

# CHESTER & VESTAL

A PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

107 Congress Street, Portland, Maine 04101

Telephone (207) 772-7426 Fax (207) 761-5822

EDWIN P. CHESTER  
BARBARA A. VESTAL  
MICHAEL P. DIXON  
CAITLIN ROSS WAHRER

*chester@chesterandvestal.com*  
*vestal@chesterandvestal.com*  
*dixon@chesterandvestal.com*  
*wahrer@chesterandvestal.com*

October 17, 2018

Julia Sheridan, Esq., Chair  
Historic Preservation Board  
389 Congress Street  
Portland, Maine 04101

Re: 33-37 Montreal Street

Dear Chair Sheridan and Members of the Board:

I would like to focus my comments on the review process. As you know, this is in front of you because one of these buildings was identified as “**Preferrably Preserved.**” The Munjoy Hill Neighborhood Conservation Overlay District says that the Building Authority shall not issue a demolition permit for a Preferrably Preserved building for up to 12 months unless the applicant meets certain standards. The ordinance encourages the applicant to “actively pursue alternatives to demolition.”

In this case, we are about 5 months into the 12 month demolition delay. The applicant has opted not to pursue alternatives to demolition. So the applicant is trying to get the Board to determine that it has met the required standard to lift the demolition delay. To do that the ordinance states it must get the Board to “approve a development for the site as consistent with the Historic Resource Design Standards as applied to a new building.” Then the Building Authority may issue a demolition permit without making the applicant wait 12 months.

**Importantly**, the ordinance itself contains two examples of what might qualify for lifting the delay, noting they are not exhaustive. One example of what might justify lifting the delay is proposed “demolition of a portion of the building while maintaining the principal structure and/or most architecturally significant portion of the building.” That does not apply here; the proposal is to demolish the entire building.

The other example, provided in the ordinance, is demolition of the entire Preferrably Preserved building, as proposed here, “but with a replacement proposal that is acceptably contextual in the surrounding neighborhood.” 14-140.5(e)5(b)

What does it mean for a building to be “**acceptably contextual in the surrounding neighborhood?**” That is up to the Board to determine. But as this is the first one, I would encourage you to take the time to flesh this out.

I don't think it should be deemed sufficient if a proposed replacement building merely meets the most minimal standards for new construction in an historic district. It is going to have to essentially meet very similar standards anyway to proceed under Alternative Design Review, whether before or after the 12 month demolition delay. Surely this test for removing the demolition delay must mean more than just whether the building will be approvable in the future under the Alternative Design Review Standards. Or whether it will just barely meet the new construction standards as applied in a vacuum.

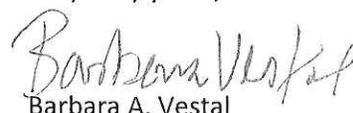
I would argue that the ordinance requires something more to lift the 12 month demolition delay: that the new building is so appropriate and so compatible with the surrounding neighborhood that it offsets the loss of the Preferably Preserved building. It is so appropriate for its surroundings – **so acceptably contextual in the surrounding neighborhood** - that the applicant should be rewarded by not being required to wait the entire 12 months to demolish a preferably preserved building.

To gauge whether it is "acceptably contextual" it seems to me that the Board needs to go through a process similar to what would have been done in an historic district designation report. Maybe this has been done already, but I am not aware of it. It seems like the Munjoy Hill Conservation District needs to be looked at as a whole to identify the valued visual qualities which led to the conservation district's special designation. The established patterns and important architectural characteristics have to be identified so the Board can assess whether the proposed new design is sufficiently responsive, and avoids diminishing the district's valued visual qualities. The important character-defining features of the Munjoy Hill Conservation District need to be identified. Without this, the Board is being asked to decide whether the proposed replacement building is "acceptably contextual" in a vacuum.

On a different but related topic, I think you also need to be concerned about future enforcement. The ordinance allows the City to treat a substantial variation from an approved replacement building as a violation. So the Board needs to be very precise about what is approved as a replacement building so that the City has a way to determine whether what is built is a substantial variation. You only have "sketch quality" elevations of the Eastern Prom facing side and the Walnut Street facing side. In addition, the staff has identified several important areas where the proposal in front of you does not meet scale and mass standards for new construction.

I would argue that the design should be fully detailed and the proposed replacement building should fully meet the required standards **before** you give approvals that would authorize the Building Authority to lift the demolition delay. Meeting the standards should not be left to a condition of approval which anticipates further modification. It is inappropriate, and weakens the ability to enforce an appropriate replacement building, if you grant a conditional approval which leaves important details to be resolved in some later review.

Very truly yours,

  
Barbara A. Vestal