

**IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND OREGON**

**IN THE MATTER OF AN APPEAL BY THE APPLICANT AGAINST DESIGN  
COMMISSION'S DECISION TO CONDITIONALLY APPROVE THE JUPITER HOTEL  
EXPANSION AT 910 E BURNSIDE  
(LAND USE CASE NO.: LU 15-276553 DZM)**

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**FINDINGS AND CONCLUSIONS**

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**ADOPTED BY THE CITY COUNCIL ON  
June 29, 2016**

**(Approval of an appeal of a Type 3 Design Review with a Modification)**

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IN THE MATTER OF AN APPEAL BY THE APPLICANT AGAINST DESIGN  
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FINDINGS AND CONCLUSIONS

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The findings and conclusions of the City Council in this matter are set forth below.

**I. GENERAL INFORMATION**

**Applicant/Appellant:** Kegan Flanderka | Works Partnership Architecture | 524 E Burnside Street, Suite 320 | Portland, OR 97214

**Owner:** Tod Breslau & Kelsey Bunker | Jupiter Hotel | 800 E Burnside Street | Portland, OR 97214

**Site Address:** 910 E BURNSIDE STREET

**Legal Description:** BLOCK 197 LOT 1 EXC PT IN ST, EAST PORTLAND; BLOCK 197 LOT 2, EAST PORTLAND

**Tax Account No.:** R226513080, R226513090

**State ID No.:** 1N1E35CD 01900, 1N1E35CD 02000

**Quarter Section:** 3031

**Neighborhood:** Buckman, contact Zachary Brooks at 503-482-8252.

**Business District:** Central Eastside Industrial Council, contact Debbie Kitchin at [ceic@ceic.cc](mailto:ceic@ceic.cc).

**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.

**Plan District:** Central City - Central Eastside

**Zoning:** EXd – Central Employment zone with a Design overlay

**Case Type:** DZM – Design Review with Modifications

**Procedure:** Type III, with a public hearing before the Design Commission. The decision of the Design Commission can be appealed to City Council.

**II. INTRODUCTION AND PROCEDURAL HISTORY**

**Original Proposal:**

The applicant seeks Design Review approval for a new 6-story hotel in the Central Eastside sub district of Central City. The project provides 67 hotel rooms on the upper four floors, large event space and outdoor deck on the 2<sup>nd</sup> floor, and retail, restaurant and hotel lobby on the ground floor along with loading and back-of-house areas. Bike parking for both visitors and employees are provided on site along both street frontages and on the interior. The exterior finishes include options for metal shingle or layered

asphalt composition shingle for the primary cladding, and aluminum storefront system, vinyl windows, mirror glass soffit and metal panel.

Along Burnside, floors 2 through 6 extend into the right-of-way above the sidewalk up to 8'-0" in depth, which is considered a Major Encroachment by Transportation. A request to eliminate the Major Encroachment review process for properties along E Burnside, specifically, went before City Council on March 16, 2016. Council supported the ordinance and the Major Encroachment process will therefore be waived for such projections along E. Burnside. A recommendation from the Design Commission to City Council is no longer necessary.

Along 9<sup>th</sup>, a 2'-6" deep oriel window at floor 5 extends into the right-of-way above the sidewalk. An exception to the Oriel Window standard E is requested to exceed the 12' maximum bay length (27.2' length proposed).

The following Modification is requested:

1. *Loading* – To reduce the 13' vertical clearance to 12' for the required for the one large loading space provided on site (Section 33.266.310).

Nonconforming Upgrades - The site and ownership includes the block to the west where the current Jupiter Hotel and Doug Fir Lounge exist. Per Section 33.258.070.D, when improvements to a site are made that exceed \$155,900, up to 10% of the total project value must be spent towards bringing the site up to conformance with the current zoning code regulations. The potential upgrades identified include screening of trash and recycling, 6' wide pedestrian connections through the site and to the abutting streets, long and short term bike parking and screening of vehicle areas from adjacent properties. Staff is working with the applicant to confirm which upgrades are required and if they will be addressed in this design review. If not addressed in this review, separate land use reviews (Design, Modification and/or Adjustment reviews) may be required before building permit issuance.

**Relevant Approval Criteria:**

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

- Central City Fundament Design Guidelines
- Central Eastside Design Guidelines
- Section 33.825.040 – Modifications through Design Review

**Design Review Commission Procedural History:**

- A Design Advice Request (DAR) occurred before the Design Commission on November 13, 2016, where the Commission provided feedback on the overall design, end wall conditions, and the need to respond the arcaded condition along Burnside frontage.
- The first land use hearing on this Design Review application was held on March 24, 2016, where the majority of the discussion focused on the exterior cladding of the building. The majority of the Commission was not in support of the asphalt composition shingle, noting concerns related to quality and permanence. A continuation was requested by the applicant to work on resolving the Commission's concerns.
- The second land use hearing occurred on April 21<sup>st</sup> where the applicant presented two options for the exterior cladding, the asphalt composition shingles originally proposed and a metal shingle. The Commissioners present continued to have reservations with the use of asphalt composition shingle as the primary exterior

material and voted in favor of adopting the Staff Report with the Condition of approval for metal shingle.

- The City mailed the Notice of Decision on May 5, 2016.
- The Appellant, NWDA, filed a timely appeal to the City Council on May 13, 2015, at 4:34 p.m. The basis of the appeal was Condition of Approval B, which required metal shingle as the exterior cladding material.

**Portland City Council:**

- Following timely notice to all persons entitled to notice under the City's zoning code, the City Council heard the appeal at an "on the record" hearing on June 8, 2016 at 2:00 p.m.
- Following a presentation by BDS staff, testimony was provided by the Appellant/Applicant and supporters of the Appellant/Applicant. After some discussion, the item was continued to June 15, 2016 to allow the two absent Council members to participate and hear their opinions on that appeal.
- At the hearing on June 15<sup>th</sup>, 2016, the Appellant/Applicant provided a brief rebuttal. The Mayor then closed the hearing. The City Council made a tentative decision, voting 5-0 to approve the appeal and modify Condition of Approval B of the Design Commission's decision, and continued the matter to June 29, 2016 for the adoption of findings and a final vote.
- On June 29, 2016 the Council adopted findings and a final decision to grant the appeal and Modify Condition of Approval of B the Design Commission's decision to approve the hotel project with an exterior cladding material of either metal shingle or Malarkey Legacy asphalt composition shingle.

**III. ANALYSIS**

**Site and Vicinity:** The Jupiter Hotel Expansion is a quarter block addition to the existing Jupiter Hotel located immediately adjacent to the proposed site at the intersection of East Burnside Street and SE 9th Avenue. The proposed site occupies an 8,800 square foot partially vacant lot that currently houses one small structure at the northeast corner of the lot, set for demolition. The lot is situated along a commercial corridor at the north end of the Central Eastside Industrial District. The abutting streets have the following classifications:

- E Burnside – Major Transit Priority Street, City Walkway, Local Service Bikeway
- SE 9th – Local Service Street & Walkway, City Bikeway

**Zoning:** The Central Employment (EX) zone allows mixed uses and is intended for areas in the center of the City that have predominantly industrial-type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area.

The Design Overlay Zone (d) promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The Central City Plan District implements the Central City Plan and other plans applicable to the Central City area. These other plans include the Downtown Plan, the River District Plan, the University District Plan, and the Central City Transportation management Plan. The Central City plan district implements portions of these plans by adding code provisions which address special circumstances existing in the Central City area. The site is within the Central Eastside sub district of this plan district.

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

**Agency and Neighborhood Review:**

**1. Agency Review:**

A “Notice of proposal in Your Neighborhood” was mailed **March 4, 2016**. The following Bureaus have responded with no issue or concerns:

- Bureau of Transportation Engineering and Development Review (Exhibit E.1)
- Water Bureau (Exhibit E.2)
- Fire Bureau (Exhibit E.3)
- Bureau of Parks, Forestry Division (Exhibit E.4)
- Site Development Section of BDS (Exhibit E.5)
- Plan Review Section of BDS (Exhibit E.6)
- 1. Bureau of Environmental Services (see Exhibit E.7)

**2. Neighborhood Review:**

A Notice of Proposal in Your Neighborhood was mailed on **March 4, 2016**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

**IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS**

**(1) DESIGN REVIEW**

**Chapter 33.825 Design Review**

**Section 33.825.010 Purpose of Design Review**

Design review ensures that development conserves and enhances the recognized special design values of a site or area. Design review is used to ensure the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality.

**Section 33.825.055, Design Review Approval Criteria**

A design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.

**Findings:** The site is designated with design overlay zoning (d), therefore the proposal requires Design Review approval. Because the site is located generally within the Central City Plan District, the applicable design guidelines are the Central City Plan Fundamental Design Guidelines. As the site is also specifically located within the Design Zone of the Central Eastside District, the Special Design Guidelines for the Design Zone of the Central Eastside District of the Central City Plan also apply.

**Special Design Guidelines for the Design Zone of the Central Eastside District of the Central City Plan and Central City Fundamental Design Guidelines**

The Central Eastside is a unique neighborhood. The property and business owners are proud of the district's heritage and service to the community and region. Light industry, distribution/warehousing, and transportation are important components of the district's personality. To the general public, retail stores and commercial businesses provide the central focus within the district.

The underlying urban design objective for the Central Eastside is to capitalize on and emphasize its unique assets in a manner that is respectful, supportive, creative and compatible with each area as a whole. Part of the charm and character of the Central Eastside District, which should be celebrated, is its eclectic mixture of building types and uses. An additional strength, which should be built on, is the pattern of pedestrian friendly retail uses on Grand Avenue, East Burnside and Morrison Streets, as well as portions of 11<sup>th</sup> and 12<sup>th</sup> Avenues.

The Central City Fundamental Design Guidelines focus on four general categories. **(A) Portland Personality**, addresses design issues and elements that reinforce and enhance Portland's character. **(B) Pedestrian Emphasis**, addresses design issues and elements that contribute to a successful pedestrian environment. **(C) Project Design**, addresses specific building characteristics and their relationships to the public environment. **(D) Special Areas**, provides design guidelines for the four special areas of the Central City.

**Central Eastside Design Goals**

The following goals and objectives define the urban design vision for new development and other improvements in the Central Eastside

- Encourage the special distinction and identity of the design review areas of the Central Eastside District.
- Provide continuity between the Central Eastside and the Lloyd District.
- Provide continuity between the Central Eastside and the river, downtown, and adjacent residential neighborhoods.
- Enhance the safety, convenience, pleasure, and comfort of pedestrians.

**Central City Plan Design Goals**

This set of goals are those developed to guide development throughout the Central City. They apply within all of the Central City policy areas. The nine goals for design review within the Central City are as follows:

1. Encourage urban design excellence in the Central City;
2. Integrate urban design and preservation of our heritage into the development process;
3. Enhance the character of the Central City's districts;
4. Promote the development of diversity and areas of special character within the Central City;
5. Establish an urban design relationship between the Central City's districts and the Central City as a whole;
6. Provide for a pleasant, rich and diverse pedestrian experience for pedestrians;
7. Provide for the humanization of the Central City through promotion of the arts;
8. Assist in creating a 24-hour Central City which is safe, humane and prosperous;
9. Ensure that new development is at a human scale and that it relates to the scale and desired character of its setting and the Central City as a whole.

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

**A1. Integrate the River.** Orient architectural and landscape elements including, but not limited to, lobbies, entries, balconies, terraces, and outdoor areas to the Willamette River and greenway. Develop accessways for pedestrians that provide connections to the Willamette River and greenway.

**C1. Enhance View Opportunities.** Orient windows, entrances, balconies and other building elements to surrounding points of interest and activity. Size and place new buildings to protect existing views and view corridors. Develop building façades that create visual connections to adjacent public spaces.

**Findings for A1 and C1:** The site is located approximately nine blocks east of the river. Pedestrian access to the river is located at the Eastbank Esplanade access point off the east end of the Burnside Bridge. The building is sited to locate the building entries off the sidewalks on Burnside and the main hotel lobby at the 9th Avenue intersection, which leads west directly to the esplanade access. The orientation of the lobby entry also better establishes the connection between the existing Jupiter hotel and the proposed building. The windows along the first two floors and the units on the street facing facades coupled with the fifth floor deck on the northwest corner of the building help emphasize the view corridor along Burnside toward the river and the West Hills beyond. *These guidelines have been met.*

**A2. Emphasize Portland Themes.** When provided, integrate Portland-related themes with the development's overall design concept.

**A2-1. Recognize Transportation Modes, Produce, and Commerce as Primary Themes of East Portland.** Recognize and incorporate East Portland themes into a project design, when appropriate.

**Findings for A2 and A2-1:** The building is oriented to take advantage of the major vehicular thoroughfare on Burnside. This street also is a major bicycle and pedestrian avenue. The building's encroachment out over the right-of-way on Burnside helps to facilitate this pedestrian movement and the bike racks along both street frontages support the bicycle mode in the area. The loading requirements for the building are handled on 9th Avenue, where the traffic and transportation demand is far less. *These guidelines have been met.*

**A3. Respect the Portland Block Structures.** Maintain and extend the traditional 200-foot block pattern to preserve the Central City's ratio of open space to built space. Where superblock exist, locate public and/or private rights-of-way in a manner that reflects the 200-foot block pattern, and include landscaping and seating to enhance the pedestrian environment.

**Findings:** The site is located on the northwest corner of Block 197 and is just under a quarter-block in size. The proposed design will project the corner of the building out toward the intersection of Burnside Street and 9th Avenue, helping to redefine the full dimensions of the block. *This guideline has been met.*

**A4. Use Unifying Elements.** Integrate unifying elements and/or develop new features that help unify and connect individual buildings and different areas.

**A5. Enhance, Embellish, and Identify Areas.** Enhance an area by reflecting the local character within the right-of-way. Embellish an area by integrating elements in new development that build on the area's character. Identify an area's special features or qualities by integrating them into new development.

**A5-1. Reinforce the Effect of Arcaded Buildings Fronting on East Burnside Street.**

Maintain, continue, and reinforce the effect of sidewalk arcaded buildings fronting on East Burnside Street.

**C10. Integrate Encroachments.** Size and place encroachments in the public right-of-way to visually and physically enhance the pedestrian environment. Locate permitted skybridges toward the middle of the block, and where they will be physically unobtrusive. Design skybridges to be visually level and transparent.

**Findings for A4, A5, A5-1 and C10:** Transportation made improvements to East Burnside several years ago that included curb extensions with stormwater facilities at most intersections between MLK and 12<sup>th</sup>. The curb extension and stormwater facility along the site's frontage at Burnside and 9<sup>th</sup> will be maintained as will the dual ornamental light standard at the corner. New street trees will be added at the east end of Burnside and along 9<sup>th</sup>, which will extend the character of the ROW along both of these frontages.

The major encroachment along East Burnside helps to create a contemporary arcade condition that speaks to Burnside's past as an arcaded pedestrian thoroughfare. At 8' in depth it is somewhat shallower than the arcades that exist and range from 9'-1" to 12' in depth. However, the more modern design that excludes any visible supports, and shallower depth will be a comparable addition similar to the B-Side 6 to the west that will add to the character of the district. The 2'-6" deep projection along the 9th Avenue frontage is better enhanced by a 5' setback at the ground floor, allowing the projection to grow to a dimension that can be utilized by pedestrians as a covered thoroughfare. The 27.2' length of the projecting bay at the 5th floor exceeds the 12' length requirement of the Oriel Window Standard. The building projections at this street facade contribute to Design Guidelines which support an active ground floor level and extensions of the sidewalk zone by providing additional protection from the weather contributing to a better street environment at the busy intersection. The integrated design of the skin also helps to breakdown the plane of the facade along the street. *These guidelines have been met.*

**A5-3. Plan for or Incorporate Underground Utility Service.** Plan for or Incorporate Underground Utility Service to development projects.

**Findings for A5 and A5-3:** Many of the site's utilities are currently sited underground per the renovations made by the City along East Burnside, which is an underground utility district. The project proposes to mount the electrical transformers to a new utility pole in the sidewalk along 9th Avenue at the south end of the site, which is not within the underground utility district. The applicant has been unable to obtain an approval letter from PGE for the transformer location because it is too early in the electrical design process for them to confirm a final location. Should this elevated location not be an acceptable solution, the applicant will need to work with Transportation for a vault within the sidewalk as an above-grade location within the building near the street facades will not be acceptable. If an underground or pole mount installation is found not feasible, a Condition of Approval will require another Type II Design Review and that Type II Land Use Review, if required, must be approved prior to issuance of any building permit.

The applicant has also worked with NW Natural since the last hearing to incorporate the gas meters within the building, with only the regulator and standpipe on the exterior near the loading bay on 9th Avenue. *As revised and conditioned, this guideline is met.*



**A7. Establish and Maintain a Sense of Urban Enclosure.** Define public rights-of-way by creating and maintaining a sense of urban enclosure.

**Findings for A7:** The ground floor facade comes up to the property line along the Burnside Street frontage where the 8' encroachment overhead creates an "arcade" condition and clearly defines the public right-of-way. The 9th avenue frontage is setback to allow the overhang to enlarge to a usable covered pathway for pedestrians. These overhangs help create a defined transitional space between the exterior urban environment and the interior environment without forcing the building to sit back from right-of-way and disengage with the surrounding urban context. *This guideline has been met.*

**B1. Reinforce and Enhance the Pedestrian System.** Maintain a convenient access route for pedestrian travel where a public right-of-way exists or has existed. Develop and define the different zones of a sidewalk: building frontage zone, street furniture zone, movement zone, and the curb. Develop pedestrian access routes to supplement the public right-of-way system through superblocks or other large blocks.

**B2. Protect the Pedestrian.** Protect the pedestrian environment from vehicular movement. Develop integrated identification, sign, and sidewalk-oriented night-lighting systems that offer safety, interest, and diversity to the pedestrian. Incorporate building equipment, mechanical exhaust routing systems, and/or service areas in a manner that does not detract from the pedestrian environment.

**C1-1. Integrate Parking.**

- a. Integrate parking in a manner that is attractive and complementary to the site and its surroundings.
- b. Design parking garage exteriors to visually respect and integrate with adjacent buildings and environment.

**Findings B1, B2 and C1-1:** The retail frontage on East Burnside is set back from the overhanging building face above, providing for an expanded and protected frontage zone. New street trees will be provided along both frontages reinforcing the furnishing zone adjacent to the street and clearly marking the pedestrian thruway. All the back-of-house/ building services are consolidated along the southwest corner of the street facing façade as to allow an uninterrupted pedestrian thoroughfare, from hotel lobby, to restaurant, to retail frontage. The perforated metal overhead door for the loading will soften the façade and add texture to the non-active areas of the ground level while obscuring the back-of-house activities beyond. The soffit at the ground level is mirrored, coupled with the majority of the ground floor being storefront, will allow light to fill the exterior pedestrian environment, providing safety for pedestrians along both street frontages. *These guidelines have been met.*

**B3. Bridge Pedestrian Obstacles.** Bridge across barriers and obstacles to pedestrian movement by connecting the pedestrian system with innovative, well-marked crossings and consistent sidewalk designs.

**B3-1. Reduce width of Pedestrian Crossings**

- a. Where possible, extend sidewalk curbs at street intersections to narrow pedestrian crossings for a safer pedestrian environment.
- b. Maintain large service vehicle turning radii where necessary.

**B7. Integrate Barrier-Free Design.** Integrate access systems for all people with the building's overall design concept.

**Findings for B3, B3-1 and B7:** Transportation made improvements to East Burnside several years ago that included curb extensions with stormwater

facilities at most intersections. The curb extension along the site's frontage at the intersection of Burnside and 9<sup>th</sup> will be maintained and the associated cross walks will continue to provide safe pedestrian crossing opportunities to the north side of Burnside and west to the existing hotel and beyond. The proposed building design is also fully ADA accessible. *These guidelines have been met.*

**B6. Develop Weather Protection.** Develop integrated weather protection systems at the sidewalk-level of buildings to mitigate the effects of rain, wind, glare, shadow, reflection, and sunlight on the pedestrian environment.

B6-1. Provide Pedestrian Rain Protection. Rain protection is encouraged at the ground level of all new and rehabilitated commercial buildings located adjacent to primary pedestrian routes. In required retail opportunity areas, rain protection is strongly recommended.

**B4. Provide Stopping and Viewing Places.** Provide safe, comfortable places where people can stop, view, socialize and rest. Ensure that these places do not conflict with other sidewalk uses.

**C9. Develop Flexible Sidewalk-Level Spaces.** Develop flexible spaces at the sidewalk-level of buildings to accommodate a variety of active uses.

**Findings for B4, B6, B6-1 and C-9:** Weather protected areas along the entirety of the site's frontages provide opportunities for people to gather, stop, hotel patrons to arrive and be dropped off and for retail activities to extend outside along the sidewalk. Along 9<sup>th</sup>, a continuous 5' deep setback of the ground floor creates continuous covered area along the sidewalk. A portion of the facade up at the 5<sup>th</sup> floor projects out above the property line to extend the covered area to 7'-6" in depth at the north end on 9<sup>th</sup>. The 8' deep "arcade" condition along Burnside created by the projecting building facade provides continuous weather protection along the north frontage that ties into a series of arcade that exist along Burnside. *These guidelines have been met.*

**C13. Integrate Signs.** Integrate signs and their associated structural components with the building's overall design concept. Size, place, design, and light signs to not dominate the skyline. Signs should have only a minimal presence in the Portland skyline.

**C1-2. Integrate Signs.**

- a. Retain and restore existing signage which reinforces the history and themes of the district, and permit new signage which reinforces the history and themes of the East Portland Grand Avenue historic district.
- b. Carefully place signs, sign supports, and sign structures to integrate with the scale, color and articulation of the building design, while honoring the dimensional provisions of the sign chapter of the zoning code.
- c. Demonstrate how signage is one of the design elements of a new or rehabilitation project and has been coordinated by the project designer/ architect. Submit a Master Signage Program as a part of the project's application for a design review.

**Findings for C13 and C1-2:** No exterior signage is proposed. Potential signs on the *interior* of the storefront are shown in the renderings, yet are not subject to Design Review. *These guidelines are not applicable.*

**C2. Promote Quality and Permanence in Development.** Use design principles and building materials that promote quality and permanence.

**C4. Complement the Context of Existing Buildings.** Complement the context of existing buildings by using and adding to the local design vocabulary.

**C5. Design for Coherency.** Integrate the different building and design elements including, but not limited to, construction materials, roofs, entrances, as well as

window, door, sign, and lighting systems, to achieve a coherent composition.

**C3-1. Design to Enhance Existing Themes in the District.** Look to buildings from throughout the district for contextual precedent. Innovation and creativity are encouraged in design proposals, which enhance overall district character.

**Findings for C2, C4, C5 and C3-1:** The Central Eastside Industrial District is home to a variety of building types, scales and designs. The existing Jupiter Hotel and its new expansion utilize a design vocabulary of simple and historically industrial materials with interjections of modern and refined materials such as glass and metal panel, which are common in new and proposed buildings in the district. The exterior materials (metal panel, layered asphalt composition or metal shingle, aluminum storefront system, vinyl windows, and mirror glass soffit) are carefully placed on the facades to reinforce the design concept. While the design concept is clear and the building would add to the electric mix of buildings in the district.

For the first hearing on March 24, 2016, Staff did not recommend approval due to several unresolved items, but primarily due to concerns with the asphalt composition shingles for the exterior cladding on the building. Staff noted reservations with its permanence and finish qualities given the material is intended for rooftop applications, where replacement is required often, the potential build up of moss (particularly on north façade), and the natural shedding of the asphalt over time onto the sidewalk below. At this hearing, the Commissioners present concurred with the permanence and quality concerns and suggested the applicant explore other more permanent finishes of higher quality such as metal shingles.

For the return hearing on April 21<sup>st</sup>, the applicant included an option for metal shingles as the exterior cladding in dark grey and 26-gauge. A mock-up and material sample were also provided at the hearing for the Commission to review. Since the concerns with the asphalt composition remained, Staff recommended approval of the metal shingle option. At the hearing, the applicant stated their preference for the asphalt composition shingle noting it was the most responsive material to the building's form and resulted in the least amount of seams that had the potential to render a pattern, which was not the goal of the design. The entire Commission present continued to have reservations with this material providing the following conclusions:

- The intentional design of the building where joint lines are not desired on behalf of the architect has backed the project into a corner with regard to material choices.
- Asphalt composition shingles do not meet the permanence and quality level in this type of urban environment. The examples provided were more of a residential application which may be more appropriate.
- The issue comes down to establishing a precedent. One Commissioner does not believe the Design Commission could permit the asphalt shingle option to be so tightly constructed and scripted that it could prevent a future applicant from proposing a similar application that is not as nearly well-realized or appropriate as is this design.
- One Commissioner stated a preference for the asphalt composition shingles given the two choices, but could not vote in support since it does not meet the permanence and quality guidelines.

- There was a larger concern with the building's composition, which the asphalt composition option does not help resolve
- Overall, in response to the guidelines, metal shingles is preferred over the asphalt composition shingles

The other additional items that were also discussed at the first hearing as needing more attention were revised and found acceptable at the April 21<sup>st</sup> hearing including:

- The gauges and details of the different types of metal proposed throughout the design were clarified in the plans and are consistent with those identified at the March 24<sup>th</sup> hearing (Flashing – 24 gauge, between windows – 22-gauge backed, Rooftop enclosures – 22- gauge backed).
- The south end wall was revised to reflect the design presented at the March 24<sup>th</sup> hearing. The art murals are no longer proposed and the fenestrations from the street facades now extend to both end walls for a permanent architectural solution that results in a coherent composition.
- Wall sections of the PTAC vents on courtyard facades were provided showing a grille flush and painted to match the wall surface for an integrated installation.

Regarding the exterior material (source of the appeal), City Council finds the use of asphalt composition roof shingles as an exterior cladding to be innovative and creative resulting in a building that is very distinctive, which is encouraged in design proposals in the Central Eastside sub district to enhance its character. Council clarified that other projects that propose a similar material would be evaluated on their own merit, based on context, and against the design guidelines that specifically apply to that site and district. Furthermore, based on the evidence in the record from Malarkey, Council finds this specific product, the Legacy Shingle Line, is designed to maintain its quality finish over time providing a sense of permanence. Specifically, the Legacy shingle is laminated for weather protection and includes a Scotchgard coating that protects the shingle from algae growth and staining. Understanding there is no local precedent of this material in a similar application (as a primary exterior building) to demonstrate its appearance over time, Council amended the condition of approval to allow the metal shingle *or* the asphalt composition shingle, the Malarkey Legacy product specifically. This would allow the project to change the exterior finish to metal shingle without another design review in case the asphalt composition shingle is not successful.

*As revised with a condition that allows the metal shingle in dark grey in 26-gauge, or Malarkey Legacy asphalt composition shingle in a dark grey or black., these guidelines have been met.*

**A8. Contribute to a Vibrant Streetscape.** Integrate building setbacks with adjacent sidewalks to increase the space for potential public use. Develop visual and physical connections into buildings' active interior spaces from adjacent sidewalks. Use architectural elements such as atriums, grand entries and large ground-level windows to reveal important interior spaces and activities.

**C7. Design Corners that Build Active Intersections.** Use design elements including, but not limited to, varying building heights, changes in façade plane, large windows, awnings, canopies, marquees, signs and pedestrian entrances to highlight building

corners. Locate flexible sidewalk-level retail opportunities at building corners. Locate stairs, elevators, and other upper floor building access points toward the middle of the block.

**C8. Differentiate the Sidewalk-Level of Buildings.** Differentiate the sidewalk-level of the building from the middle and top by using elements including, but not limited to, different exterior materials, awnings, signs, and large windows.

**Findings:** The proposed design provides for expansive ground floor windows to promote quality, long term retailers and a restaurant along the Burnside Street frontage. The major corner of the property is activated through a sense of transparency with storefront on the first two floors. This glass façade encloses a two story lobby with a large feature stair at the corner, as well as an event space; all of which able to visually engage the public. Additionally all the “back-of-house” program has been condensed to the southwest corner of the property to allow for an almost uninterrupted glass frontage along both street facades. *These guidelines have been met.*

**C11. Integrate Roofs and Use Rooftops.** Integrate roof function, shape, surface materials, and colors with the building’s overall design concept. Size and place rooftop mechanical equipment, penthouses, other components, and related screening elements to enhance views of the Central City’s skyline, as well as views from other buildings or vantage points. Develop rooftop terraces, gardens, and associated landscaped areas to be effective storm water management tools.

**Findings:** The rooftop includes a 13’-9” tall elevator overrun, 7’-9” tall stair enclosure and a series of mechanical units that range from 3’-8” to 5’-5” in height. The elevator and stair enclosures will be clad in metal to match the metal elsewhere on the building and will be centrally located in the middle of the roof. The mechanical unit zone will be setback 30’ from Burnside, 14’ from the east roof edge and screened from 9<sup>th</sup> by the rooftop structures. The consolidation of the units will unify their presence from elevated locations and the setback and lower profile will reduce the visibility from the street frontages. A future roof deck that would take advantage of the vast views of the downtown area, Willamette River, West Hills, Mt. Tabor and Mt. Hood is also being considered. Any exterior alterations necessary to accommodate such addition would be reviewed in a future design review. The second floor is partially occupied by a roof garden that will be both an inviting amenity to the occupants as well as an opportunity to incorporate additional stormwater management tools on site. *These guidelines have been met.*

**C12. Integrate Exterior Lighting.** Integrate exterior lighting and its staging or structural components with the building’s overall design concept. Use exterior lighting to highlight the building’s architecture, being sensitive to its impacts on the skyline at night.

**Findings:** The exterior lighting will be subtle and focused at the pedestrian level only. A light alcove with a recessed linear light fixture will line the storefront along both street facades. Spill out of interior light from the open lower floors will be amplified by the addition of mirrored soffits.

At the March 24th hearing the Commission asked for details of the lighting levels of the concealed strip light that will run the length of the soffit on the ground floor. An enlarged section detail of the light alcove was provided and as well as a manufacturers specification sheet for an LED light fixture that allows the lighting level to be controlled rather than a fluorescent light which has a fixed output. At the hearing on April 21st, the Commission determined the LED lighting tape

within the open alcove was acceptable as accent lighting to highlight the building's ground level storefront and sidewalk. This guideline has been met.

## **(2) MODIFICATION REQUESTS**

### **33.825.040 Modifications That Will Better Meet Design Review Requirements:**

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

- A. Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and
- B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

The following modifications are requested:

1. *Loading* – To reduce the 13' vertical clearance required for the one large loading space provided on site to 12' (Section 33.266.310).

Purpose: 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.

**Findings:** The 43,000 SF of hotel, event space and retail requires one large Type A (35' long x 10' wide x 13' vertical clearance) loading space on site. The project originally proposed two small Type B (18' long x 9' wide x 10' vertical clearance), however the loading analysis provided revealed that larger trucks were servicing the adjacent hotel and others in the area and Transportation was not supportive of the request. The proposal was thus revised for the larger Type A space, however, included a reduction to the height. As indicated in Figure 16 of the Loading Analysis, dated 2/4/16, the tallest truck servicing the adjacent hotel and others in the area, is 12' in height. Transportation has reviewed the loading study and findings and concurs that 12' vertical clearance is adequate for the Type A loading spaces and is therefore consistent with the purpose of the standard.

This modification to a reduced loading space height will better meet Central City Fundamental Design Guidelines C1-1 (Integrate parking) and C5 (Design for Coherency) in that a smaller loading bay door is more complementary to the design and reduces the appearance of the back-of-house and loading functions of the use along the pedestrian realm. *These approval criteria have been met.*

**DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal is not required 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.

**IV. CONCLUSIONS**

The design review process exists to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The proposed design did take into account the guiding principles offered at the Design Advice Request and first Design Review hearing. At the 2<sup>nd</sup> hearing with two options proposed for the exterior cladding (asphalt composition shingles or metal shingles) the Commissioners present continued to have concerns with the asphalt composition material, specifically regarding its lack of permanence and high quality finish in this urban environment and imposed a condition to only allow the metal shingle cladding. At the appeal hearing on June 15, 2016, Council granted the appeal to modify the condition to allow the metal shingle or the asphalt shingle concluding the use of asphalt composition shingle as an exterior cladding was innovative and the specific Malarkey Legacy product was shown to have qualities of permanence. With a condition of approval to allow both the metal and asphalt composition shingles, this proposal meets the applicable design guidelines and will be a welcome addition to the eclectic Central Eastside.

**VI. DECISION**

It is the decision of the Council to grant the appeal of the applicant and amend Condition of Approval B of the Design Commission's Design Review approval as noted below (modified condition is in *italics*)

Approval of a Design Review for a new 6-story hotel with 67 hotel rooms, retail, restaurant and event space and the Modification to loading in the Central Eastside sub district of Central City.

Approval of the following Modification:

Loading – To reduce the 13' vertical clearance to 12' for the required for the one large loading space provided on site (Section 33.266.310).

Approvals per Exhibits C.1-C-66, signed, stamped, and dated June 29, 2016, subject to the following conditions:

- A.** As part of the building permit application submittal, the following development-related conditions (A – D) 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 15-276553 DZM. All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B.** *The alternate exterior cladding option of metal shingle in a dark grey in 26-gauge is allowed or Malarkey Legacy asphalt composition shingle in a dark grey or black.*
- C.** If the transformer cannot be pole-mounted and/or subterranean pursuant to PBOT and/or PGE standards, its location shall be subject to a future Type II Land Use

Review. That Type II Land Use Review, if required, must be approved prior to issuance of any building permit.

D. No field changes allowed.

**The applicant/appellant prevailed.**

## **VII. APPEAL INFORMATION**

### **Appeals to the Land Use Board of Appeals (LUBA)**

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

### **EXHIBITS NOT ATTACHED UNLESS INDICATED**


- A. Applicant's Statement
  - 1. Applicant's narrative & responses to approval criteria dated 12/11/15
  - 2. Stormwater memo from ESA dated 1/28/16
  - 3. Applicant's response dated 1/29/16 to Staff's incomplete letter
  - 4. Draft Loading Study dated 1/29/16
  - 5. Original plans dated 12/11/15
  - 6. Applicant's revised narrative & responses to approval criteria dated 1/29/16
  - 7. Revised plans dated 1/29/16
  - 8. Loading Study date 2/4/16
  - 9. Stormwater Management Report dated 2/2016
  - 10. Applicant's revised narrative & responses to approval criteria dated 2/22/16
  - 11. Drawing set dated 3/4/16 from 1<sup>st</sup> hearing
- B. Zoning Map (attached)
- C. Plan & Drawings
  - 1. Through 65 (C.4, C.14, C.20, C.21-C.24, C.31 attached)
  - 66. Manufacturer cutsheets
- D. Notification information:
  - 1. Request for response
  - 2. Posting letter sent to applicant
  - 3. Notice to be posted
  - 4. Applicant's statement certifying posting
  - 5. Mailed notice
  - 6. Mailing list
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review
  - 2. Water Bureau
  - 3. Fire Bureau
  - 4. Bureau of Parks, Forestry Division
  - 5. Site Development Section of BDS
  - 6. Plan Review Section of BDS
  - 7. Bureau of Environmental Services
- F. Letters
  - 1. List of Testifiers from 3/24/16 hearing
- G. Other



1. Original LUR Application
  2. Request for Completeness Routing Slip dated 12/17/15
  3. Incomplete Letter dated 1/8/16
  4. Pre-Application Conference (15-238905 EA) Summary Memo dated 11/17/15
  5. Design Advice Request (15-238912 DA ) Summary Memo dated 12/10/15
  6. 120-Extension form signed
  7. Staff Memo to Commission dated 3/18/16
  8. Copy of Staff Presentation from 3/24/16 hearing
  9. 1<sup>st</sup> Staff Report & Recommendation to Design Commission dated 3/17/16
- H. Post 1<sup>st</sup> Hearing
1. Staff email with 1<sup>st</sup> hearing summary
  2. Revised Staff Report & Recommendation to Design Commission dated 4/14/16
  3. Staff Memo to Commission dated 4/14/16
  4. Final Findings and Decision of the Design Commission from 4/21/16
  5. Mailing List for Final Findings and Decision of the Design Commission
- I. Appeal
1. Appeal Submittal
  2. Appealed Decision
  3. Notice of Appeal
  4. NOA Mailing list
  5. Kelsey Bunker (owner) letter, received 6/6/16
  6. Copy of BDS Staff Presentation to Council on 6/8/16 hearing

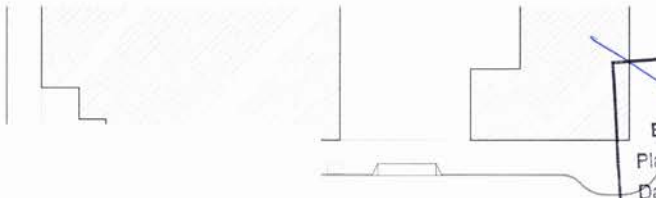
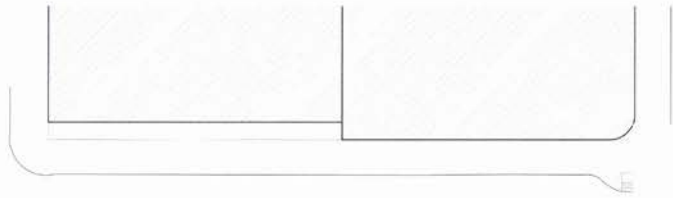


# ZONING

 This site lies within the:  
 CENTRAL CITY PLAN DISTRICT  
 CENTRAL EASTSIDE SUBDISTRICT  
 NORTH

-  Site
-  Historic Landmark

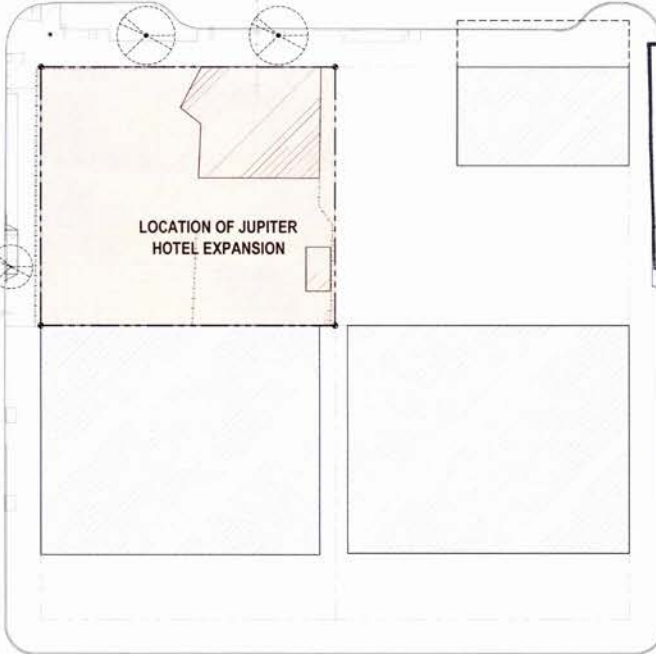
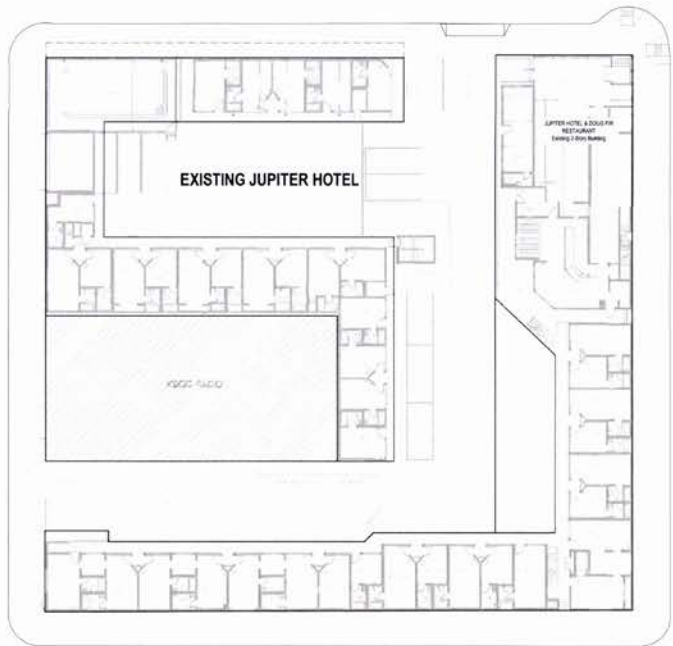
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 1/4 Section 3031  
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 State\_Id 1N1E35CD 1900  
 Exhibit B (Dec 14, 2015)



~~\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner [Signature]  
Date 4/21/16~~

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

EAST BURNSIDE STREET



\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner [Signature]  
Date 6/24/16

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

SE 8TH AVENUE

SE 9TH AVENUE

SE 10TH AVENUE

SE ANKENY STREET



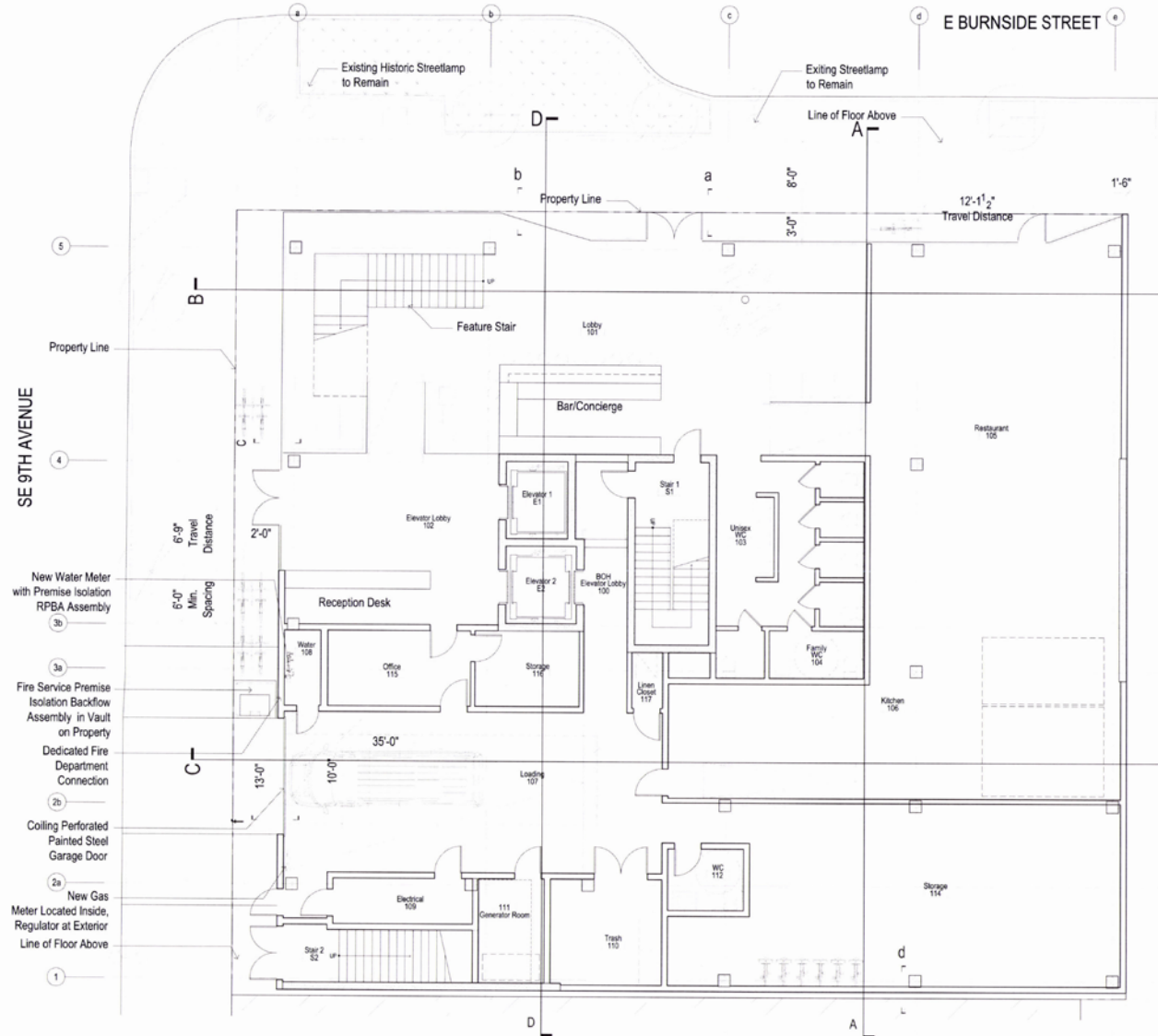
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LU 15-276553 D2M EX.C.4

SE 9TH AVENUE

E BURNSIDE STREET

Gross Floor Area(L1): 2,249 SF Unconditioned  
8,248 SF Total  
FAR per Floor: .94/1



- 3b New Water Meter with Premise Isolation RPBA Assembly
- 3a Fire Service Premise Isolation Backflow Assembly in Vault on Property
- 2b Dedicated Fire Department Connection
- 2a Coiling Perforated Painted Steel Garage Door
- 1 New Gas Meter Located Inside, Regulator at Exterior Line of Floor Above

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date 4.21.16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date 6/29/16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

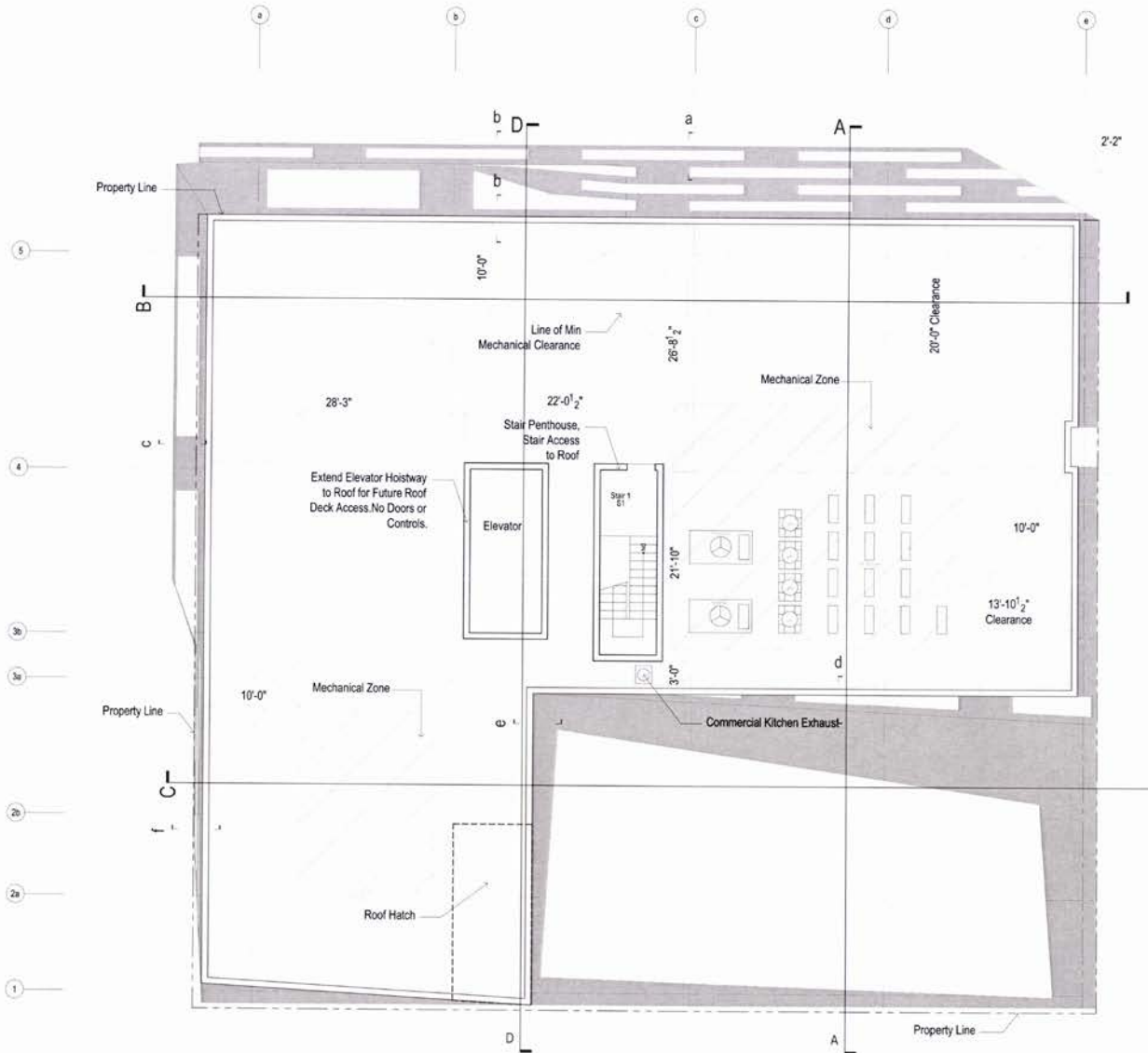


**Ground Floor Plan**  
 scale: 3/32" = 1'-0"



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Plans 14  
 LW 15-276553 D2M EX .C-14



~~\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date 4.21.16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 Additional zoning requirements may apply.~~

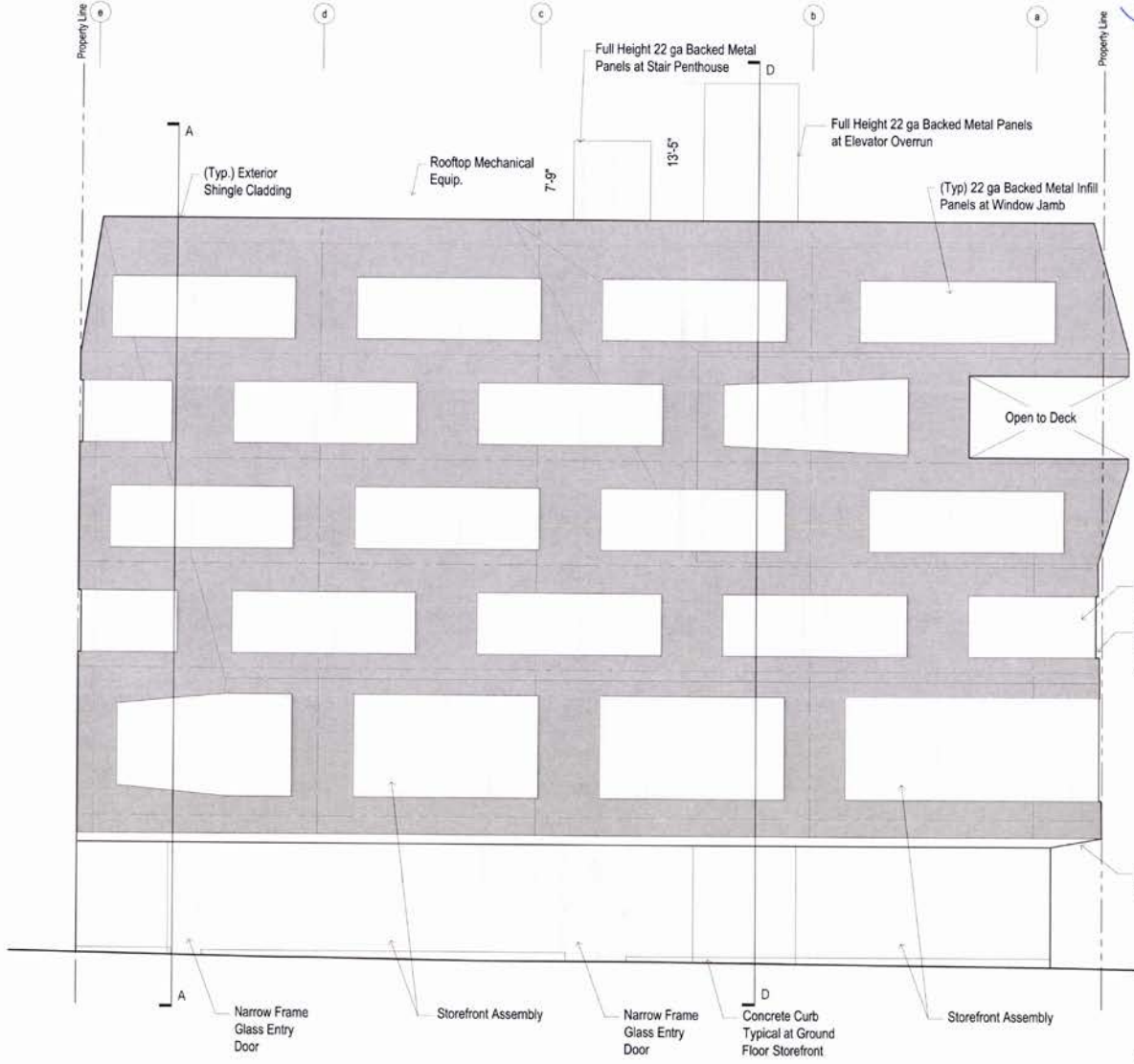
\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date 6/29/16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 Additional zoning requirements may apply.

Roof Plan  
 scale: 3/32" = 1'-0"  
 0 5 10

Plans 20  
 LU 15-276553 DZM EX.C-20

- + T.O. Elevator Bulkhead +171'-10"
- + T.O. Coping +158'-5"
- + T.O. Roof +155'-11"
- + 6th Floor +145'-2"
- + 5th Floor +134'-11"
- + 4th Floor +124'-8"
- + 3rd Floor +114'-5"
- + 2nd Floor +100'-0"
- + 1st Floor - Restaurant +86'-9"
- + 1st Floor - Lobby Upper +80'-0"
- + 1st Floor - Lobby Lower +85'-4"
- + 1st Floor - Loading +84'-6"

13'-5"  
 2'-6"  
 10'-0"  
 10'-3"  
 10'-3"  
 10'-5"  
 14'-5"  
 13'-3"  
 Building Height = 73'-1"

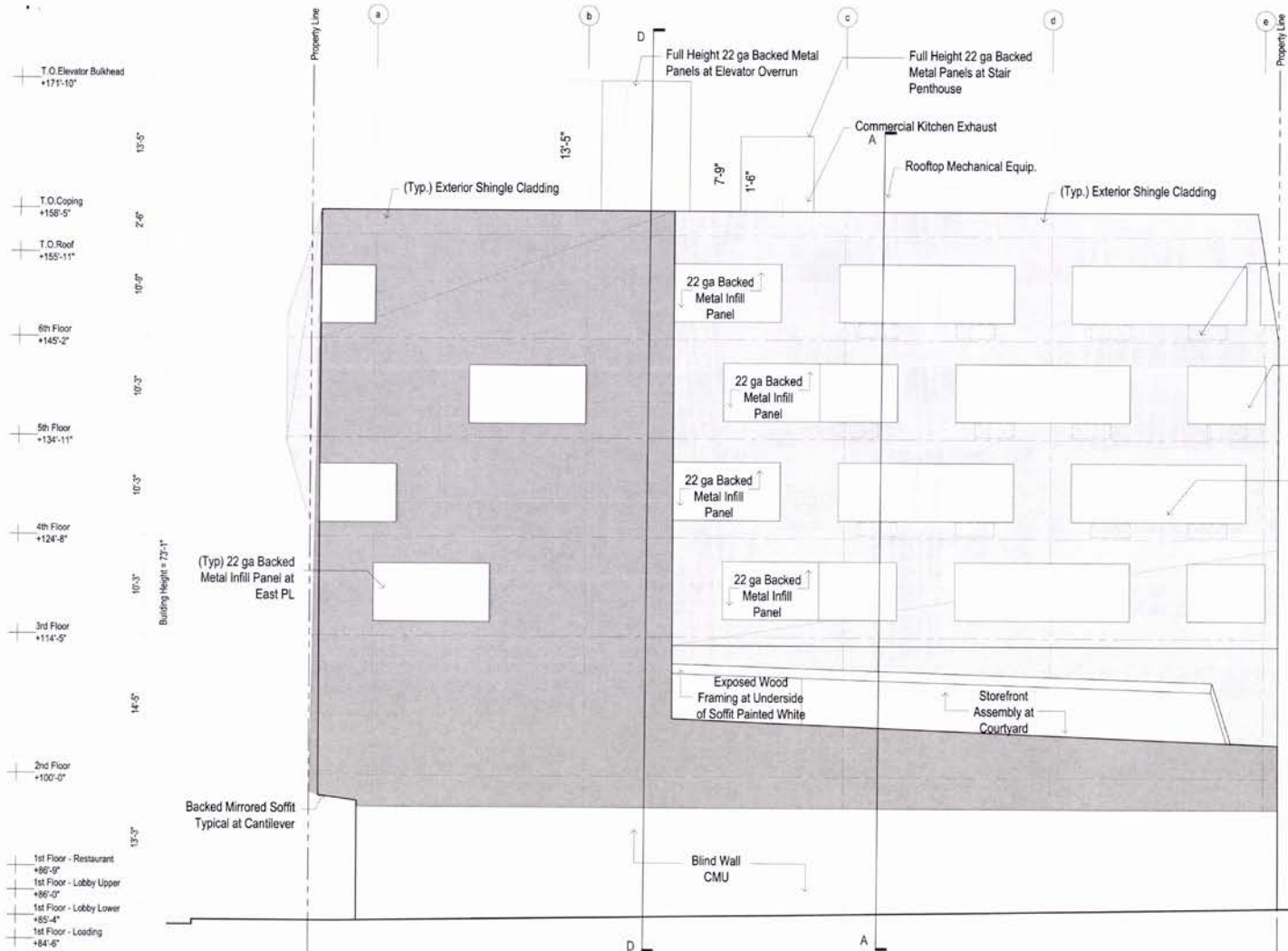


**North Exterior Elevation**  
 scale: 3/32"=1'-0"

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date 6/25/16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner [Signature]  
 Date 4.21.16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

LU 15-276553 DZM  
 EX. C-21



(Typ.) PTAC Units at all Courtyard Room Windows. Screened with a Louvered Plenum, Painted to a Match

Clear Glazing Units Typ. @ South Elevation U.N.O.

(Typ) 22 ga Backed Metal Infill Panels at Window Jamb

~~\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner *[Signature]*  
Date 4-21-16~~

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

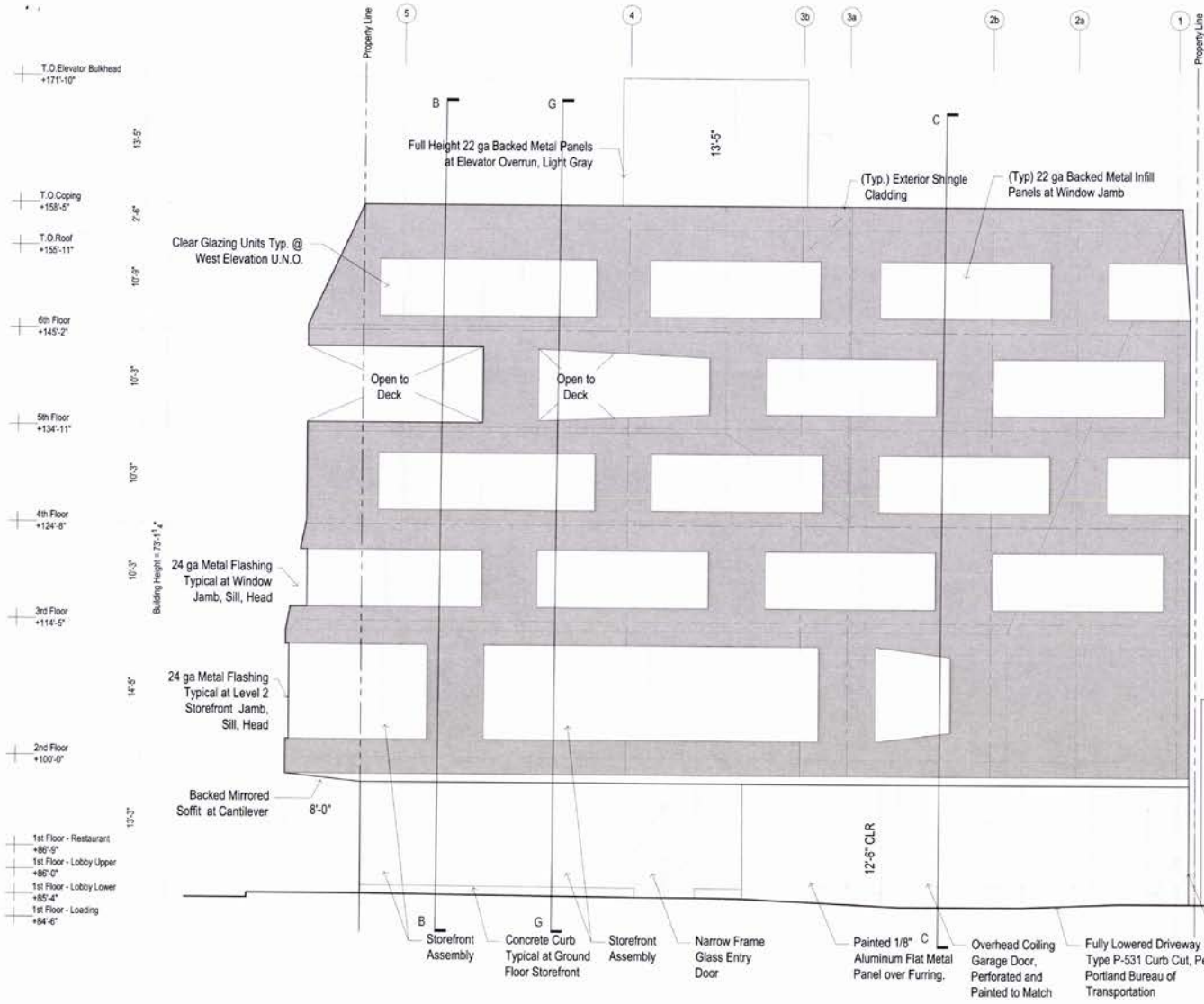
\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner *[Signature]*  
Date 6/29/16

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

South Exterior Elevation  
scale : 3/32"=1'-0"

LV 15-276553 Dzm ex. C-22

04.03.2016  
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~~\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner *[Signature]*  
Date *6-21-16*~~

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

\*Approved\*  
City of Portland  
Bureau of Development Services  
Planner *[Signature]*  
Date *6/29/16*

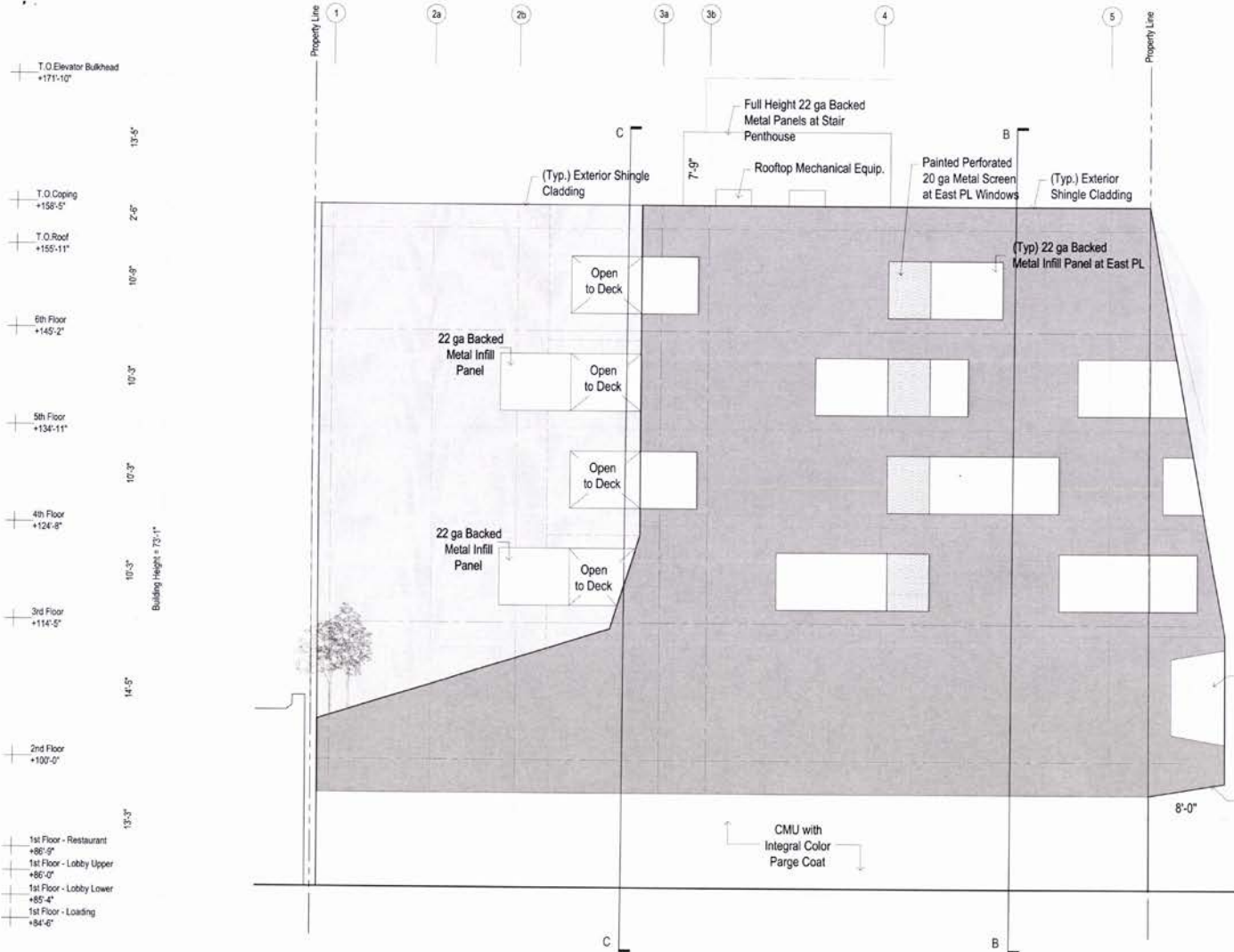
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

**West Exterior Elevation**  
scale: 3/32"=1'-0"

W 15-276553 DZM Exterior Elevations 23  
EX.C-23

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~~\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner Silva  
 Date 6/21/16~~

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

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner Silva  
 Date 6/29/16

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

East Exterior Elevation  
 scale: 3/32"=1'-0"

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W 15-276553 02m

Ex. C-24



View of North-West Corner from Burnside

Material Key

1. Exterior Shingle Cladding
2. 1/8" Aluminum Panel, White
3. Aluminum Storefront, Silicone Capture Verticals, Slate Grey
4. Fixed Picture Window with Clear Glazing Units, Concealed Frame
5. Flat Metal 22 Ga. Backed Infill Panel
6. Backed Mirrored Panel Soffit
7. Narrow Frame Aluminum Glass Entrance Door, Slate Grey Frame
8. Flushline Aluminum Entrance Door (Solid), White
9. Coiling Overhead Door, Perforated Slats, Slate Grey



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