



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

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Type II Land Use Appeal

MEMORANDUM

Date: April 13, 2023
To: Portland Design Commission
From: David Besley, BDS, Land Use Services, Title 33
(503) 865-6715 / david.besley@portlandoregon.gov
Re: LU 22-159396 AD – Commercial building addition/renovation and loading space modification at 2788 NW Thurman Street
Appeal of a Type II Adjustment Review Approval with Conditions – March 3, 2023

Included with this memo is a copy of the proposal for a new mixed-use development 2788 NW Thurman Street in preparation for the proposal's Type II Adjustment Review appeal, to be held on April 20, 2023. Please contact me with any questions or concerns.

I. OVERVIEW

Appeal of a Type II Staff Decision of Approval with Conditions of an Adjustment Review for a proposal to re-purpose an existing tavern into a retail sales and service space (including but not limited to restaurants) with 6-10 tenants, expand the building at the southeast corner, add a partial second floor, add ground level and second floor patios connected via an external stairway, and modify an existing loading space at the southeast corner of NW Thurman St and NW 28th Ave, and in the Northwest Plan District. The two (2) Adjustments were requested to:

1. reduce the minimum 10-foot building setback to 6 feet along the south lot line, and to waive the L3 landscaping buffer (PZC 33.130.215.B, Table 130-2); and
2. reduce the residential-abutting setbacks for a loading space from 5 feet with perimeter landscaping to the L4 standard to 0 feet, to waive the perimeter landscape requirement, and to allow the northernmost 4 feet of the loading space to be located between the building and the street (NW 28th Avenue) (PZC 33.266.310.E, Table 266-8).

NOTE: Because the Adjustment requests are for a site within in the Design Overlay Zone (the site is zoned CM2d), they are appealed to the Design Commission. **The Design Commission is only looking at conditions related to the Adjustment requests (along the south lot line)**, not whether or not the whole project is approvable.

II. DEVELOPMENT TEAM

Architect/Appellant Philip Sydnor, Integrate Architecture & Planning
Owner: Nascent Collective LLC

III. APPROVAL CRITERIA: Adjustment Approval Criteria A. through F. of Section 33.805.040:

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- B. If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and
- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and
- D. City-designated scenic resources and historic resources are preserved; and
- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and
- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable (*not applicable*).

IV. PROCEDURAL HISTORY

- Adjustment Review application submitted on July 1, 2022 and determined to be complete on October 31, 2022. The Adjustment notice was originally mailed November 7, 2022 and was re-noticed on November 18, 2022 to include elevation drawings.
- The applicant requested to extend the review period on January 2, 2023 to the maximum allowed 245 days.
- Staff decision of *Approval with Conditions* issued on March 3, 2023.
- Twenty-eight (28) neighbors collectively appealed the staff decision on March 16, 2023. James McAdoo, Representing the Trolley-car Lofts Homeowners Association, also appealed the staff decision on March 16, 2023
- The applicant submitted revised floor plans and elevations on April 13, 2023 as a result of a preliminary Life Safety meeting with BDS staff regarding accessibility and egress requirements. The revisions include the following changes:
 - Exterior stadium seating and stairs between patios are flipped (with stadium seating at the north and the stairway at the south) to provide an uninterrupted landing at the bottom of the staircase;
 - More detailed gate and fencing information has been added along the 28th avenue ROW at the west end of the courtyard and loading area;
 - A gate/ screen is provided at the west end of the trash and electric meter location to help better enclose this area; and
 - Stairs between south courtyard and southernmost access area are removed (slopes as determined by civil are indicated).

V. STAFF ANALYSIS

There are two appellants in this case:

- 1) Twenty-eight (28) neighbors are collectively appealing approval with conditions of the Adjustment requests. The 4-page appeal narrative is summarized as follows:
 - Adjustments do not equally or better meet the purpose of the zoning regulations.
 - Privacy, light, and air for the adjacent building will be impacted because there are sleeping areas, decks, and skylights at the 2nd floor which will be subject to noise of outdoor dining, evening lights and potential music.
 - The proposal does not complement the scale or intensity of the surrounding residentially zoned areas.
 - The loading zone is too small to accommodate garbage/delivery trucks, which will have to load on NW 28th Avenue, and could result in traffic buildup.
 - The proposed landscaping would not mitigate for impacts on the neighbors. “No amount of landscaping will mitigate the impact of large gatherings on the neighboring homes.”
 - There are concerns with the proposed loading space alterations, including concerns about increased traffic and pedestrian safety.
 - There are concerns that the proposal is not aligned with the Northwest Plan District character statement.

- 2) James McAdoo, Representing the Trolleycar Lofts Homeowners appealing approval with conditions of the Adjustment requests. The 3-page appeal narrative shares some of the above concerns and additional comments are summarized as follows:
 - The description of the adjacent Trolleycar Lofts in the administrative decision is inaccurate.
 - The project’s sound transmission will impact livability to Trolleycar Lofts, and “might not be fully attenuated by its origins’ elevations and distances.”

Staff Response:

Regarding the appeals to the Adjustment approval with conditions, Staff tried to strike a balance between the requirements of the standard and applicant’s request for some flexibility, given their proposed preservation of the existing building and working with the existing layout on site. The full staff Findings for this Adjustment can be found on pages 7-17 of the staff decision.

The purpose of the Setback standards (33.130.215) are as follows:

The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial/mixed use zones. The setbacks promote buildings close to the sidewalk to reinforce a pedestrian orientation and built-up streetscape. The setback requirements for areas that abut residential zones promote commercial/mixed use development that will maintain light, air, and the potential for privacy for adjacent residential zones . . .

The minimum building setbacks along local service streets adjacent to residential zones work together with requirements for step downs in building height to ensure that there is a transition in street frontage characteristics to lower scale residential zones. In these situations, the building setback regulations promote street frontages with landscaping and residential uses to provide a transition and a cohesive street environment with similar street frontage characteristics on both sides of the street, and limit exterior display and storage to minimize impacts to nearby residentially-zoned areas.

Staff found the proposal supported this condition because about half of the southern façade is over 23 feet from the southern lot line, which is a substantial increase in distance over the 10-foot minimum building setback, and helps offset the building's overall massing. Additionally, the maximum height of the structure, including the proposed partial second story addition is approximately 35-feet, which is substantially lower than the maximum allowed 45-foot building height. Furthermore, the southernmost 18 feet of the building, where the second level patio is proposed, is only about 14 feet in height, and sits about 10 feet lower than the top of the residential neighbor's (Trolleycar Lofts) parapet. The partial second story addition is proposed to be set back 32 to 36 feet from the southern property line, resulting in a step-down building design from north to south. The significantly reduced height and FAR (compared to what the CM2 zone allows) reduces the massing of the building, helps maintain light and air, and provides a transition to the adjacent multi-dwelling development to the south.

While a full 10 feet of L3 landscape buffer is not proposed, one new small tree is proposed at the ground level, and 4-foot-wide landscape planters with 6-foot-tall evergreen shrubs will be provided along the southern edge of the seating areas where the building setback and landscaping adjustment is requested. Combined with the floorplans which do not provide customer seating within 10 feet of the southern lot line, the landscaping will promote privacy and provide a transition to the neighboring residences to the south. It will also improve the appearance of the site by providing additional landscaping, as the current development has no landscaping. A condition of approval was included as follows:

The landscaped buffer areas along the southern edge of the seating areas (upper courtyard, lower courtyard, stadium seating, and lower rooftop deck, as shown on Exhibit C.2) must be continuously maintained in a healthy manner. Plants that die must be replaced in kind.

In order to address neighbor concerns about customer noise on the patios, particularly at night, the applicant has proposed a new gate/fence at the southwestern edge of the site to limit access when the business is closed and signage at all patio access doors (2 on the ground level and 2 at the upper level) stating: "South outdoor areas closed to customers after 10 PM."

The purpose of the Loading Standards (33.266.310) are as follows:

A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way

The existing 24-foot-wide x 90-foot-long paved loading area along the southern edge of the site is proposed to be reduced to 18 feet x 10 feet, which meets the minimum requirements for a Standard B loading space. PBOT responded with no concerns regarding the Adjustment review and noted that reducing the existing curb cut as proposed, from about 24 feet to 10 feet, will add an additional on-street parking space and provide additional street tree plantings. The northernmost 4 feet of the loading space is proposed to be located between the southernmost building addition and the street, which will obscure only about 4% of the western building facade. The loading space is located along the southern property line and is connected to the 6-foot access area proposed at the south edge of the site. If the loading area was located anywhere else on site, it would obscure more of the building façade. New landscaping planters are proposed along the entire north edge and a portion of the east edge of the loading space, as well as within the existing 24-foot-wide x 90-foot-long paved loading area. These features will help improve the appearance of the loading area and overall site.

The purpose of the Northwest Plan District (33.562.010) is as follows:

The Northwest plan district implements the Northwest District Plan, providing for an urban level of mixed-use development including commercial, office, housing, and employment. Objectives of the plan district include strengthening the area’s role as a commercial and residential center. The regulations of this chapter:

- *Promote housing and mixed-use development;*
- *Address the area’s parking scarcity while discouraging auto-oriented developments;*
- *Enhance the pedestrian experience;*
- *Encourage a mixed-use environment, with transit supportive levels of development and a concentration of commercial uses, along main streets and the streetcar alignment; and*
- *Minimize conflicts between the mixed-uses of the plan district and the industrial uses of the adjacent Guild’s Lake Industrial Sanctuary.*

The proposed commercial development will achieve the Northwest Plan’s objective of creating an urban level of mixed-use development. Along the north edge of the site, NW Thurman Street is classified as a “main street” (per Map 562-7). The proposed renovation and additions will support a mix of different retail sales and service uses on a site with transit access and will therefore encourage transit supportive levels of development and a concentration of commercial uses along a main street. The proposal will also help strengthen the area’s role as a commercial and residential center by providing additional commercial uses in an area with existing low, medium, and higher-density residential development. The proposed commercial building additions and renovations will enhance the pedestrian experience by including multiple retail sales and service options in a single building and providing outdoor patios.

For these reasons, staff finds the proposal is consistent with the purpose statement for the Northwest Plan District.

VI. NEXT STEPS

- 1) Approve one or both of the appeals, overturning the staff decision of approval with conditions, which would require the proposal to meet the building setback and landscaping standards and/or the loading space setback and landscaping standards.
- 2) Deny one or both of the appeals and uphold the staff decision of approval with conditions;
- 3) Add, delete, or revise one or more conditions of approval from the original staff decision; or
- 4) Request the applicant to return with further revisions.

VII. LINKS

- Adjustment Approval Criteria (33.805.040) <https://www.portland.gov/sites/default/files/code/33.805-adjustments.pdf>
- Commercial / Mixed Use Corridors Zones (33.130) https://www.portland.gov/sites/default/files/code/130-c-zones_1.pdf
- Parking, Loading, And Transportation And Parking Demand Management (33.266) https://www.portland.gov/sites/default/files/code/266-parking_1.pdf
- Design Overlay Zone (33.420) <https://www.portland.gov/sites/default/files/code/420-design.pdf>
- Portland Citywide Design Guidelines <https://www.portland.gov/bps/doza/documents/portland-citywide-design-guidelines-2021/download>
- Northwest Plan District (33.562) <https://www.portland.gov/sites/default/files/code/562-northwest-pd.pdf>
- Northwest District Plan <https://www.portland.gov/bps/comp-plan/documents/northwest-district-plan-2003/download>