

BDS
ATTN: YVONNE POELWIJK
1900 SW 4TH AVE, STE 5000
PORTLAND, OR 97201

MARTIN KEHOE
PORTLAND LEEDS LIVING LLC
6650 SW MACADAM AVE
PORTLAND, OR 97239

PORTLAND SCHOOL DIST #1
JUSTIN DOLLARD/PAUL CATHCART
501 N DIXON ST
PORTLAND, OR 97227

STEVEN SPENCE
1932 NW OVERTON ST.
PORTLAND, OR 97209

OVERTON STREET LLC
35530 SUNNYHILL LN
PLEASANT HILL, OR 97455-9643

TRIMET
GRANT O'CONNELL
1800 SW FIRST AVE STE 300
PORTLAND, OR 97201

RONALD H. FOREHAND
1420 NW 20TH AVE #103
PORTLAND, OR 97209

AIA URBAN DESIGN COMMITTEE
SAUNDRA STEVENS
403 NW 11TH AVE
PORTLAND, OR 97209

TEAM OREGONION
1320 SW BROADWAY
PORTLAND, OR 97201

KATE WASHINGTON
1550 NW 14TH AVE #520
PORTLAND, OR 97209

METRO
SUSTAINABILITY CENTER
600 NE GRAND AVE
PORTLAND, OR 97232

SARAH DRAKE
B106/R1302/TRAILS

RON WALTERS
NW DISTRICT ASSOCIATION
2057 NW OVERTON ST.
PORTLAND, OR 97209

NEIGHBORS WEST/WEST
MARK SEIBER
2257 NW RALEIGH ST.
PORTLAND, OR 97210

PDC
B129

RON WALTERS
NW DISTRICT ASSOCIATION
2252 NW RALEIGH ST.
PORTLAND, OR 97210

NORTHWEST DISTRICT ASSOC.
JOHN BRADLEY
2350 NW JOHNSON ST.
PORTLAND, OR 97210

TAVO CRUZ, NWDA PRESIDENT
c/o NEIGHBORS WEST/NORTHWEST
2257 NW RALEIGH ST
PORTLAND, OR 97210

KADEE & JOHN W. ACREE
1420 NW 20TH AVE #504
PORTLAND, OR 97209

NOB HILL BUSINESS ASSOC
MIKE CONKLIN
25 NW 23RD PL #6-PMB 217
PORTLAND, OR 97210

LU 14-220722 DZ AD
DATE MAILED: 2/10/2015
26 LABELS

SHERRY C. FOX
2034 NW OVERTON ST. #E
PORTLAND, OR 97204

OREGON WALKS
C/O DOUG KLOTZ
1908 SE 35TH PLACE
PORTLAND, OR 97214

BARBARA & STEVEN SPENCE
P.O. BOX 374
DEER HARBOR, WA 98243

PEARL DIST BA
ADELE NOFIELD
P.O. BOX 6767
PORTLAND, OR 97228-6767

PHILLIP CHUBB
FFA ARCHITECTURE & INTERIORS
520 SW YAMHILL ST #900
PORTLAND, OR 97204

PEARL DIST NA
PAT GARDNER
1200 NW MARSHALL ST STE 1307
PORTLAND, OR 97209



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

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

CASE FILE: LU 14-220722 DZ AD (Tess O'Brien Apartments)
WHEN: Wednesday, March 4, 2015, 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: February 10, 2015
To: Interested Person
From: Staci Monroe, Land User Services, 503-823-0624

A public hearing will be held to consider an appeal of the Design Commission's decision to approve the Tess O'Brien Apartments at 1953 NW Overton and 1950 NW Pettygrove Streets. The Design Commission's decision of approval with conditions has been appealed by the Northwest District Association. At the hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an On-the-Record hearing, one in which no new evidence can be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

GENERAL INFORMATION

Appellant: Northwest District Association | 2257 NW Raleigh Street | Portland, OR 97210

Applicant: Phillip Chubb | FFA Architecture & Interiors Inc.
520 SW Yamhill Street, Suite 900 | Portland, OR 97204

Owner: Martin Kehoe | Portland LEEDS Living, LLC
6605 SW Macadam Ave | Portland, OR 97239

Site Address: 1953 NW OVERTON & 1950 NW PETTYGROVE STREETS

Legal Description: BLOCK 265 LOT 12&13, COUCHS ADD and BLOCK 265, W 1/2 OF LOT 10, LOT 11 COUCHS ADD

Tax Account No.: R180224250, R180224130

State ID No.: 1N1E33AB 09500, 1N1E33AB 10300

Quarter Section: 2928

Neighborhood: Northwest District, contact John Bradley at 503-313-7574.

Business District: Nob Hill, contact Mike Conklin at 503-226-6126.

District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Plan District: Northwest

Other Designations: Urban Character Area D of the NW Plan District Guidelines

Zoning: EXd: Central Employment (EX) base zone; Design (d) overlay zone

Case Type: DZ AD, Design Review with an Adjustment
Procedure: Type III, with a public hearing before the Design Commission. The decision of the Design Commission can be appealed to City Council.

Proposal:

The applicant seeks Design Review approval for two, 6-story apartment buildings containing a total of 123 residential units (51 units in the Pettygrove building and 72 units in the Overton building). The ground level of the buildings include lobbies, live-work and residential units, and areas for bike storage and trash. Apartment units will occupy the upper floors of both buildings. The 67' tall structures will be comprised of red brick, black aluminum and black vinyl windows, steel canopies, and stucco. A large outdoor courtyard is proposed between the buildings that will include landscaping, outdoor seating areas, a pergola, stormwater planters and covered bike storage. The 153 required long-term bike spaces will be dispersed throughout the project both in the buildings and courtyard. The project will pay into the Bike Fund for the 7 short-term bike spaces required.

The following Adjustment is requested:

1. To not provide the two 9' x 18' loading spaces required on the site (Section 33.266.310.C.1.a).

A Type 3 Design Review is required for new development in a Design overlay where the project value exceeds \$2,087,400, per Zoning Code Section 33.825.025.A.1.e.

Relevant Approval Criteria:

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

- Community Design Guidelines
- Adjustment Approval Criteria – Section 33.805.040

REVIEW BODY DECISION

It is the decision of the Design Commission to approve a Design Review for two, 6-story apartment buildings containing 123 residential units (51 units in the Pettygrove building and 72 units in the Overton building) in the Northwest Plan District.

Approval of the following Adjustment:

1. To not provide the two 9' x 18' loading spaces required on the site (Section 33.266.310.C.1.a).

Approvals per Exhibits C.1-C-32, signed, stamped, and dated January 15, 2015, subject to the following conditions:

- A.** As part of the building permit application submittal, the following development-related conditions (A – E) must be noted on each of the 4 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 14-220722 DZ. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled “REQUIRED.”
- B.** No field changes allowed.
- C.** A minimum of two coats of the stucco finish must be applied to the cementitious panels for the “Senenergy 1000” rain screen system.
- D.** The canopies along the ground level of both buildings that face the courtyard must match the design and materials of the steel canopies on the street-facades of both buildings as shown in detail A3 of Exhibit C.21 and as depicted on Exhibit C.31.

- E.** The non-street facades of both buildings shall be all of the same dark color stucco and the banding that aligns with the cornice of the brick façade shall be removed as depicted in Exhibit C.32.

APPEAL

The Design Commission's decision of an approval with conditions has been appealed by Northwest District Association. According to the appellants' statement, the appeal of the Design Commission's decision is based on two arguments:

- 1) The proposed development does not meet the approval criteria, specifically Guideline D7 (Blending into the Neighborhood) of the Community Design Guidelines; and
- 2) Procedural errors occurred in the design review process.

Review of the case file: The Design Commission's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. I can provide some of the information over the phone.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 130, Portland, OR 97204. A description of the City Council Hearing process is attached.

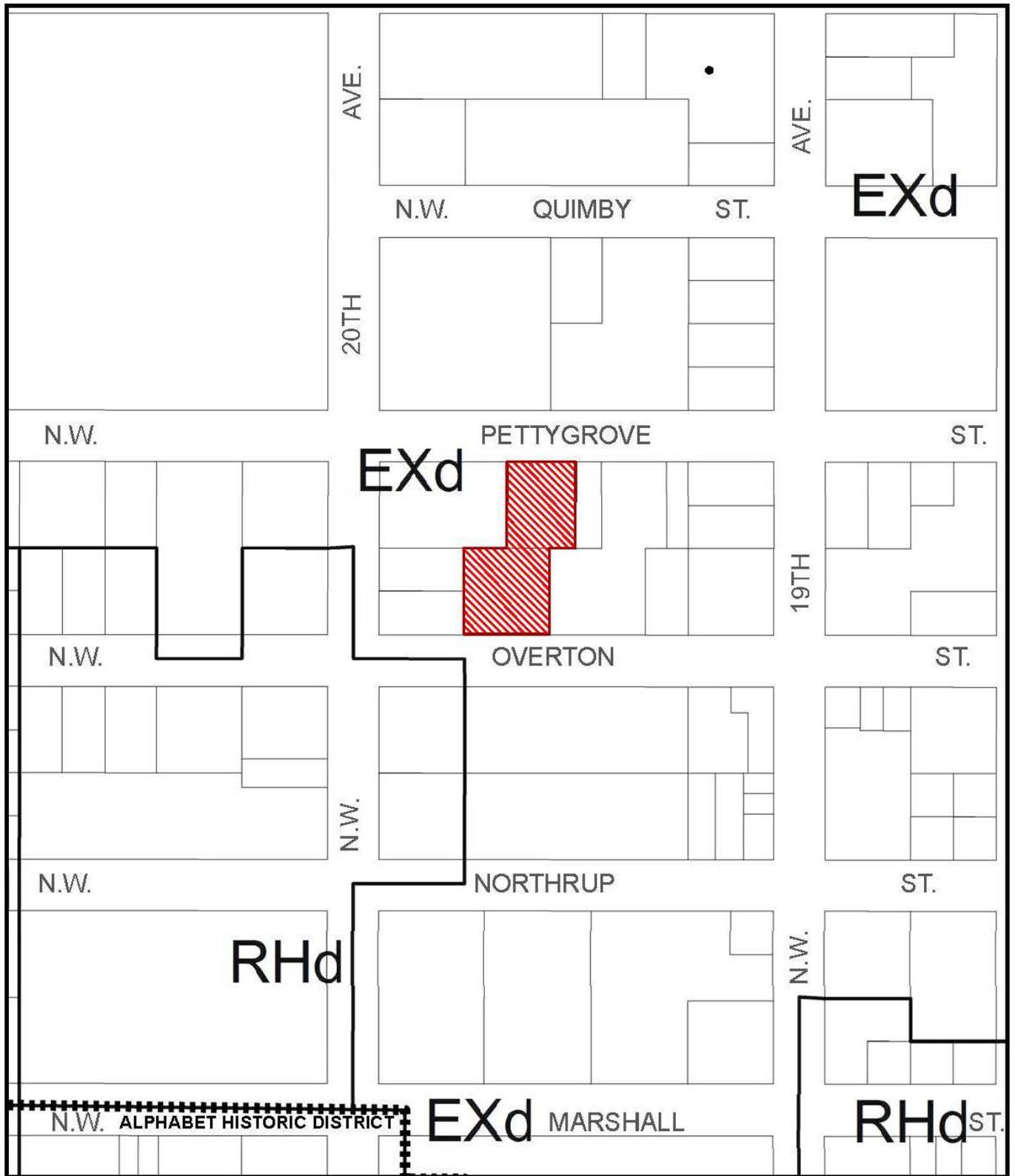
If you choose to provide testimony by electronic mail, please direct it to the Council Clerk at CCTestimony@portlandoregon.gov. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plan
3. Elevations & Renderings
4. Appeal Statement
5. City Council Appeal Process

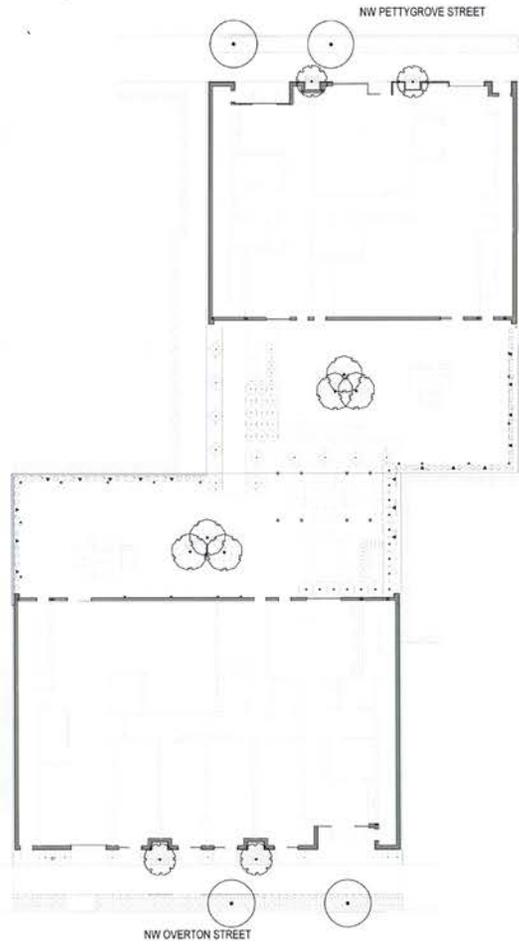


ZONING



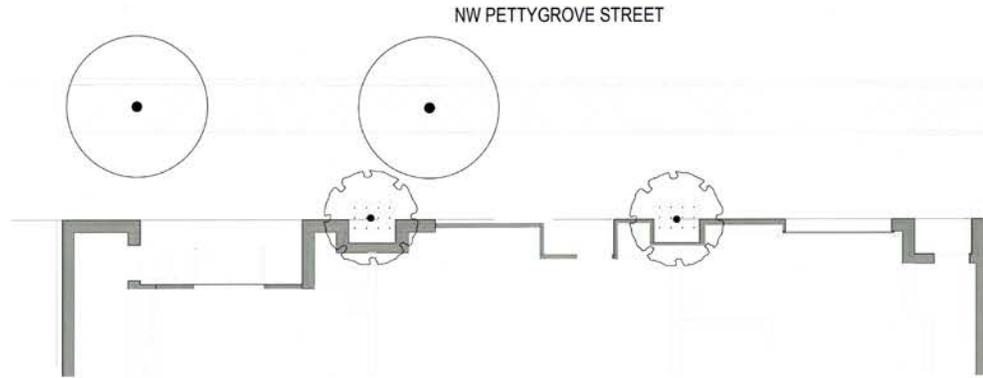
This site lies within the:
NORTHWEST PLAN DISTRICT

File No. LU 14-220722 DZ, AD
 1/4 Section 2928
 Scale 1 inch = 150 feet
 State_Id 1N1E33AB 9500
 Exhibit B (Oct 3, 2014)



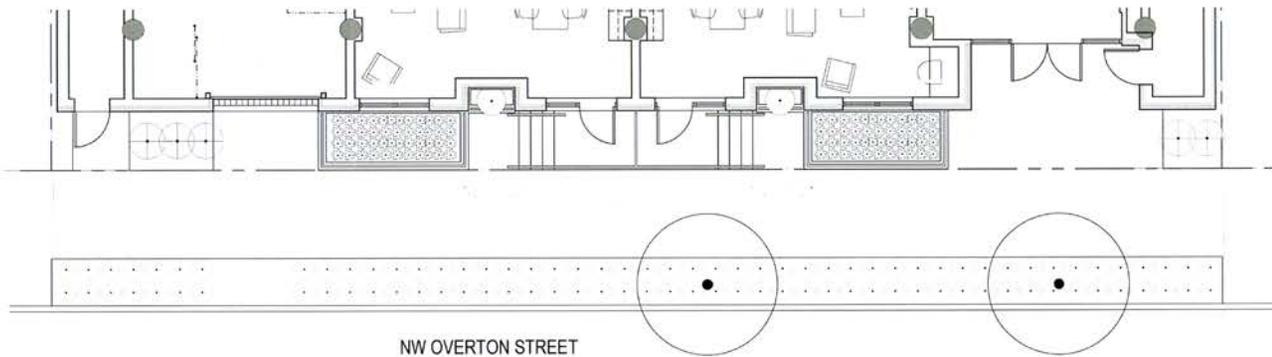
PLANTING PLAN- OVERALL

SCALE: 1"=30'-0"



PLANTING PLAN- PETTYGROVE STREET

SCALE: 1"=10'-0"



PLANTING PLAN- OVERTON STREET

WALK-UP ~~OPTION~~

SCALE: 1"=10'-0"

Approved

City of Portland - Bureau of Development Services

Planner *Shelley* Date 1/15/15 NORTH

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

C4.1

LU14-220722DZ



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandonline.com/bds



Type III Decision Appeal Form

LU Number: 14-220722 DZ

FOR INTAKE, STAFF USE ONLY

Date/Time Received 2/4/2015 1:46 PM Action Attached

Received By M. Tracy Fee Amount 5,000

Appeal Deadline Date 2/4/2015 [Y] [N] Fee Waived see comments in folder

Entered in Appeal Log Bill # 3725723

Notice to Auditor [Y] [N] Unincorporated MC

Notice to Dev. Review

APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.

The appeal must be filed by the deadline listed in the Decision

Development Site Address or Location 1953 NW Overton ; 1950 NW Pettygrove Streets

Date February 4, 2015 Land Use Number 14-220722

Appellant's Name NWDA c/o NWNW

Street Address 2257 NW Raleigh St.

City Portland State OR Zip Code 97210

Day Phone 503-823-4293 FAX 503-223-5308 email contact@northwestdistrictassociation.org

Appellant's Interest in the case (applicant, neighbor, etc.) Neighborhood Association

Appellant's Statement Please describe how the proposal meets or does not meet approval criteria, or how the City erred procedurally. The statement must address specific approval criteria or procedures and include the appropriate code citation(s).

See Attached.

Appellant's Signature

To file this appeal, take the following to the Development Services Center

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland
 - Fee waiver for ONI Recognized Organizations approved
 - Fee waiver for low income individual approved (attach letter from Director)
 - Fee waiver for Unincorporated Multnomah County recognized organizations is signed and attached

CASE NO. LU 14-220722
EXHIBIT I.1
1 of 4

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

The appeal must be filed by the deadline listed in the Decision. To ensure the appeal is received within this deadline, the appeal should be filed in the Development Services Center at 1900 SW 4th Ave, 1st Floor, Suite 1500, Portland, Oregon, between 8:00 a.m. and 3:00 p.m. on Tuesday through Friday. On Mondays, and between 3:00 - 4:30 p.m. on Tuesday through Friday, the form(s) must be submitted at the Reception Desk on the 5th Floor.

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



Northwest District Association

February 4, 2015

Bureau of Development Services
1900 SW 4th Avenue
Portland, Oregon 97201

RE: LU 14-220722 DZ – Tess O'Brien Apartments

Dear BDS:

NWDA wishes to appeal the BDS final decision to approve the application for the Tess O'Brien Apartments. NWDA is appealing both because the proposed development does not meet Community Design Standards and because of procedural errors in the design review process.

Specifically, NWDA believes that the buildings, as proposed, do NOT meet Guideline D7, Blending into the Neighborhood. The application does not provide any basis for evaluation of its compliance with this guideline. There is no representation of the adjacent buildings to the west or any eye level views of how these buildings would be experienced in their context from the sidewalk.

The compatible massing provision of this guideline is the relevant design guideline in this situation, in which significant increases in the density of development are being proposed, and where there are additional considerations and values to be weighed other than simply what massing is allowed. In this instance, the combination of the height of the buildings and that they are built up to the side property lines with no setbacks suggest that little has been done to "reduce the impact of the new development."

For these buildings to meet this guideline they would need to provide a minimum of 6' side-yard setbacks, and height of the Overton building would need to be reduced, consistent with the applicant's findings as noted in the Staff Report.

The image below shows the scale and context of the buildings on Overton and the excessive mass of the proposed project:



2 of 4

The following image shows the scale and context of the buildings on Overton with a massing that would meet Guideline D7:



Furthermore, NWDA believes that BDS made multiple procedural errors in the design review process for the Tess O'Brien Apartments. The first BDS procedural error was to grant a continuance after Design Commission already voted to deny the application. At the November 6, 2014 Design Commission hearing, Chairperson Millius offered the applicant a continuance on three occasions. The applicant declined the suggestions of a continuance and insisted on a vote. Design Commission voted unanimously to deny the application.

Sometime after the November 6 hearing, BDS erred by granting a continuance to the applicant. NWDA does not believe that BDS can grant a continuance after a Design Commission decision and outside of a hearing. Any continuance would need to be granted at the hearing.

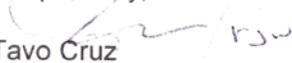
According to the Procedural Information section in the BDS Staff report, the correct procedure is as follows: *"The Design Commission will make a decision about this proposal at the hearing or will grant a continuance."* Moreover, the applicable Land Use Hearings procedures reflected, in part, in administrative Rule 9.02, section 3.7, requires that any request for continuance have been made before the close of the Design Commission's hearing: **"At the request of a party before the close of the hearing, or upon the motion of the Hearings Officer, the Hearings Officer will hold the record open or continue the hearing to a later date for the submission of additional evidence or testimony."**

The second BDS error was to allow the applicant to change its requested design review timeline after submitting its application. As stated on page 2 of the City's 120-day waiver form, **"Once you choose the timeline you want to follow, we will include that information in the notice to neighbors, and process your application accordingly.** For that reason, once you choose a timeline, you may not change your request."

The final decision issued by BDS states that "Upon submission of their application, the applicant for this land use review chose to waive the 120-day time frame in which the City must render a decision." This statement is factually incorrect. BDS allowed the applicant to waive the 120-day time frame after Design Commission voted to deny the application on November 6, 2014.

NWDA respectfully requests that the Portland City Council vote to approve our appeal. We ask City Council to remedy the BDS procedural errors and deny approval of the proposed project until all design guidelines are met.

Respectfully,


Tavo Cruz
NWDA President

GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR ON-THE-RECORD APPEALS

1. SUBMISSION OF LEGAL ARGUMENT

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the DESIGN COMMISSION prior to the date the DESIGN COMMISSION closed the evidentiary record. Parties may refer to and criticize or make arguments in support of the validity of evidence received by the DESIGN COMMISSION. However, parties may not submit new evidence to supplement or rebut the evidence received by the DESIGN COMMISSION.
- b. Legal argument may be mailed to the Council Clerk, 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. Written legal argument must be received by the time of the hearing and should include the case file number.
- c. Legal argument may be submitted orally (see below).

2. COUNCIL REVIEW

- a. The order of appearance and time allotments are generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent	15 minutes
Other Opponents	3 minutes each
Appellant Rebuttal	5 minutes
Council	

- b. The applicant has the burden of proof to show that the evidentiary record compiled by the DESIGN COMMISSION demonstrates that each and every element of the approval criteria is satisfied. If the applicant is the appellant, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the DESIGN COMMISSION demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the DESIGN COMMISSION decision are available for review by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, #5000, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 823-4085 (TDD: 823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.