

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

Elizabeth Boepple, Chair  
Sean Dundon, Vice Chair  
David Eaton  
Brandon Mazer  
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Lisa Whited

September 27, 2017

Bernie Saulnier  
BD Sheridan, LLC  
1266 Furnace Brook Parkway  
Quincy, MA 02169

Will Savage, P.E.  
Acorn Engineering, INC  
158 Danforth Street  
Portland, ME 04102

Project Name:	Nineteen-Unit Condominium	Project ID:	2017-073, 2017-115
Address:	155 Sheridan	CBL:	012 Q012
Applicant:	Bernie Saulnier		
Planner:	Matthew Grooms		

Dear Mr. Saulnier and Mr. Savage

On September 12, 2017, the Planning Board approved the Level III Site Plan/Subdivision application and the Conditional Use application for inclusionary zoning for the nineteen-unit residential condominium project located at 155 Sheridan Street in the R-6 Residential District and Fort Sumner Park Overlay Zone. This project includes demolition of an existing single-family structure and extensive regrading of the site so as to accommodate the proposed four-story building. Other site improvements include the construction of a pile and lag retaining wall around the exterior of the proposed building with site landscaping along the property's frontage and along the rear portion of the retaining wall. The Planning Board reviewed the proposal for conformance with the standards of the Site Plan Ordinance, Subdivision Ordinance, Stormwater Permit and Divisions 7 (R-6 and R-6A Residential Zones inclusive of the Fort Sumner Park Overlay Zone), and 20 (Off-Street Parking) of the Land Use Code. The Board also reviewed the Conditional Use application to Ensure Workforce Housing under Division 30 (Affordable Housing) of the Land Use Code. The Planning Board voted 6-0 (Chair Boepple absent) to approve the application with the following waiver(s) and condition(s) as presented below:

### WAIVERS

1. The Planning Board voted unanimously 6-0 (Boepple absent) to waive the Section 14-526(c)(3)(b) standard of the Site Plan Ordinance requiring electrical service to be placed underground unless otherwise specified for industrial uses, or determined to be unfeasible due to extreme cost subject to the following conditions:
  - a. The proposed overhead utilities shall conform to the standards of the Fort Sumner Park Overlay Zone; and

- b. The final proposed overhead configuration shall be reviewed and approved by the Fire Department, Department of Public Works and Planning Authority.
2. The Planning Board voted unanimously 6-0 (Boepple absent) to waive the Section 14-499(h) standard of the Subdivision Ordinance requiring that all utility lines be placed underground unless otherwise approved by the Planning Board subject to the following conditions:
  - a. The proposed overhead utilities shall conform to the standards of the Fort Sumner Park Overlay Zone; and
  - b. The final proposed overhead configuration shall be reviewed and approved by the Fire Department, Department of Public Works and Planning Authority.

#### **SUBDIVISION REVIEW**

The Planning Board voted 6-0 (Boepple absent) that the plan is in conformance with the subdivision standards of the Land Use Code subject to the following condition(s) of approval:

1. Requiring that draft Condominium Association documents addressing Planning Board feedback regarding maintenance of the green roof and be finalized to the satisfaction of Corporation Counsel; and
2. A final subdivision plan and recording plat shall be reviewed and approved by the Department of Public Works and the Planning Authority.

#### **SITE PLAN REVIEW**

The Planning Board voted 6-0 (Boepple absent) that the plan is in conformance with the site plan standards of the Land Use Code subject to the following condition(s) of approval:

1. The applicant shall provide a revised construction management plan that incorporates a sidewalk detour to the west side of Sheridan Street. Two temporary crosswalks will be required which shall both be ADA accessible. The southerly temporary crosswalk shall be located at the location of the Fort Sumner path as requested by the city's consulting traffic engineer;
2. That the applicant shall provide a stormwater maintenance agreement for the stormwater drainage system, shall be submitted, signed, and recorded prior to the issuance of a building permit with a copy to the Department of Public Works;
3. The applicant shall provide an updated landscaping plan which provides additional buffering of the project site from Fort Sumner Park as detailed in the comments raised in the City Arborist's email dated September 1, 2017 or otherwise approved by the City Arborist;
4. A contribution of \$4,000 in lieu of ten street trees to the Tree Fund, which staff recommends be utilized for landscaping improvements to the lower slope of Fort Sumner Park;
5. The applicant shall work with the Department of Public Works to revise their proposed stormdrain connection per comment 2 of Woodard and Curran's memo dated August 29, 2017; and
6. After submitting plans for review and approval by the Planning Authority, the Applicant shall construct a sidewalk meeting city standards in front of Fort Sumner Park creating a continuous

sidewalk along the east side of Sheridan Street, as well as install a crosswalk connecting the Marion Street pedestrian pathway with this new sidewalk. The applicant is entitled to recoup up to \$9,400 in project costs for the sidewalk construction from contributions related to the conditions of approval of the project at 88 Walnut Street (2017-099), specifically the grant of waiver of Section 14-498 8(a) included in that project's approval.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application (2017-063) which is attached.

#### **CONDITIONAL USE FOR ENSURING WORKFORCE HOUSING**

The Planning Board voted 6-0 (Boepple absent) that the plan is in conformance with the conditional use standards of the Land Use Code, subject to the following condition(s) of approval:

1. That the Applicant shall provide one unit of on-site workforce housing restricted to households earning up to 120% of the Area Median Income (AMI) per the submitted application prior; and
2. The applicant shall enter into an Affordable Housing Agreement (AHA) with the City. This agreement shall outline the details of the affordability restrictions placed on Workforce Units and will be filed as covenant to the property's deed with the Cumberland County Registry of Deeds before a Certificate of Occupancy shall be issued.

#### **STANDARD CONDITIONS OF APPROVAL**

Please Note: The following standard conditions of approval and requirements apply to all approved site plans:

1. **Subdivision Recording Plat** A revised recording plat, listing all conditions of subdivision approval, must be submitted to the Planning and Urban Development Department for review. Once approved, the plat shall be signed by the Planning Board 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. 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 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 Permitting and Inspections Department.
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. **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, shall be submitted for review by Corporation Counsel. Once approved, the document shall be signed and recorded at the Cumberland County Registry of Deeds prior to the issuance of a building permit. Please submit final copies to both the Department of Planning and Urban Development and the Department of Public Works.

7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, 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 and Urban Development Department and Public Works Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
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 Works 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 Works Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
11. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning and Urban Development Department, 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 Public Works prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to the date required for final site inspection. The Development Review Coordinator can be reached at the Planning and Urban Site Plan and Conditional Use Approval letter

Development Department 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 Matthew Grooms at (207) 874-8725

Sincerely,



Elizabeth Boepple, Chair  
Portland Planning Board

**Attachments:**

1. Staff Review Memo (6.30/17)
2. Woodard and Curran Memo (8.29.17)
3. T.Y. Lin Email (8.30.17)
4. City Arborist Review Comments (9.1.17)
5. DPW Review Memo (9.1.17)
6. Housing Program Manager Memo (9.5.17)
7. Final Design Review Memo (9.6.17)
8. Planning Board Report
9. Portland City Code: Chapter 32
10. Sample Stormwater Maintenance Agreement
11. Performance Guarantee Packet

**Electronic Distribution:**

cc: Jeff Levine, AICP, Director of Planning and Urban Development  
Stuart G. O'Brien, City Planning Director, Planning and Urban Development  
Barbara Barhydt, Development Review Services Manager, Planning and Urban Development  
Matthew Grooms, Planner, Planning and Urban Development  
Philip DiPierro, DRC, Planning and Urban Development  
Mike Russell, Director of Permitting and Inspections  
Ann Machado, Zoning Administrator, Permitting and Inspections  
Jonathan Rioux, Deputy Director, Permitting and Inspections  
Jeanie Bourke, Plan Reviewer/CEO, Permitting and Inspections  
Chris Branch, Director of Public Works  
Katherine Earley, Engineering Manager, Public Works  
Keith Gray, Senior Engineer, Public Works  
Doug Roncarati, Stormwater Coordinator, Public Works  
Jane Ward, Engineering, Public Works  
Rhonda Zazzara, Construction Engineering Coordinator, Public Works  
Jeff Tarling, City Arborist, Public Works  
Jeremiah Bartlett, Transportation Systems Engineer, Public Works  
William Scott, Chief Surveyor, Public Works  
Keith Gautreau, Fire  
Danielle West-Chuhta, Corporation Counsel  
Victoria Volent, Housing Program Manager, Housing and Community Development

Thomas Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard and Curran  
Christopher Huff, Assessor

# Planning and Urban Development Department Planning Division



June 30, 2017

Bernie Saulnier  
BD Sheridan, LLC  
1266 Furnace Brook Parkway  
Quincy, MA 02169

Will Savage, P.E.  
Acorn Engineering, INC  
158 Danforth Street  
Portland, ME 04102

RE: Staff Review Comments for 155 Sheridan Street (2017-073) – Planning Board Review

Project Name: 155 Sheridan Street Project ID: (2017-073)  
Project Address: 155 Sheridan Street CBL: 012-Q-012  
Applicant: Will Savage  
Planner: Matthew Grooms

Dear Mr. Saulnier and Mr. Savage,

Thank you for submitting a preliminary Level III Site Plan, Subdivision, Stormwater Quality and Conditional Use application for Ensuring Workforce Housing for a four-story, 19-unit residential development at 155 Sheridan Street in the R-6 District, subject further to the Fort Sumner Park Overlay Zone. This property is being reviewed as a preliminary plan subject to the following applicable Land Use Code provisions:

- Subdivision Ordinance, Article IV
- Site Plan Ordinance, Article V
- Division 7, R-6 and R-6A Residential Zones
- Division 20, Off-Street Parking Standards
- Neighborhood Meeting Regulations, Section 14-32

## Final Plan for Planning Board Review: Staff Review Comments

### I. Stormwater and Civil Engineering Review

#### Documents Reviewed by Woodard & Curran

- Level III Site Plan Application and attachments, dated May 11, 2017, prepared by Acorn Engineering, INC, on behalf of BD Sheridan LLC.
- Engineering Plans, Sheets C-01, C-02, C-03, C-10, C-20, C-30, C-40, C-41, C-42, C-43, C-44, C-45, C-46, & L-1, , dated March 28, 2017 prepared by Acorn Engineering, INC, on behalf of BD Sheridan LLC.

- Architectural Plans, 13 sheets dated March 9, 2017, prepared by Ryan Senator Architecture, on behalf of BD Sheridan LLC.
- Existing Conditions Survey, dated March 4, 2016, prepared by Titcomb Associates, on behalf of BD Sheridan, LLC

### Comments

1. Per Section 12 of the City's Technical Manual, the Applicant is required to submit a photometric plan demonstrating minimal light trespass from the site.
2. In accordance with Section 5 of the City of Portland Technical Manual, a Level III development project is required to submit a stormwater management plan pursuant to the regulations of MaineDEP Chapter 500 Stormwater Management Rules, including conformance with the Basic, General, and Flooding Standards. We offer the following comments:
  - a. Basic Standard: Plans, notes, and details have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in accordance with Appendix A, B, & C of MaineDEP Chapter 500.
  - b. General Standard: The project will result in an increase in impervious area of approximately 9,783 square feet. As such, the project is required to include stormwater management features for stormwater quality control. We have the following comments on the proposed treatment system.
    - i. The Applicant has indicated in the Stormwater Management Report that the subsurface sand filter was sized only to treat runoff generated from the roof of the proposed building and that landscaped areas will not be directed into the system. Table 2: Developed Area Treatment and Table 4: Water Quality Volume Table, both depict landscaped areas being treated by the subsurface sand filter. Please clarify if the proposed subsurface sand filter will treat the proposed landscaped areas. Additionally, if landscaped area is to be directed towards the subsurface sand filter, the filter surface area provided in Table 3 should be revised accordingly.
  - c. Flooding Standard: The project will result in an increase in impervious area of approximately 9,783 square feet. As such, the project is required to include any specific stormwater management features to control the rate or quantity of stormwater runoff from the site. We have the following comments on the associated stormwater model.
    - i. Table 4 in the Stormwater Management Report specifies a provided storage volume for the subsurface sand filter of 1,086 cubic feet, however, the modeled storage for pond 1P is approximately 2,222 cubic feet. Please clarify the intended subsurface filter size.
    - ii. The Time of Concentration flow path for Pre-Development does not appear to represent the most hydrologically remote point.
    - iii. It appears that a portion of subcatchment 3 shown on the Post-Development watershed, is directed towards the subsurface sand filters and a portion flows directly onto Sheridan Street. Please clarify how flow from the rear of the lot is directed way from the proposed subsurface sand filters.
3. The provided bituminous pavement detail references both 9.5 and 12.5 mm HMA as the surface course. City of Portland Technical Standards require the use of 12.5 mm HMA.

## **II. Traffic and Construction Management Review**



1. The applicant has prepared a traffic impact study and I find the methods and conclusions to be reasonable. The project is not be expected to create any mobility or safety deficiencies. Trip generation levels do not require a Traffic Movement Permit. The Washington Avenue/Walnut Street/Fox Street intersection is a High Crash Location, but the proposed project is not expected to add a significant amount of traffic to the intersection.
2. I have reviewed the parking layout and I find it to be acceptable.
3. The proposed driveway opening at the garage is 18-feet wide. Technically this width does not require a waiver from City standards given that the width increases at the property line (the minimum width permitted by the City is 20 feet). I find the driveway configuration to be acceptable. I would note that the driveway apron shall provide for a maximum 2% cross slope along the sidewalk or pedestrian route.
4. I have reviewed the construction management plan and greater detail is required as it relates to temporary sidewalk provisions. This should include resultant width of roadway and ADA compliant temporary ramps. Additionally, the applicant should specifically note if on-street parking is to be eliminated (with detailed limits) during construction and how contractor parking be managed.

## **5. Public Infrastructure and Community Safety Standards**

### **A. Fire Department Comments (Keith Gautreau)**

1. Premises Identification
  - a. The main entrance of the building must be the address for the property. This should be consistent with 911, tax assessor, Inspections Division and future mailing address.
  - b. Street addresses shall be marked on the structure and shall be as approved by the City E-911 Addressing Officer.
  - c. If the building entry faces a different street, both the street name and number should be large enough to read from the street.
  - d. Address numbers must be a minimum of 6 inches high.
  - e. The number should be in Arabic numerals rather than spelled out (for example, “130” instead of “One Hundred and Thirty”).
  - f. Color: Addresses should be in a color that contrasts with the background.
  - g. Whenever possible, should be illuminated.
  - h. Provide additional address signs at entrances to the property when the building address is not legible from the public street.
  - i. Buildings set back in groups that share common entrances can make quickly locating a specific building and the shortest route difficult. On such sites, additional signs with directional arrows and/or diagrams of the buildings and access layout should be posted.
2. There appears to be hydrants located at Walnut and Sheridan and at 135 Sheridan Street. According to GIS they are on dead end mains. Please confirm with PWD that this is the case and that they will provide a capacity to serve letter for domestic and fire protection for this proposed project.
3. Essentially there is only access to one side of the building for Emergency Vehicles on Sheridan Street. Because of this Fire Dept. would like to see underground power rather than the proposed overhead lines. This will make access to the roof and roof top decks difficult or impossible.

### **I. Site Design Standards**

### A. Site Plan, Subdivision Review Comments (Matthew Grooms)

6. Will the elevator be ADA accessible from the proposed southerly most pedestrian entrance? If not, would the applicant consider making this a fully ADA accessible pedestrian entrance.
7. Indicate on the proposed site plan where the required bicycle parking shall be located.
8. Façade mounted mechanical equipment is clearly visible from the public right-of-way. This equipment shall be screened in conformance with the City's site plan ordinance, Section 14-526(b)(2)(b).
9. A copy of the finalized Geotechnical report will be required prior to the issuance of any building permit.
10. In line with the Fort Sumner Park Overlay Zone, this item is required to go before the Parks Commission for an advisory review and Planning Board recommendation.
11. Site lighting details and associated photometric plan shall be provided with the final submittal package.
12. A subdivision plan and recording plat shall be required as part of the final submittal package.
13. It is recommended that plantings along Sheridan Street be located within vertical granite planters, so as to protect vegetation from road salts and define private space.
14. Given the narrow sidewalk width along Sheridan Street, street tree placement is still under consideration. Further direction regarding street tree placement shall be provided.

### B. Design Review (Caitlin Cameron)

The project at 155 Sheridan Street was reviewed according to the *Multiple-family Standards of Review* in the *City of Portland Design Manual* by Caitlin Cameron, Urban Designer, Matt Grooms, Planner, and Christine Grimando, Senior Planner.

#### Design Review Comments:

##### *(i) Multiple-family:*

*Standard (1) Design Compatibility* – Sheridan Street has a mix of building scales and types. Immediately adjacent to this proposal are several multi-family residential projects of similar scale and character. The project provides visual interest and scale through the bays, materials, and articulation elements such as balconies, cornice overhangs, and brackets. The façade material selection is appropriate to the building scale, type, and context. Staff requests that the **material placement be revised slightly – in order to establish a building rhythm and rationale, and emphasize the third floor delineation/scale, the shingles should consistently be placed to end at the third story with panel on the fourth across the street facade (see attached). In addition, the ground floor windows at the structured parking should be more consistent and without spandrel glass – revise the two large windows at the ground floor to be transparent and of the same height as the smaller square windows, the width could remain as is (see attached).**

*Standard (2) Relationship of building to the street* – The project is setback five feet from the sidewalk according to zoning dimensional requirements and also consistent with the building placement of nearby buildings. **However, the landscaping between the sidewalk and the building face should be better defined with a raised edge such as a curb or a seating wall –this better establishes the line between public and private as well as holding the sidewalk edge. Plant viability will also be improved.** The main entry is directly oriented to the street and is emphasized with a canopy, lighting, and building address. **The mechanicals are very visible from the public right-of-way – more integrated design or screening is needed.**

*Standard (3) Open Space* – Project includes balcony and roof spaces for tenants.

*Standard (4) Light and Air* – Project includes ample windows for light and air.

*Standard (5) Surface Parking* – Not applicable

*Standard (6) Lodging Conversion* – Not applicable

**Additional Submittals Required:**

Please upload the digital plans and documents to address staff comments. Upon receipt of the revised material, the City of Portland will review the additional plans and information for conformance with applicable ordinances. Please be aware that an application expires within 120 days of the date upon which this written request for additional information was made and only one set of revised plans may be submitted for review. This item is scheduled to go before the Planning Board as a workshop item on July 11, 2017. Following the workshop process, this item will be scheduled for a public hearing at the Planning Board's next available meeting and the staff will provide the Planning Board with a recommendation to approve, approve with conditions, or deny the final site plan.

If you have any questions, feel free to contact me at (207) 874-8725 or by email at [mgrooms@portlandmaine.gov](mailto:mgrooms@portlandmaine.gov).

Sincerely,

Matthew Grooms  
Planner

**Electronic Distribution:**

Tuck O'Brien, Planning Division Director  
Barbara Barhydt, Development Review Services  
Manager  
Victoria Morales, Associate Corporation  
Counsel

Anne Machado, Zoning Administrator  
Captain Keith Gautreau, Fire  
Jeff Tarling, City Arborist  
Tom Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard & Curran

## MEMORANDUM



**TO:** Matt Grooms, Planner  
**FROM:** Lauren Swett, PE & Craig Sweet, EIT  
**DATE:** August 29, 2017  
**RE:** 155 Sheridan Street, Level III Site Plan Application Response to Comments

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Woodard & Curran has reviewed the Level III Site Plan Application response to comments the proposed development located at 155 Sheridan Street in Portland, Maine. The project involves the construction of four-story apartment building with a parking garage on the first floor and 19 apartment units on the second, third and fourth floors.

### **Documents Reviewed by Woodard & Curran**

- Level III Site Plan Application and attachments and Response to Comments, dated August 4, 2017, prepared by Acorn Engineering, INC, on behalf of BD Sheridan LLC.
- Engineering Plans, Sheets C-01, C-02, C-03, C-10, C-20, C-30, C-40, C-41, C-42, C-43, C-44, C-45, C-46, & L-1, , REV. dated August 4 2017 prepared by Acorn Engineering, INC, on behalf of BD Sheridan LLC.

### **Comments**

- 1) In accordance with Section 5 of the City of Portland Technical Manual, a Level III development project is required to submit a stormwater management plan pursuant to the regulations of MaineDEP Chapter 500 Stormwater Management Rules, including conformance with the Basic, General, and Flooding Standards. We offer the following comments:
  - a) Basic Standard: Plans, notes, and details have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in accordance with Appendix A, B, & C of MaineDEP Chapter 500.
  - b) General Standard: The project will result in an increase in impervious area of approximately 9,783 square feet. The project includes an underdrained subsurface sand filter system that will provide adequate treatment of the site.
  - c) Flooding Standard: The project will result in an increase in impervious area of approximately 9,783 square feet. The project will provide adequate flow control from the site, reducing the peak flow in all modeled storm events.
- 2) The Applicant is proposing a direct connection to the stormdrain in Sheridan Street. Based on the referenced note, it appears that the proposed stormdrain pipe will be 8" connecting to an existing 12" pipe. The Applicant should confirm with Public Works that an Inserta Tee connection will be allowed for these pipe sizes, and that a new manhole will not be required.
- 3) All other comments have been addressed.



Matthew Grooms &lt;mgrooms@portlandmaine.gov&gt;

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## 155 Sheridan Street - Final Traffic Comments

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Tom Errico &lt;thomas.errico@tylin.com&gt;

Wed, Aug 30, 2017 at 1:39 PM

To: Matthew Grooms &lt;mgrooms@portlandmaine.gov&gt;

Cc: Keith Gray &lt;kgray@portlandmaine.gov&gt;, Katherine Earley &lt;kas@portlandmaine.gov&gt;, Jeremiah Bartlett &lt;JBartlett@portlandmaine.gov&gt;, "Jeff Tarling (JST@portlandmaine.gov)" &lt;JST@portlandmaine.gov&gt;, "Swett, Lauren" &lt;lswett@woodardcurran.com&gt;

Hi Matt – I have reviewed the updated application materials and offer the following final traffic comments as a status update of my June 30<sup>th</sup> comments.

- The applicant has prepared a traffic impact study and I find the methods and conclusions to be reasonable. The project is not be expected to create any mobility or safety deficiencies. Trip generation levels do not require a Traffic Movement Permit. The Washington Avenue/Walnut Street/Fox Street intersection is a High Crash Location, but the proposed project is not expected to add a significant amount of traffic to the intersection.

**Status: I have no further comment.**

- I have reviewed the parking layout and I find it to be acceptable.

**Status: I have no further comment.**

- The proposed driveway opening at the garage is 18-feet wide. Technically this width does not require a waiver from City standards given that the width increases at the property line (the minimum width permitted by the City is 20 feet). I find the driveway configuration to be acceptable. I would note that the driveway apron shall provide for a maximum 2% cross slope along the sidewalk or pedestrian route.

**Status: The plans have been revised and I have no further comment.**

- I have reviewed the construction management plan and greater detail is required as it relates to temporary sidewalk provisions. This should include resultant width of roadway and ADA compliant temporary ramps. Additionally, the applicant should specifically note if on-street parking is to be eliminated (with detailed limits) during construction and how contactor parking be managed.

**Status: In an attempt to maintain on-street parking and avoid the use of barriers in the street, the City requests that the applicant provide a draft construction management plan (for review and approval) that incorporates a sidewalk detour to the west side of Sheridan Street. Two temporary crosswalks will be required and shall be ADA accessible. The southerly temporary crosswalk shall be located at the location of the Fort Sumner path.**

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director

**TYLIN** INTERNATIONAL

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Falmouth, ME 04105

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"One Vision, One Company"



Matthew Grooms <[mgrooms@portlandmaine.gov](mailto:mgrooms@portlandmaine.gov)>

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## Review Comments Reminder

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Jeff Tarling <[jst@portlandmaine.gov](mailto:jst@portlandmaine.gov)>

Fri, Sep 1, 2017 at 2:08 PM

To: Matthew Grooms <[mgrooms@portlandmaine.gov](mailto:mgrooms@portlandmaine.gov)>

Hi Matt -

I have reviewed the 155 Sheridan Street project and offer the following review comments:

a) Street and shade tree planting - The proposed building setback and narrow street right of way width is a challenge for street tree installation and have the required ADA sidewalk width. Sidewalk snow clearing equipment access with trees in tree pits or planters on a narrow walk also adds to this challenge. Looking at the rest of Sheridan Street we see very few if any street trees due to the same reasons. Thus we would not see the typical planting space as we would like to see for a development of this scale. Landscape planting behind the sidewalk is about the only green offering for this project, steep slopes nearby are also a challenge.

Contribution to the Tree Fund to be planted nearby looks like the best option.

b) Other landscape features - the project does not appear to have any landscape treatment on the upper sections near the North Street, Fort Sumner Park area. Additional landscape treatment would be recommended for the North Street, Fort Sumner park view. This could be in the form of low shrub plantings that soften the building view while not obstructing the vista, view shed.

Tree & Landscape summary - The 155 Sheridan Street project has many site related challenges given the lay of the land and the desired building density. Trees and landscape, greenery do not appear to be primary in the overall design intent, unfortunately. Unlike the condo project next door that contributed to the lower Fort Sumner Park lower Sheridan Street trail access and public landscape we do not see similar attempts here, although it could benefit the overall streetscape.

Requesting a small contingent landscape budget to address post development needs once the project is complete. This is an unusual request but perhaps the best approach given the uncertainty of how the project will appear.

Thanks

Jeff

Jeff Tarling  
City Arborist - City of Portland Maine  
Parks, Recreation & Facilities Department  
Forestry & Horticulture  
212 Canco Road  
Portland, ME. 04103  
(207) 808-5446  
[jst@portlandmaine.gov](mailto:jst@portlandmaine.gov)

On Tue, Aug 29, 2017 at 7:51 AM, Matthew Grooms <[mgrooms@portlandmaine.gov](mailto:mgrooms@portlandmaine.gov)> wrote:

[Quoted text hidden]



Matthew Grooms <[mgrooms@portlandmaine.gov](mailto:mgrooms@portlandmaine.gov)>

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## 155 Sheridan Street

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**Bradley Roland** <[brad@portlandmaine.gov](mailto:brad@portlandmaine.gov)>

Fri, Sep 1, 2017 at 2:33 PM

To: Lauren Swett <[lswett@woodardcurran.com](mailto:lswett@woodardcurran.com)>

Cc: Matthew Grooms <[mgrooms@portlandmaine.gov](mailto:mgrooms@portlandmaine.gov)>, Keith Gray <[kgray@portlandmaine.gov](mailto:kgray@portlandmaine.gov)>

Afternoon All,

An 8" insert-a-tee on a 12" pipe in my opinion will not work.

Historically we have not allowed insert-a-tee's on any pipe less than 15".

And an insert-a-tee that is more than half the diameter of the receiving pipe is just wrong.

By technical manual (2.6.7) building sewers and drains over 8" require a manhole.

Also by technical manual (2.3.4) service laterals shall not connect to either stormwater or sewer manholes.

Hmm - now keep in mind I have only been doing this development review for a short time but seems to be a conflict to me.

We should really fix that.

That being said (and looking at the street) the storm drain manholes are 80 feet apart.

I do not want another one.

So I would suggest to the applicant that they cut out a portion of the existing 12" storm drain and install a 12"x8" Wye with two Fernco couplings. They can then tie their storm drain into the 8" side of the Wye.

Enjoy the weekend.

Brad

--

Bradley A. Roland, P.E.  
Senior Project Engineer  
Portland Public Works  
55 Portland Street  
Portland, ME 04101  
Tel: [207-874-8840](tel:207-874-8840)  
Fax: [207-874-8852](tel:207-874-8852)  
[brad@portlandmaine.gov](mailto:brad@portlandmaine.gov)

[Quoted text hidden]





To: Matthew Grooms Planner, Planning & Urban Development Department

From: Victoria Volent, Housing Program Manager, Housing & Community Development Division

Date: September 5, 2017

Subject: 155 Sheridan Street – Inclusionary Zoning Conditional Use

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All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487 of the Zoning Ordinance.

Division 30, Section 14-487, Ensuring Workforce Housing, requires at least ten percent (10%) of the dwelling units in the development shall meet the definition of Workforce Housing units for sale or for rent. The ordinance under Section 14-487 e 3 also requires the number of bedrooms in the units shall be 10% of the total number of bedrooms in the development.

The development located at 155 Sheridan Street proposes the creation of 19 dwelling units of owner occupied housing consisting of fourteen (14) one-bedroom units, and five (5) two-bedroom units. As dwelling units for sale, the designated Workforce Unit will be restricted to households earning up to 120% of Area Median Income (AMI). Based on the requirements outlined in Section 14-487, the development is required to provide a minimum of one (1) workforce units with one (1) bedroom. The Applicant has elected to provide one (1) Workforce Unit on-site consisting of one (1) one-bedroom unit to satisfy the ordinance's minimum requirements. As such, the project has met the minimum requirements set forth in Section 14-487.

Staff recommends the Board Approve this Conditional Use provided the Applicant and the City enter into an agreed upon Affordable Housing Agreement (AHA) before a Building Permit may be issued. The Affordable Housing Agreement will outline the details of the affordability restrictions placed on the Workforce Units and will be filed as covenant to the property's deed with the Cumberland County Registry of Deeds before a Certificate of Occupancy may be issued.

Sincerely,

Victoria Volent  
Housing Program Manager

# Planning and Urban Development Department

## Planning Division

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**Subject:** Multi-family Design Review – 155 Sheridan Street  
**Written by:** Caitlin Cameron, Urban Designer  
**Date of Review:** Wednesday, September 6, 2017

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The project at 155 Sheridan Street was reviewed according to the *Multiple-family Standards of Review* in the *City of Portland Design Manual* by Caitlin Cameron, Urban Designer, Matt Grooms, Planner, and Christine Grimando, Senior Planner.

### Design Review Comments:

#### **(i) Multiple-family:**

*Standard (1) Design Compatibility* – Sheridan Street has a mix of building scales and types. Immediately adjacent to this proposal are several multi-family residential projects of similar scale and character. The project provides visual interest and scale through the bays, materials, and articulation elements such as balconies, cornice overhangs, and brackets. The façade material selection is appropriate to the building scale, type, and context. Staff requests that the **material placement be revised slightly – in order to establish a building rhythm and rationale, and emphasize the third floor delineation/scale, the shingles should consistently be placed to end at the third story with panel on the fourth across the street façade. Carrying the shingle to the fourth floor above the entrance is not needed given the entrance is already emphasized by the canopy and will have little impact on making the entrance more legible given the bay projections will obscure its visibility. Staff feel the rhythm and consistency in design is more important. In addition, the ground floor windows at the structured parking were revised to be more consistent and without spandrel glass.**

*Standard (2) Relationship of building to the street* – The project is setback five feet from the sidewalk according to zoning dimensional requirements and also consistent with the building placement of nearby buildings. **The landscaping between the sidewalk and the building face should be better defined with a raised curb –this better establishes the line between public and private as well as holding the sidewalk edge. Plant viability will also be improved.** The main entry is directly oriented to the street and is emphasized with a canopy, lighting, and building address. **The mechanicals are very visible from the public right-of-way –screening was added.**

*Standard (3) Open Space* – Project includes balcony and roof spaces for tenants.

*Standard (4) Light and Air* – Project includes ample windows for light and air.

*Standard (5) Surface Parking* – Not applicable

*Standard (6) Lodging Conversion* – Not applicable

# PLANNING BOARD REPORT PORTLAND, MAINE



19-Unit Condominium Development  
155 Sheridan Street

Level III Site Plan and Subdivision Plan and Conditional Use Application for Inclusionary Zoning

Submitted to: Portland Planning Board Date: September 8, 2017 Public Hearing Date: September 12, 2017	Prepared by: Matthew Grooms, Planner CBL: 012-Q-010, 012-Q-012 Project #: 2017-073, 2017-115
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## I. INTRODUCTION

BD Sheridan, LLC requests a Level III site plan, subdivision and conditional use review for a four-story, 34,555 SF housing development on Sheridan Street in the East End. The proposed development consists of nineteen residential units including one on-site workforce housing unit with ground-floor structured parking for nineteen vehicles on a property located immediately north of Fort Sumner Park. The site is currently occupied by a one and a half story single-family home.



**Figure 1: Project Site (Note: Existing Single-Family House to be Demolished)**

This development is being referred to the Planning Board for compliance with the site plan and subdivision standards of the land use code.

The applicant has submitted a final site plan for review by the Planning Board. As this project is located within the Fort Sumner Park Overlay Zone, this project was required to go before the Parks Commission for an advisory review to the Planning Board. The Parks Commission met on September 7, 2017, and unanimously recommended approval of the proposed project.

A total of 374 notices were sent to property owners within 500 feet of the site and a legal ad ran on September 4, and 5 2017.

**Applicant:** BD Sheridan, LLC

**Consultants:** Will Savage, Acorn Engineering, INC; Rex Croteau, Titcomb Associates; Ryan Senatore, Ryan Senatore Architecture; Tom Jewell; Olivia Dawson; Patrick Venne

## II. REQUIRED REVIEWS

<b>Waiver Requests</b>	<b>Applicable Standards</b>
Overhead utilities – To retrofit existing overhead utility lines to serve this site and meet fire department access requirements and the standards of the Fort Sumner Park Overlay Zone  <u>Staff Comments:</u> The review staff recommends waiving this standard if the formal cost estimate for underground utilities is greater than \$150,000 based upon CMP’s non-binding initial estimate.	Site Plan Ordinance, Section 14-526(c)(3)(b) - Electrical service shall be underground unless otherwise specified for industrial uses, or if it is determined to be unfeasible due to extreme cost, the need to retrofit properties not owned by the applicant or complexity of revising existing overhead facilities.  Subdivision Ordinance, Section 14-499(h) - All utility lines shall be placed underground unless otherwise approved by the Planning Board.

<b>Review</b>	<b>Applicable Standards</b>
Subdivision	Section 14-497
Site Plan	Section 14-526

**III. PROJECT DATA**

Existing Zoning	R-6, Fort Sumner Park Overlay
Existing Use	Single-Family Home
Proposed Use	Residential
Proposed Development Program	19 units, 19 parking spaces
Parcel Size	18,140 SF

	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Building Footprint	640 SF	9,708 SF	9,068 SF
Building Floor Area	1,280 SF	34,555 SF	33,275 SF
Impervious Surface Area	1,287 SF	11,070 SF	9,783 SF
Parking Spaces (on site)	1	19	18
Bicycle Parking Spaces	0	8	8
Estimated Cost of Project	\$5,000,000		

**IV. EXISTING CONDITIONS**

The applicant proposes to develop on a 18,140 SF site on the east side of Sheridan Street immediately north of Fort Sumner Park. The site is steeply sloped, with a maximum grade differential of 43 feet from west to east along the southerly property line. Surrounding uses include both single-family homes and multi-family developments, with several nearby projects having been completed in recent years; 152-156 Sheridan Street (2014) located immediately across the street and 135 Sheridan Street (2006) located just to the south. Fort Sumner Park, located immediately to the south, is accessible via footpath from Sheridan Street. The city has recently completed work to stabilize the toe of this slope.

The site lies in the R-6 zone within the Fort Sumner Park Overlay Zone, intended to protect the panorama from Fort Sumner Park. The properties across Sheridan Street are zoned B-2b.

**V. PROPOSED DEVELOPMENT**

The applicant proposes to develop nineteen residential condominiums on this site, including five two-bedroom units and fourteen one-bedroom units on the second through fourth floor. One, one-bedroom unit of comparable size and appointment is set aside for workforce housing. As currently depicted, the units would range in size from 836 SF to 1,438 SF, and all would have either a balcony or patio with small yard. Extensive site grading is planned. In order to maintain the cut slope, a permanent soldier pile and lagging wall is proposed along the south, east and north portions of the site with a maximum exposed height of 24 feet.

The proposed building is set back five feet from Sheridan Street and is four stories tall with its northern most extent being reduced to three stories in order to satisfy the requirements of the Fort Sumner Park Overlay Zone. The exterior façade consists of a mixture of composite lap siding with a cedar shingle appearance and composite siding panel. Building articulation and massing is further managed by means of projecting bays, street-facing balconies, an entrance canopy and a ranged color palette. Three pedestrian entrances are proposed along the west (street-facing) façade with a further 18’ foot wide vehicular entrance and associated new curb cut also being provided off Sheridan Street. The



**Figure 2: Proposed Site with Zoning Information with Topography**

and associated new curb cut also being provided off Sheridan Street. The

first and primary entrance is located in the center of the west façade and provides access to the mail room, parking area and one of two building stairwells. The two secondary entrances are located at either end of the building's west façade, with one entrance adjacent to the proposed garage entrance, and the other at the southwest corner of the building which provides direct pedestrian access to the building's elevator and second stairwell.

Given the extensive grade differential, the applicant is proposing to regrade large portions of the site and has submitted a geotechnical report in support of the necessary site work. In accordance with the Fort Sumner Park Overlay Zone, the applicant has provided a fifteen-foot setback along the southerly property line adjacent with the park property and building elevations demonstrating that all portions of the proposed roof structure including appurtenances fall within the limits set by the overlay zone. In order to further mitigate the impacts of a building in this location as it relates to the panorama from Fort Sumner Park, the applicant is proposing to construct a green (vegetated) roof in order to soften the appearance of the building from the park. The green roof would not be accessible to residents of the development, and during the workshop on July 11<sup>th</sup>, the Planning Board suggested that the roof be maintained by an independent contractor hired by the condominium association. According to the applicant, maintenance of this feature is covered under both the stormwater maintenance agreement and condominium documents for this project.

The first floor of the proposed building will consist of structured parking for nineteen vehicles including one compact parking space as well as a resident lobby, mail room, solid waste storage, mechanical closets and elevator. The upper floors will consist of nineteen one and two-bedroom residential units, ranging from 836 SF to 1,438 SF. Each unit is provided with either a patio or a balcony. There is an additional common roof deck available to residents located on the fourth floor and similarly residents have private access to Fort Sumner Park via a proposed pathway accessible by an entrance located on the fourth floor.

Additional site improvements include the reconstruction of the sidewalk along Sheridan Street and dedication of one foot of the applicant's frontage along a portion of their property as a public access easement in order to widen the sidewalk. According to the applicant's engineer, this would provide sufficient space for the proposed street trees and adequate pedestrian passing access. The developer intends to install landscaping along both the property's street frontage and along the rear property line. A total of four Armstrong Red Maples are proposed as street trees with eight additional Dwarf Alberta Spruce and perennial beds proposed along the front façade of the building. At the northern extent of the building, a CMP compliant 6-foot cedar stockade fence is proposed to screen the proposed transformer pad and at the southern extent of the building, one Downy Service Berry is proposed to soften the appearance of the retaining walls per suggestions raised by the Planning Board at the July 11<sup>th</sup> workshop. At the rear of the property, 55 Virginia Rose, which is a thorny bush, are proposed to run along the top perimeter of the pile and slag retaining wall as both a visual buffer and natural deterrent to site access from North Street. A five-foot chain link fence will also be installed along the top of the retaining wall for additional safety. No street lights are proposed.

## **VI. DISCUSSION OF WAIVER REQUEST FOR OVERHEAD UTILITIES**

Both the site plan ordinance and subdivision ordinance contain language which require developers to install electrical service lines underground for new development. The site plan ordinance under Section 14-526(c)(2)(3)(b) states:

*Electrical service shall be underground unless otherwise specified for industrial uses, or if it is determined to be unfeasible due to extreme cost, the need to retrofit properties not owned by the applicant or complexity of revising existing overhead facilities.*

The subdivision ordinance, under Section 14-499(h) states:

*All utility lines shall be placed underground unless otherwise approved by the Planning Board.*

In response to preliminary plan review comments from Planning, the Department of Public Works and Fire Department requesting that utility lines be placed underground, the applicant met with and discussed cost estimates with Central Maine Power for the placement of electrical service lines underground. It was initially determined to be cost prohibitive, which prompted the developer to pursue an alternative option in which the lines would be located on elevated poles and moved away from the building by means of alley arms. Given that this alternative does not

meet city standards as stated above and is not a preferred alternative for the fire department, city staff have solicited additional information to inform the recommendation to the Planning Board.

On August 17, 2017, staff met with the applicant’s engineer, architect and attorney to discuss the cost of this improvement and standards under the site plan and subdivision ordinance as listed above. Staff asked that the applicant meet with CMP and determine a formal cost estimate for both options so as to weigh a waiver request. This meeting was followed up by a site visit on August 24<sup>th</sup> attended by members of staff, the applicant’s engineer and architect, and Paul Duperre from Central Maine Power. At this meeting, Mr. Duperre provided a rough approximation of the cost and layout of the two alternatives, stating that a formal cost estimate would take six weeks to prepare.

According to Mr. Duperre, the cost of an overhead configuration with raised poles and alley arms would likely be around \$70,000, based upon a similar configuration installed on India Street. This proposal would involve relocating poles 20 and 21 away from the proposed building’s frontage and raising the poles approximately seven feet in elevation. The non-binding estimate for the underground configuration would be between \$120,000 and \$140,000. This proposal would involve relocation of pole 21 from the east side of Sheridan Street to the west side, and removal of existing poles 20 and 22, currently along the building’s frontage and to the north of the project site, with the installation of two underground vaults along the property’s frontage. This proposal would involve work to be completed within Sheridan Street (*Plans 31 and 32*).

The overhead configuration is considered acceptable though not preferable from a life/safety perspective and would meet fire department standards for building access. Keith Gautreau, Assistant Fire Chief, has indicated his preference to see the lines installed underground. This consideration is being addressed as a waiver request, and is further being reviewed as a condition for approval, subject to the final cost estimate provided by CMP.

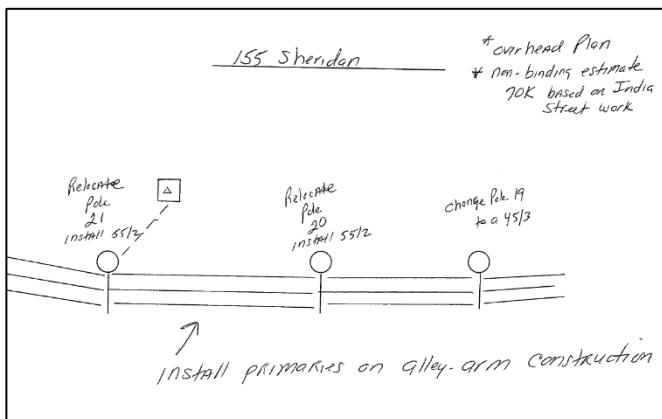


Figure 3: Proposed Overhead Configuration

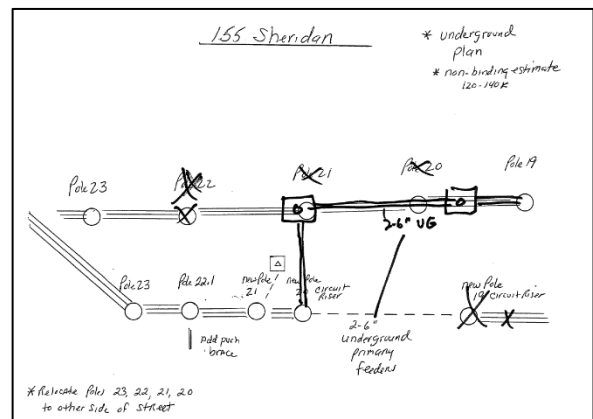


Figure 4: Proposed Underground Configuration



Figure 3: West Elevation Demonstrating Compliance with Fort Sumner Park Overlay



provide off-site improvements. In regards to the other raised concerns, these issues are addressed in the applicant's construction management plan which has been reviewed by the city's consulting traffic engineer, Tom Errico and Senior Engineer with DPW, Keith Gray.

The applicant did hold a neighborhood meeting on June 21<sup>st</sup> at the East End School, attended by 12 individuals. Questions asked at this meeting were in regards to the parking, the proposed work-force housing unit, the construction management process, site stabilization, view impacts from Fort Sumner Park, the proposed green roof and project timeline (*Attachment Y*). Comments are discussed below where relevant.

## **VII. PARKS COMMISSION ADVISORY REVIEW**

On September 7, 2017, the Parks Commission voted unanimously to recommend approval of the project at 155 Sheridan Street to the Planning Board. The applicant provided a comprehensive overview including compliance with the standards of the Fort Sumner Park Overlay Zone, and revisions based upon both staff and Planning Board feedback. The Commission's recommendation to the Planning Board included a suggestion that the applicant work with other proposed developments occurring in the vicinity, notably the project at 88 Walnut Street, to provide monetary contributions for off-site improvements, specifically extension of the sidewalk along the east side of Sheridan Street by 200 feet to south across the Fort Sumner Park property, and installation of a cross-walk at the Marion Street intersection. No public testimony was received during this meeting.

Staff has not formally requested contributions from the applicant for off-site improvements, though the Parks Commission recommendation may be pursued by the Planning Board as a possible condition for approval.

## **VIII. RIGHT, TITLE, & INTEREST**

The applicant has provided a deed demonstrating ownership of the subject property, which, as described above, consists of two separate parcels. (*Attachment C*).

## **VIII. FINANCIAL & TECHNICAL CAPACITY**

The estimated cost of the development is \$5 million. The applicant has submitted a letter from Northern Bank & Trust Company indicating that BD Sheridan, LLC has the financial capacity to fund the project (*Attachment G*).

## **IX. ZONING ANALYSIS**

BD Sheridan, LLC is proposing a nineteen-unit multi-family development located entirely within the R-6 Residential zoning district and within the Fort Sumner Park Overlay District. This structure meets the maximum and minimum setback requirements, including the required fifteen-foot setback from Fort Sumner Park. Building height within the R-6 is limited to 45' feet above average grade with further limitations imposed by the Fort Sumner Park Overlay Zone, which limits the absolute height of the building, including roof forms and rooftop mechanical equipment, to 160.27' feet above mean sea level, with a further reduction of one vertical foot for each 25' feet radially away from the identified apex point within Fort Sumner Park. The average building height is approximately 43.75' feet above grade, with the proposed elevator override being located just under the maximum allowable height under the Fort Sumner Park Overlay Zone. Proposed landscaped open space exceeds 20% of the property as is required, and the lot contains a total of 954 square feet per unit, whereas the requirements is for a minimum of 750 square feet.

At this time, overhead utilities are proposed along the property's frontage. In order to provide for adequate Fire Department access, the installation of taller utility poles utilizing alley arms would be necessary. Per both the site plan and subdivision ordinance, new projects are required to install underground utilities, though this requirement may be waived by the Planning Board if the installation of underground utilities proves cost prohibitive. In the event that overhead utilities are permitted, the applicant has stated that overhead lines will fully comply with the standards of the Fort Sumner Park Overlay. This has been drafted as condition for approval.

The standards of the Fort Sumner Park Overlay Zone require that projects located within the zone go before the Parks Commission for an advisory review to the Planning Board. A preliminary presentation was made to the Parks Commission on July 6, 2017, with a follow-up advisory meeting held on September 7, 2017. The Parks Commission voted unanimously to recommend this project for approval by the Planning Board.



The project as proposed meets the standards of both the R-6 Residential district and the Fort Sumner Park Overlay Zone.

**X. SUBDIVISION REVIEW (14-497(a). Review Criteria; 14-198. Technical and Design Standards; & 14-499. Required Improvements)**

The final plans have 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**

The site is currently occupied by a single-family structure and is largely vegetated, and steeply sloped to the east. An impervious area of 11,070 square feet is proposed. The applicant has submitted stormwater management plans which have been reviewed and approved by the city's consulting storm water engineer, Lauren Swett, P.E. of Woodard and Curran. No detrimental air quality impacts are anticipated.

**2 & 3. Adequacy of Water Supply**

The applicant has supplied a letter from the Portland Water District dated August 2, 2017 which states that there is adequate capacity to serve this project. (*Attachment M*)

**4. Soil Erosion**

As noted above, the site is sloped such that the grade changes by approximately 43 feet from west to east. There will be a retaining wall around the exterior of the property, where the site abuts residential buildings on the west side of North Street. Vegetation currently covers most of the slope. The submittal includes a geotechnical report which found that no blasting would be required as part of this development. Piles will be driven into the ground for support of the pile and lag retaining wall. The applicant states that the building will be constructed as a slab-on-grade with development with a soldier pile and lagging wall retaining the cut slope along the easterly property line (*Attachment Q*).

**5. Impacts on Existing or Proposed Highways and Public Roads**

The applicant has supplied a Traffic Impact Study which projects that this development would result in fewer than 10 new peak hour trips, and further states that Sheridan Street currently has the capacity to handle this traffic. The project has been reviewed by Mr. Thomas Errico, consulting traffic engineer, who has indicated that he generally finds it acceptable (*Attachment 3*). If approved, proposed underground utilities would require work within the public Right-of-Way to install an underground primary feeder across Sheridan Street.

**6. Sanitary Sewer/Stormwater**

The applicant has submitted a wastewater capacity application to the Department of Public Works which was approved by the Department of Public Works on July 19, 2017 (*Attachment M*).

An underdrained subsurface sand filter (USSF) is proposed as a stormwater mitigation measure. Catch basins are to be installed around the exterior of the property with stormdrains directing discharge to the northwest corner of the site where it will connect with a storm sewer in Sheridan Street.

**7. Solid Waste**

The applicant states that a private contractor would be used for waste management purposes. Temporary storage of trash and recyclables in an interior trash room is proposed.

**8. Scenic Beauty**

The applicant proposes to remove existing vegetation on the site and replace it with a three-story structure. As with many projects in this area, the proposal takes advantage of existing views from Sheridan Street looking westward over Back Cove and the city skyline. It should be noted that the view from Fort Sumner Park, which sits uphill from the site with a grade change of approximately 40 feet, should remain relatively unchanged. A rendering of the development as seen from Fort Sumner Park has been provided. (*Attachment Plan 28*)

**9. Comprehensive Plan**

The project is highly compatible with Comprehensive Plan goals and policies, specifically the city’s identified local goals as stated:

1. Increase, preserve and modify the overall supply of housing City-wide to meet the needs, preferences and financial capabilities of all Portland households;
2. Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods;
3. Pursue policies to enable people who work in Portland to have the option to live in Portland;
4. Encourage quality, sustainable design in new housing development.

This project provides significant additional housing in a location that is readily accessible and nearby to a variety of services, amenities and public transit. Additionally, this project is contextually sensitive in its construction, specifically as it related to nearby Fort Sumner Park, and meets the city’s standards for workforce housing.

**10. Financial and Technical Capacity**

As noted above, the applicant has submitted a letter from Northern Bank & Trust Company indicating that BD Sheridan, LLC has the financial capacity to fund the project (*Attachment G*).

**11. Wetland Impacts**

There are no anticipated impacts to wetlands.

**12. Groundwater Impacts**

There are no anticipated impacts to groundwater supplies.

**13. Flood-Prone Area**

The project is not located in a flood-prone area.

**Technical and Design Standards and Required Improvements**

Generally, many of the technical and design standards of *Section 14-498* do not apply in this case. The application incorporates most of the required improvements outlined in *Section 14-499*. A subdivision plan and recording plat will be required demonstrating compliance with these standards. Street trees are required per both the subdivision ordinance (*Section 14-499(f)*) and the site plan ordinance (*Section 14-526.2.b(iii)*), both of which refer to the city’s Technical Manual, which sets a standard of one street tree/unit for multi-family developments. Based on this standard, nineteen street trees are required and four street trees are proposed. In speaking with the applicant, it is understood that street tree contribution will be made a condition for approval.

**XII. SITE PLAN REVIEW**

The preliminary plans for the Sheridan Street Apartments have 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 applicant has stated that less than 10 peak hour trips will be generated by the proposed development. Mr. Errico has reviewed the submittal and reports that he finds it generally acceptable (*Attachment 3*).

*b. Access and Circulation*

The preliminary plans include a new curb cut on Sheridan Street, with a garage door providing access to an interior parking area. Pedestrian access is proposed via two doors on the Sheridan Street frontage, one at each end of the building. The applicant proposes to reconstruct the existing sidewalk and replace concrete with brick pavers. Tom Errico, the city’s consulting traffic engineer, has reviewed the plans and offers the following comments (*Attachment 3*):

1. *In an attempt to maintain on-street parking and avoid the use of barriers in the street, the City requests that the applicant provide a draft construction management plan (for review and approval) that*

*incorporates a sidewalk detour to the west side of Sheridan Street. Two temporary crosswalks will be required and shall be ADA accessible. The southerly temporary crosswalk shall be located at the location of the Fort Sumner path.*

*c. Public Transit Access*

The proposed development is not located along a public transit route and is not of sufficient size to require transit access.

*d. Parking*

Division 20 of the land use ordinance requires one parking space/unit for residential development located on the peninsula (*Section 14-332(a)3*) with the requirement for the first three spaces within the R-6 zone being waived. At this ratio, the project requires a minimum of sixteen parking spaces. As noted above, these are proposed in an interior parking area, with door-controlled access from Sheridan Street.

Per the preliminary submittal, bike parking is proposed for eight bicycles. While this meets the city’s standard of two spaces for every five dwelling units per *Section 14-526(a)4.b*). Bicycle racks shall be located in an interior storage room on the second floor of the development and as well outside of the southerly most pedestrian entrance to the building.

*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 preliminary plans show eight Dwarf Alberta Spruce along the property’s frontage, set amongst ornamental grasses and perennial planting beds. Along Sheridan Street, the applicant is proposing four Armstrong Red Maple street trees. Virginia Roses are proposed towards the rear of the property atop the proposed retaining wall, intended to visually buffer the site from adjacent residential properties and act as a deterrent to site access from North Street.

Jeff Tarling, the City Arborist, has stated that plantings along the property frontage should be placed in raised granite boxes, and has indicated that the narrow width of the sidewalk with proposed street trees does not provide sufficient maneuvering for pedestrian access and wintertime sidewalk plows. He notes that few if any street trees are present elsewhere along Sheridan Street due to narrow sidewalks. He recommends contribution to the Tree Fund in lieu of providing street trees on-site. Mr. Tarling further suggests that additional plantings be provided along the rear and sides of the property in order to further buffer the project from North Street and Fort Sumner Park.

Given the unique context of the project in close proximity to Fort Sumner Park, Mr. Tarling has stated a desire to see additional contributions made towards the improvement of the park property:

- 1. The 155 Sheridan Street project has many site related challenges given the lay of the land and the desired building density. Trees and landscape, greenery do not appear to be primary in the overall design intent, unfortunately. Unlike the condo project next door that contributed to the lower Fort Sumner Park lower Sheridan Street trail access and public landscape we do not see similar attempts here, although it could benefit the overall streetscape.*

*Requesting a small contingent landscape budget to address post development needs once the project is complete. This is an unusual request but perhaps the best approach given the uncertainty of how the project will appear*

In line with Section 14-526(b)(2)(b)(iii) Street Trees, Planning staff recommends that the applicant either provide a contribution in lieu of providing on-site street trees, or propose landscaping improvement to the lower slope of Fort Sumner Park.

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

The project’s water quality, storm water management and erosion control plans were peer reviewed by the city’s consulting project engineer, Lauren Swett, P.E. of Woodard and Curran. She has reviewed the revised plans submitted following the initial workshop and finds that the applicant has addressed all but one comment.

1. *The applicant is proposing a direct connection to the stormdrain in Sheridan Street. Based on the referenced note, it appears that the proposed stormdrain pipe will be 8” connecting to an existing 12” pipe. The applicant should confirm with Public Works that an Inserta Tee connection will be allowed for these pipe sizes, and that a new manhole will not be required.*

Bradley Roland, Senior Project Engineer with the Department of Public Works reviewed the proposed connection and offered the following comment:

1. *An 8" insert-a-tee on a 12" pipe in my opinion will not work. Historically we have not allowed insert-a-tee's on any pipe less than 15". And an insert-a-tee that is more than half the diameter of the receiving pipe is just wrong.*

*By technical manual (2.6.7) building sewers and drains over 8" require a manhole. Also by technical manual (2.3.4) service laterals shall not connect to either stormwater or sewer manholes. I would suggest to the applicant that they cut out a portion of the existing 12" storm drain and install a 12"x8" Wye with two Fernco couplings. They can then tie their storm drain into the 8" side of the Wye.*

Resolution of this comment has been drafted as a condition for approval.

**3. Public Infrastructure and Community Safety Standards**

a. *Consistency with Related Master Plans*

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

b. *Public Safety and Fire Prevention*

Keith Gautreau, Deputy Fire Chief, has reviewed the final plans submitted for this project and has indicated that his initial comments were addressed with the applicant’s resubmittal and that he has no further comments. As noted above, Mr. Gautreau did state that his preference was to see all utilities placed underground, though he finds the proposed raised utility poles with alley arms acceptable from a public safety and fire prevention perspective.

c. *Availability and Capacity of Public Utilities*

The applicant proposes to extend an existing 6” water line across Sheridan Street that would divert into a 4” domestic line and 6” fire line and connect at the southwest corner of the proposed building. A connection to an existing 12” sanitary sewer line, which flows north towards Walnut Street, is proposed from the northwest corner of the building. The applicant proposes underground electric from a new pole to be located at the northwest corner of the building.

The applicant has supplied all requisite ‘ability to serve’ letters for electrical service, water and wastewater that there are sufficient utilities, in particular, sewer and water capacity, to service the residential units on the site.

At this time, the Board shall consider a waiver request to allow for the reconfiguration of overhead utilities to serve this development. The waiver should be considered on the basis of extreme financial burden based around the formal cost-estimate as provided by CMP.

#### 4. *Site Design Standards*

a. *Massing, Ventilation, and Wind Impact*

The maximum building height in the R-6 zone is 45 feet. The preliminary elevations show a building height of 43.75' feet from the Sheridan Street grade. The proposed building is similar in massing to other recently approved multi-family developments along Sheridan Street, including the property immediately across the street.

b. *Shadows*

No shadow impacts on publicly accessible open spaces are anticipated.

c. *Snow and Ice Loading*

There are no anticipated detrimental snow or ice loading impacts.

d. *View Corridors*

The site is located within the Fort Sumner Park Overlay Zone, and as such must conform with standards intended to protect the vista from Fort Sumner Park. This proposal meets those standards and shall not obstruct the existing panorama. Proposed overhead utilities, if approved as a waiver, would be required to comply with the standards of the Fort Sumner Park Overlay.

e. *Historic Resources*

Fort Sumner Park is adjacent to this site; however this site as well as the park are not a designated historic district or landmark. Similarly, the project site is not a known archaeological site.

f. *Exterior Lighting*

Details regarding exterior lighting including photometric plan have been provided and found to meet applicable city standards for light trespass and design.

g. *Noise and Vibration*

Information on the HVAC and mechanical equipment has been provided.

h. *Signage and Wayfinding*

No signage or wayfinding is proposed at this time.

i. *Zoning-Related Design Standards*

The city's site plan ordinance states that "residential developments...shall integrate with and respect the character of surrounding residential development in terms of architectural form, landscaping and open space, façade materials, roof pitch, massing and height as demonstrated by compliance with all applicable design standards as listed in the Design Manual" (*Section 14-526(d)9.a(v)*). The Design Manual includes standards and guidelines for the R-6 zone, however, in this case, the standards for multiple family developments as the standards of the R-6 zone specifically apply to small developments on lots of less than 10,000 square feet. The multi-family design standards section of the Design Manual provides standards related to site context, interface with the public realm, building orientation, building articulation, garages and building materials.

The applicant has provided final building elevations and renderings, which were reviewed by city staff during a design review attended by Caitlin Cameron, Urban Designer; Christine Grimando, Senior Planner; Matthew Grooms, Planner. These renderings show a façade constructed with a mixture of composite siding panel and composite lap siding with cedar shingle appearance. In order to provide building articulation, the applicant has proposed regularly spaced projecting bays, material and color changes, and other elements to break up the façade such as balconies and projecting canopies. The building possesses extensive fenestration, including at the ground level. Given that this building will be highly proximate to Fort Sumner Park, the

applicant has proposed the installation of a green roof to soften the visual impact. The city’s urban designer stated that comments were addressed with the applicant’s resubmittal with the exception of material placement configurations chosen by the architect which accentuate the building’s façade over the principal entrance. This, according to the city’s Urban Designer is an unnecessary addition as the entrance is already framed by projecting bay windows and accentuated by a canopy. Ms. Cameron states that the rhythm and consistency of the design is a more important consideration than accentuation of the principal entrance (*Attachment 7*)

**XIII. INCLUSIONARY ZONING CONDITIONAL USE**

The city’s Housing Program Manager, Victoria Volent, reviewed the Conditional Use for Affordable Housing application at 155 Sheridan Street. Conditional Use is authorized by Division 30, Section 14-487, Ensuring Workforce Housing, to secure the creation of Workforce Housing Units as part of new residential projects that propose 10 or more units. The ordinance requires a minimum of 10% of the project to be restricted for Workforce Households and that the number of bedrooms required under Section 14-487(e)3 be at least 10% of the total number of bedrooms made available as part of the project. The project located at 155 Sheridan Street proposes the creation of 19 condominium units with one unit being set aside as workforce housing in order to satisfy the standards of Division 30. According to the attached memo, provided by Ms. Volent, the proposed unit shall be restricted to households earning up to 120% of the Area Median Income (AMI). It is requested that the applicant enter into an Affordable Housing Agreement (AHA) with the City prior to issuance of a building permit (*Attachment 6*).

**XIV. PROPOSED MOTIONS**

**A. CONDITIONAL USE**

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 September 12, 2017 for application 2017-115 relevant to the Conditional Use as authorized by Division 30, Section 14-487 Ensuring Workforce Housing; and the testimony presented at the Planning Board Hearing, the Planning Board finds the proposed conditional use for workforce housing [**does** or **does not**] meet the standards of Section 14-484 with the following conditions:

1. That the Applicant shall provide one unit of on-site workforce housing restricted to households earning up to 120% of the Area Median Income (AMI) per the submitted application prior.
2. The applicant shall enter into an Affordable Housing Agreement (AHA) with the City. This agreement shall outline the details of the affordability restrictions placed on Workforce Units and will be filed as covenant to the property’s deed with the Cumberland Country Registry of Deeds before a Certificate of Occupancy shall be issued.

**B. 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 September 12, 2017 for application 2017-073 relevant to Portland’s site plan ordinance and subdivision ordinance and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board [**finds/does not find**], based upon the Department of Public Works and Planning Department’s review, that extraordinary conditions exist or undue hardship may result from strict compliance with the Site Plan standard (*Section 14-526(c)(3)(b)*) which requires that electrical service be placed underground unless otherwise specified for industrial uses, or if it is determined to be unfeasible due to extreme cost. The Planning Board [**waives/does not waive**] the Site Plan standard (*Section 14-526(c)(3)(b)*) to allow overhead utilities subject to the following conditions:
  - a. The cost of installing underground utilities exceeds \$150,000 based upon CMP’s initial non-binding cost-estimate; and
  - b. If greater than \$150,000 to install underground utilities, the cost delta between providing underground and overhead utilities exceeds \$50,000; and

- c. The proposed overhead utility lines conform to the standards of the Fort Sumner Park Overlay zone; and
  - d. The final proposed overhead configuration shall be reviewed and approved by the Fire Department, Department of Public Works and Planning Authority.
2. The Planning Board [**finds/does not find**], based upon the Department of Public Works and Planning Department’s review, that extraordinary conditions exist or undue hardship may result from strict compliance with the Subdivision standard (*Section 14-499(h)*) which requires that all utility lines be placed underground unless otherwise approved by the Planning Board. The Planning Board [**waives/does not waive**] the Subdivision standard (*Section 14-499(h)*) to allow overhead utilities subject to the following conditions:
- a. The cost of installing underground utilities exceeds \$150,000 based upon CMP’s initial non-binding cost-estimate; and
  - b. If greater than \$150,000 to install underground utilities, the cost delta between providing underground and overhead utilities exceeds \$50,000; and
  - c. The proposed overhead utility lines conform to the standards of the Fort Sumner Park Overlay zone; and
  - d. The final proposed overhead configuration shall be reviewed and approved by the Fire Department, Department of Public Works and Planning Authority.

**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 September 12, 2017 for application 2017-073 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. Requiring that draft Condominium Association documents addressing Planning Board feedback regarding maintenance of the green roof and be finalized to the satisfaction of Corporation Counsel; and
- 2. A final subdivision plan and recording plat shall be reviewed and approved by the Department of Public Works and the Planning Authority.

**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 September 12, 2017 for application 2017-073 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 provide a revised construction management plan that incorporates a sidewalk detour to the west side of Sheridan Street. Two temporary crosswalks will be required which shall both be ADA accessible. The southerly temporary crosswalk shall be located at the location of the Fort Sumner path as requested by the city’s consulting traffic engineer; and
- 2. That the applicant shall provide a stormwater maintenance agreement for the stormwater drainage system, shall be submitted, signed, and recorded prior to the issuance of a building permit with a copy to the Department of Public Works; and

3. The applicant shall provide an updated landscaping plan which addresses the comments raised in the City Arborist’s email dated September 1, 2017 or otherwise approved by the City Arborist; and
4. A contribution of nineteen street trees or an equivalent alternative shall be provided prior to the issuance of a Certificate of Occupancy. This contribution shall be reviewed and approved by the City Arborist; and
5. The applicant shall work with the Department of Public Works to revise their proposed stormdrain connection per comment 2 of Woodard and Curran’s memo dated August 29, 2017.

**XIV. ATTACHMENTS**

**PLANNING BOARD REPORT ATTACHMENTS**

1. Staff Review Memo (6.30.17)
2. Woodard and Curran Memo (8.29.17)
3. T.Y. Lin Email (8.30.17)
4. City Arborist Comments (9.1.17)
5. DPW Comments (9.1.17)
6. Housing Program Manager Memo (9.5.17)
7. Final Design Review Memo (9.6.17)
8. Public Comment
  - a. Jaimie Parker (8.21.17)

**APPLICANT’S SUBMITTALS**

- A. Cover Letter
- B. Level III Site Plan Application
- C. Right Title and Interest
- D. Conformity with Applicable Zoning Standards
- E. Summary of Easements
- F. Written Request for Waivers
- G. Evidence of Financial Capacity
- H. Stormwater Report
- I. Stormwater Maintenance Agreement
- J. Erosion Control Report
- K. Fire Department Letter
- L. Solid Waste
- M. Utility Cover
- N. Construction Management Plan
- O. Tree Report
- P. Traffic Impact Study
- Q. Geotechnical Report
- R. Architectural Design Narrative
- S. Lighting Cut Sheets
- T. Architectural Design Comment Responses
- U. Structural Design Concept
- V. Inclusionary Zoning Cover Letter
- W. Inclusionary Zoning Application
- X. Conformity with Applicable Conditional Use Standards
- Y. Neighborhood Meeting
- Z. Comment Response Letter

**C. PLANS**

- Plan 1 Cover Sheet & Legend



- Plan 2 General Notes
- Plan 3 Existing Conditions Plan
- Plan 4 Demolition, Construction Management Plan & Erosion Control Plan
- Plan 5 Site Plan
- Plan 6 Landscape Plan
- Plan 7 Utility Plan
- Plan 8 Grading & Drainage Plan
- Plan 9 Site Details I
- Plan 10 Site Details II
- Plan 11 Utility Details
- Plan 12 Drainage Details
- Plan 13 Stormwater Details
- Plan 14 Erosion Control Notes
- Plan 15 Erosion Control Details
- Plan 16 First Floor Plan
- Plan 17 Second Floor Plan
- Plan 18 Third Floor Plan
- Plan 19 Fourth Floor Plan
- Plan 20 Section View
- Plan 21 West Elevation
- Plan 22 South Elevation
- Plan 23 East Elevation
- Plan 24 North Elevation
- Plan 25 Rendering – View Looking South
- Plan 26 Rendering – View Looking North
- Plan 27 Rendeirng – View from Washington Ave
- Plan 28 Rendering – View from Fort Sumner Park Apex
- Plan 29 Photometric Plan
- Plan 30 Subdivision Plan
- Plan 31 Overhead Proposal CMP
- Plan 32 Underground Proposal CMP

**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

**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

## 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

*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 works 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; Ord. 108-15/16, 11/16/2015)

### **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 works ("DPW") 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 DPW in a form provided by DPW, certifying that the person has inspected the BMP(s) and that they are 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 DPW 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, DPW may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

(Ord. No. 35-09/10, 8-17-09; Ord. 108-15/16, 11-16-2015)

**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, DPW 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 DPW believes that a person has violated this article or the post-construction stormwater management plan, DPW 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 DPW. 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; Ord. 108-15/16, 11-16-2015)

#### **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)