



Portland Design Commission

1900 SW Fourth Ave., Suite 5000
Portland, Oregon 97201
Telephone: (503) 823-7300
TDD: (503) 823-6868
FAX: (503) 823-5630
www.portlandonline.com/bds

Date: May 13, 2021
To: Portland City Council
From: Julie Livingston
Re: Recommended Drafts of DOZA Code and Map Amendments (Volume 2)

Mayor Wheeler and Commissioners Rubio, Ryan, Hardesty, and Mapps:

The Design Commission was not able to deliberate and vote on this additional testimony at a public meeting between the close of Council's DOZA hearing on May 12th and the DOZA record closing at 5PM on May 14th. However, it is important to clarify and emphasize what we all heard during Council's DOZA testimony, and given that I served on the DOZA 3x3 subcommittee of the Planning & Sustainability Commission and the Design Commission and am very familiar with the issues, I am submitting this testimony without first seeking the consent of the entire Design Commission.

1. LAND USE REVIEW APPEALS

Frequency. Design Review appeals are uncommon. There has not been a Design Review affordable housing project that was appealed to LUBA. BDS records indicate the following facts:

TYPE 2 DESIGN REVIEWS:

- Between 2012 and 2020 BDS staff reviewed 1,040 Type 2 Design Review applications.
- Each year between 2012 through 2020, only 0 to 4 appeals were filed each year.
- 2% (21) of the 1,040 Type 2 reviews in this 8-year period resulted in appeals to the Design Commission.
- 1% (10) of the total Type 2 Design Reviews were appealed by the public.
- 1% (10) were appealed by the applicant.
- .09% (1) was appealed by the applicant and the public. The public's appeal was regarding an Adjustment Review request to not meet a required development standard, the appeal was not of the Design Review. The applicant's appeal was regarding Conditions of Approval. (5020 N Interstate)
- Of these 21 appeals, 1 appeal from the public went to LUBA in 2013.
- Of these 21 appeals, 12 were new market rate housing projects, 1 was a new affordable housing project, 7 were not housing projects.
- The affordable housing project was NOT appealed to LUBA.

TYPE 3 DESIGN REVIEWS:

- Between 2012 and 2020 BDS staff and Design Commission reviewed 216 Type 3 Design Review applications.
- Each year between 2012 and 2020, only 0 to 4 appeals were filed each year.
- 7.4% (16) of the 216 Type 3 reviews in this 8-year period resulted in appeals to City Council.
- 5.5% (12) of the total Type 3 Design Reviews were appealed by the public.
- 1.9% (4) were appealed by the applicant.

- Of these 16 appeals, 2 appeals from the public went to LUBA in 2015 and 2017.
- Of these 16 appeals, 12 were market rate housing projects, 1 was a new affordable housing project, 3 were not housing projects.
- The affordable housing project was NOT appealed to LUBA.

(Most appeals submitted were appeals of a staff or Commission approval. 100% of appealed projects were approved by Commission or Council.)

Current appeal timelines.

- Within 14 days of a land use review decision, an appeal can be filed.
- Within 5 working days of the receipt of the appeal, an appeal notice is mailed.
- Within 21 days from the appeal notice a public hearing is held.
 - For a Type 2 land use reviews a decision is mailed within 17 days of the appeal body final decision.
 - For a Type 3 land use reviews a tentative decision is made by the Council and a return hearing is set. A decision is mailed within 5 days of the appeal body decision.

Considerations for revising the appeal process.

- Increase appeal fees. Current appeal fees are as low as \$250 and free for Neighborhood Associations.
- Speed up appeals. Preset appeal dates when decisions are issued shaving off approximately 3 weeks of process time. Review State Law to understand where else time can be saved in the process.
- Adopt rules that establish a legitimate appeal to avoid superfluous appeals.
- Revise the review bodies for appeals. This could ensure public participation but with an authority with a more flexible and shorter process time.

2. THRESHOLD FOR USING STANDARDS (increasing from 55' to 75')

- Equivalent Outcomes – “One size fits all” Standards are NOT equivalent to Guidelines, especially with context, and even BPS staff acknowledged this.
- Community Engagement - Three people of color provided testimony. All three expressed support for more engagement, not less, as beneficial to BIPOC communities.
- Community Engagement - Council is encouraged to revisit the 2018 Mixed Use Zone legislative record to understand the commitments made to communities when heights and FAR were increased. To paraphrase, “design review will allow communities the opportunity to participate and have a say in the redevelopment of their neighborhoods”.
- Community Engagement – DOZA enacted many administrative improvements that help all participants in the Design Review process effectively participate and contribute to the process. BDS staff and the Design Commission will continue these improvements and expand upon these improvements. Requiring more projects significant to a community to go through the Design Review process ensures people, at the very least, have the opportunity to participate in the growth of their communities.

- End game – Development convenience is not a guarantee of more development, including affordable housing, look at Conway and the Pearl District.

3. TYPE 2/TYPE 3 FOR AFFORDABLE HOUSING PROJECTS

- Time-sensitive pressures and complex funding for affordable housing projects is real. While the Type III review with the Design Commission is ideal for many reasons, it can take 3-4 months. The Type II review with a DAR, which aligns with the current emergency ordinance, is an alternative process that is quicker, still allows for public discourse, and provides early guidance from the appeal body to get these often complex projects on the right path from the start.
- Design Commissions should always be educated on what it takes to develop an affordable housing project and the typical critical issues these types of projects face.
- People are understandably frustrated with high rents. There are empty apartments all over the City, but rents aren't dropping to "affordable" levels. The publicly traded development companies and overseas trusts that own multi-family properties in Portland can wait out the down cycle. Neither proposal – 75' or Type 2/Type 3 – will change these circumstances.

4. NEW IDEAS WE SUPPORT

- Support Arbor Lodge request for the 'm' overlay to be added.
- Support for the City working with the Montavilla neighborhood.
- Support celebrating and retaining neon signs.

5. CONCLUSION

In closing, please listen again to the testimony from Sean Bolden. To paraphrase ***"We can't boil everything down to an algorithm. There is no one-size-fits-all solution. We/you need voices. Don't drown out the voices. That is a slippery slope. Developers come in with their own biases with no understanding of a culture in the neighborhood so we need public discourse. Once the culture leaves you can't bring it back."***

We would also like to direct your attention to written testimony from David Keltner who attended the entire hearing but was unable to participate as the last testifier due to technical issues. Please find his written testimony [here](#).

The Design Commission awaits your deliberations on possible amendments on May 26th and will convene a public meeting to provide additional testimony on any proposed amendments.

Thank you for your time.

Sincerely,



Julie Livingston, Chair of Design Commission and member of 3x3 DOZA subcommittee

cc: DOZA Staff, Bureau of Development Services
DOZA Staff, Bureau of Planning and Sustainability
Portland Design Commission
Portland Planning & Sustainability Commission