

Elizabeth Boepple, Chair  
Sean Dundon, Vice Chair  
Carol Morrisette  
David Eaton  
Kristien Nichols  
Lisa Whited  
Maggie Stanley

December 16, 2016

Lou Woods  
A&M Partners Inc  
120 Exchange Street  
Portland ME 04101

Thomas S Greer, P.E.  
Pinkham & Greer, Civil Engineers  
28 Vannah Avenue  
Portland ME 04103

Project Name: **Westerlea View Lofts: 54 unit residential development plus 1 commercial space**  
Project ID: #2016-184 (Subdivision & Site Plan) and  
#2016-185 (Conditional Use Inclusionary Zoning)  
Address: 75 Chestnut Street CBL: 26/E/10  
Applicant: A&M Partners Inc  
Planner: Jean Fraser

Dear Sirs:

On December 13, 2016, the Planning Board considered a proposal for a new 7 story building comprising 54 residential apartments (rental), and one commercial unit, totaling approximately 75,800 sq ft, located at 75 Chestnut Street. One parking space per residential unit is proposed to be located in the existing abutting parking garage for the tenants of the new building, and the project also includes a landscaped amenity area. The Planning Board reviewed the proposal for conformance with the standards of the Subdivision, Site Plan, B-7 Zone and Inclusionary Zoning.

The Planning Board voted 7-0 to approve the application with the following waiver and conditions as presented below:

**A. 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 for the public hearing on December 13, 2016 for application 2016-184 (75 Chestnut Street) relevant to Portland's technical and design standards and other regulations; and the testimony presented at the planning board hearing:

1. The planning board voted 7-0 that it finds that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The planning board waives the site plan standard (*Section 14-526 (b) (iii)*) requiring one street tree per unit for multi-family development and concludes that the applicant shall contribute \$6,400 to Portland's tree fund.

## **B. SUBDIVISION**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on December 13, 2016 for application 2016-184 (75 Chestnut Street) relevant to the subdivision regulations; and the testimony presented at the planning board hearing, the planning board voted 7-0 that the plan is in conformance with the subdivision standards of the land use code and approves the application, subject to the following conditions of approval, which must be met prior to the signing of the plat:

- i. The applicant shall submit a final subdivision plat for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority;
- ii. The applicant shall provide drafts of all necessary easements, including but not limited to:
  - a. Temporary construction easement from the City of Portland to Westerlea View Lofts;
  - b. License from the City of Portland to Westerlea View Lofts for building footings;
  - c. Easement(s) for the deck extensions above the existing parking garage structures (air rights);
  - d. Access easement for sidewalks that are on the site property;
  - e. Easement or other legal document to secure required parking for the residential units; for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority, with evidence of executed easements to be submitted prior to the issuance of a building permit.

## **C. SITE PLAN**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in planning board report for the public hearing on December 13, 2016 for application 2016-184 (75 Chestnut Street) relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing:

The Planning Board voted 7-0 that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions:

- i. That final proposals shall comply with the B7 Design Standards A-2, A-5, C-2, E-1 and E-3, particularly addressing:
  - a. Articulated roofline;
  - b. Massing and scale to transition and integrate with the residential context on Chestnut Street;
  - c. Pedestrian experience on Chestnut Street; and
  - d. Materiality;to be reviewed and approved by the Planning Board.
- ii. That the project is subject to the submitted Transportation Demand Management Plan dated October 2016, to include annual monitoring studies that comply with the requirements set out in the comments of the Traffic Engineering reviewer Tom Errico dated 12.9.2016; and
- iii. That the applicant submit a revised and more detailed plan for the amenity area between the building and Lancaster Street that demonstrates that the safety and security of the area meets CPTED standards eg re lighting, visual surveillance and similar issues including landscape features; and

- iv. That the applicant and all assigns shall comply with the conditions of Chapter 32 stormwater including Article III, post-construction storm water management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the submitted construction stormwater management plan and sediment and erosion control plan dated 9.30.2016 based on City standards and State guidelines. A Maintenance Agreement for the stormwater drainage system shall be approved by Corporation Counsel and the Department of Public Works, and submitted, signed and recorded prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Works; and
- v. That plans showing details for the areas listed below shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit:
  - a. Patio/entrances on Oxford Street
  - b. Doors for entrance to parking garage on Chestnut Street
  - c. Decks over parking lot
  - d. Live-work unit
  - e. Parking layout (dimensioned) for ADA spaces and demonstration that it meets applicable state and federal standards regarding ADA van parking.
- vi. That the applicant shall revise plans and provide design details for the following elements in the City's Right of Way, for review and approval prior to the issuance of a building permit:
  - a. Driveway aprons on Oxford Street and Lancaster Street, noting a pedestrian accessibility route with a maximum 2% cross-slope, and whether full or partial adjustment to the grade of the driveway apron is required;
  - b. Grading adjustments for the sidewalk ramp construction at the corner of Chestnut Street and Lancaster Street to address the ponding of water that currently impacts the pedestrian walking route; and
  - c. The provision of an underground lighting conduit as part of the sidewalk reconstruction along the lot frontage on Oxford Street.
- vii. That the applicant shall submit details of the location, design and screening of façade and rooftop external heating, ventilation and other mechanical equipment, and associated information to document the sound levels meet the City's Site Plan, Zoning and Technical Standards, for review and approval by the Planning Authority; and
- viii. That the applicant address the Fire Department comments dated 9.7.2016; and
- ix. That the proposed building mounted wall sconces shall be installed so that the light is directed downward.

#### **D. INCLUSIONARY ZONING CONDITIONAL USE**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on December 13, 2016 for application 2016-185 (75 Chestnut Street) relevant to the Conditional Use as authorized by Division 30, Section 14-487 Ensuring Workforce Housing; and the testimony presented at the planning board hearing, the planning board voted 7-0 that the Conditional Use is in conformance with the standards of the land use code and approves the application, subject to the following conditions of approval: *(continued)*

- i. Provided the Applicant and the City enter into an Affordable Housing Agreement (AHA) before a Building Permit may be issued.
- ii. The AHA will outline the details of the affordability restrictions placed on the workforce units and will be filed as a covenant to the 75 Chestnut Street property's deed with the Cumberland County Registry of Deeds before a Certificate of Occupancy may be issued.

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application #2016-184 and #2016-185, 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 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 Permitting and 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, inspection fee payment of 2.0% of the guarantee amount and six (6) final sets of plans must be submitted to and approved by the Planning Division and Public Works Department prior to the release of a subdivision plat for recording at the Cumberland County Registry 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 Work'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 Works 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 Works Department prior to the issuance of a certificate of occupancy.

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

If there are any questions, please contact Jean Fraser at (207) 874- 8728.

Sincerely,



Elizabeth Boepple, Chair  
Portland Planning Board

**Attachments:**

1. Final B7 Design Review comments dated December 5, 2016
2. Fire Department comments dated December 13, 2016
3. Planning Board Report
4. City Code, Chapter 32
5. Sample Stormwater Maintenance Agreement
6. Performance Guarantee Packet

**Electronic Distribution:**

Jeff Levine, AICP, Director of Planning and Urban Development  
Stuart O'Brien, City Planning Director  
Barbara Barhydt, Development Review Services Manager  
Jean Fraser, Planner  
Philip DiPierro, Development Review Coordinator, Planning  
Mike Russell, Director of Permitting and Inspections  
Ann Machado, Zoning Administrator, Inspections Division  
Jonathan Rioux, Inspections Division Deputy Director  
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division  
Chris Branch, Director of Public Works  
Katherine Earley, Engineering Services Manager, Public Works  
Bill Clark, Project Engineer, Public Works

Doug Roncarati, Stormwater Coordinator, Public Works  
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Michelle Sweeney, Associate Engineer, Public Works  
John Low, Associate Engineer, Public Works  
Rhonda Zazzara, Field Inspection Coordinator, Public Works  
Jeff Tarling, City Arborist, Public Works  
Jeremiah Bartlett, Public Works  
Keith Gautreau, Fire Department  
Danielle West-Chuhta, Corporation Counsel  
Thomas Errico, P.E., TY Lin Associates  
Lauren Swett, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department  
Approval Letter File



## Planning and Urban Development Department Planning Division

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**Subject:** B7 Design Review – 75 Chestnut Street

**Written by:** Caitlin Cameron, Urban Designer

**Date of Review:** Monday, December 5, 2016

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### **Design Review Criteria:**

The project must meet the B-7 *Mixed Use Urban District Zone Design Principles & Standards* (Appendix 4 of the Design Manual).

### **Findings of the Design Review:**

Below are the standards relevant to the Planning Board comments from the September 13, 2016 and October 18, 2016 workshops with staff comment. Those standards not listed in this memo are either met or not applicable.

Staff recommends a condition of approval that states: That final compliance with Design Standards A-2, A-5, C-2, D-1, D-4, E-1, E-3, E-4 shall be reviewed and approved by Planning staff to address the staff design comments dated 12.9.16 which primarily relate to material placement and design of the pedestrian realm.

### **Principle A: Urban Design**

*All development in Bayside shall be designed to create a strong urban identity and sense of place. Buildings may be a variety of architectural styles, particularly those that are innovative and express the aesthetic of the time in which they were built, and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. These principles shall . . . ensure sensitive transitions to surrounding neighborhoods, enhance the physical amenities of the neighborhood, and create a pedestrian oriented environment with safe and vital streets.*

**A-2: Edges and Transitions** – *Transitions between larger scale, mixed use buildings and smaller-scale residential uses shall be designed so that there is a seamless connection to adjacent residential neighborhoods to ensure that these zones remain stable, quiet, and secure. This shall be achieved through the mitigation of height, massing, stepbacks, materials, and details and design of the façade at the pedestrian level. . . . Larger scale developments may use public open spaces to provide transitions to lower scale uses.*

- To address the standard and the board comment, the applicant modified the massing on the Oxford Street façade. The revisions result in a graduated massing that places a four-story mass at the street, of similar scale and proportion to the residential architecture around it. The changes in plane are accentuated with changes in material. The façade continues to have a “secondary” presence on the street – Chestnut Street being the principal façade with the primary residential entrance. The secondary aspect of the façade is reflected in the design of the door and the smaller, elevated windows at the street to indicate the private use.
- **On Chestnut Street, the detail and design of the façade at the pedestrian level should be strengthened to improve the sense of scale through revisions to material placement and the addition of articulation elements that relate to the pedestrian realm experience (Standards E-1, E-3, E-4).**

**A-5: Pedestrian Environment** – *Development on public streets or public spaces shall be human scale at the pedestrian level and enhance the pedestrian environment through the use of elements at the first floor such as . . . fully functioning entries oriented to the street; active windows and storefronts; awnings and weather protection; outdoor seating and sales displays; adequately sized sidewalks; gathering spaces; trees and landscaping; street furniture; . . .*

- The project uses fenestration at the ground levels, entrances emphasize with canopies and material change, and open space at the end of the block.
- Where the standard is still not met is the detail and design of the building façade at the ground level. Little to no massing or façade variation is used to differentiate the ground floor – the result is a flat façade for the full 6 stories of the building. The staff recommends that the architecture team further articulate and detail the pedestrian level to create a sense of enclosure and the placement of materials to reflect the uses rather than arbitrary placement. These comments also apply to Standard E-1 Architectural Design, E-3 Massing, and E-4 Articulation.

**A-7: Building Orientation** – *The primary facades and entrances of buildings shall be oriented to streets, major pedestrian routes, or open spaces in order enhance the pedestrian-oriented environment.*

- The project faces onto two streets and is set close to the property line.
- Chestnut Street is treated like the primary façade with the primary residential entrance. Oxford Street is the secondary façade but addresses the street with a minor residential entrance, some visual interest and massing variation, and a maintenance of the street wall.

#### **Principle C: Parking, Loading and Service Areas**

**C-2: Parking Entrances** – *The entrance to parking garages shall respect the pedestrian realm and minimize the visual impact of the garage . . .*

- For CPTED concerns, staff recommended that the design of the “tunnel” to the garage entrance on Chestnut Street be revised – the applicant has addressed the concern by adding a gate at the façade. However, the design of that gate and vehicle entrance/exit should be clarified so as to not encroach on the sidewalk/pedestrian path. Car stacking should also be considered in the placement of the gate.

#### **Principle D: Open Space and the Public Realm**

**D-1: Open Space Design** – *Publicly-accessible parks, plazas, and other open space shall be accessible from sidewalks and surrounding buildings. . . . Pedestrian amenities such as seating, lighting, artwork, trash receptacles, etc. shall be compatible with the City’s Streetscape Standards for Bayside. . . . Solar access, wind protection, and landscaping shall be considered to enhance pedestrian comfort and provide a variety of sunny and shaded areas.*

- It is not clear whether the open space provided is accessible from the sidewalk. The space shown as plaza and seating is visible from the sidewalks, streets, and buildings as required by the standard. The amenity provided appears to be a paved area with seating that is under shade, and additional landscaping throughout the space. No lighting is proposed.

**D-4: Pedestrian Amenities** – *Pedestrian amenities shall comply with the City’s Technical Manual at a minimum, and also with the streetscape standards selected for Bayside.*

- Seating: One linear foot of seating for each thirty (30) square feet of open space, or 30 linear feet of pedestrian route shall be provided within publicly accessible open space.
- It is not clear whether the seating proposed in the open space meets this standard – what kind of seating and what linear feet of seating are proposed?

#### **Principle E: Architectural Design**

*New development shall create a mixed-use, pedestrian-friendly setting that contributes to the context of the surrounding urban fabric and provides a sensitive transition to adjacent residential neighborhoods. . . . The scale, massing, and fenestration of new development shall reflect its context, . . .*



**E-1: Architectural Design** – *New development in Bayside may be a variety of architectural styles, . . . and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. A respectful integration of contemporary design within the existing context shall complement, reinforce, and enhance the prevailing patterns and proportions of adjacent buildings without requiring imitation or repetition.*

- Overall, staff does not find the placement of materials to be contextual. In some cases, the materials correspond to the massing or use, but in other cases, materials change at corners or in arbitrary ways that result in a patchwork quilt effect that does not benefit the overall design nor does it relate to the pattern or use of materials in the context. Staff recommends a simplification of material placement (example below). Visual interest should be achieved through articulation rather than a material pastiche.

**E-2: Height** – *Heights along the edges of the B-7 Zone shall transition to the scale of adjacent neighborhood development through design elements such as variations in massing; articulation of the facades in intervals that reflect existing structures or plating pattern, stepping the architecture to adjacent buildings and/or contextual proportions of building elements, use of architectural style and details such as roof lines, belt courses, cornices, or fenestration, and color or materials that derive from the less intensive zone.*

- The Planning Board’s concerns regarding transition of height have been addressed by the revisions to the Oxford Street façade.

**E-3: Massing** – *Large expanses of undifferentiated façade or uniform cladding is not allowed along public rights of way. . . . The composition of a proposed building façade shall be defined by horizontal and vertical articulation, with vertical articulation being predominant, in keeping with the local context of the urban form.*

- As stated above, little to no massing or façade variation is used to differentiate the ground floor – the result is a flat façade for the full 6 stories of the building.

*New buildings that are four stories or higher shall have three components: base, middle, and top.*

- The base of the building should be more consistently defined, especially on the Chestnut Street side. At this point, that can best be achieved through articulation, material placement and detailing. The corner, double-height live-work unit could also be more substantially differentiated from the other masses of the building.

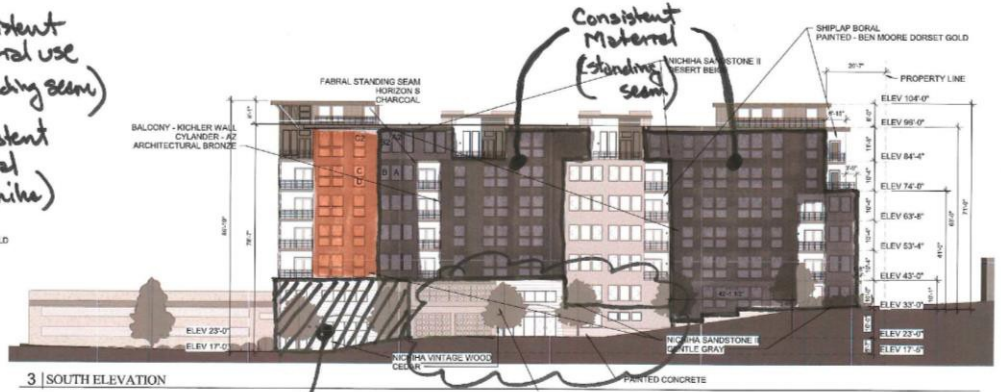
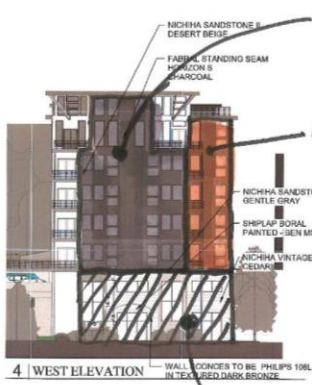
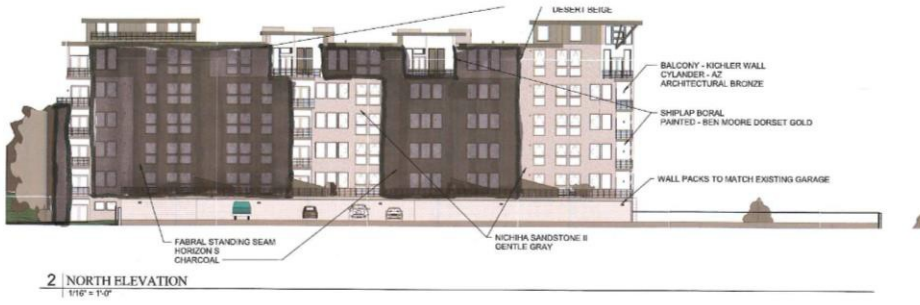
**E-4: Articulation** – *Façades visible from public rights of way shall incorporate design elements that break the facades into components scaled to the pedestrian, and to the context of other buildings on the street. This may be accomplished through an expression of the building’s base, middle and top, vertical fenestration, variation in the planes of the façade, architectural details such as windows, doors, bays, balconies, cornices, reveals, expansion joints, trim, changes in color, texture, and material, permanent artwork, etc.*

- The project uses fenestration at the ground levels, entrances emphasize with canopies and material change, recessed bays at the upper floors, and open space at the end of the block.

*The base of the building which relates to the pedestrian realm shall be designed with a high level of detailing and material quality utilizing the options listed above. . . . Buildings which are six and seven stories shall meet this standard on the first 24 feet, or the first two floors at a minimum.*

- The level of detail and articulation on the Chestnut Street elevation is not sufficient, especially at the street level. Material changes are mostly arbitrary and other than at the entrance, do not correspond to uses or plane changes. Revisions to meet this standard could come in form of enclosure; articulation and detail (reveals, dimensional trim, material transitions, detail); placement of material that corresponds with uses

[see sketch next page]



Consistent material use (standing seam)

Consistent material (Nichha)

Consistent Material (standing seam)

Consistent material use differentiating this corner unit

Ped level articulation + match floor plans

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**MEMORANDUM**

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**To:** FILE  
**From:** Jean Fraser  
**Subject:** Application ID: 2016-184  
**Date:** 12/13/2016

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**Comments Submitted by: Keith Gautreau/Fire on 9/7/2016**

Fire Department Access shall have an unobstructed vertical clearance of not less than 13 ft 6 in. We will NOT be requiring this vertical clearance as emergency vehicles will not be entering the parking garage

**Comments Submitted by: Keith Gautreau/Fire on 9/7/2016****Premises Identification**

The main entrance of the building must be the address for the property. This should be consistent with 911, tax assessor, Inspections Division and future mailing address.

Street addresses shall be marked on the structure and shall be as approved by the City E-911 Addressing Officer.

If the building entry faces a different street, both the street name and number should be large enough to read from the street

Address numbers must be a minimum of 4 inches high.

The number should be in Arabic numerals rather than spelled out (for example, "130" instead of "One Hundred and Thirty")

Color: Addresses should be in a color that contrasts with the background.

Whenever possible, should be illuminated.

Provide additional address signs at entrances to the property when the building address is not legible from the public street.

**Comments Submitted by: Keith Gautreau/Fire on 9/7/2016**

Emergency vehicle access is two sides only, Chestnut and Oxford. This is acceptable to the Fire Dept although because of the arrangement and height of the building I would like to require the overhead power line on Chestnut Street going to the transformer to be underground. This will drastically restrict the Aerial Ladder trucks operation at this proposed site.

**Comments Submitted by: Keith Gautreau/Fire on 9/7/2016**

I would like to see a letter from the Portland Water District of their ability to serve domestic and fire protection demand for the proposed high rise building.

**Comments Submitted by: Keith Gautreau/Fire on 12/12/2016**

I have received the Ability to Serve letter from PWD and the Authority Having Jurisdiction accepts.



## PLANNING BOARD REPORT PORTLAND, MAINE

### Westerlea View Lofts: 54 unit residential development plus 1 commercial space

75 Chestnut Street

Level III Subdivision and Site Plan  
Conditional Use Inclusionary Zoning

A&M Partners Inc, Applicant

Project #2016-184 (Subdivision & Site Plan) Project  
#2016-185 (Conditional Use Inclusionary Zoning) CBL:  
26/E/10

Submitted to: Portland Planning Board Public Hearing Date: December 9 <sup>th</sup> , 2016	Prepared by: Jean Fraser, Planner Date: December 13 <sup>th</sup> , 2016
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### I. INTRODUCTION

A&M Partners Inc have requested a final review of the proposed Westerlea View Lofts on Chestnut Street. A preliminary Level III Site Plan and Subdivision application was submitted at the end of July and the Planning Board has held two Workshops (9.13.16 and 10.18.16)

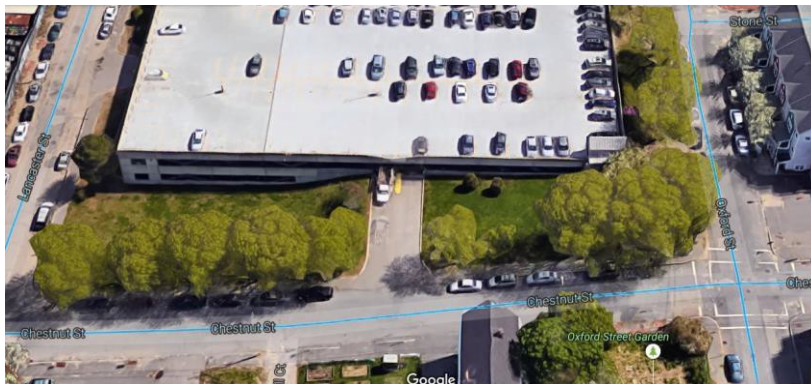
The project is located at the corner of Chestnut Street and Lancaster Street in the B7 zone. The proposal is for a 7 story 54 unit residential building (plus one commercial unit) to be constructed on part of the open area surrounding the Chestnut Street parking garage.

The proposal is subject to the Inclusionary Zoning ordinance and a separate conditional use application was submitted for review which proposes 5 units to meet the definition of workforce housing units.

The site abuts the R6 zone along Chestnut and Oxford Streets and is currently an amenity area comprising 10 mature locust street trees and an access drive to the middle level of the parking garage. The building would be constructed over the garage access.

Applicant: Lou Wood, A & M Partners, Inc  
Agent and Engineer: Tom Greer, Pinkham & Greer  
Architect: William Hopkins, Archetype

Required reviews and waivers:



<b>Applicant's Proposal</b>	<b>Applicable Standards</b>
New structure of 54 dwelling units	Subdivision Review
Multifamily building of 75,800 sq ft	Level III Site Plan Review and B-7 Design Review
New structure of 54 dwelling units	Inclusionary Zoning Section "Ensuring Workforce Housing" 14-487

<b>Waiver Requests</b>	<b>Applicable Standards</b>
Street trees – project includes 22 street trees, less than required (this application came in prior to the Amendment to the waiver provisions)	Site Plan Standard, <i>Section 14-526(b)2.b(iii)</i> and Technical Manual, <i>Section 4.6.1</i> . All multi-family development shall provide one street tree per unit. Waiver permitted where site constraints prevent it, to allow contribution of a proportionate amount to Tree Fund. <i>54 units less 22 street trees proposed or existing = 32 street trees required; contribution of \$6400 recommended, as the submission was prior to the new ordinance and technical standards regarding street trees.</i>

**II. PROJECT DATA**

<b>SUBJECT</b>	<b>DATA</b>
<b>Existing Zoning</b>	B-7
<b>Existing Use</b>	Parking garage and open, landscaped surrounds
<b>Proposed Use</b>	54 residential units & 1 commercial unit
<b>Parcel Size</b>	92,202 sq ft
<b>Impervious Surface Area</b>	
--Existing	53,832 sq ft
--Proposed	64,796 sq ft
--Net Change	10,964 sq ft
<b>Total Disturbed Area</b>	22,309 sq ft
<b>Building Footprint</b>	
--Existing	49,326 sq ft
--Proposed	59,126 sq ft
--Net Change	9,800 sq ft
<b>Building Floor Area</b>	
--Existing	147,978 sq ft (existing garage)
--Proposed	223,778 sq ft
-Net Change	75,800 sq ft
<b>Residential</b>	
- # of Existing Res. Units	0
- # of proposed Res. Units	54
- # of lots	2
- # of affordable housing units	6
<b>Proposed Bedroom Mix</b>	
-Efficiency Units	2
One-Bedroom Units	14
Two-Bedroom Units	38
Three-Bedroom Units	0
<b>Parking Spaces</b>	446 existing in garage, of which 54/55 spaces (1:1) proposed for tenants
<b>Handicapped Spaces</b>	2
<b>Bicycle parking Spaces</b>	44 (36 inside; 8 outside) (none existing)
<b>Estimated Cost of the project:</b>	\$5,850,000

### III. EXISTING CONDITIONS

The proposal site abuts the west side of the 2-3 story parking garage, with the main frontage of the new building along Chestnut Street. The site slopes downhill about 20 feet from Oxford Street to Lancaster Street.

The building is proposed to be at the “top” of the slope at the corner of Chestnut and Oxford Streets and next to the pedestrian steps leading to the top deck of the parking garage- see photos right and below.



*Corner of Oxford and Chestnut Streets*



*Looking towards site from garage deck*

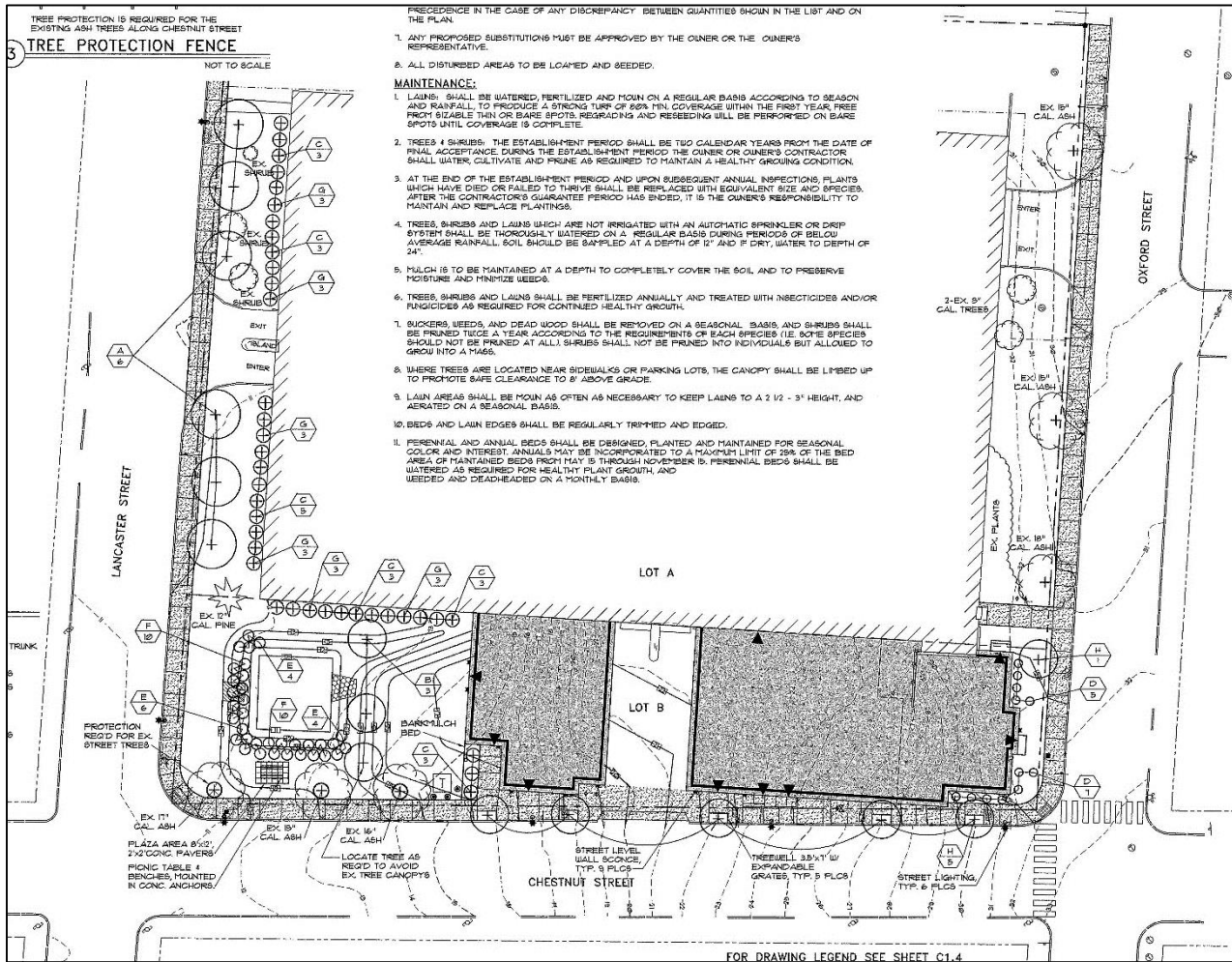
### IV. PROPOSED DEVELOPMENT

The proposals in terms of the site layout have changed slightly by relocating the footprint 10 feet further away from Oxford Street (Plan P4 Site Plan). The proposed 7 story building abuts the parking garage and is built over the drive access to the garage. The main entrance to the building faces Chestnut Street and is located just uphill from the garage access drive. There is also an entrance from the parking lot to the elevator lobby and seven secondary entrances to specific units or rooms (eg community room) (see Floor Plan in Plan P14).

The sidewalk along Lancaster, Chestnut and Oxford Streets (ie whole of the lot) is proposed to be rebuilt in concrete based on the City’s new sidewalk materials standard. It was widened to 8 feet as recommended by staff and supported by the Board at the first Workshop. Seven of the ten existing mature trees along Chestnut would be removed (Plan P2) but the revised proposals add in 15 street trees along Lancaster, Chestnut and Oxford Streets.

The new building would provide 54 apartment units; these are understood to be market-rate apartments with the exception of 6 units proposed to meet the definition of “Work Force” housing. In addition, there is a 2-level unit next to the garage access drive that is considered commercial although it has been suggested it may be a “live-work”. It totals approximately 3550 sq ft., with an entrance on Chestnut Street and from the common amenity space on the north side. The first full level of apartments (floor 3) have cantilevered decks out over the top deck of the parking garage (see elevations, Plan P13), and a total of 42 units have balconies.

**Final Landscape Plan (Plan P6):**



**V. PUBLIC COMMENT AND WORKSHOP DISCUSSIONS**

This hearing was noticed to 160 neighbors and interested parties, and the public notice appeared in the *Portland Press-Herald* on December 5 & 6, 2016. The applicant held a Neighborhood Meeting on August 31, 2016. The Planning Division received two public comments from Louis Christen (PC1 and PC2) who is concerned that the building does not respect the nearby much lower buildings and should be lower.

As indicated in the table below the applicant has addressed most of the neighbor, staff and Planning Board comments although the footprint, general massing and maximum height have not been revised.

<i>Issues raised at Workshops</i>	<i>Information/revisions submitted/included</i>
Building needs better engagement with the community/street	Community room identified in ground level; re-orientation of entrance to live/work space so from Chestnut
Concern re height in context of neighborhood-transition to surrounding lower heights and public comment request to remove one floor	Neighborhood Architectural Overview ( <u>Attachment M</u> ) with sections and renderings and floorplans- overall massing has not changed except for stepbacks on Oxford Street elevation
Concern re siting and massing of building re R6; Oxford elevation seems like the "back"	Moved 10 ft from Oxford Street with additional stepbacks at upper levels on Oxford St elevation
Concern about design- using colors to break up bulk; lack of urban scale at street	Updated re entrances and one color for apartment walls (see <u>Att. M</u> )
Windows/apartments at ground level - Oxford facing apartments might better be a different use	Remain as apartments, but with entrances direct from Oxford Street sidewalk.
Street trees	Removing 7 existing and replaced with 5 new ones on Chestnut, plus adding 10 additional street trees on the lot

Site Landscape- screen blank wall of garage	Added viburnum along base of garage
Site landscape- outdoor recreational space- design and security	Added steel slatted picnic table on paved area
Site landscape- adding green elements	Trees and planting have been added- see <u>Plan P6</u> .
Traffic safety analysis Lancaster and Chestnut	Submitted
Information about parking supply /demand /management	<u>Attachment O</u> provides additional information
Sidewalks- need to be widened to at least 8 feet	Sidewalks widened to 8 feet
Sidewalks- extend replacement to Lancaster & Oxford	Concrete sidewalk (as allowed under new standards, all at 8 ft wide) extended along all street frontages of larger (garage) site)
Street lighting	Added 6 street lights (Bayside medium) along Chestnut and Lancaster
ROW- ADA ramps at corners	Revised to meet staff recommendations
Stormwater - Peer Engineer comments	Addressed all comments except re PWD capacity letter
Clarification of external mechanicals on facades	Not specifically addressed
Parking- allow residents without car to have a rebate instead of parking space	The Traffic engineering reviewer considers this has been addressed ( <u>Attachment 5</u> ).
Bike parking- some inside and some on street for visitors	36 inside; 8 outside

**VI. STAFF REVIEW**

**A. ZONING ASSESSMENT**

The proposed development is on the edge of the B7 zone and faces the R6 zone on Chestnut and Oxford Streets. The B7 zone includes a number of unique requirements concerning setbacks and the length of the building wall.

The applicant has not confirmed the use of the “commercial” space between the garage entrance and Lancaster Street on the lowest floor and staff request details be submitted when available to ensure there are no zoning or site plan issues (see suggested condition of approval).

The applicant has submitted a Zoning Analysis (Attachment C) and staff consider that the proposed development meets all of the dimensional requirements of this zone. The

Bayside Height Overlay Map (2006) identifies the site as within the “Intermediate Height District” of 3 floors minimum and a maximum of 105 ft. The R6 zoned areas across Chestnut and Oxford Streets are identified as “Traditional Neighborhood Height” with a minimum of 2 floors and a maximum height of 55 feet.



Plan P13 Building Elevations show the calculation for the average grade which is used to calculate the height based on the zoning definition of height. The average grade is 24.125 feet and top most roof structure is 104.0 feet (both from same datum) so the zoning height is 79.875 feet. A table of heights per zoning compared to “absolute” heights is included in section VI D to provide information in the context of the discussion of height transition from this site to abutting buildings.

The B7 Zoning ordinance also specifically requires compliance with the *B7 Design Principles and Standards*, which includes requirements for access and circulation, sidewalks and crosswalks, and lighting in addition to building design. The relevant building design standards are included in section VI D.



## **B. SUBDIVISION STANDARDS**

### 14-496. Subdivision Plat Requirements

The applicant has submitted a draft plat which has been revised to address preliminary staff comments and will be finalized prior to signature in accordance with the standard condition of approval. The location of the five identified easements on the plat is one of the staff concerns.

### 14-497. General Requirements (a) Review Criteria

#### ***Water, Air Pollution and Soil Erosion***

A revised Erosion Control Plan has been submitted (Plan 7) and staff find this is acceptable (Attachment X). The Portland Water District has just issued a water capacity letter and this will be available at the Hearing.

#### ***Traffic***

The applicant has submitted the requested Traffic Assessments (Attachment H) and these are acceptable to the Traffic Engineering Reviewer (Attachment 5).

#### ***Parking***

The applicant has noted that there is a 450 space parking garage abutting the project and in principle the parking supply is adequate. Under Zoning and Site Plan ordinances there is a requirement for additional information and this is discussed below.

#### ***Sanitary Sewer/Soils***

The application has been reviewed by the consulting Peer Engineer (Attachments 4) and is acceptable subject to confirmation of wastewater capacity. The wastewater capacity letter has been received (Attachment G).

#### ***Storm water***

The applicant proposes to manage stormwater impacts by collecting the stormwater and directing it to an underdrained soil filter at the corner of the site near Lancaster/Chestnut Streets. The revised submissions additional detail and address the Peer Engineer comments (Attachments 4).

#### ***Scenic Beauty and Street Trees***

The proposal results in the removal of 7 of the 10 mature trees at the back of the sidewalk on Chestnut Street (Plan P2). The Landscape Plan has been revised to add 5 new maple street trees along Chestnut Street and 10 new trees elsewhere on the site. The street tree requirement is discussed under the Site Plan review.

#### ***Comprehensive Plan***

The project is consistent with the Housing Goals and Policies of the Comprehensive Plan.

#### ***Electrical Service***

The Subdivision ordinance requires electrical service to be underground and the proposals have been revised to place the services crossing Chestnut Street underground (Plan P5).

## **C. SITE PLAN STANDARDS**

### 14-526 Site Plan Standards

#### ***Traffic - Access, Circulation, Loading and Servicing***

Staff have confirmed that they concur with the submitted traffic data and that no further action is required (Att. 5).

#### ***Right of Way***

The applicant is proposing to reconstruct the sidewalk at least 8 feet in width and in concrete along the Chestnut, Oxford and Lancaster Streets in accordance with the Council's current materials policy. Staff recommend that this addresses the Technical Standards, but have noted that some details need to be revised to address drainage, slopes of the sidewalks where they cross aprons, and lighting requirements (Attachment 5). A suggested condition addresses this comment.

***Public Transit Access*** - these do not apply to this project.

#### ***Parking***

The applicant is proposing the provision of parking on a one to one ratio within the parking garage and has submitted a TDM ([Attachment N.](#)) and additional parking information ([Attachment O](#)) to clarify the proposed parking provision and how adequate spaces will be available for tenants including ADA spaces. The Planning Board is required to establish the parking requirement based on a submitted parking analysis. The Traffic Engineer Tom Errico has confirmed that both the number of spaces provided and the information is acceptable, subject to the TDM being implemented with annual monitoring studies that are carried out in accordance with specification included in the suggested condition of approval ([Attachment 5](#)). Further clarification regarding ADA required parking is also the subject of a suggested condition of approval.

### ***Bicycle Parking***

The proposals show 44 bicycle parking spaces (8 outside near the commercial space; 36 inside the parking garage) on the site plan and this meets the requirement of 2 bicycle parking spaces for every 5 dwelling units.

### ***Snow Storage***

This requirement does not apply.

### ***Transportation Demand Management***

The Site Plan ordinance requires that all Level III development in the B7 zone shall design and implement a Transportation Demand Management (TDM) Plan. The applicant has submitted a TDM Plan ([Attachment N](#)) and this is considered by staff to be acceptable subject to the annual monitoring studies being carried out in accordance with the reviewer's recommendations ([Attachment 5](#)). A suggested condition of approval reflects the reviewer comments.

### ***Landscape Preservation / Site Landscaping and Screening***

The proposals include viburnum planting around the base of the parking garage planting around the base of the building and around the rain garden, and 9 new street trees ([Plan P6](#)). Staff are concerned at the lack of detail regarding hardscape materials, character of the planting re CPTED issues, and boundary fencing along Oxford Street and in the amenity area; suggested conditions require further detail for review and approval by staff.

### ***Street Trees***

The proposals retain 7 existing street trees, add 5 street trees in the Chestnut Street ROW, and add 10 trees on the site near the ROW, giving a total of 22 street trees provided as part of the proposal.

***Water quality, Stormwater Management and Erosion Control*** - see discussion under Subdivision Review above.

### ***Public Safety***

The Crime Prevention through Environmental Design (CPTED) standards in the site plan ordinance address the principles of natural surveillance, access control and territorial reinforcement so that the design of developments enhance the security of public and private spaces and reduce the potential for crime.

The proposals bring the gated entrance to the parking garage (under the building) near to Chestnut Street and this addresses concerns regarding the previous proposal for a closed "tunnel" which limited surveillance and access control. The proposed amenity area between the building and Lancaster Street is not lit and includes grass and shrub planting. Staff are concerned that this area may not have any immediate surveillance from the building (as its next to the commercial space) and suggest a condition that allows for further consideration and review of the design details of this area to ensure it is as safe and secure as possible.

### ***Fire Prevention***

The Fire Department has provided comments which are subject of a suggested condition of approval ([Attachment 3.](#)) One comment requested sight of the PWD capacity letter; this was provided this week and further comments are awaited.

### ***Public Utilities***

The Peer Engineer has reviewed the utilities and these are considered acceptable ([Attachment 4](#)).

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

The Site Plan ordinance includes the following requirement in respect of wind impacts:

- a. *The bulk, location or height of proposed buildings and structures shall not result in health or safety problems from a reduction in ventilation to abutting structures or changes to the existing wind climate that would result in unsafe wind conditions for users of the site and/or adjacent public spaces.*

The submissions do not include any detailed information regarding the wind conditions anticipated to be created by the proposed 7 story building at this location. Staff do not consider that the proposed building would result in any problems or unsafe conditions.

### ***Shadows***

The applicant has submitted a Shadow Study ([Attachment J](#)). The shadows created by the building largely affect the parking garage.

***Historic Resources-*** this does not apply to this project.

### ***Exterior Lighting including Street Lighting***

Building mounted lighting is proposed within the balconies and in sconces near the entrances; the specifications are included in [Attachment L](#). Staff consider these meet the technical requirements, subject to the sconces being mounted so they direct the light downward. This requirement is specified in a suggested condition of approval.

As noted in the discussion of public safety, the absence of pole lighting in the amenity area may present security and safety issues and a suggested condition requires that this be reviewed further.

Regarding street lighting in the ROW, the applicant has added three street lights to meet the staff requests regarding lighting in Chestnut Street and Lancaster Street. Technically the applicant could be requested (per Technical Standards and *B7 Design Standards*) to replace the street light fixtures along Oxford Street, but staff recommend that the applicant be requested to provide just the underground lighting conduit as part of the reconstruction of the sidewalk in order to allow for LED lighting in the future. The City has issued an RFP to update the street lighting, so the city would prefer to have the conduit for the future upgrades.

### ***Noise and Vibration***

The applicant has confirmed that rooftop appurtenances will be located on the roof without screening (set back) and staff assume this will include HVAC mechanicals. A public comment also asked about whether any mechanical devices would be protruding from the sides of the building. The suggested conditions address concerns about noise, screening and mechanical fixtures on the facades.

## **D. DESIGN STANDARDS**

### **B-7 Zone Design Principles and Standards**

The applicant has submitted an updated narrative explaining how the design has been revised to mitigate the height on the Oxford Street elevation, break up the roof line generally and modify entrances/uses at ground level ([Attachment M.](#)). These address the comments from the two PB Workshops (including public comments), which generally related to:

- Building needs better engagement with the community/street
- Concern re height in context of neighborhood- transition to surrounding lower heights
- Concern re siting and massing of building re R6
- Concern about design- using colors to break up bulk; lack of urban scale at street

The “Neighborhood Architectural Overview” in [Attachment M](#) also provides birds eye aerials, renderings, sections, floor plans and elevations to illustrate how the proposed building integrates into the existing urban fabric.

Both members of the public and the Board have focused on assessing the way the building “*ensures sensitive transitions to surrounding neighborhoods*” (B7 Design Standards- Principle A as extracted below) as this requires a sensitivity to existing buildings as well as to the zoning maximums for each zone. This issue is not only related to height, but also to the material placement and design of the pedestrian realm.

**Height**

The following tables have been prepared to help frame the final review of this issue in the context of the proposals where heights are shown based on two different ways of measuring height: the zoning height (height above the average grade) and the absolute height (height of the building at a particular point in relation to the grade at that location).

The absolute height of the proposed building (from Oxford Street) is shown as 71 feet on the elevation in Plan P13; this would be about 35 feet higher than the roof ridge of the townhouses opposite on Oxford Street, and 30-40 feet higher than the Pearl Place buildings further east on the same side of Oxford Street.

**Table of proposed heights: (see Plan P13)**

Heights of proposed elements of new building	Per zoning definition (height from average grade)	Absolute height (from grade at that location)	Maximum height allowed by zoning
Mezzanine at Oxford St facade	79.875 ft	71 ft approx	105 ft
Mezzanine at Lancaster St end	79.875 ft	86 ft 10 in	
Top of highest main floor at Oxford St end	71.875 ft	63 ft approx	
Top of highest floor at Lancaster St end	71.875 ft	78 ft 7 in	
Lowest stepback at Oxford St facade	59.875 ft	41 ft approx	

**Table of Surrounding Zoning Heights allowed and Absolute Heights of existing buildings:**

Surrounding zones on opposite side of street from the development	Maximum zone height allowed on opposite side of street	Absolute height of existing buildings nearby as noted
Chestnut Street	55 ft	40 ft approx. (one building on opposite side of Chestnut St)
Oxford Street	55 ft	35 ft approx. (row of buildings on opposite side of Oxford St)
Lancaster Street	105 ft	Existing parking lot
(Other side is parking garage)	105 ft	30-40 ft approx. (Pearl Place buildings nearest Oxford St on other side of garage)

**Pedestrian Realm and Materials**

The City’s Urban Designer has provided comments on the final design in the context of the standards (Attachment 2) and recommends the following condition of approval:

*That final proposals comply with Design Standards A-2, A-5, C-2, D-1, D-4, E-1, E-3, E-4 and shall be reviewed and approved by Planning staff to address the staff design comments dated 12.9.16 which primarily relate to material placement and design of the pedestrian realm.*

The suggested condition is based on the following comments from the Urban Designer that address other aspects of the issue of “sensitive transitions” (Attachment 2):

**Principle A: Urban Design**

*All development in Bayside shall be designed to create a strong urban identity and sense of place. Buildings may be a variety of architectural styles, particularly those that are innovative and express the aesthetic of the time in which they were built, and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. These principles shall . . . ensure sensitive transitions to surrounding neighborhoods, enhance the physical amenities of the neighborhood, and create a pedestrian oriented environment with safe and vital streets.*

**A-2: Edges and Transitions** – *Transitions between larger scale, mixed use buildings and smaller-scale residential uses shall be designed so that there is a seamless connection to adjacent residential neighborhoods to ensure that these zones remain stable, quiet, and secure. This shall be achieved through the mitigation of height, massing, stepbacks, materials, and details and design of the façade at the pedestrian level. . . . Larger scale developments may use public open spaces to provide transitions to lower scale uses.*

- To address the standard and the board comment, the applicant modified the massing on the Oxford Street façade. The revisions result in a graduated massing that places a four-story mass at the street, of similar scale and proportion to the residential architecture around it. The changes in plane are accentuated with changes in material. The façade continues to have a “secondary” presence on the street – Chestnut Street being the principal façade with the primary residential entrance. The secondary aspect of the façade is reflected in the design of the door and the smaller, elevated windows at the street to indicate the private use.
- On Chestnut Street, the detail and design of the façade at the pedestrian level should be strengthened to improve the sense of scale through revisions to material placement and the addition of articulation elements that relate to the pedestrian realm experience (Standards E-1, E-3, E-4).

**A-5: Pedestrian Environment** – *Development on public streets or public spaces shall be human scale at the pedestrian level and enhance the pedestrian environment through the use of elements at the first floor such as . . . fully functioning entries oriented to the street; active windows and storefronts; awnings and weather protection; outdoor seating and sales displays; adequately sized sidewalks; gathering spaces; trees and landscaping; street furniture; . . .*

- The project uses fenestration at the ground levels, entrances emphasize with canopies and material change, and open space at the end of the block.
- Where the standard is still not met is the detail and design of the building façade at the ground level. Little to no massing or façade variation is used to differentiate the ground floor – the result is a flat façade for the full 6 stories of the building. The staff recommends that the architecture team further articulate and detail the pedestrian level to create a sense of enclosure and the placement of materials to reflect the uses rather than arbitrary placement. These comments also apply to Standard E-1 Architectural Design, E-3 Massing, and E-4 Articulation.

**A-7: Building Orientation** – *The primary facades and entrances of buildings shall be oriented to streets, major pedestrian routes, or open spaces in order enhance the pedestrian-oriented environment.*

- The project faces onto two streets and is set close to the property line.
- Chestnut Street is treated like the primary façade with the primary residential entrance. Oxford Street is the secondary façade but addresses the street with a minor residential entrance, some visual interest and massing variation, and a maintenance of the street wall.

### **Principle C: Parking, Loading and Service Areas**

**C-2: Parking Entrances** – *The entrance to parking garages shall respect the pedestrian realm and minimize the visual impact of the garage . . .*

- For CPTED concerns, staff recommended that the design of the “tunnel” to the garage entrance on Chestnut Street be revised – the applicant has addressed the concern by adding a gate at the façade. However, the design of that gate and vehicle entrance/exit should be clarified so as to not encroach on the sidewalk/pedestrian path. Car stacking should also be considered in the placement of the gate.

### **Principle D: Open Space and the Public Realm**

**D-1: Open Space Design** – *Publicly-accessible parks, plazas, and other open space shall be accessible from sidewalks and surrounding buildings. . . . Pedestrian amenities such as seating, lighting, artwork, trash receptacles, etc. shall be compatible with the City’s Streetscape Standards for Bayside. . . . Solar access, wind protection, and landscaping shall be considered to enhance pedestrian comfort and provide a variety of sunny and shaded areas.*

- It is not clear whether the open space provided is accessible from the sidewalk. The space shown as plaza and seating is visible from the sidewalks, streets, and buildings as required by the standard. The amenity provided appears to be a paved area with seating that is under shade, and additional landscaping throughout the space. No lighting is proposed.

**D-4: Pedestrian Amenities** – *Pedestrian amenities shall comply with the City's Technical Manual at a minimum, and also with the streetscape standards selected for Bayside.*

- *Seating: One linear foot of seating for each thirty (30) square feet of open space, or 30 linear feet of pedestrian route shall be provided within publicly accessible open space.*
- *It is not clear whether the seating proposed in the open space meets this standard – what kind of seating and what linear feet of seating are proposed?*

**Principle E: Architectural Design**

*New development shall create a mixed-use, pedestrian-friendly setting that contributes to the context of the surrounding urban fabric and provides a sensitive transition to adjacent residential neighborhoods. . . . The scale, massing, and fenestration of new development shall reflect its context, . . .*

**E-1: Architectural Design** – *New development in Bayside may be a variety of architectural styles, . . . and shall be organized according to principles of urban design that integrate with the urban fabric of surrounding neighborhoods and Portland as a whole. A respectful integration of contemporary design within the existing context shall complement, reinforce, and enhance the prevailing patterns and proportions of adjacent buildings without requiring imitation or repetition.*

- *Overall, staff does not find the placement of materials to be contextual. In some cases, the materials correspond to the massing or use, but in other cases, materials change at corners or in arbitrary ways that result in a patchwork quilt effect that does not benefit the overall design nor does it relate to the pattern or use of materials in the context. Staff recommends a simplification of material placement (example below). Visual interest should be achieved through articulation rather than a material pastiche.*

**E-2: Height** – *Heights along the edges of the B-7 Zone shall transition to the scale of adjacent neighborhood development through design elements such as variations in massing; articulation of the facades in intervals that reflect exiting structures or platting pattern, stepping the architecture to adjacent buildings and/or contextual proportions of building elements, use of architectural style and details such as roof lines, belt courses, cornices, or fenestration, and color or materials that derive from the less intensive zone.*

- *The Planning Board's concerns regarding transition of height have been addressed by the revisions to the Oxford Street façade.*

**E-3: Massing** – *Large expanses of undifferentiated façade or uniform cladding is not allowed along public rights of way. . . . The composition of a proposed building façade shall be defined by horizontal and vertical articulation, with vertical articulation being predominant, in keeping with the local context of the urban form.*

- *As stated above, little to no massing or façade variation is used to differentiate the ground floor – the result is a flat façade for the full 6 stories of the building.*

*New buildings that are four stories or higher shall have three components: base, middle, and top.*

- *The base of the building should be more consistently defined, especially on the Chestnut Street side. At this point, that can best be achieved through articulation, material placement and detailing. The corner, double-height live-work unit could also be more substantially differentiated from the other masses of the building.*

**E-4: Articulation** – *Façades visible from public rights of way shall incorporate design elements that break the facades into components scaled to the pedestrian, and to the context of other buildings on the street. This may be accomplished through an expression of the building's base, middle and top, vertical fenestration, variation in the planes of the façade, architectural details such as windows, doors, bays, balconies, cornices, reveals, expansion joints, trim, changes in color, texture, and material, permanent artwork, etc.*

- *The project uses fenestration at the ground levels, entrances emphasize with canopies and material change, recessed bays at the upper floors, and open space at the end of the block.*

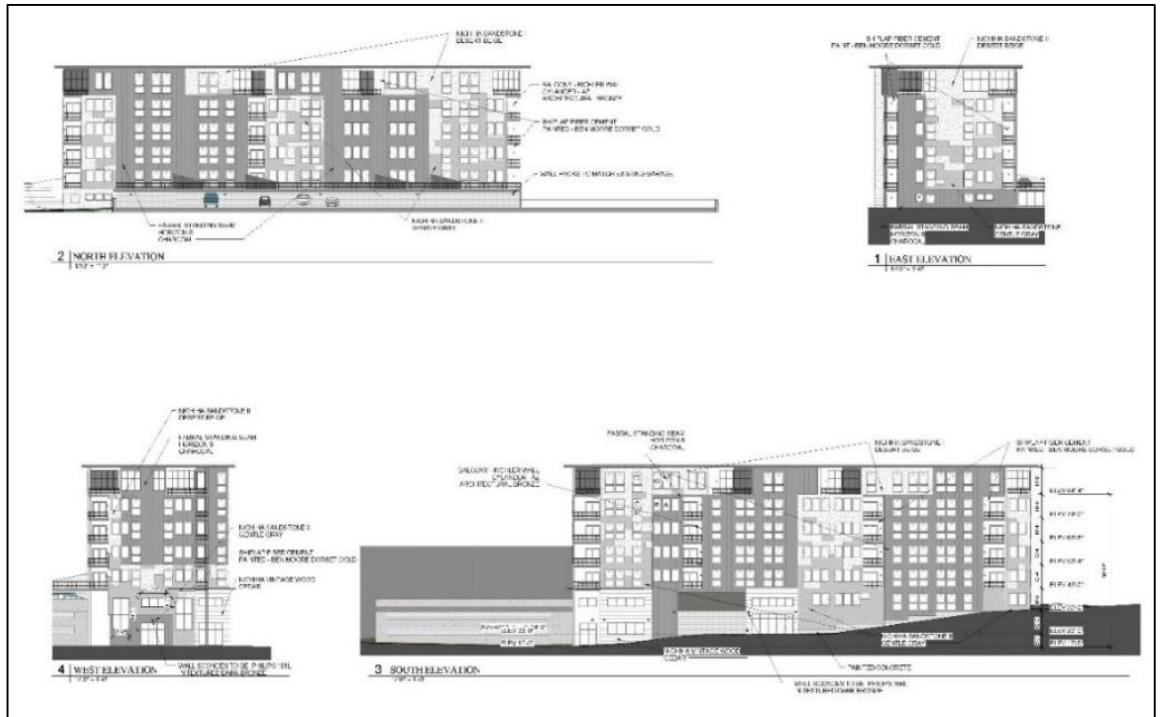
*The base of the building which relates to the pedestrian realm shall be designed with a high level of detailing and material quality utilizing the options listed above. . . . Buildings which are six and seven stories shall meet this standard on the first 24 feet, or the first two floors at a minimum.*

- The level of detail and articulation on the Chestnut Street elevation is not sufficient, especially at the street level. Material changes are mostly arbitrary and other than at the entrance, do not correspond to uses or plane changes. Revisions to meet this standard could come in form of enclosure; articulation and detail (reveals, dimensional trim, material transitions, detail); placement of material that corresponds with uses.

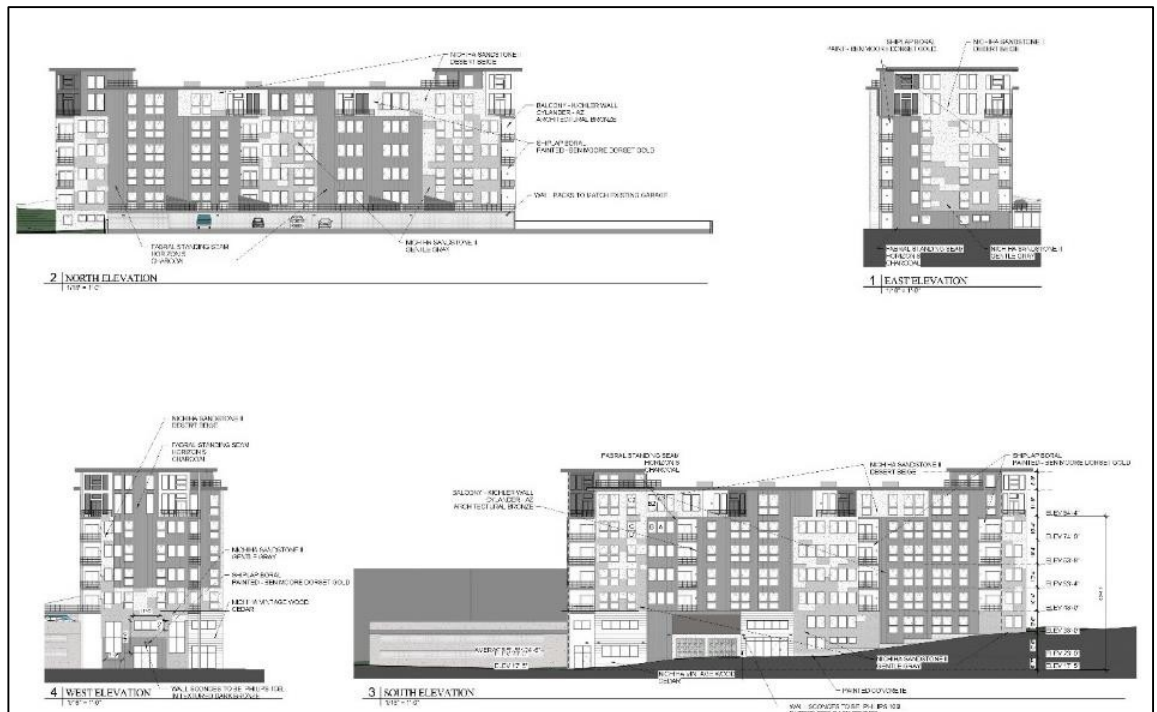
(see sketch in Attachment 2 annotating the elevations to clarify the comments)

The series of elevations below illustrates how the design has evolved from the original submissions to the final plans included in this Report:

**Initial submitted Elevations:**



**Elevations as presented to the first Workshop (see PB Memo 9.13.16):**







*Final elevations*



*Final Oxford Street frontage:*



*Final from Lancaster Street:*



**Multi-family and Other Housing Types Design Standard**

This design standard also applies to this proposal and most of the standards are already included in the B7 Standards above. However, the standard regarding open space is relevant:

*3. Open space on the site for all two-family, special needs independent living unit, bed and breakfast and multiple-family development shall be integrated into the development site. Such open space in a special needs independent living unit or a multiple-family development shall be designed to complement and enhance the building form and development proposed on the site. Open space functions may include but are not limited to buffers and screening from streets and neighboring properties, yard space for residents, play areas, and planting strips along the perimeter of proposed buildings;*

Staff comment: 42 of the new units will have balconies, though about 5 of these are cantilevered over the top deck of the parking garage and may not serve an “open space function”. Clarification of the design and materials of the deck are requested and subject of a suggested condition of approval. The site includes an open amenity area near the corner of Chestnut Street and Lancaster Street, but this is partly taken up by the stormwater system and it is unclear how much of the area would serve as open space for resident/public access. A condition of approval requests further details of this area to ensure safety and security issues are addressed.

**XII. INCLUSIONARY ZONING CONDITIONAL USE**

Housing Planner Tyler Norod reviewed the Conditional Use for Affordable Housing application at 75 Chestnut Street. Conditional Use is authorized by Division 30, Section 14-487, Ensuring Workforce Housing, to secure the creation of Workforce Housing Units as part of new residential projects that propose 10 or more units. The ordinance requires a minimum of 10% of the project to be restricted for Workforce Households and that the number of bedrooms required under Section 14-487(e)3 be at least 10% of the total number of bedrooms made available as part of the project. The project located at 75 Chestnut Street proposes the creation of 54 residential rental units. Based on a total of a proposed 55 units (since the commercial unit has also been described as a live-work space), the project will be required to provide a minimum of five (5) on-site workforce units with a total of nine (9) bedrooms.

The project has proposed to provide six (6) workforce units on-site with a total of 9 bedrooms, the project has met the minimum requirements set forth in Section 14-487. These workforce units will be dispersed throughout the project with two (2) studios and two (2) two-bedroom units located on the second floor, one (1) one-bedroom unit located on the third floor, and one (1) two-bedroom unit located on the fifth floor.

The ordinance defines *Workforce housing unit for rent* to mean a dwelling unit which:

- (a) Is affordable to a household earning less than 100% of HUD AMI; and
- (b) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

The memo from the Housing Planner confirms the project complies with the ordinance and includes a condition requiring an Affordable Housing Agreement to clarify and document the details of affordability restrictions. (Attachment 1).

### XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the planning board approve the Site Plan, Subdivision and Conditional Use for the proposed residential development at 75 Chestnut Street (Westerlea View Lofts).

### XIV. PROPOSED MOTIONS FOR THE BOARD TO CONSIDER

#### A. WAIVER

*(This project was submitted before the recently adopted Street Tree Amendment that became effective on 12.7.2016)*

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on December 13, 2016 for application 2016-184 (75 Chestnut Street) relevant to Portland's technical and design standards and other regulations; and the testimony presented at the planning board hearing:

1. The planning board **finds/does not find** that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The planning board **waives/does not waive** the site plan standard (*Section 14-526 (b) (iii)*) requiring one street tree per unit for multi-family development and concludes that the applicant shall contribute \$6,400 to Portland's tree fund.

#### B. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on December 13, 2016 for application 2016-184 (75 Chestnut Street) relevant to the subdivision regulations; and the testimony presented at the planning board hearing, the planning board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval, which must be met prior to the signing of the plat:

- i. The applicant shall submit a final subdivision plat for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority;
- ii. The applicant shall provide drafts of all necessary easements, including but not limited to:
  - a. Temporary construction easement from the City of Portland to Westerlea View Lofts;
  - b. License from the City of Portland to Westerlea View Lofts for building footings;
  - c. Easement(s) for the deck extensions above the existing parking garage structures (air rights);
  - d. Access easement for sidewalks that are on the site property.

for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority, with evidence of executed easements to be submitted prior to the issuance of a building permit.

### C. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in planning board report for the public hearing on December 13, 2016 for application 2016-184 (75 Chestnut Street) 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:

- i. That final proposals comply with Design Standards A-2, A-5, C-2, D-1, D-4, E-1, E-3, E-4 and shall be reviewed and approved by Planning staff to address the staff design comments dated 12.9.16 which primarily relate to material placement and design of the pedestrian realm; and
- ii. That the project is subject to the submitted Transportation Demand Management Plan dated October 2016, to include annual monitoring studies that comply with the requirements set out in the comments of the Traffic Engineering reviewer Tom Errico dated 12.9.2016; and
- iii. That the applicant submit a revised and more detailed plan for the amenity area between the building and Lancaster Street that demonstrates that the safety and security of the area meets CPTED standards eg re lighting, visual surveillance and similar issues including landscape features; and
- iv. That the applicant and all assigns shall comply with the conditions of Chapter 32 stormwater including Article III, post-construction storm water management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the submitted construction stormwater management plan and sediment and erosion control plan dated 9.30.2016 based on City standards and State guidelines. A Maintenance Agreement for the stormwater drainage system shall be approved by Corporation Counsel and the Department of Public Works, and submitted, signed and recorded prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Works; and
- v. That plans showing details for the areas listed below shall be submitted to the Planning Authority for review and approval prior to the issuance of a building permit:
  - a. Patio/entrances on Oxford Street
  - b. Doors for entrance to parking garage on Chestnut Street
  - c. Decks over parking lot
  - d. Live-work unit
  - e. Parking layout (dimensioned) for ADA spaces and demonstration that it meets applicable state and federal standards regarding ADA van parking.
- vi. That the applicant shall revise plans and provide design details for the following elements in the City's Right of Way, for review and approval prior to the issuance of a building permit:
  - a. Driveway aprons on Oxford Street and Lancaster Street, noting a pedestrian accessibility route with a maximum 2% cross-slope, and whether full or partial adjustment to the grade of the driveway apron is required;
  - b. Grading adjustments for the sidewalk ramp construction at the corner of Chestnut Street and Lancaster Street to address the ponding of water that currently impacts the pedestrian walking route; and
  - c. The provision of an underground lighting conduit as part of the sidewalk reconstruction along the lot frontage on Oxford Street.
- vii. That the applicant shall submit details of the location, design and screening of façade and rooftop external heating, ventilation and other mechanical equipment, and associated information to document the sound levels meet the City's Site Plan, Zoning and Technical Standards, for review and approval by the Planning Authority; and
- viii. That the applicant address the Fire Department comments dated 9.7.2016; and
- ix. That the proposed building mounted wall sconces shall be installed so that the light is directed downward.

#### **D. INCLUSIONARY ZONING CONDITIONAL USE**

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board Report for the public hearing on December 13, 2016 for application 2016-185 (75 Chestnut Street) relevant to the Conditional Use as authorized by Division 30, Section 14-487 Ensuring Workforce Housing; and the testimony presented at the planning board hearing, the planning board finds that the Conditional Use **is/is not** in conformance with the standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval:

- i. Provided the Applicant and the City enter into an Affordable Housing Agreement (AHA) before a Building Permit may be issued.
- ii. The AHA will outline the details of the affordability restrictions placed on the workforce units and will be filed as a covenant to the 75 Chestnut Street property's deed with the Cumberland County Registry of Deeds before a Certificate of Occupancy may be issued.

#### **ATTACHMENTS TO THIS REPORT:**

##### **Attachments**

1. Final Housing & Comm Dev Review of IZ
2. Final Design Review comments
3. Final Fire Department comments
4. Final Engineering Review comments
5. Final Traffic Engineering review comments
6. Final City Arborist comments

##### **Public Comments (all received since project submitted)**

- PC1. Louis Christen 9.12.16  
PC2. Louis Christen 10.17.16

##### **Applicants Final Submittal**

- A. Cover Letter and Subdivision/Site Plan Applic. w/revised data sheet
- B. Cover letter & Inclusionary Zoning Cond. Use Applic.
- C. Zoning analysis
- D. B-7 Design Standards Compliance narrative
- E. Right, title and Interest
- F. Financial Capability letter
- G. Utility letters of capacity
- H. Traffic Assessments
- I. Stormwater Reports
- J. Shadow Study
- K. Neighborhood Meeting Certification
- L. Updated Lighting Specifications
- M. Updated Neighborhood Architectural Overview including revised perspectives
- N. TDM Plan
- O. Additional Parking Information

**Final Plans**

- P1. Boundary Survey
  - P2. Existing Conditions and Demolition Plan
  - P3. Draft Subdivision Plat
  - P4. Site Plan
  - P5. Grading and Utilities Plan
  - P6. Landscape Plan
  - P7. Erosion Control Plan
  - P8. Details
  - P9. Details
  - P10. Details
  - P11. Details
  - P12. Drainage analysis
  - P13. Building Elevations
  - P14. Floor Plans
- (Note- Perspectives and Renderings are in Att. M.)

**CHAPTER 32 STORM WATER**

- Art. I. Prohibited Discharges, §§ 32-1--32-15**  
**Art. II. Prohibited Discharges, §§ 32-16--32-35**  
**Art. III. Post-Construction Stormwater Management, §§32-36-32-40**

**ARTICLE I. IN GENERAL**

**Sec. 32-1. Definitions.**

For the purposes of this article, the terms listed below are defined as follows:

*Applicant.* "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a project that is a post-construction stormwater management plan under this article.

*Best management practices ("BMP").* "Best management practices" or "BMPs" means schedules or activities, combinations of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage.

*Clean Water Act.* "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.* also known as the "Clean Water Act"), and any amendments thereto.

*Discharge.* "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposal or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, roll-off container, concentrated animal manure storage or vessel or other floating craft, from which pollutants are or may be discharged.

*Enforcement authority.* "Enforcement authority" means the person(s) or entity authorized under section 32-3 of this article to administer and enforce this article.

*Exempt person or discharge.* "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental ion ("DEP"). City of Portland

*Municipality.* "Municipality" means the city of Portland.

*Municipal separate storm sewer system, or MS4.* "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with systems, municipal streets, catch basins, curbs, , ditches, human-made channels or storm (other than publ owned treatment works and combined sewers) owned or by ity, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges ly to surface waters of the state.

*National pollutant discharge elimination system (NPDES) storm water discharge permit.* "National pollutant discharge elimination system (NPDES) storm water discharge permit" a permit issued by the EPA or by the DEP that authorizes the of pollutants to waters of the United States, whether the . . icable on an individual, group, or general area-wide basis.

*Non-storm water discharge.* "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

*Person.* "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a dis . . of storm water or a non-storm water discharge

*Pollutant.* "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, , sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

*Post-construction stormwater management plan.* "Post-construction stormwater management plan" means BMPs by a development project to meet the stormwater standards of Section V of the department of and urban 's Technical and Design Standards and Guidelines.



*Premises.* "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and \_\_\_\_\_, located within the \_\_\_\_\_, from which discharge into the storm drainage system are or may be initiated, or maintained.

*Qualified post-construction stormwater inspector.* "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

*Regulated small MS4.* "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

*Small municipal separate storm sewer system or small MS4.* "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not covered by the I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road and facilities, and military bases and facilities.

*Storm drainage system.* "Storm drainage system" means the City of Portland's small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

*Storm water.* "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and \_\_\_\_\_; "Stormwater" has the same meaning as "storm water".

*Urbanized area ("UAN").* "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-2. Reserved.**

**Sec. 32-3. Reserved.**

**Sec. 32-4. Reserved.**

**Sec. 32-5. Reserved.**  
**Sec. 32-6. Reserved.**  
**Sec. 32-7. Reserved.**  
**Sec. 32-8. Reserved.**  
**Sec. 32-9. Reserved.**  
**Sec. 32-10. Reserved.**  
**Sec. 32-11. Reserved.**  
**Sec. 32-12. Reserved.**  
**Sec. 32-13. Reserved.**  
**Sec. 32-14. Reserved.**  
**Sec. 32-15. Reserved.**

## ARTICLE II. PROHIBITED DISCHARGES

### **Sec. 32-16. Applicability.**

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any \_\_\_\_\_ses into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

### **Sec. 32-17. Responsibility for administration.**

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

### **Sec. 32-18. Prohibition of non-storm water discharges.**

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated \_\_\_\_\_; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn \_\_\_\_\_ runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fighting act runoff; water line flushing and discharges from water sources; individual residential car washing; and de-chlorinated swimming dis s.

- (2) Discharges specified in writing by the enforcement authority safety. as be necessary to protect public health and
- (3) . with verbal notification to the enforcement authority prior to the time of the test.

(c) person or discharge. This article shall not apply to an exempt person or dis that the enforcement authority may request from exempt persons and persons with exempt dis s of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-19. Suspension of access to the city's small MS4.**

The enforcement authority may, without notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water dis to the storm drainage system which presents or may present imminent and substantial to the environment, or to the health or welfare of persons, or to the storm drainage s or which may cause the to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, public ways or public property, to physically block the dis or minimize a non-storm water discharge to the storm dra system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such s as deemed necessary to or minimize to the storm s or to to persons.  
(Ord. No. 85-08/09, 10-20-08; Ord. 8-17-09)

#### **Sec. 32-20. Monitoring of discharges.**

In order to determine compliance with this article, the enforcement may enter upon and es subject to this article at reasonable hours to ct the and connections thereon to the storm drainage system; and to conduct monitoring, sampling and te of the discharge to the storm drainage system  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-21. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

(a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and the action necessary to correct it, including, without limitation:

- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
- (2) The cessation of discharges, practices, or operations in violation of this article
- (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
- (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

(b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any \_\_\_\_\_ies, fines or \_\_\_\_\_unctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the \_\_\_\_\_ manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *\_\_\_\_\_ 1 of notice of violation.* Any person rece \_\_\_\_\_ a notice of violation or suspension notice may \_\_\_\_\_ the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the \_\_\_\_\_ of \_\_\_\_\_, except that such hearing may be delayed by agreement of the ci \_\_\_\_\_ manager and the appellant. The city manager may a \_\_\_\_\_ reverse or modify the decision of the enforcement \_\_\_\_\_. A suspension under Section 32-5 of this article remains in \_\_\_\_\_ unless or until lifted by the city manager or by a reviewing court. A \_\_\_\_\_ aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision \_\_\_\_\_ to Rule BOB of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the \_\_\_\_\_ rements set forth in the notice of violation, or, in the event of an appeal to the \_\_\_\_\_ manager, within 45 days of a decision of the manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of \_\_\_\_\_ jurisdiction under Rule BOK of the \_\_\_\_\_ Rules of Civil Procedure.
- (f) *Ultimate \_\_\_\_\_ ity of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized dis \_\_\_\_\_ of \_\_\_\_\_ lutants into waters of the U.S. caused by said person. This article shall not create liabil \_\_\_\_\_ on the \_\_\_\_\_ of the \_\_\_\_\_, or any officer \_\_\_\_\_ or \_\_\_\_\_ thereof for any \_\_\_\_\_ that

result from any person's reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-22. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or of this article or the ication thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or ication of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

- Sec. 32-23. Reserved.**
- Sec. 32-24. Reserved.**
- Sec. 32-25. Reserved.**
- Sec. 32-26. Reserved.**
- Sec. 32-27. Reserved.**
- Sec. 32-28. Reserved.**
- Sec. 32-29. Reserved.**
- Sec. 32-30. Reserved.**
- Sec. 32-31. Reserved.**
- Sec. 32-32. Reserved.**
- Sec. 32-33. Reserved.**
- Sec. 32-34. Reserved.**
- Sec. 32-35. Reserved.**

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

(Ord. No. 35-09/10, 8-17-09)

**Sec. 32-37. Post-construction stormwater management plan approval.**

Notwithstanding any ordinance sion to the no icant for a ect to which this article is applicable shall for that development project unless the also receives approval for its post-construction stormwater management plan and for the best management practices ("nBMPs") for that development project.

(Ord. No. 35-09/10, 9-17-09)

**Sec. 32-38. Post-construction stormwater management plan compliance.**

Any person owning, operating, or otherwise having control over a BMP required by a post construction stormwater management plan shall maintain the BMPs in accordance with the approved plan and shall demonstrate compliance with that plan as follows:

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any impervious areas, catchbasins, swales, detention basins and ponds pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual Certification.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that they are properly maintained and functioning as intended by the approved post-construction stormwater management plan that requires maintenance or repair, and the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file an annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon the property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

**Sec. 32-39. Enforcement.**

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the \_\_\_\_\_s of this article or of the post-construction stormwater management plan. Whenever the enforcement \_\_\_\_\_ believes that a \_\_\_\_\_ on has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a \_\_\_\_\_ violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of \_\_\_\_\_ to that person \_\_\_\_\_ the nature of the violation and \_\_\_\_\_ eh action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or \_\_\_\_\_ in violation of this article or of the post-construction stormwater management plan;
  - (2) At the person's expense, compliance with BMPs required as a condition of \_\_\_\_\_ of the development project, the \_\_\_\_\_ r of BMPs and/or the restoration of any affected property; and/or
  - (3) The \_\_\_\_\_ of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
  - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance repair and/or restoration must be completed.
- (b) *Penalties/fines/inj unctive relief.* In addition to the \_\_\_\_\_ sition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates \_\_\_\_\_ s section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to



attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any \_\_\_\_\_s, fines or \_\_\_\_\_unctive relief \_\_\_\_\_ed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person \_\_\_\_\_ a notice of violation or suspension notice may appeal the determination of the enforcement authority to the manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the \_\_\_\_\_ within 30 \_\_\_\_\_ from the date of rece \_\_\_\_\_ of the notice of \_\_\_\_\_ that such \_\_\_\_\_ may be del \_\_\_\_\_ by \_\_\_\_\_ of the \_\_\_\_\_ manager and the appellant. The \_\_\_\_\_ ty manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the manager's decision pursuant to Rule BOB of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected \_\_\_\_\_ to the requirements set forth in the notice of violation, or \_\_\_\_\_, in the event of an appeal to the \_\_\_\_\_ manger, within \_\_\_\_\_ five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the \_\_\_\_\_ counsel's office file an enforcement action in a Maine court of \_\_\_\_\_ jurisdiction under Rule BOK of the Maine Rules of Civil Procedure.

(Ord. No. 35-09/10, 8-17-09)

#### **Sec. 32-40. Severability.**

The provisions of this article are \_\_\_\_\_ declared to be severable. If any \_\_\_\_\_ ion, clause, sentence, or \_\_\_\_\_ of this article or the \_\_\_\_\_ ication thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other \_\_\_\_\_ sions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 35-09/10, 8-17-09)



**STORMWATER DRAINAGE SYSTEM  
MAINTENANCE AGREEMENT**

**For SUBDIVISIONS**

**IN CONSIDERATION OF** the site plan and subdivision approval granted by the Planning Board of the City of Portland to the proposed \_\_\_\_\_ (name of developments and project number) shown on the Subdivision Plat (Exhibit A) recorded in Cumberland Registry of Deeds in Plan Book \_\_\_\_, Page \_\_\_\_ submitted by \_\_\_\_\_, and associated Grading, Drainage & Erosion Control Plan (*insert correct name of plan*) (Exhibit B) prepared by \_\_\_\_\_ (engineer/agent) of \_\_\_\_\_ (address) dated and pursuant to a condition thereof, \_\_\_\_\_ (name of owner), a Maine limited liability company with a principal place of business in Portland, Maine, and having a mailing address of \_\_\_\_\_, the owner of the subject premises, does hereby agree, for itself, its successors and assigns (the “Owner”), as follows:

Maintenance Agreement

That it, its successors and assigns, will, at its own cost and expense and at all times in perpetuity, maintain in good repair and in proper working order the \_\_\_\_\_ (*details of the system such as underdrained subsurface sand filter BMP system, rain gardens, storm drain pipes, underdrain pipes, catch basins*), (hereinafter collectively referred to as the “stormwater system”), as shown on the \_\_\_\_\_ Plan in Exhibit B and in strict compliance with the approved Stormwater Maintenance and Inspection Agreement (*insert correct name of document*) prepared for the Owner by \_\_\_\_\_ (copy attached in Exhibit C) and Chapter 32 of the Portland City Code.

Owner of the subject premises further agrees, at its own cost, to keep a Stormwater Maintenance Log. Such log shall be made available for inspection by the City of Portland upon reasonable notice and request.

Said agreement is for the benefit of the said City of Portland and all persons in lawful possession of said premises and abutters thereto; further, that the said City of Portland and said persons in lawful possession may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further, that after giving the Owner written notice and a stated time to perform, the said City of Portland, by its authorized agents or representatives, may, but is not obligated to, enter upon said premises to maintain, repair, or replace said stormwater system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the Owner upon written demand. Any funds owed to the City under this paragraph shall be secured by a lien on the property.

This Agreement shall also not be construed to allow any change or deviation from the requirements of the subdivision and/or site plan most recently and formally approved by the Planning Board of the City of Portland.

This agreement shall bind the undersigned only so long as it retains any interest in said premises, and shall run with the land and be binding upon the Owner's successors and assigns as their interests may from time to time appear.

The Owner agrees to record a copy of this Agreement in the Cumberland County Registry of Deeds within thirty (30) days of final execution of this Agreement. The Owner further agrees to provide a copy of this Agreement to any successor or assign and to forward to the City an Addendum signed by any successor or assign in which the successor or assign states that the successor or assign has read the Agreement, agrees to all its terms and conditions and the successor or assign will obtain and forward to the City's Department of Public Services and Department of Planning and Urban Development a similar Addendum from any other successor or assign.

For the purpose of this agreement and release "Owner" is any person or entity who is a successor or assign and has a legal interest in part, or all, of the real estate and any building. The real estate shown by chart, block and lot number in the records on file in the City Assessor's office shall constitute "the property" that may be entered by the City and liened if the City is not paid all of its costs and charges following the mailing of a written demand for payment to the owner pursuant to the process and with the same force and effect as that established by 36 M.R.S.A. §§ 942 and 943 for real estate tax liens.

Any written notices or demands required by the agreement shall be complete on the date the notice is attached to one or more doors providing entry to any buildings and mailed by certified mail, return receipt requested or ordinary mail or both to the owner of record as shown on the tax roles on file in the City Assessor's Office.

If the property has more than one owner on the tax rolls, service shall be complete by mailing it to only the first listed owner. The failure to receive any written notice required by this agreement shall not prevent the City from entering the property and performing maintenance or repairs on the stormwater system, or any component thereof, or liening it or create a cause of action against the City.

Dated at Portland, Maine this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
(name of company)

\_\_\_\_\_  
(representative of owner, name and title)

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_

Personally appeared the above-named \_\_\_\_\_ (name and title), and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

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

Print name: \_\_\_\_\_

Exhibit A: Subdivision Plat as recorded

Exhibit B: Approved Grading and Drainage Plan (name of the plan showing the Stormwater System in detail)

Exhibit C: Approved Stormwater Maintenance and Inspection Agreement



Jeff Levine, AICP  
Director, Planning & Urban Development Department

## **Performance Guarantee and Infrastructure Financial Contribution Packet**

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

### Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

**SUBDIVISION/SITE DEVELOPMENT**  
**Cost Estimate of Improvements to be covered by Performance Guarantee**

Date: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address/Location: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Developer: \_\_\_\_\_

Form of Performance Guarantee: \_\_\_\_\_

Type of Development: Subdivision \_\_\_\_\_ Site Plan (Level I, II or III) \_\_\_\_\_

**TO BE FILLED OUT BY THE APPLICANT:**

<u>Item</u>	<b>PUBLIC</b>			<b>PRIVATE</b>		
	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Subtotal</u>
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL						
Silt Fence	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____

**INSPECTION FEE (to be filled out by the City)**

	<b>PUBLIC</b>	<b>PRIVATE</b>	<b>TOTAL</b>
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	



**SAMPLE FORM**

**SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]**

**[Date]**

Jeff Levine  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: **[Insert: Name of Developer]**  
**[Insert: Address of Project, Portland, Maine]**  
**[Insert: Application ID #]**

**[Insert: Name of Bank]** hereby issues its Irrevocable Letter of Credit for the account of **[Insert: Name of Developer]**, (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of **[Insert: amount of original performance guarantee]**. These funds represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/ or site plan]**, approved on **[Insert: Date]** and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or

3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at \_\_\_\_\_ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. \_\_\_\_\_.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements**].

Date: \_\_\_\_\_

By: \_\_\_\_\_

[Name]

[Title]

Its Duly Authorized Agent

**SAMPLE FORM**

**SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
ESCROW ACCOUNT  
[ACCOUNT NUMBER]**

**[Date]**

Jeff Levine  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: **[Insert: Name of Developer]**  
**[Insert: Address of Project, Portland, Maine]**  
**[Insert: Application ID #]**

**[Insert: Name of Bank]** hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

**[Bank]** will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

In the event of the Bank's dishonor of the City of Portland's sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on [Insert date between April 16 and October 30 of the following year] ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank's offices located at \_\_\_\_\_ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. \_\_\_\_\_.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the [Insert: subdivision and/ or site plan] approval, dated [Insert: Date] as required by City Code §14-501, 525 and shall automatically expire one (1) year from the date of its creation ("Termination Date").

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements** ].

Date: \_\_\_\_\_

By: \_\_\_\_\_

[Name]

[Title]

Its Duly Authorized Agent

Seen and Agreed to: [**Applicant**]

By: \_\_\_\_\_

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: \_\_\_\_\_

Developer's Name and Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Account Number: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Application of \_\_\_\_\_ [Applicant] for \_\_\_\_\_ [Insert street/Project Name] at \_\_\_\_\_ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$ \_\_\_\_\_ [amount of performance guarantee] on behalf of \_\_\_\_\_ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on \_\_\_\_\_ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] approval, dated \_\_\_\_\_ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option,

either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its representative, will give the City written notice, by certified mail (restricted delivery to Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

1. the Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements ]**.



Seen and Agreed to:

By: \_\_\_\_\_  
[Applicant]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\*\*\*\*Planning Division Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Development Review Coordinator

Date: \_\_\_\_\_

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

---

**Distribution**

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. \*\*\*\*Signature required if over \$50,000.00.

**Infrastructure Financial Contribution Form**  
**Planning and Urban Development Department - Planning Division**

**Amount \$**

**City Account Number:** 710-0000-236-98-00

**Project Code:** \_\_\_\_\_

(This number can be obtained by calling Cathy Ricker, x8665)

**Project Name:**

**Application ID #:**

**Project Location:**

**Project Description:**

**Funds intended for:**

**Applicant's Name:**

**Applicant's Address:**

**Expiration:**

If funds are not expended or encumbered for the intended purpose by \_\_\_\_\_, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) \_\_\_\_\_

**Form of Contribution:**

Escrow Account

Cash Contribution

**Interest Disbursement:** Interest on funds to be paid to contributor only if project is not commenced.

**Terms of Draw Down of Funds:** The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

**Date of Form:**

**Planner:**

- 
- Attach the approval letter, condition of approval or other documentation of the required contribution.
  - One copy sent to the Applicant.

**Electronic Distribution to:**

Peggy Axelsen, Finance Department  
Catherine Baier, Public Services Department  
Barbara Barhydt, Planning Division  
Jeremiah Bartlett, Public Services Department  
Michael Bobinsky, Public Services Department  
Diane Butts, Finance Department  
Philip DiPierro, Planning Division  
Katherine Earley, Public Services Department  
Michael Farmer, Public Services Department  
Alex Jaegerman, Planning Division  
David Margolis Pineo, Public Services Department  
Matt Rancourt, Public Services Department  
Jeff Tarling, Public Services Department  
Planner for Project