

Comments submitted 4/10/14

City of Portland
Development Review Application
Planning Division Transmittal Form

Application Number: 2014-033 **Application Date:** 04/02/2014
CBL: 197 B018001 **Application Type:** Level III Site Plan 50,000 - 100,000
Applicant: CHARTER WESTGATE LLC /Karen Johnson
Project Name: Dunkin Donuts
Address: 1412 CONGRESS ST
Project Description: Reuse of former Tim Horton's restaurant for a proposed Dunkin Donuts.
Zoning: B2

Other Required Reviews:

- | | | |
|---|---|--|
| <input type="checkbox"/> Traffic Movement | <input type="checkbox"/> 14-403 Streets | <input type="checkbox"/> Housing Replacement |
| <input type="checkbox"/> Storm Water | # Units _____ | <input type="checkbox"/> Historic Preservation |
| <input type="checkbox"/> Subdivision | <input type="checkbox"/> Flood Plain | <input type="checkbox"/> Other: |
| # Lots _____ | <input type="checkbox"/> Shoreland | |
| <input type="checkbox"/> Site Location | <input type="checkbox"/> Design Review | |
| # Unit _____ | | |

Distribution List:

Planner	Jean Fraser	Parking	John Peverada
Zoning	Marge Schmuckal	Design Review	Alex Jaegerman
Traffic Engineer	Tom Errico	Corporation Counsel	Nennifer Thompson
Civil Engineer	David Senus	Sanitary Sewer	John Emerson
Fire Department	Chris Pirone	Inspections	Tammy Munson
City Arborist	Jeff Tarling	Historic Preservation	Deb Andrews
Engineering	David Margolis-Pineo	DRC Coordinator	Phil DiPierro
		Outside Agency	

Comments needed by 4/16/2014

shall be substituted for the board of appeals as the reviewing authority over conditional business uses:

1. Major and minor auto service stations in the B-2 zone, only;
2. Major or minor auto service stations in the B-2b zone in existence as of November 15, 1999;
3. Car washes;
4. Drive-throughs in the B-2 or B-2b zones which are adjacent to any residential use or zone, provided that, in the B-2b drive-throughs must be accessory to a principal use located on the same site;
5. Automobile dealerships.

In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:

- a. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.
- b. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.

A-183(a)

→ 6. Drive-throughs, where permitted, shall also specifically comply with the following conditions:

- a. 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 adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such 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.

Tom
Erico

- b. 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.
- c. 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.
- d. 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

Sports complex: One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least six thousand (6,000) seats.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock or other mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use. Stockpiles shall be considered structures for purposes of dimensional requirements under the Land Use Code.

Stormwater detention area: A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Storm water retention area: A pond or basin used for the permanent storage of stormwater runoff.

Story: That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four (4) feet above the floor does not exceed two-thirds of the floor area of the story immediately below it and which does not contain an independent apartment or dwelling unit. A story which exceeds eighteen (18) feet in height shall be counted as two (2) stories. A basement shall be counted as a story for the purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

Stream: A free-flowing body of water from the outlet of the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

Street: A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street line: The line of demarcation between a street and the abutting land.

Structure: Anything constructed or erected of more than one

Applicant: Dunkin' Donuts

Date: 4/7/14

Address: 1412 Congress St

C-B-L: 197-B-018

CHECK-LIST AGAINST ZONING ORDINANCE

Date -

Zone Location - ^{B-2} leased former Tim Hartman to Dunkin' Donuts

Interior or corner lot -

Proposed Use/Work -

Sewage Disposal -

Lot Street Frontage -

Front Yard - "Street line" definition in comments

Rear Yard -

Side Yard -

Projections -

Width of Lot -

Height -

Lot Area -

Lot Coverage/ Impervious Surface -

Area per Family -

Off-street Parking -

Loading Bays -

Site Plan - 2014-033 - conditional use to RB

Shoreland Zoning/ Stream Protection -

Flood Plains -

Need Super signs permits for signage

MEMORANDUM

To: FILE
From: Jean Fraser
Subject: Application ID: 2014-033
Date: 4/10/2014

Comments Submitted by: Marge Schmuckal/Zoning on 4/10/2014

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. Therefore 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.

Marge Schmuckal
Zoning Administrator

Marge Schmuckal - Follow up re meeting on reuse Tim Hortons

From: Jean Fraser
To: Barhydt, Barbara
Date: 3/13/2014 12:03 PM
Subject: Follow up re meeting on reuse Tim Hortons
CC: Errico, Thomas; Schmuckal, Marge; Thompson, Jennifer

Barbara

This is how the meeting was left (please note I said I would ask you to e-mail her to answer some questions that I was not able to answer- see 5th bullet):

- Tom and Diane M will liaise (ccing me into correspondence) to confirm the MDOT stacking # and what that means in feet length, with Diane doing sketch to show what this means on the ground- sketch to be sent to you, me, Tom and Marge so that we can look at in context of cond use req's;
- Jennifer will look into the question framed by Karen regarding if the stacking land wraps around the front is there an issue re our cond. use requirements (it being in front setback) and if so, would the PB or ZBA have authority to waive if requested;
- You, Marge, Jennifer and I to confer on this issue once we see the plan showing stacking lane location as would be required to meet MDOT TMP;
- Tom to check into the process and timetable for the necessary modification of the TMP (ie is scoping meeting necessary) and confirm to Diane and me;
- Karen will submit site plan application after getting an e-mail from Barbara confirming or revising:
 - what Jean had suggested at the meeting ie that she should submit a level III site plan application and tick the boxes for "plan amendment (PB Review)" and "TMP"(total of \$1500 fee)
 - whether anything else needs to be ticked/paid re cond use review;
 - whether a different fee for a TMP modification;
 - whether she needed a Neighborhood meeting.
- I indicated that the timing of the Planning Board meeting could depend on whether going direct to a hearing or having a Workshop first, and what involved re the TMP and whether a Neighborhood Meeting was required; I confirmed the next PB meetings were April 8 and 22 but did not commit.

Thanks
Jean

Marge Schmuckal - Fwd: RE: Portland - Dunkin' Donuts at Westgate Plaza

From: Jennifer Thompson
To: Barbara Barhydt; Errico Thomas; Jean Fraser; Marge Schmuckal
Date: 4/7/2014 3:13 PM
Subject: Fwd: RE: Portland - Dunkin' Donuts at Westgate Plaza
CC: Chris Pirone

Jean - as we discussed earlier today, a "street line" is defined to mean "the line of demarcation between a street and the abutting land." As Barbara pointed out, "street" is defined to mean "A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city." That definition could certainly be read to include the whole of the ROW not just the travel portion. So, the question, as you know, is whether the setback must be measured from the edge of public ROW or from the travel portion of the street. It would be helpful to hear from Marge how this has historically been interpreted as I, frankly, could go either way with it.

Also, do I understand your email and this drawing to mean that the 25' setback will not be met if we measure from the edge of the ROW rather than the travel portion?

>>> Jean Fraser 4/7/2014 2:38 PM >>>
 Hello all

Karen has just sent this plan that shows that the stacking lane can wrap around the front and still meets the conditional use standard. This is based on the definition of street line that does not include all of the ROW but just the "street"; also its based on a 10 ft wide stacking lane which Tom E indicated he would accept.

If we all feel this meets the city's ordinance regarding the location of stacking, then perhaps this project could go forward direct to a hearing on April 22 SUBJECT to any process issues related to the TMP modification (Tom speaking to MDOT Steve Landry today I think).

Could you all chime in on whether its realistic and feasible to go direct to PB hearing for April 22nd (Report would have to be completed on April 17th/18th ie end of next week) ie whether you see any procedural hold up or misunderstanding that needs to be resolved- or need for more info before you can comment for the Board. Many thanks
 Jean

>>> Karen Johnson <karen@chartweb.com> 4/7/2014 2:18 PM >>>

Jean – please see attached plan. Diane Morabito is also reviewing this with Tom Errico, she reviewed the Brunswick analysis with him last week and will also request that he review the total stacking required with the Maine DOT representative. However, the attached plan illustrates that either the 12 or 15 car stacking can comply with zoning. I also reviewed with the approach with Marge Schmuckal on Friday to make sure we amended the plan appropriately.

Thank you again for your attention to this matter.

Karen

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Karen

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From: Jean Fraser
To: Barhydt, Barbara; Errico Thomas; Schmuckal, Marge; Thompson, Jennifer
Date: 4/7/2014 3:35 PM
Subject: Fwd: RE: Portland - Dunkin' Donuts at Westgate Plaza
Attachments: Setback if from property line (as orig submitted and told was incorrect).pdf

Jen

They can not meet the 25 ft setback requirement with stacking along the front if the 25 feet is measured from the property line- that line is shown on the attached which they submitted originally. They would have to ask for a variance from the ZBA in this case.

Coincidentally, if the "streetline" is as shown on the plan submitted today (ie at back of the traveled way, not at the back of the sidewalk) then they can squeeze the stacking lane in along the front and just meet the 25 ft setback. I agree their plan is not very precise, but based on my quick GIS measurements I think its 99% likely.

So this is a fundamental issue and Marge's interpretation needs to be confirmed.

[Tom- when you speak to Steve could you find out the basis of the 15 and what factors at this location might be relevant- just in case they can only get 12 stacked here]

thanks
 Jean

>>> Jennifer Thompson 4/7/2014 3:13 PM >>>

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