

**MEMORANDUM**  
DAR HEARING - 060514

TO: Design Review Commission  
FROM: Burton Francis and Preserve the Pearl  
CC: Kara Fioravanti, BDS  
RE: EA 14-134106 DA - Proposed Development of Pearl Block 136  
Date: June 2, 2014

**1. Objections**

The following objections are made on procedural due process grounds based in the federal and state constitutions and also on any other applicable provisions as may be contained in Oregon law, including rules and regulations adopted by Multnomah County and the City of Portland:

a) Inadequate Notice

As the system for application and approval of developments is currently constituted, there is inadequate notice to neighboring property residents and owners regarding projects that have the potential to dramatically impact their lives. Of the many residents of the Riverstone, a project directly across the street and one that will literally stand in perpetual afternoon shadow of this proposal, none have reported to us that they received any direct notice of this project.

The only notice provided regarding consideration of this project in particular, aside from any public filing with the Commission or a preliminary meeting with the neighborhood association, was a notice posted on various corners of the affected building. Such notice relies on a serendipitous encounter with that notice by a resident or owner who might happen by the posting location. Notice to the public regarding a matter of such public impact should not be left to a chance encounter or the off-chance that a privately run organization will notify anyone either within or beyond their membership list.

Instead, direct notice of any proposed development should be provided by US mail to all businesses and residences within 100 yards of the proposed development at least two months prior to any initial contact or submission to the Commission. The ownership/residence information for such a contact is readily available online and would come at a nominal cost in comparison to the overall cost of any project. On balance, keeping residents and owners in a neighborhood apprised of potentially dramatic changes to their quality of life is an important public interest that outweighs the nominal burden on those seeking to change that neighborhood quality.

b) Limitation of Time for Presentation

The developer is generally accorded a generous amount of time to present their project and enjoys further face-time with the Commission in responding to questions. By stark contrast, public comment is limited to only two minutes per person. Thereafter, the developer gets yet another opportunity to address the commission in the form of rebuttal. The process overall is lopsided in favor of one side and does not provide for a full and fair hearing of public concerns.

c) Consideration of Irrelevant Issues

As part of the comment process, the Commission has asked each public commenter to state not only their residence building or location, but has also asked each member of the public to designate the particular side of the building their unit is on. This inquiry appears calculated to elicit information regarding what view, if any, may be affected by the proposal. Private view, however, is not part of the Design Guidelines or Code under consideration and is therefore an irrelevant inquiry that can only provide a basis for the Commission to improperly 'discount' that speaker's comments.

d) Lack of Public Access to Commission Staff

Requests have been directed to Commission staff to arrange a meeting or obtain information regarding this public process. Beyond an initial and brief encounter with one staff member prior to the first DAR hearing, no further opportunity to meet has been allowed. A personal visit to the office and an email requesting a meeting have both gone unanswered and we are mystified as to why we are unable to arrange contact.

In order for this procedure to be a full and fair public hearing, the public is entitled to the service of public servants to facilitate an understanding of the process, explain the applicable rules being applied, and provide the public with an understanding of what they might expect in terms of a procedural time frame. Simply, government should be responsive enough to actually assist the members of the public that collectively embody the 'sovereign' that is the source of that government's legitimacy. Such a response has been lacking in this matter.

e) Preference of FAR Rules Over Height Limitations

It appears that the Commission's general opinion thus far is that if the developer is entitled to a 7:1 FAR, then the height limits as shown on Map 510-3 (75 feet in the area under consideration) are not applicable at least up to 120 feet. However, the applicable code regarding height as acknowledged by the Commission's documents is Zoning Code §33.510.210.E.4. This provision is unequivocal in requiring that all of the listed criteria are met, and specifically:

- e. The increased height will result in a project that better meets the applicable design guidelines; &
- f. Approval of the increased height is consistent with the purposes stated in Subsection 33.510.205.A.

In other words, there is no language in this provision that specifically allows FAR allowances to exceed the 75 foot height limitation in the area. Objection is made to the Commission's interpretation of the applicable provision on the grounds that such an interpretation exceeds the legislative authority delegated to the commission and is contrary to public interest.

## 2. Design Guidelines

The previous Memorandum submitted on behalf of Preserve The Pearl for the DAR on May 15, 2014 is hereby incorporated by reference in its entirety.

In consideration of this project, the developer asks the Commission to find that its proposal 'better meets the applicable design guidelines' because someone in the Pearl District Neighborhood Association suggested that any design 'not screw up 13<sup>th</sup> Avenue.' This is not a design guideline that appears in the Central City plan, the River District Design Guidelines, or the Zoning Code.

By contrast, the proposal must be evaluated by specifically enumerated criteria that do exist in the applicable guidelines, including the following:

- That the proposal conform to a 'step-down' in building heights towards the river;
- That the proposal be oriented perpendicular to the river (cf. the orientation of the street grids south of Burnside and then above Burnside to at least Lovejoy for an historic example of Portland's 'orientation' to the Willamette);
- That the proposal fit in with the existing neighborhood in size, scale, dimension, and over all rhythm;
- That uniquely Portland traits of our neighborhood be preserved, especially preserving as public focal points the iconic Portland images of Mt. Hood, the Union Train Station Tower, and Portland's bridges;
- That any new development minimize shadow/shade impact on public spaces and existing residential neighborhoods.

Clearly a design that develops the entire block up to 7 stories will better meet the above considerations to a far greater degree than the currently proposed 150 foot high wall of apartments or condominiums that disconnects half the neighborhood from the Willamette River and the Union Station Tower.

Accordingly, it is again requested that the Commission reject the current proposal and suggest to the developer that a new design be submitted that includes:

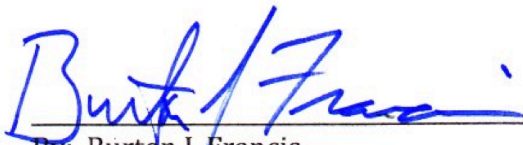
- A reduction in height to no more than 75 feet as per Map 510-3 to better fit the size, scale, dimension, and overall rhythm of this unique area of the Pearl;
- An enhancement of the area's connectedness to the Willamette River, in part by reorienting the design to run perpendicular to the river (consistent with

the existing street grid) rather than north to south, and also by adhering to the "step-down" in building heights to the river as mandated by 33.510.200.A via 33.510.210.E.4.f;

- The preservation of the focal point and centrality of the Union Station Tower as a precious feature of the neighborhood consistent with existing design considerations RDDG A5-1-4 and the specific language of the zoning code at 33.510.210.D;
- A rejection of any request for any bonus height in order to preserve the public resources of sunlight, air, and view to ensure that shadows from this new development do not fall on the public open space of Jamison Park or the residential neighborhoods in the area, and in particular the Riverstone Condominiums directly across the street to the east;
- An enhancement of the street vibrancy found on historic 13<sup>th</sup> Avenue both to the north and to the south of the proposed development area, and better connecting the two with design elements and sidewalk/loading dock-style enhancements.

Respectfully submitted,

Preserve The Pearl



By: Burton J. Francis

Contact Information:

Office:

3430 SE Belmont Street, Ste 209

Portland, OR 97214

Phone: 503.858.4005