Council Meeting: 11/24/08
Agenda: Special Study Session
Item #: 3. a.

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MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Jeremy McMahan, Planning Supervisor
Jon Regala, Senior Planner

Date: November 20, 2008

Subject: CBD 1 and 2 Amendments Study Session, File No. ZON08-00019

RECOMMENDATION:

Review and confirm previous City Council direction on various CBD 1 and 2 amendments. Review staff's proposed regulatory responses and provide further direction or refinements as needed. Staff will use Council direction to complete draft regulations for consideration at a future City Council public hearing.

The DRB met to discuss amendments to retail, building heights, and upper story step backs on November 17th. Their discussion is summarized in Attachment 1.

Staff has drafted specific regulations and guidelines for all issues except those noted below. Staff recommends that the main focus of the November 24 study session be on the step back issue.

- CBD 1 upper story step backs. Staff has received general direction from Council on regulatory approaches to this issue. The Design Review Board also provided excellent guidance at their November 17th study session. Additional Council guidance on key issues is needed on December 24th and staff recommends that an additional consultation meeting with the DRB be held to help refine options prior to the public hearing.
- CBD 2 second story for public access and view corridors. Council did not get to this topic at the previous study session so additional direction is needed.

This memo is divided into the following sections:

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A. RETAIL..... (page 2)
B. BUILDING HEIGHTS..... (page 3)
C. STEP BACKS..... (page 4)
D. LAKE STREET STEP BACKS..... (page 7)
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III. DESIGN REVIEW BOARD DISCRETION..... (page 9)

I. CBD 1 ISSUES:

A. Codify retail requirements:

Two key elements of "superior retail space" have been identified: the design of the space and the use of the space.

Design:

Council Direction: Council agreed that the real "value added" part of the superior retail requirement has been the enhanced public realm that the DRB has required in approved projects. Council agreed that wider sidewalks are appropriate to make the regulations consistent with the Design Guidelines (increase from 10' to 13' with averaging allowed). It appeared that the majority of Council members agreed that wider sidewalks should be a requirement of all CBD 1 development rather than encouraged with incentives (e.g. – only if 4th or 5th story is proposed).

Council agreed that minimum retail story height should be increased from 13' to 15'. Staff noted that we would review retail depth requirements and retail storefront guidelines to ensure they are adequate.

Regulatory Response:

- Draft CBD 1 Use Zone Charts (Attachment 2) include:
  - New General Regulation #4 establishing the 30' existing retail depth requirement and expanding the application to parking garages. Note that the Special Regulations under the office and residential use listings were moved to the General Regulation.
  - New General Regulation #5 requiring a minimum 12' wide sidewalk with an average of 13'. As drafted, the requirement is not related to the height of the proposed building.
- Draft KZC 50.62 regulation (Attachment 3) include section 50.62.2 requiring ground floor retail to be a minimum of 15' in height (applies to all CBD zones).
- Draft Design Guideline (Attachment 4) with enhanced storefront window design requirements for the CBD.

Use:

Council Direction: Council agreed to a prohibition on "Banking and Related Financial Services" and drive through facilities on Park Lane and Lake Street. Consideration of other uses (banks elsewhere, service businesses) were moved to the "parking lot". Council asked for verification that other financial services uses such as brokerages would not be allowed as retail. Staff confirmed that such uses would be included in the scope of the Banking and Related Financial Services. Uses such as real estate offices are included in the definitions of office so are similarly not allowed on the ground floor street frontage in CBD 1.

Regulatory Response:

- Draft CBD 1 Use Zone Charts (Attachment 2) include new Special Regulation #2 under the Banking and Related Financial Services use listing with a prohibition on Park Lane and Lake Street.

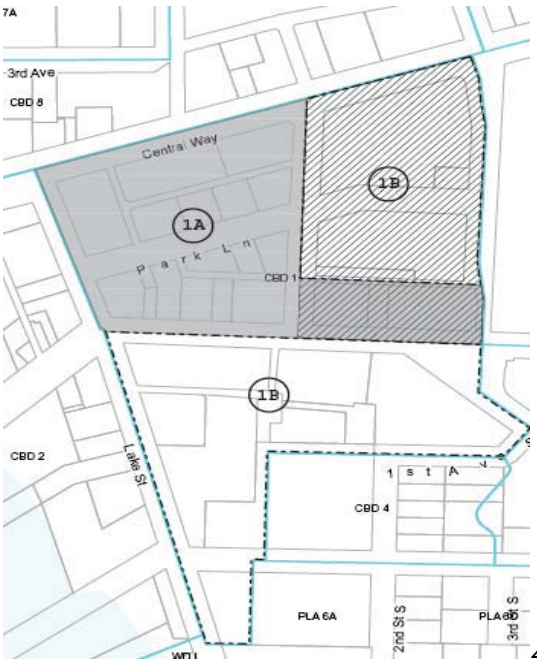
Grandfathering language is includes to not render Bank of America non-conforming. Special Regulation #1 is amended to address drive through facilities.

B. <u>Codify Maximum Allowed Building Heights</u>:

Council Direction: Council agreed that maximum building height should be measured in feet rather than stories, but that a minimum retail height was needed to ensure that retail was not compromised. Council also agreed that all CBD zones should be amended accordingly. For CBD 1, Council agreed to codify the Downtown Plan limits on rooftop appurtenances.

Regulatory Response:

- The CBD 1 Zoning will be divided into a CBD 1A zone and a CBD 1B (see diagram below) zone to correspond to the 4 story and 5 story height districts established in the Comprehensive Plan. The draft CBD 1 Use Zone Charts (Attachment 2) replace stories with feet as the measurement of maximum height. KZC Section 50.62 (Attachment 3) deletes the story methodology and includes a new regulation for minimum retail heights.
- KZC Section 50.62.3 (Attachment 3) is amended to limit the height of rooftop appurtenances and related screening consistent with the Plan
- Staff will follow up with similar changes to the other 7 CBD Use Zone Charts.
    - *Issue: The Zoning and Comprehensive Plan currently denote height in terms of stories. If the conversion to feet consistently applies the maximum (15' retail stories and 13' office stories), there may be cases where lower floor height for residential would allow one more story than the current Zoning would allow. For example, in an area like CBD 7 currently designated for 3 stories regardless of use, the maximum height of one story of retail plus two stories of office above is 41'. If an applicant chose to build lower residential stories, it would be possible to build a four story building. The maximum height is the same, but staff would like Council confirmation of this approach.*



Zoning map amendment

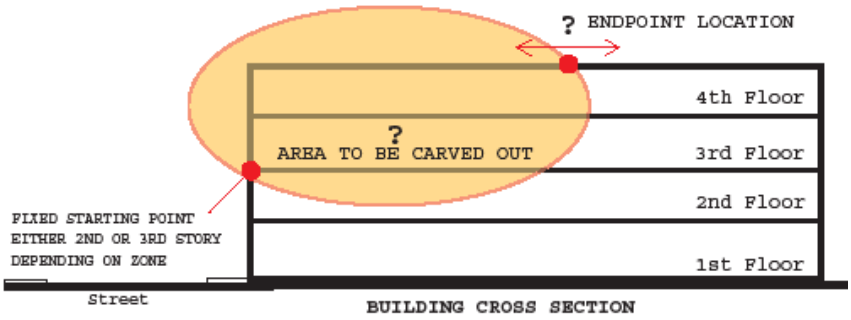
C. Codify Upper Story Step Backs:

Council Direction: In previous study sessions, the City Council expressed general agreement that the upper story building step back 'combo approach' should apply to buildings in CBD 1. The 'combo approach' proposes to require smaller step backs at the middle floors of a building and a larger step back at the top-most story to address Downtown Plan step back policies. While there was general agreement on this approach by the City Council, there were still some concerns/comments regarding this approach which are summarized as follows:

- The DRB should have the authority to modify step back standards in order to require:
    - Additional public space at the ground level
    - Varied and attractive building forms
- Need to understand impact of 'combo approach' on properties with multiple frontages
- The proposed mid-level step back depths (5') are not deep enough for useable space

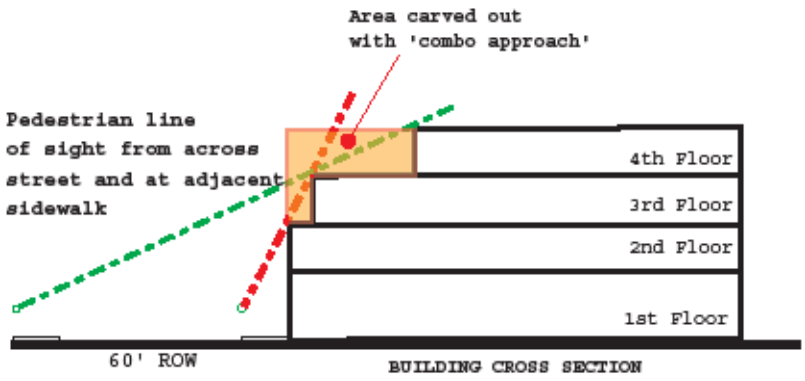
Regulatory Response:

The proposed height limits establish a basic outline of building massing. The issue is that maximizing the massing along pedestrian oriented street is not acceptable. In creating the 'combo approach', staff determined that upper story step backs should be relative to the pedestrian experience and should diminish the perception of larger building forms by the pedestrian at the street level. By reducing mass at the upper stories, focus is reoriented towards the building base and back to the pedestrian experience. As shown in the diagram below, the challenge is to establish specific standards to reduce the massing of upper stories along pedestrian-oriented streets.



Upper story step backs are appropriate in areas where taller buildings are allowed and imposing building facades at the sidewalk should be avoided. As a result, additional solar access at the street level is obtained due to the wider unobstructed angle from the recessed upper stories. Therefore, the amount of upper story step backs should be based on two pedestrian vantage points: *across the street from the building and on the sidewalk adjacent to the building*.

As illustrated in the diagram below, this 'combo approach' to upper story step backs generally reduces building massing and provides additional sunlight at the ground level when taken from the vantage point of a pedestrian standing across the street. When viewed from the sidewalk immediately adjacent to the building, upper story step backs reduce the view of the upper stories and maintains pedestrian scale by preventing larger building facades from looming over the sidewalk.



This approach is supported by the following key Downtown Plan step back policies:

General - Design District 1 Policies

- Stories above 2nd story are setback from the street
- Street frontages should be two stories along Park Lane west of Main Street, 3rd Street, and Kirkland Avenue
- Buildings up to 3 stories along Central Way
    - Avoid continuous 3 story street wall

Design District 1B Policies

- East of Main Street – modulate height and facades
- South of Kirkland Avenue – Step up from north and west
- Reduce building mass above the 2nd story

'Bonus' Story Step Back Policies

- Stories above the 2nd story should be stepped back significantly
- Building form stepped back at the 3rd, 4th, and 5th stories

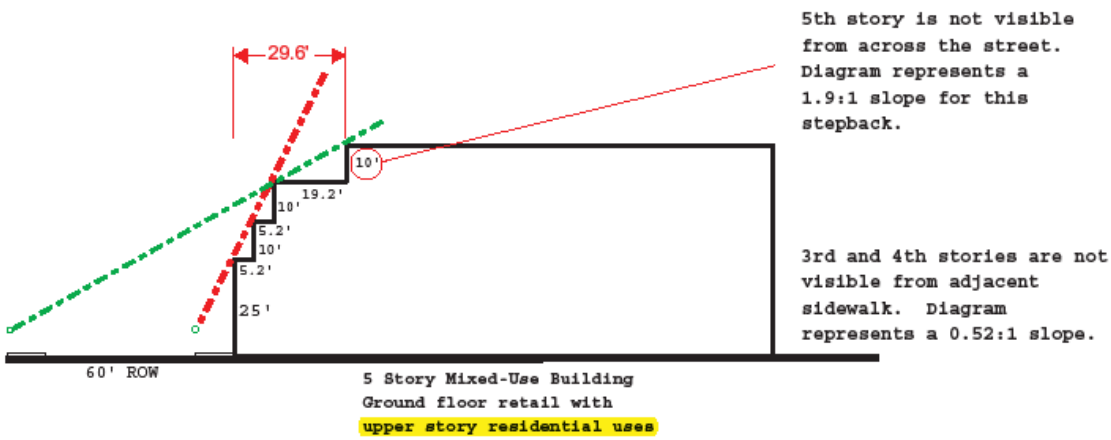
Step Back Zone Approach

Staff heard the concerns by the City Council regarding the 'combo approach' in that it may be too rigid of a standard, and that some step back distances may be too narrow to create useable space at the upper stories. The Council also agreed that the established standards should be crafted in a way to give the DRB flexibility to allow modifications in return for an increase in public space at the street level and better building design in terms of arranging the massing to avoid a cookie cutter approach to all buildings.

In order to address these concerns, staff is continuing to refine the 'combo approach' by utilizing floor area ratio (FAR) rather than specific step back dimensions. This approach is intended to allow design flexibility while clearly specifying building massing expectations. Rather than establish a uniform angle that shapes a consistent building form on all properties, the desire is to establish an approach that is as effective at removing building mass, but allows less rigid and more creative solutions.

Since the Downtown Plan policies on upper story step backs refer primarily to the perception of building massing from the street, staff is proposing to focus the step back discussion to a zone or area within a certain distance from the street. In this case, staff has picked a distance of 30' from the property line to define the area in which to measure or quantify upper story step backs for two reasons: The first reason is that when looking at built examples (Heathman Hotel, Kirkland Central, and Merrill Gardens) the majority of upper story step backs and massing reductions were located within a zone of 30' from the property line

(see Attachment 5). Second, the 30' zone is similar to the overall step back identified with the combo approach previously presented to the Council:



With the existing buildings, staff began to quantify the amount of floor area located within this 30' step back zone. This information identifies the relationship between the step back area and floor area within the step back zone. Generally speaking, once a floor area ratio (FAR) is established based on a formula *to be determined*, the design of a building, the amount of step backs, modulation, and public space can revolve around a fixed FAR. Authority can be given to the DRB to review projects regarding these design issues. The chart below summarizes the FAR for several projects and compares them with the FAR results with the previously proposed combo approach.

Project	FAR within 30' Step Back Zone (all stories)	FAR within 30' Step Back Zone (stories above the 2nd)
Heathman Hotel (4-stories)	**2.11 (out of a possible 4.0)**	**1.06 (out of a possible 2.0)**
Combo Approach 4-story Building	**2.93 (out of a possible 4.0)**	**.93 (out of a possible 2.0)**
Merrill Gardens (5-stories)	**2.15 (out of a possible 5.0)**	**1.05 (out of a possible 3.0)**
Kirkland Central (5-stories)	**3.32 (out of a possible 5.0)**	**1.72 (out of a possible 3.0)**
Combo Approach 5-story Building	**3.5 (out of a possible 5.0)**	**1.5 (out of a possible 3.0)**

Based on the information above, additional work still needs to be done to fine tune an FAR formula. Obviously, application of the draft approach would result in more FAR within the 30' zone than project have actually built, suggesting the resultant FAR may be too generous. Staff analysis indicates that it may be more accurate to set FAR based on stories above the second story as a way of targeting the desired reduction of massing more specifically.

Staff will need time to continue to evaluate the methodology. As discussed with the DRB, we would propose to develop additional modeling of the CBD 1 zone to evaluate massing results on both sides of street, provide a better feel for the pedestrian experience, analyze how FAR relates to step backs, and develop and approach for "trading" FAR for additional public pedestrian at the street level.

Additional direction from Council on the following questions would assist in further refinements:

- Is the 30' zone the appropriate depth to focus on?
- Is the conceptual FAR approach the right way to quantify and provide flexibility?
- Is there agreement that some trade-off of FAR for public space at the ground level is appropriate?
- Should the method apply to all streets on properties with multiple frontages? Asked another way, are vertical 4 of 5 story buildings without step backs acceptable on certain streets? Note that there may be ways to prioritize or weight the method in these cases.

D. Lake Street Step Back:

Council Direction: Council agreed that a 30' step back above two stories along Lake Street was appropriate to reflect the scale on the west side of the street. Council agreed that the measurement should be taken from existing property lines to avoid penalty if future dedication is need for additional sidewalk width. Council also agreed that some latitude should be provided to the DRB to allow minor encroachments into the step back in exchange for additional public space (wider sidewalks and pedestrian plazas) at the street level.

Regulatory Response: Draft CBD 1 Use Zone Charts (Attachment 2) include new General Regulation #1 establishing the 30' step back from current property lines.

II. CBD 2 ISSUE:

Council Direction: Council did not have time to discuss this item at the previous study session.

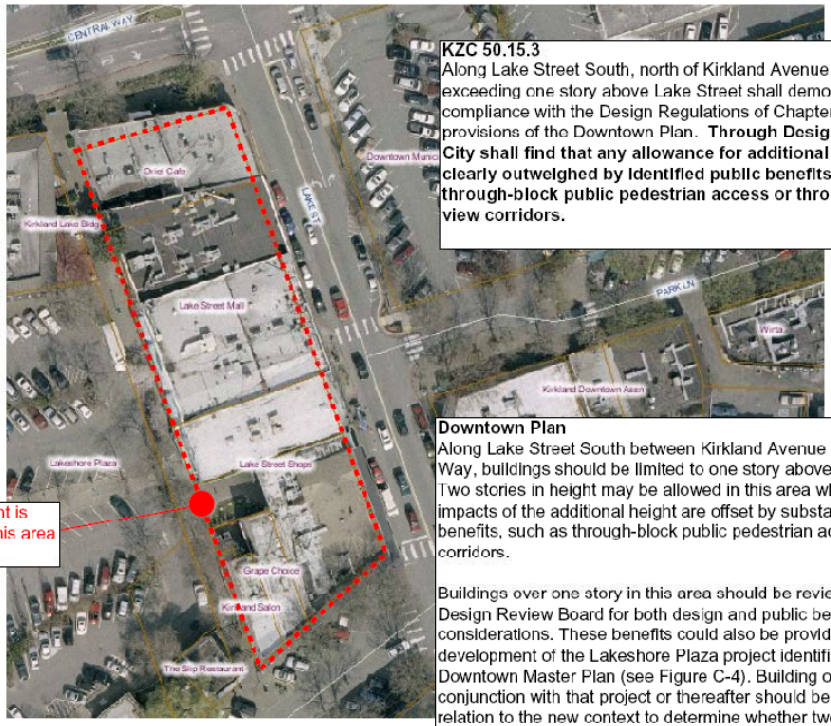
Regulatory Response: Not drafted.

Issue: The current CBD 2 regulations require the DRB to weigh the impact of a 2nd story building against substantial public benefit (see diagram below). This type of weighing of public impacts and benefits is better suited to something like a highly discretionary PUD process that a design driven decision. There are many ways to codify a clear standard that would allow properties to build a 2nd story if they meet the standard. One approach would be to mandate a minimum width at the north or south property line in terms of feet or percentage of parcel width that would be set aside for public access and view corridors. For example, if each parcel were required to set aside 10', two adjoining properties might provide 20' of width over time. Unfortunately, as can be seen from the building locations in the plan view below, the location of property lines is somewhat random from an urban planning perspective in that the access and view corridors may not result in the ideal locations. Such measures would help penetrate the block but would not make the grand gesture of opening up the downtown to the lake. Discussions during the Lakeshore Plaza study considered more significant gestures like a continuation of Park Lane or opening up the corners of the block at Kirkland Avenue and/or Central Way.

Staff concludes that regulations can be drafted to achieve a basic objective. Those regulations could allow enough flexibility to create something better if properties were aggregated in a manner that an applicant could provide something more effective. However, the real solution to the long time objective of opening downtown to the lake probably needs something more akin to a

collaborative master planning process between the City and the property owners. Due to additional constraints such as parking, redevelopment in this area in the immediate future is highly unlikely.

CBD 2

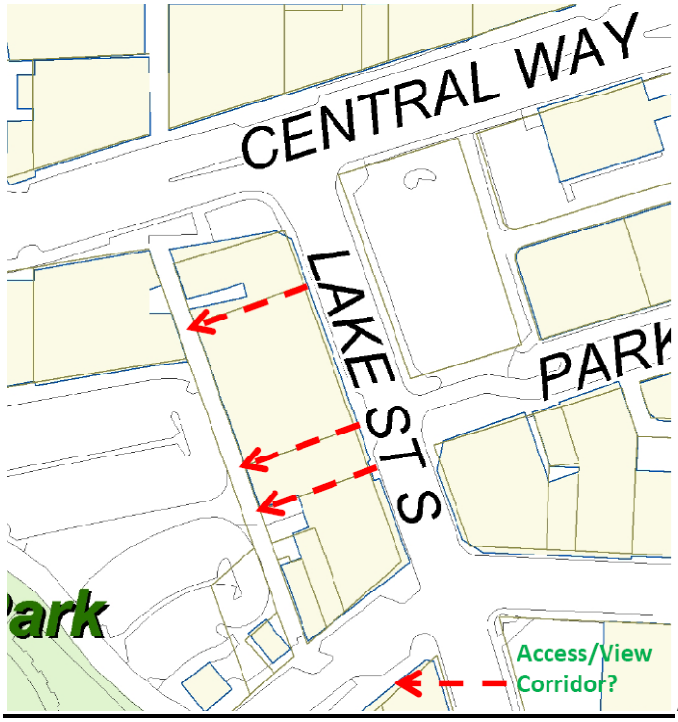


KZC 50.15.3
Along Lake Street South, north of Kirkland Avenue, buildings exceeding one story above Lake Street shall demonstrate compliance with the Design Regulations of Chapter 92 and all provisions of the Downtown Plan. **Through Design Review the City shall find that any allowance for additional height is clearly outweighed by identified public benefits such as through-block public pedestrian access or through-block view corridors.**

Maximum height is two stories in this area

Downtown Plan
Along Lake Street South between Kirkland Avenue and Central Way, buildings should be limited to one story above the street. Two stories in height may be allowed in this area where the impacts of the additional height are offset by substantial public benefits, such as through-block public pedestrian access or view corridors.

Buildings over one story in this area should be reviewed by the Design Review Board for both design and public benefit considerations. These benefits could also be provided with the development of the Lakeshore Plaza project identified in the Downtown Master Plan (see Figure C-4). Building occurring in conjunction with that project or thereafter should be reviewed in relation to the new context to determine whether two stories are appropriate.



Map of possible corridors at existing property lines.

III. DRB DISCRETION

Council Direction: The Council agreed to codify building heights and, upper story step backs, and retail standards to eliminate the high DRB discretion in these areas and avoid a repeat of the Bank of America and McLeod project appeals. Council also agreed that the Comprehensive Plan policies should be codified to avoid using the Plan as a regulatory document in design review as it is currently. The proposed regulations and guidelines will achieve those goals. The Council should decide if the current appeal process is still appropriate if the level of discretion in DRB decisions is corrected.

Regulatory Response:

- Draft KZC 142 (Attachment 6) includes the following changes:
    - Deletion of Comprehensive Plan as a regulatory document for ADR and DRB decisions (142.25.c and 142.35.3.c).
    - Potential amendment for open record appeals to the Hearing Examiner rather than City Council (142.40.1).
- Draft CBD 1 Use Zone Charts (Attachment 2) General Regulation #2 includes deletion of Comprehensive Plan as a regulatory document for design review.

Attachments

DRB Discussion

The Design Review Board met on November 17th in a study session to discuss CBD 1 amendments related to retail, building heights, and building step backs. The following summary of those discussions is summarized by staff below. Member of the DRB plan to attend the November 24 City Council study session to listen in and address any questions.

Retail design:

- Agree with focus on public realm
- Agree that all CBD 1 retail streetscape and facade design should be "superior" regardless of height
- Agree with need for wider sidewalk detached from allowed building heights. Liked averaging but felt that 10' was too low for a minimum. Suggested something more like 13' average with 12' minimum. Continuity of the public realm between properties is important and that context can be reviewed by the DRB.
- Agreed with concept of trading some upper story step backs for additional pedestrian space at street level.
- Agree with 15' retail heights. Ensure that guidelines and regulations for glazing (heights & percentage), canopies, trees, grates, pedestrian lighting, etc. are in place

Retail use:

- Not DRB issue, others will decide

Building Heights:

- Agree with Council direction to specify allowed heights in feet rather than stories and decide up front where those heights are appropriate.

Building Step Backs:

- Need to establish pedestrian-oriented principles for why we want step backs
- Will ultimately require a prescriptive approach paired with some discretionary program to ensure appropriate building form and design.
- Agree that the ultimate methodology should not mandate a generic wedding cake approach to massing.
- Agree with concept of trading some upper story step backs for additional pedestrian space at street level.
- Concerned that "Combo Approach" does not carve enough volume out of building to give DRB leverage for appropriate trade-off's in massing creativity and public realm. Expect developers to always want to maximize the volume.
- Need to model both sides of a street like Park Lane to understand the full impacts of the massing concept.

CHAPTER 50 - CENTRAL BUSINESS DISTRICT (CBD) ZONES

50.05 User Guide.

The charts in KZC 50.12 contain the basic zoning regulations that apply in the CBD 1 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

	Section 50.10 – GENERAL REGULATIONS The following regulations apply to all uses in this zone unless otherwise noted:
Zone CBD-1 A and 1B	1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
	2. Height measured at the midpoint of the frontage of the subject property on the abutting right-of-way, excluding First Avenue South. ~~Buildings exceeding two stories must demonstrate compliance with the design regulations of Chapter 92 KZC and all provisions contained in the Downtown Plan. The City will determine compliance with these requirements through Design Review (D.R.).~~

3. No portion of a building within 30' of Lake Street may exceed a height of 28' above Lake Street except as provided in Section 50.62. The measurement shall be taken from the location of property line abutting Lake Street prior to any potential dedication of additional right-of-way. The DRB is authorized to grant minor variations pursuant to 142.37, provided that in addition to the criteria of 142.37.d, the DRB finds that the minor variation results in additional public space and amenities at the street level.

4. The street level floor of all buildings shall have a minimum average of 30' depth (as measured from the face of the building on the abutting right-of-way) of Retail; Restaurant or Tavern; Banking and Related Financial Services; or Entertainment, Cultural and/or Recreational Facility use. The DRB (or Planning Director if not subject to D.R.) may approve a minor reduction in the depth requirement if the applicant demonstrates that the proposed configuration of the building's retail frontage provides provides an adequate dimension for a viable retail tenant and provides equivalent or superior visual interest and potential foot traffic as would compliance with the required dimension.

5. Where public improvements are required by KZC Chapter 110, sidewalks for Pedestrian-Oriented Streets within CBD 1A and 1B shall be as follows:

a. The applicant shall install a minimum 12' wide sidewalk, with a minimum 13' average width along the entire frontage of the subject property abutting each pedestrian-oriented street. The configuration shall be approved through D.R.

Zone CBD-1

USE ZONE CHART

Section 50.12	USE ⇩ / REGULATIONS ⇨	DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS										
		Required Review Process	MINIMUMS				MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.010	Restaurant or Tavern	D.R., Chapter 142 KZC	None	0′	0′	0′	100%	~~2 to 4 stories above each abutting right-of-way.~~ 1A - 45' above each abutting right-of-way 1B - 55' above each abutting right-of-way.	D	E	One per each 125 sq. ft. of gross floor area. See KZC 50.60.	1. Drive-in or drive-through facilities are prohibited.
.020	Any Retail Establishment, other than those specifically listed, limited or prohibited in this zone, selling goods or providing services, excluding banking and related financial services										One per each 350 sq. ft. of gross floor area. See KZC 50.60.	1. The following uses are not permitted in this zone: a. Vehicle service stations. b. The sale, service and/or rental of motor vehicles, sailboats, motor boats, and recreational trailers; provided, that motorcycle sales, service, or rental is permitted if conducted indoors. c. Drive-in facilities and drive-through facilities. 2. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: a. The assembled manufactured goods are directly related to and dependent upon this use, and are available for purchase and removal from the premises. b. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses.

Zone CBD-1

USE ZONE CHART

Section 50.12	USE ⇩ / REGULATIONS ⇨	DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS										
		Required Review Process	MINIMUMS				MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.025	Banking and Related Financial Services (see spec. req. 2)	D.R., Chapter 142 KZC	None	0′	0′	0′	100%	~~2 to 4 stories above each abutting right-of-way.~~ 1A - 45' above each abutting right-of-way 1B - 55' above each abutting right-of-way	D	E	One per each 350 sq. ft. of gross floor area. See KZC 50.60.	Except along Park Lane and Lake Street, 1. Drive-through facilities are permitted as an accessory use if: a. The drive-through facility existed prior to January 1, 2004, OR the drive-through facility will replace a drive-through facility which existed on January 1, 2004, and which drive-through facility: 1) Was demolished to allow redevelopment of the site on which the primary use was located; and 2) Will serve the same business served by the replaced facility, even if that business moves to a new location; and 3) Does not result in a net increase in the number of drive-through lanes serving the primary use; and b. The Public Works Department determines that vehicle stacking will not impede pedestrian or vehicular movement within the right-of-way, and that the facility will not impede vehicle or pedestrian visibility as vehicles enter the sidewalk zone; and c. The vehicular access lanes will not be located between the street and the buildings and the configuration of the facility and lanes is generally perpendicular to the street; and d. Any replacement drive-through facility is reviewed and approved pursuant to Chapter 142 KZC for compliance with the following criteria: 1) The design of the vehicular access for any new drive-through facility is compatible with pedestrian walkways and parking access. 2) Disruption of pedestrian travel and continuity of pedestrian-oriented retail is limited by minimizing the width of the facility and associated curb-cuts.

2. Unless this use existed on the subject property prior to January 1, 2004, this use may not be located within the 30' depth (established by General Regulation #4 on the street level floor of a building fronting on Park Lane or Lake Street.

Zone CBD-1

USE ZONE CHART

Section 50.12	USE ⇩ / REGULATIONS ⇨	Required Review Process	MINIMUMS: Lot Size	MINIMUMS: REQUIRED YARDS (See Ch. 115) Front	Side	Rear	MAXIMUMS: Lot Coverage	Height of Structure	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
		DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS										
.030	Hotel or Motel	D.R., Chapter 142 KZC	None	0′	0′	0′	100%	~~2 to 5 stories above each abutting right-of-way.~~	D	E	One for each room. See Spec. Reg. 2 and KZC 50.60.	1. The following uses are not permitted in this zone: a. Vehicle service stations. b. Vehicle and/or boat sale, repair, service or rental. c. Drive-in facilities and drive-through facilities. 2. The parking requirement for hotel or motel use does not include parking requirements for ancillary meetings and convention facilities. Additional parking requirements for ancillary uses shall be determined on a case-by-case basis.
.040	Entertainment, Cultural and/or Recreational Facility							~~2 to 4 stories above each abutting right-of-way.~~			See KZC 50.60 and 105.25.	

1A - 45' above each abutting right-of-way
1B - 55' above each abutting right-of-way

Zone CBD-1

USE ZONE CHART

Section 50.12	USE ⇩ / REGULATIONS ⇨	Required Review Process	MINIMUMS: Lot Size	MINIMUMS: REQUIRED YARDS (See Ch. 115) Front	Side	Rear	MAXIMUMS: Lot Coverage	Height of Structure	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
		DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS										
.060	Private Club or Lodge	D.R., Chapter 142 KZC.	None	0′	0′	0′	100%	~~2 to 4 stories above each abutting right-of-way.~~	D	B	See KZC 50.60 and 105.25.	1. This use may be located on the street level floor of a building only if there is a retail space extending a minimum of 30 feet of the building depth between this use and the abutting right-of-way. The Planning Director may approve a reduction to the depth requirement for the retail space if the applicant demonstrates that the proposed configuration of the retail use provides an adequate dimension for a viable retail tenant and provides equivalent or superior visual interest and potential foot traffic as would compliance with the required dimension. 2. Ancillary assembly and manufacture of goods on premises may be permitted as part of an office use if: a. The ancillary assembled or manufactured goods are subordinate to and dependent on this office use; and b. The outward appearance and impacts of this office use with ancillary assembly and manufacturing activities must be no different from other office uses. 3. The following regulations apply to veterinary offices only: a. May only treat small animals on the subject property. b. Outside runs and other outside facilities for the animals are not permitted. c. Site must be designed so that noise from this use will not be audible off the subject property. A certification to this effect signed by an Acoustical Engineer, must be submitted with the D.R. and building permit applications. d. A veterinary office is not permitted if the subject property contains dwelling units.
.070	Office Use									D	One per each 350 sq. ft. of gross floor area. See KZC 50.60.	
.080	Stacked or Attached Dwelling Units							~~2 to 5 stories above each abutting right-of-way.~~		A	1.7 per unit. See KZC 50.60.	
.090	School, Day-Care Center or Mini School or Day-Care Center							~~2 to 4 stories above each abutting right-of-way.~~		B	See KZC 50.60 and 105.25.	1. A six-foot-high fence is required along all property lines adjacent to outside play areas. 2. Structured play areas must be setback from all property lines by at least five feet. 3. Hours of operation may be limited by the City to reduce impacts on nearby residential uses. 4. An on-site passenger loading area may be required depending on the number of attendees and the extent of the abutting right-of-way improvements. 5. These uses are subject to the requirements established by the Department of Social and Health Services (WAC Title 388).

1A - 45' above each abutting right-of-way
1B - 55' above each abutting right-of-way

Zone CBD-1

USE ZONE CHART

Section 50.12	USE ⇩ / REGULATIONS ⇨	Required Review Process	MINIMUMS: Lot Size	MINIMUMS: REQUIRED YARDS (See Ch. 115): Front	Side	Rear	MAXIMUMS: Lot Coverage	Height of Structure	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
		DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS										
.100	Assisted Living Facility See Special Regulation 3.	D.R., Chapter 142 KZC.	None	0′	0′	0′	100%	~~2 to 5 stories above each abutting right-of-way.~~ 1A - 45' above each abutting right-of-way 1B - 55' above each abutting right-of-way	D	A	1.7 per independent unit. 1 per assisted living unit. See KZC 50.60.	1. A facility that provides both independent dwelling units and assisted living units shall be processed as an assisted living facility. 2. A nursing home use may be permitted as part of an assisted living facility use in order to provide a continuum of care for residents. If a nursing home use is included, the following parking standard shall apply to the nursing home portion of the facility: a. One parking stall shall be provided for each bed. 3. This use may be located on the street level floor of a building only if there is a retail space extending a minimum of 30 feet of the building depth between this use and the abutting right-of-way. The Planning Director may approve a reduction to the depth requirement for the retail space if the applicant demonstrates that the proposed configuration of the retail use provides an adequate dimension for a viable retail tenant and provides equivalent or superior visual interest and potential foot traffic as would compliance with the required dimension.
.110	Public Utility, Government Facility, or Community Facility							~~2 to 4 stories above each abutting right-of-way.~~	D See Special Reg. 1.	B	See KZC 50.60 and 105.25.	1. Landscape Category B or C may be required depending on the type of use on the subject property and the impacts associated with the use on nearby uses.
.120	Public Park	Development standards will be determined on a case-by-case basis. See Chapter 49 KZC for required review process.										

50.62 Building Height Provisions in the CBD

~~1. In cases where the height of structures is specified in number of stories, the following heights per story are allowed:~~

~~a. Ground floor retail; ground floor restaurant and tavern; ground floor entertainment/cultural and/or recreational facility shall be a minimum of 13 feet in height and a maximum of 15 feet in height.~~

~~b. Office; private club or lodge; church; school, day-care center; public utility, government facility, or community facility; public park; ground floor of hotel or motel; retail above the ground floor shall be a maximum of 13 feet.~~

~~c. Residential; hotel or motel above the ground floor shall be a maximum of 10 feet.~~

~~2. To determine the allowed height of structure, determine the number of stories allowed in the use zone charts and apply the allowed height per story specified in subsection (1) of this section. For example, if three stories are allowed and the proposed use is ground floor retail with two stories of residential above, the allowed height would be 35 feet.~~

~~Buildings which are not constructed with the maximum allowable number of stories may increase the height of the stories actually constructed by an amount that does not result in a height greater than that which would have resulted from a building constructed with the maximum allowable number of stories. For the purpose of this height calculation, it shall be assumed that each unconstructed story would have been used for residential purposes if constructed, and therefore allows an additional 10 feet of height that can be added to the building.~~

~~For example, if three stories are allowed, but only two stories are constructed, an additional 10 feet may be added to the building height.~~

~~3~~1. Height shall be measured above the point of measurement (e.g, above average building elevation, or above right-of-way) as specified in the particular use zone charts. For purposes of measuring building height above the abutting right(s)-of-way, alleys shall be excluded.

2. Where retail frontage is required along an abutting street, the minimum story height of ground floor retail; ground floor restaurant and tavern; ground floor entertainment, cultural and/or recreational facility shall be 15 feet.

~~4~~3. ~~In addition to the height exceptions established by KZC~~ 115.60, ~~t~~The following exceptions to height regulations in CBD zones are established:

a. Decorative parapets may exceed the height limit by a maximum of four feet; provided, that the average height of the parapet around the perimeter of the structure shall not exceed two feet.

b. For structures with a peaked roof, the peak may extend five feet above the height limit if the slope of the roof is greater than three feet vertical to 12 feet horizontal and eight feet above the height limit if the slope of the roof is equal or greater than four feet vertical to 12 feet horizontal.

c. Within CBD 1A and 1B, the height of rooftop appurtenances and related screening shall not exceed the maximum applicable height limitation beyond the height exceptions established in 3.a and 3.b above. In addition, the appurtenances and screening shall be integrated into the design of the parapet or peaked roof form. The height of rooftop

appurtenances and the height of related screening may not be modified through Section 115.120.

"Pedestrian-Friendly" Building Fronts

Issue

Building setbacks were originally developed to promote "pedestrian-friendly" building fronts by providing light, air, and safety. But dull building facades and building setbacks that are either too wide or too narrow can destroy a pedestrian streetscape. A successful pedestrian business district must provide interesting, pedestrian-friendly building facades and sidewalk activities.

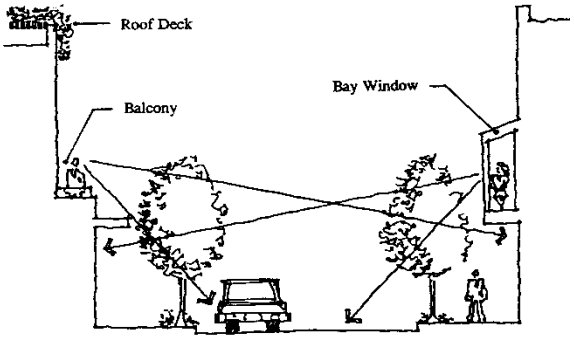
Discussion

Building fronts should have pedestrian-friendly features – transparent or decorative windows, public entrances, murals, bulletin boards, display windows, seating, or street vendors – that cover at least 75 percent of the ground-level storefront surface between 2' and 6' above the sidewalk.

Sitting areas for restaurant and merchandise displays should allow at least a 10' wide pavement strip for walking. Planters can define the sitting area and regulate pedestrian flow.

Blank walls severely detract from a pedestrian streetscape. To mitigate the negative effects of blank walls:

- Recess the wall with niches that invite people to stop, sit, and lean.
- Allow street vendors.
- Install trellises with climbing vines or plant materials.
- Provide a planting bed with plant material that screens at least 50 percent of the surface.
- Provide artwork on the surface.



Guideline

All building fronts should have pedestrian-friendly features as listed above.

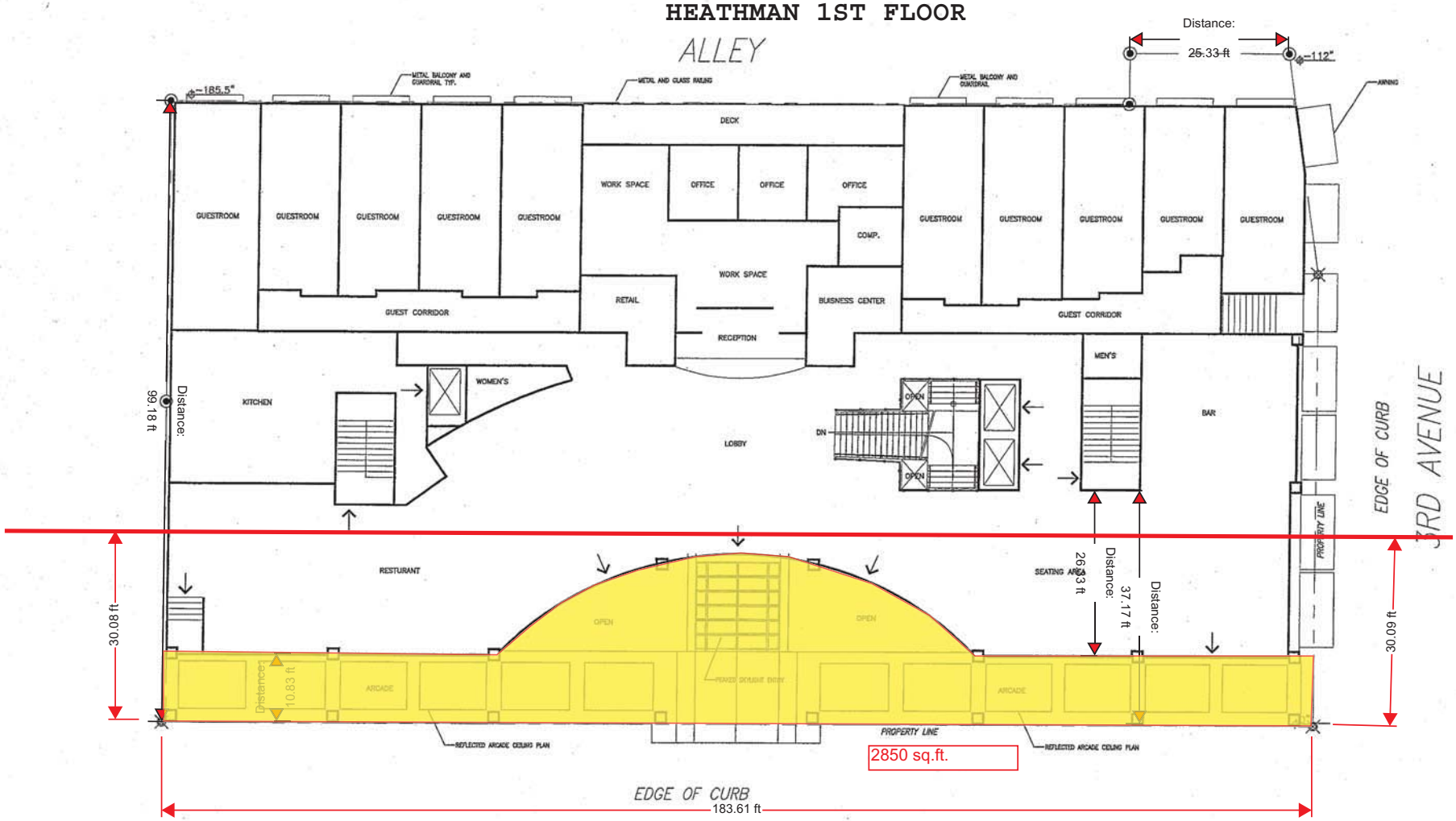
Special Consideration for Downtown Kirkland

Retail frontages in the Central Business District are required to have a 15' story height to ensure adequate height to accommodate diverse retail tenants and enhance the pedestrian experience. Where these taller retail stories are required, special attention to storefront detailing is necessary to provide a visual connection between pedestrian and retail activity.

Guideline

Storefronts should be highly transparent with windows of clear vision glass beginning no higher than 2' above grade to at least 10' above grade and covering at least 75% of the façade length.

HEATHMAN 1ST FLOOR



1st floor plan
1/16"=1'-0"

KIRLAND AVENUE

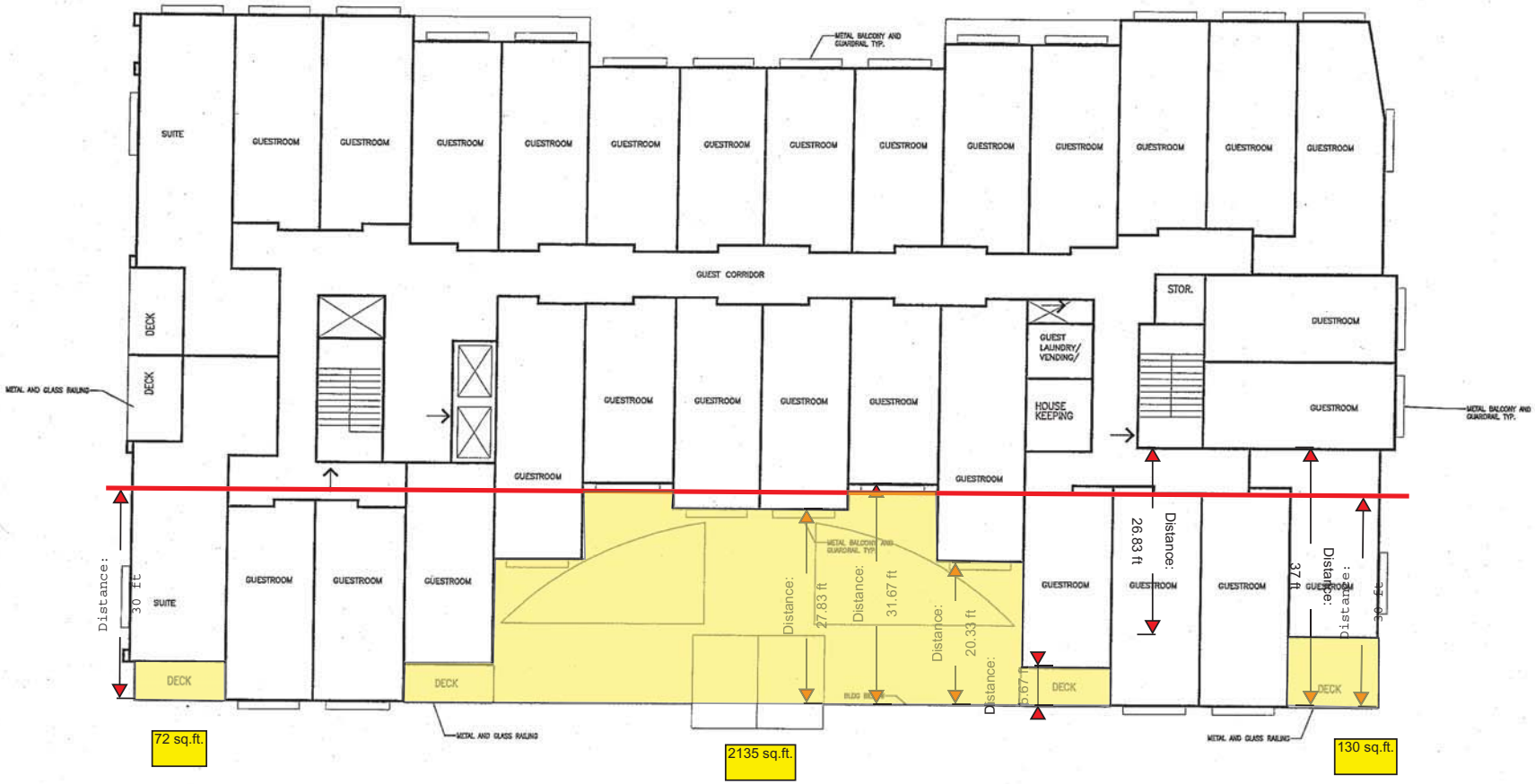
Max Floor Area within 30' Zone = 30 * 183 = 5,490 sq.ft.
1st Floor FAR within 30' Zone = 0.48
2nd Floor FAR within 30' Zone = 0.57
3rd Floor FAR within 30' Zone = 0.58
4th Floor FAR within 30' Zone = 0.48
Total FAR within 30' Zone = 2.11

Kirkland Hotel at Third St. and Kirkland Aven

A2.04

JOB #: 4002.01 DATE: 5/22/03 FILE NAME: A2.00-4-PLANS

HEATHMAN 2ND FLOOR



2nd floor plan

1/16"=1'-0"

Kirkland Hotel at Third St. and Kirkland Avenue

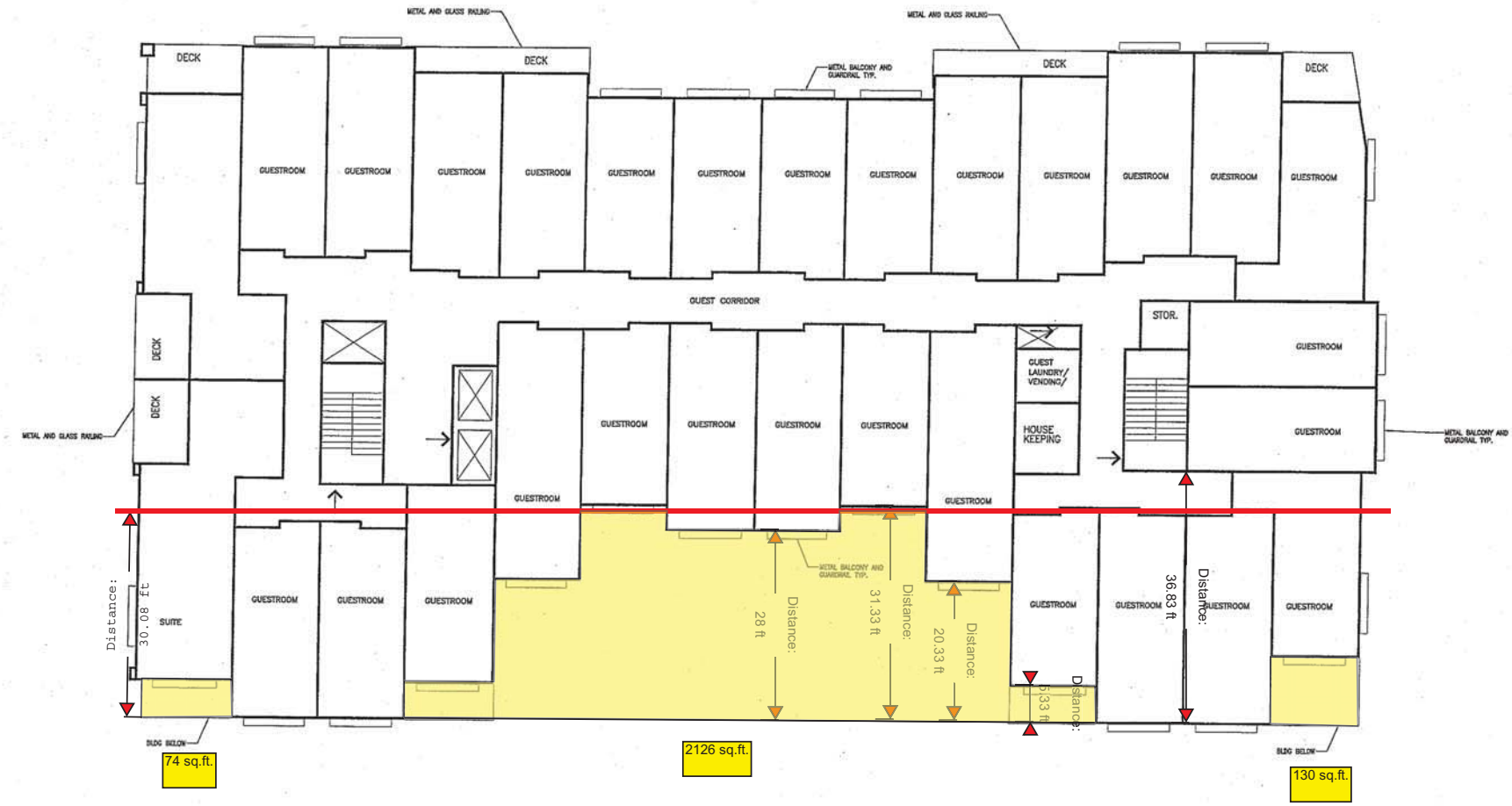
CORBETT HOLT PROPERTIES, INC.

Jensen/Fey
Architecture and Planning
3131 EAST MADISON SUITE #200
SEATTLE, WA 98112
TELE 206.329.9900 FAX 206.328.7058

A2.05

JOB #: 4002.01 DATE: 5/22/03 FILE NAME: A2.00-@-PLANS

HEATHMAN 3RD FLOOR



3rd floor plan

1/16"=1'-0"

Kirkland Hotel at Third St. and Kirkland Avenue

CORBETT HOLT PROPERTIES, INC.

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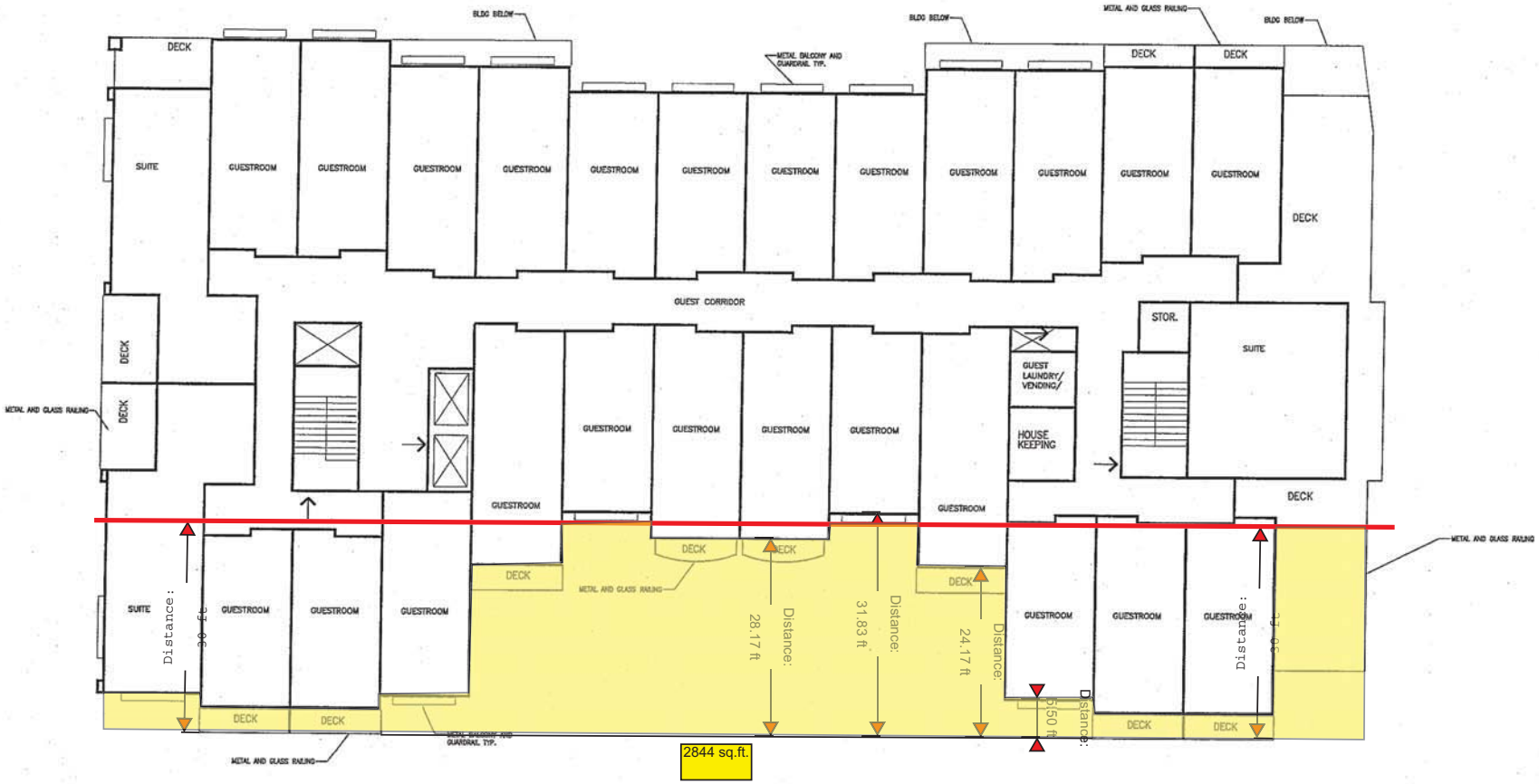
A2.06

JOB #: 4002.01 DATE: 5/22/03 FILE NAME: A2.06-6-PLANS

HEATHMAN 4TH FLOOR



4th floor plan

1/16"=1'-0"

Kirkland Hotel at Third St. and Kirkland Avenue

CORBETT HOLT PROPERTIES, INC.

Jensen/Fey
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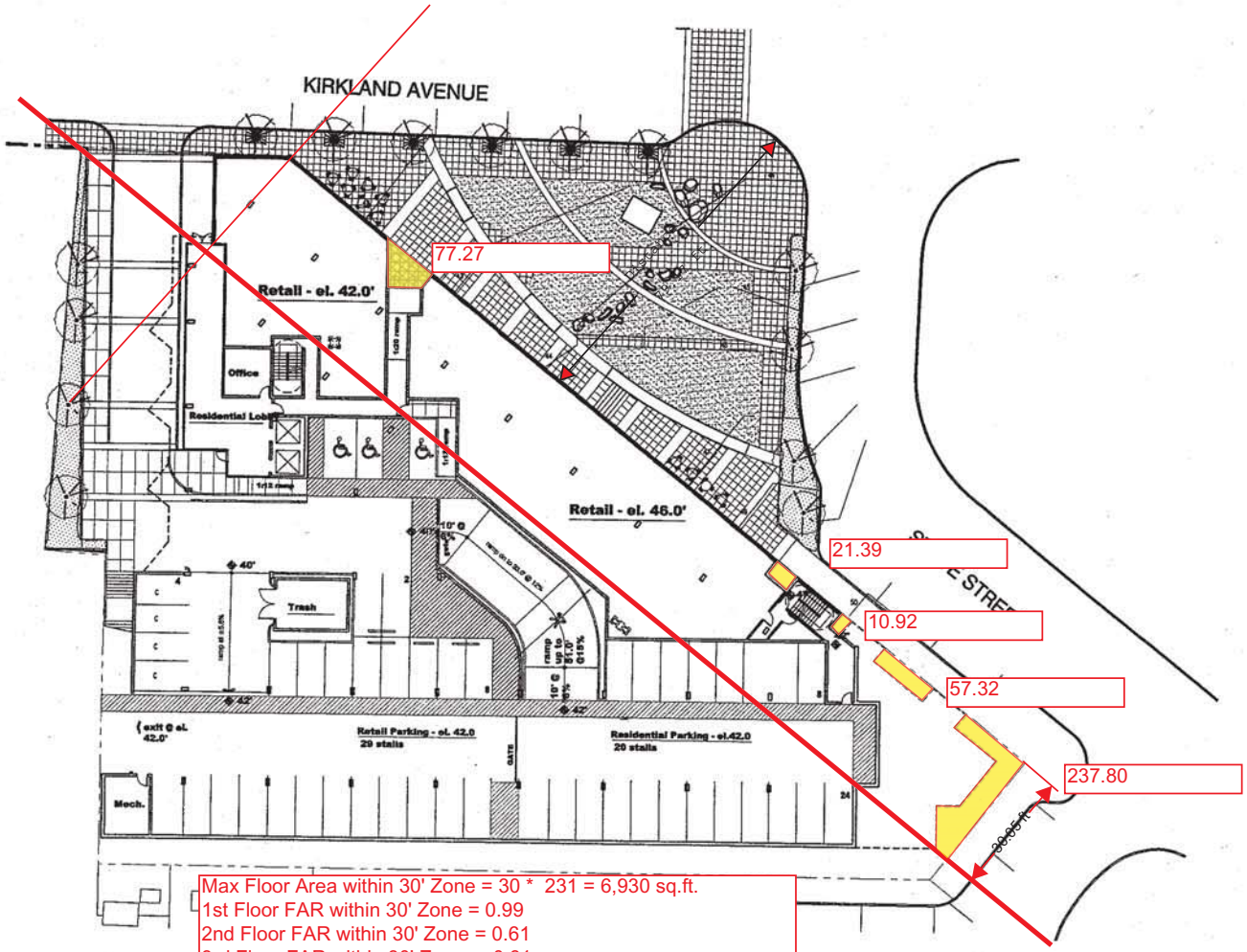
A2.07

JOB #: 4002.01 DATE: 5/22/03 FILE NAME A2.00-a-PLANS

KIRKLAND CENTRAL 1ST FLOOR



Max Floor Area within 30' Zone = 30 * 231 = 6,930 sq.ft.
1st Floor FAR within 30' Zone = 0.99
2nd Floor FAR within 30' Zone = 0.61
3rd Floor FAR within 30' Zone = 0.61
4th Floor FAR within 30' Zone = 0.61
5th Floor FAR within 30' Zone = 0.50
Total FAR within 30' Zone = 3.32

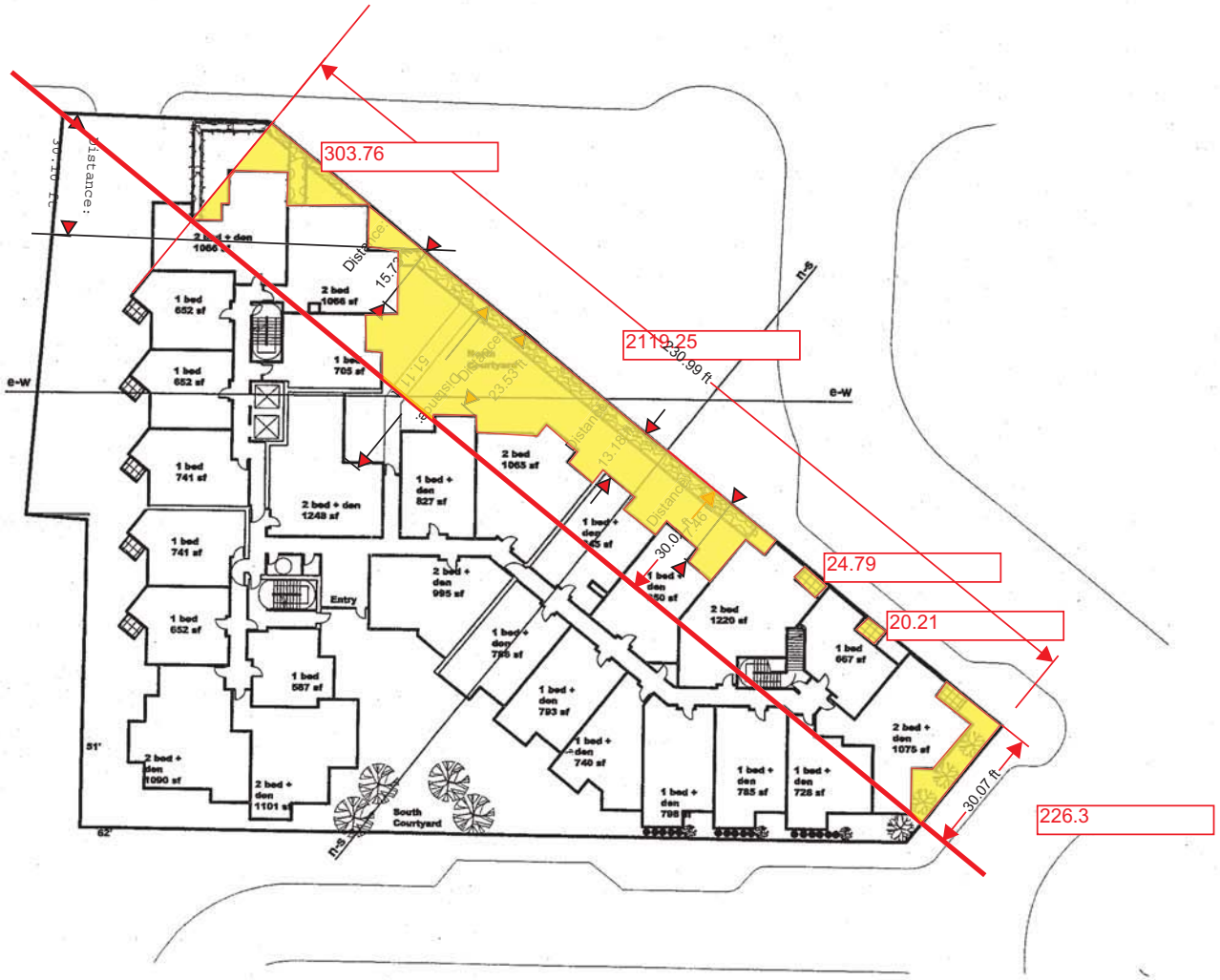
P2 Parking Level - el. 42'

75 State Street

MITHŪN
Architects+Designers+Planners

0 8 16 32

KIRKLAND CENTRAL 2ND TO 4TH FLOORS



Floors 2-4

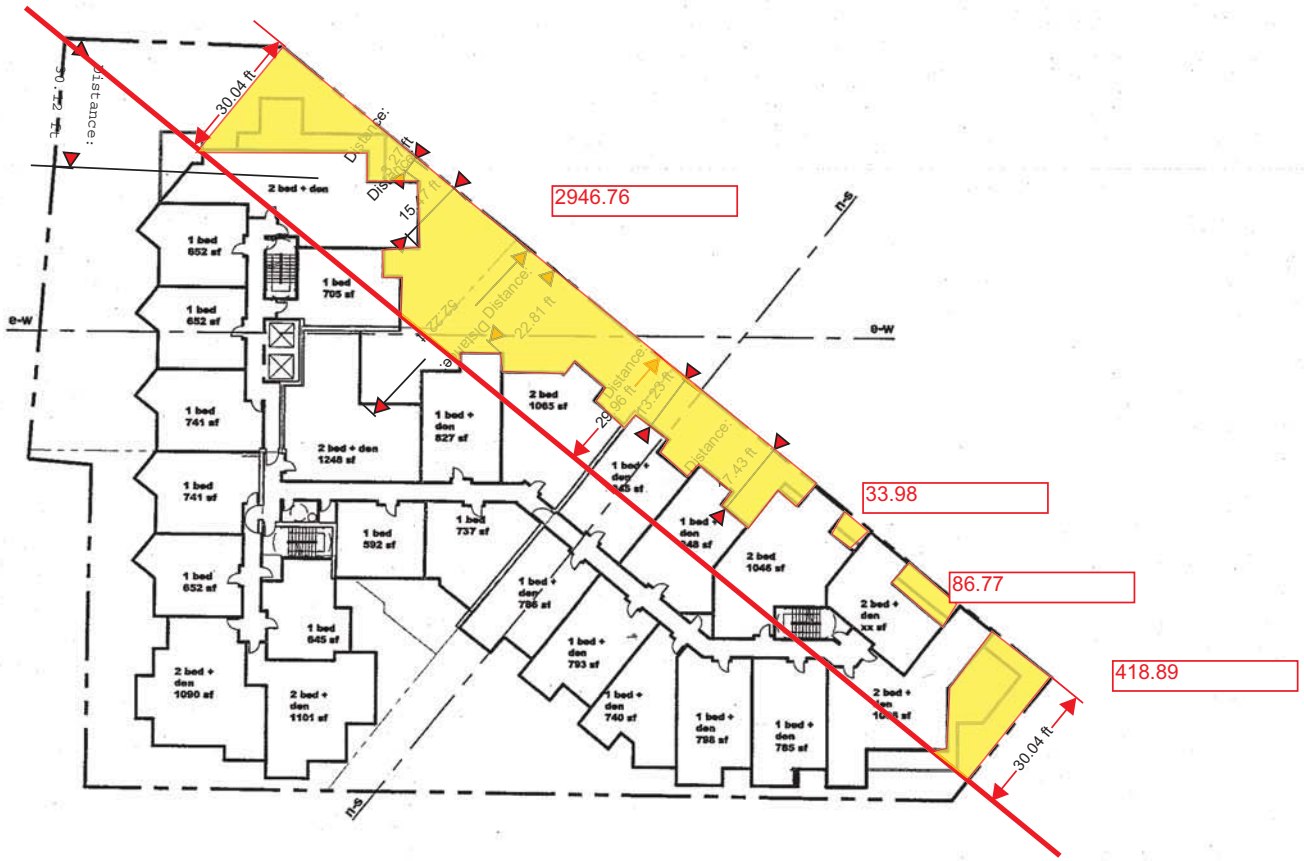
R1 Residential Level - el. 61'

75 State Street

MITHŪN
Architects • Designers • Planners

Distance:
31.98 ft
0 8 16 32

KIRKLAND CENTRAL 5TH FLOOR



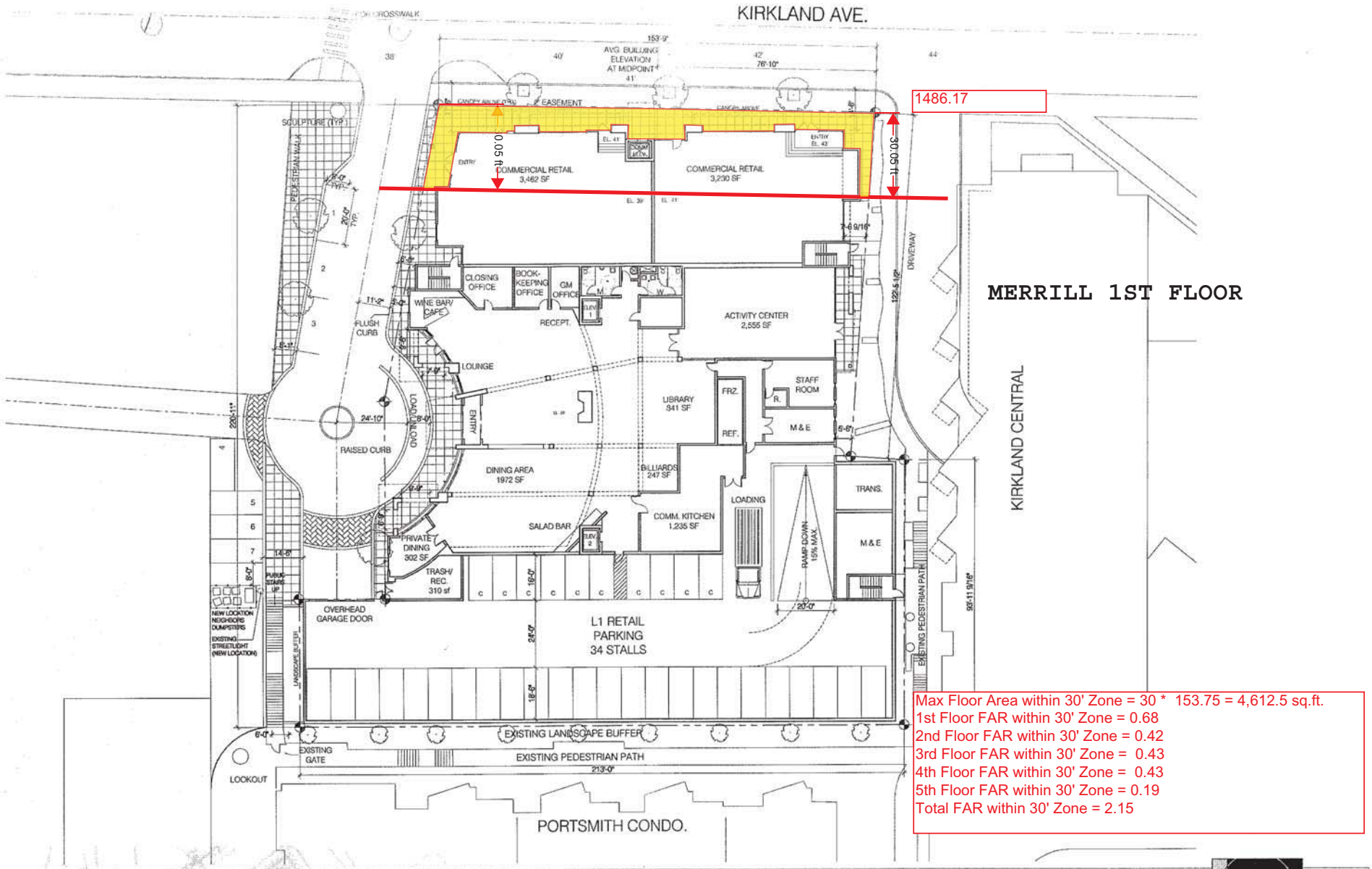
5th Floor

R4 Residential Level EL. 90.25'

75 State Street

MITHŪN
Architects+Designers+Planners

0 8 16 32



Merrill Gardens at Kirkland :

201 KIRKLAND AVENUE | OCTOBER 3, 2006

SCALE: 1/32" = 1'-0"

MERRILL GARDENS

SRM STONE RIVARD McGONIGLE DEVELOPMENT, LLC

RUNBERG ARCHITECTURE group PLLC

sheet 4

MERRILL 2ND FLOOR

Merrill Gardens at Kirkland : PLAN: L2

201 KIRKLAND AVENUE | OCTOBER 3, 2006

MERRILL GARDENS

SRM STONE RIVARD McGONIGLE DEVELOPMENT, LLC

RUNBERG ARCHITECTURE GROUP

sheet 5

MERRILL 3RD TO 4TH FLOOR

Merrill Gardens at Kirkland : PLAN: L3-4

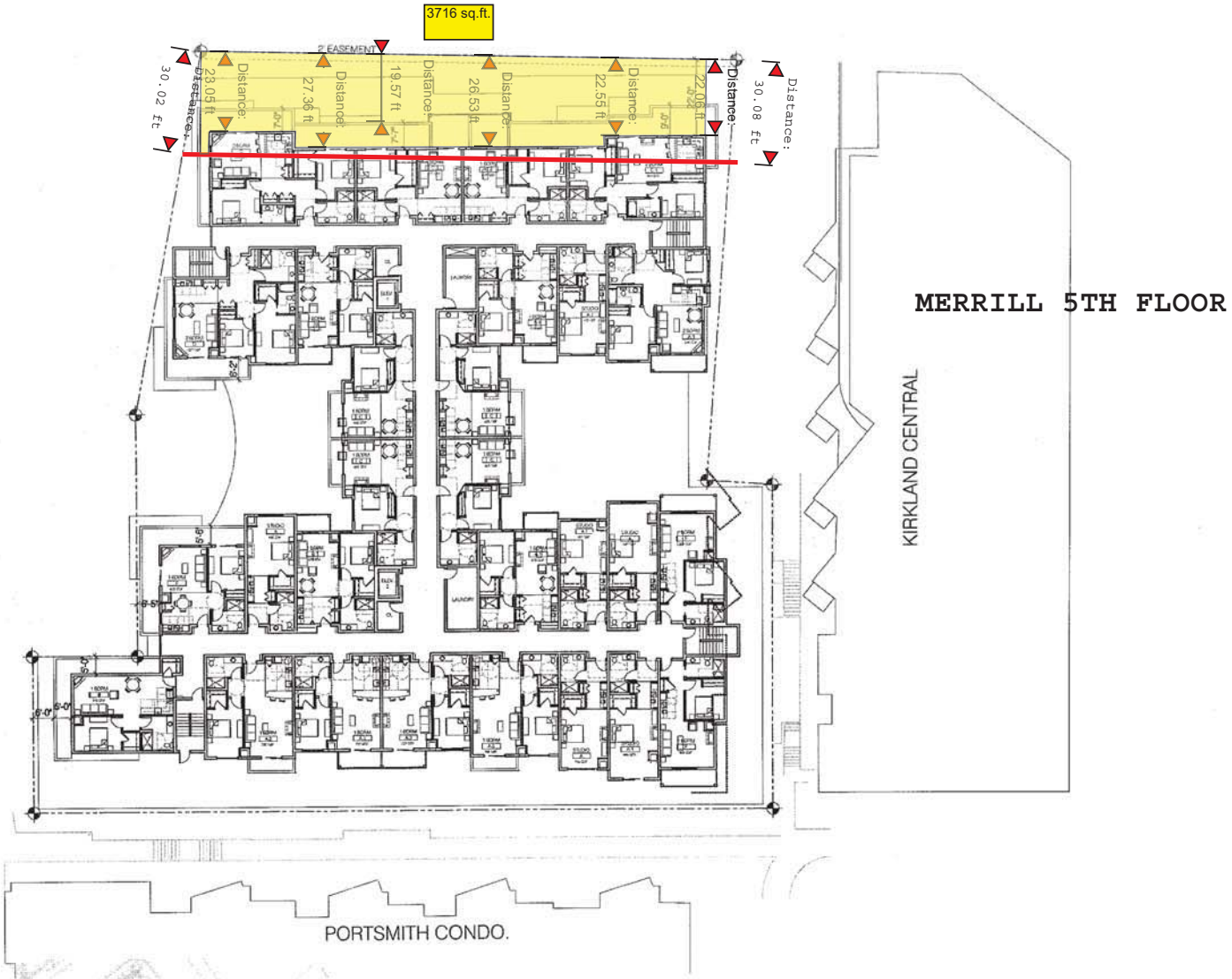
201 KIRKLAND AVENUE | OCTOBER 3, 2006

MERRILL GARDENS

SRM STONE RIVARD McGONIGLE DEVELOPMENT, LLC

RUNBERG ARCHITECTURE GROUP PLLC

sheet 6



Merrill Gardens at Kirkland : PLAN: L5

201 KIRKLAND AVENUE | OCTOBER 3, 2006

MERRILL GARDENS

SRM STONE RIVARD McGONIGLE DEVELOPMENT, LLC

RUNBERG ARCHITECTURE group

sheet 7

Chapter 142 – DESIGN REVIEW

Sections:

142.05 User Guide
142.15 Development Activities Requiring D.R. Approval
142.25 Administrative Design Review (A.D.R.) Process
142.35 Design Board Review (D.B.R.) Process
142.40 Appeals of Design Review Board Decisions
142.50 Modifications
142.55 Lapse of Approval for Design Review Board Decisions
142.60 Bonds

142.05 User Guide

Various places in this code indicate that certain developments, activities, or uses are required to be reviewed through design review or D.R. Design review may either be administrative design review (A.D.R.) or design board review (D.B.R.). This chapter describes these design review processes.

142.15 Development Activities Requiring D.R. Approval

1. Design Board Review (D.B.R.)

a. The following development activities shall be reviewed by the Design Review Board pursuant to KZC 142.35:

1) New buildings greater than one story in height or greater than 10,000 square feet of gross floor area, or in the Market Street Corridor Historic District (MSC 3 Zone).

2) Additions to existing buildings where:

a) The new gross floor area is greater than 10 percent of the existing building's gross floor area; and

b) The addition is greater than 2,000 square feet of gross floor area; and

c) Either:

1) The existing building and addition total more than 10,000 square feet of gross floor area; or

2) The addition adds another story; or

3) Is in the Market Street Corridor Historic District (MSC 3 zone).

3) Renovations to existing facades, where the building is identified by the City as an historic structure or is in the Market Street Corridor Historic District (MSC 3 zone).

b. Exemptions from D.B.R. – The following development activities shall be reviewed through the administrative design process in KZC 142.25:

1) Any development where administrative design review is indicated in the applicable Use Zone Chart.

2) Any development in the following zones within the NE 85th Street Subarea: RH 8, PR 3.6, RM, PLA 17A.

3) Any development in the MSC 1, MSC 2, and MSC 4 zones located within the Market Street Corridor.

2. Administrative Design Review (A.D.R.) – All other development activities not requiring D.B.R. review under subsection (1) of this section shall be reviewed through the A.D.R. process pursuant to KZC 142.25.

3. Exemptions from Design Review – The following development activities shall be exempt from either A.D.R. or D.B.R. and compliance with the design regulations of Chapter 92 KZC:

a. Any activity which does not require a building permit; or

b. Interior work that does not alter the exterior of the structure; or

c. Normal building maintenance including the repair or maintenance of structural members; or

d. Any development listed as exempt in the applicable Use Zone Chart.

142.25 Administrative Design Review (A.D.R.) Process

1. Authority – The Planning Official shall conduct A.D.R in conjunction with a related development permit pursuant to KZC 142.25.

The Planning Official shall review the A.D.R. application for compliance with the design regulations contained in Chapter 92 KZC. In addition, the following guidelines and policies shall be used to interpret how the regulations apply to the subject property:

a. Design guidelines for pedestrian-oriented business districts, as adopted in KMC 3.30.040.

b. Design guidelines for the Rose Hill Business District (RHBD) and the Totem Lake Neighborhood (TLN) as adopted in KMC 3.30.040.

~~c. The neighborhood plans contained in the Comprehensive Plan for areas where Design Review is required, such as the Downtown Plan, Juanita Business District Plan, the Totem Lake Neighborhood Plan, the North Rose Hill Neighborhood Plan for the North Rose Hill Business District (NRHBD), the NE 85th Street Subarea Plan for the Rose Hill Business District (RHBD), and the Market Street Corridor Plan for the Market Street Corridor (MSC).~~

~~d~~c. For review of attached or stacked dwelling units within the NE 85th Street Subarea and the Market Street Corridor, Appendix C, Design Principles for Residential Development contained in the Comprehensive Plan.

2. Application – As part of any application for a development permit requiring A.D.R., the applicant shall show compliance with the design regulations in Chapter 92 KZC by submitting an A.D.R. application on a form provided by the Planning Department. The application shall include all documents and exhibits listed on the application form, as well as application materials required as a result of a pre-design conference.

3. Pre-Design Conference – Before applying for A.D.R. approval, the applicant may schedule a pre-design meeting with the Planning Official. The meeting will be scheduled by the Planning Official upon written request by the applicant. The purpose of this meeting is to provide an opportunity for an applicant to discuss the project concept with the Planning Official and the Planning Official to designate which design regulations apply to the proposed development based primarily on the location and nature of the proposed development.

4. A.D.R. Approval

   a. The Planning Official may grant, deny, or conditionally approve the A.D.R. application. The A.D.R. approval or conditional approval will become conditions of approval for any related development permit, and no development permit will be issued unless it is consistent with the A.D.R. approval or conditional approval.

   b. Additions or Modifications to Existing Buildings

      1) Applications involving additions or modifications to existing buildings shall comply with the design regulations of Chapter 92 KZC to the extent feasible depending on the scope of the project. The Planning Official may waive compliance with a particular design regulation if the applicant demonstrates that it is not feasible given the existing development and scope of the project.

      2) The Planning Official may waive the A.D.R. process for applications involving additions or modifications to existing buildings if the design regulations are not applicable to the proposed development activity.

5. Lapse of Approval – The lapse of approval for the A.D.R. decision shall be tied to the development permit and all conditions of the A.D.R. approval shall be included in the conditions of approval granted for that development permit.

6. Design Departure and Minor Variations may be requested pursuant to KZC 142.37

   ~~a. General – This section provides a mechanism for obtaining approval to depart from strict adherence to the design regulations or for requesting minor variations from requirements in the following zones:~~

   ~~1) In the CBD: minimum required yards; and~~

   ~~2) In the Totem Center: minimum required yards, floor plate maximums and building separation requirements; and~~

   ~~3) In the RHBD and the TLN: minimum required yards, landscape buffer and horizontal facade requirements; and~~

~~4) In the MSC 1 and MSC 4 zones of the Market Street Corridor: minimum required front yards and horizontal facade requirements.~~

~~5) In the MSC 2 zone of the Market Street Corridor: height (up to an additional five feet), minimum required front yards and horizontal facade requirements.~~

~~6) In the MSC 3 zone of the Market Street Corridor: horizontal facade requirements.~~

~~This section does not apply when a design regulation permits the applicant to propose an alternate method for complying with it or the use zone chart allows the applicant to request a reduced setback administratively.~~

~~b. Process – If a design departure or minor variation is requested, the D.R. decision, including the design departure or minor variation, will be reviewed and decided upon using the D.B.R. process.~~

~~c. Application Information – The applicant shall submit a complete application on the form provided by the Planning Department, along with all information listed on that form, including a written response to the criteria in subsection (6)(d) of this section.~~

~~d. Criteria – The Design Review Board may grant a design departure or minor variation only if it finds that all of the following requirements are met:~~

~~1) The request results in superior design and fulfills the policy basis for the applicable design regulations and design guidelines;~~

~~2) The departure will not have any substantial detrimental effect on nearby properties and the City or the neighborhood.~~

142.35 Design Board Review (D.B.R.) Process

1. Timing of D.B.R. – For any development activity that requires D.B.R. approval, the applicant must comply with the provisions of this chapter before a building permit can be approved; provided, that an applicant may submit a building permit application at any time during the design review process. An applicant may request early design review, but such review shall not be considered a development permit or to in any way authorize a use or development activity. An application for D.R. approval may be considered withdrawn for all purposes if the applicant has not submitted information requested by the City within 60 calendar days after the request and the applicant does not demonstrate reasonable progress toward submitting the requested information.

2. Public Meetings – All meetings of the Design Review Board shall be public meetings and open to the public.

3. Authority – The Design Review Board shall review projects for consistency with the following:

   a. Design guidelines for pedestrian-oriented business districts, as adopted in Chapter 3.30 KMC.

b. Design Guidelines for the Rose Hill Business District (RHBD) and the Totem Lake Neighborhood (TLN) as adopted in Chapter 3.30 KMC.

~~c. The applicable neighborhood plans contained in the Comprehensive Plan for areas where Design Review is required.~~

~~d~~c. The Design Principles for Residential Development contained in Appendix C of the Comprehensive Plan for review of attached and stacked dwelling units located within the NE 85th Street Subarea and the Market Street Corridor.

4. The Design Review Board is authorized to approve minor variations in development standards within certain Design Districts described in KZC 142.~~25(6)(a)~~37 provided the variation complies with the criteria of KZC 142.~~25(6)(b)~~37.

5. Pre-Design Conference – Before applying for D.B.R. approval, the applicant shall attend a pre-design conference with the Planning Official. The conference will be scheduled by the Planning Official upon written request by the applicant. The purpose of this conference is for the Planning Official to discuss how the design regulations, design guidelines, and other applicable provisions of this code and the Comprehensive Plan relate to the proposed development and to assist the applicant in preparing for the conceptual design conference. A pre-design conference may be combined with a pre-submittal meeting.

6. Conceptual Design Conference – Before applying for design review approval, the applicant shall attend a conceptual design conference (CDC) with the Design Review Board. The conference will be scheduled by the Planning Official to occur within 30 days of written request by the applicant. The applicant shall submit a complete application for Design Review within six months following the CDC, or the results of the CDC will be null and void and a new CDC will be required prior to application for design review approval. The purpose of this conference is to provide an opportunity for the applicant to discuss the project concept with the Design Review Board and:

   a. To discuss how the design regulations, design guidelines and other applicable provisions of the Comprehensive Plan affect or pertain to the proposed development;

   b. For the Design Review Board to designate which design regulations, design guidelines and other applicable provisions of the Comprehensive Plan apply to the proposed development based primarily on the location and nature of the proposed development; and

   c. For the Design Review Board to determine what models, drawings, perspectives, 3-D CAD model, or other application materials the applicant will need to submit with the design review application.

7. Application – Following the conceptual design conference, the applicant shall submit the design review application on a form provided by the Planning Department. The application shall include all documents and exhibits listed on the application, as well as all application materials required as a result of the conceptual design conference.

8. Public Notice

a. Contents – On receipt of a complete design review application, the Planning Official shall schedule a design response conference with the Design Review Board to occur within 60 calendar days of receiving the complete application. The Planning Official shall provide public notice of the design response conference. Public notice shall contain the name of the applicant and project, the location of the subject property, a description of the proposed project, time and place of the first design response conference, and a statement of the availability of the application file.

b. Distribution – The Planning Official shall distribute this notice at least 14 calendar days before the first design response conference as follows:

1) By mailing the notice or a summary thereof to owners of all property within 300 feet of any boundary of the subject property.

2) Publish once in the official newspaper of the City.

3) Post conspicuously on the subject property on a public notice sign. The Department of Planning and Community Development is authorized to develop standards and procedures for public notice signs.

9. Design Response Conference – The design response stage allows the Design Review Board to review the design plans and provide direction to the applicant on issues to be resolved for final approval. The applicant shall present a summary of the project to the Design Review Board. The Planning Official shall present a review of the project for consistency with the requirements specified in subsection (3) of this section. Public comment relevant to the application may be taken. Persons commenting must provide their full name and mailing address. The Design Review Board may reasonably limit the extent of comments to facilitate the orderly and timely conduct of the conference.

The Design Review Board shall decide whether the application complies with the requirements specified in subsection (3) of this section. The Design Review Board shall make its decision by motion that adopts approved project drawings in addition to changes or conditions required by the Design Review Board. If the Design Review Board finds that the application does not meet those requirements, it shall specify what requirements have not been met and options for meeting those requirements. The Design Review Board may continue the conference if necessary to gather additional information necessary for its decision on the design review application. If the conference is continued to a specific date, no further public notice is required; otherwise notice shall be mailed to all parties participating in the design response conference.

Conceptual Master Plan Conference for TL 2 – The Design Review Board shall consider a Conceptual Master Plan (CMP) for properties over one and one-half acres in size in TL 2. The CMP shall incorporate the design principles set forth in the special regulations for the use in the TL 2 zoning chart.

Conceptual Master Plan Conference for TL 5 – The Design Review Board shall consider a Conceptual Master Plan (CMP) for properties over four acres in size in TL 5. The CMP shall incorporate the design principles set forth in the special regulations for the use in the TL 5 zoning chart.

Conceptual Master Plan Conference for RHBD – The Design Review Board shall consider a Conceptual Master Plan (CMP) in the RH 3 zone within the NE 85th Street Subarea. The CMP shall incorporate the design considerations for the RH 3 zone set forth in the Design Guidelines for the Rose Hill Business District.

10. Approval – After reviewing the D.B.R. application and other application materials, the Design Review Board may grant, deny or conditionally approve subject to modifications the D.B.R. application for the proposed development. No development permit for the subject property requiring D.B.R. approval will be issued until the proposed development is granted D.B.R. approval or conditional approval. The terms of D.B.R. approval or conditional approval will become a condition of approval on each subsequent development permit and no subsequent development permit will be issued unless it is consistent with the D.B.R. approval or conditional approval. The Planning Official shall send written notice of the D.B.R. decision to the applicant and all other parties who participated in the conference(s) within 14 calendar days of the approval. If the D.B.R. is denied, the decision shall specify the reasons for denial. The final D.B.R. decision of the City on the D.B.R. application shall be the postmarked date of the written D.B.R. decision or, if the D.B.R. decision is appealed, the date of the City's final decision on the appeal. Notwithstanding any other provision of this code, if an applicant submits a complete application for a building permit for the approved D.B.R. development within 180 days of the final D.B.R. decision, the date of vesting for the building permit application shall be the date of the final D.B.R. decision.

    Additional Approval Provision for TL 2 and TL 5 – The Notice of Approval for a Conceptual Master Plan (CMP) shall set thresholds for subsequent D.B.R. or A.D.R. review of projects following approval of a CMP in TL 2 or TL 5. The Notice of Approval shall also include a phasing plan for all improvements shown or described in the CMP.

    Additional Approval Provision for RHBD – The Design Review Board shall determine the thresholds for subsequent D.B.R. or A.D.R. review of projects following approval of a Conceptual Master Plan (CMP) in the RHBD. The Notice of Approval for the CMP will state the thresholds for future review of projects and also include a phasing plan for all improvements shown or described in the CMP.

142.37. Design Departure and Minor Variations

a. General – This section provides a mechanism for obtaining approval to depart from strict adherence to the design regulations or for requesting minor variations from requirements in the following zones:

1) In the CBD: minimum required yards; and

2) In the Totem Center: minimum required yards, floor plate maximums and building separation requirements; and

3) In the RHBD and the TLN: minimum required yards, landscape buffer and horizontal facade requirements; and

4) In the MSC 1 and MSC 4 zones of the Market Street Corridor: minimum required front yards and horizontal facade requirements.

5) In the MSC 2 zone of the Market Street Corridor: height (up to an additional five feet), minimum required front yards and horizontal facade requirements.

6) In the MSC 3 zone of the Market Street Corridor: horizontal facade requirements.

This section does not apply when a design regulation permits the applicant to propose an alternate method for complying with it or the use zone chart allows the applicant to request a reduced setback administratively.

b. Process – If a design departure or minor variation is requested, the D.R. decision, including the design departure or minor variation, will be reviewed and decided upon using the D.B.R. process.

c. Application Information – The applicant shall submit a complete application on the form provided by the Planning Department, along with all information listed on that form, including a written response to the criteria in subsection (6)(d) of this section.

d. Criteria – The Design Review Board may grant a design departure or minor variation only if it finds that all of the following requirements are met:

1) The request results in superior design and fulfills the policy basis for the applicable design regulations and design guidelines;

2) The departure will not have any substantial detrimental effect on nearby properties and the City or the neighborhood.

142.40 Appeals of Design Review Board Decisions

1. Jurisdiction – Appeals of the decision of the Design Review Board will be heard as follows:

   a. If a related development permit requires an open record public hearing, then the appeal shall be heard at that hearing and decided upon by the hearing body or officer ~~or officer~~ hearing the related development permit

   b. If there are no other open record hearings required for related development permits, then the decision of the Design Review Board shall be heard at an open record hearing by the ~~City Council~~Hearing Examiner.

   Only those issues under the authority of the Design Review Board as established by KZC 142.35(3) and (4) are subject to appeal.

2. Who May Appeal – The decision of the Design Review Board may be appealed by the applicant or any other individual or entity who submitted written or oral comments to the Design Review Board.

3. Time To Appeal/How To Appeal – The appeal, in the form of a letter of appeal, must be delivered to the Planning Department within 14 calendar days following the postmarked date of the distribution of the Design Review Board decision. It must contain a clear reference to the matter being appealed and a statement of

the specific elements of the Design Review Board decision disputed by the person filing the appeal.

4. Fees – The person filing the appeal shall include with the letter of appeal the fee as established by ordinance.

5. Notice

   a. Content – The Planning Official shall prepare a notice of the appeal containing the following:

      1) The file number and a brief written description of the matter being appealed.

      2) A statement of the scope of the appeal including a summary of the specific matters disputed in the letter of appeal.

      3) The time and place of the public hearing on the appeal.

      4) A statement of who may participate in the appeal.

      5) A statement of how to participate in the appeal.

   b. Distribution – At least 14 calendar days before the hearing on the appeal, the Planning Official shall send a copy or a summary of this notice to the applicant, appellant(s), and Design Review Board. The notice of appeal may be combined with the hearing notice for the related development permit, if applicable.

6. Participation in the Appeal – Only the person(s) who filed the appeal, the applicant, and the chair (or designee) of the Design Review Board may participate in the appeal. These persons may participate in the appeal in either or both of the following ways:

   a. By submitting written comments or testimony to the hearing body or officer prior to commencement of the hearing.

   b. By appearing in person, or through a representative, at the hearing and submitting oral testimony directly to the hearing body or officer. The hearing body or officer may reasonably limit the extent of oral testimony to facilitate the orderly and timely conduct of the hearing.

7. Scope of the Appeal – The scope of the appeal is limited to the specific elements of the Design Review Board decision disputed in the letter of appeal and the hearing body or officer may only consider comments, testimony, and arguments on these specific elements.

8. Staff Report on the Appeal

   a. Content – The Planning Official shall prepare a staff report containing the following:

      1) The written decision of the Design Review Board.

2) All written comments received by the Design Review Board.

3) The letter of appeal.

4) All written comments on the appeal received by the Planning Department from the appellant or applicant and within the scope of the appeal.

5) An analysis of the specific element(s) of the Design Review Board's decision disputed in the letter of appeal.

The Planning Official may present the staff report orally to the hearing body or officer.

b. Distribution – At least seven calendar days before the hearing, the Planning Official shall distribute copies of the staff report to the hearing body or officer, the appellant, and the applicant.

9. Electronic Sound Recordings – The hearing body or officer shall make a complete electronic sound recording of each hearing.

10. Continuation of the Hearing – The hearing body or officer may continue the hearing if, for any reason, it is unable to hear all of the testimony on the appeal or if it determines that it needs more information within the scope of the appeal. If, during the hearing, the hearing body or officer announces the time and place of the continued hearing on the matter, no further notice of that hearing need be given.

11. Decision on the Appeal

a. Criteria – Unless substantial relevant information is presented which was not considered by the Design Review Board, the decision of the Design Review Board shall be accorded substantial weight. The decision may be reversed or modified if, after considering all of the evidence in light of the design regulations, design guidelines, and Comprehensive Plan, the hearing body or officer determines that a mistake has been made. Specific allowances established by the applicable use zone charts may not be appealed unless the Design Review Board has approved exceptions to those allowances.

b. General – The hearing body or officer shall consider all information and material within the scope of the appeal submitted by the appellant. The hearing body or officer shall adopt findings and conclusions and either:

1) Affirm the decision being appealed; or

2) Reverse the decision being appealed; or

3) Modify the decision being appealed.

c. Issuance of Written Decision – Within eight calendar days after the public hearing, the hearing body or officer shall issue a written decision on the appeal. Within four business days after it is issued, the hearing body or officer shall distribute the decision by mail to the appellant and the applicant.

d. Effect – If the appeal hearing is combined with an open record hearing for a related development permit, the decision on the appeal shall become part of the decision on the related development permit. The final decision of the City on the appeal of the Design Review Board decision shall occur at the same stage as the final decision of the City on the related development permit. Any appeal or challenge of the action of the hearing body or officer on the appeal of the Design Review Board decision shall be limited to the scope of the initial appeal.

142.50 Modifications

1. The Planning Official may approve a modification to the D.R. approval for the proposed development if:

   a. The need for the modification was not known and could not reasonably have been known before the D.R. approval was granted;

   b. The modification is minor and will not, in any substantial way, change the proposed development or violate any requirement imposed by the Design Review Board. The Planning Official may consult with the Design Review Board in his/her decision; and

   c. The development that will result from the modification will be consistent with the design regulations, design guidelines, and Comprehensive Plan.

2. Any modification, other than as specified in subsection (1) of this section, must be reviewed and decided upon as a new D.R. approval under this chapter.

142.55 Lapse of Approval for Design Review Board Decisions

1. General – Unless otherwise specified in the decision granting D.B.R. approval, the applicant must begin construction or submit to the City a complete building permit application for development of the subject property consistent with the D.B.R. approval within one year after the final decision granting the D.B.R. approval or that decision becomes void. The applicant must substantially complete construction consistent with the D.R. approval and complete all conditions listed in the D.B.R. approval decision within three years after the final decision on the D.B.R. approval or the decision becomes void. “Final decision” means the final decision of the Planning Official or Design Review Board.

2. Extensions

   a. Application – The applicant may apply for a one-time extension, of up to one year, of the time limits under subsection (1) of this section. The application for the extension must be submitted by letter prior to the expiration of the applicable time limit under subsection (1) of this section. The letter of application must be submitted to the Planning Department and, along with any other supplemental documentation, must demonstrate that the applicant is making substantial progress toward developing the subject property consistent with the D.B.R. approval and that circumstances beyond his/her control prevent compliance with the applicable time limit under subsection (1) of this section.

b. Fee – The applicant shall include with the letter of request the fee as established by ordinance.

c. Review Process – An application for a time extension will be reviewed by the Planning Official.

3. Appeals

a. Who Can Appeal – Any person who is aggrieved by a time extension or denial of a time extension under this section may appeal that determination.

b. How To Appeal – The applicant must file a letter of appeal within 14 days of the approval or denial of the time extension indicating how the determination affects his/her property and presenting any relevant arguments or information on the correctness of the determination. The applicant shall include the appeal fee as established by ordinance.

c. Applicable Procedures – All appeals of decisions under this section will be reviewed and decided upon using Process IIA, described in Chapter 150 KZC.

142.60 Bonds

The Planning Official may require a bond under Chapter 175 KZC to ensure compliance with any aspect of a D.R. approval.