

90-A-A-1, 2+5

Peaks Island

512 Island Ave.

Peaks Isl. Fuel

~~Letter Divers~~

**From:** Barbara Barhydt  
**To:** Desmond, Jay  
**CC:** Giles, Eric  
**Date:** 7/27/2011 11:36 AM  
**Subject:** Re: Peaks Island Fuel Parking Lot

Dear Mr. Desmond:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Jay Desmond <jayd@maine.rr.com> Wednesday, July 27, 2011 9:15 AM  
>>>

Dear Barbara Barhydt,

I, Jay Desmond, a lifelong resident of Peaks Island would like to register my support of Kith Ivers' plans for a parking area on his property on Island Avenue, Peaks Island to support his business Peaks Island Fuel. It is essential to the viability of Peaks Island Fuel that this project be allowed to be constructed. I am sure you are aware of the necessity of maintaining competition in the heating fuel business in order to enable sustainable life on Peaks Island and certainly the other Islands of Casco Bay which this fuel company serves. Please see that this project receives no harassment from the City of Portland and is allowed to proceed promptly.

Thank you for your attention to this important matter.

Sincerely,  
Jay Desmond

William J. Desmond

Telephone: (207) 766-2088  
Email jayd@maine.rr.com

33 Seashore Ave.  
Peaks Island, ME 04108

**From:** Barbara Barhydt  
**To:** Astarita, Art  
**CC:** Giles, Eric  
**Date:** 7/26/2011 5:49 PM  
**Subject:** Re: Peaks Island Fuel Support

Dear Mr. Astarita:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> "Art Astarita" <restech@maine.rr.com> Tuesday, July 26, 2011 5:30 PM  
>>>

Ms Barhydt,

I have been a full-time resident and homeowner on Peaks Island for 17 years. Peaks Island Fuel (PIF) has serviced our home for that whole time with stellar performance. I know Keith and his family; we both live on the same end of the island. Peaks Island Fuel provides very valuable services to this Island and prevents a LPG and Heating Oil monopoly.

I am troubled to hear that PIF company is being forced to legally defend their proposal to site trucks on Keith's land. My discussions with Keith reveal that PIF has Maine DEP approval and the site is Business Zoned. Therefore, I cannot understand why is Peaks Island Fuel having to be dragged into such legal shenanigans?

The Company is having to spend down reserve funds for legal fees the company cannot afford. At a minimum, such actions could result in higher prices that many of PIF customers cannot afford. Worst case, PIF will dissolve leaving us all with one option for heating and gas purchase along with cleaning services. Since Peaks Island Fuel began as a cooperative, there has been many bogus actions against the company. I hope this is not an attempt to force the company out of business for the monetary gain of others.

I totally support Peaks Island Fuel and I hope you will arrive at the same conclusion. I also wish that you will recommend that all legal fees encumbered by Peaks Island Fuel be paid by the those who have brought forth these unjustified law suits.

Thank you,  
Arthur Astarita

51 Woods Road  
Peaks Island, ME. 04108  
207.766.5997 Home

207.232.3388 Cell  
207.766.0940 Fax



**From:** Barbara Barhydt  
**To:** Blatt, Jerri  
**CC:** Giles, Eric  
**Date:** 7/26/2011 5:47 PM  
**Subject:** Re: support for Peaks Island Fuel

Dear Jerri and Robert:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area within the Island Business Zone off Island Avenue. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> Jerri Blatt <jerriblatt@gmail.com> Tuesday, July 26, 2011 5:07 PM >>>  
Dear Ms. Barhydt:

We are writing to voice our support for the new parking facility that Peaks Island Fuel has planned on Island Ave. We believe they have, in good faith and thoughtfully, planned a feasibly economic plan to maintain the operation of their business. And it is very important to Peaks Island residents that there continues to be competition regarding the purchasing of fuel oil, propane, and the servicing of heating equipment. It is distressing to me that a group (of predominantly summer residents) is threatening Peaks Island Fuel's attempt to better service islanders.

We have lived on Peaks Island, year round for 20 years and have been customers of both fuel companies on the island. We have witnessed many changes - both in development and the socio-economic make up of the population on Peaks. We live across the street from the site of which was originally the "City Barn" (where Public Works was headquartered before the transfer station built) and is now the site of Senior Housing and Health Center. Would we prefer something more scenic? Of course. But more importantly, we see the value of these facilities to our community. The opposition to the new parking plans of Peaks Island Fuel is a "not in my backyard" effort and we feel that this group's intention is not in the best interest of all of the residents of Peaks Island.

We applaud Peaks Island Fuel in trying to remain a viable company in these challenging economic times and providing islanders with a choice of heating companies. If you find them in compliance with all necessary regulatory mandates, we fully encourage you to favor their parking plans.

Sincerely,

Jerri Blatt & Robert Van Der Steenhoven  
122 Central Ave.

Peaks Island, ME

766-5942

**From:** Barbara Barhydt  
**To:** Eaton, Eric  
**CC:** Giles, Eric  
**Date:** 7/26/2011 2:06 PM  
**Subject:** Re: Support for Keith Ivers and Peaks Island Fuel's new parking

Good afternoon Eric:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area in the Island Business Zone. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Eric Eaton <eric@deliberate-design.com> Tuesday, July 26, 2011 1:58 PM  
>>>

Dear Ms. Barhydt,

I am writing to express my support for Keith Ivers and Peaks Island Fuel's (PIF) effort to establish a new parking location for his trucks, on his property, in a commercial zone. The success and ease of operation for Keith and PIF is important to the health if Peaks Island. Without PIF, there would be no market force keeping fuel costs in check. Not only that, but Keith is an exceptionally honest, fair and helpful business owner, as well as well regarded member of our community with ties, past and present, to the Island. Anything that impedes his operation will have an negative impact on the Island for many reasons.

It is my understanding that a small, yet vocal group of people are seeking to interfere with Keith's plans to park his trucks on his land which is in a commercial zone. As a Peaks Island Councilor, I have been privy to many islanders' input on this issue and I can assure you, most islanders favor Keith's plans.

It troubles me to see a small group of people bent on interfering with one of the the Island most important small businesses run by one of our trusted neighbors. Keith is well within his rights as a land owner in a commercial zone. Peaks Island is part of Portland's working waterfront, and PIF is a critical part of working families existence here. Please don't allow the narrow opinions of a small minority thwart the reasonable and legal efforts of one of Peak's few small business and young, working families. Please allow Keith to go forward with his plans with a little interference and lag time as possible.

Sincerely, Eric Eaton  
210 Brackett Ave, Peaks Island, Maine.

**From:** Barbara Barhydt  
**To:** Hafner, Susan  
**CC:** Giles, Eric  
**Date:** 7/26/2011 12:32 PM  
**Subject:** Re: Peaks Island Fuel

Good afternoon Susan:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We do have an application from Mr. Ivers for a parking area in the Island Business Zone. We have requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again for your comments.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Susan Hafner <snhafner@yahoo.com> Tuesday, July 26, 2011 12:26 PM  
>>>

Dear Barbara:

I am writing concerning the issue about Keith Ivers' plan to develop a parking area for his trucks behind his home. Today's letter from Keith was the first I had heard of this issue, and frankly I cannot see what the issue is. Keith is a concerned citizen of Peaks Island, and I have NEVER had occasion to question his judgment on issues concerning my energy needs nor issues concerning his business. My husband, who passed away last year, knew Keith and his family well, and he admired his business sense as well as his sensitivities toward island life and island environment health. I feel very badly that Keith's family was accosted at their home; frankly, I am ashamed that islanders would choose to act that way. Likewise, as we so often see in our society today, people love to carp behind the scenes and stir up trouble but are not willing to meet face to face.

I totally support Keith's decision and plan. It makes sense, and it certainly is pro-active in this high cost energy environment. I live on a fixed income and appreciate this well-planned attempt to economize without hurting our environment. I hope Keith will be able to realize this plan. He is a young businessman who is trying to support his family as well as continue his family's participation in the business of this island. If people have issues, let them study the plans with Keith. I hope this parking development will be approved and will happen soon.

Sincerely,

Susan N. Hafner  
139 Central Avenue

Peaks Island, ME 04108

**From:** Barbara Barhydt  
**To:** Thompson, Otis  
**CC:** Giles, Eric  
**Date:** 7/26/2011 8:21 AM  
**Subject:** Re: Peaks Island Fuels

Good morning Mr. and Mrs. Otis:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this project application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Otis Thompson <otis.c.thompson@gmail.com> Monday, July 25, 2011 6:15 PM >>>

Dear Ms. Barhyadt,

My wife and I are long time residents of Peaks Island.

We support Keith Ivers', President of Peaks Island Fuel, application for the use of his home property for the parking of the company's fuel trucks. We are confident that Mr. Ivers will take the necessary steps to assure that this use of his property will be safe and appropriate.

Sincerely,  
A. Mavourneen Thompson  
Otis C. Thompson

**From:** Barbara Barhydt  
**To:** sinicki, ron  
**CC:** Giles, Eric  
**Date:** 7/26/2011 8:20 AM  
**Subject:** Re: Peaks Island Fuel

Good morning Ron:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this project application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> ron sinicki <sinicki.ron@gmail.com> Monday, July 25, 2011 5:44 PM >>>  
Barbara Barhydt

As a business owner and home owner I am not surprised by the uproar of TEIA concerning Peaks Island Fuel wanting to use island zoned business land for their business. The attitude of not in my neighborhood is appalling .Don't be pressured by by these people. They will be the first to complain if we lose PIF and Plante's raises their oil prices.This is a legal use of the land. Peaks Island is not so special, any where on the island would be tyoo close to members of TEIA.

Ron Sinicki

**From:** Barbara Barhydt  
**To:** radis, sandi  
**CC:** Giles, Eric  
**Date:** 7/26/2011 8:19 AM  
**Subject:** Re: Support for Peaks Island Fuel

Good morning Sandi:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this project application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> sandi radis <[sradis@live.com](mailto:sradis@live.com)> Monday, July 25, 2011 5:39 PM >>>

Dear Ms Barhydt

I would like to add my support for Mr Ivers to park his trucks near his home. TEIA is only open about 9 weeks a year and they should not be able to prevent a business the year rounders need from improving his parking. It is not that big a deal! Please call us if you need more information. Sandra K Radis 207 766 5915.



**From:** Barbara Barhydt  
**To:** kelley, scott  
**CC:** Giles, Eric  
**Date:** 7/25/2011 1:55 PM  
**Subject:** Re: peaks island fuel - letter of support

Hello Scott:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> scott kelley <scottkelleystudio@gmail.com> Monday, July 25, 2011 1:31 PM  
>>>

dear ms. barhydt -

this letter is in unconditional support of the proposed parking lot for peaks island fuel. mr. ivers is a trusted and respected local businessman who, as far as i can tell, has every right to implement his plan, despite the objections of some members of the peaks island community. it seems ridiculous that a few people - some of whom seem possessed of the idea that they speak for peaks island, while i can assure you that they do not - could constitute such a time-consuming and potentially ruinous impediment to prevent mr. ivers from securing the safety and security of his business. the actions of these people are, not to put too fine a point on it, self-serving and nothing more than entitlement and greed run amok.

thus, i urge you to consider his plan carefully, and that you grant him approval without delay, thereby ensuring that a local business who serves peaks island can continue to do so without further hindrance or delay.

thank you.

sincerely,

scott kelley

**From:** Barbara Barhydt  
**To:** Montanese, Kathleen  
**CC:** Giles, Eric  
**Date:** 7/25/2011 1:22 PM  
**Subject:** Re: Peak Island Fuel

Good morning Kathleen:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> Kathleen Montanese <[ksmpeaks@yahoo.com](mailto:ksmpeaks@yahoo.com)> Monday, July 25, 2011  
12:50 PM >>>

Dear Ms. Barhydt: In regard to the proposed parking lot for Peaks Island Fuel. As the proposed site is within a business zone I am not sure what the problem is but I wish to express my support for this location. It is absolutely vital to the year round residents of Peaks that we maintain two fuel companies and the current proposal is necessary for the future of Peaks Island Fuel. Thank you for your attention.  
Kathleen Montanese, 50 Oak Ave., Peaks Island

**From:** Barbara Barhydt  
**To:** kelley, gail t.  
**CC:** Giles, Eric  
**Date:** 7/25/2011 8:56 AM  
**Subject:** Re: Peaks Island Fuel lot

Good morning Gail:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> "gail t. kelley" <gtkot@hotmail.com> Monday, July 25, 2011 8:42 AM >>>  
Hello Barbara,

I am writing to you in support of Keith Iver's plans for the parking space for his fuel trucks. Keith is a hard working islander with a young family. His business supports year round island living and he is very generous with the community. I understand his plans meet all compliance mandates and I am sure he will do his best to maintain the visual landscape to that area. Please register my support of his plan.

Thank you,

Gail Trefethern- Kelley  
16 Sterling Street  
Peaks Island, Maine 04108  
207.756.9000

**From:** Barbara Barhydt  
**To:** cparker@maine.rr.com  
**CC:** Giles, Eric  
**Date:** 7/25/2011 8:53 AM  
**Subject:** Re: support for peaks island fuel

Good morning:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> <cparker@maine.rr.com> Monday, July 25, 2011 8:09 AM >>>

I am a peaks island year round resident for 30 years. I deal with both fuel companies. I feel unless you own the property and the necessary laws are in compliance, you have no rights to make it difficult for a business to improve or function. Peaks Island fuel is a small necessary business here on Peaks and has a very hard working president, Keith Ivers. He does not deserve to be harrassed nor does his family deserve to live in fear by so called Peaks Island concerned residents.

**From:** Barbara Barhydt  
**To:** Picos, Isla  
**CC:** Giles, Eric  
**Date:** 7/25/2011 8:39 AM  
**Subject:** Re: Peaks Island Fuel's plans

Good morning Kay and Gene:

:  
Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you again.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> "Isla Picos" <[islapicos@maine.rr.com](mailto:islapicos@maine.rr.com)> Sunday, July 24, 2011 1:17 PM >>>  
77 Torrington Avenue  
Peaks Island, Maine 04108  
July 24. 2011

to: Barbara Barhydt  
Development Review Services, Manager  
Planning Division  
City of Portland

Dear Ms. Barhydt,

My husband and I would like to register our SUPPORT for Keith Ivers and Peaks Island Fuel, as Keith seeks to build a parking lot for the fuel trucks behind his home.

We are confident that it will be done legally and according to specifications. Over time, landscaping will block public view of the trucks, feelings will calm down, and life will go on.

In our nearly thirty years on Peaks, we have seen tempers rise over issues such as the sewage treatment plant, the transfer station, sewer extensions, and the affordable housing/health center complex. And those were just the big ones. Eventually reason won out over emotion and the whole Island is benefitting from the results. I trust that such will be the case for Peaks Island Fuel's plans, too.

With thanks for your work in Planning, both now and over the years,

Sincerely,

Kay and Gene Taylor

**From:** Barbara Barhydt  
**To:** Soley, Jak  
**CC:** Giles, Eric  
**Date:** 7/25/2011 8:37 AM  
**Subject:** Re: Peaks Is. Fuel applicaiton

Good morning Jak:

Thank you for your comments and I am adding Erick Giles to this e-mail, as he is the assigned planner for this project. We requested additional information regarding this application, which Mr. Ivers and his engineer are working on now. We expect a revised plan soon and all of the city departments will review the revised plans under Portland's site plan standards.

Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> "Jak Soley" <jsoley@eastbrowncow.com> Saturday, July 23, 2011 7:00 PM  
>>>

Dear Barbara,

I understand that you are reviewing Keith Ivers' planning application for the construction of a commercial fuel oil parking area on his property in the Island Business Zone.

I have been a customer of Peaks Island Fuel for all 17 years that Peaks has been my year round residence. During much of that period, Keith was in the employ of the company and more recently, its owner. He has delivered fuel to my home on countless occasions and has been the sole service tech for my furnace. I have always been impressed at the professionalism with which he has carried out his work and his attention to safety issues. I have never found Keith to be unreasonable and in fact have relied on his good judgment to my great benefit.

As Peaks islanders deal with the many financial challenges that make it difficult to afford island life, certainly maintaining the limited competition for energy supply is a crucial issue. I am particularly concerned about any further fiscal burden that Peaks Island Fuel must endure in order to be viable.

I would like to offer my complete support for Keith's application as it adheres to the current zoning for the proposed site.

Thank you,

Jack Soley  
766-3333 (H)

**From:** Barbara Barhydt  
**To:** Giles, Eric; Jaegerman, Alex; St. Louis, Penny  
**Date:** 7/14/2011 9:50 AM  
**Subject:** Fwd: Fuel Companies on Peaks Island

>>> Danielle West-Chuhta (Danielle West-Chuhta) Thursday, July 14, 2011 9:45 AM >>>  
fyi.

>>> Gary Wood 7/14/2011 9:43 AM >>>

fyi

>>> Chris Hoppin <choppin@aol.com> 7/13/2011 5:54 PM >>>

One of our two island-owned fuel companies - Peaks Island Fuel -  
needs community help to store their seven trucks in an appropriate location.

This issue arose five years ago and has re-surfaced with a property  
variation

use request at the owner's home, which is in an old business zone  
near the  
TEIA Club.

I am writing the Mayor, our District One Councilor, Peaks Island  
Councilors,

and City Staff members with a simple request:

Can we make the necessary arrangements to establish a secure  
parking area

for the vehicles of both island-owned fuel companies in the area of the  
City's

Peaks Island Transfer Station?

Thank you,

Chris

C.J. Hoppin, Lt.Col., USAFR Ret. *Same Date of Rank -*

*Grads at the top and bottom from West Point, Annapolis*

*and the Air Force Academy* Details at [www.cjhoppin.com](http://www.cjhoppin.com)

196 Seashore Avenue

Peaks Island, ME 04108

207 766 2593

choppin@aol.com

**From:** Barbara Barhydt  
**To:** Burnette, M J  
**CC:** Giles, Eric  
**Date:** 7/14/2011 9:39 AM  
**Subject:** Re: Peaks Island Fuel / 516 Island Avenue, Peaks Island

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of conducting an administrative review of the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> M J Burnette <[mj.burnette@yahoo.com](mailto:mj.burnette@yahoo.com)> Wednesday, July 13, 2011 9:26 PM >>>

Dear Ms. Barhydt,

I am writing in support of Peaks Island Fuel's request for permitting of a parking area for their trucks at 516 Island Avenue.

This location would be much better than the current location on lower Welch Street, the busiest traffic and pedestrian area year round, as it is right at the ferry landing.

The Island Avenue location is in a less densely populated area in both summer and winter.

The TEIA members who are opposing this are overlooking that the trucks run more in the winter and only occasionally in the summer. And in the winter, the population is significantly lower out here.

Lastly, most people who are at the TEIA club house are looking towards the water and not towards Island Avenue. Certainly, some additional bushes or evergreens would help to block the "offensive" view towards Island Avenue.

We need Peaks Island Fuel to keep fuel costs in line. Kindly support their request.



**From:** Michael Richards <mosbypeaks@yahoo.com>  
**To:** <BAB@portlandmaine.gov>  
**CC:** <EGILES@portlandmaine.gov>  
**Date:** 7/13/2011 7:34 PM  
**Subject:** Peaks Island Fuel Project

Hi,

I respectfully disagree with my good friend Rob. TEIA includes many year-round islanders like me and is understandably opposed to siting fuel trucks in its dooryard. In the summer, 100 Peaks Island kids a day come down the same road the fuel truck would. Given the poor visibility coming in and out of that street, with its poor repair and with Ted's house and trees right there, it's a safety issue. Why incur that risk? I suggest PIF use CMP's former generation lot. It's more visible and central -- and safer.

Mike Richards  
19 Daniel Street  
Peaks Island, ME 04108  
653-4567

----- Forwarded Message -----

From: Barbara Barhydt <BAB@portlandmaine.gov>  
To: Rob Tiffany <robtpeaks@yahoo.com>  
Cc: Eric Giles <EGILES@portlandmaine.gov>  
Sent: Wednesday, July 13, 2011 4:09 PM  
Subject: Re: Peaks Island Fuel Project

Good afternoon:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of conducting an administrative review of the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt

Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Rob Tiffany <robtpeaks@yahoo.com> Wednesday, July 13, 2011 9:38 AM  
>>>

Barbara, I am concerned for the future of Peaks Island Fuel. It is my understanding they have requested permission to complete a project in a business zoned area of the island that conforms to all existing city standards. This project needs to move forward. Peaks Island year round residents depend on two currently existing fuel companies for their winter heat. If we lose one of those companies, fuel costs will most certainly increase. This is an issue of island living costs. The individuals opposing this project are here for 10-12 weeks in the summer at most. They should definitely not be allowed to halt this project so badly needed by the island. Move this project forward.

Rob Tiffany  
38 Centennial Street  
Peaks Island, ME 04108

**From:** Barbara Barhydt  
**To:** Tiffany, Rob  
**CC:** Giles, Eric  
**Date:** 7/13/2011 4:09 PM  
**Subject:** Re: Peaks Island Fuel Project

Good afternoon:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of conducting an administrative review of the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Rob Tiffany <robtpeaks@yahoo.com> Wednesday, July 13, 2011 9:38 AM  
>>>

Barbara, I am concerned for the future of Peaks Island Fuel. It is my understanding they have requested permission to complete a project in a business zoned area of the island that conforms to all existing city standards. This project needs to move forward. Peaks Island year round residents depend on two currently existing fuel companies for their winter heat. If we lose one of those companies, fuel costs will most certainly increase. This is an issue of island living costs. The individuals opposing this project are here for 10-12 weeks in the summer at most. They should definitely not be allowed to halt this project so badly needed by the island. Move this project forward.

Rob Tiffany  
38 Centennial Street  
Peaks Island, ME 04108

**From:** Barbara Barhydt  
**To:** Chuck, Jeanne and  
**CC:** Giles, Eric  
**Date:** 7/12/2011 8:50 AM  
**Subject:** Re: 512 Island Avenue Peaks Island

Hello:

This application is a Level I application, which is reviewed administratively. It does not require review by the Planning Board. The administrative staff are reviewing the application based upon the standards of the site plan ordinance.

Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> "Jeanne and Chuck" <[cmeuse1@maine.rr.com](mailto:cmeuse1@maine.rr.com)> Tuesday, July 12, 2011 8:03 AM >>>

Thank you very much. Do you know if a hearing is scheduled regarding this matter?  
Jeanne Meuse

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

**From:** Barbara Barhydt ( <mailto:BAR@portlandmaine.gov> )  
**To:** Jeanne and Chuck ( <mailto:cmeuse1@maine.rr.com> )  
**Cc:** Eric Giles ( <mailto:EGILES@portlandmaine.gov> )  
**Sent:** Monday, July 11, 2011 10:09 AM  
**Subject:** Re: 512 Island Avenue Peaks Island

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699

Fax: (207) 756-8256  
bab@portlandmaine.gov>>> "Jeanne and Chuck" <cmeuse1@maine.rr.com> Sunday, July 10, 2011  
9:40 PM >>>

Dear Ms. Barhydt:

We are writing to voice our concerns regarding the proposed application for a license for a parking lot for propane and oil trucks at 512 Island Ave. Peaks Island. The landscape of the proposed site is directly behind our property. Drainage flows down and through our land and onto the beach. We are worried that pollutants or spillage from vehicles will contaminate our property and that of the beach.

Other concerns are that this will create heavy traffic, noise, and safety issues. There are many children who bike and walk that area as well as golf cart traffic.

There has not been a business in this area for 40 years and it was a grocery store not a fuel business. Propane is a very volatile substance and oil is an environmental hazard and has no place in a busy residential area.

Thank you for taking these concerns into consideration while you make your decision.

Sincerely,

Jeanne and Chuck Meuse  
11 Trefethen Ave.  
Peaks Island, Me 04108

**From:** Barbara Barhydt  
**To:** Chuck, Jeanne and  
**CC:** Giles, Eric  
**Date:** 7/11/2011 10:09 AM  
**Subject:** Re: 512 Island Avenue Peaks Island

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> "Jeanne and Chuck" <cmeuse1@maine.rr.com> Sunday, July 10, 2011 9:40 PM >>>

Dear Ms. Barhydt:

We are writing to voice our concerns regarding the proposed application for a license for a parking lot for propane and oil trucks at 512 Island Ave. Peaks Island. The landscape of the proposed site is directly behind our property. Drainage flows down and through our land and onto the beach. We are worried that pollutants or spillage from vehicles will contaminate our property and that of the beach.

Other concerns are that this will create heavy traffic, noise, and safety issues. There are many children who bike and walk that area as well as golf cart traffic.

There has not been a business in this area for 40 years and it was a grocery store not a fuel business. Propane is a very volatile substance and oil is an environmental hazard and has no place in a busy residential area.

Thank you for taking these concerns into consideration while you make your decision.

Sincerely,

Jeanne and Chuck Meuse  
11 Trefethen Ave.  
Peaks Island, Me 04108

**From:** Barbara Barhydt  
**To:** Robbins, Carla  
**CC:** Giles, Eric  
**Date:** 7/11/2011 10:08 AM  
**Subject:** Re: Peaks Island

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> "Carla Robbins" <[carlarobbins@myfairpoint.net](mailto:carlarobbins@myfairpoint.net)> Sunday, July 10, 2011 2:18 PM >>>

Hello,

I am a year round resident of Peaks Island. I have just heard some disturbing news about Peaks Island Fuel and Trefethen and was told I should write you. To begin, Peaks needs two fuel companies for competition and man power. To lose either of the companies, would seriously impact everyone in the winter. Unfortunately, fuel companies require trucks to deliver fuel. It is my understanding that PIF has spent considerable time and money to have plans drawn up to make an attractive parking area for the trucks. The club members at Trefethen refuse to look at the plans or discuss any compromise. This club is only open for four months a year, most of its members are only here in the summer, and the building is oriented toward the water, not the proposed parking space, what is their problem. The club has the where with all to create endless law suits until PIF can no longer stay in business. Who, in their right mind, would want to destroy a young family over a few trucks hidden behind a fence or shrubs. Please let PIF construct the space it needs on this property. The club members need to sit down, work out a solution like adults.

Thank you for your time. Please feel free to pass this on to Trefethen,I could not find an e-mail address.

Carla Robbins

**From:** Barbara Barhydt  
**To:** Katharine  
**CC:** Giles, Eric  
**Date:** 7/11/2011 10:03 AM  
**Subject:** Re: Support Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Katharine <katharine.hall@gmail.com> Saturday, July 09, 2011 8:25 PM  
>>>

Good evening,

I am an island resident at 54 Spruce Street, Peaks Island and I am writing to voice support for the proposed parking lot at 516 Island Avenue. It is important to the island community that Peaks Island Fuel has a safe an covenant parking location. Thank you, Katharine

Sent from my iPhone



**From:** Barbara Barhydt  
**To:** mbeebe@aol.com  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:57 AM  
**Subject:** Re: 512 Island Avenue Peaks Island Parking Lot Application

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> <mbeebe@aol.com> Friday, July 08, 2011 1:59 PM >>>  
Barbara Barhydt, Development Review Services Manager

**Reference Application: 512 Island Avenue, Peaks Island. Level 1: Site Alteration application submitted by Keith Ivers for a 4,200 sq. ft. gravel parking area to serve as the parking area for his fuel trucks.**

My wife and I have owned property on Peaks Island in the Trefethen area for over 33 years. My wife was raised on Peaks Island and attended the Peaks Island elementary school. She used to buy candy and ice cream at Webber's Store which was long ago converted by Ted Haykal to a private residence and is adjacent to the 512 Island Avenue property. While visiting the island years ago, I also remember frequenting Webber's Store. During summers, we have raised our 2 daughters on Peaks Island and now we are walking our grandsons down to the Trefethen Evergreen Improvement Association Club (TEIA) for their tennis and day camp.

We strongly object to the above referenced application for the following reasons:

After the Hotels, boarding houses and Trefethen Ferry Landing ceased to exist decades ago on this part of Peaks Island, there has been no commercial traffic originating in this area, only service vehicles coming from the commercial district at the other end of the island near the current Ferry Landing, store, restaurant, gas and marina businesses. Most customers walked to and from Webber's Store. There was no parking lot for the store for cars or other vehicles. Now the Trefethen area is a well established residential section of Peaks Island. In our collective memory, this part of Peaks Island has never been used as a base for commercial use, only for residential and that is what makes it so special. During the summer months when the TEIA Club is operating, the roads in this area are full of children and adults walking and bicycling and introducing heavy truck and equipment traffic which this proposed parking lot with bring to these roads defies logic and safety. As land use changes over time, so does zoning. Why is it reasonable to permanently introduce large commercial trucks and equipment into an area that has long ago evolved into a quiet residential zone, particularly when there are other parcels of land on this island where a 4,200 sf. commercial truck/equipment parking lot could be located away from the higher density residential housing that currently exists in and around 512 Island Avenue?

Respectfully submitted by:

Michael and Nancy Beebe  
582 Island Avenue  
Peaks Island, Maine 04108

**From:** Barbara Barhydt  
**To:** Peretti, Frank L.  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:30 AM  
**Subject:** Re: Re; Islander support for Peaks Island Fuel

Good morning:

Thank you for your comments and phone message. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> "Frank L. Peretti" <fperetti@maine.rr.com> Friday, July 08, 2011 9:34 AM  
>>>

Dear Barbara Barhydt.

Please note that my Wife and I support Peaks Island Fuel application to legally park their fuel delivery trucks on their property in a business zone. In addition, Peaks Island Fuel, by engaging an architect to properly fit their proposal into the general scheme of the area, shows their receptiveness to the neighborhood. Additionally, they provide a valuable community service to the overall Island community (please note that I am not a customer of Peaks Island Fuel).

Thank you.

Frank & Peggie Peretti  
16 Oak Lawn Rd,  
Peaks Island, ME 04108

**From:** Barbara Barhydt  
**To:** Hanley, Susan  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:27 AM  
**Subject:** Re: Peaks Island Fuel parking area

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> "Susan Hanley" <susan@peaksislandfiberartscamp.com> Thursday, July 07, 2011 11:37 AM >>>

Hello Barbara –

I am writing to ask you to please allow Peaks Island Fuel to install a legally conforming parking area for their fuel delivery vehicles.

I have been a Peaks Island resident for over 20 years and have witnessed the consistent erosion of year-round islanders' needs, sacrificed at the altar of summer residents' complaints about preserving the picturesque nature of their summer homes. These people only live here for three months of the year and they should not dictate how life on Peaks Island is conducted.

Summer residents do not heat their homes in the winter, and they seem to forget that those of us who live here year-round DO! They also seem to forget that islanders need to make a living and Peaks Island Fuel owner, Keith Ivers, provides local islanders with jobs as well as fuel oil. He is a good community citizen who does not deserve the wrath or ire of the summer residents. He is only trying to make a living and he needs the parking lot in order to keep oil prices low for island residents.

Please let me know where you stand on this issue and how I can offer further support for Peaks Island Fuel.

Thank you,  
Susan

Susan Hanley  
Peaks Island Fiber Arts Camp  
207.332.2443  
susan@peaksislandfiberartscamp.com

Check out our website: [www.peaksislandfiberartscamp.com](http://www.peaksislandfiberartscamp.com)

**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 7/11/2011 9:25 AM  
**Subject:** Fwd: Planning Department subject: Peaks Island Fuel

>>> Maryel Doyon Thursday, July 07, 2011 4:17 PM >>>  
Hello Mike & Penny

Wasn't sure who to send this one too.

Maryel Doyon  
Web Master  
mcd@portlandmaine.gov  
207-756-8232

>>> <rwalsh1@maine.rr.com> 7/7/2011 9:47 AM >>>

I am writing in support of the Peaks Island Fuel's request for a site alteration to park their trucks on Island Avenue.

As a year round resident, we are customers of Peaks Island Fuel. I am sure there are people who need their services year round, but we primarily call them during the fall and winter months. It is during those months that it is very quiet on the Island Avenue area of the island.

I do not live close to the property but do live on the front of the island. I see this site ideal because it will remove another business from the already congested area of the island, down front. People are pleased to have more than one fuel business on Peaks Island, it keeps a strong competition and produces local jobs. As a customer, I have seen Peaks Island Fuel as a prompt, reliable, conscientious business, who I believe would be a responsible and attentive neighbor if this site alteration is allowed.

Thank you for your time and consideration into this matter.

Rose Ann Walsh  
28 Epps Street  
Peaks Island ME 04108

**From:** Barbara Barhydt  
**To:** LJKLynch@aol.com  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:13 AM  
**Subject:** Re: (no subject)

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> <LJKLynch@aol.com> Wednesday, July 06, 2011 8:07 PM >>>

I support Peaks island Fuel being able to park their trucks in the proposed location. Please grant them the opportunity to continue to do business for the viability of this community.

They are viable entity on Peaks and in the light of rising fuel cost we need their to be a competitive edge, with only one fuel company we are held captive by the competition

Sincerely Lisa Lynch  
PIFuel and LPA customer

**From:** Barbara Barhydt  
**To:** Daligan, Phil  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:12 AM  
**Subject:** Re: Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.  
Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "Phil Daligan" <pdaligan@maine.rr.com> Wednesday, July 06, 2011 7:48 PM >>>

Dear Barbara,

Please lend an ear to the year round Peaks Islanders who value Peaks Island Fuel not only for it's service but also the employees of the company and their contribution to Island life.  
It's essential we have competing fuel companies on the Island as experience has shown prices will rise if we are reduced to one supplier.  
It's my understanding that they have a right to a legal conforming area to park their fuel delivery vehicles.  
It's crazy that the wishes of a few summer residents should take any precedence over year round residents who rely on winter fuel.

Thanks for listening,  
Phil Daligan  
Peaks 15 years.

**From:** "Fred O'Keefe" <fokeefe@fsog-llc.com>  
**To:** AQJ@portlandmaine.gov  
**CC:** EGILES@portlandmaine.gov; BAB@portlandmaine.gov  
**Date:** 7/11/2011 9:04 AM  
**Subject:** Reference: Level 1: Site Alteration Development Application, 516 Island Avenue, Peaks Island, ME.

July 10, 2011

Mr. Alexander Q. Jaegerman, AICO

Director, Planning & Development Department

Planning Division

City of Portland

389 Congress Street

Portland, ME 04101-3509

Reference: Level 1: Site Alteration Development Application, 516 Island Avenue, Peaks Island, ME.

Dear Mr. Jaegerman,

It was a pleasure to meet you and your staff when you visited the above site for your inspection.

As I wrote to you in my email I have been appointed as central contact and am therefore writing to you with several items for your consideration during your evaluation of this application.

Rather than reiterate many of the items already brought to your attention I would like to focus on a few that we feel are relevant and would appreciate you considering.

1. According to the application completed by Mr. Ivers he states; "Utilize Commercial Property for Parking of Delivery and Service Trucks, Fill in site and add two driveways:

The property in question is according to the zoning map classified as I-B Island Business Zone and not as "Commercial Property." The Land Use Codes defines several different types of property - Residential, Business, Industrial and Urban Commercial. It appears that Peaks is broken into two zones, Residential and Business both defined Article III, Division 7.1, 7.2,



7.3 and Division 12.1.

2. Mr. Ivers also refers to Delivery and Service Trucks.

There is nothing that we can see in the I-B Island Business Zone codes that allows for the specific parking of fuel (oil and/or propane) or any other type of fuel, i.e. kerosene. The only definition in Section 47 of the Code that seems to apply is as follows:

Truck terminal: A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Mr. Ivers has requested approval to establish a parking lot for his fuel trucks. We believe that he uses the house on the premises as part of his business operations and frequently parks trucks on Island Avenue in front. The proposed storage of his trucks holding fuel for delivery fits within this definition of a truck terminal and is not permitted in this zone. It is not the type "off street parking" that is contemplated in Section 14-223 (f). Any use not expressly permitted in Sections 14-223 and 224 is prohibited under Section 225.

Another issue of concern is whether or not the proposed use is consistent with the City's comprehensive plan. In addition to zoning ordinances, the zoning has to be consistent with the comprehensive plan. We have not been able to research such a plan, but request your department to determine whether this type of activity is inconsistent with other uses in the area.

3. Another issue is whether Portland has considers uses on land adjacent to the shoreland zone. The property in question borders the shoreland zone so closely that there may be a reason to be concerned about any adverse impacts that may emanate from the applicant's property such as leakage, spills, or otherwise.

How does this conform to any rules of the Maine Department of Environmental Resources? Are they aware of this project and do they have input?

4. Regarding environmental issues: There does not appear to be any plan provided by Mr. Avers to how he plans to avoid any sort of spillage whether it comes from his trucks stored with fuel oil by rain or whether it comes from an accidental spill of some other sort.

Mr. Ivers in his letter "To whom it may concern" which describes the proposed project for 516 Island Avenue states, " Culverts will be put into place at each location were there would be a possibility for water to catch so it can continue on its natural path".

The flow of any runoff, as you must have observed, is towards the shoreline. You must have also observed the runoff stream located approx. 75-100 feet south of the proposed parking area.

Again, there does not appear to be any environmental plan that addresses these or any other environmental issue required by city, state or federal laws.

5. One issue that is of most concern to the residents of the affected area is the proposed "business" use of this property is inconsistent with other existing uses in the neighborhood - residential and the TEIA Club. We note that the island business district in this area is in effect an isolated zone in an otherwise residential area that was rooted in the former existence of the Webber's Store. That use terminated in the 1970's and the property has been residential since then.

The presence of a fuel truck storage facility in the area will forever change the character of the neighborhood and detract from its rural island setting. Major renovations have been undertaken by several of the homeowners, as well as by TEIA, to conform to a rural island setting without the presence of any business activities other than home occupations. The immediate effect of property devaluation and high insurance premiums is a real fear. Without question, the presence of a hazardous business in the neighborhood will substantially reduce property values and negatively impact the neighbors, both financially and in the quality of their lives - noise, smells and safety. It is difficult enough to get reasonable insurance for island property in light of all the recent flooding tragedies. Many insurance companies are presently not insuring any island or shoreline properties with 2,000 feet of tidal waters according to a State Farm representative. It seems inconceivable that the City would approve such a use that would be so incompatible with the neighborhood use and so adversely affects the neighbors. It would contrary to good planning and the expectations of residents in the area.

8. Safety is a recurring fear among neighborhood residents and the members of TEIA. Island Avenue and the access road to TEIA are narrow and the visibility is limited at the intersection. Two cars can barely pass each other. Bike, golf cart and pedestrian traffic aggravate the situation. Big trucks operating in the area require wide turning radiuses and will place other vehicles and pedestrians at risk. The road leading to TEIA would have to be enlarged, but even that would not relieve the risk. It is a tight congested area and totally incompatible with large truck traffic. We ask you to study this concern carefully and assess the likelihood of accident or injury resulting from the proposed use.

Possible solutions to this and future issues of this nature:

1. The City of Portland addresses the issues of creating an industrial or commercial zone within the center of the island, away from residents.
2. It is also our understand that property owners in the center of the island now storing commercial vehicles have expressed interest in speaking with Mr. Ivers.

The parking of commercial, business and industrial vehicles of any sort has been, and is, an island problem for many years. It would appear to us that now is the perfect time to address this issue and avoid not only business and financial issues for business owners like Mr. Ivers, for those that will come in the future.

Obviously our intentions are clear; our neighborhood does not want to see this application approved.

Thank you for your consideration of these issues. We hope you will consider them during your review of this application and we await your decision.

Sincerely yours,

Fred O'Keefe

**From:** Barbara Barhydt  
**To:** Seredin, Tanya  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:02 AM  
**Subject:** Re: Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> "Tanya Seredin" <[tseredin@mohrseredin.com](mailto:tseredin@mohrseredin.com)> Wednesday, July 06, 2011 10:57 AM >>>

Dear Barbara,

I have been a year round resident of Peaks Island for over 25 years, and I am a customer of Peaks Island Fuel's competitor, Lionel Plante Associates. However, I believe that it is essential to have two heating oil companies on the island to help keep the fuel costs down. I'm sure that you are aware that the cost of oil for heating is much much more on the island than it is on the mainland in Portland, so I believe that keeping two companies on the island helps to keep the costs as low as possible. I remember how the price of fuel was helped immensely when Peaks Island Fuel was started several years ago, and I would hate to see what would happen if they aren't able to continue serving the island.

We do everything we can on the island to help our neighbors who need it , including fundraising a dollar at a time for fuel assistance. Even a few cents a gallon makes a difference, and competition is key to keeping those costs down.

I am not quite sure what the detailed issues are, but if Peaks Island Fuel is able to find a place to park their vehicles that conforms to the city's requirements, I hope that the City's planning staff can help make that happen.

Thanks,

Tanya Seredin

---

Tatyanna Seredin  
Mohr & Seredin, Landscape Architects, Inc.  
18 Pleasant Street,  
Portland, Maine 04101  
(207) 871-0003

**From:** Barbara Barhydt  
**To:** Conrad, Melissa  
**CC:** Giles, Eric  
**Date:** 7/11/2011 9:01 AM  
**Subject:** Re: In Support of Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Melissa Conrad <mconrad@backshore.net> Wednesday, July 06, 2011  
10:39 AM >>>

Please see the attached letter and photo. These will also follow by mail.

Thanks,  
Eric & Melissa Conrad

**From:** Barbara Barhydt  
**To:** Maclsaac, Joanne  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:46 AM  
**Subject:** Re: 512 Island Ave

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
 Development Review Services Manager  
 Planning Division  
 389 Congress Street 4th Floor  
 Portland, ME 04101  
 (207) 874-8699  
 Fax: (207) 756-8256

bab@portlandmaine.gov>>> "Maclsaac, Joanne" <JMaclsaac@trojb.com> Tuesday, July 05, 2011 6:12 PM >>>

Dear Barbara

I have been away so my response may be late but not because I am not interested or very concerned about this application.

I have been a seasonal resident of Peaks Island for 54 years and have lived through many developments and changes to the island character. I am very much against this request for a parking area for fuel trucks reasons which I will state below:

1. while the actual site may be zoned as "commercial" that would be a holdover from the past – I believe this area transitioned from commercial activity to residential over 30 years ago when the Webber Store closed.
2. If commercial activity is allowed it should support the neighborhood
3. This specific function (parking) is not **location sensitive for the success of his business** – locating it elsewhere (away from a residential area) would not provide a hardship for the owner and would not increase nor decrease his business.
4. The proposed location seems to only to serve for the convenience of the owner of the fuel company and not the neighborhood and would likely decrease the valuation of the property and increase insurance premiums in the immediate area providing a hardship for the residents.
5. The area in question is not only in the middle of a residential neighborhood but also serves as the gate way to the TEIA property which is a center of activity for children. The creation of a fuel truck parking lot does not seem to be a compatible nor a safe neighbor. I personally have witness children riding down the hill – full steam ahead through the intersection and down to the clubhouse and while this is currently a safety risk – with fuel truck traffic I would assume the risk has now been increased dramatically.
6. There are other appropriate options for the storage of fuel trucks – adjacent to city land in the center of the island where there are multiple access points. Since the applicant does not currently own the proposed site it would not provide a financial hardship to look at another location.

Thank you for your consideration  
Joanne Maclsaac

**TRO Jung|Brannen**  
**Celebrating a Century of Inspired Design**

22 Boston Wharf Road  
Boston, Massachusetts 02210

**t** 617.502.3514

**f** 617.502.3401

[www.trojungbrannen.com](http://www.trojungbrannen.com)

**From:** Barbara Barhydt  
**To:** Kendall, Deborah  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:37 AM  
**Subject:** Re: Peaks island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Deborah Kendall <ndallk@gmail.com> Tuesday, July 05, 2011 11:40 AM  
>>>

I am a long term satisfied customer of Peaks Island Fuel.

I ask that you allow Peaks Island Fuel to install a legal, conforming area to park fuel delivery vehicles on Island Avenue.

A fuel company delivers oil and provides service year round by appointment and in emergencies.

I wish to keep home heating fuel costs competitive on Peaks.

TEIA is a summer facility open a number of weeks per season.

Please add my name to the list of Peaks Island Fuel supporters.

DeborahKendall  
668 Seashore Ave.  
207.766.0034  
ndallk@gmail.com



**From:** Barbara Barhydt  
**To:** gerard, sidney  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:35 AM  
**Subject:** Re: Peaks Island Fuel Parking

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

>>> "sidney gerard" <s.gerard@tpk.net> Tuesday, July 05, 2011 10:57 AM >>>

Ms. Barhydt:

My name, Sidney Gerard, I am a year round resident and registered on Peaks Island. I fully support Peaks Island Fuel developing a parking area for their delivery vehicles. This effort is necessary to insure that the fuel needs of all Islanders are satisfied.

My address is 51 Prince Avenue, Peaks Island 04108. My telephone number is 207-766-5854. If you need additional information please feel to write or call me.

Sidney Gerard  
Peaks Island Concerned Resident

**From:** Barbara Barhydt  
**To:** rwalsh1@maine.rr.com  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:34 AM  
**Subject:** Re: Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> <rwalsh1@maine.rr.com> Tuesday, July 05, 2011 10:49 AM >>>

I am writing in support of the Peaks Island Fuel's request for a site alteration to park their trucks on Island Avenue.

As a year round resident we are customers of Peaks Island Fuel. I am sure there are people who need their services year round, but we primarily call them during the fall and winter months.

It is during those months that it is very quiet on the Island Avenue area of the island.

I do not live close to the property but do live on the front of the island. I see this site ideal because it will remove another business from the already congested area of the island, down front.

People are pleased to have more than one fuel business on Peaks Island, it keeps a strong competition and produces local jobs. As a customer, I have seen Peaks Island Fuel as a prompt, reliable, conscientious business, who I believe would be a responsible and attentive neighbor if this site alteration is allowed.

Thank you for your time and consideration into this matter.

Rose Ann Walsh  
28 Epps Street  
Peaks Island ME 04108

**From:** Barbara Barhydt  
**To:** gerard, jane  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:32 AM  
**Subject:** Re: Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "jane gerard" <janegerard@maine.rr.com> Tuesday, July 05, 2011 9:50 AM  
>>>

As a registered voting year round resident of Peaks Island, I am writing in SUPPORT of Peaks Island Fuel being allow to construct an area to park their fuel delivery vehicles on the land presently proposed by the owner of the company.

Jane A. Gerard  
51 Prince Avenue  
Peaks Island, ME 04108

**From:** Barbara Barhydt  
**To:** Jpiawlock@aol.com  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:29 AM  
**Subject:** Re: support for PI Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> <Jpiawlock@aol.com> Tuesday, July 05, 2011 8:08 AM >>>

Good Morning,

Please give permission to Peaks Island Fuel to relocate their fuel trucks--we need to continue having 2 companies on PI to help keep fuel prices as low as possible.

The T. club is only open for a few months in summer and those against this project don't even have to buy heating oil for year round.

We are year round residents and a customer of Peaks Island Fuel.

Thank you,

Judy and Stan Piawlock

**From:** Barbara Barhydt  
**To:** Roberts, Suellen  
**CC:** Giles, Eric  
**Date:** 7/11/2011 8:29 AM  
**Subject:** RE: Peaks Island Fuel

Good morning:

Thank you for your comments. I am forwarding your e-mail to Erick Giles, the planner assigned to review this project. The Planning Office and other departments are in the process of reviewing the application under the City's site plan ordinance standards.

Thank you.  
Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> Suellen Roberts <sbwatersedge@earthlink.net> Monday, July 04, 2011 11:49 PM >>>

Dear Barbara Barhydt,

My husband and I are year-round resident on Peaks Island.

Pease allow the Peaks Island Fuel Co. to use the designated commercial property they have requested on Peaks Island.

This is very important to the YEAR-ROUND residents of Peaks not the seasonal residents who live here only a few weeks of the year.

Thank you for you consideration of this important issue.

Suellen Roberts

354 Seashore Avenue

Peaks Island ME 04108

sbwatersedge@earthlink.net

766-2161

**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 7/11/2011 8:23 AM  
**Subject:** Fwd: in support of conforming use of lot on Peaks Island.by Peaks Island Fue.

>>> "Marjorie Phyfe" <mphyfe@maine.rr.com> Sunday, July 03, 2011 11:50 AM >>>

Dear Ms. Barhydt,

Many people on Peaks, both summer visitors and year-round islanders talk about the importance of supporting small businesses here on the island. I am a year-round islander, and I express my support in two ways: 1) by purchasing all items on island if they are available here and 2) by supporting the efforts of island businesses operate successfully.

Peaks Island Fuel has selected a location on the island and proposes to expand its business in a way that conforms to existing zoning regulations.

I understand that some islanders, many of whom are summer residents, object to the site because solely they feel it interferes with with the perceived summer ambiance of houses and a summer club house in the vicinity.

However, the proposed use is both legal and supportive of a business which keeps fuel prices down on this island during the long winters that are particularly difficult for year-round islanders.

It would be unconscionable if the Planning Division denied Peaks Island Fuel permission to exercise the right to develop in a legal matter the lot in question in a way that is of clear benefit to those who make their permanent homes on Peaks Island and who are residents of the City of Portland.

Sincerely,

Marjorie Phyfe  
11 Onway Ave  
Peaks Island, ME

**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 7/11/2011 8:19 AM  
**Subject:** Fwd: FW: Peaks Island Fuel Co.

>>> "Suellen Roberts" <sbwatersedge@earthlink.net> Sunday, July 03, 2011 11:23 AM >>>

Dear Barbara Barhydt,  
My husband and I are year-round resident on Peaks Island.  
Pease allow the Peaks Island Fuel Co. to use the designated  
commercial property they have requested on Peaks Island.  
This is very important to the year-round residents on the island.  
Thank you.

Suellen Roberts  
354 Seashore Avenue  
Peaks Island ME 04108  
sbwatersedge@earthlink.net  
766-2161

**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 7/1/2011 7:58 AM  
**Subject:** Fwd: 512 Island Ave. Peaks Island

>>> "S & K Maclsaac" <ramseyroost@maine.rr.com> Thursday, June 30, 2011 10:22 PM >>>  
Dear Ms. Barhydt,

I have just learned about Keith Ivers' application for a permit to create a parking lot for Peaks Island Fuel vehicles at 512 Island Avenue and wish to convey my deep concerns about his proposal. I am not a near neighbor to that address but I am very much involved in island-wide efforts to preserve the character of our unique island community. I do understand that that address is still zoned for business; however, no business or commercial entity has operated in that area since the 1970s when the seasonal grocery store closed permanently. The building that housed the store is now a private home. With the exception of the Trefethen-Evergreen Improvement Association (a summer recreational facility) the neighborhood surrounding 512 Island Avenue is entirely residential.

I feel that creation of a parking area for fuel trucks in this location is very inappropriate for these reasons: That end of Trefethen Avenue is narrow, poorly maintained, and usually not plowed in the winter. In the warmer months it is crowded with bicycles, walkers, golf carts, and children coming and going to the beach and TEIA. Adding fuel trucks to the mix would compromise the safety of everyone who traverses the road.

The land where the proposed parking lot would be is low and wet. Gray water from washing the trucks and potential fuel leaks could contaminate the ground and seep down to the beach thus creating a health hazard for neighbors and beachgoers.

The presence of parked fuel trucks would certainly decrease the value of homes in the neighborhood with homeowners seeking abatements and the city realizing decreased tax revenues. It would also impact future sales in the neighborhood.

The quiet, peaceful character of the neighborhood is what attracts people to live there. A commercial parking area would be quite disruptive and negatively impact neighbors' lives and change the cherished character of the area.

Surely there are more appropriate locations where the fuel trucks could be parked. Perhaps Upper A Street or a spot on land owned by Island Bay Services would be more appropriate. Both of those locations are far enough away from residences so as not to disrupt people's lives.

Thank you for listening to my concerns.

Kimberly A. Maclsaac  
140 Reed Avenue  
Peaks Island



**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 7/1/2011 7:50 AM  
**Subject:** Fwd: 512 Island Ave. Peaks Island

>>> "S & K MacIsaac" <ramseyroost@maine.rr.com> Thursday, June 30, 2011 10:22 PM >>>  
Dear Ms. Barhydt,

I have just learned about Keith Ivers' application for a permit to create a parking lot for Peaks Island Fuel vehicles at 512 Island Avenue and wish to convey my deep concerns about his proposal. I am not a near neighbor to that address but I am very much involved in island-wide efforts to preserve the character of our unique island community. I do understand that that address is still zoned for business; however, no business or commercial entity has operated in that area since the 1970s when the seasonal grocery store closed permanently. The building that housed the store is now a private home. With the exception of the Trefethen-Evergreen Improvement Association (a summer recreational facility) the neighborhood surrounding 512 Island Avenue is entirely residential.

I feel that creation of a parking area for fuel trucks in this location is very inappropriate for these reasons: That end of Trefethen Avenue is narrow, poorly maintained, and usually not plowed in the winter. In the warmer months it is crowded with bicycles, walkers, golf carts, and children coming and going to the beach and TEIA. Adding fuel trucks to the mix would compromise the safety of everyone who traverses the road.

The land where the proposed parking lot would be is low and wet. Gray water from washing the trucks and potential fuel leaks could contaminate the ground and seep down to the beach thus creating a health hazard for neighbors and beachgoers.

The presence of parked fuel trucks would certainly decrease the value of homes in the neighborhood with homeowners seeking abatements and the city realizing decreased tax revenues. It would also impact future sales in the neighborhood.

The quiet, peaceful character of the neighborhood is what attracts people to live there. A commercial parking area would be quite disruptive and negatively impact neighbors' lives and change the cherished character of the area.

Surely there are more appropriate locations where the fuel trucks could be parked. Perhaps Upper A Street or a spot on land owned by Island Bay Services would be more appropriate. Both of those locations are far enough away from residences so as not to disrupt people's lives.

Thank you for listening to my concerns.

Kimberly A. MacIsaac  
140 Reed Avenue  
Peaks Island

**From:** Barbara Barhydt  
**To:** rondelucia@gmail.com  
**CC:** Giles, Eric  
**Date:** 6/30/2011 4:43 PM  
**Subject:** Re: truck yard on Peaks

Dear Mr DeLucia:

Thank you for your comments. I am forwarding them to the planner who is reviewing the project, Erick Giles, and he will share them with the other staff members as well. This is a recent submission, so we have just started the review.

Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov

>>> ron delucia 06/30/11 3:46 PM >>>

Barbara, My name is Ron De Lucia. My cottage is 499 Island Ave Peaks Island. I understand a request has been made to allow a parking lot for fuel trucks in our neighborhood. I am 100% against this. There are a number of reasons, as any reasonable person could imagine. Environmental impact. How could a City allow FUEL TRUCKS that close to the ocean? Neighborhood blight. We are a neighborhood not a truck yard. Can you imagine the noise, dust smoke and smell from the fuel trucks? How about the view? My house taxes are based on the view. I'm sure all the neighbors will apply for a substantial decrease in property taxes. The houses will no doubt be worth less than they are today. Garage creep. Can you picture the number of vehicles and other items such as boats, earth moving equipment, boxes, pallets, barrels and other debris that will accompany the trucks? You wouldn't want a truck yard in your neighborhood... neither do we. There are other places on the island, such as the transfer station that could handle the confusion and mess these trucks will cause. I ask you to consider the common good and not approve the proposal.  
Ron De Lucia

**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 6/30/2011 12:41 PM  
**Subject:** Re: Fwd: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island

>>> Barbara Barhydt Thursday, June 30, 2011 12:41 PM >>>  
Good afternoon:

Thank you for your comments and I will forward your e-mail to the staff members who are reviewing this project.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)>>> Stevenson Monica <[monicas@maine.rr.com](mailto:monicas@maine.rr.com)> Thursday, June 30, 2011 11:11 AM >>>

We concur with the comments sent to you below by Elizabeth Stout. Please keep us informed.  
Monica Stevenson and John Freeman  
548 Island Avenue

Begin forwarded message:

**From:** elizabeth stout <[betsybb1@earthlink.net](mailto:betsybb1@earthlink.net)>  
**Date:** June 29, 2011 2:11:11 PM EDT  
**To:** Stevenson Monica <[monicas@maine.rr.com](mailto:monicas@maine.rr.com)>  
**Subject:** Re: FYI: Level I Site Alteration application for 512 Island Avenue, Peaks Island  
**Reply-To:** elizabeth stout <[betsybb1@earthlink.net](mailto:betsybb1@earthlink.net)>

I am writing to express my concern about the application to create a 4200sq.ft. gravel parking lot for the purpose of parking oil trucks. I believe that it is inappropriate for several reasons but two raise the most concern for me. To begin, while the zoning may allow for commercial activities, it has been many years since there were any commercial enterprises conducted in that neighborhood. In other words, what is on the books does not accurately reflect what is on the ground and how it is used. My biggest concern is environmental. Being so close to the water it seems to me the chance of run-off or worse, a spill of some sort could damage the area and affect its use. I believe that the proposed lot is also quite low and often wet increasing the opportunity for the oil to contaminate. In addition, there is a beach between the proposed lot and the ocean that many use as well as a large number of people

accessing the water through TEIA down a very narrow and unimproved road. That road is often clogged with bikers and walkers. It is difficult at best to imagine an oil truck maneuvering in and out of a parking lot with all of the activity that takes place on that little road. I hope that the application will be denied.

Elizabeth Stout  
549 Island Ave.  
Peaks Island, ME 04108.

**From:** Barbara Barhydt  
**To:** O'Keefe, Fred  
**CC:** Giles, Eric  
**Date:** 6/30/2011 10:51 AM  
**Subject:** RE: 512 Island Ave., Peaks Island Level 1 Alteration

Hello:

I am adding Erick Giles to this e-mail, so he can respond to your questions.

Thank you.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "Fred O'Keefe" <fokeefe@fsog-llc.com> Thursday, June 30, 2011 8:43 AM  
>>>

Thank you very much for the response Barbara.

I do have a question regarding the EPA and or other water quality agencies. Since this property is within very close proximity of the water and there is a stream that runs either through or extremely close to the property can you tell me if the EPA or other agencies concerned with spillage and/or pollution possibilities are also submitting input relating to your decision?

If you would be so kind as to send me Eric Giles email address I will address further questions to him directly.

Thanks again for your quick response. In all my years since I have lived on Peaks I have never seen such as quick neighborhood reaction. We are very, very concerned about this.

Fred

**From:** Barbara Barhydt [mailto:BAB@portlandmaine.gov]  
**Sent:** Tuesday, June 28, 2011 3:03 PM  
**To:** fokeefe@fsog-llc.com  
**Cc:** Eric Giles  
**Subject:** Re: 512 Island Ave., Peaks Island Level 1 Alteration

Hello Mr. O'Keefe:

I received your voice mail and e-mail regarding this project.

Erick Giles is the planner assigned to review this project. I am asking him to scan a copy of the plan and send it to you for your information. We are in the process of reviewing the plan and will consider your comments below. Site plans are reviewed by the Fire Department, Zoning, Department of Public

Services, and Planning. We will be sure to share your comments with the other reviewers as well.

Thank you and if you have more questions or comments, please let us know.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

[<bab@portlandmaine.gov>](mailto:bab@portlandmaine.gov) >>> <[fokeefe@fsog-llc.com](mailto:fokeefe@fsog-llc.com)> Tuesday, June 28, 2011 2:16 PM >>>

Dear Ms. Barhydt,

In today's mail I received a notice for a Level 1 adjustment for 512 Island Ave. to create a 4200 sq.ft parking area to serve as a parking lot for oil and propane fuel trucks.

If you would be so kind as to give me proper guidance to formally object to this adjustment to a primarily resident neighborhood composed mostly of year round residents I would greatly appreciate it. Our concern is chiefly the amount of highly explosive material that will be stored on this property. Where it will be stored and what fire and safety precautions are required by the owners should this application be approved.

This is extremely important since the fire department is located minimally a miles distance from the proposed property adjustment. God forbid there ever be an explosion or fire it could be a disaster.

There are quite a few year round families with children as well as the TEIA tennis, boating and club facility that are extremely close to this property which should also raise concerns.

Would you also let me know what the City time-line is for making your decision.

My number is 766-2300. I reside a 268 Pleasant Ave.

Thank you for your assistance relating to this matter.

Fred O'Keefe  
Sent via BlackBerry by AT&T

**From:** Jean Gulliver <jeangulliver1@gmail.com>  
**To:** NMM@portlandmaine.gov; EGILES@portlandmaine.gov; BAB@portlandmaine.gov  
**CC:** krollins@msad51.org; afunnything@myfairpoint.net; parkerrenat@yahoo.com;...  
**Date:** 6/30/2011 8:49 AM  
**Subject:** Site Alteration 512 Island Ave Peaks Is

Important Notice from City of Portland  
RE: 512 Island Avenue, Peaks Island

To residents and property owners:  
A Level I: Site Alteration application was submitted to the Portland Planning Division by Keith Ivers for a 4200 sq .ft. gravel parking area to serve as the parking area for his fuel oil trucks (7 vehicles) at 512 Island Avenue, Peaks Island.

In Accordance with the Portland Land Use Ordinance, notices of receipt of a Level I Application must be sent to neighbors. This application will be reviewed administratively by City Staff.

Plans are available in the Portland Planning Division, 4th Floor, City Hall. If you have any questions or wish to submit comments, contact Barbara Barhydt, Development Review Services Manager, at 874-8699 or bab@portlandmaine.gov

Another contact, in the planning office, is Eric Giles: egiles@portlandme.gov

To the City of Portland,

I am writing in reference to the above notice on behalf of the Board and members of Trefethen Evergreen Improvement Association. We would like to express our deep concern about the proposed Site Alteration Proposal.

We are concerned about three specific issues and hazards.

1. Traffic. Trefethen Avenue is a small, quiet lane with very little vehicle traffic but a great deal of bike, walking and golf cart activity. We have children passing and repassing all day, all summer, this is not a place to introduce trucks.
2. Environment. The lot in questions is low and wet and very near the ocean into which it drains. We are very concerned about commercial gas and oil trucks being parked and washed in this location and sending pollution into Casco Bay.
3. Residential Area. Despite the artifact of the old commercial zone this is a residential area and has been for decades. Introducing a commercial use would damage the use and value of all area owners.

We would like the opportunity to speak directly with the city about these issues and our concerns. We would also like to know what legal recourse we have for an open hearing on this proposed change of use. Please contact us with the requested information. Also we have heard that city officials are planning a site visit tomorrow June 30 could you please confirm the time of this visit.

I look forward to hearing from you today. Jean Gulliver, Chair TEIA 756 5905

**From:** Barbara Barhydt  
**To:** Stout, Betsy  
**CC:** Giles, Eric  
**Date:** 6/29/2011 2:08 PM  
**Subject:** Re: application for parking lot on Peaks

Good afternoon:

Thank you for your comments. We received this application and have just begun the review of this applicaiton. I am forwarding your comments to Erick Giles, the planner assigned to this project. We will also share your concerns with the other staff members, such as the traffic engineer and zoning administrator, who are part of the review process.

Thank you and you may contact Eric with question or more comments regarding the proposal.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> Betsy Stout <bstout@windhamraymondschools.org> Wednesday, June 29, 2011 1:28 PM >>>

I am writing to express my concern about the application to create a 4200sq.ft. gravel parking lot for the purpose of parking oil trucks. I believe that it is inappropriate for several reasons but two raise the most concern for me. To begin, while the zoning may allow for commercial activities, it has been many years since there were any commercial enterprises conducted in that neighborhood. In other words, what is on the books does not accurately reflect what is on the ground and how it is used. My biggest concern is environmental. Being so close to the water it seems to me the chance of run-off or worse, a spill of some sort could damage the area and affect its use. I believe that the proposed lot is also quite low and often wet increasing the opportunity for the oil to contaminate. In addition, there is a beach between the proposed lot and the ocean that many use as well as a large number of people accessing the water through TEIA down a very narrow and unimproved road. That road is often clogged with bikers and walkers. It is difficult at best to imagine an oil truck maneuvering in and out of a parking lot with all of the activity that takes place on that little road. I hope that the application will be denied.

Elizabeth Stout  
549 Island Ave.  
Peaks Island, ME 04108



**From:** Barbara Barhydt  
**To:** Giles, Eric  
**Date:** 6/29/2011 8:47 AM  
**Subject:** Fwd: 512 Island Ave., Peaks Island Level 1 Alteration

>>> <fokeefe@fsog-llc.com> Tuesday, June 28, 2011 2:16 PM >>>  
Dear Ms. Barhydt,

In today's mail I received a notice for a Level 1 adjustment for 512 Island Ave. to create a 4200 sq.ft parking area to serve as a parking lot for oil and propane fuel trucks.

If you would be so kind as to give me proper guidance to formally object to this adjustment to a primarily resident neighborhood composed mostly of year round residents I would greatly appreciate it. Our concern is chiefly the amount of highly explosive material that will be stored on this property. Where it will be stored and what fire and safety precautions are required by the owners should this application be approved.

This is extremely important since the fire department is located minimally a miles distance from the proposed property adjustment. God forbid there ever be an explosion or fire it could be a disaster.

There are quite a few year round families with children as well as the TEIA tennis, boating and club facility that are extremely close to this property which should also raise concerns.

Would you also let me know what the City time-line is for making your decision.

My number is 766-2300. I reside a 268 Pleasant Ave.

Thank you for your assistance relating to this matter.

Fred O'Keefe  
Sent via BlackBerry by AT&T

**From:** Barbara Barhydt  
**To:** jamacleod@comcast.net  
**CC:** Giles, Eric  
**Date:** 6/29/2011 8:46 AM  
**Subject:** Re: Level I Site Alteration application for 512 Island Avenue, Peaks Island

Hello Mr. MacLeod:

Thank you for your comments and I will forward your comments to Erick Giles, the planner assigned to the project. We have just begun our review of this proposal and will take your comments into consideration.

Thank you again,

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256

bab@portlandmaine.gov>>> "John MacLeod" <jamacleod@comcast.net> Tuesday, June 28, 2011 5:29 PM >>>

Ms. Barbara Barhydt  
Development Review Services Manager  
City of Portland

Dear Ms. Barhydt:

I am writing to express my deep concern over the proposed 4,200 SF gravel parking area referenced in the Site Alteration Application for 512 Island Avenue. While zoned for dual use, the area for half a mile in every direction is entirely residential in nature. Not since Webber's store closed down in my childhood had there been any commercial activity nearby.

Far more appropriate and normal for this type of project (a parking lot for fuel storage and trucking) would be in the area of Upper A St, in the center of the island near the transfer station, near the old utility substation or "down front" in the commercial zone roughly bounded by the library, through Welch Street and up and around to Greenwood Gardens.

While I'm sure the property owner (not Mr. Ivers) would love to generate more revenue from her property at 512 Island Avenue, this seems like a highly inappropriate way to do so.

A home retail business, small store, studios, etc. would be disruptive enough, but the noise, smell and increased truck traffic, risk of environmental pollution or fire/explosion from fuel storage trucks in a neighborhood filled with homes and biking children is beyond the pale. And the damage to the property values and proportionate decrease in the property tax base of neighboring homes should be of some concern to property owners and city officials alike.

I thank you and your colleagues in City Government for your consideration, and urge you strongly you deny this application.

Very sincerely,  
John A. MacLeod  
539 Island Avenue  
Peaks Island, ME. 04108  
207-766-0099  
207-766-2010  
John MacLeod, Trumpet Performance & Instruction  
Principal Trumpet, Portsmouth Symphony Orchestra

Sent on the Now Network™ from my Sprint® BlackBerry

**From:** Barbara Barhydt  
**To:** fokeefe@fsog-llc.com  
**CC:** Giles, Eric  
**Date:** 6/28/2011 3:03 PM  
**Subject:** Re: 512 Island Ave., Peaks Island Level 1 Alteration

Hello Mr. O'Keefe:

I received your voice mail and e-mail regarding this project.

Erick Giles is the planner assigned to review this project. I am asking him to scan a copy of the plan and send it to you for your information. We are in the process of reviewing the plan and will consider your comments below. Site plans are reviewed by the Fire Department, Zoning, Department of Public Services, and Planning. We will be sure to share your comments with the other reviewers as well.

Thank you and if you have more questions or comments, please let us know.

Barbara

Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress Street 4th Floor  
Portland, ME 04101  
(207) 874-8699  
Fax: (207) 756-8256  
bab@portlandmaine.gov>>> <fokeefe@fsog-llc.com> Tuesday, June 28, 2011 2:16 PM >>>  
Dear Ms. Barhydt,

In today's mail I received a notice for a Level 1 adjustment for 512 Island Ave. to create a 4200 sq.ft parking area to serve as a parking lot for oil and propane fuel trucks.

If you would be so kind as to give me proper guidance to formally object to this adjustment to a primarily resident neighborhood composed mostly of year round residents I would greatly appreciate it. Our concern is chiefly the amount of highly explosive material that will be stored on this property. Where it will be stored and what fire and safety precautions are required by the owners should this application be approved.

This is extremely important since the fire department is located minimally a miles distance from the proposed property adjustment. God forbid there ever be an explosion or fire it could be a disaster.

There are quite a few year round families with children as well as the TEIA tennis, boating and club facility that are extremely close to this property which should also raise concerns.

Would you also let me know what the City time-line is for making your decision.

My number is 766-2300. I reside a 268 Pleasant Ave.

Thank you for your assistance relating to this matter.

Fred O'Keefe  
Sent via BlackBerry by AT&T

**From:** Nancy Cuthbertson <ncuthbertson@maine.rr.com>  
**To:** BAB@portlandmaine.gov  
**Date:** Thursday, July 07, 2011 6:45 AM  
**Subject:** Letter of Support for 512 Island Avenue  
**Attachments:** Consideration of Support for 512 Island Avenue.pages

Hello Ms. Barhydt,

Please consider the attached document as a letter of support for alterations considered for 512 Island Avenue. If you have difficulties in opening the attached document, please let me know and I shall make accommodations. Thank you.

Sincerely,

Nancy Cuthbertson  
Resident of 341 Island Avenue  
Peaks Island, Maine

**From:** Nancy Cuthbertson <ncuthbertson@maine.rr.com>  
**To:** BAB@portlandmaine.gov  
**Date:** Monday, July 11, 2011 7:58 AM  
**Subject:** Consideration for Alterations to 512 Island Avenue  
**Attachments:** Consideration of Support for 512 Island Avenue.doc

Hello Barbara,

Please excuse potential confusion as I attempted to provide an attachment regarding the above last weekend. I believe you may have difficulty opening it and am trying again in a different format. Thank you and I hope you had a good vacation.

Best Regards,  
Nancy Cuthbertson

July 6, 2011

Dear Members of the Planning Committee for the City of Portland,

I am in receipt of several emails regarding consideration of plans for approval of site alteration of location referred to as 512 Island Avenue. Please consider my support for continuation of this process.

Based upon the emails I have received, it is my understanding that membership of what is commonly referred to as TEIA has concerns regarding this process. I am receipt of emails urging membership to amass at TEIA on Friday, July1, 2011 at 9:00 to "hear the facts and voice an opinion"; to the best of my knowledge it was for review of potential plans and was not intended as a public hearing. I am in receipt of an email sent by membership of TEIA stating a concern of environmental impact; my hope is that membership will review all collective activities as we all contribute to such. Additionally, I have received nothing indicating that Peaks Island Fuel is not attempting to follow a thoughtful and appropriate process and would have hoped that all community members would have followed suit.

In essence, I am concerned that community members amassed at TEIA and proceeded to the private residence of Mr. Ivers. I am concerned that his family felt such distress that they needed to leave their residence. I am concerned that the factual process of determining the viability of potentially maintaining a business supporting the well-being of year round Island residence is being thwarted through a lack of potential thoroughness or misinformation.

Please know that I am employed by Mr. Ivers and Peaks Island Fuel. I am not representing their opinion. I made the decision to become in their employ due to my belief that healthy competition is necessary for our survival as a thriving community.

Ultimately, this is an important issue requiring process. The potential energy of histrionic or myopic misinformation and emotion will not help guide this Island.

Thank you for your consideration.

Sincerely,

Nancy M. Cuthbertson  
Resident of 341 Island Avenue  
Peaks Island, Maine

# CITY OF PORTLAND, MAINE

---

## ZONING BOARD OF APPEALS

**Interpretation Appeal** to the Portland Zoning Board of Appeals ("Board") from the Zoning Administrator's August 18, 2011 determination that proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B Zone

### DECISION

Date of public hearing: October 13, 2011

Name and address of appellants: Ted Haykal, et al. (named in appeal narrative)  
c/o David A. Lourie, Esq.  
189 Spurwink Ave.  
Cape Elizabeth, ME 04107

Location of property under appeal: 512 Island Avenue, Peaks Island  
Tax Map 090, Block AA, Lots 001, 002 & 005

### For the Record:

**Names and addresses of witnesses (proponents, opponents and others):**

David A. Lourie, Esq. for Appellants

Danielle West-Chuta, Assoc. Corp. Counsel for City of Portland Zoning Administrator Marge Schmuckal; City of Portland Zoning Administrator Marge Schmuckal; City Traffic Consultant Tom Errico;

Ted Small, Esq. for Keith Ivers/Peaks Island Fuel.

Proponents:

1. Ted Haykal, 522 Island Avenue
2. Mr. Steven Riccuchi
3. Arthur Fink
4. Jeanne Meuse, 11 Trefethen Ave.
5. Joanne MacIsaac, 499 Island Ave.
6. Jean Gulliver, Trefethen Evergreen Improvement Association



7. Liz Williams
8. Ron DeLucia, 499 Island Ave.
9. Nancy Hoffman, Brackett Ave.

Opponents:

1. Stephen Mohr, 18 Pleasant Street
2. Nancy Cuthbertson, 341 Island Avenue
3. Ed Ranney, Island Ave.
4. Eric Conrad, 152 Brackett Ave.
5. Eric Eaton, Peaks Island Council
6. Mike Grady, Island Ave.
7. Dan Doane, 364 Island Ave.
8. Kyle Green, 188 Central Ave.
9. Paul Rico, 58 Elizabeth St.
10. Keith Ivers, Peaks Island Fuel Owner
11. Lisa Lynch
12. Sidney Gerard, Island Ave.
13. Rob Tiffany, 38 Centennial St.
14. Paul 341 Island Ave.
15. Rand Gee
16. Hutch Brown, Island Ave.
17. Chris Vail, Island Ave.
18. Robert Haines, Holm Ave.

**Exhibits admitted (e.g. renderings, reports, etc.):**

1. Interpretation Appeal Application, dated Sept. 16, 2011 by David A. Lourie, Esq., incl.:

**Exhibit A**, Aug. 18, 2011 determination by Zoning Administrator Marge Schmuckal;  
**Exhibit B-1**, Aug. 8, 2011 letter from Terradyn Consultants LLC to Portland Planning Dept., Keith Ivers' letters to Planner Erick Giles, notice of the July 28, 2011 Peaks Island Council meeting, Grading and Erosion Control, Site and Landscaping Plans, Stormwater Management Plan;  
**Exhibit B-2**, Site Plan, Landscaping Plan and Details & Notes;  
**Exhibit C**, photographs of vehicles;  
**Exhibit D**, City of Portland Technical Manual, Section 1 (Transportation Systems and Street Design);  
**Exhibit E**, March 20, 1989 City Council Order amending City Code §§ 14-331 and 341.

2. Letters.
  - a. Letters from Frederick W. O'Keefe and Phyllis A. MacIsaac to Board of Appeals on Sept. 29, 2011;

- b. Email from Susan Hanley to Marge Schmuckal, Oct. 4, 2011;
- c. Letter from Jonathan and Beth Brown to Board of Appeals, Oct. 1, 2011;
- d. Letter from Michael Beebe to Board of Appeals, Sept. 29, 2011;
- e. Letter from Alison and Shergul Arshad to Board of Appeals, Sept. 29, 2011.
- f. Email from John S. and Anne E. Whitman dated Oct. 13, 2011.
- g. Email from Tom Morse dated Oct. 13, 2011.
- h. Letter from Bruce and Lori Hochman dated Oct. 13, 2011.

3. Cover Memo from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 5, 2011, transmitting prior comments from public regarding 512 Island Ave., Peaks Island (139 pages of correspondence).

4. Memorandum from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 13, 2011.

#### Findings of Fact and Conclusions of Law:

##### **Findings of Fact:**

The Board's authority to review an interpretation of the building authority (Zoning Administrator) is pursuant to Section 14-472 of the City of Portland Code of Ordinances, Chapter 14 ("Land Use Code").

Keith Ivers is the owner of Peaks Island Fuel. He proposes to park seven vehicles -- four 2,800 gallon fuel trucks used in Mr. Ivers' propane and oil delivery business and three passenger vehicle-sized service vehicles used in Mr. Ivers' heating repair business -- on a "parcel" located at 512 Island Avenue, Peaks Island consisting of several lots, which is improved by a single-family dwelling. Mr. Ivers stated that Peaks Island Fuel's offices are at 66 Island Avenue, and that the Peaks Island fuel trucks and other vehicles currently are parked on rented space on Welch Street, above the ferry landing. He and other members of the public observed that the present parking location is in the midst of much pedestrian traffic and is subject to vandalism and litter. Mr. Ivers also stated that there would be no filling or fueling, major maintenance or washing of the vehicles in the proposed off-street parking area; that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel; and that fueling of the vehicles occurs at the barge site for oil and kerosene and on the mainland for propane filling. In addition, Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation.

This parcel is located in the Island-Business (I-B) District, in which "Off-Street Parking" is a permitted use as stated in Section 14-233 (f) of the Land Use Code. Section 14-331 of the Land Use Code defines "Off Street Parking" as follows:

**Sec. 14-331. Defined.**

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

By letter dated Aug. 18, 2011, the City's Zoning Administrator determined that Mr. Ivers' proposed use is a permitted "off-street parking" use in the I-B Zone. In that letter, the Zoning Administrator determined that Sec. 14-223(f) and 14-331 of the Land Use Code "do not limit the allowable 'off-street parking' to any particular type of use or only allow parking as an accessory use," that the spaces can be either open air or garage spaces, that "The proposed parking area is meeting the standards in the City's Technical Manual," and that the "proposed parking lot is not a truck terminal" because the trucks are not warehoused or stored on the site, the trucks are not filled or fueled and no product is dispensed on site. As a permitted use, the proposed fuel truck/other vehicle parking use would be reviewed by the City's Planning Department under the site plan provisions of the Land Use Code.

The appellants, represented by David A. Lourie, Esq., filed an appeal on Sept. 19, 2011. Appellants assert that the definition of "off-street parking" in Sec. 14-331 means parking for automobiles and compact cars as defined by the City of Portland Technical Manual, Section 1. Appellants argue that the Technical Manual provides for parking spaces 19' in length and 8½' to 9' in width, while the proposed parking lot plans depict parking spaces as long as 22' and as wide as 12', and that the Land Use Code's reference to the Technical Manual limits the off-street parking use to passenger cars and motorcycles. Appellants also argue that the City Council's intent in amending § 14-331 in 1989 to incorporate the Technical Manual by reference was to allow off-street compact car parking. In addition, they argue that the proposed use actually is a "Truck Terminal" use which is prohibited in the I-B -- the storage of trucks, "for use in delivering fuel and services elsewhere on the island." Finally, Appellants argue that the determination was made without adequate consideration for the purposes of the Land Use Code as expressed in Sec. 14-46.

Section 14-47 of the Land Use Code defines "Truck Terminal" as follows:

*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

The defined use "Truck Terminal" is not listed as a permitted or conditional use in the I-B Zone. Under Sec. 14-225 of the Land Use Code, "Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

#### Conclusions of Law:

For reasons that follow, the Board concludes that Appellants have not met their burden of demonstrating that the Zoning Administrator's interpretation of the Land Use Code was incorrect or improper.

First, the Board concludes that the proposed use does constitute "off-street parking," which is a permitted use in the I-B Zone (Sec. 14-223(f)). The Board looks to the plain meaning of Secs. 14.223 (f) and 14-331, which establish "off-street parking" as a permitted use without limitation in the I-B zone in which the parcel is located.

The Board is aware that Sec. 14-331 of the Land Use Code provides that "Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, ... ." However, the Board does not interpret Sec. 14-331 and the Technical Manual incorporated thereby by reference as limiting the "off-street parking" use to passenger vehicles only, or as limiting the dimensions of parking spaces allowed in off-street parking spaces in the City of Portland to 9' by 19' passenger vehicle spaces or to 8½' by 19' compact car spaces. This is because construing the Land Use Code as a whole, other sections of the Land Use Code that refer to off-street parking imply that the off-street parking use also includes commercial motor vehicles. For example, Sec. 14-335 sets forth what off-street parking does not include, such as: more than one commercial motor vehicle in any residence, R-P or B-1 Zone (Sec. 14-335(a)); more than six commercial motor vehicles in any B-2 Zone (Sec. 14-335 (b)); and "any truck body, commercial trailer or similar commercial vehicles in residence zone or the R-P Zone" (Sec. 14-335(e)). In addition, Sec. 14-344 permits the Board or the Planning Board to permit off-street parking accessory to business uses but located in residential zones, with the limitation that the off-street parking be "for passenger cars only." These provisions demonstrate that the "off-street parking" use is available for both passenger vehicles and commercial vehicles, and that the passenger car and compact car stall dimensions in the Technical Manual must be minimum dimensions -- not fixed standards. Further, construing the Land Use Code as Appellants suggest would mean that larger commercial vehicles and trucks cannot be parked in off-street parking sites in Portland, a result that is not consistent with the Land Use Code as interpreted by the Board above or with observed practice in the City of Portland.

Second, the Board concludes that the proposed parking of seven Peaks Island Fuel vehicles is not a prohibited "Truck Terminal" use. In so concluding, the Board

notes that the definition of "truck terminal" in Section 14-47 of the Land Use Code begins: "A building and premises devoted to handling and temporary warehousing of goods, ... ." The plans for the proposed parking area do not include a building, and the definition does not state "A building or premises"; therefore, the proposed use fails to meet this definition. Also, while Appellants argues that there is a distinction between "parking" and "storage" and argue that under the definition of "truck terminal," storage of trucks constitutes a truck terminal, a closer reading of the definition does not support that argument. The full definition reads:

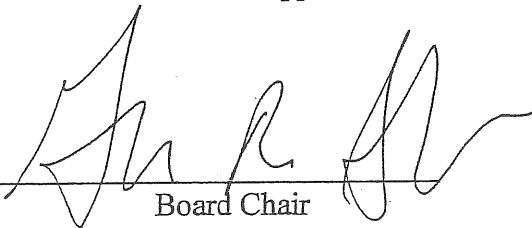
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Thus, while the "storage of trucks" "may be included" in the definition of "truck terminal," the storage of trucks does not by itself constitute a "truck terminal" use. Moreover, Mr. Ivers stated that his proposed off-street parking use for the Peaks Island Fuel vehicles does not include major maintenance, which would be conducted off site and does not include fueling, which he said occurs at the barge site for oil and kerosene and on the mainland for propane filling. Moreover, to the extent any distinction between "storage" and "parking" is relevant to this appeal, the Land Use Code prohibits "storage" outside of more than one unregistered motor vehicle "for a period in excess of thirty (30) days in any residence zone, the R-P Zone or any business zone." Sec. 14-335(d). Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation, so that this section does not apply.

**Decision:**

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

Dated: Oct. 20, 2011

  
Board Chair

July 26, 2012

Mr. Alexander Q. Jaegerman, AICP  
Director  
Planning & Urban Development Department  
Planning Division  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Dear Alex,

It has been some time since I have corresponded with you regarding the decisions and outcomes relating to the off-street parking plans of Keith Ivers and Peaks Island Fuel, 512 Island Avenue, Peaks Island. There are several unresolved questions that I hope you can clarify.

According to the recorded disc of the Planning Board of Appeals meeting held on February 28, 2012 the question was put to the Board relating to the question, "Does 1,320 gallons of fuel stored in either tank and/or truck constitute fuel storage within IB-2 zoned property", according to the definition of the State of Maine DEP? The City Attorney who did not answer the question, but suggested that the Planning Board ask its Attorney.

I have attached a copy of the email sent to me by Mr. David McCaskill of the DEP dated November 16, 2011 where he reconfirms the definition of this rule that 1,320 gallons of fuel stored in a tank and/or truck "overnight" indeed constitutes fuel storage.

1. Has the Planning Board reached a decision regarding this definition?
2. If so, how does it apply to the City Codes defining off street parking within IB-2 zoned property?

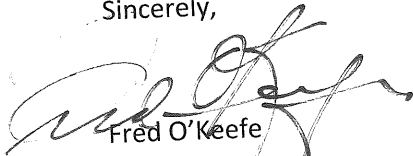
If the City of Portland Planning Board allows for fuel storage in this particular case, does this change the code of what is allowed within the definition of IB-2 zoned property versus those codes that govern "Commercial" property? Would re-zoning from a business zone to a commercial zone be required?

Obviously, because of safety concerns, we are very concerned as to how this issue will be resolved. Since this is a 100% residential use area, regardless of the current zoning with many year round residents, we simply want to be certain that there is the utmost compliance on the part of Peaks Island Fuel to obey all the laws, codes and rules of the City, the State and Federal agencies.

We hope you understand our sincere desire to want to protect our long established residential neighborhood lifestyles to the best of our abilities and further protect our homes from being threatened by any potential danger/disaster, big or small, as could be inflicted on us by volatile materials such as fuel oil and propane.

Thank you for your attention to this matter. I look forward to your answers which I will forward to all neighbors.

Sincerely,



Fred O'Keefe

268 Pleasant Avenue  
Peaks Island, ME 04108

Cc: Mr. David McCaskill  
Maine Department of Environmental Protection  
17 State House Station  
28 Tyson Drive  
Augusta, ME 04333-0017

## Fred O'Keefe

---

**From:** McCaskill, David [David.McCaskill@Maine.gov]  
**Sent:** Wednesday, November 16, 2011 2:44 PM  
**To:** Fred O'Keefe  
**Cc:** Bowie, Butch C  
**Subject:** RE: Question

Yes-It is still fuel storage as long as the trucks are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

---

**From:** Fred O'Keefe [mailto:fokeefe@fsog-llc.com]  
**Sent:** Monday, November 07, 2011 4:03 PM  
**To:** McCaskill, David  
**Cc:** Bowie, Butch C  
**Subject:** Question

David,

As you may recall I corresponded with you back in July of this year regarding the plan submitted by Keith Ivers, Peaks Island Fuel. Recently the City of Portland upheld his request to park fuel trucks on property he is attempting to purchase. The Zoning Board of Appeal also upheld the ruling which would permit the parking of seven (7) vehicles. I have two questions that you hopefully may be able to answer.

1. The resubmitted drawing of the property in question show substantially more of the property within the shoreland zone. What effect will this have in fulfilling State and Federal DEP requirements?
2. Has Mr. Ivers filled the SPCC Plan as required and if so what is the State's recommendations?
3. In the November issue of "The Island Times" and I quote:

"His (Attorney for the Appeal, David Lourey) second argument was that keeping the vehicles at Mr. Ivers's home constituted fuel storage, not parking. This actually caused some consternation among the board members who asked for clarification from the City's Assistant Corporate Council, Danielle West-Chuhta. She and Zoning Administrator Marge Schmuckal both responded, saying that it would constitute storage only if the vehicles were parked for more than 30 days, for instance, if one was inoperable and had not been repaired."

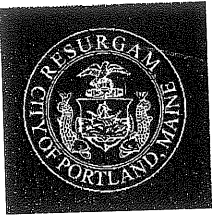
My question to you is what does the DEP consider to be fuel storage. I was under the impression that fuel oil in excess of 1,320 gallons in storage tanks or in his delivery trucks if they are to be parked at the site overnight or longer with product in them does constitute the parking of these vehicles to be in a fuel storage/terminal area.

Is this factual?

Thank you so much for any assistance and/or advice you can provide.

Fred O'Keefe





# PORTLAND MAINE

*Strengthening a Remarkable City, Building a Community for Life* • [www.portlandmaine.gov](http://www.portlandmaine.gov)

**Planning & Urban Development Department**  
Penny St. Louis Littell, Director

**Planning Division**  
Alexander Jaegerman, Director

October 27, 2011

Keith Ivers  
Peaks Island Fuel  
P.O. Box 6  
Peaks Island, ME 04108

Jeff Amos, P.E.  
Terradyn Consultants, LLC  
P.O. Box 339  
New Gloucester, ME 04260

Project Name:	Peaks Island Fuel	Project ID:	2011-277
Address:	512 Island Avenue	CBL:	090-AA-1, 2 and 5
Applicant:	Keith Ivers		
Planner:	Barbara Barhydt, Development Review Services Manager		

Dear Mr. Ivers and Mr. Amos

On October 27, 2011, the Planning Authority approved with conditions a Level I: Site Alteration site plan for a seven (7) vehicle parking lot, four (4) truck spaces and three (3) vehicle spaces, for Peaks Island Fuel at 512 Island Avenue, Peaks Island. The decision is based upon the application documents and plans as submitted by Keith Ivers and prepared by Jeff Amos, P.E with a revision date on the site plans of 9/16/11. In addition, the applicant submitted a copy of the Spill Prevention, Control and Countermeasures Plan that was reviewed by the MDEP, Bureau of Remediation and Waste Management, and approved by Butch Bowie, DEP Environmental Specialist, on August 23, 2011 ([Attachment 3](#)). The proposal was reviewed for conformance with the standards of Portland's site plan ordinance and shoreland zoning. The review comments from City Staff are included as Attachments 1a-1g) The Zoning Board of Appeals confirmed that the parking lot is permitted in the Island Business I-B zone with their October 20, 2011 decision ([Attachment 3](#)).

#### **SITE PLAN STANDARD WAIVERS**

The applicant requested two waivers from the technical standards. The Planning Authority waives the Technical Standards as follows:

1. **Bicycle Parking:** The applicant states that the parking lot is not for public use and there will be no vehicular or pedestrian traffic into the parking area except for employees of

Peak's Island Fuel. The site plan standard (Section 14-526 b. (i) (c) requires two bicycle spaces.

The Planning Authority waives the requirement for bicycle parking under the waiver criteria of 14-526 b. (ii) due to the facts that the parking area is for the Peaks Island Fuel vehicles, which is not open to the public, is active time of use will be during the winter months, and is located in an outlying area on the island.

2. Driveway width: The applicant is proposing a 12 foot wide driveway rather than the 20 foot minimum to the parking area. From a traffic engineering perspective, the reduced width is not expected to be problematic and low traffic volumes on Island Avenue. The narrower drive is proposed to better screen the parking by increasing the available buffer between the gravel surface and the abutting property. As stated in the request, Peak's Island Fuel has only one full time driver and one part-time driver, so there will not be opposing vehicles at any time. Also, the parking area is not open to the public. Finally, the Fire Department has concluded that the proposed driveway width is acceptable due to the fact the driveway into the parking lot is not to a building requiring fire apparatus access.

The Planning Authority waives the standard in the Technical Manual, Section 1, 1.7 Driveway Design to reduce the minimum two-way driveway width from 20 feet to 12 feet per the authority of Section 14-524 (a) 3.v (v)(h) and finds that the public interest is secured with a more prominent buffer, while maintaining a safe driveway, as described/approved by the Traffic Engineer and the Fire Department, and that the variation does not nullify the intent and purpose of the land development plan and regulations.

3. Parking lot dimensions: The applicant is proposing four larger parking stalls of 12 by 22 feet for the trucks with a travel aisle width of 28 feet. The rest of the parking spaces are proposed to be 9 x18 feet.

The Planning Authority supports the four larger parking spaces and the wider aisle width to accommodate the truck parking and circulation, which exceed the minimum dimensional standard of 9x18 feet for a parking space and twenty-four (24) feet for an aisle width as established in the Technical Manual, Section 1.14 and standard figure 1-27. The proposed parking dimensions and lay out allow the parking lot to function in a safe manner. The larger spaces and aisle width will not have the effect of nullifying the intent and purpose of the land development plan and the city regulations.

## SITE PLAN REVIEW

The Planning Authority found the plan is in conformance with the Site Plan Ordinance (Article V) of the Land Use Code, subject to the following condition(s) of approval:

1. The future storage area shown on the site plan is not approved as part of this decision. Any proposed structure must be submitted for the applicable reviews and permits.
2. The applicant and all assigns, must comply with stormwater inspection and maintenance plan and housekeeping plan as included in the applicant's site plan documents and the post-construction stormwater management plan compliance requirements and annual reporting as specified in Chapter 32 of the City Code.
3. The Fire Department approves the driveway into the storage lot as it is not to a building requiring fire apparatus access. However, if a structure is built in this storage lot, a minimum of a 16' wide driveway may be required; and at the entryway it may need to be modified to meet the turning radius of fire apparatus. If a structure is built in the future, code may require a sprinkler system.

The approval is based on the submitted site plan and associated documentation. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

### STANDARD CONDITIONS OF APPROVAL

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

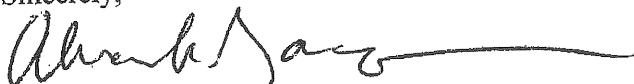
1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require 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 Inspection Division.
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 seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Department prior to the release of a 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 Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
7. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

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 Division at 874-8632. All site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Barbara Barhydt, Development Review Services Manager at (207) 874- 8699.

Sincerely,



Alexander Jaegerman  
Planning Division Director

Attachments:

1. Staff Memorandums
  - a. Memorandum from Lauren Swett, P.E., Woodard and Curran, October 5, 2011
  - b. Thomas Errico, P.E, T.Y. Lin, October 19, 2011
  - c. Jeff Tarling, City Arborist, August 25, 2011
  - d. Jeff Tarling, City Arborist, October XXX
  - e. Captain Chris Pirone, Fire Department, October 18, 2011
  - f. Marge Schmuckal, review comments, July 15, 2011
  - g. Marge Schmuckal, Zoning Determination, August 18, 2011
  - h. Marge Schmuckal, Review Comments, October 25, 2011
2. Zoning Board of Appeals Decision, October 20, 2011
3. Butch Bowie, DEP, approval of spill prevention plan, August 23, 2011,
4. Chapter 32 – Storm Water
5. Performance Guarantee Packet

**Electronic Distribution:**

Penny St. Louis, Director of Planning and Urban Development Department  
Alexander Jaegerman, Planning Division Director  
Philip DiPierro, Development Review Coordinator, Planning  
Marge Schmuckal, Zoning Administrator, Inspections Division  
Tammy Munson, Inspection Division Director,  
Lannie Dobson, Administration, Inspections Division  
Michael Bobinsky, Director, Public Services  
Katherine Earley, Engineering Services Mgr., Public Services  
Bill Clark, Project Engineer, Public Services  
David Margolis-Pineo, Deputy City Engineer, Public Services  
Jane Ward, Administration, Public Services  
Capt. Chris Pirone, Fire Department  
Jeff Tarling, City Arborist, Public Services  
Thomas Errico, P.E., T.Y. Lin Associates  
David Senus, P.E., Woodard & Curran  
Assessor's Office  
Approval Letter File

## MEMORANDUM

TO: Barbara Barhydt, Planner  
FROM: Lauren Swett, P.E.  
DATE: October 5, 2011  
RE: 512 Island Ave



---

As follow up to the response to comments and revised plans received from the applicant for 512 Island Ave, Peaks Island, we offer the following comments.

### Documents Provided

- Response to Comments and attachments for Peaks Island Fuel, dated September 22, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.
- Engineering Plans for Peaks Island Fuel, Sheets 1-4, revised September 16, 2011, prepared by Terradyn Consultants, LLC, on behalf of Peaks Island Fuel.

### Comments

The Applicant has responded to the comments noted in Woodard & Curran's memorandums dated August 19, 2011 and August 25, 2011. The applicant's letter and plan revisions adequately address our comments.

1 b.

**Barbara Barhydt - 512 Island Avenue**

---

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Barbara Barhydt <BAB@portlandmaine.gov>  
**Date:** Wednesday, October 19, 2011 5:28 PM  
**Subject:** 512 Island Avenue  
**CC:** Katherine Earley <KAS@portlandmaine.gov>, David Margolis-Pineo <DMP@port...>

---

Barbara – The following summarizes my final comments noted as a status report from my August 25<sup>th</sup> email.

- The proposed commercial driveway does not meet City standards for width. Based upon low traffic usage, repeat driver use, and the fact that customers will not be accessing the site, I support a waiver for the construction of a 12-foot wide driveway.

**Status: No response needed.**

- The applicant should define the location of the driveway as it relates to abutting driveways and whether it meets the City's driveway separation standard. I'm not concerned about this issue, based upon traffic volumes on Island Avenue and traffic entering and exiting relevant driveways, but want to note whether a standard waiver is required.

**Status: According to the applicant, the area is informally used in respect to vehicle access and parking. Based upon the issues noted above, I find conditions to be acceptable.**

- I support a waiver from the City's technical standards regarding the truck parking stall dimensions (12' x 22') and the parking aisle width (28') to assist with on-site circulation movements. I do not support the provision of the 10' x 20' parking stalls and would suggest that they be reduced to meet city standards (9' x 18').

**Status: The plans have been revised and I have no further comment.**

- The applicant should provide information on the adequacy of sight distance exiting the proposed driveway.

**Status: The applicant has indicated that adequate sight distance will be provided and I have no further comment.**

- In my professional opinion the proposed project will not significantly impact safety or traffic mobility in the area of the project.

**Status: No response needed.**

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate

1 0 c

**From:** Jeff Tarling  
**To:** Eric Giles  
**Date:** 8/25/2011 3:12 PM  
**Subject:** 512 Island Avenue / Peaks Island

Hi Eric -

I have reviewed the proposed project at 512 Island Avenue and offer the following comments / conditions:

- 1) Plant sizes - Shade and ornamental trees proposed did not meet the city standard sizes, shade trees such as Red Maple should be 2.5" caliper, ornamental trees 2" caliper, and evergreens 5-6' in height minimum. The shrub sizes proposed did meet standards.
- 2) Additional screening recommendation - I would recommend an additional 5 lilac shrubs to screen the adjacent residential property, this screening can follow the note on the plan to be coordinated between the project team and neighbor.
- 3) Fencing - In addition to the proposed fencing to screen the parking lot, I would recommend a simple wooden split-rail fence that would run from about the timber retaining wall along the entrance drive following the property line. This fencing would be to demarcate the property line and serve as a safety for children or other residential visitors from venturing into the proposed parking area. This could be an option with agreement from the neighbor.

Overall, the landscape plan saves existing trees, plants additional mix of shade and evergreen trees along with shrubs to help buffer the project.

Thanks,

Jeff Tarling  
City Arborist



1 d.

**From:** Jeff Tarling  
**To:** Barbara Barhydt  
**Date:** Tuesday, October 25, 2011 3:39 PM  
**Subject:** 512 Island Avenue Revisions

Hi Barbara -

I have reviewed the revised plans for 512 Island Avenue and find the plan acceptable as shown.

The additional lilac shrubs along with the fencing and earlier landscape planting meet the earlier review comments. We would be able to meet with the applicant or other concerns on-site to review the placement 'Post Construction' to go over plant placements in regards to screening, snow storage and sight distances.

Jeff Tarling  
City Arborist

1e

**From:** Chris Pirone  
**To:** Barhydt, Barbara  
**Date:** Tuesday, October 18, 2011 11:01 PM  
**Subject:** Re: 512 Island Avenue

Fire comments:

I am all set with this project as the driveway into the the storage lot is not to a building requiring fire apparatus access. However, if a structure is built in this storage lot, a minimum of a 16' wide driveway may be required; and at the entryway it may need to be modified to meet the turning radius of fire apparatus.

If a structure is built in the future, code may require a sprinkler system.

Captain Chris Pirone  
Portland Fire Department  
Fire Prevention Bureau  
380 Congress Street  
Portland, ME 04101  
(t) 207.874.8405  
(f) 207.874.8410

>>> Barbara Barhydt 10/12/11 8:14 AM >>>

Hello:

I would like to wrap up this review, which had been Erick's project. I have memos from Tom, Jeff and David date August 25, 2011, but I don't see anything since then. I know we have discussed this project and I believe you are satisfied with the most recent version. I need to have your sign off in writing.

Chris, I cannot find any comments from you on this project. Could you direct me to your comments and approval. The oil spill prevention control and countermeasure plan that was approved by DEP is one of the documents listed in One Solution.

Thank you.

Barbara

512 Island Avenue – Peaks Island – 90-AA-1, 2, 5

#2011-277

7/15/2011 This is a proposal to create a small, gravel parking lot for up to 7 vehicles . Currently there is a single family dwelling located along Island Avenue. The lot is consists of three separate parcels. The lot is divided by two separate zones: the IR-2 zone and the I-B zone. A portion of the outer edge of the 250' Shoreland Zone also extends into the property. The dwelling is located in the IR-2 zone and the proposed parking lot is located within the I-B zone.

Currently up to seven (7) vehicles are proposed to be parked upon the lot within the I-B zone. The applicant should review sections 14-339 and 14-340 and 14-341 to supply further information before I can make a final determination on zoning compliance. It is my understanding that there will be some refinements to the application.

Marge Schmuckal

Zoning Administrator



# PORTLAND MAINE

*Strengthening a Remarkable City. Building a Community for Life* - [www.portlandmaine.gov](http://www.portlandmaine.gov)

*Penny St. Louis - Director of Planning and Urban Development  
Marge Schmuckal, Zoning Administrator*

512 Island Avenue, Peaks Island  
90-AA-1, 2, 5 - IR-2/I-B Zone

August 18, 2011

The applicant, Mr. Ivers, is showing a vehicle parking lot for seven (7) vehicles located at 512 Island Avenue, Peaks Island. Currently a single family house is located on one portion of the lot. The proposed parking area will be located on another portion of the lot and has sufficient space to park four 2,800 gallon fuel trucks and three passenger-vehicle sized service vehicles. The vehicles are all to be actively used by Mr. Ivers in his heating and fuel oil business. The proposed parking area is shown entirely within the I-B zone.

Section 14-223(f) indicates that "off-street parking" is a permitted use in the I-B island business zone.

Section 14-331 defines "off-street parking" as parking "either by use of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended...."

The above sections do not limit the allowable "off-street parking" to any particular type of vehicle or only allow parking as an accessory use. Instead, the I-B zone allows off-street parking as a specific permitted use and the definition makes clear that the parking spaces can either be open-air or garage spaces that meet the standards in the City's Technical Manual. The proposed parking area is meeting the standards in the City's Technical Manual. As a result, I have determined that the parking lot described in Mr. Iver's application is permitted under the City Code.

It is important to note that I have reviewed the definition for a truck terminal. A "truck terminal" is defined in the City's Land Use Zoning Ordinance as:

"a building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations".

Mr. Iver's proposed parking lot is not a truck terminal. This is because his trucks are not warehoused or stored on the site. The trucks are also not filled, fueled and no product will be dispensed on the site. Instead, the trucks are just parked on this site for active use as needed in Mr. Ivers' propane and oil delivery business. The other vehicles that will be parked on the site are also for active use with Mr. Ivers' heating repair business. Mr. Ivers' business has been active through four generations and has garnered many clients on Peaks Island.

19

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have thirty days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,



Marge Schmuckal  
Zoning Administrator

Cc: Penny St. Louis, Director of Planning and Urban Development  
Alex Jaegerman, Division Director of Planning  
Barbara Barhydt, Development Review Service Manager  
Erick Giles, Planning  
Danielle West-Chuhta, Corporation Counsel  
Mike Murray, Island/Neighborhood Liaison

lh

512 Island Avenue – Peaks Island – 90-AA-1, 2, 5

#2011-277

**10/25/2011** This project has been approved by Zoning for all the underlying I-B zone requirements and Shoreland Zoning requirements.

Separate permits are required by Inspection Services for the use and the parking lot.

It is also noted that the Zoning Board of Appeals approved the parking lot use at its hearing on 10/13/2011 and made a final vote and accepted the findings of fact on 10/20/2011.

Marge Schmuckal

Zoning Administrator

# CITY OF PORTLAND, MAINE

---

## ZONING BOARD OF APPEALS

**Interpretation Appeal** to the Portland Zoning Board of Appeals ("Board") from the Zoning Administrator's August 18, 2011 determination that proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B Zone.

### DECISION

Date of public hearing: October 13, 2011

Name and address of appellants: Ted Haykal, et al. (named in appeal narrative)  
c/o David A. Lourie, Esq.  
189 Spurwink Ave.  
Cape Elizabeth, ME 04107

Location of property under appeal: 512 Island Avenue, Peaks Island  
Tax Map 090, Block AA, Lots 001, 002 & 005

### For the Record:

**Names and addresses of witnesses (proponents, opponents and others):**

David A. Lourie, Esq. for Appellants

Danielle West-Chuta, Assoc. Corp. Counsel for City of Portland Zoning Administrator Marge Schmuckal; City of Portland Zoning Administrator Marge Schmuckal; City Traffic Consultant Tom Errico;

Ted Small, Esq. for Keith Ivers/Peaks Island Fuel.

### Proponents:

1. Ted Haykal, 522 Island Avenue
2. Mr. Steven Riccuchi
3. Arthur Fink
4. Jeanne Meuse, 11 Trefethen Ave.
5. Joanne MacIsaac, 499 Island Ave.
6. Jean Gulliver, Trefethen Evergreen Improvement Association

7. Liz Williams
8. Ron DeLucia, 499 Island Ave.
9. Nancy Hoffman, Brackett Ave.

Opponents:

1. Stephen Mohr, 18 Pleasant Street
2. Nancy Cuthbertson, 341 Island Avenue
3. Ed Ranney, Island Ave.
4. Eric Conrad, 152 Brackett Ave.
5. Eric Eaton, Peaks Island Council
6. Mike Grady, Island Ave.
7. Dan Doane, 364 Island Ave.
8. Kyle Green, 188 Central Ave.
9. Paul Rico, 58 Elizabeth St.
10. Keith Ivers, Peaks Island Fuel Owner
11. Lisa Lynch
12. Sidney Gerard, Island Ave.
13. Rob Tiffany, 38 Centennial St.
14. Paul 341 Island Ave.
15. Rand Gee
16. Hutch Brown, Island Ave.
17. Chris Vail, Island Ave.
18. Robert Haines, Holm Ave.

**Exhibits admitted (e.g. renderings, reports, etc.):**

1. Interpretation Appeal Application, dated Sept. 16, 2011 by David A. Lourie, Esq., incl.:

**Exhibit A**, Aug. 18, 2011 determination by Zoning Administrator Marge Schmuckal;  
**Exhibit B-1**, Aug. 8, 2011 letter from Terradyn Consultants LLC to Portland Planning Dept., Keith Ivers' letters to Planner Erick Giles, notice of the July 28, 2011 Peaks Island Council meeting, Grading and Erosion Control, Site and Landscaping Plans, Stormwater Management Plan;

**Exhibit B-2**, Site Plan, Landscaping Plan and Details & Notes;

**Exhibit C**, photographs of vehicles;

**Exhibit D**, City of Portland Technical Manual, Section 1 (Transportation Systems and Street Design);

**Exhibit E**, March 20, 1989 City Council Order amending City Code §§ 14-331 and 341.

2. Letters.
  - a. Letters from Frederick W. O'Keefe and Phyllis A. MacIsaac to Board of Appeals on Sept. 29, 2011;



- b. Email from Susan Hanley to Marge Schmuckal, Oct. 4, 2011;
- c. Letter from Jonathan and Beth Brown to Board of Appeals, Oct. 1, 2011;
- d. Letter from Michael Beebe to Board of Appeals, Sept. 29, 2011;
- e. Letter from Alison and Shergul Arshad to Board of Appeals, Sept. 29, 2011.
- f. Email from John S. and Anne E. Whitman dated Oct. 13, 2011.
- g. Email from Tom Morse dated Oct. 13, 2011.
- h. Letter from Bruce and Lori Hochman dated Oct. 13, 2011.

3. Cover Memo from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 5, 2011, transmitting prior comments from public regarding 512 Island Ave., Peaks Island (139 pages of correspondence).

4. Memorandum from Zoning Administrator Marge Schmuckal to Zoning Board of Appeals, Oct. 13, 2011.

**Findings of Fact and Conclusions of Law:**

**Findings of Fact:**

The Board's authority to review an interpretation of the building authority (Zoning Administrator) is pursuant to Section 14-472 of the City of Portland Code of Ordinances, Chapter 14 ("Land Use Code").

Keith Ivers is the owner of Peaks Island Fuel. He proposes to park seven vehicles -- four 2,800 gallon fuel trucks used in Mr. Ivers' propane and oil delivery business and three passenger vehicle-sized service vehicles used in Mr. Ivers' heating repair business -- on a "parcel" located at 512 Island Avenue, Peaks Island consisting of several lots, which is improved by a single-family dwelling. Mr. Ivers stated that Peaks Island Fuel's offices are at 66 Island Avenue, and that the Peaks Island fuel trucks and other vehicles currently are parked on rented space on Welch Street, above the ferry landing. He and other members of the public observed that the present parking location is in the midst of much pedestrian traffic and is subject to vandalism and litter. Mr. Ivers also stated that there would be no filling or fueling, major maintenance or washing of the vehicles in the proposed off-street parking area; that the vehicles may contain some amounts of fuel when parked overnight after deliveries in case evening emergency fuel deliveries are needed, but the trucks would not be filled with fuel; and that fueling of the vehicles occurs at the barge site for oil and kerosene and on the mainland for propane filling. In addition, Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation.

This parcel is located in the Island-Business (I-B) District, in which "Off-Street Parking" is a permitted use as stated in Section 14-233 (f) of the Land Use Code. Section 14-331 of the Land Use Code defines "Off Street Parking" as follows:

**Sec. 14-331. Defined.**

Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.

By letter dated Aug. 18, 2011, the City's Zoning Administrator determined that Mr. Ivers' proposed use is a permitted "off-street parking" use in the I-B Zone. In that letter, the Zoning Administrator determined that Sec. 14-223(f) and 14-331 of the Land Use Code "do not limit the allowable 'off-street parking' to any particular type of use or only allow parking as an accessory use," that the spaces can be either open air or garage spaces, that "The proposed parking area is meeting the standards in the City's Technical Manual," and that the "proposed parking lot is not a truck terminal" because the trucks are not warehoused or stored on the site, the trucks are not filled or fueled and no product is dispensed on site. As a permitted use, the proposed fuel truck/other vehicle parking use would be reviewed by the City's Planning Department under the site plan provisions of the Land Use Code.

The appellants, represented by David A. Lourie, Esq., filed an appeal on Sept. 19, 2011. Appellants assert that the definition of "off-street parking" in Sec. 14-331 means parking for automobiles and compact cars as defined by the City of Portland Technical Manual, Section 1. Appellants argue that the Technical Manual provides for parking spaces 19' in length and 8½' to 9' in width, while the proposed parking lot plans depict parking spaces as long as 22' and as wide as 12', and that the Land Use Code's reference to the Technical Manual limits the off-street parking use to passenger cars and motorcycles. Appellants also argue that the City Council's intent in amending § 14-331 in 1989 to incorporate the Technical Manual by reference was to allow off-street compact car parking. In addition, they argue that the proposed use actually is a "Truck Terminal" use which is prohibited in the I-B -- the storage of trucks, "for use in delivering fuel and services elsewhere on the island." Finally, Appellants argue that the determination was made without adequate consideration for the purposes of the Land Use Code as expressed in Sec. 14-46.

Section 14-47 of the Land Use Code defines "Truck Terminal" as follows:

*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

The defined use "Truck Terminal" is not listed as a permitted or conditional use in the I-B Zone. Under Sec. 14-225 of the Land Use Code, "Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

#### Conclusions of Law:

For reasons that follow, the Board concludes that Appellants have not met their burden of demonstrating that the Zoning Administrator's interpretation of the Land Use Code was incorrect or improper.

First, the Board concludes that the proposed use does constitute "off-street parking," which is a permitted use in the I-B Zone (Sec. 14-223(f)). The Board looks to the plain meaning of Secs. 14-223 (f) and 14-331, which establish "off-street parking" as a permitted use without limitation in the I-B zone in which the parcel is located.

The Board is aware that Sec. 14-331 of the Land Use Code provides that "Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, ... ." However, the Board does not interpret Sec. 14-331 and the Technical Manual incorporated thereby by reference as limiting the "off-street parking" use to passenger vehicles only, or as limiting the dimensions of parking spaces allowed in off-street parking spaces in the City of Portland to 9' by 19' passenger vehicle spaces or to 8½' by 19' compact car spaces. This is because construing the Land Use Code as a whole, other sections of the Land Use Code that refer to off-street parking imply that the off-street parking use also includes commercial motor vehicles. For example, Sec. 14-335 sets forth what off-street parking does **not** include, such as: more than one commercial motor vehicle in any residence, R-P or B-1 Zone (Sec. 14-335(a)); more than six commercial motor vehicles in any B-2 Zone (Sec. 14-335 (b)); and "any truck body, commercial trailer or similar commercial vehicles in residence zone or the R-P Zone" (Sec. 14-335(e)). In addition, Sec. 14-344 permits the Board or the Planning Board to permit off-street parking accessory to business uses but located in residential zones, with the limitation that the off-street parking be "for passenger cars only." These provisions demonstrate that the "off-street parking" use is available for **both** passenger vehicles and commercial vehicles, and that the passenger car and compact car stall dimensions in the Technical Manual must be minimum dimensions -- not fixed standards. Further, construing the Land Use Code as Appellants suggest would mean that larger commercial vehicles and trucks cannot be parked in off-street parking sites in Portland, a result that is not consistent with the Land Use Code as interpreted by the Board above or with observed practice in the City of Portland.

Second, the Board concludes that the proposed parking of seven Peaks Island Fuel vehicles is not a prohibited "Truck Terminal" use. In so concluding, the Board

notes that the definition of "truck terminal" in Section 14-47 of the Land Use Code begins: "A building and premises devoted to handling and temporary warehousing of goods, ... ." The plans for the proposed parking area do not include a building, and the definition does not state "A building or premises"; therefore, the proposed use fails to meet this definition. Also, while Appellants argues that there is a distinction between "parking" and "storage" and argue that under the definition of "truck terminal," storage of trucks constitutes a truck terminal, a closer reading of the definition does not support that argument. The full definition reads:

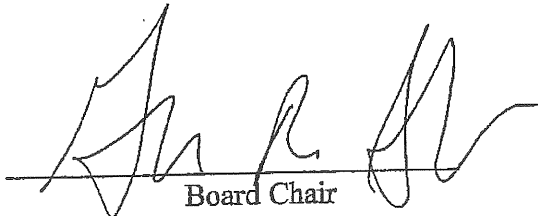
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

Thus, while the "storage of trucks" "may be included" in the definition of "truck terminal," the storage of trucks does not by itself constitute a "truck terminal" use. Moreover, Mr. Ivers stated that his proposed off-street parking use for the Peaks Island Fuel vehicles does not include major maintenance, which would be conducted off site and does not include fueling, which he said occurs at the barge site for oil and kerosene and on the mainland for propane filling. Moreover, to the extent any distinction between "storage" and "parking" is relevant to this appeal, the Land Use Code prohibits "storage" outside of more than one unregistered motor vehicle "for a period in excess of thirty (30) days in any residence zone, the R-P Zone or any business zone." Sec. 14-335(d). Mr. Ivers stated that the Peaks Island Fuel vehicles to be parked in the proposed "off-street parking" site are registered and are used in rotation, so that this section does not apply.

**Decision:**

The Board finds that the Appellants have NOT satisfactorily met their burden of demonstrating that the August 18, 2011 determination of the City's Zoning Administrator was incorrect or improper, and therefore DENIES the appeal.

Dated: Oct. 20, 2011

  
Board Chair

**From:** "Bowie, Butch C" <Butch.C.Bowie@maine.gov>  
**To:** "Eric Giles" <EGILES@portlandmaine.gov>  
**CC:** "Jeff Amos" <jeff@terradynconsultants.com>  
**Date:** 8/23/2011 12:58 PM  
**Subject:** Peaks Island Fuel SPCC Plan

Dear Mr. Giles,

In 2002, the Maine Legislature enacted 38 MRSA § 570-K(5), giving the Maine DEP authority to oversee compliance with the federal SPCC requirements for aboveground oil storage facilities that exceed the federal 1,320 gallon aggregate storage capacity threshold and are used to market and distribute oil.

An SPCC plan lists the containment equipment and structures used to prevent spills from reaching ground water or surface water, and it identifies the inspection, monitoring and oil transfer procedures that will be followed to prevent a spill. If a spill occurs, a well-developed Oil SPCC plan will identify whom to call, and will specify steps, or "countermeasures," to contain the spill and minimize environmental impacts. The specific SPCC requirements for oil storage facilities are found in federal regulation, 40 CFR Part 112. A qualified professional engineer must examine the plan and attest that it has been prepared in accordance with good engineering practices.

Based on a review of the draft SPCC plan prepared by Jeffrey D. Amos, P.E. and submitted for review on August 15, 2011 for Peaks Island Fuel Company, the plan appears to adequately address the requirements of 40 CFR Part 112.

At some point, I would like to schedule a follow up site visit to ensure that all aspects of the plan have been fully implemented at the facility.

Sincerely,

Butch Bowie  
Environmental Specialist  
Bureau of Remediation and Waste Management  
Division of Technical Services  
(207) 287-4804

## 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.



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

## ARTICLE 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 same are 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 an 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.

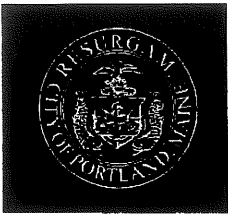
(Ord. No. 35-09/10, 8-17-09)

#### **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

*Strengthening a Remarkable City, Building a Community for Life* • [www.portlandmaine.gov](http://www.portlandmaine.gov)

Planning and Urban Development Department  
Penny St. Louis, Director

Planning Division  
Alexander Jaegerman, Director

## **Performance Guarantee and Infrastructure Financial Contribution Packet**

The municipal code requires that all development falling under site plan and/or subdivision review in the City of Portland be subject to a performance guarantee for various required site improvements. The code further requires developers to pay a fee for the administrative costs associated with inspecting construction activity to ensure that it conforms with plans and specifications.

The performance guarantee covers major site improvements related to site plan and subdivision review, such as paving, roadway, utility connections, drainage, landscaping, lighting, etc. A detailed itemized cost estimate is required to be submitted, which upon review and approval by the City, determines the amount of the performance guarantee. The performance guarantee will usually be a letter of credit from a financial institution, although escrow accounts are acceptable. The form, terms, and conditions of the performance guarantee must be approved by the City through the Planning Division. The performance guarantee plus a check to the City of Portland in the amount of 2.0% of the performance guarantee or as assessed by the planning or public works engineer, must be submitted prior to the issuance of any building permit for affected development.

Administration of performance guarantee and defect bonds is through the Planning Division. Inspections for improvements within existing and proposed public right-of-ways are the responsibility of the Department of Public Services. Inspections for site improvements are the responsibility of the Development Review Coordinator in the Planning Division.

Performance Guarantees will not be released by the City until all required improvements are completed and approved by the City and a Defect Bond has been submitted to and approved by the City.

If an infrastructure financial contribution is required by the City as part of a development approval, please complete the contribution form and submit it along with the designated contribution to the Planning Division. Please make checks payable to the City of Portland.

### Attachments

1. Cost Estimate of Improvements Form
2. Performance Guarantee Letter of Credit Form (with private financial institution)
3. Performance Guarantee Escrow Account Form (with private financial institution)
4. Performance Guarantee Form with the City of Portland
5. Infrastructure Financial Contribution Form with the City of Portland

**SUBDIVISION/SITE DEVELOPMENT**  
**Cost Estimate of Improvements to be covered by Performance Guarantee**

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

Name of Project: \_\_\_\_\_

Address/Location: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Developer: \_\_\_\_\_

Form of Performance Guarantee: \_\_\_\_\_

Type of Development: Subdivision \_\_\_\_\_ Site Plan (Level I, II or III) \_\_\_\_\_

**TO BE FILLED OUT BY THE APPLICANT:**

Item	PUBLIC			PRIVATE		
	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	Subtotal
1. STREET/SIDEWALK						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____

SAMPLE FORM

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
LETTER OF CREDIT  
[ACCOUNT NUMBER]

[Date]

Penny St. Louis  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: [Insert: Name of Developer]  
[Insert: Address of Project, Portland, Maine]

\_\_\_\_\_ (“Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Developer], (hereinafter referred to as “Developer”), held for the exclusive benefit of the City of Portland, in the aggregate amount of [Insert: amount of original performance guarantee]. These funds represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/ or site plan], approved on [Insert: Date] and as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65.

This Letter of Credit is required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 and is intended to satisfy the Developer’s obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, up to thirty (30) days before or sixty (60) days after its expiration, stating any one of the following:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the [Insert: subdivision and/ or site plan] approval, dated [Insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Letter of Credit by presentation of a sight draft and this Letter of Credit and all amendments thereto, at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

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

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

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

**[Name]**  
**[Title]**  
Its Duly Authorized Agent

**SAMPLE FORM**

SITE PLAN/SUBDIVISION  
PERFORMANCE GUARANTEE  
ESCROW ACCOUNT  
[ACCOUNT NUMBER]

**[Date]**

Penny St. Louis  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

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

**[Insert: Name of Bank]** hereby certifies to the City of Portland that **[Bank]** will hold the sum of **[Insert: amount of original performance guarantee]** in an interest bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the **[Insert: subdivision and/or site plan]**, approved on **[Insert: date]** as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Developer's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by **[Insert: Developer]**.

**[Bank]** will hold these funds as escrow agent for the benefit of the City subject to the following:

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account by presentation of a draft in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert date]**; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee by presentation of a sight draft at Bank's offices located at \_\_\_\_\_, prior to the Termination Date, stating any one of the following:

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

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

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

**[Name]**  
**[Title]**  
Its Duly Authorized Agent

Seen and Agreed to: **[Applicant]**

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

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: \_\_\_\_\_

Developer's Name and Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Account Number: \_\_\_\_\_

Application ID #: \_\_\_\_\_

Application of \_\_\_\_\_ [Applicant] for \_\_\_\_\_ [Insert street/Project Name] at \_\_\_\_\_ [Address], Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$ \_\_\_\_\_ [amount of performance guarantee] on behalf of \_\_\_\_\_ [Applicant] in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] as depicted on the subdivision/site plan, approved on \_\_\_\_\_ [date] as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete the work on the improvements contained within the \_\_\_\_\_ [insert: subdivision and/ or site improvements (as applicable)] approval, dated \_\_\_\_\_ [insert date]; or
2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

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

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

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

---

**Distribution**

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Cathy Ricker, ext. 8665.
3. The Agreement will be executed with one original signed by the Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Batch form.
5. \*\*\*\*Signature required if over \$50,000.00.



# Infrastructure Financial Contribution Form

Amount \$ \_\_\_\_\_

City Account Number: 710-0000-236-98-00

Project Code: \_\_\_\_\_

(This number can be obtained by calling Cathy Ricker, x8665)

Project Name: \_\_\_\_\_

Project #: \_\_\_\_\_

Project Location: \_\_\_\_\_

Project Description: \_\_\_\_\_

\_\_\_\_\_

Funds intended for: \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_

Expiration:

If funds are not expended or encumbered for the intended purpose by \_\_\_\_\_, funds, or any balance of remaining funds, shall be returned to contributor within six months of said date.

Funds shall be permanently retained by the City.

Other (describe in detail) \_\_\_\_\_

Form of Contribution:

Escrow Account

Cash Contribution

**Interest Disbursement:** Interest on funds to be paid to contributor only if the project is not commenced.

**Terms of Drawdown of Funds:** The City shall periodically draw down the funds via a payment requisition from Public Works, which form shall specify use of City Account # shown above.

Date of Form: \_\_\_\_\_

Planner: \_\_\_\_\_

Person Completing Form: \_\_\_\_\_

- 
- Attach the approval letter, condition of approval or other documentation of the required contribution.
  - One copy sent to the Applicant.

**Electronic Distribution to:** Peggy Axelsen, Michael Bobinsky, Michael Farmer, Kathi Earley, Betsy Beety, David Margolis-Pineo, Jeff Tarling, Alex Jaegerman, Barbara Barhydt, Phil DiPierro, Deb Marquis and the Planner for project.



**City of Portland, Maine  
 Department of Planning and Urban Development  
 Zoning Board of Appeals  
 Interpretation Appeal Application**

**Applicant Information:**

Ted Haykal and others listed in attached narrative  
 Name  
 opposed to Ivers' Truck Storage Project (See Attached)  
 Business Name  
 c/o Law Offices of David A. Lourie  
 Address  
 189 Spurwink Ave. Cape Eliz. ME 04107  
 Telephone 207-799-4922 Fax 207-221-1688

**Subject Property Information:**

512 Island Avenue, Peaks Island  
 Property Address  
 90-AA-1, 2, 5 or 112-H-1  
 Assessor's Reference (Chart-Block-Lot)  
 Property Owner (if different):  
 KEITH IVERS  
 Name  
 BOX 6 PEAKS ISLAND ME 04108  
 Address  
 Telephone Fax

**Applicant's Right, Title or Interest in Subject Property**  
 Owners of Abutting and Nearby Properties  
 (e.g. owner, purchaser, etc.):

**Current Zoning Designation:** IR-2/I-B Zone

**Existing Use of Property:**  
 Residential

**Disputed Provisions from Section 14 - 14-223(f)/331**

**Order, decision, determination, or interpretation under dispute:**

AUGUST 18, 2011 DETERMINATION THAT  
 PROPOSED STORAGE OF FUEL TRUCKS AND OTHER TRUCKS  
 IS PERMITTED IN I-B ZONE, AS "OFF-STREET PARKING"

**Type of Relief Requested:**

REVERSAL OF DECISION

**RECEIVED**

SEP 19 2011

**Dept. of Building Inspections  
 City of Portland Maine**

**NOTE: If site plan approval is required, attach preliminary or final site plan.**

The undersigned hereby makes application for the relief above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

*David A. Pucci, Agent* \_\_\_\_\_ Date: *9/16/11*

LAW OFFICES OF DAVID A. LOURIE  
189 Spurwink Avenue  
Cape Elizabeth ME 04107  
*and*  
97 India Street, Portland ME 04101  
(207) 799-4922 \* fax 221-1688  
[david@lourielaw.com](mailto:david@lourielaw.com)

September 15, 2011

Board of Appeals  
City of Portland  
Portland City Hall  
389 Congress Street  
Portland, ME 04101

Re: Appeal of Ted Haykal, Abutters, and Neighbors of August 18, 2011 Determination of Zoning Administrator that Storage of 2,800 Gallon Fuel trucks and other commercial Vehicles is Permitted as "off street parking."

To the Chair and members of the Board:

This narrative supplements the Appeal form to which it is attached. The persons taking this appeal are as follows:

1. Ted Haykal, 522 Island Avenue
2. Chuck Muse, 11 Trefethen Ave
3. Jeanne Muse, 11 Trefethen Ave
4. The Trefethen Evergreen Improvement Association ("TEIA") 10 Trefethen Ave;
5. Beth Brown, 517 Island Ave
6. Jonathan Brown, 517 Island Ave
7. Joanne MacIsaac, 499 Island Ave
8. Ron DeLucia, 499 Island Ave
9. Wesley Gustafson, 525 Island Avenue
10. Shiela Gustafson, 525 Island Avenue
11. Frederick O'Keefe, 268 Pleasant Ave
12. Phyllis MacIsaac, 268 Pleasant Ave
13. Mildred MacIsaac, 49 Trefethen Ave
14. Linda Pryblo, 49 Trefethen Ave
15. Nancy Beebe, 582 Island Ave
16. Michael Beebe, 582 Island Ave
17. Charles Hitt, Oak lawn Road
18. Karen Hitt, Oak lawn Road
19. Elizabeth Stout, 439 Island Avenue
20. Monica Stevenson, 548 Island Ave

21. John Freeman 548 Island Ave
22. Christie MacLeod, 531 Island Ave
23. John MacLeod, 539 Island Ave
24. Sarah MacLeod, 539 Island Ave
25. Elizabeth Stout, 549 Island Ave
26. John Gulliver, 8 Diamond Path
27. Jean Gulliver, 8 Diamond Path

I. INTRODUCTION:

Keith Ivers, doing business as Peaks Island Fuel, filed a site plan application for change of use to allow the storage of fuel and other trucks used for the delivery of fuel and services (off of the premises on which they are to be parked or stored.) When the lawfulness of the proposed use at the proposed site was questioned by neighbors, the Zoning Administrator issued a written determination on August 18, 2011 that the proposed use was a permitted use in the Island Business ("I-B") Zoning District, as "off-street parking." This Appeal seeks to reverse the decision of the Zoning Administrator. The Decision appealed from is attached as Exhibit "A."

II. Statement of Fact

The Ivers site plan application proposes consolidating Peaks Island Fuel operations at this location, and depicts parking on the site by seven (7) trucks. A copy of the Ivers site plan application is attached as Exhibit "B-1" and "B-2." This shows "parking spaces" as long as 22', and as wide as 12', where typical parking spaces shown in the Technical Manual are only 19' in length and only 8½' or 9' in width. Photographs of the vehicles proposed for storage on the premises at their present location are attached as Exhibit "C."

While the proposed activities will be significantly different from the passenger required or permitted as *off-street parking*, and although the use was within the definition of "truck terminal" in §14-47 of the Ordinance (and NOT listed as a permitted use in the I-B district), the

Zoning Administrator concluded that the proposed use was permitted due to the listing of “off-street parking” as a permitted use in the I-B island business zone, and the “definition” of “off-street parking” in §14-331 (which incorporates the Technical Manual by reference.<sup>1</sup>)

### III. ARGUMENT

#### A. SUMMARY OF ARGUMENT:

The Decision was in error for several reasons, and at several levels:

- The Technical Manual relied upon in the Decision describes only parking spaces for passenger cars and motorcycles! Nowhere in the Technical Manual are the trucks to be parked on *these* premises referenced. The spaces shown on the Ivers site plan are as long as 22', and as wide as 12', where the parking spaces depicted in the Technical Manual are only 19' in length and only 8½ or 9' in width.
- The supporting materials filed with the 1989 Amendment to §14-331 show that the intent of the City Council (in incorporating the Technical Manual by reference) was simply to allow compact car parking, and not to include large trucks to be parked wherever off-street parking was permitted by the zoning ordinance.
- The trucks parked on the premises are to be stored there, for use in delivering fuel and services elsewhere on the island. The *storage of trucks* is within the definition of “truck terminals” in §14-47.<sup>2</sup> A truck terminal is not listed as a permitted or conditional use in

---

<sup>1</sup> “Section 14-223(f) indicates that “off-street parking” is a permitted use in the I-B island business zone. Section 14-331 defines “off-street parking” as parking “either by use of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended....” The above sections do not limit the allowable “off-street parking” to any particular type of vehicle or only allow parking as an accessory use. Instead, the I-B zone allows off-street parking as a specific permitted use and the definition makes clear that the parking spaces can either be open-air or garage spaces that meet the standards in the City’s Technical Manual. The proposed parking area is meeting the standards in the City’s Technical Manual. As a result, I have determined that the parking lot described in Mr. Iver’s application is permitted under the City Code. “

<sup>2</sup> “*Truck terminal*: A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.”

the I-B district, and is therefore a prohibited use.

- The Decision was made without sufficient regard to the direction of §14-46, that the Portland Zoning Ordinance is intended to promote “the health, safety, convenience and general welfare of the citizens of the city”, and “made with reasonable consideration . . . to the character of each zone and its peculiar suitability for particular uses.”<sup>3</sup> The proposed use will be detrimental to those purposes.

B. THE PROPOSED VEHICLE STORAGE IS NOT WITHIN THE DEFINITION OF OFF-STREET PARKING.

§14-331 defines “off-street parking” as “either by use of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended . . .”<sup>4</sup>

The present version of §14-331 replaced a provision defining parking spaces. The prior ordinance required them to always be 9' x 18'. The amendment was adopted as an “emergency” to validate the practice of the planning board in allowing smaller spaces for compact cars, particularly in private parking garages. *See*, Memorandum of Joseph Gray, Planning Director, dated March 8, 1989, and Order #389 (both attached as Exhibit D.) The only reason given for

---

<sup>3</sup> §14-46. Purpose. This article, made in accordance with a comprehensive plan, is enacted for the purpose of decreasing congestion in streets; securing safety from fire, panic and other dangers; providing adequate light and air; preventing the over-crowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, sewerage, schools, parks and other community facilities and utilities; thus promoting the health, safety, convenience and general welfare of the citizens of the city. This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community.

<sup>4</sup> “DIVISION 20. OFF-STREET PARKING. **Sec. 14-331. Defined.** Off-street parking, either by means of open-air spaces or by garage spaces which meet the standards set forth in the City of Portland Technical Manual, as hereafter amended, in addition to being a permitted use in certain zones, shall be considered as an accessory use when required or provided to serve conforming uses in any zone.”

the change was to provide more flexible standards for the sizing of parking spaces for the parking for passenger vehicles for persons residing at, or visiting various premises. There is no reason to conclude that the City Council intended to include the storage of the large trucks proposed by Ivers when it incorporated the Technical Manual into §14-331.

Most important, and fatal to the decision of the Zoning Administrator (who relied upon the incorporation of the Technical Manual into §14-331), is the fact that *nowhere* in the Technical Manual is there is any reference to, or description of, large truck parking, whether by “open air spaces” or “garage spaces!”<sup>5</sup> In fact, Technical Manual §1.14 describes only parking spaces for passenger vehicles and motorcycles, while the only other depictions in the Technical Manual are Figures I-27 thru I-31. These show only parking configurations for standard passenger vehicles (minimum space 9'x19'); for compact cars (8'x15'); for motorcycles, BUT NOT CONFIGURATIONS FOR TRUCKS! Finally, the “parking spaces” shown on the Ivers site plan are not those depicted in the Manual. The Ivers spaces are all much longer and much wider. A full copy of the Manual is attached as Exhibit “E.”

Any comparison of the “parking spaces” depicted in the Ivers site plan and those depicted

---

<sup>5</sup> Technical Manual §1.14. *PARKING LOT AND PARKING SPACE DESIGN* states: Refer to Division 20 of the City Land Use Code (Sections 14-331 to 14-350) for zoning ordinance requirements concerning the number of parking spaces required for off-street parking. Parking spaces shall meet the following dimensional requirements:

- Standard parking space: 9 feet wide by 18 feet long.
- Compact parking space: 8 feet wide by 15 feet long.
- Motorcycle/motorized scooter parking space: 4 feet wide by 8 feet long.

Any parking lot with 10 or fewer spaces shall contain standard sized parking spaces. Parking lots with greater than 10 spaces may be comprised of up to 20% compact parking spaces.

Parking lot layout shall conform to Figures I-28 thru I-32.

Vehicular access shall be provided by one or more aisles. Minimum widths of aisles are illustrated in Figures I-28 thru I-31.”

in the Technical Manual demonstrates that the reliance of the Zoning Administrator (upon the incorporation of the Technical Manual into §14-331) to support her Decision was wholly misplaced, and must be reversed.

Finally, §14-223(f) (allowing off-street parking as a principal use in the I-B zone) must be read in harmony with other provisions of the I-B zoning district.

Compounding the errors in interpreting the Zoning Ordinance identified above, was the failure to recognize the difference between the *parking* of a motor vehicle associated with the premises, and the *storage* of an unrelated truck intended for use elsewhere. That difference is recognized by the Portland Zoning Ordinance in the inclusion of the *storage* of trucks within the definition of “truck terminal” in §14-47. Since *storage of trucks* for use elsewhere on the island is what is proposed, the use is only allowed where truck terminals are allowed as either a permitted or conditional use. (*See, infra.*)

C. The Proposed Use Is Within the Definition of “Truck Terminal”, and is therefore a Prohibited Use in the I-B Zoning District.

§14-225 states that “Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited [in the I-B district.]” As noted above, Ivers’ proposed truck storage is within a use defined by §14-47, as a *truck terminal* (“A building and premises which **may include ... storage of trucks** or tractor-trailer combinations.”) Since a truck terminal is NOT listed as either a permitted use or a conditional use in §§14-223 or 224, it is prohibited by §14-225.

Reinforcing the conclusion that truck storage is a use prohibited by §14-225 are the differing use characteristics (and resultant danger) inherent in truck storage compared to the



parking of passenger vehicles. These dangers are exacerbated by the risks inherent in the fragile environment of island zoning. Wells and septic systems are far less forgiving than the waterlines and sewer lines in mainland districts. One would expect more restrictive zoning for the I-B zone, but the Decision does not consider this either. Moreover, the unattended storage of fuel trucks, as opposed to *parking* of ordinary cars and trucks presents additional risks of vandalism or leakage of the large amounts of volatile fuel contained in these vehicles.

The entire scheme of the Ordinance militates against allowing a defined and undesirable use (*truck terminal*) allowable as of right as *off-street parking*. See, Singal v. City of Bangor, 440 A.2d 1048 (Me. 1982)

“When a term of a zoning ordinance is ambiguous or uncertain, the court should construe that term reasonably “with regard both to the objects sought to be obtained and to the general structure of the ordinance as a whole. ... It is through consideration of the whole ordinance that the legislative intent can be ascertained. ... Our examination of the Bangor zoning ordinance convinces us that the sale of gasoline was not intended as a permitted use in a C-1 zone. The ordinance is highly restrictive in its treatment of gasoline service stations, permitting them only as special exceptions in the heavier C-2, C-3 and C-4 commercial zones, when the applicant can demonstrate, among other things, that the health, safety, welfare and property values of the neighborhood will not be affected. Since many of the same dangers necessitating restrictions on gasoline service stations are inherent in the self-service sale of gasoline, it would be unreasonable to conclude that the sale of gasoline was intended either as the primary business of, or as a use accessory to, a grocery/superette. **Otherwise, a use considered undesirable for many reasons even in heavy commercial zones would be permitted without restriction in a neighborhood commercial zone.**” See, Singal v. City of Bangor, 440 A.2d 1048 (Me. 1982)

As in *Singal*, the effect of the Decision is to make an undesirable land use considered otherwise restricted to industrial zones a permitted without restriction this neighborhood

commercial zone.<sup>6</sup> Had the City Council intended to allow truck storage as *off-street parking*, it would have at least made truck storage a conditional use, as was done with the open-ended permission for *municipal uses* in the I-B Zone. (This provision allows comparable public works trucks to be stored at this location “provided outside storage and parking area uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood.” *See*, §224(f).) The fact that *off-street parking* by DPW trucks is allowed only with safeguards, tends to negate the conclusion that Ivers trucks could be permitted without those safeguards. It also, reinforces the conclusion that §14-223(f) was intended to allow only the off-street parking of passenger vehicles.

### CONCLUSION

The Decision of the Zoning Administrator interpreting the term “off-street parking” to include a fuel truck terminal in an I-B zone is contrary to the letter and to the spirit of the Portland Zoning Ordinance.

The Decision is detrimental to the public health, safety and welfare, which the Ordinance is supposed to protect. The decision of the Zoning Administrator must be reversed.

Respectfully submitted,



David A. Lourie

---

<sup>6</sup> *Singal* was overruled only on grounds of standing in Norris Family Associates, LLC v. Town of Phippsburg, 2005 ME 102; 879 A.2d 1007. The holdings quoted above are still valid.