

CITY OF PORTLAND, MAINE

PLANNING BOARD

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February 3rd, 2014

Ed Theriault
EMT, LLC (118 Condominiums, LLC)
118 Congress Street
Portland, ME 04101

Project Name: "118 on Munjoy Hill" Condominium
12 unit residential, and 2 unit commercial, condominium
Project ID: #2013-255
Project Address: 118 Congress Street
CBL: 16-D-2
Applicant: Ed Theriault, EMT, LLC (118 Condominiums, LLC)
Planner: Jean Fraser

Dear Mr Theriault:

On January 28th, 2014 the Portland Planning Board considered and approved a Level III Final Site Plan and Subdivision proposal for the construction of a 4-story 14 unit condominium building at 118 Congress Street, comprising 2 commercial units totaling approximately 1800sq ft floor area, 18 parking spaces on the ground floor to the rear of the commercial units, and 12 residential units above.

The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance and voted 7-0 to approve the application with the following waivers and conditions as presented below.

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 January 28, 2014 for application #2013-255 (118 Congress Street) relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board voted 7-0 to waive the Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow for 13 of the indoor parking spaces to measure 18 feet by 8'6".
2. The Planning Board voted 7-0 to waive the Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow a drive aisle of less than 24 feet, as shown on Plan P12.

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 January 28, 2014 for application #2013-255 (118 Congress Street) relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. SUBDIVISION

The Planning Board voted 7-0 that the plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

2.

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references as advised by the Associate Corporation Counsel in e-mail dated 1.23.2014 and relevant conditions; and
- ii. That a Stormwater Management Agreement and all easements shall be finalized to the satisfaction of the Corporation Counsel prior to the issuance of a Certificate of Occupancy; and
- iii. That the Condominium Association documents shall include references to the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, landscape maintenance (including in ROW) and all easements and licenses and be reviewed and approved by Corporation Counsel prior to the recording of the Subdivision Plat; and
- iv. That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment J and Plans 10 and 11 of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and
- v. That the applicant shall submit revised plans and associated documentation, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit, to address the comments by the City Arborist, Jeff Tarling, dated 1.22.2014 regarding the street tree location, species and long term maintenance of the other plantings in the ROW; and
- vi. That the applicant shall make a contribution to the City's Street Tree Fund of \$1400 (for 7 trees) prior to the issuance of a certificate of occupancy.

2. SITE PLAN REVIEW

The Planning Board voted 7-0 that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

- i. The applicant shall submit a revised building design that results in the decks on St Lawrence Street being within the property boundaries while maintaining the current quality of design in regards to facade articulation and variation of form, for review and approval by the Planning Authority prior to signing of the Subdivision Plat; and
- ii. That the applicant shall obtain a license from the City Council, subject to review and approval by the Corporation Counsel's office, for any building features associated with the approved design that extend over the City right-of-way, prior to the release of the signed Subdivision Plat; and
- iii. That the applicant shall obtain easements or temporary construction agreements for all work outside the boundaries of the site; these (if any) shall be reviewed and approved by Corporation Counsel and the recorded copies shall be provided to the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant may be required to install a crosswalk on Congress Street at the easterly side of the St. Lawrence Street intersection. The City's Crosswalk Committee may review the subject location and identify recommendations for installing a crosswalk. If deemed appropriate by the Crosswalk Committee the applicant shall be responsible for implementation of all features of the crosswalk including but not limited to pavement markings, signage, and ADA compliant ramps; and
- v. That the applicant shall submit the revised civil engineering plans to address the Engineering Review comments of Dave Senus dated 1.16.2014 for review and approval by the Planning Authority prior to the issuance of a building permit; and
- vi. That the applicant shall submit a revised Landscape Improvement Plan to address the City Arborist comments of 1.22.2014 in respect of the site landscape (buffering and additional trellis), to also address CPTED principles as relevant, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit; and

- vii. That the applicant shall submit the plans, documents and other materials to address the Traffic Review comments of Tom Errico dated 1.23.2014 in respect of loading and servicing and impact on street parking/City's Traffic Schedule, for review and approval by the Planning Authority, Department of Public Services and Parking Division prior to the issuance of a Certificate of Occupancy; and
- viii. That the applicant shall submit, for review and approval by the Planning Authority and the Department of Public Services prior to the start of any work on site, a revised Construction Management Plan that addresses the comments of Tom Errico dated 1.23. 2014; and
- ix. That the two adjustable "flood" lights on the front of the building over the commercial unit windows shall be adjusted in accordance with the City's Technical Standard 12 "Site Lighting" Section 12.4.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in the Planning Board Report for the public hearing on January 28, 2014 for application #2013-255 (118 Congress Street), which is attached. The standard conditions of approval are listed below.

The Planning Board, in considering this project, were aware that the associated building projections (including decks) over the ROW would need a license to be approved by the City Council and that there were staff concerns about this aspect of the project. The Planning Board voted 5-2 (Dean and Hall opposed) to send a Communication to the City Council outlining the basis of the Board's support for the projections on this particular project.

STANDARD CONDITIONS OF APPROVAL

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

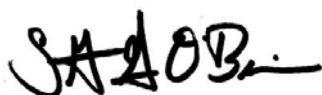
1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the posting of a performance guarantee. The performance guarantee must be posted prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval.
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

9. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
10. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
11. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
12. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

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

If you have any questions, please contact Jean Fraser at 874 8728 or jf@portlandmaine.gov.

Sincerely,



Stuart O'Brien, Chair
Portland Planning Board

Attachments:

1. Associate Corporation Counsel comments dated 1.23.2014
2. City Arborist comments dated 1.22.2014
3. Engineering Review (Woodard & Curran) comments 1.16.2014
4. Traffic Engineering Review comments dated 1.23.2014
5. Plan P12
6. P. B. Hearing Report for the public hearing on January 28, 2014 re application #2013-255 (118 Congress Street)
7. City Code Chapter 32
8. Sample Stormwater Agreement
9. Performance Guarantee Packet

Electronic Distribution:

Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Jean Fraser, Planner
Philip DiPierro, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Tammy Munson, Inspections Division Director
Lannie Dobson, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Service

Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Captain Chris Pirone, Fire Department
Danielle West-Chuhta, Corporation Counsel
Jennifer Thompson, Associate Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

Paper Copies:

Thomas S Greer, PE

Thomas Federle Esq., Federle Mahoney

28 Vannah Avenue
Portland, ME 04103

254 Commercial Street, Ste F
Portland, ME 04101

From: Jennifer Thompson
To: Fraser, Jean
Date: 1/23/2014 7:45 AM
Subject: 118 Congress Street - Plat and Condo Docs

Jean - I agree with your assessment. The Plat and the condo docs for this application are marginal. Although I realize that the practice has, somewhat by necessity, been to make final edits to the plat and condo docs a condition of approval, there is still a requirement that applications for subdivision approval be complete when they go before the Board and that the proposed plat and condo docs contain sufficient detail to allow the Board to make an informed decision. As you say, for this one the plat and condo docs need to be clear with respect to:

- Existence of the parking level and number of spaces and access
- Sq footage of commercial units and at least the aggregate square footage of residential
- Location of street trees
- location of raingarden (abutting Eben ALbert-Knoff property line) and ref stormwater system maintenance (confirming that this is not city and referring to agreement etc)
- more detail re overhangs over ROW
- Show all nearby buildings on plat
- Maintenance of green walls on side and rear elevations
- Existing and anticipated utilities and any associated easements
- Responsibility for general maintenance and trash and snow removal

The subdivision plat really needs to inform folks of necessary information on its face. It is not sufficient to be incorporating by reference other sheets when it comes to the essential contents of the plat. As with all applications, I direct these folks to our ordinance, which outlines what is required on all plats. Their attorney should similarly be familiar with the State statute that outlines necessary components of condominium documents.

Jennifer L. Thompson
Associate Corporation Counsel
City of Portland, Maine
(207)784-8480

From: Jeff Tarling
To: Jean Fraser
CC: David Margolis-Pineo
Date: 1/22/2014 2:49 PM
Subject: 118 Congress Street Project

Hi Jean -

118 Congress Street project / tree & landscape review comments:

a) Street-trees - the project proposes to plant (6) street trees, (4) along Congress Street, 'save' the existing Pin Oak and plant (2) new on Saint Lawrence Street. Updated plan shows the trees planted in raised granite tree wells with herbaceous planting. If on-street parking is proposed, the tree spacing or setback away from the curb to prevent the opening of car doors is important. The trees can be placed to match the in-between on-street parking, making sure there is good access to the sidewalk from parked cars. The residential tree standard of one tree per unit would also be a condition. Building overhangs over the public way should be discouraged to allow the street tree growth.

'Tree Save' - I was hoping the project could protect or save the large Pin Oak on Saint Lawrence Street, while the recent plan does show this, a recent site visit confirmed the crown of the tree would be severely impacted or one-sided, thus reluctantly yield to the fate of removal due to proposed building location. An additional street tree would be requested. Also, the proposed new tree on Congress Street near the corner of Saint Lawrence should be shifted slightly away from the intersection perhaps 2 - 3'. The recently planted American Elm along Congress Street should be saved and replanted by the city.

Tree types - It would be ideal if the tree types along Congress Street are all the same species. I would recommend the Columnar 'Musashino' Zelkova to be ideal due to the narrow space. See <http://www.jfschmidt.com/articles/musashino> and photo below.

The 'Red Sunset' Maple crown shape is too broad for this space. Along Saint Lawrence Street again a more narrow tree is needed, it could be Ginkgo 'Magyar' or 'Autumn Gold' cultivar (seedless), due to narrow sidewalk space. (photo 'Musashino' Zelkova, narrow vase shape crown)

b) Landscape - The recent revision adds herbaceous planting to the tree planters and the 'backyard' / rain-garden edge. Additional screening to the adjacent property should be considered, this might be achieved by adding higher branching landscape planting or higher fencing (5'). The rain-garden planting with mostly herbaceous plant material will reach a low height. It does not appear to meet the B-1 Zone landscape standard (i) " A densely planted buffer and / or fencing will be required to protect neighboring properties..." Suggestions could including some taller shrub plants along with a higher wooden fence. The Green Wall proposed will also help screen the building. Additional green-wall / landscape planting could be used on the West elevation to the left of the garage door, this area seems blank; and to the left of the center door on Congress Street away from the overhead canopy.

Granite planters in right of way - the six granite planters are proposed to be planted with street-trees and 'Cranesbill', perennial geranium. This will add interest to the typical mulched tree well. Long term however it is unlikely the city would be able to maintain these plantings. Ideally, the project could adopt the tree wells and maintain the landscape planting.

Landscape Comment - Personally, I was hoping to see additional landscape element along the street frontage along Congress Street and Saint Lawrence Street. Either in the form of behind the sidewalk planter or green wall if the various building facade walls could have jugged in to create a small landscape niche. I noted a variety of past projects where this seemed to work successfully.

Fitting a new project of this scale and prominent location into a neighborhood like Munjoy Hill where everyone walks, homeowners take pride and their landscape with events like the 'Hidden Gardens of Munjoy Hill', landscape should be an important element.

COMMITMENT &
INTEGRITY
DRIVE RESULTS

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MEMORANDUM

TO: Jean Fraser, Planner
FROM: David Senus, P.E. & Ashley Auger, E.I.T.
DATE: January 16, 2014
RE: 118 on Munjoy Hill, Level III Site Plan Review

Woodard & Curran has reviewed the revised Level III Site Plan Application for the development project located at 118 Congress Street in Portland, Maine. The project will involve the construction of a new four story mixed-use building consisting of residential units and retail space.

Documents Reviewed by Woodard & Curran

- Revised Level III Site Plan Application and attachments, dated January 2, 2014, prepared by Pinkham & Greer Consulting Engineers on behalf of 118 Condominiums, LLC.
- Engineering Plans, Sheets C1.0, C1.1, C1.2, C1.3, C1.4, C1.5, C1.6, & C1.7, revised January 2, 2014, prepared by Pinkham & Greer Consulting Engineers on behalf of 118 Condominiums, LLC.
- Landscaping Details, Sheet L2.0, dated December 31, 2013, prepared by Mohr & Seredin Landscape Architects, Inc.
- Construction Management Plan, dated November 13, 2013, prepared by Pinkham & Greer Consulting Engineers on behalf of 118 Condominiums, LLC.

Comments

- 1) The final submittal does not include letters from utility companies confirming capacity to serve the proposed development. If responses are not received prior to Public Hearing, we recommend requiring submittal of ability to serve letters from the utilities as a condition of approval.
- 2) The Applicant has provided a plan, notes, and details to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in general accordance with Appendix A, B, & C of MaineDEP Chapter 500. The plan should also include a note stating that the street Right-of-Way shall be kept clean from dust, tracked soil/mud, and construction debris and swept as necessary or as requested by the City of Portland to minimize dust and sediment originating from the site.
- 3) The Applicant proposes a rain garden along the east edge of the site to promote infiltration and detention of roof water prior to discharge to the combined sewer. It appears that the roof drain pipe will connect to the underdrain system below grade, filling the rain garden from below. The roof drain pipe should include a screen or in-line filter to avoid debris or solid material passing into the below grade underdrain, where maintenance and cleaning would be challenging. The design should also include an above grade opening in the roof drain line to avoid a backup condition in the pipe (a high flow outlet).
- 4) The plans should note the size, material, and slope for the proposed storm drain connection to the combined sewer in St. Lawrence Street. Pending input from DPS, a wye connection to the sewer may be acceptable and the proposed sewer/drain manhole may not be needed. In addition, DPS would prefer that the storm drain pipe be installed "shallow" from the rain garden to the right-of-way, angling down to connect to the combined sewer (approximately 3' of cover in the road would be an acceptable depth). This will aid in potential future sewer separation efforts in St. Lawrence Street.
- 5) The following details for work within the City Right-of-Way should be provided in accordance with the City's Technical Manual:
 - a) Pavement Repair Cross Section detail
 - b) Brick Sidewalk detail
- 6) All previous review comments have been adequately addressed.

Attachment 4

From: Tom Errico <thomas.errico@tylin.com>
To: Jean Fraser <JF@portlandmaine.gov>
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, "JeremiahBartlett" <JBartlett@portlandmaine.gov>
Date: 1/23/2014 11:39 AM
Subject: 118 Congress Street - Final Traffic Comments

Jean - The following is a status update of my December 12, 2013 comments and represent my final comments.

- * The project will be providing in excess of one parking space per residential unit and therefore meets City standards.

Status: I would note that per zoning standards, parking provisions for the commercial uses are not required and thus the project only provides parking for the residential use.

- * I find the proposed driveway condition to be acceptable. The project will be eliminating two curb cuts on Congress Street and providing one driveway on St. Lawrence Street.

Status: No comment necessary.

- * Some of the parking spaces on site do not meet City standards (reduced size - but larger than compact size spaces) and a waiver will be required. A formal waiver and supporting information shall be provided by the applicant.

Status: In addition to the request for a parking stall dimension waiver, the applicant is also requesting a waiver for a reduction in parking aisle width from 24 feet to 23 feet. I support waivers from these City standards.

- * In my professional opinion the proposed project will not generate a significant amount of traffic and is not expected to have a negative impact on traffic safety and operations in the study area.

Status: No comment necessary.

- * Historically a crosswalk has been provided on Congress Street at the easterly side of the St. Lawrence Street intersection. The City's Crosswalk Committee shall review the subject location and identify recommendations for installing a crosswalk. If deemed appropriate by the Crosswalk Committee the applicant will be responsible for installing the crosswalk and all supporting features.

Status: A condition of approval should be included that notes if a crosswalk is required by the City's Crosswalk Committee the applicant will be responsible for implementation of all features of the crosswalk including but not limited to pavement markings, signage, and ADA compliant ramps.

New Comments

- * Changes in on-street parking regulations will be required as a result of the project. Accordingly changes to the City's Traffic Schedule will be required, thus requiring City Council action. The applicant will be responsible in providing materials in support of the Council request packet.
- * Deliveries and services vehicles for the project will be expected to do so from the street. The applicant shall coordinate with the Parking Division and the Department of Public Services for the type of on-street regulations to be implemented on Congress Street along the project frontage. The applicant will be responsible for all costs associated with signage installation.

- * I have reviewed the construction management plan provided by the applicant and I find the general concept to be acceptable. Specific comments are noted below:
- o All temporary sidewalks and crosswalks will need to be ADA compliant.
 - o Further detail will be required for determining the safest location for a temporary crosswalk on St. Lawrence Street. This includes sight distance and driveway locations, at a minimum.
 - o The applicant will be responsible for winter maintenance of the temporary facilities as well as along the public street abutting the detour on Congress Street.
 - o The details of the delineator posts need to be further reviewed.
 - o The contractor will be responsible for work including signage and pavement markings and work must meet requirements of the Manual on Uniform Traffic Control Devices.
 - o A schedule of activities should be provided and documentation on the need for sidewalk closures, in terms of duration, shall be provided.
 - o The applicant shall be responsible for submitting a Construction Management Plan for review and approval prior to the issuance of any City Permit.

If you have any questions, please contact me.

Best regards,

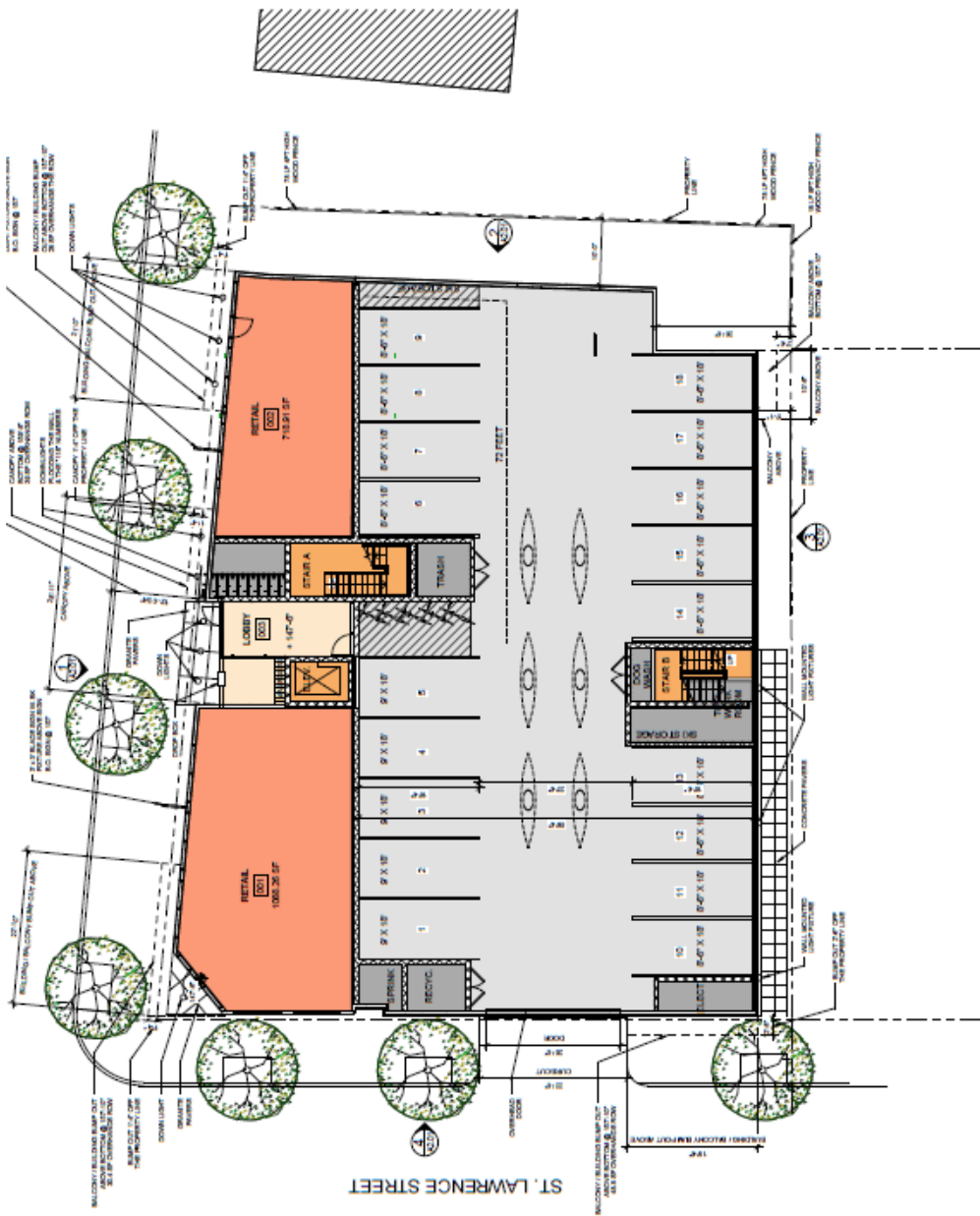
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SOLUTION DETAIL

PLAN DETAIL	WALL TYPE	FLOOR TYPE
	NEW WALL - STUD & GYP. BD.	
	NEW CMU WALL	
	NEW MASONRY	
	EXISTING CMU WALL	
	EXISTING STUD WALL	
	EXISTING MASONRY WALL	
	DEMO AND REMOVE	



1 | PARKING LEVEL | PROJECT FOOTPRINT: 8,884 GSF



PLANNING BOARD REPORT PORTLAND, MAINE

“118 on Munjoy Hill”
12 unit residential and 2 unit commercial condominium, 118 Congress Street
Final Level III Site Plan and Subdivision
Project ID 2013-255
118 Condominiums, LLC (Ed Theriault), Applicant

Submitted to: Portland Planning Board Public Hearing Date: January 28 th , 2014	Prepared by: Jean Fraser, Planner Date: January 24 th , 2014
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I. INTRODUCTION

On behalf of 118 Condominiums LLC, Pinkham & Greer Consulting Engineers have submitted a final Level III Site Plan and Subdivision application for the construction of a 14 unit condominium building at 118 Congress Street. The proposed building would comprise 12 residential units over 2 commercial units, and ground floor parking within the building for 18 vehicles. The 10,728 sq ft site currently is occupied by parking spaces and a single story building with footprint of 2,644 sq ft; the proposed building will have a footprint of 8,884 sq ft and be 4 stories high.

The parcel is located at the highest point of Congress Street on Munjoy Hill, at the east corner of Congress Street and St Lawrence Street. It is within the B-1 zone where the height may be up to 50 feet if the ground floor is commercial, based on a B1 text amendment that was approved by the City Council on 12.16.2013.

The applicant held a Neighborhood Meeting on December 18, 2013 (Certification [Attachment G](#)) which was attended by 11 people. The Planning Division has received 4 written public comments since the December Workshop, of which three object to the scale and massing of the proposed building (see Public Comment Attachment PC 1-8).

This Workshop was noticed to 242 neighbors and interested parties, and the public notice appeared in the *Portland Press-Herald* on January 20th and 21st, 2014.

Required reviews: a waiver request (Attachment C) was submitted in respect of parking space dimensions and width of the parking drive aisle. The waivers are supported by the Traffic engineering review ([Attachment 2](#))



Applicant’s Proposal	Applicable Standards
New structure of 12 dwelling units and 2 commercial units	Subdivision Review
Multifamily building of 36,131 square feet	Level III Site Plan Review and R-6 Design Review
Waiver requested for size of parking space to allow 13 spaces to be 8’6” by 18’ within the internal parking garage to provide 6 additional parking spaces over the minimum required (12 required; 18 provided).	Technical Manual Standard 1.14 requires standard spaces of 9’ by 18’ or compact spaces of 8’ by 15’.
Waiver requested for the parking drive aisle to be 23 ft wide instead of the required 24 ft wide to reduce encroachment of the building on the ROW.	Technical Manual Standard 1.14 requires a 24 ft wide parking aisle where there is 90 degree parking.

II. PROJECT DATA

<i>SUBJECT</i>	<i>DATA</i>
Existing Zoning	B-1
Existing Use	Professional offices
Proposed Use	Residential and commercial
Parcel Size	10,728 sq ft
Number of lots in subdivision	14 (2 commercial; 12 residential)
Impervious Surface Area	
--Existing	9,131 sq ft
--Proposed	9,457 sq ft
--Net Change	326 sq ft
Total Disturbed Area	10,728 sq ft
Building Footprint	
--Existing	2,644 sq ft
--Proposed	8,884 sq ft
--Net Change	6,240 sq ft
Building Floor Area	
--Existing	2,644 sq ft
--Proposed	35,362 sq ft
Parking Spaces	
-Existing	14
-Proposed	18
Bicycle parking Spaces	4 outside; 12 inside
Estimated cost of the project	\$5,101,500

III. EXISTING CONDITIONS

The proposal site is located on the summit of Congress Street about 200 feet east of the Portland Observatory and within an area of mixed heights up to 4 stories. Immediately abutting the site on the south and east sides are 2-3 story residential properties, with the fire station opposite on St Lawrence.

The photomontages below were presented to the Board when the B1 text amendment was being considered and are included to illustrate the existing conditions for the proposed development.:

The site:



Congress Street opposite the site:



IV. PROPOSED DEVELOPMENT

The proposals, including floor plans, elevations, and renderings, are illustrated in the final Plan Set and are similar to the proposals seen at the Workshop except that:

- the entire building has been pulled back from the Congress Street ROW by a foot; thus the building overhangs along congress street are now 1’ 4”;
- the foundation drains have been omitted (based on geotechnical info);
- a landscaped raingarden (to detain roof stormwater drainage) has been incorporated between the proposed building and nearest abutter on Congress Street;
- the side and rear elevations have a darker base and modified windows (and retained green trellis with wisteria proposed); and
- the street tree proposals include the option of retaining the mature Pin Oak Street tree on St Lawrence (the other 3 existing street tree to be removed and relocated/replaced).

The existing one-story building of 2644 sq ft footprint is proposed to be demolished and replaced with a 4 story building of 8884 sq ft footprint comprising two commercial units of 1088sq ft and 719 sq ft on the ground level, and 12 residential units over 3 upper floors ranging from about 1500 sq ft to 2100 sq ft in floor area. The residential units have an entrance on Congress Street between the commercial/retail units.

Each of the 12 units have a balcony and a small amount of living space that projects from the building by 2’4” on Congress Street (of which 1’4” is over the ROW) and by 2’6” for the 3 decks on St Lawrence Street (all of this is over the ROW (Plans P12, P15 and P22)). The fourth floor units also have roof top decks (Plan P14).

Parking provision is located within the building behind the commercial units and totals 18 spaces.

A small area of landscaping combined with a raingarden to detain roofwater drainage is located between the building and the abutting house/driveway to the east. The existing four street trees (mature) are proposed to be removed and relocated and replaced with five or six new street trees (Plan P10 Landscape Improvement Plan).

V. PUBLIC COMMENT and WORKSHOP

A. Public comments:

Four written comments were included in the Workshop Memo (3 people) and the main objections were that the proposal was out of scale and there was no parking for the commercial component (thus putting pressure on street parking). At the Workshop these concerns were raised by 7 members of the public; 2 others were in support of the project and one was concerned that this was not meeting the need for ‘average ‘ housing. Since the Workshop a total of five written comments have been received (Attachment PC 5-9). Three of the comments particularly object to the scale and massing of the building and request further revisions. One comment raises concerns over the impacts on the sidewalk and street trees; and one is from the abutter on St Lawrence (Mr Gross) who is concerned about the proximity of the proposed building to his property line and whether it will constrain future development on his lot.

B. Planning Board comments:

Several of the Planning Board members questioned the scale and massing of the proposed building, particularly noting that the entire building (including the overhangs) should be within the property boundaries and that the side and rear elevations should be designed to the same standard as the other two elevations. Board members also requested additional graphics illustrating impacts on the views of the Portland Observatory (landmark) from both directions, local views (eg St Lawrence) and identified view corridors. These have been submitted and are included in Plans P18-P21 (total of 10 graphics including near and far views and montages)

VI. RIGHT, TITLE AND INTEREST

The applicant (EMT,LLC) has fee ownership of the site and has submitted the Warranty Deed in Attachment M.

VII. STAFF REVIEW

A. ZONING ASSESSMENT

The proposed development is within the B-1 Business Zone, which extends 10-15 ft beyond the rear property line and abuts the R-6 Residential Zone. The Zoning Administrator and applicant have agreed on the interpretation of the B-1 setback language and the footprint of the building has a “jog” at the southeast corner to meet the setback requirement

of 20 feet for that section of the property line (Attachments 4 and 12). Otherwise there is no rear setback requirement in this zone and the 5 feet between the building and the rear property line is not a requirement.

The height limitation of 45 feet in the B1 zone is allowed to be 50 feet for this project as it meets the recently approved height amendment that states:

(14-165 Dimensional Requirements)

2. On-peninsula B-1 and B-1b locations, as defined in Section 14-47: Forty-five (45) feet except in the case of a building in a B-1 zone along Congress Street with commercial first floor and residential upper floors where fifty (50) feet is allowed. The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet.

The depth of the larger proposed commercial unit is at least 23 ft (widens to 26 ft at widest and 19ft along St Lawrence). The depth of the smaller retail unit ranges from 17 to 21 feet, so the proposed commercial units meet the requirement.

B. SUBDIVISION STANDARDS

14-496. Subdivision Plat Requirements

The applicant has submitted a draft Subdivision Plat (Plan P2) and draft Condominium Documents (Attachment F). The potential conditions of approval suggest amendments to both documents and further review by staff as they do not fully address the Subdivision Plat requirements nor include specific references to particular maintenance requirements (eg raingarden). The Associate Corporation Counsel has advised that such documents should be substantially complete when presented to the hearing, and the submitted documents need to address her comments which confirm the essential contents of the plat (Attachment 8).

14-497. General Requirements (a) Review Criteria

1. Will Not Result in Undue Water and Air Pollution (Section 14-497 (a) I), and Will Not Result in Undue Soil Erosion (Section 14-497 (a) 4)

The applicant has submitted an Erosion Control Plan (Plan P7) and the Engineering Reviewer has requested additional notes regarding potential impacts to the ROW (Attachment 1).

2. Sufficient Water Available (Section 14-497 (a) 2 and 3)

The applicant has submitted a letter from the Portland Water District dated 12.2.2013 confirming water capacity for this development.

3. Will Not Cause Unreasonable Traffic Congestion (Section 14-497 (a) 5)

The access to the lower level parking area for 18 cars is via a widened existing curb cut on St Lawrence Street and Tom Errico, the Traffic Engineer consultant does not have concerns regarding traffic generation (Attachment 2). The proposed number of parking spaces is adequate but the size of spaces does not meet the Technical Standards and a waiver has been requested for 13 of the spaces to be .5 foot narrower than “standard” (Attachment C).

Mr Errico (Attachment 2) has confirmed that the parking is adequate; parking provision for the commercial uses is not a requirement and he is supportive of the waivers as requested.

4. Will Provide for Adequate Sanitary Sewer and Stormwater Disposal (Section 14-497 (a) 6), and Will Not Cause an Unreasonable Burden on Municipal Solid Waste and Sewage (Section 14-497 (a) 7)

The applicant has revised the proposals so that the roof stormwater is directed into the raingarden area and detained prior to entering the combined sewer system in St Lawrence Street. The foundation drains have been eliminated entirely, and the applicant has submitted geotechnical information showing that these are not required in this location (Attachment E). The Stormwater Report has been revised (Attachment J) to reflect these revisions.

David Senus, the Consulting Engineer, supports this approach in principle, but has commented that the raingarden design needs refinement and the associated connection to the combined sewer in St Lawrence should allow for a

future sewer separation (Attachment 1). The potential conditions of approval include a requirement to address these comments. The capacity letter for wastewater is included at Attachment H.

5. Scenic Beauty, Natural, Historic, Habitat and other Resources (Section 14-497 (a) 8)

Street Trees

The subdivision requirement would be one tree per unit, or 14 street trees, in or near the ROW. There are already 4 street trees, which include the larger pin oak on St Lawrence Street and 3 others on Congress Street.

The preliminary submission proposed to remove all of the existing street trees and replace with 5 new street trees in new locations (3 on Congress and 2 on St Lawrence). The final proposals include an option to “save” the existing pin oak on St Lawrence Street (see below), remove the existing 3 trees on Congress and replace with 4 new street trees in different locations, and to add a street tree in St Lawrence near the back corner of the new building (Plan P10).

The City Arborist, Jeff Tarling, has commented (Attachment 6):

*a) **Street-trees** - the project proposes to plant (6) street trees, (4) along Congress Street, 'save' the existing Pin Oak and plant (2) new on Saint Lawrence Street. Updated plan shows the trees planted in raised granite tree wells with herbaceous planting. If on-street parking is proposed, the tree spacing or setback away from the curb to prevent the opening of car doors is important. The trees can be placed to match the in-between on-street parking, making sure there is good access to the sidewalk from parked cars. The residential tree standard of one tree per unit would also be a condition. Building overhangs over the public way should be discouraged to allow the street tree growth.*

***Tree types** - It would be ideal if the tree types along Congress Street are all the same species. I would recommend the Columnar 'Musashino' Zelkova to be ideal due to the narrow space.*

See <http://www.jfschmidt.com/articles/musashino> and photo below.

The 'Red Sunset' Maple crown shape is too broad for this space. Along Saint Lawrence Street again a more narrow tree is needed, it could be Ginkgo 'Magyar' or 'Autumn Gold' cultivar (seedless), due to narrow sidewalk space.

***Granite planters in right of way** - the six granite planters are proposed to be planted with street-trees and 'Cranesbill', perennial geranium. This will add interest to the typical mulched tree well. Long term however it is unlikely the city would be able to maintain these plantings. Ideally, the project could adopt the tree wells and maintain the landscape planting.*

If the Board agrees to the removal of existing street trees and their replacement, a potential condition of approval has been included to allow for further adjustments to the location of the new street trees and maintenance of the other plantings in the ROW to address the City Arborist comments.

Pin Oak- should it be saved

The largest existing street tree is a pin oak on St Lawrence near the intersection with Congress Street, which is visible in long and short views (in center of photo as viewed from near Washington Ave).

The applicant obtained a detailed assessment of the pin oak by an arborist, Kyle Rosenberg (Forest to Shore Arborist), who recommends that the pin oak be removed and replaced with new plantings as it would inevitably be adversely impacted and decline in the short term (Attachment D). The applicant’s landscape architect Stephen Mohr of Mohr Seredin, and the City Arborist Jeff Tarling, concur with this assessment (Attachments D and 6).



The applicant has offered the alternative of planting 2 new street trees to replace the pin oak (Plan P10) which would result in a total of 7 new street trees for this project. If the Board agrees with this approach, that would leave 7 street trees to be addressed by an equivalent contribution to the Street Tree Fund (potential condition included).

6. Comprehensive Plan (Section 14-497 (a) 9)

The project is compatible with Comprehensive Plan goals and policies related to residential and mixed use development.

7. Financial Capability (Section 14-497 (a) 10)

A letter dated 10.18.2013 confirming financial capability is included at Attachment P.

C. SITE PLAN STANDARDS

14-526 Requirements for approval

(A) Transportation

- **Traffic - as discussed above under Subdivision Review**
- **Construction Management Plan-** The applicant has submitted a Construction Management Plan (Plan P16) that utilizes adjacent property for the staging, and creates a parallel path for pedestrians along Congress Street and reroutes pedestrians to the other side of St Lawrence Street. The plan has been reviewed by Tom Errico, Traffic Engineer and while acceptable in principle there are a number of details that need to be addressed, with a revised plan submitted for review and approval (Attachment 2). A potential condition of approval addresses Mr Errico’s comments.
- **Sidewalk and ROW**
 The Department of Public Services has reviewed the proposal and comments on the final submissions are included in Attachment 4; it is noted that Congress Street is a moratorium street until 2017.

Although the applicant has set the building back one foot, the Congress Street decks (6 - each about 20 feet long) still overhang the ROW by 1ft 4 inches. On St Lawrence the three overhangs are 2ft 6 inches in depth and the entirety of this width overhangs the ROW (see note on Elevations in Plan P15 and Plans P12 and P22).

The table below compares the overhangs as proposed at the Workshop with the revised overhangs incorporated in the final Plan Set:

	Submitted version presented at Workshop	Final version (Jan) for Hearing (building moved back 1 ft from Congress)
Congress St east (3 levels) <ul style="list-style-type: none"> • Overhang over ROW • Length of overhang • Area over ROW 	<ul style="list-style-type: none"> • 2ft 4 inches • 20ft 9 inches • 48.4 sq ft over ROW 	<ul style="list-style-type: none"> • 1ft 4 inches • 21 ft • 28 sq ft over ROW
Congress St west (nearest St Lawrence) (3 levels) <ul style="list-style-type: none"> • Overhang over ROW • Length of overhang • Area over ROW 	<ul style="list-style-type: none"> • 2ft 4 inches • 22ft 8 inches • 52.8 sq ft over ROW 	<ul style="list-style-type: none"> • 1ft 4 inches • 22ft 10 inches • 30.4 sq ft over ROW
St Lawrence St (3 levels) <ul style="list-style-type: none"> • Overhang over ROW • Length of overhang • Area over ROW 	<ul style="list-style-type: none"> • 2 ft 6 inches • 19 ft 6 inches • 48.8 sq ft over ROW 	<ul style="list-style-type: none"> • 2 ft 6 inches • 19 ft 6 inches • 48.8 sq ft over ROW
Entrance Canopy over Congress St <ul style="list-style-type: none"> • Overhang over ROW • Length of overhang • Area over ROW 	<ul style="list-style-type: none"> • 2ft 4 inches • 28 ft 11 inches • 68.7 sq ft over ROW 	<ul style="list-style-type: none"> • 1ft 4 inches • 28 ft 11 inches • 39 sq ft over ROW

DPS still do not support any encroachments over the ROW and cite snow removal and falling ice as particular issues over the public sidewalk (Attachment 4). The Planning Board at the Workshop were concerned about the impact on the ability of the public to enjoy this section of sidewalk and requested additional views and graphics to understand how the overhangs and bulk of the building would relate to the public realm.

Additional graphics have been submitted and those of particular relevance are the Line Diagrams (Plans P18 and P19) and the four near perspectives in Plan P20.

The City Arborist also is concerned about the overhangs in terms of the impact on street trees and views (Att. 6), and the Urban Designer notes that there is no compelling reason (eg site constraints or to maintain historic character) why the building can not be set back so that the balconies are within the property line (Attachment 7).

- **Public Transit Access**

The public transit requirements do not apply to this project.

- **Parking**

There are 18 parking spaces which meet zoning requirement of 14 spaces, all located within the enclosed ground floor behind the commercial units. The Traffic Engineering reviewer has commented that the number is acceptable as they serve the 12 residential units; there is no requirement for parking provision for the two small commercial units.

- **Bicycle Parking (also Motorcycle and Scooter parking)**

The proposals meet the standards with 4 outside spaces and 12 inside spaces near the main residential entrance on Congress Street.

- **Snow Storage-** does not apply to this proposal as the parking area is within the building.

- **TDM -** does not apply to this proposal.

- **Loading and Servicing-** The proposals do not include any particular provision for loading and servicing. The Traffic Engineering Reviewer has commented (Attachment 2):

Deliveries and services vehicles for the project will be expected to do so from the street. The applicant shall coordinate with the Parking Division and the Department of Public Services for the type of on-street regulations to be implemented on Congress Street along the project frontage. The applicant will be responsible for all costs associated with signage installation.

A potential condition of approval incorporates the requirements outlined in the comment.

Environmental Quality Standards

- **Landscape Preservation-** see Subdivision Review (Scenic Beauty)

- **Site Landscaping and Screening**

The City Arborist preliminary comments were that additional street view landscape treatment should be added. The final proposals have added a raingarden with more extensive planting between the building and the driveway of the nearest abutter on Congress Street and flowering plants have been added to the street tree planters.

Mr Tarling's has reviewed the landscape improvement proposals (Plans P10 and P11) and discussed them with the applicants Landscape Architect Stephen Mohr. The final review comments focus on the need for enhanced screening along the boundaries with neighbors and for additional street level interest along the sidewalks (Attachment 6):

b) Landscape - The recent revision adds herbaceous planting to the tree planters and the 'backyard' / rain-garden edge. Additional screening to the adjacent property should be considered, this might be achieved by adding higher branching landscape planting or higher fencing (5'). The rain-garden planting with mostly herbaceous plant material will reach a low height. It does not appear to meet the B-1 Zone landscape standard (i) " A densely planted buffer and / or fencing will be required to protect neighboring properties..." Suggestions could including some taller shrub plants along with a higher wooden fence. The Green Wall proposed will also help screen the building. Additional green-wall / landscape planting could be used on the West elevation to the left of the garage door, this area seems blank; and to the left of the center door on Congress Street away from the overhead canopy.

Personally, I was hoping to see additional landscape element along the street

frontage along Congress Street and Saint Lawrence Street. Either in the form of behind the sidewalk planter or green wall if the various building facade walls could have juttred in to create a small landscape niche. I noted a variety of past projects where this seemed to work successfully.

A potential condition of approval requests the submission of a revised Landscape Improvement Plan to address these comments.

- **Street Trees** - see subdivision Review.
- **Water quality, Stormwater Management and Erosion Control**
As discussed above under **Subdivision Review**.

(a) **Public Infrastructure and Community Safety Standards**

- **Consistency with City Master Plans** -
- **Public Safety and Fire Prevention**

The Crime Prevention through Environmental Design (CPTED) standards in the site plan ordinance address the principles of natural surveillance, access control and territorial reinforcement so that the design of developments enhance the security of public and private spaces and reduce the potential for crime.

The proposal largely fills the site and includes lighting on all sides except near the raingarden. It is suggested that when the Landscape Improvement Plan is being revised and possibly including a higher fence (currently at 4 ft) that the CPTED principles be addressed so that the raingarden area does not present a negative space at night.

The applicant has submitted a Fire Code analysis ([Attachment O](#)) and there is an existing hydrant on the opposite side of St Lawrence Street (adjacent to the Fire Department). Final comments from Captain Chris Pirone have not been received as of the completion of this Report.

- **Availability and Adequate Capacity of Public Utilities** - see Subdivision Review

(b) **Site Design Standards**

- **Massing, Ventilation and Wind Impact**

The applicable site plan standard is (14-526 (d) (1) b):

The bulk, location or height of proposed buildings and structure shall minimize, to the extent feasible, any substantial diminution in the value or utility to neighboring structures under different ownership and not subject to a legal servitude in favor of the site being developed.

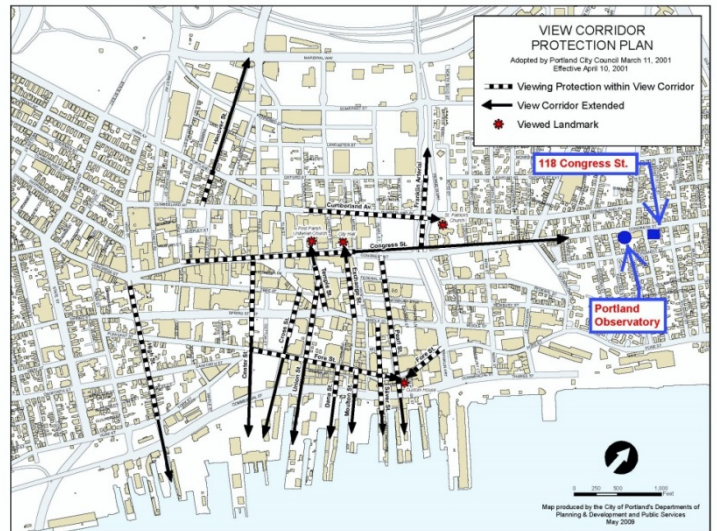
It is noted that the public comments expressed strong concerns regarding the proposed scale of the development and the project has utilized the extra 5 feet in height allowed under zoning to facilitate the mixed use with commercial on the lowest floor. The combination of the height, footprint and elevation design, including decks and living space that overhangs the public sidewalk, creates an imposing building in this part of Congress Street (see the 4 “near” perspectives in. [Plan P20](#)).

Staff have not seen any evidence of “diminution in the value or utility to neighboring structures” but there are impacts on the public realm that are discussed under the Subdivision Review and below.

- **Shadows/Snow and Ice Loading** - not considered an issue for this proposal.
- **View corridors**

The Portland Planning ordinances do not protect water views except where they are identified as a protected "view corridor" as per the “View Corridor Protection Plan” approved by the Portland City Council in 2001 ([Attachment 9](#)). It is reproduced below with the Portland Observatory and the site of 118 Congress Street highlighted.

The Congress Street view looking east towards the Observatory is indicated as being of importance. The applicant was requested to show how the proposed building would appear within a “longer view” from the view corridor and the graphics in Plan P21, which includes 4 relevant photos and drawings. The line drawing (below) from the applicant (Plan P21) gives a sense of the scale of the proposed building as it appears behind the fire station. The photo lower right is taken from a location near the tip of the solid black arrow in the “View Corridor Protection Plan”. The large existing building just downhill from the Observatory largely blocks the view of the Observatory building itself and the proposed building is not prominent from this direction.



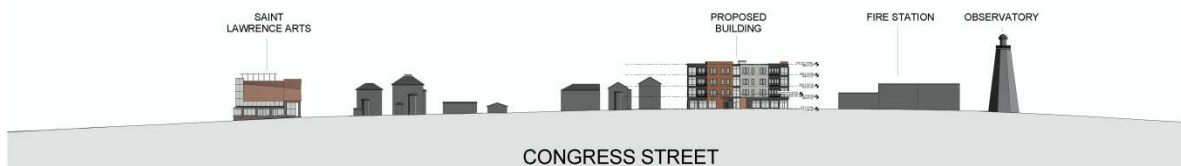
From applicant



Staff photo from near Ponce Street

- **Historic Resources**

This project is not within 100 feet of an historic district or landmark and the ordinance does not apply. However, the Portland Observatory (a landmark) is located just over 200 feet to the west of the site and is discussed above under “View Corridors”.



- **Exterior Lighting**

The proposals include downlights along Congress Street (under overhangs) and wall lights on the St Lawrence and rear elevations that meet the technical standards (Attachment I). Two small “flood” type lights are also on the front elevation over the commercial units on arms that can be fixed to direct the light. A potential condition of approval is included (based on the technical standard) to ensure that the lighting is not directed upward or way from the building facade.

- **Noise and Vibration-** The B1 zone contains noise limitations that would apply to outside air heating/cooling condensers and use of the deck/rooftop areas, so the conditions of approval do not include any additional potential conditions.

- **Signage and Wayfinding-** not considered a particular issue for this proposal.

D. ZONING RELATED DESIGN STANDARDS IN THE SITE PLAN ORDINANCE

B1 Design Principles and Standards

Below is an extract of the relevant standards:

1. Building Location and Form

Buildings shall be located near the street so as to create an urban street wall. An urban street wall is created by a pattern of buildings which line the street in a consistent manner, thereby establishing a desirable spatial relationship between the building in the commercial district and the major object. Location is one of several related factors defining the street environment. Building Form, including height, bulk, and massing, contribute to the development of a street wall.

The desired condition is to have the building frame and enclose the street, which is achieved by providing building height that is proportionate to the width of the adjoining major street. A ratio of building height to street width of one-to-two creates a strong "room-like" street, while a one to-three ratio provides good street definition and proportion. Shorter buildings of one story facing broad streets will not achieve the desired relationship..

For a fifty-foot street right-of-way, therefore, a minimum height of 15' is required, with 25' height preferred. An eighty-foot right-of-way requires about 27' to achieve the 1:3 proportion., with 40'-height preferred. Obviously, buildings located as close as possible to the street right-of way will provide better definition and proportion than buildings set further back.

2. Building Function

An urban street and business district requires a substantial intensity and variety of uses. It is beneficial to have mixed uses within portions of buildings situated near the street. For example, a retail first floor might have office or residential on the second or third floors. This provides both the scale of building height desired, as well as the economic vitality of the business district.

3. Orientation of Buildings and their Entrances to the Street

Major building entries shall be designed and located to provide the primary building access oriented to the public street and sidewalk. Doorways should be prominent and obvious in appearance, so as to attract the users toward the entry. Major entry features should primarily address the street, with entry courts, display windows, signage, lights, walkways, and vestibules, as appropriate. Major entries should be adjacent to, or very close to, the street and public sidewalk.

4. Windows

Windows shall be located in all building facades visible from the public way, especially on building facades along the major public street. Retail uses with store fronts are the most desirable feature for locations adjacent to the public sidewalk; and active, transparent (minimum visible transmittance (VT) of .7 or greater), and interesting windows contribute the maximum value. Limitations on transparency, such as dark or reflective glass, or interior coverings, should be avoided. Where uses (such as office) are not conducive to transparent viewing from the public way, windows can still convey a sense of activity and presence along the street. Even these more private windows can convey occupancy and habitation when lighted from within, as during evening hours, even if the interior is screened from view.

5. Building Character, Detail, Scale, and Graphic Qualities

Building design will include various architectural and graphic amenities to provide a strong presence along a street and relate a building to its community. Awnings, canopies, and flags may be utilized to highlight entryways and to further identify the activity and identity of a use. Facade lighting may be used to highlight entryways or to provide visual interest along an otherwise blank façade. Building scale, roof pitch, architectural detail, and fenestration shall be designed to complement and be compatible with surrounding residential and commercial buildings.

7. Development Relationship to Street

Building facades and site amenities shall form a cohesive wall of enclosure along a street. Where buildings are not located at the street line, site amenities, including masonry walls, fences, and landscaping, shall be placed along the street to provide a sense of enclosure or definition.

The City's Urban Designer Caitlin Cameron has confirmed that the overall scale and bulk of the proposal is acceptable and has provided an updated analysis of the final proposals (Attachment 7):

Because of the building's size, design strategies which include variation and articulation are important. I continue to feel, as in my previous comments, that the project is successful in this regard in its use of materials, fenestration, variation in roof line and form, and the incorporation of landscape elements such as

green screens and rain gardens. The East and South elevations have improved in response to workshop comments. Staff has two further comments/suggestions regarding 1) Retail storefront and 2) Building overhangs.

The mixed-use project will ideally enhance the street wall with its active retail storefront windows and close proximity to the sidewalk. It is for that reason staff would like to see the retail storefront window returned to the East elevation which has been removed in the latest iteration of the design. For urban design reasons, any additional landscaping would be more appropriate as vertical gardens or in the furnishing zone of the sidewalk along with the street trees rather than adding landscape elements to the retail facades.

In regards to the architectural elements proposed to overhang the public right of way, unlike other exceptions where this kind of easement over the right of way was granted, this project is not limited by site constraints, existing structure, or by maintaining historical character. The articulation of the facade is a benefit to the streetscape and produces a good design that meets the design standards. If the Planning Board decides that the overhangs into the public right-of-way are not appropriate, then staff would encourage the resulting design solution maintain the current quality of design in regards to facade articulation and variation of form. (Attachment 7)

Comparison of the elevations:

WORKSHOP



FINAL (See Plan P15)



Multi-family and Other Housing Types Design Standard

This design standard also applies to this proposal is outlined in sections below with associated staff review comments:

(i) TWO-FAMILY, SPECIAL NEEDS INDEPENDENT LIVING UNITS, MULTIPLE-FAMILY, LODGING HOUSES, BED AND BREAKFASTS, AND EMERGENCY SHELTERS:

(1) STANDARDS. Two-family, special needs independent living units, multiple-family, lodging houses, bed and breakfasts, and emergency shelters shall meet the following standards:

a. Proposed structures and related site improvements shall meet the following standards:

1. The exterior design of the proposed structures, including architectural style, facade materials, roof pitch, building form and height, window pattern and spacing, porches and entryways, cornerboard and trim details, and facade variation in projecting or recessed building elements, shall be designed to complement and enhance the nearest residential neighborhood. The design of exterior facades shall provide positive visual interest by incorporating appropriate architectural elements;

Staff comment: See Urban Design comments (Attachment 7).

2. The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;

Staff comment: See Urban Design comments (Attachment 7).

3. Open space on the site for all two-family, special needs independent living unit, bed and breakfast and multiple-family development shall be integrated into the development site. Such open space in a special needs independent living unit or a multiple-family development shall be designed to complement and enhance the building form and development proposed on the site. Open space functions may include but are not limited to buffers and screening from streets and neighboring properties, yard space for residents, play areas, and planting strips along the perimeter of proposed buildings;

Staff comment: All 12 of the new residential units will have generous balconies.

4. The design of proposed dwellings shall provide ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and shall also provide sufficient storage areas;

Staff comment: This standard appears to be met.

5. The scale and surface area of parking, driveways and paved areas are arranged and landscaped to properly screen vehicles from adjacent properties and streets;

Staff comment: The parking is located within the building.

VIII. STAFF RECOMMENDATION

The proposed 14 unit commercial/residential condominium project appears to meet the minimum standards of review, subject to the proposed conditions, with the exception of the overhangs over the public sidewalk. Any licences for encroachment into the ROW must be approved by the City Council and the standard potential condition has been included to at least cover the canopy over the entrance.

Staff remain of the view that there is no need for the decks and living spaces to be outside the property boundaries except that they would allow better views, as noted in the marketing brochure distributed at the workshop. This is the first project where open decks have encroached into/over the ROW- other licenses have been for (usually fewer) enclosed bays that protrude from the plane of the building, so this project introduces a precedent.

The overhangs have a number of adverse impacts: ice and snow falling onto the sidewalk; visual encroachment into the public realm; and constraints on the street trees. They are not supported by DPS, City Arborist and the Urban Designer.

If the Planning Board approves the project with the overhangs as shown (six decks/overhangs encroaching 1’4” over Congress Street; three decks/overhangs encroaching 2’6” over St Lawrence Street) the City Council would consider that as support for the overhangs and support for the granting of a license from the City.

Staff have therefore included a potential condition of approval that requires the applicant to redesign the decks/overhangs so that there is no encroachment over the ROW while retaining the decks/overhangs to achieve articulation and interest on this façade. Staff suggest there are a number of ways this could be achieved without substantially altering the overall design. If the Board determine that the overhangs over the ROW are acceptable, this potential condition may be removed.

IX. MOTIONS FOR THE BOARD TO CONSIDER

a. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report for the public hearing on January 28, 2014 for application #2013-255 (118 Congress Street) relevant to Portland’s Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board (waives/does not waive) Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow for 13 of the indoor parking spaces to measure 18 feet by 8’6”.

2. The Planning Board (waives/does not waive) Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow a drive aisle of less than 24 feet, as shown on Plan P12.

b. 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 January 28, 2014 for application #2013-255 (118 Congress Street) relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. SUBDIVISION:

That 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:

Potential conditions of approval:

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references as advised by the Associate Corporation Counsel in e-mail dated 1.23.2014 and relevant conditions; and
- ii. That a Stormwater Management Agreement and all easements shall be finalized to the satisfaction of the Corporation Counsel prior to the issuance of a Certificate of Occupancy; and
- iii. That the Condominium Association documents shall include references to the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, landscape maintenance (including in ROW) and all easements and licenses and be reviewed and approved by Corporation Counsel prior to the recording of the Subdivision Plat; and
- iv. That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment J and Plans 10 and 11 of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and
- v. That the applicant shall submit revised plans and associated documentation, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit, to address the comments by the City Arborist, Jeff Tarling, dated 1.22.2014 regarding the street tree location, species and long term maintenance of the other plantings in the ROW; and
- vi. That the applicant shall make a contribution to the City’s Street Tree Fund of \$1400 (for 7 trees) prior to the issuance of a certificate of occupancy.

2. SITE PLAN REVIEW

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 condition(s) of approval:

Potential conditions of approval:

- i. The applicant shall submit a revised building design that results in the entire building (including decks and overhangs but not the entrance canopy, **or** particular specified decks/overhangs) being within the property boundaries while maintaining the current quality of design in regards to facade articulation and variation of form, for review and approval by the Planning Board prior to signing of the Subdivision Plat; and

- ii. That the applicant shall obtain a license from the City Council, subject to review and approval by the Corporation Counsel’s office, for any building features associated with the approved design that extend over the City right-of-way, prior to the release of the signed Subdivision Plat; and
- iii. That the applicant shall obtain easements or temporary construction agreements for all work outside the boundaries of the site; these (if any) shall be reviewed and approved by Corporation Counsel and the recorded copies shall be provided to the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant may be required to install a crosswalk on Congress Street at the easterly side of the St. Lawrence Street intersection. The City’s Crosswalk Committee shall review the subject location and identify recommendations for installing a crosswalk. If deemed appropriate by the Crosswalk Committee the applicant shall be responsible for implementation of all features of the crosswalk including but not limited to pavement markings, signage, and ADA compliant ramps; and
- v. That the applicant shall submit the revised civil engineering plans to address the Engineering Review comments of Dave Senus dated 1.16.2014 for review and approval by the Planning Authority prior to the issuance of a building permit; and
- vi. That the applicant shall submit a revised Landscape Improvement Plan to address the City Arborist comments of 1.22.2014 in respect of the site landscape (buffering and additional trellis), to also address CPTED principles as relevant, for review and approval by the Planning Authority and City Arborist prior to the issuance of a building permit; and
- vii. That the applicant shall submit the plans, documents and other materials to address the Traffic Review comments of Tom Errico dated 1.23.2014 in respect of loading and servicing and impact on street parking/City’s Traffic Schedule, for review and approval by the Planning Authority, Department of Public Services and Parking Division prior to the issuance of a Certificate of Occupancy; and
- viii. That the applicant shall submit, for review and approval by the Planning Authority and the Department of Public Services prior to the start of any work on site, a revised Construction Management Plan that addresses the comments of Tom Errico dated 1.23. 2014; and
- ix. That the two adjustable “flood” lights on the front of the building over the commercial unit windows shall be adjusted in accordance with the City’s Technical Standard 12 “Site Lighting” Section 12.4.

ATTACHEMNTS

Staff Review comments and background information

1. Engineering Review comments 1.16.2014
2. Traffic Engineering Review comments 1.23.2014
3. Zoning comments 12.6.13 and 12.9.14
4. DPS (David Margolis-Pineo) comments 1.21.2014
5. Fire Department comments (not received as of completion of the report)
6. City Arborist comments 1.22.14 and 12.12.2013
7. Urban Designer Comments 1.22.14 and 12.13.13
8. Associate corporation Counsel comments 1.23.2014
9. View Corridor Protection Plan

Public comments

- PC1 Linda Tyler 12.11.13
PC2 Francine O’Donnell 12.11.13
PC3 Linda Tyler 12.11.13

- PC4 Susan Baker-Kaplan 12.11.13
- PC5 Susan Baker-Kaplan 1.22.14
- PC6 Larry Gross 1.22.14
- PC7 David Kaplan 1.22.14
- PC8 Tony Russo 1.22.14
- PC9 Linda Tyler 1.20.14 (rec'd 1.24.14)

Applicant's Submittal (newest first)

- A. Cover Letter for final submissions 1.2.2014
- B. Final application and updated data sheet 1.12.2014
- C. Waiver Request 1.2.2013
- D. Landscape and Pin Oak Assessment 12.31.2013
- E. Geotech Report Dec 2013
- F. Draft Condominium Documents Jan 2014
- G. Neighborhood Meeting Certificate, Sign In sheet and Notes 1.6.2014
- H. Utility capacity confirmation letters- wastewater and water
- I. Lighting plan and specifications updated Jan 2014
- J. Revised Stormwater Report 1.2.2014

(below all from November)

- K. Zone Information
- L. Project Description
- M. Right, title and Interest
- N. Maps
- O. Building and Fire code analysis
- P. Financial and Technical Capability letters
- Q. Traffic Report
- R. Bike Rack Elevation
- S. Congress Street Emission Statement

Plans

- P1. Boundary Survey
- P2. Subdivision Recording Plat
- P3. Condominium Plan
- P4. Site Plan
- P5. Existing Conditions and Demolition plan
- P6. Grading and Utilities Plan
- P7. Erosion Control Plan
- P8. Details
- P9. Details
- P10. Landscape Improvement Plan
- P11. Landscape Details
- P12. Ground Floor Plan
- P13. Typical Unit Floor Plan
- P14. Roof Plan
- P15. Building Elevations
- P16. Construction Management Plan

Illustrative Graphics

- P17. Section showing building in context of Observatory (“street view”)
- P18. Line Diagram 1
- P19. Line Diagram 2
- P20. Near Perspectives (4)
- P21. Far Perspectives (4)
- P22. Overhangs compared to nearby building footprints

CHAPTER 32 STORM WATER

Art. I. Prohibited Discharges, §§ 32-1--32-15

Art. II. Prohibited Discharges, §§ 32-16--32-35

Art. III. Post-Construction Stormwater Management, §§32-36-32-40

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

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

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

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

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

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

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

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

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

Municipality. "Municipality" means the city of Portland.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

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

ARTICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

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

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

Sec. 32-17. Responsibility for administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32-20. Monitoring of discharges.

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

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

Sec. 32-21. Enforcement.

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

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

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

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

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

Sec. 32-22. Severability.

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

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

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

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

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

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

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

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

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

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

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

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

Sec. 32-39. Enforcement.

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

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

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

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

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

Sec. 32-40. Severability.

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

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



PORTLAND MAINE

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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

Performance Guarantee and Infrastructure Financial Contribution Packet

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

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

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

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

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

Attachments

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

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

Date: _____

Name of Project: _____

Address/Location: _____

Application ID #: _____

Developer: _____

Form of Performance Guarantee: _____

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

TO BE FILLED OUT BY THE APPLICANT:

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

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

INSPECTION FEE (to be filled out by the City)

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

SAMPLE FORM

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

[Date]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

SAMPLE FORM

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

[Date]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

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

By: _____

**PERFORMANCE GUARANTEE
with the City of Portland**

Developer's Tax Identification Number: _____

Developer's Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

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

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

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

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

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

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

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

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

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

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

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

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

Distribution

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

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

Amount \$

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

Project Code: _____

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

Project Name:

Application ID #:

Project Location:

Project Description:

Funds intended for:

Applicant's Name:

Applicant's Address:

Expiration:

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

Funds shall be permanently retained by the City.

Other (describe in detail) _____

Form of Contribution:

Escrow Account

Cash Contribution

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

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

Date of Form:

Planner:

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

Electronic Distribution to:

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