



Notice of this Public Hearing was mailed to 132 neighbors and interested parties and was advertised in the October 14 and 15, 2013 editions of the Portland Press Herald. The required Neighborhood Meeting was conducted as part of the original approval.

## **II. Project Status and Current Proposal**

The applicant is requesting an amendment to the approved phased plan to reduce the overall site impact and to allow development activities to transition from the easterly to the westerly portions of the site.

*Approval Status:* Originally, the applicant was approved for a “Phase 1” including two boat ramps, a travel lift basin, floating docks, buildings totaling over 42,000 square feet of industrial space, significant fill and grading, stormwater improvements, utility work, lighting, and landscaping. The majority of activity approved concentrated toward the easterly portion of the site. For the Board’s information, the applicant also showed a “Phase 2” full build out scenario, which showed additional development and buildings on the westerly portion of the site. The approved December 2012 plan is provided as Attachment P1. The future master plan, showing planned development on both the easterly and westerly portions of the site, is provided as Attachment P2.

The August 2013 amendment kept the December 2012 approvals intact, while allowing a “Phase 1A” to proceed. Phase 1A was limited to minimal site improvements including installation of the westerly boat ramp to the Fore River, construction of associated floats, and regarded areas for boat storage and service. The extent of the Phase 1A improvements is shown in red hash marks on Attachment P1. The applicant has proceeded with the Phase 1A improvements and construction is on-going.

### *Waivers and Conditions of Approval:*

The previous approval included various waivers and conditions of approval. The waivers are summarized in a table below.

The original approval also included several conditions of approval. Staff has provided a copy of the previous approval letter for the Board’s reference. While most of the previous conditions of approval were satisfied prior to beginning of construction, several conditions of approval from December 2012 have been brought forward into this review for the Board’s Consideration.

*Waiver Summary:* As part of the December 2012 approval, the application was granted the following waivers, which are assumed to remain in effect unless specifically amended or rescinded by the Board.

Waiver	Code Reference	Comment
<b>Sidewalks and Granite Curbing:</b>	Site Plan Standard 14-526(a)(2)c.1 (and 14-448 and 14-449, by reference)	<i>Sidewalk waiver was granted based on sidewalk criteria 1 (safe route across the street, and criteria 6 (loss of significant features of greater value). Curbing waiver was granted based on criteria 4 (loss of significant site features of a greater public value,) and criteria 5 (runoff from the development site or within the street does not require curbing for stormwater management.)</i>
<b>Site Lighting</b>	Tech Standards Sec. XV. 5.4.A, Uniformity and 4.B, Illumination Levels.	<i>Waiver granted due to allow dark areas on the site not meeting minimum illumination levels. No lighting plan is currently provided. Staff recommends a condition of approval for submission of a lighting plan for staff review and approval.</i>
<b>Landscaping:</b>	Tech Standards Sec. IV. 5.4.5  Tree Species and Size standards.)	<i>Waivers granted to allow a naturalized replanting program consistent with the site's Shoreland Zone context.  Current proposal relies on preservation of existing vegetation for landscaping. Staff recommends a condition of approval for submission of a landscaping plan for staff review and approval.</i>
<b>Flooding</b>	Tech Standards Sec.V E, Flooding	<i>Waiver granted due to the capacity of the receiving body (the Fore River)</i>

Waiver	Code Reference	Comment
<b>Soil Infiltration Testing</b>	Tech Standards, Sec. V, Appendix D.4.(a)	<i>Waiver granted based on known conditions on the site and controlled materials to be installed with construction.</i>
<b>Bicycle Parking</b>	Site Plan Standard 14-526 a (4) b.	<i>Partial waiver granted based on an "industrial use located in an outlying area (waiver criteria)</i>
<b>Driveway width</b>	Tech Standards, sec 1.7.1.4.	<i>Standard cites 36 feet maximum: Waiver for 48 feet+/-granted based on large truck and trailer turning movements. August 2013 phasing approval retained the existing narrower drive entry, not requiring a waiver. A monitoring condition was approved, which is recommended to carry forward with the subject approval.</i>

*Requested Amendments:* The amended plan moves the two primary buildings (retaining their approximate size,) eliminates 1 boat ramp and the travel lift basin, and significantly reduces the extent of berthing floats. The amended site plan is referred to as Phase 1B (sheet C-2.1) in the applicant's material and labeled Attachment P8.

## II. Project Data

### Phase 1A Only

Total Site Acreage: 22.5 acres  
Total Proposed Disturbed area: 100,000 sq ft +/-  
Zone: Waterfront Port Development Zone  
Existing Uses: Mostly Vacant. Propane distribution and rail sidings  
Proposed Use: Boat repair, storage,  
Continued propane distribution

Predevelopment Impervious Area: 287,704 sq ft  
Post-development Impervious Area: 255,598 sq ft  
Percentage Impervious Area, total: 26%

Proposed Building Footprint: 41,617 sq ft  
 Existing Total Building Floor Area: 0 sq ft  
 Proposed Total Building Floor Area: 41,617 sq ft

Required Vehicle Parking: 21  
 Proposed Vehicle Parking: As needed in yard area  
 Required Bicycle Parking: 8  
 Proposed Bicycle Parking: 0 Waiver requested

### **III. Right, Title and Interest**

The applicant previously provided a deed for land formally owned by the Portland Terminal Company (Pan Am) in Attachment D and an option agreement for a 50 year lease for the former gasworks properties.

### **IV. Site Description**

The subject site is an aggregate of waterfront parcels located adjacent to the Casco Bay Bridge along the dredged channel of the Fore River. Totaling over 22.5 acres, the site contains active rail lines and has a long history of industrial, marine, and rail development. Along with the lone remaining rail siding, the only remaining active use of the site is a propane distribution facility located on 3.96 acres in the interior of the site. The propane facility is proposed to remain in its existing condition for Phase 1a.

The subject site is the combination of a former coal gasification plant site with portions of an historic rail yard. With the exception of the propane facility, the land is vacant and the rail yard portions of the site have recently re-vegetated with volunteer birch, poplar, oak and pine.

The gas plant use has left portions of the site contaminated with coal tars and the site is partially subject to a Maine DEP “VRAP” remediation agreement

The Fore River shoreline is characterized by derelict piers and stone bulkheads. To the east, the former gas plant site has been stabilized by recent riprap installed as part of the VRAP. There are some areas of erosion located between the former gas and rail properties. This erosion is assumed to be problematic with potential coal tar contaminants entering the river. Redevelopment of the site provides an opportunity to stabilize this area of concern and much of the shoreline bulkhead has been restored with recent activity associated with Phase 1A construction.

The site has +/-1500 feet of frontage along West Commercial Street. While the northerly side of West Commercial Street, along Nova Seafood, the Graybar building and the “Star Match” complex, have curb and sidewalk, none exist along the subject parcel. The applicants were approved for a waiver of curb and sidewalk with the previous review.

The Beach Street entrance/exit from the Casco Bay Bridge intersects West Commercial Street across from the center of the site at the location an existing driveway for the propane facility. The Beach Street ramp intersection is currently being evaluated for a traffic signal and the City is seeking funds for such a project.

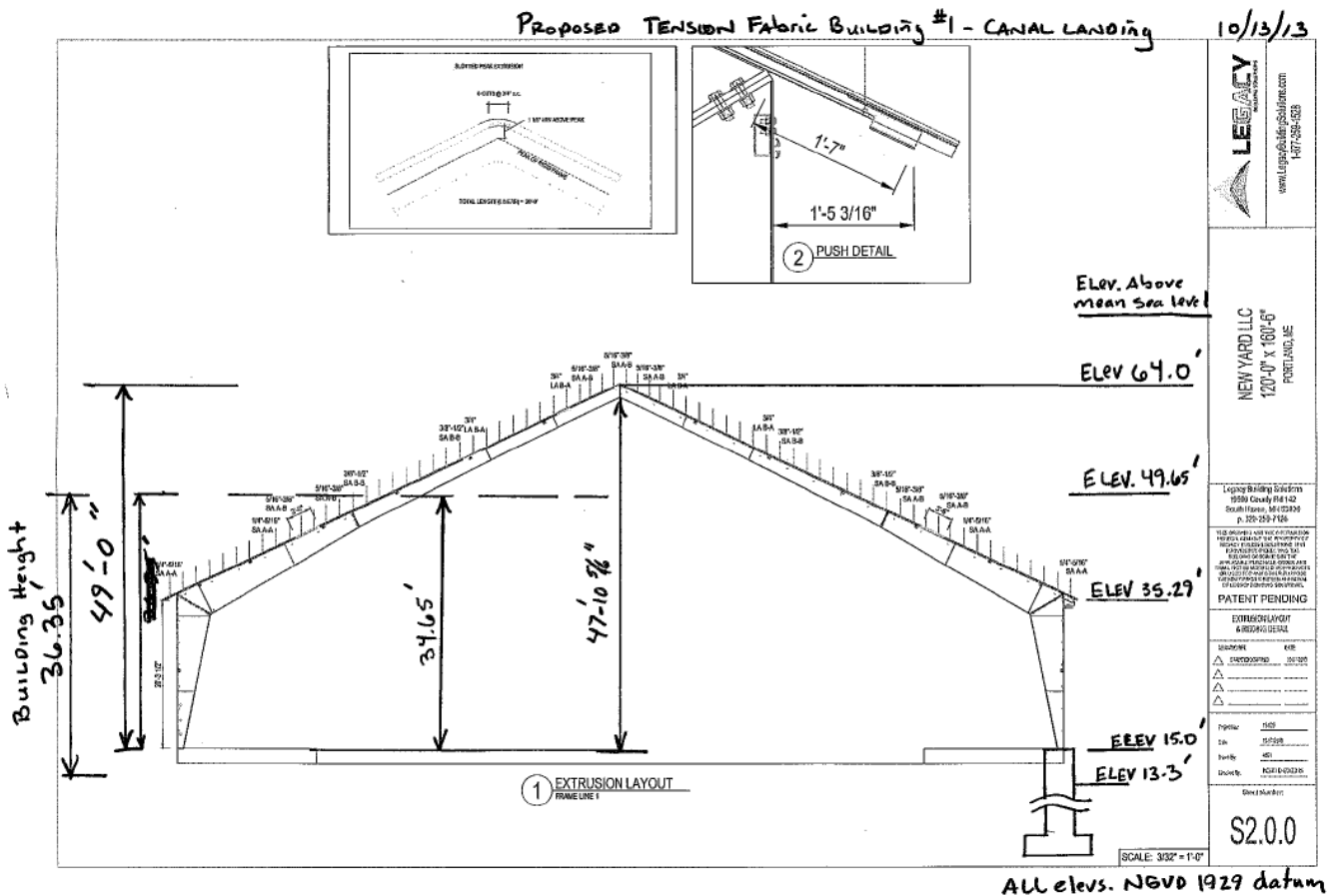
An additional vehicle entrance existed to the site adjacent to the IMT. This entrance is a shared access roadway serving the subject parcel and a MDOT maintenance building for the Casco Bay Bridge.

**V. Proposed Development**

The applicant's submission includes a detailed description of Phase 1B in Attachment A of this report.

The proposed improvements included with the requested amendment are shown on Attachment P8 (Sheet C-2.1).

Landside improvements in Phase 1a are largely limited to grading portions of the site for use, and placement of two buildings. The first building anticipated is a 160'x120' frame and fabric structure, the section drawing of which is shown below.



Marine improvements are reduced to the single boat ramp and supporting floating docks approved with Phase 1A. The marine improvements are consistent with approvals issued by the Portland Harbor Commission.

The proposed development includes use of the access drive located at the far easterly boundary of the site. This drive currently serves a MDOT bridge building located near to the water. The subject parcel retains access rights to this drive.

Utility work includes new electric service (by one of two options proposed – either from a new pole located south of the existing rail lines with a transition to underground service to the building and marine operations area; or, from an extension of existing underground service in the gasworks site. New water lines for an expanded fire hydrant network are also proposed.

No sewer lines are proposed and portapotty service is assumed.

The applicant is not proposing to install any new landscaping with Phase 1b, but will adhere to the previously approved tree preservation plan.

## **VI. Staff Review:**

The application and supporting documents have been reviewed by City staff from the Departments of Planning and Urban Development, Fire Safety, and Public Services. The plans have also been reviewed by consulting engineers for civil engineering and traffic.

### **a. Zoning Review: WPDZ, Shoreland, Flood Plain**

#### ***i. Waterfront Port Development Zone***

*Use:* The project is located in a WPD Zone. The proposed boat repair yard uses are permitted uses in this zone. In the December 2012 approval boat storage and sales (yacht brokerage) were both approved as conditional uses in the WPDZ.

*No Adverse Impact on Marine Use:* The WPDZ includes a provision for protecting access function of water dependent uses in the form of “Sec. 14-318.5. No adverse impact on marine uses.” The No Adverse impact provision could be construed to apply to the boat storage use as this use does not necessarily require direct water access (though water access may be a component through launching and hauling.) While applicability of the provision could be argued, no portion of the proposed development appears to create an adverse impact as described in the Sec. 14-318.5 and quoted below:

*Sec. 14-318.5*

- (a) *The proposed nonwater-dependent use will displace an existing water-dependent use;*
- (b) *The proposed use will reduce existing commercial vessel berthing space;*
- (b) *The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or*
- (d) *The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.*

*Dimensional Requirements:*

The proposed development meets all provisions of the WPDZ dimensional requirements.

*Parking:*

Parking within the WPDZ is at 1 space per 1000 square feet of building (+/-42 spaces required.) The applicant indicates that parking for +/-50 employees will be provided . While a formalized parking area is not identified, it is assumed that employees and clients using the site will find more than adequate parking to fill both the zoning requirements and functional needs of the use. This condition was approved by the Board with the December 2012 review.

**ii. Shoreland Zone:**

At the time of the previous approval on this project, the project met with all Tree Clearance restrictions that apply to development in the shoreland portions of the site. Subsequent to the December 2012 approval, new legislation passed that allows a greater degree of tree clearance on working waterfront property. Currently, the WPDZ is exempt from Shoreland tree clearance standards under local ordinance and the recent legislation allows the City to apply this exemption. The current proposal preserves trees and existing shrub vegetation between the proposed buildings and the rail line. Staff recommends augmenting the preservation plan with additional plantings at the shore line and the site perimeter (see landscaping discussion, below.)



In addition to the tree clearance standards, the Planning Board found that the original plan met the applicable shoreland zone standards and the proposed amended plan is anticipated to have fewer impacts than the previously approved plan.

**iii. Flood Plain Management:**

The subject parcel is partially located in a regulated Flood Plain. The FEMA, Flood Insurance Rate Maps show portions of the property within the flood zone A2 with a base flood elevation of 10’.



The proposed Phase 1B plan does not place buildings within the identified Flood Plain and meets applicable management standards, as previously approved.

**iv. Vehicle Loading, Division 21: NA**

**v. Signage:**

Separate permits are required for any new signage prior to installation.

**b. Conditional Use Review for Boat Storage and Yacht Brokerage in the WPDZ**

As noted above, the proposal is subject to a conditional use review for boat storage and a yacht brokerage in the WPDZ. Conditional Uses in the WPDZ are subject to the following provisions:

**Sec. 14-320. Conditional uses.**

*...such uses will not impede or preclude existing or potential water-dependent development on other lots, will allow for adequate right-of-way access to the water, are compatible with marine uses, and are physically adaptable or relocatable to make way for future development for water-dependent uses, and meet any additional standards set forth below:*

While the proposed development's two buildings are considered permanent, they are designed and intended to serve the permitted uses of boat repair and maintenance in addition to the conditional use of boat storage. Given the intended uses, the "adaptable" provision of the standard appears to be met.

All conditional uses are subject to the provisions of Section 14-474, Conditional Use:

*Standards. Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:*

- a. There are unique or distinctive characteristics or effects associated with the proposed conditional use;*
- b. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*
- c. Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

Staff recommends that the proposal is in conformance with the above standards.

**c. Site Plan Review.**

Attachment 2 of this report includes the full text of the December 2012 Planning Board Report, which provides a description and analysis of all applicable review standards. This report will concentrate on standards impacted by the proposed phasing request.

**Site Plan Standards Review, Sec. 14-526**

The site plan standards language is summarized below in *italics*, with planning staff comment and analysis in regular font.

(a) *Transportation Standards*

Primary access to the site is provided through the existing easterly entrance drive located adjacent to the IMT.

Consulting Traffic Engineer, Tom Errico, and the City Transportation Systems Engineer, Jeremiah Bartlett, have reviewed the existing condition and anticipate that Phase 1a should function adequately and safely. There are some concerns that the existing 16 foot wide gate could create a queuing issue if large truck traffic is larger than anticipated and recommend a monitoring condition as follows:

*Regarding the Phase 1A proposal for use of the existing easterly entrance adjacent to the IMT, the City will monitor the entrance for safety and may require modifications to the gate and entrance design if safety issues become evident.*

(b) *Environmental Quality Standards*

1. and 2. *Preservation of Significant Natural Features:*

As noted above in Shoreland, the applicant proposes to retain vegetation along the rail line, but otherwise proposes to clear the site. The approved 2012 landscape plan is provided as Attachment 3.1. Staff recommends a condition of approval that requires submission of a revised landscaping plan that includes additional plantings at the shoreline and the site perimeter.

3. *Water Quality, Stormwater Management and Erosion Control:*

As with the original approval, stormwater management is primarily proposed to utilize a gravel surface that is designed to hold and treat stormwater prior to exiting the site to the Fore River. Given the industrial history of the site, its flat grades, and well-drained soils, the limited construction activity proposed is not anticipated to cause stormwater quality issues in the Fore River. Stormwater volumes should in fact be reduced with the Phase 1B activity as the applicant proposes to reduce the existing impervious surface by +/-32,000 sq ft compared to the December 2012 approval

The erosion and sedimentation controls approved in December 2012 are still in effect and will need to be adhered to through construction of all phases of development.

Reviewing Engineer, Dave Senus, PE, Woodard and Curran, suggests the following:

- 1) Per FST's response to comments letter dated 10/15/2013, the Applicant is proposing a manmade pervious surface ("Boatyard Surface") for much of the improved area of the site to meet the General Standards. The amended plans do not indicate the type of surface proposed for the improved traveled-way, and no details were provided with the amended application to depict the construction requirements for this surface. Also, the entry driveway is noted to be gravel, which is not considered a pervious treated surface, please clarify.
- 2) The original application noted that the project was subject to the requirements of the Maine Construction General Permit. The Applicant should verify that they have submitted a Notice of Intent to Comply with the Maine Construction General Permit to the Maine DEP.

Mr. Senus recommends a condition of approval directing compliance with the above comments and further that the previously submitted Stormwater Inspection and Maintenance Manual still applies to the amended site.

(c) *Public Infrastructure and Community Safety Standards.*

1. *Consistency with City Master Plans:*

The proposal appears consistent with applicable approved master plans. Note: The City is applying for funds to engage in a West Commercial Street planning process to determine the appropriate design to accommodate multiple modes of transport consistent with both land-side mixed use and water-side marine development along the corridor.

2. *Public Safety and Fire Prevention:*

(a) *Natural surveillance that promotes visibility of public spaces and areas.*

All of the principle open spaces on the development are visible with clear lines of site from multiple vantage points and/or buildings with windows.

(b) *Access control that promotes authorized and/or appropriate access to the site.*

The site appears to sufficient access control through fencing, entry gates, and its location on the water.

(c) *Territorial reinforcement that promotes a sense of ownership and responsibility through environmental design.*

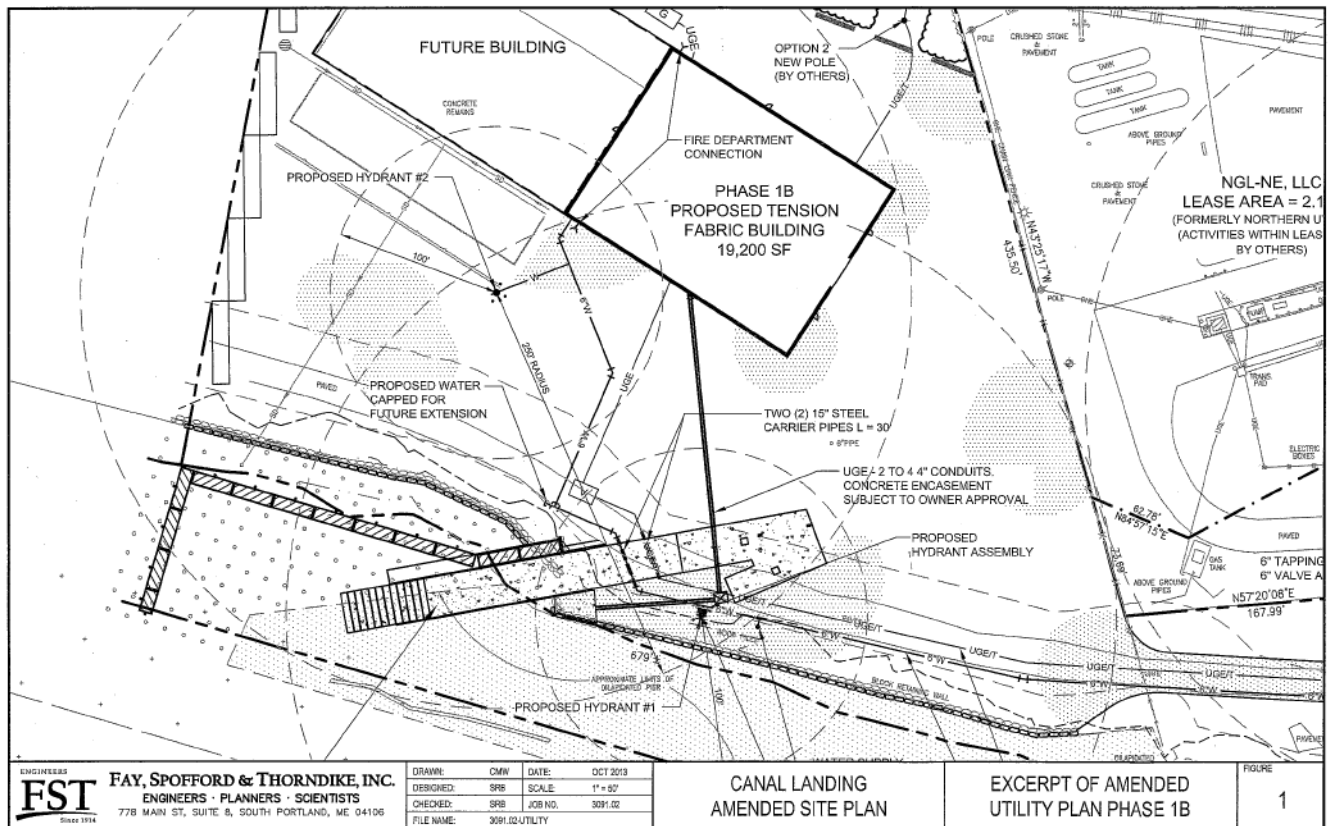
The use and maintenance of the facility as designed should sufficiently reinforce the site's identity as an active boat yard.

- (d) Provide adequate emergency vehicle access to the site in accordance with City standards for street widths and turning radii, as described in Section 1 of the Technical Manual.

The applicant provided a revised fire access and circulation plan. Fire Safety reviewer, Captain Chris Pirone has not had opportunity to review the plan and a condition of approval is suggest that modifications to this plan may be needed pending further review.

With the proposed amendments, this plan will need to be updated and a condition of approval is suggested. The intent of the fire safety plan is to identify emergency access routes and their adequacy for supporting fire suppression equipment.

- (e) Be consistent with City public safety standards, Section 3 of the City of Portland Technical Manual, including but not limited to availability and adequacy of water supply and proximity of fire hydrants to structures.



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The site is currently served by two fire hydrants on West Commercial Street and an additional hydrant in the interior of the site. The proposed utility plan, Attachment P10, (excerpted above) shows additional hydrant locations within blue buffer circles.

Portland Water District has provided a letter indicating adequate capacity to serve the fire suppression needs of the proposal.

3. *Availability and Adequate Capacity of Public Utilities:*

The site is served by all public utilities and a letter of water capacity was previously provided.

(d) *Site Design Standards*

1. *Massing, Ventilation and Wind Impact:* NA

2. *Shadows:* NA

3. *Snow and Ice Loading:* NA

4. *View corridors:* NA

5. *Historic Resources:*

With the limited amount of subsurface construction proposed, potential on-site historic and archeological resources will not be significantly impacted by the proposed amendment. The 19<sup>th</sup> century seawall is currently being restored in conjunction with the proposed marine improvements. The location of a 19<sup>th</sup> century glass works is known to exist on site and the applicant should document any evidence of its disturbance with the limited utility work proposed. A condition of approval is recommended.

6. *Exterior Lighting:*

No exterior lighting is proposed in Phase 1B. A condition of approval is suggested that requires submission of a lighting plan prior to installation.

7. *Noise and Vibration:*

Based on the current Portland Yacht Services activities, exterior noise levels are anticipated to be within zoning requirements for sound levels.

8. *Signage and Wayfinding:*

Signage plans have not been provided, but will be reviewed and approved with the building permit applications for the site. No signage may be installed without such approval.

9. *Zoning Related Design Standards NA*

**VIII. Staff Recommendation:**

The applicants have demonstrated adherence to the applicable standards and Planning Staff recommends that the Planning Board approve the amended plan for the New Yard at Canal Landing, subject to the conditions provided below in the suggested motions.

**IX. Recommended Motions:**

**b. Conditional Use in the Waterfront Port Development Zone:**

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 application # **2013-224** relevant to the Conditional Use Standards of the Waterfront Port Development Zone for *boat storage, marine products sales,* and Section 14-474 of Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (**is/is not**) in conformance with conditional use standards of the land use code.

**c. Site Plan:**

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 application # **2013-224** relevant to the Site Plan Ordinance, Shoreland Zone, Flood Plain Management, Site Location of Development, and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan (**is/is not**) in conformance with applicable standards of the land use code, subject to the following conditions of approval:

**Conditions of Approval**

- i. *MDOT Shared Entrance: Regarding the proposal for use of the existing easterly entrance adjacent to the IMT, the City will monitor the entrance for safety and may require modifications to the gate and entrance design if safety issues become evident.*
- ii. *Fire Safety and Emergency Access: Prior to issuance of a building permit, the revised fire access and circulation plan, as may be amended, shall receive review and approval from City Fire Safety review staff.*

- iii. Landscaping: *Prior to issuance of a building permit, that applicant shall submit for staff review and approval a revised landscaping plan that includes additional plantings at the shoreline and the site perimeter.*
- iv. Stormwater:
  - a. *Prior to issuance of a building permit, the applicant shall submit for staff review and approval information regarding the type of surface and construction details proposed for the improved traveled-way;*
  - b. *The Applicant shall verify that they have submitted a Notice of Intent to Comply with the Maine Construction General Permit to the Maine DEP; and,*
  - c. *The previously submitted Stormwater Inspection and Maintenance Manual still applies to the amended site.*
- v. Previous Conditions of Approval: *For development approved on December 18, 2012, all conditions of approval not previously addressed remain in effect as described in Attachment 1 of this report.*
- vi. Archeological Resources: *If evidence of 19<sup>th</sup> century glass works, known to exist on the subject site, is discovered during subsurface utility work, the applicant shall contact the Planning Authority and make reasonable efforts document any resources discovered.*
- vii. Exterior Lighting: *Prior to issuance of a building permit, that applicant shall submit for staff review and approval a revised exterior lighting plan.*

### **Attachments**

- 1. Approval Letter from December 18, 2012 Public Hearing
- 2. Planning Board Report #53-12, December 14, 2012
- 3.1 Previously approved Landscape Plan (showing tree preservation)

### **Applicant's Submission Packet**

- A. Application narrative and Project Information, September 23, 2013
- B. Building Height and Flood Hazard permit information, October 13, 2013
- C. Response to Staff Comments, October 15, 2013

### **Plans**

- Plan 1 Previously Approved Plan (December 18, 2012, Amended, August 2013)
- Plan 2 Future Phase Master Plan, December 2012
- Plan 3 to 13 Current Plan Set