

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

GOOSE HOLLOW FOOTHILLS LEAGUE,
WILLIAM P. BUCK, PATRICIA GARDNER,
STEVEN M. HOFH, SHARON PAGET
and JERALD M. POWELL,
Petitioners,

VS.

CITY OF PORTLAND,
Respondent,

and

NANETTE WATSON and PETER FINLEY FRY,
Intervenors-Respondent.

LUBA No. 99-105

Appeal from City of Portland.

Peter Livingston, Portland, filed the petition for review and argued on behalf of petitioners. With him on the brief was Lane Powell Spears Lubersky LLP.

Ruth M. Spetter, Senior Deputy City Attorney, Portland, filed a response brief and argued on behalf of respondent.

Nanette Watson and Peter Finley Fry, Portland, filed a response brief and argued on their own behalf.

BASSHAM, Board Member; HOLSTUN, Board Chair; BRIGGS, Board Member, participated in the decision.

AFFIRMED 01/31/2000

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Bassham.

2 NATURE OF THE DECISION

3 Petitioners appeal a decision of the city's Historic Landmarks Commission
4 (commission) approving the design of a multi-story condominium unit in an historic district.

5 MOTION TO INTERVENE

6 Nanette Watson and Peter Finley Fry (intervenors) move to intervene on the side of
7 the city. There is no opposition to their motions, and they are allowed.

8 FACTS

9 The subject property consists of two adjoining lots, one currently vacant and one
10 which contains a deteriorating historic structure that has been approved for demolition. The
11 property is zoned RHd (High Density Residential with Design overlay). The property fronts
12 SW Madison Street, in the southeast corner of the Kings Hill Historic District (District), near
13 a newly constructed light-rail station.

14 The District covers 43 acres and contains 134 buildings. Of the 134 buildings, 108
15 are considered either “primary” or “secondary” contributing structures, which means the
16 structures were built between 1882 and 1942 and contribute to the historic character of the
17 District.¹

¹Properties in the District are classified as (1) primary contributing; (2) secondary contributing; (3) historic non-contributing; (4) compatible non-contributing; and (5) non-compatible non-contributing. According to petitioners, these terms are defined in the National Register of Historic Places Continuation Sheet for the District as follows:

- “1. Primary Contributing: Structures built between 1882 and 1914, and which reflect the styles, traditions, or patterns of buildings typically constructed during this period.
 - “2. Secondary Contributing: Structures built between 1915 and 1942. 1942 marks the conclusion of consistent architectural design within the District. * * * [L]ater buildings generally conflict with the historic character of the District.
 - “3. Historic Non-contributing: Buildings constructed during either the primary or secondary periods of development which have been so altered over time that their original integrity and contributing elements have been lost or concealed.

1 In 1997, intervenor Nanette Watson requested design review for a 21-unit, nine-story
2 condominium project, known as the Madison Condominiums. The design was later modified
3 to a 13-unit, seven-story building, with a basement garage. As modified, the proposed new
4 development is an allowed use in the RHd zone, subject to compliance with criteria
5 governing development in historic districts. On April 12, 1999, city staff administratively
6 approved the decision. The notice of decision described the subject property and immediate
7 neighborhood as follows:

8 “The site is in the far southeast corner of the [District], and is vacant except
9 for a 3-story house that is dilapidated and will be demolished. Immediately to
10 the west are 5 attached houses built about 10 years ago * * * that are non-
11 historic/non-contributing. Across Madison to the north are non-historic
12 apartments and a residence that is historic but non-contributing. Other sites to
13 the west and north within the historic district are developed with a mixture of
14 single dwelling and multi-dwelling development, with several historic
15 landmark houses and other contributing historic sites. There are no historic
16 landmark properties fronting this segment of SW Madison, which dead ends
17 about 200 feet west of SW 20th Avenue. Land to the east, all outside the
18 historic district, has residential development used primarily for offices, and
19 the block to the northeast will soon be razed for future development by the
20 owner, the MAC club. To the south, also outside the district, is a large motor
21 vehicle sales and service development. Other lands nearby to the southeast
22 are a mixture of residential, office, and retail uses.” Record 172.

23 Petitioner Goose Hollow Foothills League appealed the staff approval to the
24 commission. The commission conducted a hearing and, on June 14, 1999, voted to deny the
25 appeal and approve the proposed development. This appeal followed.

26 **FIRST ASSIGNMENT OF ERROR**

27 Petitioners argue that the findings of approval do not adequately address and respond
28 to the applicable criteria, and are not supported by substantial evidence.

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- “4. Compatible Non-contributing: Buildings constructed after 1942, which are compatible architecturally with the significant structures and the historic character of the District.
 - “5. Non-compatible Non-contributing: Buildings constructed after 1942, which are incompatible architecturally with the historic character of the District.” Record 20.

- 1 Development within the District is subject to 10 review criteria found at Portland City
2 Code (PCC) 33.846.140(C).² The challenged findings of approval determine that criteria 2-7
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²PCC 33.846.140(C) provides that proposals for development within an historic district are subject to the following approval criteria:

- “1. Historic character. The historic character of the property will be retained and preserved. Removal of historic materials or alteration of features and spaces that contribute to the property's historic significance will be avoided;
- “2. Record of its time. The historic resource will remain a physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings will be avoided;
- “3. Historic changes. Most properties change over time, those changes that have acquired historic significance will be preserved;
- “4. Historic features. Generally, deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement, the new feature will match the old in design, color, texture, and other visual qualities and, where practical, in materials. Replacement of missing features must be substantiated by documentary, physical, or pictorial evidence;
- “5. Historic materials. Historic materials will be protected. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials will not be used;
- “6. Archaeological resources. Significant archaeological resources affected by a proposal will be protected and preserved to the extent practical. When such resources are disturbed, mitigation measures will be undertaken;
- “7. Differentiate new from old. New additions, exterior alterations, or related new construction will not destroy historic materials that characterize a property. New work will be differentiated from the old;
- “8. Architectural compatibility. New additions, exterior alterations, or related new construction will be compatible with the resource's massing, size, scale and architectural features. When retro-fitting buildings or sites to improve accessibility for persons with disabilities, design solutions will not compromise the architectural integrity of the historic resource;
- “9. Preserve the form and integrity of historic resources. New additions and adjacent or related new construction will be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic resource and its environment would be unimpaired; and
- “10. Hierarchy of compatibility. Exterior alterations and additions will be designed to be compatible primarily with the original resource, secondarily with adjacent properties, and finally, if located within a Historic or Conservation district, with the

1 and 9 do not apply, apparently because the commission felt that those criteria address only
2 circumstances where the proposed development is a modification to an existing historic
3 structure, rather than new development on vacant, or soon-to-be vacant, lots.³ Accordingly,
4 the decision finds compliance only with criteria 1, 8 and 10.

5 With respect to criterion 1, historic character, the decision finds:

6 “The historic character of the property is that it at one time contained two
7 ‘secondary contributing’ structures.^[4] One has been removed and the other
8 will be removed, due to unsound structural conditions. The historic character
9 of residential, multi-dwelling use would be retained. This criterion is met.”
10 Record 175-76.

11 With respect to criterion 8, architectural compatibility, the decision finds:

12 “The proposed new construction is not on the same site as a specific resource,
13 and adjacent properties are not historic. Therefore, architectural compatibility
14 is discussed in [criterion] 10. Hierarchy of Compatibility below. The building
15 will be accessed through at-grade lobby and elevators. This criterion is
16 therefore met.” Record 176.

17 With respect to criterion 10, hierarchy of compatibility, the decision compares the
18 proposed condominium development to several other historic properties in the District, and
19 finds that it is compatible with those properties.⁵

rest of the district. Where practical, compatibility will be pursued on all three levels.”

³For example, the finding with respect to criterion 2, PCC 33.846.140(C)(2), states that:

“No building will remain, due to unsafe conditions. Since the site will be vacant, this criterion does not apply.” Record 176.

⁴The petition for review points out, and the city does not dispute, that the structures were actually “primary contributing” structures, because they were built prior to 1914. However, the finding’s erroneous characterization of the structures’ status plays no discernible role in any assignment of error before us.

⁵The findings with respect to criterion 10 state:

“The proposed building must be compared to the district, since there is no original resource on the site, and adjacent properties are either non-compatible non-contributing or are historic non-contributing. In the immediate vicinity there is a secondary historic 4-plex at the west end of Madison Street, a vacant site adjacent to the 4-plex, and a historic residence is located nearby to the north on SW 20th Avenue.

- 1 Petitioners argue, first, that in addressing criterion 10 the findings treat the relevant
 - 2 “resource” as the entire District, not a particular existing historic structure. In order to be
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“The historic 4-plex is a 2-story concrete and stucco structure above a 4-car garage, with a hipped roof and deep overhangs. It was constructed in 1925 in the Mediterranean style. These apartments ‘represent a transition between the traditional 19th century single-family residence with large landscaped lots to the middle-to-upper class, multi-family buildings erected after 1900, in response to an increase in population, and a trend towards urban living.’ ([F]rom the National Register Nomination). The proposed building is compatible with this structure in that it would use concrete and stucco, and it continues the trend towards urban living, creating more units very near to a regional light-rail station.

“The two nearby historic residences are of Queen Anne and bungalow styles. The one immediately across the street from the site is no longer contributing due to a significant modern addition. Both houses sit well above the street, with basalt rock retaining walls at street level and full or nearly full-story basements. The height to the ridge-line of the houses, measured from adjacent sidewalks, would be about 45 feet, even though they are 2-3 stories in height. There is significant perimeter landscaping for these two sites. The proposal is compatible with these residences since it will include perimeter landscaping and a basalt rock wall, which would meet the sidewalk along SW 20th and continue part of the way up SW Madison. Although the [proposed] condominiums would be 7 stories tall, the height is 75 feet from the sidewalk, measured from the lobby entrance to the top of the penthouse.

“The height of the proposed building is comparable to similar structures that are historic and contributing elsewhere within the Historic district. Most buildings constructed as multiple dwellings that have historic merit are located close to West Burnside, with taller buildings generally closer to Burnside than shorter ones. The Envoy Apartments are the tallest. Although the Envoy is 7 stories high, the building is easily over 100 feet tall, and appears taller given its location on the slope above Burnside. The Madison is in an analogous position, at a far corner of the district, near transit service. However, the Envoy is on a much larger site and is a much more massive building. More comparable are three contributing apartment buildings, the Fordham and Kingsbury on SW Vista, and the Marshall on SW King. These are 5 to 7 stories high, on lots between 5,000 and 10,000 square feet in area, with heights from 67 to 74 feet above the sidewalk level. These apartments were built around 1910, in response to an increase in population and to the new streetcar line connecting to downtown Portland. Similarly, the Madison responds to an increased interest in urban living and the recently completed west-side portion of the light-rail line, with a station located just one block to the south.

“The design takes several cues from these earlier apartments, including corner balconies, archways at lobby entrances, decorative cornices, generous windows, and tri-partite construction, with a defined base, middle and top. While these historic apartments have very high lot coverage, with little or no landscaping, and building walls flush with the sidewalk, The Madison would be less intense, in order to better fit its context and to meet the current development standards. The building would be set back from adjacent properties, in accordance with base zone standards, and to provide outdoor areas for residents. The setbacks would allow required perimeter landscaping and outdoor terraces with planter boxes. The color palette would be two-tone with taupe and beige, and white trim, compatible with Mediterranean color schemes in the District and the use of two tones in most buildings, whether brick or stucco. Balcony railings would be wrought iron, another common material in the District.” Record 177-78.

1 consistent, petitioners argue, the city must similarly interpret the relevant “resource” for
2 purposes of criteria 2-7 and 9 as the entire District, rather than as a specific historic structure.
3 In other words, petitioners contend that the city erred in concluding that criteria 2-7 and 9
4 apply only to proposals to modify existing historic structures, and thus that those criteria do
5 not apply to the proposed new development.

6 Because the commission is not the governing body, our review of its interpretations
7 of the PCC is not subject to a deferential standard of review. *Gage v. City of Portland*, 319
8 Or 308, 317, 877 P2d 1187 (1994). Our standard of review under this circumstance is
9 whether the commission’s interpretation is reasonable and correct. *McCoy v. Linn County*,
10 90 Or App 271, 275, 752 P2d 323 (1988). In the present case, the commission determined
11 that criteria 1, 8 and 10 apply, but that criteria 2-7 and 9 do not. That determination is based
12 on the commission’s apparent view that criteria 1, 8 and 10 have some applicability to new
13 development on a vacant lot, while the other criteria apply only when development affects
14 existing historic structures.

15 At the outset, it is not clear to us that *any* of the criteria at PCC 33.846.140(C) apply
16 to new development on vacant lots. The 10 criteria are each worded such that application of
17 any of them to new development on vacant lots is problematic, at best. However, no party
18 challenges the commission’s determination that criteria 1, 8 and 10 apply to the development
19 proposed here. Petitioners *agree* with the city and the commission that criteria 1, 8 and 10
20 apply, although they take issue with how the commission applied those provisions.

21 Given the arguments before us, we agree with the city that the commission correctly
22 determined that criteria 2-7 and 9 do not apply to the proposed development. Assuming that
23 criterion 10 applies at all, it expressly requires a determination of compatibility with the
24 District, as well as the “original resource,” and “adjacent properties.” In contrast, criteria 2-7
25 and 9 require findings only with respect to the “resource,” “property” or similar terms that
26 clearly refer to modifications to or impacts on an existing structure or site of historic value.

1 If the city had intended criteria 2-7 and 9 to require findings with respect to historic sites or
2 resources in areas of the District other than the structure or property at issue, it knew how to
3 state that requirement, as criterion 10 demonstrates. The commission's interpretation of
4 PCC 33.846.140(C) to the effect that criteria 2-7 and 9 are not applicable to the development
5 proposed here is reasonable and correct.

6 Next, petitioners challenge the extent to which the city considered the proposed
7 construction's compatibility with its surroundings, as required by criterion 10. Criterion 10
8 requires, to the extent practical, compatibility with a hierarchy of structures moving from the
9 original resource to the adjacent properties and ending with a consideration of compatibility
10 with the district. Petitioners argue that the city erred in limiting the scope of "adjacent"
11 structures to those structures directly next door or across the street rather than expanding
12 their scope to consider nearby structures in the immediate neighborhood. Further, petitioners
13 argue that the city considered the proposed construction's compatibility with the high-rise
14 buildings on the other side of the District without considering or giving appropriate weight to
15 the historic single-family dwellings in the immediate neighborhood of the subject property.

16 The city responds that the commission properly applied criterion 10 by comparing the
17 proposed development to historic structures in the District, including several structures in the
18 immediate neighborhood, as well as similar high-rise multi-family dwellings near West
19 Burnside. The city contends that criterion 10's hierarchy of compatibility does not require
20 that special weight be given to proximate locations within the District over more distant
21 locations.

22 We agree with the city that criterion 10 does not require findings of compatibility
23 with any particular *subpart* of the District other than the resource and historic structures
24 "adjacent" to the subject property. The commission limited consideration of "adjacent"
25 structures only to those structures contiguous with or across the street from the subject
26 property, none of which happen to be historic contributing structures. Petitioners cite to a

1 dictionary definition of “adjacent” to the effect that the term can sometimes include
2 noncontiguous, nearby locations.⁶ However, we note that “adjacent” is generally used to
3 describe the relationship between objects of the same type only when the objects are
4 contiguous or nothing of the same nature intervenes. *See Webster’s Third New International*
5 *Dictionary*, 26 (unabridged ed 1981) (“Applied to things of the same type, it indicates either
6 side-by-side proximity or lack of anything of the same nature intervening”). To the extent
7 the dictionary definition of “adjacent” is determinative, the commission’s alleged failure to
8 consider noncontiguous, nearby structures is consistent with that definition.

9 As the city points out, the commission did consider three non-adjacent historic
10 structures in the “immediate vicinity”: a four-plex down the street, a noncontributing house
11 across the street, and a contributing house on an adjoining street. Record 177; *see n 5*.
12 Petitioners fault these findings of compatibility with structures in the “immediate vicinity” as
13 being incomplete and selective. For example, petitioners note that the commission found
14 compatibility with the four-plex in part because of similar exterior use of concrete and
15 stucco, without addressing dissimilarities in height, mass, footprint and historic details.
16 However, because such structures are not “adjacent” the commission’s obligation to consider
17 them, if any, is derived only from its obligation to consider compatibility with the District.
18 As explained above, criterion 10 does not require that weight be given to any particular
19 subpart of the District, in considering compatibility with the District. Petitioners do not
20 suggest that the commission must consider compatibility with each of the 108 historic
21 structures in the District, or that the proposed development must be compatible in every
22 respect with historic structures. Given the diverse nature of historic structures in the District,
23 and the imprecise nature of the requirement for “compatibility,” findings of compatibility

⁶Petitioners cite the *Random House Dictionary of the English Language* (2d ed. 1983), which defines “adjacent” to include: “**1.** Lying near, close, or contiguous; adjoining, neighboring * * *.” Petition for Review 7.

1 with the District pursuant to PCC 33.846.140(C)(10) must necessarily be selective and
2 subjective. We cannot say that the commission's approach in this case, in finding
3 compatibility with the District based on comparison with similar historic apartment buildings
4 on West Burnside, and with a small number of historic structures in the immediate vicinity, is
5 inconsistent with PCC 33.846.140(C)(10). Therefore, to the extent PCC 33.846.140(C)(10)
6 applies to new development on vacant lots, we reject petitioners' challenge concerning that
7 provision.

8 Petitioners raise two other challenges that require discussion. Petitioners argue that
9 compatibility for purposes of PCC 33.846.140(C)(10) is a matter of physical characteristics
10 such as design and architectural detail, and thus that the commission erred to the extent it
11 considered any similarity in *use* between the proposed development and other historic
12 structures, such as the high density residential apartment buildings on West Burnside.⁷
13 Petitioners argue that considering *use* under PCC 33.846.140(C)(10) could justify any
14 residential use in any structure, no matter how incompatible with the design and architectural
15 elements that led to the designation of the historic District. However, it is not clear to us that
16 the uses for which a building is designed are irrelevant for purposes of
17 PCC 33.846.140(C)(10). The commission's discussion of the historic apartments on West
18 Burnside suggests that part of the reason those apartments were designated was that their
19 design and location responded to a particular historic trend: urban, transit-oriented
20 residential use. If that is the case, we see no error in considering similar contemporary trends
21 and responsive designs in determining compatibility under PCC 33.846.140(C)(10).

⁷Petitioners point to the following language as evincing an impermissible reliance on use:

“* * * [The historic] apartments were built around 1910, in response to an increase in population and to the new streetcar line connecting to downtown Portland. Similarly, the Madison responds to an increased interest in urban living and the recently completed west-side portion of the light rail line, with a station located just one block to the south.” Record 178.

1 Finally, petitioners argue that the commission improperly relied upon the fact that the
2 proposed development, like the historic apartments along West Burnside, is located “near the
3 edges of the district.” Record 178. The language petitioners object to is not part of the
4 findings of compliance with PCC 33.846.140(C), but rather part of the overall conclusion,
5 where the commission states:

6 “The applicant proposes a new building in a prominent location that will be
7 especially visible from the streets and lands to the south and east, within
8 Goose Hollow. Above the site, the [District] slopes up to the base of
9 Washington Park, with many mature trees and historic residences. The
10 revised design, shorter and smaller than earlier proposals, incorporates many
11 details and design features of historic buildings within the district. *The height*
12 *and massing is similar to other multi-dwelling structures that have been*
13 *designated historic, near the edges of the district. * * **” Record 178
14 (emphasis added).

15 We understand petitioners to argue that the above-quoted statement rationalizes
16 development of a high-rise multi-dwelling structure in a part of the District that is generally
17 characterized by low-rise structures, because the proposed development is located near the
18 edge of the District, similar to the high-rise buildings on West Burnside. Petitioners contend
19 that “[t]o rely on the subject property’s location on an ‘edge’ of the District is to open the
20 door to modern high-rise development on the three sides of the District which, so far, do not
21 have high-rise development.” Petition for Review 13. However, we do not read the above-
22 quoted statement as justifying the proposed development based on its location near the edge
23 of the District. The phrase “near the edge of the district” describes the buildings on West
24 Burnside, not the proposed development. The stated points of similarity are height and mass,
25 not the location. To the extent the statement implies some similarity of location, the
26 significance it attaches to that similarity is unclear. Finally, it is difficult to read the
27 statement as anything but nonessential verbiage, because it occurs in the decision’s
28 conclusion and not within any finding with respect to approval criteria. *See Lowrie v. Polk*
29 *County*, 19 Or LUBA 363, 365 (1990); *Bonner v. City of Portland*, 11 Or LUBA 40, 52-53
30 (1984) (nonessential findings provide no basis for reversal or remand of a land use decision).

1 The first assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR**

3 Petitioners argue that the commission’s finding of compliance with criterion 1, PCC
4 33.846.140(C)(1), misconstrues and fails to respond adequately to that provision.⁸ We
5 repeat the commission’s finding of compliance with PCC 33.846.140(C)(1):

6 “The historic character of the property is that it at one time contained two
7 ‘secondary contributing’ structures. One has been removed and the other will
8 be removed, due to unsound structural conditions. The historic character of
9 residential, multi-dwelling use would be retained. This criterion is met.”
10 Record 175-76.

11 Petitioners argue, first, that criterion 1 requires that in order to preserve the “historic
12 character” of the existing structure charted for demolition, *that structure* must be “retained
13 and preserved.” In the alternative, petitioners argue that criterion 1 requires that the
14 replacement structure emulate the set of attributes that define the historic character of the
15 original residence. According to petitioners, the proposed development can comply with
16 criterion 1 only if it is consistent with the character of the preexisting structure in terms of
17 “design, height, scale and other salient features.” Petition for Review 14.

18 As explained above, it is not clear to us that PCC 33.846.140(C)(1), or any of the
19 criteria at PCC 33.846.140(C), apply to new development on vacant or soon-to-be vacant
20 lots. The commission’s finding is clearly inconsistent with petitioners’ first argument, that
21 criterion 1 requires preservation of the existing historic structure, which was approved for
22 demolition in a separate proceeding due to “unsound structural conditions.” That
23 interpretation of criterion 1 is reasonable and correct, and we affirm it. *See also Historical*
24 *Development Advocates v. Portland*, 27 Or LUBA 617, 620 (1994) (under the City of

⁸PCC 33.846.140(1) provides:

“The historic character of the property will be retained and preserved. Removal of historic materials or alterations of features and spaces that contribute to the property’s historic significance will be avoided[.]”

1 Portland's code, the city can delay but cannot deny a request to demolish a structure, even if
2 that structure is designated as a historical landmark). But rather than conclude that criterion
3 1 does not apply to the proposed new development, as it did for criteria 2-7 and 9, the
4 commission takes the anomalous approach of finding that criterion 1 applies and is met
5 because "the historic character of residential, multi-dwelling use would be retained." Record
6 176. We understand petitioners' alternative argument to be that if criterion 1 applies, it
7 requires retaining and preserving the "historic character" of the property, not limited to the
8 "residential, multi-dwelling use" of the property. Petitioners argue that:

9 "If the reference to 'historic character' does not refer to the primary
10 contributing structure itself, it must refer to a set of attributes that define the
11 structure and that could be incorporated into a replacement. Otherwise,
12 anyone could buy all of the buildings on the street, demolish them, and build a
13 new structure or structures that had nothing to do with their design
14 characteristics, which the District guidelines are intended to protect." Petition
15 for Review 13 (footnote omitted).

16 Like petitioners, we have some difficulty understanding how "residential, multi-
17 family use" is, by itself, part of the historic character of the soon-to-be demolished structure.
18 Be that as it may, petitioners do not challenge the commission's finding that criterion 1
19 applies and is met because it preserves the residential, multi-dwelling use of the property.
20 Instead, petitioners argue that criterion 1, properly construed, requires that new development
21 on lots where historic buildings once existed must preserve the historic character of those
22 buildings by a design that is consistent with the "design, height, scale and other salient
23 features" of the original. Petition for Review 14. The commission's finding, that criterion 1
24 is met because residential, multi-dwelling use is retained, implicitly but clearly rejects
25 petitioners' view that compliance with criterion 1 under these circumstances requires more.

26 We also reject petitioners' understanding of criterion 1. In our view, the second
27 sentence of criterion 1 illustrates the scope of "historic character" and how that character is
28 "retained and preserved" for purposes of criterion 1. The second sentence requires that
29 "[r]emoval of historic materials or alteration of features and spaces that contribute to the

1 property's historic significance will be avoided." The proposed development does not
2 remove historic materials or alter features or spaces that contribute to the property's historic
3 significance. To the extent that criterion 1 applies at all to new development on vacant lots,
4 it does not require that such development replicate once-existing historic structures on the
5 property, as petitioners suggest. We conclude that the commission did not err in failing to
6 require the proposed new development to be consistent with the design, height and scale of
7 the structure on the property.

8 The second assignment of error is denied.

9 The city's decision is affirmed.