

# CITY OF PORTLAND, MAINE

## PLANNING BOARD

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Sean Dundon, Chair  
Brandon Mazer, Vice Chair  
David Eaton  
David Silk  
Austin Smith  
Maggie Stanley  
Lisa Whited

December 4, 2018

Dunkin' Brands, Inc  
attn. Robert Mahoney  
130 Royall Street  
Canton, MA 02021

Plymouth Engineering, Inc.  
Attn. Jon H Whitten, Jr P.E.  
PO Box 46  
Plymouth, ME 04969

Project Name: New Dunkin' Donuts Restaurant with drive-through  
Project ID: Project # PLO00047-2018 (Site Plan) and CU-000172-2018 (Conditional Use)  
Address: 325 St John Street, Portland CBL: 065 Coo4001  
Applicant: Dunkin' Brands, Inc. (Robert Mahoney)  
Planner: Jean Fraser

Dear Sirs:

On November 27, 2018, the Planning Board considered Level III Site Plan, Traffic Movement Permit, and Conditional Use applications for a new Dunkin Donuts restaurant comprising a new 2,277 sq ft building with drive-through and 24 parking spaces. The Planning Board reviewed the proposal for conformance with the standards of the Site Plan, Traffic Movement Permit and Conditional Use. The Planning Board voted unanimously 6-0 (Whited absent) to approve the applications with the following waivers and conditions as presented below:

### A. 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 November 27, 2018 for application # PLO00047-2018 (Site Plan ) (new Dunkin Donut restaurant at 325 St John Street) relevant to Portland's Technical and Design Standards, the B2 Design Guidelines and Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. Parking aisle Widths: The Planning Board voted unanimously 6-0 (Whited absent) that based upon the consulting Traffic Engineer's review (Attachment 4), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.14 *Parking Lot and Parking Space Design*. The Planning Board waives the *Technical Manual* standard (Technical Manual Section 1.14) to allow the parking lot aisle

widths as shown on the site plan 11.16.2018, as supported by the Traffic Engineering reviewer.

2. Driveway Separation

The Planning Board voted unanimously 6-o (Whited absent) that based upon the consulting Traffic Engineer's review (Attachment 4), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.7.1.7 *Location and spacing of driveways*. The Planning Board waives Technical Design Standard Section 1.7.1.7 *Location and spacing of driveways* to allow the proposed driveways (each one-way) to be located as shown on the site plan 11.16.2018 as supported by the Traffic Engineering reviewer.

3. Sidewalk materials

The Planning Board voted unanimously 6-o (Whited absent) that based upon the City Engineer's review (Attachment 5), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.8.2 *Sidewalk Construction and Materials* in respect of the sidewalk along St John Street. The Planning Board waives the *Technical Manual* standard (Technical Manual Section 1.8.2) to allow concrete material for the sidewalk along the site frontage on St John Street, as the retention of the existing concrete sidewalk meets the waiver criteria set out in the Technical Manual *Appendices 15.1*.

## **B. CONDITIONAL USE**

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 November 27, 2018 for application CU-000172-2018 (Conditional Use) (new Dunkin Donut restaurant at 325 St John Street), relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board voted unanimously 6-o (Whited absent) that the proposed conditional use for a drive-through associated with the new Dunkin Donuts restaurant at 325 St John Street in the B2 zone does meet the standards of § 14-474 and the standards of §14-183 for the B2 zone.

### Prior to Applying for a Building Permit

1. That the applicant shall submit a revised site plan to incorporate strategies for enhancing pedestrian safety at the crosswalk from Valley Street into the site/across the drive through lanes, for review and approval by the Planning Authority. These strategies may consist of signing, pavement markings, or creating a raised crosswalk.

### Prior to the Issuance of a Certificate of Occupancy

2. That any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or

shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.

### **C. TRAFFIC MOVEMENT PERMIT**

The Planning Board voted unanimously 6-0 (Whited absent) that based upon the City of Portland's Delegated Review Authority, the Planning Board approves the Traffic Movement Permit application, as submitted, subject to the following conditions:

1. That the applicant shall modify the configuration of St. John Street from a four-lane roadway to a three-lane section with a center turn lane and bicycle lanes. This change is intended to mitigate crash patterns (St. John Street is a High Crash Location) associated with turning movements entering and exiting driveways. The applicant shall be responsible for implementation/construction of all aspects of the improvement plan.

#### Prior to Applying for a Building Permit

2. That the applicant shall finalize the submitted concept improvement plan (for the modifications outlined in i above) and submit final construction/design plans, specifications and construction management plan for review and approval by the Planning Authority.

#### Prior to the Issuance of a Certificate of Occupancy

3. That the implementation of the approved improvement plan, for the required modifications in St John Street, shall be completed prior to the issuance of a certificate of occupancy for the project.

### **D. 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 the public hearing on November 27, 2018 for application # PLO00047-2018 (Site Plan ) (new Dunkin Donut restaurant at 325 St John Street) relevant to the site plan regulations; and the testimony presented at the Planning Board hearing; the Planning Board voted unanimously 6-0 (Whited absent) that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions of approval:

#### Prior to Applying for a Building Permit

1. That the applicant shall revise the building design to clarify the following details for review and approval by the Planning Authority:
  - a. The treatment of the rear elevation (facing Valley Street) to integrate the walk-in cooler and add visual interest to this part of the building which faces Valley Street;
  - b. The HVAC/Mechanical proposals to show that they meet site plan standards; and

- c. The visible transmittance of the windows along the St John Street frontage, as they are required to be transparent (with a visible transmittance (VT) of .7 or greater).
2. That the applicant shall submit revised civil plans to address the utility, bicycle parking and ROW comments of the Peer Engineer dated 11.20.2018 and the Transportation Program Manager dated 11.27.2018, for review and approval by the Planning Authority.
3. That the applicant shall submit a revised Landscape Plan, for review and approval by the City Arborist and the Planning Authority, to address the City Arborist comments dated 11.20.2018 and improve the appearance of the dumpster enclosure either through upgraded materials or landscape screening.
4. That the applicant shall submit, for review and approval by the Planning Authority, a revised lighting plan (both building mounted and site lighting) and associated photometric plan, to meet the Technical Standards, including the provision of adequate lighting levels in the vicinity of the St John Street building entrance and along the pedestrian walkway from Valley Street.

#### Prior to Issuance of a Building Permit

5. That the applicant shall submit a copy of the ability to serve (water supply and wastewater) letters, and address the Peer Engineer comments of 11.20.2018.
6. That the applicant shall submit a detailed construction management plan (CMP) for work that will impact both St. John Street and Valley Street, for review and approval by the Planning Authority; the CMP should avoid closure of the St John Street sidewalk and address the comments of the Traffic Engineering Reviewer dated November 16, 2018.
7. That the final stormwater maintenance agreement shall be submitted for review and approval by the Planning Authority and then recorded, with a copy to the Planning Authority and the Department of Public Works.
8. That the applicant shall submit the easement or other legal documentation for public access over the bus landing area where it is not in the ROW.

#### Prior to the Issuance of a Certificate of Occupancy

9. That separate permits are also required for all new signs, including those on the building, and for HVAC systems, which require submission of dBA levels to confirm compliance with the maximum sound limits of the ordinance.

#### **Standard Conditions of Approval**

Please Note: The following standard conditions of approval and requirements apply to all approved site plans:

1. 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 Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. 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 Permitting and Inspections Department.
3. 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.
4. Performance Guarantee and Inspection Fees A performance guarantee covering the site improvements, inspection fee payment of 2.0% of the guarantee amount and four (4) final sets of plans must be submitted to and approved by the Planning and Urban Development Department and Public Works Department 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.
5. Defect Guarantee A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
6. 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 Works 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.
7. Construction Management Plans The applicant, contractor and subcontractors are required to conform to the approved Construction Management Plan, and all conditions contained within the project's approval, for the entire duration of the project. Any amendments to the approved Construction Management Plan shall be reviewed and approved by the Department of Public Works prior to the execution. The Planning Authority and the Department of Public Works have the right to seek revisions to an approved Construction Management Plan. The applicant shall coordinate the project's construction schedule with the timing of nearby construction activities to avoid cumulative impacts on a neighborhood and prevent unsafe vehicle and pedestrian movements.

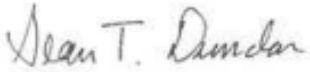
Accordingly, nearby construction activities could involve a delay in the commencement of construction.

8. Department of Public Works Permits If work or obstructions will occur within the public right-of-way, such as utilities, curb, sidewalk, driveway construction, site deliveries and equipment siting, a Street Opening and/or Occupancy Permit (s) is required for your site. Please contact the Department of Public Works Permit Clerk at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
9. As-Built Final Plans Final sets of as-built plans shall be submitted digitally to the Planning and Urban Development Department, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

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

If there are any questions, please contact Jean Fraser at (207) 874- 8728.

Sincerely,



Sean Dundon, Chair  
Portland Planning Board

Attachments:

1. Peer Engineer comments dated 11.20.2018
2. Transportation Program Manager comments dated 11.27.2018
3. City Arborist comments dated 11.20.2018
4. Planning Board Report
5. Portland City Code: Chapter 32
6. Performance Guarantee Packet



Jean Fraser &lt;jf@portlandmaine.gov&gt;

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**Fwd: PB Hearing dunkin donuts on St John Street- draft of suggested conditions**

1 message

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Jean Fraser <jf@portlandmaine.gov>  
To: "Fraser, Jean" <jf@portlandmaine.gov>

Tue, Nov 20, 2018 at 12:39 PM

**FINAL PEER ENGINEER COMMENTS**

----- Forwarded message -----

From: **Lauren Swett** <lszett@woodardcurran.com>  
Date: Tue, Nov 20, 2018 at 7:38 AM  
Subject: RE: PB Hearing dunkin donuts on St John Street- draft of suggested conditions  
To: Jean Fraser <jf@portlandmaine.gov>

Hi Jean,

I don't have very many comments left, but I've added them to eplan, and will list them here too. Basically, I think you can replace your general comment on providing utility ability to serve requests with these 4 comments on their utilities:

- The Applicant has noted a connection to the sewer within St. John Street. The Applicant is still waiting for an ability to serve from the Department of Public Works. The Applicant should coordinate the location of the connection with DPW, as there are multiple sewer lines identified in St. John Street. The Applicant should coordinate the sizing and location of their grease trap. In addition, the installation should be coordinated with the street moratorium, which remains in place until May 2019.
- The ability to serve from DPW should also include the stormdrain connection to the combined sewer on Valley Street, noting that there is a slight increase in stormwater flow to this system. The project is not required to meet the Flooding Standard as there is no increase in impervious surface.
- The Applicant will be required to receive verification of ability to serve for the site's water service.
  - The Applicant should show pavement repair limits within the City of Portland Right-of-Way and provide a detail.

I am headed to a site visit in Brunswick (I think...) but if you have questions, feel free to call my cell phone 207-219-3591

Thanks,

Lauren



# PLAN CORRECTIONS REPORT PL-000047-2018 FOR CITY OF PORTLAND

**PLAN ADDRESS:** 325 Saint John St  
Portland, Maine 04102      **PARCEL:** 065 C004001

**APPLICATION DATE:** 04/06/2018      **SQUARE FEET:** 0.00      **DESCRIPTION:** Dunkin Donuts at 325 St. John Street

**EXPIRATION DATE:**      **VALUATION:** \$0.00

CONTACTS	Name	Company	Address
Agent/Representative	Jon Whitten	Plymouth Engineering	30 Lower Detroit Road Plymouth, ME 04969

## Corrections Required

**City Arborist** Jeff Tarling

**Civil Engineering - Third Party Reviewer** Lauren Swett

v.1.00 - Not Resolved

Correction: General

The applicant is proposing a connection to the existing combined sewer infrastructure within Valley Street, please show the proposed connection on the design drawings. As the connection is greater than 8 inches, a manhole will be required.

Corrective Action: Update the utility plan to show the stormdrain connection.

Correction: General

The Applicant should show pavement repair limits within the City of Portland Right-of-Way and provide a detail. Additionally, note that St. John Street which will remain under moratorium until May 2019. Any impact within that street will be required to meet the current moratorium standards for repair until that time.

Corrective Action: Provide additional information for work within City streets.

Correction: General

The Stormwater Management Plan should include a stormwater inspection and maintenance plan developed in accordance with and in reference to MaineDEP Chapter 500 guidelines and Chapter 32 of the City of Portland Code of Ordinances. A stormwater agreement will be required for the project.

Corrective Action: Provide a stormwater inspection and maintenance plan and a stormwater agreement.

Correction: General

Sizing calculations have not been provided for the proposed Focal Point systems.

Corrective Action: Provide sizing calculations.

Correction: General

Locations of erosion and sediment control features should be shown in plan view.

Corrective Action: Provide erosion and sediment control on the site plan or grading and drainage plan.

Correction: General

The plans should note a location for snow storage. The snow storage location should be sited outside of existing and proposed drainage courses.

Corrective Action: Provide for snow storage or identify a snow management plan.

Correction: General

The Construction Management Plan narrative references a drawing showing the location of construction staging areas that was not provided.

Corrective Action: Provide Construction Management Plan figure.

Correction: General

The Applicant will be required to provide verification of utilities' ability to serve the proposed project.

Corrective Action: Provide verification of utility ability to serve.

Correction: General

The project will result in a decrease in impervious surface on the entire site. The Applicant should provide an evaluation of the amount of redeveloped, non-roof, impervious surface. Per the City's stormwater standards, if greater than 5,000 SF of redeveloped, non-roof impervious surface is created as part of the project, at least 50% of that area is required to be treated. The Applicant is proposing to provide treatment using focal point treatment systems, and likely will meet the standard using this treatment.

Corrective Action: Provide clarification of redeveloped, non-roof, impervious surface.

Correction: General



The project is not required to meet the flooding standard, as it is not increasing impervious surface. The stormwater report indicated that post-development flows will be increased in the 10-year and 25-year storms. No HydroCAD model has been provided (a model is in eplan, but it appears to be for another project). The report also references storm frequencies used for modeling that are not in accordance with the current MaineDEP Chapter 500 Guidance. The HydroCAD model should be updated and provided for review so that the City can verify that the increase in flow will not be an issue with the existing system.

Corrective Action: Provide HydroCAD model and verify that the City's system has the capacity to accept additional flow.

Correction: General

The project is located within a brick sidewalk district. Note that driveway aprons are required to match the sidewalk material.

Corrective Action: Provide required sidewalk and driveway apron materials.

<b>Fire</b>	Pool Fire
<b>Parking</b>	John Peverada
<b>Planning</b>	Jean Fraser
<b>Public Works Engineering</b>	Keith Gray
<b>Traffic - Third Party Reviewer</b>	Tom Errico
<b>Transportation/Planning</b>	Bruce Hyman
<b>Zoning</b>	Pool Zoning

## Conditions Required



Jean Fraser &lt;jf@portlandmaine.gov&gt;

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**Fwd: Dunkin Donuts - St. John Street - Final Streetscape/Site Plan Comments**

1 message

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Jean Fraser <jf@portlandmaine.gov>  
To: "Fraser, Jean" <jf@portlandmaine.gov>

Tue, Nov 27, 2018 at 2:55 PM

***Transportation Program Manager comments 11.27.18***

----- Forwarded message -----

From: **Bruce Hyman** <bhyman@portlandmaine.gov>  
Date: Tue, Nov 27, 2018 at 2:41 PM  
Subject: Re: Dunkin Donuts - St. John Street - Final Streetscape/Site Plan Comments  
To: Jean Fraser <jf@portlandmaine.gov>  
Cc: Keith Gray <kgray@portlandmaine.gov>, Jeremiah Bartlett <JBartlett@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>, Tom Errico <thomas.errico@tylin.com>

Good afternoon, Jean,

I have reviewed application materials and offer the following final streetscape, detail sheets & site plan comments for the project.

- The applicant shall provide a minimum 5' wide (parallel to the street) x 8' deep (perpendicular to the street) bus stop landing area to meet ADA requirements within the northerly edge of the bus easement area for the bus stop - this may involve adding one to two feet of depth along the back side of the new concrete sidewalk along this frontage. - I believe the sidewalk shown is 7'.
- The applicant shall ensure that there is a minimum of 5' of clear width of sidewalk at all locations with utility poles within all existing or new concrete sidewalk along its frontage.
- The driveways shall be constructed to have a maximum cross-slope of 2% for a minimum 5' of width across the pedestrian access route connecting the sidewalks. This is to be reflected on the driveway detail sheet (Detail Sheet 6).
- Per the city's sidewalk material policy, the two driveways are to be concrete to create a consistent pedestrian access route material along the applicant's frontage.
- The detail for the concrete sidewalk shall indicate a maximum 2% cross-slope (Detail Sheet 6). The detail for the brick sidewalk shall indicate a maximum 2% cross-slope (Detail Sheet 7).
- A more durable material than pavers is to be used for Detectable Warning Panels (Detail Sheet 6).
- The brick sidewalk to be constructed on Valley Street is to match the same width as the rest of the sidewalk (Site Plan).
- The location shown for the Bike Racks is too small (parked bikes will conflict with the on-site sidewalk) and the location also conflicts with the landscaping plan - there are three plants shown immediately adjacent to the bike racks. I also could not find information on the number of racks proposed for the site.

Please don't hesitate to contact me if you or the applicant have any questions related to the above items.

Best regards,

Bruce

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Bruce Hyman  
Transportation Program Manager  
Transportation Division

Department of Planning & Urban Development  
389 Congress Street  
Portland, Maine 04101

(207) 874-8717 phone

[bhyman@portlandmaine.gov](mailto:bhyman@portlandmaine.gov)

<http://www.portlandmaine.gov/1363/Transportation-Division>

*Yes! Transportation's Good Here ....*





Jean Fraser <jf@portlandmaine.gov>

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## DD St John Street Tree & Landscape

1 message

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**Jeff Tarling** <jst@portlandmaine.gov>  
To: Jean Fraser <jf@portlandmaine.gov>

Tue, Nov 20, 2018 at 3:27 PM

Hi Jean -

The revised landscape plan is improved and is acceptable with the following suggested conditions:

Plant sizes -

a) Increase the Canadian Hemlock from 3-4' to 4-5', - Note: due to the pending issue with Hemlock Woolly Adelgid (HWA) effecting Hemlock trees the project may consider options like Weeping Alaska Cedar or Serbian Spruce.

b) Increase the Lilac size from 1 gallon to 5 gallon (so you can see them when planted)

Jeff Tarling  
City Arborist - City of Portland Maine  
Parks, Recreation & Facilities Department  
Forestry & Horticulture  
[212 Canco Road](#)  
[Portland, ME. 04103](#)  
(207) 808-5446  
[jst@portlandmaine.gov](mailto:jst@portlandmaine.gov)



# PLANNING BOARD REPORT PORTLAND, MAINE

New Dunkin Donut restaurant and drive-through  
325 St John Street

Level III Site Plan, Traffic Movement Permit, and Conditional Use  
Project # PL000047-2018 (Site Plan ) and CU-000172-2018 (Conditional Use)

Applicant: Dunkin' Brands, Inc

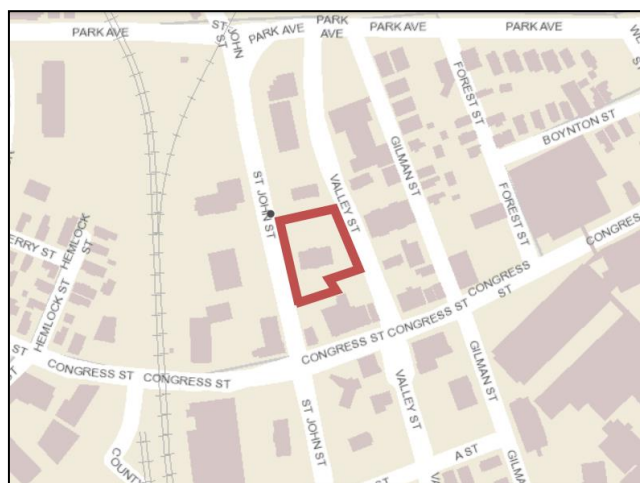
CBL: 065 C004001

Submitted to: Portland Planning Board Public Hearing Date: November 27 <sup>th</sup> , 2018	Prepared by: Jean Fraser, Planner Date: November 20 <sup>th</sup> , 2018
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## I. INTRODUCTION

Plymouth Engineering Inc, on behalf of Dunkin' Brands, Inc, has requested approval to the submitted Level III Site Plan, Traffic Movement Permit, and Conditional Use applications for a new Dunkin Donuts restaurant comprising a new 2,277 sq ft building with drive-through. The 30,239 sq ft site abuts the existing Dunkin donuts and is currently occupied by Langs restaurant and located in the B2 zone.

The project was considered at a Board Workshop on July 24<sup>th</sup>, 2018 and since then the applicant has been working to address the Workshop comments and to meet the TMP mitigation requirement for creation of a three lane configuration in St John Street.



The proposal is located on the site immediately south of the current Dunkin Donuts (with drive-through) on St John Street. The new location provides a larger site and allows for more stacking capacity, and the drive-through egress will be changed from Valley Street to St John Street. The proposal includes 24 parking spaces, two drive through lanes (one for mobile app pick up; no second ordering location), and associated lighting and landscaping.

This use requires a conditional use permit for the drive-through to be approved by the Planning Board and to meet the requirements of the standards for all Conditional Uses (§14-474), the B2 zone Conditional Use standards (§14-183 (a)6), , as well as the B2 Design Standards.

**Applicant:** Dunkin' Brands, Inc (Robert Mahoney)

**Engineer:** Plymouth Engineering Inc (Jon Whitten, PE)

**Traffic Engineer (TMP):** Maine Traffic Resources (Diane Morabito, PE, PTOE)

## II. REQUIRED REVIEWS

<i>Applicant's Proposal</i>	<i>Applicable Standards</i>
New structure of 2,277 sq ft	Level III Site Plan
Restaurant Drive-through in B2 zone	Conditional Use in the B2 zone (§14-183(a) 6)
Traffic Movement Permit (delegated from State)	State Regulations

## III. WAIVER REQUESTS (Note: Waiver request for # of curb cuts has been withdrawn)

<i>Applicant's Proposal</i>	<i>Applicable Standards</i>
<u>Parking aisle widths</u> : The applicant has requested a waiver to allow a wider drive aisle to accommodate both parking maneuvers and the stacking lane for the drive-through ( <u>Att. J</u> )	<i>Technical Manual Section 1.14</i> specifies that the parking aisle shall be 24 feet wide for perpendicular parking. The City Traffic Engineering Reviewer supports the waiver ( <u>Attachment 4</u> ).
<u>Location and spacing of Driveways</u> : The applicant has requested a waiver for the proposed driveway spacing, noting that on St John Street they are an improvement over existing conditions with only one separation substantially below 100 feet ( <u>Att. X2</u> ).	<i>Technical Manual Section 1.7.2.7</i> specifies the acceptable spacing between driveways as related to the speed limit of the street, with 100 feet separation a minimum. The City Traffic Engineering Reviewer supports the waiver ( <u>Att. 4</u> ).
<u>Sidewalk Materials</u> : The applicant has requested a waiver request to maintain the existing concrete sidewalk on St John Street ( <u>Attachments X1</u> ), due to the limited scale of disturbance proposed.	<i>Technical Manual Section and 1.8.2 Technical Manual Appendices 15.1</i> specifies that the sidewalk material should be brick for St John Street, and outlines waiver criteria for existing sidewalks. The existing sidewalk along the St John Street frontage is concrete in generally good condition and the proposals meet the waiver criteria. The City Engineer supports the waiver ( <u>Attachment 5</u> ).

## IV. PROJECT DATA

<i>SUBJECT</i>	<i>DATA</i>
<b>Existing Zoning</b>	B- 2
<b>Existing Use</b>	Restaurant
<b>Proposed Use</b>	Restaurant and associated drive-through (new building)
<b>Parcel Size</b>	30,239 sq ft
<b>Total Disturbed Area</b>	30,239 sq ft
<b>Impervious Surface Area</b>	
--Existing	25,595 sq ft
--Proposed	19,228 sq ft
--Net Change	(6,367 sq ft)
<b>Building Footprint</b>	
--Existing	3,406 sq ft
--Proposed	2,277 sq ft
--Net Change	(1,129 sq ft)
<b>Building Floor Area</b>	
--Existing	3,406 sq ft
--Proposed	2,277 sq ft
--Net Change	(1,129 sq ft)
<b>Parking Spaces</b>	
-Existing	50
-Proposed	25 (16 required by zoning)
<b># handicapped</b>	2
<b>Bicycle parking Spaces</b>	
-Existing	0
-Proposed	Not known (3 required)
<b>Estimated cost of the project</b>	tbc

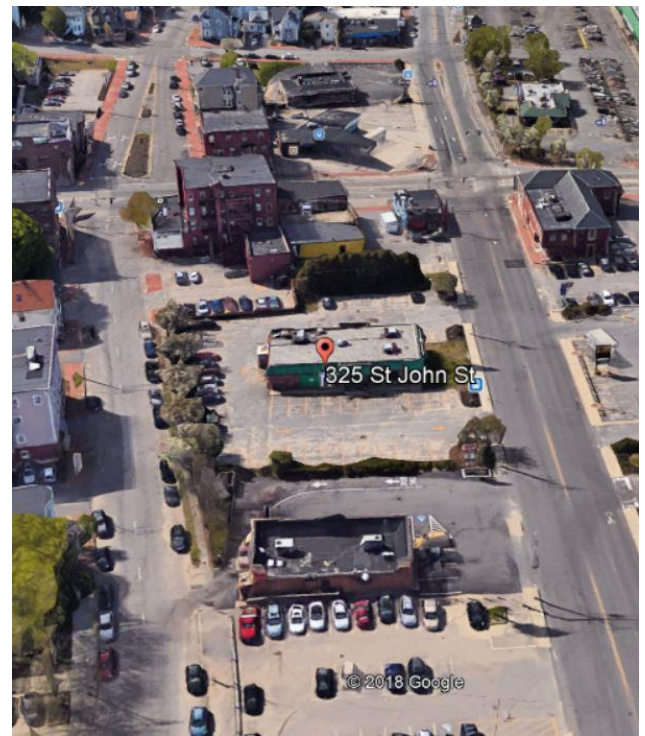
## V. EXISTING CONDITIONS

The development site is immediately south of the existing Dunkin Donuts, located opposite Amatos and MacDonaldis on St John Street. The uses near the proposed Dunkin Donuts to the south, north and west are commercial. The Inn at St John is located immediately to the south and overlooks the site.

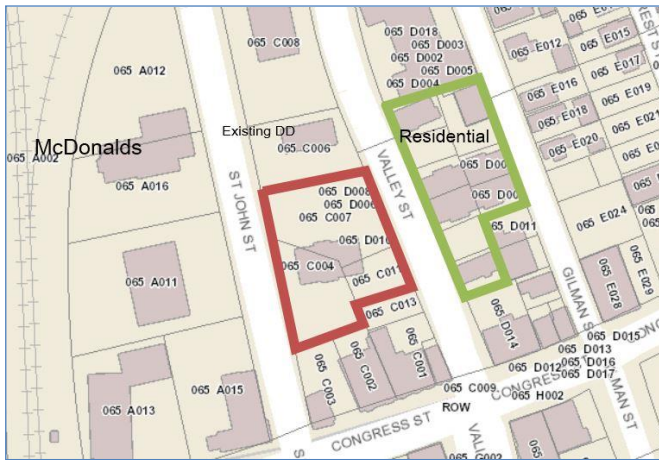
Looking north on St John Street (site on right, green roof):



Birdseye view looking south:



To the east the site abuts the R7 overlay zone as shown below; the area encircled in green includes approximately 30 dwelling units, including some managed by the nearby Shalom House.



Looking north on Valley Street:

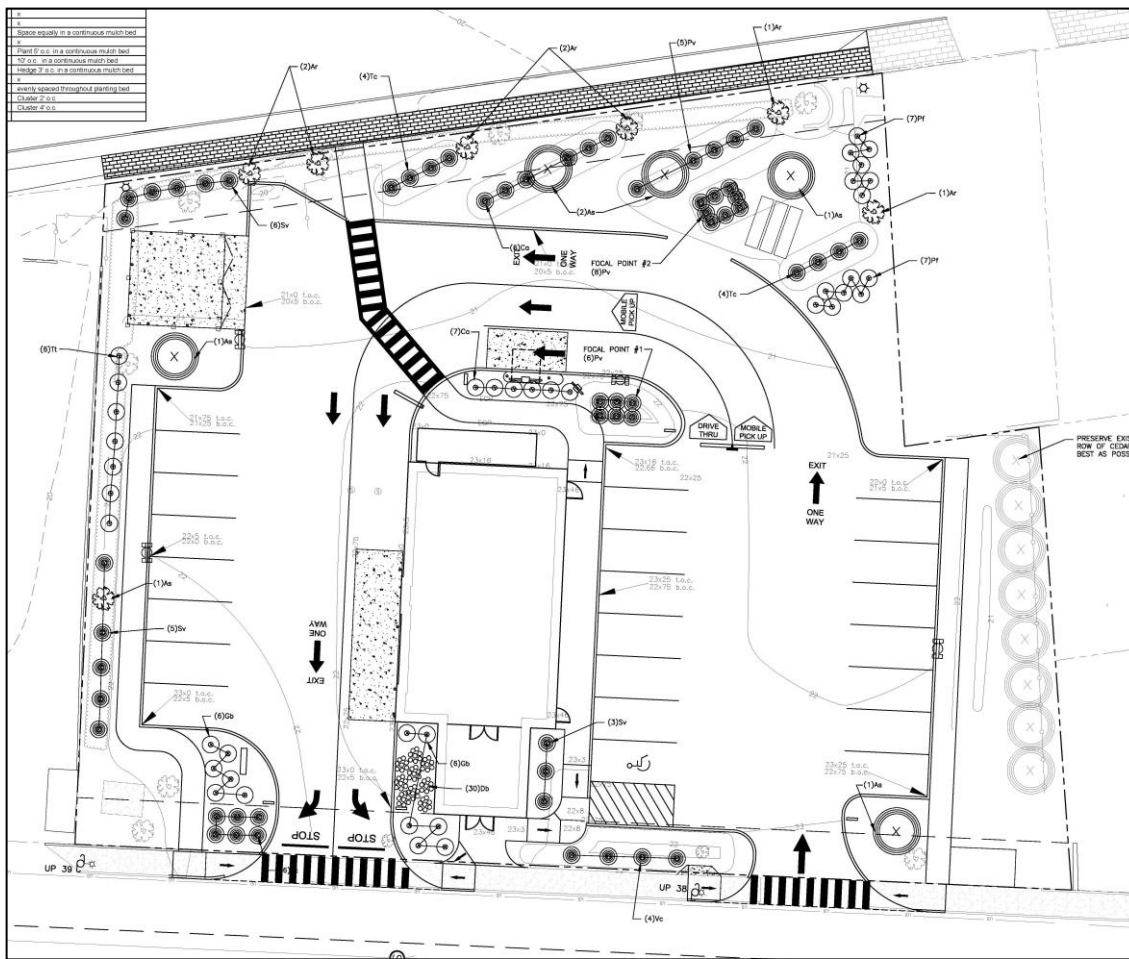


## VI. PROPOSED DEVELOPMENT

The proposals have been revised to address comments, as outlined in the updated Project Summary in [Attachment Y](#) and shown in the Plan Set. The site layout now includes the following:

- New building of 2,277 sq ft footprint set back 10 feet from ROW in accordance with B2 Design Standards
- Design of building is Dunkin' Donut corporate design
- Main 2-door entrance faces St John Street as part of the extended glass-enclosed front eating area
- One other entrance is located on south side accessible to parking spaces
- Two curb cuts are proposed from St John Street, both with marked cross-walks to connect sidewalks
- Parking for 24 vehicles, all accessed via St John Street only
- Two lanes drive through, both exiting to St John Street
- New planting along both street frontages and side boundaries
- Berms and planting along the Valley Street side to buffer headlights while also maintaining CPTED overlooking (see [P4 Landscape Plan](#) below)
- Stormwater management incorporating focal points

## Plan 4 Landscape:



## VII. PLANNING BOARD WORKSHOP SUMMARY - July 24, 2018

The board's comments related to the original proposal that did not include any specified pedestrian walkway from Valley Street and included a third vehicle access from Valley Street. The main concerns raised by the Board were:

- Considered more needed to be done to ensure pedestrian access and safety;
- Concerned that the third access from Valley Street into the site would be difficult to enforce as being for service vehicles only;
- Requested increased landscaping, including to the dumpster enclosure and along boundaries;
- Confirmed that the sidewalk along Valley Street should be brick, which is the required material for that street; and
- Agreed with the public comment that a mixed use development without a drive-through would be preferable, but note that the project meets the current zoning requirements.

## VIII. PUBLIC COMMENTS

A total of 95 notices of this Hearing were sent to neighbors and interested parties within 500 feet, and the legal notice appeared in the November 16<sup>th</sup> and 17<sup>th</sup>, 2018 editions of the *Portland Press-Herald*. A Neighborhood meeting was held on July 6, 2018, and attended by two neighbors (see notes in Att. P). A further Neighborhood meeting focused on the TMP mitigation requirements in St John Street was held November 15, 2018 and attended by a neighbor and representatives of two neighborhood associations (see notes in Attachment Z1).

One member of the public spoke at the Planning Board Workshop and noted that the proposal for a drive-through was disappointing as it does not contribute to the creation of a walkable city and encourages more cars. The Planning Office has not received and written public comments as of the completion of this report.



## IX. STAFF REVIEW

### A. RIGHT, TITLE AND INTEREST

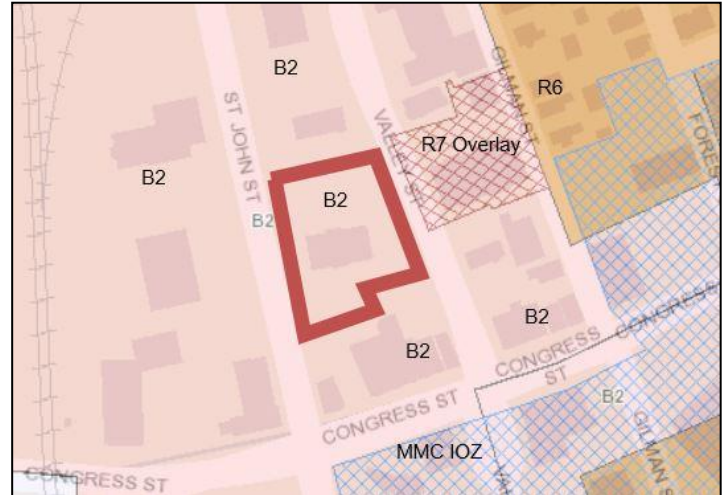
The applicant has submitted a signed agreement to lease the site to be developed (Attachment C). The Agreement appears to be with a different entity than the applicant, and a letter has been submitted that confirms that the leasing party is the legally connected to the applicant.

### B. ZONING ASSESSMENT

The proposal is a conditional use in the B2 zone and meets all of the B2 dimensional requirements, including the requirement that the front setback shall be a maximum of 10 feet. It is near a group of apartments in the R7 overlay zone on Valley Street and near the MMC Institutional Overlay Zone and associated new hospital expansion (gray hatch on zone plan to right).

The current zoning standards came into force since the development of most of the sites along this stretch of St John Street, and the B2 zone now includes the following purpose statement, with associated Design Standards and dimensional requirements:

*The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.*



The proposals have been revised to add a pedestrian entrance and walkway from Valley Street and the project includes bicycle racks. The parking requirement under zoning is one space per 150 sq ft, which would result in a requirement for 16 spaces. The applicant has provided 24 spaces and this is supported by the Traffic Engineering reviewer due to the nature of the use (Attachment 4).

The B2 Zoning states that the restaurant must close at 11pm unless authorized by the City Council (interpreted to be through the business licensing process). The City Council has granted a business license that allows 24 hour service (Attachment 7).

### C. CONDITIONAL USE REVIEW

The applicant has submitted an analysis of how the proposal meets the B2 Conditional Use Standards (14-183 and 14-474) in Attachment M (Conditional Use Application).

The following B2 Conditional Use standards are the basis of the review (14-183 (a) 6):

*6. Drive-throughs: Notwithstanding section 14-474(a) of this article or any other provision of this code, the Planning Board shall be substituted for the Board of Appeals as the reviewing authority and shall apply the following standards in addition to the provisions of section 14-474:*

- a. Location of Drive-throughs: Features, such as windows, vacuum cleaners and menu/order boards, stacking lanes, must be placed, where practicable, to the side and rear of the principal building except where such placement will be detrimental to an adjacent residential zone or use, and shall be located no nearer than forty (40) feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.*

Staff comment: The Site Plan (Plan 1) notation and dimensions confirm that the drive-through features meet the conditional use standards. The proposal shows a 15 car queue for the drive-through, but it is understood the typical maximum is 13 cars.

*b. Noise: Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.*

Staff comment: The applicant (Attachment M) has indicated that the ordering microphone can be set at a particular sound level, and this conditional use requirement is included in a suggested condition of approval.

*c. Lighting: Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.*

Staff comment: The landscaping proposals are described below and in Attachment Y and are anticipated to be effective, in conjunction with the existing trees along Valley Street, in deflecting vehicular headlights away from the residential properties on Valley Street. The final site lighting is subject of a suggested condition of approval requiring further submissions for review and approval.

*d. Screening and Enclosure: Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and*

Staff comment: In discussions with staff the applicant concluded that solid fencing would potentially create an area alongside the sidewalk and the drive-through queuing area that would be hidden from overlooking and potentially attract crime. The landscape design is described by the applicant in Attachment Y and comprises raised planted berms at an angle that will mitigate sound and light impacts from the drive-through while also allowing visual connection between the site activity and the public sidewalk and street.

*e. Pedestrian access: Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.*

Staff comment: The applicant has added a pedestrian walkway from Valley Street at the north end of the frontage. This location was chosen because of the need to avoid an “opening” at the southern end that would allow headlights to shine through the site towards the residential properties on Valley Street. Wherever the pedestrian connection to Valley Street is located it would require pedestrians to cross the drive-through lanes.

Staff consider the proposed location acceptable subject to adding measures, such as raised surfaces, that slow down or stop vehicles proceeding through the outer two lanes. The Traffic Engineering Reviewer has commented (Attachment 4):

*I do have concerns regarding pedestrian safety entering the site from Valley Street via the proposed crosswalk and conflicts with circulating vehicles. The applicant shall propose strategies for enhancing pedestrian safety at this crosswalk for review and approval. These strategies may consist of signing, pavement markings, or creating a raised crosswalk.*

A suggested condition requires submission of a detailed plan for staff review and approval.

*f. Hours of Operation: The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.*

Staff comment: B2 Zoning states that the restaurant must close at 11pm unless authorized by the City Council (interpreted to be through the business licensing process). The City Council has granted a business license that allows 24 hour service.

The following standards in 14-474 apply to all conditional uses:

1. *Standards. The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that the proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. The Board shall find that this standard is satisfied if it finds that:*

*a. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone; and*

Staff comment: The applicant is addressing this through the TMP review, and the associated mitigation would address any impacts.

*b. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and*

Staff comment: The proposal is not expected to create harmful conditions, as the revised plans have addressed the issue of headlight glare satisfactorily.

*c. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.*

Staff comment: Subject to the suggested conditions of approval (that aim to create a positive environment along Valley Street), the proposals meet this standard.

#### **D. TRAFFIC MOVEMENT PERMIT (TMP)**

The applicant submitted a full TMP permit application (Attachment W) and the Scoping meeting was held on 7.16.18 which identified the preferred mitigation for the additional drive-through trip generation as being the creation of a central turning lane in St John Street. Since then there have been two further staff meetings and the applicant has developed a striping plan to create a three lane configuration in St John Street that provides for a central turning lane and bicycle lanes (see Plan 15 TMP Re-Striping Plan). The re-striping plan was discussed with the MDOT and they support the proposals subject to minor revisions.

It should be noted that the proposed Dunkin' Donut is being evaluated as a new proposal with new trip generation, as the former Dunkin' Donut site next door could be reused as a restaurant and drive-through by the new owner.

A special Neighborhood Meeting was held on November 15, 2018 at staff request, to ensure that neighboring businesses and neighborhoods were advised of the proposed TMP mitigation that would change the lane configuration in St John Street. The meeting was attended by a DPW representative and Site Plan review engineers; the notes of this meeting are included at Attachment Z1. Although the applicant went to considerable lengths to ensure that the local business managers received detailed invitations to the meeting, none of the local businesses were represented at the meeting.

Staff consider the three-lane modification to be an essential mitigation in relation to the addition of the drive-through and the associated trip generation. The applicant's Traffic Engineer has submitted a note summarizing the safety benefits of the three lane modification (Attachment Z2) and quoted below:

The submitted note of "Expected Benefits of Saint John Street "Road Diet"" (Att. Z2) includes the following:

- *By reducing to single travel lanes in each direction lane change/sideswipe type collisions are eliminated.*
- *Rear-end collisions due to left-turns are greatly reduced or eliminated since left-turning traffic can get out of the through traffic stream and have a safe place to wait in the center turn lane for a gap to turn left.*
- *Angle accidents as vehicles enter or exit drives are reduced. Many of these collisions now occur when drivers are waved through one lane to collide with an approaching vehicle in the other lane. These type of accidents also often happen as sight lines to a vehicle in the inner lane is obstructed by a vehicle in the outer lane. Angle crashes for these reasons are eliminated with the proposed 3-lane section.*
- *There were 28 crashes along this stretch of Saint John Street in the 3-year study period. My analysis indicates that 15 of them would be eliminated for the above three reasons. Federal Highway studies cite typical crash reduction rates of up to 47 percent when reducing a roadway from 4 to 3 lanes.*
- *Vehicles taking a left to enter a drive only have to cross one lane of traffic so it is both easier and safer.*
- *Similarly vehicles exiting a drive as a left-turn will only have to cross one lane of traffic and can also sometimes use the center two-way left turn lane to pause to enter the other traffic stream.*
- *The speed differential is decreased since all through traffic is in a single travel lane, also enhancing safety along the corridor.*
- *FHWA research indicates that roadways with Average Daily Traffic volumes less than 20,000 are good candidates for Road Diets. This section of St. John Street only has an ADT of 14,000 so there are no capacity concerns with the proposed lane reductions.*
- *The additional roadway width from the road diet is used to create bike lanes increasing safety for bicyclists and contributing to a "Complete Street".*

Tom Errico, the consultant Traffic Engineering Reviewer, has provided the following update (Att. 4):

*The project meets the requirement for a Traffic Movement Permit (TMP). The applicant has submitted a TMP Application, attended a Scoping Meeting, and submitted a Traffic Study (Section 7). The key item identified for review and consideration was changing the configuration of St. John Street from a four-lane roadway to a three-lane section with a center turn lane and bicycle lanes. This change is intended to mitigate crash patterns (St. John Street is a High Crash Location) associated with turning movements entering and exiting driveways. Based upon concept improvements plans prepared by the applicant the following is required as a condition of approval for the TMP:*

- *The applicant shall submit draft final construction/design plans and specifications for review and approval.*
- *The applicant shall be responsible for implementation/construction of all aspects of the improvement plan.*
- *The implementation of the improvement plan shall be completed prior to the certificate of occupancy for the project.*
- *The applicant shall submit a construction management plan for review and approval.*

These comments have been incorporated into a suggested condition of approval.

#### **E. DEVELOPMENT REVIEW (SITE PLAN STANDARDS in Section 14-526)**

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's site plan ordinance and applicable regulations, with comments provided as follows:

##### ***i. Transportation Standards***

Impact on Surrounding Street system- this standard will be addressed by the TMP review.

### Access and Circulation/Loading and Servicing

The original proposals included three curb cuts (two on St John Street and one on Valley Street), and a waiver was requested from the Technical Standards (which limit the number of curb cuts to two). The layout has been revised to omit the third curb cut on Valley Street, so that there is a one-way in and a one-way out on St John Street. The width of the curb-cuts is slightly wider than necessary for one way working to accommodate the tractor trailer service vehicles.

The project requires waivers for the parking aisle width and for driveway spacing related to abutting driveways. Staff support both of these waivers (Attachment 4).

Sidewalks: The applicant had originally requested waivers from the provision of sidewalks meeting the City's brick sidewalk and apron material policy for both Valley Street and St John Street. The final proposals include a five foot wide brick sidewalk in Valley Street and a waiver to retain the existing concrete sidewalk on the St John Street frontage.

Staff note that the sidewalks on this section of St John Street, including along the frontage of the site, are concrete and in generally good condition. The proposals do not disturb the existing sidewalk except to narrow the existing curb cuts. Staff support the waiver (see Attachment 5) as the circumstances meet the waiver criteria which are noted below:

- a. A substantial portion of sidewalks adjacent to and in the area surround the portion to be constructed or disturbed are of a material other than that designated on the Sidewalk Material map, and*
- b. Existing sidewalks on the affected street frontage, other than those in the area to be disturbed, are in sound conditions, and*
- c. Less than 50% of the existing sidewalk on the affected block is to be disturbed.*

The design of the sidewalks does not fully meet the City's technical standards and the Transportation Program Manager has noted several aspects that need to be clarified on the Site Plan and Detail sheets - see comments in Attachment 6.

Public Transit Access: The METRO Route 1 operates a northbound service with a stop along the frontage of the project site. The proposals show the bus stop relocated to the south and provided with an expanded area (easement from the site) near the bus stop. The scale of the development does not trigger the requirement for a bus shelter or other facility, but the proposed bus stop landing area requires minor modifications to meet ADA requirements, as per the comments of the Transportation Program Manager (Attachment 6).

Parking: The site layout includes parking for 24 vehicles, which is 8 above the zoning requirement of 16. The Traffic Engineer reviewer has determined that this is appropriate in view of the high peak customer levels (Attachment 4).

Bicycle parking spaces are shown on the site plan and 3 spaces would be required. A bike rack is indicated on the Site Plan (Plan 1) and the Transportation Program Manager notes that the surrounding area is too small and that the location conflicts with the Landscaping Plan (Plan 4). A suggested condition of approval is included to require the location, number and design of bike racks to be revised for staff review and approval.

TDM: The scale of the proposal does not trigger the requirement for a TDM Plan.

Construction Management Plan: the applicant submitted a narrative and plan (Attachment G and Plan 12) which is not considered acceptable due to the impacts on pedestrian safety. A suggested condition of approval is included in the proposed Motion that refers to the Traffic Engineering comments on this concern (Attachment 4).

## **ii. Environmental Quality Standards**

### Landscape Preservation

The proposals have been revised to omit the third curb cut from Valley Street, and therefore all 5 of the existing trees along the Valley Street frontage are preserved.

### Buffers and Parking Lot Landscaping

The Landscape Plan is extracted above (under "Proposals") and indicates new planting, which has been revised substantially since the Planning Board Workshop to address the City Arborist comments (Attachment 3) and to achieve the following objectives:

- Screen the headlights from cars entering the site from St John Street so that they do not impact the housing on the other side of Valley Street; and
- Address the CPTED standards that encourage overlooking to minimize the potential for crime.

It is noted that although a new tree has been planted near the dumpster enclosure, the enclosure remains chain link without any screen planting. A suggested condition of approval requires that either the enclosure is upgraded to wood materials, or screened with planting, with the final proposals subject to final staff review and approval.

### Street Trees

The City Arborist comments (Attachment 3) included recommendations for new street trees along St John Street and the final proposals address these comments.

### Water quality; Stormwater Management; Erosion Control:

The project has been reviewed by Lauren Swett, consultant Peer Engineering Reviewer, who has provided detailed comments Attachment 1. These comments requested further information to confirm the areas that need to be treated and whether the focal points are adequate. The comments also request that the Hydrocad model be updated and submitted so that the City can evaluate whether the increased stormwater flows can be accommodated in the City's combined system.

The applicant has satisfactorily addressed these comments and the only other Peer Engineer comments relate to utilities (see below).

## **iii. Public Infrastructure and Community Safety Standards**

### Public Safety (CPTED) and Fire Prevention

The applicant has addressed the previous staff concerns and suggestions regarding the Valley Street frontage. In particular, staff recommended that the layout create a positive environment along the frontage and include a welcoming pedestrian entrance, adequate lighting, and screening of the drive-through that does not create areas that attract crime. The final proposals generally meet those objectives, although the detailing of the pedestrian walkway and its safety and lighting have not been finalized and are the subject of conditions.

The Fire Department have not identified any concerns.

Public Utilities - The Peer Engineer final comments in Attachment 1 note that the utility capacity letters need to address several specific issues regarding this site.

## **iv. Site Design Standards (as applicable)**

Exterior Lighting: The applicant has not submitted the final site and building lighting details and associated photometric plan (although they are indicated on the site plan and elevations). These proposals need to address the safety requirements of the rear pedestrian walkway and also ensure adequate lighting for the entrance on St John Street, while also ensuring there is no impact on the residential areas on Valley Street. A suggested condition of approval requires these final details for review and approval.

Noise & Vibration (Mechanical Equipment) - It is understood that mechanical equipment will be installed on the roof. The location of these elements is important as the site is viewed from Valley Street as well as St John Street and the location and screening of the equipment needs to be considered in the context of all elevations. A suggested condition of approval requires that these details be submitted for final review and approval.

B2 Design Standards: The East elevation of the new building (see Plan 9) is a “blank” wall with a walk in cooler located along it. This elevation “faces” Valley Street and is the primary (drive-through) customer environment. Staff suggest that the applicant should enhance the elevation to give it more visual interest and relating it better to the rest of the building without adding signage. A suggested condition of approval requires that this elevation be revised to add visual interest.



## X. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed Dunkin Donuts restaurant and drive-through at 325 St John Street. The applicant has modified the proposal significantly to address the TMP, site plan and conditional use standards.

## XI. PROPOSED MOTIONS

### A. 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 November 27, 2018 for application # PL000047-2018 (Site Plan ) (new Dunkin Donut restaurant at 325 St John Street) relevant to Portland’s Technical and Design Standards, the B2 Design Guidelines and Standards and other regulations, and the testimony presented at the Planning Board hearing:

1. Parking aisle Widths: The Planning Board [**finds/does not find**], based upon the consulting Traffic Engineer’s review (Attachment 4), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.14 *Parking Lot and Parking Space Design*. The Planning Board [**waives/does not waive**] the *Technical Manual* standard (Technical Manual Section 1.14) to allow the parking lot aisle widths as shown on the site plan 11.16.2018, as supported by the Traffic Engineering reviewer.
2. Driveway Separation  
The Planning Board [**finds/does not find**], based upon the consulting Traffic Engineer’s review (Attachment 4), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.7.1.7 *Location and spacing of driveways*. The Planning Board [**waives/does not waive**] Technical Design Standard Section 1.7.1.7 *Location and spacing of driveways* to allow the proposed driveways (each one-way) to be located as shown on the site plan 11.16.2018as supported by the Traffic Engineering reviewer.
3. Sidewalk materials  
The Planning Board [**finds/does not find**], based upon the City Engineer’s review (Attachment 5), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section 1.8.2 *Sidewalk Construction and Materials* in respect of the sidewalk along St John Street. The Planning Board [**waives/does not waive**] the *Technical Manual* standard (Technical Manual Section 1.8.2) to allow concrete material for the sidewalk along the site frontage on St John Street, as the retention of the existing concrete sidewalk meets the waiver criteria set out in the Technical Manual *Appendices 15.1*.

## **B. CONDITIONAL USE**

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 November 27, 2018 for application CU-000172-2018 (Conditional Use) (new Dunkin Donut restaurant at 325 St John Street), relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board [**finds/does not find**] that the proposed conditional use for a drive-through associated with the new Dunkin Donuts restaurant at 325 St John Street in the B2 zone [**does / does not**] meet the standards of § 14-474 and the standards of §14-183 for the B2 zone.

### Prior to Applying for a Building Permit

1. That the applicant shall submit a revised site plan to incorporate strategies for enhancing pedestrian safety at the crosswalk from Valley Street into the site/across the drive through lanes, for review and approval by the Planning Authority. These strategies may consist of signing, pavement markings, or creating a raised crosswalk.

### Prior to the Issuance of a Certificate of Occupancy

2. That any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater.

## **C. TRAFFIC MOVEMENT PERMIT**

Based upon the City of Portland's Delegated Review Authority, the Planning Board [**approves/does not approve**] the Traffic Movement Permit application, as submitted, subject to the following conditions:

1. That the applicant shall modify the configuration of St. John Street from a four-lane roadway to a three-lane section with a center turn lane and bicycle lanes. This change is intended to mitigate crash patterns (St. John Street is a High Crash Location) associated with turning movements entering and exiting driveways. The applicant shall be responsible for implementation/construction of all aspects of the improvement plan.

### Prior to Applying for a Building Permit

2. That the applicant shall finalize the submitted concept improvement plan (for the modifications outlined in i above) and submit final construction/design plans, specifications and construction management plan for review and approval by the Planning Authority.

### Prior to the Issuance of a Certificate of Occupancy

3. That the implementation of the approved improvement plan, for the required modifications in St John Street, shall be completed prior to the issuance of a certificate of occupancy for the project.

## **D. 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 the public hearing on November 27, 2018 for application # PL000047-2018 (Site Plan ) (new Dunkin Donut restaurant at 325 St John Street) 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, subject to the following conditions of approval:



#### Prior to Applying for a Building Permit

1. That the applicant shall revise the building design to clarify the following details for review and approval by the Planning Authority:
  - a. The treatment of the rear elevation (facing Valley Street) to integrate the walk-in cooler and add visual interest to this part of the building which faces Valley Street;
  - b. The HVAC/Mechanical proposals to show that they meet site plan standards; and
  - c. The visible transmittance of the windows along the St John Street frontage, as they are required to be transparent (with a visible transmittance (VT) of .7 or greater).
2. That the applicant shall submit revised civil plans to address the utility, bicycle parking and ROW comments of the Peer Engineer and the Transportation Program Manager, both dated 11.20.2018, for review and approval by the Planning Authority.
3. That the applicant shall submit a revised Landscape Plan, for review and approval by the City Arborist and the Planning Authority, to improve the appearance of the dumpster enclosure either through upgraded materials or landscape screening.
4. That the applicant shall submit, for review and approval by the Planning Authority, a revised lighting plan (both building mounted and site lighting) and associated photometric plan, to meet the Technical Standards, including the provision of adequate lighting levels in the vicinity of the St John Street building entrance and along the pedestrian walkway from Valley Street.

#### Prior to Issuance of a Building Permit

5. That the applicant shall submit a copy of the ability to serve (water supply and wastewater) letters, and address the Peer Engineer comments of 11.20.2018.
6. That the applicant shall submit a detailed construction management plan (CMP) for work that will impact both St. John Street and Valley Street, for review and approval by the Planning Authority; the CMP should avoid closure of the St John Street sidewalk and address the comments of the Traffic Engineering Reviewer dated November 16, 2018.
7. That the final stormwater maintenance agreement shall be submitted for review and approval by the Planning Authority and then recorded, with a copy to the Planning Authority and the Department of Public Works.
8. That the applicant shall submit the easement or other legal documentation for public access over the bus landing area where it is not in the ROW.

#### Prior to the Issuance of a Certificate of Occupancy

9. That separate permits are also required for all new signs, including those on the building, and for HVAC systems, which require submission of dBA levels to confirm compliance with the maximum sound limits of the ordinance.

(attachments next page)

## ATTACHMENTS:

### Report Attachments

1. Peer Engineer Review final comments
2. Design Review comments
3. City Arborist comments
4. Traffic Engineer Traffic Final comments
5. DPW Comments
6. Transportation Program manager comments
7. MDOT comment
8. City Council Business License

Public Comments (none at time Report was completed)

### Applicants Submittal

- A. Level III Application
- B. PROJECT SUMMARY
- C. Right, Title and Interest documents
- D. Stormwater Report (Revised July)
- E. Certificate of Good Standing
- F. Soils Map
- G. CMP Narrative
- H. Level-III-Site-Plan Checklist
- I. Zoning-Analysis-Table
- J. Aisle Width Explanation
- K. Pre-Devel HydroCAD
- L. Post-Devel HydroCAD
- M. Conditional Use Application
- N. LED Pole Light Spec
- O. Wall Light Spec
- P. Neighborhood Meet Certification
- Q. Chapter 500 Redevelopment
- R. Focal Point 1 Wrksht
- S. Focal Point 2 Wrksht
- T. Housekeeping Plan
- U. Maintenance Plan
- V. stormwater maintenance agreement
- W. Traffic Movement Permit Application
- X1. Waiver - St. John St. Brick Sidewalk Waiver
- X2. Waiver - Driveway Spacing Waiver
- Y. Updated Project Summary
- Z1. TMP Neighborhood Meeting 11.15.18 info (Z2 to arrive mon)
- Z2. Summary of Expected Safety Benefits St John 3-lane road diet

### Plans

- PLAN 1 SITE PLAN
- PLAN 2 GRADING DRAINAGE PLAN
- PLAN 3 UTILITY PLAN
- PLAN 4 LANDSCAPE PLAN
- PLAN 5 EROSION CONTROL
- PLAN 6 DETAILS
- PLAN 7 DETAILS
- PLAN 8 SURVEY PLAN
- PLAN 9 ELEVATION
- PLAN 10 FLOOR PLAN
- PLAN 11 Lighting Plan
- PLAN 12 CONSTRUCTION MANAGE PLAN
- PLAN 13 CULTEC DETAILS
- PLAN 14 FOCAL POINT DETAILS
- PLAN 15 TMP RE-STRIPING PLAN
- PLAN 16 ARCH DETAILS A02
- PLAN 17 ARCH DETAILS A03

**CHAPTER 32 STORM WATER**

**Art. I. Prohibited Discharges, §§ 32-1--32-15**

**Art. II. Prohibited Discharges, §§ 32-16--32-35**

**Art. III. Post-Construction Stormwater Management, §§32-36-32-40**

**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.**

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

## **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 the 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 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, 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 manager, 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)



Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP

Director, Planning &amp; Urban Development Department

## Performance Guarantee, Inspection Fee, and Infrastructure Financial Contribution Packet

### A. Site Plan/Subdivision Performance Guarantees Required

Portland's Land Use Code requires all developers with approved site plan and/or subdivision applications to submit a performance guarantee to the City prior to the start of any construction or site improvements. The performance guarantee represents 100% of the total cost of site improvements, as determined by the City. The code further requires developers to pay an inspection fee of 2% of the performance guarantee amount to the City for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications. (Portland's Land Use Code, Sections 14-501 and 14-530)

### B. Cost Estimate Form and Inspection Fee

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. Please submit an itemized cost estimate form to determine the detailed costs of both public and private site improvements to the Planning Division for review and approval. The cost estimate form is included as [Attachment 1](#). The approved amount on the Cost Estimate form is the amount to be covered by the performance guarantee and is the basis for calculating the 2% inspection fee.

### C. Acceptable Types of Performance Guarantees

The accepted forms of a performance guarantee, covering the amount approved on the Cost Estimate form, must be one of the following options consistent with the attached templates, with **NO** exceptions:

1. A letter of credit from a bank/credit union (Attachment 2)
2. A deposit into a bank-held escrow account (Attachment 3)
3. A deposit into a City-held escrow account (Attachment 4)

**NOTE: No land use application of any kind shall be processed, reviewed or issued, no signed subdivision plat shall be released or recorded, and no building permit of any kind shall be issued unless all fees have been paid and every aspect of the proposed development is in compliance with City Codes as determined by the Development Review Coordinator in the Planning Division.**

The developer is eligible to receive up to three reductions from the performance guarantee in a calendar year equal to the estimated cost of the completed improvements. In no case, however, shall any performance guarantee be reduced 1) in any line item where improvements remain to be completed; or 2) to a value which is less than the estimated cost of completing all remaining required improvements; or 3) to a value less than 10% of the Performance Guarantee.

At the conclusion of the project, the City will release 90% of the performance guarantee after the Development Review Coordinator determines that site improvements have been satisfactorily completed at the time of the final inspection. The City will then retain a 10% defect guarantee to cover the workmanship and durability of materials used in construction. The defect guarantee will be released one (1) year from date of acceptance, subject to the Development Review Coordinator inspecting the site and finding it in compliance with the approved site plan.

#### **D. Housing Replacement Performance Guarantees**

For those projects that are subject to Portland's Housing Preservation and Replacement Ordinance (Section 24-483) and have an approved plan, then a performance guarantee is required for housing replacement. An owner or developer must post a performance guarantee in the form of a letter of credit in the amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Fund, if the applicant had chosen that option. The guarantee shall be valid for no more than three years, after which the full amount shall be provided to the City's Housing Trust Fund, if replacement units meeting the code do not have certificates of occupancy. The guarantee can be released upon the issuance of a certificate of occupancy for the replacement units. A suggested template for a Housing Replacement Performance Guarantee is included as Attachment 5.

#### **E. Infrastructure Accounts**

Contributions to infrastructure accounts may be required as part of the conditions of site plan approval. The contributions must be submitted prior to the issuance of any permits, unless stated otherwise in the approval. The form for submitted required contributions is included as Attachment 6.

#### **F. Administrative Process for Submitting Performance Guarantee**

- **Step 1 - Cost Estimate**  
Submit completed cost estimate form to Planning Division for review and approval. Once approved, use this total amount as the performance guarantee amount in Step 2.
- **Step 2 - Performance Guarantee**  
Complete a draft of 1 of the 3 attached performance guarantee templates, inputting project specific information into blank and bracketed areas, and submit to the Planning Division for final approval. Once staff approved the draft, the applicant shall submit the official signed original performance guarantee document, which for option 1) or 2) must be on Bank/Credit Union letterhead with original signatures.
- **Step 3 - Submit Performance Guarantee, Inspection Fee, and Infrastructure Contributions**  
Submit the final original Performance Guarantee, the required inspection fee, and any infrastructure contributions to the Planning Division. The Planning Division will confirm that the final documents are accurate and acceptable.
- **Step 4 - Release of Recording Plat and Permits**  
Only after the performance guarantee is issued, fees paid, and all other conditions of site plan approval and compliance are met, will the recording plat be released for recording at the Cumberland County Registry of Deeds and/or City permits issued.

**Contact:** Please email the cost estimate form to [jdealaman@portlandmaine.gov](mailto:jdealaman@portlandmaine.gov)

After the cost estimate is approved, all subsequent paperwork can be submitted by mail to 389 Congress Street, 4<sup>th</sup> Floor, Portland, ME 04101, Attn: James Dealaman.

Please call 207-874-8721 with any questions.

#### 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 Escrow Form with the City of Portland
5. Housing Replacement Performance Guarantee Form
6. Infrastructure Financial Contribution Form with the City of Portland





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 the quantities of plant material and unit costs)	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____

**INSPECTION FEE (to be filled out by the City)**

	<b>PUBLIC</b>	<b>PRIVATE</b>	<b>TOTAL</b>
A: 2.0% of totals:	_____	_____	_____
<u>or</u>			
B: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
	(name)	(name)	

**TEMPLATE – PERFORMANCE GUARANTEE LETTER OF CREDIT**

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 Applicant]  
[Insert: Address of Project, Portland, Maine]  
[Insert: Application ID #]

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Applicant] (hereinafter referred to as “Applicant”), 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 the City of Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65.

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 Applicant has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Applicant 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 Applicant has failed to notify the City for inspections.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City 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 City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the Bank, by written certification, to reduce the available amount of the escrowed money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>. It is a condition of this Letter of Credit that the expiration date 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 Brendan O’Connell, 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, 530 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 Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant 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

TEMPLATE –ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
ESCROW ACCOUNT WITH FINANCIAL INSTITUTION  
[ACCOUNT NUMBER]

[Date]

Jeff Levine  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: [Insert: Name of Applicant]  
[Insert: Address of Project, Portland, Maine]  
[Insert: Application ID #]

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “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 the Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by [Insert: Applicant].

[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 Applicant has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Applicant 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 Applicant has failed to notify the City for inspections.

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City 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 City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the [Bank], by written certification, to reduce the available amount of the escrowed

money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Escrow Account will automatically expire on **[Insert date one year from the date of this Escrow Account]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>. It is a condition of this Escrow Account that the expiration date 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 Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this 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 Escrow Account 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, 530 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 Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant 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: \_\_\_\_\_

TEMPLATE - PERFORMANCE GUARANTEE ESCROW ACCOUNT  
with the City of Portland

Applicant’s Tax Identification Number: \_\_\_\_\_

Applicant’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 noninterest 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 the Portland Code of  
Ordinances Chapter 14 §§ 501, 530and Chapter 25 §§46-65.

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 Applicant 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 Applicant 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 Applicant 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 Brendan O’Connell,  
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 City, 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, 530 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 one years from the date of this performance  
guarantee] (“Expiration Date”), or on the date when the City determines that all improvements guaranteed  
by this Performance Guarantee are satisfactorily completed, whichever is later, provided that the expiration

date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>.

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 Applicant has failed to complete any unfinished improvements; or
2. the Applicant has failed to correct any defects in workmanship; or
3. the Applicant has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site plan]**.

Seen and Agreed to:

By: \_\_\_\_\_  
**[Applicant]**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
\*\*\*\*Planning Division Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Development Review Coordinator

Date: \_\_\_\_\_

Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

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### 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 Applicant.
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.



**TEMPLATE - PERFORMANCE GUARANTEE FOR  
COMPLIANCE WITH HOUSING REPLACEMENT ORDINANCE**

Demolition and Housing Replacement  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]

**[Insert Date]**

Jeffrey Levine  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

**Re: [Insert Project Address] Demolition and Housing Replacement**

**[Insert Name of Lender]** (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of **[Insert Name of Applicant]** (“Applicants”), held for the exclusive benefit of the City of Portland (“City”), in the aggregate amount of **[Insert exact amount to be determined by the City]**. These funds represent the estimated cost of **[Insert Amount]** for the housing replacement fee applicable to the demolition of **[insert number of units demolished]** dwelling units if no replacement units are constructed, as approved on \_\_\_\_\_ (“**Demolition Approval**”) and as required under Portland Code of Ordinances Chapter 14-483(j).

In the event that Applicant fails to satisfy its housing replacement obligation, 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, if any.

The housing replacement requirement shall be deemed satisfied upon the City’s issuance of a Certificate of Occupancy for **[insert number of units to be replaced]** dwelling units located in the City of Portland provided that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

After construction of each of the replacement units has been completed, the City, as provided in Chapter 14 of the Portland Code of Ordinances, may authorize the Bank, by written certification along with the return of the original of this Letter of Credit, to reduce the available amount of the escrowed money by the full amount of the Letter of Credit.

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.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30<sup>th</sup> and April 15<sup>th</sup>. It is a condition of this

Letter of Credit that the expiration date 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 Brendan O'Connell, 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 that the Bank provides notice of its election to discontinue this Letter of Credit and Applicant has not satisfied its housing replacement obligation, 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 signed by the Director of Planning and Urban Development, at Bank's offices located at Portland Maine stating that:

this drawing results from notification that the Bank has elected to discontinue its Letter of Credit No. \_\_\_\_\_.

Date: \_\_\_\_\_ By: \_\_\_\_\_

**[Name]**

**[Title]**

Its Duly Authorized Agent

**Contribution Form (Watershed, Tree, and Infrastructure Accounts)  
Planning and Urban Development Department - Planning Division**

<b>Application ID:</b>		<b>Planner:</b>	
<b>Project Name:</b>		<b>Date of Form:</b>	
<b>Project Address:</b>			
<b>Applicant's Name:</b>			
<b>Applicant's Address:</b>			
<b>Project Description:</b>			

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Retained by City	Funds not Expended	Expiration Date:	Amount
Infrastructure #1	710-0000-236-98-00						\$
Infrastructure #2	710-0000-236-98-00						\$

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Amount
Transportation Fund	710-0000-238-01-00			\$
Infrastructure (Tree Fund)	242-3100-341-00-00	PR0045		\$
Watershed (Nason's Brook)	257-3100-327.10-00	CFUP03		\$
Watershed (Fallbrook)	257-3100-327.10-00	CFUP02		\$
Watershed (Capisc Brook)	257-3100-327.10-00	CFUP01		\$

<b>Total Amount:</b>	\$
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\* Funds not expended or encumbered by the expiration date, shall be returned to contributor within 6 months of said date.

\* Office Use Only

**FORM OF CONTRIBUTION: (Please check the applicable box below for an Infrastructure Account only)**

<b>Cash Contribution</b>	
<b>Escrow Account</b>	

Interest on funds to be paid to contributor only if project is not commenced.

The City shall periodically draw down funds from Public Works, which form shall specify use of City Account # as shown above.

**Electronic Distribution:**

Tiffany Mullen, Finance Department  
 Joanna Coey, Principal Financial Officer, Recreation and Facilities Mgt.  
 Stuart O'Brien, City Planning Director  
 Barbara Barhydt, Development Review Services Manager, Planning Division  
 Jeremiah Bartlett, Public Services Department  
 Christopher Branch, Public Services Director

Philip DiPierro, Development Review Coordinator, Planning Division  
 Katherine Earley, Engineer Services Manager, Public Services  
 Michael Farmer, Project Engineer, Public Services Department  
 David Margolis Pineo, Deputy City Engineer, Public Services Department  
 Jeff Tarling, City Arborist, Public Services Department  
 Planner for the Project