



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: July 16, 2012
To: Interested Persons
From: Chris Caruso, City Planner, Bureau of Development Services

NOTICE OF APPEAL HEARING
ON A PROPOSAL IN YOUR NEIGHBORHOOD

CASE FILE: LU 12-116432 DZM, The Payne Apartments
REVIEW BY: Design Commission
WHEN: Thursday August 16, 2012 at 1:30PM
WHERE: 1900 SW Fourth Ave Conference Room
2500A Portland, Oregon 97201

Within the past several weeks, we sent you the Bureau of Development Services Administrative Findings and Decision on this proposal. That decision of **approval** has now been appealed by:

Theodore J Buehler, 105 NE Beech St, Portland, OR 97212-2005

James Weter, Boise NA, 66 NE Failing St, Portland, OR 97212

A copy of the appeal is attached as well as an explanation of the hearings process. This is a notice to inform you of a public hearing on this proposal and invite you to testify at this hearing. At the hearing the Design Commission will consider the proposal for the development described below.

The following information will tell you important information about this proposal. It is a summary of the administrative decision which you previously received.

Applicant: Agustin Enriquez/GBD Architects
1120 NW Couch Street, #300/Portland, OR 97209

Owner: Payne Apartments LLC
851 SW 6th Ave #1500/Portland, OR 97204

Site Address: 3703-3709 N WILLIAMS AVE

Tax Account No.: R010505990
State ID No.: 1N1E22DC 12800
Quarter Section: 2630
Neighborhood: Boise, contact James Weter at 503-358-3571.
Business District: North-Northeast Business Assoc, Joice Taylor at 503-445-1321.
North Portland Business Assoc, Jim Schaller at 503-517-9915.
District Coalition: Northeast Coalition of Neighborhoods, Shoshana Cohen at 503-823-4575.
Plan District: None

Other Designations: Albina Community Plan Area
Zoning: EXd, Central Employment with design overlay
Case Type: DZ, Design Review
Procedure: Type II, an administrative decision with appeal to the Design Commission.

Proposal:

The applicant seeks design review approval for a new 4 and 5 story, 17,921 SF, mixed-use retail and apartment building with 19 units and 2 live/work units in the Albina Community Plan Area, built using Passive House construction techniques. Exterior materials include cedar siding, Cera-Clad brand cement panels, an exposed timber trellis on the roof deck, glazed translucent overhead garage doors, and fiberglass windows. There will be alley access to a workshop/storage building but no on-site vehicle parking. A bicycle corral and sidewalk extension, which is not part of this review, will be provided along N Beech.

Two Modifications are being requested:

1. 33.140.240 Pedestrian Connections – to allow the interior pedestrian connections to be reduced from 6 feet wide to 4 feet and 5 feet wide.
2. 33.140.242 Transit Street Main Entrances – to allow the main entries of the two N Williams-facing ground-floor units to be rotated 90 degrees from the street, not facing the main transit street.

Because the proposal is in a design overlay zone and the valuation is above the exemption trigger, design review is required.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The relevant criteria are:

- 33.825 Design Review
- 33.825.040 Modifications
- Community Design Guidelines

The proposal **met** the following Community Design Guidelines:

- P1. Plan Area Character.
- D7. Blending into the Neighborhood.
- E1. The Pedestrian Network.
- E2. Stopping Places.
- E3. The Sidewalk Level of Buildings.
- E4. Corners that Build Active Intersections.
- E5. Light, Wind, and Rain.
- D1. Outdoor Areas.
- D3. Landscape Features.
- D2. Main Entrances.
- D5. Crime Prevention.
- D8. Interest, Quality, and Composition.

The proposal **met** the following criteria:

- 33.825.040 Modifications That Will Better Meet Design Review Requirements

The following administrative decision was issued on June 26, 2012.

Administrative Decision:

Approval of design review for a new 4 and 5 story, 17,921 SF, mixed-use retail and apartment building with 19 units and 2 live/work units in the Albina Community Plan Area, built using Passive House construction techniques, and a workshop/storage building off of the alley, all with exterior materials of cedar siding, Cera-Clad brand cement panels, metal

canopies, an exposed upper roof deck timber trellis, glazed translucent overhead garage doors, and fiberglass windows; and

Approval of the following Modification requests:

1. 33.140.240 Pedestrian Connections – Allow the interior pedestrian connections to be reduced from 6 feet wide to 4 feet and 5 feet wide; and
2. 33.140.242 Transit Street Main Entrances – Allow the main entries of the two N Williams-facing ground-floor units to be rotated 90 degrees from the street, not facing the main transit street; and

Approved per the approved site plans Exhibits C-1 through C-33 signed and dated June 21, 2012, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.33. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-116432 DZM. No field changes allowed."

Review of the file: The complete Administrative Findings and Decision and all evidence on this case are now available for review at the Bureau of Development Services (BDS), 1900 SW Fourth Avenue, Suite 5000, Portland, OR 97201. Please call BDS at 503-823-7617 for an appointment to review the file. If the Administrative Findings and Decision are modified in any way, that report will be available 10 days prior to the hearing. Copies of information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some information over the phone.

We are seeking your comments on this proposal. To comment, you may write or testify at the hearing. Please refer to the file number when seeking information or submitting testimony. In your comments, you must address the approval criteria as stated in the administrative report and decision which you previously received.

Written comments must be received by the beginning of the hearing and should include the case file number. Thank you for any information you can provide regarding this case. **Note:** If you have already written, it is not necessary to write again; your correspondence will be given to the Design Commission.

Any new written comments must be given to or mailed to the Design Commission, **Chris Caruso, Planner**, 1900 SW Fourth Avenue, Suite 4500, Portland, OR 97201. You may FAX your comments to the Committee or Commission at 503-823-5630.

A description of the Design Commission hearings process is attached. The decision of the Design Commission is final; any further appeal is to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at the Public Utility Building, 550 Capitol Street NE, Salem, Oregon 97301 [Telephone: 503-373-1265] for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Design Commission an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

For more information, call Chris Caruso, Planner at 503-823-5747 or email Chris.Caruso@portlandoregon.gov.

Attachments:

1. Zoning Map
2. Approved Site Plan
3. Appeal
4. Type II Appeal Hearings Process

cc: Design Commission
Representative/owner/applicant and appellant, if different.
Neighboring property owners within 150 feet.
All persons who wrote letters in response to this application per Decision Exhibit List.
Neighborhood Association(s)

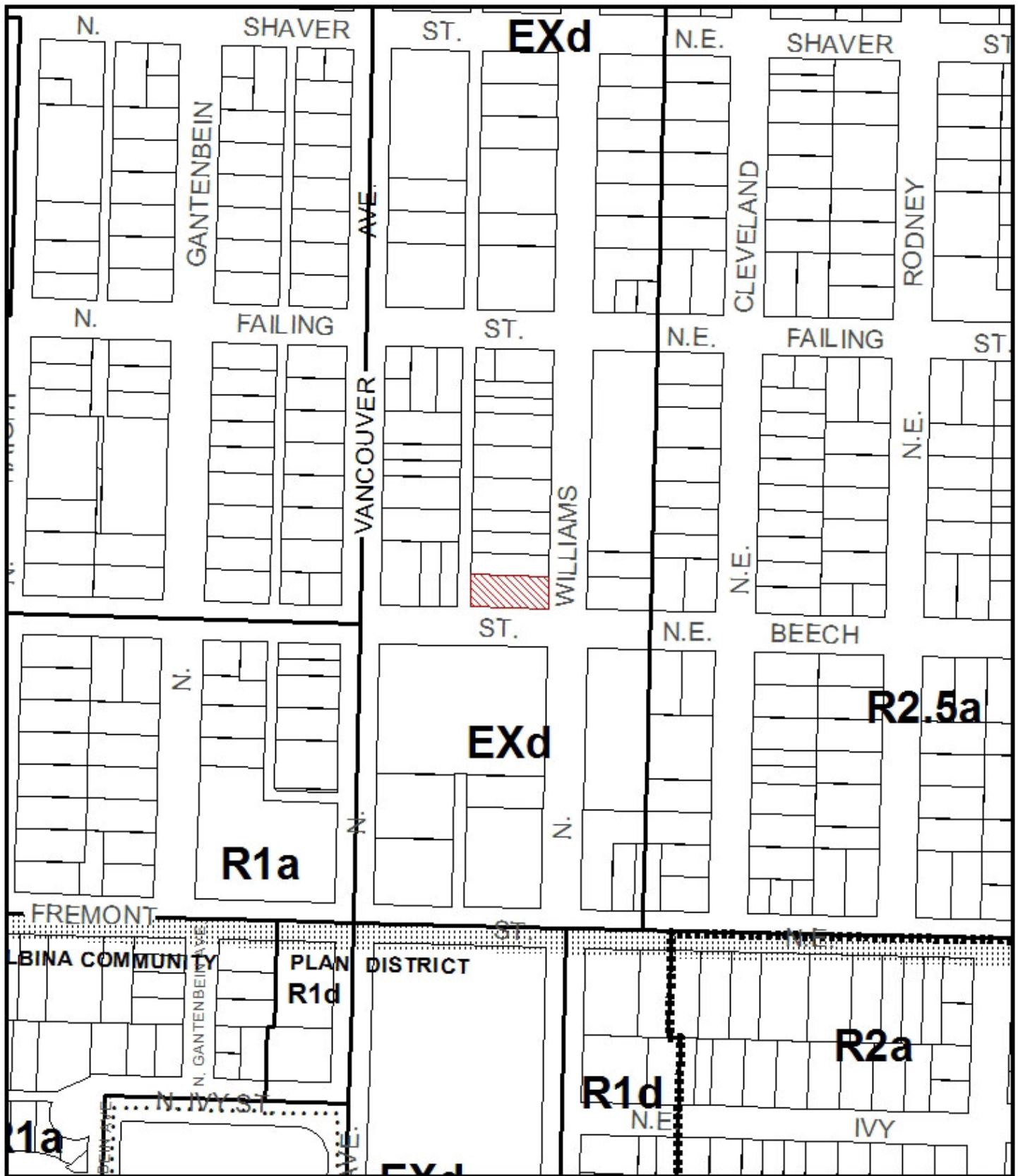
HEARING CANCELLATION

This public hearing will be cancelled if Portland Public Schools close due the inclement weather or other similar emergency. Check local television and radio reports for school closures. The hearing will be rescheduled for the earliest possible date. A renotification notice will not be sent. Contact the Bureau of Development Services at 503-823-7967, for immediate information regarding cancellations or rescheduling.

To attend the hearing, public transportation is available. Tri-Met buses stop near the BDS building on SW Fifth or Sixth Avenues at Hall or Harrison Streets. Call Tri-Met at 503-238-7433 (or www.trimet.org/schedule/allroute.htm) for routes and times. Hourly-rate public parking is available a half block south of the BDS building on Fourth Avenue.

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868)

CC
(PLSOP 1-2000)
Appeal letter 10.17.95



ZONING

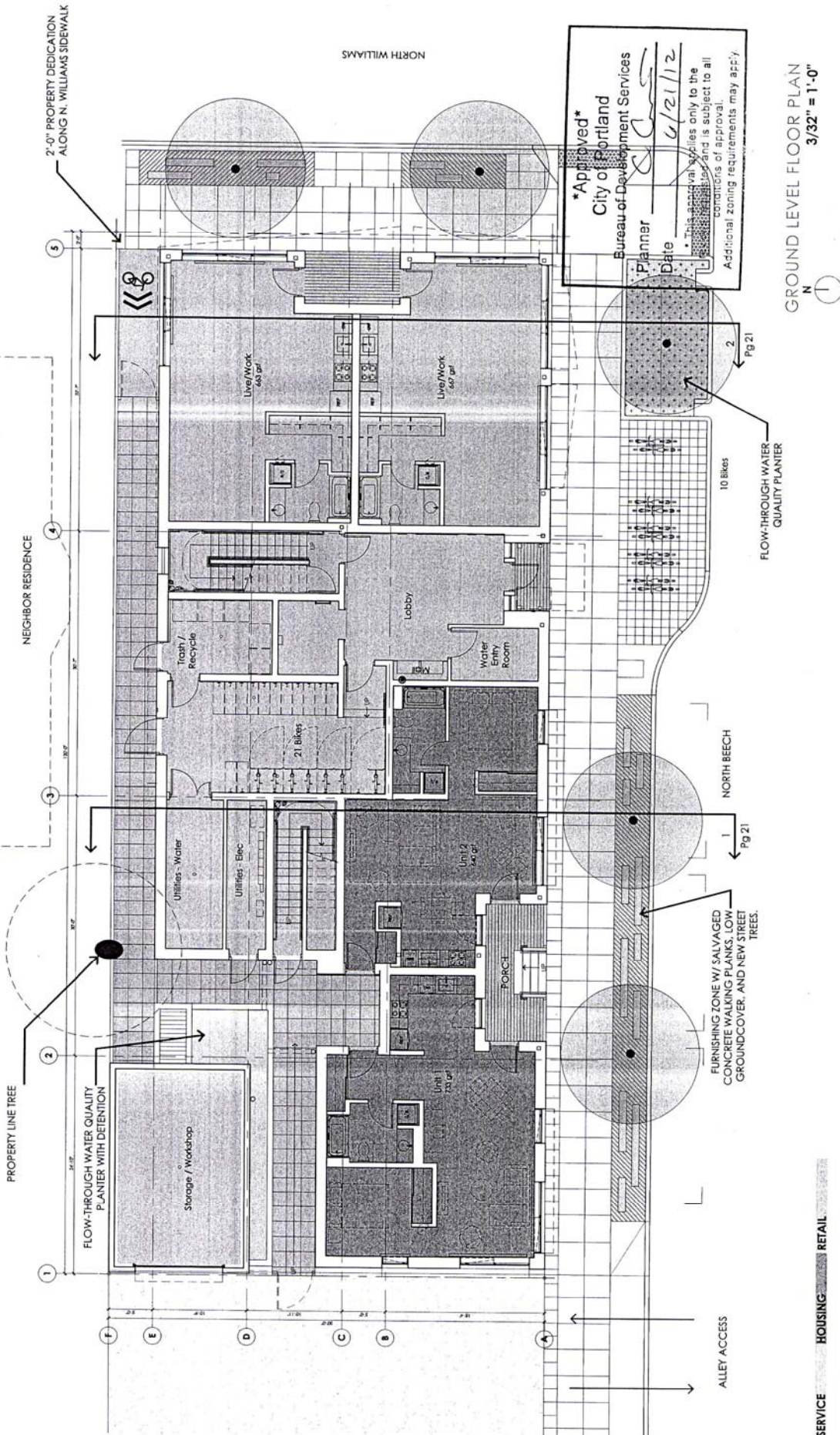
 Site



File No.	<u>LU 12-116432 DZM</u>
1/4 Section	<u>2630</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1N1E22DC 12800</u>
Exhibit	<u>B (Apr 26, 2012)</u>

ARCHITECTURAL DRAWINGS

SECTION 2



Approved
 City of Portland
 Bureau of Development Services
 Planner _____
 Date 6/21/12
 This approval applies only to the conditions of approval and is subject to all additional zoning requirements may apply.

GROUND LEVEL FLOOR PLAN
 3/32" = 1'-0"

DESIGN REVIEW APPLICATION 11

CU 12-116432 DZM EXH. C-A

N WILLIAMS AND N BEECH, PORTLAND, OREGON

SERVICE HOUSING RETAIL

PAYNE APARTMENTS, LLC



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Type II and IIX Decision Appeal Form

LU Number: 12-116432 DZM

FOR INTAKE, STAFF USE ONLY

Date/Time Received <u>7/10/12 2:50 pm</u>	<input checked="" type="checkbox"/> Action Attached
Received By <u>5th floor reception</u>	Fee Amount <u>\$ 250 -</u>
Appeal Deadline Date _____	<input checked="" type="checkbox"/> [N] Fee Waived
<input checked="" type="checkbox"/> Entered in Appeal Log <u>7/11/12</u>	Bill # <u>3366299</u>
<input type="checkbox"/> Notice to Auditor _____	<input type="checkbox"/> [Y] [N] Unincorporated MC
<input type="checkbox"/> Notice to Dev. Review _____	Neighborhood <u>BOISE NA</u>

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly. The appeal must be filed by the deadline listed in the Decision

Development Site Address or Location 3703 - 3709 N. WILLIAMS AVE (X BEECH)

Date JULY 10 2012 Land Use Number LU 12-116432 DZM (PAYNE)

Appellant's Name BOISE NEIGHBORHOOD ASSOCIATION

Street Address SAME AS ABOVE

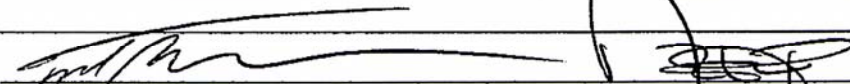
City PORTLAND State OR Zip Code 97227

Day Phone (503) 890-0510 FAX email ted101@gmail.com

Appellant's Interest in the case (applicant, neighbor, etc.) NEIGHBORHOOD ASSOCIATION

Appellant's Statement Please describe how the proposal meets or does not meet approval criteria, or how the City erred procedurally. The statement must address specific approval criteria or procedures and include the appropriate code citation(s). The specific Zoning Code citations(s) must be included in your statement.

PLEASE SEE ATTACHED LETTER

Appellant's Signature 

To file this appeal, take the following to the Development Services Center

- This completed appeal form
- An appeal fee as follows:
 - \$250, payable to City of Portland (no appeal fee is charged when appeal is filed by ONI recognized organizations for property within organization's boundaries); or
 - Fee waiver for low income individual approved (attach letter from Director) (not available for MC cases); or
 - Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached.

A public hearing will be set before a review body. The land use review applicant and everyone who received the notice of the decision will receive notice of the appeal hearing date.

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

Information about the appeal hearing procedure and fee waivers is on the back of this form.



The Boise Neighborhood Association is appealing the decision on The Payne Apartments, located at 3703-3709 N Williams Avenue, Land Use Case Number 12-11-6432, based on:

- 1) **The Transit Street Main Entrance modification requested is not warranted.**
- 2) **The project fails to meet the Community Design Guidelines.**

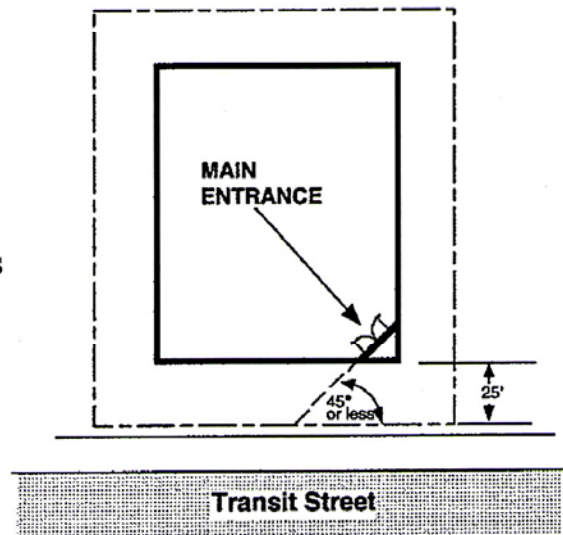
1) Transit Street Main Entrances

We object to approval of the the request to move Transit Street Main Entrances away from N Williams Ave.

N Williams Ave. is the heart of the Boise Neighborhood Business District, and we hope to see it continue to develop as a vibrant commercial corridor. While Payne Apartments calls the ground floor apartments "live-work studios," we are concerned that these not be suitable for commercial uses if the doors are not visible from the transit street.

We request that this exemption approval be rescinded and that the building be redesigned with doors that will support Williams as a neighborhood commercial center, such as a corner entrance as suggested under "33.140.242 Transit Street Main Entrances."

Figure 140-6
Transit Street Main Entrance



2) Community Design Guidelines

We are basing our appeal on these statements from the **How Design Guidelines are Used** statement on page 7 of the document.

Design guidelines are mandatory approval criteria that must be met as part of design review...

While the design guidelines are qualitative, they are still mandatory approval criteria and must be met.

Unlike objective design standards, there are many acceptable ways to meet each guideline. Each guideline is followed by a list of examples of some ways to meet the guideline.

...proposals that do not meet all of the guidelines will not be approved.

Our appeal of this project is that there are several Community Design Guideline elements where this project fails to meet even a single criteria. While each component has a list of several mitigation strategies that can be employed, the Payne Apartment developer is proposing a structure that is 100% out of compliance.

We as a neighborhood support the Community Design Guidelines, we want to have our neighborhood and city built out in the way that these guidelines dictate. Over the past six months we have made several requests to the Payne Apartment developers and to the city's Bureau of Development Services to ensure that this development proposal would meet the guidelines, we are disappointed to see that our requests have been denied and the proposal fails to conform to the guidelines.

D7: Blending in the Neighborhood.

“Reduce the impact of new development on established neighborhoods by incorporating elements of nearby, quality buildings such as building details, massing, proportions, and materials.”

Section D7 lists eight different design techniques that may be employed to conform to this guideline. Payne Apartments fails to employ even a single technique, and as a result has an unacceptable negative impact on nearby buildings.

A: Incorporating elements and details found in nearby structures.

Payne Apartments is composed of large, blank facades with no elements or details found in nearby structures. N Williams has a fabulous array of architectural details to use as inspiration or work off of, but the featureless windows, doors and cornices are (thankfully) not part of this array.

B: Divide large wall areas into distinct smaller planes.

The Beech and Williams facades are large, unbroken wall plane areas.

C: ...constructing new commercial buildings that serve the neighborhood with strong pedestrian connections.

There is no ground floor retail to support pedestrian connections. Furthermore, the doors facing N Williams Ave. are turned away from the street. This creates a "dead" corner, as can be observed nearby at NE Shaver and MLK, where the Shaver Green building with ground floor apartments has squelched the possibility of a vibrant pedestrian street.

D: Creating new buildings that follow the topography of the site

Not applicable.

E: Encouraging infill to complement the scale and proportions of surrounding buildings.

The proposed building sits on a block with 19 single family homes (or duplexes). All of these are modest sized buildings, all have yards with landscaping. All have pointy gables, multi-planned facades, cornices, bay windows, and other human scaled elements.

Payne Apartments is proposing a 5 story building built to the lot lines. This is a completely different scale than the other properties on the block, and will result in a dramatic loss of "quality of life" for the owners and occupants of nearby homes.

F: Using plant materials to soften the impact of new development.

The building is built out to the lot lines, which doesn't allow for significant trees or landscaping.

G: Incorporating architectural details found in nearby structures

The proposed building does not have the scale, shapes, forms or details found in nearby older structures. Williams Avenue has a vast array of quaint and distinct architectural styles. We specifically asked Payne Apartments in several letters and meetings to *not* build a flat, featureless building on our

street. Their response was that they didn't want to "mimic" surrounding architecture in their building.

H: Designing detached structures that reflect the design of the primary structure.

The detached garage structure does reflect the design of the primary structure, but since the primary structure is out of conformity with guideline "G," this does not support the overall intent of the guidelines.

Summary -- Payne Apartments fails to meet even one of the Community Design Guidelines criteria for "Blending into the Neighborhood." As a result, it will have unmitigated adverse impacts on our neighborhood and our homes. While *There are many acceptable ways to meet each guideline*, Payne Apartments did not do this.

P1: Plan Area Character

"Enhance the sense of place and identity by incorporating site and building design features that respond to the area's desired characteristics and traditions."

A: Respecting the pattern of small corner churches...

Not applicable.

B: Respecting the few remaining buildings that have association with Albina's African-American community.

Not applicable.

C: Taking advantage of views to downtown, rivers, etc.

While the proposed building does take advantage of views, it also blocks existing views of current buildings, which we does not meet the spirit of this point.

D: Protecting Albina's heritage as to home to early industrial workers.

The building dwarfs the adjacent workers' cottages, rendering them significantly less attractive as single family homes, and thus putting them at risk of demolition for further redevelopment.

E: Protecting and planting trees in the public right-of-way.

This is a "freebie" as it is required by city code. So while this option is technically filled, it fails to meet the spirit of conforming to the existing characteristics of the Albina Neighborhood as is required in the CDGs.

F: Respecting the influence streetcars had on the characteristics of the early development of Albina.

Payne Apartments has designed their building to specifically avoid meeting this option, as the main entrance is on Beech St., rather than Williams (our historical streetcar street). Furthermore, they requested a design exemption to face doors on the Williams Ave ground floor units *away from the street!*

G: Using architectural details that are found in surrounding buildings.

Both Beech and Williams have an array of attractive architectural elements, ranging from Queen Anne and Craftsman homes across Williams, workers vernacular cottages on neighboring lots to the north and west, a foursquare house now used as a business just to the south, and an attractive retrofit of a warehouse building as a vibrant commercial strip kitty corner up Williams.

H: Using Albina's historic apartment buildings as prototypes for new multi-dwelling buildings.

We're lucky to have an small inventory of historic apartments in Albina, and we'd like to see this theme strengthened by adherence to this guideline. In particular, just two doors down at 29 NE Beech there is a very attractive craftsman fourplex that is a strong contributor to neighborhood character. And currently under construction at 3855 N Mississippi is "The Miss," a four story apartment that will be a positive contribution to our inventory because it responds to facade elements and window layouts found in our historic buildings. Payne Apartments neglects to use the many fine examples of historic or new historic-inspired apartment buildings in our neighborhood, and instead delivers a plain, faceless facade that will never blend into our community.

Summary:

Albina neighborhoods have many attributes that contribute to the livability and commercial vibrancy of our neighborhood business districts. All of these contribute to our neighborhood's attractive appearance, commercial vibrancy, and human scale. The "Plan Area Character" requirement of the CDGs was created to protect and enhance these characteristics. Payne Apartments not only fails to meet any of these guidelines, but appears to have been designed specifically to flaunt them and degrade these desirable features of our neighborhood.

Conclusion

We favor development in our community, especially on vacant lots like this one. We've welcomed Payne Apartments representatives into our neighborhood meetings, and provided them with clear feedback over a *six month period*. Specifically, we've asked for:

- * Commercial spaces on the ground floor, and an emphasis on employment in the building
- * Height limited to three stories, or four stories with a setback on the upper level, and
- * Architectural and massing features to connect this building to the neighborhood.

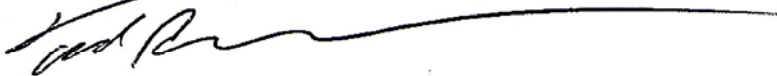
Payne Apartments has listened to us, but has politely refused to deliver on any of these larger points.

We do not want to be seen as anti-development, we do not want to discourage creative and innovative design features such as the green building construction techniques, but we are not satisfied with the Payne Apartments limited attempts to respond to our issues.

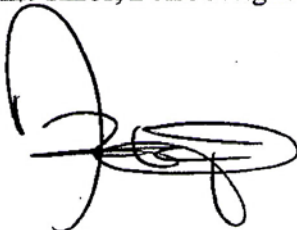
Our issues are well founded not only in the Community Design Guidelines, but also in many other Portland civic plans and goals for employment and enhancement of historic neighborhoods.

We ask the Portland Design Commission to reject Payne Apartments in its current form based on failure to comply with the mandatory Community Design Guidelines, but to invite them to return with a modified proposal that meets the guidelines and will thereby enhance both the visual characteristics, vibrancy, and economic sustainability of our neighborhood.

Thank you,
Ted Buehler, Boise Neighborhood Co-Chair



Frewine Kiros, Boise Neighborhood Co-Chair



DESIGN COMMISSION HEARINGS PROCESS ON APPEALS

1. SUBMISSION OF TESTIMONY

- a. Testimony regarding the appeal may be submitted in writing to the Design Commission, c/o the Planner named in this report, Bureau of Development Services, 1900 SW Fourth Avenue, Room 5000, Portland, OR 97201. Written comments must be received by the time of the hearing and should include the case number.
- b. Testimony may be submitted orally at the time and place shown on the hearing notice.

2. HEARINGS PROCESS

- a. The order of appearance is generally as follows:
 - Planner Presentation 10 minutes
 - Appellant 10 minutes
 - Supporters of Appellant 2-5 minutes each (determined by commission chair)
 - Principal Opponent 15 minutes
 - Other Opponents 2-5 minutes each (determined by commission chair)
 - Appellant Rebuttal 5 minutes
 - Close Public Testimony
 - Commissioner Comments or Deliberation

Prior to the close of Public Testimony, if any party requests an opportunity to submit additional evidence, the record will be held open.

- b. The appellant may be the applicant or someone else, and opposes the administrative decision. In order to prevail, the appellant must succeed in one of the following:
 1. If you are the appellant and not the applicant, you must persuade the Commission to find that the applicant has not carried the burden of proof with regard to one or more of the approval criteria. You may also wish to explain to the Commission how or why the applicant's facts are incorrect.
 2. If you are the appellant and also the applicant, you must persuade the Commission how you have met all of the applicable criteria and how the facts, which you relied upon are correct. If you have appealed the decision because of a condition of approval, you must demonstrate how the applicable criteria can be met without the condition or that there is no legal relationship between the approval criteria and the condition.
 3. If you are the appellant (and either the applicant or an opponent of the decision), you may want to show the approval criteria are being incorrectly interpreted, the wrong approval criteria are being applied, or additional approval criteria should be applied. Any errors in the proceeding should also be identified, as well as an error in any decision by staff.
- c. Failure to address an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

3. ADDITIONAL INFORMATION

- a. The Appeal Report to the Design Commission, including the Administrative Findings and Decision, will be available at least 10 days prior to the hearing. Call the Bureau of Development Services at 823-7300 if you want a copy mailed to you. Be sure to indicate the case file number.
- b. If any additional information is provided in support of the application, after the notice of the hearing is given, any party is entitled to request a continuance of the hearing to allow time for review of that material.
- c. If a participant requests it, before conclusion of the initial evidentiary hearing by the Design Commission, the record will remain open for at least seven days after the hearing to allow for the submittal of additional written evidence. If new evidence is submitted in that seven-day period, there will be an additional seven days provided to the applicant for written rebuttal to the evidence, if the applicant requires that time. The Commission will then meet again to make their decision.
- d. The decision of the Commission will be mailed to the applicant and other participants no later than 17 days after the close of the record.