



Tuck O'Brien
City Planning Director, Planning Division

November 16, 2018

Kurt Overmyer (applicant) Director of Development and Construction Guggenheim Retail Real Estate Partners Inc 3000 Internet Blvd, Suite #570 Frisco, TX 75034	Banyan North LLC (owner) 13 Kinnard Street Cambridge, MA 02139	David Fenstermacher, PE (agent) VHB 2 Bedford Farms Drive, Suite #200 Bedford, NH 03110
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Project Name: **Conversion of Sala Thai to Taco Bell with drive-through**
 Project ID: #2016-007
 Address: 1363 Washington Avenue, Portland CBL: 401 A002001
 Applicant: Guggenheim Retail Real Estate Partners, Inc.

NOTIFICATION OF NON COMPLIANCE WITH SITE PLAN APPROVAL

Dear Mr Overmyer:

I am writing with respect to the above Planning Board (conditional) approval dated May 13, 2016 and to request compliance with the conditions of that approval. The approval included the following conditions related to the concern about the safety of the access for the new drive-through (copy of the approval letter is attached):

- i. That applicant shall conduct a detailed *Crash Monitoring Study* at the drive access with Washington Avenue (to be conducted in accordance with a methodology agreed with the City's Traffic Engineering Reviewer and particularly focusing on crashes caused by Taco Bell vehicles entering or exiting the site) for the 12 months following the opening of the drive through to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the *Crash Monitoring Study*, including the identification of all crashes and any other problems observed in the 12 month period, shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the *Study* is conducted. The applicant will obtain the crash data from local sources including the Portland Police Department. If the *Study* indicates that the full turn access has contributed to a significant increase in crashes along Washington Avenue involving site vehicles (as determined by the City based on the cause of the crashes and on the City Traffic Engineer's recommendations), the applicant shall modify the access to be right-out and right-in only; and
- ii. That the applicant shall pursue the creation of a 2-way road connection to the "Rite Aid" driveway to the north in order to encourage Taco Bell customers to use the access from Allen Avenue and reduce potential conflicts in Washington Avenue. The applicant shall preserve space for this connection in the current site plan and agree to construct it in the future if the Rite Aid site is redeveloped or at a time period when the site is being reviewed by the City. If this connection is achieved and permanent (ie open to Taco Bell vehicles) within the first 12 months following the opening of the drive through to the public (ie during the monitoring period), the applicant shall not be responsible for submitting the final report associated with the *Crash Monitoring Study* nor the associated potential restrictions as outlined in Condition 1 above;

These conditions were included pursuant to Section 14-526 (a) of Chapter 14 of the City's Code of Ordinances and because the City's Traffic Engineering reviewer was concerned that the drive through use would create safety issues along this stretch of Washington Avenue, which is a high crash location. They were agreed during the review as a substitute for the City's earlier requirement that turn restrictions be designed into the final layout, and the agreement was based on assurances from the applicant at the time.

The new Taco Bell opened in May 2017. Since then the City has been in correspondence with the applicant (Guggenheim Retail Real Estate Partners Inc) regarding compliance with the above quoted conditions of approval. The current position is as follows:

- Although the 2-way connection to the abutting Rite Aid driveway is the City's preferred solution to the access issue, the applicant/owner has declined to pursue or implement this option to meet condition ii; therefore condition i applies.
- In accordance with the condition i of the approval, the City received from the agent/applicant a *Crash Monitoring Study* that confirms that the full turn access for Taco Bell has unreasonably contributed to crashes along Washington Avenue.

Therefore, based on the *Crash Monitoring Study* and in accordance with the conditional site plan approval, the City has concluded that the full turn access must be modified to restrict the access, so it is right in and right out only, in order to mitigate the safety problem that has been created by the full turn access. The required modification comprises the construction of a 2 foot wide median in Washington Avenue, topped by flexible bollards, that would restrict the left turn vehicle movements to and from the Taco Bell site. The condition specifies that the applicant shall make such a modification.

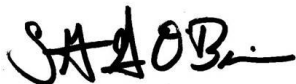
We request that you prepare the plan for the median within one month of the date of this letter, and arrange for obtaining street opening permits and complete construction within 5 months of the date of this letter. Please note that in the short term the City will be erecting sign(s) in the right-of-way indicating that the left turn out of Taco Bell is prohibited.

If we have not received the median modification plan within one month of the date of this letter, and a street opening permit within 4 months of date of this letter, the City will utilize the remaining \$8677.90 of defect guarantee escrow account to install the required median.

Please note that the failure to comply with the noted conditions of approval related to the safety of the Taco Bell access would constitute a land use violation subject to fines under 30-A M.R.S. § 4452 and Section 1-15 of the Portland City Code of up to \$2,500 for each violation. Each day that a violation continues is considered a separate violation. Additionally, please be advised that violation of the City's ordinances is grounds for denial of a business license under Chapter 15 of the City's Code.

If you have any questions, please do not hesitate to contact me, or Jean Fraser at 207 874 8728.

Very truly yours,



Stuart G. O'Brien
City Planning Director
City of Portland

Attachment: Planning board Approval letter dated May 13, 2016

cc: Taco Bell Franchisee, 1363 Washington Avenue, Portland, ME 04103
City Associate Corporation Counsel

Portland, Maine



Yes. Life's good here.

Tuck O'Brien
City Planning Director, Planning Division

May 13, 2016

Angel Robinson, Pre-Development Director
Guggenheim Retail Real Estate Partners, Inc.
3000 Internet Blvd, Suite #570
Frisco, TX 75034

David Fenstermacher, PE
VHB
2 Bedford Farms Drive, Suite #200
Bedford, NH 03110

Project Name: **Conversion of Sala Thai to Taco Bell with drive-through**
Project ID: #2016-007
Address: 1363 Washington Avenue, Portland CBL: 401 A002001
Applicant: Guggenheim Retail Real Estate Partners, Inc.
Planner: Jean Fraser

Dear Ms Robinson and Mr Fenstermacher:

On May 13, 2016, the Planning Authority approved with conditions a Level II site plan for the conversion of the existing Sala Thai restaurant (with no drive through) to a Taco Bell restaurant with a drive through at 1363 Washington Avenue.

The decision is based upon the application and documents as submitted by the applicant, and plans prepared by VHB (engineers) dated 5.4.2017. The Planning Authority found the proposals are in conformance with the Site Plan Standards of the Land Use Code subject to the following waiver and conditions of approval and the standard conditions of approval:

WAIVER

Parking lot layout

The Planning Authority waives the Technical Standard, Section 1.14 and associated figures, which specify aisle widths and parking space dimensions, to allow the parking lot layout to be based on 50 degree angled parking as shown on the approved Layout Plan.

SITE PLAN CONDITIONS OF APPROVAL

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- ii. That the applicant shall pursue the creation of a 2-way road connection to the "Rite Aid" driveway to the north in order to encourage Taco Bell customers to use the access from Allen Avenue and reduce potential conflicts in Washington Avenue. The applicant shall preserve space for this connection in the current site plan and agree to construct it in the future if the Rite Aid site is redeveloped or at a time period when the site is being reviewed by the City. If this connection is achieved and permanent (ie open to Taco Bell vehicles) within the first 12 months following the opening of the drive through to the public (ie during the monitoring period), the applicant shall not be responsible for submitting the final report associated with the *Crash Monitoring Study* nor the associated potential restrictions as outlined in Condition 1 above; and
- iii. The drive-through is approved as part of the Taco Bell use only. If the occupant changes and the drive-through remains in operation, the new occupant shall submit a traffic analyses relating to the new occupant's drive through traffic generation to the Planning Authority for review and approval. If the new occupant's drive through use results in "peak hour" traffic volumes that are greater than those associated with Taco Bell (as documented in the Taco Bell site plan application subject of this letter), the new occupant may be required to revise the access from Washington Avenue to incorporate restrictions (for safety) and may be required to obtain a Traffic Movement Permit; and
- iv. The project was reviewed to confirm conformance with the B2 Design Standards and the attached (undated) elevation has been approved, based on the understanding that any new windows will be specified to be Solarban 60 Starphire Ultra-Clear Glass (or equivalent) of a tint to match the tint of the existing windows; and
- v. That the plans shall be revised to include additional erosion and sedimentation control notes as listed below, with all these revised plans to be included in the Final Plan set and submitted prior to the issuance of a building permit:
 - a. The project shall comply with the MaineDEP Basic Standards for erosion and sediment control, inspection and maintenance, and good housekeeping practices, as outlined in Appendix A, B, & C of the Maine DEP Chapter 500 Regulations. The contractor shall utilize Maine Department of Environmental Protection Erosion and Sedimentation Control Best Management Practices.
 - b. Siltsack sediment traps shall be installed in all existing catch basin structures located within the site and immediately downstream of the construction site.
 - c. A stabilized construction exit will be utilized as required, and the site shall be swept on an as-needed basis, and as directed by the City of Portland, to prevent the tracking of sediment from the site onto the street.
- vi. That the final detailed construction management plan shall be submitted for review and approval by the Department of Public Works prior to the start of any work on site, to ensure pedestrian and traffic safety arrangements are satisfactory; and
- vii. All signage, whether included/shown in the approved plan set or not (both free standing and wall mounted) shall be subject to separate sign permits and approvals under the City's Sign Ordinance (Land Use Ordinance Chapter 14, Article III, Division 22) and separate applications are necessary via Inspections.

The approval is based on the submitted site plan. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

STANDARD CONDITIONS OF APPROVAL

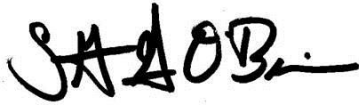
Please note the following standard conditions of approval and requirements for all approved site plans:

1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and six (6) final sets of plans must be submitted to and approved by the Planning Division and Public Works Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Works Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Jean Fraser at (207) 874-8728.

Sincerely,



Stuart G. O'Brien
City Planning Director

Attachment:

- i. Submitted Proposed Elevation
- ii. Performance Guarantee Packet

Electronic Distribution:

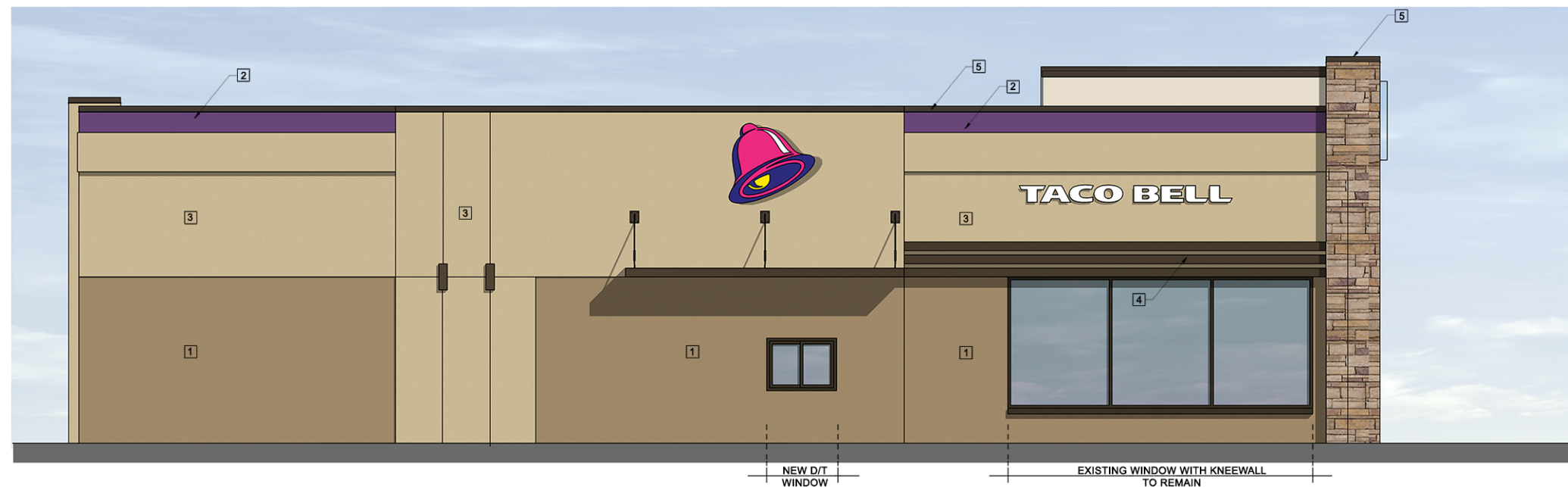
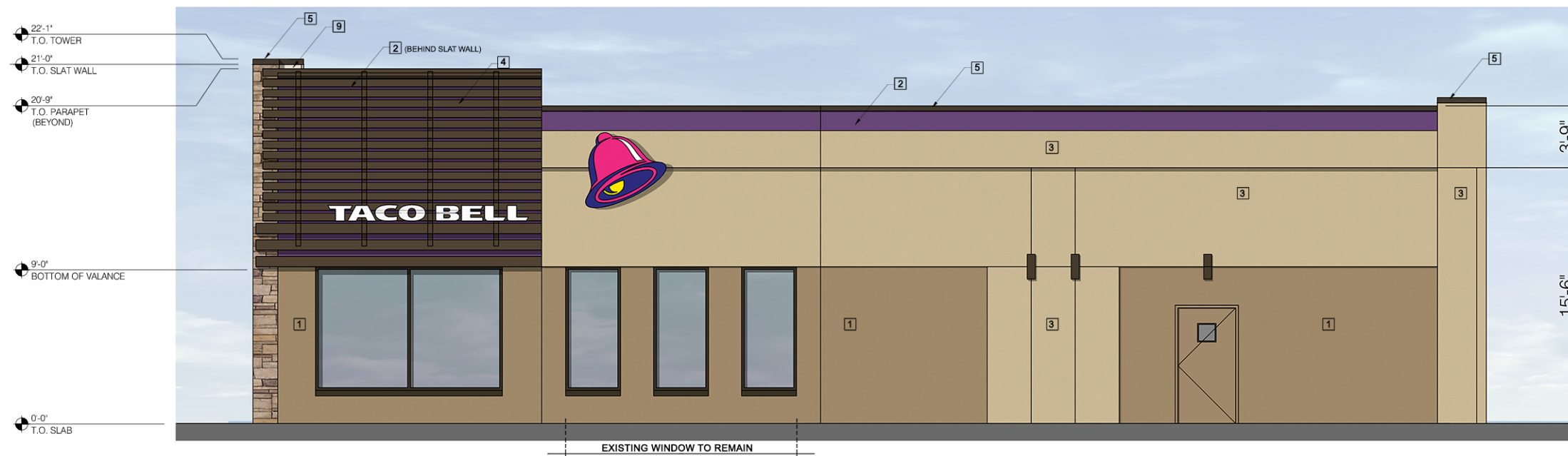
cc: Jeff Levine, AICP, Director of Planning and Urban Development
Stuart G. O'Brien, City Planning Director
Barbara Barhydt, Development Review Works Manager
Jean Fraser, Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Zoning Administrator, Inspections Division
Tammy Munson, Inspections Division Director
Jonathan Rioux, Inspections Division Deputy Director
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division
Brad Saucier, Administration, Inspections Division
Katherine Earley, Engineering Works Manager, Public Works
Bill Clark, Project Engineer, Public Works
David Margolis-Pineo, Deputy City Engineer, Public Works
Doug Roncarati, Stormwater Coordinator, Public Works
Greg Vining, Associate Engineer, Public Works
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Works
Rhonda Zazzara, Field Inspection Coordinator, Public Works
Mike Farmer, Project Engineer, Public Works
Jane Ward, Administration, Public Works
Jeff Tarling, City Arborist, Public Works
Jeremiah Bartlett, Public Works
Keith Gautreau, Fire Department
Jennifer Thompson, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File



SYMBOL	AREA	MANUFACTURER	COLOR
1	MAIN BUILDING COLOR (E.I.F.S)	LOTUSAN STO THERM, CI ESSENSE STOLIT LOTUSAN 1.0	NA08-0011 "CAMEL BACK"
2	WALL COLOR BEHIND SCREEN WALL (E.I.F.S)	LOTUSAN STO THERM, CI ESSENSE STOLIT 130 DARK	NA08-0011 "CLEMATIS"
3	ACCENT COLOR (E.I.F.S)	LOTUSAN STO THERM, CI ESSENSE STOLIT LOTUSAN 1.0	NA08-0011 "ROOKWOOD CLAY"
4	ALUMINUM SLAT WALL AND VALANCE COLOR	VENDOR	SW 7034 "STATUS BRONZE" (EQUAL)
5	PARAPET CAP COLOR	DUROLAST	MEDIUM BRONZE (FACTORY FINISH)
6	STONE WALL	BORAL - VERSA STONE	TIGHT CUT - "PLUM CREEK"

EXTERIOR FINISH SCHEDULE

NOTE: EXISTING WINDOWS NOTED TO REMAIN.
NEW GLASS TO BE SOLARBAN 60 STARPHIRE
ULTRA-CLEAR GLASS, TINT TO MATCH EXISTING



MARK D. MCCLUGGAGE AIA, CCS
1538 E. Douglas, Wichita, KS 67211
Tel: (316) 265-9367
Fax: (316) 265-5646
www.gimv.com

15034.000

CONTRACT DATE:
BUILDING TYPE:
PLAN VERSION:
SITE NUMBER:
STORE NUMBER:

TACO BELL
1363 WASHINGTON AVE.
PORTLAND, ME



EXTERIOR ELEVATIONS

PLOT DATE: