

CITY OF PORTLAND, MAINE

PLANNING BOARD

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March 17, 2015

The Federated Companies
Jonathan Cox
P.O. Box 370008
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FST Consultants
Stephen Bushey
778 Main Street, Suite 8
South Portland, Maine 04106

Project Name: Midtown
Project ID: #2014-203
Address: 59 Somerset Street
CBL: 34-B-2, 3, 4, 5, 22 and 34-D-3, 9, 10
Applicant: FEDEQ DV001, LLC.
Planner: Richard Knowland

Dear Mr. Cox,

On March 3, 2015, the Planning Board considered the Midtown development in the vicinity of Somerset Street, Chestnut Street and Elm Street. The development features approximately 445 dwelling units, 91,000 sf of retail space and a 799 space parking garage. The parking garage is being supported by funding from the City via the Section 108 loan program from the U.S. Department of Housing and Urban Development.

The Planning Board reviewed the proposal for conformance with the standards, outlined in the City Code, for Conditional Use approval; Subdivision approval; a Traffic Movement Permit; Site Plan approval, including Site Development of Location Act. The Planning Board voted to approve the application with the following waivers and condition(s) as presented below.

A. CONDITIONAL USE

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in the Planning Board report for application #2014-203 relevant to Portland's B-7 zone, the City's Site Plan Ordinance, the City's Conditional Use Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board Hearing:

1. The Planning Board finds the proposed conditional use for the parking garage does meet the standards of B-7 Conditional Use, Sec. 14-296 (3) governing structured parking and Zoning Code Section 14-474 and therefore voted 6-0 (Eaton recused) to approve the parking garage.

B. TECHNICAL AND DESIGN WAIVERS

On the basis of the application (2014-203) plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for midtown site plan and subdivision (application 2014-203), including but not limited to Section VIII Technical Waivers as amended, of the report and the reviews by Thomas Errico, PE of T.Y Lin (dated January 27, 2015, Attachment 2), David Senus, P.E. of Woodard and Curran, (dated January 28, 2015, Attachment 5) , David Margolis-Pineo, Deputy City Engineer, (dated January 7, 2015 Attachment 6), and Jeff Tarling, City Arborist (dated January 30, 2015, Attachment 8) for the Midtown Site Plan and Subdivision Plan relevant to Portland’s Technical and Design Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board voted 6 to 0 (Eaton recused) on the following findings:

Transportation and Street Design

1. Street Grades

The Planning Board finds that the applicant has demonstrated that extraordinary conditions unique to this property exist including that the existing and anticipated flood hazards in Somerset Street require the proposed buildings to be at elevation 12 (2 feet above flood hazard elevation) and the existing building elevations across Somerset Street are at lower elevations such that relief from strict compliance with the 0.03 cross slope regulations for a local street is necessary; and the Board finds that the public interest and purposes of the land development plan are secured by the proposed variation in street grades as shown on Figure 1 – Somerset Street Schematic Maintain 18” of Freeboard adjacent to Noyes Building, rev. dated January 26, 2015, prepared by FST Engineers on behalf of the Federated Companies. The Planning Board therefore waives Section 1.4.1 Street Grades of Portland’s Technical Manual to allow the roadway cross slope to be modified as shown in Figure 1.

2. Vertical Alignment

The Planning Board finds that the applicant has demonstrated that extraordinary conditions unique to this property exist, including that the existing and anticipated flood hazards in Somerset Street require the proposed buildings to be at elevation 12 (2 feet above flood hazard elevation) such that the proposed alterations to Somerset Street and the existing building elevations across Somerset Street are at lower elevations; the Planning Board finds that, given these circumstances, relief from strict compliance with the requirement to maintain the vertical alignment for Crest Vertical Curves K=3- and Sag Vertical Curves K=40 for City streets is necessary to avoid undue hardship ; and that the public interest and purposes of the land development plan are secured by the proposed variation in the K value. The Planning Board waives Section 1.5 Vertical Alignment of

Portland's Technical Manual to allow K values for the sags on Chestnut Street to be 33.56 and Elm Street to be 38.89.

3. Sanitary Sewer and Storm Drain Design Catch Basins

The Planning Board finds based upon the January 7, 2015 review by David Margolis Pineo (Attachment 6) and the January 28, 2015 David Senus review (Attachment 5) that extraordinary conditions unique to this property and related to existing and potential future flooding exist or undue hardship would result from strict compliance with the Technical Standard 2.7.8, including that compliance with that standard would result in excessive piping and appurtenances in the public street; and the Planning Board finds that the proposed stormwater treatment system design requires direct connections into catch basins to comply with design guidance outlined in MaineDEP Chapter 500 BMP Manual and, the public interest is secured, and the variation is consistent with the intent of the ordinance. The Planning Board waives Section 2.7.8 Catch Basin of the Technical Manual to allow the connection of storm drain lines into a catch basin structure.

4. Street Trees

The Planning Board finds that the applicant has demonstrated that due to site constraints preventing the planting of required street trees in the right of way, the requirements of Section 14-526(2)(b)(iii) of the Site Plan Ordinance cannot be met; and the Board finds that the applicant has satisfied the waiver criteria set out in Section 14-526(2)(b)(iii)(b). The Planning Board therefore waives Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance and, further grants a partial reduction in the financial contribution to the tree fund due to the applicant's commensurate infrastructure investment in twenty-nine (29) raised tree wells, as presented in the application to a contribution to the tree fund of \$8,000, which is the difference between the cost for the required number of trees and the cost of the 29 raised planters.

5. Stormwater Management Standards and ME DEP Stormwater Management Flooding Standard

The Planning Board finds that the project satisfies the waiver criteria contained in Stormwater Chapter 5 Section E.2 of the City's Technical Manual relating to Stormwater Management Standards because it conveys stormwater exclusively in a piped system directly into the ocean as confirmed by David Senus' review (Attachment 5) and that the applicant has provided an engineering evaluation indicating that cumulative changes to peak flow rate from the site will be minimal and can be accommodated in the City's municipal drainage infrastructure. The Planning Board therefore waives Chapter 5, Section E.2 Flooding Standard of the Technical Manual that requires stormwater detention for flood control to allow the storm water to be directly piped to the ocean.

6. Soil Survey Standards – High Intensity Soil Survey

The Planning Board finds that the applicant has demonstrated that greater than 50% of the site will be developed on a filled site and remediated as a Brownfields site, which has had soil analysis done for the site and street right-of-way, and has therefore met the waiver criteria contained in the Technical Manual. The Planning Board therefore waives Section 7.1 Soil Survey Standards of the Technical Manual, as recommended by David

Margolis-Pineo (Attachment 6) and as authorized by Section 7.4.1 of the Technical Manual.

7. Street Lighting Standards

The Planning Board finds that the applicant has demonstrated that extraordinary circumstance unique to this property exist relating to its size and location and the anticipated significant increase in pedestrian activity in the area; and the Planning Board finds that the proposed LED lights, shielded fixtures for down lighting, and the separately metered circuit for the street lights secure the public interest and address the overall intent of the City's land development plan, including its lighting standards along public ways. Thus, the Planning Board waives Section 10.4 Standards for Special Lighting Districts in the Technical Manual to allow a closer spacing of light poles as shown on the site plan.

C. B-7 DESIGN WAIVERS

On the basis of the applications 2014-203 plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Report for the public hearing on March 3, 2015 for application 2014-203, including but not limited to Appendix 4 of Portland's Design Manual, B-7 Design Standard Waivers of the report for the Midtown Development Plan relevant to Portland's Design Manual and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

1. B-7 Standard A-4, Views and Landmarks

Recognizing the existing blockage of the Cedar Street views and partial blockage of Myrtle Street view corridors, constraints relating to building design and block configuration, as well as other factors outlined in the application and the Planning Board Report, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard A-4, Views and Landmarks, to grant a partial waiver of the requirement that new development be sited so that it does not block view corridors, to allow the midtown development to partially obstruct the Myrtle Street and Cedar Street view corridor.

2. B-7 Standard B-2, Street Connectivity

Recognizing that Cedar and Myrtle streets do not abut the subject property, and in consideration of the proposed mews providing an alternate access between Somerset Street and the trail, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore waives B-7 Standard B-2, Street Connectivity, and therefore voted 6 to 0 (Eaton recused) to grant a waiver of the requirement so that the development not be required to extend Cedar Street and Myrtle Street through the project.

3. B-7 Standard B-3, Mid-Block Permeability

Due to the proposed building form and program of midtownThree, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6-0 (Eaton recused) to partially waive B-7 Standard B-3, Mid-Block Permeability, for that portion of the block bounded by Marginal Way, Chestnut Street, Somerset Street and Elm Street in order to not require mid-block permeability of the development between Chestnut and Elm Streets at the site of midtownThree, subject to a requirement that a secondary internal circulation system is provided with the following conditions:

- i. Clear posting that the public is welcome to travel through the space during normal business hours shall be provided,
- ii. That a plan for public access through the first floor of midtownThree during normal business hours (which are assumed will approximate 9am-5pm daily but must by necessity be allowed to fluctuate in accordance with particular tenant arrangements, holiday schedules, and other commercially reasonable variables), including a fully ADA accessible route with functioning access doors on both the Somerset Street and Bayside Trail sides of midtownThree, shall be submitted for Planning Authority review and approval prior to issuance of an occupancy permit for the first floor of midtownThree.
- iii. That the City and Federated shall work together to resolve the costs and responsibilities for utilization of contaminated berm soils as fill under the project buildings to the extent feasible, or, to the extent required, at City expense the removal of such soils and establishment of post development grades; and for landscape, surface treatments and access ways between the northerly façade of midtownThree and the Bayside Trail. Plans for this area shall be determined collaboratively with the Planning Authority and, to the extent it is necessary, approval shall not be unreasonably withheld.

4. B-7 Standard B-7, Continuity of Street Level Uses

Recognizing that there is no other location for such entrances other than on Somerset Street due to block configuration, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard B-7, Continuity of Street Level Uses, to allow service entrances and vehicular entrances on Somerset Street.

5. B-7 Standard B-11, Lighting

In order to enable an enhanced retail and pedestrian sidewalk lighting condition on Somerset Street, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard B-11, Lighting, to allow closer spacing of the street lights on Somerset Street.

6. B-7 Standard C-2 Parking Entrances

Recognizing the shallow lots and constrained garage layout, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard C-2 Parking Entrances, to allow the entry and exit of the garage entry to be combined on Somerset Street.

7. B-7 Standard C-5, Decks and Ramps

Recognizing the shallow lots and constrained garage layout, and that the garage design incorporates a green screen on the northerly sloped side along with other architectural devices, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard C-5, Decks and Ramps, to allow visible non-horizontal ramps on the north face of the garage.

8. B-7 Standard C-8, Service, Utility and Mechanical Infrastructure

Because this project has no rear elevation, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted (6 to 0) to waive B-7 Standard C-8, Service, Utility and Mechanical Infrastructure, to not require all loading docks, delivery areas, truck parking shall be located at the rear or side of buildings and not along public ways.

9. B-7 Standard E-3, Massing

The Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured, and the variation is consistent with the intent of the ordinance, and therefore voted 6 to 0 (Eaton recused) to waive B-7 Standard E-3, Massing, to waive the requirement of a differentiated top to the parking garage.

10. B-7 Standard E-12: Materials

The Planning Board finds that the use of EIFS on upper stories as a subordinate material, as presented in the February 19, 2015 plans, provides a practical, durable, and energy efficient solution consistent with the intent of the ordinance, therefore the Planning Board voted 6 to 0 (Eaton recused) to waive Standard E-12 to allow the EIFS cladding, subject to the elimination of the use of EIFS on the ground floor of any building.

D. TRAFFIC MOVEMENT PERMIT

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for Application 2014-203 relevant to the Traffic Movement Permit, Site Plan and Subdivision reviews and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

That the plan is in conformance with the standards of the Traffic Movement Permit, as reviewed by Thomas Errico, P.E and comments submitted on January 29, 2015, and therefore voted 6 to 0 (Eaton recused) to approve the Traffic Movement permit, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The Marginal Way/Chestnut Street intersection currently meets signal warrants. A traffic signal will be installed in this location as part of this project. Given the nature of the public-private partnership to construct this project, which includes a publicly-funded parking structure, as well as the fact that the City has already collected partial funding from other nearby developments for such a signal, cost will be shared between the City and the applicant. The applicant shall contribute one-third of the cost associated with installation of a traffic signal at that location, and the City shall fund the remainder. The applicant will be responsible for the development of design plans and specifications for review and approval by the Traffic Engineer and Planning Authority.
2. The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it currently consists of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.
3. The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6

months following certificate of occupancy. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.

4. Pursuant to Chapter 305 of the MDOT Rules and Regulations, the applicant shall make a \$24,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street.
5. Pursuant to Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall make a \$26,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor.
6. Pursuant to Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall make a \$21,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street.
7. Somerset Street/Pearl Street – The applicant has conducted a detailed evaluation of this installation of a four-way STOP sign traffic control condition and has determined that this type of control is warranted and from a traffic operations perspective performs at acceptable levels of service following project build-out. Accordingly, in order to meet the requirements of Chapter 305, of the MDOT Rules and Regulations Pertaining to Traffic Movement Permits, the applicant shall be responsible for the installation of a four-way STOP intersection. The applicant shall submit plans for review and approval by the Traffic Engineer and Planning Authority.

E. AMENDED OVERALL SUBDIVISION PLAT AND SUBDIVISION PLANS:

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-203 relevant to the Subdivision Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, the delegated review of the Site Location of Development Application, and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board finds the following:

That the plan is in conformance with the subdivision standards of the land use code, and therefore voted 6 to 0 (Eaton recused) to approve the subdivision plans, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The configuration of the Elm Street sidewalk frontage with the indented parking area in front of Midtown 4 will be re-designed as follows: the on-street parking bay shall be shifted to the south so that it does not constrain the sidewalk in front of building Four. In addition, the sidewalk and curbing must be implemented in a manner that will match an MDOT approved, City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building. The plans shall be revised in coordination with and in accordance with input from Public Services and the Planning Authority
2. The final plans shall be updated for review and approval to address the Technical Manual standards for ADA compliance and meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards as follows:
 - i. Continue to improve the ramp and landing system on the NE corner of Elm Street – Somerset Street for ADA compliance and to provide quality pedestrian street crossings and a quality pedestrian environment along Elm Street and Somerset Street. The new configuration is to be reviewed and approved by the Traffic Engineer and Planning Authority;
 - ii. An updated ADA-compliant accessible pedestrian route graphic (previously C-2.0B) shall be prepared for review and approval. The earlier version (October 2014) relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances shall be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc);
 - iii. The applicant shall provide an updated sheet C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street that will provide a direct accessible pedestrian route along Elm Street;
 - iv. The configuration of several curb ramps shall be revised for review and approval by the Traffic Engineer and Planning Authority, so the ramps are aligned to be perpendicular to the flush curb portion of the ramp; and
 - v. In order to bring the project into compliance with the ADA, the applicant shall provide an updated sheet C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street.
3. All ramps/stairs/planters/retaining walls for the midtown development that are located within the street right of way shall require a license from the Portland City Council, the terms of which shall require the owner and assigns to be responsible for the maintenance, repair, and long term upkeep of such improvements. Such license shall be recorded in the Cumberland County Registry of Deeds. This responsibility shall be expressly noted on the subdivision plat and in any lease, assignment or other agreements purporting to transfer that responsibility.
4. The applicant shall provide public pedestrian access easements for all sidewalks on private property that are adjacent to the street right of way. All easements

shall be submitted for Public Services, Planning Authority and Corporation Counsel review and approval. Easements shall specify the function, responsibility of maintenance and repair, as well as ownership of all improvements. The ADA compliant accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.

5. The curb extension on the north side of Somerset Street near the Mews must be extended to the beginning of the nearest on-street parking space along Somerset Street.
6. The applicant shall adjust the final plans to address the pedestrian routings along Chestnut Street and the path of accessibility shall not include the ramp features at the Bayside Trail on Chestnut Street. These revised plans shall be submitted for review and approval by the Traffic Engineer and Planning Authority.
7. The final design of the sidewalk on the south side of Somerset Street shall be submitted for review and approval by the Planning Authority.
8. The applicant shall provide the specific design details for the pedestrian facility infrastructure for all routings and compliant cross slopes, including driveway aprons and which meet the standards contained in Technical Manual for final review and approval by the Traffic Engineer and the Planning Authority.
9. The Applicant's submittal is in conformance with the requirements of the City's Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. All stormwater infrastructure designed to provide water quality treatment to meet the General Standards, including infrastructure proposed in the public right-of-way shall be privately maintained as stated in the notes on the recording plat and subject to the following conditions:
 - i. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.
 - ii. The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements.
 - iii. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services.

- iv. Applicant shall secure a license from the Portland City Council for the installation of all stormwater quality treatment units located within the public rights of way. Such license shall be recorded in the Cumberland County Registry of Deeds.
10. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice shall be submitted to the City upon filing with MaineDEP for the project record.
11. The Applicant shall continue to coordinate their design with all impacted utility providers, including but not limited to the Portland Water District, Unutil, Central Maine Power, Fairpoint, and Time Warner Cable, to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
12. For the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50 (refer to sheets C-3.0 and C-7.12), the face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements shall be obtained by the Applicant from the adjacent property owner(s) to complete the work as proposed.
13. The City has agreed to design and fund the installation of the 24” storm drain pipe in Elm Street from Somerset Street to the existing 24” pipe in Elm Street. This extension of 24” pipe shall be constructed by the applicant in the course of project development, at City cost, with the City billed directly by contractor if permissible under applicable procurement policies, otherwise to reimburse applicant directly and within a reasonable time following payment requisition.
14. The Applicant has submitted Figure 1, *Somerset Street Schematic Maintain 18” of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. The civil engineering plans do not currently reflect the layout, grading, drainage, and materials presented on Figure 1 within the Somerset Street Right-of-Way. The Applicant shall update the plans depicting the proposed improvements to the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for Public Services review and approval prior to issuance of a building permit. Prior to approval of the final grading plan, the City shall make such plans available to abutters for their review and comment, and the applicant shall work together with the City and abutters to coordinate reasonable resolutions to any outstanding details of the street interface with abutting property.
15. The following note shall be amended to read on all final plans: “midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN

AND IMPROVEMENT CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE COST SHARING ARRANGEMENT EMBODIED IN EXHIBIT C TO 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT, DATED OCTOBER 14, 2014, FOR THIS WORK”.

16. That the site plan shall be revised depicting all areas of the Bayside Trail as having a minimum width of 16 feet.
17. Applicant shall be responsible for all costs associated with the repair or reconstruction of the Bayside Trail where damaged or disturbed by applicant construction activity associated with the project. If the plans submitted show changes to the trail grading that are not identified as being completed by others, the applicant is responsible for the costs of those changes.
18. The applicant shall submit examples of other development projects undertaken by the applicant to confirm technical capacity to meet the standards of the subdivision ordinance for Planning Authority review and approval..
19. The Subdivision Plans and Recording Plat shall be subject to review and approval of the Planning Authority, Corporation Counsel, and Department of Public Services, including but not limited to the following:
 - i. Detailed references to labeling of easements, content and dimensions of easements, temporary construction easements, subdivision notes, maintenance and repair responsibilities, ownership of all improvements, and other relevant conditions;
 - ii. The DPS comments submitted on the Amended Subdivision /Recording Plat, dated April 10, 2013 must be met and the plan shall be stamped by a registered land surveyor.
 - iii. The applicant shall submit a deed for the proposed four foot widening of Somerset Street and the recording plat shall be revised to show the widening on the plat.
 - iv. All relevant plans and documents cited in notes shall be recorded.
 - v. The Subdivision Plat shall be revised to show property pins to be set at all locations to define the applicant’s property.
20. In the event that the elevation of Somerset Street is raised east of Pearl Street, the applicant or successor shall be responsible for removing ramps, steps and other impediments in providing a continuous at-grade pedestrian access along the front of midtown One. Applicant or successor shall also be responsible for installing new streetscape materials and amenities that achieves a continuous at-grade sidewalk with review and approval by the Planning Authority. The applicant or its successor shall also be responsible for sidewalk and related improvements within their property line along Pearl Street extension should Pearl Street extension be reconstructed in the future.

E. LEVEL III SITE PLAN REVIEW

On the basis of the application (2014-203), plans, reports, and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for application 2014-203 relevant to the Site Plan Ordinance, the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, the delegated review of the Site Location of Development Application, and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board finds the following:

That the plan is in conformance with the site plan standards of the Land Use Code, Site Location of Development review and DEP Stormwater Permit, and therefore voted 6 to 0 (Eaton recused) to approve the site plan, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

a) Transportation Standards

1. The applicant shall provide a detailed Construction Management Plan as a condition of approval. The plan shall be submitted for review and approval by Public Services prior to issuance of any City permit.
2. The configuration of the sidewalk with the indented parking area in front of Midtown 4 will degrade the pedestrian environment along the section of sidewalk. A re-design of this Elm Street frontage is required to comply with the B-7 Design Principles and Standards. Therefore, the on-street parking bay shall be shifted to the south so that it does not constrain the sidewalk in front of building Four. In addition, the sidewalk and curbing must be implemented in a manner that will match an MDOT approved, City plan to modify Elm Street to eliminate that narrow sidewalk at the corner of the Trader Joe's Building.
3. The final plans shall be updated for review and approval by Public Services to address the Technical Manual standards for ADA compliance and meet the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards as follows:
 - i. The ramp and landing system on the NE corner of Elm Street – Somerset Street must be revised to achieve ADA compliance and to provide quality pedestrian street crossings and a quality pedestrian environment along Elm Street and Somerset Street. The new configuration is to be reviewed and approved by the Traffic Engineer and Planning Authority;
 - ii. An updated ADA-compliant accessible pedestrian route graphic (previously C-2.0B) shall be prepared for review and approval. The earlier version (October 2014) relies heavily on the building frontage zone immediately adjacent to all of the buildings. Assurances shall be provided that no intrusions will restrict the accessibility of this route by the retail/commercial uses within (no outdoor seating, etc);

- iii. The section of sidewalk along Elm Street between Midtown 3 and Midtown 4 does not provide a direct accessible pedestrian route (as depicted on Sheet C-2.0B) along Elm Street – the applicant shall provide an updated C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street;
 - iv. The configuration of several curb ramps shall be revised for review and approval, so the ramps are aligned to be perpendicular to the flush curb portion of the ramp; and
 - v. Portions of the accessible pedestrian route depicted on C-2.0B are not ADA-compliant due to reliance on crossing the flare of a curb ramp and the final plans shall be revised for review and approval – the applicant shall provide an updated C-2.0B to show revised pedestrian access routes based on the reconfigured sidewalks and ramps on Somerset Street.
4. Required easements for pedestrian public access along the ADA – compliant accessible pedestrian routes located on private property shall be provided for review and approval by Corporation Counsel.
5. The curb extension on the north side of Somerset Street near the Mews must be extended to the beginning of the nearest on-street parking space along Somerset Street.
6. The applicant shall adjust the final plans to address the pedestrian routings along Chestnut Street and that the path of accessibility shall not include the ramp features at the Bayside Trail on Chestnut Street for review and approval by the Traffic Engineer and Planning Authority.
7. The final design of the sidewalk on the south side of Somerset Street shall be submitted for review and approval by the Planning Authority.
8. The applicant shall provide the specific design details for the pedestrian facility infrastructure for all routings and compliant cross slopes, including driveway aprons for review and approval.
9. An in-line Transit Stop on Somerset Street is required and coordination with METRO is required to finalize details for the bus shelter. The proposed bus stop location does not provide the required ADA-compliant bus stop landing area (5'x8') nor does the bus stop directly connect to the ADA-compliant pedestrian access route at this location (per drawing C-2.0B). The final plans must address ADA compliance and the applicant must confirm that METRO has reviewed and approved the location.
10. The applicant shall provide a parking demand and supply analysis that demonstrates the adequacy of the proposed parking garage for the entire project as part of the TDM to be reviewed and approved by the Traffic Engineer and the Planning Authority.

11. The final plans shall be revised to provide the following:
 - i. Adequate spacing between the racks or with adequate spacing from the street or other structures, defined as spacing of 36" (min.) on center between bike hitches that are parallel to each other; spacing of 72" (min) on center between bike hitches that are in line with each other; separation of 30" (min.) on center between a bike hitch mounted parallel to a structure, wall or building; 48" (min.) on center between a bike rack mounted perpendicular to a structure, wall or building.
 - ii. The selected bike racks (shown on Sheet L4.0, the Olympia Rack) do not meet the Technical Manual standard for installation within the public right of way. These racks should be replaced with either the Bike Hitch or Downtown rack; and
 - iii. A detailed layout of the bicycle parking with the parking garage should be provided to ensure the functionality and accessibility to the clusters of 8 bike racks, with 2 clusters per level. It does not appear that the racks will be fully accessible when cars are parked immediately adjacent to the clusters.
12. The TDM Plan shall be finalized for review and approval by the Traffic Engineer and the Planning Authority. Portland Trails and METRO shall be provided the opportunity to comment on the TDM prior to approval. An annual monitoring program is required for the TDM with reports provided to the City and pursuant to which other strategies will be reviewed on an annual basis.
13. The Applicant shall be responsible for the maintenance and repair of all stairways, landings and retaining walls required by the development located within the public right-of-way along Midtown's street frontage and shall secure a license from the City Council for these improvements, which shall be recorded at the registry of deeds. This responsibility shall be noted on the both the subdivision plat and the site plan.
14. That the site plan shall be revised depicting all areas of the Bayside Trail as having a minimum width of 16 feet.
15. Applicant shall be responsible for all costs associated with the repair or reconstruction of the Bayside Trail where damaged or disturbed by applicant construction associated with the project.

b) Environmental Quality Standards

1. A final landscape plan shall be submitted that makes the following changes to the last plan submitted.:
 - i. Show all tree save areas, protection areas and protection measures, including physical barriers/protective fencing during construction. No ~~no~~ construction equipment or storage shall take place near root zones.
 - ii. Specify that the landscape contractor shall properly prepare trees to be relocated to be made available to the city of Portland for reuse. Such preparation includes digging and preparing the rootball with “balled and burlap” standard. Trees shall be cared for on-site as needed for an agreed upon period of time, which includes watering and site protection in a safe location.
 - iii. All plant material shall meet the size and species requirements of the arboricultural standards of Portland’s Technical Manual, with the exception that some Dog Woods may be included in the tree mix;
 - iv. The raised granite planter for the street trees should change from saw-cut to “Thermal Top”.
 - v. Landscape plant sizes shall be 5 gallon for shrubs; green vines and perennials shall be a minimum 3 gallon size.
 - vi. The 26 Pagoda Dogwood trees on the trail side of Midtown Three should be upgraded to a larger tree species such as Yellow Birch, River Birch, Red Maple, or Swamp Oak and planted in fewer numbers, in groves if feasible.

2. The Applicant’s submittal is in conformance with the requirements of the City’s Stormwater Management Standards and the MaineDEP Chapter 500 Stormwater Management Standards relative to Site Location of Development, including the Basic and General Standards. All stormwater infrastructure designed to provide water quality treatment to meet the General Standards, including infrastructure proposed in the public right-of-way, shall be privately maintained as stated in the notes on the recording plat and subject to the following conditions:
 - i. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines;
 - ii. The owner/operator of the approved stormwater management system and all assignsshall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements;
 - iii. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services; and

- iv. Applicant shall secure a license from the City Council for the installation of stormwater quality treatment units within public rights-of-way.
3. The proposed development will require filing a notice of intent to comply with the Maine Construction General Permit with the MaineDEP; a copy of this notice shall be submitted to the City upon filing with MaineDEP for the project record.
4. The Applicant shall continue to coordinate their design with all impacted utility providers, including but not limited to the Portland Water District, Unitol, Central Maine Power, Fairpoint, and Time Warner Cable, to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.
5. For the areas behind midtown One and midtown Two, from Bayside Trail STA 6+50 to STA 12+50 (refer to sheets C-3.0 and C-7.12), the face of the retaining wall and fence are proposed primarily on the property line between City of Portland (Bayside Trail) property and the parcels located north of the Bayside Trail. Temporary construction agreements shall be obtained by the Applicant from the adjacent property owner(s) to complete the work as proposed.
6. The City has agreed to design and fund the installation of the 24” storm drain pipe in Elm Street from Somerset Street to the existing 24” pipe in Elm Street. This extension of 24” pipe shall be constructed by the applicant in the course of project development, at City cost, with the City billed directly by contractor if permissible under applicable procurement policies, otherwise to reimburse applicant directly and within a reasonable time following payment requisition.
7. The Applicant has submitted Figure 1, *Somerset Street Schematic Maintain 18” of Freeboard Adjacent to Noyes Building*, rev. dated January 26, 2015. The civil engineering plans do not currently reflect the layout, grading, drainage, and materials presented on Figure 1 within the Somerset Street Right-of-Way. The Applicant shall update the plans depicting the proposed improvements to the Somerset Right-of-Way to reflect the concepts presented on Figure 1 as part of their final plan, to be submitted for review and approval by Public Services prior to issuance of a building permit. Prior to approval of the final grading plan, the City shall make such plans available to abutters for their review and comment, and the applicant shall work together with the City and abutters to coordinate reasonable resolutions to any outstanding details of the street interface with abutting property.
8. The following note shall be amended to read on all final plans: “midtown HAS BEEN DESIGNED TO REFLECT THE PROPOSED RAISING AT SOMERSET STREET BASED ON CITY GUIDANCE. SOMERSET STREET DESIGN AND IMPROVEMENT CONSTRUCTION SHALL BE COMPLETED IN ACCORDANCE WITH THE COST SHARING ARRANGEMENT EMBODIED

IN EXHIBIT C TO 2nd AMENDMENT TO PURCHASE AND SALE AGREEMENT, DATED OCTOBER 14, 2014, FOR THIS WORK ”.

c) Public Infrastructure and Community Safety Standards

- i. The final location of the hydrant to be relocated along Lancaster street shall be reviewed and approved by the Fire Department.
- ii. A Dumpster is proposed to be placed inside of Midtown Three for the trash holding area. Although this building will be provided with a full sprinkler system, a two hour separation between this space and the remainder of the building shall be required.
- iii. The new proposed curb cut and access off Elm Street to the small side of Midtown Four must be a minimum of 16’ wide for fire access. The final plans shall be revised showing the required signage and striping on the driveway indicating Fire Lane NO PARKING for review and approval.
- iv. During construction, the Fire Department requires the following:
 - i. Per NFPA 1, 16.3.4, Access for firefighting equipment.
 - ii. Per NFPA1,16.4.3, Fire Protection during construction. (Water supply)
 - iii. Per NFPA 16.4.3.3.2, Standpipe Installations in Buildings under construction.
 - iv. Per NFPA 16.7.1.6, Fire Extinguishers
 - v. Per NFPA 16.7.2, Fuel Systems.
- v. The Applicant must continue to coordinate their design with all impacted utility providers to ensure that the design meets applicable standards and to meet specific conditions and requests made by each utility. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.

d) Site Design Standards

1. The lighting plan with the photometrics shall be subject to the Planning Authority’s review and approval.
2. Signage shall meet zoning ordinance requirements and the overall signage plan shall be subject to the Planning Authority’s review and approval.
3. References to snow storage within the Bayside Trail Corridor shall be removed from all plans and the final management of snow storage submitted for review and approval by the Planning Authority.
4. The location of all exterior utility and gas meters shall be reviewed and approved by the Planning Authority and City Arborist.

5. Applicant shall submit catalog cut and or samples of exterior materials used for the retaining walls and stairs for Planning Staff review and approval.
6. The proposed development is consistent with the B-7 Design Standards subject to the following conditions of approval:
 - i. The mid-block permeability plan is subject to the following conditions of approval:
 - a. Clear posting that the public is welcome to travel through the space during normal business hours shall be provided,
 - b. That a plan for public access through the first floor of Midtown Three during normal business hours (which are assumed will approximate 9am-5pm daily but must by necessity be allowed to fluctuate in accordance with particular tenant arrangements, holiday schedules, and other commercially reasonable variables), including a fully ADA accessible route with functioning access doors on both the Somerset Street side and, when berm removal and resultant conditions permit, the Bayside Trail side of Midtown Three, shall be submitted for Planning Authority review and approval prior to issuance of an occupancy permit for the first floor of Midtown Three.
 - c. That the City and Federated shall work together to resolve the costs and responsibilities for utilization of contaminated berm soils as fill under the project buildings to the extent feasible or, to the extent required, at City expense the removal of such soils and establishment of post development grades; and for landscape, surface treatments and access ways between the northerly façade of Midtown Three and the Bayside Trail. Plans for this area shall be determined collaboratively with the Planning Authority and, to the extent it is necessary, approval shall not be unreasonably withheld.
 - ii. The massing and building articulation Standards E-3 and E-4 are subject to the following condition of approval:
 - a. That Midtown Three revised architectural elevations and renderings shall be submitted for Planning Board review and approval to address the large expanse of undifferentiated façade, to break up the monolithic run of façade and rooftop, and to create a human scale of the building at street level.

- iii. **Standard B-4: Sidewalks and Crosswalks:** The accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.
- iv. **Standard B-10: Encroachments:** The accessible route shall meet the Technical Manual standards for ADA-compliance and the streetscape design and pedestrian accessibility standards as described by the B-7 Design Principles and Standards be resolved to the satisfaction of the Planning Authority.
- v. **Standard C-7: Bike Racks:** A detailed layout for bicycle parking within the parking garage shall be provided that ensures functionality and accessibility that meets the Technical Manual Standards to the satisfaction of the Planning Authority.
- vi. **Standard D-4: Pedestrian Amenities 2. Bus Shelters:** Bus stop location and level of ADA-compliance shall be resolved to meet the Technical Manual Standards to the satisfaction of the Planning Authority.
- vii. **Standard D-5: Public Art and other special features:** The treatment of any building location shown to potentially host public art should be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12.
- viii. **Standard E-12: Materials:** Final storefront design shall be subject to approval of the Planning Authority and, as the rest of the ground level, be completed in materials on the “predominant materials” list in Standard E-12.
- ix. Prior to receiving a building permit, the applicant shall submit a final set of elevations and site plans dated March 3, 2015 or a later date that shall removal any scrivener's errors and incorporate any changes made in the plans between the initial submission and Planning Board approval.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report for application #2014-203 which is attached.

STANDARD CONDITIONS OF APPROVAL

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

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

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

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at (207) 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Richard Knowland at (207) 874-8725.

Sincerely,

Stuart O'Brien, Chair
Portland Planning Board

Attachments:

1. Planning Board Report – with Staff Memos
2. City Code, Chapter 32
3. Sample Stormwater Maintenance Agreement
4. Performance Guarantee Packet

Electronic Distribution:

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Jeremiah Bartlett, Public Services
David Petruccelli, Fire Department
Craig Messinger, Fire Department
Jennifer Thompson, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File
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