



PLANNING BOARD REPORT PORTLAND, MAINE

Reuse of former Tim Horton's Drive-through Restaurant for a Dunkin Donuts
Westgate Plaza vicinity 1412 Congress Street (Lot #3 of Westgate Plaza Subdivision)

CONDITIONAL USE REVIEW AND MODIFICATION OF TMP

Project ID #2014-033

Charter Realty and Development Corp. - Applicant

Submitted to: Portland Planning Board:
Public Hearing Date: May 13th, 2014

Prepared by: Jean Fraser, Planner
Date: May 9th, 2014

I. INTRODUCTION

Charter Realty and Development Corp. have submitted site plan and conditional use applications to amend the previous approvals for the drive-through restaurant on "Lot #3" within the Westgate Plaza. The improvements to the overall Plaza were reviewed in 2008 and as part of that a drive-through restaurant was reviewed and approved in relation to site plan, TMP and conditional use standards ([Attachment 4](#)).

Tim Hortons operated the drive-through restaurant on the site until November of 2013 when it closed.

The proposed reuse of the Tim Horton's restaurant for a Dunkin does not include any revisions to the site plan (except minor relocation of the menu board), but modifies the Traffic Movement Permit and Conditional Use Permit granted by the Planning Board in 2008 due to the higher trip generation, particularly at the AM peak, and the increased number of vehicles within the stacking lane.

Required Reviews:

- TMP Modification Review (via Level III site plan application)
- Conditional Use Review under Sections 14-183 and 14-474;



II. BACKGROUND

The applicant sought staff advice regarding what approvals would be required for the reuse of the existing building (with only cosmetic changes) on the site for a Dunkin Donuts. Usually a new tenant would not trigger any further review, but in this case the original approval included a condition on the Traffic Movement Permit that required further review of any change in trip generation levels; it stated:

If the tenant of the proposed restaurant on lot 3 changes such that "peak hour" traffic volumes are greater than that included in the traffic analyses conducted for the project, a revised traffic analysis will be required for review and approval by the City Transportation Engineer. ([Attachment 4](#))

The Traffic Engineer reviewed the applicants updated traffic analysis ([Attachment G](#)) that would apply to a Dunkin Donuts operation and concluded ([Attachment 1](#)) that the changes would require a modification to the TMP re the increase in trip generation and would increase the stacking requirement. The change in the stacking characteristics triggered the need for a Conditional Use Review, since the location of the stacking lane is part of the conditional use review standards under the B2 zoning ordinance (14-183).

This Hearing was noticed to 82 neighbors and interested parties, and the public notice appeared in the *Portland Press-Herald* on May 5th and 6th, 2014. One neighbor on Stevens Avenue has sent written comments (PC1 & PC2).

III. PROJECT DATA (all is existing)

Existing Zone:	B-2 Business
Existing/ Proposed Use:	Restaurant/ Restaurant with drive-through
Total Lot Area:	22,092 s.f.
Total impervious surface:	15,685 sq ft
Building footprint/floor area:	2,434 sq ft
Parking:	17 spaces
Bicycle Parking:	9

IV. EXISTING CONDITIONS

The development of the drive-through restaurant was completed in accordance with the 2008 approved plans, which are included as background information in P1 – P3. The applicant has provided updated plans (P4-P6) that reflect some minor revisions eg orientation of the bike racks and location of the menu board and pick up window.

The 2013 aerial at right shows the existing condition.

The only residential properties near the site are on the opposite side of Congress Street in the R5 zone.



V. PROPOSED AMENDMENTS

The applicant’s cover letter in Attachment A and Conditional Use Narrative in Attachment E describe the redevelopment of the Westgate Shopping Plaza between 2008 and 2011 and highlight issues related to the proposed Dunkin Donuts reuse of the building on Lot #3 in the Plaza. The applicant has confirmed that no changes would be made to the site other than relocation of the menu board, plus cosmetic changes to the elevations (Plan P7) and signage (to be separately reviewed by the Zoning Administrator).

The applicant suggests that the maximum number of stacked vehicles would be 11 based on the applicant’s traffic analysis (Attachment G). The City’s Traffic Engineer Tom Errico did not agree with this analysis and after consulting with the MDOT concluded that the proposals should allow for 15 stacked vehicles in the AM peak hour (Attachment I). The applicant revised the stacking diagram to relocate the menu board and show the lane with 15 stacked cars in place (Attachments E and P8). The diagram in P8 illustrates how the existing site can accommodate the additional stacked cars that are anticipated to be the maximum queue for a Dunkin Donuts during the AM peak.

Access to the stacking lane is not directly from Congress Street, so the number of stacked vehicles is not a traffic concern (Attachment I). The increase of 131 in trip rates in the AM peak is a traffic concern in the context of the nearby Congress Street/Stevens Avenue intersection and requires a modified Traffic Movement Permit. The traffic analysis provided to address this issue is supported by the City’s reviewing traffic engineer subject to a condition requesting a contribution to the City’s intended upgrade of this intersection to improve safety for pedestrians (Att. 2).

VI. PUBLIC COMMENT

The Planning Office has received two comments from a neighbor on Stevens Avenue, Margaret Gaettner (Attachments PC 1 and PC2). Ms Gaettner’s home is about 100 feet north of the intersection of Congress Street and Stevens Avenue, which is about 430 feet (direct line) or 560 feet (as measured via the shortest pedestrian route through the intersection) from the Dunkin Donuts restaurant site.

Ms Gaettner’s first comment (PC1) concerns the trash left at the bus stop near her home (possibly from users of the restaurant) and suggests that the Dunkin Donut approval require them to take responsibility for trash pick up at the bus stops in the area. Staff have not included a potential condition along these lines as there is no ordinance standard that relates to this issue.

Ms Gaertner's second comment (PC2) relates to the lack of an internal sidewalk linking Congress Street to Shaws supermarket. During the 2008 review the Board considered the need for pedestrian links from Congress Street to the main Plaza stores; the approved proposal included a series of sidewalks and crosswalks from the Congress Street sidewalk opposite Stevens to the main Plaza stores (see third plan in Plan P8). A similar direct segregated pedestrian link was not required by the 2008 review to be provided on the western side of the Plaza. It would not be possible to address this wider need within Lot #3, and it is not a review criterion for the applications subject of this report.

VII. RIGHT, TITLE AND INTEREST AND FINANCIAL/TECHNICAL CAPACITY

- a. The owner of the property is Charter Westgate, LLC. The applicant has provided a copy of a Quitclaim Deed, recorded at the Cumberland County Registry of Deeds (Book 25887 Page 80, which demonstrates their right, title and interest in the property.
- b. There is no substantive cost associated with the reuse of the existing buildings so staff have not requested a letter regarding the financial and technical capacity.

VIII. ZONING ASSESSMENT

The site is located in the B-2 Business zone and restaurant/drive-through use was reviewed in 2008. The proposed use has not altered and Marge Schmuckal, the Zoning Administrator, has commented (Attachment 3):

This property housed Tim Horton's restaurant with a drive-thru. Tim Hortons moved out in November of 2013 from what I was told. Normally under zoning, a new restaurant owner would not need a new zoning permit (or change of use) for a different owner with the same use. However, since this was originally a conditional use approval to the Planning Board for the new drive-thru, a condition was placed on the original approval that triggered another review based upon a different restaurant tenant.

Section 14-183(a)6(a) specifically states within the text: "In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line." There has been some concern as to where the measurement to the street line actually is located. The definition of "street line" is located in 14-47 and states: "Street line: the line of demarcation between a street and the abutting land." This definition does not use the terminology of abutting property line. Therefor I interpret the street line definition to mean the demarcation between the street pavement and the abutting land and not an abutting property line. The curb would be the specific transition point between the street and the abutting land.

I am not aware of any other zoning issues at this time. Separate permits will be required for any exterior approved changes to the drive-thru and for any new signage.

The motion for the Board to consider includes a suggested condition to reflect the Zoning Administrators last sentence.

IX. TRAFFIC MOVEMENT PERMIT

On May 27, 2008 the Planning Board granted a Traffic Movement Permit (TMP) for the Westgate Shopping Plaza as a whole, subject to the condition quoted on page 1 of this report which requires a revised traffic analysis for review and approval if the proposed tenant of Lot #3 changes and this results in an increase in peak hour volumes (Attachment 4). The Tim Hortons restaurant trip generation was within the 2008 approved TMP limits.

Tom Errico, the City's Traffic Engineering Reviewer, has provided final comments that document the Dunkin Donut traffic generation increase during the AM peak and the associated need for a modified TMP. His comments also include a review of the TMP and traffic analysis submissions in Attachments F and G:

- *A traffic assessment was conducted for the project by Maine Traffic Resources and determined that the project would be expected to increase traffic from Westgate Shopping Center by 131 vehicles entering and exiting the site during the AM peak hour. This projected increase in traffic requires a modification to the existing MaineDOT Traffic Movement Permit. The applicant has complied with submitting an application for the Traffic Movement Permit Application.*
- *The applicant has conducted a traffic assessment that evaluated the impact of the increased traffic on the Congress Street/Stevens Avenue/Westgate Shopping Center intersection. The analysis indicates the intersection will operate at an acceptable level of service C overall with some movements operating at level of service D.*

- *I have reviewed the traffic analysis and site plan graphics as it relates to the drive-through lane for the project. In my professional opinion the drive-through will operate safely and is not expected to create any traffic circulation issues. I find site conditions to be acceptable.*
- *The City is planning on implementing pedestrian improvements at the Congress Street/Stevens Avenue/Westgate Shopping Center intersection in conjunction with the Outer Congress Street Improvement Plan. The improvements are expected to consist of bringing the intersection up to ADA compliance with respect sidewalk ramps. Additionally, minor geometric improvements are being proposed in an effort to reduced crossing distances for pedestrians. Given that some of these improvements will be located on the Westgate Shopping Center intersection approach, the City is requesting a contribution of \$5,000.00 towards implementation of these improvements. The scope of these improvements mesh well with the installation of the METRO bus stop implemented by Westgate Shopping Center under prior approvals, so that transit riders can safely access the bus stop. (Att. 3)*

The motion for the Board to consider includes the condition outlined in the last paragraph.

X. CONDITIONAL USE STANDARDS

The further review under these standards was triggered by the greater length of the stacking queue for a Dunkin Donuts. Tom Errico, Traffic Engineer, has confirmed that this would be 15 vehicles long as compared to the likely maximum queue of 11 vehicles for Tim Horton's (as agreed in the 2008 reviews). The applicant has submitted a narrative addressing all of the conditional use standards (Attachment E).

A. Conditional Use Requirements (Section 14-183):

Sec. 14-183 - *Conditional Uses* identifies drive-throughs in the B-2 or B-2b zones that are adjacent to any residential use or zone as being a permitted conditional business use if they meet specific requirements. "*The Planning Board shall be substituted for the Board of Appeals as the reviewing authority over conditional business uses*". The property is adjacent to an R-5 residential zone, though it is on the opposite side of Congress Street, which is three- four lanes (50 feet) wide at this location. The ordinance specifies that "*Drive-throughs, where permitted, shall also specifically comply with the following conditions:*"

1. **Location of Drive-throughs:** *Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to any property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.*

Staff comments: Most of the existing drive-through features, including the menu board with speaker and pick up window are located on the sides or rear of the building, interior to the shopping plaza. The proposed stacking lane for 15 cars would begin on the "front" of the site (facing Congress Street) and wrap around the side and rear of the building.

The nearest residential zone is on the opposite side of Congress Street, though technically it begins in the middle of Congress Street. Congress Street is 50 feet wide (curb to curb) at this point and therefore the zone boundary is 50 feet from the outermost edge of the stacking lane. The outermost edge of the stacking lane is 25 feet from the Congress Street curb ("street line" as defined by the Zoning Administrator (Attachment 3)) and therefore meets the numerical requirements of this standard.

The City's Traffic Engineer, Tom Errico, has confirmed that the stacking lane would need to accommodate 15 cars, and that use of the lane as proposed would not create a traffic circulation concern (Att. 1 and 2).

2. **Noise:** *Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.*

Staff comments: The speaker system associated with the Tim Hortons was evaluated during the 2008 review and then monitored after it went into operation. While it is anticipated that the Dunkin Donut system would have the same characteristics, the Board may wish to impose a condition which requires monitoring if there are any complaints regarding the new tenants system.

3. **Lighting:** *Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.*

Staff comments: The applicant has confirmed that the existing site lighting will not be changed (Attachment E).

4. **Screening and Enclosure:** *Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts;*

Staff comments: The proposed use by Dunkin Donuts will change the length of the stacking lane during the AM peak, when it is expected to extend in front of the building so that 2-3 cars would be facing the commercial building next door (see Plan P8) and be more visible from Congress Street. Since this is anticipated to be a daytime occurrence, headlight glare is not expected to be an issue. If the stacking lane were to extend to 15 cars at night, the site has existing evergreen planting along the boundary to the west (between the site and the commercial building) so headlight glare would be buffered.

The original approval required five trees and other landscaping along the Congress Street frontage, which has been implemented. A more solid buffer along the sidewalk and Congress Street has not been suggested by staff as this would create issues in relation to pedestrian safety and it is desirable to retain the visual connection between the sidewalk and the building.

5. **Pedestrian access:** *Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.*

Staff comments: The existing layout, as previously approved (Plans P1- P6) was designed to meet this standard.

6. **Hours of Operation:** *The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.*

Staff comments: The restaurant hours were approved in 2008 to be 5am to 11pm, seven (7) days a week. The applicant has confirmed that the Dunkin Donut hours of operation will be the same (Attachment E).

B. Conditional Use Requirements (Section 14-474):

The Conditional Use standards in this section also apply and state:

Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:

- 1) *There are unique or distinctive characteristics or effects associated with the proposed conditional use;*
- 2) *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area;*
- 3) *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

The Planning Board may impose reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use permit and in the permit. Violation of such conditions shall be a violation of this article.

Staff comments: The proposed reuse of the Tim Horton's building is the reuse of an existing restaurant building with a drive-through. The applicant has confirmed that there are no proposed changes to the site other than relocation of the menu board and the proposed user is similar to the previous tenant in terms of characteristics and impacts.

This review is based on the understanding that there would be no material changes in the site or the operation of the restaurant/drive-through when the Dunkin Donuts moves into the property. A suggested potential condition of approval covers the possibility that the applicant or new tenant wishes to make modifications, for example to site lighting or hours of operation.

XI. DEVELOPMENT REVIEW - SITE PLAN

The applicant has submitted the approved plans as background information, and an updated set to reflect the final as built condition with minor modifications to the ordering and pick up locations and bicycle rack (Plans P1-P6). The only proposed site change is the relocation (by 15-20 feet) of the menu board, which does not have any impacts. The site plan should be updated to show the relocated menu board, and a potential condition of approval is included to request the revised site plan.

XII. STAFF RECOMMENDATION

Staff considers that the existing site and drive-through design are adequate for proposed reuse of the Tim Horton's building/site for the more intensive but similar Dunkin Donuts operation. The TMP modification relates to an increase in vehicle generation and this has been addressed by the contribution to upgraded pedestrian facilities at the intersection that will be handling the additional vehicle use.

XIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the applications, plans, reports, and other information submitted by the applicant, and on findings and recommendations contained in the May 13th, 2014 Planning Report for Project #2014-033 1412 Congress Street (Lot #3 in the Westgate Shopping Plaza), relevant to Portland's Conditional Use Standards, Site Plan Standards and other applicable regulations, and testimony presented at the Planning Board Hearing, and based upon the City of Portland's Delegated Review Authority for Traffic Movement Permits, the Planning Board finds the following:

1. TRAFFIC MOVEMENT PERMIT

The Portland Planning Board finds the plan (**is/ is not**) in conformance with 23 MRSA 704-A and Chapter 305 Rules and Regulations pertaining to Traffic Movement Permits and (**grants/does not grant**) the modification to the Traffic Movement Permit granted in 2008 for the Westgate Shopping Plaza, subject to the following condition of approval:

Potential condition of approval:

- i.* That the applicant shall contribute \$5000 to an account maintained by the City that will be used to fund pedestrian improvements to the intersection at Congress Street/Stevens Avenue near the Westgate Shopping Plaza.

2. CONDITIONAL USE

The Portland Planning Board finds the plan (**is/ is not**) in conformance with the B2 conditional use standards (14-183 and 14-474) of the Land Use Code, subject to the following condition of approval:

Potential condition of approval:

- i.* That the applicant shall obtain Planning Board approval to any modifications to the characteristics subject of the conditional use review (including but not limited to lighting and hours of operation) prior to the introduction of such revision.

3. 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 conditions of approval:

Potential conditions of approval:

- i. That the applicant shall submit a final revised site plan, prior to the opening of the Dunkin Donuts, that shows the approved location of the menu board as in Plan P8 of this report; and
- ii. That separate permits and/or site plan approvals shall be required for any exterior changes to the site and drive-through features, and for any new signage.

ATTACHMENTS

Staff Review comments and background information

1. Traffic Engineering Review prelim comments
2. Traffic Engineering Review final comments
3. Zoning comments
4. 2008 approval letters as background (2)

Public comments

PC1 Margaret Gaertner 4.9.2014 (re bus stop trash)
PC2 Margaret Gaertner 5.5.2014 (re sidewalks to Shaws)

Applicant's Submittal

- A. Cover Letter
- B. Recorded deed
- C. Development Review application
- D. Conditional use application
- E. Conditional use narrative (including drive through Stacking Plan)
- F. TMP Modification application
- G. Traffic Memorandum

Plans

Previously approved site plans

- P1. Recorded Subdivision Plat
- P2. 2008 Approved Site Plan
- P3. 2008 Approved Plan set (10 plans)

Updated to reflect built conditions

- P4. Cover sheet
- P5. Existing conditions Plan
- P6. Site plan

Details re Dunkin Donuts Reuse

- P7. Elevations
- P8. Stacking Plan and relocated menu board (same as in E)