



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

Dan Ryan, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portland.gov/bds

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

CASE FILE: LU 20-123610 DZM – 1137 NW 23RD AVE

HEARING DATE: WEDNESDAY, JULY 14, 2021 at 2:00pm

REMOTE ACCESS: CITY COUNCIL AGENDA

<https://www.portlandoregon.gov/auditor/26997>

Date: June 10, 2021
To: Interested Person
From: Grace Jeffreys, Land User Services, 503.865.6521

A virtual public hearing will be held to consider an appeal of the Design Commission's decision to approve a proposed new five-story mixed-use building at **1137 NW 23RD AVE** which is in the Northwest Plan District. The Design Commission decision of approval has been appealed by **Steve Pinger representing the NW District Neighborhood Association**. During the hearing, City Council will consider the appeal. You are invited to testify at the hearing. SEE INFORMATION BELOW ON HOW TO TESTIFY.

This will be an Evidentiary hearing, one in which new evidence can 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.

Due to the City's Emergency Response to COVID19, this land use hearing will be remote participation via Zoom. Please refer to <https://www.portlandoregon.gov/auditor/26997> for information on how to observe and participate remotely.

GENERAL INFORMATION

Applicant: Richard Dobrot, GBD Architects Incorporated
1120 NW Couch St, Suite 300, Portland OR 97209
(503) 548-2332, Richard@gbdarchitects.com

**Representative/
Owner** Seth Garey, CE John Properties 71 LLC
1701 SE Columbia River Dr, Vancouver WA 98661

Site Address: 1137 NW 23RD AVE

Legal Description: BLOCK 2 LOT 1&2, GOLDSMITHS ADD; BLOCK 2 LOT 3&4, GOLDSMITHS ADD
Tax Account No.: R331300220, R331300240, R331300240
State ID No.: 1N1E33BB 03000, 1N1E33BB 03100, 1N1E33BB 03100
Quarter Section: 2927

Neighborhood: Northwest District, contact Greg Theisen at 503-227-5430.
Business District: Nob Hill, contact at nobhillportland@gmail.com.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Northwest

Other Designations: None

Zoning: **CM2 (MU-U)d, m;** Commercial/Mixed Use 2 (CM2) with Design (d) and Centers Main Street (m) overlays.

Case Type: **DZM,** Design Review with Modification requests

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

Proposal:

The applicant seeks Design Review approval for a proposed new five-story mixed-use building, with 74 apartment units on four floors above approximately 10,000 sf of ground level retail, located in the Northwest Plan District. Proposal also includes below grade parking for 44 cars, one B sized loading space, and 91 bikes, which will be all accessed off NW Northrup Street. Primary cladding materials include 3 colors of brick, metal panels, synthetic stucco, ground level aluminum and wood storefront glazing, commercial-grade vinyl windows above, metal canopies, and painted concrete at the base.

The following four (4) Modifications are requested:

1. Bike Parking – Stall Widths (PZC 33.266.220.C.3.b). Request to reduce the width of the vertically hung bike parking spaces from 24” to 18”.
2. Transit Street Main Entrance - Location (PZC 33.130.242.C.3.c). Request to locate the proposed main entrance to the residential portion of the building on NW Marshall, approximately 70 feet from NW 23rd Avenue (transit street).
3. Setbacks – L3 Landscape (33.130.215.B.2.b). Request to alter the required L3 landscape screening to the west due to substantial grade differences, including using a wood rather than masonry fence and increasing the width of paving.
4. Vehicle Parking – Stall Size (33.130.266.130 Table 266-4). Request to have two stalls be slightly obstructed by structural columns at the front of the stall, effectively reducing the stall depth to 15'-0" instead of the required 16'-0”.

Design Review is required for new development in a design overlay zone (PZC 33.420.041). A Type III procedure is required because this development is in a design overlay zone and exceeds the value of \$2,366,000 (PZC 33.825.025). Modifications are required because the applicant is requesting to not meet the standards indicated above.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the criteria of Title 33. The relevant criteria are:

- *Community Design Guidelines*
- *PZC Section 33.825.040 Modifications That Will Better Meet Design Review Requirements*

REVIEW BODY DECISION

The following decision was mailed on May 21, 2021.

DESIGN COMMISSION DECISION

It is the decision of the Design Commission to approve Design Review for the proposed new five-story mixed-use building, with 74 apartment units on four floors above approximately 10,000 sf of ground level retail, located in the Northwest Plan District. Approval also for Modifications to four (4) Portland Zoning Code standards: Stall Widths for Bike Parking, Location of Street Main Entrance, Treatment of Landscape in Setbacks, and Stall Size for Vehicle Parking.

The full decision is available on the BDS website:

<https://www.portlandoregon.gov/bds/index.cfm?&a=783826>

APPEAL

The Design Commission decision of approval has been appealed by **Steve Pinger representing the NW District Neighborhood Association**. According to the appellants' statement, the appeal of the Design Commission decision is based on argument that:

- The Staff Report Finding for *Community Design Guideline P1. Plan Area Character, P1.1 Urban Character: District-wide Considerations* does not address the content of the subject guideline regarding step backs at the street facade, and inappropriately refers to a) required step backs on other facades, and b) parapet and cornice detailing, both of which are irrelevant to complying with this guideline.

The full appeal statement can be viewed in the notice located on the BDS website at <https://efiles.portlandoregon.gov/Record?pagesize=200&sortBy=recCreatedOn&q=20-123610>

Click on the District Coalition then scroll to the relevant Neighborhood and case number.

Review of the case file: If you are interested in viewing information in the file, please contact the planner listed on the front of this notice or call the Request Line at 503-823-7617 to request specific materials. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. A digital copy of the Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write in advance, or testify during the hearing. If you would like to testify during the hearing you may need to sign up a few days in advance of the hearing; visit <https://www.portlandoregon.gov/auditor/26997> for more information on how to testify during 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 that are mailed via USPS **must be received by the close of the record** and should include the case file number and the name and address of the submitter. It can be mailed to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, OR 97204.

If you choose to provide testimony by e-mail, please direct it to the Council Clerk at CCTestimony@portlandoregon.gov. Due to legal and practical reasons, City Council members cannot accept e-mail on cases under consideration by the Council. Any e-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.

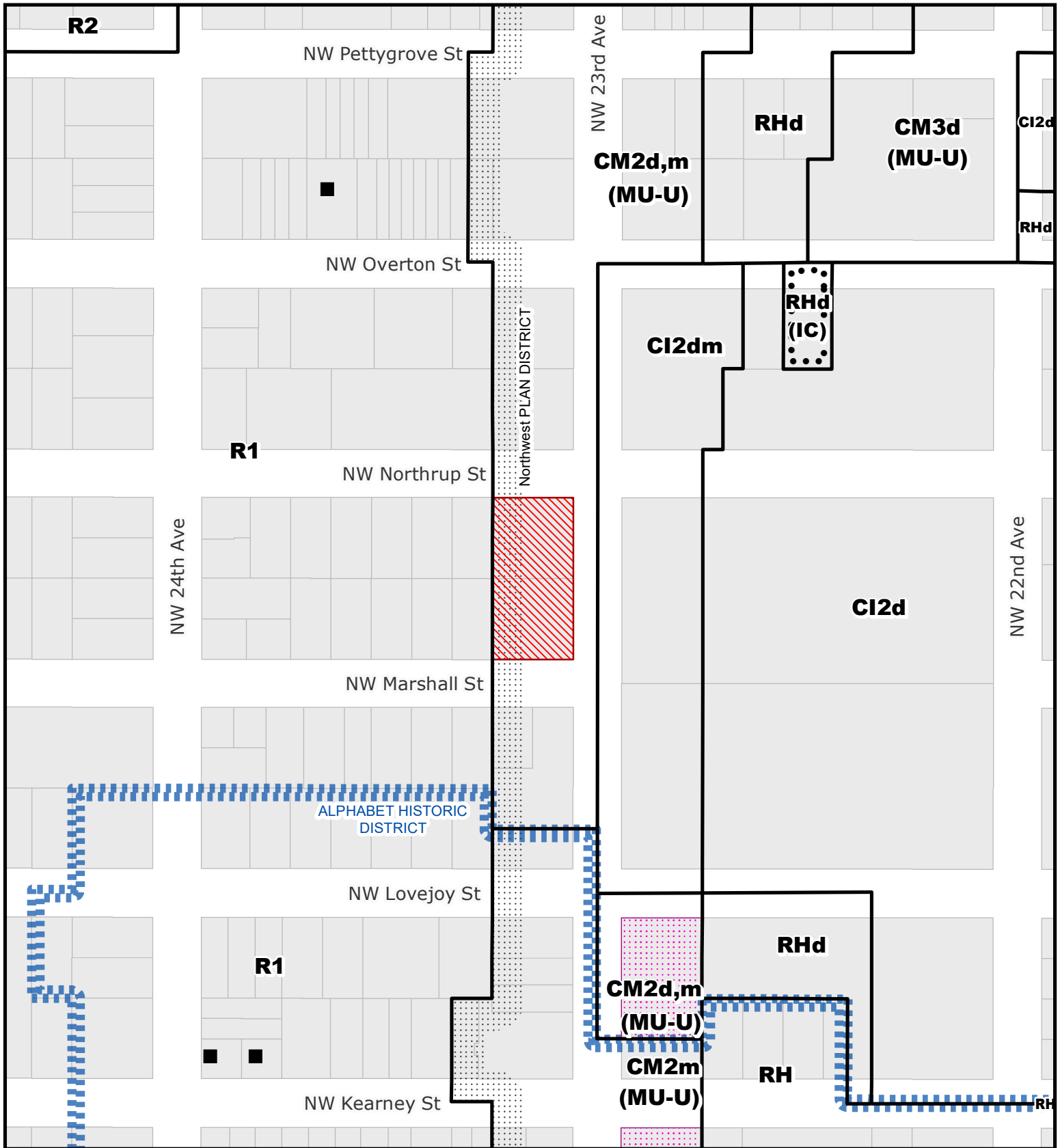
A description of the City Council Hearing process is attached.

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.

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: Sheet C-2
3. Elevations: Sheets C-20, C-22, C-24, C-26
4. City Council Appeal Process
5. Appeal Statement (on-line version only).



ZONING


NORTH

NORTHWEST PLAN DISTRICT

-  Site
-  Also Owned Parcels
-  Historic Landmark

File No.	LU 20 - 123610 DZM
1/4 Section	2927
Scale	1 inch = 163 feet
State ID	1N1E33BB 3100
Exhibit	B Mar 02, 2020

Approved
 City of Portland
 Bureau of Development Services

Planner _____
 Date 05-19-2021

* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

R1 ZONE

Proposed Building
CM2 ZONE

HIGH POINT
EL 113.66'

NW MARSHALL STREET

98'-1"

PROPERTY LINE

APPROX 13'-0"

APPROX 15'-0"

PROPERTY LINE

10 FT SETBACK

STEPDOWN LINE

NW NORTHROP STREET

3 FT DEDICATION

LOW POINT
EL 102.85'

TRANSIT STOP

200'-0"

NORTHWEST 23rd AVENUE

FIRE HYDRANT

FIRE HYDRANT

Good Samaritan Hospital



SITE PLAN

0'4" 8' 24 ft

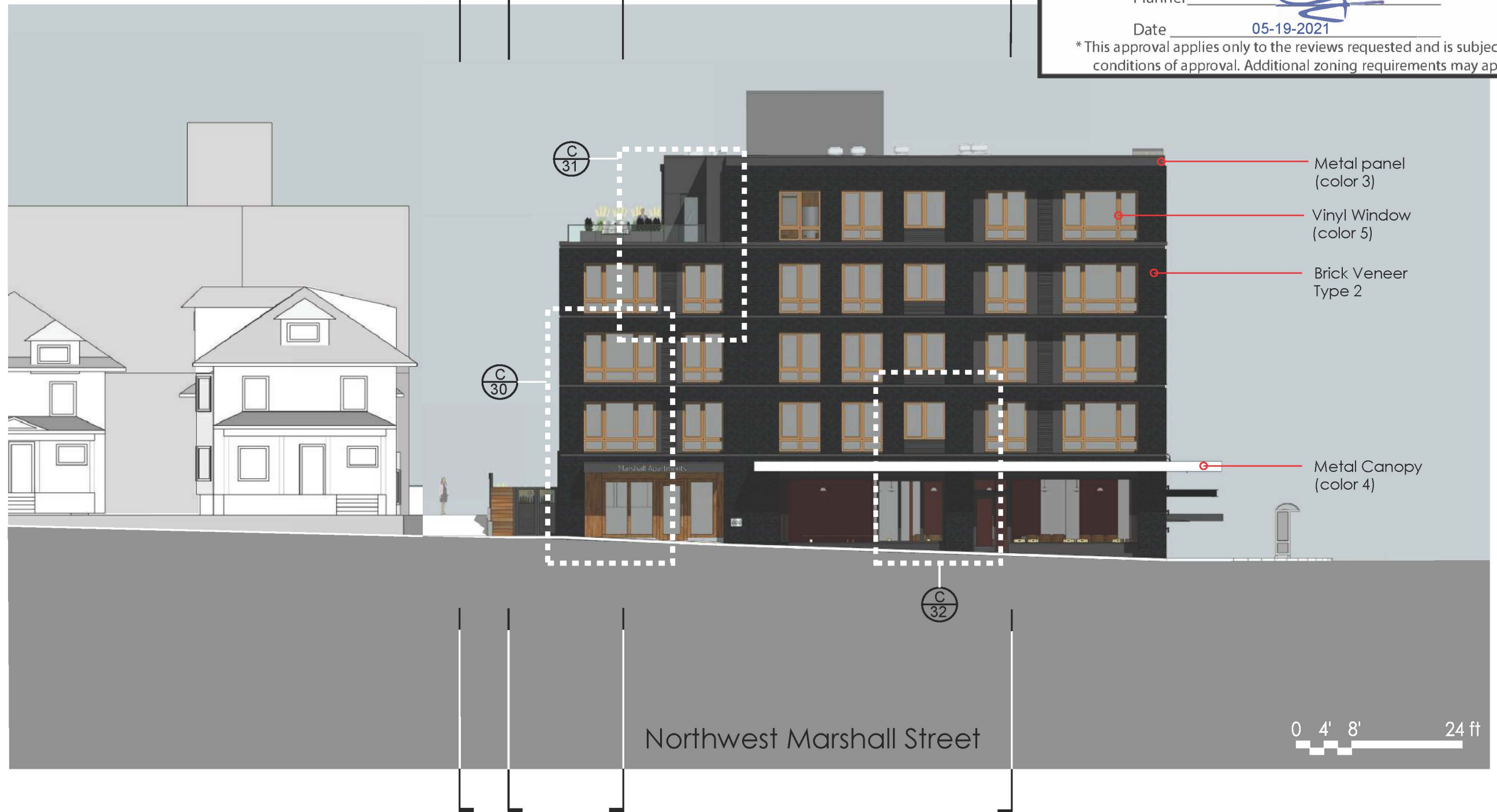


Approved
 City of Portland
 Bureau of Development Services

Planner _____ 

Date 05-19-2021

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- Metal panel (color 3)
- Vinyl Window (color 5)
- Brick Veneer Type 2

— Metal Canopy (color 4)

Northwest Marshall Street

ELEVATION - SOUTH

Approved
 City of Portland
 Bureau of Development Services

Planner _____ 

Date 05-19-2021

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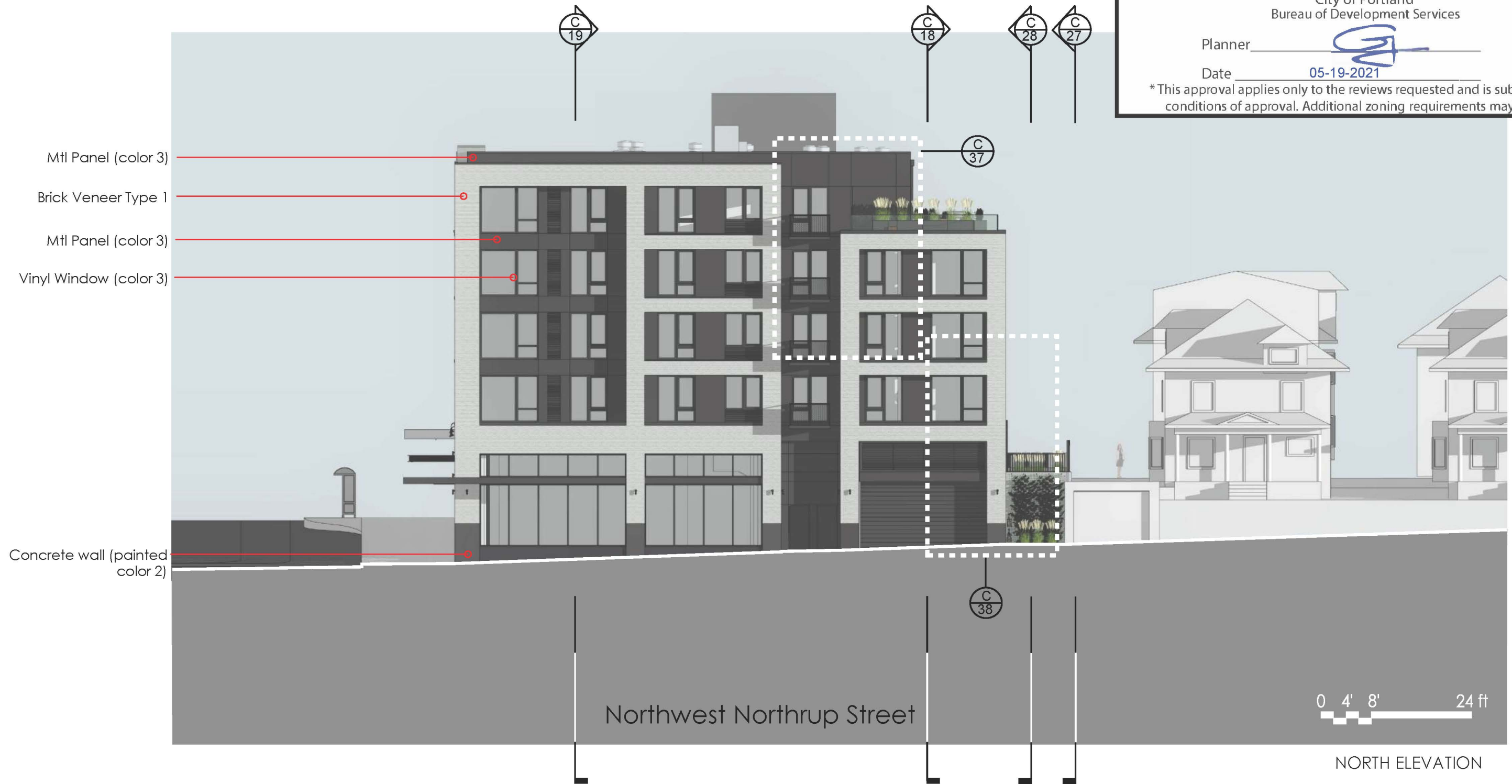


Approved
 City of Portland
 Bureau of Development Services

Planner _____ 

Date 05-19-2021

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NORTH ELEVATION



WEST ELEVATION

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 Fourth 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 is generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent of the Appeal	15 minutes
Other Opponents of the Appeal	3 minutes each
Appellant 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 Design Commission’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 to the Land Use Board of Appeals (LUBA) on that issue.

3. OTHER INFORMATION

- a. If you are interested in viewing information in the file, please contact the planner listed on the front of this proposal. The planner can provide some information over the phone. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available for viewing. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at <https://www.portlandoregon.gov/citycode/28197>.

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.



City of Portland, Oregon - Bureau of Development Services

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



Type III Decision Appeal Form

LU Number: **LU20-123610DZM**

FOR INTAKE, STAFF USE ONLY

Copy of LU Decision & Meeting Minutes from Neighborhood Meeting

Date/Time Received 6/4/21 @8:00am

Action Attached of 6/3/21

Received By Mary B

Fee Amount \$5,250

Appeal Deadline Date 6/4/21 @4:30pm

Y N Fee Waived (Pending - The waiver was submitted concurrently)

Entered in Appeal Log

Bill # 4833048

Notice to Auditor

Y N Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 1137 NW 23RD AVE DEADLINE OF APPEAL June 4 2021

Name NW District Association, by Steve Pinger

Address _____ City _____ State/Zip Code _____

Day Phone 503 807 3601 Email steve@sspdev.com Fax _____

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

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

Zoning Code Section 33. 825 . 055

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:

Staff Report Finding for Community Design Guideline P1. Plan Area Character, P1.1 Urban Character: District-wide Considerations does not address the content of the subject guideline regarding step backs at the street facade, and inappropriately refers to a) required step backs on other facades, and b) parapet and cornice detailing, both of which are irrelevant to complying with this guideline. The Finding for this guideline is in err, the guideline is not met.

Appellant's Name [Signature]

FILE THE APPEAL - Submit the following:

I acknowledge this typed name as my signature

- 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 Civic Life 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

Email this application and supporting documents to: LandUseIntake@portlandoregon.gov

To file the appeal, this completed application form and any supporting documentation must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of the Decision. To be valid, the City must receive the appeal by 4:30 p.m. on the deadline listed in the Decision. Once the completed appeal application form is received, a Land Use Services Technician will contact you with instructions on how to pay the fee.

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

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

Type III Appeal Hearing Procedure

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

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

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

Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original Bureau of Development Services Land Use Services 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 Community & Civic Life Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

A. Office of Community & Civic Life Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Community & Civic Life 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.



Type III Decision Appeal Fee Waiver Request for Organizations

FOR INTAKE, STAFF USE ONLY		<input type="checkbox"/> Directors Approval Letter Requested
LU Number: _____		<input type="checkbox"/> Waiver Approved by Director
Date/Time Received _____		<input type="checkbox"/> Waiver Denied
Received By _____		Date waiver Approved/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 1137 NW 23RD AVE

File Number LU20-123610DZM Appeal Deadline Date June 4 2021

Organization and Appeal Information

Organization Name NW District Association

Person Authorized by the Organization to file the Appeal Steve Pinger

Street Address 2669 NW Savier St

City Portland State OR Zip Code 97210

Day Phone 503 807 3601 FAX _____ email steve@sspdev.com

By signing this form, the organization confirms that:

- yes** **D** The organization testified orally or in writing at the hearing, and the testimony was directed to a specific approval criterion;
- yes** **D** The appeal is being made on behalf of the recognized organization, and not on behalf of an individual; and
- yes** **D** The vote to appeal was done in accordance with the organization's bylaws.

Name/Title Steve Pinger, member Planning Committee, Board Secretary

____ Signature/Date  June 3, 2021

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 : <u>June 3 2021</u>
The decision to appeal was made by a vote of (check one of the following): <input type="checkbox"/> The general membership in a meeting of the organization as listed above. <input type="checkbox"/> The board in a meeting of the organization as listed above. <input checked="" type="checkbox"/> The land use subcommittee in a meeting of the organization as listed above.
Please include at least one of the following: <input checked="" type="checkbox"/> A copy of the minutes from the meeting when the vote to appeal was taken. <input checked="" type="checkbox"/> Vote results to appeal - Number of YES votes to appeal <u>5</u> Number of NO votes to appeal <u>1</u>

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

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

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

Information about Type III Appeal Fee Waiver Requests for Organizations

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

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

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

Zoning Code Requirements

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

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

Applicant contact

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

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

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