



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue · Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: 16-100496 DZM

FOR INTAKE, STAFF USE ONLY

Date/Time Received 9/1/2017; 4:00PM

Action Attached

Received By AP

Fee Amount \$5,000.00

Appeal Deadline Date 9/1/2017

[N] Fee Waived

Entered in Appeal Log

Bill # 4183683

Notice to Auditor

[Y] Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS BLOCK 290 - 1417 NW 20th Avenue DEADLINE OF APPEAL 09/01/15

Name Northwest District Association

Address 2257 NW Raleigh St City Portland State/Zip Code OR 97210

Day Phone 503-227-5000 Email karen@klkarlsson.com Fax _____

Interest in proposal (applicant, neighbor, etc.) Neighborhood Association

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. see below Zoning Code Section 33. _____ . _____

Zoning Code Section 33. _____ . _____ Zoning Code Section 33. _____ . _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

Approval Criteria at Source of Appeal: Section 5 of the Con-way Master Plan, 33.825.040 Modifications That Will Better Meet Design Review Requirements, Approval Criteria 1-3 of Section 8 of the Con-way Master Plan

See attached narrative.

Appellant's Signature *Karen Karlsson*

FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland
 - Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - Fee waiver request letter for low income individual is signed and attached
 - Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

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

Type III Appeal Hearing Procedure

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original application fee. The fee amount is listed in the decision. The fee may be waived as follows:

Fee Waivers (33.750.050)

The director may waive required fees for Office of Neighborhood Involvement (ONI) Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

A. ONI Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Neighborhood Involvement (ONI) or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Bureau of Development Services Development Services Center, 1st floor, 1900 SW 4th, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

B. Low Income Fee Waiver

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

Information is subject to change



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Type III Decision Appeal Fee Waiver Request for Organizations

FOR INTAKE, STAFF USE ONLY	ORGANIZATION NOTIFICATION
LU Number: _____	Date/Time _____
Date/Time Received _____	Received By _____
Received By _____	<input type="checkbox"/> Waiver Approved <input type="checkbox"/> Waiver Denied

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

This form is to request a waiver for the fee charged for an appeal. To file an appeal, a separate form must be completed.

Development Site Address or Location BLOCK 290 - 1417 NW 20th Avenue

File Number 16-100496 DZM MS Appeal Deadline Date September 1, 2017

Organization and Appeal Information

Organization Name Northwest District Association

Person Authorized by the Organization to file the Appeal Karen Karlsson, President

Street Address 2257 NW Raleigh St

City Portland State OR Zip Code 97210

Day Phone 503-227-5000 FAX _____ email karen@klkarlsson.com

By signing this form, the organization confirms that:

- yes no The organization testified orally or in writing at the hearing, and the testimony was directed to a specific approval criterion;
- yes no The appeal is being made on behalf of the recognized organization, and not on behalf of an individual; and
- yes no The vote to appeal was done in accordance with the organization's bylaws.

Name/Title Karen Karlsson, President Northwest District Association

Signature/Date *Karen Karlsson* 8/31/17

Please complete all of the information requested below.

See reverse side for additional information on fee waiver requirements.

Date of meeting when the vote to appeal the land use decision was taken :

The decision to appeal was made by a vote of (check one of the following):

- The general membership in a meeting of the organization as listed above.
- The board in a meeting of the organization as listed above.
- The land use subcommittee in a meeting of the organization as listed above.

Please include at least one of the following:

- A copy of the minutes from the meeting when the vote to appeal was taken.
- Vote results to appeal - Number of YES votes to appeal 7 Number of NO votes to appeal 0

To request a waiver of an appeal fee for a land use review take:

- This completed fee waiver request form and any supplemental information necessary to qualify for a fee waiver.

The City must receive the appeal fee waiver request and the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee waiver application at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

Information about Type III Appeal Fee Waiver Requests for Organizations

The following information will help neighborhood, community, business and industrial associations and other organizations that are recognized or listed in the Office of Neighborhood Involvement Directory to apply for fee waivers when appealing a City land use review decision. The Portland Zoning Code, the Office of Neighborhood Involvement and the Oregon statutes, which regulate public meetings and public records, all describe requirements that associations and organizations must meet when requesting a fee waiver from the City for a land use appeal.

In order for an appeal to be valid, it must be accompanied by the required appeal fee or a waiver request that was approved before the appeal deadline as stated in the specific land use decision (Section 33.730.020 of the Portland Zoning Code). The Bureau of Development Services Director may waive a land use review appeal fee for a recognized organization under certain circumstances (Section 33.750.050). A recognized organization is one that is listed by the Office of Neighborhood Involvement (Portland Zoning Code Chapter 33.910).

Because the City understands that the timelines for appeals are short, we will allow the waiver and appeal to be submitted at the same time. However, if the request for a fee waiver is denied, the appeal may be invalid because the deadline passed and the fee did not accompany the appeal. Within 48 hours of receiving the fee waiver request, the Bureau of Development Services Director, or her/his delegate, will notify the organization's contact person as to whether the request for a fee waiver is approved, or if additional information is needed to make a decision on the fee waiver request. The Director's decision to waive an appeal fee is final.

Zoning Code Requirements

The Portland Zoning Code states that the appeal fee may be waived for a recognized organization if all of the following conditions are met:

1. The recognized organization has standing to appeal. This applies only to appeals of a Type III land use review, and means that the recognized organization testified, either orally or in writing, at the initial evidentiary hearing;
2. The appeal is being made on the behalf of the recognized organization; and
3. The appeal contains the signature of the chairperson or the other person authorized by the organization, confirming the vote to appeal was done in accordance with the organization's bylaws.

Applicant contact

While it is not a requirement of the Zoning Code, you are encouraged to notify the applicant or their representative prior to the meeting where an appeal of the City's decision will be discussed and voted on. This gives the applicant, or their representative, an opportunity to attend the meeting and participate in the discussion.

Where to obtain the Type III Decision Appeal Fee Waiver Requests and Appeal Forms

To file an appeal, a separate form must be completed and submitted. Both the Appeal Fee Waiver Form and Appeal Form are available from the Bureau of Development Services, Development Services Center, 1st floor, 1900 SW Fourth Avenue, Portland, OR 97201.

Attendees:

- **Members - Greg, Steve, Dennis, Bill, Parker, Don, JoZell**
- **Non Members - Sharon Kelly, Alan Claussen, Bob Baker,**

**NWDA Planning Committee August 10, 2017 8:00 – 9:00
CoHo Theater Lobby, 2257 NW Raleigh**

8:00 Announcements:

- LURs:
 - o LU 17-177871 HR – Exterior Alterations & New Sign, Type II administrative review. 619-527 NW 21st. New Dosha salon. Comments due 8/28/2017 (**comment??**)
- Pre-aps
 - EA 17-206215 NW Kearney & NW 22nd, to discuss development of an 18-unit multi-dwelling building on a vacant lot. Type III HR review, Mike Osterman applicant, [503-799-2189](tel:5037992189) **AUGUST 15, 10:30 AM**
 - o This is the historic garden lot behind Karen/Rick's office
 - o Large building on small lot
- Early Assistance
- Additional items
 - Code Reconciliation Neighborhood Notice
 - o Submitted comments and will be tracking results, no individual status
 - Tree Replacement updates
 - o Cathedral - Discussion of current status – individuals to go review current status. Elms are going, question on replanting
 - o No update on Glisan/23rd tree removal request
 - o No update on tree status overall – Page not able to pick up until Sept

Block 290

- Design committee approved
- No changes to the committee feedback
 - Motion to Appeal to City Council – Greg – Don - unanimous
 - Motion to initiate sub committee to manage/prepare appeal – consist of Don, Steve, Greg, Karen as members – non voting consultants Ron, Suzanne – regular updates, assuming late October, early November action. This movement will include both standards and policy
 - Greg – Bill – unanimous
 - Will the appeal effect the actions of the developers – 18th is 17 days out for published decision, 14 days to appeal – so develops actions not initiated until after that time
 - Discussion on appeal process, design costs, appeal costs and stepwise actions,

LU 17-188551 HR – Façade and roof Alterations to a Historic Warehouse, Building 112 NW 20th Ave, (August 10 deadline) Colin Maclean [503 807-1646](tel:5038071646)

- removal of the non-historic T-111 siding at the ground floor;
- installation of a glass garage door at the north and central bays of the building;
- installation of steel panels at the north and central bay;
- installation of a glass sidelight and large steel pivot door at the south bay;
- removal of a metal cornice cap and restoration of brick below and
- removal of a portion of the southwest roof, in a manner that is not visible from the public right-of-way, to create an open space with the building's historic truss running through it.

Colin Maclean in attendance

- Long term Portland resident, looking for an opportunity to move into NW Portland, moving warehouse to residential, history of restoring historic building(Bishop house behind vista spring), Goal for the building is to keep the building historical, visual presentation
- o Discussion of building
 - Maintain gallery space and 2 bed apartment on main floor, 2nd floor 2 bedroom loft style apartment
 - Living in back due to fred meyer loading zone noise in the front

- Keep original stair access, trusses and water car elevator
- Questions
 - Challenges from landmark commission?? Garage door and removal of t1 siding – they wanted to honor the format of the lighting – so that the windows upstairs had a horizontal trim that unified the structure. Protecting the pedestrian view of the building. Bringing it back to an original theme
 - Frosted glass on the front doors – yes
 - Replacing aluminum windows – less consistent about replacing windows than ensuring window structure – visual – did not want to completely remove glass – so goal is to leave as is - discussion is connection to street and air flow. Original window discussion with double pane would cut more noise. Historic street car garage next door does not have glass windows. Recommendation to look for historic pictures to justify window and history
 - Discussion of cornice restoration – remove sheet metal, reroof complete building, replace skylights and then tuckpoint the brick work with metal coping at the top.
 - Square points are accents – which may have held goose neck lights in the past
 - Establishing a 2nd apartment on the ground floor – 5 foot alley in the back – light and air to ground floor – no view look out on brick wall – element of the city living – blind walls north and south.
 - Maintaining the skylights? 2 rear ones come out because they are bedroom, ones in front will be replaced by open area, large ones in the middle will be retained.
 - Actions – trying to do roof this year but based on building permit process – if too long then will go to next year.
- Comment – no formal motion but support of using the building as a residential

LU 17-182064 HR Façade Renovation to non-contributing building, 524 NW 23rd, former Moonstruck Chocolates site (August 14 deadline)

- Laurie in attendance
- Building being repaired from explosion in 2016
- Changes
 - Recladding outside in white tile
- Questions
 - Changes in the tenants – no – moonstruck and jewelry on the first floor – office in the 2nd
 - This permit is only the façade changes – a 2nd permit for repairing the original layout for the internal
 - Building – build in 50's, updated in 90's (additional of cornice work – but not integrated into actual structure)
 - Additional of flag signs over entrances
 - Discussion of materials, application
 - “Eyebrows – Brazilian mahogany – IPE, above entry and above 2nd floor windows
 - Will age to unfinished teak (driftwood grey) – can add oil to keep the robust wood color
 - Is not going to be front so protected from the weather
 - Applied with anti-graffiti coat to protect building – will come off easy – need to refinish -
 - White tile presented as base accent – central area, base accent above windows
 - Simple design
 - Lighting tiny downlights in lower entry – rather than large flood as historic
 - Larger windows from original to allow more store front visualization
 - Motion to support the update – Bill – Steve – vote unanimous
 - John to send a letter of support to request

Sharon Kelly – question about mural 25 and lovejoy – has it gone through mural committee

- Currently going up now – did it go through a community review? – there is a process for a mural committee – we have not been notified about the Lovejoy and 25th
- Painting over exposed brick

Bob Butler - Broker Bob – Neighborhood activist – regarding Arcade that will be created by south side stadium

- His personal business used to be 21st and Everett then moved to goose hollow

- Concern – Stadium expansion creates an arcade
 - Creates a shelter about 400 feet long 13/17 feet wide – with current “camping” laws will create a homeless area of camping and neighborhood concern
 - Turn the street into a slumland with homeless occupation – available shelter
 - Is the committee considering a LUBBA appeal?
 - Current committee member – Ron Walters is not here today – suggest that Bob get in contact with Ron to discuss
 - Needs to be appeal to city council
 - Special step for putting a building over public right away
 - Burnside arcades – on east time are examples
 - Request for more formal opposition for the arcade
 - Discussion that the public right away should not be given away to the sports facility
 - City does own the structure – but the streets are not part of the facility and can lease out
 - Parker – 2 comments
 - Neighborhoods can request modification of city laws based on their zones
 - Current eastside request from alameda
 - Street beats – community must request the beat cops to walk up and down the streets



As envisioned in the Con-way Master Plan, Block 290 is the centerpiece of the Slabtown area and of the NW neighborhood. The public park and square, known as "Slabtown Square", were two of the primary components of the entire Con-way Master Plan agreement, as adopted by City Council in 2012. In describing the Overall Scheme, the plan states that open space is to be a "significant component" of the plan and that "25% of the total land area" is designated for open space that will be "accessible to the public." P15. The term "public" has meaning in this plan and requires more than just public access, it means providing a square that is visible, iconic, active, maximizes sun access and is integrated into its surroundings. Accomplishing the objectives identified in the master plan provide a once-in-a-generation opportunity to create priceless public assets. The Design Commission's approval of multiple modifications, along with a Master Plan Amendment in LUR 16-100496 DZM MS, compromises these objectives and agreements between NWDA, Con-way and the City Council.

The NWDA is appealing the decision on LUR 16-100496 DZM MS Block 290W because we believe that the Master Plan agreement is not being kept. We are appealing the Design Commission's decision because we believe that the current development proposal fails to meet the requirements of the Con-way Master Plan in two fundamental ways:

- 1. It is proposing far more building area on the site than is allowed, and secondly,**
- 2. It does not provide the required public open spaces as defined by the Master Plan.**

Furthermore, we believe that the Design Review process, in approving this proposal, did not follow the well-defined approval process and criteria for this type of review.

Background

The Square's recommended features were drawn from successful and iconic squares in Europe and South America. The Master Plan called for a square that balanced openness against enclosure, was contextual and recognized the relationships to adjoining areas, the necessity for sunlight, and required commercial uses on the ground floor. The DR approval allows for a reduction in the required Square open space by more 6,000sft. Modifications that allow an increase in the developable floor area by more than 40,000sft restrict the public's ability to not only access, but also see into the square and to realize that it is a public, rather than a private amenity. Modifications to increase the building height and additional density compromise the solar access objectives. Finally, much of the ground floor retail, necessary to provide an active and engaging square, has been removed.

The Northwest Portland community is invested in the potential of the Square and its associated public benefits. Extensive community outreach identified a public square as a high priority for those who live and work here. To achieve the vision of public open space, the Master Plan limits FAR on this site and grants more height, greater floor area ratio (FAR) on commercial development and transferable FAR in other blocks in Slabtown. The community trusted that by giving additional height, greater floor area and creating a transferable development scheme elsewhere within Con-way/Slabtown, the community would realize the benefit of a truly iconic, recognizable public square. Having struck a fair agreement in the Master Plan in 2012, the applicant should not be allowed to change the terms in 2017.

Unfortunately, the development approved by the Design Commission does not satisfy the Master Plan, or the criteria to amend or adjust the Master Plan, but rather is merely "... a proposal that is financially feasible." Portland Zoning Code 33.825.055 requires a finding of compliance with all of the design guidelines for the area including the Community Design Guidelines as well as the NW Master Plan Design Standards and Guidelines. Although a number of modifications to these standards are proposed, the criteria for granting the modification as set forth in ZC 33.825.040 are not satisfied. Finally, the criteria for amending the Master Plan, ZC 33.562.300(G), are not met. More specifically, this design falls short in the following respects:

1. Master Plan Requirements in the Development Area

- 1.1. Proposal Exceeds the Maximum Allowable FAR
- 1.2. Proposal Fails to Provide the Required Public Spaces

2. Additional Master Plan Requirements

- 2.1. Openness to the Sky/Sun Exposure
- 2.2. Visual Connection the Park
- 2.3. Enclosed Gathering Space
- 2.4. Quimby Festival Street
- 2.5. Access and Connections
- 2.6. Lively Public Realm
- 2.7. Urban Character

3. Design Review Process Should Require Filing a New Application and did not Comply with Required Procedure

Based on the details described below and touched on above, the proposal fails to satisfy Master Plan standards 1, 7.C, 7.D.2, 8.F, 10.A, 10.B, 10.C, and Guidelines 7.B, 7.C. In sum, the requested Master Plan Modifications do not better meet the design guidelines and purpose of the standards. In addition, the Master Plan Amendment:

- **Is not** consistent with the approved Con-way Master Plan's vision and purpose;
- The urban design elements provided in the purpose statements of the Design Standards and Guidelines of the approved Con-way master plan **do not** continue to be met after the amendment(s).

Conclusion

For the reasons set forth above, the proposal therefore fails to satisfy the design review standards, the criteria for modifying these standards or the requirements for amending the plan. In sum, the applicant has forced too much private development onto a site that was to be protected for public amenities, particularly a square. Many of the applicable standards inter-relate and overlap but the Design Commission erred by adopting findings that failed to respond to each standard. Moreover, the Design Commission's erred by focusing on the incremental nature of the modifications. What the DC viewed as small increases in building height, reduction in the amount of retail, reducing the size of the square and an encroachment into the park when viewed on their own may not seem significant, when considered together they represent a significant deviation from the vision for the whole.

1. Master Plan Requirements in the Development Area

1.1. Proposal Exceeds the Maximum Allowable FAR

As described in the Master Plan, this is a 200ft by 200ft site with height limits of 47ft and 77ft and a requirement to build a 16,000sf public square. The proposed design utilizes the density intrinsic in the site plus more. The Con-way Master Plan allows floor area to be transferred between development sites per Standard 5.4. The maximum FAR on any development site is limited, however, by the maximum allowable building height, per Standard 5.1, *and* any setbacks or other limitations on the buildable footprint of the site. On Block 290W, the maximum allowable floor area is ~144,600sf. The current proposed has a floor area of 184,589sf. ***This exceeds the maximum allowable floor area by ~40,000sf, or 27%.*** Furthermore, this excess floor area is achieved by ***proposing to build private development in designated public park area.*** This design fails to respond to the values identified in the plan and fails to provide a building that is compatible with regard to massing and proportion as required by Community Design Guideline P1 and D7. This similar requirement is found in NW Master Plan Design Standard 8.F and Guideline 1 and 4, which focuses on “human scale.”

The applicant has included the transfer of density from two adjoining public open spaces which is allowed under the Master Plan but unfortunately, developing this site with this additional density is virtually impossible without violating the Master Plan.

This violation of the Master Plan is achieved by:

- Buildings that exceed height and setback limitations
- Buildings with too large a footprint
- Too much building height

The purpose of the building height limitation was to protect the size and accessibility of the square. Granting a modification to the building height standard that further encloses the square and compromises the solar access is not mitigated by the provision of commercial retail, a requirement in any event, and a rooftop amenity that is not open to the public. The modification to Con-way Master Plan Standard #1 is not justified.

1.2. Proposal Fails to Provide the Required Public Spaces

The Con-way Master Plan requires the creation of three public open spaces on Block 290: 1.) a public park on the eastern 260' x 200', 2.) a 16,000sf public square located within the western 197' x 200', and 3.) a public festival street in 460' x 60' former right of way to the north of the park and the square.

The current proposal fails to provide all three of the public spaces, and compromises each with the encroachment of private uses to the point where the spaces are no longer public in nature:

- NW Master Plan Standard #2 define the maximum building envelope and Design Guideline 7B identifies fifteen required characteristics of a public square. The decision fails to respond to each of these requirements.
- The proposal fails to comply with Map 04-7 and Guideline 7.B.12 by placing **private development in designated public** park area, and **fails to provide any public benefit** to justify the proposed Amendment to do so.
- The proposal fails to comply with Community Design Guideline D1 and D3, Standards 7.C, 7.D.1, 10.A, 10.B and 10.C regarding the arrangement and character of the public square and the surrounding building's relationship to it, resulting in a space that is **more akin to a private courtyard than a public square**.
- The proposal fails to comply with Guidelines 7.C.1, 7.C.3, 7.C.4, 7.C.7, and 7.C.8 regarding arrangement and character of the NW Quimby Parcel, resulting in a space that functions entirely to provide **access to the proposed development's underground parking rather than the intended festival street**.

Modifications to the reduce the dimensions of the square as well as the ground plane connection, as required by Master Plan Standard 10.B and 10.C do not satisfy the ZC 33.825.040 standards.

Similarly, amending the master plan to allow for a reduction in the designated "Neighborhood Park" fails to further the objective of protecting open space and ultimately achieving a goal of 25% open space within the plan area. Although the plan acknowledges the existence of "market force"-driven development, the purpose of this plan is to hold-fast to certain objectives, including the amount and the quality of open space. These objectives cannot be compromised based on financial feasibility of the project. With this approval, the Design Commission sought to re-balance what it viewed as "desired densities with livability and positive urban qualities." Although NWDA favors increased density, the Council should keep in mind that this will largely be market rate housing. In sum, this is the applicant's desired density at the expense of public amenities, in direct contravention of the Plan's purpose and vision.

2. Additional Master Plan Requirements

2.1. Openness to the Sky and Sun Light

Master Plan Standard #10.B requires both enclosing the square on at least three sides, and a minimum horizontal dimension of 100'. This opens the Square to the sky and sufficient natural light to invite community interaction.

Furthermore, Standard #1 allows sunlight to reach the ground in the Square by limiting buildings to its south and west to four stories. The proposal seeks to exceeds that limit by ten feet, one additional story or 21 percent. See also NW Master Plan Design Guideline 3, 7.B.3,

2.2. Visual Connection to the Park

Standard #10.B further requires clearance of the ground plane connection between the square and park be 25'. The applicant proposes an average of 15' with a minimum clearance of 13'-9". NW Master Plan Design Guideline 7.B.2 imposes a similar 25' requirement.

Ideally, to optimize the asset of the park, the square should connect to the park between buildings. However, if they connect *through* a building, the opening must be wide and higher than one floor. This achieves a visual and spatial connection typical of other successful public squares.

2.3. Enclosed Gathering Space

Standard #10.A requires framing the Square by active buildings on at least three sides.

This provides a public gathering space that is safe, quiet and insulated from adjacent vehicular traffic and noise. It facilitates neighborhood gatherings and supports its social fabric. As designed, the square is framed by active buildings on just one side and is too small to invite public use.

2.4. Quimby Festival Street

Master Plan Guideline #7.C requires a multi-use street and open space that links the Square and park with the north and south. It should serve primarily for pedestrian and bicycle use. Its proposed use for private parking access diminishes its capacity to enhance the public realm. The decision fails to address these requirements.

Further, NW Quimby is intended for emergency and service access suitable for a dense urban neighborhood. Its use is also flexible, to accommodate farmers' markets, art walks or other programmed neighborhood events. These uses are prioritized over private vehicular traffic.

Finally, the Master Plan cites access to underground parking from NW Raleigh Street or NW 20th Street, not the Quimby open space parcel. For these reasons, this design fails to respond to Community Design Guideline E1 and E5, NW Master Plan Guideline 2.

2.5. Access, Integration of Design and Connections

NW Master Plan Guideline 7A requires integration between open spaces as well as the design of open spaces that are distinctive as well as accessible. Standard #10.A, Guideline 7.B.3 and 7D requires that the Square connect to nearby open spaces.

This Standard ensures that the square is easily recognized as a public space within the city's

network of open spaces. Because of its required level of enclosure, it must connect to the park and surrounding streets. The proposed design does not achieve this standard.

2.6. A Lively Public Realm

The Master Plan also requires signaling the Square's public nature with ground floor retail on NW 21st Avenue and in the buildings fronting the interior of the Square. Guideline 7.B.1, 7C, 7.D. This Standard requires committing 3/4 of Square frontage to lively commercial uses. This requirement specifically envisions retail sales and service, which generate more activity and interaction than other ground floor uses.

The proposed active use on the Square diminishes its potential as a gathering place for events and activities. It is more private courtyard than public square. Where modifications to some of these standards were requested, the decision fails to justify a modification as required by ZC 33.825.040. Further, it is not clear why a height adjustment is necessary to provide for ground floor retail uses and at the same time, a modification is also necessary to significantly reduce the amount of ground floor retail. Similarly, the decision concludes that the park space must be reduced to accommodate amenities such as a bike repair and pet washing station, relating to Design Standard 5, but this represents a false choice that is actually the result of forcing too many residential units into the development. The open space and the neighborhood facilities must be provided for the neighborhood facility purpose objective to be satisfied.

2.7. Urban Character

Section 4 of the Master Plan lays out the vision of the area's development. It begins with the return to the traditional 200ft by 200ft block grid. It defines where structures would be built, a circulation system for vehicles, pedestrians and bikes and very important to the livability of the neighborhood, the designation of open spaces.

The current proposal expands the footprint of private development outside the block grid, 15' to the east into the public park without justification, denigrating the urban character as envisioned by the Master Plan.

3. The Design Commission Should Have Required Refiling of the Application and Review Against the Standards in Place When the Substantially Revised Design was Filed

The original Block 290 development application was deemed complete on March 29, 2016. Finding little support for the original design, the applicant changed architect and returned with a new building design in March 2017. Rather than requiring submittal of a new application, coupled with a filing fee, the applicant has proceeded under the umbrella of the previous application. This approach not only violates ORS 227.178(5) and ZC 33.700.080(B), it sets a terrible public policy in that it fails to recover filing fees to cover the staff costs resulting from providing two reviews of two completely disparate proposals. Moreover, this approach frustrates the City's ability to require compliance with newly imposed regulations. For example, a developer could avoid the recently

required inclusionary zoning requirements by continually changing an application that predated their enactment.

