

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

**IN THE MATTER OF AN APPEAL BY THE NORTHWEST DISTRICT
NEIGHBORHOOD ASSOCIATION AGAINST DESIGN COMMISSION'S DECISION TO
CONDITIONALLY APPROVE THE TESS O'BRIEN APARTMENTS AT 1953 NW
OVERTON STREET AND 1950 NW PETTYGROVE STREET
(HEARING: LU 14-220722 DZ AD)**

FINDINGS AND CONCLUSIONS

**ADOPTED BY THE CITY COUNCIL ON
March 25, 2015**

(Denial of an appeal of a Type 3 Design Review with an Adjustment)

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ASSOCIATION AGAINST DESIGN COMMISSION'S DECISION TO CONDITIONALLY
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(HEARING: LU 14-220722 DZ AD)

FINDINGS AND CONCLUSIONS

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

I. 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.

II. INTRODUCTION AND PROCEDURAL HISTORY

Original Proposal:
The applicant seeks Design Review approval for two, 6-story apartment buildings with an interior courtyard containing a total of 123 residential units (51 units in the

Pettygrove building on NW Pettygrove Street and 72 units in the Overton building on NW Overton Street). 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

Design Review Commission Procedural History:

- The first Type 3 hearing was held on November 6, 2014.
- At the first hearing, a tentative vote of denial was noted by the Design Commission and to be completed on November 20, 2014, the next available hearing date.
- The tentative vote was non-binding because it was not reduced to writing and the record was held open to revise the original report of approval to denial. The applicant exercised its right to extend the 120-day timeline for this case (continuing the November 20, 2014 hearing to December 4, 2014) in order to revise the submittal to respond to Design Commission concerns raised at the November 6, 2014 hearing.
- The Staff Report was updated for the Design Commission's consideration on December 4, 2014 to reflect the project changes since the November 6, 2014 hearing.
- At the continued hearing on December 4, 2014, the Design Commission found that two (2) items were not yet resolved: material palette and ground level transition along the Overton street frontage. A member of the Northwest District Association (NWDA) asked that the record remain open, and the Design Commission granted this request.
- The applicant made further revisions to the project in response to the Design Commission comments on December 4, 2014 and the Staff Report was updated to reflect these changes for the Design Commission's consideration on December 18, 2014.
- At the continued hearing on December 18, 2014 a majority of the Design Commission stated that further improvements were needed to the ground level of the Overton building. A member of the NWDA also asked that the record remain open, and the Design Commission granted this request.
- The applicant prepared two options for the Design Commission's consideration that were both responsive to the Design Commission's comments and the Staff Report was updated for the Design Commission's consideration on January 15, 2015.

- The Design Commission adopted its decision approving the applications with conditions of approval on January 15, 2015.
- The City mailed the Notice of Decision on January 21, 2015.
- The Appellant, NWDA, filed a timely appeal to the City Council on February 4, 2015, by 4:30 p.m.

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 March 4, 2015 at 2:00 p.m.

Following a staff report by BDS staff and testimony by the Appellant and supporters of the Appellant, representatives of the applicant testified against the appeal. The appellant waived its rebuttal opportunity.

The City Council next asked for a summary by BDS staff who discussed the loading space adjustment. The City Council notes that the the appeal did not raise an issue associated with the loading space adjustment granted by the Design Review Commission, nor did any party at the City Council appeal hearing discuss this issue. BDS staff noted that the Portland Bureau of Transportation ("PBOT") had a concern about conflicts with pedestrian movements on the public streets caused by an off-street loading space. BDS staff also addressed the appellant's concerns with the Design Commission's procedures at the request of Commissioner Fritz.

The Mayor then closed the public hearing and the record. The City Council made a tentative decision, voting 4-0 to deny the appeal and uphold the Design Commission's decision, and continued the matter to March 25, 2015 for the adoption of findings and a final vote.

On March 25, 2015 the Council adopted findings and a final decision to deny the appeal and uphold the Design Commission's decision approving this proposed apartment project.

III. SITE ANALYSIS

Site and Vicinity: The site is comprised of two tax lots that share a portion of a rear property line: one 8,000 SF lot with frontage on NW Pettygrove and one 10,000 SF lot with frontage on NW Overton. Both lots are within Block 265 bounded by NW 19th & NW 20th in the Northwest Plan District. The lots are currently developed with a combination of surface parking and a 1-story industrial building. The block and surrounding area contains both older 1- and 2-story industrial /commercial structures, along with older and newer 3- to 6-story residential buildings. The site lies with the Northwest Pedestrian District and both NW Pettygrove and NW Overton are local service streets.

The site lies within the Urban Character Area D - Transition Area identified in the Northwest District Plan. The desired characteristics and traditions of the Transition Area are as follows:

New development should contribute to integrating the Transition Area into the fabric of the Northwest District by more closely follow[ing] the development patterns of the rest of the neighborhood, such as a partial-block scale of development, street frontages lined with buildings rather than parking lots, and extension along NW 21st Avenue of the main street pattern of buildings with ground-floor windows built close

to sidewalks. The facades and rooflines of larger buildings should be divided into distinct components that reflect the Northwest District's established development pattern of 50 to 100 foot-wide increments. Larger structures that provide a sense of urban enclosure should be concentrated along main streets and the streetcar corridor, with a finer grain of façade articulation and roofline variation along east-west side streets. The historic 200-foot by 460-foot street grid pattern, as identified in the Northwest District Master Street Plan, is to be reestablished within the Transition Area. Future institutional development along NW 23rd Avenue should be designed to help reestablish the main street pattern of entrances and ground-floor windows. A key opportunity in the Transition Area is the new Portland Streetcar alignment on NW Lovejoy and NW Northrup streets. Along the streetcar alignment, new development should contribute to the creation of a pedestrian- and transit-oriented streetscape, similar to that of the main streets, with a continuous, but architecturally varied, frontage of mid-rise buildings with ground-floor windows and entrances oriented to the public realm. Retail development along NW 21st and NW Thurman (west of NW 21st) in the Transition Area should be designed to acknowledge the fine-grain mix and pattern of uses that characterizes the Northwest District's established main streets, such as by dividing main street frontages into spaces suitable for small tenants or by including upper-story residences or offices.

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 Northwest Plan District implements the Northwest District Plan, providing for an urban level of mixed-use development including commercial, office, housing, and employment. Objectives of the plan district include strengthening the area's role as a commercial and residential center. The regulations of this chapter: promote housing and mixed-use development; address the area's parking scarcity while discouraging auto-oriented developments; enhance the pedestrian experience; encourage a mixed-use environment, with transit supportive levels of development and a concentration of commercial uses, along main streets and the streetcar alignment; and minimize conflicts between the mixed-uses of the plan district and the industrial uses of the adjacent Guild's Lake Industrial Sanctuary.

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

Agency Review: A "Notice of proposal in Your Neighborhood" was mailed **October 16, 2014**. Bureau responses from the building permits (14-177160 CO and 14-177163 CO) were provided, none of which identify any major concerns.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **October 16, 2014**. A total of two written responses were received from notified property owners in response to the proposal. The first response listed below was from

the project when it was noticed on September 10th as two Type 2 Design Reviews, which was later corrected to the current Type 3 Design Review.

1. Ronald H. Forehand, September 23, 2014, stating concerns with the lack of parking for the project (Exhibit F-1).
2. John Acree, October 23, 2014, stating concerns with the lack of parking for the project (Exhibit F-2).

City Council's Response: There is no minimum parking requirement for the project given its location in the Northwest Plan District, per Section 33.562.280 of the Zoning Code. This provision seeks to foster development that contributes to the pedestrian- and transit- oriented character of the district, promotes alternatives to the automobile and encourages a more efficient use of urban land. In addition, there are no design guidelines applicable to providing parking for the project.

Since the 1st hearing on November 6th, the City received additional written testimony citing procedural concerns and outstanding design items (See H exhibits in the record). Responses to the procedural concerns were addressed via email from BDS's Director and senior Staff to the individuals. The City Council's findings below address the project's response to the design guidelines as well as to specific appeal issues raised by the Appellant.

IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS

(1) DESIGN REVIEW – SECTION 33.825

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 of the site's location in the Northwest Plan District, the applicable design guidelines are the Community Design Guidelines.

Community Design Guidelines

The Community Design Guidelines consist of a set of guidelines for design and historic design cases in community planning areas outside of the Central City. These guidelines address the unique and special characteristics of the community plan area and the historic and conservation districts. The Community Design Guidelines focus on three general categories: **(P) Portland Personality**, which establishes Portland's urban design framework; **(E) Pedestrian Emphasis**, which states that Portland is a city for people as well as cars and other movement systems; and **(D) Project Design**, which assures that each development is sensitive to both Portland's urban design framework and the users of the city.

The City Council has considered all guidelines and has addressed only those guidelines considered applicable to this project.

P1. Plan Area Character. Enhance the sense of place and identity by incorporating site and building design features that respond to the area's desired characteristics and traditions.

P2. Historic and Conservation Districts. Enhance the identity of historic and conservation districts by incorporating site and building design features that reinforce the area's historic significance. Near historic and conservation districts, use such features to reinforce and complement the historic areas.

D7. Blending into the Neighborhood. Reduce the impact of new development on established neighborhoods by incorporating elements of nearby, quality buildings such as building details, massing, proportions, and materials.

Findings for P1, P2 and D7: The site is located within Urban Character Area D: Transition Area, identified in the Northwest District Plan. The site is also three blocks north of the Alphabet Historic District. The proposed project incorporates elements that contribute to the desired characteristics of the Transition Area, which are also features found in the nearby historic district and surrounding area. These elements include:

- In-fill development: no wider than 100' (80' and 100' building widths proposed); no taller than 75' (67' building height proposed); and with distinct wall plans no wider than 50' to 100' (22' to 37' wall plane widths proposed) that reinforces the partial block building massing that is prevalent in the Northwest District Plan area, nearby Alphabet Historic District and the immediate neighborhood.
- Primary residential lobby entrances and activities located directly facing the NW Overton and Pettygrove street frontages and sidewalks.
- Building façade canopies, light fixtures, distinct precast stone at the main entries on the ground floors and architectural cornices at the second floors provide pedestrian scale and visual interest at the NW Overton and Pettygrove street frontages and sidewalks.
- Use of red brick as the predominant exterior building material on the street frontages and stucco on the non-primary facades to reinforce the plan district's building traditions for both historic residential, commercial, and industrial buildings. Architectural façade and fenestration proportions that echo historic apartment and industrial buildings.
- The incorporation of the building's name at the main residential entrance canopies on NW Overton and Pettygrove Streets.

At the hearing on November 6th, the Design Commission indicated the buildings, each facing different streets and directions, should be differentiated to better respond to the conditions along their frontages. Both street frontages have Bike Boulevard designations with Overton as an existing bikeway and Pettygrove as a future bikeway. The Green Street designation that occurs on Pettygrove to the east is intended to be extended down along this frontage at some point in the future.

Given the similarity of the street designations, the applicant focused on the development conditions along each frontage. After further review, it was concluded that Overton consists of more low rise and town house residential scale and character, while Pettygrove hosts a modest level of retail and commercial

active uses. To better respond to these different conditions the applicant revised the project as follows: (a) established a deeper street setback on the Overton frontage with individual residential entries; (b) eliminated the street setback for the Pettygrove building and converted two ground floor residential units into one live-work unit with a storefront entry condition; and (c) redesigned the larger Overton building street façade to have an “A-B-A” composition of brick bays and maintained the “B-B-B” composition of brick bays on the Pettygrove street façade.

The revised concept is that together the Overton and Pettygrove buildings comprise one cohesive in-fill development, with each building’s street facing façade subtly differentiated to blend into the subtly different development context for each building. The differences in the façade designs are apparent on the width of the bays, but are really focused at the ground level, where the difference in conditions and uses is most obvious. The City Council concurs with the Design Commission that, as modified through the Design Review process and consultation with the neighborhood, the plans demonstrate compliance with these guidelines.

Notwithstanding these plan modifications, the appellant contends the project does not meet Guideline D7 because the buildings do not blend into the neighborhood. Specifically, the appellant contends the height of the buildings and the minimal side yard setbacks cause the massing of the buildings to be incompatible with other area buildings.

The City Council disagrees and finds that the project meets Guideline D7 for five reasons. First, despite the appellant’s argument to the contrary, the applicant has demonstrated compliance with this standard. Specifically, the slides presented by the applicant at the appeal hearing show the project massing compared to the surrounding neighborhood; images of other recently approved multifamily projects in the neighborhood, including 20 Pettygrove and the Muse located at NW 19th Avenue and NW Overton Street; historical precedents within the Northwest District; examples of zero-lot line projects; and additional street front façade examples. As these visual materials illustrate and as described in the findings below for Guideline D8 and the findings above, the applicant has proposed a project height, massing, and building materials, ground floor features, and façade elements that blends well with and reflect other buildings in the neighborhood.

Second, the City Council finds that although the plain language of this guideline refers to “massing,” it does not mandate “stepping down” development scale and mass from adjacent buildings in every case. Rather, the guideline mandates “incorporating elements of nearby, quality buildings,” and “massing” is simply an example of how this can be achieved in certain circumstances. In this case, the City Council finds that both buildings in the project “incorporate elements of nearby, quality buildings.” As support for this conclusion, the City Council relies upon the visuals and related testimony presented by the applicant and summarized in the previous paragraphs. The City Council further finds that this project is appropriate because it is a transition to a more intense future development in a neighborhood that is becoming more dense.

Third, the underlying zoning designation of the site is EX, which is one of the most aggressive, urban zones in the City. The City Council finds that the appellant’s proposed application of this guideline is inconsistent with the overall purposes of the EX zone.

Fourth, the City Council finds that the stated purpose of increased side-yard setbacks is to provide for additional light and air. However, the City Council finds that the project proposes an expansive interior courtyard that provides a bigger area and more open access to light and air than a five-foot side yard setback would at this location. As a result, the City Council finds that requiring an increased setback in this case would eliminate or reduce the size of the courtyard and actually defeat the public objective of increasing light and air. Moreover, the floor area ratio ("FAR") on this site is only 61%, less than the FAR of adjacent buildings.

Fifth, although the appellant contends that the applicant has not taken sufficient steps to "reduce the impact of the new development," the City Council disagrees. The applicant has reduced the impact of the new development and took significant steps during the design review process to design a more compatible development with reduced impacts on the neighborhood. As support for this finding, the City Council relies upon the findings above and in response to Guideline D8 as well as the "Summary of Changes" slide presented by the applicant at the appeal hearing. These changes were made for the express purpose of responding to neighborhood and Design Commission concerns and, in the Council's view, succeeded in doing so in a way that resulted in a project that blends well with the existing neighborhood.

As revised, these guidelines have been met.

P3. Gateways. Develop or strengthen the transitional role of gateways identified in adopted community and neighborhood plans

Findings: This project is not located at an identified gateway. It is a mid-block, in-fill development. *This guideline is not applicable.*

E1. The Pedestrian Network. Create an efficient, pleasant, and safe network of sidewalks and paths for pedestrians that link destination points and nearby residential areas while visually and physically buffering pedestrians from vehicle areas.

E2. Stopping Places. New large-scale projects should provide comfortable places along pedestrian circulation routes where people may stop, visit, meet, and rest.

E3. The Sidewalk Level of Buildings. Create a sense of enclosure and visual interest to buildings along sidewalks and pedestrian areas by incorporating small scale building design features, creating effective gathering places, and differentiating street level facades.

E5. Light, Wind, and Rain. Enhance the comfort of pedestrians by locating and designing buildings and outdoor areas to control the adverse effects of sun, shadow, glare, reflection, wind, and rain.

Findings for E1, E2, E3 and E4: The proposal includes a number of elements designed with the pedestrian in mind. The predominance of the building facades directly along the NW Overton and Pettygrove street frontages form a strong built edge, and include pedestrian scale fenestration and detailing (canopies, wall scones, architectural cornices) at the sidewalk level. The 5'-deep canopies that extend along the majority of the ground floors provide shelter for those accessing the building or a place to stop along the sidewalk. The project will include sidewalk improvements that conform to PBOT's standards for sidewalk paving, street lights, and street trees for a consistent frontage treatment that creates a pleasant and safe environment. No vehicle access is proposed to the building and the existing curb cuts along both street frontages will be removed, which will eliminate any vehicle-pedestrian conflicts.

At the hearing on November 6th, the Design Commission indicated the ground level of both buildings could be improved to strengthen the base and provide more active frontages. The applicant revised the ground level of the project to: raise the head height of the windows, doors and canopies, deepen the building setback on Overton and add individual entries to the residential units, and eliminate the building setback along Pettygrove and convert the residential units to one large live-work space.

At the hearing on December 4th, the Design Commission stated the revisions were an improvement, however, larger porches and more gracious entries were needed to the ground floor units along Overton. In response, the applicant moved the Overton building back an additional 1' for an overall depth of 5' from the street lot line. The applicant combined the 4 ground level residential units into 2 larger units, each with its own entry on Overton Street with several options for the porch design.

At the hearing on December 18th, the Design Commission stated the relationship between the ground floor residential units still needed further separation from the sidewalk (horizontal or vertical) or should be changed to live-work. In response, Applicant raised the interior of the 2 ground floor residential units in the Overton building by 3' with stairs, landings and raised landscape planters along the frontage. These revisions improve the transition from the public sidewalk to the private residential unit and allows for a sense of privacy within the unit without having to "draw the blinds". As revised, the project better activates the street frontage, provides a sense of enclosure, and adds interest along the sidewalk level. *As revised, these guidelines have been met.*

E4. Corners that Build Active Intersections. Create intersections that are active, unified, and have a clear identity through careful scaling detail and location of buildings, outdoor areas, and entrances.

Findings: This project is not located at an intersection (Overton Building is closest at 100' from the corner), and is a mid-block, in-fill development. The main building entries are located at the mid-block of NW Overton and Pettygrove Street. Within the program of the project's residential use, the proposed design is intended to be visually active, distinguished, and visible from the nearby street intersections. *This guideline is met.*

D2. Main Entrances. Make the main entrances to houses and buildings prominent, interesting, pedestrian accessible, and transit-oriented.

Findings: The main building (lobby) entrances are recessed 5' (Pettygrove building) and 10' (Overton building) from the sidewalk along their respective frontages and include large windows and doors to the interior. The entries also include prominent, 5'-deep canopies that announce the destination, provide protection for pedestrians, and are directly connected to the public sidewalk. The facades surrounding the entrances will be clad in a gray precast stone, and along with the wall sconces flanking the entries and signage attached to the canopies, the access points of both buildings will be easily identifiable.

The Design Commission suggested at the hearing on November 6th that three points of access to each building along its street frontage was confusing. The Design Commission recommended consolidating some of the egress doors to clarify the access points. In response, the applicant relocated the egress doors

near the main lobby entries of both buildings to discharge into a deeper main entry alcove and so that they are not placed directly on the street facing façade. Removing one door on each street façade and increasing the depth of the alcove at the lobby increases the prominence of the main building entrance. *As revised, this guideline has been met.*

D1. Outdoor Areas. When sites are not fully built on, place buildings to create sizable, usable outdoor areas. Design these areas to be accessible, pleasant, and safe. Connect outdoor areas to the circulation system used by pedestrians;

D3. Landscape Features. Enhance site and building design through appropriate placement, scale, and variety of landscape features.

Findings for D1 and D3: A diversely landscaped courtyard includes layers of low lying plant materials, medium height plant materials, and taller trees to provide a gradation of scale and visual variety. Plant material will also be used to screen mechanical equipment within the enclosed courtyard. The courtyard is designed to create “rooms” with seating areas, a pergola, and fire table that is accessible to all residents for social gatherings. The courtyard is not directly connected to the sidewalk along either street frontage; however, it is accessible via the overhead doors and lobby entry points of both buildings.

As suggested by the Design Commission at the hearing on November 6th, the applicant removed the shallow, at-grade planters that lined both building frontages to create a more urban condition. The applicant also moved the Pettygrove building closer to the street lot line and the Overton building further back to better reflect the character on each street. Small at-grade planters remain within the recesses along the Pettygrove frontage where deciduous trees with a columnar habit will provide some texture and interest within the alcove.

The Design Commission also stated the interior and exterior bike parking needed to be more integrated as did the courtyard and the building. The applicant made several improvements to the courtyard in response:

- Covered structures have been added above all exterior bike parking spaces in courtyard that complement courtyard pergola design.
- Pergola and bike shelter roof covers have been changed to a higher-quality translucent Pentaglass polycarbonate panel.
- Courtyard-facing ground level walls of both buildings have been revised to include overhead doors, bike parking, canvas canopies.

As revised, the project incorporates landscaping and other features that enhance both the public (street edge) and private (inner courtyard) areas of the development. *These guidelines have been met.*

D4. Parking Areas and Garages. Integrate parking in a manner that is attractive and complementary to the site and its surroundings. Locate parking in a manner that minimizes negative impacts on the community and its pedestrians. Design parking garage exteriors to visually respect and integrate with adjacent buildings and environment.

Findings: No parking or loading is proposed. See Adjustment findings below in Section 2 for discussion regarding the loading. *This guideline is not applicable.*

D5. Crime Prevention. Use site design and building orientation to reduce the likelihood of crime through the design and placement of windows, entries, active ground level uses, and outdoor areas.

Findings: The proposed design includes several features that reduce the likelihood of crime. The numerous street-facing entries with large transparent windows and doors as well as the active uses within the ground level promote more “eyes on the street”. Wall sconces adjacent to all the entries along both frontages provide additional light at night for residents and visitors. The landscape plant materials within the building setback along the sidewalk are designed at a modest scale to ensure visibility from the sidewalk and prevent “hiding places” in dense opaque hedges. *This guideline has been met.*

D8. Interest, Quality, and Composition. All parts of a building should be interesting to view, of long lasting quality, and designed to form a cohesive composition.

Findings: The design of the buildings is influenced by the façade rhythm, proportions, and projecting bays typical in the Northwest Plan District. In addition to the distinct vertical regularity of the façade, the design includes a visually defined base, middle, and top composition. The two-story building bases are distinguished from the upper floors above, and the top floor levels are demarked by a cornice band at the sixth floor. This composition is used consistently along the street-facing and end walls. Architectural details such as the steel rod suspended canopies at the ground floors, brick soldier course cornice, signage above the main entry canopies, recessed window frames within both the brick and stucco, and the roof parapet cornices embellish the overall design by providing this additional layer of visual interest and quality.

The original material palate consisted of red brick, precast stone, painted fiber cement lap siding, black framed windows, and painted fiber cement accent panel. Brick remains the predominant street-facing exterior material, which provides a sense of permanence and a finer grain texture and visual scale relative to the overall size of the building façades. In response to the Design Commission concerns stated at the November 6th hearing, the applicant increased the amount of brick on the street facades, reduced the amount of fiber cement board and introduced stucco finish on the end walls.

At the hearing on December 4th, the majority of the Design Commission felt the material palate needed to be simplified and a number of combinations were discussed. In response to these comments, Applicant completely removed the fiber cement lap siding from the project and replaced it with a stucco finish. Brick remains the primary material on the street facades and stucco now occurs within the recessed alcoves on the street facades and on the entirety of end and rear walls. The horizontal reveals in the stucco on the end walls align with the brick cornices on the brick facades and provide some articulation and relief on these large facades.

The proposed “Senergy 1000” stucco system proposed is a rigid cement board product with a trowelled stucco texture application. It appears durable and appropriate for a non-primary façade finish. To ensure a consistent finish, the City Council finds that it is necessary to impose a condition of approval requiring application of at least 2 coats of stucco to the panels. *See Condition C.*

At the hearing January 15th, the applicant presented new options for the courtyard canopies and the rear and end wall treatment. The majority of the Design Commission expressed a preference for steel canopies within the courtyard over the proposed canvas awning or optional wood and polycarbonate design, as the steel canopies matched the canopies on the street facades. Regarding the

treatment of the end and rear walls, the majority of the Design Commission stated the option presented at the hearing with a dark color and no banding on all three non-street facades of both buildings was preferred and represented a more historic diagram over the other colors of stucco and banding of the proposed design. The Design Commission determined that both of these options provide more coherency among the building façades and elements. The City Council agrees and adopts conditions of approval to ensure compliance with these changes. See Conditions D and E.

As revised and conditioned for steel canopies in the courtyard and same dark color and no banding on the non-street facades, the project results in coherent composition with high-quality materials on all facades providing texture and interest on all sides of the buildings. *This guideline has been met.*

(2) ADJUSTMENT REQUESTS – SECTION 33.805

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met.

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

Findings: Based on the number of units within each building, one 9'x18' loading space is required by code for *each* building. The project requests to not provide either of these loading spaces and instead seek temporary loading areas along the site's street frontages on an as-needed basis.

The purpose of the loading requirement is to ensure: adequate areas for loading for larger uses and developments; that the appearance of loading areas will be consistent with that of parking areas; and 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 (ROW).

The proposal is for an entirely residential building, with the exception of 1 live-work space, with relatively small units. As such, the project does not have the rate or capacity of loading/delivery needs that a commercial building or tenants

would have. The frequency of loading for the proposal would be highest at the initial occupancy of the building and then limited to changes in tenancy. Given the low rate of loading needs, two ground level loading bays with curb cuts that reduce the number of on-street parking spaces is not warranted. As mentioned by the applicant, the on-site management company can secure temporary on-street loading permits from Transportation to handle the occasional loading needs. The location of temporary loading would be in designated on-street parking areas and thus have no adverse impacts on traffic or transportation functions in either street. Not having loading on the site will eliminate the potential for vehicle conflicts with pedestrians on the sidewalk. Lastly, having no on-site loading means curb cuts are not necessary. This will provide up to 2 new on-street parking spaces along Pettygrove street frontage. Along Overton, on-street parking does not currently exist due to the two curb cuts and a loading zone. Without an on-site loading space, the project will restore the entire 100' frontage along Overton to on-street parking for potentially 5 vehicles. As demonstrated above, the proposal meets the purpose of the loading regulations. *This approval criterion is met.*

- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area; and

Findings: The site is located in the EX, Central Employment Zone and within the Urban Character Area D: Transition Area, of the Northwest Plan District. The desired characteristics of the Transition Area include ground floors that contain main entrances, windows and active areas that contribute to the pedestrian-oriented landscape. By not providing loading within the building, more of the ground floor is dedicated to pedestrian uses along the sidewalk. *This approval criterion is met.*

- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. *This criterion does not apply.*

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

Findings: There are no city-designated scenic or historic resources on this site. *This criterion does not apply.*

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

Findings: Because there were no impacts identified in the findings, *this criterion does not apply.*

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

Findings: This site is not within an environmental zone. *This criterion does not apply.*

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.

PROCEDURAL ISSUES RAISED BY APPELLANT

The appellant also contended the Design Commission erred in its processing and review of the application by: (1) granting a continuance after the Design Commission made a decision to deny the applications; and (2) permitting the applicant to waive the 120-day review clock. For the reasons explained below, the Council finds the Design Commission did not err. Even if it did, any procedural error did not prejudice to any of the appellant's substantial rights.

First, the record reflects that the applicant simply extended the City's review period until March 29, 2015. The applicant did not completely waive the City's review period. State law (ORS 227.178(5)) expressly allows permit applicants to extend the 120-day period for a specified period of time in writing. The City Council finds that that is what occurred here. As a result, the City Council finds the City committed no procedural error in this regard.

The appellant further contends that City staff erred by granting a continuance of the matter in response to Applicant's written extension of the 120-day review period. This is factually incorrect. City staff did not actually grant a continuance in this matter. Rather, the Design Commission granted a continuance at its December 4, 2014 hearing. Further, at the time the applicant submitted a request to extend the 120-day clock, the Design Commission had not yet adopted a final written decision. The Design Commission had made a tentative and nonbinding decision in this matter at the time the Design Commission approved a continuance. Neither the City Code nor Oregon law precluded this action. A local decision-maker has the discretion to adopt a final written decision that varies from a tentative decision when new facts arise between the tentative and final decisions. The record reflects that new facts arose in this case because the applicant revised the proposal between the tentative and final decisions.

Second, the City Council finds that any error procedural error the City may have committed did not cause prejudice to any of Appellant's substantial rights. These rights include an opportunity to prepare and submit the party's case and the right to a full and fair hearing. After the Design Commission granted the continuance in this matter, the Design Commission held three additional hearings pertaining to the application at which the appellant appeared and testified. Further, the Design Commission left the record open after two of these hearings to allow for submittal of additional testimony, at the appellant's request. As a direct result of the continued hearings and ongoing dialogue between the appellant and the applicant, the applicant revised the plans to address many of the concerns expressed by the appellant. Stated simply, the appellant received and used the numerous opportunities provided to make its views known to the Design Commission and the appellant's substantial interests were not prejudiced. Accordingly, any procedural error is harmless in nature and does not require corrective action by the City Council.

V. 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 project revisions have been responsive to the Commission's concerns at the prior hearings. Of the two options presented as the hearing on January 15th for the ground level uses and design for the Overton building, the Commission preferred the raised residential units over the at-grade live-work design. The vertical separation and stoops of the residential option provides transition from the sidewalk to the individual ground floor units and allows for visual and physical connections that activate the sidewalk level. The Adjustment allows for the ground floor to be dedicated to uses that enliven, and do not conflict with, the pedestrian environment, as well as provide for new on-street parking spaces. The proposal meets the applicable design guidelines and Adjustment criteria and therefore warrants approval.

VI. DECISION

It is the decision of Council to deny the appeal of the Northwest District Neighborhood Association and uphold the Design Commission's conditional approval as noted below:

Approval of 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).

Conditions of Approval:

- 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 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

The applicant prevailed.

VII. APPEAL INFORMATION

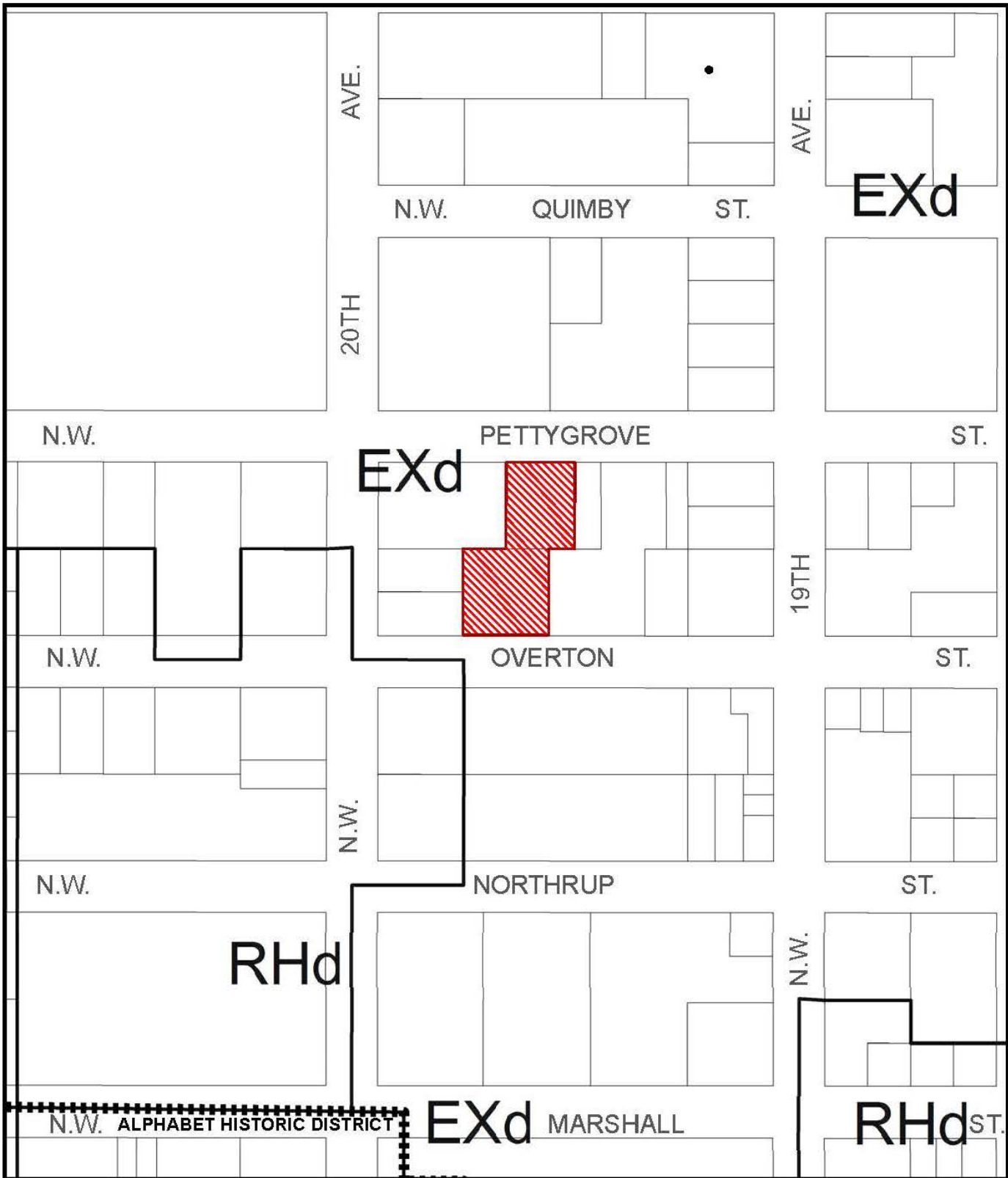
Appeals to the Land Use Board of Appeals (LUBA)

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. Project Narrative, Development Standard Compliance & Responses to Approval Criteria.
- B. Zoning Map (attached)
- C. Plan & Drawings
 - 1. Through 32 (C4.1, C2.1, C2.2 and C2.3 attached)
- D. Notification information:
 - 1. Posting letter sent to applicant
 - 2. Notice to be posted
 - 3. Applicant's statement certifying posting
 - 4. Mailed notice
 - 5. Mailing list
- E. Agency Responses: see interagency comments from building permits 14-177163 CO and 14-177160 CO.
- F. Letters
 - 1. Ronald H. Forehand, September 23, 2014, stating concerns with the lack of parking for the project.
 - 2. John Acree, October 23, 2014, stating concerns with the lack of parking for the project.
 - 3. Sherry Fox, November 5, 2014, stating concerns with the lack of parking for the project.
 - 4. Ron Walters (representing Northwest District Association, NWDA), November 6, 2014, stating concerns with compatibility, building materials and composition, ground level units, and lack of loading and parking for the project.
 - 5. List of four testifiers from the hearing all in opposition of the project stating similar concerns as those from the NWDA.
- G. Other
 - 1. Original LUR Application
 - 2. Copy of Staff Report dated 10/27/14
 - 3. Copy of Staff's PowerPoint Presentation from 11/6 hearing
- H. After First Hearing
 - 1. Signed 120-Day Review Period Extension Form dated 11/13/14
 - 2. Letter from NWDA, dated 11/13/14, stating additional project concerns.
 - 3. Memo from applicant dated 11/21/14, summarizing project changes
 - 4. Revised Staff Report dated 11/24/14
 - 5. Memo to Commission dated 11/24/14
 - 6. Letters from NWDA to BDS Director, dated 12/2/14, stating land use review procedural concerns.
 - 7. Letters from NWDA to Design Commission, dated 12/2/14, stating land use review procedure concerns.
 - 8. Copy of Staff's PowerPoint Presentation from 12/4/14 hearing
 - 9. Signed 120-Day Review Period Extension Form dated 12/4/14

10. Letter from Ron Walters to BDS Director, dated 11/24/14, stating land use review procedure concerns.
 11. Memo from applicant, dated 11/25/14 indicating requests to meet with NWDA.
 12. Letter from Ron Walters to Design Commission dated 12/4/14, stating land use review procedure concerns.
 13. Testifier slip from 12/4 hearing, requesting a continuance for the record to remain open.
 14. Revised Staff Report dated 12/15/14
 15. Memo to Commission dated 11/24/14
 16. Copy of Staff's PowerPoint Presentation from 12/18/14 hearing
 17. Letter from Ron Walters to Design Commission, dated 12/15/14, stating land use review procedure concerns.
 18. Letter from Steve Pinger to Design Commission, dated 12/18/14, stating concerns with land use review procedure and approval criteria not met.
 19. Testifier slips from 3 oral testimonies from the 12/18/14 hearing (1 in support of project, 2 in opposition)
 20. Signed 120-Day Review Period Extension Form dated 1/12/15
 21. Staff Memo to Commission dated 1/9/15
 22. Revised Staff Report dated 1/9/15
 23. Copy of Staff's PowerPoint Presentation from 1/15/15 hearing
 24. Letter from Steve Pinger representing the NWDA to Design Commission, dated 1/15/15, stating approval criteria D7 (Blending into the Neighborhood) has not been met.
 25. Five letters of support provided at the 1/15/15 hearing to the Commission
 26. Supplemental images from the Applicant depicting options to the canopies and end/rear wall treatments.
- I. Appeal
1. Appeal Submittal
 2. Appealed Decision
 3. Notice of Appeal
 4. NOA Mailing list
 5. Appeal comment letter from Brian Hill, received February 25, 2015
 6. Appeal comment letter from Karen Karlsson, received March 2, 2015
 7. Appeal comment letter from Ron Walters, received March 4, 2015
 8. FIPIS
 9. Commissioner's Assistant Briefing Memo
 10. Staff PowerPoint presentation from Council appeal hearing



ZONING



Site

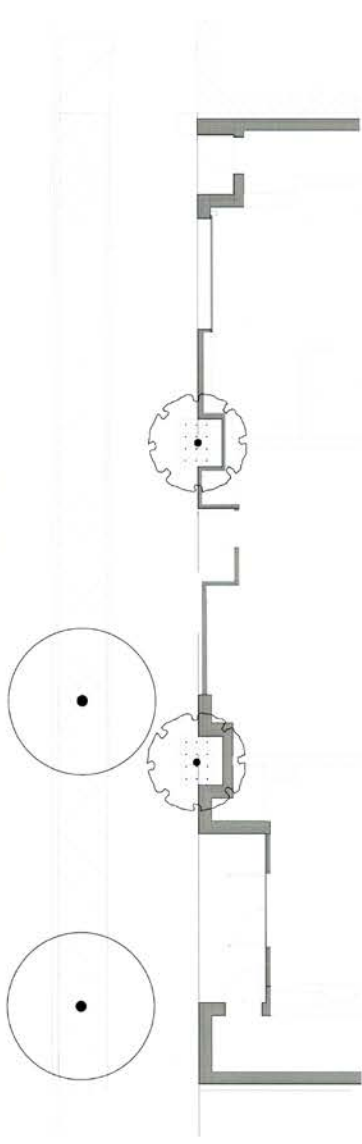


NORTH

This site lies within the:
NORTHWEST PLAN DISTRICT

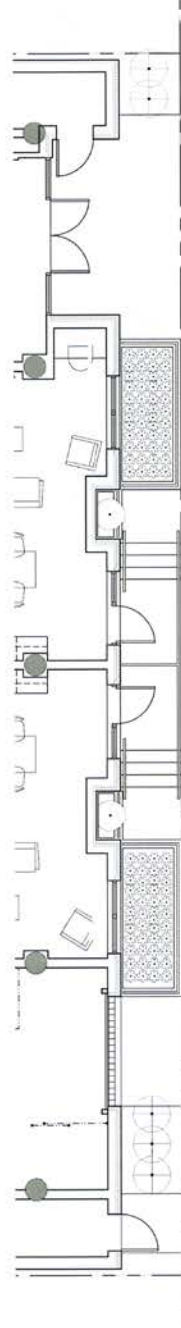
File No. LU 14-220722 DZ, AD
 1/4 Section 2928
 Scale 1 inch = 150 feet
 State_Id 1N1E33AB 9500
 Exhibit B (Oct 3, 2014)

NW PETTYGROVE STREET

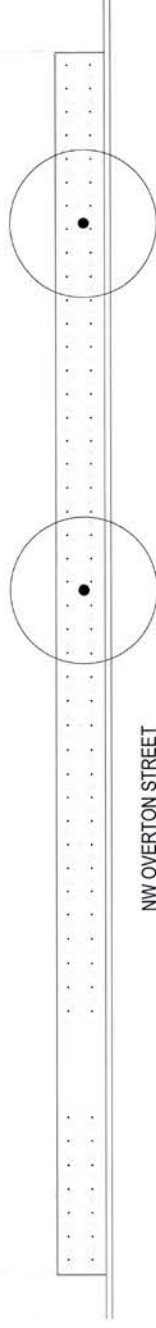


PLANTING PLAN - PETTYGROVE STREET

SCALE: 1"=10'-0"



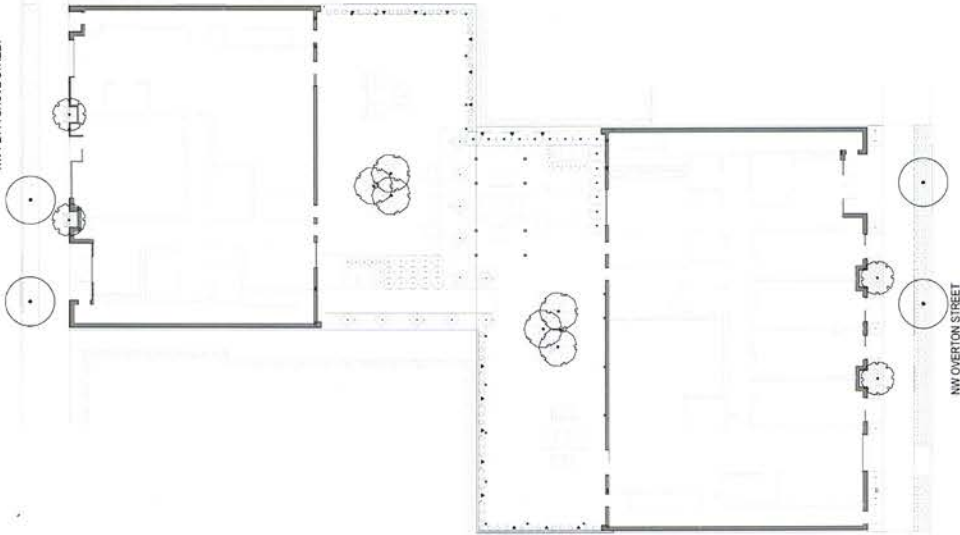
NW OVERTON STREET



PLANTING PLAN - OVERTON STREET

SCALE: 1"=10'-0"

NW PETTYGROVE STREET



PLANTING PLAN - OVERALL

SCALE: 1"=30'-0"



Approved

City of Portland - Bureau of Development Services

Planner: *SMW*

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

