

PLANNING BOARD REPORT PORTLAND, MAINE



169 Newbury Street Residential Development
169 Newbury Street
Subdivision & Conditional Use Review
2016-021
Luminato Condominium, LLC

Submitted to: Portland Planning Board Date: March 18, 2016 Public Hearing Date: March 22, 2016	Prepared by: Caitlin Cameron, Urban Designer CBLs: 028-I009001 and 028-I010001 Project #: 2016-021
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I. INTRODUCTION

Luminato Condominium, LLC has requested a final subdivision and conditional use review for a seven-story residential development at 169 Newbury Street, in between Newbury and Federal streets and facing Franklin Street at the edge of the India Street neighborhood. The proposed 40,200 SF development includes structured parking on the lower two floors and 26 market rate condominiums, a fitness area, and roof access on the 5 floors above. The proposal also has two affordable rental residential units in the existing 3-family residential structure at 42 Hampshire Street. The project includes a parking structure has 26 spaces, one surface parking space to be accessed by the neighboring property, sidewalk and landscaping improvements, and stormwater treatment facilities in the form of a green roof. The green roof qualifies the project for a height bonus of a seventh floor. The site is currently occupied by two residential buildings and a garage.

This development is in the process of a staff level site plan approval for compliance with the standards of the India Street Form Based Code. The Planning Board is only reviewing the subdivision and compliance with Division 30 (inclusionary zoning).

A total of 110 notices were sent to property owners within 500 feet of the site and a legal ad ran in the *Portland Press Herald* on March 14 and March 15, 2016.

Applicant: S.P. Chip Newell, Luminato Condominium, LLC

Consultants: Thomas S. Greer, P.E., Pinkham & Greer, Civil Engineers; Northeast Civil Solutions; Archetype Architects; Tom Federle, Federle Law

II. REQUIRED REVIEWS

Waiver Requests	Applicable Standards
Driveway width – to allow driveway 18 feet on Federal Street to enter 18’ access easement across 100 Federal Street <i>Supported by Traffic Engineer</i>	Technical Manual, <i>Section 1.7.2.3</i> . Minimum driveway width (two-way): Any site with driveway access to a street shall have a minimum width of 20 feet for two-way ingress and egress, with a preferred width of 24 feet.
Street trees – project includes 14 street trees, less than required <i>Supported by City Arborist</i>	Site Plan Standard, <i>Section 14-526(b)2.b(iii)</i> and Technical Manual, <i>Section 4.6.1</i> . All multi-family development shall provide one street tree per unit. Waiver permitted where site constraints prevent it, with applicant contributing proportionate amount to Tree Fund. <i>26 units = 26 street trees required. Contribution for 12 trees at \$200 per tree suggested.</i>
Review	Applicable Standards
Site Plan Level II (staff level review/approval) Subdivision	<i>Section 14-526</i> , including IS-FBC Building Design Standards <i>Section 14-497</i>

III. PROJECT DATA

Existing Zoning	IS-FBC
Existing Use	Residential
Proposed Use	Residential
Proposed Development Program	26 condominium units (16 1-bedroom, 7 2-bedroom, 3 3-bedroom) + 2 off-site Workforce Housing units in 42 Hampshire Street
Parcel Size	10,270 SF

	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Building Footprint	3,686 SF	6,736 SF	3,050 SF
Building Floor Area	9,510 SF	40,200 SF	30,690 SF
Impervious Surface Area	64,836 SF	5,135 SF (50%)	1,236 SF
Parking Spaces (on-site)	2	26 structured, 1 surface	25
Bicycle Parking Spaces	none	36 (26 interior)	36
Estimated Cost of Project	\$8,000,000		



Figure 1

IV. BACKGROUND & EXISTING CONDITIONS

169 Newbury Street lies at the “corner” of Newbury and Franklin streets – currently Franklin Street does not connect to either Newbury or Federal Street as it once did. All northbound Franklin Street traffic will pass this prominent building. Because the future design and development of Franklin Street is uncertain, the applicant worked with City staff to determine the appropriate level of site and sidewalk improvements to be made. For example, a sidewalk connection will be added from Newbury Street to Franklin Street but not from Federal Street

to Franklin Street which has a steep slope and would require steps. There remains a large landscaped buffer between the Franklin Street sidewalk and the property line – this will be improved with landscaping, retention of existing street trees, planting of new street trees, and a pedestrian door added on the Franklin façade of the building.

The site is actually a collection of several distinct lots, all of which are held under common ownership (*Plan 2*). The site is zoned India Street Form-based Code Zone with an Urban Transitional (UT) subdistrict, but borders Urban Neighborhood (UN) streets with a smaller vernacular built fabric of Hampshire Street. The site is not in the India Street Historic District. The blocks along Franklin Street in the India Street neighborhood, such as the applicant’s site, serves as an important transition between the fine-grained residential fabric of the historic and small-scale UN streets and the fast-moving, wide arterial of Franklin Street.

V. PROPOSED DEVELOPMENT

The applicant proposes to reconfigure several existing lots in order to create a single contiguous lot for purposes of this development (*Plan 2*). The development would consist of a seven-story building with approximately 135 feet of frontage on Franklin Street and 66 feet of frontage on Newbury Street. Structured parking would occupy the first two floors, with pedestrian access from Franklin Street. 26 residential apartments would occupy the upper five floors, with principal access from Newbury Street and secondary access from Franklin Street. Vehicular parking for 26 cars would be provided in a two-level structure situated behind the proposed building, with lower level access from Newbury Street and upper level access from Federal Street. Because of grade changes, the structured parking area will read as the ground floor on Newbury Street with six floors of residential above.

New brick sidewalks, curb cuts, and street trees are proposed on Newbury, Franklin, and Federal streets. The site lighting shall be provided by existing street lights and additional lighting is added by the building lighting (*Attachment 12*). The landscape plan (*Attachment 7*) also includes low landscaping and Greenscreen along the building face on the Franklin Street frontage (at the request of the City Arborist) most of which will be within the public right-of-way, and additional landscaping between the building and neighboring properties as well as a fence to screen the transformer pad. Stormwater treatment is proposed as a green roof on the 6th and 7th floors (*Attachments Plan 21, Plan 22, Plan 23*).



Figure 2

VI. PUBLIC COMMENT

During the preliminary review, staff fielded a telephone call from a neighbor who raised concerns about the proposed height and view impacts of the proposal. No written comments have been submitted.

The applicant hosted a neighborhood meeting on February 17, 2016 in conformance with the subdivision ordinance. There were eleven attendees. The meeting minutes show that neighbors raised questions about project timeline and process, who would have access to the parking, size and price of units, type of construction, and coordination with Franklin Street Plan (*Attachment N*).

VII. RIGHT, TITLE, & INTEREST

The applicant’s submittal includes deeds as evidence of right, title, and interest. As noted above, the applicant has proposed to reconfigure four lots to create a development site on what will be one newly defined parcel which will also include the existing building at 42 Hampshire Street. Corporation Counsel and the Zoning Administrator reviewed the plan for the new division of lots (*Plan 2*) and have not identified concerns. The neighboring property is relocating porches away from the new property line so as to not create a non-conforming condition with the new lot lines.

The applicant proposes to use a portion of the 100 Federal Street driveway as an access point to the garage for 169 Newbury Street. 100 Federal Street is a three-family residential building and therefore is exempt from providing off-street parking under the IS-FBC zone. At least one parking space will be retained on-site and an additional access and parking easement is proposed from 169 Newbury Street to 100 Federal Street. These easements shall be recorded and appear on the Subdivision Plat.

VIII. FINANCIAL & TECHNICAL CAPACITY

The estimated cost of the development is approximately \$8 million. The applicant has submitted a letter from Camden National Bank indicating that their intent to consider financing for the project. The applicant has also provided documents attesting to the technical capacity of Pinkham & Greer Civil Engineers (*Attachment D*).

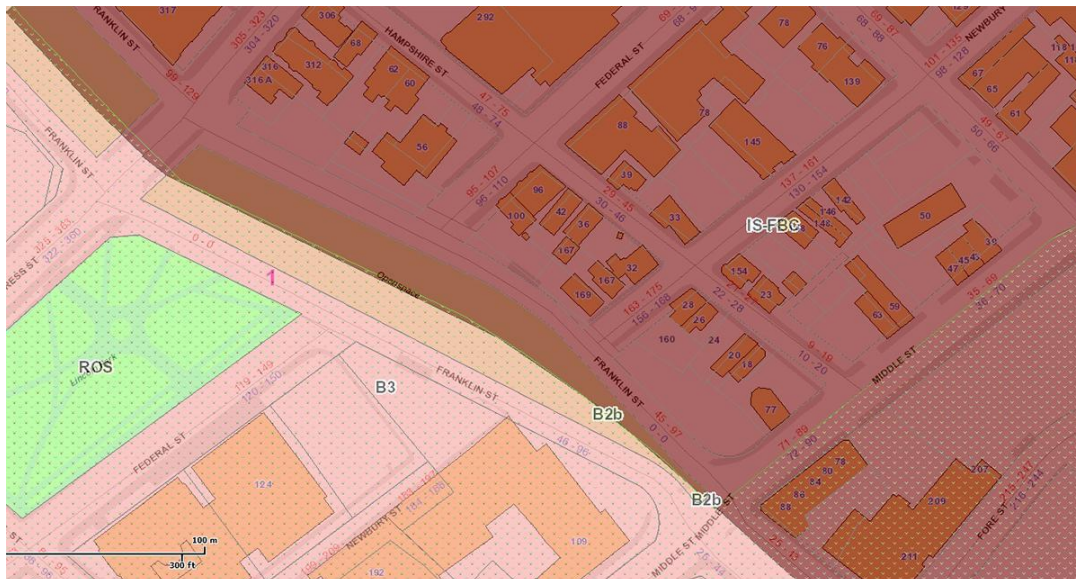


Figure 3

IX. ZONING & LEVEL II SITE PLAN

The project is in the India Street Form-based Code zone and faces two Urban Transitional subdistrict streets (Newbury and Franklin Street). The total project area is under 50,000 square feet and is therefore subject to Level

II Site Plan review which is an staff level review and approval. Site Plan review includes review of zoning, design, and site design such as landscape, traffic, stormwater, and parking. There is also Housing Replacement for this project – 5 existing units will be demolished and replaced by the proposed project. The project is currently in review and Level II Site Plan approval is included as a Subdivision condition of approval.

X. SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS (*Section 14-496*)

The applicant has provided a subdivision plat for review by the city’s surveyor. Finalizing this plat per *Section 14-496* has been included as a condition of approval. In addition, the project includes condominium units. As such, condominium documents have also been included as a condition of approval.

In the submittal, the applicant proposes the following easements and licenses:

- Temporary construction easement from the City of Portland to Luminato Condominium, LLC;
- License from the City of Portland to Luminato Condominium, LLC for building footings on Newbury Street and Franklin Street rights-of-way;
- License from the City of Portland to Luminato Condominium, LLC for roof overhang on Newbury Street right-of-way;
- Access and parking easement from 169 Newbury Street to 100 Federal Street;
- Access easement 100 Federal Street to 169 Newbury Street;

In their final submittal, the applicant has also indicated that construction easements will be necessary from the City of Portland. These easements should also be noted on the construction management plans. Final construction management plans shall be required as part of Site Plan Level II.

All of these easements have been suggested as conditions of approval.

XI. SUBDIVISION REVIEW

(14-497(a). Review Criteria)

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland’s subdivision ordinance. Staff comments are below and in *Attachments 1-3*.

1. Water, Air Pollution

The project is not anticipated to result in undue air or water pollution (*Attachment 1*).

2 & 3. Adequacy of Water Supply

The plans show water service from a main in Newbury Street to a new 3-inch domestic pipe and a 6” fire protection pipe. The applicant has provided evidence of capacity from the Portland Water District with conditions (*Attachment G*).

4. Soil Erosion

No unreasonable soil erosion or reduction in the capacity of the land to hold water is anticipated (*Attachment 1*). Site Plan (*Attachment Plan 3*) and Erosion Control Plan (*Attachment Plan 6*) provide information about stabilizing the slope during and after construction.

5. Impacts on Existing or Proposed Highways and Public Roads

The applicant has provided a traffic and transportation analysis (*Attachment F*). Tom Errico, the city’s consulting traffic engineer, has reviewed the study and provided comments (*Attachment 3*), which states the project is not expected to cause unreasonable highway or public road congestion or unsafe conditions.

6. Sanitary Sewer/Stormwater Disposal

A 6-inch sewer line are proposed to service the building and would outlet to Newbury Street. No grease trap is proposed – no commercial uses are proposed as part of the building. The applicant has submitted a wastewater capacity application to the Department of Public Works with an approval letter granted 2/17/16 (*Attachment H*).

The applicant has provided stormwater management and utility plans as well as information for the green roof. Both David Senus, the city’s consulting civil engineer, and David Margolis-Pineo, of the city’s Department of Public Services, have provided comment that this subdivision criteria is met and will review these plans further as part of the Site Plan review (*Attachments 1 and 2*).

7. Solid Waste

The applicant has proposed a trash and recycling room adjacent to the residential entrance and has indicated in the condominium documents that residents are responsible for engaging a waste management contractor to provide waste removal service. The project is not anticipated to cause an unreasonable burden on the ability of the city to dispose of solid waste (*Attachment F*).

8. Scenic Beauty

This proposal is not deemed to have an adverse impact on the scenic beauty of the area. The project is not within a historic district or within 100’ of a historic landmark.

9. Comprehensive Plan

India Street Sustainable Neighborhood Plan

This newly adopted neighborhood plan includes the following goals and principles which are met by this proposal:

Goal – Vitality – the project adds 26 new units bringing more people to the neighborhood

Goal – Diversity of building types and residents – The project targets a different demographic for the neighborhood.

Principle 7: Guided Growth – the project provides dense residential development on Franklin Street corridor, one of the areas identified as potential growth and infill development sites.

Principle 8: Form of Development – High residential density, maintaining the pedestrian-scale blocks, continuous sidewalks, and street-oriented buildings – these concepts are all included in the project.

Principle 13: Responsive to Climate Change – this will be the first project in the neighborhood to have a green roof and aggressively address stormwater runoff.

Incentives for Affordable Housing and Housing – Sustaining Portland’s Future

The city believes that it is in the public interest to promote an adequate supply of affordable housing for its residents. The proposed project is required under the newly adopted Division 30, Section 14-487, Ensuring Workforce Housing to provide at least 10% workforce housing units. As described below and in (*Attachment 4*), the project successfully incorporates two rental units on the same lot, but in an existing building on the same lot. In addition to the required affordable housing being provided, the project targets the unit size and price towards first-time home-buyers. The housing stock is placed in a multi-modal neighborhood with good connections to several neighborhoods, offices, and services.

10. Financial and Technical Capacity

As noted above, the applicant has provided evidence of financial and technical capacity (*Attachment D*).

11. Wetland/Water Body Impacts

Project is not located within a watershed of any pond or lake or within 250 feet of any wetland, great pond or river.

12. Groundwater Impacts

There are no anticipated impacts to groundwater supplies (*Attachment 1*).

13. Flood-Prone Area

Per the FEMA flood maps, the site is not located in a flood zone (*Attachment M*).

14. Wetland/Water Body Impacts

No potential wetlands within the proposed subdivision (*Figure 3*).

15. Wetland/Water Body Impacts

No river, stream or brook within or abutting the proposed subdivision (*Figure 3*).

(14-497(c) Conformity with Code) Any proposed subdivision shall be in conformity with all relevant provisions of this Code. Project has not completed Level II Site Plan approval at the time of this public hearing to determine conformity with all relevant provisions of the Code. Staff proposes a condition of approval that the project shall receive Level II Site Plan Approval.

XII. INCLUSIONARY ZONING CONDITIONAL USE

Housing Planner Tyler Norod reviewed the Conditional Use for Affordable Housing application at 169 Newbury Street. Conditional Use is authorized by Division 30, Section 14-487, Ensuring Workforce Housing, to secure the creation of Workforce Housing Units as part of new residential projects that propose 10 or more units. The ordinance requires a minimum of 10% of the project to be restricted for Workforce Households and that the number of bedrooms required under Section 14-487(e)3 be at least 10% of the total number of bedrooms made available as part of the project. The project located at 169 Newbury Street proposes the creation of 26 condominium units. Based on the total number of units the project will be required to provide at least two (2) workforce units.

The project has proposed to provide off-site workforce rental units to meet the requirements of this ordinance. The proponent has entered into an agreement with Community Housing of Maine (CHOM) to provide two (2) two-bedroom workforce units for rent at 42 Hampshire Street. The units will be rented to households earning up to 100% of the area median income (AMI) as required for workforce rental units. The units will be restricted for a term of 99 years and will be managed by CHOM. The workforce housing units will be renovated according to the standards outlined in the recently adopted inclusionary zoning implementation regulations.

By providing two (2) two-bedroom units off-site with a management plan with CHOM acceptable to the City, the project has met the minimum requirements set forth in Section 14-487.

Please refer to the memo from the Housing Planner for the complete analysis (*Attachment 4*).

XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the planning board approve the Subdivision and Conditional Use for the proposed residential development at 169 Newbury Street.

XIV. PROPOSED MOTIONS

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on March 22, 2016 for application 2016-021 relevant to Portland’s technical and design standards and other regulations; and the testimony presented at the planning board hearing:

1. The planning board **finds/does not find**, based upon the consulting transportation engineer’s review, that future non-compliance with the *Technical Manual* may result from strict

compliance with the *Technical Manual* standard (*Section 1.7.2.3*) which requires a minimum driveway width (two-way): Any site with driveway access to a street shall have a minimum width of 20 feet for two-way ingress and egress, with a preferred width of 24 feet., that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The planning board **waives/does not waive** the *Technical Manual* standard (*Section 1.7.2.3*) to allow the driveway and access easement width as shown on the plans.

2. The planning board **finds/does not find** that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The planning board **waives/does not waive** the site plan standard (*Section 14-526 (b) (iii)*) requiring one street tree per unit for multi-family development and concludes that the applicant shall contribute \$2,400 to Portland’s tree fund.

C. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on March 22, 2016 for application 2016-021 relevant to the subdivision regulations; and the testimony presented at the planning board hearing, the planning board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall submit a final subdivision plat for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority;
2. Prior to Certificate of Occupancy, the applicant shall provide condominium documents for review and approval by Corporation Counsel;
3. Should Federal Street be connected to Franklin Street in the future, the current and future owners of 169 Newbury Street agrees to work with the City to bring the curb cut on Federal Street into compliance with the City of Portland Technical Manual;
4. That the applicant and all assigns shall comply with the conditions of Chapter 32 stormwater including Article III, post-construction storm water management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and State guidelines. A Maintenance Agreement for the stormwater drainage system and green roof as described in Attachment I of this report, shall be approved by Corporation Counsel and the Department of Public Works, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Works;
5. The applicant shall obtain Level II Site Plan approval; and
6. The applicant shall provide drafts of all necessary easements, including but not limited to:
 - a. Temporary construction easement from the City of Portland to Luminato Condominium, LLC;

- b. License from the City of Portland to Luminato Condominium, LLC for building footings on Newbury Street and Franklin Street rights-of-way;
- c. License from the City of Portland to Luminato Condominium, LLC for roof overhang on Newbury Street right-of-way;
- d. Access and parking easement from 169 Newbury Street to 100 Federal Street;
- e. Access easement 100 Federal Street to 169 Newbury Street;

for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority, with evidence of executed easements to be submitted prior to the issuance of a building permit.

D. INCLUSIONARY ZONING CONDITIONAL USE

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on March 22, 2016 for application 2016-021 relevant to the Conditional Use as authorized by Division 30, Section 14-487 Ensuring Workforce Housing; and the testimony presented at the planning board hearing, the planning board finds that the Conditional Use **is/is not** in conformance with the standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval:

- a. Provided the Applicant and the City enter into an Affordable Housing Agreement (AHA) before a Building Permit may be issued.
- b. The AHA will outline the details of the affordability restrictions placed on the workforce units and will be filed as a covenant to the 42 Hampshire Street property's deed with the Cumberland County Registry of Deeds before a Certificated of Occupancy may be issued.

XV. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

- 1. Civil Engineer review (memo from David Senu, 3/18/16)
- 2. City Engineer review (memo from David Margolis-Pinneo, 3/18/16)
- 3. Traffic Engineer review (memo from Thomas Errico, 3/18/16)
- 4. Housing Planner review (memo from Tyler Norod, 3/10/16)

APPLICANT'S SUBMITTALS

- A. Level III Subdivision application
- B. Project Description
- C. Evidence of Right, Title, and Interest
- D. Financial and Technical Capacity
- E. Proposed Easements
- F. Project Information: Traffic Studies, Significant Natural Features, Solid Waste
- G. Water Capacity Letter
- H. Wastewater Capacity Letter
- I. Stormwater Management Report
- J. Green Roof Specifications
- K. Requested Waivers
- L. Soils Map
- M. Flood Insurance Map

N. Neighborhood Meeting Minutes

PLANS

- Plan 1. Cover Sheet
- Plan 2. Subdivision Plan
- Plan 3. Site Plan
- Plan 4. Existing Conditions and Demolition Plan
- Plan 5. Grading and Utilities Plan
- Plan 6. Erosion Control Plan, Notes and Details
- Plan 7. Landscape Plan Notes and Details
- Plan 8. Parking Layout & Details
- Plan 9. Site Details 1
- Plan 10. Site Details 2
- Plan 11. Boundary Survey
- Plan 12. Lighting and Photometric Plan
- Plan 13. Lighting Specifications
- Plan 14. Cover Page
- Plan 15. Floor Plan A1.0 Lobby & Lower Level Parking
- Plan 16. Floor Plan A1.1 1st Floor
- Plan 17. Floor Plan A1.2 2nd Floor
- Plan 18. Floor Plan A1.3 3rd Floor
- Plan 19. Floor Plan A1.4 4th Floor
- Plan 20. Floor Plan A1.5 5th Floor
- Plan 21. Floor Plan A1.6 6th Floor
- Plan 22. Floor Plan A1.7 Roof Plan
- Plan 23. Green Roof/Pervious Surface Area Calculations