



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

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**TENTATIVE FINAL FINDINGS, CONCLUSIONS AND DECISION OF THE
 DESIGN COMMISSION
 ON AN
 APPEALED ADMINISTRATIVE DECISION
 (TYPE II PROCEDURE)**

Case File Number: 22-159396 AD: 2788 NW THURMAN ST

The Administrative Decision for this case was appealed by Trolleycar Lofts Homeowners Association, 2781 NW Savier Street, Portland, OR 97210 and 28 Neighbors represented by Mary DeVries, 2803 NW Savier St. Portland, OR 97210 to the City of Portland Design Commission. The Design Commission granted aspects of the appeal that had been addressed by the Applicant and upheld the Administrative Decision that approved the proposal, but with additional conditions of approval.

GENERAL INFORMATION

Applicant: Philip Sydnor
 Integrate Architecture & Planning
 1919 N Kilpatrick
 Portland, OR 97217
 Phone: 503.528.9899
 Email: phil@integratearch.com

Owner Rep: Erik Opsahl
 Savier Development
 2724 NW Savier St
 Portland, OR 97210

Owner: Nascent Collective Llc
 Po Box 29107
 Portland, OR 97296

Site Address: 2788 NW THURMAN ST

Legal Description: TL 8600 0.23 ACRES, SECTION 29 1N 1E
Tax Account No.: R941290220, R941290220
State ID No.: 1N1E29DC 08600, 1N1E29DC 08600
Quarter Section: 2826

Neighborhood: Northwest District, contact Greg Theisen at
planningchair@northwestdistrictassociation.org

Business District: None

District Coalition: Neighbors West/Northwest, contact at admin@nwnw.org

Plan District: Northwest

Zoning: CM2d (Commercial/Mixed Use 2 zone with Design “d” overlay zone)

Case Type: AD (Adjustment Review – 2 Concurrent Adjustments)

Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is proposing 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 provide a loading space. For lot lines in the CM2 zone abutting residentially zoned sites, the Portland Zoning Code requires a minimum building setback of 10 feet and a landscape buffer to the L3 standard (Section 33.130.215.B, Table 130-2). The expansion at the southeast corner of the existing building is proposed to be located as close as 6 feet from the south lot line (at the second-floor patio and first floor staircase/trash enclosure area). An existing loading area along the southwestern corner of the site is proposed to remain and a 6-foot wide pedestrian access connection is proposed along the southern edge of the site to serve as access for the building and trash enclosure area; therefore, no landscaping is proposed in this area¹. The adjacent site to the south is residentially zoned (RM1 – Residential Multi-Dwelling 1); therefore, an Adjustment is requested to reduce the minimum 10-foot building setback to 6 feet, and to waive the L3 landscaping buffer.

While no loading spaces are required, the applicant is proposing to modify the existing 23-foot-11-inch wide loading area located along the southern edge of the site. It is proposed to be reduced to 10 feet wide (to be consistent with the “Standard B” loading space requirements), and the remaining 13 foot – 11 inch curb cut is proposed to be closed for use as additional on street parking.² The Portland Zoning Code requires that loading spaces abutting a Residential zone be set back a minimum of 5 feet and include perimeter landscaping to the L4 standard (per Section 33.266.310.E, Table 266-8). The loading space’s location is adjacent to a residentially zoned site (RM1 – Residential Multi-Dwelling 1) to the south. An additional requirement of this standard requires that loading spaces not be located between a building and the street. While the existing loading space is not proposed to expand or be relocated, the addition is proposed to be located as close as 6 feet from the southern property line and the loading space is proposed to be 10 feet wide; this would result in the northernmost 4 feet of the loading space being located between the building and NW 28th Avenue. An Adjustment is therefore requested to reduce the residential-abutting setbacks 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.

Note: The applicant submitted a revised plan set which reduced the southernmost outdoor seating areas so they are not located within the minimum 10-foot building setback for abutting residential lots (to the south) and expanded the width of the landscape planters areas along these areas to 4 feet to allow additional landscape buffer area.

Relevant Approval Criteria:

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

¹ The applicant is proposing a 3-foot-2-inch wide x 24.5-foot long landscape planter at the ground level, a 2.5-foot wide x 19.5-foot long landscape planter area at the southern edge of the stairway, and a 4-foot wide x 29-foot long landscape planter at the southern edge of the second-floor patio. These landscape planters are proposed within the 10-foot landscape buffer area.

² While the loading space is legally existing, it is not meeting current landscaping requirements. Development not complying with development standards must be brought into conformance or receive an Adjustment. (Loading spaces are considered “exterior development” and therefore subject to nonconforming landscaping upgrades per Section 33.258.070.D.2.b.1).

ANALYSIS

Site and Vicinity: The 10,000 square foot site is located on the southeast corner of the intersection of NW Thurman Street and NW 28th Avenue. The relatively flat site is currently developed with a 7,213 square foot single-story commercial building (an out-of-business tavern). The surrounding vicinity is developed with a mix of commercial buildings and higher density residential buildings along NW Thurman Street to the east, ranging from 1-to-3-stories. Development to the south is primarily single- and multi-dwelling residential buildings ranging from 1-to-3-stories. Development about one block to the north consists primarily of higher density multi-dwelling residential buildings ranging from 2-to-4-stories. The adjacent sites to the north, east, and west of the subject site are also zoned Commercial/Mixed Use 2 with a Design (“d”) overlay zone. The adjacent site to the south is zoned Residential Multi-Dwelling 1 (RM1), and is developed with a single-story multi-dwelling residential building with a partial second floor.

Zoning: The Commercial/Mixed Use 2 zone (CM2) is a medium scale zone intended for sites in a variety of centers, along corridors, and in other mixed-use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City’s various neighborhoods.

The Design overlay zone (“d”) ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city’s evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;
- Contribute to a public realm that encourages social interaction and fosters inclusivity in people’s daily experience; and
- Promotes quality and long-term resilience in the face of changing demographics, climate and economy.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Notice of Proposal in Your Neighborhood” was mailed **November 17, 2022**. The following Bureaus have responded as follows:

- The Portland Bureau of Transportation (PBOT) responded with no concerns regarding the Adjustment review, included information about required right-of-way improvements, and noted that reducing the existing curb cut as proposed will add an additional on-street parking space and provide additional street tree plantings (Exhibit E.1);
- The Life Safety Review Section of the Bureau of Development Services (BDS) responded with no concerns regarding the Adjustment review, and noted that a separate Building Permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances (Exhibit E.2);
- The Bureau of Environmental Services (BES) responded with no concerns regarding the Adjustment review and noted that a detailed stormwater management plan will be required during building permit review (Exhibit E.3); and
- The Fire Bureau responded with no concerns and noted that a separate building permit is required for this proposal (Exhibit E.4).

The following Bureaus have responded with no concerns (Exhibit E.5):

- The Site Development Review Section of BDS; and
- The Water Bureau.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 17, 2022. Thirty-seven written responses have been received from the Northwest District Association (NWDA, Exhibit F.25) and neighboring property owners/HOAs in response to the proposal. Six responses (including the NWDA) were written in support of the proposal (See the Exhibit section at the bottom of this Decision Letter for details). The NWDA supports the project conditioned on the provision of the following measures:

1. Professional acoustic engineering review of all exterior mechanical equipment to assure acceptable operating noise levels, including the use of plantings for attenuation; and
2. An executed Good Neighbor Agreement, negotiated in good faith by the applicant and the affected neighbors, to address any anticipated operational issues arising from the proposed uses and the location of exterior public seating areas.

The remaining 31 responses were written expressing concerns about the proposal, requesting additional information about the proposal, suggesting modifications to the proposal, and/or opposing the proposal. Many of the concerns expressed by neighbors were shared and are summarized below:

- Privacy:
 - The proposed second floor drinking/dining area would be too close to the residential neighbors to south (Trolleycar Lofts) and west, and because it is elevated, there would be privacy issues (views and noise from customers using the second-floor patio to the residents to the south, who have roof decks and skylights).
- The proposed patios are oriented toward NW 28th Ave to the west and the residential lot to the south rather than NW Thurman St to the north. A preferred design would be patios should be oriented to Thurman because this is a commercial corridor and NW 28th is more residential.
- Noise impacts:
 - Customers of the proposed business;
 - Ventilation from the kitchens;
 - Amplified or live music;
 - Trash pick-up; and
 - Deliveries/loading zone activity.
- Odor impacts:
 - Trash area;
 - Cigarette smoke; and
 - Cooking smells.
- Off-site impacts (sidewalk and surrounding areas):
 - Cigarette smoke;
 - Noise/drunk customers;
 - Tables and chairs in the sidewalk/right-of-way;
 - Vagrancy/loitering; and
 - Rodents
- Visual impacts:
 - Light pollution;
 - Loading space; and
 - Garbage.
- There could be an increase in traffic congestion and less parking availability.
- The proposed landscape planters/shrubs would not provide adequate buffer/mitigation.
- The proposal does not equally or better meet the purpose of the regulations (per Adjustment Approval Criterion A).
- The proposal would detract from the “livability and appearance” of the residential neighborhood (per Adjustment Approval Criterion B).
- The proposal would negatively impact the neighborhood character and property values.
- The scale of the project is too large/intensive:
 - Too many occupants will be using the patio space, with estimates of 175-200 people in this area;
 - There will be too many restaurants/bars.

- There are maintenance concerns for the north wall of adjacent Trolley Car Lofts residential development to the south of the building.
- Granting the Adjustment would allow a roof top beer garden adjacent to a Residentially-zoned site.
- There are questions about the proposal that have not been answered by the applicant:
 - What are the hours of operation?
 - How many businesses will there be?
 - What kinds of businesses will there be?
 - What is the occupancy?
 - Will alcohol be served?
 - Will there be amplified or live music/outdoor entertainment? What will the volume be?

Applicant Response:

The applicant provided a response to neighbor comments (Exhibit A.2), which is summarized as follows:

- The applicant acknowledges compliance with the two conditions required by the NWDA.
- The scale of the proposal is far below the allowable 45-foot height and Floor Area Ratio (2.5:1 FAR and up to 4:1 FAR with bonuses). The proposed height is about 35 feet and the proposed FAR is about 1.58:1. The partial second story of the building is proposed to be set back 32 to 36 feet from the southern property line, which significantly exceeds the minimum 10-foot building setback requirement.
- Restaurants and bars are allowed in this commercial zone by right.
- Outdoor seating is proposed on the north, west, and south sides of the building. The outdoor seating area would be accessed from both NW Thurman Street through the building as well as from NW 28th Avenue, thereby connecting the two pedestrian pathways. The occupancy number of 175-200 people that was stated in the original letter written by a neighbor assumed a standing only environment and was calculated using gross square feet and did account for actual conditions where there will be space taken by tables, chairs, planters, egress walkways, etc. We anticipate the actual real world maximum capacity to be between 90-135 occupants for both the north and south outdoor areas, but the actual maximum allowed capacity stated per code will be in line with Oregon Structural Specialty Code and Fire Marshall requirements.
- The property will abide by all City sound and noise codes/ordinances as stated in Chapter 18.10.010 Maximum Permissible Sound Levels
- Regarding neighbor concerns about potential noise created by the outdoor areas on the upper level, and the impact to the roof decks of the Trolley car Lofts, it should be noted that the second-level smaller patio that is closest to the residential zone at the southeast corner of the property is only 500 sq.ft. with a seating area set back 10 feet from the property line. The finished surface elevation of the patio is about 10 feet beneath the top of the residential building's parapet, and the larger second level patio is set back 24 feet from the residential property line and has a finished surface elevation that is 8 feet lower than the top of the residential building's parapet.
- The existing 24 foot wide x 89 foot – 6 inch long paved loading zone was officially permitted (permit #395581) as a loading area in 1962, but has existed on the property since it was originally built in 1914. It has remained an active loading area over the years for both the tavern and art studio uses.
- The adjustments requested will reduce the burden on residential neighbors by allowing the waste area and electrical utility equipment to be located as far back as possible from the sidewalk frontage along NW 28th Ave, while also retaining an onsite loading area for deliveries, keeping the delivery vehicle out of the street in the way of traffic. The redefining of the existing loading area will also reduce the existing curb cut from about 26 feet down to 10 feet, thereby creating an additional on street parking space. It will also allow for the Portland General Electric (PGE) electrical equipment to be hidden from view and placed further off the sidewalk and into the site while still meeting PGE's requirement to have the equipment to be located within 25' of a local service street for servicing access.

- The outdoor use on the southern facing patios will be closed to customer use after 10:00pm and several signs are proposed at patio entrances that state: “South outdoor areas closed to customers after 10 PM.”
- The loading zone space will be used for deliveries during normal business hours.
- At this time there are no tenants identified for the space. We expect to accommodate between 6 – 10 tenants, which could range from a food vendor to artist gallery space.
- We have no plans to have any amplified music at this time, but if things were to change any music would be in accordance with Chapter 18.10.010, Maximum Permissible Sound Levels for Land Use Zones, and any anticipated noises above these levels would be done through a noise variance permit.
- The project will meet all current State and local requirements and standards governing ventilation. The trash areas is anticipated to be serviced every day or every other day depending on the amount of use at that given time.
- While there have been picnic tables historically located in the right-of-way on both Thurman St and NW 28th Ave, there are no current plans to have tables and chairs in the right-of-way. If tenants choose to place tables and chairs in the right-of-way in the future it will be done in accordance with PBOT requirements.

Staff Response:

Staff notes that this Adjustment review is requested to adjust the following development standards:

1. To reduce the minimum 10-foot building setback to 6 feet, and to waive the L3 landscaping buffer; and
2. To 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.

Concerns and comments relevant to the Adjustment requests and approval criteria are located in the *Zoning Code Approval Criteria* section below.

In response to comments related to traffic, congestion, and vehicle parking availability, staff notes that parking is not required in this location (due to the retail sales and service use proposed, the lot size, and transit availability, per Section 33.266.110.B.1.b and Table 266-1); these issues are therefore not relevant to the Adjustments requested.

In response to comments that this is a residential area and the use is overly intensive for this area, staff notes that the zoning of the site is Commercial/Mixed Use 2, which allows retail sales and service uses (including restaurants and bars) by right.

In response to the concerns about how the proposal does not meet Adjustment Approval Criterion B because it detracts from “livability” and “appearance” of the area, Staff notes the wording of this approval criterion:

*If in a residential, C11, 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;***

staff notes that *livability* and *appearance* only apply to this criterion when an Adjustment request is in a Residential zone. This site is in a Commercial zone, so only the second part of Criterion B applies (shown in bold). This criterion is discussed in the *Zoning Code Approval Criteria* section below.

In response to comments regarding some neighbor’s building orientation preference toward NW Thurman Street (a more “commercial” street) instead of NW 28th Avenue (a more “residential” street), staff notes that the sites directly across both streets (to the north and west, respectively) are also zoned CM2d and therefore the proposal is oriented toward commercial zoning to the west and north. The proposal includes a main entrance along the north façade, roof patio seating at the northwest corner of the building, and roof patio seating at the

southern edge and southwestern corner of the building; the proposal does not have a single orientation. The only adjacent residentially-zoned site is the RM1 zoned site to the south.

In response to the assertion that approving the Adjustment request will allow a roof patio and seating within the setback, staff notes that the applicant submitted a revised plan set which increased the width of the landscape planter areas along the southernmost seating areas (lower courtyard, stadium seating, and lower rooftop deck) to 4 feet to allow for additional landscape buffer area and to eliminate customer seating areas within the minimum 10-foot building setback for abutting residential lots. (Exhibit C.2).

In response to concerns about there being tables and chairs in the sidewalk area, staff notes that this is not part of the Adjustment requests and, in order for a business to operate in the right-of-way (i.e. sidewalk), a Healthy Businesses Permit (through PBOT) must be reviewed and approved.

Off-site impacts (including noise, odor, and glare) are regulated under Zoning Code Section 33.262.

In response to concerns about potential damage to the neighboring residential building to the south, staff notes that damage to the north wall of neighboring residential building by the proposed business, or damage of any kind, is a civil issue between owners.

Appellant Statement:

The administrative decision of approval with conditions has been appealed by Trolleycar Lofts Homeowners Association (TCLHOA) and a collective of 28 neighbors. According to the appellants' statement, the appeal is based on arguments that:

- The description of the adjacent Trolleycar Lofts in the administrative decision is inaccurate.
- 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 project's sound transmission will impact livability to Trolleycar Lofts, and "might not be fully attenuated by its origins' elevations and distances."
- 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 congestion.
- 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.

The full appeal statements can be viewed in the notice located on the BDS website at <https://www.portlandoregon.gov/bds/35625>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number.

Procedural History:

1. The application for this land use review was submitted on July 1, 2022 and was determined to be complete on October 31, 2022.
2. The Adjustment notice was originally mailed November 7, 2022 and was re-noticed to include elevation drawings on November 17, 2022.
3. The Type II staff level decision of approval with conditions was mailed on March 3, 2023.
4. Two appeals of this decision were submitted on March 16, 2023 (Collective of 28 neighbors at 11:00 am and TCLHOA at 1:52 pm)
5. A Notice of Appeal was mailed on March 23, 2023

6. A Memorandum to the Design Commission was sent on April 13, 2023, which attached the Final Drawing Set, the Site Context, the Appealed Staff Decision, and letters from the public received to that date.
7. Additional correspondence received after that date, such as letters from the appellant, the applicant and the members of the public, were made publicly available as they were received: <https://efiles.portlandoregon.gov/record/15914666>
8. A Public Hearing with the Design Commission was held April 20, 2023 to consider an appeal of the Administrative Decision on this case. The appeal statement noted issues with impacts resulting from a proposed reduction to building and loading space setbacks and landscape requirements for a commercial site abutting a residential zone. David Besley, the case planner and representative of the BDS/Land Use Services Division, made a PowerPoint presentation (Exhibit H.12) that included neighborhood context, a summary of the proposal, Adjustment approval criteria, and proposal revisions submitted (4/13/23 and 4/19/23).

Following BDS's presentation, the Appellant representative Mary DeVries testified. Next, the Appellant representative Thomas Cutler testified. The Design Commission asked clarifying questions directed toward the appellants. The Applicant's representatives Renee France and Philip Sydnor then provide testimony. The Design Commission asked clarifying questions directed toward the applicant's representatives. The Appellants presented rebuttals of the applicant's testimony and requested the record be left open. The Design Commission then closed public testimony and deliberated on the evidence and testimony that was submitted into the record to date.

9. Because it was requested that the record be left open, the timeline and submittals are noted as follows:
 - a. Deadline for new evidence: Friday April 28, 2023 @ 9am
 - i. Three (3) responses were received on April 28, 2023.
 - b. Deadline for response: Friday May 5, 2023 @ 9am
 - i. No responses were received.
 - c. Deadline for final argument: Friday May 12, 2023 @ 9am
 - i. The Applicant submitted a final written argument on May 11, 2023.

ZONING CODE APPROVAL CRITERIA

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The findings for the requested setback and loading space Adjustments are found below.

Setback Adjustment

The applicant is proposing 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, and add ground level and second floor patios connected via an external stairway, which requires an Adjustment to reduce the minimum 10-foot building setback to 6 feet (for commercial lots abutting residential lots) along the south lot line, and to waive the L3 landscaping buffer.

The purpose statement (relevant sections in bold) and associated findings are found below:

33.130.215 Setbacks

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 front setback requirements for Civic Corridors in Eastern and Western pattern areas provide opportunities for additional pedestrian space and separation from the vehicle traffic along these major streets to create an environment for building users and pedestrians that is less impacted by close proximity to traffic, and provide opportunities for front landscaping reflective of the vegetated characteristics of these neighborhood pattern areas.

The minimum building setbacks along local service streets adjacent to residential zones work together with requirements for step downs in building height (33.130.210.B.2.b.) 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.

At the ground level, the proposed building addition at the southeast corner of the site is set back 6 feet from the south lot line for a 6-inch length (partially enclosing and screening the electrical meter area), 8 feet from the south lot line for a 14-foot length (along the north edge of the electrical meter area) and 10 feet from the south lot line for a 34-foot length (at the back of the trash area) (as shown in Exhibit C.2). At the second level “lower rooftop deck,” the building addition is cantilevered over the trash area and electrical meter area and is uniformly 6 feet from the south lot line. A stairway and stadium seating are located to the west of this second level open patio. A ground level open patio (including a “lower courtyard” and “upper courtyard”) area is also proposed. Four-foot-wide planter boxes are proposed along the southern edges of the lower courtyard, stadium seating, and lower rooftop deck to provide a buffer between the customer area and the adjacent residential building. A 6-foot-wide access area (for trash pickup, electric meter access, and deliveries) is proposed along the southern edge of the site.

The residential building adjacent to the project to the south (Trolleycar Lofts) includes a solid brick wall at its north façade. The northern facade of Trolleycar Lofts is located zero feet from the shared lot line with the subject site. While there are no doors or windows along its northern edge, the 6 units within have partial roof patios. The second level patio of the proposed commercial development includes a smaller patio that is closest to the residential zone, which has a finished surface elevation about 10 feet beneath the top of Trolleycar Loft’s parapet, and a larger second level patio which is set back 24 feet from the residential property line and has a finished surface elevation that is 8 feet lower than the top of the parapet (see Exhibit A.2, page 4). Because the second level patios are significantly lower than the Trolleycar Lofts parapet, privacy to the residents of Trolleycar Lofts will be promoted.

As noted in the *Proposal* section above, the applicant has revised their proposal to reduce the lower courtyard, stadium seating, and lower rooftop deck areas so they are no closer than 10 feet from the south lot line and to include 4-foot wide landscape planters with evergreen shrubs to form a screen 6 feet high. The wider landscaping area and reduced seating area will increase separation and provide additional privacy for Trolleycar Lofts, and improve the overall site appearance.

While a full 10 feet of L3 landscape buffer is not proposed (due to access needs and design choices), one new small tree is proposed at the ground level and a 4-foot-wide landscape buffer (via planter boxes) will be provided along the southern edge of the lower courtyard, stadium seating, and lower rooftop deck areas. The planter height is proposed at 2 feet and, when combined with proposed 6-foot-tall shrubs, the vegetation will sit about 8 feet above the patios along the southern edge, where the building setback adjustment is requested. The proposed landscape includes evergreen shrubs to provide year-round screening. Combined with the revised floorplans which do not provide customer seating within 10 feet of the southern lot line, the landscaping will further 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 will require that the landscaped buffer areas along the southern edge of the seating areas (upper courtyard, lower courtyard, stadium seating, and lower rooftop deck) be continuously maintained in a healthy manner. Plants that die must be replaced in kind. A fine may be levied if the landscaping has not been maintained, and new plants required to be planted (to be consistent with Zoning Code Section 33.248.040 Landscaping and Screening Maintenance).

The proposed development is located to the north of the residential property thereby not compromising Trolleycar Lofts' southern exposure and access to sunlight. Additionally, as noted above, the second level patio area has a finished surface elevation about 10 feet beneath the top of Trolleycar Loft's parapet, thereby not compromising residential access to light.

As noted above, the southeastern section of the addition is proposed as close as 6 feet to the southern (residentially abutting) property line; however, about 50 feet of the 100-foot length 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. The average southern façade setback is about 15 feet from the south lot line.

The setback purpose statement works together with the step-down building height requirements but, in this case, there is no step-down height required for the abutting residentially zoned lot line to the south. The maximum height of the structure, including the proposed partial second story addition is about 35-feet, which is about 22 percent lower than the maximum allowed 45-foot building height (Table 130-2). Furthermore, the southernmost 18 feet of the building, where the second level patio is proposed, is only about 14 feet in height. The partial second story addition is proposed to be set back 32 to 36 feet from the southern property line, a substantial distance beyond the minimum 10-foot building setback requirement. The proposed FAR is about 1.58:1 which is significantly lower than the maximum allowed FAR of 2.5:1 in this zone. The significantly reduced height and FAR results in an overall building scale reduction, which will help provide a transition to the adjacent Trolleycar Lofts development and will also help maintain light and air for residents of this building.

The Fire Bureau has reviewed the request for reduced building setback and offered no concerns with regards to separation for fire protection, or access for firefighting.

Loading Space Adjustment

A second Adjustment is requested to reduce the residential-abutting setbacks for a loading space from 5 feet (landscaped 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. The relevant purpose statements and associated findings are found below:

33.266.310 Loading Standards

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.

While the loading space is legally existing, loading spaces are considered “exterior development” and therefore subject to nonconforming landscaping upgrades³, which means that if upgrades cannot be provided to meet current Zoning Code standards (i.e. setback and landscaping requirements), approval through an Adjustment review is required. The existing approximately 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. As noted above, 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 (Exhibit E.1).

The northernmost 4 feet of the loading space is proposed to be located between the southernmost building addition and the street, which – when occupied by a loading vehicle – will obscure only about 4% of the 96-foot-wide 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 4-foot-long portion of the east edge of the loading space. These planters will include one new small tree and, as noted above, 6-foot-tall evergreen shrubs for year-round screening. Additional new landscape planters (described above) are proposed within the former 24-foot-wide x 90-foot-long paved loading area. These features will help improve the appearance of the loading area and overall site.

As conditioned, this criterion is met.

- 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

Findings: The subject site is in a Commercial zone. At this location, the City’s Transportation System Plan classifies NW 28th Avenue as a Local Service Street and NW Thurman Street as a Neighborhood Collector, Transit Access Street, and City Bikeway. PBOT has indicated no concerns regarding the proposal’s consistency with the classification of adjacent streets.

Desired character of area

“Desired character” is defined in Zoning Code Chapter 33.910:

Desired Character. *The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.*

Pursuant to this definition, the desired character of this site is determined by the character statement of the CM2 zone, the purpose statements of the Design Overlay

³ Because the project valuation exceeds \$1 Million, nonconforming upgrades are required for this project.

Zone and the Northwest Plan District, the Portland Citywide Design Guidelines, and the [Northwest District Plan](#).

CM2 zone

The character statement for the CM2 zone is in Zoning Code Section 33.130.030.C:

The Commercial/Mixed Use 2 (CM2) zone is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

The Adjustment requests are to reduce the building and loading area setbacks and landscaping requirements along a residential-abutting lot line and to allow a portion of the loading area to be between the building addition and the street. As noted above, the addition proposed within the setback is a single-story addition with a roof patio which sits about 10 feet below TrolleyCar Loft's parapet, and landscape screening via planter boxes along the southern edge of the patio. The proposal includes only a partial second-story addition, which will be well under the maximum four stories, and will therefore complement the scale of surrounding residentially zoned areas. The paved and legally existing loading area along the southern edge of the site is proposed to be significantly reduced/narrowed, which will add an additional on-street parking space.

The proposed additions, patios, and loading area will be consistent with the CM2 zone's intentions of providing commercial uses with limited off-site impacts in an area with transit service (Including TriMet bus Line 26 along Northwest Thurman). The pedestrian-oriented development will be supportive of transit.

For these reasons, staff finds the proposal is consistent with the character statement for the CM2 zone.

Design Overlay Zone

The site is in the Design overlay zone, the purpose for which is in Zoning Code Section 33.420.010:

The Design overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city's evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- *Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;*
- *Contribute to a public realm that encourages social interaction and fosters inclusivity in people's daily experience; and*
- *Promotes quality and long-term resilience in the face of changing demographics, climate and economy.*

Rather than demolishing the existing commercial building, the applicant is proposing a renovation which will include 9 new, full-story ground floor windows along the north and west facades (currently windowless), new outdoor patios (including roof patios), and a partial second story. The new windows, as well as the proposed restaurants, indoor seating, and outdoor patio seating will encourage social interaction and foster inclusivity in people's daily experience and allow for year-round use regardless of the climate. While the 10-foot minimum building setback is proposed to be reduced to 6

feet, the applicant is providing a 10-foot distance (4 feet of which must be landscaped as described above) between the outdoor patio seating areas and the neighboring residential building to the south in order to build on the unique context of this site: a commercially zoned corner lot with an existing commercial building adjacent to residential zoning/development to the south.

Trash, delivery, and electric utility access are proposed at the southeast corner of the site where these areas will remain out of public view and away from the street facing façades. Unlike typical brick and mortar restaurants, the applicant is proposing 6 – 10 tenants, which could range from food vendors to artist gallery spaces (as noted in Exhibit A.2). By allowing multiple tenants with a range of retail sales and service uses, the commercial building should have flexibility for changing tenants and smaller scale restaurants and will therefore promote long-term resilience in the face of changing demographics and economy.

For these reasons, staff finds the proposal is consistent with the purpose statement for the Design overlay zone.

Northwest Plan District

The Northwest Plan District purpose statement can be found in Zoning Code Section 33.562.010:

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” (Portland Zoning Code 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.

As noted above, parking is not required for the proposal or relevant to the Adjustment request. No conflicts are anticipated between the mixed uses of the plan district and the industrial uses of the adjacent Guild’s Lake Industrial Sanctuary.

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

Portland Citywide Design Guidelines

The Portland Citywide Design Guidelines consist of a set of guidelines for design cases in community planning areas outside of the Central City. The Portland Community Design Guidelines focus on three tenets: **Context**, balancing the aspirations of the future desired character with today's setting; **Public Realm**, strengthening a building and site's relationship with the public rights-of-way and open spaces; and **Quality and Resilience**, underscoring holistic site and building designs that benefit people and climate.

Staff has considered all guidelines and has addressed only those guidelines considered applicable to this project.

02: Create positive relationships with surroundings.

Possible design approaches may include, but are not limited to:

- *Building Massing – Developing effective placement and proportion of building massing toward adjacent lower-scale development and residential uses; and*
- *Street Wall – Maintaining a vibrant street wall with continuous storefronts along historic main streets.*

03: Integrate and enhance on-site features and opportunities to contribute to a location's uniqueness.

Possible design approaches may include, but are not limited to:

- *On-site older buildings and historic resources – retaining existing older buildings and historic resources; and*
- *Social and cultural significance – Incorporating a site's significant cultural or social history*

As noted above, the southeastern section of the addition is proposed as close as 6 feet to the southern property line; however, about half of the southern façade is much farther away, which helps offset the building's overall massing. The height of the proposed building (ranging from 14 to 35 feet) is 10 feet lower than the 45-foot height limit. The patio closest to the southern lot line sits about 10 feet lower than the top of Trolleycar Loft's parapet. The reduced massing and height and the step-down building design from north to south help provide a transition to the adjacent multi-dwelling development to the south.

As noted above, the applicant is proposing renovations and additions rather than demolishing the existing commercial building. The building design preserves the historic eastern half of the north façade (facing NW Thurman Street), which has special features including a corbeled brick parapet, entablature, large store windows and transom windows, and a decorative belt course above the windows (see Adjustment Criterion D below for additional information about the historic resource) and adds large ground floor windows along the remaining windowless portions of the north and west facades, strengthening the storefront connection to the commercial corner of NW Thurman Street and NW 28th Avenue.

The paved and legally existing loading area along the southern edge of the site (approximately 24-foot-wide x 90-foot-long) has been in use for over 60 years. As part of this Adjustment request, it is proposed to be reduced to an area of 18 feet x 10 feet. As noted above, 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.

05: Provide opportunities to pause, sit, and interact.

Possible design approaches may include, but are not limited to:

- *Seating – providing a variety of seating types for passersby and building users;*
- *Enclosure – Offering a comfortable buffer and distinction from the public realm; and*

- *Trees and Landscaping - Promoting health and wellness by helping to mitigate the effects of urban heat island.*

In addition to indoor seating, several different outdoor patio spaces are proposed to support the restaurant or other uses, including lower and upper “courtyards” at the ground level, a “stadium seating” area adjacent to the external stairway, which leads up to a “lower rooftop deck” and a “back rooftop deck” at the south side of the building (per Exhibit C.2 Floorplans). A covered patio is also proposed at the northwest corner of the second floor. The terraced, connected outdoor areas will provide a variety of seating types for customers and will be connected to the interior spaces via entrance doors. An elevator is also proposed at the south edge of the second story addition for improved accessibility.

There is currently no landscaping on site. As noted above, one new small tree is proposed at the ground level and 4-foot-wide landscape planters with evergreen shrubs to form a 6-foot-high screen will be provided along the southern edge of the outdoor seating areas. Additional landscape planters are proposed outside of the setback area ranging from 3-feet-2-inches-wide (at the ground level between the upper courtyard and the loading space) to 2.5-feet-wide (at the south and west edges of the back rooftop deck). The landscaping will offer a comfortable buffer and distinction from the public realm and will also promote privacy and provide a transition to the neighboring residences to the south. The landscaping will also promote health and wellness by helping to mitigate the effects of urban heat island.

For these reasons, staff finds the proposal is consistent with the Portland Citywide Design Guidelines.

Northwest District Plan

The Northwest District Plan is intended to guide public and private decision-making and investment in the Northwest District. The plan provides policy direction in a number of key areas including land use, urban design, transportation, housing, and economic development. Staff has considered all objectives and has addressed only those considered applicable to this project. The subject site is classified as a *Streetcar Main Street* site (Map 4, Page C-15) and the *Desired Characteristics and Traditions* of these Streetcar Main Street sites are as follows:

The Streetcar Era structures that define the character of the main streets, portions of which are located within the Alphabet Historic District, should be preserved or adaptively reused. New development should incorporate architectural features that characterize the district’s main streets, such as large storefront windows, awnings and upper-story residences, and should continue the historic pattern of a continuous frontage of buildings and active uses located close to sidewalks. Large retail developments should be integrated into the main streets’ fine grain urban pattern and mix of uses through strategies such as including spaces suitable for small tenants along street frontages or by including upper-floor residences. Where appropriate, development should include outdoor space for dining and other activities that contribute to a vibrant urban environment. Disruptions to the continuity of the main street pedestrian environment by curb cuts, driveways, garage fronts and surface parking areas should be avoided. (Page C-18)

The open courtyard spaces at the south side of the building will provide active outdoor space for dining and a direct connection to the NW 28th Avenue right-of-way. The north and west facades of the existing building are zero feet from the sidewalks along NW Thurman Street and NW 28th Avenue, and will remain in this location. New, large, storefront windows are proposed to be added at the northwest corner of the building while retaining the historic character of the building (see Adjustment Criterion D below for additional information about the historic resource). The existing loading space curb

cut is proposed to be reduced, which will add an additional on-street parking space and provide additional street tree plantings.

Land Use Objectives (Page E-6)

C. Concentrate a mix of higher intensity residential and commercial development along main streets and the Portland Streetcar line.

D. Reinforce main streets and the Portland Streetcar line as the focus for retail activity in the District.

Business and Economic Development Objectives (Page E-34)

B. Encourage commercial development that is oriented to pedestrians.

E. Encourage new commercial development and job creation opportunities to locate along main streets, the Portland Streetcar line, and close to the I-405 freeway.

Urban Design Objectives (Page E-38)

A. Integrate new development with the existing urban fabric by acknowledging the scale, proportions, orientation, quality of construction and other architectural and site design elements of the building's immediate area.

Thurman-Vaughn Subarea⁴ Objectives (Page E-70)

A. Enhance NW Thurman Street as a neighborhood-oriented main street that is primarily residential, with commercial uses clustered at intersections.

The proposed multi-tenant, retail sales and service use building would concentrate higher intensity commercial development at NW Thurman Street (which is classified as a *Main Street*) and would reinforce this street/intersection as a focus for retail activity in the Northwest District. The outdoor terraced seating areas with immediate access from the NW 28th Avenue sidewalk would encourage development that is oriented to pedestrians. Rather than proposing a demolition of the existing building, the applicant is proposing a renovation, which will maintain the historic character of the building while providing an appropriately scaled expansion.

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

For all the reasons listed above, staff finds this proposal is consistent with the desired character of the area.

This criterion is met.

- 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

Findings:

As noted above, the character statement for the CM2 zone is:

The Commercial/Mixed Use 2 (CM2) zone is a medium-scale zone intended for sites in a variety of centers, along corridors, and in other mixed use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Buildings in this zone will generally be up to four stories tall unless height and floor area bonuses are used, or plan district provisions specify other height limits. Development is intended to be pedestrian-oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

⁴ Per Map 5 (Page E-3), the subject site is identified as being in the Thurman-Vaughn Subarea.

As noted above, under Criterion B, the Adjustment requests are to reduce the building and loading area setbacks and landscaping requirements along a residential-abutting lot line. The addition proposed within this setback is a single-story addition with a roof patio which sits about 10 feet below Trolleycar Loft's parapet, and landscape screening via planter boxes along the southern edge of the patio. The proposal includes only a partial second-story addition, which will be well under the maximum four stories, and will therefore complement the scale of surrounding residentially zoned areas.

While both Adjustment requests are to reduce residential-abutting setbacks and landscaping, the loading area is legally existing along the southern edge of the site, and is proposed to be significantly reduced and narrowed. Allowing a loading space to remain at zero feet from the residential-abutting lot line will not affect the scale of the proposed development on the adjacent residentially zoned site, and may reduce off-site impacts by adding an additional on-street parking space and allowing deliveries and maintenance to happen on-site rather than blocking NW 28th Avenue.

Because of the reduced height and scale of the overall building, and because of the loading area reduction and limited impacts, cumulative effects will be minimal and the proposed additions, patios, and loading area will be consistent with the CM2 zone's intentions of providing pedestrian-oriented commercial uses with limited off-site impacts in an area with transit service.

For these reasons, staff finds the proposal is consistent with the character statement for the CM2 zone.

This criterion is met.

D. City-designated scenic resources and historic resources are preserved; and

Findings: City designated scenic resources are identified on the Official Zoning Map with a lower case "s" and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. This site is marked with a dot and designated as a "documented resource." The existing building was originally built between 1914 and 1921 and is classified as an eligible/contributing building in the Historic Resource Inventory. The eastern half of the Thurman Street façade has a corbeled brick parapet, entablature, and a decorative belt course above the windows. Additional special features include large store windows and transom windows. These features will all be retained. Much of the exterior façade has been remodeled with new doors, windows, asphalt siding, and plywood. While the partial second-story addition will change the appearance of this façade, the roof profile at the historic portion of the building (described above), will remain as is, thus preserving the historically significant features of the front (north) façade.

As noted above in Criterion B, large, ground-floor windows along the remaining windowless north and west facades are proposed. Much of the original siding on this non-historically contributing section of the building is brick but was covered up by vertically clad composite material. This composite material will be removed, and brick will be repaired/replaced as necessary. This brick siding at the ground level will better match the historically significant front façade and help unify the building's design.

This criterion is met.

E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and

Findings:

While an Adjustment is requested to reduce the minimum residential-abutting (south) building setback from 10 feet to 6 feet at the southeastern addition to the building, the significantly reduced height and FAR (described under Criterion A above) 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 will be provided along the southern edges of the “lower rooftop deck” and “lower courtyard” seating areas with 6-foot-tall evergreen shrubs. Combined with the revised 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 add landscaping to a currently barren site. A condition of approval will require that the landscaped buffer areas 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 (to be in compliance with City of Portland zoning and building code requirements) 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.”

As conditioned, this criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, this criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant is proposing 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 provide a loading space. Two Adjustments are requested to:

1. reduce the minimum 10-foot building setback to 6 feet, and to waive the L3 landscaping buffer; 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).

While an Adjustment is requested to reduce the minimum residential-abutting (south) building setback from 10 feet to 6 feet at the southeastern addition to the building, 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 Trolleycar Loft's 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 revised 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 will require that the landscaped buffer areas be continuously maintained in a healthy manner. Plants that die must be replaced in kind.

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. 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 facade. 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 "desired character" of this site is determined by the character statement of the CM2 zone, the purpose statements of the Design Overlay Zone and the Northwest Plan District, the Northwest District Plan, and the Portland Citywide Design Guidelines.

- The proposed additions, patios, and loading area will be consistent with the CM2 zone's intentions of providing commercial uses with limited off-site impacts in an area with transit service.
- Rather than demolishing the existing commercial building, the applicant is proposing a renovation which will include 9 new, full-story ground floor windows along the (currently windowless) north and west facades, and new indoor dining and outdoor patio seating, which will encourage social interaction and foster inclusivity in people's daily experience and allow for year-round use regardless of the climate. Trash, delivery, and electric utility access are proposed at the southeast corner of the site where these areas will remain out of public view and away from the street facing facades. By allowing multiple tenants with a range of retail sales and service uses, the commercial building should have flexibility for changing tenants and smaller scale restaurants, and will therefore promote long-term resilience in the face of changing demographics and economic conditions. For these reasons, staff finds the proposal is consistent with the purpose statement for the Design Overlay Zone.
- The proposal will include a mix of different retail sales and service uses on a site with transit access and will therefore encourage a concentration of commercial uses along NW Thurman (classified as a "main street"), strengthen the area's role as a commercial and residential center, and enhance the pedestrian experience. For these reasons, staff finds the proposal is consistent with the purpose statements for the Northwest Plan District and the Northwest District Plan.
- The building design preserves the historic portions of the north facade and adds ground floor windows along the remaining portions of the north and west facades, strengthening the storefront connection to the commercial corner of NW Thurman

Street and NW 28th Avenue. The proposed indoor and outdoor dining areas will provide a variety of seating types for customers and will be connected externally via stairways and internally via entrance doors. An elevator is also proposed at the south edge of the second story addition for improved accessibility. The proposed landscaping will offer a comfortable buffer and distinction from the public realm and promote health and wellness by helping to mitigate the effects of urban heat island. For these reasons, staff finds the proposal is consistent with the Portland Citywide Design Guidelines.

Because of the reduced height and scale of the overall building, and because of the loading area reduction and limited impacts, cumulative effects will be minimal and the proposed additions, patios, and loading area will be consistent with the CM2 zone's intentions as stated above.

The existing building was originally built between 1914 and 1921 and is classified as an eligible/contributing building in the Historic Resource Inventory. The eastern half of the Thurman Street façade has a corbeled brick parapet, entablature, and a decorative belt course above the windows. Additional special features include large store windows and transom windows. These features will all be retained. While the partial second-story addition will change the appearance of this façade, the roof profile at the historic portion of the, will remain as is, thus preserving the historically significant features of the front façade. Much of the original siding on this non-historically contributing section of the building is brick but was covered up by vertically clad composite material. This composite material will be removed, and brick will be repaired/replaced as necessary. The brick siding will better match the historically significant front façade and, along with the new ground floor windows, will help unify the building's design.

Impacts resulting from the Adjustments are mitigated to the extent practical as follows:

- The significantly reduced height and FAR reduces the massing of the building, helps maintain light and air, and provides a transition to the adjacent multi-dwelling development to the south.
- Customer seating will not be provided within 10 feet of the southern lot line
- The landscaping will promote privacy, provide a transition to the neighboring residences to the south, and improve the appearance of the site.
- 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 proposal meets the applicable approval criteria and approval is therefore recommended.

DESIGN COMMISSION DECISION

The Design Commission denies both appeals and supports the staff recommendation of approval of 2 Adjustments to:

1. reduce the minimum 10-foot building setback to 6 feet, and to waive the L3 landscaping buffer(Section 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) (Section 33.266.310.E, Table 266-8)

as part of a larger 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 provide a loading space, per the approved plans and elevations, Exhibits C-1 through C-3, signed and dated February 28, 2023, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related condition (B) must be noted on each of the required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 22-159396 AD." All requirements must be graphically represented on the site plan, landscape, or other required plans and must be labeled "REQUIRED."
- B. 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.

These findings, conclusion and decision were adopted by the City of Portland Design Commission on May 18, 2023.

By: _____
Brian McCarter, Design Commission Chair

Date Final Decision Effective/Mailed: June 1, 2023
The 365-day extended review period (120 days + 245 day extension) deadline: October 31, 2023.

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on July 1, 2022, and was determined to be complete on October 31, 2022.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on July 1, 2022.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant requested that the 120-day review period be extended a maximum 245 days. **The 365-day extended review period (120 days + 245 day extension) will expire on: October 31, 2023.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review,

any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision is final and becomes effective the day the notice of decision is mailed (noted above). This decision may not be appealed to City Council; however, it may be challenged by filing a “Notice of Intent to Appeal” with the State Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed, pursuant to ORS 197.620 and 197.830. A fee is required, and the issue being appealed must have been raised by the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at the 775 Summer Street NE, Suite 330, Salem, OR 97301 [Telephone: 503-373-1265].

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

Unless appealed, the final decision will be recorded after **June 1, 2023** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant submittal:
 - 1. Narrative
 - 2. Response to neighbors
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Floor Plans (attached)
 - 3. Elevation Drawings (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice

E. Agency responses:

1. Bureau of Transportation Engineering and Development Review
2. Life Safety Section of BDS
3. Bureau of Environmental Services
4. Fire Bureau
5. Bureaus responding with no concerns (Site Development Section of BDS and Water Bureaus)

F. Correspondence:

1. Elizabeth Rusch, 11/14/22, support letter
2. Mary DeVries, 12/8/22, opposition letter
3. John and Jo Ann Utz, 12/5/22, opposition letter
4. Claire Hanway, 12/5/22, support letter
5. Peter Beninato, 12/5/22, opposition letter
6. Mike Kirk, 12/5/22, support letter
7. Tom Barbara, 12/7/22, opposition letter
8. Richard Hicks, 12/7/22, opposition letter
9. Linda Walton, 12/7/22, opposition letter
10. Greg Passmore, 12/7/22, support letter
11. John DeVoe, 12/7/22, opposition letter
12. Susie Stragnell, 12/7/22, opposition letter
13. Glenn and Deanna Ford, 12/7/22, opposition letter 12/7/22, opposition letter
14. Reinier Warschauer, 12/7/22, opposition letter
15. Lisa Taaffe, 12/7/22, opposition letter
16. Izhak Shafran, 12/7/22, opposition letter
17. Sue Galatz, 12/8/22, opposition letter 2/8/22, opposition letter
18. Greg Simons and Anne Harris, 12/8/22, opposition letter
19. Shelley Jordan, 12/8/22, opposition letter
20. Martin Davidson, 12/8/22, opposition letter
21. Joni Marie Johnson, 12/8/22, opposition letter
22. Gayle Kvernland, 12/8/22, opposition letter
23. Patrick Kehoe, 12/8/22, opposition letter
24. James Thompson, 12/8/22, opposition letter
25. Northwest District Association (NWDA), 12/8/22, support letter
26. Lisa Selman, 12/8/22, opposition letter
27. David Greenstein, 12/8/22, opposition letter
28. Olivia Horgan, 12/8/22, opposition letter
29. Jim McAdoo/TLHOA , 12/8/22, opposition letter
30. Mark Samuel and Wanda Meyer-Price, 12/8/22, opposition letter
31. Bob Clay, 12/8/22, opposition letter
32. Susan Stone, 12/8/22, opposition letter
33. Regna Merritt, 12/8/22, opposition letter
34. Elliot Levin, 12/8/22, opposition letter
35. Jill Walworth, 12/8/22, opposition letter
36. Ernest Cooper, 12/8/22, support letter
37. Stacey Vallas, 12/8/22, opposition letter

G. Other:

1. Original LU Application and Receipt
2. Incompleteness determination letter, dated July 28, 2022
3. Request for Extension of 120-Day Review Period signed by applicant, dated January 2, 2023
4. Staff Decision, March 3, 2023

H. Design Commission Exhibits

[Received before the Appeal Hearing]

1. Submitted Appeal, 28 neighbors, 3/16/2023
2. Submitted Appeal, TCLHOA + James McAdoo, 3/16/2023
3. Notice of Appeal, 3/23/2023
4. Notice of Appeal Mailing List, 3/23/2023
5. Joel Soltman, 4/3/2023, Letter opposing appeal

6. Gail Rubin, 4/16/2023, Letter opposing appeal
7. Commission Memorandum, 4/13/2023
8. Revised site plan and elevation drawings from applicant, 4/13/2023
9. Revised site plan and elevation drawings from applicant, 4/19/2023
10. New 3D rendering from applicant, 4/19/2023
11. New 3D rendering from applicant, 4/19/2023

[Received after the Appeal Hearing]

12. Staff PowerPoint presentation from 4/20/2023 Appeal Hearing
13. Elliot Levin and Lisa Taaffe, New Evidence submittal, 4/28/2023
14. Thomas Cutler, New Evidence submittal, 4/28/2023
15. Kerrie G. Standlee, P.E, New Evidence submittal, 4/28/2023
16. Erik Opsahl, Final Argument from Applicant, 5/11/2023

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).