

20-D-32

2008-0067

112 Newbury St.  
Amended Cond. Rezene Agreement  
Village at Okeangate (Bay House)

on spreadsheet

**THE BAY HOUSE, formerly THE VILLAGE AT OCEANGATE  
VICINITY OF 112 NEWBURY STREET  
AMENDED CODITIONAL REZONE AGREEMENT**

**THE VILLAGE AT OCEANGATE, LLC, APPLICANT**

Submitted to:

Portland City Council  
Portland, Maine

May 19, 2008 and June 2, 2008

Submitted by:  
Portland Planning Board

April 29, 2008



## **I. INTRODUCTION**

The Village at OceanGate LLC submitted an application to amend the conditional rezoning agreement for the Village at OceanGate project located at 112-113 Newbury Street. The proposed amendments to the agreement pertain to Phase I of the Village at OceanGate project, now called The Bay House. The original agreement was adopted by the City Council on November 20, 2006 (Attachment 1) and it allows up to 176 residential units in Phases I and II, with a maximum of 66 residential units stipulated for Phase II. The Planning Board approved the subdivision/site plan for Phase I with 84 residential units on July 10, 2007 and the Planning Board tabled Phase II at that meeting.

The applicant is seeking the City Council's adoption of the proposed conditional rezoning agreement (attached Council Order). The applicant seeks to revise the conditional zone agreement to incorporate 1,600 square feet of land from the rear of 61 India Street into Phase I, so Building #2 may be redesigned to remove a jog in footprint and to construct the building extension to the dimensional standards of the current agreement. In addition, the proposal reduces the amount of commercial space to create storage space for units, reduces the number of residential units from 84 to 82 (the February application proposed 92 units), revise the parking numbers and modify the exterior façades and materials. The applicant has withdrawn their request to pro-rate the community contribution. The applicant is seeking to modify the current requirement that a performance guarantee for the Phase II sidewalk and curbs be posted prior the issuance of the Phase I building permit and instead require this prior to the recording of the plat for Phase II.

The applicant's representatives include Sebago Technics, David White, Architect, and Greg Shinberg, Shinberg Consulting. 196 notices were sent for this project and appeared in the newspaper on May 19 and May 26. A neighborhood meeting was held on April 8, 2008.

## **II. PLANNING BOARD RECOMMENDATION**

On April 29, 2008 the Planning Board voted unanimously (5-0, Odokara and Lewis absent) on a motion to recommend to the City Council the following:

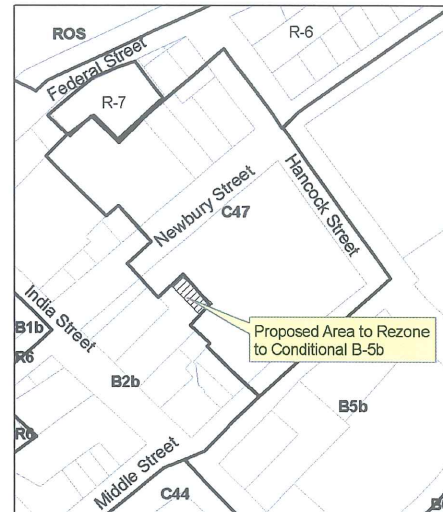
1. The Planning Board recommends the proposed amendments to the contract for items # 1, 3, 4 and 7 (as numbered in this report to the Council) which relates to the map amendment, the residential unit numbers, the parking arrangements and the reduced retail space.
2. The Planning Board recommends that item 2 regarding revisions to exterior materials, entry location and fenestration be referred back to the Planning Board for further review at the time of the amended subdivision and site plan review.
3. The Planning Board does not take a position on the applicant's request to revise the agreement (item #6 of this Council Report) to state that a separate performance guarantee for the curb and sidewalk for Phase II and any other required Phase II public improvements be posted prior to the release of the recording plat for Phase II and recommends that this request is more appropriately within the purview of the City Council. The current agreement requires a separate performance guarantee be posted for the Phase II sidewalk and curbing prior to the issuance of a Phase I building permit.

### **III. SUMMARY OF PROPOSED PROJECT CHANGES AND AMENDMENTS TO THE CONDITIONAL REZONING AGREEMENT**

The proposed Amended Conditional Rezoning Agreement for the Village at OceanGate is included as the attached Council Order. The Village at OceanGate LLC has revised their request since the original application for an amended conditional rezoning agreement. The applicant's written submittal for an amendment is included as Attachment 2 with subsequent submittals included as Attachments 3 and 4. A summary of the project history is included as Attachment 5. The revised plan sets for the building elevations and floor plans are Attachment 11, the revised building façade and floor plan for Building #2 is Attachment 12. The proposed changes to the plans and conditional zoning agreement are noted below.

1. **Map Amendment (Council Order, Condition 1):**

The map for the conditional rezoning is revised to include an area of 1,602 square feet from the rear of the adjoining lot owned by Pearl Properties LLC at 61 India Street (Tax Map 20-E-021). The Pearl Properties site contains the Tackle Shop, which will remain. The strip of land to be transferred to the Village at OceanGate LLC is vacant and the proposed transfer meets zoning requirements for 61 India Street. The revised map for the conditional rezoning agreement is inserted here. *The Planning Board recommends this revision.*



**Proposed Area to Rezone from B-2b to Conditional Rezoning to B-5b for The Village at OceanGate, LLC  
112-113 Newbury Street  
April 2008**

Prepared by the Department of Planning and Development based upon GIS Workgroup Data.



2. **Subdivision and Overall Site Plan, (Council Order, Condition 2):** The current conditional rezoning agreement states the site will be developed in substantial accordance with the subdivision and overall site plan and cites the specific site plan that is attached to the agreement. The agreement also states that, "Phase I of the project, consisting of two buildings along Middle, Hancock and Newbury Streets shall conform to the building elevations and architectural renderings submitted by David M. White, Architect, dated November 17, 2006, Attachment 2 (collectively, "the Plans for Phase I)."

The applicant is seeking to modify the building elevations and the exterior materials for Phase I. The proposed changes are outlined in Mr. David White's list of changes dated April 23, 2008 (Attachment 5). The discussion of the complete set of changes and Carrie Marsh's review of the revisions are found under Section IV, subsection 5 of this report. *The Planning Board recommends referring the exterior changes back to the Planning Board for review at the time of subdivision and site plan review.*

The conditional rezoning agreement has been revised as follows to allow the Planning Board to review proposed building elevation changes. It states:

The final building elevations shall be approved by the Planning Board during the required subdivision and site plan amendment process. The previously approved building elevations for Phase I, submitted by David M. White, Architect, dated June 26, 2007, Attachment 2 (collectively, “the Plans for Phase I”), may be modified or altered by the Planning Board in accordance with the Design Standards for the Eastern Waterfront in connection with the site plan and subdivision amendments.

3. **Commercial Retail Space (Council Order, Condition 3):** The original agreement stipulated that the project shall contain no less than 6,772 feet of commercial/retail space along Middle Street, which included a 150 to 200 seat restaurant. The project no longer contains plans for a large restaurant and the applicant is seeking to reduce the overall commercial space for the project. The rear commercial area that would have served as kitchen facilities is now being proposed as storage space for the residential units. The applicant is proposing to have three commercial/retail spaces along Middle Street in each building of Phase I with a total of 5,700 square feet of commercial space. The applicant is also proposing to relocate the residential unit entrance for Building #2 from the base of building #2 to the connector between Buildings #1 and #2, in order to provide the three storefronts. This exterior change is discussed in more detail below under Staff Review (Section IV, paragraph 5); however the final location of the entrance impacts the amount of retail space. The conditional rezoning agreement as drafted states that a minimum of 5200 and up to 5,700 square feet of commercial space is required for this project. *The Planning Board recommends this revision with their recommendation that the location of the door be finalized at the time of subdivision and site plan review.*
4. **Number of Residential Units (Council Order, Condition 5):** The proposed number of residential units for Phase I was approved with 84 during subdivision review. The application for an amendment to the conditional rezone agreement states that 92 residential units are proposed in Phase I; however the applicant has revised this figure downward to 90 units (April 8<sup>th</sup> submittal) and then to 82 units (April 23<sup>rd</sup> submittal). Mr. White’s memo of April 23 (Attachment 5) states that the proposed number of units will be 82 in order to create “...larger units to meet this demand by prospective buyers.” The original agreement allowed up to 110 units in Phase I, thus the proposed density is within the provisions of the agreement and this section does not need to be amended. *The Planning Board did not identify any issues and it does not necessitate any revision to the conditional rezoning agreement.*
5. **Community Contribution (Council Order, Condition 6):** In the application dated February 28, 2008 with the March 4, 2008 cover memo (Attachment 3), the applicant sought to reduce the required community contribution and fees to a level proportionate with Phase I. The applicant is no longer seeking to prorate the community contribution and fees (refer to Greg Shinberg’s correspondence dated April 8, 2008 [Attachment 4]).
6. **Phasing (Council Order, Condition 8):** The Planning Board tabled the proposed subdivision and site plan for Phase II. The current agreement requires a separate performance guarantee be posted for the sidewalk and curbing for Phase II prior to

the issuance of a building permit for Phase I. The applicant is seeking to revise the conditional rezoning agreement to state that a separate performance guarantee for the cost of installing sidewalks and curbing and any other public improvements must be posted prior to the release of the recording plat for Phase II. *The Planning Board did not take a position on this proposed revision. The Planning Board felt that the merits of such a request are within the purview of the City Council.*

7. **Parking (Council Order, Condition 9):** A post development parking analysis is required in the first agreement, which is to be conducted 6 months after the issuance of a certificate of occupancy. It states that if the Parking Analysis finds that the 1:1 unit parking space ratio is inadequate, then the parking in Phase II would need to be increased accordingly as determined by the Planning Board. The proposed agreement revises the parking requirements as follows and includes a requirement that 38 bicycle parking spaces shall be provided on site:

Parking shall be provided for Phase I at no less than a) a 1:1 ratio (1 parking space per dwelling unit), and b) 6 spaces for retail employee parking and c) active participation in a valid Park and Shop ticket validation program – all to be provided as follows: 80 parking spaces on-site for residential use and 16 parking spaces in the parking garage being built at the corner of India Street and Middle Street. A post development occupancy parking analysis shall be conducted by the DEVELOPER six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then the DEVELOPER must submit a parking mitigation plan for Phase I, which plan shall be reviewed and approved by the City and thereafter implemented by the DEVELOPER. Parking for Phase II of the project shall be determined by the Planning Board during subdivision and site plan review provided that a condition of such approval shall include the requirement for a post development occupancy parking analysis, with the same mitigation requirements as Phase I.

Thirty-eight bicycle parking shall be provided on site in accordance with §14-526 of the Portland City Code.

*The Planning Board recommends these revisions.*

#### **IV. STAFF REVIEW**

The staff review of the proposed revisions of the plans based upon the City's Site Plan and Subdivision Standards are listed below.

1. **Zoning:**

Amendments to the adopted conditional rezoning agreement are requested in order to incorporate the additional land area, adjust the amount of commercial space within the project, and to revise other provisions, such as the phasing and parking conditions. The staff evaluated whether this proposal could go forward without amending the contract and instead rely on the B-2b zone provisions for the new land area in combination with the Incentives of Affordable Housing. The dimensional



standards for height and density under those provisions did not achieve the building height and dimensional standards sought for the project. Penny Littell, Associate Corporation Counsel, advised that the approval for the Conditional Rezoning Agreement entered into by The Village at OceanGate LLC, contemplates the use and layout of the entire site as originally proposed. Any attempt to now utilize the entire lot (or even a portion thereof) for purposes of calculating land area requirements for an adjacent parcel zoned B-2 (presumably to allow a number of units and the use of inclusionary zoning provisions) would in essence, take land already accounted for by the Conditional Rezoning and use it again to calculate a separate and distinct land area requirement. This would violate the Conditional Rezoning Agreement presently in place. A total of 110 residential units is permitted in Phase I and 82 units are proposed, so the proposal is within the overall density calculations. The agreement needs to incorporate the additional land area.

2. **Traffic:**

The applicant submitted a revised parking calculation report for Phase I that was prepared by William C. Eaton, P.E., Eaton Traffic Engineering, and dated April 8, 2008 (Attachment 4). Thomas Errico, P.E., Consulting Traffic Engineer, reviewed the work and found it to be acceptable. The revised agreement reflects the changes in the parking numbers for this project and includes the recently adopted regulations for bicycle parking facilities

3. **Public Infrastructure:**

The revised plans as submitted to date are acceptable to Public Works. A Community Contribution of \$200,000 is part of the conditional rezoning agreement, which is to be used for the extension of Hancock Street. The applicant is no longer seeking to pro-rate this contribution between the two phases of the project. Hancock Street is a City project currently under construction. Since the Village at OceanGate project received its site plan and subdivision approval, there have been discussions between the City, CMP and the applicant on the plans for providing underground electrical service to the site. Central Maine Power (CMP) reviewed the utility plans and recommended revisions to the electrical layout in order to create an underground loop in the system. The City concurred with this recommendation. The applicant had sought alternative solutions to this recommendation, but has now agreed to the underground loop as recommended. The City has committed to providing the necessary ducts in Hancock Street (refer to Joe Gray, City Manager, correspondence, Attachment 6).

4. **Fire Prevention:** Captain Gregory Cass, Fire Prevention for the Fire Department, reviewed the revised plans and found them to be acceptable and noted that a designated area for fire access near the entrance might be required when a revised site plan is reviewed.

5. **Building Elevations and Exterior Materials**

Changes to the building elevations and exterior materials are proposed in Phase I. David White, AIA, submitted a memorandum dated April 23, 2008 (Attachment 5) listing the proposed revisions since the July 10th approval. Carrie Marsh's review is included as Attachment 8. The building elevations included in the public hearing packet for the July 10, 2008 public hearing on the site plan are included as Attachment 9.

Based upon the Planning Board workshop held on March 25, 2008, the applicant has chosen to retain the brick on the Middle and Hancock Street facades and a window has been added along the alley in the commercial space in Building #2. Hardie board is proposed as a substitute for the metal cladding. The belt course has been changed from a combination of granite and brick to polished concrete block with a granite look.

When the project was approved in July 2007, the intention was to have a restaurant in Building #2. The commercial space in Building #1 was designed to accommodate a restaurant and possibly one commercial space. The entrance for the residential units was located in the base of this building along the Middle Street façade to create a more prominent entrance for the residential units. The applicant would prefer to relocate the entry from its approved location to the garage level wall, which is stepped back from the building façade by approximately three to four feet. The applicant notes that the relocation of the door provides three commercial/retail spaces along Middle Street with a total of 2,878 square feet in Phase I and creates a symmetry of storefronts for both buildings. Retaining the entry in its approved location decreases the overall commercial square footage to 2,400 square feet in Building 1, but creates a clear residential entry in the base of the building. The staff requested that the applicant provided an option of the door in their preferred location with the exterior materials of Buildings #1 and #2 extended along the residential entry and garage entry façade for consideration. In addition, the staff recommended that all doors remain of a scale and detailing that is prominent and readily visible in a large building and the final set of proposed exterior samples should be submitted to the Planning Division prior to the City Council's consideration of the amended agreement (the materials have been submitted).

At the April 29, 2008 public hearing, the Planning Board expressed concerns about the proposed changes to some of the entrances, fenestration and exterior materials. The Board was concerned that that the multiple changes could impact and compromise the overall design of the project. The Planning Board is not taking a position on the changes at this time, but suggested that these items could be further reviewed at the time of an amended subdivision and site plan application in order to resolve the design details.

## V. COMPREHENSIVE PLAN ANALYSIS

Housing and Sustaining Portland's Future is the housing element of Portland's Comprehensive Plan. It encourages construction of all types of new housing to meet the needs of Portland households. It also encourages sustainable development with higher density housing near the downtown and supports mixed-use developments within the City's business zones. The City's housing element includes policies to maintain neighborhood integrity and stability. An objective of the Housing plan states:

Encourage innovative new housing development, which is designed to be compatible with the scale, character, and traditional development patterns of each individual neighborhood.

The actions encourage new development that offer diverse and quality living options, provide traditional neighborhood elements, promote a walkable city and is compatible with Portland's existing neighborhoods. The plan also encourages compatible development through the use of

design guidelines for new development. Attachment I is an excerpt of relevant housing policies from the Comprehensive Plan.

The Eastern Waterfront Master Plan was adopted in 2004. The proposed site for this rezoning is adjacent to the Eastern Waterfront study area and was included in the height analysis for the Master Plan. Thus, the goals and policies of the Eastern Waterfront Plan are pertinent to this rezoning request and the Planning Board directed the staff to evaluate this proposal under the Eastern Waterfront Design Guidelines at the initial workshop (refer to Attachment D for Urban Design review by Carrie Marsh). The Master Plan encourages development that is compatible with the surrounding neighborhoods, natural environment and maritime uses through the use of compatible architecture, maintaining the street and pedestrian network, and preserving significant public view corridors to and from the water. The plan also encourages mixed-use development that will create a vital and active urban area.

The purpose of the B-5 and B-5B zone is “to provide zone in areas of the peninsula near the central business district, where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings. It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management and driveways.

The proposed revisions to the plan add 1,602 square feet of land to Phase I, which allow a jog in Building #2 to be eliminated and six more residential units to be added. While the commercial space will be reduced with the elimination of the kitchen space for a restaurant, it maintains a mix of uses with the first floor area for both buildings 1 and 2 designated for commercial/retail space. Housing is the predominant use in this mixed-use proposal, which is near the downtown and major transportation facilities. The project will provide a mix of uses that offer a 24-hour presence in the neighborhood and does not interfere with any of the marine or other uses proposed near the waterfront. In addition, a shared alley serves the project and an adjoining business on India Street and the developer is participating in upgrading the public street and utility infrastructure within this neighborhood.

## **VI. Neighborhood Meeting and Public Comment**

The applicant held a neighborhood meeting on April 8, 2008. The meeting notes and list of attendees is in Attachment 10. No public comments have been received to date.

### **Attachments:**

1. Conditional Rezoning Agreement for the Village at OceanGate, adopted November 20, 2006
2. Zoning Amendment Application from the Village at OceanGate, LLC., dated February 28, 2008
3. Applicant Submittal, April 8, 2008, memorandum from Greg Shinberg and Parking Calculation Memorandum from William Eaton
4. Applicant Submittal, April 23, 2008, memorandum from David White, AIA
5. Project History
6. Subdivision and Site Plan Approval Letter, dated July 20, 2007

7. Correspondence from Joseph E. Gray Jr. to Dimitrios Dasco, dated Feb. 22, 2008
8. Memorandum, Carrie Marsh, dated April 25, 2008
9. Building Elevations from July 10, 2008 public hearing
10. Neighborhood Packet, neighborhood meeting held on April 8, 2008
11. Revised Site Plan and Building Elevations, dated April 18, 2008
12. Revised First Floor Plan and Middle Street Elevation, dated April 22, 2008
13. Revised Site Plan, dated 4-22-08



Att 1A

**Conditional Zoning Agreement  
The Village At Ocean Gate  
112-113 Newbury Street, Portland, Maine**

This agreement is made as of the 19<sup>th</sup> day of December, 2006 by **THE VILLAGE AT OCEAN GATE, LLC**, a Maine Limited Liability Corporation having a principal place of business at Boston, Massachusetts (hereinafter "**DEVELOPER**").

**WHEREAS, DEVELOPER**, as assignee of the rights of the purchaser under a purchase and sale agreement with the Village Café, Inc., has the right to purchase the property located at 112-113 Newbury Street and 40 Hancock Street, Portland, Maine, consisting of the property shown on the Portland Assessor's Map as parcels 20-E-9, 20-D-13-15 and 20-D-32 and described in the Cumberland County Registry of Deeds at Book 17317, Page 167, Book 3161, Page 504, Book 4357, Page 291, Book 3217, Page 83, Book 3004, Page 226, Book 3091, Page 703, Book 3752, Page 140, Book 3112, Page 131, Book 3024, Page 132, Book 3291, Page 260, Book 2996, Pages 235 and 237, Book 4357, Page 289, Book 4094, Page 222 and Book 9520, Page 73 (hereinafter the "**SITE**"); and

**WHEREAS**, the **SITE** is currently in the B-2b zoning district and is adjacent to a B-5b district to the southeast; and

**WHEREAS**, Developer has filed a Zone Change Application with the City of Portland (hereinafter "**CITY**") to rezone the **SITE** to the B-5b zoning district subject to certain modifications and conditions set forth in this Agreement in order to accommodate a mixed-use development consisting of up to 176 residential units; space for a 150- to 200-seat restaurant; and sidewalk-level commercial space in a complex of buildings of varying sizes and heights (hereinafter the "project"); and

**WHEREAS**, the Portland Planning Board has determined that the rezoning would provide needed housing, would create a vibrant new neighborhood and would assist in revitalizing adjacent areas; and

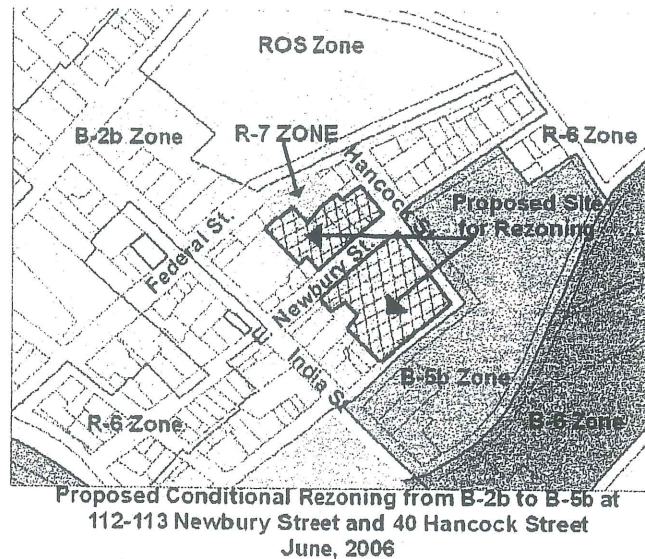
**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the B-5b zone and that the rezoning would be pursuant to and consistent with the **CITY**'s Comprehensive Plan; and

**WHEREAS, DEVELOPER** has agreed to enter into this Agreement, with its concomitant terms and conditions, which shall hereinafter bind **DEVELOPER**, its successors and assigns;

**NOW, THEREFORE**, in consideration of the rezoning of the **SITE**, **DEVELOPER** agrees to be bound by the following terms and conditions:

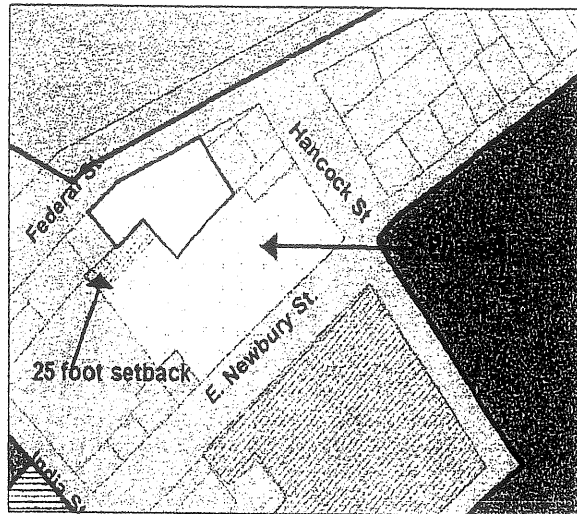
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1. Map. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change. The underlying zone is changed from B-2b to B-5b.



Prepared for the Department of Planning and Development  
by the City of Portland, Oregon

2. Subdivision and Overall Site Plan. Except as otherwise provided in this paragraph 2, the **SITE** will be developed substantially in accordance with the Subdivision and Overall Site Plan, Attachment 1, submitted by Sebago Technics, Inc., dated 8/03/05 as revised November 17, 2006. Phase I of the project, consisting of two buildings along Middle, Hancock and Newbury Streets shall conform to the building elevations and architectural renderings submitted by David M. White, Architect, dated November 17, 2006, Attachment 2 (collectively, "the Plans for Phase I"). Phase II of the project, consisting of one or more buildings along Newbury and Hancock Streets shall meet the following requirements:
  - a maximum of sixty six (66) residential units shall be provided; and

- lc
- a minimum setback of twenty five (25) feet from the most westerly rear property line (abutting CBL 20-D-11) shall be provided and as illustrated below ; and



Required Minimum Setback of 25 feet in Phase II  
Depiction - Not to Scale

Prepared by the Department of Planning and Development  
on 02/09/2010 10:00 AM



- the maximum height of any building(s) in Phase II shall be sixty-five (65) feet measured from the existing Newbury Street grade.

The Planning Board shall review both the Phase I and Phase II proposals and apply the site plan and subdivision standards of the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.

After the initial approval of the Plans for Phase I, and any plans submitted in connection with the development of Phase II, the Planning Board may, upon application of **DEVELOPER** and without the necessity of amending this Conditional Rezoning Agreement, approve subsequent changes to the Plans for Phase I which decrease building dimensions or reduce the density of development, provided that any such decrease or reduction shall nonetheless be determined to substantially conform to the Plans.

The project shall incorporate light fixtures in "Downtown Black," specifications to be provided by the Planning Authority during subdivision review. In addition, all other streetscape improvements will be consistent with the Hancock Street Extension Plans, which improvements are currently represented on the Plans.

3. Permitted uses: Those uses allowed in the B-5b zoning district. The project shall include not less than 6772 square feet of commercial/retail space on the ground level along Middle Street and at the corner of Hancock and Middle Streets as depicted on the Plans.

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4. Phase I shall consist of, at minimum Buildings 1 and 2, while Phase 2 shall consist of one or more buildings in accordance with §14-495(h).
  5. Modifications to B-5b Regulations. The **SITE** shall be governed by the regulations applicable to the B-5b zoning district, except as follows:

- a. The maximum residential density on the **SITE** shall be 176 dwelling units.
- b. The maximum front yard setback shall be ten (10) feet, except that a front yard setback of no greater than sixteen (16) feet shall be allowed for the parking garage entrance and associated façade as depicted on the Plans for Phase I.
- c. The maximum height for the structures shall be:

Buildings 1 and 2: The maximum height of each building in Phase I shall not exceed 74 feet from average grade, as measured and approved by the Zoning Administrator.

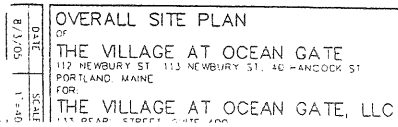
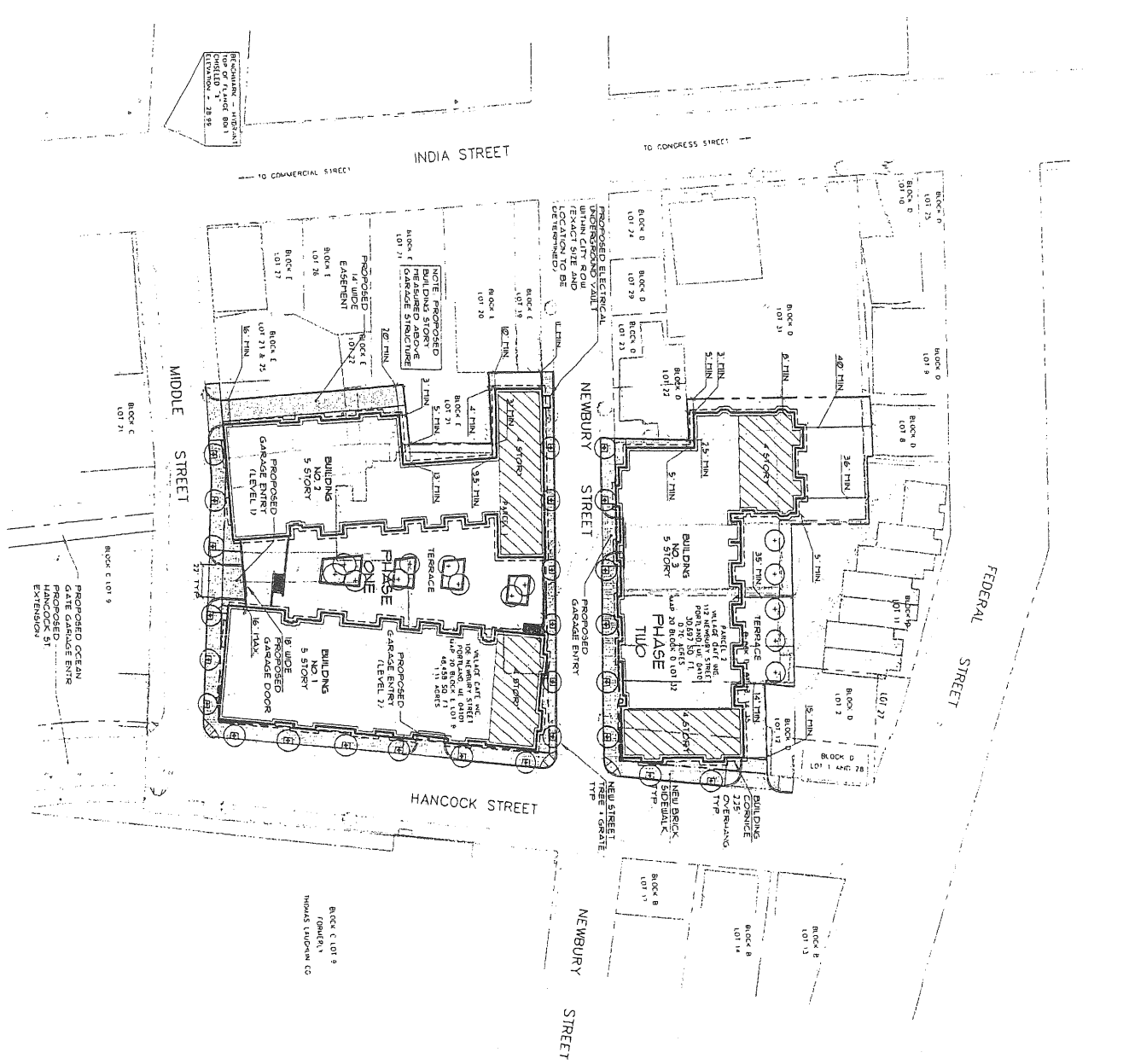
Building(s) in Phase II: The maximum height in Phase II shall not exceed sixty-five (65) feet measured from the existing Newbury Street grade.

- d. The cornices of buildings, and storefront awnings along Middle and Hancock Streets, will extend over the street rights of way in various locations as shown on the Plans. The **CITY** hereby grants license for such overhangs and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.
  - e. An underground electrical vault will be installed within the right of way of Newbury Street, the final location of such vault to be approved by the Planning Authority. The **CITY** hereby grants license for such installation and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.
6. Community Contribution. The community contribution under this Agreement shall be \$200,000.00, to be dedicated to extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension; \$5,000.00 dedicated to the India/Middle Street traffic improvements to be commissioned by the City; and \$5,000.00 to be dedicated to the Eastern Waterfront Post-Development Traffic Impact Study to be commissioned by the City. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a building permit for Phase I.

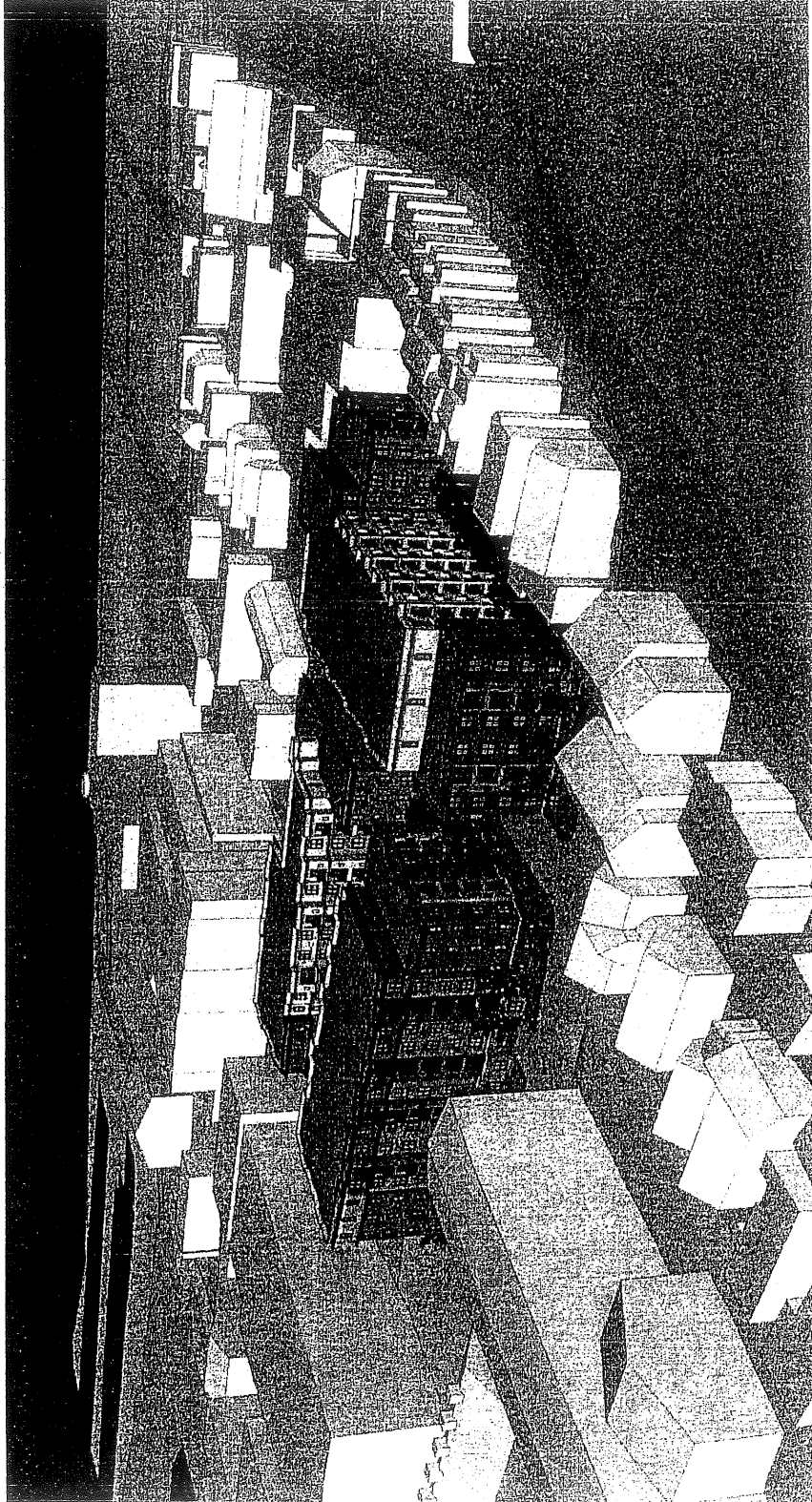
The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage located at Middle Street, Portland, with documentation of such participation provided to the City Planning Authority at minimum every two years.



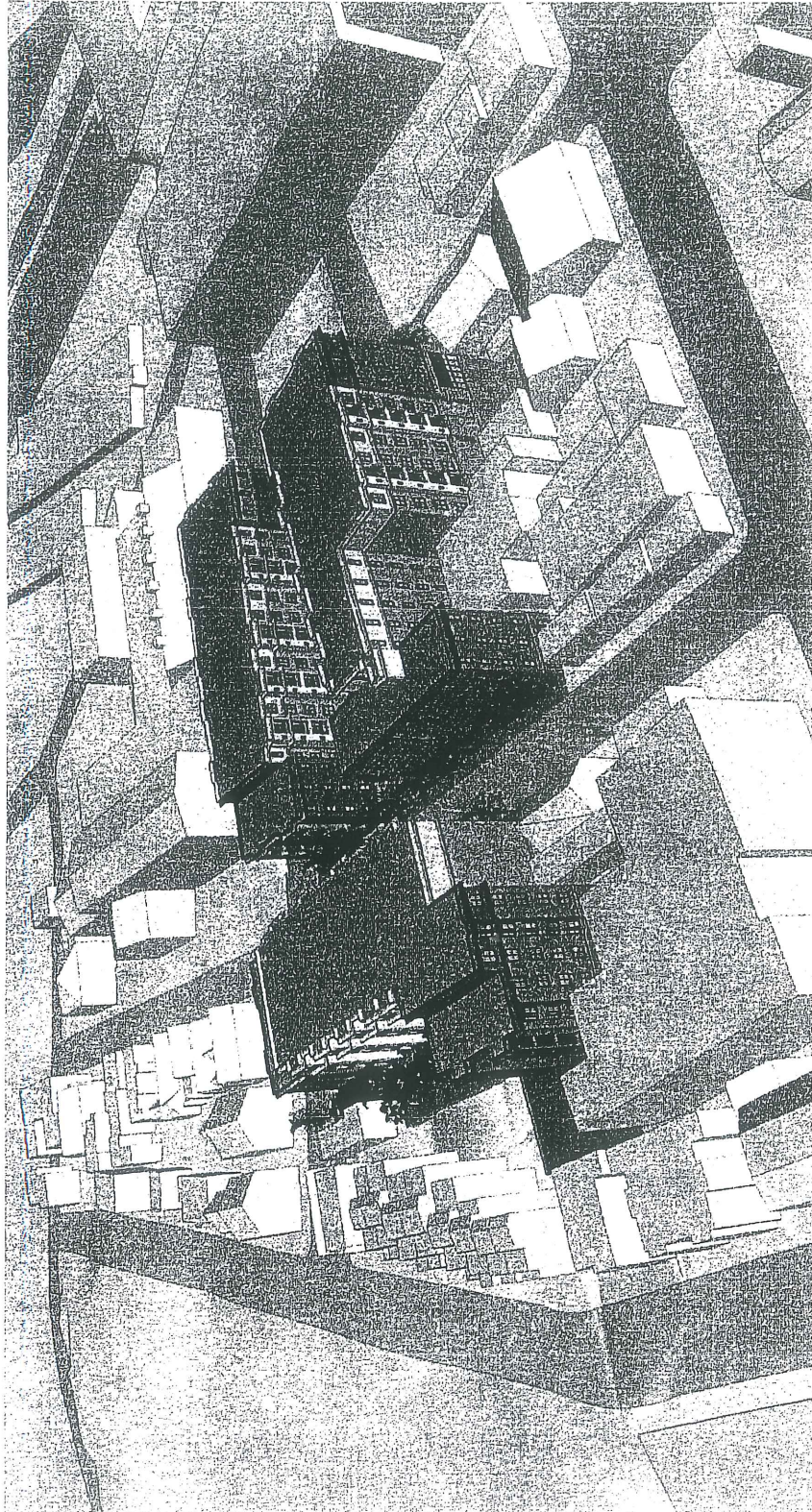
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7. This conditional rezoning shall become null and void and the **SITE** shall revert to the existing B-2b zoning district in the event that **DEVELOPER** fails to commence construction of Phase I within two years from the date of the Council vote, with the ability of the Planning Authority, in its sole discretion, to extend this period by an additional one year and Phase II of the project must be commenced within two years following the issuance of a certificate of occupancy for Phase I. If any required approval, including the approval of the conditional rezoning, has been appealed, and if **DEVELOPER** fails to commence construction within one (1) year from the final disposition of such appeal, this conditional rezoning shall become null and void and shall revert.
  8. Phasing: **DEVELOPER** may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525(f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing for Phase II must be posted with the City prior to the issuance of a building permit for Phase I of the project. If Phase II fails to be developed within the time line set forth in this Agreement, the **DEVELOPER** shall nonetheless be required to install such improvements upon demand by the City. Otherwise, the City shall call on the performance guarantee and install said improvements itself.
  9. A post development occupancy parking analysis shall be conducted by the **DEVELOPER** six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then parking for Phase II of the project shall be increased accordingly as determined by the Planning Board.
  10. The rezoning shall run with the **SITE**, shall bind and benefit **DEVELOPER** and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. Within thirty (30) days of the City Council's passing of the Conditional Zone, **DEVELOPER** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **SITE**. **DEVELOPER** shall provide to the **CITY** the Book and Page number of said recording.
  11. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
  12. Except as expressly modified herein, the development, use, and occupancy of the **SITE** shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.



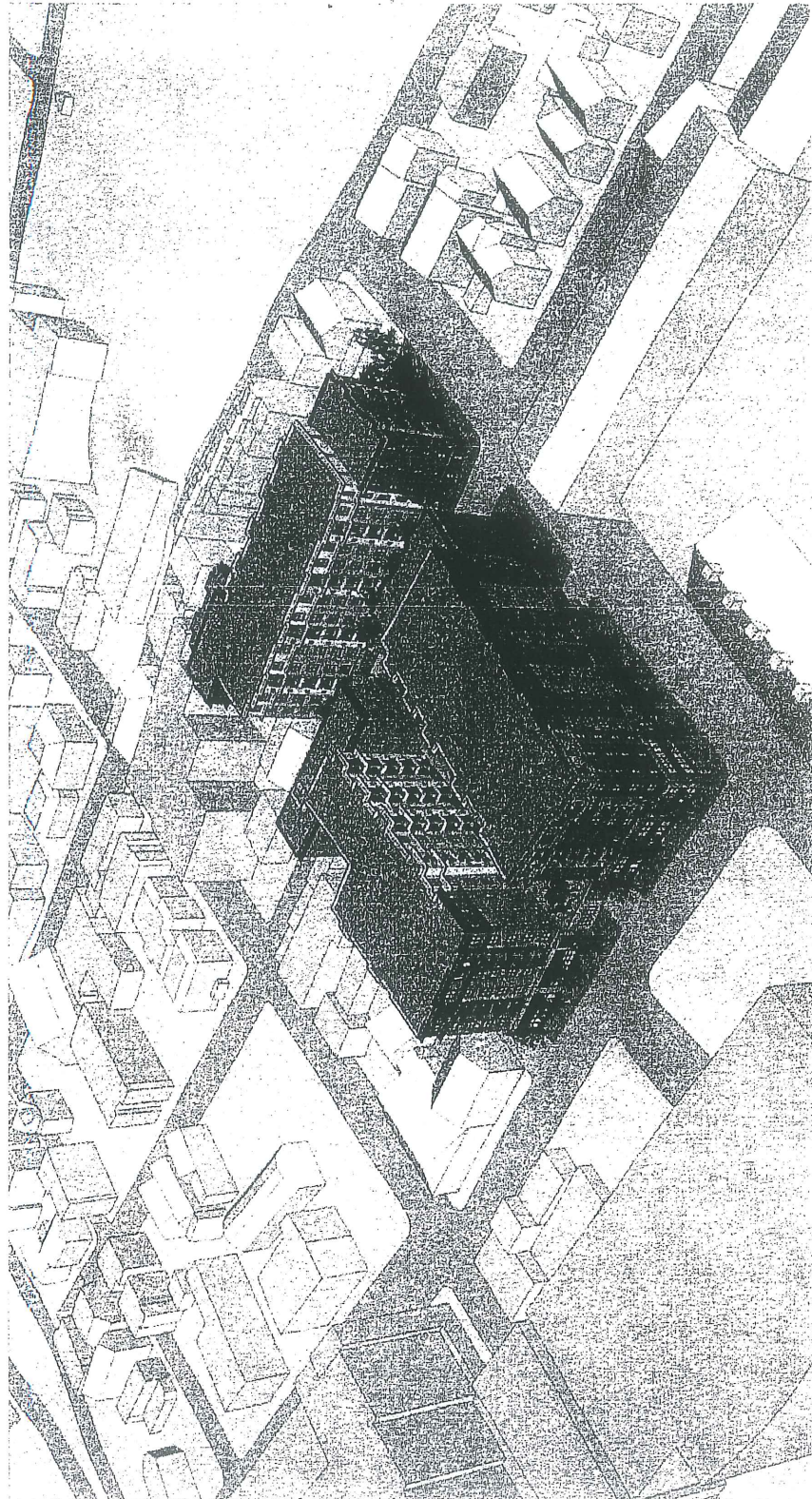
C	CD	9-17-06	REVISED PER COUNCIL WMSD. PLUM FOR MIG 11/20/06
D	CD	9-11-06	REVISED SETBACK DISTANCE BEHIND BUILDING 2
C	CD	8-29-06	SUBMITTED TO PLANNING BOARD PUBL. HEARING
B	CD	8-11-06	PLANNING STAFF REVIEW-MTC
A	CD	8-8-06	CLIENT REVIEW
REV	BY	DATE	STATUS











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Att 2 a

**City of Portland, Maine**  
**Department of Planning and Development**  
**Conditional/Contract Rezoning Application**

Application ID: 1325 Application Date: 03/05/2008 CBL: 020 E021001 Property Location: 61 India St

**Applicant Information:**

Village at OceanGate, LLC.  
Name

Business Name

35 Fay Street, 107B  
Address

Boston, MA 02118  
City, State and Zip

617-482-3006 617-482-3007  
Telephone Fax

**Applicant's Right, Title or Interest in Subject Property:**

See purchase and sale agreement.

**Current Zoning Designation:** B56

**Existing Use of Property:**

Vacant lot - no structures.

**Proposed Use of Property:**

To construct 8 additional units that will be added to the approved conditional zoning agreement for the Village at OceanGate located at 112-113 Newbury Street.

**Property Owner:**

Pearl Properties Llc  
Name

198 Tuttle Rd  
Address

Cumberland, ME 04021  
City, State and Zip

Telephone

Fax

Amendment A ☐

Amendment B ☐

Amendment C ☒

Section 14: \_\_\_\_\_

Requested: \_\_\_\_\_

**Planning Approval**

REVIEW TYPE: Committee Review

RECOMMENDATION DATE: \_\_\_\_\_ APPROVAL DATE: \_\_\_\_\_ ENACTMENT DATE: \_\_\_\_\_





26

# Zoning Amendment Application

Department of Planning and Development  
Planning Division and Planning Board

1. **Applicant Information**

VILLAGE AT OCEANGATE, LLC

Name

35 FAY ST. 107B

Address

BOSTON, MA 02118

617 482 3006 617 482 3007

Phone

Fax

3. **Property Owner:** ☒ Applicant ☐ Other

Same as above

Name

Address

Phone

Fax

2. **Subject Property**

61 INDIA ST. (PORTION OF)

Address

PORTLAND, ME 04101

20 E 21

Assessor's Reference (Chart-Block-Lot)

4. **Billing Address:**

VILLAGE AT OCEANGATE

Name

35 FAY ST 107B

Address

BOSTON, MA, 02118

4. **Right, Title, or Interest:** Please identify the status of the applicant's right, title, or interest in the subject property:

See purchase & Sale Agreement

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. **Vicinity Map:** Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

6. **Existing Use:**

Describe the existing use of the subject property:

VACANT LOT / NO STRUCTURES

7. Current Zoning Designation(s): B56

3 c

8. **Proposed Use of Property:** Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

TO CONSTRUCT 8 ADDITIONAL UNITS THAT WILL  
BE ADDED TO THE APPROVED CONDITIONAL  
ZONING AGREEMENT FOR THE VILLAGE AT  
OCEAN GATE LOCATED AT 112-113 NEWBURY ST.

9. **Sketch Plan:** On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.)

10. **Proposed Zoning:** Please check all that apply:

A. \_\_\_\_\_ Zoning Map Amendment, from \_\_\_\_\_ to \_\_\_\_\_

B. \_\_\_\_\_ Zoning Text Amendment to Section 14-\_\_\_\_\_

For Zoning Text amendment, attached on a separate sheet, the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. ☒ Conditional or Contract Zone

A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. **Application Fee:** An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below.) The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

\_\_\_\_\_ Fee for Service Deposit      \$200.00

(This fee is required for all applications in addition to the application fee listed below)

\_\_\_\_\_ Zoning Map Amendment      \$2,000.00

\_\_\_\_\_ Zoning Text Amendment      \$2,000.00

12. Advertising/Notices:

## Legal Advertisements

Applicant to pay a percent of the total advertisement

## Notices

.75 cents each

(receipt of application, workshop and public hearing notices will be sent)

NOTE: Legal notices placed in the newspaper for the public hearing meeting are required by State Statute and local ordinance. The cost of any and all newspaper advertisements, legal advertisements and Planning Board notices will be billed directly to the applicant.

13. **Signature:** The above information is true and accurate to the best of my knowledge.

Signature of Applicant

Date of Filing

### Further Information:

Please contact the Planning Division for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

Portland Planning Board  
Portland, Maine

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made and entered into this 27<sup>TH</sup> day of February, 2008 by and between Pearl Properties, LLC, a Maine limited liability company (Seller) and Village at Ocean Gate, LLC of 35 Fay Street, 107B Boston Massachusetts (Buyer).

### WITNESSETH:

1. PREMISES. Seller agrees to sell and Buyer agrees to buy the land situated at the rear of 61 India Street, Portland, Maine (collectively the Premises), such land being approximately ~~1,700~~<sup>1,600</sup> square feet and depicted on Exhibit A, subject to the provisions of Section 14 below. The Westerly boundary of the Premises shall be no less than twelve (12) feet from the recently poured foundation on the Seller's remaining land. Seller shall have the right, but not the obligation to salvage, remove and retain for its ownership and use, any and all walls and bricks located upon the Premises prior to the closing. Included in the sale of the Premises will be a construction easement to use that approximately 14 foot wide area of Seller's retained land, also depicted on Exhibit A, for temporary construction purposes for the initial construction of Buyer's project to last the duration of the construction project and for the future maintenance of the portions of the constructed building thereof.

2. PURCHASE PRICE. Subject to any adjustments and pro-rations hereinafter described, Buyer agrees to pay for the Premises the sum of Two Hundred Thousand Dollars (\$200,000), payable as follows:

(a) Deposit. NO LATER THAN FEB. 29TH 2008 paid to Seller as a deposit ~~at the time of the execution of this Agreement~~, which shall be credited toward the purchase price at the closing.

(b) Cash at Closing. DC shall be paid to the Seller by certified check or bank cashier (s) check at the closing.

2.A. ADDITIONAL CONSIDERATION. In addition to the Purchase Price, the Buyer shall deliver the following to Seller at closing:

(i) Pedestrian Easement. Buyer shall grant, subject to the condition below in this paragraph, Seller an approximately ~~six (6)~~<sup>five (5)</sup> foot wide pedestrian easement, in such form and on any other reasonably necessary terms and conditions reasonably satisfactory to Seller, over land of the Buyer from the remaining land of the Seller to Newbury Street in the area shown on Exhibit A. Buyer shall not be obligated to grant the foregoing easement to Seller in the event that doing so materially and adversely affects any municipal approvals for Seller's Bay House Condominium project.

(ii) Courtyard & 14-Foot Easement Paving. Buyer shall finish pave the courtyard area on Seller's remaining land lying easterly of the recently poured foundation on the Seller's

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AM  
DO

remaining land and westerly of the Premises. In addition, Buyer shall finish pave the 14-foot easement running from Seller's remaining land to Middle Street and more particularly described in an instrument recorded in the Cumberland County Registry of Deeds in Book 25615, Page 187. The finish paving shall be of the same type, finish and quality as the paving that Buyer installs on the Premises. Such paving shall be completed within THIRTY (30) days of paving the Premises but no later than DEC. 31<sup>ST</sup>, 2009. In the event that the Buyer defaults in its obligation to pave hereunder, Seller shall be entitled to any and all legal and equitable remedies including but not limited to any and all costs, expenses and attorney's fees associated and/or incurred by Seller in enforcing or attempting to enforce the provisions of this section. The provisions of this section shall survive closing.

3. TITLE. Seller shall convey the Premises to Buyer at the closing in fee simple with good and marketable title, free and clear of all liens. The Premises shall be conveyed subject to exceptions from coverage set forth in Tigor Title Insurance Company Owner's Policy # 74106-161258, as the same has been amended by endorsement, except for any mortgages or other liens referenced therein. In the event that Seller is unable to convey title as aforesaid, upon written notice from Buyer, Seller shall use reasonable efforts to remedy all title defects. In the event that said defects are not remedied within Forty-Five (45) days from the date of such notice, then the Deposit shall be returned to Buyer and this Agreement, and Seller (s) and Buyer (s) obligations hereunder, will terminate. Buyer may, at Buyer(s) option, elect to close notwithstanding such defects as may exist.

4. CLOSING. The closing of this transaction shall take place in the office of Tom Hanson, Bernstein Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029 (or, if the Buyer and the Seller mutually agree in advance and in writing, at another time and place) within Fifteen (15) Days of the date of the approval by the City of Portland City Council of the amended contract zone that shall include the Premises. Notwithstanding the foregoing, the closing shall occur no later than August 1, 2008. At the closing, Seller shall execute and deliver to Buyer, against payment of the balance of the purchase price, a Warranty Deed to the Premises (the Deed).

5. RISK OF LOSS, DAMAGE, DESTRUCTION AND INSURANCE. Prior to the closing, the Premises shall be the sole responsibility of Seller and Seller shall bear the risk of any loss to the Premises whether by fire or otherwise. In the event of any casualty loss, Buyer shall have the alternative of either terminating this Agreement by written notice, whereupon Buyer shall receive back the Deposit plus accrued interest, or of accepting the insurance proceeds made available, if any, and closing notwithstanding such loss.

6. INSPECTION. At all reasonable times during the term hereof, Buyer shall have the right to enter the Premises and perform such inspections, engineering tests, soil tests, surveys, hazardous waste investigations, water tests, or other inspections as Buyer deems necessary or appropriate provided that the Buyer's activities shall not damage the Premises. Seller shall have the right but not the obligation to have a representative present at each inspection. Buyer shall keep the Premises free of all liens in connection with its inspection of the Premises or shall



2.9

remove any liens immediately upon being notified of them. Buyer agrees to indemnify, defend and hold Seller harmless from all damage, loss or claims relating directly or indirectly to any physical damage to the Premises resulting from inspections or studies of the Premises made by Buyer or its agents, which indemnity shall survive Closing. Buyer agrees to provide Seller with copies of each of the reports completed regarding the Premises. Buyer agrees to return the Premises as nearly as possible to its original condition after all of such tests and inspections. If the results of a hazardous waste or other investigation done pursuant to this Paragraph are unsatisfactory to Buyer, Buyer shall have the right to terminate this Agreement by written notice and receive back the Deposit, plus accrued interest.

7. REPRESENTATIONS AND WARRANTIES. As a material part of the consideration for this Agreement, Buyer represents to Seller that Buyer knows, has examined, and has investigated (or, prior to the closing, shall know, shall have examined, and shall have investigated) to Buyer's satisfaction, operating information, environmental condition, physical nature and condition of the Premises. Buyer agrees to take the Premises "AS IS", with all latent and patent defects and no warranty by Seller that the Premises are fit for a particular purpose. Buyer takes the Premises with the agreement that there are no express or implied warranties or representations by Seller as to its physical condition, quality of construction or workmanship, or any other matter. Furthermore, Seller makes no agreement to alter, repair, or improve the Premises.

8. POSSESSION. Seller shall deliver possession of the Premises to the Buyer upon transfer of title free and clear of all leases, tenancies and occupancies by any person.

9. ADJUSTMENTS, PRORATION AND CLOSING COSTS. Real estate taxes and assessments and all utilities shall be prorated as of the closing on the basis of the latest available tax bill. The Maine real estate transfer tax shall be paid equally by Seller and Buyer. The recording fee for the Deed and any expenses related to Buyer (s) financing will be paid for by the Buyer.

10. CONDITIONS PRECEDENT. Buyer (s) obligation to close hereunder is subject to satisfaction of the following conditions at or before closing:

- (a) As of the date hereof, and as of the date of closing, all of Seller (s) representations and warranties shall be true and correct.
- (b) Approval by the City of Portland City Council of the amended contract zone that shall include the Premises.

If the above listed condition is not satisfied within the time specified or if no time is specified, by the closing date, Buyer shall be entitled to receive back the Deposit plus accrued interest, whereupon this Agreement shall terminate and neither party will be under any further obligation hereunder.



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11. DEFAULT AND REMEDIES. In the event that Buyer fails to close hereunder for a reason other than the default of Seller, Seller shall retain the Deposit plus accrued interest as full and complete liquidated damages in lieu of any other legal or equitable remedy, whereupon this Agreement will terminate and neither party will be under any further obligation hereunder. In the event of Seller (s) default hereunder, Buyer may, as its sole and exclusive remedy, either (i) terminate this Contract and be entitled to the return of the Deposit or (ii) seek specific performance.

12. ACCEPTANCE DATE. This contract shall not be valid unless executed by all parties by 5:00 p.m. ~~February 28, 2008.~~

13. MISCELLANEOUS.

(a) Time is of the essence of this Agreement. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed as follows:

TO SELLER: Pearl Properties, LLC  
c/o Joseph W. Reynolds  
198 Tuttle Road  
Cumberland, ME 04021

TO BUYER: Village at Ocean Gate, LLC  
35 Fay Street 107B  
Boston, MA 02118

Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein. Seller (s) representations and warranties shall survive the closing. This Agreement will inure to the benefit of and bind the respective successors and assigns of Seller and Buyer. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of the masculine shall include, where appropriate, the feminine and neuter. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any

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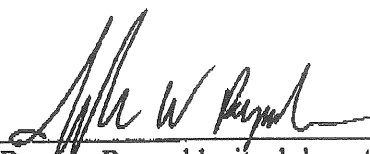

provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

14. SURVEY. Buyer shall obtain, at Buyer's sole cost and expense, a standard boundary survey and metes and bounds description of the Premises, which survey will depict the temporary construction easement area and the pedestrian easement area (collectively, the "Survey") prior to closing. The Survey shall evidence the setback compliance of the rear portion of the Seller's remaining land and shall be otherwise reasonably satisfactory to Seller in all respects.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first written above.

WITNESS:

Pearl Properties, LLC

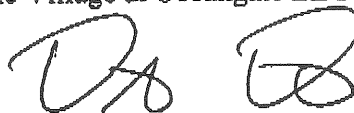


By: Joe Reynolds, its duly authorized Manager

2/27/08

Date

The Village at Oceangate LLC



By: Demetri Dasco, its duly authorized Manager  
Buyer

2/27/08

Date





3.k

**Shinberg Consulting, LLC**  
477 Congress Street, Suite 1012  
Portland, Maine 04101-3427  
207 772 7070 Office  
207 772 7080 Fax

March 4, 2008

Mr. Alexander Jaegerman, Ms. Barbara Barhydt  
Planning Division Director, City of Portland  
and City of Portland Planning Board Members  
389 Congress Street  
Portland, Maine 04101

**RE: The Bay House**  
**112 Newbury Street, Portland, Maine**

Dear Mr. Jaegerman, Ms Barhydt and Board Members:

Enclosed is a submission for The Bay House Condominiums (formerly known as The Village At Ocean Gate) project proposed for 112 Newbury Street. The project has been amended to incorporate approximately 1,600 square feet of land that will be acquired from the next door neighbor, Pearl Properties, LLC whose property affronts 61 India Street.

The total number of units has been increased from 84 units to 92 residential units. The square footage of retail space has been reduced to approximately 5,348 square feet. The total number of parking spaces in the garage has been increased from 79 to 80 spaces. The total number of leased spaces in the Gateway Parking Garage will be increased from 15 to 17. This will provide one parking space for each residential unit and an additional 5 spaces for the proposed retail space.

The retail space remains essentially unchanged at the part of the building that affronts Middle and Hancock Streets. The retail space in Building 2 at the West Elevation has been changed to provide additional storage space for the residential units.

After meeting with City Staff to review possible alternate materials for the buildings, the exterior of the building has been changed to include more concrete masonry units (CMU Block) at the base of the building and more cement board clapboard siding has been placed on the Newbury, Hancock and Middle Street elevations. In addition, the arched windows at the top floor have been changed to standard double hung windows.



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As per the terms of the Conditional Approval letter from Ms. Barhydt dated July 20, 2007, the following fees have been agreed to:

1. \$9,600.00 tree replacement fee;
2. \$43,000.00 fee to reclaim and repave Hancock Street as per the memo from Mike Farmer of Portland Public Works;
3. \$200,000.00 Community Contribution to be dedicated to the extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension.

The three items listed above equals a total amount of \$252,600.

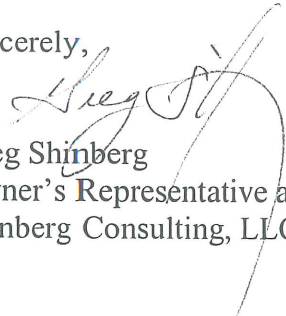
Because these fees were based upon building both Phase I and Phase II, and Phase II was not approved by the Planning Board on July 10, it is reasonable to request that the total fees be reduced from \$252,600.00 to \$156,612.00 or 62 % of the total. This calculation is based upon the relative size of Phase I and the proposed size of Phase II.

As noted in Section 5 of the approved Conditional Zoning Agreement, several modifications have been granted to the B-5b Zone. We request that the additional parcel to be acquired from Pearl Properties be subject to the same modifications that were previously granted.

Attached are the revised Site Plans by Sebago Technics dated February 27, 2008 and revised Floor Plans and Elevations and Floor Plans by David M. White dated February 18, 2008.

We look forward to attending the next scheduled Planning Board Workshop to review the amended project.

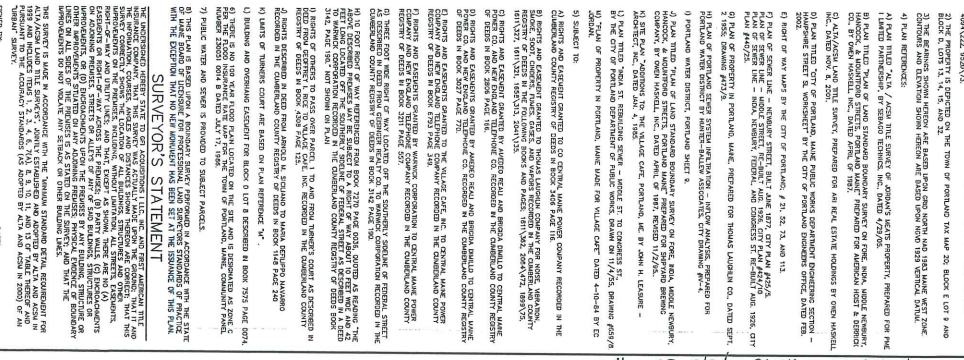
Sincerely,



Greg Shinberg  
Owner's Representative and Project Manager  
Shinberg Consulting, LLC

**LEGEND**

SYMBOL	DESCRIPTION	PROPOSED
—	SETBACK	—
—	EASEMENT	—
□	CORNER	■
○	IRON PIPE/HOO	○
ψ	WATER SHUT OFF	ψ
⊕	CATCH BASIN	⊕
⊕	GATE VALVE	⊕
⊕	HYDRANT	⊕
⊕	SEWER MANHOLE	⊕
⊕	POLE	⊕
⊕	GUY WIRE	⊕
⊕	ELECTRIC MANHOLE	⊕
⊕	EDGE PAVEMENT	⊕
⊕	CORNER	⊕
⊕	BEACHHEAD	⊕
⊕	HARDWOOD TREE	⊕



**Sebago Technics**  
Engineering Expertise You Can Build On  
One Chobol Street  
Westbrook, Me 04090-1339  
Tel (207) 856-0277

CD	2/27/05	REVISED PER CLIENT	G. SIMMERBERG REVISION
CD	2/10/08	REVISED PER CLIENT	G. SIMMERBERG REVISION
CD	2/15/08	ADDED NOTES TO CLIENT	THE UNIVERSITY
DCS	1/29/05	REVISED PER CLIENT	ADDED NOTES TO CLIENT
DCS	1/29/05	REVISE HANCOCK STREET SUELINE	ADDED NOTES TO CLIENT
DFB	8/02/05	BOUNDARY & MISC REVISIONS	
DFB	7/20/05	BOUNDARY REVISION	
DFB	7/05/05	PER DCS REVISIONS	
BY:	DATE:	STATUS:	

THIS SHALL NOT BE MOIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNICS, INC. ANY ALTERATIONS, ADDS OR DELETIONS, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNICS, INC.



Shinberg Consulting, LLC  
477 Congress Street, Suite 1012  
Portland, Maine 04101-3427  
207 772 7070 Office  
207 772 7080 Fax

April 8, 2008

Mr. Alexander Jaegerman, Ms. Barbara Barhydt  
Planning Division Director, City of Portland  
and City of Portland Planning Board Members  
389 Congress Street  
Portland, Maine 04101

**RE: The Bay House, Amendment to the Conditional Contract Zone  
112 Newbury Street, Portland, Maine**

Dear Mr. Jaegerman, Ms. Barhydt and Board Members:

Enclosed is a submission for The Bay House Condominiums project proposed for 112 Newbury Street. The project has been amended to incorporate 1,602 square feet of land that will be acquired from the next door neighbor, Pearl Properties, LLC, whose property affronts 61 India Street.

On March 25<sup>th</sup> at the Planning Board Workshop, several items were addressed by the Planning Board and Staff that included the following items:

1. A comparison of the old retail square foot totals to the new retail space. *The old retail space totaled approximately 6,772 square feet. The new retail total is approximately 5,700 square feet.*
2. *An explanation of the change of materials on the exterior skin. The materials that are proposed will change some of the metal siding to a cement board that is reinforced with fiberglass (also known as "Hardi Plank") siding. The granite base has been changed to a fabricated granite block.*
3. *According to Penny Latelle, the bicycle storage racks for the project must now meet the City Ordinance. We will meet the City Ordinance which we calculate to be 37 bicycle spaces. It should be noted that there will now be substantially more storage space for the individual units and Owners may elect to store their bicycles in their storage compartment.*
4. *A request that we add more glass to the west elevation of the retail space in Building 2 (facing the alley and Right of Way); This change has been made – see the attached elevations.*

5. A request that we obtain input from Carrie Marsh, Urban Designer, on the proposed changes to the exterior. *We have been working together with City Staff to review the proposed changes to the materials.*
6. A request that we clarify the off-site improvements that must be done as a part of Phase I separately from Phase II. *See the attached plans that show this proposed work.*
7. A request that we include the easements for the abutting property located at 61 India Street. *See the attached plans.*
8. A request that we clarify our request that the \$200,000.00 Community Contribution fee be prorated between Phase I and Phase II. *We have decided to withdraw that request.*

The total number of units has been increased from 84 units to 90 residential units. The square footage of retail space has been reduced to approximately 5,700 square feet. The total number of parking spaces in the garage has been increased from 79 to 80 spaces. The total number of leased spaces in the Gateway Parking Garage will remain at 15 spaces. This will provide one parking space for each residential unit and an additional 5 spaces for the proposed retail space. See the attached memo from Eaton Traffic Engineers.

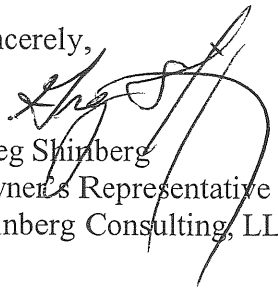
The retail space remains essentially unchanged at the part of the building that affronts Middle and Hancock Streets. The retail space in Building 2 at the West Elevation has been changed to provide additional storage space for the residential units.

As noted in Section 5 of the previously approved Conditional Zoning Agreement dated December 19, 2006, several modifications have been granted that amended the B-5b Zone. We request that the additional parcel to be acquired from Pearl Properties be subject to the same modifications that were previously granted.

Attached are the revised Site Plans by Sebago Technics, dated April 8, 2008, and the revised Floor Plans and Elevations by David M. White Architects, dated April 5, 2008.

We look forward to presenting the application at the Planning Board Workshop and Public Hearing that is scheduled for April 29<sup>th</sup>.

Sincerely,



Greg Shinberg  
Owner's Representative and Project Manager  
Shinberg Consulting, LLC





To: Demetri Dasco, Atlas Investment Group  
Fm: William C. Eaton, P.E., Eaton Traffic Engineering  
Re: Parking Calculation for Revised Phase 1 - Village at Ocean Gate Development  
Dt: April 8, 2008

The current revision for the above noted development is a 2 phase development with 90 condominium units and 6 retail spaces totaling 5,736 square feet of retail floor area in Phase 1. Based upon a determination by the City of Portland, parking for condominiums is to be calculated at 1 space per unit. The commercial floor area is likely to be a mix of retail and office land uses. The current plan for Phase 1 of the development will provide for 80 spaces on site designated for the condominiums. The City of Portland has determined that only the parking supply for the employees of the retail space must be provided; all patrons of the retail uses will use nearby garages, or off- and on-street parking. To estimate employee parking demand the publication Parking Generation 3<sup>rd</sup> Edition<sup>1</sup> was reviewed. Database information for a number of land uses includes employee density. For 6 various retail land uses (Free Standing Discount, Supermarket, Discount Supermarket, Sporting Goods, Furniture and Carpet) the density ranged from 1 employee per 1000 square feet to 1 per 1667 square feet. To provide a conservative estimate, retail will be estimated at 1 employee per 1000 square feet. Parking Generation indicates that parking demand for retail should be similar to office spaces – about 0.9 spaces per employee. Using this demand rate, retail employee parking supply needs are estimated at 6 spaces; these 6 spaces plus 10 spaces for condominium parking (16 total) are to be provided off site via a lease with a private parking facility.

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<sup>1</sup> Institute of Transportation Engineers, 2004

I trust that the above addresses your needs in this matter. Should you have any questions, please contact me.

Att 4 c

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DAVID M. WHITE, ARCHITECT

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403 fibbetts hill rd.  
p.o. box 447  
goffstown, n.h. 03045  
603-497-3405  
fax 603-497-2783

**MEMO**

Date: April 23, 2008

From: David White

To: Barbara Barhydt

Project: The Village at Ocean Gate

Copy To: The Village at Ocean Gate, LLC

Number: 01

Reference: Plan and elevation  
changes

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The following is an outline of the changes made to the plans and elevations since the previous submission to the Planning Board that led to the conditional approval.

First some general items:

1. With the option to purchase the Reynolds' property Building 2 has been "squared" off to increase the saleable square footage. The number of units in the overall project had been increased to 92, but since our last meeting in early April the overall number of units has been reduced to 82. We have created larger units to meet this demand by prospective buyers.
2. The first floor plan has been changed to reflect a change in the structural system resulting in a changed parking layout and an increase in area available for buyer storage space and bike storage.
3. All metal panel work has been changed to Hardie board with battens.
4. The base of the project, from the belt course to grade has been changed from a combination of granite at the retail areas and brick under the residential areas has been change to polished concrete block with a polished granite look.
5. The windows at the fifth floor have been changed from arch top windows to flat top windows. These windows do now have a crowned head casing.
6. Fireplace exhaust hoods have been diagrammatically added. These will be painted to match the field color in which they are located.
7. We have adjusted the floor to floor height of the building and the average grade plane based on the new building perimeter. The overall height of

the building is 56.85' which is less than our previous height of 57.5' and considerably less than the 74' allowed by the conditional rezoning.

\$ 5

#### Middle Street Elevation (P.10):

1. No change to the brick above the belt course.
2. Simplification of the storefront detailing at the retail spaces. Standard 2" mullions instead of built up mullions. No change to color or panels. Awnings are now indicated.
3. The entrance to Building 2 has been relocated between the massing of Building 2 and the garage door. This change was made as an attempt to increase the amount of rentable retail area. This also creates symmetry with the retail areas for both Buildings 1 & 2.

#### Hancock Street elevation (P.11):

1. The location of brick above the belt course remains the same as the previous submission.
2. The entrance to Building 1 is now similar to the entrance to Building 1. The previous entrance detail would not work with the proposed awning.
3. Three sets of windows were moved to accommodate the units' fireplaces. These are the two end windows in the brown brick field and the triple window.
4. The window in the retail area has been simplified in the same manner as the Storefronts.

#### Newbury Street elevation (P.12):

1. The brick remains in Building 1.
2. Changes to the elevation of Building 2 include a large, more prominent entrance (no awning), relocation of the balconies from the rear of this section to the Newbury street side and slight rework of the windows for that unit with the balcony change.

#### Alley elevation (P.13 & P.16):

1. No change to the area above the belt course at the Middle Street block.
2. The window to the retail area in the Middle Street block has been scaled down and is consistent with the storefront detailing.
3. The brick previously shown from the Middle Street section to the new relocated balcony at the Newbury Street block has been changed to Hardie-plank clapboard siding similar to the courtyard elevations. Note that this area did have this siding in the area now infilled with the addition of the Reynolds' property.

4. Window and deck locations from the Middle Street Block to Newbury Street have been revised to reflect the additional constructed space in Building 2.

Building 1 Courtyard elevation (P.14):

1. No change

Building 2 Courtyard elevation (P.15 & P.16):

1. No change to the Middle Street or Newbury Street blocks.
2. The area between these two sections has been change to reflect the revised unit configurations. This is indicated by only 3 decks per floor instead of the original 4.

I trust that this accurately reflects the changes made to the plans and elevations since that previous submission. We will be pleased to answer any question on these changes at the Planning Board meeting.

As part of this submission we have included the revised plans and elevations and renderings indicating the changes outlined in this narrative.

Respectfully submitted,



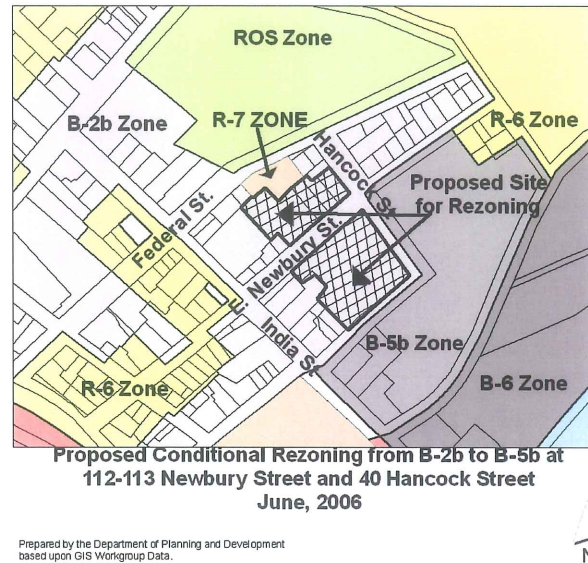
David M. White, AIA

Cc: The Village at Ocean Gate, LLC

## PROJECT HISTORY

### A. Conditional Rezoning Agreement 2007

On November 20, 2007 the City Council adopted the Conditional Rezoning Agreement for the Village at OceanGate Project, which rezoned the combined site from B-2b to Conditional B-5b. The project area is composed of two sites with a total of 1.81 acres. The agreement was for a two-phase project that would have up to 176 units. At that time, there were two levels of structured parking in Phase I with a total of 145 on-site parking spaces. Phase II had one level of parking with 45 spaces. Excerpts of the agreement are listed below and the complete text is contained in Attachment 1:



1. Subdivision and Overall Site Plan.
  - a. Phase I of the project, consisting of two buildings along Middle, Hancock and Newbury Streets.
  - b. The Planning Board shall review both the Phase I and Phase II proposals and apply the site plan and subdivision standards of the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.
2. Permitted uses: Those uses allowed in the B-5b zoning district. The project shall include not less than 6772 square feet of commercial/retail space on the ground level along Middle Street and at the corner of Hancock and Middle Streets as depicted on the Plans.
3. Phase I shall consist of, at minimum Buildings 1 and 2, while Phase 2 shall consist of one or more buildings in accordance with §14-495(h).
4. Modifications to B-5b Regulations. The SITE shall be governed by the regulations applicable to the B-5b zoning district, except as follows:
  - a. The maximum residential density on the SITE shall be 176 dwelling units.
  - b. The maximum front yard setback shall be ten (10) feet, except that a front yard setback of no greater than sixteen (16) feet shall be allowed for the parking garage entrance and associated façade as depicted on the Plans for Phase I.
  - c. The maximum height for the structures shall be:



Buildings 1 and 2: The maximum height of each building in Phase I shall not exceed 74 feet from average grade, as measured and approved by the Zoning Administrator.

- d. An underground electrical vault will be installed within the right of way of Newbury Street, the final location of such vault to be approved by the Planning Authority. The CITY hereby grants license for such installation and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.

5. Community Contribution. The community contribution under this Agreement shall be \$200,000.00, to be dedicated to extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension; \$5,000.00 dedicated to the India/Middle Street traffic improvements to be commissioned by the City; and \$5,000.00 to be dedicated to the Eastern Waterfront Post-Development Traffic Impact Study to be commissioned by the City. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a building permit for Phase I.

The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage located at Middle Street, Portland, with documentation of such participation provided to the City Planning Authority at minimum every two years.

6. Phasing: DEVELOPER may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525 (f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing for Phase II must be posted with the City prior to the issuance of a building permit for Phase I of the project. If Phase II fails to be developed within the time line set forth in this Agreement, the DEVELOPER shall nonetheless be required to install such improvements upon demand by the City. Otherwise, the City shall call on the performance guarantee and install said improvements itself.
7. A post development occupancy parking analysis shall be conducted by the DEVELOPER six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then parking for Phase II of the project shall be increased accordingly as determined by the Planning Board.

**B. July 10, 2007 Subdivision and Site Plan Approval**

After the conditional rezoning agreement was adopted, the applicant submitted plans for



## Attachment 2

subdivision and major site plan review. As the review process progressed, the applicant chose to reduce the number of residential units and reduce the number of parking decks for the overall project. The approved plans for Phase I include two four-story residential buildings above one level of structured parking. The Phase I project findings include the following:

Proposed Uses:	84 residential units 6, 772 square feet for commercial space and restaurant One level of structured parking
Total Unit breakdown:	68 two-bedroom and 16 one-bedroom units
Unit breakdown:	Building #1: 40 two-bedroom and 4 one-bedroom units Building #2: 28 two-bedroom and 12 one-bedroom units
Parking Spaces:	Total 130 spaces on-site. The proposal is to lease 18 spaces. Eight leased spaces for residential units and 10 spaces for employees.
Parking Ratio:	1 space/unit and 10 employee parking spaces for commercial uses with the inclusion of the leased spaces. Parking for customers will be available through a Park and Shop program at the "Riverwalk" Garage with documentation of participation to the Planning Authority every two years.
Building Height:	Maximum height allowed for Buildings 1 and 2 shall not exceed 74 feet above average grade. Proposed heights are 57.04 feet in Phase I (measured from average grade).
Building Footprint	Total 65,675 square feet, both phases

On July 10, 2007, the Planning Board held a public hearing on the subdivision and site plan for Phase I and Phase II of the Village at OceanGate. The Board found unanimously that Phase I met the conditional rezoning agreement and the Eastern Waterfront Design Guidelines. The Board voted unanimously to table Phase II regarding the plans conformance with the conditional rezoning agreement and the Eastern Waterfront Design Guidelines. A copy of the approval letter is included as Attachment 6). Please note that the Planning Board conditioned the subdivision and site plan approvals (number 10 and site plan conditions 3 and 4) to require the applicant to submit revised plans meeting the requirements of the Urban Designer and to address building awnings.

AH. 6a

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**CITY OF PORTLAND, MAINE**  
**PLANNING BOARD**

Michael Patterson, Chair  
Janice E. Tevanian, Vice Chair  
Kevin Beal  
Bill Hall  
Lee Lowry III  
Shalom Odokara  
David Silk

July 20, 2007

Mr. Demetri Dasco  
Village Café Inc.  
112 Newbury Street  
Portland, ME 04101

Christopher DiMatteo  
Sebago Technics  
One Chabot Street  
P.O. Box 1339  
Westbrook, Maine 04098-1339

RE: The Village at Ocean Gate, 112 Newbury Street  
CBL: Chart 20, Block D, Lots 13-15 and 32, Chart 20, Block E, lot 9  
Application ID: 2007-0021

Dear Mr. Dasco and Mr. DiMatteo:

On July 10, 2007 the Portland Planning Board considered the Village at Ocean Gate proposal for a two-phased project consisting of 138 residential units and 6,772 square feet of retail space. A one level parking structure with two buildings above the parking is proposed for each phase. The Planning Board reviewed the proposal for conformance with the provisions of the conditional rezoning agreement and the standards of Portland's subdivision and site plan ordinances. The Planning Board approved Phase I with waivers and conditions and tabled Phase II. The Planning Board's motions are as follows:

**Conformance with Conditional Rezoning Agreement**

The Planning Board voted unanimously (7-0) that the *Phase I* plan is in conformance with the Conditional Rezoning Agreement and the Eastern Waterfront Design Guidelines, with the condition that the applicant submit revised plans meeting the requirements of Urban Designer Carrie Marsh in her 06/29/07 memo as the conditions apply to Phase I.

The Portland Planning Board voted unanimously (7-0) to table *Phase II* regarding the plan's conformance with the Conditional Rezoning Agreement and the Eastern Waterfront Design Guidelines and thus cannot act upon the Subdivision and Site Plan.

**Waiver**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #30-07 relevant to the Subdivision Ordinance, Site Plan Ordinance, Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board waives the Technical Standard, Section III 2 A (b), which requires a 24 foot wide driveway for two-way ingress and egress, to allow the access to be between 18 and 22 feet at the garage entrances on Newbury and Middle Street as shown on the subdivision plat.
2. The Planning Board waives Technical Standard, Section XV H, Photometric plans requiring

photometric plans for the interior courtyards only.

3. The Planning Board acknowledges the applicant's contribution to the construction of Hancock Street and the additional costs for tree wells and tree guards, so based upon the recommendation of the City Arborist the Planning Board waives the financial contribution to the street fund to one half the amount due as determined by the City Arborist.

**Subdivision:**

The Planning Board voted unanimously (7-0) that the Phase I plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval as applicable to Phase I:

1. 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.
2. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Traffic Consulting Engineer's review dated June 26, 2007 shall be submitted for review and approval prior to the issuance of a building permit.
3. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of July 5, 2007 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
4. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 28, 2007, to the Planning Authority for review and approval prior to the issuance of a building permit.
5. In lieu of the applicant reclaiming and repaving a portion of Hancock Street, the Department of Public Works requests that the applicant pay the cost of reclaiming and repaving Hancock Street to the City, so that the City can use these funds to cover part of the cost of rehabilitating Hancock Street at a future time. The estimated cost of reclaiming and repaving the street must be reviewed and approved by Public Works.
6. The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two years.
7. All financial contributions required as part of the conditional rezoning shall be submitted to the City prior to the issuance of a building permit.
8. The design details for the bike racks shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

Bc

9. The proposed condominium documents shall be submitted for review by Penny Littell, Associate Corporation Counsel, prior to the issuance of a certificate of occupancy.
10. That the applicant submit revised plans meeting the requirements of Urban Designer Carrie Marsh in her 06/29/07 memo as the conditions apply to Phase I.

**Site Plan:**

The Planning Board voted unanimously (7-0) that the Phase I plan is in conformance with the site plan standards of the land use code, subject to the following conditions of approval as applicable to Phase I:

1. A construction management site plan that shows any potential impacts on sidewalks and on the public right-of-way along with mitigation measures and the estimated construction schedule must be submitted for review and approval by the Planning Authority prior to the issuance of a building permit.
2. Revisions to the landscape plan should be submitted for review and approval by the City Arborist.
3. The applicant shall submit a unified plan for signage and awnings for review and approval by Carrie Marsh, Urban Designer prior to the issuance of a certificate of occupancy.
4. The applicant shall submit revised plans meeting the requirements of Urban Designer Carrie Marsh in her 06/29/07 memo as the conditions apply to Phase I.
5. Recommends that a revised light plan for the exterior building lights and meeting the City's standards be submitted to the Planning Authority for review and approval.
6. The final plans will conform with the City's Fire Regulations as reviewed and approved by Captain Cass.
7. The site plan shall be revised to show awnings on Buildings #1 and #2 for review and approval by Carrie Marsh, Urban Designer.

Please note the following provisions and requirements for all subdivision approvals:

1. Updated plans meeting the Planning Board's conditions of approval must be submitted for review and approval by the Planning Office prior to the issuance of any permits.
2. The above approvals do not constitute approval of building plans, which must be reviewed and approved by Portland's Inspection Division.
3. Mylar copies of the construction drawing for the subdivision must be submitted to the Public Works Department prior to the release of the plat. Where submission drawings are available in



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electronic form, the applicant shall submit any available electronic Autocad files (\*.dwg), release 14 or greater, with seven (7) sets of the final plans.

4. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount must be submitted to and approved by the Planning Division and Public works prior to the recording of the subdivision plat. The subdivision approval is valid for three (3) years.
5. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, 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.
7. 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.)
8. The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Department at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions regarding the Board's actions, please contact Barbara Barhydt at 874-8699.

Sincerely,



Michael J. Patterson, Chair  
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director  
Alexander Jaegerman, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Philip DiPierro, Development Review Coordinator  
Marge Schmuckal, Zoning Administrator  
Jeanie Bourke, Inspections Division  
Michael Bobinsky, Public Works Director  
Kathi Earley, Public Works  
Bill Clark, Public works  
Jim Carmody, Transportation Manager  
Michael Farmer, Public Works

Leslie Kaynor, Public Works  
Jeff Tarling, City Arborist  
Captain Greg Cass, Fire Prevention  
Assessor's Office  
Approval Letter File



# PORTLAND MAINE

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*www.portlandmaine.gov*

**Executive Department**

Joseph E. Gray, Jr., City Manager

February 22, 2008

Mr. Dimitrios Dasco  
Managing Partner  
Village at Ocean Gateway LLC  
35 Fay Street  
Suite 107-B  
Boston, Massachusetts 02118

**Re : Village At Ocean Gateway**

Dear Mr. Dasco:

Please allow me to follow up on a meeting held in my office two weeks ago to discuss your residential development project in the vicinity of Hancock Street in Portland. In requesting the meeting you wanted a better understanding of the City's position regarding two major issues: 1) whether the City would support an amendment to the Conditional Rezoning Agreement that your community contribution of \$200,000 be prorated between the two phases of your development; and 2) whether the City was amenable, absent a rational basis, to permitting you to reroute your electrical connection through the presently existing overhead lines as opposed to connecting your project to the new underground circuit planned to service new development in the area.

Taking the second issue first, let me say that I listened carefully to your presentation and all the reasons you, as the developer, listed for avoiding a tie in to the new electrical system being installed in Hancock Street. At the time of our discussion I did not know CMP had a preferred position in favor of a tie in to the redundant circuit, nor was I aware of an analysis performed by staff in this regard. It is clear to me now that your project should likewise tie in to the Eastern Waterfront circuit presently under construction to service this area. All new development in the area will be tying in to this new system, including any development on the Jordan Meat site and the Maine State Pier.

I have also considered your memo to me dated 1/30/08 and the costs of laying underground electrical service to tie in with the redundant loop versus that of your project suggested alternative (i.e. upgrade Newbury Street to "primary" service from overhead lines in nearby Mountfort Street (via Federal Street to Hancock Street) which would require additional poles in Newbury Street as well as pole and bracket upgrades to Federal Street poles). According to CMP, there would be little to no *construction cost* savings achieved by your project in taking this approach. I do understand savings would come from avoiding *reallocation costs* imposed by CMP pursuant to Public Utilities Commission regulations. At no time in our discussion was mention made that your alternative was being proposed to avoid these reallocation costs. Please know the City has no control over these reallocation costs. However, according to PUC regulations, a portion of the reallocation costs borne by the Village will be incrementally returned to you from later development in the area.

While I am not unsympathetic to your situation, others have been in the same predicament and have nonetheless been required to incur some upfront costs associated with electrical installations. In this case, with the many projects in the works in the Eastern Waterfront, the City and CMP have two important objectives: (1) to reduce the number of overhead lines in the area; and, (2) to provide service to city blocks from multiple circuits (redundant service) within the peninsula electrical system. Removing overhead lines has urban design advantages as well as providing greater flexibility in siting buildings, which need separation away from overhead lines. Redundant service provides system stability and reliability advantages to the properties served. From a meeting with CMP engineering staff held on February 5, 2008, the upper Hancock Street link from Middle to Newbury Street is an important link in this system.

As a result of the foregoing, and based upon new information brought to my attention regarding the importance of reducing overhead lines and installing a redundant system which will benefit your project, I am not in a position of altering CMP and staff's recommendation on the underground electrical connection in Hancock Street to service the Village project. However, given the importance of this improvement the city is willing to install the conduit bank (between Middle and Newbury Street) up to a cost of \$20,000. In this way, the City will contribute to improving its infrastructure, while your project will continue to be responsible for pulling the electrical wire.

The second issue raised concerns the modification of your Conditional Rezoning agreement to apportion the community contribution of \$200,000.00 between Phase I and Phase II of your project. I am willing to recommend this apportionment idea provided there is a performance guarantee securing the Phase II payment obligation to the City within two years and regardless of whether your Phase II project moves forward. Please be advised that there is no guarantee the City Council will approve your request. Also note that once an amendment to the Conditional Rezoning is presented to the Council, the entirety of the rezoning is fair for comment and change. I am not in favor of apportioning the traffic improvement/traffic impact study contribution.

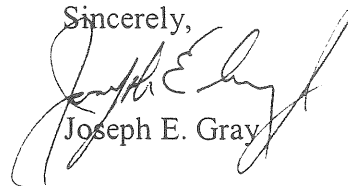


Dimitrios Dasco  
February 22, 2008  
Page 3

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Thank you for your time and attention. I trust this addresses your two issues adequately.

Sincerely,



Joseph E. Gray

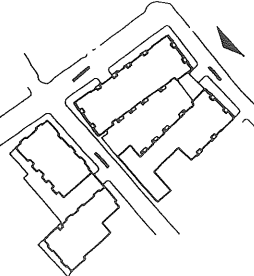
Cc: Greg Shinberg, Consultant  
Barbara Barhydt, Development Review Services Manager ✓  
Alex Jaegerman, Planner  
William Needleman, Planner  
Michael Bobinsky, Director of Public Works  
O:\office\penny\letters2008\dasco021408.doc

Att 9 c



# BUILDINGS 1 & 2 MIDDLE STREET ELEVATION

SCALE: 1/8" = 1' 0"



THE VILLAGE AT OCEAN GATE  
MIDDLE STREET AND HANCOCK STREET  
PORTLAND, MAINE

THE VILLAGE AT OCEAN GATE, LLC  
GRI PARTNERS, LLC  
BOSTON, MASSACHUSETTS

DAVID M. WHITE, ARCHITECT  
GOTTSTOWN, NEW HAMPSHIRE  
JUNE 26, 2007

SHEET 3

[illegible]

BUILDING 1  
HANCOCK STREET ELEVATION

SCALE: 1/8" = 1' 0"

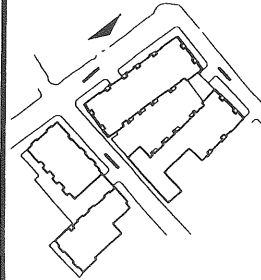


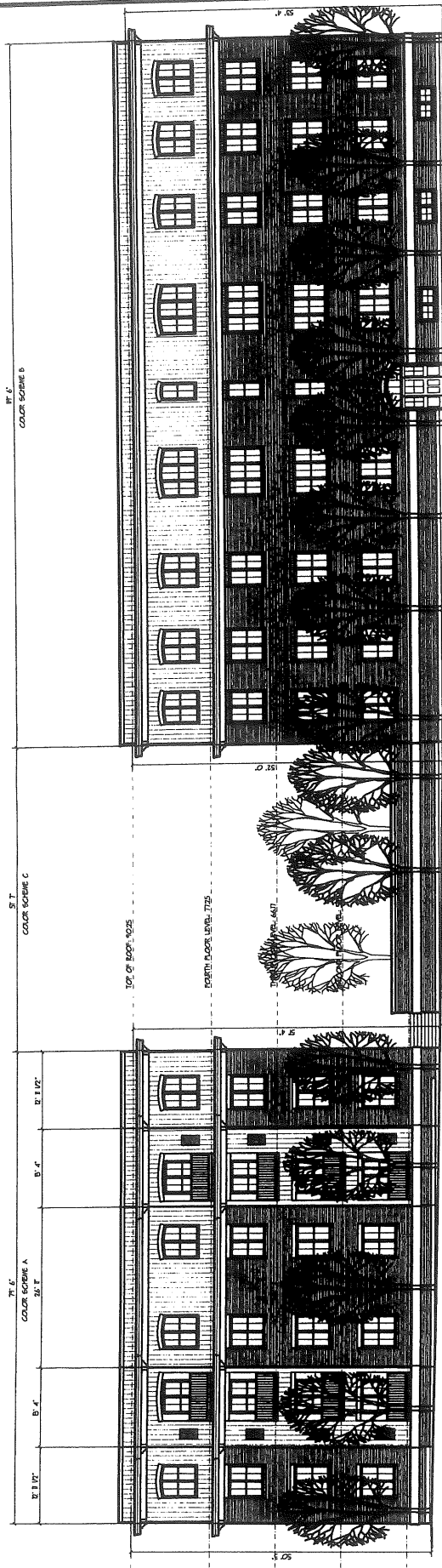
THE VILLAGE AT OCEAN GATE  
MIDDLE, NEWBURY AND HAWCOCK STREETS  
PORTLAND, MAINE

THE VILLAGE AT OCEAN GATE, LLC  
GP PARTNERS, LLC  
BOSTON, MASSACHUSETTS

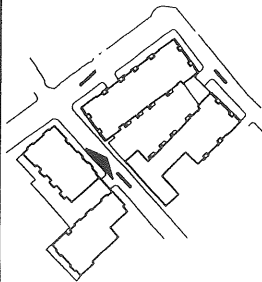
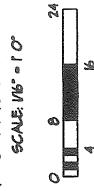
DAVID M. WHITE, ARCHITECT  
GORTSTOWN, NEW HAMPSHIRE  
JULIE 26, 2007

SHEET 4





# BUILDINGS 1 & 2 NEWBURY STREET ELEVATION



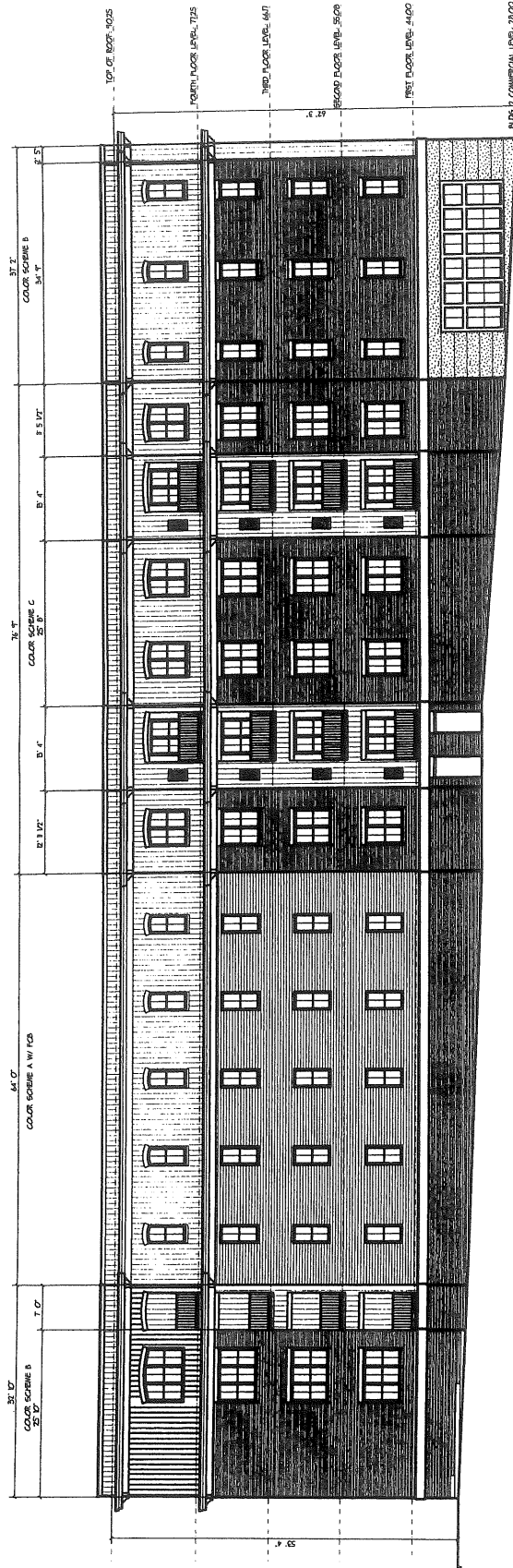
THE VILLAGE AT OCEAN GATE  
NORFOLK, NEWBURY AND HANCOCK STREETS  
PORTLAND, MAINE

THE VILLAGE AT OCEAN GATE, LLC  
GRI PARTNERS, LLC  
BOSTON, MASSACHUSETTS

DAVID M. WHITE, ARCHITECT  
GOTTSTOWN, NEW HAMPSHIRE  
JUNE 24, 2007  
SHEET 5



9d



BUILDING 2  
WEST ELEVATION

SCALE: 1/16" = 1'-0"



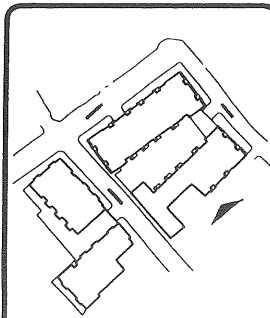
THE VILLAGE AT OCEAN GATE  
MIDDLE, NEWBURY AND HANCOCK STREETS  
PORTLAND, MAINE

THE VILLAGE AT OCEAN GATE, LLC  
GRI PARTNERS, LLC  
BOSTON, MASSACHUSETTS

DAVID M. WHITE, ARCHITECT  
GORTSTOWN, NEW HAMPSHIRE

JUNE 26, 2007

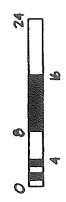
SHEET 6



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BUILDING 1  
WEST COURTYARD ELEVATION

SCALE: 1/16" = 1' 0"

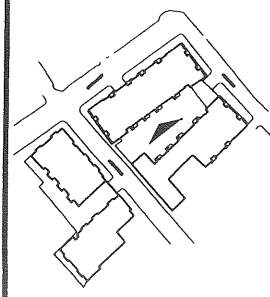


THE VILLAGE AT OCEAN GATE  
MIDDLE, NEWBURY AND HANCOCK STREETS  
PORTLAND, MAINE

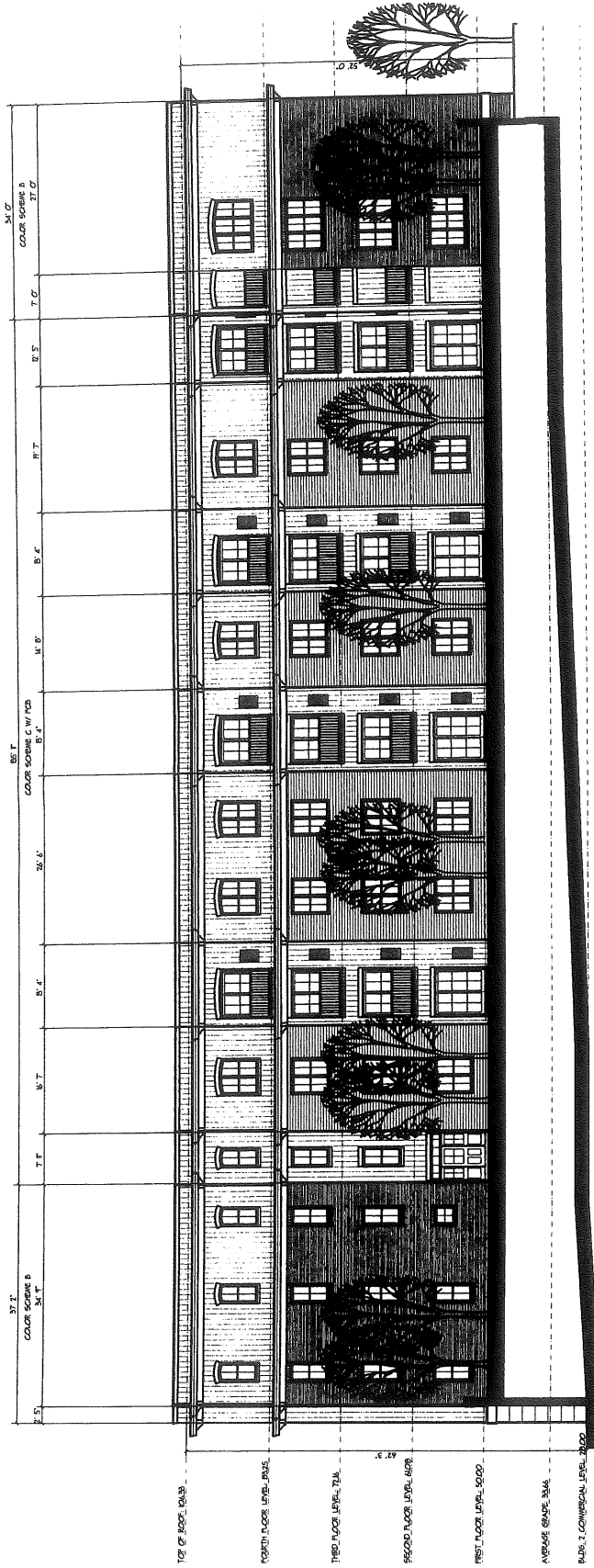
THE VILLAGE AT OCEAN GATE, LLC  
GFI PARTNERS, LLC  
BOSTON, MASSACHUSETTS

DAVID M. WHITE, ARCHITECT  
GOTTSTOWN, NEW HAMPSHIRE  
JUNE 26, 2007

SHEET 7



56



# BUILDING 2 EAST COURTYARD ELEVATION



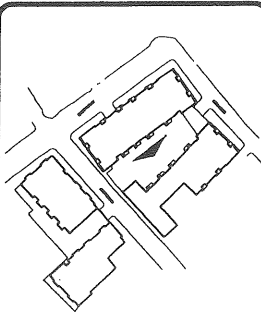
THE VILLAGE AT OCEAN GATE  
MIDDLE, NEWBURY AND HANCOCK STREETS  
PORTLAND, MAINE

THE VILLAGE AT OCEAN GATE, LLC  
GR PARTNERS, LLC  
BOSTON, MASSACHUSETTS

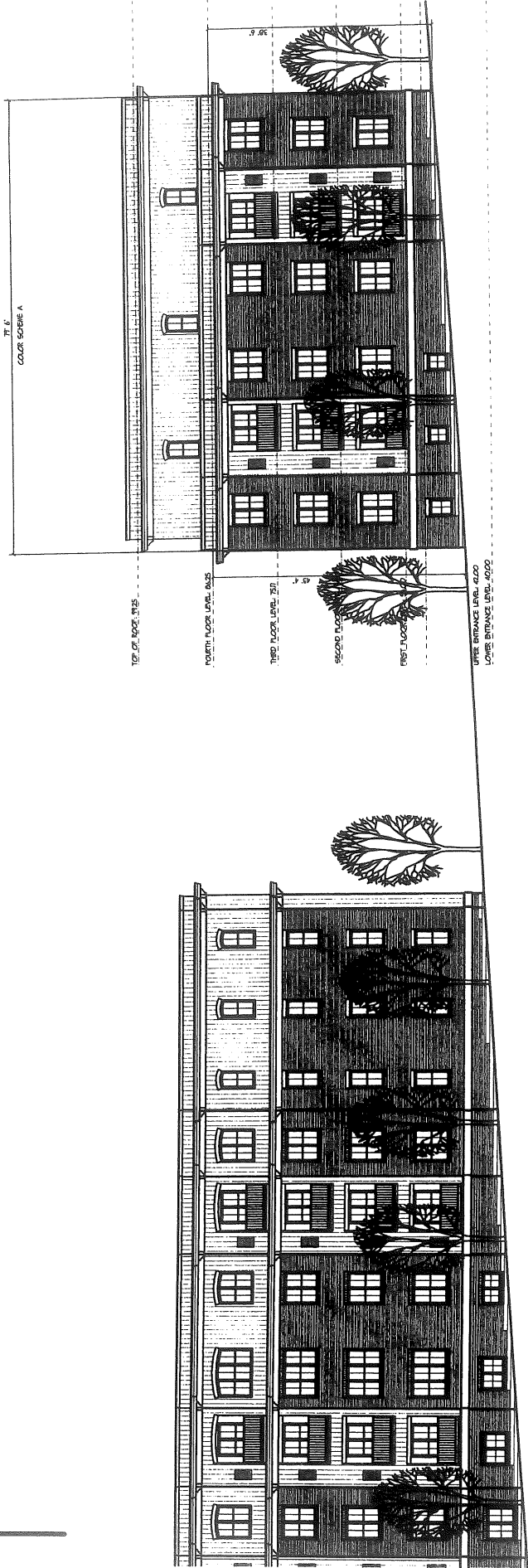
DAVID M. WHITE, ARCHITECT  
GOTTSTOWN, NEW HAMPSHIRE

JUNE 26, 2007

SHEET 8

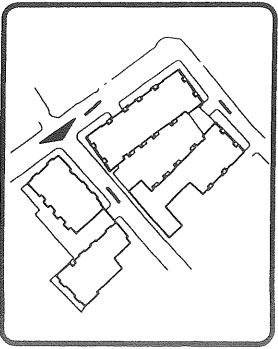
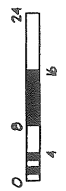


95



# BUILDINGS 1 & 3 HANCOCK STREET ELEVATION

SCALE: 1/8" = 1'-0"



THE VILLAGE AT OCEAN GATE  
APPLE, NEWBURY AND HANCOCK STREETS  
PORTLAND, MAINE

THE VILLAGE AT OCEAN GATE, LLC  
GRT PARTNERS, LLC  
BOSTON, MASSACHUSETTS

DAVID M. WHITE, ARCHITECT  
GORTSTOWN, NEW HAMPSHIRE  
JUNE 26, 2007

SHEET 9



SHINBERG CONSULTING, LLC  
477 Congress Street, Suite 1012  
Portland, Maine 04101

To: Alex Jaegerman, Barbara Barhydt and Portland Planning Board Members  
From: Greg Shinberg, Shinberg Consulting, LLC - Owner's Representative  
Date: April 8, 2008  
RE: Minutes from the Neighborhood Meeting held on April 1, 2008 for the  
The Bay House project located 112 Newbury Street

The following is a record of the Neighborhood Meeting held from 6:00 to 7:30 PM at the Cummings Community Center.

Present on behalf of The Village At Ocean Gate, LLC:

Greg Shinberg, Shinberg Consulting, LLC (GS)

The following neighbors were present:

Elizabeth Graves	(EG)
Ron Smalley, Jr.	(RS)

The meeting started at 6:45 PM to allow for some late arrivals.

GS introduced himself and that he is the representative for the owners and then presented the a review of the project to the neighbors;

GS explained how the project has changed from the original design that now incorporates the 1,600 square feet of property from the abutter located at 61 India Street;

GS reviewed the floor plans, site plans and proposed elevations with the neighbors;

EG asked when the project is scheduled to commence and finish; GS stated that the anticipated commencement date is this summer and that it should take approximately 15 months to complete.

RS asked what off site improvements are proposed to be done by us. GS explained what the scope of work to be done is. This includes the utility work at Newbury, Hancock and Middle Streets;

RS asked why Phase II was not approved. GS answered that the Planning Board had concerns with the size and scale of Phase II.

RS asked what the plans are for Phase II. GS stated that no additional work has been done on Phase II and the only changes at this time are for Phase I;

RS stated that he supported the plans for Phase II;

EG asked about the plans for 61 India Street. GS stated that Mr. Reynolds has plans to renovate the existing property that needs substantial structural and cosmetic work. GS told the neighbors that they can contact Mr. Reynolds directly;

RS asked when the work would be completed on Hancock Street from Middle to Commercial Street. GS stated that that work is ongoing and that according to the City (Todd Merkle), the work is scheduled to be completed by July;

GS gave to both neighbors a card and contact information in the event that they have any additional questions.

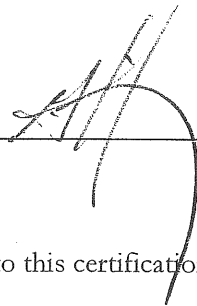
Meeting adjourned at 7:45

### Neighborhood Meeting Certification

I, (applicant/consultant) hereby certify that a neighborhood meeting was held on (date) at (location) at (time).

I also certify that on (date at least seven days prior to the neighborhood meeting), invitations were mailed to all addresses on the mailing list provided by the Planning Division, including property owners within 500 feet of the proposed development or within 1000 feet of a proposed development in an industrial zone and the residents on the "interested parties" list.

Signed,

  
\_\_\_\_\_

4/8/08 (date)

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

SHINBERG CONSULTING, LLC  
477 Congress Street, Suite 1012  
Portland, Maine 04101

March 24, 2008

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans to amend the Conditional Rezoning Agreement for the Village at Ocean Gate Project (now known as "The Bay House") which will be located at 112 Newbury Street, in Portland, Maine.

Meeting Location: Cummings Community Center, 134 Congress Street, Portland, Maine  
Meeting Date: Tuesday, April 1, 2008  
Meeting Time: 6:00 to 7:30 PM

If you have any questions, please call Greg Shinberg at 207 772 7070

Sincerely,



Greg Shinberg, Owner's Representative  
Shinberg Consulting, LLC

Note:

Under Section 14-32 ( C ) of the City Code of Ordinances, an applicant for a major development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting at least seven days prior to the Planning Board public hearing on the proposal.



# NEIGHBORHOOD MEETING APRIL 1, 2008

## SIGN IN SHEET

## THE BAY HOUSE

NAME \_\_\_\_\_

## ADDRESS

SIGNATURE

Elizabeth Graves 97 Newbury St

Ron A. Smalley Jr 73 Wall St (48 Hancock)

*glen*

R. A. Wall

THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02109  
P.O. Box 447  
403 T. Robert Hill Road  
David W. White, Architect  
(603) 471-3405

THE BAY HOUSE  
Middle Street  
Portland, Maine

Phase I/Buildings 1 & 2  
Scale: 1/16" = 1' 0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

DRG. NO.  
P.1



FIRST FLOOR PLAN  
PHASE I  
SCALE: 1/16" = 1' 0"  
GROSS FLOOR AREA: 45,375 SF

DRG. NO.  
P.1

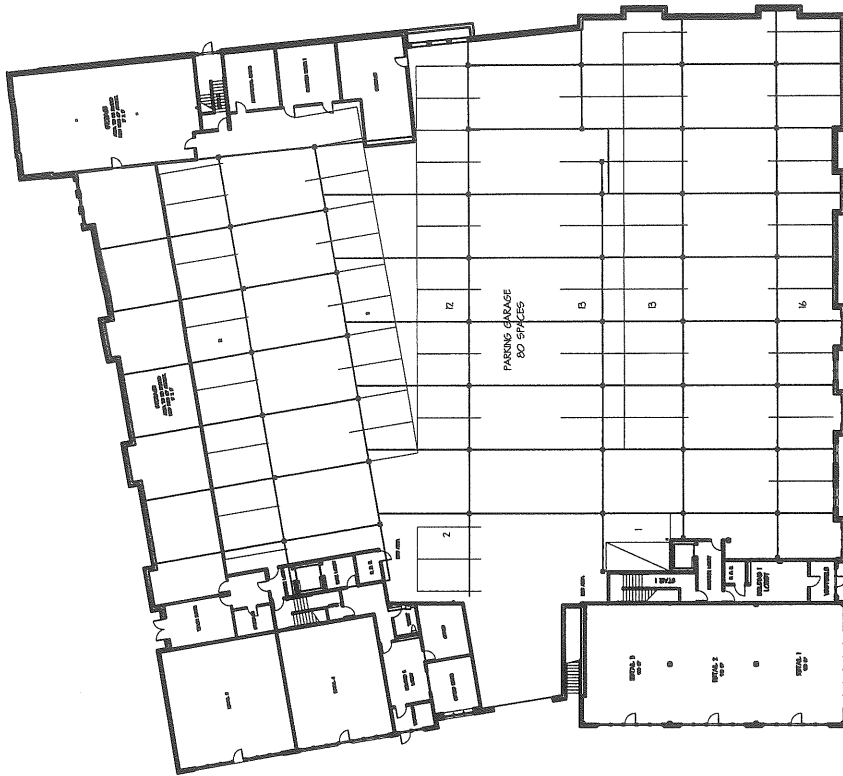
REVISIONS:

**FIRST FLOOR PLAN**  
Phase 1 Buildings 1 & 2  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

**THE BAY HOUSE**  
Middle Street  
Portland, Maine

**THE VILLAGE AT OCEAN GATE, LLC**  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02109

**DAVID M. WHITE, ARCHITECT**  
403 T. B. White Hill Road  
P. O. Box 447  
Goffstown, New Hampshire 03045  
(603) 497-3405



**FIRST FLOOR PLAN  
PHASE 1**

SCALE: 1/8" = 1'-0"  
GROSS FLOOR AREA INCLUDING DECKS: 45,375 SF

DAVID M. WHITE, ARCHITECT  
403 Tivoli Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 471-3405

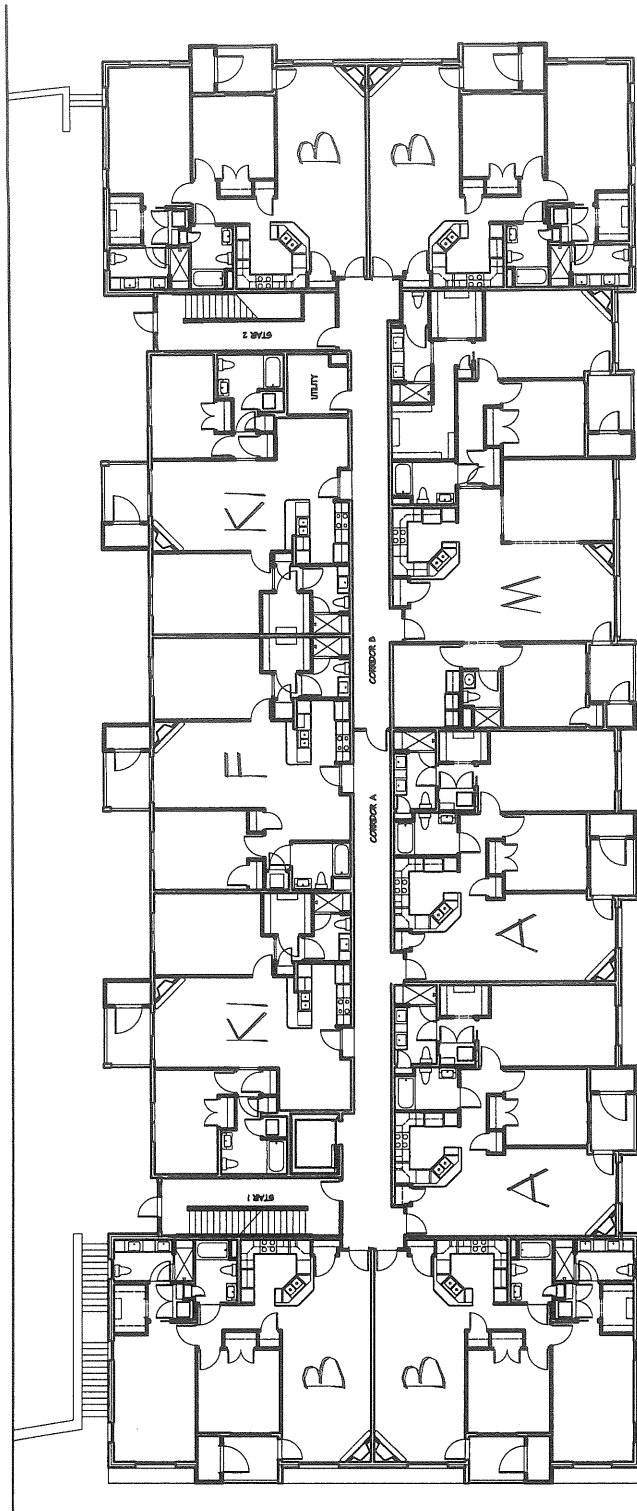
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02109  
ALTOSSAVE

THE BAY HOUSE  
Middle Street  
Portland, Maine

SECOND FLOOR PLAN  
Phase 1/Building 1  
Scale: 1/8" = 1'-0"  
Commission No. 06-008  
Date: April 18, 2008

REVISIONS:

DWG. NO.  
P.2



2nd FLOOR PLAN  
PHASE 1, BUILDING 1  
SCALE: 1/8" = 1'-0"  
GROSS FLOOR AREA INCLUDING PATIOS: 15,774 SF



DAVID M. WHITE, ARCHITECT  
403 Tabbots Hill Road  
F.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 471-3405

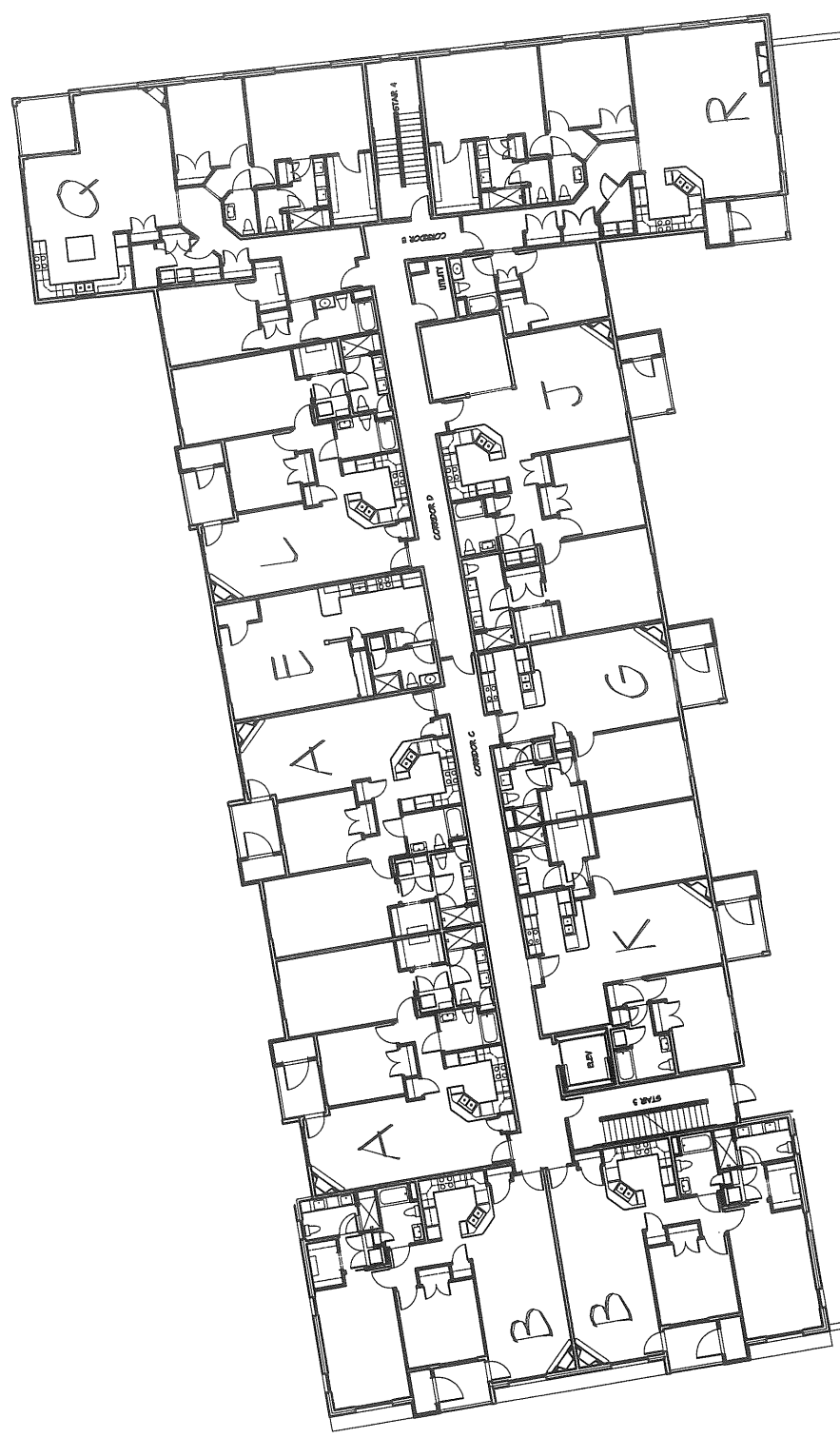
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Roy Street Suite 5-2  
Boston, MA 02108  
Middle Street  
Portland, Maine

THE BAY HOUSE  
Middle Street  
Portland, Maine

SECOND FLOOR PLAN  
Phase I/Building 2  
Scale: 1/8" = 1' 0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

DRG. NO.  
P.3



2nd FLOOR PLAN  
PHASE I, BUILDING 2  
SCALE: 1/8" = 1' 0"  
GROSS FLOOR AREA INCLUDING PATIOS: 17,023 SF

11E

DAVID M. WHITE, ARCHITECT  
403 T. Robert's Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 477-3405

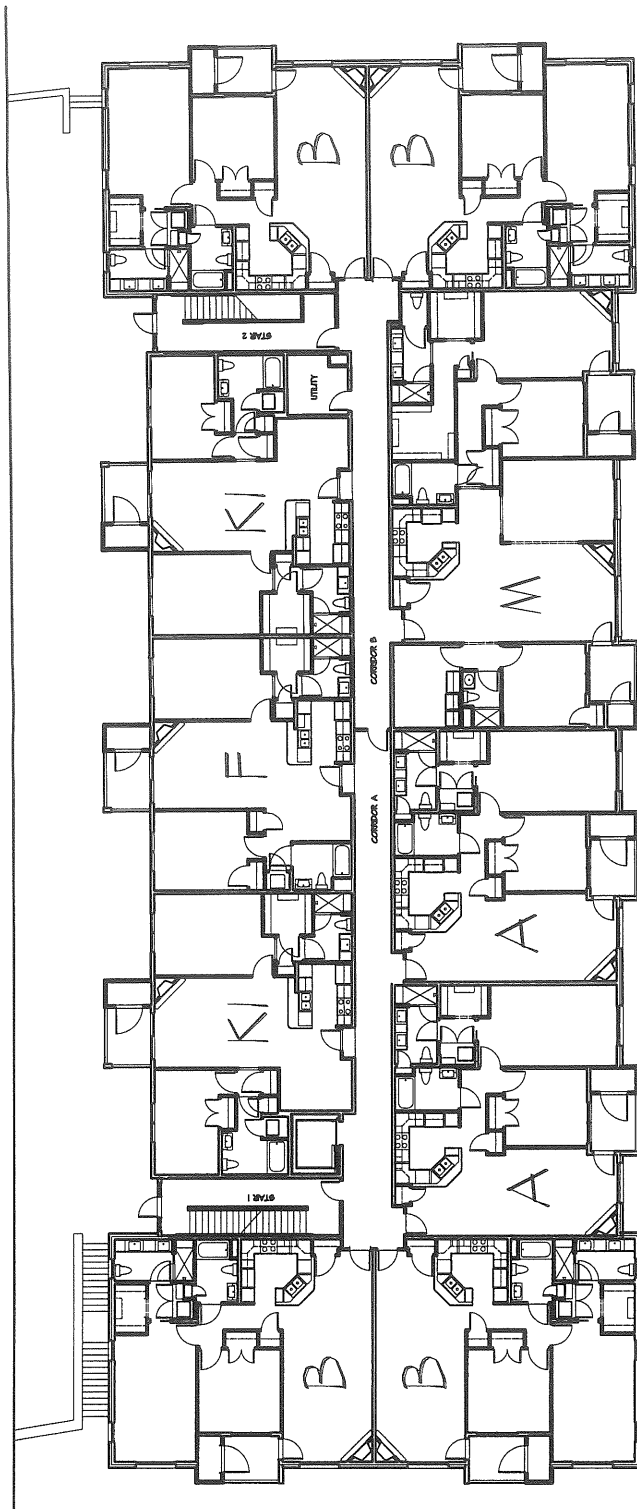
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Ray Street Suite 5-2  
Boston, MA 02108-1516

THE BAY HOUSE  
Middle Street  
Portland, Maine

THIRD FLOOR PLAN  
Phase I/Building I  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

DRG. NO.  
P.4



3rd FLOOR PLAN  
PHASE I, BUILDING I  
SCALE: 1/8" = 1'-0"  
GROSS FLOOR AREA INCLUDING DECKS: 15,714 SF

DAVID M. WHITE, ARCHITECT  
403 Roberts Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 477-3405

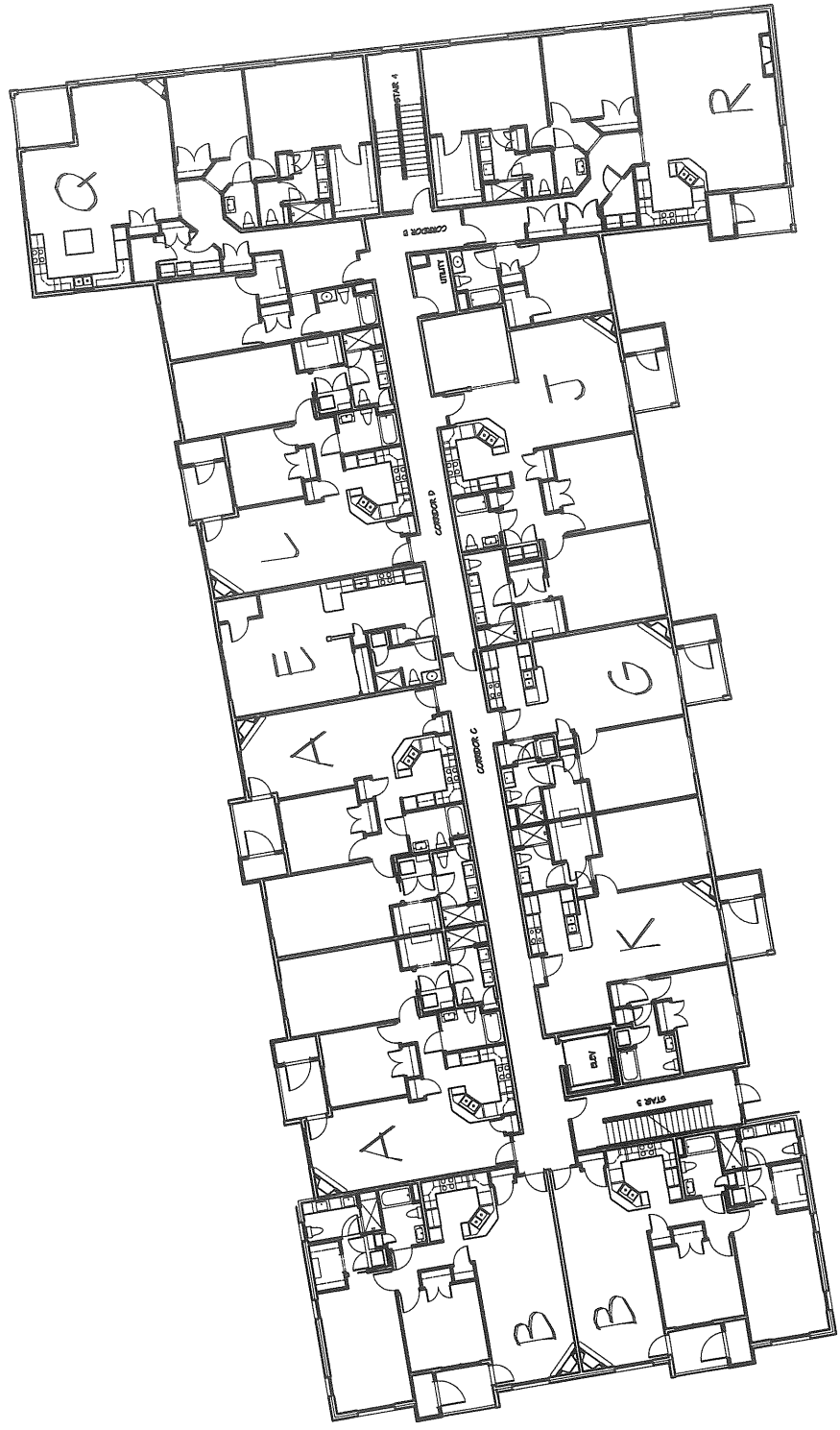
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02109  
AUTOSAVE

THE BAY HOUSE  
Middle Street  
Portland, Maine

THIRD FLOOR PLAN  
Phase 1/Building 2  
Scale: 1/8" = 1' 0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

DWG. NO.  
P.5



3rd FLOOR PLAN  
PHASE 1, BUILDING 2  
SCALE: 1/8" = 1' 0"  
GROSS FLOOR AREA INCLUDING DECKS: 17,023 SF

DAVID W. WHITE, ARCHITECT  
403 Taber's Hill Road  
P. O. Box 447  
Goffstown, New Hampshire 03045  
(603) 471-3405

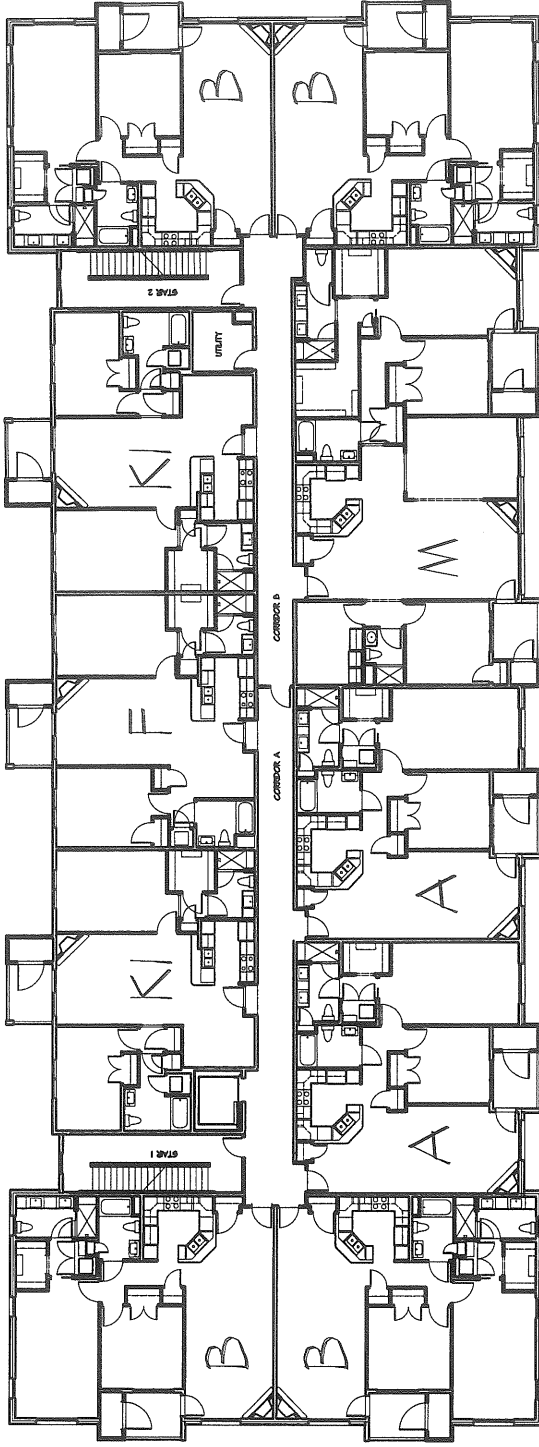
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02109  
AUTOSAVE

THE BAY HOUSE  
Middle Street  
Portland, Maine

FOURTH FLOOR PLAN  
Phase 1/Building 1  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

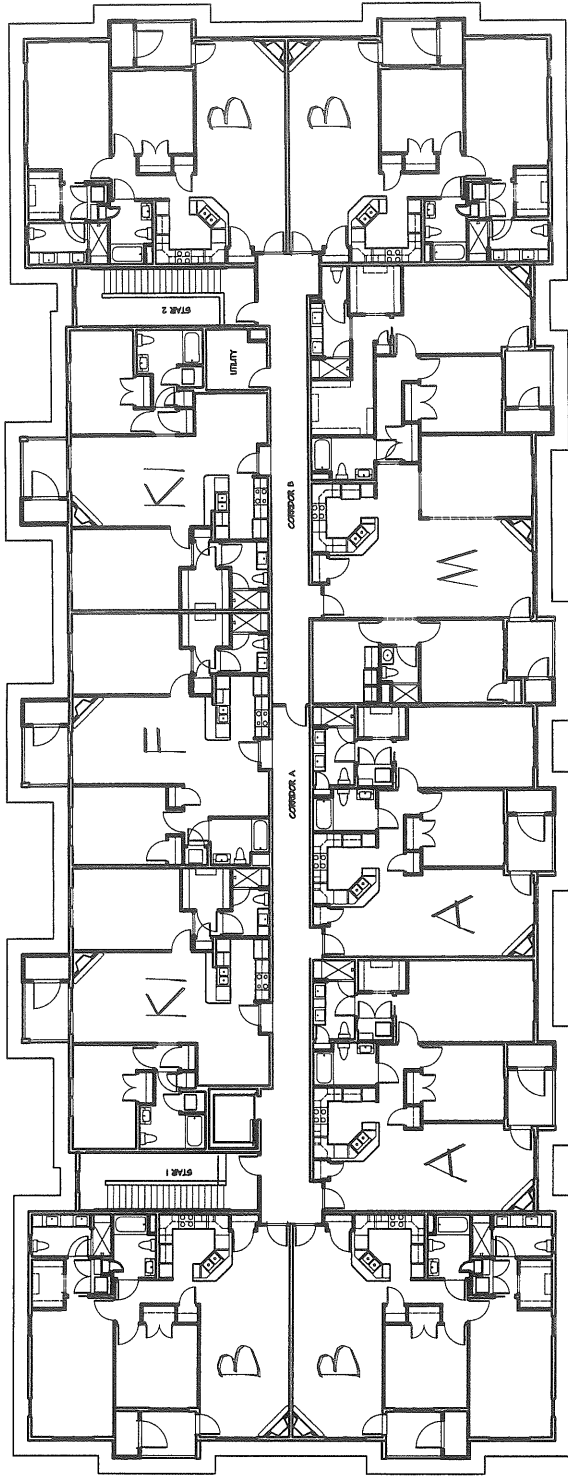
DRG. NO.  
P.6



4th FLOOR PLAN  
PHASE 1, BUILDING 1  
SCALE: 1/8" = 1'-0"  
GROSS FLOOR AREA INCLUDING DECKS: 15,774 SF



4th FLOOR PLAN  
PHASE 1, BUILDING 2  
SCALE: 1/8" = 1' 0"  
GROSS FLOOR AREA INCLUDING DECKS: 17,023 SF



# 5th FLOOR PLAN PHASE I / BUILDING I

SCALE: 1/8" = 1' 0"  
GROSS FLOOR AREA INCLUDING DECKS: 15,680 SF  
DECK AREA: 677 SF

DAVID M. WHITE, ARCHITECT  
403 Tabbetts Hill Road  
P.O. Box 447  
Dorchester, New Hampshire 03045  
(603) 497-3405

THE WILAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02109-5416

THE BAY HOUSE  
Middle Street  
Portland, Maine

FIFTH FLOOR PLAN  
Phase I Building I  
Scale: 1/8" = 1' 0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

DWG. NO.  
P.8

111

DAVID W. WHITE, ARCHITECT  
403 Tabbetts Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 477-3405

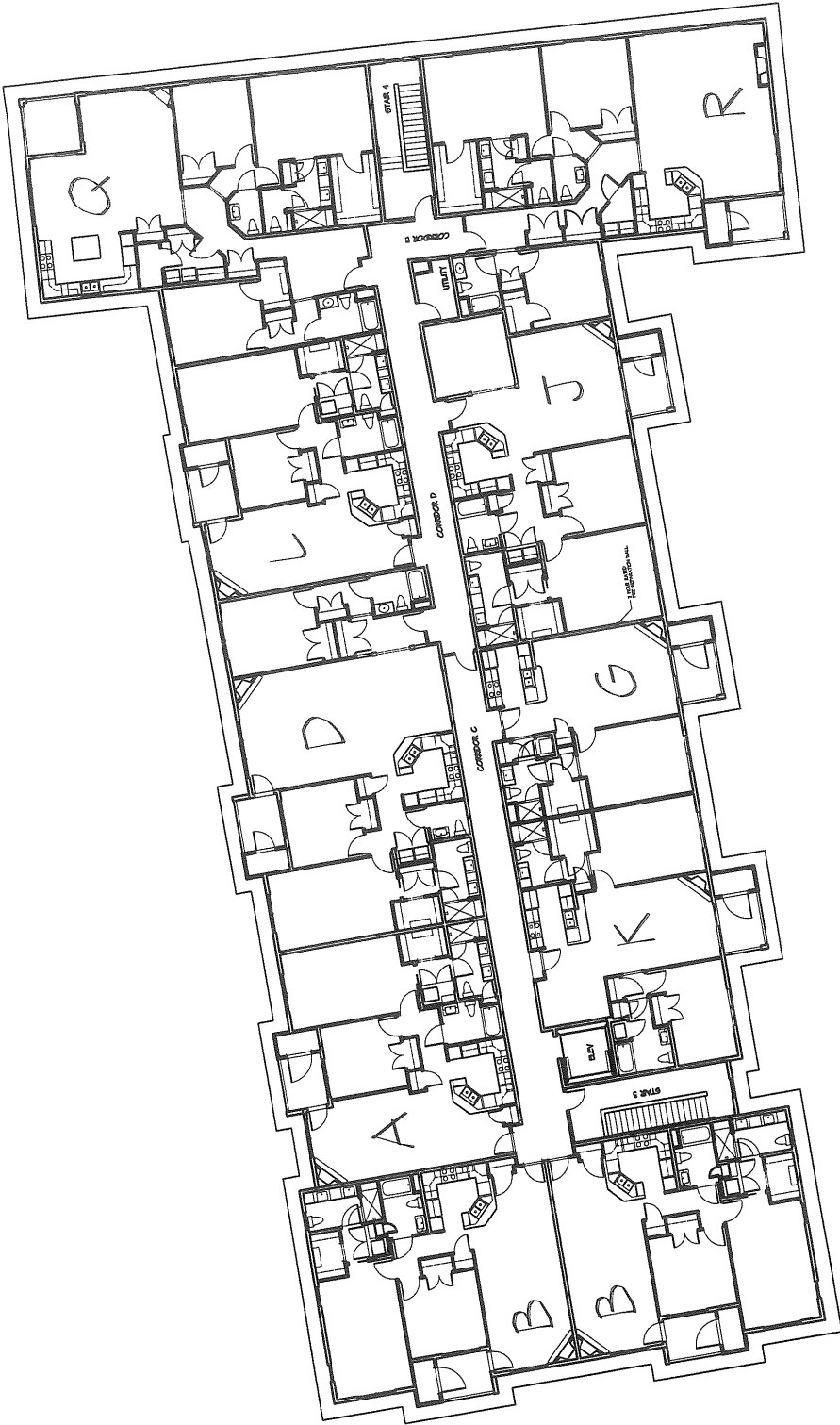
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Foy Street Suite 5-2  
Boston, MA 02109  
AUTOSAVE

THE BAY HOUSE  
Middle Street  
Portland, Maine

FIFTH FLOOR PLAN  
Phase 1/Building 2  
Scale: 1/8" = 1' 0"  
Commission No: 06-008  
Date: April 18, 2008

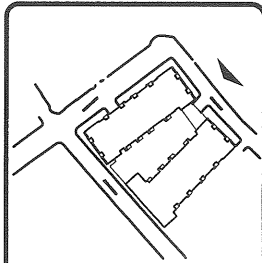
REVISIONS:

DRG. NO.  
P.9



5th FLOOR PLAN  
PHASE 1, BUILDING 2

SCALE: 1/8" = 1' 0"  
GROSS FLOOR AREA INCLUDING DECKS: 16,808 SF



DAVID M. WHITE, ARCHITECT  
403 Tibbatts Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 477-3405

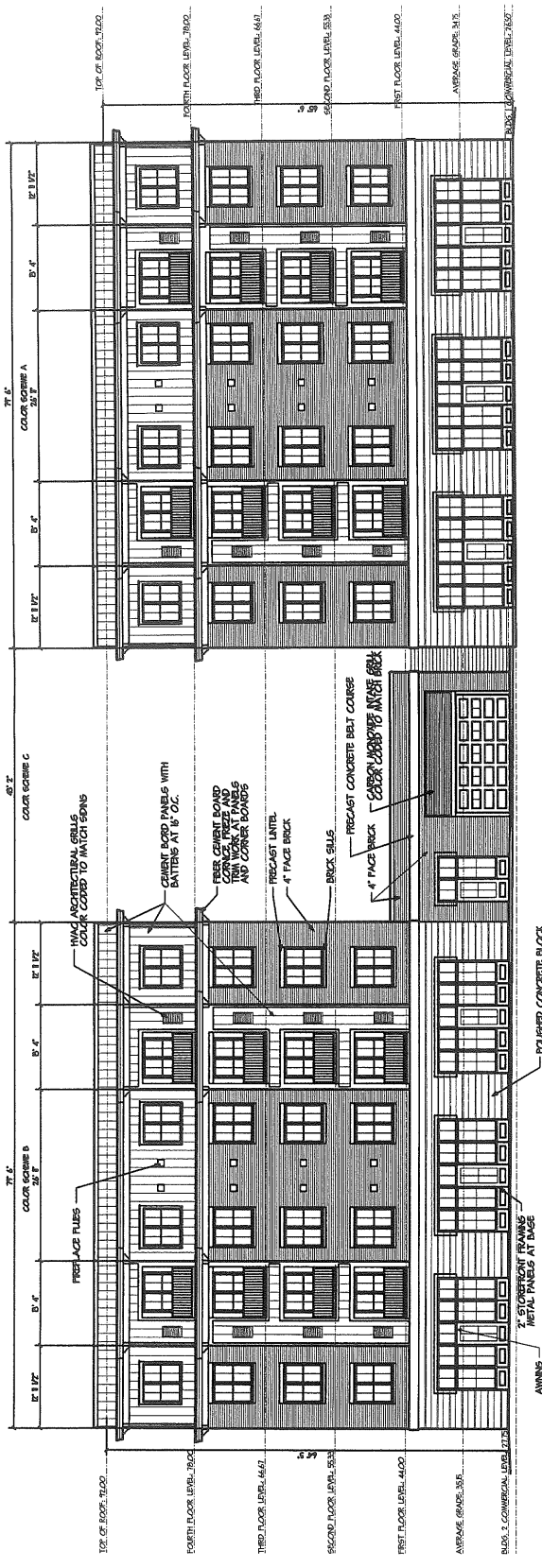
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investment Group  
35 Fay Street Suite 5-2  
Boston, MA 02108

THE BAY HOUSE  
Middle Street  
Portland, Maine

SOUTH ELEVATION  
Phase I/Building 1 & 2  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

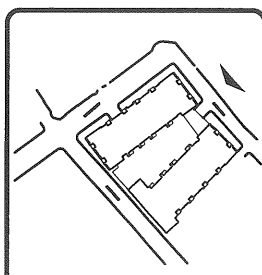
REVISIONS:

DRG. NO.  
P.10



BUILDINGS 1 & 2  
MIDDLE STREET ELEVATION  
SCALE: 1/8" = 1'-0"

NOTES:  
LOCATION OF TOILET AND LAUNDRY EXHAUST VENTS  
TO BE COORDINATED WITH MECHANICAL CONTRACTOR.  
HWC ARCHITECTURAL GRILLS TO BE COORDINATED WITH  
MECHANICAL CONTRACTOR. HWC ARCHITECTURAL GRILLS  
HOODS, HWC ARCHITECTURAL GRILLS AND PRECAST PILES TO BE  
EITHER FACTORY FINISHED OR FIELD FINISHED TO  
COORDINATE WITH THE COLOR OF THE FINISH IN  
WHICH THERE ARE TO BE INSTALLED.





DAVID W. WHITE, ARCHITECT  
403 Tibbatts Hill Road  
P.O. Box 447  
Off Station, New Hampshire 03045  
(603) 471-5405

THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investment Group  
35 Fay Street Suite 5-2  
Boston, MA 02108

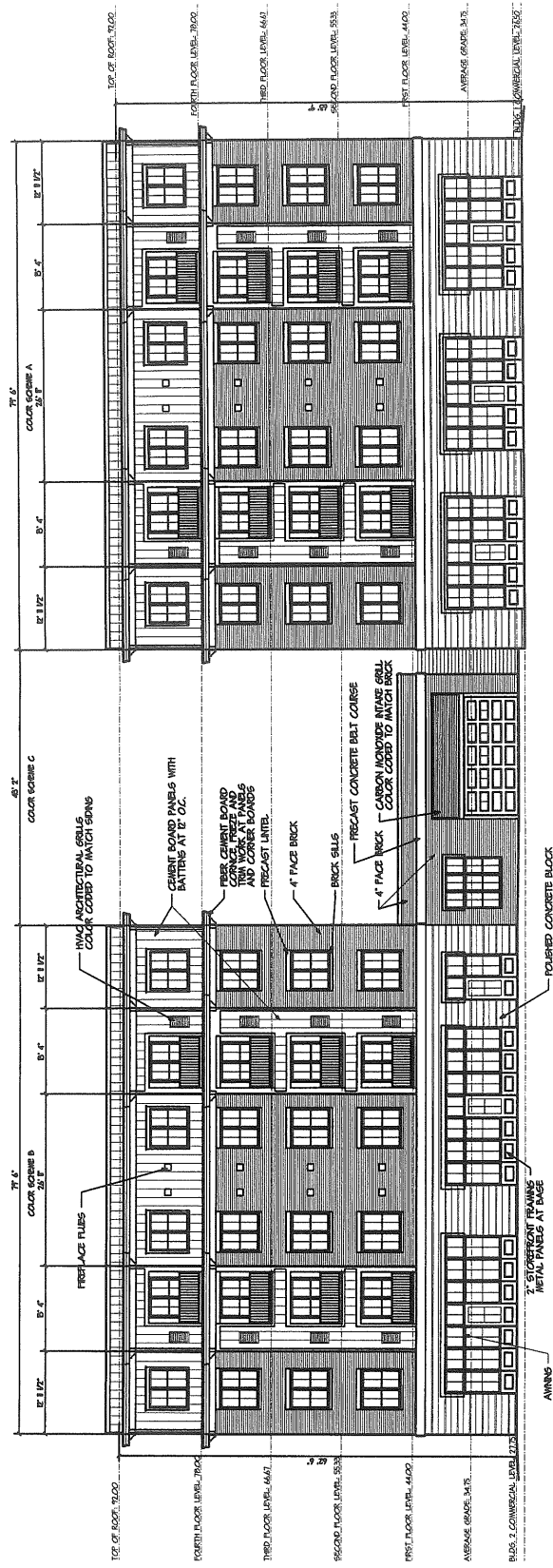
THE BAY HOUSE  
Middle Street  
Portland, Maine

SOUTH ELEVATION  
Phase I/Building 1 & 2  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

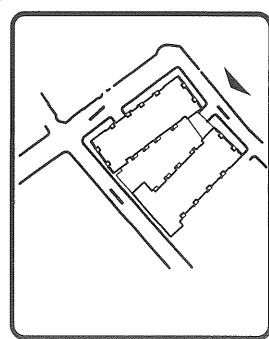
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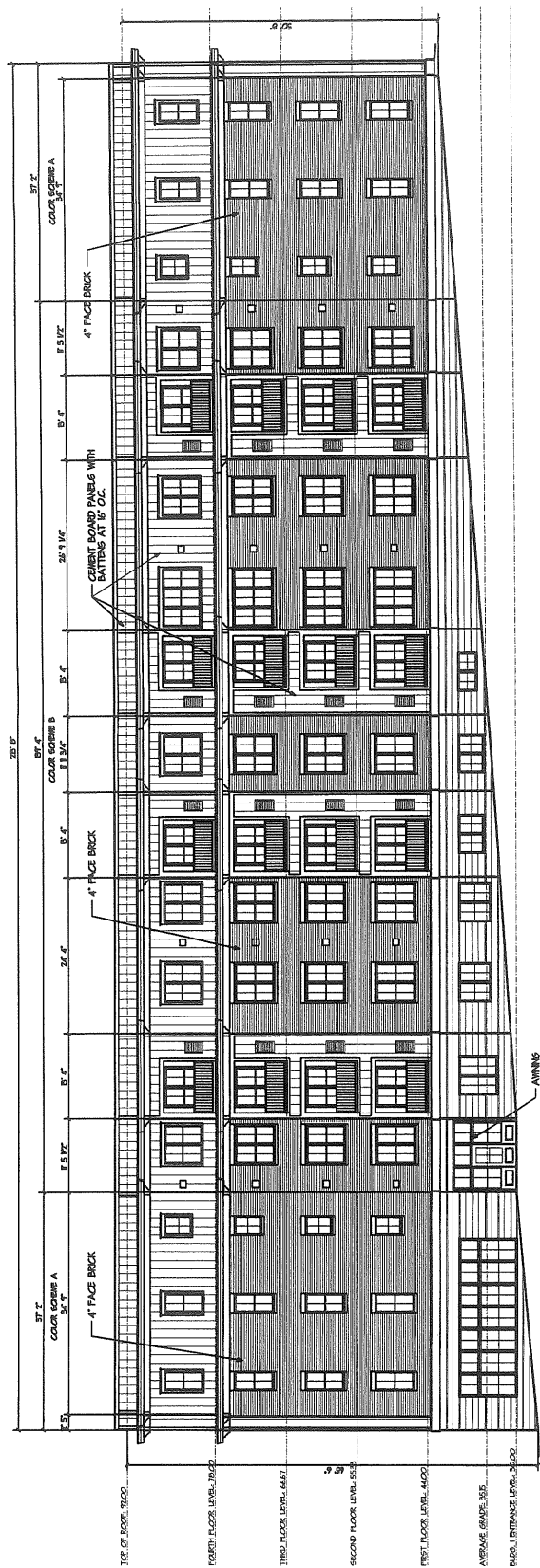
P.10



BUILDINGS 1 & 2  
MIDDLE STREET ELEVATION  
SCALE: 1/8" = 1'-0"

NOTES:  
LOCATION OF TOILET AND LAUNDRY EXHAUST VENTS  
TO BE FIELD COORDINATED TO LINE UP VERTICALLY.  
ALL EXTERIOR AFFIXATIONS SHALL BE FIELD  
COORDINATED TO LINE UP VERTICALLY.  
EXTERIOR FINISHES SHALL BE FIELD COORDINATED TO  
FIELD FINISHES TO BE COORDINATE WITH THE COLOR OF THE FINISH IN  
WHICH THERE ARE TO BE INSTALLED.





DAVID W. WHITE, ARCHITECT  
403 Tebuite Hill Road  
P. O. Box 447  
Goffstown, New Hampshire 03045  
(603) 497-3405

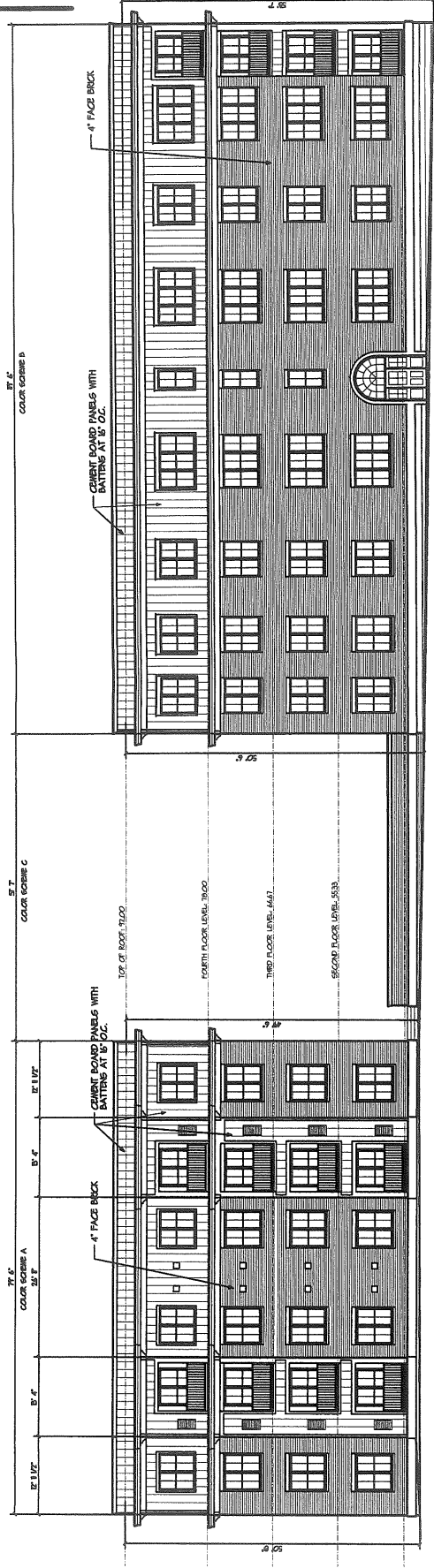
THE WILAGE AT OCEAN GATE, LLC  
C/O Atlas Investment Group  
35 Fay Street Suite 5-2  
Boston, MA 02108

THE BAY HOUSE  
Portland, Maine  
Middle Street

NORTH ELEVATION  
Phase 1/Building 1 & 2  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

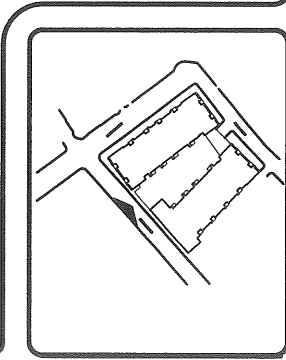
REVISIONS:

DRG. NO.  
P.12



GRADE ENTRANCE LEVEL: 7150

BUILDINGS 1 & 2  
NEWBURY STREET ELEVATION  
SCALE: 1/16" = 1'-0"





DAVID M. WHITE, ARCHITECT  
403 Taber's Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 471-3405

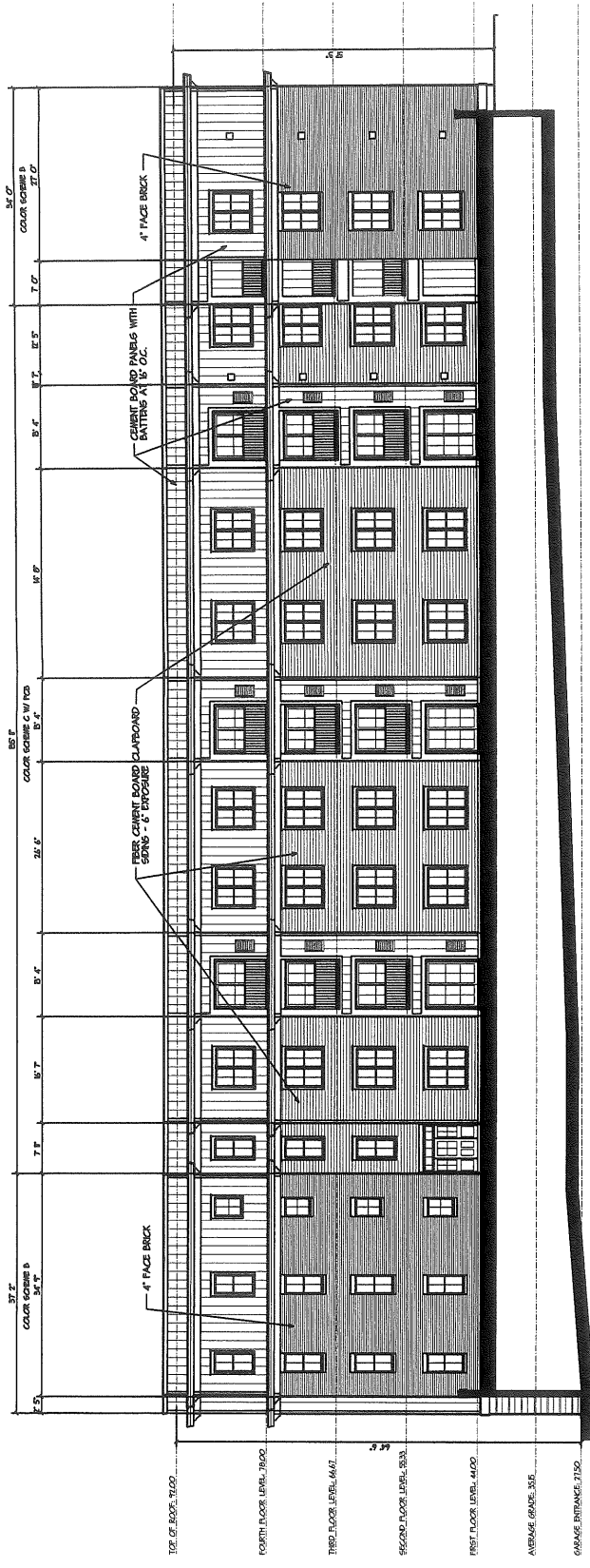
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investment Group  
35 Fay Street Suite 5-2  
Boston, MA 02108

THE BAY HOUSE  
Middle Street  
Portland, Maine

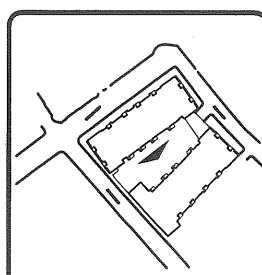
EAST ELEVATION  
Phase 1/Building 2  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

REVISIONS:

DWG. NO.  
P.14



BUILDING 2  
EAST COURTYARD ELEVATION  
SCALE: 1/16" = 1'-0"





DAVID M. WHITE, ARCHITECT  
403 Tibbatts Hill Road  
P.O. Box 447  
Goffstown, New Hampshire 03045  
(603) 477-3405

THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investment Group  
35 Fay Street Suite 5-2  
Boston, MA 02108

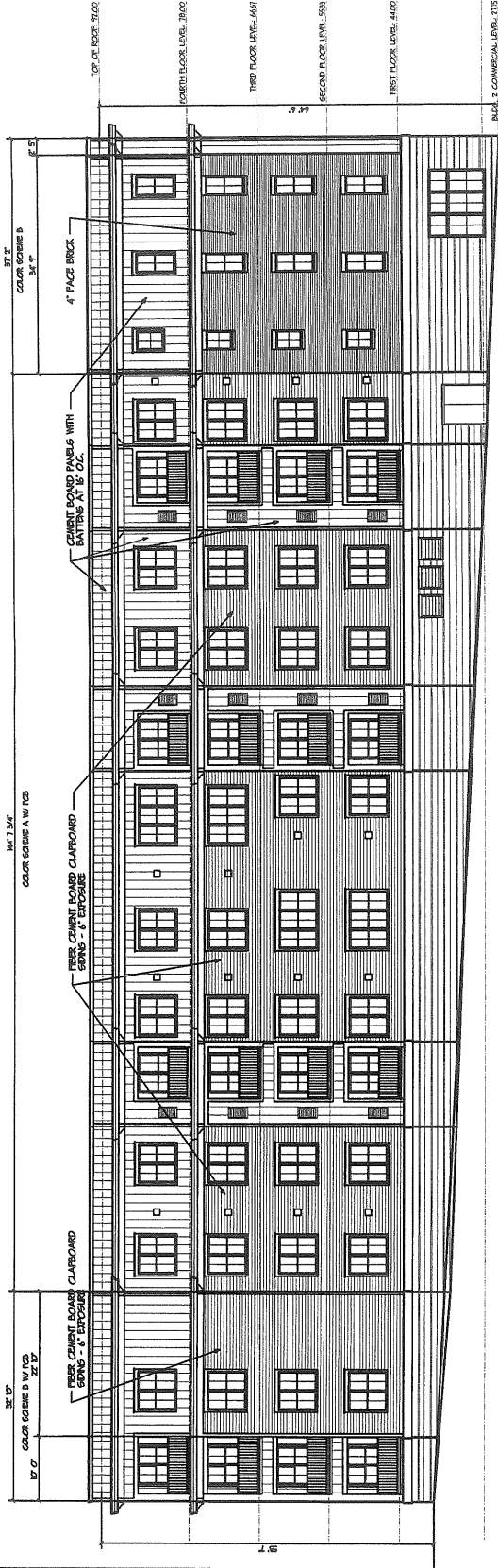
THE BAY HOUSE  
Middle Street  
Portland, Maine

WEST ELEVATION  
Phase 1/Building 2  
Scale: 1/8" = 1'-0"  
Commission No: 06-008  
Date: April 18, 2008

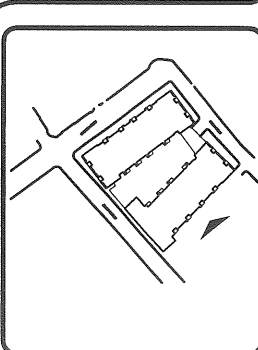
REVISIONS:

DWG. NO.

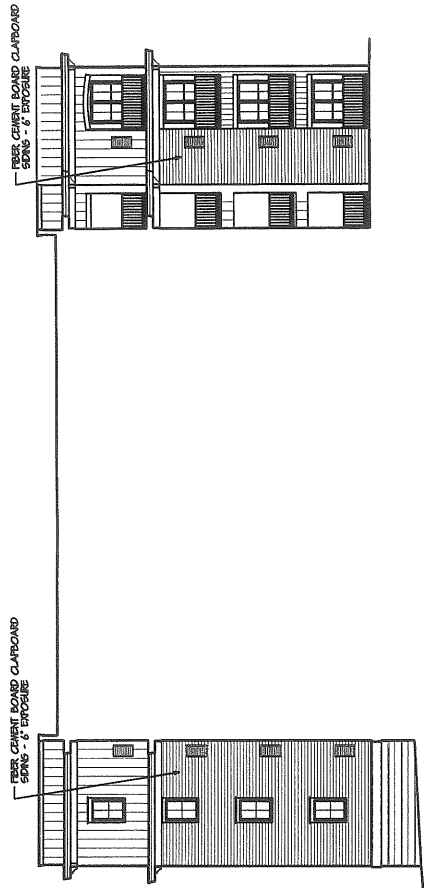
P.15



BUILDING 2  
WEST ELEVATION  
SCALE: 1/8" = 1'-0"

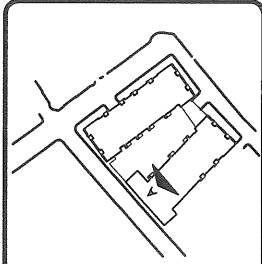


DAVID M. WHITE, ARCHITECT 403 Tibbatts Hill Road P.O. Box 447 Gorham, New Hampshire 03045 (603) 497-3405	THE VILLAGE AT OCEAN GATE, LLC C/O Altus Investment Group 35 Fay Street Suite 5-2 Boston, MA 02108	THE BAY HOUSE Middle Street Portland, Maine	ELEVATION A Phase 1/Building 2 Scale: 1/8" = 1' 0" Commission No: 06-008 Date: April 18, 2008	REVISIONS:	DRG. NO: P.16



ELEVATION A

BUILDING 2  
ELEVATION A THROUGH BUILDING  
SCALE: 1/8" = 1' 0"

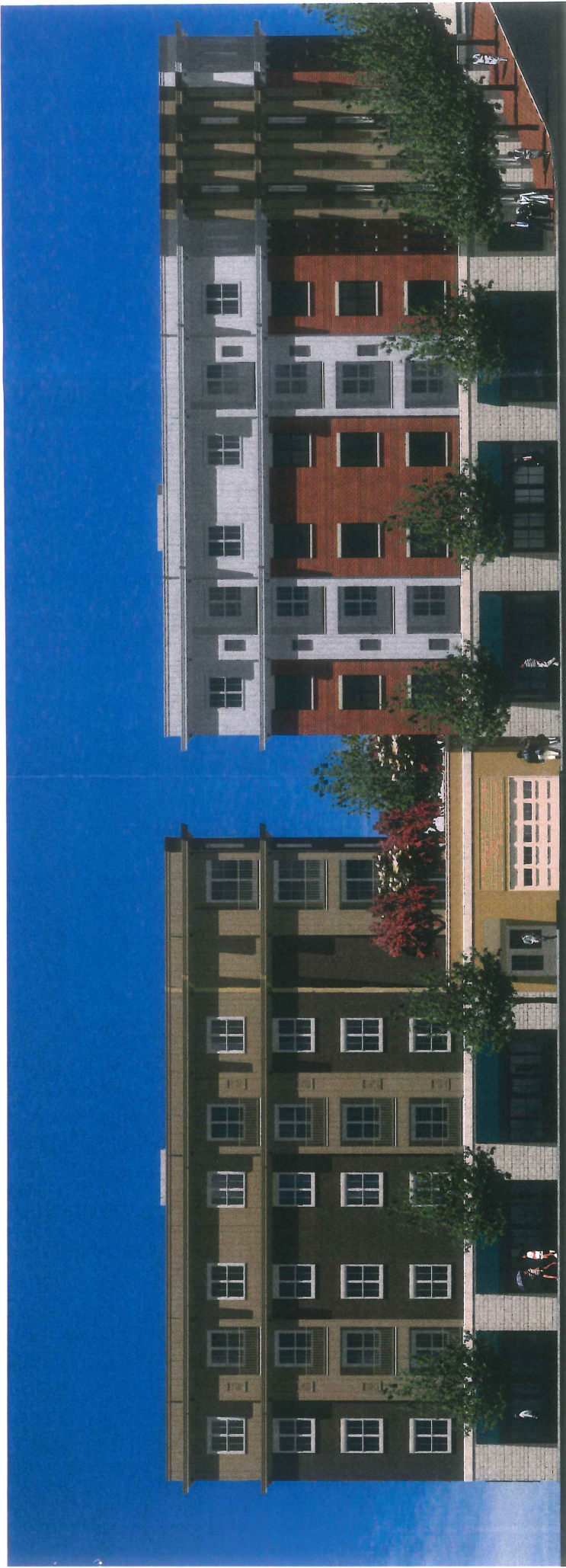


AA.11T





AH. 11U





AH. 11V



HH-4W





44.11X



DAVID W. WHITE, ARCHITECT  
403 Tibbitts Hill Road  
P. O. Box 447  
Goffstown, New Hampshire 03045  
(603) 497-3405

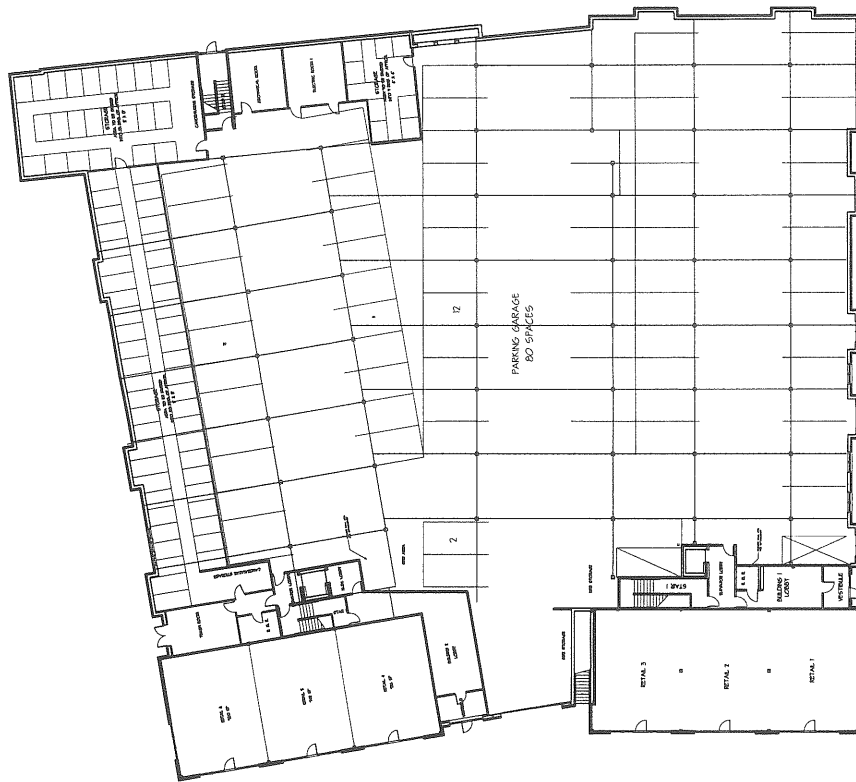
THE VILLAGE AT OCEAN GATE, LLC  
C/O Atlas Investments Group  
35 Fay Street Suite 5-2  
Boston, MA 02108

THE BAY HOUSE  
Middle Street  
Portland, Maine

FIRST FLOOR PLAN  
Phase I/Buildings 1 & 2  
Scale: 1/16" = 1' 0"  
Commission No: 06-008  
Date: April 22, 2008

REVISIONS

DRG NO  
P.I

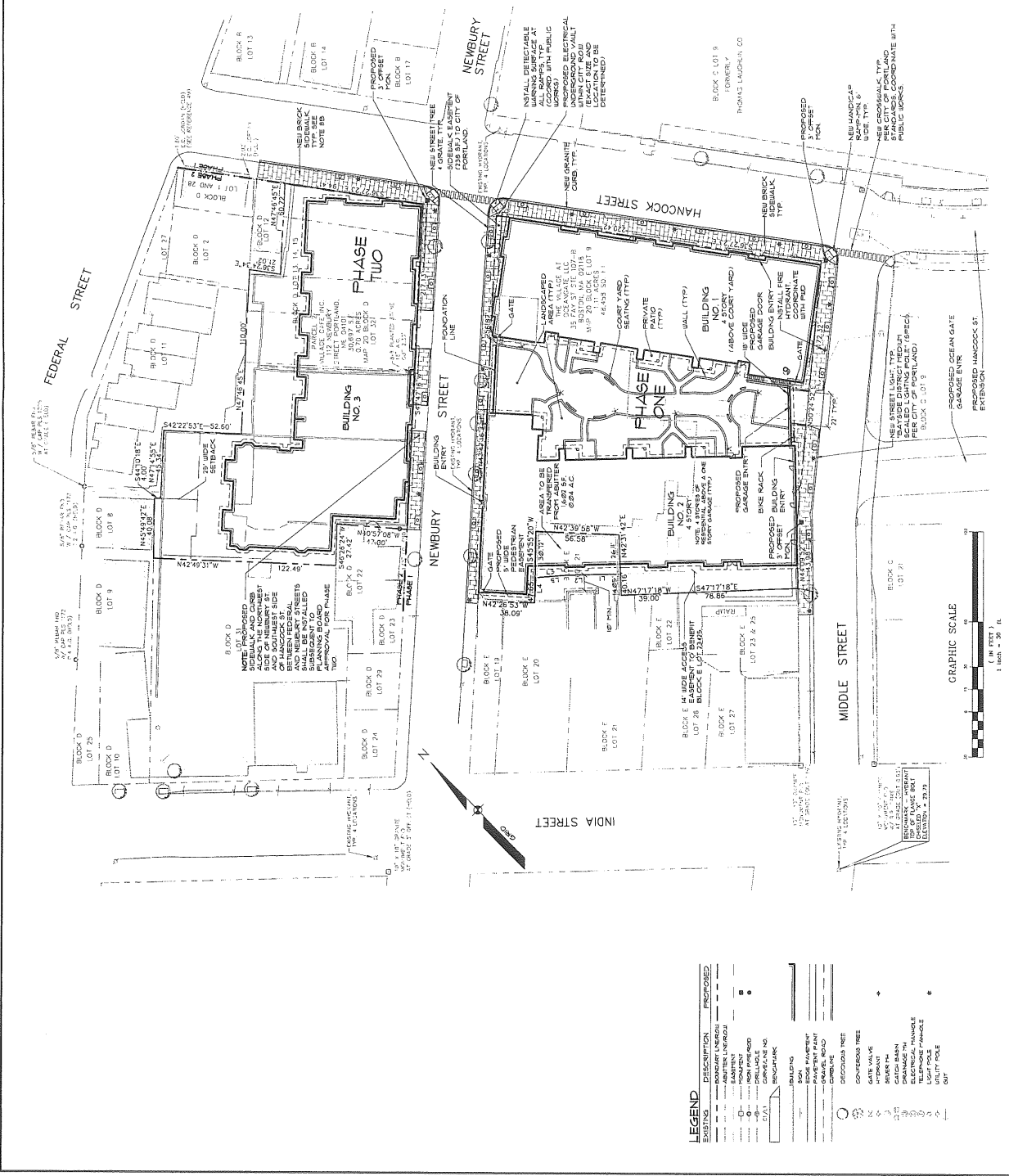


FIRST FLOOR PLAN  
PHASE I

SCALE: 1/16" = 1' 0"  
GROSS FLOOR AREA: 45,369 SF





[illegible]



# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life* [www.portlandmaine.gov](http://www.portlandmaine.gov)

**Executive Department**  
Joseph E. Gray, Jr., City Manager

February 22, 2008

Mr. Dimitrios Dasco  
Managing Partner  
Village at Ocean Gateway LLC  
35 Fay Street  
Suite 107-B  
Boston, Massachusetts 02118

**Re : Village At Ocean Gateway**

Dear Mr. Dasco:

Please allow me to follow up on a meeting held in my office two weeks ago to discuss your residential development project in the vicinity of Hancock Street in Portland. In requesting the meeting you wanted a better understanding of the City's position regarding two major issues: 1) whether the City would support an amendment to the Conditional Rezoning Agreement that your community contribution of \$200,000 be prorated between the two phases of your development; and 2) whether the City was amenable, absent a rational basis, to permitting you to reroute your electrical connection through the presently existing overhead lines as opposed to connecting your project to the new underground circuit planned to service new development in the area.

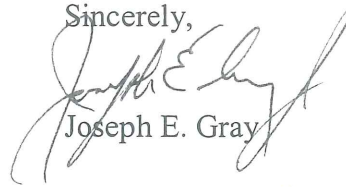
Taking the second issue first, let me say that I listened carefully to your presentation and all the reasons you, as the developer, listed for avoiding a tie in to the new electrical system being installed in Hancock Street. At the time of our discussion I did not know CMP had a preferred position in favor of a tie in to the redundant circuit, nor was I aware of an analysis performed by staff in this regard. It is clear to me now that your project should likewise tie in to the Eastern Waterfront circuit presently under construction to service this area. All new development in the area will be tying in to this new system, including any development on the Jordan Meat site and the Maine State Pier.



Dimitrios Dasco  
February 22, 2008  
Page 3

Thank you for your time and attention. I trust this addresses your two issues adequately.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph E. Gray", is written over the typed name.

Joseph E. Gray

Cc: Greg Shinberg, Consultant  
Barbara Barhydt, Development Review Services Manager ✓  
Alex Jaegerman, Planner  
William Needleman, Planner  
Michael Bobinsky, Director of Public Works  
O:\office\penny\letters2008\dasco021408.doc

**From:** Alex Jaegerman  
**To:** Barbara Barhydt; [dasco@atlasboston.com](mailto:dasco@atlasboston.com); David White; [gls@shinbergconsulting.com](mailto:gls@shinbergconsulting.com)  
**Date:** Thursday, April 17, 2008 3:25:53 PM  
**Subject:** RE: revised agreement for The Village at OceanGate

Not wishing to complicate the discussion, but you are still free to propose the residential entry in the middle section. If you do that, Barbara's message was that we recommend that you upgrade the materials in this middle section to the granite-look block, and to better articulate the entrance door and related glazing as it had been in the approved plans.

We need to be sure the conditional rezone agreement reflects the proposed solution. I also noticed that with the residential entry in the center portion, the lobby hall to the elevator gets squeezed at the rear of the retail as it turns the corner. If you want to relieve that pinch point, the retail square feet needs to be adjusted.

Given all that, if you revert to the entry as previously approved, that is OK. I think either solution is feasible.

Alex.

>>> "David White" <[dmwarch@comcast.net](mailto:dmwarch@comcast.net)> 4/17/2008 3:06:04 PM >>>  
Barbara,

Yes to the potential change in the agreement regarding the retail square footage and it might also change the required parking for same as we would now have just 5 retail spaces.

David

-----Original Message-----

From: Barbara Barhydt [<mailto:BAB@portlandmaine.gov>]  
Sent: Thursday, April 17, 2008 2:52 PM  
To: [dasco@atlasboston.com](mailto:dasco@atlasboston.com); [dmwarch@comcast.net](mailto:dmwarch@comcast.net); [gls@shinbergconsulting.com](mailto:gls@shinbergconsulting.com)  
Cc: Alex Jaegerman ; Carrie Marsh  
Subject: RE: revised agreement for The Village at OceanGate

David:

Thank you for clarifying this point. You may present your options to the Board. I will note that if there needs to be a change in the amount of area designated for the commercial space, then that needs to be noted in the proposed agreement.

Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)

>>> "David White" <[dmwarch@comcast.net](mailto:dmwarch@comcast.net)> Thursday, April 17, 2008 2:29

PM >>>

Barbara,

For the record, regarding the revised entrance to building 2, we did not state that it was not a possibility in fact we stated that we have a plan already previously drawn keeping the entrance where we had originally shown it and based on the decision of the board we could go either way. We stated that we preferred the new location as it provided for additional retail space since the owners had made the decision to eliminate the alley way retail space once it became evident that a restaurant would not be going in that space.

David

-----Original Message-----

From: Barbara Barhydt [mailto:[BAB@portlandmaine.gov](mailto:BAB@portlandmaine.gov)]

Sent: Thursday, April 17, 2008 1:16 PM

To: [dasco@atlasboston.com](mailto:dasco@atlasboston.com); [dmwarch@comcast.net](mailto:dmwarch@comcast.net);

[glis@shinbergconsulting.com](mailto:glis@shinbergconsulting.com)

Cc: Alex Jaegerman ; Carrie Marsh

Subject: RE: revised agreement for The Village at OceanGate

Hello:

Alex, Carrie and I discussed your project yesterday. We agreed that returning to the brown brick and adding the window on the alley is consistent with the Board's discussion.

Bill Hall asked that we do a complete comparison of the approved versus new exteriors, so we will need to prepare that analysis. I believe Greg mentioned that you are working on comparison drawings.

As Carrie mentioned at our meeting, the entrance door to the residential units was in the base of the building when approved. The new location of the door will be a difference that will be noted in our report and we ask that you consider that option again. Placing the door in that facade contributes to creating a strong base for the building.

At the meeting you stated that was not a possibility. You can make your case to the Board that the entry needs to be in the alternate location. If that is to be your position, we also ask that you consider carrying the same exterior materials across the portion of the structure setback between the two buildings and accentuating the pedestrian

DAVID M. WHITE, ARCHITECT

403 fibbetts hill rd.  
p.o. box 447  
goffstown, n.h. 03045  
603-497-3405  
fax 603-497-2783

**MEMO**

Date: April 23, 2008

From: David White

To: Barbara Barhydt

Project: The Village at Ocean Gate

Copy To: The Village at Ocean Gate,

Number: 01

LLC

Reference: Plan and elevation  
changes

---

The following is an outline of the changes made to the plans and elevations since the previous submission to the Planning Board that led to the conditional approval.

First some general items:

1. With the option to purchase the Reynolds' property Building 2 has been "squared" off to increase the saleable square footage. The number of units in the overall project had been increased to 92, but since our last meeting in early April the overall number of units has been reduced to 82. We have created larger units to meet this demand by prospective buyers.
2. The first floor plan has been changed to reflect a change in the structural system resulting in a changed parking layout and an increase in area available for buyer storage space and bike storage.
3. All metal panel work has been changed to Hardie board with battens.
4. The base of the project, from the belt course to grade has been changed from a combination of granite at the retail areas and brick under the residential areas has been change to polished concrete block with a polished granite look.
5. The windows at the fifth floor have been changed from arch top windows to flat top windows. These windows do now have a crowned head casing.
6. Fireplace exhaust hoods have been diagrammatically added. These will be painted to match the field color in which they are located.
7. We have adjusted the floor to floor height of the building and the average grade plane based on the new building perimeter. The overall height of

the building is 56.85' which is less than our previous height of 57.5' and considerably less than the 74' allowed by the conditional rezoning.

#### Middle Street Elevation (P.10):

1. No change to the brick above the belt course.
2. Simplification of the storefront detailing at the retail spaces. Standard 2" mullions instead of built up mullions. No change to color or panels. Awnings are now indicated.
3. The entrance to Building 2 has been relocated between the massing of Building 2 and the garage door. This change was made as an attempt to increase the amount of rentable retail area. This also creates symmetry with the retail areas for both Buildings 1 & 2.

#### Hancock Street elevation (P.11):

1. The location of brick above the belt course remains the same as the previous submission.
2. The entrance to Building 1 is now similar to the entrance to Building 1. The previous entrance detail would not work with the proposed awning.
3. Three sets of windows were moved to accommodate the units' fireplaces. These are the two end windows in the brown brick field and the triple window.
4. The window in the retail area has been simplified in the same manner as the Storefronts.

#### Newbury Street elevation (P.12):

1. The brick remains in Building 1.
2. Changes to the elevation of Building 2 include a large, more prominent entrance (no awning), relocation of the balconies from the rear of this section to the Newbury street side and slight rework of the windows for that unit with the balcony change.

#### Alley elevation (P.13 & P.16):

1. No change to the area above the belt course at the Middle Street block.
2. The window to the retail area in the Middle Street block has been scaled down and is consistent with the storefront detailing.
3. The brick previously shown from the Middle Street section to the new relocated balcony at the Newbury Street block has been changed to Hardie-plank clapboard siding similar to the courtyard elevations. Note that this area did have this siding in the area now infilled with the addition of the Reynolds' property.



4. Window and deck locations from the Middle Street Block to Newbury Street have been revised to reflect the additional constructed space in Building 2.

Building 1 Courtyard elevation (P.14):

1. No change

Building 2 Courtyard elevation (P.15 & P.16):

1. No change to the Middle Street or Newbury Street blocks.
2. The area between these two sections has been change to reflect the revised unit configurations. This is indicated by only 3 decks per floor instead of the original 4.

I trust that this accurately reflects the changes made to the plans and elevations since that previous submission. We will be pleased to answer any question on these changes at the Planning Board meeting.

As part of this submission we have included the revised plans and elevations and renderings indicating the changes outlined in this narrative.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. White", with a stylized flourish at the end.

David M. White, AIA

Cc: The Village at Ocean Gate, LLC

**PURCHASE AND SALE AGREEMENT**

THIS AGREEMENT made and entered into this 27<sup>TH</sup> day of February, 2008 by and between Pearl Properties, LLC, a Maine limited liability company (Seller) and Village at Ocean Gate, LLC of 35 Fay Street, 107B Boston Massachusetts (Buyer).

**WITNESSETH:**

1. PREMISES. Seller agrees to sell and Buyer agrees to buy the land situated at the rear of 61 India Street, Portland, Maine (collectively the Premises), such land being approximately ~~1,700~~ <sup>1,688</sup> square feet and depicted on Exhibit A, subject to the provisions of Section 14 below. The Westerly boundary of the Premises shall be no less than twelve (12) feet from the recently poured foundation on the Seller's remaining land. Seller shall have the right, but not the obligation to salvage, remove and retain for its ownership and use, any and all walls and bricks located upon the Premises prior to the closing. Included in the sale of the Premises will be a construction easement to use that approximately 14 foot wide area of Seller's retained land, also depicted on Exhibit A, for temporary construction purposes for the initial construction of Buyer's project to last the duration of the construction project and for the future maintenance of the portions of the constructed building thereof.

2. PURCHASE PRICE. Subject to any adjustments and pro-rations hereinafter described, Buyer agrees to pay for the Premises the sum of Two Hundred Thousand Dollars (\$200,000), payable as follows:


(a) Deposit. Two Thousand Dollars (\$2,000.00) paid to Seller as a deposit ~~at the time of the execution of this Agreement~~ <sup>NO LATER THAN FEB. 29TH 2008</sup>, which shall be credited toward the purchase price at the closing.

(b) Cash at Closing. One Hundred Ninety-Eight Thousand Dollars (\$198,000.00) shall be paid to the Seller by certified check or bank cashier (s) check at the closing.

2.A. ADDITIONAL CONSIDERATION. In addition to the Purchase Price, the Buyer shall deliver the following to Seller at closing:

(i) Pedestrian Easement. Buyer shall grant, subject to the condition below in this paragraph, Seller an approximately ~~six (6)~~ <sup>FIVE (5)</sup> foot wide pedestrian easement, in such form and on any other reasonably necessary terms and conditions reasonably satisfactory to Seller, over land of the Buyer from the remaining land of the Seller to Newbury Street in the area shown on Exhibit A. Buyer shall not be obligated to grant the foregoing easement to Seller in the event that doing so materially and adversely affects any municipal approvals for Seller's Bay House Condominium project.

(ii) Courtyard & 14-Foot Easement Paying. Buyer shall finish pave the courtyard area on Seller's remaining land lying easterly of the recently poured foundation on the Seller's

 remaining land and westerly of the Premises. In addition, Buyer shall finish pave the 14-foot easement running from Seller's remaining land to Middle Street and more particularly described in an instrument recorded in the Cumberland County Registry of Deeds in Book 25615, Page 187. The finish paving shall be of the same type, finish and quality as the paving that Buyer installs on the Premises. Such paving shall be completed within THIRTY (30) days of paving the Premises but no later than DEC. 31<sup>ST</sup>, 2009. In the event that the Buyer defaults in its obligation to pave hereunder, Seller shall be entitled to any and all legal and equitable remedies including but not limited to any and all costs, expenses and attorney's fees associated and/or incurred by Seller in enforcing or attempting to enforce the provisions of this section. The provisions of this section shall survive closing.

3. TITLE. Seller shall convey the Premises to Buyer at the closing in fee simple with good and marketable title, free and clear of all liens. The Premises shall be conveyed subject to exceptions from coverage set forth in Ticor Title Insurance Company Owner's Policy # 74106-161258, as the same has been amended by endorsement, except for any mortgages or other liens referenced therein. In the event that Seller is unable to convey title as aforesaid, upon written notice from Buyer, Seller shall use reasonable efforts to remedy all title defects. In the event that said defects are not remedied within Forty-Five (45) days from the date of such notice, then the Deposit shall be returned to Buyer and this Agreement, and Seller (s) and Buyer (s) obligations hereunder, will terminate. Buyer may, at Buyer(s) option, elect to close notwithstanding such defects as may exist.

4. CLOSING. The closing of this transaction shall take place in the office of Tom Hanson, Bernstein Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029 (or, if the Buyer and the Seller mutually agree in advance and in writing, at another time and place) within Fifteen (15) Days of the date of the approval by the City of Portland City Council of the amended contract zone that shall include the Premises. Notwithstanding the foregoing, the closing shall occur no later than August 1, 2008. At the closing, Seller shall execute and deliver to Buyer, against payment of the balance of the purchase price, a Warranty Deed to the Premises (the Deed).

5. RISK OF LOSS, DAMAGE, DESTRUCTION AND INSURANCE. Prior to the closing, the Premises shall be the sole responsibility of Seller and Seller shall bear the risk of any loss to the Premises whether by fire or otherwise. In the event of any casualty loss, Buyer shall have the alternative of either terminating this Agreement by written notice, whereupon Buyer shall receive back the Deposit plus accrued interest, or of accepting the insurance proceeds made available, if any, and closing notwithstanding such loss.

6. INSPECTION. At all reasonable times during the term hereof, Buyer shall have the right to enter the Premises and perform such inspections, engineering tests, soil tests, surveys, hazardous waste investigations, water tests, or other inspections as Buyer deems necessary or appropriate provided that the Buyer's activities shall not damage the Premises. Seller shall have the right but not the obligation to have a representative present at each inspection. Buyer shall keep the Premises free of all liens in connection with its inspection of the Premises or shall

remove any liens immediately upon being notified of them. Buyer agrees to indemnify, defend and hold Seller harmless from all damage, loss or claims relating directly or indirectly to any physical damage to the Premises resulting from inspections or studies of the Premises made by Buyer or its agents, which indemnity shall survive Closing. Buyer agrees to provide Seller with copies of each of the reports completed regarding the Premises. Buyer agrees to return the Premises as nearly as possible to its original condition after all of such tests and inspections. If the results of a hazardous waste or other investigation done pursuant to this Paragraph are unsatisfactory to Buyer, Buyer shall have the right to terminate this Agreement by written notice and receive back the Deposit, plus accrued interest.

7. REPRESENTATIONS AND WARRANTIES. As a material part of the consideration for this Agreement, Buyer represents to Seller that Buyer knows, has examined, and has investigated (or, prior to the closing, shall know, shall have examined, and shall have investigated) to Buyer's satisfaction, operating information, environmental condition, physical nature and condition of the Premises. Buyer agrees to take the Premises "AS IS", with all latent and patent defects and no warranty by Seller that the Premises are fit for a particular purpose. Buyer takes the Premises with the agreement that there are no express or implied warranties or representations by Seller as to its physical condition, quality of construction or workmanship, or any other matter. Furthermore, Seller makes no agreement to alter, repair, or improve the Premises.

8. POSSESSION. Seller shall deliver possession of the Premises to the Buyer upon transfer of title free and clear of all leases, tenancies and occupancies by any person.

9. ADJUSTMENTS, PRORATION AND CLOSING COSTS. Real estate taxes and assessments and all utilities shall be prorated as of the closing on the basis of the latest available tax bill. The Maine real estate transfer tax shall be paid equally by Seller and Buyer. The recording fee for the Deed and any expenses related to Buyer (s) financing will be paid for by the Buyer.

10. CONDITIONS PRECEDENT. Buyer (s) obligation to close hereunder is subject to satisfaction of the following conditions at or before closing:

- (a) As of the date hereof, and as of the date of closing, all of Seller (s) representations and warranties shall be true and correct.
- (b) Approval by the City of Portland City Council of the amended contract zone that shall include the Premises.

If the above listed condition is not satisfied within the time specified or if no time is specified, by the closing date, Buyer shall be entitled to receive back the Deposit plus accrued interest, whereupon this Agreement shall terminate and neither party will be under any further obligation hereunder.

11. DEFAULT AND REMEDIES. In the event that Buyer fails to close hereunder for a reason other than the default of Seller, Seller shall retain the Deposit plus accrued interest as full and complete liquidated damages in lieu of any other legal or equitable remedy, whereupon this Agreement will terminate and neither party will be under any further obligation hereunder. In the event of Seller (s) default hereunder, Buyer may, as its sole and exclusive remedy, either (i) terminate this Contract and be entitled to the return of the Deposit or (ii) seek specific performance.

12. ACCEPTANCE DATE. This contract shall not be valid unless executed by all parties by 5:00 p.m. ~~February 28, 2008.~~

13. MISCELLANEOUS.

- (a) Time is of the essence of this Agreement. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed as follows:

TO SELLER: Pearl Properties, LLC  
c/o Joseph W. Reynolds  
198 Tuttle Road  
Cumberland, ME 04021

TO BUYER: Village at Ocean Gate, LLC  
35 Fay Street 107B  
Boston, MA 02118

Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein. Seller (s) representations and warranties shall survive the closing. This Agreement will inure to the benefit of and bind the respective successors and assigns of Seller and Buyer. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. As used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of the masculine shall include, where appropriate, the feminine and neuter. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any



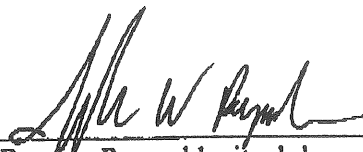

provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

14. SURVEY. Buyer shall obtain, at Buyer's sole cost and expense, a standard boundary survey and metes and bounds description of the Premises, which survey will depict the temporary construction easement area and the pedestrian easement area (collectively, the "Survey") prior to closing. The Survey shall evidence the setback compliance of the rear portion of the Seller's remaining land and shall be otherwise reasonably satisfactory to Seller in all respects.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first written above.

WITNESS:

Pearl Properties, LLC

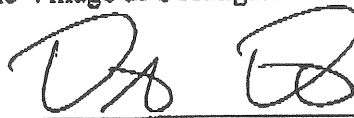
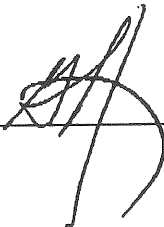


By: Joe Reynolds, its duly authorized Manager

2/27/08

Date

The Village at Oceangate LLC



By: Demetri Dasco, its duly authorized Manager  
Buyer

2/27/08

Date

O:\LAWOFFICE\REALTY\Reynolds\India\Salc of back lol\Pearl Properties Purchase Contract 225-08 rev.doc



**From:** James Adolf  
**To:** Barhydt, Barbara; Finnigan, Pat; Jaegerman , Alex; Littell , Penny; Schmuckal, Marge  
**Date:** Thursday, April 24, 2008 12:03:20 PM  
**Subject:** B-3 government offices amendment

Hi all:

I'm attaching a new draft of the B-3 amendment that would allow government offices, along with an explanatory memo. The intent is to have a first reading on this by the Council this Monday (4/28), send it to the Planning Board for public hearing on 5/13, and then have it voted on by the Council on 5/19.

So, please take a look and let me know if you want changes (ASAP). I'll get this to Sonia tomorrow morning. Barbara — can you put it on the Planning Board agenda and advertise, etc.?

Thanks —

Jim

SHINBERG CONSULTING, LLC  
477 Congress Street, Suite 1012  
Portland, Maine 04101

March 24, 2008

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans to amend the Conditional Rezoning Agreement for the Village at Ocean Gate Project (now known as "The Bay House") which will be located at 112 Newbury Street, in Portland, Maine.

Meeting Location: Cummings Community Center, 134 Congress Street, Portland, Maine  
Meeting Date: Tuesday, April 1, 2008  
Meeting Time: 6:00 to 7:30 PM

If you have any questions, please call Greg Shinberg at 207 772 7070

Sincerely,



Greg Shinberg, Owner's Representative  
Shinberg Consulting, LLC

Note:

Under Section 14-32 ( C ) of the City Code of Ordinances, an applicant for a major development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting at least seven days prior to the Planning Board public hearing on the proposal.



1 f

**Conditional Zoning Agreement  
The Village At Ocean Gate  
112-113 Newbury Street, Portland, Maine**

This agreement is made as of the 19<sup>th</sup> day of December, 2006 by **THE VILLAGE AT OCEAN GATE, LLC**, a Maine Limited Liability Corporation having a principal place of business at Boston, Massachusetts (hereinafter "**DEVELOPER**").

**WHEREAS, DEVELOPER**, as assignee of the rights of the purchaser under a purchase and sale agreement with the Village Café, Inc., has the right to purchase the property located at 112-113 Newbury Street and 40 Hancock Street, Portland, Maine, consisting of the property shown on the Portland Assessor's Map as parcels 20-E-9, 20-D-13-15 and 20-D-32 and described in the Cumberland County Registry of Deeds at Book 17317, Page 167, Book 3161, Page 504, Book 4357, Page 291, Book 3217, Page 83, Book 3004, Page 226, Book 3091, Page 703, Book 3752, Page 140, Book 3112, Page 131, Book 3024, Page 132, Book 3291, Page 260, Book 2996, Pages 235 and 237, Book 4357, Page 289, Book 4094, Page 222 and Book 9520, Page 73 (hereinafter the "**SITE**"); and

**WHEREAS**, the **SITE** is currently in the B-2b zoning district and is adjacent to a B-5b district to the southeast; and

**WHEREAS**, Developer has filed a Zone Change Application with the City of Portland (hereinafter "**CITY**") to rezone the **SITE** to the B-5b zoning district subject to certain modifications and conditions set forth in this Agreement in order to accommodate a mixed-use development consisting of up to 176 residential units; space for a 150- to 200-seat restaurant; and sidewalk-level commercial space in a complex of buildings of varying sizes and heights (hereinafter the "project"); and

**WHEREAS**, the Portland Planning Board has determined that the rezoning would provide needed housing, would create a vibrant new neighborhood and would assist in revitalizing adjacent areas; and

**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

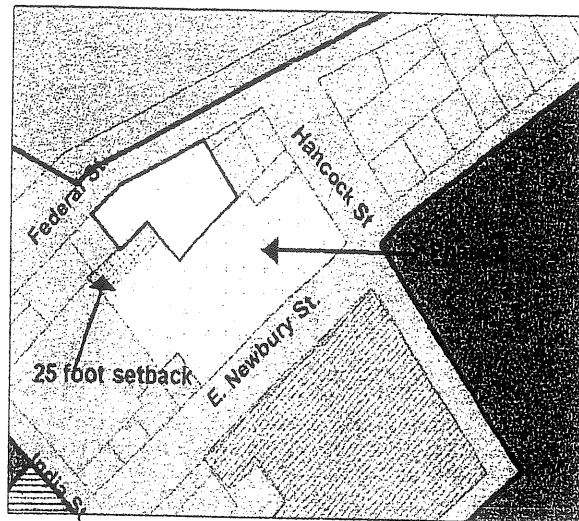
**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the B-5b zone and that the rezoning would be pursuant to and consistent with the **CITY's** Comprehensive Plan; and

**WHEREAS, DEVELOPER** has agreed to enter into this Agreement, with its concomitant terms and conditions, which shall hereinafter bind **DEVELOPER**, its successors and assigns;

**NOW, THEREFORE**, in consideration of the rezoning of the **SITE**, **DEVELOPER** agrees to be bound by the following terms and conditions:

1 F 3

- a minimum setback of twenty five (25) feet from the most westerly rear property line (abutting CBL 20-D-11) shall be provided and as illustrated below ; and



Required Minimum Setback of 25 feet in Phase II  
Depiction - Not to Scale

Prepared by the Department of Planning and Development  
based upon GIS Orthographic Data



- the maximum height of any building(s) in Phase II shall be sixty-five (65) feet measured from the existing Newbury Street grade.

The Planning Board shall review both the Phase I and Phase II proposals and apply the site plan and subdivision standards of the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.

After the initial approval of the Plans for Phase I, and any plans submitted in connection with the development of Phase II, the Planning Board may, upon application of **DEVELOPER** and without the necessity of amending this Conditional Rezoning Agreement, approve subsequent changes to the Plans for Phase I which decrease building dimensions or reduce the density of development, provided that any such decrease or reduction shall nonetheless be determined to substantially conform to the Plans.

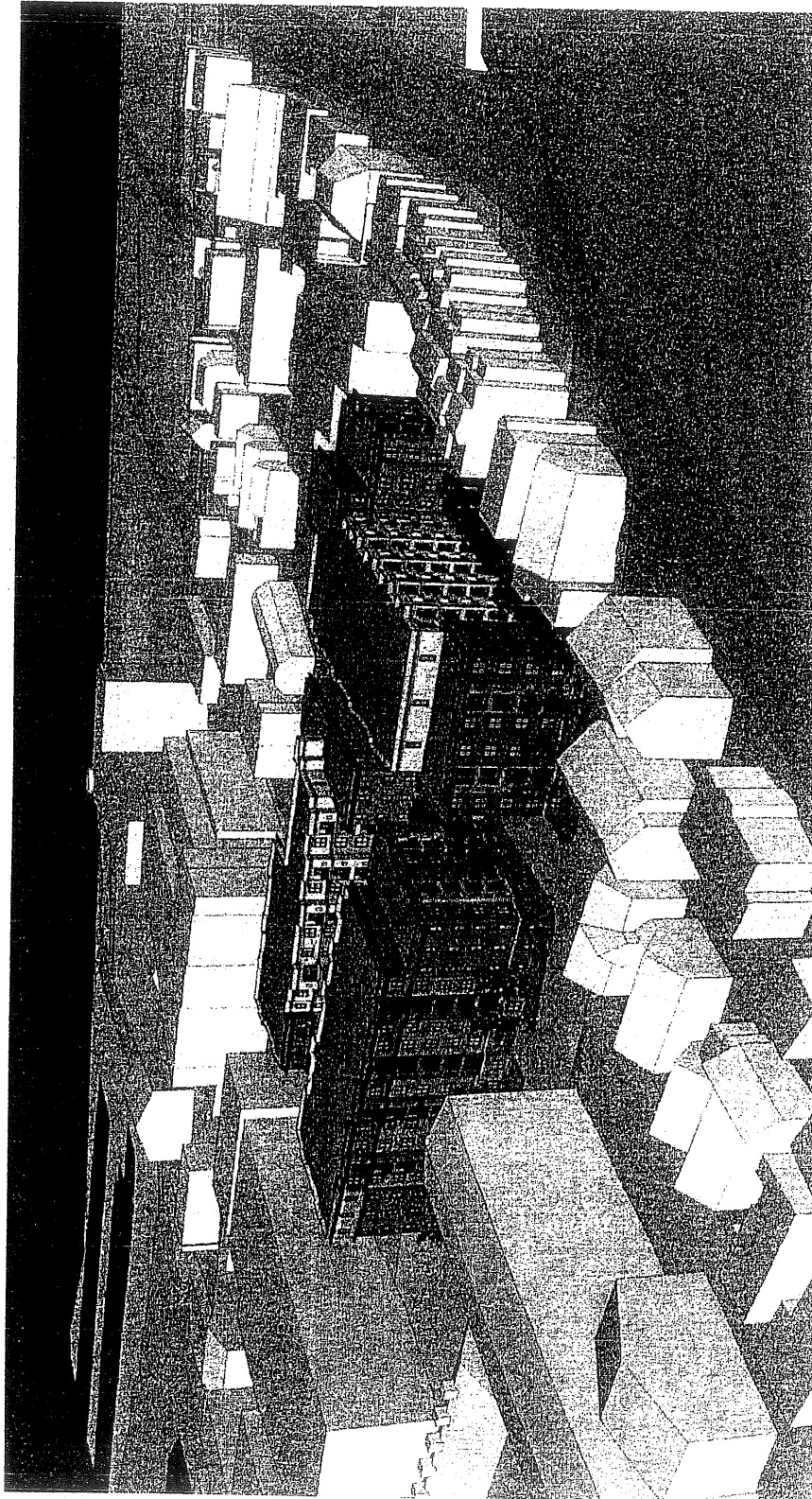
The project shall incorporate light fixtures in "Downtown Black," specifications to be provided by the Planning Authority during subdivision review. In addition, all other streetscape improvements will be consistent with the Hancock Street Extension Plans, which improvements are currently represented on the Plans.

3. Permitted uses: Those uses allowed in the B-5b zoning district. The project shall include not less than 6772 square feet of commercial/retail space on the ground level along Middle Street and at the corner of Hancock and Middle Streets as depicted on the Plans.

1 f 5

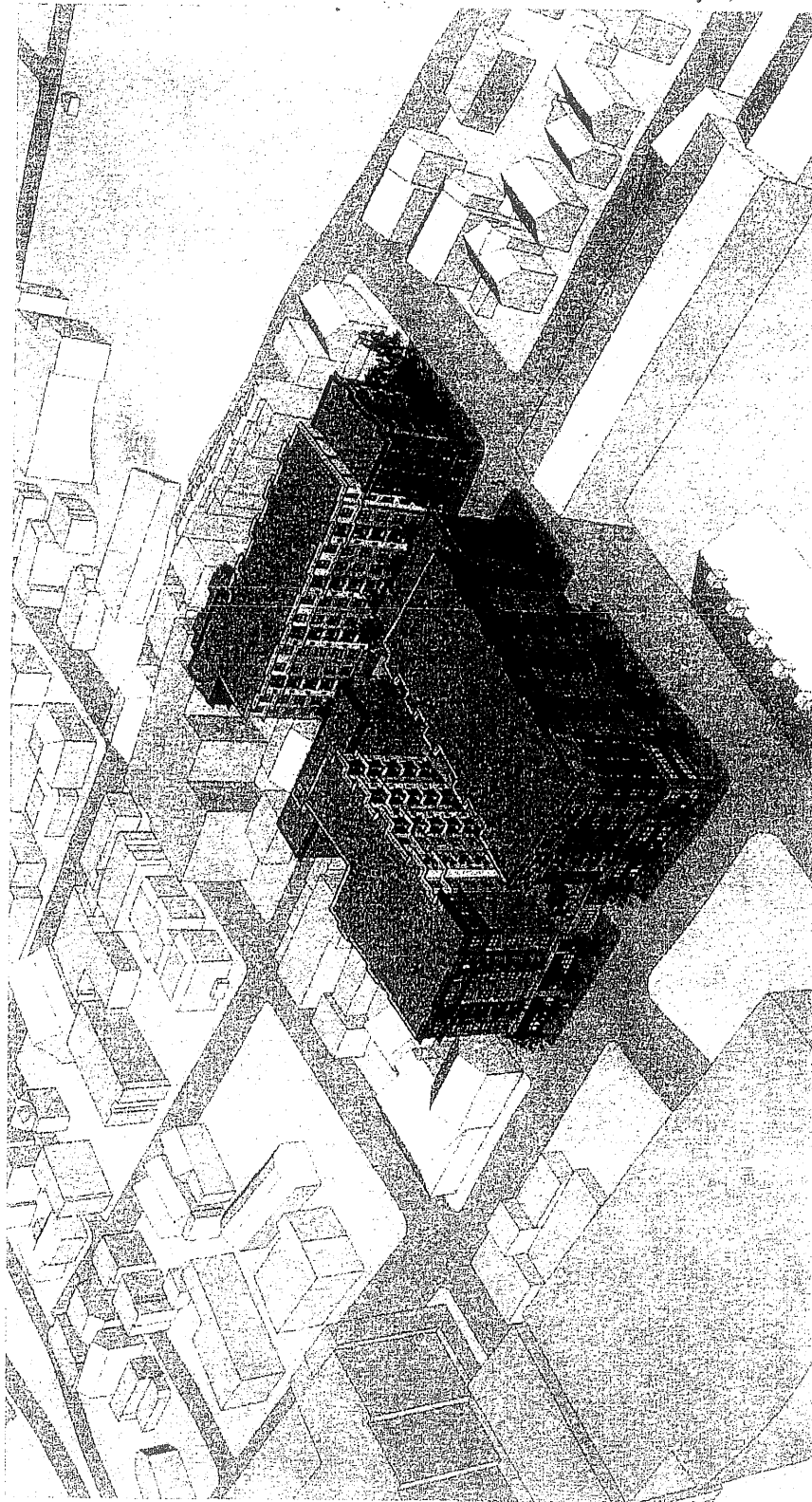
7. This conditional rezoning shall become null and void and the **SITE** shall revert to the existing B-2b zoning district in the event that **DEVELOPER** fails to commence construction of Phase I within two years from the date of the Council vote, with the ability of the Planning Authority, in its sole discretion, to extend this period by an additional one year and Phase II of the project must be commenced within two years following the issuance of a certificate of occupancy for Phase I. If any required approval, including the approval of the conditional rezoning, has been appealed, and if **DEVELOPER** fails to commence construction within one (1) year from the final disposition of such appeal, this conditional rezoning shall become null and void and shall revert.
8. Phasing: **DEVELOPER** may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525(f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing for Phase II must be posted with the City prior to the issuance of a building permit for Phase I of the project. If Phase II fails to be developed within the time line set forth in this Agreement, the **DEVELOPER** shall nonetheless be required to install such improvements upon demand by the City. Otherwise, the City shall call on the performance guarantee and install said improvements itself.
9. A post development occupancy parking analysis shall be conducted by the **DEVELOPER** six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then parking for Phase II of the project shall be increased accordingly as determined by the Planning Board.
10. The rezoning shall run with the **SITE**, shall bind and benefit **DEVELOPER** and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. Within thirty (30) days of the City Council's passing of the Conditional Zone, **DEVELOPER** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **SITE**. **DEVELOPER** shall provide to the **CITY** the Book and Page number of said recording.
11. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
12. Except as expressly modified herein, the development, use, and occupancy of the **SITE** shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

Overhead View from Federal Street - REVISED NOV. 17, 2006



157

Overhead View from Hancock Street - REVISED NOV. 17, 2006



1 f 9



**Shinberg Consulting, LLC**  
477 Congress Street, Suite 1012  
Portland, Maine 04101-3427  
207 772 7070 Office  
207 772 7080 Fax

February 19, 2008

Mr. Alexander Jaegerman, Ms. Barbara Barhydt  
Planning Division Director, City of Portland  
and City of Portland Planning Board Members  
389 Congress Street  
Portland, Maine 04101

**RE: The Bay House**  
**112 Newbury Street, Portland, Maine**

Dear Mr. Jaegerman, Ms Barhydt and Board Members:

Enclosed is a submission for The Bay House Condominiums (formerly known as The Village At Ocean Gate) project proposed for 112 Newbury Street. The project has been amended to incorporate approximately 2,010 square feet of land that will be acquired from the next door neighbor, Pearl Properties, LLC whose property affronts 61 India Street.

The total number of units has been increased from 84 units to 92 residential units. The square footage of retail space has been reduced to approximately 5,348 square feet. The total number of parking spaces in the garage has been increased from 79 to 80 spaces. The total number of leased spaces in the Gateway Parking Garage will be increased from 15 to 17. This will provide one parking space for each residential unit and an additional 5 spaces for the proposed retail space.

The retail space remains essentially unchanged at the part of the building that affronts Middle and Hancock Streets. The retail space in Building 2 at the West Elevation has been changed to provide additional storage space for the residential units.

After meeting with City Staff to review possible alternate materials for the buildings, the exterior of the building has been changed to include more concrete masonry units (CMU Block) at the base of the building and more cement board clapboard siding has been placed on the Newbury, Hancock and Middle Street elevations. In addition, the arched windows at the top floor have been changed to standard double hung windows.

As per the terms of the Conditional Approval letter from Ms. Barhydt dated July 20, 2007, the following fees have been agreed to:

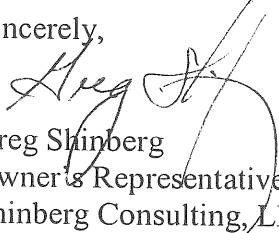
1. \$9,600.00 tree replacement fee;
2. \$43,000.00 fee to reclaim and repave Hancock Street as per the memo from Mike Farmer of Portland Public Works.

Because these fees were based upon building both Phase I and Phase II, and Phase II was not approved by the Planning Board on July 10, it is reasonable to request that the total fees be reduced from \$52,600.00 to \$32,612.00 or 62 % of the total. This calculation is based upon the relative size of Phase I and the proposed size of Phase II.

Attached are the revised Site Plans by Sebago Technics dated February 19, 2008 and revised Floor Plans and Elevations and Floor Plans by David M. White dated February 18, 2008.

We look forward to attending the next scheduled Planning Board Workshop to review the amended project.

Sincerely,



Greg Shinberg  
Owner's Representative and Project Manager  
Shinberg Consulting, LLC



## Development Review Application Portland, Maine

Department of Planning and Development, Planning Division and Planning Board

Address of Proposed Development: 112 NEWBURY STREET

Zone: B56

Project Name: THE BAY HOUSE

Existing Building Size: 15,914 sq. ft.

Proposed Building Size: 63,800 sq. ft.

Existing Acreage of Site: 78,843.6 sq. ft.

Proposed Acreage of Site: 78,843.6 sq. ft.

Proposed Total Disturbed Area of the Site: 78,843 sq. ft. \*

\* If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) or Chapter 500, Stormwater Management Permit with the Maine Department of Environmental Protection (DEP).

Tax Assessor's Chart, Block & Lot:

Chart # 20 20 20

Block # E D D

Lot # 9 13-15 32

Property Owners Name/  
Mailing address:

VILLAGE AT OCEANGATE  
LLC  
35 FAY ST 107B  
BOSTON, MA 02118

Telephone #:

617 482 3006

Cell Phone #:

Consultant/Agent Name,  
Mailing Address, Telephone #, Fax #  
and Cell Phone #:

GREG SHAWBERG  
SHAWBERG CONSULTING  
471 CONGRESS ST. SUITE 1012  
PORTLAND ME 04101

Applicant's Name/  
Mailing Address:

VILLAGE AT OCEANGATE  
LLC  
35 FAY ST. 107B  
BOSTON, MA 02118

Telephone #:

Cell Phone #:

207 772 7070  
772 7080 F  
653 7510 C  
Fee for Service Deposit (all applications)

✓ (\$200.00)

Proposed Development (check all that apply)

- ☐ New Building ☐ Building Addition ☐ Change of Use ☐ Residential ☐ Office ☐ Retail  
☐ Manufacturing ☐ Warehouse/Distribution ☐ Parking lot  
☐ Subdivision (\$500.00) + amount of lots \_\_\_\_\_ (\$25.00 per lot) \$ \_\_\_\_\_ + major site plan fee if applicable  
☐ Site Location of Development (\$3,000.00)  
(except for residential projects which shall be \$200.00 per lot \_\_\_\_\_)  
☐ Traffic Movement (\$1,000.00) ☐ Storm water Quality (\$250.00)  
☐ Section 14-403 Review (\$400.00 + \$25.00 per lot)  
☐ Other \_\_\_\_\_

~ Please see next page ~

**Major Development (more than 10,000 sq. ft.)**

- ☐ Under 50,000 sq. ft. (\$500.00)
- ☐ 50,000 - 100,000 sq. ft. (\$1,000.00)
- ☐ Parking Lots over 100 spaces (\$1,000.00)
- ☐ 100,000 - 200,000 sq. ft. (\$2,000.00)
- ☐ 200,000 - 300,000 sq. ft. (\$3,000.00)
- ☐ Over 300,000 sq. ft. (\$5,000.00)
- ☐ After-the-fact Review (\$1,000.00 + applicable application fee)

**Minor Site Plan Review**

- ☐ Less than 10,000 sq. ft. (\$400.00)
- ☐ After-the-fact Review (\$1,000.00 + applicable application fee)

**Plan Amendments**

- ☐ Planning Staff Review (\$250.00)
- ☒ Planning Board Review (\$500.00)

**Billing Address: (name, address and contact information)**

ALEX DASCO  
VILLAGE AT OCEANGATE LLC  
C/O ATLAS INVESTMENT GROUP  
35 FAY ST 107 B  
BOSTON, MA 02118

Submittals shall include **seven (7) folded packets** containing of the following materials:

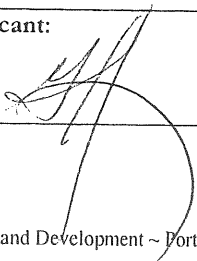
- A. Copy of the application.
- B. Cover letter stating the nature of the project.
- C. Written Submittal (Sec. 14-525 2. (c), including evidence of right, title and interest.
- D. A standard boundary survey prepared by a registered land surveyor at a scale not less than one inch to 100 feet.
- E. Plans and maps based upon the boundary survey and containing the information found in the attached sample plan checklist.
- E. Copy of the checklist completed for the proposal listing the material contained in the submitted application.
- F. In addition to the seven (7) sets of documents listed above, one (1) set of the site plans reduced to 11 x 17 must be submitted.

Portland's development review process and requirements are outlined in the Land Use Code (Chapter 14), which includes the Subdivision Ordinance (Section 14-491) and the Site Plan Ordinance (Section 14-521). Portland's Land Use Code is on the City's web site: [www.portlandmaine.gov](http://www.portlandmaine.gov) Copies of the ordinances may be purchased through the Planning Division.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

**This application is for site review only; a Performance Guarantee, Inspection Fee, Building Permit Application and associated fees will be required prior to construction.**

Signature of Applicant:



Date:

February 19, 2008



## Site Plan Checklist Portland, Maine

Department of Planning and Development, Planning Division and Planning Board

THE BAY HOUSE 112 NEWBURY STREET  
Project Name, Address of Project

Application Number

The form is to be completed by the Applicant or Designated Representative:

Check Submitted	Site Plan Item	Required Information	Section 14-525 (b,c)
✓	(1)	Standard boundary survey (stamped by a registered surveyor, at a scale of not less than 1 inch to 100 feet and including:	l
✓	(2)	Name and address of applicant and name of proposed development	a
✓	(3)	Scale and north points	b
✓	(4)	Boundaries of the site	c
✓	(5)	Total land area of site	d
✓	(6)	Topography - existing and proposed (2 feet intervals or less)	e
✓	(7)	Plans based on the boundary survey including:	2
✓	(8)	Existing soil conditions	a
✓	(9)	Location of water courses, wetlands, marshes, rock outcroppings and wooded areas	b
✓	(10)	Location, ground floor area and grade elevations of building and other structures existing and proposed, elevation drawings of exterior facades, and materials to be used	c
✓	(11)	Approx location of buildings or other structures on parcels abutting the site and a zoning summary of applicable dimensional standards (example page 9 of packet)	d
✓	(12)	Location of on-site waste receptacles	e
✓	(13)	Public utilities	e
✓	(14)	Water and sewer mains	e
✓	(15)	Culverts, drains, existing and proposed, showing size and directions of flows	e
✓	(16)	Location and dimensions, and ownership of easements, public or private rights-of-way, both existing and proposed	f
✓	(17)	Location and dimensions of on-site pedestrian and vehicular access ways	g
✓	(18)	Parking areas	g
✓	(19)	Loading facilities	g
✓	(20)	Design of ingress and egress of vehicles to and from the site onto public streets	g
✓	(21)	Curb and sidewalks	g
✓	(22)	Landscape plan showing:	g
✓	(23)	Location of existing vegetation and proposed vegetation	h
✓	(24)	Type of vegetation	h
✓	(25)	Quantity of plantings	h
✓	(26)	Size of proposed landscaping	h
✓	(27)	Existing areas to be preserved	h
✓	(28)	Preservation measures to be employed	h
✓	(29)	Details of planting and preservation specifications	h
✓	(30)	Location and dimensions of all fencing and screening	i
✓	(31)	Location and intensity of outdoor lighting system	j
✓	(32)	Location of fire hydrants, existing and proposed (refer to Fire Department checklist)	k
✓	(33)	Written statements to include:	c
✓	(34)	Description of proposed uses to be located on site	cl
✓	(35)	Quantity and type of residential, if any	cl
✓	(36)	Total land area of the site	c2
✓	(37)	Total floor area, total disturbed area and ground coverage of each proposed Building and structure	c2
✓	(38)	General summary of existing and proposed easements or other burdens	c3
✓	(39)	Type, quantity and method of handling solid waste disposal	c4
✓	(40)	Applicant's evaluation or evidence of availability of off-site public facilities, including sewer, water and streets	c5
✓	(41)	Description of existing surface drainage and a proposed stormwater management plan or description of measures to control surface runoff.	c6



<input checked="" type="checkbox"/>	(42)	An estimate of the time period required for completion of the development	7
<input checked="" type="checkbox"/>	(43)	A list of all state and federal regulatory approvals to which the development may be subject to. Include the status of any pending applications, anticipated timeframe for obtaining such permits, or letters of non-jurisdiction.	8
<input checked="" type="checkbox"/>	(47)	Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that it has reviewed the planned development and would seriously consider financing it when approved.	h8
<input checked="" type="checkbox"/>	(48)	Evidence of applicant's right title or interest, including deeds, leases, purchase options or other documentation.	
<input checked="" type="checkbox"/>	(49)	A description of any unusual natural areas, wildlife and fisheries habitats, or archaeological sites located on or near the site.	
<input checked="" type="checkbox"/>	(50)	A jpeg or pdf of the proposed site plan, if available.	
<input checked="" type="checkbox"/>	(51)	Final sets of the approved plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.	

Note: Depending on the size and scope of the proposed development, the Planning Board or Planning Authority may request additional information, including (but not limited to):

- drainage patterns and facilities
- erosion and sedimentation controls to be used during construction
- a parking and/or traffic study
- emissions
- a wind impact analysis
- an environmental impact study
- a sun shadow study
- a study of particulates and any other noxious
- a noise study

Other comments:

THIS PROJECT RECEIVED APPROVAL FOR PHASE I FROM THE PLANNING BOARD ON JULY 10, 2007 WITH CONDITIONS SPECIFIED.

THIS APPLICATION TO AMEND THE PLAN INCLUDES THE ACQUISITION OF APPROXIMATELY 2,010 SQUARE FEET OF LAND FROM THE ADJACENT PROPERTY OWNER PEARL PROPERTIES, LLC. THE NEW PROJECT WILL INCLUDE 8 ADDITIONAL UNITS. IT ALSO INCLUDES A CHANGE TO THE PROPOSED RETAIL SPACE LOCATED AT THE SOUTHWEST CORNER OF THE PARCEL.

QUITCLAIM DEED WITH COVENANT

**VILLAGE CAFÉ, INC.**, a Maine corporation with a place of a business at 112 Newbury Street, Portland, Maine 04101, FOR CONSIDERATION PAID, grants to **THE VILLAGE AT OCEANGATE, LLC**, a Maine limited liability company with a mailing address of 35 Fay Street, Suite 107-B, Boston, Massachusetts 02118, with QUITCLAIM COVENANT, certain real property, together with any improvements thereon, located at 112-113 Newbury Street, Portland, County of Cumberland and State of Maine, more particularly described on **Exhibit A** attached hereto and made a part hereof.

IN WITNESS WHEREOF, Village Café, Inc. has caused this instrument to be executed under seal by John Reali, its Treasurer thereunto duly authorized, this 15<sup>th</sup> day of November, 2007.

WITNESS



VILLAGE CAFÉ, INC.

By:

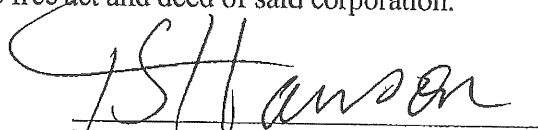
John Reali

Its duly authorized Treasurer

State of Maine  
County of Cumberland

November 15, 2007

PERSONALLY APPEARED before me the above-named John Reali, duly authorized Treasurer of Village Café, Inc., as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.



Notary Public/Attorney At Law

Commission Expires: N/A

Print Name:

Tom S. Hanson

MAINE REAL ESTATE TAX PAID

EXHIBIT A

PARCEL 1

A CERTAIN LOT OR PARCEL OF LAND SITUATED ON THE SOUTHERLY SIDE OF NEWBURY STREET, IN THE CITY OF PORTLAND, COUNTY OF CUMBERLAND, STATE OF MAINE, NOW OR FORMERLY OF THE VILLAGE CAFE, INC., BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY SIDE OF NEWBURY STREET, HAVING A RIGHT OF WAY WIDTH OF 50 FEET, SAID POINT BEING THE NORTHERLY CORNER OF LAND NOW OR FORMERLY OWNED BY BARTLETT ISLAND LLC, RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 17068 PAGE 212, AND THE NORTHWEST CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, N 47°-47'-16" E, A DISTANCE OF 258.80 FEET, BY AND ALONG SAID SOUTHERLY SIDE OF NEWBURY STREET TO THE WESTERLY SIDE OF HANCOCK STREET, HAVING A RIGHT OF WAY OF 66 FEET, TO A POINT, SAID POINT BEING THE MOST NORTHERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, S 36°-58'-45" E, A DISTANCE OF 218.60 FEET, BY AND ALONG THE SOUTHERLY SIDE OF SAID HANCOCK STREET TO THE WESTERLY SIDE OF MIDDLE STREET, HAVING A RIGHT OF WAY OF 49.5 FEET, TO A POINT, SAID POINT BEING THE MOST EASTERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, S 50°-09'-17" W, BY AND ALONG SAID WESTERLY SIDE OF MIDDLE STREET, A DISTANCE OF 177.17 FEET, TO A POINT, SAID POINT BEING A SOUTHERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, S 43°-54'-17" W, BY AND ALONG SAID MIDDLE STREET, A DISTANCE OF 43.31 FEET, TO A POINT, SAID POINT BEING THE EASTERLY CORNER OF LAND NOW OR FORMERLY OWNED BY HILARY AND STEPHEN ANDREW RECORDED IN SAID CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 19479 PAGE 226 AND THE MOST SOUTHERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, N 47°-17'-23" W, BY AND ALONG THE LAND OF SAID ANDREW, A DISTANCE OF 78.41 FEET, TO A BRICK BUILDING CORNER, SAID BUILDING CORNER BEING THE MOST NORTHERLY CORNER OF LAND OF SAID ANDREW AND THE EASTERLY CORNER OF LAND NOW OR FORMERLY OWNED BY WOODEN NICKEL LLC RECORDED IN SAID CUMBERLAND COUNTY REGISTRY OF DEEDS IN BOOK 14219 PAGE 166 AND A SOUTHERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, N 47°-17'-23" W, BY AND ALONG SAID LAND OF WOODEN NICKEL LLC, A DISTANCE OF 39.00 FEET, TO A BRICK BUILDING CORNER, SAID BUILDING CORNER BEING AN EASTERLY CORNER OF LAND OF SAID WOODEN NICKEL LLC AND A WESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, N 42°-35'-21" E, BY AND ALONG THE LAND OF SAID WOODEN NICKEL LLC, A DISTANCE OF 40.20 FEET, TO A POINT, SAID POINT BEING AN EASTERLY CORNER OF LAND OF SAID WOODEN NICKEL LLC AND A WESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, N 42°-36'-19" W, BY AND ALONG THE LAND OF SAID WOODEN NICKEL LLC, A DISTANCE OF 56.58 FEET, TO A BRICK BUILDING CORNER, SAID BUILDING CORNER BEING THE MOST NORTHERLY CORNER OF LAND OF SAID WOODEN NICKEL LLC AND A WESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, S 46°-27'-27" W, BY AND ALONG THE LAND OF SAID WOODEN NICKEL LLC, A DISTANCE OF 47.76 FEET, TO A POINT, SAID POINT BEING A NORTHWESTERLY CORNER OF LAND OF SAID WOODEN NICKEL LLC AND A WESTERLY CORNER OF THE PARCEL HEREIN DESCRIBED,

THENCE, N 42°-26'-53" W, BY AND ALONG THE LAND OF SAID WOODEN NICKEL LLC AND LAND OF SAID BARTLETT ISLAND LLC, A DISTANCE OF 37.23 FEET, TO THE POINT OF BEGINNING.  
MEANING AND INTENDING TO DESCRIBE A CERTAIN PARCEL OF LAND CONTAINING 48,805 SQUARE FEET OR 1.12 ACRES, MORE OR LESS.

Received  
Recorded Register of Deeds  
Nov 16:2007 03:36:44P  
Cumberland County  
Pamela E. Lovley

**Memorandum**  
Department of Planning and Development  
Planning Division



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**To:** Chair Tevanian and Members of the Portland Planning Board

**From:** Barbara Barhydt, Development Review Services Manager

**Date:** March 21, 2008

**Re:** Amended Conditional Rezoning Agreement for The Village At Ocean Gate,  
Applicant, Village at OceanGate, LLC  
Tax Map 20, Block D, Lots 13, 14, 15, and 32; and Block E, lot 9.

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**I. INTRODUCTION**

The Village at OceanGate LLC submitted an application seeking amendments to the conditional rezoning agreement for the Village at OceanGate project located at 112 Newbury Street. The conditional rezoning agreement was adopted by the City Council on November 20, 2006 (Attachment 1). The agreement allows up to 176 residential units for both Phase I and II of this project with a maximum of 66 residential units in Phase II. Phase I of this project received subdivision and site plan approval on July 10, 2007 for a total of 84 residential units.

The applicant is seeking to incorporate 1,600 square feet of adjoining property to Phase I, so that Building #2 may be redesigned to remove a jog in the structure. In addition, the proposal is to reduce the amount of commercial space in Phase I to create more storage space for units, reduce the community contribution and other associated fees to a level proportional to Phase I, increase the number of residential units from 84 units to 92 units, revise the parking numbers and changing the exterior façade materials. The applicant's written submittal for an amendment is included as Attachment 2 and the revised plan set is Attachment 6.

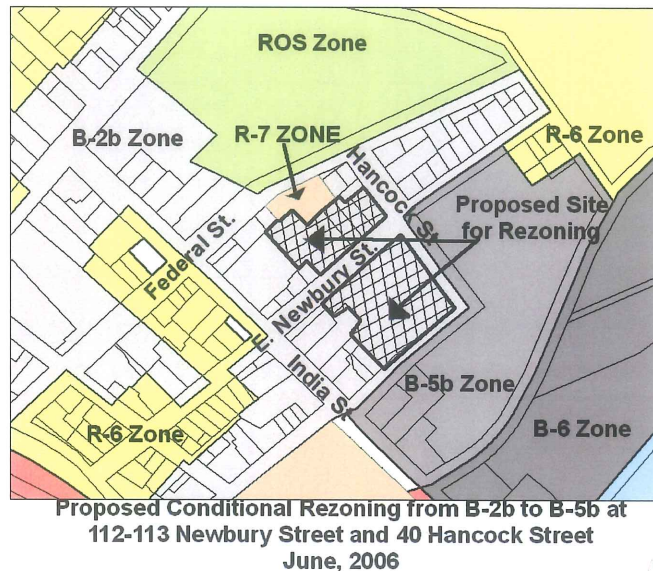
The applicant is seeking the Planning Board's recommendation to the City Council for the proposed amended conditional rezoning agreement. The representatives for the applicant include Sebago Technics, David White, Architect, and Greg Shinberg, Shinberg Consulting. A total of 194 notices were sent for this project. This memorandum includes the following sections:

- I. Introduction
- II. Project History
  - A. Conditional Rezoning Agreement – 2007
  - B. Subdivision and Site Plan Review
- III. Proposed Amended Conditional Rezoning Agreement
  - i. Applicant's Proposal
  - ii. Potential Points or Revised Conditions for the Board's Consideration
- IV. Next Steps

## II. PROJECT HISTORY

### A. Conditional Rezoning Agreement 2007

On November 20, 2007 the City Council adopted the Conditional Rezoning Agreement for the Village at OceanGate Project, which rezoned the property, which is composed of two sites with a total of 1.81 acres, from B-2b to Conditional B-5b. The agreement was for a two-phase project that would have up to 176 units. At that time, there were two levels of structured parking in Phase I with a total of 145 on-site parking spaces. Phase II had one level of parking with 45 spaces. Excerpts of the agreement are listed below and the complete text is contained in Attachment 1:



1. Subdivision and Overall Site Plan.

- a. Phase I of the project, consisting of two buildings along Middle, Hancock and Newbury Streets.
- b. The Planning Board shall review both the Phase I and Phase II proposals and apply the site plan and subdivision standards of the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.

2. Permitted uses: Those uses allowed in the B-5b zoning district. The project shall include not less than 6772 square feet of commercial/retail space on the ground level along Middle Street and at the corner of Hancock and Middle Streets as depicted on the Plans.

3. Phase I shall consist of, at minimum Buildings 1 and 2, while Phase 2 shall consist of one or more buildings in accordance with §14-495(h).

4. Modifications to B-5b Regulations. The SITE shall be governed by the regulations applicable to the B-5b zoning district, except as follows:

- a. The maximum residential density on the SITE shall be 176 dwelling units.
- b. The maximum front yard setback shall be ten (10) feet, except that a front yard setback of no greater than sixteen (16) feet shall be allowed for the parking garage entrance and associated façade as depicted on the Plans for Phase I.
- c. The maximum height for the structures shall be:

Buildings 1 and 2: The maximum height of each building in Phase I shall not exceed 74 feet from average grade, as measured and approved by the Zoning Administrator.

- d. An underground electrical vault will be installed within the right of way of Newbury Street, the final location of such vault to be approved by the Planning Authority. The CITY hereby grants license for such installation and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.

- 5. Community Contribution. The community contribution under this Agreement shall be \$200,000.00, to be dedicated to extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension; \$5,000.00 dedicated to the India/Middle Street traffic improvements to be commissioned by the City; and \$5,000.00 to be dedicated to the Eastern Waterfront Post-Development Traffic Impact Study to be commissioned by the City. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a building permit for Phase I.

The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage located at Middle Street, Portland, with documentation of such participation provided to the City Planning Authority at minimum every two years.

- 6. Phasing: DEVELOPER may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525 (f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing for Phase II must be posted with the City prior to the issuance of a building permit for Phase I of the project. If Phase II fails to be developed within the time line set forth in this Agreement, the DEVELOPER shall nonetheless be required to install such improvements upon demand by the City. Otherwise, the City shall call on the performance guarantee and install said improvements itself.
- 7. A post development occupancy parking analysis shall be conducted by the DEVELOPER six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then parking for Phase II of the project shall be increased accordingly as determined by the Planning Board.

## **2. Subdivision and Site Plan Approval**

After the conditional rezoning agreement was adopted, the applicant submitted plans for subdivision and major site plan review. As the review process progressed, the applicant chose to reduce the number of residential units and reduce the number of parking decks for the overall



project. The approved plans for Phase I include two four-story residential buildings above one level of structured parking. The Phase I project findings include the following:

Proposed Uses:	84 residential units 6, 772 square feet for commercial space and restaurant One level of structured parking
Total Unit breakdown:	68 two-bedroom and 16 one-bedroom units
Unit breakdown:	Building #1: 40 two-bedroom and 4 one-bedroom units Building #2: 28 two-bedroom and 12 one-bedroom units
Parking Spaces:	Total 130 spaces on-site. The proposal is to lease 18 spaces. Eight leased spaces for residential units and 10 spaces for employees.
Parking Ratio:	1 space/unit and 10 employee parking spaces for commercial uses with the inclusion of the leased spaces. Parking for customers will be available through a Park and Shop program at the "Riverwalk" Garage with documentation of participation to the Planning Authority every two years.
Building Height:	Maximum height allowed for Buildings 1 and 2, shall not exceed 74 feet above average grade. Proposed heights are 57.04 feet in Phase I (measured from average grade).
Building Footprint	Total 65,675 square feet, both phases

The building elevations and materials at the time of the conditional rezoning and subdivision review consisted of the following components:

**PHASE I, BUILDINGS #1 AND #2:**

**Buildings #1** extends 80 feet along Middle and Newbury Streets and 210 feet along Hancock Street. The exterior building entrance is located along Hancock Street and all other access points are from the parking levels or the private courtyard. Commercial space was shown along Middle Street. The exterior material for the commercial spaces was a rough-faced gray granite veneer with dark green finish for window surrounds. The exterior materials for the residential building will be red brick with gray metal cladding on projecting balconies and the fifth story along Middle and Newbury Streets. The center portion of the building is proposed in brown brick with dark brown metal cladding.

A **private courtyard** separates Building #1 and #2, which will be developed on top of the parking garage roof ([Attachment B](#)). Access to the above grade courtyard is from a stairway along Newbury and internally from the buildings. The courtyard walls are proposed in a gold brick and the garage entrance is stepped back between 10 and 16 feet from Middle Street.

**Building #2** (closest to India Street) included a proposed 150 to 200 seat restaurant and other retail space. A sandstone veneer with bronze finish windows are proposed for the commercial space and brown brick with dark brown metal cladding are proposed for the balconies and the fifth story. The center section of the building will be clad in a gold brick with buff metal cladding. The Newbury Street side of the building was proposed with brown brick. Two residential entrances are proposed for this building: one within the commercial frontage along Middle Street; and the second along Newbury Street.

On July 10, 2007, the Planning Board held a public hearing on the subdivision and site plan for Phase I and Phase II of the Village at OceanGate. The Board found unanimously that Phase I met the conditional rezoning agreement and the Eastern Waterfront Design Guidelines. The Board voted unanimously to table Phase II regarding the plans conformance with the conditional rezoning agreement and the Eastern Waterfront Design Guidelines. A copy of the approval letter is included as Attachment 3). Please note that the Planning Board did grant the following waiver to reduce the overall contribution by half to the City's tree fund:

The Planning Board acknowledges the applicant's contribution to the construction of Hancock Street and the additional costs for tree wells and tree guards, so based upon the recommendation of the City Arborist the Planning Board waives the financial contribution to the street fund to one half the amount due as determined by the City Arborist.

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The Village at OceanGate, LLC is seeking an amendment to the conditional rezoning agreement for the project at 112 Newbury Street, now called The Bay House. The applicant has a purchase and sales agreement with Pearl Properties, LLC, c/o of Joseph W. Reynolds for the rear portion of 61 India Street (CBL 020 E 021). According to the revised plan, a total of 1,600 square feet would be conveyed to the project for a total Phase I parcel area of approximately 50,050 square feet. The proposed land to be incorporated within the conditional rezoning is shown on Attachment 2, Exhibit A and in Attachment 6, revised plan set. The additional land area permits adjustments in the footprint of the parking level and Building #2. The written application, which includes the purchase and sales agreement and a cover letter from Mr. Greg Shinberg are included as Attachment 2. The set of revised plans are included as Attachment 6.

As described in Mr. Shinberg's letter, in addition to adding the land within the Conditional Rezone agreement, the applicant is seeking additional modifications to the agreement and project. The proposed revisions are noted below:

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**Required Community Contribution – Dedicated to Extend Hancock Street  
between Middle and the Commercial Street Extension (Fore Street)**  
\$200,000.00 Community Contribution

**Proposed Financial Commitment**  
\$124,000.00 or 62% of the total

The current cost of the Hancock Street extension is contracted for \$ 275,000. The extension of Hancock Street is part of the Eastern Waterfront Masterplan to increase street and neighborhood connections.

The applicant had discussed the reduction in the community contribution with Joseph E. Gray, Jr., City Manager, along with modifications in the underground electrical service. Mr. Gray's response is included as Attachment 4. Mr. Gray does not support any waivers of creating a looped underground electrical system nor does CMP. However, Mr. Gray does agree to the City sharing in the cost of the conduit bank in Hancock Street up to \$20,000. Mr. Gray states he could support an apportionment of the Community Contribution, provided that a "...performance guarantee securing the Phase II payment obligation to the City within two years, and regardless of whether your Phase II project

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7. **Required sidewalk and curb improvements for Phase II:** Per our conversation with Demetri Dasco of the Village at OceanGate, LLC on March 21, 2008, the applicant would like to revise the conditional rezoning agreement to clarify that if Phase II is not approved, then the developer is relieved of the obligation of improving the sidewalks and curb along Phase II.

#### **B. Potential Points or Revised Conditions for the Board’s Consideration**

A proposed amended conditional rezoning agreement has not been drafted for this workshop. The potential points to include in a revised agreement include the following:

1. A map amendment incorporating the 1,600 square feet of area into the agreement;
2. Maintaining a minimum of 5,348 square feet of commercial/retail space along Middle Street and Hancock as shown on the plans;
3. Revised parking numbers as outlined in the application;
4. Specification of the exterior materials to be used in Phase I;
5. Any revisions to dimensional standards as confirmed by the applicant and staff.
6. The applicant’s continued obligation to provide underground electrical service per the specifications of the City and Central Maine Power;
7. An apportionment of the Community Contribution, provided that a performance guarantee securing the Phase II payment obligation to the City within two years, and regardless of whether your Phase II project moves forward.
8. If Phase II is not approved, then the developer is relieved of the obligation of improving the sidewalks and curb along Phase II.

#### **IV. Next Steps**

- Address any additional information requested by the Planning Board and City Staff.
- Finalize the conditional rezoning agreement
- The applicant must hold a neighborhood meeting at least seven (7) days before a public hearing and must give seven (7) days notice
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2. Application from The Village at OceanGate
3. Subdivision and Site Plan Approval Letter, Dated July 20, 2007
4. Joseph E. Gray, Jr. City Manager, correspondence, February 22, 2008
5. Michael Farmer, memo, March 21, 2008
6. Revised Plan Set

**M E M O**

TO: Barbara Barhydt  
FROM: Mike Farmer, Engineering Division of DPW  
DATE: March 21, 2008  
RE: Bay House, 112 Newbury Street

DPW does not object to the idea of allowing the applicant to prorate the \$200,000 Community Contribution fee between Phase I and Phase II, as has been previously discussed by City staff.

The March 4, 2008 letter from Shinburg Consulting, LLC indicates that the applicant is also now requesting approval to prorate the tree replacement fee and the \$43,000 fee that would be paid to the City in lieu of the applicant being required to reclaim and repave Hancock Street northwesterly of Middle Street. DPW is concerned that if prorating the \$43,000 fee is approved by the City and Phase II is not built, the City will not have sufficient funds to do the necessary work in Hancock Street. For this reason, DPW recommends that the applicant be required to pay the full \$43,000 amount concurrent with Phase I, or that the applicant be required to provide a guarantee, suitable to the City, to assure that the full \$43,000 amount will be paid to the City.

**Memorandum**  
**Department of Planning and Development**  
**Planning Division**



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**To:** Chair Tevanian and Members of the Portland Planning Board

**From:** Barbara Barhydt, Development Review Services Manager

**Date:** March 21, 2008

**Re:** Amended Conditional Rezoning Agreement for The Village At Ocean Gate,  
Applicant, Village at OceanGate, LLC  
Tax Map 20, Block D, Lots 13, 14, 15, and 32; and Block E, lot 9.

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**I. INTRODUCTION**

The Village at OceanGate LLC submitted an application seeking amendments to the conditional rezoning agreement for the Village at OceanGate project located at 112 Newbury Street. The conditional rezoning agreement was adopted by the City Council on November 20, 2006 (Attachment 1). The agreement allows up to 176 residential units for both Phase I and II of this project with a maximum of 66 residential units in Phase II. Phase I of this project received subdivision and site plan approval on July 10, 2007 for a total of 84 residential units.

The applicant is seeking to incorporate 1,600 square feet of adjoining property to Phase I, so that Building #2 may be redesigned to remove a jog in the structure. In addition, the proposal is to reduce the amount of commercial space in Phase I to create more storage space for units, reduce the community contribution and other associated fees to a level proportional to Phase I, increase the number of residential units from 84 units to 92 units, revise the parking numbers and changing the exterior façade materials. The applicant's written submittal for an amendment is included as Attachment 2 and the revised plan set is Attachment 6.

The applicant is seeking the Planning Board's recommendation to the City Council for the proposed amended conditional rezoning agreement. The representatives for the applicant include Sebago Technics, David White, Architect, and Greg Shinberg, Shinberg Consulting. A total of 194 notices were sent for this project. This memorandum includes the following sections:

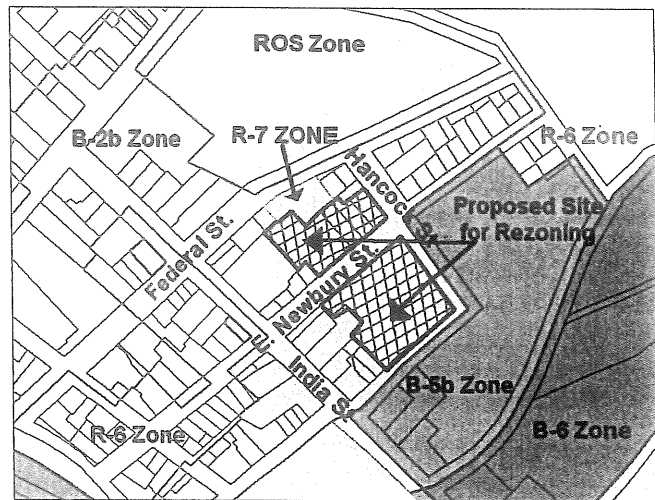
- I. Introduction
- II. Project History
  - A. Conditional Rezoning Agreement – 2007
  - B. Subdivision and Site Plan Review
- III. Proposed Amended Conditional Rezoning Agreement
  - i. Applicant's Proposal
  - ii. Potential Points or Revised Conditions for the Board's Consideration
- IV. Next Steps



## II. PROJECT HISTORY

### A. Conditional Rezoning Agreement 2007

On November 20, 2007 the City Council adopted the Conditional Rezoning Agreement for the Village at OceanGate Project, which rezoned the property, which is composed of two sites with a total of 1.81 acres, from B-2b to Conditional B-5b. The agreement was for a two-phase project that would have up to 176 units. At that time, there were two levels of structured parking in Phase I with a total of 145 on-site parking spaces. Phase II had one level of parking with 45 spaces. Excerpts of the agreement are listed below and the complete text is contained in Attachment 1:



Prepared by the Department of Planning and Development  
based upon GIS Workgroup Data.

1. Subdivision and Overall Site Plan.

- a. Phase I of the project, consisting of two buildings along Middle, Hancock and Newbury Streets.
- b. The Planning Board shall review both the Phase I and Phase II proposals and apply the site plan and subdivision standards of the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.

2. Permitted uses: Those uses allowed in the B-5b zoning district. The project shall include not less than 6772 square feet of commercial/retail space on the ground level along Middle Street and at the corner of Hancock and Middle Streets as depicted on the Plans.

3. Phase I shall consist of, at minimum Buildings 1 and 2, while Phase 2 shall consist of one or more buildings in accordance with §14-495(h).

4. Modifications to B-5b Regulations. The SITE shall be governed by the regulations applicable to the B-5b zoning district, except as follows:

- a. The maximum residential density on the SITE shall be 176 dwelling units.
- b. The maximum front yard setback shall be ten (10) feet, except that a front yard setback of no greater than sixteen (16) feet shall be allowed for the parking garage entrance and associated façade as depicted on the Plans for Phase I.
- c. The maximum height for the structures shall be:

Buildings 1 and 2: The maximum height of each building in Phase I shall not exceed 74 feet from average grade, as measured and approved by the Zoning Administrator.

- d. An underground electrical vault will be installed within the right of way of Newbury Street, the final location of such vault to be approved by the Planning Authority. The CITY hereby grants license for such installation and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.

5. Community Contribution. The community contribution under this Agreement shall be \$200,000.00, to be dedicated to extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension; \$5,000.00 dedicated to the India/Middle Street traffic improvements to be commissioned by the City; and \$5,000.00 to be dedicated to the Eastern Waterfront Post-Development Traffic Impact Study to be commissioned by the City. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a building permit for Phase I.

The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage located at Middle Street, Portland, with documentation of such participation provided to the City Planning Authority at minimum every two years.

6. Phasing: DEVELOPER may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525 (f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing for Phase II must be posted with the City prior to the issuance of a building permit for Phase I of the project. If Phase II fails to be developed within the time line set forth in this Agreement, the DEVELOPER shall nonetheless be required to install such improvements upon demand by the City. Otherwise, the City shall call on the performance guarantee and install said improvements itself.
7. A post development occupancy parking analysis shall be conducted by the DEVELOPER six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then parking for Phase II of the project shall be increased accordingly as determined by the Planning Board.

## **2. Subdivision and Site Plan Approval**

After the conditional rezoning agreement was adopted, the applicant submitted plans for subdivision and major site plan review. As the review process progressed, the applicant chose to reduce the number of residential units and reduce the number of parking decks for the overall

project. The approved plans for Phase I include two four-story residential buildings above one level of structured parking. The Phase I project findings include the following:

Proposed Uses:	84 residential units 6, 772 square feet for commercial space and restaurant One level of structured parking
Total Unit breakdown:	68 two-bedroom and 16 one-bedroom units
Unit breakdown:	Building #1: 40 two-bedroom and 4 one-bedroom units Building #2: 28 two-bedroom and 12 one-bedroom units
Parking Spaces:	Total 130 spaces on-site. The proposal is to lease 18 spaces. Eight leased spaces for residential units and 10 spaces for employees.
Parking Ratio:	1 space/unit and 10 employee parking spaces for commercial uses with the inclusion of the leased spaces. Parking for customers will be available through a Park and Shop program at the "Riverwalk" Garage with documentation of participation to the Planning Authority every two years.
Building Height:	Maximum height allowed for Buildings 1 and 2, shall not exceed 74 feet above average grade. Proposed heights are 57.04 feet in Phase I (measured from average grade).
Building Footprint	Total 65,675 square feet, both phases

The building elevations and materials at the time of the conditional rezoning and subdivision review consisted of the following components:

**PHASE I, BUILDINGS #1 AND #2:**

**Buildings #1** extends 80 feet along Middle and Newbury Streets and 210 feet along Hancock Street. The exterior building entrance is located along Hancock Street and all other access points are from the parking levels or the private courtyard. Commercial space was shown along Middle Street. The exterior material for the commercial spaces was a rough-faced gray granite veneer with dark green finish for window surrounds. The exterior materials for the residential building will be red brick with gray metal cladding on projecting balconies and the fifth story along Middle and Newbury Streets. The center portion of the building is proposed in brown brick with dark brown metal cladding.

A private courtyard separates Building #1 and #2, which will be developed on top of the parking garage roof (Attachment B). Access to the above grade courtyard is from a stairway along Newbury and internally from the buildings. The courtyard walls are proposed in a gold brick and the garage entrance is stepped back between 10 and 16 feet from Middle Street.

**Building #2** (closest to India Street) included a proposed 150 to 200 seat restaurant and other retail space. A sandstone veneer with bronze finish windows are proposed for the commercial space and brown brick with dark brown metal cladding are proposed for the balconies and the fifth story. The center section of the building will be clad in a gold brick with buff metal cladding. The Newbury Street side of the building was proposed with brown brick. Two residential entrances are proposed for this building: one within the commercial frontage along Middle Street; and the second along Newbury Street.

On July 10, 2007, the Planning Board held a public hearing on the subdivision and site plan for Phase I and Phase II of the Village at OceanGate. The Board found unanimously that Phase I met the conditional rezoning agreement and the Eastern Waterfront Design Guidelines. The Board voted unanimously to table Phase II regarding the plans conformance with the conditional rezoning agreement and the Eastern Waterfront Design Guidelines. A copy of the approval letter is included as Attachment 3). Please note that the Planning Board did grant the following waiver to reduce the overall contribution by half to the City's tree fund:

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5. Michael Farmer, memo, March 21, 2008
6. Revised Plan Set



A-11 1A

Conditional Zoning Agreement  
The Village At Ocean Gate  
112-113 Newbury Street, Portland, Maine

This agreement is made as of the 19<sup>th</sup> day of December, 2006 by THE VILLAGE AT OCEAN GATE, LLC, a Maine Limited Liability Corporation having a principal place of business at Boston, Massachusetts (hereinafter "DEVELOPER").

WHEREAS, DEVELOPER, as assignee of the rights of the purchaser under a purchase and sale agreement with the Village Café, Inc., has the right to purchase the property located at 112-113 Newbury Street and 40 Hancock Street, Portland, Maine, consisting of the property shown on the Portland Assessor's Map as parcels 20-E-9, 20-D-13-15 and 20-D-32 and described in the Cumberland County Registry of Deeds at Book 17317, Page 167, Book 3161, Page 504, Book 4357, Page 291, Book 3217, Page 83, Book 3004, Page 226, Book 3091, Page 703, Book 3752, Page 140, Book 3112, Page 131, Book 3024, Page 132, Book 3291, Page 260, Book 2996, Pages 235 and 237, Book 4357, Page 289, Book 4094, Page 222 and Book 9520, Page 73 (hereinafter the "SITE"); and

WHEREAS, the SITE is currently in the B-2b zoning district and is adjacent to a B-5b district to the southeast; and

WHEREAS, Developer has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the SITE to the B-5b zoning district subject to certain modifications and conditions set forth in this Agreement in order to accommodate a mixed-use development consisting of up to 176 residential units; space for a 150- to 200-seat restaurant; and sidewalk-level commercial space in a complex of buildings of varying sizes and heights (hereinafter the "project"); and

WHEREAS, the Portland Planning Board has determined that the rezoning would provide needed housing, would create a vibrant new neighborhood and would assist in revitalizing adjacent areas; and

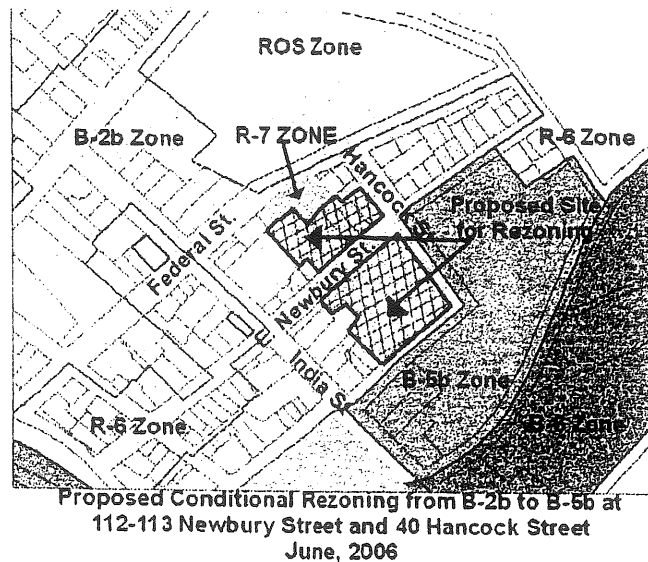
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the SITE; and

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the B-5b zone and that the rezoning would be pursuant to and consistent with the CITY's Comprehensive Plan; and

WHEREAS, DEVELOPER has agreed to enter into this Agreement, with its concomitant terms and conditions, which shall hereinafter bind DEVELOPER, its successors and assigns;

NOW, THEREFORE, in consideration of the rezoning of the SITE, DEVELOPER agrees to be bound by the following terms and conditions:

- 1b
1. Map. The CITY shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change. The underlying zone is changed from B-2b to B-5b.



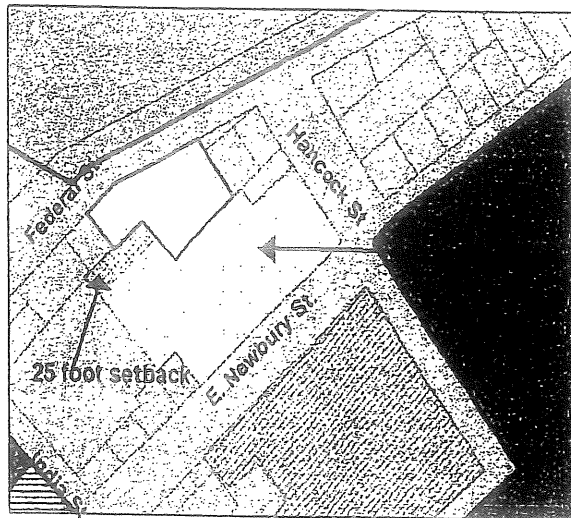
Prepared for the Department of Planning and Development  
by the City of Portland



2. Subdivision and Overall Site Plan. Except as otherwise provided in this paragraph 2, the **SITE** will be developed substantially in accordance with the Subdivision and Overall Site Plan, Attachment 1, submitted by Sebago Technics, Inc., dated 8/03/05 as revised November 17, 2006. Phase I of the project, consisting of two buildings along Middle, Hancock and Newbury Streets shall conform to the building elevations and architectural renderings submitted by David M. White, Architect, dated November 17, 2006, Attachment 2 (collectively, "the Plans for Phase I"). Phase II of the project, consisting of one or more buildings along Newbury and Hancock Streets shall meet the following requirements:

- a maximum of sixty six (66) residential units shall be provided; and

- lc.
- a minimum setback of twenty five (25) feet from the most westerly rear property line (abutting CBL 20-D-11) shall be provided and as illustrated below ; and



Required Minimum Setback of 25 feet in Phase II  
Depiction - Not to Scale

Prepared by the Department of Planning and Development  
dated upon 512 West 4th Ave Date



- the maximum height of any building(s) in Phase II shall be sixty-five (65) feet measured from the existing Newbury Street grade.

The Planning Board shall review both the Phase I and Phase II proposals and apply the site plan and subdivision standards of the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.

After the initial approval of the Plans for Phase I, and any plans submitted in connection with the development of Phase II, the Planning Board may, upon application of **DEVELOPER** and without the necessity of amending this Conditional Rezoning Agreement, approve subsequent changes to the Plans for Phase I which decrease building dimensions or reduce the density of development, provided that any such decrease or reduction shall nonetheless be determined to substantially conform to the Plans.

The project shall incorporate light fixtures in "Downtown Black," specifications to be provided by the Planning Authority during subdivision review. In addition, all other streetscape improvements will be consistent with the Hancock Street Extension Plans, which improvements are currently represented on the Plans.

3. Permitted uses: Those uses allowed in the B-5b zoning district. The project shall include not less than 6772 square feet of commercial/retail space on the ground level along Middle Street and at the corner of Hancock and Middle Streets as depicted on the Plans.

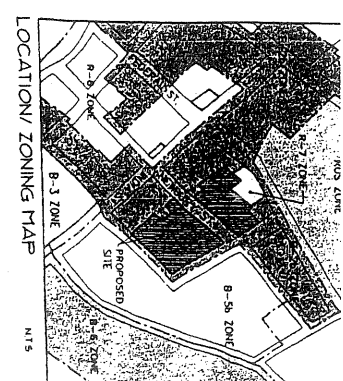
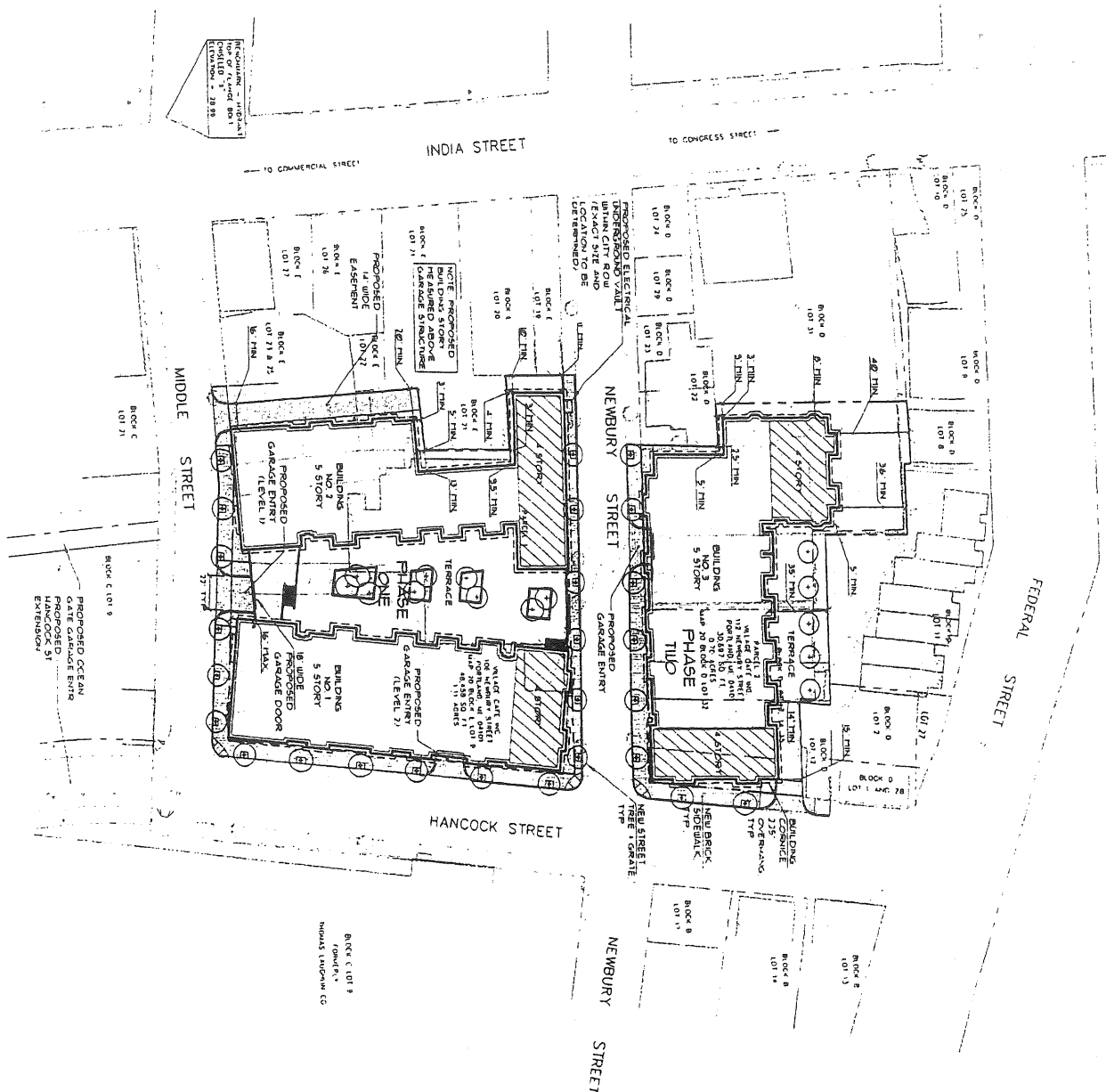
- 1d.
4. Phase I shall consist of, at minimum Buildings 1 and 2, while Phase 2 shall consist of one or more buildings in accordance with §14-495(h).
  5. Modifications to B-5b Regulations. The **SITE** shall be governed by the regulations applicable to the B-5b zoning district, except as follows:
    - a. The maximum residential density on the **SITE** shall be 176 dwelling units.
    - b. The maximum front yard setback shall be ten (10) feet, except that a front yard setback of no greater than sixteen (16) feet shall be allowed for the parking garage entrance and associated façade as depicted on the Plans for Phase I.
    - c. The maximum height for the structures shall be:

Buildings 1 and 2: The maximum height of each building in Phase I shall not exceed 74 feet from average grade, as measured and approved by the Zoning Administrator.

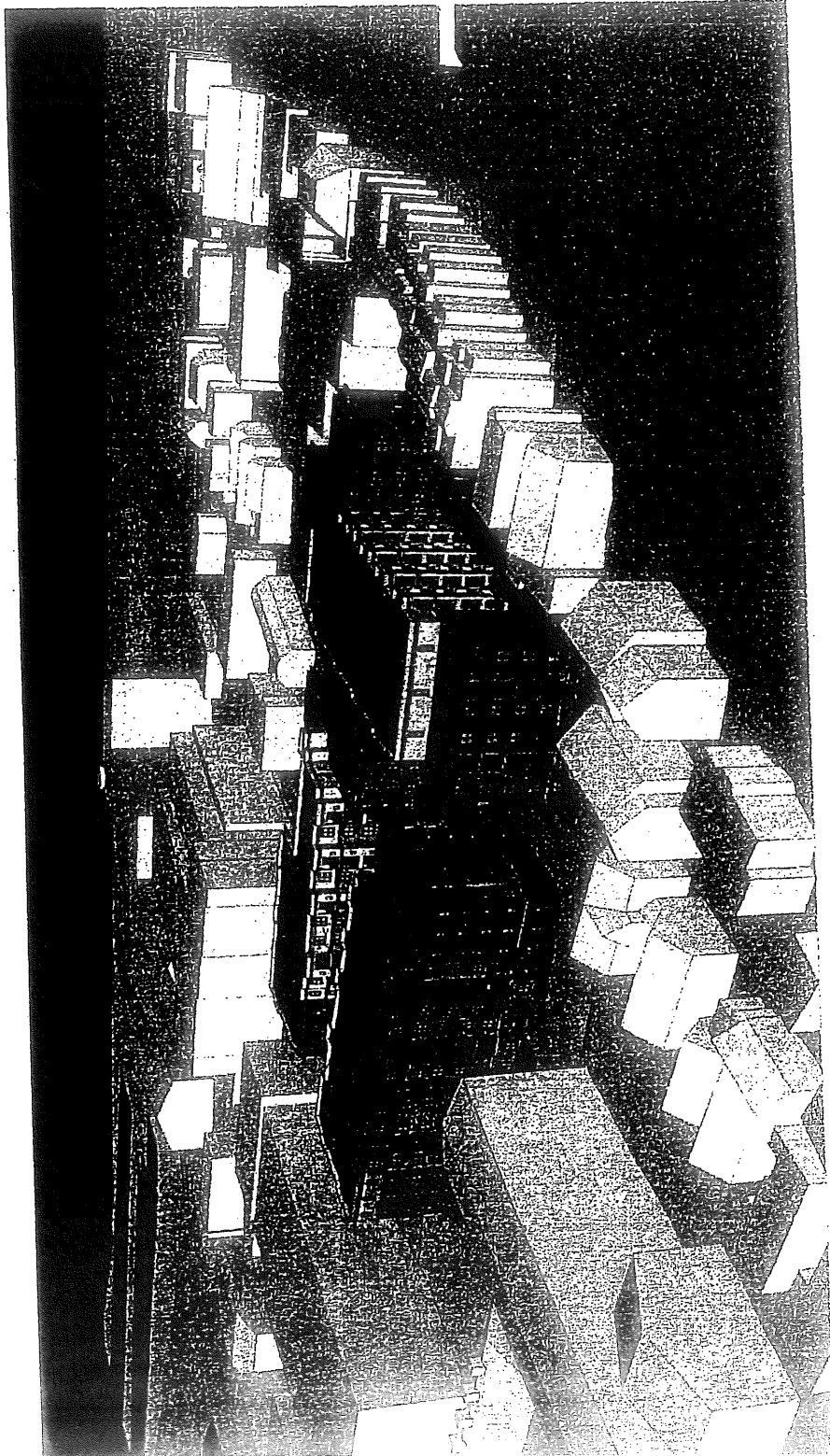
Building(s) in Phase II: The maximum height in Phase II shall not exceed sixty-five (65) feet measured from the existing Newbury Street grade.
    - d. The cornices of buildings, and storefront awnings along Middle and Hancock Streets, will extend over the street rights of way in various locations as shown on the Plans. The **CITY** hereby grants license for such overhangs and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.
    - e. An underground electrical vault will be installed within the right of way of Newbury Street, the final location of such vault to be approved by the Planning Authority. The **CITY** hereby grants license for such installation and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.
  6. Community Contribution. The community contribution under this Agreement shall be \$200,000.00, to be dedicated to extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension; \$5,000.00 dedicated to the India/Middle Street traffic improvements to be commissioned by the City; and \$5,000.00 to be dedicated to the Eastern Waterfront Post-Development Traffic Impact Study to be commissioned by the City. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a building permit for Phase I.

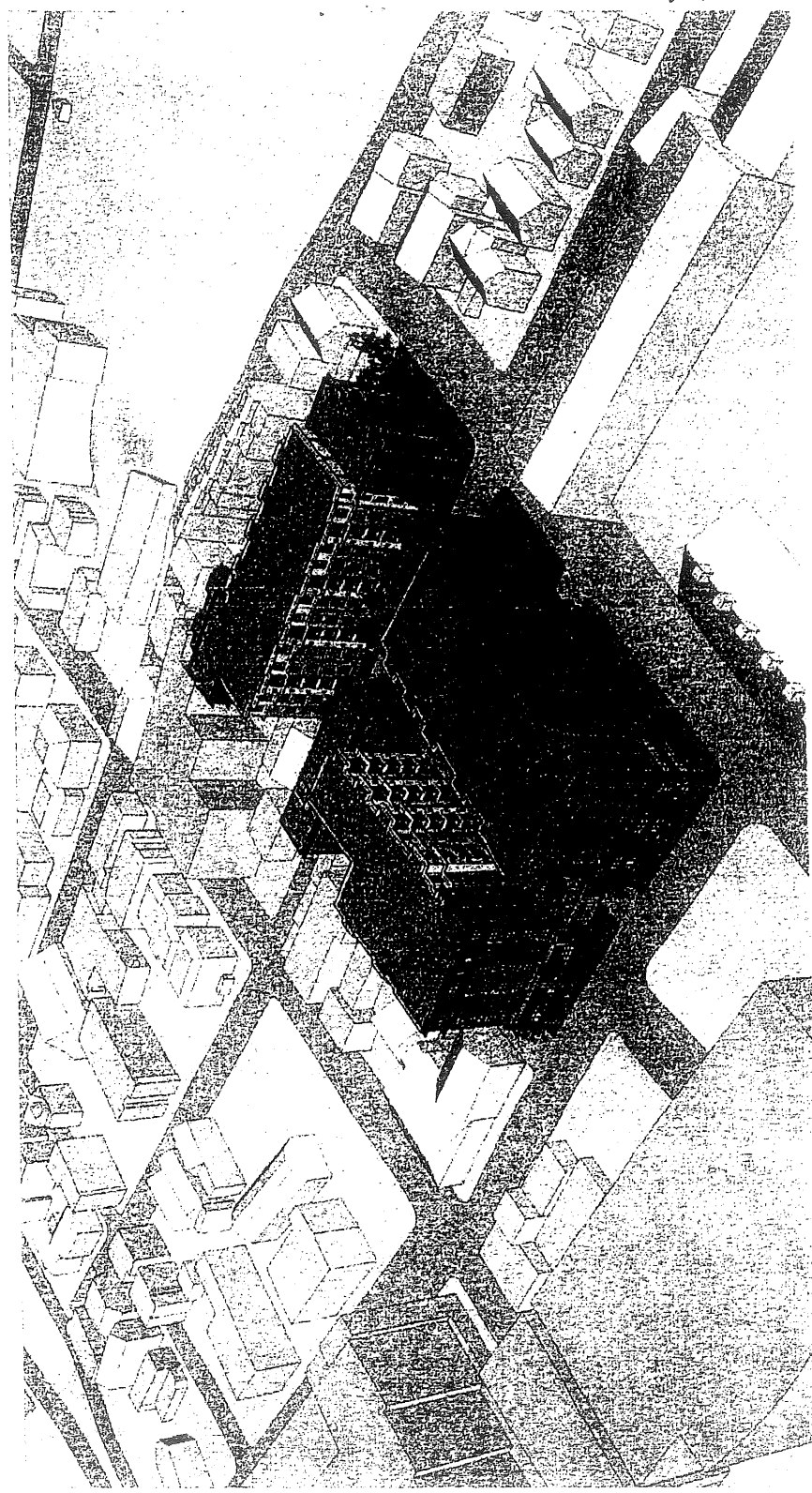
The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage located at Middle Street, Portland, with documentation of such participation provided to the City Planning Authority at minimum every two years.

- 1e
7. This conditional rezoning shall become null and void and the **SITE** shall revert to the existing B-2b zoning district in the event that **DEVELOPER** fails to commence construction of Phase I within two years from the date of the Council vote, with the ability of the Planning Authority, in its sole discretion, to extend this period by an additional one year and Phase II of the project must be commenced within two years following the issuance of a certificate of occupancy for Phase I. If any required approval, including the approval of the conditional rezoning, has been appealed, and if **DEVELOPER** fails to commence construction within one (1) year from the final disposition of such appeal, this conditional rezoning shall become null and void and shall revert.
  8. Phasing: **DEVELOPER** may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525(f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing for Phase II must be posted with the City prior to the issuance of a building permit for Phase I of the project. If Phase II fails to be developed within the time line set forth in this Agreement, the **DEVELOPER** shall nonetheless be required to install such improvements upon demand by the City. Otherwise, the City shall call on the performance guarantee and install said improvements itself.
  9. A post development occupancy parking analysis shall be conducted by the **DEVELOPER** six (6) months following the issuance of a certificate of occupancy for Phase I. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:parking space ratio, then parking for Phase II of the project shall be increased accordingly as determined by the Planning Board.
  10. The rezoning shall run with the **SITE**, shall bind and benefit **DEVELOPER** and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. Within thirty (30) days of the City Council's passing of the Conditional Zone, **DEVELOPER** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **SITE**. **DEVELOPER** shall provide to the **CITY** the Book and Page number of said recording.
  11. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
  12. Except as expressly modified herein, the development, use, and occupancy of the **SITE** shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.











Att 2 u

City of Portland, Maine  
Department of Planning and Development  
Conditional/Contract Rezoning Application

Application ID: 1325 Application Date: 03/05/2008 CBL: 020 E021001 Property Location: 61 India St

**Applicant Information:**

Village at OceanGate, LLC.

Name

Business Name

35 Fay Street, 107B

Address

Boston, MA 02118

City, State and Zip

617-482-3006

Telephone

617-482-3007

Fax

**Applicant's Right, Title or Interest in Subject Property:**

See purchase and sale agreement.

**Current Zoning Designation:** B56

**Existing Use of Property:**

Vacant lot - no structures.

**Proposed Use of Property:**

To construct 8 additional units that will be added to the approved conditional zoning agreement for the Village at OceanGate located at 112-113 Newbury Street.

**Property Owner:**

Pearl Properties Llc

Name

198 Tuttle Rd

Address

Cumberland, ME 04021

City, State and Zip

Telephone

Fax

Amendment A ☐

Amendment B ☐

Amendment C ☒

Section 14: \_\_\_\_\_

Requested: \_\_\_\_\_

**Planning Approval**

REVIEW TYPE: Committee Review

RECOMMENDATION DATE: \_\_\_\_\_

APPROVAL DATE: \_\_\_\_\_

ENACTMENT DATE: \_\_\_\_\_



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**Zoning Amendment Application**  
Department of Planning and Development  
Planning Division and Planning Board

1. **Applicant Information**

VILLAGE AT OCEANGATE, LLC

Name

35 FAY ST. 107B

Address

BOSTON, MA 02118

617 482 3006 617 482 3007

Phone

Fax

3. **Property Owner:** ☒ Applicant ☐ Other

Same as above

Name

Address

Phone

Fax

2. **Subject Property**

61 INDIA ST.

Address

PORTLAND, ME 04101

20 E 21

Assessor's Reference (Chart-Block-Lot)

4. **Billing Address:**

VILLAGE AT OCEANGATE

Name

35 FAY ST 107B

Address

BOSTON, MA, 02118

4. **Right, Title, or Interest:** Please identify the status of the applicant's right, title, or interest in the subject property:

See purchase & Sale Agreement

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. **Vicinity Map:** Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

6. **Existing Use:**

Describe the existing use of the subject property:

VACANT LOT / NO STRUCTURES

7. Current Zoning Designation(s): B56

2c

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

TO CONSTRUCT 8 ADDITIONAL UNITS THAT WILL  
BE ADDED TO THE APPROVED CONDITIONAL  
ZONING AGREEMENT FOR THE VILLAGE AT  
OCEAN GATE LOCATED AT 112-113 NEWBURY ST.

9. Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.)

10. Proposed Zoning: Please check all that apply:

A. \_\_\_\_\_ Zoning Map Amendment, from \_\_\_\_\_ to \_\_\_\_\_

B. \_\_\_\_\_ Zoning Text Amendment to Section 14-\_\_\_\_\_

For Zoning Text amendment, attached on a separate sheet, the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. ☒ Conditional or Contract Zone

A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. Application Fee: An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below.) The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

\_\_\_\_\_ Fee for Service Deposit \$200.00

(This fee is required for all applications in addition to the application fee listed below)

\_\_\_\_\_ Zoning Map Amendment \$2,000.00

\_\_\_\_\_ Zoning Text Amendment \$2,000.00

\_\_\_\_\_ Contract/Conditional Rezoning

2 d

Under 5,000 sq. ft.	\$1,000.00
5,000 sq. ft. and over	\$3,000.00

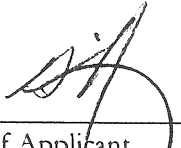
12. **Advertising/Notices:**

Legal Advertisements                      Applicant to pay a percent of the total advertisement

Notices    .75 cents each  
(receipt of application, workshop and public hearing notices will be sent)

NOTE: Legal notices placed in the newspaper for the public hearing meeting are required by State Statute and local ordinance. The cost of any and all newspaper advertisements, legal advertisements and Planning Board notices will be billed directly to the applicant.

13. **Signature:** The above information is true and accurate to the best of my knowledge.

	<u>Feb 28, 2008</u>
Signature of Applicant	Date of Filing
GREG SHINBERG, PROJECT MANAGER	

**Further Information:**

SHINBERG CONSULTING, LLC

Please contact the Planning Division for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

Portland Planning Board  
Portland, Maine



2e

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made and entered into this 27<sup>TH</sup> day of February, 2008 by and between Pearl Properties, LLC, a Maine limited liability company (Seller) and Village at Ocean Gate, LLC of 35 Fay Street, 107B Boston Massachusetts (Buyer).

### WITNESSETH:

1. PREMISES. Seller agrees to sell and Buyer agrees to buy the land situated at the rear of 61 India Street, Portland, Maine (collectively the Premises), such land being approximately ~~1,700~~ <sup>1,600</sup> square feet and depicted on Exhibit A, subject to the provisions of Section 14 below. The Westerly boundary of the Premises shall be no less than twelve (12) feet from the recently poured foundation on the Seller's remaining land. Seller shall have the right, but not the obligation to salvage, remove and retain for its ownership and use, any and all walls and bricks located upon the Premises prior to the closing. Included in the sale of the Premises will be a construction easement to use that approximately 14 foot wide area of Seller's retained land, also depicted on Exhibit A, for temporary construction purposes for the initial construction of Buyer's project to last the duration of the construction project and for the future maintenance of the portions of the constructed building thereof.

2. PURCHASE PRICE. Subject to any adjustments and pro-rations hereinafter described, Buyer agrees to pay for the Premises the sum of Two Hundred Thousand Dollars (\$200,000), payable as follows:

(a) Deposit. NO LATER THAN FEB. 29TH 2008 paid to Seller as a deposit ~~at the time of the execution of this Agreement~~, which shall be credited toward the purchase price at the closing.

(b) Cash at Closing. I shall be paid to the Seller by certified check or bank cashier (s) check at the closing.

2.A. ADDITIONAL CONSIDERATION. In addition to the Purchase Price, the Buyer shall deliver the following to Seller at closing:

(i) Pedestrian Easement. Buyer shall grant, subject to the condition below in this paragraph, Seller an approximately ~~six (6)~~ <sup>FIVE (5)</sup> foot wide pedestrian easement, in such form and on any other reasonably necessary terms and conditions reasonably satisfactory to Seller, over land of the Buyer from the remaining land of the Seller to Newbury Street in the area shown on Exhibit A. Buyer shall not be obligated to grant the foregoing easement to Seller in the event that doing so materially and adversely affects any municipal approvals for Seller's Bay House Condominium project.

(ii) Courtyard & 14-Foot Easement Paving. Buyer shall finish pave the courtyard area on Seller's remaining land lying easterly of the recently poured foundation on the Seller's

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AM  
DD

remaining land and westerly of the Premises. In addition, Buyer shall finish pave the 14-foot easement running from Seller's remaining land to Middle Street and more particularly described in an instrument recorded in the Cumberland County Registry of Deeds in Book 25615, Page 187. The finish paving shall be of the same type, finish and quality as the paving that Buyer installs on the Premises. Such paving shall be completed within THIRTY (30) days of paving the Premises but no later than DEC. 31<sup>ST</sup>, 2009. In the event that the Buyer defaults in its obligation to pave hereunder, Seller shall be entitled to any and all legal and equitable remedies including but not limited to any and all costs, expenses and attorney's fees associated and/or incurred by Seller in enforcing or attempting to enforce the provisions of this section. The provisions of this section shall survive closing.

3. TITLE. Seller shall convey the Premises to Buyer at the closing in fee simple with good and marketable title, free and clear of all liens. The Premises shall be conveyed subject to exceptions from coverage set forth in Ticor Title Insurance Company Owner's Policy # 74106-161258, as the same has been amended by endorsement, except for any mortgages or other liens referenced therein. In the event that Seller is unable to convey title as aforesaid, upon written notice from Buyer, Seller shall use reasonable efforts to remedy all title defects. In the event that said defects are not remedied within Forty-Five (45) days from the date of such notice, then the Deposit shall be returned to Buyer and this Agreement, and Seller (s) and Buyer (s) obligations hereunder, will terminate. Buyer may, at Buyer(s) option, elect to close notwithstanding such defects as may exist.

4. CLOSING. The closing of this transaction shall take place in the office of Tom Hanson, Bernstein Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029 (or, if the Buyer and the Seller mutually agree in advance and in writing, at another time and place) within Fifteen (15) Days of the date of the approval by the City of Portland City Council of the amended contract zone that shall include the Premises. Notwithstanding the foregoing, the closing shall occur no later than August 1, 2008. At the closing, Seller shall execute and deliver to Buyer, against payment of the balance of the purchase price, a Warranty Deed to the Premises (the Deed).

5. RISK OF LOSS, DAMAGE, DESTRUCTION AND INSURANCE. Prior to the closing, the Premises shall be the sole responsibility of Seller and Seller shall bear the risk of any loss to the Premises whether by fire or otherwise. In the event of any casualty loss, Buyer shall have the alternative of either terminating this Agreement by written notice, whereupon Buyer shall receive back the Deposit plus accrued interest, or of accepting the insurance proceeds made available, if any, and closing notwithstanding such loss.

6. INSPECTION. At all reasonable times during the term hereof, Buyer shall have the right to enter the Premises and perform such inspections, engineering tests, soil tests, surveys, hazardous waste investigations, water tests, or other inspections as Buyer deems necessary or appropriate provided that the Buyer's activities shall not damage the Premises. Seller shall have the right but not the obligation to have a representative present at each inspection. Buyer shall keep the Premises free of all liens in connection with its inspection of the Premises or shall

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remove any liens immediately upon being notified of them. Buyer agrees to indemnify, defend and hold Seller harmless from all damage, loss or claims relating directly or indirectly to any physical damage to the Premises resulting from inspections or studies of the Premises made by Buyer or its agents, which indemnity shall survive Closing. Buyer agrees to provide Seller with copies of each of the reports completed regarding the Premises. Buyer agrees to return the Premises as nearly as possible to its original condition after all of such tests and inspections. If the results of a hazardous waste or other investigation done pursuant to this Paragraph are unsatisfactory to Buyer, Buyer shall have the right to terminate this Agreement by written notice and receive back the Deposit, plus accrued interest.

7. REPRESENTATIONS AND WARRANTIES. As a material part of the consideration for this Agreement, Buyer represents to Seller that Buyer knows, has examined, and has investigated (or, prior to the closing, shall know, shall have examined, and shall have investigated) to Buyer's satisfaction, operating information, environmental condition, physical nature and condition of the Premises. Buyer agrees to take the Premises "AS IS", with all latent and patent defects and no warranty by Seller that the Premises are fit for a particular purpose. Buyer takes the Premises with the agreement that there are no express or implied warranties or representations by Seller as to its physical condition, quality of construction or workmanship, or any other matter. Furthermore, Seller makes no agreement to alter, repair, or improve the Premises.

8. POSSESSION. Seller shall deliver possession of the Premises to the Buyer upon transfer of title free and clear of all leases, tenancies and occupancies by any person.

9. ADJUSTMENTS, PRORATION AND CLOSING COSTS. Real estate taxes and assessments and all utilities shall be prorated as of the closing on the basis of the latest available tax bill. The Maine real estate transfer tax shall be paid equally by Seller and Buyer. The recording fee for the Deed and any expenses related to Buyer (s) financing will be paid for by the Buyer.

10. CONDITIONS PRECEDENT. Buyer (s) obligation to close hereunder is subject to satisfaction of the following conditions at or before closing:

- (a) As of the date hereof, and as of the date of closing, all of Seller (s) representations and warranties shall be true and correct.
- (b) Approval by the City of Portland City Council of the amended contract zone that shall include the Premises.

If the above listed condition is not satisfied within the time specified or if no time is specified, by the closing date, Buyer shall be entitled to receive back the Deposit plus accrued interest, whereupon this Agreement shall terminate and neither party will be under any further obligation hereunder.