

Parsons, Susan

From: Burton Francis <burtonfrancislaw@gmail.com>
Sent: Tuesday, April 14, 2015 10:14 PM
To: Council Clerk – Testimony
Subject: Pearl Block 136 - Preserve The Pearl LLC Response
Attachments: 1 FILED PtP LLC Response 041515.PDF

Hello,

Attached please find a pdf of Preserve The Pearl LLC's response that was allowed by leaving the record open after the 040815 hearing on this matter.

Could you please send me a reply email acknowledging that this document has been received by the Council Clerk's Office for the City of Portland?

Thank you!

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Preserve The Pearl LLC
422 NW 13th Avenue, Ste 187
Portland, OR 97209

April 15, 2015

To: Portland City Council
Re: Appeal of the Approval of the Pearl Block 136 – Mixed Use
Case File Numbers: LU 14-230014 DZM AD
PC# 14-13411

Response by Preserve The Pearl LLC

Background

A hearing was held on this appeal on Wednesday, April 8th, 2015. However, about 24 hours *prior* to the public hearing, the applicant – who carried the burden of proof to justify the project - filed a 51 page argument plus attachments and so ‘sandbagged’ the process such that a fair hearing was impossible.

Despite this obvious violation of a full and fair hearing under due process standards, the Mayor elected to hold the public hearing anyway. Upon the recommendation of City Counsel, however, the record was left open for one week to allow for a response to the applicant’s ‘sandbagging’ tactic.

The Burden of Proof

Although the applicant through counsel tried to minimize their burden of proof in the hearing, that burden falls squarely on the developer as set forth in the Central City Fundamental Design Guidelines:

Design guidelines are mandatory approval criteria that must be met as part of design review and historic review ... During the design review process, the review body must find that the proposal meets each of the applicable design guidelines. Proposals that meet **all** applicable guidelines will be approved; proposals that do not meet **all** of the applicable guidelines will not be approved.

[CCFDG, p. 10, emphasis in the original]

Project Justifications at the Hearing – Failure to Justify Bonus Height

The project was vouched for by the city’s staff, by the developer, and even by the personal testimony of two members of the design review commission, the head of the design review and the vice chair.

Various excuses were offered for why the project, and in particular the 150 foot tower wall running on a north/south axis along 12th Avenue, best met the applicable design guidelines. Inter alia, those excuses were that it is a *very* well designed project and that the ground floor commercial with public courtyard would enliven the area.

None of the excuses offered either in the applicant's 51 page brief or by testimony at the public hearing justified the doubling of the base height of the area; **all** of the supposed benefits of the project can be achieved **without** the extra height.

As stated by the vice chair of the design commission who testified at the hearing:

"What we see as a successful building is the bottom 20 to 30 feet, and where a building meets a city street is the most important aspect of how a building succeeds or fails."

(~150:12 - 22).

This 'most important aspect' of the project as supported by the design commission **still exists** if the project were built to the base height limit of 75 feet.

Testimony at the Hearing – Extraneous Factors

As pointed out during the hearing most explicitly by Commissioner Fish, the project is to be evaluated by reference to the specific provisions of the zoning code that address the exceptions for height above the base.

By contrast, however, it was apparent from the personal testimony of staff and by the head of the design commission that the design commission had little idea what specific criteria needed to be applied. In fact, the two commissioners' testimony combined with the testimony of the staff member at the hearing proved that the design commission's approval of the bonus height was not properly founded on applicable and current zoning code factors.

First, as noted above, the design commission's support for the project was focused on the bottom 20 to 30 feet of the building (see above). Thus, all of the reasons to support the project had nothing to do with justifying the bonus height.

Second, the head of the design commission neglected to mention in his testimony that he had asked about private views at the first DAR (see the previously filed Preserve The Pearl LLC brief in support of the appeal at I B, p. 5). However, staff (at ~173:20 - 40) offered that while 205.A only deals with 'public' views (an opinion not explicitly stated in the code), he yet went on to admit in testimony that 'views' *were* considered and that the north/south vs. east/west orientation made no difference!

If private views are not a legitimate element of review under the design guidelines, then the design commission had no business making that inquiry. That said, staff is

just plain wrong to assert that the orientation of the building 'makes no difference' to what were termed 'view sheds'.

Exhibit 2f filed in support of the appeal shows the 'view shed' looking to the south from Lovejoy from the Safeway building. If the project were oriented on an east/west axis parallel to Lovejoy (and perpendicular to the river, as suggested by the River District Design Guidelines at p.10), then the only 'view' that would be blocked would be more cityscape; nothing unique or intrinsically 'Portland' there.

Exhibit 2g filed in support of the appeal shows the 'view shed' looking west to east. Clearly seen is the Union Station clock tower, the Steel Bridge, and (on a clear day) Mt. Hood; all of which would be a lost 'view shed' if the building were oriented as currently proposed on a north/south axis; the uniquely Portland character of the middle Pearl neighborhood would be destroyed.

The point is that if private 'view sheds' are off limits, then the staff member at the hearing admitted they'd been considered --- which was improper. But staff's affirmative assertion that the orientation of the building would make 'no difference' to *any* 'view sheds' is a claim utterly without merit.

Third, the head of the design commission personally testified at the hearing (time stamp ~148:00) that an excuse for preserving the north/south axis of the project was to protect 'shading of future residences' to the north.

Here again, the hearing testimony validates the appeal brief (see the previously filed Preserve The Pearl LLC brief in support of the appeal at I C, p. 6). Nowhere in all of the applicable design guidelines is there a consideration of 'future shadowing' of residential areas. Again, this is an example of 'forward thinking' that applies currently non-existent guidelines to the evaluation of the Block 136 proposal.

The currently applicable design guideline states that the project should minimize the shading of **existing** residential neighborhoods. This guideline is specifically applicable to the evaluation of this project through consideration of the housing height exception, zoning code 33.510.210.E.4.f that specifically refers to zoning code section 33.510.205.A [emphasis added]:

33.510.205 Height

A. Purpose. The maximum building heights are intended to accomplish several purposes of the Central City Plan. These include protecting views, creating a step- down of building heights to the Willamette River, limiting shadows on public open spaces, ensuring building height compatibility and step downs to historical districts, and **limiting shadows from new development on residential neighborhoods** in and at the edges of the Central City.

The testimony at the April 8th hearing by the head of the design commission that approved this project substitutes a consideration of the tragedy of perpetual shade that would befall the existing Riverstone condominiums to the east in favor of some potential resident in an as yet non-existent residential building to the north under some 'future shade' guideline that does not exist.

How much clearer must the evidence be for the City Council to acknowledge that the design commission that approved this project got it wrong?

Specific zoning code criteria not justified at the hearing

Aside from the project's many failures as pointed out in the previously filed brief in support of the appeal, not one shred of evidence taken by the City Council at the April 8th hearing justified the project's failure to meet the following specific, zoning code mandated criteria:

1. The height exception under the 'general' provision of 33.510.210.D was described as 'automatic'. Nothing in this zoning provision allowing for a 'general height bonus' declares this exception to be 'automatic' and thereby obviates the criteria specifically set forth therein, and no supporting authority for this 'automatic/no criteria' position was cited either in the 51 page argument by the applicant or by anyone, including staff, testifying in support of the project at the hearing. See Preserve the Pearl LLC brief in support of the appeal, Section III A, pp. 7 – 9;
2. The current tower does not best meet the applicable design guidelines because it is inconsistent with the surrounding buildings and the neighborhood. See Zoning code 33.510.210.E.4.e and the application of Central City Fundamental Design guideline C4, AND Zoning Code 33.510.210.E.4.f which applies 33.510.205.A, as fully set forth in the brief in support of this appeal at pp. 18 – 20;
3. The current orientation of the tower does not best meet the applicable design guidelines because the massive north/south wall it creates condemns adjacent existing residential dwellings to perpetual shade. 33.510.210.E.4.f, and the specific application of Zoning code 33.510.205.A design criteria as fully set forth in the brief in support of this appeal at p. 20. The 'shadow impacts' discussed by staff at the hearing (at ~170:22 et seq.) completely fails to address this issue, but instead focuses on the shadow impact to Jameson Park, an entirely *different* shadow impact;
4. The tower creates a step-up and not a step-down to the Willamette river. See Zoning code 33.510.210.E.4.f, specifically applying 33.510.205.A, as fully set forth in the brief in support of this appeal at p. 19. Staff's discussion of this issue at the hearing (see 171:21 et seq.) began by mentioning the 'step-down' factor but quickly became an intellectual non sequitur as it became a discussion of pedestrian pathways for some reason (which, itself, was

absurd: east/west pedestrian paths provide *greater* access to the post office and Union Station; north/south pedestrian traffic is completely satisfied by the existing Avenues, particularly 13th).

The design criteria are for the good of the public

Design review is a public process that is focused on achieving a public good. As stated by the Central City Fundamental Design Guidelines at page 2:

Design and historic review ensure that new development and alterations to existing buildings maintain the integrity and enhance the quality of the Central City.

The applicant, Security Properties (SP), however, repeatedly offers private and self-interested reasons for why this project should be approved.

- SP refuses to reorient the project to an east/west axis because then the north side of the project will be 'in the dark' (see their 51 page argument) and the 'public' courtyard they are so generously offering for public use will have more shade (hearing testimony by the head of the design commission).

And yet –

- The public interest as expressed in the applicable design guidelines is to preserve the connection of the entire neighborhood to the river and to minimize the shadowing of existing residential neighborhoods.

Also, this excuse of 'north face darkness' is simply not justified by the current Pearl buildings that orient properly on an east/west axis. Specifically, the residential buildings '937 Glisan' and 'The Henry' at 1025 NW Couch across from Powell's both orient east/west with an entire residential side facing north. There are, of course, many other examples throughout the Pearl and the city.

- SP offers that their design 'connects to the river' because there will be river views from the east-facing half of the tower and from the roof area (see their 51 page argument).

And yet –

- The proposal would create a 150 foot tall tower on a north/south axis that would divide the residential core of the neighborhood --- i.e., the public --- and separate the western portion of the neighborhood from the river, and create a step-up, not a step-down, in building height to the Willamette.

Conclusion

It is readily apparent that the Block 136 proposal is a self-centered, self-interested and publically divisive project by a Seattle developer. Despite protestations to the contrary, the project's north/south orientation and massive height is solidly focused on the economic interests of the applicant and not on the public interests of the Pearl district as a neighborhood or the central city design aspirations of Portland.

There is no affordable housing component to the proposal and the height in particular overwhelms the neighborhood and the adjacent 13th Avenue Historic district.

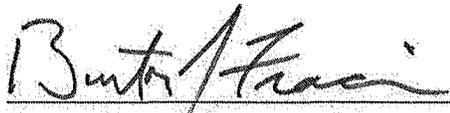
Sustaining the appeal would:

- Achieve the noble, publically oriented design goals of preserving a uniquely Portland neighborhood and the middle Pearl's connectivity to the river; all as more fully set forth in the Central City Fundamental Design Guidelines and the River District Design Guidelines, applicable as required by law under the zoning code;
- Would not harm the economic interests of the city of Portland because it would simply send the project back to the design commission for further refinement to better meet the specific applicable design guidelines as required by the zoning code;
- Allow the Mayor and City Council to send the proper message to both developers and to the citizens of Portland that our great city is a city that values livability, that values honest public input in the design process, and is a city that is 'open for business' with integrity and the public weal in mind, and not cheaply 'for sale' to the highest bidder.

The project **clearly** does not meet **all** of the applicable design guidelines as required by the design review process and so the City Council **must** sustain the appeal.

Respectfully Submitted,

Preserve The Pearl LLC

By: 
Burton Francis, Officer and Agent