



Alex Jaegerman, FAICP  
Division Director, Planning Division

September 11<sup>th</sup>, 2014

Jeremy Benn, 133 York LLC  
110 Marginal Way Ste 292  
Portland, ME 04101

**Project Name:** Construction of Residential townhouse - 6 unit condominium (and demolition of existing building)  
**Project ID:** 2013-187  
**Project Address:** 133 York Street  
**CBL:** 44-1-29 & 31  
**Applicant:** 133 York, LLC, Applicant  
**Planner:** Jean Fraser

Dear Mr Benn:

Thank you for your letter received September 8<sup>th</sup>, 2014 requesting approval to undertake site work prior to the receipt of a building permit.

On January 28<sup>th</sup>, 2014 the Portland Planning Board approved with conditions a proposal to construct a 6 unit residential condominiums at 133 York Street.

As provided in Section 14-532, this letter serves as the written permission from the Planning Authority to commence site work on this project prior to the issuance of a building permit for the new construction of a 6-unit condo building. The commencement of site work is limited to the extent of work outlined in your letter received September 8<sup>th</sup>, 2014 (attached) as listed below and subject to the noted conditions and the additional general conditions listed in this letter:

#### Extent of Work Approved

- 1) Removal of the existing structure only if a) a building permit for that demolition has been formally issued by the Inspections Division and in accordance with any conditions of the building permit; and
- 2) Removal and pruning of any trees in accordance with the approved plans and any advice from the City Arborist; and
- 3) Installation of utilities only if a Street Opening Permit has been issued by DPS (which requires a Traffic Management Plan).

Excavation of the site (after demolition) in preparation for construction of the foundation (for the new condominium) is not approved as part of the advance site work as it involves structural issues being reviewed as part of the building permit for the new building and its foundation.

#### Additional General Conditions

- A) That any basement or holes etc that remain as a result of the demolition of the existing building would have to be filled within 30 days of the demolition if the construction of the new building has not started within 30 days of the demolition;
- B) That all erosion and sedimentation control measures shall be in place as per the approved plans, and to include any additional measures as advised by Phil diPierro; and

- C) That during the demolition the contractor shall ensure that construction warning signs are in place so that users of the sidewalk are aware of truck traffic, and the sidewalk should remain passable at all times. If the City determines that there are unacceptable impacts on the traffic or pedestrian use of the ROW, the contractor may be requested to take other actions such as to limit vehicle turning movements and/or use a flagger to help manage traffic. This condition would also apply to the construction of the new condominium building; and
- D) No material (including dirt and mud) from the site shall be deposited on the sidewalks or streets; and
- E) Neighbors shall be kept informed of any activities that may have adverse impacts on them and as per construction easements.

Please be advised that you must obtain any permits that may be required from Public Works for the temporary closing of any sidewalks, any street openings and any temporary loss of on-street parking. Building permits must be obtained from the Inspections Division prior to the demolition of any buildings or commencement of any construction of any buildings, foundations or structures. Also please see attached the City's Ordinances regarding construction activities and hours of work, and the associated Department of Public Services waiver request form re hours of work.

The approval to proceed with the site work is based on the submitted request received September 8<sup>th</sup>, 2014 and the approved subdivision/ site plan as referenced in the Planning Board approval letter dated February 3, 2014 (attached). If you need to make any modifications to the approved subdivision/site plan, you must submit revised plans for staff review and approval.

Please contact Philip DiPierro, Development Review Coordinator at 874-8632 with information to show compliance with the conditions outlined in this letter (both specific in items 1-3 and more general in items A) to E).

If you have any questions, please contact Jean Fraser on 874 8728.

Sincerely,



Alex Jaegerman  
Planning Division Director

Attachments:

1. Request letter from Jeremy Benn received September 8<sup>th</sup>, 2014;
2. Planning Board Subdivision and Site Plan Approval letter;
3. City Ordinance regarding Construction, and DPS Waiver request form re hours of work.

Electronic cc:

Jeff Levine, AICP, Director of Planning and Urban Development  
 Alexander Jaegerman, FAICP, Planning Division Director  
 Barbara Barhydt, Development Review Services Manager  
 Jean Fraser, Planner  
 Philip DiPierro, Development Review Coordinator, Planning  
 Marge Schmuckal, Zoning Administrator, Inspections Division  
 Tammy Munson, Inspection Division Director  
 Lannie Dobson, Administration, Inspections Division  
 Gayle Guertin, Administration, Inspections Division  
 Michael Bobinsky, Public Services Director  
 Katherine Earley, Engineering Services Manager, Public Services  
 Bill Clark, Project Engineer, Public Services  
 David Margolis-Pinco, 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  
 Captain Chris Pironc, Fire Department  
 Danielle West-Chuhta, Corporation Counsel  
 Thomas Errico, P.E., TY Lin Associates  
 David Senus, P.E., Woodard and Curran  
 Rick Blackburn, Assessor's Department  
 Approval Letter File  
 Applicant (Vincent Veroncau of J B Brown & Sons)

Jeremy Benn  
133 York, LLC  
110 Marginal Way Ste 292  
Portland, Maine 04101

Dear Mr Jaegerman,

We are writing to request permission to start site work prior to our building permit being issued. The general contractor, excavation contractor, the abutters, Phil DiPierro, and I met late last week for the Pre-construction meeting. We have also posted our performance guarantee with a city held escrow. We are asking for permission to move forward with removing the existing structure, removing and pruning trees, utility installation, and prepping the site for the foundation. With your permission I would also like to ask building code enforcement to issue the foundation permit separately. If they agree I would like to start the excavation for the foundation.

We would like to move forward as soon as possible to appease the neighbors since we will be accessing their property for the site work. It is in everyone's best interest to take advantage of the construction friendly weather. It will allow us to vacate the abutters properties prior to snowfall.

Thank you for your time and consideration.

Sincerely,



Jeremy Benn  
133 York, LLC  
207-807-9218

# CITY OF PORTLAND, MAINE

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## PLANNING BOARD

Stuart O'Brien, Chair  
Timothy Dean, Vice Chair  
Elizabeth Boepple  
Sean Dundon  
Bill Hall  
Carol Morrissette  
Jack Soley

January 7, 2014

Joe Flynn  
133 York, LLC  
110 Marginal Way Ste 292  
Portland, ME 04101

Thomas S Greer PE  
28 Vannah Avenue  
Portland, ME 04103

**Project Name:** Residential townhouse - 6 unit condominium  
**Project ID:** 2013-187  
**Project Address:** 133 York Street  
**CBL:** 44-1-29 & 31  
**Applicant:** 133 York, LLC, Applicant  
**Planner:** Jean Fraser

Dear Mr Flynn and Mr Greer:

On January 28<sup>th</sup>, 2014 the Portland Planning Board considered and approved a Level III Final Site Plan and Subdivision proposal for the construction of a 6 unit residential building at 133 York Street.

The Planning Board reviewed the proposal for conformance with the standards of the Subdivision Ordinance and Site Plan Ordinance and voted 6-0 (Dundon absent) to approve the application with the following waivers and conditions as presented below.

### 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 project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to Portland's Technical and Design Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. The Planning Board voted 6-0 (Dundon absent) to waive the Ordinance Section 14-526 (b) (2) (b) (iii) Street Trees to allow for a contribution of \$600 to the City's Street Tree Fund to be substituted for the provision on site of three of the required street trees.
2. The Planning Board voted 6-0 (Dundon absent) to waive the Technical Design Standard Section 1.14 *Parking Lot and Parking Space Design* to allow a drive aisle of less than 24 feet , as shown on Plan P3 subject to the requirement that the bike rack be relocated.

### DEVELOPMENT REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street relevant to the Site Plan and Subdivision reviews and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds the following:

**1. SUBDIVISION**

The Planning Board voted 6-0 (Dundon absent) that the plan is in conformance with the subdivision standards of the land use code, subject to the following conditions of approval:

- i. That the Subdivision Plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel, and Department of Public Services and include detailed references to easements, snow removal, tree preservation, stormwater system maintenance, relevant conditions, and addressing the comments of the Associate Corporation Counsel dated 1.23.2014; and
- ii. That the Condominium Association documents shall reference the Stormwater Maintenance Agreement and Stormwater Inspection and Maintenance Plan, adequate snow removal and the ongoing maintenance of the preserved trees, to be reviewed and approved by Corporation Counsel prior to the recording of the Subdivision Plat; and
- iii. That the applicant and all assigns shall comply with the conditions of Chapter 32 Stormwater including Article III, Post-Construction Storm Water Management, which specifies the annual inspections and reporting requirements. The developer/contractor/subcontractor must comply with conditions of the construction stormwater management plan and sediment & erosion control plan based on City standards and state guidelines. A maintenance agreement for the stormwater drainage system as described in Attachment L and W of this Report, shall be approved by Corporation Counsel and Department of Public Services, and submitted and signed prior to the issuance of a Certificate of Occupancy with a copy to the Department of Public Services; and
- iv. That the applicant shall ensure that tree preservation/protection measures are undertaken in accordance with the comments of the City Arborist dated 9.6.2013 and 11.1.2013, and that the Condominium Association documents shall include responsibilities for ongoing tree preservation measures; and
- v. That the Subdivision Plat shall include a note confirming the Snow Removal Plan details and that the Condominium Association is responsible for this being undertaken in a timely fashion.

**2. SITE PLAN REVIEW**

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

- i. That the applicant shall submit a revised front elevation to address the Design Review comments dated 1.23.2014 concerning the lighting under the entrance canopy, for review and approval by the Planning Authority prior to the issuance of a building permit; and
- ii. That the applicant shall submit a revised Site Plan, Utility Plan and Landscape Plan that address the 1.23.2014 City Arborist comments in respect of planting materials, and include documentation of fencing details on the south and west boundaries and utility modifications on and near the north boundary, for review and approval by the Planning Authority, Department of Public Services and City Arborist prior to the issuance of a building permit; and
- iii. That the applicant shall finalize all easements/temporary construction agreements for work outside the site, and that recorded copies are submitted to the Planning Authority prior to the issuance of a building permit; and
- iv. That the applicant shall submit a revised Construction (traffic) Management Plan for activities in York Street that addresses Tom Errico's comments of 1.23.2014, for review and approval by the Planning Authority and Department of Public Services prior to the issuance of any City permits; and
- v. That the applicant shall submit a more detailed Construction Plan for the area to the north side and rear of the site that includes the items listed in the Engineering comments dated 11.7.2013 (and identify the method of supervision) and submit the plans for the temporary metal sheeting and associated excavation stamped by a professional engineer, all for review and approval by the Inspections Division as part of any demolition permit review and copied to the Planning Authority prior to the issuance of a demolition permit for the existing building; and

- vi. That the applicant shall reconsider the location of the bicycle parking rack so that it does not impede access to parking spaces and is readily visible and accessible to potential users, with a plan showing the revised location to be reviewed and approval by the Planning Authority prior to the issuance of a building permit; and
- vii. That the FDC connection shall be located at York Street; and
- viii. That the Condominium Association documents shall include the requirement that any external condensers for heating or cooling units shall be located out of sight of neighbors and include sound baffling so that the sound level at the property line is at or below 45dBA between 10pm and 7am, and below 50 dBA between 7am and 10pm; and
- ix. That the applicant shall submit a revised photometric plan, prior to the installation of the bollard lighting, that shows that the light levels from the new lighting under the entrance canopy and the proposed bollards along the drive access meet the standards set out in Section 12 *Site Lighting Standards* in the City's Technical Manual.

The approval is based on the submitted plans and the findings related to site plan and subdivision review standards as contained in Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street, which is attached. The standard conditions of approval are listed below.

#### STANDARD CONDITIONS OF APPROVAL

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

1. **Subdivision Recording Plat** A revised recording plat listing all conditions of subdivision approval must be submitted for review and signature prior to the posting of a performance guarantee. The performance guarantee must be posted prior to the release of the recording plat for recording at the Cumberland County Registry of Deeds.
2. **Subdivision Waivers** Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice and the plan or notice must be recorded in the Cumberland County Registry of Deeds within 90 days of the final subdivision approval.
3. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. **Separate Building Permits Are Required** This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
5. **Site Plan Expiration** The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. **Subdivision Plan Expiration** The subdivision approval is valid for up to three years from the date of Planning Board approval.
7. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a subdivision plat for recording at the Cumberland County of Deeds, and prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.

8. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
9. **Preconstruction Meeting** Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
10. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
11. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.
12. **Mylar Copies** Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to the Public Services Dept. prior to the issuance of a certificate of occupancy.

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

If you have any questions, please contact Jean Fraser at 874 8728 or [jf@portlandmaine.gov](mailto:jf@portlandmaine.gov)

Sincerely,



Stuart O'Brien, Chair  
Portland Planning Board

**Attachments:**

1. Associate Corporation Counsel comments dated 1.23.2014
2. City Arborist comments dated 9.6.2013 and 11.1.2013 (underlined sections)
3. Design Review comments dated 1.23.2014
4. City Arborist comments 1.23.2014
5. Traffic Engineering (Tom Errico) comments 1.23.2014
6. Engineering comments dated 11.7.2013
7. Planning Board Report for project #2013-187 (Addendum to Report #50-13) for 133 York Street
8. City Code Chapter 32
9. Sample Stormwater Agreement
10. Performance Guarantee Packet

**Electronic Distribution:**

Jeff Levine, AICP, Director of Planning and Urban Development  
 Alexander Jaegerman, Planning Division Director  
 Barbara Barhydt, Development Review Services Manager  
 Jean Frascr, Planner  
 Philip DiPierro, Development Review Coordinator  
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 Jane Ward, Administration, Public Services  
 Jeff Tarling, City Arborist, Public Services  
 Jeremiah Bartlett, Public Services  
 Captain Chris Pirone, Fire Department  
 Danielle West-Chuhta, Corporation Counsel  
 Jennifer Thompson, Associate Corporation Counsel  
 Thomas Errico, P.E., TY Lin Associates  
 David Senus, P.E., Woodard and Curran  
 Rick Blackburn, Assessor's Department  
 Approval Letter File



Sec. 17-18 Construction activities.

(a) No person shall engage in construction activities between the hours of 7:00 p.m. and 7:00 a.m., of the following day within five hundred (500) feet of any building used for residential, hospital or nursing home purposes.

(b) Construction activities shall include, but not be limited to, the following:

- (1) The use or operation of power or heavy equipment in connection with road, street, or bridge construction, reconstruction or repair;
- (2) The use or operation of power or heavy equipment in connection with the installation or repair of utility lines, pipes, wires or cables;
- (3) The use or operation of power or heavy equipment in connection with the construction of buildings, including specifically excavation for foundations or landscaping work of any kind;
- (4) The renovation, repair, remodeling or demolition of any existing building or structure.

(c) This section shall not apply in the following situations:

- (1) Emergency repair work on any utility line, pipe, wire or cable required to restore normal utility service;
- (2) Situations where the public works authority determines that the construction activity is of a unique character which cannot reasonably be completed or performed during the permitted hours and which is not of a recurring nature, provided that prior to engaging in such activity the contractor or his representatives gives notice of the time and scope of such proposed activity, the notice to be given in a manner approved by the public works authority (Code 1968, ξ 703.3A; Ord. No. 403-71, 8-16-71).

CITY OF PORTLAND, MAINE  
DEPARTMENT OF PUBLIC SERVICES  
TIME WAIVER REQUEST

DATE:

TO: Director of Public Works  
55 Portland Street  
Portland, ME 04101

REGARDING: Request for Waiver of Established Work Hours for  
Construction Activities - - Section 17-18 of the  
Municipal Code

Dear Sir:

My firm of \_\_\_\_\_  
(NAME OF FIRM) (ADDRESS) (TELEPHONE) (FAX) (CONTACT PERSON)  
requests a waiver of the City of Portland from its Municipal Code, Section 17-18 (see  
back of waiver request form) prohibiting construction activities between the hours of  
7:00 p.m. and 7:00 a.m. of the following morning.

We are doing \_\_\_\_\_ type of construction activity at  
\_\_\_\_\_ in Portland, Maine, and request permission to  
(ADDRESS)  
begin work at \_\_\_\_\_ a.m., and end work by \_\_\_\_\_ p.m. for \_\_\_\_\_  
day (s). Work will begin on \_\_\_\_\_ and cease on \_\_\_\_\_.

I understand and agree that if this waiver is approved, work will be of a non-reoccurring  
nature as noted in the ordinance and is acceptable only for the above listed company,  
location, single-construction activity and time.

SIGNED:

\_\_\_\_\_  
(SIGNATURE OF APPLICANT)

\_\_\_\_\_  
(COMPANY)

\_\_\_\_\_  
(DATE)

APPROVED: \_\_\_\_\_  
(DIRECTOR OF PUBLIC SERVICES)

\_\_\_\_\_  
(DATE)