



HearingsOfficeClerks@PortlandOregon.gov

503-823-7307



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## RECOMMENDATION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File Number:** LU 24-073674 CP ZC (Hearings Office 4240018)

**Applicant:** Derek Metson  
Greenbox Architecture  
502 7th St #203  
Oregon City, OR 97045

**Owner:** HMS-PDX Holdings, LLC  
1123 NE Fremont St  
Portland, OR 97212

**Representative:** Christie White  
Radler White Parks & Alexander  
111 SW Columbia St., Ste 700  
Portland, OR 97201

**Owner's Representative:** Kerry Hughes  
HMS Developments, LLC  
PO Box 10105  
Portland, OR 97296

**Site Address:** 3508 NE 11TH AVE

**Legal Description:** BLOCK 15 LOT 8 EXC ELY 20', LINCOLN PK; BLOCK 15  
E 20' OF LOT 8 W 30' OF LOT 9, LINCOLN PK

**Tax Account No.:** R497102200, R497102220

**State ID No.:** 1N1E23CD 23900, 1N1E23CD 23800

**Quarter Section:** 2631

**Neighborhood:** Sabin Community Association,  
contact Kathleen McConnell

**Business District:** Soul District Business Association, contact at [info@nnebaportland.org](mailto:info@nnebaportland.org)

**District Coalition:** District 2, contact at [info@necoalition.org](mailto:info@necoalition.org)

**Plan District:** None

**Existing Zoning:** R5 – Residential 5,000

**Land Use Review:** Type III, CP ZP Comprehensive Plan Map Amendment with concurrent Zoning Map Amendment

**PP&D Staff Recommendation to Hearings Officer:** Approve the proposed map amendment to the Portland Comprehensive Plan from Residential 5,000 to Mixed Use-Dispersed. Deny the proposed zoning map amendment from Residential 5,000 (“R5”) to Commercial Mixed Use 1 (“CM1”).

**Public Hearing:** The Hearings Officer held a duly noticed, fully remote public hearing on Wednesday, December 18, 2024. After a brief delay, the Hearings Officer opened the hearing at approximately 1:35pm and closed the hearing at approximately 2:51pm. The Hearings Officer held the record open until December 27, 2024 for additional evidence and testimony. This included architectural renderings the Hearings Officer requested to illustrate the massing of possible development on the site, and final argument from the applicant. On December 27, 2024 the applicant submitted the additional evidence and its final argument, which is Exhibit H-10 in the Hearings Office file. The Hearings Office did not receive any other evidence or testimony during the open record period.

**Testified at the Hearing:**

Amanda Rhoades, City Planner  
Christie White, Radler White Parks & Alexander, Applicant Representative

**In Opposition**

Covell Coleman

Three persons testified at the hearing. Planner Amanda Rhodes made a presentation summarizing the staff report and recommended decision and responded to testimony from the applicant’s representative and questions from the Hearings Officer. Christen White, a land use attorney, testified on behalf of the applicant and likewise responded to testimony from Amanda Rhodes and questions from the Hearings Officer. Finally, a neighbor of the subject property, Covell Coleman, testified and sought clarification on the height restrictions associated with the zoning designations at issue.

## II. BACKGROUND

The subject property is in the Sabin neighborhood, located at 3508 NE 11<sup>th</sup> Ave. It sits on the corner of NE 11<sup>th</sup> and NE Fremont St. A former commercial storefront that was converted to a residence in 1996 is located on the eastern portion of the subject site and fronts NE Fremont. A house on the western portion of the property was demolished in 1991. At this time, with the exception of the converted residence, the site is otherwise vacant.

Slide seven of staff's presentation to the Hearings Officer (Exhibit H-8) includes a photo of site looking north from NE Fremont. It provides a good illustration of the current condition of the subject property. Other photos in Exhibit H-8 show the property in the context of surrounding property and the neighborhood. The staff report (Exhibit H-6) provides a thorough history of prior land use reviews related to the property. The most recent were from 1996, which included a property line adjustment and numerous adjustments to regulations in Title 33 to implement the property line adjustment.<sup>1</sup>

The applicant seeks to change the comprehensive plan map designation and the zoning on the property but does not currently propose any development or redevelopment of the property. The applicant requested a plan amendment from the "Residential 5,000" designation to "Mixed Use-Dispersed" and a concomitant zone change from "Residential 5,000" or "R5" to "Commercial Mixed Use 1" or "CM1."

On the north side of NE Fremont, the site abuts properties improved with single-family dwellings. The Irvington Historic District is south of NE Fremont, where single-family dwellings predominate. Irving Park, an approximately 17-acre park, is a half-block to the southwest of the site. A commercial area sits 1.5 blocks to the east with a block of one-to one-and-a-half-story commercial storefronts. In this location, there are a variety of commercial uses along NE Fremont to the east and west of NE 14<sup>th</sup> which includes a Whole Foods grocery anchoring multiple commercial uses at the northwest corner of NE 15<sup>th</sup> Ave and NE Fremont St. Approximately 2,000 feet to the west of the site, NE Fremont meets MLK, Jr. Blvd, which also features a variety of commercial and, increasingly, residential uses.

Portland's Transportation System Plan classifies the abutting streets as follows:

|                               | <b>Traffic</b>         | <b>Transit</b>        | <b>Bicycle</b> | <b>Pedestrian</b> | <b>Freight</b> | <b>Emergency</b>                | <b>Design</b>      |
|-------------------------------|------------------------|-----------------------|----------------|-------------------|----------------|---------------------------------|--------------------|
| <b>NE Fremont St</b>          | Neighborhood Collector | Transit Access Street | Local Service  | City Walkway      | Local service  | Major Emergency Response Street | Community Corridor |
| <b>NE 11<sup>th</sup> Ave</b> | Local Service          | Local Service         | Local Service  | Local Service     | Local Service  | Minor Emergency Response Street | Local Service      |

Planning staff solicited comments from other city departments and bureaus, other affected local agencies and from neighbors and the Sabin Community Association. No objections were raised regarding the application, and the Sabin Community Association wrote a letter in support of the application.

<sup>1</sup> See Exhibit H-6, pages 3-4. The prior land use reviews do not affect the disposition of this review.

### **III. ANALYSIS**

In order for the city to approve the application, the applicant must demonstrate compliance with relevant criteria in Title 33 of the Portland City Code, which is commonly referred to as the “zoning code” as provided in section 33.10.020.<sup>2</sup> Specifically, the applicant must demonstrate compliance with Chapters 33.810 and 33.855 of the Code, which govern amendments to the comprehensive plan map and zoning map, respectively.

#### **A. Comprehensive Plan Map Amendment Criteria**

For quasi-judicial amendments to the plan map, Section 33.810.050(A) of the Code requires the applicant to show that the following criteria<sup>3</sup> are met:

1. The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole than the old designation; and
2. The requested change is consistent with Statewide Land Use Planning Goals.

In the application, the applicant reviewed these criteria and concluded their proposed plan map change from Residential 5,000 to Mixed Use-Dispersed complied with them. In the staff report, Planner Amanda Rhodes provided a thorough evaluation of the application against these criteria. See Exhibit H-6, pages 5-34. After thoughtful consideration, the staff report found the applicant demonstrated compliance with the criteria, and recommended the Hearings Officer approve the applicant’s request to change the plan map designation to Mixed Use-Dispersed.

The Hearings Officer agrees with staff that the applicant’s requested change complies with the relevant provisions of Section 33.810.050(A). For the reasons stated in the staff report, the Hearings Officer finds that: (1) the Mixed Use-Dispersed plan designation will be equally or more supportive of the Portland Comprehensive Plan than the Residential 5,000 designation; and (2) the change to the plan map designation is consistent with Oregon’s Statewide Land Use Planning Goals.

#### **B. Zoning Map Amendment Criteria**

For this proposed zoning map amendment, the applicant must demonstrate compliance with certain relevant subsections of 33.855.050, specifically subsections (A), (B) and (E). Subsection (E) requires the site that is the subject of the zone change to be within Portland’s city limits. The property is within the city limits of Portland, and therefore the application satisfies subsection (E).

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<sup>2</sup> The Hearings Officer refers to the zoning code as the “Code” throughout this recommendation.

<sup>3</sup> Applications that seek to change a plan map designation from certain industrial or employment designations would need to show compliance with a third criteria in the Code. Because the existing plan map designation for the subject property is residential, this third criteria is not applicable to this application.

Subsection (B) requires the applicant to show that if the zoning designation on the subject property changed, the levels of various public services (e.g., water, sewer, transportation, police, fire, etc.) are adequate to serve the site. The applicant concluded adequate public services would continue to exist if the city approved the zone change.

Planner Amanda Rhodes evaluated the application against the criteria in subsection (B), and likewise found that if the zoning on the property were changed to a designation that corresponds to the Mixed Use-Dispersed plan designation, adequate public services would exist to serve the property. The evidence in the record clearly supports a finding that public services would be adequate if the city approved a change to the property's zoning designation. For the reasons stated in the staff report, the Hearings Officer finds the application meets the relevant criteria in 33.855.050(B).

Whether to approve or deny the application ultimately rests on whether the applicant has demonstrated compliance with subsection (A) of 33.955.050. That subsection requires the applicant to show that:

[t]he zone change is to a corresponding zone of the Comprehensive Plan Map. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes or characteristics of each zone and the zoning pattern of surrounding land.

In this case, the plan map designation of Mixed Use-Dispersed has two corresponding zoning designations the city could apply to the property.<sup>4</sup> One is the CM1 zone, which is the zoning designation the applicant requests. The other is the "Commercial Residential" or "CR" zoning designation. The staff report finds the CR zoning is ultimately the "most appropriate" designation for the property, not the CM1 zone the applicant seeks.

As the applicant acknowledges, determining whether the CR or CM1 zone is the "most appropriate" designation for the property is a subjective exercise. Candidly, the evidence in the record and the arguments for and against applying the CM1 zone do not yield an obvious answer. It is an extremely close call, at least in the context of the subject property.

Ultimately, after careful consideration of the purposes of each zone, and the zoning pattern of the area surrounding the property, the Hearings Officer agrees with the applicant that the CM1 zone is the "most appropriate" zoning designation for the property.

In recommending denial of the applicant's request for CM1 zoning and finding the CR zone to be "most appropriate" per 33.955.050(A), Planner Amanda Rhodes provides a thorough review of the property relative to the surrounding zoning and development patterns and

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<sup>4</sup> In the comprehensive plan, language indicates that a third zoning designation corresponds to the Mixed Use-Dispersed plan designation. That is the "Commercial Employment" or "CE" zone. However, a table in the comprehensive plan only identifies the CR and CM1 as corresponding zones. Because the applicant is not requesting that designation, it is not necessary for the city to resolve that ambiguity in the context of this proposal. Footnote number one in the staff report elaborates on this issue.

detailed comparison of the purposes and characteristics of each zone. Planner Rhodes makes a persuasive case for why CR zoning is “most appropriate.” The applicant likewise provides a detailed justification for the city to apply CM1 zoning. The applicant’s final legal argument (Exhibit H-10) summarizes their points of disagreement with staff’s recommendation regarding the most appropriate zoning for the property.

There are two issues that, in the opinion of the Hearings Officer, tip the scales towards finding CM1 zoning to be most appropriate. For the Hearings Officer, the primary issue relates to the purposes of the CR zone versus the CM1 zone, and specifically whether the site is best described as “isolated” (CR zone) or part of a “dispersed mixed use node within lower density areas” (CM1 zone). The concentration of commercial uses that exist approximately 400 feet to the east of the site, much of which is also zoned CM1, the commercial uses that exist to the west of the site and the multiple civic uses that are directly adjacent to or within blocks of the site (Irving Park and at least two houses of worship) – these characteristics lead the Hearings Officer to find that the property is best described as being in “dispersed mixed use” location on NE Fremont while also being “within [a] lower density area[.]”

The second, somewhat less persuasive reason, is that applying the CR zone to the property would appear to result in the existing building on the property becoming non-conforming to the requirements of the CR zone. The maximum floor-to-area ratio (“FAR”) in the CR zone is 1:1. The maximum FAR in the CM1 zone is 1.5:1. The evidence in the record indicates the existing building has a FAR of 1.13:1, which would exceed the FAR in the CR zone, however slightly. But the existing building would conform to the CM1 zone’s FAR. Of course, the applicant may in the future demolish that building and redevelop the property. While they would be able to likely build a larger building than what the CR’s FAR would permit, the applicant provided a “concept massing diagram” as part of its final argument, which shows potential redevelopment on the site. In the opinion of the Hearings Officer, it does not overwhelm the site and appears consistent with prevailing development and redevelopment in the area.

#### **IV. CONCLUSION AND RECOMMENDATION TO THE CITY COUNCIL**

This application asks the city to approve two changes relative to the subject property. First, the applicant requests the city approve a change to the comprehensive plan map designation from Residential 5,000 to Mixed Use-Dispersed. Second, assuming the city approves the requested change to Mixed Use-Dispersed, the applicant requests the city approve a change to the zoning designation of the property from R5 to CM1.

The Hearings Officer agrees with staff and the applicant that the city may approve the requested comprehensive plan designation change to Mixed Use-Dispersed. With respect to the requested zone change, the Hearings Officer believes there are defensible arguments to apply either the CR or CM1 zoning designation. However, the Hearings Officer ultimately believes the “most appropriate” zoning designation would be CM1.

For these reasons, the Hearings Officer respectfully recommends the Portland City Council approve the application.



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David Doughman, Hearings Officer  
Dated: January 13, 2025

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|---|------------------|
| <b>Application Determined Complete:</b> | October 25, 2024 |
| <b>Report to Hearings Officer:</b>      | December 6, 2024 |
| <b>Recommendation Mailed:</b>           | January 13, 2025 |

**Conditions of Approval.** 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.

**City Council Hearing.** The City Code requires the City Council to hold a public hearing on this case and you will have the opportunity to testify. The hearing will be scheduled by the City Auditor upon receipt of the Hearings Officer’s Recommendation. You will be notified of the time and date of the hearing before City Council. If you wish to speak at the Council hearing, you are encouraged to submit written materials upon which your testimony will be based, to the City Auditor.

If you have any questions, contact the Bureau of Development Services representative listed in this Recommendation.

**The decision of City Council, and any conditions of approval associated with it, is final.** The decision may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearings process before the Hearings Officer and/or City Council; and

- a notice of intent to appeal be filed with LUBA within 21 days after City Council's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**Expiration of approval.** Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your 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 RECEIVED IN THE HEARINGS OFFICE – SEE NEXT PAGE**  
(NOT ATTACHED UNLESS INDICATED)

The exhibits in the land use case file are all assigned a letter (example A-1). The Hearings Office accepts exhibits filed online in its case management system. These exhibits are marked in the lower right hand corner that identifies the exhibit as a “Portland Hearings Office” exhibit. All of these exhibits are designated “H Exhibits” (that is, Hearings Office Exhibits). See the BDS Staff Report for a list of exhibits prior to “H.”

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### Exhibits, Orders, and Other Attachments

| <b>Number</b> | <b>Title</b>                                     | <b>Status</b> |
|---------------|--|---------------|
| Exhibit 1     | Land Use Intake Form                             | Accepted      |
| Exhibit 2     | 120-Day Extension Request Form                   | Accepted      |
| Exhibit 3     | Email Chain with PP&D                            | Accepted      |
| Exhibit 4     | Hearings Office Notice of Hearing                | Accepted      |
| Exhibit 5     | Zoom Land Use Hearing Participation Instructions | Accepted      |
| Exhibit 6     | STAFF REPORT                                     | Accepted      |
| Exhibit 7     | Applicant's Response to Staff Report             | Accepted      |
| Exhibit 8     | STAFF PRESENTATION                               | Accepted      |
| Exhibit 9     | Closing Record Form                              | Accepted      |
| Exhibit 10    | New Evidence and Final Legal Argument            | Accepted      |