

20-D-32

113 Newbury St.

Bay House

~~Village at~~

~~Green~~

~~Coastway~~

NEEDELMAN  
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**Memorandum  
Planning and Urban Development Department  
Planning Division**



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**To:** Carol Morrissette, Chair and Members of the Portland Planning Board  
**From:** Bill Needelman, Senior Planner  
**Date:** June 8, 2012  
**Re:** Hampshire Street Rezoning and B-2b Text Amendments Workshop  
Hampshire Street Properties, Applicants

**Meeting Date:** June 12, 2012

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**I. Introduction**

At the request of Hampshire Street Properties, represented by Tom Federle, Federle/Mahone, and Kevin Bunker, Developer's Collaborative, the Planning Board is requested to hold a workshop to review proposed zone map and text changes in the vicinity of 24 Hampshire Street. The applicant proposes changing the zone map on properties held by the applicant from R-6 to B-2b and to amend the text of the B-2b to allow taller structures and smaller yard setbacks. Board members should note that, as proposed, the building height relaxations are proposed to be geographically limited to portions of the subject property near Franklin Street.

The purpose of the proposal is to allow a 5 story residential structure with four floors of units over a single deck of parking. The B-2b zone allows a residential density above the R-6 zone necessary for the proposal and also allows for commercial uses that the applicant may want to pursue on parcels under their control and nearby the subject development site.

The workshop was advertised in the June 4 and June 11, 2012 editions of the Portland Press Herald and was noticed by mail to 144 neighboring property owners and interested parties.

**II. Site Description**

The applicant's holdings proposed for rezoning comprise nine parcels of property located between Hampshire Street and Franklin Street. The immediate development

parcel(s) lies between Federal Street to the north and Newbury Street to the south. These parcels comprise the entirety of the city block formed by Hampshire, Federal, Franklin and Federal Streets excepting a single residential parcel.

Two additional lots located south of Newbury Street and west of Hampshire Street are also proposed for rezoning to B-2b.

*Neighborhood Context:* The Hampshire Street neighborhood is comprised of mostly mid-19<sup>th</sup> century frame residential structures located on close knit small lots oriented to the street. There is a well-established pattern of development and the area has retained an urban density that has been lost in many of the surrounding neighborhoods.

*Subject Buildings:* The buildings owned by the applicants are a mix of residential structures which range from occupied multifamily blocks to vacant single family houses. Many of the buildings on lots considered for rezoning are distressed and vacant.

*Historic Preservation:* While the neighborhood is home to a sizable collection of “pre-fire” (earlier than 1866) buildings, the area is not a designated historic district.

Planning staff with Historic Preservation Program staff have conducted a cursory evaluation of the subject buildings and determined that the majority of the buildings have lost their historic value due to alteration and/or deterioration. There is a brick apartment building at 96 Federal Street that is in solid condition and retains its original character and the applicant proposes to retain this structure. 32 Hampshire Street, while not expressly identified for demolition by the developer, presents more of a challenge as it appears to have retained original early architectural detail; but, also displays significant deterioration. If the applicant proposes to demolish 32 Hampshire Street, the Historic Preservation program will need to make a determination regarding it’s eligibility for designation as a protected historic structure. *(Note: If the applicant is successful with the rezoning, their next step will be a site plan and subdivision review where historic preservation will receive additional analysis.)*

*Franklin Street:* The street grid in the area was significantly interrupted by the 1960’s construction of Franklin “Arterial” which truncated Federal and Newbury Streets at the westerly edge of the subject properties. The site’s location along Franklin Street, which is depressed below its historic topography, presents challenges to the development and the neighborhood. While there are have been and continue to be ongoing evaluations of how Franklin Street should redevelop in the future, the feasibility analysis for preliminary concepts has not yet been conducted. Much of the planning for Franklin



Hampshire Street looking north

Street has considered the potential to reconnect Federal Street, Newbury Street, or both streets to Franklin. The applicant's proposal has raised the question of street reconnection and the Board has been asked by the District City Councilor, Kevin Donoghue to consider these related issues in conjunction with the subject development (see Attachment 1.1.)

*Current Zoning:* Zoning for the area is a mix of R-6 and B-2b with the residential zoning concentrating on areas with a consistent residential fabric. The B-2b, however, interweaves into the residential area and from the street one may not know where the zone lines begin and end based solely on existing use and development patterns. A map of existing zoning and the proposed lots for amendment are provided in Attachment 3 of this memo.

### **III. Proposed Development**

The applicant's submission, Attachment 4, includes a description of the proposed use of the property followed by concept plans and renderings. In summary, the applicant is proposing to demolish 6 (potentially 7) residential structures containing approximately 19 apartment units to be replaced by a single 26 unit residential condominium building located adjacent to Franklin Street.

196 Federal Street, the brick apartment building at Hampshire and Federal Streets is proposed to be retained as a component of the development and may be converted to mixed live/work artist's studios, which are allowed under the B-2b zoning, but not under the R-6.

The area of greatest uncertainty with the site involves 32 Hampshire Street, which was noted in the Historic Preservation discussion above. The applicants are not currently showing a new structure on the site of 32 Hampshire Street, nor are they showing its removal; but, they have noted to staff verbally that there are significant challenges to its redevelopment due to its configuration and condition. The Board may want to explore with the applicant's team their plans for 32 Hampshire Street.

The two parcels located south of Newbury Street that are proposed for rezoning are intended to have their existing structures demolished to make way for future development.

### **IV. Proposed Zone Amendments**

The applicant proposes that the properties under their control in the R-6 zone west of Hampshire Street and south of Federal Street be rezoned to B-2b. See attachment 3 for the rezoning map.

In addition to the map change, the applicant's goals are to allow 65 foot buildings close to Franklin Street, to allow 10 foot side yard building setbacks, and to allow zero building setbacks along public street rights of way. All of the above require text changes to the B-2b zone language.

The text changes are summarized below and the applicant's "track changes" edits to the ordinance text is provided in Attachment 4 of this memo.

*Text Change Summary:*

The applicant requests consideration of B-2b text changes to allow the following:

- *Higher buildings* (65 feet from 45 feet) within 65 feet of Franklin Street.
- *No building "step backs"* for buildings taller than 45 feet within 65 feet of Franklin Street.
- *Smaller side yard setbacks* (10 feet from 20 feet) when residential uses in the B-2b abut residential zones (Note: 10 feet is the current standard for non-residential B-2b uses abutting residential zones.)
- *Eliminating Rear yard setbacks along street rights of way* (as is already allowed for front and side yards.)

**V. Potential Alternatives to the Applicant's Proposal**

When considering the proposed map and text changes, the Board may consider applying the amendments somewhat more broadly than included in the application – at least for the purposes of advertisement prior to a public hearing.

*Map Change:* The proposed map change shown in Attachment 3 includes only the properties under control of the applicant. If approved as shown, north of Newbury Street there would be only one parcel of land left within the block defined by Hampshire, Federal, Franklin and Newbury Streets. South of Newbury Street, two lots at the corner of Hampshire and Newbury Streets would remain in the R-6 along with an isolated R-6 parcel adjacent to Franklin Street. At the workshop, staff will ask the Board whether the above noted parcels, at minimum, should be considered for a map change for the purposes of advertisement.

NOTE: The abutting property owner at 40 Hampshire Street, Dr. Darcy Thomas, has provided a letter expressing concerns over the application. Dr. Thomas would like to retain the existing 20 foot setback requirements afforded by the B-2b zone abutting residential zones (which presumes that the map change moves forward.) She also has concerns regarding taller buildings. However, if the B-2b map change moves forward, she would like her property to be included in B-2b zone.

*Text Change:* As noted above, the taller building heights and the related elimination of building step backs above 45 feet are tied to proximity to Franklin Street. Tying larger buildings to major arterial streets is a rational concept that may warrant application beyond Franklin Street. The B-2b zone is located in several locations on the Portland

Peninsula and the Board may consider whether Franklin Street is uniquely suited for accommodating larger buildings, or whether right of way width could be used as the determinative criteria for allowing taller buildings (with or without “step backs”.)

**Streets Adjacent to B-2b Zones, Approximate Right of Way Widths:**

Franklin Street at Federal Street:	+/-170 feet
Franklin Street at Congress Street:	+/-190 feet
Forest Ave at Portland Street:	+/- 80 feet
Forest Ave at Falmouth Street:	+/- 86 feet (off-peninsula )
Washington Ave at Cumberland Ave:	+/- 66 feet
Washington Ave at Madison Street:	+/- 66 feet
Portland Street at Parris Street:	+/- 66 feet
Portland Street at High Street:	+/- 95 feet
Congress Street at Mellen Street:	+/- 65 feet
Congress Street at Deering Street:	+/- 65 feet
Congress Street at India Street:	+/- 69 feet
Congress Street at Washington Ave:	+/- 66 feet

If the Board is interested in a more widely applied text change for taller Building Heights, a map for application will be provided for the Public Hearing.

**VI. Relevant Policies**

When reviewing the proposed text changes against the land use policies of the Comprehensive Plan, there is limited specific guidance. The Hampshire Street neighborhood has not been subject to specific neighborhood planning process and the Franklin Street planning process is still ongoing. Preliminary results for Franklin Street (*Reclaiming Franklin Street: Report of the Franklin Street Arterial Committee*) were accepted by the City Council but were not incorporated into the Comprehensive Plan. The results of the Franklin, Phase 1 process are found at:

<http://www.pactsplan.org/reallybigfiles/Franklin%20Street%20Report%20final%2011.30.09.pdf>

Franklin, Phase 2 is anticipated to begin in the fall of this year.

**Housing Plan:** Board members should look to the City's 2002 Housing Plan, *Housing: Sustaining Portland's Future (the Housing Component of the Comprehensive Plan)* for guidance.

As noted in the ongoing *India Street Building Height Evaluation* (also reviewed at the 6-12-12 workshop,) the Housing Plan suggests a balance between increase in the supply and density of housing while simultaneously maintaining neighborhood integrity and stability. While the above goals are not contradictory or mutually exclusive, they do present a tension between encouraging density and building within an established neighborhood scale. Board members are encouraged to review the findings of the Housing Plan at:

<http://www.portlandmaine.gov/planning/housingplan.pdf>

**R-6 Policies:** Excerpted from the Future Land Use chapter of the Comprehensive Plan, the policies of the R-6 zone are as follows:

***R-6 RESIDENTIAL and PROPOSED R-6 OVERLAY ZONE***

***Location:*** The R-6 zone is found primarily on the peninsula in the neighborhoods of Parkside, West End, St. John Street area, Munjoy Hill and Bayside.

***Current and Proposed Zoning:*** All land currently zoned R-6 Residential.

***Discussion:***

*The intent of the R-6 zone is to set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses.*

*The R-6 zone permits single and two-family dwellings, multi-family dwellings, single-family manufactured housing units, lodging houses, home occupations, special needs independent living units bed and breakfast establishments, parks, and municipal facilities. Conditional uses include sheltered group homes, schools, long and intermediate care facilities, churches, private clubs, community hall, hospital, colleges, professional offices, and day care facilities. The minimum lot size for a one or two-family dwelling is 4,500 square feet. There is a minimum of 1,000 square feet of land area per dwelling unit for multi-family housing. The minimum land area per room in a lodging house is 250 square feet and the intermediate care facility requires 8,000 square feet for the first 35 residents and then 350 square feet for each additional resident.*

*Currently, the R-6 Zone Amendments for Small Lot Infill Development are being prepared to allow undersized vacant lots to be developed at former density and*

*setback requirements. The intent of these amendments is to encourage new housing on small infill lots in a manner consistent with the existing compact lot development pattern typically found on the peninsula. The current R-6 zoning text in many respects does not reflect the existing development pattern, so the amendments are intended to address the development of vacant lots that are less than 10,000 square feet. The proposed amendments include changes in the space and bulk requirements, such as front yard setbacks, side yards, maximum lot coverage, parking requirements, and minimum lot sizes. The R-6 small lot provision provides flexibility from the normal R-6 requirements. The flexibility is balanced with design standards to ensure buildings of high quality that blend with the character of the neighborhood. The design standards being developed address proportion and scale, balance, articulation, massing, context, orientation to the street, and materials.*

*Other potential text amendments will be considered to update the residential zones in conformance with the recommendations of Housing: Sustaining Portland's Future. Neighborhoods are encouraged to address the city's housing issues through the Neighborhood Based Planning Process.*

**B-2b Policies:** Excerpted from the Future Land Use chapter of the Comprehensive Plan, the policies of the B-2b zone are as follows:

**4. B-2b COMMUNITY BUSINESS**

**Location:** *The B-2b zone is a newly created zone that is in accordance with the Transportation Plan and housing recommendations. It is primarily located on the peninsula along portions of Washington, India Street area, portions of Forest Avenue and Portland Street, and Congress Street. It is also located along Forest Avenue between Preble Street and Woodford's Corner.*

**Current and Proposed Zoning:** *All land currently zoned B-2b.*

**Discussion:** *B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development patterns exist on-peninsula or in areas where a neighborhood compatible commercial district is established off-peninsula and each area exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern. Building additions are encouraged but not required to meet the maximum setbacks of 14-185(c). The uses are generally the same as in the B-2 zone, except some of the auto related uses and drive-through facilities are more limited. There is no minimum lot size for non-residential uses. The B-2b zone has a required maximum front yard setback of 10 feet, thus development will be close to the street and maintain the urban*



*character of these areas. Maximum impervious surface ratio is 90%. No changes to the zone are anticipated at this time.*

A more complete review and analysis of the proposed rezoning against the Comprehensive Plan will be provided for the Public Hearing.

## **VII. Development Considerations**

While the Board is considering the proposed rezoning of the subject properties, members should consider other issues related to the development of the site. The following issues will be thoroughly addressed pending a site plan and subdivision application:

- *Sidewalks along Franklin Street:* The Department of Public Services has plans to construct a temporary asphalt sidewalk from Middle Street to Congress Street along the subject property boundary. The applicant's proposal will need to be coordinated with DPS plans as well as the development requirements for sidewalks along public Street frontages. The final material, construction sequence and funding of sidewalks along Franklin should be established as part of the development's review.
- *Future Franklin Street Design and Street Reconnections:* While a design for Franklin Street redevelopment has not been developed, the subject project should not restrict the opportunities for new treatments for the street. Planning Staff, DPS and the applicants will need to coordinate efforts to ensure integration of the new development into the Franklin corridor planning process. As noted by the 1<sup>st</sup> District City Councilor in Attachment 1, the issue of reconnecting Federal and Newbury Streets to Franklin has already been raised as an issue for consideration.
- *B-2b Design Standards and 1<sup>st</sup> floor architecture:* Should the rezoning be approved by City Council, the applicant will need to demonstrate adherence to the applicable B-2b standards in the city Design Manual. The prominence of the 1<sup>st</sup> floor garage use will likely be the significant issue to be addressed for the concept plans provided.
- *Treatment of Future Development Sites:* As noted above, at least three sites are proposed for rezoning that have no immediate development plans: 24 Hampshire Street and the two lots south of Newbury Street. If buildings are to be removed from these sites with no immediate development plan in place, the applicant should show how the sites will be used and treated in the interim condition. If the sites are to be used for off-site parking, such parking should be designed, reviewed and approved concurrently with the development review of the subject project.

**Attachments:**

Attachment 1	Public Comment
Attachment 2	Applicant's Neighborhood Meeting information
Attachment 3	Proposed Rezoning Map
Attachment 4	Proposed B-2b Text Changes

Applicant's Submission Packet

Dear members of the Planning Board,

I'm writing in support of the proposed map amendment from R6 to B2B sought by Hampshire Street Properties. With its frontage on an arterial and being across the street from intensely developed B3 zones, B2B, which represents a modest upzone from the R6, is appropriate. The text amendments sought to the B2B should be given your critical consideration and in pursuit of the answer to the question of what conditions provide for this degree of change in the underlying B2B. Granted, the project is on Franklin Street, but to date, the project does not engage Franklin Street. Also, while this is an appropriate location to consider this urban scale of development, it demands a companion urban scale on the street network, including the possibility of reconnecting East Newbury and/or East Federal Streets to the outbound lanes of Franklin Street. The text amendments sought for height and setbacks to the B2B become more appropriate if this is a corner parcel rather than part of a superblock. Moreover, if this is the intensity of development we will continue to see in the "Rectangle Beneath Congress," we will need a street grid to support it. With this project holding the would-be corners of E Newbury and E Federal at Franklin Street, and seeking such a substation upzoning by way of the map amendment, but especially the text amendment, reconnecting aspects of the street grid should be considered in conjunction with its approvals, Thanks for your attention.

All Best,  
Kevin Donoghue  
City Council, District One

Comments from Christian Milneil to Planning Board  
June 1, 2012

I just stopped by City Hall to have a look at the preliminary drawings for the Hampshire Street project, and they stink. Not only is there a blank parking garage wall on Franklin Street, but also on Newbury and Federal. There are no active street-level uses whatsoever - no windows and no doors except the gaping maw of the garage.

At least it would make a nice place for homeless folks to hang out (the Walker Terrace building on Congress Street recently had to install taller fences to keep the homeless out of its own street-level garage). Call it street-level retail for the meth trade.

The developer is Kevin Bunker, who's a good guy and receptive to neighbor concerns. Part of the problem is that the city is forcing him to provide lots of parking on a small site, with two entrances to his garage. That dictates that garage entrances have to be on ground level on Newbury and Federal, where they'd take up the entire street-level frontages. There's no room for ramps leading underground without losing the required amount of space for parked cars.

Here's how the city could help: 1) reduce parking requirements; 2) sell or deed the developers a 10' strip of land that's currently the right-most lane of Franklin Street (which, as the phase 1 study noted, should go away anyhow) to give the building some extra space and hide the garage behind a street-level lobby or something; 3) allow them to build a driveway leading into the garage from Franklin Street at its current level, such that the garage would be below the grade of Federal and Newbury; 4) in anticipation of the imminent reconstruction of Franklin, the city can waive certain street infrastructure costs (like sidewalk construction and street trees) in exchange for requiring the developers to build a more-expensive underground garage.

As it's currently designed, I'm pretty sure that the plans would fail to meet the city's design standards that require active street-level facades. So there's legal justification to complain about this stuff, and I'm confident that most planning board members would agree with us. Still, as many neighbors as possible should speak out about this.

For the current planning board meeting it looks like they're only asking for a rezoning, from R6 to B2b. The site plan application, anticipated later this summer, would have more architectural details. I think it's worth it for us to support the rezoning with a strong caveat that we'll be holding their feet to the fire for active street-level facades.

I'm copying Kevin and Bill Needelman on this. Bill, could you please share these comments with the Planning Board as public testimony? Thanks,  
-Christian

<http://christianmilneil.com>

The Vigorous North:  
A field guide to the wilderness areas of American cities.

<http://www.vigorousnorth.com>

Att. 1.3

Dr. Darcy Thomas  
142 Lake Street  
Arlington, MA 02474  
Owner of 40 Hampshire St  
Portland, ME 04101

City of Portland Planning Board, Carroll Morrissette, Chair  
City of Portland, Maine  
389 Congress Street  
Portland, ME 04101-3509

June 4, 2012

Dear Carroll Morrissette,

I am writing to you regarding the proposal to change the zoning, height, and setbacks around Hampshire Street. I am the current owner of 40 Hampshire Street in Portland. The plans for development around my property will dramatically change my neighborhood. I have been thinking about the proposed changes and how that will impact me. Although I welcome plans that will improve my neighborhood, I am afraid my property will lose some important aspects that I cherish in a living space.

Of the proposed changes, I am neutral regarding the proposal to change the zoning on Hampshire Street. However, if the zoning surrounding my property is changed to B-2b from R-6, I would like to be included in this change seeing that my property lies in the middle of the proposed development.

I am not in favor of the proposed change to decrease setbacks from 20 feet to 10 feet. Along the south and north side of my property, this will not significantly affect me, but it will negatively affect me along the west side of my property. With the present one story garage to my west side, I currently have open space and light coming through my west side windows. With the proposed plan, I would have a large building to my west side blocking the light and open space that is now there. With 10 foot setbacks in addition to a building up to 65 feet high, there would be minimal light and space which are elements I do not want to give up. As far as the height increase, I am also weary of a change in my surroundings that may affect the light in my own space. As mentioned above, the height increase will also shadow my building and take away a large amount of afternoon light that now brightens my property.

I also am concerned about how this large project will affect everyone living at 40 Hampshire Street. It is a huge construction, and I would like to hear more about how my building and everyone there will be protected during this development process.

I do not want to impose negatively on welcome improvements, but I want to express my concerns as to how my property and all living there may be affected by these major changes.

Sincerely,



Darcy Thomas

## William Needelman - The Hampshire St Project

From: ISNA <info@indiastreet.org>  
To: Bill Needelman <wbn@portlandmaine.gov>  
Date: 6/8/2012 3:21 PM  
Subject: The Hampshire St Project

Planning Board Members

The Hampshire Street Project.

The India Street Neighborhood Association has had many meetings involving the subject project three have been advertised, public meetings. Tom Federle and various others have met with us for months, beginning long before there were any firm plans. Their involvement with the community has been full and open from the beginning. In all of the meetings they have used our input to help guide, design and time the project.

The hampshire street blocks are an example of the blight that grew in our neighborhood as a result of the creation of the Franklin Arterial. Many dwelling units were padlocked and buildings were beyond rehabilitation. We were and are eager to have this specific small area redeveloped. Existing zoning, almost everywhere in the ISN, does not allow the construction of the kinds of developments that the ISN wants and for which there is an increasing market demand, This project is as near perfect as we could wish.

We have heard a very small minority who only want brick or other more usual construction in the ISN. Of course, some people do not come to neighborhood meetings and just quietly form opinions from what they happen to pick up. Perhaps, if they participated, they would have a different opinion. In any case this is just what the ISNA has been seeking and the community needs.

Please accept this proposal.

Hugh Nazor 6/8/2012

FR.2.

# FEDERLE | MAHONEY

Jennifer Yeaton, Office Manager  
Planning and Urban Development  
City of Portland  
389 Congress St., 4th Floor  
Portland, ME 04101

June 4, 2012

RE: Neighborhood Meeting Certification

Dear Jennifer:

I, Thomas B. Federle, on behalf of Hampshire Street Properties, hereby certify that a neighborhood meeting was held on June 1, 2012 at Micucci's Grocery at 45 India Street, Portland Maine at 5pm.

I also certify that on May 22, 2012 invitations were mailed to all addresses on the mailing list provided by the Planning Department, including property owners within 500 feet of the proposed development and the residents on the "interested parties" list.

I am enclosing a copy of the invitation sent, the sign-in sheet, and the meeting minutes.

Best Regards,



Thomas B. Federle  
Hampshire Street Properties

Enc.: Copy of invitation sent; sign-in sheet; meeting minutes

8.2.3

# FEDERLE | MAHONEY

## Neighborhood Meeting Invitation

May 22, 2012

Dear Neighbor:

On behalf of Hampshire Street Properties, I am writing to invite you to join a neighborhood meeting to discuss an application for a zoning map and text amendment relating to a plan for redevelopment of properties located at 24 Hampshire Street, 32 Hampshire Street, 42 Hampshire Street, 160 Newbury Street, 167 Newbury Street, 169 Newbury Street, 96 Federal Street and 100 Federal Street. **The meeting information is as follows:**

- Meeting location:** 2<sup>nd</sup> Floor of Micucci's Grocery Store at 45 India Street (enter from Middle Street)
- Meeting date:** June 1, 2012
- Meeting time:** 5:00 pm to 6:15 pm

The City land use ordinance requires that property owners within 500 feet of the proposed development and residents on an "interested party" list be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call me at 207.841.4092.

Regards,

Thomas B. Federle

*Note: Under Section 14-32(C) and 14-525 of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within three weeks of submitting a preliminary application or two weeks of submitting a final site plan application, if a preliminary plan was not submitted. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to the Planning and Urban Development Department, Planning Division 4<sup>th</sup> Floor, 389 Congress Street, Portland, ME 04101 or by email to: [bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)*



11.2.1

Hampshire Street Properties  
Neighborhood Meeting Minutes

6/1/12

Meeting was held at Micucci's Grocery at 45 India Street. About 20 people attended. Tom Federle started the meeting shortly after 5pm and gave an introduction:

- We have had several informal neighborhood meetings over the past 12 months; this is the official Neighborhood Meeting required by the ordinance
- Meeting part of a zone change process
- Separate from site plan review
- Another official Neighborhood Meeting will be scheduled at time of submitting site plan application
- Proposing B2b change for properties we own
- Several other nearby owners are potentially interested in joining application to have their properties in the new B2b zone
- Requesting 65' height within 65' of Franklin
- 0' setback from streets
- Reduction in side yard setbacks when abutting residential zones

Building overview:

- Planning 26 units
- High density development up against Franklin
- 24 parking spaces on site with 2 off-site
- 96 Federal: a few possibilities including as-is; rehab, apts, condos, artist live-work, or apts w/1<sup>st</sup> floor gallery space
- 32 Hampshire: demo; redeveloped as commercial space; perhaps w/restaurant on 1<sup>st</sup> floor

Questions:

Q: What about property that you don't own on the block—will they clean up their property?

A: We can't speak for the owner; the owner has not expressed interest in selling; we are in touch with the owner but do not know what their intention is regarding maintenance of the property; believe the intention is to keep the building as a three-unit apartment.

Q: Façade materials?

A: Insulated metal panels, glass, metal siding, fiber cement

Q: What is zoning in the rest of the neighborhood

A: The B2b zone is above the block from Federal Street to Congress and below from Middle Street up to about halfway up the block below the development. Other areas of the neighborhood running towards India Street are a mixture of B2b and R6 with some small contract zones in the area as well.

Q: Will it delay your project if they look at the rest of the R6?

A: Hugh Nazor from public answered. Said the City has contacted neighborhood association and while the plan is not to delay any current development proposals there is general consensus that there should be a comprehensive look at the area's zoning which future projects would then be governed by. Hugh clarified that the Neighborhood Association supported the zoning change being requested and that the broader need for a comprehensive zoning scheme should not slow this zoning request down.

Q: Prices? Sizes?

A: 700-1700 sf; \$average \$275/sf; have received some unsolicited early interest

Q: Would you build less parking is you could?

A: No. All our market research suggests people expect and demand a parking space with a condo.

Q: What about parking for the proposed restaurant?

A: We will have a parking issue with a new building at 32 Hampshire; no parking on site; we are still working through options for parking associated with that corner lot.

Q: Will there be an intersection at Newbury & Franklin?

A: We don't know; that is part of a larger planning process on its own, and is likely to move at a slower timetable. We have taken substantial cues from the Neighborhood Association on both design and use of the property and we have also responded to their repeated request that we move forward with our redevelopment now, not later.

Q: How many sf is the lot for the condo building?

A: 12,981.

Q: What justifies the B2b? It speaks to a different urban texture. The potential Franklin connections add "opportunities" to the building and help with the B2b texture.

A: B2b is for high density urban settings like this neighborhood. Reconnecting severed street makes sense. But we were asked by the neighborhood to get going and we've got to do that based upon what we have. We are aware and hopeful that the Franklin reclamation will move forward but we don't have any way of knowing exactly when, whether or how.

Q: "Something" will happen. The building will need to engage Franklin. Many buildings have turned their back on Franklin. This building should not turn its back on Franklin. It is a pretty façade but it is the back of a building.

A: (David Lloyd) Completely disagrees. This will be the most dynamic façade on the entire Peninsula and will celebrate Franklin. The building faces Franklin not turns its back on it.

(Became more of an open discussion)

(Joe Malone) Likes the design; thinks we are doing the right thing relative to Franklin.

11.2.5

(Hugh Nazor) We don't know the future condition of Franklin. We don't know the timeline. We need more residential units to balance all the businesses. And residential needs parking.

(Kevin Bunker) The basic urban design problems were that: density was desired on site; but a human scale along Hampshire was appropriate. Also 1-2 buildings to preserve along Hampshire. So density wanted to be along Franklin, which was consistent with Franklin vision. Parking necessary for density, but narrowness of lot meant only place it could go was under building. No room for other uses on ground floor. Multiple competing issues that we have attempted to mediate.

(Markos Miller) Would you reduce parking using fee in lieu?

A: No.

(Allison Brown) This project is wonderful and exactly what the neighborhood needs.

(Dick McGoldrick) I'm totally in favor of this project, but I urge you to think carefully about a restaurant; there will be issues with the residential owners and parking will be a problem.

Q: Are there any ideas floating around out there for more parking?

A: The Intercontinental garage has unused capacity.

Hugh Nazor mentioned valet parking as a possibility to accommodate a cluster of restaurants in the area.

Q: What will you do if you do not get the zone change?

A: Nothing. We will be back to square one.

Q: Does the staff like your plan?

A: They have been very receptive thus far and have given us positive feedback.

14.2.6

HAMPSHIRE STREET PROPERTIES

NEIGHBORHOOD MEETING

ZONE CHANGE REQUEST

June 1, 2012

5:00pm

Micucci's Grocery, 45 India Street

OLIVE

SIGN IN SHEET

Name	Address	Email Address
1. Hugh Najor	50 Federal	Hugh@Najor.net
2. Marc Chadbourne	151 Newbury St	marcelad@gmail.com
3. Ed Gardner	151 Newbury St	Ed@oceangravity.com
4. JOE MALONE	30 Highland St	joe@malonecb.com
5. Arlin Smith	88 Middle St.	arlin.smith@gmail.com
6. Andrew Pike	40 India St.	
7. Paul Stelmack	207 Fore St #1	mstelmack@MAINE.PR.COM
8. RICHARD J. McHARRICK		
9. Tony Donouan	Portland	TDonouan@MAINE.PR.COM
10. Mark Miller	7 Atlantic St	
11. MARK STELMACK	207 Fore St. #1	
12. Phil Notis	139 Newbury St. #2	philnotis@gmail.com
13. [unclear]	[unclear]	
14. Britt Vitalius	306 Congress St.	britt@vitalius.com
15. Allison Brown	125 Newbury St	abrown125@gmail.com

16. GEORGE LLOYD 45 MINDA ST -

17.

18.

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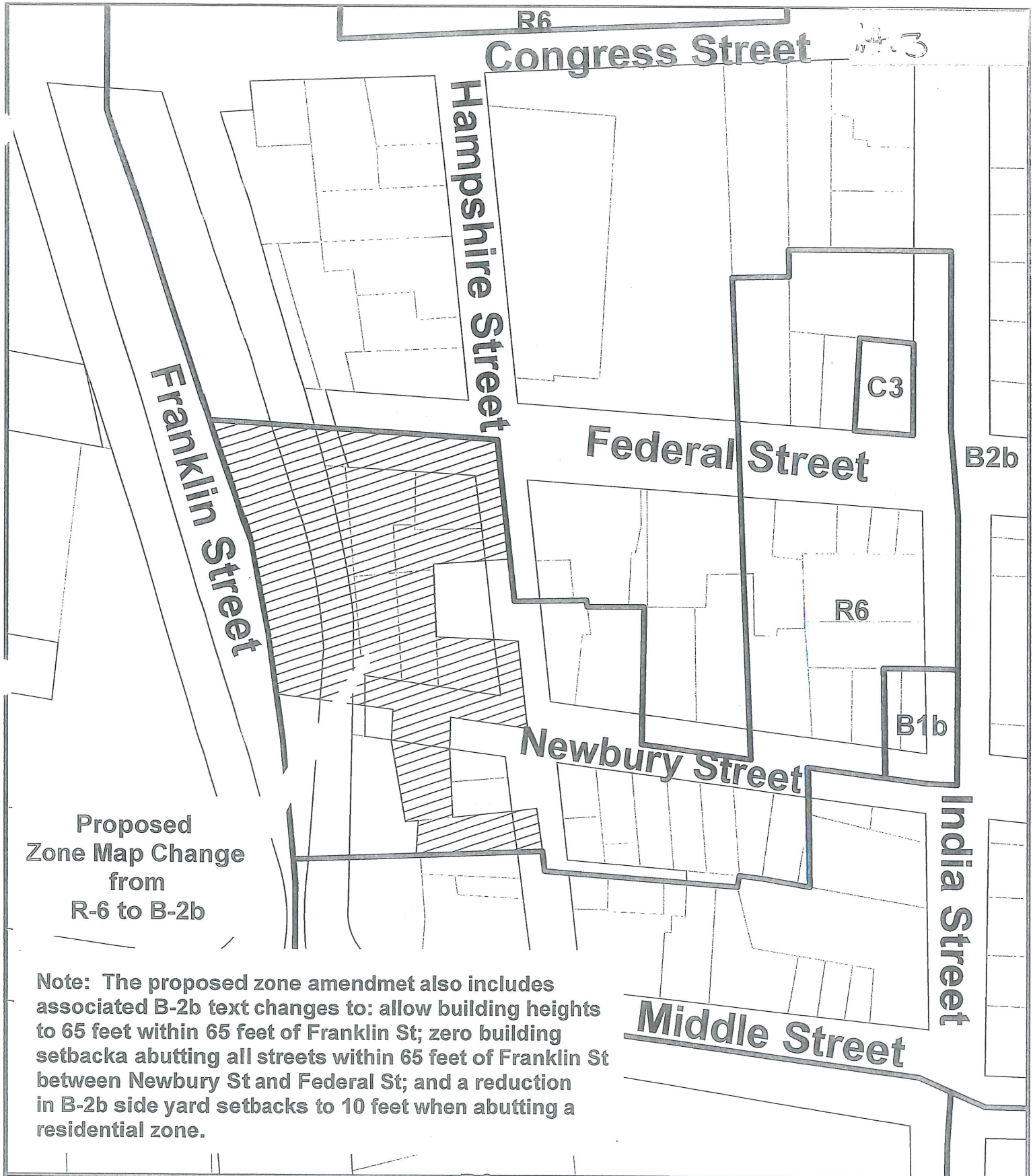
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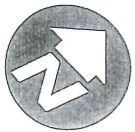


Proposed  
Zone Map Change  
from  
R-6 to B-2b

Note: The proposed zone amendmet also includes associated B-2b text changes to: allow building heights to 65 feet within 65 feet of Franklin St; zero building setbacks abutting all streets within 65 feet of Franklin St between Newbury St and Federal St; and a reduction in B-2b side yard setbacks to 10 feet when abutting a residential zone.

Zoning Map Amendment Proposed by  
Hampshire Street Properties

R-6 to B-2b



City of Portland  
Code of Ordinances

Chapter 14 LAND USE

- Sec 14-181 (no text change proposed)
- Sec 14-182 (no text change proposed)
- Sec 14-183 (no text change proposed)
- Sec 14-184 (no text change proposed)

Proposed text change:

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses as permitted under sections 14-182(a) and (b) and newly constructed buildings with residential and non-residential uses shall meet the following requirements:

- (a) Residential uses:
  - 1. Minimum lot size: None.
  - 2. Minimum street frontage: None.
  - 3. Minimum yard dimensions:
    - a. Front yard: None.
    - b. Rear yard: Ten (10) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.
      - i. Accessory structures: Five (5) feet.
      - ii. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the portion of the building exceeding forty-five (45) feet shall have a minimum setback of fifteen (15) feet or an additional minimum setback of fifteen (15) feet.
    - c. Side yard: Five (5) feet, except where the lot abuts a residential zone, where ~~twenty (20)~~ten (10) feet is required.
      - i. Accessory structures: Five (5) feet.

- ii. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the portion of the building exceeding forty-five (45) feet shall have a minimum setback of fifteen (15) feet; provided however that this provision does not apply to buildings located within sixty-five (65) feet of Franklin Street;
  - d. Side yard or rear yard on a side street: None.
  - e. Maximum front yard: In the B-2, B-2b and B-2c zones; as provided for in section 14-185 (b) (3) (a), except that the maximum front yard setback need not apply in the case of a development meeting one (1) or more of the following standards:
    - i. The lot has less than forty (40) feet of continuous frontage and the lot has a depth of more than one hundred (100) feet from the nearest street; or
    - ii. The structures on the lot meet the maximum front yard or are within twenty (20) feet of the street and the remainder of the lot has less than forty (40) feet of continuous street frontage.
  - f. Pavement setback: For lots adjacent to a residential zone, pavement shall be set back a minimum of ten (10) feet from the side and rear property lines adjacent to the residential zone.
4. Maximum impervious surface ratio: 90%.
5. Maximum residential density:
- a. On-peninsula locations, as defined in section 14-47: Four hundred and thirty-five (435) square feet of land area per dwelling unit.
  - b. Off-peninsula locations, as defined in section 14-47:
    - i. Residential density requirements of the nearest adjacent residential zone shall apply except for multi-family dwellings above the first floor of commercial uses as provided in (ii) below.



- ii. Multi-family dwellings above first floor commercial uses: One thousand (1,000) square feet of land area per dwelling unit is required.

6. Maximum structure height:

- a. B-2 and B-2c zones: Forty-five (45) feet.
- b. B-2b zone: Forty-five (45) feet, except in the case of a building with a commercial first floor and residential upper floors, where fifty (50) feet is allowed, and except for the portion of a building located within sixty-five (65) feet of Franklin Street, where sixty-five (65) feet is allowed.

(b) Business and other non-residential uses:

1. Minimum lot size:

- a. Intermediate, long-term and extended care facilities: Ten thousand (10,000) square feet.
- b. Other non-residential uses where permitted:
  - i. B-2 zone: Ten thousand (10,000) square feet.
  - ii. B-2b zone: None.
  - iii. B-2c zone: Ten thousand (10,000) square feet.
- c. Where multiple uses are on one (1) lot, the highest applicable minimum lot size must be met.

2. Minimum street frontage: Fifty (50) feet.

3. Yard dimensions: (Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum or maximum yard of another structure.)

Except as provided in subsection (5) below, the following setbacks are required:

a. Front yard:

- i. Minimum front yard in B-2, B-2b and B-2c zones: None.

- ii. Maximum front yard in the B-2 and B-2c zones: The maximum front yard setback shall not exceed the average depth of the front yard of the closest developed lots on either side of the lot in question unless the planning board or planning authority approves a modified setback pursuant to section 14-526 (a) (27) (j). For purposes of this section a developed lot means a lot on which a principal structure has been erected.
- iii. Maximum front yard in B-2b zone (on-peninsula): The maximum front yard setback shall either be: (1) ten feet; or (2) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten (10) feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.

In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.

- iv. Maximum front yard in B-2b zone (off-peninsula): None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected. In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.

Where the front yard setback exceeds ten (10) feet, however, a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street(s) consisting of street trees spaced at not more than fifteen (15) feet on center, (which otherwise meet the requirements of city arborist) and a combination of the following:

- i. Landscaping of no less than four (4) feet in depth; and
- ii. Ornamental brick or stone walls; and/or

24. 2.5

iii. Ornamental fencing.

The site shall otherwise meet the requirements of article V (Site Plan).

b. Rear yard:

i. Principal structures: Ten (10) feet. Where a rear yard abuts a residence zone or first floor residential use, twenty (20) feet is required.

ii. Accessory structures: Five (5) feet.

c. Side yard:

i. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, ten (10) feet is required.

ii. Accessory structures: Five (5) feet.

iii. Side yards on side streets (corner lot): In the B-2 and B-2c zone, a minimum of ten (10) feet. In the B-2b zone, a maximum of ten (10) feet except that for any newly constructed building on a lot abutting two (2) or more streets, the maximum side yard shall apply to one street or to the side street that forms a corner with a major street as provided for in the maximum front yard provisions of this section.

4. Minimum lot width: None.

5. Maximum structure height:

a. B-2 and B-2c zones: Forty-five (45) feet, except that on lots in excess of five (5) acres, sixty-five (65) feet is permitted; provided each of the minimum setbacks required under subsection (3) above are increased by one (1) foot in distance for each foot of height above forty-five (45) feet.

b. B-2b zone: Fifty (50) feet.

6. Maximum impervious surface ratio: Eighty (80) percent in the B-2 and B-2c; Ninety (90%) percent in the B-2b.

50.46

- (c) Building additions: Building additions for residential and non-residential uses are not required to meet the maximum front yard setback for the maximum side yard on side street setback contained in this section.

# **Applicant's Submittal**

Att.

1

Re-zoning Application

Att.

2

Right, Title, and Interest

Att.

3

Vicinity Map

Att.

4

Proposed Use of Property

Att.

5

Concept Plans

6

7

8

Att. 1

City of Portland  
Development Review Application  
Planning Division Transmittal form

Application Number: 2012-499      Application Date: 5/8/2012 12:00:00 AM  
CBL:28-O-8

Project Name: Zoning Map/Text Amendment

Address: 24 Hampshire Street

Project Description: Map Change from R6 to B2b with text amendments for increased height and decreased setbacks.

Zoning: R6

Other Reviews

Required:

Review Type: Zoning Map/Text Amendment

Distribution List:

<input type="checkbox"/> Planner		<input type="checkbox"/> Parking	John Peverada
<input type="checkbox"/> Zoning	Marge Schmuckal	<input type="checkbox"/> Design Review	Alex Jaegerman
<input type="checkbox"/> Traffic Engineer	Tom Errico	<input type="checkbox"/> Corporation Counsel	Danielle West-Chuhta
<input type="checkbox"/> Civil Engineer	David Sensus	<input type="checkbox"/> Sanitary Sewer	John Emerson
<input type="checkbox"/> Fire Department	Chris Pirone	<input type="checkbox"/> Inspections	Tammy Munson
<input type="checkbox"/> City Arborist	Jeff Tarling	<input type="checkbox"/> Historic Preservation	Deb Andrews
<input type="checkbox"/> Engineering	David Margolis-Pineo	<input type="checkbox"/> DRC Coordinator	Phil DiPierro
		<input type="checkbox"/> Outside Agency	

Comments needed by (7 days later):



# PORTLAND MAINE

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

Receipts Details:

**Tender Information:** Check , BusinessName: Developers Collaborative , Check Number: 1197  
**Tender Amount:** 3000.00

Receipt Header:

**Cashier Id:** jyeaton  
**Receipt Date:** 5/8/2012  
**Receipt Number:** 43723

Receipt Details:

Referance ID:	1615	Fee Type:	PEZ-TEXTMAP
Receipt Number:	0	Payment Date:	
Transaction Amount:	3000.00	Charge Amount:	3000.00
Job ID: Project ID: 2012-499 - 24 Hampshire Street			
<b>Additional Comments:</b> 24 Hampshire Street			

Thank You for your Payment!





1.3

May 11, 2012

Ms. Barbara Barhydt  
City of Portland  
389 Congress Street  
Portland, ME 04101

**RE: Hampshire Street map amendment / overlay district / text change**

Dear Barbara:

I would like to take this opportunity first to thank you for your help today in sorting out the zoning issues surrounding the proposed Hampshire St. condominium project. As a result of this meeting, I am responding to your request to clarify certain issues addressed in the zone map change / text amendment application I submitted on May 7. This application was submitted by me, on behalf of Rebeco LLC and 160 Newbury Street LLC, owners of the parcels in question along Hampshire, Newbury, and Federal Streets.

Rebeco LLC and 160 Newbury Street LLC would like to request the following:

1. A map change from R6 to B2b for the identified parcels in the application;
2. A building height of 65' within 65' of Franklin Street between Federal and Newbury Streets;
3. Zero setbacks abutting all streets within 65' of Franklin Street between Federal and Newbury Streets;
4. A reduction in the B2b side yard setback to 10' when abutting a residential zone.

We will plan to show an overlay zone-type diagrammatical map at our neighborhood meeting and workshop so all can see the effect of the proposal. However, we are not suggesting at this time that the diagram itself be incorporated into the zoning ordinance. Per our conversation, we will submit text changes for your consideration by Thursday May 17 in order to keep on the schedule for the June 12 workshop.

We believe this zoning responds to the desires of the neighborhood, the market demands of the site and area, and the future conversation regarding Franklin Street. We look forward to developing a building of which all can be proud and of which type and character does not currently exist in the City.

You have also asked me to provide a count of housing units to be removed and replaced during the project. A total of 19 units will be removed and 26 units will replace them.

Please contact me with any questions and I look forward to working through the re-zoning process with you.

Thank you,

  
Kevin Bunker, Manager


Developers Collaborative Predevelopment LLC

Designated Representative for Rebeco LLC and 160 Newbury Street LLC

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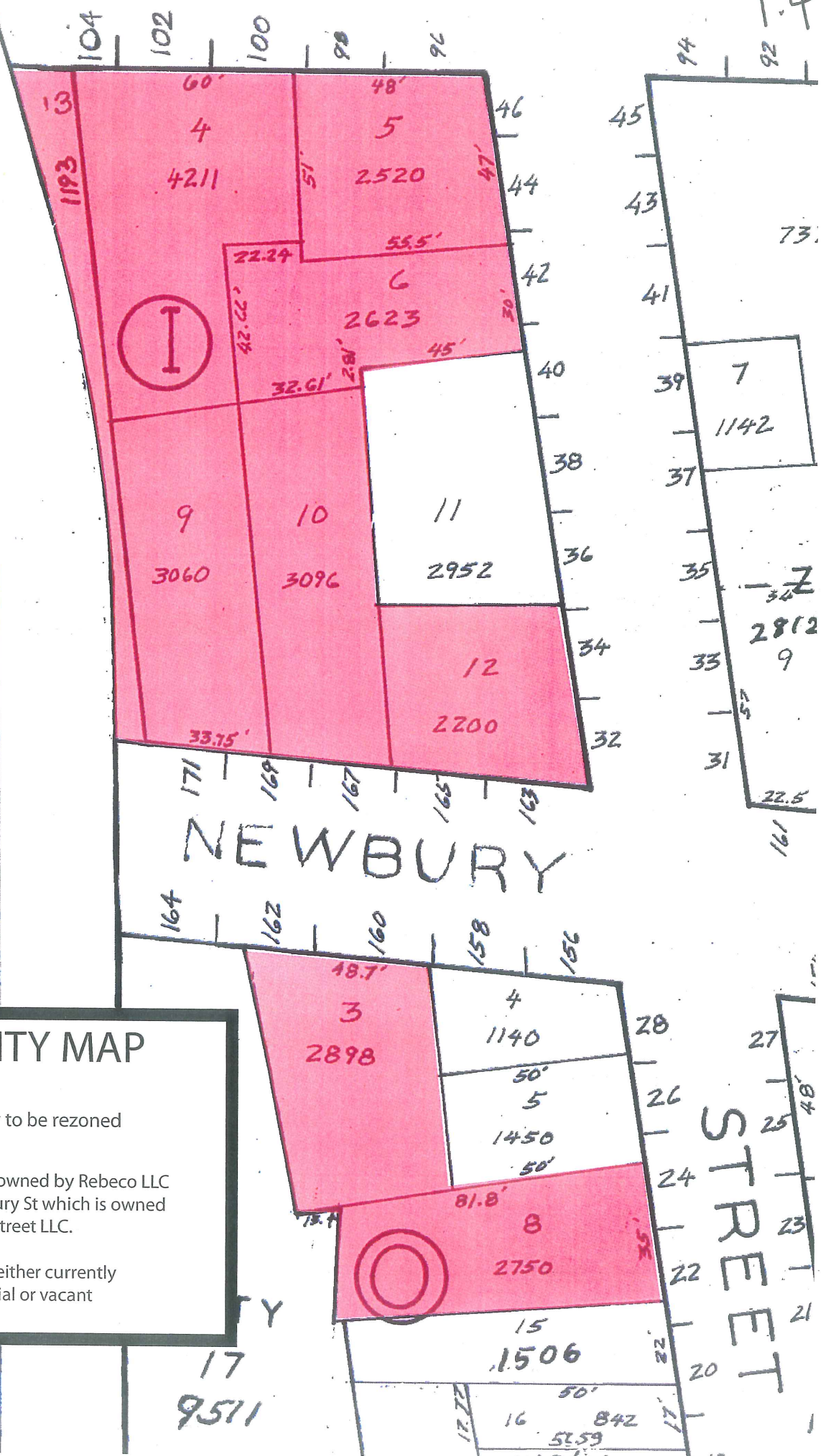
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### VICINITY MAP

 Property to be rezoned

All properties are owned by Rebeco LLC except 160 Newbury St which is owned by 160 Newbury Street LLC.

All properties are either currently occupied residential or vacant residential.



NEWBURY

STREET

17  
9511

PROJECT ADDRESS: 24 Hampshire St, 32 Hampshire St, 42 Hampshire St 96 Federal St 100 Federal St

CHART/BLOCK/LOT: 28-0-8; 28-1-12; 28-1-6; 28-1-5; 160 Newbury St, 167-169 Newbury St.  
28-1-4; 28-0-3; 28-1-10; 28-1-9

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

map change from R-6 to B2b with text amendments for increased height (65') and decreased setbacks (5') for parcels adjoining Franklin Arterial

**CONTACT INFORMATION:**

	<p><b>Applicant's Contact for electronic plans</b></p> <p>Name: Kevin Bunker e-mail Address bunker.kevin@gmail.com work # 766-1632</p>
<p><b>Applicant – must be owner, Lessee or Buyer</b></p> <p>Name: Rebeco LLC Business Name, if applicable: 160 Newbury Street LLC Address: 217 Commercial St, Ste 500 City/State: Portland ME Zip Code: 04101</p>	<p><b>Applicant Contact Information</b></p> <p>Work # 841-4092 Home# Cell # 841-4092 Fax# e-mail: tom@federkemahoney.com</p>
<p><b>Owner – (if different from Applicant)</b></p> <p>Name: Address: City/State: Zip Code:</p>	<p><b>Owner Contact Information</b></p> <p>Work # Home# Cell # Fax# e-mail:</p>
<p><b>Agent/ Representative</b></p> <p>Name: Kevin Bunker, Manager Address: Developers Collaborative Predevelopment LLC 17 Chestnut St. City/State: Portland ME Zip Code: 04101</p>	<p><b>Agent/Representative Contact information</b></p> <p>Work # 766-1632 Cell # 766-1632 e-mail: bunker.kevin@gmail.com</p>
<p><b>Billing Information</b></p> <p>Name: Rebeco LLC Address: 217 Commercial St Ste. 500 City/State: Portland ME Zip Code: 04101</p>	<p><b>Billing Information</b></p> <p>Work # 841-4092 Cell # 841-4092 Fax# e-mail: tom@federkemahoney.com</p>
<p><b>Engineer</b></p> <p>Name: Steve Bushey, Deluca Hoffman Address: 778 Main St. #8 City/State: South Portland ME Zip Code: 04106</p>	<p><b>Engineer Contact Information</b></p> <p>Work # 775-1121 Cell # Fax# e-mail: sbushey@delucahoffman.com</p>



**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.

see attached.


**Site Plan:** On a separate sheet, please provide a site 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' = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

see attached.

**APPLICATION FEE:**

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

<p><b>Zoning Map Amendment</b>          ___ \$2,000.00 (from ___ zone to ___ zone)</p>	<p><b>Fees Paid</b> (office use)          _____</p>	<p>The City invoices separately for the following:</p> <ul style="list-style-type: none"> <li>• Notices (\$.75 each)              (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council)</li> <li>• Legal Ad (% of total Ad)</li> <li>• Planning Review (\$40.00 hour)</li> <li>• Legal Review (\$75.00 hour)</li> </ul> <p>Third party review is assessed separately.</p>
<p><b>Zoning Text Amendment</b>          ___ \$2,000.00 (to Section 14- _____)          (For a zoning text amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (<i>example</i>) and language to be added is depicted as underline (<i>example</i>))</p>	<p>_____</p>	
<p><b>Combination Zoning Text Amendment and Zoning Map Amendment</b>  <input checked="" type="checkbox"/> \$3,000.00</p>	<p>_____</p>	
<p><b>Conditional or Contract Zone</b>          ___ \$3,000.00          (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, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p>	<p>_____</p>	

<p><b>Signature of Applicant:</b>   , Manager, Developers Collaborative</p>	<p><b>Date:</b>          5/7/12</p>
--	---

**Further Information** *Predevelopment UC*

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.

Att. 2

24 Hampshire St.

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that ALEXIAD, LLC, a Maine limited liability company with a place of business in Falmouth, Maine, for consideration paid, grant to REBECO, LLC, a Maine limited liability company with a place of business in Augusta, Maine and a mailing address of 10 Middle Road, Augusta, Maine 04330, with WARRANTY COVENANTS, the land in Portland, County of Cumberland and State of Maine, bounded and described as follows:

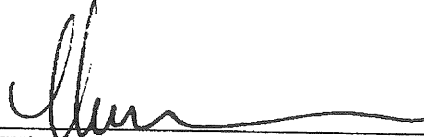
A certain lot or parcel of land, with the buildings thereon, situated on the southwesterly side of Hampshire Street, in the City of Portland, County of Cumberland, and State of Maine, bounded and described as follows:

Beginning on said southwesterly side of Hampshire Street at the northerly corner of land conveyed by Maine Savings Bank to Aniello Pallotta, et al., September 21, 1936; thence running northwesterly by said Hampshire Street thirty-five (35) feet more or less formerly of B.A. Donahue; thence southwesterly adjoining said Donahue land and land formerly of E. Lawrence to the westerly corner of the shed or ell attached to the house on the lot herein described; thence southeasterly adjoining the southwesterly end of said shed or ell and on a line in the extension of the same to the westerly corner of said land conveyed to said Pallotta; thence northeasterly by said Pallotta land to said Hampshire Street and the point of beginning.

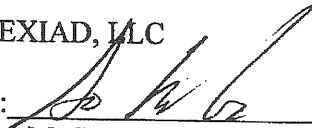
Subject, however, to the right to use the driveway on the southeasterly side of said premises and the right to maintain pipes under said driveway as granted in said deed to Pallotta.

Being the same premises conveyed to the Grantor herein by deed from Scott McCown and Laura J. Madigan McCown dated May 19, 2003 and recorded in the Cumberland County Registry of Deeds in Book 21265, Page 257.

IN WITNESS WHEREOF, the said Alexiad, LLC by its Manager Scott McCown has set his hands this 22 day of September, 2008.

  
\_\_\_\_\_  
Witness

ALEXIAD, LLC

BY:   
\_\_\_\_\_  
Scott McCown  
Its: Manager

MAINE REAL ESTATE TAX PAID

STATE OF MAINE  
COUNTY OF CUMBERLAND

September 22, 2008

Then personally appeared before me the above named, Scott McCown in his capacity as Manager of Alexiad, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said company.

Before me,

  
\_\_\_\_\_  
Notary Public/Attorney-at-Law

Thomas B. Federle  
Printed name of person taking  
acknowledgment  
ME Bar # 8328

Received  
Recorded Register of Deeds  
Sep 30 2008 08:29:10A  
Cumberland County  
Pamela E. Lovley



2.2

32 Hampshire St.

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that **HOLLY M. MORRISON** and **ISAAC J. MORRISON** of Portland, Maine, for consideration paid, grant to **REBECO, LLC**, a Maine Limited Liability Company with a place of business in Augusta, Maine and a mailing address of 10 Middle Road, Augusta, Maine 04330, with **WARRANTY COVENANTS**, the land in Portland, County of Cumberland and State of Maine, bounded and described as follows:

A certain lot or parcel of land, with the buildings thereon, situated in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

A certain lot or parcel of land with the buildings thereon situated on the northwesterly corner of Newbury and Hampshire Streets in said Portland, and being all that portion of said corner lies southerly of a line commencing on the westerly side of said Hampshire Street at a point distant forty-nine (49) feet northerly from the northerly side line of said Newbury Street, and running at right angles to said Hampshire Street, to land now or formerly of one Lucas.

Being the same premises conveyed to the Grantors herein by deed from Nancy W. Bartlett dated April 2, 2004 and recorded in the Cumberland County Registry of Deeds in Book 21061, Page 195.

IN WITNESS WHEREOF, the said Holly M. Morrison and Isaac J. Morrison have set their hands this \_\_\_\_\_ day of September, 2008.

MAINE REAL ESTATE TAX PAID

\_\_\_\_\_  
Witness John Graham

Holly M. Morrison  
Holly M. Morrison

\_\_\_\_\_  
Witness

Isaac J. Morrison  
Isaac J. Morrison

STATE OF MAINE  
COUNTY OF CUMBERLAND

September 22, 2008

Then personally appeared before me, Holly M. Morrison and Isaac J. Morrison, and acknowledged the foregoing instrument to be their free act and deed.

Before me,  
Thomas B. Federle  
Notary Public/Attorney-at-Law  
Thomas B. Federle  
Printed name of person taking acknowledgment Maine Bar # 8328

Received  
Recorded Register of Deeds  
Sep 30, 2008 08:32:11A  
Cumberland County  
Pamela E. Lovley

23

42 Hampshire St.

**WARRANTY DEED  
Maine Statutory Short Form**

**HAMPSHIRE 42 PROPERTIES, LLC**, a Maine limited liability company having its principal place of business at Portland, Cumberland County, Maine, for consideration paid, grants to ReBeCo, LLC, a Maine limited liability company having its principal place of business at Winthrop, Kennebec County, Maine, with a mailing address of 134 Main Street, Suite 2A, Winthrop, ME 04363, with Warranty Covenants, the land in Portland, Cumberland County, Maine, bounded and described as follows:

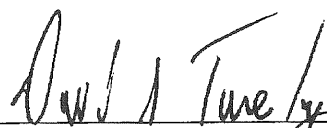
A certain lot or parcel of land, with the buildings thereon, situated on the southwesterly side of Hampshire Street in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point in the southwesterly sideline of said Hampshire Street at the northeasterly corner of land now or formerly of W. L. Poole; thence running north by line of said Hampshire Street thirty (30) feet to land now or formerly of Duran; thence southwesterly along line of said Duran's land fifty-five and five tenths (55.5) feet to a stake; thence north at right angles to said last mentioned line seven and thirty-six hundredths (7.36) feet to land of Swett; thence west twenty-two and twenty-four hundredths (22.24) feet to a stake; thence southeasterly forty-two and sixty-six hundredths (42.66) feet; thence east thirty-two and sixty-one hundredths (32.61) feet to a stake; thence north two and eighty-one hundredths (2.81) feet to a stake; thence east along the line of said Poole's land forty-five (45) feet to the point of beginning. Being the premises situated at number 42 Hampshire Street, in the City of Portland, Maine.

Meaning and intending to convey the same premises conveyed by Christopher A. Lynch and Elizabeth R. Lynch to Hampshire 42 Properties, LLC by deed, dated June 7, 2004, and recorded in the Cumberland County Registry of Deeds in Book 21629, Page 32.

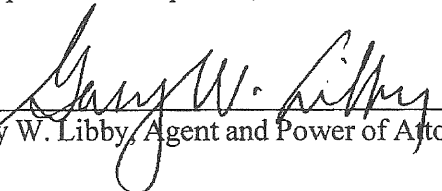
In Witness Whereof, the said Hampshire 42 Properties, LLC. has caused this instrument to be sealed and signed in its company name by Gary W. Libby, its agent and attorney-in-fact thereunto duly authorized, this 8<sup>th</sup> day of December, 2009.

MAINE REAL ESTATE TAX PAID

  
\_\_\_\_\_  
David S. Tubesty

STATE OF MAINE  
CUMBERLAND, ss

Hampshire 42 Properties, LLC

By:   
\_\_\_\_\_  
Gary W. Libby, Agent and Power of Attorney

December 18, 2009

Then personally appeared the above named Gary W. Libby, the duly appointed agent and attorney-in-fact of said limited liability company, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said limited liability company.

Before me,

*David S. Turesky Esq*

Notary Public/Attorney at Law

*David S. Turesky Esq*

Printed Name

My Commission Expires

Maine Bar No.

*Bar Reg # 1926*

Received  
Recorded Register of Deeds  
Jan 08, 2010 09:35:03A  
Cumberland County  
Pamela E. Lovley

25

96 Federal St

DEED OF TRUSTEE


KNOW ALL BY THESE PRESENTS THAT I, MARY A. KIBBEE as Trustee of TARO REALTY TRUST, under Indenture dated August 28, 1972 and recorded in the Cumberland County Registry of Deeds at Book 2288, Page 326, as amended by document dated August 25, 1992 and recorded in said Registry at Book 10242, Page 99, by the power conferred by said trust, and every other power, for consideration paid, grant to ReBeCo, LLC, a Maine limited liability company with mailing address at 217 Commercial Street, 5<sup>th</sup> Floor, Portland ME 04101, with Warranty Covenants, a certain lot or parcel of land with the buildings thereon situated on the corner formed by the intersection of the southeast side of Federal Street and the southwest side of Hampshire Street in Portland, County of Cumberland and State of Maine bounded and described as follows:


Beginning at said intersection; thence southeasterly by said Hampshire Street forty-seven (47) feet, more or less, to land now or formerly of Charles W. Dinsmore, conveyed to him by Josiah Duran by deed recorded in Cumberland County Registry of Deeds in Book 347, Page 330; thence southwesterly by said Dinsmore land fifty-five (55) feet, more or less, to land formerly of Edward Jordan; thence northwesterly by said Jordan land and land formerly in possession of William R. Cobb to said Federal Street fifty-one (51) feet, more or less; thence northeasterly by said Federal Street forty-eight (48) feet, more or less, to said Hampshire Street and to the point of beginning.

Being the same premises conveyed to the Grantor herein by deed of Lillian M. D. Shankman, dated November 9, 1972 and recorded in said Registry in Book 3340, page 5

Witness my hand this 22<sup>nd</sup> day of December, 2010.

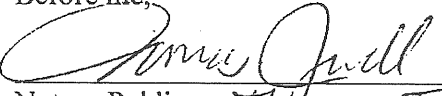
Taro Realty Trust

Witness: 

  
By: Mary A. Kibbee, Trustee

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

On December 22, 2010, personally appeared the above-named Mary A. Kibbee and acknowledged the foregoing instrument to be her free act and deed.

Before me,  
  
Notary Public Thomas Jenell  
Printed Name: Attorney at Law

Received  
Recorded Register of Deeds  
Jan 07, 2011 08:31:00A  
Cumberland County  
Pamela E. Lovley

MAINE REAL ESTATE TAX PAID

100 Federal St. 2.6

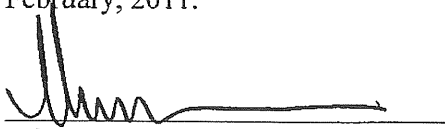
Doc#: 12305 Bk:28560 Pg: 326

QUITCLAIM DEED

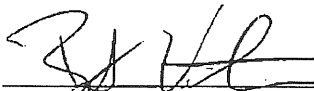
**BROAD REACH INVESTMENTS, LLC**, a Maine limited liability company with a principal place of business in Portland, Cumberland County, State of Maine, for consideration paid, grants to **REBECO, LLC**, a Maine Limited Liability Company, whose mailing address is 217 Commercial Street, 5<sup>th</sup> Floor, Portland, Maine 04101, with **QUITCLAIM COVENANTS**, a certain lot or parcel of land with the buildings thereon situated in the City of Portland, County of Cumberland and State of Maine, and more particularly described as follows:

SEE SCHEDULE A ATTACHED HERETO

IN WITNESS WHEREOF, Brit Vitalius, Managing Member of **BROAD REACH INVESTMENTS, LLC**, has caused this instrument to be signed and sealed on the 24<sup>th</sup> day of February, 2011.



Witness



**BROAD REACH INVESTMENTS, LLC**  
By: Briton R. Vitalius  
Its: Managing Member

STATE OF MAINE  
COUNTY OF CUMBERLAND

February 24, 2011

Then personally appeared the above-named Brit Vitalius in his capacity as Managing Member of **BROAD REACH INVESTMENTS, LLC**, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of **BROAD REACH INVESTMENTS, LLC**.

Before me,



Notary Public/Attorney at Law  
NOTARY PUBLIC  
AS ATTORNEY AT LAW  
4 M.R.S.A. § 1056  
MY COMMISSION DOES NOT EXPIRE



MAINE REAL ESTATE TAX PAID

SCHEDULE A

A certain lot or parcel of land, with all buildings and improvements thereon, located on the southeast side of Federal Street in the City of Portland, County of Cumberland, and State of Maine bounded and described as follows:

Beginning on the southeast side of Federal Street at the northeast corner of a lot formerly owned by Ralph Cross, and later by Pettengill, and now known as the Franklin Street Arterial; thence N 57° E along Federal Street 60 feet; thence S 33° E, on a course at right angles with Federal Street, 40 feet, more or less to land formerly of the heirs of Theophilus Boynton; thence continuing southeast along land formerly of Josiah Durand 5 feet, more or less, to land formerly of Charles W. Dinsmore; thence southeast by the rear end of the house on land formerly of Swett, 21 feet, more or less, to the west corner of the Dinsmore lot; thence southeast along the Dinsmore lot, also formerly land of Ward, 42 feet 8 inches to land formerly of Anderson and Curtis; thence southwest along land of Anderson and Curtis to land formerly of Daniel Pettengill, and now known as the Franklin Street Arterial; thence northwest along land formerly of Pettengill, now the Franklin Street Arterial, 43 feet; thence continuing N 35° W along land formerly of Pettengill, now the Franklin Street Arterial, 53 feet 4 inches to the point of beginning.

Being the same premises conveyed to the Grantor herein by deed from Duncan S. MacDougall a/k/a Duncan S. MacDougal dated August 20, 2010 and recorded in the Cumberland County Registry of Deeds in Book 28019, Page 227.

Received  
Recorded Register of Deeds  
Mar 03, 2011 08:25:44A  
Cumberland County  
Pamela E. Lovley

160 Newbury St

WARRANTY DEED

RICHARD CLARK and SUSAN L. COX, of Wells, York County, State of Maine, for consideration paid, GRANT to 160 NEWBURY STREET, LLC, a Maine limited liability company, whose mailing address is 217 Commercial Street, 5<sup>th</sup> Floor, Portland, Maine 04101, with Warranty Covenants, a certain lot or parcel of land situated in the City of Portland, County of Cumberland and State of Maine, and more particularly described as follows:

SEE SCHEDULE A ATTACHED HERETO

Dated this 2<sup>nd</sup> day of <sup>March</sup> February, 2012.

Signed, Sealed and Delivered in the presence of

[Signature]  
Witness

[Signature]  
RICHARD CLARK

[Signature]  
Witness Keith Fletcher

[Signature]  
SUSAN L. COX

MAINE REAL ESTATE TAX PAID

State of Maine  
County of York

<sup>March</sup>  
February 2, 2012

Personally appeared the above named RICHARD CLARK and SUSAN L. COX and acknowledged the foregoing instrument to be their free act and deed.

Before me,

[Signature]

Notary Public/Attorney at Law  
Printed Name: Keith Fletcher  
Commission Expires: April 3, 2014

SCHEDULE A

A certain lot or parcel of land with the buildings thereon situated at 160 Newbury Street in the City of Portland, County of Cumberland and State of Maine, more particularly described as follows:

BEGINNING at a stake standing on the southerly sideline of said Newbury Street and distant 48.10 feet westerly from Hampshire Street; thence South 32° 10' East by land formerly of J. Westcott and B.A. Donahue, 60.44 feet to a stake; thence South 54° 03' West by land formerly of J.M. Carleton 43 feet to an iron hub; thence North 36° 38' West by land formerly of R.C. Baker and F. Joseph 70.9 feet to a post in the southerly sideline of said Newbury Street; thence North 66° 50' East by said Newbury Street 48.7 feet to the point of beginning.

Reference may be had to a deed from William W. Clark to Richard Clark and Susan L. Cox recorded May 9, 1985 in the Cumberland County Registry of Deeds at Book 6753, Page 74.

Received  
Recorded Register of Deeds  
Mar 16, 2012 08:16:24A  
Cumberland County  
Pamela E. Lovley



2.10

167-169 Newbury St.

**SHORT FORM DEED OF SALE BY  
PERSONAL REPRESENTATIVE (TESTATE)**

Catherine Cartonio, of Portland, Cumberland, County, Maine, duly appointed and acting Personal Representative of the Estate of Eugene N. Caiazzo, deceased (testate), as shown by the probate records of Cumberland County, Maine (Docket #2009-0490) and not having given notice to each person succeeding to an interest in the real property described below at least ten [10] days prior to the sale, such notice not being required under the terms of the decedent's will, by the power conferred by the Probate Code, and every other power, FOR CONSIDERATION PAID, grants to ReBeCo, LLC, a Maine Limited Liability Company with a place of business in Winthrop, Maine, whose mailing address is 134 Main Street, Suite 2A, Winthrop, Maine 04364, certain real property, together with any improvements thereon, located in Portland, Cumberland County, Maine, being more particularly described in Exhibit A attached hereto and incorporated herein by specific reference.

MAINE REAL ESTATE TAX PAID

WITNESS my hand and seal this 5<sup>th</sup> day of January, 2010.

WITNESS:

JBL  
Name: Justin LaBlanc

Catherine Cartonio  
Catherine Cartonio  
Personal Representative of the  
Estate of Eugene N. Caiazzo

State of Maine  
County of Cumberland, ss.

January 5, 2010

PERSONALLY APPEARED the above-named Catherine Cartonio, Personal Representative as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her said capacity.



KATHERINE A. FOSTER  
Notary Public, Maine  
My Commission Expires March 03, 2015

Before me,

Katherine A. Foster  
Notary Public / ~~Attorney at Law~~

SEAL

EXHIBIT A

Grantor: Catherine Cartonio, Personal Representative of the Estate of Eugene N. Caiazzo  
 Grantee: ReBeCo, LLC  
 Date: \_\_\_\_\_  
 Instrument: Short Form Personal Representative's Deed of Sale

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Parcel 1 – 167 Newbury Street

A certain lot or parcel of land with the buildings thereon situated on the northerly side of Newbury Street, in the City of Portland, County of Cumberland, and State of Maine, and bounded and described as follows:

Beginning on the northerly side line of said Newbury Street and at the easterly corner of land now or formerly of Wilbert O. Pitcher, and running thence northerly by said Pitcher land about one hundred and twenty (120) feet to land now or formerly of one Dinsmore, thence easterly by said Dinsmore land thirty-one (31) feet to land formerly of Poole, thence southerly by said Poole land and land now or formerly of one Hatch about one hundred and twenty (120) feet to Newbury Street, thence westerly by said street thirty-three (33) feet, more or less, to the first bound.

Being the same premises conveyed to Eugene N. Caiazzo and Mildred E. Caiazzo, as joint tenants, by deed of Harris A. Jacobs, dated January 18, 1950, and recorded in the Cumberland County Registry of Deeds in Book 1985, Page 285. The said Eugene N. Caiazzo having been the surviving joint tenant.

Parcel 2 – 169 Newbury Street

A certain lot or parcel of land with the buildings thereon situated on the northerly side of Newbury Street, in the City of Portland, County of Cumberland, and State of Maine, and bounded and described as follows:

Beginning on the northwesterly side of said Newbury Street, at the northeasterly corner of land of the late Gardner F. Hanson, and now or formerly of one Geisinger; thence running northeasterly on the line of said Newbury Street, thirty-three feet and nine inches (33'9") to land formerly of Josiah Ward, and now or formerly of Hiram Wolf; thence northwesterly on the line of land formerly of said Ward ninety (90) feet to land formerly of William H. Swett, and now or formerly of H. Finkleman; thence southwesterly on line of said Swett land to said Hanson land; thence southeasterly on said Hanson line, more recently Geisinger, to the first mentioned bounds.

Being the same premises conveyed to Eugene N. Caiazzo by deed of Hugh Calkins, Esquire, guardian for Philomena Sabatino, dated March 11, 1977, and recorded in the Cumberland County Registry of Deeds in Book 3984, Page 254.



# Zoning Map/Text Amendment Application Portland, Maine

Planning and Urban Development Department  
Planning Division and Planning Board

Portland's Planning and Urban Development Department coordinates the development review process for requests for zoning map amendments, zoning text amendments and contract or conditional rezoning. The Division also coordinates site plan, subdivision and other applications under the City's Land Use Code. The **Application Process for a Zone Change** is summarized below under Section I and the associated costs for reviews are found under Section II, **Development Review Fees, Public Notices and Guarantees**, and are listed on the fee structure sheet.

## I. APPLICATION SUBMITTAL

### Pre-application meeting

Prior to submitting a zoning amendment application, the Planning Division recommends that the applicant or the designated representative schedule a pre-application meeting to discuss the review process and applicable standards for a proposal. Please contact Barbara Barhydt, Development Review Services Manager at 874-8699 to schedule a meeting.

### Zoning Amendment Application

**All plans and written application materials must be uploaded to a website for review. At the time of application, instructions for uploading the plans will be provided to the applicant. One paper set of the plans, written materials and application fee must be submitted to the Planning Division Office to start the review process.**

- Submit one (1) complete paper set of the zoning amendment application with a concept plan and a written narrative. Contract and conditional rezoning applications must include site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Applications may be submitted between 8 a.m. and 4:30 p.m. Monday through Friday at the Planning Division on the 4<sup>th</sup> floor of City Hall, 389 Congress Street, Portland.
- All applications are processed in the order in which they are received.
- In order for the Planning Division's Administrative Staff to accept and log-in an application, the application form must be complete, it shall be signed by the applicant's or the applicant's designated representative, and all applicable fees paid at the time of submittal.
- The Land Use Code is available on the City's website at [www.portlandmaine.gov](http://www.portlandmaine.gov).
- If the application is found to be incomplete, the applicant will be informed in writing of the required plans and materials.

## II. DEVELOPMENT REVIEW FEES, PUBLIC NOTICES AND GUARANTEES

### Zoning Application Fees

- Each application must be submitted with the applicable fees as listed in the fee structure on page 4. The fees cover general administrative processing costs.
- Application fees may be paid in cash or by check (addressed to the City of Portland).
- An application will not be processed without the required application fees.

**Fee for City Review Services**

- The City of Portland charges fees for service to cover the cost of reviews by Planning and Legal staff members. The charges will be billed at an hourly rate and will be invoiced monthly for reimbursement.
- Current billing rates: Planning services, \$40.00/ hour and Legal services: \$75.00/hour.

**Fee for Third Party Review**

- Portland contracts with local engineering firms to conduct engineering reviews of development proposals. The direct cost of all engineering services or third-party consultant reviews, such as the civil engineering review of stormwater management plans, traffic impact reviews and such other reviews as required under the City's Ordinances, will be included in the monthly invoices for reimbursement.

**Public Notices**

- Public notices must be sent to property owners within 500 for all proposals at the time an application is received. Zoning map amendments for Industrial zones require notices to be sent to property owners within 1,000 feet.
- In advance of a Planning Board workshop or public hearing, public notices for projects must be sent to property owners and are posted in a legal ad in the Portland Press Herald and on the City's web site.
- In addition, zoning map amendments, text amendments and conditional rezoning agreements require individual notices to be posted in the Portland Press Herald.
- The Planning Division mails public notices and posts notices in the newspaper. The applicant will be billed for actual or apportioned costs for advertising and sending mailed notices.
- The applicant is required to hold a neighborhood meeting under the City's regulations for zone change requests. The mailing labels must be purchased from the Planning Division for the neighborhood meeting invitation. A request for labels requires a minimum of two business days to generate the mailing labels and a charge of \$1.00 per sheet will be payable upon receipt of the labels.

**Third Party Review Fees**

- Engineer and Third Party Review Fees - The fees are assessed by the Consulting Engineers and Third Party Reviewers.
- Inspection Fee - This fee is 2% of the Performance Guarantee or as assessed by Planning or Public Works Engineer with \$300.00 being the minimum.

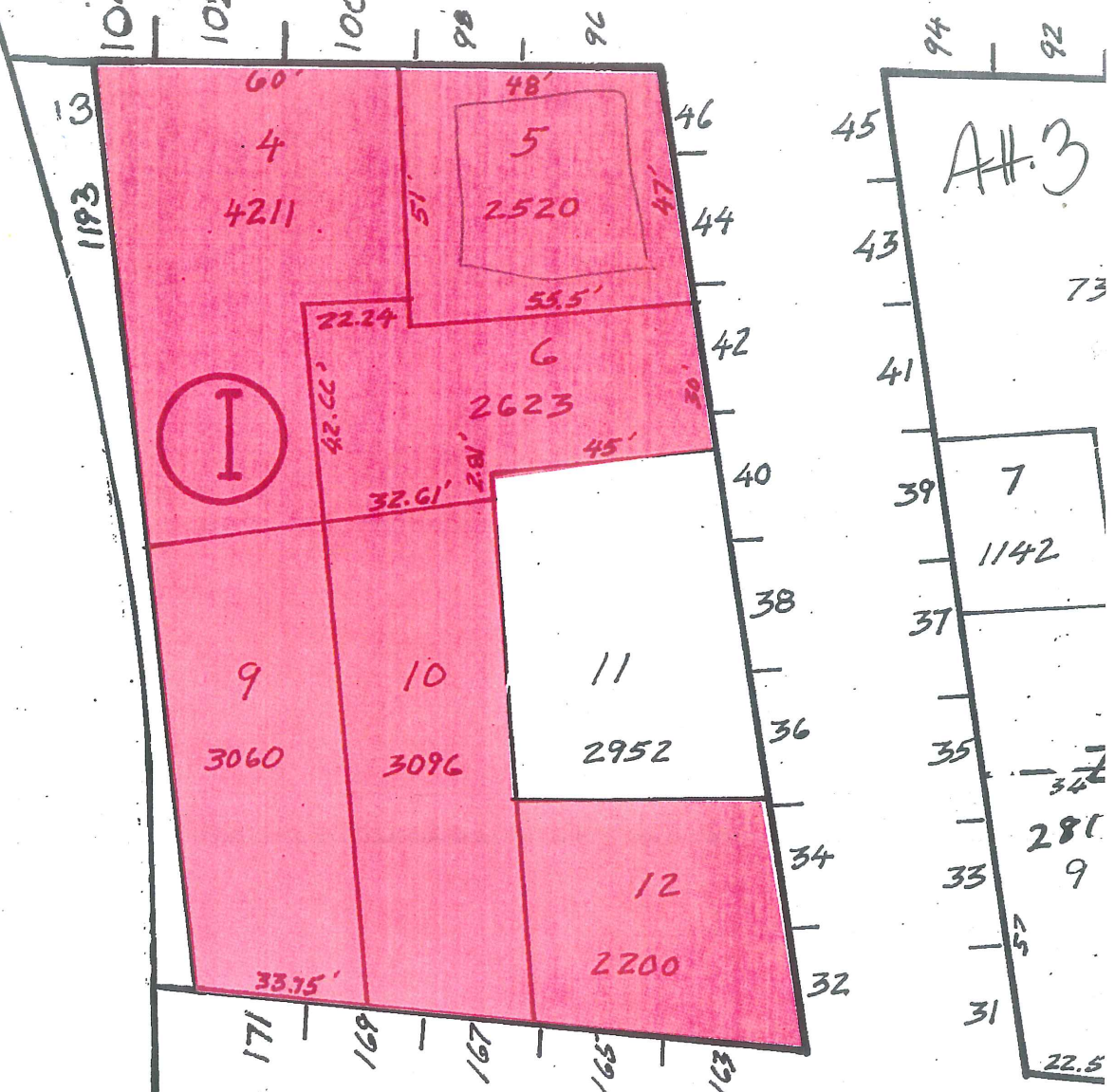
**Noticing/Advertisements Planning Board/City Council Review**

- Legal Advertisement: Percent of total bill
- Notices: .75 cents each  
(notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council)

<p><b>Planning Division</b>          Fourth Floor, City Hall          389 Congress Street          (207) 874-8721 or 874-8719</p>	<p><b>Office Hours</b>          Monday thru Friday          8:00 a.m. – 4:30 p.m.</p>
---	---

11 C

A#3



NEWBURY

STREET

### VICINITY MAP



Property to be rezoned

All properties are owned by Rebeco LLC except 160 Newbury St which is owned by 160 Newbury Street LLC.

All properties are either currently occupied residential or vacant residential.

17  
9511

15  
1506

16  
842

27

25

23

21

19

17

15

13

73

7

1142

34

280

9

22.5

161

28

26

24

22

20

18

16

94 92

45

43

41

39

37

35

33

31

46

44

42

40

38

36

34

32

10 102 100 98 96

13

1193

13.4

2.72

R6  
Congress Street

3.1

Hampshire Street

Franklin Street

Federal Street

B2b

C3

R6

B1b

Newbury Street

India Street

Middle Street

Proposed  
Zone Map Change  
from  
R-6 to B-2b

Note: The proposed zone amendmet also includes associated B-2b text changes to: allow building heights to 65 feet within 65 feet of Franklin St; zero building setbacks abutting all streets within 65 feet of Franklin St between Newbury St and Federal St; and a reduction in B-2b side yard setbacks to 10 feet when abutting a residential zone.

Zoning Map Amendment Proposed by  
Rebeco LLC and 160 Newbury LLC

R-6 to B-2b



100 50 0 100 Feet



## Proposed Use of Property

96 Federal Street will be retained, and contemplated uses are apartments (as is current) or redeveloped as artists's studios.

160 Newbury Street and 24 Hampshire Street will be demolished and reserved for future development.

167 Newbury Street, 169 Newbury Street, 42 Hampshire Street, and 100 Federal Street will be demolished and the site will be redeveloped with a condominium building of 26+/- units, 24 +/- parking spaces, and a green space/sculpture garden. The building is contemplated to be 4 stories on top of parking with some roof mezzanines and a roof deck. The building will contain a mix of unit sizes with price points from \$175,000 to over \$400,000. The exterior of the wood frame building will be metal siding with considerable storefront glass and windows, especially on higher floors. Some façade articulation is planned. The building will be up against the Franklin Arterial, and its design will respond to the future possibility of a more pedestrian oriented experience along Franklin than is currently the case. The Hampshire Street side of the block will retain its current scale and feel, and will be improved by retention of the most historically significant building as well as the addition of a park and a new building to anchor the corner. Neighborhood and stakeholder input has considerably shaped the final plan, particularly that of the India St. Neighborhood Association. The proposal has also been shaped by the work of the Franklin Arterial Study Committee, which has advocated for buildings that address the current arterial. The building is intended to be a major architectural statement and the first step toward making Franklin a desirable address, while preserving a neighborhood scale and feel on the interior of the neighborhood, unlike some previous larger scale development proposals in the area.

32 Hampshire Street will be demolished and reserved for a future development which will be attached to the new condominium building. Uses in the new building are not known at this time. It is quite possible that the site plan application, anticipated to be filed in August 2012, will contain a proposal for this new building. As with 96 Federal Street, while uses are not dispositively known at this time, they will be B2b compliant.

CITY OF PORTLAND, MAINE  
PLANNING BOARD

---

Carol Morrissette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
Joe Lewis  
David Silk  
Patrick Venne

June 15, 2012

Demetri Dasco  
Village at Oceangate, LLC  
35 Fay St. 107B  
Boston, MA 02118

Project Name: The Bay House                      Project ID: 2012-466  
Address: 112 Newbury Street  
Applicant: The Village at Oceanate, LLC  
Planner: Barbara Barhydt, Development Review Services Manager

Dear Mr. Dasco:

On June 12, 2012, the Planning Board considered amended subdivision and site application for 94 residential units and 80 on-site parking spaces for 112 Newbury Street. The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance. The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) to approve the application with the following waivers and conditions as presented below.

**WAIVERS**

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) to waive each of the following waivers from the Technical Standards:

1. Technical Manual, Section 1, subsection 1.7.2.3 Minimum Driveway Width, which requires a minimum of 20 feet with a preferred width of 24 foot wide driveway for two-way ingress and egress, is waived to allow the access drive to be 18 feet at the garage entrance on Middle Street with a four foot setback from the Middle Street façade, as shown on the amended subdivision plat.
2. Technical Standard, Section 12.8 Submission, which requires a photometric plan, is waived for the interior courtyard 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 (which was two trees per unit in 2009) as determined by the City Arborist. Thus the financial contribution to the City's Street Tree Fund will be calculated at one tree per unit with the deduction for street trees proposed for the project.



## **SUBDIVISION REVIEW**

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the amended plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.
2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.
3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.
4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.
5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandums shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.

### **Hancock Street**

- The developer will contribute \$43,000 to the City for the reconstruction of Hancock Street for the agreed upon portion between Middle and Newbury Streets prior to the issuance of a building permit.

### **Newbury Street**

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

### **Middle Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two (2) years.
9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a certificate of occupancy.
10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.
11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.
12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.
13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.

#### **SITE PLAN REVIEW**

The Planning Board voted unanimously (4-0, Hall, Morrisette and O'Brien absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval:

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. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.
3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit.
4. Revised plans and information meeting the recommendations and addressing the suggestions contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit.

6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.
7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report #29-21 for application #2012-466. A copy of the report is attached.

#### STANDARD CONDITIONS OF APPROVAL

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.

8. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
9. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.
10. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

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

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager, at 874-8699.

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

**Attachments:**

1. Planning Board Report and attachments
2. Performance Guarantee Packet

cc: Nathan Smith, Esq, Bernstein Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029  
 Marc Gagnon, Landmarc Construction, 415 Congress Street, Suite 202, Portland ME 04112  
 Jim Seymour, Sebago Technics, 75 John Roberts Road, Suite 1A, South Portland, ME 04106-6963  
 David M. White, 403 Tibbetts Hill Road, Goffstown, NH 03045

**Electronic Distribution:**

<p>cc: Greg Mitchell, Interim Director of Planning and Urban Development          Alexander Jaegerman, Planning Division Director          Barbara Barhydt, Development Review Services Manager          Philip DiPierro, Development Review Coordinator, Planning          Marge Schmuckal, Zoning Administrator, Inspections Division          Tammy Munson, Inspection Division Director          Lannie Dobson, Administration, Inspections Division          Gayle Guerin, Administration, Inspections Division          Michael Bobinsky, Public Services Director          Katherine Earley, Engineering Services Manager, Public Services          Bill Clark, Project Engineer, Public Services          David Margolis-Pineo, Deputy City Engineer, Public Services          Doug Roncarati, Stormwater Coordinator, Public Services          Greg Vining, Associate Engineer, Public Services          Michelle Sweeney, Associate Engineer</p>	<p>John Low, Associate Engineer, Public Services          Mike Farmer, Project Engineer, Public Services          Jane Ward, Administration, Public Services          Jeff Tarling, City Arborist, Public Services          Captain Chris Pirone, Fire Department          Thomas Errico, P.E., TY Lin Associates          David Senus, P.E., Woodard and Curran          Rick Blackburn, Assessor's Department          Approval Letter File</p>
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# PLANNING BOARD REPORT PORTLAND, MAINE

The Bay House  
112 Newbury Street  
Amended Subdivision and Site Plan  
2012-466  
Village at Ocean Gate, LLC, Applicant

Submitted to: Portland Planning Board: Public Hearing Date: June 12, 2012	Prepared by: Barbara Barhydt, Development Review Services Manager Date: June 8, 2012 Planning Board Report Number: #29-12
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## I. INTRODUCTION

On September 22, 2009, the Planning Board approved the Bay House plan for 82 residential units, commercial space on the first level along Middle Street, and two levels of structured parking with 159 spaces. The approvals for the subdivision and site plan are valid until September 22, 2012. The Village at Ocean Gate LLC has submitted an application to amend the subdivision and site plans by increasing the number of residential units from 82 to 94, to eliminate one level of structured parking, to revise the underground utility plans for the site and modify the landscaped courtyard.

Demetri Dasco of Village at Oceangate, LLC is the applicant. The development team includes the following: James Seymour, P.E. with Sebago Technics, David M. White, Architect, Nathan Smith, Attorney with Bernstein Shur, and Marc Gagnon of Landmarc Construction.

135 notices were sent to area residents and to the interested citizen list on June 1, 2012. The legal ad appeared in June 4 and June 5, 2012 editions of the *Portland Press Herald*.

At the April 24, 2012 workshop, two residents submitted written comments regarding the Bay House Project, which are included as Attachments 8a and 8b.

## II. PROJECT DATA

Existing Zoning:	Conditional B-5b
Existing Use:	Vacant Lot
Proposed Units:	94 rental units
Approved Units:	82 condominium units
Parcel Size:	Amended subdivision plat lists 1.15 acres (50,088 square feet)
Proposed Building Area:	215,960 square feet
Parking Spaces:	80 on-site, 20 leased spaces proposed at Ocean Gateway Garage

## III. CHRONOLOGY OF REVIEW

### a. Conditional Rezone Agreement and Amendments

The original conditional rezoning agreement for the Village at Ocean Gate was adopted by the City Council on November 20, 2006, which allowed up to 176 residential units in Phases I and II, with a maximum of 66 residential units stipulated for Phase II. The City Council adopted the amended

rezoning agreement per the Planning Board's recommendations on June 2, 2008 and the agreement became effective on July 2, 2008. On June 20, 2011, the City Council adopted amendments to the agreement, which deleted the second phase of the project, extended the approval dates for the site plan and conditional zone agreement to September 22, 2012, and set the maximum number of units at 110.

The Planning Board held a public hearing on May 22, 2012, to consider amendments to the conditional rezoning agreement proposed by the applicant. The proposed amendments include a ten year payment plan for the community contribution for the extension of Hancock Street, a provision that states the plans may be revised and approved from time to time by the Planning Board and clarifies that parking shall be provided at no less than 1 space per unit for a total of 94 spaces, with approximately 80 on-site and the balance provided in the Ocean Gateway Garage. The Planning Board voted five (5) to two (2), Silk and Dean, opposed, as follows:

- A. That the three proposed amendments to Conditional Rezone Agreement regarding the site plan, the payment schedule and the on-site parking are consistent with the Comprehensive Plan of the City of Portland; and
- B. That the Planning Board therefore recommends the Third Amendment to Conditional Zoning Agreement for the Village at Ocean Gate (aka Bay House) to the City Council for approval.

A copy of the revised agreement that is being forward to the City Council for their consideration is included as Attachment 1. This item will be on the City Council Agenda for a first reading on June 18<sup>th</sup> and then a public hearing at the Council's July meeting.

**b. Subdivision and Site Plan Review**

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. A waiver of the Landscaping requirements for the project was re-approved on November 13, 2007 and recorded at the Cumberland County Registry of Deeds. The original recording plat for the subdivision was signed by the Planning Board, but was not recorded.

On July 8, 2008, the Planning Board approved the amended site plan and subdivision plan included the following revisions:

- a. The subdivision plat was revised to incorporate 1,602 square feet of land into Phase I;
- b. The number of units in Phase I was reduced from 84 to 82 residential units;
- c. The commercial space was reduced to 5,736 square feet with three retail spaces in Building #2 and the vestibule is located near the garage entrance.
- d. The first level of Phase I was revised to provide storage areas for the units, 80 vehicle parking spaces and 38 bicycle spaces; and
- e. There were modifications to the exterior materials and building design.

The 2008 approval was extended to 2010 and the recording plat was signed, but it was not recorded. The waivers were recorded at the Registry within 90 days.

On September 22, 2009, the site plan and subdivision plan was approved with conditions by the Planning Board. The Bay House plan included 82 condominiums and two levels of structured

parking with a total of 159 parking spaces. The Planning Board found the proposal in conformance with the 2008 conditional zone agreement subject to 4 conditions, granted four waivers, approved the subdivision plan with ten (10) conditions of approval and approved the site plan with seven (7) conditions of approval (Attachment 2, includes approval letter, staff report and attachments). The 2009 site plan approval was extended to September 22, 2012, as part of the conditional zone agreement amended in 2011 (this provision is retained in the proposed Third Amended Agreement, Attachment 1). The 2009 subdivision and site plan approvals are currently valid for this site.

#### IV. PROPOSED AMENDMENTS TO SUBDIVISION AND SITE PLAN

The applicant is seeking the Planning Board's approval for the proposed amendments to the 2009 approved subdivision and site plans. The following review focuses on the revisions to the plans. The motions for the Planning Board's consideration incorporate the full set of waivers and motions from 2009 with proposed revisions and additions as applicable to the amended plans.

#### V. COMPLIANCE WITH THE CONDITIONAL REZONE AGREEMENT

##### a) Zoning Review: Marge Schmuckal, Zoning Administrator, June 7, 2012

This is a third rendition of the proposal on Newbury and Middle Streets. I have reviewed the most current version of the Conditional Contract Rezoning and reviewed the current plan submissions. It is my understanding that the City Council will be weighing in on the rezoning on June 18th, 2012. The proposal is meeting the requirements of the rezoning and the B-5b zone requirements where required. This includes the number of parking spaces within the buildings, setbacks and area per dwelling unit. The building height is under the maximum of 74' from average grade. There is a measurement of 71' from the lowest grade elevation to the top of the roof.

Separate information shall be required concerning the HVAC systems and their compliance with the maximum noise allowance of the B-5b zone.

Separate permit will be required for any new signage.

Marge Schmuckal's requirements for additional information and signage permits are incorporated in conditions of approval drafted under the design review section below.

##### b) Expiration Dates

The second amendment and proposed third amendment to the conditional rezone agreement establish expiration dates for the conditional zone agreement and the site plan as follows:

10. 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 the **SITE** by September 22, 2012. 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.
11. The site plan approval for the **SITE** dated September 22, 2009, shall be extended until September 22, 2012.

A condition of approval is proposed to state clearly that the September 22, 2012 is the expiration date for both the 2012 amended subdivision and site plans:

*The approval for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.*

**c) Eastern Waterfront Design Guidelines**

The conditional rezone agreement for the Bay House includes a provision stating plans may be modified by the Planning Board in accordance with the Design Standards for the Eastern Waterfront in connection with site plan and subdivision amendments.

1. **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 August 3, 2005 as revised April 22, 2008 and September, 2009, and with the lot line adjustment approved by the Portland Planning Board on May 24, 2011, and as same may be revised and approved from time to time by the Planning Board. The project shall consist of two buildings along Middle, Hancock and Newbury Streets. The final building elevations shall be or have been approved by the Planning Board during the required subdivision and site plan amendment process. The previously approved building elevations for the SITE, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, "the Plans for the SITE"), 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.

The Planning Board shall review or shall have reviewed the SITE proposal 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.

The 12 new units are proposed within Building #1, which in turn necessitates façade changes to the Hancock, Newbury, and interior courtyard elevations. David White, Architect, identifies the changes to the building elevations in his letter dated June 4, 2012 (Applicant's submittal, Attachment L). The Newbury Street façade is extended by 3 feet 8 inches toward the street line with three units rather than two on each floor. Additional windows and balconies are shown along Newbury Street. One additional unit is proposed on each floor facing Hancock Street. Four balconies were shown along Hancock Street in 2009, so the number of balconies remains unchanged. Similarly, an additional unit is proposed on each floor facing the interior courtyard, so the façade changes with more balconies and windows. The Middle Street elevation for Building #1 remains unchanged and there no proposed revisions to Building #2.

The proposed exterior materials are listed in his most recent letter submitted on May 22, 2012 (Applicant's submittal, Attachment K). He states, "[r]egarding the materials we will be submitting new materials, but they are consistent with the previous approval." He notes that the brick, precast, polished block, windows and cement board will be consistent with the past approval, but may be from a different manufacturer and may have some color variation. Samples of the exterior materials were submitted to staff for review.



At the Planning Board workshop, the applicant proposed removing the lower cornice from the buildings, which was approved between the third and fourth floors in 2009. For the Board's final review, the lower cornice has been re-introduced to separate the brick and clapboards from the board and batten on the fourth floor. As noted in Mr. Whites June 4<sup>th</sup> letter (Attachment L), the lower cornice is six inches smaller than the approved cornice and it is not proposed to be installed on the bump-outs for the balconies. The revised elevations are included in the applicant's submission (Applicant's submittal, Attachment N.26- N.32).

The two levels of parking were approved with smaller window openings than in the previous version. The applicant is proposing to use the smaller window openings with the one level of parking. The plan also removes the upper windows above the retail windows and substitutes a polished block material that will be under permanent window awnings.

Alexander Jaegerman, Planning Division Director, and Barbara Barhydt reviewed the revisions under the Eastern Waterfront Guidelines (excerpt Attachment 3). The applicable design standards with staff comments are below:

**Building Composition:**

- c. *Massing: The massing of new development should be compatible with the existing development found in the surrounding neighborhoods. Portland is characterized by human scaled architecture that complements a pleasant pedestrian environment. New development along the Eastern Waterfront should avoid large monolithic massing along all Street frontages. Where new structures are larger than buildings characteristically found in Portland's waterfront, horizontal and vertical variation should be used to break large expanses of building into components that are in scale with the context to which they most closely relate.*

Staff Comment: In 2009, the Planning Board found the proposed structures to be consistent with the design guidelines. At that time, the projecting bays for the balconies with the vertical siding provided vertical variation and the lower cornice offered horizontal variation.

The revised plans show a larger bay projecting toward Newbury Street on Building# 1, which brings the building closer to the street line and continues to provide vertical variation. The re-introduction of the lower cornice between the third and fourth floor, excluding the projecting bays, divides the horizontal massing of the building. As noted at the Planning Board workshop, the massing and articulation of the building is important, particularly along Hancock Street.

In 2009, the Planning Board found the proposal to be consistent with the Eastern Waterfront Guidelines with three conditions of approval. The first condition was as follows:

The developer shall provide the additional documentation regarding final average grades used to determine the building height and the projected noise levels for proposed HVAC systems, as requested by Marge Schmuckal, Zoning Administrator in her 9/17/09 review prior to the issuance of a building permit.

Marge Schmuckal, Zoning Administrator, has received the average grade information and has confirmed the proposed building height is allowable under the conditional zoning agreement; however she does request the specifications for proposed HVAC systems and building signage. At the workshop, the Planning Board asked for clarification and the heights of any proposed rooftop appurtenances.

The proposed revisions are consistent with the massing guideline with the following recommendation for a revised condition of approval:

*The developer shall provide the additional documentation regarding all roof top appurtenances and the projected noise levels for proposed HVAC systems for review and approval by the Zoning Administrator and the Planning Authority, prior to the issuance of a building permit.*

- d. *Proportion: The façade proportions used in new development should be compatible with the existing development found in Portland's waterfront. While some building on Portland's Waterfront project a predominantly vertical or horizontal orientation, most use architectural details, storefront design, window openings, and roof shapes to balance the proportions of facades into pleasant and cohesive compositions. In smaller in-fill development, proportions of features such as windows, entryways, and storefronts should be designed to achieve compatibility with abutting structures and surrounding development.*

Staff Comment: The proposed storefronts are essentially the same as the design in 2009, except that a polished block will be used over the retail windows and these areas are covered by permanent awnings (proposed with a forest green sunbrella material). The windows for the parking level provide articulation along the pedestrian way, screen the parking use and are compatible with surrounding development. The plan also shows the stairway leading to the courtyard as a minimum of 5 feet wide.

In 2009, the Board included the following two conditions of approval:

The developer shall submit the details of the awning and signage for the buildings, a schedule of materials and colors for each façade, and details of the square windows and all window glass specification within the base façade prior to the issuance of a building permit.

The developer shall expand the width of the Newbury Street pedestrian stairway to a minimum of five (5) feet and a maximum of six (6) feet.

The details for the awnings and the schedule of exterior materials have been submitted, so the above condition can be revised to eliminate those two provisions; however the details for the signage, square windows and all window glass specifications must be submitted. The plans have been revised to show a 5 foot wide stairway meeting the second condition of approval.

The Planning staff finds the proposed revisions are consistent with the proportion guideline with the following two conditions of approval:

*The developer shall submit the details of the square windows, all window glass specifications within the base façade for review and approval prior to the issuance of a building permit.*

*The applicant shall submit details for unified signage for the buildings along with separate sign permits for review and approval by the Planning Authority and the Zoning Administrator, prior to the issuance of a certificate of occupancy.*

- e. *Articulation: Traditional arrangement of façade components into base, middle, and top composition can be used to achieve compatibility and continuity within the surrounding architectural context. Additionally, projecting bays, recessed balconies, and roof shape variation can be judiciously utilized to provide interest, individuality, and appropriate scale to new development.*

Staff Comment: As noted under massing, the projecting bays for the balconies and the building projection along Newbury Street provide vertical articulation on the building. The roof and lower cornices provide horizontal articulation to the building and contribute to the façade components for the base, middle and top. The proposed revisions are consistent with the articulation guideline.

- f. *Materials: Materials used in new development should reflect the historic character of Portland's waterfront. A straightforward use of natural and traditional building materials is encouraged. Brick, stone, high quality metals, cast concrete, wood, and glass will achieve the greatest level of compatibility with the surrounding area and will best stand the test of time; in terms of both changing community tastes and withstanding the maritime climate of the Eastern Waterfront.*

Staff Comment: The exterior materials are consistent with the 2009 and as stated in the applicant's material, the only variations are changes in vendors and slight color variations. The proposed changes to the exterior materials are consistent with the materials guideline, subject to the condition proposed under *Proportion* above that seeks additional details regarding the windows.

## VI. AMENDED SUBDIVISION AND SITE PLAN REVIEW

### (a) Financial Capability

For the 2009 approval, Village at Ocean Gate LLC confirmed a business agreement with Mr. Eric Cianchette in which the Village at Ocean Gate had the opportunity to partner or convey the project to Mr. Cianchette and the application included a letter of financial capacity from Bangor Savings that was submitted by Mr. Cianchette. Mr. Eric Cianchette is no longer a partner in this proposed project.

The Village at Ocean Gate, LLC has submitted a letter from East Boston Savings Bank, stating that they issued a formal commitment letter for construction financing for a 94 unit residential apartment complex including 5,700 sq. ft. of retail space and structured parking

under the building for 80 cars. The letter is included as Applicant's Submittal, Attachment M and meets the standard for financial capability.

**(b) Number Of Residential Units For Subdivision**

The subdivision and site plan in 2009 were approved with 82 residential units and the amended plan is for 94 dwelling units. In 2009, the unit types included 2 studios, 4 one-bedroom, 62 two-bedrooms, and 14 two-bedroom with a den. The revised unit types are as follows: 6 studios; 12 one-bedroom units; 62 two-bedroom units, 4 one-bedroom with a den apartments; and 10 three-bedroom units. The additional 12 units are proposed to be incorporated in Building 1, so the unit count increases from 40 to 52. According to Mr. White's letter (Attachment L, dated June 4, 2012), Building 1 will extend 3 feet 8 inches toward the west, which adds 120 square feet of area on each floor. The Applicant's submittal includes the revised floor plans and elevations, Attachment N.16- N.32.

The increase in the number of units is within the maximum of 110 units set by the conditional zone agreement. A final recording plat for the Planning Board signature will need to be submitted that reflects all of the waivers and conditions of approval that are applicable. The proposed motion for the Planning Board's consideration incorporates the previous waivers and conditions that remain applicable to the revised plan along with any proposed revisions.

**(c) Traffic and Parking**

**i. Required Parking**

The 2009 approved had two parking levels under Buildings 1 and 2 with a total of 159 parking spaces for the 82 condominiums. The applicant is seeking to return to the original concept of having one level of structured parking with 80 spaces on-site. According to the project data sheet in the application, the applicant will provide 100 spaces for the 94 units and 6 retail spaces. Applicant's Submittal Attachments A and N ( N.15, 16, and 21 the revised parking layout ).

The amended conditional rezoning agreement as recommended by the Planning Board includes the following to address required parking for the project:

12. Parking shall be provided for the SITE at no less than one space per dwelling (i.e. 94 spaces) and six (6) spaces for retail employee parking with approximately eighty (80) spaces provided onsite and the balance provided in the Ocean Gateway Garage. 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 the SITE. If the parking analysis demonstrates the inadequacy of a 1:1 /unit; parking space ratio, then the DEVELOPER must submit a parking mitigation plan, which plan shall be reviewed and approved by the City and thereafter implemented by the DEVELOPER.

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

The proposed site plan and subdivision meet the proposed changes in the agreement, but the parking arrangement would not meet the requirements of the currently adopted agreement. Thus a subdivision and site plan approval must be subject to the adoption of the amended agreement by the City Council.

ii. Traffic Engineer Review

Thomas Errico, consulting Traffic Engineer, submitted review comments in 2009 and he reviewed the revised plans. Several of his comments have been met, which are noted below. With the changes to the parking from 159 spaces to 80 on-site, Mr. Errico is recommending that the applicant prepare a Traffic Demand Management Plan. His comments (Attachment 4) are as follows:

The following summarizes a status report based on my September 17, 2009 comments and the revised application materials for the above noted project.

- 9/17/2009 Comment – The plans must be stamped by a professional engineer.  
Status – The plans have been sealed and I have no further comment.
- 9/17/2009 Comment – Sidewalk ramps shall meet city standards.  
Status – The plans meet this requirement and I have no further comment.
- 9/17/2009 Comment – The applicant should be responsible for all regulatory sign changes impacted by their project.  
Status – This comment remains valid.
- 9/17/2009 Comment – Based upon the proposed parking supply provided, a Parking Management Plan is not required.  
Status – The project will be providing 81 parking spaces for 94 residential units and retail uses. It is my recommendation that the project prepare a Transportation Demand Management Plan for the project that addresses what strategies the project will employ such that parking demand and traffic generation is minimized.
- 9/17/2009 Comment – The driveway on Middle Street does not meet City standards for width.  
Status – I support a waiver from City standards.
- 9/17/2009 Comment – The project will impact on-street parking regulations and would be expected to support staff in seeking City Council approval.  
Status – This comment remains valid.

On June 6, 2012, Tom Errico (Attachment 4) confirmed that his above comments remain valid and he noted that conditional rezone agreement requires the contributions for the India/Middle Street Traffic improvements and the Eastern Waterfront Post-Development Traffic Impact Study to be paid prior to the issuance of a building permit. A proposed condition of approval states all contributions shall be contributed in accordance with the conditional rezone agreement, since the City Council is being asked to consider a ten-year payment plan for the Hancock Street community contribution. In addition, a condition is proposed requiring the applicant to submit evidence of a lease for the residential spaces to be secured in the Ocean Gate garage prior to the

issuance of a certificate of occupancy and provided to the Planning Authority every two years. The waiver granted for the reduced driveway width for the Hancock entrance to the second level of parking is omitted from the proposed motion, since the second level of parking is no longer part of the proposal.

The proposed conditions of approval pertaining to traffic and parking are listed below:

- 1. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.*
- 2. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.*
- 3. The retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two (2) years.*
- 4. A copy of the lease for the 14 parking spaces for residential units to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.*
- 5. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.*
- 6. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.*

**(d) Revised Landscaping Plan**

The landscaping plan for the interior courtyard has been simplified from the approved plan with reductions in the mounded landscaped islands and walkway. The interior courtyard is private space that is not open to the public. Jeff Tarling, City Arborist, has reviewed the simplification of the design and reduction in vegetation to be acceptable for the interior courtyard ([Attachment 6](#)). Jeff does recommend that some of the areas along the street could benefit from enhanced landscaping and that the tree wells must be installed with structural soil as called for in the applicant's specifications. The condition of approval regarding landscaping has been updated to reflect Mr. Tarling's latest memo.

When this project was approved in 2009, the street tree requirement was set at 2 per unit and a waiver was granted to reduce the street tree contribution to one half the amount due as determined by the City Arborist. The following revisions to the motion are proposed to clarify the waiver:

*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 (which was two trees per unit in 2009) as determined by the City Arborist. Thus the financial contribution to the City's Street Tree Fund will be calculated at one tree per unit with the deduction for street trees proposed for the project.*

**(e) Utility Plan Changes**

The applicant is proposing a revised utility plan, which includes installing the electrical lines underground in Newbury Street. James Seymour summarizes the utility and road changes in his letter dated May 11, 2012 (Applicant's Submittal, Attachment G). Briefly the proposed changes include the following:

- Install 3-phase power underground to serve the development and other parties along Newbury Street from a point near India Street and across Hancock Street;
- No utility services are proposed in Hancock Street. The sewer and drain lines will connect into Middle Street. Electrical, water, and gas services will be installed from Newbury Street. The applicant will install the utilities except for water and gas.
- The applicant has agreed to mill Hancock Street's existing finish pavement course, shim and adjust elevations for new granite curbing along the building frontage and to resurface the street.
- Water upgrades planned for Newbury, Middle and Hancock Streets are to be installed by Portland Water District.
- 

David Margolis-Pineo, Deputy City Engineer, has reviewed the underground electrical plan with CMP. In general, the Department of Public Services supports the proposed underground electrical line and recommends a joint meeting with the applicant, CMP and the Department of Public Services. Mr. Margolis-Pineo's comments from the workshop are below and included as (Attachment 5a):

On the afternoon of May 17th, Mike Farmer and I met with Jeff Hanscom of CMP to discuss the proposal by the applicant of The Bayhouse to install underground electrical service on Newbury Street.

CMP has no issue with installing the electrical service underground, however when reviewing the applicant's Utility Plan, we were informed by Jeff that CMP would not allow the circuit to run through the transformer vault as shown, and that an electrical manhole would need to be installed with the Bayhouse being serviced from the electrical manhole. It would be desirable to have this manhole located in the intersection of Hancock and Newbury for future underground service on Hancock Street.

A note on the plans indicates that the applicant will coordinate with CMP and the City of Portland Public Service for the exact location of electrical lines and vaults. The applicant may wish to coordinate with CMP now to fully understand what is expected. Public Service staff will be available to attend.

In the 2009 approval letter there are conditions of site plan approval that address utilities and the required work in each abutting street. In particular, there is no work proposed in Hancock Street except the milling and paving proposed above, thus the 2009 conditions of site plan approval related

to Hancock Street are shown with a strike out for the street reconstruction fee. David Margolis-Pineo is confirming that this should be deleted. The condition has been revised to state applicable street opening fees. The final comments from David Margolis-Pineo, which address the underground utilities and other technical items are included as Attachment 5b and are referenced in the motion.

Steve Bushey, Consulting Civil Engineer, reviewed the revised plans (Attachment 7) and recommends clarification on the following aspects of the plan:

- The final plans shall be submitted with common revision dates;
- Clarification of the parking layout, turning movements and interior signage is requested.
- Final plans of the underground utilities accurately located on record drawings are required;
- Stormwater questions raised in 2009 remain relevant.

The motion is updated to reflect his most current review.

#### **VII. STAFF RECOMMENDATION**

The Planning staff members recommend approving the amended subdivision and site plan with the conditions listed in the proposed motions.

#### **VIII. PROPOSED MOTIONS**

The following motion is based upon the Planning Board's 2009 decision. The motion is restated and revisions to the original motion are underlined. As noted in the report, one waiver granted for the driveway width off Hancock Street has been omitted since the second level of parking is no longer part of the proposal and items that have been met and are omitted in the motions, such as the awnings, building height data and other technical requests, are not included in the motion below.

##### **Conformance with Conditional Rezoning Agreement**

On the basis of the application, plans, reports, conditional rezoning agreement and other information submitted by the applicant, the findings and recommendations contained in the Planning Board Report #29-12 and the testimony presented at the Planning Board hearing, the Planning Board finds:

The *Phase I* plan of 2009 as amended in 2012 is in conformance with the Conditional Rezoning Agreement and the Eastern Waterfront Design Guidelines subject to the following conditions:

1. The developer shall provide the additional documentation regarding all roof top appurtenances and the projected noise levels for proposed HVAC systems for review and approval by the Zoning Administrator and the Planning Authority prior to the issuance of a building permit.
2. The developer shall submit the details of the square windows, all window glass specifications within the base façade for review and approval by the Planning Authority prior to the issuance of a building permit.
3. The applicant shall submit details for unified signage for the buildings along with separate sign permits for review and approval by the Planning Authority and the Zoning Administrator, prior to the issuance of a certificate of occupancy.



### Waivers

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #29-12 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, the Planning Board waives the following technical standards:

1. Technical Manual, Section 1, subsection 1.7.2.3 Minimum Driveway Width which requires a minimum of 20 feet, with a preferred width of 24 foot wide driveway for two-way ingress and egress is waived to allow the access to be 18 feet at the garage entrance on Middle Street with a four foot setback from the Middle Street façade as shown on the amended subdivision plat.
2. Technical Standard, Section 12.8 Submission, which requires a photometric plan, is waived for the interior courtyard 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 (which was two trees per unit in 2009) as determined by the City Arborist. Thus the financial contribution to the City's Street Tree Fund will be calculated at one tree per unit with the deduction for street trees proposed for the project.

### Subdivision

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report #29-12, relevant to the Subdivision Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.
2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.
3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.
4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.
5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandum shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.

**Hancock Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- ~~The developer shall undertake its own trench work in Hancock Street (From Middle to the end of its Phase II frontage). In addition to such trenching, the developer shall pay to the City \$43,000 which will go towards the Hancock Street improvements. The developer shall not be obligated to pay a Pavement Restoration fee as the City will consider this fee covered by the \$43,000 payment. *(this strike out needs to be confirmed with Public Services by the time of the public hearing.)*~~

**Newbury Street**

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

**Middle Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two (2) years.
9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a certificate of occupancy.
10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.
11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in

the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.

12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.
13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.

**Site Plan**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report # 29-12, relevant to the Site Plan Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions of approval:

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. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.
3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit.
4. Revised plans and information meeting the recommendations contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit.
6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.
7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.

Attachments:

1. Proposed Third Amended Conditional Rezone Agreement for Bay House– 2012
2. Subdivision and Site Plan Approval Letter- 2009
3. Excerpt of Eastern Waterfront Design Guidelines
4. E-mail from Thomas Errico, P.E. , dated May 18, 2012 and June 6, 2012
5. E-mail from David Margolis-Pineo, dated May 18, 2012
6. E-mail from Jeff Tarling, dated June 8, 2012
7. Steve Bushey, memo, dated June 7, 2012
8. Public Comment
  - a. Hugh Nazor, 50 Federal Street, dated 4/24/12
  - b. Allison Brown, President, India Street Neighborhood Association, dated 4/24/12

Applicant's Submittal

- A. Application -- dated 4-3-12
- B. Cover Letter, Marc Gagnon, Landmarc Construction Corp, dated June 30, 2008
- C. David M. White, Architect, letter dated March 31, 2012
- D. James Seymour, P.E, Sebago Technics, letter dated April 3, 2012
- E. Nathan H. Smith, Esq. Bernstein Shur, letter dated April 12, 2012
- F. Resubmitted Application
- G. James Seymour, P.E., Sebago Technics, letter dated May 11, 2012
- H. Height Analysis
- I. David M. White, Architect, letter dated May 11, 2012
- J. Unit Type -- May 11, 2012
- K. David White, Architect, revised exterior materials memo, May 22, 2012
- L. David White, Architect, revised exterior materials memo, June 4, 2012
- M. Mary An Devlin, Vice President, East Boston Savings Bank, May 23, 2012
- N. Plan Set and Building Elevations - N.1 through N.32

CITY OF PORTLAND, MAINE  
PLANNING BOARD

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Carol Morrissette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
Joe Lewis  
David Silk  
Patrick Venne

June 15, 2012

Demetri Dasco  
Village at Oceangate, LLC  
35 Fay St. 107B  
Boston, MA 02118

Project Name: The Bay House      Project ID: 2012-466  
Address: 112 Newbury Street  
Applicant: The Village at Oceanate, LLC  
Planner: Barbara Barhydt, Development Review Services Manager

Dear Mr. Dasco:

On June 12, 2012, the Planning Board considered amended subdivision and site application for 94 residential units and 80 on-site parking spaces for 112 Newbury Street. The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance. The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) to approve the application with the following waivers and conditions as presented below.

**WAIVERS**

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) to waive each of the following waivers from the Technical Standards:

1. Technical Manual, Section 1, subsection 1.7.2.3 Minimum Driveway Width, which requires a minimum of 20 feet with a preferred width of 24 foot wide driveway for two-way ingress and egress, is waived to allow the access drive to be 18 feet at the garage entrance on Middle Street with a four foot setback from the Middle Street façade, as shown on the amended subdivision plat.
2. Technical Standard, Section 12.8 Submission, which requires a photometric plan, is waived for the interior courtyard 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 (which was two trees per unit in 2009) as determined by the City Arborist. Thus the financial contribution to the City's Street Tree Fund will be calculated at one tree per unit with the deduction for street trees proposed for the project.

**SUBDIVISION REVIEW**

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the amended plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.   
*- approved 8/6/12 - recorded 8/10/12*
2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.   
*- intends to commence*
3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.   
*# 62,600* *breakdown*
4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.   
*- says will do as part of cost*
5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.   
*- Construction mgd Plan*
6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandums shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.   
*- Talk w/ Steve*
7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.   
*- mk = Dave?*

**Hancock Street**

- The developer will contribute \$43,000 to the City for the reconstruction of Hancock Street for the agreed upon portion between Middle and Newbury Streets prior to the issuance of a building permit.

**Newbury Street**

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

**Middle Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

*Do we need a plan?*  
*- says they will do this*

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two (2) years. *- will submit plan to*
9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a certificate of occupancy. *copy*
10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line. *Danielle - Exhibit D*
11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years. *Danielle - Exhibit F*
12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.
13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval. *Tom*

#### SITE PLAN REVIEW

The Planning Board voted unanimously (4-0, Hall, Morrisette and O'Brien absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval:

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. *NOT submitted yet*
2. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.
3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit. *Chris*
4. Revised plans and information meeting the recommendations and addressing the suggestions contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit. *Jeff*
5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit. *Alex - Exhibit E*

6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.
7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.

P.G. Danielle

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report #29-21 for application #2012-466. A copy of the report is attached.

#### STANDARD CONDITIONS OF APPROVAL

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.



8. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
9. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.
10. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

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

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager, at 874-8699.

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

**Attachments:**

1. Planning Board Report and attachments
2. Performance Guarantee Packet

cc: Nathan Smith, Esq, Bernstein Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029  
 Marc Gagnon, Landmarc Construction, 415 Congress Street, Suite 202, Portland ME 04112  
 Jim Seymour, Sebago Technics, 75 John Roberts Road, Suite 1A, South Portland, ME 04106-6963  
 David M. White, 403 Tibbetts Hill Road, Goffstown, NH 03045

**Electronic Distribution:**

cc: Greg Mitchell, Interim Director of Planning and Urban Development  
 Alexander Jaegerman, Planning Division Director  
 Barbara Barhydt, Development Review Services Manager  
 Philip DiPierro, Development Review Coordinator, Planning  
 Marge Schmuckal, Zoning Administrator, Inspections Division  
 Tammy Munson, Inspection Division Director  
 Lannie Dobson, Administration, Inspections Division  
 Gayle Guertin, Administration, Inspections Division  
 Michael Bobinsky, Public Services Director  
 Katherine Earley, Engineering Services Manager, Public Services  
 Bill Clark, Project Engineer, Public Services  
 David Margolis-Pineo, Deputy City Engineer, Public Services  
 Doug Roncarati, Stormwater Coordinator, Public Services  
 Greg Vining, Associate Engineer, Public Services  
 Michelle Sweeney, Associate Engineer

John Low, Associate Engineer, Public Services  
 Mike Farmer, Project Engineer, Public Services  
 Jane Ward, Administration, Public Services  
 Jeff Tarling, City Arborist, Public Services  
 Captain Chris Pirone, Fire Department  
 Thomas Errico, P.E., TY Lin Associates  
 David Senus, P.E., Woodard and Curran  
 Rick Blackburn, Assessor's Department  
 Approval Letter File



## PLANNING BOARD REPORT PORTLAND, MAINE

The Bay House  
112 Newbury Street  
Amended Subdivision and Site Plan  
2012-466  
Village at Ocean Gate, LLC, Applicant

Submitted to: Portland Planning Board: Public Hearing Date: June 12, 2012	Prepared by: Barbara Barhydt, Development Review Services Manager Date: June 8, 2012 Planning Board Report Number: #29-12
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### I. INTRODUCTION

On September 22, 2009, the Planning Board approved the Bay House plan for 82 residential units, commercial space on the first level along Middle Street, and two levels of structured parking with 159 spaces. The approvals for the subdivision and site plan are valid until September 22, 2012. The Village at Ocean Gate LLC has submitted an application to amend the subdivision and site plans by increasing the number of residential units from 82 to 94, to eliminate one level of structured parking, to revise the underground utility plans for the site and modify the landscaped courtyard.

Demetri Dasco of Village at Oceangate, LLC is the applicant. The development team includes the following: James Seymour, P.E. with Sebago Technics, David M. White, Architect, Nathan Smith, Attorney with Bernstein Shur, and Marc Gagnon of Landmarc Construction.

135 notices were sent to area residents and to the interested citizen list on June 1, 2012. The legal ad appeared in June 4 and June 5, 2012 editions of the *Portland Press Herald*.

At the April 24, 2012 workshop, two residents submitted written comments regarding the Bay House Project, which are included as Attachments 8a and 8b.

### II. PROJECT DATA

Existing Zoning:	Conditional B-5b
Existing Use:	Vacant Lot
Proposed Units:	94 rental units
Approved Units:	82 condominium units
Parcel Size:	Amended subdivision plat lists 1.15 acres (50,088 square feet)
Proposed Building Area:	215,960 square feet
Parking Spaces:	80 on-site, 20 leased spaces proposed at Ocean Gateway Garage

### III. CHRONOLOGY OF REVIEW

#### a. Conditional Rezone Agreement and Amendments

The original conditional rezoning agreement for the Village at Ocean Gate was adopted by the City Council on November 20, 2006, which allowed up to 176 residential units in Phases I and II, with a maximum of 66 residential units stipulated for Phase II. The City Council adopted the amended

rezoning agreement per the Planning Board's recommendations on June 2, 2008 and the agreement became effective on July 2, 2008. On June 20, 2011, the City Council adopted amendments to the agreement, which deleted the second phase of the project, extended the approval dates for the site plan and conditional zone agreement to September 22, 2012, and set the maximum number of units at 110.

The Planning Board held a public hearing on May 22, 2012, to consider amendments to the conditional rezoning agreement proposed by the applicant. The proposed amendments include a ten year payment plan for the community contribution for the extension of Hancock Street, a provision that states the plans may be revised and approved from time to time by the Planning Board and clarifies that parking shall be provided at no less than 1 space per unit for a total of 94 spaces, with approximately 80 on-site and the balance provided in the Ocean Gateway Garage. The Planning Board voted five (5) to two (2), Silk and Dean, opposed, as follows:

- A. That the three proposed amendments to Conditional Rezone Agreement regarding the site plan, the payment schedule and the on-site parking are consistent with the Comprehensive Plan of the City of Portland; and
- B. That the Planning Board therefore recommends the Third Amendment to Conditional Zoning Agreement for the Village at Ocean Gate (aka Bay House) to the City Council for approval.

A copy of the revised agreement that is being forward to the City Council for their consideration is included as Attachment 1. This item will be on the City Council Agenda for a first reading on June 18<sup>th</sup> and then a public hearing at the Council's July meeting.

**b. Subdivision and Site Plan Review**

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. A waiver of the Landscaping requirements for the project was re-approved on November 13, 2007 and recorded at the Cumberland County Registry of Deeds. The original recording plat for the subdivision was signed by the Planning Board, but was not recorded.

On July 8, 2008, the Planning Board approved the amended site plan and subdivision plan included the following revisions:

- a. The subdivision plat was revised to incorporate 1,602 square feet of land into Phase I;
- b. The number of units in Phase I was reduced from 84 to 82 residential units;
- c. The commercial space was reduced to 5,736 square feet with three retail spaces in Building #2 and the vestibule is located near the garage entrance.
- d. The first level of Phase I was revised to provide storage areas for the units, 80 vehicle parking spaces and 38 bicycle spaces; and
- e. There were modifications to the exterior materials and building design.

The 2008 approval was extended to 2010 and the recording plat was signed, but it was not recorded. The waivers were recorded at the Registry within 90 days.

On September 22, 2009, the site plan and subdivision plan was approved with conditions by the Planning Board. The Bay House plan included 82 condominiums and two levels of structured

parking with a total of 159 parking spaces. The Planning Board found the proposal in conformance with the 2008 conditional zone agreement subject to 4 conditions, granted four waivers, approved the subdivision plan with ten (10) conditions of approval and approved the site plan with seven (7) conditions of approval (Attachment 2, includes approval letter, staff report and attachments). The 2009 site plan approval was extended to September 22, 2012, as part of the conditional zone agreement amended in 2011 (this provision is retained in the proposed Third Amended Agreement, Attachment 1). The 2009 subdivision and site plan approvals are currently valid for this site.

#### **IV. PROPOSED AMENDMENTS TO SUBDIVISION AND SITE PLAN**

The applicant is seeking the Planning Board's approval for the proposed amendments to the 2009 approved subdivision and site plans. The following review focuses on the revisions to the plans. The motions for the Planning Board's consideration incorporate the full set of waivers and motions from 2009 with proposed revisions and additions as applicable to the amended plans.

#### **V. COMPLIANCE WITH THE CONDITIONAL REZONE AGREEMENT**

##### **a) Zoning Review: Marge Schmuckal, Zoning Administrator, June 7, 2012**

This is a third rendition of the proposal on Newbury and Middle Streets. I have reviewed the most current version of the Conditional Contract Rezoning and reviewed the current plan submissions. It is my understanding that the City Council will be weighing in on the rezoning on June 18th, 2012. The proposal is meeting the requirements of the rezoning and the B-5b zone requirements where required. This includes the number of parking spaces within the buildings, setbacks and area per dwelling unit. The building height is under the maximum of 74' from average grade. There is a measurement of 71' from the lowest grade elevation to the top of the roof.

Separate information shall be required concerning the HVAC systems and their compliance with the maximum noise allowance of the B-5b zone.

Separate permit will be required for any new signage.

Marge Schmuckal's requirements for additional information and signage permits are incorporated in conditions of approval drafted under the design review section below.

##### **b) Expiration Dates**

The second amendment and proposed third amendment to the conditional rezone agreement establish expiration dates for the conditional zone agreement and the site plan as follows:

10. 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 the **SITE** by September 22, 2012. 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.

11. The site plan approval for the **SITE** dated September 22, 2009, shall be extended until September 22, 2012.

A condition of approval is proposed to state clearly that the September 22, 2012 is the expiration date for both the 2012 amended subdivision and site plans:

*The approval for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.*

**c) Eastern Waterfront Design Guidelines**

The conditional rezone agreement for the Bay House includes a provision stating plans may be modified by the Planning Board in accordance with the Design Standards for the Eastern Waterfront in connection with site plan and subdivision amendments:

1. 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 August 3, 2005 as revised April 22, 2008 and September, 2009, and with the lot line adjustment approved by the Portland Planning Board on May 24, 2011, ~~and as same may be revised and approved from time to time by the Planning Board~~. The project shall consist of two buildings along Middle, Hancock and Newbury Streets. The final building elevations shall be or have been approved by the Planning Board during the required subdivision and site plan amendment process. The previously approved building elevations for the SITE, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, "the Plans for the SITE"), 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.

The Planning Board shall review or shall have reviewed the SITE proposal 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.

The 12 new units are proposed within Building #1, which in turn necessitates façade changes to the Hancock, Newbury, and interior courtyard elevations. David White, Architect, identifies the changes to the building elevations in his letter dated June 4, 2012 (Applicant's submittal, Attachment L). The Newbury Street façade is extended by 3 feet 8 inches toward the street line with three units rather than two on each floor. Additional windows and balconies are shown along Newbury Street. One additional unit is proposed on each floor facing Hancock Street. Four balconies were shown along Hancock Street in 2009, so the number of balconies remains unchanged. Similarly, an additional unit is proposed on each floor facing the interior courtyard, so the façade changes with more balconies and windows. The Middle Street elevation for Building #1 remains unchanged and there no proposed revisions to Building #2.

The proposed exterior materials are listed in his most recent letter submitted on May 22, 2012 (Applicant's submittal, Attachment K). He states, "[r]egarding the materials we will be submitting new materials, but they are consistent with the previous approval." He notes that the brick, precast, polished block, windows and cement board will be consistent with the past approval, but may be from a different manufacturer and may have some color variation. Samples of the exterior materials were submitted to staff for review.

At the Planning Board workshop, the applicant proposed removing the lower cornice from the buildings, which was approved between the third and fourth floors in 2009. For the Board's final review, the lower cornice has been re-introduced to separate the brick and clapboards from the board and batten on the fourth floor. As noted in Mr. Whites June 4<sup>th</sup> letter (Attachment L), the lower cornice is six inches smaller than the approved cornice and it is not proposed to be installed on the bump-outs for the balconies. The revised elevations are included in the applicant's submission (Applicant's submittal, Attachment N.26- N.32).

The two levels of parking were approved with smaller window openings than in the previous version. The applicant is proposing to use the smaller window openings with the one level of parking. The plan also removes the upper windows above the retail windows and substitutes a polished block material that will be under permanent window awnings.

Alexander Jaegerman, Planning Division Director, and Barbara Barhydt reviewed the revisions under the Eastern Waterfront Guidelines (excerpt Attachment 3). The applicable design standards with staff comments are below:

**Building Composition:**

- c. *Massing: The massing of new development should be compatible with the existing development found in the surrounding neighborhoods. Portland is characterized by human scaled architecture that complements a pleasant pedestrian environment. New development along the Eastern Waterfront should avoid large monolithic massing along all Street frontages. Where new structures are larger than buildings characteristically found in Portland's waterfront, horizontal and vertical variation should be used to break large expanses of building into components that are in scale with the context to which they most closely relate.*

Staff Comment: In 2009, the Planning Board found the proposed structures to be consistent with the design guidelines. At that time, the projecting bays for the balconies with the vertical siding provided vertical variation and the lower cornice offered horizontal variation.

The revised plans show a larger bay projecting toward Newbury Street on Building# 1, which brings the building closer to the street line and continues to provide vertical variation. The re-introduction of the lower cornice between the third and fourth floor, excluding the projecting bays, divides the horizontal massing of the building. As noted at the Planning Board workshop, the massing and articulation of the building is important, particularly along Hancock Street.

In 2009, the Planning Board found the proposal to be consistent with the Eastern Waterfront Guidelines with three conditions of approval. The first condition was as follows:

The developer shall provide the additional documentation regarding final average grades used to determine the building height and the projected noise levels for proposed HVAC systems, as requested by Marge Schmuckal, Zoning Administrator in her 9/17/09 review prior to the issuance of a building permit.

Marge Schmuckal, Zoning Administrator, has received the average grade information and has confirmed the proposed building height is allowable under the conditional zoning agreement; however she does request the specifications for proposed HVAC systems and building signage. At the workshop, the Planning Board asked for clarification and the heights of any proposed rooftop appurtenances.

The proposed revisions are consistent with the massing guideline with the following recommendation for a revised condition of approval:

*The developer shall provide the additional documentation regarding all roof top appurtenances and the projected noise levels for proposed HVAC systems for review and approval by the Zoning Administrator and the Planning Authority, prior to the issuance of a building permit.*

- d. *Proportion: The façade proportions used in new development should be compatible with the existing development found in Portland's waterfront. While some building on Portland's Waterfront project a predominantly vertical or horizontal orientation, most use architectural details, storefront design, window openings, and roof shapes to balance the proportions of facades into pleasant and cohesive compositions. In smaller in-fill development, proportions of features such as windows, entryways, and storefronts should be designed to achieve compatibility with abutting structures and surrounding development.*

Staff Comment: The proposed storefronts are essentially the same as the design in 2009, except that a polished block will be used over the retail windows and these areas are covered by permanent awnings (proposed with a forest green sunbrella material). The windows for the parking level provide articulation along the pedestrian way, screen the parking use and are compatible with surrounding development. The plan also shows the stairway leading to the courtyard as a minimum of 5 feet wide.

In 2009, the Board included the following two conditions of approval:

The developer shall submit the details of the awning and signage for the buildings, a schedule of materials and colors for each façade, and details of the square windows and all window glass specification within the base façade prior to the issuance of a building permit.

The developer shall expand the width of the Newbury Street pedestrian stairway to a minimum of five (5) feet and a maximum of six (6) feet.

The details for the awnings and the schedule of exterior materials have been submitted, so the above condition can be revised to eliminate those two provisions; however the details for the signage, square windows and all window glass specifications must be submitted. The plans have been revised to show a 5 foot wide stairway meeting the second condition of approval.

The Planning staff finds the proposed revisions are consistent with the proportion guideline with the following two conditions of approval:

*The developer shall submit the details of the square windows, all window glass specifications within the base façade for review and approval prior to the issuance of a building permit.*

*The applicant shall submit details for unified signage for the buildings along with separate sign permits for review and approval by the Planning Authority and the Zoning Administrator, prior to the issuance of a certificate of occupancy.*

- e. *Articulation: Traditional arrangement of façade components into base, middle, and top composition can be used to achieve compatibility and continuity within the surrounding architectural context. Additionally, projecting bays, recessed balconies, and roof shape variation can be judiciously utilized to provide interest, individuality, and appropriate scale to new development.*

Staff Comment: As noted under massing, the projecting bays for the balconies and the building projection along Newbury Street provide vertical articulation on the building. The roof and lower cornices provide horizontal articulation to the building and contribute to the façade components for the base, middle and top. The proposed revisions are consistent with the articulation guideline.

- f. *Materials: Materials used in new development should reflect the historic character of Portland's waterfront. A straightforward use of natural and traditional building materials is encouraged. Brick, stone, high quality metals, cast concrete, wood, and glass will achieve the greatest level of compatibility with the surrounding area and will best stand the test of time; in terms of both changing community tastes and withstanding the maritime climate of the Eastern Waterfront.*

Staff Comment: The exterior materials are consistent with the 2009 and as stated in the applicant's material, the only variations are changes in vendors and slight color variations. The proposed changes to the exterior materials are consistent with the materials guideline, subject to the condition proposed under *Proportion* above that seeks additional details regarding the windows.

## VI. AMENDED SUBDIVISION AND SITE PLAN REVIEW

### (a) Financial Capability

For the 2009 approval, Village at Ocean Gate LLC confirmed a business agreement with Mr. Eric Cianchette in which the Village at Ocean Gate had the opportunity to partner or convey the project to Mr. Cianchette and the application included a letter of financial capacity from Bangor Savings that was submitted by Mr. Cianchette. Mr. Eric Cianchette is no longer a partner in this proposed project.

The Village at Ocean Gate, LLC has submitted a letter from East Boston Savings Bank, stating that they issued a formal commitment letter for construction financing for a 94 unit residential apartment complex including 5,700 sq. ft. of retail space and structured parking



under the building for 80 cars. The letter is included as Applicant's Submittal, Attachment M and meets the standard for financial capability.

**(b) Number Of Residential Units For Subdivision**

The subdivision and site plan in 2009 were approved with 82 residential units and the amended plan is for 94 dwelling units. In 2009, the unit types included 2 studios, 4 one-bedroom, 62 two-bedrooms, and 14 two-bedroom with a den. The revised unit types are as follows: 6 studios; 12 one-bedroom units; 62 two-bedroom units, 4 one-bedroom with a den apartments; and 10 three-bedroom units. The additional 12 units are proposed to be incorporated in Building 1, so the unit count increases from 40 to 52. According to Mr. White's letter (Attachment L, dated June 4, 2012), Building 1 will extend 3 feet 8 inches toward the west, which adds 120 square feet of are on each floor. The Applicant's submittal includes the revised floor plans and elevations, Attachment N.16- N.32.

The increase in the number of units is within the maximum of 110 units set by the conditional zone agreement. A final recording plat for the Planning Board signature will need to be submitted that reflects all of the waivers and conditions of approval that are applicable. The proposed motion for the Planning Board's consideration incorporates the previous waivers and conditions that remain applicable to the revised plan along with any proposed revisions.

**(c) Traffic and Parking**

**i. Required Parking**

The 2009 approved had two parking levels under Buildings 1 and 2 with a total of 159 parking spaces for the 82 condominiums. The applicant is seeking to return to the original concept of having one level of structured parking with 80 spaces on-site. According to the project data sheet in the application, the applicant will provide 100 spaces for the 94 units and 6 retail spaces. Applicant's Submittal Attachments A and N ( N.15, 16, and 21 the revised parking layout ).

The amended conditional rezoning agreement as recommended by the Planning Board includes the following to address required parking for the project:

12. Parking shall be provided for the SITE at no less than one space per dwelling (i.e. 94 spaces) and six (6) spaces for retail employee parking with approximately eighty (80) spaces provided onsite and the balance provided in the Ocean Gateway Garage. 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 the SITE. If the parking analysis demonstrates the inadequacy of a 1:1 /unit; parking space ratio, then the DEVELOPER must submit a parking mitigation plan, which plan shall be reviewed and approved by the City and thereafter implemented by the DEVELOPER.

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

The proposed site plan and subdivision meet the proposed changes in the agreement, but the parking arrangement would not meet the requirements of the currently adopted agreement. Thus a subdivision and site plan approval must be subject to the adoption of the amended agreement by the City Council.

ii. Traffic Engineer Review

Thomas Errico, consulting Traffic Engineer, submitted review comments in 2009 and he reviewed the revised plans. Several of his comments have been met, which are noted below. With the changes to the parking from 159 spaces to 80 on-site, Mr. Errico is recommending that the applicant prepare a Traffic Demand Management Plan. His comments (Attachment 4) are as follows:

The following summarizes a status report based on my September 17, 2009 comments and the revised application materials for the above noted project.

- 9/17/2009 Comment – The plans must be stamped by a professional engineer.  
Status – The plans have been sealed and I have no further comment.
- 9/17/2009 Comment – Sidewalk ramps shall meet city standards.  
Status – The plans meet this requirement and I have no further comment.
- 9/17/2009 Comment – The applicant should be responsible for all regulatory sign changes impacted by their project.  
Status – This comment remains valid.
- 9/17/2009 Comment – Based upon the proposed parking supply provided, a Parking Management Plan is not required.  
Status – The project will be providing 81 parking spaces for 94 residential units and retail uses. It is my recommendation that the project prepare a Transportation Demand Management Plan for the project that addresses what strategies the project will employ such that parking demand and traffic generation is minimized.
- 9/17/2009 Comment – The driveway on Middle Street does not meet City standards for width.  
Status – I support a waiver from City standards.
- 9/17/2009 Comment – The project will impact on-street parking regulations and would be expected to support staff in seeking City Council approval.  
Status – This comment remains valid.

On June 6, 2012, Tom Errico (Attachment 4) confirmed that his above comments remain valid and he noted that conditional rezone agreement requires the contributions for the India/Middle Street Traffic improvements and the Eastern Waterfront Post-Development Traffic Impact Study to be paid prior to the issuance of a building permit. A proposed condition of approval states all contributions shall be contributed in accordance with the conditional rezone agreement, since the City Council is being asked to consider a ten-year payment plan for the Hancock Street community contribution. In addition, a condition is proposed requiring the applicant to submit evidence of a lease for the residential spaces to be secured in the Ocean Gate garage prior to the

issuance of a certificate of occupancy and provided to the Planning Authority every two years. The waiver granted for the reduced driveway width for the Hancock entrance to the second level of parking is omitted from the proposed motion, since the second level of parking is no longer part of the proposal.

The proposed conditions of approval pertaining to traffic and parking are listed below:

1. *The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.*
2. *All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.*
3. *The retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two (2) years.*
4. *A copy of the lease for the 14 parking spaces for residential units to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.*
5. *The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.*
6. *Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.*

**(d) Revised Landscaping Plan**

The landscaping plan for the interior courtyard has been simplified from the approved plan with reductions in the mounded landscaped islands and walkway. The interior courtyard is private space that is not open to the public. Jeff Tarling, City Arborist, has reviewed the simplification of the design and reduction in vegetation to be acceptable for the interior courtyard (Attachment 6). Jeff does recommend that some of the areas along the street could benefit from enhanced landscaping and that the tree wells must be installed with structural soil as called for in the applicant's specifications. The condition of approval regarding landscaping has been updated to reflect Mr. Tarling's latest memo.

When this project was approved in 2009, the street tree requirement was set at 2 per unit and a waiver was granted to reduce the street tree contribution to one half the amount due as determined by the City Arborist. The following revisions to the motion are proposed to clarify the waiver:

*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 (which was two trees per unit in 2009) as determined by the City Arborist. Thus the financial contribution to the City's Street Tree Fund will be calculated at one tree per unit with the deduction for street trees proposed for the project.*

**(e) Utility Plan Changes**

The applicant is proposing a revised utility plan, which includes installing the electrical lines underground in Newbury Street. James Seymour summarizes the utility and road changes in his letter dated May 11, 2012 (Applicant's Submittal, Attachment G). Briefly the proposed changes include the following:

- Install 3-phase power underground to serve the development and other parties along Newbury Street from a point near India Street and across Hancock Street;
- No utility services are proposed in Hancock Street. The sewer and drain lines will connect into Middle Street. Electrical, water, and gas services will be installed from Newbury Street. The applicant will install the utilities except for water and gas.
- The applicant has agreed to mill Hancock Street's existing finish pavement course, shim and adjust elevations for new granite curbing along the building frontage and to resurface the street.
- Water upgrades planned for Newbury, Middle and Hancock Streets are to be installed by Portland Water District.

David Margolis-Pineo, Deputy City Engineer, has reviewed the underground electrical plan with CMP. In general, the Department of Public Services supports the proposed underground electrical line and recommends a joint meeting with the applicant, CMP and the Department of Public Services. Mr. Margolis-Pineo's comments from the workshop are below and included as (Attachment 5a):

On the afternoon of May 17th, Mike Farmer and I met with Jeff Hanscom of CMP to discuss the proposal by the applicant of The Bayhouse to install underground electrical service on Newbury Street.

CMP has no issue with installing the electrical service underground, however when reviewing the applicant's Utility Plan, we were informed by Jeff that CMP would not allow the circuit to run through the transformer vault as shown, and that an electrical manhole would need to be installed with the Bayhouse being serviced from the electrical manhole. It would be desirable to have this manhole located in the intersection of Hancock and Newbury for future underground service on Hancock Street.

A note on the plans indicates that the applicant will coordinate with CMP and the City of Portland Public Service for the exact location of electrical lines and vaults. The applicant may wish to coordinate with CMP now to fully understand what is expected. Public Service staff will be available to attend.

In the 2009 approval letter there are conditions of site plan approval that address utilities and the required work in each abutting street. In particular, there is no work proposed in Hancock Street except the milling and paving proposed above, thus the 2009 conditions of site plan approval related

to Hancock Street are shown with a strike out for the street reconstruction fee. David Margolis-Pineo is confirming that this should be deleted. The condition has been revised to state applicable street opening fees. The final comments from David Margolis-Pineo, which address the underground utilities and other technical items are included as Attachment 5b and are referenced in the motion.

Steve Bushey, Consulting Civil Engineer, reviewed the revised plans (Attachment 7) and recommends clarification on the following aspects of the plan:

- The final plans shall be submitted with common revision dates;
- Clarification of the parking layout, turning movements and interior signage is requested.
- Final plans of the underground utilities accurately located on record drawings are required;
- Stormwater questions raised in 2009 remain relevant.

The motion is updated to reflect his most current review.

#### **VII. STAFF RECOMMENDATION**

The Planning staff members recommend approving the amended subdivision and site plan with the conditions listed in the proposed motions.

#### **VIII. PROPOSED MOTIONS**

The following motion is based upon the Planning Board's 2009 decision. The motion is restated and revisions to the original motion are underlined. As noted in the report, one waiver granted for the driveway width off Hancock Street has been omitted since the second level of parking is no longer part of the proposal and items that have been met and are omitted in the motions, such as the awnings, building height data and other technical requests, are not included in the motion below.

##### **Conformance with Conditional Rezoning Agreement**

On the basis of the application, plans, reports, conditional rezoning agreement and other information submitted by the applicant, the findings and recommendations contained in the Planning Board Report #29-12 and the testimony presented at the Planning Board hearing, the Planning Board finds:

The *Phase I* plan of 2009 as amended in 2012 is in conformance with the Conditional Rezoning Agreement and the Eastern Waterfront Design Guidelines subject to the following conditions:

1. The developer shall provide the additional documentation regarding all roof top appurtenances and the projected noise levels for proposed HVAC systems for review and approval by the Zoning Administrator and the Planning Authority prior to the issuance of a building permit.
2. The developer shall submit the details of the square windows, all window glass specifications within the base façade for review and approval by the Planning Authority prior to the issuance of a building permit.
3. The applicant shall submit details for unified signage for the buildings along with separate sign permits for review and approval by the Planning Authority and the Zoning Administrator, prior to the issuance of a certificate of occupancy.

### Waivers

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #29-12 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, the Planning Board waives the following technical standards:

1. Technical Manual, Section 1, subsection 1.7.2.3 Minimum Driveway Width which requires a minimum of 20 feet, with a preferred width of 24 foot wide driveway for two-way ingress and egress is waived to allow the access to be 18 feet at the garage entrance on Middle Street with a four foot setback from the Middle Street façade as shown on the amended subdivision plat.
2. Technical Standard, Section 12.8 Submission, which requires a photometric plan, is waived for the interior courtyard 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 (which was two trees per unit in 2009) as determined by the City Arborist. Thus the financial contribution to the City's Street Tree Fund will be calculated at one tree per unit with the deduction for street trees proposed for the project.

### Subdivision

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report #29-12, relevant to the Subdivision Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.
2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.
3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.
4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.
5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandum shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.

**Hancock Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- ~~The developer shall undertake its own trench work in Hancock Street (From Middle to the end of its Phase II frontage). In addition to such trenching, the developer shall pay to the City \$43,000 which will go towards the Hancock Street improvements. The developer shall not be obligated to pay a Pavement Restoration fee as the City will consider this fee covered by the \$43,000 payment. *(this strike out needs to be confirmed with Public Services by the time of the public hearing.)*~~

**Newbury Street**

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

**Middle Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two (2) years.
9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a certificate of occupancy.
10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.
11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in

the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.

12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.
13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.

**Site Plan**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report # 29-12, relevant to the Site Plan Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions of approval:

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. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.
3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit.
4. Revised plans and information meeting the recommendations contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit.
6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.
7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.



Attachments:

1. Proposed Third Amended Conditional Rezone Agreement for Bay House– 2012
2. Subdivision and Site Plan Approval Letter- 2009
3. Excerpt of Eastern Waterfront Design Guidelines
4. E-mail from Thomas Errico, P.E. , dated May 18, 2012 and June 6, 2012
5. E-mail from David Margolis-Pineo, dated May 18, 2012
6. E-mail from Jeff Tarling, dated June 8, 2012
7. Steve Bushey, memo, dated June 7, 2012
8. Public Comment
  - a. Hugh Nazor, 50 Federal Street, dated 4/24/12
  - b. Allison Brown, President, India Street Neighborhood Association, dated 4/24/12

Applicant's Submittal

- A. Application -- dated 4-3-12
- B. Cover Letter, Marc Gagnon, Landmarc Construction Corp, dated June 30, 2008
- C. David M. White, Architect, letter dated March 31, 2012
- D. James Seymour, P.E, Sebago Technics, letter dated April 3, 2012
- E. Nathan H. Smith, Esq. Bernstein Shur, letter dated April 12, 2012
- F. Resubmitted Application
- G. James Seymour, P.E., Sebago Technics, letter dated May 11, 2012
- H. Height Analysis
- I. David M. White, Architect, letter dated May 11, 2012
- J. Unit Type -- May 11, 2012
- K. David White, Architect, revised exterior materials memo, May 22, 2012
- L. David White, Architect, revised exterior materials memo, June 4, 2012
- M. Mary An Devlin, Vice President, East Boston Savings Bank, May 23, 2012
- N. Plan Set and Building Elevations - N.1 through N.32



# PLANNING BOARD REPORT PORTLAND, MAINE

The Bay House  
112 Newbury Street  
Third Amendment to Conditional Rezone Agreement  
2012-466  
The Village at Ocean Gate, LLC, Applicant

Submitted to: Portland Planning Board: Public Hearing Date: May 22, 2012	Prepared by: Barbara Barhydt, Development Review Services Manager Date: May 17, 2012 Planning Board Report Number: 24-12
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## I. INTRODUCTION

On September 22, 2009, the Planning Board approved the Bay House plan for 82 residential units, commercial space on the first level along Middle Street, and two levels of structured parking with 159 spaces. The approvals for the subdivision and site plan are valid until September 22, 2012. The applicant has submitted an application to amend the subdivision and site plans by increasing the number of residential units from 82 to 94. The applicant is requesting a recommendation from the Planning Board on an amendment to the conditional rezoning agreement to permit a ten-year payment plan for the infrastructure contribution to the extension of Hancock Street. The proposed amended agreement is included as Attachment 1.

Demetri Dasco of Village at Oceangate is the applicant. The development team includes the following: James Seymour, P.E. with Sebago Technics, David M. White, Architect, Nathan Smith, Attorney with Bernstein Shur, and Marc Gagnon of Landmarc Construction. The applicant's submission is a separate document in the packet.

135 notices were sent to area residents and the interested citizen list. The agreement was posted in the City Clerk's office on May 7<sup>th</sup> and the agreement was sent to abutters on May 9<sup>th</sup>. The legal notice appeared on May 7<sup>th</sup> and May 14<sup>th</sup> and the legal ad appeared in the May 14<sup>th</sup> and 15<sup>th</sup> editions of the *Portland Press Herald*.

## II. PROJECT DATA

Existing Zoning:	Conditional B-5b
Existing Use:	Vacant Lot
Proposed Units:	94 rental units
Approved Units:	82 condominium units
Parcel Size:	78,843.6 square feet (data from project data form in application) , amended subdivision plat lists 1.15 acres (50,088 square feet)
Proposed Building Area:	215,960 square feet
Parking Spaces:	
Proposed:	81 on-site, 19 spaces off-site and 3 handicapped spaces, total 103 ( data is from the project data form in the application)

## III. BACKGROUND ON CONDITIONAL REZONE AGREEMENT

The original conditional rezoning agreement for the Village at Ocean Gate was adopted by the City Council on November 20, 2006, which allows up to 176 residential units in Phases I and II, with a maximum of 66 residential units stipulated for Phase II. The City Council adopted the amended rezoning agreement per the Planning Board's

recommendations on June 2, 2008 and the agreement became effective on July 2, 2008. On June 20, 2011, the City Council adopted the second amendments to the agreement, which deleted the Phase II of the project, extended the approval dates for the site plan and conditional zone agreement to September 22, 2012, and set the maximum number of units at 110.

#### IV. PROPOSED AMENDMENTS TO CONDITIONAL ZONE AGREEMENT

The applicant is seeking the Planning Board's recommendation to City Council on proposed amendments to the conditional rezone agreement. When the Village at Oceangate sought the conditional rezoning agreement in 2006, Hancock Street did not connect from Middle Street to Fore Street. The Eastern Waterfront Master Plan recommended re-establishing the street connectivity in this neighborhood, so there would be better pedestrian and vehicle circulation to support redevelopment of the area. Plans were made to extend Hancock Street to Fore Street. As part of the adopted agreement, the Village at Oceangate committed to a \$200,000 community contribution to the extension of Hancock Street. Other contributions were allocated to traffic improvements and all contributions were to be made prior to the issuance of a building permit.

Attachment 2 is a letter from Nathan Smith, Esq. Bernstein Shur dated April 12, 2012. On behalf of the applicant, Mr. Smith is requesting that the City Council consider an amendment to the conditional rezone agreement that allows a payment plan for the Hancock Street Community Contribution to be paid over a ten year period (\$20,000 annual installments) rather than one lump sum. As noted in Mr. Smith's letter, the project cannot be financed as a condominium project in the current real estate market. It will be financed and operated as residential rental apartment complex. The applicant is seeking to reduce the upfront cash required to start the project, thus a payment plan allows them to extend the payments over time and meet cash flow requirements for the project. The proposed revision to the agreement is as follows:

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 of \$200,000 shall be made in annual installments of \$20,000 per year according to a payment plan to be determined by the Planning Authority, and the remaining \$10,000 shall be paid prior to the issuance of a building permit for the **SITE**.

The City extended Hancock Street in 2008 with the final paving in 2009 at a total cost of \$306,000 Bonded monies from the City's CIP Pavement Rehabilitation account were used to fully fund the construction of the street. The Department of Public Services anticipated the eventual \$200,000 reimbursement to support future Pavement Rehabilitation that was postponed by this alternative use of CIP funds. While community contributions are included in conditional rezone agreements, a payment plan is more of a policy/financial consideration for the City Council than a land use issue.

In addition, the applicant is seeking a second amendment to the conditional rezone agreement that allows for modifications in the subdivision and site plans as approved by the Planning Board. The proposed amendment is as follows:

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 August 3, 2005 as revised April 22, 2008 and September, 2009, and with the lot line adjustment approved by the Portland Planning Board

on May 24, 2011, and as same may be revised and approved from time to time by the Planning Board. The project shall consist of two buildings along Middle, Hancock and Newbury Streets. The final building elevations shall be or have been approved by the Planning Board during the required subdivision and site plan amendment process. The previously approved building elevations for the **SITE**, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, "the Plans for the **SITE**"), 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.

## V. COMPREHENSIVE PLAN

The Comprehensive Plan includes the housing element titled Housing: Sustaining Portland's Future. The plan calls for the creation of all types of housing to meet the needs of Portland. The plan calls for sustainable development with greater density of housing near the downtown and supports mixed-use development within the Business zones. The conditional zone for this site was adopted in 2006 and amended in 2008 and 2011. The proposed amendments for a ten year pay plan and adjustments to the subdivision and site plan as approved by the Planning Board are requested by the applicant to move the project to construction by meeting current financing requirements and they do not amend the applicant's plans for sustainable development with greater density of housing near the downtown. As a result, the proposal seems to be in compliance with the Comprehensive Plan.

## VI. STAFF RECOMMENDATION

The Planning Staff suggest the Planning Board consider a positive recommendation for the proposed Conditional Rezone amendments to the City Council.

## VII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the application, plans, reports and other information submitted by the applicant, the policies and requirements of the Conditional Rezone zone, the Comprehensive Plan, public comment, staff comments and recommendations contained in Planning Report #24-12, and the testimony presented at the Planning Board Hearing, the Planning Board finds:

- A. That the proposed amendments to Conditional Rezone Agreement as described in this Report [are or are not] consistent with the Comprehensive Plan of the City of Portland;
- B. That the Planning Board therefore [recommends or does not recommend] the Third Amendment to Conditional Zoning Agreement for the Village at Ocean Gate (aka Bay House) to the City Council for approval.

### Attachments:

1. Proposed Third Amended Conditional Rezone Agreement for the Village At Ocean Gate (aka the Bay House)
2. Letter from Nathan H. Smith, Esq. April 12, 2012

MICHAEL F. BRENNAN (MAYOR)  
 KEVIN J. DONOGHUE (1)  
 DAVID A. MARSHALL (2)  
 EDWARD J. SUSLOVIC (3)  
 CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

Attachment 1  
 JOHN R. COYNE (5)  
 JOHN M. ANTON (A/L)  
 JILL C. DUSON (A/L)  
 NICHOLAS M. MAVODONES (A/L)

**AMENDMENT TO CITY CODE**  
**SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)**  
**RE: Third Amendment to Conditional Zoning Agreement**  
**The Village At Ocean Gate (aka Bayhouse)**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.

**THIRD AMENDED CONDITIONAL ZONE AGREEMENT**

This amendment and agreement is made as of the \_\_\_ day of \_\_\_\_\_ 2011, 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 owner of land located at 112-113 Newbury Street, Portland, Maine, consisting of the property shown on the Portland Assessor's Map as parcels 20-E-9 and a part of parcel 20-E-21 and described in a deed dated November 15, 2007 and recorded in the Cumberland County Registry of Deeds at Book 25625, Page 275, and in a deed from Pearl Properties, LLC dated April 2, 2010 and recorded in the Cumberland County Registry of Deeds at Book 27688 Page 258(hereinafter the "**SITE**"); and

**WHEREAS**, this Second Amendment is intended to supersede the Conditional Zoning Agreement for the Site as amended by the First Amendment signed June 18<sup>th</sup>, 2008 and recorded in the Cumberland County Registry of Deeds at Book 26146, Page 291, and also removes the area covered by Phase II referenced in the First Amendment; 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 110 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

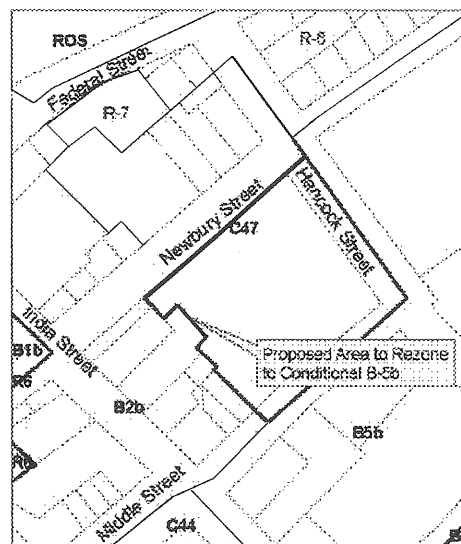
**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

**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 and the Amendment thereto, 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. Map. The **CITY** shall and does hereby 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.



**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, July 2011**

Prepared by the Department of Planning and Development  
based upon GIS Workgroup 0666.



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 August 3, 2005 as revised April 22, 2008 and September, 2009, and with the lot line adjustment approved by the Portland Planning Board on May 24, 2011, and as same may be revised and approved from time to time by the Planning Board. The project shall consist of two buildings along Middle, Hancock and Newbury Streets. The final building elevations shall be or have been approved by the Planning Board during the required subdivision and site plan amendment process. The previously approved building elevations for the **SITE**, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, “the Plans for the **SITE**”), 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.

The Planning Board shall review or shall have reviewed the **SITE** proposal 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 the Planning Board may, upon application of **DEVELOPER** and without the necessity of amending this Conditional Rezoning Agreement, approve subsequent changes to the Plans 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 5,700 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 unless during site plan review the Planning Board approves a minimum amount of 5,200 square feet of commercial/retail space.
4. The **SITE** shall consist of, at minimum Buildings 1 and 2.
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 110 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 the **SITE**.
  - c. The maximum height for the structures shall be:

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

- 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 of \$200,000 shall be made in annual installments of \$20,000 per year according to a payment plan to be determined by the Planning Authority, and the remaining \$10,000 shall be paid prior to the issuance of a building permit for the SITE.

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.

7. Performance Guarantee. Prior to recording this Second Amendment to the Conditional Zoning Agreement at the Cumberland County Registry of Deeds the DEVELOPER shall post a performance guarantee in the amount of \$25,000, or such amount as approved by the Planning Authority and reviewed by the Public Services Department on the basis of a detailed cost estimate showing quantities and unit costs as required for such performance guarantees in order to cover the cost of the following:
- a. Close off two curb cuts on Newbury Street with granite curb;
  - b. Close off two curb cuts on Hancock Street with granite curb;
  - c. Close off one curb cut on Middle Street and maintain (as is) the one curb cut in active use on Middle Street;
  - d. All sidewalks where curb cuts are closed shall be constructed to City standards with bituminous paving material as a temporary situation;
  - e. Install granite curb around the corner of Hancock and Middle intersection and include one handicap ramp meeting the City standards to line up the existing ramp across Middle Street; and



- f. Install guardrail or fencing along the perimeter of the **SITE** as approved by the Planning Authority.

8. **DEVELOPER** shall immediately undertake the following actions:

1. Stabilize the **SITE**, including the following:
  - a. Clean-up demolition debris;
  - b. Maintain a clean **SITE**;
  - c. Install erosion control measures meeting best management practices and maintain the erosion controls;
  - d. Grade and mulch disturbed areas from erosion control measures;
  - e. Clean catch basin sump near the corner of Hancock and Middle Streets; and
  - f. Remove debris and maintain filter material that has clogged the catch basin.
2. Sidewalk Maintenance and Repair, including the following:
  - a. Hold a pre-construction meeting to ensure compliance with **CITY** regulations for sidewalk repair;
  - b. Stabilize and repair edge condition of Newbury Street sidewalk;
  - c. Remove debris that has washed across the Middle Street sidewalk; and
  - d. Install a sidewalk patch along Middle Street, where erosion has caused the sidewalk to deteriorate.

9. **DEVELOPER** shall be responsible for regular maintenance of the **SITE** on a bi-weekly or at least monthly basis. This maintenance shall include, but not be limited to, mowing the grass and weeds, picking up and removing trash and any material dumped on the **SITE** within four (4) working days of said dumping, and plowing the public sidewalks abutting the **SITE**. Prior to the recording of this Second Amendment to the Conditional Zoning Agreement at the Cumberland County Registry of Deeds, the **DEVELOPER** must present evidence to the satisfaction of Corporation Counsel and the Planning Authority of a snowplowing contract for the public sidewalks around the **SITE** in order to comply with **CITY** ordinances to maintain sidewalks for safe pedestrian access.

10. 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 the **SITE** by September 22, 2012. 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.

11. The site plan approval for the **SITE** dated September 22, 2009, shall be extended until September 22, 2012.

- 12. Parking shall be provided for the **SITE** 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 the **SITE**. If the parking analysis demonstrates the inadequacy of a 1:1 /unit: parking space ratio, then the **DEVELOPER** must submit a parking mitigation plan, which plan shall be reviewed and approved by the City and thereafter implemented by the **DEVELOPER**.

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

- 13. 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.
- 14. 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.
- 15. 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.
- 16. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. No alleged violation of this rezoning Agreement may be prosecuted, however, until the **CITY** has delivered written notice of the alleged violation(s) to the owner or operator of the **SITE** and given the owner or operator an opportunity to cure the violation(s) within thirty (30) days of receipt of the notice. Following any determination of a zoning violation by the Court, either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Contract Rezoning be modified or the **SITE** rezoned.

**WITNESS:**

**THE VILLAGE AT OCEAN GATE, LLC**

\_\_\_\_\_

\_\_\_\_\_

Its Managing Member

STATE OF MAINE  
CUMBERLAND, ss.

Date:

Personally appeared the above-named \_\_\_\_\_, Managing Member of The Village At Ocean Gate, LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of The Village At Ocean Gate, LLC.

\_\_\_\_\_  
Notary Public

AH 2

207 774-1200 main  
207 774-1127 facsimile  
bernsteinshur.com

**BERNSTEIN SHUR**  

---

**COUNSELORS AT LAW**

100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

Nathan H. Smith  
207 228-7235 direct  
nsmith@bernsteinshur.com

April 12, 2012

VIA EMAIL

Barbara Barhydt, Senior Planner  
Planning Department  
City of Portland  
389 Congress Street  
Portland ME 04101

Re: Village at Oceangate, LLC

Dear Barbara:

To follow up on our meeting yesterday afternoon, I am writing to formally request on behalf of the Village at Oceangate, LLC that the Planning Board consider a recommendation to the Portland City Council to further amend the Conditional Zoning Agreement for the Village at Oceangate, LLC to permit the payment of the Community contribution dedicated to improvements in Hancock Street over a ten year period of time with payments at the rate of \$20,000 a year instead of a lump-sum payment of \$200,000 at the time the building permit is obtained. While I will provide more information to follow up on this request in anticipation of the upcoming Planning Board Workshop, the basic rationale for this request is that there has been a precipitous drop in real estate values and the project cannot be financed as a condominium project. It will now need to be financed and initially operated as a residential rental apartment complex. Based on increased equity/debt requirements in the loan commitment for the project, reducing the upfront cash needed to get the project started and extending payments out over time is one essential component of the developer's strategy to meet cash flow requirements for the project and, hopefully, improve its chances of success.

Thank you for your time.

Sincerely,



Nathan H. Smith

# BERNSTEIN SHUR

COUNSELORS AT LAW

207-774-1200 main  
207-774-1127 facsimile  
bernsteinshur.com

100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

Philip R. Saucier  
207 228-7160 direct  
psaucier@bernsteinshur.com

August 28, 2012

Barbara Barhydt  
City of Portland  
389 Congress Street  
Room 308  
Portland, ME 04101

Re: The Bay House  
112 Newbury Street

Dear Barbara:

Listed below are the Subdivision Conditions of Approval, the Site Plan Conditions of Approval and the other items referenced in your email of July 31, 2012 (copy attached). Below each condition is a status report or reference to an enclosure addressing the condition. You will note that a few of these items are still in progress; we wanted to make sure we forwarded any information we have for your review at this time and will send along any outstanding items as soon as possible. Please let us know if you would like further clarification or documentation for any of these conditions.

## I. SUBDIVISION CONDITIONS OF APPROVAL

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the amended plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.

### STATUS:

**City Council adopted the Third Amendment to the Conditional Rezoning Agreement on August 7<sup>th</sup>, 2012. Please see Exhibit A attached to this letter.**

OK

recorded  
8/10/12

2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.

**STATUS:**

**The Developer intends to commence construction by September 22, 2012 and is actively pursuing required permits.**

3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.

**STATUS:**

**A check in the amount of \$62,600 will be submitted to the City at the time General Contractor-Metric Construction submits an application for a building permit. Please see Infrastructure Financial Contribution Form attached as Exhibit B.**

4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.

**STATUS:**

**This condition is within the scope of construction and will be addressed during the construction phase.**

*Construction  
not done*

5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

**STATUS:**

**Please see attached letter from Sebago Technics addressing the recommendations contained in Steve Bushey's memoranda of September 16, 2009 and June 7, 2012 at Exhibit C.**

*ck w  
Steve*

6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandums shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

*mika  
Steve*

**STATUS:**

Please see attached letter from Sebago Technics addressing the recommendations contained in Michael Farmer and David Margolis-Pineo's memoranda of June 28, 2007, September 16, 2009 and June 7, 2012 at Exhibit C.

7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.

**Hancock Street**

- 500k will pay
- The developer will contribute \$43,000 to the City for the reconstruction of Hancock Street for the agreed upon portion between Middle and Newbury Streets prior to the issuance of a building permit.

**Newbury Street**

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

**Middle Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

**STATUS:**

**Hancock:** The developer will submit a check in the amount of \$43,000 for the reconstruction of Hancock Street between Middle and Newbury Streets prior to the issuance of a building permit as the condition requires.

**Newbury:** Per the subdivision plan and construction documents, the developer will reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

**Middle:** The developer will submit a check for the current Street Opening Fee for work in Middle Street as and when applicable.

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and

that documentation of such participation will be provided to the City Planning Authority every two (2) years.

**STATUS:**

**Documentation of participation in a Park and Shop Program will be provided to the City Planning Authority prior to issuance of a certificate of occupancy and every two years thereafter as the condition requires.**

9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a Certificate of Occupancy.

**STATUS:**

**The proposed condominium documents will be presented to Corporation Counsel prior to submitting an application for a certificate of occupancy as the condition requires.**

10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.

**STATUS:**

**Please see attached access easement at Exhibit D.**

11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.

**STATUS:**

**A copy of the lease is attached to this letter at Exhibit F and will be provided every two years thereafter as the condition requires.**

12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.

**STATUS:**

**The developer will prepare and Transportation Demand Management Plan and submit the plan for review to the Planning Authority prior to submitting an application for a certificate of occupancy as the condition requires.**

*Danielle*

*2007.7  
- still valid*



13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.

**STATUS:**

*Tom*  
Please see attached letter from Sebago Technics addressing the recommendations contained in Thomas Errico's memorandum of May 18, 2012 at Exhibit C.

## II. SITE PLAN REVIEW CONDITIONS OF APPROVAL

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval:

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.

**STATUS:**

*- not received*  
A construction management plan will be submitted as soon as possible for review and approval by the Planning authority prior to the issuance of a building permit as required by this condition.

2. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.

**STATUS:**

Currently the contract drawings show signage for the exterior of the building. These are noted to be for budget purposes only and not intended to be the final signage appearance. During construction the owner will work with a signage contractor to develop an exterior signage presentation for the project. This will be completed and submitted to the Planning Authority for approval prior to the issuance of certificate of occupancy as the condition requires.

3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit.

**STATUS:**

The fire protection approval is presently based on the narrative and conditions from the approval in 2007. We will review with the state fire marshal and fire department if any revisions will be required prior to the release of a fire protection permit application.

Due to the nature of the design/build fire protection contract, we are unable to immediately provide design information on the enclosed parking garage ventilation system. However, we will review specific code compliant details and design information with the state fire marshal and fire department prior to the submission of a fire protection permit application.

4. Revised plans and information meeting the recommendations and addressing the suggestions contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

**STATUS:**

Please see attached letter from Sebago Technics addressing the recommendations contained in Jeff Tarling's memoranda of June 8, 2012 at Exhibit C.

5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit.

**STATUS:**

Please see attached as Exhibit E a chart from Jeld-Wen Windows and Doors. In that chart a red box is provided that surrounds the SHGC and VT information on the windows specified for the project. The windows are specified with SDL grilles. SHGC is the Solar Heat Gain Coefficient. VT is the Visible light Transmission.

6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.

**STATUS:**

There are no changes to the window material planned at this time. In the event that there are changes, information will be submitted to the Planning Authority for review and approval.

7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.

**STATUS:**

We are currently working with Danielle West-Chuhta to develop a performance guarantee and defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible. The defect guarantee covering landscape improvements will be extended for a two year time period as the condition requires.

*status*

**STANDARD CONDITIONS OF APPROVAL**

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.

**STATUS:**

A revised Subdivision Recording Plat was submitted to the Planning Authority on August 8, 2012.

*signed*

2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).

**STATUS:**

All waivers are noted on the subdivision plan and will be recorded within 90 days of approval.

3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.

**STATUS:**

The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant.

4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the

Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a performance guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible. An inspection fee payment of 2% of the guarantee amount and seven final sets of plans will be submitted to the Planning Division and Public Services Department prior to the release of the building permit as the condition requires.**

5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible.**

6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

**STATUS:**

**The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing.**

7. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.

**STATUS:**

**The General Contractor-Metric Construction and their trades will submit the proper applications for building and trade specific required permits to the city inspectional department for the review and approval prior to start of work.**

8. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

**STATUS:**

**The General Contractor-Metric Construction and or the site contractor will apply and pay for all street opening and public way permits as required by the Department of Public Services.**

9. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

**STATUS:**

**The General Contractor-Metric Construction upon completion of the project will submit as-built drawings to the planning department as indicated.**

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

**STATUS:**

**The General Contractor-Metric Construction and their site contractor upon completion and prior to a certificate of occupancy will submit Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision.**

**III. BARHYDT CONDITIONS RE: EMAIL OF JULY 31, 2012**

1. The approval letter is attached for your use and there are 13 conditions of subdivision approval and 7 conditions of site plan approval. The final plans must to be revised to meet those conditions. The City staff will need to review the plans to assure conformance with the conditions, so you will need to factor some time into the process before the start of construction.

**STATUS:**

**Revised Plans have been submitted to the Planning Division for review.**

2. The recording plat must reflect all of the final conditions of approval from the Planning Board and we will need to review the final plat prior to the Planning Board signing the

plat. The Planning Board has one meeting in August, which will be held on August 14<sup>th</sup>. I recommend that you revise the plat now for review, so it is ready to be signed on the 14<sup>th</sup>. (The next available meeting is September 11, 2012.)

**STATUS:**

**A revised Subdivision Recording Plat was submitted to the Planning Authority on August 8, 2012.**

- 3 As noted in the standard conditions of approval, a performance guarantee acceptable to the City (the PG packet attached to the approval letter and include here, contains the templates for the guarantees and a cost estimate form). The performance guarantee must be in place along with the inspection fee prior to the release of the plat for recording at the Cumberland County Registry of Deeds. There are templates for the performance guarantees that address letters of credit or escrow accounts with either a financial institution or with the city. If you make changes to the form, then it must be reviewed by the legal staff. We also review the cost estimate figures and compare the estimates with the final plans.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a performance guarantee and defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible.**

4. One of the conditions of approval for the site plan is the preparation of a construction management for review and approval. This plan must address the traffic and pedestrian circulation around the site and any proposed mitigation measures to assure adequate access. This must be complete prior to the start any work on the site.

**STATUS:**

**A construction management plan will be submitted as soon as possible for review and approval by the Planning authority prior to the issuance of a building permit as required by this condition.**

5. Similarly, a pre-construction meeting must be held prior to the initiation of any site work and construction.

**STATUS:**

**The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing.**

6. The Planning Authority may authorize the start of site work prior to the release of a building permit (see the provisions under Sec. 14-532 (d) 2. b.) The final plans,

performance guarantee, inspection fee, construction management plan and pre-construction meeting must be complete prior to the start of site work.

**STATUS:**

**The final plans, performance guarantee, inspection fee, construction management plan and pre-construction meeting will be complete prior to the start of site work as the condition requires.**

7. Portland's Inspection Division will conduct the review of the building plans, so we recommend that those be submitted to the division for review as soon as possible.

**STATUS:**

**Building plans will be submitted to the Inspection Division as soon as possible.**

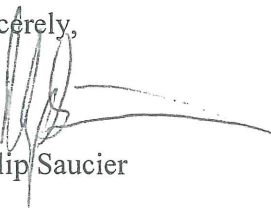
8. Please be aware that you may need other permits or licenses from the Department of Public Services for any of the work proposed in the street and to implement the construction management plan.

**STATUS:**

**The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing including a review of other necessary permits or licenses.**

We hope this letter is helpful. Please feel free to call us if you would like further clarification or documentation for any of these conditions. We will forward the remaining items to you as soon as possible.

Sincerely,



Philip Saucier

cc: Demetrios Dasco, Village at Oceangate – Bay House  
Marc Gagnon, Landmarc Construction  
Jim Seymour, Sebago Technics  
David White  
Nathan Smith, Bernstein Shur  
Thomas Hanson, Bernstein Shur

# BERNSTEIN SHUR

COUNSELORS AT LAW

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100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

Philip R. Saucier  
207 228-7160 direct  
psaucier@bernsteinshur.com

August 28, 2012

Barbara Barhydt  
City of Portland  
389 Congress Street  
Room 308  
Portland, ME 04101

Re: The Bay House  
112 Newbury Street

Dear Barbara:

Listed below are the Subdivision Conditions of Approval, the Site Plan Conditions of Approval and the other items referenced in your email of July 31, 2012 (copy attached). Below each condition is a status report or reference to an enclosure addressing the condition. You will note that a few of these items are still in progress; we wanted to make sure we forwarded any information we have for your review at this time and will send along any outstanding items as soon as possible. Please let us know if you would like further clarification or documentation for any of these conditions.

## I. SUBDIVISION CONDITIONS OF APPROVAL

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the amended plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval:

1. The approvals for the Amended Subdivision and Amended Site Plan for the Bay House are contingent upon the City Council adopting of the Third Amended Rezone Agreement for the Bay House.

### STATUS:

**City Council adopted the Third Amendment to the Conditional Rezoning Agreement on August 7<sup>th</sup>, 2012. Please see Exhibit A attached to this letter.**



2. The approvals for the Amended Subdivision and Amended Site Plans for The Bay House development, dated June 12, 2012, shall expire on September 22, 2012 and no further extensions may be granted in the event that the Developer fails to commence construction of the site by September 22, 2012.

**STATUS:**

**The Developer intends to commence construction by September 22, 2012 and is actively pursuing required permits.**

3. All financial contributions required as part of the Conditional Rezoning shall be submitted to the City as stipulated in the Third Amended Conditional Rezoning Agreement for the Bay House.

**STATUS:**

**A check in the amount of \$62,600 will be submitted to the City at the time General Contractor-Metric Construction submits an application for a building permit. Please see Infrastructure Financial Contribution Form attached as Exhibit B.**

4. The applicant shall reimburse the City for the installation of No Parking signs on the north side of Middle Street and reset the signs as necessary during construction.

**STATUS:**

**This condition is within the scope of construction and will be addressed during the construction phase.**

5. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 and June 7, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

**STATUS:**

**Please see attached letter from Sebago Technics addressing the recommendations contained in Steve Bushey's memoranda of September 16, 2009 and June 7, 2012 at Exhibit C.**

6. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandum of June 27, 2008 and contained in David Margolis-Pineo, Deputy City Engineer's, September 16, 2009 and June 8, 2012 memorandums shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

**STATUS:**

**Please see attached letter from Sebago Technics addressing the recommendations contained in Michael Farmer and David Margolis-Pineo's memoranda of June 28, 2007, September 16, 2009 and June 7, 2012 at Exhibit C.**

7. The following schedule outlines the City's expectation with regard to its street improvements and associated fees to be paid by the developer.

**Hancock Street**

- The developer will contribute \$43,000 to the City for the reconstruction of Hancock Street for the agreed upon portion between Middle and Newbury Streets prior to the issuance of a building permit.

**Newbury Street**

- The developer shall reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.

**Middle Street**

- The developer shall pay to the City current Street Opening Fees, as applicable.
- The developer may choose one of the following two options:

The developer shall reconstruct the entire length of Middle Street (from Hancock to India) in which case there will be no Pavement Restoration charge incurred;

OR

The developer shall reconstruct the entire frontage of its site (from Hancock along Middle Street) and trench the remaining to India. If the developer chooses this option, it will also incur a Pavement Restoration fee equal to \$65 per square yard (from the edge of its frontage to India Street).

**STATUS:**

**Hancock: The developer will submit a check in the amount of \$43,000 for the reconstruction of Hancock Street between Middle and Newbury Streets prior to the issuance of a building permit as the condition requires.**

**Newbury: Per the subdivision plan and construction documents, the developer will reconstruct Newbury Street from India to Hancock Street consistent with the City's design standards and with all the utilities as shown on the subdivision plan.**

**Middle: The developer will submit a check for the current Street Opening Fee for work in Middle Street as and when applicable.**

8. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Ocean Gate Parking Garage" located at Middle Street and

that documentation of such participation will be provided to the City Planning Authority every two (2) years.

**STATUS:**

**Documentation of participation in a Park and Shop Program will be provided to the City Planning Authority prior to issuance of a certificate of occupancy and every two years thereafter as the condition requires.**

9. The proposed condominium documents, if applicable, and a copy of the pedestrian easement to benefit the adjoining property shall be submitted for review by Corporation Counsel's Office prior to the issuance of a Certificate of Occupancy.

**STATUS:**

**The proposed condominium documents will be presented to Corporation Counsel prior to submitting an application for a certificate of occupancy as the condition requires.**

10. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.

**STATUS:**

**Please see attached access easement at Exhibit D.**

11. A copy of the lease for the 14 parking spaces for residential units and 6 retail spaces to be provided in the Ocean Gate Parking Garage as required in the Third Amendment of the Conditional Zone Agreement for the Bay House shall be provided prior to the issuance of a certificate of occupancy and then provided to the City Planning Authority every two (2) years.

**STATUS:**

**A copy of the lease is attached to this letter at Exhibit F and will be provided every two years thereafter as the condition requires.**

12. The applicant shall prepare a Transportation Demand Management Plan for the project that addresses the strategies the project will employ such that parking demand and traffic generation is minimized and the plan will be submitted to the Planning Authority for review and approval prior to the issuance of a certificate of occupancy.

**STATUS:**

**The developer will prepare and Transportation Demand Management Plan and submit the plan for review to the Planning Authority prior to submitting an application for a certificate of occupancy as the condition requires.**

13. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of May 18, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit, unless stated otherwise in the conditions of approval.

**STATUS:**

**Please see attached letter from Sebago Technics addressing the recommendations contained in Thomas Errico's memorandum of May 18, 2012 at Exhibit C.**

## **II. SITE PLAN REVIEW CONDITIONS OF APPROVAL**

The Planning Board voted unanimously (4-0, Hall, Morrissette and O'Brien absent) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval:

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.

**STATUS:**

**A construction management plan will be submitted as soon as possible for review and approval by the Planning authority prior to the issuance of a building permit as required by this condition.**

2. The applicant shall submit a unified plan for signage for review and approval by the Planning Authority prior to the issuance of a certificate of occupancy.

**STATUS:**

**Currently the contract drawings show signage for the exterior of the building. These are noted to be for budget purposes only and not intended to be the final signage appearance. During construction the owner will work with a signage contractor to develop an exterior signage presentation for the project. This will be completed and submitted to the Planning Authority for approval prior to the issuance of certificate of occupancy as the condition requires.**

3. The fire protection approval based upon the narrative and conditions from the approval in 2007 shall remain in effect unless revisions are reviewed and approved by the Fire Department. The enclosed parking garage ventilation system must be submitted for review and approval by the Fire Department prior to the release of a building permit.

**STATUS:**

**The fire protection approval is presently based on the narrative and conditions from the approval in 2007. We will review with the state fire marshal and fire department if any revisions will be required prior to the release of a fire protection permit application.**

**Due to the nature of the design/build fire protection contract, we are unable to immediately provide design information on the enclosed parking garage ventilation system. However, we will review specific code compliant details and design information with the state fire marshal and fire department prior to the submission of a fire protection permit application.**

4. Revised plans and information meeting the recommendations and addressing the suggestions contained in Jeff Tarling, City Arborist's memorandum of June 8, 2012 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

**STATUS:**

**Please see attached letter from Sebago Technics addressing the recommendations contained in Jeff Tarling's memoranda of June 8, 2012 at Exhibit C.**

5. The applicant shall submit the specifications for the opaqueness of the windows for the Planning Authority's review and approval, prior to the issuance of a building permit.

**STATUS:**

**Please see attached as Exhibit E a chart from Jeld-Wen Windows and Doors. In that chart a red box is provided that surrounds the SHGC and VT information on the windows specified for the project. The windows are specified with SDL grilles. SHGC is the Solar Heat Gain Coefficient. VT is the Visible light Transmission.**

6. Any changes to the window material, including but not limited to bars on sidewalk windows, shall be submitted to the Planning Authority for review and approval.

**STATUS:**

**There are no changes to the window material planned at this time. In the event that there are changes, information will be submitted to the Planning Authority for review and approval.**

7. The defect guarantee covering landscape improvements shall be extended for a two (2) year time period.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a performance guarantee and defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible. The defect guarantee covering landscape improvements will be extended for a two year time period as the condition requires.**

**STANDARD CONDITIONS OF APPROVAL**

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee.

**STATUS:**

**A revised Subdivision Recording Plat was submitted to the Planning Authority on August 8, 2012.**

2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).

**STATUS:**

**All waivers are noted on the subdivision plan and will be recorded within 90 days of approval.**

3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.

**STATUS:**

**The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant.**

4. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the

Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a performance guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible. An inspection fee payment of 2% of the guarantee amount and seven final sets of plans will be submitted to the Planning Division and Public Services Department prior to the release of the building permit as the condition requires.**

5. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible.**

6. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

**STATUS:**

**The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing.**

7. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.

**STATUS:**

**The General Contractor-Metric Construction and their trades will submit the proper applications for building and trade specific required permits to the city inspectional department for the review and approval prior to start of work.**

8. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

**STATUS:**

**The General Contractor-Metric Construction and or the site contractor will apply and pay for all street opening and public way permits as required by the Department of Public Services.**

9. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

**STATUS:**

**The General Contractor-Metric Construction upon completion of the project will submit as-built drawings to the planning department as indicated.**

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

**STATUS:**

**The General Contractor-Metric Construction and their site contractor upon completion and prior to a certificate of occupancy will submit Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision.**

### **III. BARHYDT CONDITIONS RE: EMAIL OF JULY 31, 2012**

1. The approval letter is attached for your use and there are 13 conditions of subdivision approval and 7 conditions of site plan approval. The final plans must to be revised to meet those conditions. The City staff will need to review the plans to assure conformance with the conditions, so you will need to factor some time into the process before the start of construction.

**STATUS:**

**Revised Plans have been submitted to the Planning Division for review.**

2. The recording plat must reflect all of the final conditions of approval from the Planning Board and we will need to review the final plat prior to the Planning Board signing the



plat. The Planning Board has one meeting in August, which will be held on August 14<sup>th</sup>. I recommend that you revise the plat now for review, so it is ready to be signed on the 14<sup>th</sup>. (The next available meeting is September 11, 2012.)

**STATUS:**

**A revised Subdivision Recording Plat was submitted to the Planning Authority on August 8, 2012.**

- 3 As noted in the standard conditions of approval, a performance guarantee acceptable to the City (the PG packet attached to the approval letter and include here, contains the templates for the guarantees and a cost estimate form). The performance guarantee must be in place along with the inspection fee prior to the release of the plat for recording at the Cumberland County Registry of Deeds. There are templates for the performance guarantees that address letters of credit or escrow accounts with either a financial institution or with the city. If you make changes to the form, then it must be reviewed by the legal staff. We also review the cost estimate figures and compare the estimates with the final plans.

**STATUS:**

**We are currently working with Danielle West-Chuhta to develop a performance guarantee and defect guarantee in a form that will be acceptable to the City, and will forward a copy of the final document as soon as possible.**

4. One of the conditions of approval for the site plan is the preparation of a construction management for review and approval. This plan must address the traffic and pedestrian circulation around the site and any proposed mitigation measures to assure adequate access. This must be complete prior to the start any work on the site.

**STATUS:**

**A construction management plan will be submitted as soon as possible for review and approval by the Planning authority prior to the issuance of a building permit as required by this condition.**

5. Similarly, a pre-construction meeting must be held prior to the initiation of any site work and construction.

**STATUS:**

**The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing.**

6. The Planning Authority may authorize the start of site work prior to the release of a building permit (see the provisions under Sec. 14-532 (d) 2. b.) The final plans,

performance guarantee, inspection fee, construction management plan and pre-construction meeting must be complete prior to the start of site work.

**STATUS:**

**The final plans, performance guarantee, inspection fee, construction management plan and pre-construction meeting will be complete prior to the start of site work as the condition requires.**

7. Portland's Inspection Division will conduct the review of the building plans, so we recommend that those be submitted to the division for review as soon as possible.

**STATUS:**

**Building plans will be submitted to the Inspection Division as soon as possible.**

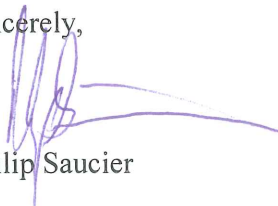
8. Please be aware that you may need other permits or licenses from the Department of Public Services for any of the work proposed in the street and to implement the construction management plan.

**STATUS:**

**The General Contractor-Metric Construction will schedule and coordinate a pre-construction meeting on or off-site with city officials to discuss site logistics, schedule and critical aspects of the work prior to mobilizing including a review of other necessary permits or licenses.**

We hope this letter is helpful. Please feel free to call us if you would like further clarification or documentation for any of these conditions. We will forward the remaining items to you as soon as possible.

Sincerely,



Philip Saucier

cc: Demetrios Dasco, Village at Oceangate – Bay House  
Marc Gagnon, Landmarc Construction  
Jim Seymour, Sebago Technics  
David White  
Nathan Smith, Bernstein Shur  
Thomas Hanson, Bernstein Shur

SEAL

A TRUE COPY  
ATTEST: Katherine L. Jones  
Katherine L. Jones, City Clerk  
Portland, Maine  
DATE 8/8/2012

Order 27-12/13  
Given first reading on 7/16/12  
Passed as Amended 5-3 (Anton, Donoghue, Marshall)

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. ANTON (A/L)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)  
**EXHIBIT**  
**A**

**AMENDMENT TO CITY CODE**  
**SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)**  
**RE: Third Amendment to Conditional Zoning Agreement**  
**The Village At Ocean Gate (aka Bayhouse)**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.

**THIRD AMENDED CONDITIONAL ZONE AGREEMENT**

This amendment and agreement is made as of the 6<sup>th</sup> day of August 2012, 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 owner of land located at 112-113 Newbury Street, Portland, Maine, consisting of the property shown on the Portland Assessor's Map as parcels 20-E-9 and a part of parcel 20-E-21 and described in a deed dated November 15, 2007 and recorded in the Cumberland County Registry of Deeds at Book 25625, Page 275, and in a deed from Pearl Properties, LLC dated April 2, 2010 and recorded in the Cumberland County Registry of Deeds at Book 27688 Page 258(hereinafter the "SITE"); and

**WHEREAS**, this Third Amendment is intended to supersede the Conditional Zoning Agreement for the Site as amended by the First Amendment signed June 18<sup>th</sup>, 2008 and recorded in the Cumberland County Registry of Deeds at Book 26146, Page 291, and also removes the area covered by Phase II referenced in the First Amendment; 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 110 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

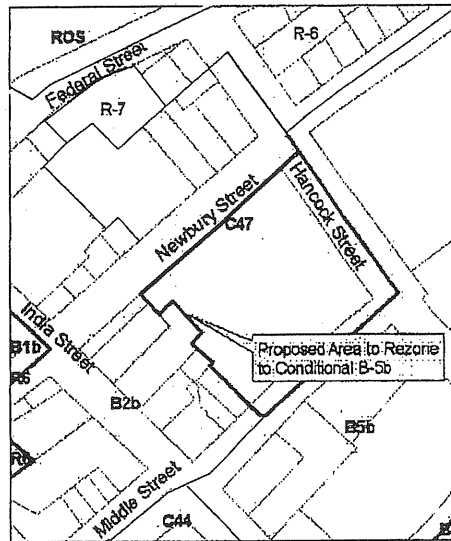
**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

**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 and the Amendment thereto, 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. Map. The **CITY** shall and does hereby 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.



**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, July 2011**

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



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 August 3, 2005 as revised April 22, 2008 and September, 2009, and with the lot line adjustment approved by the Portland Planning Board on May 24, 2011, and as same may be revised and approved from time to time by the Planning Board. The project shall consist of two buildings along Middle, Hancock and Newbury Streets. The final building elevations shall be or have been approved by the Planning Board during the required subdivision and site plan amendment process. The previously approved building elevations for the **SITE**, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, "the Plans for the **SITE**"), 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.

The Planning Board shall review or shall have reviewed the **SITE** proposal 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 the Planning Board may, upon application of **DEVELOPER** and without the necessity of amending this Conditional

Rezoning Agreement, approve subsequent changes to the Plans 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 5,700 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 unless during site plan review the Planning Board approves a minimum amount of 5,200 square feet of commercial/retail space.
4. The **SITE** shall consist of, at minimum Buildings 1 and 2.
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 110 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 the **SITE**.
  - c. The maximum height for the structures shall be:
 

Buildings 1 and 2: The maximum height of each building shall not exceed 74 feet from average grade, as measured and approved by the Zoning Administrator.
  - 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 \$10,000.00,; of which \$5,000.00 shall be dedicated to the

India/Middle Street traffic improvements to be commissioned by the City and \$5,000.00 shall 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 of \$10,000 shall be made prior to the issuance of a building permit for the **SITE**.

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.

7. Performance Guarantee. Prior to recording this Second Amendment to the Conditional Zoning Agreement at the Cumberland County Registry of Deeds the **DEVELOPER** shall post a performance guarantee in the amount of \$25,000, or such amount as approved by the Planning Authority and reviewed by the Public Services Department on the basis of a detailed cost estimate showing quantities and unit costs as required for such performance guarantees in order to cover the cost of the following:
  - a. Close off two curb cuts on Newbury Street with granite curb;
  - b. Close off two curb cuts on Hancock Street with granite curb;
  - c. Close off one curb cut on Middle Street and maintain (as is) the one curb cut in active use on Middle Street;
  - d. All sidewalks where curb cuts are closed shall be constructed to City standards with bituminous paving material as a temporary situation;
  - e. Install granite curb around the corner of Hancock and Middle intersection and include one handicap ramp meeting the City standards to line up the existing ramp across Middle Street; and
  - f. Install guardrail or fencing along the perimeter of the **SITE** as approved by the Planning Authority.
8. **DEVELOPER** shall immediately undertake the following actions:
  1. Stabilize the **SITE**, including the following:
    - a. Clean-up demolition debris;
    - b. Maintain a clean **SITE**;
    - c. Install erosion control measures meeting best management practices and maintain the erosion controls;

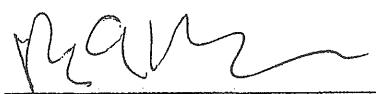
- d. Grade and mulch disturbed areas from erosion control measures;
  - e. Clean catch basin sump near the corner of Hancock and Middle Streets; and
  - f. Remove debris and maintain filter material that has clogged the catch basin.
2. Sidewalk Maintenance and Repair, including the following:
- a. Hold a pre-construction meeting to ensure compliance with CITY regulations for sidewalk repair;
  - b. Stabilize and repair edge condition of Newbury Street sidewalk;
  - c. Remove debris that has washed across the Middle Street sidewalk; and
  - d. Install a sidewalk patch along Middle Street, where erosion has caused the sidewalk to deteriorate.
9. **DEVELOPER** shall be responsible for regular maintenance of the **SITE** on a bi-weekly or at least monthly basis. This maintenance shall include, but not be limited to, mowing the grass and weeds, picking up and removing trash and any material dumped on the **SITE** within four (4) working days of said dumping, and plowing the public sidewalks abutting the **SITE**. Prior to the recording of this Second Amendment to the Conditional Zoning Agreement at the Cumberland County Registry of Deeds, the **DEVELOPER** must present evidence to the satisfaction of Corporation Counsel and the Planning Authority of a snowplowing contract for the public sidewalks around the **SITE** in order to comply with **CITY** ordinances to maintain sidewalks for safe pedestrian access.
10. 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 the **SITE** by September 22, 2012. 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.
11. The site plan approval for the **SITE** dated September 22, 2009, shall be extended until September 22, 2012.
12. Parking shall be provided for the **SITE** at no less than one space per dwelling (i.e. 94 spaces) and six (6) spaces for retail employee parking with approximately eighty (80) spaces provided onsite and the balance provided in the Ocean Gateway Garage. A post development occupancy parking analysis shall be conducted by the **DEVELOPER** six (6) months following the issuance of a certificate of occupancy for the **SITE**. If the parking analysis demonstrates the inadequacy of a 1:1 /unit:



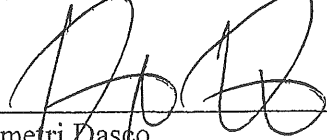
parking space ratio, then the **DEVELOPER** must submit a parking mitigation plan, which plan shall be reviewed and approved by the City and thereafter implemented by the **DEVELOPER**. Thirty-eight bicycle parking shall be provided on site in accordance with §14-526 of the Portland City Code.

- 13. 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.
- 14. 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.
- 15. 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.
- 16. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. No alleged violation of this rezoning Agreement may be prosecuted, however, until the **CITY** has delivered written notice of the alleged violation(s) to the owner or operator of the **SITE** and given the owner or operator an opportunity to cure the violation(s) within thirty (30) days of receipt of the notice. Following any determination of a zoning violation by the Court, either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Contract Rezoning be modified or the **SITE** rezoned.

WITNESS:

  
\_\_\_\_\_

THE VILLAGE AT OCEAN GATE, LLC

By:   
\_\_\_\_\_

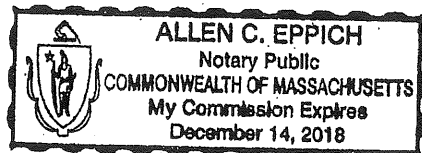
Demetri Dasco  
Manager

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Worcester, ss.

Date: August 10, 2012

Personally appeared the above-named Demetrios Dasco, **Manager of the** Village At Ocean Gate, LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of The Village At Ocean Gate, LLC.



Allen C. Eppich 8/10/12  
Notary Public

SEAL

Received  
Recorded Register of Deeds  
Aug 13, 2012 11:56:32A  
Cumberland County  
Pamela E. Lovley

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

Amount \$ 62,000.00

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

Project Code: \_\_\_\_\_

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

Project Name: THE BAY HOUSE

Application ID #: \_\_\_\_\_

Project Location: NEWBURY STREETProject Description: 94 RESIDENTIAL UNITS, 80 UNDER  
STRUCTURE SURFACE PARKING, WOOD FRAMEFunds intended for: CITY/PUBLIC IMPROVEMENTSApplicant's Name: VILLAGE AT OCEAN GATEApplicant's Address: 35 FAY ST. SUITE 107 B BOSTON MAExpiration: 9/2012

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

Funds shall be permanently retained by the City.

Other (describe in detail) \_\_\_\_\_

**Form of Contribution:**

Escrow Account

Cash Contribution

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

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

Date of Form: 08/7/2012

Planner: \_\_\_\_\_

Person Completing Form: MARC GAGNON  
CONSTRUCTION MGR

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

Electronic Distribution to: Peggy Axelsen, Michael Bobinsky, Michael Farmer, Kathi Earley, Betsy Beety, David Margolis-Pineo,

August 28, 2011  
05109

Barbara Barhydt, Development Review Services Manager  
City of Portland Planning Division  
City Hall, 4<sup>th</sup> Floor  
389 Congress St.  
Portland, ME 04101

Village at Ocean Gate LLC, - Bay House (Middle, Newbury and Hancock Streets)  
Responses to Conditions of Level III Site and Subdivision Plan Approval

Dear Ms. Barhydt:

On behalf of Village at Ocean Gate LLC., please find one (1) copy of the revised Level III Site/Subdivision Plan associated design plans which are response to the conditions of approval as set forth by the Portland Planning Board at the June 12, 2012 hearing, and as outlined in your letter of approval dated June 15<sup>th</sup> 2012. Specifically, Sebago Technics has addressed or responded to the various technical and design issues raised by memorandums submitted by the Public Services (David Margolis-Pineo, PE), the Consulting Engineer (Steve Bushey, PE), the Consulting Traffic Engineer( Thomas Errico, PE), and the City Arborist (Jeffrey Tarling).

To assist all involved in tracking these responses we have attempted to answer these in the same order as they were generated by each reviewer. The conditions of approval for the Subdivision review are noted on page two of the June 15<sup>th</sup> approval letter. Item #5 requests that plan revisions shall be required addressing the recommendations of Steve Bushey's memorandums dated September 16, 2009 and June 7, 2012. Those responses are as follows.

September 16, 2009 Memo:

1. Tree grates have been revised and updated to City Standards and included on the detail sheets to be square. A cut sheet showing the selected 36 inch by 72 inch grate was provided for review at the final plan submission.
2. Road grades along Hancock Street will require adjusting to accommodate dips and differences of the gutter grade along the proposed curb. We have provided an updated grading plan and will adjust the grades accordingly with shim gravel before restoring the final paving grade. The City has accepted a financial contribution in lieu of repairing the entire street section.
3. The building program is a design build, such that we are not certain to the exact locations of all internal roof and internal drainage collection systems for the garage. We have been forced to relocate a detention and collection system under the garage

slab that was previously located in the Alley to the west. Since the project was started in 2007, the abutting owners have had utilities such as water, gas and sewer installed. And given that our system was installed at a significant depth near the farthest end away from Middle Street the shoring, bracing for the soils, and foundation protection, as well as the need to possibly relocate the utilities squeezing their separation distances, would be an expensive and challenging construction. Our latest plan intends to provide a collection point for roof, garage catch basins and court yard catch basins through the stormwater detention system under the garage floor. The system will detain the equivalent as the system had been proposed in the alley, and will discharge through a 15 inch drain into a collector pipe proposed in Middle Street. Additional roof leaders and foundation drain locations will be provided off the corners of both building to tie into the same storm drain system in Middle Street.

4. The reviewer requested that the engineer drawings confirm clearances and elevations of all utilities and services in Middle Street since there are many potential conflicts with the Portland Water District Water mains. We have discovered that the water main was replaced since the original design, and that there is little documentation to the depth the water main was set. We have assumed that the standard practice of 5.5 feet depth was maintained when it was installed. In addition we have revised the Middle Street grading to accommodate the existing curb line on the southerly side as it has been constructed by the Ocean Gate Parking Garage. With the many conflict, and adjustments, we have been coordinating directly with Public Services to rectify grading for adequate reveal on proposed curbs, and for alignments of the proposed storm drain to avoid as many conflicts as possible. It appears that the contractor will need lower the water main elevation near the garage access on Middle Street to allow us access to install necessary storm drains and sewer laterals. We have provided plan and profile sections for Middle Street showing the new surface grading, and utility layouts to address these conflicts of utility elevations.

The second memo, June 7, 2012 memo:

1. All site plans and details have been updated to show a common date for Final Plan - Conditional Approval Review Submittal.
2. The parking stall spacing and concerns for turning movements and garage parking layout will be addressed by installation of appropriate signs and pavement markings indicating both handicap and compact space locations. Some spaces will be assigned to particular residents, and signs and parking numbers could be assigned to delineate reserved locations and direct residents to their designated locations. It is also our understanding that visitors will not be parking in this garage, as it will be gated access for residents only. We would request that prior to occupancy that we submit a parking space management plan. Aisle spacing is per City requirements at 24 feet and some spaces in the middle are deeper to allow for inadvertent traffic to turnaround if spacing is occupied.
3. The proposal for installation of underground electrical and communication services has been an on going deliberation between the Owners, the City and CMP. Following

a recent meeting we have developed a plan to install underground electrical 3-Phase power lines and, an above ground transformer. The issue appears to be now with regards to the aesthetics of the transformer enclosure. A sketch of the proposed masonry enclosure has been submitted for Planning Staff review and we are waiting further comments. Functionally both the Public Services and CMP are satisfied with the alignment and connection into the existing power circuit in the neighborhood.

4. Planning Staff was requested to look into the bike rack proposed and as part of the final plan report prepared by the planning staff; they had approved the bike rack and its location in the garage.
5. The comments raised were regarding the garage drainage which has been explained and responded in Comment #3 from the 2009 comments raised above.

The City's Public Services has memos from both Michael Farmer and David Margolis Pineo which have been incorporated into the conditions of approval. First we will respond to Mr. Farmers comments raised in his June 28, 2007:

1. In Steve Bushey's first comment, he noted a discrepancy regarding tree grate sizes called for on Sheet 5 and the detail on Sheet 11. I think the tree grate sizes called for on Sheet 5 are correct. The tree grate detail on Sheet 11 should be changed so it is consistent with Sheet 5. *This has previously been addressed.*
2. Steve Bushey's second comment notes a possible grading problem on Hancock Street, where the proposed sidewalk grades and "top of curb" grades along Hancock Street (between elevations 32' and 34') could lead to 12 inches of curb reveal at one location. A 12" curb reveal would be unacceptable to the Department of Public Services (DPS). Our design standards require 7 inches of curb reveal, and the typical cross slope on sidewalks is 2%, sloping downhill toward the curb. I recommend that the plans be revised in light of Steve Bushey's comment and the above noted standards for curb reveal and sidewalk cross slope. *This layout has been revised from the 2008 layout and plans now meet City specifications for sidewalk, curb reveal, and ADA crossslope.*
3. Steve Bushey's 5<sup>th</sup> comment states that the location of the grease trap may need refinement. I do not disagree with the comments he presents in this regard. However, my view is that the grease trap and the associated sampling manhole are private property that would be more appropriate to locate outside of the street right-of-way. *The sampling manhole has been located just outside the right-of-way to Middle Street near the garage entrance*
4. I concur with Steve Bushey's other comments.

Mr. David Margolis-Pineo's comments from September 16, 2009 are as follows:

1. Concerns with construction fence will be addressed with points facing down.
2. Curbing sections shall be not less than four feet in length. This issue is difficult given the City's detail for new handicap ramp locations and the design of the curved and

straight tip-down transition requires one section to be 3 feet per their standards. We can correct the section such that the tip down of the curved and straight section be extended to 8 feet rather than 7 feet to provide two 4 foot sections. We have shown the required detail per their Technical details for the new handicap access ramps.

3. The construction work in Middle Street was not to interfere with water main work planned to be under way in 2009. The work for the water main is complete but we will need to adjust the depths of the water main to accommodate storm drainage in Middle Street. The proposal will have the PWD replace the water main in Newbury Street as part of the full box cut replacement. No other utilities are expected to be replaced in Newbury Street.
4. All design plans will be stamped by a professional engineer.
5. Water main work will be performed by the Portland Water District, or under their inspection.
6. We will pay the necessary street opening fees as determined by the Condition of Approval #7 under Subdivision Review.
7. Street occupancy for parking space and sidewalk space are noted at \$10 per each per day has been forwarded to the owner.
8. The contractor shall provide a traffic plan to Public Services before commencement of construction activity and shall submit to Public Services for approval, preferably at the pre-construction meeting.
9. Stormwater regulations have been previously reviewed and the plan will detain the same volume as approved in the ally way now under the under the garage slab.
10. Handicap ramps are now in compliance with ADA and City requirements as shown on the Site and Grading plans.

Mr. David Margolis-Pineo's comments from June 8, 2012 are as follows:

1. Concerns over sidewalk notes to be in compliance with ADA and City requirements have been added to details. We have met with Bruce Hyman and reviewed crosswalk locations in the field and have adjusted the plans accordingly on Newbury and Hancock Streets to address orientation concerns. All other crosswalks were deemed acceptable.
2. Notes have been added to the Grading, Utility, and Site Plans, indicating that the work in the City Right-of-Way must be conducted to meet City technical design standards.
3. Water main work in Newbury Street has been noted to be constructed in accordance with PWD specifications (on the Utility Plan).

4. The electrical transformer location and manhole locations have been discussed in the field with CMP the City Engineer (Mike Farmer), and the owners' representative (Marc Gagnon) and determined to be satisfactory for alignment, operation, and providing manholes for future connectivity into the 3-phase power network. Final screening of the above ground transformer will require approval by the Planning Staff before installation.
5. All catch basins have been shown with 3 foot sumps on the detail sheet.

Mr. Thomas Errico's comments from May 18, 2012 are as outlined below with our response in italics:

1. Plans have been sealed by a professional engineer.
2. Sidewalks ramps have been designed per City standards.
3. The applicant should be responsible for all regulatory sign changes. *We have added a note to the Site plan noting this requirement.*
4. A Traffic Demand Management plan will be required for the project prior to occupancy. *We will provide a plan discussing parking demands, public transportation opportunities, and discuss methods to reduce traffic generation prior to the occupancy permit of the first constructed building.*
5. Mr. Errico supports the waiver for the reduced entrance to 18 feet width.
6. The project will impact on street parking regulations and would be expected to support staff in seeking City Council approval. *We concur with his findings.*

Mr. Jeff Tarling's comments from June 8, 2012 are as outlined below with our response:

1. The use of structural soil will be added to our landscaping plans and details to assure the street trees will have a greater opportunity for root zone.
2. The area near the Middle Street garage entrance has been redesigned with a raised curb island/planter near both building corners for additional green space.
3. The street tree per unit fee has remained unchanged from earlier proposals and a contribution will be paid to the City for the difference required versus what is planted.

We have included with this response as noted earlier plans to address the construction of both Middle and Newbury Streets. It is our understanding that Middle Street will require the installation of sewer and drainage infrastructure to support the project which will impact the existing water main, and require a section to be deeper. In addition all overhead services will be removed from the building front on Middle Street under the supervision of CMP. The street will be constructed to restore pavement for the full street width from the extent of the projects western corner property iron to the intersection with Hancock as shown on the attached drawings.

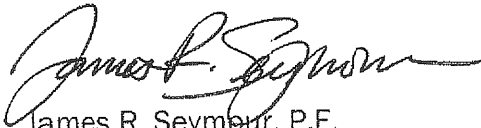


Newbury Street will be constructed of a full box cut with a new water line extended from the far side of India Street to the intersection of Hancock Street with a new 8 inch main. All other utilities will remain in place, but the street will receive a new sub-base and base course of aggregates, as well as a base and finish courses of bituminous pavement. All construction will be in accordance with City specifications. After meeting with City engineers all offsite curbing and sidewalks except where pointed out will remain in place and constructed to achieve to the most practicable extent a reveal of 7 inches. All sidewalk and curbing along the site will be installed as new.

Our understanding is that our project has been tentatively placed on the August 29th Planning Staff's weekly meeting agenda for review and discussion. If you have any questions on this response letter or attached plans, please do not hesitate to contact us. We thank you for your cooperative efforts and look forward to completion of the Approval Conditions such that the owner may attain a building permit as soon as possible.

Sincerely,

SEBAGO TECHNICS, INC.



James R. Seymour, P.E.  
Project Manager

JRS;jrs/df

DeLUCA-HOFFMAN ASSOCIATES, INC.  
CONSULTING ENGINEERS  
778 MAIN STREET  
SUITE 8  
SOUTH PORTLAND, MAINE 04106  
TEL. 207 775 1121  
FAX 207 879 0896

- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- TRAFFIC STUDIES AND MANAGEMENT
- PERMITTING
- AIRPORT ENGINEERING
- SITE PLANNING
- CONSTRUCTION ADMINISTRATION

MEMORANDUM

DATE: September 16, 2009

TO: Barbara Barhydt, Portland Planning

FROM: Stephen R. Bushoy, P.E.

SUBJECT: The Bay House

Barbara,

DeLuca-Hoffman Associates, Inc. has reviewed the submission materials prepared by Schago Technics dated 09-08-09 relating to the Bay House project. The submission package includes revised plans and a letter containing additional information pertaining the most recent project changes. Specifically an additional level of parking has been added to the development program, resulting in there being 160 spaces of structured parking within the building. We note that the second amended site plan incorrectly identifies there being 80 spaces on the lower level parking when there is actually only 70 spaces. Based on our review there remains a few minor technical items that should be addressed by the engineer prior to construction. These items can likely be addressed when the construction phase drawings are issued and should not hold up the Board's current consideration. These comments are as follows:

1. The tree grate should match the tree grates provided along the frontages of the Gateway Parking garage along Middle and Hancock Street. While graphically the plan depicts a rectangular grate I believe the actual grates are square. The City Arborist show weigh in on what is required.
2. The grading along a portion of the Hancock Street sidewalk continues to suggest as much as a 12" reveal along the sidewalk, particularly between elevation 32 to 34'. Either a shim course is warranted or the street is reworked to make the adjustment to the street grade at this location. I believe Public Services has weighed in that the curb reveal shall be 7".
3. The current plans do not appear to contain any information on the drainage system within the building's parking level. Additional information on any internal drainage system should be provided for the Department's records once it is prepared as part of the building plans. We assume this system will exit the building as part of the 12" SD exiting the building at the Middle Street entrance.
4. There are multiple utility crossings particularly in Middle Street. We recommend the engineer verify clearances at all crossings and provide the necessary profiles to the Portland Water District in the event the District installs the water main under separate contract. In this case it will be necessary that the District's contractor be aware of the water main installation depth needed to avoid the other pipes to be installed.

- 5. Final Stamped drawings should be provided for the City's records and for Planning Board Signatures.

We have no further comments on the plans at this time. On the basis on this review we can recommend the plans be presented to the Planning Board for approval with the condition that the aforementioned items be addressed prior to release of a building permit. If you or the applicant's representatives have any questions regarding these comments please contact this office.

Regards,

Steve Bushey, PE  
Senior Engineer  
DeLuca-Hoffman Associates, Inc.

A



DeLUCA-HOFFMAN ASSOCIATES, INC.  
CONSULTING ENGINEERS

778 MAIN STREET  
SUITE 8  
SOUTH PORTLAND, MAINE 04106  
TEL. 207 775 1121  
FAX 207 879 0896

- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- SITE PLANNING
- CONSTRUCTION ADMINISTRATION

A4-7

## MEMORANDUM

**DATE:** June 7, 2012  
**TO:** Barbara Barhydt, City of Portland Planning  
**FROM:** Steve Bushey  
**SUBJECT:** The Bay House, Site Plan review

---

Barbara,

I have briefly reviewed the plans and supporting documents as made available on the EPlan site and I have just a couple of comments, which are:

1. Prior to Final approval a final set of updated plans with a common Revision date reflecting the current submission should be submitted just to maintain clarity, given the number of submissions there have been over time.
2. I believe the parking layout is probably acceptable for vehicle movements in and out of the space, however, it might be beneficial to simply see various vehicle turning movements within the garage to determine any spots where additional warning signage or space for maneuvering is needed. As an example, might there be some spots signed for compact vehicles or motorcycles? It might be useful to add some signage in the area of the handicap spaces to alert oncoming vehicles of the handicap spaces and to look for pedestrians. Somewhat obvious, but it's a tight space in the parking garage. We assume that lighting of the parking garage space as been covered in a separate submittal. Will the parking garage be gated, as this might help with access control in/out to a certain degree? This might overlap with comments from Tom Errico, so I will defer to anything further he may desire for information.
3. We understand that underground power/communications will be installed in Newberry Street. We have no specific comments regarding this proposal and understand that challenge that the existing street and infrastructure present for placement of new facilities. Ultimately, the installation of any new underground infrastructure should be accurately located on record drawings for the City's long term benefit. Existing utilities, as they are encountered during trenching etc. should also be recorded for horizontal and vertical location.
4. Planning staff should review the bike rack type being proposed and determine if they are acceptable as they appear to be different than the DERO style recommended under the technical standards.
5. Regarding our comments from September 16, 2009, we find that three is still a bit of outstanding question regarding the drainage within the parking areas, however I'm sure this can be worked out with the final construction drawings.

We have no further comments at this time.

**CITY OF PORTLAND**  
**DEPARTMENT OF PUBLIC SERVICES**  
**Engineering Division**

**M E M O**

TO: Barbara Barhydt  
FROM: Michael Farmer, Project Engineer  
DATE: June 27, 2008  
RE: Village at Oceangate project (Newbury Street)

I reviewed the comments in the June 23, 2008 memo to you from Steve Bushey of DeLuca-Hoffman Associates. I will offer the following additional comments regarding this project and the issues that Steve Bushey brought up.

1. In Steve Bushey's first comment, he noted a discrepancy regarding tree grate sizes called for on sheet 5 and the detail on sheet 11. I think the tree grate sizes called for on sheet 5 are correct. The tree grate detail on sheet 11 should be changed so it is consistent with sheet 5.
2. Steve Bushey's second comment notes a possible grading problem on Hancock Street, where the proposed sidewalk grades and "top of curb" grades along Hancock Street (between elevations 32' and 34') could lead to 12 inches of curb reveal at one location. A 12" curb reveal would be unacceptable to the Dept. of Public Services (DPS). Our design standards require 7 inches of curb reveal, and the typical cross slope on sidewalks is 2%, sloping downhill toward the curb. I recommend that the plans be revised in light of Steve Bushey's comment and the above noted standards for curb reveal and sidewalk cross slope.
3. Steve Bushey's 5<sup>th</sup> comment states that the location of the grease trap may need refinement. I do not disagree with the comments he presents in this regard. However, my view is that the grease trap and the associated sampling manhole are private property that would be more appropriate to locate outside of the street right of way.
4. I concur with Steve Bushey's other comments.

Deputy City Engineer  
David Margolis-Pineo

September 16, 2009

To: Barbara Barhydt  
From: David Margolis-Pineo  
And Public Service Staff  
Re: The Bay House

- 1. When the construction fence gets installed make sure the points on the fence are down and not up.
- 2. No granite curb sections shall be installed less than four feet in length.
- 3. This project shall not interfere with the water main work that is currently underway.
- 4. THERE IS NO P. E. STAMP ON THESE PLANS. This department can not sign off on these plans until they are stamped.
- 5. The grading and utility plan indicate water main construction. This work is being completed by others and is not part of this project. This proposed work should be deleted from the plans.
- 6. Street opening permit fees are \$223 each.
- 7. Street, parking space and sidewalk occupancy fees are \$10/day per each.
- 8. Any work in the right of way will require an approved traffic plan by Public Services.
- 9. The site will adhere strictly with the new storm water regulations pertaining to site plan work.
- 10. Handicap ramps shown on the plans do not meet ADA or City standards.

June 8, 2012

TO: Barbara Barhydt  
FROM: David Margolis-Pineo Dept. of Public Services  
RE: Review Comments: 112 Newbury Street -- The Bay House

The Department of Public Services has the following comments on the above referenced project.

1. Please add note to the plans that all proposed sidewalk ADA handicap ramps and crosswalk layout and locations shall be reviewed and approved prior to construction by Bruce Hyman (400-9243) Portland's Bike/Ped Coordinator.
2. Please add note to plans that all work within the street right of way will meet City of Portland Technical Manual standards.
3. As previously agreed, the applicant shall install the water main and appurtenances on Newbury St. to the specifications of the Portland Water District.
4. Central Maine Power (CMP) representatives state the proposed underground electrical conduit as shown will not be permitted. If approved, a condition should be added that the applicant, CMP and the City shall meet to determine a mutually agreeable design to include an electrical manhole in the intersection of Newbury and Hancock to facilitate future underground electrical on Hancock. The proposed underground electrical shall be design and constructed to incorporate future needs for the area.
5. All catch basin sumps shall be three feet in depth.

14.3

Barbara Barhydt - Bay House

From: Tom Errico <thomas.errico@tylin.com>  
 To: Barbara Barhydt <BAB@portlandmaine.gov>  
 Date: Friday, May 18, 2012 9:44 AM  
 Subject: Bay House  
 CC: Katherine Earley <KAS@portlandmaine.gov>, David Margolis-Pineo <DMP@port...

Barbara – The following summarizes a status report based on my September 17, 2009 comments and the revised application materials for the above noted project.

- 9/17/2009 Comment – The plans must be stamped by a professional engineer.

Status – The plans have been sealed and I have no further comment.

- 9/17/2009 Comment – Sidewalk ramps shall meet city standards.

Status – The plans meet this requirement and I have no further comment.

- 9/17/2009 Comment – The applicant should be responsible for all regulatory sign changes impacted by their project.

Status – This comment remains valid.

- 9/17/2009 Comment – Based upon the proposed parking supply provided, a Parking Management Plan is not required.

Status – The project will be providing 81 parking spaces for 94 residential units and retail uses. It is my recommendation that the project prepare a Transportation Demand Management Plan for the project that addresses what strategies the project will employ such that parking demand and traffic generation is minimized.

- 9/17/2009 Comment – The driveway on Middle Street does not meet City standards for width.

Status – I support a waiver from City standards.

- 9/17/2009 Comment – The project will impact on-street parking regulations and would be expected to support staff in seeking City Council approval.

Status – This comment remains valid.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
 Senior Associate  
 Traffic Engineering Director



Att. 6

**Barbara Barhydt - The Bay House Landscape Review**

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**From:** Jeff Tarling  
**To:** Barbara Barhydt  
**Date:** Friday, June 08, 2012 8:45 AM  
**Subject:** The Bay House Landscape Review  
**Attachments:** 05109JEFF2.PDF; 05109JEFF1.PDF

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Hi Barbara -

The Bayhouse project proposes to plant 20 new street-trees using upright 'Armstrong' Red Maple and Zelkova trees to be planted in treewells. The spec does mention to use 'structural soil' in the planting of the street-trees, this important feature to create greater root zone for the sidewalk trees should be followed in the construction phase.  
(Note: we often see that the site contractors not follow this spec)

As mentioned in the earlier landscape review comments that the interior courtyard landscape has been reduced or simplified. The project may want to consider future landscape options for this area depending on the use and function of this space to enhance the use & living space.

Landscape condition recommendations - Additional landscape greening is needed in the area near the Middle Street entrance. This can be in the form of curbed landscape planter near the building or 'green-wall' treatment. In this area the sidewalk width appears wide enough to accommodate additional planting space.

The "street-tree / per unit" contribution recommendation is unchanged from the earlier memo of one tree per unit minus the trees planted in public space around the proposed project.

Thanks,

Jeff Tarling  
City Arborist

The performance information listed is for new products and is intended to be used for reference only, and is not complete. Depending on the components, accessories, and options chosen, the actual rating could vary. Confirm ratings for specific products with your supplier or JELD-WEN sales representative.

SERIES	GLAZING	Premium Sitrline EX Windows and Doors									
		U-FACTOR		No Grids		5/8" Flat GGG, 23/32" Contoured GGG, SDL		1" Contoured GGG		VT	
		SHGC	VT	SHGC	VT	U-FACTOR	SHGC	VT	U-FACTOR	SHGC	VT
Clad Awning	Clear	0.49	0.53	0.56	0.49	0.49	0.49	0.51	0.49	0.49	0.51
	Low-E 270	0.37	0.26	0.48	0.37	0.37	0.24	0.43	0.38	0.24	0.43
	Low-E 270 Argon	0.34	0.26	0.48	0.34	0.34	0.24	0.43	0.35	0.24	0.43
	Low-E EC	0.33	0.25	0.44	0.33	0.33	0.23	0.39	0.33	0.23	0.39
	Low-E EC Argon	0.30	0.25	0.44	0.30	0.30	0.23	0.39	0.31	0.23	0.39
	Low-E 366	0.36	0.20	0.44	0.36	0.36	0.18	0.40	0.37	0.18	0.40
	Low-E 366 Argon	0.33	0.19	0.44	0.33	0.33	0.18	0.40	0.34	0.18	0.40
	Triple Glaze Argon - 270, Cl, Cl	0.30	0.24	0.42	0.31	0.31	0.22	0.38	-	-	-
	Triple Glaze Argon - 270, Cl, 180	0.27	0.23	0.41	0.28	0.28	0.21	0.37	-	-	-
	Triple Glaze Argon - 180, Cl, 180	0.28	0.38	0.46	0.28	0.28	0.35	0.41	-	-	-
	Clear	0.49	0.54	0.56	0.49	0.49	0.49	0.51	0.49	0.49	0.51
	Clad Casement	Low-E 270	0.37	0.26	0.48	0.37	0.37	0.24	0.43	0.38	0.24
Low-E 270 Argon		0.34	0.26	0.48	0.34	0.34	0.24	0.43	0.35	0.24	0.43
Low-E EC		0.33	0.25	0.44	0.33	0.33	0.23	0.39	0.34	0.23	0.39
Low-E EC Argon		0.30	0.25	0.44	0.30	0.30	0.23	0.39	0.31	0.23	0.39
Low-E 366		0.37	0.20	0.44	0.37	0.37	0.18	0.40	0.38	0.18	0.40
Low-E 366 Argon		0.34	0.19	0.44	0.34	0.34	0.18	0.40	0.35	0.18	0.40
Triple Glaze Argon - 270, Cl, Cl		0.31	0.24	0.43	0.31	0.31	0.22	0.39	-	-	-
Triple Glaze Argon - 270, Cl, 180		0.28	0.24	0.41	0.28	0.28	0.22	0.37	-	-	-
Triple Glaze Argon - 180, Cl, 180		0.28	0.39	0.46	0.29	0.29	0.36	0.42	-	-	-
Clear		0.48	0.63	0.66	0.48	0.48	0.57	0.59	0.49	0.57	0.59
Low-E 270		0.34	0.30	0.56	0.34	0.34	0.27	0.50	0.36	0.27	0.50
Clad Casement Fixed		Low-E 270 Argon	0.31	0.30	0.56	0.31	0.31	0.27	0.50	0.32	0.27
	Low-E EC	0.29	0.28	0.51	0.29	0.29	0.26	0.46	0.31	0.26	0.46
	Low-E EC Argon	0.27	0.28	0.51	0.27	0.27	0.26	0.46	0.28	0.26	0.46
	Low-E 366	0.34	0.22	0.52	0.34	0.34	0.20	0.46	0.36	0.20	0.46
	Low-E 366 Argon	0.30	0.22	0.52	0.30	0.30	0.20	0.46	0.32	0.20	0.46
	Triple Glaze Argon - 270, Cl, Cl	0.27	0.27	0.50	0.28	0.28	0.25	0.45	-	-	-
	Triple Glaze Argon - 270, Cl, 180	0.24	0.27	0.48	0.24	0.24	0.24	0.43	-	-	-
	Triple Glaze Argon - 180, Cl, 180	0.25	0.45	0.54	0.25	0.25	0.41	0.48	-	-	-

Premium Sitrline EX Windows and Doors

SERIES	GLAZING	U-FACTOR	No Grids			5/8" Flat GBG, 23/32" Contoured GBG, SDL			1" Contoured GBG				
			SHGC	VT	U-FACTOR	SHGC	VT	U-FACTOR	SHGC	VT	U-FACTOR	SHGC	VT
Clad Double-Hung	Clear	0.48	0.57	0.60	0.48	0.51	0.53	0.48	0.51	0.53	0.48	0.51	0.53
	Low-E 270	0.35	0.27	0.51	0.35	0.24	0.45	0.37	0.24	0.45	0.37	0.24	0.45
	Low-E 270 Argon	0.32	0.27	0.51	0.32	0.24	0.45	0.33	0.24	0.45	0.33	0.24	0.45
	Low-E EC	0.30	0.26	0.46	0.30	0.23	0.41	0.32	0.23	0.41	0.32	0.23	0.41
	Low-E EC Argon	0.28	0.26	0.46	0.28	0.23	0.41	0.29	0.23	0.41	0.29	0.23	0.41
	Low-E 366	0.35	0.20	0.47	0.35	0.18	0.42	0.36	0.18	0.42	0.36	0.18	0.42
	Low-E 366 Argon	0.32	0.20	0.47	0.32	0.18	0.42	0.33	0.18	0.42	0.33	0.18	0.42
	Clear	0.47	0.60	0.62	0.47	0.53	0.55	0.48	0.53	0.55	0.48	0.53	0.55
	Low-E 270	0.33	0.28	0.53	0.33	0.25	0.47	0.35	0.25	0.47	0.35	0.25	0.47
	Low-E 270 Argon	0.30	0.28	0.53	0.30	0.25	0.47	0.32	0.25	0.47	0.32	0.25	0.47
Clad Double-Hung Fixed	Low-E EC	0.28	0.27	0.48	0.28	0.24	0.43	0.30	0.24	0.43	0.30	0.24	0.43
	Low-E EC Argon	0.26	0.27	0.48	0.26	0.24	0.43	0.27	0.24	0.43	0.27	0.24	0.43
	Low-E 366	0.33	0.21	0.49	0.33	0.19	0.44	0.35	0.19	0.44	0.35	0.19	0.44
	Low-E 366 Argon	0.30	0.21	0.49	0.30	0.19	0.44	0.31	0.19	0.44	0.31	0.19	0.44
	Clear	0.48	0.60	0.62	0.48	0.53	0.55	0.49	0.53	0.55	0.49	0.53	0.55
	Low-E 270	0.35	0.28	0.53	0.35	0.25	0.47	0.37	0.25	0.47	0.37	0.25	0.47
	Low-E 270 Argon	0.32	0.28	0.53	0.32	0.25	0.47	0.33	0.25	0.47	0.33	0.25	0.47
	Low-E EC	0.30	0.27	0.49	0.30	0.24	0.43	0.31	0.24	0.43	0.31	0.24	0.43
	Low-E EC Argon	0.28	0.27	0.49	0.28	0.24	0.43	0.29	0.24	0.43	0.29	0.24	0.43
	Low-E 366	0.35	0.21	0.49	0.35	0.19	0.44	0.36	0.19	0.44	0.36	0.19	0.44
Clad Horizontal Slider	Low-E 366 Argon	0.31	0.21	0.49	0.31	0.19	0.44	0.33	0.19	0.44	0.33	0.19	0.44
	Clear	0.49	0.69	0.72	0.48	0.62	0.65	0.48	0.62	0.65	0.48	0.62	0.65
	Low-E 270	0.32	0.32	0.61	0.32	0.29	0.55	0.34	0.29	0.55	0.34	0.29	0.55
	Low-E 270 Argon	0.29	0.29	0.61	0.29	0.29	0.55	0.30	0.29	0.55	0.30	0.29	0.55
	Low-E EC	0.27	0.31	0.56	0.27	0.28	0.50	0.28	0.28	0.50	0.28	0.28	0.50
	Low-E EC Argon	0.24	0.31	0.56	0.24	0.28	0.50	0.25	0.28	0.50	0.25	0.28	0.50
	Low-E 366	0.32	0.24	0.57	0.32	0.22	0.51	0.34	0.22	0.51	0.34	0.22	0.51
	Low-E 366 Argon	0.28	0.24	0.57	0.28	0.22	0.51	0.30	0.22	0.51	0.30	0.22	0.51
	Triple Glaze Argon - 270, Cl, Cl	0.23	0.30	0.56	0.24	0.27	0.50	-	-	-	-	-	-
	Triple Glaze Argon - 270, Cl, 180	0.19	0.29	0.53	0.20	0.27	0.48	-	-	-	-	-	-
Clad Direct-Set	Triple Glaze Argon - 180, Cl, 180	0.20	0.49	0.60	0.21	0.45	0.54	-	-	-	-	-	-
	Clear	0.47	0.69	0.72	0.47	0.62	0.65	0.48	0.62	0.65	0.48	0.62	0.65
	Low-E 270	0.32	0.32	0.61	0.32	0.29	0.55	0.34	0.29	0.55	0.34	0.29	0.55
	Low-E 270 Argon	0.28	0.32	0.61	0.28	0.29	0.55	0.30	0.29	0.55	0.30	0.29	0.55
	Low-E EC	0.26	0.31	0.56	0.26	0.28	0.50	0.28	0.28	0.50	0.28	0.28	0.50
	Low-E EC Argon	0.24	0.31	0.56	0.24	0.28	0.50	0.25	0.28	0.50	0.25	0.28	0.50
	Low-E 366	0.31	0.24	0.57	0.31	0.22	0.51	0.33	0.22	0.51	0.33	0.22	0.51
	Low-E 366 Argon	0.28	0.24	0.57	0.28	0.22	0.51	0.29	0.22	0.51	0.29	0.22	0.51
	Triple Glaze Argon - 270, Cl, Cl	0.23	0.30	0.56	0.23	0.27	0.50	-	-	-	-	-	-
	Triple Glaze Argon - 270, Cl, 180	0.19	0.29	0.53	0.20	0.27	0.48	-	-	-	-	-	-
Clad Direct-Set Radius	Triple Glaze Argon - 180, Cl, 180	0.20	0.49	0.60	0.21	0.45	0.54	-	-	-	-	-	-
	Clear	0.47	0.69	0.72	0.47	0.62	0.65	0.48	0.62	0.65	0.48	0.62	0.65
	Low-E 270	0.32	0.32	0.61	0.32	0.29	0.55	0.34	0.29	0.55	0.34	0.29	0.55
	Low-E 270 Argon	0.28	0.32	0.61	0.28	0.29	0.55	0.30	0.29	0.55	0.30	0.29	0.55
	Low-E EC	0.26	0.31	0.56	0.26	0.28	0.50	0.28	0.28	0.50	0.28	0.28	0.50
	Low-E EC Argon	0.24	0.31	0.56	0.24	0.28	0.50	0.25	0.28	0.50	0.25	0.28	0.50
	Low-E 366	0.31	0.24	0.57	0.31	0.22	0.51	0.33	0.22	0.51	0.33	0.22	0.51
	Low-E 366 Argon	0.28	0.24	0.57	0.28	0.22	0.51	0.29	0.22	0.51	0.29	0.22	0.51
	Triple Glaze Argon - 270, Cl, Cl	0.23	0.30	0.56	0.23	0.27	0.50	-	-	-	-	-	-
	Triple Glaze Argon - 270, Cl, 180	0.19	0.29	0.53	0.20	0.27	0.48	-	-	-	-	-	-
Triple Glaze Argon - 180, Cl, 180	0.20	0.49	0.60	0.21	0.45	0.54	-	-	-	-	-	-	



PARKING LEASE  
(OCEAN GATEWAY GARAGE)

THIS PARKING LEASE (the "Parking Lease") is entered into as of the \_\_\_\_ day of SEPT., 2007, by and between OCEAN GATEWAY GARAGE LLC, a Maine limited liability company with an address of Two Market Street, Portland, Maine 04101 ("Owner") Owner of the Ocean Gateway Garage at 161 Fore Street, Portland, Maine 04101 and The Village At Oceangate, LLC, a Maine limited liability company ("Tenant") with an address c/o GFI Partners, 133 Pearl Street, Suite 400, Boston, MA 02110.

WITNESSETH:

WHEREAS, Owner owns the Ocean Gateway Garage, a parking garage which, once constructed, will have approximately seven hundred twenty (720) spaces located on a parcel of land approximately thirty-seven thousand (37,000) square feet in area located at 161 Fore Street in the City of Portland, County of Cumberland and State of Maine and shown as "Proposed Lot 3" on plan entitled "Subdivision/Recording Plat" by Owen Haskell, Inc., dated March 22, 2006 as last revised April 13, 2006, and recorded in the Cumberland County Registry of Deeds in Plan Book 207, Page 54 (the "Garage"); and

WHEREAS, Owner and Tenant desire to enter into this Parking Lease for the purpose of setting forth the terms and conditions of a certain arrangement between them relating to the use of parking spaces in the Garage by Tenant; and

WHEREAS, in order to provide shared use of parking spaces at different times of the day and night for multiple tenants, the Owner and Tenant agree to limit and manage the hours of use of the Garage Parking Spaces by Tenant; and

WHEREAS, Tenant and/or its assignees or sublessees will occupy residential condominium units, retail spaces and commercial offices located at a project to be known as "The Bay House Condominium," to be developed at 113 Newbury Street and 40 Hancock Street, Portland, Maine (the "Condominium") and will use the Parking Spaces for residents, employees and business invitees as defined hereinafter.

NOW, THEREFORE, for good and valuable consideration including the mutual covenants and agreements herein, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Use of Parking Spaces.

a. Owner hereby leases to Tenant the right to use twenty (20) parking spaces (the "Parking Spaces") in the Garage in accordance with and subject to the terms and conditions below and such reasonable rules and regulations established from time to time by Owner governing the leasing and use by monthly and transient users of parking spaces in the Garage. The Parking Spaces are to be used as follows: ten (10) of the Parking

Spaces shall be to serve retail and/or commercial space in the first phase of the Condominium (the "Nonresidential Spaces"), five (5) of the Parking Spaces shall be to serve residential units in the first phase of the Condominium (the "Phase I Residential Spaces"), and the remaining five (5) Parking Spaces shall be to serve residential units in the second phase of the Condominium (the "Phase II Residential Spaces"). Tenant understands and agrees that, in accordance with customary garage operations and management practices, specific parking spaces are not reserved or dedicated for Tenant and the availability of any specific parking space is not guaranteed. The Parking Spaces are intended for use for automobile, motorcycle, van, pick-up truck and SUV parking only, not for the parking of any large commercial trucks or other commercial vehicles.

b. In particular, Owner will make available to Tenant twenty (20) parking access cards (or such parking codes or other "keys" or means of convenient 24-hour access as shall be available from time to time) which shall in turn be made available to Tenant's employees, agents, assignees and/or subtenants.

c. It is understood and agreed that (i) this Lease may be assigned, in whole or in part, by Tenant to the Condominium Association (the "Association") to be established by Tenant, and (ii) Tenant or the Association may sublease the Parking Spaces to owners or occupants of Condominium Units. Both parties hereto understand and agree that Parking Spaces may only be sublet or assigned to users who own or occupy Phase I or II residential condominiums or Phase I retail and/or commercial condominiums or spaces in the Bay House Condominium development.

d. It is understood that in accordance with customary garage operations and management practices, Owner will enter into parking agreements with other tenants to use the Parking Spaces at times they are not being used by Tenant. To better manage such shared use of Parking Spaces, Owner and Tenant agree the Nonresidential Spaces may be used from 7:45 AM to 5:15 PM Monday through Friday (the "Nonresidential Parking Time Frame"), and that at any one time no more than twenty percent (20%) of the Tenant's Nonresidential Parking Spaces may be used beyond such Nonresidential Parking Time Frame or on the weekends. In the event Tenant or its assignee or subtenant(s) use more than twenty percent (20%) of the Nonresidential Parking Spaces beyond the Nonresidential Parking Time Frame, Tenant shall pay to Owner as additional monthly payment an amount equal to the then maximum daily rate charged by the Garage for each day and for each Nonresidential Parking Space so utilized in excess of the allowable twenty percent (20%) of the Nonresidential Parking Spaces.

2. Deposits. There shall be no Deposit for this Lease, but Tenant shall pay to Owner customary fees and charges imposed by Owner for lost cards or replacement cards and/or reimbursement for out-of-pocket expenses arising therefrom.

3. Term. The initial term of this Parking Lease shall be ten (10) years, commencing (a) on the date when the Phase I Condominium Buildings receive a Certificate of Occupancy from the City of Portland, as to the Nonresidential Spaces and five (5) of the Residential Spaces, and (b) on the date when the Phase II Condominium Buildings receive a Certificate of

Occupancy from the City of Portland, as to the remaining five (5) Residential Spaces (the "Commencement Dates"). Provided that Tenant is not in default hereunder at the time of renewal, the Term may be extended for an additional one (1) term (the "Option Term") of ten (10) years beginning on the tenth (10<sup>th</sup>) anniversary of each Commencement Date. The extension of the Term shall be automatic unless the Tenant delivers to Owner not less than twelve (12) months prior to the end of the expiration of the then current term a notice that Tenant elects not to extend the Term of the Lease.

4. Monthly Rate. The Monthly Parking Rate for each Parking Space shall be the market rate as reasonably determined annually by Owner.

The Monthly Parking Rate shall be set at the commencement of the Parking Term and may be increased on July 1<sup>st</sup> of each year of the parking Term, provided, however, that Owner shall deliver to Tenant not less than thirty (30) days prior to an increase, written notice of any increase in such rate.

5. Payment. Beginning on the Commencement Date, Tenant shall pay Owner the amount due for the Parking Spaces by one check or wire transfer to be received by Owner in advance on or before the first day of each month at Owner's address hereinafter set forth or to such other address (e.g., a manager's) as may be designated by Owner in writing to Tenant from time to time. If the Commencement Date does not fall on the first day of the month, then prorated rent for the first partial month shall be due on the Commencement Date.

6. Late Payment. If the monthly payment for the Parking Spaces is not received by Owner by the 1<sup>st</sup> day of each calendar month, Tenant shall pay Owner (a) all unpaid amounts due with respect to the Parking Spaces, and (b) an additional late charge in the amount of five percent (5%) of the monthly payment for the Parking Spaces. In the event that the payment of any amounts due from Tenant is not received by Owner within fifteen (15) days of delivery of written notice from Owner to Tenant of such non-payment, then Owner shall have each and every remedy provided by law including the right to immediately terminate their Parking Lease and evict Tenant in a forcible entry and detainer ("FED") action for non-payment of rent. Owner shall also be entitled to a reimbursement of its reasonable attorneys' fees incurred in such FED action. By way of clarification, if there is a dispute over the amount of rent due or whether rent was timely paid, it shall be handled under Paragraph 15 below.

7. Registration of Vehicles. All vehicles utilizing Parking Spaces shall be registered with Owner on forms provided to Tenant by Owner. Tenant agrees to keep a current log of names of users and license numbers for employees using parking spaces and, if requested by Owner, provide updated copies of the log to Owner for inspection.

8. Parking Times. The Parking Spaces shall be available for use 24 hours per day, 7 days per week subject to the terms and provisions hereof and as more specifically set forth in paragraph 1(d) above (the "Parking Times").

9. Insufficient Parking Spaces. Owner agrees to use reasonable good faith efforts to ensure that there are sufficient parking spaces available in the Garage to satisfy the rights of

Tenant hereunder. In the event there exists insufficient parking spaces in the Garage to meet the requirements of Tenant at any time Tenant exercises its rights to use parking spaces under this Parking Lease, Owner shall be obligated to terminate a sufficient number of monthly tenant-at-will parkers in the Garage within forty-five (45) days thereafter as will, in Owner's reasonable judgment, ensure the regular availability of sufficient parking spaces to meet such requirements of Tenant hereunder. If Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage during allowable Parking Times, Tenant shall notify the Owner of the Garage, or Owner's garage manager as designated from time to time by Owner, within two (2) hours thereof (if between 9 a.m. and 5 p.m.) or if after 5 p.m. then by 10 a.m. on the day after Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage, following which Tenant shall be entitled to a credit against the next month's parking fee in an amount equal to the hourly parking rate at the Garage times eight (8) for each day that an employee of Tenant is unable to find a parking space, unless Owner can reasonably establish and document that a parking space was available in the Garage. The credits against parking fees set forth in this Section do not relieve Owner of its obligation to use reasonable good faith efforts to ensure that sufficient spaces are available, as provided herein.

10. Maintenance and Repair of Garage. Subject to the provisions of Paragraph 12 below, Owner shall maintain the Garage in good condition and repair. Owner shall not be deemed in default in any of its obligations under this Parking Lease during any period in which all or any portion of the Garage is closed for required maintenance and repairs, provided that except in cases of emergency Owner provides Tenant with seven (7) days written notice of such closing of all or any significant portion of the Garage (i.e., more than 75 spaces at any one time), or for any other reasons beyond the control of Owner. Owner will use reasonable efforts to undertake such maintenance and repair during such times as will, in the reasonable judgment of Owner, minimally interfere with parking in the Garage. If such maintenance shall cause the Parking Spaces or some significant portion thereof to be unavailable for three (3) or more consecutive days, Tenant shall be entitled to a pro rata credit against the monthly parking fee to the extent of any adverse impact of the availability of the twenty (20) spaces for Tenant.

11. Insurance. Each party shall maintain or cause to be maintained commercial general liability insurance, the form of which and amount of coverage to be reasonably acceptable to the other party but at any rate not less than \$2,000,000 combined single limit. Each party further agrees to maintain such insurance with acceptable coverage limits during the term of this Parking Lease and shall provide the other party with not less than fifteen (15) days written notice prior to the cancellation or expiration of any insurance policy required to be maintained pursuant to this Parking Lease. Owner shall be listed an additional insured on Tenant's liability policy.

12. Damage to Vehicles or Personal Property. Owner shall not be responsible for any damage or loss to vehicles or personal property belonging to any person using any of the Parking Spaces, except for such damage or loss resulting from the gross negligence of Owner.

13. Cessation of Garage Business. Owner shall not be deemed in default in any of its obligations under this Parking Lease in the event Owner ceases to operate the Garage, or any portion thereof, due to events beyond the control of Owner, which events may include without

limitation, acts of government, embargoes, fire, flood, explosions, hurricanes, tornadoes, acts of God, terrorism or public enemy, strikes, labor disputes, vandalism, commotion, riots, or any similar events which, in the reasonable judgment of Owner, make use of the Garage impossible or impractical. If there is a "Casualty Event" (as defined below) the Owner shall have the right to elect whether or not to rebuild or restore the Garage within 120 days of the Casualty Event. If Owner elects to rebuild or restore the Garage, then this Parking Lease shall remain in effect except that Tenant's obligation to pay rent shall abate pro-rata so long as some or all of the Parking Spaces are not available. If Owner elects not to rebuild or restore the Garage, then this Parking Lease shall terminate upon notice thereof from Owner to Tenant. If Owner elects to rebuild or restore the Garage, Owner agrees to use diligent good faith efforts to complete the reconstruction or restoration within a reasonable period of time. Notwithstanding the foregoing, Owner agrees that if there is a Casualty Event, Owner will elect to rebuild or restore the Garage, if the insurance proceeds available by reason of such Casualty Event are sufficient to rebuild or restore and so long as said proceeds are not otherwise claimed by Owner's lender under any mortgage on the Garage or otherwise unavailable. A "Casualty Event" shall occur if (i) there is substantial destruction of the Garage which leaves the use of the Garage impossible or impractical in the reasonable judgment of Owner, or (ii) Owner notifies Tenant that the City of Portland or a licensed engineer has determined that the Garage is structurally unsound or unsafe requiring the cessation of parking in the Garage. Upon such termination of this Parking Lease by either Owner or Tenant, all rights and obligations of Owner and Tenant hereunder shall cease and shall be of no further force and effect except for such obligations as shall by their express terms, survive termination of this Parking Lease, subject to compliance with Paragraph 14 below. Tenant shall remain liable to Owner for payments due Owner accrued and unpaid up to the date of said termination.

14. Compliance with Terms and Conditions: Indemnity. Tenant shall be responsible for ensuring that the use of the Garage by its employees, assignees and sublessees complies with the terms and conditions of this Parking Lease and such other reasonable rules and regulations as are established from time to time by Owner governing the use of the Garage by parking patrons. Tenant hereby agrees to indemnify and hold harmless Owner from any claim, costs, liability and expense including, but not limited to, reasonable attorneys' fees and expenses, arising from or attributable to Tenant's or its guest's or employee's use of the Garage hereunder. This agreement to indemnify Owner shall survive termination of this Parking Lease.

15. Disputes.

a. Any controversy, claim or cause of action arising out of or relating to this Agreement shall be finally settled by arbitration by an arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the power to grant equitable remedies in addition to imposing monetary damages. Arbitration shall be held in Portland, Maine, or such other location as the parties agree. The arbitration shall include (i) a provision that the prevailing party in such arbitration shall recover his or her costs of arbitration and reasonable attorneys' fees from the other party and (ii) the amount of such costs and fees. All arbitration under this paragraph shall be final, binding and conclusive.



b. Despite subparagraph a. above, if any party believes it necessary to seek injunctive relief or a provisional remedy (such as forcible entry and detainer or an attachment or trustee process), such party may file a civil action in any court having jurisdiction for such foreclosure, injunctive relief or provisional remedy. The arbitration procedures specified in subparagraph a. above, however, will apply to the determination of the merits of any monetary claim or defense, and the court proceeding will extend no further than to provide a kind of relief or remedy not readily available under the subparagraph a. above procedures.

c. Tenant and Owner for themselves, their heirs, successors, and assigns hereby knowingly, willingly and voluntarily waive any and all rights such party may have to a trial by jury in any forcible and detainer ("FED") action or proceeding brought by Owner or Owner's successors and/or assigns based upon or related to the provisions of this Parking Lease. Owner and Tenant hereby agree that any such FED action or proceeding shall be heard before a single judge of the appropriate District Court or a single justice of the appropriate Superior Court, or a Federal District Court Judge sitting in the District of Maine.

16. Estoppel Certificate. At any time, and from time to time, upon the written request of Owner or any mortgagee, Tenant within ten (10) days of the date of such written request agrees to execute and deliver to Owner and/or such mortgagee, without charge and in a form reasonably satisfactory to Owner, Tenant, and/or such mortgagee, a written statement: (i) ratifying this Lease; (ii) confirming the commencement and expiration dates of the term of this Lease; (iii) certifying that Tenant is in occupancy of the Leased Premises, and that the Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated and agreeing not to amend, modify or cancel this Lease without mortgagee's written consent; (iv) certifying that all conditions and agreements under this Lease to be satisfied or performed by Owner have been satisfied and performed except as shall be stated; (v) certifying that Owner is not in default under the Lease and there are no defenses or offsets against the enforcement of this Lease by Owner, or stating the defaults and/or defenses claimed by Tenant; (vi) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid and agrees not to prepay rent more than 10 days in advance; (vii) reciting the amount of security deposit deposited with Owner, if any; and (viii) any other information which Owner or the mortgagee shall reasonably require.

17. Subordination. Tenant agrees that, except as hereinafter provided, this Lease is, and all of Tenant's rights hereunder are and shall always be, subject and subordinate to any mortgage or leases of Garage pursuant to which Owner has or shall retain the right of possession of the Garage or security instruments (collectively called "Mortgage") that now exist, or may hereafter be placed upon the Garage and to all advances made or to be made thereunder and to the interest thereon, and all renewals, replacements, modifications, consolidations, or extensions thereof; provided that so long as Tenant is in full compliance with the terms and provisions of this Lease (with all defaults, if any, fully and timely cured within applicable grace periods), any such Mortgagee, lessor or purchaser at a foreclosure sale shall recognize Tenant in accordance with the terms hereof; provided further that if the holder of any such Mortgage ("Mortgage") or if the purchaser at any foreclosure sale or at any sale under a power of sale contained in any Mortgage shall at its sole option so request, Tenant will attorn to, and recognize such Mortgagee or purchaser, as the case

may be, as Owner under this Lease for the balance then remaining of the term of this Lease, subject to all terms of this Lease, and that the aforesaid provisions shall be self-operative and no further instrument or document shall be necessary unless required by any such Mortgagee or purchaser. Should Owner or any Mortgagee or purchaser desire confirmation of either such subordination or such attornment, as the case may be, Tenant upon written request, and from time to time, will execute and deliver without charge and in form satisfactory to Owner, the Mortgagee or the purchaser all instruments and/or documents that may be requested to acknowledge such subordination and/or agreement to attorn, in recordable form. In the event Tenant fails to execute and deliver the instruments and documents as provided for in this paragraph within the time period set forth herein, Owner may treat such failure as an event of default.

18. Miscellaneous.

a. This Parking Lease and the rights and obligations hereunder shall be binding upon the Owner and its successors and assigns in interest. In the event that Owner sells the Garage to a third party, upon the assignment and assumption of this Parking Lease by the third party, the Owner shall have no further obligations hereunder for any period of time following the assignment and assumption. Except as provided above, this Agreement may not be assigned, transferred, encumbered or conveyed, or hypothecated, in whole or in part, by Tenant to any other person or entity, under any circumstances, without the express prior written consent of the Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

b. Except as otherwise provided herein, any notice relating in any way to this Parking Lease shall be in writing and shall be either hand delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

To Owner:                    Ocean Gateway Garage LLC  
                                      c/o Drew E. Swenson  
                                      P.O. Box 17536  
                                      Portland, ME 04112

To Tenant:                    The Village At Oceangate, LLC  
                                      c/o GFI Partners  
                                      133 Pearl Street, Suite 400  
                                      Boston, MA 02110

and such notice shall be deemed delivered upon the earlier of actual receipt or three days after deposit in the U.S. mails as set forth above or, in the case of hand delivery, when received in person with a written acknowledgement of receipt. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above and also add persons or addresses for notices to lenders or their counsel.

c. All paragraph headings in the Parking Lease are for convenience of reference only and are of no independent legal significance.

d. This Parking Lease may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

e. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Parking Lease, which alone fully and completely expresses their entire Parking Lease.

f. If any part of any term or provision of this Parking Lease shall be held or deemed to be invalid, inoperative or unenforceable to any extent by a court of competent jurisdiction, such circumstance shall in no way affect any other term or provision of this Parking Lease, the application of such term or provision in any other circumstances, or the validity or enforceability of this Parking Lease.

g. The language used in this Parking Lease shall be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction will be applied against either party. Without limiting the generality of the foregoing, the language in all parts of this Parking Lease shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party hereto, and without implying a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who drafted the same. It is hereby agreed that the representatives of both parties have participated in the preparation hereof.

h. This Parking Lease may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument.

i. This Parking Lease may not be recorded but a Memorandum hereof containing such information as is required by 33 M.R.S.A. § 201 may be recorded by either party but only on or after the Commencement Date. Owner agrees to execute and have acknowledged and delivered to Tenant for recording at the Cumberland County Registry of Deeds, such a Memorandum, if tendered by Tenant.

j. This Parking Lease shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

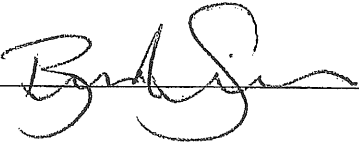
IN WITNESS WHEREOF, the undersigned have caused this Parking Lease to be executed by their duly authorized representatives.

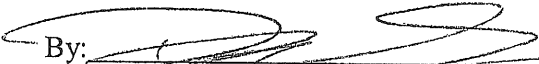
WITNESS

OWNER:

OCEAN GATEWAY GARAGE LLC

By: Riverwalk, LLC, Its Manager

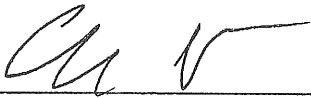
  
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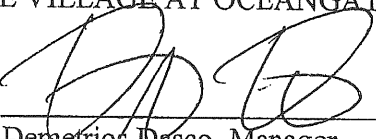
By:   
\_\_\_\_\_

Drew E. Swenson, its Manager

TENANT:

THE VILLAGE AT OCEANGATE, LLC

  
\_\_\_\_\_

By:   
\_\_\_\_\_

Demetrios Dasco, Manager

Easement Relocation Agreement

This Easement Relocation Agreement is entered into this 3<sup>rd</sup> day of May 2006, by and between Village Café, Inc., a Maine corporation with a mailing address of 112 Newbury Street, Portland, Maine 04101 ("Village") and Pearl Properties, LLC, a Maine limited liability company with a mailing address c/o 198 Tuttle Road, Cumberland, Maine 04021 ("Pearl").

Whereas, Village is the owner of real property located near Middle, India, Newbury, and Hancock Streets in Portland, Cumberland County, Maine (the "Village Property") and more particularly described in the following deeds:

- a. deed from Ari Real Estate Holdings, L.L.C. dated February 11, 2002 and recorded at Cumberland County Registry of Deeds in Book 17317, Page 167;
- b. deed from Andrew Quatrano and Rose Anne Quatrano dated March 3, 1971 and recorded at said Registry in Book 3161, Page 504;
- c. deed from Rose M. Piacitelli dated December 19, 1978 and recorded at said Registry in Book 4357, Page 291;
- d. deed from Theresa C. Piacitelli acknowledged on March 7, 1972 and recorded at said Registry in Book 3217, Page 83;
- e. deed from Angelina C. Phillipio dated July 21, 1967 and recorded at said Registry in Book 3004, Page 226;
- f. deed from Gladys Difazio and John R. Difazio dated May 29, 1969 and recorded at said Registry in Book 3091, Page 703;
- g. deed from Santino Viola dated October 2, 1975 and recorded at said Registry in Book 3752, Page 140;
- h. deed from Vincenzo Reali dated December 11, 1969 and recorded at said Registry in Book 3112, Page 131;
- i. deed from Amedeo Reali and Albert Dimillo dated January 1, 1967 and recorded at said Registry in Book 3024, Page 132;
- j. deed from Amedeo J. Reali and Bridget Dimillo dated September 1, 1972 and recorded at said Registry in Book 3291, Page 260;
- k. deed from Donald J. Roderick and Felicia J. Roderick dated May 23, 1967 and recorded at said Registry in Book 2996, Page 237; and
- l. deed from Rocco C. Risbara, Jr. dated May 23, 1967 and recorded at said Registry in Book 2996, Page 235;
- m. deed from Adelaide DiPaolo dated December 19, 1978 and recorded at said Registry in Book 4357, Page 289;
- n. deed from Mary Nolfo dated September 9, 1977 and recorded at said Registry in Book 4094, Page 222;
- o. deed from 73 India Street Associates dated April 10, 1991 and recorded at said Registry in Book 9520, Page 73; and
- p. deed from Dominic Reali dated June 6, 1991 and recorded at said Registry in Book 9591, Page 34;

Whereas, Pearl is the owner of real property located on India Street in Portland, Cumberland County, Maine and more particularly described in a deed from Wooden Nickel, LLC to Pearl dated August 5, 2005 and recorded at said Registry in Book 23005, Page 267 (the "Pearl Property");

Whereas, Village has requested that Pearl release easements that burden the Village Property, such easements referenced or described in deeds from Geoffrey I. Rice to Village recorded at said Registry in Book 4308, Page 125, and from Arnold M. Siciliano to Maria DeFilippo Navarro recorded at said Registry in Book 1148, Page 240, and being depicted as "Turners Court" and "8' Common Right of Way" on a survey entitled "ALTA/ACSM Land Title Survey of: Village Café Inc." prepared for GFI Acquisitions I, LLC by Sebago Technics dated July 12, 2005, last revised August 2, 2005 (Project No. 05109) (together, the "Existing Easements");

Whereas, Pearl has requested that Village provide Pearl with a new easement for access and underground utilities for the Pearl Property;

Whereas, Pearl is willing to release the Existing Easements and Village is willing to grant Pearl the new easement on the terms and conditions provided below.

Now, therefore, in consideration of the agreements of Village and Pearl below, the sufficiency of which hereby is acknowledged, Village and Pearl agree as follows:

1. Except for the new easement granted in paragraph number 2 below, Pearl hereby releases and grants to Village all right, title and interest in the Existing Easements and the Village Property.

2. Village hereby grants to Pearl, with Warranty Covenants, a non-exclusive, irrevocable and perpetual easement for purposes of access by pedestrians and vehicles to the Pearl Property from Middle Street, but not for parking, and for underground utilities in that fourteen (14)-foot strip of land depicted on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto (the "Easement Area"). Pearl shall have the right to use the Easement Area for pedestrian and vehicular access and underground utilities for only the buildings on the Pearl Property, and including the right to enter upon the Easement Area to maintain, repair, replace and renovate such buildings, but the easements granted herein shall not be for the benefit of any property other than the Pearl Property. Included with the foregoing is the right to install, maintain, repair and replace underground utilities within the Easement Area provided that such utilities do not unreasonably interfere with utilities installed in the Easement Area for the benefit of the Village Property and to pave, repave, repair, remove snow from and otherwise maintain the Easement Area for the purposes set forth herein provided that Pearl shall provide Village with reasonable advance notice of work on improvements in the Easement Area and use commercially reasonable efforts to minimize disruption to the business or other uses of the Village Property caused by such work. Further, Pearl shall indemnify and hold Village harmless from any claims, costs, damages and expenses, including without

limitation reasonable attorneys' fees, incurred by Village and caused by Pearl's use of the Easement Area. The foregoing easements shall not be blocked or otherwise obstructed by Village. However, Village and Pearl shall each have the right to temporarily obstruct the Easement Area during construction of improvements on the Village Property or the Pearl Property or maintenance or repairs to the Village Property or the Pearl Property; such obstructing party shall provide the other party with reasonable advance notice of such obstruction and shall use commercially reasonable efforts to minimize the extent and duration of such obstruction. The benefits and burdens of this easement shall run with the Pearl Property and the Village Property and inure to the successors and assigns of Village and Pearl.

3. Village hereby grants to Pearl, with Warranty Covenants, a non-exclusive, irrevocable right and easement for pedestrian and vehicular ingress and egress from the existing curb cut on Middle Street located closest to the Easement Area, in, over and across the Village Property to the Easement Area until Village installs, at its sole cost and expense, a curb cut, reasonably satisfactory to Pearl, extending along Middle Street which shall permit pedestrian and vehicular ingress and egress to the Easement Area and paves, at its sole cost and expense, the Easement Area, allowing and permitting Pearl actual and convenient pedestrian and vehicular ingress and egress from the Pearl Property over the Easement Area to Middle Street. The foregoing easement shall not be blocked or otherwise obstructed by Village except for temporary blockage consistent with temporary blockage for the Easement Area as provided in paragraph 2 above. Village shall commence and diligently prosecute completion of said installation of the curb cut and paving of the Easement Area promptly upon substantial completion of construction on the portion of the Village Property adjacent to the Easement Area.

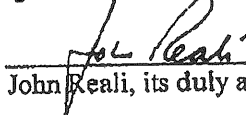
4. Notwithstanding anything to the contrary herein, nothing herein shall be deemed to release or otherwise relinquish or affect the three (3) foot wide easement described in the deed from Wooden Nickel, LLC to Pearl dated August 5, 2005 and recorded at said Registry in Book 23005, Page 267.

In witness whereof, Village has caused this instrument to be executed under seal by John Reali, its duly authorized President, and Pearl has caused this instrument to be executed under seal by Joseph W. Reynolds, its duly authorized Manager.

Witness:

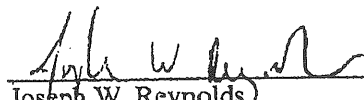


Village Café, Inc.

By:   
John Reali, its duly authorized President

Pearl Properties, LLC

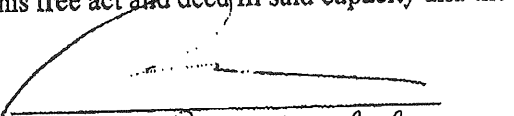


By:   
Joseph W. Reynolds  
Its duly authorized Manager

State of Maine  
County of Cumberland

May 3, 2006

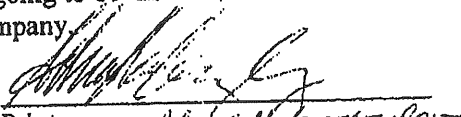
Personally appeared before me the above-named John Reali, President of Village Café, Inc., and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said corporation.

  
Print name: Frederick R. Royce  
~~Notary Public~~/Attorney at Law  
My commission expires:

State of Maine  
County of Cumberland

May 3, 2006

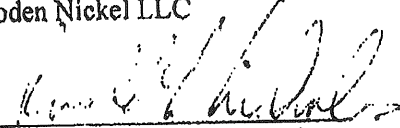
Personally appeared before me the above-named Joseph W. Reynolds, Manager of Pearl Properties, LLC, and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said company.

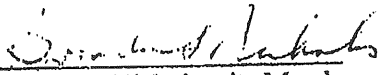
  
Print name: Adrian M. Gonzalez  
~~Notary Public~~/Attorney at Law  
My commission expires:



Wooden Nickel LLC, hereby joins in this Easement Relocation Agreement with respect to its interest in the Pearl Property pursuant to a certain Statutory Short-Form Mortgage from Pearl dated August 9, 2005, and recorded in the Cumberland County Registry of Deeds in Book 23005, Page 270, and hereby subordinates such mortgage to this Easement Relocation Agreement.

Wooden Nickel LLC

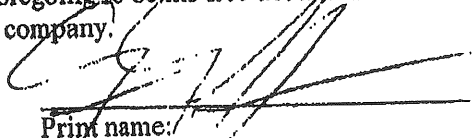
By:   
Ronald Nicholas, its Member

By:   
Brenda S. Nicholas, its Member

State of Maine  
County of Cumberland

May 3, 2006

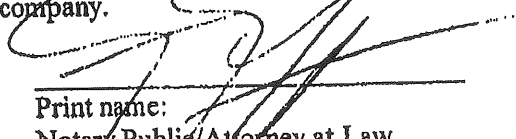
Personally appeared before me the above-named Ronald Nicholas, Member of Pearl Properties, LLC, and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said company.

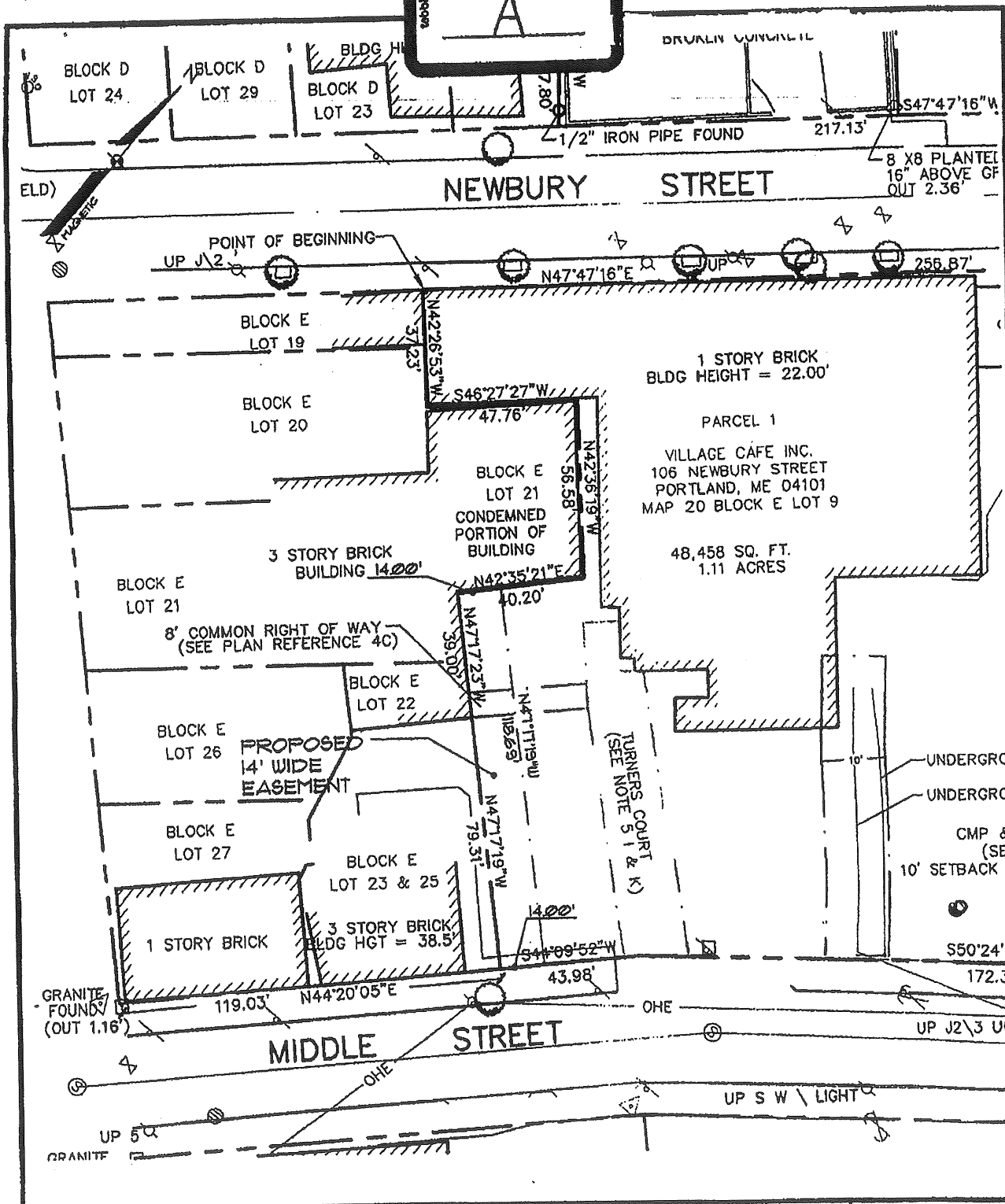
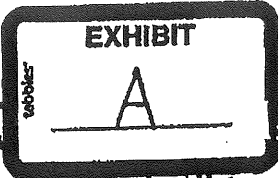
  
Print name:  
Notary Public/Attorney at Law  
My commission expires:

State of Maine  
County of Cumberland

May 3, 2006

Personally appeared before me the above-named Brenda S. Nicholas, Member of Pearl Properties, LLC, and acknowledged the foregoing to be her free act and deed in said capacity and the free act and deed of said company.

  
Print name:  
Notary Public/Attorney at Law  
My commission expires:



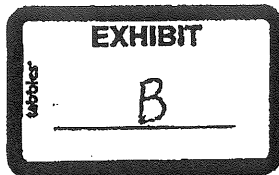
**Sebago Technics**  
 Engineering Expertise You Can Build On  
 One Chobot Street  
 Westbrook, Me 04098-1339  
 Tel (207) 856-0277

**TITLE**  
 PROPOSED NEW 14' WIDE EASEMENT

**LOCATION:**  
 VILLAGE CAFE INC.  
 112 NEWBURY ST, PORTLAND, ME

**FOR:** VILLAGE AT OCEAN GATE C/O  
 GF1 ACQUISITIONS I, LLC  
 133 PEARL ST. BOSTON, MA

**SCALE:** 1"=40'  
**DATE:** 4-14-06  
**SHEET:** 1 OF 1



05109

Doc#: 70192 Bk:25615 Pg: 193

**DESCRIPTION OF A 14-FOOT WIDE EASEMENT**  
**Prepared for**  
**Village at Ocean Gate**  
**Portland, Maine**

A certain parcel of land situated on the northwesterly side of Middle Street, City of Portland, County of Cumberland, State of Maine, being further described as follows:

Beginning at a point on the northwesterly sideline of Middle Street, said point being N 44°-20'05" E by and along said northwesterly sideline, a distance of 119.03 feet from the intersection of the northeasterly sideline of India Street with said northwesterly sideline of Middle Street;

Thence N 44°-09'-52" E, by and along said northwesterly sideline, a distance of 14.00 feet;

Thence N 47°-17'-19" W, through the land of the grantor, a distance of 118.69 feet;

Thence S 42°-35'-21" W, through the land of said grantor, a distance of 14.00 feet to a point on the northeasterly face of a brick building;

Thence S 47°-17'-18" E, by and along said northwesterly face of a brick building, a distance of 39.00 feet;

Thence leaving said northeasterly face of a brick building S 47°-17'-19" E, a distance of 79.31 feet to the Point of Beginning.

Meaning and intending to describe a 14 foot wide Easement containing 1,659 square feet.

Bearings are Maine State Plane Grid, West Zone.

CD:cd/kn  
April 14, 2006

Received  
Recorded Register of Deeds  
Nov 14, 2007 08:46:31A  
Cumberland County  
Pamela E. Lovley

Pedestrian Access Easement

For \$1.00 and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, The Village at Oceangate, LLC, a Maine limited liability company with a mailing address of 35 Fay Street, Suite 107-B, Boston, Massachusetts 02118 ("VOG"), hereby grants the following pedestrian access easement to Pearl Properties, LLC, a Maine limited liability company with a mailing address c/o 198 Tuttle Road, Cumberland, Maine 04021 ("Pearl"):

A non-exclusive and irrevocable right and easement for pedestrians to cross and re-cross that five (5) foot strip of land more particularly described on Exhibit A attached hereto for purposes of accessing the back portion of the Pearl Property (as defined below) from Newbury Street. VOG agrees not to obstruct the easement granted herein except on a temporary basis and as reasonably necessary for construction activities on the VOG Property.

This easement is intended to be appurtenant to and benefit real property located on India Street in Portland, Cumberland County, Maine and more particularly described in a deed from Wooden Nickel, LLC to Pearl dated August 5, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23005, Page 267 (the "Pearl Property"). This easement burdens the portion of the VOG property located near Newbury Street in Portland, Cumberland County, Maine (the "VOG Property") and more particularly described in a deed from Village Café, Inc. dated November 15, 2007, and recorded in said Registry in Book 25625, Page 275. This easement shall run with the land and all provisions of this easement shall be binding upon and inure to the benefit of the successors and assigns of VOG and Pearl.

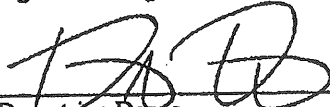
In witness whereof, VOG has caused this instrument to be executed by Demetrios Dasco, its duly authorized Manager on this 31 day of January, 2009.

Witness:

  
\_\_\_\_\_

The Village at Oceangate, LLC

By:

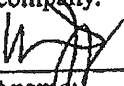
  
Demetrios Dasco  
Its duly authorized Manager

Commonwealth of Massachusetts

County of Suffolk

January 31, 2009

Personally appeared before me the above-named Demetrios Dasco, Manager of The Village at Oceangate, LLC, and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said company.

  
\_\_\_\_\_  
Print name:

Notary Public/Attorney at Law

My commission expires:

12/26/2015

EXHIBIT A

05109

**Proposed 5 Foot Wide  
Pedestrian Easement**

A certain pedestrian easement situated on the southerly side of Newbury Street, in the City of Portland, County of Cumberland, State of Maine, being depicted on a plan of land titled "Boundary & Topographic Survey of The Bay House", dated through June 03, 2008 by Sebago Technics, Inc., said easement being more particularly bounded and described as follows:

Beginning at a 5/8 inch rebar found at a corner of land now or formerly of Wooden Nickel, LLC, as described in a deed recorded at the Cumberland County Registry of Deeds in Book 14219, Page 166, said rebar being a corner of property now or formerly of The Village at Ocean Gate, LLC, as described in a deed recorded in Book 25625, Page 275;

Thence N 42°-26'-53" W, by and along land now or formerly of Bartlett Island, LLC, as described in a deed recorded in Book 17068, Page 212, and by and along land now or formerly of MAHC, Inc., as described in a deed recorded in Book 15267, Page 127, a total distance of 38.09 feet to a point in the southerly side of Newbury Street;

Thence N 47°-47'-16" E, by and along Newbury Street, a distance of 5.00 feet to a point;

Thence S 42°-26'-53" E, passing through land of the grantor, a distance of 38.08 feet to a point in the line of land of Wooden Nickel, LLC;

Thence S 47°-36'-06" W, by and along land of Wooden Nickel, LLC, a distance of 5.00 feet to the point of beginning.

Meaning and intending to describe a certain 5 foot wide pedestrian access easement containing 190 square feet, more or less being depicted as a "Proposed 5 foot wide pedestrian access easement to benefit Block E, Lot 21", as shown on a plan of land titled "Boundary & Topographic Survey of The Bay House" dated through June 03, 2008 by Sebago Technics, Inc.

The bearings referenced herein are based upon Grid North NAD 1983 Maine West Zone.

DCS/cb  
June 20, 2008

Received  
Recorded Register of Deeds  
Feb 13, 2009 01:47:45P  
Cumberland County  
Pamela E. Lovley



PARKING LEASE  
(OCEAN GATEWAY GARAGE)

THIS PARKING LEASE (the "Parking Lease") is entered into as of the \_\_\_\_\_ day of SEPT., 2007, by and between OCEAN GATEWAY GARAGE LLC, a Maine limited liability company with an address of Two Market Street, Portland, Maine 04101 ("Owner") Owner of the Ocean Gateway Garage at 161 Fore Street, Portland, Maine 04101 and The Village At Oceangate, LLC, a Maine limited liability company ("Tenant") with an address c/o GFI Partners, 133 Pearl Street, Suite 400, Boston, MA 02110.

WITNESSETH:

WHEREAS, Owner owns the Ocean Gateway Garage, a parking garage which, once constructed, will have approximately seven hundred twenty (720) spaces located on a parcel of land approximately thirty-seven thousand (37,000) square feet in area located at 161 Fore Street in the City of Portland, County of Cumberland and State of Maine and shown as "Proposed Lot 3" on plan entitled "Subdivision/Recording Plat" by Owen Haskell, Inc., dated March 22, 2006 as last revised April 13, 2006, and recorded in the Cumberland County Registry of Deeds in Plan Book 207, Page 54 (the "Garage"); and

WHEREAS, Owner and Tenant desire to enter into this Parking Lease for the purpose of setting forth the terms and conditions of a certain arrangement between them relating to the use of parking spaces in the Garage by Tenant; and

WHEREAS, in order to provide shared use of parking spaces at different times of the day and night for multiple tenants, the Owner and Tenant agree to limit and manage the hours of use of the Garage Parking Spaces by Tenant; and

WHEREAS, Tenant and/or its assignees or sublessees will occupy residential condominium units, retail spaces and commercial offices located at a project to be known as "The Bay House Condominium," to be developed at 113 Newbury Street and 40 Hancock Street, Portland, Maine (the "Condominium") and will use the Parking Spaces for residents, employees and business invitees as defined hereinafter.

NOW, THEREFORE, for good and valuable consideration including the mutual covenants and agreements herein, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Use of Parking Spaces.

a. Owner hereby leases to Tenant the right to use twenty (20) parking spaces (the "Parking Spaces") in the Garage in accordance with and subject to the terms and conditions below and such reasonable rules and regulations established from time to time by Owner governing the leasing and use by monthly and transient users of parking spaces in the Garage. The Parking Spaces are to be used as follows: ten (10) of the Parking

Spaces shall be to serve retail and/or commercial space in the first phase of the Condominium (the "Nonresidential Spaces"), five (5) of the Parking Spaces shall be to serve residential units in the first phase of the Condominium (the "Phase I Residential Spaces"), and the remaining five (5) Parking Spaces shall be to serve residential units in the second phase of the Condominium (the "Phase II Residential Spaces"). Tenant understands and agrees that, in accordance with customary garage operations and management practices, specific parking spaces are not reserved or dedicated for Tenant and the availability of any specific parking space is not guaranteed. The Parking Spaces are intended for use for automobile, motorcycle, van, pick-up truck and SUV parking only, not for the parking of any large commercial trucks or other commercial vehicles.

b. In particular, Owner will make available to Tenant twenty (20) parking access cards (or such parking codes or other "keys" or means of convenient 24-hour access as shall be available from time to time) which shall in turn be made available to Tenant's employees, agents, assignees and/or subtenants.

c. It is understood and agreed that (i) this Lease may be assigned, in whole or in part, by Tenant to the Condominium Association (the "Association") to be established by Tenant, and (ii) Tenant or the Association may sublease the Parking Spaces to owners or occupants of Condominium Units. Both parties hereto understand and agree that Parking Spaces may only be sublet or assigned to users who own or occupy Phase I or II residential condominiums or Phase I retail and/or commercial condominiums or spaces in the Bay House Condominium development.

d. It is understood that in accordance with customary garage operations and management practices, Owner will enter into parking agreements with other tenants to use the Parking Spaces at times they are not being used by Tenant. To better manage such shared use of Parking Spaces, Owner and Tenant agree the Nonresidential Spaces may be used from 7:45 AM to 5:15 PM Monday through Friday (the "Nonresidential Parking Time Frame"), and that at any one time no more than twenty percent (20%) of the Tenant's Nonresidential Parking Spaces may be used beyond such Nonresidential Parking Time Frame or on the weekends. In the event Tenant or its assignee or subtenant(s) use more than twenty percent (20%) of the Nonresidential Parking Spaces beyond the Nonresidential Parking Time Frame, Tenant shall pay to Owner as additional monthly payment an amount equal to the then maximum daily rate charged by the Garage for each day and for each Nonresidential Parking Space so utilized in excess of the allowable twenty percent (20%) of the Nonresidential Parking Spaces.

2. Deposits. There shall be no Deposit for this Lease, but Tenant shall pay to Owner customary fees and charges imposed by Owner for lost cards or replacement cards and/or reimbursement for out-of-pocket expenses arising therefrom.

3. Term. The initial term of this Parking Lease shall be ten (10) years, commencing (a) on the date when the Phase I Condominium Buildings receive a Certificate of Occupancy from the City of Portland, as to the Nonresidential Spaces and five (5) of the Residential Spaces, and (b) on the date when the Phase II Condominium Buildings receive a Certificate of



Occupancy from the City of Portland, as to the remaining five (5) Residential Spaces (the "Commencement Dates"). Provided that Tenant is not in default hereunder at the time of renewal, the Term may be extended for an additional one (1) term (the "Option Term") of ten (10) years beginning on the tenth (10<sup>th</sup>) anniversary of each Commencement Date. The extension of the Term shall be automatic unless the Tenant delivers to Owner not less than twelve (12) months prior to the end of the expiration of the then current term a notice that Tenant elects not to extend the Term of the Lease.

4. Monthly Rate. The Monthly Parking Rate for each Parking Space shall be the market rate as reasonably determined annually by Owner.

The Monthly Parking Rate shall be set at the commencement of the Parking Term and may be increased on July 1<sup>st</sup> of each year of the parking Term, provided, however, that Owner shall deliver to Tenant not less than thirty (30) days prior to an increase, written notice of any increase in such rate.

5. Payment. Beginning on the Commencement Date, Tenant shall pay Owner the amount due for the Parking Spaces by one check or wire transfer to be received by Owner in advance on or before the first day of each month at Owner's address hereinafter set forth or to such other address (e.g., a manager's) as may be designated by Owner in writing to Tenant from time to time. If the Commencement Date does not fall on the first day of the month, then prorated rent for the first partial month shall be due on the Commencement Date.

6. Late Payment. If the monthly payment for the Parking Spaces is not received by Owner by the 1<sup>st</sup> day of each calendar month, Tenant shall pay Owner (a) all unpaid amounts due with respect to the Parking Spaces, and (b) an additional late charge in the amount of five percent (5%) of the monthly payment for the Parking Spaces. In the event that the payment of any amounts due from Tenant is not received by Owner within fifteen (15) days of delivery of written notice from Owner to Tenant of such non-payment, then Owner shall have each and every remedy provided by law including the right to immediately terminate their Parking Lease and evict Tenant in a forcible entry and detainer ("FED") action for non-payment of rent. Owner shall also be entitled to a reimbursement of its reasonable attorneys' fees incurred in such FED action. By way of clarification, if there is a dispute over the amount of rent due or whether rent was timely paid, it shall be handled under Paragraph 15 below.

7. Registration of Vehicles. All vehicles utilizing Parking Spaces shall be registered with Owner on forms provided to Tenant by Owner. Tenant agrees to keep a current log of names of users and license numbers for employees using parking spaces and, if requested by Owner, provide updated copies of the log to Owner for inspection.

8. Parking Times. The Parking Spaces shall be available for use 24 hours per day, 7 days per week subject to the terms and provisions hereof and as more specifically set forth in paragraph 1(d) above (the "Parking Times").

9. Insufficient Parking Spaces. Owner agrees to use reasonable good faith efforts to ensure that there are sufficient parking spaces available in the Garage to satisfy the rights of

Tenant hereunder. In the event there exists insufficient parking spaces in the Garage to meet the requirements of Tenant at any time Tenant exercises its rights to use parking spaces under this Parking Lease, Owner shall be obligated to terminate a sufficient number of monthly tenant-at-will parkers in the Garage within forty-five (45) days thereafter as will, in Owner's reasonable judgment, ensure the regular availability of sufficient parking spaces to meet such requirements of Tenant hereunder. If Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage during allowable Parking Times, Tenant shall notify the Owner of the Garage, or Owner's garage manager as designated from time to time by Owner, within two (2) hours thereof (if between 9 a.m. and 5 p.m.) or if after 5 p.m. then by 10 a.m. on the day after Tenant or any person entitled to a Parking Space hereunder is unable to find a parking space in the Garage, following which Tenant shall be entitled to a credit against the next month's parking fee in an amount equal to the hourly parking rate at the Garage times eight (8) for each day that an employee of Tenant is unable to find a parking space, unless Owner can reasonably establish and document that a parking space was available in the Garage. The credits against parking fees set forth in this Section do not relieve Owner of its obligation to use reasonable good faith efforts to ensure that sufficient spaces are available, as provided herein.

10. Maintenance and Repair of Garage. Subject to the provisions of Paragraph 12 below, Owner shall maintain the Garage in good condition and repair. Owner shall not be deemed in default in any of its obligations under this Parking Lease during any period in which all or any portion of the Garage is closed for required maintenance and repairs, provided that except in cases of emergency Owner provides Tenant with seven (7) days written notice of such closing of all or any significant portion of the Garage (i.e., more than 75 spaces at any one time), or for any other reasons beyond the control of Owner. Owner will use reasonable efforts to undertake such maintenance and repair during such times as will, in the reasonable judgment of Owner, minimally interfere with parking in the Garage. If such maintenance shall cause the Parking Spaces or some significant portion thereof to be unavailable for three (3) or more consecutive days, Tenant shall be entitled to a pro rata credit against the monthly parking fee to the extent of any adverse impact of the availability of the twenty (20) spaces for Tenant.

11. Insurance. Each party shall maintain or cause to be maintained commercial general liability insurance, the form of which and amount of coverage to be reasonably acceptable to the other party but at any rate not less than \$2,000,000 combined single limit. Each party further agrees to maintain such insurance with acceptable coverage limits during the term of this Parking Lease and shall provide the other party with not less than fifteen (15) days written notice prior to the cancellation or expiration of any insurance policy required to be maintained pursuant to this Parking Lease. Owner shall be listed an additional insured on Tenant's liability policy.

12. Damage to Vehicles or Personal Property. Owner shall not be responsible for any damage or loss to vehicles or personal property belonging to any person using any of the Parking Spaces, except for such damage or loss resulting from the gross negligence of Owner.

13. Cessation of Garage Business. Owner shall not be deemed in default in any of its obligations under this Parking Lease in the event Owner ceases to operate the Garage, or any portion thereof, due to events beyond the control of Owner, which events may include without

limitation, acts of government, embargoes, fire, flood, explosions, hurricanes, tornadoes, acts of God, terrorism or public enemy, strikes, labor disputes, vandalism, commotion, riots, or any similar events which, in the reasonable judgment of Owner, make use of the Garage impossible or impractical. If there is a "Casualty Event" (as defined below) the Owner shall have the right to elect whether or not to rebuild or restore the Garage within 120 days of the Casualty Event. If Owner elects to rebuild or restore the Garage, then this Parking Lease shall remain in effect except that Tenant's obligation to pay rent shall abate pro-rata so long as some or all of the Parking Spaces are not available. If Owner elects not to rebuild or restore the Garage, then this Parking Lease shall terminate upon notice thereof from Owner to Tenant. If Owner elects to rebuild or restore the Garage, Owner agrees to use diligent good faith efforts to complete the reconstruction or restoration within a reasonable period of time. Notwithstanding the foregoing, Owner agrees that if there is a Casualty Event, Owner will elect to rebuild or restore the Garage, if the insurance proceeds available by reason of such Casualty Event are sufficient to rebuild or restore and so long as said proceeds are not otherwise claimed by Owner's lender under any mortgage on the Garage or otherwise unavailable. A "Casualty Event" shall occur if (i) there is substantial destruction of the Garage which leaves the use of the Garage impossible or impractical in the reasonable judgment of Owner, or (ii) Owner notifies Tenant that the City of Portland or a licensed engineer has determined that the Garage is structurally unsound or unsafe requiring the cessation of parking in the Garage. Upon such termination of this Parking Lease by either Owner or Tenant, all rights and obligations of Owner and Tenant hereunder shall cease and shall be of no further force and effect except for such obligations as shall by their express terms, survive termination of this Parking Lease, subject to compliance with Paragraph 14 below. Tenant shall remain liable to Owner for payments due Owner accrued and unpaid up to the date of said termination.

14. Compliance with Terms and Conditions: Indemnity. Tenant shall be responsible for ensuring that the use of the Garage by its employees, assignees and sublessees complies with the terms and conditions of this Parking Lease and such other reasonable rules and regulations as are established from time to time by Owner governing the use of the Garage by parking patrons. Tenant hereby agrees to indemnify and hold harmless Owner from any claim, costs, liability and expense including, but not limited to, reasonable attorneys' fees and expenses, arising from or attributable to Tenant's or its guest's or employee's use of the Garage hereunder. This agreement to indemnify Owner shall survive termination of this Parking Lease.

15. Disputes.

a. Any controversy, claim or cause of action arising out of or relating to this Agreement shall be finally settled by arbitration by an arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the power to grant equitable remedies in addition to imposing monetary damages. Arbitration shall be held in Portland, Maine, or such other location as the parties agree. The arbitration shall include (i) a provision that the prevailing party in such arbitration shall recover his or her costs of arbitration and reasonable attorneys' fees from the other party and (ii) the amount of such costs and fees. All arbitration under this paragraph shall be final, binding and conclusive.

b. Despite subparagraph a. above, if any party believes it necessary to seek injunctive relief or a provisional remedy (such as forcible entry and detainer or an attachment or trustee process), such party may file a civil action in any court having jurisdiction for such foreclosure, injunctive relief or provisional remedy. The arbitration procedures specified in subparagraph a. above, however, will apply to the determination of the merits of any monetary claim or defense, and the court proceeding will extend no further than to provide a kind of relief or remedy not readily available under the subparagraph a. above procedures.

c. Tenant and Owner for themselves, their heirs, successors, and assigns hereby knowingly, willingly and voluntarily waive any and all rights such party may have to a trial by jury in any forcible and detainer ("FED") action or proceeding brought by Owner or Owner's successors and/or assigns based upon or related to the provisions of this Parking Lease. Owner and Tenant hereby agree that any such FED action or proceeding shall be heard before a single judge of the appropriate District Court or a single justice of the appropriate Superior Court, or a Federal District Court Judge sitting in the District of Maine.

16. Estoppel Certificate. At any time, and from time to time, upon the written request of Owner or any mortgagee, Tenant within ten (10) days of the date of such written request agrees to execute and deliver to Owner and/or such mortgagee, without charge and in a form reasonably satisfactory to Owner, Tenant, and/or such mortgagee, a written statement: (i) ratifying this Lease; (ii) confirming the commencement and expiration dates of the term of this Lease; (iii) certifying that Tenant is in occupancy of the Leased Premises, and that the Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated and agreeing not to amend, modify or cancel this Lease without mortgagee's written consent; (iv) certifying that all conditions and agreements under this Lease to be satisfied or performed by Owner have been satisfied and performed except as shall be stated; (v) certifying that Owner is not in default under the Lease and there are no defenses or offsets against the enforcement of this Lease by Owner, or stating the defaults and/or defenses claimed by Tenant; (vi) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid and agrees not to prepay rent more than 10 days in advance; (vii) reciting the amount of security deposit deposited with Owner, if any; and (viii) any other information which Owner or the mortgagee shall reasonably require.

17. Subordination. Tenant agrees that, except as hereinafter provided, this Lease is, and all of Tenant's rights hereunder are and shall always be, subject and subordinate to any mortgage or leases of Garage pursuant to which Owner has or shall retain the right of possession of the Garage or security instruments (collectively called "Mortgage") that now exist, or may hereafter be placed upon the Garage and to all advances made or to be made thereunder and to the interest thereon, and all renewals, replacements, modifications, consolidations, or extensions thereof; provided that so long as Tenant is in full compliance with the terms and provisions of this Lease (with all defaults, if any, fully and timely cured within applicable grace periods), any such Mortgagee, lessor or purchaser at a foreclosure sale shall recognize Tenant in accordance with the terms hereof; provided further that if the holder of any such Mortgage ("Mortgage") or if the purchaser at any foreclosure sale or at any sale under a power of sale contained in any Mortgage shall at its sole option so request, Tenant will attorn to, and recognize such Mortgagee or purchaser, as the case

may be, as Owner under this Lease for the balance then remaining of the term of this Lease, subject to all terms of this Lease, and that the aforesaid provisions shall be self-operative and no further instrument or document shall be necessary unless required by any such Mortgagee or purchaser. Should Owner or any Mortgagee or purchaser desire confirmation of either such subordination or such attornment, as the case may be, Tenant upon written request, and from time to time, will execute and deliver without charge and in form satisfactory to Owner, the Mortgagee or the purchaser all instruments and/or documents that may be requested to acknowledge such subordination and/or agreement to attorn, in recordable form. In the event Tenant fails to execute and deliver the instruments and documents as provided for in this paragraph within the time period set forth herein, Owner may treat such failure as an event of default.

18. Miscellaneous.

a. This Parking Lease and the rights and obligations hereunder shall be binding upon the Owner and its successors and assigns in interest. In the event that Owner sells the Garage to a third party, upon the assignment and assumption of this Parking Lease by the third party, the Owner shall have no further obligations hereunder for any period of time following the assignment and assumption. Except as provided above, this Agreement may not be assigned, transferred, encumbered or conveyed, or hypothecated, in whole or in part, by Tenant to any other person or entity, under any circumstances, without the express prior written consent of the Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

b. Except as otherwise provided herein, any notice relating in any way to this Parking Lease shall be in writing and shall be either hand delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

To Owner:                    Ocean Gateway Garage LLC  
                                      c/o Drew E. Swenson  
                                      P.O. Box 17536  
                                      Portland, ME 04112

To Tenant:                    The Village At Oceagate, LLC  
                                      c/o GFI Partners  
                                      133 Pearl Street, Suite 400  
                                      Boston, MA 02110

and such notice shall be deemed delivered upon the earlier of actual receipt or three days after deposit in the U.S. mails as set forth above or, in the case of hand delivery, when received in person with a written acknowledgement of receipt. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above and also add persons or addresses for notices to lenders or their counsel.

c. All paragraph headings in the Parking Lease are for convenience of reference only and are of no independent legal significance.

d. This Parking Lease may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

e. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Parking Lease, which alone fully and completely expresses their entire Parking Lease.

f. If any part of any term or provision of this Parking Lease shall be held or deemed to be invalid, inoperative or unenforceable to any extent by a court of competent jurisdiction, such circumstance shall in no way affect any other term or provision of this Parking Lease, the application of such term or provision in any other circumstances, or the validity or enforceability of this Parking Lease.

g. ~~The language used in this Parking Lease shall be deemed to be the language chosen by the parties to express their mutual intent and no rule of strict construction will be applied against either party. Without limiting the generality of the foregoing, the language in all parts of this Parking Lease shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party hereto, and without implying a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who drafted the same. It is hereby agreed that the representatives of both parties have participated in the preparation hereof.~~

h. This Parking Lease may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute one and the same instrument.

i. This Parking Lease may not be recorded but a Memorandum hereof containing such information as is required by 33 M.R.S.A. § 201 may be recorded by either party but only on or after the Commencement Date. Owner agrees to execute and have acknowledged and delivered to Tenant for recording at the Cumberland County Registry of Deeds, such a Memorandum, if tendered by Tenant.

j. This Parking Lease shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

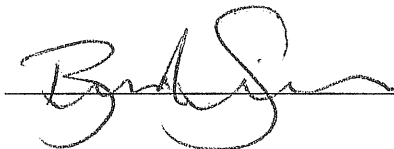
IN WITNESS WHEREOF, the undersigned have caused this Parking Lease to be executed by their duly authorized representatives.

WITNESS

OWNER:

OCEAN GATEWAY GARAGE LLC

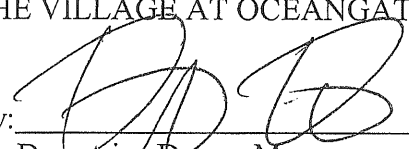
By: Riverwalk, LLC, Its Manager

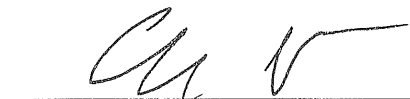
  
\_\_\_\_\_

By:   
\_\_\_\_\_ Drew E. Swenson, its Manager

TENANT:

THE VILLAGE AT OCEANGATE, LLC

By:   
\_\_\_\_\_ Demetrios Dasco, Manager

  
\_\_\_\_\_

**Barbara Barhydt - RE: The Bay House**

---

**From:** "mgagnon@landmarccorp.com" <mgagnon@landmarccorp.com>  
**To:** Barbara Barhydt <BAB@portlandmaine.gov>, Demetri Dasco <dasco@atlasbosto...>  
**Date:** Wednesday, September 05, 2012 2:13 PM  
**Subject:** RE: The Bay House  
**CC:** Alex Jaegerman <AQJ@portlandmaine.gov>

---

Hi,

We carried what was presented in the documents over the past years and up to approvals. The notes state "1/2 City Arborist tree fund estimate-\$9,600.00". I am assuming an estimate and value was established by the city. I am sure there is no way that we could install/fit 94 trees less approximately 20 new =64 total in this area. Let me know if we still have a conflict. Thank you.

Marc C. Gagnon | President

**Landmarc Construction**

415 Congress Street | Suite 202  
Portland, ME 04112  
207.699.2572-p | 207-699-1380-f | 207-232-2830-c

<http://www.landmarccorp.com>

---

**From:** Barbara Barhydt [mailto:BAB@portlandmaine.gov]  
**Sent:** Wednesday, September 05, 2012 1:37 PM  
**To:** Demetri Dasco; Nathan Smith; PhilSaucier; David White; mgagnon@landmarccorp.com; Jim Seymour; Will Conway  
**Cc:** Alex Jaegerman  
**Subject:** RE: The Bay House

Hi:

I came up with a higher figure for the tree fund. Can you share your calculation with me? I know it is to be one per unit minus street trees that you are installing.

Thank you.

Barbara



>>> "mgagnon@landmarccorp.com" <mgagnon@landmarccorp.com> Wednesday, September 05, 2012 1:14 PM >>>

Hi Barbara,

We calculated the infrastructure financial contribution with the below items:

Traffic improvements to India and Middle-	\$5,000
Post-Development traffic impact study-	\$5,000
Hancock Street improvements contribution	\$43,000
<u>City arborist tree fund</u>	<u>\$9,600</u>
	\$62,600

Marc C. Gagnon | President

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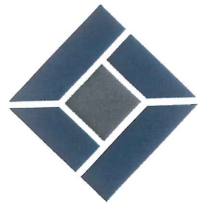
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**From:** Barbara Barhydt [<mailto:BAB@portlandmaine.gov>]  
**Sent:** Wednesday, September 05, 2012 11:51 AM  
**To:** Demetri Dasco; Nathan Smith; Phil Saucier; David White; [mgagnon@landmarccorp.com](mailto:mgagnon@landmarccorp.com); Jim Seymour; Will Conway  
**Cc:** Alex Jaegerman  
**Subject:** The Bay House

Good morning:

Phil, thank you for your call today.

I distributed the written material submitted last week for review and comments are pending. I need a full set of the civil drawings, one hard copy and then a disk with each plan a separate pdf, showing all changes on the plan. I know that Will, Marc and I met regarding the changes along Newbury Street. Once the plans are approved as meeting the conditions of approval, 7 paper sets will be required for distribution.



# Landmarc Construction

415 Congress Street, P.O. Box 460, Portland, ME 04112  
207-699-2572-p, 207-699-1380-f

## Letter of Transmittal

To: **Barbara Barhydt**  
**Development Review Services Manager**  
**Planning Division**  
**389 Congress Street 4th Floor**  
**Portland, ME 04101**

Fax:

From: **Marc C. Gagnon**

Date: **9/10/2012**

Re: **The Bay House**  
**Amended Plans for Approval**

Pages: **0,**  
**Including cover page**

Fax:

Urgent     For review     Please comment     Please reply     Please recycle

---

### COMMENTS:

Barbara,

Please see the attached revised site and architectural plans including Construction Management Plan and schedule for your review and approval. Please let me know if you need additional information. Thank you.

Marc C. Gagnon

**Included:**

- 2 copies of complete site drawings*
- 2 copies of amended only architectural plans/elevations*
- 1 CD rom/digital copy of documents above.*

Jeff,

Sorry to bother you on your private cell line. Attached is a typical License which the City Manager often signs for projects like Bay House. I hope a License for the footings and usual overhangs will suffice for the Foundation Permit with the understanding that we will need to get a minor amendment to the Site and Subdivision Plans for the adjustment in the Newbury Street line and de minimis building encroachments before pulling the full permit. Apparently the street monument was missing from the intersection of Newbury and Hancock and Sebago Technics had to recalculate the Street line from older plans and other monuments and measurements further down the street resulting in a slight line adjustment.. I can be available anytime Monday before 4:30. I assume it might make sense to have Barbara Barhydt at the meeting. I have not yet broached this subject with her. I realize there may be other ways to approach this which we can discuss. My direct line is 228-7235 and cell 831-2725.

Thanks

Nathan

PS

Enjoy the weekend

---

Nathan Smith

**Confidentiality notice:** This message is intended only for the person to whom addressed in the text above and may contain privileged or confidential information. If you are not that person, any use of this message is prohibited. We request that you notify us by reply to this message, and then delete all copies of this message including any contained in your reply. Thank you.

**IRS notice:** Unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (a) avoiding tax-related penalties under the Internal Revenue Code, or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

**From:** Danielle West-Chuhta [mailto:DWCHUHTA@portlandmaine.gov]  
**Sent:** Friday, September 07, 2012 11:39 AM  
**To:** Nathan Smith  
**Subject:** License re: Bay House

Nathan:

As we discussed this morning, attached is an example license regarding another project in the City. The Department of Public Services would need to review any license and a site plan showing the encroachments should be attached - other than that - the license just needs to be reviewed and signed by

the City Manager. If you have any questions, please feel free to contact me.

Thanks,

Danielle

Danielle P. West-Chuhta

Associate Corporation Counsel  
City of Portland, Maine  
(207) 874-8480

## Barbara Barhydt - Street Occupancy Fees

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**From:** Rhonda Zazzara  
**To:** Barbara Barhydt  
**Date:** Monday, September 10, 2012 10:57 AM  
**Subject:** Street Occupancy Fees

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Vehicles: Car, truck ,van, generators are \$15 per, space per day, Sun. - Sat. including Holidays  
Sidewalk closed, staging :\$15 per day, Sun. - Sat. including Holidays  
Lifts, dumpster and cranes : \$30 a day per space, Sun. - Sat. including Holidays  
Bus and semi trailers are \$90 (for 3 space due to size) per day, Sun. - Sat. including Holidays

**REVOCABLE**  
**LICENSE AGREEMENT**

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City"), hereby GRANTS to Waterville Triad LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address c/o Peter Bass, at 17 Chestnut St., (hereinafter the "Licensee") a revocable license to occupy portions on or over land owned by the City on Waterville St. in Portland, Cumberland County, Maine, which land abuts the property of Waterville Triad LLC at 29 Waterville St, Portland, Maine, for the purpose of allowing encroachments by certain portions of the buildings and improvements constructed by Waterville Triad LLC onto the City's property as shown on Exhibit A and Exhibit B attached hereto and made a part hereof: (i) encroachments of bay window(Exhibit A and B); (ii) encroachments of landscape plantings.(Exhibit A) The license granted in this agreement is subject to the following conditions:

1. Waterville Triad LLC, its successors and assigns shall indemnify the City, its officers, agents, and employees from any and all claims which arise out of its use, or the use of others, of the City's property encroached upon as described above.
2. Licensee shall procure and maintain liability insurance in an amount of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit, (or any amount noted in the Maine Tort Claims Act, as may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license.
3. This license is assignable to any subsequent owners of the buildings located on the land described on the approved site plan for Waterville St. Condominiums, Portland, Maine and depicted on Exhibit C attached hereto.
4. This license may be revoked upon six (6) months written notice by the City in the event that: 1) the buildings shown on the attached plans (Exhibits A, B and C) fail to be constructed substantially in accordance with such plans or any amendments thereto; 2) the buildings as shown on such plans or any amendments thereto are destroyed, removed or otherwise thereafter cease to exist on the site at 29 Waterville St. for a period of one year or more.
5. All landscape plantings in the designated area in the public right of way, as shown in Exhibit A, shall be owned and maintained by Waterville Triad LLC and all subsequent owners of the building.

6. The landscaped area within the public right of way as shown in Exhibit A shall be flush to the finished sidewalk and shall have no raised border or edge. In order to accommodate mechanical plowing of the sidewalk located on Waterville Street, Waterville Triad, LLC and any successors or assigns, shall be responsible for removing the aforementioned landscaped area and replacing said area with materials similar to those used for the finished sidewalk if the City decides and/or needs to provide mechanical plowing service of the sidewalk located on Waterville Street.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this \_\_\_ day of \_\_\_\_\_.

**CITY OF PORTLAND**

By: \_\_\_\_\_  
Joseph E. Gray, Jr.  
City Manager

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2009

PERSONALLY APPEARED the above named Joseph E. Gray, Jr., City Manager of the City of Portland 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 the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law  
Print name:  
My commission expires:

STATE OF MAINE

CUMBERLAND, ss.

\_\_\_\_\_, 2009

PERSONALLY APPEARED the above named \_\_\_\_\_ 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 \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

Print name:

My commission expires: