



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

Carmen Rubio, Commissioner
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Date: May 24, 2023
To: Interested Person
From: Andrew Gulizia, Land Use Services
503-865-6714 / Andrew.Gulizia@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 23-019877 AD

GENERAL INFORMATION

Applicant: Keri Erwin | Hacker Architects
555 SE Martin Luther King, Jr. Blvd., Ste. 501 | Portland, OR 97214
(503) 227-1254 | kerwin@hackerarchitects.com

Property Owner: Upshur Acquisition LLC
2222 NE Oregon St #208 | Portland, OR 97232

Site Address: 2631 NW Upshur St.

Legal Description: BLOCK 15 W 49.5' OF LOT 3 LOT 4-6, LOT 13-16, NORTH PORTLAND;
BLOCK 15 LOT 7&12, NORTH PORTLAND; BLOCK 15 LOT 8&9,
NORTH PORTLAND

Tax Account No.: R612701950, R612701990, R612702010,
State ID No.: 1N1E29DD 03300, 1N1E29DD 03400, 1N1E29DD 04600
Quarter Section: 2826
Neighborhood: Northwest District, contact Greg Theisen at
planningchair@northwestdistrictassociation.org

Business District: Northwest, contact at nobhillportland@gmail.com
District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at
darlene@nwnw.org

Plan District: None
Zoning: CM2 – Commercial/Mixed Use 2
RM3d – Residential Multi-Dwelling 3 with Design (“d”) overlay zone
Case Type: AD – Adjustment Review
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee

Proposal: The applicant proposes a 5-story, mixed-use development with ground floor commercial space, 250 dwelling units, and 146 garage parking spaces. Two separate building forms would rise from a shared, two-level underground parking garage. The proposed building height is 60 feet.

Part of the site is zoned RM3d, which allows a maximum building height of 65 feet (Zoning Code Section 33.120.215.B.1, Table 120-3). The RM3d-zoned part of the site is subject to Design Review, which is underway separately (case file LU 22-213164 DZ).

The subject of this Adjustment Review is the CM2-zoned portion of the site. The CM2-zoned portion of the site does not require Design Review, but the maximum base height in the CM2 zone is 45 feet (Zoning Code Section 33.130.210.B.1, Table 130-2). An additional 5 feet of building height is allowed for this building because of high ceilings on the ground floor (Zoning Code Section 33.130.210.C.8), bringing the outright-permitted building height maximum to 50 feet. The applicant requests Adjustment Review approval to allow 60 feet of building height in the CM2-zoned portion of the site. The applicant proposes to mitigate for the additional building height by setting the 5th story 12 feet further back from the NW Vaughn Street lot line than the first four stories.

Relevant Approval Criteria: To be approved, this proposal must comply with the Adjustment Review approval criteria in Zoning Code Section 33.805.040.A-F.

ANALYSIS

Site and Vicinity: The subject site is in Northwest Portland and has frontage on three streets: NW Vaughn Street to the north, NW 27th Avenue to the west, and NW Upshur Street to the south. The site is composed of three tax lots and is about 1.4 acres in area. The eastern part of the site is currently developed with single-story apartment buildings and the western part of the site is currently developed with single-story commercial buildings. The applicant intends to demolish the existing buildings. The surrounding area has a mix of residential, commercial, and industrial uses. The tallest building in the area is the Montgomery Park building, which is on the opposite corner of NW 27th Avenue and NW Vaughn Street from the subject site.

Zoning: The portion of the site subject to this Adjustment Review is zoned CM2 (Exhibit B). The CM2 zone is a medium-scale commercial/mixed-use zone intended for sites in a variety of centers, along corridors, and in other mixed-use areas that have frequent transit service. The zone allows a wide range and mix of commercial and residential uses, as well as employment uses that have limited off-site impacts. Development is intended to be pedestrian oriented, provide a strong relationship between buildings and sidewalks, and complement the scale of surrounding residentially zoned areas.

Land Use Review History: A Design Review was recently recorded for this proposal for the RM3d-zoned portion of the site (case file LU 22-213164 DZ). A prior Adjustment Review for this site (case file LU 07-169465 AD) modified the height and loading requirements for a proposed building, but the building approved in that review was never built and the prior approval is now expired.

Agency Review: A “Notice of Proposal” was sent to City agencies and mailed to neighbors April 18, 2023 (Exhibit D-2). The following City agencies responded with no concerns about the proposed Adjustment:

- Bureau of Environmental Services (Exhibit E-1);
- Portland Bureau of Transportation (Exhibit E-2);
- Water Bureau (Exhibit E-3);
- Fire Bureau (Exhibit E-4);
- Site Development Section of the Bureau of Development Services (BDS) (Exhibit E-5); and
- Life Safety Review Section of BDS (Exhibit E-6).

Neighborhood Review: Two comments were submitted in response to the mailed “Notice of Proposal.”

The first was from a neighbor who objected to the proposal because of construction-related impacts (Exhibit F-1). This response did not specifically address the Adjustment request for building height.

The second response was from the Northwest District Association (Exhibit F-2). This letter expressed support for the project but questioned whether such a large setback for the upper story was necessary. The letter also raised questions about street dedication requirements and bike traffic on NW Vaughn Street.

Staff response: While construction impacts are not relevant to the approval criteria for this Adjustment Review, the City will enforce regulations on construction impacts during the building permit review and inspection process.

As explained in the approval criteria findings below, staff finds the significant setback for the 5th story creates the appearance of a 4-story building scale along the street, which is relevant to approval criteria A and B. The Portland Bureau of Transportation (PBOT) responded to the Northwest District Association separately with information on street dedication requirements and bike traffic.

ZONING CODE APPROVAL CRITERIA

33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

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

Findings: The Adjustment request is to increase the maximum building height allowance in the CM2-zoned portion of the site. The purpose statement for the building height standard is in Zoning Code Section 33.130.210.A. The parts of this purpose statement relevant to the Adjustment request on this site are:

The height limits are intended to control the overall scale of buildings.

and

The height limits in the CM2 and CE zones allow for a greater building height at a scale that can accommodate the growth intended for centers and corridors, while relating to the low- to mid-rise scale of neighborhood residential areas.

The 45-foot height allowance for the CM2 zone (with 5 feet of additional height available for tall ground-floor ceilings) is intended to promote a predominantly 4-story building scale in CM2-zoned areas, as stated in Zoning Code Section 33.130.030.C.

In the proposed plans, the “building 1” portion of the development is 5 stories in height. The proposed building height (60 feet) is less than the maximum allowed in the RM3d-zoned portion of the site along NW Upshur Street but requires a significant increase in the height allowance in the CM2-zoned site area along NW Vaughn Street.

Within the CM2-zoned area, the 5th story will be set back 12 feet further back from the NW Vaughn Street lot line than the first four stories (Exhibit C-1). Only the top of the 5th story wall will be visible from the highest sidewalk grade on the opposite side of NW Vaughn

Street (Exhibit A-4, page 30, and Exhibit C-6). The building mass most apparent along NW Vaughn Street will be the 4-story building area.

Staff finds the stepped-back upper story will create a development visually consistent with the 4-story building scale intended for the CM2 zone and limit the apparent scale difference with lower buildings in the area to the extent intended for the zone. While the 5th story will not contribute much to the building scale apparent from NW Vaughn Street, the additional height will help to accommodate the growth intended for this corridor.

For these reasons, staff finds the proposal is equally consistent with the purpose of the building height standard to be modified. Approval criterion A is met.

- B.** If in a residential, CI1, or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I, or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Since the portion of the site subject to this review is in a commercial/mixed-use zone, the Adjustment must be consistent with the classifications of adjacent streets and the desired character of the area.

Street classifications

The increased building height allowed by this Adjustment Review will front on NW Vaughn Street, which is classified as a Neighborhood Collector and Major Transit Priority Street in the City's Comprehensive Plan. PBOT reviewed this Adjustment Review proposal and raised no objections, noting the developer will be required to construct street frontage improvements to accommodate the new development (Exhibit E-2). Therefore, staff finds the proposal is consistent with the adjacent street classifications.

Desired character of area

"Desired character" is defined in Zoning Code Chapter 33.910. Pursuant to this definition, the desired character for the CM2-zoned portion of this site is determined by the character statement for the CM2 zone and the Northwest District Plan.

CM2 zone

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

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

As stated in the findings for approval criterion A, the 5th story within the CM2 zone will be set back 12 feet further from the NW Vaughn Street lot line than the first four stories, and only the top of the 5th story wall will be visible from the sidewalk on the opposite side of NW Vaughn Street. Since the building mass most apparent from the street within the CM2 zone will be 4 stories in height, the development will be visually consistent with the 4-story building scale intended for the zone and the scale difference with lower buildings nearby will not appear greater than intended for CM2. The development will also be pedestrian-oriented, with building walls close to the street and entrances oriented to public sidewalks. Therefore, staff finds the proposal is consistent with the CM2 zone character statement.

Northwest District Plan

Staff finds the following statements from the Northwest District Plan (<https://www.portland.gov/bps/comp-plan/documents/northwest-district-plan-2003/download>) to be relevant:

Urban Design Concept Elements: Vaughn Transitional Corridor (page C-6): NW Vaughn Street is a seam that both separates and connects the Guild's Lake Industrial Sanctuary and the residential and mixed use neighborhood to the south. City policies have contributed to its serving as a stable boundary for the Industrial Sanctuary. New development has been oriented to employment and commercial uses that have limited negative impacts on nearby residences and industrial operations. The north side of NW Vaughn Street is characterized primarily by uses that are compatible or synergistic with industrial businesses. Development on both sides of NW Vaughn Street has contributed to an attractive, unified streetscape.

Urban Character: District-Wide Considerations (page C-15): While the emphasis of the Desired Characteristics and Traditions statements that follow is on highlighting the distinguishing characteristics of each urban character area, development throughout the Northwest District should contribute to maintaining the district's architectural scale and its fine-grain pattern of development. New buildings and additions that are taller than the two- to four-story building height that is predominant in the district should have upper stories stepped-back in order to contribute to a more consistent streetscape and to maintain neighborhood scale. Also, the street frontage of large projects should be divided into distinct components that reflect the district's established pattern of partial block massing.

Urban Design Concept Elements: Vaughn Corridor Desired Characteristics and Traditions (page C-24): Future development along NW Vaughn Street should contribute to a more urban and pedestrian-oriented streetscape, with buildings located close to and oriented to the Vaughn Street frontage. While a more unified street orientation along NW Vaughn Street is desired, new buildings should contribute to the architectural diversity of the area. The Vaughn Corridor's stock of late-nineteenth and early-twentieth century structures, including remnants of the Slabtown neighborhood, are an important component of the area's desired character that should be preserved.

Housing Policy (page E-30): Retain the district's existing housing stock and mix of types and tenures. Promote new housing opportunities that reflect the existing diversity of housing and support a population diverse in income, age, and household size.

Urban Design Policy, Objective A (page E-38): Integrate new development with the existing urban fabric by acknowledging the scale, proportions, orientation, quality of construction and other architectural and site design elements of the building's immediate area.

Thurman-Vaughn Subarea Policy C (page E-70): Encourage development on the south side of NW Vaughn Street that includes a continuous frontage of commercial buildings, unifies the streetscape, and supports both the mixed-use area to the south and the industrial sanctuary to the north.

The proposed development will support an attractive, pedestrian-friendly environment along the street, with large street-facing window area and building entrances oriented to the public sidewalk.

The development will be large in scale, but it will have the appearance of two separate buildings (Exhibit C-1). In addition, the 5th story of "building 1" will be stepped back from NW Vaughn Street as called for on page C-15 of the plan, creating a 4-story building scale along the street and minimizing the visual contrast with lower buildings nearby.

The new ground floor commercial space and the new residential units will contribute to the mixed-use neighborhood intended for the south side of NW Vaughn Street without encroaching into the industrial area intended for the north side.

The proposal does not preserve the existing housing units on the site, but a much larger number of new housing units will be created.

For all these reasons, staff finds the proposal is consistent with the Northwest District Plan.

Summary

Staff finds the proposal is consistent with the classifications of adjacent streets and the desired character of the area. Approval criterion B 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: Since only one Adjustment is requested, this criterion is not applicable.

- D.** City-designated scenic resources and historic resources in Historic, Conservation and National Register Districts and within the boundaries of Historic, Conservation and National Register Landmarks are preserved; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s,” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. As there are no scenic resources or historic resources mapped on the subject site, this criterion is not applicable.

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

Findings: As explained above in the findings for approval criteria A and B, impacts from the increased building height will be effectively mitigated by stepping the 5th story 12 feet further from the NW Vaughn Street lot line than the rest of the building. The building will present a 4-story scale to NW Vaughn Street (Exhibit C-6). With the stepped back upper story, staff finds impacts resulting from the Adjustment are mitigated to the extent practical, and that approval criterion E is met.

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

Findings: Environmental overlay zones are designated on the official zoning maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As there are no environmental overlay zones mapped on the site, this criterion is not applicable.

DEVELOPMENT STANDARDS

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

CONCLUSIONS

Staff finds the Adjustment request is consistent with the purpose of the building height requirement to be modified and with the character intended for the site. The upper story benefiting from the height Adjustment will be stepped back significantly from the street,


limiting its visual impact on the neighborhood. Since staff finds the Adjustment Review approval criteria are met, the Adjustment Review is approved.

ADMINISTRATIVE DECISION

Approval of an Adjustment to Zoning Code Section 33.130.210.B.1 to increase the allowable building height in the CM2-zoned portion of the site from 45 feet to 60 feet per the approved plans, Exhibits C-1 through C-6, signed and dated May 10, 2023, subject to the following condition:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-6. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 23-019877 AD."

Staff Planner: Andrew Gulizia

Decision rendered by:  **on May 10, 2023**

By authority of the Director of the Bureau of Development Services

Decision mailed: May 24, 2023

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

Procedural Information. The application for this land use review was submitted on March 8, 2023 and was determined to be complete on April 13, 2023.

Zoning Code Section 33.700.080 states that land use review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on March 8, 2023.

ORS 227.178 states the City must issue a final decision on land use review applications within 120 days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on August 11, 2023.**

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

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

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, and if appealed a hearing will be held. The appeal application form can be accessed at https://www.portland.gov/sites/default/files/2020/lu_type2_2x_appeal_form_071116.pdf. Appeals must be received **by 4:30 PM on June 7, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to email, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision. If this land use review is approved the final decision will be recorded with the Multnomah County Recorder. *Unless appealed*, the final decision will be recorded after **June 7, 2023** by the Bureau of Development Services. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder. For further information on recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

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

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Original narrative/plans
 - 2. April 12, 2023 memo in response to incompleteness determination letter
 - 3. Deed history establishing legal lot of record status
 - 4. Revised narrative/plans
- B. Zoning map (attached)
- C. Plans/Drawings:
 - 1. Site plan (attached)
 - 2. South building elevation (attached)
 - 3. West building elevation (attached)
 - 4. North building elevation (attached)
 - 5. East building elevation (attached)
 - 6. 3D rendering from NW Vaughn St. (attached)
- D. Notification Information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Portland Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Review Section of BDS
- F. Correspondence:
 - 1. Email from Michelle M., dated April 27, 2023
 - 2. Letter from Northwest District Association, dated May 5, 2023
- G. Other:
 - 1. Land use application form
 - 2. Incompleteness determination letter, dated March 21, 2023

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