

EXHIBIT 23

WRITTEN WAIVERS FROM SITE PLAN OR TECHNICAL STANDARDS

WRITTEN REQUESTS FOR WAIVERS FROM SITE PLAN OR TECHNICAL STANDARDS

PART 1 –THE FOLLOWING WAIVER REQUEST FOR BUILDING AND B-7 STANDARDS HAS BEEN PREPARED BY CBT ARCHITECTS

1. Applicant requests waiver from Standard B-3 requirement to provide mid-block permeability through **midtownThree** block between Chestnut and Elm Streets, connecting Somerset Street to the Bayside Trail.

MidtownThree provides retail space fronting on Somerset Street which is designed as “through space”, that is, allowing a visual connection through to the Bayside Trail beyond. It is noted that the building opposite this building on Somerset Street has no mid-block connector and the trail adjacent to the building’s north facade is defined by a berm containing stabilized contaminated soil which rises 6 feet above the floor level of the retail space. In addition, there is a fenced parking lot on the north side of the trail. A mid-block connector in this instance would serve no real purpose as there would be no matching connector on the other side of Somerset Street and no pedestrian connection to the trail or properties to the north – that is a connector by itself (even if it could overcome the topographic problem of the berm, would generate no foot traffic as it would not be part of a larger pattern of pedestrian movement.

The building design does, however, hold back from the property line at its west end allowing an expanded trail connection to Somerset and Elm Streets with easy and inviting access from Somerset Street.

2. Applicant requests waiver from the Standard B-7 requirement to provide continuity of street level uses along Somerset, Chestnut, and Pearl Streets.

A service entrance for the **midtownOne** apartment building and its ground floor retail use is provided on Pearl Street; service entrance for **midtownTwo** retail space is provided adjacent to the garage entrance; service entrance for **midtownThree** retail and residences is provided on Somerset Street, and the service entrance for **midtownFour** is provided on Elm Street.

These service entrance doors will be from seven feet to eleven feet wide, will be designed as an integral part of the modern industrial aesthetic of the buildings, and will be opened only to remove trash and recycling to vehicles parked in designated service spaces.

Service for the ground floor retail use in the Garage building will be provided through the front door(s) of the retail spaces from loading zones along Somerset Street.

Loading dock facilities are planned only at buildings one and three; for retail spaces tenants will provide for trash and recycling facilities within their leased premises.

Retail and apartment lobbies will form more than 90% of street frontages thus assuring the maximum frontage along Somerset, Chestnut, and Pearl Streets. Elm Street is planned to have continuous retail frontage.

3. Applicant requests waiver from Standard B-11 requirement to comply with City's Technical and Design standards for street lighting along Elm, Somerset, Chestnut, and Pearl Streets.

The Plan for midtown Development will utilize the standard type fixture for Somerset Street, Elm, Chestnut Street, and Pearl Extension. Location and spacing may need a waiver. As well, higher intensity lighting is appropriate for the retail locations especially along Somerset Street and to create a uniform appearance along the ground floor retail areas of the development which may require a waiver of some requirements.

Pedestrian lighting will be provided by the streetscape lighting noted above together with 'spill' lighting from retail store fronts.

Lighting for the mews and new public opens spaces will be designed to complement these standards.

4. Applicant requests waiver from Standard C-2 requirement to separate vehicular entrance and exit from parking garage.

In the Plan for midtown Development, garages will be designed to respect the pedestrian realm and minimize the visual impact of the garage entrance and exit by collocating the garage entrance and exit. These consolidated entry/exits will provide greater uninterrupted active retail use on the ground floor and will require a waiver from the requirement for separate entry/exit.

Entry/egress gates will be located interior to the garages to allow entrance queuing internal to the structure minimizing back up onto Somerset Street.

5. Applicant requests waiver from Standard C-5 requirement that garage decks shall be horizontal where visible from public ways.

The garage decks of the Plan for midtown Development will be level on the Chestnut and Somerset Street and the Mews facades, and will incorporate a parking ramp between parking levels along the Bayside Trail façade. The Plan seeks a waiver to allow these ramps to be expressed to the Trail and visible tangentially from streets and public rights of way.

The **midtownTwo** Parking Garage has been designed with ramps at the Bayside Trail façade supported on sloping structure between horizontal end bays. The end bays will be clad in architectural precast concrete with openings similar in size and spacing to the apartment building windows. The sloped structure between these will be minimized, cable rails will provide for pedestrian and auto safety, and the interior structure will be a dark color, all to minimize visibility of the sloping ramps. The façade will be screened above the retail ground floor with green or other appropriate screening materials.

6. Applicant requests a partial waiver from Standard D-2 requirement that buildings adjacent to the trail have active doors into the building on facades facing the trail.

All the **midtown** buildings are designed with façade elements adjacent to the Bayside Trail that enhance the trail experience. As noted above, these facades are not designed as “backs”, and they provide the important element of residential windows overlooking the trail. Food service establishments are the planned as part of the retail leasing program for the ground floors of the all buildings. This may provide some entrances and egresses facing the trail.

The partial waiver is sought on the requirement of having “active building ingress and egress” on the portion of **midtownThree** facing the trail because of natural changes in grade. The trail adjacent to the building’s north facade is defined by a berm containing stabilized contaminated soil which rises 6 feet above the floor level of the retail space. It would be impractical to create entrances from the berm, and a hardship to remove it.

7. Applicant requests a waiver from Standard E-12 requirement that building facades visible from the public rights of way shall consist of natural building materials

The buildings in the midtown Development will be clad in precast concrete, EFIS, aluminum, vinyl, or other siding materials, corrugated metal siding, with vinyl residential windows and enameled aluminum and glass storefront window and louver systems. All materials will be chosen for durability and long service life. These materials are manufactured for durability and long life, and will be detailed to stand up to all the rigors that the New England coastal climate offers.

A waiver is being sought of Standard E-12 for the use of EFIS and vinyl metal or cement composite siding panels. Building material technology has evolved in recent years with offerings of higher strengths, color and pattern choices, and the ability to vary forms within a façade composition. These materials can have a handsome, elegant appearance when assembled in architecturally considered designs. Additionally the performance of these materials is very well understood and their use rivals the age and performance of heavier exterior materials like masonry stone or concrete.

8. Applicant requests clarification that a wind study will not be required under Standard E-20, or if required a waiver from such study.

As the buildings are all substantially lower than the limits of height prescribed for the project area, and are consistent with the height of other recent developments in the district that have not experienced uncomfortable winds, the Applicant seeks clarification that a detailed professional wind study will not be required for Final Level III Site Plan review

Initial assessment of wind roses and anecdotal reports suggest that winter winds from the North and Northwest might cause probable discomfort for sitting activities in the Courtyard if **midtownOne** were built to 165 feet tall. The building is proposed at 72 feet however, and the effects of wind would be attenuated substantially. It is therefore highly probable that users seated in the courtyard would find these winter winds uncomfortable.

Summer winds from the South will be tempered by topography and existing construction south of the project site. The tendency for the south wind to concentrate in the Mews will be mitigated by the openness of the garage.

Other uncomfortable winds previously predicted for walking at the Elm Street end of the trail, predicated on a pair of 165 ft. high buildings, would be similarly attenuated in the Applicant's current proposal to build midtownThree and midtownFour as substantially lower 72 ft. high buildings. It is highly improbable that pedestrians on the trail, Elm Street, or Somerset Street in this vicinity would experience any discomfort due to wind while sitting, standing still, walking, or jogging.

9. Applicant requests a waiver from Section 14-296 a.ii. requirement that parking garage façade be set back a minimum of 35 ft. from the street right of way.

Due to the shallow nature of the lot and the city's desire to create active retail street frontage on Somerset Street the façade of the building is set back ten ft. and continuous retail frontage is provided at ground level.

10. Applicant requests an exception from Section 14-334 (a) and (b) to allow parking serving midtownFour to be located in midtownTwo, and to allow ownership of the parking separate from ownership of the residential and retail buildings.

The entrances to the garage and the midtownFour buildings are more than 100 ft. but less than 1500 ft. apart. The four buildings are being developed as a single project but the applicant wishes to reserve the right to finance or sell each building separately at any time in the future. As the garage will always be a resource to the neighborhood, residents of the other three buildings will always be able to park their vehicles in it.

PART 2 – WAIVER REQUEST FOR CIVIL DESIGN PREPARED BY FST ENGINEERS

11. 1.4 Street Grades (reference page 3 of Technical Standards)

- *The cross slope for local streets shall be 0.03. The cross slope for other street classifications shall be 0.02.*

The project will require the reconstruction of Somerset Street. The building will be set at elevation 12.0 to be 2 feet above the higher flood hazards anticipated to increase over time. There are existing buildings with finish floors, entrances, and exits at lower elevations. The Federated plan for the midtown project has extensive ground floor retail which requires flush accessible entrances. On the other hand, there are existing buildings across the street (most notably the "Noyes" property with existing floors and entrance elevations which will not be changed. Because the buildings on either side of the street are near or on the right of way, some variation from transverse slopes and location of the street crown from the City's typical cross section within the street right of way will be required.

12. 1.5 Vertical Alignment: Parabolas at grade changes (K values) (Reference Pages 3 & 4 of the Technical Standards)

The profiles for the reconstruction of Chestnut, Somerset, Elm, and Pearl Streets are included in the Plan Documents. Minor variations from the City Standards for the “K” values (30 and 40 for crests and sags) will be requested.

It is anticipated, the variation of the K value for the sags on Chestnut Street is expected to have a “K” value of 33.56 and Elm Street is expected to have a value of 39.89.

13. Section 2 – Sanitary Sewer and Storm Drain Design Standards

2.7.8. No storm drain lines, with the exception of field inlets and underdrains, shall be connected into a catch basin structure (Reference Page 82 of the Technical Standards)

Representatives from the City of Portland have indicated the technical standards are being revised and will remove this restriction. If the standards have been revised, this waiver will not be required. The waiver is very important to avoid excessive piping and appurtenances in the public streets.

14. Section 5

Portland Stormwater Management Standards and MaineDEP Chapter 500 Stormwater Management (Reference Page 149; Section E. 2 6 of this Chapter of the Technical Standards)

The requirements include stormwater detention for flood control. The applicant is requesting a waiver to the requirement for detention as part of the Stormwater Management Plan. The location of the site within the watershed results in a condition where passing flow from this area as soon as possible allows capacity to free up to receive and convey flows from upstream areas.

15. Section 7

Soil Survey Standards (Reference Page 209 of the Technical Standards)

The applicant is requesting a waiver from the City of Portland’s requirement to provide a high intensity soil survey. This request is made after considering that the site is on fill land, the site has been heavily disturbed as part of environmental cleanup measures over the past several years, the site will be nearly impervious after development such that hydrologic soils rating is not a significant issue.

PART 3 – WAIVER REQUEST FOR LANDSCAPING AND LANDSCAPE PRESERVATION PREPARED BY MITCHELL & ASSOCIATES

16. 4.6 Street Trees:

Waiver: The applicant is requesting a waiver of the requirement for providing one street tree per residential unit. The maximum number of units proposed for the “midtown” project is 445 units. A total of 97 trees, not including replaced street trees along Elm Street, are being provided along Chestnut Street, Somerset Street, Pearl Street, and along the Bayside Trail. The request is based upon the enhanced planting method that includes 4 FT x 8 FT raised (granite curb) planting beds and a structural planting system below grade that provides for

an expanded root zone that is approximately 60 % larger than typical street tree planting area. There are 29 raised planters located along the street frontages and the cost to install improvements for these trees well exceeds the fee in lieu for the additional 349 trees.

B-7 MIXED USE URBAN DISTRICT DESIGN PRINCIPALS AND STANDARDS

PRINCIPAL D OPEN SPACE AND PUBLIC REALM

17. Standard D-3 Landscaping and Street Furniture:

Planters, wells and tree grates: The applicant is requesting a waiver for raised planting beds associated with the ramp system located within the right of way that occur along the Somerset Street sidewalk adjacent to Pearl Street extension and Elm Street as designed.

Irrigation and Drainage: The applicant is requesting a waiver of the requirement for an irrigation system. All plant material selected shall conform the city standards, be selected for drought tolerance in addition, will be located in larger raised planting areas.



MEMORANDUM #1

In an effort to address questions and/or concerns raised at the November 12, 2014 Planning Board meeting, and to provide some background information regarding specific details of the Level III Site Plan & Subdivision submission, we have prepared the following memorandum.

Regarding the required mid-block permeability between Chestnut Street and Elm Street, we are requesting a waiver due to issues related to the design, functionality, and efficiency of the structure. Furthermore, it is our belief that the access point would not in any way provide any functional benefit. When contemplating various ways to provide this pass through, we considered the following:

- A physical separation, creating two separate structures- We felt that this was the obvious first choice as it was aesthetically the most attractive option. After review, we came to the conclusion that, due to the unusually narrow lot width and a host of other site limitations, we were unable to design two buildings that made economic sense to construct. Both buildings would require their own building core, service area, and entry lobby. The physical separation would also result in the loss of 20 apartments and approximately six thousand feet of leasable retail space. Additionally, it would “break” the continuous retail activity along Somerset Street that we believe is essential to creating the experience necessary to drive people to an area that today is best described as an urban wasteland.
- An access corridor within the retail space of the currently proposed structure- We feel very strongly that this is not a viable option. Our concerns are economic (the loss of square footage would have an adverse financial impact) and functional (the resulting separation would further limit the flexible subdivision of the retail space), but our primary concern is security related. We believe that this enclosed space will become a haven from inclement weather and a place that people will go to escape the public eye. We have concerns related to loitering and illegal activity, and although we will have personnel on site we will not be equipped to monitor or police activity within this confined space. We believe that the possibility for this type of behavior, in and of itself, will deter usage of this access point by ordinary citizens.

In addition to the specific concerns raised above, the mid-block pass through is further complicated by the fact that when the trail was built, a berm was created along the length of this lot preventing a simple “pass through” and necessitating the deconstruction of this berm and the remediation of the site and disposal of the contaminated material that the berm is currently comprised of. Given that the City of Portland created this condition when the trail was constructed and that the condition lies on city property, we feel that the burden of remediating and re-grading this area would be unfairly placed on the developer in the event that this permeation were required.

Finally, we believe that the proposed pass through has no functional benefit due to existing conditions. The proposed pedestrian connection provides no north/south connectivity as the blocks between Cumberland Avenue and Congress Street, Lancaster Street and Kennebec Street, Kennebec Street and Somerset Street, and Somerset Street and Marginal Way lack any connectivity and the presence of multiple structures limits the likelihood that this condition will change anytime soon. It is this lack of connectivity that would make it highly unlikely that a pedestrian would arrive at the point of the proposed access to begin with. The connectivity to the trail, which we view as the sole benefit of this action, is not improved in any way as an individual accessing the trail can do so at the trailhead that merges with the sidewalk immediately west of the building or at the Chestnut Street crossing to the east. In an effort to improve this access and to improve visibility at the trailhead, the developer has voluntarily removed over three thousand feet of retail space, effectively shortening the length of the building and the distance between trail connections. We believe that the proposed pass through provides no benefit because, in the unlikely event that a pedestrian were to arrive at the point of the proposed access, and due to the fact that the sidewalk runs parallel to the trail, the distance traveled in either direction would be exactly the same.

Prepared by Jonathan Cox



MEMORANDUM #2

In an effort to address questions and/or concerns raised at the November 12, 2014 Planning Board meeting, and to provide some background information regarding the details of the Level III Site Plan & Subdivision submission, we have prepared the following memorandum.

Regarding the use of certain exterior finish materials not otherwise allowed, we are requesting a waiver due to the compatibility of these systems with the intended construction type and the various functional and economic benefits of utilizing these materials in the construction of the building façade. In determining that these materials were the most appropriate application, we considered the following:

- PLEASE NOTE THAT WE ARE NOT REQUESTING A WAIVER FOR THE USE OF VINYL SIDING. WE HAVE NO INTENTION OF UTILIZING THIS MATERIAL IN THE CONSTRUCTION OF THIS PROJECT. A WAIVER IS BEING REQUESTED FOR THE USE OF EIFS, A FORM OF SYNTHETIC STUCCO AND A MATERIAL WHOSE APPEARANCE IS VIRTUALLY INDISTINGUISHABLE FROM MATERIALS CURRENTLY APPROVED FOR USE IN THIS ZONE.
- While reviewing the possibility of reducing the height of the proposed structures, we came to the conclusion that the project became economically constrained when maintaining the previously proposed steel frame construction type. We analyzed the benefits and drawbacks of wood frame construction, in this case over a concrete podium, and decided that this framing material was better suited to construct the reduced height buildings. Timber frame construction results in a more environmentally sustainable building structure, has a smaller carbon footprint, and is far more energy efficient to construct and to operate.

The wood frame structure interacts better with a lighter weight façade material. EIFS, or synthetic stucco, the surface material for which we are requesting a waiver to utilize, is a lighter weight application than a comparable fiber-cement panel. THE INSTALLED LOOK OF BOTH PRODUCTS IS VIRTUALLY IDENTICAL. EIFS is a superior product and has emerged as the preferred option, and is far more widely used than it's fiber-cement alternative. EIFS is an applied siding, whereas the fiber-cement panel is an installed siding. The fiber-cement panel is installed using mechanical fasteners, which are unsightly, maintenance intensive, and are subject to failure. The fiber-cement siding is panelized, creating gaps in the building envelope that contribute to energy loss. EIFS is troweled on, eliminating the use of mechanical fasteners, and creating a sealed application that actually increases the insulation value of the structure. EIFS acts as a "blanket", wrapping the exterior of the structure, reducing air infiltration and energy consumption. It eliminates "thermal breaks" associated with installed siding.

Virtually indistinguishable from the fiber-cement panel, both are designed to resemble stucco. EIFS, however, expands the architect's design palate as it is available in a virtually limitless amount of colors and textures, whereas fiber-cement siding is fairly limited. It also allows for the construction of architectural detailing that would be cost prohibitive using conventional construction methods, such as cornices, arches, columns, and keystones. These details are computer-generated and laser cut out of insulation board, and the finish material is directly applied to the base insulation.

The lower operating costs and limited maintenance of this product allow for efficient operation of the structure on an ongoing basis. Additionally, it is our opinion that the expanded range of options that this material provides allows us to deliver a superior product at an economical price. In tandem with the other specified façade materials, we believe that we have presented a project that is reflective of the modern-industrial design aesthetic, paying homage to the neighborhoods industrial past while looking forward to its modern future.

Prepared by Jonathan Cox