



**Land Use Appeals Board
Blue Haven #16-001**

REPORT SUMMARY...

<i>Project Name:</i>	Blue Haven Planning Commission Appeal
<i>Appellant:</i>	Jeremy S. Raymond
<i>Project Address:</i>	743 North 800 East
<i>Request:</i>	Appeal
<i>Current Zoning:</i>	Campus Residential (CR)
<i>Type of Action:</i>	Quasi-Judicial
<i>Date of Hearing:</i>	April 6, 2016
<i>Submitted By:</i>	Russ Holley, Senior Planner

RECOMMENDATION

Staff recommends that the Land Use Appeals Board **deny** an appeal request for project #16-004, Blue Haven, for the property located at 743 North 800 East, TIN# 05-040-0003; -0010; -0018; -0020.

INTRODUCTION

This appeal to the Logan City Land Use Appeals Board (LUAP) is to determine whether or not the Logan City Planning Commission acted appropriately and within their authority on a Design Review Permit issued on February 25, 2016 for the Blue Haven student housing project located at 743 North 800 East. The specific issue being appealed is condition of approval #4, which states; *“Per LDC 17.15.120, a building shall not exceed 120’ in length. There shall be a minimum separation between buildings of at least 20’ to provide for common open space or pedestrian access. The vertical corridor connections between the buildings must be removed”*. More specifically, as this condition relates to the length of building mass along the 800 East street frontage (east façade).

BACKGROUND INFORMATION

This exact section of the Land Development Code (LDC) was amended in 2013, subsequent to the Factory Apartments project located in 600 East. Due to project confusion and public comments concerning this issue, the Planning Commission requested additional clarity to this code section. The City Council adopted a new code amendment. The old and new versions read as follows;

Old Version - 17.15.120 Campus Residential (CR)

Pedestrian Access

Buildings shall not exceed 120 feet in horizontal distance without minimum 20 foot breaks between providing pedestrian access or common open space

New and Current Version - 17.15.120. Campus Residential (CR)

Building Mass

A building shall not exceed 120 feet in length. There shall be a minimum separation between buildings of at least 20 feet to provide for common open space or pedestrian access.

The original Blue Haven submittal in December 2015 showed a much different building design and footprint (see Exhibit A). The original footprint and building mass was generally oriented in a north/south alignment with approximately 270 feet of building width near 800 East Street. After meeting with staff members and reviewing the current LDC section 17.15.120, the proponent re-

submitted a second design in January of 2016 (see Exhibit B); the building mass was then arranged in a predominant east/west alignment generally consisting of three building wings, and although still near 270 feet in width, the area of total building mass near 800 East Street was reduced to 210 feet in width. More specifically, a building wing of 54 feet, a recessed 20 foot corridor, a building wing of 54 feet, a recessed 20 foot corridor and a final building wing of 62 feet bringing the total building width along 800 East to approximately 210 feet. A third submittal was presented at the Planning Commission meeting which showed a 3-D rendering of essentially the same building layout with the exception of additional windows on the 20 foot recessed corridor portions (see Exhibit C). The 20 foot recessed corridor connections is the primary issue of debate in this case.

Staff attempted to propose a compromise between the LDC code requirements and the proponent's strong desire to keep the 20 foot recessed corridors. Staff wrote a condition of approval within the project report that allowed the recessed corridors to remain if the top floor and ground floor were removed, creating a "sky-bridge" element. The condition was written on the assumption that the Planning Commission would utilize its authoritative discretion outlined in LDC 17.50.080, which may allow limited adjustments in design standards, such as building placement, form, materials, fenestration and articulation when approving Design Review Permits. This discretionary adjustment allowance is the exception not the rule. The Planning Commission only utilizes this LDC section in unique and difficult situations where existing conditions or some other barrier exists that cannot be mitigated by the applicant alone. Staff informed the proponent that this decision rests solely on the Planning Commission and of the unlikely probability of adjustments, especially in this situation where the applicant had essentially created its own problem by designing a building this way in the first place. There were, nor are there today, any existing conditions or cumbersome circumstances out of the control of the applicant that do not allow for a building(s) to be designed on this site in a manner that conforms to the 120' maximum width. Furthermore, the Planning Commission can only utilize the discretionary adjustment section of the LDC if and only if, they can substantiate findings that the adjustments are not made due to financial reasons, are consistent with surrounding land use patterns, community design and will not compromise future projects or continuity.

PLANNING COMMISSION MEETING (FEB 25, 2016)

Six members of the Planning Commission attended the meeting on February 25, 2016 (Commissioner Russ Price was absent). The Blue Haven Design Review Permit was presented to the Planning Commission with several issues being discussed at length. This appeal solely concerns building mass and the 120' maximum building width. Staff presented the compromised position of a sky bridge. The proponent did not support staff's compromised position and remained firm in their stance of keeping the full recessed 20 foot corridor connections. The Planning Commission debated this issued extensively with Commissioner Butterfield making a motion to approve as proposed by the applicant with full recessed corridor connections. That motion ended in a tie vote 3-3 (tie votes do not pass). After further discussion, a subsequent motion was made by Commissioner Newman to approve the Design Review Permit with the condition that the buildings have complete and total separation every 120 feet as per LDC 17.15.120. That motion passed unanimously 6-0. The majority of the Planning Commission concluded that they could *not* substantiate findings for any sort of adjustment on this Design Review Permit and considered a literal interpretation of LDC 17.15.120 appropriate and just.

APPELLANTS POSITION

Logan City received a formal appeal from Jeremy S. Raymond on March 7, 2016 on behalf of property owners John and David Brandley. The submitted appeal statement suggests that the Planning Commission imposed unnecessary conditions and was in error concerning the Design Review Permit, and that the Blue Haven project as proposed with the full recessed corridor connections complies with the letter and intent of the LDC. The statement continues with a proposed text amendment concerning occupancy, building definition arguments, the

separateness of each building wing, the Planning Commission's misinterpretation of the definition of "building", the connection corridors are simply for egress, Fire Department preferences and that common open space and pedestrian access are in fact achieved (see appellant's submitted statement of appeal).

LAND DEVELOPMENT CODE

The LDC 17.57 states that the purpose for appeals is to provide uniform appeals procedures for development related actions and that a proponent who participated in the hearing process may have standing to file an appeal. The Land Use Appeal Board (LUAP) shall hear and decide appeals in a quasi-judicial manner. If the LUAP renders a decision that overturns or modifies an action by the Land Use Authority (Planning Commission), the LUAP shall make findings substantiated in conformance with the requirements of the procedures for the type of action being appealed. If the LUAP upholds the appealed action, no additional findings are required. The LUAP may, upon upholding the Land Use Authority, add, clarify, or enhance findings based on facts presented at the LUAP meeting.

STAFF'S CONCLUSIONS

The purpose of the LDC is to provide consistent and predictable development regulations that result in uniform growth patterns. The Planning Commission is charged and have been delegated the authority to ensure the LDC is executed and interpreted in a consistent and fair manner. To deviate from the LDC is both unfair for the citizens at large and for different developers proposing projects. The discretionary adjustment authority the Planning Commission has in accordance with LDC 17.50.080 is limited and confined to certain situations for overall predictability and continuity. The Planning Commission, in this situation, was unable to substantiate findings to justify any sort of adjustment.

The appellant's arguments are flawed and their rational is inconsistent. First, the notion that Blue Haven, as proposed with full recessed corridor connections is in fact three separate buildings and complies with both the letter and intent of the code is incorrect. The literal (letter of the code) interpretation of LDC 17.15.120 and the word "separate" for that matter, means no building connection whatsoever. Completely separate buildings. The text amendment concerning occupancy is irrelevant to this appeal. The Fire Department is responding only to this design as proposed, they would have numerous preferences based on numerous different proposals. A building(s) design that was 120 feet maximum width with at least a 20 foot separation could be placed in a manner that is preferable to the Fire Department and should not be factored into this decision. The argument that these recessed corridor connections do not meet the definition of "building" as listed in the LDC is incorrect as the corridors in fact contain walls, roofs and enclose people within. In fact, later on in the statement the appellant even calls out the corridors as necessary for sociability, winter weather protection and providing gathering areas for tenants, meeting the definition of "building" having walls, roof and meant to enclose people.

The Planning Commission did not misinterpret or misapply the definition of "building" as suggested by the appellant because the recessed corridor connections actually have walls, a roof and enclose people within. The Blue Haven project as proposed to the Planning Commission was not clearly composed of three separate buildings nor do they appear separate (see Exhibit B & C). Open space and pedestrian access are negatively impacted by the recessed corridors. The corridors force pedestrians (people outside) to go around or take alternative routes to traverse through the project. The corridors would not allow plants and other open space elements to grow or function as effectively because of the bisected space. This LDC code section was recently amended to add clarity and ease of interpretation concerning building mass requirements in the Campus Residential zone. The header was even changed to now read "building mass", further suggesting that it concerns buildings not just pedestrian access.

The content of LDC is scrutinized and adopted by the Logan City Municipal Council, who represents the well-being of Logan citizens. The Planning Commission is appointed and charged with upholding the requirements therein. To suggest that the Planning Commission misapplied the code in this particular instance is completely wrong, as this section is easily understandable, concise and clearly within their authority to act. The Planning Commission was clearly unable to substantiate findings that would support any sort of limited adjustment to the literal interpretation of LDC 17.15.120, and acted in accordance with the code they are bound to uphold. The Logan City LDC provides consistent, uniform standards creating a fair and just building and development environment that doesn't favor one developer over another and creates predictable quality growth patterns so that citizens can invest and conduct business within Logan. Granting this appeal will compromise Logan City's regulatory system and creates an unfair environment. Staff recommends that the LUAP uphold the Planning Commission's decision and deny this appeal.

PUBLIC NOTIFICATION

Legal notices were published in the Herald Journal on 3/31/16 and the Utah Public Meeting website on 3/31/16. Public notices were mailed to all property owners within 300 feet of the project site on 3/31/16.

RECOMMENDED FINDINGS FOR DENIAL

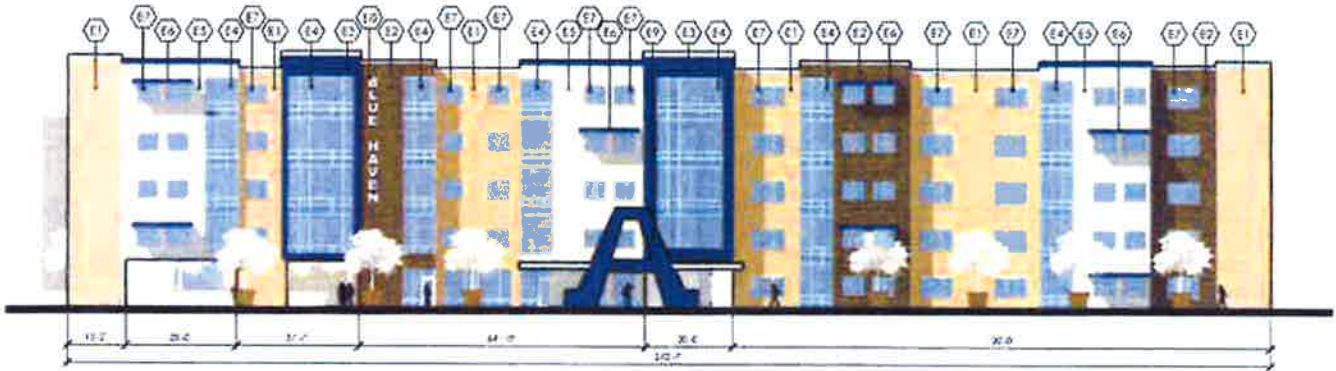
The Land Use Appeals Board bases its decisions on the following findings:

1. The proposed appeal does not warrant any changes to the Design Review Permit as approved by the Planning Commission because rulings based on literal interpretation of the Land Development Code fall under the authority and purview of the Logan City Planning Commission.
2. The building, as proposed with corridors, is in fact actually connected and does not meet the LDC requirement in the CR zone for separate buildings of 120' maximum length.
3. Future rulings by the Planning Commission may be jeopardized if this appeal was granted.
4. The property rights and essential enjoyments available to the property owner are not compromised by the condition of separate buildings of no more than 120' in length.
5. The Land Development Code creates consistent uniform standards to establish fair and just development patterns that do not favor one developer over another while creating predictable quality growth patterns within Logan.
6. The recessed corridor connections between the "wings" of the building are considered buildings by their very nature and characteristics.
7. The LDC 17.15.120 standard is clear in its intent and meaning.
8. The LDC 17.15.120 was adopted in a public hearing process by the Logan City Municipal Council.
9. The applicant could have pursued other building design options that comply with the 120 foot maximum length, but chose not to do so.

This staff report is an analysis of the application based on adopted city documents, standard city development practices, and available information. The report is to be used to review and consider the merits of the application prior to and during the course of the Planning Commission meeting. Additional information may be revealed by participants at the Planning Commission meeting which may modify the staff report and become the Certificate of Decision. The Director of Community Development reserves the right to supplement the material in the report with additional information at the Planning Commission meeting.

EXHIBIT A

Original December 2015 Submittal



 EAST ELEVATION
SCALE (24x36): 1/16" = 1'-0"

270 feet wide

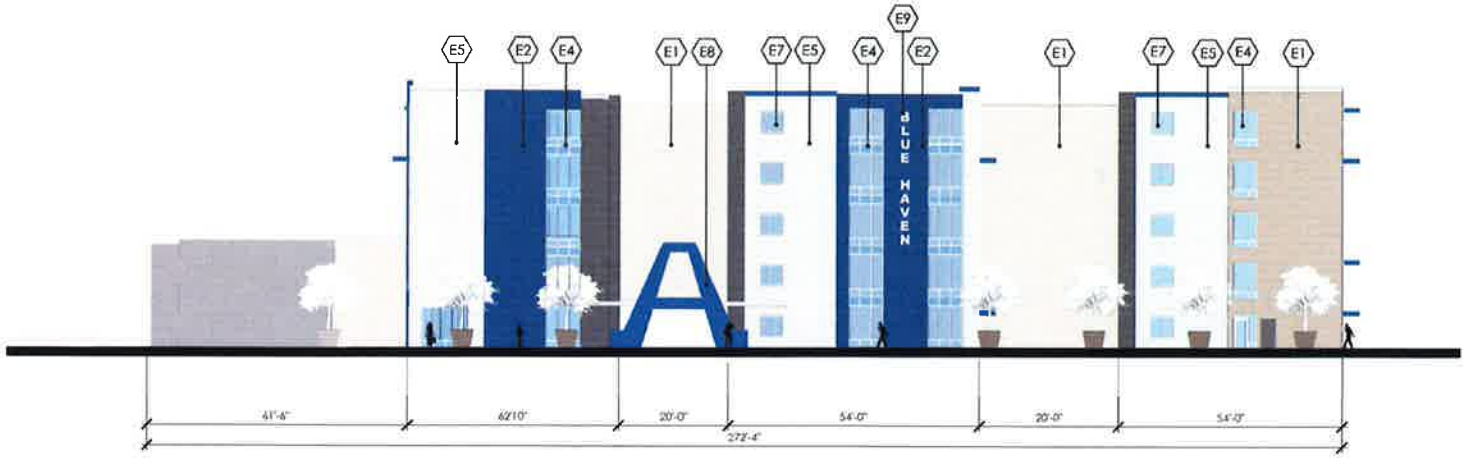
800 East Street Frontage



800 East Street

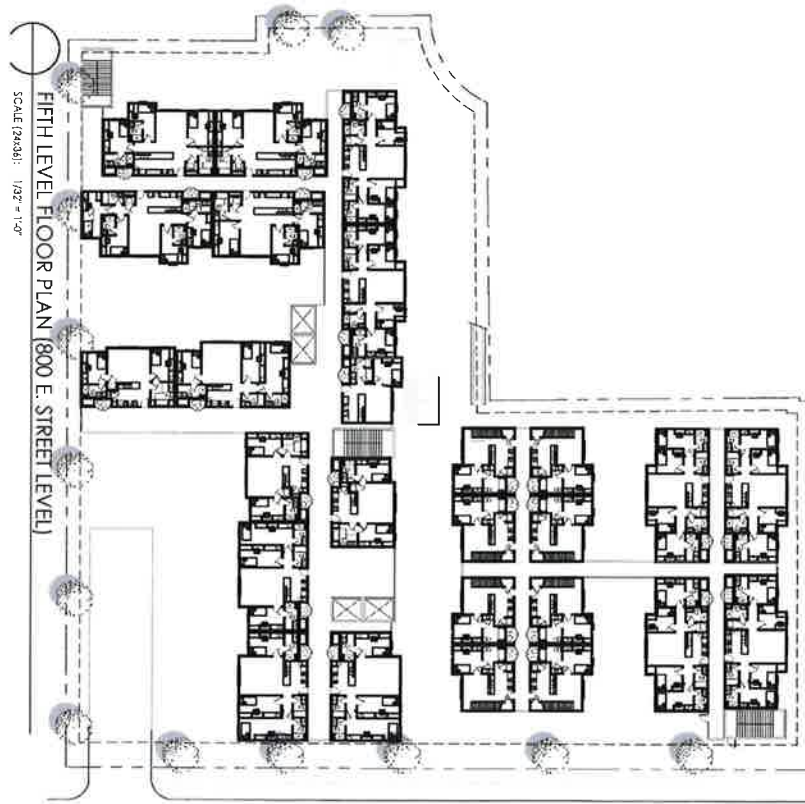
EXHIBIT B

January 2016 Re-submittal



800 East Street

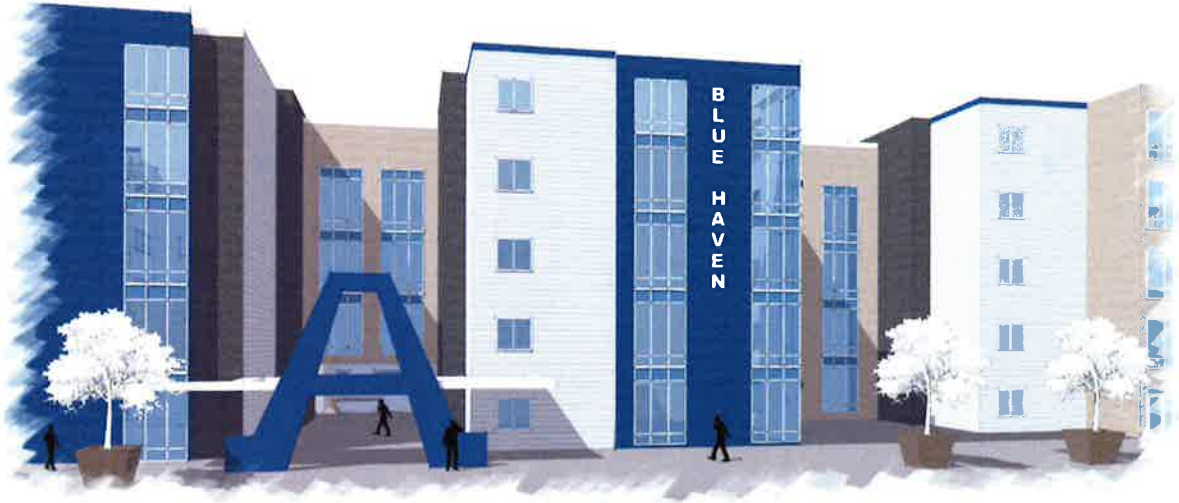
 EAST ELEVATION
SCALE (24x36): 1/16" = 1'-0"



800 EAST



EXHIBIT C
Third Re-submittal




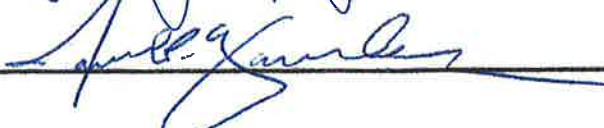
800 East Street



APPLICATION FOR PROJECT REVIEW

Wed. Apr. 6 @ 10:30

Planning Commission Land Use Appeal Board Administrative Review

Date Received 3-7-16	Received By	Receipt Number 312430	Zone CR	Application Number LUAB 16-001
Type of Application (Check all that apply): <input type="checkbox"/> Design Review <input type="checkbox"/> Conditional Use <input type="checkbox"/> Subdivision <input type="checkbox"/> Zone Change <input type="checkbox"/> Administrative Design Review <input type="checkbox"/> Code Amendment <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Variance <input type="checkbox"/> 4950' Design Review <input type="checkbox"/> Other _____				
PROJECT NAME Blue Haven (PC 16-004)				
PROJECT ADDRESS 743 North 800 East, Logan, UT 84341			COUNTY PLAT TAX ID # 05-040-0003, 05-040-0010 05-040-0018, 05-040-0020	
AUTHORIZED AGENT FOR PROPERTY OWNER (Must be accurate and complete) Jeremy S. Raymond, Olson & Hoggan, P.C.				MAIN PHONE # 435-752-1551
MAILING ADDRESS P.O. Box 525		CITY Logan	STATE UT	ZIP 84323-0525
EMAIL ADDRESS jsr@oh-pc.com				
PROPERTY OWNER OF RECORD (Must be listed) John Brandley & David R. Brandley				MAIN PHONE # 435-760-9333 801-781-0776
MAILING ADDRESS 1888 East 1460 North 1163 South 920 East		CITY Logan Ogden	STATE UT UT	ZIP 84341 84404
EMAIL ADDRESS				
DESCRIBE THE PROPOSED PROJECT AS IT SHOULD BE PRESENTED (Include as much detail as possible - attach a separate sheet if needed)				Total Lot Size (acres) 1.54
Please see attached Statement of Appealed Issue.				Size of Proposed New Building (square feet) Parking Garage 137,291 SF Housing 83,898 SF
				Number of Proposed New Units/Lots 372 Beds
- NO SITE ACTIVITY MAY OCCUR UNTIL AFTER APPROPRIATE COMMITTEE APPROVAL -				
I certify that the information contained in this application and all supporting plans are correct and accurate. I also certify that I am authorized to sign all further legal documents and permits on behalf of the property owner.		Signature of Property Owner's Authorized Agent 		
I certify that I am the property owner on record of the subject property and that I consent to the submittal of this project. I understand that all further legal documents and permits will be sent to my authorized agent listed above.		Signature of Property Owner 		

STATEMENT OF APPEAL

to

LAND USE APPEAL BOARD

ISSUE BEING APPEALED

Project Blue Haven is a student housing development currently planned to accommodate approximately 372 students. It is located at 743 North 800 East, Logan, Utah 84341. Attached hereto are renderings of Project Blue Haven as designed.

The proponents of Project Blue Haven ("Proponents") are appealing the February 25, 2016 decision of the Planning Commission which imposed a condition on the Project Blue Haven design review permit precluding Project Blue Haven from having recessed, walkable, egress corridors (recessed 60 feet from the front of each building) connecting the three buildings comprising the eastern half of Project Blue Haven.

The provision of the Logan Land Development Code at issue states, "Building Mass: A Building shall not exceed 120 feet in length. There shall be a minimum separation between buildings of at least 20 feet to provide for common open space or pedestrian access." See LDC § 17.15.120. It is Proponents' position that the condition requiring the removal of the corridors from the design was imposed unnecessarily and in error, as the proposed design implementing the corridors complies with the letter and intent of LDC § 17.15.120.

POSTURE AND DISCUSSION OF ISSUE BEING APPEALED

As part of the entitlement process for Project Blue Haven, an application for design review permit and an application for a text amendment was filed with the Department of Community Development. The proposed text amendment is in the process of being considered and it is anticipated that the proposed text amendment (as modified by Logan City) will be approved by the Council within the next month.

At the February 25, 2016 Planning Commission meeting, Project Blue Haven's application for design review permit was granted. However, the design review permit as granted is subject to various conditions that must be satisfied before a building permit will be issued. One condition is that the egress corridors on the proposed development that connect the three separate buildings be removed (stated differently, Project Blue Haven was approved with the condition that the three buildings could not be connected by egress corridors).

The provision of the Logan Land Development Code at issue states, "Building Mass: A Building shall not exceed 120 feet in length. There shall be a minimum separation between buildings of at least 20 feet to provide for common open space or pedestrian access." See LDC § 17.15.120. We understand from Community Development staff that the intent of this provision was to avoid a street facing building façade that exceeds 120 feet without being broken up in a meaningful way. The Logan Land Development Code defines "Building" as "a structure having

a roof supported by columns or walls, for the housing or enclosure of persons, animals or chattels.”

As proposed (see attached), the eastern half of Project Blue Haven consists of three separate buildings (as “Building” is defined by LDC) that are each connected by egress corridors. One such egress corridor extends from the second floor to the top of the building. This provides for outside walkability through the entire project. The other egress corridor extends from ground level to the top of the building. Each building is approximately fifty-five feet in width and the separation between each building is at least 20 feet. The egress corridors are recessed 60 feet from the front of each building, thus preserving the separateness of each building and providing the open space and pedestrian circulation throughout the site. The corridors would also have substantial transparency and aesthetic appeal. Among other benefits, the corridors would enhance the sociability among tenants, provide indoor walkability (be environmentally friendly during cold winters), and provide common gathering areas for tenants. Furthermore, at the Planning Commission meeting the Fire Department (Craig Humphreys) stated that the propose design is preferable to a design removing the corridors for fire purposes.

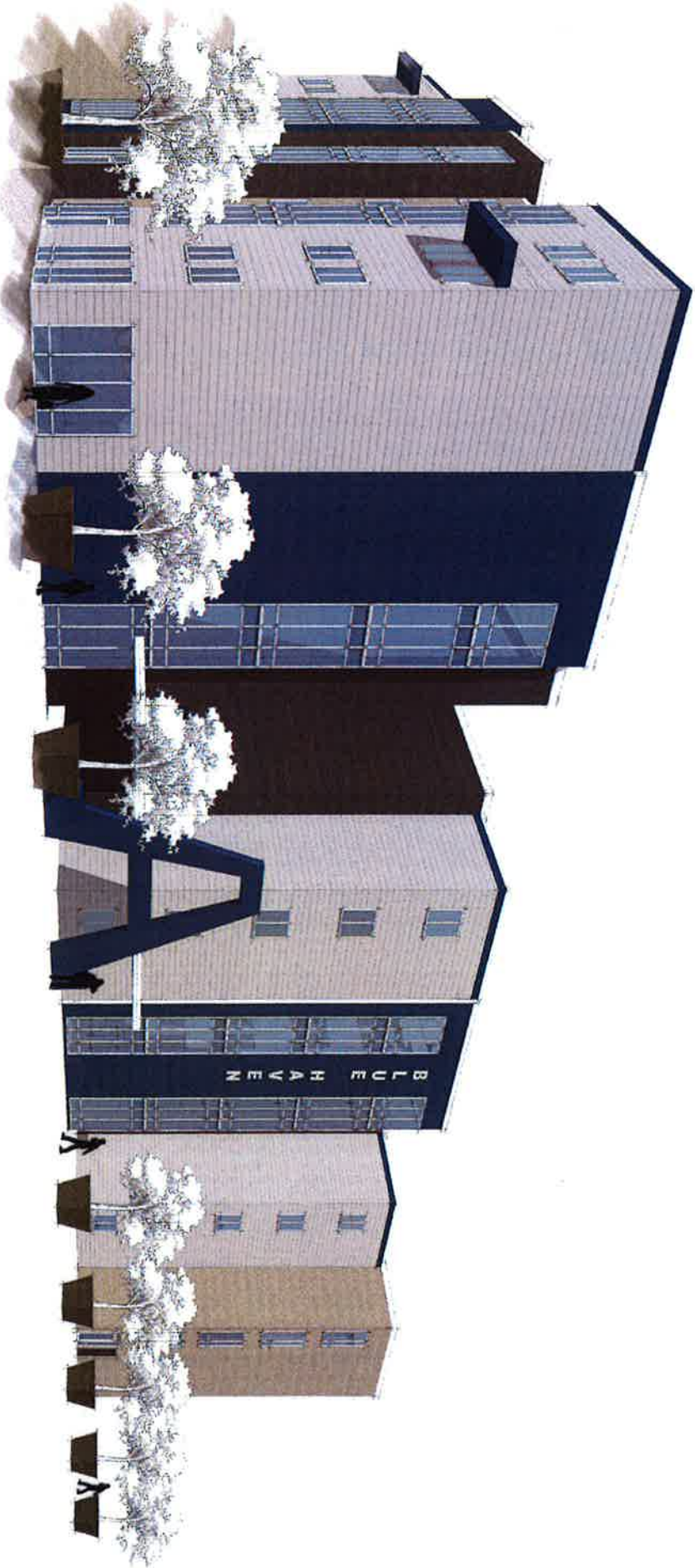
The proposed design was the result of working with Community Development staff to provide a design that meets the intent of LDC § 17.15.120, but also provides benefits of more efficient and aesthetically pleasing design, and allows indoor movability between the buildings for student residents of Project Blue Haven. Regarding this issue, the initial staff report dated January 14, 2016, stated, “The Planning Commission consider the building in substantial conformance with the LDC concerning the 120’ maximum width with the 60’ deep courtyards, 20’ minimum width, considering building code ingress/egress and with the addition of windows, trees and landscaping and darker materials to the recessed hallway building elevation.” Regarding this issue, the initial staff report dated February 25, 2016, stated, “A sky bridge that connects the different building wings facing 800 East and is no more than three stories in size and not located on the first or fifth floor is considered in substantial compliance with the LDC requirement of 120’ building width maximum. The sky bridge area shall include additional windows and landscaping to help further emphasize building separation.”

The Planning Commission erred in imposing the condition to the design review permit for Project Haven because they misinterpreted and misapplied the definition of “Building” and LDC § 17.15.120. As stated above, LDC defines “Building” as “a structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals or chattels.” As proposed, Project Blue Haven clearly is composed of three separate structures having a roof supported by columns or walls, for the housing or enclosure of persons. The buildings are separate and appear separate. The existence of an egress corridor connecting the three buildings does not turn the three buildings into one building, and there is nothing in the LDC to suggest or support such an interpretation. Furthermore, the Planning Commission erred in determining that Project Blue Haven as proposed did not comply with LDC § 17.15.120. The plain language of LDC § 17.15.120 only requires a “separation” of buildings to provide for common open space or pedestrian access.” As suggested by Community Development staff, the Project as proposed provides the contemplated separation of at least twenty feet, and it allows for common open space and pedestrian access. Therefore, the Planning Commission erred in imposing this condition.

Proponents respectfully request that the Land Use Appeals Board overturn the imposed condition described herein, find that Project Blue Haven as proposed complies with the LDC, and remove the imposed condition from Project Blue Haven's design review permit and adopt the current design.

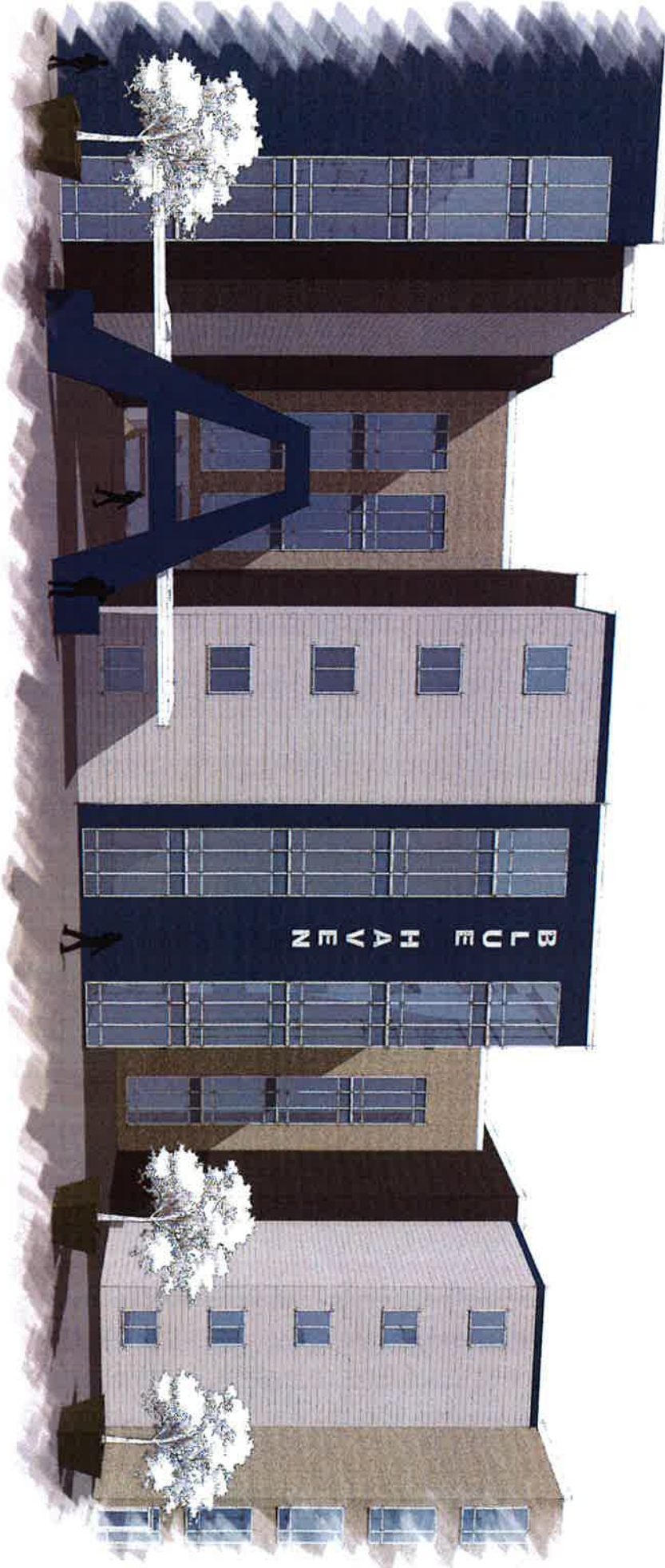
Your consideration is appreciated.

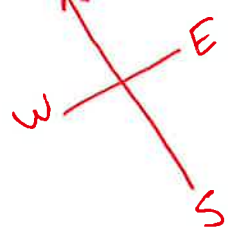
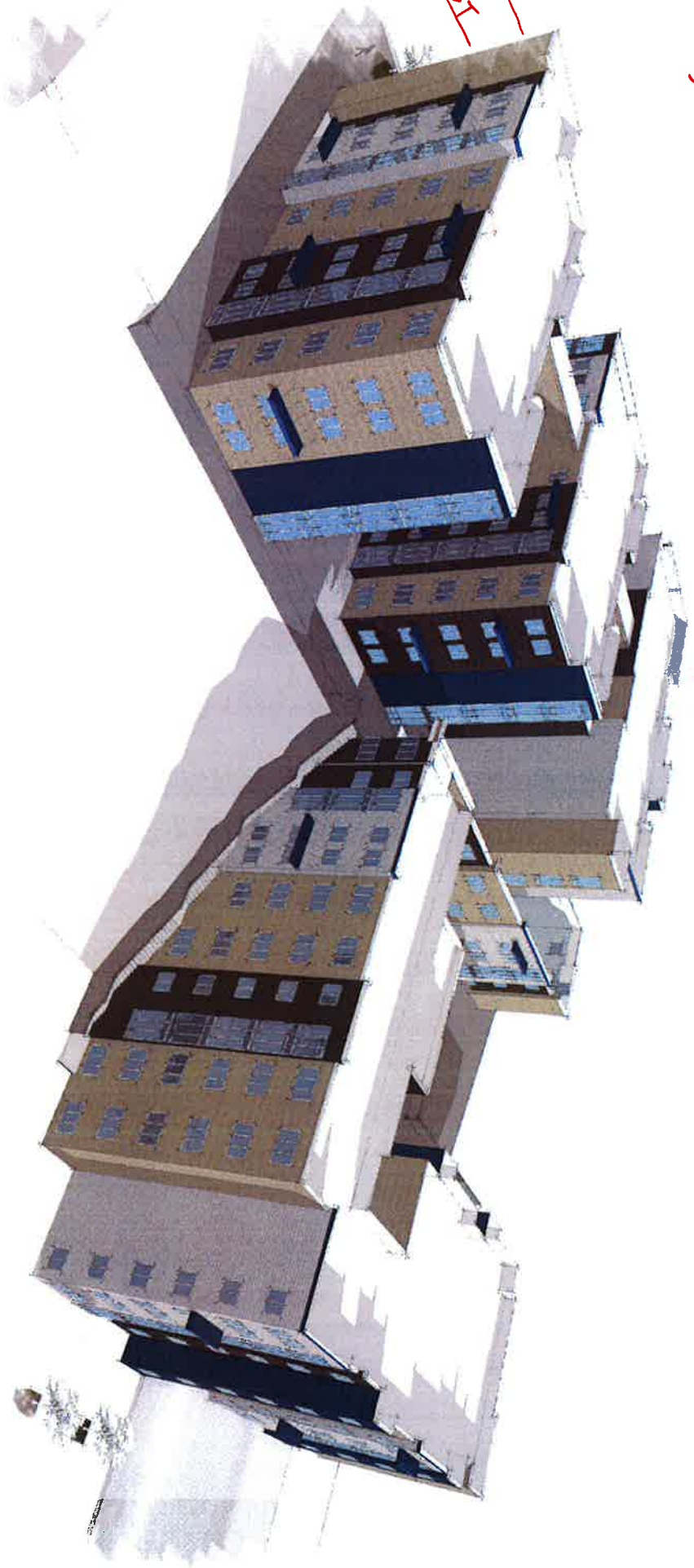
J:\JSR\Real Estate\Brandley, John\Memo.Statement.of.Appeal.Final.1.doc



800 EAST

800 EAST





800 EAST

2051