

From: Thomas Cutler <thomas@cutlerlawgrp.com>
Sent: Thursday, April 20, 2023 9:34 AM
To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Lisa T <lisataaffe@gmail.com>; Elliot Levin <levinelliott@gmail.com>
Subject: LU 22-159396 AD – Appeal; Written submissions for Levin and Taaffe

Hi David,

As you know, I represent Lisa Taaffe and Elliot Levin on the referenced appeal. Here are their written submissions in support of the appeal. Please forward these materials to the Design Commissioners and make sure they are included in the record. Thank you!

Our submissions include photos/visual exhibits referenced in the list at the end of our submissions, all of which follow in subsequent emails to make sure the attachments do not exceed data size limits.

I am already registered for the hearing this afternoon, although I don't believe I have received the Zoom link. Could you please send me that, and also correct that I am "for" the appeal? Staff indicate to me that I should indicate "against" the application/approval. Also, could you please confirm the time we are scheduled. I was told we are slotted for 2:55 to 5:00 pm. Thanks again.

--Thomas



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April 20, 2023

Submitted Electronically

Design Commission
City Of Portland
1900 SW Fourth Ave, Suite 5000
Portland, Oregon 97201

Re: LU 22-159396 AD – Appeal
Hearing: April 20, 2023; 1:30 P.M.

Dear Design Commissioners,

I represent Elliot Levin and Lisa Taaffe, who reside at 1704 NW 28th Ave, Portland, Oregon 97210, less than a stone’s throw from the proposed food court conversion project. My clients are very rightly concerned about the clear adverse impacts of the project on their residence and on their neighbors. This letter is intended to supplement their appellate submissions, further support their arguments in opposition to the decision approving the project, and to further support oral testimony to be provided at the Design Commission Hearing on April 20, 2023.

By far my greatest concern on behalf of my clients and the neighborhood is the application’s apparent total disregard for the city’s approval criteria for adjustments, particularly as they relate to adverse impacts relating to noise, invasion of privacy and incompatibility of project with neighboring residential uses. The applicant simply has not met its burden in complying with standards which would justify doing away with setbacks and buffering that are necessary, particularly at the transitional boundary of a commercial zone with a residential zone. The decision to approve the application was made in error and should be reversed.

As the commission will become aware, there is well-founded, widespread neighborhood opposition to the design and layout of this project. City staff aptly summarized many of the opposing comments and testimony received regarding both “privacy” and noise impacts (many of which in fact overlap) as follows: The proposed second-floor drinking/dining area would be too close to the residential neighbors to the south (Trolleycar Lofts) and west, and because it is

elevated, there would be privacy issues (views and noise from customers using the second-floor patio to the residents to the south, who have roof decks and skylights); The proposed patios are oriented toward NW 28th Ave to the west and the residential lot to the south rather than NW Thurman St to the north; A preferred design would be for the patios to be oriented towards Thurman because this is a commercial corridor and NW 28th is more residential; Noise generated from customers of the proposed business, ventilation from the kitchens, recorded or live music; trash pick-up; and deliveries/loading zone activity. Staff summarizes other neighbor concerns regarding adverse impacts, including odor from trash, smoke, and cooking, as well as off-site impacts (sidewalk and surrounding areas), including cigarette smoke, noise/drunks customers; tables and chairs in the sidewalk/right-of-way as well as many visual impacts, including light pollution, unsightly loading space; and, again, trash. The neighborhood is also legitimately concerned that the proposed landscape planters/shrubs will not provide adequate buffer/mitigation. Appellants and neighbors are absolutely correct that **the proposal does not equally or better meet the purpose of the regulations** (per Adjustment Approval Criterion A), that the proposal is fundamentally incompatible with the residential neighborhood and that the proposal would negatively impact the neighborhood character and property values (per Adjustment Approval Criterion B).

The neighbors are absolutely correct that, especially with the extensive proposed outdoor uses, the scale of the project is too large/intensive for this neighborhood and that too many occupants will potentially be using the patio space (with now substantiated estimates of 199 people on the proposed north side patios plus at least 26 more on the north in these outdoor areas); Neighbors are legitimately concerned that granting the adjustments would essentially allow a rooftop beer garden adjacent to a Residentially zoned Site and that the applicant, and now the city have left too many unanswered questions about the project: What are the hours of operation? How many businesses will there be? What kinds of businesses will there be? What is the occupancy? Will alcohol be served? Will there be amplified or music/outdoor entertainment? What will the volume limits be?

My clients refer to all such prior neighborhood testimony and evidence and expressly ask and state that all input from all participants in the proceedings with staff below be admitted and considered part of the record for purposes of consideration in this appeal and/or if this matter is later appealed to LUBA. Also, for appeal purposes, either to this commission, or to LUBA if necessary, Elliot Levin and Lisa Taaffe refer to and adopt Ms. Mary DeVries' submissions, her arguments, and evidence and incorporates all of them here by reference, as if my clients had attached them all, as exhibits to this document. Similarly, my clients refer to and adopt the submissions of the Trolleycar Lofts HOA, their arguments and evidence, and incorporate all of them here by reference, as if my clients attached them all as exhibits to this document. My clients also refer to and incorporate, as if attached hereto again, their own appeal document, and their attached and included evidence and arguments. Finally, I also attach, include and incorporate with this submission several photos, maps and demonstrative visual aids (accompanying this submission and summarized in the list of visual exhibits below) in order to assist the commissioners with understanding the application, the decision and the appeal, the character of the surrounding neighborhood, and particularly so as to better understand just how

close these neighboring proposed changes and uses are to so many of the neighboring residential property owners

Unfortunately, after summarizing the extensive evidence, testimony and objections of neighborhood participants, in its decision, staff seems to dismiss most of such concerns with a single sentence “Off-site impacts (including noise, odor, and glare) are regulated under Zoning Code Section 33.262.” The decision does not address the standards or substance of Zoning Code Section 33.262, or of Title 18, for that matter. Staff appears, wrongly, to simply “assume” that the applicant will comply with this section and with Title 18 referred to therein (relating to noise), without requiring or discussing any measurement, quantification, verification, or evidence whatsoever that the applicant can or will so comply. This is unacceptable and erroneous, particularly in light of the discussion below.

In reaching an approval decision and even citing Zoning Code Section 33.262, city planning staff ignores the substantive requirements of Zoning Code Subsection 33.262.100. The subsection provides:

33.262.100. Documentation in Advance.

In situations where the Director of BDS is empowered to require documentation in advance that a proposed use will conform with these standards, all of the following additional information is required of the applicant prior to approving a building permit:

- A. Use description. A description of the use or activity regarding processes, materials used, storage, waste disposal, types of machinery and other such items as it relates to off-site impacts. However, the applicant is not required to reveal any trade secrets which would cause any secret manufacturing procedure, compound or product to become public knowledge and available to competitors;
- B. Abatement devices. An explanation of any mechanisms or techniques which are proposed to restrict any hazardous or nuisance effects, including the type and location of any abatement devices and/or recording instruments to measure conformance with the required standard; and
- C. Expert evaluation. An evaluation and explanation certified by a registered engineer or architect, as appropriate, that the proposed activity can achieve the off-site impact standard or standards in question.

With respect to an application such as this one, the above section provides a clear and important provision the applicant and city can and must comply with anyway, prior to building permit issuance. Particularly in a situation that involves intensive, untested, and ill-defined outdoor commercial uses a few feet away from existing residences, the BDS director can and must require documentation in advance with respect to noise and other off-site impacts. And since it can and should be required anyway before construction can begin, and because as discussed below, the information about impacts is critical to determining the land use questions about compliance with adjustment criteria, the city can and must require the impacts study now, before land use approval. It is not sufficient for staff, as it has done in the approval decision, to

merely require that the applicant engage a noise/acoustical consultant, nor is it sufficient that the applicant has promised, for example, that it will “abide” by maximum noise limits. Demonstration and documentation, through an expert, of the applicant’s ability, the likelihood of compliance, and the use and efficacy of proposed abatement, can and should be required before approval.

The requirement of a study to determine and quantify the potential adverse impacts of the proposed project is even more important in this case as such a study would seem a fundamental prerequisite to the applicant’s burden of proving compliance with the approval criteria for the adjustments sought. Zoning Code Section 133.805.040 sets forth such criteria:

133.805.040 Approval Criteria

. . . All other adjustment requests will be approved if the review body finds that the applicant has shown that . . . approval criteria A. through F. . . , below, have been met.

A. Granting the adjustment will ***equally or better meet the purpose of the regulation to be modified***; and

B. If in a residential, CII, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the ***proposal will be consistent with the classifications of the adjacent streets and the desired character of the area***; and

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is ***still consistent with the overall purpose of the zone***; and

D. City-designated scenic resources and historic resources in Historic, Conservation and National Register Districts and within the boundaries of Historic, Conservation and National Register Landmarks are preserved; and

E. ***Any impacts resulting from the adjustment are mitigated to the extent practical***; and

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable; . . .(emphasis added).

Note that all criteria above are connected by the word “and,” requiring compliance with all. The applicant has not demonstrated satisfactory compliance with any of criteria A, B, C or E, let alone all of them, and staff’s glossing over these criteria with a conclusory statement that these criteria are “met” does not save the application, nor the erroneous approval decision:

A. Granting the adjustment will ***equally or better meet the purpose of the regulation to be modified***;

This criterion is not met for any of the proposed adjustments, not for the elimination of landscaping, road frontage or side setbacks. As to the expressly stated purposes for setbacks, as cited by staff, are set forth as follows:

33.130.215 Setbacks

The required building setbacks ***promote streetscapes that are consistent with the desired character of the different commercial/mixed use zones***. The setbacks promote buildings close to the sidewalk to reinforce a pedestrian

orientation and built-up streetscape. ***The setback requirements for areas that abut residential zones promote commercial/mixed use development that will maintain light, air, and the potential for privacy for adjacent residential zones.*** (emphasis added).

Not only does the section expressly call for setbacks to promote consistency with the desired character of the different zones, the section expressly states that setbacks for areas that abut residential zones promote commercial and mixed use development that will “maintain light, air and the ***potential for privacy*** for adjacent residential zones.” In other words, the express purpose when abutting residential property is to provide needed additional space to buffer the transitional boundary between commercial and residential zones. The maintenance of the “potential for privacy” surely also implies and entails noise, odors, light, and most of the legitimate evidence, testimony, and concerns of dozens of residents who oppose this project as proposed. This project resoundingly does not meet this standard as either expressed, nor implied. What’s more, since the applicant has not provided any data, evidence or analysis regarding the real impacts of the project on the adjacent residential uses with respect to noise or otherwise, neither the applicant, nor city staff can engage in any meaningful discussion of whether this criterion is or can be met. **The project as proposed must be denied until and unless compliance is affirmatively demonstrated.**

Similarly approval criterion B is not met:

B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the ***proposal will be consistent with the classifications of the adjacent streets and the desired character of the area***

This criterion is not met for any of the proposed adjustments, not for eliminating landscaping, road frontage or side setbacks. Staff makes a technical argument that comments from the participants that the proposal significantly detracts from the “livability or appearance of the residential area” are inapplicable, because project site is not “in a residential zone.” First, there is a very good argument to be made that this project by being bordered and nearly surrounded by residential zoning and use is, for all intents and purposes in the context of this code section, “in” the surrounding residential zone. Surely commercial projects which directly border residential zones are not intended to be able to disregard and significantly detract from livability and appearance of their residential neighbors under this section. More importantly, staff’s analysis here overlooks the spirit of the criteria as a whole and then misapplies the letter of the criteria in the second half of the subsection. Even properties “in” commercial zones must demonstrate the proposal “will be consistent with the classifications of the adjacent streets and the desired character of the area.” That desired character for this “area” clearly includes the fact that this area surrounding the subject site includes many directly adjacent and nearby residentially zoned and residentially occupied properties. A noisy, chaotic food court with extensive outdoor dining and use, especially as

proposed with landscaping, buffering and setbacks substantially curtailed, is not consistent with the desired character of this area, which area includes the residential neighborhood! But, again, since the applicant has not provided any data, evidence or analysis regarding the real impacts of the project on the adjacent residential uses with respect to noise or otherwise, neither the applicant, nor city staff can engage in any meaningful discussion of whether this criterion is or can be met. What will the actual, demonstrated, and quantified impacts on the desired character of the area be? The applicant has not given enough evidence or detail in its submissions for anyone to know yet. **The project as proposed must be denied until and unless compliance is affirmatively demonstrated.**

Similarly approval criterion C is not met:

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is *still consistent with the overall purpose of the zone*; and

This criterion is not met by any of the proposed adjustments, not for the elimination of landscaping, road frontage or side setbacks. Clearly in this instance, the project applicant seeks more than one adjustment and this criterion applies. For all the reasons stated above, the cumulative effect of the adjustments results in a project inconsistent with the “overall purpose of the zone.” The overall purpose, even of the commercial zone, would include the purpose of reducing conflicts between uses, respecting adjacent residential uses, and even expressly providing additional buffering when a project is adjacent to residentially zoned properties. It would make no sense to turn around and eliminate or significantly curtail the setback, the very purpose of which is designed to do its part in meeting the overall purpose of the zone. Also, again, since the applicant has not provided any data, evidence or analysis regarding the real impacts or cumulative effects of the project on the adjacent residential uses with respect to noise or otherwise, neither the applicant, nor city staff can engage in any meaningful discussion of whether this criterion is or can be met. What will the actual, demonstrated and quantified impacts to the desired character of the area be? The applicant has not given enough evidence or detail in its submissions for anyone to yet know. Plans have been changed but not distributed so it is difficult for the interested parties to know the Applicant’s intentions. **The project as proposed must be denied until and unless compliance is affirmatively demonstrated.**

Similarly approval criterion E is not met:

E. *Any impacts* resulting from the adjustment are *mitigated to the extent practical*;

Again, this criterion is not met for any of the proposed adjustments, not for the elimination of landscaping, road frontage or side setbacks. Unfortunately, both the applicant and staff gloss over this express and unequivocal requirement which must be satisfied before anyone gets a variance, waiver or “adjustment” of any code requirement. The successful applicant must show that “any” impacts resulting from any of the adjustments sought in this application are mitigated and must do so to the extent practical. Again, since the applicant has not provided any data, evidence or analysis regarding the actual impacts of the project on the adjacent residential uses

LIST OF PHOTOS AND VISUAL EXHIBITS

1. Depiction showing approximate distances from Trolley Car Loft Bedrooms to Project
2. Depiction showing location of project opponents and project supporters
3. Depiction showing 6 feet distance from Trolley Car Loft's North Wall
4. Photo 013 shows the Corner of NW 28th and Savier
5. Photo 016 shows the view of NW 28th Ave opposite the Trolley Car Loft building
6. Photo 258 shows the houses across NW 28th from Trolley Car Loft garage and across from the Nascent alley
7. Photo 345 shows the view from the corner of NW 28th and NW Thurman. This shows the condos across Thurman from Nascent
8. Photo 415 shows the view immediately across from Nascent's ally. The red structure is an apartment building.
9. Photo 350 shows Nascent's property (brown and blue buildings), followed by a coffee shop, a small restaurant, and a massage business.
10. Photo 510 shows the south side of the Trollycar Lofts
11. Photo 537 shows 1704 NW Savier's windows along NW 28th. The first two windows are bedrooms.
12. Photo 721 shows the view from the Trolley Car Loft's roof looking at Nascent's property
13. Photo 727 shows the view of Nascent's roof from an Appellant's deck
14. Photo 652 another view from the Trolley Car Loft roof looking at Nascent's property
15. Photo 702 shows the view from the Trolley Car Loft's roof into Nascent's ally
16. Photo 750 shows the view of Nascent from Appellant Utz's deck
17. Photo 838 shows one of the master bedrooms on the roof of the Trolley Car Loft building

From: Thomas Cutler <thomas@cutlerlawgrp.com>
Sent: Thursday, April 20, 2023 10:22 AM
To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Lisa T <lisataaffe@gmail.com>; Elliot Levin <levinelliott@gmail.com>
Subject: LU 22-159396 AD – Appeal; Written submissions for Levin and Taaffe

Hi David,

Here are our visual exhibits and photos. I will indicate the number of emails on my last submission so we can verify that you received them all. There should be 17 photos/visual exhibits. Thanks.

--Thomas



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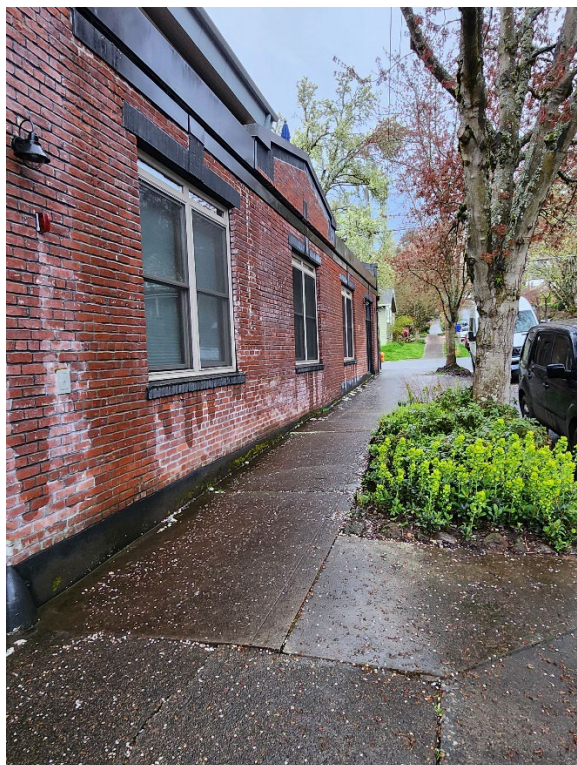
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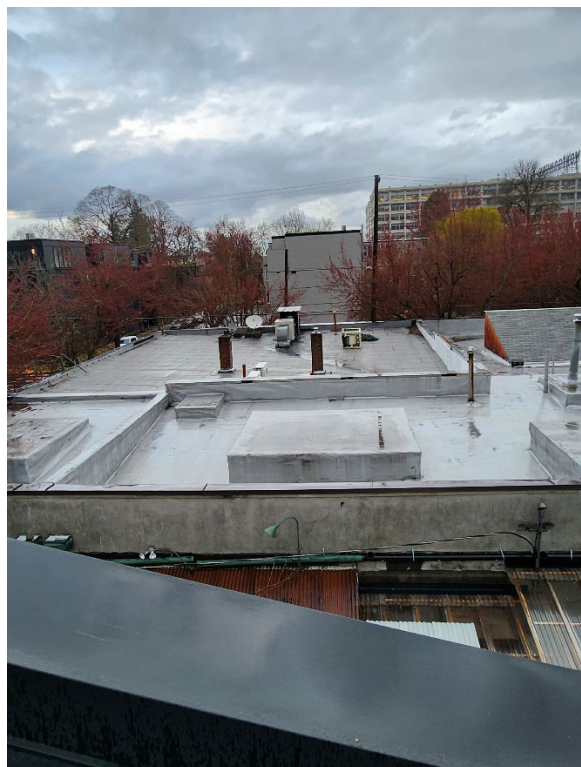
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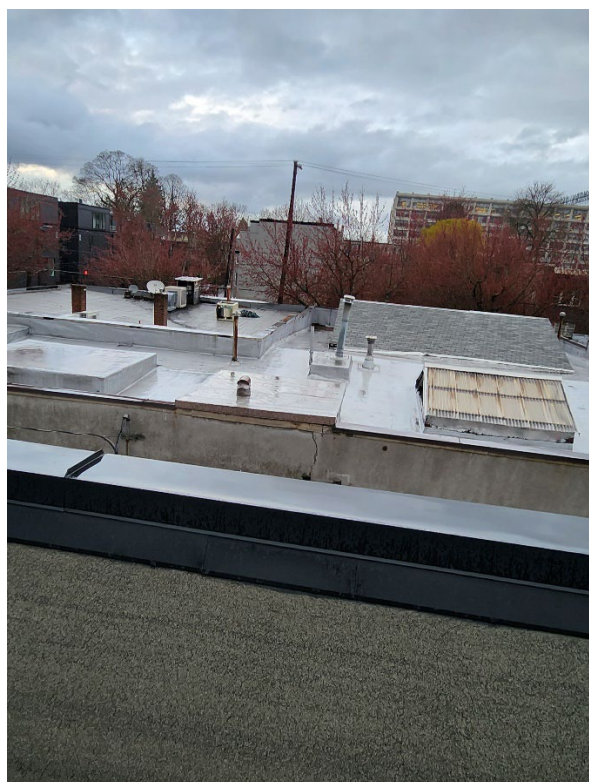
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From: Thomas Cutler <thomas@cutlerlawgrp.com>
Sent: Thursday, April 20, 2023 10:28 AM
To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Lisa T <lisataaffe@gmail.com>; Elliot Levin <levinelliott@gmail.com>
Subject: LU 22-159396 AD – Appeal; Written submissions for Levin and Taaffe

Hi David,

Here are our visual exhibits and photos. I will indicate the number of emails on my last submission so we can verify that you received them all. There should be 17 photos/visual exhibits. Thanks.

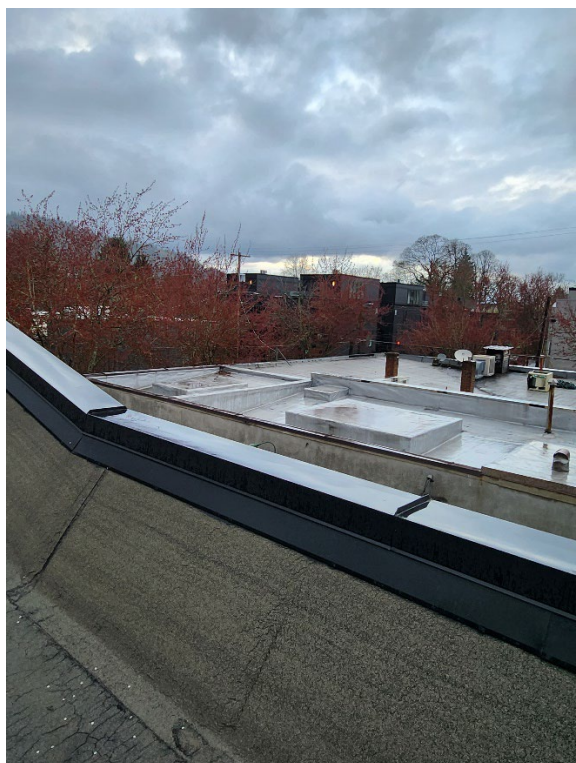
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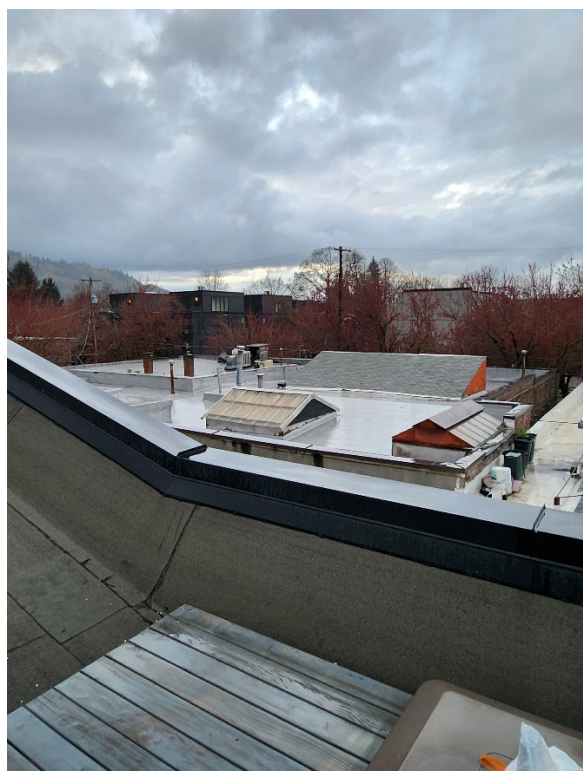
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To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Lisa T <lisataaffe@gmail.com>; Elliot Levin <levinelliott@gmail.com>
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Sent: Thursday, April 20, 2023 10:30 AM
To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Lisa T <lisataaffe@gmail.com>; Elliot Levin <levinelliott@gmail.com>
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To: Besley, David <David.Besley@portlandoregon.gov>
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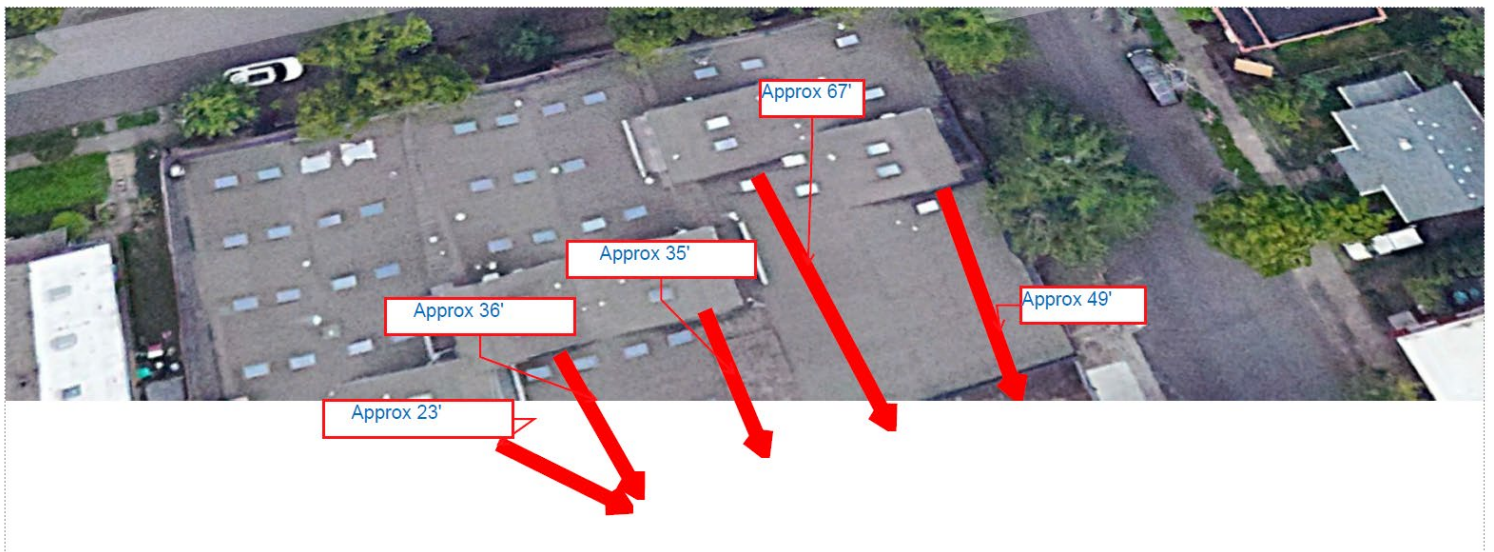
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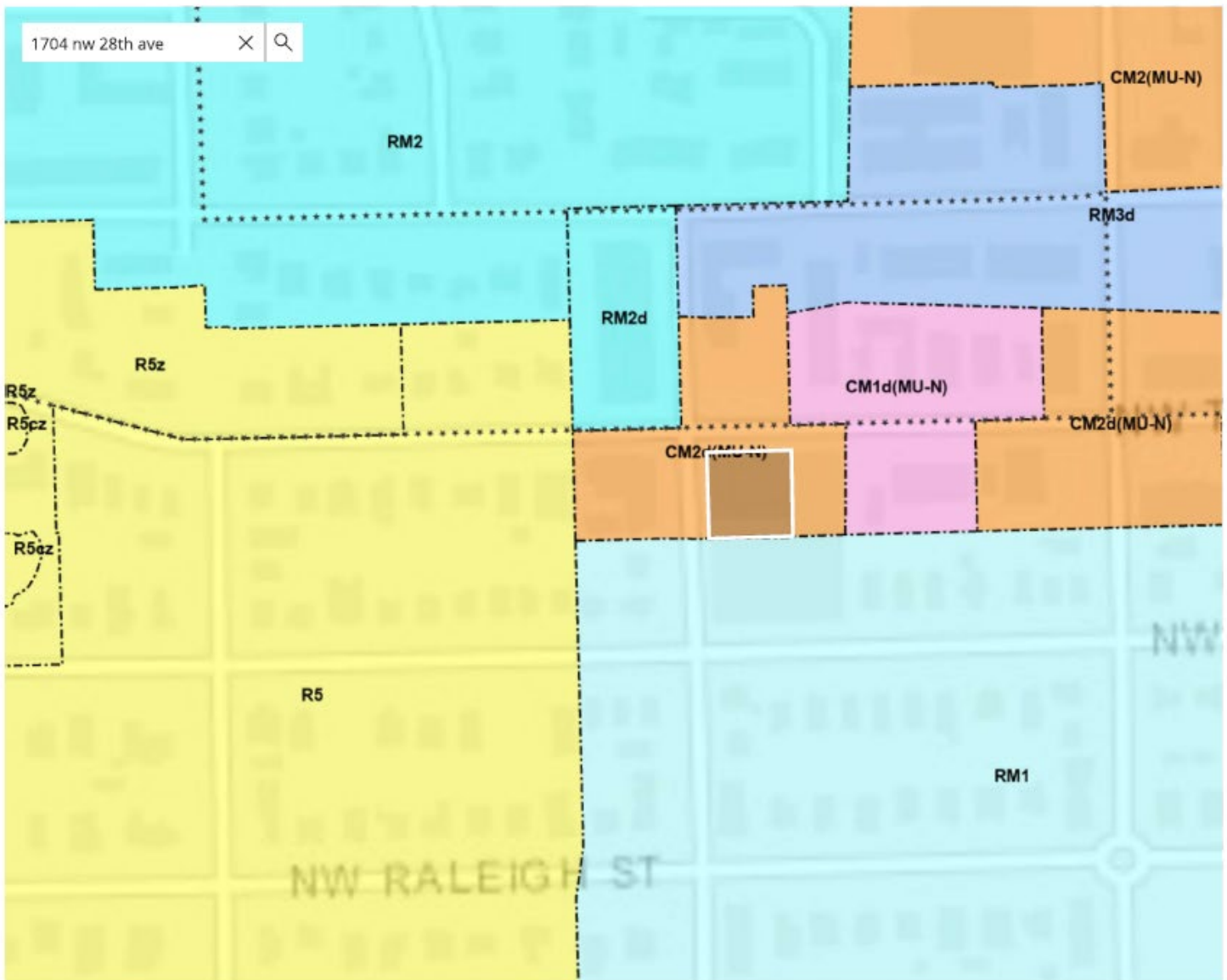
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Oregon Metro, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA | City ... Powered by Esri

2774-2788 NW THURMAN ST

Comprehensive information for this property is available on PortlandMaps.com: [R316388](#)

The official zoning quarter section map(s) for this property is [2826](#)

This property contains the following Comprehensive Plan Map Designation(s):

Mixed Use - Neighborhood

Detailed zone summaries are available below.

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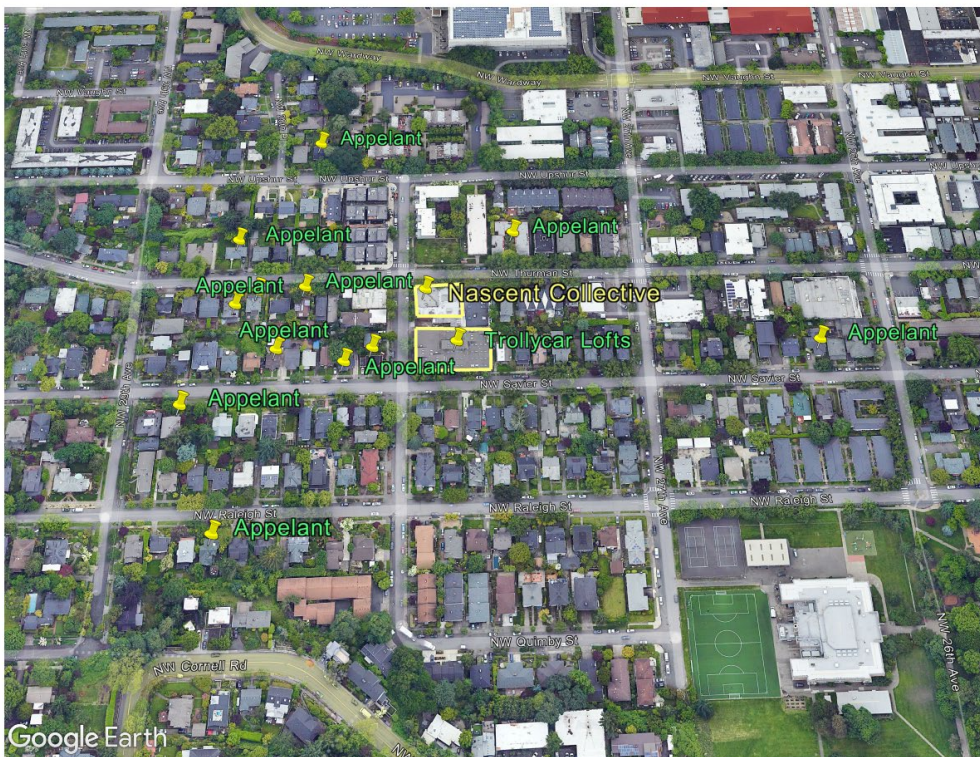
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From: Thomas Cutler <thomas@cutlerlawgrp.com>
Sent: Thursday, April 20, 2023 10:52 AM
To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Lisa T <lisataaffe@gmail.com>; Elliot Levin <levinelliott@gmail.com>
Subject: LU 22-159396 AD – Appeal; Written submissions for Levin and Taaffe

Hi David,

Good to talk to you. I had to send them one at a time, but it looks like they all went through. You should actually have 19 emails before this one, each with a different attachment. The first was my main letter. The following 18 had 14 photos and 4 pdf visual exhibits (that includes 1 extra not specifically referenced on my exhibit list, which is just the zoning map for the area). Please confirm receipt. Thanks!

Also, I don't think I have received my link for the hearing. If you could also send that. Thanks.

--Thomas



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Sent: Thursday, April 20, 2023 11:45 AM
To: Besley, David <David.Besley@portlandoregon.gov>
Cc: Jim McAdoo <quidam8@yahoo.com>; Elliot Levin <levinelliott@gmail.com>; Lisa T <lisataaffe@gmail.com>
Subject: RE: LU 22-159396 AD – Appeal; Written Submissions for Trolleycar Lofts HOA

And here are the two photo/visual attachments.

--Thomas



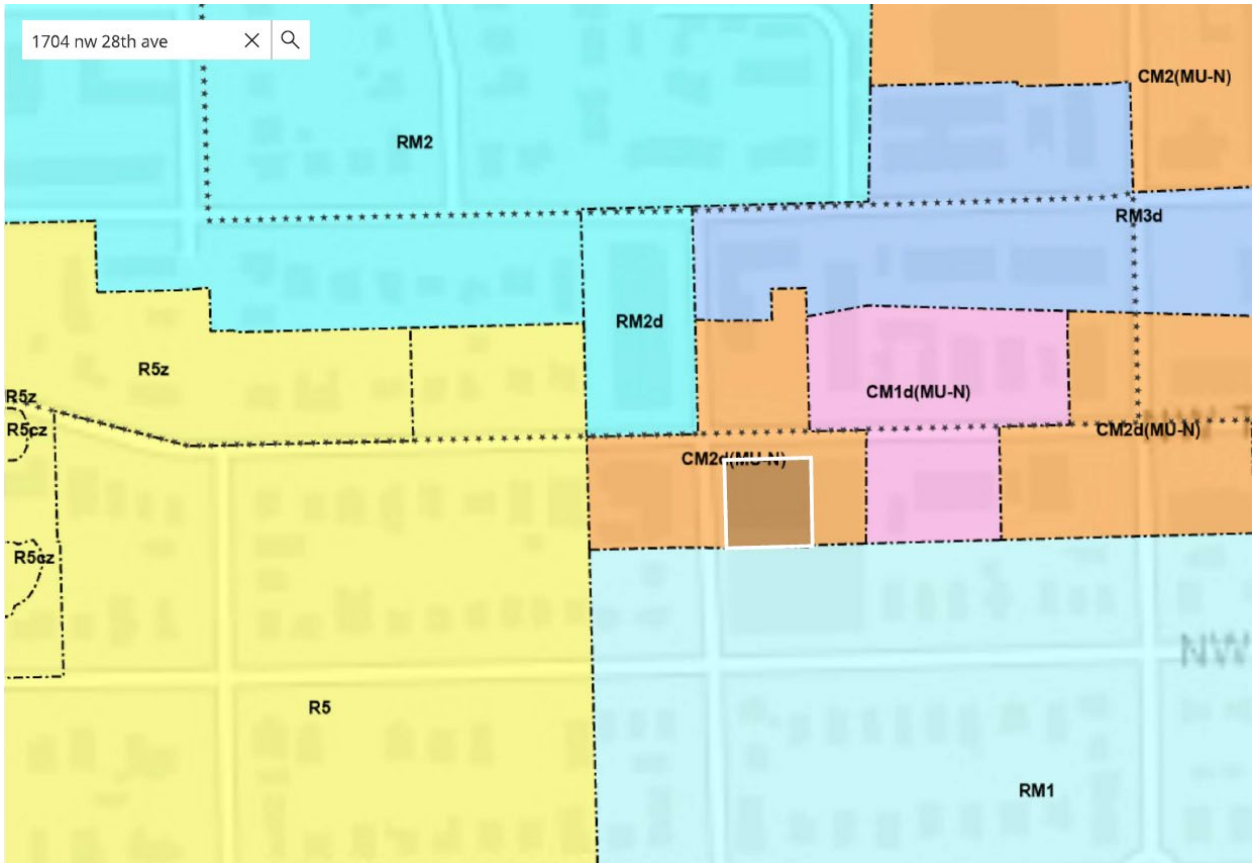
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Cc: Jim McAdoo <quidam8@yahoo.com>; Elliot Levin <levinelliot@gmail.com>; Lisa T <lisataaffe@gmail.com>
Subject: RE: LU 22-159396 AD – Appeal; Written Submissions for Trolleycar Lofts HOA

Hi David. Thanks for confirming.

Again, I don't represent the HOA, but they asked/authorized me to forward their written materials to you to for submission into the record. Here is their document attached. Two photo/visual attachments will follow.

--Thomas



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LU 22-159396 AD – Appeal Hearing: April 20, 2023; 1:30 P.M.

Written Comments and Testimony from Trolleycar Lofts Homeowner’s Association in support of Appeal of Adjustments at 2788 NW Thurman Street 97210

The Trolleycar Lofts Homeowner’s Association strongly opposes this application and requests that the staff’s decision to approve the application be reversed. The project, as proposed, gives much less, rather than more or equal, buffering from the adverse impacts of having several new businesses and outdoor dining within a few feet or a few yards at best from our residences. The noise of dozens, or potentially over 100 outdoor dining customers, with verbal chatter, clanking plates and glasses, scooting chairs will undoubtedly be deafening and greatly impact our HOA members and their neighbors. Yet the applicant doesn’t provide any evidence or analysis of such noise impacts, and fails to quantify or explain anything regarding noise from the newly proposed uses including outdoor dining. Similarly, the city staff glosses over noise issues without requiring any proof of impacts or compliance, much less requiring any proof of how the proposal satisfies the adjustment criteria, or how the proposal mitigates or otherwise provides equal or greater protections to neighbors than if the city codes were simply enforced without adjustment.

The application has not and cannot meet the required approval criteria for the requested adjustments. The Applicant’s requested Adjustments do not equally or better meet the purpose of the zoning regulations they are requesting be modified. The purpose of setbacks, vegetative plantings and other transitional screening is to buffer the noise, odor, light pollution and other adverse impacts from the neighboring property. We understand this is especially the case when new commercial uses are proposed right next to existing residential zone uses. This applicant ignores even trying to show how the sound, odor and privacy impacts will be within acceptable or tolerable levels.

Also, alternatives would improve project without planning adjustments. As Mary DeVries, (a neighbor and architect by training), points out in her appeal submission, “. . . there is ample opportunity to locate 2nd story dining above the existing building facing the Northwest corner and the North/east property line shared with commercial uses while protecting the privacy and maintaining light and air for the adjacent residences.” The HOA strongly recommends that the Commission review Ms. DeVries written and oral testimony as she speaks from professional experience and training as an architect, and as a residential member of the impacted neighborhood.

Note: For appeal purposes, either to this commission, or to LUBA, if necessary, the HOA refers to Ms. DeVries submissions, her arguments and evidence, and incorporates all of them here by reference, as if the HOA attached them all again, as exhibits to this document. Similarly, the HOA refers to the submissions of Eliot Levin and Lisa Taaffe, their arguments and evidence, and incorporates all of them here by reference, as if the HOA attached them all again, as exhibits to this document.

As discussed in more detail below, our members' residences are incredibly close to this proposed project. We have windows, skylights and open roof patios mere feet from the open patios and public dining areas the applicant is proposing. We ask that the Commission please carefully review the visual exhibits attached with this submission, and those attached to the submission of Elliot Levin and Lisa Taaffe, which show just how tightly spaced these adjacent uses really are, which show just how incompatible these proposed public outdoor patios and dining really would be with respect to our existing residences, and with respect to the existing character of our neighborhood. We are all a mere stone's throw from the newly proposed outdoor patios and decks, and some of our residences are a fraction of a stone's throw away! Again, please see photos. Like any residentially zoned properties in the city, we purchased our properties expecting and believing that the city would protect our residential environment. We deserve, like any property owners, the quiet enjoyment of our property. That will not be possible if the city allows this project to ignore required setbacks and offer no meaningful buffer.

ZONING CODE SECTION 33.130.215: Setbacks

(Per Notice of Decision Attached)

Setback Adjustment

The applicant is proposing to re-purpose an existing tavern into a retail sales and service space (including but not limited to restaurants) with 6-10 tenants, expand the building at the southeast corner, add a partial second floor, and add ground level and second floor patios connected via an external stairway, which requires an Adjustment to reduce the minimum 10-foot building setback to 6 feet (for commercial lots abutting residential lots) along the south lot line, and to waive the L3 landscaping buffer.

33.130.215 Setbacks

The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial/mixed use zones. The setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial/mixed use development that will maintain light, air, and the potential for privacy for adjacent residential zones.

The residential building adjacent to the project to the south (Trolleycar Lofts) includes a solid brick wall at its north façade. The northern facade of Trolleycar Lofts is located zero feet from the shared lot line with the subject site. While there are no doors or windows along its northern edge, the 6 units within have partial roof patios. The second level patio of the proposed commercial development includes a smaller patio that is closest to the residential zone, which has a finished surface elevation about 10 feet beneath the top of Trolleycar Loft's parapet, and a larger second level patio which is set back 24 feet from the residential property line and has a finished surface elevation that is 8 feet lower than the top of the parapet (see Exhibit A.2, page 4). Because the second level patios are significantly lower than the Trolleycar Lofts parapet, privacy to the residents of Trolleycar Lofts will be promoted.

Unfortunately, staff accurately points out just how close the respective properties are but fails to properly consider the impacts and various details. Staff also seems to ignore the purpose of setbacks, especially for commercial properties which border residential ones. Staff points out our north wall is right on the property line (so there is no 10-foot setback on the residential side already). But then, wrongly approves cutting even the setback on the commercial side down to six feet. This is a 40% reduction in the setback required to buffer and transition from commercial to residential use but leaves only 30% of the 20 feet of combined setback that the city code would normally contemplate between commercial

and residential buildings! There is no evidence in the application, nor cited by city staff to support justifying the waiver of any of the standards the applicant seeks to “adjust.”

Trolleycar Lofts, a residential condominium building adjacent to/sharing the project’s southern property line adjoining the project’s current 10’x100’ alley, *However, its description is incomplete and incorrect.*

Trolleycar Lofts has six (6) penthouses adjacent to six (6) roof decks on its roof.

Five (5) of the six (6) penthouses have (1) bedroom and (1) full size bathroom. Range in size from 357 SF to 470 SF. Total 2134SF

Closest to Trolleycar Lofts North parapet wall and the project are:

Unit 2759 roof deck

Unit 2761 penthouse/roof deck

Unit 2777 penthouse/roof deck

Unit 2769’s penthouse’s north wall.

Unit 1704 penthouse/roof deck.

Trolleycar Lofts penthouse fronts/roofs are 6 feet to 8 feet *above* its North parapet. The Parapet is not a complete penthouse sound barrier given origins’ locations and distances from the parapet.

Unit 1704 penthouse/roof deck also adjacent to Trolleycar Lofts West parapet and NW28th’s East sidewalk. NW 28th East street side parking and East sidewalk next to Unit 1704’s two (2) first floor bedrooms’ West exterior walls.

Trolleycar Lofts also has thirty (30) venting skylights. Of these, eleven (11) venting skylights are located on its five (5) penthouses and four (4) slope deck roof areas closest to the building’s North parapet.

Three (3) lofts have multi-split systems which will reduce venting skylight use. Nonetheless, owners will also continue to use first floor living spaces’ and penthouses’ exterior windows to maintain interior ventilation.

Project’s sound transmission to Trolleycar Lofts:

(1) will likely not be fully attenuated by its origins’ elevations and distances, and the applicant has not provided any evidence about sound impacts or the efficacy of any buffering, screening or other mitigation measures.

(2) is important to Trolleycar Lofts livability and greatly and adversely impacts the character of our neighborhood, which is at least equally, if not more residential in character than commercial. See zoning map attached.

It is not enough for staff in its decision to merely suggest the applicant engage an acoustical consultant. This is backwards and deprives the city and the community the ability to consider, quantify and tailor restrictions and mitigation measures to address the actual projected impacts from this project. The city should require a sound/noise/acoustical engineering study as part of the applicant's prerequisite to approval.

The study should ensure that Trolleycar Lofts penthouses and first floor living areas sound levels are at a constant 55dBA (or lower as the City Code may require) and in compliance with Title 18 Noise Control Code for both commercial and residential zones as both will be triggered and impacted.

As a follow up requirement in any conditions of approval, if the applicant can meet the threshold requirements, a second sound impacts verification study should be required within (1) year after project completed. Each to confirm residential sound transmission compliance at 55dBA at Trolleycar Lofts, (or lower, especially for impacted residential zones).

Further, Applicant should be required in the conditions of approval to review and modify as/if required, project's operating hours in its other business areas beyond the South outdoor courtyard, lower rooftop deck, and back rooftop deck and enforce a 10PM closure to ensure compliance for other adjacent residences.

Conditions should also restricted property owner and/or tenant from utilizing amplified live and recorded music outside the building. Again, there are residences mere feet from these proposed outdoor areas.

ZONING CODE SECTION 33.266.310: Loading Space Adjustment:
(Per Notice of Decision attached):

A second Adjustment is requested to reduce the residential-abutting setbacks for a loading space from 5 feet (landscaped to the L4 standard) to 0 feet, to waive the perimeter landscape requirement, and to allow the northernmost 4 feet of the loading space to be located between the building and the street. The relevant purpose statements and associated findings are found below:

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

Criteria A has Not been met.

Granting the Adjustment will NOT equally or better meet the purpose of the regulation to be modified. The purpose of the setbacks is stated by staff, then ignored. The purpose for setbacks for proper vegetative and other screening is to provide a buffer to minimize conflicts between neighboring uses and to minimize impacts of commercial on residential use. The purpose is to protect the residential character of the adjacent use and maximize privacy while minimizing

noise, odor, light pollution, etc. How can the city or this applicant say it meets the 33.805.040 (A) standard? It certainly has not and cannot, particularly when there is a failure of evidence measuring, credibly projecting, or properly mitigating any noise or other impacts. Much less is there any demonstration that, as proposed, the project will equally or better meet the purpose of setbacks and other buffering requirements.

33.266.310 Loading Standards

Code section, 33.266.130 omitted in the attached Decision. Cites the purpose of the requested adjustment.

33.266.130 Development Standards for All Other Development (Parking, Loading, And Transportation And Parking Demand Management)

A. Purpose. The development standards promote vehicle areas that as safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones.

Loading zone at 10'x18' is too small to allow garbage/recycling trucks to load. Only pickups and vans can safely unload/load in the zone. A front-loading garbage truck is 8 ½ feet wide. A rear loading garbage truck is 8 feet wide. A side loading recycling truck is also 8' wide. All three truck types will have to be loaded on NW 28th Avenue. As well, beverage delivery trucks the same size as garbage/recycling trucks will also have to unload/load on NW 28th.

An additional parking space on NW 28th has been added adjacent to the loading zone. Will limit garbage/recycling and beverage truck loading efficiency and safety.

As well, pedestrian safety on the sidewalk adjoining the alley could be compromised by loading zone's proximity to the sidewalk.

Past use of alley has been limited/infrequent. A small number of garbage and recycling bins were moved from the alley to NW 28th. Project will significantly change that volume.

Trolley-car Lofts residents will have a more frequent garage driveway and sidewalk safety issue with the right or south side of the new loading zone as will other drivers and pedestrians. Especially Trolley-car Lofts residents when leaving the condominium's garage and turning right off its driveway onto NW 28th.

The approval criteria is not met for this item, either.

ZONING CODE SECTION 33.805.040: Adjustment approval criteria

C. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone;

Eliminating Landscaping, reduced building setbacks, and shorter loading zone in alley allow larger outdoor courtyards.

Larger outdoor courtyards can accommodate large gatherings. Large gatherings could affect sound transmission to Trolley-car Lofts living spaces. Their likelihood should be included in project's sound transmission study requested by Trolley-car Lofts, as discussed more fully above.

Project's large gatherings could also affect sound transmission to two residences on east side of NW 28th as well as two residences at the NW Savier/NW 28th intersection.

Again, none of this provides equal or better compliance with the purposes of regulations applicant is wanting to waive, but all of this also makes the project inconsistent with the overall purpose of the zone, which purpose would surely include respecting neighboring uses and minimizing conflicts and incompatibility, even in mixed uses.

The approval criteria is not met for this item, either.

PLANNING CODE SECTION 33.420.010: Design Overlay Zone

(Per Notice of Decision attached):

The site is in the Design overlay zone, the purpose for which is in Zoning Code Section 33.420.010:

The Design overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city's evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- *Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;*
- *Contribute to a public realm that encourages social interaction and fosters inclusivity in people's daily experience; and*
- *Promotes quality and long-term resilience in the face of changing demographics, climate and economy.*

Unfortunately, waiving so many of the requirements designed to buffer and minimize impacts on us as neighbors is having and will have the opposite effect. *The project undermines context by not enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change; It does not contribute to a public realm that encourages social interaction and fosters inclusivity in people's daily experience. It makes us only shun this intrusive, incompatible use. Finally. The project as proposed, utterly fails to promote quality and long-term resilience in the face of changing demographics, climate and economy.*

Whether or not project can achieve the Design Overlay Zone's three (3) goals is subjective and difficult. However, no full-time on-site project manager for a large diverse multi-tenant restaurant and retail property, will make that effort difficult/problematic. Project manager should be on-site for at least two (2) years after project completed.

Approval criterion 33.805.040 B is also not met:

B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the

proposal will be consistent with the classifications of the adjacent streets and the desired character of the area

This criterion is not met for any of the proposed adjustments, not for the elimination of landscaping, road frontage or side setbacks. Staff makes a technical argument that comments from the participants that the proposal significantly detracts from the “livability or appearance of the residential area” are inapplicable, because project site is not “in a residential zone.” First, there is a very good argument to be made that this project by being bordered and nearly surrounded by residential zoning and use is, for all intents and purposes in the context of this code section, “in” the surrounding residential zone. Surely commercial projects which directly border residential zones are not intended to be able to disregard and significantly detract from livability and appearance of their residential neighbors under this section. More importantly, staff’s analysis here overlooks the spirit of the criteria as a whole and then misapplies the letter of the criteria in the second half of the subsection. Even properties “in” commercial zones must demonstrate the proposal “will be consistent with the classifications of the adjacent streets and the desired character of the area.” That desired character for this “area” clearly includes the fact that this area surrounding the subject site includes many directly adjacent and nearby residentially zoned and residentially occupied properties. A noisy, chaotic food court with extensive outdoor dining and use, especially as proposed with landscaping, buffering and setbacks substantially curtailed, is not consistent with the desired character of this area, which area includes the residential neighborhood! But, again, since the applicant has not provided any data, evidence nor analysis regarding the real impacts of the project on the adjacent residential uses with respect to noise or otherwise, neither the applicant, nor city staff can engage in any meaningful discussion of whether this criterion is or can be met. What will the actual, demonstrated and quantified impacts to the desired character of the area be? The applicant has not given enough evidence or detail in its submissions for anyone to yet know. The project as proposed must be denied until and unless compliance is affirmatively demonstrated.

Again, and by way of supplemental analysis, approval criterion 33.805.040 C is also not met:

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is *still consistent with the overall purpose of the zone*; and

This criterion is not met for any of the proposed adjustments, not for the elimination of landscaping, road frontage or side setbacks. Clearly in this instance, the project applicant seeks more than one adjustment and this criterion applies. For all the reasons stated above, the cumulative effect of the adjustments results in a project that is inconsistent with the “overall purpose of the zone.” The overall purpose, even of the commercial zone, would include the purpose of reducing conflicts between uses, respecting adjacent residential uses, and even expressly providing additional buffering when a project is adjacent to residentially zoned properties. It would make no sense to turn around and eliminate or significantly curtail the setback, the very purpose of which is designed to do its part in meeting the overall purpose of the zone. Also, again, since the applicant has not provided any data, evidence nor analysis regarding the real impacts or cumulative effects of the

project on the adjacent residential uses with respect to noise or otherwise, neither the applicant, nor city staff can engage in any meaningful discussion of whether this criterion is or can be met. What will the actual, demonstrated and quantified impacts to the desired character of the area be? The applicant has not given enough evidence or detail in its submissions for anyone to yet know. The project as proposed must be denied until and unless compliance is affirmatively demonstrated.

Approval criterion 33.805.040 E is also not met:

E. *Any impacts* resulting from the adjustment are *mitigated to the extent practical*;

Again, this criterion is not met for any of the proposed adjustments. Unfortunately, both the applicant and staff gloss over this express and unequivocal requirement which must be satisfied before anyone gets a variance, waiver or “adjustment” of any code requirement. The successful applicant must show that that “any” impacts resulting from any of the adjustments sought in this application are mitigated and must do so to the extent practical. Again, since the applicant has not provided any data, evidence nor analysis regarding the real impacts of the project on the adjacent residential uses with respect to noise or otherwise, neither the applicant, nor city staff can engage in any meaningful discussion of whether this criterion is or can be met. What will the actual, demonstrated and quantified impacts to the desired character of the area be? What mitigation methods are possible, which mitigation efforts would be efficacious? Which ones would be practical? The applicant has not given enough evidence or detail in its submissions for anyone to yet know. Also, this criterion expressly and directly requires the applicant to consider mitigation alternatives, which would presumably include possible redesign of the project to orient the outdoor dining decks and patios in the other direction, as proposed by Mary Devries, appellant, neighboring property owner and architect. (See Ms. Devries submissions.) The applicant has been unaccountably resistant to such considerations, even though it would seem such mitigation analysis would be a necessary prerequisite for any adjustment. The project as proposed must be denied until and unless compliance is affirmatively demonstrated.

Attachment

Trolleycar Lofts Homeowners Association

Trolleycar Lofts Homeowners Association (TLHOA) a six (6) condominium since 1998 in NW Portland with ten (10) owners and residents.

Trolleycar Lofts (TL) a former 1914 industrial/warehouse masonry building re-developed into six (6) residential lofts in 1996-1998. Located in RM1-Residential Multi-Dwelling zone. Building 16000SF.

Nascent Collective LLC (Nascent) owned since late 2020, a 1914 single story frame/masonry commercial building at 2788 NW Thurman Street 97210. Located in CM2D (MU-N) zone.

Nascent and Trolleycar Lofts buildings built in 1913/1914 by Beno & Ballis, two real estate developers in Portland, OR.

Trolleycar Lofts building later sold by developers in 1920's. Multiple commercial, military, and warehouse uses until redevelopment in 1998/1998.

Nascent's single story building has an existing 10' x 100' paved alley separating Trolleycar Lofts building's North exterior masonry wall from Nascent's building's South exterior masonry walls.

Adjacent to last tenant's, Crackerjacks', outdoor bar/restaurant dining area adjacent to the alley. Area installed without Bureau Development Services approval.

Southern part of the alley next to an adjacent property has been enclosed by two (2) small storage sheds.