



Memorandum

Planning and Urban Development Department

Planning Division

To: Stuart O'Brien, Chair and Members of the Portland Planning Board

From: Jean Fraser, Planner

Date: May 23rd, 2014

Re: **May 27th, 2014 Planning Board Workshop**
 Level III Site Plan and Subdivision Review
 5-unit multi-family building
 97 Cumberland Avenue
 Peter Dugas, Applicant

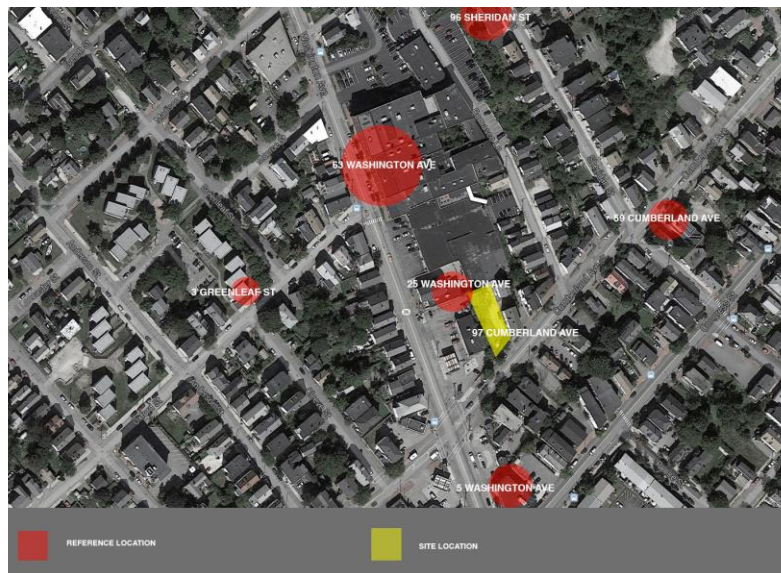
I. INTRODUCTION

Timothy Lock of GOLogic, on behalf Peter Dugas, has submitted a Level III Site Plan and Subdivision application for the construction of a 3 story building with 5 residential units and basement parking on a 5550 sq ft “urban infill” site at 97 Cumberland Avenue. The site is currently vacant; a vacant single unit residential building (located towards the rear of the site) was recently demolished.

The site is located immediately uphill from the *Seven-Eleven* at the corner of Washington Avenue and Cumberland Avenue. The *Seven Eleven* is in the B2b zone and the subject site is within the R6 residential zone.

The parcel is part of a 3 lot subdivision (plat can be found in [Attachment B](#)) and accessed via a shared ROW over a gravel drive owned by the abutter at 93 (front) Cumberland Avenue.

The applicant held a Neighborhood Meeting on April 14, 2014 but it was not noticed in accordance with the ordinance requirements and another Neighborhood Meeting is required.



Aerial as submitted by the applicant

This Workshop was noticed to 220 neighbors and interested parties, and the public notice appeared in the *Portland Press-Herald* on May 19th and 20th, 2014.

Required reviews:

Applicant's Proposal	Applicable Standards
New structure of 5 dwelling units	Subdivision Review
Multifamily building of 6990 square feet	Level III Site Plan Review and R-6 Design Review

Waivers: None requested, but Tom Errico, Traffic Reviewer, has identified the need for a waiver request in respect of the parking aisle.

II. PROJECT DATA

<i>SUBJECT</i>	<i>DATA</i>
Existing Zoning	R-6
Existing Use	Vacant and unused
Proposed Use	5-unit new building
Parcel Size	5550 sq ft
Impervious Surface Area	
--Existing	0 sq ft
--Proposed	2914 sq ft
--Net Change	2914 sq ft
Total Disturbed Area	Approx 2914 sq ft
Building Footprint	
--Existing	0 sq ft
--Proposed	1790 sq ft
--Net Change	1790 sq ft
Building Floor Area	
--Existing	0 sq ft
--Proposed	6990 sq ft
Residential Units	
-Existing	Previously 1, demolished
-Proposed	5
Bedroom Mix (proposed)	
- Efficiency Units	0
- One bedroom units	4
- Two bedroom units	0
- Three bedroom units	1
Parking Spaces	5, 3 located at basement level
Bicycle parking Spaces	Not confirmed
Estimated cost of the project	\$900,000

III. EXISTING CONDITIONS

The proposal site is located on the north side of Cumberland Avenue, one lot away from Washington Avenue.

To the north and west are large scale, more industrial/commercial, buildings along Washington Avenue. To the east is a row of 2-3 story older residential buildings as shown in the photograph to the right.

Across the street is a mix of residential buildings, some with flat roofs but traditional in design.



Photograph submitted by applicant - see [Att. C](#); looking up Cumberland with site to L

The site is currently mostly grassed with one tree on the site near the front.

IV. PROPOSED DEVELOPMENT

The proposals, including floor plans and elevations, are shown in the Plan set. The proposed building has 3 levels in the front part and 4 levels in the rear section, with parking on the lowest level. The overall building height is approximately 40 feet as shown in the elevations ([Plans P10](#)).

The entrance for 4 of the 5 units is a central entrance on the uphill side of the building, which is accessed from a path under a cantilevered awning that connects with the public sidewalk. The entrance to the ground floor front one bedroom unit is via a separate recessed front door on the left side of the front elevation. Above the front one bedroom unit is a 2-story three bedroom unit with a balcony facing Cumberland Avenue and access via the side central entrance. A roof top deck is located over the rear section of the building.



The design is explained in detail in [Attachment C](#) and the applicant seeks to achieve high thermal efficiency through thick insulation, limited fenestration and solar panels on the top of the front section of the building facing south. These require a somewhat flat roof which is angled in two places to achieve the necessary orientation. The external cladding comprises a metal panel that intentionally rusts to achieve a reddish color- details of this and the “green wall” (see rendering right) are in [Attachments I and J](#).



The proposed vehicle access is over the right-of-way granted in the deed over the abutting lot. It is within the ownership of the house immediately next door, but shared between three lots as shown on the plat (last page of [Attachment B](#)). The subject lot is identified as Lot #3.

Renderings are in [Attachment C](#) and [Plan P12](#).

The engineering proposals ([Plan P7](#)) indicate modifications to the drive access that include a retaining wall, regrading and paving plus some minor modifications to the neighboring house at 93 Cumberland Avenue.

V. STAFF REVIEW

A. RIGHT, TITLE AND INTEREST

The applicant has submitted evidence of Right, Title and Interest in [Attachment B](#), which has been reviewed by the City’s Associate Corporation Counsel because the proposal relies on the shared access drive and proposed alterations to the driveway. The drive is shared with 2 other lots and up to 5 other units.

Jennifer Thompson, Associate Corporation Counsel, has commented and the full text is in [Att. 3](#). She finds:

“...no language in the these deeds that purports to limit the scope of the right-of-way or condition it on the presence of only a single family home. Rather, the plain language of the deed from Edwards to Dugas is that the Lot 3 is benefited by "a right of way over, along and upon said lot numbered one (1) . . . easterly of and adjacent to the premises.”

The possibility of “overburdening” the easement is acknowledged as a possibility and therefore she has also advised:

“...including as a condition of approval a letter from an attorney or some other form of title opinion that opines that the right of way will not be overburdened.”

The owner of the abutting property at 93 Cumberland Avenue (Carol Pike) has submitted (PC2) a detailed comment that she and her attorney do not consider that the applicant has rights to undertake the proposals as presented.

The question of whether the proposal constitutes any “overburden” on the right of way is not a Planning Board issue. The Associate Corporation Counsel will advise, at the time of any hearing, as to whether the Board should include conditions related to the question of Right, Title and Interest on any potential approval.

B. ZONING ASSESSMENT

The proposed subdivision is within the R-6 Residential Zone. The applicant has provided a Zoning Assessment in Attachment A.

Marge Schmuckal, Zoning Administrator, has provided the following comments (Attachment 2):

I have reviewed this project for a new 5 unit residential 3-story structure. My major concern after this review is the required 10' side setback for the building. Both sides are not meeting the required minimum 10' setback. I am uncertain why the applicant is showing that there is less than the required 10' side yard setback when the document acknowledges the 10' required. All other R-6 dimensional requirements are being met.

It is understood that the discrepancy is not great, but the applicant will need to revise the proposals to fully meet the zoning requirements.

B. SUBDIVISION STANDARDS

14-496. Subdivision Plat Requirements

A final subdivision plat will need to be stamped by a professional surveyor and address the Ordinance requirements as part of the final submissions.

14-497. General Requirements (a) Review Criteria - Key Review issues

Water, Air Pollution and Soil Erosion

Erosion Control Plans have been submitted (Plan P7 and P8) and are generally acceptable to Dave Senus, the consultant reviewing engineer, with some minor revisions (Attachment 1).

Traffic

The proposed access utilizes the existing driveway that serves the three lots. Its effective width is proposed to be narrowed to 12 feet (see Plan P2) which is considered acceptable in terms of a driveway but may preclude parking in the driveway by users who have rights to that area.

Tom Errico, the traffic reviewer, has identified several other details where further information is needed and a waiver request would need to be made (with supporting documentation) for the parking aisle width (Attachment 2)

Storm water

The applicant has provided a stormwater report in Attachment G. The proposals manage stormwater impacts by including an infiltration basin at the rear of the site. While the principle is acceptable, Dave Senus, engineering reviewer, has raised concerns regarding the likely overflow being directed onto neighboring property (Attachment 1). The applicant was advised of this concern and provided an additional memo (Attachment H) which argues the proposal continues an historical pattern. Mr Senus does not agree with this assessment and suggests that the applicant would need to get an agreement from the abutter in order to move forward with this approach to stormwater management (Attachment 9).

Street Trees

The subdivision requirement would be one tree per unit, or 5 street trees, in or near the ROW. The proposals include one new tree on site near the ROW, and there is an existing street tree, so the standard is not yet addressed in full. If three additional street trees are not feasible at this location, the City Arborist may recommend the applicant make an equivalent contribution to the City's Street Tree fund. The City Arborist comments were not received in time to include in this Memorandum.

C. SITE PLAN STANDARDS

14-526 Requirements for approval

Traffic - as discussed above under Subdivision Review

Bicycle Parking

The submission indicates that bicycle parking spaces will be provided in accordance with the City standards. The final submission should show the number and location of the bicycle parking.

Snow Storage

The Site Plan shows snow storage within the abutters lot (rear part of 93 Cumberland Avenue) and as noted by Tom Errico ([Attachment 2](#)) this may also interfere with other users of the Right of Way drive access. The applicant is requested to confirm that he has rights to place snow at this location.

Site Landscaping and Screening

The applicant has submitted a Landscape Plan ([Plan P3](#)). This has not been reviewed in detail and the comments of the City Arborist were not available to include in this Memorandum.

Water quality, Stormwater Management and Erosion Control

As discussed above under *Subdivision Review*.

Public Utilities

The proposal is a subdivision and this would require that all utilities be located underground.

Dave Senus, the engineering reviewer, has noted ([Attachment 1](#)):

The existing site includes a utility pole that provides overhead service (presumably both electrical and telecommunications) to buildings on three adjacent properties. The plan calls for eliminating this pole and the associated existing overhead services; however, it does not address how new services will be provided to all adjacent properties, specifically the 7-Eleven store.

Capacity letters have not been submitted and would need to be included in the final submissions.

Site Design Standards

Massing, Ventilation and Wind Impact

The applicable site plan standard is (14-526 (d) (1) b):

The bulk, location or height of proposed buildings and structure shall minimize, to the extent feasible, any substantial diminution in the value or utility to neighboring structures under different ownership and not subject to a legal servitude in favor of the site being developed.

The neighbor Carol Pike at 93 Cumberland (front) has submitted comments (PC2) that suggest possible diminution in the value and utility of her property immediately next door, which includes ownership of the shared access drive.

D. DESIGN STANDARDS IN THE SITE PLAN ORDINANCE

R-6 Infill Development Design Principles and Standards

The applicant has submitted a narrative outlining how the proposed design addresses the R-6 design standard (Attachment C). The applicant has requested an alternative review.

Staff reviewed the submitted narrative and the project and the detailed staff design review comments are included in Attachment 4. The comments conclude that generally the design is appropriate for this location and meets the design standards.

Multi-family and Other Housing Types Design Standard

This design standard also applies to this proposal is outlined in sections below with associated staff review comments:

(i) TWO-FAMILY, SPECIAL NEEDS INDEPENDENT LIVING UNITS, MULTIPLE-FAMILY, LODGING HOUSES, BED AND BREAKFASTS, AND EMERGENCY SHELTERS:

(1) STANDARDS. *Two-family, special needs independent living units, multiple-family, lodging houses, bed and breakfasts, and emergency shelters shall meet the following standards:*

a. *Proposed structures and related site improvements shall meet the following standards:*

1. *The exterior design of the proposed structures, including architectural style, facade materials, roof pitch, building form and height, window pattern and spacing, porches and entryways, cornerboard and trim details, and facade variation in projecting or recessed building elements, shall be designed to complement and enhance the nearest residential neighborhood. The design of exterior facades shall provide positive visual interest by incorporating appropriate architectural elements;*

Staff comment: The neighborhood is characterized by a variety of architectural styles and the proposed modern style is acceptable in principle.

2. *The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;*

Staff comment: The proposal generally is similar in form, massing and relationship to the street and associated elements.

3. *Open space on the site for all two-family, special needs independent living unit, bed and breakfast and multiple-family development shall be integrated into the development site. Such open space in a special needs independent living unit or a multiple-family development shall be designed to complement and enhance the building form and development proposed on the site. Open space functions may include but are not limited to buffers and screening from streets and neighboring properties, yard space for residents, play areas, and planting strips along the perimeter of proposed buildings;*

Staff comment: The plans suggest that the rear roof deck is accessible to all units and the upper unit at the front has a balcony.

4. *The design of proposed dwellings shall provide ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and shall also provide sufficient storage areas;*

Staff comment: This standard appears to be met.

5. *The scale and surface area of parking, driveways and paved areas are arranged and landscaped to properly screen vehicles from adjacent properties and streets;*

Staff comment: The parking is located underneath the units and at the rear. Details of screening and associated landscaping have not been closely reviewed.

VI NEXT STEPS

The applicant needs to hold another Neighborhood Meeting, to be noticed in accordance with the ordinance requirements. The final submission will need to include:

- Draft Subdivision Plat
- Attorney or title opinion regarding the use and modifications to the shared access drive
- Revisions to address all review comments, including zoning and the design review
- Revisions to address Planning Board comments

ATTACHMENTS:

Attachments to Memorandum

1. Engineering Review comments 5.5.2014
2. Traffic Engineering Review comments 5.9.2014
3. Associate Corporation Counsel comments 5.20.2014
4. Alternative Design Review (R6 Infill) comments 5.22.2014
5. Zoning Administrator comments 5.23.2014
6. DPS (David Margolis-Pineo) comments (not received at time memo was completed)
7. Fire Department comments (not received at time memo was completed)
8. City Arborist comments (not received at time memo was completed)
9. Additional Engineering Review comment Dave Senus 5.23.14

Public comments

- PC1 Carol Pike 93 Cumberland Avenue 4.14.14
PC2 Carol Pike 93 Cumberland Avenue 5.21.2014

Applicant's Submittal

- A. Preliminary Site Plan Application April 2014
- B. Right, title and Interest
- C. Description and Narrative re Design Principals and Standards
- D. Additional Information re Design (email 5.14.2014)
- E. Wastewater Capacity application
- F. Traffic Study
- G. Stormwater Management Report March 2014
- H. Further information re Stormwater
- I. Technical Information re cladding
- J. Technical information re green wall

Plans

- P1. Boundary Survey
- P2. Preliminary Site Plan
- P3. Landscape Plan
- P4. Fire Department Site Plan
- P5. Engineer Cover Sheet
- P6. Engineer Site Plan
- P7. Erosion Control Plan
- P8. Erosion Control Details
- P9. Site Details
- P10. Elevations (3 plans)
- P11. Floor Plans (3 plans)
- P12. Front Elevation Rendering