

CITY OF PORTLAND, MAINE
PLANNING BOARD

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January 28, 2014

The Federated Companies
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3301 NE 1st Avenue
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Shinberg Consulting
Greg Shinberg
Suite 1012
477 Congress Street
Portland, Maine 04101

Project Name: midtown Project ID: #2013-105
Address: 59 Somerset Street CBL: 34-B-2, 3, 4, 5; 34-D-3, 8 and
10
Applicant: Federated Companies
Planner: Richard Knowland

Dear Mr. Cox,

On January 14, 2014, the Planning Board considered the midtown development application submitted by the Federated Companies (hereinafter, the "applicant."). The Planning Board reviewed the proposal for conformance with the standards, outlined in the City Code, for Conditional Use approval (Phase One); Master Development Plan approval (all phases); Subdivision approval; a Traffic Movement Permit; and Site Plan approval (Phase One), including Site Development of Location Act.

A. CONDITIONAL USE

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Reports #58-13 and the report for the January 14, 2014 public hearing, including but not limited to Section VIII of the January 14, 2014, relevant to Portland's B-7 zone, the City's Site Plan Ordinance, the City's Conditional Use Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing:

1. The Planning Board finds the proposed conditional use for the increase in building height to 165 feet does meet the standards of B-7 Conditional Use (Sec. 14-296), Site Plan Sec. 14-526 (d)(9) (viii), and City Code Section 14-474 (2), and therefore voted 7-0 to approve an increase in building height to 165 feet, subject to the following conditions of approval:

a. Wind Mitigation Condition for Phase One:

The applicant shall submit plans and specifications for all recommended wind mitigation measures contained in the RWDI wind study for the mews, the courtyard, and the residential entry area to achieve a condition comfortable for standing in the mews area and comfortable for sitting in the courtyard area, and comfortable for walking in the building entrance area, for review and approval by the Planning Board prior to issuance of a building permit. At the same time, the applicant shall submit a wind condition monitoring plan for Planning Board review and approval, which will specify how the wind conditions will be monitored and recorded over a twelve month period from the date of the Phase One residential building certificate of occupancy. A performance guarantee shall be retained at the time of issuance of a building permit to cover the estimated cost of constructing the potential wind mitigation measures, which shall remain at the full amount until the satisfactory completion of any required mitigation improvements, at which time it shall be reduced to a 10% defect guarantee.

After 12 months from the issuance of the Certificate of Occupancy (C of O), but not more than 15 months after the C of O is issued, the applicant shall submit the wind monitoring report to the Planning Board. If the comfort and safety level in the mews, courtyard, and/or entry area is not satisfactory in the judgment of the Planning Board, the applicant shall be required to implement and install some or all of the wind mitigation measures contained in the RWDI wind study within a time certain as directed by the Planning Board

b. Wind Mitigation Condition for Phases Two and Three:

At time of Level III Site Plan Review of Phase Two, the applicant shall submit a detailed wind study of Phases Two and Three, which shall include an instrumented physical model wind tunnel study and impact assessment for the Planning Board's review. The master development plan and site plan shall be revised to mitigate projected wind impacts to achieve a satisfactory level of comfort for standing or sitting in public places for a substantial majority of the time in all seasons, including but not limited to the trail corridor behind and between the buildings proposed in Phases Two and Three.

2. The Planning Board finds that the development meets the requirements for modifying the setback provisions of 14-296(a)(5)(b) relating to setbacks as required under sec. 14-526(9)(viii)(b) and therefore voted 6 to 1 (Morrissette) to approve such modification..

3. The Planning Board finds the proposed conditional use for the Phase One parking garage does meet the standards of B-7 Conditional Use, Sec. 14-296 (3) governing structured parking and Zoning Code Section 14-474 (2), and therefore voted 7 to 0 to approve the parking garage use.

B. MASTER DEVELOPMENT PLAN

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision ordinances and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

That the Master Development Plan is in conformance with the standards of the Master Development Plan provisions of the Site Plan Ordinance, and therefore voted 7 to 0 to approve the Master Development Plan for all three phases, subject to the following conditions of approval:

1. That a pedestrian passage be provided in the Phase Two site plan between the two residential towers in Phase Two or, the alternative, through one of the residential towers located in Phase Two, unless the Planning Board waives this requirement during the Phase 2 Level III site plan review process.
2. The final Master Development Plan shall be revised to reflect Planning Board decisions outlined herein that impact the overall Master Development Plan, including but not limited to waivers, conditional use review, subdivision review and site plan review.
3. For Phases Two and Three, include and install erosion control measures meeting best management practices and maintain the erosion controls for the site prior to mulching disturbed areas. The site shall be maintained clean and free of debris at all times. The City may request the applicant to conduct additional maintenance activities or grading corrections to Phase Two and Phase Three, if debris or sedimentation is found in the surrounding catch basins which diminishes the capacity or causes back-ups of the basins. All sidewalks shall be cleared of snow by the property owner, including sidewalks located in Phase Two and Phase Three.
4. The proposed Bus shelter location shown on Somerset Street in Phase Two shall be coordinated and further refined in the future during site plan review for Phase Two.

5. The Drop-off area, sidewalk ramps, sidewalks, and other features within the public right-of-way on Elm Street for Midtown Four, which is included in Phase Three, are not acceptable. Details of the sidewalk, curb line, and other features shall be revised and submitted for approval during future site plan reviews.

C. TECHNICAL AND DESIGN WAIVERS

On the basis of the applications (2013-105 and 2013-128) plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing, including but not limited to Section IX of the report for January 14, 2014 titled "Technical Waivers," the report and the reviews by Tom Errico, PE dated January 6, 2014 (Attachment 3) and David Margolis-Pineo, Deputy City Engineer dated January 9, 2014 (Attachment 4), for the Midtown Master Development Plan and Midtown Phase One relevant to Portland's Technical and Design Standards and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board voted 7 to 0 on the following findings:

Street Trees

1. The Planning Board finds that the applicant has demonstrated that site constraints prevent the planting of required street trees on the site and/or in the City right of way. The Planning Board voted 7 to 0 to waive Section 14-526 (b)(2)(b)(iii) Street Trees of the Site Plan Ordinance and concluded that the applicant shall make a financial contribution of \$5,000 to the tree fund, which amount takes into consideration the applicant's commensurate infrastructure investment in twenty-one (21) raised tree wells as presented in the application. This waiver applies to Phase One only.

Transportation and Street Design

2. The Planning Board finds, based, among other things, on Tom Errico's review (Attachment 3) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Section 1.4 Street Grades of the Technical Manual to modify the cross slopes as presented in the application for a local street from the 0.03 requirement. This waiver applies to Phase One only.

Section 1.4 Street Grades

3. The Planning Board does not find based upon the reviews by Tom Errico and David Margolis Pineo (Attachments 3 and 4) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted (7 to 0) not to waive Section 1.4 Street Grades of the Technical Manual to modify the cross slopes for a sidewalk as presented in the application from the 0.02 requirement.

Section 1.5 Vertical Alignment

4. The Planning Board finds based, among other things on Tom Errico's review (Attachment 3) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted to 7 to 0 to waive Section 1.5 Vertical Alignment of the Technical Manual to modify the K values as presented in the application. This waiver applies to Phase One only.

Section 1.7.2.5 Curbing of Driveways

5. The Planning Board finds based, among other things on Tom Errico's review (Attachment 3) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 waive Section 1.7.2.5 Curbing of Driveways of the Technical Manual to allow the tip down granite curbs rather than radius curbs at driveways, subject to the condition that the exact details of the aprons shall be provided for review and approval.

Section 1.7.1.9 Number of Driveways

6. The Planning Board finds based, among other things on the reviews by Tom Errico and David Margolis Pineo (Attachments 3 and 4) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Number of Driveway of the Technical Manual to allow the Master Development Plan project to have five (5) curb cuts: two (2) in Phase One; two (2) in Phase Two; and one (1) in Phase Three; with the condition that curb cuts in Phases Two and Three will be reviewed at the Level III site plan reviews and only the Phase One curb cuts will be installed with the Somerset reconstruction as presented on the applicant's Phase One plan.

Sanitary Sewer and Storm Drain Design

7. The Planning Board finds based, among other things, upon the review by David Margolis Pineo (Attachment 4) that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Section 2.7.8 Catch Basin of the Technical Manual to allow the connection of storm drain lines into a catch basin structure.

Stormwater Management Standards and ME DEP Stormwater Management

8. The Planning Board finds that the project conveys stormwater exclusively in a piped system directly into the ocean as confirmed by David Senus' review (Attachment 5) and therefore, extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. The Planning Board voted 7 to 0 to waive Chapter 5, Section E.2 Flooding Standard of the Technical Manual to allow the stormwater to be directly piped to the ocean.

Soil Survey Standards

9. The Planning Board finds based upon David Margois-Pineo's recommendation (Attachment 4) that greater than 50% of the site was developed on a filled site and remediated as a Brownfields site, which has had soil analysis done for the site and street right-of-way and therefore, extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance. . The Planning Board voted 7 to 0 waive Section 7.1 Soil Survey Standards of the Technical Manual related to the requirement for a high intensity soil survey.

D. B-7 WAIVERS

On the basis of the applications (2013-105 and 2013-128) plans, reports and other information submitted by the applicant, findings, recommendations, contained in the Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing, including but not limited to Section X, B-7 Design Standard Waivers of the January 14, 2014 report for the Midtown Master Development Plan and Midtown Phase One relevant to Portland's Design Manual, and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board finds the following:

1. Recognizing the existing blockage of the Cedar Street views and partial blockage of Myrtle Street view corridors, constraints relating to building design and block configuration, as well as other factors outlined in the applications and the Planning Board Report, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 waive B-7 Standard A-4, Views and Landmarks, to grant a partial waiver of the requirement that new development be sited so that it does not block view corridors, to allow the garages in Phases One and Two to partially obstruct the Myrtle Street and Cedar Street view corridor.
2. Recognizing that Cedar and Myrtle streets do not abut the subject property, and in consideration of the proposed mews providing an alternate access between Somerset Street and the trail, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive to B-7 Standard B-2, Street Connectivity, to grant a waiver of the requirement that the development be required to extend Cedar Street and Myrtle Street through the project.

3. Due to the proposed placement of the garage and buildings in Phase II, the Planning Board does not find that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 not to approve a waiver of B-7 Standard B-3, Mid-Block Permeability, for Phase Two development which requires mid-block permeability of the development between Chestnut and Elm Streets.
4. Recognizing that there is no other location for such entrances other than on Somerset Street due to block configuration, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard B-7, Continuity of Street Level Uses, to allow service entrances and vehicular entrances on Somerset Street.
5. In order to enable and enhanced retail and pedestrian sidewalk lighting conditions on Somerset Street, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard B-11, Lighting, to allow closer spacing of the street lights on Somerset Street as depicted on the submitted site plan.
6. Recognizing the shallow lots and constrained garage layout, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard C-2 Parking Entrances, to allow the entry and exit of the garage entry to be combined on Somerset Street.
7. Recognizing the shallow lots and constrained garage layout, the Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard C-5, Decks and Ramps, to allow visible non-horizontal ramps on the north face of the garage.
8. Because this project has no rear elevation, the Planning Board therefore finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured with the variation, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard C-8, Service, Utility and Mechanical

Infrastructure, which requires all loading docks, delivery areas, truck parking shall be located at the rear or side of buildings and not along public ways.

9. Recognizing that the shadow study (Exhibits 20 and 20A) demonstrate that for half of the 12 time/seasons reported, a 65 foot tall building would impose a shadow impact on the trail and open space that subsumes the longer shadow of the taller building. Further, the six times that show increased shadow from the taller building, the shadow impact is limited in area and duration, therefore the overall increase in shadow created by the taller heights is not substantially more detrimental to the trail than would result from an as-of-right (65 foot tall) development, thus undue hardship may result from strict compliance with Standard E-19. The Planning Board finds that extraordinary conditions exist or undue hardship may result from strict compliance, substantial justice and the public interest are secured, and the variation is consistent with the intent of the ordinance, and therefore voted 7 to 0 to waive B-7 Standard E-19, Shadows, to allow an increase of more than 10% shadow on the Bayside Trail.

E. TRAFFIC MOVEMENT PERMIT

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision reviews and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

That the plan is in conformance with the standards of the Traffic Movement Permit, and therefore voted 7 to 0 to approve the Traffic Movement Permit, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The applicant will be required to install a traffic signal at the Marginal Way/Chestnut Street intersection. This intersection currently meets signal warrants and accordingly this improvement shall be installed prior to certificate of occupancy of Phase One. It should be noted that the applicant will be responsible for the development of design plans and specifications for review and approval by the City.
2. The applicant shall install improvements to the Marginal Way eastbound approach at Franklin Street as documented in their traffic study. This improvement consists of changing the lane assignment on eastbound Marginal Way to a left-lane and a shared through/right lane (it current consist of a shared left/through lane and a right-turn lane). This improvement is to consist of pavement marking and signing changes only (signal head modifications may be required). No roadway widening is anticipated as part of this work. The improvement shall be installed prior to certificate of occupancy for Phase One. The applicant shall submit plans for review and approval.

3. The applicant shall develop updated traffic signal timing plans for Franklin Street for the three intersections with I-295 Northbound Ramps, Marginal Way, and Somerset Street/Fox Street. The timing plans shall be implemented within 6 months following certificate of occupancy. The applicant shall submit plans for review and approval.
4. The applicant shall make a \$32,000 contribution towards improvements to Franklin Street in the Somerset Street/Fox Street and Marginal Way intersection areas. This contribution is related to addressing sub-standard traffic conditions along Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for each project phase.
5. The applicant shall make a \$30,000 contribution towards implementation of the Marginal Way Master Plan. This requirement is to address traffic issues at the Marginal Way intersections with Preble Street and Forest Avenue and general multi-modal improvements along the corridor. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for each project phase.
6. The applicant shall make a \$51,000 contribution towards the implementation of the Somerset Street extension project. This requirement is to address traffic issues along Marginal Way, particularly at Forest Avenue, Preble Street, and Franklin Street. This contribution amount is for the full build project and may be proportioned according to traffic generation levels for each project phase.
7. Somerset Street/Pearl Street - This intersection was determined to operate at unacceptable conditions following project build-out. It is recommended that the applicant conduct a monitoring study following the construction of Phase One. The monitoring study would be required for Phase 2 of the project.

F. AMENDED OVERALL SUBDIVISION PLAT AND PHASE ONE SUBDIVISION PLANS:

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision ordinances and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

That the Amended Overall Subdivision plat (dated 12-20-2013) and the Phase One Subdivision Plans are in conformance with the subdivision standards of the City's Code, and therefore voted 5 to 2 (Hall and O'Brien opposed) to approve the subdivision plans, subject to the following conditions of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. That the Phase One Subdivision Plan shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to labeling of easements, subdivision notes and other relevant conditions meeting the requirements for a recording plat as contained in Portland's Subdivision Ordinance and Maine State statute, and incorporating the phasing plan as described in condition 3, below.
2. That the Amended Overall Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services including detailed references to labeling of easements, subdivision notes and other relevant conditions.
3. That Somerset Street improvements may be constructed in two phases with design details subject to review and approval by the City's Department of Public Services as further described in a letter from Michael Bobinsky, Director of Public Services, dated January 9, 2014, see Attachment 2. The construction of lot 6 and or lot 7 (Phase One) shall require the reconstruction of Somerset Street from Pearl Street to Chestnut Street along with necessary grade tapering west of Chestnut Street and additional related tapering on Chestnut Street, which shall be implemented in conjunction with Phase One of the Master Development Plan and Level III Site Plan review. Initiation of construction on lots 2, 3 and or 5 (Phase Two) requires reconstruction of the remainder of Somerset Street west of Chestnut Street to Elm Street, which shall be implemented in conjunction with development of Phase Two and/or Phase Three of the Master Development Plan, or at such earlier time as may be approved by the Department of Public Services and Planning Authority.
4. That all easements shall be submitted for Public Services, Planning Authority and Corporation Counsel review and approval. Easements shall specify the function, responsibility of maintenance and repair as well as ownership of all improvements.
5. That the passage easement between Chestnut and Elm be removed on the Amended Overall Subdivision plat provided that a pedestrian passage be provided in the Phase Two site plan between the two residential towers in Phase Two or through one of the residential structures.
6. The applicant shall be totally responsible for the reconstruction of the Bayside Trail to the satisfaction of the City.
7. That the applicant and all assigns shall comply with the conditions of Chapter 32 of the City Code governing Stormwater, including Article III, "Post-Construction Storm Water Management," which specifies the City's annual inspections and reporting requirements. The applicant/developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and

sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system shall be submitted for review and approval by Corporation Counsel and the Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and

8. That the Subdivision Plat shall be revised to address the following review comments from the Department of Public Services:
 - a. Show property pins to be set at all locations to define the applicant's property.
9. That the Subdivision Plans shall be revised for review and approval by the Department of Public Services to address the Department of Public Services review of the subdivision plans as presented in a January 9, 2014 memo from David Margolis-Pineo, Deputy City Engineer.
10. In the event that the elevation of Somerset Street is raised east of Pearl Street, the applicant or successor shall be responsible for removing ramps, steps and other impediments in providing a continuous at-grade pedestrian access along the frontage of Phase One. Applicant or successor shall also be responsible for installing new streetscape materials and amenities that achieves a continuous at-grade sidewalk with review and approval by the Planning Authority. The applicant or its successor shall also be responsible for sidewalk and related improvements within their property line along Pearl Street extension should Pearl Street extension be reconstructed in the future.
11. The applicant and all assigns shall be responsible for the maintenance and upkeep of all ramps/stairs/planters in the sidewalk along Somerset Street in front of the residential tower, whether such ramps/stairs/planters are located within the street right of way or on private property.
12. The applicant shall revise the subdivision plat to remove the limited open space easement on lot 4, (adjacent and west of Lot 2) benefiting lot 2.

G. SITE PLAN REVIEW

On the basis of the applications (2013-105 and 2013-128), plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Reports # 58-13 and the report for the January 14, 2014 public hearing for application for the Midtown Master Development Plan and Midtown Phase One relevant to the Site Plan and Subdivision ordinance and other regulations, as well as the Planning Board deliberations and the testimony presented at the Planning Board hearings, the Planning Board finds the following:

That the plan is in conformance with the site plan standards of the Land Use Code, Site Location of Development review and DEP Stormwater Permit, and therefore voted 7 to 0 to approve the proposed site plan, subject to the following condition(s) of approval to be met prior to the issuance of a building permit unless otherwise stated:

1. The applicant shall submit revised plans that provide the details for the mountable curbs, and provide details of the driveway apron areas meeting City standards for review and approval by the Planning Authority for the proposed mountable curbs.
2. According to information provided by the applicant, large delivery vehicles cannot be accommodated in the proposed service entrances provided for the project. For Phase One the on-street parking spaces on Somerset Street shall be designated as a Loading Zone with Dual Rear Wheel vehicle use requirements. The site plan shall correctly indicate such signage along Somerset Street and the No Parking signs on Pearl Street shall be revised to add "Tow Away Zone" for review approval by Department of Public Services. A large delivery vehicle management plan for the site shall be submitted to the Traffic Engineer for review and approval. For other future phases, it is recommended that the details on large truck loading be determined during Site Plan review.
3. The City shall retain the opportunity for a 60-foot right-of-way on Pearl Street north of Somerset Street. Therefore, the applicant shall submit a revised plan for review and approval that shifts the right-of-way line to the west 5-feet in anticipation of the City acquiring 5 feet of right-of-way width in the future to the east as it intends to do.
4. The TDM Plan provides general information on strategies and notes requirements for conducting tenant surveys as required by the City's Code. Following the 6 month survey and monitoring report, the City may require the applicant to aggressively implement strategies such as METRO pass subsidies, if trip reduction targets contained in the TDM plan are not met.
5. The applicant has submitted a general Construction Management plan that primarily details how the Bayside Trail will be closed and temporarily relocated to Somerset Street. The applicant shall submit a more detailed plan for review and approval by the Department of Public Services that provides the specific details on the trail facility as well as general pedestrian circulation throughout the area. The applicant shall submit a fully detailed construction management plan with a timeline prior to obtaining any City permits.
6. Details of the sidewalk ramps adjacent to the proposed crosswalk on Pearl Street to the Whole Foods corner shall be revised to the satisfaction of Department of Public Services.

7. The applicant shall provide a plan that specifically documents the sidewalk compliance with maximum cross slope requirements and sidewalk ramps that meet City standards for review and approval.
8. The location of the on-street ticket dispenser and related signage shall be revised to the satisfaction of the City's Parking Division. Additionally, it is recommended that the ticket system include the parking spaces on the south side of Somerset Street so the applicant will be responsible for the foundation and signage changes.
9. Phase One includes a Turn-Out on Pearl Street at the Entrance to the residential building. The turn-out will function independently of public traffic without a Pearl Street connection to Marginal Way; however, the design does not function when Pearl Street is extended. When Pearl Street is connected to Marginal Way, the turn-out shall be eliminated and a standard curbside drop-off area shall be implemented. This should be noted as a future condition of approval.
10. A sidewalk ramp at the corner of Somerset Street and Elm Street may be necessary in conjunction with interfacing this project with the City's Somerset Street Extension project. The applicant shall be responsible for revising the plan accordingly.
11. That the signage depicted in the Master Plan shall be revised to meet zoning ordinance requirements and shall be subject to Planning Board review and approval.
12. That the lighting plan shall be subject to Planning Staff review and approval.
13. That the landscaping plan shall be subject to City Arborist review and approval.
14. That the site plan shall be revised to clarify the number and location of bicycle spaces subject to Planning Authority review and approval.
15. That the final height of the ornamental fence around the transformers shall be subject to Planning Authority review and approval.
16. That the site plan shall be revised to widen the Pearl Street extension sidewalk to a minimum of ten (10) feet.
16. That references to snow storage within the Bayside Trail corridor shall be removed from all site plans.
17. That the site plan and related documentation shall be revised reflecting the comments of Capt. Chris Pirone of the Fire Department, in a memo dated January 6, 2014.

18. That the site plan and related documentation shall be revised reflecting the comments of David Senus, Consulting Review Engineer, in a memo dated January 6, 2014.
19. That the site plan and related documentation shall be revised reflecting the comments of David Margolis-Pineo, in a memo dated January 9, 2014.
20. That the site plans shall be revised removing discrepancies and inconsistencies among plans for Planning Authority review and approval.
21. That the location of all exterior gas meters shall be reviewed and approved by the Planning Authority.
22. That the final design of the Bayside Trail shall be revised for review and approval by Public Services and Planning Authority reflecting a goal of eliminating a second fence/rail proposed along the northerly edge of the trail.
23. The applicant shall install a public entrance to the retail building space for the Phase One residential building and parking garage, adjoining the courtyard and trail respectively, if appropriate to the use, to the satisfaction of the Planning Authority.

The approval is based on the submitted plans and the findings related to the development review standards as contained in Planning Report for application #2013-105 which is attached.

STANDARD CONDITIONS OF APPROVAL

Please note the following standard conditions of approval and requirements for all approved development 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 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 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 approval.
7. **Master Development Plan Expiration** A master development plan is valid for up to six (6) years from the date of Planning Board approval with potential extension periods as provided for in Section 14-532(d).
8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
10. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting. (If applicable)

11. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
12. **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.
13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted in the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to 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 Richard Knowland at (207) 874-8725.

Sincerely,



Stuart O'Brien
Portland Planning Board

Attachments:

1. (Insert applicable staff memos)
2. Planning Board Report
3. City Code: Chapter 32
4. Sample Stormwater Maintenance Agreement [if applicable]
5. Performance Guarantee Packet

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, FAICP, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Rick Knowland, Senior Planner
Philip DiPierro, Development Review Coordinator, Planning
Marge Schmuckal, Zoning Administrator, Inspections Division
Tammy Munson, Inspection Division Director
Lannie Dobson, Administration, Inspections Division
Gayle Guertin, Administration, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services