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Submitted Electronically

Design Commission
City Of Portland
1900 SW Fourth Ave, Suite 5000
Portland, Oregon 97201

Re: LU 22-159396 AD – Appeal
Hearing: April 20, 2023; 1:30 P.M.

Dear Design Commissioners,

I represent Elliot Levin and Lisa Taaffe, who reside at 1704 NW 28th Ave, Portland, Oregon 97210. Thank you for leaving the record open for the submission of additional evidence. It is my sincere hope that you will seriously consider my clients' and other appellants' additional evidence and the deficiencies in the applicants' submitted evidence before making your final determinations in this appeal. Please keep in mind that it is the applicant's burden to prove compliance and entitlement to a favorable decision on its application. The points in this supplemental letter and the preceding submissions and testimony do in fact address the conditions of approval for adjustments. Subsection B of 133.805.040 broadly requires the project "proposal" to be consistent with the classifications of the adjacent streets and the desired character of the area. Three other subsections, i.e., A, C, and E of 133.805.040 require consideration of "adjustments." All four subsections, A, B, C and E either expressly, or impliedly require consideration of impacts on neighboring properties and the surrounding area.

To determine if they "equally or better meet the purpose of the regulation to be modified," whether there is consistency with the "overall purpose of the zone" and whether "any impacts resulting from the adjustment are mitigated to the extent practical," such impacts must be considered. Subsection E requires consideration of impacts and mitigation expressly. Impacts and mitigation can only reasonably refer to impacts on the surrounding neighbors and area. Contrary to staff's apparent belief, the code requires consideration of **all** potential impacts, including noise. Noise is not specifically mentioned, because the subsections are broadly worded so as to include all types of adverse impacts, i.e., noise, visual impacts, odors, vibrations, traffic, conflicting use, etc. (even though none are specifically mentioned.) If this were not the case, the approval criteria would be meaningless, not requiring consideration of any impacts nor

mitigation of impacts on the surrounding community before an applicant is relieved from the requirements of complying with the city's code.

The applicant's suggestion that shortened setbacks are not only permissible but actually result in a better, less impactful project for the neighborhood is unfounded and disingenuous. According to the applicant, if the 10-foot side setback were enforced, the only result would be the elimination of the deck planter boxes, with the deck area and capacity remaining the same. They have provided no alternative plans nor evidence that such would be the case or that such revised plans would be approved by the city. Placing code-required landscaping at ground level right next to the Trolley car lofts building is not an option for the applicant for multiple reasons. Such placement would give no benefit to the developer/owner or to the neighbor, and planted vegetation may not be able to grow or thrive right next to a tall brick wall. Moreover, no vegetation can be planted next to or near the wall because access must be preserved to allow for its maintenance, as has been the case for more than 100 years. The applicant and staff have largely ignored this issue. It is a legal and factual reality for the applicant. The applicant has not shown that it has any legal right (nor practical, genuine intention) to put vegetation at ground level within the 10-foot setback, nor that it has any legal right to build the proposed deck within the 10-foot setback, for that matter. The reality is, if the setback adjustment is not granted, the planters would still be required, for design, visual impacts and patron comfort and privacy if nothing else, and to satisfy the vegetation requirement not otherwise possible at ground level. If the full setbacks are enforced the whole patio layout and outdoor seating area would move over and be shortened by 4 feet along its full length, resulting in a substantial net loss of deck square footage. Compliance with the code as written would result in less deck occupancy, less people, less noise, less commotion, and fewer impacts on neighbors.

In light of the above, and the additional evidence below, the applicant's assertions that the project as modified and with adjustments will have "no impacts" on the surrounding residential neighbors is simply absurd. As promised, we are attaching additional evidence, expert opinion and argument from a respected, qualified acoustical engineer, Kerrie Standlee, P.E. His letter is attached. He testifies as to the particular sound dynamics of this project as proposed, with adjustments and as conditioned, concluding that the residences and surrounding area will be substantially impacted, the applicant and staff have failed to properly consider noise impacts, and the resulting decision fails to properly condition approval so as to properly mitigate such impacts. Mr. Standlee notes the problems of having the south decks between three hard surfaced walls, that the sound level within the deck area will be louder than would normally be expected due to the number of people potentially located on the decks, and due to reflected sound caused by the surrounding walls. He estimates noise on the south decks to be "in the range of 70 dBA due to the addition of sound from individual voices and the effect of reflected sound from the walls. And, because there will be reflected sound in the area, the sound traveling over the parapet wall to 2nd floor residential windows of some of the condominiums to the south could possibly be as high as 60 dBA." Title 18, of course limits daytime noise to 55 dBA as measured at the boundary of the residential zone, i.e., at the brick wall, even before the noise travels to residential windows. See 18.10.010, subsections A and E.

Mr. Standlee also expresses serious concern over the lack of mitigating conditions for the section of the south wall of the building that will have a metal folding door system that can be opened to the deck area. He notes, “any sound generated within the building will basically radiate to the outdoor deck area, even if the deck is closed. So, if music or loud voices occur inside the building, that sound will radiate through the opening to the deck area. And, because the opening is an elevated area opening, the parapet to the south will have very little effect in reducing sound traveling to residential receivers south of the deck area.” Mr. Standlee recommends conditioning approval with limitations on when the doors can be left open.

Mr. Standlee testifies about numerous other sound-related facts, deficiencies, and issues, including many failures to include needed and desirable conditions of approval. We urge the commissioners to carefully consider all of Mr. Standlee’s letter, and to adopt his recommendations. Appellants also request that a full sound study be required of the applicant, including an analysis of the real noise impacts of this project, recommended mitigation measures, proposed limitations, and the effectiveness of those measures and limitations.

We urge the board to request that the conditions of approval in the current decision itself be corrected and supplemented consistent with staff’s findings and recommendations (staff indicates numerous limitations, conditions and mitigation measures, many volunteered by the applicant itself, which are erroneously omitted from the conditions of approval section of the decision), consistent with Mr. Standlee’s well-founded recommendations and consistent with Mr. Levin’s very reasonable requests for further conditions of approval to protect the neighbors and the area from expected impacts. Appellants appreciate your time and attention to this important matter. The staff’s decision should be reversed, or at the very least remanded, to correct the proceedings and properly apply the applicable criteria and require needed conditions.

Very truly yours,

_____/S/_____
Thomas H. Cutler