



PORTLAND MAINE

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Planning Division

Alexander Jaegerman, FAICP, Director

August 30, 2013

Seth Parker
Avesta Housing, Avesta 409 Cumberland, LP
307 Cumberland Avenue
Portland, ME, 04101

Bob Metcalf
Mitchell & Associates
70 Center Street
Portland, ME, 04101

Project Name: **409 Cumberland Apartments** Project ID: 2013-148
Address: 409 Cumberland Avenue CBL: 036 H018001, H019001
Applicant: Avesta Housing, Avesta 409 Cumberland, LP
Planner: Caitlin Cameron

Dear Mr. Parker:

On August 27, 2013 the Planning Board considered 409 Cumberland Apartments for Level III Site Plan/Subdivision approval. The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance. The Planning Board voted 6-0 (Dundon recused) to approve the application with the following waivers and conditions as presented below.

WAIVERS

The Planning Board voted 6-0 (Dundon recused) to waive the following:

1. Technical Standard, Section 14-526 (b)(2)(b)(iii) Street Trees, where the applicant shall install five (5) raised granite tree wells to accommodate proposed street trees, the cost of which shall be credited towards the fee owed for the remaining forty-seven (47) trees.
2. Section 14-526 (3) requirement to provide public transit access.
3. Technical Design Standard Section 1. Figure 1-27 'Standard Parking Spaces' to reduce parking garage aisle width from twenty-four (24) feet to twenty-two (22) feet, to have more compact spaces than allowed, and to have compact parking spaces larger than standard.
4. Section 14-220 B-3 District dimensional requirements for street wall built-to line which requires new building construction shall be within five (5) feet of the property line on street frontage. The Board supported the waiver for the proposed development which will have a thirty-six (36) foot setback for a portion of the building forty-three (43) feet along Mechanic Street and an eight (8) foot setback for a portion of the building along Forest Avenue for a length of ninety-five (95) feet.
5. Technical Design Standard Section 1 Figure 1-6E 'Preferred Sidewalk Ramp at Intersection' due to existing infrastructure conditions.

SITE PLAN REVIEW

The Planning Board voted 6-0 (Dundon recused) that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following condition(s) of approval:

1. The applicant shall submit plans for a revised sidewalk ramp at the Mechanic Street intersection for review and approval by the Department of Public Services. The applicant shall provide specific information on what utilities are impacted for perpendicular crosswalk alignment (both crosswalks) at the Forest Avenue intersection for review by the City in assessing the most practicable option.
2. Parking layout should be revised such that vehicles can enter and exit the site front first with particular attention to the ADA space inside the garage.
3. That the parking required for the development has been determined by the Planning Board to be forty (40) spaces. One parking space on-site shall remain a carshare space accounting for eight (8) parking spaces. If a shortfall should occur due to changed circumstances around the proposed carshare parking space, it shall be addressed either through a fee-in-lieu or off-site parking leases in accordance with the Ordinance, depending on future buyer needs. Prior to the issuance of a certificate of occupancy, the applicant shall post a bond to be deposited in the Sustainable Transportation Fund. Bond amount shall be determined according to Sec. 14-345. Peninsula fee-in-lieu of parking guidelines.

SUBDIVISION REVIEW

The Planning Board voted 6-0 (Dundon recused) that the plan is in conformance with the subdivision standards of the Land Use Code. 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 #2013-148 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 MRS section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval).
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has

commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.

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

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 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 Caitlin Cameron, Urban Designer at 874-8901.

Sincerely,



Carol Morrissette, Chair
Portland Planning Board

Attachments:

1. Planning Board Report
2. Performance Guarantee Packet

Electronic Distribution:

CC: Jeff Levine, AICP, Director of Planning and Urban Development
Alexander Jaegerman, FAICP, Planning Division Director
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Jeremiah Bartlett, Public Services
Captain Chris Pirone, Fire Department
Danielle West-Chuhta, Corporation Counsel
Thomas Errico, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File



PLANNING BOARD REPORT PORTLAND, MAINE

409 Cumberland Apartments
409 Cumberland Avenue
Level III Site Plan/Subdivision
Project ID #: 2013-148
Avesta Housing, Applicant

Submitted to: Carol Morrisette, Chair and Members of the Portland Planning Board Public Hearing Date: August 27, 2013	Prepared by: Caitlin Cameron, Urban Designer Date: 8/23/13 Planning Report #39-13
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I. INTRODUCTION

Avesta Housing applied for a Level III Site Plan/Subdivision review for the property located at 409 Cumberland Avenue. The applicant proposes to develop a 57 unit apartment building on the vacant lots and provide open space and garage and surface parking. The proposed site was the subject of a conditional rezoning agreement for the Waterview project, a 12-story building with 94 residential units, which has since expired. The applicant requested a housing determination as to whether they will be held accountable for the 10 dwelling units lost on-site as a result of the Waterview project.

Public notice consisted of 220 notices mailed to property owners within 500 feet as well as the item appearing on the Legal Ad which ran in the Press Herald on 8-19-13 and 8-20-13. A neighborhood meeting was held on July 11 with 14 attendees. Comments focused on concerns over vehicular traffic on Mechanic Street, the security of the Mechanic Street side of the project, and the use of the ground floor, non-residential space. Meeting minutes are attached (Attachment 1). Public comment during the July 23 workshop included concern about the increased demand in parking, the amount of parking provided on-site being too low, winter traffic conditions on Mechanic Street, the security and design of the open space, construction noise being disruptive to neighboring residential, and potential future uses of storefront.

II. BACKGROUND

Historically, the site was made up of seven (7) parcels and included a three-story, 10-unit apartment building, a two-story, single-family residence, a three-story office building with surface parking, and another surface parking lot on Parcel 18. The project site was previously approved as a contract zone for the Waterview project which was to have 94 condominium units in a twelve-story structure that was never constructed. The existing structures were demolished and the single family house was relocated to Myrtle Street.

The neighborhood surrounding 409 Cumberland Avenue includes residential and non-residential uses. Adjacent to the lot at 409 Cumberland is the Back Bay Tower which is a high-rise residential building. Low-rise multi-family and single family homes exist further down the block as part of the Bayside

neighborhood. Non-residential uses include the YMCA, commercial offices, and a parking garage. The parcel might be considered transitional between the downtown and Bayside neighborhood.

Waiver Request	Applicable Standard
Waiver is requested to waive fees for additional trees where the applicant shall install raised granite tree wells to accommodate proposed street trees. Raised wells exceed City tree well specifications.	Section 14-526 (B)(2)(b)(iii) Street Trees
Waiver from providing transit facility on Forest Avenue.	Section 14-526 (3) Requirement to provide public transit access.
Waiver to reduce parking garage aisle width from 24 feet to 22 feet, to have more compact spaces than allowed, and to have compact parking spaces larger than standard.	Technical Manual Section 1.14
B-3 Setback for a portion of the build-to line along Mechanic Street and Forest Avenue.	B-3 zone, Section 14-220 and Site Plan Ordinance Section 14-526 (d) 9 and Design Manual, II. B. Standards for increasing setback beyond street build-to line.
Waiver from ADA preferred alignment for crosswalk ramps at Cumberland and Forest due to existing utilities. Alternative alignment proposed.	Technical Manual Section 1.1.1 and 1.8.5.
Site Plan	Site Plan Standards – 14-526
Subdivision	Subdivision Standards - Section 14-497

III. PROJECT DATA

Current Zoning:	Split between R-6 Residential and B-3 Downtown Business Zone
Land Area:	0.41 acres (18,008 SF)
Building Floor Area:	10,100 SF (new construction)
Impervious Surface Area:	16,000 SF (new construction)
Building Height:	4 stories (51’6”) on Cumberland, 5 stories (71’3”) along Forest
Existing Use:	Vacant Lot
Proposed Use:	Housing (57 apartment units, 46 affordable and 11 market-rate)
Bedroom Mix:	Efficiency – 21, One-bed – 32, Two-bed – 4
Parking Spaces:	18 proposed, 2 Handicap, 1 Carshare; Additional 3 motorscooter
Bicycle Parking:	28 proposed
Estimated Cost:	\$10.2 million
Land Uses in Vicinity:	YMCA, Commercial office space, High-rise multi-family residential, Low-rise multi-family residential, Single-family homes

IV. PROPOSAL

The proposal seeks to develop the property into a five-story building with 57 apartment units, ground floor building services and public education space, on-site parking (structured and surface), and secured open space. The project will serve a mixed income population with both market rate and low

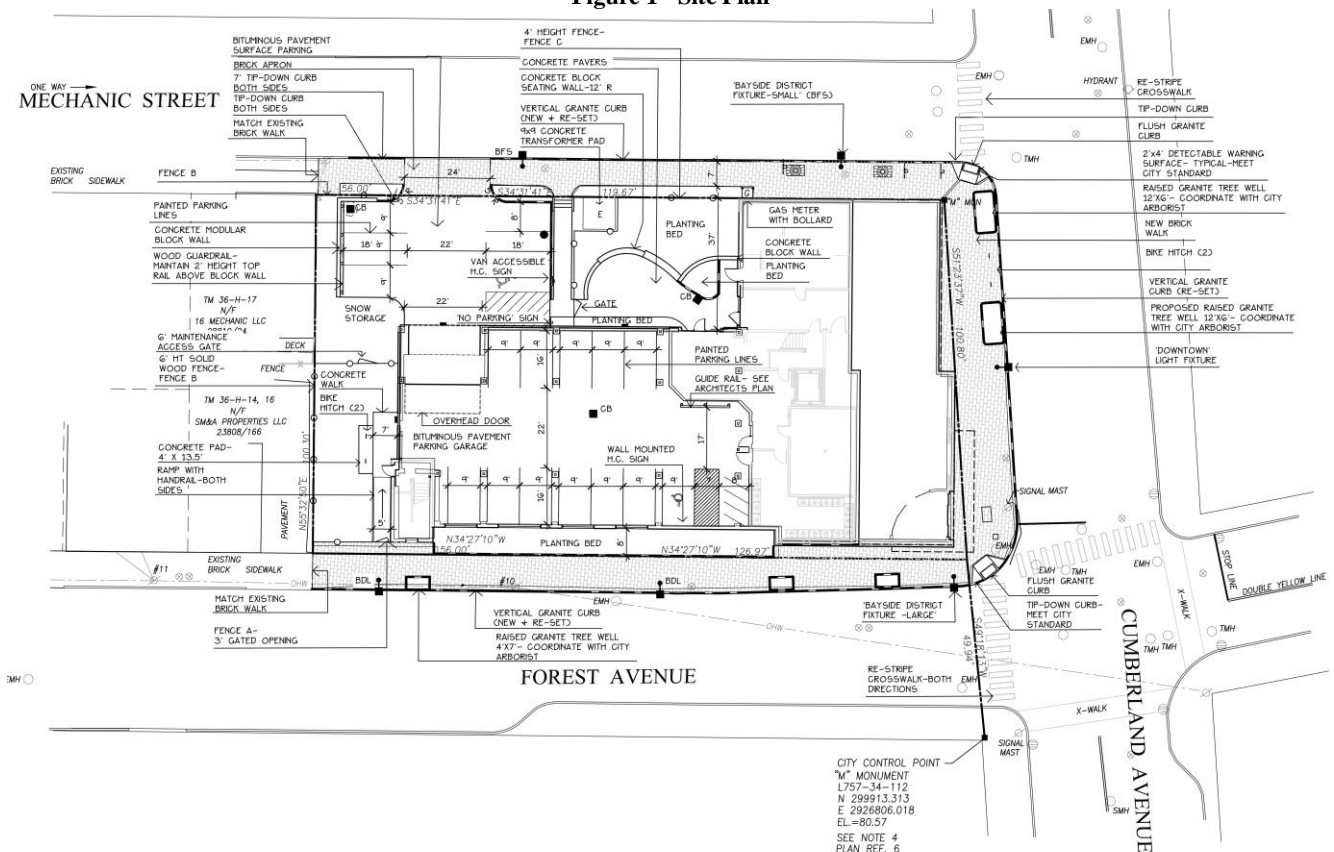
to moderate income units. Rooftop amenities such as planter beds and a greenhouse are proposed and are setback to minimize visibility from the street. (Figure 1) below shows the proposed site plan.

The lot is currently vacant (since the demolition associated with the Waterview project) and was leased as construction parking for the Eastland Hotel which has since relocated.

The property is not itself within a Historic District although it is within 100 feet of the Congress Street Historic District and the New England Telephone Building Historic Landmark across Cumberland Avenue. For that reason, the proposal on this site has been reviewed by Historic Preservation staff for compatibility to the historic resources as required under Section 14-526 of the Site Plan Ordinance. The review did not result in any Historic Preservation concerns.

The property is not in the Pedestrian Activity District Overlay Zone.

Figure 1 - Site Plan



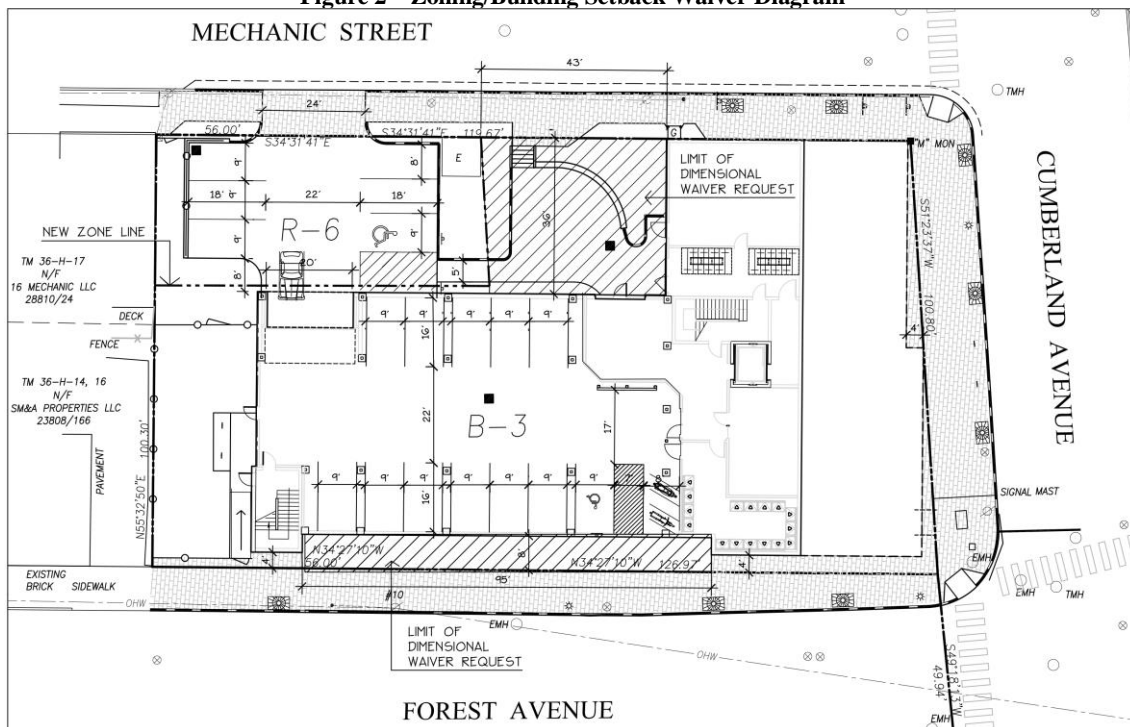
The proposal includes twenty-five (25) parking spaces including twelve (12) indoor spaces for cars (1 ADA accessible space), six (6) surface spaces, and additional motor scooter parking (3 spaces), and a bicycle storage room (28 spaces). The applicant proposes to use one (1) on-site parking space as a carshare space which under the zoning ordinance accounts for eight (8) parking spaces. The on-peninsula zoning requirement is one (1) parking space per unit. Alternative designs to increase the parking on-site were considered but deemed infeasible due to the sloped site. However, for projects with over 50,000 sf the Planning Board determines the required number of spaces based on a traffic report.

V. ZONING ANALYSIS

The zoning has been revised to reflect the expanded B-3 zone area and R-6 zone area. The Zoning Administrator has confirmed that the proposal meets the height and setback requirements of the respective zones except for the areas where a waiver is requested regarding the B-3 street wall build-to line (Figure 2) (Attachment 3) which is within the purview of the Planning Board.

The applicant requested partial relief from Section 14-220 Dimensional Requirements (c) Street Wall Build-to Line. The proposed building does not meet the five (5) foot maximum setback requirement for street frontages in two locations. On Mechanic Street, the building is setback at thirty-six (36) feet for a length of forty-three (43) feet to accommodate a resident-accessible open space. Although typically a waiver request for this condition would require the open space provide substantial and viable publicly accessible open space that reinforces and supports pedestrian activity and interest, in this case, there is substantial concern from the neighbors, applicant, and Planning Board about the security of that space. Under these circumstances the applicant has reviewed with staff a revised design that will maintain visibility from the public right of way, but will be physically accessible only to residents (Attachment Plan 2). In the second area of the project requesting a waiver on Forest Avenue, the building is setback eight (8) feet for a length of ninety-five (95) feet. The Forest Avenue waiver does provide publicly accessible street level amenity. The area that is setback eight (8) feet is providing variability to the façade which is otherwise lacking in street vitality without storefront or building entrances. The setback does not substantially detract from the prevailing street wall character nor does it detract from existing open space. The area of setback is Southwest-facing which allows for acceptable orientation for solar access to be attractive to pedestrian activity. The quality and character of design has been reviewed with staff and will include trees and curbing. Staff suggested additional amenities such as seating wall and a green wall which the applicant was not able to accommodate in this location.

Figure 2 – Zoning/Building Setback Waiver Diagram



VI. DEVELOPMENT REVIEW

A. SUBDIVISION (Sec. 14-497)

The proposal has been reviewed according to the Subdivision (a) Review criteria. Staff comments are included as Attachments 3-7 and noted 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 in conformance with this standard.

2. Sufficient Water Available (Section 14-497 (a) 2 and 3)

The applicant has presented a capacity letter from the Portland Water District (Attachment A) and there is adequate capacity.

3. Will Not Cause Unreasonable Traffic Congestion (Section 14-497 (a) 5)

Please see paragraph (B) (a) 1 below.

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)

Please see paragraph (B) (b) 3 below.

5. Scenic Beauty, Natural, Historic, Habitat and other Resources (Section 14-497 (a) 8)

Under the standards of the subdivision ordinance, all subdivisions are required to provide one (1) street tree per unit for multi-family projects. The subject application is for fifty-seven (57) units. City Arborist Jeff Tarling will accept ten (10) of the proposed trees towards meeting this requirement. The applicant has requested a waiver of the street trees in order to contribute to the City's tree fund for remaining forty-seven (47) required trees. The applicant will provide five (5) raised granite curb tree well planters at their own cost which is estimated to be \$2,000 per tree well for a total of \$10,000. Because the \$10,000 is commensurate with the contribution for the forty-seven (47) trees of \$9,400, the waiver request asks for that amount to be counted towards their tree contribution. Whereas the subject site is located in a fully developed urban environment, the City Arborist supports the use of raised tree wells to further protect the trees and supports the waiver request. Therefore, the City Arborist supports the waiver request for no additional contribution to the tree fund.

The proposed Planting Plan (Attachment Plan 8) has been reviewed and approved by City Arborist.

The proposed project will not have an adverse effect on the scenic or natural beauty of the area.

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

The proposed zoning map amendment is consistent with the Housing Component of the Comprehensive Plan entitled *Housing: Sustaining Portland's Future*.

Housing: Sustaining Portland's Future recommends that Portland seek to grow along with Cumberland County and maintain a 25% share of the County's population. . . . Efforts to encourage production of housing and recommended revisions to the residential zoning will increase Portland's capacity for new development.¹ Specifically, the Comprehensive Plan states that the City should:

"Encourage and Support Private Market Rate Development: In addition to the need for affordable housing, there is also a critical need for market rate housing that serves middle and higher income households. Eliminating barriers to housing development and supporting market rate projects through the approval process will assist in expanding the market rate housing stock."

Housing: Sustaining Portland's Future contains several goals which are applicable to this proposed map amendment. Chief among them is *Policy #1 Ensure an Adequate and Diverse Supply of Housing for All* which states:

"Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future."

- Objective 1.a. Ensure the construction of a diverse mix of housing types that offers a continuum of options across all income levels for both renter and owner-occupied, including but not limited to the following:
 - ii. Housing units for decreasing household sizes
 - v. Higher density housing, such as row houses, small lots, reuse of non-residential buildings, and mixed use buildings
- Objective 1.c: Encourage higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation.
- Objective 1.d: Increase Portland's rental housing stock to maintain a reasonable balance between supply and demand yielding consumer choice, affordable rents, and reasonable return to landlords.
 - 1.d.2 Evaluate and update current zoning, as needed, to eliminate barriers to the creation of rental housing . . .

In the *Downtown Vision: Overall Goals*:²

- Continue to offer, expand, and promote programs, which maintain and upgrade housing in the neighborhoods within and immediately surrounding the Downtown.
- Initiate long-term development programs for the Bayside, Gorham's Corner, and India Street perimeter areas with an objective of establishing and re-establishing residential components with a mix of income levels and types of housing within a context of mixed commercial and residential uses.

The proposed 57 units help alleviate the high demand for residential units. The project at 409 Cumberland Avenue will offer a diversity of housing including efficiency, one and two-bedroom

¹ Comprehensive Plan, Housing Initiatives, page 3.

² Comprehensive Plan, Part 1, page 47.

units at market and affordable rates. The building proposes dense infill construction near services including schools, businesses, employers, and public transportation.

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

The estimated cost of the development is \$10.2 million. The applicant has submitted a letter from Gorham Savings Bank, dated May 30, 2013 (Attachment G) as demonstration of their financial and technical capacity to complete the proposed development.

8. Subdivision Plat

The subdivision plat has been reviewed by staff. The plat should include the survey plan rather than the site plan and waiver requests should be revised to reflect the updated comments from staff. Several conditions of approval are proposed for the updated plat.

B. SITE PLAN (Sec. 14-526)

The proposal has been reviewed according to the Site Plan Requirements for approval. Staff comments are included as Attachments 3-7 and noted below.

(a) Transportation

1. Impact on Surrounding Street Systems

The proposed project will add fifty-seven (57) dwelling units. A Traffic Study has been provided by the applicant (Attachment N). There are no High Crash Locations within the immediate study area. It is the opinion of Traffic Reviewer Tom Errico that the project will not have a significant impact on the area streets with low traffic volumes. No mitigation actions are suggested.

2. Access and Circulation

All vehicle access is provided on Mechanic Street (including bicycle and scooter/motorcycle). Pedestrian access is provided on Cumberland Avenue and Mechanic Street. Concern has been raised by the public about the Mechanic Street access becoming dangerous in the winter due to the slope of the road. A waiver is requested regarding the ADA crosswalk ramp at the corner of Cumberland and Forest Avenues because of existing site conditions such as utilities which staff supports but will require additional review and discussion (see Condition 1 for suggested language). Comment from Tom Errico:

“The proposed sidewalk ramp at Mechanic Street is not acceptable and shall be revised for perpendicular alignment. For the Forest Avenue sidewalk ramp, specific utility information should be provided that supports the proposed apex ramp layout, which does not meet the preferred ADA and City standards for perpendicular alignment. The City acknowledges that significant constraints do exist but before a non-compliant design is accepted more detail is required. Accordingly, the applicant shall submit plans for a revised sidewalk ramp at the Mechanic Street intersection for review and approval by the DPS. The applicant shall provide specific information on what utilities are impacted for perpendicular crosswalk alignment (both crosswalks) at the Forest Avenue intersection for review by the City in assessing the most practicable option.”

3. Public Transit Access

The development is of sufficient size and along two (2) existing public transit routes on a local principal roadway which triggers the Public Transit Access requirement. However, there are two existing bus stops within a quarter mile of the project. METRO was consulted to help determine whether the project needs to provide transit facility with a shelter and bus pullout bay connected to the sidewalk system. Tom Ridge from METRO commented: “We feel that our bus stops within the area of 409 Cumberland Ave are sufficient, and we do not feel that the creation of a new bus stop within that area is necessary.” (Attachment 8) Therefore, the waiver request is recommended to be granted.

4. Parking

The proposal includes eighteen (18) parking spaces total twelve (12) indoor spaces for cars (1 ADA accessible space), six (6) surface spaces, and additional motor scooter parking (3 spaces), and a bicycle storage room (28 spaces). The on-peninsula zoning requirement is one (1) parking space per unit. Traffic Engineer Tom Errico reviewed the applicant’s parking study, which proposes a .70 parking space to unit ratio and he concurs with the analysis. Using the recommended ratio of .70 spaces, the required number of parking spaces is forty (40). The applicant proposes to use one (1) on-site parking space as a carshare space (Attachment V) which under the zoning ordinance accounts for eight (8) parking spaces. The resulting on-site parking space count is twenty-five (25). For the remaining, required fifteen (15) parking spaces, as a development within the B-3 zone, the applicant may provide off-site parking by lease or ownership, or may take advantage of the fee-in-lieu of parking provision contained in Division 20 of the Zoning Ordinance. The applicant intends to pay into the fee-in-lieu of parking fund. Please note that public comment has been received regarding parking concerns within the neighborhood.

Because the carshare parking space will be fulfilled by an entity other than the building owner, staff recommends a condition be made to secure the required number of parking spaces be met in the future.

Comments from Tom Errico (Attachment 4):

- The project is proposing a waiver for aisle width (22 feet is proposed versus the standard 24 feet) for the surface parking area. I support a waiver from City standards due to the low volumes entering and exiting the 18 parking spaces provided on-site.
- The number of compact spaces exceeds the maximum allowed by City standards.
- The dimensions of the compact parking spaces do not meet City Standards. The waiver request is supported given the spaces are larger than the standard.
- Within the garage, parking aisle widths and compact size space create a very tight environment for vehicle maneuvering. Further complicating maneuvers is the presence of building support columns. The applicant has provided turning template graphics for a customized mid-size passenger car, not the standard passenger car typically utilized for analysis. The templates indicate that access and egress movements from the parking spaces will be very difficult for the

reduced sized vehicle. It appears that some of the parking maneuvers will require vehicles to back out of the garage onto Mechanic Street (assuming all parking spaces are occupied). This condition should not be permitted and the layout should be revised such that vehicles can enter and exit the site front first.

- Changes to on-street parking regulations will be required on Mechanic Street in the vicinity of the project driveway. The applicant should be aware that these changes will require changes to the City's Traffic Schedule and will need to be reviewed and approved by the City Council. The applicant will be required to provide documents that support the request for parking changes.

Comments from John Peverada (Attachment 5):

- With more residents parking on the street there will be more conflict between the neighborhood residents, businesses, and emergency vehicles.
- Without adequate parking the residents will be more apt to be towed for street sweeping or snow bans, and emergency vehicles and snow plows will have a more difficult time maneuvering.

5. Transportation Demand Management

Traffic Engineer Tom Errico finds the TDM plan to be acceptable. Further comments regarding parking demand are included in (Attachment 4). The applicant proposes the project will generate a parking demand ratio of .70 spaces per unit (40 parking spaces), twenty-five (25) of which will be provided on-site (18 spaces and net +7 spaces for carshare). Tom Errico and John Peverada conducted field surveys and found that the .70 number is reasonable. The remaining fifteen (15) spaces will be accounted for through the fee-in-lieu program.

(b) Environmental Quality

1. Preservation of Significant Natural Features – Not applicable

2. Landscaping and Landscape Preservation

There is no existing landscape to be preserved. Landscape buffers and fencing are provided between the project and neighboring residences. The surface parking requires tree/shrub screening which is provided along Mechanic Street and between the surface parking and the open space. Eighteen (18) trees are proposed in the Planting Plan, ten (10) of which will be counted towards the street tree requirement (Attachment Plan 8). See section VI. (A) 5 for further details.

3. Water Quality, Stormwater Management, and Erosion Control

Civil Engineer David Senus had the following two comments (Attachment 8):

- The applicant has noted that proposed pipe materials have been specified on the design plans; however, it is unclear where this note has been added, please clarify.
- Manhole #2, which has been proposed within the City Right-of-Way as a means of connection to the existing storm drain in Mechanic Street, should comply with Figure II-1 of the City of Portland Technical Manual.

All previous review comments have been adequately addressed.

(c) Public Infrastructure and Community Safety

1. Consistency with City Master Plans

The project is consistent with the City's Comprehensive Plan, especially the housing component "Housing: Sustaining Portland's Future." The project provides 57 new rental units near downtown amenities, employment, and public transit. The housing

mix provides efficiency, one-bedroom, and two-bedroom units and 80% affordable units. As a dense urban infill development, the project reduces environmental impacts associated with new development. The project especially meets the following policies:
Policy #1: Ensure an Adequate and Diverse Supply of Housing for All
Policy #3: Neighborhood Stability and Integrity
Policy #5: Sustainable Development
Policy #6: Freedom of Choice

For further details, see (Attachment K).

2. Public Safety and Fire Prevention – Conditions met (Attachment M)
3. Availability and Adequate Capacity of Public Utilities – Conditions met (Attachment F)

(d) Site Design

An architectural narrative is provided as (Attachment L).

1. Massing, Ventilation, and Wind Impact
Public comment was received with concern over the proposed orientation of the project towards Forest Avenue and suggests the orientation be changed. These concerns are related to the location of the proposed building and the possible diminution of the utility of the neighboring street. At the Planning Board Workshop, Planning Board members agreed that the building orientation as proposed was appropriate.
2. Shadows
Applicant has not provided a hard copy of the shadow impact study to show the effects on neighboring properties and streets. Referencing the interactive study presented at the Planning Board, the project has been adequately designed to avoid excessive shadows cast. The open space associated with the project is North-facing and as such, will be in shadow more often than if South-facing. The open space should be designed so as to maximize the direct sunlight for a portion of the day for uses such as sitting or sunning. Section 11 of the Technical Manual provides additional information.
3. Snow and Ice Loading – Conditions met
4. View Corridors – Not applicable
5. Historic Resources
The Historic Preservation Program Manager has confirmed that the project does not need to go before the Historic Preservation Board nor receive a Certificate of Appropriateness. Administrative review of the building design is adequate for determining appropriateness and all concerns regarding design and roof elements have been addressed.
6. Exterior Lighting – The project will provide new street lighting fixtures on Forest Avenue, Cumberland Avenue, and Mechanic Street. Exterior lighting plans for the building show fixtures conform to the Technical Standards (Attachment S). Light intrusion has been minimized to neighboring residential uses with full cutoff fixtures. The maximum foot candles of 5.0 will be surpassed directly below each fixture (to 8.6fc) in the occasion that motion triggers the motion-sensors in the evening which will cause the triggered fixture to raise to 100% output level. Otherwise, the fixtures remain at 50% output and well within the maximum and minimum foot candles required by the Technical Manual.
7. Noise and Vibration – Conditions met
8. Signage and Wayfinding – Conditions met
9. Zoning-related Design Standards

The staff feels the design standards for B-3 and Residential Development are met by this project with the exception of the areas where waivers are requested.

VII. HOUSING REPLACEMENT DETERMINATION

The purpose of Sec. 14-483 Housing preservation and replacement of the Land Use Code is:

- 1) *To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;*
- 2) *To limit the net loss of housing units in the city;*
- 3) *To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety, and welfare of its citizens.*

Per the Housing Replacement Ordinance, Avesta intends to use a portion of the units created at 409 Cumberland Avenue to offset sixteen (16) dwelling units which will be eliminated at the Lighthouse Shelter site on Elm Street.

A housing determination was requested regarding the ten (10) dwelling units that were previously on this site. Eleven (11) dwelling units existed on the site with one single-family house being moved to Myrtle Street. The remaining ten (10) dwelling units were demolished with the intention of being replaced by the Waterview project. However, since that project did not move forward, the ten (10) units were not replaced on-site or elsewhere in the city. The Housing Replacement Ordinance has been revised and rewritten since the Waterview project which factored into the determination.

The Planning staff met with Corporation Council and determined that Avesta shall not be held responsible for replacing the previous ten (10) dwelling units. The determination (Attachment 9) states that at the time of the demolition in 2005, a determination had been made by the City that a performance guarantee was not required for the demolition of those 10 units. A demolition permit was issued and the demolition without a performance guarantee was therefore lawful. No appeal of the City's determination or of the issuance of a demolition permit was taken. Although the ordinance has since been amended to require a performance guarantee in connection with the loss and replacement of housing units, that amendment did not retroactively alter the terms of the permit that was issued or the determination that the 10 units could be demolished without a performance guarantee.

Moreover, under its express terms, the housing replacement ordinance only applies to the loss of housing units "in a five year period." City Code § 14-483(c). Because the demolition of the 10 units at issue here occurred more than 5 years ago, the housing replacement requirements contained in the City's ordinance simply do not apply to those units.

VIII. 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 fifty-seven (57) residential units and accompanying program space, parking accommodations, and open space at 409 Cumberland Avenue.

IX. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations, contained in the Planning Board Report #39-13 for application 2013-148 relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board (waives/does not waive) Section 14-526 (b) (2) (b) (iii) Street Trees, where the applicant shall install five (5) raised granite tree wells to accommodate proposed street trees, the cost of which shall be credited towards the fee owed for the remaining forty-seven (47) trees.
2. The Planning Board (waives/does not waive) Section 14-526 (3) requirement to provide public transit access.
3. The Planning Board (waives/does not waive) Technical Design Standard Section 1. Figure 1-27 'Standard Parking Spaces' to reduce parking garage aisle width from twenty-four (24) feet to twenty-two (22) feet, to have more compact spaces than allowed, and to have compact parking spaces larger than standard.
4. The Planning Board (waives/does not waive) Section 14-220 B-3 District dimensional requirements for street wall build-to-line. New building construction shall be within five (5) feet of the property line. The applicant is proposing a thirty-six (36) foot setback for a portion of the building thirty-seven (37) feet along Mechanic Street and an eight (8) foot setback for a portion of the building along Forest Avenue for a length of ninety-five (95) feet.
5. The Planning Board (waives/does not waive) Technical Design Standard Section 1 Figure 1-6E 'Preferred Sidewalk Ramp at Intersection' due to existing infrastructure conditions.

X. DEVELOPMENT 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 #39-13 for application 2013-148 relevant to the Site Plan, Subdivision, and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (is/is not) in conformance with the site plan and subdivision standards of the land use code, subject to the following conditions of approval:

1. The applicant shall submit plans for a revised sidewalk ramp at the Mechanic Street intersection for review and approval by the Department of Public Services. The applicant shall provide specific information on what utilities are impacted for perpendicular crosswalk alignment (both crosswalks) at the Forest Avenue intersection for review by the City in assessing the most practicable option.
2. Parking layout should be revised such that vehicles can enter and exit the site front first.
3. That the parking required for the development has been determined by the Planning Board to be forty (40) spaces. One parking space on-site shall remain a carshare space accounting for eight (8) parking spaces. If a shortfall should occur due to changed circumstances around the proposed carshare parking space, it shall be addressed either through a fee-in-lieu or off-site parking leases in accordance with the Ordinance, depending on future buyer needs. Prior to the issuance of a certificate of occupancy, the applicant shall post a bond to be deposited in the Sustainable Transportation Fund. Bond amount shall be determined according to Sec. 14-345. Peninsula fee-in-lieu of parking guidelines.

Attachments

Planning Board Report Attachments

1. Neighborhood Meeting Minutes (7.11.13)
2. Public Comment (Kate Pembleton)
3. Zoning Administrator review (memo from Marge Schmuckal, 7.17.13)
4. Traffic Engineer review (memo from Tom Errico, 8.22.13)
5. Parking Manager review (memo from John Peverada, 7.8.13)
6. City Arborist review (memo from Jeff Tarling, 8.23.13)
7. Civil Engineer review (memo from David Senus, 8.13.13)
8. Housing Determination Letter (8.19.13)
9. Statement from METRO (8.14.13)

Applicant Submittals

- A Site Plan and Subdivision Plan Application (6.18.13)
- B Purchase and Sales Agreement
- C Project Description, Project Data, and Maps
- D Abutting Property Owners
- E Existing Soils Condition
- F Public Utilities
- G Technical Capability, Financial Capability, and Letter of Authorization
- H Compliance with Applicable Zoning
- J Waiver Request
- K Consistency with City's Master Plan and Conformity with Design Standards
- L Architectural Narrative
- M Fire Department Checklist and HVAC Emissions Requirements
- N Traffic and Parking Study
- P Stormwater Management Plan (calculations omitted)
- Q Solid Waste Disposal
- R Snow Removal
- S Light Fixtures/Exterior Lighting Plans
- T Response to Staff Review (7.17.13)
- U Response to Staff Review (8.13.13)
- V Carshare Agreement
- W YMCA Meeting notes

Plans

- Plan 1 Existing Conditions
- Plan 2 Layout and Lighting Plan
- Plan 3 Grading and Drainage Plan
- Plan 4 Utilities Plan
- Plan 5 Site Details
- Plan 6 Site Details
- Plan 7 Site Details
- Plan 8 Planting Plan
- Plan 9 Stormwater Management Plan
- Plan 10 Pre-Development Drainage Plan
- Plan 11 Post-Development Drainage Plan

- Plan 12 Erosion and Sedimentation Control Plan
- Plan 13 Construction Management Plan (Revised 8.12.13)
- Plan 14 Building Floor Plans
- Plan 15 Building Elevations
- Plan 16 Turning Templates

MEMORANDUM

To: FILE
From: Caitlin Cameron
Subject: Application ID: 2013-148
Date: 7/17/2013

Comments Submitted by: Marge Schmuckal/Zoning on 7/16/2013

This project is for 57 new apartments in a new structure. The property is proposed to be rezoned to allow a portion of the lot to remain in an R-6 Zone. I am awaiting confirmation of the Council approval of the zone change. The primary underlying zone is B-3 which allows residential dwelling units. The project is a site plan review and a subdivision review.

The building is primarily located in the B-3 zone. The B-3 requirements are being met except for the street wall build to line (14-220(c) requirement which the Planning Board can allow a further setback than 5 feet that is needed off Mechanic Street.

I also have not have the ability to view the building elevations for compliance. The maximum building height according to the Downtown height overlay map is 85 feet. The given height is 60.5 feet which would be in compliance. There is also a minimum building height in the B-3 zone which is 35 feet. The given lowest building height is 47 feet which is in compliance.

This project is also showing that the new building will be over 50,000 sq ft in floor area. Therefore the parking requirements for the project are determined by the Planning Board.

Separate permits are required for the construction of the project after site plan/ subdivision approvals. Separate permits are also required for all HVAC equipment. All such equipment shall meet the maximum noise requirements of the B-3 Zone. At time of application, all dBA information shall be included for compliance checks.

Marge Schmuckal
Zoning Administrator

Caitlin Cameron - 409 Cumberland Avenue - Final Traffic Comments

From: Tom Errico <thomas.errico@tylin.com>
To: Caitlin Cameron <CCameron@portlandmaine.gov>
Date: 8/22/2013 4:26 PM
Subject: 409 Cumberland Avenue - Final Traffic Comments
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@port...

Caitlin – I have reviewed the application materials submitted prepared by Gorrill-Palmer Consulting Engineers, Inc. and the Site Plan layout prepared by Mitchell and Associates and offer final comments as a status update to my preliminary comments.

1. I have reviewed the safety data contained in the traffic study and concur that there are no locations within the immediate study area that are High Crash Locations and require further evaluation.
Status: No comment necessary.
2. I generally concur with the methods used in the traffic study in conjunction with evaluating the impacts of the project on the local street system. It is my professional opinion that the project will not have a significant impact on the area streets. The analysis did indicate that long delays currently and will continue following project completion for movements from Mechanic Street onto Cumberland Avenue. The traffic volumes are low and no mitigation actions are suggested.
Status: No comment necessary.
3. The project is proposing a waiver for aisle width (22 feet is proposed versus the standard of 24 feet) for the surface parking area. I support a waiver from City standards due to the low volumes entering and exiting the 18 parking spaces provided on-site.
Status: No comment necessary.
4. Within the garage, parking aisle widths and compact size spaces create a very tight environment for vehicle maneuvering. Further complicating maneuvers is the presence of building support columns. The applicant shall provide turning template information for a typical size vehicle that illustrates adequate maneuvering space is available before dimensional standard waivers are supported.
Status: The applicant has provided turning template graphics for a customized mid-size passenger car, not the standard passenger car typically utilized for analysis. The templates indicate that access and egress movements from the parking spaces will be very difficult for the reduced sized vehicle. It appears that some of the parking maneuvers will require vehicles to back out of the garage onto Mechanic Street (assuming all parking spaces are occupied). This condition should not be permitted and the layout should be revised such that vehicles can enter and exit the site front first.
5. The handicapped van parking space is in a location where access and egress movements seem problematic. It is suggested that either the space be relocated or technical documentation be provided that confirms adequate room for maneuvering will be provided.
Status: See #4.
6. I have field reviewed the sidewalk ramp areas at the corners of Cumberland Avenue/Mechanic Street and Cumberland Avenue/Forest Avenue. I concur that at the Forest Avenue ramp significant utility infrastructure complicates how the ramp is to be constructed. Little or no constraints appear to exist at the Mechanic Street ramp. I continue to review this issue with staff at DPS and will provide guidance in the future.

Status: The proposed sidewalk ramp at Mechanic Street is not acceptable and shall be revised for perpendicular alignment. For the Forest Avenue sidewalk ramp, specific utility information should be provided that supports the proposed apex ramp layout, which does not meet the preferred ADA and City standards for perpendicular alignment. The City acknowledges that significant constraints do exist but before a non-compliant design is accepted more detail is required. Accordingly, the applicant shall submit plans for a revised sidewalk ramp at the Mechanic Street intersection for review and approval by the DPS. The applicant shall provide specific information on what utilities are impacted for perpendicular crosswalk alignment (both crosswalks) at the Forest Avenue intersection for review by the City in assessing the most practicable option.

7. The number of compact spaces exceeds the maximum allowable by City standards. The applicant shall provide information that documents why this standard can't be met.
Status: As noted in #4 above, the parking lot layout is very tight. I support a waiver from City standards assuming backing maneuvers do not occur.
8. The dimensions of the compact parking spaces do not meet City standards. I support a waiver from the technical standard given that the spaces are larger than the noted standard.
Status: No comment necessary.
9. I continue to review the parking demand analysis that documents the number of parking spaces expected to be generated by this project. I will be working with the Parking Division in assessing current parking demand data in Portland to confirm that the applicant's parking generation rate is reasonable.
Status: The city has conducted a preliminary parking survey and concurs with the conclusions of the applicant that the parking demand is expected to be 0.7 parking spaces per residential unit (40 parking spaces is the required parking supply). The survey was conducted by City staff during both daytime and evening time periods at the following existing residential developments; Pearl Place, Walker Terrace, 640 Congress Street (former USM Housing); North Street/Walnut Street Island View complex, 135-37 Anderson Street, Promenade East Condo's, and 53 Danforth Street. It should be noted that the City will continue to conduct surveys during other times of the year and at other developments to refine the parking generation estimate and thus the 0.7 parking rate is considered preliminary and should not be assumed for other future projects.
10. I have reviewed the TDM Plan and generally find it to be reasonable, although more review is required. How will the on-site parking spaces be managed? The applicant should also clarify the one parking permit per unit program.
Status: That applicant has responded to this and I find the TDM plan to be acceptable.
11. The applicant shall submit a construction management plan for both vehicles and pedestrians for review and approval.
Status: The applicant has submitted the required construction management plan and I generally find it to be acceptable. It should be noted that some adjustment (signage, pavement markings, etc.) will be required before construction can take place. I would also note that the applicant should consider providing specific plans on managing contractor parking such that impacts to the neighborhood are minimized.
12. Changes to on-street parking regulations will be required on Mechanic Street in the vicinity of the project driveway. The applicant should be aware that these changes will require changes to the City's Traffic Schedule and will need to be reviewed and approved by the City Council. The applicant will be required to provide documents that support the request for parking changes to be included in the City Council information packet.

Status: No comment necessary.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director

TYLININTERNATIONAL

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**CITY OF PORTLAND
MEMORANDUM**

TO: Caitlin Cameron, Planner
FROM: John Peverada, Parking Manger
DATE: July 8, 2013
RE: 409 Cumberland Ave.

Caitlin, per your request the following are my comments on the above referenced project.

The applicant only proposes approximately .30 parking spaces per unit, and the standard is 1 off street parking space per dwelling unit, which was reduced from 2 several years ago.

Year 2000 census data from state of Maine shows

over 57% of households own 2 or more vehicles.

Only 7.6% of Maine households do not own a vehicle, and on a national basis only 9% of the households with incomes of \$25,000 & greater, do not own a vehicle.

The primary demand for residential parking is typically at night and on weekends; however, as more people choose to work at home, demand during normal weekday business hours may increase, competing with customer and downtown employee parking

1. With more residents parking on the street there will be more conflict between the neighborhood residents, businesses and emergency vehicles.
2. Without adequate parking the residents will be more apt to be towed for street sweeping or snow bans, and emergency vehicles and snow plows will have a more difficult time maneuvering.

The congestion and apartment turnover in Parkside are good examples of the above.

I fully understand that more housing on the peninsula could be beneficial; however I think that it should be created in a way that it does not negatively impact others. Currently on a regular basis the Parking Division receives complaints from residents of the Shepley/Oak St. area concerning the lack of parking, including the AVESTA Loft apartments that only have 8 off street parking spaces for 37 units. The new tenants of the building are calling the Parking Division office to complain about the lack of parking, and questioning how the development was approved !

For the above stated reasons, I think that the off street parking requirement for this development should be at least one off street parking space per unit, unless the developers can verify that a majority of the units will be reserved for elderly. I recognize that the developer is proposing scooter /moped parking and bike racks, but I still believe that the majority of tenants will own vehicles. Even if they do not use their vehicles daily, they will need a place to park or store them.

Please forward this memo and the attached article that states the number of vehicles in the US is increasing including the number of people commuting by single occupancy vehicles, onto the Planning Board. Let me know if you need any additional information from me concerning this matter.

Caitlin Cameron - Re: Draft comments - 409 Cumberland

From: Jeff Tarling
To: Caitlin Cameron
Date: 8/23/2013 12:55 PM
Subject: Re: Draft comments - 409 Cumberland
CC: Barbara Barhydt

Hi Caitlin -

This looks good !

Thanks

Jeff

>>> Caitlin Cameron 8/22/2013 5:06 PM >>>

If have drafted up a summary of what we discussed last week. Please get back to me on whether this correctly reflects your comments for the project:

Under the standards of the subdivision ordinance, all subdivisions are required to provide one (1) street tree per unit for multi-family projects. The subject application is for fifty-seven (57) units. City Arborist Jeff Tarling will accept ten (10) of the proposed trees towards meeting this requirement. The applicant has requested a waiver of the street trees in order to contribute to the City's tree fund for remaining forty-seven (47) required trees. The applicant will provide five (5) raised granite curb tree well planters at their own cost and request that amount be counted towards their tree contribution. Whereas the subject site is located in a fully developed urban environment, the City Arborist supports the waiver and that the developer shall contribute a fee of \$200 per tree required into a street tree fund for a total of \$9,400 for use by the City Arborist in the installation and maintenance of urban street trees in the vicinity of the site. The City Arborist also accepts the contribution of the five (5) granite curb tree well planters at a cost of \$2,000 per installation for a total of \$10,000 which covers the \$9,400 tree fund contribution. Therefore, no additional contribution to the tree fund will be conditioned.

The proposed Planting Plan has been reviewed and approved by City Arborist.

Caitlin Cameron, LEED AP, Associate AIA
Urban Designer | Planning & Urban Development Department
City of Portland, Maine
389 Congress Street, 4th Floor Portland, ME 04101
(207) 874-8901 | ccameron@portlandmaine.gov

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MEMORANDUM



TO: Caitlin Cameron, Planner
FROM: David Senus, P.E. & Ashley Auger, E.I.T.
DATE: July 26, 2013
RE: 409 Cumberland Avenue Apartments, Level III Site Plan/Subdivision Application

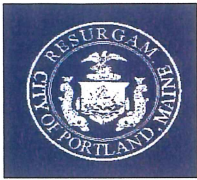
Woodard & Curran has reviewed the Response to Comments on the Level III Site Plan/Subdivision Application for the proposed "409 Cumberland Avenue" Apartments located at 409 Cumberland Avenue in Portland, Maine. The project consists of the development of a 57 unit mixed affordable and market rate rental apartment building and associated site improvements.

Documents Reviewed by W&C

- Response to Comments Letter and attachments dated July 17, 2013, prepared by Mitchell & Associates, on behalf of Avesta 409 Cumberland, LP.
- Engineering Plans, Sheets 3, 7, 9, & 10, revised July 10, 2013, prepared by Mitchell & Associates, on behalf of Avesta 409 Cumberland, LP.

Comments

- 1) The Applicant has noted that proposed pipe materials have been specified on the design plans; however, it is unclear where this note has been added, please clarify.
- 2) Manhole #2, which has been proposed within the City Right-of-Way as a means of connection to the existing storm drain in Mechanic Street, should comply with Figure II-1 of the City of Portland Technical Manual.
- 3) All previous review comments have been adequately addressed.



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Planning & Urban Development Department
Jeff Levine, AICP, Director

Planning Division
Alexander Jaegerman, FAICP, Director

August 19, 2013

Seth Parker
Avesta Housing, Avesta 409 Cumberland, LP
307 Cumberland Avenue
Portland, ME, 04101

Dear Mr. Parker,

On June 20, 2013, Mitchell & Associates provided a written request for a ruling on the applicability of the City's Housing Preservation and Replacement ordinance (City Land Use Code, Division 29), namely the number of units to be replaced, as applied to 409 Cumberland Avenue. Your request asks whether the proposed development is responsible for replacing the 10 dwelling units previously on the site of 409 Cumberland Avenue in addition to the 16 units from the Lighthouse Shelter to be replaced by this project. The 10 units in question were demolished in 2005 as part of another housing proposal on the site, Waterview, which was never built and therefore, the 10 dwelling units were not replaced. If the Housing Preservation and Replacement ordinance is found to be applicable to those 10 units, your request goes on to ask whether an exemption of the performance guarantee for those 10 dwelling units may be granted.

City Planning and Legal staff met to discuss your request and found that the Housing Preservation and Replacement ordinance applies to 409 Cumberland Avenue for the 16 dwelling units of the Lighthouse Shelter but not in the case of the 10 units previously demolished. At the time of the demolition in 2005, a determination had been made by the City that a performance guarantee was not required for the demolition of those 10 units. A demolition permit was issued and the demolition without a performance guarantee was therefore lawful. No appeal of the City's determination or of the issuance of a demolition permit was taken.

Although the ordinance has since been amended to require a performance guarantee in connection with the loss and replacement of housing units, that amendment did not retroactively alter the terms of the permit that was issued or the determination that the 10 units could be demolished without a performance guarantee.

Moreover, under its express terms, the housing replacement ordinance only applies to the loss of housing units "in a five year period." City Code § 14-483(c). Because the demolition of the 10 units

at issue here occurred more than 5 years ago, the housing replacement requirements contained in the City's ordinance simply do not apply to those units.

Based on that reasoning, the Housing Preservation and Replacement ordinance will be upheld for the 16 dwelling units of the Lighthouse Shelter as requested by Avesta Housing, but the applicant is not responsible for the replacement of the former 10 dwelling units previously on site. Should you wish to seek relief from the housing replacement obligation, Section 14-483 (k) describes the process for *Partial waiver of replacement requirements*.

As you continue to work with the property at 409 Cumberland Avenue, we will continue to be available to assist in any way possible within the limits of our ordinance. If you have any questions or would like to discuss further, please contact me at any time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alexander Jaegerman".

Alexander Jaegerman, FAICP, Planning Division Director

CC:

Jeff Levine, Planning and Urban Development Director

Alex, Jaegerman, Planning Division Director

Danielle West-Chuhta, Corporation Counsel

Barbara Barhydt, Development Review Services Manager

Jennifer Thompson, Associate Corporation Counsel

Caitlin Cameron - Re: Response on new development questions?

From: "Tom Ridge" <tridge@gpmetrobus.com>
To: "Caitlin Cameron" <CCameron@portlandmaine.gov>
Date: 8/14/2013 11:45 AM
Subject: Re: Response on new development questions?

Hi Caitlin,

We feel that our bus stops within the area of 409 Cumberland Ave are sufficient, and we do not feel that the creation of a new bus stop within that area is necessary. Thank you for getting in touch with Metro about this, and thanks for your time.

Tom Ridge
Greater Portland Transit District
Assistant Transportation Manager
(W) 207-774-0351
(C) 207-310-1889

----- Original Message -----

From: [Caitlin Cameron](#)
To: tridge@gpmetrobus.com
Sent: Wednesday, August 14, 2013 9:57 AM
Subject: Response on new development questions?

Hello Tom,

I sent you an email last week regarding the new Avesta development at 409 Cumberland. We are waiting for METRO's response on whether a transit facility is desired on Forest Avenue at that location or if improvements are needed at either of the two nearby transit stops.

I am writing my report on this for the Planning Board hearing next week, if you could please get in touch with me either via email or phone at your earliest convenience.

Thank you,

Caitlin

Caitlin Cameron, LEED AP, Associate AIA
Urban Designer | Planning & Urban Development Department
City of 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
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Jeff Tarling, Public Services Department
Planner for Project