

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

NORTHWEST DISTRICT  
NEIGHBORHOOD ASSOCIATION,  
*Petitioner,*

vs.

CITY OF PORTLAND,  
*Respondent,*

and

NORTHWEST HOUSING ALTERNATIVES, INC.,  
and BLACKSTONE CENTER GROUP,  
*Intervenors-Respondents.*

LUBA No. 2019-003

FINAL OPINION  
AND ORDER

Appeal from City of Portland.

Kenneth P. Dobson, Portland, filed the petition for review and a reply brief and argued on behalf of petitioner.

Nikesh J. Patel, Assistant Deputy City Attorney, Portland, filed a response brief and argued on behalf of respondent.

Timothy V. Ramis, Lake Oswego, filed a response brief and argued on behalf of intervenor-respondent Blackstone Center Group. With him on the brief was Jordan Ramis PC.

Cozette Tran-Caffee, Portland, filed a response brief and argued on behalf of intervenor-respondent Northwest Housing Alternatives, Inc. With her on the brief was Lane Powell PC.

1           ZAMUDIO, Board Chair; RUDD, Board Member; RYAN, Board  
2 Member, participated in the decision.

3  
4           AFFIRMED

09/06/2019

5  
6           You are entitled to judicial review of this Order. Judicial review is  
7 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a limited land use decision by the city council approving (1) historic resource review for three related structures and (2) an adjustment to loading standards applicable to development of new residential units.

**MOTION TO SUBMIT SUPPLEMENTAL MEMORANDUM**

Oral argument in this appeal was held on July 23, 2019. After oral argument, on August 1, 2019, intervenor-respondent Blackstone Center Group (Blackstone) moved to submit a supplemental memorandum and submitted a supplemental memorandum to provide a supplemental response to a question posed at oral argument. Petitioner has not responded to the supplemental memorandum.

The Board did not request or order the parties to submit supplemental briefing. Our rules do not permit supplemental briefing in the absence of a specific request from the Board, and we generally do not allow supplemental briefing, especially after oral argument. *See Cecil v. City of Jacksonville*, 19 Or LUBA 621 (1990) (LUBA will not consider a supplemental brief filed after oral argument where the supplemental brief was not requested by LUBA). The motion to submit a supplemental memorandum is denied and the Board will not consider the supplemental memorandum.

1 **MOTION TO TAKE OFFICIAL NOTICE**

2 The city requests LUBA take official notice of the Community Design  
3 Guidelines, which were adopted by city ordinance. No party objects. LUBA may  
4 take official notice of “[a]n ordinance, comprehensive plan or enactment of any  
5 county or incorporated city in this state, or a right derived therefrom[.]” ORS  
6 40.090(7) (Oregon Evidence Code (OEC) 202). The city’s motion to take official  
7 notice of the of the Community Design Guidelines is granted.

8 **FACTS**

9 The subject property is located on the east side of NW 18th Avenue  
10 between NW Hoyt Street and NW Irving Street in the Historic Alphabet District,  
11 which is within the Northwest Plan District (the district). The Historic Alphabet  
12 District ends within one block to the east of the subject property. The I-405  
13 Freeway is located two blocks to the east of the property. The district is  
14 predominately residential but includes some institutional properties and two  
15 major commercial corridors. Buildings immediately surrounding the subject  
16 property include two-and-one-half-story residential structures and one-story  
17 concrete structures. Multifamily residential buildings ranging from three to six  
18 stories are within blocks to the south, west, and northwest of the subject property.  
19 The neighborhood is one of the city’s more densely populated historic  
20 neighborhoods.

21 The property is zoned High Density Residential (RH) and is within a  
22 historic resource protection overlay. The property is currently developed with the

1 Buck-Prager building, which is a three-story structure and a designated historic  
2 contributing resource built in 1918 (Buck-Prager). Although vacant since 2007,  
3 the Buck-Prager has historically been used as a hospital, later as an arts education  
4 building, and more recently as business offices. The remainder of the property is  
5 currently developed with two surface parking lots on the south and north ends of  
6 the property and a one-story multifamily residential building.

7 Intervenor-respondent Northwest Housing Alternatives, Inc. (NHA)  
8 applied for historic resource review, modification, and an adjustment to (1) adapt  
9 the Buck-Prager for residential use, (2) attach a new four-story addition to the  
10 south side of the Buck-Prager, connected internally on the first floor (South  
11 Addition), and (3) construct a new, detached five-story plus basement building  
12 on the north side of the property (North Building). The South Addition will  
13 replace existing surface parking. Together, the Buck-Prager and South Addition  
14 will contain 48 housing units. The North Building will contain 100 housing units  
15 and will replace existing surface parking and a one-story, non-historic,  
16 multifamily residential structure, which will be demolished. The Buck-Prager,  
17 South Addition, and North Building are designed to appear as three separate  
18 buildings.

19 The Historic Landmarks Commission held two hearings and approved the  
20 proposal with conditions. Petitioner and another individual appealed the decision  
21 to the city council, which held an on-the-record public hearing and approved the  
22 proposal with conditions. This appeal followed.

1 **FIRST ASSIGNMENT OF ERROR**

2 Historic Alphabet District Community Design Guideline 3 (HAD-3)  
3 requires exterior alterations and additions to historic resources be reviewed for  
4 “compatibility \* \* \* primarily with the original resource, secondarily with  
5 adjacent properties, and finally, \* \* \* with the rest of the District.” Petitioner  
6 argues that HAD-3 is not satisfied because the South Addition and North  
7 Building will “tower over” the Buck-Prager. Petition for Review 4. Petitioner  
8 also argues that the overall design is “grossly out of proportion with the smaller  
9 [residential and commercial structures] in the immediate area in terms of scale,  
10 size, setbacks, floor to area ratios, and massing.” *Id.*

11 Petitioner does not identify the applicable standard of review, as required  
12 by our rules. *See* OAR 661-010-0030(4)(d) (“Each assignment of error must state  
13 the applicable standard of review.”). The parties agree that the city’s decision is  
14 a limited land use decision because it involves discretionary design review. ORS  
15 197.015(12)(a)(B).<sup>1</sup> Our review of a limited land use decision is controlled by

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<sup>1</sup> ORS 197.015(12)(a)(B) provides:

“‘Limited land use decision’:

“(a) Means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns:

“\* \* \* \* \*

1 ORS 197.828, which provides, in part: “The board shall reverse or remand a  
2 limited land use decision if \* \* \* [t]he decision does not comply with applicable  
3 provisions of the land use regulations.” ORS 197.828(2)(b).

4 The city council noted that many of the historic review guidelines use the  
5 term “compatible,” but that term is not defined in the city’s regulations. The city  
6 council referred to a dictionary definition and a Historic Landmarks Commission  
7 Guide to the Historic Resource Review Process (Guide) to interpret the meaning  
8 of “compatibility.” The city council found:

9 “[C]ompatibility occurs when a proposal is capable of existing  
10 together in harmony with its context, and shares principles of scale,  
11 proportion, composition, level of detail, materials, and  
12 craftsmanship with the historic resource.” Record 17.<sup>2</sup>

13 The council found that in the Historic Alphabet District, “‘compatibility’ of new  
14 development must be evaluated with reference to the character of the District as  
15 a whole.” Record 17. The city council observed that the Guide explains that  
16 compatibility review considers how modifications and new development fit  
17 together with existing historic resources and the character of the historic district.  
18 The city emphasized that “‘fitting in’ is not the same thing as uniformity. A new

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“(B) The approval or denial of an application based on  
discretionary standards designed to regulate the  
physical characteristics of a use permitted outright,  
including but not limited to site review and design  
review.”

<sup>2</sup> All record citations in this opinion are to the revised record.

1 building can make a statement of its own identity without subverting the character  
2 of the district.” Record 17 (quoting Guide).

3 The city council found that the alterations to the Buck-Prager are “exterior  
4 alterations” and the South Addition is an “addition” such that HAD-3 applies to  
5 those developments. Differently, the council found that the North Building is a  
6 new building that need not be analyzed under HAD-3. However, “out of an  
7 abundance of caution,” the council reviewed all three buildings under HAD-3  
8 and determined that all three structures met the compatibility requirements in  
9 HAD-3 based on the city council’s interpretation of that term.<sup>3</sup> Record 18.

10 The city explained that the district is characterized by a variety of  
11 architectural styles and juxtaposition of building types, including single-family  
12 residences and larger apartment buildings. The city reasoned that under the  
13 hierarchy of compatibility in HAD-3, “the first priority is compatibility with the  
14 historic resource.” Record 23. The city explained that the South Addition and  
15 North Building are compatible with the Buck-Prager because the new buildings  
16 use similar architectural designs as the Buck-Prager such as flat roofs, tripartite  
17 compositions, and zero-front setbacks, design elements that are common in the  
18 historic multi-family and commercial buildings in the district. The city found that

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<sup>3</sup> On appeal, the parties reprise their dispute about whether HAD-3 applies to the North Building. We need not resolve that dispute because the city’s decision assumed that HAD-3 applied to the North Building and we affirm the city’s decision that HAD-3 is satisfied with respect to the entire development.



1 the new buildings share the Buck-Prager’s “principles of scale, proportion,  
2 composition, level of detail, materials, and craftsmanship” and that the addition  
3 and new development can “exist together in harmony with its context.” Record  
4 23. The city observed that nearby residences are two-and-a-half stories with  
5 pitched roofs, low lot coverage, and front and side setbacks. The city found that  
6 compatibility with the Buck-Prager is a higher priority than compatibility with  
7 nearby residential structures.

8         The city found that the South Addition is compatible with the Buck-Prager  
9 because the addition maintains the design composition of the historic  
10 contributing resource, including a modular, running bond brick façade with “bay  
11 rhythm” and punched openings, a base that matches the Buck-Prager base, albeit  
12 with a color differentiation, alignment of opening sills and belt courses between  
13 the buildings, and a cornice element to reduce the perceived height and add  
14 articulation at the top of the building. Record 23–24. The city also found that the  
15 South Addition is compatible with adjacent properties, in part, because the design  
16 reinforces “the neighborhood’s fine-grained pattern of development through use  
17 of smaller than quarter-block building and further breaking down the massing  
18 through material and plane changes.” Record 24. Finally, the city found that the  
19 South Addition is compatible with the district based on the materials and design  
20 features.

21         The city found that the North Building is compatible with the Buck-Prager  
22 based on the symmetrical façade and entrance bay, use of strong tripartite

1 composition, and a cornice element to reduce the perceived height and add  
2 articulation at the top of the building. The city also found that the North Building  
3 is compatible with adjacent properties, in part, because the design reinforces “the  
4 neighborhood’s fine-grained pattern of development through use of a quarter-  
5 block building and further breaking down the massing through material and plane  
6 changes.” Record 24. In addition, the North building will use red brick and square  
7 windows similar to the townhomes across the street and will incorporate historic  
8 window proportions. Finally, the city found that the North building is compatible  
9 with the district based on the materials and design features.<sup>4</sup>

10 With respect to scale, the city found:

11 “The Council considered the appellants’ argument that scale of the  
12 North Building and the South Addition does not reinforce the  
13 District’s fine-grained pattern of development and disagrees. The  
14 North Addition is a quarter block development that has been further  
15 broken down by building articulation as discussed above. The South  
16 Addition and the Buck-Prager, while internally linked, present the  
17 appearance of two separate buildings on a quarter-block parcel. The  
18 City Council finds that for this application, this level of scale is  
19 compatible with the scale of the historic resource, the adjacent  
20 properties, and the District.” Record 22.

21 We understand petitioner to argue that the city’s decision does not comply  
22 with the “compatibility” requirement in HAD-3. Petitioner essentially argues

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<sup>4</sup> The city imposed additional design conditions that the new buildings’ main entrances shall be custom wood storefronts and the detailing of the North Building recesses shall match the bays. Record 25.

1 that the development cannot satisfy the hierarchy of compatibility in HAD-3  
2 because the height and scale of the new buildings is disproportionate to the Buck-  
3 Prager and other residential buildings in the immediate vicinity of the Buck-  
4 Prager.

5 The city considered and expressly stated that “compatible” does not  
6 require uniformity and explained at length why the new buildings are compatible  
7 with the Buck-Prager, adjacent properties, and the district, with an emphasis on  
8 the primary goal of preserving the Buck-Prager and ensuring the development is  
9 compatible with that contributing resource.

10 We are required to affirm a local governing body’s interpretation of its own  
11 land use regulations if the interpretation is not inconsistent with the express  
12 language, purpose, or policy of the comprehensive plan or land use regulations.  
13 ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010)  
14 (applying ORS 197.829(1) standard); *Gage v. City of Portland*, 28 Or LUBA 307  
15 (1994), *aff’d*, 133 Or App 346, 891 P2d 1331 (1995) (LUBA is required to afford  
16 deference under ORS 197.829 to local interpretations of local comprehensive  
17 plans and land use regulations only when those interpretations are made by the  
18 local governing body).<sup>5</sup> Petitioner has not demonstrated that the city’s

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<sup>5</sup> ORS 197.829(1) provides:

“[LUBA] shall affirm a local government’s interpretation of its  
comprehensive plan and land use regulations, unless the board  
determines that the local government’s interpretation:

1 interpretation of “compatible” is inconsistent with the express language of HAD-  
2 3, the purpose of that design standard, or the underlying policy that provides the  
3 basis for that standard.

4 The first assignment of error is denied.

#### 5 **SECOND ASSIGNMENT OF ERROR**

6 The property is within the district’s Urban Character Area C, the Eastern  
7 Edge design subarea. Community Design Guideline (CDG) P1 requires the  
8 development retain the “desired characteristics and traditions” of the designated  
9 design subarea. The Northwest District Plan Amended Design Guidelines  
10 provide “Desired Characteristics and Traditions,” and explain that the Eastern  
11 Edge is “a diverse, mixed-use area with a fine-grain mixture of employment,  
12 residential, and community services” that “serves as a transition and connection  
13 between the residential core of the Northwest District and the more intensely  
14 developed Central City.” Record 26. The city reviewed CDG P1 and Community  
15 Design Guidelines, Appendix J: Excerpt from Northwest District Plan Amended  
16 Design Guidelines – Desired Characteristics and Traditions (CDG Appendix J)

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- “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
  - “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation; [or]
  - “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 and found that the applicable desired characteristics and traditions in the subarea  
2 include:

3 “maintaining the district’s architectural scale and its fine-grained  
4 pattern of development. New buildings and additions that are taller  
5 than the two- to four-story building height that is predominant in the  
6 district *should have upper stories stepped-back* in order to  
7 contribute to a more consistent streetscape and to maintain  
8 neighborhood scale. Also, the street frontage of large projects  
9 should be divided into distinct components that reflect the district’s  
10 established pattern of partial block massing.’

11 “\* \* \* \* \*

12 “New development should contribute to the architectural diversity  
13 of the Eastern Edge and continue its established pattern of partial  
14 block building massing. \* \* \* The historic resources of the Eastern  
15 Edge, part of which is located in the Alphabet Historic District,  
16 should be preserved.” Record 26 (quoting CDG Appendix J; italics  
17 omitted; emphasis added).

18 The city interpreted the phrase “fine-grained pattern of development” to  
19 mean “maintaining the scale of the area’s historic street grid and continuing the  
20 area’s pattern of partial block building massing,” by dividing buildings and  
21 creating distinct wall planes, for example, by creating separate structures, setback  
22 variations, vertical projections, or recessed areas. Record 26. The city interpreted  
23 the taller building step-back guidance as a suggestion, and not a requirement, and  
24 reasoned that the desired characteristics of preserving historic structures and fine-  
25 grained development can be achieved through means other than an upper-story  
26 step-back, such as separate structures or recessed areas. The city also observed

1 that the area includes other tall buildings that do not have upper stories stepped  
2 back.<sup>6</sup>

3 Petitioner argues that the development fails to retain the “desired  
4 characteristics and traditions” of the designated design subarea by allowing the  
5 new buildings to be constructed without the upper stories stepped back. Petitioner  
6 argues that the term “should” in CDG Appendix J either compels the city to  
7 require an upper story step-back or “show good cause why the requirement could  
8 not be met.” Petition for Review 24. Petitioner also argues that the city’s findings  
9 are inadequate and fail to explain how CDG P1 is satisfied.

10 We understand petitioner to argue that the city’s decision does not comply  
11 with CDG P1, the city’s findings are inadequate with respect to CDG P1, and the  
12 city’s decision that CDG P1 is satisfied is not supported by substantial evidence  
13 in the record. ORS 197.828(2)(a), (b). As explained above, we are required to  
14 affirm a local government’s interpretation of its own land use regulations if the  
15 interpretation is not inconsistent with the express language, purpose, or policy of  
16 the comprehensive plan or land use regulations. ORS 197.829(1); *Siporen*, 349  
17 Or 247; see n 5. Adequate findings set out the applicable approval criteria and  
18 explain the facts relied upon to reach the conclusion whether the applicable  
19 criteria are satisfied. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992).

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<sup>6</sup> The record includes examples of taller than four story, multi-family buildings within the district without upper-story step-backs. Record 3256–58, 3268.

1 Findings need not take a particular form and “no magic words need be  
2 employed.” *Sunnyside Neighborhood v. Clackamas County*, 280 Or 3, 21, 569  
3 P2d 1063 (1977). Instead, to be sufficient for review, findings need only  
4 “establish the factual and legal basis for the particular conclusions drawn in a  
5 challenged decision.” *Thormahlen v. City of Ashland*, 20 Or LUBA 218, 229–30  
6 (1990).

7 Blackstone and NHA (together, intervenors) respond, and we agree, that  
8 petitioner has not established that the city’s interpretation of the phrase “should  
9 have upper stories stepped back” as a non-mandatory suggestion is inconsistent  
10 with the express language of CDG P1, the purpose of that design standard, or the  
11 underlying policy that provides the basis for that standard.

12 Following the guidance that historic resources “should be preserved,” the  
13 city found that the primary concern is preserving and maintaining the historic  
14 Buck-Prager. The city found that the primary concern is satisfied by the  
15 development, and that the new buildings “contribute to a more consistent  
16 streetscape” and “maintain neighborhood scale” without upper-story step-backs  
17 based on partial block building massing, distinct wall planes, and separate  
18 structures. Record 26. The city found that “neighborhood scale” includes  
19 buildings as tall as the South Addition and North Building, without upper-story  
20 step-backs. *Id.* The city’s findings adequately explain how the development will  
21 satisfy that policy.

1 The city's findings identify the evidence it relied upon, including the  
2 expertise of the Historic Landmarks Commission, the existence of other taller  
3 buildings in the district without upper-story step-backs, and the design plans for  
4 the buildings that show partial block massing. Those findings are adequate to  
5 explain why the city concluded that CDG P1 is satisfied. We conclude that a  
6 reasonable person could rely on that evidence to support a finding that the  
7 development will "maintain[] the district's architectural scale and its fine-grained  
8 pattern of development," as required by CDG P1.

9 The second assignment of error is denied.

### 10 **THIRD ASSIGNMENT OF ERROR**

11 CDG D6 requires that modifications of the exterior of a contributing  
12 resource "[r]espect the original character of buildings," and that additions "be  
13 compatible in scale, color, details, material proportion, and character with the  
14 existing building." The city interpreted CDG D6:

15 "‘Respect’ means ‘the giving of particular attention to.’ *Webster’s*  
16 *Third International Dictionary*. The City Council interprets this  
17 guideline to mean that exterior finishing materials and architectural  
18 details of the Buck-Prager are respected through giving particular  
19 attention to retention or restoration. The Council further interprets  
20 this guideline to mean that the South Addition should be respectful  
21 and give particular attention to the Buck-Prager by complimenting  
22 the historic resource, but the Guideline does not require that the  
23 South Addition replicate the Buck-Prager’s scale, color, details,  
24 material proportion, and character." Record 34.

25 Petitioner argues that the development does not comply with CDG D6  
26 because the new buildings "are simply not compatible with the original, much



1 smaller Buck-Prager Building in terms of scale, size, and material proportion.”  
2 Petition for Review 26. Petitioner argues that the city’s decision that CDG D6 is  
3 satisfied is not supported by adequate findings or substantial evidence in the  
4 record.

5 Adequate findings set out the applicable approval criteria and explain the  
6 facts relied upon to reach the conclusion whether the applicable criteria are  
7 satisfied. *Heiller*, 23 Or LUBA at 556. Petitioner characterizes the city’s findings  
8 as “conclusory.” Petition for Review 28. We disagree. The city’s findings set out  
9 the approval criteria and explained the facts relied upon to reach the conclusion  
10 that the CDG D6 is satisfied. The city found that modifications to the Buck-  
11 Prager respect the original character of the building, and that the South Addition  
12 design complements and respects the original character of the Buck-Prager. The  
13 city enumerated the facts that it relied upon in reaching those conclusions with  
14 respect to the modifications to Buck-Prager:

15 “• Retaining the resource’s historic architectural details and exterior  
16 materials.

17 “• Conducting extensive seismic upgrade work without disruption  
18 of the street-facing elevation.

19 “• Removing masonry infill and installing windows in original  
20 ground floor window openings on main elevation.

21 “• Replacing metal sash windows with new custom wood single-  
22 hung windows to better match originals.

23 “• Constructing entrance canopy like the original, based on historic  
24 photos.

1 “• Constructing parapet eyebrow like the original, based on historic  
2 photos.” Record 34.

3 With respect to the South Addition, the city found that CDG D6 is met by:

4 “• Maintaining the primary design composition of punched openings  
5 in a modular, running bond brick facade while selecting contrasting,  
6 yet complimentary, brick color to create a clear distinction between  
7 the historic resource and the addition.

8 “• Replicating the resource’s ‘A-B-A-B’ bay rhythm of four-foot-  
9 wide rough opening and four-foot-wide brick wall surface.

10 “• Use of a symmetrical facade with a centered entry bay and metal  
11 entrance canopy.

12 “• Use of a strong base that matches the height of the Buck-Prager’s  
13 base, while using color for differentiation.

14 “• Alignment of the South Addition’s rough opening sills with those  
15 of the Buck-Prager.

16 “• Alignment of the South Addition’s third floor belt course with the  
17 Buck-Prager’s parapet eyebrow.

18 “• Use of a cornice element to reduce the perceived parapet height  
19 and add articulation to the top of the building.” Record 35.

20 Those findings are more than adequate to explain why the city concluded CDG  
21 D6 is satisfied.

22 We will reverse or remand a limited land use decision if “[t]he decision is  
23 not supported by substantial evidence in the record. The existence of evidence in  
24 the record supporting a different decision shall not be grounds for reversal or  
25 remand if there is evidence in the record to support the final decision[.]” ORS  
26 197.828(2)(a). We have previously opined that

1 “the legislature intended LUBA’s standard of review of evidentiary  
2 challenges to limited land use decisions to be different from, and  
3 likely less rigorous than, the standard of review of challenges to land  
4 use decisions. But the express language of ORS 197.828(2)(a) and  
5 the legislative history we have reviewed do not articulate how  
6 substantial evidence review under ORS 197.828(2)(a) differs from  
7 substantial evidence review under ORS 197.835(9)(a)(C).” *Truth in*  
8 *Site Coalition v. City of Bend*, 71 Or LUBA 348, 364, *aff’d*, 273 Or  
9 App 820, 362 P3d 1215, *rev den*, 358 Or 527 (2015).

10 We need not define the precise nature of substantial evidence review of a  
11 limited land use decision under ORS 197.828(2)(a) in this case because, even  
12 under what may be a more rigorous standard of review at ORS 197.835(9)(a)(C),  
13 we conclude that a reasonable decision maker could reach the city’s conclusion,  
14 as explained below. Under the substantial evidence standard in ORS  
15 197.835(9)(a)(C), “[s]ubstantial evidence exists to support a finding of fact when  
16 the record, viewed as a whole, would permit a reasonable person to make that  
17 finding.” *Dodd*, 317 Or 172; *Younger*, 305 Or 346.

18 The city specifically addressed and rejected petitioner’s argument:

19 “The City Council has considered the appellants’ testimony that the  
20 North Building and the South Addition overwhelm the Buck-Prager.  
21 The City Council also considered other evidence in the record and  
22 disagreed. The Council notes the testimony of Kristin Minor, the  
23 chair of the Landmarks Commission, who stated that none of the  
24 Commissioners had concerns with the overall scale and height of the  
25 project at this particular site. The Council finds that the project scale  
26 respects the original character of the Buck-Prager.

27 “The City Council reviewed the appellants’ testimony on this  
28 guideline, including their criticism that the side view of character-  
29 defining quoins at the front corners will be obscured. It finds the  
30 historic resource was designed with solid brick side walls to

1 accommodate abutting buildings, and therefore that the original  
2 architect assumed and planned for the side view to be obstructed.  
3 Therefore, the Council disagrees that this result is out of character.”  
4 Record 34.

5 Petitioner challenges the city’s reliance on the Historic Landmarks  
6 Commission chairperson’s statement that none of the commissioners had  
7 concerns with the overall scale and height of the project.<sup>7</sup> First, we note that  
8 statement is not the sole evidence that the city relied upon to find that CDG D6  
9 is satisfied. As set out above, the city enumerated a list of facts supporting its  
10 conclusion that CDG D6 is satisfied. Second, members of the Historic Landmarks  
11 Commission are selected for their “leadership and expertise on maintaining and  
12 enhancing Portland’s historic and architectural heritage. \* \* \* The Commission  
13 includes a historian, and architectural historian, an architect, two members  
14 representing the public at-large, and two members experienced in either design,  
15 engineering, financing, construction or management of buildings, land  
16 development, archaeology, law, cultural geography or anthropology, or related

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<sup>7</sup> Chairperson Minor’s statement regarding scale and height was as follows:

“I will say that regarding scale and height, that was a unanimous decision. None of the commissioners had concerns overall with the scale and height and that’s important. The historic district does have quite a few disparities in height and style as have been discussed here and these disparities are existing and therefore appropriate and there are just many instances where volume such as those three sort of separate look[ing] buildings really fit into the morphology of this neighborhood.” Record 3184 (Minutes, Portland City Council Meeting, Nov 29, 2018).

1 disciplines.” Record 668. In evaluating whether modifications “respect the  
2 original character” of historic buildings and whether additions are “compatible in  
3 scale” with the existing building, a reasonable person could rely on a statement  
4 from the Historic Landmarks Commission stating that the project design scale  
5 was unanimously not concerning to the commission members. Substantial  
6 evidence supports the city’s conclusion that CDG D6 is satisfied.

7 The third assignment of error is denied.

8 **FOURTH ASSIGNMENT OF ERROR**

9 CDG D7 requires an applicant to “[r]educe the impact of new development  
10 on established neighborhoods by incorporating elements of nearby, quality  
11 buildings such as building details, massing, proportions, and materials.”<sup>8</sup> The city

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<sup>8</sup> The guidelines provide eight examples of how that guideline may be accomplished:

“A. Incorporating elements and details found in nearby structures.  
\* \* \*

“B. Divide large wall areas into distinct smaller planes that are more in keeping with the scale of surrounding development. \* \* \*

“C. Renovating and constructing new commercial buildings that serve the surrounding residential neighborhood with strong pedestrian connections. \* \* \*

“D. Creating buildings that follow the topography of the site.  
\* \* \*

“E. Encouraging infill to complement the scale and proportions of surrounding buildings. \* \* \*

1 found that the “neighborhood” includes the surrounding four to five blocks, and  
2 is not confined to the blocks adjacent to the project site and that the impact of the  
3 new development should be considered “in the context of the architectural  
4 diversity that characterizes the District.” Record 35. There are multiple structures  
5 with five or more stories within the district and within four to five blocks from  
6 the subject property. Record 115. The city found that the new development will  
7 “blend into the neighborhood” because the design incorporates elements from the  
8 Buck-Prager and other historic buildings in the district. Record 35. Specifically,  
9 the city found that the South Addition and the North Building “designs  
10 incorporate[] elements from quality, nearby buildings, including primarily the  
11 Buck-Prager, as well as the American Apartment Building, the Embassy Condos,  
12 and the Wickersham.” Record 35. The American Apartment Building, the  
13 Embassy Condos, and the Wickersham are all five-story residential apartment  
14 buildings within the district that provided “design influence” for the North  
15 Building. Record 35, 144.

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“F. Using plant materials to soften the impact of new development. \* \* \*

“G. Incorporating architectural details found in nearby structures.  
\* \* \*

“H. Designing detached structures that reflect the design of the primary structure. \* \* \*”

1           Petitioner argues that the city failed to examine the mass and proportions  
2 of the nearby townhomes and instead focused on larger buildings within the  
3 district. Petitioner argues that “it makes little sense” to include buildings four to  
4 five blocks from the subject property. Petition for Review 30. Petitioner argues  
5 that including considerations of buildings within a four- to five-block area  
6 “renders the word ‘neighborhood’ as used in CDG D7 superfluous” because the  
7 entire district is only seven blocks wide. Petition for Review 30–31. Petitioner  
8 argues that “[a] more sensible” construction is to consider only the couple blocks  
9 in the immediate vicinity of the subject property. Petition for Review 31.

10           We understand petitioner to argue that the city improperly construed the  
11 terms “nearby” and “neighborhood.” Petitioner has not demonstrated that the  
12 city’s interpretations of “nearby” and “neighborhood” are inconsistent with the  
13 express language of CDG D7, the purpose of that design standard, or the  
14 underlying policy that provides the basis for that standard. ORS 197.829(1);  
15 *Siporen*, 349 Or 247; see n 5. So long as the local government’s interpretation is  
16 not inconsistent with the applicable standard and policy, we will defer to the local  
17 government’s interpretation, even when presented with “a stronger or more  
18 logical interpretation.” *Mark Latham Excavation, Inc. v. Deschutes County*, 250  
19 Or App 543, 555, 281 P3d 644 (2012). That deference extends to the city  
20 council’s interpretation of design guidelines. *Barnard Perkins Corp. v. City of*  
21 *Rivergrove*, 36 Or LUBA 218, 222 (1999). Petitioner’s arguments on appeal

1 amount to a disagreement with the city’s decision and provide no basis for  
2 remand.

3 The fourth assignment of error is denied.

4 **FIFTH ASSIGNMENT OF ERROR**

5 The North Building will contain 100 dwelling units and is required to and  
6 will provide one Standard B loading space.<sup>9</sup> Portland City Code (PCC)  
7 33.266.310.C.1, D.2. Together, the Buck-Prager and South Addition will contain  
8 48 dwelling units and is required to provide one on-site Standard B loading space.  
9 The city approved an adjustment to reduce the loading space requirement for the  
10 Buck-Prager and South Addition from one to zero.

11 Otherwise applicable regulations in the zoning code may be modified  
12 through an adjustment review process under two circumstances: (1) when strict  
13 application of regulations would preclude all use of a site, or (2) if the proposed  
14 development continues to meet the intended purpose of the regulations. PCC  
15 33.805.010, 33.805.040 (providing adjustment review purpose and approval  
16 criteria). The city reviewed the requested adjustment under the second standard.  
17 The stated purposes of the loading standards are:

18 “A minimum number of loading spaces are required to ensure  
19 adequate areas for loading for larger uses and developments. These

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<sup>9</sup> A Standard B loading space “must be at least 18 feet long, 9 feet wide, and have a clearance of 10 feet.” PCC 33.266.310.D.2. The curb cut for a Standard B loading space is 10 feet wide with 6-foot wide commercial wings. Record 41.



1 regulations ensure that the appearance of loading areas will be  
2 consistent with that of parking areas. The regulations ensure that  
3 access to and from loading facilities will not have a negative effect  
4 on the traffic safety or other transportation functions of the abutting  
5 right-of-way.” PCC 33.266.310.A.

6 The city approved the requested adjustment, effectively allowing the  
7 loading area to be moved off-site and onto the street with posted loading zone  
8 hours. The city found that “the requested adjustment will equally or better meet  
9 the purpose of the loading standards because the \* \* \* site design features balance  
10 the need for loading with the requirement to reduce negative effects on other  
11 activities in the right-of-way.” Record 41.

12 The city explained that the residential units in the Buck-Prager and South  
13 Addition are studio apartments, which the city found “tend to have minimal  
14 apartment turnover and less need for loading larger furniture.” Record 41. The  
15 city relied on the city Bureau of Transportation Engineering and Development  
16 (PBOT) statements in favor of the adjustment request. PBOT explained that  
17 studio apartments have a lower rate of turnover, and Standard B loading spaces  
18 are often used for trash and recycling areas instead of loading areas. PBOT  
19 explained that “[b]y allowing an on-street loading space, PBOT can sign the  
20 hours so that it is available to residents and visitors during peak demand times.”  
21 Record 41, 453.

22 A neighbor opposing the development argued to the city that an on-street  
23 loading area will create congestion and safety issues within the right-of-way,

1 which will be blocked by on-street loading activities.<sup>10</sup> The city rejected those  
2 arguments and, instead, found that the adjustment to allow no Standard B loading  
3 space and allow on-street loading is safe:

4 “In providing a safe and attractive area for pedestrians and motorists  
5 consistent with that of the parking area standard (Chapter  
6 33.266.130), moving the loading space to the street consolidates the  
7 vehicle area. Further, it does not interrupt the pedestrian sidewalk in  
8 the right-of-way. This provides a safer area for residents to unload  
9 belongings, while maintaining the pedestrian route.” Record 41.

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<sup>10</sup> Petitioner directs us to the following testimony in the record from an  
opponent of the development directed to the Historic Landmarks Commission  
regarding loading areas:

“No Drop off zones and Limited loading zone - Surrounded by one-  
way streets on all external sides, there is not a way to drop off or  
pick up the residents without stopping or blocking traffic. This  
means stopping in the bike lane on 18th or completely blocking the  
street on NW Hoyt or Irving. This would be additionally  
compounded by moving in or deliveries to the buildings. Carving  
out loading zones in the street compromise an already existing  
limited parking environment.” Record 2786 (boldface omitted).

“The request for no off-street loading zones or pull outs for  
accessibility to these structures should not be allowed given that  
there are single lane streets (Hoyt and Irving) on the sides and a one-  
way street with a bike lane on 18th Avenue. This large structure on  
the smaller road infrastructure will result in congestion and regular  
disruptions for pedestrians.” Record 2794.

The city council’s review was on the record from the Historic Landmarks  
Commission, and the above-quoted testimony is included in the LUBA record.

1 The city also found that “any impact resulting from the adjustment are  
2 mitigated to the extent practical.” PCC 33.805.040.E. The city found:

3 “There is little impact resulting from not providing one off-street  
4 loading space. As noted above, the proposed studio units have a low  
5 turnover rate, and being studios, residents will not have as much to  
6 move in or out. Additionally, by not providing an off-street loading  
7 space which requires 22 feet of curb cut, this length of sidewalk and  
8 on-street parking area will remain available for public use. By  
9 keeping the space as an on-street loading space, PBOT can assign  
10 the hours, so it is available to residents and visitors during peak  
11 demand times.” Record 42.

12 Petitioner argues that the city’s findings are not supported by substantial  
13 evidence in the record. ORS 197.828(2)(a). Petitioner argues that the conclusion  
14 that studio apartments require less loading space than larger apartments is  
15 “unsupported by any demographic analysis or other objective evidence on the  
16 record.” Petition for Review 34. Petitioner does not cite any applicable regulation  
17 that requires demographic analysis to support the adjustment. PBOT manages the  
18 city’s transportation system, including private uses in the city right-of-way.  
19 Record 453. PBOT staff have special expertise in the safe and efficient use of the  
20 right-of-way and various demands on streets, including traffic, parking, and  
21 loading. Statements from PBOT regarding studio apartment loading needs is  
22 evidence that would permit a reasonable person to find that studio apartments  
23 have low turnover rates and less need for unloading large furniture and, thus,  
24 studio apartments have a lesser need for a loading space. Accordingly, the city  
25 could find that an adjustment allowing an on-street loading area is adequate for

1 the development’s loading needs, such that the development continues to meet  
2 the intended purpose of the loading space regulations.<sup>11</sup>

3 Finally, petitioner reprises the argument that allowing an on-street loading  
4 area will create congestion and safety issues within the right-of-way. Implicit in  
5 the city’s decision and in PBOT’s statement supporting the adjustment is the  
6 conclusion that signed, infrequent, on-street loading “will not have a negative  
7 effect on the traffic safety or other transportation functions of the abutting right-  
8 of-way.” PCC 33.266.310.A. Petitioner points to testimony regarding anticipated  
9 negative impacts of off-street loading. See n 10. However, petitioner does not  
10 explain why the city could not rely on PBOT’s opinion that an on-street loading  
11 area would adequately serve the development. “The existence of evidence in the  
12 record supporting a different decision shall not be grounds for reversal or remand  
13 if there is evidence in the record to support the final decision[.]” ORS  
14 187.828(2)(a). We conclude that the city’s finding that the loading space  
15 adjustment continues to meet the intended purpose of the loading regulations is  
16 supported by substantial evidence.

17 The fifth assignment of error is denied.

18 The city’s decision is affirmed.

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<sup>11</sup> The city council allowed the loading space adjustment. PBOT parking control section will separately review the on-street loading space during the public works permit process. Record 453.