

From: [Tran-Caffee, Cozette](#)
To: [Council Clerk – Testimony](#)
Cc: [Jeffreys, Grace](#); [Adam, Hillary](#); [Trell Anderson](#); [Christopher Hulette](#); [Michelle Black](#); [Brian Carleton](#); [Paul Falsetto](#); [Long, Jill](#); [Call, Brandi](#)
Subject: Block 162 Apartments - LU 18-187493 HRM AD - applicant's appeal letter
Date: Monday, November 26, 2018 1:07:48 PM
Attachments: [NHA LP appeal letter - FINAL.pdf](#)

Dear Council Clerk,

Attached please find the applicant's written response to the appeals in LU 18-187493 HRM AD (HLC approval of the Block 162 Apartments).

Thank you,
Cozette



COZETTE TRAN-CAFFEE
Attorney [Bio](#) | [vCard](#)
trancaffeec@lanepowell.com
D 503.778.2108
LANEPOWELL.COM

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13819 SE McLoughlin Blvd
Milwaukie, Oregon 97222-7161
phone: 503-654-1007

web: www.nwhousing.org
email: info@nwhousing.org
fax: 503-654-1319

11/26/18

Portland City Council
1221 SW Fourth Avenue
Portland, OR 97204-1900

Re: Block 162 Apartments, 1727 NW Hoyt; LU 18-187493 HRM, AD

Dear Honorable Mayor Wheeler and City Commissioners,

As the project sponsor, I am writing to summarize our project, the design process, and the Historic Landmark Commission's decision approving our project. Following this letter is the appeal response from our attorneys, Lane Powell PC, which describes the project specifics and addresses in detail the items under appeal.

Project Team

Northwest Housing Alternatives (NHA) has been one of Oregon's leading nonprofit owners and developers of affordable housing for over 30 years, and a neighbor in the Historic Alphabet District for almost 25 years. Our mission is to provide opportunity through housing for Oregonians with low incomes, disabilities, and those at risk of housing instability. We own and operate over 1,800 units of housing statewide, including nearly 1,400 units in the tri-county area, as well as a family shelter at our home campus in Milwaukie. NHA hired Carleton Hart Architecture (CHA), Bremik Construction, and Paul M. Falsetto Architect (PMFA) for their extensive expertise in historic preservation, affordable housing, and community engagement.

NHA has led the rehabilitation of a number of historic properties. We recently completed rehabilitation of the historic Victorian Inn Apartments, and own and operate the Roselyn Apartments – both of which are contributing resources in the Historic Alphabet District. Other historic properties we've developed include Rosemont Court Apartments in Portland's Piedmont neighborhood and the Julian Hotel in Corvallis, which utilized this same design team and received a DeMuro award for preservation excellence.

Project Goal

Block 162 Apartments embodies NHA's mission to serve Oregonians through housing, especially in high opportunity, transit-oriented areas. Our goal for this project is to expand housing opportunity in the Historic Alphabet District while rehabilitating and adaptively reusing the historic Buck-Prager building, thereby preserving its historic value for the community.

The site location is the right place for high density and high opportunity housing thanks to strong local resources including transit, walkability, employment opportunities, and social services. We

anticipate working relationships with community organizations such as Northwest Pilot Project, Blanchet House, and Rose Haven women's services, among others.

Project Design

Our proposed design for the half-block development is centered on the preservation of the Historic Buck-Prager building, which is currently vacant and in need of extensive rehabilitation. The renovated Buck-Prager building will house 18 units and serve as a central hub featuring a community room, kitchen, and offices for management and resident services staff.

Two new adjacent structures will be built to complement the Buck-Prager. A 4-story South Addition will occupy the south end of the site, complete with an internal courtyard to highlight the historic Buck-Prager. To the north, a new 5-story North Building has been designed for compatibility, incorporating multiple features of similar historic buildings within the District.

Design Process

Our design team has collaborated with neighbors, the Northwest District Association (NWDA), the Portland Historic Landmarks Commission (HLC), and city staff to balance the objectives of this project with all applicable codes and guidelines. Ultimately, these collaborations yielded a compatible project, and one that will be both an asset to its residents as well as the community.

The design review process involved three Design Advice Requests (DARs), one public hearing, and one continuance spanning 8 months, and resulted in the incorporation of a number of modifications to our original design. These changes are detailed in the attached appeal response, and include a full-story reduction of the North Building, which eliminated 16 units. We have also incorporated building articulation into the North Building, as recommended by the HLC, which eliminated another unit. High quality materials and details have been incorporated, along with additional landscape buffering. It should be noted that our design utilizes only 72% of FAR as allowed under code – a reduction in residential capacity of the site, but a trade-off which we understand helps increase compatibility within the District.

This lengthy and iterative design process ensured that the project is a positive addition to the Historic Alphabet District. In September, based on the recommendation of staff, the Historic Landmarks Commission voted for approval in a near unanimous decision, confirming that this project has satisfied all required codes and guidelines.

Summary

NHA is exceedingly proud to build and operate new housing in the Historic Alphabet District through adaptive reuse of an important historic resource. In the context of a housing crisis in our city, this project “checks all the boxes” by providing 148 new apartments while preserving a historic building, and enriches the fabric of one of Portland's great neighborhoods. We are excited to move from the planning phase of this project into preservation and construction.

Sincerely,

Trell Anderson
Executive Director, Northwest Housing Alternatives



COZETTE TRAN-CAFFEE
503.778.2108
trancaffeec@lanepowell.com

November 26, 2018

Portland City Council
1221 SW Fourth Avenue
Portland, OR 97204-1900

**Re: Block 162 Apartments, 1727 NW Hoyt
LU 18-187493 HRM, AD**

Dear Honorable Mayor Wheeler and City Commissioners:

This firm represents Northwest Housing Alternatives (“NHA” or the “applicant”) with respect to the above-referenced development project. We are writing to you today to request that you uphold the Historic Landmarks Commission’s decision approving the project’s design. Section 1 of this letter describes the project and summarizes the design process. Section 2 addresses the legal issues raised on appeal.

The project team has worked diligently and collaboratively with a variety of stakeholders and officials to create a compatible project in the Historic Alphabet District. As part of the design process, the project team met multiple times with neighbors, engaged fully with the Bureau of Development Services planners, and sought multiple rounds of advice from the Historic Landmarks Commission. The resulting design garnered approval of Bureau of Development Services Staff and the Historic Landmarks Commission (the “Commission”).

As discussed below, the project satisfies all of the applicable approval criteria¹ and therefore must be approved under PCC 33.846.060.E.1.c. Although the appellants disagree with the Commission’s interpretation and application of the approval criteria, they have identified no legal support for their preferred position(s). Importantly, where relevant, prior LUBA opinion supports the Commission’s Final Findings and Decision (the “Decision”). Our team respectfully requests that City Council deny the two appeals, and allow this project to go forward and begin serving the City of Portland.

¹ A chart of the applicable approval criteria is attached as Exhibit 1.

SECTION 1: PROJECT AND DESIGN PROCESS

The Block 162 Apartments Project

This project involves three distinct components, which together will provide 148 units² of affordable housing:

(1) The existing 3-story Buck, Carsten & Carrie Prager Building (the “**Buck-Prager**”). The Buck-Prager is a Contributing Resource in the Historic Alphabet District (the “HAD” or the “District”)³ that has been vacant for more than 10 years. The project involves rehabilitation, adaptive re-use, and seismic upgrading to the Buck-Prager that will help preserve this historic building.

The design approach to the Buck-Prager was relatively straightforward, and relies heavily on reference to historic photographs. The building’s street facing façade will largely restore historic design features that have been lost over time. The project also includes extensive seismic and fire/life safety upgrades, which will not be visible from the street facade.

(2) A 4-story addition to the Buck-Prager (the “**South Addition**”). Consistent with the Historic Alphabet District Community Design Guidelines, the South Addition references the facade of the Buck-Prager, specifically its horizontal datum lines, bay rhythm, massing, and materiality. These details are given a modern interpretation to distinguish the South Addition from the Buck-Prager, as required by the approval criteria. Additionally, the South Addition will be faced in dark and muted tones, drawing focus to the Buck-Prager’s white brick exterior.

(3) A new 5-story building to the north of the Buck-Prager (the “**North Building**”). Design of the North Building required specific research and reference to existing 5-story buildings within the District. This analysis identified several methods of compatible massing, including setbacks, oriel bays, contrasting materials and colors, high quality materials, and tripartite elevations (base-middle-top). The North Building employs all of these strategies, which break down the scale of the building and enhance the pedestrian experience. The District already includes several successful historic examples of this design approach, including the 5-story Tudor Arms Apartments, 5-story American Apartment Building, 5-story Wickersham Apartments, 5-story Embassy Condos, and 6-story St. Francis Apartments.

² The project includes 147 affordable housing units and one unit designated for an on-site manager.

³ A discussion of the Buck-Prager’s historical significance can be found in the Decision, pages 2 and 3.

The following elevation⁴ shows the project's three components, viewed as a whole:



North Building

Buck-Prager

South Addition

This is a complex project with a simple goal: to make a positive contribution to the District, including the preservation of one of its threatened Contributing Resources. Creating a variety of structures in this half-block development complements the variety found in the District as a whole, and embodies one of the District's historically significant characteristics – residential architecture “characterized by buildings of various types, styles, and eras.”⁵

Further, this project does what City Council has previously requested for this site—preserve the Buck-Prager, redevelop the neighboring lots, and provide affordable housing.⁶

The Historic Alphabet District

The District includes the area roughly bounded by NW Lovejoy Street to the north, NW 17th Avenue to the east, W Burnside Street to the south, and NW 24th Street to the west. The identity of the District is characterized by the variation of buildings in both architectural style and size. As recognized by the Commission, one of the District's most important characteristics is its architectural diversity, as well as the juxtaposition created by this variety.

Quoting directly from the District's Context Statement:

The Historic Alphabet District is further eligible under Criterion C for its expression of early residential architecture in the city of Portland characterized by buildings of various types, styles, and eras. * * *

⁴ This elevation can be found in the record at Ex. H.61, page 4.

⁵ HAD Community Design Guidelines Addendum, Statement of Significance, page 11.

⁶ See Type IV Demolition Review at 1727 NW Hoyt, LU 14-210073 DM, Findings and Conclusions, page 30.

The district's multi-family dwellings are noteworthy for their appearance in an area that retains buildings from its early development period. Grand single-family homes sit next to first-class apartment buildings in a physical representation of the sociocultural transition experienced by one of Portland's oldest neighborhoods. * * *

The Historic Alphet District today harbors a concentration of various types of multi-family housing. One-story, California-style garden court apartments were sited next to mid-sized, mid-priced apartment buildings such as the Tudor Arms apartments [extant].⁷

One distinctive feature of the District is the proximity of short to tall buildings and single-family to multi-family residential buildings. A few examples⁸ include:

NW 20th & Everett

5-story (57') Everett Apartments adjacent to 2.5-story (26') house



⁷ *Id.*

⁸ All of these images can be found in the record at Exhibit H.61, pages 7 and 8. All building heights are approximate.

NW 20th & Everett
75' multifamily housing adjacent to 32' house



NW 21st & Johnson
5-story (60') American Apartment Building adjacent to 2.5-story (32') house



NW 18th & Flanders

5-story (60') Wickersham Apartments adjacent to 2.5 story (26') house



The following aerial graphic⁹ shows the project in the context of the surrounding blocks as well as the variety of nearby development:



⁹ This image can be found in the record at Exhibit H.61, page 1.

Project Team¹⁰

Northwest Housing Alternatives (“NHA”). NHA is an Oregon 501(c)(3) that strives to create opportunity through housing. For over 30 years, NHA has developed and owned affordable housing across the state of Oregon. NHA owns and manages over 1,800 housing units that serve diverse populations, including seniors, work-force, families, persons with disabilities and in recovery, and families transitioning from homelessness. NHA has extensive experience in all aspects of affordable housing development and operation, including compliance with the requirements of various financing options. NHA also owns properties with formal historic status, such as the Roselyn Apartments (1912), located in the Historic Alphabet District.

Carleton Hart Architecture (“CHA”). CHA is a collaborative design practice dedicated to creating innovative design solutions to community centered design challenges. CHA specializes in affordable housing and has a portfolio of over 75 affordable housing projects supporting a variety of underserved populations in the Pacific Northwest. CHA designs with all stakeholders in mind, with respect for existing neighborhood fabric, and through research and community outreach.

Paul M. Falsetto, Architect. Mr. Falsetto is a Portland based architect with specific expertise in historic preservation. His work includes preservation plans for and rehabilitation of dozens of buildings listed in the National Register. Mr. Falsetto has also taught courses for the Historic Preservation Program at the University of Oregon’s School of Architecture & Environment, with a focus on preservation theory and eco-preservation. Mr. Falsetto serves as the expert historic preservation consultant on this project.

Bremik Construction. Bremik is a Portland based general contractor with a portfolio focused on historic preservation and multifamily residential, including affordable housing. Bremik’s experience includes over 3,000 urban apartment units and 20 historic preservation projects.

Design Process

The project team first met with the Northwest District Association (“NWDA”) in 2016 and had two formal follow up meetings with NWDA as the project design progressed. The project team also met with an additional group of neighbors and participated in three Design Advice Requests (“DARs”), which resulted in significant adjustments to the project design, as reflected in the progression shown below. Larger versions of these images, along with notes from the three DARs, can be found at Exhibit A.1, pages APP. 1-34 and APP. 1-35.

¹⁰ The curriculum vitae for the project team can be found at Exhibit H.59.

SW Corner (showing progression of the South Addition)

DAR 1 – January 8, 2018 (incorporating feedback from initial neighbor meetings)



DAR 2 – February 26, 2018 (incorporating feedback from DAR 1)



DAR 3 – April 23, 2018 (incorporating feedback from DAR 2)



HRM (incorporating feedback from DAR 3)



NW Corner (showing progression of the North Building)

DAR 1 – January 8, 2018 (incorporating feedback from initial neighbor meetings)



DAR 2 – February 26, 2018 (incorporating feedback from DAR 1)



DAR 3 – April 23, 2018 (incorporating feedback from DAR 2)



HRM (incorporating feedback from DAR 3)



Staff Recommendation and Approval by the Historic Landmarks Commission

In addition to the three DARs, the Commission held two hearings. Prior to the first hearing, the City's Design Review Staff recommended approval of the project with certain conditions, all of which have been incorporated into the project. Following both hearings, the Commission approved the project as reflected in its Decision.

The Decision correctly identifies the applicable approval criteria as the Community Design Guidelines ("CDG") and the Historic Alphabet District Community Design Guidelines Addendum ("HAD Guidelines").¹¹ The Decision also includes a detailed discussion of each approval criterion and the manner in which the project design satisfies each of these requirements.¹² In its deliberation of the approval criteria, the Historic Landmarks Commission often references the application narrative. The relevant portions of the narrative can be found at Exhibit A.1, pages App. 1-24 through 1-32 and Exhibit H.61, pages 14 through 25.

SECTION 2: APPEAL ISSUES

NWDA and Mr. Tony Schwartz have each submitted an appeal of the Decision. These appeals revolve around a core objection to the size of the proposed buildings, especially when compared to a select subset of nearby historic residences. As discussed in some detail below, the arguments raised on appeal misinterpret the applicable guidelines, unduly restrict the permissible frame of reference to certain residences, and/or seek to impose additional substantive and procedural obligations not found in the approval criteria. (Note that, because the applicable design guidelines are the approval criteria under PCC 33.846.060.E.1.c., this letter uses the terms "guidelines" and "approval criteria" interchangeably.)

HAD Guideline 2: Differentiate new from old

The Commission correctly determined that the project satisfies this criterion by retaining historic materials that characterize the property and achieving compatibility with the historic qualities outlines in the District's Historic Context Statement.

In their appeal notices, appellants argue that the project fails to satisfy this guideline because the South Addition has "insufficient relation to [the] Buck-Prager; [it] doesn't complement scale or pick up design elements." Additionally, the appellants argue that both the South Addition and the North Building "grossly overwhelm [the] Buck-Prager, and are incompatible with [the] historic context of the immediately surrounding area, which is primarily small structures * * * 13 [of which] are individually listed in the National Register." Finally, the appellants object that the "Decision makes no mention of these historic structures."

¹¹ PCC 33.846.060.E.1.c. ("The approval criteria for historic resource review outside the Central City plan district are as follows: * * * Alphabet Historic District. In the Alphabet Historic District, the approval criteria are the Community Design Guidelines and the Historic Alphabet District Community Design Guidelines Addendum.")

¹² This discussion can be found at pages 6-18 of the Decision.

Appellants' objections misunderstand this guideline, which focuses on materials and not overall building scale. The guideline language itself states:

New additions, exterior alterations, or related new construction will *retain historic materials* that characterize a property to the extent practicable. Replacement materials should be *reasonable facsimiles of the historic materials they replace*. The design of new construction will be compatible with the historic qualities of the district as identified in the Historic Context Statement.¹³

The "Background" provided for this guideline explains the concern for historic materials:

Materials used for the original construction of buildings contribute to the character of the Historic Alphabet District. Exterior materials can highlight important architectural elements of a structure. Cornice treatments provide a transition from the structure to the sky, window treatments provide a consistent rhythm to building facades, and brickwork can visually define floor transitions. Historic materials and their use in the building design constitute a base of reference for historic preservation efforts. As time passes, these materials age and deteriorate. In many cases, replacement is complicated due to difficulties locating historic materials, modern code requirements, and the cost of replacement material. Efforts should be made to preserve historic materials or replace them with high quality facsimiles because of the contributing role construction materials play in the Historic Alphabet District.¹⁴

The four examples provided under this guideline similarly emphasize materials and design detailing.¹⁵ Neither the guideline, nor the background, nor the examples require an analysis of building size or scale. Thus the objection that the South Addition and the North Building "grossly overwhelm" the Buck-Prager and are incompatible with nearby "small structures" is misplaced under this guideline. Similarly, because this guideline does not require a comparison to "the immediately surrounding area" (as compared to the District as a whole), the fact that the Decision does not reference the 13 nearby "small structures" was not error.

Addressing the argument that the South Addition does not "pick up design elements" from the Buck-Prager, this objection does not fall within this guideline's focus on materials. However, to the extent that other design elements are relevant, the Decision correctly found that the South Addition takes numerous design cues from the Buck-Prager, including "the primary design composition of punched openings in a modular, running brick façade," replicating the Buck-Prager's rhythm of 4' wide rough openings followed by 4' wide brick wall surfaces, symmetrical façades with a centered entry bay and metal entrance canopy, and alignment with the Buck-Prager's rough opening sills and parapet eyebrow.¹⁶ An illustration of this

¹³ HAD Community Design Guidelines Addendum, page 37, emphases added.

¹⁴ *Id.*

¹⁵ *Id.* at 37-38.

¹⁶ Decision at 8.

complementary design can be found in the design analysis under HAD Guideline 3, immediately below.

HAD Guideline 3: Hierarchy of compatibility

The Commission correctly determined this criterion is satisfied because the South Addition and the North Building are compatible with the relevant comparison buildings. Appellants' argument that the North Building is required to be compatible with more than "similar buildings in the Historic Alphabet District," is contrary to LUBA's interpretation of the relevant language. Appellants' position that *compatibility* requires *similarity* is also inconsistent with LUBA precedent.

The appellants argue that the Decision "emphasizes the reverse order of compatibility: first with [the] wider district, [it] ignores compatibility with adjacent properties, and barely mentions the Buck-Prager." They also argue that "no consideration [was] given to differences in height, scale, setbacks, major articulation, roof shapes, [or] compatible window design." Finally, the appellants argue that "[l]arge buildings distant from [the] site [were] used to show compatibility," and these buildings "are not similar to [the] Buck-Prager or adjacent structures."¹⁷

Mr. Schwartz further argues that this guideline requires the same frame of reference for both new development and additions to historic resources, and that the Decision therefore incorrectly interpreted the guideline.

The Decision's interpretation of this guideline was correct. Contrary to Mr. Schwartz's assertions, the plain language of this guideline clearly applies a different standard to new development, like the North Building, than to additions, like the South Addition:

*Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a historic or conservation district, with the rest of the District. Where practical, compatibility will be pursued on all three levels. New development will seek to incorporate design themes characteristic of similar buildings in the Historic Alphabet District.*¹⁸

Thus only exterior alterations and additions to an original resource (such as the South Addition) must be compatible with, first, the original resource (such as the Buck-Prager), second, the adjacent properties, and third, the District. New development (such as the North Building), on the other hand, need only be compatible with similar buildings in the District.

Mr. Schwartz states that limiting the compatibility analysis for new development only to similar buildings in the District "makes no sense" because "[t]here has to be a hierarchy – not just one consideration, but more than one." A more thorough analysis demonstrates that it is

¹⁷ NWDA Appeal at 3.

¹⁸ HAD Community Design Guidelines Addendum, page 39, emphases added.

Mr. Schwartz's position that cannot be logically implemented. This guideline applies to all development in the District, not only to development on or near a site containing an original resource.¹⁹ Consider, for example, a proposed new development on a vacant lot or a site otherwise lacking a contributing resource. How would such a project show primary compatibility with the (nonexistent) original resource?

It is worth noting that LUBA has previously considered this "hierarchy of compatibility." *Goose Hollow Foothills League v. City of Portland*, 37 Or. LUBA 631 (2000). There, LUBA addressed a PCC provision containing language identical to the first two sentences of HAD Guideline 3—*i.e.*, the compatibility language applicable to "exterior alterations and additions."²⁰ LUBA expressed doubt that this language would apply to new development, noting that the criterion was "worded such that application * * * to new development * * * is problematic, at best." *Id.* at 638.

The HAD Guidelines were developed in part to address the doubt expressed by LUBA in the *Goose Hollow Foothills League* decision.²¹ Thus, the addition of the sentence requiring that "new development" be compatible with "similar buildings" is recognition that the pre-existing 3-tiered compatibility standard did not apply to new development.

¹⁹ Compare the structure of HAD Guideline 3 to the structure of HAD Guideline 2, which does distinguish between "related" new construction and new construction more generally. HAD Community Design Guidelines Addendum at 37.

²⁰ At issue was PCC 33.846.140.G.10.: "Hierarchy of compatibility. Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a Historic or Conservation district, with the rest of the district. Where practical, compatibility will be pursued on all three levels." 37 Or. LUBA at 634 n.2.

²¹ As explanation for "Why This Addendum Exists," the HAD Community Design Guidelines Addendum, page 6, states:

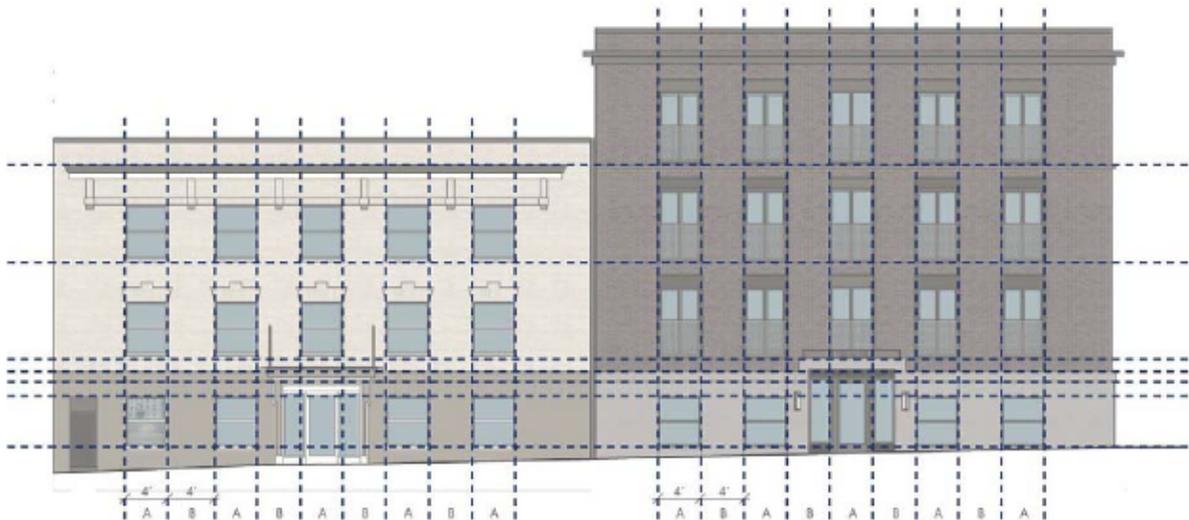
A key point of the opponent's concern to the district's listing in the National Register was the vague language of the amended version of the U.S. Secretary of the Interior's Standards for Historic Design Review, as stated in Section 33.846.140 (C) of Portland's zoning code (Appendix B). Difficulty with the interpretation and application of the guideline language was a major point of apprehension. The Portland Historic Landmarks Commission also expressed concern with the vague nature of the language in the amended version of the U.S. Secretary of the Interior's Standards for Historic Design Review. Property owners were thus concerned that new construction and exterior alterations of existing buildings would become more contentious and uncertain under the existing standards.

Their concerns were supported by a recent Land Use Board of Appeals (LUBA) ruling (LUBA No.99-105, [*Goose Hollow Foothills League v. City of Portland*, 37 Or. LUBA 631 (2000)]) regarding the applicability of Section 33.846.140(C) to a project located in the King's Hill National Historic District. *LUBA was concerned that the approval criteria of Section 33.846.140(C) appeared to have no applicability to new construction.* LUBA's decision provided further impetus for the City to clarify the design standards language for National Historic Districts without a special design guidelines document. A clarified set of guidelines is intended to provide greater assurance to developers as well as interested residents.

In its November 19 appeal letter, NWDA presents a second competing interpretation of this guideline,²² arguing that it requires the North Building to be compatible with buildings that are similar to the Buck-Prager or adjacent properties, or set in a similar context.²³ This attempt to graft the 3-tiered hierarchy onto new development is not supported by the language or framework of this guideline.

The South Addition is primarily compatible with the Buck-Prager, and secondarily compatible with other adjacent structures and the District as a whole. Turning back to appellants' assertion that the Decision prioritizes compatibility with the District over compatibility with adjacent properties, and "barely mentions" the Buck-Prager, this assertion is simply not true. The Decision begins its discussion of this guideline by noting *seven specific points of comparison* showing compatibility between the South Addition and the Buck-Prager.²⁴ It then—consistent with the required hierarchy—contains a more abbreviated discussion of the South Addition's compatibility with adjacent properties and the broader District.²⁵

Appellants' position ignores the non-cumulative nature of the hierarchy analysis. The South Addition must be, above all else, compatible with the Buck-Prager. Once it has met this standard, it need be compatible with adjacent structures and the broader District only where practical. The following design analysis²⁶ demonstrates that the South Addition is a careful extension of the Buck-Prager's design elements, which the Decision correctly found to be compatible with that original resource:



²² This argument was not presented to the Commission.

²³ NWDA Appeal Letter, page 7.

²⁴ Decision at 10.

²⁵ *Id.*

²⁶ This analysis can be found in the record at Exhibit A.1, page C.21.

Points of compatibility include:

- Horizontal continuity through alignment of banding, coursing, and sills.
- Vertical continuity through use of alternating 4' bays of solid and void.
- Symmetrical facades, with centered main entries.
- Strong bases in contrasting textures.
- Street-car era aesthetic, including a simply ordered façade, masonry with punched openings, and thin metal window frames.

The appellants also take an unduly narrow view of compatibility, arguing that differences in height, scale, setbacks, major articulation, roof shapes, and compatible window design render the project incompatible. This focuses on *similarity*, rather than *compatibility*, and fails to disqualify this project for at least two reasons. First, as clear from the above design analysis, the South Addition is, in fact, quite similar to the Buck-Prager in all of the aspects identified by appellants (height, scale, setbacks, major articulation, roof shape, and window design). Second, the appellants' assertion ignores the clear differences between the Buck-Prager, (originally designed as a hospital) and the other adjacent structures, some of which are 2.5-story wood framed houses. Simply put, the South Addition cannot simultaneously be similar to both the brick Buck-Prager and the wood framed houses. Under the hierarchy of compatibility imposed by this guideline, compatibility with the Buck-Prager is what is required, and what takes precedence.

Moreover, the appellants' claim that the size of the South Addition is excessive when compared to adjacent properties is a mischaracterization. The South Addition differs from the adjacent structures as follows:

- East elevation: 42' 3.5" tall, or approximately 8' taller than the 36' tall house directly adjacent.²⁷
- South elevation: 40' 4" tall, or approximately 7' taller than the 33' tall house directly across NW Hoyt.²⁸
- West elevation: 40' 4" tall, or approximately 2' shorter than the 42' 6" tall converted church directly across NW 18th Ave.²⁹

²⁷ Exhibit A.1., page C.15.

²⁸ *Id.*, page C.10.

²⁹ *Id.*, page C.15.

This variation in size is well within the bounds of compatibility. *See Goose Hollow Foothills League at n.5* (upholding the compatibility of 7-story, 75' tall condominium building with 2- and 3-story, 45' houses).

The North Building is compatible with similar existing structures in the District. The Decision contains a detailed analysis of the North Building's compatibility with the District, including both compatibility with similar buildings in the District as required, and with the nearby Campbell Townhomes, which goes beyond what is required.³⁰

The below comparison of the North Building with other existing structures³¹ in the District demonstrates not only compatibility, but also clear similarity, with such structures.

North Building



American Apartment Building
NW 21st & Johnson



Embassy Condos
NW 20th & Flanders



CDG P1: Plan Area Character

The Commission correctly determined that the project satisfies this criterion by contributing to the architectural diversity of the Northwest District Plan's Eastern Edge, continuing its established pattern of partial block massing, and preserving the HAD's historic resources.

³⁰ Decision, pages 10-11.

³¹ These images can be found in the record at Exhibit H.61, page 12.

Appellants argue that this guideline was not satisfied because the “immediate area” is typified by a variety of small-scale single family and multi-family housing, and similarly scaled historic churches. They characterize the proposed project as “large block-like buildings” that “break up sense of place and identity of this area.”

Under this guideline, development is required to “[e]nhance the sense of place and identity by incorporating site and building design features that respond to the area’s desired characteristics and traditions.”³² As reflected in the guideline’s associated examples, the appropriate frame of reference is the Northwest District Plan’s Eastern Edge,³³ and not the selection of middle-class Victorian houses, brick rowhouses, small wood-frame apartment buildings, and small historic churches identified by appellants.³⁴ The Decision correctly identifies the applicable “Desired Characteristics and Traditions” as those for the Eastern Edge, and provides a detailed discussion of how specific characteristics of the project will respond to those desired characteristics.

CDG P2: Historic and Conservation Districts

The Commission correctly found that the project design satisfies this criterion by reinforcing the area’s historic significance.

This guideline requires development in historic districts to “[e]nhance the identity of historic and conservation districts by incorporating site and building design features that reinforce the area’s historic significance.”³⁵ The examples provided include suggestions to “incorporate[] architectural details of the surrounding historic buildings,” “rehabilitat[e] buildings with

³² Community Design Guidelines, page 15.

³³ *Id.* at 29-31.

³⁴ NWDA quotes selectively from the Northwest District Plan, to give the impression that the Eastern Edge is primarily small-scale residential development. NWDA Appeal Letter at 7-8. The full Eastern Edge description reflects a much more diverse development pattern:

Architecture Among the diverse assortment of residential structures in the Eastern Edge are clusters of middle-class Victorian houses, primarily in the Italianate and Queen Ann styles; Portland’s only nineteenth-century brick rowhouses; occasional small wood-frame apartment buildings; and several block and split-block apartment buildings. The norther portion of the Eastern Edge, notably along NW 19th Avenue, includes scattered Victorian cottages, primarily in the Queen Anne style, that are remnants of the working-class Slabtown neighborhood. *Industrial buildings*, primarily dating from the early- through mid-twentieth century, are another significant component of the Eastern Edge’s architecture. *Light industrial buildings are located throughout the area*, with larger concentrations near the I-405 freeway and toward the north. Most industrial buildings are of concrete construction, or occasionally brick, and feature flat roofs and one to two stories, with older examples having multi-pane steel sash windows.

Community Design Guidelines, Appendix J (emphases added).

³⁵ NWDA Appeal Notice at 3.

attention to restoring and enhancing historic features,” and “[e]nhanc[e] the district with new development that reflects the qualities of buildings in the district[.]”³⁶

The Decision correctly reflects numerous aspects of the project that satisfy this guideline:

- The sensitive rehabilitation of the Buck-Prager, including restoration of exterior features based on historical photographs.
- The extensive seismic and fire-life safety upgrades to the Buck-Prager, to help ensure the historic building’s long-term use and durability.
- The design of the North Building, including size, materials, and exterior detailing, is based on similar buildings in the District.
- The design of the South Addition is based on the Buck-Prager and uses similar exterior materials, façade proportions, punched openings, base, entry canopy, and parapet cornice.
- New brick pavers and street trees to match those on NW Irving Street.

Similar to their other objections, appellants argue that this guideline is not satisfied because the project’s proposed buildings are larger than a select group of nearby single family residences. Specifically, appellants assert that “a unique and distinct urban character area is disrupted by placing incompatibly large new development in the middle of a nearly intact cluster of late 19th century houses.” There is nothing in this guideline that requires such a limited focus. Moreover, as the aerial view provided on page 6, above, demonstrates, this area cannot truly be characterized as a “nearly intact cluster of late 19th century houses.” A variety of building types, historic and recent, populate this area.

Appellants also assert error related to an earlier Demolition Review Decision,³⁷ which denied a demolition permit for the Buck-Prager. Although somewhat unclear, this objection appears to argue that the present Historic Resource Review Decision is inconsistent with the previous demolition review decision. Neither this guideline, nor any of the other approval criteria, require consistency with prior land use decisions. Further, requiring consistency between these two decisions would be an incoherent exercise, because they are subject to two completely separate sets of approval criteria and two distinct approval processes. Finally, this project does what City Council suggested in its Demolition Review decision—preserve the Buck-Prager, redevelop the neighboring lots, and provide affordable housing.³⁸

³⁶ *Id.*

³⁷ Council Findings, Conclusions and Decision LU 14-210073 DM – Buck-Prager Building (the “Demolition Review Decision”). The Demolition Review Decision is attached to the letter submitted as Exhibit F.27.

³⁸ In the Conclusion to the Demolition Review Decision, City Council noted that “Demolition is only one path toward improving the condition of this half block. Other options are available to achieve this purpose, including redevelopment of the half-block to the north and development of a smaller building, or even open space, to the south, as well as rehabilitation of the historic resource.” Demolition Review Decision at 30. City Council further

CDG D6: Architectural Integrity

The Commission correctly determined that the project design satisfies this criterion, which requires respect for the Buck-Prager’s original character, and compatibility between the Buck-Prager and the South Addition.

This guideline applies only to the rehabilitation of the Buck-Prager and the development of the South Addition:

Respect the original character of buildings when making modifications that affect the exterior. Make additions compatible in scale, color, details, material proportion, and character with the existing building.

This criterion does not apply to new development, and does not require reference to surrounding buildings. Accordingly, the objections related to the size and style of the North Building are misplaced under this guideline. So is the assertion that “both new structures overpower adjacent historic structures.”

With this in mind, the Decision correctly finds that the Buck-Prager rehabilitation, which will restore much of the building’s historical detailing, appropriately respects the building’s original character. The Decision also correctly finds that the South Addition, which will echo many of the Buck-Prager’s historic design themes, is compatible with that building in terms of scale, color, detail, material proportion, and character.

Appellants identify only one aspect of the Buck-Prager that the project will obscure—the building’s quoins (corner masonry blocks). When used in a mid-block building like the Buck-Prager, quoins are a construction method³⁹ rather than a decorative architectural detail, and are intended to be subsequently concealed. Accordingly, the covering of the quoins by subsequent construction (as intended) does not compromise the Buck-Prager’s architectural integrity.

NWDA also argues that the South Addition has not followed the design advice contained in the National Park Service’s Preservation Brief 14.⁴⁰ Neither this guideline, nor any of the other applicable approval criteria, require compliance with the National Parks Service’s design advice.

noted that it may have approved demolition of the Buck-Prager if the proposed replacement development addressed the City’s affordable housing needs: “A proposal offering a greater diversity of housing that meets the specific and greatest needs of the city, which is for lower-income housing, could potentially offer a greater public benefit than the preservation of this specific building, and therefore shift the balance of the approval criteria.” *Id.*

³⁹ Specifically, the quoins result from integrating the finished brick used on the façade of the Buck-Prager with the common brick used on the side and rear of the building. Use of common brick is evidence that the sides and rear were intended to be subsequently covered.

⁴⁰ NWDA Appeal Letter at 10.

CDG D7: Blending into the Neighborhood

The Commission correctly determined that the project is designed to reduce its impact on the neighborhood.

This guideline requires that efforts be made to “[r]educe the impact of new development on established neighborhoods by incorporating elements of nearby, quality buildings such as building details, massing, proportions, and materials.” The Decision discusses the many design features of the North Building and South Addition that keep the massing consistent with the scale of the immediate neighborhood, including the Campbell Townhomes across the street.

Appellants argue that the Decision fails to address the design elements of “nearby” buildings and instead focuses on buildings many blocks away. There is nothing in this guideline that limits comparison solely to adjacent buildings.⁴¹ Additionally, the Decision specifically addresses design elements of adjacent buildings, including the Campbell Townhomes and the Buck-Prager.

“Blending into” a neighborhood with architectural variation as diverse as the Historic Alphabet District is not a straightforward task. The elevation drawings below help illustrate the extent to which the project, by design and intent, continues the diverse pattern of surrounding development:

North Elevation in Immediate Context⁴²



⁴¹ NWDA’s November 19 Appeal Letter continues to exaggerate differences between the project and its immediate vicinity. The true difference in heights was addressed above under HAD Guideline 3. With respect to CDG D7, NWDA additionally argues that “the proposed buildings have flat roofs, while almost all of the surroundings buildings have peaked roofs.” NWDA Appeal Letter at 11. As shown by the aerial graphic on page 6, above, many of the surrounding buildings in fact have flat roofs. Addressing just the adjacent buildings, the North Building fronts another quarter block site across NW 18th Avenue, which is developed with an institutional flat-roofed building associated with the First Immanuel Lutheran Church. The Buck-Prager itself is a flat-roofed building. And, the quarter block site abutting the rear of the North Building is developed with a flat-roofed office building.

⁴² Exhibit A.1, page C.12.

South Elevation in Immediate Context⁴³



West Elevation in Immediate Context⁴⁴



East Elevation in Immediate Context⁴⁵



⁴³ *Id.* at C.15.

⁴⁴ *Id.* at C.10.

⁴⁵ *Id.* at C.14.

Alleged Procedural Errors

Appellants raise several issues as alleged procedural errors. As an initial matter, appellants have not asserted prejudice of their substantial rights arising from any these alleged errors, which therefore provide no basis for reversal or remand. *O'Shea v. City of Bend*, 49 Or. LUBA 498, 502 (2005) (merely providing a list of alleged procedural errors without making any meaningful attempt to explain how those alleged errors prejudiced a petitioner's substantial rights does not establish a basis for reversal or remand). *See also* ORS 197.835(9)(a)(B) (reversal or remand is allowed where the local government "[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner"); OAR 661-010-0073(2)(c) (LUBA shall remand where the local government committed "procedural error which prejudiced the substantial rights of the petitioner(s)").

These alleged errors are also deficient for the following reasons:

1. Deeming the application complete before NHA addressed CDG P1. The chart in the HAD Community Design Guidelines Addendum states that CDG P1 does not apply to multi-dwelling projects (like this project) in the HAD. Accordingly, NHA believed that CDG P1 did not apply to this project and did not address that guideline in its initial application materials (although it did previously address this guideline during all three DARs). Sometime later, staff determined that CDG P1 likely did apply. NHA addressed the criterion, but not until after its application had been deemed complete. However, so long as the staff report correctly listed the applicable criteria prior to the hearing (which it did), appellants cannot show prejudice to their substantial rights, as required to sustain a procedural error. *Painter v. City of Redmond*, 56 Or. LUBA 264, 268 (2008).
2. Failure to apply the Historic Overlay Zone regulations instead of the base zone regulations, where the two conflict. Appellants argue that the discussion by the Historic Landmarks Commission at the DARs and the hearings "indicated more reliance on base zone allowances than [on the] approval criteria for Historic Review." Even assuming the DAR and hearing discussions could properly be characterized in this fashion (which they cannot), the Decision itself is properly based on the correct approval criteria (the HAD Design Guidelines and the Community Design Guidelines).
3. Failure to address Council's earlier Demolition Review Decision. Nothing in the relevant approval criteria or the applicable procedure requires discussion of or consistency with prior land use decisions, particularly those subject to a separate set of approval criteria like the prior Demolition Review. A local government is not required to recreate prior land use approvals, even when applying the same set of approval criteria to the same proposal. *Devin Oil Co. Inc. v. Morrow County*, LUBA No. 2015-033 at 13-14 (petitioner failed to identify any requirement that the county "carry over previously imposed conditions of approval simply because they were imposed five years earlier").

4. Failure to address public comments in detail in the written Decision. Appellants do not identify any specific issues that were inadequately addressed by the Commission's Decision and have therefore failed to establish either procedural error or substantial prejudice.
5. Alleged harassment of one Historic Landmarks Commissioner. One of the Historic Landmarks Commissioners owns and resides at a property across the street from the project site. A member of the public, Alan Kessler, took issue with that commissioner's impartiality on this basis during the DARs. That commissioner ultimately took a leave of absence and did not participate in the Decision. Beyond observing Mr. Kessler's testimony at the DARs and hearings, the project team has had no contact with him and has purposefully not returned his calls. The project team is otherwise unaware of the reasons for and circumstances of the commissioner's leave of absence.

An Approval Condition to Ensure Affordability Would Be Unlawful

The appellants request an additional condition of approval requiring that the project provide affordable housing. As NWDA admits, this aspect of the project is not relevant to any of the approval criteria.⁴⁶ Imposing the requested affordability approval condition would be unlawful. *See, e.g., Caster v. City of Silverton*, 56 Or. LUBA 250, LUBA No. 2007-211 at 12 (2008) (an approval condition imposed for reasons other than to ensure compliance with applicable approval criteria was unlawful); *7th Street Station, LLC v. City of Corvallis*, 55 Or. LUBA 321, 2007-140 and -141 at 6 (2007) (remanding a decision imposing an approval condition where all applicable approval criteria had been met and the city lacked authority to impose the additional condition); *Davis v. City of Bandon*, 28 Or. LUBA 38, 94-043 at 13-14 (1994) ("local government must have authority under its comprehensive plan or land use regulation to impose [any approval] conditions"). NWDA's concerns about funding⁴⁷ are similarly outside the scope of any applicable approval criteria.

Additional Issues Raised by Mr. Schwartz's Appeal

Addressing the remainder of Mr. Schwartz's appeal, he asserts error based on the number of residential units proposed (148), which is based on his fear that the project's residents will spend most of their time in the building instead of interacting with their neighbors. Neither of these concerns is responsive to the relevant approval criteria.

Finally, Mr. Schwartz claims that PCC 33.846.060 and PCC 33.846.070 have not been addressed or met. These sections of the code cover a broad range of issues and Mr. Schwartz has not adequately identified specific errors. In any case, all applicable requirements in these code sections have been both addressed and satisfied.

⁴⁶ NWDA Appeal Letter, Nov. 19, 2018, page 13 ("Whether the housing proposed for this site is affordable is not relevant to the approval criteria for this case.").

⁴⁷ *See id.*

Conclusion

The project team has worked diligently and collaboratively with a variety of stakeholders and officials to create a compatible project in the Historic Alphet District. Multiple meetings with the NWDA Planning Committee and concerned citizens in the neighborhood informed the team's design decisions. Engaged discussions with Bureau of Development Services planners gave shape to a project that addressed the approval criteria. Three Design Advice Requests with the Historic Landmarks Commission provided detailed comments and direction. City Staff recommended approval of the project and found that every approval criterion has been met. The Historic Landmarks Commission considered this staff report and the copious testimony presented in their deliberation, and approved the project by a 5 to 1 vote. The Commission's Decision offered this concluding summary: "By taking cues from the existing contributing resource, adjacent properties, and the rest of the district for the site, the massing, the material palette, and the details, Block 162 apartments will successfully fit into and enrich the Alphet Historic District."

The applicant will bring a much needed project that enriches the District while providing critical housing. Our team asks City Council to respect the Historic Landmarks Commission's decision by denying the two appeals, and allowing this project to progress and begin serving its intended goals.

Very truly yours,

LANE POWELL PC

A handwritten signature in blue ink that reads "Cozette Caffee". The signature is written in a cursive, flowing style.

Cozette Tran-Caffee

CTC:ah

Exhibit 1

APPROVAL CRITERIA

<p>Historic Alphabet District Guideline 1:</p> <p><i>Historic changes.</i></p> <hr/> <p><i>Most properties change over time; those changes that have acquired historic significance will be preserved.</i></p>	<p>BDS STAFF APPROVAL (SOME WITH CONDITIONS)</p> <p>✓</p>
<p>Historic Alphabet District Guideline 2:</p> <p><i>Differentiate new from old.</i></p> <hr/> <p><i>New addition, exterior alterations, or related new construction will retain historic materials that characterize a property to the extent practicable. Replacement materials should be reasonable facsimiles of the historic materials they replace. The design of new construction will be compatible with the historic qualities of the district as identified in the Historic Context statement.</i></p>	<p>✓</p>
<p>Historic Alphabet District Guideline 3:</p> <p><i>Hierarchy of Compatibility.</i></p> <hr/> <p><i>Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a historic or conservation district, with the rest of the district. Where practical, compatibility will be pursued on all three levels. New development will seek to incorporate design themes characteristic of similar buildings in the Historic Alphabet District.</i></p>	<p>✓</p>

Community Design Guidelines:

	DESIGN GUIDELINES	PROJECT TYPE	MULTI - DWELLING	BDS STAFF APPROVAL (SOME WITH CONDITIONS)
PORTLAND PERSONALITY				
P1	Community Plan Area Character		❖	✓
P2	Historic and Conservation Districts		❖	✓
P3	Gateways		❖	✓
PEDESTRIAN EMPHASIS				
E1	The Pedestrian Network		❖	✓
E2	Stopping Places		❖	✓
E3	The Sidewalk - Level of Building		❖	✓
E4	Corner that Build Active Intersections		❖	✓
E5	Light, Wind, Rain		❖	✓
PROJECT DESIGN				
D1	Outdoor Areas		❖	✓
D2	Main Entrances		❖	✓
D3	Landscape Features		❖	✓
D4	Parking Areas and Garages		❖	✓
D5	Crime Prevention		❖	✓
D6	Architectural Integrity		❖	✓
D7	Blending into the Neighborhood		❖	✓
D8	Interest, Quality and Composition		❖	✓