

1 BEFORE THE LAND USE BOARD OF APPEALS

2
3 OF THE STATE OF OREGON

4
5 BERNADETTE NIEDERER,
6 *Petitioner,*

7
8 vs.

9
10 CITY OF ALBANY,
11 *Respondent,*

12
13 and

14
15 MARK SIEGNER,
16 *Intervenor-Respondent.*

17
18 LUBA No. 2018-133

19
20 ORDER

21 **MOTION TO INTERVENE**

22 Mark Siegner, the property owner and applicant below, moves to intervene
23 on the side of the respondent in the above captioned appeal. No party opposes the
24 motion and it is granted.

25 **MOTION FOR STAY**

26 The challenged city decision approves demolition of three historic
27 contributing structures. The challenged decision includes a condition that “[t]he
28 subject buildings shall not be demolished for at least 90 days from the date the
29 Notice of Decision is signed.” Record 82. The Notice of Decision was signed on
30 October 11, 2018, and ninety days from that date is January 8 or January 9, 2019,

1 depending on whether the date the Notice of Decision was signed is counted as
2 the first day. Record 82.

3 On January 2, 2019, petitioner filed a motion to stay the challenged
4 decision pursuant to ORS 197.845(1) and OAR 661-010-0068. Petitioner argues
5 that the city's procedure for obtaining further authorization to demolish the
6 buildings requires only a demolition permit, which an applicant may obtain from
7 the city in two days to one week, with no notice to any party of its issuance.
8 Accordingly, petitioner argues, the buildings could be demolished pursuant to an
9 issued demolition permit at any time after January 9, 2019, and without the
10 opportunity for LUBA to address the merits of her appeal.

11 Based on petitioner's motion for stay, the Board grants an interim stay of
12 the challenged decision. *See Save Amazon Coalition v. City of Eugene*, ___ Or
13 LUBA ___ (LUBA No. 95-042, March 27, 1995) (granting an interim stay of a
14 decision to approve a demolition permit for historic buildings). The interim stay
15 shall take effect immediately, conditioned on the Board's receipt no later than
16 4:00 p.m. on Wednesday, January 9, 2019, of an undertaking or a cashier's check
17 or bank-certified check in the principal amount of \$5,000.¹ If such undertaking
18 or check is not received within the time set forth in this order, the interim stay
19 shall automatically expire.

¹ Petitioner's motion for stay was accompanied by a check in the amount of \$5,000, however, the check is not a cashier's check or bank-certified check, as specified in OAR 661-010-0068(4).

1 The city's and intervenor-respondent's (together, respondents') responses
2 to the motion for stay shall be due no later than 4:00 p.m. on Monday, January
3 14, 2019. Respondents shall file and serve their responses to the motion pursuant
4 to OAR 661-010-0075(2)(a) and (b). In addition, (1) respondents shall transmit
5 courtesy copies of their responses by email to LUBASupport@dsl.state.or.us,
6 and to petitioner's attorney's email address provided in the final exhibit attached
7 to the motion for stay, and (2) all pleadings regarding the motion for stay filed by
8 any party from this point forward shall be transmitted by courtesy copy to LUBA
9 and the other parties in the same manner. The Board shall issue an order no later
10 than 4:00 p.m. on Thursday, January 17, 2019, either granting the motion for stay,
11 or denying the motion and vacating this interim stay.

12 Time limits for all further procedures in this appeal are currently suspended
13 pending the Board's resolution of petitioner's record objections, which the Board
14 will resolve by separate order. In the motion for stay, petitioner did not suggest
15 an expedited briefing schedule, as required by OAR 661-010-0068(1)(d). Instead,
16 petitioner suggests maintaining the regular briefing schedule. If respondents do
17 not suggest an expedited briefing schedule in their responses to the motion to
18 stay, briefing in this appeal shall proceed as established by the Board's rules.

19 Dated this 7th day of January, 2019.

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23 _____
24 H. M. Zamudio
 Board Member