

# PORTLAND MAINE

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**Planning & Urban Development Department**

Jeff A. Levine, AICP, Director

**Planning Division**

Alexander Jaegerman, Director

August 3, 2012

Mr. Fred O'Keefe  
268 Pleasant Avenue  
Peaks Island, ME 04108

RE: 0910 - AA - 1 & 2 & 5  
512 ISLAND AVE. P.I.

Dear Mr. O'Keefe:

Thank you for your July 26, 2012 letter regarding 512 Island Avenue (a copy of which is included as an attachment) in which you are asked the following questions:

1. Does 1,320 gallons of fuel stored in either tank and/or truck constitute fuel storage within IB-2 zoned property? You ask if the Planning Board reached a decision on this definition.
2. If so, how does it apply to the City Codes defining off-street parking with IB-2 zone property?

In response to both of your questions, the Planning Board did not address or reach a decision regarding the definition of fuel storage. This is because any and all questions regarding the use of property were decided by the Zoning Board of Appeals ("ZBA") at its October 13, 2012 public hearing (a copy of the ZBA's decision is included as an attachment). The ZBA ultimately decided to uphold the Zoning Administrator's interpretation that the proposed parking of seven vehicles at 512 Island Avenue, Peaks Island, is a permitted "off-street parking" use in the I-B zone. The ZBA decision was not appealed, thus it is the final and binding decision on this matter. I would note that the ZBA did discuss the issue of fuel storage at its hearing, but did not find this issue to be determinative.

After the ZBA decision was rendered, a Level I: Site Alteration plan for Peaks Island Fuel at 512 Island Avenue was reviewed and approved by the Planning Authority on October 27, 2011 (a copy of which is included as an attachment). As part of the review process, a Spill Prevention, Control and Counter Measures Plan (that was reviewed and approved MaineDEP) was reviewed by the Planning Authority and is included as an attachment to the approval letter.

Finally, Mr. Ted Haykal submitted an appeal of the Planning Authority's decision to the Planning Board (a copy of the report and attachments that was presented to the Planning Board is attached). After a hearing on the appeal, the Planning Board denied Mr. Haykal's appeal. Thus, the Planning Authority's approval of the 512 Island Avenue Level I: Site Alteration site plan remains in effect.

Thank you for your inquiry and I hope this material answers your questions.

Sincerely,



Alexander Jaegerman  
Planning Division Director

cc:

Jeff Levine, Director, Department of Planning and Urban Development  
Danielle West-Chuhta, Associate Corporation Counsel  
Marge Schmuckal, Zoning Administrator  
Barbara Barhydt, Development Review Services Manager

Attachments:

1. Fred O'Keefe correspondence, dated July 26, 2012
2. Zoning Board of Appeals Decision, public hearing on October 13, 2012 and decision signed on October 20, 2012.
3. Alexander Jaegerman, Planning Division Director, Site Plan Approval Letter for 512 Island Avenue, dated October 27, 2011.
4. Planning Board Report #9-12, prepared on February 24, 2012 for the February 28, 2012 public hearing.
5. Carol Morrissette, Planning Board Chair, Planning Board Decision made on February 28, 2012 and decision letter dated Marcy 8, 2012.

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?

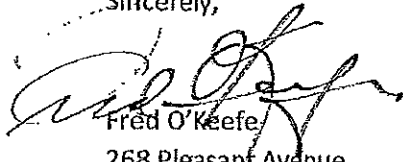
If the City of Portland Planning Board allows for fuel storage in this particular case, does this change the code of what is allowed within the definition of IB-2 zoned property versus those codes that govern "Commercial" property? Would re-zoning from a business zone to a commercial zone be required?

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**

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**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 truck are parked overnight. I have not heard from the town of late but we will check in with them.

Take care,

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**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 filed 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

# CITY OF PORTLAND, MAINE

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## 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



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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 Constultants, 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 Barley, 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



COMMITMENT & INTEGRITY  
DRIVE RESULTS

41 Hutchins Drive  
Portland, Maine 04102  
www.woodardcurran.com

T 800.426.4262  
T 207.774.2112  
F 207.774.6635

H-6

Att. 1a

## 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**

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**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...

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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

l d 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

4.10

le

**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

1 f.

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 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

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*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.

bg

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



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

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## 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 Brick 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. Maelsaac 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:

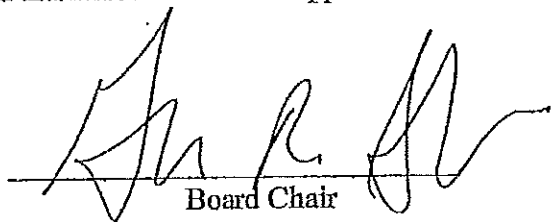
*Truck terminal:* A building and premises devoted to handling and temporary warehousing of goods, which may include facilities for the maintenance and repair (except body repairs, frame straightening and painting), fueling and storage of trucks or tractor-trailer combinations.

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

City of Portland  
Code of Ordinances  
Sec. 32-1

Storm Water  
Chapter 32  
Rev. 9-17-09

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.

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Storm Water  
Chapter 32  
Rev. 9-17-09

*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.

City of Portland  
Code of Ordinances  
Sec. 32-5

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Chapter 32  
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- 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)

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Sec. 32-21. Enforcement.

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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

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result from any person's reliance on this article or any administrative decision lawfully made hereunder.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

**Sec. 32-22. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.  
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

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

**ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.**

**Sec. 32-36. Applicability.**

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.  
(Ord. No. 35-09/10, 8-17-09)

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

Notwithstanding any ordinance provision to the contrary, no applicant for a development project to which this article is applicable shall receive approval for that development project unless the applicant also receives approval for its post-construction stormwater management plan and for the best management practices ("BMPs") for that development project.  
(Ord. No. 35-09/10, 9-17-09)



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

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

- (a) *Inspections.* The owner or operator of a BMP shall hire a qualified post-construction stormwater inspector to at least annually, inspect the BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
- (b) *Maintenance and repair.* If the BMP requires maintenance, repair or replacement to function as intended by the approved post-construction stormwater management plan, the owner or operator of the BMP shall take corrective action(s) to address the deficiency or deficiencies as soon as possible after the deficiency is discovered and shall provide a record of the deficiency and corrective action(s) to the department of public services ("DPS") in the annual report.
- (c) *Annual report.* The owner or operator of a BMP or a qualified post-construction stormwater inspector hired by that person, shall, on or by June 30 of each year, provide a completed and signed certification to DPS in a form provided by DPS, certifying that the person has inspected the BMP(s) and that the yare adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, including the record of the deficiency and corrective action(s) taken.
- (d) *Filing fee.* Any persons required to file and annual certification under this section shall include with the annual certification a filing fee established by DPS to pay the administrative and technical costs of review of the annual certification.
- (e) *Right of entry.* In order to determine compliance with this article and with the post-construction stormwater management plan, DPS may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the BMPs.

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

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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

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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

4.34.

**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
<b>1. STREET/SIDEWALK</b>						
Road/Parking Areas	_____	_____	_____	_____	_____	_____
Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
<b>2. EARTH WORK</b>						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
<b>3. SANITARY SEWER</b>						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
<b>4. WATER MAINS</b>						
_____	_____	_____	_____	_____	_____	_____
<b>5. STORM DRAINAGE</b>						
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:

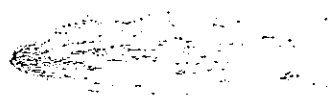
- 1. the Developer has failed to complete any unfinished improvements; or
- 2. the Developer has failed to correct any defects in workmanship; or
- 3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [Insert: subdivision and/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

4.40

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.

**CITY OF PORTLAND, MAINE**  
**PLANNING BOARD**

---

Carol Morrissette, Chair  
Stuart O'Brien, Vice Chair  
Timothy Dean  
Bill Hall  
Joe Lewis  
David Silk

March 8, 2012

Ted Haytkal  
522 Island Avenue  
Peaks Island, ME 04108

Keith Ivers  
512 Island Avenue  
Peaks Island, ME 04108

Dear Mr. Haytkal and Mr. Ivers:

On February 28, 2012, the Planning Board considered Mr. Haykal's appeal of the administrative determination made by Alexander Jaegerman, Planning Division Director, on November 30<sup>th</sup>, 2011, which determined that the appeal submitted by Mr. Ted Haykal on November 28, 2011 specifically appealing the decision of the Zoning Board of Appeals was not within the authority of the Planning Board to consider. The Planning Board voted unanimously (4-0, Hall and Lewis absent) on the following motion:

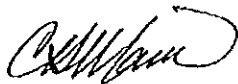
On the basis of the plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 9-12 relevant to the Portland's Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board found:

The Planning Authority determination made on November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not timely, is correct and Mr. Haykal's appeal is denied.

This is a final determination by the Planning Board and may only be appealed to superior court as provided in Portland's Land Use Code, Section 14-29.

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

Sincerely,



Carol Morrissette, Chair  
Portland Planning Board

Attachments:

1. Planning Board Report #9-12

**Electronic Distribution:**

Greg Mitchell, Acting Director of Planning and Urban Development Department  
Alexander Jaegerman, Division Director, Planning Division  
Barbara Barhydt, Development Review Services Manager, Planning Division  
Philip DiPierro, Development Review Coordinator, Planning Division  
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Bill Clark, Project Engineer, Public Services  
David Margolis-Pinco, Deputy City Engineer, Public Services  
Jane Ward, Administration, Public Services  
Capt. Keith Gautreau, Fire Department  
Jeff Tarling, City Arborist, Public Services  
Tom Errico, P.E., T.Y. Lin Associates  
Dan Goyette, P.E., Woodard & Curran  
Assessor's Office  
Approval Letter File



# PLANNING BOARD REPORT PORTLAND, MAINE

APPEAL OF PLANNING AUTHORITY DETERMINATION  
MR. TED HAYKAL, APPELLANT

Submitted to: Portland Planning Board Public Hearing Date: February 28, 2012 Planning Board Report Number:# 9-12	Prepared by: Barbara Barhydt, Development Review Services Manager Prepared Date: February 24, 2012
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## I. Introduction

The Planning Board will hold a public hearing on Ted Haykal's appeal of the Planning Authority's November 30, 2011 determination that stated Mr. Haykal's appeal of a Zoning Board of Appeals decision, filed on November 28, 2011 is not within the authority of the Planning Board to consider and that an appeal of the Planning Authority site plan approval was not filed within the required time frame. Mr. Haykal submitted an appeal regarding 512 Island Avenue.

Notices were sent to 94 property owners and the interested citizen list. The legal ad appeared on February 20 and 21 in the Portland Press Herald.

## II. Chronology Of The Review And Appeals For Peaks Island Fuel At 512 Island Avenue

1. Keith Ivers, Owner/President of Peaks Island Fuel, submitted an application for a Level I: Site Alteration site plan review on June 6, 2011 for Peaks Island Fuel. The project description stated:

Utilize commercial property for parking of delivery and service trucks, fill in site and add two driveways.

As part of the application Mr. Ivers included a cover letter, which describes a 4,200 square parking area for seven service vehicles at 512 Island Avenue. The site lies within the Island Residential I-R2 zone and the Island Business I-B zone. A single family home is located within the IR-2 zone, which is Mr. Ivers' residence. The proposed parking area is located within the IB zone.

The application was distributed for review on June 10, 2011.

2. A site visit was conducted by City staff on Friday, July 1, 2011. The staff participants included Brick Giles, Planner, David Margolis-Pineo, Deputy City Engineer, Barbara Barhydt, Development

Review Services Manager, and Alexander Jaegerman, Planning Division Director. Approximately 40 residents met the City staff members at the site.

- 3. Brick Giles, Planner, prepared a review of the application dated July 15, 2011, which included the review comments from other departments and third party reviews.
- 4. A revised plan was submitted to the Planning Division for review on August 8, 2011.
- 5. Marge Schmuckal Zoning Administrator, prepared a written determination regarding whether the use is permitted in the Island Business zone on August 18, 2011. Ms. Schmuckal concluded the following:

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.

- 6. An Interpretation Appeal of Marge Schmuckal's determination was submitted on September 16, 2011. The appeal was submitted by twenty (27) entities, including Mr. Haykal.
- 7. The Zoning Board of Appeals held a public hearing on the Interpretation Appeal on October 13, 2011. The Zoning Board of Appeals approved the findings on October 20, 2011. The decision is as follows:

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.

- 8. On October 27, 2011, the Level I; Site Alteration Application for 512 Island Avenue was approved by the Planning Authority with three conditions of approval (Attachment 6). Three waivers were granted as part of the approval that waived the requirement for 2 bicycle spaces, waived the 20 foot driveway width to 12 feet and waived parking lot dimensions to allow a 28 foot aisle and four parking spaces of 12 x22.
- 9. Ted Haykal submitted his appeal to Alexander Jaegerman, Planning Division Director, on November 28, 2011 (Attachment 1), which stated the following:

I am writing to notify you that I wish to appeal the decision of the Board of Zoning Appeals on October 13, 2011 in the matter of 512 Island Avenue, Peaks Island, Keith Ivers, prospective

buyer, Tax Map 090, Block AA, Lots 001, 002 & 005, I-B Island Business Zone, in which the applicants challenged the Zoning Administrator's determination that the proposed parking of fuel trucks and other trucks is permitted in the I-B zone as "off-street parking."

The basis of the appeal is that the Board committed errors of law in interpreting City of Portland ordinances, that the decisions was not adequately supported in the facts, and was arbitrary and capricious.

10. Alexander Jaegerman responded to Mr. Haykal's appeal on November 30, 2011 (Attachment 2), stating the following:

The Planning Board cannot accept the appeal you submitted on Monday, November 28, 2011 requesting an appeal of the 2011 Determination by the Zoning Board of Appeal (letter included as Attachment 1) dated October 13, 2011. The Planning Board is not authorized to consider an appeal of a Zoning Board of Appeals decision. An appeal of a Zoning Board of Appeals decision must be submitted to the Maine Superior Court under Rule 80B, Sec 30-A M.R.S.A., section 2691 (3)(G). The Planning Board is, however, authorized to consider an appeal within 30 calendar days of an administrative decision for a site plan (Land Use Code, Sec. 14-30 (o) and 14-529). In this case, the Planning Authority approved the Level I: Site Alteration site plan for 512 Island Avenue on October 27, 2011. Consequently, the time to appeal the aforementioned site plan approval was Monday, November 28, 2011.

11. Mr. Haykal questioned this response. A letter was sent to Ted Haykal from Alexander Jaegerman on December 7, 2011, advising him of his rights to appeal the Planning Authority's administrative determination (Attachment 3).

The Planning Board is authorized to consider an appeal of an administrative determination within 30 calendar days of an administrative determination (Land Use Code, Sec. 14-30 (o)). Specifically, you have the right to submit a letter requesting to appeal the November 30, 2011 determination by the Planning Authority that stated the appeal you submitted was not within the authority of the Planning Board to consider and thus, the request for an appeal is not timely (Attachment 1). You must submit a letter within the appeal period that outlines the points of the Planning Authority November 30th determination that you are appealing.

12. On December 30, 2011, Mr. Haykal submitted an appeal of Alex Jaegerman's determination along with attachments (Attachment 4). Mr. Haykal submitted a handwritten appeal and additional documents on December 30, 2011. He submitted a typed version of his appeal on January 3<sup>rd</sup>. In these letters he states:

This letter is written as an appeal to your decision of November 30, 2011.

The appeal I submitted on November 28, 2011 was incorrectly stated. The appeal I submitted was not within the authority of the Planning Board to consider.

I hope you will reconsider my appeal to the Planning Board.



The attachments to Mr. Haykal's appeal seek an appeal of the Level I: Site Alteration Site Plan for 512 Island Avenue.

**III. Planning Board Authority To Consider An Appeal Of A Determination**

The Planning Board is being asked to determine if there is an error in Alexander Jaegerman's November 30, 2011 letter (Attachment 2) determining that the appeal submitted by Mr. Ted Haykal on November 28, 2011 specifically appealing the decision of the Zoning Board of Appeals was not within the authority of the Planning Board to consider. Mr. Haykal is seeking to correct the statement of the November 28, 2011 appeal from an appeal of the Zoning Board of Appeals decision to an appeal of the site plan approval to the Planning Board, and to rely on the timeliness of the November 28, 2011 appeal letter as meeting the appeal filing requirement for such an appeal.

The City Code specifies that the Planning Board has the authority to:

- (o) To hear, review and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the planning authority.

City Code, Chapter 14, section 14-30. This section does not grant the Planning Board the authority to hear, review or decide appeals of decisions of the Zoning Board of Appeals.

The City Code makes it clear that Zoning Board of Appeals decisions must be appealed according to Section 14-553:

An appeal from any final decision of the board of appeals may be taken by any aggrieved party to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

It is also important to note that administrative decisions for a site plan may be appealed to the Planning Board as follows:

- (a) When the planning authority has approved with conditions or denied a site plan, any person aggrieved may appeal the decision to the planning board within thirty (30) calendar days of the date of the written decision of the planning authority. Upon the taking of such an appeal, the application shall be reviewed as a new application.
- (b) When the planning board has finally approved, approved with conditions, or disapproved a site plan, any person aggrieved or the City may appeal the decision to the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure within thirty (30) days of the vote on the original decision by the planning board.

In this case, Mr. Haykal did not submit a timely appeal of the Planning Authority's October 27, 2011 decision. Danielle West-Chuhta, Associate Corporation Counsel, has provided a memorandum concerning the appeal, which is included as Attachment 5.

Overall, as a result of the above, Mr. Haykal's appeal should be denied.

#### **IV. Proposed Motion**

On the basis of the plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 9-12 relevant to the Portland's Land Use Code and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board finds:

- A. The Planning Authority determination made on November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not timely, is correct and Mr. Haykal's appeal is denied.

**Or**

- B. The Planning Authority determination November 30, 2011 that Mr. Haykal's appeal was not within the authority of the Planning Board to consider and thus, was not a timely appeal of the site plan approval, is incorrect and Mr. Haykal's appeal is granted. Mr. Haykal's appeal of the Planning Authority's approval of the Level I: Site Alteration site plan for 512 Island Avenue shall be scheduled for a public hearing on April 10, 2012.

#### **Attachments:**

1. Ted Haykal Appeal – November 28, 2011
2. Planning Authority Determination to Ted Haykal – November 30, 2011
3. Planning Authority Letter to Ted Haykal – December 7, 2011
4. Ted Haykal Appeal – December 30, 2011
5. Danielle P. West-Chuhta, Associate Corporation Counsel, February 23, 2012
6. Approval Letter, 512 Island Avenue, dated October 27, 2011