



Planning & Urban Development Department

To: Mayor Brennan and Members of the Portland City Council

From: Stuart G. O'Brien, Chair, Portland Planning Board

Subject: Licenses for Building Sidewalk Projections

Date: February 3, 2014

Dear Mayor Brennan and Members of the Portland City Council:

On January 28, 2014, the Planning Board approved the site plan and subdivision for the mixed retail and residential development proposed by the NewHeight Group (Chip Newell and Susan Morris) at 118 Congress Street. This project as proposed includes several box bays and open decks which protrude over the public sidewalk on both Congress and St. Lawrence Streets, and which will require license agreements from the City Council to go forward. (The applicant for the license is the current property owner, Ed Theriault of EMT LLC.) The Planning Board discussed this aspect of the project at length, ultimately approving the development as proposed with the exception of the elimination of the open deck overhang on St. Lawrence Street. This matter will likely be coming to the City Council in February for approval of license agreements for the projecting building elements.

While this is not the first project to propose projections, the deck projections in particular were unusual, and the extent of the projections generated concerns from City staff from Planning and Public Services. The Planning Board ultimately approved the plan with projections, largely on the basis of the following five factors:

1. The decks and bays are fully integrated into the overall building form so as to positive architectural relief through its mass/void articulation, combined with its fenestration rhythm, providing character that is desirable for meeting the urban design standards;
2. Pushing the building back to less than the proposed 5' rear setback to keep the projections on private property would have resulted in a loss of 40% of the rear fenestration to meet applicable fire code;
3. Pulling the building back from the front property line would compress the retail depth to less than the required 20' average depth required under the recently enacted zoning provision;
4. Compressing the building internally would have reduced the parking drive aisle to less than the required City standard; and
5. The applicant demonstrated that such projections are appropriate to the context of the immediate neighborhood

While the Board agreed that these factors support the proposed projecting building elements in this case, the question of the value of this effective “air right” was the subject of further Board discussion. The Planning Board recommends that in cases where a license enables the creation of valuable real estate floor area, the City Council consider a policy of recouping that value in the issuance of such licenses. The Board did not condition this approval on such remuneration since that is not within our jurisdiction and authority. We did, however, vote 5 to 2 (Hall and Dean opposed) to send this letter to communicate The Board’s reasoning on approving this proposal with its overhanging projections, and to suggest that the City Council develop a fair compensation mechanism to recapture the value of the air rights that result from such licenses.

The Planning Board, in making this recommendation, does not intend that any new policy development should inhibit or delay the subject application by the NewHeight Group and EMT LLC in their business before the City Council in pursuing their license agreement.

Thank you for considering this matter.

Stuart G. O’Brien, Chair

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