



Helen Donaldson &lt;hcd@portlandmaine.gov&gt;

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## Proposed Conditions

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**Levine, Howard A.** <Howard.Levine@klgates.com>

Mon, Oct 24, 2016 at 3:30 PM

To: "Nell Donaldson (hcd@portlandmaine.gov)" &lt;hcd@portlandmaine.gov&gt;

Cc: Tuck O'Brien &lt;sgo@portlandmaine.gov&gt;, "JEFF LEVINE (jlevine@portlandmaine.gov)" &lt;jlevine@portlandmaine.gov&gt;

Hi Nell:

Several Hersey Street neighbors gathered this past Saturday afternoon to learn about and to discuss the 23 Ocean Ave. proposed project. Many of them were unaware (and might have come to the workshop if they were), all were astounded, and all offered very reasoned and intelligent comments. As we discussed earlier this afternoon, I guarantee you that they are NOT NIMBY's by any stretch of one's imagination. I have prepared and am forwarding the above attachment at their request. I have taken your draft conditions, created a new document, and edited and added conditions. The attached edited proposed conditions are a result of their reactions based on their daily experiences, thought processes and ideas, and as well the product of the several reports delivered by the applicant and the several reviews by City Staff. The idea, simply, is, if this project is ever approved, to hold the Developer and the City accountable and to establish avenues of enforcement. This effort is to create enforceable conditions based on the applicant's representations and expectations, but beyond "should" and "probably", "monitor", and Staff's conclusions of "reasonable", etc.

Much of it results from the much needed, but still currently lacking, clarity in the Zoning Ordinance regarding shared parking and off-site parking, Section 14-334, (by the by, I STILL believe this is the responsibility of the ZBA, not the Planning Board) and the lack of definition of office uses, each of which produce different traffic impacts and parking demands. The neighborhood deserves the expectation of enforcement by the City and the failsafe recommendations proposed to ensure that. It was unfortunate to have to go to such extremes and detail to fill the gaps from the Zoning Ordinance.

You will note that many conditions, if the project is approved, are merely written affirmations and implementation of the applicant's presentations regarding "shared parking", traffic, stormwater, etc., and to solve some of the deficiencies in the Zoning Ordinance itself regarding office use and shared parking and off-site parking after the expiration of 5 years.

The general consensus of the meeting is that the project is premature, ill conceived, needs to be redesigned, made smaller, creates additional safety issues, does not address the realities of the traffic nightmare at that location, but rather exacerbates it, and ignores the physical realities of the site. Further, that the applicant has failed to meet with neighbors spoke volumes to them. Neighbors will appear at the hearing and intend to speak. Several are elderly, so I cannot predict the number who will be able to attend.

I pulled this together very quickly and apologize for its drafting infirmities and for my lack of knowledge of the Portland municipal "lingo" (I suspect I referred incorrectly to staff titles).

In short, the neighborhood requests DENIAL or at least to have the proposal held so that the applicant will meet with the neighborhood and participate in a negotiation with them and the City Staff to resolve issues and to seek solutions and answers to questions, that are currently unanswered.

Again, thank you so much for all of your time, courtesy and efforts. As we discussed, I am copying Tuck O'Brien and Jeff Levine.

Howard, on behalf of the residents of Hersey Street.

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**2 attachments**

**Hersey Street-USE\_Active01-300207198-v2.docx**

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**Redline - Hersey Street-USE\_Active01-300207198-v1 and Hersey Street-USE\_Active01-300207198-v2.docx**

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### C. DEVELOPMENT REVIEW

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 October 25, 2016 for application 2016-120 relevant to the site plan regulations; and the testimony presented at the Planning Board hearing, 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 conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall ~~submit~~have submitted a final construction management plan, including provisions for pedestrian access, contractor parking, on site only or at an approved satellite location by the Planning Department, no truck deliveries via Hersey St., and construction phasing, ~~for review and approval~~and it must have been reviewed and approved by the Department of Public Works and the Planning Authority;
2. The applicant shall ~~submit~~have submitted final details for the reconstruction of the ramp on the south side of Hersey Street to meet ADA requirements~~for review and approval.~~ Said details shall have been reviewed and approved by the Department of Public Works; Said reconstruction shall be completed, approved, and accepted by the Department of Public Works prior to issuance of a Certificate of Occupancy.
3. ~~Prior to certificate of occupancy, the~~The applicant shall provide ~~evidence~~a certified copy of a lease for use of off-site parking spaces underin compliance with Section 14-334 ~~for review and approval~~which Lease shall have been reviewed and approved by the Planning Authority and Corporation Counsel;
4. Said lease shall not allow parking for residential uses, shall be automatically renewable in perpetuity, and shall have been recorded in the Registry of Deeds for \_\_\_\_\_ County. If said lease expires or is terminated, Inspectional Services shall issue a cease and desist order for violation of the terms of this permit except for those uses supported by the required parking demand per the Zoning Ordinance on site.
5. The applicant shall deliver to the Department of Planning and Corporation Counsel a Covenant/Deed Restriction, signed by the owner of the off-site parking location, 28 Vannah Ave, in recordable form, the content of which is to be approved by Planning and Corporation Counsel; said covenant will require dedication of 5 parking spaces as off-site parking for the 23 Ocean Ave project at 28 Vannah Avenue approved by this permit, in perpetuity.
6. ~~4. Prior to certificate of occupancy, the~~The applicant shall prepare final details for the reconstruction of the missing sidewalk link on the north side of Vannah ~~Street~~Avenue between the proposed off-site parking and the site~~and construction this sidewalk segment for review and approval.~~ which details shall have been reviewed and approved

by the Department of Public Works; Construction shall have been completed and accepted by the City.

7. ~~5.~~ Within six months of a certificate of occupancy, for any portion of the project, and on an annual basis thereafter ~~for a period of five years~~, the applicant shall ~~provide~~fund an analysis of parking demand, the efficacy of the parking management plan, and neighborhood ~~implacts~~impacts for review and approval by the Department of Public works and the Planning Authority. Said analysis shall be prepared by an independent consultant expert in shared parking, to be selected by the Planning Department. Should the analysis indicate that parking demand is not adequately met ~~with the approval by the Department of Public Works and the Planning Authority; and~~
- ~~6.~~ and/or is creating negative neighborhood impacts, with the approved shared parking and off-site parking arrangement, the applicant shall implement after consultation with planning and traffic the following (a menu of mitigation measures to address deficiencies must be negotiated with the Planning Department and Traffic Engineer and agreed by the applicant prior to a vote on this application) measures within 2 weeks of the analysis. Failure to do so will be deemed a violation of this permit and a cease and desist order shall issue. The applicant shall provide revised plans to address the conflict between the proposed cherry tree and stormwater treatment unit at the corner of Ocean Avenue and Hersey Street for review and approval by the City Arborist and the Planning Authority.
8. Snow will be hauled off site, not stored on site.
9. Applicant will support efforts to amend a Parking Ordinance Amendment to require permit parking for on-street vehicles from \_\_\_\_\_ Hersey St to \_\_\_\_\_ Hersey St.
10. Only general office uses is allowed by the permit. Medical offices and other service oriented office uses are not allowed. General office use shall cease at 5pm daily.
11. Applicant shall fund a capacity analysis and report of possible solutions for sewerage and stormwater problems created by the Hersey Street combined sewer and stormwater pipe, to be conducted by the Department of Public works.
12. A transportation Demand, Management Plan (TDM) shall be presented, reviewed and approved by the Department of Planning and shall include free bus passes and measures to achieve carpooling.

<b>Summary report:</b> <b>Litéra® Change-Pro TDC 7.5.0.195 Document comparison done on</b> <b>10/24/2016 12:54:24 PM</b>	
<b>Style name:</b> KL Standard	
<b>Intelligent Table Comparison:</b> Active	
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<a href="#">Move To</a>	1
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<del>Table Delete</del>	0
<a href="#">Table moves to</a>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>65</b>

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