



101 SW Main Street, Suite 1100
Portland, Oregon 97204

balljanik.com

t 503.228.2525
f 503.295.1058

March 21, 2014

Stephen T. Janik
sjanik@balljanik.com

RECEIVED

MAR 21 2014

Ms. Sheila Frugoli, Senior Planner
Bureau of Development Services
City of Portland
1900 SW 4th Avenue, Suite 5000
Portland OR 97201

Re: Comprehensive Plan Map and Zoning Map Amendment
(LU 14-105474 CP ZC) Block 7

Potential Applicability of Prior Master Plan

Dear Ms. Frugoli:

In our meeting of March 5, you also asked that the applicant comment on whether the last MAC Master Plan had any continuing effect on Block 7. The last Master Plan was approved, with conditions, on October 16, 1992 under File No. 91-00740 CU. One of the conditions of approval was the approval under a Type II process of "goals" to be agreed upon by MAC and the neighborhood association. Those agreed goals were approved February 22, 1993 under LUR 92-00813 MS.

The requirement that MAC prepare a Master Plan arose as a condition of approval of the Salmon Street MAC parking garage conditional use approval in 1981 (CU 80-80). In 1996, the City rezoned the MAC Clubhouse and the Salmon Street parking garage to CXd, thereby eliminating the conditional use status and making these buildings outright permitted uses. Pursuant to PMC § 33.700.110(B)(2)(b), if a prior conditional use becomes a use "allowed by right, the conditions of approval no longer apply." Thus, the basis for requiring a master plan, the prior conditional use approval, was superseded by the rezoning to CXd.

Further, under PMC § 33.820.060, a master plan terminates when "development allowed by the plan has been completed or the plan is amended or superseded." The 1992 approved Master Plan did not allow any development; rather it simply referred to vaguely described "possible future uses." And, as stated above, that Master Plan has been superseded by the CXd rezoning.

Finally, in the 1992 approved Master Plan, the brief discussion of Block 7 described "possible future uses" as including: a single mixed-use project of commercial and residential uses that "would be primarily residential"; however, it

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may also include Club facilities and parking, and neighborhood retail uses." (Master Plan, pg. 17.) While I do not believe the 1992 Master Plan has any legal effect on Block 7, even if it did, the proposed project is consistent with the above description of a possible future use in the 1992 Master Plan.

If you would like to discuss this issue further, please call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. Janik".

Stephen T. Janik

cc: Mr. Sam Rodriguez
Mr. Mike Silvey
Ms. Julia Kuhn

STJ:llr



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Calculation of FAR

Dear Ms. Frugoli:

In your completeness review letter of February 4, 2014 and our subsequent meeting, one issue that was raised was the "reasonable worst case" development that would be allowed under existing zoning and the related issue of how the density of the proposed project was determined. This letter responds to that issue.

Block 7, currently zoned RH, has a FAR of 4:1 (PMC Map 510-2), and a maximum height of 100 feet (PMC Map 510-3). The FAR may be increased using bonus FAR up to a maximum increase of 3:1 (PMC § 33.510.200(C)). Block 7 is located in the Central City Plan District (PMC Map 510-1), and may utilize any applicable FAR bonuses under PMC § 33.510.210.

Within the RH zone, the maximum height is 100 feet (PMC Table 120-3), and maximum building coverage is 85% of the site area. Block 7 contains 43,549 square feet.

Given the size of Block 7 and the applicable FAR of 4:1, the allowed above-grade amount of building square footage is 174,196 sq. ft. The applicant, assuming no Comprehensive Plan change or zone change, would utilize the eco-roof bonus in PMC § 33.510.210(C)(10). The square footage of the eco-roof would be 25,520 sq. ft. Under PMC § 33.510.210(C)(10)(a)(3), the FAR bonus is 3 multiplied by the eco-roof area (25,520 sq. ft.) for a total FAR bonus of 76,570.

In addition, under the RH zoning, FAR may be transferred under the provisions of PMC § 33.120.205(E) which allows FAR transfer from a Landmark-zoned RH to a site zoned RH (PMC § 33.120.205(E)(5)(b)). Alternatively, the applicant could acquire transferable residential FAR pursuant to PMC § 33.120.200(F). The

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applicant intends to acquire 14,807 sq. ft. of transferable density under one of the above code provisions.

The total square footage of the project will then be the sum of the base FAR (174,196 sq. ft.), the eco-roof bonus FAR (76,500 sq. ft.), and the transferable FAR (14,807 sq. ft.) for a total of 265,681, which is a FAR of 6.1:1.

With this building square footage, the project can contain the proposed 260-280 apartment units, the 16 MAC units, and that portion of the parking area which is included in the definition of Floor Area in PMC Chapter 33.910.

It would be difficult in the RH zone to achieve additional FAR beyond the proposed 6.1:1 FAR, even though there is a theoretical possibility of a maximum FAR of 7:1. This higher density could only be achieved by a greater amount of transferred FAR, or the use of bonuses under PMC § 33.510.210(C), very few of which are applicable in the RH zone and would be very expensive to utilize. (See PMC § 33.510.210(C)(6), (15), and (18)).

Thus, it is theoretically possible that a residential project with a 7:1 FAR could be the "worst case" under the existing zoning. Such a project could also include up to 20% of the net building area for Retail Sales and Service or Office uses; however, these uses are not permitted uses, require a conditional use permit (PMC § 33.120.100(B)(2) the approval of which is uncertain, and should not be factored into any "worst case" analysis. The result is that the "worst case" would be a residential project somewhat larger than the proposed project and a project that would have a greater traffic impact than the proposed residential project with 6.1:1 FAR.

Finally, as noted in our application materials, the proposed project will be the only project allowed on Block 7 because the property owner will restrict Block 7 to only that project, through a Restrictive Covenant enforceable by the City. This will preclude the range of commercial uses that would be allowed in the requested CX zone. Thus, there will be no need to analyze the traffic impacts from those commercial uses that can never be built.

Please call me if you would like to discuss this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen T. Janik".

Stephen T. Janik

cc: Mr. Sam Rodriguez
Mr. Mike Silvey
Ms. Julia Kuhn



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Re: Comprehensive Plan Map and Zoning Map Amendment
(LU 14-105474 CP ZC) Block 7

CCPR Issues

Dear Ms. Frugoli:

In your completeness review letter of February 4, 2014 for the above matters, you questioned why the applicant was not concurrently submitting an application for a CCPR for the 225 MAC stalls included in the proposed project. You commented that such a concurrently-filed CCPR application would give the reviewers (the Hearings Officer and City Council) "a complete analysis." You asked the applicant to explain why the CCPR was not being concurrently submitted.

The reason why the applicant is not concurrently submitting the CCPR application is because we do not believe that Title 33 would allow such a concurrent submittal. If that analysis is correct, as we set forth below, an opponent of the project could argue before LUBA that the concurrent CCPR application was a material procedural error and, assuming the City Council's approval of the requested Comprehensive Plan change, a zoning map change, with a concurrent CCPR approval, LUBA could well remand the entire case if the consolidated decision improperly included an approval of the CCPR.

There are several reasons why we believe it would be imprudent to file a concurrent CCPR application.

First, the Code nowhere explicitly authorizes the filing of a CCPR (or any other non-zone change land use review) when the approval requested would not be allowed under the then-existing comprehensive plan designation and zoning. This would be the case if we file a concurrent CCPR because the parking requested is a Retail Sales and Service Use, which is not allowed under the existing Comprehensive Plan designation and zoning, given the amount of building space this parking would utilize.

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In addition, PMC § 33.700.070(C) which applies to "situations where the Code is silent," seems to address the current situation and provides: "Proposals for uses, development, or land divisions when the Code is silent or where the rules of this section do not provide a basis for concluding that the proposal is allowed are prohibited."

Second, PMC § 33.700.070(D)(1)(e) provides that "an adjustment, conditional use, or other land use review may not be requested in order to allow an exception to the regulation in question." Applying for a CCPR approval of 225 parking stalls now, before a Comprehensive Plan and zone change allowing such a use, would in effect be seeking an exception from the current plan designation and R-H zoning that would prohibit the 225 parking stalls.

Third, PMC § 33.810.030 allows concurrent Comprehensive Plan map changes and zoning map changes, but only if the zoning map change is consistent with the comprehensive map change. (To the same effect is PMC § 33.855.030.) The only logical inference from this Code section is that concurrent applications for other land use reviews, which are not consistent with the then existing comprehensive plan and zoning designations, are not allowed. This inference is consistent with and required by PMC § 33.700.070(C) quoted above.

Fourth, PMC § 33.700.080(c) provides: "Applications will not be accepted for building permits or land use reviews based on regulations or zone changes that have been approved but not yet implemented." However, pre-application conferences may be requested and held. Clearly, a CCPR is a "land use review (See PMC § 33.808). The approval of 225 parking stalls under a CCPR when prohibited by the existing plan designation and zoning would not be allowed until a permissive zone change was approved.

The only practical concerns that we can see with applying for a CCPR after approval of the requested Comprehensive Plan change and zoning map change are the following:

1. As discussed in the pre-application conference, the applicant will be applying for 225 stalls of Preservation Parking pursuant to PMC § 33.510.265(B)(3). This request will be based on the fact that the existing MAC buildings have far less parking than either the minimum or maximum amount of parking allowed under PMC Tables 266-1 and 266-2. In fact, the parking deficiency is greater than 225 stalls. If there is a concern that a subsequently-filed CCPR application would request more than 225 stalls, that concern can be easily addressed. The applicant agrees that a subsequently-filed CCPR will not request any more stalls than 225.

2. The Kittelson & Associates Traffic Impact Analysis (the "TIA") filed as part of the application included sections addressing the CCPR approval criteria in PMC § 33.808.100. This was because the applicant asked that all traffic-



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related issues pertinent to the Comprehensive Plan map change, the zoning map change, and the CCPR be analyzed because it was efficient, once the data had been collected, to apply the data to the criteria in these three land use reviews because the criteria are similar and responses to those criteria will be, to a large extent, similar and be based on the same data.

In order to avoid any confusion, we have revised the TIA by deleting from the main body of the TIA any discussion of compliance with the CCPR approval criteria. We have placed that analysis in the TIA as Appendix G, if a reviewer would like to have that analysis. A copy of the revised TIA is attached.

I hope the above is a satisfactory response to the issue you raised in your February 4, 2014 letter and our subsequent meeting. Please feel free to call me if you would like to discuss this letter.

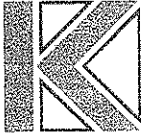
Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen T. Janik".

Stephen T. Janik

cc: Mr. Sam Rodriguez
Mr. Mike Silvey
Ms. Julia Kuhn

STJ:llr
Enclosures



MEMORANDUM

Date: March 20, 2014

Project #: 12986

To: Bob Haley, City of Portland Bureau of Transportation (PBOT)
Sam Rodriguez, Mill Creek
Steve Janik, Ball Janik

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MAR 21 2014

From: Julia Kuhn
Project: Block 7
Subject: MAC Apartment Trip Generation

As a follow-up to our March 5th meeting regarding Block 7, this memo clarifies the trip generation of the proposed apartments on Block 7. As discussed, up to 296 apartment units may be constructed on-site. Of these, 16 could be used by the MAC for short-term visitors. Our January 2014 Traffic Impact Study for Block 7 reports analysis resulting from consideration of all 296 units as "Apartments" (Land Use Code 220) as classified by *Trip Generation* (Institution of Transportation Engineers, 9th Edition, 2012). As such, the weekday p.m. peak hour rate is expected to be 0.62 trips per unit.

At our meeting, you inquired whether the use of a Motel or Hotel rate would increase the potential trip generation of the 16 MAC-related units. Per our discussion, a Hotel (Land Use Code 310) is expected to generation 0.60 trips per room during the weekday p.m. peak hour whereas a Motel (Land Use Code 320) is expected to generate 0.47 trips per room during the weekday p.m. peak hour. Therefore, the apartment rate represents the highest rate of the three categories considered. For this reason, we recommend no changes to our analysis.

Please let me know if you need any additional information as you review our analyses and report.

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MAR 21 2014

EXHIBIT C
RESTRICTIVE COVENANT

DATED: _____

FROM: MCRT INVESTMENTS LLC,
a Delaware limited liability company ("MCRT")

AND: MAC BLOCK 7, LLC,
an Oregon limited liability company and
MULTNOMAH ATHLETIC CLUB, an Oregon
nonprofit corporation (collectively, "MAC")

IN FAVOR
OF: CITY OF PORTLAND,
an Oregon municipal corporation ("City")

MCRT initiated a Comprehensive Plan change and a zone change with respect to the real property described on attached Exhibit A (the "Property"). The City Council of the City adopted Ordinance No. _____ on _____, which was effective on _____ (the "Ordinance").

The Ordinance changed the Comprehensive Plan designation of the Property from High Density Multi-Dwelling to Central Commercial and changed the zoning from RHd to CXd. These changes will allow MCRT to construct the following: up to 280 multi-family dwelling units and 191 associated below-grade parking stalls (the "Dwelling Units"), 225 below-grade parking stalls for the exclusive use of the MAC, and 16 studio units to be used exclusively by the MAC for short-term occupancy by the MAC's members, reciprocal members and guests or for other uses allowed in the Retail Sales and Service category in the Portland Municipal Code, Chapter 33.920 but only for the non-public exclusive use by the MAC (collectively, the "MAC Uses"). The Ordinance conditioned the Comprehensive Plan change and zone change on the condition that the only uses allowed on the Property shall consist of the Dwelling Units and the MAC Uses and that MCRT and the MAC execute, deliver

and record a restrictive covenant in favor of the City evidencing and enforcing this condition.

NOW, THEREFORE, for good and sufficient consideration, MCRT and MAC agree as follows:

1. The Property shall only be used for the following uses: the Dwelling Units and the MAC Uses, unless other uses are allowed by an action of the City Council of the City.
2. The term of this Restrictive Covenant shall be perpetual.
3. This Restrictive Covenant shall burden the Property and any improvements built or to be built on the Property, shall benefit the City, and shall run with the Property and any improvements built or to be built on the Property. This Restrictive Covenant is binding on MCRT and MAC and any subsequent party that holds an interest in the Property or any improvements built or to be built on the Property, including, but not limited to any persons owning a condominium unit created with respect to the Property or improvements on the Property.
4. MAC is joining in this Restrictive Covenant to assure the City that its use of improvements on the Property is limited to the MAC Uses, even in the event MAC owns the improvements in which the MAC Uses are located.
5. In the event of a breach of this Restrictive Covenant, the City shall be entitled to all remedies under the Portland Municipal Code and all remedies allowed at law or in equity, including, but not limited to the remedy of specific performance.
6. This Restrictive Covenant is a covenant referred to in Portland Municipal Code Section 33.700.060. As required by Section 33.700.060: (i) MCRT and MAC will comply with all applicable code requirements and conditions of approval; and (ii) if MCRT or MAC fail to perform under this Restrictive Covenant, the City may terminate occupancy of the Property and seek all necessary injunctive relief, including seeking

to prevent future occupancy of the Property while a violation of this Restrictive Covenant exists. The provision of Section 33. 700.060(3) is inapplicable.

7. In the event of a claimed breach of this Restrictive Covenant, the prevailing party shall be entitled to recover its reasonable attorneys' fees, paralegal fees, expert witness fees and costs in any proceeding enforcing this Restrictive Covenant as determined by the judge or in any appeal or review.
8. This Restrictive Covenant is governed by the laws of the State of Oregon.
9. This Restrictive Covenant is the complete and final agreement of the parties with respect to the matters referred to in this Restrictive Covenant and supersedes and replaces all prior written or oral agreements on the same matters.

IN WITNESS WHEREOF, the parties have executed and recorded this Restrictive Covenant to be effective upon its recordation.

MCRT:

MCRT INVESTMENTS LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

MAC:

MAC BLOCK 7, LLC, an Oregon limited liability company

By: MULTNOMAH ATHLETIC CLUB, an Oregon non-profit corporation, its sole member

By: _____

Name: _____

Its: _____

MULTNOMAH ATHLETIC CLUB, an Oregon non-profit corporation, its sole member

By: _____

Name: _____

Its: _____

CITY:

CITY OF PORTLAND, an Oregon municipal corporation

By: _____

Its: _____

Approved as to form:
Office of the City Attorney

By: _____

Its: _____