



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

Chloe Eudaly, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

**NOTICE OF A CONTINUED PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND DESIGN COMMISSION**

CASE FILE: LU 16-278621 DZM GW (Fremont Apartments)
WHEN: May 10, 2018, 2:00 pm
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: April 18, 2018
To: Interested Person
From: Benjamin Nielsen, Land Use Services, 503-823-7812

The Review Body decision of **approval** has been appealed by **Jeffrey L. Kleinman on behalf of the Pearl District Neighborhood Association**.

A continued public hearing will be held to consider design revisions by the applicant to address an appeal of the Portland Design Commission's decision to approve a 17-story residential mixed-use building in the Central City – River District Subdistrict – North Pearl Subarea at 1650 NW Naito Pkwy. The Design Commission decision of approval with conditions was appealed by the Pearl District Neighborhood Association. At the May 10th hearing, City Council will consider the appeal and the new, proposed design revisions. You are invited to testify at the hearing. The Portland City Council held a de novo hearing February 21, 2018. The Council left the record open for further written submissions due by February 28, 2018, and March 6, 2018, the latter to consist of rebuttal only.

On March 7, 2018, Council made a tentative decision to uphold the Neighborhood Association's appeal and deny the application. On April 4, 2018, the Portland City Council moved to reopen the record and continue the hearing.

During the continued hearing on May 10th, City Council will consider the appeal and the new, proposed design revisions. You are invited to testify at the continued hearing.

This will be an evidentiary/de novo hearing, one in which new evidence may be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

Appellant: Pearl District Neighborhood Association
c/o Jeffrey L. Kleinman, Attorney at Law
1207 SW 6th Ave
Portland, OR 97204

**Applicants/
Representative:**

Tim Wybenga, TVA Architects
503-220-0668
Timw@tvaarchitects.com

Bonnie Chiu, TVA Architects
971-998-9321
Bonniec@tvaarchitects.com

920 SW 6th Ave #1500
Portland, OR 97204

Owner: Patrick Gilligan, Lincoln Property Company LLC
55 San Francisco St #450
San Francisco, CA94133
415-981-7878
Pgilligan@Lpc.Com

Site Address: **1650 NW NAITO PKWY**

Legal Description: LOT 1-10 TL 400, WATSONS ADD
Tax Account No.: R883803450
State ID No.: 1N1E28DD 00400
Quarter Section: 2828,2829

Neighborhood: Pearl District, contact planning@pearldistrict.org.
Business District: Pearl District Business Association, contact Carolyn Ciolkosz at 503-227-8519.

District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Plan District: Central City - River District – North Pearl Subarea
Zoning: EXdg – Central Employment with Design and Greenway (River General) Overlays

Case Type: DZM GW – Design Review with Modifications and concurrent Greenway Review

Procedure: Type III – with a public hearing before the Design Commission. The decision of the Design Commission can be appealed to City Council.

PROPOSAL

Original Proposal:

The applicants request **Design Review** and a **concurrent Greenway Review** for a proposed 17-story, approximately 305,538 square foot mixed-use building with a retail/restaurant space on the ground floor and residential on the upper stories in the North Pearl Subarea of the River District Subdistrict of the Central City Plan District. The site is adjacent to the Willamette River and is currently occupied by a surface parking lot adjacent to a three-story office building. A new plaza and open space area is proposed to be created between the new residential tower and the existing office building at the northwest edge of the site. This plaza and open space area will allow for public access to the Willamette Greenway trail from NW Naito Pkwy.

The proposed building includes several massing components: along the Willamette Greenway trail, the building is massed at five stories with a height of approximately 54'-0'. A roof deck will sit atop this massing and face the river. The five-story massing continues along the new plaza and open space area at the northwest side of the site and transitions into the 17-story tower as it approaches NW Naito Pkwy. This tower component, with a height of 175'-0" to the top of the parapet and 185'-0" to the top of a mechanical screen (please note, heights shown in the drawing package submitted to the Design Commission have since been revised slightly downward based on drawings submitted in Exhibit A-13, which will be provided to the Design Commission at the hearing), forms an "L" with its legs running along the new plaza and NW Naito Pkwy. At the southern corner of the site, the tower steps down to an 8-story mass, with a height of approximately 86'-0". At the eastern corner of the site and along the southeast property line, the building is massed as a single-story with a roof deck and eco-roof on top with

a height of approximately 15'-0". Structured parking is proposed for the site on both the ground floor (9 spaces) and underground (140 spaces).

The proposed total floor area will exceed the base zone Floor Area Ratio (FAR) of 2:1 for this 72,080 SF site; with a proposed floor area of 305,538 SF, the proposed FAR would be approximately 4.24:1. The applicants propose to earn bonus FAR through a combination of the residential bonus option, locker room bonus option, and eco-roof bonus option.

- The residential bonus option in zoning code section 33.510.210.C.1.a.(2) allows for 1 additional square foot of floor area for each square foot of floor area developed and committed as housing, for a total possible bonus FAR of up to 2:1. The full bonus will be earned, as more than 144,160 SF of residential floor area is proposed.
- The locker room bonus option in zoning code section 33.510.210.C.8 allows for an additional 40 square feet of floor area for each square foot of floor area developed and committed to locker room facilities to encourage biking. The applicants propose to earn this bonus by providing a 380 SF locker room area on the ground floor of the building, connected to the long-term bicycle parking room. The applicants propose to provide 481 long-term bicycle parking spaces, with 206 in the bicycle parking room and an additional 275 in residential units.
- The eco-roof bonus option in zoning code section 33.510.210.C.10 allows for an additional two square feet of floor area for each square foot of eco-roof where the total area of eco-roof covers at least 30%, but less than 60%, of the building's footprint. The applicants propose to earn this bonus by providing a total of 18,217 SF of eco-roof out of a total of 56,231 SF of roof area (32.4% of total roof area).

Proposed cladding materials include clear glass, spandrel glass, flat metal panel, ribbed metal panel, fiber cement panel, brick, and concrete.

Seven (7) **Modifications** to zoning code development standards are requested:

- 1) 33.140.210.B.2 – Height: To allow rooftop mechanical equipment and screening to extend above the height limit of 175' (per the North Pearl Subarea height opportunity area standards), to be located closer than 15' to the roof edges on street-facing facades and to cover more than 10% of the roof area. The proposed mechanical screen will enclose 73% of the tower roof area and will extend up to the parapet of the tower in some locations.
- 2) 33.266.220.C.3.b – Standards for all bicycle parking, Bicycle racks: To allow vertically-hung long-term bicycle racks to be spaced at 1'-4" x 6' rather than the required 2' x 6'.
- 3) 33.510.205.H.2.c – North Pearl Subarea height opportunity area:
 - To allow the height of the building to be 175'-0", exceeding the maximum allowed base height of 100'-0"; and,
 - To allow the length of facades above 100' to exceed 120' in length. Proposed façade length on the east and west facades of the building is 125'-2". Proposed façade length on the north and south facades of the building is 142'-8".
- 4) 33.510.251.C.3 – Required open area development standards, Shadow standard: To allow more than 50% of the plaza area on the north side of the site to be covered by shadows at noon on April 21st of any year, not including shadows from trees. Approximately 84% of the plaza will be in shadow at noon.
- 5) 33.510.251.D.3.b & c – North Pearl Subarea waterfront development standards:
 - b. Setbacks for all development from the Willamette River: To allow portions of the building over 35' in height to extend into the setback area, which requires the building to be set back from the Greenway setback line by 1' for every 1' of height above 35'. (These portions of the building are not yet clearly identified on the plan drawings.)
 - c. Maximum building dimension: To allow the building dimension to be 230'-9" in the east-west direction, i.e., perpendicular to the river, rather than the maximum allowed 200' dimension.

- 6) 33.140.240.B.4 – Pedestrian Standards, EG1 and EX zones: To allow landscaping between the sidewalk and the building along NW Naito Parkway to be planted with groundcover and other low plants, which is less than the required L1 landscaping standard that requires trees to be planted in addition to groundcover.
- 7) 33.266.130.G.2.c – [Parking Area] Setbacks: To allow required landscaping between the south lot line and the driveway leading from NW Naito Pkwy to the structured parking garage to be screened with 3-foot tall evergreen shrubs for a portion of its length and with a 3-foot tall concrete wall for the rest of its length instead of the required L2 landscaping (which consists of trees, shrubs, and ground cover). The proposed planted area will be 2 feet in width instead of the required 5-foot width.

In addition to the reviews described above, concurrent, but separate, Property Line Adjustment (PR 17-113983) and Lot Consolidation (LU 17-169109 LC) procedures are currently under review to separate the proposed development site from the rest of the larger parcel.

Revised Proposal:

The applicants have revised their original proposal in the following ways:

- The overall building length in the east-west direction, perpendicular to the Willamette River, has been shortened by 13'-6" to 217'-3" in the east-west direction, perpendicular to the Willamette River. This is accomplished by removing a bay and shifting removed dwelling units up to a new sixth floor on the podium along the Greenway. This shift raises the height of this podium by approximately 10 feet.
- The Greenway trail has been widened from a minimum dimension of 13'-0" to a minimum dimension of 20'-0" and redesigns some of the landscaping around the trail. The plaza on the north side of the site has also been slightly redesigned to accommodate the wider trail.
- The entire building footprint has also been shifted slightly closer (18") to NW Naito Parkway.
- Two "creative studio spaces" are proposed facing the Greenway trail near the southeast corner of the site.
- Modification #2 has been removed from consideration. The proposal now includes 140 bicycle parking spaces on the ground floor plus another 275 in the residential units, all of which are proposed to meet the bicycle parking standards.
- The sum of changes proposed may result in a change to the impact of Modification #4, possibly reducing the area in shadow at noon on April 21st of any year.
- Modification #5 part b will be reduced slightly, as the eastern podium and the tower have been shifted slightly further out of the North Pearl Subarea diagonal greenway setback.
- Modification #5 part c will be reduced to allow a building 217'-3" in length rather than the original request of 230'-9".
- The locker room FAR bonus is no longer being requested. Instead, all bonus FAR is proposed to be achieved through a combination of the residential FAR bonus and the eco-roof FAR bonus.

The revised drawings and applicant's narrative, submitted to the Council Clerks, may be viewed here: <https://www.portlandoregon.gov/auditor/article/676151>.

A Type III Design Review is required for proposed new development valued over \$2,223,650 in the "d" Design Overlay Zone of the River District Subdistrict of the Central City Plan District and for requested Modifications to zoning code development standards. Greenway Review is required for proposed new development in the "g" Greenway – River General Overlay Zone.

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:

- Central City Fundamental Design Guidelines
- River District Design Guidelines
- Willamette Greenway Design Guidelines
- 33.820.040, Modifications That Will Better Meet Design Review Requirements
- 33.440.350, Approval Criteria

ORINGINAL REVIEW BODY (DESIGN COMMISSION) DECISION

It is the decision of the Design Commission to approve Design Review and concurrent Greenway Review for the proposed 17-story, approximately 305,538 square foot mixed-use building with a retail/restaurant space on the ground floor and residential on the upper stories in the North Pearl Subarea of the River District Subdistrict of the Central City Plan District;

Approval of the following Modification requests:

- 1) 33.140.210.B.2 – Height: To allow rooftop mechanical equipment and screening to extend above the height limit of 175’ (per the North Pearl Subarea height opportunity area standards), to be located closer than 15’ to the roof edges on street-facing facades and to cover more than 10% of the roof area. The proposed mechanical screen will enclose 73% of the tower roof area and will extend up to the parapet of the tower in some locations.
- 2) 33.266.220.C.3.b – Standards for all bicycle parking, Bicycle racks: To allow vertically-hung long-term bicycle racks to be spaced at 1’-4” x 6’ rather than the required 2’ x 6’.
- 3) 33.510.205.H.2.c – North Pearl Subarea height opportunity area:
 - To allow the height of the building to be 175’-0”, exceeding the maximum allowed base height of 100’-0”; and,
 - To allow the length of facades above 100’ to exceed 120’ in length. Proposed façade length on the east and west facades of the building is 125’-2”. Proposed façade length on the north and south facades of the building is 142’-8”.
- 4) 33.510.251.C.3 – Required open area development standards, Shadow standard: To allow more than 50% of the plaza area on the north side of the site to be covered by shadows at noon on April 21st of any year, not including shadows from trees. Approximately 84% of the plaza will be in shadow at noon.
- 5) 33.510.251.D.3.b & c – North Pearl Subarea waterfront development standards:
 - d. Setbacks for all development from the Willamette River: To allow portions of the building over 35’ in height to extend into the setback area, which requires the building to be set back from the Greenway setback line by 1’ for every 1’ of height above 35’. (These portions of the building are not yet clearly identified on the plan drawings.)
 - e. Maximum building dimension: To allow the building dimension to be 230’-9” in the east-west direction, i.e., perpendicular to the river, rather than the maximum allowed 200’ dimension.
- 6) 33.140.240.B.4 – Pedestrian Standards, EG1 and EX zones: To allow landscaping between the sidewalk and the building along NW Naito Parkway to be planted with groundcover and other low plants, which is less than the required L1 landscaping standard that requires trees to be planted in addition to groundcover.
- 7) 33.266.130.G.2.c – [Parking Area] Setbacks: To allow required landscaping between the south lot line and the driveway leading from NW Naito Pkwy to the structured parking garage to be screened with 3-foot tall evergreen shrubs for a portion of its length and with a 3-foot tall concrete wall for the rest of its length instead of the required L2 landscaping (which consists of trees, shrubs, and ground cover). The proposed planted area will be 2 feet in width instead of the required 5-foot width.

Approvals per Exhibits C.1-C.107, signed, stamped, and dated December 22, 2017, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through K) 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 16-278621 DZM GW". All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. At the time of building permit submittal, a signed Certificate of Compliance form (<https://www.portlandoregon.gov/bds/article/623658>) must be submitted to ensure the permit plans comply with the Design/Historic Resource Review decision and approved exhibits.
- C. No field changes allowed.
- D. The glazing at the ground floor of the west and south elevations shall be clear glass rather than fritted glazing.
- E. The storefront glazing at the FCC room and fire riser room on the north elevation shall be composed of translucent glass.
- F. Exposed metal panel attachments shall be finished to be the same color as the metal panel.
- G. Exposed fasteners used with the fiber cement panel system shall be prefinished by the manufacturer to match the color of the panels, and the concealed fasteners used with the fiber cement panel system shall be attached entirely from the back side of the panel via a clip or similar system.
- H. The proposed wall-mounted bike racks shall be staggered vertically by a minimum of 6".
- I. The proposed retail/restaurant space at the northeast corner of the ground floor of the building shall remain in a Retail Sales & Services use for the life of the building.
- J. Signage denoting public access to the Greenway trail shall be placed at both ends of the pedestrianway, and the signs shall meet the Directional Signs standard in Portland sign code section 32.32.030.H.
- K. At least one long-term bike parking space shall be shown in each dwelling unit, or otherwise accounted for within the building at the time of permit to earn the requested locker room bonus.

APPEAL

The Design Commission's decision of an approval with conditions has been appealed by Jeffrey L. Kleinman, Attorney at Law on behalf of the Pearl District Neighborhood Association. According to the appellants' statement, the appeal of the Design Commission decision is based on arguments that:

The proposal violates provisions of the zoning code and relevant design guidelines and also includes several modifications to development standards that were not required to be approved.

The proposal would create a precedent for similar development along the Greenway which visually and physically cuts the North Pearl District off from the Willamette River.

The proposal does not meet the following guidelines from the Central City Fundamental Design Guidelines and the River District Design Guidelines:

- *A2 – Emphasize Portland Themes. The building’s massing and height does not properly take the view of the Fremont Bridge into account. The view would not be impaired if the building met the 100-foot base height limit.*
- *A3-1 – Provide Convenient Pedestrian Linkages. The proposal does not respect the typical 200-foot block pattern with its placement at the south property line.*
- *A4 – Use Unifying Elements. The building creates a visual mishmash.*
- *A5-1-1 – Reinforce the Identity of the Pearl District Neighborhood. The proposal creates its own neighborhood along the river almost entirely for the benefit of high-rent tenants.*
- *A5-1-5 – Reinforce the Identity of the Waterfront Area – The proposal does not integrate an active mix of uses along the waterfront or make development open and accessible in order to maintain the publicness of the Greenway; it instead turns the riverfront into a private benefit and amenity.*
- *A5-3 – Incorporate Water Features. The proposal does not incorporate water features which enhance the quality, character, and image of the River District. Proposed stormwater planters are not a legitimate water feature and do not form the focal point for integrated open spaces.*
- *A5-4 – Integrate Works of Art. The proposed benches do not comprise works of art.*
- *B5 – Make Plazas, Parks, and Open Space Successful. The proposed plaza/open space has minimal engagement with the existing 3-story office building to the north.*
- *C4 – Complement the Context of Existing Buildings. The proposal fails to use and add to the local design vocabulary with its gated, walled stair entrance to the second-floor roof terrace and lack of visual connection to the Greenway trail.*
- *C5 – Design for Coherency. The proposal’s unharmonious mix of design features and wall-like cutting off of the riverfront and Greenway are not designed for coherency.*

The following modifications do not merit approval, as they do not better meet applicable design standards, are inconsistent with the purpose of the standards in question, and should have instead been reviewed through the more formal adjustment process:

- *Modification #1 – 33.140.210.B.2, Height. Allowing the proposed building and its mechanical equipment screen to exceed the 100-foot base height limit or the 175-foot North Pearl bonus height limit does not better meet the applicable design guidelines and is inconsistent with the purpose of the standard.*
- *Modification #2 – 33.266.220.C.3.b, Standards for all bicycle parking, Bicycle racks. This modification obviates the need for the locker room FAR bonus and bicycle parking area.*
- *Modification #3 – 33.510.205.H.2.c, North Pearl Subarea height opportunity area. The modifications to this standard are substantial and need not have been considered by the Design Commission or could have been denied. The goals of the North Pearl Plan are directly relevant to the review of this modification. The additional height will not create and support a range of community amenities; it will not create a visually permeable skyline providing visual access to locations beyond the subarea; it will not result in a dynamic and varied skyline or urban form contributing to the health, vibrancy, or livability of urban living; it will not shape building massing allowing light and air to penetrate the street level, enhance pedestrian scale, or create a pleasant, versatile, and active public realm; it will not provide a range of building types but will create a visual mess.*

The proposal will not comply with the purpose statement of the standard: it will not increase sunlight along the Greenway and within public and private open space areas along the waterfront; it will not create an active urban waterfront with a vibrant public realm; it will not result in the creation of well-designed public and private open space amenities; it will not facilitate visual and physical access to and along the riverfront for all

members of the public; it will not create expanded opportunities for views of the river from Naito Parkway, landward portions of the subarea, and locations west of the subdistrict; and it will significantly affect views or diminish the aesthetic qualities of the Fremont Bridge on the skyline.

- *Modification #4 – 33.510.251.C.3, Required open area development standards, Shadow standard. This modification request does not better meet the applicable design guidelines, nor does it meet the purpose of the standard.*
- *Modification #5 – 33.510.251.D.3.b & c, North Pearl Subarea waterfront development standards. The proposal will not better meet design guidelines or be consistent with the purpose of the standard. With the accumulated other modifications, the proposal is already oppressive with respect to the Greenway, and locating the only open area on one side of the property will not allow for the requisite views and physical connections to the river.*
- *Modification #7 – 33.266.130.G.2.c, [Parking area] setbacks. The proposal violates the purpose of creating an environment inviting to pedestrians and does not better meet the design guidelines.*

The proposal does not meet the following guidelines from the Willamette Greenway Design Guidelines:

- *Issue A, Relationship of Structures to the Greenway Setback Area, Guideline 1, Structure Design. The structure does not complement or enhance the Greenway Setback Area, but rather intrudes upon it.*
- *Issue A, Guideline 2, Structure Alignment. The proposal fails to follow the Central City's typical 200-foot grid.*
- *Issue B, Public Access, Guideline 1, Public Access Opportunities. The proposal includes only one access point to the river and Greenway.*

There are also problems related to zoning code interpretations concerning allowable floor area:

- *The proposal incorrectly states a site area of 72,080 square feet upon which the proposal's floor area ratio (FAR) and bonus floor area allowances are based, rather than the 40,000 square-foot site area allowed by zoning code section 33.930.025.*
- *Allowance of bonus FAR would be discretionary rather than mandatory, as would be the accommodation of any such bonus FAR by means for modification of the 100-foot height standard.*
- *The allowance of 15,200 square feet of bonus floor area through the locker room bonus in zoning code section 33.510.210.C.8 should not have been granted as the bonus was intended to benefit bicycle commuters and was not intended for residential structures.*

The proposed restaurant and retail use along the Greenway is intended only to justify the large number of underground parking spaces for apartment tenants, which would not otherwise be allowable. The chance of a business succeeding in this location is remote.

Review of the case file: The Design Commission decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies.

We are seeking your comments on this proposal. The continued hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing on May 10th** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

If you choose to provide testimony by electronic mail, please direct it to the Council Clerk at CCTestimony@portlandoregon.gov. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR EVIDENTIARY/DE NOVO APPEALS

1. SUBMISSION OF TESTIMONY

- a. Testimony may be submitted via email to CCTestimony@portlandoregon.gov or in writing to the Council Clerk, 1221 SW 4th Avenue, Room 130, Portland, Oregon 97204. Written comments must be received by the time of the hearing and should include the case file number.
- b. Testimony may be submitted orally (see below).

2. HEARINGS PROCESS

- a. The order of appearance and time allotments for this continued hearing are generally as follows, though Council may revise the order and length of testimony as appropriate:

Applicant	10 minutes
Staff Report	10 minutes
Principal Appellant	15 minutes
Public Testimony	3 minutes each
Applicant Rebuttal	5 minutes
Council Discussion	

- b. The applicant has the burden of proof to show that each and every element of the approval criteria can be satisfied. If the applicant is opposing the Review Body's recommendation, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied, or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the application must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidence submitted in support of the application demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong criteria are being applied, or additional approval criteria should be applied.

- d. The failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal the Land Use Board of Appeals (LUBA) on that issue.

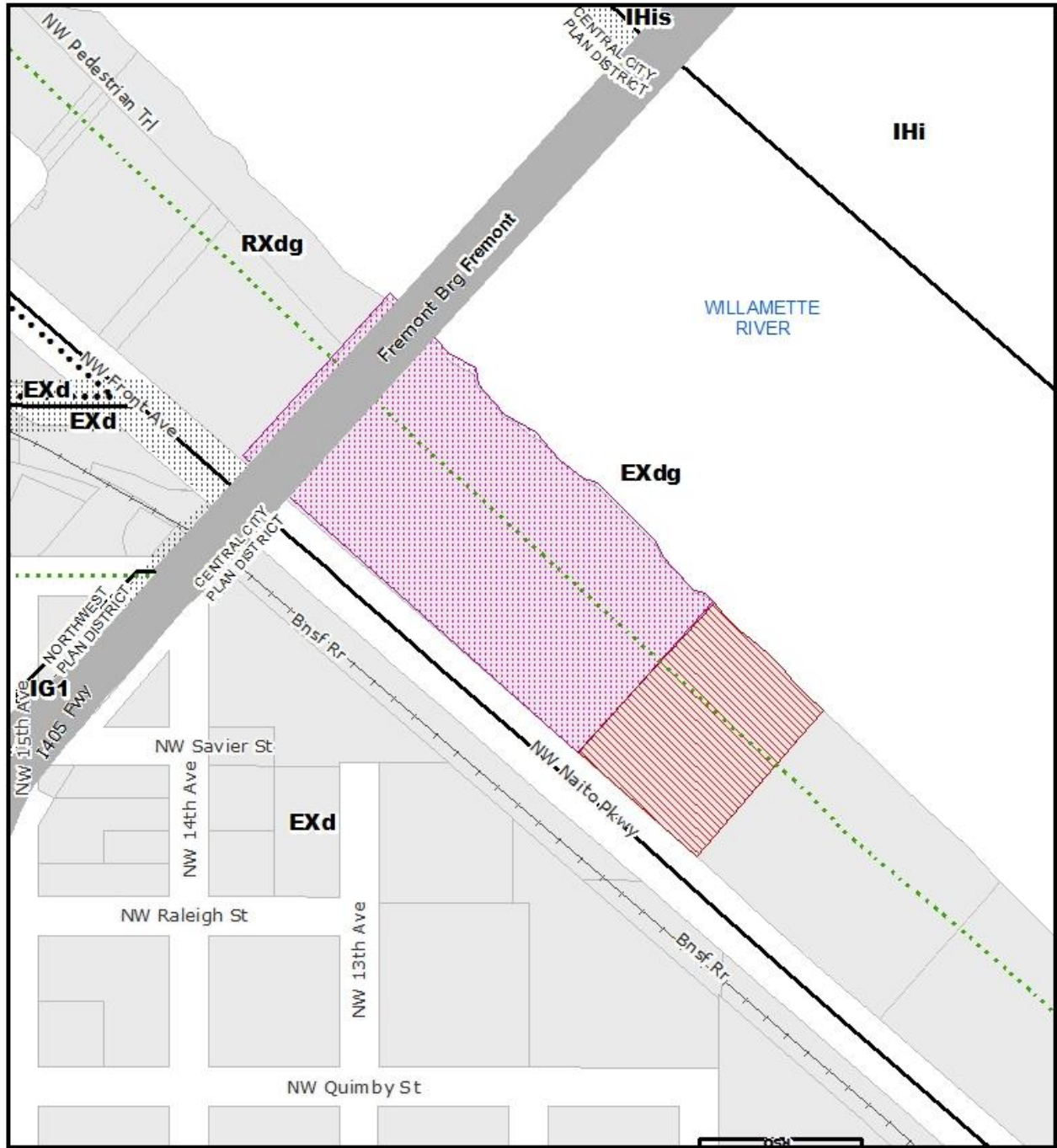
3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the Review Body decision are available for review by appointment at the Bureau of Development Services, 1900 SW 4th Avenue, Portland, Oregon 97201. Call 503-823-7617 to make an appointment to review the file.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning map
2. Site plan
3. Revised greenway plan
4. Greenway section comparison
5. Building elevation/massing comparison
6. Applicant statement
7. Appeal statement



ZONING

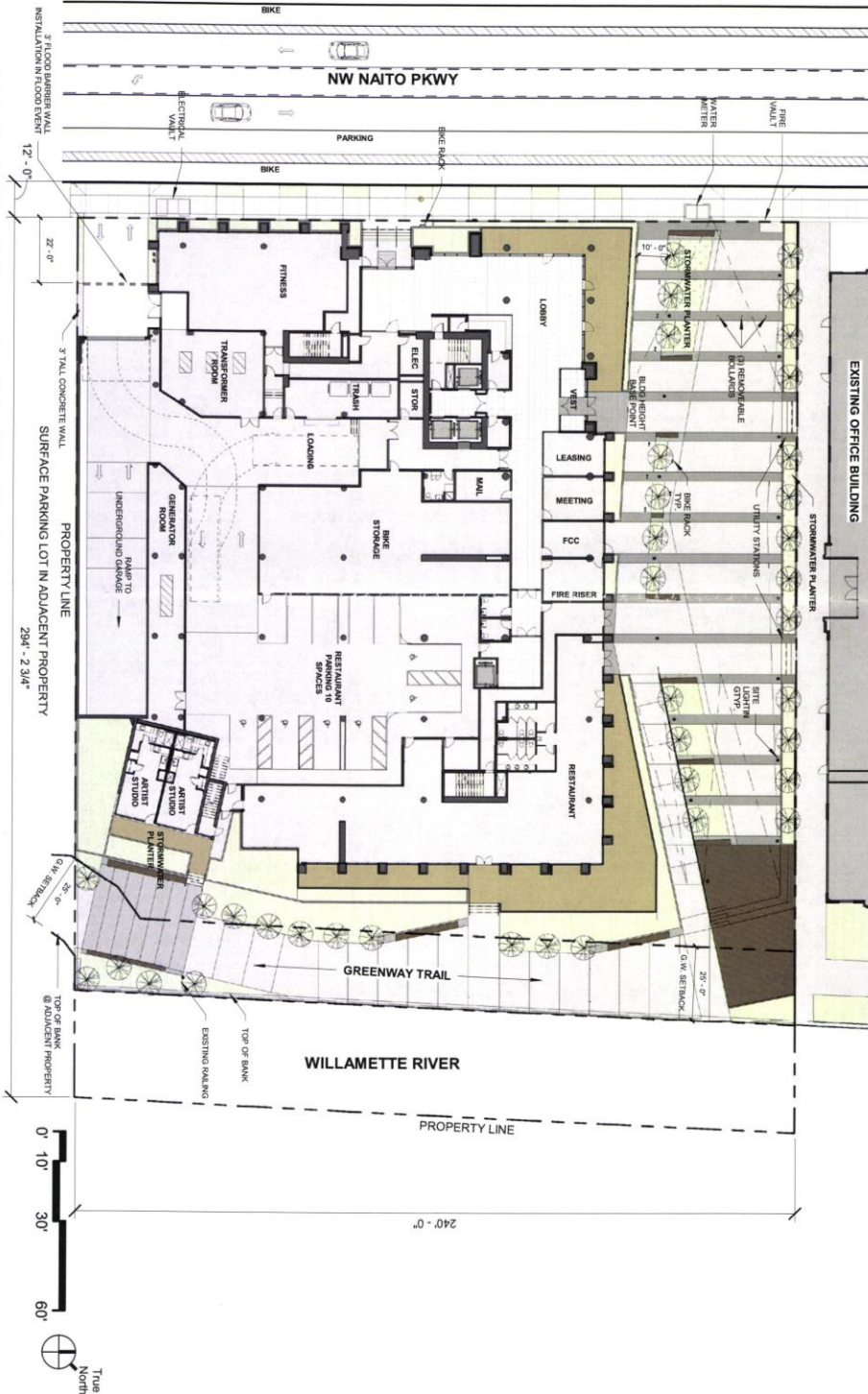


-  Bridge
-  Recreational Trails
-  Site
-  Also Owned Parcels

File No.	LU 16-278621 DZM GW
1/4 Section	2828
Scale	1 inch = 200 feet
State ID	1N1E28DD 400
Exhibit	B Aug 16, 2017

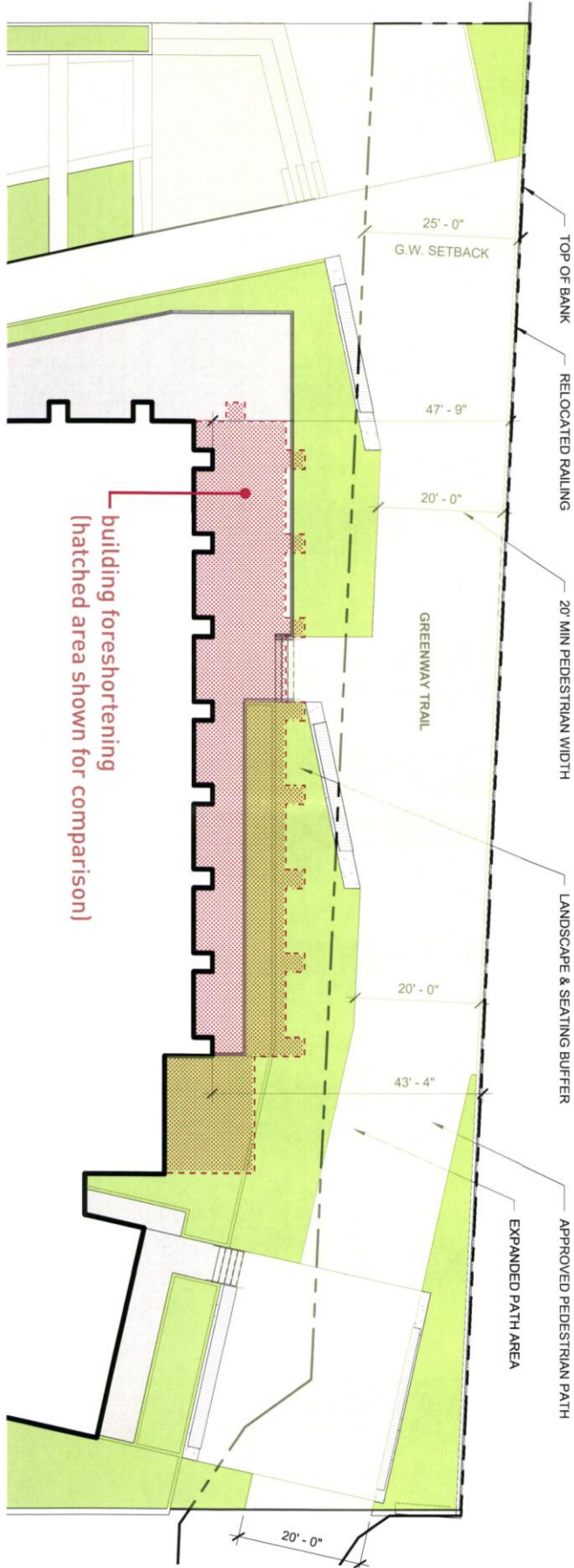


4 appendix:
 site plan - technical



LINCOLN PROPERTY COMPANY
FREMONT PLACE APARTMENTS
 portland, oregon
 LU 16-278621 DZM GW

proposed design revisions (plan view):



LINCOLN PROPERTY COMPANY
FREMONT PLACE APARTMENTS
portland, oregon
LU 16-278621 DZM GW

12 appendix:
greenway section comparison

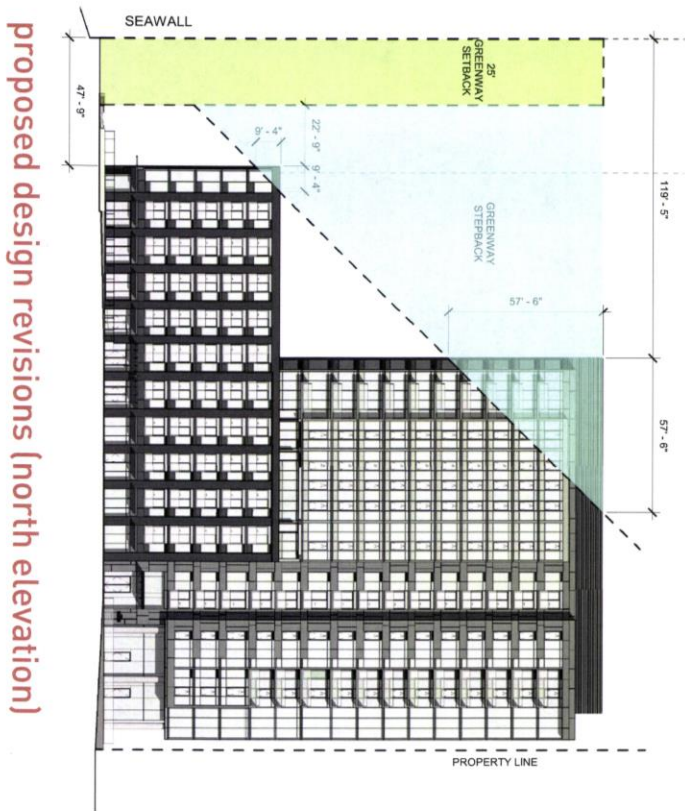
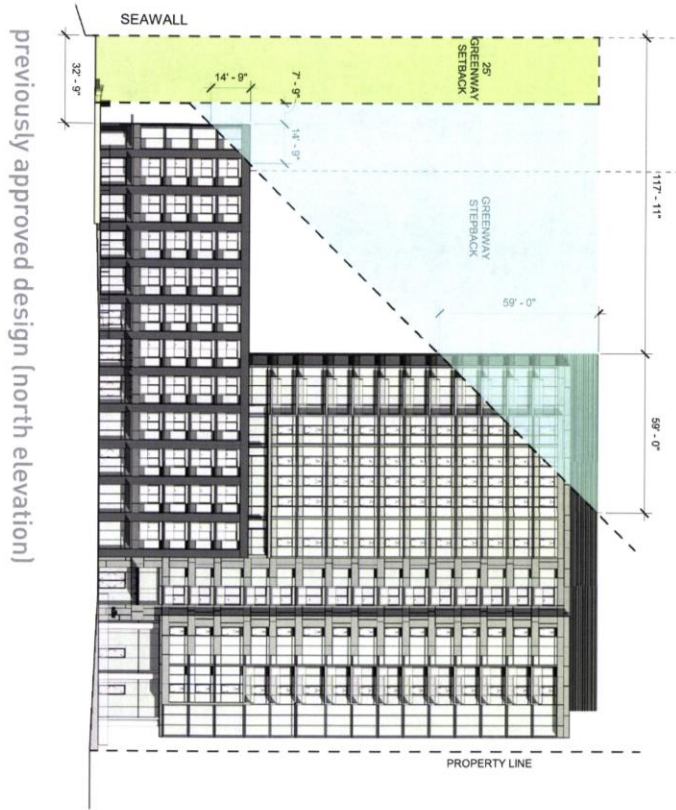


previously approved design (section view):

proposed design revisions
(section view)



13 appendix:
building elevation/massing comparison



approved + proposed
building north elevation + massing





April 11, 2018

Portland City Council
Attention: Council Clerk
Portland City Hall
1221 SW Fourth Avenue
Portland, OR 97204

Re: Fremont Apartment Project Design Revisions

Dear Mayor Wheeler and Members of the City Council:

Lincoln Property Company appreciates the opportunity to present a revised design for the Fremont Apartments project, which we believe responds in a meaningful way to the concerns raised at the last two City Council hearings.

This packet of information showcases numerous design changes that increase the public benefits provided by the project, while retaining the basic design of the project that evolved over the course of a DAR and 4 hearings before the Design Review Commission.

Key changes include:

- The width of the bike/ped trail within the Greenway has been increased so it is now a minimum of 20 feet at its narrowest point – that increase makes it the widest Greenway trail section from South Waterfront to the terminus at Terminal One.
- Additional landscaping was added between the path and the building. This area now measures between 43 feet, 4 inches, and 47 feet, 9 inches from the seawall to building, almost twice the minimum size required by Code, and just about meets the new 50-foot setback standard under Central City 2035.
- A new public plaza has been added at the south end of the project. The plaza is envisioned to work in conjunction with the proposed new art studios to create a robust public arts area.

tva architects, inc.

920 sw sixth avenue | suite 1500 | portland, oregon 97204
phone: 503 220 0668 | www.tvaarchitects.com

Robert Thompson, FAIA | Tim Wybenga, LEED AP | Pamela Saftler, AIA, IIDA | Mandy Butler, AIA, LEED AP BD+C

April 11, 2018

Page 2

- The two storefront spaces fronting the southern plaza will be programmed as affordable creative space. We will work with private and public partners to activate these spaces with creative art and will celebrate the history of the Pearl as an arts district.

We thank you, as a team, for your willingness to consider the revised designs that we have prepared for this project and trust that you will see the long history of collaboration with neighbors, staff, and the design commission, the concerted effort to address the items raised by Council, and the great public benefit that this project will provide.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Wybenga". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Tim Wybenga
Principal-in-Charge
TVA Architects Inc

Executive Summary

The accompanying materials illustrate the design changes that have been made in response to concerns raised by the Mayor and City Councilors about the Greenway, and other changes to enhance the project's amenities and public benefits.

The Lincoln team has put in many hours since last week's Council hearing brainstorming about how best to address the issues while keeping faith with the basic design parameters that were developed in conjunction with the Design Review Commission and staff during DAR and four DR hearings before the Design Commission.

We hope the City Council will find that this package of modifications meets its expectations, satisfies all relevant Design Guidelines and Code standards, and that it will be prepared to vote in favor of approving the Fremont Place Apartments at its hearing on May 10.

The following discussion is intended to summarize and clarify the design changes illustrated in the accompanying materials.

1. Greenway Enhancements

The increasing the width of the Greenway setback and, most importantly, the bike/ped path within the setback were a key focus of the modifications. While the original proposal satisfied all Code requirements, we recognized that creating a more expansive Greenway than what the Code called for could result in a significant enhancement to the public realm. As illustrated by the attached exhibits, the revised Greenway proposal includes the following changes:

- Our design increases the width between the seawall and the building by 17 feet, 6 inches.
- We accomplished this in part by removing a single vertical bay from the 5-story podium (thereby decreasing building length by 13 feet, 6 inches) and increasing this podium to 6 stories to ensure the building did not lose 10-12 housing units.
- We also moved the building 18 inches toward NW Naito Parkway by eliminating space between the building and the sidewalk and relocating our planters to the building wall.
- These cumulative changes result in the building being set back from the seawall between 43 feet 4 inches and 47 feet, 9 inches.
- We widened the Greenway trail path to 20 feet at its narrowest point, resulting in the widest trail path section along the western side of the River.
- We also included more landscaping between the path and the building, including the restaurant patio area, to buffer diners from trail use.
- Our design directly responds to Portland Parks and Recreation's guidance in the record and replaces the existing seawall guardrail to gain 2 feet, 6 inches of usable Greenway space for bikes and pedestrians.

2. New Arts Plaza

The creation of a second plaza at the southern end of the Greenway is a significant new public amenity. This plaza includes landscaping, seating areas and a raised platform that activates our proposed creative studio space. With the addition of this public space, the project's total open space area will even further exceed the amount required by Code.

3. Affordable Creative Space on the Southern Plaza

We propose to designate the two flexible spaces that face the south plaza as affordable creative studio space. These spaces have large plaza- and Greenway-facing windows that would allow the public to enjoy art being created in the studio spaces and provide a unique public art experience on the site. The connection between the studios and the plaza will be a space for creative interactions between the artists working in the studios and the opportunity for public displays of art and perhaps performances in the plaza.

The Pearl has a long history as an arts district, but rent-levels limit the accessibility of this area for many artists. Designating these spaces as being reserved for artists at reduced rents will make a meaningful contribution to the City's ongoing efforts to preserve and create space for artistic work. We have begun discussions with potential partners for how to plan and program this area to meet the goals described in the Plan for Preserving and Expanding Affordable Arts Space endorsed by the City Council earlier this year.

3. Modifications Removed or Reduced

The approved design included 7 modifications. Many of these arose out of design choices the Commission and the project architects believed were important to allow the project's design to best respond to the iconic nature of this site and its important location adjacent to the River and the Fremont Bridge.

It is not unusual for large buildings, particularly ones that are not on standard-sized City blocks to utilize available modifications as a way to balance competing Design Guidelines and be responsive to the unique features of each site. Moreover, several of the modifications for this project are to development standards the City intends to eliminate as part of Central City 2035.

Nevertheless, the design team has been working with City staff to make several minor adjustments to the design in order to reduce the number and/or extent of the modifications. We believe the revisions may allow for the elimination of three of the seven modifications approved by the Design Review Commission.

Changes include:

- Removing Mod 2 by decreasing amount of bike parking and increasing bike rack size
- Attempting to remove Mod 4 by working with staff to clarify a Code interpretation
- Reducing Mod 5a by encroaching less into the 45-degree angle Greenway setback
- Reducing Mod 5b by decreasing building length to 217 feet, 3 inches between the Greenway and NW Naito Parkway
- Attempting to remove Mod 6 by eliminating space between the building and NW Naito Parkway and seeking a Code interpretation

To the extent that the Council is concerned about the precedent of granting some of these modifications, Council should be aware that the standards requiring modifications for height, certain façade lengths above 100 feet, the plaza requirements and shadow standard, and the 45-degree angle standard will all be eliminated under Central City 2035.

4. A Beneficial Design for an Important Site

In preparing the Design Revisions, we thought at length about the Design Commission process that led to our previous approval through four Design Review hearings and a DAR.

The Design Commission focused on the building's form, the way the design worked with the site, and on the public benefits the project provides. The Commission felt it was important for the project to be oriented to compliment a view of the Fremont Bridge from the Fields Park, and to provide substantial public open space, exceeding the Code requirements. To accomplish these things, the project's bulk is constrained; the building contains only 82% of the FAR allowed by the Code.

The Commission understood, as this Council does, that the view from the Park of the Bridge is not formally protected. However, a design that compliments this view, to the extent that it is possible for the building to provide, is a public benefit of this design to the City and the Pearl District neighborhood. We agree that designing with the Bridge in mind is an important part of this project and helps it to better meet the Design Guidelines than a project that completely blocks this view. As the Design Commission found, this objective required modifications to some development standards, including the building overall façade length, lengths of facades above 100 feet, and shadows on the plaza area. These modifications are directly relevant to the project's ability to meet Design Guidelines.

5. Future Greenway Enhancements and Affordable Housing

For Lincoln, this project is important as the first phase of its future redevelopment of the larger riverfront property stretching north to the Fremont Bridge. Over time, Lincoln plans to redevelop the two existing office buildings north of this project site as phases II and III of this project. In anticipation of these future phases, Lincoln has already worked with the neighboring property owner north of the Fremont Bridge to connect the Greenway trail under the Bridge (by dedicating an easement and building a trail connection) between that site and the office buildings. The next phases will continue the robust Greenway treatment to be built in this first phase. Lincoln intends to develop housing as the next phases of this project, which will provide affordable housing through compliance with the Inclusionary Housing program.



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: 16-278621 DZM GW

FOR INTAKE, STAFF USE ONLY

Date/Time Received 1/11/2018; 4:22pm

Action Attached

Received By AP

Fee Amount \$5000.00

Appeal Deadline Date 1/11/2018

[N] Fee Waived

Entered in Appeal Log

Bill # 4248045

Notice to Auditor

[M] Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 1650 NW Naito Pkwy DEADLINE OF APPEAL 1-11-18

Name Pearl District Neighborhood Association c/o Jeffrey L. Kleinman, Attorney at Law

Address 1207 SW Sixth Avenue City Portland State/Zip Code OR 97204

Day Phone (503) 248-0808 Email KleinmanJL@aol.com Fax (503) 228-4529

Interest in proposal (applicant, neighbor, etc.) ONI Recognized Organization

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

Zoning Code Section 33. (SEE EXHIBIT A)

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:

(SEE EXHIBIT A, ATTACHED.)

I confirm that the vote to appeal in this matter was carried out in accordance with PDNA's bylaws.

Appellant's Signature Stanley Penkih PRESIDENT PDNA

By: Stanley Penkih, President

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.



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 Fee Waiver Request for Organizations

FOR INTAKE, STAFF USE ONLY	ORGANIZATION NOTIFICATION
LU Number: <u>16-278621 DZM GW</u>	Date/Time _____
Date/Time Received <u>1/11/18; 4:22pm</u>	Received By _____
Received By <u>AP</u>	<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 1650 NW NAITO PARKWAY

File Number LU 16-278621 DZM GW Appeal Deadline Date JANUARY 11, 2018

Organization and Appeal Information

Organization Name PEARL DISTRICT NEIGHBORHOOD ASSOCIATION

Person Authorized by the Organization to file the Appeal STANLEY PENKIN

Street Address 1075 NW HORTHROP ST. #407

City PORTLAND State OR Zip Code 97209

Day Phone 845 417.8155 FAX _____ email STANLEYPENKIN@GHAL.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 Stanley Penkin, PRESIDENT

Signature/Date 1-2-18

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 : 12-27-17

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 10 Number of NO votes to appeal 5

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.

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.

RELEVANT APPROVAL CRITERIA

A. River District Design Guidelines:

A2, A3-1, A4, A5-1-1, A5-1-5, A5-3, A5-4, B4, C4, C5

B. Portland Zoning Code Sections:

33.930.025
33.825.040.A and B
33.140.210.B.2,
33.266.220.C.3.b
33.510.205.H.2
33.510.205.H.2.c.2
33.510.210.C.1.a.2.
33.510.210.C.8
33.510.251.C.3
33.510.251.D.3.b and c
33.440.350.A
33.266.130.G.2.c

REASONS FOR APPEAL (HOW THE PROPOSAL DOES NOT COMPLY WITH THE LISTED APPROVAL CRITERIA)

I. INTRODUCTION

For the reasons explained below, the Design Commission has ratified the stacking of several modifications, including modifications for excess height and FAR, which the Code did not require it to approve, and which violate several provisions of the Code and relevant Design Guidelines. If the commission's decision is affirmed, it will result in the effective walling off of more than a full city block's length of riverfront and the blotting out of key views of the Fremont Bridge.

Allowing a 17-story structure (plus an additional story for its rooftop mechanicals) and the additional features described in the application would create a precedent for more of the same along this stretch of the Greenway, visually and physically cutting the North Pearl District off from the Willamette

II. FAILURE TO COMPLY WITH RIVER DISTRICT DESIGN GUIDELINES.

River District Design Guideline A2. The building’s massing concept does not properly take the view of the Fremont Bridge into account and inappropriately shifts much of the mass to the north. By exceeding the normal height limitation of 100 feet by a total of 85 additional feet, the proposed structure actually obliterates a key view of the bridge itself from the Fields Park and elsewhere, which would not be impaired if the applicant complied with the 100-foot limit. The commission erred in finding otherwise.

River District Design Guideline A3-1. The proposal does not respect Portland’s typical 200-foot block pattern. The placement of the building so close to the southern property line violates the typical 200-foot Portland block pattern, setting a precedent for future development on the adjacent parcel to create a combined development far in excess of 200 feet in length along NW Naito Parkway.

River District Design Guideline A4. The proposed design does not use unifying elements but, as noted by the commission’s chair, creates a visual mishmash.

River District Design Guideline A5-1-1. The applicant’s proposal does not reinforce the identity of the Pearl District Neighborhood, but serves to substantially detract from it. It creates its own neighborhood along the river almost entirely for the benefit of high-rent tenants.

River District Design Guideline A5-1-5. The proposal detracts from rather than reinforcing the identity of the Waterfront Area. In particular, it does not integrate an active mix of uses along the waterfront or make development open and accessible in order to maintain the publicness of the greenway.

Compare the wall-like design proposed by the applicant, with a narrow open space area confined to one end, with the design of what we would previously have considered a significant, large development on this stretch of the Willamette—the Waterfront Pearl condominiums. These are comprised of two large, landmark 10-story structures, which are surrounded by open space on all sides and by a large water feature wrapping around and between the buildings, creating a broad space between the structures and the Greenway trail. The Waterfront Pearl provides the city with the amenity of a true water feature, with moving water in ponds large enough to attract ducks.

In this case, however, the applicant contends that the Willamette is its water feature and it need not do more. The developer of the Waterfront Pearl did not have the nerve or the desire to try to hoodwink the commission in this manner. Thus far, it has worked for the applicant in this case.

This project in no way integrates an active mix of uses along the waterfront and fails to make development open and accessible in order to maintain the publicness of the Greenway. Instead, it turns the riverfront into a private benefit and amenity.

River District Design Guideline C4. This proposal fails to complement the context of existing buildings. It fails to use and add to the local design vocabulary, as described above with particular respect to the Waterfront Pearl, or as to McCormick Pier condominiums or any other relevant development.

In this instance, the applicant proposes a gated, walled stair entrance to a second floor roof terrace. The developments north of the Fremont Bridge have residential entries, gardens and balconies opening directly onto the Greenway trail. There is no visual connection to the Greenway trail in this proposal.

The above defects indicate noncompliance with River District Design Guidelines A5, A5-1, A5-1-1, A5-1-5, and C4.

River District Design Guideline A5-3. As explained above, the proposed project does not incorporate water features which enhance the quality, character and image of the River District. The stormwater planters are not a legitimate water feature and in no way form the focal point for integrated open spaces. They do not take cues from the river, bridges, or the historic industrial character in the design of structures and/or open spaces. No legitimate water feature is incorporated into this project.

River District Design Guideline A5-4. The project fails to integrate any works of art, as required. The supposed structural effects of the proposed benches should not and do not comprise works of art in compliance with this guideline by any rational definition of the term.

River District Design Guideline B5. The proposed plazas, parks and open space are not successful. The proposed plaza/open space has minimal engagement with the existing 3-story office building to the north, and a planter and grade change between the proposed plaza and existing sidewalk adjacent to the office building would block off all but one connection point on NW Naito Parkway.

River District Design Guideline C5. Due To its FAR-maximizing, unharmonious mix of design features and wall-like cutting off of the riverfront and Greenway, the proposed project is not designed for coherency.

III. MISCONSTRUCTION OF SITE AREA FOR PURPOSES OF CALCULATING FAR

PZC 33.930.025 provides in material part as follows:

“33.930.025 Measuring Development Standards

Unless otherwise stated below or elsewhere in this Title, all measurements involving development standards are based on the property lines and area of the site after dedication of public rights-of-way and/or designation of private rights-of-way. Standards include, but are not limited to, building coverage, floor area ratio, setbacks, and landscaping requirements. * * * (Emphasis added)

Under this section, for the purposes of calculating site area in order to determine allowable Floor Area Ratio (FAR), it was necessary to omit the square footage of the 25-foot public Greenway strip and the 60-foot wide public open space connection between SW Naito Parkway and the river. The result is a base permissible floor area of approximately 40,000 square feet rather than the 72,080 square feet accepted as fact by the commission. Thus, even if all requested modifications were allowed, the permissible square footage for this project would have to be reduced by 44 percent.

IV. MODIFICATION REQUESTS.

PZC 33.825.040. This provision allows *only* “modifications that will better meet Design Review requirements.” For the reasons explained above and which will be explained further at your hearing, the proposed modifications do not provide for better compliance with the Design Review requirements. In addition, consideration of such modifications outside the adjustment process is strictly permissive (“The review body may consider modification of site-related development standards * * * as part of the design review process.”) It was therefore in no way mandatory for the Design Commission to approve any of the requested modifications. These should instead have been reviewed through the more formal adjustment process, and held to the strict approval criteria for adjustments. Indeed, under this code section, “[a]djustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process.”

Even if held to the apparently less strict requirements of Design Review, the proposed modifications violate PZC 33.825.040.A because they do not better meet the applicable design standards, and 33.825.040.B because they are utterly inconsistent with purpose of the standards in question. With respect to proposed Modification #1 for height under PZC 33.140.210.B.2, appellant notes that the normal maximum height for this site (excluding bonuses) is 100 feet. With all the requested bonuses approved, the maximum

height would be 175 feet.

However, the applicant does not stop there but seeks a further modification to allow rooftop mechanical equipment screening to extend in an additional 10 feet, further obstructing the view of the Fremont Bridge. How does this better meet the applicable design guidelines than adhering to a 100-foot or 175-foot limit? It does not. It results in further violation of the River District Design Guidelines we discuss above.

By the same token, this modification fails in any way to comply to be consistent with the purpose of the standard. The proposed Modification #1 for height is an abuse of both the applicable design guidelines and the purpose of the height standard.

PZC 33.266.220.C.3.b. This modification was for the purpose of spacing long term bicycle racks closer than required by this standard, and may have been withdrawn. Appellant notes this modification only to point out that the discussion of it reflects the creation of 275 long-term bicycle parking spaces in the residential units, *i.e.*, at least one per living unit, thus obviating the need for the bogus locker room and bicycle parking area discussed below.

PZC 33.510.205.H.2. Modification #3 addresses the North Pearl Subarea Height Opportunity Area, seeking authorization for a 175-foot height, exceeding the normal maximum base height of 100 feet. The proposed modification would also allow the length of the facades above 100 feet to exceed 120 feet in length, with the proposed facade length on the southwest and northeast facades of the building to be 125 feet 2 inches long, and the southeast and northwest facades to be 142 feet 8 inches long.

Each of the above modifications is substantial and, under the applicable code provisions, need not have been considered at all by the Design Commission, or could simply have been denied. Instead, Modification #3 was approved, resulting in the maximum adverse impact upon the North Pearl Subarea and the River District. The Purpose Statement of this code section states that in “the North Pearl Subarea, additional building height *may* be appropriate to support the goals of the North Pearl Plan.” Thus, the proposed building height may also serve to defeat the goals of the North Pearl Plan, and may not be appropriate. The requested modification would therefore never be mandatory, but would always be discretionary at most. Moreover, contrary to the Design Commission’s conclusion, this provision makes the goals of the North Pearl Plan directly relevant to review of this application.

With respect to the specific purposes set out here, appellant would point out the following:

- The requested additional height will in no way create and support a range of community amenities.
- It will not create a visually permeable skyline and urban form providing visual access to locations in and beyond the subarea, but will have the opposite effect.
- It will not result in a dynamic or varied skyline or urban form contributing to the health, vibrancy, or livability of urban living.
- It will not shape building massings allowing light and air to penetrate the street level, or enhance pedestrian scale, or create a pleasant, versatile and active public realm. It will achieve the opposite result.
- It will not provide a range of building types fulfilling the design objectives of the purpose statement, but create a visual mess instead.

In addition, the proposed additional height will not comply with the purpose statement as to development along the waterfront of the North Pearl Subarea, as follows:

- It will not increase sunlight along the Greenway and within the public and private open space areas developed along the waterfront. It will have the opposite effect.
- It will not create an active urban waterfront with a vibrant public realm. Instead, it will have a suppressive effect.
- It will not work with the open area and waterfront development provisions of the North Pearl Subarea in the creation of well designed public and private urban open space amenities.
- It will not facilitate visual and physical access to and along the riverfront for all members of the public. It will have the opposite effect—that of a great wall.
- It will not create expanded opportunities for views of the river as viewed from Naito Parkway and Front Avenue, landward portions of the subarea, and locations west of the subdistrict. It will have the opposite effect.
- With respect to the specific purpose of ensuring that bonus height granted to sites adjacent to the Fremont Bridge not significantly affect views of or diminish the aesthetic qualities of the bridge or its iconic stature on the

skyline, the proposed additional height will again have the opposite effect.

We note that with respect to the requested bonus height, PZC 33.510.205.H.2.c.2 does not allow bonus height if the length of any facade above 100 feet of building height is more than 120 feet long, unless there is a further modification for facade length. Accordingly, the applicant only achieves the additional, excessive building height by stacking modifications and obtaining permission for excessive facade length. The result is the negative impacts described here.

Appellant also incorporates by reference here its discussion of the applicable Design Guidelines, above.

PZC 33.510.251.C.3. Modification #4 proposes to compound the other defects in this proposal through violation of the required open area development standards. In particular, the relevant shadow standard for the plaza area creating the purported open space would be 84% covered by shadow, 34% above the limit of 50% at noon on April 21 of each year. This in no way better meets the applicable design guidelines, addressed at length above. Rather, it again has the opposite effect. It also fails to meet the purpose of the relevant standard, *i.e.*, providing a reasonable amount of sunlight to users of the open area.

PZC 33.510.251.D.3.b&c. Modification #5 proposes to exceed the North Pearl Subarea waterfront development standards both as to setback for development from the Willamette River, and maximum building dimension. Again we see a compounding of the accumulated modifications. The applicant proposes to allow portions of the building over 35 feet in height to extend into the Greenway setback area, and for the maximum building dimension to exceed the permitted 200 feet perpendicular to the river by nearly 31 feet. This will not better meet the above design guidelines or be consistent with the purpose of the standard sought to be modified. With all the accumulated, requested modifications, the proposed project is already oppressive with respect to the Greenway and as to its uninterrupted mass. Jamming the sole open area onto one side of the property will not allow for the requisite views and physical connections to the river and its activities.

V. GREENWAY REVIEW UNDER PZC 33.440.350

PZC 33.440.350.A. Under Issue A, Relationship of Structures to the Greenway Setback Area, Guideline 1, “Structure Design,” the structure design does not complement or enhance the Greenway Setback Area. Rather, as we have explained, it intrudes upon it to the maximum possible extent, and effectively walls it in.

Under Guideline 2, regarding structure alignment, the proposed modification results in a failure to follow the Central City's typical 200-foot grid.

Under Issue B, Public Access, Guideline 1, Public Access Opportunities are not sufficiently integrated along the river. There is just one access point on this project of more than one city block's length.

VI. DEVELOPMENT STANDARDS.

PZC 33.510.210.C–Bonus Floor Area.

The first 144,160 square feet of the project would be allowed through the 2:1 base FAR available for the 72,080 square feet of the site, assuming that were the relevant square footage instead of 40,000 square feet as provided by PZC 33.930.025. The Design Commission has allowed a 100% floor area bonus of an additional 144,160 square feet through the residential bonus provisions of PZC 33.510.210.C.1.a.2.

However, as explained above, the allowance of this bonus FAR would be discretionary and not mandatory, as would be the accommodation of any such bonus FAR by means for modification of the 100-foot height standard. For all the reasons explained above, neither the requested bonus FAR nor the height requested to accommodate it should be allowed, and the commission erred in approving them.

The applicant claims additional FAR of 15,200 feet as a locker room bonus for its supposed locker room/bike storage/shower and dressing area, under PZC 33.510.210.C.8. A review of the history of this bonus provision shows that it has been requested by developers on approximately nine occasions. We believe that, in each instance, this was for office/commercial uses as to which employees would bicycle to work. In other words, this provision is intended to benefit incoming bicycle commuters.

This provision was not intended for residential structures, where residents shower in their own units. With particular regard to this project, there will already be a bicycle storage area in each apartment. After storing their bicycles in their units, will residents then run downstairs to shower in the locker room rather than in their apartments? This is obviously not the case. The locker room proposed for this project is intended not for any real use, but simply to achieve additional, bonus FAR. This request for added FAR must be denied.

**VII. PROPOSED RESTAURANT/RETAIL USE;
PROPOSED MODIFICATION REGARDING PARKING**

The proposed restaurant and retail use along the Greenway at the northeast corner of the site is intended only to justify the large number of requested underground parking spaces for apartment tenants, which would not otherwise be allowable. The chance of the businesses in question actually succeeding and remaining open for business is substantially less than the chance had by *Lucier* restaurant near the Strand condominiums, which failed in spite of enormous foot traffic from Tom McCall Waterfront Park and nearby residential development and hotels, and never reopened. The relevant condition of approval in this case can assure only empty space which cannot be used for anything else, all to secure the desired indoor parking for tenants.

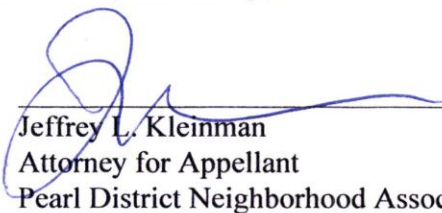
PZC 33.266.130.G.2.c Moreover, proposed Modification #7, intended to further enhance the underground parking amenity, does not comply with this provision regarding required landscaping, in part substituting a concrete wall for the required trees, shrubs, and ground cover. It violates the purpose of creating an environment inviting to pedestrians, and does not better meet the design guidelines.

VIII. CONCLUSION.

For each of the above reasons, the Design Commission erred in approving the subject project. The City Council should sustain this appeal and deny the application.

To the extent the applicant may still desire any of the requested modifications, the applicant should be required to resubmit through the city's adjustment processes, where an appropriate level of scrutiny would be applied.

Respectfully submitted this 11th day of January, 2018.



Jeffrey L. Kleinman
Attorney for Appellant
Pearl District Neighborhood Association