



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

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MEMORANDUM

DATE **June 28, 2021**

TO: Mayor Ted Wheeler
Commissioner Mingus Mapps
Commissioner Carmen Rubio
Commissioner Jo Ann Hardesty
Commissioner Dan Ryan

FROM: Rebecca Esau, Director *R Esau*
Bureau of Development Services

RE: City Council hearing appeal of LU 20-123610 DZM – NW 23rd and Marshall
Apartments

The purpose of this memorandum is to provide a summary and brief description of the land use review that will be presented to you in the public hearing on July 14, 2021 at 2 PM, time certain.

Site Address: 1137 NW 23rd Avenue

BDS Representatives: Grace Jeffreys, City Planner – Design Review

Land Use Reviews Requested: Type III Design Review with Modifications for a new five-story mixed-use building in the Northwest Plan District. Proposal includes:

- 74 apartment units on four floors above approximately 10,000 sf of ground level retail. Proposal will meet Affordable Housing requirements.
- Below grade parking for 44 cars, one B sized loading space, and 91 bikes, which will be all accessed off NW Northrup Street.
- Modifications to bike parking, transit street main entrance, setback landscaping and vehicle parking standards were requested.

Design Commission Decision: The Design Commission found that the applicable approval criteria had been met. Standard conditions of approval were added.

Appeal: The Design Commission decision of approval has been appealed by Steve Pinger representing the NW District Neighborhood Association, based on the argument that the findings do not correctly address *Community Design Guideline P1. Plan Area Character* regarding step backs at the street facade.

Key Elements of Proposal:

- Project was submitted on February 26, 2020 and deemed complete on August 20, 2020.
- The first hearing was scheduled within 56 days from the completeness date for October 15, 2020 but was then postponed by applicant. Upon signing an extension to the review period, a new hearing date was subsequently scheduled and held with the Design Commission on May 6, 2021.
- There was some public interest and participation, and staff received 7 written comments in opposition of the project. Primary concern focused on lack of setback at the upper (fifth) story. Additional comments not related to the approval criteria were also submitted.
- The following findings and facts relevant to the appeal item, a lack of setback at the upper (fifth) story, include:
 - Community Design Guideline (CDG) P1, Plan Area Character asks proposals to incorporate site and building design features that respond to the “area’s *desired characteristics and traditions.*” (CGD, page 15). Appendix J: Excerpt from Northwest District Plan, Amended Design Guidelines – Desired Characteristics and Traditions lists numerous desired characteristics, one of which is that “*New buildings and additions that are taller than the two-to four-story building height that is predominant in the district should have upper stories stepped back in order to contribute to more consistent streetscape and to maintain neighborhood scale.*” (CGD, Appendix J page 198).
 - This proposal is five stories and is within the height limit allowed by the Zoning Code. To keep the higher massing away from the residential area to the west, the upper (5th) story was pushed east towards NW 23rd. To meet this guideline and respond to the area’s desired characteristics and traditions, other design elements were used to address the neighborhood scale:
 - The building height is stepped down to four stories on the west side towards the residential area, resulting in making a significant portion (almost a third) of the north and south street elevations four stories tall.
 - The five-story eastern building façade facing NW 23rd is broken into three distinct blocks to reflect the district’s pattern of partial block massing. This is emphasized with different brick colors and detailing, window configurations, and ground floor storefront and canopy details. Two two-foot deep façade recesses help to further break up the elevation.
 - Parapet and cornice details and a 6-inch step back to the upper (fifth) floor were added to further respond to the desired four-story building height datum.
 - The Community Design Guidelines are intended to be flexible and location appropriate, and examples provided are intended to be explanations, rather than recommended solutions: “*The design review process is flexible to encourage designs that are innovative and are appropriate for a specific location....Each*

guideline is followed by a list of examples of ... ways to meet the guidelines ... provided to stimulate the search for a design that meets both the guidelines and the developer's needs; they function as explanations of the guideline and are not intended to be used as the recommended solutions.” (CGD page 7).

- Because this building will be located along the densest area of NW 23rd, faces the streetcar line as well as the six-story Good Samaritan building across the street, and most of the massing has appropriately been set to the east along NW 23rd and therefore away from the smaller-scaled residential zoned area to the west, the Commission considered the five-story massing facing NW 23rd appropriate for this proposal and location.

Alternatives Facing Council

- Deny the appeal and uphold the Design Commission's decision of approval with conditions.
- Deny the appeal but modify the Design Commission's decision of approval with conditions and instruct the applicant to revise the design and return to Council at a future date.
- Grant the appeal, thereby overturning the Design Commission's decision to approve with conditions. In this case, the project would be denied.



City of Portland, Oregon - Bureau of Development Services

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Type III Decision Appeal Form

LU Number: **LU20-123610DZM**

FOR INTAKE, STAFF USE ONLY

Date/Time Received _____	<input type="checkbox"/> Action Attached _____
Received By _____	Fee Amount _____
Appeal Deadline Date _____	<input type="checkbox"/> Y <input type="checkbox"/> N Fee Waived
<input type="checkbox"/> Entered in Appeal Log _____	Bill # _____
<input type="checkbox"/> Notice to Auditor _____	<input type="checkbox"/> Y <input type="checkbox"/> N Unincorporated MC
<input type="checkbox"/> 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. <u>825</u> . <u>055</u>	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.

Appellant's Name _____

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 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

I acknowledge this typed name as my signature

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.

IMPACT STATEMENT

Legislation title: Consider appeal of the NW District Neighborhood Association against the Design Commission's decision to approve with conditions a proposed new five-story mixed-use building at 1137 NW 23rd Ave in the Northwest Plan District (LU 20-123610 DZM)

Contact name: Grace Jeffreys, City Planner, BDS Land Use Services

Contact phone: 503.823.6521

Presenters names and contact information:

- Grace Jeffreys (BDS Planner): grace.jeffreys@portlandoregon.gov
- Richard Dobrot (Applicant): richard@gbdarchitects.com
- Steve Pinger (Appellant): steve@sspdev.com

Purpose of proposed legislation and background information:

This is an appeal of a Type III Land Use Review decision (a quasi-judicial action). Title 33, Zoning Code Section 33.730.030 G provides that Type III Land Use Review decisions may be appealed to City Council. The Design Commission decision for the proposed development (NW 23rd and Marshall Apartments) was appealed by Steve Pinger representing the NW District Neighborhood Association.

Financial and budgetary impacts:

This is an appeal of a Type III quasi-judicial land use review (not legislation). The City Council decision on this matter will not have financial or budgetary impacts on the City.

Generally, Land Use Reviews are fee supported. In this case, the appeal fee was waived because the appellant is representing a Recognized Organization as defined by 33.910. City costs associated with this appeal are for staff time to process the appeal.

Community impacts and community involvement:

The notification procedures for this Type III land use application followed the public involvement requirements contained within the Portland Zoning Code, as reviewed and adopted by the Portland City Council.

For Type III Land Use Reviews, the Zoning Code requires public notice be mailed to recognized neighborhood and business associations that are within 1,000 feet of the site. For this site, the Northwest District Association, Hillside Neighborhood Association, Nob Hill Business Association, and Neighborhoods West – Northwest received notice. In addition, all property owners within the 400 feet of the site were mailed notice of the public hearing and the site was posted with notice boards. City Bureaus were also mailed notice. Interested persons were encouraged to write and/or testify at the public hearing conducted before the Design Commission.

A number of comments were received from the public, including those affiliated with the appellant (*Steve Pinger representing the Northwest Neighborhood Association*), and were submitted to the Design Commission as both oral and written testimony during the review

process. The hearing before the Design Commission took place on May 6, 2021, and the Design Commission voted to approve the proposal.

The City Council decision on this appeal will be the final decision of the City, per Zoning Code Section 33.730.030.H.9. However, the City Council's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA).

Budgetary Impact Worksheet

Does this action change appropriations?

YES: Please complete the information below.

NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount