



ADDENDUM PLANNING BOARD REPORT PORTLAND, MAINE

Residential townhouse - 6 unit condominium
133 York Street
Level III Site Plan and Subdivision
Project ID 2013-187
133 York, LLC, Applicant

Submitted to: Portland Planning Board Public Hearing Date: January 28 th , 2014	Prepared by: Jean Fraser, Planner Date: January 24 th , 2014 Addendum to Planning Board Report # 50-13
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I. INTRODUCTION

The Planning Board held a hearing on November 12, 2013 to consider the Level III Site Plan and Subdivision application for the construction of a 6 unit residential building at 133 York Street. The Hearing was based on the the tabled Hearing Report #50-13 as well as evidence and comment by the applicant and the public. The Board voted 6-1 (Dean opposed) to table the final vote to a future date to be agreed between the applicant and staff.

This Addendum to Report #50-13 has been prepared to update on the revisions to the proposals to address the concerns raised at the November hearing. Except where stated in this Addendum, all other information and review comments in original Report remain unchanged. A revised motion with potential conditions is included in this Addendum.

This Hearing has been noticed to 169 neighbors and interested parties, and the public notice appeared in the *Portland Press-Herald* on January 20th and 21st, 2014. Since the November hearing there has been one further comment from Susan Kaplan, representing the Harborview Flats Condominium Association, which confirms in-principle agreement to the proposals as they affect the boundary fence (PC 10). All of the earlier public comments are included in Public Comment attachments PC1-9.

II. BACKGROUND

There were a number of unresolved issues identified by the Planning Board that the applicant was requested in the final submissions:

- Architectural design, especially the north elevation
- Impact on and communication with immediate neighbors
- Need for greater certainty on how condominium and site plan/subdivision conditions would be enforced eg re construction management
- Resolution of a way to retain cobblestones near the drive entrance
- Confirmation of fencing/screening along southern property line
- Pole and utilities on northern boundary

The applicant has submitted a letter confirming what revisions have been incorporated into the final submissions (Attachments A-G and Plans P1-P31) to address these comments and the potential conditions listed in the previous report (Report #50-13 included with this Addendum) . Staff comments are structured to address the original list of potential conditions and then the other comments and concerns that arose at the November hearing.

III. STAFF UPDATE ON THE POTENTIAL CONDITIONS OF APPROVAL CONTAINED IN REPORT #50-13

1. **SUBDIVISION:** [Potential conditions of approval as in Report #50-13]

- i. *That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, snow removal, green wall maintenance, Condominium Association documents and relevant conditions; and*
- ii. *That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the green wall, to be reviewed and approved by Corporation Counsel. The documents shall also address the relevant conditions of approval and be finalized to the satisfaction of the Corporation Counsel prior to the recording of the Subdivision Plat; and*

Update: The applicant has submitted an amended draft Subdivision Plat (Plan P2) and revised condominium association documents (Attachment B). Staff have requested that key issues and features of the proposal be identified and noted on the plat and in the condo documents eg snow removal, tree preservation and stormwater maintenance responsibilities. These are not mentioned in the documents and the plat as drafted shows these by reference to other plans and documents but does not specify the limitations directly. As explained in the comments from the Associate Corporation Counsel (Attachment 5), where there are important limitations that would apply in the long term these should be explicitly stated. The two conditions still apply but have been reworded.

- iii. *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 & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment L and W of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and*

Update: This condition still applies.

- iv. *That the applicant shall ensure that tree preservation/protection measures are undertaken in accordance with the comments of the City Arborist dated 9.6.2013 and 11.1.2013, and that the Condominium Association documents shall include responsibilities for ongoing tree preservation measures; and*

Update: The applicant has noted the tree preservation requirements on the site plan but a condition is still required to identify which trees are to be preserved on the plat and to ensure that the plat and the Association documents specify the requirements in more detail.

- v. *That the applicant shall add a note on the Subdivision Plat that the Condominium Association shall be responsible for the maintenance of the green wall, both the structure and the planting, and that any damage from vehicles backing into green wall shall be repaired within one week; and*

Update: The separate green wall has been removed and an agreement is understood to have been reached between the applicant and the owners of the Harborview Flats Condominium to add slats to their existing fence and plant hydrangea on the applicants side of the fence. A draft Easement has been submitted (Attachment F) and the Harborview Flats appear to be in agreement with this proposal. The plans (Plan P4 and P6) as submitted do not reflect this agreement and a revised potential condition has been included to ensure the documents are consistent.

- vi. *That the Subdivision Plat shall include a note confirming the Snow Removal Plan details and that the Condominium Association is responsible for this being undertaken in a timely fashion.*

Update: See above. The condition still applies.

2. **SITE PLAN REVIEW** [Potential conditions of approval as in Report #50-13]:

- i. *That the applicant shall submit a revised proposal for the materials (including color scheme) and rear elevation articulation of the proposed building, for review and approval by the Planning Authority prior to the issuance of a building permit; and*

Update: The applicant has met with staff and both immediate abutters for input into a revised design, with the main focus on the back elevation. The Design Review memo in Attachment 6 outlines the stages in the discussions and how the design evolved to the final version in Plans P17-P19 and P25-P31.

Staff do not have any serious concerns regarding the final design, but request three minor revisions to refine the latest design:

- The tone of the entire central entrance section should be somewhat darker to contrast with the abutting material;
- The overlarge and angled central cornice area should be simplified so it relates to the canopy over the entrance door and better ties into the roof line; and
- Lighting (downlighting) from underneath the entrance canopy should be added.

Thus a modified version of this condition of approval applies to the updated elevations.

- ii. *That the applicant shall submit a revised Landscape Plan that addresses the 11.1.2013 City Arborist comments in respect of planting material and green wall, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit; and*

Update: The revised plans do not list the increased pot sizes for the hydrangea as recommended by staff (see Jeff Tarling comments in Attachment 2, which were also noted in Mr Tarling's previous comments) nor clarified re the fencing on the south boundary, so a similar condition has been included in the Motion for the Board to consider.

- iii. *That the applicant shall obtain easements or temporary construction agreements for all work outside the boundaries of the site; these (if any) shall be provided to the Planning Division prior to the issuance of a building permit; and*

Update: The applicant has met with neighbors and submitted draft easements related to impacts to the north, west and south (Attachments E, F and G). Staff have not received confirmation from the neighbors regarding the content but recommend that the approval could be conditioned on receipt of the final signed and recorded easement agreements.

- iv. *That the applicant shall submit a Construction (traffic) Management Plan for activities in York Street, for review and approval prior to the issuance of any City permits. In view of the high level of traffic on York Street, it is very likely that construction activity will not be allowed during peak traffic time periods; and*

Update: The applicant has submitted the "Utility Construction Plan" (text document as Attachment C). The Traffic Engineer has reviewed the Plan and comments (Attachment 3):

I have reviewed the document that discusses the general principles for utility construction work and impacts to York Street. The general principles are acceptable (e.g. that construction activity shall not impact peak times periods). With that said greater detail will be required in terms of how traffic and pedestrians are managed during construction. Accordingly, the applicant will be required to submit a traffic control plan for review and approval prior to the issuance of any City permit. I want to conclude that traffic volumes are very high on York Street and therefore careful attention to the plan is required. Lastly, pedestrian safety will be closely reviewed and plans must account for providing ADA compliant facilities, if detours are required.

Thus the condition still applies.

- v. *That the applicant shall submit a more detailed Construction Plan for the area to the north side and rear of the site that includes the items listed in the Engineering comments dated 11.7.2013 (and identify the method of supervision) and submit the plans for the temporary metal sheeting and associated excavation stamped by a professional engineer, all for review and approval by the Planning Authority prior to the issuance of a demolition permit for the existing building; and*

Update: The applicant has commented that this information will be submitted with the building permit application. The condition therefore remains and has been revised to have a copy of this information submitted to the Planning Authority to facilitate coordination.

- vi. *That the applicant shall submit a revised Site Plan that relocates the bicycle parking rack so that it does not impede access to parking spaces, for review and approval prior to the issuance of a building permit; and*

Update: This location (shown on Plan P12) is not apparent to visitors and staff suggest an alternative location be identified and shown on one of the key civil plans (eg site plan or landscape plan).

- vii. *That the FDC connection shall be located at York Street; and*

Update: This condition to remain to allow for a final detailed review as part of the building permit process.

- viii. *That the Condominium Association documents shall include the requirement that any external condensers for heating or cooling units shall be located out of sight of neighbors and include sound baffling so that the sound level at the property line is at or below 45dBA between 10pm and 7am, and below 50 dBA between 7am and 10pm; and*

Update: This requirement would be shown on the plat in the list of Planning Board conditions.

- ix. *That the applicant ensure, at their cost, that the electrical lines (from Park Street into the building to be demolished) are removed prior to the issuance of a Demolition Permit; and that the pole is removed prior to the issuance of a Certificate of Occupancy. If the pole and light are to remain to serve the parking lot at McCormick Place, the applicant shall provide evidence that the cost of the electricity to serve the retained light is being borne by a private party and not the City; and*

Update: The applicant has indicated that an arrangement has been reached with the McCormick Place condominium association to remove the pole and light and provide a new light elsewhere on their property. The applicant has indicated (Attachment A) that Plans P4 and P6 include notes to this effect, but staff were unable to located notes confirming this arrangement. A revised potential condition has been included to document the final arrangement.

- x. *That the applicant shall submit a revised photometric plan, prior to the installation of the garage lighting and bollard lighting, that shows that the light levels from revised ceiling mounted lights within the parking garage area and the proposed bollards along the drive access meet the standards set out in Section 12 Site Lighting Standards in the City's Technical Manual.*

Update: The more recent Photometric Plan (Plan P24) continues to show very high light levels near the bollards which in turn are near to the Harborview Flats. Recent experience with LED bollard lighting has shown that these can be very bright and may not meet CPTED standards in addition to not meeting the current Technical Standards. The bollard lighting needs to be reconsidered and lighting under the entrance canopy is recommended to address both design and CPTED objectives.

3. COMMENTS OF THE PLANNING BOARD at NOVEMBER HEARING

a. Need for greater certainty on how condominium and site plan/subdivision conditions would be enforced eg re construction management

Update: The draft construction easements (Attachments E, F and G) potentially address some of the concerns, but staff have not received confirmation from McCormick Place Condominium Association nor from the Gilman/Flint property as to whether the proposed easements meet their concerns.

b. Cobbles:

Update: The current proposals do not include the retention or relocation of the existing cobbles in the project. The Existing Conditions and Demolition Plan (Plan P5) confirms that the cobbles will be salvaged and given to the City.

The Department of Public Services has confirmed that the cobbles may not be relocated within the ROW unless specific consent is given by the City Council as a variance from the sidewalk/apron materials policy. The applicant could purchase the cobbles from the City at \$2 each (staff estimate there are approximately 400 cobbles) and relocate them immediately beside the sidewalk on the private property side. This was suggested to the applicant by staff (Attachment 1) but the applicant has not confirmed what, if anything, is proposed regarding use of the cobbles near the project.



IV. STAFF RECOMMENDATION

The proposed 6-unit condominium project appears to meet the minimum standards of review, subject to the proposed conditions that seek to ensure documentation of key review requirements and tie up several “loose ends”.

V. MOTIONS FOR THE BOARD TO CONSIDER

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 project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to Portland’s Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board (waives/does not waive) Section 14-526 (b) (2) (b) (iii) Street Trees to allow for a contribution of \$600 to the City’s Street Tree Fund to be substituted for the provision on site of three of the required street trees.
2. The Planning Board (waives/does not waive) Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow a drive aisle of less than 24 feet , as shown on Plan P3 subject to the requirement that the bike rack be relocated.

b. DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

4. SUBDIVISION:

That the Planning Board finds that the plan (**is/is not**) in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

Potential conditions of approval:

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, snow removal, tree preservation, stormwater system maintenance, relevant conditions, and addressing the comments of the Associate Corporation Counsel dated 1.23.2014; and

- ii. That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the preserved trees, to be reviewed and approved by Corporation Counsel prior to the recording of the Subdivision Plat; and
- iii. 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 & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment L and W of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and
- iv. That the applicant shall ensure that tree preservation/protection measures are undertaken in accordance with the comments of the City Arborist dated 9.6.2013 and 11.1.2013, and that the Condominium Association documents shall include responsibilities for ongoing tree preservation measures; and
- v. That the Subdivision Plat shall include a note confirming the Snow Removal Plan details and that the Condominium Association is responsible for this being undertaken in a timely fashion.

5. SITE PLAN REVIEW

The Planning Board finds that the plan (**is/is not**) in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

Potential conditions of approval:

- i. That the applicant shall submit a revised front elevation to address the Design Review comments dated 1.23.2014 concerning tone of material, integration of the cornice, and lighting under the entrance canopy, for review and approval by the Planning Authority prior to the issuance of a building permit; and
- ii. That the applicant shall submit a revised Site Plan, Utility Plan and Landscape Plan that address the 1.23.2014 City Arborist comments in respect of planting materials, and include documentation of fencing details on the south and west boundaries and utility modifications on and near the north boundary, for review and approval by the Planning Authority, Department of Public Services and City Arborist prior to the issuance of a building permit; and
- iii. That the applicant shall finalize all easements/temporary construction agreements for work outside the site, and that recorded copies are submitted to the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant shall submit a revised Construction (traffic) Management Plan for activities in York Street that addresses Tom Errico's comments of 1.23.2014, for review and approval by the Planning Authority and Department of Public Services prior to the issuance of any City permits; and
- v. That the applicant shall submit a more detailed Construction Plan for the area to the north side and rear of the site that includes the items listed in the Engineering comments dated 11.7.2013 (and identify the method of supervision) and submit the plans for the temporary metal sheeting and associated excavation stamped by a professional engineer, all for review and approval by the Inspections Division as part of any demolition permit review and copied to the Planning Authority prior to the issuance of a demolition permit for the existing building; and
- vi. That the applicant shall reconsider the location of the bicycle parking rack so that it does not impede access to parking spaces and is readily visible and accessible to potential users, with a plan showing the revised location to be reviewed and approval by the Planning Authority prior to the issuance of a building permit; and

- vii. That the FDC connection shall be located at York Street; and
- viii. That the Condominium Association documents shall include the requirement that any external condensers for heating or cooling units shall be located out of sight of neighbors and include sound baffling so that the sound level at the property line is at or below 45dBA between 10pm and 7am, and below 50 dBA between 7am and 10pm; and
- ix. That the applicant shall submit a revised photometric plan, prior to the installation of the bollard lighting, that shows that the light levels from the new lighting under the entrance canopy and the proposed bollards along the drive access meet the standards set out in Section 12 *Site Lighting Standards* in the City's Technical Manual.

ATTACHMENTS

*****Report #50-13 as was considered and tabled at the PB Hearing on November 12th (all sections)*****

Materials received SINCE the November 12th, 2013 Hearing:
[except for public comments, which are all as received since the review began]

Staff Attachments to the Addendum Report

1. Staff e-mail re cobbles 1.8.2014
2. City Arborist comments 1.23.2014
3. Traffic Engineering Review comments 1.23.2014
4. DPS (David Margolis-Pineo) comments
5. Associate Corporation Counsel comments 1.23.2014
6. Design Review Memo dated 1.23.2013

Public Comments (all)

- PC1 Kaplan (Notes of PB Workshop)
PC2 Morrison (125 York Street)
PC3 Kaplan (12 unit brick condos, York Street)
PC4 McGee (33 Park Street - Mc Cormick Place condo)
PC5 Browne (33 Park Street Mc Cormick Place condo)
PC6 Higgins (33 Park Street Mc Cormick Place condo)
PC7 Foley (33 Park Street Mc Cormick Place condo; Pres Condo Association)
PC8 Weiner (33 Park Street Mc Cormick Place condo)
PC9 Gilman & Flint (29 Park Street s/f)

(below are since Nov hearing)

- PC10 Kaplan 1.7.2014

Applicant's Submittal

- A. Greer Letter addressing potential conditions of approval as in #50-13
- B. Revised draft condominium documents
- C. Utility Construction Plan
- D. Lighting specifications
- E. Draft construction easement McCormack Place
- F. Draft construction Easement fence Harborview Flats
- G. Draft construction easement Gilman/Flint

Final Plan Set

- P1. Boundary Survey
- P2. Subdivision Recording Plat
- P3. Condominium Plan
- P4. Site Plan

- P5. Existing Conditions and Demolition Plan
- P6. Grading and Utilities Plan
- P7. Erosion Control and Landscape Plan
- P8. To P10. Details
- P11. Green Tree Filter Detail
- P12. To P16. Floor plans
- P17. To P19. Elevations
- P20. To P21. Wall Plans
- P22. Horizontal and Vertical Boundaries
- P23. Section across site
- P24. Photometric Plan
- Graphics and illustrations***
- P25. Aerial Photo
- P26. Front View
- P27. Rear View
- P28-31. Aerial views of building (4)