line. If SW 16th were built to our right of way, PBOT would not allow the street to be steeper than 18% and our AD wouldn't be necessary. The steeply sloping lot and uphill vs downhill height codes allow taller homes on the uphill side of up to 35 feet and shorter homes on the downhill side of 23 feet so both lots have the potential to obtain a view. Without our height AD we will not have a view at all except the back wall of the appellants home on the east and then our home will be completely blocked by the large trees located on the adjacent lot north and east of our lot.

There are numerous downhill homes with 2 level roof heights above street grade in this neighborhood supporting this height AD. The standard 2 stories, 23' above street grade look small in scale compared to those houses that are uphill side homes. Our house appears modest compared to both the downhill and uphill side homes.

4. Appeal Statement

The height standards also serve to promote options for privacy for neighboring properties....If the plan shifts so that the floors do not line up with mine, it could result in windows that look directly into our entire living area (p3, par10).

Response

We are committed to our design and the floor elevation. Our discussions with planning have already addressed the window types on the south side of our building. The city requirement already states that our south windows bottoms are placed 6' above floor so that we can still get sunlight on our south wall but also that we would have blocked visible view between our south wall and the appellants north windows. We want to ensure you that we will meet this requirement particularly the windows that may align with appellant's living room area.

5. Appeal Statement

In addition to meeting all requirements and constraints mentioned above, the appellant is also suggesting to redesign "... reducing the height at the back portion of the house, along with a green screen to the south and east, would more closely promote a reasonable building scale and relationship of one residence to another."

Response

We want to be very careful in choosing the type of plants, height of screening plants, and placement of the plants so as not to violate sight view easement criteria and to block the views out of the neighbors windows. To avoid future contests, we encourage appellant to plant screening plants that will fit her needs.

Again, from certain perspectives all the homes on the hill side look small or massive. Anyone can choose to view details and specifics in a way that makes their argument appear strong,

however, when comparing actual dimensions our building footprint is much smaller than most homes and our height is not higher above the street grade than any other home on the hill side and in fact will actually appear smaller.

Please review photographs of all the downhill homes that are 17 feet or higher as measured from the street grade. These photos substantiate that there are numerous 2 level homes on the downhill side of the street. The slopes of those streets at the face of the building are 18% or less. Our lot is unique in that the 16th Avenue right of way cannot be constructed because the slopes are too steep.



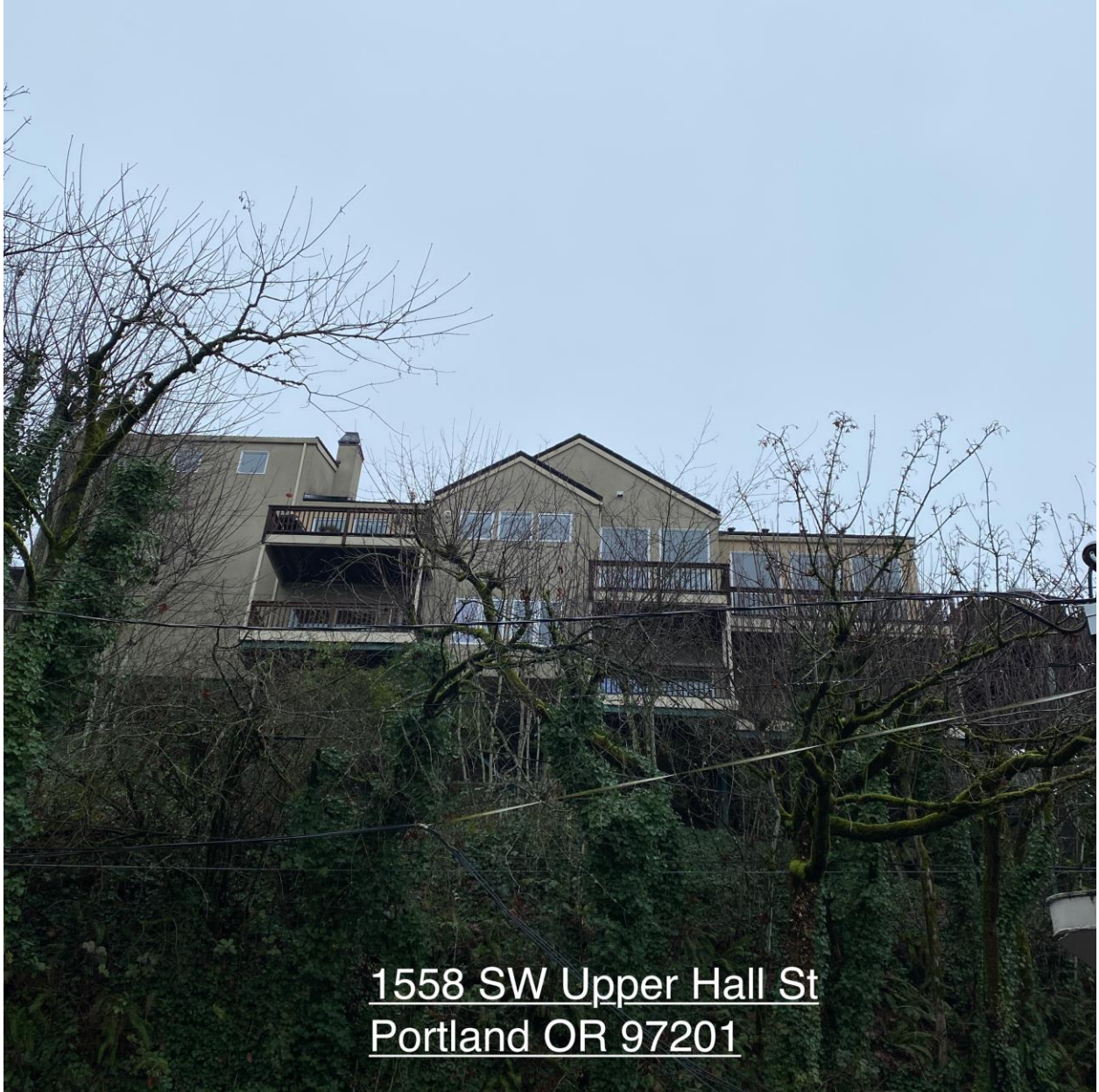
Appellants home. Building height 2-Story. The north wall of this home is massive when standing north and looking south.



Appellants home as viewed from SW Upper Hall. Our home peak height will still be lower than the appellants peak height. The location of the person standing on the left side of the appellants driveway is the high side of our driveway and our front door is 4.5 feet lower than the point where the person is standing just like the appellants.



This home is directly north from our project site. This home looks massive from the north and east view. This is a modern home, a downhill side of the street home and although they don't have floor space on the second level because they designed vaulted ceilings instead of flat roof, the peak of the roof is still 17 feet or more above the street grade and the street is no steeper than 18%. This is a great example of how the code is intended to function. Our proposed home is much smaller in footprint than this home and the elevation of our roof will not impact this home at all.



Shown here clearly depict the massiveness this home presents from the east view.



This home is a couple blocks north. This home looks massive from the north and east view and clustered by homes tightly built around it. This is a modern home, a downhill side of the street home and they do have floor space on the second level and gable roofs making this home seem massive from the street. This peak of the roof is at least 23 feet or more above the street grade and the street is no steeper than 18%. This is a great example of how the code is intended to function for downhill. Our proposed home is much smaller in footprint than this home and the elevation of our roof will not impact this home at all.



This home is a couple blocks east. This home looks massive from the north and east view and clustered by homes tightly built around it. This is a modern home, a downhill side of the street home and they do have floor space on the second level and gable roofs making this home seem massive from the street. This peak of the roof is at least 23 feet or more above the street grade and the street is no steeper than 18%. This is a great example of how the code is intended to function for downhill. Our proposed home is much smaller in footprint than this home and the elevation of our roof will not impact this home at all.



1319 SW College St
Portland OR 97201

This home is a couple blocks east. This home looks massive from the north and east view and clustered by homes tightly built around it. This is a modern home, a downhill side of the street home and they do have floor space on the second level and flat roofs making this home seem massive from the street. This peak of the roof is at least 23 feet or more above the street grade and the street is no steeper than 18%. This is a great example of how the code is intended to function for downhill. Our proposed home is much smaller in footprint than this home and the elevation of our roof will not impact this home at all.



This home is located east from the appellants and our lot. This is shown just to substantiate the typical scale and mass of the homes in the area when viewed from the street.



This home is located east from the appellants and our lot. This is shown just to substantiate the typical scale and mass of the homes in the area when viewed from the street.



This home is directly west and across the street from our site and the appellants. This home looks massive. Yes it is a turn of the century building, however, all existing conditions must be compared when addressing the character of the neighborhood. Our proposed home is much smaller in footprint than this home and the elevation of our roof will not barely block any views in the front window of this home.



1610 SW Upper Hall St
Portland OR 97201

This home is located south west from the appellants and our lot. This is shown just to substantiate the typical scale and mass of the homes in the area when viewed from the street. This home is directly south across the street from the appellants. This home looks massive. It is a turn of the century building, however, all existing conditions must be compared when addressing the character of the neighborhood. Our proposed home is much smaller in footprint than this home and the elevation of our roof will not impact this home at all.

