

CITY COUNCIL FINDINGS AND DECISION

July 25, 2012

**LU 12-106944 HDZM
PC # 11-157631**

GENERAL INFORMATION

Applicant: Johnson Street Investors II LLC
500 E Broadway #110
Vancouver, WA 98660

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Mill Creek Residential Trust LLC
220 NW 2nd Avenue Suite 900
Portland, OR 97209

Representative: Kurt Schultz 503-445-7312
SERA Architects
338 NW 5th Avenue
Portland, OR 97209

Site Address: Intersection NW 19th Avenue and NW Johnson Street

Legal Description: BLOCK 177 LOT 2&3, COUCHS ADD; BLOCK 271 LOT 1&2 LOT 6&7
E 6' OF LOT 10, COUCHS ADD

Plan District: Northwest

Other Designations: One non-contributing property and one vacant property in the Alphabet
Historic District, which was listed in the National Register of Historic
Places on August 24, 2000

Zoning: RH, Residential High Density, with Historic Resource Protection Overlay
(Building A); and EXd, Central Employment, with Historic Resource
Protection and Design Overlays (Building B).

Case Type: HDZM, Historic Design Review with Modifications requested

Procedure: Type III, with a public hearing before the Historic Landmarks
Commission and opportunity to appeal the Commission's decision to the
City Council. On appeal, the Council is the City's final decision maker on
this application.

Proposal: The applicant is seeking Historic Design Review approval for a proposal to develop two new market rate apartment buildings as a single project, at the intersection of NW 19th Avenue and NW Johnson Street. Building A, with 5 floors, 86 dwelling units, and 66 below-grade parking stalls, is proposed on the southwesterly corner following demolition of a non-contributing building; and Building B with 5 floors and 48 dwelling units, is proposed on the northeasterly corner, which is currently occupied by a parking lot. Historic Design Review is required because the proposal is for non-exempt new construction in a historic district.

Modifications: The applicant is seeking modification of the following standards:

- 33.266.310, for a non-standard loading stall height of 8'-2" in basement of Building A, and for rear-motion exiting from loading in Building B;
- 33.266.130, for a non-standard parking stall depths of some spaces in basement of Building A; and
- 33.140.215 C. 1. e. 5, for a facade less than 100% within the maximum setback.

Approval Criteria:

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

- *Community Design Guidelines*
- *Historic Alphabet District Community Design Guidelines Addendum*
- 33.846.070 Modifications Considered in Historic Design Review

ANALYSIS

Site and Vicinity: The two subject properties, Site A occupying the southwesterly corner of the intersection, and Site B occupying the northeasterly corner, are developed respectively with a non-contributing building and a parking lot. Consequently, redevelopment of the sites will not directly affect historic fabric.

The Alphet Historic District (the "District") is an area of Portland significant for its concentration of intact late 19th and early 20th Century, mostly middle class, housing stock and small-scale commercial buildings. Of special note are the many mid-sized apartment and institutional buildings. Many of these are in the various Period Revival styles, e.g. Tudor, Spanish Colonial, Byzantine, Jacobean, etc, and this is especially the case in the immediate vicinity of the proposed new development. Also specific to this location are three, individually designated, historic landmark properties that represent the earliest phase of development within the district, when NW 19th Avenue was the favored address for a number of Portland's wealthiest families. Testimony was offered that the street trees in the Alphet Historic District are a significant historic element of the District and part of the District's "historic fabric." While we agree that street trees add character to neighborhoods throughout the City, we note that attributes that contribute to the historic value of the District are described in the nomination for National Register of Historic Places Registration Form, and the over 500 page nomination document mentions trees three times, does not specifically mention street trees at all, and trees are not mentioned in the description of the two lots that comprise the development site. Moreover, the design guidelines that are specific to the Historic Alphet District (the *Historic Alphet District Community Design Guidelines Addendum*) do not discuss street trees at all, which contrasts with other historic districts that do address street trees, such as the Irvington Conservation District, Piedmont Conservation District, Outer Southeast Community Plan Area, North Interstate Corridor Plan Area and others. Therefore, the Council concludes the current documentation and regulations for the District do not specifically identify street trees as a distinctive characteristic or part of the historic character of the District to be protected.

The area is characterized by a grid of narrower, east-west residential streets, named alphabetically after prominent Portlanders of the day, which are crossed by generally more robust north-south avenues. Two of these, NW 21st Avenue and NW 23rd Avenue are low-scale business corridors featuring a mix of purpose-built commercial structures and converted houses. NW 19th Avenue is similar in physical character except that institutional uses are more common than commercial ones. It forms the southbound half of a busy traffic couplet with NW

18th as the northbound partner. West of NW 19th the length of the east-west block faces more than doubles, from 200' to approximately 460'.

Zoning: The multi-dwelling zones, including RH, are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The RH zone is a high density multi-dwelling zone. Density is not regulated by a maximum number of units per acre. Rather, the maximum size of buildings and intensity of use is regulated by floor area ratio (FAR) limits and other site development standards. Generally the density will range from 80 to 125 units per acre. Allowed housing is characterized by medium to high height and a relatively high percentage of building coverage. The major types of new housing development will be low, medium, and high-rise apartments and condominiums. Generally, RH zones will be well served by transit facilities or be near areas with supportive commercial services.

The Central Employment (EX) zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area. The development standards are intended to allow new development which is similar in character to existing development.

The Historic Resource Protection chapter protects certain historic resources in the region and preserves significant parts of the region's heritage. The regulations implement Portland's Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the region. The regulations foster pride among the region's citizens in their city and its heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

The Design Overlay Zone applies only to the EX zoned portion of the site (Building B). The Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

Land Use History: City records indicate one relevant prior land use review:

- LU 08-147214 HDZ, seeking approval of a proposed six story building on Site B. The case was withdrawn by the applicant.

Procedural History: The applicant filed the application for historic design review on January 24, 2012 and the application was deemed complete on March 5, 2012. Following public notice as required by the zoning code, the Historic Landmarks Commission held a public hearing on April 23, and May 14, 2012 and issued a decision approving the application on May 21, 2012. On June 7, 2012, the Northwest District Association appealed the Commission's decision to the City Council. Notice of the Council's hearing was mailed on June 15, 2012. The Council held a public hearing on the Association's appeal on July 18, 2012 and, at the conclusion of the hearing, voted tentatively to deny the Association's appeal, uphold the Commission's decision and continue the matter for the adoption of a final decision. On July 25, 2012, the Council voted to adopt findings and a final decision, thereby denying the Association's appeal and upholding the Commission's decision.

ZONING CODE APPROVAL CRITERIA

(1) Scope of Applicability of Title 33 of Portland Zoning Code

Four large elm trees are located in the public right-of-way adjacent to 1920 NW Johnson Street, which is the RX zoned portion of the site (Building A). The basis for the appeal to City Council was:

“The Historic Landmarks Commission (the "HLC"), acting in consideration of the advice of City staff, erroneously construed PCC 33.445.230, and possibly other code sections, in such a way as to exclude from consideration certain street trees at the site (four mature elms). The HLC also failed to consider the contribution made by street trees to the fabric and context of the district as characterized in the Community Design guidelines and the Historic Alphabet District Community Design Guidelines Addendum in making their findings and arriving at their final decision. PCC 33.856.060, 33.420.010 and 33.420.045A.

City Council finds that City staff's advice was correct, is consistent with how the City has historically excluded street trees from Historic Design Review and is not a basis for reversing the Historic Landmarks Commission's decision. City Council's interpretation that the right-of-way, including street trees, are not subject to the Zoning Code or regulated through Historic Design Review is based upon several sections of the Portland City Code, which are explained below.

PCC 33.10.030 When the Zoning Code Applies.

B. Clarification for rights-of-way. Land within private rights-of-way, including rail rights-of-way and utility rights-of-way, is regulated by Title 33. Land within public rights-of-way is regulated by Title 17, Public Improvements, and not by Title 33, except in the following situations where both Titles apply:

1. Rights-of-way in the greenway, environmental, and scenic resource overlay zones, including the creation of new rights-of-way and the expansion or vacation of existing rights-of-way;
2. The act of creating or dedicating public rights-of-way through a land division;
3. Development within design districts when specified in Chapter 33.420, Design Overlay Zone;
4. Structures that project from private property over rights-of way, such as oriel windows; and
5. Proposals for park-and-ride facilities for mass transit.

The part of the right-of-way in question is not regulated by the Zoning Code because none of the listed exceptions apply, specifically:

- The area in question is not in the Greenway, Environmental, or Scenic Resource Overlay zones, and no right-of-way is being created, expanded, or vacated;
- no land division is being created;
- the portion of the site where the trees are located is not in the Design Overlay zone;
- no projections into the right of way are under consideration; and
- no park-and-ride facility for mass transit is proposed.

The street trees that are the basis of the appeal are adjacent to the RH zoned portion of the site. The EXd zoned portion of the site does not have street trees in the adjacent right of way. The appellants argued that because PCC 33.420.045(A) allows for the "substitution" of Historic Design Review for design review that would otherwise be required by PCC Chapter 420, the

right of way is subject to Historic Design Review. City Council disagrees. PCC 33.420.045 specifies when items are exempt from design review, including when a site is in a Historic District, such as the EXd zoned portion of the site. If a site is exempt from design review, then the development of that site is not "development within design districts when specified in Chapter 33.420, Design Overlay Zone" that may trigger compliance with Title 33 pursuant to PCC 33.10.030.B.3. Moreover, the street trees that are the basis for the appeal and the RH zoned portion of the site adjacent to the right of way in which the street trees are located are not within a design district that is specified in Chapter 33.420. Historic Design Review, which is required for the site, is regulated by Chapter 33.425. Therefore, development of the RH zoned portion of the site is not "development within design districts when specified in Chapter 33.420, Design Overlay Zone" that may trigger compliance with Title 33 pursuant to PCC 33.10.030.B.3.

PCC 33.445.320 Development and Alternations in a Historic District

Building a new structure or altering an existing structure in a Historic District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

A. When Historic Design Review is required in a Historic District. Unless exempted by Section 33.445.320.B, below, the following proposals in a Historic District are subject to Historic Design Review:

1. Exterior alteration of a primary structure;
2. Building a new structure;
3. Exterior signs;
4. Nonstandard improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that have not received prior approval of the City Engineer;
5. Proposals using one of the provisions of the a, Alternative Design Density Overlay Zone, specified in Sections 33.405.040 through .080; and
6. Proposals in the Albina Community plan district using the provisions of Section 33.505.220, Parking Requirement Reduction, or Section 33.505.230, Attached Residential Infill on Vacant Lots in R5-Zoned Areas.

B. Exempt from historic design review.

1. Construction of a detached accessory structure with 300 square feet or less of floor area when the accessory structure is at least 40 feet from a front property line;
2. Changes that do not require a building, site, zoning, or sign permit from the City, and that will not alter the exterior material or color of a resource having exterior materials or color specifically listed in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the resource's historic value;
3. Changes in landscaping unless the landscaping is identified in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the historic value of a Historic Landmark;
4. Normal repair and maintenance other than change of facade color where exterior material or color is specifically listed in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the resource's historic value;
5. Parking lot landscaping that meets the standards of this Title and does not include a wall or a fence;
6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the following are met:

- a. The area where the equipment will be installed must have a pitch of 1/12 or less;
 - b. No more than 8 mechanical units are allowed, including both proposed and existing units;
 - c. The proposed mechanical equipment must be set back at least 4 feet from the edge of the roof for every 1 foot of height of the equipment above the roof surface or top of parapet; and
 - d. The proposed equipment must have a matte finish or be painted to match the roof.
7. Public Art as defined in Chapter 5.74.

The existing street trees are standard improvements and/or landscaping in the right of way that meet the City Engineer's standards. If the street trees are removed, the required mitigation for those trees, including planting new trees, must meet the City Engineer standards. In preparation for this case the proposed removal and replacement of the street trees was determined by the Bureau of Transportation to meet its standards for improvements in the right-of-way.

The potential impact to street trees as a consequence of a new structure is exempt from Historic Design Review pursuant to PCC 33.445.320.B.5. In the alternative, if the potential removal of street trees is viewed in isolation, as standard improvements and/or landscaping, the street trees are not subject to Historic Design Review under PCC 33.445.320.A.4. Although the Historic Landmarks Commission can and did express concern about the trees in question, it cannot and did not reach beyond its delegated authority and appropriate jurisdiction over them

Appellant has argued that PCC 33.445.320.B.5 is ambiguous and offered an interpretation, that was supported by the Applicant as part of a settlement agreement, that street trees are not exempt from Historic Design Review because street trees are not improvements and the City Forester, not City Engineer, regulates the removal of street trees. City Council disagrees with Appellant's interpretation. Each of the critical terms in PCC 33.445.320.B.5 is analyzed and interpreted below.

Historic Design Review is triggered by the construction or alteration of a "structure" or exterior sign. PCC 33.445.320.A. "Structure" is defined to specifically exclude vegetative landscaping materials, such as trees. PCC 33.910.030.¹ The exclusion of landscaping from Historic Design Review is reinforced by PCC 33.445.320.B.5, which includes as a required exemption from Historic Design Review, "Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards." The existing and replacement street trees are improvements and/or landscaping in the right-of-way that meet the City Engineer's standards and replacement street trees are expected to meet the City Engineer's standards, so alterations to the existing street trees and the planting of new street trees are exempt from Historic Design Review.

Street Trees are "Improvements" in the Public Right of Way

Trees and landscaping are interchangeable terms, and the fact that the list in PCC 33.445.320.B.5 does not list trees alongside the other items does not exclude trees from the exemption.

¹ The code defines a "structure" as "[a]ny object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag poles, signs and other similar objects. Structure does not include paved areas or vegetative landscaping materials."

"Improvements," "landscaping" and "trees" are not defined in the code. In the absence of a definition, PCC 33.700.070 sets forth general rules for interpretation of code language. PCC 33.700.070.D.1 states that "[w]ords used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions." Landscape is defined online in Merriam Webster to mean "the landforms of a region in the aggregate." The verb landscape is defined to mean "to modify or ornament (a natural landscape) by altering the plant cover." An example in the online Merriam Webster dictionary states: "an area landscaped with flowering shrubs and trees." Nothing in these broadly worded definitions suggests that landscape or landscaping does not include trees. In fact, an example of landscaping given in the dictionary references the planting of trees to landscape an area. The dictionary meaning of landscape (as a noun or verb) plainly includes trees and other vegetation. To suggest that landscaping does not include trees defies the ordinary meaning of a term that is not otherwise defined in the code.

Appellant cites an alternative definition of "improvement" from Black's Law Dictionary, and suggest that "improvements" are the built environment, not existing trees. First, of the two competing definitions, the City Council finds that it is more reasonable to use a standard dictionary (Merriam Webster) than a specific-purpose legal dictionary (Black's Law Dictionary) when looking to a dictionary for guidance on the meaning of a term in the Zoning Code. Secondly, Appellant's interpretation of their preferred definition of "improvement" is overly restrictive because the definition mentions additions to property "intended to enhance its value [or] beauty..." which City Council interprets to include vegetation, including street trees. This interpretation is consistent with the list of improvements recited in PCC 33.445.320.B.5, which includes planters and landscaping.

Including trees as an improvement and/or landscaping in the public right-of-way is also supported by PCC 33.700.070.D.4, which provides that lists of items indicated by "including the following" or "such as . . ." are not limited to just those items." The code further explains that "lists are intended to provide examples, but not to be exhaustive of all possibilities." Therefore, the fact that the list in PCC 33.445.320.B.5 does not include trees in the illustrative list of improvements does not exclude trees from the exemption. Instead, the code clearly states that lists are not intended to be exhaustive.

Street Trees are Subject to City Engineer Standards

Appellant suggested that because the removal and planting of street trees are regulated by the City Forester, the Historic Design Review exemption in PCC 33.445.320.B.5 does not apply because the exemption is limited to improvements that meet the City Engineer's standards. The fact that the City Forester is involved in the removal and planting of street trees is not inconsistent with the exemption in PCC 33.445.320.B.5. The exemption is not limited to improvements that are exclusively in the jurisdiction of the City Engineer. Instead, the improvements must simply meet the applicable City Engineer's standards (i.e., the Design Guide for Public Street Improvements, which includes a section on street trees), in addition to any other applicable criteria, which in this case include Chapter 20.40 of the City's code.

Council's Interpretation is Consistent with the Structure of PCC 33.445.320

PCC 33.445.320 regulates when Historic Design Review is required. Subsection A lists 6 activities that trigger Historic Design Review in a historic district, including building a new structure. Subsection B lists 5 activities that are exempt from Historic Design Review, including improvements in the public right of way (the exemption described in detail above).

Appellant argued that if a project triggers Historic Design Review (i.e., a building new structure), then the City may not rely upon the exemptions in Subsection B to exclude any portion of the project from Historic Design Review. Basically, the Appellant's reading of the code is that if a project is subject to Historic Design Review because it is described in

Subsection A, then there is no basis for applying Subsection B to the project. The appellant's interpretation is wrong because it renders Subsection B meaningless. For example, Subsection B exempts from Historic Design Review structures that meet specific dimensional requirements (i.e., a small shed or detached garage). PCC 33.445.320.B.1. Under Appellant's interpretation, no development would ever qualify for this exemption because by definition these small accessory structures are a "new structure," and new structures trigger design review pursuant to Subsection A. According to Appellant, notwithstanding the exemption in Subsection B, because the small shed is a new structure, it must be subject to Historic Design Review. Appellant's interpretation is not supportable because it ignores Subsection B. Instead, consistent with PCC 33.700.070.A and the maxim of statutory construction that a regulation should be construed to give meaning to all words and phrases in the regulation, both Subsection A and Subsection B should apply, as City Council has interpreted the code.

The Guidelines are Not Relevant to the Interpretation

The purpose or intent of a regulation may provide guidance on how a regulation should be interpreted, as described in PCC 33.700.070.G. In this case the purpose of the Historic Resource Protection Overlay Zone (PCC 33.445.010 Purpose) would be relevant, but it does not provide insight into how PCC 33.445.320.B.5 should be interpreted. Because street trees are exempt from Historic Design Review, the Community Design Guidelines and Historic Alphabet District Community Design Guidelines Addendum may not be applied to the street trees, and the intent of those guidelines is not relevant to interpreting PCC 33.445.320.B.5. Design Guidelines do not "trump" the historic resources chapter or PCC 33.445.320.B.5, as suggested by a supporter of the appeal. PCC 33.700.070.E describes the hierarchy of City regulations, with plan districts superseding overlay zones, which supersede base zones. Plan districts are found in the 500s series of chapters in the Zoning Code. The Historic Design Review guidelines applicable to the District are not a plan district; they originate from the 400s series of chapters in the Zoning Code (Chapter 445).

City Council's Interpretation is Consistent with Precedent

Appellant has not cited any precedent where the Historic Landmarks Commission or City Council has determined that street trees are subject to Historic Design Review. Appellant suggested that a 2007 unappealed decision of the Historic Landmarks Commission denying a project in the Irvington Conservation District (Case File LU 07-180515 HDZ) is an example of street trees being subject to Historic Design Review. While that case does discuss street trees and how they may be impacted by a proposed development, there are no findings that Landmarks Commission has jurisdiction over street trees and street trees were not a basis for denying the proposal. Furthermore, even if that case subjected street trees to Historic Design Review, City Council is not bound by interpretations of the Historic Landmarks Commission.

Voluntary Tree Preservation Efforts

While not required by the City, testimony was offered that the Applicant and Appellant have worked together to identify construction measures that may reduce the project's impact on the street trees. Among the options the Applicant may voluntarily pursue is pulling portions of the north basement wall of Building A back to the property line, which will give the street trees' roots more room. City Council finds that the design of the basement is not essential to findings of compliance with the applicable criteria, or the City's approval of the project. Therefore, it is permissible for the Applicant to modify the basement of Building A without triggering Historic Design Review or any other land use review.

(2) Chapter 33.846.060 - Historic Design Review

Purpose of Historic Design Review

Historic Design Review ensures the conservation and enhancement of the special characteristics of historic resources.

Historic Design Review Approval Criteria

Requests for historic design review will be approved if the review body finds the applicant has shown that all of the approval criteria have been met.

Findings: The site is located within the Alphabet Historic District and the proposal is for non-exempt new construction. Therefore Historic Design Review approval is required. The approval criteria are the *Community Design Guidelines* and the *Historic Alphabet District Community Design Guidelines Addendum*.

All guidelines have been considered. Only those guidelines applicable to this proposal are addressed below.

Historic Alphabet District - Community Design Guidelines Addendum

1. Historic Changes. Most properties change over time; those changes that have acquired historic significance will be preserved.

Findings: Neither of the proposed sites is occupied by a contributing resource, so the significant historic fabric of the district, changed or not, will not be affected. *This guideline is moot.*

2. Differentiate New from Old. New additions, exterior alterations, or related new construction will retain historic materials that characterize a property to the extent practicable. Replacement materials should be reasonable facsimiles of the historic materials they replace. The design of new construction will be compatible with the historic qualities of the district as identified in the Historic Context Statement.

Findings: Although both proposed buildings exceed the average height of traditional apartment buildings in the Alphabet Historic District, they do fall within the overall range, and the atypical east-west length of Building A is mitigated by its division into three sections alternating with recessed courtyards as is typical of many historic apartment buildings in the area. Relative to the presence of three shorter historic landmark buildings in the immediate vicinity, the height and length of the buildings is mitigated by setbacks, landscaping, quality of detailing, and the fact that only one of the historic landmark properties directly adjoins the development site. Both size and the use of modern materials will distinguish these buildings as modern. *This guideline is met.*

3. Hierarchy of Compatibility. Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a historic or conservation district, with the rest of the District. Where practical, compatibility will be pursued on all three levels. New development will seek to incorporate design themes characteristic of similar buildings in the Historic Alphabet District.

Findings: Notwithstanding the ambiguity of this guideline, the designated property in this instance is the Alphabet Historic District, not an individual resource. As noted in the preceding finding, compatibility with the historic district is achieved through the use of traditional forms, development patterns, and materials. Although both of the proposed buildings will be taller than their immediate neighbors, the mixing of taller and shorter structures on a scale similar to the proposal is a pattern evident throughout the historic district. *This guideline is met.*

Community Design Guidelines

P2. Historic and Conservation Districts. Enhance the identity of historic and conservation districts by incorporating site and building design features that reinforce the area's historic significance. Near historic and conservation districts, use such features to reinforce and complement the historic areas.

Findings: As revised, the proposed buildings draw enough of their features from historic buildings in the vicinity to enhance and reinforce the character of the Alphabet Historic District. However the Commission expressed concern that the sectional detailing of all the window types was not sufficiently clear in the drawings, specifically with reference to: a) distance from the face of the stucco to the face of the window frame, and b) the dimensions of the side trim of vertically stacked windows. *With two conditions of approval, that the stamped drawings show that: a) the distance from the face of the stucco to the face of the window frame is a minimum of three inches; and b) the dimensions of the side trims of vertically stacked windows, this guideline can be met.*

E1. The Pedestrian Network. Create an efficient, pleasant, and safe network of sidewalks and paths for pedestrians that link destination points and nearby residential areas while visually and physically buffering pedestrians from vehicle areas.

E2. Stopping Places. New large-scale projects should provide comfortable places along pedestrian circulation routes where people may stop, visit, meet, and rest.

E3. The Sidewalk Level of Buildings. Create a sense of enclosure and visual interest to buildings along sidewalks and pedestrian areas by incorporating small scale building features, creating effective gathering places, and differentiating street level facades.

E4. Corners that Build Active Intersections. Create intersections that are active, unified, and have a clear identity through careful scaling detail and location of buildings, outdoor areas and entrances.

E5. Light, Wind, and Rain. Enhance the comfort of pedestrians by locating and designing buildings and outdoor areas to control the adverse effects of sun, shadow, glare, reflection, wind, and rain.

Findings for E1 through E5: As is the case with the historic apartment buildings throughout the Alphabet Historic District, the proposed buildings rely on the public sidewalk for major exterior circulation. The proposal will improve the pedestrian environments because it will introduce a traditional pattern of residential use close to the sidewalk, punctuated by a rhythm of planted courtyards and setbacks where one can enter the building or outdoor areas, and developing strong urban corners currently occupied by parking and a nondescript, modernist, two story office building. The main entry to Building A is protected by a glass awning and the main entry of Building B is recessed within a small, sheltering, courtyard. *These guidelines are met.*

D1. Outdoor Areas. When sites are not fully built on, place buildings to create sizable, usable outdoor areas. Design these areas to be accessible, pleasant, and safe. Connect outdoor areas to the circulation system used by pedestrians;

D3. Landscape Features. Enhance site and building design through appropriate placement, scale, and variety of landscape features.

Findings for D1 and D3: Appellant argued that the Historic Landmarks Commission "failed to consider the contribution made by the street trees to

the fabric and context of the district as characterized in the *Community Design Guidelines* and the *Historic Alphabet District Community Design Guidelines Addendum* in making their findings and arriving at their final decision." However, a commission or Council can only apply approval criteria to matters under its purview and the treatment of street trees, as demonstrated, is not such an item. An application to cut down the trees submitted independently of this development proposal would be processed under the jurisdiction of the Urban Forestry Commission, not the Historic Landmarks Commission or City Council. City Council also finds that it is noteworthy that even if the Guidelines did apply to street trees, the only design guideline that could relate to street trees is *Community Design Guidelines, Landscape Features, Guideline D3*, which requires that a project "enhance site and building design through appropriate placement, scale, and variety of landscape features." One of several non-binding suggestions on how the guideline may be met encourages the preservation and protection of street trees. The guideline may also be met by planting street trees, using plant materials along sidewalks and walkways to define routes, buffer pedestrians and provide gateways, interest, color and texture, and using a variety of plant materials in areas visible to the public (suggestions C, D and F) – all elements that are incorporated into the project. While the historic development pattern of apartment buildings in the vicinity includes very little open or planted area, the use of these two elements in the proposal's recessed entries and landscaped setbacks is a useful approach because it helps to mitigate for the increased height and length of the buildings. *These guidelines are met*

D2. Main Entrances. Make the main entrances to houses and buildings prominent, interesting, pedestrian-accessible, and transit-oriented.

Findings: The main entrance to the proposed Building A is appropriately marked by a metal and glass marquise. The main entry to the proposed Building B and the secondary entrances to Building A are emphasized by their locations within small, partially planted courtyards opening to the sidewalk. While the size of these courtyards could be expanded to good effect, the locations are appropriate. Both main entries appropriately address NW 19th Avenue, the predominant right-of-way. *These guidelines are met.*

D4. Parking Areas and Garages. Integrate parking in a manner that is attractive and complementary to the site and its surroundings. Locate parking in a manner that minimizes negative impacts on the community and its pedestrians. Design parking garage exteriors to visually respect and integrate with adjacent buildings and environment.

Findings: Although not required by the Zoning Code because of the nearby availability of transit services, seventy automobile parking spaces, for the use of both buildings, are fully integrated into the design within the basement of the proposed Building A. The automobile entry is appropriately located away from the street intersection, toward the west end of the building. Owing to the fully residential use of the development, with an attendant low level of activity, a shorter than standard loading stall is preferable because it keeps overall building height lower. Rear motion exiting onto NW Johnson Street from the Building B loading bay is also preferable because it minimizes historically uncharacteristic vehicle-related impacts to the facade. Some slightly substandard parking stall sizes are justified by the common availability of small

vehicles, and the fact that the greater number of stalls reduces on-street parking. Long term bicycle parking is provided in a mix of specialized ground floor and basement rooms, and, in the case of Building B, within the dwelling units. Short term bicycle parking is provided on the sites in reasonable proximity to entries. *With modifications for non-standard loading stall height, rear motion exiting from the Building B loading bay, and substandard parking stall size for some spaces in the garage, this guideline and the purpose of the regulation can both be met.*

D7. Blending into 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.

D8. Interest, Quality, and Composition. All parts of a building should be interesting to view, of long lasting quality, and designed to form a cohesive composition.

Findings for D7 and D8: In order to mitigate the impacts of height and length, the applicant responded to the expressed concerns of the Historic Landmarks Commission at the initial hearing by:

- recessing windows in stucco 2" and returned the stucco at all jambs and head;
- bringing bay windows down to the second floor on Building B and adding a trim band;
- changing the windows in the attic story over the bay windows on Building B;
- adding brick to the east façade of Building B;
- making the glass canopy flat on Building A;
- changing the garage doors on Building A to decorative painted steel;
- adding more detail to the center pavilion on Building A;
- enlarging the parapet trim at Building A;
- making the bottom loading door panels opaque at the glass loading door on building B;
- providing a spacer bar between glass at the applied muntins at all windows; and
- enlarging the depth of stucco trim in building A in general.

This guideline is met.

(3) 33.846.070 Modifications Considered During Historic Design Review The approval criteria for modifications considered during historic design review are:

A. Better meets historic design review approval criteria. The resulting development will better meet the approval criteria for historic design review than would a design that meets the standard being modified; and

B. Purpose of the standard.

1. The resulting development will meet the purpose of the standard being modified; or
2. The preservation of the character of the historic resource is more important than meeting the purpose of the standard for which a modification has been requested.

Request #1: To modify 33.266.310, for a non-standard loading stall height of 8'-2" in the basement of Building A; and for rear-motion exiting from the loading bay of Building B.

33.266.310 – Purpose. A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way.

Findings for A: As evidenced in the findings under Guideline D4 above, the resulting development will better meet the approval criteria because the typical loading pattern in a fully residential building does not require full height bays, and the overall building height and facade impacts are minimized.

Findings for B: The purpose of the regulation is met because more safe, adequate, and minimally visible loading will be provided.

The proposed Modifications meet the approval criteria and the purpose of the standard, and are acceptable to the Bureau of Transportation, and therefore merit approval.

Request #2: To modify 33.266.130, for a non-standard parking stall depths of some spaces in basement of Building A.

33.266.130 – Purpose. The development standards promote vehicle areas which are safe and attractive for motorists and pedestrians. Vehicle area locations are restricted in some zones to promote the desired character of those zones. Together with the transit street building setback standards in the base zone chapters, the vehicle area restrictions for sites on transit streets and in Pedestrian Districts.

Findings for A: As evidenced in the findings under Guideline D4 above, the resulting development will better meet the approval criteria because the impact of on-street parking will be minimized.

Findings for B: The purpose of the regulation is met because safe, adequate, and minimally visible parking will be provided. The basement parking will be in assigned spaces and the columns will occur at the middle of the stall, easing turning motions in and out.

This proposed Modification meets the approval criteria and the purpose of the standard and therefore merits approval.

Request #3: To modify 33.140.215 C. 1. e. 5, for a facade less than 100% within the maximum setback.

33.140.210 – Purpose. The setback standards promote different streetscapes. The EG1, IG1, and EX zone setbacks reflect the generally built-up character of these areas. The setback standards are also intended to ensure that development will preserve light, air, and privacy for abutting residential zones. In the EG1 and EX zones, the setback requirements along transit streets and in Pedestrian Districts create an environment that is inviting to pedestrians and transit users.

Findings for A: As evidenced in the findings under Guideline E5 above, the resulting development will better meet the approval criteria because the nonconforming recess fits the historic development pattern for the building type and will divide an uncharacteristically long facade into more historically compatible segments.

Findings for B: The purpose of the regulation is met because the recessed area is landscaped and leads to a prominent and well-designed main residential entry, providing a pleasant pedestrian environment and replicating a common development pattern in the historic district.

This proposed Modification meets the approval criteria and the purpose of the standard and therefore merits approval.

CONCLUSIONS

Inserting new development into historic district contexts is a process that must weigh many variables against one another. Perhaps the most difficult balance to strike is between economic viability, which tends to dictate maximizing size, and a mixed historic development pattern. Taken as a whole, the proposed new development achieves a reasonable accommodation to its context.

CITY COUNCIL DECISION

Based on the findings above, it is the decision of the City Council to:

- (1) Deny the appeal of the Northwest District Association from the Historic Landmarks Commission’s decision;
- (2) Uphold the Historic Landmarks Commission’s decision; and
- (3) Approve Historic Design Review for new construction of two, five story, apartment buildings with 134 dwelling units and 70 below grades parking spaces, on the site of one non-contributing property and one vacant property, in the Alphabet Historic District.
- (4) Approve the following four modifications:
 - 1. 33.266.310, for a non-standard loading stall height of 8'-2" in basement of Building A, and
 - 2. for rear-motion exiting from loading in Building B;
 - 3. 33.266.130; for a non-standard parking stall depths of some spaces in basement of Building A; and
 - 4. 33.140.215 C. 1. e. 5, for a facade less than 100% within the maximum setback.

Approvals are per Exhibits C-1 through C-48, signed, stamped, and dated May 17, 2012, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (A – D) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled “ZONING COMPLIANCE PAGE- Case File LU 12-106944 HDZM. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled “REQUIRED.”
- B. No field changes allowed.
- C. The stamped drawing shall reflect that the distance from the face of the stucco to the face of the window frame is a minimum of three inches.
- D. The stamped drawing shall reflect the dimensions of the side trims of vertically stacked windows.

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Exhibits

- C. Plans & Drawings:
 - 1. Aerial Rendering
 - 2. Table of Contents

3. Building A Rendered Perspective to Southwest
4. Building B Rendered Perspective to Northeast
5. Building A Rendered Perspective to Northwest
6. Building A Rendered Perspective to South
7. Building B Rendered Perspective to East
8. Location Plan
9. Site and Context Photos
10. Building A Precedent Photos
11. Building B Precedent Photos
12. Urban Design Diagram
13. Site Plan (attached)
14. Utility Plan
15. Building A Landscape Plan
16. Building B Landscape Plan
17. Landscape Details
18. Landscape Details
19. Building A Planting Plan
20. Building B Planting Plan
21. Planting Plan Legend
22. Plant Materials
23. Plant Materials and Site Furnishings
24. Building A Floor Area Ratio Diagrams and Calculations
25. Building B Floor Area Ratio Diagrams and Calculations
26. Building A Basement Plan
27. Building A Ground Floor Plan (attached)
28. Building A Typical Upper Floor Plan
29. Building A Roof Plan
30. Building B Ground Floor Plan (attached)
31. Building B Upper Floor Plans
32. Building B Roof Plan
33. Building A East and North Elevations (attached)
34. Building A West and South Elevations (attached)
35. Building B South and West Elevations (attached)
36. Building B East and North Elevations (attached)
37. Building A Enlarged Elevations and Sections
38. Building B Enlarged Elevations and Sections
39. Building A North-South and East-West Sections
40. Building B North-South and East-West Sections
41. Building A Section Details
42. Building A Section Details
43. Building B Section Details
44. Building B Section Details
45. Entry Canopy, Garage Gate, and PTAC Grill Details
46. Building A Lighting Plan and Fixtures
47. Building B Lighting Plan and Fixtures
48. Exterior Finishes