

CITY OF PORTLAND, MAINE

PLANNING BOARD

Elizabeth Boepple, Chair
Sean Dundon, Vice Chair
Bill Hall
Carol Morrissette
Jack Soley
Dave Eaton

February 10, 2016

Ethan Boxer-Macomber
Adams Apple, LLC
30 Danforth Street, Suite 213
Portland, ME 04101

Project Name:	65 Munjoy Street Condominiums	Project ID:	2015-225
Address:	65 Munjoy Street	CBL:	003-M-5
Applicant:	Adams Apple, LLC		
Planner:	Nell Donaldson		

Dear Mr. Boxer-Macomber:

On February 9, 2016, the Planning Board considered your 8-unit affordable housing project at 65 Munjoy Street. The Planning Board reviewed the proposal for conformance with the standards of the site plan and subdivision ordinances. The Planning Board voted 6-0 to approve the application with the waivers and condition(s) presented below.

WAIVERS

The Planning Board voted 6-0 to find the following:

1. The Planning Board found, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that aisle width for right-angle parking be 24 feet per *Figure I-27*, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard (*Section 1.14*) to allow a 19 foot wide aisle in the parking area;
2. The Planning Board found, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that a standard parking space be 9' x 18', that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard (*Section 1.14*) to allow two 9' x 15' spaces and one 8' x 18' space;
3. The Planning Board found that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The Planning Board waived the site plan

standard (*Section 14-526 (b) (iii)*) to allow for a contribution of \$400 to Portland's tree fund to be substituted for the provision of additional trees on site.

SUBDIVISION REVIEW

The Planning Board voted 6-0 that the plan is in conformance with the subdivision standards of the Land Use Code, subject to the following condition(s) of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority; and
2. Prior to Certificate of Occupancy, the applicant shall finalize condominium documents for review and approval by Corporation Counsel.

SITE PLAN REVIEW

The Planning Board voted 6-0 that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval which must be met prior to the issuance of a building permit:

1. The applicant shall obtain a license agreement for grading and landscaping to be performed on the adjacent city park property for review and approval by the Department of Public Works and Corporation Counsel;
2. The applicant shall provide a revised plan set either eliminating the brick driveway apron or obtain a change in sidewalk material policy from City Council and submit a maintenance agreement for review and approval by the Department of Public Works;
3. The applicant shall submit a revised landscaping plan depicting plant types and locations as requested by the city's arborist for review and approval by the city arborist; and
4. The applicant shall submit additional design materials which demonstrate the treatment of the top of the bay window, the depth and articulation of the façade, and related detailing for review and approval by the Planning Authority.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Board Report for application 2015-225 which is attached.

STANDARD CONDITIONS OF APPROVAL

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

1. Storm Water Management Condition of Approval

The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.

The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.

A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Works.

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **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 the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **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.
5. **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.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and 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.
8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
9. **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 Service'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.

10. **Department of Public Services 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.)
11. **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.
12. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to 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 Nell Donaldson at 874-8723

Sincerely,



Elizabeth Boepple, Chair
Portland Planning Board

Attachments:

1. Planning Board Report
2. City Code, Chapter 32
3. Sample Stormwater Maintenance Agreement
4. Performance Guarantee Packet

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Stuart G. O'Brien, City Planning Director

C:\Users\elboepple\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\V474Z2XJ\Approval - Level III Suidivision - 65 Munjoy.doc

Barbara Barhydt, Development Review Services Manager
, Planner/Senior 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 Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Services
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
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

PLANNING BOARD REPORT PORTLAND, MAINE



8-unit Condominium Development
65 Munjoy Street
Level III Site Plan and Subdivision Review
2015-225
Adam's Apple LLC

Submitted to: Portland Planning Board Date: February 4, 2016 Public Hearing Date: February 9, 2016	Prepared by: Nell Donaldson, Planner CBL: 003 M 001 Project #: 2015-225
--	---

I. INTRODUCTION

Adam's Apple, LLC appears before the Planning Board for a final site plan and subdivision review for an eight-unit affordable housing development at 65 Munjoy Street in the city's East End. The plans include a three-story building, eight parking spaces on a surface lot partially covered by the building, landscaping, stormwater treatment, and sidewalk improvements.

The 65 Munjoy Street site, as a portion of a larger property formerly occupied by the Adams School, is owned by the city. The site currently houses a surface parking lot. The city's Housing and Community Development Committee issued an RFP for the development of the site in 2014. The conceptual plan for this development was submitted in response.

This development is being referred to the Planning Board for compliance with the site plan and subdivision standards. No Planning Board workshop was held. A total of 281 notices were sent to property owners within 500 feet of the site and a legal ad for the Planning Board hearing ran on February 1 and 2, 2016.

Applicant: Ethan Boxer-Macomber, Adam's Apple, LLC

Consultants: John Mahoney, Ransom Consulting; Owen Haskell, Surveyor; Evan Carroll, Bild Architecture

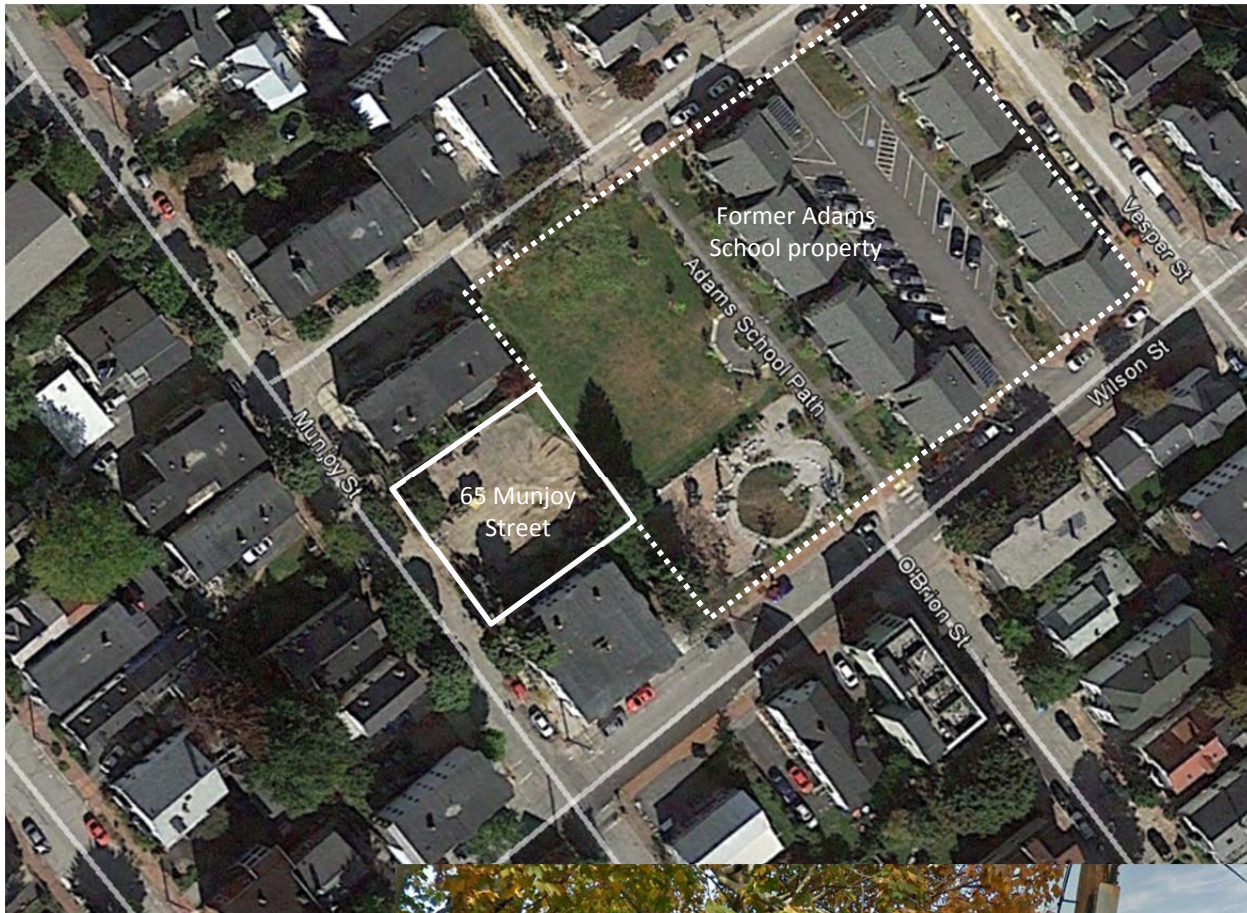
II. REQUIRED REVIEWS

Waiver Requests	Applicable Standards
Aisle width – To allow a 19' aisle in the parking area <i>Supported by consulting traffic engineer.</i>	Technical Manual, <i>Section 1.14</i> , requiring that aisle width for right-angle parking be 24' per Figure I-27.
Parking dimensions – To allow two 9' x 15' spaces and one 8' x 18' space <i>Supported by consulting traffic engineer.</i>	Technical Manual, <i>Section 1.14</i> , requiring that standard parking space be 9' x 18'.
Street trees – 8 units = 8 trees required. One street tree proposed to be preserved, five proposed to be visible from street along drive. Meets waiver. Contribution for two trees. <i>Supported by city arborist.</i>	Site Plan Standard, <i>Section 14-526(b)2.b(iii)</i> and Technical Manual, <i>Section 4.6.1</i> . All multi-family development shall provide one street tree per unit. Waiver permitted where site constraints prevent it, with applicant contributing proportionate amount to Tree Fund.
Review	Applicable Standards
Site Plan	<i>Section 14-526</i>
Subdivision	<i>Section 14-497</i>

III. PROJECT DATA

Existing Zoning	R-6
Existing Use	Surface parking
Proposed Use	Residential (8 condominium units)
Parcel Size	6,778 SF

	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Building Footprint	0 SF	3,336 SF	3,336 SF
Building Floor Area	0 SF	10,008 SF	10,008 SF
Impervious Surface Area	6,470 SF	5,178 SF	-1,292 SF
Parking Spaces	24	8	-16
Bicycle Parking Spaces	0	2	2
Estimated Cost of Project	\$1.7 million		



Figures 1 and 2: 65 Munjoy Street and the former Adams School property from above (top) and from Munjoy Street (right).





Figure 3: 65 Munjoy zoning context

IV. BACKGROUND

65 Munjoy Street is a city-owned lot located on the east side of Munjoy Street in the heart of Munjoy Hill. The site was originally part of a larger property which housed the grounds of the Adams School, an elementary school which served the Munjoy Hill neighborhood from the late 1950s until 2006. Shortly following the school’s closure, the city established the Adams School Reuse Committee to consider possible future uses for the school property. The final report of the committee, completed in 2007, outlined a set of goals for the property’s redevelopment (*Attachment BG-1*). The report informed an RFP (*Attachment BG-2*), and in 2010, the eastern portion of the former school property was sold and redeveloped into a 16-unit affordable housing complex (*Attachments BG-3 and 4*). Under the same plans, the middle portion was developed as a city park (*Attachments BG-3 and 4*). The redevelopment of the 65 Munjoy Street site was considered in the responses to the RFP, but not included in the final site plan. Instead, the lot remained as a surface parking area used mainly for the purposes of snow ban parking.

In 2014, the City Council’s Housing and Community Development Committee (HCDC) issued an RFP for the sale and redevelopment of the 65 Munjoy site (*Attachment BG-5*). The RFP was informed by the original Adams School Reuse Committee report, public input from the surrounding neighborhood, an environmental site assessment performed by Crede Associates, LLC, and a feasibility study completed by Bluestone Planning Group. The city received one response from Adam’s Apple, LLC (*Attachment BG-6*). The HCDC subsequently recommended that the council approve the sale of the land for the purposes of the Adam’s Apple development. This development is the subject of the current site plan and subdivision review. A summary of this RFP process, described by Mary Davis, Director of the city’s Housing and Community Development Division, is included as *Attachment BG-7*.

The site lies in an R-6 zone and is surrounded by residential uses, including both single and multi-family homes. As discussed above, a city park neighbors the site to the immediate northeast. Environmental contaminants, including lead, arsenic, Polycyclic Aromatic Hydrocarbons (PAHs), and Extractable Petroleum Hydrocarbons (EPHs), have been found in the soil on the site. These contaminants require remediation prior to redevelopment (*Attachment BG-5*).



Figure 4: Proposed development at 65 Munjoy Street, looking north

V. PROPOSED DEVELOPMENT

The applicant’s plans show an eight-unit condominium building, including two 3-bedroom units, two 2-bedroom units, and four 1-bedroom units, all of which would be deed restricted to households of less than 120% of area median income for a period of 90 years. The plans show a driveway cut from Munjoy Street and eight parking spaces, six of which are proposed beneath the building. Entrances are shown at the front of the building on Munjoy Street, the side of the building, and the rear. The side entrance, near the parking, is proposed as the designated accessible entrance. The plans include landscaping at the front, side, and rear, a new brick sidewalk, and stormwater detention in three rain gardens. Some grading and landscaping on the site of the adjacent city park is proposed.

The building is designed to stand three stories in height, with clapboard and board-and-batten siding. A bay window is proposed on the southern portion of the front façade. The front entry is defined by a small porch feature with a concrete bench and steel columns. A small roof defines the side entry of the building as well.

VI. PUBLIC COMMENT

The Planning Division received comments on the plans from several neighboring property owners (*Attachments PC-1-10*). The applicant has also provided neighborhood meeting minutes (*Attachment Q*). The comments from these sources identify the following concerns:

- *Parking:* Neighbors expressed concern at the loss of snow ban parking and questioned whether additional residential development would overburden the existing parking supply.
- *Design:* Several neighbors have expressed concerns with respect to the design of the building, particularly its relationship to the surrounding context. These neighbors have questioned the height of the building, the width of the building, the level of articulation and detail, and the way the building references the neighborhood vernacular. Neighbors have suggested revising the design entirely to a side-by-side triple

decker typology, enhancing the front stoop, raising the first floor plate, and integrating additional traditional elements, such as bay windows.

- *Public Process:* Several neighbors have also raised concerns about the Adams School reuse process more broadly, from the time of the Adams School Reuse Committee’s report to the current RFP and site plan and subdivision review. Several members of the committee have argued that the neighborhood’s original design vision is not adequately reflected in the current proposal.

VII. RIGHT, TITLE, & INTEREST

On February 1, the City Council authorized a purchase and sale agreement for the sale and redevelopment of the 65 Munjoy Street site to Adam’s Apple, LLC (*Attachment G*). The transaction includes an interim sale to the Portland Housing Development Corporation in order to secure a \$200,000 brownfields grant from Greater Portland Council of Governments for the purposes of environmental remediation.

The applicant’s plans show regrading at the rear of the site which extends into the adjacent city park. This regrading is necessary to allow the site to capture and infiltrate its runoff. The applicant also shows landscaping on adjacent city property in order to screen the view of the parking area from the neighboring park. In conjunction with Corporation Counsel, David Margolis-Pineo, of the city’s Department of Public Works, has requested a license for this work. He writes,

The applicant is required to execute an easement or license with the City of Portland for access, grading and landscaping by the applicant on City property.

This license has been included as a condition of approval.

VIII. FINANCIAL & TECHNICAL CAPACITY

The applicant has submitted a letter from Gorham Savings Bank stating that the project team has “demonstrated both the management capabilities and the financial resources necessary to see a project like [65 Munjoy Street] through to completion” (*Attachment H*).

IX. ZONING ANALYSIS

Staff conducted a zoning analysis which found that the project meets the requirements of the R-6 zone, including minimum lot area per dwelling unit, setbacks, and building height. The elevations show the height, based on average grade, at 34.69’ (*Plan 14*). The R-6 permits 45’ in height.

X. SITE PLAN SUBMISSION REQUIREMENTS (Section 14-527) and SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS (Section 14-496)

The applicant has submitted a draft subdivision plat (*Plan 6*). A final plat, meeting the requirements of *Section 14-496*, will require review by William Clark, the city’s surveyor, as well as Corporation Counsel. This review has been included as a condition of approval. A review of condominium documents has also been included as a condition of approval.

XI. SUBDIVISION REVIEW (14-497(a). Review Criteria)

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland’s subdivision ordinance. Staff comments are below.

1. Water, Air Pollution

As discussed above, the project will involve some environmental remediation. The city has developed a Voluntary Response Action Program (VRAP) work plan to address the environmental site work. No detrimental water or air quality impacts are anticipated.

2 & 3. Adequacy of Water Supply

The applicant has provided evidence of capacity from the Portland Water District (*Attachment P*).

4. Soil Erosion

No unreasonable soil erosion or reduction in the capacity of the land to hold water is anticipated.

5. Impacts on Existing or Proposed Highways and Public Roads

Tom Errico, the city’s consulting traffic engineer, has reviewed the plans and has not raised any concerns about impacts to the existing street network associated with trip generation (*Attachment 2*).

6. Sanitary Sewer/Stormwater Disposal

Sanitary sewer and stormwater impacts are discussed in more detail under site plan review below.

7. Solid Waste

The applicant has proposed a location for solid waste receptacles in the under-building parking area. Solid waste and recycling will be collected by the city.

8. Scenic Beauty

This proposal is not deemed to have an adverse impact on the scenic beauty of the area.

9. Comprehensive Plan

The plans meet multiple goals from the city’s housing plan, including ensuring “the construction of a diverse mix of housing types that offers a continuum of options across all income levels” and “encourag[ing] higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation.”

10. Financial and Technical Capacity

As noted above, the applicant has submitted a letter from Gorham Savings Bank attesting to the applicant’s financial capacity (*Attachment H*).

11. Wetland/Water Body Impacts

There are no anticipated impacts to wetlands or water bodies.

12. Groundwater Impacts

There are no anticipated impacts to groundwater supplies.

13. Flood-Prone Area

Per the city’s existing flood maps, the site is not located in a flood zone.

XII. SITE PLAN REVIEW

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland’s site plan ordinance. Staff comments are below.

1. Transportation Standards

a. Impact on Surrounding Street Systems

The development includes eight residential units, which are not anticipated to generate significant traffic volumes. Mr. Errico has reviewed the applicant’s submittals and has not noted any appreciable impact on surrounding street systems (*Attachment 2*).

b. Access and Circulation

The final plans include a new eight foot brick sidewalk along the frontage of the site. This sidewalk would provide access to the front door of the building, which is proposed to be connected via corridor to the building’s central stairwell. An accessible entrance is proposed on the side of the building. This entrance is proximate to parking and, in the revised plans, has been accentuated with a canopy.

The plans also include a new curb cut, which is shown in the plans with a brick apron. Of this material choice, Mr. Margolis-Pineo writes,

The applicant has proposed a brick driveway apron which does not meet the City's driveway apron material policy. If the applicant is agreeable to an agreement that the applicant will be responsible for maintaining the brick apron, this Department is supportive of waiving the material policy for this project.

The applicant would be required to have the change in material approved by the council. This has been included as a condition of approval.

The plans show a new paved drive aisle which would provide access to eight parking spaces, six of which would sit under the first floor of the building. The drive aisle is proposed at 19 feet in width, narrower than the city standard of 24 feet. As such, a waiver is required. Mr. Errico has met with the applicant to simulate parking maneuvers under the plan and expressed his support for this waiver (*Attachment 2*).

c. *Public Transit Access*

The proposed development is not located along a public transit route. As such, no provisions for transit access are required.

d. *Parking*

Division 20 of the land use ordinance provides an exception for the off-street parking requirement for the first three units in the R-6 zone and a 1:1 requirement thereafter. Per the ordinance then, only five off-street spaces are technically required. The applicant has elected to provide eight off-street spaces. On the final plans, the applicant shows three spaces whose dimensions technically fail to meet the *Technical Manual* standard; two spaces are proposed at 9' x 15' and one space is proposed at 8' x 18'. Mr. Errico has expressed his support for this waiver (*Attachment 2*).

Two bicycle spaces per five dwelling units are required under the site plan ordinance. As such, four bicycle parking spaces are required. The final plans denote a bicycle rack on the sidewalk in front of the building to provide space for one visiting bicycle. The architectural plans show additional bicycle parking spaces in the under-building parking area. The plans meet the bicycle parking standard.

e. *Transportation Demand Management*

A transportation demand management plan is not required.

2. ***Environmental Quality Standards***

a. *Preservation of Significant Natural Features*

There are no known significant natural features on the site.

b. *Landscaping and Landscape Preservation*

The landscaping plan includes assorted perennials interspersed with decorative granite blocks along the building frontage and blueberries, dogwood, switchgrass, and iris in the rain gardens at rear. Jeff Tarling, the city's arborist, has reviewed the plans and offered the following comments,

Along Munjoy Street - would recommend adding in at least a few 'woody' plants for four season interest. Concern that this time of year just the granite blocks would be the only visible landscape feature. Also lets define 'Assorted Perennials' - It should be in keeping with the Native Sod theme and looks like it is from the perspective drawing. Note that establishing the native sod can be a challenge, extra water is needed for the first two years.

Rain Garden - ...plant names should show where plants are located. Caution on the use of 'Red Twig' knowing their expanding size,

might be worth looking at 'Kelsey Dwarf' or other low growing types to better fit this space.

Wilson Street side - Landscape Treatment, *This narrow space does not appear to have a landscape treatment type shown. Is this going to be the only turf area on the property or other?*

The plans also include some planting on the adjacent city park. Of these plans, Mr. Tarling writes,

Adams School Playground Plants - *We like the upright, 'Regal Prince' Oak, lets tweak the arrangement and line them up near the property line to reduce hiding spots and have the grasses grouped on the park side or near the corners. Grass type we would like to use 'The Blues', Little Bluestem grass vs the taller Switchgrass proposed.*

Mr. Tarling's comments have been reflected in the proposed conditions of approval.

Per the city's site plan ordinance, eight street trees are required for the eight residential units proposed. The plans include five ginkgo trees on the northern property line and the retention of one existing street tree. Mr. Tarling has agreed that the five ginkgos and the existing tree qualify toward the street tree requirement. Site constraints prevent the planting of additional street trees. A waiver for the planting of the two remaining street trees, with a contribution of \$400 as required by ordinance, is proposed.

c. *Water Quality/Storm Water Management/Erosion Control*

As it stands as a surface parking lot, the site is mostly impervious, and the majority of the site drains toward the city park at the rear of the site. The proposed development will reduce the impervious area on site by approximately 20%. As a result, the applicant is not required by ordinance to treat stormwater runoff. However, the applicant has proposed three rain gardens, two at the rear of the site and one at the back of sidewalk, to capture and infiltrate stormwater. The majority of runoff would be directed to the gardens at rear, with a small area of the driveway directed to the garden at the front of the building. The applicant has designed the rain gardens at the back of the site to overflow via grassed level spreaders to the adjacent city park land. The system generally maintains existing drainage patterns but will decrease the amount of stormwater leaving the site. David Senus, the city's consulting civil engineer, has reviewed this system and indicated his approval (*Attachment 4*).

As noted above, prior to construction the site will undergo environmental remediation for contaminants found in the soil. The city has developed a Voluntary Response Action Program (VRAP) work plan and a Soil Management Plan in order to address the treatment of these contaminants. Remediation work is scheduled to begin this spring.

3. Public Infrastructure and Community Safety Standards

a. *Consistency with Related Master Plans*

As noted above, the project is generally deemed consistent with related master plans.

b. *Public Safety and Fire Prevention*

Keith Gautreau, of the Fire Prevention Bureau, has noted that he is satisfied with the plans as proposed (*Attachment 5*). The site has generally been planned in accordance with Crime Prevention Through Environmental Design (CPTED) principles.

c. *Availability and Capacity of Public Utilities*

The plans depict underground electric from a pole directly in front of the proposed building on Munjoy Street. Electrical service to neighboring buildings will need to be moved in order to eliminate conflicts with the proposed building. This is noted on the plans.

A sewer connection is proposed to an existing line in Munjoy Street. The applicant has provided a wastewater capacity letter from David Margolis-Pineo of the Department of Public Works attesting to the

city’s capacity to transport and treat the anticipated wastewater flows from the project via this sewer line (*Attachment P*).

Gas and water are also proposed to and from Munjoy Street. The applicant has provided evidence of water capacity (*Attachment P*).

4. Site Design Standards

a. Massing, Ventilation, and Wind Impact

The bulk, location, and height of the proposed building are not anticipated to result in health or safety problems from a reduction in ventilation or changes to the wind climate. Likewise, these elements of the plan are not anticipated to result in substantial diminution in the value or utility of neighboring structures. HVAC mechanisms are denoted at the center of the roof, away from the public park at the rear of the site, as well as the street.

b. Shadows

Per the city’s *Technical Manual*, proposals for structures greater than 45 feet tall outside the B3, B5, B6, and B7 zones are required to include a preliminary shadow analysis to determine if adverse impacts to publicly accessible open spaces are likely. The proposed building stands less than 45 feet tall. However, in this case, since the site lies west of a city park, the city’s advance planning work by the Bluestone Planning Group considered the issue of shadow impacts. The study found that a three story structure including eight dwelling units and set back from the rear property line, with an additional



Figure 5: Preliminary shadow study by Bluestone Planning Group

stepback, would “have very minimal shadow impact on the playground on Wilson Street, although there may be some shadows cast on the open space at the center of the block” (*Attachment BG-5*). It should be noted that the applicant’s design differs from that identified in this preliminary shadow study. However, given that the building is generally similar in height, and that the height is well below 45 feet, no additional shadow study was required through site plan review.

c. Snow and Ice Loading

Accumulated ice and snow are not anticipated to load onto adjacent properties or public ways.

d. View Corridors

Munjoy Street is not a protected view corridor.

e. Historic Resources

The site is not within or adjacent to a designated historic resource.

f. Exterior Lighting

The applicant has provided a photometric plan and a specification for a building light. The lighting meets the city’s *Technical Manual* standards.

g. Noise and Vibration

On the final elevations, mechanical equipment is shown on the roof at the interior of the site.

h. Signage and Wayfinding
 No signage or wayfinding is proposed.

i. Zoning-Related Design Standards

The 2014 RFP for the development of this site included guidelines around “design compatibility.” These guidelines were developed by the Adams School Reuse Committee in 2007 and suggest that the development “connect to the neighborhood,” be “reflective of the surrounding traditional neighborhood,” and “enhance the pedestrian experience and the public realm,” among other objectives (*Attachment BG-5*). In addition, the 2014 Bluestone report identified a preferred design concept for 65 Munjoy Street. This concept showed two triple deckers with shared access. The Bluestone report was included as an attachment to the RFP for 65 Munjoy (*Attachment BG-5*). Ms. Davis, the Director of Housing and Community Development, writes,

The issue of design was discussed as part of the process of drafting the RFP as well as during the work [Bluestone Planning Group] did to create the massing and feasibility study. The study looked at alternative designs for the site, and while there was one preferred alternative in the study, that did not rule out the possibility that respondents to the RFP could put forth other design options. The RFP included a section devoted to "Design Compatibility" which called for a high quality, compatible design. Detailed design review was acknowledged as the responsibility of the Planning Board.

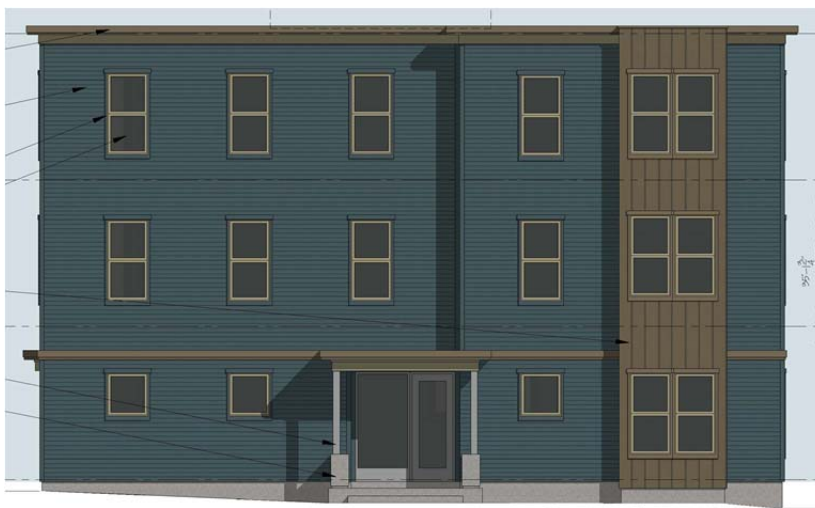
Adam’s Apple responded to the 65 Munjoy Street RFP with drawings which depicted one larger building, instead of two side-by-side triple deckers. In their proposal, they wrote, “[i]nitial plans to develop the site with two buildings...was [sic] abandoned due to the much higher costs of building redundant foundations, envelopes, circulation spaces, utility connections, metering systems, mechanical systems, and stair towers.” They also noted the high cost of environmental remediation (*Attachment BG-6*).



Figure 6: Proposed development at 65 Munjoy Street from the north

The preliminary architectural drawings submitted by the applicant for the purposes of site plan review remained relatively unchanged from the response to the RFP (*Plans 12 and 13*). In these drawings, the exterior of the building was designed to appear as two adjoining triple deckers, but the interior of the building was organized as an apartment building with three units on the upper two floors and two on the first. Based on a preliminary R-6 design review, staff suggested that the applicant move away from the triple decker exterior design concept in an effort to more accurately reflect the interior composition of the building and improve the quality of interior spaces. Staff suggested that the applicant add elements reflective of the neighborhood which might lend articulation, such as bay windows, and modify the proportions of the front porch. The applicant subsequently held their neighborhood meeting to gain feedback on the design. Revised plans were provided to the city in late January.

Staff reviewed the revised plans (*Figures 6 and 7*) against the R-6 design guidelines and found that the proposed design met all design criteria. Caitlin Cameron, the city’s urban designer, writes,



A-1 Scale and Form: The form is defined by rectilinear masses in keeping with typical multifamily buildings in the neighborhood, the roof line is flat with expressed cornice lines. The proposed mass is three stories and 55’ wide on the street – the length of the building at the street is similar to neighboring double-houses; triple-deckers are also in the context making the height of three stories an appropriate scale. On Munjoy Street, the building length is mitigated by breaking it into two masses and a bay projection.



A-2 Composition of Principal Facades: The building overall takes its cues from the surrounding forms, materials, and façade composition but combines them in a contemporary way. The composition of the Munjoy Street façade is well-balanced and is simple but with visual interest created through a change in planes, bay window, and trim and material details. As noted

Figures 7 and 8: Proposed development at 65 Munjoy Street front elevation and massing study

below, the overall composition of the facades meets the standard in terms of rhythm, size, orientation, and proportion of window and door openings.

A-3 Relationship to the Street: The building placement is consistent with the spacing of the residential fabric – residential buildings are typically raised with a small front yard setback. The ground floor is raised consistent with residential development patterns. The street wall is maintained and the garage is side-facing. Architectural features such as a covered stoop and bay window are employed, picking up on the vernacular language in the neighborhood.

XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed eight-unit condominium development at 65 Munjoy Street.

XIV. PROPOSED MOTIONS

A. WAIVERS

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 February 9, 2016 for application 2015-225 relevant to Portland's technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board **finds/does not find**, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that aisle width for right-angle parking be 24 feet per *Figure I-27*, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board **waives/does not waive** the *Technical Manual* standard (*Section 1.14*) to allow a 19 foot wide aisle in the parking area;
2. The Planning Board **finds/does not find**, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard (*Section 1.14*) which requires that a standard parking space be 9' x 18', that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board **waives/does not waive** the *Technical Manual* standard (*Section 1.14*) to allow two 9' x 15' spaces and one 8' x 18' space;
3. The Planning Board **finds/does not find** that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The Planning Board **waives/does not waive** the site plan standard (*Section 14-526 (b) (iii)*) to allow for a contribution of \$400 to Portland's tree fund to be substituted for the provision of additional trees on site.

B. SUBDIVISION

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 February 9, 2016 for application 2015-225 relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority; and
2. Prior to Certificate of Occupancy, the applicant shall finalize condominium documents for review and approval by Corporation Counsel.

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 February 9, 2016 for application 2015-225 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 obtain a license agreement for grading and landscaping to be performed on the adjacent city park property for review and approval by the Department of Public Works and Corporation Counsel;
2. The applicant shall provide a revised plan set either eliminating the brick driveway apron or obtain a change in sidewalk material policy from City Council and submit a maintenance agreement for review and approval by the Department of Public Works; and
3. The applicant shall submit a revised landscaping plan depicting plant types and locations as requested by the city’s arborist for review and approval by the city arborist.

XV. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

1. Department of Public Works review (memo from David Margolis-Pineo, 2/3/16)
2. Traffic engineer review (memo from Thomas Errico, 2/2/16)
3. City arborist review (memo from Jeff Tarling, 1/27/16)
4. Civil engineer review (memo from David Senus, 2/3/16)
5. Fire Prevention Bureau review (memo from Keith Gautreau, 1/7/16)
6. Design review (memo from Caitlin Cameron, 1/27/16)

APPLICANT’S SUBMITTALS

- A. Cover Letter (from John Mahoney, 12/11/15)
- B. Level III Site Plan Application
- C. Description of Project
- D. Accessibility Narrative
- E. Crime Prevention Through Environmental Design Narrative
- F. Compliance With Zoning
- G. Evidence of Right, Title, & Interest
- H. Evidence of Financial Capacity
- I. Parking Memo
- J. Stormwater Management Narrative
- K. Consistency with City Master Plans
- L. Solid Waste Management
- M. NFPA Code Summary
- N. Design Standards Assessment
- O. Geotechnical Report
- P. Utility Capacity Letters
- Q. Neighborhood Meeting Summary
- R. Comment Response Letter (from John Mahoney, 1/27/16)

PLANS

- Plan 1. Boundary Survey
- Plan 2. Site Plan
- Plan 3. Grading, Drainage, and Utilities Plan
- Plan 4. Details
- Plan 5. Details
- Plan 6. Subdivision Plat

- Plan 7. Landscape Plan
- Plan 8. Photometric Plan
- Plan 9. Construction Management Plan
- Plan 10. First Floor Plan
- Plan 11. Second and Third Floor Plan
- Plan 12. Preliminary Proposed Elevations (12/8/15)
- Plan 13. Preliminary Proposed Elevations (12/8/15)
- Plan 14. Final Proposed Elevations (1/27/16)
- Plan 15. Final Proposed Elevations (1/27/16)
- Plan 16. Perspective View
- Plan 17. Perspective View
- Plan 18. Perspective View
- Plan 19. Context Model

PUBLIC COMMENT

- PC-1. Thayer email (1/15/16)
- PC-2. Thayer editorial (1/20/16)
- PC-3. Thayer email (1/21/16)
- PC-4. Thayer email (1/21/16)
- PC-5. Thayer email (2/2/16)
- PC-6. Thayer email (2/3/16)
- PC-7. Marcisso email (2/3/16)
- PC-8. Lindholm email (2/4/16)
- PC-9. Lloyd email (2/4/16)
- PC-10. Thayer email (2/4/16)

BACKGROUND DOCUMENTS

- BG-1. Adams School Reuse Committee Report (7/27/2007)
- BG-2. Adams School Reuse RFP (2008)
- BG-3. Adams School Development Proposal, Avesta Housing (7/22/08)
- BG-4. Adams School Development Subdivision Plat (4/30/12)
- BG-5. 65 Munjoy Street RFP (including Credere Associates Work Plans and Bluestone Planning Group Reports) (11/19/14)
- BG-6. 65 Munjoy Development Proposal, Adam's Apple (1/13/15)
- BG-7. Division of Housing and Community Development memo (memo from Mary Davis, 2/1/16)

CHAPTER 32 STORM WATER

- Art. I. Prohibited Discharges, §§ 32-1--32-15**
Art. II. Prohibited Discharges, §§ 32-16--32-35
Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP"). "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

Exempt person or discharge. "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

Municipality. "Municipality" means the city of Portland.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

Person. "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified post-construction stormwater inspector. "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

Small municipal separate storm sewer system, or small MS4. "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

Storm drainage system. "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm water. "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

Sec. 32-5.	Reserved.
Sec. 32-6.	Reserved.
Sec. 32-7.	Reserved.
Sec. 32-8.	Reserved.
Sec. 32-9.	Reserved.
Sec. 32-10.	Reserved.
Sec. 32-11.	Reserved.
Sec. 32-12.	Reserved.
Sec. 32-13.	Reserved.
Sec. 32-14.	Reserved.
Sec. 32-15.	Reserved.

ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the city's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
 - (2) The cessation of discharges, practices, or operations in violation of this article.
 - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-37. Post-construction stormwater management plan approval.

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

Sec. 32-38. Post-construction stormwater management plan compliance.

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the year adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file an annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
 - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
 - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
 - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)

**STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT**

For SUBDIVISIONS

IN CONSIDERATION OF the site plan and subdivision approval granted by the Planning Board of the City of Portland to the proposed _____ (name of developments and project number) shown on the Subdivision Plat (Exhibit A) recorded in Cumberland Registry of Deeds in Plan Book ____, Page ____ submitted by _____, and associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit B) prepared by _____ (engineer/agent) of _____(address) dated and pursuant to a condition thereof, _____ (name of owner), a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of _____, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

That it, its successors and assigns, will, at its own cost and expense and at all times in perpetuity, maintain in good repair and in proper working order the _____ (*details of the system such as underdrained subsurface sand filter BMP system, rain gardens, storm drain pipes, underdrain pipes, catch basins*), (hereinafter collectively referred to as the “stormwater system”), as shown on the _____ Plan in Exhibit B and in strict compliance with the approved Stormwater Maintenance and Inspection Agreement (*insert correct name of document*) prepared for the Owner by _____ (copy attached in Exhibit C) and Chapter 32 of the Portland City Code.

Owner of the subject premises further agrees, at its own cost, to keep a Stormwater Maintenance Log. Such log shall be made available for inspection by the City of Portland upon reasonable notice and request.

Said agreement is for the benefit of the said City of Portland and all persons in lawful possession of said premises and abutters thereto; further, that the said City of Portland and said persons in lawful possession may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further, that after giving the Owner written notice and a stated time to perform, the said City of Portland, by its authorized agents or representatives, may, but is not obligated to, enter upon said premises to maintain, repair, or replace said stormwater system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the Owner upon written demand. Any funds owed to the City under this paragraph shall be secured by a lien on the property.

This Agreement shall also not be construed to allow any change or deviation from the requirements of the subdivision and/or site plan most recently and formally approved by the Planning Board of the City of Portland.

This agreement shall bind the undersigned only so long as it retains any interest in said premises, and shall run with the land and be binding upon the Owner's successors and assigns as their interests may from time to time appear.

The Owner agrees to record a copy of this Agreement in the Cumberland County Registry of Deeds within thirty (30) days of final execution of this Agreement. The Owner further agrees to provide a copy of this Agreement to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions and the successor or assign will obtain and forward to the City's Department of Public Services and Department of Planning and Urban Development a similar Addendum from any other successor or assign.

For the purpose of this agreement and release "Owner" is any person or entity who is a successor or assign and has a legal interest in part, or all, of the real estate and any building. The real estate shown by chart, block and lot number in the records on file in the City Assessor's office shall constitute "the property" that may be entered by the City and lienied if the City is not paid all of its costs and charges following the mailing of a written demand for payment to the owner pursuant to the process and with the same force and effect as that established by 36 M.R.S.A. §§ 942 and 943 for real estate tax liens.

Any written notices or demands required by the agreement shall be complete on the date the notice is attached to one or more doors providing entry to any buildings and mailed by certified mail, return receipt requested or ordinary mail or both to the owner of record as shown on the tax roles on file in the City Assessor's Office.

If the property has more than one owner on the tax rolls, service shall be complete by mailing it to only the first listed owner. The failure to receive any written notice required by this agreement shall not prevent the City from entering the property and performing maintenance or repairs on the stormwater system, or any component thereof, or lienied it or create a cause of action against the City.

Dated at Portland, Maine this ____ day of _____, 2014.

(name of company)

(representative of owner, name and title)

STATE OF MAINE
CUMBERLAND, ss.

Date: _____

Personally appeared the above-named _____(name and title), and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

Notary Public/Attorney at Law
Print name: _____

Exhibit A: Subdivision Plat as recorded

Exhibit B: Approved Grading and Drainage Plan (name of the plan showing the Stormwater System in detail)

Exhibit C: Approved Stormwater Maintenance and Inspection Agreement



Jeff Levine, AICP

Director, Planning & Urban Development Department

Performance Guarantee and Infrastructure Financial Contribution Packet

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

SUBDIVISION/SITE DEVELOPMENT
Cost Estimate of Improvements to be covered by Performance Guarantee

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

Type of Development: Subdivision _____ Site Plan (Level I, II or III) _____

TO BE FILLED OUT BY THE APPLICANT:

<u>Item</u>	<u>PUBLIC</u>			<u>PRIVATE</u>		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL						
Silt Fence	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

	PUBLIC	PRIVATE	TOTAL
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
LETTER OF CREDIT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

**SITE PLAN/SUBDIVISION
PERFORMANCE GUARANTEE
ESCROW ACCOUNT
[ACCOUNT NUMBER]**

[Date]

Jeff Levine
Director of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: **[Insert: Name of Developer]**
[Insert: Address of Project, Portland, Maine]
[Insert: Application ID #]

[Insert: Name of Bank] hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

[Bank] will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at _____, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements**].

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: [**Applicant**]

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

Application of _____ [Applicant] for _____ [Insert street/Project Name] at _____ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$ _____ [amount of performance guarantee] on behalf of _____ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing _____ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on _____ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the _____ [insert: subdivision and/ or site improvements (as applicable)] approval, dated _____ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements]**.

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
***Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. ***Signature required if over \$50,000.00.

Infrastructure Financial Contribution Form
Planning and Urban Development Department - Planning Division

Amount \$

City Account Number: 710-0000-236-98-00

Project Code: _____

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

If funds are not expended or encumbered for the intended purpose by _____, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

Interest Disbursement: Interest on funds to be paid to contributor only if project is not commenced.

Terms of Draw Down of Funds: The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form:

Planner:

-
- Attach the approval letter, condition of approval or other documentation of the required contribution.
 - One copy sent to the Applicant.

Electronic Distribution to:

Peggy Axelsen, Finance Department
Catherine Baier, Public Services Department
Barbara Barhydt, Planning Division
Jeremiah Bartlett, Public Services Department
Michael Bobinsky, Public Services Department
Diane Butts, Finance Department
Philip DiPierro, Planning Division
Katherine Earley, Public Services Department
Michael Farmer, Public Services Department
Alex Jaegerman, Planning Division
David Margolis Pineo, Public Services Department
Matt Rancourt, Public Services Department
Jeff Tarling, Public Services Department
Planner for Project