

20-D-32

113 Newbury St.

Bay House

~~Village at~~

~~Cam~~

~~Coastal~~

plan by the Planning Board or the Planning Authority pursuant to the terms of this article. Any such parcel lawfully altered prior to the enactment date of these revisions shall not be further altered without approval as provided herein. Modification or alteration shall mean and include any deviations from the approved site plan including, but not limited to, topography, vegetation and impervious surfaces shown on the site plan. No action, other than an amendment approved by the Planning Authority or Planning Board, and field changes approved by the Public Services Authority as provided herein, by any authority or department shall authorize any such modification or alteration.

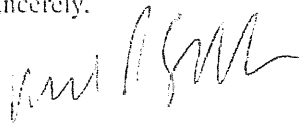
4. The above approvals do not constitute approval of building plans, which must be submitted for review and approval by the City of Portland's Inspection Division.
5. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (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.
6. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
7. The subdivision approval is valid for three (3) years.
8. Final sets of plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
9. 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.
10. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released. As per the Planning Board condition for The Bay House, a two-year defect guarantee is required for the required landscaping.
11. Prior to construction, a pre-construction meeting shall be held at the project site 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 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.
12. 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.)

Philip DiPierro, 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 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

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

Sincerely,


David Silk, Chair
Portland Planning Board

Attachments:

1. Marge Schmuckal, Zoning Administrator, September 17, 2009
2. Thomas Errico, PE, Consulting Traffic Engineer, September 17, 2009
3. Stephen Bushey, P.E., Consulting Engineer, September 16, 2009
4. David Margolis-Pineo, Deputy City Engineer, September 16, 2009
5. Jeff Tarling, City Arborist, September 11, 2009
6. Planning Board Report #35-09
7. Planning Board Report #34-08
8. Performance Guarantee Packet

Electronic Distribution:

- Penny St. Louis Lutell, Director of Planning and Urban Development
- Alexander Jaegerman, Planning Division Director
- Barbara Barhydt, Development Review Services Manager
- Philip DiPierro, Development Review Coordinator
- Marge Schmuckal, Zoning Administrator
- Tammy Munson, Inspections Division Director
- Lisa Danforth, Administrative Assistant
- Michael Bobinsky, Public Services Director
- Kathi Earley, Public Services
- Bill Clark, Public Services
- David Margolis-Pineo, Deputy City Engineer
- Jane Ward, Public Services
- Keith Gautreau, Fire
- Jeff Tarling, City Arborist
- Tom Errico, Wilbur Smith Consulting Engineers
- Dan Goyette, Woodard & Curran
- Assessor's Office
- Approval Letter File
- Hard Copy: Project File

Zoning Administrator Marge Schmuckal

09/17/09

This project is a revision of previous submittals. The project is within a Conditional/Contract Zone #C-52 (C-47 preceded revisions). This Conditional/Contract Zone is a modification of the B-5b Zone. Generally the footprint is the same as previous renditions.

The current proposal for Phase #1 is for 82 residential dwelling units (a maximum of 110 d.u. is allowed), with 5742 square feet of retail (no less than 5,700 square feet required). The parking requires 1 parking per dwelling unit. 160 spaces are shown with 38 bike spaces (33 minimum per requirements).

The height allowance under the Conditional/Contract is 74' by the methods normally used by the Zoning Administrator. That methodology is to begin at average the grade and end at the top of the structural beam. First of all, the height requirement is being met. The previous average grade that I had use was 33.21'. Currently the average grade shown on the plans is 35.15'. Using the worst case scenario, the height of the building is 64.29 feet, which is almost 10' under the maximum allowed. For further clarification, I would like to see how the average grade was determined using the current plans. I again clarify, the height of the structure is meeting the maximum height limits allowed under the Conditional/Contract Zone.

In future submissions, I would like to verify that the HVAC systems are meeting the B-5b noise limitations. I would also like to look at signage proposals to be sure sign requirements will be met.

From: "Tom Errico" <thomas.errico@tylin.com>
To: "Barbara Barhydt" <BAB@portlandmaine.gov>
Date: Thursday, September 17, 2009 8:56:24 AM
Subject: Bay House

Barbara -

In response to your request I have reviewed the September 8, 2009 submittal prepared by David M. White, Architect and offer the following new comments as it relates to the revised plan. Please note that my comments from the prior approval continue to remain valid.

. The plans must be stamped by a licensed Professional Engineer and these comments should be considered preliminary until the plans have been stamped.

. New corner handicapped ramps shall meet the proposed City of Portland design standards such that they are located at the tangent of the radius (two ramps per corner, typical). The applicant shall be responsible for altering the crosswalk markings as needed to appropriately orientate the markings between the proposed and existing ramps.

. On Sheet 4 of 15 the General Notes references a restaurant and leased parking in the adjacent Gateway garage. The plans should be updated to reflect current proposed parking conditions. I would note that the project has significantly increased the number of parking spaces and I find conditions to be acceptable.

. The applicant shall be responsible for all regulatory sign modifications (parking, STOP, etc.) associated with improvements along their property frontage on Hancock Street, Middle Street, and Newbury Street.

. Based upon the increase in parking supply being provided for the project, the parking management plan is not required and should be eliminated as a condition of approval.

. The proposed driveway on Hancock Street does not meet City design standards, but I support a waiver due to the low turnover parking activity and private use of the parking lot.

Some on-street parking spaces will be eliminated on Hancock Street as a result of the construction of the new driveway. The applicant will likely have to obtain City of Portland Council approval for the loss of the on-street parking spaces.

There appears to be some inconsistent parking supply numbers included in the submittal. The applicant should confirm the exact number of parking spaces to be provided.

If you have any questions, please call me.

Best regards,

Thomas A. Errico, P.E.

T.Y. Lin International

12 Northbrook Drive
Building A, Suite One
Falmouth, ME 04105

207.347.4354 (Direct)
207.781.4721 (Main)
207.781.4753 (Fax)
207.400.0719 (Mobile)

CC: "Katherine Earley" <KAS@portlandmaine.gov>, "David Margolis-Pineo"
<DMP@portlandmaine.gov>



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. Bushey, P.E.

SUBJECT: The Bay House

Barbara,

DeLuca-Hoffman Associates, Inc. has reviewed the submission materials prepared by Sebago 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.

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.

From: Jeff Tarling
To: Barbara Barhydt
Date: Friday, September 11, 2009 5:01:22 PM
Subject: Bay House Landscape Review

Hi Barbara -

I have reviewed the proposed Bay House project and offer the following recommendations & review:

a) Street-trees - The street-tree layout looks good as shown on Sheet 8, request would be to check to make sure that tree placement matches any on-street parking or loading zone requirements. Ideal placement of street-trees where on-street parking exists is to have the trees match up to the space between parked vehicles and not mid-car or where passengers were unloading. Tree spacing is also to include review of all underground utilities required set backs. Sidewalk widths should meet ADA standards between the tree grate & building.

b) Courtyard landscape - The interior courtyard is not visible from the street view, the proposed landscape treatment should make this area pleasant. Plant choices given the shade / sun requirements appear to be well thought out.

Recommendations for the courtyard at the street-view would be to use plants with a taller vertical element along the Newbury Street frontage. Since this area is relatively narrow the recommended plants should be upright in form. Suggestions, this space might benefit be best treated with a planting of upright small trees or shrubs, or climbing vine & combination one suggestion might be 'Climbing Hydrangea', or perhaps 'Heptacodium'. A second recommendation on the Middle Street courtyard would be to include a small planting space to the right of the driveway entrance. This is the space from the building plane to the garage door opening leaving space (pavement) along the drive on both sides. Both of the landscape elements or planters proposed in this recommendation would benefit from irrigation which should be able to be extended from the interior courtyard.

I would be glad to meet with the Project Team & Planning staff to review.

Thanks,

Jeff Tarling
City Arborist

CC: David Margolis-Pineo



PLANNING BOARD REPORT PORTLAND, MAINE

THE BAY HOUSE
113 NEWBURY STREET
VILLAGE AT OCEAN GATE LLC, OWNER/APPLICANT

Submitted to: Portland Planning Board: Public Hearing Date: September 22, 2009 Project No. 09-99600006 Report Number – #35-09	Prepared by: Barbara Barhydt, Development Review Services Manager Date: September 17, 2009
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I. INTRODUCTION

The Village at Ocean Gate LLC submitted an application for an amended site plan and subdivision for the Bay House at 113 Newbury Street (Applicant's Submittal, Attachment B). As stated in the cover letter, the applicant "has an opportunity to convey or partner phase I of this property to/with Eric Cianchette of Portland, ME." In order to increase the financial viability of Phase I, the applicant is seeking to add a second level of structured parking to this project, which requires an increase in the building height of five (5) feet, revisions to the ground level of the façade, and a garage entrance onto Hancock Street. Amended plans for the Bay House were approved on July 8, 2008 and this approval expires on July 8, 2010. The parcel is located within Conditional Zone C47. The 2008 review of the amended subdivision and site plan is included as Attachment C, Planning Board Report #34-08.

Notice of the public hearing appeared in the Portland Press Herald on September 14 and 15 and 175 notices were sent to property owners and the interested citizen list.

II. CHRONOLOGY OF REVIEW

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 (Attachment I).

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 (Attachment C, item 3 is the 2007 Approval Letter). 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.

A copy of the 2008 approval letter is included as Attachment 2 and the letter authorizing the extension of approval to 2010 is included as Attachment 3. The recording plat was signed, but it has not been recorded. The waivers were recorded at the Registry within 90 days.

III. PROJECT DATA

Existing Zoning:	Revised Conditional Rezoning Agreement to B-5b, adopted by City Council on June 2, 2008
Proposed Use:	82 condominiums, commercial space and two level parking garage
Parcel Size Phase I:	50,088.16 sf
Impervious Surface Area:	
Existing- Phase I:	50,088.16 sf
Proposed:	50,088.16 sf
Net Change:	0
Building Area:	
Proposed Floor Area:	215,960 sq. ft.
Residential Data:	
Proposed Residential Units:	82 residential condominiums (Unchanged). The conditional rezoning allows up to 110 units in Phase I.
Unit Types (Unchanged):	2 Studio Units 4 One Bedroom Units 62 Two-Bedroom Units 14 Two-Bedroom plus den units
Vehicle Parking Spaces:	
Required parking cond. rezone:	1 space/unit plus 6 spaces for the retail space
Proposed:	159 spaces on-site (revision)
Number Handicapped Spaces:	6 handicapped spaces (unchanged)
Bicycle Parking Spaces:	
Required Bicycle Parking:	33 spaces
Proposed Bicycle Parking:	38 provided in three designated spaces in the parking level as shown on Floor Plan B1-1 and B2-1 dated June 23, 2008. A small rack is also shown adjacent to the Middle Street parking entrance near the commercial spaces. (unchanged)

Middle Street Driveway/Entrance:	Access to the lower level of parking is from Middle Street. There is a 22-foot wide driveway to the 18 foot wide garage entrance. Waivers from the Technical Standards were granted for this design in 2007 and 2008.
Proposed Hancock Street Driveway/Entrance:	Access to the second level of parking is proposed from Hancock Street. The applicant is seeking a waiver from the Technical Standards to allow this curb cut to be the same as the Middle Street entrance (22-foot wide driveway and 18-foot wide garage entrance.
Estimated Cost of Project:	\$17,000,000 (current estimate)
Uses in Vicinity:	The uses in the vicinity include the Parking Garage across Middle Street; Marriott extended stay hotel, the Shipyard Brewery, residential uses on Newbury, Federal and Hancock Streets and mixed commercial and residential uses on India Street.

IV. PROJECT REVISIONS FOR PHASE I

1. Revised On-Site Parking

The 2008 approved subdivision and site plan has 82 residential units and 80 parking spaces on one level of structured parking. The 2009 revised plan proposes two levels of parking with 159 parking spaces. The lower level of parking is shown with 70 spaces and the upper level is shown with 89 spaces, which extends over the retail spaces located on the lower level. The applicant intends to offer one space per unit and then offer condominium owners the opportunity to purchase an extra space.

Access for the first level of parking is from Middle Street. The garage entrance received a waiver from the technical standards for a 22 foot side driveway and an 18 foot wide garage door. A garage entrance to the upper level of parking is proposed off Hancock Street. This entrance is designed with the same dimensions as the Middle Street entrance and thus also requires a waiver of the technical standards.

The 2008 conditional rezoning agreement includes a requirement for a parking mitigation plan if the Planning Board finds that the parking is inadequate based upon the parking analysis. The proposed number of parking spaces exceeds the number of spaces per unit required in the conditional zoning agreement and exceeds the recently amended zoning requirement of one space per residential unit on the peninsula. This condition of the conditional rezoning agreement remains in effect, should the Planning Board determine there is a need for parking mitigation.

The 2008 amended rezoning agreement revised the parking requirements to require 80 on-site spaces, 8 space in the Riverwalk Parking Garage (aka Longfellow garage, aka Ocean Gateway Garage) and 33 on-site bicycle parking spaces (Attachment 1). As stated above, the applicant is proposing 159 on-site parking spaces and bicycle racks for 38 bicycles are shown on the lower parking level. The requirement for parking spaces in the Longfellow garage for the retail space remains a requirement for this project.

2. Revised Floor Plans

The conditional rezoning agreement requires 5,200 to 5,700 square feet of commercial space in Phase I. The applicant is proposing to provide three retail spaces in each building (Building #1 and #2) with a total of 5,736 square feet of commercial space. The amount of proposed square footage for the retail remains the same. The applicant has added a community room, exercise room, association office, and restrooms over the retail space in building #2 with roughly 2,880 square feet of area. The two residential buildings in Phase I remain unchanged in terms of the floor plans and exterior design.

The layout of the parking levels are shown on the G.1 and G.2 floor plans for the two parking levels. The lower level parking has three handicapped parking space and bicycle racks for 38 bicycles. The upper level has three handicapped spaces and no bicycle racks are proposed on this floor. There are 48 storage bins and a designated canoe and kayak area proposed on the lower level. A total of 92 storage bins are proposed on the upper level. The vestibules, lobby, mail room and trash room are located on the lower parking level.

3. Revised Building Height

The proposed addition of a second parking level requires that building height be raised by five feet. According to the cover letter prepared by David White, Architect (Attachment B), the increase in height is the "minimum needed to accomplish this change and the maximum that can be done to insure no change in the proposed construction type." The increase in height changes the base level of the structure and raises the elevation of the central courtyard. According to Marge Schmuckal's review estimates that the building height is 64.29 feet, which is below the 74 feet permitted in the Conditional Rezoning Agreement.

4. Revised Exterior Elevations and Materials

The amended conditional rezoning agreement states:

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

In 2008, the applicant sought to make modifications to the exterior of Buildings #1 and #2 (refer to Attachment C, Planning Board Report #34-08). The Planning Board found the revised elevations and exterior materials to be in conformance with the Conditional Rezoning Agreement and the Eastern Waterfront Design Guidelines (Attachment 2, Approval Letter). The 2008 elevations are included in Attachment C, item 15, excerpt of plan set.

The applicant is proposing to use the same exterior materials, which were approved previously. With the proposed addition of a second level of parking, the overall height of the structure increases by five feet. The upper floors of the residential buildings remain unchanged. In general the ground level façade or base of the building is increased in height. The exterior modifications for the ground level façade include the following:

1. **Fenestration:** The applicant is proposing windows above the storefront six store fronts along Middle Street. The windows would serve the community room, office and exercise room on the upper parking level in Building #2. In Building #1, the windows would be located in the parking garage. Square decorative windows are proposed above the Middle Street Garage entrance and along the facades facing Hancock and Newbury Streets. The specifications and transparency for the square windows has not been submitted at this time.
2. **Courtyard:** The elevation of the courtyard is now raised by five feet. The stairway leading to the courtyard from Middle Street has been removed as it required two and half flights of stairs to reach the courtyard. The stairway leading to the courtyard along Newbury Street has increased from 4 steps to twelve.

V. STAFF REVIEW

The amended plans for The Bay House are subject to review under the City's Subdivision and Site Plan Ordinances of the City's Land Use Code. In addition, the proposal shall be reviewed under the applicable standards of the Eastern Waterfront Design Guidelines.

1. Right Title and Interest

The original and amended applications in 2006 and 2008, respectively, included the right, title and interest for the Bay House. As stated in the cover letter, the Village at Ocean Gate LLC has the opportunity to partner or convey the Bay House to Eric Cianchette. Attachment B, item 4 is a letter from Demetri Dasco, Village at Ocean Gate LLC, confirming the business agreement with Eric Cianchette.

2. Financial Capacity

Mr. Eric Cianchette has submitted a letter from Bangor Savings confirming he has the financial and technical capacity to undertake this project (Attachment B, item 5).

3. Recording Plat and Plan

There is a plat that was signed after July 8, 2008 approvals. A revised plat will need to be submitted for review and signature that incorporates the Planning Board's final conditions of approval prior to the issuance of a building permit.

4. Zoning

Marge Schmuckal, Zoning Administrator, reviewed the amended plans for the Bay House (Attachment 4). She has found that the density, square footage of retail space, bicycle parking and on-site vehicle parking spaces meet the Conditional Rezoning Agreement for Phase I. Ms. Schmuckal has determined that the proposed height is less than allowed and her evaluation of the height is as follows:

The height allowance under the Conditional/Contract is 74' by the methods normally used by the Zoning Administrator. That methodology is to begin at average the grade and end at the top of the structural beam. First of all, the height requirement is being met. The previous average grade that I had used was 33.21'. Currently the average grade shown on the plans is 35.15'. Using the worst case scenario, the height of the building is 64.29 feet, which is almost 10' under the

maximum allowed. For further clarification, I would like to see how the average grade was determined using the current plans. I again clarify, the height of the structure is meeting the maximum height limits allowed under the Conditional/Contract Zone.

In addition, Marge Schmuckal is requesting additional information to verify that the HVAC systems are meeting the B-5b noise limitations and request that proposals for signage be submitted to be sure sign requirements will be met.

1. Fire Department

In 2008, the Planning Board imposed the following condition of approval for the site plan based upon a review conducted by Captain Cass:

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.

Captain Keith Gautreau has reviewed the plans and recommends that the above condition of approval remain in effect.

2. Traffic

In the 2008 plan, a total of 80 parking spaces on site were proposed with spaces reserved in the Parking Garage for the commercial uses. The conditional rezoning agreement includes a requirement for a parking mitigation plan if the Planning Board finds that the parking is inadequate based upon the parking analysis conducted by the developer six months after issuance of the certificate of occupancy. The revised plan now includes a total of 159 parking spaces on-site, which exceeds the number of spaces per unit required in the conditional zoning agreement and exceeds the recently amended zoning requirement of one space per residential unit on the peninsula. Thomas Errico, Consulting Traffic Engineer, has reviewed the revised plans (Attachment 5) and finds the proposed residential parking should be sufficient. The provisions for a parking analysis and potential mitigation plan remain in effect from the conditional rezoning agreement.

Mr. Errico is recommending that the technical standards be waived for the Hancock Street garage entrance, which is consistent with the Middle Street entrance. He does recommend that his comments from the prior approval (Attachment C, item 8) be retained and adds the following comments:

- The plans must be stamped by a licensed Professional Engineer and these comments should be considered preliminary until the plans have been stamped.
- New corner handicapped ramps shall meet the proposed City of Portland design standards such that they are located at the tangent of the radius (two ramps per corner, typical). The applicant shall be responsible for altering the crosswalk markings as needed to appropriately orientate the markings between the proposed and existing ramps.
- On Sheet 4 of 15 the General Notes references a restaurant and leased parking in the adjacent Gateway garage. The plans should be updated to reflect current proposed parking conditions. I would note that the project has significantly increased the number of parking spaces and I find conditions to be acceptable.

- The applicant shall be responsible for all regulatory sign modifications (parking, STOP, etc.) associated with improvements along their property frontage on Hancock Street, Middle Street, and Newbury Street.
- The proposed driveway on Hancock Street does not meet City design standards, but I support a waiver due to the low turnover parking activity and private use of the parking lot.
- Some on-street parking spaces will be eliminated on Hancock Street as a result of the construction of the new driveway. The applicant will likely have to obtain City of Portland Council approval for the loss of the on-street parking spaces.
- There appears to be some inconsistent parking supply numbers included in the submittal. The applicant should confirm the exact number of parking spaces to be provided.

3. Public Infrastructure/Stormwater

Steve Bushey, Consulting Engineer, is the third party reviewer of this project and he submitted the following review ([Attachment 6](#)). Mr. Bushey notes that the second amended site plan incorrectly identifies there being 80 spaces on the lower level parking when there is actually only 70 spaces. He notes that there remain a few minor technical items that should be addressed by the engineer prior to construction. On the basis of Mr. Bushey's review he recommends the plans be presented to the Planning Board for approval with the following potential conditions:

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 should 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.

The Department of Public Services has reviewed the plans and Mr. David Margolis-Pinco has submitted the following comments ([Attachment 7](#)):

1. The previous comments from Michael Farmer remain valid and should be retained as part of an approval.

2. The condition of approval regarding the City's expectation for street improvements and associated fees should be retained in an approval.
3. When the construction fence gets installed make sure the points on the fence are down and not up.
4. No granite curb sections shall be installed less than four feet in length.
5. This project shall not interfere with the water main work that is currently underway.
6. THERE IS NO P. E. STAMP ON THESE PLANS. This department can not sign off on these plans until they are stamped.
7. 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.
8. Street opening permit fees are \$223 each.
9. Street, parking space and sidewalk occupancy fees are \$10/day per each.
10. Any work in the right of way will require an approved traffic plan by Public Services.
11. The site will adhere strictly with the new storm water regulations pertaining to site plan work.
12. Handicap ramps shown on the plans do not meet ADA or City standards.

4. **Eastern Waterfront Design Standards**

In reference to the proposed architectural revisions and the Eastern Waterfront Design Guidelines (Attachment C, item 6 Waterfront Guidelines) for B. Buildings/Architecture, Alexander Jaegerman, Planning Division Director, offers the following comments:

1. **Building Composition:**

a. **Placement:** In general the buildings are placed along the sidewalk. The residential entrances face Middle, Hancock and Newbury Street. The Middle Street façade extends a two story base across the courtyard between Buildings #2 to Building #1. The residential entrance for building #2, the westerly tower, is located within the parking level between the two towers. The residential entrance is lent prominence through use of glass panels on either side of the door and the Middle Street garage entrance is made subordinate by virtue of a four foot recess from the front building plane. The building base comprising the two store fronts, the residential entry, and the garage entry, is visually tied together through a continuous first floor plane and materials palette (polished concrete), with the prominent glazed doorway feature. There is a substantial retail component in three identical store front bays in the base of each tower, and the storefronts wrap the corners at the westerly building corner and at the intersection of Hancock. The proposed building placement and entries are reasonable design solutions relative to the design standards. The additional height resulting from the second parking tray is manifest in the Middle Street facade in a set of windows capping the first floor storefronts, with the second level appearing as a half- story or mezzanine in scale. Three square windows mark the second parking level in the space between the towers. There is unassigned usable building floor space in the area behind the windows above the retail in the westerly tower. There is parking located behind the windows above the retail in the easterly tower. There are 15 square windows in the garage façade along Hancock Street, and 12 such windows in the garage façade on Newbury Street.

- b. **Height:** The proposed height of the building has increased by five feet and is within the limits of the conditional rezoning agreement.
- c. **Massing:** The proposed massing is broken into two buildings with a center courtyard. Vertical elements are created with the balconies and projecting bays, fenestration and use of a variety of building materials.
- d. **Proportion:** The base of the building along Middle Street is punctuated with 6 storefronts, the Building #2 entry and the garage entrance. The Hancock Street façade contains a retail window, residential entrance, garage entry to the upper parking deck, and square garage windows along the parking facade course.
- e. **Articulation:** The building base along Middle and Hancock Street is shown with polished concrete block to accentuate the base of the structure. The base course along Hancock Street runs horizontally along the street. The base is articulated with a storefront (about 30 feet in length) and a residential entrance, the garage entry and the square garage windows. The base level height along Hancock Street varies from 22 feet at the corner to about 6 feet at the Newbury corner. Projecting bays and fenestration articulate the upper three floors of the building, which are clad in brick along street frontages and turn the corner of each tower. The top floor and projecting bays are proposed with a contrasting material (Hardi-plank), which is also proposed within the courtyards. Arch topped windows are proposed on the fifth floor to articulate the building top along the street frontages and turn the corners of each building. The arched windows are not used within the courtyards. Cornices are proposed between the fourth and fifth floors and above the fifth floor to define this level. Building's # 1 and 2 are articulated to present a base middle and top.
- f. **Materials:** The middle portions of the buildings are clad in brick and concrete is used to clad the box bays. The westerly tower brick is brown in color, and the easterly tower at the corner of Middle and Hancock is red brick. There were portions of yellow brick in the earlier project, but this does not appear to be proposed for the current phase. The applicant should provide a schedule of materials and colors for each façade as an update to clarify the current plan for façade treatment. The base course is now proposed as a polished concrete block that resembles granite. The applicant is proposing Hardi-plank (cement cladding material) on the projecting bays and top floor. Awnings are noted above the commercial windows and doorways. The signage for the building has not been proposed at this time.

Based upon the information submitted, the Bay House, Phase I, the planning staff finds the buildings in Phase I to be consistent with the Eastern Waterfront Design Guidelines. The additional height of the base necessitated by the extra parking tray is handled visually by the base cladding articulation and square window treatment, mitigating the blankness of parking structure along the sidewalk edge to a reasonable effect. The staff recommends conditions of approval to 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 facade.

5. Landscaping

The landscaping plan is essentially the same as in 2008. The number of street trees to be installed is the same; however the locations of street trees along Hancock Street have been adjusted to accommodate the Hancock Street entrance. Jeff Tarling, City Arborist, has

reviewed the plan (Attachment 8). With the increase in height of the building base due to the additional parking level, he is recommending some additional landscaping and more vertical elements along portions of Newbury Street and Middle Street. Mr. Tarling's comments are as follows:

a) **Street-trees** - The street-tree layout looks good as shown on Sheet 8, request would be to check to make sure that tree placement matches any on-street parking or loading zone requirements. Ideal placement of street-trees where on-street parking exists is to have the trees match up to the space between parked vehicles and not mid-car or where passengers were unloading. Tree spacing is also to include review of all underground utilities required set backs. Sidewalk widths should meet ADA standards between the tree grate & building.

b) **Courtyard landscape** - The interior courtyard is not visible from the street view; the proposed landscape treatment should make this area pleasant. Plant choices given the shade / sun requirements appear to be well thought out.

Recommendations for the courtyard at the street-view would be to use plants with a taller vertical element along the Newbury Street frontage. Since this area is relatively narrow the recommended plants should be upright in form. Suggestions, this space might benefit be best treated with a planting of upright small trees or shrubs, or climbing vine & combination one suggestion might be 'Climbing Hydrangea', or perhaps 'Heptacodium'. A second recommendation on the Middle Street courtyard would be to include a small planting space to the right of the driveway entrance. This is the space from the building plane to the garage door opening leaving space (pavement) along the drive on both sides. Both of the landscape elements or planters proposed in this recommendation would benefit from irrigation which should be able to be extended from the interior courtyard.

VI. STAFF RECOMMENDATION

The Planning Staff recommend approval of the plan subject to the conditions of approval imposed on the Amended Plan for Phase I in 2008 with new or revised conditions relevant to the 2009 amended plan.

VII. MOTIONS FOR THE BOARD TO CONSIDER

The following motions apply to Phase I of the Bay House only and do not constitute an approval of Phase II, which was unanimously tabled by the Planning Board on July 10, 2007. The conditions from 2008 are listed below along with revised or new conditions.

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 #35-09 and the testimony presented at the Planning Board hearing, the Planning Board finds:

The amended *Phase I* plan of 2009 (**is or is not**) 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 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.
2. 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.

Waiver

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #34-08 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, does not waive) the following technical standards:

3. Technical Standard, Section III 2 A (b), which requires a 24 foot wide driveway for two-way ingress and egress, to allow the access to be 18 feet at the garage entrance on Middle Street with a four foot setback from the Middle Street facade as shown on the amended subdivision plat.
4. Technical Standard, Section III 2A (b), which requires a 24-foot wide driveway for two-way ingress and egress, to allow the access to be 18 feet at the garage entrance on Hancock Street.
5. Technical Standard, Section XV H, Photometric plans requiring photometric plans for the interior courtyards only.
6. The Planning Board acknowledges the applicant's contribution to the construction of Hancock Street and the additional costs for tree wells and tree guards, so based upon the recommendation of the City Arborist the Planning Board waives the financial contribution to the street fund to one half the amount due as determined by the City Arborist.

Subdivision

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report #35-09, 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/is not) in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

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 requires as part of the Conditional Rezoning shall be submitted to the City prior to the issuance of a building permit.
3. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of September 16, 2009 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

4. Revised plans and information meeting the recommendations contained in Michael Farmer's, Project Engineer, memorandum of June 27, 2008 and contained in David Margolis-Pineo's, Deputy City Engineer, September 16, 2009 memorandum shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
5. 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 a Street Opening Fee of \$223 x 2.
- 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.

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 a Street Opening Fee of \$223.
- 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 Pavement Restoration fee equal to \$65 square yard (from the edge of its frontage to India Street)

6. The Retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two years.
7. All financial contributions required as part of the conditional rezoning shall be submitted to the City prior to the issuance of a building permit.
8. The proposed condominium documents 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.
9. The applicant shall submit for review and approval by Corporation Counsel the access easement on the westerly property line.
10. Revised plans and information meeting the recommendations contained in Thomas Errico, P.E., Consulting Traffic Engineer's, memorandum of September 17, 2009 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

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 # 35-09, 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/is not) 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 and awnings 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 September 11, 2009 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.

Attachments:

1. Conditional Rezone Agreement
2. Planning Board Approval Letter for July 8, 2008
3. Planning Approval Extension letter
4. Marge Schmuckal, Zoning Administrator, September 17, 2009
5. Thomas Errico, PE, Consulting Traffic Engineer, September 17, 2009
6. Stephen Bushey, P.E., Consulting Engineer, September 17, 2009
7. David Margolis-Pineo, Deputy City Engineer, September 16, 2009
8. Jeff Tarling, City Arborist, September 11, 2009

Attachment B: Applicant's Submittal 2009

1. Application
2. Cover Letter, dated September 8, 2009
3. Quitclaim Deed with Covenant
4. Letter from Demetrios Dasco, Managing Member, Village at Ocean Gate LLC, dated September 16, 2009
5. Letter from Bangor Savings Bank, dated September 16, 2009
6. E-mail, Chris DiMatteo, Sebago Technics, lot area
7. Plan Set
 - a. The Bay House, Phase I, Sebago Technics Plans, Sheets 1 through 15
 - b. Building floor plans and elevations, David White, Architect, Sheets G.1 and G.2, B1-2 plans, B2-2 plans and Elevations E.1-E.7.

Attachment C: Planning Board Report #34-08 (separate Document in Packet)

1. Application:
 - a. Application form
 - b. Letter, Greg Shinberg, May 27, 2008
 - c. Right Title and Interest for the additional property
 - d. Area of Property Construction Easement and written easements
 - e. Letter, Greg Shinberg, June 30, 2008
 - f. Bicycle Rack Detail
 - g. Hardiplank Warranty
 - h. Neighborhood Packet:
 - i. Minutes
 - ii. Sign-in Sheet
 - iii. Notice
 - iv. Neighborhood Certification
2. Amended Conditional Rezoning Agreement
3. Approval Letter for the July 10, 2007 site plan and subdivision approval
4. Planning Board Report #30-07
5. David M. White Architect, April 23, 2008 correspondence
6. Eastern Waterfront Design Standards
7. Carrie Marsh, April review
8. Thomas Errico, Consulting Engineer, e-mail correspondence, July 1, 2008
9. Michael Farmer, Project Engineer, Department of Public Services, June 12, 2008
10. Stephen Bushey, P.E., Delucca Hoffman Associates, Inc., June 23, 2008
11. Michael Farmer, Project Engineer, Department of Public Services, June 27, 2008
12. Stephen Bushey, P.E., Delucca Hoffman Associates, Inc., June 30, 2008
13. Tracked Changes from the July 10, 2007 motions
14. Approved Building Elevations, July 10, 2007
15. Excerpts from Plan Set- The Bay House
 - a. Sebago Technics Plans:
 1. Subdivision Plat, 6-23-08
 2. Site Plan, 6-23-08
 3. Grading Plan, 6-3-08
 4. Utility Plan, 6-3-08
 5. Landscape and Lighting Plan, 6-3-08
 - b. Plans prepared by David M. White Architect, Drawings; B1-1 and B2-1, E.1 through E.7;
 - c. Bike Rack Details

2.28

PLANNING BOARD REPORT #34-08

THE BAY HOUSE (FORMERLY THE VILLAGE AT OCEANGATE)
VICINITY OF
112 NEWBURY STREET
AMENDED SUBDIVISION AND SITE PLAN REVIEW
VILLAGE AT OCEANGATE LLC. , APPLICANT

Submitted to:

Portland Planning Board
Portland, Maine

July 8, 2008

Prepared by:

Barbara Barhydt, Development Review Services Manager
July 3, 2008

I. INTRODUCTION

The Village at OceanGate LLC has submitted an application to amend the site plan and subdivision plan for The Bay House, which was formerly called the Village at OceanGate (Attachment 1). The original conditional rezoning agreement 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 becomes effective on July 2, 2008 (Attachment 2).

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 (Approval Letter, Attachment 3). 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 has not yet been recorded. A copy of the original application and the applicant's supplemental information for the Village at OceanGate will be available at the public hearing for the Planning Board's reference. A copy of the Planning Board report #30-07 is included as Attachment 4.

The applicant is seeking to revise the proposed project as follows:

- a. Revise the subdivision plat to incorporate 1,602 square feet of land into Phase I;
- b. Reduce the number of units in Phase I from 84 to 82 residential units;
- c. Reduce the commercial space to 5,736 square feet with three retail spaces in Building #2 and the vestibule is located near the garage entrance.
- d. Modify the first level of Phase I to provide storage areas for the units, 80 vehicle parking spaces and 33 bicycle spaces; and
- e. Provide substitutes for some of the exterior materials and design modifications to the buildings.

The amended plans are being reviewed under the standards contained in the City's Subdivision and Site Plan Ordinances.

A total of 194 notices were sent to area residents the notice appeared in the Monday, June 30th and Tuesday July 1, 2008 editions of the *Portland Press Herald*.

II. SUMMARY OF FINDINGS

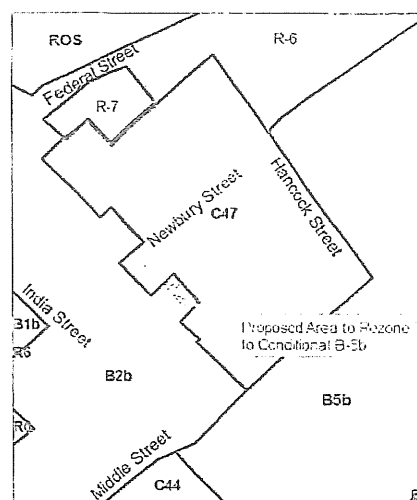
Total Land Area of Phase I:	50,008 sf, (based upon Boundary and Topography Sheet by Sebago Technics, dated 7/12/05, revised 6/3/08)
Total Land Area of Phase II:	30,697 sf
Zone:	Revised Conditional Rezoning Agreement to B-5b, adopted by City Council on June 2, 2008
Proposed Uses:	82 Residential units, 80 space parking level and retail/commercial spaces along Middle Street
Unit Types:	2 Studio Units 4 One Bedroom Units 62 Two-Bedroom Units 14 Two-Bedroom plus den units
Required Minimum Lot Area:	none

Proposed Square Footage:	Building #1: 63,050 SF Building #2: 67,790 SF Garage Level: 45,495 SF
Required parking:	1 space/unit plus 6 spaces for the retail space
Proposed parking:	80 spaces on-site and 8 spaces at the Longfellow Garage
Required Bicycle Parking:	33 spaces
Proposed Bicycle Parking:	38 provided in three designated spaces in the parking level as shown on Floor Plan B1-1 and B2-1 dated June 23, 2008.
Proposed Driveway/Entrance:	Access to the first level of parking is from Middle Street. There is a 22 -foot wide driveway to the 18 foot wide garage entrance. Waivers from the Technical Standards were granted for this design in 2007.

III. PROJECT REVISIONS FOR PHASE I

1. Phase I Parcel Revised:

The conditional rezoning map as shown here has been revised to include an area of 1,602 square feet from the rear of the adjoining lot owned by Pearl Properties LLC at 61 India Street (Tax Map 20-E-021). The Pearl Properties site contains the Tackle Shop, which will remain. The strip of land to be transferred to the Village at OceanGate LLC is vacant. This land area is now shown on the amended subdivision plat and subdivision/site plan (refer to Plan Set, Attachment 15).



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

2. Revised Number of Residential Units:

Phase I was approved with 84 units during subdivision review in 2007. The amended application is for 82 units. The applicant is seeking to create larger units to meet market demand. The conditional rezoning agreement allows up to 110 units in Phase I, thus the proposed density is within the provisions of the agreement.

3. Revised Parking:

The original rezoning agreement required a post development parking analysis, which is to be conducted six (6) months after the issuance of a certificate of occupancy. The amended agreement has been revised to require a parking mitigation plan if the Planning Board finds that the parking is inadequate based upon the parking analysis. The amended rezoning agreement also revises the parking requirements to require 80 on-site spaces, 8 space in the Longfellow garage and 33 on-site bicycle parking spaces (Attachment 2).

The conditional rezoning agreement was revised to reduce the amount of commercial space in Phase I to an area between 5,200 and 5,700 square feet. The applicant is proposing to provide three retail spaces in each building (Building #1 and #2) with a total of 5,736 square feet of commercial space. The residential entrance to Building # 2 is proposed along the Middle Street frontage near the garage entrance. Eighty

(80) parking spaces and 38 bicycle parking spaces are proposed in the enclosed parking level. Storage areas for the units are proposed within three areas of the parking garage. In the original proposal, the applicant presented a letter from Mr. Swenson stating that the applicant could secure up to leased spaces in the Longfellow Garage.

4. Revised Exterior Elevations and Materials

The amended conditional rezoning agreement states:

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

The applicant is seeking to make modifications to the exterior of Buildings #1 and #2. For the workshop memo, David M. White, Architect, provided a list of revisions to the building on April 23, 2008, which is included as Attachment 5 was updated with the revised drawings and Mr. Shinberg's correspondence of May 27, 2008 (Attachment 1). Based upon the Planning Board's discussion of the potential revisions at the June 10, 2008 workshop, the exterior modifications to the plans before the Board at this time are as follows (Plan Set, Attachment 15):

1. **Exterior Materials:** All previously approved metal panel work is proposed as Hardie board with battens. The material sample was presented at the workshop and was submitted to the planning at the meeting. In Mr. Shinberg correspondence, he notes that the product is a quality product with a 50 year warranty for the material and a 25 year warranty for the paint. He states that the Hardie board warranty is equal or better to the metal siding approved in 2007 for this project.
2. **Fenestration:** The applicant had proposed changing the fifth floor windows from arched to flat-top windows; however, the revised plans have returned to the original proposal with arched windows on the fifth floor along street frontages. Flat-top windows on the fifth level are shown for those units facing the internal courtyards.
3. **Commercial Space and Entrance for Building #2:** The storefronts along Middle Street have been simplified and awnings added to the façade. The applicant is proposing to have three commercial spaces in Building #2 as shown on the building elevations (Attachment 15 b). It provides symmetry in the facades for both Building #1 and #2 and maximizes the usable commercial space. This proposed revision requires relocating the Building #2 entrance from the base of Building #2 to a location closer to the garage entrance. As designed, the residential doorway is on the same plane as the retail facade and the façade continues to the stairway leading to the courtyard. The Middle Street entrance has been revised so that it is more prominent with glass panels on either side of the door. The garage entrance is recessed four feet within the façade, which creates an arch to screen part of the fresh air intake (labeled as the carbon monoxide intake grill on the elevations) located above the garage door. It also carries the polished concrete block along the full length of the Middle Street façade. Attachment 15 b shows the layout of the first level with the three retail spaces of equivalent size and the entry near the garage.

4. **Other Exterior Revisions:** Other revisions that are highlighted in Mr. David White's April correspondence (Attachment 5) include the following:
1. The base of the project is polished concrete block with a polished granite look.
 2. Fireplace exhaust hoods have been added and will be painted to match the color of the siding.
 3. The building height has been reduced from 57.5 to 56.85 feet.
 4. The brick along Hancock Street will remain as approved in 2007;
 5. The Hancock entrance has been modified from a double door with an arched window above to an entrance with glass panels framing the door and a transom above it. An awning is proposed.
 6. The retail window on Hancock Street is simplified to match the windows on Middle Street and the same type of window is proposed on the corner of the building facing the alley.
 7. A more prominent entrance is proposed to Building #2 on Newbury Street
 8. Brick wraps the corner of the Building #2 and then the applicant proposes Hardie-plank on the alley side of the building. This is the same treatment as shown for the courtyards, which was approved in 2007.

The Conditional Rezoning Agreement, as amended, states that the Planning Board may modify or alter the plans approved in 2007 in accordance with the Design Standards of the Eastern Waterfront. A copy of the standards is included as Attachment 6 and Carrie Marsh's comments submitted in April are included for your reference (Attachment 7). The staff review of the most recent submittal is below in Section IV, paragraph 8.

IV. STAFF REVIEW

The amended plans for The Bay House are subject to review under the City's Subdivision and Site Plan Ordinances of the City's Land Use Code. In addition, the proposal shall be reviewed under the applicable standards of the Eastern Waterfront Design Guidelines. The Planning Board report from July 10, 2007 is included as Attachment 4 and the staff review below is an evaluation of the proposed revisions.

1. Right Title and Interest

The applicant has submitted the purchase agreement for the additional land to be added to Phase I (Attachment 1). The original application included the right, title and interest for the project.

2. Easements

A five foot wide pedestrian easement to benefit Block E lot 21 is depicted on the recording plat. The applicant submitted a copy of the easement on July 3, 2008, so it has not been reviewed. The other easements on this property were part of the 2007 application.

3. Recording Plat and Plan

The notes on the recording plat were updated per the staff recommendations. The plat lists the waiver granted by the Planning Board on July 10, 2007 regarding the required contribution to the street tree fund. The plat also lists all of the conditions of approval from the July 10, 2007 approval. The plat will need to be revised to reflect Board's final conditions of approval.

4. Fire Department

Captain Gregory Cass has reviewed the proposed plan and has the following comments:

The existing fire protection narrative and prior conditions are still in effect unless rescinded by the owner. The enclosed parking garage requires a ventilation system. Please provide details.

The following potential condition of approval is suggested to replace the condition of approval included in 2007:

- I. *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.*

The 2007 condition stated, "The final plans will conform with the City's Fire Regulations as reviewed and approved by Captain Cass."

5. Traffic

Thomas Errico, Consulting Traffic Engineer, has reviewed the revised plans and his review is included as Attachment 8. In summary, Mr. Errico finds the proposed number of parking spaces and parking layout to be acceptable. He notes that the City will install no parking signs on Middle Street as shown on the applicant's plan and that the applicant shall reimburse the City for this expense. The proposed crosswalks shall be shown with parallel lines per the City's standards. He also recommends that the applicant should continue to be required to make a \$5,000.00 contribution towards a Neighborhood Traffic Monitoring Study and \$5,000.00 towards future improvements at the India Street/Middle Street intersection.

The Planning Board granted a waiver of the garage entrance width in 2007, which remains part of the proposal. The change in the entrance is now the setback four feet from the Middle Street façade. He states the following:

Garage Entrance: I find the garage/driveway design to be acceptable and would support a width waiver for the proposed 18-foot driveway. The offset nature of the proposed driveway and the Longfellow Parking garage is not ideal, but the applicant had previously provided traffic information indicating the separation is not anticipated to be problematic based upon traffic volumes entering and exiting both driveways. In essence limited vehicle queuing on Middle Street should prevent problems. I also support the recessed nature of the garage door, as it should improve sight lines to pedestrians walking on the sidewalk.

Status: I would further add that I find the location of the of the building entry door near the garage opening to be acceptable.

The planning staff recommends that the waiver for the driveway be restated for the Middle Street entrance, noting the four foot setback modification as shown on the most recent plans. Based upon Mr. Errico's review, potential conditions of approval are suggested below to replace the condition included in 2007:

- *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.*
- *All financial contributions requires as part of the Conditional Rezoning shall be submitted to the City prior to the issuance of a building permit.*

The 2007 condition stated, "Revised plans and information meeting the recommendations contained in Thomas Errico, P.E. Traffic Consulting Engineer's review dated June 26, 2007 shall be submitted for review and approval prior to the issuance of a building permit.

The revised plans show three bike racks proposed in the garage with the capacity to accommodate 38 bicycles, which exceeds the requirements of the site plan ordinance. The proposed rack detail meets the requirements of the City's technical standards, thus the condition included in 2007 to submit the design details for the bike racks prior to the issuance of a building permit may be deleted.

6. Public Infrastructure/Stormwater

Michael Farmer, Project Engineer, reviewed the revised plans and his memo, dated June 12, 2008 is included as Attachment 9. Based upon the revised scope of utility work within the public right-of-way, the Department of Public Services requires the following:

- Reconstruct (i.e. full depth reconstruction) Middle Street from Hancock Street to India Street;
- Pay the City the cost of milling and repaving Newbury Street from Hancock Street to India Street;
- Pay the City the cost of milling and repaving Hancock Street across the full frontage of the project.

A meeting was held with the Portland Water District, City staff and the applicant's representatives on June 20, 2008 to clarify the specifics of these requirements.

Steve Bushey, Consulting Engineer, is the third party reviewer of this project and he submitted comments for this project on June 23, 2008 (Attachment 10). In his review he notes a dozen items to address on the plans. Michael Farmer, Project Engineer, was asked to evaluate whether any of Mr. Bushey's comments were addressed in the Public Services review. Mr. Farmer's assessment is contained in his memo dated June 27, 2008 (Attachment 11) in which he concurs with Mr. Bushey's review with the following clarifications:

- The tree grate on Sheet 5 is correct and the detail on Sheet 11 should be changed to be consistent with Sheet 5.
- The proposed grading problem on Hancock identified by Mr. Bushey does not meet City standards, so he recommends a revised plan be submitted meeting the City standards.
- Mr. Farmer recommends that the grease trap and sampling manhole be moved to private property.

Mr. Bushey reviewed the revised applicant's revised plans that were submitted on June 23, 2008 (memo dated June 30, 2008, Attachment 12). The revised plans had been prepared without the benefit of Mr. Bushey's review, so his review contained in the June 23, 2008 memo continue to apply.

Potential conditions of approval are suggested below to replace the conditions placed on the project in 2007:

- *Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer for the Department of Public Services, memorandums of June 12, 2008 and June 27, 2008 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.*

- *Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandum of June 23, 2008 and June 30, 2008 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.*

The conditions in 2007 cited the memos from Mr. Farmer and Mr. Bushey dated June 28, 2007 and July 5, 2007, respectively.

7. Eastern Waterfront Design Standards

In reference to the proposed architectural revisions and the Eastern Waterfront Design Guidelines (Attachment 6) for B. Buildings/Architecture, the planning staff offers the following comments:

1. **Building Composition:**

- a. **Placement:** In general the buildings are placed along the sidewalk. The entrances face Middle, Hancock and Newbury Street. The applicant is proposing to extend the Middle Street façade from Building #2 to Building #1. The residential entrance is located within the parking level between the two towers. The residential entrance has become more prominent with glass panels on either side of the door and the garage entrance is setback four feet. The original placement located the residential entry within the base level of the residential tower above, which provided a positive visual orientation between these building elements. The applicant proposes to move the entry east of the tower, and seeks to visually relate the entry to the residential tower through an extension of a continuous first floor plane and materials palette (polished concrete), with a prominent glazed doorway feature. This provides for a somewhat larger retail component in three identical store front bays, which is also an attractive solution for the tower base. The proposed building placement and entry are reasonable design solutions relative to the design standards.
- b. **Height:** The proposed height of the building has been lowered slightly and is within the limits of the conditional rezoning agreement. It is also consistent with the approved plans for the Longfellow project and the industrial development across Hancock Street.
- c. **Massing:** The proposed massing is broken into two buildings with a center courtyard. Vertical elements are created with the balconies and projecting bays, fenestration and use of a variety of building materials.
- d. **Proportion:** The base of the building along Middle Street is punctuated with 5 or 6 storefronts, the Building #2 entry and the garage entrance. The Hancock Street façade contains a retail window, building entrance, and windows along the base course.
- e. **Articulation:** The building base along Middle and Hancock Street is shown with polished concrete block to accentuate the base of the structure. The base course along Hancock Street runs horizontally along the street rather stepped as shown in 2007. This provides a stronger base along the street. The base is articulated with storefronts and entrances. Projecting bays and fenestration articulate the upper three floors of the building, which are clad in brick along street frontages and turn the corner of each tower. The top floor and projecting bays are proposed with a contrasting material (Hardi-plank), which is also proposed within the courtyards (the courtyard application of this material was approved in 2007). Arch topped windows are proposed on the fifth floor to articulate the building top along the street frontages and turn the corners of each building. The arched windows are not used within the courtyards. Cornices

are proposed between the fourth and fifth floors and above the fifth floor to define this level. Building's # 1 and 2 are articulated to present the base middle and top.

- f. **Materials:** A number of exterior material options have been discussed during the review of the amended conditional rezoning agreement. Based upon those discussions, the applicant has retained the brick exteriors approved in 2007. The base course is now proposed as a polished concrete block that looks like granite, which resembles the granite material that had been approved before. The applicant is proposing Hardi-plank as a substitute for the metal siding and is shown on the projecting bays and top floor. As noted above, the applicant states that the quality and longevity of the material is equal to or better than the metal panels. The applicant has submitted samples and the warranty information for the Hardi-plank. Awnings are noted above the commercial windows and doorways. The signage for the building has not been proposed at this time.

Based upon the information submitted, the Bay House, Phase I, the planning staff finds the buildings in Phase I to be consistent with the Eastern Waterfront Design Guidelines. The staff recommends that the conditions of approval regarding urban design be eliminated except for the condition to submit the details of the awning and signage for the buildings.

8. Exterior Lighting

There was a condition in 2007 that a lighting plan meeting the City's Technical Standards be submitted for review and approval. The plans submitted in November of 2007 met the standards. The most recent submission does not propose any changes to the lighting, so the condition may be removed.

9. Landscaping

In 2007 the Board placed a condition on the plan that City Arborist review and approve a revised landscape plan. The applicant submitted revised plans in November 2007, which were approved by the City Arborist and revisions have not been proposed at this time. This condition of the original approval may be deleted.

10. Neighborhood Meeting

A neighborhood meeting was held on June 30, 2008 and the minutes, sign-in sheet and other materials from that meeting are included as Attachment I.

V. MOTIONS FOR THE BOARD TO CONSIDER

The following motions apply to Phase I of the Bay House only and do not constitute an approval of Phase II, which was unanimously tabled by the Planning Board on July 10, 2007. The original conditions that are applicable are listed below along with the revised or new conditions. Those conditions that have been met have been eliminated. A tracked change version of the original motion as revised is included as Attachment 13.

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 #34-08, and the testimony presented at the Planning Board hearing, the Planning Board finds:

The amended *Phase I* plan (is or is not) in conformance with the Conditional Rezoning Agreement and the Eastern Waterfront Design Guidelines.

Waiver

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #34-08 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, does not waive) the following technical standards:

1. Technical Standard, Section III 2 A (b), which requires a 24 foot wide driveway for two-way ingress and egress, to allow the access to be 18 at the garage entrance on Middle Street with a four foot setback from the Middle Street facade as shown on the amended subdivision plat.
2. Technical Standard, Section XV H, Photometric plans requiring photometric plans for the interior courtyards only.
3. The Planning Board acknowledges the applicant's contribution to the construction of Hancock Street and the additional costs for tree wells and tree guards, so based upon the recommendation of the City Arborist the Planning Board waives the financial contribution to the street fund to one half the amount due as determined by the City Arborist.

Subdivision:

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report #30-07, relevant to the Subdivision Ordinance and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (is/is not) in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

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 requires as part of the Conditional Rezoning shall be submitted to the City prior to the issuance of a building permit.*
3. Revised plans and information meeting the recommendations contained in Steve Bushey, P.E., Consulting Engineer's, memorandums of June 23 and June 30, 2008 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
4. Revised plans and information meeting the recommendations contained in Michael Farmer, Project Engineer's, memorandums of June, 23 and June 30, 2008 shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit.
5. In lieu of the applicant reclaiming and repaving a portion of Hancock Street, the Department of Public Works requests that the applicant pay the cost of reclaiming and repaving Hancock Street to the City, so that the City can use these funds to cover part of the cost of rehabilitating Hancock Street at a future time. The estimated cost of reclaiming and repaving the street must be reviewed and approved by Public Works.

6. The restaurant and/or retail/commercial uses on site shall participate in a Park and Shop Program (or similar program) with the "Riverwalk Parking Garage" located at Middle Street and that documentation of such participation will be provided to the City Planning Authority every two years.
7. All financial contributions required as part of the conditional rezoning shall be submitted to the City prior to the issuance of a building permit.
8. The proposed condominium documents 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.

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 # 34-08, 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/is not) 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 and awnings 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.

Attachments:

1. Application
 - a. Application form
 - b. Letter, Greg Shinberg, May 27, 2008
 - c. Right Title and Interest for the additional property
 - d. Area of Property Construction Easement and written easements
 - e. Letter, Greg Shinberg, June 30, 2008
 - f. Bicycle Rack Detail
 - g. Hardiplank Warranty
 - h. Neighborhood Packet:
 - i. Minutes
 - ii. Sign-in Sheet

M. 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

AH. 3.2

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"One Vision, One Company"
Please consider the environment before printing.

Att. 4

Barbara Barhydt - Proposed underground electric - Bayhouse Project

From: David Margolis-Pineo
To: Barbara Barhydt
Date: Friday, May 18, 2012 10:15 AM
Subject: Proposed underground electric - Bayhouse Project
CC: Jeff Hanscom; Michael Farmer

Barbara,

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.

AH. 5 a.

The Village at Oceangate

4/24/2012

The Village project has always been a development that the neighborhood does not want. It took many changes to get the Council to approve phase 1. Phase 2 was never approved.

The neighborhood was against the 18- month extension of the contract zone not only because the plan was seen as a detriment to the neighborhood but because it had already proved to be financially unrealistic. We argued that the sooner this over drawn concept was abandoned, the sooner something good for the neighborhood could be created. We were all told that there were banks interested in making the needed loans and that it would be easy to sell the required number of units to qualify. It is now clear that those representations were overly optimistic.

Now there is a request that both increases the number of units and decreases the parking spaces. Each of these changes is undesirable to the neighborhood. The changes are an inadequate attempt to make the project more financially viable. They would also create more parking problems and a less desirable number any type of units.

Time has again proven this proposal to be unviable and these changes would only create a product less beneficial to the city will not save it. We have heard rumors that there may be a TIF requested. Any attempt to have the neighborhood fund a program that an overwhelming majority of the residents and businesses do not want would be the height of irony and still further proof of the financial instability of the project.

Such a large development for which there is no proven market could easily wind up with many relatively short-term rentals that would further degrade the probability of unit sales and could lead to an auctioning of unwanted properties.

Please see this request for what it is and do not approve these changes.

Hugh Nator
50 Federal St

AH 5 b.

April 24, 2012

To whom it may concern:

When the Village project began there were many reservations about its size and scope. The projected 65 to 70 foot building was and is a concern of the surrounding neighbors, particularly in light of the Garage that looms over the waterfront.

Repeated failure by the development group to find financing for the project was also a concern. Now almost 5 years later and at least one extension of the contract zone later, we are back asking for changes in units, façade, parking etc...still without the promised bank financing. Although the India Street Neighborhood is among the smallest in the city, it has seen the most growth and development of any part of the city on the peninsula. Unfortunately this project is indicative of the lack of a comprehensive plan by the city. This is particularly troubling, as it is the gateway to Portland.

As a neighborhood, do we want an empty lot to be the first thing visitors see when they walk through our neighborhood – of course not! But we also don't want a behemoth of a building over-powering and dwarfing the other residences and businesses that have been in the neighborhood for decades. Additionally, the streets cannot sustain the increased number of cars that the new proposal projects. We want feet on the street. We want owner residents, who take pride in the rich history of this part of Portland.

The plan as it currently exists is not universally acceptable; however, it is a better alternative than the new proposal currently on the table. Please vote to reject this new proposal.

Thank you.



Allison Brown
President, India Street Neighborhood Association

Order 282-10/11

Given first reading 6/20/11

Public Hearing, Amended and Passage 7/18/11 (8-0) (Leeman absent)

NICHOLAS M. MAVODONES (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. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

AMENDMENT TO CITY CODE SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT) RE: Second 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.

SECOND 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 as assignee of the rights of the purchaser under a purchase and sale agreement with the Village Café, Inc., has the right to purchase the property located at 112113 Newbury Street and 40 Hancock Street, Portland, Maine, consisting of the property shown on the Portland Assessor's Map as parcels 20-E-9, 20-D-13-15 and 20-D-32 and described in the Cumberland County Registry of Deeds at Book 17317, Page 167, Book 3161, Page 504, Book 4357, Page 291, Book 3217, Page 83, Book 3004, Page 226, Book 3091, Page 703, Book 3752, Page 140, Book 3112, Page 131, Book 3024, Page 132, Book 3291, Page 260, Book 2996, Pages 235 and 237, Book 4357, Page 289, Book 4094, Page 222 and Book 9520, Page 73 (hereinafter the "**SITE**"); and

WHEREAS, this Second Amendment is intended to supersede the Conditional Zoning Agreement for the Site as amended by the First Amendment signed June 18th, 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 ~~176~~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

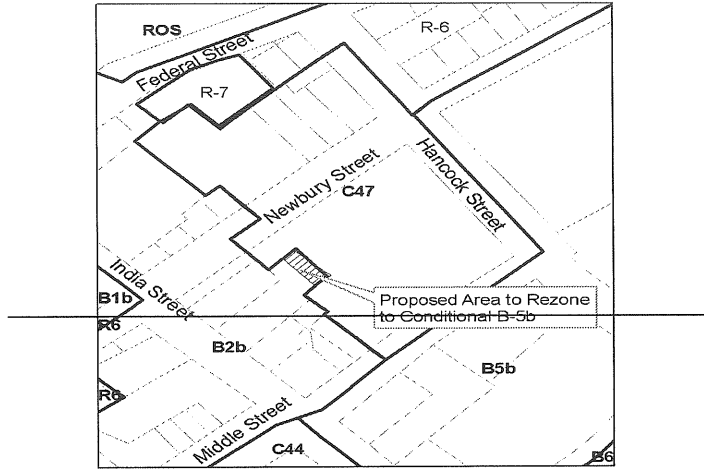
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

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;

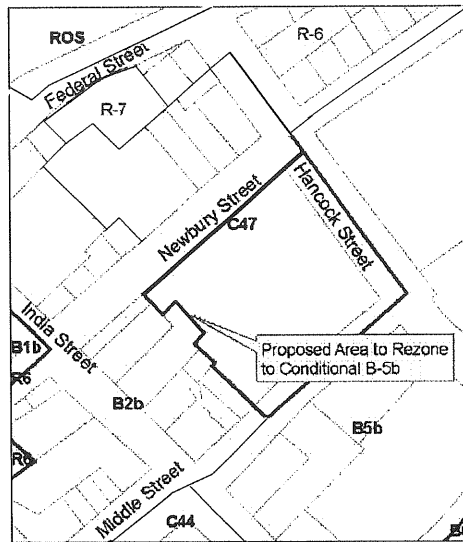
NOW, THEREFORE, in consideration of the rezoning of the **SITE**, **DEVELOPER** agrees to be bound by the following terms and conditions:

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**

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



**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**

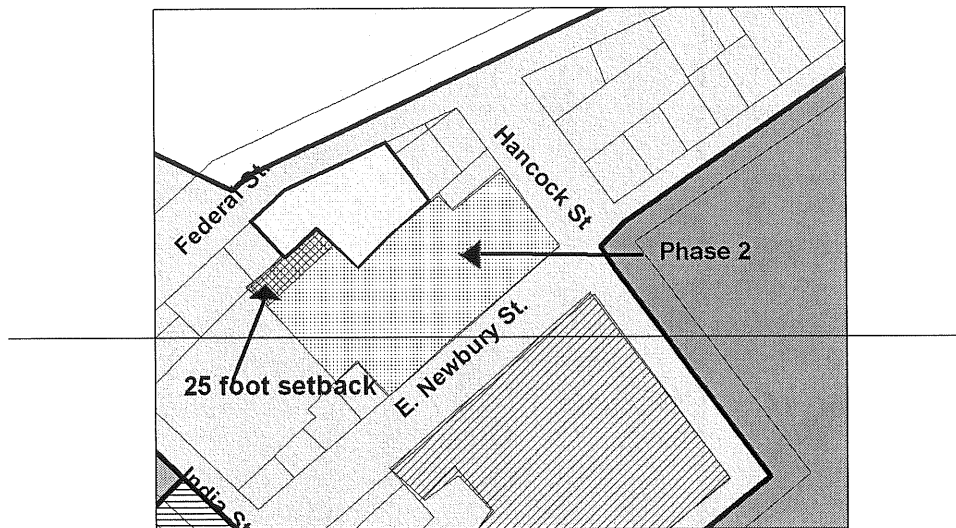
Prepared by the Department of Planning and Development
based upon GIS Workgroup Data.



2.—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. ~~Phase I of the~~ 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 Phase ~~the~~ SITE, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, “the Plans for Phase ~~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. Phase II of the project, ~~consisting of one or more buildings along Newbury and Hancock Streets shall meet the following requirements:~~

- ~~— a maximum of sixty six (66) residential units shall be provided; and~~
- ~~— a minimum setback of twenty five (25) feet from the most westerly rear property line (abutting CBL 20-D-11) shall be provided and as illustrated below ; and~~



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

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



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

The Planning Board shall review or shall have reviewed ~~both the Phase I and Phase II~~ the SITE proposals and apply the site plan and subdivision standards of

the Portland Land Use Code and the applicable standards of the Eastern Waterfront Design Standards to each.

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

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

3.2. 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.

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

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

- a. The maximum residential density on the **SITE** shall be ~~176~~ 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. ~~for Phase I.~~
- c. The maximum height for the structures shall be:

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

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

- d. The cornices of buildings, and storefront awnings along Middle and Hancock Streets, will extend over the street rights of way in various locations as shown on the Plans. The **CITY** hereby grants license for such

overhangs and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.

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

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

7.6. 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 ~~\$2550,000~~, 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 ~~Phase I~~ the SITE by September 22, 2012. ~~Phase II of the project must be commenced within two (2) years following the issuance of a certificate of occupancy for Phase I.~~ If any required approval, including the approval of the conditional rezoning, has been appealed, and if **DEVELOPER** fails to commence construction within one (1) year from the final disposition of such appeal, this conditional rezoning shall become null and void and shall revert.

11. The site plan approval for the **SITE** dated September 22, 2009, shall be extended until September 22, 2012.
12. ~~Phasing: **DEVELOPER** may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525(f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing and any other public improvements for Phase II must be posted with the City prior to the release of the recording Plat for Phase II.~~
13. Parking shall be provided for ~~Phase I~~ 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 ~~Phase I~~ 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 for Phase I, which plan shall be reviewed and approved by the City and thereafter implemented by the **DEVELOPER**. ~~Parking for Phase II of the project shall be determined by the Planning Board during subdivision and site plan review provided that a condition of such approval shall include the requirement for a post development occupancy parking analysis, with the same mitigation requirements as Phase I.~~

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

14. 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.

15. 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.
16. 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.
17. 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



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 7th and the agreement was sent to abutters on May 9th. The legal notice appeared on May 7th and May 14th and the legal ad appeared in the May 14th and 15th 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.

nc.

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 18th, 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

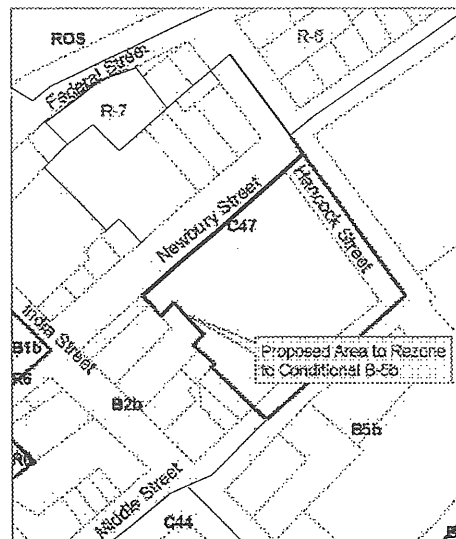
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

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 Mapping 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 \$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

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

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

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. 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 _____ 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 18th, 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

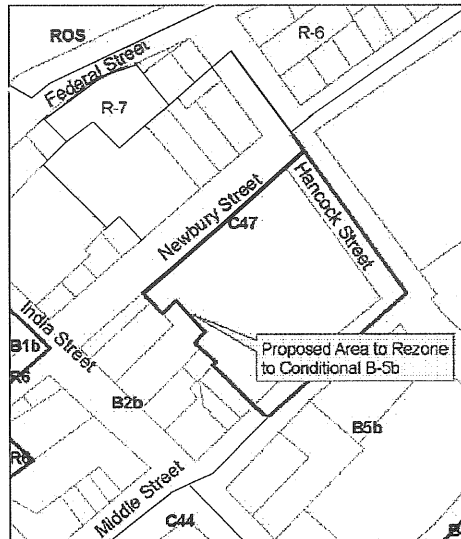
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

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

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

Proposed Amendments to Second Amendment to Conditional Zoning Agreement

The Village at Ocean Gate (aka Bayhouse)

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.

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**.

12. Parking shall be provided for the **SITE** at no less than one space per dwelling (i.e. 94) and six spaces for retail employee parking with approximately 80 spaces onsite and the balance 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**.

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



To: Carol Morrissette, Chair and Portland Planning Board Members
From: Barbara Barhydt, Development Review Services Manager
Date: April 19, 2012
Re: Amended Subdivision and Site Plan and Conditional Zone Amendment for the Bay House, 113 Newbury Street, Village at Oceangate, Applicant
Project #: 2012-466
Meeting Date: April 24, 2012

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, to seek a waiver of underground utilities in Newbury Street, and to request 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.

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.

88 notices were sent to area residents and 47 notices went to the interested citizen list. The legal ad appeared in the April 16 and 17th 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. CHRONOLOGY OF REVIEW

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 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. A copy of the agreement is included as Attachment 1.

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 has not been 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 (Attachment 1). These are the approvals and conditional rezone agreement that are currently valid for this site.

IV. PROPOSED AMENDMENTS TO SUBDIVISION AND SITE PLAN

The applicant requested a workshop to discuss the proposed revisions with the Planning Board. The applicant is seeking the Board's input prior to investing in revisions to the full set of plans to meet the 2009 conditions of approval imposed on the subdivision and site plan.

1. Increase in Number of Residential Units and Building Elevations

The subdivision and site plan in 2009 was approved with 82 residential units. The unit types at that time included 2 studios, 4 one-bedroom, 62 two-bedrooms, and 14 two-bedroom with a den. The units were proposed as condominiums and located within two buildings situated above the structured parking and commercial space.

The amended plan is for 94 dwelling units. The additional 12 units are proposed to be incorporated in Building 1, so the unit count increases for this building from 40 to 52. According to Mr. White's letter (Attachment C.1), Building 1 will extend 3 feet 8 inches toward the west, which adds 120 square feet of area on each floor. Three units rather than two are proposed facing Newbury Street and the elevation has been revised to reflect the additional windows and balconies. The Hancock façade is revised for each floor to reflect the change from three units to four. On the courtyard side of the building one additional unit is proposed for each floor, so again the interior courtyard elevation now reflects the windows and balconies for the additional units.

The Middle Street façade is unaltered. The Applicant's submittal includes the revised floor plans and elevations, Attachment F, which depict the changes proposed for Building #1.

According to Mr. White (Applicant's submittal, Attachment C) the proposed exterior materials will be consistent with the previously approved plans and the applicant will submit the new materials for final review. He notes that the brick, precast, polished block, windows and cement board will be consistent with the approval, but may be from a different manufacturer. Colors may vary slightly. The cornice between the third and fourth floors that separated the brick from the batten siding has been eliminated and instead three brick courses and a precast band will be added. Smaller windows are substituted for the larger windows shown for the parking level in the previous review. The windows above the retail space have been replaced with polished black material.

The increase in the number of units is within the maximum set by the conditional zone agreement.

2. One level of structured parking and reduction in on-site parking spaces

The plan approved in 2009 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 81 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. The project sheet lists 3 handicapped spaces for a total of 103 spaces. Attachment F.18 in the applicant's submittal shows the revised parking layout (sheet G.1).

The proposed parking arrangements for off-site parking need to be clarified and documented prior to a final review of the revised plans. The amended conditional rezoning agreement of 2011 requires the following:

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.

3. Revised Landscaping Plan

The landscaping plan for the interior courtyard has been simplified from the approved plan. The mounded landscaped islands and walkway have been reduced. 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. Jeff does recommend that some of the areas along the street could benefit from enhanced landscaping and that the tree wells may need modifications to protect the trees from salt damage. Lastly, 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 as follows:

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 the street tree fund to one half the amount due as determined by the City Arborist.

He is recommending a clarification that the street tree contribution will be based upon one tree per unit with the deduction of street trees proposed for the project.

4. Waiver of Underground Utilities

Section 14.499 Required Improvements of Portland's Subdivision Ordinance includes paragraph (h), which states "All utility lines shall be placed underground unless otherwise approved by the Planning Board." Section 14-506. Modifications provides the following provisions for considering a waiver or modification of a required improvement:

- (a) Except for the requirements set forth in sections 14-498 and 14-499 pertaining to the provision and construction of curbs and sidewalks, the Planning Board if it finds that extraordinary conditions exist or that undue hardship may result from strict compliance with these regulations may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the land development plan and the regulations of this article.

The 2009 approved plans for the Bay House show the utility lines underground along Newbury Street. The applicant is seeking a waiver of the subdivision requirement for underground utilities along Newbury Street. Jim Seymour, P.E. Sebago Technics, describes the proposed revisions to the electrical utility system in his letter dated April 3, 2012 (Applicant's submittal, Attachment D). Mr. Seymour states that the installation of the underground utilities presents a "substantial burden of cost", will cause time delays and disruption for the construction schedule due to the complexity of installing three-phase power underground. The applicant is seeking to move the three-phase power overhead lines to the opposite side of Newbury Street (westerly side) and then bring the power across Newbury Street at the Hancock intersection to an underground vault on the easterly side of Newbury. Mr. Seymour states:

We believe that while the Planning Board has the authority to approve the overhead service, that we have met the intent by designing as revised. This will also allow the City in future site plan reviews to have the flexibility to require other developments on adjacent vacant lots to install the three phase power underground or maintain above ground. In the event of a future underground installation the disruption to our development will be minimal.

Michael Farmer, Engineer, Department of Public Services, reviewed the plans dated 4/3/12 and his e-mail of 4/20/12 is included as Attachment 3. It is his assessment, that not only are the lines shown overhead on Newbury Street, but that the underground lines that were to be extended in Hancock Street along the Bay House frontage is not shown on the plans. His review is as follows:

Based on a review of the proposed Utility Plan for the Bay House, revised as of 4-3-2012, it appears that the developer is proposing to build none of the underground electric system in Middle Street, Hancock St. (between Middle St. and Newbury St.) and Newbury Street, as previously required. The underground electric utility system I am referring to is the layout prepared by CMP in 2007 and used as the basis for the underground electric utility improvements built by two other developers and the City. Thus, this developer would be contributing essentially nothing to the underground electric utility system plan developed for this area.

In the meetings with the Planning staff, there was no mention that the applicant was seeking changes to the infrastructure in Hancock Street. Thus, Mr. Farmer's review will be shared with the applicant and clarification of the utility plan and waiver request is needed.

In 2008, the Eastern Waterfront had seven projects under construction or in the review process: 1) Watermark condominiums (Riverwalk); 2) Ocean Gateway Garage (Riverwalk); 3) Residence Inn by Marriot (Ara Aftandilian); 4) Extension of Hancock Street (City of Portland); 5) Shipyard Brewery warehouse expansion; 6) office building at 25 India Street (Riverwalk); and 7) Village at Ocean Gateway, now called the Bay House. Plans were also under consideration for the former Jordan's Meat site and the Maine State Pier. The design, layout, and responsibility for constructing adequate public utilities was complicated, especially the electrical system. Summit meetings were held with CMP, which included representatives from each of the above projects, consulting engineers, Department of Public Services, and Planning. Bill Needelman, Senior Planner, represented the Planning Division at these meetings and provided the following summary of those discussions and decisions.

With the pending projects in the Eastern Waterfront, the City and CMP identified two important opportunities: (1) to reduce the number of overhead lines in the area; and, (2) to provide service to city blocks from multiple circuits (redundant service) within the peninsula electrical system. Removing overhead lines has urban design advantages as well as providing greater flexibility in siting buildings up to the street right-of-way. Otherwise, a minimum separation or setback of 10 feet is required between a building and overhead lines. Redundant service provides system stability and reliability advantages to the properties served. From a meeting with CMP engineering staff held on February 5, 2008, the upper Hancock Street link from Middle to Newbury Street was identified as an important link in this system. The City installed an underground conduit bank under the southwest sidewalk and one new underground vault in the street when Hancock Street was extended in 2008/2009.

Each of the seven approved projects listed above had a utility plan based on underground electrical lines; however only four of those projects have been completed. According to the Department of Public Services and confirmed by CMP, the Marriot Hotel installed additional underground conduits and another underground vault to serve their project. The Ocean Gateway Garage installed underground power system in Fore Street from India to Hancock Streets, which served as the link to extend up Hancock Street. It should be noted that the Ocean Gateway Garage could have been served by a less expensive system (from India Street) were the developers not required, by CMP, to construct an increment within a larger, more stable system. This redundant system was part of the CMP "plan" for development in this area in 2008.

According to Bill's understanding, CMP will only authorize the design of an electrical distribution system serving the site once the City has approved a project. CMP will follow City guidance regarding some aspects of the system (i.e., use of under-ground versus over-head lines) but CMP designs the system. Based on the CMP design and a PUC-dictated billing system, CMP then allocates the cost of installing the wires, switches, transformers, etc to the developer. When multiple developers are incrementally adding to and drawing from a new system, the first developer needs to pay for 100% of the initial CMP installation costs. Later developers utilizing the initial system will, through CMP, compensate the initial developer according to a prorated "reallocation" formula based on the number of *meters* (customers) on the site.

The anticipated cost savings for moving the overhead lines to the opposite side of Newbury Street are not stated in the amended application, but Mr. Gagnon of Landmarc Construction estimated construction cost savings of roughly \$167,000. As noted above, the full extent of potential utility changes needs to be clarified. The Planning Staff have recommended the applicant apply for a TIF to recoup infrastructure costs, rather than seek a waiver from the underground utility requirement. The TIF option does not appear to meet the applicant's financial needs, so they are pursuing their waiver request with the Planning Board. The Bay House proposal to retain overhead electrical lines is counter to the utility investments that have occurred within the Eastern Waterfront for an integrated or redundant underground system. There are construction costs involved in shifting the lines to the opposite side of Newbury Street (where there is one building and a parking lot), and it shifts the burden of installing underground lines to the next development proposal. The applicant states that

they have first right of refusal for the property (formerly Phase II of this project), but the applicant does not own the land at this time.

5. Amendment to Conditional Zone Agreement- Payment Plan

When the Village at Oceangate sought the conditional rezoning agreement in 2006, Hancock Street did not extend 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. Following is Condition #5 from the 2011 amended agreement:

Community Contribution. The community contribution under this Agreement shall be \$200,000.00, to be dedicated to extending Hancock Street between Middle Street and the Commercial Street extension or to reimburse the City for expenses it incurs in such extension; \$5,000.00 dedicated to the India/Middle Street traffic improvements to be commissioned by the City; and \$5,000.00 to be dedicated to the Eastern Waterfront Post-Development Traffic Impact Study to be commissioned by the City. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a building permit for 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 expects the eventual \$200,000 reimbursement to support future Pavement Rehabilitation that was postponed by this alternative use of CIP funds.

In the Applicant's submittal, Attachment E is a letter from Nathan Smith, Esq. Bernstein Shur dated April 12, 2012. On behalf of the applicant, Mr. Smith is requesting that the Planning Board consider a recommendation to Council that would allow the payment of the Community contribution for Hancock Street to be paid over a ten year period (\$20,000 annual installments) rather than one lump sum. The economic reasons for this request are articulated in Mr. Smith's letter.

VI. NEXT STEPS

- The applicant is seeking feedback from the Planning Board on the above items before seeking updated to the engineered drawings .
- The 2009 amended plan was approved with different financial commitments, so the financial capacity documents must be updated for this application.
- Final subdivision and site plans must be submitted for review that address the 2009 conditions of approval and incorporate proposed revisions.
- A public hearing on the amended final plans and conditional rezoning amendment needs to be scheduled.

Attachments:

1. Amended Conditional Rezone Agreement – 2011
2. Subdivision and Site Plan Approval Letter- 2009
3. Mike Farmer e-mail, April 20, 2012

Attachment 1
Order 282-10/11
Given first reading 6/20/11
Public Hearing, Amended and Passage 7/18/11 (8-0) (Leeman absent)

NICHOLAS M. MAVODONES (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. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)
RE: Second 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.

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

WHEREAS, this Second Amendment is intended to supersede the Conditional Zoning Agreement for the Site as amended by the First Amendment signed June 18th, 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 ~~176~~ 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

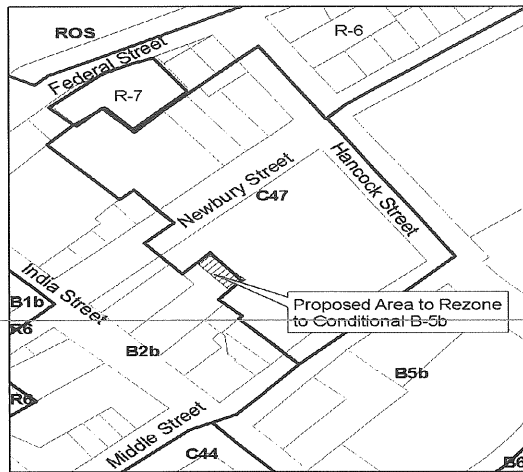
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the **SITE**; and

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;

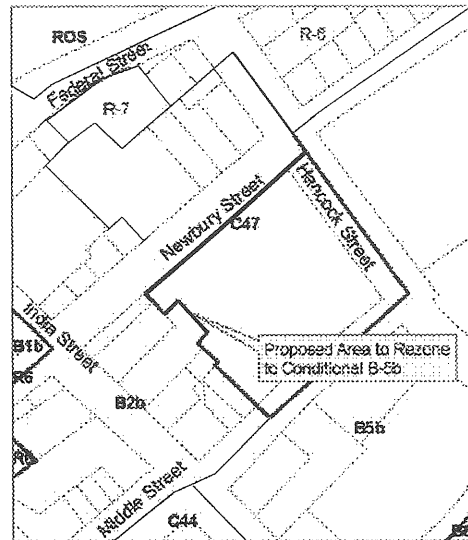
NOW, THEREFORE, in consideration of the rezoning of the **SITE**, **DEVELOPER** agrees to be bound by the following terms and conditions:

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**

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



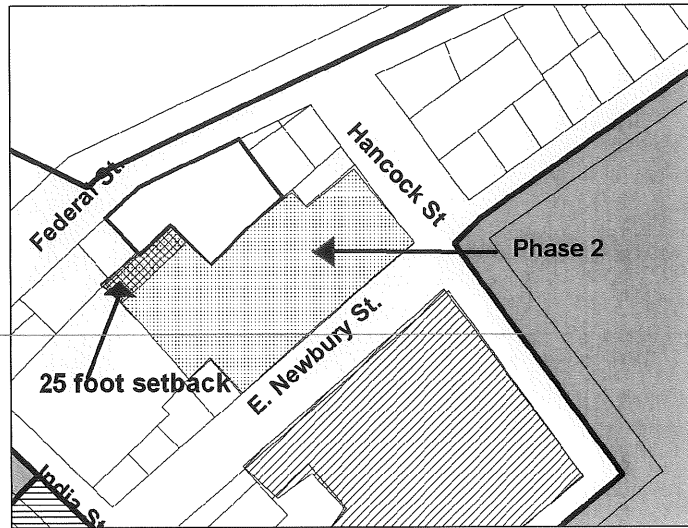
**Proposed Area to Rezone from B-2b to Conditional Rezoning to B-5b for The Village at OceanGate, LLC
112-113 Newbury Street
April 2008, July 2011**

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



~~2.2. 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. Phase I of the 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 Phase I the SITE, submitted by David M. White, Architect, dated June 26, 2007 as revised and modified September, 2009, Attachment 2 (collectively, "the Plans for Phase I 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. Phase II of the project, consisting of one or more buildings along Newbury and Hancock Streets shall meet the following requirements:~~

- ~~■ a maximum of sixty six (66) residential units shall be provided; and~~
- ~~■ a minimum setback of twenty five (25) feet from the most westerly rear property line (abutting CBL 20-D-11) shall be provided and as illustrated below; and~~



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

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



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

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

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

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

3.2. 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.

4.3. Phase I ~~The SITE~~ shall consist of, at minimum Buildings 1 and 2, ~~while Phase 2 shall consist of one or more Buildings in accordance with §14.495(h).~~

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

- a. The maximum residential density on the **SITE** shall be ~~176~~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**, ~~for Phase I.~~
- c. The maximum height for the structures shall be:

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

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

- d. The cornices of buildings, and storefront awnings along Middle and Hancock Streets, will extend over the street rights of way in various locations as shown on the Plans. The **CITY** hereby grants license for such overhangs and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.
- e. An underground electrical vault will be installed within the right of way of Newbury Street, the final location of such vault to be approved by the Planning Authority. The **CITY** hereby grants license for such installation and authorizes the City Manager to execute said license in such form and with such terms and conditions as he deems appropriate.

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

7.6. 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 ~~\$2550,000~~, 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 ~~Phase I~~ the **SITE** by September 22, 2012. ~~Phase II of the project must be commenced within two (2) years following the issuance of a certificate of occupancy for Phase I.~~ If any required approval, including the approval of the conditional rezoning, has been appealed, and if **DEVELOPER** fails to commence construction within one (1) year from the final disposition of such appeal, this conditional rezoning shall become null and void and shall revert.
11. The site plan approval for the **SITE** dated September 22, 2009, shall be extended until September 22, 2012.
12. ~~Phasing: **DEVELOPER** may construct the project in two phases as shown on the Plans. Phase I is designed to stand alone in the event Phase II is not built. Performance guarantees shall be posted separately for each phase. For purposes of the time periods set forth in this paragraph 8 and in section 14-525(f) of the Portland City Code, commencement of construction on Phase I shall be deemed to constitute commencement of construction on Phase II, provided that actual construction on Phase II is commenced no later than 3 years after the commencement of construction on Phase I. A separate performance guarantee for the cost of installing the sidewalks and curbing and any other public improvements for Phase II must be posted with the City prior to the release of the recording Plat for Phase II.~~
13. Parking shall be provided for ~~Phase I~~ 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 ~~Phase I~~ 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 ~~for Phase I~~, which plan shall be reviewed and approved by the City and thereafter implemented by the **DEVELOPER**. ~~Parking for Phase II of the project shall be determined by the Planning Board during subdivision and site plan review provided that a condition of such approval shall include the requirement for a post development occupancy parking analysis, with the same mitigation requirements as Phase I.~~

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

14. 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.
15. 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.
16. 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.
17. 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

Att 3

Barbara Barhydt - 113 Newbury Street

From: Michael Farmer
To: Barhydt, Barbara
Date: Friday, April 20, 2012 12:30 PM
Subject: 113 Newbury Street
CC: Margolis-Pineo, David

Based on a review of the proposed Utility Plan for the Bay House, revised as of 4-3-2012, it appears that the developer is proposing to build none of the underground electric system in Middle Street, Hancock St. (between Middle St. and Newbury St.) and Newbury Street, as previously required. The underground electric utility system I am referring to is the layout prepared by CMP in 2007 and used as the basis for the underground electric utility improvements built by two other developers and the City. Thus, this developer would be contributing essentially nothing to the underground electric utility system plan developed for this area.

I did a quick review of the expenses paid by the City to build one block of Hancock Street. I believe the expenses were equal to about \$306,000, which includes the underground electric system improvements. The actual cost to build one block of Hancock Street was probably higher, if you include the Marriot Hotel's expense to build the brick sidewalk and street lights.

Michael Farmer, Project Engineer
Portland Dept. of Public Services
55 Portland Street
Portland, ME 04101
phone: 207-874-8845
fax: 207-874-8852

Proposed Amendments to Second Amendment to Conditional Zoning Agreement

The Village at Ocean Gate (aka Bayhouse)

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.

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**.

12. Parking shall be provided for the **SITE** at no less than one space per dwelling (i.e. 94) and six spaces for retail employee parking with approximately 80 spaces onsite and the balance 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**.

DAVID M. WHITE, ARCHITECT

54 TODD FARM LANE
P.O. BOX 817
NEW LONDON, NH 03257
603-763-1335
EMAIL: DMWARCH@COMCAST.NET

6 March 2013 (revised)

Barbara Barhydt, Senior Planner (via email)
Department of Planning and Development
Planning Division
389 Congress Street
Portland, ME 04101

Re: The Bay House

Dear Barbara,

After we completed the Contract Documents and during the development of the contractor's Design-Build electrical documents an issue arose regarding the need for a roof top generator for the operation of the elevators during a power outage. This was because we were designating the street entrances at Middle and Hancock Street as the level of discharge. This means 4 stories above this level of discharge to the top level which would require the generator. It was determined that if we made the building accessible from Newbury Street through the courtyard we could make the first residential floor the level of discharge which would make it only 3 stories above the level of discharge to the top floor, thus eliminating the requirement for the generator. The referenced code section for this requirement and exception is 1007.2.1

In order to accomplish this we added a ramp from Newbury Street to the courtyard. The original stair remained in its approximate original location. Also included as a result of the ramp was the relocation of the areaway for the fans servicing the carbon monoxide system in the garage. This areaway was located where the new ramp is located and was relocated on the left end of Building 1 as it faces Newbury Street.

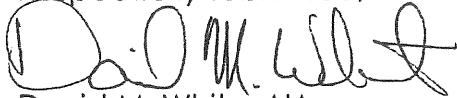
Prior to making this change the Owners elected to provide a surface mounted transformer instead of in a vault under the sidewalk and right of way. This is also shown on the revised elevations.

While we were working on the revisions for the ramp the Owners expressed concerns from the prospective buyers about the security of the courtyard, given

the existing population of the area. This has lead to a decorative fence at those areas which would be in reach of a person who might want to breach the existing proposed walls and gates. This occurs at both ends of the courtyard, although the fence and gate at the Middle Street end is minimal. We have asked the contractor to provide us with the design and materials for this fencing so we can deliver it to your office for review.

If you have any questions regarding these changes do not hesitate to call either myself or Marc Gagnon.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. White". The signature is fluid and cursive, with a large initial "D" and "W".

David M. White, AIA

A registered Maine Architect

Cc: Jeanne Bourke, Portland Building Department (via email)
Gordon Reger, The Village at Ocean Gate, LLC (via email)
Demetri Dasco, The Village at Ocean Gate, LLC (via email)
Marc Gagnon, Landmark Construction (via email)

DAVID M. WHITE, ARCHITECT

403 tibbetts hill rd.
p.o. box 447
goffstown, nh 03045-0447
603-497-3405
fax 603-497-2783

4 June 2012

Barbara Barhydt, Senior Planner
Department of Planning and Development
Planning Division
389 Congress Street
Portland, ME 04101

Re: The Bay House (formerly The Village at Ocean Gate)

Dear Barbara,

I would like to take this opportunity to note the changes in the architectural plans incorporated with this application from the last previously approved architectural plans.

The most recently approved plan had two parking levels with 159 parking spaces and four residential floors with 82 dwelling units. The originally approved plan had one parking level with 79 parking and four residential plans with 82 dwelling units. The newly submitted plans has one parking level with 80 parking spaces and four residential floors with 94 dwelling units. The residential units are in two "towers", labeled as Building 1 on Hancock Street and Building 2 to the west. The parking level has 6 retail spaces, the same as the original plans.

Building 1 previously had 40 units, the new layout is 52 units. The Newbury Street end of Building 1 has been extended towards the west by 3' 8" or approximately 120 SF/floor. This end of the building has been changed from two units to three units/floor and the elevation towards Newbury Street has been revised to reflect the new layout. The Middle Street end of this building has not been changed, except as I will note further in this letter. The Hancock Street elevation has changed to reflect 4 units per floor in the center section versus three units in the previous plan. However the previous plan had four balconies/floor in this area and so does the new plan. On the courtyard side of the building one additional unit/floor and one additional balcony/floor were added to the center section. All material in these changes areas are consistent with those on the previously approved plans.

Building 2 is the same footprint and unit design as the previous plan. There are no changes to the previously approved materials.

architecture • land planning • project management

Regarding the materials we will be submitting new materials, but they are consistent with the previous approval. For instance the brick, precast, polished block, windows and cement board siding don't change as materials, but they may have a different manufacturer. The three different color schemes noted on these plans have not changed in concept, there may be slight variations due to the new selected materials. A revised materials/color scheme is attached as part of this submission.

One change to the elevations which affects both buildings is the change to the lower cornice between the third and fourth floors. This cornice now separates the brick and the clapboards from board and batten siding on the fourth floor. The cornice is 6" smaller than the previous cornice which provides the upper cornice with greater prominence. The lower cornice has been eliminated at the bump outs for the balconies/mechanical closets since the material for these bump outs is the same material on all four floors.

We also removed the larger windows from the parking level in the parking area. They have been replaced with the smaller windows that were shown in the two level parking scheme. We also removed the upper windows above the main retail windows. They are replaced with the same polished block material. We removed these because these windows would never be seen as there are awnings over these upper window areas.

At the Courtyard there is a new layout which has a reduction in pavers and earthen mounds. Vegetation will be in containers in grassed areas. Please refer to Landscaping plans by Sebago Technics.

The obvious reason for these changes are to make the project financially feasible; however, not at the expense of the quality and character of the previously approved plans and elevations

Should you have any questions on the proposed changes please give me a call.

Respectfully submitted,


David M. White, AIA

Cc: Demetri Dasco, The Village at Ocean Gate, LLC
Marc Gagnon, Landmark Construction



May 23, 2012

Portland Planning Board
c/o City of Portland Planning Office
City Hall
389 Congress Street
Portland ME 04101

Re: Village at Oceangate, LLC – Bay House

Ladies and Gentlemen:

This letter is to advise you that on March 29, 2012 East Boston Savings Bank issued to the Village at Ocean Gate, LLC a formal commitment letter for construction financing for a 94-unit residential apartment complex including approximately 5,700 SF of retail space and parking under the buildings for approximately 80 cars to be known as the Bay House, located on Newbury and Hancock Streets in Portland, Maine.

Sincerely,
EAST BOSTON SAVINGS BANK

A handwritten signature in cursive script that reads 'Mary Ann Devlin'.

Mary Ann Devlin
Vice President

Cc: Demetri Dasco
Gordon Reger
Nathan Smith, Esq.

Barbara Barhydt - Re: Village@ocengate?

From: Hugh Nazor <hugh@nazor.net>
To: Barbara Barhydt <bab@portlandmaine.gov>
Date: Wednesday, January 11, 2012 8:16 AM
Subject: Re: Village@ocengate?

Barbara:

Thanks very much for your quick and complete response. Last evening I learned that there is, in fact, a plan and probable financing to go forward with 108 rental units rather than the 82 (or so) condo units.

I have a question about to what extent such a change would require reconsideration of approvals. Would you please call me at your convenience? I would greatly appreciate a brief conversation.

~~O~~ ____/)_ Hugh

up to 110

Neighborhood Association
- don't want parking as much
- reduce height - 48'
- in conjunction w/ parking -
- neighborhood would be happy -
- time + \$

On Jan 10, 2012, at 9:48 AM, Barbara Barhydt wrote:

I have not received anything nor heard anything.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Hugh Nazor <hugh@nazor.net> Tuesday, January 10, 2012 9:47 AM >>>
Barbara:

Newspapers are calling to ask about a change, by the owners of the Village property, to want a 120 or 108 (two different stories going around) rental units rather than fewer condos. Have you received anything such as this or heard about any such proposed change?

Thanks, ~~O~~ ____/)_ Hugh

called Mayana District

present idea
relook at 65 ft
- opposed to 65 -
- get overlay off

The Village at Oceangate

4/24/2012

The Village project has always been a development that the neighborhood does not want. It took many changes to get the Council to approve phase 1. Phase 2 was never approved.

The neighborhood was against the 18- month extension of the contract zone not only because the plan was seen as a detriment to the neighborhood but because it had already proved to be financially unrealistic. We argued that the sooner this over drawn concept was abandoned, the sooner something good for the neighborhood could be created. We were all told that there were banks interested in making the needed loans and that it would be easy to sell the required number of units to qualify. It is now clear that those representations were overly optimistic.

Now there is a request that both increases the number of units and decreases the parking spaces. Each of these changes is undesirable to the neighborhood. The changes are an inadequate attempt to make the project more financially viable. They would also create more parking problems and a less desirable number any type of units.

Time has again proven this proposal to be unviable and these changes would only create a product less beneficial to the city will not save it. We have heard rumors that there may be a TIF requested. Any attempt to have the neighborhood fund a program that an overwhelming majority of the residents and businesses do not want would be the height of irony and still further proof of the financial instability of the project.

Such a large development for which there is no proven market could easily wind up with many relatively short-term rentals that would further degrade the probability of unit sales and could lead to an auctioning of unwanted properties.

Please see this request for what it is and do not approve these changes.

Hugh Nazon
50 Federal St

April 24, 2012

To whom it may concern:

When the Village project began there were many reservations about its size and scope. The projected 65 to 70 foot building was and is a concern of the surrounding neighbors, particularly in light of the Garage that looms over the waterfront.

Repeated failure by the development group to find financing for the project was also a concern. Now almost 5 years later and at least one extension of the contract zone later, we are back asking for changes in units, façade, parking etc...still without the promised bank financing. Although the India Street Neighborhood is among the smallest in the city, it has seen the most growth and development of any part of the city on the peninsula. Unfortunately this project is indicative of the lack of a comprehensive plan by the city. This is particularly troubling, as it is the gateway to Portland.

As a neighborhood, do we want an empty lot to be the first thing visitors see when they walk through our neighborhood – of course not! But we also don't want a behemoth of a building over-powering and dwarfing the other residences and businesses that have been in the neighborhood for decades. Additionally, the streets cannot sustain the increased number of cars that the new proposal projects. We want feet on the street. We want owner residents, who take pride in the rich history of this part of Portland.

The plan as it currently exists is not universally acceptable; however, it is a better alternative than the new proposal currently on the table. Please vote to reject this new proposal.

Thank you.



Allison Brown
President, India Street Neighborhood Association

Demetri Jordan

**PRE-APPLICATION MEETING
CITY OF PORTLAND, DEPARTMENT OF PLANNING AND DEVELOPMENT**

Project Name: Day House Date: March 14, 2012

People in attendance: Mark Gagnon - Alex
David White - Jim Sykes

Address of development: _____ Zone: _____

Lot Size: _____ Proposed Building Size: _____ sq. ft

Existing Use of site: _____ Proposed Use of site: _____

Description of Proposed Project:

Secured financing - Change use from rental -
minor - design revisions - City fees - assessed - contribution
fees - Bernstein Shur - talked w/ Jueg - Design & Look
Increasing - 94 - units - 145 - spaces - 6 - public
for retail - 2 - level - changing 1st level -
3-1-2 - 40 units - 52 - units - - 4' - into courtyard do foot print
doesn't change - (Hancock St)
Buildings - 2 - stays the same - "alley bldg" - footprint same
- Courtyd - simplify - entry ways to street + planters -
Potential Reviews Required¹: - revise plans for courtyard -> over

	Shoreland Zoning Stream Protection	Conditional use	Design Review	Historic Preservation	Replacement Housing	Site Plan Level I or II	Site Plan Level III	Subd	Zone Change Request	Street Extension 14-403	Site Location of Development	Traffic Permit DEP	Storm water Management DEP
Yes													
Possible													

Next Steps:

¹ Please note: this meeting is not a pre-approval of any ordinances. Any project must go through the appropriate reviews and receive permits from Portland before construction or reuse can begin. The meeting and notes are intended to outline the City processes that may apply to a proposal based upon the information provided at the meeting. Any changes to the information or proposal may change the development review requirements. Please check on-line for Portland's Land Use Ordinance and other information at www.portlandmaine.gov.

Signed plat has Rev. A-C -

* Amended plan - semi-circles - off plan -

- Screen wall encroachment - can you
eliminate -

- Bldg corner encroachment

David - limit of trenching work is st changed

driveway - apron ?

Cross-reference - or 3rd -
Book & Page

Question

E.3 - revised to reflect transformer -
- transformer reflected on ^{survey} B-1-2 B1-1
(does it need - E.3 -)

E.4 - - - - - different

(1) Sheet - Index.

- remove - planters in middle ROW
- 1/6 trees

(2) Boundary + Topographic Survey - stamped by
Surveyor

(3) Dendition Plan

- shows - Staging area across the st -

toll const

(4) Sheet 4 of 18 - Plat
- remove planters -

5 of 18 -

remove planters

- I count 16 streets
20 holes?

- calculate contribution

- Hancock St - crosswalk removed

* - site plan contributions - 1-7

9/10/15
deter. plat
for tree wall

5a -> get rid of Planter bed
5b

Detail 5-C - do according to DPS
- remove Hancock -
- trench detail - need to confirm
DPS

sheet 6/5 -

H St trees - 1 shown - planter
needs to go - return to
Street trees

7 of 17 - defects Steve & DPS

7A - of 18

- remove Planter - reduction in st
trees

7. Plans 7D - don't show encroachment
transformer -

8 - mid of Planters - st trees

9 - utility trench -

10 - revise landscaping plan -

11 - planters - 16 trees

Sheets

Barbara Barhydt - Revised comment for the Bay House aka The Village @ Ocean Gate

From: Marge Schmuckal
To: Barbara Barhydt
Date: Monday, June 11, 2012 2:14 PM
Subject: Revised comment for the Bay House aka The Village @ Ocean Gate

Newbury Street/ Middle Street/ Hancock Street - 20-E-009
2011-227 Amendment to the Conditional Rezoning
2012-466 Level III Site Plan
June 11, 2012 - Revised Comments

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 submission. It is my understanding that the City Council will be voting 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. The building height using the average grade information is 57' 8 1/4", which is well under the maximum of 74' allowed by contract.

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

Separate permits will be required for any new signage.

Marge Schmuckal
Zoning Administrator

Barbara Barhydt - Bay House Design Review

From: Barbara Barhydt
To: Smith, Nathan
Date: Thursday, May 24, 2012 2:35 PM
Subject: Bay House Design Review
CC: Jaegerman, Alex

Hi Nathan:

Alex told me you had questions about the design review for the Bay House and that you had a letter from Penny regarding an interpretation of what is applicable. I don't have a letter from Penny in the file, so could you forward it to me? I do not know what she was addressing.

The Bay House project was evaluated in the past reviews under the Eastern Waterfront Design Standards, which is a requirement of the Conditional Rezone agreement (under #2 Subdivision and Overall Site Plan, paragraph 2). I have assumed that the changes to the building would be looked at under those standards and this information presented to the Planning Board. I recommend that David White provide accurate renderings of what is proposed and compare with the approved design.

Again, please forward the letter you have from Penny and we can discuss further.

Thank you.

Barbara

8. **Bicycle Safety**

Bicycles are a key mode of transportation in Portland's transportation system as well as providing important recreation and fitness opportunities. Accommodations for bicycle traffic and safety should be designed into new and reconfigured streets and intersections. Bicycle racks should be installed along public sidewalks where appropriate.

B. Buildings/Architecture

Purpose

Design guidelines for buildings in the Eastern Waterfront Redevelopment Area encourage architecture that enhances the development of a mixed-use and marine intermodal transportation center, and is compatible with the surrounding neighborhoods. New construction should respect the historic character of Portland's waterfront, while representing the best elements of contemporary design.

Guidelines

1. Contextual Design

New buildings should be designed in response to their context and should be compatible with surrounding neighborhoods. Broadly stated, compatibility refers to the recognition of existing development patterns and characteristics, and a responsiveness in new building design that respects these established patterns. **The placement, height, massing, proportion, articulation, and materials** of new structures should encourage a vision that supports the idea that the Eastern Waterfront develop into an extension of the surrounding areas while establishing its own identity as a new urban neighborhood.

2. Building Composition

The combination of design elements will determine the character of new buildings and neighborhoods. While specific solutions for any given setting cannot be anticipated in a single set of guidelines, the following building characteristics can be used to guide visual compatibility of new development.

a. Placement

In general, buildings should be placed at the sidewalk with their primary entrances oriented to the street.

b. Height

Building heights should be compatible with surrounding development and neighborhoods. The attached Building Height Key Map provides a general direction for building heights in the Eastern Waterfront district. These Guidelines recommend that any future rezoning process for the Eastern Waterfront should be preceded by a building height analysis comparable to the Downtown Height Study for the B-3 Zone.

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.

d. Proportion

The façade proportions used in new development should be compatible with the existing development found in Portland's waterfront. While some buildings 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.

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.

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.

3. Pedestrian Environment

Development along new or existing public streets should foster a walkable and enjoyable pedestrian environment. New development should avoid large expanses of blank walls, should provide frequent street level entries, and should provide sidewalk amenities such as street furniture and lighting that encourage year-round pedestrian use. Buildings sited along Primary Streets should utilize traditional storefront design principles along the ground floor, and provide engaging displays and clear glazing to enhance the pedestrian experience.

4. Primary Entrances and Service Entrances

Primary entrances should open onto public sidewalks along the primary street frontage. Service entrances and loading facilities should be located at the rear or side of structures. Where buildings face more than one public street, service and loading circulation may be located along secondary streets where appropriate. Where no off-street options are available, loading and service entrances located along public streets should occupy the minimum space necessary and be compatible with the other uses of the street, including pedestrian activities, retail development, and traffic flow. The sharing of service circulation and loading facilities between buildings is encouraged.

5. Parking Structures

Parking structures should be compatible with adjacent uses and architecture in form, bulk, massing, articulation, and materials. The design of parking structures should create a visually attractive and active pedestrian environment by incorporating retail, commercial, and residential uses along all public streets.

a. Mixed-use Architecture

Parking uses and the appearance of parking structures should not dominate public streetscapes. All above-grade parking structures should include usable retail, commercial, and /or residential uses along street frontages to create a high quality urban environment. Parking structures on Primary Streets should have at least two stories of mixed uses integrated along the street frontage. On Secondary Streets at least one story of mixed uses should buffer the street.

b. Vertical and Horizontal Articulation

Visible diagonal ramps and non-horizontal parking plates should be screened from all visible angles whenever possible and not allowed on primary facades.

c. Lighting

Light fixtures installed in the interiors of parking garages should be fully screened from the exterior or utilize full cut-off shielding as defined in the City's Technical Standards.

6. Infill and Small Scale Development

Infill development should fill open space along existing streets to reestablish street wall continuity. Likewise, small-scale development without a directly abutting neighbor should be guided by adjacent development patterns as a means to incrementally fill empty portions of the streetscape and achieve compatibility with surrounding neighborhoods.

7. Historic Structures

Historically and architecturally significant structures and sites should be inventoried and protected from demolition and carefully rehabilitated in a way that is consistent with their original architectural intent. The challenge and opportunity is to adaptively reuse significant structures while retaining their historic character. New additions to historically significant buildings should be designed for compatibility with the original structure in size, composition and material and should result in the minimum necessary loss of original architectural material.

Note: Portions of the westerly section of the Eastern Waterfront are located in the Waterfront Historic District and are subject to the City's Historic Preservation Ordinance.

8. Civic Structures

Civic structures represent the public commitment to creating a high quality urban environment. Civic buildings should be easily distinguished by their quality, placement, and use of materials. Traditionally, civic structures in Portland (City Hall, Union Station, Customs House, Federal and County Court Buildings, among others) have used the highest quality materials and design to assign a sense of permanence and importance to their role in the community. Additionally, these structures relate strongly to the streets and open spaces where they are located, sharing their importance with their surroundings. The Eastern Waterfront will

hold a new transportation center in one of the most visible sites on Portland's waterfront. The proposed marine passenger terminal should meet the same high standard for design and construction as Portland's other great public buildings.

9. Marine Development

There are locations, specifically in the marine support areas, where development may have difficulty adhering to the building guidelines section above. Marine-dependent structures should be allowed to reflect their intended uses through the use of practical materials and straightforward design. Outbuildings, sheds and temporary marine-use structures should be sited and designed to minimize negative visual impacts. Through use of building placement, incorporation of design details, and use of landscaping and screening, designers should look for economical solutions to provide utilitarian marine structures with visual interest and character befitting their use.

C. Open Space and the Public Realm

Purpose

The character of public streets and sidewalks is the primary determinant of the quality of the public realm. The public realm is further defined and enhanced by the incorporation of quality open spaces. These guidelines aim to create comfortable, safe, accessible, and appropriately located open spaces to provide pedestrian interest and convenience. Open spaces can range in scale from building forecourts, to public trails, to public plazas and public parks. All open spaces should be accessible and barrier-free wherever possible. Landscaping, pedestrian amenities, outdoor furniture and lighting should be incorporated where appropriate. Opportunities for public art and historical references are encouraged.

Guidelines

1. Public Open Space and Plazas

The Eastern Waterfront will contain publicly owned and constructed open space. Generally associated with the water's edge east of the Atlantic Pier (Pier 2,) City-owned open space should provide opportunities for public enjoyment and use of the water and add value to public and private development.

a. Visual Accessibility

To ensure that open space is well used, it is essential that the space should be visible and easily accessible from public areas (building entrances, sidewalks, and trail). Open spaces should be oriented to maximize exposure to the harbor, views and sun.

b. Physical Accessibility

Open spaces should have direct access from the adjacent streets, sidewalks, and trail, should allow for multiple points of entry, and should provide for universal accessibility. They should also be visually permeable from the sidewalk and trail, allowing passersby to see directly into the space.

c. Buffering

Open space should be well buffered from moving cars so that users can enjoy and relax in the space. The space may be visible from streets or internal drives but should not be wholly exposed to them. "Outdoor rooms" that are partially enclosed with building walls, freestanding walls, landscaping, raised planters, or on-street parking buffers are encouraged.

d. Perimeters

The perimeter of public spaces should consist of active uses that encourage pedestrian traffic. Public use of the waterfront, such as the passenger terminal and small marinas, retail activities, cafes and restaurants, and high-density residential uses all provide context for open space.

e. Trees and Plantings

Plants used in landscaped areas should be of the highest quality and of sufficient quantity and scale to make a visual impact. Plantings should be selected and located so that their functional and aesthetic qualities can be maximized. Trees of reasonable caliper should be installed at a density adequate to provide shade, habitat, and visual interest to public open space and care should be taken that appropriate species are selected for the soil conditions. Adequate space should be given to each planting and adequate irrigation and drainage should be provided.

f. Amenities

Memorandum
Department of Planning and Urban Development
Planning Division



TO: Mayor Mavodones and Portland City Council

FROM: Penny St. Louis, Director, Department of Planning and Urban Development

DATE: June 8, 2011

RE: The Bay House, 113 Newbury Street

I have considered the approved 2009 site plan with respect to the new site plan standards and conclude that these standards do not significantly impact the 2009 Site Plan Approval for the Bay House nor render the development nonconforming.



Memorandum
Department of Planning and Urban Development
Planning Division

TO: Penny St. Louis, Director, Department of Planning and Urban Development
FROM: Barbara Barhydt, Development Review Services Manager
DATE: May 26, 2011
RE: The Bay House, 113 Newbury Street

A site plan approval may be extended to three years from the approval date provided that "... such extensions may not be granted if changes to the City's zoning ordinance would render the development nonconforming in any respect or if changes in the subdivision or site plan ordinance or in the Public Services Technical Standards Manual or Planning and Development Design Standards would otherwise significantly impact the approved site plan as determined by the Director of the Planning and Urban Development." City Code, sec. 14-526 (c).

The following sections of the 2010 updates to the Site Plan Ordinance and Technical and Design Manuals are the only new sections which were not previously applied to the approved Bay House plan. As described in more detail below, the following sections do not significantly impact the 2009 Site Plan Approval for the Bay House nor render the development nonconforming.

- Section 14-526 (a) 1(3) Public Transit Access: The Public Transit Access standards apply to projects with 20 or more dwelling units. This standard would not apply to the Bay House as the site is not along an existing public transit route on a principal local or minor arterial road.
- Section 14-526 (a) 1. (4) Parking: The Bay House is providing two vehicle parking spaces per unit and the City's zoning regulations only require one space per unit. The proposed parking exceeds the parking standard by more than 10%, so under the new 2010 regulations the Bay House would be required to do a parking analysis that demonstrates the number is appropriate for the proposed use. The new standard also "*encourages* Transportation Demand Management (TDM) strategies to be employed" where a parking analysis is required. A parking analysis was already conducted as part of the original and subsequent applications, and so this standard has been met. Although TDM strategies were not specifically employed, such strategies are not required to be implemented under the new 2010 standards.
- Section 14-526 (a) 1. (4) Parking: The new 2010 parking standard calls for the site plan to accommodate access and parking for two wheeled motorized vehicles. Bicycle parking meeting the City standard has been provided. Although specific spaces for two-wheeled motorized vehicles have not been identified on the approved plans for the Bay House, I do not think that this renders the development nonconforming as described in section 14-526(c).
- Section 14-526(2) 3. Street Trees: The new standard for street trees for multifamily units is one per unit rather than two per unit. This standard has been met since the Bay House is installing street trees along Middle, Newbury and Hancock Street, and is paying money into the City's tree fund since the project could not accommodate all the required street trees on site.

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- O:\PLAN\REZONE\Village Cafe Site\Amended Conditional Rezoning 2011\CCdirector5-26-11.docx



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- PERMITTING
- AIRPORT ENGINEERING
- SITE PLANNING
- CONSTRUCTION ADMINISTRATION

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. It appears that overhead utilities are proposed along 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 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.

4/11/12

Nathan Smith
Marc Gagan

Alex
Barbara

- rental project
- 90% - financing - 70% - financing - need 30%

TIF - financing

* - financial capability
- Commitment for financing -

* - 10 yrs - for infrastructure

* 82 → 94
- 1

- * Parking - drop level -
82
20
102
- lessens height - 5 ft - (get
- go to original parking (option for spaces)
- commitment to leasing

* Changes to facade & courtyard

* Underground conduits - $\frac{3}{4}$ of India St
\$289,000
- money is not there
- move from 10 ft - \$89,000
(\$167,000)

(Amendment to agreement)
- waiver versus - does this meet -

Barbara Barhydt - 113 Newbury Street

From: Michael Farmer
To: Barhydt, Barbara
Date: Friday, April 20, 2012 10:48 AM
Subject: 113 Newbury Street

I reviewed your draft memo and I have the following comments.

1. Hancock Street between Fore St. and Middle Street was built by the City in 2008, for the most part; final paving was probably completed the following year.
2. Bill Needelman's comments about the underground electric system are consistent with my memory and understanding.
3. My personal feeling is that the underground electrical system would be a wonderful infrastructure improvement for Newbury, Hancock and Middle Streets. I think the future Bay House property owners and the public would the aesthetic benefits from an underground electrical system. I think the City should try hard to make this happen.
4. Bill correctly pointed out that other private developers have already paid to build parts of the underground electrical system. I think the developer of the Ocean Gateway garage paid to install over 500 feet of underground conduits and related electrical equipment in Fore Street.
5. The developer's proposal to move the overhead electric wires to the other side of Newbury Street seems to be a "kick the can down the road" solution that does not come to terms with the aesthetic advantages of an underground electrical system.

Michael Farmer, Project Engineer
Portland Dept. of Public Services
55 Portland Street
Portland, ME 04101
phone: 207-874-8845
fax: 207-874-8852

Barbara Barhydt - Re: Fwd: Hancock St (Fore to Newbury)

From: Matt Doughty
To: Barhydt, Barbara; Margolis-Pineo, David
Date: Thursday, April 19, 2012 4:08 PM
Subject: Re: Fwd: Hancock St (Fore to Newbury)

Hi Barbara, here's the scoop! CMP confirmed.

>>> Matt Doughty 4/18/2012 10:28 AM >>>
Thank you Mike, that connects the dots for us.

>>> Michael Farmer 4/18/2012 8:31 AM >>>
Matt:

DPS built this one block section of Hancock Street. We installed the underground conduit bank in the southwest sidewalk and 1 new underground vault in the street as part of our project. I think the Marriot Hotel project installed additional underground conduits and another underground vault to serve their project. I am not sure who paid to pull the CMP wires; but my guess is that the developers of the Marriot and the new parking garage paid the bill. I think the developer of the parking garage also paid to construct the underground power system in Fore Street from Hancock Street to near India Street.

FYI, the plans for the underground power system in that area were drawn by CMP (Jeff Hanscom). They include extending the underground power system to, and around, the Bay House. I think I have a copy of these plans, which are probably 4 or 5 years ago.

Michael Farmer, Project Engineer
Portland Dept. of Public Services
55 Portland Street
Portland, ME 04101
phone: 207-874-8845
fax: 207-874-8852

>>> Matt Doughty 4/17/2012 3:02 PM >>>
Mike, any input here? Not sure if you were part of this project or not. Thanks!

>>> Matt Doughty 4/17/2012 2:47 PM >>>
Breanna,

Hope all is well. We have some major developers looking at building on a lot on Hancock St between Middle St and Newbury St. Near to that, we have another developer looking to build an addition to the recent hotel that went up on Fore St.

Tying these all together is the concept of buried utilities. To help drive this discussion - I need to know before Thursday if the utilities in Hancock St (between Fore and Middle) are buried. That particular area had a full road reconstruction when the Marriott Hotel went in.

I know it's a last minute rush request for info - any chance you could direct me to the right person?

Thanks!

Matt

Memorandum
Department of Planning and Development
Planning Division



To: Lee Urban, Planning and Development Director
Mike Bobinsky, Public Works Director

From: Bill Needelman, Senior Planner
Alex Jaegerman, Planning Division Director

Date: February 7, 2008

Re: Eastern Waterfront Electrical Distribution – Village Development

CC: Joe Gray, City Manager
Penny Littell, Associate Corporation Counsel
Kathi Earley, Engineering Services Manager
Todd Merkle, Public Works Inspections
Pat Finnigan, Assistant City Manager
Phil DiPierro, DRC
David Pineo, City Engineer
Barbara Barhydt, Development Review Services Manager

Introduction

With the many projects underway and planned for the Eastern Waterfront district, the design, layout, and responsibility for constructing adequate public utilities has become increasingly complicated – especially the electrical system. This memo summarizes the status of electrical infrastructure serving several projects centered along the Hancock Street right of way. The reason for summarizing this information stems from a request from the Village at Ocean Gateway developer to alter their approved utility plan and the need for the City to provide a solitary voice in responding to this request.

From the information assembled we are recommending at the staff level that we stay with the original plan to establish the electrical infrastructure in Hancock Street. Joe has asked this department to resolve this issue with the applicant. Please review the information below and provide your assessment (at the department head level) of the necessary course of action. We will provide a written decision to the applicant next week. Mike, when we met with Joe on this, he asked Public Works to investigate if there is any CIP money that could be reallocated to this project. If that is possible, we should consider what, if any, further contribution the City can make to this infrastructure.

Background

The Village at Ocean Gateway is one of seven permitted projects in the immediate area along the Hancock Street ROW: The Watermark condominiums (Riverwalk), The Ocean Gateway Garage (Riverwalk), The Residence Inn by Marriot (Ara Aftandilian), the extension of Hancock Street (City of Portland,) a Shipyard Brewery warehouse expansion (replacing space lost to the Marriot project), a proposed office building at 25 India Street (at the Fore Street corner, Riverwalk), and the Village at Ocean Gateway.

Additional anticipated projects in the area (but not yet approved) will share utility infrastructure with the above list including: the Jordan's Meats site, and the Maine State Pier.

Achieving a Redundant Underground System – Both a City and CMP Goal

With the many projects in the works, the City and CMP have two important opportunities: (1) to reduce the number of overhead lines in the area; and, (2) to provide service to city blocks from multiple circuits (redundant service) within the peninsula electrical system. Removing overhead lines has urban design advantages as well as providing greater flexibility in siting buildings, which need separation away from overhead lines. Redundant service provides system stability and reliability advantages to the properties served. From a meeting with CMP engineering staff held on February 5, 2008, the upper Hancock Street link from Middle to Newbury Street is an important link in this system.

CMP Design and Allocation of Costs

Each of the approved projects above showed a utility plan based on underground electrical lines. Unfortunately, CMP will not review projects until approvals are in hand, and only then will they authorize the design of an electrical distribution system serving the site. They will follow City guidance regarding some aspects of the system (i.e., use of under-ground versus over-head lines) but CMP designs the system. Based on the CMP design and a complicated PUC-dictated billing system, CMP then allocates the cost of installing the wires, switches, transformers, etc to the developer. When multiple developers are incrementally adding to and drawing from a new system, the first developer needs to pay for 100% of the initial CMP installation costs. Later developers utilizing the initial system will, through CMP, compensate the initial developer according to a prorated “reallocation” formula based on the number of *meters* (customers) on the site. In simplified terms, the more meters, the higher the cost – regardless of the cost of installation. This system is highly disadvantageous to multifamily residential projects, but its application is beyond the City's control. (The Village development will have +/-84 meters in their first phase – while the Marriot will have 2 meters.)

As the first project in the ground, the Ocean Gateway Garage (5 meters) paid a considerable amount of money to bury lines in Fore Street and establish the first segment of a system intended to travel up the Hancock Street ROW to then serve both the Marriot and the Village. One should note that the Ocean Gateway Garage could have been served by a less expensive system (from India Street) were the developers not compelled, by CMP, to construct an increment within a larger, more stable system. This redundant system is part of the CMP “plan” for development in this area.

Village Request

The Village project was approved with a new underground conduit to be installed up Hancock Street (from the end of the City project at Middle) connecting to new lines in Newbury Street. The Village project would be served from Newbury Street, and the project is also proposing to bury existing overhead lines in Newbury Street along the frontage of the project (necessary to separate new “primary” lines from buildings.) The existing service in Newbury cannot now provide adequate power to the project and requires an upgrade from “secondary” to “primary” service (from Hancock Street).

The Village developers request an amendment to the above plan to save costs. They propose to upgrade Newbury Street to “primary” service from overhead lines in nearby Mountfort Street (via Federal Street to Hancock Street.) This would require additional poles in Newbury Street as well as pole and bracket upgrades to Federal Street poles.

According to CMP, there would be little to no *construction cost* savings achieved by the Village in taking this approach. The savings would come from avoiding the *reallocation costs* that would return to the Ocean Gateway Garage.

One should note that if the Village developers (assuming a denial of their request) construct the system as approved, later developers will pay connection fees to CMP that will be reallocated *to the Village*. This reallocation process is in effect for twenty years, so the likelihood of the Village being compensated is great. Given the interconnected (and mutually advantageous) nature of the system, these later connections could extend as far as the Jordan’s site and the Maine State Pier. As with the Ocean Gateway Garage, a portion of upfront costs bourn by the Village will be incrementally returned from later development.

Staff Recommendation

Planning, Legal, and Public Works staffs recommend that the Village at Ocean Gateway construct the underground electrical system within Hancock Street, as previously approved. As stated, we are looking for a position to take to the applicant next week. If we are all on the same page here, we can resolve this with the applicant.

City Council

May 21st 1st Reading

June 4th 2nd Reading

June - 12th PH - site plan

May 22nd

- OK w/ finished coat / pave Hancock
- don't want to go into Hancock
- cut across to Newbury st - for electrical underground conduit in Newbury
- Pave - mill + top coat / full depth w/ trenches
- Middle St - is it a moratorium
- finish coat for middle

electrical lights in Hancock

- paving coat finishing on 3 sides

\$182,000 - underground -

- (\$100,000) - CMO differential

- add \$68,000 - if conduit on

- 20,000 less than if

- taking down poles - down middle

take off \$43,000 - do paving themselves / middle st can out - mill, grind + top coat

Barbara Barhydt - FW: Bay House/ Middle Street + Newbury Street Revisions

From: "Will Conway" <wconway@sebagotechnics.com>
To: <BAB@portlandmaine.gov>
Date: Sunday, August 26, 2012 8:42 AM
Subject: FW: Bay House/ Middle Street + Newbury Street Revisions
CC: <mgagnon@landmarcconstruction.com>, "James Seymour" <jseymour@sebagotech...>
Attachments: image001.png; 05109AUG21A.PDF; 05109AUG21B.PDF; 05109WTC.PDF

Welcome back Barbara !

Neither Alex nor Jeff responded to this email...I'm sure you have lots to catch up on, but as soon as you can respond to us would be a huge help as we are closing in on the 9/22 required construction start date, thank you,

Will

From: Will Conway
Sent: Thu 8/23/2012 10:29 AM
To: aqj@portlandmaine.gov; jst@portlandmaine.gov
Cc: mgagnon@landmarccorp.com; dmwarch@comcast.net; nsmith@bernsteinshur.com; James Seymour
Subject: Bay House/ Middle Street + Newbury Street Revisions

Hi Alex and Jeff,

As you are aware we have been working with Barbara to address a condition of approval, per Jeff's memo, to add green space near the Middle Street entrance to the garage. Attached is our proposal, which includes the addition of four (4) raised planters in this location(See 05109WTC.pdf) . These would be constructed with granite curbing, elevated 6" above the sidewalk. Within the planters we are adding to the project additional trees (Honey Locust and Magnolia) as well as groundcovers and ornamental grasses. We think this additional detailing softens the garage entrance nicely and visually differentiates the function of this area from the storefront streetscape on either side of the project entrance. Marc and I met with Barbara before she left on vacation and she liked this plan, however, she had not heard back from Jeff at that time.

The other graphics address a change the owner needs to make respective to the plaza entrance on Newbury Street. We had proposed an underground transformer in this location, which is unfavorable regarding installation cost and long term maintenance, therefore, we now propose an above grade, pad mounted transformer. When we met with Barbara, she had trouble visualizing this area and requested that we prepare an elevation view, which is attached for your review. When we met with Barbara, the sketch we showed her at that time suggested a wrought iron fence around the transformer; she was not convinced that it afforded enough screening. In this revised design, we now propose a masonry wall around the transformer, except at the front, where a wrought iron swing gate would be located (this due to CMP clearance requirements at the front of the unit). We worked closely with Architect David White on this new design, which is coordinated in scale and rhythm with the architectural masonry in this area. The stair to the plaza is widened to 5 feet, and the "pocket park" niche has been widened, where we propose a raised planter and bench to compliment the streetscape and plaza entry.

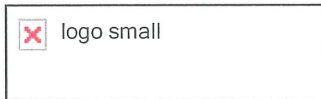
This message is flagged urgent, as the design team is rushing to respond to remaining conditions of approval, so that the owner can meet the deadline to begin construction by September 22nd. The transformer revision

requires the architect and structural engineer to modify the parking level as well, and we're running short on time with the building/ foundation permit. Essentially, we can't wait for Barbara's return to move forward, and are asking for your review in her absence. If you would like to meet with us, just let me know.

Thank you,

Will

William T. Conway, RLA, LEED-AP
Vice President, Landscape Architecture

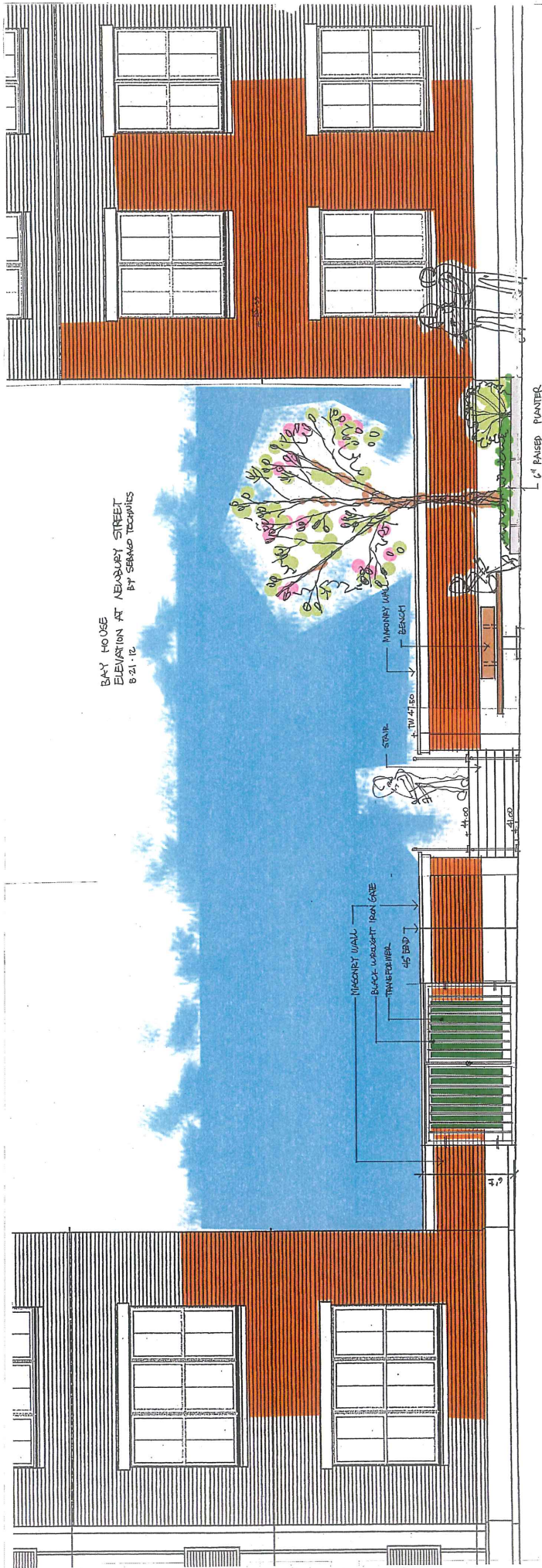


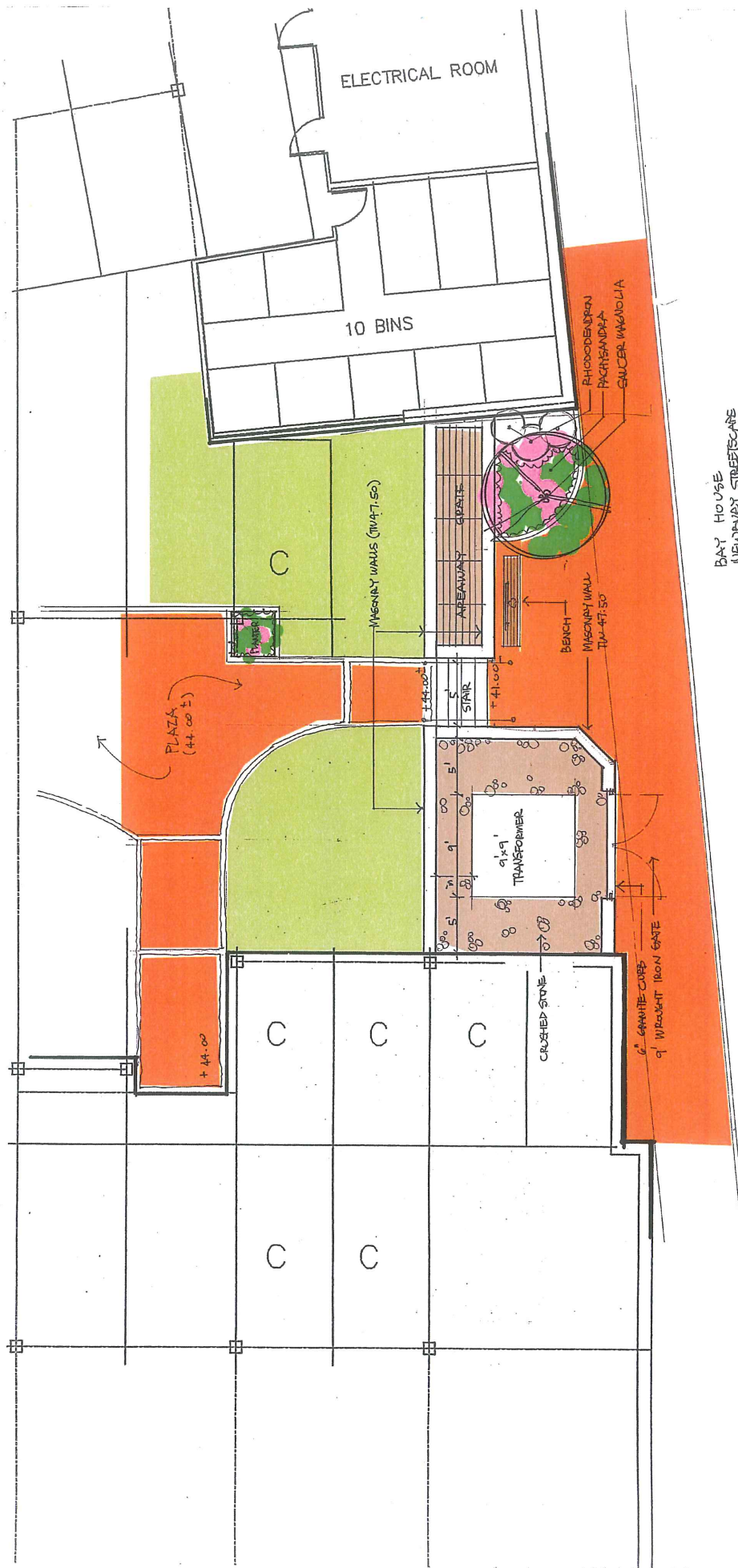
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BAY HOUSE
ELEVATION AT NEASBURY STREET
BY SERGIO TEJEMILS





ELECTRICAL ROOM

10 BINS

RHODODENDRON
PACHIRANDRA
GAUCER MAGNOLIA

MAGNOLIA WALL (TYP. 71.50)

APREMIARY GRATE

BENCH
MAGNOLIA WALL
TYP. 47.50

PLAZA
(44.00 ±)

TRANSFORMER

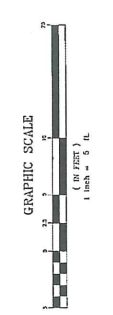
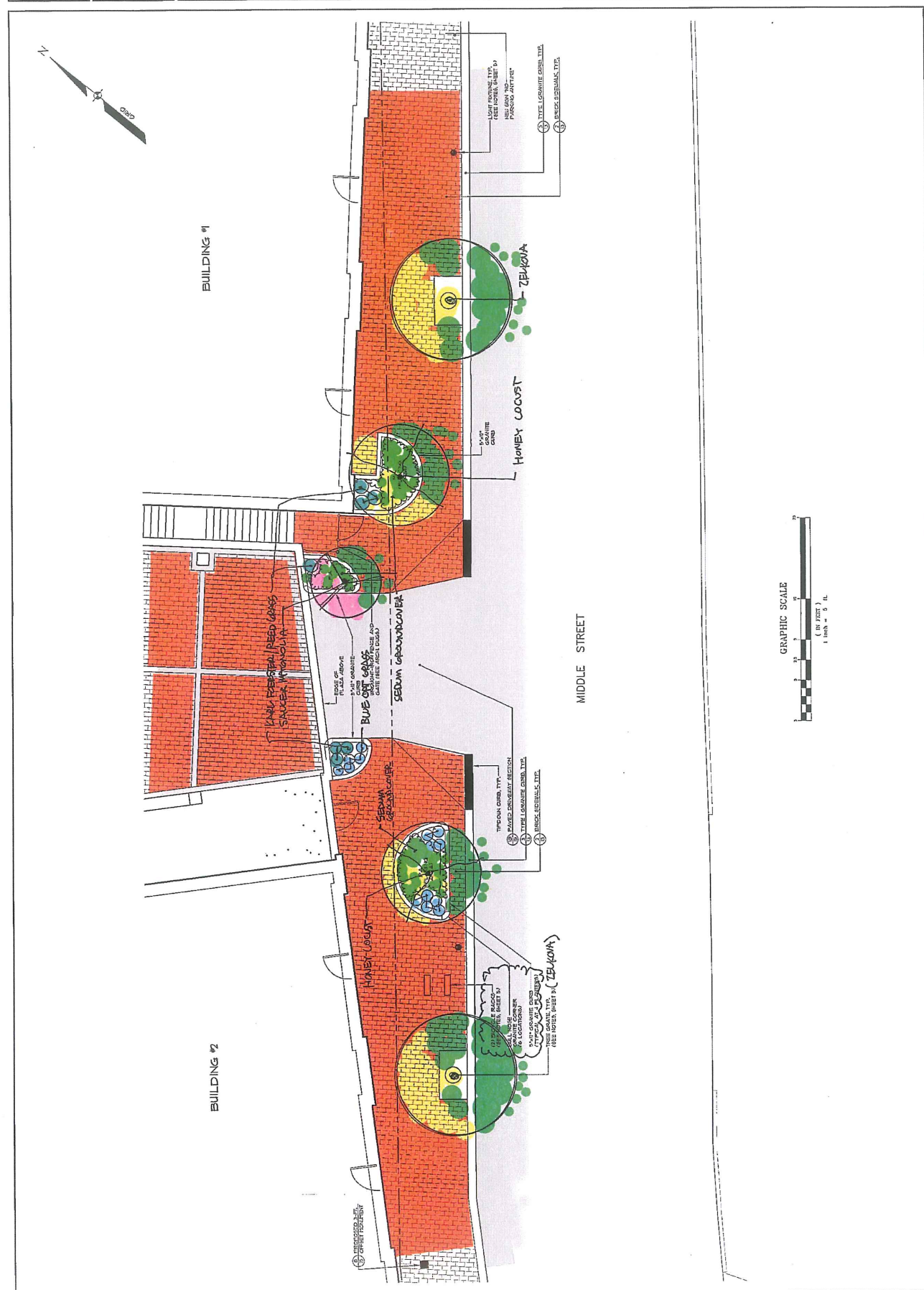
CRUSHED STONE

6" GRANITE CURB
OF WROUGHT IRON GATE

BAY HOUSE
NEWBURY STREETCARSE
BY SERGIO TECHNICS
8/21/12

REV.	BY	DATE	STATUS
B	JRS	05-10-12	REVISED PER CONDITIONS OF APPROVAL
A	JRS	05-11-12	ISSUED TO CITY FOR REVIEW
1	JRS	05-10-12	DATE

APPROVED ON BEHALF OF THE ARCHITECT: [Signature]
APPROVED ON BEHALF OF THE CLIENT: [Signature]



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.

James Seymour

From: James Seymour
Sent: Tuesday, August 14, 2012 9:34 AM
To: 'Barbara Barhydt'; 'Danielle West-Chuhta'
Cc: 'Nathan Smith'; Saucier, Phil; 'Tom Hanson'; 'Gagnon, Marc'; '05109@sebagotechncs.com'
Subject: Recording Plat for BAYHOUSE - (Village at Ocean Gate LLC)
Attachments: 3rd Amend SB.PDF

"The Bay House"
 Newbury - Hancock
 REV C 8-14-12

Barbara,

This is a communication responding the comments prepared by Planning Staff in review of the Recording Plan for Bay House.

I though it would be easiest if I responded to each of the comments in the order they were received, to make it clear for all to see what was revised, as there is a fair amount of information on the plans. I will be dropping the plans (mylar and paper) copies off within the next 1/2 hour, and thought this would be good for all to see and have a copy for their records of what is submitted. Please review, but we feel we have captured all that was requested, such that the Planning Board can sign this evening.

Below are the assembled comments and our responses in red:

Review Comments for Bay House Plat

- 1) The plat lists 82 condominium units in each building. It also refers to this as phase I. There are no phases in this project and the numbers are not correct. Also, I believe the TIF requires that the units be apartments. Phase I references have been removed and note corrected/ and noted in the total # of Apts/Condominiums.
- 2) The wording on the conditional rezoning needs to cite both of the amendments to the CZA. The plat is just citing the one in their general notes and then in the Planning Board conditions they are citing to the Third Amended CZA. This is inconsistent. The reference has identified the 3rd Amended CAZ with recording information in the general notes and matches the Conditions of Approval note reference.
- 3) Under General Notes, paragraph 5. I believe the land area is incorrect as it is listed with two phases. There is no second phase to this project. Phase references have been removed.
- 4) Under General Notes, paragraph 7, it lists the former conditional rezoning agreement and the book and page of this in the registry of deeds. This needs to be updated with the current agreement and recording information. Book and Page recording information for the 3rd amended CZA has been added.
- 5) Under General Notes, paragraph 7 (b), it lists the maximum residential density to be 176. The maximum residential density is 110. Please check your zoning information against the conditional agreement. Density of residential units has been revised to 110 and checked against the CZA.
- 6) There is a proposed sidewalk easement to the city shown in Detail A. I think the easement language should be submitted for review and hopefully the easement could be recorded along with the plat. The detail easement for the sidewalk has been provided in description and plan exhibit for staff review under separate transmission.

RE: The Bay House - 3rd Amended Subdivision Plat Rev C 8/08/12 by William Clark PLS

✓ OK 8/14/12 WBC

1. Please show State Plane Coordinates for street line corners of Hancock St @ Middle St, and Hancock St @ Newbury St. Coordinates have been added as requested.

✓ OK

2. Please set property corners where possible along southwesterly boundary. Irons at the lot corners have been added where physically possible.

✓ OK

3. Please label tax map/block/lot numbers for adjoining parcels which border India Street. There are references to block and lot numbers for easements. Adjoining parcel property information and deed references have been updated and added to the plan as requested.

✓ OK

4. Benchmark. Hydrant at southerly corner India Street and Middle Street. Suggest changing text to Temporary Benchmark and adding another Benchmark/Temporary Benchmark for checking in to. A permanent benchmark has

← ✓ OK

8/14/2012

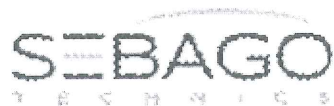
been established on the street monument on the southwestern corner of Hancock and Middle Street, and A temporary benchmark has been established and verified for the hydrant (replaced in 2009) on India Street. OK

5. Location Map. Does not show Hancock Street connecting with Fore Street. A new location map has been updated on the plan shown all locus streets to the property. ✓OK

6. **On Site Plans.** Please add the granite survey monuments to be set or the site/building contractor might not set them. We will add the monuments to be set to the site plan as requested. ✓OK

Thank you very much for your assistance and responsiveness.

James R. Seymour P.E.
Project Manager



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8/14/2012



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LETTER OF TRANSMITTAL

TO Barbara Barhydt
City of Portland Planning Division
4th Floor City Hall, 389 Congress St
Portland, ME, 04101

DATE: 8-8-12	STI Project 05109
ATTENTION: Planning Staff	
RE: Bay House Subdivision Plan	

WE ARE SENDING YOU Attached Under separate cover via _____ the following items:

- Shop drawings
 Prints
 Plans
 Samples
 Specifications
 Copy of letter
 Shop drawings

COPIES	DATE	NO.	DESCRIPTION
5	8/8/12	4/17	Subdivision Plan for Review by Staff


THESE ARE TRANSMITTED as checked below:

- For approval
 Approved as submitted
 Resubmit _____ copies for approval
 For your use
 Approved as noted
 Submit 5 copies for distribution
 As requested
 Returned for corrections
 Return _____ corrected prints
 For review and comment

 FOR BIDS DUE _____
 PRINTS RETURNED AFTER LOAN TO US

REMARKS: Please find attached the Subdivision Plan for the Village at Ocean Gate LLC. Bayhouse project. We have submitted the Subdivision plan for staff review of the notes, conditions of approval, deeds, and references to the Conditional Zone. Our objective is to have this reviewed by the staff such we are certain of the plan contebnts and that we can have the mylars signed at the August 14th Planning Board meeting. Thanks for your assistance.

COPY TO: _____

Signed: 

If enclosures are not as noted, kindly notify us at once.



75 John Roberts Road-Suite 1A
South Portland, ME 04106-6963

Phone (207) 200-2100 FAX (207) 856-2206

LETTER OF TRANSMITTAL

DATE: 8/14/12	STI Project 05109
ATTENTION:	
RE: Bay House Subdivision	

TO Barbara Barhydt
Planning Dept
City Hall 4th Floor
389 CONGRESS ST.
PORTLAND, ME

WE ARE SENDING YOU Attached Under separate cover via _____ the following items:

- Shop drawings Prints Plans Samples Specifications
 Copy of letter Shop drawings _____

COPIES	DATE	NO.	DESCRIPTION
2	8/14/12	4/17	Mylar Copies (3rd Amended Subdiv. - The Bay House
2	"	"	Paper Copies " " " "
1			E-mail Transmittal - Correspondence to Review Comments

THESE ARE TRANSMITTED as checked below:

- For approval Approved as submitted Resubmit _____ copies for approval
 For your use Approved as noted Submit 2+2 copies for distribution
 As requested Returned for corrections Return _____ corrected prints
 For review and comment _____
 FOR BIDS DUE _____ PRINTS RETURNED AFTER LOAN TO US

REMARKS: Let me know if you have any questions.

Thank you for your assistance.

RECEIVED

AUG 14 2012

City of Portland
Planning Division

Signed: [Signature]

COPY TO: _____

If enclosures are not as noted, kindly notify us at once.

Barbara Barhydt - Bay House : Middle Street Transformer Revision- For st
- elevations - propose

From: "Will Conway" <wconway@sebagotechnics.com>
To: "Will Conway" <wconway@sebagotechnics.com>, "Barbara Barhydt" <BAB@portl...>
Date: Monday, August 13, 2012 3:15 PM
Subject: Bay House : Middle Street Transformer Revision
CC: <mgagnon@landmarccorp.com>, "James Seymour" <jseymour@sebagotechnics.com...>
Attachments: 05109T1.PDF; 05109WTC.PDF

Hi Barbara,

As requested, attached are two drawings for review in advance of the 3:00 meeting this Thursday.

The one on the right (05109WTC.pdf) pertains to Jeff Tarling's condition of approval to add landscape elements at the Middle Street garage entrance. This drawing shows the proposed addition of four (4) planters, constructed of granite curbing raised approx. 6 inches above the sidewalk and planted with a varied palette of tree species, ornamental grasses and groundcovers. We also shifted the location of the bike racks and have changed the specification to match City standards (Dero Downtown Rack). We think this compliments that area of the streetscape and this entrance to the project.

The second (05109T1.pdf) drawing reflects a request that Marc has to replace the below grade transformer on Newbury Street with an above ground unit. This is due to long term maintenance issues with a below grade installation and limited space within the street due to other utilities in that location . We have carefully considered the aesthetic aspects of this proposal, and we propose adding some detailing (wrought iron fencing, raised curbed planters, groundcover) , also with a bench and complimentary raised curbed planter with a tree and groundcover to complete a unified streetscape . Note as well that the retaining walls in this location (the plaza is about 3 feet above the Newbury sidewalk) will have brick veneer and wrought iron guardrails , another very nice streetscape element.

The raised curbed planters are a streetscape element I've discussed with Jeff Tarling(he has had good experiences with these elsewhere in the City) . Today at our meeting both CMP and Mike Farmer were comfortable with the transformer proposal ; these drawings will be included in the upcoming submittal, so we have a consistent look throughout the project.

I've copied Jeff with this message and we look forward to seeing you on Thursday.

Will

William T. Conway, RLA, LEED-AP
 Vice President, Landscape Architecture



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Barbara Barhydt - RE: Scanned from 4thflr755 09/12/2012 17:26- Easements Bay House

From: "James Seymour" <jseymour@sebagotechnics.com>
To: "Barbara Barhydt" <BAB@portlandmaine.gov>, "Nathan Smith" <nsmith@bernst...>
Date: Friday, September 14, 2012 7:43 AM
Subject: RE: Scanned from 4thflr755 09/12/2012 17:26- Easements Bay House
CC: "Tom Hanson" <thanson@bernsteinshur.com>, "Alex Jaegerman" <AQJ@portland...>

Barbara,

I am available most of the morning to go over these and any other subtle changes to the plans. The issue and changes are a result of many opinions and suggestions from reviewers which don't always get captured for everyone's knowledge. I have responded or questioned each listed below.

I have just compared the signed subdivision plat with the proposed Fourth amended plat. Here are my comments:

1) The fourth amendment should reference that the third amended plat that was signed by the Planning Board and include the book and page of that recording. I know it has not been recorded yet, but we need to do this in a sequence. Are you suggesting that we record the 3rd amended, and then reference the forth amended? Or just leave a block for the third amended recording data to be filled in prior to recording the forth. It don't understand how I can include thirds recording data for reference, to the forth, when the third has not been recorded. Nathan may need to step in here on this one.

2) The landscape planters are shown in the Middle Street sidewalk and I believe those were to be removed from the final plans. I have not had an opportunity to compare the plat with the final set of plans, but it should not be on the amended plat. The planters will be removed from the final plat along with the bike racks in the street ROW.

3) The plat shows an encroachment of the screening for the transformer. I don't recall discussing that earlier this week and I would like to see that fence pulled back to avoid an encroachment. It looks like the corner has been rounded, could it go at a diagonal? We are discussing the subtle change of this transformer enclosure wall with the structural designers, of 1 SF, to see if we can clip the corner off to eliminate the minor encroachment.

4) The limit of the street work to include utility trenching and pavement reconstruction on the signed plat includes the full intersection of Hancock and Newbury. The amended plan shows a trench. I spoke with David Margolis-Pineo and it was his understanding that the work in this intersection was to be done as shown on the signed plat. It seems as though we only have one trench crossing the intersection for the underground power, and that the water trench and pipe has been replaced up to the row limits of Hancock St and Newbury. It seemed to us redundant to repave and repair the surface when the City will be conducting a full reconstruction of Hancock Street and likely regrading and box cutting the intersection. This seems like it will fall more into the requirements of Hancock St. reconstruction. And that our contributions should be made part of that repair.

5) There are few other items shown on the amended plat that are not on the signed plat, such as a driveway apron on Newbury Street, which appears will be reconstructed and a catch basin or something (unlabeled) on Middle. The driveway apron on Newbury to be replaced was a recommendation from DPS per a site walk we had with them, as that improvement is the result of a curb cut to nowhere that they wanted replaces with vertical curbing.

6) The changes I saw in the notes had to do with the survey. This is correct.

7) The paper plan and the mylar do not line up. The paper plan seems stretched, even the scale bar is longer

than the one on the plat. I assume this will be rectified when it is printed on the mylar, but it was not lining up for review. We assume that this is the result of printer settings using the conveyance of pdf files. The file was sent to Nathan who printed out the drawing, if the delivery or receipt of the drawing did not match the original scale some scaling to fit can occur which throws the scaling off. We will print plans from our office and make sure the plan sets are accurate to the scale on the drawing. The Cadd settings and scale have not been altered.

I intend to continue reviewing the plans tomorrow. Thank you for the list of changes from Jim Seymour. I have forwarded those to the reviewers in hopes of making it easier for them to identify the changes. I will note that the changes to the landscaping plan are not shown on the plat.

Thank you.

Barbara

>>> Nathan Smith <nsmith@bernsteinshur.com> Thursday, September 13, 2012 4:41 PM >>>

Even if we met at 10 with Sebago we could possibly wrap up the Site and Subdivision Plans and any other Civil Plan Changes under their control. If the first two are done we could at least get the License going and hopefully develop a short list of open items and anyone from whom we need final comments. Sounds like the Construction Management Plan meeting needs to happen Monday. It shouldn't take long but needs to be a priority.

Nathan Smith

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From: Barbara Barhydt [mailto:BAR@portlandmaine.gov]
Sent: Thursday, September 13, 2012 4:30 PM
To: Nathan Smith; mgagnon@landmarccorp.com; Danielle West-Chuhta
Cc: Tom Hanson; Alex Jaegerman; James Seymour; WillConway
Subject: RE: Scanned from 4thflr755 09/12/2012 17:26- Easements Bay House

Hi all -

I have a meeting at 11 and I don't know if I can gather the others at 10. I know Tom Errico was going to get me his comments tomorrow, but I don't believe he will in Portland on Friday. He would be essential to have a meeting on the construction management plan. All the participants in public services are gone for the day, so I cannot confirm their schedules.

I will see what I can do, but I cannot promise a meeting right now.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Nathan Smith <nsmith@bernsteinshur.com> Thursday, September 13, 2012 4:15 PM >>>

Sebago needs to explain. I think a meeting is essential ..is tomorrow morning possible? 10? 11? We might first address any Plan Questions then the Construction Management Plan. From our side we need Marc, Will and Jim and me. I am free from 10-1..others?

Nathan Smith

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From: Barbara Barhydt [<mailto:BAR@portlandmaine.gov>]
Sent: Thursday, September 13, 2012 4:07 PM
To: Nathan Smith; mgagnon@landmarccorp.com; Danielle West-Chuhta
Cc: Tom Hanson; Alex Jaegerman; James Seymour; WillConway
Subject: Re: FW: Scanned from 4thflr755 09/12/2012 17:26- Easements Bay House

Hi:

I have just overlaid the signed mylar over the amended paper copy and it is not lining up. Even the graphic scale does not line up properly. Can anyone explain why there is this discrepancy? I was looking for consistency and changes.

Thank you.

Barbara

Barbara Barhydt
 Development Review Services Manager
 Planning Division
 389 Congress Street 4th Floor
 Portland, ME 04101
 (207) 874-8699
 Fax: (207) 756-8256

bab@portlandmaine.gov >>> Barbara Barhydt Thursday, September 13, 2012 3:42 PM >>>
 Hi Nathan:

I am trying to get the comments and I need to confirm that my past comments were addressed as well. I have not heard a response from questions on the glazing.

Questions are being raised regarding the construction management plan. David Margolis-Pineo just sent me an e-mail recommending that we set up a meeting to discuss this plan. Tom Errico is in Boston today and he will be getting me his comments on the construction management plan tomorrow. John Peverada asked the following:

- They state the construction fence will be at least a foot off of the curb lines Is that a foot into the street or a foot onto the sidewalk ?
- Since the fence will be at/near the curb line, the entire windrow from plowing will be in the street. Will they be required to provide snow removal to maintain parking on both sides of the street ?
- Where are the contractors employees parking ?

Jeremiah Bartlett at DPS wants more information on the potential one-day closure of Middle Street and the potential impacts that might have to adjacent operations/businesses.

I have not had an opportunity to look at the amended subdivision plan.

I am forwarding comments to you as I receive them.

Thank you.

Barbara

>>> Nathan Smith <nsmith@bernsteinshur.com> Thursday, September 13, 2012 3:25 PM >>>

Barbara,

I understand Jim Seymour is addressing Dave Pineo's comments you forwarded this am. I think we have addressed Danielle's unless she has others. We are waiting for any final comments from Tom Errico, Steve Bushey, the Fire Dept and you. As soon as we have final comments Sebago will incorporate any final changes, get copies to you and deliver the Amended Site Plan and finally the 4th Amended Subdivision Plan for signature and recording. Finishing the latter two are necessary(along with an insurance certificate) for Danielle to be in a position to get the City License signed so we can record it and close on the loan..and thereby get the Letter of Credit and other funds to be paid to the City.

Does this sequence make sense to you?

Nathan

Nathan Smith

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From: Danielle West-Chuhta [<mailto:DWCHUHTA@portlandmaine.gov>]
Sent: Thursday, September 13, 2012 10:16 AM
To: Nathan Smith
Cc: Barbara Barhydt
Subject: Re: FW: Scanned from 4thflr755 09/12/2012 17:26- Easements Bay House

Ok, thanks. I am good on those two items now.

Danielle

>>> Nathan Smith <nsmith@bernsteinshur.com> 9/12/2012 5:29 PM >>>

Danielle,
Attached are copies of the Sidewalk Easement and the Access Easement as recorded and as required by the Bay House Approvals.
Nathan

Nathan Smith

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Barbara Barhydt - PPlan Changes

From: Nathan Smith <nsmith@bernsteinshur.com>
To: Barbara Barhydt <BAB@portlandmaine.gov>
Date: Thursday, September 13, 2012 4:22 PM
Subject: PPlan Changes

I asked Jim Seymour for a list of changes on the plans and got the following yesterday:

“Changes to the plans per the conditions of approval were noted in the letter sent to Barbara dated August 28th. Recent changes resulted from Newbury street ROW movement.

Other changes are:

1. The Transformer change
2. The underground detention under the garage slab. We replaced storm chambers with ADS pipe detention system which provides more protection and strength, and retains the same volume of runoff.
3. The Middle St design was revised to address building entry elevations and existing curb elevations, and deal with conflicts of utilities in the street.
 - a. Basin to basin connection to alleviate congestion of manholes due to existing utilities in the middle sector of the street.
 - b. The storm drain line to act as underdrain so we don't have to rip up existing curb and sidewalk on opposite side
 - c. Our connections into the storm drain with cleanouts at the garage entry.
 - d. revisions of street grades to address cover issues, maintain existing curb reveal and work with our necessary building entries.
4. Regrading of Hancock Sidewalk to address ADA access issues near the corner.
- 5 Slight adjustment of the handicap ramps to address concerns of 4 feet sections of curbing.
6. Alignment of crosswalks per meeting with Bruce H. from the City. (We forgot to remove on one plan)
7. Reconfiguring access during and following construction to Pearl Properties from Newbury Street.
- 8 . Reconfiguring landscape islands to meet Arborist request for raised islands.”

Nathan Smith

Bernstein Shur
 100 Middle Street
 PO Box 9729
 Portland, ME 04104-5029
 207 774-1200 main
 207 774-1127 facsimile
 nsmith@bernsteinshur.com
 www.bernsteinshur.com

Portland, ME | Augusta, ME | Manchester, NH

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The final approved set of plans will need to include all of the building elevation plans as well. If there are any changes to those plans since the project was approved in June, then those plans (one hard set and a digital set), must be submitted for review.

I have not received a construction management plan, so that needs to be submitted for review. This may necessitate revisions, so the plan should be submitted as soon as possible. In this case, please submit 2 hard copies and a digital set.

Please submit a breakdown of all of the financial contributions. I came up with a higher figure than you have submitted, so please I would like to see how the number \$62,600 was calculated.

I will forward comments as I receive them, but we need the plans in order to conduct the reviews.

Thank you.

Barbara

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

Barbara Barhydt - Re: Referrals to contact regarding the permitting process

From: "Jared A. Clark" <jared1007@maine.rr.com>
To: Barbara Barhydt <BAB@portlandmaine.gov>
Date: Tuesday, September 04, 2012 4:53 PM
Subject: Re: Referrals to contact regarding the permitting process

Barbara,

Thank you for following up. When might you and Alex be available this next week except for Thursday?

Jared

On Sep 4, 2012, at 4:20 PM, Barbara Barhydt wrote:

Hello Jared:

I am checking back with you to see if you want to meet soon. I know you had inquired at the beginning of August, but we never set a date. Just let us know.

Thank you.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov >> <jared1007@maine.rr.com> Thursday, August 09, 2012 1:13 PM >>>
Thank you Barbara.

Jared

---- Barbara Barhydt <BAB@portlandmaine.gov> wrote:

> Hi Jared:

>

> Attached is a list of potential contacts. There are six names for your use. I think all of them will give you their honest opinion. They have had both positive experiences and difficulties at times. I provided you with phone numbers and e-mail addresses.

>

> I have not seen the separate e-mail that you refer to, but Alex is on vacation starting this Friday for the following week. He may come in on Thursday of next week. I am on vacation the following

week. I may need to take Monday, August 27th off as well.

>

> Hope you are enjoying the summer. It has been very busy here and the summer is moving along quickly.

>

> Thank you.

>

> Barbara

>

>

>

>

> Barbara Barhydt

> Development Review Services Manager

> Planning Division

> 389 Congress Street 4th Floor

> Portland, ME 04101

> (207) 874-8699

> Fax: (207) 756-8256

> bab@portlandmaine.gov>>> <jared1007@maine.rr.com> Tuesday, August 07, 2012 11:17 AM

>>>

> Alex and Barbara,

>

> I hope you are having a good summer. From newspaper reports of various development matters it would appear to be a busy one.

>

> I mentioned that I would like to meet with at least four people who have had the opportunity to go through the permitting process to obtain the benefit of their perspectives regarding their experiences. I was hoping for at least two whom you would characterize as having had a substantially positive experience and two whose experience they would likely characterize as "could have been better."
> Have you had the opportunity to identify at least four such individuals/companies and their respective contact information?

>

> We also need to get together again for continuation of our discussions. In separate correspondence I suggest possible meeting dates and times. Are there dates you would suggest I avoid due to your other commitments?

>

> Thank you for your assistance.

> --

> Jared Clark

> Government Consulting Group

> 6 Polliwog Lane

> Gorham, ME 04038

> 207-222-2008 Office

> 207-216-7831 (Cell)

--

Jared Clark

Government Consulting Group

6 Polliwog Lane

Gorham, ME 04038
207-222-2008 Office
207-216-7831 (Cell)

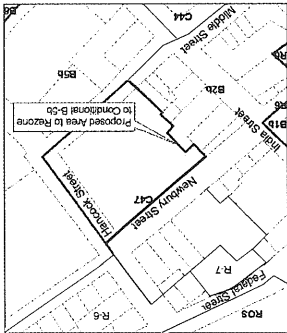
**IMPORTANT NOTICE FROM PORTLAND PLANNING BOARD
TO RESIDENTS AND PROPERTY OWNERS IN THE VICINITY OF
112 NEWBURY STREET**

WHAT: The Planning Board will hold a public hearing to consider a request for an amendment to the conditional zone agreement (C-47) for the Bay House at 112 Newbury Street to permit a ten year payment plan for the \$200,000 community contribution designated for the extension of Hancock Street. The applicant is The Village at OceanGate, LLC and the conditional rezoning agreement from B-2b to B-5b as amended in the agreement adopted on July 18, 2011. Public comments will be taken at this meeting.

WHEN: Tuesday, May 22, 2012 at 7:00 p.m.
City Council Chambers, 2nd Floor, City Hall

FOR MORE INFORMATION:

Plans are available in the Portland Planning Division, 4th Floor, City Hall. If you wish to submit written comments, address them to Barbara Barzydł, Development Review Services Manager, Planning Division, 4th Floor, 389 Congress Street, Portland, Maine 04101; by phone at (207) 874-8699 or e-mail at bab@portlandmaine.gov



Proposed Area to Rezone from
B-2b to Conditional B-5b
for The Village at OceanGate, LLC
April 2008, July 2011

Prepared by: The Planning Board and City Hall
Revised by: City Manager, 2011


met Sam
Mon 9/17/12

June 8, 2012
September 13, 2012

TO: Barbara Barhydt
FROM: David Margolis-Pineo Dept. of Public Services
RE: Review Comments: 113 Newbury Street – The Bay House

The Department of Public Services has the following comments to the Conditions of Approval to the above project.

1. Please add a 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.
The applicant has coordinated with Bruce Hyman. However the applicant is requested to not show or paint the crosswalk marking across Hancock St at the intersection of Hancock and Newbury Streets.
2. Please add note to plans that all work within the street right of way will meet City of Portland Technical Manual standards.
Done
3. As previously agreed, the applicant shall install the water main and appurtenances on Newbury St. to the specifications of the Portland Water District.
The applicant has indicated on Sheet 9 that the water line on Newbury St. will be replaced. It is understood that the applicant will be responsible for cost of replacing this water line.
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.
This comment has been addressed.
5. **Survey Plan Sheet 2 of 18 is not stamp. This is required.**
6. **The applicant now shows bike racks and planters within the right of way on Middle Street. The planters are new to the approved plan and the bike rack is now shown in the right of way and not next to the building. As shown, pedestrian traffic is now directed onto private property. The planters will need to be relocated to allow pedestrians to stay in the right of way when on the sidewalk in this area. Locating the bike racks within the right of way is acceptable as long as consideration is given to pedestrian traffic and snow removal.**
7. **The applicant is showing the sidewalk angling at a diagonal at the two driveway cuts on Middle St. It is preferred have the sidewalk slope to the drive cut for the length of the granite curb tip-down.**
8. **It appears that the City will need a pedestrian easement from the applicant at the Newbury/Hancock intersection.**

 - flat
Red easement

Bay House – 112 Newbury Street

Review Comments: Barbara Barhydt, Development Review Services Manager

September 14, 2012

Fourth Amended Plat – dated September 11, 2012:

1. Fourth Amended Subdivision Plan: The fourth amended plan is to be an amendment to the plat signed by the Planning Board, which is labeled Third Amended Plan. I think the statement on the fourth amended plan should read:

Fourth Amended Subdivision Plat is an amendment to the Subdivision Plat approved by the Portland Planning Board on June 12, 2012 and recorded in the Cumberland County Registry of Deeds (book and page number).

The third plat would need to be recorded and that recording information put on the fourth amendment, which Jeff Levine, Director of Planning and Urban Development will sign. The second plat would need to be recorded after the first one is complete and Jeff can sign it.

2. The fourth amended subdivision plat and the subdivision/site plan set needs to be revised to eliminate the planters and bike rack in the right-of-way. I noted that these features are shown on the Index sheet and Sheets, 4, 5, 5a, 5b, 6, 7a, 8, 10 and 11. My list may not be complete.
3. As noted in my other e-mail, the fourth amended subdivision plat shows an encroachment of the transformer, but I did not see that identified in the building plans or site plans. I understand that this is being looked at and revised.
4. As noted in my other e-mail, the trenching and pavement work in Hancock Street is different on the revised plans versus the signed plat. I have forwarded Jim's response to Public Services and have asked them to look at the revision. I do not have a response as of yet. I did note that this revision is also shown on sheets 7c and 9.
5. Jim Seymour indicated that the addition of the work on the driveway apron was requested by public services, so that is acceptable.
6. The notes on the plat are acceptable.

Subdivision and Site Plan, in general dated 9/5/2012:

1. The Boundary and Topographic Survey must be stamped by a surveyor. The final plans need to be stamped by an engineer.

2. As noted above, the plan sheets showing the planters and bike rack in the right-of-way need to be removed.
3. The plans approved by the Planning Board show 20 street trees and the planning board granted a waiver for the remainder of the required street trees to be paid into the street tree fund based upon one tree per unit. The landscape plans and details for the final plans show a reduction in the number of street trees from 20 street trees to 16 street trees. The required spacing for street trees is 25 to 35 feet. With the removal of the landscape planters, the approved number of street trees (20) can be re-established around the site along with a financial contribution to the tree fund of \$14,800 would meet the Planning Board decision and condition of approval.

Elevation Plans, in general dated 9/5/2012:

1. The building plans B1-1 and B-12 show revisions for the transformer. The Elevation drawing for E-3 does not show the above ground elevation. I know there was a detail at one point showing the fencing, but I do not see it in the plan set. Please submit that as part of the plan set.
2. Here is the question I posed on Monday regarding the transparency of the glass:

This question came up on a recent project. The Planning Board approved a wavier from the VLT standard of .7 and allowed a VLT of .64, so that there could be a higher energy efficiency rating. The applicant also agreed to consider glass with greater transparency for the retail units on the ground floor, but I do not know what will be the final decision. If you used a similar approach for the Bay House, would that work to achieve your objectives?

* Demelle
license - question

9/11/12

*

~~Thurs 9-~~

Barbara Barhydt - Fwd: Bay House -- Site Plan Comments - Traffic and Site Plan

From: Barbara Barhydt
To: Conway, Will; David White; Gagnon, Marc; Hanson, Tom; Jim Seymour; ...
Date: Friday, September 14, 2012 12:22 PM
Subject: Fwd: Bay House -- Site Plan Comments - Traffic and Site Plan
CC: Bartlett, Jeremiah; DiPierro, Philip; Earley, Katherine; Errico, Thom...
Attachments: Bay House- review comments -bb.docx

Hello:

The review comments from Tom Errico are below. I know that Danielle West-Chuhta has approved the proposed pedestrian easements for this project, which is a question of Tom's.

My review comments are attached as a word document. I have tried to respond to Jim's comments from this morning under the revised plat and then separated by comments based upon the subdivision/site plan and building elevations. Please note that most of my comments are minor, but the number of street trees and financial contribution needs to be revised to meet the Planning Board approval. I also cannot resolve the question of the utility trench today.

At this time, I have Alex Jaegerman, Tom Errico, Jeremiah Bartlett, John Peverada attending the meeting. I have also invited Rhonda Zazzara and Phil DiPierro. David Margolis-Pineo is on vacation today and Monday.

Thank you.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Tom Errico <thomas.errico@tylin.com> Friday, September 14, 2012 11:26 AM >>>
Barbara – I have reviewed the site plan and find it to be acceptable. The following comments were discussed with DPS staff and I am expecting these issues to be articulated in greater detail in their review comments letter.

- Crosswalks should not be marked if ADA compliant ramps are not provided on both ends of the crosswalk.
- The flare taper at the two driveways on Middle Street should be changed such that the flare is not impacting pedestrians walking along the sidewalk.
- The raised landscape features in the sidewalk will need to be modified.

- The location of the bicycle rack on Middle Street will need to be modified.
- Are pedestrian access easements necessary for areas where the sidewalk is on private property?

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director

TYLININTERNATIONAL

12 Northbrook Drive
Falmouth, ME 04105
207.347.4354 direct
207.400.0719 mobile
207.781.4753 fax
thomas.errico@tylin.com
Visit us online at www.tylin.com

"One Vision, One Company"
Please consider the environment before printing.

Barbara Barhydt - Bay House Construction Management Plan

From: Tom Errico <thomas.errico@tylin.com>
To: Barbara Barhydt <BAB@portlandmaine.gov>
Date: Friday, September 14, 2012 9:02 AM
Subject: Bay House Construction Management Plan
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@port...

Barbara – I have reviewed the information provided for the project on the construction management plan and offer the following comments:

- As noted by others the key issue is the closing of sidewalks abutting the project. The applicant needs to specify details on why sidewalks need to be closed for the entire duration of construction. The City recognizes that sidewalks need to be closed to provide safe conditions, but specific details are necessary. I would also note that the applicant would be responsible for the implementation of all sidewalk detours including signage and ensuring that the detours are ADA compliant.
- Access to all driveways to all properties on Newbury Street, Middle Street, and Hancock Street must be maintained during construction.
- I have reviewed their truck access/egress routing and revisions may be necessary. Newbury Street is very narrow with parked vehicles and thus may not be appropriate. It may be better to route to Hancock Street and Fore Street.
- Prior to the implementation of any traffic control plan, the applicant will need to submit detailed plans for review and comments. The review process generally takes several days and therefore materials should be submitted well in advance of construction activity.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
TYLIN INTERNATIONAL
12 Northbrook Drive
Falmouth, ME 04105
207.347.4354 direct
207.400.0719 mobile
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Please consider the environment before printing.

Bay House – 112 Newbury Street

Review Comments: Barbara Barhydt, Development Review Services Manager

September 14, 2012

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

Construction Site Management Narrative

Site control:

Install temporary fence at least a foot off the curb lines on Hancock St., Middle Street and Newbury Street with construction gates to the project. Signage would be installed on the corners of India and Middle, Newbury and India, Hancock and Middle and Hancock and Newbury stating sidewalk closed please use the other side with an arrow pointing to the direction they would need to go. We would control the delivery of materials by signage, asking that they use Middle Street as the main entrance.

It is our intent that the site contractor will employ traffic control people (Flaggers) as the work on the utilities on Newbury Street and Middle Street is being completed.

Our understanding is the site contractor will Close Middle street one lane at a time to rework the utilities on Middle including Power, Water, sewer and storm drainage. There will be a need to close the street completely for one day to finish erecting the steel for the first floor deck.

All attempts will be made to keep the parking garage entrance open from Middle Street during the construction. There may be a time of 30 minutes that we would need to close that entrance as well to set the last couple of beams for our 1st floor deck. Signage would be located at the entrance to the parking garage as well as at the corner of Middle and India Streets stating Street closed at Parking Garage.

We would reduce Newbury Street to one lane of traffic while the utilities are being rework.

Our intent is to stay within the site fence parameters to construct the building and install the new sidewalks that are part of the project.

We will have a temporary construction trailer located on the project. The exact location is yet to be determined but we are planning on it being in the corner of the parking lot on Newbury Street. If the owner is unable to secure those parking spaces then we would on the Middle Street south west corner of the site.

At the completion of the project the fence and signage would be removed and any city signs removed or damaged during the project would be replaced.

Barbara Barhydt - Fwd: Pre-punch list

From: Philip DiPierro
To: Barhydt, Barbara
Date: Thursday, December 12, 2013 1:47 PM
Subject: Fwd: Pre-punch list
Attachments: Fwd: Pre-punch list

Attached is Greg Vining's list from Public Services. Some of the items have been addressed, but they still owe street opening fees in excess of \$6,000.00.

Barbara Barhydt - Fwd: Pre-punch list

From: Gregory Vining
To: DiPierro, Philip
Date: Wednesday, December 11, 2013 7:30 AM
Subject: Fwd: Pre-punch list

This was my list if it helps.
I do need to check to see if the street opening has been paid.
If not no C.O.

Greg

>>> Gregory Vining 11/4/2013 7:31 AM >>>
Bob,

India At Newbury intersection: The area between the two road patches was saw cut, needs to be crack sealed.

Newbury: Winterize all manhole covers for plowing.

ADA plates are not installed properly.

Survey monuments need to be pinned and cast iron covers installed.

Remove covers and clean silt from all CB, SMH, DMH.

All parking signs to be installed. Includes replacing existing. There maybe a cost of this. See note page 5 note 4.

3/4" pick hole all manhole covers.

Street lighting to be installed.

All tree grates and trees.

Finish brick sidewalks.

Cross walk striping.

Newbury: finish pavement needed at #123 Newbury.
Question? what about the other two driveways?

Remove debris from the corner of Newbury at Hancock. Concrete ring, dunage, orange fencing.

Middle St. The sidewalk, near the CB by the entrance to the ocean gateway garage, needs to be fixed.

All SMH's and DMH's need to have properly marked covers. i.e. if it's a sewer manhole it should say sewer.

All street opening fees need to be payed in full.

All work in the R.O.W. needs to be 100% complete, prior to any CO.
This is not meant to be a comprehensive list, just a starting point.
Any Question please call

Greg Vining
City of Portland
Cell 650-9836

Bayhouse
12/10/13

Public Services - Still owe \approx \$6,500 in fees

- Street signs need to be installed
- Newbury Str. needs surface pavement coat
- Concrete border around ADA panels in sidewalks are rough & unacceptable & will need to be re-done in the Spring.
- Survey monuments & covers need to be installed
- Sidewalk on Middle Str. needs repair - in front of OG garage
- Str. light luminaire at corner of Middle & Hancock
- easement for railing in Hancock sidewalk?
- Take down all hump signs in sidewalk along

Planning

- Deck & Stairs @ Joe Beaud's Building
- Alley C.B. needs Cases Trap
- Lawn area in alley needs lawn, seed, mulch
- All structure covers need to be cleaned, opened, & re-sealed
 - Need to check inside structures
- Bike racks not City Standard
- Site plan conditions re approval in approval of car
- Garage parking strip
- Clean up Storage Yard - Storage yard

Barbara Barhydt - Re: Bay House C of O

From: Barbara Barhydt
To: DiPierro, Philip; Levine, Jeff
Date: Wednesday, December 18, 2013 3:56 PM
Subject: Re: Bay House C of O

We will talk with Tammy, but this is new to me. We have issued temporary certificates of occupancy on a number of residential projects and it has not been a problem. We can target the temporary C of O's to a building or portion of a building. Not sure I understand the difference.

>>> Jeff Levine Wednesday, December 18, 2013 3:40 PM >>>

Got it. I think that maybe we can finesse the terms so a Partial C of O can be issued that is, in effect, a Temp C of O. Talk to Tammy about it, she is creative with this kind of issue. The concern from the developer is that some attorneys and banks won't sign off on a unit that has a Temp C of O. I would hate for them to lose sales over a term.

>>> Philip DiPierro 12/18/13 15:35 PM >>>

The Ordinance only allows for the issuance of a Temp. CO or Final CO. Not all requirements have been met for a Final CO.

Phil

>>> Barbara Barhydt 12/18/2013 3:20 PM >>>

Hi Jeff:

I responded to you more detail in an e-mail that included my original list of requirements. I think they are ready to get the temporary certificate of occupancy for the residential units in just the one building.

Barbara

>>> Jeff Levine Wednesday, December 18, 2013 3:00 PM >>>

Can you give me an update on what is still outstanding on the Bay House? They called me today and sounds like they have taken care of some of the items and - from their perspective - the 10% holdback would cover us on the rest. They were also concerned about the "temporary" C of O, wondering if it can be "partial" instead.

Jeff

>>> Philip DiPierro 12/10/2013 11:22 AM >>>

Hi Jeff, attached is the approval letter with the conditions of approval that must be met prior to the issuance of the certificate of occupancy. I have clouded the conditions that have not been met to date. This is the same letter I distributed at our recent meeting when we met at the site with the developers. The letter I gave them was highlighted, identifying the conditions of approval that needed to be met prior to the issuance of a certificate of occupancy. To my knowledge, nothing has been submitted to address the outstanding conditions of approval, but I'll check with Barbara to confirm.

I also plan to meet today with Greg Vining, the City's Public Services right-of-way inspector, to see if there are

file:///C:/Users/BAB/AppData/Local/Temp/XPgrpwise/52B1C5ADPortlandCityHall1001... 12/18/2013

any issues in the right-of-way that need to be addressed. He was on vacation last week, so this is the first chance we've had to inspect the site since our site meeting with the developers.

Please let me know if you have any questions. Thanks.

Phil

>>> Jeff Levine 12/9/2013 4:34 PM >>>

I think they have a final walk-through this week. Any last issues you are aware of?

Barbara Barhydt - Bay House - Conditions of Approval for Certificate of Occupancy

From: Alex Dasco <adasco@atlasboston.com>
To: "BAB@portlandmaine.gov" <BAB@portlandmaine.gov>
Date: Tuesday, December 17, 2013 1:34 PM
Subject: Bay House - Conditions of Approval for Certificate of Occupancy
CC: Demetri Dasco <dasco@atlasboston.com>

Hi Barbara,

Demetri forwarded your message and the approval letter he had highlighted. Thanks for your response. It is very helpful. We still have a few questions as follows:

1) For the Park and Shop program (item 2 below): The commercial units have not been leased or sold as of yet. How would you suggest we satisfy this requirement if we have not leased or sold the units? Will there be separate C of O's for the commercial space (ie separate from the residential units)? If so, can we isolated this requirement to apply only to the C of O for each Commercial unit without holding up the C of O for the Residential buildings/units? If we sell the commercial units does this requirement still apply? If so, how would you suggest we obligate the buyer, is there a form of agreement? Sorry for all the questions.

2) For the Transportation Demand Management Plan (item 5 below): How would you suggest we satisfy this requirement? Is there a consultant we can hire that you have used before? We are not sure how to manage the transportation demand or otherwise satisfy this requirement, although we very much would like to do so.

Any assistance or guidance you can offer is greatly appreciated. We are working diligently and would like to complete these obligations.

Sincerely,

Alex Dasco

Atlas Investment Group
 35 Fay Street, Suite 107 B
 Boston, MA 02118
 617-482-3006 x 204
 617-259-0056 cell

From: Barbara Barhydt [<mailto:BAB@portlandmaine.gov>]
Sent: Thursday, December 12, 2013 3:54 PM
To: Demetri Dasco; Nathan Smith
Cc: Alex Jaegerman; Jeff Levine; Jennifer Thompson; Philip DiPierro; Tammy Munson
Subject: Re: Fwd: S35C-413112114020.pdf

Hi Demetri:

You contacted me about the conditions of approval for the Bay House project and whether some could be deferred to the certificate of occupancy for the second building opening. You forwarded the approval letter for Bay House with six items highlighted. Following is our reievw:

1. The fees for the street trees has been paid, so that is complete. I note that some of the street trees could not be installed and it is my understanding that the trees, tree grates, and granite will be provided to the city for installation elsewhere.
2. The participation in the Park and Shop program could be a lease requirement for the retail spaces. Evidence of this as part of those leases should be submitted for review before the final certificate of occupancy is sought for the second building. Please note that it includes a monitoring provision to report participation to the Planning Authority every two years.
3. The condominium documents submitted for Corporation Counsel's review have been approved, so that condition is met.
4. For the first building, the project has sufficient parking on-site to meet Condition 11. Prior to the issuance of a certificate of occupancy for the next building, a copy of the lease for parking meeting the conditional rezoning agreement for the residential units and the retail spaces, shall be submitted. The conditional rezoning agreement is the controlling document, so this does allow you to reduce the number of required parking spaces for the residential units to meet the current unit numbers. With 80 parking spaces on-site and a total of 86 units in both buildings, then 6 residential spaces must be rented in the garage. Those can be assigned with the units.
5. As a condition of a temporary certificate of occupancy for the first building, the TDM shall be submitted for review and approval within 30 days of receipt of the temporary certificate of occupancy.
6. As a condition of approval, a unified plan for signage shall be submitted for review and approval within 30 days of receipt of the temporary certificate of occupancy..
7. Jeff Levine requests that you submit a letter confirming that this project is no longer taking advantage of the TIF and thus, the Green Building Ordinance does not apply.

Phil DiPierro, Development Review Coordinator, has a punch list of items that must be completed for the certificate of occupancy (or a temporary certificate) and the Department of Public Services has a list of items to be completed or repaired within the public right-of-way. They will be providing those lists to your contractor. I will note that according to DPS this afternoon, the street opening fees in excess of \$6,000 for this project have not been paid and a certificate of occupancy cannot be issued until all fees are paid.

Hope this answers all of your questions.

Thank you.

Barbara

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

>>> Demetri Dasco <dasco@atlasboston.com> Wednesday, December 11, 2013 11:56 AM >>>

Sent from my iPhone

Begin forwarded message:

From: Demetri Dasco <dasco@atlasboston.com>
Date: December 11, 2013, 6:50:32 AM EST
To: Demetri Dasco <dasco@atlasboston.com>
Subject: **S35C-413112114020.pdf**

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