



**Planning Department**  
 231 NE Fifth Street ◦ McMinnville, OR 97128  
 (503) 434-7311 Office ◦ (503) 474-4955 Fax  
[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

**Office Use Only:**

File No. AP 5-23  
 Date Received 4/3/23  
 Fee \$1,095.00  
 Receipt No. 207769  
 Received by AW

569-23-000140-PLNG

## Appeal Application

### Applicant Information

**Applicant is:**  Property Owner  Contract Buyer  Option Holder  Agent  Other \_\_\_\_\_

Provided testimony prior to this appeal.

Applicant Name Daniel Kiser Phone (971) 264- 4954

Contact Name \_\_\_\_\_ Phone \_\_\_\_\_  
*(If different than above)*

Address 10771 NW Brentano Lane

City, State, Zip McMinnville, OR 97128

Contact Email dkiser@fergusonshamamian.com

### Original Application Information

File No.: AP 1-23 (formerly HL 6-22) Review Body: Historic Landmarks Committee  
Planning Commission

Decision: HLC: Denied / PC: Approved Date of Decision: HLC: 01/26/23, PC: 03/16/23

Date Decision Mailed: HLC: 01/27/23, PC: 03/18/23 Appeal Date Deadline: 04/03/23

Description of Original Application Request: \_\_\_\_\_

Applications HL 6-22, HL 7-22, and HL 8-22 requested demolition of the existing historic buildings and construction of the Gwendolyn Hotel (DDR 4-22) on the combined sites of 609, 611, and 619 NE Third Street, McMinnville, Oregon.

These applications were denied by the Historic Landmarks Committee, then appealed by the Applicant to the Planning Commission, which approved the appeals.

Appeal of a decision made by the following review body is requested:

PLANNING DIRECTOR (See Section 17.72.170 (Appeal from Ruling of Planning Director) of the Zoning Ordinance for further information.)

PLANNING COMMISSION (See Section 17.72.180 (Appeal from Ruling of Planning Commission) of the Zoning Ordinance for further information.)

Please state in detail the basis for and issues raised in this appeal. You must identify the criteria and findings that you are appealing. Attach additional sheets as necessary. \_\_\_\_\_

See attached narrative.

Multiple horizontal lines for writing.

In addition to this completed application, the applicant must provide the following:

Payment of the applicable review fee, which can be found on the Planning Department web page.

I certify the statements contained herein, along with the evidence submitted, are in all respects true and are correct to the best of my knowledge and belief.

Handwritten signature: Daniel Kinn

04/03/23

Appellant's Signature

Date



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<b>Office Use Only:</b>	
File No.	<u>AP 6-23</u>
Date Received	<u>4/3/23</u>
Fee	<u>\$1,095.00</u>
Receipt No.	<u>207770</u>
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569-23-000140-PLNG-01

## Appeal Application

### Applicant Information

**Applicant is:**  Property Owner  Contract Buyer  Option Holder  Agent  Other \_\_\_\_\_  
 Provided testimony prior to this appeal.

Applicant Name Daniel Kiser Phone (971) 264- 4954  
 Contact Name \_\_\_\_\_ Phone \_\_\_\_\_  
*(If different than above)*  
 Address 10771 NW Brentano Lane  
 City, State, Zip McMinnville, OR 97128  
 Contact Email dkiser@fergusonshamamian.com

### Original Application Information

File No.: AP 2-23 (formerly HL 7-22) Review Body: Historic Landmarks Committee  
Planning Commission  
 Decision: HLC: Denied / PC: Approved Date of Decision: HLC: 01/26/23, PC: 03/16/23  
 Date Decision Mailed: HLC: 01/27/23, PC: 03/18/23 Appeal Date Deadline: 04/03/23

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04/03/23

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<b>Office Use Only:</b>	
File No.	<u>AP 7-23</u>
Date Received	<u>4/3/23</u>
Fee	<u>\$1,095.00</u>
Receipt No.	<u>207771</u>
Received by	<u>AW</u>

569-23-000140-PLNG-02

## Appeal Application

### Applicant Information

**Applicant is:**  Property Owner  Contract Buyer  Option Holder  Agent  Other \_\_\_\_\_  
 Provided testimony prior to this appeal.

Applicant Name Daniel Kiser Phone (971) 264- 4954  
 Contact Name \_\_\_\_\_ Phone \_\_\_\_\_  
*(If different than above)*  
 Address 10771 NW Brentano Lane  
 City, State, Zip McMinnville, OR 97128  
 Contact Email dkiser@fergusonshamamian.com

### Original Application Information

File No.: AP 3-23 (formerly HL 8-22) Review Body: Historic Landmarks Committee  
Planning Commission  
 Decision: HLC: Denied / PC: Approved Date of Decision: HLC: 01/26/23, PC: 03/16/23  
 Date Decision Mailed: HLC: 01/27/23, PC: 03/18/23 Appeal Date Deadline: 04/03/23

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04/03/23

Appellant's Signature

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Fee	<u>\$1,095.00</u>
Receipt No.	<u>207772</u>
Received by	<u>AW</u>

569-23-000140-PLNG-03

## Appeal Application

### Applicant Information

**Applicant is:**  Property Owner  Contract Buyer  Option Holder  Agent  Other \_\_\_\_\_  
 Provided testimony prior to this appeal.

Applicant Name Daniel Kiser Phone (971) 264- 4954  
 Contact Name \_\_\_\_\_ Phone \_\_\_\_\_  
*(If different than above)*  
 Address 10771 NW Brentano Lane  
 City, State, Zip McMinnville, OR 97128  
 Contact Email dkiser@fergusonshamamian.com

### Original Application Information

File No.: AP 4-23 (formerly DDR 2-22) Review Body: Historic Landmarks Committee  
Planning Commission  
 Decision: HLC: Denied / PC: Approved Date of Decision: HLC: 01/26/23, PC: 03/16/23  
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I certify the statements contained herein, along with the evidence submitted, are in all respects true and are correct to the best of my knowledge and belief.

Handwritten signature: Daniel Kinn

04/03/23

Appellant's Signature

Date



Dear Mayor and City Councilors,

I, Daniel Kiser, having been party to the initial proceedings through both oral and written testimony, wish to appeal the decisions of the McMinnville Planning Commission on the basis that the Commission unreasonably and incorrectly interpreted the Oregon Administrative Rules (OAR) and relevant McMinnville Zoning Ordinance (MZO), and failed to issue findings consistent with the evidentiary record. The decisions are not supported by substantial evidence in the record before the Commission.

Notably, because the March 18, 2023 Planning Commission findings are primarily an adoption of the Planning Staff recommendations—prepared prior to the Historic Landmark Committee’s (HLC) meeting on January 5, 2023—the findings fail to incorporate/weigh subsequent information and facts added to the record after January 5.

As the Planning Commission’s findings for 609 NE Third St (AP 1-23) are substantially similar to the findings for 611 NE Third St (AP 2-23) and 619 NE Third St (AP 3-23), comments regarding the findings on demolition apply to all three buildings and such findings are referenced in this document.

While the information set forth includes my primary points of contention, I reserve the right to supplement the record and provide further arguments before the City Council’s hearing.

### **Demolition**

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#### **OAR 660-023-0200(8)(a): Factors to Consider – Historic Integrity of the Property**

Historic Integrity is defined by the Planning Commission as the “*materials, form and massing that are original to the building from the time period of its significance*” (AP 3-23 Decision Document, p. 35). Some materials of the buildings have been modified, but the Historic Resources Assessment (HRA) reports confirm that remaining original elements are in fair and good condition. With regards to form, all three buildings have had the ground floor facades modified from automobile bays into storefronts, but the forms of the upper floors and parapets of 611 and 619 NE Third St remain original. The Commission’s findings fail to mention that the massing of all three buildings has not been altered from the time period of significance.

Massing is an integral part of the buildings’ designations as Historic Resources since it pertains to the scale of other buildings on Third Street. Cohesive scale and massing is one of the reasons the McMinnville Downtown Historic District was listed on the National Register of Historic Places in 1987. The nomination states “*Buildings along Third Street represent several phases of development but have a marked cohesion by virtue of their density, common scale, materials and overall design elements. While ground story storefronts have been altered over the years, distinguishing features of the upper stories are intact and provide visual continuity*” (AP 1-23 Decision Document, p. 43).

Despite their modifications, all three buildings retain the historic integrity they had when they were designated as Historic Resources and part of the Historic District.

**OAR 660-023-0200(8)(a): Factors to Consider – Historic Significance of the Property**

I concur with the Commission’s findings that “*The HRA report clearly states that all three properties are important in terms of historic significance as they represent the time period of the McMinnville National Register of Historic Places Historic District context statement relative to the emergence of automobile transportation in McMinnville*” (AP 1-23 Decision Document, p. 38).

However, the Commission’s findings incorrectly cite historic integrity as the reason these buildings no longer hold historic significance (AP 1-23 Decision Document, p. 44). The two terms are not interchangeable.

Historic significance is not defined in OAR 660-033-023. However, OAR 660-033-023(5)(a) explains that the evaluation of significance should be based on the following points (followed by statements supported by evidence in the record).

*(A) Significant association with events that have made a significant contribution to the broad patterns of local, regional, state or national history.* The three buildings were the first auto row in McMinnville and represent the advent of the automobile, which had a tremendous impact on the growth and development of McMinnville and the American landscape.

*(B) Significant association with the lives of persons significant to local, regional, state, or national history.* 609 NE Third St was developed by prominent local lawyer Frank W. Fenton.

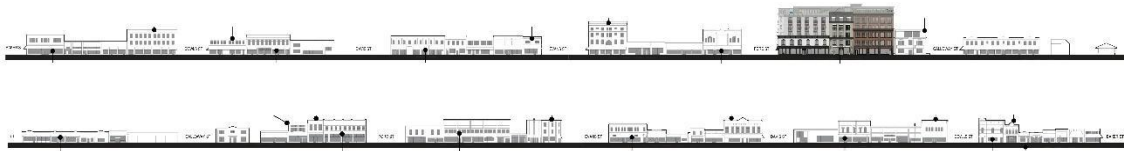
*(C) Distinctive characteristics of a type, period, or method of construction.* The three buildings are distinctive for their typology as auto garages. 611 NE Third St retains its prominent bracketed and modillioned cornice line and parapet wall, distinctive characteristics of architecture from the era.

*(E) Relevance within the local historic context and priorities described in the historic preservation plan.* The automobile is the watershed event separating the Primary and Secondary periods of the development of McMinnville, when the city and Historic District’s growth was fueled by the car rather than the Oregon Electric and Southern Pacific Railroad.

**OAR 660-023-0200(8)(a): Factors to Consider – Value to the Community**

The Commission’s findings state that the historic buildings are “*...part of the building fabric of Third Street in McMinnville, a built environment which collectively has a lot of value to the community. Any replacement project would need to be able to become an*

*asset to that built environment and not a disruptor”* (AP 1-23 Decision Document, p. 44). The Commission continues that the proposed Gwendolyn Hotel “...will need to meet the Downtown Design Overlay District code criteria for new construction, including mimicking the character and scale of the existing structures downtown” (AP 1-23 Decision Document, p. 45). The Gwendolyn does not meet the code criteria and is out of scale in relation to existing buildings, disrupting the building fabric of the Historic District (figure 1).



*Figure 1: North Third Street & Gwendolyn Hotel at top, south Third Street at bottom*

**MZO 17.65.010(d):** *Protect and enhance the City’s attractions for tourists and visitors;*

The Commission found this section of the zoning ordinance satisfied by adopting condition of approval #12: “*The replacement plan project must not only meet the minimum standards of Section 17.59, Downtown Design Guidelines, McMinnville Municipal Code, but it must enhance the overall historic sense of place of downtown McMinnville by replicating the form and design of the building stock on Third Street*” (AP 1-23 Decision Document, p. 61).

However, the adopted conditions of approval do not include this condition and have replaced it with a condition #12 that reads “*Prior to the approval of a demolition permit, the Applicant will commission a study on what needs to happen in McMinnville relative to market costs to achieve the community value of historic property rehabilitation/restoration with low lease rates to support local businesses*” (Approval Letter, p. 3). This condition does not relate to the necessary finding; the finding is therefore not satisfied.

Regardless, to demolish three historic buildings does not protect and enhance the Historic District, let alone replacing them with a building that does not meet the code criteria and is not sympathetic with the existing buildings in the District.

**MZO 17.65.050(b)(1):** *The City’s historic policies set forth in the comprehensive plan and the purpose of this ordinance;*

A typo states that the Historic Landmarks Committee approved demolition with conditions (AP 1-23 Decision Document, p. 63). The reference should be to the Planning Commission.

**MZO 17.65.050(b)(3):** *The value and significance of the historic resource;*

The Commission’s findings state “*The historic significance of the property is questionable due to the amount of modifications that have occurred*” (AP 1-23 Decision

Document, p. 69). The modifications are not shown to be significantly more than existed at the time the buildings were classified as Historic Resources (see previous discussion regarding history integrity).

I find no facts to support the finding that “*the attributed historic significance identified in the McMinnville Downtown Historic District National Register of Historic Places nomination for 609 NE Third Street as a Primary Significant Contributing resource in the district is misrepresented due to the amount of modifications that have occurred on the property*” (AP 1-23 Decision Document, p. 69).

The applicant states they are “...*requesting the demolition of these 3 buildings for a replacement building that will implement and advance the future vision for Downtown McMinnville*” (AP 1-23 Decision Document, p. 67). This is a conclusory statement that has offered no findings or evidence as to how this building would achieve that goal. Is the future vision of McMinnville’s Historic District to demolish every historic building whose owner makes a claim of financial hardship? To agree with the applicant’s reasoning sets a dangerous precedent.

**MZO 17.65.050(b)(8):** *Whether retention of the historic resource would be in the best interests of a majority of the citizens of the City,*

The Commission agreed with the applicant’s finding that “*Adaptive re-use would require seismic upgrades and the buildings cannot be economically used for hospitality*” (AP 1-23 Decision Document, p. 77). This is debunked by McMinnville’s building official, Stuart Ramsing, who said that seismic upgrades are unlikely if occupancy is kept below 300 for any of the three buildings and/or alterations are constructed independently of the existing structures (Memorandum - Additional Materials for the Public Record).

Hospitality is defined as the business of providing food, drink, and accommodation for customers of restaurants, bars, etc. or guests at hotels. In fact, 619 NE Third Street currently has hospitality uses. The applicant performed a cost analysis of converting the existing buildings into a hotel, but no study was conducted to determine the economic viability of reusing the buildings’ floor area as it currently exists for other hospitality functions, such as restaurants or bars.

**MAC-Town 2032 Economic Strategic Development Plan, Goal 6:** *Be a leader in hospitality and place-based tourism*

The Commission erred in not providing specific evidence why the preservation of the buildings would be a deterrent to advancing the MAC Town 2032 Economic Development Strategic Plan (AP 1-23 Decision Document, p. 75). I believe McMinnville is a leader in place-based tourism in Oregon due to the Downtown Historic District. Demolition of historic buildings in the district does not further that goal.

## New Construction

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**MZO 17.59.010**, Purpose: *To provide for the protection, enhancement and preservation of buildings, structures, and other elements in the downtown core which contribute to its special historic and cultural value. Further, it is not the purpose of this ordinance to create a “themed” or artificial downtown environment. Rather, its purpose is to build on the “main street” qualities that currently exist within the downtown and to foster an organized, coordinated, and cohesive historic district that reflects the “sense of place,” economic base, and history unique to McMinnville and the downtown core. (Ord. 4797 §1, 2003)*

The Planning Commission’s findings fail to address how the Gwendolyn Hotel does not create a themed or artificial downtown environment by its Third Street façade being broken down into three faux building expressions.

**MZO 17.59.050(a)(1)**: *Except as allowed by this ordinance, buildings shall maintain a zero setback from the sidewalk or property line.*

This mandate requires buildings to maintain a zero setback for the entirety of the building’s vertical exposure, reinforcing downtown’s strong vertical presence and sense of enclosure along the streetscape. This pattern builds upon one of the “main street” qualities of downtown McMinnville. The proposed Gwendolyn hotel has setbacks greater than zero on both the Third and Ford Street facades, for which no waiver has been submitted or approved. In its findings, the Planning Commission appears to have taken a position that these violations of setback requirements are allowed as they are “step backs.”

“Step backs” are not a term defined by the MZO and no mention of them is provided in Chapter 17.59. If the city wanted to use this device in the downtown design guidelines, the code would have been specific. Past practice has been to require a waiver to the setback requirement where a deviation from this standard is requested. This was the case involving the KAOS building where a waiver to the setback requirement was requested and granted for its construction. Further, the zoning ordinance already carves out exceptions to the zero setback requirement for plazas, courtyards, dining space, or rear access for public pedestrian walkways, but offers no mention of any other allowances.

**MZO 17.59.050(b)(1)**: *Buildings should have massing and configuration similar to adjacent or nearby historic buildings on the same block.*

For context, MZO 17.06.015 defines “adjacent” as being “*Contiguous to a property boundary at a property line or property corner. Two properties separated by street or right-of-way are considered adjacent*” (figure 2).

It is my opinion that the Commission erred in accepting the applicant’s interpretation of this code. “...Perhaps “adjacent” can be thought of more broadly, in a cohesive way, to

include all of downtown McMinnville. In that case, doesn't that mean in a way that all buildings downtown are adjacent? Adjacent to each other and adjacent to the whole" (AP 4-23 Decision Document, p. 40).

This is an absurd interpretation as, under this premise the entire city (and not just the downtown) would be captured in that definition. A reasonable reading of the definition would find that the proposed Gwendolyn Hotel property is adjacent to eight buildings (figure 3), ranging from one to three stories or approximately 17' - 45'-3" tall. The Gwendolyn is on the same block as two historic buildings (figure 4), which are one story and approximately 22' tall. The Gwendolyn, 80'-10" at its highest point, is 179% taller than the tallest adjacent building, Odd Fellows Lodge, (figure 5) and 367% taller than historic buildings on the same block.

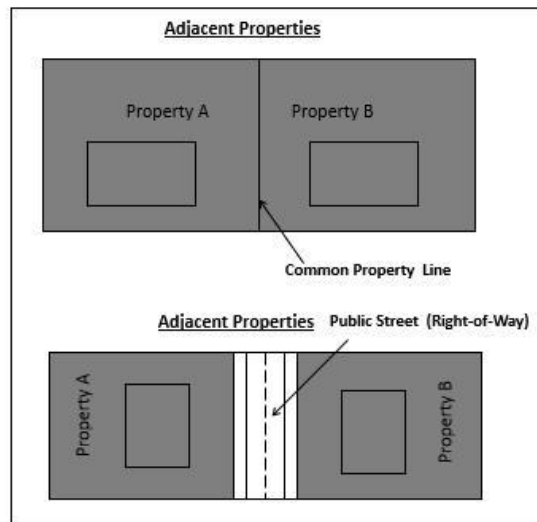


Figure 2: Figure 2 from MZO 17.06.015 demonstrating city definition of "adjacent"



Figure 3: Adjacent buildings highlighted in yellow



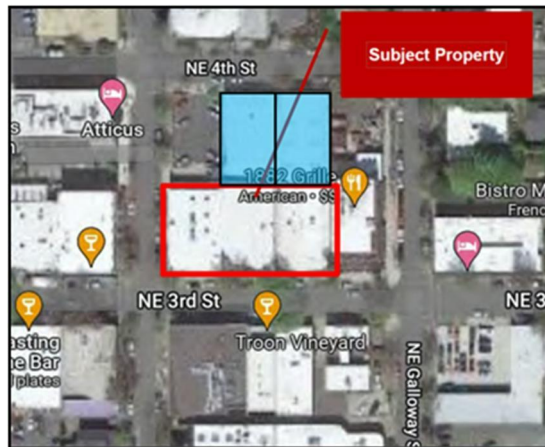


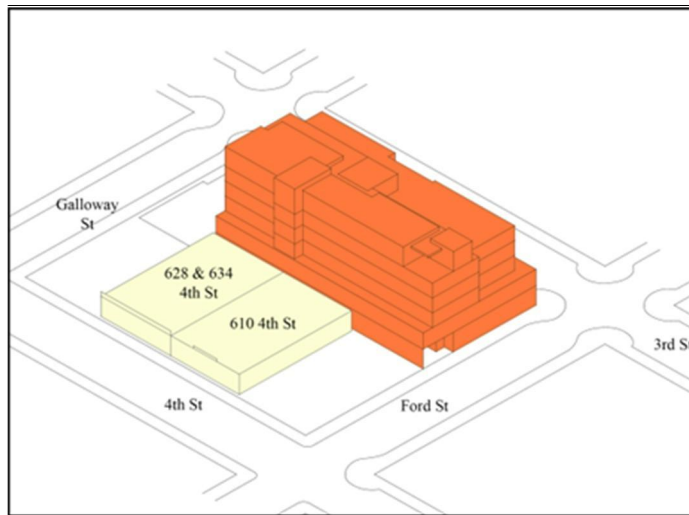
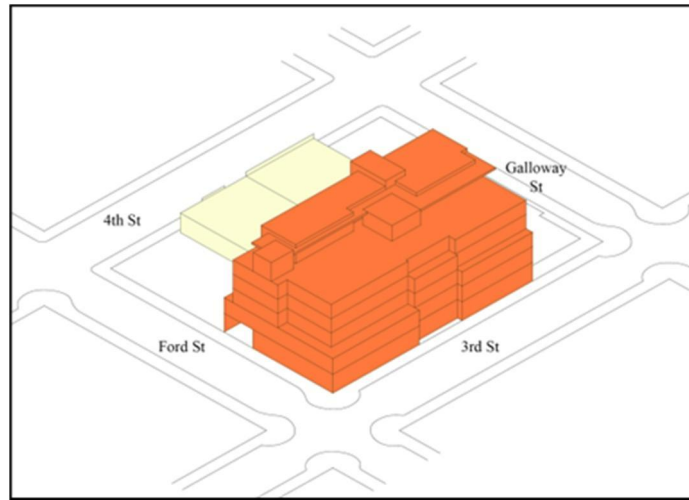
Figure 4: Historic buildings on the same block highlighted in blue



Figure 5: Applicant drawing A3.01, Gwendolyn Hotel next to the tallest adjacent building, Odd Fellows Lodge, on the left

‘Massing’ refers to the structure in three dimensions (form), not just its outline from a single perspective (shape). No buildings adjacent to the proposed hotel have a massing with step backs taller and larger than its base. Evidence in the record clearly demonstrates the Gwendolyn’s massing and configuration is not similar to the two historic buildings on the same block (figure 6).

The Commission’s findings referenced the KAOS building, the First Federal building, and the Atticus Hotel as precedent for the Gwendolyn to not satisfy this guideline (AP 4-23 Decision Document, p. 40). Reference to precedent is irrelevant as each project is weighed on its individual merits and ability to satisfy the required criteria. In some cases, waiver requests were submitted by past applicants and approved by the Planning Director or Historic Landmarks Committee, as provided in this chapter of the ordinance. This applicant has instead argued that “precedent” is an appropriate vehicle through which deviation from the massing and configuration requirements can be granted. This is not true and should be rejected by the City Council.



*Figure 6: Massing of the Gwendolyn (orange) next to massing of the two historic buildings on the same block (yellow)*

**MZO 17.59.050(b)(1):** *Buildings situated at street corners or intersections should be, or appear to be, two-story in height.*

To address this guideline, the applicant stepped back the upper four floors several feet from the Ford Street and Third Street property lines to make the building visually “appear” to be two floors in height when viewed from the street. This representation by the applicant was accepted by the Commission and memorialized in its findings demonstrating compliance with this guideline (see AP 4-23 Decision Document, p. 41).

As noted previously, such setbacks of upper (or lower) floors are not permitted unless authorized by an approved waiver. The applicant withdrew a previously submitted waiver request to this criterion. Irrespective of that, and in deference to the applicant’s written and oral testimony, views of the building’s full height would be possible from numerous

locations, including from north along 4<sup>th</sup> Street. The applicant’s own rendering from the Third and Ford Street intersection (figure 7) clearly demonstrates the building’s full height of some five to six stories.



*Figure 7: Applicant drawing A7.01, corner intersection of 3rd and Ford streets*

**MZO 17.59.050(b)(2):** *Where buildings will exceed the historical sixty feet in width, the façade should be visually subdivided into proportional bays, similar in scale to other adjacent historic buildings, and as appropriate to reflect the underlying historic property lines. This can be done by varying roof heights, or applying vertical divisions, materials and detailing to the front façade.*

At 180 feet long, the Gwendolyn is divided into three distinctive building designs along the Third Street frontage measuring, from west to east, 79 feet, 37 feet, and 64 feet wide. These dimensions do not reflect the underlying historic property lines. Further, there is no evidence in the record that demonstrates why the new construction could not meet this guideline. Even so, the westernmost and easternmost building designs exceeds 60 feet and are not visually subdivided, as called for in the guideline. On the westernmost portion, the six bays on the two lower floors do not relate in any way to the five bays on the upper floors (figure 8).

The Commission erred in comparing the applicant’s original design with its amended design (AP 4-23 Decision Document, p. 42). While precedent is irrelevant, the Commission also erred in comparing the Gwendolyn to the Atticus Hotel and First Federal Buildings, which are neither historic buildings nor adjacent to the Gwendolyn. Finally, I find the Commission did not compare the scale of the Gwendolyn’s proposed bays to the scale of the bays of adjacent historic buildings.

‘Scale,’ as referenced in this guideline, is a measure of both width and height, just as ‘proportional’ is a measure of size which combines width and height. As pointed out by Planning staff in the September 9, 2022 Draft Decision Document, “*The intent of this code criteria is scalability with the built environment around the project.*” A side by side comparison of the Gwendolyn’s bays with the adjacent historic building across the street,

the Jameson Hardware building, clearly indicates that scalability has not been achieved (figure 8), nor can it be found elsewhere on other adjacent historic buildings as called for in this guideline.



Figure 8: Applicant drawing A3.01 left, Jameson Hardware building in red brick right

## Conclusion

It is my opinion that the Planning Commission erred in approving the demolition of these three historic buildings and approving the design of the Gwendolyn Hotel.

Preservation of buildings in the Downtown Historic District is an indispensable part of the City's codes, goals, and economic success. Despite modifications that are very similar to other historic building modifications in the District, all three buildings retain their historic significance and historic integrity. As a row of former auto garages, they are the only buildings connected to the beginning of the automobile era and their massing, scale, proportional bays, and details are an integral part of Third Street's sense of place. They do not need to be demolished, they need another chance at revitalization.

The proposed Gwendolyn Hotel does not meet the Downtown Design Standards and Guidelines and specifically violates criteria relating to massing and scale (which are identified as integral components of Downtown McMinnville's designation as a Historic District). To approve such a massive, out-of-scale building with a dominating presence unlike anything else on Third Street will disrupt the building fabric and destroy its "main street" qualities. It threatens the integrity of the entire District and sets dangerous precedent for its future survival and success as one of the best main streets in America.

I respectfully request the City Council hold a public hearing on these appeals, reverse the Planning Commission's decisions, and adopt/build upon the Historic Landmark Committee's findings.

Sincerely,

Daniel Kiser  
April 3, 2023