CITY OF PORTLAND, MAINE
PLANNING BOARD

June 23, 2017

101 York Street, LLC
PO Box 207, 36 Danforth Street
Portland, ME 04112

Project Name:	101 York Street Amended Subdivision Plat		
Project ID:	2017-084		
Address:	85-101 York Street	CBLs:	40-C-5
Applicant:	101 York Street, LLC		
Planner:	Nell Donaldson		

Dear Mr. Veroneau:

On June 22, 2017, the Planning Board reviewed the amended subdivision plat for your mixed-use development at 101 York Street for conformance with the standards of the Subdivision Ordinance of the land use code. The Planning Board voted (5-0, Mazer and Eaton absent) to approve the application with the conditions presented below:

1. The applicant shall finalize the amended subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority;
2. The applicant shall finalize the new division of lots plan and associated quitclaim deed without covenant for review and approval by Corporation Counsel and the Planning Authority;
3. Prior to Certificate of Occupancy for the condominium building at 101 York Street, the applicant shall finalize condominium documents for review and approval by Corporation Counsel;
4. The applicant shall provide evidence of all necessary easements, including but not limited to:
    a. A 20’ no-build area at the new proposed lot line;
    b. A common foundation structure between the condominium building (101 York Street) and the parking structure at 27 High Street;
    c. Landscaped areas on 27 High Street to be maintained by the condominium building (101 York Street);
    d. Access from the parking structure on 27 High Street to the condominium building (101 York Street), including access to a storage room;
    e. Access from the condominium property (101 York Street) to the parking structure on 27 High Street;
    f. Stormwater drainage from the parking structure on 27 High Street through the condominium building (101 York Street) to York Street;
    g. Stormwater drainage from the parking structure on 27 High Street through the condominium building (101 York Street) to High Street;
    h. Utilities from 60 Danforth Street and 27 High Street to the condominium building (101 York Street); and

i. Utilities, including water supply for fire suppression and electrical, from 101 York Street to 27 High Street.

for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority; and

5. Prior to certificate of occupancy for the condominium building at 101 York Street, the applicant shall provide a final, executed parking agreement meeting the standards of *Section 14-334* for review and approval by the Department of Public Works and the Planning Authority.

STANDARD CONDITIONS OF APPROVAL
Please note the following standard conditions of approval and requirements for all approved subdivision plans:

1. **Mylar 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 Expiration** The subdivision approval is valid for three (3) years.

3. **Modifications to an Approved Subdivision:** The subdivision shall be constructed in accordance with the approved plans. Modification of an approved subdivision plan requires the prior review and approval of an amended subdivision plan by the Planning Board or Planning Authority.

Subdivision 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 Nell Donaldson at (207) 874-8723.

Sincerely,

Elizabeth Boepple, Chair
Portland Planning Board

Attachments
1. 12/8/15 Approval Letter

CC: Jeff Levine, Director of Planning and Urban Development
Stuart O'Brien, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Zoning Administrator, Inspections Division
Tammy Munson, Inspection Division Director
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
Matt Doughty, Field Inspection Coordinator, Public Services
Mike Farmer, Project Engineer, Public Services
Jane Ward, Administration, Public Services
Jeff Tarling, City Arborist, Public Services
Thomas Erriso, P.E., TY Lin Associates
David Senus, P.E., Woodard and Curran
Rick Blackburn, Assessor's Department
Approval Letter File

CITY OF PORTLAND, MAINE
PLANNING BOARD

December 15, 2015

101 York Street, LLC
PO Box 207, 36 Danforth Street
Portland, ME 04112

Opechee Construction Corporation
11 Corporate Drive
Belmont, NH 03220

Project Name:	101 York Street Mixed Use Development		
Project ID:	2015-139		
Address:	85-101 York Street	CBLs:	40-C-3, 4, 5, 9, 18, 22, 25, 33
Applicant:	101 York Street, LLC		
Planner:	Nell Donaldson		

Dear Mr. Veroneau:

On December 8, 2015, the Planning Board considered your application for a mixed use development at 101 York Street. The Planning Board reviewed the proposal for conformance with the standards of the subdivision and site plan ordinances of the Land Use Code. The Planning Board voted 6-0 to approve the application with the following findings, waivers, and conditions.

FINDING REGARDING B-3 BUILD-TO LINE
The Planning Board voted 6-0 to find the following:

The Planning Board found that the proposed building setback of greater than 5 feet on York Street complies with the requirements of *Section 14-526(d)9* in that it:

a) Provides substantial and viable publicly accessible open space or other amenity at the street level that supports and reinforces pedestrian activity and interest;
b) Does not substantially detract from the prevailing street wall character;
c) Does not detract from existing publicly accessible open space; and,
d) Is of high quality and character of design and of acceptable orientation to solar access and wind impacts as to be attractive to pedestrian activity.

The Planning Board approved the additional setback per *Section 14-220(c) on the condition that the applicant shall provide revised plans including amenities and insuring public access in areas of increased setback for review and approval by the city's urban designer prior to the issuance of a building permit.*

WAIVERS
The Planning Board voted 6-0 to grant the following waivers:

1. The Planning Board found, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard *(Section 1.7.2.7)* which requires that along arterials and collectors, minimum acceptable spacing between multiple driveways on adjacent lots shall be 100 feet on streets with a speed limit of 25 mph or less., that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard *(Section 1.7.2.7)* to allow the separation on York Street as shown on the plans, on the condition, proposed by the consulting transportation engineer, that *the applicant revise the plans to narrow the adjacent driveway to the east to 20 feet with the intent of maximizing the driveway separation prior to the issuance of a building permit*;

2. The Planning Board found, based on the Planning Authority's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard *(Section 12.2)* requiring that the average illumination level on a site not exceed 1.25 footcandles and that the illumination level at the property line not exceed 0.1 footcandle, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board waived the *Technical Manual* standard *(Section 12.2)* to allow illumination levels as proposed in the photometric plan *(Plan 17)*; and

3. The Planning Board found that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The Planning Board waived the site plan standard (*Section 14-526 (b) (iii)*) requiring one street tree per unit for multi-family development and concluded that the applicant shall contribute $4,400 to Portland's tree fund.

SUBDIVISION REVIEW
The Planning Board voted 6-0 that the plan is in conformance with the subdivision standards of the Land Use Code, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority;

2. Prior to Certificate of Occupancy, the applicant shall provide condominium documents for review and approval by Corporation Counsel; and

3. The applicant shall provide drafts of all necessary easements, including but not limited to:
    a) A public access easement for areas of the sidewalk not in the right-of-way;
    b) Access, utility, and maintenance easements from 27 High Street to 101 York Street (for areas including a proposed bioretention cell, a proposed fire lane, and patio);
    c) Utility and construction easements from 78 Danforth Street to 101 York Street;
    d) Access easement from 60 Danforth Street to 101 York Street, 78 Danforth Street, and 27 High Street;
    e) Utility easement from 60 Danforth Street to 101 York Street and 78 Danforth Street;
    f) Utility easement to 78 Danforth Street from 101 York Street;

g) A construction easement from 75 York Street;
h) A grading easement, as necessary, from 60 Danforth Street; and
i) A drainage easement from the city for the storm drain located in the right-of-way

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

SITE PLAN REVIEW

The Planning Board voted 6-0 that the plan is in conformance with the site plan standards of the Land Use Code, subject to the following conditions of approval, which must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall provide a copy of the Notice of Intent to Comply with the Maine Construction General Permit;

2. The applicant shall provide a revised construction management plan for review and approval by the city's Department of Public Works and Planning Authority;

3. The applicant shall provide a revised plan set addressing the comments of the city's consulting traffic engineer, including:
   a) Reconfigured handicap ramps at the corner of York and High Streets;
   b) Replacement of the existing mast arm structure and supporting equipment; and
   c) A parking plan with dimensions noted;

   for review and approval by the city's Department of Public Works;

4. The applicant shall provide a revised plan set eliminating the brick crosswalk in the driveway apron or obtain a change in sidewalk material policy from City Council for review and approval by the Department of Public Works;

5. The applicant shall provide a pavement marking plan for review and approval by the city's Department of Public Works;

6. The applicant shall provide a revised plan set addressing the comments of the city arborist and consulting civil engineer, including:
   a) Bioretention cell plantings meeting the design guidelines of the Maine DEP;
   b) Curbing in areas adjacent to pavement;
   c) Raised tree planters or tree grates as specified on York Street;
   d) The elimination of the street tree on York Street closest to High Street;
   e) Modified street tree species; and
   f) Additional screening on the Danforth Street frontage

   for review and approval by the Department of Public Works;

7. The applicant shall amend the stormwater report to clarify the proposed filter surface area and identify the annual reporting requirements per Chapter 32 of the city Code of Ordinances for review and approval by the city's consulting civil engineer;

8. The applicant shall revise the utility plans to include:
   a) A structure designated for capture, storage, and removal of oil and grit from the parking facility and

b) A sewer connection detail

for review by the city's Department of Public Works;

9. The applicant shall obtain final approval from Historic Preservation staff for proposed improvements to the property at 27 High Street for review and approval by the Planning Authority;

10. Prior to Certificate of Occupancy, the applicant shall provide documentation that HVAC and mechanical equipment meet applicable city standards for review and approval by the Planning Authority

11. Prior to Certificate of Occupancy, the applicant shall provide a signage and wayfinding plan for review and approval by the Planning Authority;

12. The applicant shall provide:
    a) Wall sections and details showing storefronts, cornices, and entrances;
    b) Specifications for windows and doors;
    c) Revised plans to differentiate the blank wall on the High Street façade;

    for review and approval by the city's Planning Board; and

13. The final plan set shall be reviewed and approved by the city's Fire Prevention Bureau.

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 2015-139 which is attached.

STANDARD CONDITIONS OF APPROVAL

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

1. **Storm Water Management** The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment and erosion control plan based on City standards and state guidelines.

   The owner/operator of the approved stormwater management system and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post Construction Stormwater Management, which specifies the annual inspections and reporting requirements. A maintenance agreement for the stormwater drainage system, as attached, or in substantially the same form with any changes to be approved by Corporation Counsel, shall be submitted and signed prior to the issuance of a building permit with a copy to the Department of Public Services.

2. **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.

3. **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).

4. **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.

5. **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.

6. **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.

7. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.

8. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements, an inspection fee payment of 2.0% of the guarantee amount, seven (7) final sets of plans, and one digital copy of the final plan set 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.

9. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.

10. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

11. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

12. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*,dwg), release AutoCAD 2005 or greater.

13. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted 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 Nell Donaldson at 874-8723.

Sincerely,

Elizabeth Boepple, Chair
Portland Planning Board

Attachments:
1. Planning Board Report
2. City Code, Chapter 32
3. Sample Stormwater Maintenance Agreement
4. 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
Nell Donaldson , Planner/Senior Planner
Philip DiPierro, Development Review Coordinator, Planning
Ann Machado, Acting Zoning Administrator, Inspections Division
Tammy Munson, Inspections Division Director
Jonathan Rioux, Inspections Division Deputy Director
Jeanie Bourke, Plan Reviewer/CEO, Inspections Division
Lannie Dobson, Administration, Inspections Division
Brad Saucier, Administration, Inspections Division
Michael Bobinsky, Public Services Director
Katherine Earley, Engineering Services Manager, Public Services
Bill Clark, Project Engineer, Public Services
David Margolis-Pineo, Deputy City Engineer, Public Services
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
Rick Blackburn, Assessor's Department
Approval Letter File

PLANNING BOARD REPORT
PORTLAND, MAINE

101 York Street Mixed Use Development
85-101 York Street
Level III Site Plan and Subdivision Review
2015-139
101 York Street, LLC

Submitted to: Portland Planning Board	Prepared by: Nell Donaldson, Planner
Date: December 4, 2015	CBLs: 40-C-3, 4, 5, 9, 18, 22, 25, 33 and 40-C-21
Public Hearing Date: December 8, 2015	Project #: 2015-139

I. INTRODUCTION

101 York Street, LLC has requested a final Level III site plan and subdivision review for a five-story mixed use development at 85-101 York Street, at the corner of York and High Streets near the city's West End. The proposed 97,565 SF development includes approximately 17,000 SF of first floor commercial and 63 market rate apartments on the four floors above. The proposal also includes a two-level parking structure with 211 spaces at the building's rear, sidewalk and landscaping improvements, and stormwater treatment facilities for a small area of site runoff. The site is currently occupied by a restaurant, office space, and surface parking. In the time since the preliminary review, the applicant has made significant modifications to the design of the building, the design of York Street, fire access, and the stormwater treatment system.

This development is being referred to the planning board for compliance with the site plan and subdivision standards of the land use code. A total of 199 notices were sent to property owners within 500 feet of the site and a legal ad ran in the *Portland Press Herald* on November 30 and December 1, 2015.

Applicant: Vincent Veroneau, 101 York Street, LCC
Consultants: Barry Stowe, Opechee Construction Corporation; Gorrill-Palmer Consulting Engineers; Owen Haskell, Surveyor

II. REQUIRED REVIEWS

Waiver Requests	***Applicable Standards***
Driveway separation – to allow driveway 40 feet from nearest curb cut to the east on York Street *Supported by Traffic Engineer with condition*	Technical Manual, *Section 1.7.2.7.* Along arterials and collectors, minimum acceptable spacing between multiple driveways on adjacent lots shall be 100 feet on streets with a speed limit of 25 mph or less.
Lighting – to allow an average illumination level of 1.5 fc and illumination levels greater than .1 fc on the adjacent properties on High and Danforth Street. *Supported by Planning staff*	*Technical Manual* standard, *Section 12.2.* Average illumination level shall not exceed 1.25 fc and maximum illumination levels at the property line shall not exceed .1 fc except where abutting non-sensitive uses.
Street trees – to plant 11 street trees, less than required *Supported by City Arborist*	Site Plan Standard, *Section 14-526(b)2.b(iii)* and Technical Manual, *Section 4.6.1.* All multi-family development shall provide one street tree per unit. Waiver permitted where site constraints prevent it, with applicant contributing proportionate amount to Tree Fund. *63 units = 63 street trees required. Contribution for 52 trees suggested.*

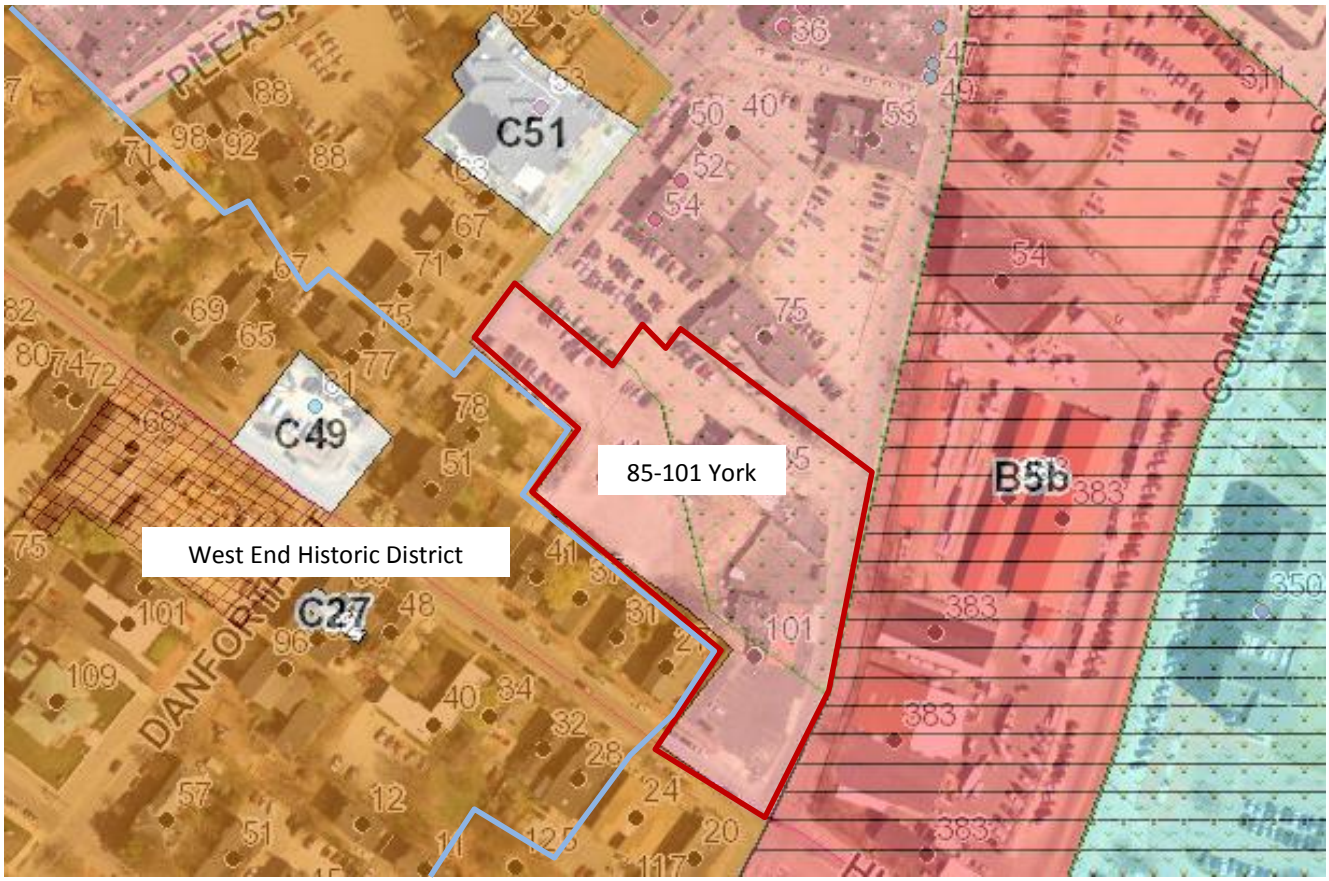
Review	***Applicable Standards***
Site Plan	*Section 14-526*, including Downtown Urban Design Guidelines
Subdivision	*Section 14-497*

III. PROJECT DATA

Existing Zoning	B-3
Existing Use	Restaurant, office, and parking lot
Proposed Use	Mixed use (commercial and residential)
Proposed Development Program	App. 17,000 SF commercial (7,000 SF restaurant and 10,000 SF office) 63 apartment units (12 1-bedroom, 47 2-bedroom, 4 3-bedroom)
Parcel Size	72,930 SF

	Existing	*Proposed*	*Net Change*
Building Footprint	6,075 SF	17,505 SF	11,430 SF
Building Floor Area	11,650 SF	97,565 SF	85,915 SF
Impervious Surface Area	64,836 SF	66,072 SF	1,236 SF
Parking Spaces (on site)	App. 95	211 (122 projected demand)	116
Bicycle Parking Spaces	14	39 (19 interior)	25
Estimated Cost of Project	$18,000,000		

Figure 1: 85-101 York Street site



Figures 2, 3, & 4: Existing zoning at York and High Streets (top); existing site from York and High; existing site from Danforth Street

IV. BACKGROUND & EXISTING CONDITIONS

85-101 York Street lies at the corner of York and High Streets at one of the city's major gateways. Virtually all northbound Casco Bay Bridge traffic, as well as a share of the southbound volume, currently passes the property. The site, which a century ago housed residential development similar to that found north on High Street, has more recently served as the location of a gas station, a restaurant, office uses, and surface parking.

The site is actually a portion of a larger collection of nine distinct lots, all of which are held under common ownership *(Plan 2)*. The site is zoned Downtown Business B-3, but borders R-6 and B-5b zones. It is situated in the Downtown Height Overlay Zone, which regulates height, and the Downtown Entertainment Overlay Zone, which establishes a 100 foot dispersal requirement for facilities with entertainment licenses. The site is not in the Pedestrian Activities District.

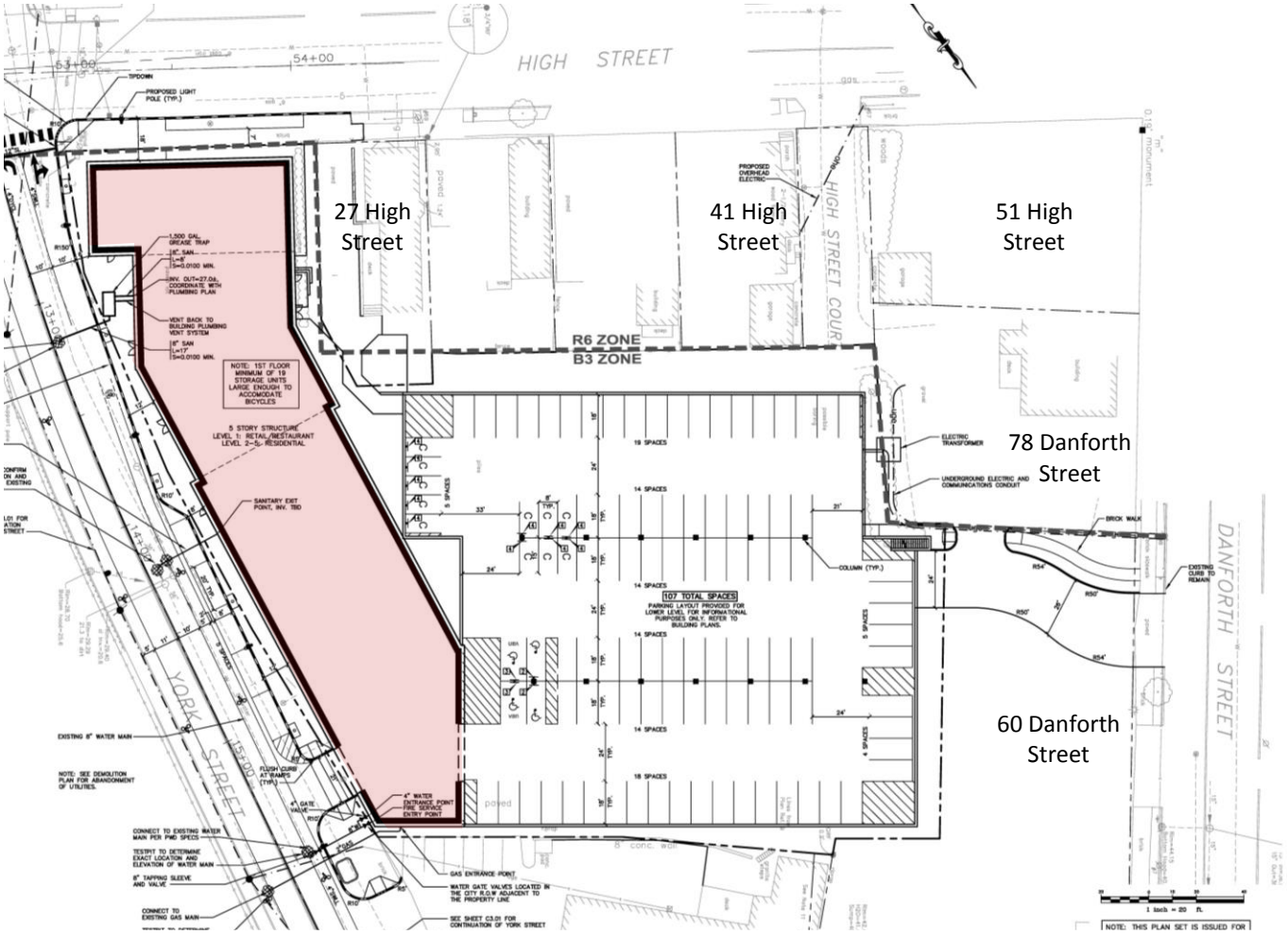


Figure 5: Site plan, with proposed building shown in red

The block which houses the site serves as an important transition between the fine-grained residential fabric of the historic West End to the north and west, the historic Old Port and the larger commercial office buildings of downtown to the east, and the city's industrial waterfront to the south. The site is bordered by the West End Historic District. As noted previously, it serves as a key gateway to the city, to the extent that it has been recognized as such in the city's *Design Manual.*

V. PROPOSED DEVELOPMENT

The applicant proposes to reconfigure nine existing lots and a portion of High Street Court, a private alley with access to High Street, in order to create a single contiguous lot for purposes of this development *(Plan 3)*. The development would consist of a five-story building with approximately 300 feet of frontage on York Street and 100 feet of frontage on High Street. Commercial space would occupy the first floor, with pedestrian access from York Street. 63 residential apartments would occupy the upper four floors, with access either from a door at the building's rear or from inside a driveway through the building at its eastern end. Vehicular parking would be provided in a two-level structure situated behind the proposed building, with lower level access from York Street and upper level access from Danforth Street. Because of grade changes, the structured parking area would read as surface parking from Danforth Street, and residential units on the second floor of the building would actually read as the first floor from the rear.

New brick sidewalks, street lights, and street trees are proposed on York and High Streets. The revised plans also include street trees on the York and High Street frontages, low landscaping along the building face on the High Street frontage, and additional landscaping between the parking and the building's rear. Stormwater treatment is proposed in a bioretention cell along the western property line adjacent to the parking area.

The plans also reflect some minor improvements at 27 High Street and 60 Danforth Street, two adjacent parcels owned by the applicant. These improvements include landscaping and hardscaping of a shared patio space at the building's rear on 27 High Street, and a driveway entrance on 60 Danforth Street.

VI. PUBLIC COMMENT

During the preliminary review, staff fielded one telephone call from a neighbor who raised concerns about the proposed height and view impacts of the proposal. No written comments have been submitted.

The applicant hosted a neighborhood meeting on Wednesday, September 3. The meeting minutes show that neighbors raised questions about height, traffic, parking and access, and stormwater *(Attachment S).*

VII. RIGHT, TITLE, & INTEREST

The applicant's submittal includes deeds as evidence of right, title, and interest. As noted above, the applicant has proposed to reconfigure nine lots to create a development site on the middle of what will be three newly defined parcels. Corporation Counsel has reviewed the plan for the new division of lots *(Plan 3)* and has not identified concerns.

The applicant proposes to use a portion of High Street Court, a private way from High Street which is bounded on the south and east by the applicant's property, for purposes of development. Under the final plans, the neighbor at 78 Danforth would relinquish rights to the High Street Court access, and the way would be developed as parking. The remainder of High Street Court would remain in private ownership, providing access to the garages of 41 and 51 High Street. The applicant also proposes to eliminate an 8 foot strip of land perpendicular to Danforth Street and designated in the survey as Palermo Road. In the final submittal, the applicant has indicated their intent to abandon this "road."

VIII. FINANCIAL & TECHNICAL CAPACITY

The estimated cost of the development is approximately $18 million. The applicant has submitted a letter from TD Bank indicating that their intent to consider financing for the project. The applicant has also provided a list of reference projects as a means of attesting to the technical capacity of Opechee Construction Corporation *(Attachment H)*.

IX. ZONING ANALYSIS

The applicant has provided a zoning analysis documenting that the plans meet most of the dimensional requirements of the B-3 zone *(Attachment E).* However, the final plans include some modifications with zoning implications which bear mentioning and some which remain unresolved. These include:

1. Building height

The height of the building has increased very slightly from the original height of 44.4 feet, as the grading around the building has been modified. It should also be noted that the City Council has amended the Downtown Height Overlay Map since the time of the preliminary review, making the maximum height at York and High Streets 65 feet. Given this change, the building is well within the height limit established by the Downtown Height Overlay Map, even with the minor changes in grading.

2. 5' Build-to line

In the final plans, the building continues to exceed the B-3 zone's maximum front yard setback of five feet in several locations. The plans show the point of greatest building setback on the York Street frontage at just over 21 feet *(Figure 6).* In their preliminary submittal, the applicant argued that these setbacks are necessary because of the "unusual geometry of the right-of-way line along the frontage" *(Attachment G).* The applicant has also stated that the increased setbacks will "provide pleasant sidewalk widths while accommodating east-west bike lanes, east-west sidewalks and on-street parking" and provide an "opportunity to support open space amenities such as building entries, outdoor seating, street trees, bike racks, and municipal lighting" *(Attachment U).*

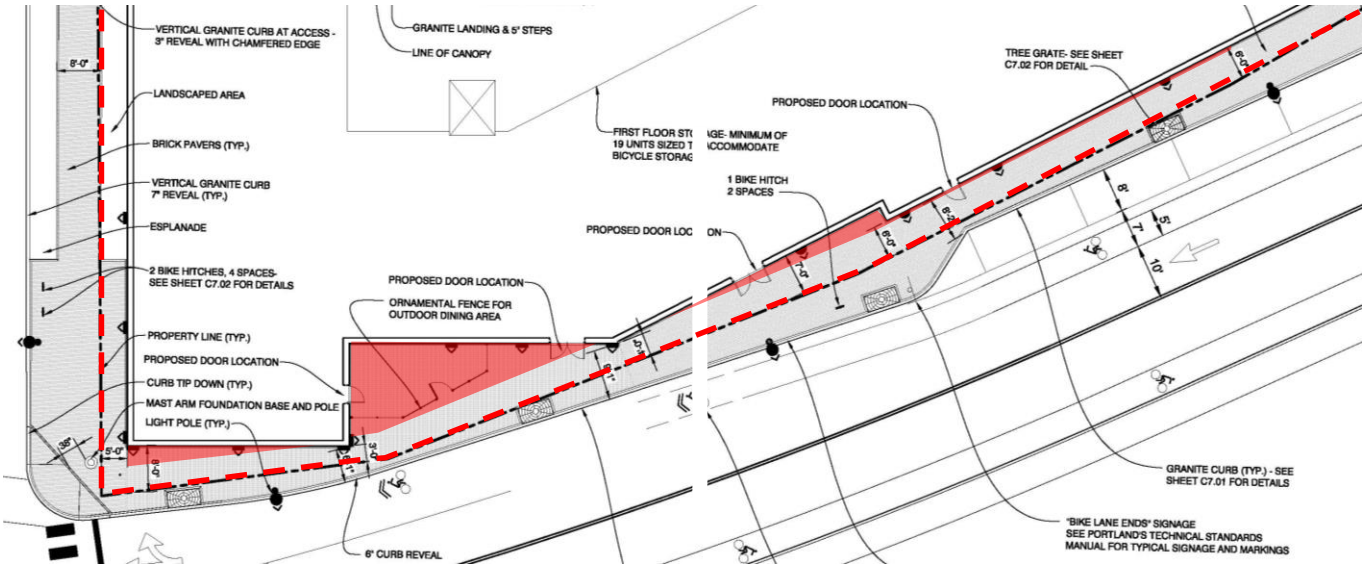


Figure 6: Approximate areas of increased setback on York Street

Under the site plan ordinance, the planning board may grant an extension of the B-3's maximum setback if "the Planning Board requires or approves an additional distance to comply with the requirements of *Section 14-526(d)9* (Zoning-Related Design Standards)." The *Design Manual* explicitly establishes guidelines for increasing the setback beyond the build-to line, including cases where the increased setback:

- Provides substantial and viable publicly accessible open space or other amenity at the street level
- Does not substantially detract from the prevailing street wall character
- Does not detract from existing publicly accessible open space by creating an excessive amount of open space; and
- Provides areas of high quality and character of design and of acceptable orientation to solar access and wind impacts as to be attractive to pedestrian activity.

The applicant has responded to these guidelines in their design narrative, stating that the increased setbacks will create high quality and active public space *(Attachment Q).*

At the planning board workshop on this proposal, board members requested that staff provide examples of other cases in which deviations from the B-3 build-to line had been granted in the past. The most comparable recent case is the Hampton Inn at the corner of Franklin Street and Fore Street. In 2010, the board granted an increased setback of almost 10 feet on this site in order to improve pedestrian access along the southern side of the building and to allow some area for outdoor seating.

In the case of the present development, the increased setbacks provide some relief for what will be a fairly narrow sidewalk in several locations. The applicant has worked with staff to arrive at a York street cross-section which accommodates vehicles, bicycles, and some on-street parking. The result is a curb line which falls fairly close to the property line in a number of areas. In order to provide sidewalks of significant enough width to create a comfortable pedestrian experience, extended setbacks are desirable.

However, it should also be noted that the final plans have removed some pedestrian level details, most notably the sidewalk seat wall and planters, which in the preliminary plans enhanced the streetscape in these areas of increased setback. Staff's urban design review has questioned the removal of the seating wall *(Attachment 1).* Further, the design review states that "the ornamental fence around [portions of] the proposed additional setback…removes public access to the widened sidewalk. Planning staff recommends a finding that the increased setback provides substantial and viable publicly accessible open space, does not detract from the street wall character, does not create an excessive amount of open space, and provides areas of high quality and character of design, subject to the applicant finalizing the design of the areas of increased setback for review and approval by the city's urban designer.

Figure 7: High Street facade

3. Maximum length of undifferentiated blank wall along a public street

Lastly, the final plans show what appears as a largely blank wall, approximately 50 feet in length, on the High Street façade, which exceeds the 30 foot maximum established by zoning *(Figure 7)*. The preliminary plans treated this wall with a raised planter which provided some relief. In the final plans, largely deciduous landscaping is proposed, and all plantings rest on the ground plane. Staff has suggested that the applicant replace the planter, add a tiered seating wall, and/or revise the landscaping plans to depict evergreen landscaping or climbing plants on trellises in this area. This has been included as a condition of approval.

X. SITE PLAN SUBMISSION REQUIREMENTS *(Section 14-527)* and SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS *(Section 14-496)*

The applicant has provided a revised subdivision plat for review by the city's surveyor. Finalizing this plat per *Section 14-496* has been included as a condition of approval. In addition, the applicant has indicated their intent to eventually divide the building into condominium units. As such, condominium documents have also been included as a condition of approval.

In the revised submittal, the applicant has provided an updated list of proposed easements *(Attachment F).* Among these, the applicant proposes:

- A public access easement for areas of the sidewalk on York and High Streets not in the right-of-way;
- Access, utility, and maintenance easements from 27 High Street to 101 York Street (for areas including a proposed bioretention cell, a proposed fire lane, and patio to benefit 101 York);
- Utility and construction easements from 78 Danforth Street to 101 York Street;
- An access easement from 60 Danforth Street to 101 York Street, 78 Danforth Street, and 27 High Street;
- A utility easement from 60 Danforth Street to 101 York Street and 78 Danforth Street;
- A utility easement to 78 Danforth Street from 101 York Street; and
- A construction easement from 75 York Street.

In addition to these easements, a grading easement may be necessary from the property to the east at 60 Danforth Street. Per the final plans, a drainage easement from the city for a storm drain proposed in the right-of-way would also be required. All of these easements have been suggested as conditions of approval.

It should be noted that the project will require a Notice of Intent to Comply with the Maine Construction General Permit. A copy of this Notice of Intent has been included as a condition of approval.

The applicant provided draft construction management plans with the preliminary plan submittal. Since blasting is proposed, the applicant will be required to follow the relevant standards in Article VIII of the land use code as well as the city's *Technical Manual*. Staff has requested that this be noted on the revised construction management plans. In their final submittal, the applicant has also indicated that construction easements will be necessary from 75 York to demolish an existing retaining wall and78 Danforth for the construction of the Danforth Street driveway, landscaping, and grading. These easements should also be noted on the construction management plans. Final construction management plans have been included as a condition of approval.

XI. SUBDIVISION REVIEW *(14-497(a). Review Criteria)*

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland's subdivision ordinance. Staff comments are below.

1. Water, Air Pollution

The project is not anticipated to result in undue air or water pollution.

2 & 3. Adequacy of Water Supply

The plans show water service from an existing 8-inch main in York Street. The applicant has provided evidence of capacity from the Portland Water District *(Attachment N)*.

4. Soil Erosion

No unreasonable soil erosion or reduction in the capacity of the land to hold water is anticipated.

5. Impacts on Existing or Proposed Highways and Public Roads

The applicant has provided a traffic impact study prepared by Gorrill-Palmer Consulting Engineers *(Attachment I)*. Tom Errico, the city's consulting traffic engineer, has reviewed the study and provided comments *(Attachment 2)*, which are discussed in detail under site plan review below.

6. Sanitary Sewer/Stormwater Disposal

Two 8-inch sewer lines are proposed to service the building; both would outlet to York Street. A 1,500 gallon grease trap is proposed on private property. The applicant has submitted a wastewater capacity application to the Department of Public Services *(Attachment N)*. A capacity letter had not been finalized at the time of the writing of this report. This has been included as a condition of approval.

The applicant has provided stormwater management and utility plans. Both David Senus, the city's consulting civil engineer, and David Margolis-Pineo, of the city's Department of Public Services, have reviewed these plans *(Attachments 3 and 4)*. Comments are discussed in more detail under site plan review below.

7. Solid Waste

The applicant has proposed a trash and recycling room adjacent to the residential entrance and has indicated that a waste management contractor would provide waste removal service. Commercial tenants would be responsible for moving waste to off-site containers provided by the owner, and a commercial contractor would then remove waste from these containers. The project is not anticipated to cause an unreasonable burden on the ability of the city to dispose of solid waste.

8. Scenic Beauty

This proposal is not deemed to have an adverse impact on the scenic beauty of the area.

9. Comprehensive Plan

The applicant's narrative argues that the project would achieve a number of the purpose statements of the B-3 zone including increasing housing opportunity, enhancing and promoting the orderly expansion of retail and service business downtown, maintaining and enhancing the role of downtown as the region's business and commercial center, and providing adequate parking and transportation facilities which promote accessibility, enhance and encourage development opportunity, and enhance and protect the pedestrian environment *(Attachment M)*. The project also helps to meet comprehensive plan goals related to "support[ing] Portland's livable neighborhoods by encouraging a mix of uses that provide needed goods and services within walking distance of most residents," "encourag[ing] neighborhood business centers throughout the city to reduce dependence on the car and make neighborhood life without a car more practical," "encourag[ing] higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation," and "increas[ing] Portland's rental housing stock."

10. Financial and Technical Capacity

As noted above, the applicant has provided evidence of financial and technical capacity (*Attachment H*).

11. Wetland/Water Body Impacts
There are no anticipated impacts to wetlands.

12. Groundwater Impacts
There are no anticipated impacts to groundwater supplies.

13. Flood-Prone Area
Per the city's existing flood maps, the site is not located in a flood zone.

XII. SITE PLAN REVIEW *(Section 14-526)*

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

1. Transportation Standards

a. Impact on Surrounding Street Systems

As noted above, the applicant has provided a traffic impact study in the revised submittal, which includes a trip generation analysis based on the proposed site uses, factoring in a credit for all uses in operation on the site over the last ten years *(Attachment I)*. The analysis projects 93 AM peak hour and 83 PM peak hour trips. These numbers do not meet the threshold for a Maine DOT Traffic Movement Permit.

In the impact study, the applicant has also supplied a capacity analysis for three adjacent intersections, all of which lie on High Street. The analysis finds that one of these intersections, the York Street/High Street intersection, is projected to experience a decline in level of service from LOS C to LOS D in the PM peak hour under the buildout condition. Other intersections are projected to continue to operate at the pre-development level of service for both the AM and PM peak hours. The impact study also includes an analysis of sight line distances and high crash locations in the area. The study finds sight lines technically sufficient. There are no high crash locations in the immediate study area. Tom Errico, the city's consulting traffic engineer, has reviewed this impact study and stated that he has no further comments.

b. Access and Circulation

The plans include new brick sidewalks on York and High Streets and a diagonal ramp at the York and High Street corner. No new crosswalks are currently proposed. Mr. Errico has reviewed the plans and requested that the applicant modify the design of the sidewalk at the northeast corner of the York Street/High Street intersection to improve ADA compliance. He writes,

> *The applicant shall revise the handicap ramp layout on the corner of High Street and York Street such that two distinct ramps are provided – the preferred ADA layout configuration. Final designs plans shall be provided for review and approval.*

Related to this corner, Mr. Errico has also requested that the applicant relocate the signal mast arm in this location, which obstructs ADA access. He writes,

> *The applicant shall replace the existing mast arm structure and supporting equipment and relocate the structure to a location that meets ADA and MUTCD requirements. The existing support is old and given that the corner area is being reconstructed, this is the time for replacement. I would note that site plan requirements for upgrading traffic signal equipment is typical for projects of significant scope and traffic generation, as proposed. Final details of the revised traffic signal shall be provided for review and approval.*

It should be noted that the Hyatt hotel at 433 Fore Street was required to replace a mast arm under similar circumstances in 2012.

Pedestrian access to the commercial units is proposed at-grade from York Street. The primary access to the residential units would be from a door at the rear of the building. This door would be accessible to the street either via a paved way from High Street (which, in the final plans, serves as a fire lane) or from the parking area. A secondary entrance would be provided inside the driveway access from York Street. The applicant has documented an ADA accessible route on the grading plan *(Plan X)* and stated that the entire York Street sidewalk has a cross slope of 2% or less. During the preliminary review, staff requested that the applicant make the primary residential entrance more legible from the street. In order to do so, the applicant has added a canopy, granite steps, and a cornerstone depicting the address.

Vehicular access is proposed via two curb cuts, one at the east end of the site on York Street and the other on Danforth Street. The York Street entrance would cut through the first floor of the building and provide access to the lower level of the parking at the property's rear. This entrance is currently proposed with a brick crosswalk in the city right-of-way. Regarding this crosswalk, David Margolis-Pineo, of the city's Department of Public Works, writes,

> *Asphalt drive aprons are required in this area of the City. The applicant is requested to eliminate the proposed brick crosswalk across the drive apron.*

Alternatively, if the applicant wishes to pursue the brick crosswalk, it would require City Council approval as a deviation from the city's sidewalk material policy.

The York Street driveway is proposed proximate to the nearest existing driveway to the east. This allows the driveway to sit well away from the York Street/High Street intersection, approximately 280 feet, but fails to meet driveway separation requirements. A waiver is required. Mr. Errico writes,

> *The driveway on York Street does not meet City driveway separation standards. The applicant shall narrow the adjacent driveway to the east to 20 feet with the intent of maximizing driveway separation. I support a waiver from the City's Technical standards following this change.*

All of the sidewalk and curbing associated with the curb cut to the east lies within the city's right-of-way.

The second driveway, proposed from Danforth Street, is designed to provide access to the top deck of the parking area. It technically lies on the adjacent property at 60 Danforth, with a proposed access easement to the property at 101 York Street. In reviewing this driveway, Mr. Errico writes,

> *The adjacent driveway to the east [of the Danforth Street driveway] shall be relocated (or closed) at the time of redevelopment [of the adjacent lot] to meet City driveway separation standards or the applicant can relocate or close the driveway now prior to Danforth Street becoming a moratorium street due to a future paving resurfacing project.*

With respect to the adjacent street design and in response to Mr. Errico's preliminary comments, the applicant has revised the cross-section of York Street to incorporate two five foot bicycle lanes, two 10' and 11' foot travel lanes, a two foot shoulder, an eight foot parking lane in its widest section, and a left-hand turn lane at the High Street intersection. Regarding the revised cross-section, Mr. Errico writes,

> *The plan has been revised to include bicycle lanes on both sides of York Street with a shared lane configuration approaching High Street. The City standard for a bicycle lane width abutting on-street is 6 feet or a bicycle buffer be provided. Additionally, the termination of the bicycle lane in the eastbound directions needs to have a formal transition. It is recommended that the applicant submit a final pavement marking layout design plan for review and approval by the City.*

Mr. Margolis-Pineo's and Mr. Errico's comments on access and circulation have been reflected in the proposed conditions of approval.

c. Public Transit Access

Greater Portland METRO operates a transit line through the West End which travels eastbound on Danforth Street and north on High Street in close proximity to the site, and South Portland currently provides transit service on High Street directly adjacent to the site. However, transit facilities have generally not been required in instances when other municipalities' transit service is involved. As such, staff is not requesting a transit facility here.

d. Parking

Division 20 of the land use ordinance establishes parking requirements by use but also grants an exception for projects that exceed 50,000 SF of floor area, allowing the planning board to determine the parking requirement in these cases. Since this project exceeds the 50,000 SF threshold, the applicant has submitted a parking study in an effort to establish parking demand *(Attachment I)*. This study is fundamentally based on the city's parking ordinance, and assumes several credits based on shared use and shared parking/offset periods of peak demand. The study estimates a total vehicular parking demand of 122 spaces.

The applicant's preliminary plans show 211 parking spaces, far exceeding the projected parking needed for the project. In this way, the plans are designed to account not only for the project but also for existing parking spaces on the property that are currently used for off-site parking for other users. The parking study estimates that 59 such spaces currently exist on site.

Mr. Errico has reviewed the parking analysis and parking plan and writes,

> *The applicant has provided a plan of the [parking] layout, but dimensions are not provided. If the layout meets City dimensional requirements, I have no further comment (the applicant should provide documentation of dimensions).*

Staff has suggested a condition of approval addressing this comment.

The final plans continue to show bicycle hitches at five locations around the perimeter of the building and the site, including eight spaces on York Street, four spaces on High Street, four spaces in the parking area, and four spaces on Danforth Street. In the final submittal, the applicant has added bicycle storage within the building as well, to bring the total bicycle parking to 39. This number meets the bicycle parking requirement.

e. Transportation Demand Management

A transportation demand management plan is not required.

2. Environmental Quality Standards

a. Preservation of Significant Natural Features

There are no known significant natural features on the site.

b. Landscaping and Landscape Preservation

The final landscaping plans include a variety of trees, shrubs, and perennials on both the York and High Street frontages and at the building's rear and side. In addition, the applicant has revised the plans to add significant landscaping, including zelkovas, river birches, juniper, hostas, yew, winterberries, Korean lilacs, and soft rush to the west of the parking area. As noted above, this area now includes a bioretention cell for stormwater treatment. In his comments, Mr. Senus has noted that some of the proposed planting may conflict with the bio-cell. He writes,

> *It appears that trees and larger buffer/screening plantings (bushes) are proposed within the bioretention cell; some of these plantings are not allowable per MaineDEP BMP design guidance. The planting plan should be coordinated with the civil plans.*

Jeff Tarling, the city's arborist, has requested that plantings at the interior of the site be curbed. He writes,

> *[The interior of the site] contains a mix of trees, shrubs and ornamental grasses, herbaceous plants. Landscape planting next to pavement should be protected by curbing unless part of the stormwater feature.*

Per the site plan ordinance, 63 street trees, at one per residential unit, are technically required. Given site constraints, however, only 12 street trees, including sugar maples, ginkgos, and zelkovas, are proposed. Mr. Tarling has reviewed the street tree plantings and noted the following of the York Street street trees,

> *The 2 street-trees next to the 'on-street' parking, should include 'Neenah' R-8811 tree grates 72" x 48" or the R-8810 if the sidewalk space is too narrow.*
>
> *The tree to the east and the two to the west on the High Street side should be in raised tree planters, see city standard spec.*
>
> *The street tree closest to High Street should be removed to improve visibility near the busy intersection.*
>
> *The third tree back close to the on-street parking should be placed in a raised planter that includes the 'bump-out' shifting the tree slightly to the right, tree #2 from High Street needs to shift slightly away from the pinch point, perhaps +/- 8' towards High Street.*

Assuming the street tree proposed closest to the York and High Street intersection is removed as requested, a contribution for 52 street trees, or $10,400, would be required. However, and in keeping with other recent projects, Mr. Tarling has also agreed that the cost of the raised granite tree wells, at $2,000 a piece, should be treated as a credit toward the street tree requirement. Assuming the tree wells requested by Mr. Tarling can be accommodated in the York Street frontage, the applicant will be responsible for a total of three. After accounting for these as a credit, the resulting street tree contribution is $4,400.

Mr. Tarling has also commented on the street tree species, writing,

> *The proposed 'Green Vase' Zelkova street trees along York Street should be switched to 'Mussahino' Columnar Zelkova to have less interference to building and traffic. See: http://www.jfschmidt.com/articles/musashino/*
>
> *For salt tolerance reasons the 'Green Mountain' Sugar Maple would ideally be switched to a 'Karpick' Red Maple.*

Lastly, Mr. Tarling has also requested additional landscaping along the Danforth Street driveway, with the intent of providing some screening for the parking area, which, as a structured facility, cannot be landscaped. He writes,

> *Additional planting / screening is recommended on the Danforth Street frontage. This would be the area to the right of the Danforth Street driveway. This might be place for something like the 'Satelite' Bosnian Pine or Swiss Stone Pine.*

Mr. Tarling's landscaping comments, as well as Mr. Senus's, have been reflected in the conditions of approval.

c. Water Quality/Storm Water Management/Erosion Control

The applicant has provided a stormwater management plan *(Attachment L),* which documents that the site is currently occupied by a surface parking lot, a restaurant, and an office building. The project will disturb 80,670 SF of the parcel and result in a total of 66,072 SF of impervious area, or an increase in 1,236 SF. In the final plans, the applicant proposes to treat a small area of runoff, approximately 2,600 SF, in a bioretention cell to the west of the parking area. This cell would outlet to High Street. The majority of the remainder of the site's runoff, including the roof drain, storm drain from the upper parking level, and foundation drain from the northwest side of the building, would also be collected and conveyed to the city's storm drain in High Street. Given existing grades, the applicant is proposing to direct the runoff from the lower level parking and the foundation drain from the easterly side of the building through two outlets to the combined sewer system in York Street. Both of these outlets would incorporate check valves. An oil/water separator is proposed for the lower parking area runoff *(Attachment L).*

Mr. Senus has reviewed the design of the biocell system and provided the following comments,

> *Table 5 of the Stormwater Management Report indicates that the proposed Filter Surface Area is 18,992 SF; this number appears to be incorrect and should be clarified.*
>
> *The stormwater inspection and maintenance plan should identify the annual reporting requirements per Chapter 32 of the City of Portland Code of Ordinances.*

These comments have been reflected in the conditions of approval.

3. Public Infrastructure and Community Safety Standards

a. Consistency with Related Master Plans

As noted above, the project is generally deemed consistent with related master plans.

b. Public Safety and Fire Prevention

During the preliminary review, the city's Fire Prevention Bureau raised concerns regarding emergency access to the rear of the proposed building. In response, the applicant has revised plans to show a 20 foot fire lane, accessed over a vertical curb from High Street, which would allow fire personnel to reach significant portions of the rear of the building. As noted in the applicant's original life safety summary, the building would also be fully sprinklered *(Attachment P).*

Assistant Fire Chief Keith Gautreau has reviewed the revised plans and verbally indicated that he approves of the design. However, the Assistant Chief was not available to formally comment in advance of the writing of this report. As such, his approval has been included as a condition of approval.

c. Availability and Capacity of Public Utilities

The Portland Water District has provided documentation of capacity to serve the project *(Attachment N).* David Margolis-Pineo, of the City's Department of Public Works, has requested additional information from the applicant related to sewer capacity. As noted above, a sewer capacity letter has been included as a condition of approval.

As previously described, the majority of the site's runoff would be collected and conveyed to the city's storm drain in High Street. As proposed, runoff from the bioretention cell would outlet to this storm drain via a line running under the sidewalk in the High Street right-of-way. Mr. Margolis-Pineo has requested that this storm drain be relocated to private property. Mr. Senus echoes this sentiment,

> *The Applicant has proposed 80 linear feet of 12" storm drain pipe between DMH 1 and DMH2 within the High Street Right-of-Way, below the sidewalk. The Applicant should consider relocating this storm drain closer to the building and within the property limits, or, if acceptable to the City, an easement or agreement will be necessary between the*

property owner and the City to identify the maintenance responsibilities for this infrastructure.

Given existing grades, the applicant is proposing to direct the remainder of the site runoff to the combined sewer system in York Street. These outlets will incorporate check valves. An oil/water separator is proposed for the lower area parking area runoff. Regarding the oil/water separators, Mr. Senus writes,

Sheet C4.01 includes a note stating that Casco traps shall be installed on stormdrains outletting from catch basins in the parking garage to act as an oil/water separator. Casco traps are a typical requirement for all catch basins connected to the City's storm drain or combined sewer system; however, the City requires that a separate structure designed for capture, storage and removal of oil and grit be provided for enclosed parking facilities. The City has accepted proprietary oil/water separators, or in-line manhole structures with sumps and inverted pipes on the outlet to provide for separation and capture of oil and grit. Exact requirements should be coordinated with DPW.

Regarding the sewer connections, Mr. Margolis-Pineo writes,

The City requires wastewater laterals 8" and larger be connected to manholes. In this case with a 36" oval brick sewer, core drilling or connecting into an existing manhole is preferred. More direction may be forth coming from John Emerson who heads up the City's Sewer Maintenance Division. 318-0239 Please be aware that the City requires a backflow preventer on all proposed laterals connecting to a combined sewer.

A condition of approval has been drafted to address these comments.

4. Site Design Standards

a. Massing, Ventilation, and Wind Impact

The bulk, location, or height of the building is not likely to result in health or safety problems from a reduction in ventilation to abutting structures.

b. Shadows

The project is proposed in the B-3 zone; as such, this standard does not apply.

Figure 8:Rendering of High Street view corridor, with 101 York Street at bottom left

c. Snow and Ice Loading
The project is not anticipated to cause snow or ice loading issues.

d. View Corridors
High Street is designated in the city's *Design Manual* as a protected view corridor. The applicant previously provided a rendering showing the view down High Street with the building massing as proposed *(Figure 8)*. Per the site plan standard pertaining to view corridors, "the massing, location, and height of development shall not substantially obstruct public views." Given the applicant's renderings, no substantial obstruction of public views is anticipated.

e. Historic Resources
The project includes some minor site work on one parcel within the West End Historic District, 27 High Street. As such, this site work is subject to review for conformance with the historic preservation ordinance standards. Historic Preservation staff has not yet signed off on the site alterations at 27 High Street. As such, this has been included as a condition of approval.

Figure 9:Rendering of High Street façade, with 27 High Street at left

Further, portions of the proposed building lie within 100 feet of this district, meaning that the entire development is subject to review for general compatibility "with the major character-defining elements of the…portion of the district in the immediate vicinity" *(Section 14-526(d)5).* The applicant has provided a narrative which speaks to the compatibility of the proposed building with the context, writing "[t]he proposed project creates a bridge between the commercial brick buildings of the Old Port and the wood residential buildings of the West End. While the functions of the building are divided vertically [(]commercial space at level 1 and residential space on the upper levels[)], the architecture is divided by the Old Port and West End" (*Attachment Q).*" They state, "[a]t the corner of York Street and High Street, the building…utilizes residentially scaled materials and colors similar to buildings of the West End. These facades are details [sic] in a more ornate fashion with historically proportioned trim, storefont details and cornice."

Deb Andrews, the city's Historic Preservation Manager, presented the preliminary drawings to the Historic Preservation Board for an advisory review on October 21, 2015. In her final comments on the drawings, which incorporate the feedback of the Historic Preservation Board, Ms. Andrews writes that "Historic Preservation Board members found that the revised design proposal was much improved from the initial proposal and responsive to many of the concerns and suggestions expressed by the board in its preliminary review" *(Attachment 6).* She notes two outstanding issues, including the absence of a residential entrance on the York or High Street elevations and a request for a continuation of the blond brick material to the ground floor of the corner building element. She also notes that the "[b]oard was not in a position to comment on the finer elements or features of the design given the fact that the submitted drawings do not include wall sections or details." Staff has requested these materials through the design review.

f. Exterior Lighting

The applicant has provided a lighting plan specifying the city's Eastern Waterfront fixtures on the York and High Street frontages and decorative pole-mounted lights at the building's rear. All of these lights are full cutoff and meet the requirements of the city's Technical Manual.

The applicant also proposes wall-mounted sconces on the York and High Street building façades that are designed as architectural lighting. These lights are not technically full cutoff. Per the code, any "architectural lighting" would need to meet *Technical Manual* standards, which include the provision that "[architectural] lighting shall be directed downward unless the development is located in an area of the city where uplighting is permitted" *(14-526(D)6b* and *Technical Manual Section 12.4).* In the final submittal, the applicant has provided specifications showing that each of the two architectural lights are downward directed. Both Historic Preservation staff and the city's urban designer have reviewed the architectural lights and indicated their general approval.

The final photometric plan shows an average illumination level slightly exceeding the *Technical Manual* standard, as well as some light trespass to the north onto both adjacent properties on Danforth Street and some trespass onto 27 High Street *(Plan 17)*. The applicant has requested lighting standard waivers. With regard to light trespass, it should be noted that two of the adjacent properties are owned by the applicant, and the applicant has provided a letter from the third property owner attesting to his comfort with the proposed lighting *(Attachment V)*. Given the location of the relevant property lines near building and parking entrances, where adequate lighting is important, staff supports the lighting waivers.

g. Noise and Vibration

The applicant has not provided information on noise from HVAC and mechanical equipment in the final submittal. The applicant has requested that this be treated as a condition of approval.

h. Signage and Wayfinding

No signage or wayfinding is proposed at this time. A final signage and wayfinding plan is included as a condition of approval.

Figures 9 and 10: Rendering of corner of York and High Streets (top); York Street elevation (bottom)

i. Zoning-Related Design Standards

The city's site plan ordinance states that "Development in the B3, B5, B5-b, B7 business zones and in the B6 and EWPZ waterfront zones shall be designed to support the development of dense, mixed-use neighborhoods with attractive, safe and convenient street level

pedestrian environments as demonstrated by compliance with all applicable design standards listed in the *Design Manual*" (*Section 14-526(d)9.a(iii)*). The *Design Manual* establishes design guidelines for the B-3 zone. The applicant has provided a brief narrative responding to the design guidelines *(Attachment Q).*

It should be noted that, following the workshop on this proposal, the applicant met on multiple occasions with staff to discuss changes to the building design. Ultimately, the applicant modified building materials, façade composition and fenestration patterns, roof lines, and entry design in an attempt to address staff concerns. The resulting drawings generally show a contextual building with rational façade composition, articulation at the base plane, and shifts in massing which help to mitigate its scale.

Caitlin Cameron, the city's urban designer, has provided final comments from the design review *(Attachment 1)*. This review finds that, generally, the standards of the B-3 Downtown Urban Design Guidelines have been met. The outstanding items from the design review include:

- *Materials and detailin*g – Specific details on the design of elements meant to provide articulation, including wall sections and details of storefronts, cornices, and entrances and window and door specifications, have not been provided;
- *Blank facades* – The project employs low seasonal landscaping on the blank area of the High Street façade. Raised planters previously shown in this location, which helped to mitigate the effect of the unarticulated wall, have been eliminated;
- *Pedestrian amenities* – Seating walls on York and planter walls on High Street have been removed from the final plans. These were desirable elements that added amenity to the project; and
- *Standards for increasing the setback beyond the build-to line* - As discussed above.

A condition of approval has been suggested to address these outstanding design items.

XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the planning board approve the proposed mixed-use development at 101 York Street.

XIV. PROPOSED MOTIONS

A. FINDING REGARDING B-3 BUILD-TO LINE

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on December 8, 2015 for application 2015-139 relevant to Portland's technical and design standards and other regulations; and the testimony presented at the planning board hearing, the Planning Board **finds/does not find** that the proposed building setback of greater than 5 feet on York Street complies with the requirements of *Section 14-526(d)9* in that it:

(a) Provides substantial and viable publicly accessible open space or other amenity at the street level that supports and reinforces pedestrian activity and interest;
(b) Does not substantially detract from the prevailing street wall character;
(c) Does not detract from existing publicly accessible open space; and,
(d) Is of high quality and character of design and of acceptable orientation to solar access and wind impacts as to be attractive to pedestrian activity.

The planning board **approves/does not approve** additional setback per *Section 14-220(c) on the condition that the applicant shall provide revised plans including amenities and insuring public access in areas of increased setback for review and approval by the city's urban designer prior to the issuance of a building permit.*

B. 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 for the public hearing on December 8, 2015 for application 2015-139 relevant to Portland's technical and design standards and other regulations; and the testimony presented at the planning board hearing:

1. The planning board **finds/does not find**, based upon the consulting transportation engineer's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard *(Section 1.7.2.7)* which requires that long arterials and collectors, minimum acceptable spacing between multiple driveways on adjacent lots shall be 100 feet on streets with a speed limit of 25 mph or less., that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The planning board **waives/does not waive** the *Technical Manual* standard *(Section 1.7.2.7)* to allow the separation on York Street as shown on the plans, on the condition, proposed by the consulting transportation engineer, that *the applicant revise the plans to narrow the adjacent driveway to the east to 20 feet with the intent of minimizing the driveway separation prior to the issuance of a building permit*;

2. The planning board **finds/does not find**, based on the Planning Authority's review, that extraordinary conditions exist or undue hardship may result from strict compliance with the *Technical Manual* standard *(Section 12.2)* requiring that the average illumination level on a site not exceed 1.25 footcandles and that the illumination level at the property line not exceed .1 footcandle, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The planning board **waivers/does not waive** the *Technical Manual* standard *(Section 12.2)* to allow illumination levels as proposed in the photometric plan *(Plan 17)*;

3. The planning board **finds/does not find** that the applicant has demonstrated that site constraints prevent the planting of all required street trees in the right-of-way. The planning board **waives/does not waive** the site plan standard (*Section 14-526 (b) (iii)* requiring one street tree per unit for multi-family development and concludes that the applicant shall contribute $4,400 to Portland's tree fund.

C. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the planning board report for the public hearing on December 8, 2015 for application 2015-139 relevant to the subdivision regulations; and the testimony presented at the planning board hearing, the planning board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Services, and the Planning Authority;
2. Prior to Certificate of Occupancy, the applicant shall provide condominium documents for review and approval by Corporation Counsel; and
3. The applicant shall provide drafts of all necessary easements, including but not limited to:
    a. A public access easement for areas of the sidewalk not in the right-of-way;
    b. Access, utility, and maintenance easements from 27 High Street to 101 York Street (for areas including a proposed bioretention cell, a proposed fire lane, and patio);
    c. Utility and construction easements from 78 Danforth Street to 101 York Street;
    d. Access easement from 60 Danforth Street to 101 York Street, 78 Danforth Street, and 27 High Street;
    e. Utility easement from 60 Danforth Street to 101 York Street and 78 Danforth Street;
    f. Utility easement to 78 Danforth Street from 101 York Street;

g. A construction easement from 75 York Street;

h. A grading easement, as necessary, from 60 Danforth Street; and

i. A drainage easement from the city for the storm drain located in the right-of-way

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

D. 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 for the public hearing on December 8, 2015 for application 2015-139 relevant to the site plan regulations; and the testimony presented at the planning board hearing, the planning board finds that the plan **is/is not** in conformance with the site plan standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval that must be met prior to the issuance of a building permit, unless otherwise stated:

1. The applicant shall provide a copy of the Notice of Intent to Comply with the Maine Construction General Permit;
2. The applicant shall provide a revised construction management plan for review and approval by the city's Department of Public Works and Planning Authority;
3. The applicant shall provide a revised plan set addressing the comments of the city's consulting traffic engineer *(Attachment 2),* including:
    a. Reconfigured handicap ramps at the corner of York and High Streets;
    b. Replacement of the existing mast arm structure and supporting equipment; and
    c. A parking plan with dimensions noted;
4. The applicant shall provide a revised plan set eliminating the brick crosswalk in the driveway apron or obtain a change in sidewalk material policy from City Council for review and approval by the Department of Public Works;
5. The applicant shall provide a pavement marking plan for review and approval by the city's Department of Public Works;
6. The applicant shall provide a revised plan set addressing the comments of the city arborist *(Attachment 5)* and consulting civil engineer, including:
    a. Bioretention cell plantings meeting the design guidelines of the Maine DEP;
    b. Curbing in areas adjacent to pavement;
    c. Raised tree planters or tree grates as specified on York Street;
    d. The elimination of the street tree on York Street closest to High Street;
    e. Modified street tree species; and
    f. Additional screening on the Danforth Street frontage;
7. The applicant shall amend the stormwater report to clarify the proposed filter surface area and identify the annual reporting requirements per Chapter 32 of the city Code of Ordinances for review and approval by the city's consulting civil engineer;
8. The applicant shall revise the utility plans to include:
    a. A structure designated for capture, storage, and removal of oil and grit from the parking facility and

b. A sewer connection detail

for review by the city's Department of Public Works;

9. The applicant shall obtain final approval from Historic Preservation for proposed improvements to the property at 27 High Street for review and approval by the Planning Authority;
10. Prior to Certificate of Occupancy, the applicant shall provide documentation that HVAC and mechanical equipment meet applicable city standards for review and approval by the Planning Authority;
11. Prior to Certificate of Occupancy, the applicant shall provide a signage and wayfinding plan for review and approval by the Planning Authority;
12. The applicant shall provide:
    a. Wall sections and details showing storefronts, cornices, and entrances;
    b. Specifications for windows and doors;
    c. Revised plans to differentiate the blank wall on the High Street façade;

    for review and approval by the city's Planning Authority;
13. The applicant shall provide a sewer capacity letter for review and approval by the Planning Authority; and
14. The final plan set shall be reviewed and approved by the city's Fire Prevention Bureau.

XIV. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

1. Design review (memo from Caitlin Cameron, 11/25/15)
2. Traffic Engineer review (memo from Thomas Errico, 12/3/15)
3. Civil Engineer review (memo from David Senus, 11/24/15)
4. Department of Public Services review (memo from David Margolis-Pineo, 12/2/15)
5. City Arborist review (memo from Jeff Tarling, 11/25/15)
6. Historic Preservation review (memo from Deb Andrews, 12/3/15)

APPLICANT'S SUBMITTALS

A. Level III Site Plan application
B. Project Description
C. Evidence of Right, Title, and Interest
D. Evidence of State and/or Federal Permits
E. Compliance with Applicable Zoning Requirements
F. Proposed Easements
G. Requested Waivers
H. Financial and Technical Capacity
I. Traffic Studies
J. Significant Natural Features
K. Narrative Describing the Site
L. Stormwater Management Report
M. Consistency with Master Plans
N. Availability of Off-Site Facilities
O. Solid Waste
P. Fire Code Summary
Q. Design Narrative
R. HVAC Narrative
S. Neighborhood Meeting Minutes
T. Wind Analysis

U. Response to Preliminary Comments
V. Supplemental Lighting Information

PLANS

Plan 1. Cover Sheet
Plan 2. Boundary Survey
Plan 3. New Division of Lots
Plan 4. Subdivision Plan
Plan 5. Demolition Plan
Plan 6. Overall Site and Utility Plan
Plan 7. Site and Utility Plan
Plan 8. Grading, Drainage, & Erosion Control Plan
Plan 9. Details - 1
Plan 10. Details - 2
Plan 11. Bio-Cell Plan and Details
Plan 12. Erosion Control Notes
Plan 13. Hardscape Plan and Details
Plan 14. Hardscape Plan and Details
Plan 15. Landscape Plan Commercial
Plan 16. Landscape Plan Residential
Plan 17. Lighting and Photometric Plan
Plan 18. Lighting Specifications
Plan 19. Floor Plan 1
Plan 20. Floor Plan 2
Plan 21. Floor Plan 3-5
Plan 22. Exterior Building Elevations
Plan 23. Color Elevations High and York Streets
Plan 24. Color Elevations Danforth Street
Plan 25. Building Section and Roof Plan
Plan 26. Rendering – York Street looking west
Plan 27. Rendering – York and High
Plan 28. Rendering – from across York
Plan 29. Soil Boring Location Plan
Plan 30. Construction Management Advance Site Work
Plan 31. Construction Management Foundations
Plan 32. Construction Management Steel & Plank Erection
Plan 33. Construction Management Masonry & Site Work

CHAPTER 32 STORM WATER

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

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

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

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

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

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

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

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

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

Municipality. "Municipality" means the city of Portland.

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

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

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

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

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

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

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

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

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

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

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

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

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

Sec. 32-2. Reserved.
Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

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

ARICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

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

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

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

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

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

(2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.

(3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

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

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

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

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

Sec. 32-21. Enforcement.

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

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

(1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.

(2) The cessation of discharges, practices, or operations in violation of this article.

(3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or

(4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

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

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

(c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

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

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

Sec. 32-22. Severability.

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

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

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

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

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

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

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

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.

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

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

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

(a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.

(b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.

(c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the yare adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.

(d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.

(e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

Sec. 32-39. Enforcement.

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

(a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering eh action necessary to correct it, including, without limitation:

(1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;

(2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or

(3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.

(4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

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

attorneys' fees and costs, incurred b y the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

(c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.

(d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manger, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

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

Sec. 32-40. Severability.

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

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

STORMWATER DRAINAGE SYSTEM
MAINTENANCE AGREEMENT

For SUBDIVISIONS

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

Maintenance Agreement

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

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

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

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

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

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

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

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

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

Dated at Portland, Maine this _____ day of _____, 2014.

_____
(*name of company*)

_____
(*representative of owner, name and title*)

STATE OF MAINE
CUMBERLAND, ss. Date: _____

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

Before me,

_____
Notary Public/Attorney at Law

Print name: _____

Exhibit A: Subdivision Plat as recorded

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

Exhibit C: Approved Stormwater Maintenance and Inspection Agreement

PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

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:

		PUBLIC			**PRIVATE**		
Item	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	Subtotal
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:	_____	_____	_____
	or			
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 [I**nsert: subdivision and/ or site plan**] approval, dated [I**nsert 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 [I**nsert: subdivision and/ or site plan**] approval, dated [I**nsert 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: _____ Date: _____
[Applicant]

By: _____ Date: _____
********Planning Division Director

By: _____ Date: _____
Development Review Coordinator

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