

CITY OF PORTLAND, MAINE  
PLANNING BOARD

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Stuart O'Brien, Chair  
Timothy Dean, Vice Chair  
Elizabeth Boepple  
Sean Dundon  
Bill Hall  
Carol Morrissette  
Jack Soley

July 10, 2014

Demetri Dasco  
Atlas Investment Group, LLC  
35 Fay Street, 107B  
Boston, MA 02118

Will Conway  
Sebago Technics  
75 John Roberts Road  
South Portland, ME 04106

Project Name: Seaport Lofts (Bay House Phase II)  
Address: 101-121 Newbury St./40 Hancock St.  
Applicant: 113 Newbury Street, LLC

Project ID: 2013-179  
CBLs: 20-D-13, 14, 15, 32  
Planner: Nell Donaldson

Dear Mr. Dasco:

On July 8, 2014 the Planning Board voted (6-0, Morrissette absent) that 113 Newbury Street, LLC has met the condition of approval from the approval letter dated October 31, 2013 requiring that revised elevations, renderings, details, and material samples for the Seaport Lofts project at 101-121 Newbury Street/40 Hancock Street address the recommendations of the Planning Board and staff on outstanding design issues (including but not limited to the treatment of proposed awnings, the proposed soldier course, metal screens, exterior lighting, and color and materials) in compliance with the design standards, with the further condition that the applicant provide a complete lighting package meeting the standards of the city's Technical Manual for review and approval by the city's Planning Authority.

Please note that the conditions of approval and requirements for your approved site plan, enumerated in your original approval letter dated October 31, 2013, still apply. This letter is attached for reference.

If there are any questions, please contact Nell Donaldson at (207) 874-8723.

Sincerely,



Stuart O'Brien, Chair  
Portland Planning Board

Attachments:

1. Original approval letter (10/31/13)

**Electronic Distribution:**

cc: Jeff Levine, Director of Planning and Urban Development  
Alexander Jaegerman, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Philip DiPierro, Development Review Coordinator, Planning  
Marge Schmuckal, Zoning Administrator, Inspections Division  
Tammy Munson, Inspection Division Director  
Lannie Dobson, Administration, Inspections Division  
Gayle Guertin, Administration, 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 Services  
Michelle Sweeney, Associate Engineer  
John Low, Associate Engineer, Public Services  
Matt Doughty, Field Inspection Coordinator, Public Services  
Mike Farmer, Project Engineer, Public Services  
Jane Ward, Administration, Public Services  
Jeff Tarling, City Arborist, Public Services  
Captain Chris Pirone, Fire Department  
Thomas Errico, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File

CITY OF PORTLAND, MAINE  
PLANNING BOARD

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Carol Morrisette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
David Silk  
Sean Dundon  
Elizabeth Boepple

October 31, 2013

Demetri Dasco  
Atlas Investment Group, LLC  
35 Fay Street, 107B  
Boston, MA 02118

Will Conway  
Sebago Technics  
75 John Roberts Road  
South Portland, ME 04106

Project Name: Seaport Lofts (Bay House Phase II)  
Address: 101-121 Newbury St./40 Hancock St.  
Applicant: 113 Newbury Street, LLC

Project ID: 2013-179  
CBLs: 20-D-13, 14, 15, 32  
Planner: Nell Donaldson

Dear Mr. Dasco:

On October 22, 2013, the Planning Board considered your subdivision and Level III site plan application for the proposed Seaport Lofts development at 101-121 Newbury Street and 40 Hancock Street. The Planning Board reviewed the proposal for conformance with the subdivision and site plan standards of the city's land use code and voted to approve the application with the waivers and conditions presented below:

**WAIVERS**

The Planning Board voted (7-0) to grant the following waivers:

1. A waiver of the technical standard (*Section 1.7.2.7*) regarding the minimum separation between driveways to allow the driveway of Seaport Lofts within the 100-150 separation requirement of an adjacent driveway to the west, as shown on the final site plan.
2. A waiver of the technical standard (*Section 1.7.2.3*) regarding the minimum driveway width of 20 feet to allow a driveway of 19 feet as depicted on the final site plan.
3. A waiver of the technical standard represented in Figures I-27 to I-29 of the city's Technical Manual regarding the parking lot dimensional requirements to allow parking as designed on the final plans.
4. A waiver of the technical standard (*Section 1.14*) regarding the compact parking space limit to allow 12 compact parking spaces on site, comprising more than the standard 20% of total spaces.

5. A waiver of the site plan standard (Section 14-526(b)2.b(iii)) and Technical Manual *Section 4.6.1* regarding street trees due to site constraints. Technically, 39 street trees are required on site. Only 10 trees, a number proportionate with the site's frontage, are proposed. To compensate, the applicant shall contribute \$5,800 (for 29 street trees) to Portland's tree fund.

#### **SUBDIVISION**

The Planning Board voted (7-0) that the proposed plans are in conformance with the subdivision standards of the city's land use code, subject to the following conditions of approval, which must be met prior to the release of a recording plat, unless otherwise stated:

1. The subdivision plat shall be finalized for review and approval by the Planning Authority, Department of Public Services, and Corporation Counsel;
2. The following shall be provided for review and approval by Corporation Counsel prior to the release of the building permit:
  - a. Pedestrian access easement for the areas of the sidewalk that are not in the public right-of-way and
  - b. License agreement for the building foundation and/or awnings;
3. The Condominium Association documents, including provisions for the allocation of at least one parking space per unit, shall be provided for review and approval by the Planning Authority, Department of Public Services and Corporation Counsel prior to the issuance of a Certificate of Occupancy.

#### **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 conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall provide application materials for proposed changes to the city's traffic schedule, for review and approval by the city's Department of Public Services prior to Certificate of Occupancy;
2. The applicant shall submit a revised construction management plan addressing the comments of Tom Errico and all phases of development for review and approval by the Planning Authority, the Department of Public Services, the city's Parking Manager, and the city's Fire Prevention Bureau prior to the issuance of any permit;
3. The applicant shall make financial contributions of \$1,200 towards improvements at the India/Middle Street intersection and \$1,200 towards the East End Traffic Monitoring Study, for review and approval by the city's Department of Public Services;
4. The applicant shall submit the HVAC system specifications meeting applicable standards for

the Zoning Administrator's review and approval;

5. The applicant shall resolve addressing questions for fire and 911 purposes, for review and approval by the city's Fire Prevention Bureau;
6. The applicant shall provide revised elevations with emphasis on articulation of the rear elevations, overall building massing with emphasis on the rear of the building, renderings, details, and material samples addressing the recommendations of the Planning board and staff on outstanding design issues (including but not limited to the treatment of proposed awnings, the proposed soldier course, metal screens, exterior lighting, and color and materials) in compliance with the Design Standards for review and approval by the Planning Board;
7. The applicant shall provide a maintenance agreement for the subsurface stormwater detention system for review and approval by Corporation Counsel and the Department of Public Services; and
8. The applicant shall submit plans and supporting documentation which specify measures to be taken to protect abutting building foundations and retaining walls during construction, including actions outlined in the email from Sebago Technics dated October 21, 2013, for approval by the Planning Authority, Corporation Counsel, and the Department of Public Services prior to the issuance of any permit.

The approval is based on the submitted plans and findings related to subdivision and site plan review standards as contained in the Planning Board Report for application 2013-179, which is attached.

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

Please note the following standard conditions of approval and requirements for all approved subdivision and 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 issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the

Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.

4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, an inspection fee payment of 2.0% of the guarantee amount, and seven (7) final sets of plans plus one final digital copy 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 the date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy.

If there are any questions, please contact Nell Donaldson at (207) 874-8723.

Sincerely,

Carol Morissette, Chair  
Portland Planning Board

**Attachments:**

1. Planning Board Report
2. Sample stormwater maintenance agreement

**Electronic Distribution:**

cc: Jeff Levine, Director of Planning and Urban Development  
Alexander Jaegerman, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Philip DiPierro, Development Review Coordinator, Planning  
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David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File

**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.**

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

## **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)





# PLANNING BOARD REPORT PORTLAND, MAINE

Seaport Lofts (Bay House Phase II)  
101-121 Newbury Street and 40 Hancock Street  
Level III Site Plan and Subdivision Review  
2013-179  
113 Newbury Street, LLC, Applicant

Submitted to: Portland Planning Board	Prepared by: Nell Donaldson, Planner
Public Hearing Date: October 22, 2013	Date: October 17, 2013
Planning Board Report Number: #46-13	CBLs: 20-D-13, 14, 15, 32

## I. INTRODUCTION

113 Newbury Street, LLC returns to the Planning Board for a Level III site plan and subdivision review for a four-story housing development, the Seaport Lofts, at the corner of Newbury and Hancock Streets in the Eastern Waterfront. The proposed 60,000 SF development includes 39 residential units - seven townhomes and 32 flats - and 43 parking spaces. The proposal also includes sidewalk and landscaping improvements. The site is currently occupied by surface parking lots.

At a prior Planning Board hearing, held on September 24, 2013, the Board reviewed final plans for the project. At the time, a number of issues remained unresolved. In addition to some minor outstanding site plan and zoning concerns, there were significant questions regarding the building's design, and meeting attendees raised concerns about the adequacy of off-street parking as well. In response, the Board asked the applicant to provide additional information, refine plans, and resubmit, tabling the item to October 22. This report describes the applicant's efforts to address outstanding issues and respond to Board concerns. The full text of the Board report from the September 24 hearing is attached (*Attachment 1*).

A total of 133 notices were sent to property owners within 500 feet and a legal ad ran on 10-14 and 10-15.

**Applicant:** 113 Newbury Street, LLC, Demetri Dasco

**Consultants:** Will Conway, Sebago Technics; David White, Architect

## II. REQUIRED REVIEWS

<b><i>Waiver Requests</i></b>	<b><i>Applicable Standards</i></b>
Driveway width – to allow a 19 foot wide driveway on Newbury Street <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual, Section 1.7.2.3. Any site with a two-way driveway access to the street shall have a minimum width of 20 feet.</i>
Driveway spacing – to allow a driveway separation of app. 10 feet <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual, Section 1.7.2.7. Along local streets, minimum acceptable spacing between driveways on adjacent lots shall be 100-150 feet.</i>
Compact parking spaces – to allow 12 compact spaces (for 29% of the total) <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual, Section 1.14. Parking lots with greater than 10 spaces may be comprised of up to 20% compact spaces.</i>
Parking dimensions <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual, Figures I-27 to I-29.</i>
Street Trees – 39 street trees required, 10 provided, resulting in contribution of \$5,800 <i>Supported by City Arborist and Planning.</i>	<i>Site Plan Standard, Section 14-526(b)2.b(iii) and Technical Manual, Section 4.6.1. All multi-family development shall provide one street tree per unit, unless site constraints prohibit it</i>

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

**III. PROJECT DATA**

Existing Zoning	B-2b
Existing Use	Vacant lot/surface parking
Proposed Use	Residential
Proposed Development Program	32 flats, 7 townhouses
Parcel Size	29,927 SF

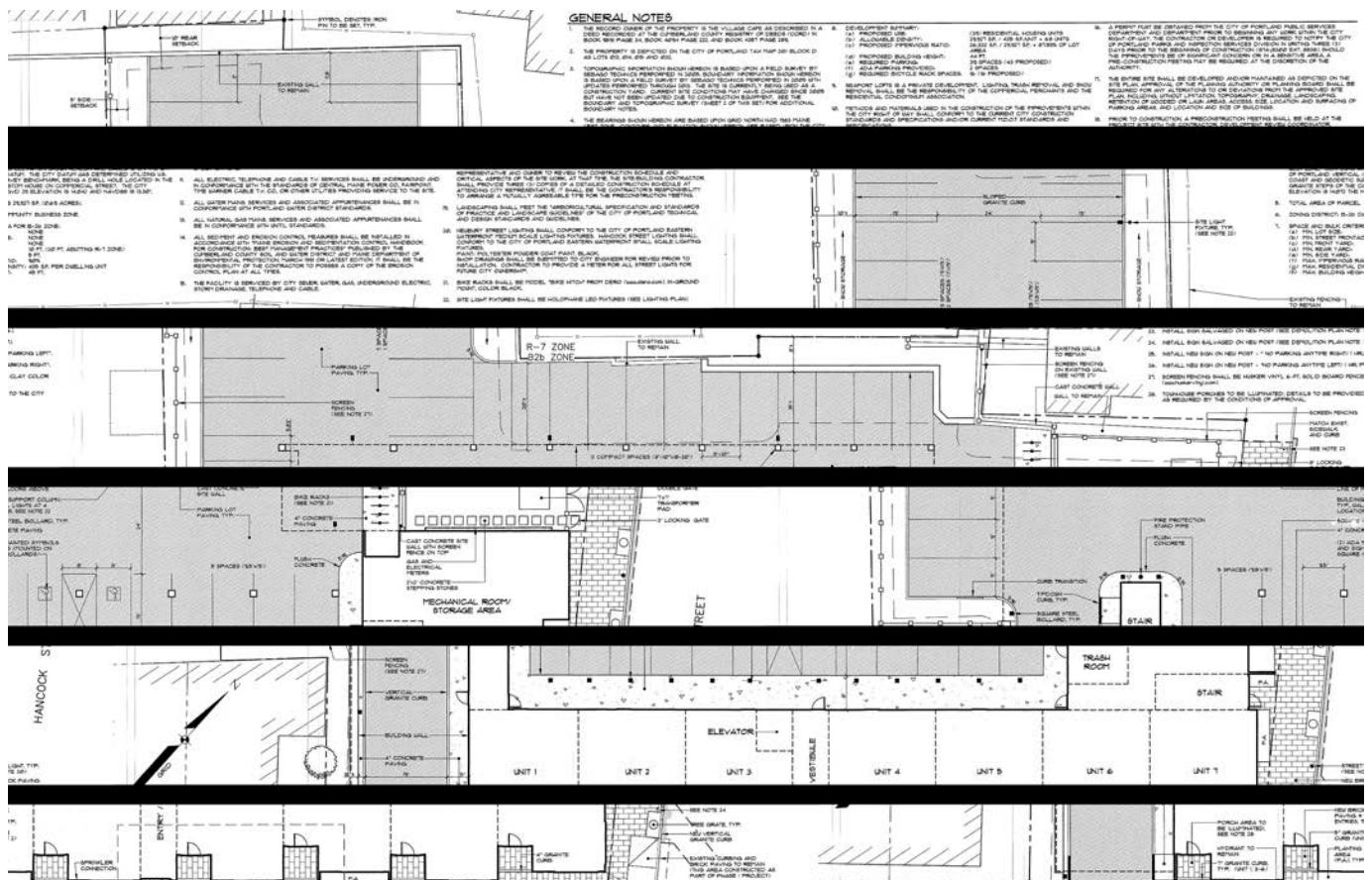
	Existing	Proposed	Net Change
Building Footprint	0 SF	17,132 SF	17,132 SF
Building Floor Area	0 SF	60,085 SF	60,085 SF
Impervious Surface Area	29,927 SF	26,332 SF	-3,595 SF
Parking Spaces (on site)	Approximately 60	43 (zoning req. 39)	-17
Bicycle Parking Spaces	0	16 (meets standard)	16
Estimated Cost of Project	\$12,000,000		

**IV. BACKGROUND & EXISTING CONDITIONS**

The site of the proposed Seaport Lofts lies at the northwest corner of Newbury and Hancock Streets in the city’s Eastern Waterfront. This neighborhood has hosted numerous developments in recent years, including the development team’s sister project, the Bay House Phase I, which is currently under construction directly across Newbury Street. The site lies in a B-2b zone, but many of the neighboring properties, including the Federal Street Townhomes to the north, the single- and multi-family homes up and across Hancock Street, and the property immediately to the west, are residential in nature. The Federal Street Townhomes, behind the site, are located in an R-7 zone. The Shipyard Brewery sits directly to the east. The Eastern Cemetery is visible from the Hancock Street frontage. The site is currently occupied by a surface parking lot.



Figure 1: Bay House Phase I site and surrounding neighborhood



Figures 2 & 3 (from top): Seaport Lofts site from Hancock & Newbury Streets; revised site plan

**V. REVISED SUBMITTAL**

The applicant provided revised materials on October 3 and 7, 2013, and met via conference call for a design discussion with staff on October 3. The revised submittal included updated plans, updated elevations, height calculations, a letter from the Portland Water District regarding the location of subsurface infrastructure, and an email regarding off-street parking (Attachments A-F). Following a set of interim comments from city staff, the applicant resubmitted both architectural and civil drawings early the week of October 14. A discussion of the revised submittals, organized to correspond with the original conditions of approval from the September 24 Board report, follows.

### **Subdivision**

#### *1. Final recording plat*

At the time of the September 24 Board hearing, the city's Department of Public Services asked for several recording plat edits. The applicant has revised the plat in response. One outstanding comment remains, which relates to the addition of a note indicating that "the responsibility for the maintenance of retaining walls has not been determined." The city's Department of Public Services has requested that this note be revised pending such a determination (*Attachment 2*). The original condition of approval related to the recording plat, standard for subdivision approval, remains.

#### *2. Easement, and license agreement*

Conditions of approval related to the recording of a pedestrian easement and the execution of a license agreement remain.

#### *3. Condo documents and parking*

At the board hearing, neighborhood residents raised concerns regarding impacts to the on-street parking supply. Hearing these concerns, the Board asked the applicant to provide additional information on a parking allocation plan and suggested a review of condominium documents, in the interest of gaining a better understanding of the treatment of shared resources and parking post-development. The applicant has not provided draft condominium documents, stating that their attorney has not progressed them to the point of submittal quality. As such, this condition of approval remains.

The applicant has, however, provided an email from Sebago Technics with a brief description of a proposed parking plan for the project (*Attachment F*). As previously discussed, Division 20 of the land use ordinance requires one parking space/unit for residential development located on the peninsula (*Section 14-332(a)3*). At this ratio, the project would require 39 parking spaces - one for each of the 39 units proposed. The final plans show 43 spaces, technically exceeding the parking requirement. Note that per the city's site plan ordinance, since the project exceeds 50,000 SF, parking requirements are ultimately at the discretion of the Planning Board.

The email from Sebago Technics states that "the parking spaces will be assigned to the units prior to unit closings and once the units are sold and closed they will be attached to the units in perpetuity." The applicant acknowledges that they have not resolved through what mechanism this will be achieved, but they have stated that a given space "will be attached to the unit through [a] legal document that will run with the unit." Of this, Thomas Errico, consulting traffic engineer, writes,

*Based upon my understanding of what is provided, at least one parking space will be allocated to each unit (So the approval assumes all units will have at least one parking space). Given this assumption, I find conditions to be acceptable.*

### **Site Plan**

#### *1. Outstanding site plan edits*

At the time of the September 24 Board hearing, there were several minor site plan edits which remained, most of which originated with the city's Department of Public Services. Per the city's DPS, the revised submittal has adequately addressed these comments (*Attachment 2*). This condition of approval has been removed.

#### *2. Additional site plan edits*

There were also several small site plan requests made by David Senus, consulting civil engineer. Per Mr. Senus, the applicant's revised submittal addresses all outstanding concerns (*Attachment 4*). As such, this condition of approval has been removed.

#### *3. Confirmation from PWD regarding location of storm drains*

In his comments on the final plans, David Margolis-Pineo, of the city's Department of Public Services, requested that the applicant provide copies of plans to the Portland Water District, so that they might review the location of storm drains to review for potential conflicts with the existing water mains. The applicant has provided a letter from PWD as evidence that there are no foreseen infrastructure conflicts (*Attachment E*). It should be noted that this

letter does point out an inconsistency in the site survey. The applicant has revised the survey to address this comment. As such, this condition of approval has been removed.

4. *Height and lot coverage*

As noted in prior reports to the Board, Seaport Lofts is proposed as a four-story building. The applicant has provided explanations of average finished grade and height calculations to demonstrate that the building will not exceed the 45’ height limit (*Attachments C & D*). Of this, Marge Schmuckal, Zoning Administrator, writes,

*More plans have been submitted showing the average grade and the roof elevation. I would want a little more clarity as to what is being considered as the "roof elevation". The definitions required the height of a building to be measure to the top of the roof beam. Is that where the 87.25 measurement is taken? Also what is above that area? The plans show a higher elevation going around the building. I did not see any plans that explain that level. Is it for shielding mechanical equipment? The dBA's can be assessed at the time of a building permit for the HVAC systems.*

*To follow up the 45' maximum height is being exactly met based upon the information received, if the upper roof shown on the plans is for mechanical systems.*

...

*I reviewed an e-mail from David White concerning the building height and how the elevations were measured. He also explained what the wall was that is higher than the roof measurement. It is a parapet that surrounds the roof concealing the mechanicals which is permitted by Ordinance to be higher than the maximum building height.*

*I also reviewed the revised impervious surface information on the revised site plan #5 of 14. The Impervious surface ratio is being met.*

*Separate permits are required for the construction of the building and also for the mechanical systems of the building after the site plan has been approved.*

*Marge Schmuckal  
Zoning Administrator*

This condition of approval has been removed.

5. *Traffic Schedule changes*

As noted in previous Board reports, the proposal includes the addition of approximately four on-street parking spaces on Hancock and Newbury Streets, the result of the closure of existing curb cuts in those locations. The applicant will be required to provide materials supporting this parking schedule change to the City Council. This condition of approval remains.

6. *Construction Management Plan*

Following the Planning Board workshop, staff reiterated the requests of Tom Errico, consulting traffic engineer, with respect to the project’s construction management plan. Mr. Errico, Mr. Margolis-Pineo, and John Peverada, the city’s parking manager, as well as members of the public, have all raised concerns regarding construction management, particularly given the experience during the construction of Bay House Phase I. In prior reports to the Board, Mr. Errico’s comments were as follows,

*The applicant has provided a construction management plan for the initial phase. The applicant should provide details on other phases of construction for review and approval and anticipated time durations for each phase. The City would like to gain a full understanding of construction impacts during the all periods of time. The City also suggests providing realistic information on*



*street closures for preliminary approval purposes. The plans should illustrate all anticipated signage and pavement marking changes for each phase. For the Hancock Street sidewalk closure, I would suggest that the sidewalk be closed at Federal Street and pedestrians directed to the east side sidewalk at the intersection. I would note that for the sidewalk closure, all pedestrian detours will need to be ADA compliant. Lastly, approval of the plan by the Fire Department will be required (ensuring acceptable emergency access).*

...

*The applicant has noted that detailed construction plans will be submitted prior to issuance of a building permit. I would note that the applicant should be informed that the construction management plan may require a host of temporary provisions including but not limited to signage, pavement markings, temporary sidewalks, temporary crosswalks, detour routes for vehicles and pedestrians, contractor parking requirements, and street circulation changes. It is my suggestion that as soon as a contractor is selected for the project coordination of the plan begin with the City.*

The applicant has not provided additional information on construction management, stating that a contractor has not been selected and that, thus, specific details cannot be outlined at this time. This condition of approval has been modified to indicate that an approved construction management plan will be required prior to the issuance of any permit.

#### *7. Financial contributions for India/Middle Street intersection and East End Traffic Monitoring Study*

Again, as noted in prior Board reports, the applicant will be required to make financial contributions to the improvement of the India/Middle Street intersection and to the East End Traffic Monitoring Study, as have prior projects in this area. This condition of approval remains.

#### *8. HVAC*

The applicant has indicated that they will provide information on the noise and vibration of HVAC and mechanical equipment prior to building permit. This condition of approval remains.

#### *9. Addressing for 911 purposes*

In discussion, the applicant has indicated that they are developing an addressing plan for the city's review; however, the plan has not been submitted at this time. As such, this condition of approval remains.

#### *10. Design*

As discussed in staff's prior Board memo, the city's site plan ordinance states that "development in the...B-2b business zone shall provide an established street wall with entrances and public portions of the building oriented to and directly accessible from the public sidewalk and shall be designed and scaled to be compatible with surrounding residential and commercial development as demonstrated by compliance with all applicable design standards listed in the Design Manual" (*Section 14-526(d)9.a(iii)*). At the September 24 hearing, as well as at the prior workshop, Board members and staff raised significant concerns with the building's design as presented, particularly with respect to articulation, composition, and compatibility. Ultimately, the Board asked the applicant to revisit the building's design.

The project architect and developer met with staff on October 3 via conference call to discuss a revised set of elevations, intended to address Board and staff concerns, and outstanding design issues. At that meeting, staff made numerous suggestions relating to the B-2b design guidelines, including those covering building orientation and entrances; windows; and building character, detail, scale, and graphic qualities. Comments revolved mainly around façade composition, window design, door and canopy design, the building's rear, and color and darkness, among other things. Following the call, the applicant submitted revised elevations on October 7, 2013. Staff met to discuss these revised elevations, and responded with additional comments. A final set of elevations is included in Figures 4, 5, 6, and 7 (*and Plans 19 and 20*). Note that, as of the writing of this report, renderings and material samples had not been provided to the city. Outstanding comments are as follows.

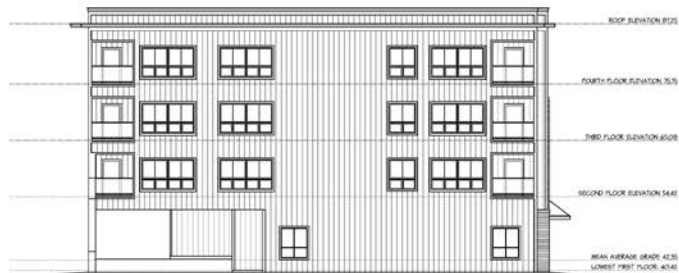


HANCOCK STREET ELEVATION  
SCALE: 1/8" = 1' 0"



NEWBURY STREET ELEVATION  
SCALE: 1/8" = 1' 0"

SEAPORT LOFTS  
PORTLAND, MAINE



LEFT SIDE ELEVATION  
SCALE: 1/8" = 1' 0"



REAR ELEVATION  
SCALE: 1/8" = 1' 0"

SEAPORT LOFTS  
PORTLAND, MAINE

Figures 4, 5, 6, and 7: Revised elevations, showing changes in window and door design, Newbury Street canopy, and façade composition.

*Building orientation and entrances*

Responding to staff requests, the applicant has made some effort to enhance the building entrances. The door of the main, shared entry on Newbury Street has been pulled out to the face of the building. The architect has also altered the awning in this area to represent a more contemporary style. The details of the awning design remain to be resolved. In addition, a Hancock Street awning, while newly added, is shown in the original style. The city has asked the architect to revise the awning in this area to match that on the Newbury Street façade.

The applicant has revised the floor plans to square the northwest corner, adding floor area to the upper story units and changing the window and balcony configuration in this area. Because of the parking arrangement below, this results in a post which is out of alignment with the building above. The rear elevation shows how this corner post will be treated.

*Building character, detail, scale, and graphic qualities*

In response to repeated comments about the flatness of the building, the applicant has altered the composition of the Newbury street façade, alternating between brick and metal cladding on the third floor, to provide some vertical accentuation, visual interest, as well as definition for the main entrance. The applicant has also changed the material configuration on the west end and the posts at the building’s rear. Staff has requested that the architect add a soldier course at the top of the second floor in order to rationalize the change in composition there, where the townhouse units meet the upper story flats.

Window mullions were added, and the openings on the west elevation have been reconfigured slightly; they now match the scale of the window openings above. On the rear of the building, the applicant has reduced the size of the balconies and added windows.

The applicant has not provided samples or renderings showing a final proposed color scheme or material qualities. Likewise, city staff has not reviewed details for the metal screens or the exterior lighting at the building entrances.

*Building location and massing*

Additional questions have arisen recently regarding the building’s scale and location, largely at the prompting of the adjacent property owner at 123 Newbury Street (*Attachment 6*). The development is proposed to sit five feet from the western property line on Newbury Street, just meeting the side setback requirement. Because the adjacent townhome, which also lies in the B-2b zone, is an older building, it lies between zero and 10 feet from the same property line, resulting in a functional separation of between five and 15 feet. As discussed above, the Zoning Administrator has indicated that the Seaport Lofts proposal meets the 45 foot height requirement of the B-2b zone.

The site design standards of the city’s site plan ordinance include a provision stating that “the bulk, location, or height of proposed buildings and structures shall minimize, to the extent feasible, any substantial diminution in value or utility to neighboring structures under different ownership...” (*Section 14-526(d)1.b*). The adjacent property owner has argued that the building’s size and proximity would, in effect, adversely affect the value of her

property, and has asked for some effort to minimize this impact. In looking at ways to mitigate the potential effects in this area “to the extent feasible,” several possibilities have been discussed by the adjacent property owner and city staff, among them: a) eliminating some or all of the six units at the building’s west end, and b) reducing the building footprint (and thus increasing the side setback) by eliminating pedestrian



Figure 8: Western property line and 123 Newbury Street, the adjacent home.

circulation elements in the driveway area. This issue was raised quite recently. The Board might wish to explore this matter further.

#### *11. Stormwater maintenance agreement*

A condition of approval related to a maintenance agreement for the proposed subsurface stormwater detention system remains. Establishing such a maintenance agreement is standard city policy for projects involving stormwater treatment of the kind proposed here.

### **VI. PUBLIC COMMENT**

In the time since the September 24 hearing, city staff has received numerous comments on the project, particularly relating to building design. A representative of the India Street Neighborhood Association has raised issues with respect to the scale of the project, stating that, from his perspective, the proposed massing and design would likely not be permitted under a form-based code which would ideally be adopted for the neighborhood. Issues about “unbroken wall” and a “continuous block of a building” were raised. This neighbor has also objected to the design of the building’s rear, stating that it lacks “textural variation.” He has advocated differentiating the façade materials on the back of the building (*Attachments 7 and 8*).

Similarly, and as discussed above, the adjacent neighbor at 123 Newbury Street has raised concerns with staff regarding the proximity and scale of the proposed development and potential effects on the value of her home. These concerns have been echoed in conversation with the property owner’s real estate agent (*Attachment 9*). This resident argues that the proposed building design is “architecturally uninteresting and imposing” and that it will have negative shadow and wind impacts for surrounding neighbors. Both of these residents have recommended eliminating units as a way to mitigate the development’s impacts.

### **VII. STAFF RECOMMENDATION**

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed development at 101-121 Newbury Street.

### **VIII. PROPOSED MOTIONS**

#### **A. WAIVERS**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in Planning Board Report # 46-13 for application 2013-179 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** the Technical Standard (*Section 1.7.2.7*) regarding the minimum separation between driveways to allow the driveway of Seaport Lofts within the 100-150 separation requirement as shown on the final site plan.
2. The Planning Board **waives/does not waive** the Technical Standard (*Section 1.7.2.3*) regarding the minimum driveway width of 20 feet to allow a driveway of 19 feet as depicted on the final site plan.
3. The Planning Board **waives/does not waive** the Technical Standard represented in Figures I-27 to I-29 regarding the parking lot dimensional requirements to allow parking as designed on the final plans.
4. The Planning Board **waives/does not waive** the Technical Standard (*Section 1.14*) regarding the compact parking space limit to allow 12 compact parking spaces on site.
5. The Planning Board **waives/does not waive** the Site Plan Standard (Section 14-526 (b) (iii)) regarding street trees due to site constraints and the applicant shall contribute \$5,800 for 29 street trees to Portland’s tree fund.

**B. SUBDIVISION**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in Planning Board Report #46-13 for application 2013-179 relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code, subject to the following conditions of approval, which must be met prior to the release of recording plat, unless otherwise stated:

1. The Subdivision Plat shall be finalized for review and approval by the Planning Authority, Department of Public Services, and Corporation Counsel;
2. The following shall be provided for review and approval by Corporation Counsel prior to the release of the building permit:
  - a. Pedestrian access easement for the areas of the sidewalk that are not in the public right-of-way and
  - b. License agreement for the building foundation and/or awnings
3. The Condominium Association documents shall be provided for review and approval by the Planning Authority, Department of Public Services and Corporation Counsel prior to the issuance of a Certificate of Occupancy.

**C. DEVELOPMENT REVIEW**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in Planning Board Report #46-13 for application 2013-179 relevant to the site plan regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the site plan standards of the land use code, subject to the following conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall provide application materials for proposed changes to the city's traffic schedule, for review and approval by the city's Department of Public Services prior to Certificate of Occupancy;
2. The applicant shall submit a revised construction management plan addressing the comments of Tom Errico and all phases of development for review and approval by the Planning Authority, the Department of Public Services, the city's Parking Manager, and the city's Fire Prevention Bureau prior to the issuance of any permit;
3. The applicant shall make financial contributions of \$1,200 towards improvements at the India/Middle Street intersection and \$1,200 towards the East End Traffic Monitoring Study, for review and approval by the city's Department of Public Services;
4. The applicant shall submit the HVAC system specifications meeting applicable standards for the Zoning Administrator's review and approval;
5. The applicant shall resolve addressing questions for fire and 911 purposes, for review and approval by the city's Fire Prevention Bureau;
6. The applicant shall provide revised elevations, renderings, details, and material samples addressing the recommendations of the Planning board and staff on outstanding design issues (including but not limited to the treatment of proposed awnings, the proposed soldier course, metal screens, exterior lighting, and color and materials for review and approval by the Planning Authority; and
7. The applicant shall provide a maintenance agreement for the subsurface stormwater detention system for review and approval by Corporation Counsel and the Department of Public Services.

**IX. ATTACHMENTS**

**PLANNING BOARD REPORT ATTACHMENTS**

1. 9/24/13 Planning Board Report
2. Department of Public Services review (memo from David Margolis-Pineo, 10/17/13)
3. Traffic Engineer review (memo from Thomas Errico, 10/17/13)
4. Civil Engineer review (memo from David Senus, 10/10/13)
5. Zoning Administrator review (memos from Marge Schmuckal, 10/8/13 and 10/9/13)
6. Public comment (email from Liz Monaghan, 10/15/13)
7. Public comment (email from Hugh Nazor, 10/11/13)
8. Public comment (email from Hugh Nazor, 10/15/13)
9. Public comment (email from Beth Angle, 10/17/13)

**APPLICANT’S SUBMITTALS**

- A. Site Plan Review Application
- B. Cover letter (from Will Conway, Sebago Technics, 10/3/13)
- C. Average grade calculations
- D. Roof height calculations (email from David White, architect, 10/8/13)
- E. PWD response (email from Rico Spugnardi, PWD, 10/1/13)
- F. Parking and construction management plan response (email from Will Conway, 10/8/13)
- G. Cover letter (from Will Conway, Sebago Technics, 10/15/13)
- H. Revised lighting cut sheets

**C. PLANS**

- Plan 1 Cover Sheet
- Plan 2 Boundary and Topographic Survey
- Plan 3 Demolition Plan
- Plan 4 Subdivision Plat
- Plan 5 Site Plan
- Plan 6 Grading and Utility Plan
- Plan 7 Off-Site Drainage Plan
- Plan 8 Profile: Hancock & Newbury Streets
- Plan 9 Landscape and Lighting Plan
- Plan 10 Details
- Plan 11 Details
- Plan 12 Details
- Plan 13 Details
- Plan 14 Details
- Plan 15 1st Floor Plan
- Plan 16 2<sup>nd</sup> Floor Plan
- Plan 17 3<sup>rd</sup> Floor Plan
- Plan 18 4<sup>th</sup> Floor Plan
- Plan 19 Hancock and Newbury Street Elevations
- Plan 20 Left and Rear Elevations



# PLANNING BOARD REPORT PORTLAND, MAINE

Seaport Lofts (Bay House Phase II)  
101-121 Newbury Street and 40 Hancock Street  
Level III Site Plan and Subdivision Review  
2013-179  
113 Newbury Street, LLC, Applicant

Submitted to: Portland Planning Board Public Hearing Date: September 24, 2013 Planning Board Report Number: #42-13	Prepared by: Nell Donaldson, Planner Date: September 20, 2013 CBLs: 20-D-13, 14, 15, 32
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## I. INTRODUCTION

113 Newbury Street, LLC requests a Level III site plan and subdivision review for a four-story housing development, recently coined the Seaport Lofts, at the corner of Newbury and Hancock Streets in the Eastern Waterfront. The proposed 60,000 SF development includes 39 residential units - seven townhomes and 32 flats - and 43 parking spaces. The proposal also includes sidewalk and landscaping improvements. The site is currently occupied by surface parking lots.

At a prior Planning Board workshop, held on August 13, 2013, the Board considered the preliminary plans for the project. At the workshop, concerns regarding design and neighborhood compatibility, effects on parking, and construction impacts were raised. This report outlines changes made to the preliminary plans in response to the Board workshop and notes outstanding comments.

A total of 133 notices were sent to property owners within 500 feet of the site and a legal ad ran on 9-16 and 9-17.

**Applicant:** Atlas Investment Group, LLC, Demetri Dasco  
**Consultants:** Will Conway, Sebago Technics; David White, Architect

## II. REQUIRED REVIEWS

<i><b>Waiver Requests</b></i>	<i><b>Applicable Standards</b></i>
Driveway width – to allow a 19 foot wide driveway on Newbury Street <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual 1.7.2.3. Any site with a two-way driveway access to the street shall have a minimum width of 20 feet.</i>
Driveway spacing – to allow a driveway separation of app. 10 feet <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual 1.7.2.7. Along local streets, minimum acceptable spacing between driveways on adjacent lots shall be 100-150 feet.</i>
Compact parking spaces – to allow 12 compact spaces (for 29% of the total) <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual 1.14. Parking lots with greater than 10 spaces may be comprised of up to 20% compact spaces.</i>
Parking dimensions <i>Supported by consulting traffic engineer.</i>	<i>Technical Manual Figures I-27 to I-29.</i>
Street Trees – 39 trees required (1/unit) ,10 street tree provided, contribution of \$5,800 required- <i>Supported by City Arborist and Planning</i>	<i>Site Plan Standard and waiver Section 14-526 (b) (iii)</i>
<i><b>Review</b></i>	<i><b>Applicable Standards</b></i>
Site Plan	<i>Section 14-526</i>
Subdivision	<i>Section 14-497</i>

**III. PROJECT DATA**

Existing Zoning	B-2b
Existing Use	Vacant lot/surface parking
Proposed Use	Residential
Proposed Development Program	32 flats, 7 townhouses
Parcel Size	29,927 SF

	<i>Existing</i>	<i>Proposed</i>	<i>Net Change</i>
Building Footprint	0 SF	17,132 SF	17,132 SF
Building Floor Area	0 SF	60,085 SF	60,085 SF
Impervious Surface Area	29,927 SF	26,332 SF	-3,595 SF
Parking Spaces (on site)	Approximately 60	43 (zoning req. 39)	-17
Bicycle Parking Spaces	0	16 (meets standard)	16
Estimated Cost of Project	\$12,000,000		

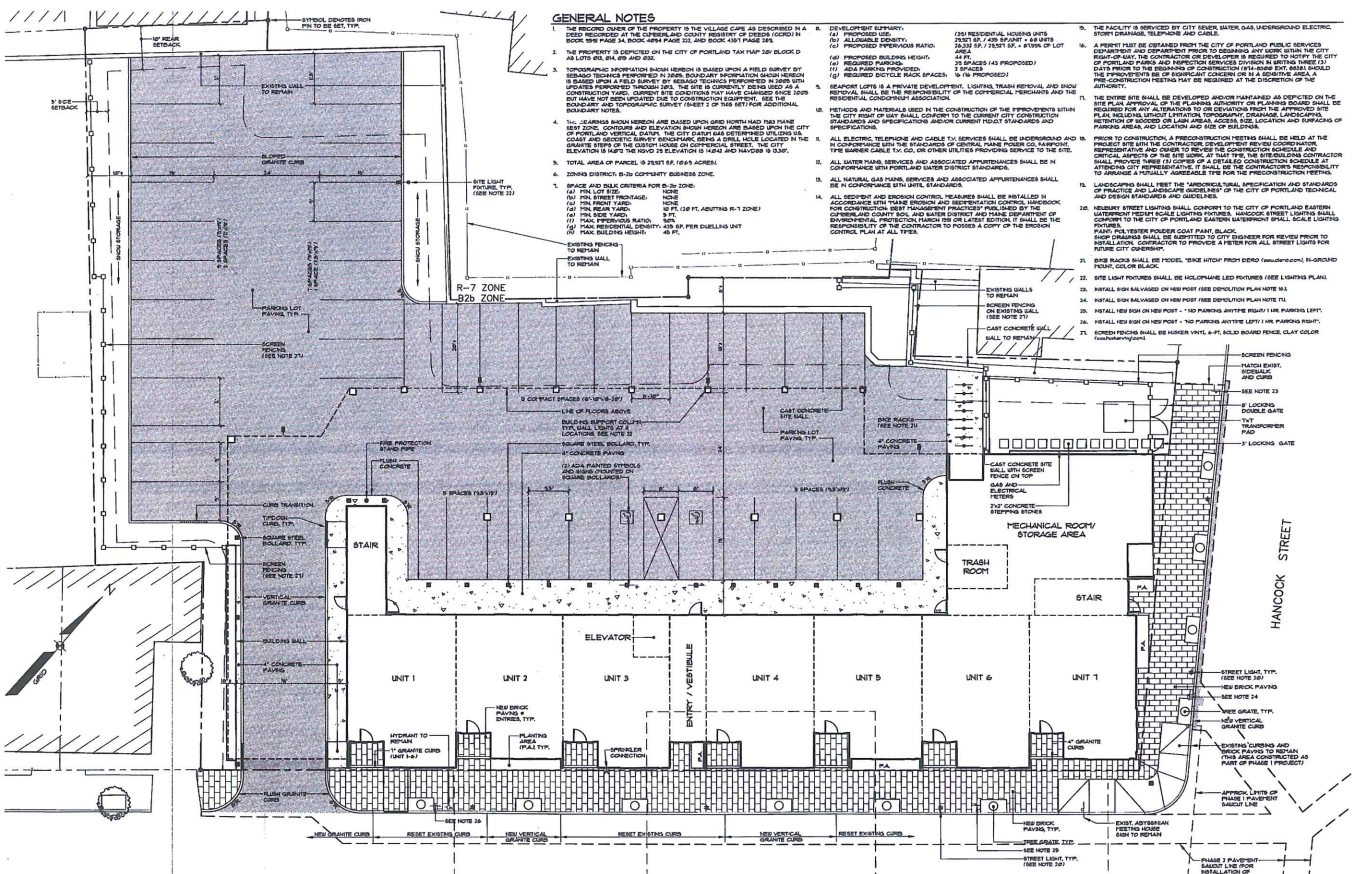
**IV. BACKGROUND & EXISTING CONDITIONS**

The site of the proposed Seaport Lofts lies at the northwest corner of Newbury and Hancock Streets in the city’s Eastern Waterfront. This neighborhood has hosted numerous developments in recent years, including the development team’s sister project, the Bay House Phase I, which is currently under construction directly across Newbury Street. The site lies in a B-2b zone, but many of the neighboring properties, including the Federal Street Townhomes to the north, the single- and multi-family homes up and across Hancock Street, and the property immediately to the west, are residential in nature. The Federal Street Townhomes, behind the site, are located in an R-7 zone. The Shipyard Brewery sits directly to the east. The Eastern Cemetery is visible from the Hancock Street frontage. The site is currently occupied by a surface parking lot.



Figures1: Bay House Phase I site and surrounding neighborhood





Figures 2, 3, & 4 (from top): Seaport Lofts site from Hancock & Newbury Streets; revised Newbury Street elevation; revised site plan

## V. PROPOSED DEVELOPMENT

The Seaport Lofts, when built, would consist of 39 residential units on four floors. Seven of these units are designed as townhomes with front doors on Newbury Street. The remaining 32 units would be accessed by elevator or stair from a main entrance on Newbury Street or a rear entrance from the parking area at back. An additional door, clarified in the final proposal to serve egress purposes alone, is proposed on Hancock Street. The building is designed with a brick façade to delineate the townhomes and metal panel siding to delineate the flats.

Vehicular access would be provided via a driveway from Newbury Street, which would cut through the building's first floor. 43 parking spaces, an increase of one space since the time of preliminary review, are proposed at the rear of the site. Roughly  $\frac{3}{4}$  of these are proposed in the open air, with the remainder under the second floor of the building.

New brick sidewalks, street trees, and street lights are proposed. The final plans also show landscaping on both the Newbury and Hancock Street frontages, enhanced landscaping around the transformer pad, and landscaping around the parking lot at the building's rear.

## VI. PUBLIC COMMENT

The applicant held a neighborhood meeting on India Street, near the project site, on August 7, 2013. The sign-in and minutes from this meeting are included as *Attachment F*. Per the meeting minutes, neighbors were concerned regarding the shadow and view impacts of the building, construction impacts, and structural integrity of the existing retaining walls.

In addition to the comments from the public meeting, the Planning Division received several letters from property owners in the vicinity. These are included as *Attachments 1 and 2*. One of these letters concerned view and shadow impacts. The other raised issues regarding the loss of existing parking on site and the adequacy of parking proposed. This property owner suggested on-street parking restrictions for Bay House residents – through which such residents would be limited to a delineated on-street parking zone or denied on-street parking stickers altogether. As an alternative, she has suggested deeded parking to discourage on-street parking and ensure that off-street parking would be available to all Seaport Lofts residents.

## VII. RIGHT, TITLE, & INTEREST

The applicant's final submittal includes a purchase and sale agreement as evidence of right, title, and interest. A deed description which demonstrates the seller's interest in the property has been reviewed.

At the time of preliminary review, a neighboring property owner raised questions regarding the rear property line as depicted on the original survey. A revised, stamped survey, showing revised property lines, has been provided with the final plans. It is the understanding of staff that the property line questions have been resolved.

## VIII. FINANCIAL & TECHNICAL CAPACITY

The estimated cost of the development is \$12 million. In their preliminary application, the applicant submitted a letter from East Boston Savings Bank indicating their intent to consider project financing for Phase II of the Bay House project.

## IX. ZONING ANALYSIS

In her preliminary review, Marge Schmuckal, zoning administrator, asked for confirmation that the project is meeting both the maximum impervious surface ratio and building height requirements of the B-2b zone. In the B-2b, the maximum impervious surface ratio is 90%. The applicant's final plans show a ratio of 87.9%, ostensibly meeting this requirement. Likewise, the maximum building height in the B-2b is 45 feet. The applicant's revised elevations show a height of 44.9 feet. Verification that the proposal is meeting lot coverage and building height requirements has yet to be confirmed by the zoning administrator.

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

The applicant has met all site plan submission requirements. However, a complete construction management plan

has yet to be approved. Thomas Errico, the city's consulting traffic engineer, writes,

*The applicant has provided a construction management plan for the initial phase. The applicant should provide details on other phases of construction for review and approval and anticipated time durations for each phase. The City would like to gain a full understanding of construction impacts during the all periods of time. The City also suggests providing realistic information on street closures for preliminary approval purposes. The plans should illustrate all anticipated signage and pavement marking changes for each phase. For the Hancock Street sidewalk closure, I would suggest that the sidewalk be closed at Federal Street and pedestrians directed to the east side sidewalk at the intersection. I would note that for the sidewalk closure, all pedestrian detours will need to be ADA compliant. Lastly, approval of the plan by the Fire Department will be required (ensuring acceptable emergency access).*

*Update: The applicant has noted that detailed construction plans will be submitted prior to issuance of a building permit. I would note that the applicant should be informed that the construction management plan may require a host of temporary provisions including but not limited to signage, pavement markings, temporary sidewalks, temporary crosswalks, detour routes for vehicles and pedestrians, contractor parking requirements, and street circulation changes. It is my suggestion that as soon as a contractor is selected for the project coordination of the plan begin with the City.*

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

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland's subdivision ordinance. The applicant has provided a draft subdivision plat. Prior to signing, the applicant will need to modify this plat to include all applicable waivers and conditions of approval as decided by the Planning Board. The applicant will also be required to provide condominium documents. As noted on the draft plat, a license agreement will also be required for the building's foundation and the applicant will be required to grant a pedestrian easement to the city for proposed sidewalk outside the public right-of-way. Conditions of approval pertaining to the above requirements are proposed for the Board's consideration.

Remaining staff comments on the subdivision are below.

##### ***1. Water, Air Pollution***

The site is currently occupied by surface parking lots. A total of approximately 26,000 SF of impervious area is proposed, representing a net decrease in impervious surfaces of more than 3,000 SF. The majority of the post-development impervious surface is comprised of roof, which is expected to improve the quality of the water leaving the site. No detrimental water or air quality impacts are anticipated.

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

The applicant has provided a letter from the Portland Water District confirming the district's ability to serve the proposed project (*Attachment D*).

##### ***4. Soil Erosion***

As noted above, the site is currently developed as a surface parking lot. The site is sloped such that the elevation changes by six feet from Newbury Street towards the back of the site. Retaining walls can be found on the northwestern property line, on the eastern property line, and interior to the site. Some of these will be rebuilt as a result of the project and may require building permits from the Inspection Division. No major impacts related to erosion are expected.

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

The project has been reviewed by Mr. Errico (*Attachment 3*). Per the traffic impact assessment completed as part of the preliminary application, the proposed development is not expected to generate significant traffic volumes. The cumulative trip generation from both phases of the Bay House is not great enough to trigger a Traffic Movement Permit. Mr. Errico has indicated that, based on prior approvals in the area, contributions toward planned improvements at the intersection of India and Middle Streets, which is currently failing in operations, and to the

East End Traffic Monitoring Study are required. These contributions are discussed in more detail below.

#### **6. Sanitary Sewer/Stormwater**

The applicant has submitted a wastewater capacity letter from the Department of Public Services indicating adequate capacity to handle wastewater flows from the project (*Attachment D*).

As noted above, the proposed development will result in a net decrease in impervious surfaces on site. As proposed, all runoff from the site will enter into a subsurface detention system on site and, from there, run down Newbury Street to the separated stormwater system in Hancock Street. The plans have been reviewed by the David Senus, consulting civil engineer, and David Margolis-Pineo of the Department of Public Services. Their comments are enclosed as *Attachments 4 and 5*.

#### **7. Solid Waste**

The applicant has revised the plans to show a ‘trash room’ near the mechanical room at the building’s rear. The applicant states that “trash will be stored in bins and collected by a contracted waste hauler” from this location (*Attachment B*). The dumpster shown in the original site plans has been removed.

#### **8. Scenic Beauty**

This proposal is not deemed to have an adverse impact on the scenic beauty of the area. The final plans include ten street trees on Hancock and Newbury Streets. A required improvement of the Subdivision Ordinance is street trees and under the Site Plan standards (Section 14-526 b (iii) ), one tree/unit is required. Thus, 39 total street trees should be supplied for this project. Ten street trees are proposed along Hancock and Newbury Streets. The waiver criteria states:

Where the applicant can demonstrate that site constraints prevent the planting of required street trees in the City right of way, the Reviewing Authority may permit the planting of street trees in the front yard, within 10 feet of the property line. Existing preserved healthy trees that are six inches or more in caliper and are on the site within 10 feet of the property line may be counted towards this requirement. If planting street trees is neither feasible in the City right of way nor within the site, the applicant shall contribute to the Cot of Portland Tree Fund an amount proportionate to the cost of required street trees.

Due to site constraints, the staff recommends a contribution to the tree fund of \$5,800 be submitted to meet the standard and waiver criteria.

#### **9. Comprehensive Plan**

As noted in staff’s prior memo to the Board, the project is deemed compatible with Comprehensive Plan goals and policies, including the vision for the community’s future, which envisions an “adequate supply of quality housing for all,” “proximity of commercial uses near residences,” and “high-density areas on the peninsula.”

#### **10. Financial and Technical Capacity**

As noted above, the applicant has submitted a letter from East Boston Savings Bank indicating the intent to consider project financing.

#### **11. Wetland Impacts**

There are no anticipated impacts to wetlands.

#### **12. Groundwater Impacts**

There are no anticipated impacts to groundwater supplies.

#### **13. Flood-Prone Area**

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

## **XII. SITE PLAN REVIEW**

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

## 1. *Transportation Standards*

### a. *Impact on Surrounding Street Systems*

The applicant's traffic impact assessment was reviewed and found acceptable by Mr. Errico. As noted in the prior Board memo, at the time of the original traffic impact study for both phases of Bay House in 2005, the intersection of India and Middle Streets was failing for the eastbound and westbound movements during the PM peak hour. Mr. Errico has noted that, as with prior projects in the area, contributions to the improvement of this intersection and to the East End Traffic Monitoring Study will be required. Mr. Errico writes,

*Based upon the increase in traffic documented by the applicant, \$1200.00 shall be contributed towards improvements at the India Street/Middle Street intersection and \$1200.00 shall be contributed towards an East End Traffic Monitoring Study.*

### b. *Access and Circulation*

Mr. Margolis-Pineo has noted that the sidewalk, as designed, encroaches on private property. This will require a pedestrian easement. In addition, in the final plans, a portion of this sidewalk has not been included in the proposed pedestrian easement. He writes,

*A portion of sidewalk on the Newbury side of the Newbury-Hancock intersection still requires to be identified for an easement.*

Mr. Margolis-Pineo also notes,

*Please indicate on the plans the intended sidewalk running and cross slopes at which the sidewalks will be installed.*

The applicant continues to propose closing all existing curb cuts on the site and providing vehicular access to the site via a driveway at the west end of the Newbury Street frontage. This driveway would cut through the first floor of the building. In order to provide pedestrian access via a sidewalk adjacent to the driveway, the driveway is proposed at 19 feet, or slightly less than in the preliminary plans and less than the standard cited in the city's Technical Manual (*Section 1.7.2.3*). Mr. Errico has previously expressed his support for this waiver.

As previously discussed, this proposed driveway is proximate to a curb cut for a residential property immediately abutting the site to the west. The applicant has provided a request for a waiver from the separation requirement for curb cuts from the city's Technical Manual (*Section 1.7.2.7*) (*Attachment H*). Of this, Mr. Errico writes,

*I support a waiver from the technical standards given the adjacent driveway serves only one vehicle and the location maximizes separation from the Hancock Street/Newbury Street intersection.*

### c. *Public Transit Access*

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

### d. *Parking*

As previously discussed, Division 20 of the land use ordinance requires one parking space/unit for residential development located on the peninsula (*Section 14-332(a)3*). At this ratio, the project would require 39 parking spaces - one for each of the 39 units proposed. The final plans show 43 spaces, an increase of one from the preliminary plans, technically exceeding the parking requirement. Per the city's site plan ordinance, since the project exceeds 50,000 SF, parking requirements are ultimately at the discretion of the Planning Board.

Twelve of the proposed parking spaces continue to be designed as compact spaces. This exceeds the allowable ratio per the city's Technical Manual (*Section 1.14*). The applicant has requested a waiver (*Attachment H*). Mr. Errico writes,

*The plan indicates that several parking spaces will not meet City standards. The applicant has formally requested a waiver for 12 compact parking spaces where the project is proposing slightly larger spaces given support column locations. The parking lot also includes spaces with dimensions of 9.5'x19', 11'x19', and 11.5'x19'. Given column constraints in the garage, as well as the two wider spaces (11" and 11.5') are located at the end of the parking aisle and need extra maneuvering space, I support a waiver from the technical standards.*

It should be noted that, in closing existing curb cuts on Hancock and Newbury Streets, approximately four on-street parking spaces will be gained. The applicant will be required to provide materials supporting this parking schedule change to the City Council.

16 bike parking spaces are proposed. This number meets the site plan standard of two spaces/five dwelling units for residential structures (*Section 14-526(a)4.b*). Bike racks are proposed at the rear of the building.

*e. Transportation Demand Management*

A transportation demand management plan is not required.

**2. Environmental Quality Standards**

*a. Preservation of Significant Natural Features*

There are no known significant natural features on the site.

*b. Landscaping and Landscape Preservation*

The final landscaping plans have been revised to show smaller trees at the building's rear, tree pit planting details, and replacement trees and plants as suggested by Jeff Tarling, City Arborist. Mr. Tarling has indicated his approval of the revised landscaping plan.

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

At the request of David Senus, consulting civil engineer, the final plans include subsurface stormwater detention in a Stormtech Isolator Row system at the rear of the site. This system is designed to control the rate of stormwater flow from the site into the Hancock Street separated system, and ultimately into the downstream Ocean Gateway stormwater treatment unit. A revised stormwater management plan has been provided (*Attachment G*).

Of this, Mr. Senus writes,

*The isolator row callout for the below grade storage system on Sheet 6 appears to be pointing to an adjacent row; not the isolator row.*

*Sheet 14 contains a detail for an "Optional Inspection Port" for the Stormtech chambers. Please clarify the number and location of inspection ports for the storage system.*

*The Grading and Utility Plan (Sheet 6) proposes a "4-inch Tree Pit Underdrain" below the sidewalk along Newbury Street. Upon consultation with City Arborist and DPS staff, unless there is a project-specific design reason for this underdrain, please remove this notation on the plan and the associated detail on Sheet 13.*

*The detail for CB#1 on Sheet 14 should include a grated cover on "Side A" of the catch basin; all other covers on CB#1 and OCS#1 should be solid covers.*

*Review of Stormwater Model – Clarification for Project Record (No Revisions Required): The HydroCAD stormwater model indicates that Pond 5P (Proposed Stormtech Chamber) will have 0 CFS discharge out of the “Primary Outflow” for the 1 year storm event (2.5” event); however, an overall peak discharge rate is reported for the Pond. This appears to be a result of the Reach Routing method utilized in the model. Other routing methods, when utilized in the model, report discharge from the “Primary Outflow” of Pond 5P during the 1 year storm event. Very little change in overall discharge rate is realized at downstream points regardless of the routing method utilized. As such, there is no need to change or revise the model. We note this for the project record, no revisions are required*

A stormwater maintenance agreement will be required for the subsurface detention system.

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

#### *a. Consistency with Related Master Plans*

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

#### *b. Public Safety and Fire Prevention*

The applicant has provided a revised NFPA code analysis for review by the Fire Prevention Bureau (*Attachment C*). Captain Chris Pirone of the Fire Prevention Bureau has indicated that addressing for 911 purposes remains unresolved.

#### *c. Availability and Capacity of Public Utilities*

As noted above, the applicant has provided evidence of water and sewer capacity. David Margolis-Pineo, of the city’s Department of Public Services, has requested that the PWD review the location of storm drains to ensure that no conflicts with the existing water mains arise.

### **4. Site Design Standards**

#### *a. Massing, Ventilation, and Wind Impact*

As noted in the prior memo to the Board, Seaport Lofts is proposed as a four-story building. The application states that it will not exceed the 45’ height limit, and the final elevations show a height of 44.9 feet. Verification of the proposed building height is outstanding.

In terms of context, the adjacent residential buildings are generally two-three stories in height, with the exception of the Federal Street Townhomes and Bay House Phase I, which are four. The Shipyard Brewery is a three-story building. The applicant has provided a site section, as requested by the Planning Board (*Figure 5*). This section shows the profile of the Federal Street Townhomes to the north, the proposed Seaport Lofts, and Bay House Phase I across Newbury Street.

#### *b. Shadows*

Figure 5 below shows the proposed Hancock Street grade elevations. Much of the shadow impact from the Seaport Lofts would fall on the northerly residential buildings, although this would be mitigated slightly by the elevation change toward Federal Street. There would be no shadow impacts to publicly accessible open spaces. Per the Technical Manual, a shadow study is not required for Level II or III developments that are less than 45 feet tall (*Section 11.3*). Though the height remains to be verified by the zoning administrator, it is the applicant’s intent that the building meet the zoning height limit.

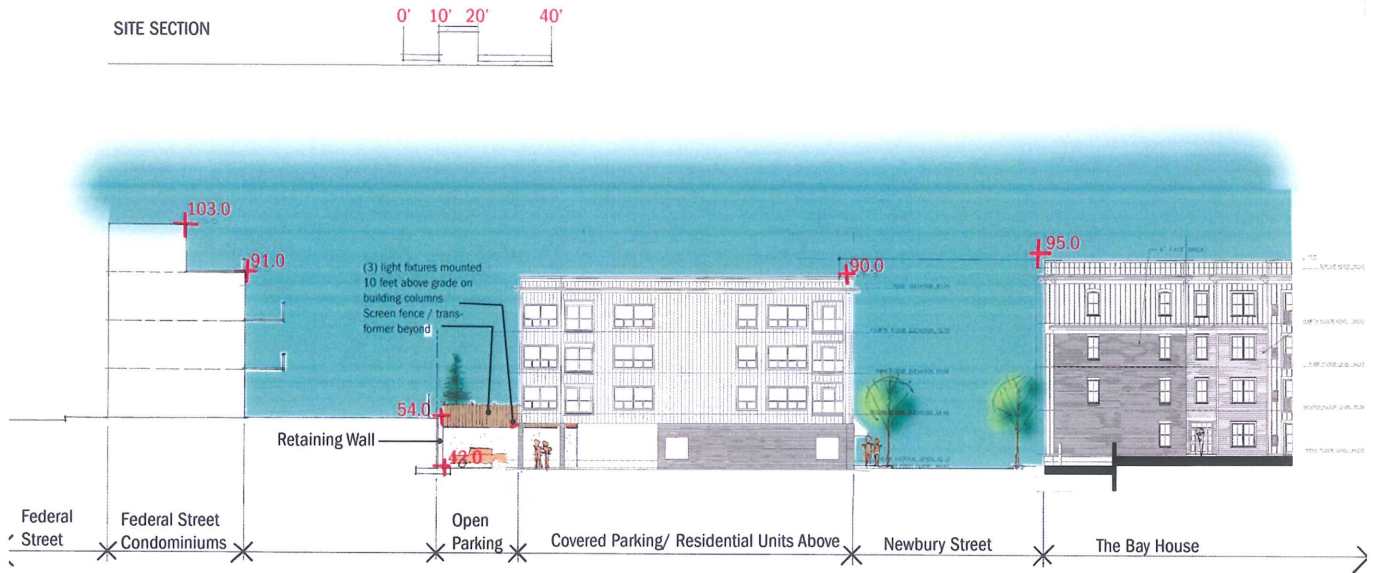


Figure 5: Proposed Hancock Street elevation

c. *Snow and Ice Loading*

The applicant has added snow storage areas to the final plans.

d. *View Corridors*

The site is not located on a recognized view corridor.

e. *Historic Resources*

The site is located more than 100’ from the nearest historic landmark, the Eastern Cemetery. As such, it is not required to undergo Historic Preservation review.

f. *Exterior Lighting*

The applicant has revised the plans to note that the Eastern Waterfront Street Lighting District streetlights are required. The applicant also proposes to install full cut-off fixtures at the rear of the building in order to light the parking area. One of these is pole-mounted, with four others mounted on the building. Cut sheets are included as *Attachment I*. The final photometric plan meets relevant technical standards.

City staff has asked the applicant to reconsider the bracket proposed for the building-mounted lights. Staff has also asked the applicant to reconsider lighting the vestibules at the first floor doorways, which are currently unlit.

g. *Noise and Vibration*

The applicant has not provided information on the noise and vibration of HVAC and mechanical equipment. Submission of this information to the Zoning Administrator for review and approval is proposed as a condition of approval.

h. *Signage and Wayfinding*

All signage and wayfinding is acceptable as shown.

i. *Zoning-Related Design Standards*

As discussed in staff’s prior Board memo, the city’s site plan ordinance states that “development in the...B-2b business zone shall provide an established street wall with entrances and public portions of the building oriented to and directly accessible from the public sidewalk and shall be designed and scaled to be compatible with surrounding residential and commercial development as demonstrated by compliance with



all applicable design standards listed in the Design Manual” (Section 14-526(d)9.a(iii)). The Design Manual includes standards and guidelines related to street walls, prominence of building entries, windows and transparency, façade character, compatibility, and landscaping.

The applicant has revised elevations and provided elevations to address the Board’s concerns about the transformer area (Figure 6). Regarding this area, the applicant shows arborvitae and azalea along the property line, as well as a 6’ solid vinyl board fence. This fence is gated in order to allow utility access. These are intended to screen the transformer from the adjacent property owner.



Figure 6: Elevation showing transformer area



Figures 7, 8, & 9: Newbury Street elevation (top), Hancock Street elevation (right); and rendering from the corner of Newbury & Hancock (Note that these renderings, dated early September, do not entirely reflect the final plans (e.g. the second story window on Hancock Street which appears out of alignment has been eliminated).

The applicant submitted renderings in early September (*Figures 7, 8, & 9*). These did not vary appreciably from those shown at the Board workshop in August. Based on these renderings, city staff conducted a design review. The applicant provided responses in their final submittal. The review comments related to the following:

- Two alcoves appear on the site and building plans, one at the rear of the building near the bike racks, and one on the Hancock Street façade near the door. These areas raise CPTED concerns. The applicant has offered to install metal screens in these locations to prevent access. The details on these screens have not been reviewed by City staff.
- The gray color proposed for the building prompts concerns as well, given the potential that the building may appear dark. The applicant has offered to provide samples of gray and an alternate color at the Board hearing. It should be noted that these samples have not been reviewed by city staff.
- As members of the public and the Board itself has noted, in renderings all sides of the building read fairly flat, including the rear which is visually prominent from neighboring properties. City staff asked the applicant to consider articulating windows and/or balconies in order to provide more variation. The applicant has responded that the windows, which are proposed to be clad in silver gray aluminum, will provide contrast with the main building material, but that projecting windows or balconies are not financially or practically feasible. City staff also asked the applicant to expand the Newbury Street balconies to encompass adjacent closet areas. The applicant responded that this was not possible given space constraints. City staff has reiterated the request that the balcony railings protrude slightly so as to create visual interest in the façade.
- In an effort to enhance building entrances, city staff asked the applicant to add a canopy to the Hancock door and consider a more architectural canopy design. The applicant has responded that “the Hancock Street ‘entry’ is actually an exit only, therefore we chose not to propose an awning in that location.” The city has reiterated this request.

The applicant has not provided revised renderings addressing these staff comments. They have indicated that financial considerations prohibit them from accommodating many of the city’s requests. The applicant has indicated that updated renderings, showing minor revisions, and material samples will be shown at the hearing. Again, these have not been reviewed by city staff.

## X. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed development at 101-121 Newbury Street.

## XI. PROPOSED MOTIONS

### A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in Planning Board Report # 42-13 for application 2013-179 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** the Technical Standard (*Section 1.7.2.7*) regarding the minimum separation between driveways to allow the driveway of Seaport Lofts within the 100-150 separation requirement as shown on the final site plan.
2. The Planning Board **waives/does not waive** the Technical Standard (*Section 1.7.2.3*) regarding the minimum driveway width of 20 feet to allow a driveway of 19 feet as depicted on the final site plan.
3. The Planning Board **waives/does not waive** the Technical Standard represented in Figures I-27 to I-29 regarding the parking lot dimensional requirements to allow parking as designed on the final plans.

4. The Planning Board **waives/does not waive** the Technical Standard (*Section 1.14*) regarding the compact parking space limit to allow 12 compact parking spaces on site.
5. The Planning Board **waives/does not waive** the Site Plan Standard (Section 14-526 (b) (iii)) regarding street trees due to site constraints and the applicant shall contribute \$5,800 for 29 street trees to Portland's tree fund.

#### **B. SUBDIVISION**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in Planning Board Report #42-13 for application 2013-179 relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code, subject to the following conditions of approval, which must be met prior to the release of recording plat, unless otherwise stated:

1. The Subdivision Plat shall be finalized for review and approval by the Planning Authority, Department of Public Services, and Corporation Counsel;
2. The following shall be provided for review and approval by Corporation Counsel prior to the release of the building permit:
  - a. Pedestrian access easement for the areas of the sidewalk that are not in the public right-of-way and
  - b. License agreement for the building foundation and/or awnings
3. The Condominium Association documents shall be provided for review and approval by the Planning Authority, Department of Public Services and Corporation Counsel prior to the issuance of a Certificate of Occupancy.

#### **C. DEVELOPMENT REVIEW**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in Planning Board Report #42-13 for application 2013-179 relevant to the site plan regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the site plan standards of the land use code, subject to the following conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall revise the final plans to include:
  - a) Delineation of the Newbury Street sidewalk in the proposed pedestrian easement area and
  - b) Sidewalk running and cross slopesFor review and approval by the city's Department of Public Services;
2. The applicant shall revise the final plans to incorporate edits as requested by David Senus in his memo dated 9/18/13, for review and approval by the city's Department of Public Services;
3. The applicant shall provide confirmation of the Portland Water District's acceptance of the location of storm drains in proximity to water infrastructure, for review and approval by the city's Department of Public Services;
4. The applicant shall obtain verification from the city's zoning administrator with respect to building height and lot coverage;
5. The applicant shall provide application materials for proposed changes to the city's traffic schedule, for review and approval by the city's Department of Public Services prior to Certificate of Occupancy;
6. The applicant shall submit a revised construction management plan for review and approval by the

Planning Authority, the Department of Public Services, the city’s Parking Manager, and the city’s Fire Prevention Bureau;

7. The applicant shall make financial contributions of \$1,200 towards improvements at the India/Middle Street intersection and \$1,200 towards the East End Traffic Monitoring Study, for review and approval by the city’s Department of Public Services;
8. The applicant shall submit the HVAC system specifications meeting applicable standards for the Zoning Administrator’s review and approval;
9. The applicant shall resolve addressing questions for fire and 911 purposes, for review and approval by the city’s Fire Prevention Bureau; and
10. The applicant shall provide revised elevations, renderings, lighting cut sheets, and details regarding the metal screens in the building alcoves which address the recommendations of the Planning Board and Planning staff, for review and approval by the Planning Authority.

**XIV. ATTACHMENTS**

**PLANNING BOARD REPORT ATTACHMENTS**

1. Public comment (letter and email correspondence from Liv Chase)
2. Public comment (letter from David Filipos)
3. Traffic Engineer review (memo from Thomas Errico, 9/19/13)
4. Department of Public Services review (memo from David Margolis-Pineo, 9/18/13)
5. Civil Engineer review (memos from David Senus, 9/18/13)

**APPLICANT’S SUBMITTALS**

- A. Cover Letter (from Will Conway, Sebago Technics, 9/3/13)
- B. Cover Letter (from Will Conway, Sebago Technics, 9/17/13)
- C. Building Code summaries
- D. Capacity to Serve letters & PWD correspondence
- E. Construction Management Plan
- F. Neighborhood Meeting material
- G. Stormwater Management Plan
- H. Summary of waiver requests
- I. Lighting cut sheets & photometric plan

**C. PLANS**

- Plan 1 Cover Sheet
- Plan 2 Boundary and Topographic Survey
- Plan 3 Demolition Plan
- Plan 4 Subdivision Plat
- Plan 5 Site Plan
- Plan 6 Grading and Utility Plan
- Plan 7 Off-Site Drainage Plan
- Plan 8 Profile: Hancock & Newbury Streets
- Plan 9 Landscape and Lighting Plan
- Plan 10 Details
- Plan 11 Details
- Plan 12 Details
- Plan 13 Details
- Plan 14 Details
- Plan 15 1st Floor Plan
- Plan 16 2<sup>nd</sup> Floor Plan
- Plan 17 3<sup>rd</sup> Floor Plan

- Plan 18 4<sup>th</sup> Floor Plan
- Plan 19 Hancock and Newbury Street Elevations
- Plan 20 Left and Rear Elevations
- Plan 21 Transformer Area Elevation
- Plan 22 Newbury Street Elevation (color)
- Plan 23 Hancock Street Elevation (color)
- Plan 24 Rear Elevation (color)
- Plan 25 Rendering
- Plan 26 Site Section

September 17, 2013

To whom it may concern,

My name is Liv Chase and my partner, Brent Adler and I are the owners of 52 Federal St., 49-51 Hancock St, and soon to be owners of 48 Hancock St. These three properties are less than a block from Bayhouse I and Bayhouse II development site. These three properties comprise of a total of eleven units. In these eleven units are seventeen tenants. I currently hold four off street parking spots (two of which I recently added). My tenant's rely heavily on the availability of on-street parking. My ability to rent out my units relies on the fact that there is a significant amount of on-street parking available.

The previous use of the Bayhouse Phase I site was the Village Café Restaurant which provided off street parking for its customers. The previous use of the Bayhouse Phase II site was a parking lot where residents of the neighborhood could rent parking.

The addition of Bayhouse Phase I is adding 86 units which will most likely add between 86-172 new residents to the neighborhood. The addition of Bayhouse Phase II is adding 39 units which will most likely add between 39-78 new residents to the neighborhood.

In a perfect world, every Bayhouse unit would be sold with off street parking and every new resident would only have 1 vehicle. In this day and age, I would find this hard to believe. I have not done any professional studies on this development in relation to the neighborhood impact, but I could speculate that a large fluctuation of vehicles receiving on-street parking stickers will have a very high impact on current residents in my neighborhood.

As an example, let's say 50% of all units the Bayhouse sells are purchased by individuals/groups with 2 or more cars (that's 188 cars!) Now, 125 cars can be parked on site but that would leave 63 new cars that all need parking. How many spots are really available in the neighborhood for on-street parking?

This problem could be solved in one of 2 ways:

- 1) A restriction on parking stickers that are given out to Bayhouse residents. Bayhouse residents would not be allowed to receive an on-street parking sticker. If the resident had more than one vehicle, he/she would need to pay to park at the Ocean Gate Garage or similar parking infrastructure. (I believe that Bayhouse has reserved spots in the garage for this purpose)
- 2) A new parking zone just for the Bayhouse which would only include the streets surrounding the development (Middle St. from India St. to Hancock St., Newbury St from India St. to Hancock St., and Hancock St. from Newbury St. to Middle St.) In this case, any Bayhouse resident could receive an on-street parking sticker but they would be restricted to a small area. This in turn would not impact the surrounding neighborhood residents.

In conclusion, I am not opposed to development, but I do believe that there are responsibilities tied to development. The addition of 125 units in my neighborhood will most definitely impact my tenants and myself on a number of levels. There will be increased traffic and congestion, more people on the street but still the same number of amenities/ businesses, and less on-street parking. The City of Portland has no control over the impact of all these new residents to the neighborhood, but it does have control over on-street parking. I ask you to consider this on-street parking and the idea of restricting the use of on-street parking to Bayhouse residents.

Thank you for your time.

Regards,  
Liv Chase

PS I apologize if any of this information has already been addressed, as I have not been able to attend any prior development meetings.

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**Helen Donaldson - Re: Bayhouse Development On-Street Parking**

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**From:** Liv Chase <livchase@yahoo.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 9/18/2013 2:13 PM  
**Subject:** Re: Bayhouse Development On-Street Parking

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Hi Nell,

Thanks for the reply. I did have one question and this may have already been addressed. It has come to my attention that not all of the units in Bayhouse Phase I are being sold with deeded parking. I was told that only 2 and 3 bedroom units would be sold with deeded parking. This leaves about half of the units that are sold without parking.

I understand that the city's guidelines for permit and approval requires the same number of parking spots as the number of units. This would be agreeable if each unit were sold with a deeded parking spot, but this is not the case. Is there anyway to address this concern for Bayhouse Phase I and also for Bayhouse Phase II?

I looked through my documentation and I re-read the traffic study that was conducted by Bayhouse. Bayhouse anticipated 1.25 cars per unit or an equivalent of 108 cars for Phase I. If half of the 86 units are sold without parking, then there is the potential for 54 cars that will park on the street. The traffic study that was conducted did not look at how many total parking spots currently exist in zone 4 or the impact that 54 more cars would have. Shouldn't this be a legitimate concern not only for neighborhood residents but also for the city?

I will plan on attending the meeting on September 24th. Is there anything else I can do to voice these concerns?

Thanks again,  
Liv Chase

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**From:** Helen Donaldson <HCD@portlandmaine.gov>  
**To:** Liv Chase <livchase@yahoo.com>  
**Sent:** Wednesday, September 18, 2013 11:50 AM  
**Subject:** Re: Bayhouse Development On-Street Parking

Liv,

Thanks for your interest in the Bay House projects, and apologies for my delay in responding.

We are currently reviewing Bay House Phase II in our office (Phase I was approved some time ago). We have heard these concerns regarding parking from others in the neighborhood, including some who spoke at the Planning Board's workshop on the project in August. We also heard significant concerns regarding parking impacts during construction. I appreciate your effort to offer solutions along with your concerns.

The most recent plans for Bay House Phase II show four additional on-street parking spaces between the Hancock/Newbury Street frontages as a result of the closure of two curb cuts. Because they are proposing to change the on-street parking configuration, the applicant will be required to appear before the council to amend the city's parking schedule. This will likely happen sometime this fall or winter.

The plans also include 43 off-street parking spaces. This does not replace the existing parking on-site on

a 1-to-1 basis, but it does exceed the requirements of the zoning ordinance (through which the applicant is technically required to provide 1 off-street parking space per unit, or 39 spaces). The Planning Board will decide at its workshop on 9/24 whether to approve the plans with the parking as presented.

Apparently, the city attempted to implement parking restrictions similar to what you describe at one point in the past. It is my understanding that the council is no longer supportive of such measures. Of course, you may hear otherwise directly from them.

I will include your letter and ideas in my report to the planning board for the hearing on 9/24, and I'd encourage you to attend that meeting if you're interested and available. Again, the Planning Board will ultimately decide whether the applicant's parking proposal is satisfactory for the Bay House Phase II site and context. I know this was the subject of some discussion at their workshop on the project.

Please let me know if you have additional questions; I'd be happy to try to answer them.

Best,

Nell

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Nell Donaldson  
City of Portland Planning Division  
389 Congress Street  
Portland, Maine 04101  
874-8723  
[hcd@portlandmaine.gov](mailto:hcd@portlandmaine.gov)

>>> Liv Chase <[livchase@yahoo.com](mailto:livchase@yahoo.com)> 9/17/2013 11:25 AM >>>

To: City Counsel Members, Planning Staff, and Transportation Specialists  
From: Liv Chase, property owner next to Bayhouse Development  
Subject: Upcoming Transportation, Sustainability, and Energy Committee Meeting

I am not opposed to the removal of 5 car parking on Middle Street, if the city is in agreement with imposing an on-street parking restriction for residents of the Bayhouse Phase I and II. **Please see attached letter with concerns.**

I am opposed to the removal of 5 car parking on Middle Street if no restrictions are imposed for on-street parking for residents of the Bayhouse Phase I and II.

Sincerely,  
Liv Chase

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.



Att. 2

David Filipos (Interested Party)  
36 Federal Street  
Portland, Maine 04101  
207-653-0404

8/2/2013

Bay House Phase II Project

Dear Developer:

I am writing this letter in response to your invitation to the neighborhood meeting on August 7 , 2013 that I am not able to attend.

My request is that my name be put on the attendee list for the purpose of being included in any mailed literature regarding your project and invitations to any future meetings.

I would also like to have access to any and all minutes transcribed of the meeting.

My biggest concern regarding the project in addition to my ever shrinking view of the Casco Bay is the the building elevation that you have planned.

I have been living at my current address for the better part of 16 years and have been subjected to the impact of many projects, more specifically the loss of sunlight. In the winter when I need the sun the most for my quality of life and also the passive solar radiation for heat, I have only the southern exposure left of what was originally a 270 degree exposure.

If there has been a sun/shadow study done as it pertains to the impact of surrounding dwellings I would be very interested in discussing this topic. Please consider this issue.

Sincerely,

David Filipos

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**CC:** Jeremiah Bartlett <JBartlett@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, David Margolis-Pineo <DMP@portlandmaine.gov>, "JeffTarlton" <JST@portlandmaine.gov>  
**Date:** 9/19/2013 9:11 AM  
**Subject:** Bay House Phase II

Nell - The following is a status update of my prior comments and represent my final comments for the project.

\* Eaton Traffic Engineering conducted a trip generation analysis associated with both the overall Bay House Developments (Phases I & II). The results of the analysis indicate the overall combined project is expected to generate 77 PM peak hour trips, with 15 trips associated with the Phase II development. Based upon this estimate the project will not require a Traffic Movement Permit.  
 Status: No comment necessary.

\* The project will be providing 42 parking spaces for 39 residential units. In excess of one parking space per unit will be provided and accordingly the project meets City standards.  
 Status: No comment necessary.

\* The proposed driveway location does not meet City separation standards. The applicant shall formally request a waiver from the technical standards with supporting documentation.  
 9/12/2013 Comment: A formal request with supporting documentation has not been provided.  
 Status: I support a waiver from the technical standards given the adjacent driveway serves only one vehicle and the location maximizes separation from the Hancock Street/Newbury Street intersection.

\* The proposed driveway width does not meet City standards (it is slightly narrower than the minimum standard). I support a waiver from the technical standard given the response provided by the applicant and the low traffic volumes expected from the project.  
 Status: No comment necessary.

\* Several parking space dimensions do not meet City standards. The applicant shall formally request a waiver from the technical standards with supporting documentation.  
 9/12/2013 Comment: A formal request with supporting documentation has not been provided. I would also note that a building column is located in the middle of a parking space, making it inaccessible for vehicles.  
 Status: The plan indicates that several parking spaces will not meet City standards. The applicant has formally requested a waiver for 12 compact parking spaces where the project is proposing slightly larger spaces given support column locations. The parking lot also includes spaces with dimensions of 9.5'x19', 11'x19', and 11.5'x19'. Given column constraints in the garage, as well as the two wider spaces (11' and 11.5') are located at the end of the parking aisle and need extra maneuvering space, I support a waiver from the technical standards.

\* Changes to on-street parking regulations will be required on Newbury Street and possibly Hancock Street. The applicant will be required to provide application materials for the City Council packet that requests a traffic schedule change to the parking regulations.  
 Status: No comment necessary.

\* The applicant shall provide a construction management plan for review and approval. The plan shall provide details on how both vehicles and pedestrians will be routed through the construction area and where contractor employees will park.  
 9/12/2013 Comment: The applicant has provided a construction management plan for the initial phase. The applicant should provide details on other phases of construction for review and approval and anticipated time durations for each phase. The City would like to gain a full understanding of construction impacts during the all periods of time. The City also suggests providing realistic information on street closures for preliminary approval purposes. The plans should illustrate all anticipated signage and pavement marking changes for each phase. For the Hancock Street sidewalk closure, I would suggest that the sidewalk be closed at Federal Street and pedestrians directed to the east side sidewalk at the intersection. I would note that for the sidewalk closure, all pedestrian detours will need to be ADA compliant. Lastly, approval of the plan by the Fire Department will be required (ensuring acceptable emergency access).  
 Status: The applicant has noted that detailed construction plans will be submitted prior to issuance of a building permit. I would note that the applicant should be informed that the construction management plan may require a host of temporary provisions including but not limited to signage, pavement markings, temporary sidewalks, temporary crosswalks, detour routes for vehicles and pedestrians, contractor parking requirements, and street circulation changes. It is my suggestion that as soon as a contractor is selected for the project coordination of the plan begin with the City.

\* Based upon prior project approvals in the area, the applicant will be expected to make financial contributions to improvements at the India Street/Middle Street intersection and to an East End Traffic Monitoring Study. The Phase I project contributed \$5,000 to each effort and

MEMORANDUM

To: FILE
From: Nell Donaldson
Subject: Application ID: 2013-179
Date: 9/19/2013

Comments Submitted by: David Margolis-Pineo/Engineering DPS on 9/18/2013

August 1, 2013
August 16, 2013
August 18, 2013

To:Nell Donaldson
Barbara Barhydt
From:David Margolis-Pineo
Re:Review Comments – Bayhouse II – 40 Hancock Street

The Department of Public Services has the following preliminary review comments for the above mentioned project.

1.Please add note to sheet 11 stating that all work within the street right of way will conform to City of Portland Technical Manual standards.
Item addressed

2.All catchbasins proposed for this project will have "The Snout" or approved equal install on the outlet pipe. Note on plans now indicates the use of the Snout. However the catchbasin detail does not show or indicate a three foot sump, the City's standard. It is understood that referencing the City's Tech Standards will address this. No further comment.
Note #5 on Sheet 12 of 14 should be changed to reflect that a three foot catchbasin sump is required. This should be done prior to the pre-construction conference and re-submittal is not required.

3.There are two catchbasins on the upper side of Hancock St at the intersection of Newbury St. The applicant is requested to connect those two basins to the proposed stormwater drainage system.
The applicant is addressing
This issue has been addressed. Thank you

4.Due to the close proximity of the proposed stormwater drainage system to the existing waterlines, it is requested that these plans be shared with the Portland Water District for review. Also it is requested that a profile of the proposed stormwater system be submitted for review and approval.
I am not aware that either item has been addressed.
Applicant states plans have been sent to the PWD for review.
Issue addressed.

5.Several shown details differ from the City's Technical Standards. The Engineer is requested to update the project details with the City's current Technical Standards.
It appears this has been resolved.
Issue resolved.

6.All submitted plans require a Professional Engineer's stamp.
All plans are now stamped.

7.Proposed street lights shall meet City of Portland district lighting standards and shall have an electrical meter for City ownership.
Not aware that this issue has been resolved.
This item has been resolved.

8.Due to the expected disturbance of a substantial portion of the sidewalk along Newbury and Hancock Streets to construct buildings, foundations/footing along the property line, and to avoid a patch job of old and new brick to fill

MEMORANDUM

To: FILE
From: Nell Donaldson
Subject: Application ID: 2013-179
Date: 9/19/2013

in existing driveway cuts to be eliminated, the City is requesting that all brick sidewalk along Phase II be the Pinehall Paver brick, the City's current standard. The removed brick can be used to fill sidewalk voids on Newbury St which were created by the Phase I project. The transition from old to new brick would be at the proposed driveway cut to Phase II. All new brick is now proposed.

9.The proposed driveway access to Phase II does not meet City standard for separation from another driveway, 20' as measured at the property line. If the applicant wishes to maintain this proposed location, a waiver is required. If a waiver is granted, there will need to be a discussion with city staff on how the drive aprons and use of brick in between the drive cuts will be placed. Waiver required with discussion to follow. Waiver request submitted.

10.It has been observed that the sidewalk and ramps on the corner of Hancock and Newbury adjacent to the applicant's site has been removed. Before approval by this Department, the applicant shall show on the plans how the proposed ramps and street crossings will be constructed. This will be covered as part of the Phase I project.

11.It appears that a portion of the proposed new sidewalk will be placed on the applicant's property. Is the applicant agreeable to giving the City an access easement to use this sidewalk? Still need an easement. A portion of sidewalk on the Newbury side of the Newbury-Hancock intersection still requires to be identified for an easement.

12.It is understood that all existing curb cuts to the applicant's property will be closed with vertical curbing and brick sidewalks and only one drive cut is proposed off Newbury St. No comment needed

13.The survey plan requires a profession's stamp and currently the plan is not acceptable. Note 8 states, "Boundary information shown hereon is approximate until the research has been updated." When the property survey is complete, please re-submit. Also..... Issue resolved.

14.Please show the three-foot offset monument at the westerly corner of Newbury St and Hancock St. Still needs to be complete. Issue resolved.

15.Please show State Plane Coordinates for the three-foot offset monument at the westerly corner of Newbury St and Hancock St and the three-foot offset monument at the southerly corner of Middle St and Hancock St Not complete. Issue addressed.

16. Need to show property corners to set. Not complete Issue addressed.

17.Northwesterly boundary line along the Federal Street abutting properties has changed since the overall Phase II survey plan dated 7/13/2013. The concrete retaining wall was apparently entirely on the Phase II property on the 7/13/2013 plan, and a section is now on abutting land. Why the change? Issue addressed

18. We frequently receive requests from City Hall to perform deed research on retaining walls which do not

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**MEMORANDUM**

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**To:** FILE  
**From:** Nell Donaldson  
**Subject:** Application ID: 2013-179  
**Date:** 9/19/2013

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border a city street. Please address the responsibility for maintenance/ownership of the retaining walls (if possible). A note such as "Responsibility of maintenance of retaining walls has not been ascertained." would suffice if there is nothing on record regarding the walls.

Not addressed

Issue addressed.

19. New Item: Please indicate on the plans the intended sidewalk running and cross slopes at which the sidewalks will be installed.

Please be aware that these comments are preliminary only and additional comments may be forthcoming.

## MEMORANDUM



**TO:** Nell Donaldson, Planner  
**FROM:** David Senus, P.E.  
**DATE:** September 18, 2013  
**RE:** Bay House Phase II, Final Level III Site Plan Application

Woodard & Curran has reviewed the Final Level III Site Plan/Subdivision Application and response to comments letter for the proposed second phase of the Bay House development located on Newbury Street in Portland, Maine. The project consists of developing a 39 unit, four story residential building.

### Documents Reviewed by W&C

- Cover Letter with Final Level III Site Plan Application attachments dated September 17, 2013, prepared by Sebago Technics on behalf of 113 Newbury Street, LLC.
- Engineering Plans, Sheets 1-14, dated September 17, 2013, prepared by Sebago Technics on behalf of 113 Newbury Street, LLC.

### Comments

- 1) The isolator row callout for the below grade storage system on Sheet 6 appears to be pointing to an adjacent row; not the isolator row.
- 2) Sheet 14 contains a detail for an "Optional Inspection Port" for the Stormtech chambers. Please clarify the number and location of inspection ports for the storage system.
- 3) The Grading and Utility Plan (Sheet 6) proposes a "4-inch Tree Pit Underdrain" below the sidewalk along Newbury Street. Upon consultation with City Arborist and DPS staff, unless there is a project-specific design reason for this underdrain, please remove this notation on the plan and the associated detail on Sheet 13.
- 4) The detail for CB#1 on Sheet 14 should include a grated cover on "Side A" of the catch basin; all other covers on CB#1 and OCS#1 should be solid covers.
- 5) Review of Stormwater Model – Clarification for Project Record (No Revisions Required): The HydroCAD stormwater model indicates that Pond 5P (Proposed Stormtech Chamber) will have 0 CFS discharge out of the "Primary Outflow" for the 1 year storm event (2.5" event); however, an overall peak discharge rate is reported for the Pond. This appears to be a result of the Reach Routing method utilized in the model. Other routing methods, when utilized in the model, report discharge from the "Primary Outflow" of Pond 5P during the 1 year storm event.

Very little change in overall discharge rate is realized at downstream points regardless of the routing method utilized. As such, there is no need to change or revise the model. We note this for the project record, no revisions are required.

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**MEMORANDUM**

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**To:** FILE  
**From:** Nell Donaldson  
**Subject:** Application ID: 2013-179  
**Date:** 10/17/2013

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**Comments Submitted by: David Margolis-Pineo/Engineering DPS on 10/17/2013**

October 17, 2013

**To:** Nell Donaldson  
Barbara Barhydt  
**From:** David Margolis-Pineo  
**Re:** Review Comments – Bayhouse II – 40 Hancock Street

All comments from Public Services have been addressed.

However there is still a question about ownership and maintenance of the retaining walls along property lines. Common sense would dictate that this is the time to resolve before it becomes an issue.

I would like this information presented to the Planning Board for their decision and a possible condition of approval to have this issue resolved.

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## MEMORANDUM

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**To:** FILE  
**From:** Nell Donaldson  
**Subject:** Application ID: 2013-179  
**Date:** 10/17/2013

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**Comments Submitted by: Tom Errico/Traffic on 10/17/2013**

From: Tom Errico <thomas.errico@tylin.com>  
To: Helen Donaldson <HCD@portlandmaine.gov>  
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, "JeremiahBartlett" <JBartlett@portlandmaine.gov>  
Date: 10/17/2013 12:59 PM  
Subject: Seaport -- Parking Management

Nell The following is the applicant's response in regard to how on site parking spaces will be managed for the project. Based upon my understanding of what is provided, at least one parking space will be allocated to each unit (So the approval assumes all units will have at least one parking space). Given this assumption, I find conditions to be acceptable. If you have any questions, please contact me.

Best regards,

The parking spaces will be assigned to the units prior to unit closings and once the units are sold and closed they will be attached to the units in perpetuity. I'm not sure if that will be through a deed, easement, license to use or other legal document. We have not yet determined if the spaces will be assigned by the developer or if we will let buyers select their spaces. In the current Bayhouse project, the unit buyers are allowed to select their space on a first come, first serve basis. Seaport will probably done a little differently as it probably makes sense for parking spaces directly behind the townhouse rear entrances to be assigned to that unit. All that being said, we have more than enough parking spaces for each unit to get at least one and they will be attached to the unit through legal document that will run with the unit.

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
[T.Y. Lin International]T.Y. Lin International



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## MEMORANDUM

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**To:** FILE  
**From:** Nell Donaldson  
**Subject:** Application ID: 2013-179  
**Date:** 10/17/2013

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**Comments Submitted by: David Senus/Civil Engineering on 10/9/2013**

From: David Senus <dsenus@woodardcurran.com>  
To: Helen Donaldson <HCD@portlandmaine.gov>  
CC: "DMP@portlandmaine.gov" <DMP@portlandmaine.gov>  
Date: 10/9/2013 8:41 AM  
Subject: RE: Dave Senus Comments: Seaport Lofts  
Attachments: Dave Senus Comments: Seaport Lofts

Hi Nell.

We have reviewed the revised submittal and email, and all comments contained in our September 18, 2013 memo have been adequately addressed. Please let me know if you need this formalized in a memorandum.

Thanks

Dave

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## MEMORANDUM

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**To:** FILE  
**From:** Nell Donaldson  
**Subject:** Application ID: 2013-179  
**Date:** 10/17/2013

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**Comments Submitted by: Marge Schmuckal/Zoning on 10/8/2013**

More plans have been submitted showing the average grade and the roof elevation. I would want a little more clarity as to what is being considered as the "roof elevation". The definitions required the height of a building to be measure to the top of the roof beam. Is that where the 87.25 measurement is taken? Also what is above that area? The plans show a higher elevation going around the building. I did not see any plans that explain that level. Is it for sheilding mechanical equipment? The dBA's can be assessed at the time of a building permit for the HVAC systems.

To follow up the 45' maximum height is being exactly met based upon the information received, if the upper roof shown on the plans is for mechanical systems.

Marge Schmuckal  
Zoning Administrator

**Comments Submitted by: Marge Schmuckal/Zoning on 10/9/2013**

I reviewed an e-mail from David White concerning the building height and how the elevations were measured. He also explained what the wall was that is higher than the roof measurement. It is a parapet that surround the roof concealing the mechanicals which is permitted by Ordinance to be higher than the maximum building height.

I also reviewed the revised impervious surface information on the revised site plan #5 of 14. The Impervious surface ratio is being met.

Separate permits are required for the construction of the building and also for the mechanical systems of the building after the site plan has been approved.

Marge Schmuckal  
Zoning Administrator

**From:** Liz Monaghan <Liz.Monaghan@rmsmortgage.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 10/15/2013 6:09 PM  
**Subject:** FW: 123 Newbury St. and 133 Newbury St.

From: Liz Monaghan  
Sent: Tuesday, October 15, 2013 6:08 PM  
To: 'hcd@portlandmaine.gov'  
Subject: 123 Newbury St. and 133 Newbury St.

Dear Nell Donaldson,

I am writing as the owner of 123 Newbury Street. My name is Elizabeth Monaghan, my husband, Kurt Nielsen and I have owned the property since 2005. When we purchased the property we had to do a complete renovation of the building. The family we bought it from had owned and lived in the building for over 80 years. When we purchased it, it was in major disrepair. We completely gutted it and rebuilt it from the inside out. You will have records of this rehab in your Portland Planning Department records. You will see the extensive work we did. I mention this because we feel the structure that is being proposed at 133 Newbury will adversely affect our building's value, its historical charm and its natural lighting.

When we rebuilt 123 Newbury, we made sure that we kept the historical features such as the large 6-7 foot windows in tact. We even added a few extra to the back unit. Letting light into the units was part of our plans. On the East side we have 10, 6.75 foot windows and on the South we have 9. It was a major feature that we wanted to maintain. Both units receive light from the South and East. Our Southern exposure has been partially diminished by the new building already built across the street. Most of the day 123's South side is now in the shadow of that building. Now with 133's design, it will have more of its sunlight taken away. It will not get any of the Eastern sunlight. 133 Newbury will be so close to 123, that it will be in its shadow all day. This will directly diminish the value of 123 Newbury St.. We ask that the design and the closeness of the proposed building be relooked at.

133 Newbury Street would block all of the Eastern light and 123 would be in the shadow of it's proposed 45 feet height all day. 123 Newbury would be encroached by the closeness of the building. The actual building would be only 5 feet from the back unit and 15 from the front unit. It being the right half of a Town House, it only has windows on its Southern and Eastern side so the shadow effect would be severe.

We currently have this property on the market and it has been a consistent concern of any interested parties. They are concerned that " the building at 133 would have an encroaching effect on our building via light, design, largeness and closeness." The largest concern is the proposed closeness of the building and how it will loom over our property and steal any light that it currently has.

We are not contesting the building of 133 Newbury. We are asking that the developers and city planners reconsider the design of the building.

The part of the building that will affect their neighbors at 123 Newbury. We would like them to consider the shadow that its height, closeness and largeness will cast on our building. It will make 123 Newbury Street's appearance encroached upon and dark. The light in this historical building is what make the building so beautiful and marketable. The value of 123 Newbury Street would be adversely affected.

After looking at the plans, it appears that they could modify their plans by moving the driveway over and eliminate the 3 units in the front, left corner of the building. (Units labeled 15 and the two above it.)This would allow about 24 feet between the sidelines. This would create a better light and shadow impact of the looming, larger and closer building. The effect of this impact was clearly considered across the street. They allowed a 30 foot separation between the two new buildings. We would appreciate the same consideration.

We hope that the planning board will consider our input and agree that the current plan adversely affects our property at 123 Newbury Street.

I am planning on attending the meeting on the 22nd. If there is an opportunity, I would like to publically share my concerns and ideas.

Thank you for your time concerning this matter.

Very Respectfully, Elizabeth Monaghan

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**From:** HUGH NAZOR <hughn@mac.com>  
**To:** Jeff Levine <JLEVINE@portlandmaine.gov>, Alex Jaegerman <aqj@portlandmaine.gov>, Bill Needelman <wbn@portlandmaine.gov>  
**CC:** Michael Brennan <mfbp@portlandmaine.gov>, <citymanager@portlandmaine.gov>, Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 10/11/2013 9:24 AM  
**Subject:** India Street activity

Hello all:

About a year and a half ago we had a meeting about planning for the India Street Neighborhood. An attempt at doing something quickly, because of development pressures proposing significant changes, had not made it past the Planning Board because they said that there should be a Comprehensive Plan for the ISN. We met and agreed that such a plan would go forward and that it should start in September (2012 - or "the Fall") and take about a year in total. It was also mentioned that, in the meantime, there could be some methods of preventing development that would clearly not be allowed under such a plan.

Everyone understands the financing problem which was a large part in the shifting of timing of this project. September 2013 became December 2014, then April 2014, and now (approximately) July 2014. There is, at present no plan schedule. It is also understood that the staffing situation is such that such projects are not easily done in-house.

My reason for writing is not to complain about the above but to draw attention to things that are being affected by the delay. The Bay House Phase 2 project is 230 feet of unbroken wall that, as mundane as it appears from the south and east looks even worse from the north (back) side. From that perspective, it closely resembled strip mall motels in Los Angeles. While it probably meets the requirements of the B2-b zoning, it does not come close to any future form based code that would not allow such scale in that location. The Planning Board has commented on this appearance and has required another look at what might be built. While smaller units are a very good idea, cramming as many as possible in a continuous block of a building is just not in keeping with anything but the Phase One of the same project, and the two pattern book hotels in the neighborhood.

The small two story building at 48 Hancock, that is to be totally shadowed by the Phase 2 project, has a scheduled hearing before the Appeals Board. They wish to rebuild to add two additional stories and cannot meet the setback requirements of B2-b. There has been an effort for more than three years to try to have a zoning change that would deal with these setback requirements. They are not appropriate to redevelopment in the ISN and totally prevent individual, fee simple townhouses from being built as a unit on multiple lots. This is exactly the kind of development that, I hope, the ISN comp plan will encourage.

We now seem to have a situation in which one project, which will be seen as unfortunate, may be allowed while another that is very desirable will have to wait until some future time before it may begin. I do hope that you can think of some way to improve our situation before the ISN comp plan is finally achieved.

Hugh Nazor  
hughn@mac.com

Copy to Nell for the Planning Board: meeting re Phase 2 on 10/22/13

**From:** HUGH NAZOR <hughn@mac.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 10/15/2013 10:05 AM  
**Subject:** Re: India Street activity

Well, if not articulation - which would cost interior space, maybe some textural variation. While the entire project (and Phase One) looks more like something from a chain hotel pattern book, making the back side look the same (multi-textural) would be an improvement. {Isn't there a saying about a pig with lipstick still being a pig?} Nonetheless, it would be less of a uniform assault to the eye for all of the units along Federal Street. The couple owning one of the Federal Street townhouses (which truly are townhouses) has put their place on the market after seeing the Phase Two drawings.

I do plan to be at the meeting, as do many of the others living on Federal Street. I hope they stay long enough to be heard - given the place on the agenda.

I hope the roof metal has a low reflectivity surface. Metal roofs are great but can also be blinding if they are reflective.

The window matching is understood and the smaller balconies are probably not very significant - depending on how they are finished and furnished.

Again, thanks for everything.

\_\_\_\_Hugh  
hughn@mac.com

Bethany Angle  
Angle Associates  
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Nell Donaldson  
City of Portland  
Planning Department

October 17, 2013

Dear Planning Department:

I have been a real estate broker specializing in residential historic properties, rehab properties and multi units selling primarily on the peninsula in Portland for the past 33 years. I am interested in submitting to you 2 issues regarding the Seaport Lofts that although adversely affect both the immediate neighbor and the neighborhood, I feel can be addressed by the developer and the city giving some relief to both affected entities.

The already partially built Bay House with its imposing box like architecture without articulation or historic character of any type fills one side of the street on Newbury Street. Although it is not in character with the charm and history of the existing neighborhood, it is already built and therefore becomes an issue as to how to best offset its "box store" type housing stock and architecture with a more pleasing architecture across the street, perhaps creating more of a Portland Peninsula type neighborhood feel. The present facade planned for Seaport Lofts provides no such relief from the deviation in charm and desirability created by the Bay House. I have been selling real estate in Portland for 33 years and am well aware of what draws homeowners, investors and buyers to an area. The facade proposal before you, will over time not be desirable to future homeowners. It creates a wind tunnel type look to what is presently a charming, yet under-utilized, neighborhood. The developer used a thirty foot or more break between buildings on the Bay House side of the street, not only creating less shadow and more light for the occupants of their own development, but also a break from the box like larger building.

There are great examples of boxy architecture with historic articulation such as the last two buildings on upper Exchange Street. These easily incorporate charm and history into block sized buildings, the hallmark of the Portland Peninsula, and their design and articulation can be easily incorporated into modern architecture. The simple use of articulation, if not like the leaded glass awning and masonry work on Exchange then more modern yet historically pleasing substitutes would create a sense of Portland's waterfront neighborhood onto Newbury Street, offsetting the already constructed but architecturally uninteresting and imposing Bay House structure.

The second issue directly involves the abutting neighbor. Presently the plans show a 45 foot building within 5 feet of the historic brick town house at 123 Newbury Street. The proposed structure will completely block all light to the tall historic windows of the residence at 123 Newbury, leaving its occupants with light coming from the street side of the townhouse only. The shadow from the newly constructed Bay House across the street has already partially shaded this home and the addition of

another enormous structure just 5 feet away on the right side will throw the residence into total shade, robbing it of almost all sunlight.

There is a solution that will bring at least some relief to the property owners of 123 Newbury Street. The plans for the Seaport Lofts show a driveway running along the separating property line and above the first floor (driveway) they have cantilevered 4 apartments. Two over each other in the front and two over each other in the back. If the “Lofts “ eliminated the front two units (#15 and above) but kept the back two units, then more light would enter 123 Newbury and less shadow. While this is not the ideal for the historic abutting property at least it is a viable compromise. The rear two units would still be within 5 feet of the rear 123 Newbury unit but the light would be significantly improved in the front brick unit created by a set back of 25 rather than 5 feet in the front. It would also improve the overpowering feel of the Seaport Lofts, softening the look of the neighborhood. In addition, the first floor wall dividing the “Lofts” drive- through opening from the townhouse neighbor is unnecessary and creates a “looming over its neighbor” affect.

Sincerely,

Bethany Angle  
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**From:** HUGH NAZOR <hughn@mac.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 10/17/2013 3:24 PM  
**Subject:** Phase2 Demolition Oct 22 meeting

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Nell:

While I plan to be at the meeting, I do wish to be sure that mention of the way in which demolition is done is more controlled than it was with Bay House. The houses on Federal street are on the fill part of the cut and fill that runs between Federal and Newbury Streets. Judging by the digging we have done in our back gardens, much of the fill was sand. When the pavement was being removed from the site of Bay House and when piles were being pounded, our houses were shaking quite a bit. Things fell from shelves etc.

The site for Phase 2 is much closer and a considerable amount of demolition is planned. A large concrete pad that is some three feet above the average height of the site is to be removed. If this is done with the same crude approach, using a large power shovel with a spike, we will have damage. The concrete pad also runs up to the base of the retaining wall behind our properties. If the area now raised and concrete covered is lowered by three feet - which seems to be the plan as shown - I would like to be given to understand exactly how the footings for the retaining wall will be protected.

It is possible that there has been engineering work done as to the depth and shape of footings for the wall and that what is planned is to be more subtly done and mechanically sure. If that retaining wall were endangered, our houses would be also.

I would appreciate having this addressed in detail if possible.

Thanks, Hugh Nazor

[hughn@mac.com](mailto:hughn@mac.com)