

CITY OF PORTLAND, MAINE

PLANNING BOARD

Elizabeth Boepple, Chair
Sean Dundon, Vice Chair
David Eaton
Bill Hall
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October 29th, 2015

Patrick Ducas
17 Chestnut Street
Portland ME 04101

Project Name: Subdivision and Change of Use/Renovation of existing building to create Ten Residential Units
Project #: #2015-162; Level III Subdivision and Site Plan
Address: 415 Cumberland Avenue, Portland
CBL: 036 G033 001
Applicant: Patrick Ducas
Planner: Jean Fraser

Dear Mr. Ducas:

On October 27th, 2015, the Planning Board considered the Level III Subdivision and Site Plan application for the subdivision and change of use of the 3 - 4 story existing building at 415 Cumberland Avenue, along with associated renovations and minor site improvements. The conversion creates ten residential units on the upper floors, served by storage and parking facilities (6 parking spaces) on the lowest floor, totaling approximately 12,500 sq ft. A 1300 sq ft commercial space remains on the lowest floor with a separate access. The Planning Board reviewed the proposal for conformance with the standards of the Subdivision and Site Plan Ordinances, and approved 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 October 27, 2015 for application #2015-162 (415 Cumberland Avenue) relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. **Street Trees:** The Planning Board voted 4-0 (Hall and Soley absent) to waive *Section 14-526 (b) (2) (b) (iii) Street Trees*, in respect of 6 of the 10 required street trees due to the lack of space, subject to the applicant making a contribution of \$1200 to the City of Portland Tree Fund (prior to the issuance of a building permit) towards the installation and maintenance of urban street trees in the vicinity of the site.

B. SUBDIVISION REVIEW

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 October 27, 2015 for application #2015-162 (415 Cumberland Avenue) relevant to the Subdivision regulations, and the testimony presented at the Planning Board hearing, the Planning Board voted 4-0 (Hall and Soley absent) that it finds that the plan is in conformance with the subdivision standards of the land use code subject to the following conditions of approval:

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services, and include confirmation regarding the street tree requirements, clarification of easements, and other information along with relevant notes and conditions prior to submission for Planning Board signature; and
- ii. That in the event the property is converted to a condominium, that the recorded condominium documents shall be copied to the Planning Authority.

C. SITE PLAN REVIEW

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 October 27, 2015 for application #2015-162 (415 Cumberland Avenue) relevant to the site plan regulations; and the testimony presented at the planning board hearing, the Planning Board voted 4-0 (Hall and Soley absent) that it finds the plan is in conformance with the site plan standards of the land use code, subject to the following conditions of approval:

- i. That the applicant shall submit a revised site plan/plat that shows the location and design of the 4 bicycle parking spaces, the proposed planting in the front garden area including 2 street trees on the site, and the replacement ADA ramp panel in the ROW at the corner of Forest Avenue and Cumberland Avenue (to meet the City's Technical Standards for any work in the ROW), for review and approval by the Planning Authority prior to the issuance of a building permit; and
- ii. That the applicant shall submit plans showing the proposals for: A) Any modifications to the roof drainage to meet the Wastewater Capacity Letter conditions (that all roof drainage be directed to the sidewalk or street level); and B) All upgrades to the existing water and sewer utilities at the existing locations, including restoration of the sidewalk (to meet the City's Technical Standards for any work in the ROW); both for review and approval prior to the issuance of a building permit; and
- iii. That the applicant shall submit the capacity letter in respect of water supply prior to the issuance of a building permit; and
- iv. That any exterior lighting shall meet the City's Site Lighting Standards in Section 12 of the Technical Manual, and the trash storage area shall meet the B3c *External Effects* standards; and
- v. That the applicant shall address the comments of the Fire Department dated 10.7.15 regarding the development of street addresses and their marking on the structure prior to the issuance of a certificate of occupancy; and
- vi. That a separate "change of use" permit shall be obtained from the Inspections Division.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Report for application #2015-162, which is attached.

STANDARD CONDITIONS OF APPROVAL

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

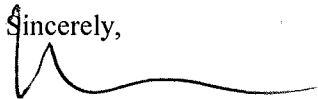
1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the issuance of a performance guarantee. The performance guarantee must be issued prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.

5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and six (6) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
9. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
10. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
11. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
12. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 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 874-8728.

Sincerely,



Elizabeth Boepple, Chair
Portland Planning Board

Attachments:

1. Fire Department comments dated 10.7.2015
2. Planning Board Report for #2015-162 415 Cumberland Avenue
3. Performance Guarantee Packet

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Stuart O'Brien, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Jean Fraser, Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Zoning Administrator, Inspections Division
Tammy Munson, Inspections Division Director
Jonathan Rioux, Inspections Division Deputy Director
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division
Brad Saucier, Administration, Inspections Division
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
Doug Roncarati, Stormwater Coordinator, Public Services
Greg Vining, Associate Engineer, Public Services
Michelle Sweeney, Associate Engineer
John Low, Associate Engineer, Public Services
Rhonda Zazzara, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Jeremiah Bartlett, Public Services
Keith Gautreau, Fire Department
Jennifer Thompson, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Deborah Andrews, Historic Preservation Program Manager
Rick Blackburn, Assessor's Department
Approval Letter File

MEMORANDUM

To: FILE
From: Jean Fraser
Subject: Application ID: 2015-162
Date: 10/22/2015 (*date of printing*)

Comments Submitted by: Keith Gautreau/Fire on 10/7/2015

Life Safety requirements for the change of use will be addressed in the Building Permit process.

Comments Submitted by: Keith Gautreau/Fire on 10/7/2015

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.

Comments Submitted by: Keith Gautreau/Fire on 10/7/2015

There are two hydrants within 200' from the propose site which is more than adequate.

Comments Submitted by: Keith Gautreau/Fire on 10/7/2015

Access to the site is good at it sits on the corner of Forest Ave. & Cumberland Ave.



PLANNING BOARD REPORT PORTLAND, MAINE

SUBDIVISION AND CHANGE OF USE/ RENOVATION OF BUILDING TO CREATE TEN APARTMENTS

415 Cumberland Avenue
Level III Subdivision Plan and Site Plan
Project ID #2015-162 CBL 036 G033001
Patrick Ducas, Applicant

Submitted to: Portland Planning Board Public Hearing Date: October 22, 2015	Prepared by: Jean Fraser, Planner Date: October 27, 2015
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I. INTRODUCTION

The applicant, Patrick Ducas, is requesting approval of a Level III application for development of the existing 3-4 story building at 415 Cumberland Avenue at the corner of Cumberland and Forest Avenues.

The property is located in the B3c zone and currently owned by 415 Cumberland LLC. The previous use was offices, including Hurley Travel. The applicant has a Purchase and Sale Agreement ([Attachment B](#)) and proposes to convert the first, second and top floors to 10 residential apartments (four 2-bedroom and six 1-bedroom) The basement will comprise inside parking for 6 cars, a commercial space and storage for the residential units.



A total of 185 notices of this Hearing were sent to residents within 500 feet and interested citizens. A notice also appeared in the October 19th and 20th, 2015 editions of the *Portland Press Herald*. The applicant held the required Neighborhood Meeting on October 8th, 2015 which was attended by two neighbors ([Attachment G](#)). The Planning office has not received any public comments as of the time of preparing this Report.

II. REQUIRED REVIEWS and REQUESTED WAIVERS

<i>Review</i>	<i>Applicable Standards</i>
Site Plan	<i>Section 14-526</i> for the proposed multifamily residential development.
Subdivision of overall site	<i>Section 14-497</i> for the division into 10 residential units.
<i>Waiver Requests</i>	<i>Applicable Standards</i>
Street trees: The applicant proposes to plant two new trees within the front garden area along Cumberland Avenue and there are two existing street trees. The request is to count four trees toward the requirement and to waive the planting of six required trees as there is no space in the ROW.	<i>Site Plan 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. A waiver is permitted where site constraints prevent planting of all the required street trees, with the applicant contributing a proportionate amount to Tree Fund. The City Arborist counts the four trees toward the requirement and supports a waiver of six trees with the recommendation that a \$1200 Tree Fund contribution (Att 3).

III. PROJECT SUMMARY

Existing Zoning:	B3c Business Zone
Proposed Use:	10 Residential Apartments on first, second and third floors
Parcel Size:	6098 sq ft
Total Disturbed Area:	None- all interior improvements
Existing Building footprint:	4,999 sq ft
Proposed Building footprint:	4,999 sq ft
Existing Building floorspace:	15,708 sq ft over 4 stories
Proposed Building floorspace:	15,708 sq ft over 4 stories
Proposed uses:	12,486 sq ft residential including units, storage and parking 1300 sq ft commercial on lowest floor 1922 sq ft common area
Residential Data:	
Existing Res. Units:	None
Proposed Res. Units:	10 apartments
Bedroom Mix:	4 No 2-bedroom units 2 No 1 bedroom units
Parking Spaces:	
Existing:	6 (within garage as part of building)
Proposed:	6 (within garage as part of building) (includes one handicapped space)
Bicycle Parking Spaces:	
Existing:	None
Proposed:	10; 4 required
Estimated Cost of Project:	\$685,000
Uses in Vicinity:	The site will provide in-city living for renters, which is near services, such as businesses, institutions, employers and public transportation.

III. PROJECT DESCRIPTION

The existing 3-4-story building is part of a group of 4-5 story buildings that include the YMCA at the corner of Forest and Cumberland Avenues. The part of the building fronting onto Forest Avenue dates from the 1860's and the rear section is recent.

The only open site area is a sliver along the west side which allows for a fire escape (see photos submitted by the applicant in [Plan P5](#)) and an open but fenced area at the north side which has a access easement over it for the YMCA and can be reached via the garage curb cut.



The existing use has been commercial with storage and the proposals retain 1300 sq ft of commercial space on the ground floor with the remainder converted to 10 residential units and supporting storage (1650 sq ft) and garage parking for 6 cars.

The proposals are described in [Attachment E](#) and illustrated in [Plans P2 to P5](#); the site plan aspects of the proposals are:

- Use of part of the rear (north) open easement area for trash storage in 10 separate bins;
- Landscape enhancement in the front gardens, including two additional street trees;
- Provision of (at least) 4 bicycle parking spaces under the fire escape on the west elevation;
- Improvement of the crosswalk ramp panel;
- Upgrading of utilities with sidewalk reinstatement as required.

IV. RIGHT, TITLE AND INTEREST AND FINANCIAL CAPACITY

a. The owner of the property is 415 Cumberland LLC and the applicant has a Purchase and Sale Agreement to purchase the property (Attachment B) which demonstrates their right, title and interest in the property. The YMCA has an access easement over a small area to the north of the property, as detailed in Attachment D.

b. The estimated cost of the development is \$685,000 (see Attachment A data sheet) and the applicant has confirmed the funds are partly from personal equity (Ducas Construction Inc) as well as bank finance, and bank letters from Bangor Savings Bank and Gorham Savings Bank have been submitted to document the available finance for this project (Attachment C).

V. ZONING ASSESSMENT

The proposed units are proposed to be market rate apartments and are permitted as “residential multi family” uses in the B3c zone. Part of the ground floor remains commercial, which is permitted as a business use in the B3c zone. The site is not within the PAD Overlay Zone. The project is exempt from providing any additional dedicated parking for the project under the zoning ordinance as a change of use in the B3c Downtown Business Zone. The proposal does not include any alterations to the existing footprint of the building nor its height. The staff finds the application to be in conformance with the B-3c zone, and notes that the trash storage is regulated in the *External effects* section 14-221.1.

VI. DEVELOPMENT REVIEW

A. SUBDIVISION and SITE PLAN SUBMISSION REQUIREMENTS (Section 14-497 & Section 14-527)

All requirements have been met. The subdivision plat (Plan P2.) has been reviewed by the Department of Public Services (DPS) Surveyor, the Legal Department and the Fire Department staff (Attachments 1, 4 and 5). The Legal Department and DPS Surveyor have requested clarification regarding the easements and other survey information; the draft plat in Plan P2 will need to be revised to address these comments.

A recommended condition of approval calls for a revised plat to be submitted for review by the Planning Authority, Department of Public Services and Associate Corporation Counsel prior to the signature of the Planning Board.

It is understood that the apartments are being created for rental so there are no Condominium Documents submitted. A suggested subdivision condition of approval requires the submission of such documents if the nature of the units is changed in the future.

B. SUBDIVISION REVIEW

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland’s Subdivision Ordinance and applicable regulations. Staff comments are listed below.

1. Will Not Result in Undue Water and Air Pollution (Section 14-497 (a) I), and Will Not Result in Undue Soil Erosion (Section 14-497 (a) 4)
Staff finds the proposed project is in conformance with this standard.
2. Sufficient Water Available (Section 14-497 (a) 2 and 3)
The applicant has spoken to the Portland Water District and understands that there is adequate capacity and there is the possibility that the immediate supply infrastructure will have to be upgraded as part of the proposals (Attachment F). The applicant does not yet own the property, so the capacity letter from PWD is suggested to be the subject of a condition of approval.
3. Will Not Cause Unreasonable Traffic Congestion (Section 14-497 (a) 5)
Please see paragraph C1 below. The staff finds the proposal will not cause unreasonable traffic congestion.
4. Will Provide for Adequate Sanitary Sewer and Stormwater Disposal (Section 14-497 (a) 6), and Will Not Cause an Unreasonable Burden on Municipal Solid Waste and Sewage (Section 14-497 (a) 7)
Staff finds the project in conformance with this standard subject to confirmation regarding the roof drains; please see paragraph C2 below.
5. Scenic Beauty, Natural, Historic, Habitat and other Resources (Section 14-497 (a) 8)
The proposed project will not have an adverse effect on the scenic or natural beauty of the area, thus the proposed project is in conformance with this standard.

6. Comprehensive Plan (Section 14-497 (a) 9)

The following statement is housing policy that is relevant to this proposal and the staff finds the proposed project is in conformance with this standard.

The first policy of Housing: Sustaining Portland's Future is to ensure an adequate and diverse supply of housing for all. Objectives under that policy include the following:

- Ensure the construction of a diverse mix of housing types that offers a continuum of options across all income levels, which are both renter and owner-occupied. The list of potential housing options under this objective include:
 - ii. Housing units for decreasing household sizes, such as young professionals, empty nesters, single parent households and senior citizens.
 - v. Higher density housing, such as row houses, small lots, reuse of non-residential buildings, and mixed use buildings.
- Encourage higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers and public transportation.
- Evaluate and update current zoning, as needed, to encourage higher density multi-family developments and mixed use projects that incorporate housing, particularly along major public transportation routes, near services areas, and in redevelopment or infill areas, where appropriate.
- Encourage housing within and adjacent to the downtown. Evaluate and update current zoning and building codes, as needed, to facilitate new housing and redevelopment opportunities....

7. Financial Capability (Section 14-497 (a) 10)

Please see above under Section V.

C. **SITE PLAN STANDARDS** (Section 14-526)

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's site plan ordinance and applicable regulations. Staff comments are listed below.

1. **Transportation Standards**

- a. Impact on Surrounding Street Systems
- b. Access and Circulation
- c. Public Transit Access
- d. Parking
- e. Transportation Demand Management (TDM)

STAFF COMMENT: The proposed project is not anticipated to have any significant adverse effect on regional traffic, and the parking needs have been addressed by the retention of the 6 existing parking spaces in the garage which have an existing curb cut that is satisfactory. A recent aspect of the review of pedestrian access relates to compliance with current ADA requirements and the applicant has submitted a note confirming compliance (Attachment I).

A satisfactory enclosed and screened trash storage is provided near the existing curb cut in Forest Avenue (see Attachment H and Plan P2 for details). This location is near the YMCA and the applicant will need to ensure that these meet the zoning requirement that no dust nor fumes are created. A suggested condition of approval requires details of the proposed bike parking to be submitted for review and approval in order to meet the bicycle parking ordinance requirement for 4 spaces.

The Public Transit and TDM standards do not apply to this project.

2. **Environmental Quality Standards**

- a. Preservation of Significant Natural Features
- b. Landscaping and Landscape Preservation
- c. Water Quality, Storm Water Management and Erosion Control

STAFF COMMENT: There is little scope for additional planting but the City Arborist (Attachment 3) has suggested enhancement of the planting at the front of the building and that this could include two additional trees which would also be credited as street trees. The City Arborist supports the waiver for six of the ten required street trees, and requests a contribution of \$1200 in lieu of these six trees.

The reuse of the building does not require any upgrading to meet current stormwater requirements, but the DPS in their Wastewater Capacity letter ([Attachment 1](#)) has requested that all rainwater downpipes be directed to the sidewalk or street level and not be connected to the sewer. The applicant is checking on whether a central roof drain is connected to the sewer and the suggested condition requires that if there is a connection that the proposals to redirect that drainage be submitted for review and approval.

3. Public Infrastructure and Community Safety Standards

- a. Consistency with Master Plans
- b. Public Safety and Fire Prevention
- c. Availability and Adequate Capacity of Public Utilities

STAFF COMMENT: The sidewalks along the frontage are in good condition but the Department of Public Services has requested that the ramp panel within the tipdown at the corner crosswalk be replaced and the applicant is willing to make this improvement (as noted on the draft Plat/Site Plan in [Plan P2](#)). A suggested condition of approval includes this item in the request for detailed plans of work in the Right Of Way.

Captain Keith Gautreau of the Fire Department has reviewed the project and confirms that all site plan concerns have been addressed ([Attachment 2](#)). He identifies 911 and street addressing as a particular concern because the entrances to the building are on two streets, and this has been highlighted in a suggested condition of approval.

The wastewater capacity letter has been received ([Attachment 1](#)) and the applicant understands that adequate water supply will be available ([Attachment F](#)). A suggested condition of approval requires the submission of the Portland Water District capacity letter. The applicant understands that he may need to upgrade on-site water and sewer infrastructure roughly where these are currently located, but details have not been submitted. A suggested condition of approval requires submission of details for any utility work, and associated reinstatement of the ROW/sidewalk where those are disturbed, for review and approval by the Planning Authority.

4. Site Design Standards

- a. Massing, Ventilation and Wind Impact
- b. Shadows
- c. Snow and Ice Loading
- d. View Corridors
- e. Historic Resources
- f. Exterior Lighting
- g. Noise and Vibration
- h. Signage and Wayfinding
- i. Zoning Related Design Standards

STAFF COMMENT: The building is an existing structure with few exterior modifications. It is not located within an Historic District and is more than 100 feet from the boundary of the Congress Street Historic District, though it is nearby. The proposals include (see [Attachment H](#)) a security light in the area of the trash storage and a suggested condition requires that this meet the City's Technical Standards. The other standards do not apply to this project.

The proposals are for a multi-family development and therefore must meet the following standards:

TWO-FAMILY, SPECIAL NEEDS INDEPENDENT LIVING UNITS, MULTIPLE-FAMILY, LODGING HOUSES, BED AND BREAKFASTS, AND EMERGENCY SHELTERS:

(1) STANDARDS. Two-family, special needs independent living units, multiple-family, lodging houses, bed and breakfasts, and emergency shelters shall meet the following standards:

a. Proposed structures and related site improvements shall meet the following standards:

1. *The exterior design of the proposed structures, including architectural style, facade materials, roof pitch, building form and height, window pattern and spacing, porches and entryways, cornerboard and trim details, and facade variation in projecting or recessed building elements, shall be designed to complement and enhance the nearest residential neighborhood. The design of exterior facades shall provide positive visual interest by incorporating appropriate architectural elements;*

2. *The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;*

Staff comment: These standards do not apply as the development is within an existing building.

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: There is little opportunity for additional planting, and the proposal to upgrade the front planted area generally addresses this standard.

4. *The design of proposed dwellings shall provide ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and shall also provide sufficient storage areas;*

Staff comment: This standard appears to be met.

5. *The scale and surface area of parking, driveways and paved areas are arranged and landscaped to properly screen vehicles from adjacent properties and streets;*

Staff comment: The parking is within an enclosed building and the vehicles are screened.

VII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed subdivision and site plan for ten units within the existing building at 415 Cumberland Avenue.

VIII. PROPOSED MOTIONS FOR THE BOARD TO CONSIDER

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 October 27, 2015 for application #2015-162 (415 Cumberland Avenue) relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

- i. The Planning Board (**waives/does not waive**) *Section 14-526 (b) (2) (b) (iii) Street Trees*, in respect of 4 of the 10 required street trees due to the lack of space, subject to the applicant making a contribution of \$1200 to the City of Portland Tree Fund (prior to the issuance of a building permit) towards the installation and maintenance of three urban street trees in the vicinity of the site.

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- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services, and include confirmation regarding the street tree requirements, clarification of easements, and other information along with relevant notes and conditions prior to submission for Planning Board signature; and
- ii. That in the event the property is converted to a condominium, that the recorded condominium documents shall be copied to the Planning Authority.

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- i. That the applicant shall submit a revised site plan/plat that shows the location and design of the 4 bicycle parking spaces, the proposed planting in the front garden area including 2 street trees on the site, and the replacement ADA ramp panel in the ROW at the corner of Forest Avenue and Cumberland Avenue (to meet the City's Technical Standards for any work in the ROW), for review and approval by the Planning Authority prior to the issuance of a building permit; and
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- iii. That the applicant shall submit the capacity letter in respect of water supply prior to the issuance of a building permit; and
- iv. That any exterior lighting shall meet the to meet the City's Site Lighting Standards in Section 12 of the Technical Manual, and the trash storage area shall meet the B3c *External Effects* standards; and
- v. That the applicant shall address the comments of the Fire Department dated 10.7.15 regarding the development of street addresses and their marking on the structure prior to the issuance of a certificate of occupancy; and
- vi. That a separate "change of use" permit shall be obtained from the Inspections Division.

Attachments:

Planning Board Report Attachments

1. DPS Comments on Plat & within Wastewater Capacity Letter
2. Fire Department comments site plan
3. City Arborist final comments 10.22.2015
4. Legal comments (Plat) 10.19.2015
5. Fire Department comments (Plat) 10.15.2015

Plans

- Plan P1 Boundary Survey
- Plan P2 Draft Subdivision Plat (also Site Plan)
- Plan P3 Architectural cover sheet
- Plan P4 Floor Plans of proposed Apartments
- Plan P5 Elevations (photos)

Public comments (none received)

Applicant's Submittal

- A. Application
- B. Evidence of RTI (P&S Agreement)
- C. Financial Capacity Information
- D. Deed with YMCA Access Easement
- E. Development Narrative & Code Summaries
- F. Water and Sewer Capacity
- G. Neighborhood Meeting Certificate
- H. Further Information from applicant
- I. ADA Compliance



PORTLAND MAINE

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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

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>	PUBLIC			PRIVATE		
	<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)

	PUBLIC	PRIVATE	TOTAL
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